

# **HANDLING ECONOMIC DISPUTES IN RUSSIA:**

## **The Impact of the 2002 Arbitrazh Procedure Code**

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## **Executive Summary**

The paper explores how two critical reforms to the procedural code governing the Russian *arbitrazh* (or economic) courts are working. Based on field research in four courts during the summer of 2003, the paper argues that both litigants and judges have resisted these reforms. The reasons for their resistance include a lack of clarity in the statutory language as well as the conservative nature of trial judges. A fuller investigation of the realities of trial court practice by elites before drafting the new code might have made them more aware of the lurking difficulties. (economic courts, transition, debt-collection)

## Introduction

The *arbitrazh* courts resolve economic disputes in post-Soviet Russia. These range in complexity and importance from the bankruptcies of former Soviet behemoth enterprises and the tax liabilities of Yukos to garden variety contractual breaches between trading partners and fines imposed by the tax ministry amounting to a few dollars. These courts were created in 1992 as the institutional successor to the Soviet-era state *arbitrazh* (or *gosarbitrazh*). Judged in terms of caseload data, the *arbitrazh* courts have grown in importance over their relatively short lifespan. As Table 1 indicates, the number of cases decided in 2003 represents a fourfold increase over the number a decade earlier. The substance of the cases brought has also changed dramatically as Russia has weathered the transition away from state socialism toward a more market-influenced economy.

In response to these challenges, the procedural codes that govern disputes brought to the *arbitrazh* courts have gone through remarkable changes. The initial code was substantially rewritten in 1995 and, after less than a decade of working under that code, policymakers determined that another overhaul was required. The result is the 2002 *arbitrazh* procedural code (hereafter referred to as the 2002 APK). Although the basic structure of the *arbitrazh* courts was left intact, this new code brought a host of intriguing changes at the operational level, some more successful than others (Hendley 2003).

In this paper, I analyze two specific reforms, both of which were introduced as solutions to nagging problems. The first reform introduces a requirement for a preliminary hearing, at which the parties are to lay out their cases for one another and the judge. They are designed to provide a relatively neutral forum to sort out thorny evidentiary questions or to determine

whether additional parties need to be brought into the case. Only when the judge is convinced that both sides are prepared will she move forward with a hearing on the merits. The second reform is aimed at enhancing efficiency. It authorizes an acceleration of the consideration of the simple debt cases, which had flooded the *arbitrazh* courts during the 1990s, at times making up as much as half of the docket. Rather than requiring a full-fledged hearing, the 2002 APK opens the door to allowing the judge to resolve such cases on the basis of pleadings and halves the time-frame for such cases from the standard two months to one month. At first glance, the statutory changes seem to be appropriate and thoughtful responses to very real dilemmas. But the law in action does not always play out as anticipated. Indeed, my field research during the summer of 2004 may lead some to conclude that the solutions are actually worse than the original problems.

## **Methodology**

I began my research by comparing the 2002 APK with its predecessor. The two reforms outlined above jumped out as fundamental changes. A full appreciation of what these changes meant required field research. I spent the summer of 2003 in Russia immersing myself in the operational reality of the *arbitrazh* courts. I began at the Higher *Arbitrazh* Court [*Vysshiy Arbitrazhnyi Sud*]. The staff at this court has assisted me with my research for many years. They gave me access to the caseload statistics for 14 individual *arbitrazh* courts and prepared introductory letters to the chairmen of the *arbitrazh* courts in Moscow, St. Petersburg, Ekaterinburg, and Saratov.

These letters opened the door to the courts. Though I have been doing field work in three of these courts (Moscow, Ekaterinburg, and Saratov) since 1996 and am personally acquainted with the chairmen of these courts and many of the judges, I still need permission from their bureaucratic superiors in Moscow every time I embark on a new project. I purposely kept the wording of the letter vague, in an effort to facilitate access to archived records, ongoing cases, as well as to courthouse personnel for interviews.

I spent three weeks at the Moscow City Court, and two weeks at each of the other courts. Upon arriving at each court, I would explain my project to the court chairman. As a rule, I was then turned over to one of her subordinates, who became my “minder.” She would obtain cases for me from the court archive or from judges’ files and would negotiate with judges to allow me to observe their activities. My goal was to maximize my exposure to cases involving either preliminary hearings or accelerated process. I had little trouble at any of the courts in learning about preliminary hearings – they were ubiquitous. Finding out about how and when the courts used the accelerated process turned out to be a dicier proposition, for reasons that will become clear below.

Initially I chose the case study sites because they represented courts of different sizes and were situated in regions with different political economies. After I gathered the caseload data at the VAS, I discovered another intriguing variable, namely the propensity to use the accelerated process. As Table 2 illustrates, almost a quarter of all cases decided in Ekaterinburg used this new tool. By contrast, Moscow City *arbitrazh* judges used it in only about 16 percent of cases decided; their St. Petersburg colleagues employed it in less than 5 percent of cases; and their

Saratov colleagues used it in less than 2 percent of cases. The data confirmed that all these courts had substantial numbers of garden-variety debt cases, suggesting that the wide variation in use was not the result of differing opportunities, but that something else was going on.

### **Balancing Efficiency and Fairness – Revisiting the Timetable for Resolving Cases**

As the number of cases brought to the *arbitrazh* courts has skyrocketed (Table 1), the courts have struggled with how to handle them in an expeditious fashion. In Russia, as elsewhere, justice delayed can amount to justice denied. Though the cases heard in these courts do not raise liberty concerns, the businessmen who comprise the litigants in *arbitrazh* are understandably keen to resolve their disputes quickly and to move on with their affairs. No doubt the courts' ability to resolve cases promptly has contributed to the growing willingness of businessmen to submit themselves to the jurisdiction of the *arbitrazh* courts.

The 1995 APK established a firm two-month deadline for processing cases and, amazingly, judges complied. Nationally the percent of decided cases that violate the two-month deadline has never exceeded 5 percent.<sup>1</sup> At the same time, judges and commentators alike questioned the wisdom of this breakneck speed. It put enormous pressure on judges, who had to review the complaint, send out the notice of the time and place of the hearing, hold the hearing, and render the decision within the relatively short two-month window. Further complicating matters was the patent unreliability of the Russian mail service. If either party failed to receive notice of the hearing (as evidenced by the appearance of the plaintiff at the hearing and the receipt of the notice of delivery of the complaint to the defendant), then the hearing had to be

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<sup>1</sup>On a national level, the percent of cases resolved in violation of this deadline ranged from 1.6 in 1995 to 4.6 in

postponed, risking violation of the deadline. The deadline hung like a sword of Damocles over all *arbitrazh* hearings. Judges were acutely aware of it and strove to meet it. Their record in doing so shaped their reputation among their colleagues and affected their chances for promotion and raises.<sup>2</sup> In interviews conducted periodically throughout the 1990s, many *arbitrazh* judges revealed themselves to be uncomfortable with the heavy emphasis on speed, likening the judicial process to a conveyor belt.

