Mediation in the neighbouring countries: the case of Russia
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NOTE

Abstract:
This Briefing Note presents a review and analysis of the current state of mediation in Russia and the relevant laws. It further shows the extent to which Russian mediation rules correspond to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. It also considers issues related to the future development of mediation in the Russian Federation and proposes measures required to bring this process forward in a successful and efficient way.
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EXECUTIVE SUMMARY

This Briefing Note presents an overview and analysis of the current status of mediation in Russia, and shows the extent to which Russian legislation in the area of alternative dispute resolution (ADR) and mediation corresponds to Directive 2008/52/EC of the European Parliament and of the Council of May 21, 2008 on certain aspects of mediation in civil and commercial matters (hereinafter referred to as the EU Directive).\(^1\)

Over the past few decades, mediation has developed apace, increasingly being seen by the international community as a universal supra-juridical option for dispute resolution as required by the challenges of the modern world, which present us with the difficult task of striking a balance between globalization, which implacably interferes in the lives of both national communities and individuals, and the natural human striving for satisfaction of personal interests and needs.

After a long process of evolution, mediation gradually took shape as a way of overcoming conflicts, differences, and disputes, empowering the parties themselves and enabling them to satisfy their goals that are under threat, but not – and this is one of the most important aspects of mediation – at the expense and to the detriment of the opponent, but giving him an equal opportunity to exercise his own rights and interests. Below, mediation is defined as a method of dispute resolution that enables settlements to be reached on the basis of consent between the parties.

Mediation is the path to a well-considered, mutually acceptable solution based on consensus between the parties involved in a dispute. Mediation constitutes participation by an impartial person – the mediator – in the procedure of dispute settlement. Mediation is a special form of intermediating. As a neutral third party, the mediator has the task of assisting the parties voluntarily participating in the mediation procedure to help them arrive at a mutually acceptable and viable solution that reflects their interests and requirements. This solution has to be one that will ensure the mutual satisfaction of the conflicting parties. Successful mediation ensures that, as a result, there are no winners or losers; rather it is a win-win situation for all parties concerned.

The mediation process has been developing in Russia since 2004-2005. The ongoing changes in Russian society since the early 1990s required drastic reforms also in the area of law, because the legal system and the public's legal awareness for a long time continued to be affected by the stereotypes shaped during the Soviet period. One factor here was the lack of legal knowledge, the lack of ability and will to use the judicial system as a tool for protecting one's rights. Aside from legal ignorance, a significant role was played by people's distrust of the government and its institutions, together with a lack of faith in their own potential in terms of social influence, as had been typical during communist party rule.

Over the last twenty years, Russia has achieved a breakthrough in creating legal institutions to meet the needs and requirements of the developing market economy. As participants in the market economy, Russian people began applying for judicial protection more and more frequently. By the early 2000s, the overloading of the court system had become a very acute problem. One of the consequences of this was the problem of ensuring the quality of justice. Russia’s leaders proclaimed creating the basis of a law-ruled state and promoting institutes of the civil society to be one of their priorities.

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Among the measures aimed at achieving this goal was the progressive introduction of mediation in Russia.

This process soon attracted many supporters among public organizations and the legal profession. Mediation is considered a humanistic and at the same time pragmatic approach to settling disputes, enabling the state to delegate some of its powers to ordinary citizens and simultaneously promoting in society a readiness and ability to accept these powers and to assume responsibility for making their own decisions.

Thus, mediation became recognized not only as a legal institution, but also an important social institution. This has been confirmed by the efforts and the support that the authorities have shown over the past few years in the course of creating conditions for the successful introduction of mediation into Russian legal culture as well as social life in general.

The shaping of the legal basis and institutionalization of mediation are undoubtedly one of the major steps for promoting the further expansion of mediation in Russia. On the initiative of Russian President Dmitri Medvedev, drafts of a Federal Law on Alternative Dispute Resolution Procedures Involving an Intermediary (Mediation) and a Federal Law on Amendments to Certain Legislative Acts of the Russian Federation Following Adoption of the Federal Law on Alternative Dispute Resolution were presented to the State Duma for consideration.


The adoption of the Law on Mediation was a milestone not only in terms of improving the Russian legal system but also the overall development of Russian society. On one hand, adoption of this law is real evidence of the transition from repressive orientation to humanization of the Russian justice system. On the other hand, the Law on Mediation is a signal from the government to the people, evidencing its trust in them and encouraging them to show more social activity. In this respect, the role played by the utilization and promotion of mediation in the EU countries, where mediation started to be actively employed in the late 1980s to early 1990s, as well as by the EU Directive should be stressed also.

The EU Directive significantly affected the creation of a legal basis for mediation in Russia. In fact, the wording of that document served as one of the main guidelines for drafting the Law on Mediation.

The Russian Law on Mediation established a facilitative model of mediation. Pursuant to this law, the mediator is not only entitled to hand down any decisions; he cannot even suggest any options for conflict settlement or act as legal consultant to the parties. That means that

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the parties maintain full control not only over the content of the settlement but also over the process of seeking settlement options and preparing agreements on the resolution of their dispute.

During the last six years, immense efforts have been made in terms of education, including introductory courses and lectures for the legal profession, managers, psychologists, and other professionals, and the organization of regional and international events aimed at popularizing mediation and promoting the pooling of experience between mediation specialists. Contemporary Russian society, however, is still not sufficiently familiar with this new institution.

With a view to successfully introducing mediation and providing high-quality mediation services (which is extremely important, especially in the initial stage of development of a new institution, when unprofessional action may have a negative impact on its image among the public), the government, public institutions, and the legal community in Russia continue to make joint efforts to shape an informed demand for mediation and offer a competent supply to meet that demand. These efforts include addressing the business community as well as other professional and social groups. In line with this, active efforts are being made to introduce mediation into the school education system in order to promote the culture of constructive conflict-related behavior starting at school age.

