

**Mediate.com Task Force on Online Mediation Training
Global Growth Forum - 4/23/21 DRAFT**

COMMENTS ON MEDIATION IN RUSSIA

I. Background on Mediation Laws in Russia

While a population that distrusts organized government and veers towards private handlings of delicate matters might seem perfectly primed to welcome mediation into its dispute resolution culture, Russian intelligencia first brought mediation to the forefront of legislative consideration in the 21st century, with legislation authorizing the use of mediation in Russia only being passed in 2011.

It is important to first note that Russian legal structures are founded on a system of legal codes, rather than common law. Thus, efforts to implement a mediation law have been of paramount importance. The basis of mediation procedure in Russia was established by Federal Law No. 193-FZ, which came into force on 1 January 2011. A series of amendments have been proposed, some as recently as in 2019, but the law currently remains in force as a voluntary mediation opportunity for civil litigants who opt into the process.

The 2011 Mediation Law was primarily advanced by legal scholars. Practicing attorneys, judges, and other legislators were largely skeptical, though they eventually acknowledged that the use of mediation would alleviate some of the challenges of an overburdened court system. In the early planning stages, a small task force of affiliates with Voronezh State University and other such institutions, working as part of the Moscow Chamber of Commerce, compiled and advocated for draft laws, modeled after the UNCITRAL Model law on International Commercial Conciliation. This task force first brought a draft of their proposed mediation law to the disinterested DUMA for consideration in 2006, and then re-submitted a sanitized revision in 2010. The revised law, passed in 2011, was hailed as a

victory in the international and Russian mediation communities alike. Alas, the victory was primarily on paper.

The language of the legislation presented many obstacles to actual implementation. There was little to no public awareness surrounding the new legislation and the opportunities that it provided. Despite acknowledgement by an overburdened court system that mediation would greatly reduce the backlog and help parties find sustainable solution, litigants have failed to make use of the opportunity. Court referrals were rare, as a 2015 survey confirmed that fewer than 0.1% of all civil cases were resolved via mediation. Russia did see the birth of a few mediation centers, including most notably the Center for Mediation and Law founded by Tsisana SHamlikashvili in 2005. However, these mediation centers found themselves primarily devoted to academic research, ministry-approved training of new mediators, and some local advocacy. These centers themselves continue to carry low case-loads, as members of the Russian public and their attorneys .

Systemic mediation, even if such mediation is voluntary, is still new to the Russian psyche. Mandated mediation, which the Russian government has failed to consider in any meaningful way, feels eons away. And yet, the gentle introduction of voluntary mediation in 2011 has made little impact. Without a mandate, courts struggle to increase their referral culture, scholars remain frozen in the realm of theoretical recommendations, and members of the public fail to understand that mediation can effectively provide them with well-tailored, thoughtful resolutions to their disputes.

II. Challenges To Implementation and Reception

At first glance, it is easy to see why many blame the murky language of Russia's Mediation Law for mediation's failure to launch. Critics of the 2011 Mediation Law contend that the law is both vague and restrictive, and that these characteristics impeded true application. From language to substance, the criticism is vast. Some say that the vocabulary

word choice of “posrednik” linguistically diminishes the position of a mediator to that of a deal-making thug. Others say that the limitation of mediation to simple civil matters prevents the country from benefiting from a broader criminal restorative justice regime that utilizes mediation. The murky parameters surrounding mediator training credentials further limit the ability of trainers to expand mediation education beyond a few mediation centers’ established training programs. Lastly, the legislation failure to provide funding for mediation or outline a structure for subsidy forces parties to pay for their own mediation processes in full, creating socioeconomic obstacles to broader use of mediation.