The 2002 APK introduced a more nuanced approach to case management. Rather than a flat rule for all cases regardless of their complexity, the code now divides the universe of *arbitrazh* cases into several categories, each of which have separate timetables. In this paper, I explore two aspects of these changes.

Most *arbitrazh* cases are now required to pass through a preparatory stage. No longer does a case proceed directly to a hearing on the merits. Instead, the process begins with a preliminary hearing, to which the parties are summoned to discuss the case with the judge and one another. The goal is to avoid surprise at trial and to encourage the parties to put their evidentiary cards on the table. The case moves forward only when the judge certifies the case as being ready for trial. In place of the rigid deadline of the 1995 APK, the new code loosens the reins by allowing judges up to two months to prepare the case and imposing a deadline for resolution of one month from the time it is certified for trial. The then-chairman of the Higher *Arbitrazh* Court, V.F. Yakovlev, described the introduction of this quasi-discovery stage as one

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2001.

<sup>2</sup>Efficiency criteria commonly serve as the basis for advancement in judicial systems in countries with civil law legal traditions (Merryman 1985).

of the key innovations of the new code, noting that, “the process is more open and transparent, allowing the parties to be better prepared and the courts to make legal and well-grounded decisions” (Samokhina 2002).

The second procedural innovation covers a more discrete subset of cases. The 2002 APK introduces an accelerated process for handling simple debt-collection cases. Such cases can be decided by judges on the basis of the pleadings and other documentary evidence submitted by the parties. The turnaround time is quick; the judge has only a month to render a decision. Either side can opt out of the “summary” procedure with no prejudice. On paper, it seemed to be a creative way for the courts to dig out from the mountain of petty debt cases that clog their dockets and to reshape debtor-creditor relations in Russia. My research, laid out below, looks past the new rules to inquire into the extent to which this new procedure has been embraced by judges and litigants.

### **Preliminary Hearings**

All agree that the introduction of preliminary hearings seemed like a good idea. But then again, so did the two-month deadline, which was intended to keep the process moving at a steady clip. As the saying goes, the road to hell is paved with good intentions. Each of these rules was introduced with the goal of improving the process. Each was designed to remedy a shortcoming that had been part of the system. Each did so to a certain extent but, at the same time, each created new and unanticipated problems. Efficient case management is perhaps unattainable.

Legal systems the world over struggle with how to ensure that cases are heard and resolved promptly, while not leaving either side with the feeling of having been steamrollered. The Russian *arbitrazh* courts are no exception.

The drafters of the 1995 APK imposed the two-month deadline for deciding cases. At first glance, this might seem to be more than enough time. For simple cases that required only one hearing, it was. When a complaint arrived at the *arbitrazh* court, it would be assigned to a judge, who would send out an order (*opredelenie*), notifying both sides of the time and place of the hearing and letting them know what evidence they would be expected to bring. All notices were mailed, with return receipts requested.

The slowness of the Russian postal service led judges to allow two weeks for each segment of the journey, meaning that they typically scheduled the first hearing for a month after receipt of the complaint. If both parties showed up with the necessary evidence in hand and no unexpected issues arise, then the case would be decided at that first hearing and would fall within the two-month deadline.

Resolving cases within a single hearing may strike some as unrealistic or even unwise. But those unfamiliar with the *arbitrazh* courts are likely unaware of how many cases brought to these courts during its first decade were mundane debt cases in which neither side disputed the outcome. For example, in my 2000 study of debt collection, 71 percent of the cases I studied were decided in a single hearing. Of those requiring additional hearings, the reason was rarely substantive. More often it was due to scheduling conflicts or the forgetfulness of the plaintiff (Hendley 2004).

But these petty debt cases, while numerous, did not make up the entire docket of the *arbitrazh* courts. The 1990's saw the rise of more complicated litigation, including fights over the control of newly privatized companies and bankruptcy. The idea of resolving such cases in a single hearing is absurd. Just as in other countries, it typically takes several meetings between the parties and the judge simply to sort out who ought to be participating in the case. Such cases routinely violated the two-month deadline. Also problematic in some courts were the cases that the 1995 APK required to be heard by three-judge panels, *e.g.*, cases involving the state in any capacity and bankruptcy. The difficulty of accommodating the schedules of three judges and the parties often resulted in processes that dragged on longer than two months.

Experience revealed the flat two-month deadline to be a mixed blessing. To be sure, it served as a spur to judges. No one wanted to be seen as a laggard. Not only would it besmirch their reputation among colleagues and court insiders, but it also might affect their chances for promotions and raises. But what was the cost to the system of this need for speed? Judges were required to ride herd on litigants, always pushing them to prepare more quickly. Those who handled more complicated cases were left feeling like failures because they could not accomplish the impossible. Even those who were able to comply sometimes did so with a heavy heart. In casual conversations throughout the 1990's, judges frequently bemoaned the conveyor belt quality of justice they meted out. Yet they felt that the system left them with no choice.

The extent to which the obsession with speed compromised substantive justice is unknowable. It is always easier to tabulate violations of a straightforward indicator like time than to assess how often cases were decided incorrectly. In my field research during the 1990s, I read hundreds of case files, mostly dealing with inter-enterprise debt. I found few in which I felt

the judge had erred. Of course, there was little doubt of the outcome of the vast majority of these cases.<sup>3</sup> What is less clear is the cost in terms of justice in more complex cases. Even when the judge got it right, perhaps the litigants were left with a sense of being steamrollered that might discourage them from using the courts again, hardly a desirable outcome. In any event, when word got out that the procedural code was being redrafted, the most common wish expressed was that the deadlines would be eliminated or loosened.

The drafters of the 2002 APK granted this wish, which brings to mind another adage, namely that we should be careful of what we wish for, because we might get it. In this instance, the flat two-month deadline was replaced with another flat rule. The good news is that the introduction of a two-month preparatory period gives judges more breathing room. The bad news is that it does not contemplate that this extra time may not always be needed. Like the old rule, the new rule is mandatory across the board, leaving no room for judicial discretion.<sup>4</sup>

The current code requires judges to begin every case with a “conversation and preliminary hearing” (*sobesedovanie i predvaritel’noe zasedanie*), which can last up to two months. The code contemplates that judges will meet with the parties to work through the arguments likely to be raised and the relevant evidence during this time. The parties are encouraged to bring motions during this period, such as requests to bring in third parties or to seek expert evaluation of assets (art. 135-136, 2002 APK). Only when the judge deems the parties and the case itself to be ready do they proceed to a hearing on the merits. If the parties

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<sup>3</sup>For example, creditors prevailed in 99 of the 100 debt cases I collected for my 2000 study.

