IJDIAS International Journal of Discoveries and Innovations in Applied Sciences
| e-ISSN: 2792-3983 | www.openaccessjournals.eu | Volume: 2 Issue: 2

Application of some types of Alternative Dispute Resolution in Uzbekistan

Xayrulina Asal
Lecturer, Department of Civil Procedural and Economic Procedural Law of Tashkent State University of Law

Atalikova Guljazira
PhD, Senior lecturer, Department of Civil Law and Civil Procedure of the MO Auezov South Kazakhstan State University

Abstract :

The article is devoted to Alternative dispute resolution methods, their types and features. An analysis was made of the use of some types of Alternative Dispute Resolution in Uzbekistan, their development, as well as the current state of this institution.

Keywords: Alternative dispute resolution, arbitration, negotiations, mediation, claims procedure, Labor Dispute Commission, out-of-court dispute settlement, consent of the parties, voluntariness.

INTRODUCTION

Recently, more and more attention has been paid to the development and application of alternative methods of dispute resolution in Uzbekistan and foreign countries. Therefore, the improvement of this system is one of the key areas of reforms currently being carried out in the country, aimed at ensuring reliable protection of the rights and freedoms of citizens, as well as solving their vital ones. One of the important factors in the development of alternative dispute resolution methods is the low efficiency of the judicial system when considering certain categories of cases, which may be associated with excessive congestion of the courts, the duration of the trial and other shortcomings that are inherent in different judicial systems. Another factor is that the parties prefer to maintain business and partnership relations, avoid publicity and resolve the dispute amicably. This is usually not always possible in state court proceedings. In addition, most ADR methods are usually based on the principles of mutual benefit, voluntariness, confidentiality and are characterized by speed of consideration and relatively low costs in their application. There are also factors such as rapid socio-economic changes, globalization, increased migration. ADR are a response to the challenge of modern social and economic evolution. Not without reasons, in recent years, the abbreviation ADR has been increasingly deciphered as “adequate ways of resolving disputes” [1, p 90].

World practice confirms the effective use of ADR in conflict resolution. For example,

ISSN 2792-3983 (online), Published under Volume: 2 Issue: 2 in February-2022

according to the data provided by the Center for Effective Dispute Resolution in the UK, 85% of disputes resolved by this center through mediation were completed by concluding a settlement agreement (the average duration of mediation is one and a half days), 6% of disputes were settled amicably within three months after the mediation and only 9% of disputes were referred to the court [2]. In Uzbekistan, unfortunately, the resolution of civil disputes by arbitration courts has not received its wide distribution; the expected popularity of mediation also did not live up to expectations.

The need to use the ADR in Uzbekistan is especially urgent in connection with the adoption in 2018 of the Civil Procedure Code [3] and the Economic Procedure Code of the Republic of Uzbekistan [4] in a new edition. In which the relevant chapters ("Conciliation Procedures") appeared, which in turn contain a provision that the parties can resolve the dispute by concluding a settlement or mediation agreement.

The above codes also include provisions that encourage the use of ADR and the development of partnerships. For example, the plaintiff's failure to comply with the pre-trial (claim) procedure for resolving a dispute, if it is provided for by law for this category of disputes or by an agreement, is the basis for leaving the application without consideration (clause 5, article 107 of the Economic Procedure Code); The Code determines that the main task of preparing a case for proceedings in an economic court is the reconciliation of the parties (paragraph 8article 163); at the request of both parties, if they apply to the court for assistance for the amicable settlement of the dispute, there is a possibility of adjournment of the court proceedings by the economic court (Part 1article 171)etc.

The Civil Procedure Code also contains similar norms, which are directed towards the use of alternative procedures. For example, a similar rule that determines whether the plaintiff does not comply with the pre-trial procedure for resolving a dispute with the defendant, when it is provided for by law or the contract (paragraph 10 of Article 122) or the plaintiff does not comply with the procedure for resolving a dispute with the defendant with the mediation procedure (paragraph 101 of Article 122) is grounds for leaving the application without consideration.

