

WAYS OF IMPROVING ARBITRATION COURTS IN UZBEKISTAN

Abdumurad Abdusaidovich Khakberdiev

Tashkent State Law University

philosophy of law doctor (PhD),

associate professor

Email : m.hakberdiev@mail.ru

Annotation: *That today in Uzbekistan there are various problems in the consideration of cases on civil and economic disputes in the formation of prospects for improving arbitration courts as one of the methods of alternative dispute resolution. This article explores the issue of prospects for improving arbitration courts in resolving disputes in an alternative manner.*

Key words: *arbitration court, decision, writ of execution, judge, law, code.*

Аннотация: *Бугунги кунда Ўзбекистонда низоларни муқобил тартибда ҳал қилиш усулларидан бири сифатида ҳакамлик судларининг фаолиятларини такомиллаштириш давомида фуқаролик ва иқтисодий низолар бўйича бир қанча ишлар кўриб чиқилишида турли муаммолар учраб турибди. Мазкур мақолада низоларни муқобил тартибда ҳал қилишда ҳакамлик судларини такомиллаштириш йўллари кўриб чиқилади.*

Калит сўзлар: *ҳакамлик суди, арбитраж суди, ҳал қилув қарор, ижро варақаси, судья, қонун, кодекс.*

Аннотация: *На сегодняшний день в Узбекистане встречаются различные проблемы в рассмотрении дел по гражданско-экономическим спорам при формировании перспективы по совершенствованию третейских судов как одного из способов альтернативного разрешения споров. В данной статье исследуется вопрос о перспективах по совершенствованию третейских судов при разрешении споров в альтернативном порядке.*

Ключевые слова: *третейский суд, арбитражные суд, решение, исполнительный лист, судья, закон, кодекс.*

In the Republic of Uzbekistan, systematic work is being carried out in the field of ensuring the rule of law, improving the investment environment, effectively regulating foreign trade, developing alternative mechanisms for resolving economic and civil disputes, and guaranteeing the rights of subjects. At the same time, based on the 15th goal of the new Development Strategy put forward by the President of the Republic of Uzbekistan Sh.M. Mirziyoev, creating the necessary organizational

and legal conditions for the wide use of alternative methods of conflict resolution, further expanding the scope of the institution of conciliation, establishing arbitration courts turning it into an effective alternative institution for resolving disputes that will gain the trust of citizens and entrepreneurs, and further improving the practice of law enforcement in this direction is of urgent importance¹⁰.

In particular, in Uzbekistan, the Law "On Arbitration Courts" (2006), "On Mediation" (2018), "On International Commercial Arbitration" (2021), the President of the Republic of Uzbekistan "A measure to further improve the mechanisms of attracting foreign direct investment to the economy of the Republic -measures (2019), Resolutions (2020) on measures to further improve the mechanisms of alternative conflict resolution and **Decree (2022) on the new development strategy of Uzbekistan for 2022-2026** It is not an exaggeration to say that systematic work is being carried out in the field of effective regulation of foreign trade activities, development of alternative mechanisms for solving economic and civil disputes, and guaranteeing the rights of subjects in order to improve the direct investment environment.

The following types of alternative dispute resolution apply in the Republic of Uzbekistan:

- ☞ arbitration proceedings;
- ☞ arbitration;
- ☞ mediation;
- ☞ negotiations;
- ☞ settlement agreement.

During the settlement of disputes arising from civil and economic legal relations by arbitration courts, it is important to resolve the rights of citizens in the way they want, deepen market relations and develop entrepreneurship in our country¹¹. The decree of the President of the Republic of Uzbekistan dated October 5, 2016 "On additional measures to ensure the rapid development of business activity, comprehensive protection of private property and qualitative improvement of the business environment" was one of the important steps taken in this direction.

Of the adoption of the Law of the Republic of Uzbekistan "On Judicial Courts" **in 2006 and its** entry into force on January 1, 2007 , a new phase of judicial reform along with the competent court It started slowly . A new special non-state type of judicial activity recognized by more than 120 countries of the world that signed the 1958 New York **Convention "On** the Recognition and Enforcement of Foreign

¹⁰ Štefánik L., Khakberdiev A., Davronov D. CLASSIFICATION AND TYPES OF ARBITRATION COURTS // Norwegian Journal of Development of the International Science. - 2022. - no . 79-2. - S. 19-25.

