



THE RAA STUDY ON THE APPLICATION OF THE NEW YORK CONVENTION IN RUSSIA DURING 2008-2017

Moscow 2018

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THE STUDY AND METHODOLOGY

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York) celebrates its 60th anniversary in 2018 (“**Convention**”). Since its inception, **159 Contracting States** have joined the Convention. The USSR ratified the Convention on 22 November 1960. The Russian Federation, as a successor of the USSR, continues to be a Contracting State.

The Convention introduced a universal mechanism for the recognition and enforcement of foreign arbitral awards, which shall apply uniformly in all Contracting States. The Convention sets out the exhaustive list of grounds, which the national courts may apply for rejecting the recognition and enforcement of foreign arbitral awards. The grounds are listed in Article V of the Convention and are duplicated in Article 36 of the Russian International Arbitration Law. Article V of the Convention is also partly duplicated in Article 244.1 of the Code of Commercial Procedure (“**APK**”).

There is a significant body of legal research on the application of the Convention in Russia. However, this study represents the first time when it is being studied through the prism of Russian case law. The Working Group of the Russian Arbitration Association has analyzed all cases decided in the past 10 years, which relate to the application of the Convention.

This study (“**NYC Study**”) was commenced over a year ago and comprised three (3) stages. To begin, we identified approximately **700 court rulings** of the first, appeal and supreme instances, in which the courts applied Article V of the Convention or related national legal norms in determining the recognition and enforcement (“**R&E**”) of the foreign arbitral award. The approximately 700 court rulings were deducted to 472 R&E cases arising out of 472 foreign arbitral awards. Each court ruling was analyzed in accordance with **45 parameters**, such as date of the arbitral award, date of the R&E application, date of the first instance ruling, number of instances, results per instance, date when the R&E was granted or rejected, nationality of the claimant, names of the parties, seat of the arbitration, arbitration rules, applicable law, subject matter of the dispute, awarded amounts and currency, number and names of arbitrators, number and names of state court judges in each instance, geography of state courts, requested and granted grounds under Article V of the Convention, and the final result of the R&E application. We entered all extracted data into a master table, which comprised over **21,000 elements in total**.

At the initial stage, the Working Group that carried out the case law analysis comprised Oleg Todua, Marina Zenkova, Dmitriy Lavrychev and Irina Maisak (White & Case LLP) who analyzed cases from the years 2017 and 2016; Dmitry Samigullin and Afina Lesnichenko (RBL I GRATA International) – cases from 2015; Anton Alifanov (Dentons) – 2014; Natalya Dvenadtsatova (VLawyers) – 2013; Mikhail Samoylov and Natalya Andreeva (Egorov Puginsky Afanasiev and Partners) – 2012; Sergey Petrachkov and Asiyat Kurbanova (ALRUD) – 2011; Marina Akchurina and Ksenia Khanseidova (Cleary Gottlieb Steen & Hamilton LLP) – 2010; Grishchenkova Anna and Irina Suspitsyna (KIAP) – 2009; and Anastasia Rodionova – 2008.

To ensure accuracy, the case search was done through two legal data bases, which were kad.arbitr.ru and Consultant Plus. The cases have been cross checked to ensure that the gathered data is accurate and complete. It should be noted that the existence of publicly available case law databases in Russia is, in itself, a great achievement because it improves court’s transparency and makes case law accessible to anyone.

The second stage of the NYC Study focused on coding the data to make it machine readable. Though it was a time-consuming exercise, the result enables us to handle a broad range of data types.

At the final stage, we built models for correlated data and visualized them. Practically, these models enable us to describe the court practice and tendencies in the application of the Convention in Russia. For example, we can show how amounts in dispute affect Russian court decisions; which courts and judges are arbitration friendly; the judges whose rulings are successfully appealed; and the ratio of successful cases per instance.

This is a whole new place to go with numbers, but this NYC Study is just scratching the surface. As more data comes in, we now have a better context to explain what these numbers really mean by comparing the cases, judges, outcomes and many other factors. In a few years, this NYC Study can be used to consider how things have changed in Russia by comparing the measurements and conclusions drawn in this study. This work will continue with the annual updates published at www.newyorkconvention.ru.

The Russian Arbitration Association is very grateful to Kirsten Cox for her work on this Study.

Roman Zykov

Chair of the Working Group

Secretary General, RAA

Managing partner, Law firm MANSORS

Application of the NYC

- The NYC Study reveals that the Convention has been widely invoked by the parties and courts of all instances in Russia in the past 10 years. In total, there were **472** R&E applications, **378** of which were granted, **45** rejected and **49** applications were not considered due to various reasons, which were mostly related to procedure.
- The NYC Study shows that Russian courts are arbitration friendly – in various years, **80** to **97%** of all R&E applications were granted.
- During the period 2008 to 2017, the most used Article V grounds were: violation of public policy (Article V2(b)) – **42 cases**; the lack of proper notice or inability to present the case (Article V1(b)) – **34 cases**; and excess of mandate by arbitrators (Article V1(c)) – **13 cases**.

Parameters of Disputes

- Most disputes arose out of Sale of Goods contracts (**341** cases); Services agreements (**39** cases); and various Financial agreements (30 cases).
- The awarded amounts in approximately 50% of the cases comprised less than EUR 50,000; in about **35%** of all cases were less than EUR **1 million**; in about **12%** of the cases were from EUR **1** to **15 million**; and in **5%** of cases – over EUR 15 million.
- Distribution of claimants by country was as follows: Ukrainian (**196**), Belarussian (**101**), Kazakhstani (**15**), Latvian (**13**), German (**11**) and Moldovan (**11**).
- The most used arbitration rules were those of the ICAC Ukrainian CCI (**193 cases**), IAC Belarussian CCI (**95**), LCIA (**17**), SCC (**16**), ICC (**13**) and LMAA (**12**).

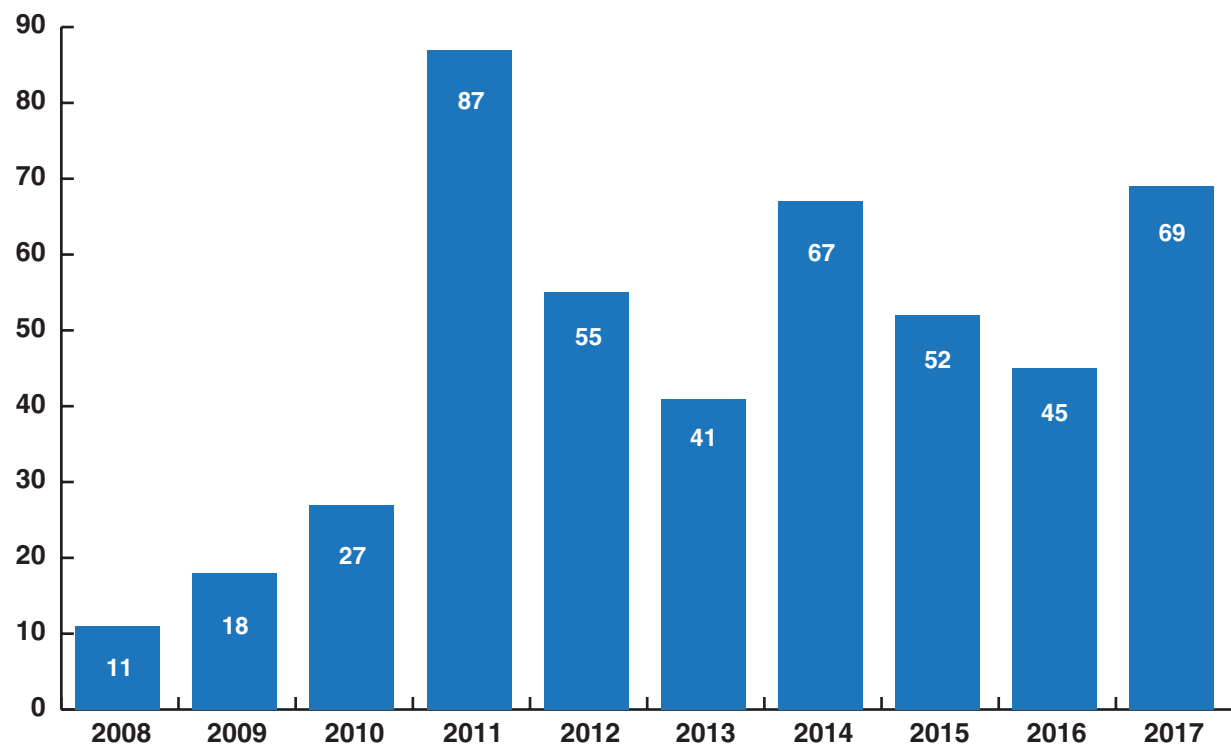
Hit Ratio

- The hit ratio of cases finally decided in the first instance, meaning that they were not subsequently appealed, was **77,6%** of all cases.
- The NYC Study shows that the higher the instance, the lower the ratio of recognized and enforced arbitral awards. About **89%** of the R&E applications were granted in the courts of 1st instance; **61%** of the R&E applications were approved by the courts of 2nd instance and there was a **60%** hit ratio in the supreme instance.
- The total value of claims sought under the R&E applications in the period 2008 to 2017 was EUR **8,220,758,910**. Russian courts enforced the claims for EUR **4,771,021,582** or, in other words, **58%** of all claimed amounts.
- In the reviewed years, the average duration of the R&E application process in Russian courts was **6 months**.

How to Improve

- From time to time, the Supreme court provides case law overviews, which explain to the lower courts how to apply certain legal provisions. For example, in 2013, the Russian Supreme Arbitrazh (Commercial) Court published the Information letter No.156, in which it explained how to apply the concept of public policy in R&E applications. As a result, the number of court granted public policy motions dropped substantially in the following years.
- In terms of improving the case law, the courts should consider giving a more detailed account of the invoked Article V grounds, which includes an explanation why such motions were granted or rejected by the court. This will contribute to the development of the case law and will increase the predictability in the application of the Convention.

Chart 1: The Year-by-Year Numbers of R&E Cases



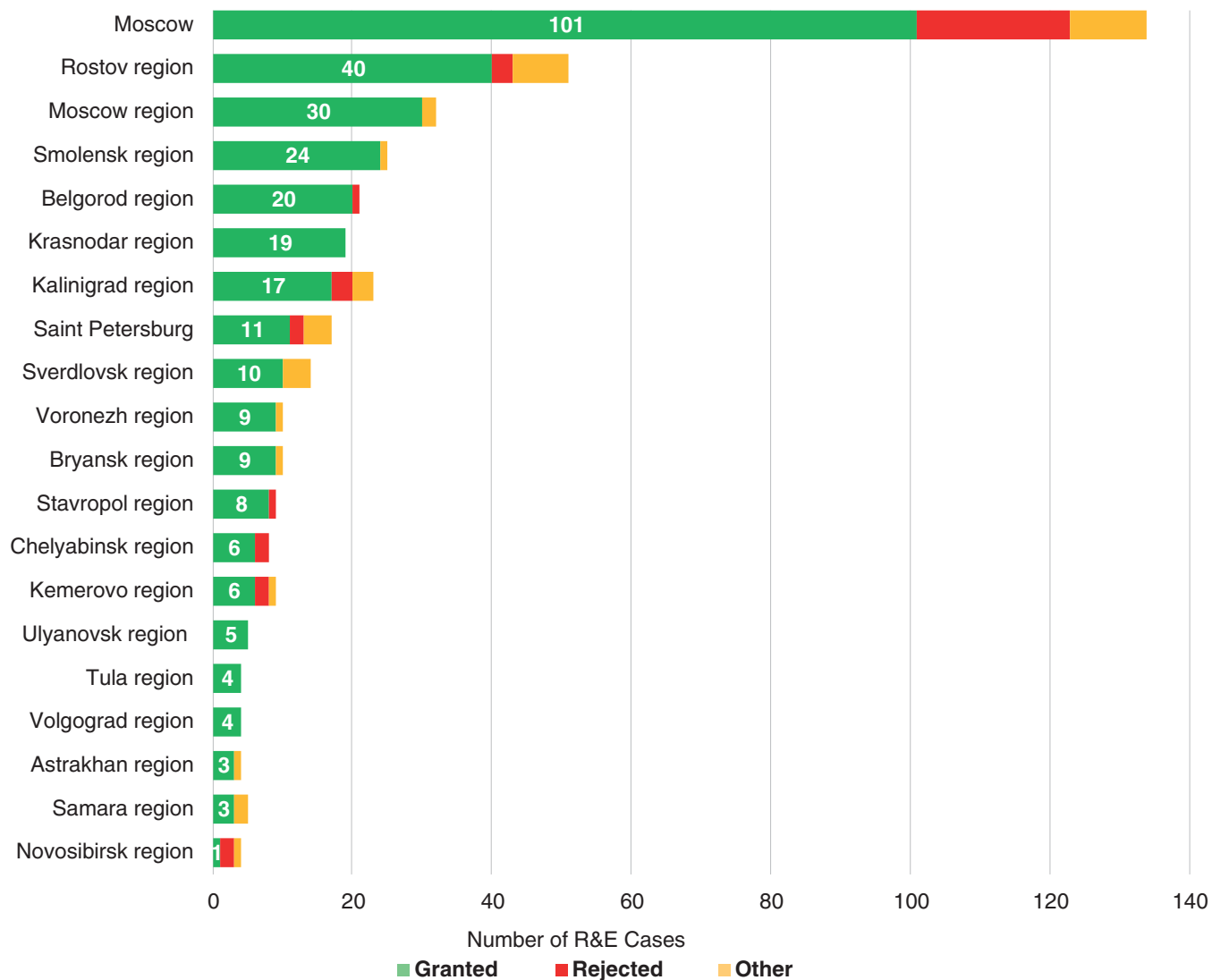
During the period of 2008 to 2017, Russian commercial courts received 472 applications for the recognition and enforcement of foreign arbitral awards.

