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Arbitration of commercial disputes in the Republic of Kazakhstan and Europe: Issues of theory and practice

Zhazira Saparbekova*

Al-Farabi Kazakh National University
050040, 71 Al-Farabi Ave., Almaty, Republic of Kazakhstan

Aiman Omarova

Narkhoz University
050035, 55 Dzhandosova Str., Almaty, Republic of Kazakhstan

Serikkali Tynybekov

Al-Farabi Kazakh National University
050040, 71 Al-Farabi Ave., Almaty, Republic of Kazakhstan

Ainur Kussainova

Narkhoz University
050035, 55 Dzhandosova Str., Almaty, Republic of Kazakhstan

Dauletbay Ryskaliyev

Al-Farabi Kazakh National University
050040, 71 Al-Farabi Ave., Almaty, Republic of Kazakhstan

Abstract

Relevance. The relevance of the study is due to the need to resolve problems related to the alternative settlement of economic disputes in Kazakhstan.

Purpose. The purpose of the study is to conduct a detailed analysis of the activities of the institute of arbitration in accordance with the current legislation.

Methodology. Among the methods used, it is worth noting logical analysis, functional analysis, dogmatic, legal hermeneutics, deduction, induction, and others.

Results. The study revealed that this legal institute provides an opportunity for subjects of commercial legal relations to control dispute resolution independently; it also has a number of advantages in comparison with state judicial instances. The main organisations that implement arbitration proceedings in Kazakhstan were considered. The regulatory framework that governs arbitration in the Republic was also examined. It was noted that the main problematic aspects of the functioning of the institute of arbitration in Kazakhstan are related to the delimitation of competence, cancellation of the arbitration agreement, securing a claim, recognition and enforcement of the arbitration agreement. A comparative legal analysis of commercial dispute arbitration in Kazakhstan and Europe was conducted. In particular, the experience of such countries as Great Britain, France, Germany, Poland, Switzerland, Sweden, and others was investigated.

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*Corresponding author



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Conclusions. The practical value of the results obtained consists in providing recommendations that will improve the effectiveness of one of the most important legal institutes, increase the level of trust and credibility of arbitration in Kazakhstan before foreign persons, and provide a more guaranteed mechanism for ensuring the right of subjects to choose a method of resolving a commercial dispute.

Keywords: alternative dispute resolution; International Chamber of Commerce; experience of foreign countries; legislation; investments.

Introduction

Globalisation inevitably affects all spheres of public life, including the emergence of new types of commercial relations. In this regard, the right, its creation and protection are gradually moving away from the exclusive competence of the state. For the subjects of commercial legal relations to have guarantees for the protection of their rights, and to be given the opportunity to resolve disputes out of court, alternative dispute resolution methods in the law enforcement practice of the Republic of Kazakhstan (RK) have become of particular importance. One of the most effective is arbitration, which is a means of dispute resolution agreed upon by the parties for its referral to one or more arbitrators with the aim of reaching a binding decision. Modern realities demonstrate the greatest effectiveness of arbitration proceedings in relation to the resolution of disputes of a foreign economic and foreign trade nature in comparison with national judicial instances. Nevertheless, at this stage, there are some problematic aspects in the functioning of this legal institute, in connection with which there is a need for a more detailed analysis of law enforcement practice and legislative regulation of arbitration proceedings.

According to B. Zeller & L. Trakman [1], currently, commercial arbitration is in high demand as it provides a neutral forum for dispute resolution from both procedural and political perspectives. Arbitration is considered a universal method of resolving international economic conflicts. In particular, in European countries, arbitration is one of the most popular and highly effective procedures. According to B. Aisautov [2], its role has become even more substantial during the development of international trade. However, in Kazakhstan, this legal institution is still going through a process of development due to the presence of certain problematic aspects that reduce the effectiveness and corresponding effectiveness of arbitration activities in the country.

As per D. Batyrbekova [3], every country has a vested interest in the advancement of arbitration, as it offers a multitude of benefits that are thoroughly elucidated in the literature on arbitration proceedings and substantiated through the legal practices of numerous nations. One of the widely recognised advantages of a developed arbitration system is the reduction in the burden on state courts, along with more flexible procedures that facilitate swift conflict resolution. This is of paramount importance for commercial transactions. Kazakhstan's policy in the development of this legal institute is characterised by a fairly high level of effectiveness, which is supported by the establishment and development of a number of arbitration centres.