The professional community of Russian mediators is growing. Following a procedure established by the Russian Government, a program of mediator training, including regular continuing education, has been established.

As prescribed by the Law on Mediation, professional mediators may set up self-regulated associations (SRO). This will create the prerequisites for shaping a unified and coordinated policy for further development of this new institution. At the same time, it will provide a mechanism for regulating mediation activities and providing quality control of the mediation services provided, at the same time avoiding over-involvement by the government. To this end, the Russian Organization of Mediators, a nonprofit partnership, was established to serve as the basis for creating a mechanism for the self-regulation of mediation activities in Russia.

In addition to considering issues related to the integration of mediation in Russia, this Briefing Note also includes recommendations as to how this process can be developed in a successful and effective manner, and in which areas combined efforts at the international level in general and with the European Union in particular would be beneficial.
INTRODUCTION: DEVELOPMENT OF ADR IN RUSSIA AND THE PREREQUISITES FOR INTEGRATING MEDIATION INTO RUSSIAN LEGAL CULTURE

Russia has a long history of the existence and development of institutions related to alternative dispute resolution (ADR), including those involving an intermediary. Many experts believe, for example, that arbitration evolved in Russia as early as the first millennium as a method of dispute resolution that was widely used by the Slavs and developed during the entire medieval period.

The system of arbitration tribunals achieved its peak of development in the mid-19th century with the adoption of the Charter of Trade Proceedings. Some of the arbitration tribunal judges were appointed by the government; while the others were elected by the merchants from among their own community (the latter performed these duties free of charge). One of the main advantages of those tribunals was to speed up the cases, which were handled. Verbal arguments constituted the priority method of the proceedings, which were absolutely free of limitation in terms of ritual, form of expression, etc. Furthermore, for consideration of urgent matters the tribunal could convene an extraordinary session, even on a holiday. A highly important element of the proceedings was the oath enabling the parties to rely on mutual trust instead of formalities.

Many experts believe that in this flourishing period of commercial proceedings in Russia, even the term "mediator" was used. However, despite this encouraging progress, the legal reforms of 1864 gave rise to increased discussion about the wisdom of retaining the commercial courts. As a result, the number of such courts began to decrease gradually despite all the arguments for keeping them.

After 1917, the new Soviet state did not abandon the utilization of minimally formal intermediation, largely due to lack of trust in the law itself by the originators and followers of Marxism-Leninism. Lenin wrote: "...the absolute obligation of the proletarian revolution was not to reform judicial institutions but to completely destroy, to raze to the ground the entire ancient court system and its apparatus." One of the first Soviet decrees was Decree No. 1 on the Courts dated November 22, 1917, which stated that "in all civil disputes and criminal law cases, the parties may appeal to an arbitration court: (Para. 6). The procedures to be followed at arbitration courts were set forth in a decree by the All-Russia Central Executive Committee (Decree on Arbitration Courts) dated February 16, 1918.

In Russia, the terms commercial proceedings (arbitrazh) and arbitration proceedings (treteyski sud) have specific meanings: on one hand, this form of dispute resolution includes legally regulated organizations belonging to the ADR system such as the International Commercial Arbitration Court at the RF Chamber of Trade and Industry, which was established by the business community; on the other hand, public courts in charge of considering disputes in the area of the economy and business are called arbitration courts as well.
included the Maritime Arbitration Commission, which was established in 1930\textsuperscript{11}, and the Foreign Trade Arbitration Commission, established in 1932 (the International Commercial Arbitration Court at the RF Chamber of Commerce and Industry becoming its successor)\textsuperscript{12}.

In the USSR, extrajudicial methods of dispute resolution achieved their highest stage of development in the area of labor relations\textsuperscript{13}, in a similar way to the labor arbitration that existed in Great Britain and the USA. A particular feature of the Soviet system was the existence of the so-called comrades’ courts that operated in workplaces\textsuperscript{14}. These bodies were called on “to prevent violations of the law, educate people by means of persuasion and social influence, and promote intolerance for any kind of anti-social behavior”\textsuperscript{15}. The comrades’ courts were entitled to handle civil, disciplinary, administrative, and even minor criminal cases. As non-governmental bodies, these courts could issue public warnings or take punitive sanctions against individuals, and could call on the management of the company or organization to take disciplinary action. Their decisions could be appealed, not in a court of law but in a trade union or a local executive agency. Rulings by a comrades’ court could be enforced after approval by a public court under a writ of execution. Notwithstanding the fairly authoritarian nature of these courts, they had certain advantages over the public courts since matters were considered in an informal manner and with a view to the needs of the future, in other words not delivering judgment in a particular case but rather establishing a relationship between the individual and the collective. In general terms, these courts were aimed not at punishment but at social upbringing.

The forms of proceedings as described above were to a great extent similar to traditional court procedures, since it was the judge as arbitrator who made the final decision. From the historical point of view, it could hardly have been different: neither the stage of development of society nor the changing political regimes were able to create preconditions for the evolution and development of other forms of dispute resolution based on a higher level of the parties’ autonomy and freedom of will.

