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Arbitration in Russia: Current Problems and Solutions

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Abstract. The development of arbitration as a means of resolving legal conflicts inevitably gives rise to various systemic challenges. Legislators and law enforcement officers in different countries encounter difficulties in integrating arbitration into the system of civil jurisdiction due to national peculiarities and legal traditions. This article provides an analytical overview of the main problems in the field of arbitration in Russia, including the application of current legislation and doctrinal developments in this area. Special attention is paid to issues of cross-cutting, system-building significance, such as the organization and administration of arbitration in Russia, the arbitrability of disputes, arbitration agreements, compliance with due process requirements, as well as the introduction of digital technologies in arbitration. Based on the results of the analysis, potential solutions for addressing the topical issues in the field of Russian arbitration are proposed.

Keywords: arbitration; arbitration institutions; *ad hoc* arbitration; arbitration agreement; independence and impartiality; arbitrability; artificial intelligence.

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Introduction

In July 2025, the Ministry of Justice of the Russian Federation submitted for public discussion a draft law that amends the regulation of arbitration,[1] which underscores the fact that although arbitration has undergone reform, ten years have now passed since its adoption. The years that have passed since the adoption of the current Russian legislation on arbitration, Federal Law of December 29, 2015 No. 382-FZ "On Arbitration (Arbitration Proceedings) in the Russian Federation," and Federal Law of December 29, 2015 No. 409-FZ amending the Law of the Russian Federation of July 7, 1993 No. 5338-I "On International Commercial Arbitration," allow us to look back and evaluate which problems in the field of Russian arbitration have been resolved and which remain unresolved.

In the initial years following the reform of arbitration courts, numerous different publications appeared, both supporting the reforms and offering various criticisms of them. Without focusing on the positive or negative aspects of the reform, in this article we will instead try to focus only on some topical issues of arbitration, touching upon a number of issues such as the organization of arbitration institutions and *ad hoc* arbitrations, arbitration agreements, dispute arbitrability, issues of independence and impartiality of arbitrators, the problems of digitalization of arbitration, and the introduction of AI technologies.

Within the pages of the Russian legal press, scholars actively discuss the rulings of the Constitutional Court of the Russian Federation on arbitration issues rendered in 2023–2024, summarizing the urgent problems and suggesting ways to solve them. It is

[1] https://regulation.gov.ru/Regulation/Npa/PublicView?npaID=157920#

difficult, however, to conduct such analysis in isolation from global trends. An excellent overview of the main problems of international commercial arbitration and current trends in its development is provided by A. Beloglavek and A. Komarov in the third edition of the Russian classic textbook "International Commercial Arbitration."[2]

Following the world's leading legal scholars, Russian researchers are increasingly reflecting on the philosophical foundations of arbitration[3] and the relationship between arbitration and law. The extensive body of practical material, judicial practice, and numerous scientific sources accumulated in recent years requires both generalization as well as philosophical and legal understanding. The cornerstone of such research is often the problem of the relationship between arbitration and civil justice. This has been confirmed in recent articles.[4] Many prominent scholars have participated in the discussion on this issue, including V. Anurov, A. Asoskov, V. Belov, S. Kurochkin, Yu. Monastyrsky, M. Morozov, A. Muranov, and O. Skvortsov.

An analysis of the positions expressed in the literature implies that Russian science tends to the jurisdictional component of arbitration to a greater extent than to the contractual one. This inclination often determines the angle of viewpoints on the problems of arbitration.

According to the tradition established in Russian doctrine, the understanding of the patterns of arbitration development is implemented by researchers using approaches that have been recognized as theories of its legal nature. Four of these theories enjoy the greatest authority, yet modern Russian authors do not tire of expanding their list by developing their own visions.[5] It is worth noting, however, that Russian law enforcement practice does not always adhere closely to general theoretical research. For instance, the Constitutional Court of the Russian Federation contemplates quite freely on the main categories of the theory of arbitration, problematizes certain aspects of it, and at times creates entirely original impulses for understanding arbitration's legal nature.[6] The mandatory positions of the Constitutional Court of the Russian Federation

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[2] *See*, for more details, Skvortsov, O. Y., Savransky, M. Y., & Sevastyanov, G. V. (Eds.). (2025). *International commercial arbitration* (3rd ed.). Editorial board of the journal "Arbitration Court." (In Russian).

[3] Skvortsov, O. Y. (2024). Lex facit arbitrum? Philosophical and legal notes on arbitration. *Journal of Russian Law, 11*, 33–45. (In Russian).

[4] *See* recent works on this issue, Belov, V. A. (2024). The legal nature of the arbitration agreement. *Bulletin of Economic Justice of the Russian Federation, 6*, 28–69. (In Russian); Belov, V. A., & Skvortsov, O. Y. (2025). Civil justice and arbitration: Discussion. *Law, 6*, 107–121. (In Russian).

[5] *See* for more details, Sevastyanov, G. V. (2015). *The legal nature of arbitration as an institution of alternative dispute resolution (private procedural law)*. Editorial board of the journal "Arbitration Court." (In Russian), etc.

