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Electronic dispute resolution in business: Opportunities for implementation in Kazakhstan

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Abstract

Relevance. The relevance of conducting a study on alternative dispute resolution between business entities stems from the fact that the current processes of digitalisation and globalisation have extended the opportunities for the introduction of innovative technologies in court proceedings.

Purpose. Among the key tasks and objectives of the study was the analysis of the mechanism for implementing electronic dispute resolution in business activities, highlighting its characteristic features and the principles on which this activity is based.

Methodology. The methods used in the present study are the theoretical-methodological approach, the functional methodological approach, the method of legal hermeneutics, the dogmatic methodological approach, the method of synthesis and others.

Results. The study analysed the specifics of the implementation of mediation as an electronic dispute resolution method in business. International practices have been analysed and the advantages and disadvantages of implementing an electronic dispute resolution mechanism in the business sector have been highlighted and recommendations have been made to make the implementation of the mechanism in Kazakhstan more effective. To complete the analysis, statistical data were reviewed, based on dispute resolution by courts of general jurisdiction and the Specialised Inter-District Economic Court in comparison to the methods they use, and analysis was carried out on the use of mediation and settlement agreements, as well as through the use of online systems.

Conclusions. A scientific study of electronic dispute resolution reveals that integrating innovative communication technologies into legal proceedings significantly enhances traditional dispute resolution methods. Electronic dispute resolution can address conflicts ranging from interpersonal disputes to state-level conflicts and is particularly beneficial for business disputes. The practical value of the findings is that the introduction of an effective e-justice mechanism will provide an opportunity to protect the rights of entrepreneurs and conduct this type of activity in the Republic of Kazakhstan.

Keywords: protection of entrepreneurs; mediation; arbitration; foreign economic disputes; electronic justice; negotiations.

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Introduction

With globalisation, the process of economic turnover, which has the capacity to accelerate constantly, has had an enormous impact on the requirements for dispute resolution instruments. It is inherent in business and the state to constantly look for new models that are more efficient and meet modern requirements. However, that states are losing their hitherto almost monopolistic position as arbiters of disputes between economic agents. Considering the issue of formalised instruments for dispute resolution procedures, alternative methods of dispute resolution involving consumers feature prominently; this procedure is governed and regulated by Directive 2013/11/EU of the European Parliament and of the Council “On alternative dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC” [1] and Regulation (EU) No. 524/2013 of the European Parliament and of the Council “On online dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC” [2]. This regulatory framework serves as the basis for creating a platform for resolving disputes with consumers.

The procedure according to which disputes are resolved and the activities of the platforms are regulated in sufficient detail; however, it is worth noting that the results of the work of this platform are very ambiguous. For example, in some industries, they have become a very effective alternative to classical dispute resolution tools; in particular, this applies to such areas as dispute resolution between passengers and air carriers, insurance companies and their customers. However, the expected overall effect has not been achieved; in the practice of the European jurisdiction, these alternative dispute resolution methods have been used in areas where large companies in the form of insurance companies or air carriers are involved in disputes with consumers. This is because these large companies are interested in a faster resolution process and do not want to tarnish their image and incur losses due to high-profile lawsuits.

R.S. Reznik [3] notes that the new system of dispute resolution arising between business entities provides an opportunity to harmonise the formation of this institution and facilitate the process of accessibility of subjects to this procedure. A. Aliyev [4] writes in his study that the implementation of alternative dispute resolution should be based on certain principles, namely transparency, impartiality, expertise, efficiency, fairness, legality, and freedom. S. Popov [5] suggests that electronic dispute resolution is a very efficient procedure, which neither traditional methods nor state courts can match in terms of speed. E.V. Dragilev [6] notes that dispute resolution by electronic means is an alternative method of dispute resolution, which must comply with general provisions, such as the aforementioned Directive 2013/11/EU of the European Parliament and of the Council “On alternative dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC” [1]. In turn, F.N. Khan and V.S. Kui [7] reflect on the fact that many states, in the context of the digitalisation of many structures of social life, cannot do without the use of electronic dispute resolution.

That is, electronic dispute resolution is a set of methods and tools for resolving disputes through the use of innovative communication technologies. In foreign practice, it is also defined as the online equivalent of alternative dispute resolution methods, which include mediation, arbitration, and negotiations. This introduction of innovative communication technologies into the practice of legal proceedings provides an opportunity to significantly expand the capabilities of traditional dispute resolution procedures. So, this procedure can be used to resolve conflicts at the level of interpersonal disputes and up to state conflicts. This mechanism has a major role in resolving disputes involving the protection of the rights of business entities. This is related mainly to the fact that the implementation of this legal institution makes it possible to ensure a balanced relationship between the institution of dispute resolution, litigation and business entities, as well as to regulate the implementation of this mechanism and its procedure, to highlight its characteristics and others so that an effective dispute resolution in business and the rights of business entities can be realised.

