

RUSSIA:

Recent Developments in Mediation

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LEGAL FRAMEWORK

Set of mediation laws creating a framework for the extra-judicial mediation of disputes:

- **Federal Law No. 193-FZ of 27 July 2010 “On ADR Procedure with Participation of an Intermediary (Mediation Procedure)**
amended on 26 July 2019 (in force from 25 October 2019)
- **Amendments to the Procedural Codes:**
 - **Civil Procedure Code**
 - **Arbitrazh Procedure Code**
 - **Administrative Procedure Code**
- **Amendments to other laws**
 - **Basics of Legislation on Notaries**
 - **Federal Constitutional law on the Supreme Court of Russian Federation***all amended on 26 July 2019 (in force from 25 October 2019)*

LEGAL FRAMEWORK

Basic amendments:

- expanded list of judicial conciliation procedures:
 - negotiations
 - mediation
 - judicial conciliation and *other methods that do not contradict the law*
- timing of such procedures
- requirements for the form and content of the settlement agreement, the procedure for its approval by the court and the enforcement procedure

Mediation as one of the ADR mechanisms and one of judicial conciliation procedures

LEGAL FRAMEWORK

Basic Principles of Mediation:

- consent of the disputing parties
- voluntary and confidential
- cooperation and good faith of the parties
- equal treatment of the parties
- impartiality and independence of mediator

Art. 2 (2) (3) Art. 3 of Law on Mediation

Legal Basis for Mediating

- if the parties agree in writing:
 - standalone agreement
 - mediation clause
- the parties may agree to mediation either before or after a dispute arises

Art. 7 of Law on Mediation

LEGAL FRAMEWORK

Disputes that can be resolved by mediation:

- civil/private law, administrative or public law matters, including those associated with entrepreneurial or other economic activities
- employment related disputes
- family related disputes

before or after submitting the case to the civil, arbitrazh or administrative proceedings

Art. 1 (2) (4) of Law on Mediation

Disputes that cannot be resolved by mediation:

- collective labor disputes
- civil, labor or family disputes that affect or involve rights of third parties not participating in the mediation
- disputes affecting or involving “public interests”
- relations when judge or arbitrator provide the parties to the dispute the conciliation service

Art. 1 (5) (6) of Law on Mediation

LEGAL FRAMEWORK

Requirements to mediation agreement/clause:

- written form
- minimum information standard:
 - subject of the dispute
 - mediator, mediators or the organization acting to ensure that mediation is carried out
 - procedure for conducting mediation;
 - agreement on allocation of expenses associated with mediation
 - deadline for conducting mediation

Art. 8 of Law on Mediation

If the parties to the dispute enter into the mediation agreement without submitting their case to the court or arbitration and such mediation agreement is notarized then it becomes an enforcement document

Art. 12 (5) of Law on Mediation

Statute of limitation:

From the moment the parties enter into an agreement to mediate any statutory limitation period is stayed while the mediation is carried out

Art. 202 (2) of the Civil Code

LEGAL FRAMEWORK

Qualification Requirements for Mediator:

- professional or a non-professional basis
- paid or an unpaid basis
- mediation is not an entrepreneurial activity
- mediator is a person of 25 years old or more who has a higher professional education and has completed training under a program for training mediators
- independence shall be manifested which means that he/she may not:
 - represent the interests of any party
 - provide the parties with legal, consulting or other assistance
 - act in this capacity if he or she is personally (directly or indirectly) interested in the outcome of the case
 - make any public statements on the merits of the dispute without the consent of the parties

Art. 15 of Law on Mediation

Retired judges as mediators on a professional basis (Lists of judges declared their consent to conduct mediation)

Art. 16 (1.1) of Law on Mediation

LEGAL FRAMEWORK

Self-regulated organisation of mediators:

GOALS:

- to promote mediation
- to establish standards of mediation practice
- to develop training programs, train and certify mediators

FORMS:

- association (union) or partnership

REQUIREMENTS:

- registration with the state register of the SRO of mediators
- having 100 and more individual members carrying out activity of mediators on professional basis, or not less than 20 organizations providing mediation *or* 100 of said individuals and organizations together
- meet the requirements to membership in such organization established by the Law on Mediation
- approved procedure for monitoring the quality of work of members and an adopted code of professional ethics for mediators

OBSTACLES

Reasons of narrow use of mediation:

- organisational issues (availability of mediators, experience in mediation procedure)
- economic issues (high cost of mediators and lack of desire amongst legal representatives to reconcile parties as it reduces their income)
- subjectivity (common psychology)

Factors causing bias against mediation:

- lack of awareness about mediation
- distrust of the mediator
- lack of negotiation skills and traditions
- the perception that the court's decision is more valuable

Statistics:

- lack of reliable statistics for cases settled by mediation before submitting the case to the court or arbitrazh
- statistics of use of mediation within the court procedures

STATISTICS

Mediation within the state courts procedures

	2014	2015	...	2018
General jurisdiction				
Cases settled totally	13 290 118	15 819 942		17 854 643
Cases settled by mediation	1329	1 115		1 187
Arbitrazh				
Cases settled totally	1 425 501	1 531 480		1 774 565
Cases settled by mediation	51	44		63

*Based on Judicial Department at the Supreme Court of the Russian Federation,
Report on the work of courts of general jurisdiction for 2018*

STATISTICS

Mediation within the state courts procedures

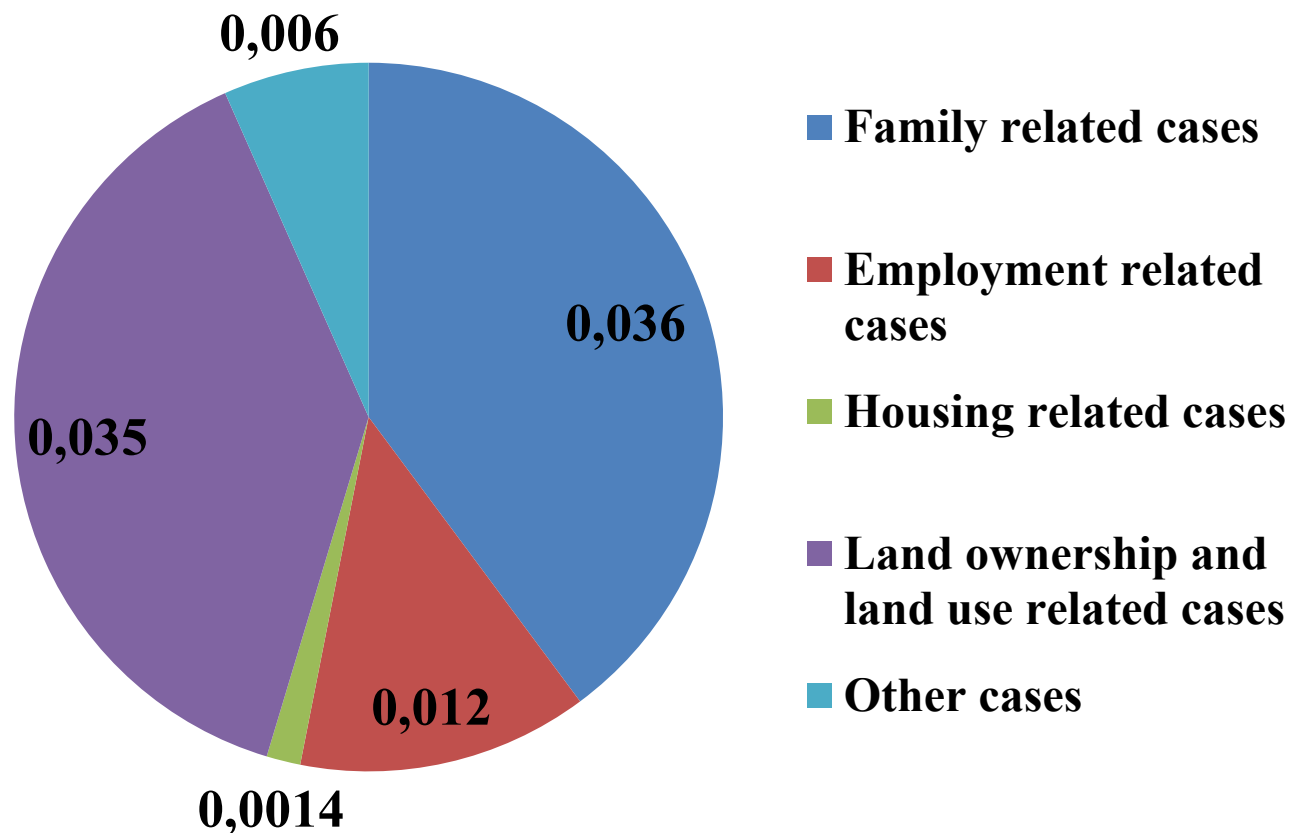
Category of case	Cases settled by court in 2018	Cases settled by mediation in 2018
Family related cases	1 144 521	415
Employment related cases	450 590	55
Housing related cases	7 128 019	100
Land ownership and land use related cases	254 155	88
Other cases	8 877 358	529
Civil law cases totally	17 854 643	1 187
Administrative law cases	4 462 025	0

