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# The State and Business at Arbitrazh Courts

*The authors investigate the question of the differential chances of success of state bodies and entrepreneurs in Russian* arbitrazh *courts (taking into account whether they appear as plaintiffs or respondents). Using regression analysis they establish that—other things being equal—the court usually comes down on the side of the entrepreneur in civil proceedings and on the side of the state in administrative proceedings. In both instances there is a bias in favor of the plaintiff. However, the more complicated the case the smaller the bias in favor of the plaintiff. The study relies on data obtained by means of a simple random sample of cases heard by* arbitrazh *courts of primary jurisdiction in 2007–2011.*

***Keywords:*** arbitrazh *courts, empirical legal studies, institutions of the Russian economy, state and business*

***Jel Classifications:*** *K20, K23, K40, K41*



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The quality of the institutional environment has a direct influence on economic development. The courts are key institutions that ensure the protection of property rights and other basic economic rights and guarantee the execution of contracts. The courts also perform a regulating function by hearing disputes between state regulative bodies and business.

Ideally, judicial examination should be impartial and just. Only in that case can the judicial system be regarded as an institution capable of creating conditions for economic growth. Often, however, the wealthier and more powerful participant in court proceedings has the advantage. The inclination of judges to support one class of participants to the detriment of another is defined as a "bias" (*uklon*) in the judicial system.[1]

We will try to reveal and explain such biases in the Russian system of arbitrazh court proceedings. In particular, we shall investigate the following questions. How does the likelihood of different outcomes (winning or losing) depend on who initiated the case—the state or the entrepreneur? Does the state have the advantage in disputes with business? If so, then under what circumstances and how can it be explained? How does the size of the claim or the complexity of the case influence the probable outcome? How does the degree to which the parties are active influence the outcome of arbitrazh proceedings?

We will try to assess these factors using the Russian judicial system as an example.[2] At the time of our study, Russia's system of arbitrazh courts consisted of the Supreme Arbitrazh Court (SAC), which heard cases by way of oversight, the ten arbitrazh courts of the federal okrugs, which hear cassational reviews, twenty arbitrazh appeal courts, and the arbitrazh courts of subjects of the Russian Federation, which hear cases as courts of primary jurisdiction. This structure emerged during the judicial reform at the beginning of the 2000s and received legislative embodiment in 2003.[3] In 2014 the SAC was abolished and the lower-level arbitrazh courts were subordinated to the newly created Supreme Court of the RF. The tendencies described in this article pertain to the general mechanics of the work of the arbitrazh court system as a whole, so the reform at the top does not make the results obtained less topical.

## Survey of the Literature

Many researchers have tried to discover what influences the probability of winning a case in court, mainly using data from foreign legal systems. The basic premise of these studies is that theoretically, in a normative model, the probability of winning a case in court should be 50 percent for each side. However, social reality is such that the plaintiff's and the respondent's chance of success in various groups of cases will deviate from the ideal figure in one direction or the other depending on specific socially conditioned factors (Clermont and Eisenberg 1997).[4] First of all, practically any judicial system will reward the plaintiff, both as a result of the structure of the judicial process and for extrajudicial reasons. (For a general discussion and a description of exceptions see Clermont and Eisenberg 2000.) As a rule, individuals make the decision to go to court in a quite rational manner, expecting that the court will find their arguments convincing. Even considering this fact, however, the proportion of cases won should not diverge too far from 50 percent. Divergence from the equilibrium point in either direction is not a matter of chance: it may arise from asymmetry of information (Bebchuk 1984) or from discrepant expectations of the parties (Priest and Klein 1984). In the first instance, one of the parties possesses more information and therefore knows the exact probability that it will win in court, while the other party may guess the probability distribution. In the second instance, the model for the choice to take the dispute to court assumes that each of the parties has an erroneous assessment of the case; the dispute is taken to court when one of the parties is more optimistic than the other regarding the outcome. Some researchers find evidence in favor of the thesis that incompleteness of information better explains the conduct of the parties at the stage when they are trying to settle the dispute without going to court, while the theoretical framework of the parties' divergent expectations has greater explanatory power at the stage when the case is taken to court after failure to reach agreement (Waldfogel 1998). Both incompleteness of information in the attempt to settle the dispute

out of court and divergent expectations of the parties create conditions for distortions and biases in the selection of court cases. In light of the parties' divergent expectations, the probability of winning a case in court may vary significantly depending on the degree of uncertainty in assessing the case, the size of court costs, or the predicted decision of the judge in the event of victory (Waldfogel 1998). These assessments may shift depending on the type of participants representing one party or the other, their characteristics, and the associated style of expected behavior.

This article is devoted to investigating the shift in assessments and the biases that arise therefrom in court in connection with the type of participants. Research into such biases in the judicial system has been conducted by Marc Galanter. In 1974 he published an article in which he showed that certain types of participants in a dispute obtain a systematic advantage in court proceedings and offered an explanation of this situation (Galanter 1974). Introducing the concept of the "repeat player," he showed that the parties may be in an unequal position in court because the representatives of one party have more experience in conducting court cases than the representatives of the other party. In disputes with business the state is usually the party with more experience. State bodies such as the tax inspectorate or the pension fund possess experience of representation in court; they are "experienced players" and should therefore win. Business people, by contrast, more rarely encounter such situations and are therefore less competent participants in court proceedings.

Studies of biases in the courts are based on data for civil disputes between various organizations. Few works are devoted to investigating the strength or weakness of the parties when one of the parties to the dispute is the state, and the conclusions that the researchers draw are contradictory and provide no grounds to assert that the state always acquires the advantage in court or, conversely, that the state always finds itself in the same position as other participants.[5]

The advantage enjoyed by the "experienced player" in court proceedings is determined by several factors. First, he possesses

more resources: at least he is always able to send a qualified lawyer to represent him in court. Over time his lawyer accumulates experience in preparing documents and conducting proceedings, and this gives him an advantage in court.

A second possible explanation is that judges, themselves being representatives of the state, usually take the side of other state representatives.[6] Oversight of compliance with laws is one of the key functions of the state, so it is not surprising that courts and state bodies might play on the same side.

