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ARBITRAZH COURTS: 1992-1996

AUTHOR: KATHRYN HENDLEY, The University of Wisconsin, Madison

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1755 Massachusetts Avenue, N.W.
Washington, D.C. 20036

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CONTRACTOR:	University of Wisconsin, Madison
PRINCIPAL INVESTIGATOR:	Kathryn Hendley
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This Report summarizes the sorts of cases heard by Russian *Arbitrazh* courts over the past five years, 1992-1996. It identifies key trends and analyzes why certain changes that had been anticipated have, or have not, appeared.

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**An Analysis of the Activities of
Russian *Arbitrazh* Courts: 1992-96**

Kathryn Hendley
975 Bascom Mall
Law School
University of Wisconsin-Madison
Madison, WI 53706

hendley@polisci.wisc.edu

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Executive Summary
An Analysis of the Activities of Russian *Arbitrazh* Courts: 1992-96

Kathryn Hendley

In post-Soviet Russia, economic disputes involving legal entites (as opposed to actual people) are resolved by special courts, known as *arbitrazh* courts. These courts have existed in their current form since 1991, though they are based on a Soviet-era administrative agency (known as state *arbitrazh*). The courts maintain records detailing the sort of cases they have resolved. The report analyzes these data on both the aggregate national level, and on the level of a selected group of individual *arbitrazh* courts.

Certain trends emerge from the analysis. As a general matter, the number of cases filed against governmental agencies has increased steadily. This suggests a greater willingness to challenge state actions, which indicates a movement away from the attitudes of resignation that characterized the Soviet period to a feeling of responsibility on the part of citizens. The data document the impressive record of trial courts in hearing and deciding cases within the two-month deadline established by law. Thus, the sort of delays that are so common in U.S. courts seem to be absent in these *arbitrazh* courts. Deciding cases expeditiously is critical in economic disputes, since business cannot stop and wait for the court. The data confirm that bankruptcy has been slow to take hold in Russia. The number of bankruptcy cases resolved is remarkably low. The largest category of cases involve overdue debts, either between enterprises or owed to banks. The data highlight regional differences, and generally confirm the preeminent role of Moscow as a commercial center.

An Analysis of the Activities of Russian *Arbitrazh* Courts: 1992-96

I. Purpose

This report to the National Council on Soviet and East European Research, submitted pursuant to Contract No. 811-18 analyzes and synthesizes published and unpublished data regarding the activities of Russian *arbitrazh* courts during the years 1992-96. My purpose is to draw attention to trends that are beginning to emerge in the caseload of these courts. Any conclusions are necessarily tentative, due to the relatively short period of the observation and the many external political and economic changes that occurred during this period that may have had an independent influence on the courts' behavior.

Arbitrazh courts have jurisdiction over economic disputes between joint-stock companies, limited liability companies, state enterprises, and other legal entities. (See Hendley, 1997) They also hear complaints lodged by legal entities against governmental agencies (*e.g.*, the tax inspectorate, the local government, the state property committee) as well as bankruptcy petitions. Under certain limited circumstances, they may hear cases filed by individuals, but such cases invariably involve economic issues. Their area of competency is distinct from that of the courts of general jurisdiction, whose docket is crowded with criminal and civil cases involving individual citizens.

The *arbitrazh* courts are not an innovation of the post-Soviet era. They represent a continuation of the Soviet institution of "state *arbitrazh*" (*gosudarstvennyi arbitrazh* or *gosarbitrazh*). Like *gosarbitrazh*, the *arbitrazh* courts are charged with resolving economic disputes. But the differences become more apparent when we look beyond this general mission statement. *Gosarbitrazh* was an administrative agency that handled disagreements between state enterprises. (Pomorski, 1977) Its primary goal was not to enforce the law, but to facilitate plan fulfillment. In 1991, this agency was transformed into a judicial system, independent from political pressure. The Soviet era arbiters were instantly transformed into judges. At least in theory, these *arbitrazh* judges were answerable only to the law. In practice, however, change has come more slowly.

The transformation from *gosarbitrazh* to *arbitrazh* court was accompanied by a new *Arbitrazh* Procedure Code that laid out the rules of this new game. (1992 *APK*) This 1992 Code turned out to be rather short-lived. In 1995, a new *Arbitrazh* Procedure Code was enacted that contemplated a new institutional structure for the court system (including additional levels of appellate review) and fundamental changes in how cases were heard and the expectations placed on litigants. (*APK*; Hendley, 1997)

The potentially critical role of the *arbitrazh* courts as the state-sponsored institution responsible for resolving economic disputes is obvious. As Russia makes the transition to a market economy, it is essential that there be an authoritative and politically neutral decision-making body capable of considering the disputes that will inevitably arise between businessmen,

and of making reasoned decisions grounded in the law that are enforceable and are, in fact, enforced. I have elsewhere analyzed the problems being experienced by the *arbitrazh* courts as they endeavor to find their place in the post-Soviet world. (Hendley, 1997) In this report, I limit myself to a discussion of what the *arbitrazh* courts are actually doing.

In analyzing data on the sorts of cases heard by the *arbitrazh* courts, it is important to recognize that these data represent only the tip of an iceberg of information that is completely unknown at this point. (See Felstiner, et al., 1980-81; Kenworthy, et al., 1996) Thus, drawing general conclusions about the incidence of economic disputes in Russian society based on these data would not be prudent. We cannot know, for example, how many disagreements between trading partners were resolved through negotiations or were abandoned for other reasons without resort to the courts. We have little information about the process by which such extra-judicial settlements take place. There is considerable speculation about the role of pre-existing personal relationships (often dating back to the Soviet period) and personal connections based on other commonalities (e.g., prior Communist Party activities, ethnic bonds, religious bonds, familial bonds). Along similar but less benign lines, it is sometimes assumed that contract enforcement has been "privatized," and that private security firms or mafia gangs ensure that contractual discipline is maintained. While anecdotal evidence of these extra-judicial methods continues to mount, such stories remain difficult to confirm.

II. Nature of the Data Available

What emerges from the published and unpublished data relating to the *arbitrazh* courts is an interesting picture of what these courts have been doing for the past five years and of certain trends. All *arbitrazh* courts are required to submit annual statistical reports to the Higher *Arbitrazh* Court in Moscow. I have obtained these reports for 1992-96 for nine different *arbitrazh* courts: Voronezh oblast', Saratov oblast', Novosibirsk oblast', Sverdlovsk oblast', Yaroslavl' oblast', St. Petersburg and Leningrad oblast'; Altaiskii krai; Moscow City; and Moscow oblast'.¹ These reports detail the sorts of cases heard, the monetary value of the cases, the time period within which the cases are heard, and the propensity to appeal decisions. These individual reports are not published, but are used to compile national-level statistics, which are published in the official journal of the Higher *Arbitrazh* Court, the *Vestnik Vysshego Arbitrazhnogo Suda*. (Sudebno, 1995; Sudebno, 1997)

Thus, these data allow us to understand how the caseload of the *arbitrazh* courts has changed over time, both in terms of the aggregate number of cases and the split among different types of cases. The data also allow us a window into more specific procedural issues that have long-term significance for the courts. Certain trends are apparent at both the national and oblast levels. Other trends are limited to particular regions.

¹My 1992 data are not complete. I collected these data in the summer of 1994, and the 1992 form for the Moscow City court had disappeared.

At the same time, the shortcomings of these data should not be overlooked. Principal among them is the inability to perceive what sorts of actors are participating in the judicial process. The *arbitrazh* courts maintain no centralized records that allow us to distinguish litigants on the basis of ownership structure, sector, or size. As a result, many hypotheses remain untestable. For example, it might be argued that start-up businesses are more likely to rely on law and more aggressive in their use of the courts to protect their interests since they are not embedded in the former Soviet network of suppliers. It might also be argued that enterprises are more likely to pursue legal action against a trading partner that is from another oblast, since the physical distance might blunt any reputational impact. The age of the general director might also be a factor relevant to the propensity to sue. But these thesis defy testing. Similarly, the failure of *arbitrazh* courts to keep track of how often a given litigant participates (either as a plaintiff or a defendant), makes testing the familiar addage that "repeat-players" tend to make out in litigation impossible. (Galanter, 1974)

In the Russian context, the problem of debt arrears among industrial enterprises is well-known. (Hendley, et al., 1997; Ickes and Ryterman, 1993) Unfortunately, the existing data provide no way of discerning how often creditors use the legal system to try to collect on these debts or what sorts of creditors (e.g., utilities, banks) resort to the courts more often. This means that a study such as that recently published of the patterns of big business litigation in the United States is out of reach. (Dunworth and Rogers, 1996)

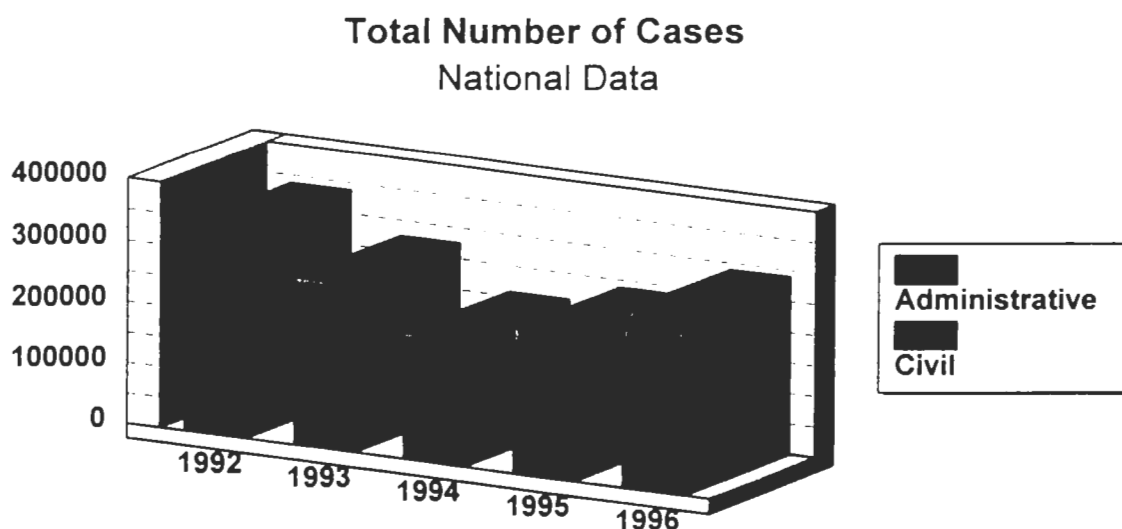
What is frustrating is that the information exists, but remains out of reach. For each case, the judge fills out a statistical information card that contains the names of the parties, the substantive category of the case, and the procedural history. But only the gross calculation of how many cases are filed in various categories and the observance of procedural deadlines is then reported to the Higher *Arbitrazh* Court. At this point, these statistical information cards are completed by hand, and the task of figuring out how many times a given enterprise has participated is probably logistically impossible. As the courts become computerized, this information may become accessible. Presently, computers are not much in evidence at the *arbitrazh* court. In the Moscow city *arbitrazh* court, which is largest of the trial-level courts with approximately 130 judges, the clerk's office that handles filings (*kantselyariya*) is computerized.² But this was not true in the other *arbitrazh* courts I observed (Saratov and Ekaterinburg), and I met no individual judges that had access to a computer.

