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### APPLYING ONLINE DISPUTE RESOLUTION MECHANISMS IN RESOLVING ECONOMIC DISPUTES

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#### ABSTRACT

This article analyzes the online mechanisms of alternative dispute resolution methods for various economic disputes between entrepreneurs, specifically the use of online mediation and arbitration. It examines the origins and systems of these approaches, as well as their distinctive features. The emergence of online mediation and its differences from traditional mediation are discussed, along with the characteristics of online arbitration. The article also provides a systematic analysis of the specific advantages and disadvantages of online mediation and arbitration institutions.

**Keywords:** online mediation, online arbitration, alternative dispute resolution, online dispute resolution.

#### INTRODUCTION

In today's world, digital technologies are penetrating various fields and exerting their influence. Particularly, the events of the last five years, namely the COVID-19 pandemic, have led to various restrictions on human activities. During this period, many people were forced to work remotely. In this situation, modern technologies undoubtedly provided assistance to them. As a result, new systems have emerged in the field of jurisprudence, such as online dispute resolution mechanisms.

During the pandemic, various international arbitration institutions, mediation centers, and law firms began transitioning their operations to digital systems, specifically remote dispute resolution systems, to prevent the suspension of their services. This process involved the adoption of resources such as video conferencing, electronic document submission, and tools that facilitate virtual hearings for parties and streamline other types of proceedings. This system has opened up new opportunities for more efficient and cost-effective dispute resolution.

The basic rules of the online dispute resolution procedure can be seen in the regulation approved by the regulation of the European Parliament and Council No. 524/2013 "Online dispute resolution in consumer disputes" dated May 21, 2013. Through this provision, we can see the legal framework for how online mediation and arbitration processes are conducted.

#### METHODS

In the process of developing this article, methods of logical reasoning, consistency, and objectivity in scientific inquiry were extensively employed. This article examines the evolution and distinctive features of online mediation and arbitration institutions. The origins, development, advantages, and disadvantages of online mediation and arbitration institutions have been thoroughly analyzed.

The methodological basis for this study is derived from Directive No. 52 of the European Parliament and Council dated May 21, 2008, concerning the application of mediation in civil and commercial matters, and on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR)

## THE MULTIDISCIPLINARY JOURNAL OF SCIENCE AND TECHNOLOGY

### VOLUME-5, ISSUE-1

The research extensively utilized the scientific works and experiences of domestic legal scholars I. Rustambekov and M. Bakhrmovna, as well as foreign legal scholars N. Alexander, D.D. Noce, S. Hattotuva, M.C. Tyler, L.J. Gibbons, Amy Holtzworth-Munroe, Amy G. Applegate, Connie J. Beck, Jeannie M. Adams, Darrell F. Hale, Noam Ebner, Joseph W. Goodman, and Andrea M. Braeutigam, who have conducted various studies on alternative dispute resolution processes.

#### **RESULTS**

This article analyzes the following:

- Distinctive features of online mediation and arbitration institutions;
- Advantages and existing shortcomings of online mediation and arbitration

#### **DISTINCTIVE FEATURES OF ONLINE MEDIATION AND ARBITRATION INSTITUTIONS**

Today, we can employ two different methods to resolve various disputes: national courts and alternative dispute resolution methods, which are considered pre-trial systems. As a result of the development of modern technologies, alternative dispute resolution (ADR) has evolved to include online dispute resolution (ODR), which is becoming increasingly widespread. While online dispute resolution (ODR) primarily involves addressing e-commerce and other Internet-related disputes, it now also encompasses mediation and arbitration processes. In other words, there are online forms of both mediation and arbitration available. Let us first examine online mediation.

Online mediation, in particular, involves the use of traditional mediation techniques in an online environment. In the online mediation process, all procedures typically used in traditional mediation are conducted remotely. These processes are carried out through modern technological tools and directly via the Internet network.