Thus, an important objective of the study is to analyse electronic dispute resolution, highlighting the characteristics and principles of this alternative dispute resolution mechanism. The key objectives are also to review foreign experience, based on which it is possible to identify the advantages and disadvantages of the mechanism under study and to highlight recommendations for the further introduction of electronic dispute resolution into the practice of the Republic of Kazakhstan. The analysis highlighting the features of this segment in the practice of the Republic of Kazakhstan should be given a special role in the study of statistical data; all the theoretical and practical aspects obtained will provide an opportunity to highlight recommendations for the effective implementation of the mechanism in practice.

Materials and Methods

This investigation was implemented through the use of methodological approaches that reveal the theoretical and practical nature of the object under study. Thus, using a theoretical-methodological approach, the concept of “electronic dispute resolution” was analysed, highlighting its main features and attributes on which this alternative dispute resolution mechanism is based. The functional methodological approach was used to analyse the implementation of the electronic dispute resolution mechanism in business and to identify its key features and characteristics. Using the method of logical analysis, the method of electronic dispute resolution, such as mediation, has been examined and highlighted, and the specifics of its application in business dispute resolution have been studied.

The study was supplemented by statistical data on disputes in the courts of general jurisdiction and the Specialised Inter-District Economic Court [8], in comparison with the methods used by them, namely dispute resolution by judges, mediation, and settlement agreements year on year; an important role is also played by the analysis of statistical data on the dynamics of dispute resolution in state courts, arbitration tribunals and independent mediators; of significance is the analysis of the number of disputes between entrepreneurs through the

use of online e-systems. The importance of this aspect lies in the fact that it allows evaluating the advantages and disadvantages of electronic dispute resolution in business based on its practical aspect of implementation. The dogmatic methodological approach, in turn, provided an opportunity to analyse the foreign experience and formulate recommendations based on it for further implementation in Kazakhstan. The importance of using the method of synthesis stems from the fact that it has explored aspects of a theoretical and practical nature that can provide an analysis of the functioning of the electronic dispute resolution segment in Kazakhstan.

Thus, this study was conducted in several stages. The first stage consisted of examining the theoretical component, based on the introduction of the concept of “electronic dispute resolution”, highlighting its main characteristics, features, and principles of implementation. The second stage provided an opportunity to explore the practical aspect, namely highlighting the features of this alternative dispute resolution in business activities, analysing the foreign practice of its implementation, and identifying the advantages and disadvantages. The third stage provided an opportunity to explore the prospects of introducing this mechanism to resolve disputes between entrepreneurs; statistical data as well as the legislative framework of the Republic of Kazakhstan were analysed; recommendations for the effective implementation of the mechanism under study were proposed.

Results and Discussion

Electronic dispute resolution is a procedure that has emerged as an interaction between alternative dispute resolution and the use of digital technology. In the form of a method, this procedure appeared due to the interaction of people and organisations for which traditional dispute resolution methods are ineffective. In the practice of foreign researchers, this type of dispute resolution is commonly regarded as a “fourth party”. In most cases, it is the “fourth party” that acts as a factor in enhancing conflict resolution and reducing the likelihood of a conflict process [9]. Yu.V. Rudneva et al., [10] note that the technologies of the electronic dispute resolution method can be applied both to an alternative method of dispute resolution and to judicial proceedings. N.M. Salikova and E.M. Batukhtina [11] analyse the advantages of electronic dispute resolution; the author notes its efficiency, as the procedure is much faster than traditional proceedings; the cost of the procedure is cheaper than traditional proceedings; she also notes the geographical flexibility, as the dispute resolution procedure can take place regardless of the geographical location of the parties to the proceedings, which is very convenient. It is important to mention the advantage of participation and control, namely that parties who use electronic dispute resolution must work with each other to achieve resolution and often have quite a lot of control over the outcome of the case.

A.F. Yusupova [12] argues that in today's environment there are many types of dispute resolution through electronic dispute resolution; the technological aspect plays an important role in the efficiency of the process; they come in the form of asynchronous and synchronous communication. When analysing the asynchronous form of communication, it is worth mentioning that

communication is not realised in real time; that is, the disputants communicate by email; in synchronous communication, the disputants communicate in real time using various social platforms such as Skype, Messenger, Zoom, Google Meet, Viber, WhatsApp and others. A.V. Yasinskaya-Kazachenko [13] notes that each of the forms of electronic dispute resolution can use different technological systems that provide an opportunity to individualise each course of implementation of this mechanism.

It is worth mentioning that the electronic dispute resolution mechanism can take various forms; these include a fully automated internet platform, the creation of a portal as an electronic chat room or videoconference, or purely asynchronous communication in the form of e-mailing. The most popular method of resolving disputes through the use of electronic arbitration is electronic arbitration; its procedure is characterised by the dispute mediator being a neutral person who makes a binding decision on the parties. Disadvantages in the implementation of this mechanism include the failure to recognise the electronic form of the document as appropriate, and challenges related to identification and cybersecurity in the digital space [14-16].

