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The Guide to Advocacy

General Editors
Stephen Jagusch QC and Philippe Pinsolle

Associate Editor
Alexander G Leventhal

Fourth Edition

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Cultural Considerations in Advocacy: Russia and Eastern Europe

Anna Grishchenkova[1]

If I were asked to select three top tips for advocacy in Russia and eastern Europe, I would choose the following:

- using storytelling;
- considering the influence of the first impression; and
- remembering the 'IKEA' effect.

In short, these can be used – albeit with some modifications – in arbitration in any jurisdiction. I begin by commenting on each of these tips in more detail and then touch on some specifics for arbitration in Russia and eastern Europe.[2]

Use storytelling

In my view, storytelling is one of the most underestimated tools of advocacy, which, if used correctly, can help you gain a competitive advantage over your adversaries.

By storytelling I mean the skill of adequately preparing and then getting across to your audience the case theory supported by relevant documents.

Numerous researches confirm the benefits of storytelling:

- A well-told story results in both the listener's and the speaker's brain being activated in the same spheres – in other words, the brains of the listener and the speaker work in the same manner – and this is exactly how a shared narrative is born.
- Stories facilitate a better understanding and make it easier to memorise large quantities of information.

1 Anna Grishchenkova is a partner at KIAP attorneys at law.

2 This chapter describes the specifics of arbitration in Russia, Ukraine and Belarus; some of the features described may also be present in arbitration in other eastern European countries.

Usually words (legal concepts in particular) are perceived by the left hemisphere of the listener's brain and are analysed logically. Moreover, in general, people can perceive and remember no more than between five and seven pieces of new information.

Conversely, stories that create pictures in the listener's mind activate the right hemisphere of the brain, which in general is in charge of creativity and the emotional perception of events. As a result, a 'virtual' picture of events is created and fixed in the listener's mind. Different pieces of information united by one story can be seen as a single piece of information and, therefore, can be more easily remembered.

Further information is also perceived more easily and inserted as an additional piece in the existing picture.

The effect of confirmation bias[3] leads to information that fits into the story being accepted and information that does not fit being rejected and ignored.

Experienced lawyers recommend verifying a story or a case theory using 'head, heart and gut'[4] and I fully agree with this advice.

Verifying using the head

Normally, lawyers do not experience any problems in this regard. After they have been instructed in a case, they start by analysing relevant laws, court practice, legal doctrine and then construct their legal theory for the case.

However, in my experience, dispute resolution lawyers' desire to win is often so strong and prevailing that after they make a determination as to the legal theory in the case, they tend to be susceptible to a certain level of self-deception, which can lead to a belief that any existing weak points are not weak points at all, and that strong arguments are much stronger than they actually are.

For self-verification, I always recommend making notes of the first impressions formed after examination of the files so as not to lose sight of an 'objective' reality in the future. It may also be useful to draw up a decision tree during the initial stage so that you are able to understand easily which elements of your legal theory are supported by evidence and which are not, and this will allow you to make a realistic assessment of the situation.

Verifying using the heart

We are all human beings and, of course, arbitrators are no exception. Consequently we seek to make fair judgements, or at least we wish to believe that the judgements we make are fair.

Many arbitrators (particularly those in civil law jurisdictions where more weight is given to enacted laws rather than evaluating a person's conduct in terms of good faith or bad faith) would never openly admit that they look at not only laws and legal propositions, but also at who is right and who is wrong in a given case, who the 'good guy' is and who the 'bad guy' is. However, as my practical experience has shown, our subconscious mind will make an evaluation of the parties and their respective conduct in this way, almost automatically, and this can affect whether we find in favour of one party or another.

3 A tendency to search for or interpret information in a way that confirms one's preconceptions.

4 See, e.g., Doak Bishop and Edward G Kehoe (eds.), *The Art of Advocacy in International Arbitration* (Juris, 2010).

Hence, it is essential that your case theory clearly demonstrates why it is your client who is right and why justice and fairness must eventually be on his or her side.

Verifying using the gut

As one of my partners would say, this type of verification is done by answering the question: 'Do I believe in this story or do I not?'

In fact, we may justify our position from a legal standpoint, and verify it from the point of view of fairness, but arbitrators may not believe it anyway and may think that in reality everything happened in a different way.

My top tip when verifying a case theory using your gut is to read it to somebody and then listen (as patiently as you can) to that person's feedback and, potentially, their criticism. If the person finds the case theory is not realistic in terms of common sense or from a business point of view, then you will need to work on the case theory again.

