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PROBLEMS OF DEADLINE OF JUSTICE ADMINISTRATION IN CASES ARISING FROM ADMINISTRATIVE AND OTHER PUBLIC LEGAL RELATIONS

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Examining the issues of length of time which is used to resolve in an arbitration court cases arising from administrative and other public legal relations, and on the ground of the practice of resolving tax disputes, the author offers the concept of procedural legislation reform, aimed at providing reasonable time limits of arbitration proceedings. There is need for reasonable time limits of proceedings for the resolution of questions of distribution court costs. Offers norms that can provide reasonable time limits of arbitration proceedings.

Keywords: proceedings time limits, timing of administration of justice, reasonable duration of arbitration proceedings, procedural terms in public law disputes.

Personal experience in protecting the interests of subjects of entrepreneurial activity in disputes with public authorities of monitoring and supervision leads to unfavorable conclusions about the timeliness of administration of justice by courts of arbitration [10]. Duration of consideration each of the cases, taking into account the time spent on resolving the issue of distribution of judicial costs, amounted to more than one year. The absolute record holder in time-bound is a case A57-3530/2008, which has been being in proceeding by Arbitration courts already for more than four years.

As a result of analysis of cases arising from administrative and other public legal relations, in arbitration courts has been identified the following reasons for delaying the terms of consideration:

- satisfaction by arbitration judges unreasonable petitions of representatives of public authorities of monitoring and supervision to postpone consideration of cases in mind of unreadiness of a representative for a case (the participation of a representative instead of another specialist, who possessed the essence of the dispute under consideration; the lack in the process of a competent specialist; lack of time to become familiar with the case materials; tax authority applies for postponing the hearing to prepare a written objection [4], etc.);
- provision of the opportunity to form other evidentiary base which has not been taken into account when giving the contested decision to public authorities of monitoring and supervision, whose decision is appealed by the applicant;
- postponing the moment of giving the judicial act not in favor of public authorities of monitoring and supervision (especially when considering the exaction of judicial costs), besides, reluctance to make a judicial act in favor of the applicant is masked by the need to submit more evidence – «having examined the case materials, having heard trial participants the court finds that the trial should be postponed under article 65, 158 of the Arbitration and Procedural Code of the Russian Federation, for the submission of additional evidence on the case»[5].

We believe that the current normative regulation of terms of consideration cases in courts of arbitration (articles 152, 267, 285, 299, 303 APC RF [1]) and the statutory right to compensation for the delay the time terms of administration of justice [2] does not solve the problem of resolution of the administrative legal disputes in a reasonable time limits (article 6.1. and articles of chapter 27.1. APC RF). Listed articles contain valuation concepts and norms, which give discretionary powers to judges, what in reality leads to a imbalance between the interests of individuals seeking protection of their interests in court and representatives of the authority.

The concept of reasonable time limit is not given in the legislation, but under it is possible to understand the length of proceedings or execution of a judicial act, which guarantee real protection of rights or legitimate interest of an interested person [9].

The presence in article 152 of the APC RF provisions: on an extension of the proceedings term at first instance (part 2 of this article) and the deletion from the time limit of suspension time and time of postponing consideration of the case (part 3 of this article) almost contributes delaying the administration of justice in cases

arising from administrative and other public legal relations. In addition, in the reality the settlement of a case does not absolutely comply with fixed in part 3 of article 189 of the APC RF responsibility of public persons to prove the circumstances giving rise to the adoption of the contested act, and the legitimacy of committed decisions and actions (inaction).

In most cases, a party whose application is subject to arbitration has no formal grounds for the applying to the arbitration court with an application for compensation for violation of right to trial within a reasonable time limit, so much so that a reasonable period is specified by such conditions as three-year and preliminary appeal with the application on the acceleration of the proceedings in accordance with the APC RF [1].

Period of three years or more, in our opinion, is absolutely unacceptable in cases arising from administrative and other public relations, at least, because for such a long period of public figures replicate their tortious behavior (action and inaction), as well as take more than one dozens of illegal decisions thereby keep busy the arbitration by the similar administrative-legal and tax disputes.

