A SOCIOMETRY OF JUSTICE IN RUSSIA

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CHAPTER THREE

TO GO TO COURT OR NOT?
THE EVOLUTION OF
DISPUTES IN RUSSIA

Kathryn Hendley

Life everywhere is beset by challenges. In Russia, as elsewhere, some of these challenges ripen into fully fledged disputes, while most are not pursued. The reasons for this tend to be opaque. The problems that fall by the wayside are like the proverbial trees that fall, unheard, in the forest. Disputes that end up in court are much noisier and easier to study. Yet they tell an incomplete story. In any society, unpacking the motivations for not going to court is just as important as understanding what happens in court. Russia is no exception.

In this chapter, I analyze the reactions of Russians to two hypothetical problems that might arise in their daily lives. First I sought their responses to a malfunctioning mobile phone. Then I asked them to contemplate a disagreement over real estate in the wake of a family death. The advantage of posing stylised facts is that everyone is responding to the same situations. This approach draws back the curtain on the process of deciding what road to take, or, perhaps more accurately, whether to take any road at all. What emerges is a strong aversion to litigation. The reasons defy the common wisdom. Despite the steady drumbeat of concern over political interference and corruption in the post-Soviet courts in the mass media and scholarly literature, such fears are entirely absent from the discussions. Instead, much like their counterparts elsewhere, Russians’ hesitation is fuelled by their fears of the cost, time, energy and emotional sacrifices required for litigation (Engel 1984; Merry 1990). For them, filing lawsuits was viewed as a last resort; their consistent preference was for finding a way to resolve problems without involving the courts. Their discussions reveal a myriad of possibilities, along with glimpses into their pluses and minuses.

METHODOLOGY

Critical to understanding Russians’ decision-making process is an ability to eavesdrop as they work out their responses. Absent the possibility of being a fly on the wall in the lives of ordinary Russians, focus groups provide the next best vehicle. Although artificial in that they bring together strangers for heartfelt discussions, they have the advantage of allowing the participants to speak their mind rather than being limited to the predetermined answers of a survey. The disadvantage of working with hypothetical situations was blunted by the fact that a number of the respondents and/or their friends had experienced similar problems (even though they were not recruited on this basis) and shared their actual reactions as well as the rationales behind them.

Working with Moscow-based Russian colleagues, I organised nine focus groups in 2014, divided equally between Moscow, Voronezh and Novosibirsk. The discussions were facilitated by an experienced Russian sociologist. Because most of the participants had full-time jobs, the meetings were held in the evenings and at weekends, and lasted about two hours. Each group included eight to twelve participants, whose names have been changed here to protect their anonymity. An effort was made to ensure diversity in terms of gender, employment and education. Almost evenly divided by gender, with forty-six men and forty-five women, their ages ranged from 23 to 66, with an average age of 41. From a financial point of view, the participants were comfortable. Two-thirds said that they could easily afford big-ticket items, such as refrigerators and televisions, while the remainder said that such purchases would be a struggle for them, but that they had no trouble covering their daily expenses.

1 The project was originally designed to investigate popular attitudes toward mediation in Russia. These venues were selected to reflect their receptivity to mediation. Voronezh is the home of Elena Nosyreva (2010), the head of the working group that drafted the 2011 law introducing mediation. She has established a mediation center at Voronezh State University. Novosibirsk has no discernible profile regarding mediation. Moscow, as usual, is sui generis. It is home to mediation activists and mediation centers, but is not known for this. As the focus groups progressed, it became evident that the participants were unaware of the advent of mediation. The discussions nonetheless provided rich source material on the process of disputing.
Hypothesising that attitudes towards dispute resolution would be coloured by prior court experience, I divided the groups accordingly. In each locale, one group was composed of court veterans, another of those who had never been to court and the third was mixed. Almost all of those with experience had been through civil processes. Most (87 per cent) had been the instigators of their court cases. Reflecting the docket of Russian courts, the most common types of case were housing (33 per cent) and family (27 per cent) disputes, with cases involving labour claims, personal injury, business problems and debt collection also represented.

The focus groups were organised around three hypothetical scenarios. The goal was to pose mundane problems that could, but need not, be solved through litigation. They were designed to ratchet up the complexity of the problem—in terms of both substance and emotion—as the discussions proceeded. The first problem involved a recently purchased mobile phone that had stopped working. The second posited a residential water leak. The third explored a sticky inheritance dispute. In this chapter, I analyse the focus groups’ discussions of the first and third scenarios. I have elsewhere explored Russians’ reactions to water leaks in their apartments (Hendley 2011a). By focusing on the arenas of consumer and inheritance law, I am able to examine how Russians approach problems involving both strangers and intimates. Socio-legal theory predicts that willingness to use the courts is correlated with social distance—in other words, that, as a relationship grows more remote, people tend to be more willing to pursue disputes (Engel 1984). Prior Russia-based research has produced mixed results. The social distance hypothesis was confirmed when it comes to mundane disputes among neighbours (Hendley 2011a), but not to disputes between firms (Hendley 2001). It is, however, just one of several explanatory factors that emerged from the focus group discussions.

My analysis relies on the so-called ‘pyramid of disputing’ framework, developed by Felstiner et al. (1980–81). Its triangular shape recognises that relatively few of the multitude of annoyances of daily life are pursued. In other words, as the stakes rise, an increasing number of these nuisances fall away. Indeed, many victims do not perceive themselves as such and do nothing. Others recognise or name the injury but still opt to stay silent (Sandefur 2007). Those who pursue the injury will identify or blame the perpetrator. Some stop there, satisfied with the knowledge of who did them wrong. A very few push further, and make a claim against the wrongdoer. Such claims can take many forms, ranging from a request for an apology to litigation. The reasons why potential disputes languish unpursued or proceed up the pyramid vary according to the surrounding circumstances and the character and capabilities of the victim. The underlying institutional environment and legal culture also play a role, which allows the Felstiner et al. framework, which is grounded in the US experience, to be adapted to remarkably different settings, including China (Michelson 2007), Kyrgyzstan (Cormier 2007) and Russia (Hendley 2001, 2010).

HANDLING CONSUMER DISPUTES

The first task tackled by each focus group was the discussion of a situation in which a schoolteacher puzzled over what to do about a malfunctioning mobile phone. Cards on which a Russian-language version of the following scenario was printed were distributed to the participants. They were given time to read and absorb the facts.

