Electronic Justice in Gazprom Arbitration Court

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Abstract: This article describes the development and practice of the Gazprom Arbitration Court. It tells an extraordinary story of how a large energy company developed an arbitration court that has come to be trusted by many third parties to resolve their energy law disputes. Included in the story is a discussion of electronic justice, including its advantages, its challenges and how it has been implemented by the Gazprom Arbitration Court.

Key words: alternative dispute resolution, arbitration, arbitrators, certification authority, confidentiality, digital signatures (DS), document exchange, DS application, DS verification key, electronic arbitration, electronic archive, electronic filing, electronic justice, electronic paperwork exchange systems, Gazprom Arbitration Court, independent arbitrators, network of certification authorities, technical failures, trade secret, videoconference

Taking into account rapid economic development in Russia today and considering the continuous growth of commercial contracting, all sorts of disputes, conflicts and escalation of competition are inevitable. In this regard resolving conflicts between the players in the market in a civilized, legal way becomes one of the most important priorities. Nowadays the popularity of the alternative forms of dispute resolution, including arbitration, constantly increases. It is evidenced by the number of disputes resolved by arbitration courts which is growing every year, and which confirms that our view is shared by other participants of business relationships.

In our opinion the trend was caused by the following undeniable advantages, provided by the arbitration:

- An opportunity to choose arbitrators;
- Keeping trade secret, as the court procedure is closed;
- Quick dispute resolution due to one-level procedure, instead of four-level procedure in the state arbitration court.

State judges, in most cases resolving disputes solely and under the time pressure, often cannot allow themselves to examine all the nuances of the dispute, to hear out the representatives of the parties carefully, to adopt a fair decision, reasoning it fully and in
detail. Their decisions may often be revoked or changed, so that the consideration of some disputes takes years.

In this respect the finality of decisions, adopted by the competent, impartial arbitration court is a positive factor, facilitating successful and sustainable development of business, settlement of conflicts and building of partnerships.

Initially, only Gazprom subsidiaries referred their disputes to the Gazprom Arbitration Court. But currently more than a half of all cases are disputes involving third parties not related to the Gazprom Group.

The growth of the Gazprom Arbitration Court popularity is due in no small part to its focus on the reconciliation of the parties and preservation of their normal partnership relationships. As a result, annually more than 25% of cases end with the amicable settlement – either by full repayment of the debt at the stage of the arbitration examination, or by conclusion of settlement agreements, confirmed by the court.

The quality of the adopted awards is first of all determined by the highest level of proficiency of the judges of our Arbitration Court. There are well-known highly qualified Russian legal scholars and practicing lawyers in the list of the arbitrators. It is almost impossible for them to adopt unfair awards, as it would immediately influence their professional reputation.

Considering that the Court was established by the large corporation, during the development of the Court Rules and Regulations, and approval of the List of the Arbitrators, special attention was paid to procuring the impartiality of the judges and procedural equality of the parties. Gazprom Arbitration Court Regulations define requirements to an arbitrator, as well as require not less than half of the arbitrators, included into the List of Arbitrators, to be independent of OAO Gazprom. Independent arbitrators are people who are not members of the managing bodies of OAO Gazprom, not employed by this company or its subsidiaries, not
shareholders of the company or its subsidiaries, not representatives of such shareholders, as well as who do not have strong business or financial relationships with any of the above mentioned people or management bodies.

The work on implementation of the electronic arbitration systems into the Gazprom Arbitration Court procedures was focused on the following areas:
- to provide dispute resolution by means of videoconference;
- to enable document exchange related to the dispute between the Arbitration Court and the disputing parties in the electronic format;
- to implement electronic paperwork exchange systems, including electronic filing.

The main difficulty that was faced during development of the electronic arbitration system was the complete non-existence of the legislative regulations for the use of information and telecommunication technologies in arbitration procedures. At that time there were no regulatory acts, providing full regulations to the use of such systems in public arbitration courts and courts of general jurisdiction. At the same time the Supreme Arbitration Court of the Russian Federation and public arbitration courts of different levels, as well as the Supreme Court of the Russian Federation gained some user experience in certain telecommunication and information systems, that was surveyed and to some extent used by the Gazprom Arbitration Court.