[6] As an example, we can cite the Ruling of the Constitutional Court of the Russian Federation of September 4, 2024 No. 826-O "On the Refusal to Accept for Consideration the Complaint of P. P. Karkachev for Violation of His Constitutional Rights by Parts 1 and 20 of Article 44 of the Federal Law 'On Arbitration (Arbitration Proceedings) in the Russian Federation'" (para. 2.2). "Consultant Plus" Legal Database. https://www.consultant.ru. (In Russian).

determine today not only the vector of development of arbitration but also new approaches to the formation of knowledge about it, thereby stimulating researchers to conduct more and more new studies of its legal nature. In the near future, perhaps, we will be able to witness the emergence of an original Russian concept of arbitration (or even doctrine), different from the global understanding.

Another area of analysis of Russian arbitration problems, conducting scientific research, is related to attempts to understand how much the Russian Federation can (or cannot) be regarded as a pro-arbitration jurisdiction. This is by no means an idle question but a purely practical one. Keeping domestic commercial disputes and luring disputes from other jurisdictions is an excellent way to reduce civil turnover costs and attract investment. It is unlikely that an arbitration-unfriendly approach could effectively serve as a reliable way in this case. Therefore, it is no coincidence that Russian legal scholars, supported in many respects by the Constitutional Court of Russia, seek to find and consolidate pro-arbitration trends in Russian judicial practice. Thus, as Prof. Skvortsov notes, not unreasonably, the recent Ruling No. 46-P issued by the Constitutional Court of Russia of 2023 has become a milestone that confirms the direction of support for the institution of arbitration, carried out on the basis of the gradual promotion of liberal ideas based on conservative opposition to the radicalism of judicial practice.[7] However, O.Y. Skvortsov's conservative optimism on this issue is not universally shared among Russian experts.

There is no doubt that the problems of applying the category of the *ordre public* remain relevant as grounds for annulment of arbitral awards or refusal to recognize and enforce them on the territory of the Russian Federation. A study of the annual summaries of the International Council for Commercial Arbitration (ICCA) has shown that no other jurisdiction pays as much attention to these issues as Russia does. It is noteworthy that in the best traditions of sociological jurisprudence, the parties to arbitration themselves give impulse to new approaches, which will later be clothed in quite tangible legal principles. They never tire of declaring a contradiction to *ordre public* in every second (if not the first) proceeding to challenge arbitral awards or when issuing a writ of execution for the enforcement of arbitral awards. Forced to respond to such statements, Russian courts have accumulated a huge practice of "sorting the wheat from the chaff" and understanding what actually constitutes a violation of *ordre public*.[8] It may even be suggested that such a practice can be an excellent basis for the

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[7] Skvortsov, O. Y. (2023). The Constitutional Court: The ideology of practice concerning arbitration. *Arbitration Court, 1/2*, 68. (In Russian).

[8] For the latest reviews, *see*, Resolution of the Plenum of the Supreme Court of the Russian Federation of December 10, 2019 No. 53 "On the Performance by the Courts of the Russian Federation of the Functions of Assistance and Control in Relation to Domestic Arbitration and International Commercial Arbitration" (hereinafter referred to as Resolution of the Plenum of the Supreme Court of the Russian Federation No. 53); Information Letter of the Presidium of the Supreme Commercial Court of the Russian Federation of February 26, 2013 No. 156 "Review of the Practice of Commercial Courts in Cases on the application of the *ordre public* clause as grounds for refusing recognition and enforcement of foreign judicial and arbitral awards," etc. "Consultant Plus" Legal Database. https://www.consultant.ru. (In Russian).

development of this institution abroad. Recent Russian studies and generalizations of the practice of applying the *ordre public* provisions by courts are all the more useful.[9] Of undoubted scientific interest is the question of how it happened that the construction of *ordre public*, born in international law and imbued with its spirit, was easily (but without grace) inscribed into the canvas of internal arbitration.

1. Arbitration Institutions and *Ad Hoc* Arbitrations: Problems of Correlation

The Russian arbitration reform of 2016 marked the beginning of a discussion on the organization and activities of permanent arbitration institutions. The distinctive Russian legal structure of the so-called "permanent court of arbitration" has sunk into oblivion, and the legal community, amid attempts, often unsuccessful, to obtain permission to administer arbitration, has once again turned its attention to the legal personality of arbitrators, the arbitral tribunal, the arbitration institution, and their interrelationships.

In the classical version, as is well known, arbitration is based on the autonomous will of the parties. The consistent development of arbitration institutions in Russia, not as a community of arbitrators, but as an element of the civil jurisdiction system, has naturally led to the involvement of the state in this area. As a result, today permission to administer arbitration, to be an arbitrator on a permanent basis, is impossible without the will of the state. The law regulates in detail the procedure for the establishment and operation of arbitration institutions. The Russian Ministry of Justice plays an active role in monitoring their formation and consistently eliminates any factors that may lead to a conflict of interest. The passage of difficult preliminary procedures, however, does not become a guarantee of the state's quality of the procedure or the resulting award, and the subsequent judicial review applies equally strict standards to both *ad hoc* arbitral awards and decisions issued by institutional arbitrations. It seems that the problem of legitimation of modern Russian arbitration institutions is still awaiting comprehensive scholarly examination of its researchers. We only emphasize that modern Russian arbitration is a unique product shaped by the will of both the state and the parties to the arbitration.

