

State of the Russian Market of Legal Services as a Factor Affecting the Efficiency of Application of Conciliation Procedures in Court Proceedings

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ABSTRACT

The article deals with the prospects of introducing conciliation procedures into the Russian court practice in the context of the legal services market. In the course of the research, it has been established that the condition of the market of legal services in the part of judicial representation can have a significant impact on their deterrence to implementation, as it has a negative tendency. This tendency is expressed in the growth of court cases (except for criminal cases) with a simultaneous decrease in the price of a claim. The low cost of a suit makes court cases economically uninteresting for mediation. Judicial reconciliation is the most promising mediation procedure. But it will condition the growth of state expenses on the judicial system. This situation can be resolved by reviewing the issue of court costs reimbursement by the court, which should not only be compensated in full but also not put in dependence on the price of the claim.

Keywords: *conciliation procedures, mediation, negotiation, judicial conciliation, legal services market, litigation, price of a claim*

1. INTRODUCTION

In modern Russia, the institution of reconciliation is not new. For a long time it has been and still is the subject of scientific discussions.

The purpose of the introduction of reconciliation procedures is applied and is aimed at reducing the level of judicial burden, as well as the high level of conflict in the field of civil circulation and business relations.

In addition, the emergence and development of mediation in our country is due to the positive experience of most countries, Europe, Latin America and some Asian countries.

For the first time, the introduction of conciliation into Russian judicial practice was stated in the provisions of the Federal Target Programme "Development of the judicial system of Russia" for 2007-2012, approved by the Government of the Russian Federation on September 21, 2006. No. 583. As stated in the program, the widespread introduction of conciliation procedures as an extrajudicial and pretrial means of dispute resolution should help to reduce the workload of judges and, as a result, save budgetary resources and improve the quality of the administration of justice.

The Federal Law of July 27, 2010, was a rather important step in the development of conciliation procedures in the field of out-of-court and pre-court dispute settlement. No. 193-FZ "On the alternative procedure of dispute settlement with the participation of the mediator (mediation procedure)".

At the same time, this Federal Law has not made any positive changes in the promotion of conciliation procedures in court practice in almost ten years. Thus, the statistics of the Supreme Court of the Russian Federation show that such procedures are ineffective. Between 2011 and 2017, conciliation procedures involving mediators were used very rarely, with only about 0.008% of cases heard by the general courts and about 0.002% of cases heard by arbitration courts.

The legislator once again attempted to enhance conciliation procedures in arbitration, civil and administrative court proceedings, thereby generating new interest in the institution. At the same time, in modern Russia all these years the market of legal services was actively formed, the state of which certainly influences the development of conciliation procedures. Accordingly, predicting the "entry" of conciliation procedures into court practice, it is necessary to assess the state of legal services in Russia as a whole. The given analysis will allow to assume in what segment of the market of legal services reconciliation procedures will be most effective, and also will allow to reveal risks of their restriction in their wide application in judicial practice from the point of view of economic expediency. In addition, this analysis will predict the ability of conciliation procedures to have an impact on reducing the workload of the judge and thus improving the quality of justice.

2. RESEARCH METHODOLOGY

In preparing this research, statistical data obtained from the official websites of various government agencies were used. The study is thus based on official data and represents an analysis of reliable information.

The direct analytical findings of this study were made on the basis of general and private scientific methods of legal, socio-economic sciences. The following methods were used in the research: analysis, synthesis, hypothesis, generalization, formalization, analogy, system approach, system analysis, methods of modeling, systematization of information and analysis of received data on the basis of special knowledge, sociological (analysis of documents directly or indirectly containing the information of interest, observation), statistical (statistical observation, summary, and grouping of collected material, calculation of generalized indicators, qualitative analysis of social phenomena).

3. RESEARCH RESULTS

The analysis of the legal services market in Russia as a whole allows forecasting the following main conclusions regarding the use of conciliation procedures in Russian court practice.

The market of conciliation procedures may well be successful in economically developed regions, including, first of all, cities of federal significance, Moscow and St. Petersburg, as well as large regional centers.

The rest of the regional legal services market will be more difficult to widely apply conciliation procedures in court practice, as the low price of a claim in a wide range of civil and even arbitration cases makes them economically impractical for the mediator. While in arbitration proceedings, compared with the civil perspective, mediation and other conciliation procedures are more encouraging.

These segments of "cheap" court representation are currently promising for judicial reconciliation, as they will be paid from the federal budget.

