TOSHKENT DAVLAT YURIDIK UNIVERSITETI HUZURIDAGI ILMIY DARAJALAR BERUVCHI DSc.07/30.12.2019.Yu.22.01 RAQAMLI ILMIY KENGASH

TOSHKENT DAVLAT YURIDIK UNIVERSITETI

BAHRAMOVA MOHINUR BAHRAMOVNA

XALQARO ARBITRAJ FAOLIYATINI RAQAMLASHTIRISH VA HUQUQIY ASOSLARINI TAKOMILLASHTIRISH MASALALARI

12.00.03 – Fuqarolik huquqi. Tadbirkorlik huquqi.
Oila huquqi. Xalqaro xususiy huquq

Yuridik fanlar doktori (DSc) dissertatsiyasi
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Fan doktori (Doctor of Science) dissertatsiyasi mavzusi O‘zbekiston Respublikasi Oliy ta’lim, fan va innovatsiyalar vazirligi huzuridagi Oliy attestatsiya komissiyasida B2022.2.DSc/Yu199 raqam bilan ro‘yxatga olingan.

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Dissertatsiya mavzusining dolzarbligi va zarurati. Dunyoda xalqaro savdo aloqalari va investitsiya faoliyati jadal sur’atda rivojlanib bormoqda. Shu bilan birga, ular bilan bog‘liq ko‘plab nizolar ham kelib chiqmoqda. Xalqaro savdo aloqalari va investitsiya borasidagi nizolarni muqobil hal etish shiddat bilan kechayotgan bugungi zamonda dunyo hamjamiyati oldida turgan dolzarb masalalardan biridir. Binobarin, nizolarni hal etishning bir necha turi takomillashib bormoqda. COVID-19 pandemiyasidan so‘ng nizolarni hal etishning eng talabgor usuli sifatida raqamli muhitda onlayn tartibda nizolarni hal etish eng qulay tizim sifatida baholandi. Statistika va nizolarni onlayn hal qilishga ixtisoslashgan markazlarning 2021-yil yakuni bo‘yicha hisobotlariga ko‘ra, nizolarni onlayn hal qilish bo‘yicha ko‘rib chiqilgan ishlarning 46,72% (78440 ta) transchegaraviy nizolar va 53,28% (89446 ta) milliy miqyosdagi nizolar toifasiga kiritilgan[1]. Yangi nizolarni hal qilishga qaratilgan raqamli platformalar (raqamli arabitrajlar) 200 dan oshgan va 1000 dan ortiq nizolarni ko‘rib chiqqan[2]. Ushbu ko‘rsatkichlar nizolarni raqamlashtirilgan muhitda samarali tartibga solish muhimligiga yaqqol misoldir.

Jahonda nizolarni raqamlashtirilgan muhitda hal qilish uchun ishlab chiqilgan dastur faqat onlayn rejimda ishlaydi. Diskret vazifalar, ya’ni hujjatlarni onlayn to‘ldirish, onlayn eshituvlarni amalga oshirish uchun onlayn interfeysni taqdim etadigan boshqa sud dasturlaridan farqli o‘laroq, nizolarni muqobil hal etish (ADR) foydalanuvchilari an’anaviy so‘rovlar bo‘yicha sudga murojaat qilishmaydi. Dastur sud qarorlarini qabul qilish uchun mo‘ljallangan texnologik platforma emas, balki murojaatchilarning nizolarini yoki ishini hal qilishda sudga yordam beruvchi vositadir. Nizolarni raqamlashtirilgan muhitda hal qilish tomonlarga nizoni maxfiylik, tezkorlik, o‘z ixtiyorlariga ko‘ra hamda xolislik mezonlari asosida hal etish va chiqarilgan qarorning butun dunyoda ijrosini ta’minlash imkoniyatini beradi. Shu munosabat bilan ushbu sohaga axborot texnologiyalarini keng joriy etishga alohida e’tibor berilmoqda. Shuningdek, uning faoliyatini tashkil etish asoslari va tartibga solish mexanizmlarini aniq belgilash zarur. Ta’kidlab o‘tish joizki, bugungi kunda nizoni ko‘rish, hal etish huquqi va vakolatlarini belgilash, nizo onlayn platformada ko‘rilishini bekor qilish yoki uning qarori ijrosini tan olish hamda ijro etish masalalariga muhim ilmiy-amaliy ahamiyat kasb etadigan tadqiqot yo‘nalishi sifatida alohida e’tibor qaratilmoqda.

Respublikamizda qonun ustuvorligini ta’minlash, sud tizimi va nizolarni hal qilishning muqobil mexanizmlari hamda investitsiya muhitini yaxshilash, biznesni jadal rivojlantirish yo‘nalishida tashqi savdo faoliyatini samarali tartibga solish va subyektlar huquqlarini kafolatlash sohasida tizimli ishlar amalga oshirilmoqda. “Investitsiyaviy muhitni yaxshilash orqali mamlakatimiz iqtisodiyoti tarmoqlari va hududlariga xorijiy sarmoyalarni faol jalb etish”[3] iqtisodiy-ijtimoiy sohani

[1] https://ec.europa.eu/consumers/odr/main/?event=main.statistics.show
[2] https://odr.info/provider-list/. http://www.odreurope.com/odr-services/odr-platforms-apps
[3] O‘zbekiston Respublikasi Prezidentining 2022-yil 28-yanvardagi PF-60-son “2022–2026-yillarga mo‘ljallangan Yangi O‘zbekistonning Taraqqiyot strategiyasi to‘g‘risida”gi Farmoni // Qonunchilik ma’lumotlari milliy bazasi, 29.01.2022-y., 06/22/60/0082-son.

rivojlantirishning ustuvor yo‘nalishlaridan biri sifatida baholangan. Bu yo‘nalishda huquqni qo‘llash amaliyotini yanada takomillashtirish dolzarb ahamiyat kasb etadi.

O‘zbekiston Respublikasining 1996-yil 29-avgustdagi Fuqarolik kodeksi[1], 2018-yil 24-yanvardagi Iqtisodiy protsessual kodeksi[2], 2003-yil 11-dekabrdagi O‘RQ–560-II-son “Axborotlashtirish to‘g‘risida”gi, 2006-yil 16-oktabrdagi O‘RQ–64-son “Hakamlik sudlari to‘g‘risida”gi, 2015-yil 22-maydagi O‘RQ–385-son “Elektron tijorat to‘g‘risida”gi, 2019-yil 25-dekabrdagi O‘RQ–598-son “Investitsiyalar va investitsiya faoliyati to‘g‘risida”gi, 2021-yil 16-fevraldagi O‘RQ–674-son “Xalqaro tijorat arbitraji to‘g‘risida”gi Qonunlari, O‘zbekiston Respublikasi Prezidentining 2017-yil 19-iyundagi PF–5087-son “Biznesning qonuniy manfaatlari davlat tomonidan muhofaza qilinishi va tadbirkorlik faoliyatini yanada rivojlantirish tizimini tubdan takomillashtirishga doir chora-tadbirlar to‘g‘risida”gi Farmoni, 2018-yil 5-noyabrdagi PQ–4001-son “O‘zbekiston Savdo-sanoat palatasi huzurida Toshkent xalqaro arbitraj markazi (TIAC)ni tashkil etish to‘g‘risida”gi, 2019-yil 29-apreldagi PQ–4300-son “Respublika iqtisodiyotiga to‘g‘ridan to‘g‘ri xorijiy investitsiyalarni jalb qilish mexanizmlarini yanada takomillashtirish chora-tadbirlari to‘g‘risida”gi, 2020-yil 17-iyundagi PQ–4754-son “Nizolarni muqobil hal etishning mexanizmlarini yanada takomillashtirish chora-tadbirlari to‘g‘risida“gi qarorlari va mavzuga oid boshqa qonun hujjatlarida belgilangan vazifalarni amalga oshirishda ushbu dissertasiya tadqiqoti muayyan darajada xizmat qiladi.

Tadqiqotning respublika fan va texnologiyalari rivojlanishining asosiy yo‘nalishlariga mosligi. Dissertatsiya tadqiqoti respublikada fan va texnologiyalarni rivojlantirishni nazarda tutuvchi 2022—2026-yillarga mo‘ljallangan Yangi O‘zbekistonning taraqqiyot strategiyasining II, ya’ni “Mamlakatimizda adolat va qonun ustuvorligi tamoyillarini taraqqiyotning eng asosiy va zarur shartiga aylantirish” ustuvor yo‘nalishi bo‘yicha bajarilgan.

Dissertatsiya mavzusi bo‘yicha xorijiy ilmiy tadqiqotlar sharhi.[3] Xalqaro arbitraj faoliyatini raqamlashtirish va huquqiy asoslarini takomillashtirish masalalari oid ilmiy tadqiqotlar dunyoning yetakchi ilmiy markazlari va oliy ta’lim muassasalarida, shu jumladan, Amerika Qo‘shma Shtatlari: Stenford universiteti, Yale universiteti, Harvard universiteti, Kolumbiya universiteti, New York

[1] O‘zbekiston Respublikasi qonun hujjatlari to‘plami 05.10.2020 y., 03/20/640/1348-son.

