

D. Consideration of the Case in the Court Hearing: Rules for Proceedings

1. General Principles

In understanding the procedural rules of the arbitrazh courts, there are some general principles which should be kept in mind — in particular, the requirements of directness and continuousness of the court examination of the case, and the prohibition on the replacement of a judge during the consideration of the case.²³ The first of these principles — directness — means that the court must base its decisions only on evidence which has been examined during the hearing of the case. The second — continuousness — means that the judge or panel of judges considering a particular case is required to continue through the consideration of that case until it is completed before the consideration of a different case is begun by that judge (panel). The third of these principles — prohibition on a change of judge during the consideration of the case — means that any event that requires that a new judge consider a case already in progress, even if that judge is a member of a panel of judges, will automatically require that the case be heard again from the very beginning.

These principles are intended to ensure that decisions are made on the basis of the best evidence available and that the evidence has been tested in court, and also that the

²³ These requirements appear in Articles 10 and 117 of the APC, but as discussed in the text have a significant effect on many of the procedural rules.

judge(s) making the decision in a case has personally heard and examined all of the witnesses and evidence and has not been distracted in this task by moving between many cases at once.²⁴ The specific procedural rules are intended to facilitate the observance of the general principles and to allow the direct, continuous consideration of cases by a single judge or panel. Thus, for example, the rules are designed to ensure that all of the relevant materials and evidence in the case have been gathered and are ready to be presented prior to the beginning of the hearing on the case.

2. General Conduct of the Hearing; Appearances of Participants

The hearing of a case is conducted by the single judge hearing the case, or if the case is being heard by a panel of judges, by the presiding judge among them. The judge (presiding judge) conducts the session and also keeps order and makes the required announcements for the record, sometimes performing duties in the court session that are performed in some other systems by bailiffs, court clerks or other functionaries. The judge opens the court session, announcing the case to be considered and verifying the presence of the participants in the case and others summoned to take part in the hearing. If any of the participants²⁵ fails to appear in the hearing, the judge must determine whether they were informed of the place and time of the hearing in the proper manner. In the absence of evidence that a participant in the case who is absent was informed in the proper manner, the judge must delay the consideration of the case until there is certainty that all participants have been duly notified of a hearing.²⁶

If a properly notified plaintiff fails to appear in the hearing, and has not requested that the court consider the case in its absence, the court will issue a determination leaving the case without consideration on these grounds. If a properly notified respondent fails to appear, the court may consider the case in the absence of the respondent. Where a properly notified expert or witness(es) fails to appear, the court must hear the opinions of the participants in the case concerning the possibility for the court to hear the case in their absence, and then issue a decision on the matter.

If a response to the petition was not received, or other evidence requested by the court from one or more participants, the court may put off the consideration of the case if the absent information is necessary to the resolution of the matter. If it has become clear that additional information not yet requested will be required to resolve the case, the court may request it at this initial session, putting off the consideration of the case to a later

²⁴ There are additional factors that may have influenced the original adoption of these principles, such as the limited availability of qualified legal representatives and the practical difficulties and costs that would be involved if the parties and participants in a case were required to appear in court (often a significant distance from their places of work and residence) many times for the resolution of the case.

²⁵ The distinction made in the procedural rules between participants in the case and other participants in the proceedings becomes quite important in connection with the rules concerning participation in the hearing. See the discussion of those rules above.

²⁶ The consideration of a case in the absence of any of the participants who was not informed in the proper manner of the time and place of the hearing is an unconditional ground for the reversal of the decision of the arbitrazh court.

date. The requirement that the court put off the consideration of the case if the information is necessary, rather than hear those witnesses and examine that evidence which is available, is related to the general requirement of continuousness discussed above. Where the court finds that the case cannot be considered due to absence of a participant or of necessary evidence or information, it must issue a determination to that effect and name a new place and time for the consideration of the case. A sample of a determination, issued in connection with the need to call particular witnesses, appears as Appendix G to the Handbook.

In some instances, the discovery that the case cannot be considered without the person/information may be made after some of the opening proceedings in the case have occurred, or even after the evidence has begun to be examined. The court has the right in such cases to make a determination putting off the consideration of the case, but the consideration of the case must begin again at the beginning.

