

E-Arbitration and Its Role in Modern Jurisprudence

Mokhinur Bakhramova, PhD in Law

Senior lecturer at Intellectual property law Department, Tashkent State University of Law,
Uzbekistan

Abstract

Electronic Arbitration (E-Arb) is a private dispute resolution method that enlists the help of an arbiter, who is a neutral and unbiased decision-maker. This person oversees the arbitration by hearing both parties' arguments and rendering a binding decision. With the advancement of ICT, the practice of online arbitration has grown in popularity, and it is now being used by businesses that operate via the Internet as a more efficient and cost-effective alternative to traditional court processes and traditional arbitration. Electronic arbitration (E-Arb) is a way of settling disputes through the use of internet platforms that provide arbitration services. As has been shown in previous chapters, the expansion of e-commerce, cross-border, and transnational trade is intimately tied to E-Arb. Parties that enter into such contracts and agreements expect a timely, efficient, and cost-effective system for resolving disputes. The request for arbitration, the proposal for the appointment of the arbitrator, the exchange of arguments between the parties, and the production of documents can all be done electronically.

Keywords: Electronic Arbitration (E-Arb), advantages of E-Arb, disadvantages of E-Arb, ODR, The American Arbitration Association (AAA), World Intellectual Property Organization (WIPO), Rules for Uniform Domain Name Dispute Resolution Policy.

The convenience of the online process is appealing; for example, a claimant can fill out a form on the Indian online arbitration website Cyber Tribunal1 and send it to the opposite side. The other party is asked to respond to the claim if they agree to arbitration. When both parties agree to proceed to arbitration, they commit to follow the award no matter what the outcome or ultimate decision is.¹ In the event of disobedience, the injured party has the right to seek enforcement of the award under applicable laws and conventions.²

At present there exist three main method so far bit rational procedure:

1. The convention a lar bit ration procedures;
2. The use of the Internet for in itial sub missions with in a conventional procedure;
3. Thee-processinvolvinganelectronicarbitrationagreementwithdigitalsignatures,video-conferencingand an electronic arbitral award.³

Modern ICT is combined with offline aspects of arbitration such as live-in-person hearings, computers, printers, fax machines, handheld devices such as Smartphones, and regular postal

¹. Rustambekov, Islambek, Uzbekistan: The New – and First – International Commercial Arbitration Law (June 22, 2021). ICC Dispute Resolution Bulletin, Issue 2, 2021, Available at SSRN: <https://ssrn.com/abstract=3872373>.

². Benyekhlef, Karim, Gélinas, Fabienne, "Online Dispute Resolution", *Lex Electronica*, Vol 10, No. 2, 2005.

³. Ardagna, Claudio Agostino, Damiani, Ernesto, *et al*, "Web Service Architecture for Enforcing Access Control Policies" *Electronic Notes in Theoretical Computer Science*, Volume 142, 3 January 2006.

services for communication between arbitrators, submission of evidence, and deliberations on the final decision and the award in partially online arbitration. As a result of the acceptance and use of ICT in the arbitration process, a growing number of local and international laws and regulations have been formed to monitor E-Arb.

As a result, the benefits of electronic arbitration include the parties' ability to select the arbitrator, the applicable laws and regulations, and the ability to reach a final decision that is internationally enforceable. They further point out that, unlike mediation, internet arbitration allows for a more straightforward communication procedure. As a result, establishing software to adjudicate online conflicts is far less difficult than creating software to enable mediation. They suggest that rather than mediation, an online marketplace can utilize arbitration because it includes the fear of exclusion as a method for implementing the requirements of the verdict. As a result, one of the most important advantages of arbitration is that arbitral rulings can be enforced abroad as long as certain conditions are followed.⁴

The stress and trauma associated with face-to-face (F2F) arbitration and litigation processes are eliminated with electronic arbitration. F2F arbitration can quickly turn confrontational, aggressive, and impolite; this is especially true in Gulf Arab countries.