Unlike the state courts, where there is a strictly regulated procedure for consideration of disputes, arbitration courts give the disputing parties an opportunity to determine some of the procedural rules for the dispute. This possibility is provided by Art. 19 of the Federal Law dated July 24, 2002 No. 102-FZ "On Arbitration Courts in the Russian Federation", stipulating that the permanently operating arbitration court shall consider the case in accordance with the rules of the permanent arbitration court, unless the disputing parties agree to apply other arbitration rules.
Thus, there are two options to resolve the issue with the possibility to use the electronic arbitration: by inclusion of respective provisions into the rules of a permanent arbitration court; or by entering into a separate agreement by the disputing parties, which would determine the rules of arbitration.

A combination of both options was applied in the Gazprom Arbitration Court: additional changes were included into the Rules of the Court, providing a possibility to use videoconference and protected electronic document exchange systems; and the detailed regulation of the arbitration proceedings using the indicated systems was included into the agreements, concluded by the disputing parties.

**Videoconference Systems**

*Major Problems*

The first question that arose in the course of preparation for the use of videoconference system in arbitration was that the videoconference should be convenient, reliable and confidential.

The Gazprom Arbitration Court uses the videoconference system of OAO Gazprom, which brings together approximately 40 companies of the Gazprom Group and is in the process of further expansion.

Previously, the system was generally used only to make conference calls. However, initially, it was clear that the range of applicants referring their disputes to the Arbitration Court cannot be constrained, *inter alia* due to technical reasons. Of course the connection of the new organization to the videoconference system of OAO Gazprom in order to consider only one dispute would not be technically and financially justified (especially for the organization itself).

In this regard, it was decided to provide the companies that are not connected to the Gazprom videoconference network with an opportunity to participate in the arbitration
disputes from the videoconference studios that already exist. A disputing party that has no
studio of its own, can participate in the proceedings from the videoconference studio of the
Arbitration Court or from videoconference studio of the other party or another company,
connected to the Gazprom videoconference network (upon preliminary consent for such an
option).

The format has repeatedly been used successfully in resolving specific disputes, when
the first of the disputing parties was in the studio of the Gazprom Arbitration Court in
Moscow (along with the arbitral tribunal), and the second one was in its own studio located in
another city. And in one of the cases, one party as it was agreed, used a videoconference
studio of a company in the same city, which was not involved in the dispute.

The greatest difficulty in the development of procedural rules in the Arbitration Court
for the use of videoconference systems was caused *inter alia* by the following procedural
aspects that do not usually cause any difficulties in the normal course of proceedings:

– Identification of representatives of the disputing parties and verification of their powers;
– Submission by the parties of the additional pieces of evidence during the court hearing;
– Guarantee of confidentiality of the arbitration proceedings;
– Resolving technical issues (communication disturbances or interruptions), which may
  arise during the meeting.

*Presentation of Evidence, Identity and Authorization Documents*

The issues may be resolved by provision of the Law on Arbitration Courts and the
Rules of the Gazprom Arbitration Court.

In accordance with provisions of Art. 23 of the Law on Arbitration Courts, submission
by the parties of pieces of evidence, supporting their arguments and objections to the claim,
should be done in advance, so that the other party and the arbitration tribunal could
familiarize themselves with it before the hearing. The Rules of the Gazprom Arbitration
Court determine that the transmission of all documents and other materials related to the case,
provided by the parties in each particular case, shall be carried out by the Arbitration Court.
The Arbitration Court organizes preparation for the dispute consideration in such a way, that by the time the hearing begins, the disputing parties and the tribunal have all the materials and pieces of evidence related to the case.

The issue with the transfer of identity documents and authorization documents of the representatives of the parties to Arbitration Court is resolved in the same way.

When referring to Gazprom Arbitration Court with an intention to use videoconference systems, the plaintiff determines who would represent him, and sends an original power of attorney and a certified copy of the identity document to the Arbitration Court. Subsequently, the defendant will send to the Arbitration Court the same documents together with its objections.

