



## PROSPECTS FOR THE DEVELOPMENT OF ALTERNATIVE DISPUTE RESOLUTION IN UZBEKISTAN.

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### ABSTRACT

*This article explores the prospects for the development of alternative dispute resolution in Uzbekistan. The authors analyze the existing methods of conflict resolution and offer a number of recommendations for improving the system of alternative dispute resolution in the country. The article also discusses the advantages of using alternative dispute resolution methods over traditional court procedures and their potential impact on the development of Uzbekistan's legal system and business environment*

Currently, Uzbekistan is experiencing an increased interest in Alternative Dispute Resolution (ADR) as an effective tool to improve the justice system and stimulate economic development. The development of ADR is an urgent problem that requires attention and research in the context of modern challenges and needs of Uzbek society. This article examines the prospects for the development of alternative dispute resolution in Uzbekistan, taking into account global trends, legislative changes and the potential to improve the quality of justice and support business. It analyzes key aspects, challenges and opportunities, and suggests ways to improve the ADR system in the country in order to create a more effective and accessible environment for dispute resolution.

Obviously, there are several positive aspects of using Alternative Dispute Resolution:

1. Efficiency: ADR methods such as mediation and arbitration can often resolve disputes more quickly than traditional court proceedings, saving time and resources for all parties involved.
2. Cost-Effective: ADR can be more cost-effective compared to litigation, as it typically involves lower fees and expenses. This can make it more accessible to individuals and businesses with limited financial resources.
3. Confidentiality: ADR processes are generally confidential, allowing parties to resolve their disputes without public scrutiny. This can be particularly beneficial for sensitive matters or disputes involving proprietary information.
4. Flexibility: ADR allows parties to tailor the resolution process to their specific needs and circumstances. They have more control over the outcome and can work towards a solution that meets their interests.

5. Preservation of Relationships: ADR methods focus on finding mutually acceptable solutions, which can help preserve relationships between parties. This is especially important in business disputes where ongoing relationships are valued.

6. Expertise: In certain types of ADR, such as arbitration, parties can choose arbitrators with expertise in the subject matter of the dispute. This can lead to more informed decisions and outcomes.

7. Enforceability: Agreements reached through certain ADR processes, such as arbitration, are often legally binding and enforceable, providing a level of certainty and security to the parties involved.

On the other hand, there are downsides that define the cons of using ADR:

1. Lack of Formality: Some forms of ADR, such as mediation, do not have the same degree of formality as court proceedings. This can lead to decisions made within ADR being less strictly defined and potentially difficult to enforce.

2. Inability to Enforce Decisions: Unlike court judgments, which can be enforced through the judicial system, decisions reached through ADR may be harder to enforce if one party refuses to recognize them. For example, a mediation agreement is a civil contract, and failure to fulfill its obligations requires filing a claim in civil court. Another example is the necessity for national courts to recognize arbitration awards to enforce them.

3. Lack of Guaranteed Confidentiality: Confidentiality in ADR processes is not always guaranteed. If parties cannot agree on confidentiality rules or if information becomes known to a third party, it can undermine trust and complicate the dispute resolution process. Additionally, information may leak due to pressure from a governmental body.

4. Lack of Established Procedures and Standards: Some forms of ADR may not have clearly established procedures and standards, leading to uncertainty in the process and difficulties in reaching an agreement between parties. For instance, during negotiations, parties might escalate the conflict instead of reaching a mutually beneficial resolution.

These disadvantages do not imply that ADR is ineffective or impractical. They merely point to some potential problems that parties may face when using alternative dispute resolution methods. It is important to consider these aspects when choosing the appropriate method for dispute resolution to ensure the fairness and effectiveness of the process.

Nevertheless, many jurisdictions encourage the use of ADR and provide parties with the opportunity to voluntarily participate in these processes. For example, in the United States, courts often require parties to attempt to resolve disputes through mediation or conciliation before the case proceeds to trial. This implies the mandatory completion of these procedures before litigation, which often leads to the resolution of about 90% of disputes through such alternative procedures without resorting to state courts. Moreover, many Western countries include provisions for the application of alternative dispute resolution methods in their laws and, as mentioned above, even mandate that parties attempt to resolve disputes through mediation or conciliation before turning to the courts. This underscores the significant role of legislation in various countries in promoting the development of ADR.