²The clerk's office is a logical place to begin the computerization process. The notification of parties as to the time and place of hearings is done by registered mail. The litigant must sign a postcard indicating receipt, which constitutes notice under the *APK*. If the defendant fails to appear, but has been notified, the hearing may go forward. (art. 119-2, *APK*, Yakovlev and Iukov, 1996, p. 277) Although the postcards are still pasted into the case file, judges may verify receipt via computer, which often speeds up the process.

III. An Overview of *Arbitrazh* Courts' Caseload

A. Aggregate Number of Cases Resolved

The total number of cases decided by *arbitrazh* courts has experienced considerable fluctuation since the creation of the institution.³ In the first two years of their existence, the national statistics show that the number of cases decreased significantly. More specifically, 18.6 percent fewer cases were resolved in 1993 than in 1992, and the numbers dropped even more in 1994, with 24.4 percent fewer cases being resolved than in the preceding year. Beginning in 1995, the trend reversed itself. The *arbitrazh* courts decided 14 percent more cases in 1995 than in 1994. In 1996, the number of resolved cases increased by 23.3 percent over the preceding year. Yet a comparison of the two endpoints, demonstrates that the *arbitrazh* courts have still not completely recovered from the initial decline experienced in 1992-93. The total number of decided cases in 1996 is 14.2 percent less than the number decided in 1992.



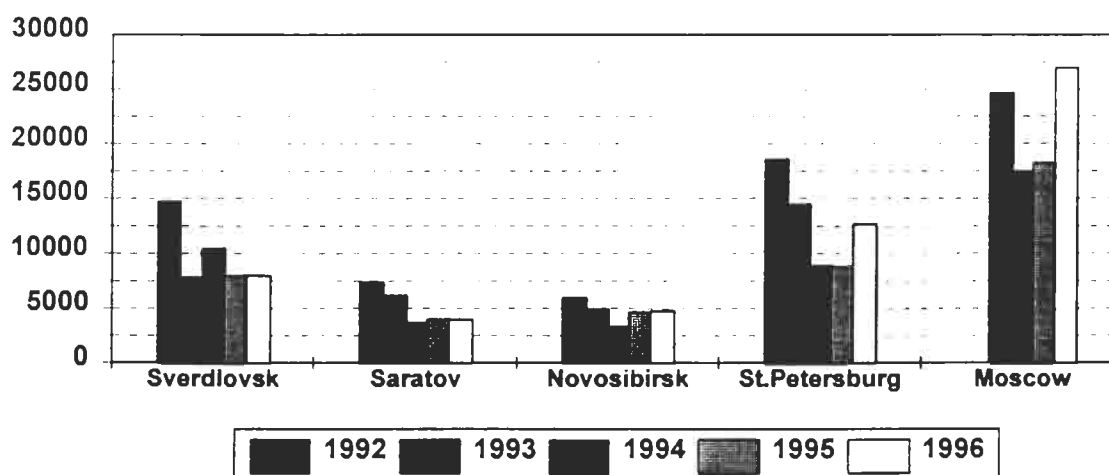
A somewhat similar dynamic can be observed on the level of individual *arbitrazh* courts.⁴

³The published national-level statistics do not provide information about the number of cases filed, only those resolved. (*Sudebno*, 1995; *Sudebno*, 1997) In contrast, the unpublished oblast' level statistics provide more detailed information about the number of cases filed (*postupilo*), the number of cases resolved (*razresheno*), and the reasons why cases drop out.

⁴This report includes five of the nine courts for which I have data. I have excluded those courts which are likely to be similar to others. Considering Saratov to be representative of Volga regions, I have not presented the data for Voronezh or Yaroslavl', which are also Volga regions. In terms of Eastern Siberia, Novosibirsk is more representative than the Altaiskii krai. Finally, I

Although all of the courts experienced a precipitous drop in cases resolved in 1993 and 1994, the extent to which they have recovered varies. Recovery has been strongest in St. Petersburg and Moscow, which is not surprising, since they have the greatest concentration of commercial activity. In St. Petersburg, the number of cases resolved decreased by 24.1 percent in 1993 and by 38.4 percent in 1994. Stabilization came in 1995, with a decrease of only 1.2 percent, and then 1996 brought a sharp increase of 43.8 percent.⁵ The recovery came even more swiftly in the Moscow City *Arbitrazh* Court. A decline in resolved cases of 29.2 percent in 1994 was followed by an increase of 4.5 percent in 1995 and an impressive 48.3 percent in 1996. Indeed, it is only in this Moscow *arbitrazh* court that the number of cases filed and resolved in 1996 has recovered to, and even surpassed, 1993 levels. The 1996 filings are 20.5 percent higher than in 1993, and about 10 percent more cases were resolved in 1996 than in 1993.

Total Number of Cases Resolved



Novosibirsk presents another pattern. After experiencing declines in 1993 (17.4 percent) and 1994 (32.8 percent), the court seemed to be recovering in 1995, experiencing a dramatic increase of 40.6 percent. The upward trend continued in 1996, though the gain was a modest 2.7 percent. The court has yet to return to either the 1992 or 1993 levels of activity.

have reported the results for the Moscow City court rather than for the Moscow oblast'. The Moscow City court is the most active court in Russia, and is more interesting than the oblast' court.

⁵If we look at the cases filed, then the trend is even clearer. The St. Petersburg court experienced decreases in filings in both 1993 (43.3 percent) and 1994 (34.6 percent), but the filings began a steady increase in 1995 (11.8 percent) that continued in 1996 (36.3 percent). The 1996 filings have almost recovered to the 1993 level, though they remain considerably less than the number of cases filed in 1992.

In other courts, such as Saratov and Sverdlovsk, we find that the decrease has been halted, but recovery has been slow to come. For example, in Sverdlovsk, decreases of 29 percent and 24.7 percent in 1993 and 1994, respectively, were followed by an increase of only 1.7 percent in 1995 and by a drop of 0.3 percent in 1996. Saratov is similar. Like Sverdlovsk, there was virtually no change in the number of cases resolved from 1995 to 1996,⁶ and the increase in 1995 was only 8.6 percent. This has barely begun to compensate for the decreases of 15.8 percent in 1993 and 40.5 percent in 1994. Both Saratov and Sverdlovsk are cities dominated by the defense industry, and these factories have been struggling for their very survival in the post-Cold War environment. This may account for the relatively slow recovery of their *arbitrazh* courts.

With the exception of Moscow, for none of the individual *arbitrazh* courts for which I have data do the increases experienced in 1995 and 1996 make up for the declines in cases filed and decided in 1992-94. If the data for 1992 and 1996 are compared, we find shortfalls of 30.1 percent for St. Petersburg, 26.3 percent for Novosibirsk, and 45.6 percent for Saratov.

What explains the nosedive in cases decided in 1993-94 and the recovery in 1995-96? When we look beyond the numbers to what was going on in the economy and in the *arbitrazh* court system, the data begin to make sense. With the collapse of the Soviet command economy, the function of the *arbitrazh* courts changed. During the Soviet period, *gosarbitrazh* had been called upon to resolve relatively simple disputes between state enterprises over delivery and quality. *Gosarbitrazh* was an administrative agency that served the interests of the state. According to those who worked as arbiters in that system, disposing of 30 cases per day was not unusual. They paint a picture of assembly-line decision making, with few of the procedural protections afforded to litigants under the current *APK*.

With the transition to a market-style economy, *arbitrazh* courts were called upon to resolve cases between privatized companies. Without exception, such cases were more complicated than the cases that arose under the administrative-command system. Determinations of fault and of the amount owed were far from straightforward. Cases arose in the post-Soviet period that would have been unthinkable only a few years earlier. Among these were bankruptcy cases and other cases relating to stock issuance, bank debt, privatization, and corporate governance. These cases are typically complex, both in factual and legal terms, and so take more time to resolve.

From the point of view of litigants, the reasons for appealing to *arbitrazh* changed. During the Soviet period, some state enterprises used *gosarbitrazh* as a means of "signalling" their ministries. (Kroll, 1987) For example, if a manufacturing enterprise was unable to obtain a key input, despite a supply contract being in place, it might lodge a complaint with *gosarbitrazh*.

⁶In terms of actual numbers, the number of resolved cases dropped from 4002 to 3999, but a decrease of 3 is not statistically significant.

Such an action would be taken as a last resort. The manufacturer would also seek out alternative suppliers, though its ability to do this was hampered by the absence of a market and the illegality of trading outside the official system. By filing a case with *gosarbitrazh*, both the efforts of the manufacturer to obtain the input would be on the record, and the refusal of the supplier to comply with its obligation would be on the record. The manufacturer would hope that its ministry would take the circumstances into account when assigning blame for failure to meet the production targets laid out in the economic plan.

