ALTERNATIVE DISPUTE RESOLUTION AS A MEANS OF ACCESS TO JUSTICE IN THE RUSSIAN FEDERATION[†]

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Translators' Note: This Article represents recent scholarship in Russian jurisprudence concerning the use of alternative dispute resolution procedures. It was written by a professor who is an active participant in law reform projects addressing the problems of elaborating legislation to articulate the rights and duties of parties involved in economic and other disputes. This Article covers three forms of dispute resolution—negotiations, claims-based dispute resolution, and mediation—and identifies characteristics of these procedures that are peculiar to the Russian context. By reviewing the forms of conflict resolution employed in Soviet-era command economy and exploring the contours of contemporary Russian "legal culture," the Article attempts to reconcile new procedural norms dictated by today's market economy with historical patterns of legal consciousness. The Article offers a unique insight into the progress of legal reforms in a narrow category of adjudication. It should prove interesting to readers seeking to understand the political and social factors that influence the adoption of new legal institutions, implementation of legislation, and the revision of law school curricula. Practitioners involved in business relationships with Russian enterprises will also find this Article a valuable survey of dispute resolution procedures in the Russian Federation.

I. INTRODUCTION

One of the main problems facing economic actors today in Russia is access to the judicial system. This problem is particularly troubling in light of the constant growth of civil lawsuits on court dockets. A government study "Development of the Judicial System in Russia for 2002-2006" predicts that, for the period up to 2006, there will be a significant increase in claims submitted to courts of Arbitrazh by entrepreneurs and other economic actors due to recent changes in substantive and procedural legislation. The best way to approach this problem would be to develop and implement alternative dispute resolution procedures for civil disputes, as this would partially relieve the courts of the burden of pending lawsuits.

[†] This Article was originally published as E.I. Nosyreva & T.N. Safronova, *Al'ternativnye Protsedury Uregulirovaniia Sporov Kak Sredstvo Obespecheniia Dostupnosti Pravosudiia*, *in* AKTUAL'NYE PROBLEMY GRAZHDANSKOGO PRAVA, GRAZHDANSKOGO I ARBITRAZHNOGO PROTSESSA, VOL. 2, 168-180, [CONTEMPORARY ISSUES IN CIVIL LAW, CIVIL PROCEDURE AND ARBITRATION] (2002).

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The necessity of such an approach has been stressed on many occasions by the Chairman of the High Arbitrage Court, V.F. Yakovlev, who emphasized the utility of introducing alternative methods of dispute resolution, a wider application of reconciliation and mediation procedures in the courts, and simplification of the procedure for minor, comparatively easy-to-resolve cases.[1] President Vladimir Putin, understanding the importance of alternative procedures for the development of the judicial system, also noted that Russia still has poorly developed mediation and reconciliation procedures, as well as limited alternative methods for resolving disputes in private tribunals (*treteiskie sudy*).[2]

The growing interest in extra-judicial procedures in recent years can be attributed to a number of factors. The principal advantages in such procedures lie not only in relieving the burden on the judicial system, but also in increasing possible choices for the parties to a dispute. A normally functioning and developing market economy presumes an increase in civil litigation. Its participants are independent and free to establish their rights and duties contractually under any terms not contradicted by law. Resolution of conflicts according to extra-judicial procedures is based on the discretion and active participation of the interested parties. The role of the state is only to provide a set of fair procedures for the regulation of disputes from which the parties can choose the method that best corresponds to the character of their legal relationship.

Currently, it is possible to speak of the use of many extra-judicial forms of dispute resolution in Russian legal practice. These are: negotiations (*peregovory*), claims-based dispute resolution (*pretenzionnyi poriadok uregulirovaniia sporov*), mediation (*posrednichestvo*), and private tribunals[3] (*treteiskie sudy*). The use of private tribunals has grown the most in recent years, and there has been a correspondingly sharp increase in the amount of research about private tribunals. In the above-mentioned private forms of civil dispute resolution, arbitration is unique in its legal character. Therefore, this institution is not explicitly examined in this Article. The other procedures have not become subjects of wide use or discussion in

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[1] *See, e.g.*, V.F. Yakovlev, Chairman of the Supreme Arbitrazh Court of the Russian Federation, *Address Before the All-Russian Congress of Judges* (Nov. 2000), *in* Vestnink Vyshego Arbitrazhnogo Suda RF [Bulletin of the Supreme Arbitrazh Court of the Russian Federation] at 14 (2001).