Despite the arbitration reform in Russia, the problem of organizing arbitration proceedings and the recognition of their results by the state remains urgent. According to the framers of the reform, arbitration, administered by permanent arbitration institutions, was intended to become the dominant form. However, not all stakeholders are satisfied with the approaches implemented in Russian legislation. It is worth noting that the new laws have been reviewed by the Russian

[9] *See, for example*, Pechegina, P. D., Dyakonova, M. O., & Sinitsyn, S. S. (2024). Public order: Towards the problem of institutionalization in international civil procedure. *International Public and Private Law, 1*, 21–25. (In Russian), etc.

Constitutional Court.[10] In the course of a difficult search for an optimal solution, an option was ultimately found that made it possible to form in Russia some semblance of a system of arbitration institutions based on uniform rules prescribed by law. At present, this system includes seven permanent arbitration institutions with self-sufficient branches in Russian regions, and their number is consistently increasing. Thus, there is no shortage of arbitration centers in Russia. However, this system is constantly being tested for durability. Interested parties persist in attempts to circumvent legislative requirements by using the *ad hoc* arbitration structure, or by creating the appearance of dispute resolution in "foreign" arbitration. Among such entities are not-for-profit organizations that have not received the right to perform the functions of a permanent arbitration institution, as well as any other entities that actually perform the functions of arbitration institutions, unlawfully substituting for them.[11] The practice has gained such momentum that in 2019 the Supreme Court of Russia was forced to clarify that arbitral awards made in the framework of arbitration conducted by an *ad hoc* arbitration court in violation of the Arbitration Law are considered to be adopted in violation of the procedure. These violations, according to the Supreme Court of the Russian Federation, occur if an arbitral tribunal is formally formed to resolve a specific dispute (*ad hoc*), but in reality, it has the characteristics of institutional arbitration.[12] As a result, unfair practices have decreased, but not disappeared.

Today, the construction of *ad hoc* arbitration, despite having undoubtedly proved itself in United Nations interstate arbitration, continues to be distorted. It should be recognized that the effectiveness of *ad hoc* arbitration in disputes involving states, and the credibility that has arisen on this basis, have been undermined by the practice of circumventing the requirements of Russian arbitration legislation in domestic arbitration. Legal scholars have attempted to provide some kind of explanation for this phenomenon noted in law enforcement practice.[13] Experts reasonably point out that formally, the position on the prohibition of hidden administration does not prevent the imitation of a private dispute or the use of "pocket" *ad hoc* arbitration, and continues to allow, through *ad hoc* pseudo-arbitration, the unfair practice

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[10] *See, for example*, Ruling of the Constitutional Court of the Russian Federation of November 30, 2021 No. 2362-O "On Refusal to Accept for Consideration the Complaint of the Autonomous Non-Profit Organization Center for Arbitration Proceedings for Violation of its Constitutional Rights by Parts 4 and 6, Paragraph 4 of Part 8, Parts 9 and 10 of Article 44 of the Federal Law 'On Arbitration in the Russian Federation.'" "Consultant Plus" Legal Database. https://www.consultant.ru. (In Russian).

[11] *See*, for this issue, Morozov, M. E. (2020). *Ad hoc* arbitration procedure and hidden administration. *Arbitration Court, 1/2*, 286–295. (In Russian), etc.

[12] *See* for more details, Resolution of the Plenum of the Supreme Court of the Russian Federation of December 10, 2019 No. 53 (para. 50). "Consultant Plus" Legal Database. https://www.consultant.ru. (In Russian).

[13] *See, for example*, Ilyichev, P. A. (2021). On the expediency of reforming the *ad hoc* arbitration system in Russia. *Arbitration and Civil Procedure, 7*, 13–17. (In Russian), etc.

of obtaining writs of execution for the enforcement of arbitral awards issued in circumvention of the established procedure.[14]

In 2024, the Russian Constitutional Court was forced to intervene in the situation and point out that "the nature of the arbitral tribunal formed by the parties to resolve a particular dispute is different from the nature of a permanent arbitration institution, despite the fact that the status and purpose of the latter stipulate the establishment of special requirements for it." Perhaps such a categorical conclusion about the nature of arbitration goes beyond the framework of classical theory, but now scholars are forced to take it into account. In an attempt to solve the problem of distinguishing permanent and *ad hoc* arbitration, the Russian Constitutional Court has formulated a daunting task that will require new scientific research. The Court, in an effort to improve the current legal regulation, directed the federal legislator with the task to clarify the criteria that would make it possible to more definitively distinguish actions that are allowed to be carried out independently by an *ad hoc* tribunal from actions that should be carried out by a permanent arbitration institution.

2. Arbitration Agreements: Key Aspects

According to Albert Van den Berg, obviously, no arbitration is possible without its very basis, the arbitration agreement.[15] And this is indeed the case. An arbitration agreement is of key importance and is a prerequisite and basis for conducting both international arbitration and internal dispute resolution by the arbitral tribunal. This largely explains the unquenchable interest in the study of arbitration agreements in Russian legal doctrine. A significant contribution to the development of the theory of the arbitration agreement in recent years has been made by V. Belov, A. Kolomiets, A. Kotelnikov, A. Loboda, and many other authors.