This "signalling" function of *gosarbitrazh* contrasts with the purpose usually served by judicial or quasi-judicial institutions. Courts typically exist to resolve disputes and, in doing so, to assign blame. As a rule, the disputes that end up in court are those where the parties have been unable to agree on liability. During the Soviet period, *gosarbitrazh* cases did not fit this basic criteria. Litigants were rarely surprised by the outcome. Fault was obvious at the outset. In addition, recovering damages was rarely the key incentive. In the Soviet system, where money was not the key to securing deficit goods, monetary recoveries were not much prized. The amounts at issue were relatively small, and the victorious enterprise would likely not be allowed to keep the money. After all, since all enterprises were state-owned, such recoveries simply took resources from one state pocket and transferred them to another. To reiterate, the litigants' reason for filing cases was not to recover damages and thereby make themselves whole again, but to document their lack of culpability for their ministries.

Once privatized, enterprises had no reason to appeal to *arbitrazh* to prove their diligence to some administrative superior. Instead, with regard to private disputes, the reasons for appealing become the familiar desires to recover monetary losses due to contractual breach and/or to compel compliance with existing obligations. The motivation can be distinguished from Soviet-era behavior in two important ways. First, the parties are seeking some material remedy -- most often monetary. Given that the parties are no longer related through common state ownership, each is seeking to maximize its own interests. Second, most cases now involve a genuine dispute over fault. The outcome is no longer a foregone conclusion.

It stands to reason that the aggregate number of such cases would be less than those filed during the Soviet period. Also contributing to the decline was the general sense of confusion that characterized the initial years of the transition. Enterprises struggled to find their place in the market. Whether contractual relationships that had begun as shotgun marriages ordered by the ministries would survive the collapse of the administrative-command system was unclear. Also adding to the uncertainty was the high level of inflation and of inter-enterprise arrears. (Ickes and Ryterman, 1993) The perception was that enterprises lacked the resources to pay their debts. Under such circumstances, it served no real purpose to go to court if the debtor has no resources. For many enterprises, the central preoccupation of the first years of the transition was privatization and not relations with outside enterprises.

The skepticism toward law and legal institutions that was inherited from the Soviet period no doubt contributed to the decline as well. (Hendley, 1996) With the end of the administrative-

command system, appealing to *arbitrazh* ceased to serve any bureaucratic purpose. Enterprise managers had to assess whether such an appeal would help them achieve their short-term goal of compelling contractual performance and/or recovering monetary losses due to default. Under such circumstances, issues such as the credibility of the *arbitrazh* courts and its judges and the ability of these courts to enforce their judgments were inevitably relevant. As a new institution, the *arbitrazh* courts may have come up short when managers were assessing their usefulness.

As the system stabilized, the number of cases began to increase gradually. Privatized enterprises sorted out the question of the reliability of various suppliers and customers. Although non-payment remained a serious problem, many enterprises required prepayment in advance of shipment. The development of a banking system provided some incentive for filing even if an enterprise was temporarily illiquid. Doing so would preserve its claim against subsequent creditors.

B. Categories of Cases: Suing Private Entities and Suing the Government

The cases heard by *arbitrazh* courts can be divided into two basic categories. There are cases in which one enterprise sues another, and there are cases in which an enterprise files a claim against a governmental agency. The former are generally referred to as “civil” cases, whereas the latter are known as “administrative” cases.⁷ Within most *arbitrazh* courts, the judges are divided into two panels (or *kollegiya*) and hear only one or the other category of cases. Civil cases typically involve some sort of contractual dispute. By contrast, administrative claims arise when a legal entity wishes to challenge an action taken by a governmental organization as being illegal. The sorts of state agencies that become involved in these claims include the tax inspectorate, the customs organs, the state privatization committee, and the agency that registers corporate entities.

Looking first at the national-level statistics, we see that civil cases dominate throughout the period under study. Yet while the number of civil cases decreases during 1993-94, and then

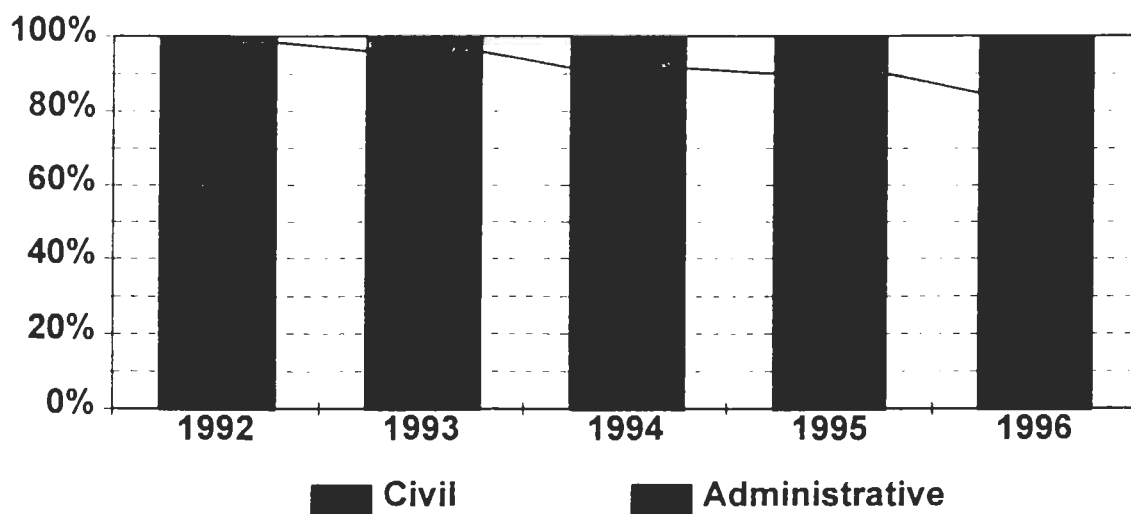
⁷The Russian terminology used for the two categories changed with the 1996 forms. Prior to 1996, the universe of cases were divided into “economic” and “in the sphere of administration” (*v sfere upravleniya*). Beginning in 1996, disputes were divided into four categories: “economic disputes arising from civil legal relations” (*ekonomicheskie spory voznikaiushchie iz grazhdanskikh pravootnoshenii*); “economic disputes arising from administrative legal relations” (*ekonomicheskie spory voznikaiushchie iz administrativnykh pravootnoshenii*); “the establishment of facts having legal significance” (*ob ustanovlenii faktov, imeiushchikh iuridicheskoe znachenie*); and “the insolvency (bankruptcy) of organizations and citizens” (*o nesostoyatel’nosti [bankrotstve] organizatsii i grazhdan*). In order to make the data comparable over the years, I have considered bankruptcy to be a civil case, and the establishment of legal facts to be an administrative case. This is appropriate since this is how these cases were grouped prior to being broken out in 1996.

begins to increase in 1995-96, the number of administrative cases steadily increases. This trend is visible both in the number of cases, and the percentage of total cases that are administrative. In 1992, 98.4 percent of all cases resolved (332,716) were civil, while only 1.6 percent (5,446) were administrative. In 1993, administrative cases made up 3.9 percent (10,857) of the total, increasing to 8.5 percent (17,610) in 1994, 10 percent (23,629) in 1995, and 15.3 percent (44,272) in 1996.

Indeed, the growth in administrative cases is startling. From 1992 to 1993, the number of administrative cases almost doubled, increasing by 99.4 percent. The pace of growth remained

Civil and Administrative Cases

National Data



high. 1994 witnessed a 62.2 percent increase over 1993, and 1995 brought an increase of 34.2 percent over 1994. In 1996, there was an incredible spurt, with the number of administrative cases increasing by 87.4 percent over the number in 1995.

The trend within civil cases is not so steady. Rather than steady increases, we find the same phenomenon observed with regard to aggregate cases resolved, *i.e.*, significant decreases in 1993 (20.5 percent) and 1994 (28 percent), followed by increases in 1995 (12.6 percent) and 1996 (14.6 percent). Notwithstanding the increases of the past few years, the number of civil cases resolved in 1996 remains substantially less (26.2 percent) than were resolved in 1992.

Civil cases also dominate the docket of individual courts. As a rule, civil cases

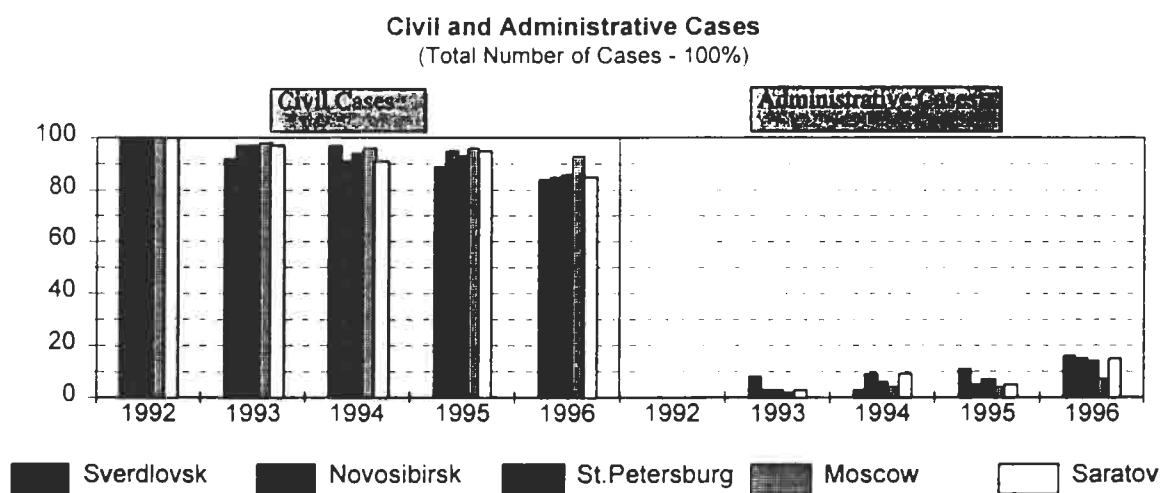
constituted more than 90 percent of those resolved during the 1993-95 period.⁸ The disparity lessened somewhat in 1996. For example, in Saratov, 15 percent of the total cases resolved in 1996 were administrative (compared to 5 percent in 1995). The data for Novosibirsk and Sverdlovsk are similar. Although the percentage of total cases that were administrative also increased in St. Petersburg and Moscow, the change was less striking. In Moscow, the share of administrative cases increased from 4 to 6 percent from 1995 to 1996. It remains to be seen whether 1996 constitutes an aberration or the beginning of a trend toward a more even division in the work of the *arbitrazh* courts between civil and administrative cases.

