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# ONLINE VS OFFLINE ARBITRATION IN THE FIELD OF RESOLVING COMMERCIAL DISPUTES

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**Abstract**. In the article author declared that in the digital era, the digitization of civil-law relations and institutions, among which arbitration occupies an important place as an effective way of resolving commercial disputes, is an objective process that will simplify procedures and save time and funds. Obviously, online proceedings, hearings and meetings will not replace the offline format, but they have every chance to become an even better addition to the arsenal of official communication in the field of resolving commercial disputes between foreign partners. Also it is pointed that In the context of globalization of the modern world, commercialization and convergence of legal systems, businessmen who do business in different regions of the world are looking for new more mobile and effective means to resolve disputes, which would allow not only to save time, but also to qualitatively resolve the dispute on acceptable terms for both parties. It has long been necessary to recognize that international commercial arbitration is such a means. It is this alternative means of resolving commercial disputes, which is permeated with the principle of autonomy of the will of the parties, gives broad opportunities for the parties to choose the place of arbitration, language, rights on the basis of which the dispute will be resolved, as well as the arbitrators themselves. Undoubtedly, such opportunities place arbitration in a more favorable position in relation to the state court, where the parties must be aware of the law of the forum, speak the language of the proceedings and follow the clearly procedural rules of the state of the dispute.

**Keywords:** *digitalization, arbitration, commercial disputes, online arbitration, offline arbitration.*

In the context of globalization of the modern world, commercialization and convergence of legal systems, businessmen who do business in different regions of the world are looking for new more mobile and effective means to resolve disputes, which would allow not only to save time, but also to qualitatively resolve the dispute on acceptable terms for both parties. It has long been necessary to recognize that international commercial arbitration is such a means. It is this

alternative means of resolving commercial disputes, which is permeated with the principle of autonomy of the will of the parties, gives broad opportunities for the parties to choose the place of arbitration, language, rights on the basis of which the dispute will be resolved, as well as the arbitrators themselves. Undoubtedly, such opportunities place arbitration in a more favorable position in relation to the state court, where the parties must be aware of the law of the forum, speak the language of the proceedings and follow the clearly procedural rules of the state of the dispute. However, it is impossible to put an end to the benefits of arbitration. Given the mobility and flexibility of this way of resolving a dispute, it is possible to lead to other amenities and opportunities for the parties. In particular, it is about online arbitration, which has recently enjoyed incredible popularity. One of the reasons for this situation is the intensive development of information technology, which expands people's capabilities. Also, a kind of catalyst for these events can be recognized COVID-19, which has made significant changes in commercial legal relations, forcing entrepreneurs to look for the latest atypical ways to resolve disputes, which would allow to continue cooperation and develop international trade accordingly.

Despite the tendency to increase the number of online arbitrations, this issue at the level of legal doctrine is quite unexplored. In most scientific papers on commercial arbitration (to the example of domestic scientists - B. N. Komarov, O. D. Krupchan, M. M. Malsky, I.G. Pobirchenko, Y.D. Prytyki, T.V. Slypachuk, G.A. Tsyrata, etc., and foreign - G. Blanke, K. Gilles, I. Grayson, P. Mauda, R. Meyren, P. Heitzmann, A. Fiaggio, and a number of others), are raising questions about the organization and arbitration of offline arbitration and a rather fleeting mention of the online procedure. We believe that this state of affairs is unacceptable and these issues, given their relevance, require more meticulous attention from scientists.

First of all, it should be noted that there is no definition of «online arbitration ». This definition can be formulated by clarifying the general and specific features of online arbitration.

Considering that, according to the basic parameters, offline and online arbitration are similar legal phenomena, we propose to outline the general features of arbitration.

(1) Arbitration – is a non-governmental jurisdiction body. Accordingly, it is not created by the state, but solely on the basis of the mutual consent of the parties to the dispute, which is executed in the form of an arbitration agreement.

(2) Arbitration is based on the principle of the autonomy of the will of the parties - *lex voluntatis*, starting from the stage of concluding the arbitration agreement and ending with the stage of rendering, recognition and execution of the arbitration award.

