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On January 21, 2016 the Plenum of the RF Supreme Court ("Supreme Court") issued Resolution No. 1 "On Some Issues Relating to Application of the Legislation on Reimbursement of Legal Costs". The Resolution provides more details and further develops the approaches to the cost reimbursement issue, including reimbursement of costs of legal representatives, that were previously outlined by the RF Constitutional Court and the RF Supreme Court.

This Overview dwells on most significant explanations that should stop issuance of contradictory decisions and help develop a uniform approach to treatment of the legal cost reimbursement issue.

Who may claim reimbursement of legal costs and against whom such claim may be submitted

According to the general principle of legal costs distribution, such costs should be reimbursed to a person who incurred them and at the expense of a person against whom a final judgment has been rendered. The Resolution explains that third parties and interested parties may also be entitled to recovery of legal costs if their procedural behavior facilitated the issuance of a judgment.

Persons

Not only plaintiff and defendant in legal proceedings but also other parties may be entitled to claim legal costs, including:

- Third parties;
- Interested parties to administrative proceedings;
- Non-participants to proceedings, with respect to whom the court issued a legal act violating their rights, freedoms or legal interests and who successfully challenged such act;
- Persons who brought an administrative class action or a request to defend rights and legal interests of a group of persons (provided they have actually participated in the proceedings which resulted in issuance of a judgment satisfying the claims);

It should also be noted that:

- If a legal action has been brought by several plaintiffs or against several defendants, legal costs should be distributed taking into account (a) specifics of the substantive-law relationship from which the dispute arises and (b) actual procedural behavior of each of them;

- If legal costs are awarded against joint debtors or joint creditors, they should bear joint liability for reimbursement of such costs which will be distributed accordingly;
- Legal costs of third parties and/or interested parties who acted for the plaintiff or respondent in favor of whom a judgment has been rendered may be reimbursed if such parties' actual procedural behavior facilitated the rendering of such judgment.

If an appeal or cassation or supervisory complaint filed by a party to legal proceedings has been dismissed, such person will be required to reimburse legal costs incurred by other parties to the proceedings in connection with examination of such appeal or complaint.

Legal costs of the recoverer incurred during the enforcement of a judgment in connection with his participation in hearings of the debtor's requests for postponement or deferral of payment awarded against him by the court's judgment or for change of the method and terms of its fulfillment should be reimbursed by the debtor.

Transfer of a right and assignment of a right to claim legal costs

If a right defended in court transfers to another person (successor), the right to claim legal costs stemming from such defense should also transfer to such successor. While the court replaces a party to the proceedings by his successor, such party's legal costs should also be recovered in favor of such successor.

Of special importance is the explanation of the RF Supreme Court Plenum that assignment is allowed not only with respect to the right defended in court, but it is also possible to limit the assignment to the right to claim legal costs. The right to claim legal costs can be assigned after the recovery of costs has been awarded or during the trial of the dispute. Such assignment does not entail procedural replacement of a party to the proceedings. If an assignment agreement with respect to the right to claim legal costs has been made, such right arises and transfers to the successor once the recovery of legal costs is awarded in favor of a party to the proceedings who has assigned such right.

Proportional distribution of legal costs

If the plaintiff's claim has been satisfied partially, legal costs will be awarded to the plaintiff proportionally to the satisfied amount of claim, and to the defendant proportionally to the dismissed amount of claim.

This rule applies to (1) satisfying pecuniary claims that are subject to evaluation and (2) economic disputes arising from public relationships in connection with challenging non-regulatory acts of government authorities which impose pecuniary liability on the challenging party, and it does not apply to satisfying non-pecuniary claims and/or pecuniary claims that are not subject to evaluation (and in some other instances).

However, if upon opening the legal proceedings the plaintiff reduces the amount of his claim because it has been proved to be unreasonably high during the proceedings, the court may hold that such plaintiff's behavior abuses his procedural rights and, as a result, in the event the court satisfies his claim as modified by the reduction, the plaintiff may face unfavorable consequences, that is to say the court may refuse recovery of his costs in full or in part from the defendant or to order that the defendant's legal costs should be recovered from the plaintiff.

Certain instances where costs may be recovered from the plaintiff

Costs of the defendant (and other persons acting on his side in the proceedings) should be recovered from the plaintiff if the proceedings have been terminated except where the proceedings have been terminated due to a settlement reached by the parties) or if the claim has been left without consideration (except where the claim has been left without consideration due to its being signed or filed by a non-authorized person or by a person whose official capacity is not indicated - in such event costs incurred by a party to the proceedings in connection with filing the claim should be recovered from such person).

Certain instances where costs may be recovered from the defendant

If the court terminates the legal proceedings upon the plaintiff's withdrawal of his claim or renders a judgement in favor of the plaintiff, in each case due to the defendant's voluntary satisfaction of the plaintiff's claim after its filing with the court, the plaintiff's legal costs should be recovered from the defendant.

Treatment of legal costs upon reaching a settlement agreement or conciliation agreement

If the parties to legal proceedings reach a settlement or conciliation agreement they should agree on distribution of their legal costs. The court will follow such parties' agreement. Otherwise, the court will rule that:

- The parties' costs will not be distributed and reimbursed;
- The costs incurred by the court at the expense of budgetary funds during examination of the dispute (money payable to witnesses, experts or specialists) will be distributed between the parties on a 50:50 basis.