[2] *See* V.V. Putin, President of the Russian Federation, *Address Before Convention Dedicated to the 10th Anniversary of Arbitrazh Courts* (February 22, 2002), *in* Vestnink Vyshego Arbitrazhnogo Suda RF [Bulletin of the Supreme Arbitrazh Court of the Russian Federation] at 6 (2002).

[3] Treteiskie sudy are a new institution in the Russian legal system and act as a private arbitration venue. The term is translated as private tribunals, not to be confused with Arbitrazh courts. *Translator's note.*

practice or in literature. At the same time, their potential significance is undisputed. In contrast to private tribunals, these procedures conclude in mutually beneficial agreements, they do not present any risks to the parties, and they do not demand significant financial resources or time. Resorting to these procedures before turning to the courts can serve to preempt a conflict in the earliest stages.

Each procedure is characterized not only by its unique qualities, but by its specific level of development and legislative regulation in the Russian Federation. We will examine the procedures separately in order to determine their level of applicability and to determine a few directions of further development.

II. NEGOTIATIONS (PEREGOVORY)

This method, initiated by the parties to the dispute and without the involvement of a third party, is one of the more accessible and effective methods of resolving civil disputes. This method does not impose any costs, and most importantly, does not necessitate governmental sanction or legislative regulation. All that is required is experienced and qualified participants in the resolution of the conflict.

In Russia, negotiation is most frequently used in the area of business activity. It has become common practice to include a clause in the contract providing that, in the event of a dispute, the parties should attempt to resolve the dispute by "friendly" negotiations. However, in most cases, this clause is simply a formality. In reality, neither the parties to the dispute nor their representative attorneys are able to conduct qualified negotiations. Traditionally, in the event of a dispute, they turn to the judicial system, which costs a great deal more money, increases stress, and causes a breakdown of business relationships. Reasons for the weakness of negotiations in Russia include the absence of an understanding of the procedure as an effective method to avoid conflict and a general lack of negotiation skills.

Western scholarship about the Russian legal system points out that, as a result of almost a century of a centralized, planned economy, Russians have lost the impetus to independently resolve conflicts, because the conflicts would typically be solved by government authorities and judicial organs. Russians have been indoctrinated to see compromise as a sign of weakness.[4] The slogan "Victory at any cost" is inherited by Russia from its

[4] *See* CH. CRAVER, EFFECTIVE LEGAL NEGOTIATION AND SETTLEMENT 330-31 (1977).

Soviet past.[5] It seems that, to this day, this slogan accurately represents the typical approach to resolving conflicts. There is no doubt that it will take a great deal of time for this to change, and development of legislation to enable negotiation will play a significant role in this transformation.

Examining the correlation between legal regulation and actual patterns of behavior, A.B. Vengerov notes that one of the main problems is the effectiveness of law. If legislation is drafted based on legal norms that do not take into consideration established patterns of behavior, the norms can lose all of their meaning. Equally true is that the law plays an instrumental role in overcoming established negative patterns of behavior.[6] This last observation is entirely relevant to alternative procedures of dispute resolution in general, and to negotiation in particular. To the extent that negotiation is a method of dispute resolution unregulated by law, the issue is more relevant to a gradual change in legal consciousness and formation of a new legal culture. But legal consciousness and its more advanced form, legal culture, also represent integral characteristics of the law. "The legal consciousness of a society, various social groups, and individuals are organically connected with the law as a socially cohesive institution, with its origin, functioning, and development, with lawmaking and enforcement, and with other facets of the legal environment of society."[7]

The character and structure of public legal consciousness and its level of development is determined by its corresponding scientific and professional legal culture. To overcome the previously mentioned unconstructive patterns of behavior, it is necessary to first direct attention to the scientific and professional levels.