Analyzing the experience of Russian citizens and companies that go to court, Kathryn Hendley shows that distinctions among potential parties in court proceedings (for instance, in terms of membership in business associations or, for physical persons, age and other demographic characteristics) can shape their behavior in mobilizing the legal system (Hendley 2012).[7]

In the opinion of Oleg Fyodorov of the National Association of Participants in the Market for Security Services and the Association for the Protection of Investors' Rights, Russian arbitrazh courts do not function as courts in the generally accepted sense. When it is a matter in which "two parties of very different size are facing each other in court—for instance, one very influential, very rich, and the other having only the law behind him—then almost no case is known of the court taking the side of the lesser-known side" (Lambroschini 2001). This comment can be disputed, but it reflects an important problem that cannot be ignored.

The Russian judicial system is regularly a target of criticism. If it is appraised in terms of the basic requirements set for courts—independence and impartiality—then few will claim that these requirements are fully satisfied. Thus another question may be posed: in what kinds of instances (if any) does the court take the side of the entrepreneur?

Although the general appraisal of the Russian judicial system by Russian and foreign experts is negative, they acknowledge that the system of arbitrazh courts possesses an effective appeals procedure.[8] By comparison with other divisions of the judicial branch, participants in court proceedings (above all,

entrepreneurs) have considerable trust in arbitrazh courts. According to Hendley's data, this finds expression in a high level of demand for arbitrazh court proceedings: the annual number of cases heard by arbitrazh courts tripled over the period 1994–2002 and then doubled over the period 2002–2011 (Hendley 2012, p. 37). Currently, arbitrazh courts in Russia hear over a million cases per year; in 2012, for instance, the number of cases heard in arbitrazh court was 1.4 million.[9]

## Data Sources and Sample

Our study is based on the analysis of a representative probability sample of 10,000 arbitrazh cases selected from the population of over 5 million cases heard by the arbitrazh courts during the period 2007–2011. We created a database containing 66 variables for each case. The cases were taken from the Web sites of arbitrazh courts.

Within each region we numbered cases for each year. From this we recorded the number of the last case within each region for each of the years under study. Then we established the number of cases for each region in each year (so that it should be proportional to the share of the region and year concerned in the entire population of cases in which decisions were adopted in 2007–2011).[10] Then a random number generator was used to select 10,000 cases throughout Russia over the period indicated. A certain quantity of numbers were generated for each region in accordance with its share of the population (24 for an average region and average year). The random numbers were used to identify cases for the sample and the requisite data for each sampled case were entered into the database. A certain number of the sampled cases (no more than 10 percent) turned out to be inaccessible;[11] reserve random numbers were used to replace them.

The sample thereby obtained satisfies all the requirements for representative samples and reflects the structure of the general population. This is confirmed by the fact that for a few intersecting variables the difference between the sample statistic

and the corresponding statistic published on the site of the SAC does not exceed statistical error. Thus all conclusions that can be drawn from our sample reflect the overall situation in Russia's arbitrazh courts.

The selected cases were coded with regard to sixty-six formal indicators that could be established by studying the decision in the case and the index cards of the case. *These parameters became the object of our analysis*. They were selected on the basis of a study of scholarly debates, interviews with judges and other participants in court proceedings, and expert views presented in the literature. The variables chosen were as follows (examples of studies revealing the significance of the variables concerned are cited in parentheses).

*Participants in disputes*. Characteristics of participants—in particular, their affiliation with groups of actors such as legal persons, physical persons, and state agencies—very often have a statistically significant influence on judges' behavior (Atkins 1993).

*Themes of disputes*—thematic fields (more or less formally demarcated) to which the content of the case under study may pertain (Goldman 1975).

*Conduct of the parties*—appearance at the session, presentation of documents, reaction to intermediate decisions of the court.[12]

*In whose favor decisions are adopted*—a key parameter that enables us to see which factors influence adoption of a decision, how, and in what situations. As a rule, this parameter is used as a dependent variable.[13]

Alongside factors named in international debate as influencing the outcome of a judicial dispute, we added another two groups of parameters whose significance has been emphasized by Russian experts.

*Time taken for the case to be settled*—the real time (not including time during which the case is suspended) that elapses between the filing of a claim and settlement of the case. Russian courts now pay close attention to this parameter in connection with the long-running campaign against red tape.

*Sums involved*. It is conjectured that cases involving small sums (often initiated not because anyone is trying to win this sum

because departmental or corporate instructions require the initiation of a case[14]) attract much less attention than cases in which substantial sums are claimed.

## Coding of Dependent Variables and Main Categories of Cases in Arbitrazh Court Procedure

When someone makes a decision to mobilize the judicial system in defense of his interests, the initiator of court proceedings—the plaintiff—hopes for an outcome favorable to himself. In many instances, however, the case may be settled by partial satisfaction of the claim or lost altogether. What is more, in the course of court proceedings a situation may emerge in which the plaintiff prefers to withdraw his claim or agree to a proposal for reconciliation of the parties.

Outcomes were coded as follows: "win"—if the plaintiff's initial claim was fully satisfied; "partial win"—if the plaintiff's claim was partially satisfied; "lose"—if the court denied the plaintiff's claim; "other outcomes"—if the claim was withdrawn, the case was terminated as a result of reconciliation between the parties, or the court hearing of the case was not complete at the time when the database was assembled.

In most cases (8,285 cases, that is, 81 percent of all cases in the sample) the plaintiff went to arbitrazh court with some monetary claim. In 19 percent of cases the plaintiff did not make a monetary claim. In the majority of such cases the plaintiff went to arbitrazh court in order to demand that a normative legal act or deal be deemed invalid. In these instances only two outcomes were possible: "win" if the court granted the plaintiff's demand, "lose" if the court rejected his demand. The results are shown in Table 1.

In order to construct a logistic regression these outcomes were recoded as a binary variable in the following way: if the claim was denied or partially satisfied then the case was considered lost; if the claim was fully satisfied then the dependent variable was coded as a win. Other outcomes were excluded from the analysis. The result was 5,174 wins (48 percent of the sample) and 2,550 loses (24 percent of the sample).

