Strasbourg, 12 April 2005

CONF/JUGES (2005) Russian Federation

2nd EUROPEAN CONFERENCE OF JUDGES

"JUSTICE AND THE MEDIA"

National report

Prepared by
the delegation of the Russian Federation

Publicity of Arbitration Court Proceedings in Russia

1. The mass media assists the judiciary in attaining one of its main objectives – the administration of justice shall be open to public scrutiny.
The Arbitration Procedure Code of the Russian Federation (hereinafter the "Code") uses the term 'publicity' in many instances and quite amply.

One may define 'publicity' as openness and access to justice from the point of view of ensuring the right of judicial recourse to any person, in other words, the 'access' should be interpreted as the right for judicial defence, the right for justice in its broad interpretation.

The term 'publicity' is used in Article 2 of the Code, **Tasks of Arbitration Court Proceedings,** which include in particular the task of ensuring the accessibility of justice and the right of every person for a fair public hearing by an independent and impartial court within a time period established by law.

Publicity in the meaning 'openness for public' of court proceedings is interpreted in Article 11 of the Code, **Publicity of Court Proceedings**, which applies the constitutional standard of trying cases in arbitration courts in full session (p. 1), provides for the right of persons participating in the full session to hear and record information in the course of the session (p. 7) and lays down such an important element of open proceedings which is the provision that "judicial acts shall be pronounced publicly by an arbitration court" (p. 8).

Article 154 of the Code provides for the right and the terms for the presence in the court session of other participants in the arbitration procedure, other than the persons taking part in the case, and the general public, i.e. citizens who wish to be present at the court session.

The court sessions are open to a wide range of persons, first of all journalists and other persons who shape the public opinion. The judges alone cannot deal with the task of making the courts enjoy public confidence, renown and prestige, and making people willing to use recourse to justice. It is very important that every determination or finding or award of a court becomes part of the public domain, if only within the limits of the law, in particular the Code.

Article 11 of the Code establishes the limits for publicity of a court procedure: a court session that tries the case on the merits in any judicial instance – a court of original jurisdiction, an appeals instance, a cassational instance and a supervisory review of judicial acts, as well as public disclosure of judicial acts and their publication. Openness of court proceedings for the press does not apply to the stage of preparation and the pre-award court session despite the fact that issues of interest to the general public are examined. This is the stage where the organisational issues are addressed.

In addition, one of the ideas that runs through the entire Code is that the court must seek conciliation of parties. In the performance of this function the court may, at the preparatory stage, learn from the parties some information that is not subject to disclosure because the court may fail to reach the conciliation of parties, in which case whatever the parties discussed when trying to reach a compromise should remain confidential. This is one of the tenets of pre-trial and extra-judicial dispute settlement in any country that uses a mediatory procedure, involving a non-

interested party or a judge as a mediator.

So, everything that concerns the pre-trial settlement efforts should be confidential. This stage is not for the public because disclosure may violate certain rights that will be difficult to provide judicial protection for.

2. Public access to court hearings is guaranteed by the laws of the Russian Federation concerning the publicity of judicial examination. Anyone present at a court session enjoys the right to make notes and to record everything that takes place in the courtroom. Documents of the case in court (the case files), however, may be inspected by the parties to the case (their attorneys) only.
Virtually all arbitration courts in Russia employ public relations (PR) specialists who deal with the mass media. Statutes have not regulated who exactly should perform PR functions – both judges and other court officials may perform such functions. Judges, however, may not make disclosures to the press concerning the cases that are still being tried, before an award has been rendered.

3. In the Russian Federation legal judgments are of great importance, including educational importance. First, the official publication of judicial awards on the court's Websites, via specialized legal electronic systems and in specialized periodicals raises the awareness of the legal community and the entrepreneurs about the practice of settling commercial disputes in courts. Second, the mass media coverage of judicial awards raises awareness of the general public in legal matters.

4. Russia's judiciary is aware of the insufficiency of direct presence of the public in courtrooms as a means of public relations. This passive PR role of the courts combined with the traditional principle of impartiality that used to make the mass media representatives the only courts' 'interlocutors' is being changed by development of direct PR work, without the journalists' mediation, through the creation of press services, dissemination of printed matter concerning the courts' activities at the courts' own initiative, construction of courts' Websites, as well as other, special forms of PR like "open days", direct telephones of courts' officials, etc.

5. The Supreme Arbitration Court of the Russian Federation has set up a forum on its Website with a view to providing a vehicle for discussion of problems of application of the current legislation by courts. The forum is meant for comprehensive discussion of the developing judicial practice by interested persons like scholars, law enforcement officers, officials and officers of ministries and departments, et. al.