[2] Qonun hujjatlari ma’lumotlari milliy bazasi 13.01.2021-y., 03/21/663/0013-son.

[3] Dissertatsiya mavzusi bo‘yicha xorijiy ilmiy tadqiqotlar sharhi: https://siepr.stanford.edu/publications/tipping-scales-balancing-consumer-arbitration-cases, https://library.law.yale.edu/news/yale-law-school-consumer-arbitration-data-archive, https://guides.library.harvard.edu/law/international-arbitration, https://cicia.law.columbia.edu/content/about, https://law.nus.edu.sg/nuslawacademy/certificate-programmes/graduate-certificates/gcia/#overview, https://www.law.ox.ac.uk/content/international-commercial-arbitration, https://www.lcil.cam.ac.uk/cuarblcil-lecture-series,https://www.reading.ac.uk/ready-to-study/study/2023/law-pg/llm-international-commercial-law, https://arbitration.qmul.ac.uk, https://www.city.ac.uk/prospective-students/courses/postgraduate/international-litigation-and-dispute-resolution,https://www.universiteitleiden.nl/en/law/research,https://llm.law.hku.hk/arbdr/,https://www.rewi.hu-berlin.de/en/sp/angebote/master/idr, https://cil.nus.edu.sg/research/international-disputeresolution/singapore-international-arbitration academy/, https://www.siarb.org.sg/,https://ud.ac.ae/ud_programs/llm-arbitration-and-dispute-resolution/,https://www.diac.com/en/home/, https://www.hkiac.org, https://www.newcastle.edu.au, https://www.uzh, https://www.uni-frankfurt.de,https://www.msu.ru/, https://msal.ru/, http://igpran.ru/, https://www.tsu.ru/, https://gubkin.ru/;https://www.rea.ru/ru/abiturientu/Pages/abiturientu.aspx,https://sgmu.ru.

universiteti; Buyuk Britaniya: Oksford universiteti, Kembrij universiteti, Reading universiteti, Queen Mary universiteti, City universiteti; Yevropa Ittifoqi: Leiden universiteti, Humboldt-Universität; Singapur xalqaro arbitraj akademiyasi, Singapur Milliy universiteti; O‘rta Sharq mamlakatlari: Dubai universiteti, Dubai xalqaro arbitraj markazi; Hong Kong xalqaro arbitraj markazi; Avstraliyaning Newcastle universiteti; Rossiya Federatsiyasi: Lomonosov nomidagi Moskva davlat universiteti, Kutafin nomidagi Moskva davlat yuridik universiteti, Tomsk davlat universtiteti, G.V.Plexanov nomidagi Rossiya iqtisodiyot akademiyasi va oliy ta’lim hamda boshqa ilmiy tadqiqot muassasalarida olib borilmoqda.

Jahonda xalqaro arbitraj faoliyatini raqamlashtirish va huquqiy asoslarini takomillashtirish masalalariga oid xorijiy ilmiy tadqiqotlar natijasida quyidagi ilmiy natijalarga erishilgan. Jumladan: raqamli arbitraj tushunchasiga nisbatan evristik va kognitiv yondashuvlar asoslantirilgan. Raqamli arbitraj huquqiy asoslari yanada takomillashtirilgan (Stenford universiteti, Yale universiteti, Harvard universiteti, Kolumbiya universiteti, New York universiteti). Xalqaro investorlar huquqlarini ta’minlash maqsadida, raqamli arbitraj qo‘llanishi sohalarini yanada kengaytirish, shu jumladan, xalqaro tashkilotlarning moliyaviy resurslari hisobiga raqamli arbitraj ilmiy sohasiga grantlarni jalb etishning konseptual asoslari taklif etilgan (Oksford universiteti, Kembrij universiteti, Reading universiteti, Queen Mary universiteti, City universiteti). Xalqaro arbitraj faoliyatini raqamlashtirish va huquqiy asoslarini takomillashtirish masalalari ilmiy va nazariy asoslari, fundamental doktrina nuqtayi nazaridan tadqiq etilgan (Leiden universiteti, Humboldt-Universität). Raqamli arbitraj rivojlanishi evolyutsiyasini zamonaviy bibliometrik analizlar orqali aniqlash va bugungi kunda raqamli arbitraj qo‘llanishi holati, arbitraj jarayonida raqamlashtirilgan tizimlardan foydalanishni yanada takomillashtirish bo‘yicha ilg‘or tijorat kompaniyalari faoliyatini tashkil etish bo‘yicha zarur choralar ko‘rilishi taklif etilgan (Singapur xalqaro arbitraj akademiyasi, Singapur Milliy universiteti). Raqamli arbitraj samarali tizimlarini tashkil etishda, ilg‘or xorijiy davlatlar tajribasi hisoblanmish xalqaro arbitraj faoliyatini raqamlashtirish masalalari zaif va kuchli texnologiyalar negizida joriy qilish taklif etilgan (Hong Kong xalqaro arbitraj markazi, Avstraliyaning Newcastle universiteti). Investorlar murojaatini ko‘rib chiqish yengillashtirishda texnologik mexanizmlarini davlat xizmati tizimiga joriy etish asoslari ishlab chiqilgan (Lomonosov nomidagi Moskva davlat universiteti, Kutafin nomidagi Moskva davlat yuridik universiteti, Tomsk davlat universtiteti, G.V.Plexanov nomidagi Rossiya iqtisodiyot akademiyasi).

Dunyoda raqamli arbitraj huquqiy muammolari va ularning yechimini topishga qaratilgan quyidagi ustuvor yo‘nalishlarda ilmiy tadqiqot ishlari olib borilmoqda. Xususan, raqamlashtirilgan tzimlar asosida xalqaro markazlar tashkil etish orqali raqamli arbitraj tizimini qulaylashtirish, ko‘p darajali raqamli arbitraj tizimlarini joriy etish, investorlarning iqtisodiy himoyasini kuchaytirishda raqamli arbitraj axborot bazalaridan foydalanish, raqamli arbitraj qo‘llanishi qonuniy asoslarini takomillashtirish, turli sohalarda raqamli arbitraj qo‘llanishi huquqiy asoslarini yanada takomillashtirish, xalqaro raqamli arbitraj standartlarini milliy qonunchilikka implementatsiya qilish va boshqalar.

Muammoning o'rganilganlik darajasi. Xalqaro va mahalliy nizolarni raqamli arbitraj faoliyati doirasida hal etish hamda uning vakolatlarini aniqlashtirish, shuningdek, belgilashning huquqiy tahlili, mazkur munosabatlarga qo'llaniladigan huquq va yurisdiksiyani belgilash, bu boradagi xalqaro tajriba hamda xorijiy mamlakatlar qonunchiligi va huquqni qo'llash amaliyoti mamlakatimizda mustaqil tadqiqot obyekti sifatida o'rganilmagan.

Nizolarni muqobil hal etishning ayrim masalalari xususiy huquq doirasida mamlakatimiz olimlaridan — H.Rahmonqulov, S.Gulyamov, I.Rustambekov, B.Samarxodjayev, O.Oqyulov, F.Otaxonov, Sh.Masadikov, D.Habibullayev, A.Suleymenova, Sh.Joldasova va boshqalarning[1] ilmiy ishlarida muayyan darajada ko'rib chiqilgan.

Xorijiy mamlakatlarda xalqaro arbitraj faoliyatini huquqiy tartibga solish, uning yurisdiksiyasini belgilash, vakolatlarini aniqlashtirish hamda yangi yo'nalishlarini rivojlantirishni so'nggi yillarda tadqiq qilgan olimlar sifatida G.Born, E.Alpaydin, P.Cortes, A.Lodder, A.Schmitz, A.Agrawal, A.Mills, A.Halevy, A.Musella, A.Berg, S.Brams, I.Banttekas, C.Hodges, C.Liyanage, R.Catherine, D.Neuberger, D.Zielinski, E.Johnson, E.Katsh, F.Sander, F.Steffek, E.Gaillard, J.Goldsmith, J.Thornton, S.Shackelford, B.Barton, J.Betancourt, J.Clanchy, J.Hope, J.Paulsson, J.Karton va boshqalarni[2] ko'rsatish mumkin.

MDH davlatlarida tadqiq qilinayotgan mavzu yo'nalishida so'nggi yillarda tadqiqot olib borgan tadqiqotchilar sifatida M.Fedotov, E.Leanovich, M.Yegorova, M.Boguslavskiy, L.Anufriyeva va boshqalarni[3] ko'rsatish mumkin.

Biroq mamlakatimiz olimlarining ishlari hakamlik sudlari va xalqaro arbitrajning umumiy jihatlariga bag'ishlangan bo'lib, nizolarni onlayn tartibda hal etish, raqamli arbitraj va uning yurisdiksiyasiga doir muammolar va sun'iy intellektga asoslangan huquqiy tartibga solish mexanizmlari kompleks tadqiq qilinmagan. Shu sababli ushbu masalani kompleks tadqiq etish dolzarb hisoblanadi.