Table 1

**Outcomes of Cases in Arbitrazh Court**

| Outcome | Number of cases | Proportion of cases (%) |
|---|---|---|
| Case lost | 1341 | 12.5 |
| Claim partially satisfied | 1209 | 11.2 |
| Case won | 5174 | 48.2 |
| Other outcomes | 3017 | 28.1 |
| Total | 10 739 | 100 |

Two categories of *arbitrazh* court cases need to be analyzed separately: cases that arise out of civil relations and cases that arise out of administrative and other public relations.

Administrative disputes (arbitrazh court cases that arise out of administrative relations) are disputes between an authorized state body and another subject (usually an entrepreneur but sometimes another state body or a body of local self-government) that are connected with exercise of the powers of the body concerned. Thus if a state body sues a legal person for failing to fulfill an order, let us say, for paper clips, then that is a dispute arising out of civil relations—a civil dispute—because here the state body is acting as an ordinary party to civil relations. But if the state body is exercising a specific power (demanding taxes, imposing a fine, prohibiting or permitting something), then a legal challenge to its actions or resort to court proceedings to force an entrepreneur to comply with such a decision is a dispute arising out of administrative relations. In essence, this is a dispute in which either an entrepreneur has not performed his obligations to the state (or has not performed them in full or has not performed them correctly) or, conversely, a body of state power has not performed its obligations to an entrepreneur (or has violated his rights).

Our database includes 4,056 cases arising out of administrative relations (37.3 percent) and 6,476 cases arising out of civil relations (59.5 percent). The breakdown of *administrative* disputes (Table 2) shows that they are most often initiated by

Table 2

**Outcomes of Cases for Various Parties in Administrative Disputes**

| Plaintiff–respondent | Case lost (%) | Claim partially satisfied (%) | Case won (%) | Other outcomes (%) | Number of cases |
|---|---|---|---|---|---|
| Entrepreneur–entrepreneur* | 17.4 | 12.4 | 41.3 | 28.9 | 121 |
| Entrepreneur–state body | 24.4 | 9.5 | 39.3 | 26.7 | 1269 |
| State body–entrepreneur | 13.2 | 4.4 | 61.4 | 21.0 | 2432 |
| State body–state body | 17.9 | 7.7 | 34.7 | 39.8 | 196 |

*For instance, in a situation where one commercial organization disputes an agreement directly affecting its interests that other commercial organizations have concluded with a state body.

the state (in 65.4 percent of cases). In administrative disputes with entrepreneurs the state wins 61.4 percent of cases. In 31.5 percent of instances entrepreneurs take state bodies to court in pursuit of claims arising out of administrative relations but win only 39.3 percent of such cases.

State bodies not only use the arbitrazh courts in performing their supervision and oversight functions but may also participate in the hearing of civil cases (mainly concerning contractual obligations). This places them on the same footing with all other actors. In cases of this type the two parties are absolutely equal: their relations are regulated by a contract—or, if no contract has been concluded, by the Civil Code of the RF and by other laws that set general rules for economic activity.

Our database contains 6,476 cases arising out of *civil* relations (59.5 percent of the sample). In civil cases both parties are usually entrepreneurs (in 82.2 percent of cases); business disputes between state bodies are very rare (1.4 percent of cases). This is quite natural. For example, state bodies figure in civil cases less often than commercial organizations because they more rarely appear as economic subjects in their day-to-day activity.

In civil disputes the state loses its advantage: it wins in only one-third (35.6 percent) of the instances in which it sues an entrepreneur (Table 3).

Table 3

**Outcomes of Cases for Various Parties in Civil Disputes**

| Plaintiff–respondent | Case lost (%) | Claim partially satisfied (%) | Case won (%) | Other outcomes (%) | Number of cases |
|---|---|---|---|---|---|
| Entrepreneur–entrepreneur | 8.5 | 15.4 | 47.5 | 28.6 | 5200 |
| Entrepreneur–state body | 18.5 | 7.2 | 41.4 | 32.9 | 428 |
| State body–entrepreneur | 13.2 | 16.5 | 35.6 | 34.8 | 661 |
| State body–state body | 19.7 | 5.6 | 45.1 | 29.6 | 71 |

Cases arising out of civil and administrative relations differ fundamentally differ in terms of logic and in their characteristics. So in constructing our basic models we have assumed that specific factors play fundamentally different roles in these two groups of cases. All basic models have therefore been constructed separately for civil and for administrative cases.

## Independent Variables: Their Coding and Possible Influence

As already noted, independent variables were selected on the basis of scholarly debate and previous research. All independent variables can be assigned to one of three groups: characteristics of the case, characteristics of the parties, and characteristics of the parties' behavior during court proceedings.

### Effect of Type of Participant: The State Versus Business

In the most general terms, all participants in court proceedings can be divided into two categories—regulating bodies and "business." Regulating bodies include tax agencies and various oversight bodies such as fire, sanitary, and building inspectorates. For the purposes of this study "business" refers to all organizations engaged in the production of goods or services, regardless of their form of ownership.

In Russia the activity of regulating bodies is often regarded as a factor that impedes the conduct of business. Therefore, it is important to assess how strong a presence state bodies have in the courts and whether they have the advantage in the adjudication of disputes.

From Table 4 it is clear, first of all, that the so-called pro-plaintiff bias does exist. The proportion of claims that are fully or partially satisfied always exceeds the proportion of claims that are denied. But we also find differences depending on who is the plaintiff and who is the respondent. The proportion of cases won by the state is indeed somewhat higher when it acts as the plaintiff against an entrepreneur rather than the other way around. Thus the state wins 54.7 percent of the cases in which it sues an entrepreneur. In disputes between state bodies the outcome is less predictable: in a third of such cases the claim is withdrawn. When an entrepreneur sues a state body his chance of winning is not so great: 22.9 percent of such cases are lost.

The conclusion may be drawn that state bodies have a stable though small advantage in arbitrazh court proceedings (Tables 5 and 6). This advantage is especially great in administrative disputes (Table 6).