*Based on Judicial Department at the Supreme Court of the Russian Federation,
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STATISTICS

Mediation within the state courts procedures

% of total civil law cases



*Based on Judicial Department at the Supreme Court of the Russian Federation,
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STATISTICS

Mediation within the state courts procedures

Family related cases	Cases settled by court in 2018	Cases settled by mediation in 2018
Civil law cases totally	17 854 643	1 187
Divorce	with children	440 453
	without children or with adults children	101 556
Annulment of marriage	772	1
Change, termination or annulment of marriage contract	808	0
Division of jointly acquired property	46 616	123
Collection of alimony for the maintenance of an adult disabled family member	5 076	3
Collection of alimony for the maintenance of minor children	323 122	27
Establishment of paternity	18 939	3
Deprivation of parental rights	53 123	3
Restriction of parental rights	8 740	1
Parenting related disputes	34 954	104
Other family related disputes	74 530	34
Totally	1 144 521	415

STATISTICS

Mediation within the state courts procedures

Employment related cases	Cases settled by court in 2018	Cases settled by mediation in 2018
Civil law cases totally	17 854 643	1 187
Dismissal cases	17 622	20
Salary payment related cases	386 770	27
Other employment related disputes	29 446	8
Totally	450 590	55

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STATISTICS

Mediation within the state courts procedures

Housing related cases	Cases settled by court in 2018	Cases settled by mediation in 2018
Civil law cases totally	17 854 643	1 187
Privatization	11 913	0
Collecting fees for living space and utility bills, heat and electricity	6 712 600	26
Disputes with management companies (not related to protection of the consumer rights)	15 762	6
Other housing related disputes	6 811 796	46
Totally	7 128 019	100

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STATISTICS

Mediation within the state courts procedures

Other categories of cases	Cases settled by court in 2018	Cases settled by mediation in 2018
Civil law cases totally	17 270 149	1 187
Property damages from accidents	146 048	38
Insurance cases	414 949	32
Consumer rights related cases (mostly resulting from the contracts with financial institutions as well as trade and service contracts)	715 552	250
Property inheritance related disputes	122 014	23
Compensation of moral harm	25 100	11
Loan agreements recoveries	5 757 157	81
Unjust enrichment recoveries	47 311	18
Other cases	1 649 227	76
Totally	8 877 358	529

*Based on Judicial Department at the Supreme Court of the Russian Federation,
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DRIVERS & EVOLUTION

Specialized Mediation Institutions:

- Mediation Institution at the Chamber of Industry and Commerce of RF
- Non-Profit-Organization Scientific and Methodological Center for Mediation and Law
- Center for Promotion of Mediation and Alternative Dispute Resolution (SOMEDIARS) ...

Arbitration Institutions offering mediation service:

- Russian Union of Industrialists and Entrepreneurs (RSPP)
- Russian Arbitration Center at the Russian Institute of Modern Arbitration ...

Periodical on mediation:

- Mediation and Law. Intermediation and Conciliation
- Mediation Bulletin ...

- create information space to exchange experiences and opinions on mediation
- promote basic principles of mediation and its advantages
- promote trust in mediation
- support implementation of mediation in Russian society

DRIVERS & EVOLUTION

Training and Qualification Programs:

Mediation Institution at the Chamber of Industry and Commerce of RF offers:

- Training and Certification Program for mediators

SOMEDIARS offers:

- Qualifying Assessment Program for mediators
- Qualifying Assessment Program for mediation advisors (advocates)
- Training Program for mediating intercultural disputes

RAA offers:

- Training Program for mediators

Popularization of mediation for the young generation of lawyers:

- Moots
- Eurasian student moot in international commercial mediation

THANK YOU FOR YOUR ATTENTION!



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