¹¹ Yu P., Khakberdiev A. ABOUT PSYCHOLOGICAL FEATURES CONDUCTING AN INTERROGATION //Norwegian Journal of Development of the International Science. - 2021. - no . 60-3. - S. 6-9.

Arbitration Decisions " , including our Republic, which joined in 1995 if we say that it started to show, it is the same defense¹².

In many foreign countries, disputes are heard in several large arbitration centers. In particular, there are the largest arbitrations in Great Britain: London Court of International Arbitration (LCIA), London Maritime Arbitrators Association (LMAA), International Grain and Feed Trade Association (GAFTA) and more than 40 professional organizations and chambers¹³.

Three main arbitration centers can be distinguished in France. These include the International Court of Arbitration at the International Chamber of Commerce in Paris (founded in 1923), the Center for Arbitration and Mediation in Paris, and the French Arbitration Association.

In Singapore: Singapore International Arbitration Center (SIAC) and Singapore Maritime Arbitration Chamber (SIAC). Other world-class dispute resolution institutions located in Singapore include Asia's first Permanent Court of Arbitration, the Singapore International Center for Dispute Resolution and the Dispute Resolution Services Center of the Singapore International Chamber of Commerce¹⁴. Arbitration in Japan is not very developed. The largest arbitration court is the Association of Arbitration Courts under the Japan Chamber of Commerce and Industry¹⁵.

However, China has established more than 200 arbitration commissions, which is related to the population and the development of the country's economy. The largest of them is the Chinese International Economic and Commercial Arbitration Commission (CIETAC) - in 2016, its divisions were established in 9 regions¹⁶. Also, there are more than 100 arbitration courts in Brazil, and more than 35 in India.

It should be noted here that more than 130 arbitration courts were established in the Slovak Republic from 2002 to 2016. However, among these courts in the Slovak Republic, there has been an increase in "pocket" courts, their catchy names, low-quality decisions, violation of the rights of the parties, and other situations. As a result, there was a negative attitude among entrepreneurs and citizens towards arbitration courts in the Slovak Republic. Then the legal system introduced in this country was not adapted to the arbitration court. These cases have damaged the reputation of the arbitral tribunal due to legal deficiencies that should be corrected in

¹² Ibratova FB et al. Legal Issues of Observation-Bankruptcy Procedures Applicable by the Economic Court of Uzbekistan //J. Advanced Res. L. & Econ. - 2019. - T. 10. - P. 187.

¹³ Veeder , VV & Diwan _ RH (2015). National Report for England and Wales. ICCA International - al Handbook on Commercial Arbitration. Kluwer Law International , 1984. Supplement no 87. December, p. 7 ; Caryl nairn " National Report for England and Wales (2019 through 2020) " Kluwer Law International. 2021. p . 5.

¹⁴ SIAC Annual Report 2017. Available at: http://www.siac.org.sg/images/stories/articles/annual_report/SIAC_Annual_Report_2017_.Pdf / (accessed: 16 April, 2018) ; <https://docplayer.com/26129301-Singapore-aziatskiy-lider-v-razreshenii-sporov.html>

¹⁵ Tezuka , H. & Kawabata, Yu. (2018). What types of disputes are typically arbitrated? In: Japan Arbitration Guide. IBA Arbitration Committee.

¹⁶ <http://cietac.org/index.php?m=Page&a=index&id=40&l=en>

the future¹⁷. According to Article 12 of the Law of the Slovak Republic "On Arbitration Courts" in 2016, the Slovak Olympic Committee, the National Sports Association and the chamber established by law (for example, the Slovak Bar Association or the Slovak Chamber of Commerce) can establish permanent arbitration courts was set¹⁸.

According to the January 2022 registry of the Ministry of Justice of the Republic of Uzbekistan, a total of more than 255 permanent arbitration courts are registered in Uzbekistan, including 160 under the Association of Arbitration Courts of Uzbekistan, more than 15 under the Chamber of Commerce and Industry of Uzbekistan and other names. More than 80 permanent arbitration courts and a total of about 1,200 arbitration court judges are registered. Based on foreign experience, we would be mistaken if we say that "pocket" courts, their catchy names, low-quality decisions, violations of the rights of the parties, criminal behavior and other situations do not occur among the existing arbitration courts in our country.

