

The Supreme Commercial Court of the Russian Federation

Introduction

Justice is served in the Russian Federation by courts only. Judicial power is exercised through constitutional, civil, administrative and criminal legal procedure. The judicial system of the Russian Federation is established by the Constitution of the Russian Federation and by a federal constitutional law. The competence, the setting-up procedure and the activities of the Constitutional Court of the Russian Federation, of the Supreme Court of the Russian Federation, of the Supreme Commercial Court of the Russian Federation and of other federal courts are set forth in federal constitutional laws.

The Supreme Commercial Court of the Russian Federation (presiding over the commercial courts) and the Supreme Court of the Russian Federation (presiding over courts of general jurisdiction), along with the corresponding systems of courts are empowered to examine cases, concerning administrative relations.

Justice in the sphere of business and other economic activities is served in the Russian Federation by commercial courts through resolving economic disputes and examination of other cases in their competence. A party to administrative disputes, examined by commercial courts is usually an individual entrepreneur or a legal entity. Administrative cases, examined by commercial courts of the Russian Federation are mostly concerned with antitrust, customs and tax legislation.

Jurisdiction or competence

All legal and individual acts and decisions of every organ, all actions or failures to act of all organs and public officers, as well as decisions of different organs to impose administrative sanctions may be subject for review.

The commercial courts decide the above mentioned disputes (except for appeals against normative acts), when the applicant (the plaintiff) is an entrepreneur or a legal entity, whose interests were breached in the sphere of business or other economic activities. If the plaintiff is a natural person, whose rights and interests were breached in some other sphere, the case will be decided by a court of general jurisdiction. When there is an appeal against a legal norm, a commercial court will only handle it if it is explicitly empowered by law to do so. A court cannot deny someone the right to file a lawsuit.

Procedure

Procedural norms can be found in the Commercial (Arbitration) procedure Code of the Russian Federation and in the Code of administrative offences of the Russian Federation. The Constitution of the Russian Federation sets the main principles of the adversarial and equal nature of the parties to a dispute and of the publicity of inquiries.

Generally, the court controls all stages of the proceedings. In addition, some procedures and stages of proceedings depend on the parties' actions. For example, the court cannot go straight to judicial proceedings during preliminary proceedings without the parties' consent; the parties may settle for a peaceful agreement at every stage of the process (including the stage of execution of a judicial decision). The plaintiff may also abandon his/her case, which may end the proceedings without a decision of the court.

There is no prosecutor as such taking part in the proceedings, but his functions are partly carried out by the organ, whose decision is being disputed, since it has to prove the lawfulness of its decision and in some cases the guilt of the plaintiff.

Proceedings in commercial courts take part in written as well as in oral form (oral form, as well as court appearance, is optional for the parties, if the court doesn't consider the appearance of the parties for statement of clarifications a duty of the parties). The parties exchange documents before the court session and make oral statements during the session. After the evidence has been examined by the court, the parties exchange short statements. The court then states the hearing of a case to be over and recesses to make a decision.

All administrative cases are decided by a single judge in commercial courts of first instance except for appeals against normative acts. The Supreme Commercial Court of the Russian Federation handles the cases as a court of first instance collectively. In the courts of appellate, cassational and supervisory instances appeals against judicial decisions are handled by a panel of judges. The collective organ of the Supreme Commercial Court of the Russian Federation is called the Presidium.

A court reviews an "administrative decision" if the rights and legitimate interests of the plaintiff have been breached, and law norms and other normative acts have not been observed (this includes cases, when the procedure of imposition of administrative sanctions has been carried out improperly). The plaintiff must show that his rights and legitimate interests have been breached. The plaintiff may claim that his "constitutional rights" (i.e. in a broad manner) or his rights, provided by particular laws or normative acts (i.e. in a narrow manner) have been breached.

The applicant (the plaintiff) has a direct access to the court; there is no obligation to file a lawsuit with the help of a counsel or an attorney.

At the moment there is a draft law to reform the system of commercial judicial proceedings, foreseeing the right to file a suit via the Internet.

As for judicial assistance, there are some public groups (often organized by law students) which render legal help free of charge.

The plaintiff has a right to ask the court to introduce different measures (including preliminary ones) that will secure his legitimate interests (e.g. to halt the execution of a disputed decision).

As a general rule, the court may order the public authority to deliver a document, requested by the plaintiff, if the document is related to the case.

There is a simplified procedure of deciding different categories of cases, as well as a procedural institute of security measures, for example in the form of a stay of execution of a decision or a prohibition to undertake certain actions. Such measures, when implemented, do not answer any fundamental questions, but are

simply temporary and/or emergency measures, which secure the legitimate interests of the parties.