Irina Ivanova, a 44-year-old teacher, bought a new mobile phone in the "Evroset" store near the school where she teaches. She is not tech savvy. Previously, she had a very basic mobile phone, which she lost. The salesman persuaded her to buy a smartphone for $150, assuring her that, if problems arose, she could easily exchange the phone for a

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2 The only exception was Vera, a 40-year-old Muscovite who worked in a technical capacity at a university, who had been the victim of a crime. She represented her own interests at the subsequent trial. Like most European countries (e.g., McKillop 1997), victims are parties to criminal cases in Russia, where they can weigh in on the treatment of the defendant and seek civil damages (Maggs et al. 2015).

3 For a discussion of more politically charged complaining in Russia, see Henry (2012).

4 For example, a US-based study of disputing behaviour found that 71.8 per cent of individuals with grievances complained to the offending party, and that a dispute arose in 63 per cent of those situations. Of these disputes, 11.2 per cent resulted in a court filing. They concluded that ‘It is clear that litigation ... is by no means the most common response to disputes’ (Trubek et al. 1983: 86–7). In a 1997 survey of Russian firms, we found that, for every 100 sales transactions, twenty-four experienced difficulties. Of these, sixteen were resolved informally, seven were resolved through threats of litigation and/or the imposition of penalties, and only one was litigated (Hendley et al. 2000: 652, n. 52).

5 Evroset (https://evroset.ru) is a chain of stores that is ubiquitous throughout Russia, which sells mobile phones and other electronics.
new one. He also convinced her to buy a two-year extended warranty for $50.6 Two weeks after the purchase, her phone stopped working. When she took it back to the store, she was told that she would have to buy a new phone. The manager explained that the problem with her phone arose due to improper use, invalidating the warranty.

The participants’ initial reactions confirmed the relevance of the scenario to Russians’ daily lives. Oleg, a 37-year-old Novosibirsk programmer, commented that, ‘in reality, many have confronted this sort of situation’. No one disputed that Irina Ivanovna had suffered an injury. In Felstiner et al. parlance, the focus group participants agreed that she had named her injury. The fact pattern also clearly identified her tormentor, namely Evroset’, which meant that blame had been assigned. The real question here was whether to make a claim and, if so, what sort of claim.

**Do nothing.** At some point in every group’s discussion, one or more of the participants advocated that Irina Ivanovna let it go and buy a new phone. In other words, they recommended that she not make any sort of claim. For some who took this position, the cost of the phone simply did not warrant investing the time and energy needed to get Evroset’ to live up to its word. On the other hand, Gennadii, a 31-year-old Voronezh entrepreneur whose wife was a schoolteacher, reminded the group that the modest salaries of teachers made the cost of the phone more significant. He said that he would weigh the cost of pursuing a claim against the price paid for the phone.

Many saw making a claim against a retail outlet as quixotic. Larisa, a 35-year-old who worked for a Voronezh construction company, reflected the feelings of customers everywhere when she said that, ‘It seems to me that salespeople have been given strict instructions to give customers the runaround as much as possible . . . First they tell you that you are a fool, then they tell you that it’s all your fault’.7 Others were more fatalistic. Nadia, a 33-year-old Voronezh doctor, said that she would chalk it up to bad luck and move on. Others echoed her sentiments, noting that the teacher would need a strong backbone to defend her rights, whether at the store or in court. Alla, a 34-year-old Moscow bookkeeper who was a veteran of multiple lawsuits, spoke of the toll it took on her wellbeing. In her view, most would do nothing. Elena, a 58-year-old Voronezh teacher, spoke for many when she said, ‘If a person has plenty of time; if he has nothing to do; if he is free, then let him go to court somewhere – write to everyone. But she is a teacher – she has to behave rationally.’ When asked what she would do in Irina Ivanovna’s position, Elena said, ‘I wouldn’t do anything. I would give this phone to my grandson and let him try to figure it out. I’m not interested in running around. I don’t want to do it.’

However, not everyone agreed. When responding to Elena, Boris, a 39-year-old Voronezh factory worker, took a different tack, saying, ‘I believe that you need to fight for your rights . . . in any situation . . . if you are in the right, then you need to see it through to the end’. Few were as bristly as Boris, but most conceded that, if Irina Ivanovna saw this as a question of principle, then she ought to make a claim.

**Seek recompense from the store.** For those who advocated making a claim, there was general agreement that returning to the Evroset’ store where she bought the phone ought to be her first step. Few saw any point to utilising the complaint book (khailoiba kniga) that all retail outlets are required to make available to consumers.8 Instead, the participants thought she should approach the store manager and ask to exchange the phone or, if that proved impossible due to a model change, ask for her money back.

Some were sure that the store would do right by Irina Ivanovna. For example, Matvei, a 28-year-old supervisor at a Moscow trading company, commented that, ‘If she paid, then she should simply take her receipt . . . and everything will proceed normally’. Several of his fellow participants shared stories that ended with them being able to return items such as phones, tablets, and CD players months after the purchase. Similar stories emerged from the other groups. Others’ confidence stemmed from the sheer size and reputation of Evroset’. One Moscow

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6 Several of the focus groups got bogged down in squabbles over the best way to handle this extended warranty. This was most pronounced in the groups with prior court experience. Across the board, most participants saw Irina Ivanovna’s purchase of the warranty as foolish.

7 Larisa’s comments were grounded in her unsatisfactory experience of buying a computer at Media Market, a chain of ‘big box’ stores in Russia.

8 The only group that mentioned complaint books was the Moscow group, which included both those with and those without court experience. It was raised towards the end of the discussion and felt like an afterthought. The group agreed that salespeople generally discouraged customers from using these books. Some thought this might be because complaints recorded in these books could negatively impact on salespeople’s bonuses. Having these books is a practice that, as Chekhov (1982) reminds us in his short story, ‘The complaint book’, dates back to the Tsarist era. They were also ubiquitous during the Soviet era (Bogdanova 2015; Hilton 2009).
participant was convinced that Evroset had an informal policy providing that, as long as you had a receipt, you could exchange your phone at any time for any reason. Unaware of this policy (which, at best, was not binding), others felt that Evroset would be loath to risk bad publicity by thwarting the desires of their customers. Several contrasted the likely response of Evroset with that of a kiosk, and all agreed that Irina Ivanovna would have less luck at a more fly-by-night enterprise.