Dissertatsiya tadqiqotining dissertatsiya bajarilgan oliy ta'lim muassasasining ilmiy tadqiqot ishlari rejalari bilan bog'liqligi. Tadqiqot ishi Toshkent davlat yuridik universiteti ilmiy tadqiqot ishlari rejasining "Investitsiya muhiti jozibadorligini oshirish va tavakkalchilik xavf-xatarini kamaytirishning huquqiy mexanizmini yaratishning nazariy-metodologik asoslarini takomillashtirish" nomli fundamental loyihasi doirasida bajarilgan.

Tadqiqotning maqsadi xalqaro raqamli arbitraj yurisdiksiyasi nuqtai nazaridan, ular faoliyatini tartibga solishni yanada takomillashtirish va ushbu sohadagi qonun hujjatlari va huquqni qo'llash amaliyoti samaradorligini oshirishga qaratilgan taklif hamda tavsiyalar ishlab chiqishdan iborat.

Tadqiqotning vazifalari:

raqamli muhitda nizolarni hal etishning huquqiy tushunchasi va mohiyatini aniqlash;

[1] Mazkur olimlar ishlarining to'liq ro'yxati dissertatsiyaning foydalanilgan adabiyotlar ro'yxatida ko'rsatilgan.
[2] Mazkur olimlar ishlarining to'liq ro'yhati dissertatsiyaning foydalanilgan adabiyotlar ro'yhatida ko'rsatilgan.
[3] Mazkur olimlar ishlarining to'liq ro'yhati dissertatsiyaning foydalanilgan adabiyotlar ro'yhatida ko'rsatilgan.

arbitrajni raqamlashtirish va nizolarni sun'iy intellekt tomonidan hal etilishi masalalarini o'rganish;

raqamli muhitda nizolarni hal etish yurisdiksiyaning nazariy tushunchasini ochib berish;

raqamli arbitraj yurisdiksiyaning asosiy tamoyillarini yoritish;

raqamli arbitraj sudi va arbitrlarning vakolatlarini tasniflash;

raqamli arbitraj faoliyatini huquqiy tartibga solish va uning qarorlarini tan olish va ijro etish masalalarini tahlil qilish;

milliy sudlar va xalqaro raqamli arbitraj o'rtasidagi munosabatlarni tavsiflash;

O'zbekiston qonunchiligi va huquqni qo'llash amaliyotini rivojlantirish istiqbollarini aniqlash;

qonunchilikni va huquqni qo'llash amaliyotini takomillashtirish bo'yicha taklif-tavsiyalar ishlab chiqish.

Tadqiqotning obyekti xalqaro onlayn savdo-iqtisodiy faoliyat doirasidagi nizolarni xalqaro raqamli arbitrajlarda hal etishning milliy va xalqaro-huquqiy tartibga solinishi bilan bog'liq huquqiy munosabatlar tizimi hisoblanadi.

Tadqiqotning predmeti xalqaro raqamli arbitrajlar faoliyatini huquqiy tartibga solish, nizolarni sun'iy intellekt vositasida hal etishning onlayn mexanizmlari doirasini belgilashdagi ilmiy-amaliy muammolar, milliy qonunchilik va huquqni qo'llash amaliyoti, xalqaro-huquqiy hujjatlar, xorijiy mamlakatlar qonunchiligi va amaliyoti hamda mavjud konseptual yondashuvlar, ilmiy-nazariy qarashlar va huquqiy kategoriyalardan iborat.

Tadqiqotning usullari. Tadqiqot olib borishda tarixiy, tizimli tahlil, qiyosiy-huquqiy, mantiqiy, umumlashtirish, ilmiy manbalarni kompleks tadqiq etish, induksiya va deduksiya, statistik ma'lumotlarning tahlili kabi usullar qo'llanilgan.

Tadqiqotning ilmiy yangiligi quyidagilardan iborat:

arbitrni tayinlash, rad etish, vakolatlarining amal qilishini tugatish, arbitraj sudining yurisdiksiyasi masalasi yuzasidan qarorlar qabul qilish, dalillarni olishga ko'maklashish, shuningdek arbitrajning hal qiluv qarorini bekor qilish masalalari arbitraj joylashgan joy qonuni asosida va joylashgan joydagi davlat vakolatli sudi tomonidan amalga oshirilishi hamda uning vakolatlari doirasida ta'minlash choralarini tan olish va ijroga qaratish asoslarini belgilash zarurati asoslantirilgan;

arbitrlar, arbitraj tomonidan tayinlangan ekspertlar, arbitraj muassasasining xodimlari — arbitraj yoki hakamlik muhokamasi davomida o'zlariga ma'lum bo'lib qolgan holatlar yuzasidan guvoh sifatida chaqirilishi va so'roq qilinishi mumkin emasligi asoslab berilgan;

arbitraj sudida ko'rilayotgan da'voni ta'minlash choralari arbitraj muhokamasi tarafining arizasiga ko'ra iqtisodiy sud tomonidan ko'rilishi mumkinligi, shuningdek, da'vo talablarini qanoatlantirishni rad etish haqidagi arbitrajning hal qiluv qarori ta'minlash choralarini iqtisodiy sud tomonidan bekor qilish uchun asos bo'lishi asoslangan;

ishda ishtirok etuvchi shaxslarning ushbu nizoni hakamlik sudiga yoki arbitrajga ko'rish uchun topshirish to'g'risidagi kelishuvi mavjud bo'lib, hakamlik sudiga yoki arbitrajga murojaat qilish imkoniyati boy berilmagan bo'lsa va, agar ishning iqtisodiy sudda ko'rilishiga qarshi bo'lgan javobgar o'zining nizoning

mazmuni bo‘yicha birinchi arizasidan kechiktirmay nizoni hakamlik sudining yoki arbitrajning hal qiluviga o‘tkazish to‘g‘risida iltimosnoma bersa sud da’vo arizasini ko‘rmasdan qoldirishi asoslab berilgan;

birjada tuziladigan shartnomalar yuzasidan vujudga keladigan nizolarni hal etishda Arbitraj komissiyasi o‘rni, ahamiyati va ishni hal etish mexanizmi sifatidagi konseptual huquqiy maqomi asoslab berilgan;

iqtisodiyot sohasida yuzaga keladigan nizolar hamda boshqa ishlar bo‘yicha qabul qilingan hal qiluv qarorlarini tan olish va ijroga qaratish masalalari, agar arbitraj joyi O‘zbekiston Respublikasida joylashgan bo‘lsa, qarorni tan olish va ijro qilish O‘zbekiston Respublikasining milliy qonunchiligida nazarda tutilgan o‘ziga xos xususiyatlarni inobatga olingan holda hal etilishi asoslantirilgan.

Tadqiqotning amaliy natijalari quyidagilardan iborat:

xalqaro amaliyotda yangi huquqiy amaliyot sifatida “Raqamli muhitda nizolarni onlayn hal etish” shakllanganligi va onlayn tartibda faoliyat ko‘rsatuvchi xalqaro markazlar tomonidan nizolarni belgilangan reglament asosida ko‘rib, hal etish konseptual jihatdan asoslab berildi;

“Raqamli makonda nizolarni hal qilish”, “Raqamli arbitraj”, “Sun’iy intellekt”, “Nizolarni onlayn hal qilish (ODR)”, “Onlayn arbitraj yurisdiksiyasi”, “Elektron tijorat platformasi”, “Elektron onlayn-auksion”, “Elektron logistika savdo portali” kabi tushunchalarga mualliflik ta’riflari ishlab chiqildi;

xalqaro raqamli arbitraj yurisdiksiyasi faoliyatiga ta’sir qiluvchi ichki va tashqi omillar aniqlandi;

onlayn arbitraj taraflar o‘rtasida tuzilgan shartnomada belgilangan shartlarga muvofiq amalga oshirilishi, taraflarga jarayonni amalga oshirish usulini tanlash erkinligini berishi, nizolarni hal qilish uchun eng maqbul shartlar va protsessual bosqichlarni tanlashga imkon yaratishi isbotlab berildi;

nizolarni onlayn hal etish, xususan, raqamli arbitraj yurisdiksiya qoidalari majburiy va shartli arbitraj yurisdiksiyasining turli jihatlarini qo‘llagan holda o‘ziga xos va cheklangan bo‘lishi asoslab berildi;

o‘zaro bog‘liq dalillarning dolzarbligi aniqlandi va yurisdiksiya da’volarini ko‘rib chiqishning onlayn prosessual mexanizmlarini takomillashtirish bo‘yicha takliflar asoslab berildi;

xalqaro arbitraj sohasida nizolarni onlayn hal qilish va elektron arbitraj platformalarini joriy etish orqali transchegaraviy nizolarni hal qilishning raqamlashtirilgan mexanizmi hamda uning yurisdiksiyasini belgilash zarurligi, bunda server joylashgan joy qonuni yangi kollizion norma sifatida qo‘llanilishi maqsadga muvofiqligi asoslab berildi.