As a result, using E-Arb for international arbitration has various advantages, including the protection of secrecy, the protection of intra-State connections, and the security of electronic data transmitted between disputing parties and the tribunal via secure sites and networks. In a conversation with a UAE-based law professor, the academic stated that while there was no fundamental difference between traditional arbitration and E-Arb, the distinctions were from the methods and modes of arbitration.⁵

Advantages of E-Arb:

Faster process: Parties and arbitrators do not have to travel long distances to attend hearings, which speeds up the process. The use of cutting-edge audio and video conferencing technology allows the contesting parties to hold meetings and hearings from afar. This saves money on travel and administrative costs for the arbitration. Parties can also communicate information, show evidence, and upload and examine pleadings, papers, and evidentiary submissions using asynchronous communication. Using the Internet to conduct E-Arb, as well as transferring and exchanging required documentation, speeds up the procedure and reduces delays. This ensures that the procedure and the dispute are completed quickly. In a personal meeting with the researcher, a respected UAE legal scholar revealed that E-Arb will become the primary basis for the shutdown.⁶

Cost-Effective: Because the parties are not needed to travel to meet and discuss subjects pertaining to the arbitration, the materials can be accessed and examined at any time that is convenient for them. The costs and waste involved with sending paper records are eliminated.

Efficient Case Management: Parties can file and defend claims by visiting specialized websites and filling out the necessary forms online, since web-based document filing systems allow them to transmit relevant documents directly, regardless of distance or cost. Speed and cost effectiveness

⁴. Chauhan, Jagruti, "OnlinedisputeResolutionSystem:exploringe-commerceandsecurities", *Windsorreview of social and legal issues*, 99, march2003

⁵. Dwan, Berni, "Avoidingemailblundersevenaftertheemailissent", *Computerfraudandsecurity*, vol2002.

⁶. Friedman, Raymond A. and Currell, Steven C., "Conflict Scalation: Dispute exacerbating elements of e-mail communication" *Human Relations*, Volume 56(11), <http://hum.sagepub.com/cgi/content/abstract/56/11/1325>

are two of the advantages that make e-arbitration a preferred ODR approach over litigation or traditional arbitration, according to Kaufmann-Kohler, Schultz, and Ware (2002: 179).⁷

Availability and Accessibility: The tribunal and disputing parties can access material relating to the arbitration from anywhere, without having to go to sessions or physically present documentation to a tribunal, thanks to the websites' persistent availability. The process allows for quick decision-making because the reward is communicated and enforced online.

Adequate and Convenient: Because the Internet is so widely accessible, websites like Virtual Courthouse can provide disputing parties with a secure online electronic environment in which to file claims, select neutral arbitrators to resolve their dispute, and submit exhibits and supporting materials for their cases to the assigned arbitrators. After the parties have concluded their case presentations, the arbitrators can evaluate the presentations and render a binding ruling within twenty hours.⁸

Disadvantages of E-Arb:

The opinion of the deputy secretary of Dubai Arbitrators is particularly instructive in outlining the shortcomings of E-Arb. He points out that an official arbitration body has identified a potential risk: E-Arb could lead to more conflicts about the veracity of the evidence submitted. For example, Walden and Hörnle, note that there are severe worries about data exchange, confidentiality, privacy, and validating information via E-Arb, since people are concerned about cyber criminals abusing the Internet as a platform.

Regulation of E-Arb:

Furthermore, given the current legal ambiguity surrounding E-Arb, customers are unsure and apprehensive about the legal ability to enforce awards. This concern can also be seen in the choice and agreement of the 'seat' from which to operate.⁹

The impact of ODR adoption and use led to the European Union (EU) Directive 2000/31/EC of the European Parliament and of the Council of June 8, 2000 re: Certain Legal Aspects of Information Society Services, in particular Electronic Commerce, in the Internal Market (Directive on Electronic Commerce), which states in paragraph 1 of article 17 that «Member States shall ensure that, in the event of a disagreement between an Information Society Service Provider and the service receiver, their legislation does not prohibit the use of out-of-court dispute resolution mechanisms provided under national law, such as proper technological means.