Looking at the dynamics of the two categories, what stands out is the remarkable growth in administrative cases. In 1996, the number of these cases in Saratov, Sverdlovsk, and St. Petersburg was more than three times greater than in 1993. Novosibirsk, by contrast, experienced a four-fold increase and, in Moscow, the number of these cases increased by five times during this three year period. Of course, the actual numbers remain a relatively small percentage of the total cases, but the trend is striking.

The data on civil cases are less consistent. Only the Moscow City *arbitrazh* court mirrors the national pattern. In Moscow, a decrease of 30.5 percent in 1994 was followed by increases of 4.5 percent and 48.3 percent in 1995 and 1996, respectively. In St. Petersburg, the recovery did not begin until 1996. A different pattern is found in Saratov and Novosibirsk, where 1995 brings a slight increase in civil cases, but then they decrease again in 1996. In Saratov, for example, an increase of 13 percent in 1995 is followed by a decrease of 10.6 in 1996. As a result, there is little discernable change between 1994 and 1996. Sverdlovsk differs from all of these in that the decline continues unabated from 1993-96. Indeed, by 1996, half as many civil cases were decided in Sverdlovsk oblast' than were decided in 1992.

⁸The 1992 statistical forms for individual *arbitrazh* courts provide no information about administrative cases. Instead, the summary page divides the cases into disputes relating to "the conclusion, amendment and termination of contracts," and those relating to "the fulfillment of contracts and other types of disputes." Since the national level data are based on these forms, the absence of information about administrative disputes brings into doubt the statistic about the doubling of administrative cases resolved between 1992 and 1993.

Several explanations can be offered for the remarkable growth in administrative cases. The most obvious cause is the fundamental change in the relationship between state and society that occurred as part of the transition from state socialism to market democracy. During the Soviet period, there were very few non-state legal entities. Most legal entities were owned and/or controlled by the state or the Communist Party. Suing the state under such circumstances was pointless from a practical point of view, and might even have been dangerous. From a legal point of view, Soviet legislation provided few causes of action for individuals or legal entities to proceed against the state. With the legalization of private property and the subsequent privatization of many state enterprises, a clear distinction between state and private interests began to emerge. The legislative changes that accompanied the transition to the market created new rights for legal entities to sue state agencies when their rights were violated. Thus, between



1992 and 1996, the opportunities for suing the government were expanded through the creation of new causes of action, and the rationale for pursuing such claims was strengthened as a result of privatization.

During this period, the state bureaucracy was reorienting itself to a new role. With the collapse of the administrative-command system, the ministries could no longer control the economy through the plan. But the bureaucracy still retained considerable regulatory powers, including the duty to impose and collect taxes. As the number and type of taxes proliferated, enterprise management complained bitterly about the burden imposed. Non-payment of taxes grew to be a serious problem for the Russian state. The tax inspectorate became more aggressive, which led to legal complaints from enterprises who felt they had been victimized. This problem grew particularly acute in 1995-96, which may explain the sharp increase in filings. In addition to tax collection, the state also regulated the privatization process and the subsequent registration of private legal entities. Some believed that the state abused its powers and/or exercised them in a biased fashion, and so sued to expose the illegal behavior of the state agencies.

Another interesting observation is the difference in the trend in civil cases among different regions of Russia. Only in the Moscow City Court do the number of civil cases resolved in 1996 exceed the 1993 level. In all other oblasts, the recovery remains less than complete. Saratov, in which the 1996 cases constitute only 43 percent of the total resolved in 1993, is the least hopeful. In Sverdlovsk, there is a discrepancy of 34 percent, and in St. Petersburg, it is 20 percent. More progress can be seen in Novosibirsk, where the difference is 14 percent.

The more rapid recovery of the Moscow court is due in large measure to the more rapid recovery of the economy in Moscow, and the emergence of Moscow as the commercial and financial center of Russia. The largest banks and investment funds tend to have their headquarters in Moscow. Similarly, many profitable enterprises in the oil and gas sector have set up their corporate offices in Moscow. In contrast, other parts of Russia are still struggling to adapt to the new market environment. No other region has attracted as much outside investment as Moscow, which makes it difficult to retool the old Soviet factories. Sverdlovsk, Saratov, St. Petersburg, and Novosibirsk are all regions that had heavy concentrations of defense plants which lost their *raison d'être* with the end of the Cold War. The conversion to civilian production has been less than completely successful. Given these circumstances, it is not surprising that there would be more serious disputes in Moscow.

IV. Procedural Issues at the Trial Level

A. Hearing Cases Collegially

The new *APK* fundamentally changed how *arbitrazh* courts hear cases. During the days of *gosarbitrazh* and during the life of the first *APK* (adopted in 1992), cases were heard by three judges together. Beginning in July 1995, when the current *APK* went into effect, the general rule changed. *Arbitrazh* judges now hear cases individually at the trial level. (Hendley, 1997) Bankruptcy and other complicated cases may still be heard collegially, but this is now the exception rather than the rule. (Art. 14, *APK*) The decision to hear a case collegially comes either at the initiative of the judge or upon the petition of one of the parties. The final decision as to whether to hear the case collegially is made by the chairman of the *arbitrazh* court. In making this decision, the chairman takes into account the complexity of the case and the persuasiveness of the petitioner's argument to have it heard collegially. (Yakovlev and Iukov, 1996, pp. 34-35) Weighing on the other side is the additional time required to hear a case collegially due to the inevitable difficulty of coordinating the schedules of three busy trial court judges.

How often have cases been heard collegially? The information is available only for 1996, which is the first full year in which the *APK* has been in effect. Sverdlovsk had the highest incidence of cases heard collegially, with 7 percent of all cases resolved being heard collegially. The other courts heard cases collegially less often. In St. Petersburg and Novosibirsk, 4 percent of cases were heard collegially. In the Moscow City Court, it was 3 percent, whereas in Saratov only 2 percent were heard collegially.

It is difficult to assess information from only one year, but it suggests that the change to hearing cases individually has taken hold. The reason behind the change is to increase the efficiency with which the courts operate. The statistical data also support the reports I received when interviewing *arbitrazh* judges. They consistently told me that petitions to hear cases collegially were few and far between, and that the litigants also liked the new system because it made the case proceed more quickly.

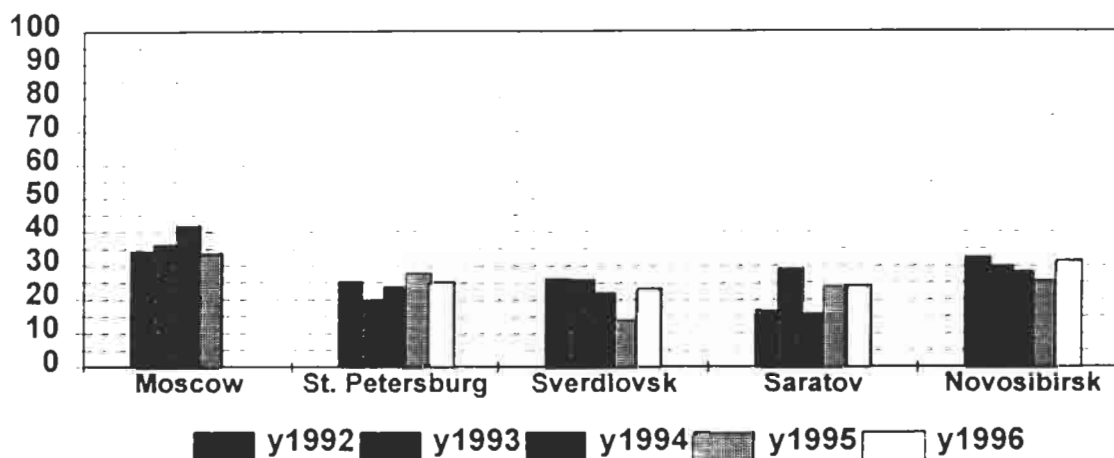
B. Complaints Filed vs. Complaints Accepted for Hearing

It comes as no surprise to learn that not all complaints filed are heard by Russian *arbitrazh* courts. Like courts throughout the world, the *arbitrazh* courts are governed by a set of procedural rules that dictate what sorts of cases can be heard and the proper form of the complaint. These rules are set forth in the *APK*. (Arts. 102-105, *APK*) When deciding whether to hear the case, the trial judge reviews the complaint for compliance with the statutory requirements. The judge may accept, reject, or return the complaint. Complaints are “returned” to the plaintiff when there is some flaw in the preparation of the complaint, *e.g.*, improper signature, failure to document that copy has been sent to the defendant, failure to document payment of filing fees, etc. (Art. 108, *APK*) No prejudice attaches. The complaints can be fixed and refiled. Complaints are “refused” when they fall outside the jurisdiction of the *arbitrazh* court or when the dispute between the parties is already the subject of a judicial decision. (Art. 107, *APK*) The vast majority of complaints are accepted. Indeed, my interviews with judges and administrators in Moscow, Saratov, and Ekaterinburg reveal that if there is any doubt about whether the court can hear the case, then it is accepted in order to give the plaintiff an opportunity to explain their position to the judge in person.

The incidence of complaints that are not heard remains significant throughout the period under study. In the Moscow City Court, for example, more than one-third of all claims filed between 1993 and 1996 were not accepted for hearing. Similarly, in Novosibirsk, an average of 30 percent of claims filed between 1992 and 1996 were never heard on the merits. In St. Petersburg, the average figure was approximately 25 percent, which is slightly lower but still significant. In Saratov, by contrast, the numbers go up and down. In 1992, 16.8 percent of claims filed were not accepted. In 1993, the percentage increased to 29.2, and then in 1994 it dropped back to 16 percent. But in both 1995 and 1996, 24 percent of all claims were not accepted.

