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Formation of arbitration courts in Uzbekistan and development prospects

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Annotation: This article is named “Formation of arbitration courts in Uzbekistan and the prospects for development". In the scientific work, the latest innovations in legislative norms and stages of development have been highlighted and researched. Also, examples and views of the role of arbitration courts are described by the author.

Key words: arbitration, court, legislation, disputes, dispute resolution

In accordance with the concept of building a new Uzbekistan, the country is consistently implementing judicial and legal reforms aimed at effective protection of human rights and freedoms, the interests of legal entities, the creation of organizational and legal mechanisms in line with the system of free market relations. As a result of these radical reforms, arbitration courts, which are an important element of civil society, have been formed, and their importance and prestige are becoming more and more stable.

It is noteworthy that the widespread use of alternative methods of pre-trial settlement of disputes, reforms in the development of arbitration courts are an important factor in creating a solid legal framework that protects the rights and legitimate interests of private property owners and meets the role of arbitration courts.

It should be noted that disputes are resolved more quickly through arbitration courts, whose parties have the opportunity to restore (and / or secure) their rights at low cost, using civil forms and methods, free from the state bureaucracy. Such benefits are extremely important for business entities, especially small businesses.

The activities of arbitration courts and alternative methods of dispute resolution are important not only for citizens and legal entities, but also for the state. The role of arbitration courts is not to challenge state courts, but to propose a unique, new way of resolving disputes, so the purpose of establishing arbitration courts is not to form a balanced new legal system.

Resolution of the President of the Republic of Uzbekistan No.4754 of June 17, 2020 "On measures to further improve the mechanisms of alternative dispute resolution" serves as an important legal basis for their transformation into trustworthy institutions.

Arbitration is one of the most effective ways to resolve disputes. At present, its legal basis has been established. The Law “On Arbitration Courts” adopted in 2006 entered into force on January 1, 2007. From this date, along with the state (economic, civil) courts, the activity of arbitration courts was established and a new important stage of judicial reform began.

The form of arbitration of disputes, first of all, its accessibility and democracy, the possibility of reducing the time of consideration of the case, the exemption from the burden of paying state duties, and many other factors are attractive to businesses.

Today, there are more than 400 arbitration courts in Uzbekistan. They are united and coordinated by the Association of Arbitration Courts.

Arbitration is one of the forms of seeking justice and getting out of a difficult situation. It is a cultural and enlightened form of resolving disputes between people, which has been recognized throughout human history as a legal means of finding reasonable solutions to various disputes and conflicts, along with the state judiciary.

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Arbitration court is a non-governmental body that resolves disputes arising from civil legal relations, including economic disputes arising between business entities. The arbitral tribunal shall resolve disputes on the basis of the laws and regulations of the Republic of Uzbekistan.

Arbitration courts are not a judicial structure in the system of state courts, but a non-governmental non-profit organization parallel to it and based on the voluntary agreement of the participants and private-legal relations. Arbitration courts are not legal entities. The uniqueness and originality of the arbitral tribunal is that its decisions are secured by the power and prestige of the state through the issuance of writs of execution by the state courts, which give the arbitral tribunal official jurisdiction.

In contrast to the courts of the state system, independent arbitration courts should be noted, first of all, the freedom of the participants in the arbitration proceedings to choose the rules of procedural and substantive law. Arbitration courts ensure the independence, honesty, impartiality (impartiality) and high professionalism of the court. Not only lawyers, but also highly qualified specialists from various sectors of the economy can be arbitrators, who are not appointed, but are elected (elected) by the parties at their discretion. The arbitral tribunal ensures the speed and impartiality of the proceedings, while at the same time ensuring the strict observance of trade secrets.