The powers of the administrative judge

Commercial courts handle the cases on the grounds of the Constitution of the Russian Federation, international treaties of the Russian Federation, federal and constitutional laws, normative acts of the President, the Government and of federal organs of the Executive, of the constitutions, laws and normative acts of the subjects of the Russian Federation, acts of bodies of local self-government. Judicial precedents of the Supreme courts are by law not recognized as law norms, but the interpretation of law norms which is given in such judicial acts is binding for courts in the process of deciding similar disputes.

The lawfulness of an interpretation, given by the Executive, can be challenged in court. When handling the appeal, the court will check the competence of the public body to give such interpretations and the compliance of the interpretation with the law (whether a broad interpretation took place or not). The court is not bound to follow such interpretations or decisions if they do not comply with the law.

Courts are not bound to follow the interpretations of civil law norms, given by the Executive, if such interpretations (clarifications) are not given based on, in compliance with, and in pursuance of the Civil code of the Russian Federation and of other laws, adopted in compliance with it.

When normative acts or decisions to impose administrative sanctions are disputed, commercial courts check their lawfulness in full scale; other decisions of administrative bodies are only checked according to the applicant's statement. When a commercial court is called upon to review a judicial decision as a supervisory instance, it decides whether or not to review the case, based on the grounds in the application as well as based on the substance of the disputed decision.

The court can find a decision to be unlawful fully or partially. When imposition of administrative sanctions is disputed, the court can change the sanction. It can also find the applicant not guilty (therefore making a completely new decision). The court can review the merits of the decision if it finds that the rights and legitimate interests have not been observed or have been breached.

When a court finds a decision of an administrative body unlawful, the decision is considered to be null from the moment of its adoption (i.e. retrospectively). Moreover, the decisions which proclaim non-normative acts (individual decisions) to be unlawful, are subject to immediate execution, if the court doesn't set another period of time, or such a period is not defined by law. When a court finds a normative act to be void, the act stops its operation when the judicial decision comes into effect.

Judicial decisions which come into effect are binding for all state organs, local bodies of self-government, public officers, public associations, other natural and juridical persons without exception and subject for rigorous adherence on all the territory of the Russian Federation. Criminal, administrative and other types of

liability are foreseen for the non-execution of judicial decisions. The imposition of those sanctions will not prevent the court from issuing an enforcement order to enforce the execution of the judicial decision.

Case # 9507/09, decided by the Supreme Commercial Court of the Russian Federation on March 19th, 2010, can serve as a good example of the powers of the court.

A businessman has filed an application to a tax organ to get a refund (offset) of insurance taxes that were paid excessively. The organ has refused to pay him back, referring to a letter of the Federal Tax Service “On the mechanism of offsets (refunds) of excessively paid insurance fees for the compulsory pension insurance”, since the application was not made in coordination with an organ of the Pension Fund of the Russian Federation.

According to the mentioned letter, a refund or an offset of excessively paid insurance fees is made by the tax organ after an application of the assured is filed, made in coordination with an organ of the Pension Fund.

The businessman’s position was that there was no norm in the Russian legislation which could bind the payers of insurance fees to coordinate their applications with the organs of the Pension Fund. The Tax Code of the Russian Federation does not set forth such a condition for a tax refund.

Moreover, the businessman thought that the letter, being of normative character, was due to be published and registered. He also pointed out that the Federal Tax Service did not have the authority to issue normative acts.

After examining the appeal of the plaintiff against a normative act of a federal organ of executive power as a court of first instance, the Supreme Commercial Court of the Russian Federation has found the contested norm to be void.

The following facts were taken into consideration during the decision-making process.

The Tax Code of the Russian Federation sets forth, that the following organs (within the scope of their competence) can issue normative acts, considering taxation: the Government of the Russian Federation, federal organs of executive power, empowered to draw up state policy and legislation considering taxation and customs, organs of executive power of the subjects of the Russian Federation and executive organs of local self-government in specified cases.

According to the Tax Code, a federal organ of the executive, empowered to control and review the activities in the sphere of taxation, and its territorial organs do not have the power to issue normative acts considering taxation.

The Federal Tax Service Act sets forth, that the Federal Tax Service is a federal organ of the executive, controlling and reviewing the compliance with tax law, the correctness of calculation, the fullness and timeliness of tax payments to the corresponding budget.

Therefore, the Federal Tax Service, as an organ, carrying out control and review, according to the directions of the Tax Code, does not have the authority to issue normative acts.