If it is found that the consideration of the case may go forward, the (presiding) judge announces the composition of the court and the identity of persons serving as experts, interpreters and other participants. The judge must explain to the participants their right to petition for recusals of those subject to recusal as well as their procedural rights and obligations during the hearing. He may at this time warn experts, witnesses and interpreters concerning their legal liability for providing knowingly false/incorrect information during the hearing.²⁷ The judge then determines the procedure for the conduct of the hearing, and ensures that witnesses leave the courtroom until the time for their testimony.

The law requires that all those present in the courtroom (including spectators and others not participating in the process) stand for the entry of the judge, and also while the decision of the court is being read out in the courtroom. During the hearing, those addressing the court must stand, including witnesses and experts while giving their testimony. The presiding judge may, however, make an exception to this rule. The persons present in the courtroom have the right to take notes, make a stenogram of the proceedings, and also to make sound recordings. Visual recordings, including still photos and videotaping, and also the direct sound or video translation of the proceedings to another location or over radio or television broadcast require the specific permission of the court. During the hearing of the case, participants in the case and in the proceedings have the general procedural rights discussed above. With respect to the motions and petitions made by participants in the case, the court is required to hear the opinions of all of the other participants in the case prior to issuing a determination on the issue.

²⁷ While the relevant provision of the APC requires that the judge give this warning, it does not require that it be done prior to the general taking of evidence in the case. In some cases the judge will prefer to warn the relevant participants about their liability at the time that they present information or begin to interpret.

3. Evidentiary Rules

a) Evidentiary Burdens

As a general rule, the participants in the case are each required to prove those facts and circumstances on which they rely as the basis for their claims, petitions, arguments and objections. Thus, the plaintiff must provide evidence of the bases for the claims in the petition, while the respondent may choose simply to deny the plaintiff's allegations and rely on insufficiency of the plaintiff's evidence, or to provide additional evidence refuting the plaintiff's claims. If the respondent wishes to rely on an affirmative defense, such as the effect of *force majeure*, the respondent will have the burden of producing evidence of this circumstance. Special rules apply to some types of cases, such as the rule that requires state bodies appearing as respondents in cases where a plaintiff is challenging the validity of an act to provide evidence of the circumstances that gave rise to the passage of the challenged act. Particular burdens may also be imposed by presumptions directly stated in the legislation applicable to the specific subject of the dispute, or by the settled interpretation of particular legal rules.²⁸

b) Relevance and Admissibility

Evidence must be both relevant and admissible. Relevance is determined by the specific facts and arguments in the case, and is a matter for the judge to decide. If only part of a document is relevant, a notarized excerpt from it is to be presented to the court rather than the entire document. Admissibility of evidence in cases before the arbitrazh courts may be determined by specific legal rules requiring certain types of evidence and not others of particular facts or relationships. Examples of such rules include the general civil law rules concerning required forms for some kinds of transactions, and specific rules contained in legislation or regulatory acts concerning the means for recording particular facts (e.g. damage to freight received). In some circumstances, notarization or registration of documents or contracts may be required for their validity or enforcement, and absence of these elements may make a document otherwise giving evidence of the transaction inadmissible as evidence that a valid transaction took place. Evidence obtained in violation of federal law is not admissible.

c) Facts and Circumstances Not Requiring Proof

The court may recognize some circumstances or facts as matters of public knowledge, which do not require proof. In addition, facts established by a prior arbitrazh court decision concerning the same parties do not require proof, nor do those established by a prior decision of a court of general jurisdiction in a civil case, where circumstances having significance in the case were established by the decision in that case in relation to

²⁸ For example, the imposition of liability for harm caused (tort liability) on a respondent under the general provisions requires that four elements be shown: 1) harm, 2) causation, 3) illegality of the acts causing the harm, and 4) fault on the part of the respondent in the form of intent or negligence. The long-settled interpretation of this rule provides that the plaintiff, in order to successfully make a case, must prove the first three elements. After those are shown, the burden to prove absence of fault is placed on the respondent.

persons participating in the new case before the arbitrazh court. A verdict in a criminal case has legal force for an arbitrazh court on the questions of whether certain actions took place and who committed them.

