

## **Private Arbitration Courts in Russian Federation: Functionality, Competence, Practice, Application**

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**Abstract:** In this article authors present their opinion on the private arbitration courts in Russian Federation functioning. Legal and organizational questions are examined, in detail questions of opening of private arbitration court, as well as its legal status. Status of the private arbitration court Judge, legal rights and guarantees in Russian Federation are presented, critical opinion of authors of the system is given. All of authors has experience in Private arbitration court's in Russian Federation work, including as judges, so has a chance to present not only basic information, but practice based experience and explained personal opinions. Authors are not limited to personal opinion, opinions of other judges, lawyers, experts, law-enforcement officers and other competent persons are presented. A special type of private arbitration courts in Russian Federation are International Commercial Arbitration Court. This type of courts is generally described, legal bases of its operation is presented along with some differences in its status.

**Key words:** Legal status • Arbitration Court • Arbitration Judge • Practice • Perspective • International Commercial Arbitration • Private justice • Russia • Russian Federation

### **INTRODUCTION**

In many countries the system of alternative mediation and/or private courts system exists [1]. These, in usually minor and non criminal cases, allow parties to settle conflict without the state official, but by inviting a person, which has a right bylaw and would be able to take appropriate actions. Russian Federation is not exclusion from the set world practices.

In 1958 Union of Soviet Socialist Republics signed the "New York" Convention on the Recognition and Enforcement of Foreign Arbitral Awards, per article XII of this Convention it entered into force on 7 June 1959 and came in to forth in Union of Soviet Socialist Republics on 22 November 1960 [2].

On May 26, 1972 in Moscow Union of Soviet Socialist Republics and other countries signed the Convention on resolution of civil disputes in arbitration way following from the relations in economic and scientific and technical cooperation [3].

In modern Russia Law of Russian Federation "About the International Commercial Arbitration" No 5338-I on July 7, 1993 was adopted, also special Federal Law "About arbitration courts in Russian Federation" No. 102-FZ on July 24, 2002 was adopted.

### **MATERIALS AND METHODS**

In the present article authors formulate the research problem, accumulate a good empirical base, this helps focus on the research process and draw conclusions reflecting the real world in the best possible way using: introduction – hypothesis, deduction – predictions, observation – nest of predictions, etc.

### **RESULTS AND DISCUSSION**

Present Federal Law regulates order of private arbitration courts formation, it's activity on the territory of Russian Federation as well as status of the private arbitration courts Judge.

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Question of the court's competence and jurisdiction is always one of the main topics of interest. Under the law in Russian Federation by agreement of parties any dispute that follows from civil legal relationship can be transferred to the private arbitration court if else isn't established by any Federal Law. Currently such restrictions are imposed only under the Federal Law "About insolvency (bankruptcy)" No. 127-FZ, adopted on October 26, 2002. It is interesting that this provision of law was several times appealed to Constitutional Court of Russian Federation. During the appeal process there have been a lot of questions raised and Constitutional Court of Russian Federation gave a number of specific broad explanations. For example, the case of constitutionality check of the point 1 article 11 of the Civil Code of Russian Federation, point 2 article 1 of the Federal Law "About arbitration courts in Russian Federation", articles 28 of the Federal Law "About the state registration of rights to real estate and transactions with it", point 1 article 33 and article 51 of the Federal Law "About mortgage (pledge of real estate)" in connection with the inquiry of Supreme Arbitration Court of Russian Federation as a result of which Constitutional Court of Russian Federation recognized the interconnected provisions of point 1 article 11 of the Civil Code of Russian Federation, point 2 article 1 of the Federal Law "About arbitration courts in Russian Federation", articles 28 of the Federal Law "About the state registration of rights to real estate and transactions with it", point 1 article 33 and article 51 of the Federal Law "About mortgage (pledge of real estate)", as allowing in its constitutional legal sense in the current system of Laws to make decisions on civil disputes concerning real estate (including questions of confiscation of property as a result for not executing mortgage agreement) and the state registration of corresponding rights on the basis of arbitration court's decisions and not contradicting the Constitution of Russian Federation. The constitutional and legal sense of the specified statutes revealed by the Constitutional Court of Russian Federation in the presented Resolution is obligatory. This excludes any other interpretation [4].

#### **Some Typical Civil Relations Characteristics Include:**

- Divide relations of property and non-property character through interests of individuals;
- Primarily dispositive method of legal regulation;

- "Horizontal" (i.e. lack of subordination) relations of subjects which are legally equal among themselves, independent and self consistent;
- Freedom of contract;
- Initiative of violated rights protection belongs to the person whose right was violated, for the purpose of receiving material compensation.

From the said above arguments it is clear that civil legal relationship is a legal relation settled by norms of civil law and existing between equal independent subjects who propriety and organizationally separate from each other, carrying subjective rights and legal duties, with possibility of coercive measures of property character application to violators.

Logical conclusion of the general thought will be the thesis that the circle of civil affairs, admissible to arbitration courts, consist in article 2 of the Civil Code of Russian Federation. Therefore in present time by general rule arbitration courts are competent to take for trial:

- Disputes connected with the property right (and other real rights);
- Disputes connected with results of intellectual activity and equated means of individualization (intellectual rights);
- Corporate disputes;
- Disputes which arising from contractual and other obligations;
- Property disputes;
- Disputes following from the personal non-property rights.