After the financial crisis of 2008, the number of R&E applications increased exponentially, with a peak in 2011.

Chart 1 also illustrates that the number of R&E applications in Russia goes up and down every 3 years (the peaks are observed in 2011→2014→2017).

I GENERAL INFORMATION ON THE R&E CASES IN RUSSIA

Chart 2: TOP-20 Regions by Number of R&E Cases



Top Russian regional commercial courts by the number of R&E cases are Moscow (134 cases), Rostov region (51), Moscow region (32), Smolensk region (25) and Belgorod region (21).

The following Chart 2 demonstrates TOP-20 Russian regions by the number of R&E cases in the period 2008 to 2017.

In 39 Russian regions, the number of R&E cases varied from 1 to 3 for the entire period of 2008 to 2017. In 26 regions, there were no R&E cases during the reviewed period.

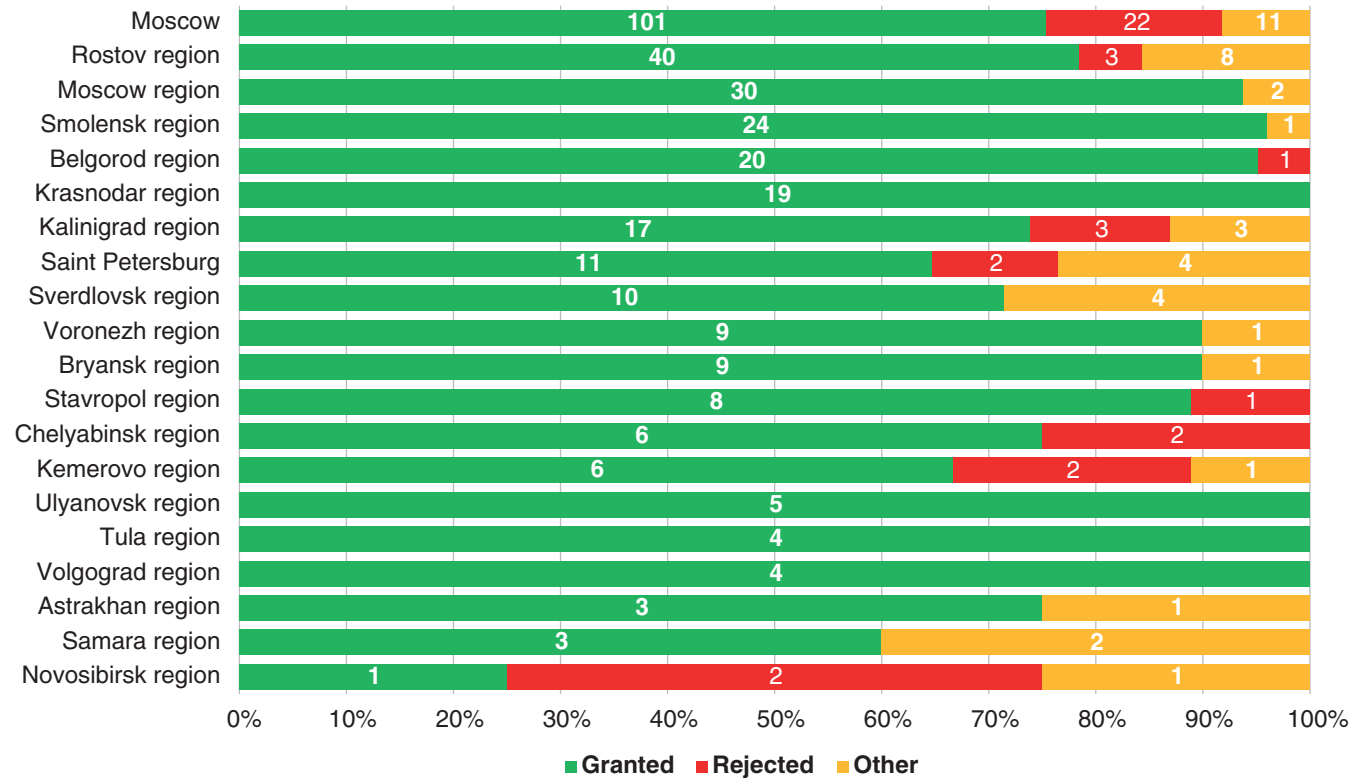
The green segments on the chart feature the successful R&E applications in various regions; red shows the rejected R&E applications and yellow shows R&E applications that achieved other result (the application was not accepted due to deficiencies in documents; the R&E process was terminated without a ruling, etc.).

I GENERAL INFORMATION ON THE R&E CASES IN RUSSIA

The ratio of granted, rejected and other results indicates the arbitration friendliness of the courts of various regions. The greener the line, the more willing the court of that region is to grant a R&E application.

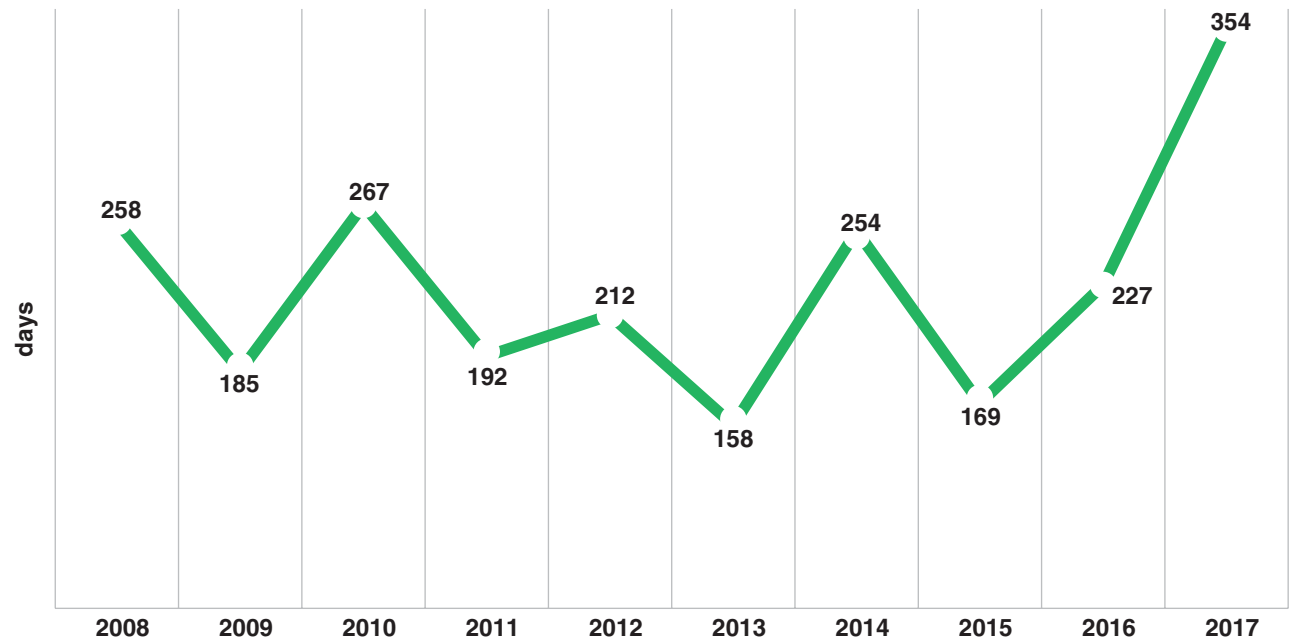
White numbers inside each line illustrate the number of R&E applications in the period 2008 to 2017.

Chart 3: Results of R&E Cases in the TOP-20 Regions



II DURATION OF R&E PROCESS

Chart 4: Average Time between the Dates of Award and R&E Application



We calculated the average time periods between the date of arbitral awards and the date of filing the R&E applications during the period 2008 to 2017. The figures represent the preparatory stage, which precedes the R&E applications to the Russian courts.

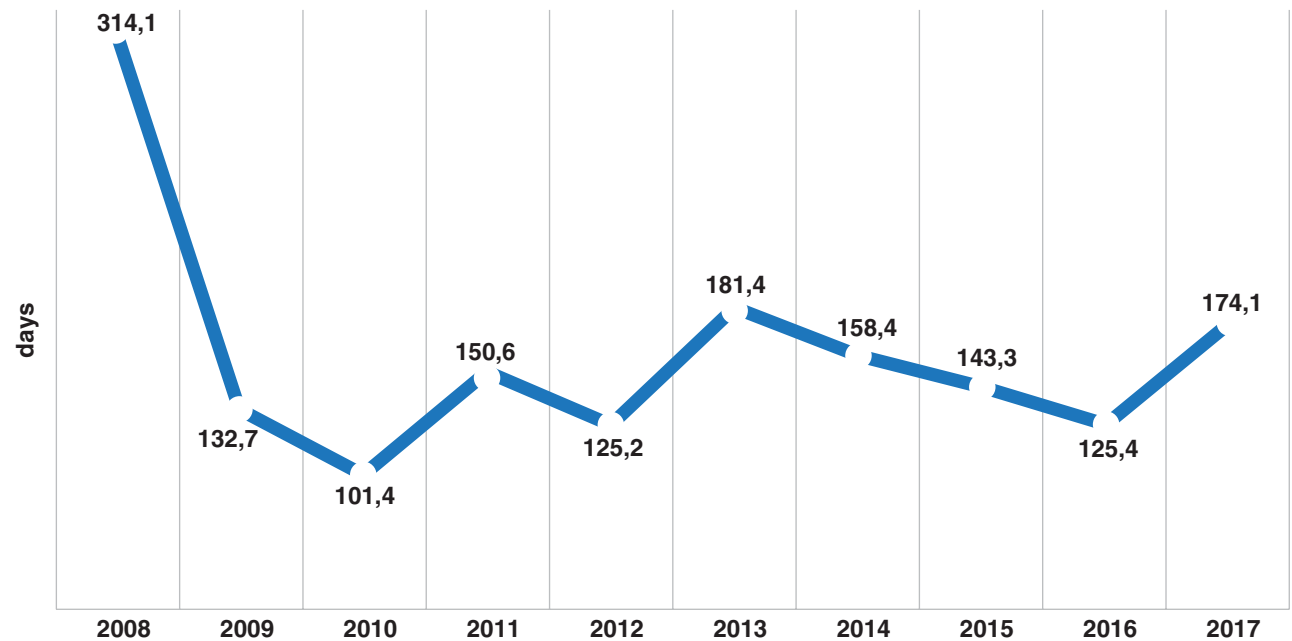
During this stage, the parties sometime attempt to settle the dispute or partial settlement is achieved. In addition, the process of preparing the submissions and corresponding evidence for the R&E application may take several months due to translation and legalization of documents, postage, etc.