However, the majority of the focus group participants were doubtful about Evroset's willingness to comply with her demands at face value. A fair number felt that the store's concern over its reputation would cut the other way, namely that management would fear an avalanche of returns if they were too accommodating. At every site, there were a few participants who told horror stories about their experiences with Evroset and other big chain stores. They came away believing that such stores could not be pressured by consumers; that they were too big to care. Those in this camp were firmly convinced that talking to the original salesperson would be a waste of time. They advocated taking the claim to the store manager and, if that failed, going public, either in the store or more publicly. Some women suggested that the very fact that Irina Ivanovna was a woman and a teacher could be a benefit if she were willing to 'create a scandal' (ustroit skandal) by approaching customers, telling them what had happened to her and encouraging them not to buy a phone at Evroset. Olga, a 39-year-old Muscovite who worked at an advertising agency, recounted her response after buying a sofa at IKEA that was infested with bugs. After the store personnel refused to help her, she mounted a multi-pronged attack. Not only did she take up a position near the cash registers and loudly caution customers against buying anything, but she also began spamming IKEA's potential customers with emails about the bugs. Within days, officials from IKEA's corporate office reached out to her to reopen negotiations. She achieved her dual goals of shaming IKEA and getting her money back. Her fellow group members were astonished by the story. Most said that they lacked the courage to follow her example. The more common suggestion was to approach one of the many television programmes that take on consumer complaints, though no one had actually tried this option. Everyone agreed with Olga as to the need to push the claim up the corporate ladder when stymied by store management.

The fact pattern stipulates that the store manager told Irina Ivanovna that she was responsible for the problems with the phone. Precisely how this could be proved and who should have the burden of proof was the subject of lengthy debate in every group. Few thought that Evroset would take Irina Ivanovna's word that she had done nothing wrong. Instead, most realised that the phone would have to be put through a process that produces a written finding (zalduchenie) that would assign blame. This so-called 'expertise' (eksperitz) process has become commonplace in recent years, which explains why what might seem to be a fairly technical legal requirement is so familiar to ordinary Russians. Nevertheless, their knowledge tends to be only skin-deep. Groups consistently argued over who would have to pay for this process and where it would take place. Most firmly believed that the customer had to bear the financial burden. In reality, it is the store that is required to cover these costs, though if the customer is found to be at fault, s/he has to reimburse the store. Of all the participants, only Marina, a 44-year-old Novosibirsk bookkeeper with no court experience who reported no prior personal skirmishes with retail outlets, was fully conversant with the details of the law. Quite matter-of-factly, she told her colleagues that not only does the store have to pay, but also that the customer has the right to be present when the evaluation takes place.

Although most participants knew that eksperitz would be needed to substantiate Irina Ivanovna's claim, many were nervous about pursuing it on their own. They spoke of the inherent advantage for Evroset, given that it deals with dissatisfied customers on a daily basis.

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9 He attributed this policy to Evroset's founder, Evgenii Chichvarkin. By 2014, when the group was conducted, Chichvarkin had fled Russia ahead of a criminal indictment for tax evasion and had sold the company. He successfully fought efforts to extradite him from his new home in London. His co-founder, Boris Levin, was less nimble and was held for many months in pre-trial detention. Eventually, he was released after being acquitted in a jury trial (Arledge 2012).

10 In several groups, it was suggested that a university education tended to inhibit a willingness to throw public tantrums. Most (80 per cent) of the focus group participants held university degrees.

11 Kontaktnaia zakupka (Test purchases) is a program that was mentioned in several groups. http://zakupka.ru (accessed 14 March 2016).

12 See Belev (2015) for an analysis of the burden of proof in consumer cases under Russian law.
Even those who had succeeded on their own begrudged the time required and the attendant inconvenience. A fair number of participants doubted the integrity of retail outlets. The remark of Vitali, a 47-year-old Novosibirsk state worker, that ‘Any trade organisation counts on the fact that, if they mislead a person, s/he will give up’ was emblematic.

Seek assistance from centres set up to protect consumer rights. In every group, someone brought up the possibility of seeking help from centres created to protect consumer rights. Usually the participant who raised the idea had personal experience with such centres. For those who were unfamiliar with them, they quickly came around to the idea when their more experienced colleagues explained how they empowered consumers. In socio-legal terms, involving these centres acted to transform ‘one-shotters’ into ‘repeat players’ (Galanter 1974), thereby levelling the playing field. These centres offer practical advice on how to approach retail establishments, explaining that managers are just as eager as their customers to avoid litigation. Raisa, a Moscow pensioner, sought counsel when her water meter was improperly installed and was advised that she ‘simply needed to scare [management] a bit at the start’. When necessary, the staff of these centres – who include lawyers – also prepare written documents ranging from formal claims (pretzsi) to be presented to management, to complaints designed to initiate lawsuits (iskovye zaiazenla). Polina, a 47-year-old manager of a Novosibirsk furniture store who had been on both sides of consumer disputes, pointed out that the pretzsi prepared by such centres lay out the basis for the claim in clear terms, relieving customers of the burden of articulating their concerns verbally. Participants generally believed that stores took their claims more seriously when they came with the imprimatur of one of these centres, and several reported that management capitulated immediately once one became involved.

13 Nikolai, a 36-year-old Voronezh construction worker, recounted a situation very similar to Irina Ivanovna’s. He had bought a smart phone for his daughter that, in relatively short order, stopped working. His initial entreaties to the store came to naught; he was told that his daughter had damaged the phone. He then pursued expertise at an independent service centre. Its conclusion was that the phone had been faulty from the outset. Armed with this evidence, the store replaced his daughter’s phone. The ordeal took months.

State-funded centres to protect consumer rights can be found in each of the locales of the focus groups. Most stories about them were positive. Typical was Anton, a 39-year-old construction worker from Novosibirsk. He had no court experience and was keen to maintain his track record. Having previously benefitted from free advice from a consumer rights centre, he insisted that, if confronted by a situation analogous to that of Irina Ivanovna, his first step would be to return to the centre, even before going to the store. Yet some participants who had used these centres reported less favourable treatment. One bone of contention was whether the services were free. Among the Voronezh participants, for example, several reported receiving free services while others complained about being expected to pay for advice. The consensus seemed to be that initial consultations were free, but that fees were charged when staff lawyers drafted documents. Some questioned the quality of these lawyers, pointing out that they tended to be young and inexperienced due to high turnover. Dmitrii, a 41-year-old Voronezh manager who had initiated several civil lawsuits, complained of being overcharged, saying that having a lawyer prepare a complaint for court typically costs 1,500 rubles (about $30), but that the centre lawyers charged him 5,000 rubles.