In particular, the features of the execution of the decision of the Arbitration Court, according to the first part of Article 49 of the Law of the Republic of Uzbekistan "On Arbitration Courts", the decision must be voluntarily executed in the manner and within the time limits specified in the decision of the Arbitration Court. The content of this norm has an important semantic meaning in understanding the execution of the decision of the arbitration court. First of all, the binding nature of the decision applies only to the parties to the dispute, and the legal force of the decision cannot be determined by its general bindingness. Secondly, the obligation to voluntarily enforce the decision is not a consequence of the dispute being resolved by an arbitration court, but a consequence of the existence of an agreement between the parties to choose an arbitration court as a form of protection (a contractual term that is part of an arbitration agreement or contract).

Article 357 of the Civil Procedural Code of the Republic of Uzbekistan and Article 231 of the Economic Procedural Code specify the grounds for refusing to issue a writ of execution for the compulsory execution of a judge's decision. All these rules of the law do not cast doubt on the jurisdictional nature of the arbitral proceedings, because the law and in the event that the parties voluntarily reject the state court and turn to the appropriate arbitration court to resolve their property dispute, it is doubtful that the arbitration court will actually conduct a fair trial to the extent of their desire does not take. The obligation of the parties to the arbitration agreement to try the case in an arbitration court does not mean that they are denied a

¹⁷ Mauro Rubino-Sammartano . International Arbitration Law and Practice - Third Edition . London. 2014. pp. 324-335.

¹⁸<https://www.international-arbitration-attorney.com/ru/arbitration-in-slovakia/>

fair trial or that they give up their constitutional right ¹⁹to protect their property interests through the court.

In particular, if we look at foreign countries, in particular, according to Article 60 of Indonesia's Alternative Dispute Resolution Law of 1999, the decision of the arbitral tribunal shall have final and permanent legal force, which shall be effective immediately and binding on the parties²⁰. Article 49, Part 3 of the Law of the Slovak Republic "On Arbitration Courts" provides for the possibility of recognition of the decision of the arbitration court without mandatory execution. In appropriate cases, there is no need to apply for the enforcement of such a decision. It is established that it is sufficient to submit a separate application for recognition of the decision of the arbitration court²¹.

In the current legislation, the practice of arbitration courts and legal literature, the optionality of the execution of the decision of the arbitration court, in turn, the obligation or the beginning of other stages is considered a necessary condition. Therefore, the decision of the arbitral tribunal should be referred to as a mandatory enforcement step or principle of arbitration. The voluntary implementation of the arbitral award as a stage of arbitration is overshadowed by the mandatory stage of enforcement, and belongs to the category of less discussed and almost unstudied topics of the civil law process. As an example of this, in paragraph 18 of the Resolution No. 238 of the Plenum of the Supreme Economic Court of the Republic of Uzbekistan on June 16, 2012, "it should be explained to the courts that the decision of the arbitration court is executed voluntarily in the manner and within the time limits specified in this decision." If the execution period is not set in the decision, it should be executed immediately²².

In any case, the sign of the voluntary execution of the decision of the arbitration court is stated in the regulations of the permanent arbitration court of Tashkent city that "at any stage of the arbitration proceedings, as well as at the stage of voluntary execution of the decision of the arbitration court, an agreement can be concluded by the parties." At the same time, only one type of dispute in the domestic documents of the arbitration courts may not be enough to make sure that the text "voluntary enforcement of the arbitration decision is the final stage of the arbitration (arbitration)" is very reasonable. This aspect is important in determining the causal relationship between the legal, effective protection of the rights violated in the

¹⁹ Abdusaidovich HA, Bakhodirovna KA An analysis of investigation related to the ethics of robberies, thefts on motor vehicles in Uzbekistan // Asian Journal of Multidimensional Research (AJMR). - 2020. - T. 9. – no. 4. - S. 265-271.

²⁰ Indonesian Law No. 30 Year 1999 regarding Arbitration and Alternative Dispute Resolution.

²¹ Mičinský, E., Olík, M. New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards – Commentary [in the Slovak language], Wolters Kluwer, Bratislava, 2016.

²² 2012 йил 16 июндаги Ўзбекистон Республикаси Олий ҳўжалик суди пленумининг 238-сонли қарори. <https://lex.uz/docs/2483046>

arbitration process and the voluntary implementation of the arbitration court's decision. In fact, the voluntary enforcement of the arbitral award is the main starting point of arbitration (arbitration proceedings), and in fact serves as one of its main principles.