Complaints not Accepted on Merit

(Number of Complaints Filled = 100%)



The statistical forms for 1992 and 1996 break down the total number of complaints not accepted into two categories: rejected and returned.⁹ Without exception, the number refused is dwarfed by the number returned. In Saratov, only 7 percent of cases not accepted in 1992 and 1996 were rejected. The remainder were returned. Among the courts for which I have data, Novosibirsk had the highest percentage of non-accepted complaints that were rejected, with 13.9 percent rejected in 1992, but the percentage dropped to 7.3 in 1996.

What do these data about the acceptance or non-acceptance of complaints tell us? The predominance of returned complaints (as opposed to rejected) suggests that the relatively high level of non-acceptance is due to minor mistakes that most likely result from an unfamiliarity with the statutory rules. It further suggests that many litigants are appealing to the *arbitrazh* courts for the first time and/or that many complaints are being prepared by non-lawyers. The mistakes that cause a complaint to be returned are the sort that, once drawn to the attention of a petitioner, are unlikely to be repeated. For example, it is understandable that a first-time plaintiff might neglect to document that a copy of the complaint had been sent to the defendant, or that such a plaintiff might not be aware that special authority is needed if the complaint is signed by someone other than the general director. But these are not the mistakes of “repeat players.” They are also not mistakes that a trained lawyer is likely to make. The procedural rules are not complicated, but a non-lawyer might be unfamiliar with the *APK* or unaware of how it is interpreted. My interviews at *arbitrazh* courts confirm that lawyers frequently do not participate at the trial level.

The fact that the incidence of non-accepted complaints remains consistent throughout the

⁹The form used from 1993-95 provided only aggregate data.

period under study buttresses the contention that many litigants are “first-timers” and that they are not lawyers. If the docket were dominated by repeat players or even by first-timers with lawyers, then the incidence of non-acceptance should decline during the period under study as litigants grew familiar with the rules. The explanation that the introduction of a new *APK* might have created confusion is not convincing. The new code became effective in July 1995, and the data show no increase for 1995 or 1996. Moreover, there is little difference between this 1995 *APK* and its predecessor in terms of this issue. (Compare Arts. 79-81, 1992 *APK* to Arts. 102-105 of the 1995 *APK*.)

C. Delays: Violations of Time Limitations for Hearing Cases

Russian *arbitrazh* courts are frequently criticized as being slow. (Greif and Kandel, 1995, pp. 311-12) The ability of a court to resolve disputes without unreasonable delays is critical. This is particularly true of economic disputes, since it is rarely possible to put complex business transactions on hold in order to wait for a court to make its decision. The *APK* requires that the case must be decided within two months of the date the original complaint was filed with the court. (Art. 114, *APK*) My interactions with *arbitrazh* judges convinced me that this deadline is taken seriously. Fear of the potential consequences of violating this deadline was a constant theme in their conversations with me and with each other. In court proceedings, judges often grumbled about the resulting violation of this deadline when parties requested a postponement.

Based on the national level data, the complaints about delays in the *arbitrazh* courts seem overblown. (Pistor, 1996, p. 96) In 1992, only 1.6 percent of cases were not resolved during the two-month statutory deadline. The percentage rose to 3.4 percent in 1993, but then returned to prior levels in 1994 (1.5 percent) and 1995 (1.6 percent). The incidence increased again in 1996 to 3.6 percent (10,340 cases). This strongly suggests that cases are dealt with expeditiously. The reason for prompt disposition is probably a combination of a desire on the part of *arbitrazh* judges to obey the law and a desire to avoid internal censure for violating this rule. Although judges and administrators denied that such violations played a role in salary determinations and/or promotions, they left no doubt that the information had a potent effect on judicial reputations. Oblast-level data are available only for 1996, and show a wide variation between courts. In Saratov, delays exceeding the statutory deadline were reported in 0.35 percent of resolved cases. At the other end of the spectrum were Novosibirsk and the Moscow City court, where the percentages were 5.4 and 5.5, respectively. St. Petersburg and Sverdlovsk were in the middle with 3.3 percent and 1.9 percent, respectively. The differences may be tied to the size of the court. Saratov has approximately 40 judges, whereas over 130 judges work at the Moscow City court. Maintaining discipline and enforcing rules becomes more difficult as the number of judges expands. Also relevant may be the administrative skills of the chairmen of the various courts.

The national-level data show sharp increases in the incidence of delay in 1993 and 1996. These are most likely due to the fact that these are the first full years after the adoption of new procedural codes. The current *APK*, which went into effect in July 1995, imposed new duties on

arbitrazh judges. (Hendley, 1997) They are now required to prepare a “protocol” outlining what happened at each hearing. More detail is required in judicial opinions. All of this takes time, and contributes to increased delays at the courts. In addition, the introduction of market mechanisms (such as collateral and commercial paper) means that business transactions are increasingly difficult to understand, and resulting disputes take ever more time to resolve. Sometimes the fault for non-compliance with the two-month deadline lies not with the courts, but with the parties who do not comprehend their obligations under the *APK* and are unable to assemble the relevant documentary evidence quickly.

D. Ensuring Compliance by Litigants with Procedural Rules

One tactic used by some courts to ensure that litigants fulfill the obligations imposed by the law and obey orders issued by the courts is to punish those who disobey. The punishments usually begin with monetary fines, but in extreme cases may even include incarceration. The negative incentives are used to encourage litigants and their lawyers to play by the rules. It is thought that this saves time for everyone in the long run.

The *APK* gives judges limited powers to fine participants for not meeting the obligations imposed by the *APK*. It provides that “fines are imposed by the *arbitrazh* court in the situations and in the amounts provided for by this Code.” (Art. 100, *APK*) The commentary to the *APK* lists the circumstances under which fines are possible. Most relate to failure to obey the final decision. But the failure to present evidence that has been demanded by the court for a reason deemed “invalid” or “disrespectful” (*neuvazhatel’naya*) can give rise to fines of up to 200 times the minimum wage. (Art. 54-3, *APK*; Yakovlev and Iukov, 1996, pp. 118-21, 230)

A constant theme in my interviews with *arbitrazh* judges from 1995-97 was the difficulties created by the poor preparation of participants. In these private conversations, judges complained bitterly about the additional burden on them as a result of having to school litigants on fundamental aspects of the law. When observing the operation of the Saratov and Moscow City courts in the spring of 1997, cases frequently arose in which one side failed to bring documents as ordered by the court and/or in which the lawyers or other representatives were patently unprepared to respond to the judge’s questions. The responses of the judges varied from silent exasperation to stern lectures on the requirements of the law. In no case, however, did the judge ever contemplate imposing some fine for this disobedience. When I asked why they did not fine the parties, I got two types of responses. Some judges insisted that they lacked the power to fine the parties. More often, however, the judges knew the law, and responded that imposing fines was too much trouble and would not have the desired effect on litigants’ behavior. The *APK* requires that fines be documented through a court order (*opredelenie*), and issuing such an order could entail holding another hearing. Judges did not think that the miserly fines permitted by the *APK* would make litigants rethink their behavior.

The data confirm my impression that fines are rarely imposed.¹⁰ Between 1993 and 1996, the Sverdlovsk court imposed no fines whatsoever. The Novosibirsk court found one case in 1995 in which it imposed fines of 11,500 rubles, which amounts to less than two dollars. Likewise the Saratov and Moscow City courts found no cases in 1993, 1994, or 1996 that warranted fines. In 1995, the Saratov court had 22 cases in which fines were imposed, and the Moscow court imposed fines in 33 cases. Once again, the amounts were insignificant.

Another way in which an *arbitrazh* court can indicate its displeasure with the behavior of the parties in a case is to issue an order that outlines and chastises a particular person. There is no equivalent in Western court practice, so I am going to refer to this order by its Russian name, “*chastnoe opredelenie*.” This is a carryover from the Soviet era when such orders would be made known to enterprise management, and could have a seriously detrimental effect on the target. The principle is the same now, namely that the goal is to affect the reputation of the target.

As with the fines, *arbitrazh* judges rarely make use of this punitive instrument. The numbers of *chastnye opredeleniya* are so small that the percentages would be infinitesimal. Their numbers have decreased over the years. For example, in the Moscow City court, there were 15 *chastnye opredeleniya* issued in 1993, but only 10 in 1994, 6 in 1995, and 2 in 1996. Similar trends can be seen in Novosibirsk and St. Petersburg, whereas in Saratov and Sverdlovsk, the number remains steady and low throughout the period.

Number of *Chastnye Opredeleniya*

Court:	1993	1994	1995	1996
Moscow City	15	10	6	2
Novosibirsk	20	9	8	1
St. Petersburg	12	7	3	1
Saratov	1	1	0	3
Sverdlovsk	1	1	1	2

E. Implementation of Decisions

The chairman of the Higher *Arbitrazh* Court, V.F. Yakovlev, has identified difficulties with implementation as the most serious problem facing the *arbitrazh* courts.¹¹ (Katanian, 1997; Vasil'eva, 1996) Published interviews with the chairmen of oblast' courts also stress implementation as a critical problem. (Tarasovaya, 1997) Documenting and quantifying the

¹⁰National level data are unavailable on this issue.

¹¹See Hendley (1997) for an explanation of the tortuous process by which parties collect on monetary judgments in *arbitrazh* courts.

problem through the statistical information available is impossible because the *arbitrazh* courts do not keep track of whether or not the victors at trial ever collect on the judgment.

One method of ensuring that the defendant will pay the judgment is to freeze all or part of its assets. The *APK* (both the 1992 and 1995 variants) allows such petitions from the plaintiff at any point in the trial. (Art. 76, *APK*) Traditionally, such petitions were uncommon. Perhaps plaintiffs' reticence was a carryover from the Soviet period when recovery was never in doubt and so extraordinary measures to guarantee performance were unnecessary. In my conversations with litigants and judges, I got the clear message that petitions to freeze assets were regarded as a signal of disrespect and lack of trust for the defendant. Put more bluntly, such petitions were seen as being somehow impolite. It is important to keep in mind that many trading relationships in Russia are longstanding and have survived the demise of the Soviet Union. With the rise of non-payments as a problem for industrial enterprises, the harsh realities of the market (*i.e.*, needing cash) have trumped any desire not to offend historic trading partners.