<sup>4</sup>*Arbitrazh* judges disagree over whether preliminary hearings are mandatory in all cases. The 2002 APK establishes a 15-day deadline for hearing certain types of administrative disputes. While conceding that the new code does not specifically exempt such cases, several Ekaterinburg judges told me that they do not hold preliminary hearings in such cases. To do so, in their view, would make it literally impossible to meet the deadline.

are present and amenable, this trial can follow on immediately after the preliminary hearing.

When the parties reach a compromise settlement or the plaintiff withdraws his claim, the case terminates with the preliminary hearing.

Looking past how preliminary hearings are supposed to work under the 2002 APK to the rough and tumble of actual *arbitrazh* practice, I found a mixed record. There is no question that preliminary hearings are a boon in some cases. They are particularly helpful in complex cases. For example, I observed innumerable cases in the Moscow City court that revolved around the ownership of commercial real estate. These cases typically involved multiple defendants and third parties and a byzantine evidentiary record due to the fits and starts by which commercial real estate was privatized. Thanks to the changes in the 2002 APK, these procedural questions were raised and resolved during preliminary hearings, rather than giving rise to endless delays of the trial itself (as would have been the likely outcome under the 1995 APK).<sup>5</sup>

Another possible appealing feature of preliminary hearings is that they can stave off trials. The 2002 APK encourages settlements whenever possible and the preliminary hearing is an ideal vehicle to promote such compromise outcomes.<sup>6</sup> Though judges are supposed to remain open-minded, they are certainly capable of telegraphing (some more pointedly than others) whether the claimant can expect more at the conclusion of a trial.<sup>7</sup> How frequently this happens

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<sup>5</sup>The 2002 code loosens up the rules as to when the court can proceed in the absence of the parties, which has lessened the need for continuances. If the record contains evidence that all parties have been notified, then the hearing can proceed regardless of whether they are present. The 1995 APK made this allowance for defendants, but halted proceedings for a missing plaintiff, even if clearly notified, unless the plaintiff had specifically authorized the court to proceed in its absence.

<sup>6</sup>The 2002 APK has an entire chapter devoted to settlements (arts. 138-42). The fact that filing fees (*gosposhlina*) are split between the parties in the event of settlement creates a material incentive to compromise.

<sup>7</sup>A typical case was one I observed in Ekaterinburg. The creditor sought the overdue debt plus interest. The

is unclear.<sup>8</sup> I saw only a few cases that fit this pattern. For example, in the Moscow City court, I observed a preliminary hearing involving failure to pay for cattle. Initially the defendant claimed that he had not paid because the cattle were diseased. After some discussion, he agreed to pay the debt if the plaintiff would forego penalties and interest. Absent the preliminary hearing, it is unlikely that this settlement would have happened. At the same time, not all defendants folded. Of the hearings I observed at which both sides were present, the majority held out for trial. Perhaps their motivation was a desire to put off the inevitable or a hope that their fortunes might turn around.

The enthusiasm for preliminary hearings among judges waned with regard to simpler cases. This is not to say that they cannot facilitate speedier trials in such cases. I observed a three-minute trial in Moscow in which the creditor-plaintiff prevailed. All of the evidence had been presented at the preliminary hearing, allowing the hearing on the merits to proceed like lightning. As the plaintiff left, the judge turned to me and commented that this was how it ought to work. The clear implication was that it usually did not.

Indeed, for simple cases, the requirement to have a preliminary hearing had the effect of lengthening the process. As I found in my earlier research, most inter-enterprise debt cases were resolved in a single hearing under the 1995 APK (Hendley 2004). Now the same cases take twice as long because they require two hearings – a preliminary hearing and a hearing on the merits – before they can be resolved. For example, a dispute between a temp agency and a company for whom they supplied workers for non-payment of 30,100 rubles was accepted on

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defendant was a state-supported institution. It conceded the debt, but argued that it should not be liable for the interest. The judge made it clear that she agreed with the defendant. The plaintiff settled for repayment of the debt.

<sup>8</sup>Statistical data about preliminary hearings is elusive. The *arbitrazh* courts do not keep records on any aspect of

November 20, 2003. The preliminary hearing was held about a month later, on December 17, 2003. Not surprisingly the defendant did not show up nor did it file any sort of response. The plaintiff sent two representatives. The APK allows hearings to go forward without the parties if they have been notified (art. 156, 2002 APK). The return postcard from the defendant was in the file. At this hearing, the judge checked the documents filed with the complaint against the originals and then set the case for a hearing on the merits on January 19, 2004. Once again the defendant was absent. The case was decided in favor of the plaintiff. The outcome would have been the same under the 1995 APK, but would have taken half the time.

The usefulness of preliminary hearings hinges on the willingness of the participants to show up. The 2002 APK is a bit inconsistent in its attitude toward those who refuse to take part. On one hand, it states that “parties have the right to present evidence, make petitions and arguments in response to questions that arise during the [preliminary] hearing” (art. 136, 2002 APK). Taken at face value, this language fails to make their participation mandatory; no duty is imposed upon them. On the other hand, the commentary to the 2002 APK that Yakovlev and one of his first deputies co-edited argues that “the disclosure of evidence [during preliminary hearings] constitutes an obligation for the parties” (Yakovlev and Yukov 2003, 393).

Perhaps their interpretation draws on the principle of adversarialism (*sostyazatel'nost'*), which is established at the outset of the new code as being essential to *arbitrazh* process. This same article states that “those participating in a case have the right to know each other’s arguments before the start of the hearing on the merits.” It goes on to warn participants of the

risk of violating procedural norms, though specifies no punishment (art. 9, 2002 APK).

Yakovlev and Yukov suggest one possibility. They contend that judges are entitled to impose court costs on non-compliant parties (Yakovlev and Yukov 2003, 393).<sup>9</sup>

The wishy-washy language of the code undercuts the usefulness of preliminary hearings. Judges feel hamstrung when parties disregard their exhortations to participate, either by failing to show up or by refusing to share their evidence if they do show up. Fines are extraordinarily rare in the *arbitrazh* courts, even when they are specifically authorized by the code. I encountered no trial judge in any of the courts I visited who was open to the idea of fining non-participants in preliminary hearings. To a person, they did not see such an option as being authorized by the code. They read the language of the code literally to say that parties have a right, but not a duty, to participate in preliminary hearings.