On a scientific level, first of all, it is necessary to develop an indigenous theory of negotiations. Development of such a theory should be a high priority. After all, negotiations are not just an independent method of resolving disputes outside of courts of law—they can also be a part of any other alternative procedure. Negotiations can be used in mediation and in reaching agreements in private tribunals, and they represent the foundation of reconciliation procedures in courts. Knowledge and mastery of theories of negotiation will foster the use of various dispute resolution mechanisms.

The rise in interest in juridical conflicts as a scientific doctrine is very timely. An increasing degree of attention is being directed towards

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[5] *See* V. VOTCHAL, THE MOVEMENT TOWARD CONFLICT MANAGEMENT IN THE FORMER SOVIET UNION 20 (1993).

[6] *See* A.B. VENGEROV, TEORIIA GOSUDARSTVA I PRAVA: UCHEBNIK [THEORY OF STATE AND LAW: TEXTBOOK] 362 (1998).

[7] *Id.* at 572.

examining the evolution of legal disputes and the identification of specific stages of disputes as they conform to various forms of regulation. Possible mechanisms for reaching agreements are being discussed. Underlining the importance of these discussions is the significance of negotiations for mediating differences in opinions, and so forth.[8] The result of research in this area, in conjunction with the application of foreign expertise, can be used to lay the foundation for the development of a domestic theory of negotiations, oriented to the specific qualities of the Russian legal system.

The next step for fostering the use of negotiations is the mastery of theories of negotiations on a professional level. Negotiations as a method of regulating legal disputes are mainly the prerogative of the legal profession. Because of this, the responsibility for the development of a professional level of legal consciousness falls upon practicing lawyers.

In many developed countries, the instruction of the theory of negotiation in law schools is a very high priority. In the course of studying this discipline, students receive not only the essential knowledge, but the practical experience of conducting negotiations. It seems that this experience deserves attention and possible application in Russian law schools.

Courses that we already offer in our law schools could serve as a forum for introducing the study of negotiations in the curriculum. For example, students could be exposed to this subject in a course on legal psychology. In the section devoted to litigation, students typically study the skills of judges in conducting negotiations to reconcile parties before they are brought to trial. This focus on the practice of judges, of course, is not enough. Students need a more intensive study of negotiation methods, either during a course in legal psychology, a course on alternative dispute resolutions, or as an independent discipline. These measures can become the initial foundation for understanding the importance of negotiation and its gradual popularization as a real method for preventing legal disputes.

III. CLAIMS-BASED DISPUTE RESOLUTION PROCEDURE (PRETENZIONNYI PORIADOK UREGULIROVANIIA SPOROV)

Claims-based dispute resolution is very similar to negotiations in that it involves the resolution of a dispute without the participation of a third party. In the way that this method has developed in the Russian legal

[8] *See Iuridicheskaia Konfliktilogiia—Novoe Napravlenie v Nauke (Po materialam kruglogo stola)* [Juridical Conflictology—New Directions in Science (Round Table)], *in* GOSUDARSTVO I PRAVO at 3-23 (1994); V.N. Kudriavtsev, *Iuridicheskii Konflikt*, *in* GOSUDARSTVO I PRAVO at 9-14 (1995).

system, however, it is important to distinguish it from traditional negotiations. Claims-based dispute resolution is the resolution of disputes with the exchange of written documents—the assertion of a claim and an answer to it—without face-to-face meetings between the parties to discuss differences. Generally, this procedure could be considered a preliminary stage in negotiations, serving as an explication of the parties' positions. My interpretation, however, corresponds more to an understanding of claims-based procedure as an independent, complete procedure. This procedure results in either the final resolution of a dispute, or a subsequent petition to the court. Furthermore, in contrast to negotiations, claims-based procedures are subject to legal regulation.