Table 4

**Outcomes of Cases in Arbitrazh Court by Type of Participants** (all cases)

| Plaintiff–respondent | Case lost (%) | Claim partially satisfied (%) | Case won (%) | Other outcomes (%) | Number of cases |
|---|---|---|---|---|---|
| Entrepreneur–entrepreneur | 8.7 | 15.1 | 47.3 | 29.0 | 5447 |
| Entrepreneur–state body | 22.9 | 8.9 | 39.9 | 28.3 | 1701 |
| State body–entrepreneur | 13.1 | 6.6 | 54.7 | 25.6 | 3279 |
| State body–state body | 18.3 | 7.1 | 37.7 | 36.9 | 268 |

Table 5

**Outcomes of Cases in Arbitrazh Court by Type of Participants**
(civil cases; %)

| Plaintiff–respondent | Case lost | Claim partially satisfied | Case won | Other outcomes | Total |
|---|---|---|---|---|---|
| Entrepreneur–entrepreneur | 8.5 | 15.4 | 47.5 | 28.6 | 100.0 |
| Entrepreneur–state body | 18.5 | 7.2 | 41.4 | 32.9 | 100.0 |
| State body–entrepreneur | 13.2 | 16.5 | 35.6 | 34.8 | 100.0 |
| State body–state body | 19.7 | 5.6 | 45.1 | 29.6 | 100.0 |
| All civil cases | 9.8 | 14.9 | 45.8 | 29.5 | 100.0 |

Table 6

**Outcomes of Cases in Arbitrazh Court by Type of Participants**
(administrative cases; %)

| Plaintiff–respondent | Case lost | Claim partially satisfied | Case won | Other outcomes | Total |
|---|---|---|---|---|---|
| Entrepreneur–entrepreneur | 17.4 | 12.4 | 41.3 | 28.9 | 100.0 |
| Entrepreneur–state body | 24.4 | 9.5 | 39.3 | 26.7 | 100.0 |
| State body–entrepreneur | 13.2 | 4.4 | 61.4 | 21.0 | 100.0 |
| State body–state body | 17.9 | 7.7 | 34.7 | 39.8 | 100.0 |
| All administrative cases | 17.1 | 6.4 | 52.5 | 24.0 | 100.0 |

## Characteristics of the Case

### Size of the Claim

The greater the size of the claim the higher the likelihood that the parties will make every possible effort to win the case—that is, they will spend resources on upholding their position in court. It may therefore be hypothesized that the larger the monetary claim in a case the more likely it is that the claim will be partially satisfied. Such a tendency would not conflict with the fact that

there exist both "cheap" cases that are nonetheless very important and require a great deal of attention and effort and "expensive" cases that are of little interest to the parties or to the court. Table 7 presents basic statistics of claims filed.

There are significant differences between the sums claimed in civil and in administrative cases. The median value of a civil case is about 100,000 rubles, while that of an administrative case is 3,000 rubles.

As is clear from Table 8, it is the "cheapest" civil cases that are most often won. As the size of the claim increases, the probability of a complete win for the plaintiff declines. At the same time, the likelihood that his claim will be only partially satisfied or denied altogether increases. It may therefore be conjectured that the chance of the plaintiff winning the case depends on the sum in dispute.

Administrative cases do not show so clear a tendency of this sort as civil cases do. The plaintiff as a rule is a state body, which wins disputes arising out of administrative relations with about the same frequency, whatever the size of the claim (except for the most "expensive" cases).

Table 7

**Size of Claims: Descriptive Statistics** (rubles)

| Statistic | Civil cases | Administrative cases |
|---|---|---|
| Mean sum | 3 318 168 | 775 110.7 |
| Minimum sum | 84.16 | 2 |
| Maximum sum | 2 420 000 000 | 359 000 000 |
| Median sum | 104 906,8 | 3 000 |
| Number of cases | 5 476 | 2 709 |
| 99th percentile | 39 100 000 | 20 500 000 |

*Note:* Here and henceforth we do not correct for inflation by adjusting prices to equivalent prices in a single base year. This is because the money value of a case is a proxy for its degree of importance and complexity and plays less of a role as a strictly quantitative estimate of the "price" of the case. It would also be difficult to make the correction because the monetary sum should be assigned not to the date of the claim but to the date on which the parties entered into relations by concluding the contract whose violation gave rise to the dispute.

Table 8

**Outcomes of Cases by Size of Claim** (civil cases; %)

| Size of claim (quartiles) | Case lost | Claim partially satisfied | Case won | Other outcomes | Total |
|---|---|---|---|---|---|
| First quartile (under 10,000 rubles) | 6.2 | 9.1 | 56.6 | 28.1 | 100.0 |
| Second quartile (10,000–50,000 rubles) | 5.6 | 14.4 | 53.9 | 26.2 | 100.0 |
| Third quartile (50,000–300.000 rubles) | 7.0 | 18.5 | 48.6 | 25.9 | 100.0 |
| Fourth quartile (over 300,000 rubles) | 14.4 | 14.2 | 37.3 | 34.1 | 100.0 |
| All civil cases | 9.7 | 14.9 | 45.7 | 29.7 | 100.0 |

If we assume that the arbitrazh court should function as an institution that settles significant disputes and conflicts in the business world and maintain equilibrium between protecting the rights of big business and ensuring that court procedures remain accessible to small businesspeople, then size of claim should have a normal distribution. This is not what we found in our study: for both civil and administrative cases the distribution of size of claim diverges from the normal, with claims of 500,000 rubles or less in two-thirds of all cases. In a large number of cases, moreover, the size of the claim does not exceed the average monthly salary of an office employee of a small company at the start of his career. However, this tendency does not reflect any concern to uphold the interests of small business; instead, it shows that the *arbitrazh* courts are overburdened with petty and trivial cases.

### Time Taken for a Case to Be Settled

The time taken for a case to be settled should not in theory have any influence on the outcome of the case. Nevertheless, it cannot be denied that the duration of a case may to some degree reflect its complexity. The elapse of a long period of time before a case is settled potentially has an effect on the probability of a successful outcome for the plaintiff. In a simple case the evidence presented

will be clear and strong and the court should quickly come to a decision in favor of the plaintiff. If a court regularly postpones sessions, increasing the time taken for cases to be settled, then this should improve the chance of the respondent winning the case.