It is also paramount, starting from day one of working on a case, to draw up a timeline.

This advice may appear basic and obvious. However, it is often the case that lawyers do not start to prepare a timeline until midway through arbitral proceedings or even close to the end of the proceedings, and only if requested by arbitrators. That will be the time they find out that the theory that has become a fundamental part of the case does not correspond to the actual facts, as events have developed a little differently (or probably completely differently) from what the client has told them. A regular revision of the timeline helps to prevent such situations from arising.

After your story has been verified using the head, heart and gut, it must be then be coherently reflected in all the documents and oral statements, and in your conduct, throughout the case.

First impressions matter

The power of the first impression has been widely discussed in publications covering psychology in arbitration.[5]

The gist of it is that the first impression functions as a filtering device through which a person processes further information. Research confirms that after a person arrives at a certain conclusion, he or she tends to disregard any information that contradicts the conclusion made. And, more importantly, this disregarding of information occurs subconsciously.

Thus, in a recent study, English doctors were given carefully measured doses of information relating to the state of patients' health. The doctors arrived fairly quickly at a diagnosis based on this partial information. Further information that was meant to change the diagnosis was ignored by the doctors, and they relied only on the data confirming the opinion they had formed initially.[6] The research showed that decision-making through the rejection of information that does not fit into a previously formed opinion occurred

5 *The Roles of Psychology in International Arbitration* (International Arbitration Law Library Series, Volume 40), T Cole (ed.) (Kluwer Law International, 2017).

6 P Ayton and G Helleringer, 'Bias, Vested Interests and Self-Deception in Judgment and Decision-Making' in *The Roles of Psychology in International Arbitration* (International Arbitration Law Library Series, Volume 40), T Cole (ed.) (Kluwer Law International, 2017), p. 42.

with any participants of relevant experiments regardless of their social status and occupation: gamblers, potential jurors, ordinary people, professional experts, including referees in boxing matches, auditors and sales assistants.[7]

With arbitrators, the first impression that is formed following the initial contact with the parties is based on an examination of the first documents and depends on a lawyer's conduct while preparing for a case.

It is very important to remember that one of the characteristic features of arbitration in Russia and eastern Europe is that, often, no distinction is made between a request for arbitration and a statement of claim; in other words, the first document filed in the case constitutes the statement of claim. Consequently, for those lawyers who are accustomed to developing their case and supplementing it as they analyse newly disclosed evidence, it is particularly important to remember that by the time of full disclosure of evidence and a complete statement of one's legal position, arbitrators have already formed their first impression and that will serve as the filter that influences arbitrators' subsequent perceptions and through which the arbitrators will evaluate all further documents, facts and arguments.

For this reason, those documents that are filed first and the conduct of the lawyer during the initial stages of arbitral proceedings are critically important.

Keep in mind the 'IKEA' effect

The IKEA effect is a type of cognitive bias based on the fact that a person who independently assembles a piece of furniture (for example, something obtained from the well-known furniture manufacturing company) values that item more than a piece of designer furniture; in other words, the more someone invests personal effort in doing something or in arriving at a conclusion, the more value that person places on the resulting product. It has been identified and subsequently studied by economist Dan Ariely.[8]

How is the IKEA effect manifested in a courtroom?

However arbitrators arrive at their conclusions, these conclusions are more important to them than everything they are offered by lawyers. Richard Harris wrote in the 19th century, in his book *Hints on Advocacy*: 'And here, it may be observed, there is a mode of creating an impression on the mind of a jury without in the least appearing to desire it, and which is of all others the most effective. All men are more or less vain, and every man gives himself credit for a deal of discernment. He loves to find out things for himself – to guess the answer to a riddle better than to be told it – to think he can see as far into an opaque substance as most people.'[9]

Thus, representatives of both parties may deliver brilliant speeches and propose exciting theories, all to no avail. My experience as an arbitrator shows that sometimes it becomes obvious to an arbitrator that representatives are wasting a lot of time on irrelevant arguments instead of focusing on matters that are significant from the point of view of the arbitrator. An arbitrator may have already formed preliminary conclusions in a case but has

7 ibid.

8 D Ariely, *Predictably Irrational: The Hidden Forces That Shape Our Decisions*, HarperCollins, 2009.

9 Richard Harris, *Hints on Advocacy*, Stevens and Sons, 7th Edition, 1884, p. 17.

certain questions. He or she expects to get those answers from the parties, but they are not always forthcoming.