This procedure became especially widespread during the Soviet period for the resolution of economic disputes between socialist organizations. It was universal and obligatory. The requirement for the use of this procedure was codified in a special normative act in the Civil Code,[9] in normative acts regulating particular types of contracts, as well as in procedural codes regulating state arbitrazh activity. Claims-based procedures preceded the investigation of a case in any agency authorized to resolve economic disputes. This procedure was named "pre-arbitrazh," (*doarbitrazhnaya*); that is, before resorting to state arbitrazh or another agency for the resolution of economic disputes.[10] Use of this procedure was also under the control of state arbitrazh. Violation of the established terms for submitting a claim for consideration was sanctionable by material fines.

The mandatory "pre-arbitrazh" resolution of economic disputes was considered one of the prerequisites to the right of filing a suit, and also became one of the principles of arbitrazh procedures.[11] The mandatory nature of claims-based procedure was based on the principle of solidarity with the mutual economic interests of socialist organizations, their obligation to actively cooperate with each other in fulfilling national economic plans, and to their obligation to assist each other within the bounds of the law with the superobjective of raising the quality and quantity of indices of production.[12]

If one ignores its ideological motivations, the procedure itself had some very valuable qualities. Its application greatly reduced the amount of

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[9] Russian Soviet Federative Socialist Republic Civil Code of 1964, art. 6.

[10] *See* T.E. ABOVA, ARBITRAZHNOE PROTSESS V SSSR (PONIATIE, OSNOVNYE PRINTSIPY) [ARBITRATION PROCEDURE IN THE USSR (FUNDAMENTAL CONCEPTS AND PRINCIPLES)] 54-55 (1985).

[11] *See* M.K. TREUSHNIKOV ED., ARBITRAZHNYI PROTSESS: UCHEBNIK DLIA VUZOV [ARBITRATION PROCESS: TEXTBOOK FOR INSTITUTIONS OF HIGHER EDUCATION] 43-44 (1993).

[12] *See* R.F. KALLISTRATOVA, RAZRESHENIE SPOROV V GOSUDARSTVENNOM ARBITRAZHE [CONFLICT RESOLUTION IN STATE ARBITRAZH] 22-24 (1961).

economic disputes. It seems that many theoretical concepts and practices of the Soviet period related to the legal environment of "pre-arbitrazh" claims-based procedure of regulating national economic disputes can be adopted and continued in contemporary research in order to develop private methods of alternative dispute resolution in Russia.[13]

The Soviet-era requirement of filing a claim in all economic disputes remained for some time after the independence of the Russian Federation. General standards were maintained in the Provision on Claims-Based Procedure of Dispute Resolution, adopted by Supreme Council of the Russian Federation Resolution of June 24, 1992.[14] However, in the new market economy, the requirement of claim-based procedure became an obstacle for turning to arbitrazh courts for many parties to disputes. In some literature on the subject, it was noted also that bringing a claim against a dishonest contractor became, for the contractor, "more of a signal to evade requirements than a method of resolving contradictions, regulating disputes between the parties without involving judicial organs with the least amount of losses, and in the shortest amount of time."[15]

Current legislation already contains requirements about obligatory claims-based procedure for resolving disputes as a common rule. The new Administrative Procedure Code ("APC"), like the 1995 APC, prescribes two grounds for the obligatory course of action for immediate settlement of a dispute with the other party: (1) if it is provided for under federal law for the specific type or category; or (2) with the agreement of the parties. The essence of the requirement is that a dispute can be transferred for consideration by a court of arbitrazh only after following such a procedure. If one ignores the cases when claims-based procedure is required by law, then its application to the settlement of disputes arising from commercial activity on the basis of agreement of the parties is more an exception than the rule. In order for the procedure to have a mandatory character, it is necessary to include in the contract a precise provision that would preclude a different interpretation. Instead of the condition of obligatory pre-trial dispute resolution, the parties should agree on a corresponding procedure order, and a statute of limitation for filing a complaint and the answer to the complaint. This can present difficulties for the parties in some cases,

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[13] *See, e.g.* R.F. KALLISTRATOVA, PRETENZIONNYI PORIADOK RAZRESHENIIA SPOROV MEZHDU SOTSIALISTICHESKIMI ORGANIZATSIAMI. [CLAIMS-BASED DISPUTE RESOLUTION BETWEEN SOCIALIST ORGANIZATIONS] 109 (1963).