A. Karipova *et al.* [4] note that the popularity of commercial arbitration is due to the range of features provided to the parties to foreign economic transactions with this method of dispute resolution and settlement.

Thus, the main advantage of commercial arbitration is the possibility of more active participation of the parties in the proceedings. The parties have the right to appoint arbitrators, referring the dispute to the most competent persons in this field. In addition, the national legislation governing arbitration has a dispositive nature, which allows the parties to replace the rules of the proceedings with their own. This allows shows that national legislation provides an opportunity to guarantee and implement one of the most important components of the arbitration procedure. According to M. Suleimenov & A. Duisenova [5], due to its objectivity, speed, and cost-effectiveness of dispute resolution, commercial arbitration is becoming increasingly popular among participants in international trade turnover in Kazakhstan.

Thus, Kazakhstan should be directly interested in ensuring that the domestic legal system has a high level of effectiveness and the development of a commercial dispute arbitration system. This is due to the fact that this will provide an opportunity to use the range of advantages provided by the socio-economic plan system based on the recognition and guarantee of human rights, which is manifested in the choice of means and method of dispute resolution. Thus, the purpose of the study is to conduct a detailed analysis of the legislative regulation of this legal institute and consider the experience of foreign countries to highlight recommendations for improving the effectiveness of arbitration.

Materials and Methods

This study was conducted using various types of analysis methods. Thus, functional analysis disclosed the concept of arbitration, identifying its role and legal nature in resolving commercial disputes. The logical analysis provided an opportunity to highlight the characteristic features of arbitration proceedings, its inherent elements and principles. Furthermore, this method allowed analysing and classifying various factors that influence the adoption of arbitration decisions, and which factors are the most critical for making the right decision in a particular case. In particular, it made it possible to examine the principles of *lex mercatoria* and *ad hoc* in the arbitration of commercial disputes.

The method of legal hermeneutics was employed to investigate the normative legal framework of Kazakhstan and international acts. This provided an opportunity to analyse the regulations that are governed by Decree of the President of the Republic of Kazakhstan No. 2485 "On the access of the Republic of Kazakhstan to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitration Awards" [6], Law of the Republic of Kazakhstan No. 488-V. "On Arbitration" [7], Law of the Republic of Kazakhstan No. 23 "About international arbitration" [8], Law of the Republic of Kazakhstan No. 22 "About arbitration courts" [9], Civil Code of the Republic

of Kazakhstan [10], Law of the Republic of Kazakhstan No. 438-V “On the International Financial Center “Astana”” [11], and investigate Decisions and rules of the AIFC [12], the Legal base [13], and the UNCITRAL Arbitration Rules [14]. The dogmatic approach highlighted the features of these regulations and their role in arbitration proceedings. In turn, the formal legal method was used to conduct a detailed analysis of the norms regulated by these acts to identify conflicts and problematic aspects. The statistical method enabled the assessment of the number of decisions and rulings issued within the activities of arbitration at the International Financial Center “Astana”.

Comparative legal analysis was used to observe the experience of arbitration in European countries and Kazakhstan. In particular, the experience of such states as Great Britain, Germany, France, Poland, Sweden, Finland, and others was considered. The method of abstraction provided the opportunity to focus on a specific aspect of the study, which is the identification of similarities and differences in the legal practice of Kazakhstan and European countries in implementing commercial arbitration for dispute resolution. The deduction method helped to characterise arbitration based on its inherent features and principles of operation. In turn, the induction method was based on identifying the legal nature of this institute and its elements to provide characteristics of arbitration. The synthesis method allowed identifying ways to improve the effectiveness of arbitration in Kazakhstan.

As a result of employing the methods of functional and logical analysis, deduction, and induction, it was possible to provide a characterisation of the arbitration institute, explore its role in resolving commercial disputes, and identify a range of features and principles. The doctrinal, formal-legal, and legal hermeneutics methods allowed for the examination of the legislative framework of Kazakhstan in this context. Comparative legal analysis was used to examine the activities of arbitration in a number of European states and identify similarities and differences with the law enforcement practice of Kazakhstan.