Tadqiqot natijalarining ishonchliligi. Tadqiqotda xalqaro huquq va milliy qonun normalari, rivojlangan davlatlar tajribasi, huquqni qo‘llash amaliyoti, statistik ma’lumotlarni tahlil qilish natijalari umumlashtirilib, tegishli hujjatlar bilan rasmiylashtirilgan, xulosa, taklif va tavsiyalar aprobatsiyadan o‘tkazilib, ularning yakuni yetakchi milliy va xorijiy nashrlarda e’lon qilingan. Olingan natijalar vakolatli tuzilmalar tomonidan tasdiqlangan va amaliyotga tatbiq etilgan.

Tadqiqot natijalarining ilmiy va amaliy ahamiyati. Tadqiqot natijalarining ilmiy ahamiyati shundan iboratki, undagi ilmiy-nazariy xulosalar, takliflar va

tavsiyalardan kelgusi ilmiy faoliyatda, qonun ijodkorligida, huquqni qo‘llash amaliyotida, nizolarni muqobil hal qilish mexanizmlari to‘g‘risidagi qonun hujjatlarining tegishli normalarini sharhlashda, milliy qonunchilikni takomillashtirish faoliyati yuzasidan ilmiy tadqiqotlar olib borishda, shuningdek, “Xalqaro xususiy huquq“, “Xalqaro elektron tijorat arbitraji”, “Nizolarni muqobil usulda hal etish”, “Intellektual mulk sohasidagi nizolarni hal etish” kabi huquqiy fanlarini o‘qitish va metodik tavsiyalar tayyorlashda foydalanish mumkin.

Tadqiqot natijalarining amaliy ahamiyati esa qonun ijodkorligi faoliyatida, xususan, normativ-huquqiy hujjatlar tayyorlash hamda ularga o‘zgartirish va qo‘shimchalar kiritish jarayonida, huquqni qo‘llash amaliyotini takomillashtirishda, shuningdek, oliy yuridik ta’lim muassasalarida xususiy va xalqaro huquq fanlarini o‘qitishda namoyon bo‘ladi.

Tadqiqot natijalarining joriy qilinishi. Tadqiqot ishi bo‘yicha olingan ilmiy natijalar quyidagilarda foydalanilgan:

arbitrni tayinlash, arbitrni rad etishni qanoatlantirish, arbitr vakolatlarining amal qilishini tugatish xususida qaror qabul qilish, arbitraj sudining yurisdiksiyasi masalasi yuzasidan qarorlar qabul qilish, dalillarni olishga ko‘maklashish, shuningdek arbitrajning hal qiluv qarorini bekor qilish to‘g‘risidagi ariza arbitraj joylashgan yerdagi iqtisodiy sudga berilishi, ta’minlash choralarini tan olish va ijroga qaratish, arbitraj sudida ko‘rilayotgan da’voni ta’minlash choralarini ko‘rish to‘g‘risidagi ariza arbitraj joylashgan yerdagi yoki qarzdor davlat ro‘yxatidan o‘tkazilgan joydagi yoxud, agar qarzdor davlat ro‘yxatidan o‘tkazilgan joy noma’lum bo‘lsa, uning mol-mulki turgan joydagi iqtisodiy sudga berilishi asoslarini belgilash yuzasidan takliflari O‘zbekiston Respublikasi “Xalqaro tijorat arbitraji to‘g‘risida”gi O‘zbekiston Respublikasi 2022-yil 16-maydagi O‘RQ–769-sonli Qonuni qabul qilinganligi munosabati bilan O‘zbekiston Respublikasining ayrim qonun hujjatlariga o‘zgartish va qo‘shimchalar kiritish haqida”gi Qonunning 37-moddasi beshinchi qismida o‘z aksini topdi (O‘zbekiston Respublikasi Oliy Majlisi Senatining 2022-yil 15-iyuldagi 06-13/35-sonli dalolatnomasi). Ushbu takliflar arbitraj sudining yurisdiksiyasi masalasi yuzasidan qarorlar qabul qilish, ta’minlash choralarini tan olish va ijroga qaratish, ta’minlash choralarini ko‘rish, dalillarni olishga ko‘maklashish to‘g‘risidagi arizalari iqtisodiy sud tomonidan ko‘rib chiqilayotganda qo‘llanilishi to‘g‘risida qaror qabul qilishga doir vakolatlarini belgilashga xizmat qilgan;

arbitrlar, arbitraj tarkibi tomonidan tayinlangan ekspertlar, arbitraj muassasasining xodimlari, hakamlik sudyalari — arbitraj yoki hakamlik muhokamasi davomida o‘zlariga ma’lum bo‘lib qolgan holatlar yuzasidan guvoh sifatida chaqirilishi va so‘roq qilinishi mumkin emasligi to‘g‘risidagi takliflari O‘zbekiston Respublikasi “Xalqaro tijorat arbitraji to‘g‘risida”gi O‘zbekiston Respublikasi 2022-yil 16-maydagi O‘RQ–769-sonli Qonuni qabul qilinganligi munosabati bilan O‘zbekiston Respublikasining ayrim qonun hujjatlariga o‘zgartish va qo‘shimchalar kiritish haqida”gi Qonunning 53-modda ikkinchi qismida o‘z aksini topdi (O‘zbekiston Respublikasi Oliy Majlisi Qonunchilik palatasining 2022-yil 8-iyuldagi 04/2-09/3348-sonli dalolatnomasi).Ushbu taklifning amalga oshirilishi arbitraj muhokamasida ishtirok etgan shaxslarning

jarayon konfedensial tashkil etilganligi munosabati bilan ma'lumot bermaslik majburiyati huquqiy asoslarini takomillashtirishga xizmat qiladi;

arbitraj sudida ko'rilayotgan da'voni ta'minlash choralari arbitraj muhokamasi tarafining arizasiga ko'ra iqtisodiy sud tomonidan ko'rilishi mumkinligi, shuningdek, da'vo talablarini qanoatlantirishni rad etish haqidagi arbitrajning hal qiluv qarori ta'minlash choralarini iqtisodiy sud tomonidan bekor qilish uchun asos bo'lishi yuzasidan berilgan taklif O'zbekiston Respublikasi "Xalqaro tijorat arbitraji to'g'risida"gi O'zbekiston Respublikasi 2022-yil 16-maydagi O'RQ–769-sonli Qonuni qabul qilinganligi munosabati bilan O'zbekiston Respublikasining ayrim qonun hujjatlariga o'zgartish va qo'shimchalar kiritish haqida"gi Qonunning 93-moddasi oltinchi qismi, 99-moddasi sakkizinchi qismida o'z aksini topdi (O'zbekiston Respublikasi Oliy Majlisi Senatining 2022-yil 15-iyuldagi 06-13/35-sonli dalolatnomasi). Ushbu takliflar arbitraj sudining da'voni ta'minlash choralarini manfaatdor tomon arizasiga binoan iqtisodiy sudda ko'rilishi, da'voni ta'minlash choralarini ko'rish to'g'risidagi arizalari iqtisodiy sud tomonidan ko'rib chiqilayotganda qo'llanilishi to'g'risida qaror qabul qilishga doir vakolatlarini belgilashga xizmat qilgan;

ishda ishtirok etuvchi shaxslarning nizoni hakamlik sudiga yoki arbitrajga ko'rish uchun topshirish to'g'risidagi kelishuvi mavjud bo'lib, hakamlik sudiga yoki arbitrajga murojaat qilish imkoniyati boy berilmagan bo'lsa va, agar ishning iqtisodiy sudda ko'rilishiga qarshi bo'lgan javobgar o'zining nizoning mazmuni bo'yicha birinchi arizasidan kechiktirmay nizoni hakamlik sudining yoki arbitrajning hal qiluviga o'tkazishi to'g'risida iltimosnoma bersa sud da'vo arizasini ko'rmasdan qoldirishi lozimligi to'g'risidagi takliflari O'zbekiston Respublikasi Iqtisodiy protsessual kodeksi 107-moddasining 2-bandi O'zbekiston Respublikasi 2022-yil 16-maydagi O'RQ–769-sonli Qonuni qabul qilinganligi munosabati bilan O'zbekiston Respublikasining ayrim qonun hujjatlariga o'zgartish va qo'shimchalar kiritish haqida"gi Qonunning 1-moddasining, 9-bandida o'z aksini topdi (O'zbekiston Respublikasi Oliy Majlisi Qonunchilik palatasining 2022-yil 8-iyuldagi 04/2-09/3348-sonli dalolatnomasi).Ushbu taklifning amalga oshirilishi javobgar o'zining nizoning mazmuni bo'yicha birinchi arizasidan kechiktirmay nizoni hakamlik sudining yoki arbitrajning hal qiluviga o'tkazishi to'g'risida iltimosnoma berishi huquqini takomillashtirishga xizmat qilgan;

fyuchers shartnomalarini tuzish va bajarish bilan bog'liq nizolar birjaning Arbitraj komissiyasi tomonidan hal etilishi to'g'risidagi takliflar O'zbekiston Respublikasi Vazirlar Mahkamasining "Tovar-xom ashyo birjalarida fyuchers savdolarini joriy qilish hamda mahsulotlarni avtotransportda tashish xizmatlarining elektron logistika savdo portalini tashkil etish chora-tadbirlari to'g'risida"gi qarorida o'z aksini topdi (O'zbekiston Respublikasi Adliya vazirligining 2022-yil 14-oktabrdagi 811-5/6628-sonli dalolatnomasi). Ushbu taklif tuzilgan fyuchers shartnomalari yuzasidan nizolarning arbitraj komissiyasi tomonidan ko'rib hal etilishiga xizmat qilgan;