An arbitration agreement can be drawn up in various ways, be of different types, and be concluded by the parties, both before and after the dispute arises. Almost all arbitration centers post examples of standard arbitration clauses on their websites. Following these models facilitates the possibility of dispute resolution in arbitration. Of course, it is possible to improve the standard clause by adding some additional conditions to it, but the main thing is that the arbitration agreement should be valid, enforceable, and not become invalid by the time it is necessary to apply to arbitration.

One cannot disagree with Gary Born that

if an arbitration agreement was properly drafted, it can become the basis for relatively smooth and effective arbitration; if it was drafted less carefully, it can create

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[14] Trezubov, E. S. (2024). Are hidden administration and the *ad hoc* arbitrator's system activity identical concepts? *Arbitration Court, 1/2*, 76. (In Russian).

[15] Van den Berg, A. (1981). *The New York Arbitration Convention of 1958: Towards a uniform judicial interpretation* (p. 144). Kluwer Law and Taxation.

many legal and practical problems; if it was drafted poorly, the arbitration agreement may not be functional. and it will then be impossible to enforce it, or it will entail an indefinite and expensive trial in national courts.[16]

The Resolution of the Plenum of the Supreme Court of the Russian Federation No. 53 states that the basis of the jurisdiction of the arbitral tribunal is a valid and enforceable arbitration agreement that has not lost its validity (para. 26), and any doubts should be interpreted in favor of the validity and enforceability of the arbitration agreement.

Accordingly, any doubts about the validity of an arbitration agreement when challenged by a party to an arbitration agreement are subject to proof by that party and careful investigation carried out by the arbitral tribunal in determining whether it may recognize itself as competent to resolve the dispute that has arisen. The same scrutiny is required of the state court when the party challenges the decision of the arbitral tribunal in which it recognized itself as competent.[17]

The Supreme Court of Russia has clarified that the grounds for the invalidity of an arbitration agreement are independent, and different from the grounds for the invalidity of the contract in connection with which such an agreement arose (for instance, violations of the rules governing the jurisdiction of arbitration), and only in certain cases may coincide with the grounds for the invalidity of the main contract as a whole (for instance, when fraud affecting the entire agreement for various reasons is detected).[18] A special case of invalidity of an arbitration agreement is the loss of legal force by this agreement. An exception related to the loss of force usually includes cases of refusal of arbitration, withdrawal of consent, termination of the arbitration agreement, expiration of the period of its validity agreed by the parties, as well as if this dispute has already been resolved by the court or the other arbitral tribunal.

Another important point is related to the notion of enforceability of the arbitration agreement. Resolution of the Plenum of the Supreme Court of the Russian Federation No. 53 (para. 30) provides guidance on what constitutes an unenforceable arbitration agreement. Based on the content of an unenforceable arbitration agreement, it may be impossible to determine the will of the parties regarding the arbitration procedure chosen by it (such as where it is unclear which arbitration the parties chose: institutional or *ad hoc*) or if the agreement cannot be executed in accordance

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[16] Born, G. (2020). *International arbitration: Law and practice*. Russian Institute of Modern Arbitration. (In Russian).

[17] *See*, Ruling of the Commercial Court of the City of Moscow on the cancellation of the arbitral tribunal's decision on the issue of competence of January 31, 2025 in Case No. A40-214647/24-107-1610. "Consultant Plus" Legal Database. https://www.consultant.ru. (In Russian).

[18] *See* para. 3 of the Review of the Practice of Reviewing Cases Related to the Performance of Assistance and Control Functions in relation to Domestic and International Commercial Arbitration (approved by the Presidium of the Supreme Court of the Russian Federation on December 26, 2018). "Consultant Plus" Legal Database. https://www.consultant.ru. (In Russian).

with the will of the parties (for example, when an agreed arbitration institution lacks the authority to administer arbitration in accordance with the requirements of applicable law).

Today, in Russia, if there are doubts about the validity and enforceability of an arbitration agreement, courts evaluate not only the text of the agreement but also other evidence that makes it possible to establish the will of the parties (including negotiations and correspondence preceding the arbitration agreement and subsequent behavior of the parties) (para. 30, Resolution of the Plenum of the Supreme Court of the Russian Federation No. 53).

Thus, a valid and enforceable arbitration agreement generates important legal consequences for its parties. Foreign (as well as Russian) literature recognizes the division of these effects into positive and negative ones.[19] Among the positive consequences is the parties' obligation to participate in good faith in dispute resolution in arbitration in accordance with the arbitration agreement, whereas the negative consequences include the obligation not to initiate proceedings in national courts and similar bodies.

Therefore, in both civil (Art. 222 of the Civil Procedure Code of the Russian Federation) and commercial (Art. 148 of the Commercial Procedure Code of the Russian Federation) court proceedings, the basis for dismissing a claim is the existence of an agreement between the parties to consider the dispute by the arbitral tribunal and to file an objection on this basis in the state court no later than the day of submission of their first statement on the merits of the dispute in the court of first instance. The Civil Procedure Code of the Russian Federation also states that the basis for leaving an application without consideration may be an arbitration agreement concluded by the parties during the trial before the judicial act has been rendered, which ends the consideration of the case on its merits. In such a case, one of the parties must file an objection on this ground regarding the consideration of the case in the state court. Of course, the main thing is that legal consequences, regardless of their type, arise for the parties to this arbitration agreement; however, in Russian arbitration practice one can find numerous examples of cases where persons who have not signed the arbitration agreement are nevertheless bound by it.