File a lawsuit. Everyone agreed that court was a last resort (kraaimi sluchai). As Oleg put it, ‘Of course, if she’s really been turned away everywhere, then naturally she ought to go to court.’ Implicit within his comment is a recognition that Irina Ivanovna ought to appeal to store management and the consumer rights centre before initiating litigation. Court veterans and neophytes agreed that, even if management had initially given her the cold shoulder, she ought to share the complaint

14 E.g., http://mecp.org/ [Moscow]; http://oss BPM.ru/ [Voronezh]; www.kalininsk.ru/industry/consumer-protection/ [Novosibirsk] (accessed 14 March 2016). Some centres also operate hotlines, provide on-line advice and have in-house expert services. The website for the Moscow centre states that, during 2015, they provided 9,260 oral consultations, prepared 3,250 pretzsi and conducted expertises in 740 cases. It further notes that they prevailed in 95 cases, recovering over 32 million rubles for their clients.

15 Anton’s prior case involved faulty shoes. When he tried to return them, the seller refused, citing improper use. The centre prepared a zakluchenie for him and the store promptly refunded the sale price.

16 Despite his experience, Dmitrii was unaware that such expenses could be reimbursed if he prevailed in the subsequent court case. When this was raised, others piped up to remind everyone that this was a big ‘if’ and that Irina Ivanovna would be liable if she lost in court.
with them before filing it with the court because it might prompt a last-minute settlement. Oleg, among others, was more sceptical, arguing that a company like Evroset’ would not back down.

The reasons why the focus group participants were reluctant to go to court mirror those previously identified among Russians and are similar to those voiced by grudging litigators elsewhere (Engel 1984; Hendley 2010; Merry 1990). Those with prior court experience complained bitterly about the time and emotional energy needed to see a lawsuit through to the end. Alla, who had survived several housing cases, invoked the infamous McDonald’s hot coffee case (Haltom and McCann 2004), though she thought it revolved around a hot tart (pirozhka), saying that, in contrast to the US, you could not win millions in Russia. In her words, ‘If you’re willing to waste time and ... if you have an inner rod of strength, then maybe, I don’t know, you can achieve a great deal.’ She reported that, although she was no longer as terrified of litigation as she was at first, she still felt ill effects on her health due to the stress. Another court veteran said that Irina Ivanovna would need the strength of ‘reinforced concrete’ to survive the ordeal. As a general matter, the participants, regardless of their prior experience, questioned whether a middle-aged female teacher could be tough enough. Although they conceded that some enjoy litigation as a kind of sport, no one admitted to sharing these feelings.

Others were discouraged by proof problems. Most believed that Irina Ivanovna would have to affirmatively prove that she had not damaged the phone. Tatiana, a 29-year-old manicurist from Novosibirsk who had sued her insurance company after it failed to pay her claim following a car accident, pointed out the difficulty of proving a negative. Only a very few participants understood that Evroset’, not Irina Ivanovna, would bear this burden. Those who did, however, were more sanguine about her prospects, though not about the time that would have to be devoted to the case. Tatiana also noted the difficulty of preparing for battle, saying that, ‘When you show up in court, they’ll immediately ask you “Where is the refusal of the store to return the item?” ... You need written evidence of the refusal.’ She cautioned her fellow participants, ‘In the present day, to prove something ... you need to consult in advance with a bunch of lawyers (advokaty), read everything thoroughly on the internet in order to approach the issue properly and to cite to the relevant legislation. Only then can you accomplish anything.’ Though she had represented herself in court, she had gone to a lawyer for help with preparing her complaint.

Her comments reflect a larger concern with legal literacy. Few felt sufficiently knowledgeable about either the substantive law or the procedural requirements for bringing a lawsuit to proceed on their own. Like Tatiana, many spoke positively about the bounty of information available on the internet.

The cost and competence of lawyers were further constraints on litigating. There was a consensus that Evroset’ would have good lawyers who are experienced at repelling consumer claims. In most groups, someone would ask whether Irina Ivanovna ought to consult a lawyer about her options. Inevitably, this idea would be shouted down, either due to doubts about lawyers’ skill levels or their cost. Few thought lawyers, especially those who were unknown, were worth consulting. When the prospect of using a free clinic was raised, the response was disdainful, though a few did admit to relying on free help from law students. The only universally acceptable option was to consult a friend who happened to be a lawyer. Only then could you be sure that the advice could be trusted.

Despite this chorus of negativity regarding lawyers, about half of the participants with court experience had hired lawyers to represent them. An additional 30 per cent took Tatiana’s road and paid for a lawyer to draft their complaints. Although the sample gathered for these focus groups is not representative, it is still a sad commentary on the state of the Russian legal profession to be able to find so few clients who were willing to speak out in support of their lawyers. Interestingly, those without court experience were more open to consulting lawyers, arguing that any financial outlay would reap benefits in the long run.

**HANDLING INHERITANCE DISPUTES**

In addition to considering how to deal with the faulty mobile phone, the focus groups were also asked to contemplate how they would handle a problem that arose after the death of a beloved family member. In contrast to the first situation, this scenario required them to think about how their calculations might change if their disagreement was with family members rather than faceless salespeople and managers.

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17 See Butler (2014) for an analysis of the twists and turns of inheritance law during the Soviet and post-Soviet eras.
Daria Nikolayevna is a 20-year-old secretary. She spent her summers in the countryside at her grandparents’ dacha. Her own parents died tragically when she was young, so her grandparents brought her up. In addition to her father, they had two other children, each of whom had a child. None of them lives nearby, and so have not recently visited the dacha. Her grandmother died a few months ago. Her aunts and uncles and cousins are keen to sell the dacha. It is located near a river and real estate developers have already bought up adjacent properties. Daria is determined to keep it. Although she does not yet have children, she wants the dacha to be there when she has a family.