\textsuperscript{11} Decree of the Central Executive Committee and the USSR Council of People’s Commissars dated December 13, 1930 on approval of the Statutes of the Maritime Arbitration Commission at the All-Union-Western Chamber of Trade.
\textsuperscript{12} Decree of the Central Executive Committee and the USSR Council of People’s Commissars of June 17, 1932 on the Foreign Trade Arbitration Commission at the All-Union-Western Chamber of Trade.
\textsuperscript{13} Decree of the Central Executive Committee and the USSR Council of People’s Commissars of August 29, 1928 on the Rules of Conciliation-Oriented Arbitration and Court Proceedings in Labor Conflicts.
\textsuperscript{14} Statutes of the Comrades’ Courts, as approved by Decree of the Presidium of the Supreme Soviet of the RSFSR dated March 11, 1977.
1. CONCILIATION PROCEDURES IN CONTEMPORARY RUSSIAN LAW (PRIOR TO THE ADOPTION OF THE LAW ON MEDIATION)

The transitional period of the last decade of the 20th century proved to be one of the most complicated and controversial periods of Russian history. At the same time as achievement of a high degree of freedom and movement toward a law-based state and civil society, criminality and corruption had grown to a critical level in Russia. This latter circumstance caused ordinary people and businesses to distrust any authorities, including the judicial system. The situation was negatively impacted further by the fact that during the years of Soviet rule, people had become completely unaccustomed to appealing to the courts for justice to be enforced. As a consequence, the population of contemporary Russia for a long time continued declining to make active use of legal protection mechanisms. It was not until the beginning of the 21st century that Russian society appeared prepared to consider the court as an effective means of protecting and guaranteeing people’s rights.

It is hardly surprising, therefore, that neither of the two fundamental laws adopted in Russia in the course of the civil procedure law reforms of 2002 — the Civil Procedure Code and the Arbitration Procedure Code — mentioned mediation as such; they provided for the possibility of using conciliation procedures, but only very briefly and in general terms. At that time, the main task was to support the court system, which was just beginning to play a significant role in the life of the state as well as community life in general. For this reason, legal experts, experienced practitioners, and the legislative bodies believed it too early to implement conciliation procedures on a wide scale.

Mediation requires a fundamentally different approach to dispute resolution, namely one based on cooperation instead of competition. Unfortunately however, in Russia the strategy of confrontation is “a habit that is quite deeply rooted in our country’s history”\(^\text{16}\).

Thus, the Civil Procedure Code of the Russian Federation (GPC RF)\(^\text{17}\) limits its consideration of possibilities of reconciliation to mentioning the amicable settlement that the parties can agree upon according to Article 39. In addition, Clause 5 of Part 1, Article 150 of the RF Civil Procedure Code (in the version effective up to January 1, 2011) stated that a judge, prior to actual court proceedings, must take all reasonable steps to secure an amicable settlement between the parties. Other issues related to conciliation were not considered in the RF Civil Procedure Code.

In the Arbitration Procedure Code of the Russian Federation (APC RF), which regulates the resolution of business conflicts, conciliation of the parties is considered to a somewhat greater extent\(^\text{18}\).

As far as intermediation is concerned, the RF Arbitration Procedure Code does not stipulate the need for an intermediary to take part in court sessions and does not provide him with any of the rights and obligations of the persons involved in the dispute or other participants in the arbitration procedure. Accordingly, the intermediary is not entitled to study case-related documents, to write out extracts or make copies of the documents, to study the


evidence or participate in its analysis, to put questions to other participants in the arbitration procedure, to file requests, to make statements, to give explanations to the arbitration court, to present his own arguments on issues arising from the case, to study requests filed by other persons, to object to the requests or arguments of other persons participating in the procedure, or to obtain copies of judicial acts issued as separate documents. The intermediary may receive the abovementioned documents and information only from the parties themselves with the consent and under the terms of the party making the documents available, and also in accordance with Article 11 of the RF Arbitration Procedure Code during public court sessions.

The parties may apply conciliation procedures with the participation of an intermediary during the entire period of proceedings at the arbitration court. Articles 135 and 138 of the Arbitration Procedure Code do not limit the possibility for the parties to use conciliation procedures solely to the period of case preparation for proceedings.

According to the APC RF, the court has no obligation to coordinate the time of the court session with the parties or the intermediary, but pursuant to Part 2 of Article 158 APC RF, it may postpone the proceedings upon the request of both parties if they decide to bring in an intermediary for the purpose of settling the dispute.

Virtually everything stated above refers to both the RF Civil Procedure Code (CPC RF) and the RF Arbitration Procedure Code (APC RF) as they currently stand, i.e. they still do not provide detailed regulation of conciliation procedures (although amendments have been introduced with respect to the possibility of dispute settlement by mediation).

In general terms it can be stated that prior to the adoption of the Law on Mediation, the only well-established form of alternative dispute resolution in Russia was represented by arbitration proceedings based on a binding evaluative ruling by the arbitrator or tribunal. The possibility of dispute resolution with the participation of an intermediary as a facilitating party was allowed, but not regulated by law.

2. PHASES ON THE PATH TOWARD THE ADOPTION OF THE LAW ON MEDIATION

In November 2004, Vladimir Putin, then President of the Russian Federation, stated in his opening speech at the 6th All-Russian Congress of Judges that it was necessary "to promote in every possible way the methods acknowledged throughout the world as being effective. By this I mean pre-trial and judicial dispute resolution by negotiations and amicable agreements as well as alternative methods of conflict settlement by applying arbitration procedures".19

This declaration by the head of the Russian state was a reaction to the already clear trend towards overloading of the Russian courts, something that has always inevitably and universally led first and foremost to a decline in the quality of justice. At the same time, it served as a kind of signal encouraging Russian society to focus more on developing new, alternative methods of dispute resolution. The need to introduce mediation was dictated by the legal and court reforms without which the creation of a law-based state and a highly developed civil society are impossible.

In February 2005, the first international conference entitled "Mediation: A new step on the path toward a law-based state and a civil society" was held with the support of the

Administration of the RF President. This event may justly be considered the starting point in the history of the development of mediation in Russia.