The essence of the arbitral tribunal is that the clients (parties) have the right to freely choose the judge who will hear their case. Another difference between an arbitral tribunal and a state tribunal is that the case is also heard at the client's request, as quickly as possible. The arbitration fee paid by the client is usually set at half the state fee paid to the state courts. The arbitral tribunal shall apply to the arbitral tribunal for the settlement of contractual disputes by mutual consent. They enter into an arbitration agreement for the case to be heard by that court. If the agreement is not signed by one of the parties, the arbitral tribunal will not consider the case. The court shall initiate the case only after an arbitration agreement has been concluded between the parties. If the client wants the case to be heard at the place he or she is proposing, not at the courthouse, the court will take that into account. However, if the other party does not agree to this, the court will reject it and the case will be heard in the courtroom. The decision to be made will also be in the context of the will of the parties.

There are also differences in the rights and duties of the participants in the arbitration proceedings. Because arbitral tribunals are not part of the state court system, they cannot be held liable for giving false testimony to its participants, for an expert to give a blatantly false conclusion, for misinterpretation, or for a witness to refuse to testify. Hence, from the point of view of reliability, the expert opinion in the arbitral tribunal and the testimony of the witness have the same evidence power as the explanations of the parties.

In addition, the arbitral tribunal, as a body without jurisdiction, has no right to compel a witness to appear in court to testify. Of course, the parties have less opportunity to gather evidence in the arbitration process than in the public trial. However, at the same time, the parties have more opportunity to change the requirements of the claim, to clarify it, for example, to change the subject and basis of the claim at the same time.

In developed countries, 80-85% of debt disputes between citizens and businesses in developed countries are considered and resolved in arbitration courts. The main purpose of the Law "On Arbitration Courts" is to regulate relations in the field of organization and activities of arbitration courts in the country.

The significance of the law is that due to the legal framework created by it, a new, unique non-governmental type of court, recognized in the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards, operates in our country.

The civil legislation of our country also has a legal basis for the activities of arbitration courts. For example, according to Article 9 of the Civil Code of the Republic of Uzbekistan, citizens and legal entities may exercise their civil rights, including the right to protection, at their own discretion. Based on this provision of the Code, the parties to the dispute have the right to decide for themselves whether to apply to a state court or an arbitral tribunal to protect their interests.

If the parties sign an arbitration agreement to refer the dispute to an arbitral tribunal, the state court shall suspend the case in accordance with Articles 100 and 152 of the Code of Civil Procedure of the Republic of Uzbekistan or refuse to accept the statement of claim. At the same time, in accordance with Part 1 of Article 10 of the Civil Code of the Republic of Uzbekistan, which deals with the judicial protection of civil rights, the protection of violated or disputed civil rights is carried out by a court, economic court or arbitration court.

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According to Article 50 of the Law on Arbitration Courts, voluntary non-enforcement of an arbitral award is subject to enforcement on the basis of a writ of execution issued by a state court. Finally, in accordance with the provisions of Article 32 of this Law, the arbitral tribunal has the right to order the application of security measures in respect of the subject matter of the dispute, and the competent state court may take compulsory measures to enforce the claim in arbitration.

These rules emphasize the legal nature of arbitration. For the parties to an arbitration agreement, the obligation to hear the case in the arbitral tribunal does not mean that they renounce their right to a fair trial or to defend their property interests through the courts.

Also, in accordance with Article 5 of the Law of the Republic of Uzbekistan "On the execution of court documents and documents of other bodies", decisions of arbitration courts, as well as decisions of foreign courts and arbitrations must be executed. In addition, in accordance with Article 7 of this law, the writs of execution issued by the courts for the enforcement of arbitration courts are among the documents that must be executed.

Thus, the priority advantages of arbitration courts are that courts are a place where disputes and disagreements between people are resolved in an enlightened and cultural way. From time immemorial, arbitration courts have been the first popular form of justice. The need for arbitration courts is growing in Uzbekistan as civil society is established, market relations are formed and entrepreneurship develops.

