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Reforming Alternative Dispute Resolution in Russia: Expectations and Prospects, DEVOTED TO THE 15TH ANNIVERSARY OF THE ALL-RUSSIAN JOURNAL "ARBITRATION

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I believe that I will express the common opinion of the audience if I say that our discussion has proved to be useful and successful. It has been particularly valuable to hear the opinion of our leading experts in jurisprudence: Tamara Yevgenyevna Abova, Veniamin Fyodorovich Yakovlev, as well as renown Russian scholars who spoke on the problems of arbitration proceedings, and other specialists.

The arbitration reform appears to be unsuccessful yet because the wrong direction of transformation was chosen and the goals of reform and, first of all, its principal goal, were misunderstood. Our session was particularly focused on abuses in arbitration tribunals. It appears that it must be clear to the authors of the reform concept that such abuses cannot be eliminated as long as those authors are guided by the slogan "the more arbitration tribunals, the better". Many of the speakers rightly pointed to the need to follow international standards in arbitration activities. It should be replied, however, that, in approaching such standards, we would not be able to avoid reforms correcting specifically the Russian legal system and the domestic legal environment.

What is the goal of the arbitration reform? What is its proper principal meaning? It would be wrong and incorrect to believe that the ultimate objective is to relieve the courts from the burden of numerous disputes. In the opinion of many colleagues with whom I have communicated, that objective cannot be the principal one. It is the quality of law application that is the main goal of all court reforms and, first of all, the arbitration reform.
To this end, three most fundamental things must be done. First, to create a stimulating and productive competitive environment in which arbitration tribunals will operate. It would not constitute a framework for the activities of entities entering the market with equal starting

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opportunities, because the Chamber of Commerce and Industry's courts, whose position is unique and, as such, attracts clients, have existed in our country for many decades. According to the established practice, those courts will be preferred as the forum for dispute resolution for the purposes of cross-border transactions because their dominant position in national jurisdictions is presumed. It is true, but a robust competitive environment would rapidly help each arbitration tribunal operating in good faith find its clientele and its niche. Since Russia lacks a numerous and self-governed arbitration community which would include, in addition to scholars, i.e. arbitration theorists, successful attorneys in retirement and former judges – a community based on a mechanism of powerful reputational compulsiveness and informal boycott over any suspicion of bribery or any other improper conduct, a robust competitive environment can only exist if closed lists of arbitrators are used. There are as few as several dozens of arbitration scholars and arbitrators of high repute in Russia. With open lists, they can sit in virtually all tribunals offering attractive fees and convenient rooms. In essence, tribunals themselves will compete for clientele in terms of their administration or location, whereas they should compete in terms of their legally competent products, ability to offer legal protection to non-standard business transactions, and flexible interpretation of the meaning and contents of the legal rules they apply. A stable team of like-minded people working in a single place rather than administration can achieve this.

The second vital step, given the circumstances of our arbitration system, would be enhancing the role of international commercial arbitration and separating it from usual domestic tribunal proceedings. It appears to be a proper legal solution in order to develop an effective legal framework. International commercial arbitration is primarily governed by international conventions, such as the New York and Geneva ones. Those are universally applicable documents. Arbitrators and state judges should take into account practice and doctrinal judgements in other countries.

There also exist some inconspicuous but meaningful procedural differences. An arbitration tribunal's chairman cannot be a foreign national without Russian legal education. An international arbitrator can be such a person. International arbitrators may use any conflict-of-law system that they believe to be applicable. A domestic tribunal may only apply national law. And, finally, the most fundamental professional difference is that an international arbitrator is not only entitled but also obliged not to be guided by any substantive findings of state courts with respect to particular matters. Domestic tribunals cannot or, to be more precise, should not follow them due to the principle of legal unambiguity and for the purpose of uniform application of national legal rules. The confusion or convergence of these two branches of the arbitration system is quite undesirable.

According to the doctrine of the arbitration reform, people without legal education may serve as arbitrators. It would be better, however, if being an arbitrator required a scholarly degree. It is unclear how a non-lawyer could do justice. Arbitrators hearing industry-specific disputes can, in order to understand special matters and obtain special knowledge, employ experts and then enclose all matters of fact in a legal envelope. It is unclear why the institution of jury should be introduced into the arbitration procedure on a *de facto* basis. That will hardly work as expected, especially in the Russian Federation.

According to the concept proposed by the Ministry of Justice, arbitration tribunals will have quite universal jurisdiction and hear disputes of any kind. It seems to me that a workable arbitration system would be different: a small number of large arbitration centres capable of operating under the Law on International Commercial Arbitration, other domestic courts having universal jurisdiction, and a large number of various special tribunals offering their services to a specific limited clientele. It appears that little-known tribunals and arbitrators of obscure origin would be discrediting both the reform and the entire arbitration system in the Russian Federation