In April of the same year, the Scientific and Methodological Center for Mediation and Law was established in Russia as the first organization with the mission and primary goal of introducing, promoting, and strengthening the institution of mediation in Russia. Currently the Center acts as the leading Russian organization in the area of mediation.

For the purpose of popularization and promotion of mediation, the Center organizes events in which public officials, politicians, and members of the legal and business communities take part. The international conferences on mediation held in Moscow every two years are among those events.

In 2006, the United Mediation Service was established by the Russian Union of Industrialists and Entrepreneurs in order to promote alternative procedures for resolving commercial disputes, while the RF Chamber of Commerce and Industry established a panel of intermediators entitled to conduct conciliation procedures.

In September 2006, the magazine *Mediation and Law: Intermediation and Conciliation* came out for the first time, and it remains the first and only specialized Russian periodical dealing with mediation and alternative dispute resolution.

In the course of shaping the strategy of integration and development of mediation in Russia, three main areas have been defined:

- Informing and educating the public and certain social and professional groups about the nature, special features, and advantages of the procedure of mediation, aimed at creating a well-educated and informed demand along with a competent supply of mediation services;
- Creating a large group of highly experienced mediation experts capable of promoting a positive image of mediation among the public and ensuring that the quality of mediation services provided is high;
- Creating a sound legal basis for the institution of mediation in the Russian Federation.

In late 2006, the first draft of a law aimed at introducing mediation into the Russian legal system was presented to the State Duma (the Lower House of the RF Parliament). The law was drafted to incorporate the UNCITRAL Model law on International Commercial Arbitration. However, the draft law failed to receive the required support and approval, primarily due to the discrepancy between its concept of stronger orientation toward applying mediation in the commercial area and the scale and capabilities of the institution of mediation applicable far beyond the bounds of commercial dispute resolution.

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25 Respective activities also include activities addressing citizens with minimum knowledge about mediation. For this purpose special publications were prepared as well — e.g. see: Ts.A. Shamlikashvili. *The ABC of Mediation*. Moscow, Publishing House of the Interregional Consulting Centre for Management and Politics, 2011.
matter of fact, mediation possesses huge potential for making social changes. Several efforts by the initiators to revise the draft law failed, since the document, due to the deficiencies in its concept, was not supported by the legislature.

In 2007, for the purpose of developing the system of pre-trial resolution of legal disputes, the Council of Court Presidents of the Urals Federal District decided to start preparations for a pilot project to develop alternative pre-trial methods of legal dispute resolution in the Urals Federal District. A working group comprising members of the courts and the academic community developed the concept of a legal experiment to implement conciliation procedures in the Urals Federal District that was approved in principle by the Council of Court Presidents of the Urals Federal District. In the second quarter of 2008, the concept was supported by the RF Supreme court and the RF Supreme Arbitration Court. The experiment started in October 2008 with the active support and participation of the Scientific and Methodological Center for Mediation and Law.

As a result of that experiment, judges who received training in the course of the experiment and learned to apply the mediative approach were able to improve their performance. While the number of amicable settlements reached by their colleagues constitutes 3 per cent, judges using the mediative approach achieve up to 33 per cent of such settlements.

These figures, taken together with other facts, convincingly proved the effectiveness of mediation and the need to let it occupy a worthy place in Russian legal culture. Prominent Russian statesmen and highly respected members of the Russian judicial community have repeatedly referred to the positive aspects of this method of dispute resolution.

The development of pre-trial and out-of-court dispute settlement and mediation procedures was also recognized as one of the areas of public policy in the sphere of combating corruption as defined in the National Plan for combating corruption approved by RF President Dmitry Medvedev on July 31, 2008.

The statement on the results of the 7th All-Russia Congress of Judges in December 2008 said: "The introduction and development of alternative methods of dispute resolution, including conciliation procedures and mediation, provides an effective way of reducing the burden on judges and thereby improving the effectiveness and quality of justice. Unfortunately, no effective steps in this respect leading to perceptible practical results have been taken... In light of these circumstances, the 7th All-Russia Congress of Judges states the need for the legislature to introduce pre-trial dispute resolution into the practice of law enforcement, especially in the area of public legal relations, as well as promoting alternative methods of dispute resolution.""31

Based on the results of that congress, Russian President Dmitry Medvedev ordered the drafting of amendments to Russian law with respect to the development of the judicial system stipulating "the development and implementation of pre-trial procedures of dispute

29 Methodology developed by the Scientific and Methodological Center for Mediation and Law.
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resolution (including mediation)\textsuperscript{32}. This order by the President marked a turning point in the development of mediation in Russia by clearly and definitively showing the desire by the Russian leadership to improve the legal system and actually move towards a civil society. It may be stated that the development vector changed from retributive to restorative justice.

The juridical community responded to above mentioned events quite actively. On December 24, 2008, a sub-commission on alternative dispute resolution and mediation was established at the Russian Jurists' Association\textsuperscript{33} (under the Commission on Improvement of the Justice System).

Drafting a law on mediation started anew\textsuperscript{34}. It should be stressed that the EU Directive that had come into force shortly before (in May 2008) at the same time effectively contributed to the creation of a legal basis for mediation in Russia and also served as a point of reference for defining the concept and basic principles of the new institution.

Since 2009, the EU EuropeAid project Improvement of Access to Justice in the Russian Federation\textsuperscript{35} has also been implemented in Russia. Under this project, major attention has been paid to development of mediation. One of the main goals was to familiarize the beneficiaries (the State Legal Department of the President of the Russian Federation and the RF Ministry of Justice) with European practices in the application of mediation. To this end, the project implementation team prepared a number of documents, including the Digest of Best European Practices in the Field of Mediation in Civil Law Matters, the Digest of Best European Practices in Out-of-Court Consideration of Disputes Between Public Bodies and Individuals, etc. Based on the results of these activities, proposals and recommendations were presented for use also in drafting the Law on Mediation.