To the objection of opponents defending the currently in force normative regulating of terms of administration of justice in arbitration courts in cases arising from administrative and other public relations, we give an example of the Republic of Kazakhstan legislation. In article 167 of the Civil Procedural Code of the Republic of Kazakhstan is established the time frame for preparing a case for proceedings:

"Preparing of civil cases for court proceedings shall be held not later than in seven days from the date of application, unless otherwise stipulated by legislative acts. In exceptional cases, for particularly complex cases, except for cases on exaction of alimony, on compensation for damage caused by injury or other harm to health, as well as on the case of loss of the breadwinner, and on claims arising from employment legal relations, this period may be extended up to one month by a reasoned ruling of a judge "[3].

Article 174 of the Civil Procedural Code of the RK regulates terms for consideration and resolution of civil cases (in Kazakhstan, there is no system of arbitration courts, their function is performed by a special chambers of the civil courts):

"1. Civil cases are considered and resolved within two months from the date of finalization of preparing the case for a court proceeding. The cases on reinstatement of employment, on exaction of alimony and on the contesting the decisions, actions (inaction) of state bodies, local self-government bodies, officials, state employees are considered and resolved within one month "[3].

Thus, the applications of business entities contesting the decisions, actions (inaction) of public persons in Kazakhstan, are considered by the court within

a month. We believe that the subjective characteristics of the persons involved in a dispute and resolving cases in court that in Kazakhstan and in Russia are the same. It is unlikely that judges in Kazakhstan possess supernatural abilities that in order to justify the Russian justice that is administrated in arbitration it would be possible to speak of national features. In our opinion, low load of Kazakhstani judges in comparison with their Russian colleague is hardly probable.

Simply enough in Kazakhstan resolved the issue of compensation for actual loss of time in court proceedings. Article 112 of the Civil Procedural Code of the RK stipulates that "on the part of the party which unfairly had stated clearly unfounded claim or dispute against a claim or systematically resisting the correct and rapid consideration and resolution of a case the court may collect compensation for actual loss of time in favor of other party. The amount of compensation is determined by the court, taking into account the specific circumstances, based on the relevant standards of payment of labor in this region "[3].

In our opinion, the Russian legislator, having created "greenhouse conditions" for the judicial system in no way contributes to the rapid administration of justice.

It seems to us, that in respect of category of cases arising from administrative and other public legal relations, the Russian legislator should introduce special rules regulating the number of admissible by the court postponing of case consideration, announcements of breaks, as well as setting deadlines for such postponing.

Additionally we should support the norm of part 3 of article 189 APC RF:

"3. The burden of proving the circumstances which served as grounds for the adoption of the disputed act, the legality of the disputed decisions and actions (failures to act) on the part of state bodies, local government bodies, state officials or other bodies and organizations, vested by federal law with certain state or other public powers, is imposed upon the bodies and persons who adopted the disputed act or decision, or performed the disputed actions (failed to act)".

with the relevant procedural norms that limit the abuse of rights by public persons in the use of the period of judicial proceedings on public and legal dispute to obtain evidence in support of the contested decision (action or inaction), which did not have legal grounds at the time of its adoption.

The most frequently the tactic of subsequent collection of evidence to support the legality of the issued decision is used by tax authorities. For example, conducting handwriting examination of invoices is conducted during the court proceeding, even though such examination should be carried out before making a decision on

results of the tax audit of a taxpayer. There have been cases of request of documents from the taxpayer's counterparty already during a tax dispute, despite the fact that the power to request such documents are provided for in the Tax Code of the RF as a tax control measures and it is supported by the norms with the corresponding liability to a fine. Possible such a course of action of public persons in the arbitration proceedings when the persons, with the help of court, check the reliability of the evidence, which formed the basis for the taken decision.

The most complete list of possible illegal actions of tax authorities is considered by V. V. Kizilov in the monograph "Illegal Actions of Tax Authority Officials" [7].

