ODR as a new way of resolving online disputes in E-commerce

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ABSTRACT

In this article, we will discuss whether arbitrations based entirely on artificial intelligence are technologically feasible, that they perform the same functions as human arbitrators, and should be permitted by law. There is nothing in the concept of arbitration that requires human control, administration, or even access. In addition, we note that the existing legal framework for international commercial arbitration, in particular the New York Convention (NYC), is capable of adapting and adapting to fully artificial intelligence-based arbitration. We expect significant regulatory competition between jurisdictions to promote technology-assisted or even fully artificial intelligence-based arbitration, and emphasize that this competition will be beneficial. In this competition, we expect common law jurisdictions to have an advantage - machine learning applications for making legal decisions can be more easily developed for bottom-up thinking jurisdictions, where case law plays a crucial role.

Keywords: Future professional activity, modeling, engineer, designer, constructor, personality activity approach, etc.

I. Introduction

Arbitration has an important place in the world of alternative dispute resolution (ADR). If the parties to the dispute need a binding decision but are reluctant to go to court, arbitration is the preferred method of resolving the dispute. Arbitration is often described as a private and consensual method of resolving disputes, resulting in a binding decision: instead of a state court, it is a private court appointed by agreement of the parties, and a binding decision is an arbitral award. [1]

Traditionally, the trial consists of arbitrators who personally conduct the arbitration process. Since the development of modern arbitration, particularly international commercial arbitration, took place in the 20th century, manpower arbitration was the only technologically feasible option. However, technological developments, in particular digitalization, artificial intelligence (AI) and blockchain technology, are now changing the traditional format and conduct of arbitration.

II. Material And Methods

According to the academician of the Academy of Sciences of the Republic of Uzbekistan, Professor H.Rakhmonkulov “the Commission (UNCITRAL) was established as a special body of the United Nations on international trade law. In accordance with the resolution of the UN General Assembly of December 17, 1966, the

task of the Commission is to promote the harmonization and harmonization of international trade rules. The task of the Commission, for example, is to assist in the drafting of model and substantively similar laws in the field of international trade law, the codification of international trade customs, the collection of information in this area and their dissemination. It is meant to be focused on learning.[2] The commission first focused on the following issues: international trade in goods, international settlements, commercial arbitration. The following Conventions have been adopted on the basis of the prepared drafts: the UN Convention on Contracts for the International Sale of Goods; Convention on Terms of Litigation in International Trade in Goods; UN Convention on the Carriage of Goods by Sea; UNCITRAL Arbitration Rules, UNCITRAL (Primary) Reconciliation Rules and others. In 1985, the Law on International Trade Arbitration was adopted, and in 1988, the Convention on International Transfer and International Bills of Exchange was adopted".[3] Stakeholders in the arbitration market are exploring how new technologies and tools can be used to increase the efficiency (low cost, high speed) and quality of the arbitration process. Empirical research has shown that the latter factor, in particular, is crucial for the parties in choosing arbitration over other dispute resolution processes.[4]

According to associate Professor Z.Ubaydullaev, "the settlement of disputes arising from investment relations between a particular state (or any of its competent authorities) and another state entity, if the parties agree in writing to submit the dispute to the Center. It will be under the authority of the center."

Smart machines promise to make smarter, more consistent and impartial decisions compared to humans. The COVID-19 pandemic is accelerating the trend of using smart technologies to increase the efficiency and quality of arbitration. For example, if physical hearings are not possible, parties and courts will be required to use video conferencing software that allows online meetings, desktop sharing, and real-time online meetings.[5] Practical needs and constraints allow people to quickly adapt to the traditional "arbitration" method using technology. In this dissertation, we examine the more radical questions that arise when thinking about the potential endpoint of the ongoing technological revolution of arbitration. Does the arbitral tribunal need individuals - arbitrators? Can this be done entirely by (artificial intelligence) machines? More specifically, can artificial intelligence-based systems organize a legitimate and fair arbitration process? Can they make a binding decision that can be taken as an arbitral award? If so, how efficient are car arbitrators in relation to people in terms of cost and quality?

These questions and the answers to them are of great practical importance to the economics of arbitration (cost, speed) and to key legal issues, such as the quality of justice or the existence/appeal of an arbitral award. Most importantly, these questions raise key conceptual issues. They force us to reconsider the concept of arbitration, taking into account its functions and the desired effect, in particular its legal consequences. The concept and components of arbitration are "normally loaded". They reflect the belief that scholars, practitioners, and legislators should have in their community (in a particular jurisdiction) what arbitration should be, given the functions it performs in the process and the (legal) effects that this community has on it. These functions and standards are translated into international and local legal standards.[6]

Before considering the concept of ODR, it may be helpful to explain how its roots go back to the Alternative Dispute Resolution ("ADR") movement. The ADR movement emerged in the 1970s as a response to judicial shortcomings. It was based on the premise that civil courts could only provide such services to private dispute resolution bodies and other institutions. [7] This was not only a reaction to top-down regulation of civil society in many ways, but also a "telecratic order" as the late von Hayek described it.