arbitrajning hal qiluv qarorini tan olish va ijroga qaratish masalalari, agar arbitraj joyi O'zbekiston Respublikasida joylashgan bo'lsa, "Xalqaro tijorat

arbitraji to'g'risida"gi O'zbekiston Respublikasi Qonunida nazarda tutilgan o'ziga xos xususiyatlar inobatga olingan holda hal etilishi yuzasidan berilgan taklif O'zbekiston Respublikasi "Xalqaro tijorat arbitraji to'g'risida"gi O'zbekiston Respublikasi 2022-yil 16-maydagi O'RQ–769-sonli Qonuni qabul qilinganligi munosabati bilan O'zbekiston Respublikasining ayrim qonun hujjatlariga o'zgartish va qo'shimchalar kiritish haqida"gi Qonunning 13-bandiga asosan, O'zbekiston Respublikasi Iqtisodiy protsessual kodeksining 248-moddasi beshinchi qismida o'z aksini topdi (O'zbekiston Respublikasi Oliy Majlisi Qonunchilik palatasining 2022-yil 8-iyuldagi 04/2-09/3348-sonli dalolatnomasi).Ushbu taklifning amalga oshirilishi chet davlatlar sudlarining va arbitrajlarining hal qiluv qarorlarini tan olish va ijroga qaratishning o'ziga xos xususiyatlari O'zbekiston Respublikasi "Xalqaro tijorat arbitraji to'g'risida"gi Qonunga muvofiq amalga oshirilishi lozimligi tartibini belgilab berishga xizmat qilgan.

Tadqiqot natijalarining aprobatsiyasi. Mazkur tadqiqot natijalari 16 ta ilmiy-amaliy anjumanda, jumladan, 8 ta xalqaro va 8 ta respublika ilmiy-amaliy anjumanida muhokamadan o'tkazilgan.

Tadqiqot natijalarining e'lon qilinganligi. Dissertatsiya mavzusi bo'yicha jami 53 ta ilmiy ish, jumladan, 1 ta o'quv qo'llanma, 9 ta monografiya va 43 ta ilmiy maqola (24 ta xalqaro nashrlarda) chop etilgan.

Dissertatsiyaning tuzilishi va hajmi. Dissertatsiya tarkibi kirish, 4 ta bob, xulosa, foydalanilgan adabiyotlar ro'yxati va ilovalardan iborat. Dissertatsiya hajmi 215 betni tashkil etgan.

DISSERTATSIYANING ASOSIY MAZMUNI

Dissertatsiyaning **kirish (dissertatsiya annotatsiyasi)** qismida tadqiqot mavzusining dolzarbligi va zarurati, tadqiqotning respublika fan va texnologiyalari rivojlanishining asosiy ustuvor yo'nalishlariga mosligi, mavzu bo'yicha xorijiy ilmiy tadqiqotlar sharhi, muammoning o'rganilganlik darajasi, mavzuning dissertatsiya bajarilayotgan oliy ta'lim muassasasining ilmiy tadqiqot ishlari rejalari bilan bog'liqligi, tadqiqotning maqsad va vazifalari, obyekti va predmeti, usullari, tadqiqotning ilmiy yangiligi va amaliy natijasi, tadqiqot natijalarining ishonchliligi, ilmiy va amaliy ahamiyati, ularning joriy qilinganligi, aprobatsiyasi, natijalarning e'lon qilinganligi, dissertatsiyaning tuzilishi va hajmi haqida ma'lumotlar keltirilgan.

Dissertatsiyaning **„Onlayn nizolarni hal etishning raqamlashtirilgan tizimlari va ularning huquqiy asoslari"** deb nomlangan birinchi bobida tadqiqotning keyingi boblarida muhokama qilingan muammolarni ishlab chiqish uchun nazariy asosning tahlili yoritilgan. Ushbu bobda raqamli makonda onlayn nizolar tushunchasi va ularning huquqiy maqomi, onlayn nizolarni hal etishning raqamlashtirilgan tizimlarining huquqiy asoslari, shuningdek onlayn nizolarni xalqaro, mintaqaviy va ikki tomonlama hal etishning huquqiy jihatlari tahlil qilingan.

Dissertant xalqaro savdo-iqtisodiy hamkorlikni rivojlantirishning nazariy va amaliy ahamiyatini hisobga olgan holda, xalqaro raqamli arbitrajning dolzarb ahamiyatini aniqlashtirgan. Bunda onlayn nizolarni raqamlashtirilgan arbitrajda hal etish – to‘liq sun’iy intellektga asoslangan texnologik jihatdan mumkin bo‘lgan, inson arbitrlar bilan bir xil vazifalarni funksional ravishda bajarishi va qonun tomonidan ruxsat etilgan tizim asosida amalga oshirilishi to‘g‘risidagi yondashuvga asoslangan. Jarayonning yana bir muhim elementi — bu sud muhokamasi bo‘lib, unda tomonlar o‘z ishini taqdim etish imkoniyatiga ega. Agar sun’iy intellektga asoslangan tizim tinglovda tomonlarning tinglanishini (va ko‘rishini) texnologik jihatdan ta’minlay olsa, jarayonning bu qismini “eshitish” sifatida tavsiflashga qarshi konseptual e’tiroz yo‘q. Bu sun’iy intellektga asoslangan tizim tomonidan o‘tkaziladigan tinglov inson arbitrlari tomonidan boshqariladigan an’anaviy tinglovga taqlid qiladi degani emas. Aksincha, sun’iy intellektga asoslangan tinglov uchun muhim bo‘lgan narsani, ya’ni tomonlarni tinglash va o‘z ishini taqdim etish uchun forumni ta’minlaydi. To‘liq sun’iy intellektga asoslangan arbitraj tizimlari kelajakda texnik jihatdan ishlashi mumkin. Agar bunday tizimlar inson arbitrlari bilan bir xil funksiyalarni nafaqat bir xil darajada, balki samaraliroq va sifatli bajarishga qodir bo‘lsa, amaldagi qonunchilik bazasi bilan bog‘liq savollar muqarrar ravishda paydo bo‘ladi.

Yuqorida ta’kidlanganidek, an’anaviy arbitrajning huquqiy asoslari onlayn versiya uchun qo‘llanilishi mumkin. Shuningdek, ba’zi jihatlar va masalalar mavjudki, ularda bunday qoidalar barcha yurisdiksiyalarda onlayn arbitraj qarori haqiqiy deb qabul qilinishiga imkon beradigan tarzda talqin qilinishi ehtimoli mavjud.

Maxsus qoidalar yoki tushuntirishlarni talab qilishi mumkin bo‘lgan ba’zi masalalar quyidagilardir:

I) barcha yurisdiksiyalar elektron hujjatlar va imzolarning haqiqiyligini tan olmaydi, bu esa elektron arbitraj kelishuvining haqiqiyligiga va elektron hujjat ko‘rinishida chiqarilgan qarorni ijro etish imkoniyatiga shubha tug‘diradi;

II) elektron usullar orqali amalga oshiriladigan xizmat va bildirishnomalar jarayonlari tartibga solinishi kerak;

III) amaldagi qonunchilik tomonlardan arbitraj joyini tanlashni talab qiladi, bu shart onlayn jarayon uchun imkonsiz bo‘lishi mumkin;

IV) elektron aloqalarning tez sur’atlarini hisobga olgan holda qonunning tegishli jarayoniga rioya qilinishini ta’minlash uchun maxsus qoidalar talab qilinadi;

V) onlayn arbitrajda foydalanish mumkin bo‘lgan aloqa vositalarining xususiyatlarini tartibga solish kerak;

VI) jarayonning maxfiyligi va yaxlitligini himoya qilish uchun zarur bo‘lgan xavfsizlik vositalarini ishlab chiqish zarur;

VII) qarorni qo‘llash mexanizmlari juda qiyin bo‘lishi ehtimoli mavjud, ayniqsa, ushbu tartib-qoidalar uchun sud aralashuvini talab qilmaydigan majburlash mexanizmlaridan foydalanish qulay bo‘lishi mumkin.

Dissertant, onlayn arbitraj uchun namunaviy qonunga ega bo‘lish ko‘plab afzalliklarga olib kelishi mumkinligini ta’kidlaydi. *Birinchidan,* bu onlayn

arbitrajni tartibga solish yo‘lidagi qadam bo‘lib, u uchun zarur bo‘lgan qoidalar haqida birinchi g‘oyalarni taqdim etadi. *Ikkinchidan,* bu ma’lum darajada butun dunyo bo‘ylab uyg‘unlashuvga imkon beradi. *Va nihoyat,* bu elektron aloqadagi yangi texnologik yutuqlar amaldagi qonunchilik eskirgan yoki to‘liq bo‘lmagan hollarda osongina o‘zgartirilishi mumkin bo‘lgan moslashuvchan vositadir.