In March 2010, preparation of the daft law was completed. Subsequently, Russian President Dmitry Medvedev presented the State Duma with two draft laws: the "main" one -- the draft of Federal Law No. 341071-5 on Alternative Dispute Resolution Procedures Involving an Intermediary (Mediation Procedure)\textsuperscript{36}, and a supplementary one – the draft of Federal Law No. 341063-5 on Amendments to Certain Legislative Acts of the Russian Federation Following Adoption of the Federal Law on Alternative Dispute Resolution Procedure Involving an Intermediary (Mediation Procedure), which amended other laws due to the introduction of mediation\textsuperscript{37}.

In July 2010, both laws were adopted and came into force on January 1, 2011.


\textsuperscript{32} Order of the RF President upon the results of the 7th All-Russia Congress of judges: http://президент.рф/%D0%BD%D0%BE%D0%B2%D0%BE%D1%81%D1%82%D0%B8/2823.
\textsuperscript{33} http://www.alrf.ru/.
\textsuperscript{34} http://www.mediacia.com/files/Documents/zakonoproekt.pdf.
\textsuperscript{35} http://www.a-to-i.ru.
\textsuperscript{38} http://www.mediacia.com/files/Documents/Law_eng1%20Simple.pdf.
Federal Law On Alternative Dispute Resolution Procedures Involving a Mediator (Mediation Procedure) created the legal basis of mediation in Russia. It may be stated without exaggeration that institutionalization of mediation in Russia was a milestone in the development of the legal system as a whole. This, of course, was just the beginning of a long and complex path of development for this new and socially important institution. But the necessary stimulus – the government’s “blessing” that Russian society was so in need of – had been given. From now on it depends on each of us (the Russian citizens) as to whether mediation will become deeply enough integrated into Russian legal culture and social life in general.

3. LAW ON MEDIATION

3.1. Brief Description and Main Provisions of the Law on Mediation

According to Parts 2 and 5 of Article 1 of the Law on Mediation, this Law regulates the application of mediation in disputes arising out of civil law relationships, including business and other economic activities as well as disputes in the area of labor and marital relationships. With regard to disputes arising out of other kinds of relationships, this law may be applied only if provided for by other federal laws. Mediation is not applied to collective labor conflicts, conflicts that affect or may affect the rights and legitimate interests of third parties not participating in mediation, or public interests.

Although mediation has proved effective in settling public and administrative disputes (including those related to taxation), the Russian legislature thought it unwise, while this new institution was still in its development phase, to extend the application of this law to these dispute categories. We hope that in the future, as mediation becomes more familiar and understandable to ordinary people, there will be an informed demand for it, which will in turn create additional obstacles to abuse and corruption. Mediation will be also applied to disputes between government and individuals. The first steps in this respect have already been taken: the experience of our foreign colleagues is being actively studied, and forums (platforms) for dialog and the development of a coordinated strategy between the authorities concerned are being created.

For example, during the International Scientific and Practical Conference on Mediation in Tax Disputes held in April 2009 by the Scientific and Methodological Center for Mediation and Law, these matters were discussed by officials from the Ministry of Finance, the Federal Tax Service, and the RF Supreme Arbitration Court, together with members of the Russian business and legal communities attending the conference in order to learn from their counterparts from the Netherlands, who managed to integrate mediation into the operation of the tax authorities within just five years.

During recent years, attempts have been made in a number of regions to use mediation in the field of juvenile criminal prosecution. Most often these attempts are experimentally
aimed at creating an institute of juvenile justice (e.g. projects in Rostov Oblast\textsuperscript{43} and Perm Oblast\textsuperscript{44}). Some experts are also developing mediation programs for the juvenile justice system\textsuperscript{45}). All this shows that legal permission of application of mediation in the Russian criminal law is still under discussion.

Under Article 2 of the Law, mediation constitutes a method of dispute resolution with the support of a mediator based on voluntary attempts by the parties to achieve a mutually satisfactory settlement. The mediator is an independent individual involved by the parties to a dispute as an intermediary who assists them in finding a mutually acceptable settlement. In addition, mediation services may be provided by organizations for which mediation, alongside other issues covered by this federal law, is one of their core activities.

In Russia, the model of facilitative mediation is used. This is clearly defined in Clause 5 of Article 11 of the Law, which states that a mediator, unless the parties have agreed otherwise, is not authorized to put forward proposals for a settlement. Moreover, the mediator is not entitled to give the parties legal advice.

This approach based on voluntary participation and full involvement of the parties themselves appears reasonable in view of corruption, which is considered one of the most serious illnesses of contemporary Russian society, and in light of the fact that the judicial system is still not fully developed nor yet fully independent.

Under Part 1 of Article 9 of the Law on Mediation, for mediation to take place, the parties must select one or more mediators by mutual agreement. If certain circumstances could affect the mediator's independence and neutrality, he must notify the parties immediately (Part 3 of Article 9).

Article 3 of the Law defines the following principles of mediation:

- Voluntary participation;
- Confidentiality;
- Cooperation and legal equality of the parties;
- Impartiality and independence of the mediator.

Article 5 of the Law describes in detail the provisions concerning confidentiality. Pursuant to this Law, all information relating to mediation shall be considered confidential except in cases defined by federal law or if the parties have agreed otherwise. The mediator is not entitled to disclose, without the parties' consent, any information related to mediation that came to his knowledge during the performance of those procedures.

Legislators rightly stress the importance of this principle. Aside from the provisions of the Law on Mediation itself, confidentiality was the goal of the amendments to the RF Administrative Procedure Code (Part 5.1 of Article 56) and the RF Civil Procedure Code (Article 69) that codified the witness immunity of mediators (as far as their professional activities are concerned).