Though they are openly frustrated by this loophole, they feel themselves to have no choice but to allow litigants to take advantage of it. The stories they told were familiar to anyone conversant in business litigation in a market setting. Well-heeled defendants and their lawyers use the preliminary hearing as a mechanism for dragging the case out. Moreover, because the preliminary hearing is optional, many litigants simply skip it, preferring to conserve their energies for the hearing on the merits. One St. Petersburg judge told me that litigants regard preliminary hearings as a “lark” (*progulka*) to which they might or might not show up and, if they appeared, they might or might not produce the evidence needed to substantiate their claims.

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<sup>9</sup>Interestingly, the section of the code to which they refer (art. 111) says nothing about its use for this purpose. Nor

Others echoed this sentiment. A number of judges advanced cultural arguments to explain this behavior, saying that the “thinking” (*myshlenie*) of most litigants could not grasp the potential benefits of the preliminary hearings. Especially in Ekaterinburg, judges lamented the persistence of what they characterized as a naïve belief in the ability to prevail by surprising the other side. In my field work in the Moscow, Saratov, and Ekaterinburg courts in the summer of 2004, I routinely asked judges to estimate what percentage of preliminary hearings were “empty” (*pustoi*) and most told me that about a third fit into this category, thanks to parties that were either absent or obstreperous.

Not all judges were naysayers. One Ekaterinburg judge who mostly handled tax disputes extolled the virtues of preliminary hearings. She reported a good attendance record among those who came before her. It is not surprising that those fighting the tax inspectorate would show up. The willingness of the representatives of the tax inspectorate is more of a surprise, especially given that other judges had reported them to be no-shows. But this judge clearly established her own norms. No doubt she had made it clear that failure to appear would earn her ire, and the tax authorities learned that annoying her was not productive. She reported that about half of her preliminary hearings transform themselves into hearings on the merits, allowing her to dispose of the cases in a single hearing. If only her experience were more typical.

Though the failure of the *arbitrazh* courts to collect information systematically on preliminary hearings limits us to impressionistic data, an overview of the case files I reviewed in Saratov and St. Petersburg provides some sense of what is going on. Of the Saratov 51 cases, 13 employed the accelerated procedure discussed below (*uproshchenoe proizvodstvo*), obviating the need for preliminary hearings. The remaining 38 should have had preliminary hearings. I

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do they mention the possibility in their own commentary to article 111 (Yakovlev and Yukov 2003, 338).

confronted only 2 cases in which judges did not bother with this stage. Of the 36 cases in which preliminary hearings were held, they seemed to serve some useful purpose in 8, and in 3 of these cases, the preliminary hearing transitioned into a hearing on the merit, allowing the case to be resolved. In the remainder (28 or 77.8 percent), there was no apparent value-added from the preliminary hearing. Of the 43 St. Petersburg cases, there were only 6 (14 percent) in which the preliminary hearing transitioned into a hearing on the merits and a decision. An additional 9 were dismissed or postponed in anticipation of a settlement. Of the 28 remaining preliminary hearings, 21 (75 percent) were empty.

I had the opportunity to observe 112 preliminary hearings during my 2004 field work. More often than not, these hearings had a rote quality. Recognizing this, judges tended to consolidate them, scheduling them to follow one after another at 20 or 30 minute intervals. Occasionally one might turn into a genuine discussion among the parties, but the more common tendency for only one side or neither side to show up would compensate for any disruption in the schedule. Judges came to preliminary hearings with low expectations. Notwithstanding Yakovlev and Yukov's celebration of the expansion of adversarialism as a result of the 2002 APK (p. 45), parties' still shied away from taking responsibility. Judges dominated these hearings. When opportunities arose to question one another, few took advantage.<sup>10</sup> One of the few consolations of the preliminary hearings for judges was that the code does not require a written record (*protokol*) for these hearings as it does for hearings on the merits.

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<sup>10</sup>I observed the same pattern of passivity at hearings on the merits, which suggests that the principle of

To the critical question of whether the introduction of preliminary hearings has been helpful, there is no easy answer. While it has certainly eased the pressure on trial judges to resolve cases quickly, it has given rise to new problems. There is little or no accountability for judges during the pretrial period. The official statistics only tell us whether the case was resolved within the period allowed under the APK. If there is a violation, they do not specify whether it occurred during the pretrial period or during the one-month period allotted for hearings on the merits (art. 152, 2002 APK). Nor is there any way to figure this out on the ground at the courts, other than a manual search of the thousands of case files.

But the bigger problem arises from the requirement that preliminary hearings take place in all cases. While the *arbitrazh* judges I interviewed uniformly agreed that these hearings served as a valuable sorting mechanism in complicated cases, they were just as unanimous in their sense of frustration at having to go through the motions of having preliminary hearings in open-and-shut cases. A perhaps apocryphal anecdote that was repeated to me at each of the four courts I visited indicates the growing attitude towards preliminary hearings by judges. It is said that a judge at the Krasnodar *arbitrazh* court sends out notices to parties that cover both preliminary hearings and hearings on the merits, with the latter scheduled to commence 10 minutes after the former. Some judges even questioned whether it tends to undermine the legitimacy of the *arbitrazh* system, reasoning that having to show up for hearings that are mostly empty of content makes parties second-guess their choice to take their case to the *arbitrazh* courts.

If *arbitrazh* judges had the discretion to decide when preliminary hearings were needed and to forego them in other cases, the 2002 APK would operate more efficiently while still preserving the rights of all concerned. But allowing judges to exercise this sort of discretion is not a hallmark of the continental legal tradition that provides the foundation for the Russian legal system. Indeed, when I suggested it to *arbitrazh* judges, I got a wide spectrum of responses. Some welcomed the idea and the attendant increase in judicial responsibility. But the majority was more hesitant, expressing a reluctance to give over this sort of power to judges. Giving untethered latitude to judges in procedural matters is a hallmark of the Anglo-American legal tradition. Expecting it to be incorporated into a revised APK is probably a pipe dream.

### **Accelerated Process**

While the introduction of preliminary hearings was almost certainly motivated by a desire to maximize substantive fairness and was driven by a concern over the breakneck pace of *arbitrazh* process in pursuit of meeting the unconditional two-month deadline of the 1995 APK, the introduction of an accelerated procedure (*uproshchennoe proizvodstvo*) for handling simple debt cases was just as surely prompted by efficiency concerns. During the 1990's, the *arbitrazh* courts became inundated with cases involving relatively small amounts of inter-enterprise debt.

The reasons for the debt can be traced back to the transition from state socialism. Many now-privatized enterprises floundered in the new quasi-market climate, renegeing on contractual

obligations. They continued to do business with their Soviet-era suppliers, who were reluctant to cut them off. Debts mounted and, as patience wore thin, creditors increasingly turned to the courts.<sup>11</sup>

Viewed in comparative perspective, the propensity to litigate over petty debts is unusual. The outcome was almost never in doubt, creating a puzzle as to why creditors resorted to the courts.<sup>12</sup> As I have argued in more depth elsewhere, the low costs attendant to *arbitrazh* disputes, whether measured in time, money, or reputational effect, made litigation bizarrely appealing (Hendley 2004).