Tadqiqotchi xalqaro raqamli arbitrajning maxsus huquqiy maqomini tahlil qilib, uni turli davlatlardagi kompaniyalar yoki shaxslar o‘rtasidagi nizolarni, odatda, sudga murojaat qilmasdan shartnomaga muvofiq vujudga kelishi mumkin bo‘lgan onlayn nizolar to‘g‘risidagi qoidalarni kiritish orqali hal etishga qaratilgan huquqiy jarayon sifatida baho beradi. Bir qator olimlarning yondashuvlarini tahlil etgan holda (H.Rahmonqulov, S.Gulyamov, I.Rustambekov, B.Samarxodjayev, O.Oqyulov, F.Otaxonov, Sh.Masadikov, D.Habibullayev, A.Suleymenova, Sh.Joldasova) xalqaro raqamli arbitraj sudlari davlat sudlariga nisbatan qator afzalliklarga egaligi asoslangan. Bunda xalqaro raqamli arbitraj tezkor va sifatli natijaga erishishning munosib usuli ekanligi, instansiyalarning mavjud emasligi va bir bosqichda nizo hal etilishi, taraflar mustaqil ravishda arbitrlarni tanlashi va arbitraj jarayoni qoidalariga kelishgan holda o‘zgartirish kirita olishi, qarori ijro etilishi majburiyligi va dunyo bo‘ylab uning ijrosini ta’minlash mumkinligi asosiy jihatlar ekanligi ko‘rsatib berilgan.

Dissertant xalqaro arbitrajning ta’riflari va ushbu masala bo‘yicha xorijiy olimlar (G.Born, E.Alpaydin, P.Cortes, A.Lodder, A.Schmitz, A.Agrawal, A.Mills, A.Halevy, A.Musella, A.Berg, S.Brams, I.Banttekas, C.Hodges, C.Liyanage, R.Catherine, D.Neuberger, D.Zielinski, E.Johnson, E.Katsh, F.Sander, F.Steffek, E.Gaillard, J.Goldsmith, J.Thornton, S.Shackelford, B.Barton, J.Betancourt, J.Clanchy, J.Hope, J.Paulsson, J.Karton)ning fikrlarini tahlil etib, xalqaro raqamli arbitraj turli mamlakatlardagi tadbirkorlik subyektlari yoki shaxslar o‘rtasidagi onlayn nizolarni hal qilishga qaratilgan huquqiy jarayon sifatida, odatda, kelgusidagi nizolarni xalqaro raqamli arbitrajga yuborish to‘g‘risidagi bitimni qo‘shish orqali aniqlanadi, - degan xulosaga kelgan.

AQShda iste’molchi arbitrajining nizodan oldingi bandidan kelib chiqadigan onlayn arbitraj qarorining ijro etilishi Nyu-York Konvensiyasining V(2) moddasidagi davlat siyosatiga oid istisnolarga zid kelmaydi[1]. Yevropa Ittifoqi Adliya Sudidan keskin farqli o‘laroq, AQSH Oliy sudi Federal arbitraj qonuni (FAA)ga ko‘ra, iste’molchilarga nizolar bo‘yicha arbitraj qoidalarini qat’iy qo‘llaydi. FAA (Federal arbitraj qonuni) 1925-yilda arbitraj kelishuvlariga nisbatan keng tarqalgan sud dushmanligiga javoban qabul qilingan. Qonunning asosiy mazmuniy qoidasi 2-bo‘limda keltirib o‘tilgan. Ya’ni: “Tijorat shartnomalaridagi arbitraj qoidalari qonunda yoki har qanday shartnomalarni bekor qilish uchun qonunchilikda mavjud bo‘lgan asoslar bundan mustasno bo‘lgan holda haqiqiy, qaytarib bo‘lmaydigan va ijro etilishi mumkin” – deb ta’kidlangan. AQSH Oliy sudi ushbu bandni shunday izohladiki, arbitraj kelishuvlari faqat “firibgarlik, majburlash yoki vijdonsizlik kabi umumiy qo‘llaniladigan shartnoma

[1] A. Schmitz “Drive-Thru Arbitration in the Digital Age: Empowering Consumers through Regulated ODR”, Baylor L. Rev. 2010, afl. 62, 208 (“OArb that ends with a final award is arbitration subject to the FAA and its strict enforcement”).

himoyasi" asosida haqiqiy emas deb topilishi mumkin, lekin arbitrajga maxsus taalluqli bo'lgan yoki o'z ma'nosi jihatidan arbitraj kelishuvi muhokama qilinayotganligidan kelib chiqadigan vajlar tufayli bekor qilinishi mumkin emas[1].

Xorijiy mamlakatlar qonunchiligi va doktrinasini o'rganish asosida „raqamli makonda nizolarni hal qilish", „sun'iy intellekt", „nizolarni onlayn hal qilish (ODR)", „onlayn arbitraj yurisdiksiyasi", „onlayn arbitraj shartnomasi", „onlayn arbitraj hal qiluv qarorini tan olish va ijro etish", „elektron tijorat platformasi", „E-auksion elektron savdo platformasi" kabi atamalarga mualliflik ta'rifi shakllantirildi va xalqaro raqamli arbitrajning jozibadorligini ta'minlovchi xususiyatlar ko'rsatib berildi.

Xususan, Onlayn sud kamida quyidagi bosqichlarni o'z ichiga oladi. *Birinchidan,* sudlanuvchilarga o'z da'volarini bayon qilish va dalillarni interaktiv veb saytga yuklashda yuridik vakilliksiz yordam berish uchun mo'ljallangan avtomatlashtirilgan onlayn sud bosqichi. *Ikkinchidan,* sudyalar tomonidan o'qitilgan va ularga hisob beruvchi yuridik malaka va tajribaga ega bo'lgan kotiblar bo'lgan yangi tashkil etilgan "Ish boshqaruvchilari" tomonidan yarashtirish bosqichi. *Nihoyat,* hal qilinmagan ishlar haqiqiy sudya tomonidan, yuzma-yuz sud muhokamasi, video yoki telefon orqali ko'rib chiqish yoki faqat yozma arizaga asoslangan qarorning qaysi biri eng maqbul bo'lganiga qarab hal qiluvchi bosqich. Aniqlash tartibi to'g'risidagi qaror ish rahbarining protsessual buyrug'ining obyekti bo'ladi, lekin tomonlarning qarori sudya tomonidan qayta ko'rib chiqish huquqiga ega bo'lgan holda amalga oshiriladi.

Muhimi, aniqlash bosqichidan kelib chiqadigan qaror okrug sudida ijro etilishi mumkin, buning uchun u okrug sudi qarori bilan bir xil huquqiy maqomga ega bo'ladi. Biroq, Onlayn arbitraj qaroridan farqli o'laroq, Onlayn sud qarori mohiyati bo'yicha to'liq ko'rib chiqilishi kerak. Haqiqatan ham, onlayn sud qarori okrug sudida oddiy apellatsiya tartibida ko'rib chiqilishi mumkin. Onlayn suddan shikoyat qilish uchun ruxsat talab qilinsa-da, yutqazgan tomon ham fakt, ham huquq masalalari bo'yicha apellatsiya berish huquqiga ega bo'ladi. Bundan tashqari, tuman sudining ruxsati bilan yutqazgan tomon ikkinchi marta Apellyatsiya sudiga shikoyat qilish huquqiga ega bo'ladi.

„Onlayn arbitraj va uning huquqiy tartibga solinishi" deb nomlangan dissertatsiyaning ikkinchi bobida onlayn arbitraj, uning huquqiy tushunchasi va mohiyati, onlayn arbitrajda nizolarni hal etish tartibi, onlayn arbitraj faoliyatining huquqiy tartibga solinishi, shuningdek, onlayn arbitraj qarorlarini tan olish va ijro etishning protsessual jihatlari ko'rib chiqilgan.

Onlayn arbitraj uchun yaratilgan qoidalar elektron shartnomalardan foydalanishga imkon beradi. Ular, shuningdek, qonuniy jarayon elektron aloqalarning tez sur'ati tufayli xavf ostida qolmasligini ta'minlashi kerak. Nihoyat, bunday qoidalar tartibga solish jarayonida almashiladigan hujjatlar va ma'lumotlarning xavfsizligi va maxfiyligini himoya qilish uchun zarur bo'lgan

[1] Doctor's Associates, Inc. v. Casarotto, 517 U.S. 681 (1996), 687; Perry v Thomas, 482 U.S. 483 (1987). – P. 492–493.

choralarni ko'rishi lozim. Bu esa qarorni sodda va tejamkor bo'lgan tarzda ijro etishning zarur mexanizmlari orqali amalga oshirilishi darkor.

Tomonlar jarayonni o'tkazish uchun turli xil elektron aloqa vositalarini tanlashlari mumkin. Har bir vosita o'zining afzalliklari va kamchiliklariga ega. Shu sababli tomonlar har bir holatda nizo va nizolarning o'ziga xos xususiyatlarini hisobga olgan holda eng qulay vositalarni ko'rib chiqishlari lozim.