Results

Increasing the investment attractiveness of various industries and elements of the economic system is the goal of any developing state, including Kazakhstan. Notably, for each subject of investment activity, issues of ensuring their rights and fair resolution of possible disputes are quite important. In this regard, the activity of arbitration courts and the corresponding consideration of conflicts is very relevant. Kazakhstan has become a full participant in the international system for recognising arbitrations as a result of signing the New York Convention [6]. Furthermore, the Law on Arbitration was adopted, the provisions of which regulate that arbitration can be established as a permanent institution or for the resolution of a specific dispute [7]. The Law establishes the principles of the formation and operation of arbitration. It is worth noting that before the adoption of this regulation, Law of the Republic of Kazakhstan No. 23 “About international arbitration” [8] and Law of the Republic of Kazakhstan No. 22 “About arbitration courts” [9] were in force. According to Article 156 of the Civil Code of the Republic of Kazakhstan (CC) [10], all commodity exchanges are endowed with

arbitration at the relevant exchange, which are specifically created to handle disputes related to transactions of an exchange nature.

In modern conditions, arbitrations are actively implementing their activities in Kazakhstan, which operate on a permanent basis. Among them, it is worth mentioning the International Arbitration Center at the International Financial Center “Astana,” the Kazakhstan International Arbitration, and the Arbitration Center at the National Chamber of Entrepreneurs “Atameken” [4]. Each of these arbitrations has its own rules of procedure, which determine the procedure for organising activities and rules of arbitration. Remarkably, the Arbitration Center “Atameken” is the successor of the International Arbitration Court at the Chamber of Commerce and Industry in the RK; the latter, in turn, was a member of the centre until 2017. Disputes were resolved in Atameken, the participants of which were companies from Kazakhstan, Spain, China, Latvia, Moldova, Poland, Uzbekistan, and other countries [15].

It is important to note the main advantages of dispute resolution through arbitration. These include granting parties the right to independently select and appoint an arbitrator; the highest level of impartiality and independence of the arbitrator in dispute resolution; provision of the right to agree on the choice of applicable law in case one of the parties is a non-resident; a simple and flexible procedure; allowing parties to present their arguments personally, eliminating the need for attorney or representative fees; the arbitration decision being non-reviewable by state authorities or judicial bodies; prohibiting state interference in the correctness of dispute resolution; ensuring expeditious case consideration and issuance of the corresponding decision; setting arbitration fees lower than state court fees; arbitration proceedings being conducted in closed sessions with exclusive participation of the parties to ensure confidentiality; the arbitration decision being enforceable from the moment of its issuance; and the simplicity and high effectiveness of arbitration proceedings in foreign countries.

In 2015, the first President of the Republic of Kazakhstan, N.A. Nazarbayev, put forward the idea of creating a new institution in the country, the International Financial Center (IFC), in the city of Astana. In this regard, a considerable amount of work was performed to create the infrastructure for the functioning of the Center, to create convenient and comfortable conditions for international market participants, and to develop a legislative framework. The logical conclusion of the idea of creating a financial centre was the opening of an IFC in Astana. This provided the Government of the Republic of Kazakhstan with the opportunity to implement innovative institutes that can potentially increase the constant flow of funds to the state treasury in the long term. One of the most effective projects to attract funds is the development of the financial flow management sector by transforming regional financial centres into international ones. According to the Law of the Republic of Kazakhstan No. 438-V “On the International Financial Center “Astana”” [11], the AIFC was created to establish a sustainable investment centre in Astana for Kazakhstan and Eurasia. The AIFC’s main investment industries include capital markets, asset management, private

banking, Islamic finance, and financial technology. Thus, the relations between the subjects of the International Financial Center and the legal status of the AIFC bodies in Kazakhstan were legally established. To further regulate the relationships within the AIFC and enhance its business environment within the territory of this economic entity, a separate jurisdiction was established, and legislative, executive, and judicial authorities were formed to regulate the relations among the participants of the Center. However, these authorities are not subject to the Republic of Kazakhstan. Despite some legal experts expressing scepticism towards this step, considering the high level of state intervention in the country's economic environment and the high level of corruption by global standards, this move is considered thoughtful and reasonable [12].

