

# **ASSESSING THE USE OF ACCELERATED PROCEDURE IN THE RUSSIAN ARBITRAZH COURTS**

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## **Executive Summary**

The paper explores how a critical reform to the procedural code governing the Russian *arbitrazh* (or economic) courts is 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)

## **Assessing the Use of Accelerated Procedure in the Russian Arbitrazh Courts**

The *arbitrazh* courts resolve economic disputes in post-Soviet Russia. These disputes 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.

The *arbitrazh* 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 one of these specific reforms, which was introduced as a solution to the nagging problem of 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 accelerated process, which turned out to be rather difficult 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 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.

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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 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).

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 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.

### **Accelerated Process**

The introduction of an accelerated procedure (*uproshchenoe proizvodstvo*) for handling simple debt cases was unquestionably 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>3</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>4</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

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<sup>3</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>4</sup>The prevailing legal and business culture in which not paying debts carried no shame also came into play

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>5</sup> It was the unusual case in which key additional facts were elicited.

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

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and helps explain why creditors resorted to the formal legal system.

<sup>5</sup>In my 2000 study of 100 non-payments cases, I found that a majority of defendants (55 percent) made absolutely 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

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 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>6</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 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

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<sup>6</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.

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 objection 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 *uproshchenoe 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 not 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 *uproshchenoe 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 *uproshchenoe 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>7</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.

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<sup>7</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.

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.

## **Conclusions**

What does this investigation into the specifics of a key change 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. 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. The reform was arguably needed to remedy shortcomings under the preceding code. Yet it is not working as intended.

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 *uproshchenoe proizvodstvo* only to have to start over again when one of the parties object.

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 *uproshchennoe 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 <i>Arbitrazh</i> 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 arbitrazhnymi 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%
<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</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</b>	<b>4.6</b>	<b>26672</b>