Electronic negotiations as a form of electronic dispute settlement method is also becoming increasingly popular; inherent in them is that at the initial stage of negotiations, the parties determine proposals and conditions under which a specialised system will be able to identify disagreements at the automatic level. The disadvantage of implementing this kind of electronic dispute resolution method is that it is suitable for resolving disputes whose only disagreement may be over the amount of money or the quantification of items [17-19]. Considering the virtual jury trial, it is worth noting here that it is an appeal using the web for the advice of an unspecified wide range of people; thus, a party posts a detailed description of the circumstances of the dispute, the claims of the parties and the evidence inherent in the dispute. To allow the intended analysis to progress in more depth, the jurors can provide information about themselves during registration, which creates the conditions for a real assessment of the dispute that has arisen [20; 21]. Electronic dispute resolution methods represent a wide range of implementation methods, which are confirmed by a large number of branches of law. At the same time, such issues as legal liability or the classification of an offence cannot be resolved through this method. This is attributed to the fact that the lack of direct contact in e-mediation does not create the conditions for trust, which serves as the basis for a claim and must be resolved through extrajudicial procedures [22-24]. While accessible, electronic dispute resolution methods can pose a number of mental barriers to the effective implementation of mediation.

An analysis of empirical research related to electronic dispute resolution methods shows that this category is most common for low-complexity disputes [25]. Therefore, of particular importance is the creation of a legal platform with a framework for e-tools in the form of an internet portal and a platform that will allow for automatic dispute resolution without hearings and legal classification. Alternative dispute resolution methods include arbitration, mediation, negotiations, arbitration court and international

commercial arbitration; the use of these electronic dispute resolution methods is particularly popular in Canada, the USA, and Asian countries [7]. Thus, the concept of international commercial arbitration should be understood as an alternative method of dispute resolution, which is one of the most profitable solutions for disputing business entities in the international arena. The advantage of this procedure is that the parties to the proceedings have the right to determine the procedural arrangements themselves, in particular, to choose an arbitrator. The composition of the arbitrators is a key element in the conduct of the proceedings; the selection of the arbitrator determines the quality of the decision, the future relations between the disputing parties and the proceedings themselves. Among the key criteria for selecting an arbitrator is impartiality to the case and objectivity in reviewing it.

These criteria are also enshrined in European legislation. Thus, Article 6.1 of the Rules of the London Court of International Arbitration [26] provides that where the parties have different nationalities, the arbitrator shall not be appointed from among persons having the same nationality as one of the parties to the dispute; further, Article 6.3 provides that persons having 2 or more nationalities shall be considered as having the nationality of each of these States; therefore, the arbitrator may not be selected with the nationality of any one party to the dispute. According to the Recommendation CM/Rec(2009)1 of the Committee of Ministers to member states “On electronic democracy (e-democracy)” [27], e-justice should be understood as a form of expression of e-democracy, which includes official websites of judicial instances, national and international portals, systems for informing about the status of a court case online, videoconference systems and methods and standards for electronic exchange information.

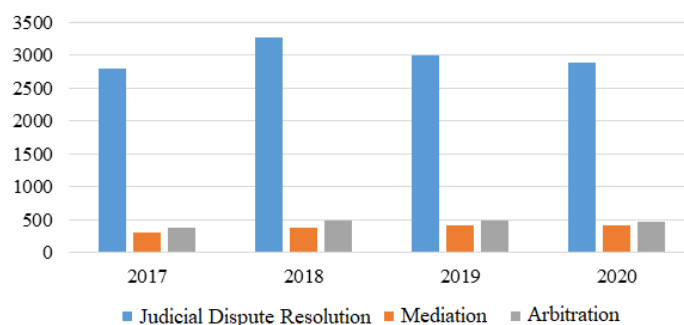
An analysis of foreign experience in introducing information and communication technologies in the activities of courts for the resolution of disputes, including those related to entrepreneurial activity, shows the effectiveness of its legal application. These forms of electronic legal proceedings are quite multidirectional. One of the most common is the establishment of an e-court, in which legally significant actions have been converted into electronic format: there is an electronic document flow, the exercise of justice has taken a partial or full implementation form in the form of the organisation of video conferencing, the notification of persons involved in the case of the progress of the court case and its results by

remote examination of the case in electronic format [28-30].

For example, Argentina has a software application that is equipped to analyse submitted documents and draft final judgments in certain categories of disputes, especially business disputes [31]. The procedure for the adoption of this judicial act provides for mandatory verification and approval by local judges. A notable advantage of this procedure is that the drafts of these judicial acts were approved without making changes to them. E-justice practice in Estonia has a similar feature [32]. A key objective of the programme under development will be that the vast majority of disputes will be automated. The initial phase of the ongoing work will be limited to economic disputes that arise from contractual relationships and at the same time with low claims.