Considering the fact that in the AIFC, the decisions of the Independent Court serve as a source of law and a regulator of legal relations for the participants of the center, where the foundations for the operation of the Anglo-Saxon legal system have been established. Within the framework of the AIFC's activities, a specialised court was created, which operates in accordance with new standards, considering the negative experience of the functioning of the Regional Financial Center of Almaty (RFCA), where it was planned to create a Specialised Economic Court with a certain autonomy from local judicial bodies, but which had to obey the Supreme Court and could not be absolutely impartial [13]. The new standards include: record keeping in English; making decisions based on the procedural principles and norms of England and Wales, including the standards of the world's leading financial centres; attracting highly qualified judges from other countries [14]. The execution of decisions of the AIFC court on the territory of the Republic of Kazakhstan is conducted in the same manner as the execution of decisions of the Kazakh courts. Translations of the decisions of the AIFC into Russian and Kazakh languages are conducted in accordance with the current legislation of the AIFC and may be transmitted to the state authorities of Kazakhstan for the purpose of implementing the decisions. AIFC aims to become the leading court for the resolution of civil and commercial disputes not only in Kazakhstan but also in the Eurasian region. Its mission is to create and develop a fully independent common law judicial system based on the principles of fairness and accessibility, and unconditional respect for the rule of law, which meets the needs of the international community. This will provide an opportunity for the legal system of Kazakhstan to reach a completely new level, but it is important to eliminate some problematic aspects.

Thus, to improve the effectiveness of arbitration proceedings, in particular, when considering commercial disputes, it is necessary to investigate the experience of foreign countries. As a positive factor, there is the desire of the states of South-Eastern Europe to properly regulate the institute of arbitration. Croatia has adopted a Law on Arbitration, Bulgaria has adopted a Law on International Commercial Arbitration, and Romania has amended its Code of Civil Procedure to settle arbitration disputes. However, some states such as Republika Srpska and Slovenia, Macedonia, and the Federation of Bosnia and Herzegovina have encountered difficulties in implementing these goals and have not yet adopted the

necessary laws. Instead, they are amending existing Laws on Civil Procedure, which does not comply with the standards of the Model Law. In these states, there are general-type arbitration institutes, except for the International Maritime and River Arbitration in Varna, which operates as an open arbitration [16]. In Poland, the institute of arbitration is quite fully regulated due to the adoption in 2005 of a new arbitration law, which is included in the fifth part of the Civil Procedure Code. This law regulates not only international but also domestic arbitration, since there is no division in Poland. The Arbitration Court at the Polish Chamber of Commerce, operating in the country, is regulated by the Rules adopted in 2006 [17].

Arbitration of commercial disputes in the UK is regulated by law, the main act is the Arbitration Act of 1996. This law establishes general principles and rules for conducting arbitration procedures, and defines their jurisdiction and competence. There are several organisations specialising in arbitration in the UK, such as the London Court of International Arbitration (LCIA) and the International Court of Arbitration (ICC). They provide services for the resolution of commercial disputes using modern methods of alternative dispute resolution [18]. In Germany, arbitration is regulated by the Code of Civil Procedure and the Arbitration Act. Unlike other countries, in Germany, there is a division between domestic and international arbitration, and these two areas are regulated differently. Germany is one of the main centres of international arbitration. There are a number of highly professional arbitration centres in the country, such as the International Arbitration Institute at the Chamber of Commerce in Berlin, the Arbitration Institute at the Chamber of Commerce in Frankfurt am Main, and the Munich Arbitration Center. In Germany, there is also state support in conducting arbitration procedures. For example, German courts recognise and enforce arbitral awards, and state assistance can be provided as part of ensuring the implementation of arbitral awards [19-23].