As with Irina Ivanovna, the focus group participants agreed that this was not an uncommon problem. They immediately saw the complication raised by the familial setting. Gennadii put it best, ‘In my opinion, it is useless to negotiate with family ... To be honest, I have found it easier to deal with strangers.’ His comments, like those of many of the participants, reflected his own sad experiences. Towards the end of his grandmother’s life, her daughter (Gennadii’s aunt) wanted to sell her apartment. Gennadii refused to allow it, reasoning that his grandmother should not be forced to move. They ‘butted heads’ for many years, culminating in a court case that satisfied no one.

*Do nothing.* Daria Nikolayevna’s problem does not fit neatly into the ‘naming, blaming, claiming’ framework of Pelatiner et al. (1980–81) as Irina Ivanovna’s dispute with Evroset’ did. At the same time, most participants agreed that it presents a dilemma that needs to be resolved, suggesting the need to make a claim.

A few participants disagreed. In essence they advocated that Daria Nikolayevna bury her head in the sand and hope for the best. Ksenia, a 45-year-old Moscow housewife, suggested that she should continue using the dacha as if nothing had changed. Her opinion is grounded in her firm belief that Daria is entitled to the dwelling because she (unlike the other relatives) had spent time there in recent years.

Her fellow participants disagreed, both with her legal reasoning and her logic. Aleksei, a 28-year-old Moscow bank manager, noted that she could certainly live there, but wondered what would become of her if her relatives dragged her into court or the developers pounced on the property.

_Negotiate a settlement with the relatives._ The participants saw finding a compromise that satisfied both Daria Nikolayevna and her relatives as a more realistic option. Although all conceded that this would be an uphill battle, most concurred with Eduard, a 42-year-old Moscow construction foreman, when he said that, ‘relatives will come to terms with each other sooner or later.’ The odds of doing so hinge on the character of those involved and their prior relationship. As Eduard put it, ‘We can contemplate thousands of alternatives, but it all depends on the human factor (chelovecheskii faktor).’ Some thought it would be possible for Daria Nikolayevna or the relatives to find the ‘golden words’ (zolotye slova) that would bring the other side around, while others mocked the very idea that there might be some key to unlocking an agreement. All agreed that, in this case, stubbornness and greed would be the enemy of compromise. Some attributed the obstinacy suggested by the scenario to the low level of civil society in contemporary Russia, saying that Russians do not know how to compromise.

Obviously the simplest way to reach an accord is for one side to give in. Elena thought that the out-of-town relatives ought to give up their interest in the dacha. ‘They should show mercy (miloserdie) to their niece and give her everything because they don’t need it. They live far away. She lived without parents. They should show mercy.’ Others in her group were skeptical that these relatives would walk away from a valuable asset simply because, in Elena’s view, it was ‘the right thing to do’. Like many others, she felt strongly that family members should not take each other to court; that the family ties ought to be sacrosanct. Berta, a 49-year-old financial director from Novosibirsk, whose relationship with her niece had been destroyed when they could not come

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18 A dacha is a summer dwelling. In the Soviet period, dachas tended to be modest, due to limitations on construction and the unavailability of building materials. In the post-Soviet period, the rich have built ostentatious ‘cottages’. According to a 2010 survey by VTsIOM, 48 per cent of Russians own dachas (Elkov and Cherniak 2013). Zavitsa (2003) reminds us that, in addition to vacationing at their dachas, many Russians cultivate the land surrounding them.

19 In an amusing aside, Vasilii, a 27-year-old administrator at a gambling salon, asked Ksenia whether, if he stole her phone and held it for a year, he would be entitled to keep it. As in all the focus groups, the participants in this Moscow group, which mixed those with and those without court experience, had only a cursory and often inaccurate understanding of the law. The Civil Code provides a preferential right for an heir who is living in a disputed property at the time of the decedent’s death (Art. 1168, GK RF 2001). It goes on to grant such an heir the right to buy out the other heirs (Art. 1170, GK RF 2001).
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to an accord in a situation similar to Daria Nikolaevna’s, likewise advocated capitulation. Not surprisingly, she identified with the older generation and thus argued that Daria should give up her share to them. Most respondents viewed capitulation by either side as unlikely.

The possibility of selling the property coloured much of the discussion. Most thought that having Daria Nikolaevna buy out her relatives would be an ideal, but unrealistic solution for a 20-year-old secretary. They doubted that she had sufficient money saved or that a bank would give her a loan. A more feasible option would be for the three heirs to join forces and put the dacha on the market. They pointed out that, with the proceeds, Daria would be able to purchase her own place. Few paid much attention to Dara’s strong emotional attachment to the dacha dating back to her childhood. When a Moscow participant raised it, her concerns were dismissed as trivial. One of her male colleagues said that Daria should ‘swallow’ (проглотить) it, meaning that she needed to get over it. Others agreed.

One of the reasons why the prospect of selling dominated the conversations was because the low level of knowledge about the legality of the various options gave rise to heated arguments. As Ellickson’s (1991) seminal work on Shasta County farmers and ranchers reminds us, people tend to order their behaviour based on what they believe the law to be, even when they are incorrect. Russians are no different (Hendley 2010). Some were firmly convinced that, without the consent of all involved, none of the heirs could sell their shares. These participants offered up the possibility of partitioning the land and the house itself and sharing it. Although Russian law would allow such an outcome, it would fully satisfy no one. Others thought that each heir had the right to sell his share, irrespective of whether his co-owners had acquiesced. Some thought that a physical partition would precede any such sale, while some thought that the remaining owners would have to accommodate themselves to their new co-owners. Needless to say, the latter could give rise to untold complications. The prospect of a sham sale to patently undesirable elements, such as drug addicts, in order to force Daria Nikolaevna into a fire sale at a below-market price, was raised, as were many other wild scenarios.

Only a few participants were aware of the technical requirements of the law. In an odd twist, the most well versed was one of the younger participants. At the age of 28, Pavel was an experienced Novosibirsk real estate agent, who cheerfully shared his hard-earned knowledge with his colleagues. He explained, ‘If she doesn’t want to sell, that’s her business, but she needs to understand the legal rules. If they sell their shares and notify her before that, this is all legal. Maybe it is unfair (несправедливо), but it is legal (законно).’ To clarify, the law requires an appraisal of the property. It then gives Daria the right of first refusal. If she sticks to her guns, her relatives are free to sell their shares to any willing buyer at the appraised price (Articles 252–254, GK RF 1994). This could open the door to the sort of nightmare scenarios suggested by Pavel’s less well-informed colleagues.