However, the time taken for a case to be settled depends not only on the wish of the judge to make a carefully weighed decision in the case but also on external pressure, because the law imposes explicit requirements for the time taken to settle a case. Article 134 of the Arbitrazh Procedure Code of the Russian Federation (APC RF) gives a court two months to prepare a case for a court session. This preparation must include specific procedural actions by the judge. The concrete content and sequence of these actions are conditioned by the general tasks of preparation: to determine the legal relations between the parties, the law by which the court should be guided, and also the circumstances that are relevant to a correct examination of the case; to decide which persons should participate in the case and identify other participants in arbitrazh court proceedings; to assist participants in the case in presenting necessary evidence; and to attempt to reconcile the parties. Basic procedural actions also include setting a time for the court session "that makes it possible to gather the people needed to participate in the proceedings with sufficient evidence correctly to settle the dispute in this first court session" (Treushnikov 2007, pp. 7–8).

A decision must be reached within one month of the court ordering a judicial investigation of the case, unless otherwise stipulated by the APC RF (Article 152 of the APC RF). Different time limits are set for cases that arise out of administrative or other public relations.

On the whole, time limits for settling cases are relatively short, and this is a significant achievement of the Russian arbitrazh court system.[15] Legal requirements pertaining to time limits are rarely violated.

Our study shows that in 89.5 percent of cases a judicial investigation is ordered within sixty-five days (this includes five days for the judge to make the decision to accept the suit and another sixty days up to the day of the first session). Moreover,

over half of cases (53.2 percent) are heard in court within one month. In 9 percent of cases it takes from two months to half a year before the first court session takes place. In 1.4 percent of cases over half a year elapses from submission of the claim to the first court session.[16]

According to the APC, the court is allowed one month to reach a decision. In over half of all cases (57.2 percent) the court meets this deadline (here we refer to physical time, not to procedural time[17]). In 39.4 percent of cases a decision is reached within the first two weeks. In another quarter of cases (24.8 percent) a decision is reached within the first two months. In 15.6 percent of cases the court of primary jurisdiction reaches a decision within a period of two to six months. In 2.4 percent of cases it takes the court over half a year to reach a decision. Table 9 presents descriptive statistics of the time taken for cases to be settled.

Of interest is the gap between the two upper percentiles of the sample. In 95 percent of civil cases less than half a year (131 days) elapses from the time when the claim is filed until the case is settled. Moreover, 90 percent of civil disputes are settled within three months and 90 percent of administrative disputes within two months. Very lengthy proceedings (over a year) characterize 1 percent of cases.

Table 9

**Time Taken for Cases to Be Settled in Arbitrazh Court: Descriptive Statistics** (days)

| Statistic | Civil cases | Administrative cases | All cases |
|---|---|---|---|
| Mean | 47.4 | 26.8 | 41.8 |
| Minimum* | 0 | 0 | 0 |
| Maximum | 1 191 | 1 097 | 1 191 |
| Median | 32 | 8 | 27 |
| 95th percentile | 131 | 85 | 131 |
| 99th percentile | 398 | 231 | 378 |

*Zero time means that the case was heard and settled on the same day as the claim was filed.

## Behavior of Participants in Court Proceedings

### Whether the Parties Appear

Appearing at court proceedings or sending notice of withdrawal may be considered one of the main modes of interaction between a participant and the court.

As we see from Table 10, when the plaintiff ignores the court session but the respondent appears the chances of each to win are practically equal. When both parties appear, the situation shifts again in favor of the plaintiff. However, if the state is the respondent in the dispute (Table 11) then the situation changes radically. First, there is a difference of almost 10 percent in the likelihood of a complete win for the plaintiff between the situation in which a state official as respondent does not appear and the situation in which an entrepreneur as respondent does not appear. Second, the appearance of an entrepreneur as plaintiff substantially improves his chances. Third—and this is very interesting—the appearance of the respondent alone when the

Table 10

**Outcomes of Civil Disputes by Whether Parties Appear: Disputes Between Entrepreneurs** (%)

| Whether parties appear | Case lost | Claim partially satisfied | Case won | Other outcomes | Total |
|---|---|---|---|---|---|
| No one appears | 4.2 | 11.2 | 63.3 | 21.3 | 100.0 |
| One party sends notice of withdrawal and the other does not appear | 7.7 | 11.1 | 45.6 | 35.6 | 100.0 |
| Both parties send notice of withdrawal/one appears but the other does not | 5.9 | 16.2 | 58.3 | 19.7 | 100.0 |
| At least one party sends notice of withdrawal or appears | 8.1 | 15.7 | 49.8 | 26.4 | 100.0 |
| Both parties appear | 16.6 | 20.9 | 32.4 | 30.0 | 100.0 |
| All disputes | 8.9 | 16.4 | 50.5 | 24.1 | 100.0 |

Table 11

**Outcomes of Civil Disputes Between the State As Plaintiff and an Entrepreneur As Respondent by Whether Parties Appear** (%)

| Whether parties appear | Case lost | Claim partially satisfied | Case won | Other outcomes | Total |
|---|---|---|---|---|---|
| No one appears | 9.2 | 21.1 | 31.6 | 38.2 | 100.0 |
| One party sends notice of withdrawal and the other does not appear | 10.3 | 5.1 | 28.2 | 56.4 | 100.0 |
| Both parties send notice of withdrawal/one appears but the other does not | 8.6 | 16.1 | 49.8 | 25.5 | 100.0 |
| At least one party sends notice of withdrawal or appears | 20.6 | 17.6 | 35.3 | 26.5 | 100.0 |
| Both parties appear | 21.6 | 20.7 | 25.5 | 32.2 | 100.0 |
| All disputes | 13.8 | 17.6 | 37.3 | 31.3 | 100.0 |

respondent is a state official improves his chances by a smaller margin than when the respondent is an entrepreneur.

The situation is similar when roles in the dispute are reversed, although here the state is in a slightly better position—the effect of a state official appearing alone is stronger. Thus when both parties fail to appear, a state official as plaintiff is more likely to win than an entrepreneur as plaintiff. The situation in which a state official as plaintiff appears alone gives him a greater advantage than the situation in which an entrepreneur as plaintiff appears alone. The likelihood of losing the case outright falls considerably when only the respondent appears. And finally, a complete win is much less likely in the situation in which both parties appear.

All these data can be interpreted as follows. In a civil case that is simple or of little importance, the state is clearly the stronger party; however, if a state official acts as plaintiff, then it is important for him to be present in person. In all other instances the presence or absence of a state official has no bearing on the outcome of the case.