Apart from these innovations in resolving business disputes through the use of e-justice, it is worth noting that the provision of legal services in this sector through the use of information and communication technology has a particular niche in foreign practice. Thus, legal reference and information retrieval systems provide the opportunity to automatically generate and analyse arrays of jurisprudence, legal acts and more. It is important to mention that the development of digital technologies in the area under study has made it possible to shape the already prepared document with all aspects taken into account [33-35]. The use of a service that can predict the outcome of a dispute through the use of artificial intelligence is becoming increasingly popular with representatives who are involved in a case. This developed software also allows considering the ethical side of the dispute; according to statistics, artificial intelligence predicted the resolution of the dispute in 79% of cases [14].

Based on the above, there is an emerging trend whereby it is more likely that judges and representatives of persons involved in a case will not be replaced by robots; there will be an additional opportunity to quickly identify the legal basis for applying a particular legal position in a particular dispute. The development of e-justice in the resolution of business disputes provides an opportunity to identify reference points according to which a particular judge has a propensity to decide and, as a consequence, to monitor the occurrence of deviations in judicial practice, which is already followed in the practice of implementation in the Republic of Kazakhstan. Therefore, it is worth analysing the statistical data on the resolution of disputes between business entities in terms of the methods used (Figure 1).



Source: based on data from the Ministry of Internal Affairs of the Republic of Kazakhstan [36]

According to the data provided, there is an upward trend in the prevalence of alternative dispute resolution methods, especially between business entities. All this leads to the conclusion that the existence of e-justice is possible as a result of digitalisation processes and without a corresponding change in the current legislation; this will make it possible to carry out procedural actions in a digital format. The prospects for this trend in the Republic of Kazakhstan are that it will not be a full substitute for traditional justice, but another form of access to it. When analysing the current legislation of the Republic of Kazakhstan that regulates the protection of business entities, it is worth referring first to Article 9 of the Civil Code of the Republic of Kazakhstan [37], which defines the bodies that protect the rights, methods, and procedure of protection; the protection of civil rights is carried out by the courts. Article 9 of the Entrepreneurial Code of the Republic of Kazakhstan [38] provides that every business entity has the right to judicial protection of its own rights, freedoms, and legitimate interests; their protection may be realised through other procedures that are provided for in other laws of the Republic of Kazakhstan, such as arbitration, mediation, ombudsman, negotiations, claim procedure and others. The rights of business entities may also be protected by challenging the actions of public officials and acts of public authorities, and by the actual or legal actions of the business entity whose rights have been infringed, i.e., self-protection.

Article 49 of the Civil Procedure Code of the Republic of Kazakhstan [39] provides that parties have the right to terminate a dispute pending before a court by an agreement to settle a dispute in mediation; recourse to mediation by the parties is possible at any stage of the proceedings. When preparing the case for trial and at the commencement of the trial, the presiding officer shall inform the parties to the dispute of their right to resolve the dispute by mediation and of the consequences of such action. Quite often business disputes can arise in connection with the sale of defective goods to consumers for the seller to restore the infringed rights. In this case, it is regulated by Article 455 of the Civil Code of the Republic of Kazakhstan [37] and the Law of the Republic of Kazakhstan No. 274-IV “On Protection of Consumer Rights” [40]. According to these norms, the consumer has the right to demand from the business entity the replacement of substandard goods with goods of proper quality, to reduce the purchase price proportionately, to eliminate the defects of the goods free of charge, or to terminate the contract with the refund of the paid purchase price.

Analysis of the provisions of the Civil Code of the Republic of Kazakhstan [37] shows that according to the norm stated in Article 353, the losses incurred by the creditor by the misuse of money that exceeds the amount of interest due to the creditor on the basis of this rule, they shall be entitled to claim compensation from the debtor for the losses to the extent that they exceed this amount; interest on the use of the funds in question shall be charged on the day the amount of these funds is paid to the creditor unless another period for charging interest has been established by other legislative acts. Article 354 of the Civil Code of the Republic of Kazakhstan [37] contains a provision stating that the payment of a penalty and

compensation for damages in case of improper performance of an obligation is not a legal fact that releases the debtor from performing the obligation in kind unless otherwise provided by law or contract; based on this, business entities have the right to require buyers to pay interest, losses, penalties and the full value of the goods.

According to the Law of the Republic of Kazakhstan No. 401-IV “On Mediation” [41], subjects' recourse to mediation may be based on the recommendation of a court, the intention of the parties or the criminal prosecution authorities. The participation of the parties and the mediator in the mediation procedure must be supported by a mediation agreement; the case that is being considered through mediation must be suspended in court. The Law also mentions that the procedure must be completed within one month; if the parties submit a request for mediation by a judge, it must be completed within ten working days. This provides an opportunity to resolve disputes quickly and efficiently, thus encouraging citizens to appeal to mediators.