d) Form of Evidence

Evidence may be presented in the form of testimony, and also of documents and other physical objects. Documents must be originals or properly verified copies or excerpts. Original documents are returned to their owner at the conclusion of the case, or upon a petition for their return if the return of the original will not affect consideration of the case and copies properly notarized or verified by the court are left in their place. Physical evidence is stored at the arbitrazh court as a general rule, although in necessary cases may be examined at another location and stored there. If a participant fears that evidence may be lost or become unavailable, a petition to the court may be made to secure the evidence, describing the specific evidence sought, the issue of significance to the case to which it relates, and the reasons for fearing its loss. The court may also issue a mandate to an arbitrazh court for another subject of the Russian Federation in which the collection of evidence, taking of testimony, or other actions which will produce evidence in a case under consideration are requested.

e) Presentation of Evidence; Demand for Evidence

Evidence is presented in the case by the participants. If a participant in the case is not able to obtain necessary evidence from another participant, or from other persons, the arbitrazh court may issue a demand for the evidence on the basis of a detailed motion from the participant identifying the evidence, the persons possessing it, and other relevant information. (A sample of such a motion requesting that documents be obtained from the tax authorities, and of the demand issued by the court on its basis, appear in Appendix H to the Handbook.) If the person to whom the court demand is addressed cannot provide the evidence, or is unable to provide it within the period established by the court, they are obligated to notify the court within five days of receipt of the demand. A fine may be imposed on those who fail to provide evidence for insufficient reasons, but the fine does not release the person from the obligation to provide the evidence.

The court itself does not have the capacity to independently order participants or other persons to provide evidence, to enter evidence into the case on its own initiative, or to conduct an independent investigation.²⁹ The court does, however, have broad powers to propose to participants that additional evidence or information be provided, and to delay consideration of the case if the information is not available at the time appointed for the hearing. Where the court has requested that such information be provided, but the party interested in the presentation of the information has neither done so nor provided sufficient reason for its failure, the court will take a decision based on the information

²⁹ There are some exceptions to this rule, such as the powers of the arbitrazh court to require the submission of information about the debtor and its accounts in a bankruptcy proceeding.

available.³⁰ A court that has not requested necessary information, however, and which makes a decision in the case based on its absence (e.g. that a particular circumstance was not proved), may well be reversed on appeal on the grounds that it failed to take into account all of the circumstances of the case, as is required by law.

f) Weighing and Evaluation of Evidence

The arbitrazh court is required to evaluate all of the evidence in the case on the basis of its “internal conviction,” which must in turn be based on a full and objective examination of all of the evidence in the case. The APC states that no evidence has a prior established force for the arbitrazh court. This is not a contradiction of the provisions concerning facts and circumstances established by other court decisions or concerning evidentiary requirements for certain transactions. Rather, it indicates that the court must consider all evidence in the case and may not rely only on part of the evidence on the grounds that it comes from a “reliable” source, nor accept the conclusion of a government body or other authoritative source as a substitute for evaluation of evidence. If there is other evidence in the case concerning the relevant issues, the court must itself weigh all the evidence and it is required to indicate in its decision why it rejected or accepted particular evidence.

g) Falsification of Evidence

Falsification of evidence may result in criminal penalties. Article 303 of the Criminal Code of the Russian Federation provides that the falsification of evidence in a civil case by a participant or his representative may result in punishment ranging from a fine of from 500 to 800 times the minimum wage to arrest of from 2 to 4 months. Commentaries to the Criminal Code suggest that the definition of the crime of falsification under Article 303 includes not only the falsification of documents or other similar evidence, but also the giving of false testimony. It is interesting to note that the range of fines envisioned in Article 303 is significantly higher than those envisioned by the articles of the Criminal Code concerning the giving of false evidence, conclusions or translations by witnesses, experts and interpreters.

4. Records of Case Proceedings

A record of the proceedings during the hearing of the case, and also of procedural actions which occur separately from the hearing, known as a “protocol,” is kept by the court.³¹ During the hearing, the protocol is kept by the judge (one of the judges) hearing

³⁰ This is not problematic where the absence of the information injures the party responsible for providing it. Failure to provide information which is of benefit to the other parties in the case is a more difficult circumstance.