Let us turn now to administrative disputes and analyze the impact of the presence of the parties. As is clear from Table 12, when an entrepreneur disputes a decision of a body of state power then everything is logical: if neither party appears then the court settles the dispute at its own discretion. As a rule, its decision is unambiguous—either yes or no. When only the plaintiff appears and is (apparently) able to argue in favor of his position, his chances improve. The reverse situation—when only the state official as respondent appears and (presumably) gives voice to his arguments, there is a much greater probability of the claim being denied. The appearance of both parties yields the same probability distribution of outcomes as the failure of both parties to appear.

The situation in administrative proceedings between two state bodies is very similar to that described above. We shall not cite figures here but note only that failure to appear increases the probability of completely losing the case by 10–15 percent. This confirms the thesis that state structures in dispute with one another are usually weaker than entrepreneurs. When only the respondent fails to appear, the effect of his presence or absence is

Table 12

**Outcomes of Administrative Disputes Between an Entrepreneur As Plaintiff and the State by Whether Parties Appear** (%)

| Whether parties appear | Case lost | Claim partially satisfied | Case won | Other outcomes | Total |
|---|---|---|---|---|---|
| No one appears | 14.8 | 3.7 | 22.2 | 59.3 | 100.0 |
| One party sends notice of withdrawal and the other does not appear | 16.7 | 10.0 | 30.0 | 43.3 | 100.0 |
| Both parties send notice of withdrawal/one appears but the other does not | 30.0 | 5.9 | 35.0 | 29.1 | 100.0 |
| At least one party sends notice of withdrawal or appears | 32.3 | 11.3 | 37.1 | 19.4 | 100.0 |
| Both parties appear | 26.3 | 12.2 | 48.0 | 13.6 | 100.0 |
| All disputes | 26.5 | 10.5 | 43.2 | 19.8 | 100.0 |

stronger than when an entrepreneur is the respondent and appears. And, finally, when both parties appear the situation is very similar (within the bounds of statistical error) to that in a dispute between a state body and an entrepreneur.

A different picture emerges when we analyze disputes that arise out of administrative relations and that are initiated by bodies of state or municipal administration (Table 13).

In these disputes it is much more difficult for the court to deny claims if both parties are absent. In comparing Tables 12 and 13 it is clear that the court takes the side of the state body, satisfying the demands of the plaintiff in his absence 50 percent more often than it satisfies the demands of an entrepreneur in an analogous situation. A similar shift can be observed in instances of the failure of the respondent or plaintiff to appear. Even in instances where both parties appear there is no parity between disputes initiated by an entrepreneur and disputes initiated by a state body.

Let us sum up.

- It cannot be said that the arbitrazh courts display a stable bias in favor of the state in all categories of cases.

Table 13

**Outcomes of Administrative Disputes Between a State Body As Plaintiff and an Entrepreneur by Whether Parties Appear** (%)

| Whether parties appear | Case lost | Claim partially satisfied | Case won | Other outcomes |
|---|---|---|---|---|
| No one appears | 15.9 | 2.5 | 65.6 | 16.0 |
| One party sends notice of withdrawal and the other does not appear | 7.8 | 2.9 | 41.2 | 48.2 |
| Both parties send notice of withdrawal/one appears but the other does not | 9.4 | 4.8 | 67.5 | 18.3 |
| At least one party sends notice of withdrawal or appears | 10.8 | 7.7 | 64.6 | 16.9 |
| Both parties appear | 25.3 | 9.6 | 52.7 | 12.3 |
| All disputes | 13.5 | 4.5 | 62.2 | 19.8 |

- The state and state organizations are somewhat weaker than the average entrepreneur in civil cases.
- In certain situations (for instance, routine cases arising out of administrative relations) the courts clearly take the side of state structures.

In our expert interviews and in professional discussions this situation is explained in terms of two groups of causes. First, it is much rarer for an entrepreneur to raise the sum claimed to an unjustifiable level (the state, according to attorneys and experts, tries more often to make the highest possible claim). Second, when an entrepreneur makes a claim against the state he weighs up his chance of winning as carefully as he can. In other words, he is constrained by the resources at his disposal, and if the potential gain is not obvious or if the chance of winning is small then he will prefer not to spend money on arbitrazh court proceedings. We can say that in cases where the parties are actively "engaged in the fight" no significant pro-state or pro-plaintiff bias is observed.

### Other Characteristics of the Behavior of Participants in the Proceedings

The first matter worthy of our attention is whether the respondent accepts the claim made against him. As is clear from Table 14, a state body is hardly ever inclined to accept claims from an entrepreneur. Acceptance of the plaintiff's claim occurs in 1.7 percent of cases arising out of administrative relations (let us compare this with the 10 percent probability of acceptance of the claim in practically all other instances). This means that if any complaint against actions or inaction of a state body is filed in an arbitrazh court, then the state body is incapable of conducting effective internal checks of the quality of its decisions and annulling them on its own initiative when necessary (in one-third of instances such decisions are annulled).

If one state official approaches another and complains to him about some administrative offense (e.g., an instance of noncompliance with the rules of trade), then the official responsible will behave in the same way as an entrepreneur:

Table 14

**Frequency of Full or Partial Agreement with the Claim by Type of Participants** (%)

| Parties | Civil disputes | Administrative disputes |
|---|---|---|
| Entrepreneur–entrepreneur | 12.9 | 11.0 |
| Entrepreneur–state body | 5.8 | 1.7 |
| State body–entrepreneur | 11.0 | 10.7 |
| State body–state body | 10.9 | 8.1 |

he is just as likely as an entrepreneur to admit his error and accept the claim. Such claims are usually accepted when a state body is the respondent in civil proceedings, more rarely when an entrepreneur is the respondent.

Why does this situation arise? In a whole series of instances where a case arises out of civil relations, the state body does not have the power to satisfy claims even if it admits that they are justified. In particular, this is connected with the budgeting of state organizations or with its restricted right of disposal. According to some experts, representatives of state bodies often directly advise their entrepreneurial partners to go to court, inasmuch as they understand their obligations but are unable to fulfill them at their own discretion. A court decision makes it much easier to obtain access to state funds for this purpose.