The EU's Green Paper of 2002 (COM/2002/196) produced and acted on this directive, strongly encouraging the use of ADR procedures. 1 The Global Business Dialogue on Electronic Commerce (GIBED), the International Union of Consumer Organizations (Consumers International (CI)), and a business group recently released recommendations for resolving consumer issues arising from e-

⁷. Garner, Bryan A. (editor-in-chief), *Black's Law Dictionary*, West Group, 1996.

⁸. Goldman, Berthold, "The applicable law: general principles of law – the *lexmercatoria*", in Lew, Julian (editor), *Contemporary problems in International Arbitration*, Centre for Commercial Law Studies, Queen Mary College.

⁹. Goldsmith Jack and Lessig, Lawrence, *Grounding the Virtual Magistrate*, NCAIR Dispute Resolution Conference, Washington DC, May 22, 1996, <http://www.lessig.org/content/articles/works/magistrate.html>

transactions. This document established the baseline standards for ODR processes and approved online arbitration, mediation, and negotiation.¹⁰

According to a recent Ernst & Young report¹¹, the rigidity and inflexibility of the legislative environment for traditional arbitration has increased the number of institutions offering e-Arb services. With the introduction of e-commerce and other e-based services, new organizations have emerged that are completely focused on the electronic realm of cyber space. As a result, they operate on a worldwide scale and in a variety of jurisdictions. The Virtual Magistrates Project, established in 1996 to deal with defamation of character, personal libel harm, and cases of fraud and deception, is one of the most well-known examples. Another notable example is the Cyber Tribunal, which was established by the University of Montreal Law School in 1996, the same year that the University was founded.¹¹

The American Arbitration Association (AAA) is a non-profit public service organization that was founded in 1926 and is a global leader in conflict resolution. Individuals and organizations who want to settle disputes outside of court can use its services. When all necessary evidence has been produced, the AAA designates solo arbitrators in consultation with the disputants, and an award can be rendered five days after the proceedings have concluded. They estimate that it will take five to thirty days to thoroughly settle online disagreements.

The American Arbitration Association (AAA), which was founded in 1926 and is a global leader in conflict resolution, is a non-profit public service organization. Individuals and organizations who want to settle disputes outside of court can use its services. When all necessary evidence has been produced, the AAA designates solo arbitrators in consultation with the disputants, and an award can be rendered five days after the proceedings have concluded. They estimate that it will take five to thirty days to thoroughly settle online disagreements.

In October 2006, AAA and Cyber Settle formed a strategic alliance to give both institutes' clients with exclusive access to their dispute resolution systems. Clients of CyberSettle who have been unable to achieve a settlement through online discussion can now turn to AAA's dispute resolution processes, which include conciliation, mediation, and arbitration.

World Intellectual Property Organization (WIPO). The World Intellectual Property Organization (WIPO) established the Arbitration and Mediation Centre, a domain-name resolution mechanism, in the 1990s (AMC). This approach eliminated the need for physical evidence presentation and established the viability of a cyber tribunal.¹²

The AMC is a recognized dispute resolution service provider, and its rulings are guided by ICANN's 'Rules for Uniform Domain Name Dispute Resolution Policy,' which can be enforced by any registrar.¹³

¹⁰. Hörnle J, "Disputes Solved in Cyberspace and the Rule of Law", 2001 2 *The Journal of Information, Law and Technology (JILT)*. <<http://elj.warwick.ac.uk/jilt/01-2/hornle.html>.

¹¹. Katsh, Ethan "Online Dispute Resolution: Some Implications for the Emergence of Law in Cyberspace", *Lex Electronica*, vol.10 n°3, Winter 2006.

¹². Kaufmann-Kohler, Gabrielle Schultz, Thomas, *Online dispute resolution, challenges for contemporary justice*, Kluwer law international, 2004.