Accordingly, by the date of the hearing all participants of the arbitration (the parties and the Arbitration Court) have a complete set of documents of the case (pieces of evidence, procedural documents, etc.), which allows to consider the dispute in full. The agreement on the use of videoconference system specifies obligations of the parties to submit all the necessary documents for the dispute to each other and to the tribunal. It is important to mention that this procedure is not a special feature of dispute resolution with the use of videoconference systems, but it should be observed in any dispute, basing on the mutual respect of the disputing parties to each other and to the arbitration court.

However, it is not always possible to predict the course of the arbitration proceedings and indicate the amount of documents that may be considered necessary to be provided for review of the Arbitration Court. The same problems arises with submission of the all sorts of arguments, motions, etc., which might need to be directly provided during the hearing. We should also keep in mind that according to Cl. 5, Art. 23 of the Law on Arbitration Courts, in the course of arbitration a party is entitled to change or supplement its claim or its defense against the claim.
All of the above mentioned cases made it necessary to provide the parties with an opportunity to submit additional documents immediately during the hearing of the Arbitration Court by means of videoconference.

In order to achieve the goal, certain provisions were included into the agreement on the use of the videoconference systems, providing that documents and other materials, relating to the case, may be transferred by the parties and the Arbitration Court by different means of communication, in particular, by e-mail or fax, mandatory transferring the same documents to the other party. During the videoconference parties may also use a document-camera, which allows you to display a document on the screen of a monitor, without interruption of the communication session. At the same time, representatives of both parties and the arbitration tribunal are able to simultaneously see the demonstrated documents on the screens of their monitors, set up in regional videoconference studios in different cities, as well as in the Central Studio of the Arbitration Court.

Confidentiality of Arbitration Proceedings

Confidentiality of the proceedings is one of the main reasons why disputing parties refer their disputes to arbitration court, rather than state court.

In the normal course of arbitration proceedings of the Arbitration Court it is not difficult to maintain confidentiality. Only the disputing parties, arbitration tribunal and people, supporting operation of the Arbitration Court, (e.g. court registry) have access to the file of the case. At the same time the third parties, who are not parties to the arbitration proceedings, may attend the arbitration hearing only upon the consent of the parties.

However, technical features of the arbitration proceedings with videoconference systems require a constant physical presence of technical specialists in the Arbitration Court hearing, in order to ensure the normal course of videoconference. The solution to this problem is to obtain consent of the disputing parties for the physical presence of technicians
during the Arbitration Court hearing with the inclusion of the relevant provisions into the agreement on the use of videoconference systems during consideration of a dispute in the Gazprom Arbitration Court.

**Resolving Issues Related to Technical Failures**

A separate article of the Agreement on the use of videoconference systems is devoted to the procedures carried out in case of technical failures.

The provisions of the Agreement are purposed to prevent situations where due to a technical failure a party of the dispute was deprived of an opportunity to fully disclose their position and to provide the supporting evidence or to listen to the arguments of the other party. In order to avoid such situations, the Agreement stipulates to record such technical failures in a special register. It also describes the measures the arbitration tribunal should take, if is it necessary to announce adjournment of the arbitration hearing for the period of rectification of the failure, as well as to notify the parties of the resumption of hearing.

It is easy to understand, that the purpose of implementation of the videoconference systems by the Gazprom Arbitration Court is to create conditions for disputing parties, which are often located at a significant distance from each other and from the Arbitration Court, to participate a dispute with the lowest time consumption and minimum financial costs. The convenience of the videoconference format is proved by the fact, that since December 2010 the Arbitration Court has been considering several videoconference disputes every month. At the same time, both the parties and the arbitrators, involved in dispute resolution, note that the contemporary level of telecommunication systems provides an effect of presence of all the arbitration participants in the courtroom.

However, sometimes in the course of the arbitration proceedings the use of videoconference systems becomes unreasonable (for instance, if the parties provide a significant number of additional documents that needs to be examined in the original form).
In such a case there is always an opportunity at any time to shift from a videoconference proceedings to the regular proceedings, providing the attendance of the parties representatives in the arbitration courtroom. And vice versa, after examination of all pieces of evidence relating to the case, the closure of the dispute and announcement of the adopted decision may be made in a videoconference format.