While litigating may have made sense to creditors, it created problems for the courts. Though victory for the creditor was a foregone conclusion in most of these cases, the 1995 APK treated them like every other case, requiring a full-fledged hearing on the merits. Based on my observations and my interviews with judges, the reality was that these hearings added little beyond the information apparent from the pleadings or attached documents.<sup>13</sup> It was the unusual case in which key additional facts were elicited.

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<sup>11</sup>In a 1997 survey of Russian industrial enterprises, we found that almost 80 percent of the 328 respondent enterprises had been a party to litigation in the *arbitrazh* courts in the preceding year (Hendley, Murrell, and Ryterman 1999). This should not be taken to mean that litigation was the only or even the preferred method of resolving disputes. Enterprises also sought to minimize disputes by requiring pre-payment and by allowing in-kind payments (Hendley, Murrell, and Ryterman 2000).

<sup>12</sup>The prevailing legal and business culture in which not paying debts carried no shame also came into play and helps explain why creditors resorted to the formal legal system.

<sup>13</sup>In my 2000 study of 100 non-payments cases, I found that a majority of defendants (55 percent) made absolutely

In an effort to streamline these sorts of cases, the new code creates a “summary” procedure (*uproshchennoe proizvodstvo*) (arts. 226-228, 2002 APK). Yakovlev explained that it is “shorter and simpler,” noting that it

“can even take place without holding a judicial hearing, only on the basis of written documents. But this form is permitted when the parties have no objection to it, and also when the cases have no question at issue (*bessporno*) or involve small (*neznachitel'no*) sums. For example, an energy-supplying organ provides energy, but isn't paid. Where's the dispute? The entity not paying says that it has no money. Here everything is clear, but still we handle such disputes according to the general procedure which is complicated and difficult. Now everything proceeds differently. As a result, the resolution will be quicker for simple or small cases and, consequently, the time of judges will be freed up for resolving more complicated cases.” (Proskuryakova 2002).

The idea of eliminating drawn-out hearings for cases in which there is no dispute is appealing. But how has it been used in practice? The caseload data are disappointingly superficial. The *arbitrazh* courts are asked to report the aggregate number of cases in which it was used. They are not asked the context of that use; nor are they required to report the total number of cases in which it might have been used. But even these limited data, as reported in Table 2, reveal an unevenness in the use of the accelerated process. Contextualizing the number of incidents by taking it as a percentage of all cases decided by the court demonstrates an astonishing range. The Sverdlovsk court uses this new tool in almost a quarter of all of its cases, whereas the Yaroslavl' and Voronezh courts use it in less than one percent of cases. The conclusion that different courts are using this option of accelerated procedure in different ways is inescapable.

But the way in which the caseload data have been collected frustrate any effort to probe into the court-level variations. At first glance, I wondered why the Higher *Arbitrazh* Court did not require the lower courts to calculate the total number of cases in which the accelerated

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no effort to participate in the process, either by appearing at the hearing or sending a written response to the complaint (*otzyv*), making the hearing superfluous but still legally required (Hendley 2004).

process could have been used. This would have been the most helpful denominator, allowing for the calculation of how often this mechanism was used when it was a viable option. Only after spending time in the courts did I come to realize how contentious the question of when *uproshchenoe proizvodstvo* can be used is, making it nigh impossible to come up with a number representing the total number of cases when it could have been used.

My field work in the *arbitrazh* courts of Moscow, St. Petersburg, Ekaterinburg, and Saratov allowed me to get a better sense of the divergent interpretations of how and when the accelerated process can be used. I confess that Yakovlev's comments along with my own observations and conversations with judges in the years before the adoption of the 2002 APK led me to expect to see it used primarily to handle petty inter-firm debts.

I set out to investigate this hypothesis both quantitatively and qualitatively. Three of the courts kept more detailed internal records than those they sent to the Higher *Arbitrazh* Court. The Moscow, St. Petersburg, and Sverdlovsk courts broke down the cases between those involving inter-enterprise disputes and those to which the state is a party.<sup>14</sup> As Table 3 shows, my hypothesis that the accelerated process would be used primarily to handle private creditors' claims does not hold up very well. In Moscow and St. Petersburg, the new tactic is used overwhelmingly in cases involving the state, which was not predicted by Yakovlev. The table is

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<sup>14</sup>When I asked for a similar breakdown in Saratov, I was told that it was unnecessary because all of the cases using the accelerated procedure involved the state. Through incessant questioning of judges, I later learned that this was not true, but I was unable to quantify the number of inter-enterprise disputes in which the new tactic had been employed. I should note that I do not believe those who told me that all cases were administrative were lying, but rather that they were misinformed.

somewhat misleading in the percentages of inter-enterprise cases reported in the Sverdlovsk court. As I will discuss below, most of these are not debt cases, but liquidation cases. Thus, the limited statistical data available suggest that further investigation is warranted.

Given that Russia has a civil law tradition and, therefore, a strong commitment to following the plain language of its codes, the statutory language provides a good starting point.

Article 226 provides:

1. In cases in which the demands of the plaintiff have an undisputed (*besspornyi*) character, have been acknowledged by the defendant, or are for an insignificant sum, the case can be heard using the accelerated process.
2. Cases are heard using the accelerated process on the petition of the plaintiff or in the absence of any objection by the defendant or at the suggestion of the *arbitrazh* court with the consent of the parties.

Laymen tend to assume that legislation answers all questions. Legal specialists realize that often the words create even more problems. Such is the case with the language of Article 226.

The one point of agreement among judges in all the courts I visited was that if the plaintiff requested that the process be used, then only the written objection of the defendant could stop it. Such requests are made in the complaint. But relatively few plaintiffs have made such requests. A detailed analysis of why is beyond the scope of this paper. My conversations with judges suggest a few possibilities. Many judges believe that litigants are simply unaware of their right to ask to have their dispute heard under this accelerated process. They pointed out that the procedural code is relatively new and litigants are just accommodating themselves to it.

This explanation is persuasive with regard to those who are only occasional participants in *arbitrazh* cases. But it fails to explain why those who are in and out of these courts on a daily basis, such as the utility companies, have not embraced the new procedural tool more enthusiastically. After all, it would seem to be a win-win proposition for them. They would still

prevail on the substance, but would do so more quickly and without having to send their lawyers to hearings that usually turn out to be pointless because the debtor does not appear. When I asked judges why these repeat players have eschewed the accelerated process, they speculate that these creditors worry that the judges will miss something in their review of the evidence. Perhaps, but it belies the record. Creditors win in *arbitrazh* court, not because of the inspired oratory of their lawyers but because they have a better case on the merits, as reflected in the documentary evidence submitted.