However, it should be noted that the provisions of national legislation on ADR are fragmentary and declarative. To date, national legislation has not disclosed the concept of "Alternative Dispute Resolution", does not indicate acceptable or recommended ADR methods, principles and guarantees for their use. Along with the concept of ADR, the concept of conciliation procedures is also used in literature and legislation. The above procedural codes include only a reference to the use of conciliation procedures and the possibility of contacting a mediator, but the definition of this concept in the code as such is not contained, nor is a complete list of conciliation procedures defined.

In the practice of different countries, there are many alternative ways of resolving disputes and one can classify them on various grounds.

Although most of the ADR methods existing in the world are not yet familiar with national legislation and dispute resolution practice, and there is no legislative definition of "alternative dispute resolution", in Uzbekistan such methods of alternative dispute resolution as negotiations, mediation, commissions on labor disputes, claims procedure have been developed, pre-trial settlement of tax, investment disputes, arbitration, international commercial arbitration, ombudsman, etc.

Let's consider some of them.

ISSN 2792-3983 (online), Published under Volume: 2 Issue: 2 in February-2022

1) Arbitration procedure.

The essence of arbitration is that both parties believe that their dispute will be resolved by a third party chosen by them and recognize its decision as binding. In turn, the arbitration court eliminates the dispute that arose between its participants in the consideration and resolution of disputes, and thereby protects the violated rights. Thus, in accordance with the current legislation of the Republic of Uzbekistan, the competence of arbitration courts includes the resolution of civil, economic disputes, as well as those arising between business entities. Arbitration courts cannot resolve disputes arising from administrative, family and labor relations, as well as other disputes provided for by law.

Consideration and resolution of disputes by arbitration courts is an alternative to proceedings in state courts. Undoubtedly, the advantages of the arbitration procedure are the freedom in choosing a judge by the parties, saving time and costs associated with the consideration of the case.

However, unlike the predicted results that took place during the adoption of the Law of the Republic of Uzbekistan "On Arbitration Courts"[5] In 2006, the current situation leaves much to be desired. Society, represented by individuals and legal entities, rarely resort to the arbitration procedure for resolving disputes for a number of reasons: the uncertainty of court costs, as well as the fees of an arbitrator, low popularity among the population, due to lack of information.

2) Negotiation.

As a rule, the parties to the conflict initially try to resolve most disputes through negotiations, which means an informal process of communication between two or more parties in order to resolve differences or a specific dispute [6, p 55]. By its very nature, negotiation is the primary form of communication between people for conflict resolution. When a dispute arises, this procedure, even in view of our Eastern mentality, is the first step towards its settlement.

According to the scientist E.V. Erokhin, negotiations are a joint (mostly oral) discussion initiated by the parties to the dispute to protect their civil law interests, conducted without the participation of a third party, which is aimed at making a joint decision in order to resolve differences [7]. I do not agree with the opinion of E.V. Erokhina, since, in my opinion, a third party, for example, a lawyer, can also participate in the negotiation process.

Two types of negotiation methods are commonly used: unaided negotiation and formal negotiation. The difference between formal negotiations and negotiations without outside help lies in the involvement of lawyers. Unassisted negotiation is when the parties to a dispute negotiate directly with each other. At official negotiations, all correspondence will go through the respective lawyers of the parties.

Negotiations without outside help

Self-help negotiation is an inexpensive option compared to formal negotiation, as all that costs the parties is their time. Sometimes lawyers have the ability to polarize an issue and get the other side on the defensive. Therefore, depending on the nature of the dispute, attempting unaided negotiation may be more advantageous than sending correspondence through a lawyer immediately. However, it is recommended that you consult with a lawyer to find out the rights in any dispute.

In most cases, the parties themselves can solve problems through negotiations without outside help. However, if the parties hold their own or feel dissatisfied, this type of dispute resolution may become ineffective. At this point, it becomes necessary to turn to other types of ADR options, one of which is the formal discussion.

ISSN 2792-3983 (online), Published under Volume: 2 Issue: 2 in February-2022

Advantages and disadvantagesof usingnegotiation as anADR.

