



In its Resolution #36 of 28.05.2009 "On application of the Russian Federation Code of Arbitration Procedure to legal proceedings in arbitration court of appeal", the Plenum of the Russian Federation Supreme Arbitration Court (SAC) provides its interpretations of some issues associated with court decision appealing.

In particular, the SAC has stated as follows:

The right to appeal court decisions belongs to both the persons participating in the relevant case and the persons which rights and duties may be influenced with such court decision, i.e. the persons referred to in the substantiation part of the contested court decision and/or in its operative part, and the persons, which rights and duties, though not referred to in the substantiation and/or operative part of the court decision, are directly influenced with such act, e.g. via creating obstacles for realization of their right or appropriate discharge of their duty in relation to one of the parties to the dispute.

Petition of appeal can be filed in respect of both one and several court decisions adopted with regard to the case, each of which can be appealed separately. Consideration of an appeal against several court decisions may result in issuing only one court ruling. Filing one appeal against court decisions issued at consideration of different cases is not allowed.

Appeal against a court decision must be rejected in case it was filed directly with the appeal instance. Earlier, the court of appeal instance used to independently request the case from the trial court and only then consider the issue of accepting the petition of appeal. There could be one exception from this rule – when the petition of appeal was filed after the appeal proceedings had been initiated by another person. In that case the court of appeal instance with a view to observe the principle of remedial effectiveness resolves to accept such appeal instead of returning it to the applicant.

The timeframe for filing a petition of appeal is calculated not from the date of sending a copy of the court decision to the persons participating in the case, but from the date of issuing by the trial court of its judicial ruling in full. Furthermore, if the interested person was not informed of proceedings properly, the period provided for filing the petition of appeal shall be calculated from the date when that person has learned or should have learned about infringement of its rights or legitimate interests with the appealed judicial act.

While considering the issue of renewing the period provided for filing the petition of appeal, the SAC explained that the following circumstances could be recognized as reasonable excuses for the persons informed about the proceedings properly: such persons, for reasons beyond their control, had no information on the court decision being appealed, including due to late forwarding by the court of a copy of the appealed court decision or due to delayed delivery of such copy by the postal service. However, normally none of the following circumstances may be accepted as reasonable excuses: need to get an approval by the superior body (another person) regarding filing an appeal, the applicant's representative being on a business trip (vacation), personnel shifts, absence of a lawyer on the organization's staff, changes at the executive level (or the executive being on a long business trip, vacation), as well as other internal organizational problems of the legal entity filing the petition of appeal.

If the fact of missing the period provided for filing the petition of appeal was established after accepting the appeal, the court of appeal instance must investigate the reasons of missing the period. After recognizing the reasons of missing the period valid, the court continues with the case, otherwise it terminates the appeal proceedings.

Sending documents via mail by a person participating in the case shortly before expiry of the term established for elimination of the circumstances which formed the grounds for leaving the petition of appeal unattended, resulting in mail delivery after that term expires, cannot be regarded as timely fulfillment of the

court requirements in respect of elimination of the relevant circumstances. Those circumstances are considered eliminated from the moment the court of appeal instance receives the documents or the information required.

Petitions of appeal filed by several persons participating in the case against one court decision should be scheduled for consideration at the same session of the court. The term of consideration of the petition of appeal begins with the date of filing with the arbitration court of the last appeal against the court decision being appealed.

New claims which were not the subject of consideration in the trial court may not be accepted and are not considered by the court of appeal instance. For example, claims to decrease amount of fines or penalties not declared in the trial court cannot be accepted and considered. Furthermore, the rules pertaining to inadmissibility of joining or splitting several claims, changes in the subject or the cause of action, the amount of claims, counter-claiming, replacement of the inadequate respondent and other rules established for legal investigation in the trial court only, do not extend on cases when the court of appeal instance considers the case by the rules established for legal investigation in the trial court.

If at case hearings in the trial court the claimant filed petition to change the subject or the cause of action, to increase or to decrease the amount of claims and the trial court wrongfully refused in satisfaction of such petition or considered the case without making the requested changes, the court of appeal instance begins proceedings based on the rules established for legal investigation in the trial court considering the claims unattended earlier, accepting the changed subject or the cause of action, and the increased (decreased) claims.

The court of appeal instance issues determination on transition to proceedings based on the rules established for legal investigation in the trial court. Objections in respect of such determination can be declared only when appealing the court decision issued at the end of legal investigation in the court of appeal instance. Based on results of its hearings, the court of appeal instance issues a ruling canceling the first instance court decision.

If there are grounds to terminate the case, the court of appeal instance does so provided that such grounds have arisen before the trial court issued its decision (for example, liquidation of an organization being party to the case has taken place). In other cases, the petition of appeal proceedings must be terminated.