³¹ General rules concerning the keeping of protocols are contained in Article 123 of the APC. Specific articles of the APC concerning various procedural actions or decisions that may occur outside a court hearing (e.g. examination of evidence at its place of location) may contain a requirement that a protocol be created concerning the action.

the case. The protocol contains information identifying the case, the judge(s) hearing it, the participants in the case and in the process and whether they appeared, and whether their rights and obligations were explained to them. It also contains information on the evidence given in court by witnesses and the conclusions presented by experts, and states the oral motions and petitions made by participants during the hearing of the case and any determinations (e.g. on a petition to submit additional evidence) made by the court immediately during the court session, without a break for consideration. The protocol must be signed by the presiding judge not later than a day following the completion of the court session. The signature of the judge indicates certification that the protocol is correct, and its absence can result in the reversal of a decision on appeal.³²

Protocols are also made concerning procedural actions that take place outside the court session (e.g. examination of evidence at its place of location). Such protocols are similar in content to that for the court session, containing information on the case concerned, the persons present, the actions taken, and, if relevant, any information or evidence received. They must be completed and signed immediately after the relevant action is taken. Each of these protocols is entered into the case record.

The participants have a three-day period following the signature of the protocol in which to examine it and to make comments concerning its completeness and accuracy. The comments are made in writing, and the judge must examine them and make a formal determination concerning whether the comments, additions, or clarifications are accepted or rejected. Both the comments and the determination on them must be appended to the protocol in the case record. Comments on the protocol which are not submitted within the period are returned by the judge without consideration.³³

The protocol is an extremely important document, as it serves as the record of the court session that will be reviewed by a superior court in the event of an appeal. In some cases, the protocol may be only a form document, containing limited spaces in which the judge is to insert the required information, which may be in a terse, abbreviated form. (A sample of such a protocol appears in Appendix I to the Handbook.) Verbatim transcripts of court proceedings are not kept by the arbitrazh courts, and although participants are permitted to keep detailed notes and to make sound recordings, these are not a part of the official record.³⁴ For these reasons, ***parties must take special care in reviewing the protocol and make sure that any information or evidence discussed in the court session that is important to their case is properly noted.*** Likewise, it is vital that oral petitions or motions, the rejection of which may be relevant on appeal, are correctly recorded in the protocol, giving clear evidence of their content, their timely submission and the determination made by the judge.

³² The absence of any protocol of the court session in the record will also serve as grounds for reversal.

³³ The period for submission of comments can be renewed or extended by the judge according to the general rules concerning procedural time periods, discussed below.

³⁴ They may, however, serve as the source for information to be used by the participants in making comments and corrections to the protocol, and may be useful in convincing the judge that a correction or addition proposed by a participant is warranted.

A record of the case as a whole is kept by arbitrazh court, and includes the original petition of suit and documents reflecting all of the actions taken in the case (review and acceptance of the petition, notifications to participants, and so forth), and copies of documents submitted as evidence in the case. This written record of the case is referred to as “the case,” using the same word that indicates the case itself as a cause of action or legal dispute.³⁵ From the point of view of higher courts, the case record serves as evidence concerning whether the case was conducted in conformity with procedural law and of the facts and arguments that served as the basis for the decision of the judge(s) on the substantive law. Since violation of a number of procedural requirements can result in drastic consequences,³⁶ as can a record that does not reflect all of the evidence submitted or all of the arguments considered in reaching a decision, *it is advisable for the participants in the case to take careful notice of the case record as a whole and to make timely petitions to the court to correct omissions or to append important documents to the record.*

5. Suspension or Termination of the Case Prior to Decision; Settlement Agreements

a) Suspension of Proceedings

Although the procedural law in theory strives toward the uninterrupted consideration of a case within a relatively limited time period, there are some circumstances in which the law requires or allows the arbitrazh court to suspend the consideration of the case.

The court is obligated under the APC to suspend proceedings in the case in four circumstances:

³⁵ This terminology is sometimes the cause of confusion for those unfamiliar with the system, as it can be difficult to immediately determine whether a reference is being made to the dispute, or to the written record of the case.

³⁶ As was noted above, the court does not have discretion in applying the rules concerning grounds for returning an incomplete petition or in applying a number of other rules, and such problems with a case record as the absence of evidence that required notifications were made to interested persons or an inconsistency between the notation concerning the judge hearing the case and the judge signing a procedural document may lead to reversal of the decision overall. In this environment, clerical error or the accidental misfiling of a key document in another case record can have serious consequences. In order to avoid confusion at a later date, participants in cases before the arbitrazh court should be particularly careful not only to review the case record but also to keep scrupulous records of the documents filed, the identity of those signing them, fees paid and other matters having procedural significance.