**The Use of Secure Electronic Document Exchange System**

**Legislative and Internal Regulation of Electronic Document Exchange**

Implementation of the secure electronic document exchange system in the settlement of disputes by the Gazprom Arbitration Court is an important part of electronic arbitration. Secure electronic document exchange is carried out between parties of the arbitration proceedings with the confirmation of authorship, integrity and preservation of information confidentiality.

Relationships of the parties of the dispute and arbitrators of the Gazprom Arbitration Court are built on the basis of implementation of digital signatures (the “DS”).

The legal status of the DS is determined by:

- Cl. 2 of Art. 160 of the Civil Code of Russia, allowing the possibility to apply digital signature in transactions;
- Federal Law dated April 06, 2011 No. 63-FZ "On Digital Signature", defining terms and conditions of application of a digital signature, as well as terms and conditions for recognition of electronic documents signed with a digital signature, as a document equivalent to the hard copy, signed with a handwritten signature.

A DS application in the Arbitration Court secure electronic document exchange system is based on the following internal rules: special Regulations on Secure Electronic Document Exchange System of the Gazprom Arbitration Court were approved by the order of OAO Gazprom.

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1 From the technical point of view a DS is a small database, transferred together with a document, signed with it. The application of DS mechanism consists of two procedures: creation of a signature by the key of the DS of the author of the document and its verification by the DS verification key. The recipient of the message generated by means of DS can verify, that the author of the message is the owner of the signature (to authenticate the source of information), that the integrity of the received information was not infringed.
Moreover, potential participants of the secure electronic document exchange sign a separate agreement stipulating the implementation procedure for the secure electronic document exchange system, obligations of the parties related thereto, as well as the procedure for settlement of conflicts, which may arise in connection with the transmission of information in the electronic form.

**Settlement of Conflicts**

Conflicts arising from the transfer of documents and materials via the secure electronic document exchange system may be associated with either challenging of the DS authenticity, or with challenging of the fact of receipt (transfer) of the electronic message.

In any event, the Agreement on the use of secure electronic document exchange system for disputes resolution by the Gazprom Arbitration Court stipulates creation of a special commission to resolve conflicts. The commission should include representatives of the Certification Authority who issued the certificate for the verification key of the DS in question, employees of the department who install and maintain the DS software, as well as employees, supporting operations of the Arbitration Court. The Agreement determines the terms and conditions to submit an application for settlement of a conflict, as well as rules of the commission procedure to settle the conflict.

If the settlement of conflicts related to challenging of the fact of receipt (transfer) of the electronic message is carried out mainly by examination of protocols of e-mail programs, a settlement of a conflict related to application of secure electronic document exchange systems and associated with challenging of the authenticity of the DS is achieved by checking of the DS verification key.

The DS verification procedure provides control over the integrity and authenticity of the documents sent via electronic document exchange system.
Within the Gazprom Arbitration Court secure electronic document exchange system a document certified by the DS should include some additional information, as follows: the date and time of signing, expiration date of the author’s DS key, first, middle and last name of the signatory, their title, name of the organization, that they represent, the DS key identifier enabling the recipient to choose the right CGS verification key.

This information is of legal significance, as it confirms the observance of procedural terms, as well as legal facts of notification of the parties of the arbitration proceedings.

**The System of Responsible Persons**

Proper notification of the parties of the arbitration is provided within the framework of secure electronic document exchange in the Arbitration Court by creating a system of responsible persons. In accordance with the Regulations on Secure Electronic Document Exchange System of the Gazprom Arbitration Court some persons from the staff, performing keeping of records in the Arbitration Court, are appointed to be the persons responsible for the operation of the secure electronic document exchange. They interact with the parties of the arbitration and the arbitrators. Similar appointments are also made in the companies that are potential participants in the arbitration proceedings.

For the operation of the secure electronic document exchange system, special software, required for generation of DS and data encryption, is installed on workstations of the responsible persons. The same software and other means of DS are provided to arbitrators of the Gazprom Arbitration Court.

The uniform procedures for generation and transfer of files containing documents and materials provided by the responsible persons within the secure electronic document exchange system is regulated in addition to Regulations on Secure Electronic Document Exchange System of the Gazprom Arbitration Court, by the specifically developed Directives on the Procedure for Secure Document Exchange among Participants of the Gazprom
Arbitration Court Proceedings. The Directives provide step by step description of processes of transformation of the original documents into the electronic form, creation of DS, file encryption for further transmission, receipt of files and processing thereof, DS decryption and verification, processing of the results of the performed actions.