In case the court of appeal instance disagrees with the substantiation part of the appealed court decision only, which part, however, has not entailed issuing the wrong decision, the court of appeal instance changes the court decision, satisfying the petition of appeal in that part, and issues a new court decision with regard to the case having the same operative part and different substantiation part. The operative part includes mentioning amendments to the substantiation part of the court decision.

The Russian Federation Supreme Arbitration Court has introduced in the State Duma of the Federal Assembly of the Russian Federation a federal bill "On amending the Code of Arbitration Procedure of the Russian Federation".

Amendments to the Russian Federation Code of Arbitration Procedure (RF CAP) were caused by the considerable changes in the legislation regulating relations in the sphere of entrepreneur and other economic activities since the time of its adoption in 2002. The CAP needed amendments improving the mechanism of resolving disputes in the sphere of entrepreneur and other economic activities, providing guarantees of justice and realization of the right to judicial protection adequately reflecting development of the law and law enforcement. Therefore, the SAC Plenum has drafted a bill which substantive provisions may be reduced to the following.



There are amendments aimed at further development of the institution of arbitration assessors.

First, formation of the court with participation of arbitration assessors will be carried out in a way excluding influence of the persons interested in an outcome of the proceedings (the possibility of currently available selection of arbitration assessors by the parties to the dispute will be eliminated): arbitration assessor nominees will be selected from the list of arbitration assessors randomly by an automated system or otherwise with a method applied in arbitration court for formation of the court.

Second, it is provided that if one or two arbitration assessors fail to attend case hearing in the court such case can be considered by the judge alone if the parties (their representatives) are present at that court session and do not object such individual judgment of the case. If at least one of the parties objects to the case consideration by the judge individually, the court declares a recess or postpones the proceeding. If a new session of the court is impossible due to absence of one or two arbitration assessors, the court, in response to a petition by one of the parties, has the right to issue a determination allowing to carry on legal investigation individually and to open session of the court in the first instance.

To consolidate guarantees of openness of the arbitration system and publicity of the court proceedings it has been offered to enhance the RF CAP with a rule allowing the persons participating in the case to get acquainted with minority opinion of the judge. Moreover, minority opinions of the SAC judges must be published in *Vestnik* of the SAC together with resolutions by the SAC Presidium with regard to corresponding cases.

Consecutive movement of cases through instances of jurisdiction where the first instance decision can be appealed in a court of cassation if it was a subject of consideration in the court of appeal instance is provided.

The bill suggests to optimize and differentiate timeframes allocated for case processing depending on type of dispute, stage of proceeding (instance of jurisdiction), and to clarify the order of such timeframes determination: a case must be considered by the trial court and the decision must be taken within three months from the date of filing the appropriate application with arbitration court, including time required for the case preparation. Arbitration courts of appeal and cassation instances shall consider appeal and cassation petitions within 2 months from the date of filing such petition together with the case with the relevant court, including time required for preparation of the case for hearings in the court and issuing the court decision.

An option (with subsequent concretization in the law on electronic support of justice) of filing a statement of claim via filling in an electronic form at the official website of the corresponding arbitration court is being established.

The order of sending notices to persons participating in the case will be improved. In particular, any notices addressed to legal entity shall be forwarded not to the address specified by a person participating in the case, but to its actual location determined based on an extract from the Unified State Register of Legal Entities. If the legal entity files a request to send judicial notices to another address, the arbitration court will send such notices to that address as well.

Besides, information on accepting the statement of claim for proceeding, time and place of session of the court and or a separate legal proceeding shall be published at the official website of the arbitration court not later than fifteen days prior to the beginning of session of the court or the separate legal proceeding. Therefore persons participating in the case, after receiving the determination with respect to acceptance of their claim for proceeding and initiation of the case, shall independently take measures to acquire information on their case development and are exposed to the risk of adverse consequences if such measures were not taken. In that case the court has the right (but it is not

obliged) to inform the persons participating in the case on the subsequent sessions of the court and separate legal proceedings with regard to the case via telephone message, cable, fax or e-mail or another communication facility. The persons participating in the case are considered informed properly if by the beginning of the court session or the separate legal proceeding the arbitration court has information confirming the receipt by the addressee of a copy of the determination with respect to acceptance of the claim for proceeding and initiation of the case, or other proofs of the receipt by the persons participating in the case of any information on the started litigation.

According to the SAC, such order of notifying the persons participating in the case will allow to avoid many negative consequences associated with untimely delivery of judicial notices by mail, including obstacles to realization of the right to judicial protection because of inadequate notification of legal proceeding participants.

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