\textsuperscript{43} http://www.juvenilejustice.ru/pilotprojects/1/18.
\textsuperscript{44} http://www.juvenilejustice.ru/pilotprojects/1/76.
\textsuperscript{45} http://www.ilpp.ru/files/stand_vosst_mediac.doc.
If a dispute is already being considered by a regular court of law or an arbitration court, the parties, according to Part 2 of Article 4 of the Law on Mediation, are at any time entitled (also if invited by the judge or arbitrator) to apply the procedure of mediation provided that the given court of law or arbitration court has not yet delivered a judgment. If the parties have agreed on mediation and decided not to take any legal action to resolve their dispute during the specified period for performing this procedure, the court of law or arbitration court shall accept the legal effect of such agreement (Part 1, Article 4).

Under Article 12 of the Law on Mediation, a mediation agreement is subject to execution in line with the principles of voluntary participation and good faith of the parties. The mediative settlement of a dispute resulting from a civil law relationship is considered a civil law settlement. An agreement reached by the parties through mediation after having filed a lawsuit in court may be approved as an amicable settlement.

Under Article 13 of the Law, the duration of the mediation procedure is limited to 60 days. In extraordinary cases it may, by agreement between the parties and with the mediator's consent, be extended up to 180 days (except mediation after a case has been brought to court).

Under Article 14, the parties are entitled to end the mediation procedure at any time.

Under Part 5 of Article 15 of the Law, persons holding public office in the Russian Federation, public office in the constituent regions of the Russian Federation, public civil office or municipal office are not entitled to act as mediators unless otherwise prescribed by federal laws.

From the legal point of view, mediation is not considered a business activity.

Under Articles 15 and 16 of the Law, a mediator may act on a professional or non-professional basis. Mediation activities on a non-professional basis may be performed by persons aged 18 or over with full legal capacity and no previous convictions.

Mediation on a professional basis may be performed by persons aged 25 with a degree from a higher education institution who have completed a special mediation course (Part 1 of Article 16). If a dispute has already been referred to a court of arbitration, only professional mediators may be appointed to perform the mediation procedure (Part 3 of Article 16).

We consider structuring the mechanism of self-regulation of mediation activities by establishing self-regulated organizations of professional mediators, as legislatively set forth in Article 18 of the Law, to be extremely important. In this respect it can be stated that the Russian government has chosen an option of regulating mediation activities that can be considered optimal at the moment; this provision allows the necessary balance to be maintained and excessive government involvement, where it may have a destructive impact, to be avoided.

3.2. Legislative Amendments following the Law on Mediation

For the purpose of effective application of the Law on Mediation, several legislative acts were amended after it came into force.
Among them, the RF Civil Code46 has been modified: if the parties have agreed on mediation, the statute of limitations period applicable to the case shall be stayed for the period until mediation is completed (Article 202 of RF Civil Code).

If the parties have agreed on mediation, the RF Civil Procedure Code now stipulates the possibility of postponing the court proceedings (Article 169). Additionally, under Article 69, mediators may not be questioned as witnesses on circumstances that became known to them during execution of their duties as mediators.

The right of parties involved in arbitration proceedings to request mediation is provided for by the RF Arbitration Procedure Code as well. Pursuant to Part 2 of Article 138 of this Code, the parties can settle their dispute by concluding an amicable agreement or by employing other settlement procedures, including mediation, provided this is not contrary to federal law. Relevant amendments have also been made to other Articles mentioning settlement procedures (Articles 153 and 158). The RF Arbitration Procedure Code also guarantees the mediator witness immunity: "Intermediators assisting the parties to settle their dispute, including mediators, shall not be questioned as witnesses on circumstances that became known to them through the execution of their obligations" (Part 5.1 of Article 56).

Finally, legislation on the commercial courts has been correspondingly changed. Under Article 6.1 of the Federal Law on Arbitration Courts in the Russian Federation, application of the mediation procedure is allowed at any stage of arbitration proceedings. The settlement agreed upon by the parties in writing as the result of mediation on a dispute under consideration by an arbitration tribunal may be approved by the tribunal as an amicable agreement.

4. COMPARATIVE ANALYSIS OF THE LAW ON MEDIATION AND THE EU DIRECTIVE ON CERTAIN ASPECTS OF MEDIATION WITH REGARD TO THE RESOLUTION OF CIVIL AND COMMERCIAL DISPUTES

In Russia, the creation of a legal basis for mediation was considered from the very outset as a fundamental and necessary prerequisite for the integration and promotion of mediation among different strata of society. This may appear strange in view of international experience with development of this institution. In most countries where mediation nowadays may be considered a frequently applied and common method of dispute resolution, laws on mediation were adopted after long periods of acquiring practical experience in applying mediation procedures, while in some countries a legal basis does not yet exist, despite the general popularity of the procedure.

In Russia, due to the socio-cultural particularities and the prevailing mentality, implementation of any new initiative, particularly a new institution altering the approach to strategies of dispute resolution in such a radical way as mediation does, adoption of a special law legitimizing and, at the same time, "blessing" this procedure is an absolutely indispensable precondition.

That is why in Russia, just as during the initial period of integrating this new institution, active attempts were made to include it in the legislation through adoption of a special law. Otherwise, the further promotion of mediation would be face constant resistance based on the lack of legal regulations for using mediation as the main argument.

46 The Civil Code of the Russian Federation, Part 1 of November 30, 1994 No. 51-FZ.
As stated above, the Russian Law on Mediation has, to a significant extent, been influenced by the EU Directive on certain aspects of mediation in civil and commercial matters\textsuperscript{47}. This Directive served as an ‘accelerating agent’ and, at the same time, a reference point in terms of creating a legal basis for mediation as an independent institution in Russia. One key aspect of the Directive with extremely high relevance for the further development of mediation is the recognition of the great social value of this dispute resolution method.