France has a long history of arbitration of commercial disputes, and its legislation in this area has developed over the years. Currently, arbitration in France is regulated in accordance with the Code of Civil Procedure and the Code of Commercial Law. In France, arbitration can be conducted both within the country and abroad. In addition, France joined the Vienna Convention on International Arbitration of 1961, which provides even greater flexibility and unification of arbitration procedures [24; 25]. Arbitration courts in France are usually appointed in accordance with a contract between the parties, although in some cases they may be appointed by a court. Arbitrators may be French citizens or foreigners, but they must have the appropriate qualifications and experience in resolving commercial disputes. In France, arbitration can be conducted based on any rules that the parties consider appropriate. However, if no specific rules have been specified, the arbitration is conducted in accordance with the rules of the Permanent Court of Arbitration in The Hague (PCA) [26]. Furthermore, there are several organisations in France that provide arbitration services. For example, the Chamber of International Arbitration in Paris is one of the most well-known organisations and offers arbitration services in various languages. In general,

France has a strong arbitration system for commercial disputes, which is flexible and convenient for the parties [20; 27-29].

Thus, in European countries, the conduct of arbitration proceedings for commercial disputes is regulated quite clearly and in a structured manner. Competences are allocated between judicial authorities and arbitration, and the enforceability of decisions within a specified timeframe is ensured. This will provide an opportunity to improve the experience of the functioning of this mechanism in Kazakhstan, specifically through amendments to existing regulations. Subsequent studies will be aimed at covering the resolution of commercial disputes by other alternative means, in particular, using digitalisation methods.

Discussion

The development of the economic system, the enhancement of competitiveness, and the efficient functioning of the sector necessitate the provision of guarantees for the protection of the rights of entities and the ability to resolve disputes through non-judicial means. Thus, the institute of arbitration dispute resolution has acquired special importance at the international level. As per J. Moreira [21], the concept of arbitration should be understood as the systems of domestic courts of arbitration and arbitration in general, including a specialised variety in the form of commercial arbitration. It is a reasonable position, but with regard to the latter, it should be noted that there is no clearly defined and fixed term for this definition in the international legal doctrine. The UNCITRAL Arbitration Rules [14] only contain recommendations when defining “commercial”. In accordance with this, commercial disputes include transactions, the subject of which are investments, purchase, and sale, provision of services, supplies, transportation, performance of services, and so on. The jurisdiction of the arbitration includes the legal relations of the tort and contractual plan [30].

According to G. La Mantia [22], commercial arbitration is a specific legal institute for dispute resolution, which is based on private law principles. In this case, it is advisable to add that state interference in the functioning of arbitration and its direct activities is minimised; the impact in this regard is limited only by legislative regulation. That is, the institute of commercial arbitration is organised by private entities to consider civil law disputes outside the framework of the domestic legal system. The state may influence the preliminary enforcement of a claim and the enforcement of decisions of international commercial arbitration using coercive mechanisms [31; 32]. R. Murthy [23] notes that there is a difference of opinion in the legal doctrine regarding the exact definition of the term “international commercial arbitration”. One should agree with the author’s position and note that the most comprehensive understanding of this concept is that it is a form of private arbitration, which is implemented through non-governmental organisations or autonomous bodies. It is designed to consider and resolve civil law conflicts that arise in the course of commercial activities involving foreign parties. One of the most substantial advantages of commercial dispute arbitration is that the consideration of the case provides an opportunity

to overcome purely narrow national approaches to dispute resolution [33-35]. This is due to the fact that state courts are guided exclusively by clearly regulated legislative principles; moreover, with the participation of a foreign person in a case, which accordingly belongs to a different legal system, state courts may seem less authoritative and trusting. In turn, the arbitration system is a neutral, impartial party that is not interested in the outcome of the case in favour of either party [36].

According to S. Biresaw [24], it is customary to distinguish several theories that determine the legal nature of commercial arbitration. The first is the theory of contract, which states that an arbitration agreement is the basis for considering a case in international arbitration. This agreement is equivalent to a civil contract, which assumes the consent of the parties to submit the dispute to the arbitration court. The second is the theory of the process, which states that international commercial arbitration is considered a special form of litigation. The arbitration agreement concluded between the parties to the dispute excludes the possibility of interference by state courts in the process of considering the case and making a decision [37]. However, national courts can help with securing a claim and enforcement of international arbitration decisions, regardless of the place of decision-making and the applicable legislation [38-40]. The third is a mixed theory, which is the most rational since it combines the theses of contractual and procedural theories. In accordance with this concept, it is possible to apply conflict-of-law rules contained in the arbitration agreement and the national regulations of the country where the case is being considered. The fourth is the autonomous theory, which asserts that international commercial arbitration is considered by itself, regardless of contractual and procedural aspects. This approach guarantees high speed and effectiveness of the case review process. In this scenario, it is appropriate to add to the author’s position that there should exist a fifth theory that encompasses all the mentioned theories since none of the theories can comprehensively and fundamentally describe the essence of the legal nature of commercial arbitration.