While face-to-face meetings are crucial in traditional mediation, online mediation conducts sessions in virtual reality, where the disputing parties and the mediator do not actually meet in person. This means that people from various parts of the world can utilize online mediation to resolve disputes through secure encrypted email, secure chat rooms, or in some cases, via videoconferencing. Parties wishing to use online mediation require a computer with internet connectivity. The mediation system and associated files are hosted on a server accessible only to authorized individuals. The system is typically provided by a mediator or, more commonly, by a mediation organization.

The online mediation process does not differ significantly from the traditional mediation process. However, in online mediation, alternative forms of communication are used instead of the traditional face-to-face procedure. The first step in the online mediation process is submitting the dispute to the website of an online mediator or mediation organization. The next stage is carried out by the mediation organization. The organization contacts the parties to determine if they are willing to participate in the online mediation procedures. If the mediating organization confirms that the parties are ready to participate in online mediation, the mediator is either selected by the parties or appointed by the organization. Both parties must be aware of the mediation rules, which is typically achieved through a link provided on the relevant website. The mediator introduces themselves and explains the process to the parties. In some cases, a mediation agreement is signed indicating the parties' intention to resolve their issues through mediation.

The process of remote mediation can be divided into two types. First, the parties and the mediator can conduct the process in real-time through various electronic means, directly viewing or hearing it remotely. This process can be called online mediation. The second is electronic mediation, in which the parties only exchange documents presenting their positions on the dispute. In this process, the

## THE MULTIDISCIPLINARY JOURNAL OF SCIENCE AND TECHNOLOGY

### VOLUME-5, ISSUE-1

parties do not use video or audio technology, but only tools that are convenient for document exchange. The mediator reviews their documents and proposes alternative solutions. Additionally, in electronic mediation, the parties' documents can be analyzed through various artificial intelligence systems, which can provide alternative solutions. The main difference between these types is that in online mediation, the parties and the mediator conduct negotiations simultaneously despite being in different locations. In electronic mediation, the parties primarily communicate their positions in writing to the mediator and to each other. In this process, the parties can familiarize themselves with the dispute at any time, study the positions of the mediator and the opposing party, and express their opinions.

Now, based on the analysis provided above, the differences between traditional mediation and online mediation are briefly summarized in the following table.

Traditional mediation	Online mediation
Live meetings between the parties and the mediator are conducted at designated locations	Meetings between the parties and the mediator can be conducted remotely
In traditional mediation, large-scale conflicts and those arising through more conventional methods are considered	Online mediation is more commonly applied to small-scale disputes and conflicts arising from online transactions
Traditional mediation is more commonly applied in cases where the parties are citizens of the same state	In online mediation, the parties are often considered representatives of different states
The mediator tends to use a more colloquial speaking style	Mediator to use more written negotiation style
The high costs associated with mediation	Low costs associated with mediation
Involvement of human emotions in addition to conflict-related facts	The lack of face-to-face contact in the conflict resolution process
Solutions related to conflicts are increasingly being developed by people	On online dispute resolution platforms, initial solutions for minor disputes are automatically generated by artificial intelligence systems

Now, let's turn our attention to the analysis of the online arbitration institution. Online arbitration is similar to online mediation, as we examined earlier. Both involve conducting traditional ADR remotely in an online environment. Therefore, let's first address the arbitration system.

Arbitration is a process in which a neutral third party (arbitrator) makes a final and binding decision for both parties. As it replaces a court decision, it can be described as a quasi-judicial procedure. In arbitration proceedings, the parties can usually choose the arbitrator and the applicable law for resolving the dispute. Furthermore, arbitration is considered closer to court proceedings than other types of alternative dispute resolution (ADR). However, this system is less formal than a court procedure. Arbitration is primarily a dispute resolution system for addressing economic disputes. Once arbitration proceedings have begun, the parties cannot withdraw from them. Another feature of arbitration is that the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ensures the enforcement of arbitral decisions. Moreover, enforcing arbitral awards is often easier than enforcing foreign national court decisions.