[14] Provision on Claims-Based Procedure of Dispute Resolution, *published in* ROSS. GAZETA. July 24, 1992.

[15] V.S. ANOKHIN, ARBITRAZHNOE PROTSESSUAL'NOE PRAVO ROSSII: UCHEBNIK [ARBITRATION PROCEDURE LAW IN RUSSIA: TEXTBOOK] 94 (1999).

especially after the beginning of a conflict. Currently, there is no document upon which the parties can base their choice to utilize claims-based procedures. This, in my opinion, is an impediment to the further development of alternative forms of dispute resolution.

Removal of the claim-based procedure requirement as a general rule was an important step on the way to developing the already existing procedures for alternative dispute resolution. This step, however, requires continuation. It is not necessary to reject claims-based procedure entirely, however, as it had been an inseparable part of the widespread common system of dispute resolution for quite some time.

The main purpose of pre-trial settlement of disputes is to rapidly and efficiently resolve conflicts, as well as to avoid a waste of resources from frivolous or uncomplicated disputes. For this, it is necessary to develop, first of all, a claim-based procedure based on the agreement of the parties.

In order to motivate parties to utilize claims-based procedures it is necessary to elaborate a single resolution on petition (pre-trial) procedure of dispute resolution that corresponds to the contemporary legal environment and extant economic conditions, and impart to it the status of a model to be applied at the discretion of the parties. It seems that the Chamber of Commerce of the Russian Federation could take upon itself the responsibility for elaborating such a resolution that would be applicable to disputes arising in the field of commercial activity. The purpose of this resolution would be to provide participants in a dispute a flexible and efficient procedure to be used for achieving mutual agreement before turning to the judicial system.

IV. MEDIATION (POSREDNICHESTVO)

This procedure is one of the least practiced and the poorest developed in the theory of Russian law. In contrast to negotiations and claims-based procedures, mediation involves a third party whose purpose is to assist the parties in cooperating to achieve a mutual agreement.

The institution of mediation has recently been officially established in Russia for the resolution of collective labor disputes. To date, it has not been codified in legislation as a practice applicable to civil disputes. The only mention of a party's right to employ a mediator for resolving economic disputes is in the 1991 legislation on arbitrazh courts. Unfortunately, subsequent legislation on arbitrage courts enacted in 1995 does not include such provisions.

The new APC of 2002 does not contain a direct reference to this right, but Article 135 states that the judge, in preparing a case for judicial proceedings, should explain the right of the parties to transfer the dispute to a mediator (as well as the right to petition private tribunals). Such indirect confirmation of the right to mediation, dependant on the initiative of a judge, is not sufficient. In my opinion, mediation needs a coherent legal regime.

Above all, it is necessary to have government-sanctioned application of that form as one of the private alternative procedures. The procedure is already realized in the APC, in the Civil Procedure Code, and in those articles that establish a right to petition private tribunals, because mediation is also an alternative procedure whose use is based on the agreement of the parties. It is logical, then, to elaborate the specific role of the mediator, indicating that he or she assist the parties in reaching a resolution. This would allow the parties to the dispute to navigate the substance of procedure without involving private tribunals (where the arbiter is authorized to reach a final and binding dispute resolution).

It would be absolutely impossible for the institution of mediation to function without confidentiality. This confidentiality is ensured with both confidential, closed hearings, and a series of provisions guaranteed by law. These provisions generally concern the impermissibility of divulging information received by the parties through the mediator in the process of mediation. This impermissibility should be encompassed by the principle of privileges; that is, discharging persons from the obligation of testifying in court.