Advantages

Negotiation generally gives the parties a greater degree of control to create their own process and reach their own agreement, which does not have to depend on each party's rights under the law. It can be more time efficient than any other dispute resolution method, usually more informal and usually less stressful.

The advantage of engaging a lawyer and participating in formal negotiations is the emergence of an objective third party who can improve communication between the parties and maintain or improve the relationship.

Disadvantages

One problem is that negotiations, formal and unaided, are by no means a guarantee of success before resorting to some other, more formal and structured means of resolving disputes. This may take the form of mediation or arbitration.

Any type of negotiation regularly requires the parties to compromise. This can cause problems if both parties are uncompromising in their approach. In this case, a different ADR method is usually required.

Formal negotiations entail costs. Moreover, if formal negotiations do not work, the parties may consider it a waste of money and time [8].

3) Claim order.

Regulated by the Law of the Republic of Uzbekistan "On the contractual and legal framework of business entities" No. 670-I dated 08.29.1998. [9]. The claim procedure is understood as one of the forms of protection of civil rights, which is an attempt to resolve disputes directly between the parties to the agreement on the fulfillment of obligations before the case is taken to court. In fact, the claim procedure consists in the fact that one of the parties to the relationship addresses the other party with a special letter - a claim that considers that its rights have been violated. In the claim, the sender explains his position and offers the recipient options for resolving the dispute.

Thus, according to the Law, an economic entity whose rights and legitimate interests have been violated has the right to file a claim against an economic entity that has violated these rights and interests [9]. The term for consideration of a claim by a business entity to which a claim is filed is 15 days from the date of receipt of the claim. In case of full or partial recognition of the claim, the business entity voluntarily transfers the recognized amount to the applicant [9].

A way to resolve the conflict using the claim procedure can also be provided for in the contract, then filing a claim before filing a statement of claim will be a prerequisite, and can be directly provided for in the law, in which case this procedure is mandatory in relation to all disputes related to certain rules the rights.

According to Article 195 of the Civil Procedure Code of the Republic of Uzbekistan and Article 155 of the Economic Procedure Code of the Republic of Uzbekistan, failure to comply with the pre-trial (claim) procedure for clarifying legal relations entails the return of the statement of claim to the court or leaving the claim without consideration.

The pre-trial (claim) procedure for resolving the dispute is mandatory for the parties by virtue of law. According to this rule, in judicial practice, the claim procedure for resolving a dispute is considered as an additional guarantee of state protection of rights, allowing voluntarily and in a short time to restore violated rights and legitimate interests without additional costs for paying court

ISSN 2792-3983 (online), Published under Volume: 2 Issue: 2 in February-2022

costs. Such a dispute resolution procedure is aimed at its prompt resolution.

The essence of the claim procedure is as follows: for example, if the party to the obligation does not fulfill its obligations to pay for the transferred goods, work performed and services rendered, to repay the loan, to transfer the thing, etc., then, before filing a claim with the economic court, it is necessary to send the debtor a claim containing a demand for payment of the debt, and maybe a penalty, interest or damages. In this case, a statement of claim may be filed with the court if the claim is rejected or the response to the claim is not received within the period established by law or the contract.

The pre-trial (claim) procedure when accepting a statement of claim or when considering a claim will be considered complied with if there is sufficient evidence that a claim has been sent to the defendant and that the claims are consistent with the claims. For example, if the debtor did not pay the amount for the delivered goods in the amount of 10 000 000 UZS he was presented with a claim for this amount, in which the applicant only draws attention to the possibility of collecting a penalty, but does not require it to be paid in a specific, calculated amount, then the claim may be declared only for the amount of 10 000 000 UZS, since with regard to the penalty, the claim procedure cannot be considered complied with.

The pre-trial (claim) procedure is of great importance, since: it allows the parties to the dispute to independently resolve the dispute without going to court; exempts the court from civil cases that can be resolved without state intervention; this procedure disciplines the parties in compliance with contractual discipline; saves money for the disputing parties. All these factors determine the high degree of “popularity” of claim proceedings as a form of ADR.

4) Resolution of labor disputes (Commission for labor disputes, trade unions)

Individual labor disputes can beconsidered both in court and by labor dispute commissions [10]. These disputes can also be resolved through mediation.