Hence, if there is an opportunity to deliver information, or a story, in a manner whereby the arbitrators are not simply told that the answer is 'four' but rather are given an opportunity to 'add two and two together', this is likely to be very effective.

One of the ways of achieving such an effect is to show the most important documents to arbitrators in a specifically predetermined order as the proceedings evolve.

The above-mentioned tips are applicable not only to arbitration in Russia and eastern Europe but can also be used in other jurisdictions. However, the rule of thumb is to consider national and cultural differences and to take into account the personalities of particular arbitrators.

I will now move on to the cultural specifics of arbitration in Russia and eastern Europe and offer some practical tips for these.

A 'who's who' of arbitration in Russia and eastern Europe

The face of arbitration in Russia and eastern Europe is primarily formed by its main participants – arbitration institutions, the parties involved and lawyers.

Arbitration institutions

Each country has its oldest arbitral institution, and some have been in existence for more than 80 years. These institutions are proud of their history and background and are sometimes reluctant to change their established traditions. These traditions are often impossible to comprehend by reading relevant arbitration rules and extracts from cases. To be able to understand how to conduct arbitral proceedings in the most efficient manner, taking into consideration the traditions within a particular arbitration institution, it is not enough to be a counsel, one has to act as an arbitrator as well.

However, that landscape is changing. For example, new institutions have been established in Russia as a result of arbitration reform, such as the Russian Arbitration Center, and foreign arbitral institutions (such as the Hong Kong International Arbitration Centre and the Vienna International Arbitral Centre) have obtained special permission to act as arbitral institutions in Russia, which has changed the approach by the oldest institutions to administering cases. As a result, long-standing trends are changing and not only the younger institutions but also the more established ones are starting to apply more progressive and transparent procedures.

Nonetheless, from this point on, I shall describe the specific features of considering cases by the more established institutions, as the procedures of administering cases in the newer ones is very similar in many aspects to how cases are dealt with in other jurisdictions and therefore have fewer national specifics. Note also that most of the specifics relate to long-standing traditions and as the arbitration landscape is now changing, new traditions may be formed and the situation may change dramatically in the next few years.

Parties

The majority of arbitration cases are disputes about relatively small sums of money and are handled by in-house counsel. Frequently, it is their first dispute in international arbitration – and probably their last – and their lack of experience can affect the course of proceedings. Sometimes inexperienced parties may undertake uncommon steps or file non-standard requests, thus introducing an element of unpredictability to the proceedings. Besides, it is quite common for less experienced parties to arbitration proceedings to obtain more patronage from arbitrators.

When dealing with clients in Russia and eastern Europe, it is worth bearing in mind that they are typically not willing to pay hourly rates for arbitration but will opt instead for either a fixed fee or an hourly rate with a cap. Consequently, external counsel will need to be able to make a fairly accurate prediction at an early stage of how the dispute is likely to proceed and the scope of services to be provided.

Lawyers

There are numerous law firms (both international and national) that handle international arbitration cases. Many lawyers have degrees that have been obtained abroad, have worked in various jurisdictions and have arbitrated in different institutions and therefore have expert knowledge of and apply best practices in the area of international arbitration. However, it is vital to remember that the application of best practices depends not only on counsel but on arbitrators as well, so the task of selecting your arbitrator must be undertaken with special care.

Selecting the arbitrator

First, it is necessary to keep in mind that in some jurisdictions, parties may select their arbitrator only from those listed with a relevant institution. For instance, in the case of a dispute between Belarusian companies, an arbitrator may be selected only from the closed list of arbitrators in the International Arbitration Court with the Belarusian Chamber of Commerce and Industry.

Further, unless an arbitration agreement provides for otherwise, the chairman of the arbitration tribunal is typically appointed by the institution itself. This can significantly affect the course of the arbitration proceedings. Rather than selecting the most suitable arbitrator to chair a tribunal, institutions customarily chose an experienced arbitrator whom they trust. Thus, in one case I have dealt with, the arbitration agreement contained detailed requirements regarding the arbitrator: more than seven years' experience of dealing with M&A transactions; a partner for more than two years at a law firm recommended by law firm rankings; no conflict of interest. The co-arbitrators selected by the parties complied with these requirements, but the institution appointed a tribunal chairman who did not, since, in the opinion of the institution, the qualifications specified in the arbitration agreement applied only to wing arbitrators, not to the chairman. The parties did not challenge the chairman, but the approach adopted by the institution was taken into consideration for the drafting of arbitration clauses and the pleading of future cases.