III. Results And Discussion

The ADR-movement was unquestionable from the outset, and some of the key points of the critique it faced are also relevant in assessing

the potential of the OArb, so they require a certain amount of attention here. It is worth noting that FISS points out the following four shortcomings of ADR:

First, he argues that the basic model of the ADR implies rough equality between competing parties, while their resources are often unequally distributed. Such an inequality of arms to translate his opinion often forces the weaker side to accept a result that does not reflect justice.[8]

Second, it considers ADR entities to be parties to individuals, but in most cases they are groups or companies represented by individuals. It was concerned that in resolving the dispute out of court, these agents would not act in the interests of the entire group or company. In his view, litigation effectively mitigates this risk, as cases are resolved in accordance with strictly established legal rules and principles.[9]

The third point of view of the FISS against the ADR is that the results of the ADR have a strong contractual character, so they do not have the enforcement obligations that are usually found in a court decision.[10]

Finally, the FISS believed that the ADR-action would deprive the judiciary of its social function. It emphasized that, in essence, private institutions could not replace or replace the function of judges in interpreting the law and thus developing it. According to him, "the task of judges is not to maximize the goals of the private parties or simply to ensure peace, but to explain and support the values embodied in such authoritative documents as the Constitution and laws."[11] That is, in the last two years, ADR has become a common part of legal language. The growing popularity of the ADR can be explained by the increasing workload of traditional courts, with the potential advantages of the ADR. Indeed, despite one of the main ambitions of the ADR movement, the workload of the courts seems to have decreased. While this may be due to the more complex and orderly nature of society, the question also arises as to whether mass urbanization has diminished the ability of modern civilization to resolve conflicts peacefully, which is crucial for the strengthening of the ADR movement. would be paradoxical.[12] The range of mechanisms under the ADR threshold varies according to the interpretation of the term “alternative”, in particular, ADR mechanisms may use a rights-based (i.e., judicial) or interest-based approach.

Law-based processes require the parties to provide legal evidence to resolve the dispute. The designated neutral person shall make a decision on the basis of the facts which he considers relevant, as well as on the legal principles applied to these facts.[13] These processes are court and arbitration. On the contrary, interest-based processes tend to focus the debate on the deepest interests of the parties to end the conflict. Such processes encourage the parties to reach a solution that they both agree on.

According to the academician of the Academy of Sciences of the Republic of Uzbekistan, Professor H.Rakhmonqulov, “issues of procedural order and rules arising in the field of consideration of civil cases of foreign citizens and stateless persons, foreign organizations, foreign state, international organizations, representative offices of foreign states, international organizations and their officials, issues of jurisdiction of international civil cases, appeals of foreign judicial authorities , enforcement of judicial acts, recognition and enforcement of decisions of foreign courts in civil cases and other issues related to the field of international civil procedural law. International commercial arbitration is also relevant in this area.”

Legislators need to fully realize the potential of artificial intelligence-based arbitration and improve the efficiency and quality of arbitration. We have established a normative framework for international commercial arbitration and demonstrate that the New York Convention is capable of accepting fully autonomous arbitration. We also discuss regulatory competition between jurisdictions to promote technology-based and fully autonomous arbitration.[14]

Our goal is to identify the main functions / elements of arbitration and assess whether it is possible to create an “arbitration based on complete artificial intelligence”. By this we do not mean technical possibilities. We discussed

this issue in the previous section. In the sense that artificial intelligence-assisted arbitration in a particular jurisdiction or arbitration that is fully conducted by an autonomous system is permitted, we are not primarily concerned with the appropriateness of a legal purpose. Instead, we try to assess whether fully autonomous arbitration can functionally provide what we think constitutes arbitration.

According to Associate Professor Z.Ubaydullaev, "in most cases, when considering civil cases complicated by a foreign element in general courts, arbitration, impartiality, general and special issues arise." Arbitrations are the essence of law and legal practice. There is no such thing as the essence of arbitration that exists in an abstract or legal vacuum. Conversely, key elements of arbitration can be derived from laws, conventions, and legal practice shared by a team of scholars and practitioners working in the field. This general notion is to some extent specific to jurisdiction. However, at least the most important subject of arbitration, namely commercial arbitration, is a very international subject. Its two main legal sources are the New York Convention and the UNCITRAL Model Law on International Commercial Arbitration. However, in the field of international commercial arbitration, there are important scientific and practical discussions about the autonomy of the subject and how it differs from national legal systems.

Scientists and practitioners do not agree on the degree of such autonomy. It is undeniable that in the last 50 years, the transnational practice of international commercial arbitration has emerged after being encouraged by international institutions such as UNCITRAL and the International Bar Association (IBA). This transnational practice was used to quote the general understanding, "... the consensus of action: to do the same thing, to treat the same way ..." - from Ludwig Wittgenstein to arbitration".

Arbitration is the process of resolving disputes by a neutral third party, the arbitrator. The main feature that distinguishes arbitration from other ADR methods, such as mediation or conciliation, is that if the parties do not reach an agreement, the arbitration process ends with a binding decision, which is called an arbitral tribunal decision. The task of the decision is to ensure justice between the parties. If the decision meets the applicable standard of decision-making and the parties consider the process to be fair and the arbitrator to be independent and impartial, the decision shall be deemed to have fulfilled that function.

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