## THE MULTIDISCIPLINARY JOURNAL OF SCIENCE AND TECHNOLOGY

### VOLUME-5, ISSUE-1

Online arbitration is considered the least frequently used type of ODR (Online Dispute Resolution) method for resolving consumer disputes, especially at the international level. This is because it is difficult to secure the consent of the other party for online arbitration after a dispute has arisen. Currently, arbitration processes are not fully adapted to online systems. The consideration of relatively large economic disputes in arbitration and their potential to be prolonged make it impractical to conduct the entire process online. However, despite these limitations, ODR electronic platforms can be used to submit applications for arbitration online, accept them, and conduct small hearings on certain disputes.

Furthermore, one of the main obstacles to conducting arbitration proceedings entirely online is the enforcement of issued decisions. Decisions rendered in traditional arbitration proceedings can be enforced without difficulty through the New York Convention. However, if arbitration is conducted fully online and its decision is made online, certain obstacles arise in ensuring its enforcement. This is because, as we mentioned above, the New York Convention stipulates that only the decisions of traditional arbitrations are enforceable. In other words, at the time this convention was adopted, the ODR system did not yet exist. For arbitration processes to be conducted entirely online, it will be necessary to make appropriate amendments to the New York Convention to enable the enforcement of decisions made through this system. Additionally, a separate convention or international legal norm should be developed to regulate the online arbitration system.

#### **DISTINCTIVE ADVANTAGES AND DISADVANTAGES OF ONLINE MEDIATION AND ARBITRATION**

Resolving disputes through online mediation and arbitration has several distinct advantages and disadvantages. We will analyze these as follows:

##### **Advantages:**

- Firstly, online mediation and arbitration offer convenience in conducting dispute resolution processes. Entities participating as parties in arising disputes are not required to leave their respective territories. This is because disputes are resolved through various online mediation and arbitration system procedures. These procedures are facilitated by various technological tools. Through these tools, parties can submit their claims and objections to mediation and arbitration centers. Each submitted message is received through mediation and arbitration providers, upon which mediators and arbitrators can provide their conclusions.
- Secondly, this results in saving time and unnecessary expenses. This is because resolving disputes through online systems does not require traveling from one place to another. Consequently, this leads to saving extra time and resources for the involved parties.
- Thirdly, the prevention of jurisdictional issues. If a dispute between parties is considered within the national judicial system, in most cases, attention is primarily given to the legislation of that state when resolving the dispute. However, resolving disputes through ODR systems can potentially eliminate these jurisdictional problems.
- Fourthly, it is a convenient system for people with physical disabilities. Although traditional mediation and arbitration processes create conditions and opportunities for people with physical disabilities, traveling to the locations where dispute resolution processes are held can be challenging for them. However, in online mediation and arbitration systems, there are no such difficulties.

##### **Disadvantages:**

- Firstly, the lack of human emotions (loss of face-to-face contact). We know that in both mediation and arbitration processes, parties seek solutions to problems through direct, in-person confrontation.

## THE MULTIDISCIPLINARY JOURNAL OF SCIENCE AND TECHNOLOGY

### VOLUME-5, ISSUE-1

This increases their chances of understanding each other and making concessions in resolving disputes. However, if these processes are conducted remotely through technological means, the parties' ability to utilize such approaches becomes somewhat limited.

- Secondly, limitations on the use of the Internet and other electronic means when accessing the online environment.

- Third, deficiencies in privacy and security. This problem is rarely encountered in traditional dispute resolution processes. However, in the process of resolving disputes online, it is difficult to adhere to the privacy policy for documents and other evidence pertaining to the parties. This is because ensuring information security in the online environment remains one of the problematic issues today.

- Fourth, difficulties in verifying identity.

### CONCLUSION

In general, the application of digital technologies in the legal field presents a significant opportunity for further development of this system and achieving new advancements. Consequently, digital advocacy and online dispute resolution are among the emerging areas of jurisprudence today. In particular, online mediation and arbitration institutions have their own distinct advantages as well as certain limitations mentioned above. Overall, the widespread implementation of online mediation and arbitration in practice is leading to fast, high-quality, and convenient resolution of disputes.

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