In world practice, as is well known, there are several approaches to substantiating the validity of an arbitration agreement in relation to such persons, depending on the nature of the underlying substantive specifics of various situations in material legal relations, for example, assignment of rights from a contract, guarantee, subrogation, agency relations, etc. Such grounds bind the participants in the civil turnover to the terms of the arbitration agreement, allow them to be involved as a party to the arbitration, and extend the binding force of the arbitral award to them. The development of Russian arbitration practice, in our opinion, is evolving in the same direction.

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[19] Born, 2020, p. 104.

3. The Russian Concept of Arbitrability: The Main Problems

The problems of arbitrability remain highly relevant in Russia. Much of the ongoing concerns are largely related to the ongoing search for the proper place of arbitration within the system of civil jurisdiction and to the determination of the extent to which arbitration may serve as an acceptable method of resolving legal conflicts. The institute of arbitrability was borrowed by Russian jurisprudence in the first decade of the 21st century to indicate the permissibility of transferring certain categories of civil cases to arbitration. The integration of the arbitrability mechanism required its correlation with Russian legal phenomena, and therefore Russian authors are actively continuing research in this field.[20]

It is fair to say that Russia has developed an original concept of arbitrability, combining international experience and Russian legal traditions. In its most general form, this concept can be outlined as follows. Arbitrability as a legal structure has become a legal permission that ensures the freedom of action of participants in civil turnover to submit a dispute that has arisen between them to arbitration. By determining the permissibility of referring specific types of disputes to arbitration, the Russian legislator defines the measure of possible behavior and grants subjective rights to civil turnover participants. A party's decision to submit the dispute to arbitration is already a manifestation of the dispositive principle, firmly rooted in Russian law. The legislator merely defines the boundaries of the dispositive principle by specifying a list of those cases the parties may or may not submit to arbitration. In Russia, as in most other countries, arbitrable disputes always concern only rights that parties can freely dispose of, and cases for the protection of inalienable rights cannot become the subject of arbitration. In practice, however, evident theoretical constructions sometimes cause difficulties.

Many Russian researchers, when describing arbitrability, proceed from the opposite direction—namely, by specifying those cases which cannot be submitted to arbitration, i.e., those deemed non-arbitrable. The designation of arbitrability is thus shaped as follows: disputes involving a "socially sensitive" element are excluded from the general range of cases that can be submitted to arbitration (as a rule, these are economic disputes of a civil nature) for reasons of public policy. As practice has shown, each interpreter has their own measure of such "sensitivity."

At the same time, it is worth remembering that the mechanism for resolving the issue of the admissibility of a particular dispute by arbitrators is a purely practical tool. Who determines the arbitrability of a dispute and how? First of all, these are the arbitrators reviewing the case. They first assess the arbitrability of the dispute, taking into account the law that the parties have agreed to apply. The arbitrability of the dispute is also assessed by the courts. At the place of arbitration, the courts verify

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[20] *See, for example*, Tuktamyshev, V. D. (2025). *The competence of the arbitral tribunal: General characteristics and arbitrability of disputes*. Statut. (In Russian).

whether the dispute can be subject to arbitration when one of the parties applies to the court, despite the existence of an arbitration agreement, when providing assistance to international commercial arbitrations, as well as when considering applications for the annulment of arbitral awards. The arbitrability of a dispute is also assessed when considering applications for recognition and enforcement of arbitral awards.

Nevertheless, although the rules on arbitrability are enshrined in the arbitration law and procedural codes and are addressed to arbitrators and state courts, they must first be considered by the parties themselves when concluding an arbitration agreement. The range of arbitrable disputes and the recognition of final arbitral awards for such disputes is determined by a decision of the national legislator, which is made taking into account the economic, political, and social priorities of the state. The Constitutional Court of the Russian Federation invariably contributes to this process, adhering to the opinion that the implementation of the dispositive principle does not affect the right of the federal legislator to define, based on the need to ensure a balance of private and public interests, a list of types of disputes that can be submitted to arbitration. This determination depends on their social significance, specific conditions for the development of civil turnover, the socio-economic system as a whole, the establishment of the legal principles of the market economy, legal culture, and other relevant factors, which may be amended by the legislator as conditions change.[21] Russian judicial practice, however, often tries to interpret the will of the legislator in a very restrictive way.

Arbitrability is a legal construct aimed at maintaining a balance of public and private interests in legal relations, which by their very nature provide freedom to their participants. As noted by the Supreme Court of the Russian Federation, with regard to the competence of arbitral tribunals, such a balance is ensured by defining categories of disputes that are arbitrable; non-arbitrable, due to their complication by a public element; and conditionally arbitrable, that is, disputes complicated by a public element but recognized as arbitrable due to the direct will of the legislator.[22] This principle constitutes yet another cornerstone in the original Russian theory of arbitrability.