M. Schinazi [25] notes that in France, a feature is the use of the *lex mercatoria* principle (customary commercial law). This is due to the favourable mechanism, from the perspective of the applicable law, for enforcing foreign decisions. Article 1496 of the Civil Procedure Code of France regulates the duty of the arbitrator to apply the law chosen by the parties to the contract, and in the absence of such, to apply the rules that will be appropriate for resolving the dispute. That is, it provides an opportunity to resolve cases based on non-national sources of law. An example that illustrates the approach is a dispute being considered at the Paris Center for Arbitration and Mediation. Thus, the parties made references to the Model Force Majeure Clause of the International Chamber of Commerce and Incoterms in turn, the arbitral tribunal considered this a sufficient expression of the will of the party to choose the law of international trade customs [25; 41]. Based on the author’s position, it should be mentioned that this principle finds its application in the practice of Kazakhstan; nevertheless, the parties must necessarily refer to a specific regulation and express their will on the application of the chosen law. However, a different

approach has developed in legal schools in Germany and Switzerland [42]. For example, E. Litina [26] writes that most authors argue against the application of various trade usages in the context of the applicable law. At the Geneva Chamber of Commerce and Industry's Center for Arbitration and Mediation, a refusal was made to establish a trade usage of international character as the applicable law, despite the expressed intent of the parties. A similar practice is present in *ad hoc* arbitrations (for this case) [26; 43]. Notably, this principle is not highly effective and violates the right of the parties to choose a specific applicable law.

In the UK, a unified approach in this vein could not be developed for quite a long time [44]. I.P. Nwakoby [27] indicates that some experts noted that arbitration should make decisions solely based on legislation; in turn, others mentioned the effectiveness of the *lex mercatoria* principle. At the moment, a positive approach to the application of this principle has not been fixed; for example, the Arbitration at the Grain and Feed Trade Association considered a dispute arising from a contract where the supplier is registered in India, and its main place of business is the USA [45; 46]. The contract relied heavily on the regulation of supply in accordance with Incoterms; the parties also made an expression of will on the application of international trade law. Nevertheless, in this case, the arbitration in the United Kingdom was guided by the jurisdiction of the place where the dispute was being heard, according to which the provisions of UK legislation were applied. A. Gadkari [28] notes that in Sweden and Finland, arbitration proceeds from the position of the parties. It is reasonable to agree with this position and state that if the contract specifies the use of a trade usage as the applicable law, accordingly, the dispute will be governed based on the provisions mentioned. Indeed, if the parties refer to an international legal document and do not specify a particular applicable law, it is highly likely that the arbitration will resolve the dispute based on the applicable law of a national character [47-49].

The application of international documents and laws of other countries by commercial arbitrations varies from the legal system of the state in which the arbitration takes place. There are three mechanisms for such application, namely: contractual reference, international custom, and the principle of *lex mercatoria*. The extension of the loyal approach guarantees the parties to the dispute the right to a fair and impartial hearing. The provided foreign experience is appropriate for further law enforcement practice in Kazakhstan. This allows for the formation of a unified arbitration practice for national arbitration institutions by generalising the approaches of foreign arbitrations and adapting them to national legal realities. In turn, this will not only improve the quality and effectiveness of the

proceedings but also provide an opportunity to establish a more authoritative and trustworthy legal system for foreign persons in the implementation of arbitration proceedings of commercial disputes.

