



COMPENSATION OF COURT COSTS: EXPLANATIONS OF THE RUSSIAN SUPREME COURT

For the attention of company CEOs, heads of legal and attorneys

Law firm Pepeliaev Group advises that Resolution No. 1 of the Plenum of the Russian Supreme Court dated 21 January 2016 “On certain aspects of applying legislation on the compensation of costs, connected with a case being considered” has been officially published.

Protecting infringed rights and lawful interests in court requires that a competent representative be engaged and the associated financial cost (travel, accommodation, etc.) be paid.

Current procedural legislation guarantees that a party that has incurred legal costs and has won the case will receive compensation of such costs at the expense of the opposing party to the proceedings which has lost. However, to date, the judicial practice has been inconsistent in this area. The highest courts either have not stated their position on the issue (the Russian Supreme Court) or have stated positions which were unstructured and self-contradictory (the Russian Supreme State Commercial (‘Arbitration’) Court).

What has changed

The Resolution of the Plenum of the Russian Supreme Court which has been adopted is intended to ensure that legislation which regulates the procedure for court costs to be compensated, is applied in a uniform manner; it is binding both on general jurisdiction courts and on state commercial (‘arbitration’) courts.

The main provisions of the Resolution:

- since only a provisional list of court costs is set out in the Russian Code of Civil Procedure, the Code of Commercial Procedure and the Code of Administrative Court Proceedings, costs incurred by a party, including at the pre-trial stage, may be compensated even if they are not directly mentioned in the law, if one of two conditions is met:
 - ◆ it is proved that the costs are directly connected with the case examined by the court;
 - ◆ even though the costs are not connected with the case directly, they were necessary for the right to be exercised to apply to the court (for example, to gather together the relevant and admissible evidence before the claim was filed with the court).
- the cost of preparing a notarised power of attorney may be classified as a court cost, but only provided that the power of attorney was not general, but was issued for the attorney to participate in a specific case or hearing;
- not only may the parties to the case claim compensation of their court costs, but third parties may also do so, regardless of whether they have made independent claims regarding the subject matter of the dispute, provided that their actual procedural actions contributed to the judicial decision being adopted.

¹ For the first time this position was stated in Resolution No. 6284/07 of the Presidium of the Russian Supreme Court dated 9 April 2009.

- the burden of proof has been allocated between the parties: the claimant should prove that the costs have been incurred and that they are connected to the case examined by the court, and the opposing party should supply evidence that the amount claimed is overstated;
- the court may not arbitrarily reduce an amount of court costs which has been claimed for recovery, if the other party has not filed an objection and has not supplied evidence of this amount being overstated, unless such costs are obviously unreasonable (overstated)¹.
- all court costs should meet the criteria of being reasonable (not overstated), and not only the cost of the attorney's services;
- the decision on whether the costs are reasonable should be made based on the comparative criterion:
 - ◆ **the cost of the attorney's services** is treated as reasonable if it is in line with the cost that is usually charged for similar services in similar circumstances. This may take into account the amount of the claim, the difficulty of the case, the scope of the services provided, the time which the attorney required to prepare the procedural documents, and the duration of the litigation;
 - ◆ **travel and accommodation costs** are treated as reasonable if they are consistent with prices which are usually set for travel and accommodation services in the place (region) where such services have actually been provided;
- as a general rule, the attorney's associated expenses (to familiarise himself with the case records, to use the Internet, mobile phone, courier services, etc.) are included in the cost of the services provided and are not compensated additionally (unless the agreement provides otherwise);
- expenses are not compensated if they have been incurred with respect to a case subject to special proceedings or if they relate to claims which can be satisfied without it being identified that the defendant has infringed or disputed the claimant's rights.

What to think about

These explanations of the Russian Supreme Court should be taken into account when an application to the court is being planned, because after this Resolution is published, cases regarding the compensation of court costs will be resolved in accordance with the recommendations provided in it.

Please note that it is for the first time that the taxpayers' right to receive compensation of the costs of legal assistance relating to the compulsory pre-trial challenging of tax authorities' decisions has been acknowledged at the level of Russia's highest court.

The Resolution does not state that court costs should meet the criteria of being economic, of a minimum amount or not exceeding a specific limit. This directs the courts that costs of services should be recovered based on their actual market prices.

When courts identify the reasonable limit for court costs to be compensated, they will need to research the current prices on similar legal services in the corresponding region. If a dispute arises over whether the amounts claimed for compensation are reasonable (not overstated), there will be an increase in the general judicial requirements for the evidence to be provided by the parties in terms of its relevancy, admissibility and reliability.

Help from your advisor

Based on our unique experience, including representing clients in the highest courts, Pepeliaev Group's experts are available to provide legal assistance on recovering court costs including providing rationale for amounts of them.

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