For a long time, Russian courts have been guided by the fact that legislation defines arbitrability as the possibility of resolving disputes in arbitration based on two criteria: (a) the nature of the legal relationship and (b) the existence of the exclusive jurisdiction of state courts.[23] In recent years, there has been a well-established position

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[21] Resolution of the Constitutional Court of the Russian Federation of May 26, 2011 No. 10-P. "Consultant Plus" Legal Database. https://www.consultant.ru. (In Russian).

[22] Ruling of the Judicial Board for Economic Disputes of the Supreme Court of the Russian Federation of July 11, 2018 No. 305-ES17-7240 in Case No. A40-165680/2016. "Consultant Plus" Legal Database. https://www.consultant.ru. (In Russian).

[23] *See, for example*, Decision of the Commercial Court of the Ural District of October 12, 2009 No. F09-10016/09-C5 in Case No. A50-29929/2009, etc. "Consultant Plus" Legal Database. https://www.consultant.ru. (In Russian).

on one common criterion of arbitrability—the civil nature of the relationship.[24] Yet its content has caused a lot of controversy in doctrine and in practice.

In accordance with established tradition, the Constitutional Court of the Russian Federation sought to put an end to this issue by pointing out that the civil law nature of the dispute, as a criterion for its possible resolution through arbitration, indicates that the current legal system does not allow disputes arising from administrative and other public legal relations, as well as cases that are currently under consideration, to be submitted to arbitration in the order of special proceedings that do not meet the traditional criteria of legal disputes. This limitation of the scope of jurisdiction of arbitral tribunals is related to the nature of civil law relations, which are based on the recognition of equality of participants, inviolability of property, freedom of contract, the inadmissibility of voluntary interference by anyone in private affairs, the need for the unhindered exercise of civil rights, ensuring the restoration of violated rights, and their judicial protection.[25] However, the apparent "full-stop" placed by the Constitutional Court ultimately proved to be an ellipsis, and the supreme Russian constitutional control body, reacting to problems in judicial practice, was compelled to revisit and explain the construction of the "civil law nature of a dispute" in 2023 and 2024.

The permissibility of referring a dispute to arbitration based on the nature of the legal relationship, or the so-called objective arbitrability, is shared by Russian courts.[26] Objective arbitrability is related to the nature of the case and determines the fundamental possibility of arbitrators considering certain categories of cases. In Russia, the range of disputes that can be submitted to arbitration is defined by Article 1 of the Arbitration Law and Article 1 of the Law on International Commercial Arbitration. It should be noted that when determining the list of arbitrable cases, the legislator combined the rules of both objective and subjective arbitration. The general range of cases allowed for consideration and resolution by international commercial arbitrations is specified by a number of federal laws.

If objective arbitrability is based on the merits of the case, then subjective arbitrability is determined by the status of the participants in the legal relationship. It is this that allows the possibility of concluding an arbitration agreement by some parties of civil law relations. In other words, subjective arbitrability is the legal permission of the persons specified in the law to submit disputes with their participation to arbitration for resolution, concluding an arbitration agreement for this purpose. In the Russian Federation, the problem of subjective arbitrability is most often considered through the prism of participation in relations, the dispute of which requires resolution,

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[24] Ruling of the Supreme Court of the Russian Federation of January 8, 2019 No. 305-ES19-11890 in Case No. A40-253545/2018. "Consultant Plus" Legal Database. https://www.consultant.ru. (In Russian).

[25] Resolution of the Constitutional Court of the Russian Federation of May 26, 2011 No. 10-P.

[26] *See, for example*, Ruling of the Judicial Board for Economic Disputes of the Supreme Court of the Russian Federation of July 11, 2018 No. 305-ES17-7240 in Case No. A40-165680/2016. "Consultant Plus" Legal Database. https://www.consultant.ru. (In Russian).

of special subjects (for instance, participants in relations for the purchase of goods, works, and services by certain types of legal entities).[27] Some Russian authors believe that subjective arbitrability also includes issues of the possibility of third parties participating in arbitration and the problem of changing persons in an arbitration agreement.[28] In Russia, legislative provisions on objective and subjective arbitrability are applied comprehensively. However, the issue of the application of the subjective arbitrability rules by the court when considering applications for recognition and enforcement of a foreign arbitral award remains controversial.

Among all the problems in the field of arbitration, two are particularly acute: the problems of the admissibility of arbitral tribunals to consider disputes over rights to real estate and disputes arising from the procurement of goods and services by some subjects of civil turnover. The discussion on the first issue has been going on for decades,[29] yet, unfortunately, there is no end in sight. The Constitutional Court of Russia has repeatedly formulated its position on these issues (in 2011, 2023, and 2024). Despite these efforts, the practice of applying to arbitration with claims in such categories of disputes persists. It is obvious that the problem has long been not a misinterpretation but the conscious desire of individual participants in civil turnover—and, in some cases, arbitrators themselves—to have such disputes resolved through arbitration. The persistence of this social practice forces scholars to continue researching the problems that have become so difficult.