For example, according to statistics from the Shymkent City Court Information Centre, in 2019 the number of cases that were finalised by conciliation reached 289, and more than 1500 cases were finalised by participatory and mediation agreements, which shows the positive results of the dispute resolution procedure by alternative means of dispute resolution. According to the operation of mediation procedures in Kazakhstan, this method of dispute resolution of business entities can be said to save time, the financial costs of the conflicting parties and the judiciary, and to reduce the number of appeals to the courts. However, an important fact at this stage is the further amendment of the current Law of the Republic of Kazakhstan No. 401-IV “On Mediation” [42]; these amendments concern the introduction of compulsory legal education for mediators, the recourse to mediation before filing a lawsuit in court, the provision of possible benefits in enforcement proceedings when concluding a mediation agreement, indicating that the legal position of Kazakhstan should be based on the principles of humanity and democracy.

When analysing the Law of the Republic of Kazakhstan No. 488-V “On Arbitration” [43], it is worth mentioning that it does not require either that the party's representative has a legal education or that the representative should be a member of a chamber of legal advisors. It should be noted that arbitrators may not have a higher legal education, which corresponds to international practice. According to paragraph 1 of Article 13 of this Law, an arbitrator who resolves a dispute alone or the chairman of the arbitral tribunal during the collegial consideration of the dispute must have higher legal education. Article 20(1) of this Law states that the arbitral tribunal shall be empowered to decide independently whether or not it has jurisdiction to hear a dispute referred to it, including in cases where one of the parties' objects to arbitration proceedings due to the invalidity of the arbitration agreement. Although this legislation is not perfect at the moment, it does provide an opportunity in regulating processes that help resolve a large number of disputes, particularly between business entities.

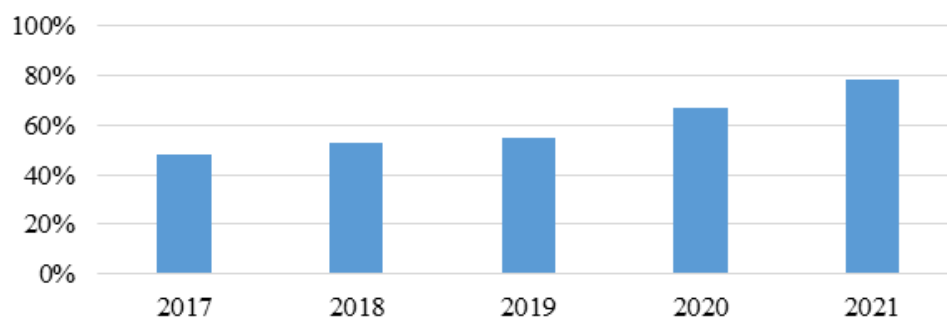
The digitalisation of the judicial process plays a special role in the development of dispute resolution, in particular,

between business entities. Thus, in the Message of the President of the Republic of Kazakhstan “New opportunities for development in the conditions of the fourth industrial revolution” [43], the digitalisation of the legal system is one of the priority tasks of the state; it is also enshrined in the State program “Digital Kazakhstan” [44]. At this stage of the digitalisation of Kazakhstan's judicial system, a number of objectives have been set, namely, to ensure the accessibility and comfort of citizens in applying to courts via various electronic services, the transition to automated forms of court proceedings and the digitalisation and optimisation of work with significant volumes of information and databases based on international best practices. The first major step in the digitalisation of the judiciary was the Situation Center of the Supreme Court, which collects essential information on the state of judicial proceedings in Kazakhstan; it offers a 24/7 access to relevant judicial information from 370 courts, allowing professionals to quickly identify all cases of misconduct in court. That is, it is a digital solution for the implementation of the mechanism for the protection of the rights of business entities in the administration of justice [45].

When analysing the Specialised Inter-district Economic Court [8] under current legislation, the first thing to consider is that it has jurisdiction over property and non-property disputes, which generally fall into the category of civil cases. A characteristic feature is that the parties to the disputes are individuals who carry out individual entrepreneurial activities without forming a legal entity, legal entities and parties to corporate disputes. The Specialised Inter-district Economic Court [8] is also

competent to resolve disputes arising from public legal relations and related to challenges to the legality of legal decisions, actions or omissions of a legal entity. This category of courts deals with cases such as bankruptcy of sole proprietors and legal entities and the rehabilitation of legal entities. The Government of the Republic of Kazakhstan has launched Forum “Taldau” [46], which includes a Single Classifier of Business Categories; a summary of judicial practice and background information on legislation that regulates relevant legal relations, a bank of judicial acts and regulatory decisions of the Supreme Court of the Republic of Kazakhstan. This has facilitated quick access to case law in all categories of cases for a wide range of actors, the only prerequisite for which is registration in the Judicial Office [47], which makes it possible for every citizen to consult court decisions and summaries in the categories of interest without consulting a lawyer for advice on their dispute.