Barcha holatlarda, tomonlar tanlagan aloqa vositalari va boshqa protsessual qoidalar jarayonning maxfiyligi va xavfsizligini kafolatlashi hamda tegishli qonun hujjatlariga rioya etilishini ta'minlashi kerak.

Tomonlar qarorni ijro etish uchun suddan tashqari mexanizmlarni tanlashlari mumkin, masalan, ishonch yorliqlaridan foydalanish, kredit kartalari bo'yicha avtomatik to'lovlar va boshqa texnologik mexanizmlarni qo'llash shular jumlasidandir.

Turli mahalliy qoidalardagi tafovutlarga yo'l qo'ymaslik uchun onlayn arbitraj qoidalarini uyg'unlashtirish lozim. Uyg'unlashtirilgan qonunchilik bazasi turli millatdagi bahsli shaxslarga jarayon bo'yicha qo'llanilishi mumkin bo'lgan qoidalarga nisbatan ishonchni ta'minlaydi. Biroq uyg'unlashtirishga erishish qiyin vazifa bo'lishi mumkin, chunki xalqaro konvensiya bo'yicha muzokaralar ko'p yillar davom etishi ehtimoli mavjud. Namunaviy qonun qonunchilik bazasini uyg'unlashtirishga yordam beradi, biroq u moslashuvchan vosita ekanligi sababli uyg'unlashtirish darajasi pastroq bo'lishi ehtimoldan xoli emas.

Ushbu mavzu bo'yicha uyg'unlashtirilgan qonunchilikka ega bo'lishning eng amaliy usuli bu har bir mamlakatda qabul qilinishi uchun barcha mamlakatlarni namunaviy qonun bilan ta'minlashdir.

Yuqorida aytilganlarning barchasini inobatga olgan holda, biz ushbu dissertatsiyaning ikkinchi bobi bo'yicha quyidagilarni xulosa qilishimiz mumkin:

An'anaviy arbitrajning amaldagi qonunchilik bazasi onlayn shakldagi arbitrajga nisbatan qo'llanilishi mumkinmi?

An'anaviy arbitraj uchun amaldagi qonunchilik bazasi onlayn arbitraj jarayonini o'tkazish imkoniyatiga to'sqinlik qilmaydi. Biroq onlayn arbitraj uni an'anaviy arbitrajdan ajratib turadigan va maxsus qoidalarni talab qilishi mumkin bo'lgan xususiyatlarga ega. Masalan, onlayn arbitraj faqat elektron aloqa vositalari orqali amalga oshiriladi va bunday vositalardan foydalanishni tartibga solish kerak. Xuddi shunday, elektron hujjatlar va imzolardan foydalanish arbitrajning amaldagi qonunchilik bazasida mavjud bo'lmagan maxsus qoidalar to'plamini talab qiladi.

Shu sababli arbitrajning amaldagi qonunchilik bazasi onlayn tartibni ta'qiqlamasa ham, o'ziga xos xususiyatlaridan kelib chiqqan holda, uning huquqiy bazasini loyihalash foydali bo'ladi. Bunday qonunchilik bazasi elektron aloqa vositalaridan foydalanishni tartibga solishi kerak. Elektron hujjatlar va imzolarning haqiqiyligini tan olish hamda jarayonning adolatliligi, xavfsizligi, shuningdek, maxfiyligini ta'minlash bo'yicha ko'riladigan chora-tadbirlarni belgilab berishi ham lozim.

Yuqorida aytib o'tilganidek, onlayn arbitraj an'anaviy arbitraj uchun qo'llaniladigan qonunchilik bazasi bilan qamrab olinmagan ma'lum xususiyatlarga

ega. Shuning uchun uni an'anaviy arbitrajdan ajratib turadigan maxsus xususiyatlarni tartibga soluvchi qoidalar to'plami talab qilinadi.

Ushbu qoidalar elektron shartnomalar tuzishga ruxsat berishi, elektron aloqa vositalaridan foydalanishni tartibga solishi, taraflarni arbitraj jarayonida almashiladigan hujjatlar va ma'lumotlarning maxfiyligi hamda xavfsizligini himoya qilish uchun xavfsizlik mexanizmlarini joriy etishga majburlashi, elektron hujjatlar, qolaversa, imzolardan foydalanishga ruxsat berishi, arbitraj sudining hal qiluv qarorini sodda, shuningdek, samarali ijro etish mexanizmlarini yaratishi lozim.

Arbitraj kelishuvi — bu shartnoma bo'lib, unga ko'ra tomonlar o'z kelishmovchiligini sudda yoki boshqa ADR (nizolarni muqobil hal etish) tashkilotlarida emas, balki onlayn arbitraj tartibida hal qilishga rozi bo'ladilar.

Arbitraj kelishuvi yozma shaklda bo'lishi kerak, shartnomani elektron aloqa vositalari orqali tuzish mumkin. Tomonlarning roziligi ularning qo'lyozma yoki elektron raqamli imzosi bilan tasdiqlanishi kerak.

Onlayn arbitraj shartnomasi hech bo'lmaganda arbitrajda ko'rib chiqilishi mumkin bo'lgan nizolarni o'z ichiga olishi lozim. Elektron aloqa vositalaridan foydalanish tartibi, ular bildirishnomalarni oladigan axborot tizimi va sud xabarnomalarini olish uchun ularning geografik joylashuvi, shuningdek, ushbu tartibda almashiladigan ma'lumotlarning maxfiyligi hamda yaxlitligini himoya qilish maqsadida ko'riladigan xavfsizlik choralari ham arbitraj shartnomasida ko'rsatib o'tilishi joiz.

Onlayn arbitraj tartib-qoidasi shunday ishlab chiqilishi kerakki, jarayonning tezkorligi tomonlar o'rtasidagi adolat va tenglikka ta'sir qilmasligi lozim. Dalillarni taqdim etish, xolislik va oqilona vaqt ichida qaror qabul qilish huquqi kabi asosiy protsessual kafolatlarga rioya qilinishi shart.

Onlayn arbitraj qoidalari har ikki tomonning elektron aloqa vositalaridan teng foydalanish imkoniyatini ta'minlashi va bu vositalardan foydalanish oson, har ikki tomon uchun ham ochiq bo'lishi hamda barcha dalillar va hujjatlarni taqdim etishiga imkon berishi kerak.

Nihoyat, jarayon arbitrajda almashilgan ma'lumotlarning yaxlitligi va maxfiyligini ta'minlash uchun zarur choralarni ko'rishi joiz.

„Raqamli (elektron) arbitraj va uning huquqiy tartibga solinishi" deb nomlangan dissertatsiyaning uchinchi bobida xalqaro arbitrajni raqamlashtirish va nizolarning sun'iy intellekt tomonidan hal etilishi masalalari, raqamli (elektron) arbitraj qo'llanilishining xalqaro tajribasi (Amerika Arbitraj Assotsiatsiyasi, CyberSettle va Butunjahon Intellektual Mulk Tashkiloti misolida) va raqamli (elektron) arbitraj faoliyatini huquqiy tartibga solish hamda uning qarorlarini tan olish va ijro etish masalalari tahlil qilingan.

Ushbu bobdan ma'lum bo'lishicha, protsesslar an'anaviy va elektron arbitraj jarayonlarida nizolashayotgan tomonlarning roziligi bilan sudlarni shakllantirishni talab qiladi. Shuningdek, har ikki turdagi arbitrajlar ham o'zaro tanlangan arbitrlarga muhtoj. Qolaversa, bahsli tomonlar o'rtasida kelishuvga erishilmasa, arbitraj sudi o'tkazilayotgan hududning milliy sudi tomonlar nomidan arbitrni tayinlashi mumkin.

Xorijiy arbitraj qarorlarini milliy qarorlardan ajratib turuvchi omillarni aniqlash uchun, avvalo, bir qancha qarama-qarshiliklar va sabablarni oydinlashtirib olish kerak. Shunday qilib, bir xillik masalalari nizo taraflarining fuqaroligiga, "joy" hududiga yoki hakamlik muhokamasiga qo'llaniladigan majburiy qonunga, yoki qaror "joyi"ga nisbatan ko'rib chiqilishi mumkin. Yuridik va sud nuqtayi nazaridan, qaror chiqarilgan joy milliy va xorijiy arbitraj o'rtasidagi mezonlarni ajratib turadi. Ushbu o'ziga xos mezon 1958-yildagi Nyu-York Konvensiyasida belgilab berilgan, chunki u chet el arbitraj qarorlarini ijro etishni tan oladi. Shuning uchun Nyu-York Konvensiyasiga a'zo davlatlar ushbu amaliyotni aks ettiruvchi qonunlarga ega bo'lishi kutilmoqda, bu orqali esa xorijiy arbitraj qarori o'z hududida kuchga kiradi.