The reticence of plaintiffs to request that the courts use the accelerated process raises the question of when else it can be used. According to Article 226, its use can also be initiated by the court. The statutory language states that such use requires the consent of the parties. Judges disagree on what this phrase – “consent of the parties” – means.

The judges of the Moscow city court who heard disputes involving the state read the new procedural code as providing a way out for them. Ever since the Constitutional Court had ruled that fines could not be assessed by state agencies without the imprimatur of the courts, the *arbitrazh* courts had been deluged with cases in which the tax inspectorate or the pension fund was seeking to recover fines for late payment or technical flaws in filings. The amounts involved were miserly, sometimes as little as 50 rubles and could range up to millions of rubles. The chairman of one of these groups (*sostavy*) of Moscow judges that handled administrative cases told me that, when the amounts were small, she believed these cases fit the common-sense definition of case in which there was no meaningful dispute. Often neither side bothered to show up. The results were preordained. She and the other judges in her *sostav* proceeded to employ this new procedural mechanism whenever possible.

When confronted by a case in which they saw no real dispute, these pioneers responded by sending out a court order (*opredelenie*) in which they proposed using this new process. They developed standard language in which they explained that this meant that the case would be heard by the judge on the basis of the submitted documents without either of the parties being present. They further explained that either party had the right to object to the use of this procedure and, if they did, then the case would be heard under the general rules. They gave the parties two weeks to voice their objections and set the date for the in-camera hearing for a month after the date of the court order. If the court received notice of service of process on both parties and received no challenges to the use of the accelerated process, then the judge would go ahead and resolve the case on her own.

The appeal of this new and innovative procedure was obvious. Rather than having to go through the tedious process of sending out notices for a preliminary hearing and then a hearing on the merits and waiting in vain for the parties to show up, a process that took two months at a minimum (due to the time needed to get the return postcards confirming receipt of notice), judges are able to dispose of these cases in a month. Indeed, if they opt for the accelerated process, they are required to resolve them within a month. As this self-proclaimed champion of the process explained it to me, it all seemed quite logical. She said that objections were the exception rather than the rule. Most of those involved were delighted to have matters proceed more quickly. The statistics for Moscow city court strongly suggest that this process was not merely used in these routine cases involving fines. As Table 3 shows, it was used in 7618 administrative cases during 2003. Yet this is more than double the number of cases (3055) brought to collect fines.

Judges handling administrative cases involving fines in Ekaterinburg likewise employed the accelerated process on a regular basis. Their rationale mirrored that of their Moscow colleagues – a desire to process these fines as quickly as possible. In both Moscow and Ekaterinburg, judges advocated changing the law to limit the number of such cases that come before the court. They argued that those fined should have the right to appeal any fine to the court, but felt that the requirement to bring every fine before the court was patently absurd.

The situation was somewhat different in Saratov and St. Petersburg. In both courts, I found strong difference of opinion among judges in the administrative *sostavy* as to whether the accelerated process was appropriate. The use of this new mechanism tended to be limited to a few judges. In Saratov, for example, there was one judge who accounted for the bulk of cases resolved using it. Other judges criticized her openly. Likewise in St. Petersburg, there was a single judge who accounted for 40 percent of all cases decided by the administrative *sostavy*.

But in contrast to the distaste exhibited for the Saratov judge's pioneering behavior, other judges in St. Petersburg respected his choice, but were unwilling to take the risk themselves. Those in charge loaded him down with these cases and he would whip through 50 or more in a single day. He took an even more aggressive approach than did his counterparts in Moscow. He argued that the statutory language governing *uproshchennoe proizvodstvo* did not specifically require that the case file include proof of notice to the defendant when deciding the case. Regardless of whether such notice had been received, he went ahead and decided cases two weeks after sending out the *opredelenie*. He recognized that neither side cared much about these cases and considered it absurd to have to go through the motions of holding a preliminary and then a hearing on the merits. To do so, in his opinion, represented a waste of time and money for

all concerned. In support of his position, he emphasized that objections to the use of the accelerated procedure were extremely rare, though he consistently reverted back to the regular procedure when there was even a hint of dissent from the parties. He estimated such protests occurred in less than 3 percent of the cases in which he proposed the use of this mechanism.

With the exception of the single judicial outlier, Saratov judges were not enthusiastic about accelerated process. They took the statutory language quite literally. They argued that the accelerated process can be used only if both parties provide written consent. Their rationale was that it was just wrong to deny parties a hearing unless they affirmatively consented. The approach taken by some other courts (as discussed below) that one could give the parties an opportunity to object and, if they did not, then could take their silence (along with proof of having been notified) as consent, was rejected as inconsistent with the language of the 2002 APK.

Somehow the logical inconsistency of their position escaped these judges. By its very definition, accelerated process is available for use only in cases in which there is no meaningful dispute. In such cases, the defendants are unlikely to be active participants. It is unlikely that such disinterested defendants are going to respond to a request from the court to provide consent to the use of this speeded-up process. As a result, this procedural innovation languishes mostly unused in Saratov. Table 3 reveals that it was used in less than 200 cases in 2003, representing 1.5 percent of all cases decided.

I also found this sort of restrictive interpretation of the statutory language in the other three courts, though it tended to be limited to the panels (*sostavy*) handling economic or inter-enterprise disputes. Given the starting hypothesis that the accelerated process would be most

useful in such cases, it is worth exploring why judges have been so resistant. Some agree with their colleagues in Saratov, arguing that a defendant should not be deprived of its day in court without its express consent. I found a number of judges within the Moscow city court that refused to use the new tool on these grounds. But outside of Saratov, this was clearly the minority view.

For most, the failure to use the accelerated process was grounded in pragmatic rather than principled reasons. Judges accepted the premise that consent could be inferred when neither party objected to the court's proposal to use it. But they regard it as "risky" in contractual disputes, arguing that Yakovlev's assertion that cases involving inter-enterprise debts were clear was naive. They cited numerous examples in which cases that appeared straightforward in the pleadings grew exponentially more complicated as they proceeded. They shared examples in which defendants assumed to be uninterested or no longer active rose from the dead to take active roles in the hearings. Occasionally their resurrection occurred on appeal, which made the trial judges look bad, in their view.

Their point was that they had no reliable way of assessing whether a case was undisputed and, therefore, eligible for the accelerated process. They preferred to err on the side of caution. They explained that if they proposed using the accelerated process and either side objected, then they lost time. The case would have to be set for a preliminary hearing and then for a hearing on the merits. In their view, proposing accelerating the process ran the risk of losing a month. They felt safe using the speeded-up process only when the file contained an agreement signed by both parties as to the amount of the debt.