However, such a task as reducing the burden on judges and, as a result, saving budgetary resources, has serious prospects of not being achieved in the regions.

This problem can only be resolved through the prism of a change in the position of the courts in terms of reimbursement of court expenses for representation. For this purpose, firstly, the costs of representation should not be put in dependence on the price of the claim. Secondly, courts should not reduce the amount of court expenses for representation when collecting them from the defendant. In this regard, the potential disproportion between the costs of litigation and the price of the proceedings makes it sufficiently costly for the parties. In this situation, reconciliation procedures begin to win in the economic sense, as they become cheaper than court costs.

4. DISCUSSION OF RESULTS

On October 25, 2019, Federal Law No. 197-FZ dated July 26, 2019, on Amendments to Certain Legislative Acts of the Russian Federation came into force. The Law expands the possibilities of using conciliation procedures in arbitration, civil and administrative court proceedings.

The law introduces types of conciliation procedures such as: conduct of negotiations, brokering, including mediation, judicial conciliation, or the use of other conciliation procedures (Article 138.2 of the Arbitral Procedural Code of RF, Article 153.3 of the Code of Civil Procedure of RF, Article 137.3 of the Code of Administrative Judicial Procedure of RF).

The law introduced a new institution - judicial reconciliation. It is applied with the participation of the court mediator, who is a retired judge. Candidates for judicial conciliation shall be determined by mutual consent of the parties from the list of judicial conciliators. Payment for the court conciliator is made from the federal budget, the procedure and conditions of which are determined by the Government of the Russian Federation (Article 138.5 of the Arbitral Procedural Code of RF, Article 153.6 of the Code of Civil Procedure of RF, Article 137.6 of the Code of Administrative Judicial Procedure of the RF).

All types of conciliation services are civil law services. An exception is court conciliation, which, based on the analysis of Federal Law No. 197-FZ dated July 26, 2019, can be considered a public service, since its financing is supposed to come from the federal budget. At the same time, the role of a judicial conciliator is more similar to the role of a judge in a process than to that of a mediator.

As with any kind of service reconciliation procedures, and first of all, mediation has an economic component. Accordingly, both supply and demand for this service are needed. At the same time, mediation, as well as other types of conciliation procedures, is closely related to the legal services market in general, and, first of all, court representation.

Some experts even tend to consider the issue of mediation effectiveness solely through the prism of finance and competition with the judicial system and believe that the successful development of this mediation procedure is impossible as long as there is wide access to courts and inexpensive justice in our country.

In the framework of this research, we formulate the concept of "legal services market" as a set of relations between counterparties in connection with the provision and sale of legal services. The market of legal services consists of a significant number of segments, which are usually allocated according to separate criteria. Depending on the type of service allocated: consulting, legal representation (litigation), out-of-court representation, integrated services, etc.

With regard to conciliation procedures, this study focuses on the evaluation of judicial representation (litigations).

Based on official statistics (Judicial Department under the Supreme Court of the Russian Federation. URL: <http://www.cdep.ru/index.php?id=79>) the court representation (litigation) can be presented as a

quantitative set of criminal, civil and administrative cases considered by the courts. The following figures provide grounds for extremely cautious favorable forecasts about the expansion of the litigation market growth both in terms of the number of cases and the volume of claims filed in court. Thus, based on data from the Judicial Department at the Supreme Court of the Russian Federation, there is a significant steady growth in administrative practice, steady growth in civil law practice and a decrease in the number of criminal law practices in courts (Figure 1).

However, this increase is due to the increase in the number of cases (over 2/3 of all cases before the courts of the first instance) which are within the jurisdiction of magistrates. Those categories of cases are in many cases extremely uninteresting in terms of their service by the legal business, at least until the problems of reimbursement of court costs are resolved in full. Therefore, the following diagram shows the dynamics of court disputes considered by district courts of the first instance (Figure 2).