Based on my interviews, it seems that the shift began in 1995. Unfortunately, data on the number of petitions to freeze assets began to be collected only in 1996. In the major commercial centers of Moscow and St. Petersburg, the percentage of cases heard in which such petitions were filed in 1996 was 11.6 and 11.2, respectively. These relatively high numbers are to be expected in these jurisdictions in which most of the large banks and enterprises are headquartered. Such entities are more likely to have competent and experienced lawyers who understand how to protect their positions legally. Novosibirsk, Sverdlovsk, and Saratov, which are traditional centers of the defense industry, and which have experienced a slower recovery, had considerably fewer petitions filed to freeze defendants' assets. In terms of the percentage of total cases heard, the data show 6.9, 4.4, and 6.7, respectively.

If the *arbitrazh* court issues an order to freeze assets (or otherwise guarantee performance) and the defendant fails to comply, the *APK* allows for the imposition of fines.¹² (Art. 76-3, *APK*; Art. 92, 1992 *APK*) Yet this provision has not been much used. 1995 is the only year in which fines were imposed by any of the oblast courts under study. Even then, the numbers are not overwhelming. Oddly enough, the most cases were recorded by Saratov, with 15. There were 7 such cases in Novosibirsk, and 2 in the Moscow City court. The court in Sverdlovsk and St. Petersburg have never imposed fines for failure to comply with judicial orders for freezing assets. These low number do not indicate that defendants routinely comply with such orders. Rather, they show the continuing reluctance to pursue non-performance through the courts.

A similar dynamic can be seen with regard to fines for non-payment of judgments. If the

¹²If the plaintiff has asked for monetary damages, then the fine can be as much as 50 percent the amount requested. If the plaintiff has asked for specific performance, then the fine is calculated in terms of the minimum wage, and can be as much as 200 times that amount.

winner at trial is unable to collect on the judgment after going through the normal collection process, the *APK* permits petitions for fines under certain circumstances. (Art. 206, *APK*; Art. 151, 1992 *APK*) Interestingly, these fines are typically sought not against the defendant itself, but against the bank in which the defendant's assets are allegedly to be found. The plaintiff will petition for the imposition of a fine when it believes the bank has acted in bad faith in refusing to pay. With this as background, it should come as no surprise to learn that such petitions are quite rare. Indeed, prior to 1996, they were almost never filed.¹³ In 1996, however, the numbers increased. The Moscow City court led the way with 21 cases. St. Petersburg had 7 cases; Novosibirsk and Saratov each had 3 cases; and Sverdlovsk had 1 case.

V. Civil Cases: Distribution and Dynamics

The dockets of the *arbitrazh* courts have been dominated by civil cases throughout the period under study. But this actually tells us very little. The category is very broad. The statistical forms provide more detail. Indeed, the data are broken down into more than 20 types of possible disputes. In this report, I focus on the most important of these sub-categories.

A. Disputes Over Payments (*Rascheti*)

Within the general category of civil cases, disputes over payments (*spory po raschetam*) constitute the largest group. These are cases in which the plaintiff is seeking recovery for non-payment of goods or services. On the national level, the percentage of civil cases that were related to payments increased steadily from 1992 to 1995, and then decreased slightly in 1996.¹⁴ In 1992, these cases constituted 19.6 percent of the total civil cases. In 1993, the percentage rose to 40. Further increases came in 1994 and 1995, during which payments cases made up 50.7 percent and 57.2 percent respectively. In 1996, the percentage declined to 51.6. Even so, these cases still account for more than half of all civil cases decided.

The actual number of payments cases almost doubled between 1992 (65,207) and 1996 (126,120). This increase is remarkable when compared to the trend for civil cases in general. As noted above, the *arbitrazh* courts have yet to recover from the downturn in cases resolved in 1993-94. Indeed, the aggregate number of civil cases resolved in 1996 (244,467) remains 26.5 percent less than those resolved in 1992 (332,716).

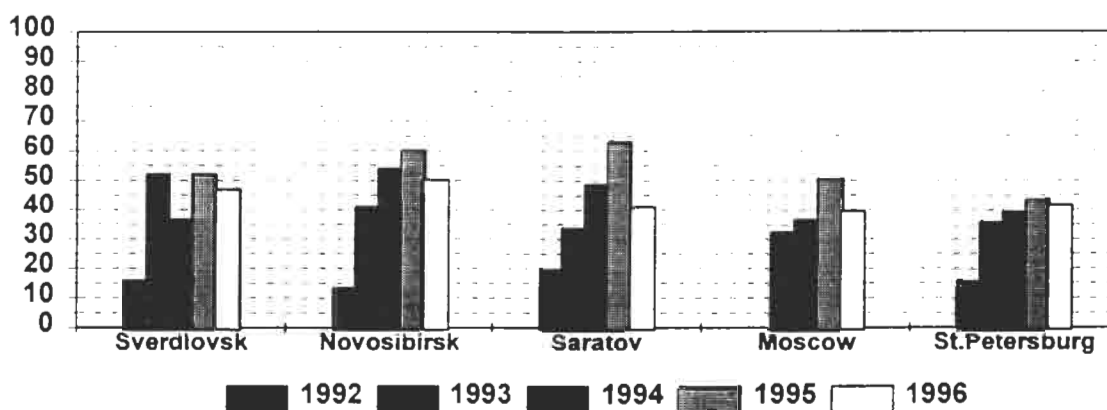
¹³From 1993-95, among the oblast courts under study, in 1995, the Novosibirsk court had 3 cases involving fines for non-performance, and the Moscow City court had 2 cases.

¹⁴The dynamic for payment cases as a percentage of total cases resolved (civil + administrative) is similar, though the numbers are lower. The percentages change from 19.3 in 1992, to 38.4 in 1993, to 46.5 in 1994, to 51.5 in 1995, to 43.5 in 1996.

A similar picture emerges from the oblast-level data. Payments cases increase dramatically from 1992 to 1995 -- both in terms of the number of cases and the percentage of civil cases. As on the national level, 1996 brings a decrease, but these cases remain the largest single category. The details are set forth in the table below. Likewise, the number of payment-related cases resolved in 1996 exceeds the number in 1992. At one extreme is Sverdlovsk, where such cases increased by an extraordinary 757 percent between 1992 and 1996. In Novosibirsk, the number doubled. In St. Petersburg, it increased by almost 60 percent, and in Saratov, by about 20 percent.

Percentage of Payment Cases

(Total Number of Civil Cases = 100%)



B. Disputes Related to Bank Debt

During the period under study, bank debt has gradually become an important source of disputes for *arbitrazh* courts. For the most part, these cases did not exist during the Soviet period when banks were merely an arm of the state. Indeed, statistics were not collected until 1993. Because privatization was carried out in Russia through a distribution of a majority of the ownership interest to managers and workers, the process generated no capital. In order to maintain production and to build toward the future, enterprises sought capital from banks. Often these banks were ill-equipped to assess the credit-worthiness of applicants, and so loans were not repaid. The data suggest that banks have become increasingly aggressive in terms of their collection efforts.

In 1993, the first year for which information was collected, bank-related cases were few, both in actual number and as a percentage of total civil cases. With the exception of the Moscow City court, these disputes accounted for less than one percent of the civil cases resolved. In Moscow, they constituted 2.3 percent of the total civil cases. Given Moscow's status as the banking center of Russia, the considerably higher incidence of bank-related cases is not surprising. In the years from 1993-96, bank-related disputes increased astronomically. In many

courts, the actual number multiplied ten times over. The importance of these cases is also visible as a percentage of total civil cases resolved. In Saratov, for example, they grew from 0.7 percent in 1993 to 16 percent in 1996. The national-level data only confirms the increasing importance of this category of dispute.

Bank-Related Cases: Number Resolved and Percentage of Total Civil Cases Resolved

Court:	1993: Number (%)	1994: Number (%)	1995: Number (%)	1996: Number (%)
Moscow City	559 (2.3)	653 (3.9)	1,676 (9.6)	4,778 (19)
Novosibirsk	21 (0.4)	89 (2.9)	560 (12.9)	538 (13.1)
St. Petersburg	134 (0.95)	225 (2.7)	606 (7.6)	1,171 (9.2)
Saratov	40 (0.7)	126 (2.1)	401 (10.5)	545 (16)
Sverdlovsk	45 (0.4)	320 (4.4)	592 (8.3)	506 (7.5)
Total for all <i>arbitrazh</i> courts	2,706 (1.0)	6,932 (3.6)	17,626 (8.2)	28,651 (11.7)

C. Bankruptcy

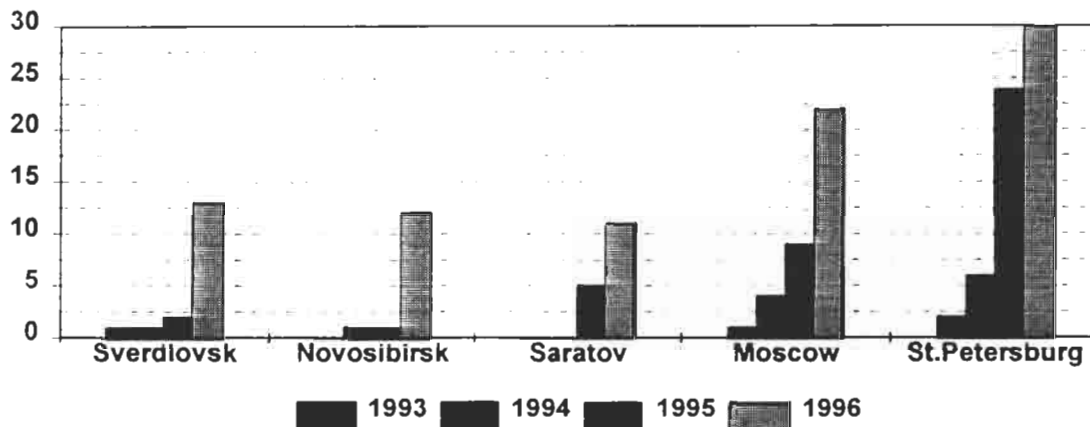
Bankruptcy is a relatively recent phenomenon in Russia. During the Soviet period, the law did not provide for bankruptcy. An enterprise might be liquidated under extreme circumstances, but there was no need for elaborate protection of creditors, since all were state owned. As part of the transition to the market, bankruptcy became possible. Yet the data demonstrate that bankruptcy remains quite unusual. According to the national-level information, the number of bankruptcy cases has grown from 74 in 1993 to 1,226 in 1996. At first glance, this increase seems remarkable. But when we consider these figures as a percentage of total civil cases resolved, the progress is less impressive. At their highest point, bankruptcy cases still represent only 0.5 percent of the total civil cases resolved. On the positive side, the increase has been steady.