The integration of mediation into legal culture and social relations marks an important step ahead on the path toward a socially-oriented society. Mediation helps educate ordinary citizens in the spirit of self-determination as well as acknowledgement and acceptance of responsibility for exercising the powers taken over from the state.

The basic provisions of the Russian Law on Mediation\textsuperscript{48} and the EU Directive are quite similar. Under Clause 6 of the Preamble of the Directive, agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. This provision is reflected (in greater detail) in Article 12 of the Law on Mediation, which states that a mediation agreement is subject to execution on the basis of voluntary actions and good faith of the parties.

Under Paragraph 1 of Article 5 of the EU Directive, a court before which an action is brought may, when appropriate and with due regard for all the circumstances of the case, invite the parties to use mediation in order to settle the dispute. A similar rule is now set forth in the Russian procedural codes also. For example, under Clause 5 of Part 1 of Article 150 of the RF Civil Procedure Code, the court shall take measures promoting the conclusion of an amicable agreement between the parties, including settlements based on the results of mediation the parties are entitled to apply at any stage of the judicial proceedings. Clause 2 of Part 1 of Article 135 of the APC RF states that a commercial court must advise the parties on their right to ask for the assistance of an intermediary, including a mediator, at any stage of the arbitration proceedings to resolve their dispute and facilitate the parties’ conciliation. These rules show that in Russia, the judge is the person possessing the key to justice.

As required by Paragraph 1 of Article 4 of the EU Directive, EU member states shall encourage, by all means that they consider appropriate, the development of, and adherence to, voluntary codes of conduct by mediators and organizations providing mediation services, as well as other effective quality control mechanisms concerning the provision of mediation services. The Law on Mediation also stipulates in Article 19 (Clauses 5 and 6) the introduction of professional standards and rules for mediators as well as for their business and professional ethics. Respective provisions also require a code of professional ethics for mediators to be developed by self-regulated organizations (SRO).

Article 7 of the Directive proclaims the confidentiality of mediation as one of its most important principles, also including the witness immunity of mediators in civil and commercial judicial proceedings or arbitration. In a similar way, Russian legislation pays special attention to this requirement: Articles 5 and 6 of the Law on Mediation proclaim the same principle, and the changes in the RF Arbitration Procedure Code and the RF Civil Procedure Code as described above ensure guaranties for witness immunity with respect to


\textsuperscript{48} http://www.mediacia.com/files/Documents/Law_eng1%20Simple.pdf

information having become known to a neutral person in the course of executing his duties as mediator.

Certain provisions of the EU Directive are absent in the Russian Law on Mediation and may thus be considered "areas of growth" for mediation in this country. They do not refer to the substantive content of mediation, but rather address issues related to public support for mediation. As far as mediation is concerned, we now can already say that the Russian government has provided considerable support for mediation by incorporating this procedure into its laws.

5. THE ROLE OF MEDIATION IN THE SYSTEM OF DISPUTE RESOLUTION IN CONTEMPORARY RUSSIAN SOCIETY

The key feature of mediation is that the parties have the possibility and the right to control not only the wording of the settlement to be achieved, but also the procedure for seeking and elaborating that settlement. It is this feature that makes mediation a special institution among the various methods of dispute resolution. In Russia, mediation that leans toward the facilitative model fully complies with the principle of empowerment of the parties.

The model set forth by the Law on Mediation considers the parties to be the "owners" of their conflict and thus also responsible for its settlement. The mediator plays a special role in the procedure of dispute resolution: he is not entitled to rule on the merits of the case and, under the Law on Mediation, is not authorized even to suggest to the parties any options for resolving their conflict (Article 12 of the Law).

The power and efficiency of this kind of mediation primarily results from the fact that "the intermediary participating in the negotiations does not issue any ruling of his own. He is not placed above the parties as a ruling authority; his only task is to apply his experience, his knowledge, and his ability to resolve the conflict and help the parties reach a settlement that is suitable to both sides and, to one extent or another, will be in the interests of the contending parties"[49].

From this feature there arise many other specific features, several of them demonstrating the significant advantage of this procedure in a Russian context. This holds true, for example, with regard to the high level of the parties’ freedom in terms of organizational details of the procedure, such as the time and place as well as the form of presentation of the material. Due to this level of flexibility, mediation significantly differs from traditional litigation, which involves binding requirements as to the time and place of the court sessions, the procedure for presenting evidence, and the form of statements and petitions to the court.

Although litigation in Russia is not as expensive as in Western countries, the same "win-or-lose" principle and the risk of losing depending on the results of the case will inevitably prompt the contending parties to consider mediation as a way to reach a settlement.

As judges themselves acknowledge, the length of court proceedings in Russia is a problem that is just as acute as in other countries. Due to the short time required and the informal nature of mediation, its procedures offer a beneficial alternative to court proceedings.

Finally, the main problem of any court ruling lies in its enforcement. In Russia, this issue is highly important because the Federal Court Bailiffs Service, which sees to the execution of court rulings, is heavily overburdened. The amount of unexecuted judgments in Russia remains quite high. The principle of empowering the parties to control the content and the procedure of seeking a solution by mediation provides one possible option for overcoming this difficult situation, given the low enforcement rate of judicial rulings. In international practice, 80 to 90 per cent of mediative settlements are implemented by the parties voluntarily.