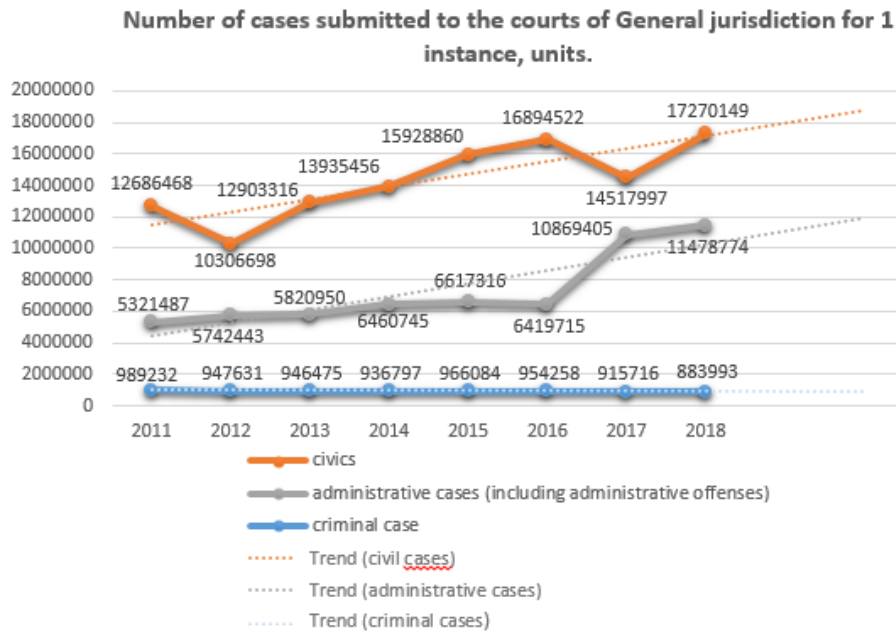


Figure 1 Number of cases submitted to the courts of General jurisdiction for 1 instance, units.

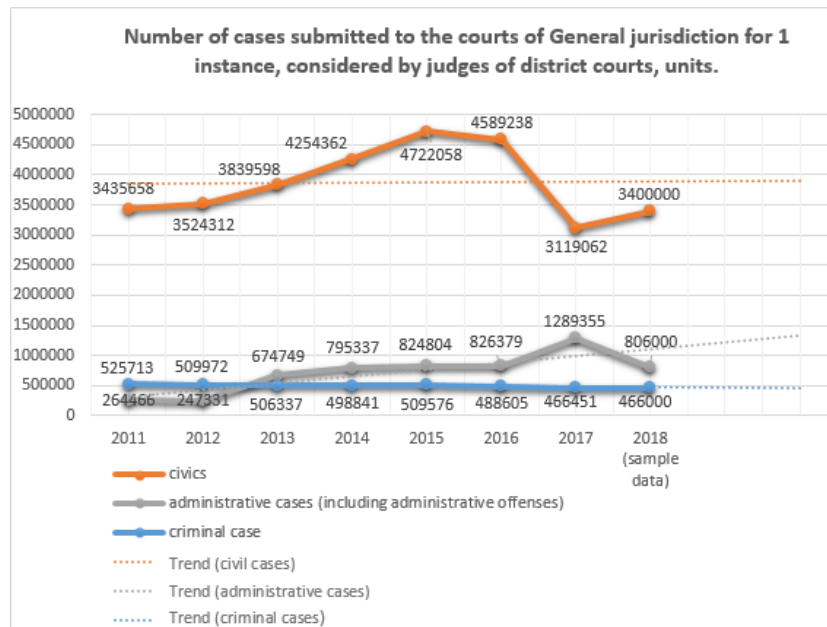


Figure 2. Number of cases submitted to the courts of General jurisdiction for 1 instance, considered by judges of district courts, units.

For the characterization of judicial representation as a segment of the legal services market, the dynamics of the amounts awarded for recovery by courts of general

jurisdiction of the first instance in a civil action is important (Figure. 3).

Amounts awarded for collection by courts of the 1st instance in civil cases, RUB.

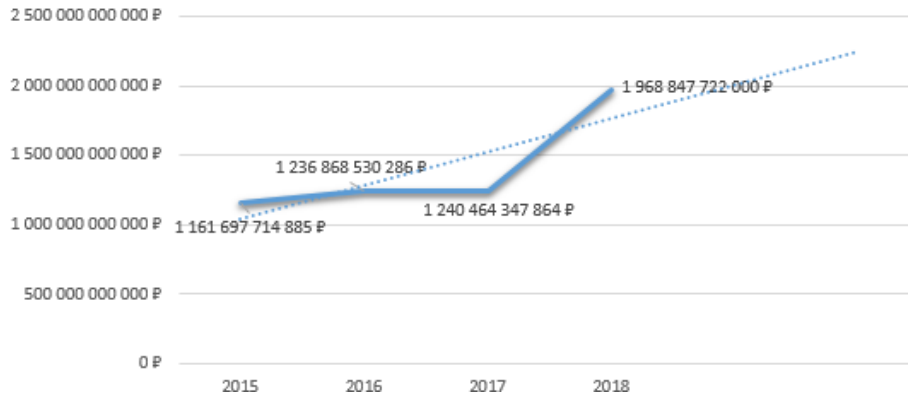


Figure 3 Amounts awarded for collection by courts of the 1st instance in civil cases, RUB.

