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Development of the Institute of Arbitration Court Assessors

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2010 was marked by the introduction of significant amendments to the Russian Arbitration Procedural Code, aimed at improving how disputes are considered in arbitration courts. In addition to key amendments on the introduction of e-justice, the notification procedure in respect of parties to a dispute and the appeals procedure over judicial acts, the legislator has attempted to reform the institute of arbitration court assessors.

The amendments primarily concerned the grounds for engaging arbitration court assessors, their appointment and the procedure for dismissing them.

At present, arbitration court assessors may only participate in extremely complicated cases, where specialist knowledge of experts engaged in the domains of economics, finance and management is required.

These amendments aim to neutralize the shortcomings identified in the practical application of the institute of arbitration court assessors over the past few years, when this institute was exploited by unprincipled defendants in a case to deliberately draw out the court proceedings.

At the same time, however, while assessing as a rule the attempted modernization as positive, I would like to highlight the following matters of principle.

Back in 1996, when the institute of arbitration court assessors was initially implemented as an experiment, the underlying conceptual idea was to establish the requisite conditions for involving in the administration of justice experienced specialists in any domain of the economy, who would be able to help a judge correctly assess the facts of a case, resulting in an improvement in the quality of the adopted decisions.

However, practice shows that at present most arbitration court assessors are lawyers, who do not have any specialist knowledge other than law. Accordingly, the set goal is not being attained.

Moreover, the amendments introduce a restriction on engaging assessors in a trial (the "extraordinary complexity of the case and/or the need to use specialist knowledge in the domains of economics, finance and management"), which only serve to obstruct the full implementation of the original idea, as it is implied that there is no need for specialist (not legal) knowledge when considering "extremely complex" cases.

Two questions arise in connection with this restriction.

First, how should we understand the term "extraordinary complexity of the case"? It would appear necessary to obtain here a detailed explanation in the form of official clarifications to ensure the uniform enforcement of law.

Second, why does a judge, as a professional and experienced lawyer, require assistance from lawyers as arbitration court assessors, who do not possess any other specialist knowledge? This question is even more pertinent if one notes that "extremely complex" cases tend to be considered by a panel of judges, further to a reasoned statement by the judge.

In general, when conducting any further reforms of the institute of arbitration court assessors, it would seem appropriate to restrict the participation of professional lawyers in a trial as arbitration court assessors.

It goes without saying that one of the most important amendments concerns the change to the procedure for appointing arbitration court assessors. The legislator has adopted adequate measures to prevent abuses of law when engaging arbitration court assessors in a case and ensure their independence and impartiality, by introducing a procedure for random selection from an approved list of arbitration court assessors, which should undoubtedly speed up the procedure for appointing arbitration court assessors and reduce the ability to illegally influence the composition of the court.

The amendments also touched upon the procedures for dismissing arbitration court assessors. The new version of the provisions of the Arbitration Procedure Code regulate in detail the grounds for removing an arbitration court assessor, such as, for example: protracted illness, vacation, study leave, long business trips and other grounds. They also resolve the implications arising from the inability to form the composition of the court in connection with the removal of arbitration court assessors — if this happens, the case is considered by a judge single-handedly. These amendments aim to streamline and speed up the procedure for forming the composition of the court and, as a result, to eliminate bureaucratic red tape when considering cases.

In our opinion, the aforementioned amendments will have a positive impact on the development of procedural legislation, streamline the procedure for forming the composition of the court and reduce the risk of abuses of procedural rights by unprincipled participants in arbitration proceedings.

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