The information collected from individual *arbitrazh* courts also documents the less-than-central role of bankruptcy. As on the national level, the growth has been steady, but progress has been slow. Interestingly, the slowest growth has come in Saratov and Sverdlovsk. These regions are dominated by defense enterprises, many of which are legally bankrupt, in that they have been unable to pay their workers regularly and/or service their debt for several years. In Saratov, the first bankruptcy cases were not resolved until 1995, when there were 5. In 1996, the number increased to 11. In Sverdlovsk, one bankruptcy case was resolved in 1993 and another was resolved in 1994. 1995 saw two bankruptcy cases, and 1996 brought thirteen. The regions where recovery has been more rapid, such as St. Petersburg and Moscow, have witnessed considerably more cases. In 1996, for example, the St. Petersburg court resolved 30 bankruptcies and the

Moscow City court handled 22.

1996 may well mark a turning point. According to the information supplied by individual courts, there are a considerable number of bankruptcy cases that were filed during 1996 that await resolution in 1997. The Moscow City court has 121 such cases; St. Petersburg

Total Number of Bankruptcy Cases



has 91; Novosibirsk has 30; Sverdlovsk has 23; and Saratov has 41. Thus, the number of cases awaiting disposition in Saratov is more than three times the total number of bankruptcy cases resolved in the history of the court.

Why has bankruptcy been slow to emerge as a viable remedy in post-Soviet Russia? A full answer to this question is beyond the scope of this paper. But several possible explanations can be suggested. There are obvious psychological and social barriers. Most Russian managers were trained and socialized during the Soviet era when bankruptcy was beyond the pale. It is difficult for them now to accept the possible demise of their enterprises. The potential political and social consequences of widespread bankruptcies may also act as a disincentive. Traditionally, Russian enterprises served a much broader role in the community than merely producing goods. Workers received housing, child care and other social benefits via the enterprise. Bankruptcy would cause the abrupt collapse of this system. Efforts are currently underway to remove these social obligations from the enterprises by creating market institutions, but the process is far from complete. The danger of social upheaval resulting from bankruptcies is particularly acute in cities or regions dominated by a single factory or a single industry. Russians are not accustomed to moving in order to find work.

The bankruptcy law, which has already undergone several revisions, has serious shortcomings. (Williams and Wade, 1995) Moreover, the institutional environment provides few incentives for creditors to push debtors into bankruptcy. Creditors are unlikely to collect, and participating in bankruptcy proceedings takes time. There is some anecdotal evidence indicating

that enterprise management is beginning to understand some of the benefits that might come from bankruptcy protection. The Russian law (like the U.S. law) provides the option to reorganize the putatively bankrupt company under the supervision of a trustee appointed by the *arbitrazh* court. The key issue in such cases become the identity and loyalties of the trustee.

D. Pre-Contractual (*Preddogovornye*) Disputes

Pre-contractual disputes constituted a significant portion of the workload of *gosarbitrazh*. During the Soviet period, enterprises that had been “matched” by their ministry would occasionally have difficulty agreeing on the precise terms of trade. In such cases, *gosarbitrazh* would step in to assist in defining the conditions of the contract between the parties. The basic terms were, of course, fixed by the ministries, but serious disagreements still arose regarding the details. The role of the ministries changed with the transition to the market. With the exception of some defense contract, they no longer have the right or the power to force parties to trade with one another. Absent that legal obligation to enter into a contract, the ability of the *arbitrazh* courts to insert themselves into the process of concluding a contract is greatly diminished.

Not surprisingly, the number of pre-contractual disputes resolved by Russian *arbitrazh* courts has decreased. In 1992, these accounted for almost 7 percent of all civil disputes, but by 1996, they only accounted for about 2 percent. In terms of the actual number of pre-contractual disputes resolved, this period witnessed a drop of 76.6 percent (from 22,810 in 1992 to 5,345 in 1996).

In contrast to the published statistics on the national level, the individual courts do not report on pre-contractual disputes, as such. There is a category of civil disputes described as “concluding, changing and terminating contracts.” It is likely that it is this information that is then aggregated as pre-contractual disputes in the published data. Without exception, there is a sharp drop in the number of these cases between 1992 and 1993. In Saratov, for example, there was a drop from 579 to 199, which represents a decrease of 65.6 percent. Sverdlovsk and St. Petersburg experienced decreases of about 50 percent. Given that 1992 was a year of great upheaval, it is not surprising that a significant number of these old-style cases lingered on.

What is more intriguing is the divergence among courts between 1993 and 1996. Saratov, Sverdlovsk, and Novosibirsk show steady declines between 1994 and 1995, but a stabilization in 1996. Sverdlovsk is typical. In 1993, 402 pre-contractual disputes were resolved, constituting 4 percent of the total civil cases. In 1994, the number and percentage dropped to 220 and 3.1, respectively. In 1995, they were 102 and 1.4. Little change is seen in 1996, with 106 pre-contractual disputes, making up 1.5 of the total civil cases.

A different pattern is evident in the Moscow City court and in St. Petersburg. After the sharp decline in 1992-93, the number of pre-contractual disputes gradually increases between 1993 and 1995. In the Moscow City court, the increase continues on through 1996 (both in raw numbers and in percentages of total civil cases). More specifically, the number of cases resolved

triple from 1993-96, and as a percentage of total civil cases, it increases from 1.1 percent in 1993 to 3.3 in 1996. In St. Petersburg, however, 1996 brings a slight decrease. The reasons for these different patterns remains a puzzle.

VI. Administrative Cases: Distribution and Dynamics

Understanding the behavior of *arbitrazh* courts with respect to administrative cases presents a greater challenge because of how the data have been reported. Prior to 1996, they are presented in broad categories without breaking them down in more detail. A good example is the category of "declaring governmental acts invalid." From 1993-95, the oblast-level data present the total number of such disputes and the number related to privatization. This is helpful, but falls short of what is needed. The form was changed in 1996 to provide information about key administrative agencies, such as the tax inspectorate and the customs organs. Other categories were similarly expanded in 1996 to provide additional detail.

A number of courts seemed to experience difficulty in categorizing their administrative cases in 1996. This is clear from the increased number of cases relegated to the "other" category.¹⁵ When taken as a percentage of the total administrative cases, St. Petersburg experienced an increase from 4 percent (34 cases) in 1995 to 22 percent (307 cases) in 1996. A similar increase occurred in Saratov, where the percentage of "other" cases rose from 17 to 63 between 1995 and 1996. The Novosibirsk and the Moscow City court likewise experienced sudden increases in this category. This suggests either that new types of cases are occurring which fall outside of the established groupings, or that judges are not being provided with sufficient guidance on how to categorize their cases. The fact that the phenomenon is fairly widespread undermines the persuasiveness of the latter explanation.

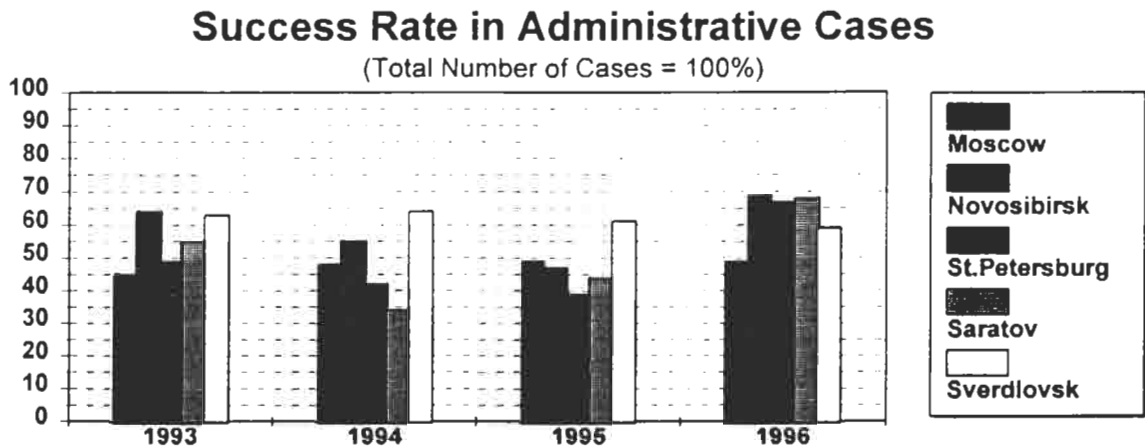
A. Outcomes

In contrast to the civil dispute information, the data on administrative disputes includes not only the number of cases resolved in various categories, but also how many were successful. This raises the question of whether patterns can be found within particular courts and/or among the *arbitrazh* courts more generally. Since administrative cases usually involve challenges to the state (in one form or another), the success rate is of great interest. Few patterns are visible among the courts. In 1994, for example, the success rate ranges from 34 percent in Saratov to 64 percent in St. Petersburg. Similar discrepancies are apparent in other years.

The picture is slightly different in the individual courts. The Moscow City court and

¹⁵Sverdlovsk represents an exception to this trend. The number of cases in the "other" category actually decreased from 1995 (17 cases) to 1996 (5 cases). In percentage terms, the decrease was from 3 percent of total administrative cases to 0.4 percent.