(3) The composition of the arbitration is formed by the parties themselves, as well as the place of arbitration, the language and right of the arbitration process are determined by the consent of the parties to the dispute. Arbitrators may act as amicable mediators *ex aequo et bono* on the basis of justice and goodness.

(4) The confidential nature of the arbitration process.

(5) Indisputability of arbitration decisions.

(6) The existence of a number of international treaties, agreements and conventions that determine the basic principles of recognition and enforcement of foreign arbitration awards, to which most foreign states are parties. This greatly facilitates the procedure of recognition and execution of arbitration decisions, allows to more quickly reach a logical conclusion and exhaust the conflict between the parties.

In view of such general features of the arbitration procedure for resolving commercial disputes between participants in international trade, it can be stated that this means of resolving disputes is currently the most flexible, fast, cheap and enforceable. Such advantages of arbitration make this institution of private international law quite attractive for use between businessmen. Therefore, we believe that in this direction that alternative methods of conflict resolution will be developed in the future.

Taking into account the following characteristics of arbitration, most scientists give the following definition of this concept: *arbitration* is a method of resolving disputes in which the interests of two or more parties are present, where the decision is made by one or several persons - an arbitrator or arbitrators who have received the authority to do so as a result of a private contract, and not from the state, and who must follow the procedure and make a decision on the case on the basis of such a contract.

Thus, according to Y. Prytika, arbitration should be considered as a form of private justice, which is based on a specially concluded agreement between the parties, where the arbitrator is given powers similar to those of a judge; at the same time, these powers derive from the agreement between the parties [3, p. 44-47].

Another domestic scientist V. Komarov emphasizes that arbitration is a non-state court whose source of law enforcement activity is the agreement of the parties, and not the order of the law, which excludes the jurisdiction of the state court to consider a specific case within the framework provided by the agreement [1, p. 32].

For his part, H. Born emphasizes that arbitration is a means by which a dispute is resolved by a disinterested person who is not a representative of a state body, in accordance with a voluntary agreement of the parties [4, p. 1].

If we take into account the specifics of online arbitration - consideration of a dispute online, then in fact all these definitions are suitable for its definition.

Thus, online arbitration can be defined as a non-state court, the main purpose of which is to consider and resolve an international commercial dispute on the merits online in a defined procedural form by issuing a binding decision for the parties.

The convenience of the online procedure suggests, but is it possible to abandon the offline arbitration procedure altogether? To clarify this issue, it is necessary to outline the risks that may arise when applying for online arbitration.

First, it concerns technical problems that can lead to inconvenience, violation of the regulations for the speeches of the parties' defenders, interruption of hearings, etc., which in principle is very important, as it can lead to a violation of ensuring the equality of the parties when defending their position before the arbitration panel.

Secondly, the lack of an emotional connection with the arbitration panel and other participants in the arbitration process, limitations in the use of gestures and psychological pressure from communicating with one's own computer can, to a certain extent, negate the oratorical abilities of lawyers.

Thirdly, given the existing laboratories of so-called cyber spies that intercept commercial secrets, production secrets, it will not always be possible to ensure the confidential nature of online hearings.

Fourthly, the questioning of witnesses is also a significant problem (at the same time, it should be recognized that, with normal organization, hearing a witness online can be a good way to fight the delay of the process or reduce the cost of arbitration [2]). However, there are significant advantages of online arbitration compared to the offline procedure, among which experts primarily point to speed, cheapness and convenience. It can be assumed that in the future, thanks to the even greater development of information technologies, and for this humanity already has all the opportunities and resources, merchants will more often use the possibilities of online procedures.

So, on the basis of the above, we can conclude that in the digital era, the digitization of civil-law relations and institutions, among which arbitration occupies an important place as an effective way of resolving commercial disputes, is an objective process that will simplify procedures and save time and funds. Obviously, online proceedings, hearings and meetings will not replace the offline format, but they have every chance to become an even better addition to the arsenal of official communication in the field of resolving commercial disputes between foreign partners.

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