II DURATION OF R&E PROCESS

Chart 5: Average Time between the Dates of R&E Application and R&E Court Ruling

The average time for obtaining a final court ruling on a R&E application has reduced to approximately 150 days in the recent years. The courts were able to decide the applications quite fast.

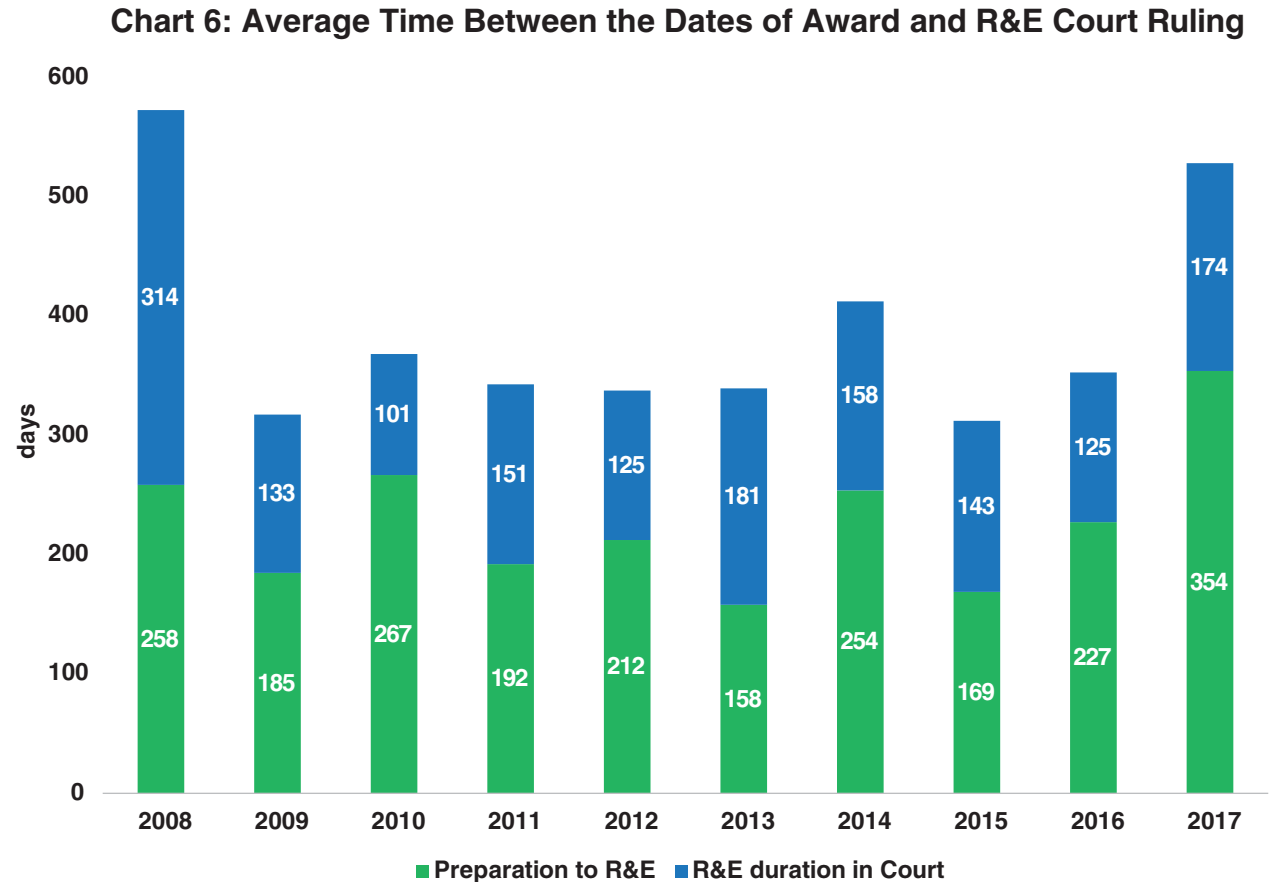
The longest lasting case was the R&E of the ICC arbitral award rendered in Turkey between Ciments Francais and OAO Siberian Cement, which continued for 2,249 days (6,25 years).



II DURATION OF R&E PROCESS

The merger of Chart 4 and Chart 5 gives an idea about the length of the entire R&E process – from the date of the arbitral award (green) and until the date of the final court ruling on the recognition and enforcement of the award in Russia (blue).

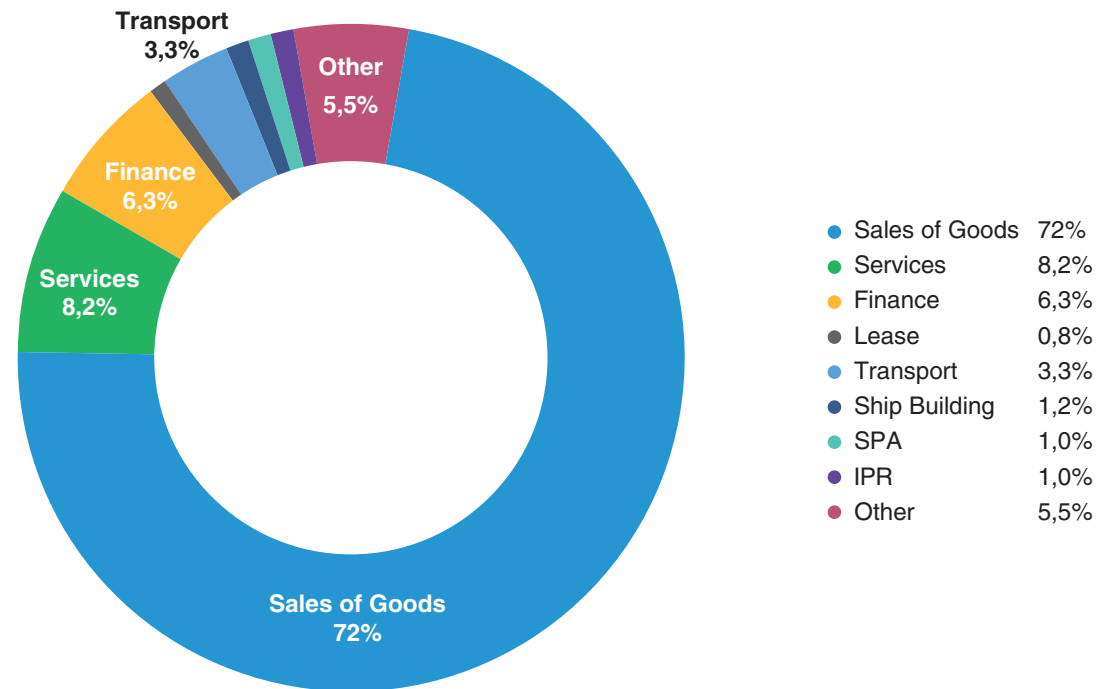
The duration of the entire R&E process varies from 1 to 2 years.



III GENERAL OVERVIEW OF THE DISPUTES

Most disputes arose out of the Sale of Goods contracts (341 cases); Services agreements (39 cases); and various Financial agreements (30 cases), followed by Lease, Transportation, Ship Building, SPAs, IPR and other types of contracts.

Chart 7: Types of Disputes

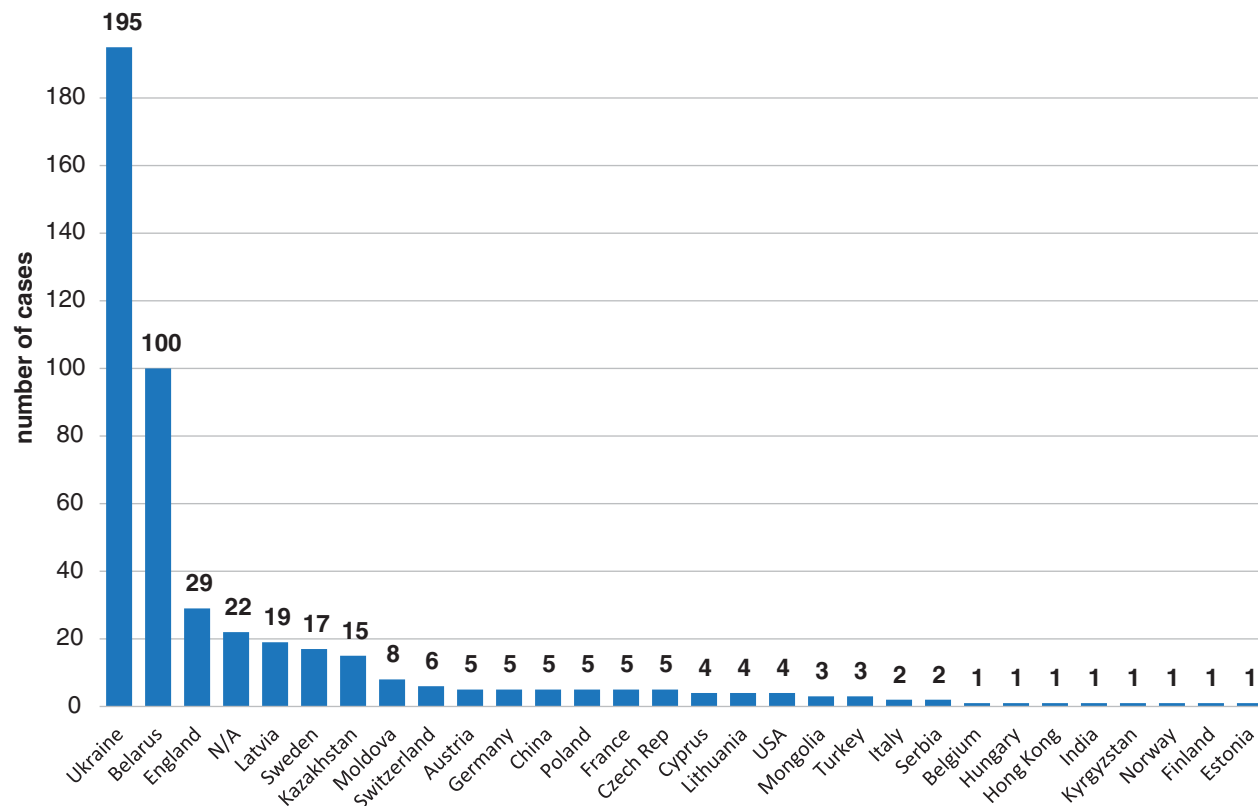


III GENERAL OVERVIEW OF THE DISPUTES

In the prevailing number of arbitral awards brought for R&E in Russia in the period 2008 to 2017, the seat of the arbitrations were as follows: Ukraine (195 awards), Belarus (99 awards), England (29), Latvia (19), Sweden (17), Kazakhstan (15), Moldova (8), Switzerland (6) and Austria, China, Czech Republic, France, Germany, Poland (5 awards each).

In 22 cases, the Russian court rulings did not contain information about the seat. This is recorded as "N/A".