In Russian law, the term "privilege" does not exist in this sense. However, the tendency to establish privileges against disclosing certain kinds of information is observed in procedural legislation. The new Civil Procedure Code includes both absolute and discretionary privileges in the examination of witnesses. Absolute privileges against testifying in court involve: attorneys involved in civil actions, criminal defense attorneys, and clergy. Discretionary privileges cover instances where the person can refuse to testify at his/her own discretion, such as, self-incriminating testimony, spousal testimony, and testimony of ombudsmen of the Russian Federation in terms of information obtained during the execution of their duties.[16]

The cultivation of the "mediator as a dispute participant" privilege is a logical step in the introduction of mediation into Russian legislation. The question is, what type of privilege would this be according to the Civil

[16] For more on "privileges" in civil procedure, *see* I.V. RESHETNIKOVA & V.V. IARKOV, GRAZHDANSKOE PRAVO I GRAZHDANSKII PROTSESS V SOVREMMENOI ROSSII [CIVIL LAW AND PROCEDURE IN RUSSIA] 175-177 (1999).

Procedure Code? Since mediation from beginning to end is a procedure based on a contractual agreement between parties, such should be the approach to the issue of privilege. Making information obtained during the course of mediation public should be subject to agreement between parties. The privilege applied to mediation must be discretionary and must be regulated by ground rules established by the parties and the mediator.

At the same time, it is necessary to take into account the fact that, in the process of mediation, information can be disclosed that concerns the violation of the rights of other parties or the commission of unlawful acts. In other words, information in which the government has an interest may be revealed. In this way, the problem consists in the clear statutory limitation on information that cannot be disclosed for the purpose of maintaining the integrity of the mediation process, and information that may be disclosed independent of the agreement of the parties in order to guarantee that rights are protected in the process of the administration of justice.[17] In general, these statutory provisions allow for the establishment of legal grounds for the future development of mediation and the activity of mediators, and they should assist in promoting mediation as an accepted and legal means of conflict resolution.

Mediation, being a more formal procedure than negotiations and involving at least three parties, should be carried out within established boundaries and in a certain order. The parties themselves choose a mediator, so it follows that they have the right to establish their own procedures. Not knowing the actual procedure, it is unlikely that the parties themselves would be able to decide beforehand all the necessary provisions. It is difficult to predict before the beginning of a dispute, and practically impossible during the course of a conflict. If the parties to the dispute completely agree on the implementation of one or another procedure, it is easier to observe already established procedures and rules.

It makes sense for organizations interested in cultivating and implementing alternative dispute resolution to develop and establish a set of standard procedures of mediation. These organizations could be chambers of commerce, professional associations, and other organizations that have already incorporated private tribunals. In this case, mediation becomes an independent or preliminary stage prior to the use of private tribunals.

In the initial stage of development, it may be useful to combine mediation procedures with private tribunals in order to make it easier to

[17] For approaches to similar problems in U.S. jurisprudence, *see* E.I. Nosyreva, *Konfidentsial'nost' Vnesudebnogo Uregulirovaniia Sporov po Zakonodatel'stvu SShA [Confidentiality in Extra-judicial Regulation of Disputes in the U.S.A.]*, ROSSIISKAIA IUSTITSIIA, No. 12, 2000 at 46-48 (2000).

select a mediator. A list of private tribunal judges could be supplemented with a list of mediators, or private tribunal judges could serve as mediators.

Regulations of separate permanent private tribunals provide reconciliation procedures as an independent method of conflict resolution. For example, the Association of Russian Banks' Private Tribunal and the Lawyers' Union Private Tribunal use such procedures.[18] An analysis of their provisions demonstrates that these reconciliation procedures are, in essence, a form of mediation. They are implemented by a person chosen by both sides from a list of private tribunal judges. This person's main task is to reconcile the parties interests. In the event that an agreement is not reached, the person can, with the agreement of the parties, continue to conduct dispute resolution in the capacity of a private tribunal judge. These regulations deserve more widespread approval and acceptance.