Today, as a result of the daily increase in the number of civil and economic disputes, the issue of enforcement of the decisions taken by the parties on the disputes considered in the arbitration courts by applying to the competent courts by paying an additional separate state duty or by applying to the competent court again has led to mistrust and confusion in the arbitration courts. It is not a secret to anyone that it is coming.

According to the statistics of the Supreme Court of the Republic of Uzbekistan from 2020 to the first half of 2022, 74 cases where decisions of arbitration courts were annulled by competent courts were returned, and the number of cases on issuing writs of execution for compulsory execution of decisions of arbitration courts was returned. It was 2,715. It would not be an exaggeration to say that the reason for such a big difference is the sentence "must be executed immediately" in the second paragraph of Article 49 of the Law "On Arbitration Courts" .

In practice, the chairman of the permanent arbitration courts or the individual judge or the judge who presides over disputes in the arbitration hearing in a collegial manner must have a higher legal education. Because among the judges of the arbitration court there are also judges with knowledge in various fields. Based on the noted theoretical, practical and statistical data, it should be noted that today we put forward the following proposal regarding the issue of focusing on the execution of the decisions of the arbitration court:

☝ to give the authority to issue a writ of execution for compulsory execution of decisions of arbitration courts to the chairman of the arbitration court permanently operating in the territories.

We consider it appropriate to issue the writ of execution to the chairman of the permanent arbitration court. Although it should be executed voluntarily by the parties, the implementation of the mechanism by which a writ of execution can be issued by the chairman of the permanently operating arbitration court in the territories due to the non-execution of the obligations specified in it in the appropriate manner and within the time limit will serve to reduce the workload of the courts.

REFERENCES:

1. Štefánik L., Khakberdiev A., Davronov D. CLASSIFICATION AND TYPES OF ARBITRATION COURTS // Norwegian Journal of Development of the International Science. – 2022. – no. 79-2. - S. 19-25.

2. Yu P., Khakberdiev A. ABOUT PSYCHOLOGICAL FEATURES CONDUCTING AN INTERROGATION //Norwegian Journal of Development of the International Science. – 2021. – no. 60-3. – S. 6-9.
3. Ibratova FB et al. Legal Issues of Observation-Bankruptcy Procedures Applicable by the Economic Court of Uzbekistan //J. Advanced Res. L. & Econ. - 2019. - T. 10. – S. 187.
4. Veeder, V.V. & Diwan, R.H. (2015). National Report for England and Wales. ICCA International- al Handbook on Commercial Arbitration. Kluwer Law International, 1984. Supplement no 87. December, p. 7; Karyl nairn “National Report for England and Wales (2019 through 2020)” Kluwer Law International. 2021. p. 5.
5. SIAC Annual Report 2017. Available at: [http://www.siac.org.sg/images/stories/articles/annual_report/ SIAC Annual Report 2017. Pdf](http://www.siac.org.sg/images/stories/articles/annual_report/SIAC_Annual_Report_2017.Pdf) / (accessed: 16 April, 2018); <https://docplayer.com/26129301-Singapur-aziatiskiy-lider-v-razreshenii-sporov.html>
6. Tezuka, H. & Kawabata, Yu. (2018). What types of disputes are typically arbitrated? In: Japan Arbitration Guide. IBA Arbitration Committee.
7. <http://cietac.org/index.php?m=Page&a=index&id=40&l=en>
8. Mauro Rubino-Sammartano. International Arbitration Law and Practice - Third Edition. London. 2014. pp. 324-335.
9. <https://www.international-arbitration-attorney.com/ru/arbitration-in-slovakia/>
10. Abdusaidovich H. A., Bakhodirovna K. A. An analysis of investigation related to the ethicalities of robberies, thefts on motors vehicles in Uzbekistann //Asian Journal of Multidimensional Research (AJMR). – 2020. – T. 9. – №. 4. – С. 265-271.
11. Indonesian Law No.30 Year 1999 regarding Arbitration and Alternative Disputes Resolution.
12. Mičinský, L., Olík, M. New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards – Commentary [in the Slovak language], Wolters Kluwer, Bratislava, 2016.
13. 2012 йил 16 июндаги Ўзбекистон Республикаси Олий ҳўжалик суди пленумининг 238-сонли қарори. <https://lex.uz/docs/2483046>