Considering the fact that, in most cases, the parties cannot influence the selection of the chairman, choosing a wing arbitrator becomes paramount.

Arbitrators in Russia and eastern Europe may be very roughly divided into three categories (though this description is not intended to be exhaustive).

The first comprises academics and employees of various universities who have acted as arbitrators for several decades. This type of arbitrator sets great store by sticking to traditions, as well as corporate solidarity and the opinions of the secretariat of the institution. These arbitrators often enjoy asking the parties and their counsel questions designed to check their knowledge of legal theories and recent scientific trends and developments.

The second group includes practising lawyers. Considering the relative youth of the legal profession in Russia and eastern Europe (the post-Soviet era), practising lawyers are often young too. Lawyers may become arbitrators when they are quite young in terms of experience – between 30 and 50 years of age. However, the young age of arbitrators is often counterbalanced by being business-oriented and committed to best practices in the area of international arbitration.

Recently, retired judges in Russia have been allowed to act as arbitrators. However, not all former judges have sufficient experience in the area of international arbitration or knowledge of its specifics, as a result of which the former judges' style of arbitration may be less flexible and more authoritative. Further, retired judges are more willing to apply the principle of *jura novit curia* and therefore consider it possible to apply rules of law independently that are relevant to the case, even if the parties do not mention those rules of law in their pleadings.

Clearly, a lot depends on the particular arbitrator, but it is quite common for arbitrators in Russia and eastern Europe (primarily those who are more mature) to perceive themselves as the judiciary and as judges rather than as arbitrators rendering a service to the parties to resolve their dispute. Moreover, there have been heated debates in Russia as to whether arbitration is a service at all. As has been mentioned, the approach of an arbitrators may be evident, among other things, from the way they communicate with the parties. Many arbitrators refuse to give interviews at the time they are selected and refuse to communicate electronically with any of the parties involved while arbitration proceedings are pending, as they believe that, by doing so, their independence may be impeded.

Filing a claim

When filing a claim, the following national specifics must be taken into account.

First, the mandatory pre-arbitration dispute resolution procedure must be complied with. In Russia, compliance with pre-arbitration dispute resolution procedure relates to public policy and, therefore, if an arbitral award has been issued but the claimant fails to comply with the established pre-arbitration dispute resolution procedure, the award may be set aside or its recognition may be denied.

Further, in the majority of cases, arbitration rules provide that arbitration starts as soon as the statement of claim has been filed, not the request for arbitration. Consequently, a party's legal position must be well developed before filing the claim so that it is able to serve as a solid foundation for the party's position. One should take into account that some arbitrators only read the statement of claim and the statement of response and do not consider any of the various supplements and comments, and will therefore aim to gain an understanding during the oral hearing. Therefore, the statement of claim must contain all the critical information supported, if possible, by all the essential evidence available.

To ensure the availability of evidence at the apposite time, it is essential to collect all the necessary evidence and information from the client well before the arbitration proceedings begin.

It is not uncommon for clients (and not only those in Russia and eastern Europe) to provide their counsel with partial information, as they presume that the less their counsel knows, the easier it will be for them to represent their client's position

In our practice, we try to ask a client as many questions as possible right away, since these questions help to form a broad picture of the situation. Often, after answering these questions, clients recall that an important document exists about which they have forgotten.

Some of the common questions are as follows:

- What happened to each party to the dispute?
- Why did they behave in a particular way?
- What were they thinking about, and how did they feel?
- What did they know at the time?
- When the dispute arose, what alternative solutions were available to the parties?
- What did each party attempt to achieve? Why did their attempts succeed or fail?
- What was the impact on all the parties involved?
- Did anyone try to correct the situation? Successfully or unsuccessfully? Why?
- How did the situation end? Who won? Who lost?
- What prompted the initiation of the lawsuit?

Another feature is that any relief requested must be formulated quite clearly right from the start, since attempts to supplement and clarify them later on may not always be welcomed by arbitrators. Besides, after arbitrators have formed their first impression, further changes may be inadvertently ignored.

Preparation for oral proceedings

The way in which arbitral proceedings are structured are specific to the region.

In newer institutions, the procedure is similar to that in the most progressive arbitral institutions.

In older institutions following the filing of a claim, a response to it and the appointment of arbitrators, in most cases there is no communication between the parties and arbitrators. There is no case management conference to jointly determine the schedule of the proceedings, and a Procedural Order No. 1 is very rarely issued. Typically arbitrators decide among themselves when the first (which in most cases is also the last) oral hearing will take place and will determine the deadline for submission of documents. The parties do not participate in this discussion.