Chart 8: Seat of Arbitration



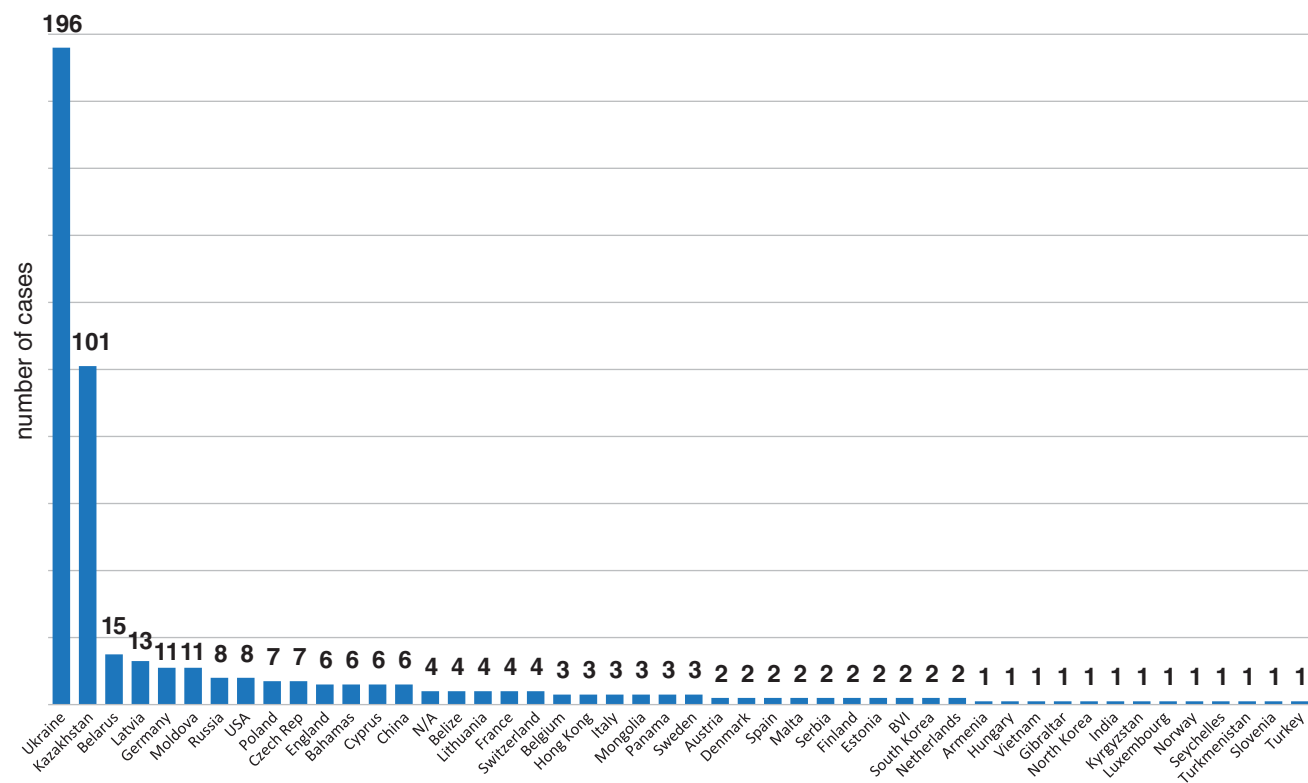
III GENERAL OVERVIEW OF THE DISPUTES

The nationals of the states who were claimants in the R&E proceedings in the period 2008 to 2017 are as follows: Ukraine (196), Belarus (101), Kazakhstan (15), Latvia (13), Germany (11), Moldova (11), Russia (8), and USA (8).

Several applicants came from jurisdictions commonly used by Russian beneficiaries for international corporate structuring: Bahamas (6), Cyprus (6), Belize (4), Hong Kong (3), Panama (3), Malta (2), BVI (2), Gibraltar (1), Luxemburg (1), and Seychelles (1).

A handful of applications related to foreign debtors' assets located in Russia.

Chart 9: Nationality of Claimants in R&E Cases



III GENERAL OVERVIEW OF THE DISPUTES

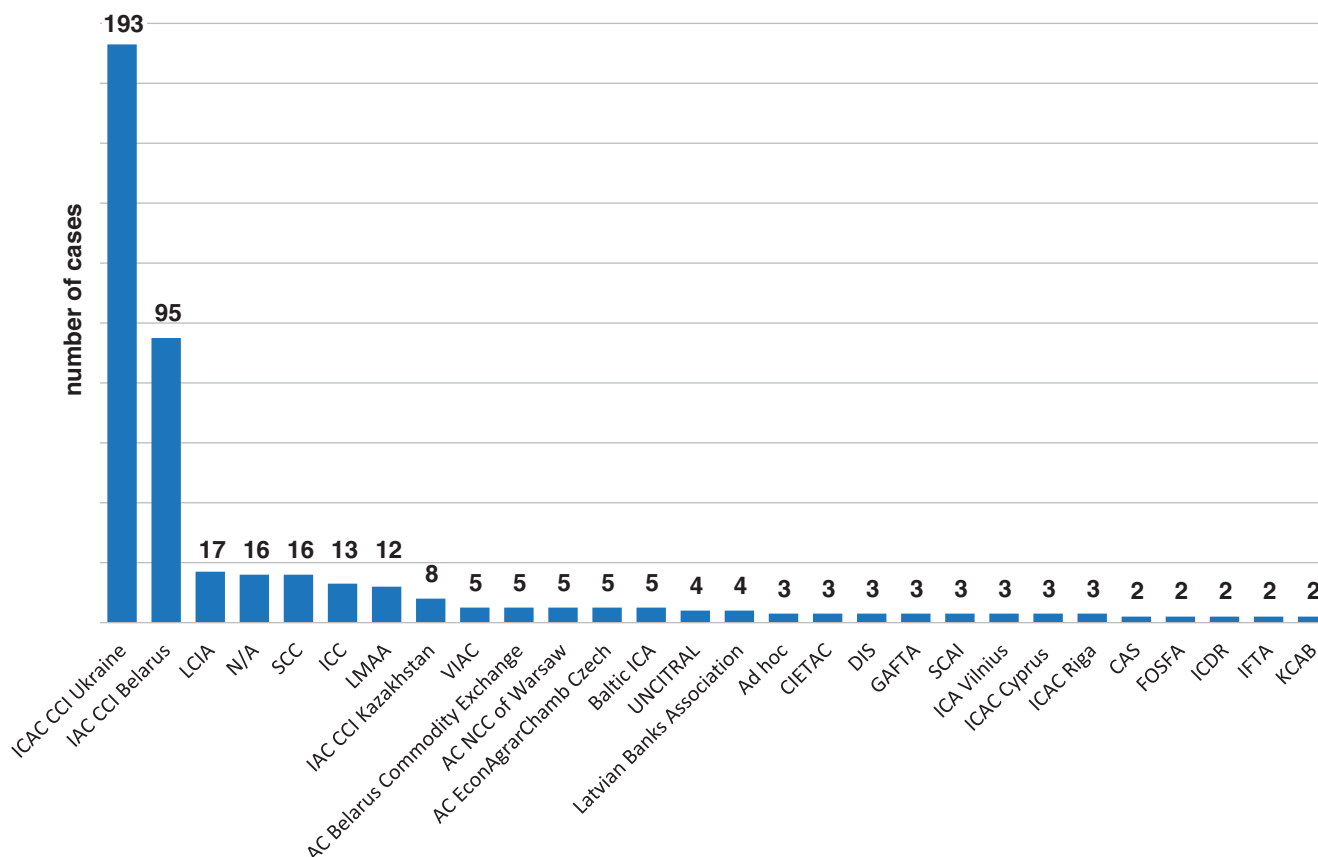
Among the most used arbitration rules in the arbitral awards there were the ICAC CCI Ukraine (193), IAC CCI Belarus (95), LCIA (17), SCC (16), ICC (13), and LMAA (12).

Chart 11 collates [I] the number of requests for arbitration filed with the SCC, LCIA and ICC in the period 2008 to 2017 in cases with Russian parties; and [II] the number of R&E applications of arbitral awards rendered under the rules of said institutes in the period 2008 to 2017.

The time difference between the dates [I] and [II] is 2 to 3 years, which is a sum of (a) 1 to 2 years – duration of arbitration per official statistics of the arbitration institutes; and (b) 1 year – length of the entire R&E process as shown on Chart 6. Therefore, the R&E applications filed to the Russian courts in 2010 most likely concern requests for arbitration filed in 2008 or earlier (see Chart 11 – same cell color per arbitration institute).

Following that logic, only 5 to 15% of cases filed with arbitral institutes reach the R&E stage in Russia.

Chart 10: Arbitration Rules in Arbitral Awards in 2008-2017



III GENERAL OVERVIEW OF THE DISPUTES

Chart 11: Comparison of Requests for Arbitration and R&E Cases by Year and Institute

Year	Requests for arbitration LCIA [I]	R&E Applications [II]	Requests for arbitration SCC [I]	R&E Applications [II]	Requests for arbitration ICC [I]	R&E Applications [II]
2008	14	2	16	0	9	1
2009	31	0	22	4	17	0
2010	18	0	22	0	13	1
2011	10	3	19	3	25	2
2012	9	2	18	1	23	0
2013	9	6	15	1	13	1
2014	13	1	26	3	27	1
2015	33	0	24	1	26	0
2016	15	1	30	1	20	3
2017	18	2	29	2	18	4
Total	170	17	221	16	191	13

The statistics illustrate that: (1) only a fraction of requests for arbitration result in final arbitral awards; (2) in some cases Russian parties are claimants; (3) in some cases where Russian parties are respondents they still prevail; (4) a part of arbitral awards are complied with voluntarily; (5) in some cases the winning parties do not pursue R&E for various reasons (such as the bankruptcy of one of the parties).

III GENERAL OVERVIEW OF THE DISPUTES

In most of the R&E cases, Russian courts did not identify the law which applied to the merits of the dispute in the arbitration. In those cases where the court identified the applicable law, the parties used English, Ukrainian, Belarussian, Russian, German, Kazakh, Latvian and Swedish law.

In 405 cases, Russian courts did not disclose the applicable law. The fact that Ukrainian, Belarussian and Russian parties comprised the largest part of the arbitrating parties (see Chart 9), there is a high probability that in a large fraction of the 405 cases either Russian, Ukrainian or Belarussian law applied.

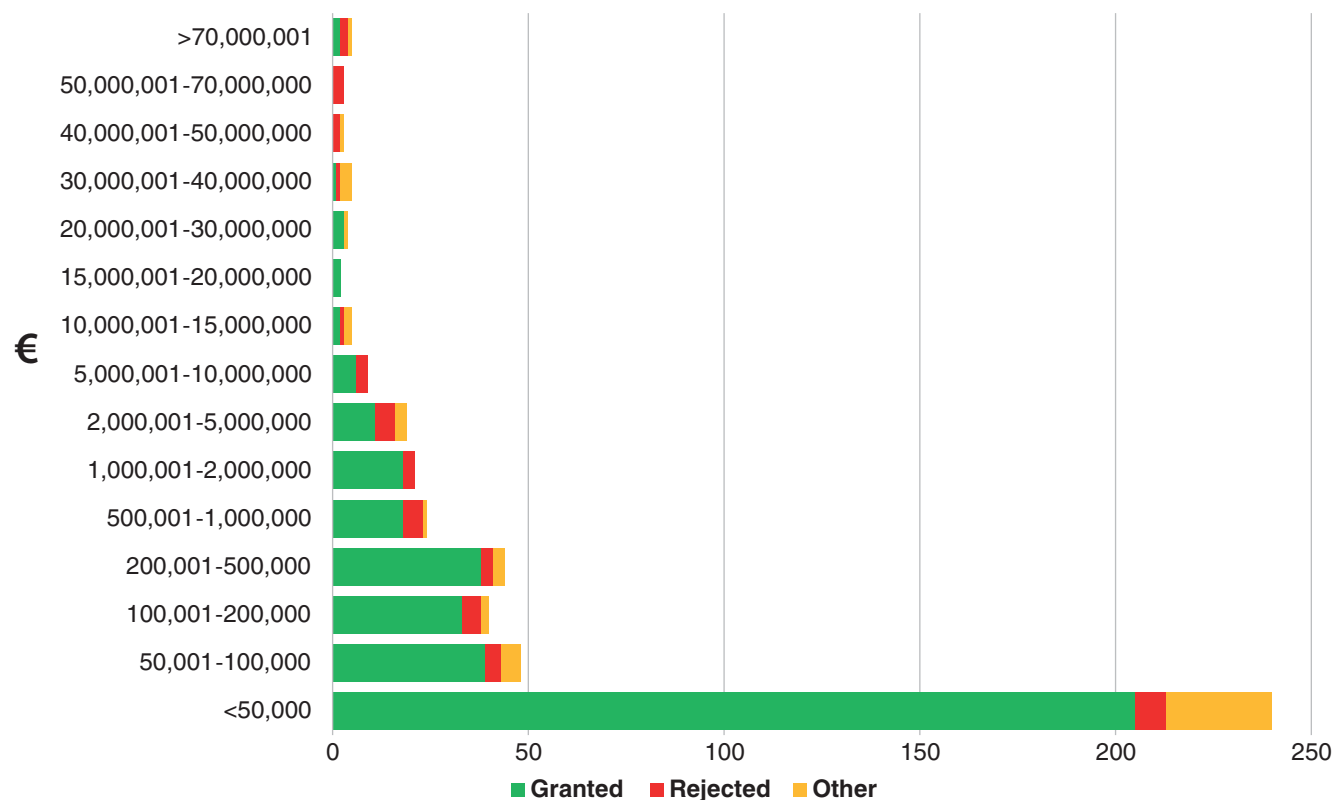
Chart 12: Applicable Laws in Arbitral Awards

Unknown	405
England & Wales	15
Ukraine	15
Belarus	7
Russia	5
Germany	4
Kazakhstan	3
Latvia	3
Sweden	3
CISG	2
Austria	2
China	2
California	1
Poland	1
Finland	1
Czech	1
Switzerland	1
Estonia	1

IV VALUE IN DISPUTES BASED ANALYSIS

The main currencies used in the arbitral awards were Russian Rubles, Euros and U.S. Dollars. Other currencies were British Pounds, Swiss Francs, Czech Crowns, Chinese Yen, and Kazakh Tenge. Though most awards were rendered under the rules of the Ukrainian and Belarussian institutes, in cases between Russian, Ukrainian and Belarussian parties there was limited use of Ukrainian Hryvnia and Belarussian Ruble.

