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PROSPECTS OF INFORMATION TECHNOLOGY USE IN INTERNATIONAL COMMERCIAL ARBITRATION DISPUTE RESOLUTION

Алла Авсієвич. ПЕРСПЕКТИВИ ВИКОРИСТАННЯ ІНФОРМАЦІЙНИХ ТЕХНОЛОГІЙ У ВИРІШЕННІ СПОРІВ МІЖНАРОДНИМ КОМЕРЦІЙНИМ АРБІТРАЖЕМ. У статті висвітлено сучасні аспекти застосування онлайн-арбітражу в системі альтернативних способів вирішення правових конфліктів. Автор систематично розглядає переваги та недоліки цього методу, пропонуючи думки як зарубіжних, так і вітчизняних науковців. Обговорення поширюється на складність цивільного права та судового процесу, наголошуючи на протиріччях у дотриманні громадського порядку в онлайн-середовищі. Цей науковий матеріал має важливе значення для розуміння та аналізу сучасних тенденцій арбітражу та альтернативних судових методів вирішення спорів.

У статті дається стисле пояснення вирішення спорів у кіберпросторі за допомогою інформаційно-комунікаційних технологій. Стаття фокусується на конкретних аспектах дослідження, пов'язаних з використанням альтернативних методів вирішення спорів, зокрема використанням електронного арбітражу. У статті розглядаються регуляторні тонкощі та нюанси вирішення спорів у кіберпросторі, зрештою зроблено висновок, що ідея відмови від офлайн-методів вирішення спорів у найближчому майбутньому не буде реалізована.

Ключові слова: арбітраж, альтернативні способи вирішення спорів, онлайн-арбітраж, арбітражна угода.

Relevance of the study. The widespread use of online transactions has led to the emergence of conflicts of a fundamentally new type. Resolving such disputes requires not only technical knowledge but also prompt decision-making. The need for standardizing approaches to resolving such conflicts has led to the creation of *lex electronica* – a system of international legal norms regulating relations related to the conclusion of transactions in the electronic environment.

In turn, e-commerce has given rise to electronic dispute resolution, specifically online arbitration. The term "online arbitration" may have several meanings, but it is most often used to denote arbitration conducted using remote communication technologies among process participants [1, 2]. This form of arbitration is gaining popularity in various legal systems due to its efficiency, speed, quality, and cost-effectiveness.

Online arbitration is a legitimate method of independent, unbiased, and effective conflict resolution arising from contractual and non-contractual relationships, using electronic means of transmission and storage of information. Its purpose is the swift and economical resolution of disputes without adhering to formal procedural rules.

Online dispute resolution can also involve the use of alternative dispute resolution mechanisms through the Internet. Online dispute resolution methods can be applied to resolve disputes both offline and online. The idea of using online alternative dispute resolution mechanisms emerged in the 1990s [3]. During this decade, notable online dispute resolution services, such as the "Virtual Magistrate Project", Online Ombudsman Office, and Online Mediation Project, were introduced [4, 5]. These projects were initially developed under the

auspices of various institutions, including the American Arbitration Association and the National Center for Automated Information Research.

Recent publications review. The concept of "ADR" commonly mistaken as an acronym for "alternative dispute resolution", was proposed by Harvard Law School professor Frank E. A. Sander [6]. ADR, in simple terms, signifies the idea of regulating and resolving disputes through means other than judicial proceedings. ADR encompasses a range of online communication tools, including email, internet relay chat, instant messaging, discussions on web forums, and similar text-based electronic communications.

In a short period, dispute resolution experts realized that there were opportunities for significant expansion in this evolving field. In 1997, Professors Ethan Katsh and Janet Rifkin founded the National Center for Technology and Dispute Resolution, which "supports and sustains the development of information technology applications, institutional resources, as well as theoretical and applied knowledge for better understanding and managing conflicts" [7]. Four years later, the first book in the field of ADR was written [8]. Subsequently, institutions such as the U.S. Federal Trade Commission, the U.S. Department of Commerce, Hague Conference on Private International Law, the Organization for Economic Cooperation and Development, the Global Business Dialogue, the World Intellectual Property Organization, and the European Union began to explore the field of ADR. In the European Union, legislative measures generally favor the use of ODR mechanisms. Examples include the Directive on Electronic Commerce, Articles 17, and the Directive on Certain Aspects of Mediation in Civil and Commercial Matters, Declarations 8 and 9. Additionally, in the field of consumer law, both a Proposal for a Regulation on Online Dispute Resolution for Consumer Disputes and a Proposal for a Directive on Alternative Dispute Resolution have been adopted. These proposals aim to improve the functioning of the internal retail market and enhance compensation for consumers' losses.

The article's objective is to discuss the prospects of use the information technology in international commercial arbitration dispute resolution.