Arbitration courts, which rely directly and firmly on the values of tolerance and wisdom of the people, have a certain advantage over state courts. The advantages and differences of the arbitration court over the civil, administrative, criminal and economic courts, which are the state structure, are reflected in the following:

1) the arbitral tribunal shall come to an agreement voluntarily by both parties to resolve the customer's contractual disputes;

2) economic disputes shall be considered only in economic courts concerning a legal entity, and in civil courts only disputes concerning citizens;

3) arbitration courts, including disputes between legal entities, as well as disputes between citizens on loans. Whether or not there is a written receipt for the loan agreement between the citizens, the arbitral tribunal will consider the dispute and make a legal decision;

4) in arbitration courts the case is considered and resolved expeditiously (because the arbitration court provides only one instance, there are no appellate, cassation, supervisory instances like other courts. The decision of the arbitral tribunal is final, usually not appealed);

5) in these courts the main purpose is directed to the agreement of the parties and cooperation between the parties is maintained. In the first place, ways are sought to reconcile the parties, with a view to ensuring that relations between the parties do not break down so that they can continue to cooperate;

6) confidentiality of arbitration proceedings is guaranteed by law. The arbitration hearing shall be held in closed session. This ensures that there is no dispute between the parties, as well as that no specific aspects of the dispute are disclosed, trade secrets are kept;

7) only the composition of the court and the disputing parties shall participate in the arbitration court. The prosecutor is not present;

8) the parties participating in this court shall not be subject to criminal or administrative penalties;

9) the decision of the arbitral tribunal shall take effect immediately from the date of its adoption;

10) economic courts and civil courts have no right to investigate the circumstances established by the arbitration court or to reconsider the content of the decision of the arbitral tribunal.

It should be noted that the arbitral tribunal does not resolve disputes arising from administrative, family and labor legal relations. For example, disputes such as alimony, adoption, reinstatement, and divorce are not within their jurisdiction.

The principles of arbitration are in the best interests of the protection of the private rights and freedoms of citizens, the nature of the activities of business entities. In fact, the activity of arbitration courts is based on the principle that the parties, in accordance with the original content of the dispute, freely and confidently submit it to the composition of the court of their choice.

The principle of legality obliges arbitral tribunals to adhere to the general principles of judicial proceedings, based on the legislation in force and the generally accepted grounds for application. Thus, the principle of judicial independence in arbitration is more important than in courts of general jurisdiction

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because the parties themselves choose judges independently and it is clear that the judge they choose is at least interested in understanding and supporting his or her position in the dispute. The principle of independence is implemented here based on the personal characteristics of the judge.

Although some principles are not enshrined in special regulations, they must still be applied by arbitrators because they are derived from the norms of general law. For example, the principle of equality of arms before the law and the courts stems from a common constitutional basis.

Recognition of non-disclosure of information as a principle of arbitration shall give the parties the right to independently determine whether their dispute is open or closed.

The principle of non-disclosure of arbitration information is also important in terms of non-disclosure of personal and related information, and for entrepreneurs, non-disclosure of trade secrets. Accordingly, third parties, as well as journalists and members of the public, may not attend the hearing. The significance of this principle for business entities is that they do not want their problems and disputes to be in the public eye. It should also be borne in mind that this can damage their reputation among partners.

According to Article 28 of the Law on Arbitration Courts, an arbitrator shall not have the right to disclose information that became known to him during the arbitration proceedings without the consent of the parties to the arbitration proceedings or their legal successors. In addition, according to the above norm, an arbitrator may not be questioned as a witness about information that became known to him during the arbitration proceedings. This means that the law strengthens the institution of "immunity of testimony" (inviolability) to confidential information.

In each case, the parties to the dispute shall mutually agree on the application of this principle. The parties shall also make an independent decision on whether the arbitration proceedings shall be closed or open. The law does not provide for liability for violation of the principle of non-disclosure (confidentiality). However, it is hoped that the arbitrator and other persons involved in the proceedings will have a positive sense of responsibility.

Disclosure of information about the arbitration proceedings may take place only with the consent of the parties. The arbitral tribunal shall not interfere in the search for or request of evidence by any party, as this would constitute a violation of the generally accepted principle of adversarial dispute.