Chart 13: Number of R&E Cases per Awarded Amounts



We converted all currencies into EUR using the average exchange rates of the Russian Central Bank for each year.

The total value of R&E applications in the period 2008 to 2017 comprised EUR 8,220,758,910. Russian courts granted R&E applications for the total amount of EUR 4,771,021,582 or, in other words, 58% of the amounts awarded by arbitral tribunals.

All R&E applications are grouped by value to show (a) the amounts that prevail in the disputes; and (b) the relationship between the amounts of the dispute and the result of the R&E applications in Russia.

Chart 14: Correlation between Awarded Amounts and Results of R&E Applications in %

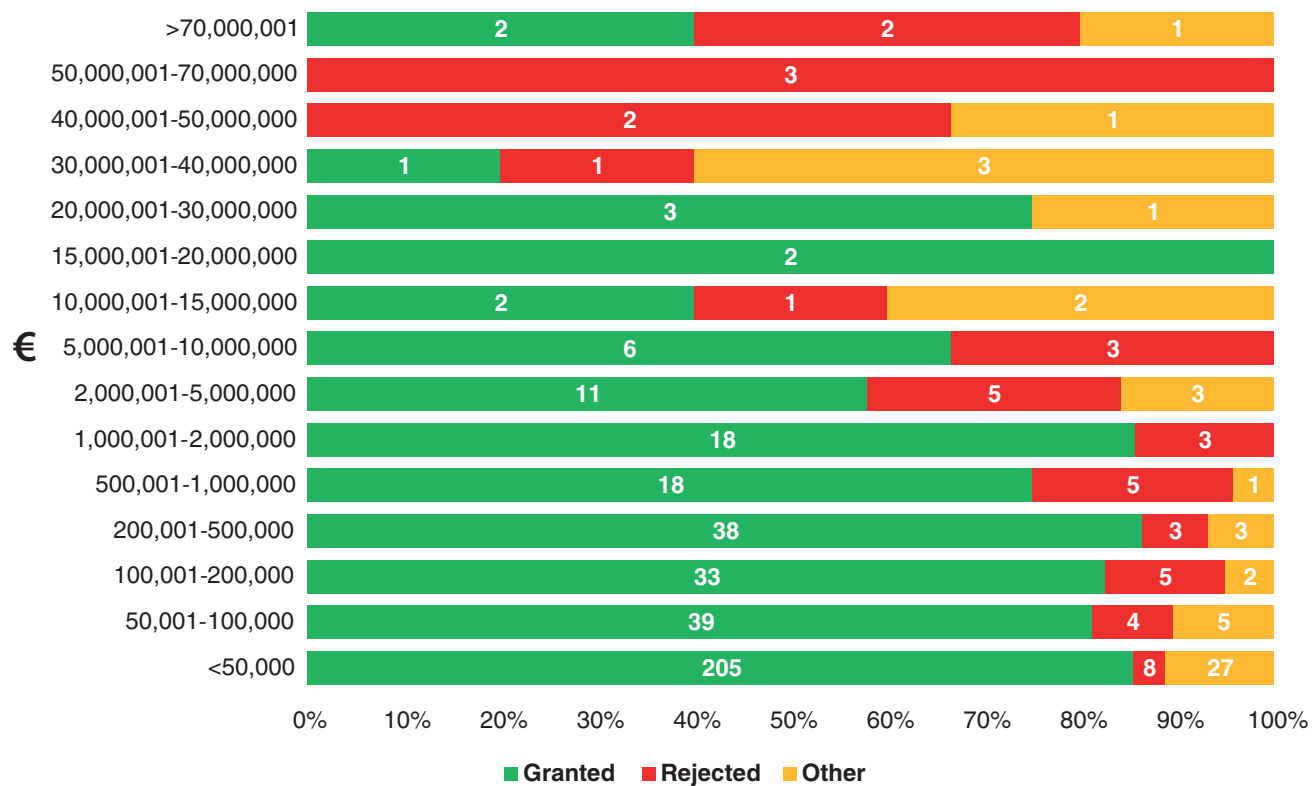
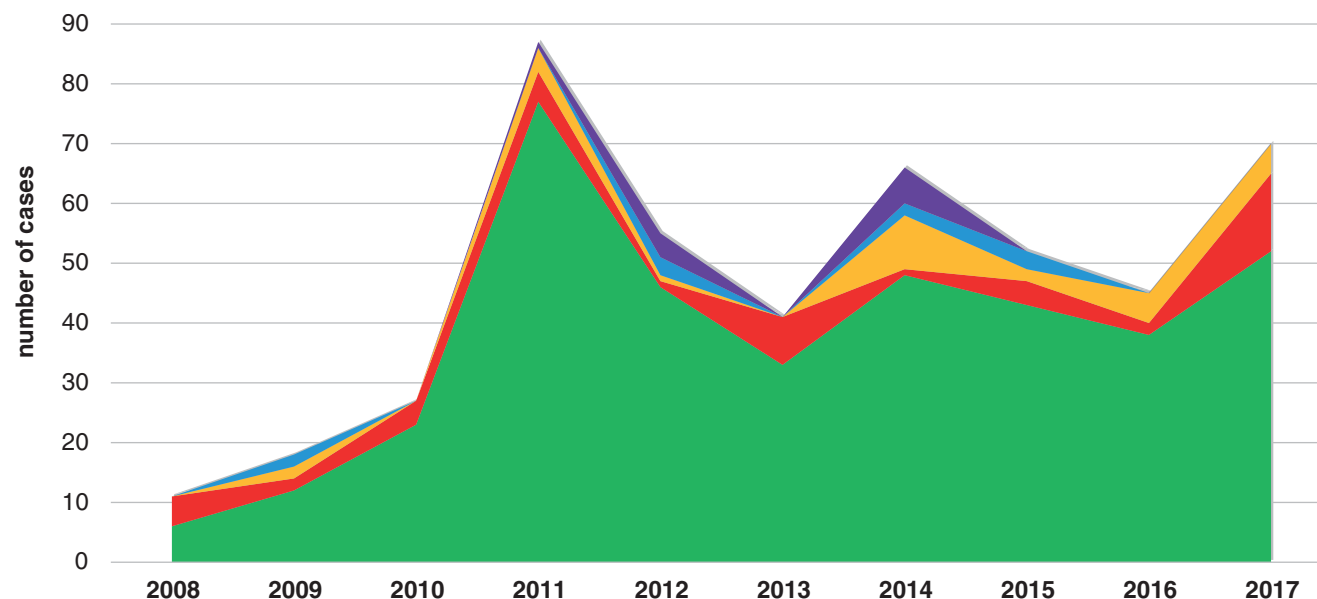


Chart 14 demonstrates the distribution of different outcomes of the R&E applications per each dispute value category during the period 2008 to 2017.

During the period 2008 to 2017, the parties filed 472 R&E applications in the Russian commercial courts.

Out of the 472 R&E applications, 378 were granted and 45 applications were rejected. 49 applications were not considered by Russian courts because of, for example, incomplete sets of supporting documents in the R&E applications; documents were not legalized or translated into Russian; the parties reached a settlement; or a debtor was in bankruptcy.

Chart 15: General Statistics on the Recognition and Enforcement



■ R&E terminated	0	0	0	1	4	0	6	0	0	0
■ Application not accepted	0	2	0	0	3	0	2	3	0	0
■ Application returned	0	2	0	4	1	0	9	2	5	5
■ Rejected	5	2	4	5	1	8	1	4	2	13
■ Granted	6	12	23	77	46	33	48	43	38	52

From a statistical point of view, the 49 R&E applications that were not considered by Russian courts for the reasons set out in Chart 15, are to be treated as so-called “statistical noise”.

Removal of the statistical noise results in a clearer picture of how Russian courts applied the Convention in the period 2008 to 2017.