Discussion. In principle, it is expected that ODR mechanisms, among other things, will "facilitate access to justice" [9] and should be able to address some of the issues associated with the use of offline dispute resolution mechanisms. ADR is considered to be able to "resolve conflicts more quickly and efficiently" than traditional methods. However, as far as we know, no reliable and skillfully conducted research has confirmed this assumption. Scholars have proposed various ideas aimed at developing an alternative dispute resolution system, and over the past 10 years, a considerable number of services in this field have been developed. In the broad spectrum of ADR mechanisms, the most common ones are negotiations, mediation, and arbitration.

As the legal profession has begun to modernize its working practices through various technological advancements in computing and telecommunications, one might question whether the use of offline mechanisms will eventually be replaced by so-called ADR mechanisms.

Electronic negotiations are one of the most prevalent forms of dispute resolution and likely one of the primary means of interaction. It is believed that people negotiate, even if they don't consciously think of it that way. Negotiations can be essentially defined as any form of communication between two or more people with the aim of reaching an agreement. In this context, negotiations can be seen as a friendly and perhaps highly desirable way of resolving conflicts. With the advent of the Internet, this form of interaction, particularly in the realm of dispute resolution and the legal profession, has somewhat shifted from court corridors and polished law firm offices to the Internet, leading to the advancement of e-negotiation.

The first research project in the field of negotiations via the World Wide Web (INSPIRE) was launched in 1996. This project was developed in the context of cross-cultural research on the decision-making and negotiation process. Extensive experiments with INSPIRE led to the development of several other electronic negotiation systems [9]. These systems, along with decision support systems, were classified into several categories, including planning systems, assessment systems, intervention systems, and process systems. However, public awareness of these tools remains very low, and it remains to be seen whether negotiations based on electronic means relying on these systems will gain widespread recognition.

The concept of electronic negotiations is closely related to the concept of computer-mediated communication. It is argued that such communication facilitates the process of

interaction through computers. The Internet has undoubtedly become one of the main means of communication and information exchange. Short text messages (SMS) via email, for example, are becoming an increasingly common phenomenon. A decade ago, corporate users sent and received approximately 105 email messages per day, amounting to 38,325 emails per year. New research is needed to determine how many of these email messages, if any, were related to negotiations. However, from the perspective of the efficiency of electronic negotiations through email, this can lead to misunderstandings, malicious attributions, and ultimately, a deadlock in negotiations.

Electronic arbitration itself can be defined as the "online version of offline arbitration". It covers everything from online arbitration agreements to online arbitration decisions. In general, in light of the principle of party autonomy, the legitimacy of online arbitration is not an issue. However, in the international context, concerns have been raised about the validity of not only online arbitration agreements but also online arbitration decisions, especially in the understanding of the 1958 New York Convention. It can be argued that this Convention was adopted "at a time when the drafters could not anticipate that [arbitration agreements, arbitration decisions] might take a form other than physical". Thus, it can only be assumed that over time, courts will agree that online arbitration agreements and online arbitration decisions meet the formal requirements of the New York Convention, thereby avoiding future problems with the recognition and enforcement of foreign arbitration decisions, including those made through online arbitration.

Currently, there are no "universally accepted rules for regulating online arbitration proceedings". Such proceedings undoubtedly take place, although comprehensive statistics on electronic arbitration seem not to have been published. It is expected that in online arbitration, parties, arbitration tribunals, experts, and witnesses will use electronic devices to participate in arbitration proceedings. This involves the use of sophisticated hardware and software devices. Existing systems, however, are criticized on the basis that they may deal only with "very limited classes of disputes, a simplified or basic arbitration process, the beginning of the process before changes become necessary, a process used by a single arbitration provider" [9].

The implementation of online arbitration has almost no significant obstacles but requires the resolution of practical issues of identifying the parties to electronic communication and their representatives, as well as the development of systems for exchanging electronic documents. The last decades show that the arbitration industry has become a major source of innovation in conflict resolution. The application of modern information technologies in specific arbitration proceedings has undeniable advantages, such as convenience, improved quality of hearings, and cost savings.

However, the transition to the online format of arbitration may pose certain problems, such as security and admissibility of evidence issues. Until unified rules at the international level are established, arbitration institutions will have to individually address issues, taking into account the specific circumstances of each case. For example, can an arbitrator in a case between parties from France and Canada "sign" an arbitration decision in electronic form, and what standard of electronic signature should be used. To resolve disputes using online systems, parties need to provide evidence of their claims. The preparation and presentation of evidence require time and effort, which can lead to avoiding the submission of unsupported claims.