¹³. Б Мохинур, ARBITRATION AND LITIGATION IN THE UAE: ADVANTAGES OF ARBITRATION IN COMPARISON TO LITIGATION - ЮРИСТ АХБОРОТНОМАСИ, 2020.

As conclusion by noting that advances in ICT are resulting in technological advancements and the opportunity to conduct a wider range of commerce and trade in cyberspace. As a result, the development of ODR technologies has progressed in lockstep with the rise of online business transactions and legal procedures. It is possible to explore the development of various ODR approaches, such as e-negotiation.¹⁴

Possible actions to take prior to the need for arbitration (E-Arb). This highlights how the arbitration procedure has progressed in terms of technology. Pre-arbitration steps such as discussion and reconciliation are now available thanks to ODR technology.

REFERENCES:

1. Rustambekov, Islambek, Uzbekistan: The New – and First – International Commercial Arbitration Law (June 22, 2021). ICC Dispute Resolution Bulletin, Issue 2, 2021, Available at SSRN: <https://ssrn.com/abstract=3872373>.
2. Ardagna, Claudio Agostino, Damiani, Ernesto, *et al*, “Web Service Architecture for Enforcing Access Control Policies” *Electronic Notes in Theoretical Computer Science*, Volume 142, 3 January 2006.
3. Benyekhlef, Karim, Gélinas, Fabienne, “Online Dispute Resolution”, *Lex Electronica*, Vol 10, No. 2, 2005
4. Chauhan, Jagruti, “Online dispute Resolution System: exploring e-commerce and e-securities”, *Windsor review of social and legal issues*, 99, march 2003
5. Dwan, Berni, “Avoiding email blunders even after the email is sent”, *Computer fraud and security*, vol 2002.
6. Friedman, Raymond A. and Currell, Steven C., “Conflict Scallation: Dispute exacerbating elements of e-mail communication” *Human Relations*, Volume 56(11), <http://hum.sagepub.com/cgi/content/abstract/56/11/1325>
7. Garner, Bryan A. (editor-in-chief), *Black’s Law Dictionary*, West Group, 1996.
8. Goldman, Berthold, “The applicable law: general principles of law – the *lex mercatoria*”, in Lew, Julian (editor), *Contemporary problems in International Arbitration*, Centre for Commercial Law Studies, Queen Mary College.
9. Goldsmith Jack and Lessig, Lawrence, *Grounding the Virtual Magistrate*, NCAIR Dispute Resolution Conference, Washington DC, May 22, 1996, <http://www.lessig.org/content/articles/works/magistrate.html>
10. Hörnle J, “Disputes Solved in Cyberspace and the Rule of Law”, 2001 2) *The Journal of Information, Law and Technology JILT*). <<http://elj.warwick.ac.uk/jilt/01-2/hornle.html>
11. Katsh, Ethan “Online Dispute Resolution: Some Implications for the Emergence of Law in Cyberspace”, *Lex Electronica*, vol.10 n°3, Winter 2006.
12. Katsh, Ethan, Rifkin, Janet, *Online dispute Resolution, Resolving conflicts in Cyberspace*, Jossey-Bass, San Francisco, 2001.

¹⁴. B Mokhinur, A THOROUGH REVIEW OF THE COMMON LAW CONCEPT OF" ARBITRARY TERMINATION" AND" UNFAIR DISMISSAL"(including DIFC&ADGM, Review of law sciences, 2020.

13. Kaufmann-Kohler, Gabrielle Schultz, Thomas, *Online dispute resolution, challenges for contemporary justice*, Kluwer law international, 2004.
14. Б Моҳинур, ARBITRATION AND LITIGATION IN THE UAE: ADVANTAGES OF ARBITRATION IN COMPARISON TO LITIGATION - ЮРИСТ АХБОРОТНОМАСИ, 2020.
15. В Mokhinur, A THOROUGH REVIEW OF THE COMMON LAW CONCEPT OF" ARBITRARY TERMINATION" AND" UNFAIR DISMISSAL"(including DIFC&ADGM, Review of law sciences, 2020.