From my standpoint, it is necessary to clarify the separation of reconciliation procedures such as mediation from the regulation of the permanent private tribunals. First of all, distinguishing the two would emphasize and maintain the independence of each form. Second, the parties may choose one of the procedures or combine them ahead of time, depending on the character of the dispute. Third, mediation as an independent form requires more expansive regulation than the reconciliation procedures of the private tribunals. A positive example of resolving disputes arising out of the international business transactions is An Agreement Regulation of the International Commercial Arbitrazh Court of the Chamber of Trade and Industry of the Russian Federation, which determines the procedure for appointing a mediator and his role in the reconciliation procedure, the procedure for the reconciliation itself, its confidentiality and other issues.[19]

Another important issue in assessing the development of mediation is the question of terminology. In the literature on the subject, the terms "*mediatsiia*" (mediation) and "*mediator*" (mediator), direct cognates from the English language, have been employed with increasing frequency.[20]

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[18] *See* E.A. VINOGRADOVA, TRETEISKII SUD: ZAKONODATEL'STVO, PRAKTIKA, KOMMENTARII, [PRIVATE TRIBUNALS: LEGISLATION, PRACTICE, AND COMMENTARY] 222-226, 252-256 (1997).

[19] *See* Soglasitel'nyi Reglament Mezhdunarodnogo Kommerchiskogo Arbitrazhnogo Suda pri Torgovo-Promyshlennoi Palate Rossiskoi Federatsii. [Agreement Regulation of International Commercial Arbitrazh Court of the Trade and Industry Chamber of the Russian Federation] at 8, Moscow 2002.

[20] *See e.g.* E.N. Ivanova, *Mediatsiia kak Al'ternativnyi Sudu Sposob Razresheniia Konfliktov, [Mediation as an Alternative to the Courts for Resolving Conflicts], in* RAZVITIE ALTERNATIVNYKH FORM RAZRESHENIIA PRAVOVYKH KONFLIKTOV [DEVELOPMENT OF ALTERNATIVE FORMS OF RESOLVING LEGAL CONFLICTS] 26-29 (M.V. Nemytinoi & M.V. Saratov eds., 1999); M.N. Kuz'mina, *Mediatsiia kak Al'ternativnaia Forma Razresheniia Pravovykh Konfliktov [Mediation as an Alternative Form of Resolving Legal Disputes], in* RAZVITIE ALTERNATIVNYKH FORM RAZRESHENIIA PRAVOVYKH KONFLIKTOV

This terminology is unacceptable, at least on a professional level or in its use in legislation. To remain faithful to the Russian legal tradition, the terms "*posrednik*" and "*posrednichestvo*" should be employed. The direct meaning of "*posrednik*" in the Russian language is "a third party, chosen by both sides, for achieving an agreement," and "*posrednichat'*" is "to consciously intercede between two sides, trying to find a compromise."[21] These terms, which have either been forgotten or have acquired a negative connotation in contemporary society, have existed from ancient times. These terms, like mediation procedures, should take an appropriate place in Russian legal consciousness and in the system of private alternative procedures of dispute resolution.

V. CONCLUSION

The discussed alternative procedures are ancillary to the justice system. They do not replace and cannot replace the justice system in all cases, should not obstruct access to courts, and should not compete with the justice system in resolving most of the conflicts.

> *Translators' Note*: Alternative dispute resolution is a fairly new legal mechanism and provides an inexpensive means to access the underfunded and strained justice system in Russia. Its development is a reflection of Russia's efforts to implement rule-of-law reforms.

[DEVELOPMENT OF ALTERNATIVE FORMS OF RESOLVING LEGAL CONFLICTS] 86-90 (M.V. Nemytinoi & M.V. Saratov eds., 1999).

[21] V.I. DAL', TOLKOVYI SLOVAR' RUSSKOGO IAZYKA [DICTIONARY OF THE RUSSIAN LANGUAGE] 512-513 (2000).