- 🕒 the need to await a decision on another case, where that decision will have a mandatory force for the arbitrazh court concerning facts, circumstances or legal interpretation which are significant for the case being considered;³⁷
- 🕒 the entry of a person who is a respondent into the active armed forces, or a motion of a person who is a plaintiff and is entering into the active armed forces requesting suspension;³⁸
- 🕒 the death of a person participating in the case, if the rights and obligations in the legal relationship involved in the case may pass to a successor;³⁹ and
- 🕒 the loss by a person participating in the case of legal capacity.⁴⁰

Additional mandatory suspension requirements may be imposed by the legislation relating to a particular type of case.

In addition to mandatory suspensions, the arbitrazh court has discretion to suspend proceedings in a case in three other circumstances:

- 🕒 where the arbitrazh court has appointed an expert to conduct an expert review or analysis and time is required for this process;
- 🕒 where an organization which is a participant in a case is undergoing reorganization; and
- 🕒 where a person participating in the case has been summoned to perform any kind of state duties.

³⁷ Such cases may be in other arbitrazh courts, or in the courts of general jurisdiction, or before the Constitutional Court. It should be noted that the law on the Constitutional Court envisions the possibility for an arbitrazh court hearing a case in which a doubt about the constitutionality of the law to be applied has arisen to suspend proceedings in the case and refer the question of the constitutionality of the law to the Constitutional Court. In such cases, rather than reacting to information about the existence of another court proceeding requiring suspension, the arbitrazh court itself initiates the other proceeding through its reference to the Constitutional Court. An example of an inquiry to the Constitutional Court made by an arbitrazh court during the consideration of a case appears in Appendix J.

³⁸ A plaintiff who has entered the active armed forces also has the right to petition the arbitrazh court to hear the case in his absence.

³⁹ It should be noted that since the arbitrazh court does not have jurisdiction over cases involving individuals nor does it hear inheritance matters, the question is not whether a judgment will affect a personal heir through its effect on the estate of the deceased participant. Rather, the question is whether there is a legal successor to the business interests of the deceased participant, such as a person who enters a partnership on the basis of their status as the decedent's heir.

⁴⁰ The general rules concerning the civil law capacity of citizens appear in Articles 29 and 30 of the Civil Code of the Russian Federation. If a person's legal capacity is recognized under these rules as limited, rather than absent, the case will be suspended only if the limitation of capacity applies to the matter in dispute. If a guardian is appointed to conduct the affairs of the person whose capacity has been limited, the proceedings in the case may be continued with the guardian representing the person who has lost legal capacity.

Proceedings may be suspended on the grounds listed at any stage of consideration of a case, including all of the stages of appeal and review. The court must issue a determination on the suspension, stating the grounds for the suspension and the circumstances that will give rise to a continuation of case proceedings. A determination suspending the case may be appealed, although a determination refusing a petition to suspend a case is not subject to immediate appeal and may serve only as a grounds for appeal of the decision in the case. During the period of the suspension, all limitations periods applying to procedures in the case are also suspended, and begin to run again only upon the re-initiation of the proceedings.

b) Termination of Proceedings

There are also circumstances under which the arbitrazh court is legally obligated to terminate the proceedings in a case. Those circumstances include cases in which:

- ⊗ the dispute is not subject to the jurisdiction of the arbitrazh court;
- ⊗ a decision of a court or arbitration tribunal exists which has entered into legal force and which concerns the same subject matter between the same parties;
- ⊗ an organization participating in the case is liquidated;
- ⊗ there is no legal successor to a person participating in the case who has died;
- ⊗ the plaintiff withdraws the suit and this withdrawal is accepted by the arbitrazh court;
- ⊗ a settlement agreement is concluded between the parties and the settlement agreement is confirmed by the court.