Appeal to the Commission on labor disputes is a pre-trial stage of resolving a labor dispute and, in fact, is an alternative (optional). In accordance withpart 2 of Article 260of the Labor Code of the Republic of Uzbekistan, an employee of his choice has the right to go to court, bypassing the Commission on labor disputes. In addition, if an individual labor dispute is not considered and resolved by the labor dispute commission within 10 days, then, according toarticles 267of the Labor Code of the Republic of Uzbekistan, the employee has the right to transfer his consideration to the district (city) court.

However, it should be noted that the absence of an obligation to apply to the Labor Disputes Commission for consideration and resolution of an individual labor dispute does not allow us to conclude that the pre-trial stage is not part of a single process for resolving an individual labor dispute.

The procedure, including the grounds and conditions for considering an individual labor dispute to the Labor Dispute Commission, as well as appealing a decision made by a pre-trial body or transferring its consideration to a court, is regulated by law. It follows from this that the pre-trial stage of dispute settlement (as possible) is an integral part of the single process of consideration and resolution of individual labor disputes. It can not only precede the trial (under certain conditions), but also be inextricably linked with the trial.

Today, the attitude towards commissions onlabor disputes is ambiguous. It is proposed to

ISSN 2792-3983 (online), Published under Volume: 2 Issue: 2 in February-2022

legislate the Commission on labor disputes as a mandatory instance for the consideration of individual labor disputes. In particular, T.A. Soshnikova considers “it is more correct to increase the role of labor dispute commissions, which have long accumulated some experience in resolving conflicts between an employee and an employer” [11, p 16].

However, there is a controversial opinion on this matter, since its authors propose to exclude the existence of the commission as an "obsolete" structure, which was used only for the administrative-command control system.

In particular, A.M. Nurmagambetov believes that in modern conditions “conciliation commissions, as an analogue of the commission on labor disputes of the recent past, are becoming obsolete primarily because of the complexity of representation on the part of workers” [12, p 7].

Despite the foregoing, it should be noted that non-state methods of dispute resolution form the basis of the ADR and labor dispute commissions initially have great potential for resolving local disputes without the intervention of state bodies, but need to be improved [13, p 9].

5) Mediation

Mediation is a relatively new phenomenon in the Uzbek legal system. It was officially introduced in 2018 with the adoption of the Law of the Republic of Uzbekistan dated July 3, 2018 No. ZRU-482 “On Mediation” (hereinafter referred to as the Mediation Law). In accordance with this law, the mediation procedure is understood as a way to resolve disputes that have arisen with the assistance of a mediator on the basis of the voluntary consent of the parties in order to achieve a mutually acceptable solution [14].

The Mediation Law contains a list of so-called “mediable” disputes, the categories of which can be settled through the use of the mediation procedure, these include disputes arising from civil legal relations, including in connection with the implementation of entrepreneurial activities, as well as individual labor disputes and family disputes. disputes with the exception of disputes affecting the interests of third parties or the public interest.

The possibility of resolving the dispute through mediation may be determined by agreement of the parties. An agreement on the use of mediation is confirmed by a written agreement before or after the dispute arises, including in the form of a mediation clause. However, the method of settling the dispute must be specified clearly and not be of a probabilistic nature.

To conduct the mediation procedure, the parties, by mutual agreement, choose one or more mediators. A mediator is a person engaged by the parties to resolve a dispute, to develop a mutually acceptable solution for the parties. Mediators can carry out their activities both on a professional and non-professional basis. However, if the dispute is referred to the court, only a person acting on a professional basis can act as a mediator in this case [14].

Ideally, the mediation procedure ends with the settlement of the dispute and the conclusion of a mediation agreement by the parties.

The advantages of this procedure include: saving time, money and emotional energy of the parties to the dispute; individual approach to the procedure (the situation, organization, rules and content of the procedure are determined by agreement of the parties); the mediator is focused on finding a constructive solution and reaching a compromise; mediation is conducted on the basis of confidentiality and other principles.

