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ALTERNATIVE DISPUTE RESOLUTION IN THE USA AND RUSSIA:
A COMPARATIVE EVALUATION

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Synopsis

The United States of America and the Russian Federation, two great
countries, belong to the different type of jurisdictions: accordingly to the common
law and the civil law. In spite of this important historic fact there are some
common trends that are not limited by the legal, territorial or ideological
boundaries. It is fair to be said the sphere of Alternative Dispute Resolution is
among them.

It is the purpose of this paper to compare existing American ADR system
and the various kinds of alternatives with their development in Russia.

The United States was one of the first countries established the additional
ways for resolving legal disputes. They have been used as alternatives to
traditional expensive, time-consuming, formal, complex, and stressful litigation.
So they have got their name Alternative Dispute Resolution (ADR).

The development of the ADR in the United States has been primarily as
an adjunct to American legal system and become its integral part.

In general, Alternative Dispute Resolution is the term, which identifies a
group of processes through which disputes are resolved out side of official court
system. At present many kinds of ADR exist in the USA. There are three primary
well-known processes – negotiation, mediation, and arbitration. Elements of
these processes have been combined in a number of ways in a rich variety of so
called "hybrid" dispute resolution techniques such as mini-trial, early neutral
evaluation, med-arb, rent-a-judge, ombudsman, etc. These methods might be
described as non-court or private ADR practices.

In addition to private sector, ADR programs have been implemented into
the public justice system. The Civil Justice Reform Act of 1990 required to
develop cost and delay reduction plan in the federal district courts as a pilot
program. Now the federal Alternative Dispute Resolution Act of 1998 requires
every federal district court to implement a dispute resolution program. As a result
different kinds of pre-trial alternatives are available in the American courts: court
– annexed arbitration, mediation, summary jury trial, early neutral evaluation.

One of the hall marks of the ADR movement and success in the USA
consists in the strong support not only from the federal or state legislative power
but from the non-profit professional organization such as well known all over the world American Bar Association, American Arbitration Association, Society of Professional in Dispute Resolution and others. They provide the legal communities with education, researches, and practices in the sphere of ADR. They also play very important role in the creation of the standards of ethics and professional responsibility for neutral persons who are charged in resolving disputes.

The last relevant ADR point, which should be underlined, is the specific of the American legal education. Many law schools included the disciplines deal with the Alternative Dispute Resolution in their curriculums. The courses of ADR, Arbitration, Mediation, Negotiation allow to orient students from the inevitable of traditional litigation toward the compromising dispute resolution.

All things considered it is might be said that the ADR in the United States has become the real integral part of its society, legal system and legal education.

Russia has also been revealing a growing interest to out-of-court methods of dispute resolution. However unlike the USA with its long, great ADR experience institute of the Alternative Dispute Resolution in Russia is in its infancy. There are a few kinds of non-court processes, which could be used for resolving dispute instead or before trial (they will be described below). Russian people (including lawyers), corporations, government agencies broadly use them. But at the same time it is worthy to note they do not realize that they use alternatives to litigation. Another words it means that there is no developed concept of ADR in Russian legal practice and our legislation does not recognize the term itself.

For the sake of fairness it must be noted that the questions on Alternative Dispute Resolution frequently find their discussion in the modern law publications in Russia. It is also notable one of the major directions in the work of Russian Foundation of Legal Reforms is the project "Development of Alternative Methods of Dispute Resolution" and arrangement of the All-Russian ADR movement within the frames of this project. This positive efforts give the hope that the doctrine of Alternative Dispute Resolution gradually will take the adequate place in Russian legal system.

Looking at the possible opportunity in using alternatives in Russia first of all arbitration should be named. This is the best known alternative process in Russia. Like the USA and many others countries our system includes two type of arbitration – domestic and international. However unlike the United States the separate statutes govern them.