At the same time, statistics on the "average" amounts awarded by the courts in a category of civil lawsuits are of sufficient interest (Figure 4).

Particular attention should be paid to the significant differences identified between the arithmetic mean price of a claim and the median price. Due to the fact that the arithmetic mean cannot offset 'emissions', i.e. there are claims with huge or minuscule amounts of claims. We recommend focusing on the average median price of a claim, as the median is a good characteristic of asymmetric

data distribution, as even with "emissions" of data, the median is more resistant to the effects of divergent data. However, for the full objectivity of its perception it is necessary to reflect the structure of the distribution of claims by price categories (Table 1). According to this structure, 86% of claims are located in the zone "less than 100 thousand rubles".

Table 1 Structure of the distribution of claims by price categories

Types of civil lawsuit cases (proceedings) heard by district courts of the first instance in Russia	the number of claims filed in respect of completed proceedings (by number of cases)						Satisfied amounts of claims, rub.	Claims considered and satisfied by the court (including counterclaims, rub.	Price of a satisfied property claim: arithmetic mean/MEDIAN LINE, rub.
	up to 50 thous. rub.	from 50 to 100 thous. rub.	from 100 to 300 thous. rub.	from 300 to 500 thous. rub.	from 500 thousand to 1 mill. rub.	over 1 mill. rub.			
2018									
Cases arising from family law relations	71,245	3,961	7,898	4,683	5,667	8,653	105,546,938	894,407	11,740/36,000
Cases arising from an employment relationship	261,213	40,482	28,908	7,686	3,049	2,206	204,610,224	468,325	39,033/33,000
Cases arising from housing law relations	5,771,275	371,524	163,830	20,501	6,962	5,482	331,737,192	7,221,683	20,020/27,000
Land ownership and land use cases	25,135	6,563	8,025	3,503	3,606	3,703	18,276,656	153,057	21,672/51,000
Other overproduction cases	4,220,933	1,111,094	1,067,637	259,724	147,047	117,664	9,400,806,095	7,749,085	140,963/40,000
Total civil lawsuits	10,349,801	1,533,624	1,276,298	296,097	166,331	137,708	0,060,977,105	16,486,557	76,972/33,000

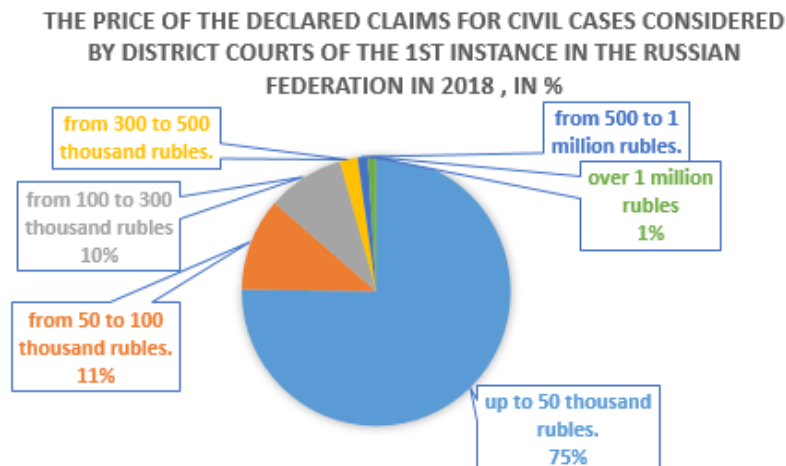


Figure 4 Amounts awarded for collection by courts of the 1st instance in civil cases, RUB.

The diagram of the price of the declared claims on the finished civil proceedings in the Russian Federation for 2018 (Figure 4), reflecting the bulk of the claim price falls on the category up to 50 thousand and confirms the disappointing forecast for the development of the legal services market as a whole. To get a more objective picture, we will compare the price structure of civil claims in the Russian Federation as a whole with the corresponding indicators of other regions, namely

Novosibirsk, Chelyabinsk, Saratov regions, Moscow and St. Petersburg, Khanty-Mansi Autonomous Okrug - Yugra. The legal markets of the above regions demonstrate high indicators as compared to the all-Russian ones, while the Moscow market as a benchmark of maximum opportunities demonstrates extremely high indicators, which are 8-9 times higher than the Russian average in arithmetic terms (Figure 5).