Pavel wondered whether the question of how Daria Nikolaevna and her relatives would deal with each other was rendered moot due to the interest of developers. The spectre of developers on her doorstep made most participants apprehensive. They were sympathetic to her plight, but saw her situation as profoundly hopeless. Indeed, they worried for her physical safety. Nina, a pensioner in the same group of court veterans as Pavel, commented that, ‘Developers have already bought up the neighbouring properties. They won’t stand on ceremony with respect to this dacha.’ Pavel later noted that developers have ‘special (особые) methods of convincing [homeowners] why they should buy the property. Believe me, they work extremely well.’ No one had a good word to say about developers; they were uniformly seen as unscrupulous. Most groups shared horror stories of the extra-legal methods employed by developers to get their way. Examples included arson, cutting off utilities and even murder.

with instructions to make it so unpleasant for the remaining owners that the latter will sell out.

20 In this regard, the Civil Code embraces freedom of contract. Parties can agree among themselves as to how to divide up real estate (Art. 252, GK RF 1994).

21 For example, one of the Voronezh participants recounted a scheme whereby a company buys random shares in real estate, and then sends in Usbekhs to live there.

22 At the conclusion of the session, several of his older colleagues asked for his business card.

23 Several members of the mixed Novosibirsk group were aware of the general parameters of the law, but they believed that any sale would have to go through the court, which is not required by the law.

24 In two groups – the Moscow and Novosibirsk groups without court experience – no one mentioned the developers.

25 Such claims harken back to the sorts of self-help solution embraced by peasants during the Tsarist era, often referred to as самодёв (e.g., Frank 1999; Frierson 2002).
noting that no one had any personal experience with developers, but felt free to pass along third-hand stories.

File a lawsuit. Law loomed larger for this scenario. Participants were quicker to invoke the law and to suggest consulting with a lawyer and/or pursuing a claim in court. In contrast to the mobile phone hypothetical, where lawyers were seen as superfluous because participants were confident that, between the Internet and consumer rights centres, they could piece together their legal position, inheritance law was viewed as denser and less susceptible to quick web-based diagnoses. Daria Nikolaevna’s youth also played a role in participants’ advocacy for seeking legal advice. Nevertheless, their distrust of lawyers continued unabated. Timofei, a 55-year-old Novosibirsk entrepreneur, reflected this apprehension: ‘I would go to one legal consultation office and receive a written answer as to how to resolve this problem. Then I would go to a completely different legal consultation office and get the same from another lawyer. I would then draw my own conclusion’.

Because he did not believe that a voluntary solution would be viable, his next step would be to initiate a lawsuit. Though many saw the wisdom in talking through the nuances of the situation with a lawyer, few were as impetuous as Timofei about court.

As before, the time and energy needed for litigation discouraged many. Moreover, Elena’s view that suing relatives is unseemly swayed many, both as a matter of principle and experience. In almost every group, someone shared a Dickensian saga of battling with relatives for years with little to show for it other than hard feelings. As Maksim, a 36-year-old Voronezh taxi driver, put it, ‘As a rule, when relatives start to litigate, they rarely stop.’ Hence, most advocated trying to come to an amicable resolution rather than making a dash for the courthouse. Litigation was seen as an option to be pursued if all else failed.

The complexity of the situation convinced a fair number of participants that, absent a settlement, court would be the only option. The fact that those without court experience held out the greatest hope for the courts is perhaps to be expected. They believed that only the Russian courts have the power to divide the property. In reality, however, notaries play a more central role in managing estates in Russia than do judges (Bespalov and Bespalova 2013; Butler 2014). Yet only a handful of the focus group participants brought up notaries. Those with court experience were sceptical that Daria Nikolaevna had a compelling case. Some questioned whether she could muster a viable cause of action. The court veterans agreed that, if she somehow ended up in court, then the judge would encourage her to find an accommodation with her relatives that would avoid clogging the docket. They understood that Russian judges are keen to process cases quickly and try to avoid those in which the issues are more emotional than legal (Hendley 2017). A case like Daria Nikolaevna’s, in which the parties are at stalemate, would be anathema. Maksim put it more bluntly: ‘Here the court can do nothing; going to court is useless (bezpoleznno).’

EXPLAINING THE DECISION TO LITIGATE
(OR TO BYPASS THE COURTS)

The focus group discussions remind us of Russians’ distaste for litigation. At the same time, they reveal a nuanced attitude. The very fact that Russians are using the courts in ever-increasing numbers suggests that, while courts may not be anyone’s first choice, they constitute a viable alternative. Indeed, in contrast to the common wisdom perpetuated by the media and much of the social science literature, their reasons for shunning the courts in the sorts of mundane cases discussed have nothing to do with their fears of political interference or corruption in the courts. Indeed, neither issue came up. Instead, their antipathy was fueled by a complicated mix of factors that are familiar to socio-legal scholars around the world.

Likely outcome. It is hardly surprising that the focus group participants raised the likelihood of success as a factor to be considered in whether to file a lawsuit. They uniformly saw the costs associated with litigation as high and were reluctant to move forward unless they had some assurance of success. This concern was more pronounced with regard

27 The more knowledgeable participants cautioned that Daria Nikolaevna should not dawdle if she wanted to use the courts. They knew that she had only six months from the date of her grandmother’s death to make her claim (Art. 1165, GO KP 2001). A few were aware that, after that time, she could petition to have the statute of limitations reinstated, but that it would be an uphill battle.

26 The number of civil cases decided more than doubled between 2012 (5.1 million) and 2014 (13.9 million). The data for the first half of 2015, which documented 8.1 million civil cases decided, indicate that this trend is continuing (Ochter 2012, 2014, 2015).
to the first scenario. The price of the phone left many participants on the fence as to whether to make any sort of claim. Ratcheting up the stakes troubled them. By contrast, few questioned the propriety of asserting a claim to the dacha. The consensus among the participants as to Daria Nikolaevna's right to a share in the dwelling made them less apprehensive about the probable outcome.