Domestic arbitration or so-called "treteyskiy" court depending on its jurisdiction varies in two kinds. First is "treteyskiy" court for resolving civil disputes only between citizens. It has been regulated by the Rules on Treteyskiy Court of 1964. Because this law was adopted in the period of the Soviet Union it
is absolutely inappropriate for present social and economic situation in Russia. So it is practically does not use. Second kind of domestic arbitration also called “treteyskiy” court is intended for resolving commercial disputes between Russian corporations and businessmen. It is acting under the Provision Rules on Treteyskiy court for economic disputes of 1993. This type of arbitration has become more and more popular since new economic politics of free trade market was begun in Russia.

Current Russian law on domestic arbitration is the subject of strong critics from academics and practice lawyers because of its contradiction and unclear that restrains the entire arbitration development and efficiency. As a result new draft of Uniform Law on Domestic Arbitration was elaborated and expects to be adopted in the nearest future.

In respect to international arbitration there is the special Law of the Russian Federation on International Commercial Arbitration of 1993. It based on the UNSITRAL Model Rules. This fact is very important and means that Russian legislative regulation in the sphere of international arbitration follows the same way as well as many other countries including the USA which have resembling law based on the above mentioned uniform Rules. It is worthy to be emphasized. Both international arbitration system American and Russian have two similar fundamental elements: equal treatments of the parties and the right and opportunity to be heard before the tribunal. So there is no reason for foreign investors to be afraid to make an arbitration agreement with Russian businessmen. Besides Russian Federation as the successor of the former Soviet Union has become the member of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Award of 1958.

Alongside with arbitration there is forming a certain practice of applying mediation in Russia. So far it is used to resolve a few type of disputes on a small scale and it is largely occurring within legal vacuum. There is no legislator regulation and there is no guarantees any confidentiality of this process. Until Russia adopt its legislation to embrace the mediation process it is challenged that it will be get its more widely evolution.

Negotiation takes a very significant place among the Alternative Dispute Resolution due to it is might be both as an independent method of resolving disputes and as the essential part of any other alternative process. Unfortunately it is must be admitted that Russia historically had no experience in the using negotiation as the mean of the dispute resolution. As a result of centuries of strict government market regulation, most Russians have not developed any significant negotiating spirit. Russians have traditionally considered open compromise as a sign of weakness. But the time has changed. Now negotiation is the part of the legislator regulation in some kind of disputes in the commercial area. However it might be watching the lack of negotiation experience. Our society needs to be educated and trained in this process, how it works, what
types of negotiating strategies exist, how they can better used, etc. Another words the negotiation theory must be elaborated like in the USA.

There is a positive tendency also in Russian court system toward a wider use pre-trial settlement in order to reach agreement between disputing parties. The main cause of reviving interest to use alternatives inside court proceedings before trial is the unsatisfactory condition of entire Russian court system, which is explained insufficient budget financing, our courts being overloaded by civil cases. In addition, ordinary litigation is too expensive for the majority of Russian people particularly at the present time when our economic and social life are not stabilized. Federal constitutional Law on the Court System of Russian Federation of 1995 established new types of local courts – Court of peace or judge of peace. To some extent they have a certain resemblance with American Small Claims Court and they would be the best place for implementing court – related ADR program.

All above mentioned circumstances considered we may conclude that the contemporary position of Russian legal framework and research work, very strict needs in improving the court system, willingness to find new informal, inexpensive, speedy, less stressful ways for resolving conflicts create fit grounds for incorporating the concept of Alternative Dispute Resolution in our legal system.

USA’s experience demonstrates that alternatives processes are beneficial not only for conflicting parties but for public as well. They free the overloaded court system from a large number of civil cases. As a result courts can concentrate their efforts on complicated civil, criminal, constitutional cases. Moreover Alternative Dispute Resolution is not only legal concept. This is a certain type of psychology, which leads to reaching compromise and peace. In this respect ADR has no legal, territorial or ideological boundaries and may be adopted from one country or culture to another.