On occasion, parties may be more proactive and ask arbitrators in advance not to fix the hearing on a specific date; they may try to agree on the schedule of the case and the dates of document exchange with the other party and to ask arbitrators to approve this schedule.

However, one should be prepared that some arbitrators (especially those of a more mature age) may decline such an arrangement and schedule and set a time that is suitable for them.

Moreover, it should be borne in mind that before an oral hearing takes place, arbitrators are unlikely to resolve any issues, including issues of discovery, granting injunctions

for hearing expert testimony or witnesses. Specific requests may be filed in advance but, in most cases, the outcome of the arbitrators' consideration will be discussed and pronounced at the oral hearing. Thus, a party may be faced with the situation that its motion is denied at a hearing, and an alternative plan has to be implemented immediately. The way in which the communication system operates within a particular arbitration institution also needs to be considered, since arbitrators may not always receive and examine filed requests in a timely manner.

The arbitration rules of each specific institution should be studied carefully, as some have established time limits for filing certain requests. For example, in Ukraine a request for an audio recording of a hearing must be submitted not later than 10 days before such a hearing. It should be understood that recordings of hearings are not universally allowed.

The various institutions treat technological innovations differently. During the course of one of our cases in Ukraine, we managed to agree on conducting the hearing via Skype. In older institutions in other jurisdictions, such a request would most likely be rejected for a number of reasons, not least the possibility of technical complications.

In Russia and eastern Europe, bifurcation is very rarely applied. In some exceptional cases, arbitrators may prefer to separate the matter of whether the court has jurisdiction over a given dispute and consideration of a claim on its merits. Issues of liability and damages or compliance with the limitation period and justification of the claims made are not treated separately.

Evidence

It is obvious that persuasiveness of the evidence and arguments you produce depends primarily on the personality of a particular arbitrator; however, there are some commonalities.

In terms of persuasiveness of arguments, first references should be to legislative enactments, followed by any relevant doctrine, and then court practice that relates to the application of particular legal rules.

The greatest evidentiary effect can be achieved by written evidence, primarily documents that have been signed by both parties, whereas witness testimony is not given much weight and is used very rarely. Generally, examination of a witness in the course of arbitral proceedings in Russia and eastern Europe is more the exception than the rule.

When producing evidence, it should be borne in mind that mature arbitrators do not always have a sufficient knowledge of English (many of them learned German as their second language), so documents have to be accompanied with a translation.

Further, even when arbitrators are conversant with the English language, they may still request that documents are translated in consideration of state court judges who may subsequently have to deal with a request to annul the arbitral award.

When preparing for a hearing, remember that even if arbitrators set a time limit for submission of documents, it does not guarantee that the other party will not try to deliver some documents beyond the court-established deadline. Arbitrators respond differently to such situations, but if a party is persistent in failing to meet the set dates, filing new evidence with other documents in the case may be denied.

However, research shows that if arbitrators have seen certain evidence or are aware of its existence, then, even if that evidence has not been filed, arbitrators will still take it

into consideration in the majority of cases.[10] For this reason, in some cases a more advisable strategy would be not to object to new evidence being filed, but to request time for providing clarifications in relation to that evidence.

Discovery in its traditional format does not exist. A party may file a request for documents, but it is not often granted. The most common attitude of arbitrators is that each party must independently collect evidence and produce it to the arbitrators. Even if a request has been granted, a party may still refuse to disclose evidence in its possession. At present, in Russia a provision has been added to procedural codes that courts may assist an arbitral panel in gathering evidence, which means that if courts uphold a request for documents, then a failure to submit those documents will be punished by a penalty. However, the amount of the penalty tends to be so insignificant that it is hardly a compelling reason to comply.

Nevertheless, a failure to produce evidence may result in an adverse inference. This rule has not been fixed in arbitration rules and arbitrators usually avoid mentioning in an arbitral award that a failure to produce evidence was a factor that influenced their decision. However, even if it is not mentioned as such, it is still an influencing factor.

Expert witnesses

It is extremely rare for examination of an expert to be arranged by an arbitral panel. In the majority of cases, expert opinions are provided by the parties. (However, there are specifics here, and one needs to be careful when examining the arbitration rules of relevant institutions; in some instances, experts may be instructed before the arbitrators have been appointed, and some arbitration rules provide exclusively for an arbitrator-appointed expert examination).