While the 2011 Mediation Law focuses on voluntary mediation, it is important to understand that the concept of voluntary mediation does not speak to the average Russian attorney or citizen on a cultural level. The perception in Russian society is that voluntary processes do not work. Without clear parameters and compelled participation, clients and attorneys alike are hesitant – feeling that they are inevitably wasting their time in an informal process. Furthermore, the cultural ethos of attorneys in Russia is that of a very proud profession. Attorneys do not like deferring to third party assistance. In the absence of a law compelling the use of a judge or an arbitrator, lawyers in Russia feel that they are the arbiters of justice. They see the suggestion that a third party facilitate their negotiations as insulting and unnecessary.

Further exploration contends that mediation as an ADR mechanism is an unwelcome alternative in competition with arbitration, which is much more highly regarded. Many mediation advocates believe that the developed and well accepted arbitration systems in Russia, such as MKAS, the Moscow-based International Commercial Arbitration Court have a monopoly on ADR in Russia. Mediation simply cannot compete. Advocates feel that, given common knowledge about arbitration among professionals and users alike, the rigid and predictable structure of the arbitration process, and general communal deference to

institutions makes arbitration an easier sell than mediation to the average Russian attorney and client.

Most notably, post-soviet assumptions about western modalities directly undermine many positive public awareness efforts. Russian culture is rooted in structural tradition. When structures fail, or when new structures are introduced, skepticism inevitably follows. For many, the main obstacle to true use of mediation is in fact the lack of a tradition of legal mediation. In order for mediation to take hold, laws that mandate and then normalize its use would be paramount for public acceptance. Alas, such laws do not exist. In the meantime, the Russian public and government alike view mediation as a western concept, and western approaches to dispute resolution specifically are seen as unreliable, and even dangerous. Private and public dispute resolution entities hesitate to promote and advertise the use of “mediation” as a concept that stems from the United States as that makes the process inherently suspect. As a result, there is little exposure to mediation in schools, and mediation awareness among lawyers is rare.

III. Approaches to Acceptance and Expansion of Mediation

In addition to advocating for expansive mandatory mediation laws to in order to fully recalibrate public and private perceptions of the role of mediation within the broader dispute resolution system in Russia, broader public awareness advocacy efforts have been key in bringing practitioners and participants to the mediation table.

First, there have been critical efforts to shift the general perception that mediation is a Western concept. Identifying historic behaviors in Russian towns and villages that are indeed examples of ongoing informal mediation has helped members of the Russian public understand that mediation is actually inherent and natural to the Russian approach to closed-door autonomous dispute resolution.

The real challenge is to legalize this approach so that systems, attorneys, and judges buy into the process as legitimate and are compelled to abide by laws mandating referral to mediation. Some progress has been made in providing formal mediation training to judges, which results in more willingness to make referrals. However, even in the best of scenarios where a judge becomes an advocate for mediation, that judge's referral rate is still rarely above 1% of cases.

In St. Petersburg and a few other regions, mediation centers have secured funding for in-court pilot programs with mediators available in the courthouse. While the commitment to increased access to justice has been admirable, the unfortunately reality is that few litigants opt in.

IV. Future Possibilities

The fate of mediation in Russia over the next year may have much to do with the political climate surrounding Western initiatives. In a climate where tensions between the U.S. and Russia continue to escalate, the likelihood of Russia mandating a Western dispute resolution mechanism is slim. However, the public can be reached and targeted directly.

Unlike the Russian government and its legislators, the Russian people are more open to the idea of ADR than ever. The public is eager to move forward. There is a culture of trust in "newness" and "young people", just as much as there is distrust in the "old guard". Members of the Russian public no longer seek to sit at a negotiation table with an "old man with grey hair". Due to the lack of legal traditions surrounding mediation, there is actually more of an expectation that young mediators will be the ones best able to embrace progressive dispute resolution techniques and offer fresh, pure ideas. The Russian public has shown more trust for newly educated young professionals than the older ones that many fear have been corrupted by an old system and are a jaded byproduct of the collapsed Soviet Era. With increased training of young mediators in Russia, there is promise that mediation will increase

privately and, in turn, become normalized enough that the laws can no longer ignore mediation's call.