Costs. With respect to both scenarios, the focus group participants' reluctance to go to court was fuelled by their perceptions of the costs of doing so. Like many Russians, they believe that court cases tend to drag on endlessly. According to the 2012 round of the Russian Longitudinal Monitoring Survey—a nationally representative panel survey—over two-thirds of respondents cited delays as a constraint on their willingness to use the courts. While it is true that cases occasionally drag on for years, these are the exceptions rather than the rule. The procedural codes contain deadlines for every category of case, which tend to be measured in weeks and months. Detailed statistics of judges' ability to live up to these rules are maintained. They reveal that fewer than 2 per cent of civil cases violate these deadlines. These data play a critical role in determining salaries and promotions and, not surprisingly, judges rarely tarry. Indeed, their need for speed risks sacrificing substantive justice at the altar of efficiency (Pomorsky 2001).

The discussions of the inheritance claim were replete with examples of cases that took years longer than anyone thought necessary. It is not surprising that many of these stories involved friends or the friends of friends. The length of time involved may have been exaggerated through the retelling, but the very fact that the participants could recite these details is indicative. The duration of cases cited during the discussions of the consumer complaint tended to be shorter, but were no less annoying to those involved. For example, Egor, a 65-year-old Muscovite who chaired his housing committee, told of a lawsuit brought against him several years ago by the former chairman, on the grounds that he refused to pay her a bonus. 'I didn't spend a kopeck on this idiotic complaint, which she lost. But I lost an entire summer. Every week we went to deal with this nonsense. I sat there in court, waiting three or four hours.' Others were similarly galled by what they saw as the indifference of judges and court staff to the inconvenience such delays caused to working people. On the other hand, a 2008 Levada Center survey of Russian court-users reveals that they were generally satisfied with the timing of their hearings (Hendley 2016), leaving open the question of whether the focus group participants might be outliers.

The monetary cost of litigation also played a role. As I noted earlier, participants bemoaned the cost of lawyers. Not everyone believed that the advice and/or services on offer were worth the price. Attitudes diverged when it came to the two scenarios. As to the dacha, the need for legal expertise was more obvious and participants were more willing to pay the going rate for it (rather than relying on lawyer-friends). By contrast, going it on their own or relying on law-related websites were more palatable options when it came to the consumer claim. Indeed, many advocated simply discarding the faulty phone and buying a new one. The relatively low ($150) value of the phone pushed many to question whether activating the judicial process was worth it. A full understanding of the regime for court fees was beyond the ken of almost all of the participants. A few knew that Russia has a loser pays system that would allow Irina Ivanovna to be reimbursed for her legal expenses (including the cost of a lawyer and eksperti) if she prevailed. However, only one participant knew that filing fees (gospodshina) are waived for consumer claims initiated by consumers (Article 17, O zashcitite 1992), and he was atypical. When explaining to his group that bringing consumer claims was basically free for the plaintiff, Sergei, a 46-year-old Moscow computer specialist, cited the law governing consumer rights by name. Though he did not bring this up in the group meeting, he had initiated a case alleging falsified election results, which is strikingly different from the mundane claims made by others with court experience.

However, the cost that was most troubling to the focus group participants was emotional. Even when the potential lawsuit would target a faceless stranger, as in the first scenario, the likely toll on the
claimant's physical and psychic wellbeing troubled participants. When talking about her then pending lawsuit, Elena’s comments about the damage to her health were reminiscent of what Alla said in her Moscow group (discussed earlier). Maksim reminded his colleagues that, 'If you don’t want to damage your nerves, you can hire a lawyer (advokat) at the outset and empower him to act on your behalf, then you don’t have to go.' For many, the decision to pursue the claim to court hinged on the amount at issue. Although Vera (a 40-year-old Muscovite who worked in higher education and was part of the same group as Alla) saw herself as the sort of person who, when wronged, pursued the matter to the end, she conceded that, in Irina Ivanovna’s shoes, she probably would not file a lawsuit over such a small sum. Protecting her nerves would be more important.

'Social distance. Concerns over the psychological costs of litigating only deepened when the context shifted to a dispute among family members. As the socio-legal literature predicts, the focus group participants were more skittish about confrontational strategies, such as litigation, when it involved people known to them (Engel 1984; Hendley 2011a; Merry 1990). Egor expressed the sentiments of many when he said that, when it comes to family disputes, 'Reconciliation is always better than court.' Reflecting on his experience, Gennadii noted that not only are such cases difficult for the parties, but they also try the patience of judges. He recalled that, after several years of hearings in which neither side was willing to budge, the frustration of the judge boiled over. She told them, 'You have worn me out. Haven’t you figured out a solution yet?' Her remark hints at the tendency to turn to the court in despair when all efforts to solve a problem have failed. When the problem is rooted in a legal question, this makes sense. When, as in Daria Nikolaelevna’s situation, the legal issues are masking a deeper interpersonal problem, the parties often come to the court with unrealistic expectations. As the judge in Gennadii’s case implied, the resolution ought to come from the parties themselves.

 Estrangement is not an uncommon consequence of litigation over inheritance claims. Recall Berta’s story of how her relationship with her niece was ruined due to their court battle. Along similar lines, Gennadii’s relationship with his aunts did not survive their lawsuit. These are representative of the many stories told of relational damage in the wake of litigation after the death of a loved one. The evidence presented at the hearings tends to be intensely personal, painting a picture of a relationship with the deceased that may be at odds with that of the opposing party. Charges of deceit and lying tend to fly fast and furiously. The psychological damage is not always assuaged by the court’s decision; it can sometimes exacerbate the underlying tensions. On the other hand, Galina, a 40-year-old school administrator from Voronezh, contended that the court can provide a level of clarity that is often impossible for family members to attain as their disagreements devolve into verbal mud wrestling. She laments the fact that, in the wake of such disputes, when family members ‘see each other on the street, they will turn away – they won’t even greet each other. Given that, it seems to me that it’s better to go to court’. Her comments echo Yngvesson’s (1985) argument that lawsuits can act to reframe the relationships among intimates.