As Table 3 indicates, the St. Petersburg and Sverdlovsk courts have been using the accelerated procedure in a significant number of so-called economic cases, meaning cases in which the state is not a party. If these cases do not involve debt, then what are they? For the most part, they are liquidations. Whether such cases should be placed in the same category as debt cases is open to dispute, but they are. Typically they involve companies that have long since ceased to function. Because they exist in name only, there is no dispute attached to their liquidation. Hence, judges are willing to take the risk of using the accelerated procedure.

Moreover, the more recent data, reflecting the 2004 activities of the Moscow and St. Petersburg courts, as reported in Tables 4 and 5, suggest major changes in the offing. Though the overall propensity to use the accelerated procedure seems fairly unchanged from 2003 to 2004, the tendency to use the accelerated procedure in economic cases is increasing in both courts. In Moscow, the percentage of cases in this category has increased from 7.9 in 2003 to 17.9 during the first quarter of 2004. In St. Petersburg, the shift is more dramatic, with economic disputes comprising a majority of cases (54.6 percent) using the accelerated procedure during the first half of 2004, compared to a minority (37.2 percent) during 2003.

Because I did not have an opportunity to sift through all of these cases, I cannot be sure what is going on. The cases I was able to review, combined with the general hostility toward using the accelerated process in mundane debt cases makes me suspect that *uproshchenoe proizvodstvo* is being employed in a mix of liquidations and fines. But it is certainly a development that deserves more investigation.

The role of leadership cannot be entirely discounted in making sense of the disparity in use of *uproshchenoe proizvodstvo* among the four courts. The chairman of the Sverdlovsk

court is a former law professor who has written widely on questions of procedural law. Though she has only been at the court for a few years, she has instituted a number of changes, including making the work of the court more transparent through the creation of a court website and a comprehensive database of court decisions as well as the publication of a yearbook summarizing the court's activities (Reshetnikova 2004). She has also emerged as a champion of the accelerated process.

Her rationale is entirely pragmatic. She sees the mechanism as a lifeline to a court that is drowning in fine-related cases which they can now streamline. She argues that the court could not cope if it had full-fledged hearings on all these cases. No doubt her support has won over some judges that were wavering, but not all. The fact that some hold-outs remain serves as a reminder that the Soviet era when the behavior of judges was rigidly dictated from above is over. Nowhere else has the chairman of the court taken on the use of the accelerated procedure as her personal project and this may explain why the Sverdlovsk has embraced it more enthusiastically than any other court.

In Moscow, one of the chairmen of the administrative *sostavy* took the initiative. She made it her job to convince her somewhat skeptical bureaucratic superiors that using the accelerated procedure to handle the deluge of cases involving fines imposed by state agencies fit within the letter and spirit of the 2002 APK. She describes it as an uphill battle, but it was one that she was determined to win. As with the Sverdlovsk chairman, her motivation was entirely pragmatic. She could not see how she and her colleagues would ever be able to get through the

mountain of cases without resorting to this new procedural tool. The fact that the champion for *uproshchennoe proizvodstvo* emerged from the middle of the hierarchy in the Moscow court perhaps explains why its use has been so spotty.

In St. Petersburg and Saratov, the use of the accelerated procedure has been limited to a few judges. Both the number of such judges and the variation in attitudes among their colleagues toward their behavior helps explain the more general patterns. The Saratov judge stands alone and is widely criticized for using *uproshchennoe proizvodstvo*. The chairman of the court has taken a mostly hands-off approach. The leadership of the St. Petersburg court likewise has taken a rather agnostic position. The vice-chairman of the court was lukewarm towards using the accelerated procedure to handle administrative fines, but was vehemently opposed to its being used to handle inter-enterprise debt.<sup>15</sup> I was introduced to the several judges who used the mechanism aggressively to handle cases involving fines, but they presented themselves as being out of the mainstream. This makes the statistics contained in Table 5 difficult to explain. The official distaste for using the accelerated process in debt cases, it is unclear how a majority of cases decided using it during the first half of 2004 fit into that category. But this mystery will have to be solved another day.

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<sup>15</sup>When several cases in which the accelerated procedure had been used in debt cases were located in response to a request from me, this vice-chairman refused to allow me to read the case file. She told me that she was doing me a favor because the cases had been incorrectly decided.

## Conclusions

What does this investigation into the specifics of two key changes to the procedural code reveal about the viability of reform more generally? What does it reveal about the capacity of the *arbitrazh* courts to remake themselves? At least one inescapable conclusion is that the legislative reforms are out ahead of the curve. With regard to both preliminary hearings and the accelerated process, the statutory language is not reflective of actual practice. Whether this is desirable is debatable. Some argue that ambitious legislation can spur societal change, but this has rarely been the Russian experience. Rather, the typical Russian response to legislation that fails to fit societal reality is to ignore the legislation. Here the goal is not social engineering, but a change in how *arbitrazh* courts handle cases. Both reforms were arguably needed to remedy shortcomings under the preceding code. Yet neither is working as intended.

The introduction of preliminary hearings makes sense in complex cases. Judges in such cases were undoubtedly too rushed under the rigid two-month deadline of the 1995 APK. But the 2002 APK seems to have replaced one ill-fitting general rule with another. Now the rule is geared to suit complex cases and undermines the handling of simpler cases. Because trial judges have been given no discretion to determine when preliminary hearings are warranted, disputes between firms over unpaid debts, which used to be routinely handled in a single hearing, now require at least two hearings and often take twice as long. Surely that was not the reformers' intent. Yet this sort of incongruity is probably inevitable if legislators are determined to impose flat rules. By lengthening the time needed to resolve cases, the new rule arguably limits the efficiency of the system. Perhaps this is an improvement on the 1995 APK, whose rigid deadlines were viewed as potentially undermining the capacity of judges to reach just outcomes.

The unwillingness of parties to make active use of the preliminary hearings is frustrating for *arbitrazh* judges. They are left unsure of whether to follow the Soviet path and try to educate these litigants as to the potential usefulness of such hearings or to veer off in a more market-oriented direction by using the limited negative incentives (fines) available to them to stimulate participation.

Precisely why disputing parties resist the opportunity to present their arguments and evidence to one another is unclear. The argument that they prefer to wait and surprise the other side is not very convincing, given that typically the other side would be given time to organize their response. When the preliminary hearing system works as designed, both parties benefit. Because they know what sorts of arguments the other side will make, the hearing on the merits is able to proceed more quickly. In my field research in Moscow, I was able to get occasional glimpses of how a well-functioning system might operate. But elsewhere the preliminary hearings seemed mostly an annoyance to both judges and litigants.