The issue of the arbitrability of disputes in the field of public procurement[30] is no less acute. The problem of participation of legal entities of public law in arbitration is also becoming increasingly relevant in Russian doctrine and law enforcement practice. Although special scientific research[31] is emerging, it is still too premature to talk with complete certainty on this issue. Meanwhile, the desire of the established arbitration centers to attract disputes involving legal entities of public law is already apparent. However, it should be noted that attempts to arbitrarily extend the regime

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27 *See, for example*, Ruling of the Judicial Board for Economic Disputes of the Supreme Court of the Russian Federation of July 11, 2018 No. 305-ES17-7240 in Case No. A40-165680/2016.

28 Minina, A. I. (2014). *Arbitrability: Theory and practice of international commercial arbitration* (p. 83). Infotropic Media. (In Russian).

29 From recent works, *see, for example*, Anurov, V. N. (2023). Conditional arbitrability of disputes on the recognition of ownership of immovable property. *Arbitration Court, 1/2*, 69–83. (In Russian); Sevastyanov, G. V. (2023). The constitutional model of arbitrability of disputes on immovable property or the replacement of formal legal control when issuing a writ of execution by investigating the circumstances of an arbitral award—"sudoisation" of arbitration? *Arbitration Court, 3/4*, 49–64. (In Russian), etc.

30 *See* for this issue, Belyaeva, O. A., & Gabov, A. V. (2017). Arbitrability of disputes arising in the field of procurement. *Journal of Russian Law, 5*, 46–55. (In Russian); Skvortsov, O. Y. (2018). Arbitrability of procurement disputes: The struggle between the classical civil approach and the theory of "accumulation of the public element." *Arbitration Court, 1/2*, 130–131. (In Russian).

31 *See, for example*, Eremin, V. V. (2021). *The arbitrability of disputes involving public entities* (PhD Thesis). St. Petersburg State University. (In Russian).

governing the participation of legal entities of public law in international commercial arbitration to the arbitration of internal disputes seem inappropriate.

4. Issues of Impartiality and Independence of Arbitrators

In accordance with Articles 12 and 18 of the Russian Arbitration Law and Article 12 of the Law on International Commercial Arbitration, arbitrators must be both impartial and independent when conducting arbitration proceedings on the territory of the Russian Federation. It can be argued that impartiality and independence are the main and mandatory conditions for arbitrators to exercise their powers to resolve disputes. These requirements are also aimed at enhancing confidence in the arbitration process and minimizing situations where one of the parties may challenge an arbitral award based on the arbitrators' bias.

If a person is approached regarding a possible appointment as an arbitrator, that person must disclose any circumstances that may give rise to reasonable doubts about his or her impartiality and independence. The duty of an arbitrator to promptly report such circumstances remains throughout his or her participation in the arbitration. The arbitrator must be impartial from the moment of accepting the powers and throughout their duration. He or she should not be directly or indirectly interested in the outcome of the case nor have any preconceived preferences or prejudices towards a particular party to the arbitration, its representative, expert, consultant, or witness. An arbitrator is considered independent if there is no relationship between him and the parties to the arbitration, their representatives, experts, consultants, witnesses, or any other participants that could influence the position of the arbitrator in the case.

Although this principle of independence and impartiality appears fairly simple, practice demonstrates that reminders to arbitrators of its existence remain necessary. The International Commercial Arbitration Court (ICAC) at the Chamber of Commerce and Industry of the Russian Federation and the Maritime Arbitration Commission at the CCI of the Russian Federation, the most reputable arbitration institutions in Russia, have approved the Rules on the Impartiality and Independence of Arbitrators by Order of the CCI of the Russian Federation of September 30, 2021. Each arbitrator, elected by the parties or appointed by the nominating committee, fills out an application for acceptance of their functions, in which all questions must be fully answered. In doing so, the arbitrator may accept the appointment of the arbitrator without reservations, accept it with reservations, or decline to accept the appointment altogether.

On more than one occasion, the Presidium of the ICAC, after analyzing the practice of challenging nominating committees, has drawn the attention of arbitrators involved in ICAC cases to the necessity of strictly complying with the obligation to immediately inform from the moment of assuming the functions of an arbitrator and throughout

the arbitration proceedings on the basis of available information and its reasonable verification of the existence or occurrence of any circumstances subsequently requiring disclosure. However, the list of circumstances requiring disclosure is not exhaustive, and any doubts should be interpreted in favor of disclosure, taking into account the general requirements for the impartiality and independence of the arbitrator. In cases where the issue of challenging an arbitrator is decided by the nominating committees, they have the right to consider whether the arbitrator fulfilled his duty to disclose the relevant circumstances in a timely manner.

All of the above underscores the need to respect the principle of impartiality and independence of arbitrators, which is one of the characteristic features of arbitration proceedings. At the same time, the practical implementation of the principle under consideration also requires a solid doctrinal platform. It is therefore not surprising that Russian legal scholars pay the most serious attention to its formation, including in the form of dissertation research.

5. Digital Technologies in Arbitration

The discussion surrounding the use of digital technologies in arbitration continues unabated on the pages of the Russian legal press.[32] This phenomenon appears to be quite objective, because the digital transformation of the civil justice system is already irreversible. In modern conditions, a jurisdictional procedure for the consideration of cases, mediated by an electronic form of information processing and interaction of participants, are clearly in great demand. Practice shows that it is possible to carry out a significant number of procedural actions in arbitration in digital form.