The list of grounds for termination of a case is exhaustive and the court has no discretion to terminate a case on other grounds. Some of the grounds for termination of the case are also grounds for refusal of an original petition by the arbitrazh court. If these grounds become known only after proceedings in the case have begun, or arise during the consideration of the case, the court must terminate the case. Termination of proceedings in a case implies a permanent bar to the further consideration of the case. After termination, proceedings in the case may not be reinitiated nor may the petition be re-filed. Proceedings in a case may be terminated with respect to the entire case or only with respect to particular claims or disputes.

c) Settlement Agreements

A settlement agreement between the parties may be concluded at any stage of arbitrazh court proceedings. The agreement must be in written form, signed by the parties, and must resolve all of the disputed questions between them. The agreement is

then submitted to the court, which must review the agreement and confirm it. The court may not confirm a settlement agreement which is not consistent with law or the terms of which violate the rights of other persons. These are the only grounds on which the court may refuse to confirm the agreement, however. If the court confirms the agreement, it must issue a determination, in which the terms of the settlement agreement are set forth in detail, and in which the proceedings in the case are terminated. Upon the issuance of the determination, the terms of the settlement agreement become binding upon the parties in the same way that the terms of a court decision on the case are binding. An execution order is generally issued at the time of confirmation of the settlement agreement, and forcible execution can be carried out if the parties fail to abide by its terms. Settlement agreements may not be concluded concerning cases on the recognition of acts of state bodies as void, on the establishment of facts having legal significance, or on other cases where the matter in dispute is not subject to disposition by the parties.

6. Decision of the Court in the Case

a) Closure of Proceedings and Deliberation

After all of the evidence in a case has been examined during the court session, the judge is required to give the participants in the case the opportunity to offer additional material for examination. If no petition for the examination of additional material is made, the judge must announce the completion of the examination of the case, and the judge or panel of judges leaves the courtroom to consider the case and make a decision. The law requires that only the judge(s) considering the case be present in the room while a decision is being made. If the case is considered by a panel of judges, a decision is made by a majority vote.

b) Form and Elements of the Decision

A decision must be set forth in writing and signed by all of the judges participating in the case. The decision is divided into four parts: an introductory part, a descriptive part, a part containing the reasoning and justification for the decision, and a part containing the resolution. The content of each of these parts is regulated by the APC. The introductory part contains identifying information about the case and its consideration, including the name of the arbitrazh court and the judge(s), the number of the case and the names of the participants in it, the date and place of the court hearing and the names and roles of those present. The descriptive part contains a short description of the petition of suit, the answer of the respondent, any counter-claims, the responses of various participants, and the other petitions and motions made in the suit.

The “motivation” part of the decision contains statements of the facts and circumstances considered established by the court, and what facts and circumstances relied on by the participants the court considers to have been established, the evidence upon which the court bases its decision and an explanation of the reason for rejecting evidence or arguments of the participants, and a statement of the laws and normative acts

upon which the court bases its decision and reasons for rejecting any arguments of the parties concerning which laws and normative acts should apply to the case. Failure of the court to state the laws and normative acts upon which it based its decision are grounds for the reversal of the decision in cassational appeal, regardless of whether the decision of the court is correct according to law. The court may make reference in this part of the decision also to decrees of the Higher Arbitrazh Court which contain explanations of the proper application of the legal provisions involved.

The “resolution” part of the decision states the consequences of the court’s reasoning for each of the participants in the case. It must state whether the petition of suit is to be satisfied, in full or in part, with respect to each of the claims made in the petition. If there are several plaintiffs and/or respondents, the resolution part of the decision must state clearly the decision with respect to each of them and their obligations as a result of the decision. If a set-off of claim and counter-claim is made, or if the petition of suit is satisfied only in part, the court must state specifically what sum is due as a result of the decision.⁴¹ The court must also state in this part of the decision how court costs are to be divided among the participants. If special procedures for the execution of the decision are established, these must be stated in this part of the decision as well. Specific requirements for decisions in particular types of suits are established by the procedural code.

A sample decision issued by an arbitrazh court of the first instance appears as Appendix K to the Handbook.

c) Issuance and Announcement of the Decision

The decision in the case must be made and announced during the same session of the court in which the case was considered by the court.⁴² For exceptionally complicated cases, a delay of no more than three days may be announced for the court to complete the part of the decision which states the court’s reasoning, but even in these cases the resolution part of the decision must be announced during the same session of the court in which the case was heard. At the time of announcement of the decision in the case, the judge must explain to the participants their rights to appeal the decision and the procedure for appeal, and must also notify them of when they may receive the motivation part of the decision, if it is not announced at same time. Copies of the court’s decision must be sent to the participants in the case, by registered mail or delivered against a signature, within five days after its issuance. If the decision is not clear, a participant may petition the court for an explanation. Mistakes in the decision — such as clerical or mathematical errors not affecting its substance — may be corrected by the court on its own initiative or upon the petition of a participant.