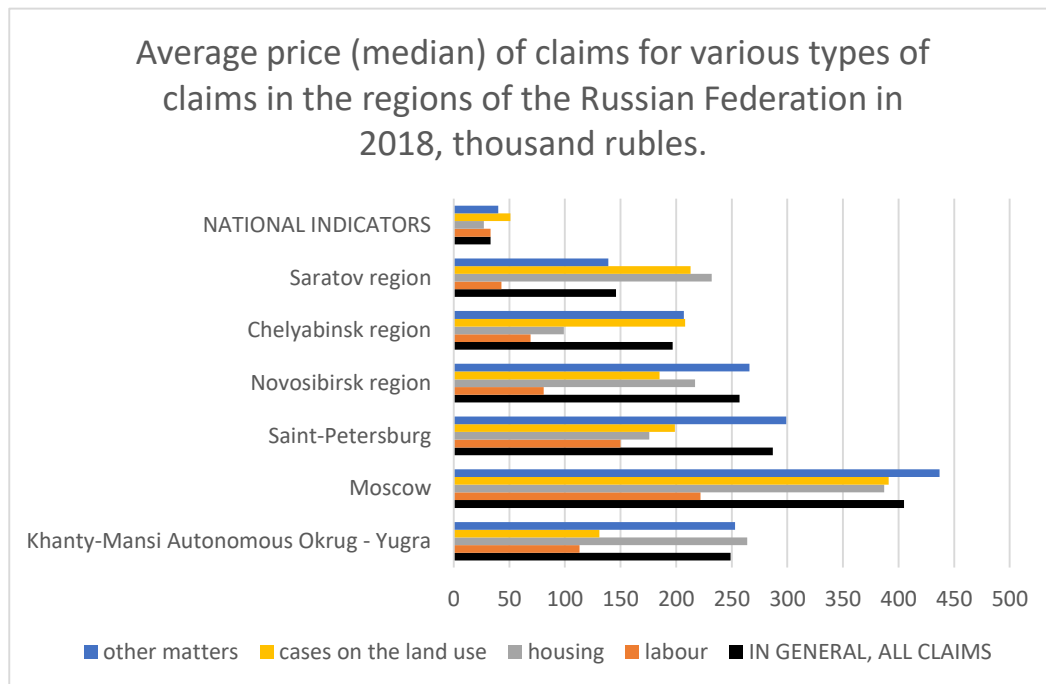


Figure 5 Average price (median) of claims for various types of claims in the regions of the Russian Federation in 2018, thousand rubles.

Similar statistics are shown by the arbitration courts. The number of cases examined by the arbitration court of the first instance is also growing, with the volume of the claims satisfied not changing significantly. This indicates

that the amounts stated per claim are reduced annually. The exception is the economically developed regional centers (Figures 6, 7, 8).

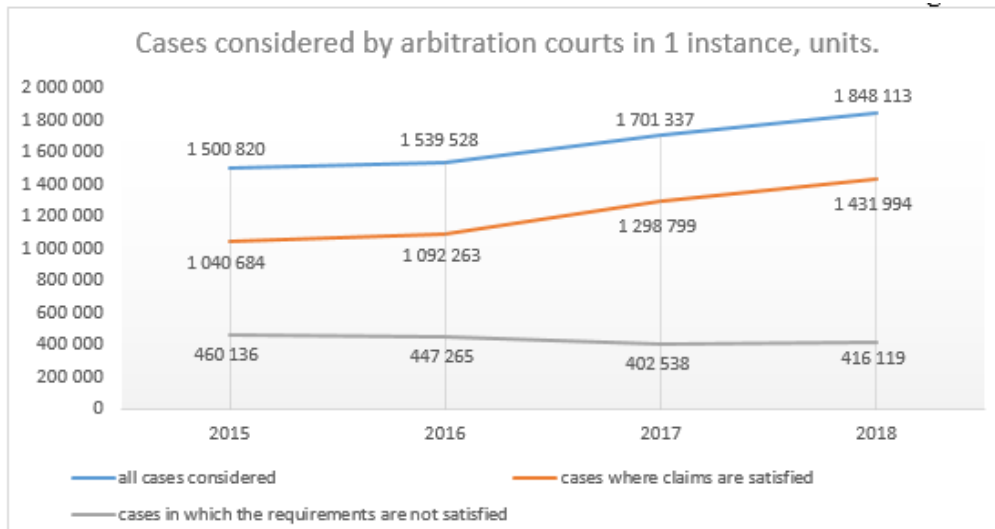


Figure 6 Cases considered by arbitration courts in 1 instance, units.