Chart 16: Number of Granted and Rejected R&E Cases

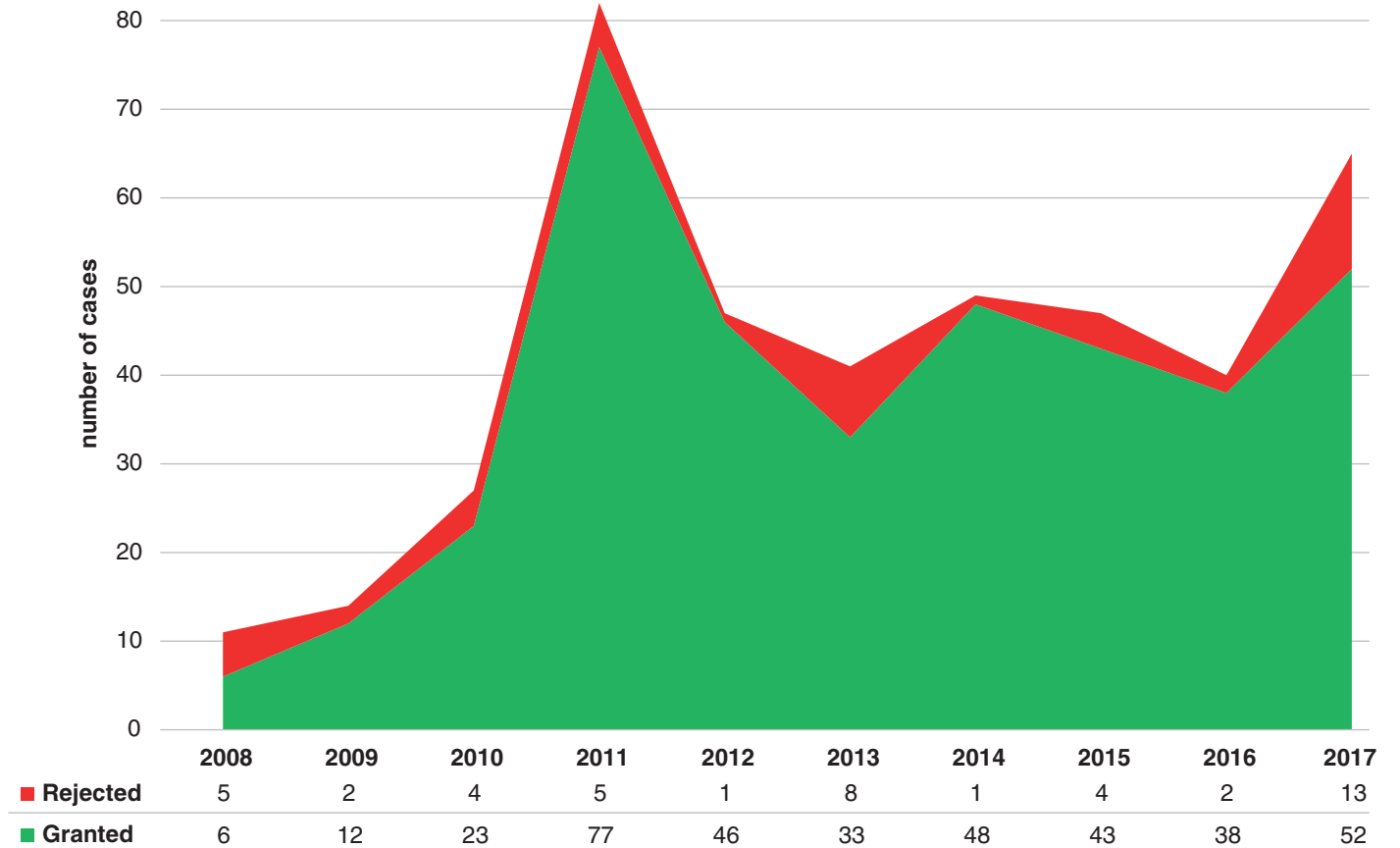
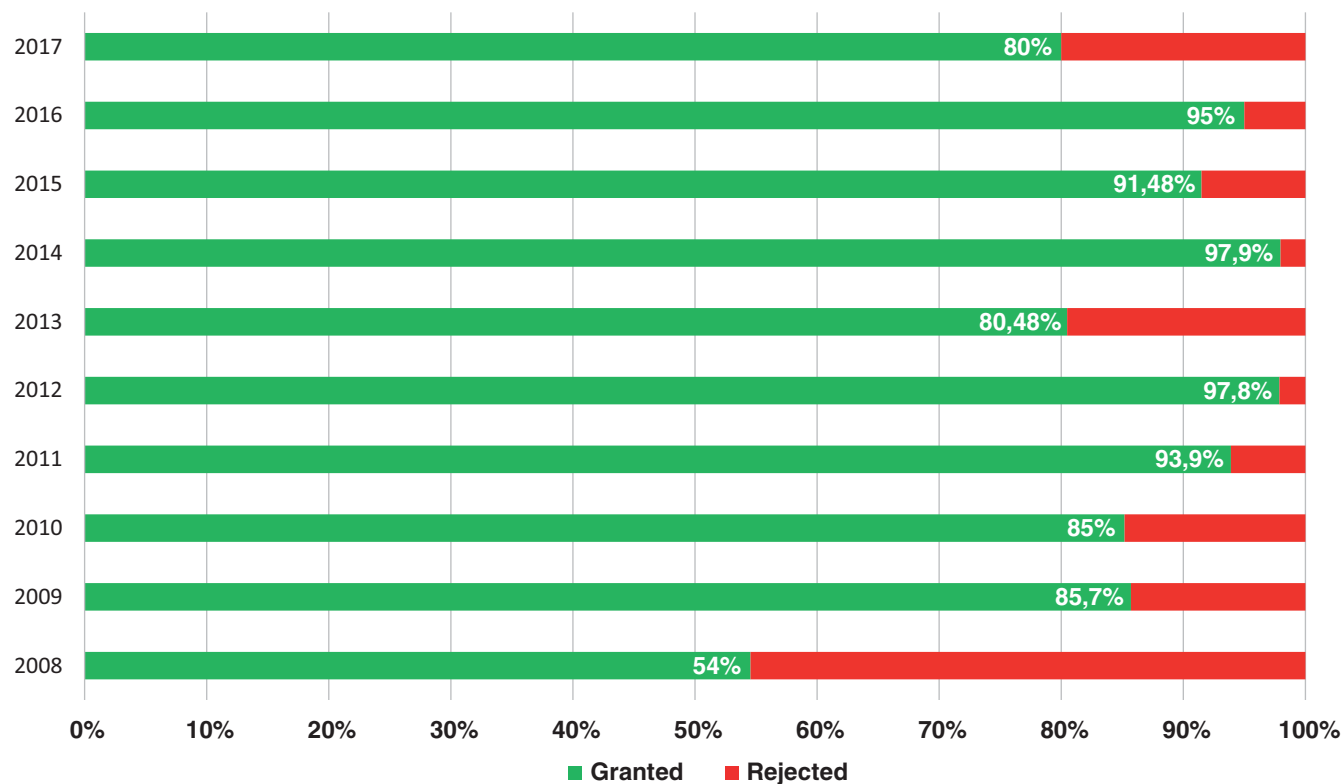


Chart 17: Ratio of Granted and Rejected R&E Cases



The same data that is recorded above is compared by percentage of successful and unsuccessful R&E applications.

It is notable that the ratio of successful R&E applications surpassed the 80% mark in 2009, and even reached 97,9% in 2014.

On a yearly basis, the ratio of successful R&E applications was as follows: in 2009 – 85,7%, in 2010 – 85%, in 2011 – 93,9%, in 2012 – 97,8%, in 2013 – 80,48%, in 2014 – 97,9%, in 2015 – 91,48%, in 2016 – 95% and in 2017 – 80%.

The chart shows the grounds of Article V of the Convention that the defendants invoked in the period 2008 to 2017. Violation of public policy was brought by the defendants in 42 cases (Article V2(b)); the lack of proper notice and inability to present a case was raised in 34 cases (Article V1(b)); and the defense that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration was raised in 13 cases (Article V1(c)).

V1(a) – the parties to the agreement were under some incapacity or the said agreement is not valid;

V1(b) – the lack of proper notice and inability to present a case;

V1(c) – the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration;

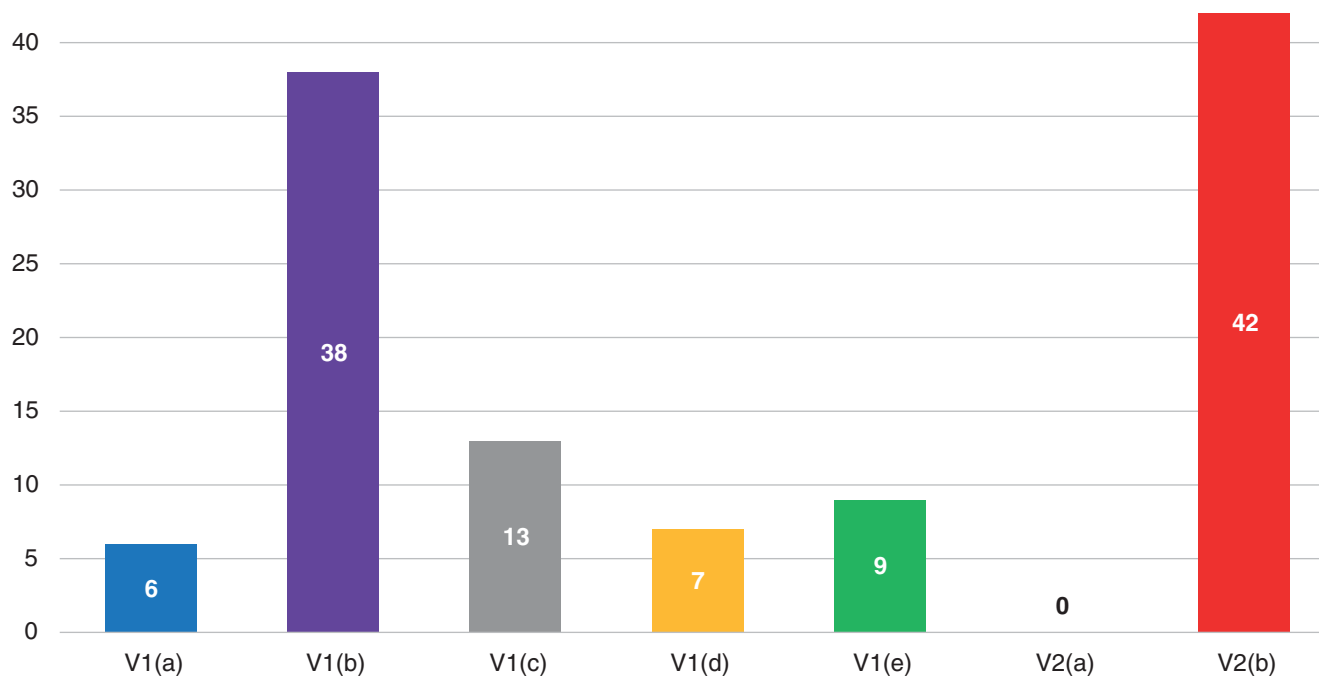
V1(d) – defects in the composition of the arbitral authority or in the arbitral procedure;

V1(e) – the award has not yet become binding on the parties, or has been set aside or suspended;

V2(a) – the subject matter of the dispute is not capable of settlement by arbitration; and

V2(b) – violation of public policy.

Chart 18: Number of Convention's Article V Defenses

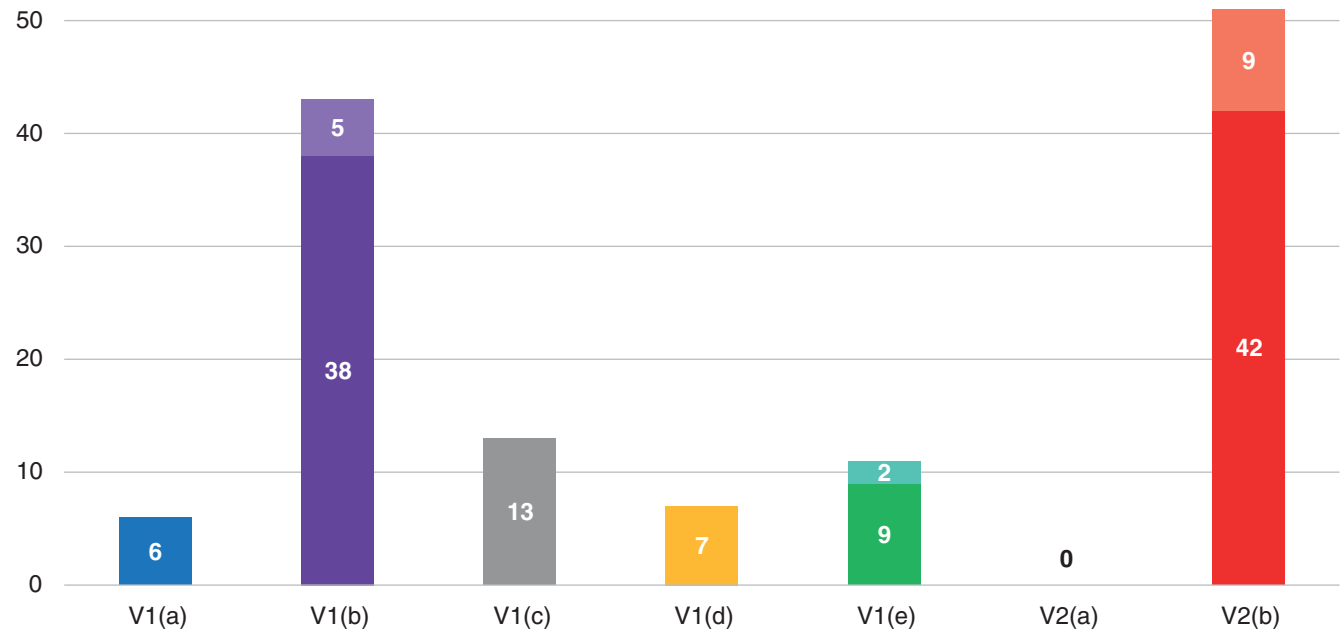


Russian procedural law contains Article 244.1 APK, which sets out several grounds for the refusal of the recognition and enforcement of foreign judgments and arbitral awards. These grounds partly duplicate Article V of the Convention.

Article 244.1 APK duplicates three of such grounds. The following grounds have been applied by the courts in several cases without any reference to Article V of the Convention: the award has not yet become binding on the parties, or has been set aside or suspended (Article V1(e) = Article 244.1.1 APK); the lack of proper notice and inability to present a case (Article V1(b) = Article 244.1.2 APK); and the violation of public policy (Article V2(b) = Article 244.1.7 APK).