Sverdlovsk exhibit a fair amount of internal consistency in terms of who wins. Between 1993 and 1996, the overall success rate for administrative cases varied from 44 to 49 percent in Moscow, and from 59 to 64 percent in Sverdlovsk. Considerably less consistency is found in individual categories. The success rates for petitions to recover fines levied by state organs ranges from 38 to 65 percent in Moscow, and from 57 to 69 percent in Sverdlovsk. Indeed, inconsistency is the pattern within the other courts. The success rate for all administrative cases and for individual categories of cases bounced around with such abandon from year to year that predictions are impossible. Taking Saratov as an example, the aggregate success rate was 55 percent in 1993, 34 percent in 1994, 44 percent in 1995, and 68 percent in 1996.



The lack of consistency may simply be a result of the substance of the cases resolved. But it does suggest that, despite the strongly hierarchical character of the *arbitrazh* courts, judges are being allowed to decide the cases on the merits. Put more bluntly, there does not seem to be a quota on the number of cases that can go against the government.

B. Invalidating Governmental Acts

In 1993, the majority of administrative disputes involved efforts to invalidate governmental acts that the petitioner believed to violate the law. On the national level, 60 percent of all administrative cases fell into this category. Within the five individual courts, in excess of 50 percent of all administrative cases relate to the invalidation of governmental acts. Although the number of such cases increased from 1993 to 1996,¹⁶ because the total number of administrative cases has increased more quickly, the percentage of administrative cases that involve the invalidation of governmental acts has actually decreased. On the national level, while the number of cases has grown from 6,594 to 9,697, as a percentage of total administrative

¹⁶As the table documents, Saratov constitutes an exception. After an initial increase in 1994, the number of cases resolved decreased during the next two years.

cases, there was a decrease from 60 to 22 percent. Similar trends exist within individual courts. In the Moscow City court, the number of cases more than doubled, but the percentage decreased from 63 to 38.

**Invalidating Governmental Acts: Cases Resolved & As Percentage of
All Administrative Cases**

Court:	1993: Number (%)	1994: Number (%)	1995: Number (%)	1996: Number (%)
Moscow City	322 (63.4)	404 (62.8)	380 (52.7)	715 (37.7)
Novosibirsk	68 (56.2)	68 (33.7)	154 (47.4)	158 (23.8)
St. Petersburg	278 (56.5)	315 (46.5)	230 (28.1)	452 (32.4)
Saratov	105 (60)	213 (65.3)	94 (46.8)	74 (12.5)
Sverdlovsk	213 (53.9)	244 (36.4)	263 (31.1)	456 (35.9)
Total for all <i>arbitrazh</i> courts	6,594 (60.1)	7,597 (43.1)	6,508 (27.5)	9,697 (21.9)

C. Challenging Governmental Refusals to Register

With the transition to the market, the state no longer owned the means of production, but it retained the right to regulate. One of the traditional mechanisms for regulating entities is to require registration or licensing prior to engaging in activities that might have a detrimental effect on society if done improperly. There is always the danger that the state will abuse this right to regulate and will begin to exert control. In theory, the right of the regulated to complain via the courts about any illegal refusal of registration should act as a check on the expansive desires of the state.

Anecdotal evidence exists of enterprise managers and independent entrepreneurs who claim that state agencies have held up their registration or have refused to grant licenses for reasons that have no connection to the demands imposed by the law. Rumors abound of bribes and other extra-legal demands on the part of state inspectors.

Yet the data show that very few cases of this sort were heard from 1993 to 1996, and that the chances for success were not very good. In Sverdlovsk, a total of 22 such cases have been resolved. Of the 13 cases filed in 1993, 8 were successful. None of the cases filed in 1994 and 1995 were successful, and only 1 of the 6 cases heard in 1996 was successful. In Novosibirsk, 8 such cases have been filed, and the plaintiff prevailed in only 2. The Moscow City court has seen the most complaints about the failure to register -- 43 -- but 25 of those cases came in 1996. Sixteen of these 43 cases were successful.

The low number of cases resolved should probably not be taken as evidence that the state is generally acting within the law in making decisions about registration and licensing. Rather, it should be taken as confirmation of the reluctance of those being regulated to confront the regulators for fear of provoking punishment by angering them. This is, of course, not a tendency that is limited to Russia. (Kagan and Bardach, 1982)

D. Tax-Related Cases

The greater detail of the 1996 statistical form allows for a crude estimation of the number of tax-related cases. Given the preponderance of complaints from enterprise managers in the popular press about the unfairness of tax inspectors, it is useful to have some gauge on how often these enterprises act on such sentiments. For the most part, these cases involve an effort by the enterprise to declare the actions of the tax inspectorate to be illegal by showing that it actions violate the legal standards. For all of the courts except Saratov, these cases constituted more than 15 percent of the administrative cases resolved. The percentage was considerably higher in Sverdlovsk, where almost one-fourth of all administrative cases involved complaints about the tax inspectorate. Saratov is an exception. Only 4 percent (26 cases) of administrative cases resolved related to taxes.

E. Recovery of Fines

Not all administrative cases pit private entities against the government. Under certain circumstances, the government must appeal to an *arbitrazh* court before imposing fines. In such cases, the government would be the petitioner and the private entity would be the defendant. These cases have grown tremendously from 1993 to 1996 both in terms of the number of cases resolved and as a percentage of total administrative cases. On the national level, they account for 43 percent of all administrative cases resolved in 1996, compared with only 13 percent in 1993. In several courts, they now constitute more than half of all administrative cases.¹⁷ Moreover, in the past few years, the government has become quite effective, and succeeded in imposing fines in more than 60 percent of these cases in Moscow, Novosibirsk, Saratov, and Sverdlovsk during 1995 and 1996. Not knowing more about the nature of the fines, it not possible to draw conclusions about the motivations of the government.

¹⁷Cases in which the state is seeking to recover fines accounted for 58 percent of the administrative cases resolved in St. Petersburg and Sverdlovsk in 1996.

BIBLIOGRAPHY

Arbitrazhnyi protsesual'nyi kodeks Rossiiskoi Federatsii [1992 APK]. Vestnik Vysshego Arbitrazhnogo Suda Rossiiskoi Federatsii, no. 5. pp. 5-47. 1992.

Arbitrazhnyi protsesual'nyi kodeks Rossiiskoi Federatsii [APK]. Vestnik Vysshego Arbitrazhnogo Suda Rossiiskoi Federatsii, no. 6. pp. 25-79. 1995.

Dunworth, Terence, and Joel Rogers. "Corporations in Court: Big Business Litigation in U.S. Federal Courts, 1971-1991." *Law & Social Inquiry*, 21:3. pp. 297-592. 1996.

Felstiner, William L.F., Richard L. Abel, and Austin Sarat. "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming ..." *Law & Society Review*, 15:3-4, pp. 631-54, 1980-81.

Galanter, Marc. "Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change." *Law & Society Review* 9:95-160. 1974.

Greif, Avner, and Eugene Kandel. "Contract Enforcement Institutions: Historical Perspectives and Current Status in Russia." In *Economic Transition in Eastern Europe and Russia*, pp. 291-321. Edited by Edward P. Lazar. Stanford: Hoover Press, 1995.

Hendley, Kathryn. "Remaking an Institution: The Transition in Russia from State *Arbitrazh* to *Arbitrazh* Courts." *American Journal of Comparative Law*, forthcoming, 1997.

_____. *Trying to Make Law Matter: Legal Reform and Labor Law in the Soviet Union*. Ann Arbor: University of Michigan Press, 1996.

Hendley, Kathryn, Barry W. Ickes, Peter Murrell, and Randi Ryterman. "Observations on the Use of Law by Russian Enterprises." *Post-Soviet Affairs*, 13:1, pp. 19-41, 1997.

Ickes, Barry W., and Randi Ryterman. "Roadblock to Economic Reform: Inter-Enterprise Debt and the Transition to the Market." *Post-Soviet Affairs*, 9:3, pp. 231-52, 1993.

Katanian, Konstantin. "*Problemy sudov svyazany s osnovnom s nekhvatkoi sredstv*," *Nezavisimaya gazeta*, p. 2, January 16, 1997.

Kenworthy, Lane, Stewart Macaulay, and Joel Rogers. "'The More Things Change ...': Business Litigation and Governance in the American Automobile Industry." *Law & Social Inquiry*, 21:3, pp. 631-79, 1996.

Kroll, Heidi. "Breach of Contract in the Soviet Economy." *Journal of Legal Studies*, 16:1, pp. 119-48, 1987.

Pistor, Katharina. "Supply and Demand for Contract Enforcement in Russia: Courts, Arbitration, and Private Enforcement." Review of Central and East European Law, 22:1, pp. 55-87, 1996.

Pomorski, Stanislaw. "State *Arbitrazh* in the U.S.S.R.: Development, Functions, Organization." Rutgers-Camden Law Journal, 9:1, pp. 61-116, 1977.

"*Sudebno-arbitrazhnaya statistik: O rabote arbitrazhnykh sudov v 1992-94 godakh.*" Vestnik Vysshego Arbitrazhnogo Suda, no. 4, 1995.

"*Sudebno-arbitrazhnaya statistik: O rabote arbitrazhnykh sudov Rossiiskoi Federatsii v 1995-96 godakh.*" Vestnik Vysshego Arbitrazhnogo Suda, no. 4, 1997.

Tarasovaya, V. "*Kogda ne ispolnyayutsya zakony, v nastuplenie perekhodit prestupnost'.*" Stavropol'skaya pravda, p. 2, January 23, 1997.

Vasil'eva, Marina. "*Nel'zya zhit' po zakonam dzhunglei.*" Chelovek i zakon, no. 7, pp. 54-59, 1996.

Williams, Paul R., and Paul E. Wade. "Bankruptcy in Russia: The Evolution of a Comprehensive Russian Bankruptcy Code." Review of Central and East European Law, 21:5, pp. 511-32, 1995.

Yakovlev, V.F., and M.K. Iukov, eds. Kommentarii k Arbitrazhnomu protsessual'nomu kodeksu Rossiiskoi Federatsii. Moscow: Kontrakt, 1996.