Among the shortcomings of mediation, one can single out: non-fulfillment by the parties of the agreement reached, the use by one of the parties of the data obtained during the mediation

ISSN 2792-3983 (online), Published under Volume: 2 Issue: 2 in February-2022

procedure to further aggravate the conflict. Also, difficulties arise with ensuring confidentiality, i.e. fulfillment by the mediator of the obligation to preserve it, the right to conceal information, including from the competent authorities.

Expert opinion

Expert opinion is a form of alternative dispute resolution in which the parties to the dispute appoint an independent third party, an "expert", to use their professional knowledge and experience to resolve the issues at the heart of the dispute. For example, it may be used to determine the rent in accordance with the rent review provisions in the lease or to evaluate the shares in accordance with the provisions of the share purchase agreement [15].

The expert opinion is linked to the terms of the contract and is not governed by any specific legislation. As a consequence, it can be a very flexible process, and the details are often open to negotiation and agreement by the parties. While the litigation is open to the public, the parties to the expert opinion may maintain the confidentiality of their contractual relationship. Private dispute resolution can enhance the viability of the ongoing commercial relationship between the parties to the dispute.

The choice of an expert must be carefully considered. The appointee, unlike the judge, must have the necessary skills and experience to understand and resolve the key issues of the dispute. Because a dispute can often involve a range of technical and legal issues, it is always worth considering bringing in a specialist to support an expert (for example, on specific technical or legal issues).

Experts may be nominated by the appointing institution or organization. Appointment through appropriate organizations is often mandated in cases where contracts contain provisions for expert opinion.

In other cases, especially by special agreement between the parties, it may simply be by agreement of the parties to appoint an appropriate expert. In addition to ensuring that the expert has the appropriate skills and experience to resolve disputes, there are a number of other factors that the parties need to consider in order for the appointment and procedure to be effective.

For example, the practitioner should:

Be free from any conflicts of interest;

Act impartially and fairly;

Have adequate availability in accordance with the schedule established for the process;

Agree on a procedure or terms of reference so that the expert can conduct his own research and, where necessary, use his experience to draw conclusions from the evidence he has presented;

Manage the process within the framework of consistency.

Completion of the process is usually reached when the expert presents the decision to the parties [15].

This should clearly articulate the examiner's decisions and provide a rationale so that the parties can fully understand the basis of the determination.

The decision may be binding or non-binding and may arise either as a result of a process provided for in the contract between the parties, or on the basis of a separate agreement that the parties decide to enter into outside the terms of the contract.

Benefits of this procedure.

The expert opinion described above can, subject to the agreement of the parties, be a very

ISSN 2792-3983 (online), Published under Volume: 2 Issue: 2 in February-2022

flexible process, adapted to the nature, size and complexity of the dispute. As a rule, this process is shorter in duration and much more cost-effective than litigation or arbitration. In addition, the parties usually have the opportunity to influence the choice of the expert making the decision, thus ensuring that the issues are reviewed and determined by a person who has the appropriate qualifications and experience in the relevant subject area. This can be very effective, for example, when a dispute arises around complex technical issues.

In addition, for disputes that may still be subject to litigation or arbitration, the use of a prior expert opinion process may help resolve the dispute. In my opinion, this is the main reason that the parties enter into an ad hoc and non-binding process [15].

This has the added benefit of allowing the commercial relationship to continue without the usual interruptions that often occur when parties are involved in formal disputes with each other.

As already mentioned, expert opinion is usually faster and more economical than litigation or arbitration, which in the very difficult economic conditions in which the world is located, can be especially attractive to the parties to the dispute.

In addition, when using a special non-binding procedure, it can facilitate the commercial settlement of the dispute, thereby avoiding the costs associated with more formal proceedings [16].

After analyzing the ADR institution, it should be noted that the features of alternative dispute resolution methods are that the dispute is not resolved on the merits and no decision is made by any body, the parties to the conflict voluntarily liquidate the dispute (conflict), is carried out in a judicial or out-of-court procedure, as a result which becomes the development of an agreement. The authors also highlighted the features inherent in ARS: 1) a certain procedure for implementation; 2) purpose - settlement of the dispute (disagreements); 3) the parties must be actively involved; 4) the initiative to use and the choice of a specific conciliation procedure depends on the parties themselves.