The Law on Mediation does not contain any provisions for employing mediation prior to the occurrence of a dispute or a conflict situation, but it does not prohibit the use of mediation as a preventive measure. Actually, prevention of a conflict proves much less expensive and much more effective than a post factum settlement. Prevention should not be understood as avoiding conflicts of interest or attempts to hide existing problems. In this case, preventing a conflict means not letting it destructively affect human relations by maintaining and utilizing the positive potential of the particular situation (consisting of acknowledging and understanding the problems that have arisen, and finding ways to create qualitatively new patterns of cooperation as required by the changed circumstances).

Mediation is not a cure-all solution, although in view of its growing popularity more and more often (which is also true for Russia) voices are heard glorifying this method and stating that mediation can replace virtually all other forms of social cooperation. This, of course, is untrue. While indeed a very useful and effective way of dispute resolution, combining such apparently incompatible qualities as humanism and pragmatism, mediation nevertheless has limits as to its application. The active development and application of mediation is possible only in a society that has a strong, independent, and stable judicial system.

Whichever methods of dispute resolution are employed, we always rely on the existence of a court system that can provide access to justice even in extremely difficult situations. This means that improving and strengthening the judicial system in Russia will itself guarantee the successful development of the institution of mediation.
RECOMMENDATIONS

The further successful promotion of mediation in Russia will require the following:

- Stepping up efforts and measures to inform and educate the public in order to develop an informed demand for mediation services that will not only provide a growing demand for mediation, but also create some kind of mechanism for publicly monitoring the quality of mediation services. The people responsible for providing this education must have in-depth knowledge of what mediation is about.

- Carrying out educational activities among the legal profession, stressing that mediation does not compete with providing legal advice, that it does not replace the participation of judges and lawyers in judicial proceedings, and that it can in no way replace the court as an institution. On the contrary, the successful development of mediation is only possible if there is a stable, independent, and transparent judicial system. Judges need detailed information about mediation to be in a position to competently offer it to the parties, as well as to apply a mediative approach toward conciliation of the parties.50

- Lawyers and judges need to be familiar with the entire spectrum of ADR options as well as the special features and advantages of mediation, particularly to be able to perform their duties in a professional manner, i.e. to competently offer their clients the use of mediation and help them make a truly informed choice.

- In the area of management, as far as decision making or HR-related issues are concerned, mediation and a mediative approach have been effectively used more and more frequently during recent years. For this reason it is necessary to promote the integration of mediation into corporate life.

- The social sector and services such as health care, the consumer sphere, and education are in need of mediation not less, but actually even more because they involve practically the entire population. For this reason, creating mechanisms that will reduce tensions and find ways of reaching settlements that are suitable for all parties concerned is extremely important for the interests of individuals as well as for preserving social stability.

Thus, education proves to be one of the key tasks, requiring for its solution various measures including involvement of the mass media and any other effective means available for distributing information and educating people.

- For this reason, it would be advisable to create the preconditions for introducing mediation as part of preschool, school51 and higher education. And for the

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50 E.g. ref. to: Ts. A. Shamlikashvily. Mediation as an alternative method of dispute resolution. What the judge should know in order to competently invite the parties to use mediation. - Moscow: Publishing house of the Interregional Consulting Centre for Management and Politics, 2010.

51 Art the Scientific and Methodological Centre for Mediation and Law an education course based on the “School Mediation” method has been developed and is now being implemented - Ts. A. Shamlikashvily. School mediation as a method of dispute resolution (Magazine School Teacher’s Handbook, No. 8, August 2009); - Ts. A. Shamlikashvily. Neuropsychological approach to education (School teacher’s Handbook, No. 9, September 2009)
present active generation as well as those just embarking on their professional lives, an introduction to mediation should be included in the system of continuing professional education as well as in the programs of higher educational establishments, especially those educating specialists in the socially-oriented professions.

That is why we consider it one of our chief goals to create a community of professional mediators and unite the efforts of the legal profession, businesspeople and members of other professional groups to ensure that the potential users of mediation services are informed about this option and will use it, being familiar with its advantages and making a well-informed choice.

Further successful development in any sphere of endeavor is impossible without close cooperation on the international level, and mediation is no exception. It is particularly important to develop such cooperation between Russia and the EU countries in the following areas:

- Joint efforts aimed at educating and informing the public, promoting recognition of the difference between intermediation in general terms and mediation as a special form of intermediation, as a unique method of dispute resolution with the participation of a third party that requires active involvement by the parties concerned and their empowerment.

- Combined efforts by the EU and Russia to promote mediation in the post-Soviet space. Progress in Russia may contribute to the higher efficacy of efforts by the European organizations to employ mediation in countries like the Ukraine, Moldova, Kazakhstan, Kyrgyzstan, Belarus, the Baltic countries, and elsewhere. In our opinion, support from Russia may prove invaluable in this respect, particularly in view of their historical and cultural commonality shaped during the years of the Soviet rule, as well as the features of their mentality that were inherited from that period and are common to the peoples of those countries. Russia – geographically as well as from the socio-cultural point of view – is a country that simultaneously bears the characteristics of both the European and Asian mentality. For this reason, Russian experience is more likely to be positively accepted on the territory of the former USSR.

- Over the past few decades, due to growing migration, changes in socio-economic conditions, and globalization, the number of international economic relations as well as international marriages has increased. The EU and Russia could pool their efforts to ensure a more dynamic and effective introduction of mediation for dispute settlement at the international level. Mediation gives modern man and society as a whole the opportunity to maintain peace by that most valuable tool that only human beings possess – the spoken word, communication based on dialog.

On this issue also see the book by Ts. A. Shamlakashvily and O.A. Semionova Why is it that difficult for your child to learn at school and how can you help him? Moscow. Publishing house of the Interregional Consulting Centre for Management and Politics, 2010.
Policy departments are research units that provide specialised advice to committees, inter-parliamentary delegations and other parliamentary bodies.

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