Frequently, arbitrators are sceptical about expert opinions that have been prepared for one party, and perceive experts as hired guns who are willing to take any side. In view of this, you should be particularly attentive when choosing an institution or an expert to carry out an expert examination for you.

Witnesses

In Russia and eastern Europe, there is no tradition of preparing witness statements before a hearing. The more progressive arbitrators may suggest that the parties exchange witness statements in advance, although this does not happen very often. In the absence of witness statements, preparations for cross-examination must be done even more carefully than usual, since there are many options as to how a witness will respond to questions. Naturally, these options cannot be predicted beforehand and thus counsel will need to think and react as the proceedings develop.

Examination of a witness rarely lasts for more than an hour. Many arbitrators of a more mature age regard the traditional, common law-style of cross-examination, with multiple closed questions, as strange and unfamiliar. Such questions may be perceived as leading.

10 E Sussman, 'The Arbitrator Survey – Practices, Preferences and Changes on the Horizon', *The American Review of International Arbitration* (2015) Vol. 26. No. 4, pp. 521 to 522, fn. 15.

Consequently, arbitrators may be expecting that a witness will be asked open questions and thus counsel should be prepared for both styles of questioning.

Generally, witnesses do not inspire much trust with arbitrators, as arbitrators are well aware that they have been prepared and assume that witnesses may either deliberately distort their testimony or may be mistaken in their recollections, simply because of how the human memory works.

In general, the most efficient strategy for examining the other party's witness is to avoid any questioning at all to mitigate any potential damage resulting from prepared speeches.

Arbitration hearing

In Russia and eastern European, a counsel's participation in a court session is treated quite formally, so the key advice is not to forget to bring a properly formalised power of attorney. It is also important to remember is that it is an essential requirement in Russia to have the original copy of the arbitration agreement at the enforcement stage.

In most instances, a hearing is arranged within two or three months of the arbitral panel being formed. In Russia, there is usually only one hearing in a given case and this hearing is rarely postponed, although it is possible that this may happen. In other jurisdictions, this may differ. In one case we dealt with in Belarus, we had seven hearings within a period of six months; each hearing lasted between two and eight hours and the next would be postponed for approximately a month. In another case in Ukraine, there were six or seven hearings and the parties then decided to settle the case.

On average, a hearing takes one day, and sometimes lasts only a few hours. Hearings lasting several days are extremely rare. Therefore, an invaluable skill for an arbitration lawyer is the ability to be clear and concise when speaking. In psychology, there is a rule that one should start with one's strongest argument, because the order in which arguments are presented affects the overall impression. Antonin Scalia, a famous Supreme Court justice, in his legendary book of advice to lawyers as to how to speak successfully in the Supreme Court, said that the first impression is critically important and offered the following comparison: 'If the first sip of wine is awful, no one will drink it till the end.'[11]

It is also vital to be able to answer questions posed by arbitrators clearly and concisely. There is a common stereotype that German arbitrators are proactive and tend to ask lots of questions, while arbitrators from Nordic countries may not raise a single question during the whole hearing. When it comes to in Russia and eastern Europe, arbitrators do not have a clearly established style of conduct in the course of a hearing, and a lot depends on the particular arbitrator. Some prefer not to ask questions to avoid giving the parties any clues as to their train of thought, or being accused of bias; others are far more proactive and ask multiple questions; but generally, arbitrators are more likely to ask questions on matters they are interested in rather than sit quietly and give the parties free rein.

Note that in the older institutions, hearings in Russia are often not transcribed during arbitration as they customarily are in international arbitration. In some cases, a report on the hearings may be prepared by the tribunal secretary. In view of this, it is advisable to request that such a report be kept and provided to the parties following the hearing, so as

11 A Scalia, B Garner, *Making Your Case: The Art of Persuading Judges*, p. 453.

to be able to comment on its completeness and accuracy. However, there is no provision in the procedure for introducing amendments to such a report.

At the end of a hearing, there is rarely an exchange of post-hearing briefs. Only in exceptional cases will arbitrators permit the production of additional documents and clarifications on a very narrow range of issues (as a rule, on those issues in which arbitrators themselves are interested). Further, the procedure for arbitrators' deliberations is such that, more often than not, the award is discussed by the arbitrators immediately after the hearing and then they proceed with drafting it. Hence, additional clarifications submitted a week or two after the hearing are rarely taken into consideration and rarely have the power to change an award that the arbitrators have already decided.

On average, it takes nine to 12 months from the date of filing a statement of claim to the award being issued.

Appendix 1

The Contributing Authors

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