As the social distance between the parties increases, relational damage is less likely. Irina Ivanovna, for example, has no longstanding relationship with Evroset. She may come away from a lawsuit determined never to return to the store, but the overall impact on her life is minimal. My research on debt collection among industrial firms in the economic (or arbitrazh) courts suggests that relational damage may also be muted when the key evidence is document-based rather than testimony-driven. I found that Russian firms come away from lawsuits with few hard feelings towards one another. In contrast to their counterparts in legal systems with stronger adversarial traditions, these Russian firms typically continue doing business together (Hendley 2004). As veterans of many court proceedings (or ‘repeat players’, in Galanter’s 1974 terms), the petty annoyances of court that the focus group participants harped on had receded to background noise. The participants’ court experiences tended to be limited to one or two cases that loomed large in their memories. Even so, as far as the mobile phone scenario was concerned, none of them were worried about the danger of damaging the relationship with the retail outlet.

Legal literacy. The focus group participants frequently referred to themselves as legally illiterate (narklicheskie negramotnye). They came to the same conclusion as to Irina Ivanovna and Daria Nikolaevna. They were particularly tough on the former. Like many of her colleagues, Ekaterina, a 52-year-old Noviisibirok grocery store manager, condemned Irina, as an educated person, for relying on the promises of the salesperson and not reading the fine print of the sales contract, saying ‘She is at fault herself’. Similar sentiments were expressed in the other groups. Yet, when pressed by the moderator, most participants admitted that they rarely read consumer contracts carefully before signing them.
This is hardly unique to Russians, though some participants were quick to attribute it to the ‘mentality’ of Russians.\(^{32}\)

Despite describing themselves as largely ignorant of the law, the participants did not hesitate to put forward their views of the law as gospel. The discussions were peppered with squabbles over the specifics of law in which neither side had it quite right, but both sides were confident of their positions. Typical is the response of Valentina, a 56-year-old Moscow state bureaucrat who, when challenged, responded, ‘It is not my opinion, it is the law’. I earlier noted the fact that most participants did not realise that filing fees are not assessed on consumer complaints and that they did not know that losers pay the legal expenses of winners in court. Along similar lines, only one participant pointed out that Irina Ivanovna would be entitled to recover punitive (moral’nye) damages under the law (Article 15, O zašchite 1992).\(^{a}\) As to the second scenario, examples include Daria Nikolaevna’s legal right to inherit. Because she was a grandchild, rather than a child of the deceased, some were convinced that she would have to take a back seat to her aunts and uncles. Others thought that her right to inherit would depend on whether her grandparents had taken on the formal role of guardian after the death of her parents. Still others thought that it would hinge on whether she had been living at the dacha when her grandmother died. To be fair, every group had vocal members who interpreted the facts correctly, understanding that Daria Nikolaevna took her father’s share.

Discussions of the letter of the law featured more prominently in the groups populated by those with court experience. While the other groups eventually wound their way around to questions of what the law allowed, such issues tended to be brought up at the outset by court veterans. Their knowledge was broader and more accurate than that of their less experienced colleagues. As a group, however, they were not more likely to agitate for litigation.

*Personal experience.* Even more telling in shaping participants’ attitudes towards disputes were their own personal experiences. For some, such as Pavel (real estate agent) and Egor (housing committee chair), these experiences stemmed from their jobs whereas, for most, the defining moments grew out of prior disputes. Those who had benefited from consultations with consumer rights agencies enthusiastically recommended this avenue. They saw it as a way of levelling the playing field when challenging big retail outlets. When it came to court, most participants saw their experiences as cautionary tales. A few came away disillusioned with the integrity and competence of judges. Not surprisingly, these participants warned their colleagues away from using the courts. The more common reaction to the courts was a recognition of the importance of being well prepared and patient when initiating a lawsuit. None of them saw litigation as the ideal outcome; most saw it as a last-ditch solution.

**CONCLUSIONS**

The narrative of Russian courts within the mass media (both Russian and Western) and much of the social science literature is one of dysfunction (e.g., Dawisha 2014; Gessen 2015, 2016; Hedlund 2005). Courts are typically described as politicised, corrupt and incompetent, leading to the conclusion that they are unusable. While not disputing the existence of these phenomena in Russian courts, my analysis of the discussion of how to solve problems among the focus group participants suggests that such concerns do not dominate the thinking of Russians when faced with routine problems. Much like their counterparts elsewhere, few of the focus group participants were eager to go to court. However, their reluctance stemmed not from a dread (or expectation) of extralegal pressure being applied on judges, but from more mundane fears of the stress associated with litigation. These include the time and energy needed to see a lawsuit through to the end as well as the emotional and financial costs. Their self-diagnosed legal illiteracy and lack of trust in legal professionals only redoubled their misgivings. They recognised the danger of ruptures in personal relationships when litigating with friends and family. Even so, going to court is clearly seen as a viable option if efforts to resolve problems resist negotiated settlements.

A very different picture might emerge if Russians were asked about their likely course of action in response to a less routine problem. My prior research (Hendley 2011b) suggests that Russians tend to avoid the courts when faced with a dispute involving the state or a well-connected individual (regardless of whether such connections are political or financial). It is in these categories of dispute, which are

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\(^{32}\) In earlier focus groups that gathered together Russians who had recently made substantial repairs to their homes, the participants also confessed to failing to read contracts before signing them. Some attributed it to ‘laîness’, while others saw it as a consequence of their busy lives (Hendley 2010: 674). For a comparison with the US, see Ayres and Schwartz (2014).
relatively rare, that Russians see a genuine risk of political interference. As a result, they tend to stay silent and absorb damages passively rather than risk rocking the boat and bringing down the wrath of their powerful enemies on themselves.33 This serves to remind us of the multiple narratives of law and courts in contemporary Russia. Like potential litigants elsewhere, Russians' willingness to use the courts depends on a multiplicity of factors, including the merits of their claims as well as the context in which they arise.

ACKNOWLEDGEMENTS

Funding for the research underlying this article was provided by grants from the Eurasia Foundation, the International Research and Exchanges Board and the Graduate School of the University of Wisconsin-Madison.

References


33 Cautionary tales abound, ranging from those who ran afoul of Putin to those who were on the losing side of battles for corporate control. The former include Aleksei Naval'nyi and Mikhail Khodorkovskii (e.g., Herszenhorn 2014; Sakwa 2009). The latter include the many entrepreneurs languishing in jail on the basis of manufactured evidence (e.g., Romanova 2011).


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TO GO TO COURT OR NOT? THE EVOLUTION OF DISPUTES IN RUSSIA