To stop the mentioned practice of arbitration court in cases arising from administrative and other public relations is possible, in our opinion, through the introduction of the following norms to article 189 APC RF:

1. The actual data submitted by bodies and individuals who took the disputed act, decision, committed disputed actions (inactions) should be recognized by the Court inadmissible as evidence, if they had been obtained in violation of the law by deprivation or suppression of guaranteed by law legal rights of persons involved in the case, or in violation of other rules of the arbitration proceeding in preparing the case for proceeding or during proceedings on the case, which had affected or could affect the reliability of the obtained actual data, including:

1) using violence, threats, deception, as well as other illegal actions;

2) with use of delusion of a person participating in a case, with respect to his/her rights and obligations, arising out of not explaining, incomplete or incorrect explanation to that person;

3) in connection with the conducting procedural actions by a person not entitled to implement the proceedings on the case;

4) in connection with participation in the procedural action of a person subject to challenge (disqualification);

5) in connection with a breach of the procedure of the procedural action proceeding;

6) from an unknown source or from a source that cannot be installed in a court session;

7) with use during proving the methods which are contrary to current scientific knowledge.

2. Inadmissibility of the use actual data as evidence, as well as the possibility of its limited use in the proceeding on the case is set by the court on its own initiative or at the request of parties to a case.

3. Evidence obtained in violation of the law shall be deemed null and void and may not be the basis for a court's judgment, and also used in proving any fact relevant to the case.

4. Actual data obtained with violations which are mentioned in the 1st part of this article may be used as evidence of the fact of the relevant violations and culpability of individuals who has committed them [3].

5) Evidences of circumstances that were not laid down to the basis of disputed decisions and actions (inaction) in a case on disputing the legality of decisions and actions (inaction) of state bodies, local self-government bodies and other bodies, organizations, empowered by the federal law with certain state or other public powers are inadmissible.

In our opinion, it is necessary and topical to introduce to Chapter 22 APC RF the following norms on time terms of court proceedings and postponement case consideration:

Article 189.1. Terms of consideration and resolution of cases

1. *Cases arising from administrative and other public legal relations are to be considered and resolved within one month from the date of completion of preparing the case for trial.*
2. *For certain categories of cases arising from administrative and other public legal relations, the law may establish other terms.*
3. *Term of postponement of consideration cases arising from administrative and other public legal relations, cannot exceed ten working days plus postage time on sending written evidence, if any, of the person who is in a different city than the party obliged to provide evidence.*

Note. Total number of the postponements at first instance of the arbitral tribunal on the petition of one party of the proceedings should not exceed three times.

Special attention requires the situation taking place in practice which regards to the time for resolution of the issue of court costs distribution between the parties involved in a case arising from administrative and other public legal relations. Representatives of public persons, who have lost the case in arbitration, as a rule, take all possible measures to postpone the time of resolution by arbitration the issue of court costs distribution. Practice of exaction judicial costs from the tax authorities shows that in such cases judges of the first two instances of arbitration courts of Russia happen to be "supportive" to tax authorities and the procedure of exaction judicial costs takes six months or more. [8] Therefore, we believe it is necessary to introduce a norm in article 112 APC RF, by updating it with the following part:

4. *Resolution of issues on the distribution of court costs in cases arising from administrative and other public legal relations is to be done within a period not exceeding two months, including the terms of postponement of case consideration.*

Appropriate, in our view, in article 112 APC RF would be a norm, developing the provisions of article 48 APC RF, on procedural succession when considering an issue of court costs distribution. Without the presence of the norm on the possibility of initiating proceedings in arbitration court regarding the allocation of court costs by successor of the prevailing party, arbitration courts have some difficulties with law-enforcement of the general provisions on procedural legal succession and qualification of assignment of a claim, the subject of which are court costs incurred by a party. [6]

Rigidity of offered by us terms of administration of justice in cases arising from administrative and other public legal relations, is justified. Cancellation by legislator "greenhouse conditions" of arbitration courts will increase the responsibility of representatives of the parties involved in the arbitration proceedings when resolving public law disputes. Arbitration courts' judges should not be liable for negligence of public persons' representatives who do not provide the adequate representation of their interests in court proceedings.

The arbitration court shall make a judicial act on those case materials, which will be presented to the court in the manner and time limits prescribed by law but not just apply the principles of parties' equality and competition, urging during court sessions the representative of a public person to provide additional (or even any) evidence in support of the legal position of a public person in a dispute.

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