Amounts of claims reviewed by arbitration courts in 1 instance, RUB.

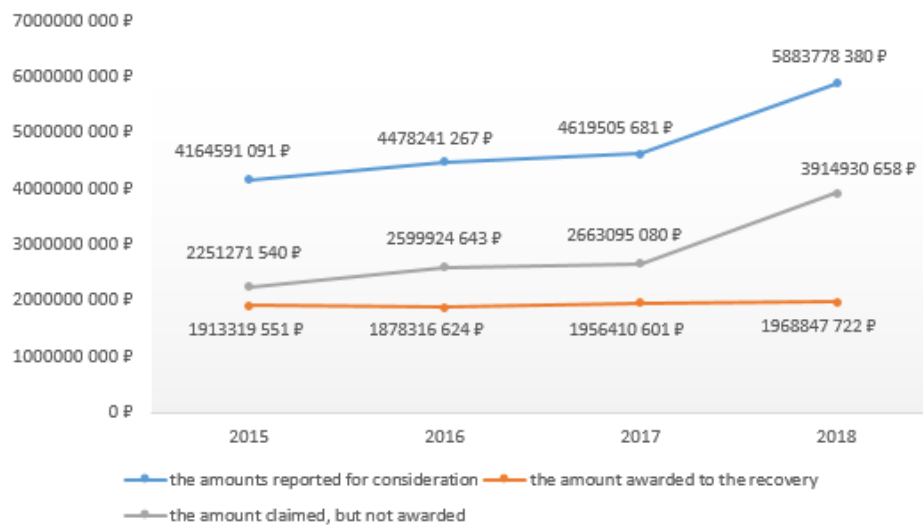


Figure 7 Amounts of claims reviewed by arbitration courts in 1 instance, RUB.

Court representation (litigation) as a segment of the Russian legal market is currently very controversial. In general, there is a steady increase in the number of cases (except for criminal cases) with a simultaneous decrease in the price of the claims, and in the overwhelming number

of cases, the price of a suit is quite low, not exceeding 50 thousand rubles.

This trend is largely due to the paradigm of Russian justice, which is based on access to justice for anyone wishing to protect their rights, both real and perceived, which have been only slightly violated.

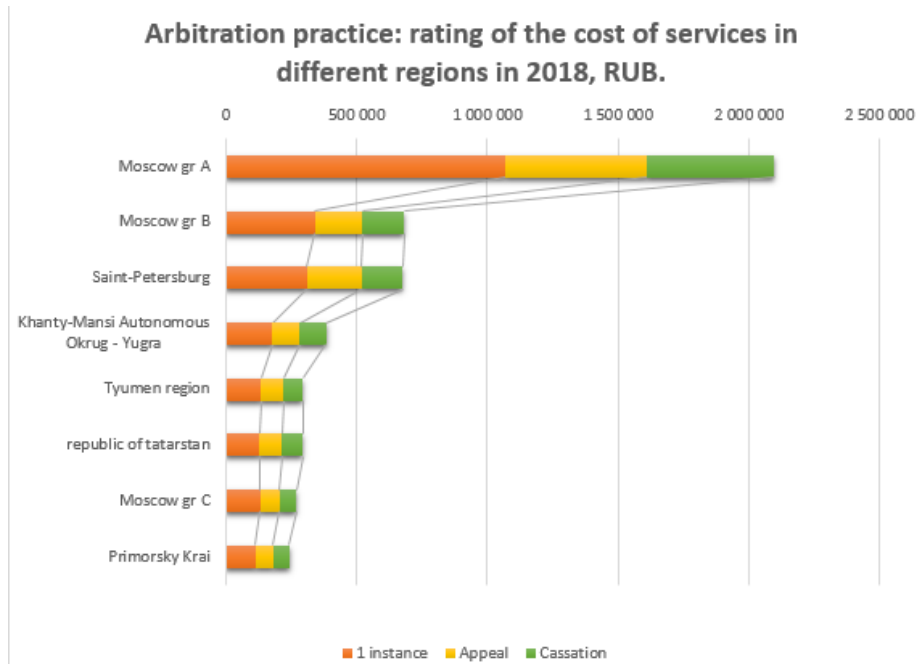


Figure 8 Arbitration practice: rating of the cost of services in different regions in 2018, RUB.