Conclusions

This study was conducted to investigate the institute of arbitration, in particular, in the resolution of commercial disputes. The arbitration mechanism was characterised, its inherent features and principles of implementation were identified. Therefore, this legal institute is very effective and practical for resolving various disputes, in particular, commercial disputes. An analysis of the regulatory framework of Kazakhstan, which regulates arbitration and related proceedings, was performed. An equally important aspect was the activities of the AIFC, the IFC and other authorised arbitrations. Thus, it was noted that in the period from 2019 to 2023, there was an increase in the number of disputes under consideration in the arbitration of Kazakhstan. The main aspects that reduce the effectiveness of the legal institute under consideration and problems related to intra-national judicial instances were highlighted, which concern the delimitation of competence, cancellation of the arbitration agreement, securing a claim, recognition and enforcement of the arbitration agreement. In particular, an analysis of arbitration proceedings of commercial disputes in European countries was conducted to resolve them.

Thus, the experience of such states as Great Britain, Germany, France, Poland, and others was considered. The peculiarity of the activity of arbitration in European countries is due to clear legislative regulation, the establishment of principles of activity, the division of competence between national courts and arbitration, and many others. It was found that most of the European states adhere to the *lex mercatoria* principle, while the rest – *ad hoc*. In particular, arbitration in the UK, Germany, France, and other countries is an effective and popular way to resolve disputes, especially in international commercial relations. Thus, the considered foreign practice provides an opportunity to make some changes to the regulatory framework of Kazakhstan to improve the quality and effectiveness of arbitration in commercial disputes. Subsequent studies will be aimed at exploring ways to resolve commercial disputes by other alternative procedures.

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Conflict of Interest

None.

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Арбітражний розгляд комерційних спорів в Республіці Казахстан та Європі: питання теорії та практики

Жазіра Сапарбекова

Казахський національний університет імені Аль-Фарабі
050040, просп. Аль-Фарабі, 71, м. Алмати, Республіка Казахстан

Айман Омарова

Університет Нархоз
050035, вул. Жандосова, 55, м. Алмати, Республіка Казахстан

Серіккалі Тинибеков

Казахський національний університет імені Аль-Фарабі
050040, просп. Аль-Фарабі, 71, м. Алмати, Республіка Казахстан

Айнур Кусаїнова

Університет Нархоз
050035, вул. Жандосова, 55, м. Алмати, Республіка Казахстан

Даулетбай Рискалієв

Казахський національний університет імені Аль-Фарабі
050040, просп. Аль-Фарабі, 71, м. Алмати, Республіка Казахстан

Анотація

Актуальність. Актуальність дослідження обумовлена необхідністю розв'язання проблем, пов'язаних з альтернативним вирішенням господарських спорів у Казахстані.

Мета. Метою дослідження є проведення детального аналізу діяльності інституту третейських судів відповідно до чинного законодавства.

Методологія. Серед використаних методів варто відзначити логічний аналіз, функціональний аналіз, догматичний, юридичну герменевтику, дедукцію, індукцію та інші.

Результати. Дослідження показало, що цей правовий інститут надає можливість суб'єктам комерційних правовідносин самостійно контролювати вирішення спорів, а також має низку переваг у порівнянні з державними судовими інстанціями. Розглянуто основні організації, які здійснюють третейське судочинство в Казахстані. Також було проаналізовано нормативно-правову базу, яка регулює арбітраж в Республіці. Відзначено, що основні проблемні аспекти функціонування інституту арбітражу в Казахстані пов'язані з розмежуванням компетенції, скасуванням арбітражної угоди, забезпеченням позову, визнанням і виконанням арбітражної угоди. Проведено порівняльно-правовий аналіз арбітражного розгляду комерційних спорів у Казахстані та Європі. Зокрема, досліджено досвід таких країн, як Великобританія, Франція, Німеччина, Польща, Швейцарія, Швеція та інші.

Висновки. Практичне значення одержаних результатів полягає в наданні рекомендацій, які сприятимуть підвищенню ефективності одного з найважливіших правових інститутів, підвищенню рівня довіри та авторитету арбітражу в Казахстані перед іноземними особами, а також створенню більш гарантованого механізму забезпечення права суб'єктів на вибір способу вирішення комерційного спору.

Ключові слова: альтернативне вирішення спорів; Міжнародна торгова палата; досвід зарубіжних країн; законодавство; інвестиції.