The insertion of an accelerated procedure for undisputed cases seemed to be a long-overdue reform. Its failure to take off is due in part to the imprecision of the statutory language. Judges are unsure of how to interpret the need for consent and are puzzled as to when a case can be regarded as "undisputed" (*bessporno*). The inherently conservative nature of most *arbitrazh* judges has led them to err on the side of caution. In doing so, they are motivated by both efficiency and fairness concerns. They do not want to risk starting down the road of *uproshchennoe proizvodstvo* only to have to start over again when one of the parties objects. Likewise many are reluctant to deny litigants their day in court unless and until they have affirmatively consented to a summary process.

Once again, this reveals the conservative nature of these judges. The ability to move cases along more quickly would seem to provide a powerful incentive to use the new mechanism. But it has not served to change behavior. Complicating matters are trial judges' fears of being reversed on appeal for failing to hold a full-fledged hearing. Upon hearing of the problems in implementing *uproshchenoe proizvodstvo*, one of the drafters of the 2002 APK commented to me that trial judges need to exhibit more courage. She may be right, but courage is not a quality that is usually associated with *arbitrazh* judges. If it is now needed, then the selection criteria may need to be reconsidered.

This suggests a more profound dilemma, namely the persistence of a disconnect between what the elite within the *arbitrazh* system think is going on at the trial level and what is actually happening. This lack of knowledge was understandable during the Soviet period, but could be remedied in the present day. Those who are responsible for drafting the new procedural norms could be better informed about the constraints of trial court judges. Instead, most of their time goes to reviewing case decisions, which is certainly important, but cannot possibly provide a full view of the challenges faced at the trial level. This tendency to legislate in a vacuum is hardly unique to the *arbitrazh* courts or even to Russia. In fact, there may be less of a gap here than in many other areas of Russian law. But it is a continuing problem for post Soviet legal systems and one that tends to corrode whatever minimal respect for law may exist.

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**TABLE 1: BASIC INFORMATION ABOUT THE ARBITRAZH COURTS**

	Number of judges (2003)		Monthly per judge caseload (2003)	Cases decided on trial level (2003)	Change in docket: 2003 cases decided as % of 1994 cases	Success rates – % of cases in which plaintiff prevails			
	Budgeted	Actual				All cases	Inter-firm disputes	Tax – state is pl	Tax– firm is pl
<b>All Arbitrazh Courts</b>	2878	2499	44.5	869355	418	NA	NA	NA	NA
<b>Moscow City Court</b>	180	163	43.8	50668	291	64.7	71.9	72.4	87.3
<b>St. Petersburg &amp; Leningrad Oblast' Court</b>	120	93	55.4	41222	462	77	72.6	72.2	84.2
<b>Ekaterinburg Oblast' Court</b>	88	64	58.3	30442	387	76.8	65.7	74.7	72
<b>Saratov Oblast' Court</b>	50	37	45.9	13379	363	72.4	68.8	89.8	68.3

Source for number of judges and per judge caseload: “*Spravka o nagruzke po rassmotreniiu del i zaiavlenii arbitrazhnyimi sudami Rossiiskoi Federatsii v 2002-2003 gg.*”

Source other columns: for all *arbitrazh* courts: Sudebno-arbitrazhnaya statistika (2004 & 1995); and for the individual courts: the Annual Reports on Activities, submitted by *arbitrazh* courts to the Higher *Arbitrazh* Court for 2003 and for 1994.

**TABLE 2: USE OF THE ACCELERATED PROCEDURE (*UPROSHCHENNOE PROIZVODSTVO*) IN 2003:**

	<b>Number of times used during 2003</b>	<b>As % of total cases decided</b>
<b>Moscow City Court</b>	8266	16.3%
<b>St. Petersburg &amp; Leningrad Oblast' Court</b>	1969	4.8%
<b>Sverdlovsk Oblast' Court (Ekaterinburg)</b>	7366	24.2%
<b>Volgograd Oblast' Court</b>	579	2.6%
<b>Novosibirsk Oblast' Court</b>	1625	7.8%
<b>Moscow Oblast' Court</b>	1264	6.5%
<b>Samara Oblast' Court</b>	400	2.2%
<b>Primorskii Krai Court</b>	1013	6%
<b>Altai Krai Court</b>	375	2.4%
<b>Saratov Oblast' Court</b>	196	1.5%
<b>Voronezh Oblast' Court</b>	55	0.6%
<b>Yaroslavl Oblast' Court</b>	15	0.2%
<b>Omsk Oblast' Court</b>	1875	18%
<b>Novgorod Oblast' Court</b>	546	14.9%

Courts are listed in descending order of caseload, with the case that hears the most cases first.

**TABLE 3: BREAKDOWN IN HOW ACCELERATED PROCEDURE WAS USED DURING 2003:**

<b>Category of case:</b>	<b>No. of cases in which new process was used</b>	<b>Cases in each category as % of all cases using new process</b>	<b>New process as % of total cases</b>
<b>ECONOMIC DISPUTES (BETWEEN ENTERPRISES):</b>			
Moscow City Court	650	7.9%	2.3%
St. Petersburg & Leningrad Oblast' Court	733	37.2%	4.9%
Sverdlovsk Oblast' Court	3994	54.2%	28.0%
<b>ADMINISTRATIVE DISPUTES (THE STATE IS A PARTY):</b>			
Moscow City Court	7618	92.1%	35.5%
St. Petersburg & Leningrad Oblast' Court	1236	62.8%	4.9%
Sverdlovsk Oblast' Court	3372	45.8%	22.2%
<b>TOTALS:</b>			
Moscow City Court	8266	100%	16.6%
St. Petersburg & Leningrad Oblast' Court	1969	100%	4.8%
Sverdlovsk Oblast' Court	7366	100%	24.2%

**TABLE 4: BREAKDOWN IN HOW THE ACCELERATED PROCEDURE WAS USED IN THE MOSCOW CITY COURT DURING THE FIRST QUARTER OF 2004**

Category of case	No. of cases in which new process was used	Category in each category as % of all cases using new process	New process as % of total cases	Total cases resolved
Economic disputes (between enterprises)	407	17.9	5.2	7791
Administrative disputes (state is a party)	1872	82.1	35.9	5218
<b>TOTALS</b>	<b>2279</b>	<b>100.0</b>	<b>17.5</b>	<b>13009</b>

**TABLE 5: BREAKDOWN IN HOW THE ACCELERATED PROCEDURE WAS USED IN THE ST. PETERSBURG COURT DURING THE FIRST HALF OF 2004**

Category of case	No. of cases in which new process was used	Category in each category as % of all cases using new process	New process as % of total cases	Total cases resolved
Economic disputes (between enterprises)	675	54.6	8	8436
Administrative disputes (state is a party)	562	45.4	3	18236
<b>TOTALS</b>	<b>1237</b>	<b>100.0</b>	<b>4.6</b>	<b>26672</b>