Setting off legal costs

Costs awarded to parties may be set off against each other upon request of relevant parties. In the event of partial satisfaction of both the initial and counter pecuniary claims, to which proportional distribution of legal costs is applicable, the plaintiff's costs relating to his initial claim should be reimbursed proportionally to the satisfied amount of the claim and his costs relating to the counter claim should also be reimbursed proportionally to the satisfied amount of the counter claim.

Abuse of procedural rights

The Resolution explains that if it is established that a party to the proceedings abused his procedural rights and failed to meet his procedural duties, the court may enjoin such party to reimburse legal costs, regardless of whether the final judgement is rendered in favor of the plaintiff or the defendant. Such party's own costs may be found unreimbursable if such party's behavior caused disruption of a hearing, protraction of the proceedings, and hindered examination of the dispute and rendering a judgment.

Costs incurred before going to court

Collection of evidence

The Resolution explains specifically that costs stemming from collection of evidence before going to court may also be regarded as legal costs if such evidence meets two criteria: (1) it is needed for exercise of one's right to go to court and (2) it is relevant and admissible. While the second criterion is quite clear as its meaning is sufficiently explained by applicable law and legal theory, the criterion of being "needed for exercise of one's right to go to court" is insufficiently developed and, as such, is likely to be more specifically defined by relevant case law.

However, the Plenum of the RF Supreme Court provides an approximate list of costs incurred before going to court that may be regarded as legal costs. The list includes, in particular, costs of notarization of pieces of evidence, legalization of foreign public documents and determination of an amount of claim and a competent court.

Costs incurred during required pre-judicial procedure

Legal costs also include costs stemming from a pre-judicial procedure, including claim submission procedure, where such procedure is required by law or a contract. Costs of legal services relating to fulfillment of such procedure are expressly reimbursable. This is certainly a progressive approach of the Plenum of the RF Supreme Court, as it should eliminate the ambiguousness in resolution of the cost reimbursement issue, e.g. during challenging a tax authority's decision to a superior tax authority or where application of a pre-judicial resolution of civil-law dispute is required.

However, legal costs do not include costs stemming from extra-judicial resolution of disputes (in particular, bringing a complaint to a superior officer where such procedure is not permitted by law, or mediation).

The above standpoints of the Plenum of the RF Supreme Court should be taken into account when determining a pre-judicial procedure for dispute resolution in agreements. Detailed provisions on a claim submission procedure should help parties *inter alia* to determine an amount of costs relating to fulfillment of pre-judicial procedures.

Reasonable limits for legal costs

Reduction of legal costs

The Resolution pays special attention to the concepts of "reasonable amount" and "excessiveness" of legal costs. The Plenum of the RF Supreme Court emphasizes that, generally, a court is not authorized to reduce claimed legal costs arbitrarily, i.e. without the other party's request and evidence to support it. Thus, reasonableness of claimed legal costs is presumed. However, if claimed legal costs are obviously unreasonable (excessive), the court has the right to reduce them. It is important that a determination that a claimed amount of costs is excessive should be based on evidence available in the case file. This approach, in view of the RF Supreme Court's intention to form a uniform case law of court of general jurisdiction and arbitrazh (commercial) courts, seems to be well-balanced as it proposes parties to proceedings to follow the adversarial principle in their disputes over legal costs and is intended to limit judges' discretion in resolution of such disputes.

Reasonableness criterion. Services of a legal representative

According to the Resolution, a basic criterion of reasonableness of costs of legal representatives should be their comparableness with costs of similar services (in other words, “fair market”).

When assessing reasonableness of costs of a legal representative, the court may take into account the specifics of the proceedings, such as volume of services provided by the representative, time spent by the representative, duration of the proceedings, and other factors. It is important that, in addition to the above factors, other circumstances of the matter may also be taken into consideration, such as complexity of the legal dispute, claimed amount, volume of claims asserted, etc.

“Ancillary” expenses that may or may not be included in legal costs

With regard to transportation and accommodation expenses of a legal representative, the reasonableness criterion should also be based on their comparableness with similar services (it is emphasized that a standard price of such services should be determined according to the location where they are provided).

The Resolution states that any other costs required for provision of legal services (such as review of case file, sending documents, telecommunications, etc.) are not subject to additional reimbursement, because, generally, they are included in the price of services unless otherwise provided by a relevant agreement. This approach of the RF Supreme Court should be taken into account when negotiating contractual terms with a legal representative, including price and payment terms.

Costs after rendering a trial court’s judgment

The RF Supreme Court allows for recovery of legal costs incurred after rendering a judgment on the merits. In particular, such costs may be incurred in connection with payments for a representative’s services after rendering a court’s judgement, during challenging a court’s judgement and during examination of a request relating to legal costs.

The Resolution also provides for recovery of costs relating to examination of the request for legal cost recovery. However, no further request is acceptable after the court resolves the legal cost issue. This measure should prevent multiple proceedings on the legal cost issue.

Contact information



Olga Glazkova,

Partner, Attorney-at-Law, Head of Litigation and
Arbitration Practice



Valentin Moiseev,

Partner, Attorney-at-Law, Head of Taxation/Tax
Disputes Practice



Alexey Gorodissky,

Partner, Attorney-at-Law, Trademark Attorney



Olga Zelenskaya,

Attorney-at-Law

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Znamenska 13, bldg. 3, 3rd floor, Moscow, 119019, Russia.
Tel.: +7 (495) 933-75-67, 691-98-13 Fax: +7 (495) 697-92-26.
E-mail: office@agp.ru. Internet: <http://www.agp.ru>.