Russian Arbitrazh (Commercial) courts. A statistical study

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This study is based on analysis of a representative sample of 10 000 commercial cases from over 5 million cases, which the courts considered from 2007 to 2011. The cases were chosen from the websites of arbitrage courts and coded into the database as 66 variables. They represent the typical structure of cases considered by Commercial courts . This paper describes empirical patterns that appear in the process of the court's everyday work. We pay particular attention to the behavior of the litigants, the court, and the character of the cases.

Our interest in such a study was prompted by the relative efficiency of the Arbitrage courts in the Russian court system as compared to the Russian judicial system as a whole. As a rule, entrepreneurs trust Russian Arbitrage courts. Even the European Court of Human Rights notes the system of appeals in the Russian commercial court is an effective mechanism of protection for entrepreneurs. Understanding the way the Arbitrage courts function may turn out to be extremely important for the development of the Russian judicial system.

We analyzed factual durations of court proceedings in commercial courts (1st instance). It was found that there are significant differences in the length of proceedings between Russia's regions. None last longer than in the Moscow Arbitrage courts (over half of the cases are considered for more than 108 calendar days). On average in Russia over half of the cases are considered for 62 calendar days or less. The "fastest" cases are the cases, which deal with the collection of compulsory payments (21 percent faster, with all others equal) and with administrative prosecution. Cases of state registration of property rights and cases of liquidation of legal entities exhibit the most significant increase in duration. Compared to the average, they last up to 2.3 and 3.5 times longer respectively.

In general, state agencies and private entrepreneurs have equal chances of winning a court case, if we do not consider minor cases (sums of less than 3000 rubles), initiated by state institutions. Such cases (they constitute less than 7% of the total number of cases) are of no interest to entrepreneurs who, therefore, choose to ignore them. Different levels of activity exhibited by entrepreneurs and officials during the commercial cases proceedings exert significant influence on case outcomes. More active participation on part of a businessman sharply increases his chances of winning the case, whereas we see no such correlation in case of state officials.

In this paper we have also analyzed the practice of using simplified procedure and collegiate proceedings in the Arbitrage courts. Simplified procedures decrease the duration of case proceedings and increase the efficiency of the court proceedings. It is, however, used rather rarely, and constitutes less than 3 per cent of the total number of cases. We assume that there are two reasons for this outcome. First, it is relatively simple to appeal decisions made as a result of a simplified procedure. Second, the rights of the judge in this sphere are not sufficiently clear. An instrument such as collegiate proceeding has almost fully become an instrument of solving complicated bankruptcy cases. This does not quite correspond to the ideas on which the current Arbitrage Procedure Code is based.

The study has shown that about 7 per cent of cases examined by the Arbitrage court are initiated by state agencies and represent pseudoapplications, filed for the sake of following departmental rules and

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the improvement of data reporting. Total income of the state received from such adjudication amounts to no more than 0.6 per cent of total costs of maintenance of the system of Arbitrage (commercial) courts (i.e., the cost of one case may be 10 times lower than the cost of examining it). Along with this no fewer than 5 percent of cases are examined by the courts with the necessity of court proceedings de-facto absent – these are the cases in which the dispute is absent and the sides have struck an agreement during or even before the proceedings. Nevertheless, a decision is made in such cases.

We took an in-depth look at the primary factors that influence the possibility of winning a case in the arbitration process. As a result of the analysis we have established that the possibility of winning a civic case by a plaintiff is in general lower than by a state agency, when the defendant presents a withdrawal or appears in the courtroom. Also, the plaintiff runs a higher chance of winning when the time of decision making by a judge is longer, as well as the duration of the court proceedings. The sum of monetary claims stated in the suit does not itself influence the possibility of winning the case, contrary to our initial hypothesis. The behavior of the litigants, namely the level of their activity in the process and their readiness to be present at hearings, plays the major role in this case; the etc.

The complexity of the category to which the case belongs possesses high predictive power. In general the factors described in a corresponding section were able to determine 36.5 percent of the possible case outcomes (which is very high, considering that a lot of case characteristics cannot be coded). We have studied the comparative behavior of litigants and courts in the first instance and in the appeal. We have shown that almost all (at least somewhat) significant cases reach the stage of appeals which allows us to infer that it is on this stage that the sides expect a real dispute settlement. However, the relative rarity of cancellations (about 20 percent) and changes testify to the fact that the courts of second instance are quality controllers rather than a locus of real proceedings. Inter alia, this piece allows us to evaluate the possibilities of the method of empirical statistical studies of law enforcement systems, as it is the first complex study of one of the branches of the Russian judicial system.

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