It is of interest that in this situation state organizations and state firms find themselves in a more difficult position. On the one hand, they have limited freedom to dispose of their own funds. On the other hand, they lack even the relatively weak "force" that regulatory bodies possess.

Besides acceptance of claims, it is important to analyze the breakdown of intermediate outcomes. In civil cases, types of plaintiff and respondent have practically no significant influence on the probability distribution of outcomes.

The situation is different in administrative proceedings (Table 15). Administrative cases most often end as a result of

withdrawal of the claim (in other words, as a result of the satisfaction of demands or the achievement of an amicable settlement, which is practically impossible in cases arising out of administrative relations) if one state body sues another. In this instance the arbitrazh court becomes an instrument of pressure on relatively weak players from relatively strong ones.

This can also be clearly seen from the fact that the claim is most often withdrawn during the hearing of a case arising out of administrative relations if the respondent is a state organization (Table 16).

If a dispute *between two state bodies or between a body of state power and a state organization* arises out of administrative or other public relations, then *the court becomes a simple means of demonstrating the seriousness of intentions*. Very often this demonstration is sufficient and the case never proceeds to the stage of real investigation or the investigation is purely formal. The disparity between the parties is especially great when one state body confronts another or a state or municipal firm. These participants, while possessing all the weaknesses typical of entrepreneurs, lack their characteristic strengths inasmuch as their activity is more bureaucratized and irrational.

## Main Results: The General Model

In order to predict the probability of any kind of event on the basis of the values of a set of indicators use is usually made of logistical

Table 15

**Intermediate Result of an Administrative Case by Type of Participants** (%)

| Parties | No changes | Claim withdrawn | Other outcomes | Total |
|---|---|---|---|---|
| State body–entrepreneur | 77 | 17.1 | 5.9 | 100 |
| State body–state body | 52 | 33.9 | 14.1 | 100 |
| Entrepreneur–state body | 76.8 | 11.4 | 11.8 | 100 |

Table 16

**Intermediate Result of an Administrative Case by Type of Respondent** (%)

| Parties | No changes | Claim withdrawn | Other outcomes | Total |
|---|---|---|---|---|
| State body–entrepreneur | 64.1 | 16.2 | 19.7 | 100 |
| State body–state body | 52.6 | 28.6 | 18.8 | 100 |
| Entrepreneur–state body | 71.8 | 15.1 | 13.1 | 100 |

regression. We are investigating the influence of the type of participant in court proceedings upon their outcome. Other variables are used as control variables. The basic model has the following form:

$$\Pr(Y = 1 \mid X = x_i) = \frac{1}{1 + e^{-(\beta_0 + \beta_i x_i)}}$$

$$\Pr(Y = 1 \mid X = x_i) = 1/(1 + e^{-(\beta_0 + \beta_i x_i)}$$

where the dependent variable $Y_i$ is the maximum gain to be made from a case in arbitrazh court and $\Pr(Y_i = 1)$ is the probability of winning the case. We estimate how three groups of parameters influence the outcome of a case in arbitrazh court. The first group of independent variables consists of *types of participants in court proceedings*—that is, state bodies or business organizations. The second group consists of *characteristics of the dispute itself:* the size of the claim and the duration of the court hearing as a proxy for the complexity of the case. Finally, the third group consists of variables that describe *the behavior of the parties in court*. The behavior of a party finds expression in three types of actions: the party may appear at the court session, send notice of his withdrawal, or completely ignore the session. This group of variables also includes the filing of appellate and cassational appeals.

In view of the uneven development of different regions it is to be expected that the regional factor will influence the behavioral strategies of participants in arbitrazh court proceedings. This is

why we have included "region" as a control variable (fixed effects). A model with fixed regional effects makes it possible to solve this problem.

The regression model is used to analyze how various factors influence the probability of winning. In order to estimate the influence of independent variables on the probability of winning, average marginal effects are calculated for all the independent variables.

Table 17 shows that type of plaintiff has a significant influence on the outcome in a civil case but not in an administrative case. If a state body makes a claim in a civil case, then its chance of winning is smaller than that of an entrepreneur. Civil disputes between two state bodies are quite rare; nevertheless, we are able to conclude that in this situation the plaintiff wins more often than the respondent.

Having analyzed the variables that describe the suit itself, we see that the "value of a case"—that is, the total sum claimed—influences the possible outcome only in administrative disputes. As the size of the claim increases, the plaintiff's chance of winning in administrative proceedings decreases.

The duration of the court hearing has a stable influence on the outcome of a case.[18] As noted above, the duration of the court hearing may be regarded as a predictor of the complexity of the case. All models indicate that as the duration of the court hearing lengthens, the plaintiff's chance of winning declines. This shows that a genuine dispute and a fully fledged judicial investigation are associated with greater equality between the parties.

The next group of variables describes the behavior of the parties in court. And here, as regression analysis shows, it is the respondent who tends to win, provided that he takes an active part in the court session. Moreover, this outcome is characteristic of both civil and administrative disputes. The appearance of the respondent or his submission of a written notice of withdrawal reduces the plaintiff's chance of winning by 31 percent in a civil case and by 21 percent in an administrative case.

Table 17

**Regression Model for Probability of Winning a Case in Arbitrazh Court** (win = 1, lose = 0)

| | Outcome in a civil case | Outcome in an administrative case |
|---|---|---|
| Plaintiff (state = 1) | −0.142*** | 0.170** |
| | (0.0224) | (0.0795) |
| Respondent (state = 1) | 0.0211 | 0.0822 |
| | (0.0370) | (0.0820) |
| Plaintiff × Respondent | 0.244 | −0.0066 |
| | (0.1577) | (0.0958) |
| Time taken for case to be settled | −0.000467** | −0.000986*** |
| | (0.000149) | (0.000419) |
| Size of claim × $10^{-3}$ | $-1.14*10^{-07}$ | $-3.40*10^{-06}$** |
| | $0.987*10^{-07}$) | ($1.50*10^{-06}$) |
| Appearance/withdrawal of plaintiff | −0.0202 | 0.1023*** |
| | (0.0215) | (0.0267) |
| Appearance/withdrawal of respondent | −0.313*** | −0.2076*** |
| | (0.0330) | (0.0391) |
| Appearance/withdrawal of plaintiff and respondent | 0.129** | 0.0885** |
| | (0.0404) | (0.0462) |
| Appellate appeal filed | −0.119*** | −0.0172 |
| | (0.0255) | (0.0342) |
| Cassational appeal filed | −0.0534 | −0.825* |
| | (0.0369) | (0.0474) |
| Number of observations | 3897 | 2115 |
| Regional effect identified | Yes | Yes |

***$p < 0.01$; **$p < 0.05$; *$p < 0.1$.
*Notes:* The table shows average marginal effects (influences on the probability of winning). Robust standard errors (adjustments for region) are shown in parentheses.