In France, conciliation procedures are regulated by the Civil Procedure Code, which contains a substantial number of provisions defining the conciliation procedure itself. Notably, the French CPC distinguishes between conciliation procedures without the participation of a conciliator and conciliation procedures with their participation. Facilitating

conciliation directly falls within the judge's duties according to Article 21, and the judge has the right to appoint a third party to listen to and clarify the mutual claims of the parties; this third party can be an individual or an organization.

However, it is important to note that the person assisting in conciliation and acting as a mediator must meet several requirements:

- Have no criminal record, not be deprived of legal capacity, and not be listed in the criminal registry maintained by the French Ministry of Justice.
- Not engage in actions that compromise honor, decency, and good morals, leading to disciplinary or administrative consequences such as dismissal or suspension from duties.
- Possess the necessary qualifications relevant to the nature of the dispute based on current or past activities.
- Demonstrate appropriate education or experience necessary for conducting the activity, depending on the circumstances.
- Provide guarantees of impartiality necessary for facilitating the conciliation of parties<sup>1</sup>.

According to Article 131-6 of the French CPC, a court order for a conciliation procedure must include the parties' consent to the procedure, the appointment of the conciliator, and the initial timeframe for the conciliator to fulfill the court's mandate. Additionally, the court order specifies the amount of the advance payment to the conciliator as remuneration (as close as possible to the estimated amount).

As another example, German legislation, which also practiced mandatory alternative means of resolution procedures before traditional court proceedings since the end of the 20th century, can be cited. And by 2012, the Law on Mediation was adopted, which served as an even greater impetus for the development of this area along with other types of alternative dispute resolution. It can also be seen that family disputes are also mandatorily referred to mediation before trial. According to the German Code of Civil Procedure, the judge can also act as mediator or mediator, choosing the appropriate alternative dispute resolution method<sup>2</sup>.

However, considering the provisions of national legislation regarding ADR, one can observe their fragmentary and declarative nature. The concept of alternative dispute resolution methods is not explicitly defined in any regulatory legal act, indicating that these procedures are still in a moderate stage of development. Procedural codes may only reference the use of alternative dispute resolution methods in the form of conciliation procedures and the conclusion of mediation agreements. At the same time, the specific definition of alternative dispute resolution methods and what they entail is not delineated in national legislation. Despite this, certain types of alternative dispute resolution methods are significantly developed in Uzbekistan. For example, negotiations, conciliation, mediation, labor dispute commissions, pre-trial dispute resolution, arbitration, and international commercial arbitration are well-established.

International commercial arbitration is a relatively young method of alternative dispute resolution along with mediation. The adoption of the Laws of the Republic of

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<sup>1</sup> The Code of Civil Procedure of the Republic of France (Code de procédure civile)  
[https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006070716/](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070716/)

<sup>2</sup> The Code of Civil Procedure of the Federal Republic of Germany (Zivilprozessordnung, ZPO).  
[https://www.gesetze-im-internet.de/englisch\\_zpo/englisch\\_zpo.html](https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html)

Uzbekistan "On International Commercial Arbitration" in 2021 and "On Mediation" in 2018 are significant steps towards the improvement of civil procedure law through the development of the introduction of these procedures into practice.

Arbitration is one of the dispute resolution procedures that can be applied both before going to court and after the commencement of the case on the basis of an agreement. The parties' agreement to submit the dispute to arbitration must be evidenced by a written agreement entered into before or after the dispute arises, or in the form of an arbitration clause in the original contract.

An important feature of arbitration is its international character, especially in cases involving investments or private partnerships, as well as trademark and copyright issues, where more often than not the parties to the dispute or the subject matter of the dispute may have different territorial characteristics. In such cases, arbitration can be an effective tool for resolving such international disputes, given the differences in the laws of different countries. However, when choosing arbitration to resolve a dispute, it is worth considering which rules will best guide the process and outcome of the resolution, including the number of arbitrators, the language of the arbitration and the applicable law.

