

## Economic Justice in Russia Moves to Greater Transparency

by Alexander Vaneev, Associate of Magisters

**The first half of 2008 has been a time of great challenges and significant developments in the economic justice system in Russia. Tellingly, almost all of the developments were dealt with or initiated by the Higher Arbitrazh Court (HAC). This court, which is at the top of the Russian arbitrazh courts system, has become a hub for progressive trends in business litigation. In this commentary we will discuss one of these trends, namely, the steps to a greater transparency of the judicial system. In particular, we will review the HAC proposal on the publication of information about judges' voting results and their dissenting opinions.**

The existing legislation governing the procedure in *arbitrazh*<sup>i</sup> courts in Russia establishes that whenever a case is heard and a judgment is rendered by a panel of judges, the issues are to be decided by the judges' majority voting. The distribution of voices is not disclosed. The dissenting judge has the right to draft his or her special opinion which is then attached to the record but not announced<sup>ii</sup>. This rule means that the dissenting opinion is usually contained in a sealed envelope. The envelope then may be opened in a higher instance, for example if the case is revised and again the same rule applies, the dissent is not to be publicized in any manner.

Noteworthy, certain peculiarities apply to the voting in the Presidium of the HAC when it considers cases as a court of fourth instance. The number of judges sitting on the HAC panel may vary from 11 to 14. The procedure is also based on the majority principle of decision-making, but when the votes are divided equally, the complaint is then rejected. The rules on dissenting opinions also apply to the proceedings in the HAC.

However, quite often the HAC provides the ultimate ruling for many cases and so there is little point for a judge to submit dissenting opinion, as there will be no further court proceedings.

The HAC proposal is to change these rules in order to make the process of passing a judgment, primarily in the HAC itself, more transparent. To that end the draft bill proposes that dissenting opinions will be disclosed; moreover, dissenting opinions of HAC judges will be publicized on the HAC official web-site alongside the voting in the HAC<sup>iii</sup>.

These amendments may seem to be minor ones, but in terms of Russian procedural tradition this is a considerable progress, firstly and most importantly in terms of the judicial system's transparency. It is expected that dissenting opinions, especially those written by high-qualified HAC judges, will provide a better understanding of cases decided by the HAC and will help to shed light on the motives for the court's final findings.

One point to add is that publicizing judges' dissents is not an absolute novelty in Russia. This institution has been functioning within the ambit of the Russian constitutional justice since 1991<sup>iv</sup>. The current view sees the dissenting opinion published along with the final decision of the Constitutional Court. Over the whole period of existence of the Constitutional Court of Russia a great number of special opinions of its judges have become quite famous for their opposition to the Court's conclusions. On the other hand, the publication of an opinion that openly and convincingly contests the findings of the resulting judgment could somehow undermine respect to it and to justice as such. This issue is now raised by

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opponents to the above-described HAC initiative. It is alleged that the proposed disclosure of an alternative point of view authorized by a HAC judge will bring instability in the legal system and could breed inconsistencies and controversial interpretations.

It is undisputed, however, that in every democratic state the confidence in the justice system is tightly connected with its transparency. The sound interpretation of justice is that it is not some kind of sacred and mysterious process but, rather, a thorough legal analysis based on a dispassionate examination of the facts. As long as we consider this assumption to be true, the HAC initiative appears quite reasonable in principle.

Another issue related to the proposed bill is the requirement to disclose the results of voting. Some experts fear that this will increase the dependence of judges: they will be reluctant to

stand up against the opposition's view point or to the chairman's opinion, as they will be aware that this could be easily identified. Obviously, this objection is relevant only to an underdeveloped judiciary. There is significant evidence that today HAC judges are much more independent than they were several years ago. Russian *arbitrazh* courts have now developed sufficiently to accept the new rules.

In our opinion, the proposed bill is definitely a sign of further progress in Russian economic justice. Once enacted, the amendments will bring Russian *arbitrazh* courts a step closer to the international standards of a fair and transparent justice system.

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<sup>i</sup> State courts vested with the power to consider economic disputes involving legal entities and private entrepreneurs.

<sup>ii</sup> Article 20 of *Arbitrazhny Protsessualny Kodeks Rossiiskoy Federatsii* (the Arbitrazh Procedural Code of the Russian Federation) of July 24, 2002 (as of June 11, 2008).

<sup>iii</sup> The project law and explanatory notice to it can be found at: <http://www.arbitr.ru/presidium/prac/19172.html> (only in Russian). The project was considered on July 10, 2008. By the time of this alert the results have not been reported.

<sup>iv</sup> Article 45 of the Law of the Russian Federation "O Konstitutsionnom Sude RSFR" (On the Constitutional Court of the RSFSR) of July 12, 1991 (currently not in force); article 76 of the Federal Constitutional Law "O Konstitutsionnom Sude Rossiiskoi Federatsii" ("On the Constitutional Court of the Russian Federation") of July 21, 1994.

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