If both parties appear in court, then the plaintiff is more likely to win than the respondent. This effect is more stable in civil cases, where it improves the chances of the plaintiff by 13 percent, but even in administrative cases the appearance of both parties in court improves the plaintiff's chances by 9 percent.

The filing of an appellate or cassational appeal by either party is associated in all instances with a reduction in the plaintiff's chances of success. However, the influence of this factor is significant only with regard to the filing of an appellate appeal in civil proceedings. This is because, as shown above, the plaintiff is more likely to win in simple cases where there is no real dispute, while cases that go to appeal are mostly those in which the correct judgment is much less obvious and the plaintiff is therefore less likely to win in the court of primary jurisdiction.[19] It may be said that an appeal is another marker of the complexity and ambiguity of a case. Three groups of factors have a stable influence on the outcome of a case in arbitrazh court. First, behavioral factors have a strong influence: the more actively the parties participate in the proceedings the more balanced the hearing of the case. If only the respondent appears at the court session, then there is a high likelihood of the case being settled in his favor. Such cases are evidently initiated by a plaintiff who is unwilling to go to much trouble to uphold his position or who changes his position before the hearing but does not consider it necessary to withdraw his claim (even if he did so he would still forfeit his filing fee). On the other hand, if both the plaintiff and the respondent participate actively, then the court still has a tendency to favor the plaintiff. An important predictor of the outcome of the judicial investigation is the complexity of the case as reflected in the duration of court proceedings: the lengthier the court hearing the smaller the plaintiff's chance of success.

Are there differences in the chances of success between the state and an entrepreneur? The answer is yes. Differences do indeed exist, but they depend on the type of dispute initiated by the state. In *administrative* cases the court takes the side of the state, as the theory of judicial biases predicts. In *civil* cases where the plaintiff is the state, the court takes the side of the respondent. We also obtained confirmation of our second hypothesis: in certain instances the courts in developing economies may make decisions in favor of business.

## Notes

1. The translation of the term "bias" as *uklon* does not perhaps reflect the full meaning of the English concept, but functionally it is quite close and it coincides with the tradition established in Russia for the translation of this word (Volkov 2012).

2. Some elements of such an assessment, without the use of regression analysis, were proposed in Titaev 2011a.

3. Federal Constitutional Law No. 4-FKZ of July 4, 2003, "On the Introduction of Amendments and Additions to the Federal Constitutional Law 'On Arbitrazh Courts in the Russian Federation.'"

4. In Russian legal usage the term "plaintiff" (*istets*) designates one of the parties only in cases that flow from civil legal relations. In cases that flow from administrative legal relations, this party is called the "petitioner" (*zaiavitel'*). Here and henceforth, we use the term "plaintiff" not in the strict legal sense but in a generic sense—to designate the party who initiates proceedings.

5. For example, a study of decisions on appeals lodged with the Supreme Court of Canada showed that the federal government or Crown, if it is the plaintiff in a case, wins about 15–20 percent more often than it loses (McCormick 1993). Analysis of decisions of the Supreme Court of the United States does not confirm that the state has the advantage (Ulmer 1985).

6. There is an extensive debate about the degree to which judges are independent. In theory the judge should be the arbiter between adversarial parties, but it is very widely thought that the judge is closer to state representatives than to private persons.

7. The term "mobilization of the legal system" or "mobilization of law" was introduced by Donald Black (1973) and is used to show that law and law enforcement mechanisms do not work automatically. It is always necessary for someone to employ additional efforts to make the system work (to file a claim, write an appeal, etc.).

8. For example, the cases in the European Court for Human Rights, "Kovaleva and Others versus Russia" and "Link Oil St. Petersburg versus Russia."

9. "Tablitsa osnovnykh pokazatelei raboty arbitrazhnykh sudov Rossiiskoi Federatsii v 2010–2012 gg., pervom polugodii 2012–2013 gg." Supreme Arbitrazh Court (http://arbitr.ru/_upimg/E71E1F5763D26D47E142A3F677BED00C_3.pdf).

10. Here we assume that all decisions adopted were numbered and that there are no gaps in this numeration.

11. Some categories of arbitrazh cases are subject to formal restrictions that prevent them from being placed in open access. In addition, there are sometimes technical mishaps, errors, problems with the functioning of information systems, and so on.

12. For a more detailed discussion, see Ewick and Silbey (1998). Although this is not a quantitative study, it is the best and most detailed demonstration of the significance of individual strategies on the basis of concrete empirical data.

13. For a survey of classical studies and basic approaches, see Thomson and Zingraff (1981).

14. For an examination of a specific situation, see Volkov, Paneiakh, and Titaev (2010).

15. "Novosti mezhdunarodno-pravovogo sotrudnichestva." Supreme Arbitrazh Court (www.arbitr.ru/int_law_coop/cooperation/60010.html); Makarov 2003.

16. Can such cases be attributed to "red tape?" Certainly not. At this stage of the analysis cases that are deliberately dragged out by the parties and cases that objectively require lengthy preparation fall into the same category. Further analysis will reveal the differences between these two groups of cases.

17. Russian law provides for a special "procedural time" that is used to measure the passage of time toward procedural time limits. The judge and the parties can use many mechanisms to halt the passage of procedural time. A period of two procedural months can therefore extend over half a year of calendar time. Thus it by no means follows that in the instances described judges are violating procedural time limits.

18. A test for multicollinearity of the variables "time taken for the case to be settled" and "size of claim" showed that these variables are independent of one another and that it is therefore justified to include them both in the model.

19. For a more detailed discussion of the problem of hearings in courts of secondary and tertiary jurisdiction, see Titaev (2012).

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