However in practice quite often we face an identification of civil legal relationship with other types of private-law relations, in particular - family, labor, housing, land. This should not be done as these relations are allocated in separate branches of law, have isolated subject and method of legal regulation, subject structure, contents and object [5].

As we see current competence of private arbitration court in Russian Federation is very broad [6]. On one hand it allows honest persons to simplify and accelerate civil trials, on the other hand it gives to dishonest persons a chance to abuse entrusted powers in the illegal purposes. For a long time private arbitration courts are used as a part of the system of illegal taxes optimization, money-laundering and legalizations of material values

received by a criminal way. Sometimes in such criminal system key role is played by arbitration courts "created" for "one-two" decisions.

Most problems connected with the activity of private arbitration courts in Russian Federation follow from the gaps in legislation. Current Federal Law left a lot of questions unsettled and some questions are easy to the unreasonable line, including questions of court's creation, functioning as an organization, powers and competence of judge, questions of taxation, questions of work contract with a judge, questions if legal immunity and defense and many other.

In Russian Federation Law allows to open private arbitration courts for concrete dispute resolution, or permanently. Law defines that permanently operating arbitration courts are be formed (opened) by chambers of commerce, organizers of trade who are operation in accordance to the Federal Law "About the organized auctions", public associations of businessmen and consumers, other organizations - legal entities created in accordance to the Law of Russian Federation and their associations (associations, unions). Created private arbitration courts work as a specialized part of these organizations - legal entities.

Permanently operating arbitration courts can't be formed by federal public authorities, public authorities of subjects of Russian Federation and local (municipal) governments. Private arbitration court with the intent for permanent operation considered to be opened, when the organization - legal entity, forming it go through the following steps:

- Made the decision on formation of constantly operating arbitration court;
- Approved the provision of constantly operating arbitration court;
- Approved the list of arbitration judges which can have binding or advisory nature for the parties;
- Informed the competent state court, carrying out judicial authority on that territory where constantly operating arbitration court would operate and provided copies of documents testifying of constantly operating arbitration court formation.

As it is clear from above it is much easier to open private arbitration court than for example to open a small private market and unlike the second one it can operate literally anywhere. However by law any private arbitration

court possesses identical powers and freedoms regardless of created it. Authors find such practice unacceptable.

Not last and not the least is the question of private arbitration court's judge status. According to the Constitution of Russian Federation, judge are inviolable, can't be instituted to criminal proceedings in any way, except as in an order determined by Federal Law. However Federal Law "About arbitration courts in Russian Federation" No. 102-FZ of July 24, 2002, Law of the Russian Federation "About the status of the judges in Russian Federation" No. 3132-1 of June 26, 1992, or any other art or law does not provide order or special form of arbitration judge's to criminal, administrative or to any other form of responsibility. Arbitration judge, like any other person should be held accountable for guilty actions [7].

## CONCLUSION

From the said above it is reasonable to drive a conclusion that on one hand in deep theory private arbitration court judges may have the same status as other judges and on other hand and in practice lack of special status specific for this type of judges means that that do not have any differences from a regular citizen. Remains not settled in law a number of other questions: no special order of taxation, no set salary, documentation keeping, information openness and many other questions.

Specific is a question of documentation keeping. There are currently no set regulation on how arbitration court's documents are to be kept and filed. Not regulated are especially the questions of who, how and where should keep documents, including court orders if the court is dismissed.

Dismissal of a private arbitration court is a separate question. Currently legislation of Russian Federation has no norms to liquidate (dismiss) a private arbitration court even in cases where their practice contradict the law.

In Russia currently there is no exact information in how many permanent private arbitration courts exist. Some data show 2-3 hundred, other up to 5 thousand. There is no other country in the world which has the same practice. If taking as example arbitration system in United States, there are large organizations like National Arbitration Forum operating [8]. In Russia such organizations are not in existence.

There are cases when private arbitration courts were created and their name and system copied the system of state arbitration courts or courts of law. For example "Federal arbitration court", "Arbitration court of the Moscow city" and many other) are known. In many cases of such private court's activity arbitration courts take upon themselves powers which have not been conferred upon by law. Some of them even offer services of compulsory execution of own orders without the state system of federal service involvement.

Many private arbitration courts follow the dishonest order of processing [9] and get to the division anywhere from some hours to some days, becoming from an instrument of protection of civil rights and legal agreements to the system of court order printing service. However, arbitration is often faster than litigation in court not only in Russia [10].

And yet there is no way to stop such court from operation. This might sound strange to lawyers working in countries of English legal system, however it is important to understand that in Russia continental system of law is in place, so only law can set regulating rules to follow and not a precedent.

For competent organization of private arbitration court's work and its full implementation into the judicial system of Russian Federation such courts should work not only as independent civil tools, but become a full-fledged member of judicial community. This requires appropriate legal status of court, judges and organizers of the court. It appears to be reasonable to create private arbitration courts as special non-profit organizations. Their special status must be fixed in law. Judges status must also be equivalent to the state judges, however this would require to make requirements for becoming and sustaining the judge status appropriate. Liability questions should be appropriately settled imposed liability on judges and on court founders.

All said above shows that private arbitration courts are only an instrument that can be used differently. Unfortunately current system of regulation does not give instruments to make sure of the legality in private court's operation.

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