The data in Chart 18 is supplemented by the cases where the parties invoked Article 244.1 APK is shown on Chart 19.

Chart 19: Number of Convention's Article V + Article 244.1 of Russian Procedural Code Defenses



V APPLICATION OF THE CONVENTION IN 2008-2017

Chart 20: Distribution of Article V Grounds per Year

This Chart depicts the number of cases in which the losing parties invoked various grounds of Article V of the Convention (including duplicating Article 244.1 APK grounds) during the period 2008 to 2017.

V1(a) – the parties to the agreement were under some incapacity or the said agreement is not valid;

V1(b) – the lack of proper notice and inability to present a case;

V1(c) – the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration;

V1(d) – defects in the composition of the arbitral authority or in the arbitral procedure;

V1(e) – the award has not yet become binding on the parties, or has been set aside or suspended;

V2(a) – the subject matter of the dispute is not capable of settlement by arbitration; and

V2(b) – violation of public policy.

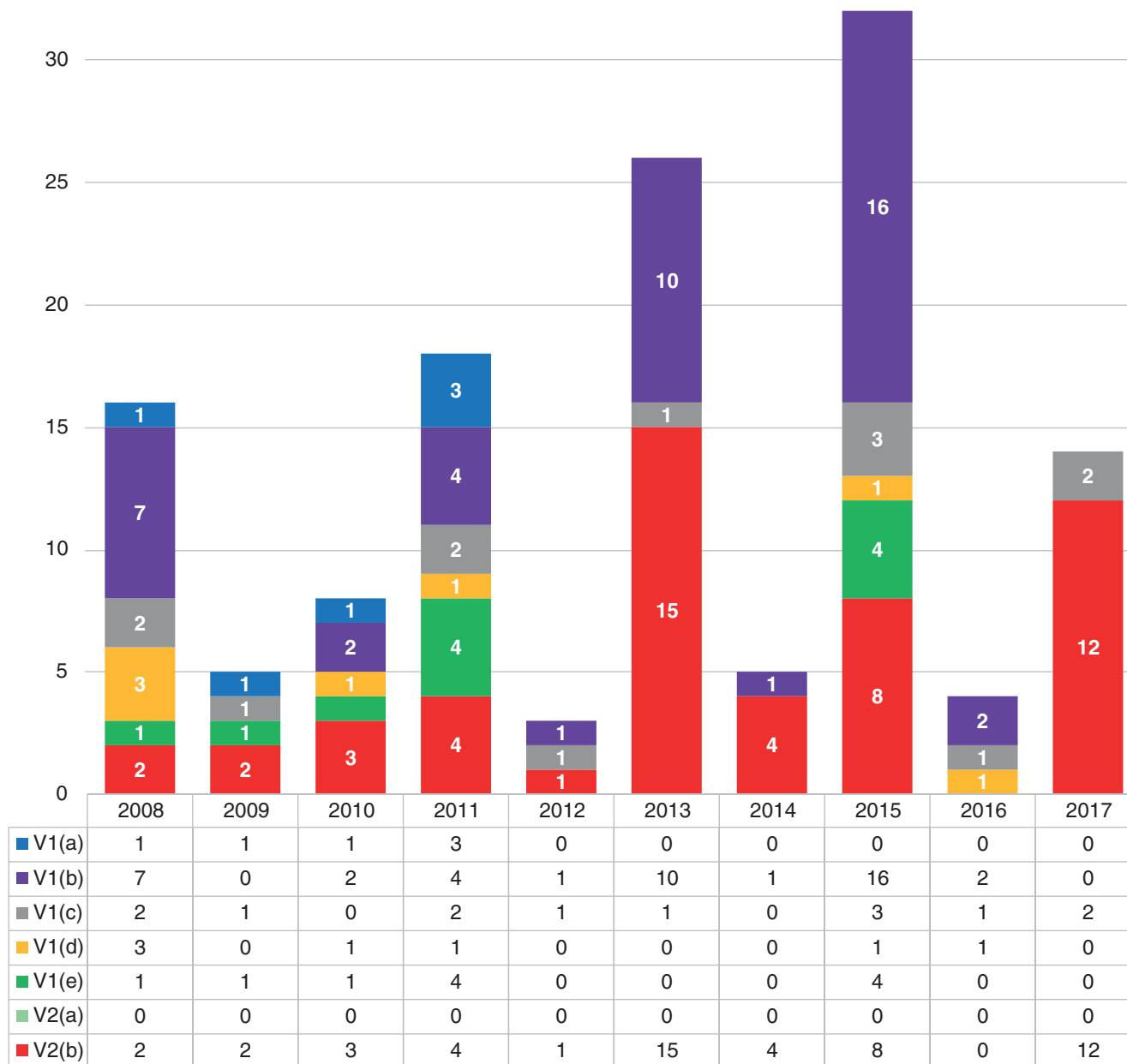
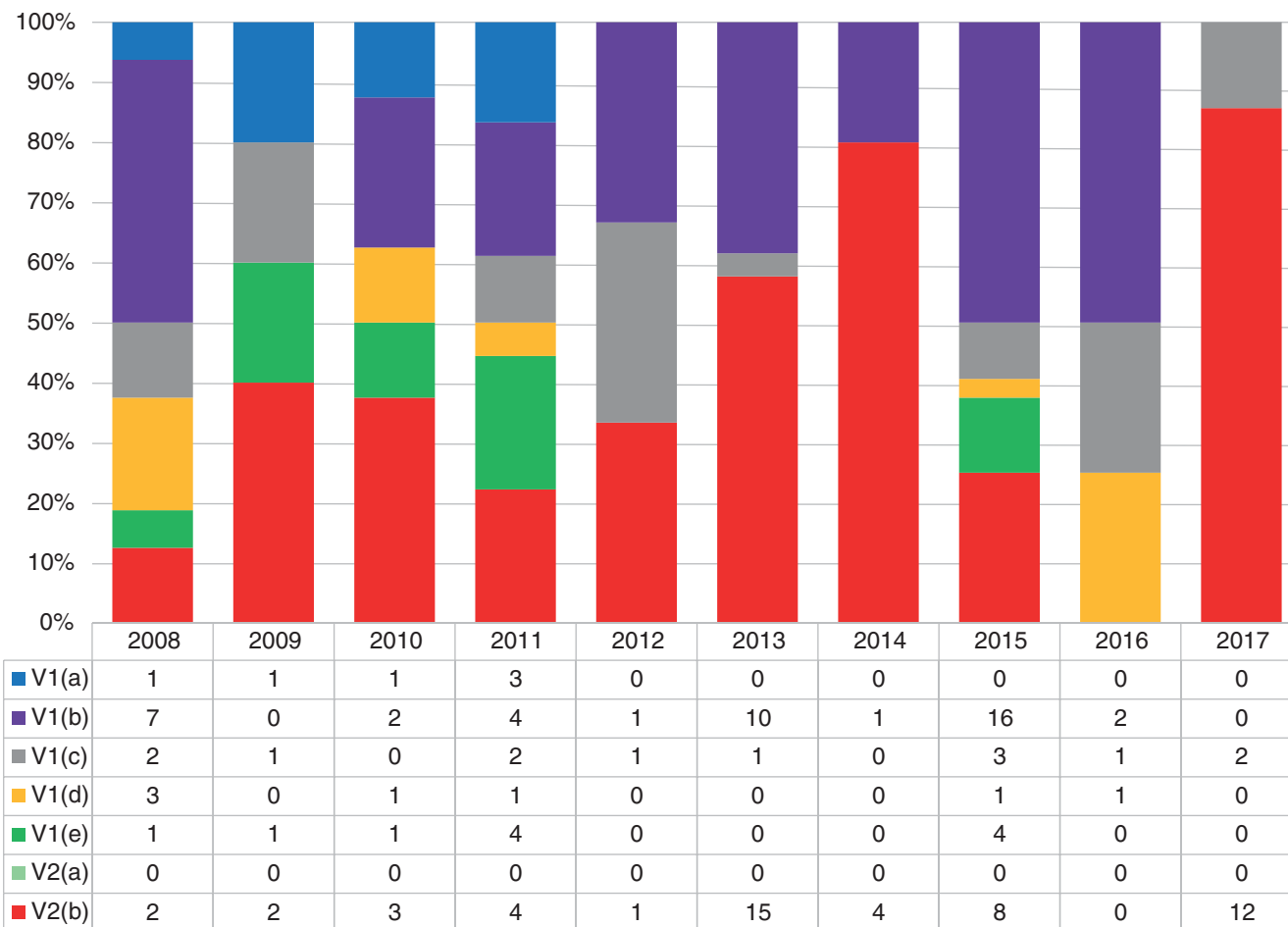


Chart 21: Ratio of Various Article V Grounds per Year

The Chart shows the relative percentage of each Article V ground to the total number of Article V grounds which the parties invoked each year from the period 2008 to 2017.

The grounds which were most used by the defendants were: Article V2(b) – violation of public policy (red); Article V1(b) – the lack of proper notice and inability to present a case (purple); and Article V1(c) – the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration (grey).



In relation to the violation of public policy, in 472 reviewed cases from the period 2008 to 2017, this defense was invoked by the parties 49 times and only 2 times ex officio by the court (51 cases in total).

The courts found that the recognition or enforcement of the awards would be contrary to the public policy of Russia in 20 cases out of 51 (39% efficiency rate).

In 2013, the Russian Supreme Arbitrazh (Commercial) Court published the Information Letter No. 156 where it explained how to apply the concept of public policy in R&E proceedings. As a result, the number of court granted public policy motions dropped to nil in the following years. Its effect lasted until 2017 when the public policy argument regained its popularity.