Gr. A: highly rated law firms

Gr. B: major law schools and specialized law firms

Gr. C: small law firms or lawyers performing personal practice

At the same time, the price of a claim is largely a factor that determines the cost of legal services. Accordingly, with a huge amount of "cheap" cases, the market for legal services in terms of litigations is unattractive. In addition, the possibility of full and fair recovery of court expenses for representation is essential for the legal market. At the moment, these amounts are not reimbursed by the courts in full, so in a number of cases, due to the cost of litigation and the small size of the claims, seeking qualified legal assistance becomes economically unprofitable. Judicial investment, which could address the issue of creating a level playing field in terms of access to justice for those who have and do not have the money to cover the costs of representation, is also in its infancy and is constrained from development, mainly due to the problem of sufficient satisfaction of the costs of representation by the courts.

Consequently, the legal market of the Russian regions in this respect is at the level of initial development of the legal business, the state of which is far from the state of maturity and is at the very beginning of its development.

The analysis of the legal services market in Russia as a whole allows forecasting the following prospects of using conciliation procedures in Russian court practice.

The market of conciliation procedures may well be successful in economically developed regions, including, first of all, federal cities of Moscow and St. Petersburg, as well as large regional centers.

The rest of the regional market will be more difficult to widely use conciliation procedures in court representation

(litigations), as the low price of a suit in a wide range of civil cases makes them economically inexpedient for the mediator. It should be noted that cases arising from family and labor relations, which by their nature are the most promising for mediation, fall into the category of economically unprofitable.

It is also not entirely optimistic to forecast the introduction of conciliation procedures in arbitration practice, as the amount of claims per claim is decreasing annually. Although the prospects for mediation and other conciliation procedures are more encouraging than in civil proceedings in arbitration practice.

The predominance of a large segment of "cheap" court practice now creates the prerequisites for the successful application of such a procedure as judicial reconciliation, since it is free of charge for the parties and compensated by the federal budget.

In fact, the conciliation procedures had to take over the entire volume of simple routine cases, thus creating the conditions for concentrating on more complex cases in order to resolve them more objectively and fairly. However, the institution of judicial reconciliation, as the most promising in Russian jurisprudence, does not yet have any experience to assess its effectiveness. At the same time, it will undoubtedly lead to an increase in budget expenditures for the judicial system. Accordingly, such a task as reducing the workload of judges and, as a result, saving budgetary resources has serious prospects of not being achieved.

This problem can only be resolved through the prism of a change in the position of the courts in terms of reimbursement of court expenses for representation. First, the costs of representation should not be conditioned on the price of the claim. Secondly, the court should not reduce the amount of court expenses for representation when collecting them from the defendant. The potential disproportion between the costs of litigation and the price of the suit makes it sufficiently expensive for the parties. In this situation, reconciliation procedures begin to win in the economic sense, as they become cheaper than court costs.

At the same time, the authors of the research note that the impact of the state of the litigation market on the efficiency of conciliation procedures in Russian jurisprudence cannot be considered as the only key factor. Their effectiveness is also due to other factors that are no less important. For example, such as a high degree of conflict in relations in society; lack of awareness of the parties about mediation; the desire of a person whose right has been violated to bring the violator to justice by any means, etc. At the same time, it is impossible not to take into account the influence of the market of legal services in terms of judicial representation on the efficiency of the implementation of conciliation procedures.

4. CONCLUSION

The introduction of conciliation procedures into court practice is a progressive step in the development of the Russian legal system. At the same time, the state of the market of legal services in terms of judicial representation may have a significant impact on their deterrence to implementation, as it has a negative tendency. This tendency is expressed in the growth of court cases (except for criminal cases) with a simultaneous decrease in the price of a claim. The low cost of a suit makes court cases economically uninteresting for mediation. Judicial reconciliation can be seen as the most promising reconciliation procedure. But it will condition the growth of expenses of the state for the judicial system. This situation can be solved by a reconsideration of the issue of compensation of judicial expenses by the court, which should not only be compensated in full but also not put in dependence on the price of the claim.

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