Conclusions. Therefore, despite some optimistic forecasts regarding the potential of alternative dispute resolution (ADR) methods to coexist on equal terms with traditional methods, it is still too early to predict what the future may hold for such forms of arbitration. The benefits of technological progress in dispute resolution are likely overestimated. ADR is simply another option, and in some cases, it may even be the best option, but it is certainly not a panacea. The classical dispute resolution system is a complex system that cannot be replaced by faster microprocessors and larger memory boards. Dispute resolution mechanisms typically serve as a means of maintaining social order. These mechanisms are designed to resolve conflicts and disputes based on the rule of law, and it is doubtful whether such a function can be fully and effectively performed in cyberspace.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

References

1. Притика Ю. Д. Онлайн-арбітраж у системі альтернативних способів вирішення спорів: pro et contra. *Проблеми цивільного права і процесу* : тези доп. учасників наук.-практ. конф., присвяч. світлій пам'яті О. А. Пушкіна, Харків, 25 трав. 2018 р. С.58-61.
2. Арбітражний регламент ICC. 2012. URL : <https://www.international-arbitration-attorney.com/uk/icc-rules-of-arbitration-2012/>
3. Rule Colin. Online Dispute Resolution for Business. San Francisco: Jossey-Bass, 2002. Ethan, Katsh. Bringing Online Dispute Resolution to Virtual Worlds: Creating Processes through Code. *New York Law School Law Review*. 2004. № 49. P. 275.
4. Almaguer Alejandro E. et al. Shaping New Legal Frontiers: Dispute Resolution for the Internet. *Ohio State Journal on Dispute Resolution*. 1998.
5. Lide E. Casey. ADR and Cyberspace: The Role of Alternative Dispute Resolution in Online Commerce, Intellectual Property and Defamation. *Ohio State Journal on Dispute Resolution*. 1996. № 12. P.719.
6. Frank Sander. Iternative Methods of Dispute Resolution: An Overview. *University of Florida Law Review*. 1985. № 37 (1).
7. Pirie Andrew. Alternative Dispute Resolution: Skills, Science, and the Law Toronto: Irwin Law, 2000, p.42.
8. Katsh Ethan et al., Online Dispute Resolution: Resolving Conflicts in Cyberspace. San Francisco: Jossey-Bass. 2001. Pp.1-240.
9. Betancourt Julio Cesar, Zlatanska Elina. Online Dispute Resolution (ODR): What is is, and Is It the Way Forward? *Arbitration*, Issue. 2013. № 3. Pp. 256-264.
10. Chartered Institute of Arbitrators, Costs of International Arbitration Survey. London: Chartered Institute of Arbitrators. 2011. P. 2.

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1. Prytyka, Yu. D. (2018). Online-arbitrazh u systemi alternatyvnykh sposobiv vyrishennya sporiv: pro et contra [Online arbitration in the system of alternative dispute resolution methods: pro et contra]. *Problemy tsyvilnoho prava i protsesu: tezy dop. uchasnykiv nauk.-prakt. konf., prysvyach. svitliy pam'yati O. A. Pushkina, Kharkiv, 25 trav. 2018 r.* Pp. 58-61.
 2. Arbitrazhnyy rehlament ICC [The Arbitration Rules of ICC]. (2012). URL : <https://www.international-arbitration-attorney.com/uk/icc-rules-of-arbitration-2012/>
 3. Rule, Colin. (2004). Online Dispute Resolution for Business. San Francisco: Jossey-Bass, 2002. Ethan, Katsh. Bringing Online Dispute Resolution to Virtual Worlds: Creating Processes through Code. *New York Law School Law Review*. No. 49. P.275
 4. Almaguer, Alejandro E. et al. (1998). Shaping New Legal Frontiers: Dispute Resolution for the Internet. *Ohio State Journal on Dispute Resolution*.
 5. Lide, E. Casey. (1996). ADR and Cyberspace: The Role of Alternative Dispute Resolution in Online Commerce, Intellectual Property and Defamation. *Ohio State Journal on Dispute Resolution*. No. 12. P. 719.
 6. Sander, Frank. (1985). Iternative Methods of Dispute Resolution: An Overview. *University of Florida Law Review*. 37 (1).
 7. Pirie, Andrew. (2000). Alternative Dispute Resolution: Skills, Science, and the Law Toronto: Irwin Law. P. 42.
 8. Katsh, Ethan et al. (2001). Online Dispute Resolution: Resolving Conflicts in Cyberspace. San Francisco: Jossey-Bass. Pp. 1-240.
 9. Betancourt, Julio Cesar & Zlatanska, Elina. (2013). Online Dispute Resolution (ODR): What is is, and Is It the Way Forward? *Arbitration*, Issue. No. 3. Pp. 256-264.
 10. Chartered Institute of Arbitrators, Costs of International Arbitration Survey. (2011). London: Chartered Institute of Arbitrators. P. 2.

ABSTRACT

The article illuminates the contemporary aspects of employing online arbitration within the system of alternative methods for resolving legal conflicts. The author systematically examines the advantages and disadvantages of this method, offering insights from both foreign and domestic scholars. The discussion extends to the complexities of civil law and the legal process, emphasizing the contradictions in upholding public order within the online environment. This scholarly material is crucial for comprehending and analyzing modern trends in arbitration and alternative legal dispute resolution methods.

The article provides a concise explanation of dispute resolution in cyberspace through information and communication technologies. It delves into specific research aspects related to the utilization of alternative dispute resolution methods, particularly the use of electronic arbitration. The paper addresses regulatory intricacies and dispute resolution nuances in cyberspace, ultimately concluding that the idea of abandoning offline dispute resolution methods in the near future may not be realized.

Keywords: *arbitration, alternative dispute resolution methods, online arbitration, arbitration agreement.*