

Damage from “trifling” cases initiated by the state in the court of arbitration

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It is estimated that cases filed upon applications of the Pension Fund involving sums of less than 1000 roubles take up around 8 percent of the whole budget of the system of arbitration, which amounts to over 1 billion 400 million roubles (these numbers are unclear, maybe 1.4 billion roubles is better) per year. At the same time, the cumulative income of the state earned from settling these cases is slightly over 130 million roubles per year. The net loss, therefore, exceeds 1,27 billion roubles per year, i.e. 9 roubles per each citizen of Russia yearly.

The Institute for the Rule of Law has conducted a statistical analysis of a random sample of 1500 cases from more than 1,4 million cases that included state agencies as one of the sides and that were examined by the courts of arbitration within the period from July 2008 to November 2009. This allowed us to identify an important factor that lowers the effectiveness of the courts of arbitration in Russia and damages their reputation.

As it turned out, over one-third of all disputes in which state organs participate are cases in which the disputed amount is less than 1000 roubles. The claimants in these cases are state agencies, as well as social service agencies. The pension fund generates the overwhelming majority of such cases. These cases are, in essence, produced en masse by the courts of arbitration after performing checks of minimum formalities. The decision, with very few exceptions, is in favor of the plaintiff. The small scale of the declared demands leads to a situation in which the defendants simply ignore such court hearings: they do not appear in court to defend their interests.

This flow “devours” up to 20 percent of total volume of funding designated for the system of courts of arbitration. Aside from that, such cases generate overhead costs in government bodies that act as claimants, and in the Federal Bailiff Service that is involved in enforcement proceedings, and in organizations that act as defendants. Budget income that is received as a result of collecting the charges associated with these lawsuits does not cover even 10 percent of expenses required for settling such cases. Aside from that, the fact that such cases are automatically solved in favor of the state, negatively affects the reputation of the courts of arbitration in the eyes of the business community.

For governing bodies, the duty to file such lawsuits constitutes a significant and unproductive burden. At the same time, none of the sides involved in the process are interested in the existence of these “trifling” cases. For entrepreneurs, the legal process of extracting these charges is not an instrument of legal protection: the expenditures of participation in the dispute far outweigh the sum of the lawsuit, and the defendants who are entrepreneurs in most cases prefer to wait for the court’s decision and pay the required sum. For the system of arbitration, if we take into account the stable growth of its workload throughout the recent years, the disappearance of cases from its jurisdiction, does not represent a risk in terms of its role or funding being decreased. For bailiffs, whose primary measurement of efficacy is the size of charges, such cases also represent additional burdens.

In order to improve the work of courts of arbitration it is necessary to change the normative and legal base, abolish legal clauses that create the basis for the large amount of cases of the same type, or cases that require that the government files lawsuits that involve such sums against entrepreneurs. Finding and abolishing such legal provisions will significantly increase the efficacy of the work of the courts of arbitration, state authorities, and the economy in general.

One of the best examples of such a legal provision is p.38 of the Instruction “On the order of individual (personified) record-keeping for insured individuals for mandatory retirement insurance”, confirmed by the Regulation of the Government N 318 (March 15, 1997) that requires that entrepreneurs submit the copy of their paycheck and personal data to the Pension Fund. The requirement that such documents be submitted creates net losses (only within the system of arbitration) amounting to 1,25 billion roubles yearly, but does not in any way increase the efficacy of the work of the Pension Fund.