⁴¹ If the court fails to resolve a claim made in the case or to state the sum or property to be transferred or other actions to be taken, or fails to deal with the court costs, an “additional decision” may be made in the case. The participants are notified of the time and place at which the question of the need for an additional decision will be resolved, but their appearance is not required for the decision to be taken. A participant may petition for an additional decision prior to the entry of the decision into force, and refusal of such a petition may be appealed.

⁴² Rules concerning the procedure for announcement of the decision are contained in Article 134 of the APC.

d) Entry Into Legal Force

The decision of the arbitrazh court enters into legal force one month after its issuance.⁴³ If an appeal is made against the decision of the court of first instance within that period, the original decision does not enter into force until the time of issuance of an appellate decision leaving it without change. The decision of the court is put into execution only after it has entered into legal force, except for decisions holding an act of a state body void or confirming a settlement agreement, which are executable immediately upon issuance. If a participant in the case makes an appropriate petition, the court may impose means for securing the execution of the decision, following the same general rules which apply to securing the suit during its consideration.

7. Determinations and “Private Determinations”

a) Determinations

Decisions of the arbitrazh court which are issued on procedural and other matters during the course of consideration of a case are generally known as “determinations.”⁴⁴ A determination issued during the consideration of the case in a court session may be recorded in the protocol of the court session. All other determinations are recorded in a document which states the identifying data on the case (number, subject of dispute, judge, participants, etc.), the question upon which the determination is being issued, the court’s decision and the reasoning for the court’s decision, with references to the laws or acts involved. Where the procedural action is subject to immediate appeal, it is this determination, as a separate act of the court, that is appealed. Determinations made in the course of the case hearing and recorded only in the protocol may not be appealed separately, but may form grounds for appeal of the decision of the court. A determination must be sent to the participants or issued against their signature within five days of its issuance. If the determination is subject to appeal, it must be sent by registered post with notification to the court of the delivery.

b) Private Determinations

The procedural laws also permit arbitrazh courts to issue acts which are known as “private” or “separate” determinations.⁴⁵ These are not determinations on matters directly related to the dispute before the court. Such a determination is issued by the arbitrazh court if it observes during its conduct of the case that there is a violation of the law in the actions of an organization, citizen, official, or state or local body. The “private determination” contains a statement of the violation directed to the body, organization or citizen, which/who must respond to the court within a month stating what measures have been taken to eliminate the violation. Such determinations may be issued by the court at any stage of arbitrazh court proceedings, including in appellate instances, and may be appealed.

⁴³ In the few instances in which the Higher Arbitrazh Court serves as a court of first instance, its decision enters into force immediately from the time of its issuance.

⁴⁴ The Russian term is *opredelenie*.

⁴⁵ The Russian term is *chastnoe opredelenie*.

8. A Note on Procedural Time Periods

Many of the procedural actions involved in the filing and consideration of a case in the arbitrazh courts are subject to time limitations stated in the relevant portion of the procedure code. With respect to those procedural matters for which the law does not establish a specific period, the arbitrazh court is generally authorized to do so itself. Periods of limitation may be expressed by the statement of a specific date by which the action must occur, by a period of time in which it must occur, or by reference to an event which must occur. According to the general rules,⁴⁶ limitations periods expressed as a period of days, months or years (the most common form of expression), begin to run on the day following the calendar date upon which they begin. If the last day of the period falls on a holiday or a non-working day, the next work day will be considered the last day of the period. Actions to which the limitation applies may be taken up to midnight on the last day of the limitations period, and the submission of documents to the post or other acceptable communications facility by midnight on that day is acceptable performance of the action (filing of an appeal, etc).⁴⁷

Failure by participants to take actions within the required time period may result in the loss of the right. This applies to appeals and petitions for reconsideration of decisions, as well as to procedural actions taken during the consideration of the case by a particular court, and the presentation of execution orders of the court for execution. Some of the relevant periods of limitation are quite short in comparison with those which operate in other legal systems, and foreign participants in cases before the arbitrazh court should take particular care in remaining aware of the limitations periods.