Chart 22: Number of Invoked and Granted Public Policy Defenses

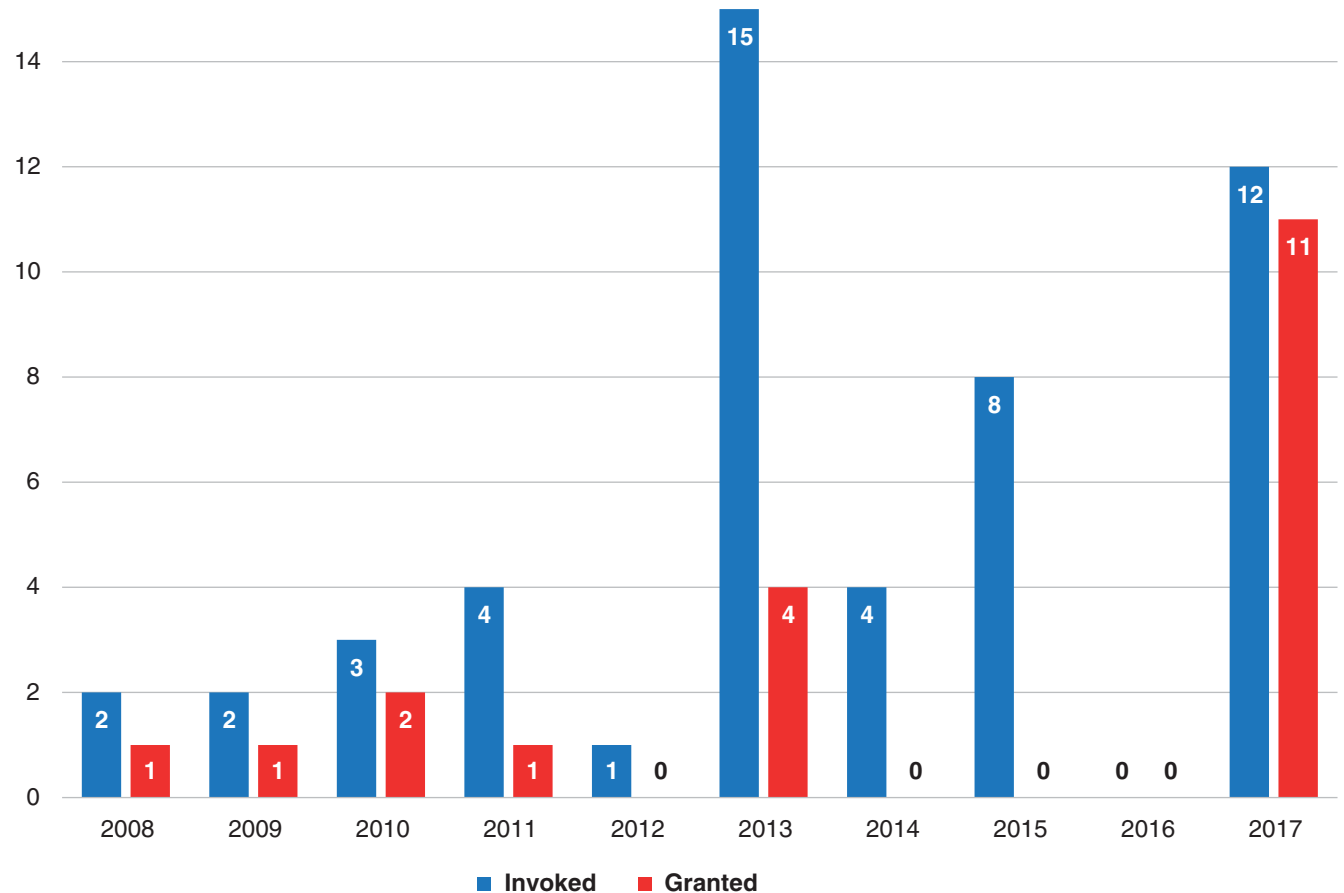
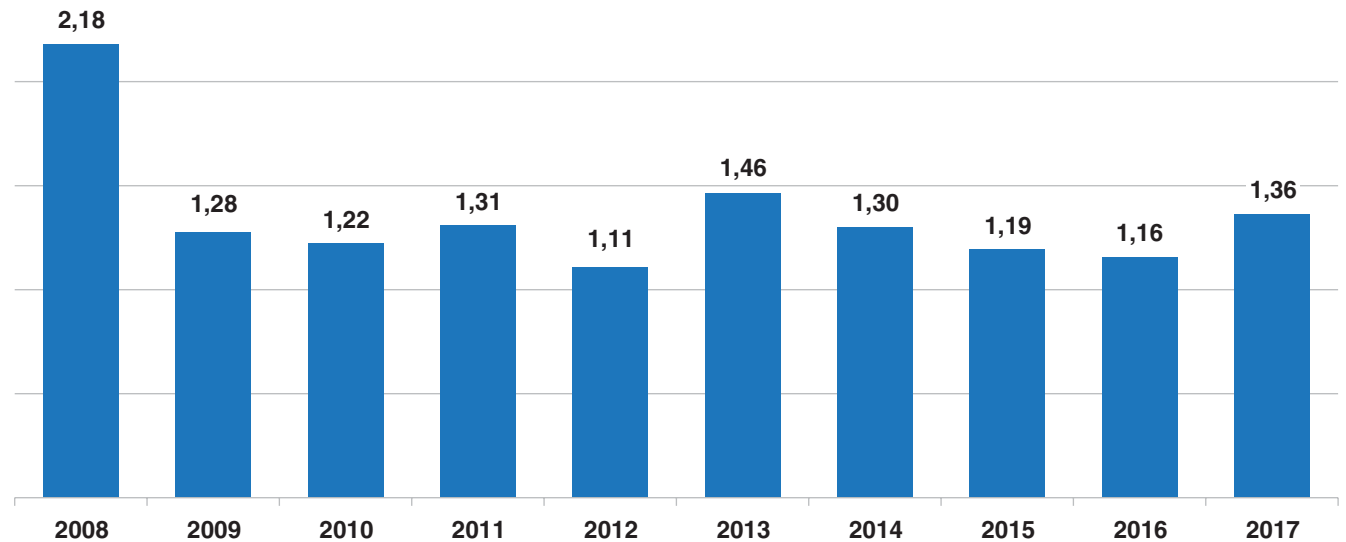


Chart 23: Average Number of Court Instances per Year

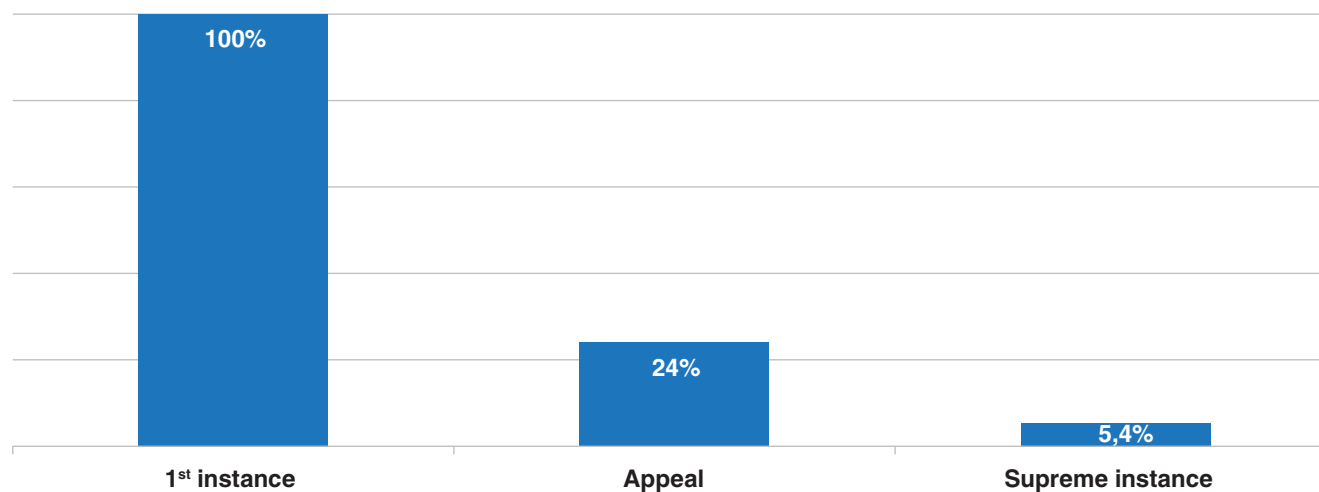


The R&E applications are filed with the courts of first instance and can be appealed to the courts of second instance and ultimately to the Russian Supreme court.

The average number of instances for obtaining final rulings on the recognition and enforcement differs from year to year, which is shown in Chart 23.

During the period 2008 to 2017, the courts of first instance recognized and enforced 378 arbitral awards and denied 45 (378+45=423 cases). 105 of these cases were then appealed to the courts of second instance or, in other words, approximately 24% of those of the courts of first instance. Only 23 cases reached the Supreme court or, in other words, approximately 5,4% of the cases decided by the courts of first instance.

Chart 24: Percentage of Appealed Court Rulings



The results of the number of R&E cases in each of three instances is shown in the Chart.

The Study shows that the higher the court instance, the lower the ratio of the recognized and enforced arbitral awards. About 89% of the R&E applications were granted in the courts of first instance; 61% of the R&E applications were approved by the courts of second instance and there was a 60% hit ratio in the supreme instance.

Chart 25: Courts' Attitude Towards R&E per Instance

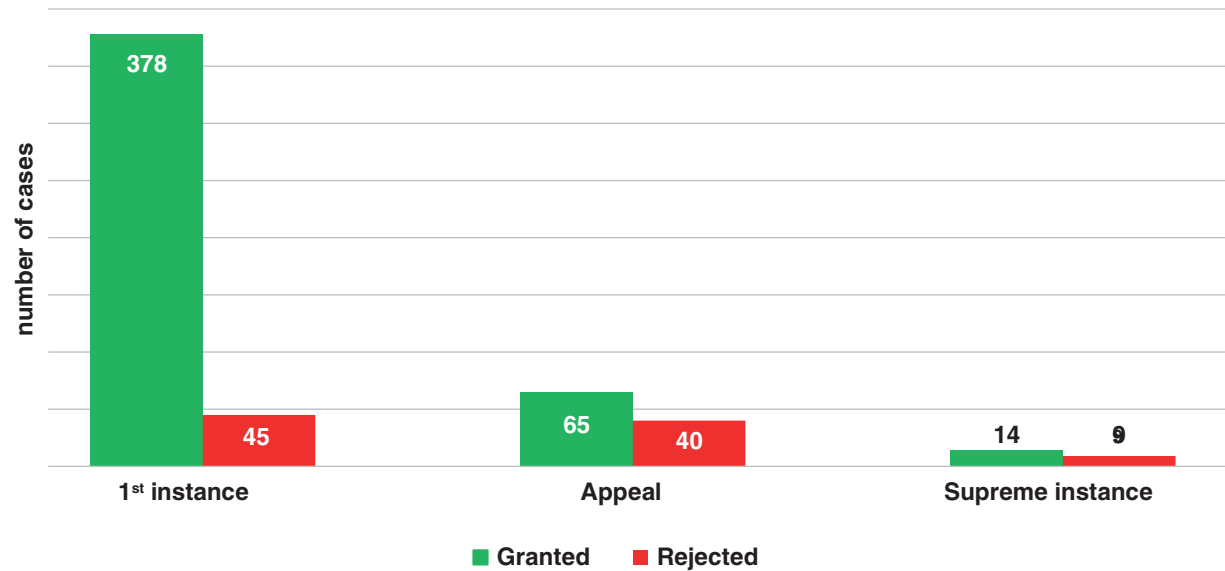
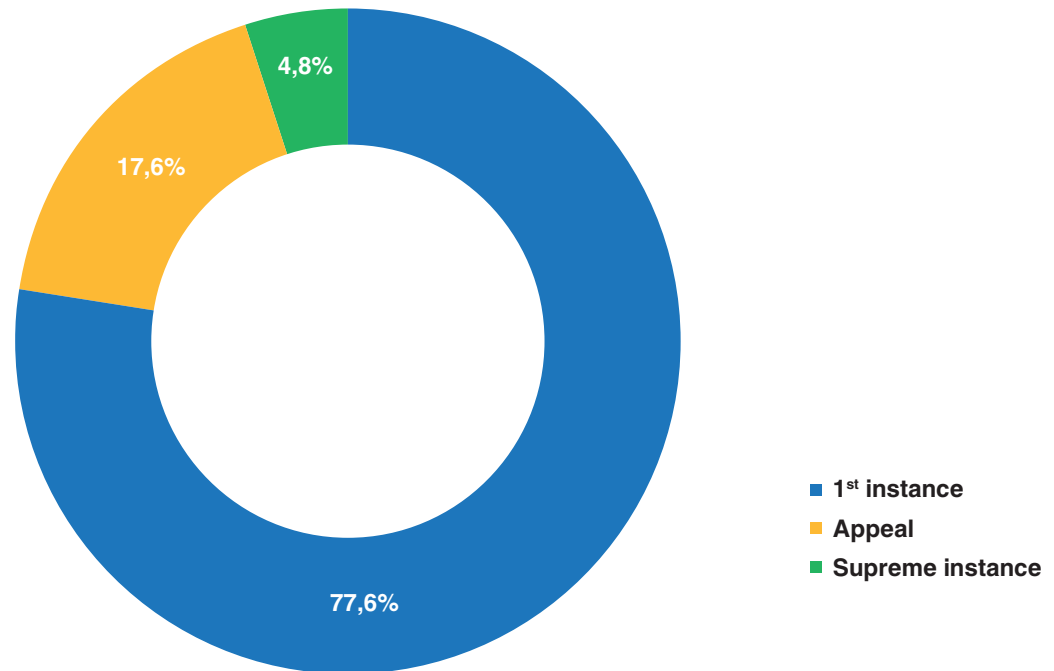


Chart 26: Percentage of Final R&E Rulings per each Court Instance



The hit ratio of cases finally decided already in the courts of first instance, meaning that they were not subsequently appealed, was 77,6% or 367 cases out of total of 472 cases.

82 cases were finally resolved by the court of second instance (17,6% of all cases).

23 cases were finally resolved by the supreme instance (4,8% of all cases).

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The results contained in this publication do not constitute legal advice, nor do they necessarily reflect the opinions of the Russian Arbitration Association. When using information contained in this study please refer to the Russian Arbitration Association.