In the near future, arbitration will inevitably continue to develop further with the expanded use of digital means of communication for information exchange, participation in arbitration proceedings, audiovisual recording, and the further analysis of arbitration proceedings online, as well as information platforms for data collection and processing that provide direct access to the services of leading arbitration centers. Artificial intelligence technologies and machine learning methods, as well as "predictive justice" methods, will likely play a decisive role, making it possible to determine the outcome of a possible trial with a high degree of probability and by assisting parties in the expediency of applying to arbitration in this regard. Digital technologies for the administration, optimization, and conduct of arbitration proceedings, as well as for communication with the parties to the arbitration, will therefore have a substantial impact on arbitration.

Following the trajectory of "e-justice," digital (electronic) arbitration will undoubtedly gain an increasingly important place in the system of civil jurisdiction.

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[32] *See, for example*, Makolkin, N. N. (2023). The potential of digital transformation of arbitration. *Arbitration and Civil Procedure, 4*, 27–30. (In Russian).

According to our assessment, from a technological standpoint, electronic arbitration will become comparable to electronic justice, and in some respects, for instance, such as in the intensity of the deployment of artificial intelligence technologies, it may even surpass it. At present, however, technological solutions in the field of state civil jurisdiction in Russia are developing at a faster pace, possibly due to the large share of government investments in the development of jurisdictional digital platforms. As new technologies are tested, it is evident that arbitration will increasingly move into cyberspace.

Digitalization is capable of providing a new impetus to cooperation between the parties through cost reduction, automation of negotiations, and the introduction of "predictive justice" technologies. It appears that the broadest prospects in arbitration are opening up precisely for artificial intelligence technologies and machine learning methods, whose capabilities are progressing rapidly. This naturally raises the question of whether artificial intelligence can replace arbitrators—a question that has already been posed in the field of civil justice.[33]

Prof. Isaenkova, expressing the position of many legal scholars, does not support the idea of replacing a judge with a robot, a computer program judge, or other technical and information products. In her assessment, it is too early to transfer the functions of justice to anyone other than judges and courts.[34] It is worth noting that technically artificial intelligence is already capable of resolving typical and minor cases, doing so quickly, economically, and very accurately.

Experiments on automating the resolution of cases are expanding, and information arrays on which neural networks can be trained are growing. It seems that the day is not far off when society will come to the point of deciding on the admissibility of full-fledged dispute resolution by a machine whose cognitive abilities may far exceed human abilities. Once again, it is not so much technological as ontological obstacles that will stand in the way. Are we ready to put justice in the hands of such a machine? And if in civil justice the answer to this question must be the result of a broader social compromise, then in arbitration, by contrast, the autonomy of the will of the parties may significantly simplify its resolution.

Today, the issue is not so much about replacement as about the harmonious combination of an intelligent machine and a human in arbitration. It is difficult to ignore the potential of technological solutions in the field of artificial intelligence in arbitration. It is in arbitration that full automation of dispute resolution is not only possible but also acceptable, provided that both parties agree to it. This development,

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[33] *See, for example*, Afanasiev, S. F. (2023). To the question of the use of artificial intelligence in the legal field. *Bulletin of Voronezh State University. Series: Law, 1*, 263–268. (In Russian); Reshetnikova, I. V. (2024). Artificial intelligence in the commercial procedure: Possible applications. *Herald of Civil Procedure, 2*, 30–41. (In Russian).

[34] Isaenkova, O. V. (2020). On the possible impact of the robotization of justice on the operation of certain principles of justice in civil proceedings. *Problems of Civil Law and Procedure, 5*, 224–230. (In Russian).

however, will require addressing the problems related to the autonomy of intelligent machines and the forms of their control by humans. AI technologies that meet security standards, in our opinion, create a solid foundation for such solutions.

Even with the current level of technological development, artificial intelligence can be used in the process of rendering arbitral awards. In international and Russian practice, there has also been a question about the compliance of online arbitral awards with the requirements of national public policy. In our opinion, an arbitral award rendered in compliance with the requirements of a fair procedure is consistent with national public policy, provided that it was made by a human being, rather than by an intellectual machine. The solutions formed by an automated system without human intervention do not meet the general principles of jurisdiction based on human cognitive activity.

Undoubtedly, the introduction of any new technology is not without problems and is invariably accompanied by errors, but these challenges are capable of being addressed. For instance, deepfakes already pose increasing difficulties. A promising task for arbitration experts is to forecast such difficulties, develop possible ways to overcome them, and create proposals for their regulation. In our opinion, it is neither necessary nor productive to contrast a human arbitrator and a robot arbitrator, biological and artificial intelligence, or traditional and electronic arbitration. Today, in arbitration, it is worth talking not about competition but about the harmonization of interaction between artificial intelligence and human arbitrators.

Conclusion

Of course, it is impossible to analyze all the problems and controversial issues of Russian arbitration in one article. Therefore, we have settled on those that have a cross-cutting significance. To summarize, we note that the considered problems arising in the field of domestic and international commercial arbitration in Russia convince us of the need for further scientific research, and the potential directions of such research studies may be completely different.

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