Arbitration courts are based on the principle of disposition. This principle is manifested in the freedom of the subjects to determine by themselves the structure of legal relations, their methods and means of judicial protection. However, this principle does not go beyond the boundaries of private-legal autonomy, so the right of the parties to behave freely in court is defined by strict limits. Each party can exercise its right in court only through this without violating the rights of other persons. The principle of dispositiveness in arbitration proceedings is manifested until a dispute over law arises. When the parties to a civil law relationship enter into an arbitration clause in the text of a contract, then, on the basis of the dispositive principle, they choose a particular arbitral tribunal to consider disputes arising between them.

Another important principle of litigation is the principle of adversariality, which is clearly reflected in arbitration. Unlike a state court, an arbitral tribunal has neither the right nor the obligation to participate in the collection of evidence or to defend the interests of the state. The principle of dispute is manifested in the fact that each of the parties presents its evidence to justify its position in the dispute. The party who presents more and better evidence in their favor will be able to resolve the case in their favor. That is, the task of proving belongs to the parties, and the court is neutral and objective.

The above analysis of the current state of arbitration and arbitration shows that while there are advantages to arbitration as an alternative dispute resolution institution, there are also some challenges in this regard.

The analysis shows that the development of alternative dispute resolution methods in a particular country, including arbitration, is also closely linked to the level of legal awareness and legal culture in that country. Another key factor influencing the development of arbitration is the economic development of the country, as well as the level of development of entrepreneurial activity.

In this regard, it is necessary to do one of the following two ways, excluding the influence on the independence and impartiality of arbitration courts and judges:

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first, to bring the activities of the Association of Arbitration Courts of Uzbekistan to a new level, to strengthen it, to ensure that all arbitration courts are members, and to coordinate and promote the activities of these courts;

the second is the creation of a new organization to coordinate the activities of all arbitration courts in the country. For example, the establishment of the Chamber of Arbitration Judges of Uzbekistan. Thus, they can be removed from the control of the Chamber of Commerce and Industry.

The introduction of a single coordinating body will facilitate, first of all, the implementation of alternative dispute resolution mechanisms, including a single tolerant (loyal) policy towards arbitration courts, as well as confirm the mandatory qualification levels for all to become arbitrators. may perform functions such as funding, performance analysis, identification and resolution of operational problems, explanation of arbitration proceedings, and advocacy.

It serves the following:

• The single body coordinating the activities of arbitration courts analyzes the work done by each arbitral tribunal during the month, based on which to develop a single strategy of arbitration activities, which is mandatory for all arbitration courts, recommends the positive experience of one arbitral tribunal to other arbitration courts;

• A mechanism for monitoring the work of arbitration courts will be established;

• Accurate information on the activities of each arbitral tribunal and judge shall be provided;

• Accurate and complete statistics on the activities of arbitration courts are generated.

For this coordinating organization to carry out its activities effectively, it is necessary to create a single electronic database on its basis and establish information exchange with all arbitration courts. In this regard, in order to improve the activities of arbitration courts, it is expedient to widely introduce modern information and communication technologies in their activities, as well as in the activities of state courts.

Based on the above, it is possible to summarize the following issues related to arbitration courts and arbitration proceedings, including:

- insufficient popularity of arbitration courts in the country and therefore the lack of attention to them by the heads and staff of government agencies, the population or the lack of desire to use the opportunities of arbitration courts;
- lack of regular practice of explaining the benefits of arbitration to business entities (almost no media coverage) and lack of advocacy among young entrepreneurs, artisans and sole proprietors;
- the websites of the arbitral tribunals do not exist or do not contain information about the arbitral tribunals or do not contain sufficient information;
- insufficient qualifications of the majority of arbitrators;
- ignorance or indifference of the population and business entities to the advantages of arbitration courts;
- in all arbitration courts there is no possibility to follow the principle of confidentiality due to the lack of a separate room for court hearings, etc.

Thus, we believe that these problems and shortcomings should be taken into account in further improving the existing legislation on the activities of arbitration courts.

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