References:

1. Shamlikashvili Ts.A., Kabanova E.V., Tyulkanov S.L. Alternative methods of dispute resolution and mediation in modern Russian legislation // Modern law. - 2015. - No. 5. - S. 90.
2. Official sitehttps://www.cedr.com/
3. Civil Procedure Code of the Republic of Uzbekistan // National Database of Legislation, 01/23/2018, No. 03/21/661/0011.
4. Economic Procedural Code of the Republic of Uzbekistan // National Database of Legislation, 01/25/2018, No. 03/21/663/0013.
5. Law of the Republic of Uzbekistan On Arbitration Courts No. ZRU-64 10/16/2006 // National Database of Legislation, 01/30/2018, No. 03/19/531/2799.
6. Farhodovich, M. S. (2021). Impact Of Investments On The Innovative Development Of Tourism In Uzbekistan. Web of Scientist: International Scientific Research Journal, 2(07), 174-177. DOI: https://doi.org/10.17605/OSF.IO/FEURK
7. E.V. Erokhin // https://cyberleninka.ru/article/n/peregovory-kak-odin-iz-sposobov-alternativnogo-razresheniya-grazhdansko-pravovyh-sporov/viewer.
8. Gibson Sheat Lawyers official website https://www.gibsonsheat.com/Articles/Litigation/Alternative+Dispute+Resolution+Series+-+Negotiation.html.

ISSN 2792-3983 (online), Published under Volume: 2 Issue: 2 in February-2022

9. Law of the Republic of Uzbekistan On the legal framework of business entities No. 670-I 08/29/1998// National database of legislation, 01/30/2018, No. 03/20/607/0279.
10. Article 260 Labor Code of the Republic of Uzbekistan 12/21/1995 //National Legislation Database, May 11, 2019, No. 03/20/653/1592.
11. Soshnikova T.A.Problems of improving legislationon labor disputes in modern Russia // Labor law in Russia and abroad. - 2011. - No. 3. - P.16.
12. Nurmagambetov A.M.The concept of legal policy of the Republic of Kazakhstanfor the period from 2010 to 2020 and the development of labor legislation // Labor law in Russia and abroad. - 2010. - No. 1. - P.7.
13. Matnenko M.Features of local conflicts in organizations// Labor law. - 2012. - No. 4. - P. 9.
14. Article 4 of the Law of the Republic of Uzbekistan on mediation No. ZRU-482 03.07.2018 // National database of legislation, 04.07.2018, No. 03/20/602/0052.
15. Michael Murphy// https://holmeslaw.ie/insights-news/news/expert-determination-explained.
16. Murodov Shavkatjon Farxodovich, & Khamrakulova O. D. (2021). PROBLEMS OF FOREIGN INVESTMENT IN ACCELERATING THE SOCIOECONOMIC DEVELOPMENT OF THE ECONOMY IN UZBEKISTAN. JournalNX - A Multidisciplinary Peer Reviewed Journal, 7(11), 33–37. https://doi.org/10.17605/OSF.IO/JPBYT
17. Davronov, D. "COERCIVE MEASURES IN THE CIVIL PROCEEDINGS: ITS IMPORTANCE AND TYPES." Norwegian Journal of Development of the International Science 76-2 (2021): 17-20.
18. Pirmatov, Otabek. "A Brief Description Of The Digitalization Of Civil Cases." Science web academic papers collection (2020).
19. Shavkatovich, Pirmatov Otabek. "THE PROCEDURAL ASPECTS OF ELECTRONIC EVIDENCE IN CIVIL LITIGATION: EXPERIENCE OF UZBEKISTAN." PalArch's Journal of Archeology of Egypt/Egyptology 17.7 (2020): 9192-9199.
20. Asal X. Mediation as a Modern Method of Dispute Resolution in Uzbekistan //Middle European Scientific Bulletin. - 2022. - T. 20. - S. 1-6.

ISSN 2792-3983 (online), Published under Volume: 2 Issue: 2 in February-2022