DS key generation and certification of the verification key to the responsible person and arbitrators is conducted by Certification Authorities, registered in the network of certification centers of OAO Gazprom. It ensures confidentiality of the secure electronic document exchange between participants of arbitration.

In this case, the range of people who can obtain a DS verification key is not restricted to affiliated companies of OAO Gazprom. Any company has the possibility to obtain a DS certificate referring to the Arbitration Court and wishing to participate in dispute resolution using the secure electronic document exchange system.

The fundamental point is that it is almost impossible to forge the DS, if you do not know the key of the author of document, generated by the Certification Authority. Therefore, the operation of any system using CGS is based on trust in the Certification Authority, generating DS keys.

**Network Certification Authorities**

In accordance with the order "On Creation of a Network of Certification Authorities of OAO Gazprom" a chain of Certification Authorities was created and now operates in the Company, which includes:

- A corporate Certification Authority, acting as the Head Authority of the vertically integrated network of certification authorities of the company;
- Certification Authority of OAO Gazprom Administration, organizing and supporting the work with means of CGS and CGS verification key certificates in the information systems of the company’s administration;
- Certification Authorities of subsidiaries and third-party organizations included into the Network of Certification Authorities of OAO Gazprom.

Network of Certification Authorities is based on a hierarchical model of trust: the
certificates of the Certification Authorities of the lower level are certified by the DS of the Certification Authorities of the upper level.

The described technological and regulatory solutions on the internal level, developed to use secure electronic document exchange system in the Arbitration Court, are far ahead of the legislative regulations for relationships associated with electronic documents.

In order to expand the use of electronic documents in business relationships and develop electronic justice, it is necessary to develop a detailed concept of an "electronic document" on the legislative level, regulations on electronic document exchange system, that is, to establish efficient mechanisms of legitimate use of the contemporary information technologies in the relationships of legal nature.

Currently, following the Assignment of President of the Russian Federation made on December 19, 2010 the Supreme Arbitration Court of the Russian Federation is now working on implementation of electronic justice in the state courts of arbitration. An interim procedure for submitting documents to the state arbitration courts of the Russian Federation in electronic form was established by the Order of the Supreme Arbitration Court of the Russian Federation No. 1, dated January 12, 2011.

**Further Perspectives of Electronic Arbitration in the Gazprom Arbitration Court**

We hope that the development of the Russian civil law and procedural law will allow the Gazprom Arbitration Court to continue developing the existing system of electronic arbitration and using it effectively in dispute resolution in the majority of cases.

Currently, the Arbitration Court is actively using telecommunication and information technologies in dispute resolution. Approximately 60% of cases are handled using elements of electronic arbitration.

The electronic exchange of documents in dispute resolution has been practically implemented as well: in March 2011 the first hearings of the Arbitration Court were held in a
videoconference format, where the cases were considered with all documents received electronically. The convenience of application of electronic document exchange system and creation of the file of the case was demonstrated. For example, the necessary electronic documents in the course of the hearing were found by the tribunal and the representatives of the parties much faster in comparison to the documents in a paper format.

Further development of electronic arbitration in the Gazprom Arbitration Court involves improvement of an existing document exchange system. It allows working with documents coming from the parties of the arbitration in the electronic form, providing quick access to them. In the future, there is a plan to create a portal system, which would allow the parties and the arbitration tribunal to familiarize and work with all incoming documents in the remote mode, *i.e.* creation of an electronic arbitration file of the case. Such a system will not only be practically convenient, but also will greatly expedite dispute resolution by the Arbitration Court.

In addition, we plan to create an electronic archive of cases with the possibility to use it for a variety of analytical reports. Electronic archive can be used in preparation of reviews of the cases and dispute resolution practice of the Arbitration Court, as well as for publication of arbitration decisions on the most important cases, subject to observance of the confidentiality principle of arbitration (the consent of both parties to publish or process the text of the decision, implying the exclusion of any information about the parties of the arbitration proceedings).