At the same time, arbitral awards in Uzbekistan are also binding on the parties and can be enforced under domestic law if recognized and enforced by a State court. Therefore, disputes of an international nature cannot be resolved in the arbitration courts of Uzbekistan.

One of the distinctive features of mediation in dispute resolution is the search for a mutually beneficial solution for both parties: disputes in the business environment and intellectual property disputes are often associated with a high degree of competition and the desire to protect their rights to innovations. In such cases, the mediator should help the parties to find compromises and mutually beneficial solutions, taking into account their interests and goals. It is also worth taking into account the time limits established by Uzbek legislation for dispute resolution through mediation (30 days, + additional 30 days in case of failure to reach an agreement, at the stage of execution 15 days).

Arbitration courts are a fairly new institution for the settlement of disputes in Uzbekistan. The adoption of the Arbitration Courts Act is on October 16, 2006. Arbitration Courts Act of 16 October 2006 entered into force on 1 January 2007. The Arbitration Courts Act defines the term "arbitration courts" as follows. The Act defines the term "arbitral tribunal" as follows:

- An arbitral tribunal is a non-State body which decides disputes arising from arbitration.
- The arbitration court is a non-State body which resolves disputes arising from civil legal relations, including economic disputes.
- disputes arising from civil legal relations, including economic disputes arising between business entities.
- The Court of Arbitration is a non-state body for resolving disputes and is not part of the state judicial system.
- The arbitration court is a non-state dispute resolution body and is not part of the state judicial system, however, despite this, it is authorized by the state.

Despite this, it is authorized by the State by virtue of the Law of the Republic of Uzbekistan "On Arbitration Courts".

The Court of Arbitration is a non-State dispute resolution body and is not part of the State judicial system.

Arbitration courts are authorized by the State, by virtue of the Arbitration Courts Act, to hear private law disputes and to adopt acts binding on the disputing parties, to be enforced by the disputing parties. At the same time, where necessary, the activities of the arbitration court are accompanied by the coercive power of the State (for example, in the case of non-execution of an arbitration court decision by the losing party).

The legislation provides for a mechanism of compulsory execution of the enforcement of the decision. Thus, the arbitration court, along with the state judicial system, is one of the bodies of judicial protection of civil rights (part of the law).

Practice shows that arbitration proceedings are an effective mechanism for the settlement of disputes. An effective mechanism for the settlement of disputes, ensuring confidentiality, economy and speed of the dispute resolution procedure, allowing disputants to resolve disputes.

Dispute resolution, allowing the disputing parties to maintain businesslike partnership relations in spite of disagreements, and is characterized by finality and enforceability of the decision taken.

In conclusion, alternative dispute resolution methods play an increasingly important role in the modern civil law process, as they contribute to faster, cost-effective and individualized dispute resolution, providing a more flexible settlement of the parties' interests. However, it is necessary to take into account both advantages and limitations of ADR when applying these methods in modern justice.

Comparing the national practice with foreign ones, it should be taken into account that the process of development of ADR in such countries as the USA, Great Britain and Canada dates back to the 50-60s of the twentieth century. And the Republic of Uzbekistan has been making significant steps in the development of many types of alternative dispute resolution in recent years, which is encouraging.

Based on the experience of foreign countries cited above, it is recommended that mediation and other types of ADR is mandatory for certain types of disputes, such as divorce, property division and other family issues.

Also, one should not underestimate the state support, which in many ways can contribute to the popularization of ADR. Conducting training programs, financial support for alternative dispute resolution centers and promoting the benefits of ADR among the public can raise awareness of the advantages and effectiveness of these methods. Alternative dispute resolution is playing an increasingly important role in modern justice, especially in civil litigation, as it provides parties with more flexible, faster and more cost-effective mechanisms for resolving disputes than traditional litigation.

#### References:

1. The Code of Civil Procedure of the Republic of France (Code de procédure civile)
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3. The Code of Civil Procedure of the Federal Republic of Germany (Zivilprozessordnung, ZPO).
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5. The Code of Civil Procedure of the Republic of Uzbekistan (O'zbekiston Respublikasining Fuqarolik protsessual Kodeksi)



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