The Judicial Office [47] now allows filing various criminal and civil appeals to any court in the state electronically and to receive an electronic confirmation of their application. Also, this service provides an opportunity to participate in dispute resolution without being present in the courtroom. This reduces the time for court proceedings and the time spent by participants in the process, while also providing an opportunity to solve the problem of participation in the consideration of the case of persons who live and are away from the location of the court, and are physically disabled or are in places of deprivation of liberty. It is therefore worth considering what proportion of the total number of civil cases in the business sector have been registered through this system (Figure 2).



Source: compiled on data from Judicial Office [47]

Based on the data provided, the number of disputes registered through the online system has increased significantly over the last 5 years; the figure has risen from 48% to 78%. As part of the digitalisation of the judicial system, the Electronic Criminal Procedure project has now been launched, which also provides the possibility to resolve disputes for business entities [48]. The project has been probated in three regions; there is a successful precedent for dispute resolution through this project in the city of Shymkent. All courts in the Republic of Kazakhstan are allowed to consider applications for judicial decisions in electronic format, and enforcement case files are no longer to be handled in paper form. Digital litigation takes place at all stages of the judicial process; based on this, at the beginning of April 2018, the number of applications filed electronically in the country's courts was 91% of the

total, which has eliminated about 66 million sheets of paper documents since the beginning of this year alone [49; 50].

Based on the above, it is worth noting that electronic dispute resolution is a type of alternative dispute resolution and must comply with the general provisions for resolving this type of dispute between business entities. Kazakhstan has prospects for the development of this sector in dispute resolution practice, but at this stage of formation due to the lack of specific platforms and legislative norms that regulate this activity.

Conclusions

Thus, having carried out a scientific study of the electronic dispute resolution method, it can be concluded that this method of introducing innovative communication technologies into the practice of legal proceedings

provides an opportunity to considerably expand the possibilities of traditional dispute resolution procedures. This procedure can be used to resolve conflicts at the level of interpersonal disputes and up to state conflicts. An important role is played by the electronic method of dispute resolution between business entities. Through the introduction of this legal institution, it is possible to ensure balanced relations between the institution for dispute resolution, litigation and business entities, and to streamline the principles on the implementation of this mechanism and its procedure, highlight its features and others, whereby effective dispute resolution in the entrepreneurial sphere and the rights of business entities can be realised.

In current practice, there are many options for dispute resolution through electronic means. The effectiveness of the implementation of this process depends on the technological aspect, which acts in the form of asynchronous and synchronous communication. Electronic dispute resolution methods represent a wide range of implementation methods, which are confirmed by a large number of branches of law. However, despite their accessibility, they can pose a number of mental barriers to

the effective implementation of mediation. This category of dispute resolution is most typical for low-complexity disputes. Therefore, of particular importance is the creation of a legal platform with a framework for e-tools in the form of an internet portal and a platform that will allow for automatic dispute resolution without hearings and legal classification. Alternative means of dispute resolution include arbitration, mediation, conciliation, negotiation and international commercial arbitration. The analysis of the legal framework of the Republic of Kazakhstan has revealed that it aims to further develop the electronic method of dispute resolution, in particular between business entities. However, this mechanism can be more effectively implemented with additional digitalisation policies, especially of the judiciary, and certain amendments to existing legislation.

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Conflict of Interest

None.

References

- [1] Directive 2013/11/EU of the European Parliament and of the Council “On alternative dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC”; 2013. <https://cutt.ly/EVbyCHb>
- [2] Regulation (EU) No. 524/2013 of the European Parliament and of the Council “On online dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC”; 2013. <https://cutt.ly/tVbuB8M>
- [3] Reznik RS. Alternative ways to resolve international disputes from contracts involving the consumer. *J High Sch Econ.* 2017;1:111-121.
- [4] Aliyev A. New Dispute Resolution Methods: Competition and Engagement with Classical Tools in the Age of Digitalization and Globalization. *Eur Asian Law Rev.* 2019;1:126-129.
- [5] Popov S. Benefits of online dispute resolution: international experience; 2019. <https://sud.ua/ru/news/publication/156502-preimuschestva-uregulirovaniya-sporov-onlayn-mezhdunarodnyy-opyt>
- [6] Dragilev EV. Online Dispute Resolution in the Acts of the UN Commission on International Trade Law. Rostov-on-Don: Russian State University of Justice; 2019.
- [7] Khan FN, Kui VS. Electronic evidence in commercial dispute resolution. *Law Right.* 2020;11:87-90.
- [8] Specialised Inter-district Economic Court; 2022. <https://almaty.sud.kz/rus/sub/smes>
- [9] Sternlight JR, Robbennolt JK. In-Person or Via Technology: Drawing on Psychology to Choose and Design Dispute Resolution Processes. *DePaul Law Rev.* 2022;71:701720.
- [10] Rudneva YuV, Kraskina EYu, Nikonova YuA. Electronic evidence in the arbitration process. *Mod Sci.* 2020;5:196-199.
- [11] Salikova NM, Batukhtina EM. Electronic document as evidence: problems of use in resolving labor disputes. *Russ Law Edu Pract Sci.* 2020;4:103-110.
- [12] Yusupova AF. Mediation as an alternative way to resolve disputes in civil proceedings. *Issues Russ Justice.* 2020;7:642-649.
- [13] Yasinskaya-Kazachenko AV. Expansion of dispute resolution methods in the light of the development of digital technologies and the “virtualization” of labor relations. Minsk: BSU; 2021.
- [14] Ferreira DB, Giovannini C, da Rocha Schmidt G, Gromova EA. Arbitration chambers and trust in technology provider: Impacts of trust in technology intermediated dispute resolution proceedings. *Technol Soc.* 2022;68:101872.
- [15] Parkhomets M, Uniiat L, Chorny R, Chorna N, Hradovyi V. Efficiency of production and processing of rapeseed for biodiesel in Ukraine. *Agricult Res Econ.* 2023;9(2):245-275.
- [16] Prokopov VG, Fialko NM, Sherenkovskij YuV, Sherenkovskaya GP, Borisov YuS, Korzhik VN, Murashov AP. Analysis of temperature conditions in the system “coating-sublayer-basis” under gas-thermal spray-coating of composite powders. *Elekt Obrabot Mater.* 1992;(2):12-15.