Procedural legislation also imposes a significant number of limitations periods on the arbitrazh courts themselves. These periods concern the time frame within which the case must be considered and decided, (two months in the first instance, one month for appeals and cassational appeals), and also the time frames in which the court must consider various petitions and in which it must complete other tasks. (For example, signature of the protocol of the court session is to be done no later than a day after its completion.) The violation by the court of the procedural periods imposed upon it by the APC or other legislation does not give rise to any specific remedy on the part of the participants in the case nor to any means for them to force the court to take the required action. It does, however, provide grounds for the participants to seek extension or renewal of procedural periods applying to their own actions, if the court's violation of the procedural period causes difficulty in meeting them.

⁴⁶ The general rules for the calculation of time periods related to civil matters are contained in Articles 199-207 of the Civil Code of the Russian Federation.

⁴⁷ This is true both for participants located within the immediate vicinity of the arbitrazh court hearing the case and for those located some distance away. It is not possible to submit documents in person to the arbitrazh courts after the end of the regular working day (usually 6:00 PM). A stamp, receipt, or notarized excerpt from the registration book of the post office or other communications facility to which the documents were submitted should be obtained as evidence of the time at which they were submitted.

The arbitrazh courts have the right to renew periods of limitation if the reason for missing the relevant deadline is sufficient. The courts may also extend periods of limitation that are established by them on the same grounds. The courts may not “extend” periods specified by law, but must rather renew them. A renewal may be for a part of the period, or for the entire period. A petition for the extension or renewal of a period is made to the arbitrazh court in which the procedural action should take place. A determination on the refusal to renew a period of limitations may be appealed.

9. Filing Fees and Court Costs

a) Filing Fees

Filing fees must be paid upon the submission of an original petition of suit, and also upon the submission of a third party claim, a bankruptcy petition, a petition concerning establishment of legally significant facts, and upon the filing of a petition for mandatory execution of the decision of an arbitration tribunal. Filing fees are also due upon the filing of first appeals and cassational appeals of decisions of the arbitrazh courts, and on the appeals of determinations of the courts concerning termination of proceedings, leaving the suit without consideration, and imposition of court fines. The amount of the filing fee is calculated based upon the value of the suit. The value of the suit is based on the sum in dispute or the value of the property in dispute in the case, including the fines or penalties that may be sought in the petition. For cases in which there is no specific sum or piece of property in dispute, such as a petition requesting that the act of a state body be held void or on the establishment of a legally significant fact, or for case in which the value of the suit is difficult to determine, such as bankruptcy petitions, specific filing fees have generally been established by law. A petition may be made to the arbitrazh court concerning permission for a delay in the payment of the fee or for the payment of the fee in installments, and also for the reduction of the amount of the fee, by a party unable to pay the fee. Government bodies submitting petitions to the court for the protection of state or public interests are generally not obligated to pay filing fees.

The payment of the filing fee is a significant issue, and a lack of evidence that the fee was paid is grounds for the court to return a petition to the plaintiff. If during the course of consideration of the case the plaintiff increases the sum demanded or otherwise increases the value of the suit, the additional amount of the filing fee must be paid or exacted at the time of the decision. No return of the fee is due if the value of the suit is reduced during the consideration of the case.

Filing fees must be paid in rubles; the court will not accept foreign currency or bank transfers denominated in foreign currency. In addition, bank transfers from foreign accounts into accounts in Russian banks often entail substantial and unpredictable delays. If a party does not have a local bank account, the representative (or his/her firm) may pay the filing fee for the client and be reimbursed for this cost.

b) Court Costs

In addition to filing fees, participants in a case before the arbitrazh court may be required to pay court costs, which consist of the sums paid to experts, and witnesses for their services and to cover their expenses during the hearing of the case. In practice, the party calling a witness, or making a petition for expert review, is required to place the sum required to cover the relevant expenses into the deposit account of the court, out of which such expenses are paid. As a general rule, the court costs are assigned, at the end of the case, to the participants in the case in proportion to the satisfaction of the claims made in the case. Unpaid filing fees of a plaintiff unable or not required to pay may be charged to a respondent found liable on the plaintiff's claims, in proportion to the amount of the claims that were satisfied. The parties may make an agreement concerning the division of court costs, and the court will issue a decision in accord with this agreement.