- [17] Burdina EV, Kapustin OA. Online reconciliation as a means of increasing access to justice. *Law Polit.* 2021;12, 29-45.
- [18] Kalyuzhna N, Smutchak Z, Chorna N, Chorny R, Baldyniuk O, Chuba R. Toolkit for Multi-vector Adaptation and Development of Corporate Culture of International Companies. *Lect Not Network Syst.* 2024;927:501-514.
- [19] Askar A, Sunggat M, Maxat M, Nunzhigit S, Kanat Z, Ainur K, Arnay A, Asset O. Investigation of the Efficiency of the Ozonator in the Process of Water Purification Based on the Corona Discharge. *J Eco Eng.* 2023;24(2):140-151.
- [20] Faulkes Z. Resolving authorship disputes by mediation and arbitration. *Res Integr Peer Rev.* 2018;1:1-7.
- [21] Korzhik VN. Theoretical analysis of amorphization conditions for metallic alloys under gas-thermal spraying. III. Transformations in the amorphized alloy under building-up of coatings. *Poroshk Metall.* 1992;(11):47-52.
- [22] Atazhanov A, Ismailov B. Foreign experience in introducing modern technologies into the justice system. *Soc Innov.* 2020;1, 269-284.
- [23] Kerimkhulle S, Obrosova N, Shanani A, Tokhmetov A. Young Duality for Variational Inequalities and Nonparametric Method of Demand Analysis in Input–Output Models with Inputs Substitution: Application for Kazakhstan Economy. *Mathem.* 2023;11(19):4216.
- [24] Buil R, Piera MA, Ginters E. Multi-agent system simulation for urban policy design: Open space land use change problem. *Int J Mod Simul Sci Comp.* 2016;7(2):1642002.
- [25] Modina AA, Loshkarev AV. E-justice as a support for entrepreneurship. *Int J Humanit Nat Sci.* 2020;10:15-19.
- [26] Rules of the London Court of International Arbitration; 2014. https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx
- [27] Recommendation CM/Rec(2009)1 of the Committee of Ministers to member states “On electronic democracy (e-democracy)”; 2009. <https://cutt.ly/kVbp4UF>
- [28] Sela A. Can Computers Be Fair: How Automated and Human-Powered Online Dispute Resolution Affect Procedural Justice in Mediation and Arbitration. *OSJDR Ohio St J Dispute Resolut.* 2018;33:91-100.
- [29] Niyazbekova S, Zverkova A, Sokolinskaya N, Kerimkhulle S. Features of the «Green» strategies for the development of banks. *E3S Web Conf.* 2023;402:08029.
- [30] Sabibolda A, Tsyporenko V, Tsyporenko V, Smailov N, Zhunussov K, Abdykadyrov A, Baigulbayeva M, Duisenov N. Improving the accuracy and performance speed of the digital spectral correlation method for measuring delay in radio signals and direction finding. *East-Eur J Enter Tech.* 2022;(9-115):6-14.
- [31] Ondashuly E. Digitalization of the legal system of Kazakhstan on the example of the judicial system. *Bull KazNU.* 2019;4:48-52.
- [32] Holtzworth-Munroe A, Beck CJ, Applegate AG, Adams JM, Rossi FS, Jiang LJ, Hale DF. Intimate partner violence (IPV) and family dispute resolution. *Psychol Public Policy Law.* 2021;27(1):45-65.
- [33] Lilikova OS, Andreeva SYu. Mediation in the system of ways to protect the rights of entrepreneurs. *Alley Sci.* 2021;5:635-639.
- [34] Chorna NP. Development of Agrarian business in Ukraine under influence of world financial and economic crisis. *Act Probl Econ.* 2009;11:40-48.
- [35] Piera MA, Buil R, Ginters E. State space analysis for model plausibility validation in multi-agent system simulation of urban policies. *J Simulat.* 2016;10(3):216-226.
- [36] Ministry of Internal Affairs of the Republic of Kazakhstan; 2022. <https://www.gov.kz/memleket/entities/qriim?lang=ru>
- [37] Civil Code of the Republic of Kazakhstan; 1994. https://adilet.zan.kz/rus/docs/K940001000_
- [38] Entrepreneurial Code of the Republic of Kazakhstan; 2015. <https://adilet.zan.kz/rus/docs/K1500000375>
- [39] Civil Procedure Code of the Republic of Kazakhstan; 2015. https://online.zakon.kz/Document/?doc_id=34329053
- [40] Law of the Republic of Kazakhstan No. 274-IV “On Protection of Consumer Rights”; 2010. https://adilet.zan.kz/rus/docs/Z100000274_/z100274.htm
- [41] Law of the Republic of Kazakhstan No. 401-IV “On Mediation”; 2011. <https://adilet.zan.kz/rus/docs/Z1100000401/z110401.htm>
- [42] Law of the Republic of Kazakhstan No. 488-V “On Arbitration”; 2016. https://online.zakon.kz/Document/?doc_id=35110250
- [43] Message of the President of the Republic of Kazakhstan “New opportunities for development in the conditions of the fourth industrial revolution”; 2018. <https://adilet.zan.kz/rus/docs/K1800002018>
- [44] State program “Digital Kazakhstan”; 2018. <https://egov.kz/cms/en/digital-kazakhstan>
- [45] Situation Center; 2017. <https://ru.qaj.kz/s/>
- [46] Forum “Taldau”; 2022. https://online.zakon.kz/Document/?doc_id=34236659
- [47] Judicial office; 2022. <https://office.sud.kz/>
- [48] Order of the Prosecutor General of the Republic of Kazakhstan No. 2 “On approval of the Instruction on conducting criminal proceedings in electronic format”; 2018. <https://adilet.zan.kz/rus/docs/V1800016268>
- [49] Bluescreen. Smart Bridge — a digital bridge between government and business; 2020. <https://bluescreen.kz/smart-bridge-tsifrovoy-most-miezhdu-ghosudarstvom-i-bizniesom/>

- [50] Sydorets V, Korzhyk V, Khaskin V, Babych O, Bondarenko O. Electrical characteristics of the equipment for the hybrid plasma-MIG welding. In: *58th Annual International Scientific Conference on Power and Electrical Engineering of Riga Technical University, RTUCON 2017 (pp. 1-6); 2017*

Електронне вирішення диспутів у бізнесі: Можливості впровадження в Казахстані

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Анотація

Актуальність. Актуальність проведення дослідження щодо альтернативного вирішення диспутів між суб'єктами господарювання зумовлена тим, що сучасні процеси діджиталізації та глобалізації розширили можливості для впровадження інноваційних технологій у судочинство.

Мета. Одним із ключових завдань і цілей дослідження став аналіз механізму впровадження електронного вирішення диспутів у підприємницьку діяльність, виділення його характерних особливостей та принципів, на яких ця діяльність базується.

Методологія. У цьому дослідженні використано теоретико-методологічний підхід, функціонально-методологічний підхід, метод правової герменевтики, догматичний методологічний підхід, метод синтезу та інші.

Результати. У дослідженні проаналізовано особливості впровадження медіації як електронного методу вирішення диспутів у бізнесі. Проаналізовано міжнародний досвід та висвітлено переваги та недоліки впровадження механізму електронного вирішення диспутів у бізнес-секторі та надано рекомендації щодо підвищення ефективності впровадження механізму в Казахстані. Для завершення аналізу було розглянуто статистичні дані щодо опрацювання диспутів судами загальної юрисдикції та спеціалізованим міжрайонним господарським судом разом із методами, які вони застосовують, а також проведено аналіз використання медіації та мирових угод, зокрема за допомогою онлайн-систем.

Висновки. Наукове дослідження електронного вирішення диспутів показує, що інтеграція інноваційних комунікаційних технологій у судові процеси значно покращує традиційні методи вирішення диспутів. Електронне вирішення суперечок може вирішувати різноманітні конфлікти, від міжособистісних до конфліктів на державному рівні, і особливо актуальне для диспутів у бізнесі. Практична цінність висновків полягає в тому, що запровадження ефективного механізму електронного правосуддя надасть можливість захистити права підприємців та провадити цей вид діяльності в Республіці Казахстан.

Ключові слова: захист підприємців; медіація; арбітраж; економічні диспути закордоном; електронне правосуддя; переговори.