Birinchidan, davlatlar, odatda, o'zlarining arbitraj qonunlarini keraksiz majburiy elementlar uchun qayta ko'rib chiqishlari kerak. Muhokama qilinganidek, xususiy avtonomiya va shartnoma erkinligi arbitrajning asosidir. Arbitraj qonunlari, agar jiddiy sabablar boshqa nuqtai nazarni ko'rsatmasa, majburiy emas, balki imkon beruvchi bo'lishi lozim. Teng munosabatda bo'lish va o'z da'vosini taqdim etish huquqi ana shunday jiddiy sabablardir. Ammo amaliy protsessual qoidalar haqida gap ketganda, taraflar avtonomiyasi hukmronlik qilishi kerak. Masalan, yurisdiksiya sud majlislarida shaxsan ishtirok etish majburiyatini yuklamasligi yoki guvohlarning shaxsan guvohlik berishini talab qilmasligi kerak. Chunki bunda dalillarni olishga turli sharoitlar to'sqinlik qilishi mumkin. Shuningdek, COVID-19 pandemiyasi sharoitida sayohatchilarga qo'yilgan karantin qoidalari haqida ham o'ylab ko'rish lozim.

Ikkinchidan, davlatlar arbitrajlar uchun mashinalarni o'rganish vositalarini ishlab chiqishni yaxshilash maqsadida huquqiy ma'lumotlarni belgilashda yordam berishga harakat qilishlari kerak. Bunday vositalar hozirda (va yaqin kelajakda) arbitrajlar uchun SI (sun'iy intellekt) ilovalari bozorida hukmronlik qiladi. Sud qarorlaridan xalqaro savdoning "lingua franca", shu jumladan, ingliz tilida oson va erkin foydalanish mumkin bo'lishi kerak. Arbitraj sudlari o'z qarorlarini hech bo'lmaganda anonim shaklda e'lon qilishlari lozim. Bundan tashqari, sudlar, shuningdek, qarorlarni hech bo'lmaganda anonim shaklda nashr etishlari kerak. Shubhasiz, ko'pchilik tijorat ishtirokchilarining bir tomondan maxfiylikni afzal ko'rishi va boshqa tomondan texnologiyaga mos arbitraj qonunlariga kirishi o'rtasida keskinlik bor. Qaysidir ma'noda, maxfiylikni qisqartirish yoki olib tashlash, bahslashayotgan tomonlar yaxshiroq xizmat uchun to'lashi mumkin bo'lgan narx sifatida tushunilishi mumkin.

Uchinchidan, arbitrajga layoqatlilik tushunchasi an'anaviy arbitrajda ham, elektron arbitrajda ham farq qilmasa-da, ba'zi davlatlar ba'zi arbitraj nizolarini elektron ish yuritishda arbitrajga layoqatlilik doirasidan chiqarib tashlashni xohlashlari mumkin. Delokalizatsiya nazariyasi tarafdorlari "chet el" arbitraj qarori tushunchasini elektron qarorning tabiatiga mos keladi, deb hisoblashadi. Biroq delokalizatsiya nazariyasi Nyu-York Konvensiyasining amaldagi qoidalariga zid keladi. Uning 5(1)(e)-moddasida agar sud qarori sud qarori chiqarilgan mamlakat qonunchiligiga muvofiq majburiy kuchga ega bo'lmasa, ijro so'ralayotgan mamlakat sudi ijroni rad etishga haqliligi nazarda tutiladi.

Boshqa bir nuqtayi nazarga ko‘ra, bu farq arbitraj sudining haqiqatiga e’tibor bermaslikdir, chunki sud qoidalarini chiqarish arbitrajdan qaror ijro etiladigan hududning milliy davlat siyosatini hisobga olishni talab qiladi. Shunday qilib, barcha arbitraj qoidalari arbitrajning “joy”iga unchalik e’tibor bermagan holda yagona organ nazorati ostida bo‘lishi kerakligi ta’kidlandi .

Adabiyotlarni ko‘rib chiqish natijasida aniqlangan ba’zi fikrlar rivojlanayotgan mamlakatlarning arbitraj ko‘rsatmalariga shubha bilan qarashlarni oqlaydi. Ko‘pincha, bu qarorlar G‘arb davlatlarida joylashgan Xalqaro arbitraj markazi nazorati ostida xorijiy davlatda chiqariladi. Bahs bitta iste’molchi yoki turli millatlarga mansub kompaniyalar guruhini o‘z ichiga olishi mumkin. Statistik ma’lumotlar xorijiy davlatlarda tuzilgan arbitraj ishlarining 90% yoki undan ko‘prog‘i rivojlanayotgan mamlakatlar tomonidan yutqazilganini ko‘rsatib, bu shubhani oqlaydi.

Biroq, hozirgi vaziyat shundan iboratki, Nyu-York Konvensiyasining 3-moddasida konvensiyani imzolagan har bir a’zo davlatda adolatni ta’minlash uchun xorijiy arbitraj qarorlarini tan olish va ijro etish nazarda tutilgan.

Ba’zi huquqshunos olimlarning fikricha, elektron arbitrajning an’anaviy oflayn arbitrajning mantiqiy rivojlanishi va uning usullari sifatida qabul qilinishini, ammo an’anaviy arbitraj tamoyillari elektron muhit uchun yetarli emasligi haqida bahslashmoqda. Boshqa tomondan, bir qator tadqiqotchilar elektron arbitrajni an’anaviy arbitraj talablari va tamoyillariga rioya qilmasdan haqiqiy emas deb hisoblaydilar. Bu yerda ular bahslashayotgan tomonlar o‘rtasida “yozish” va F2F (yuzma-yuzma) sessiyalari talabiga ishora qiladilar. Biroq hozirda yangi texnologik ishlanmalar bilan an’anaviy arbitraj sudining modelidan foydalanadigan gibrid arbitraj uslubi mavjud. Elektron arbitraj protseduralari virtual hamjamiyatning zamonaviy onlayn muhitiga mos keladi. Bunda nizolar, asosan, elektron vositalar orqali yuzaga kelishi mumkin va shuning uchun elektron vositalar orqali tezda hal qilinishi kerak. Shu bilan birga, elektron arbitraj bilan bog‘liq bir qator muhim muammolar mavjud, ya’ni uning an’anaviy xalqaro tijorat arbitrajining asosiy tamoyillariga rioya qilmasligi bunga misoldir. Qolaversa, tomonlar undan to‘g‘ri foydalanish uchun zarur texnik qobiliyat va tajribaga ega bo‘lishlari tabiiy deb hisoblanadi. Bundan tashqari, quyidagi muammolar mavjud:

- elektron arbitraj jarayonining maxfiyligi va xavfsizligi;
- tegishli aloqalar;
- onlayn rejimda arbitraj muhokamasini tashkil etish va o‘tkazish;
- tegishli ma’lumotlarning yaxlitligi;
- tegishli hujjatlarning autentifikatsiyasi.

Xususan, BAAda turli yoshdagi odamlarning savodsizligi bilan bir qatorda, Internetdan tranzaksiyalar uchun foydalanish bilan bog‘liq muammolar ham mavjud ekanligini ta’kidlash mumkin. Sharhlovchilar buni milliy aholi uchun AKT (axborot kommunikatsiyalari va texnologiyalari) bo‘yicha o‘qitishning yetishmasligida ekanligini aniqladilar. Bu shuni anglatadiki, BAAdagi odamlarning katta qismi arbitraj u yoqda tursin, bir qator onlayn xizmatlarni ham samarali amalga oshira olmaydilar.

Bundan tashqari, BAA jamiyatining jamoaviylik tabiati ham elektron arbitrajdan keng foydalanishga to‘sqinlik qilishi mumkin. Birlashgan Arab Amirliklari universitetining tijorat huquqi professori bilan suhbatda u elektron arbitrajga to‘siq bo‘layotgan narsa bu odamlarning unga bo‘lgan ishonchi va ular bu g‘oyani qanchalik ochishga tayyorligi ekanligini ta’kidladi. Abu Dabi qimmatli qog‘ozlar islom banki BAA fuqarolari elektron arbitraj haqida ko‘proq ma’lumot olishlari kerakligini ta’kidladi, chunki ko‘pchilik uning qanday ishlashi bilan tanish emas.

„O‘zbekiston Respublikasida onlayn va raqamli arbitrajni qo‘llash hamda tartibga solish masalalari” deb nomlangan dissertatsiyaning to‘rtinchi bobida O‘zbekiston Respublikasida nizolarni onlayn va elektron hal etish tizimini tatbiq etishning o‘ziga xos jihatlari hamda O‘zbekiston Respublikasida onlayn va elektron arbitraj faoliyatini tashkil etish va qarorlar ijrosini ta’minlashga doir qonunchilikni takomillashtirish masalalari o‘rganilgan.

Ushbu bobda, birinchi navbatda, arbitraj sudining “nizo masalasi bo‘yicha majburiy va hal qiluvchi qaror” sifatidagi ta’rifini kiritish orqali arbitraj qarori bo‘yicha munozara boshlashga harakat qilindi. Keyinchalik bahs elektron arbitraj qarorlarini chiqarishga qaratildi va ta’kidlanganidek, arbitraj uchun o‘zaro “joy”ga rozi bo‘lishda nizolashayotgan tomonlar sukut bo‘yicha sud qarori chiqarilgan joyni hal qiladilar.Garchi buni ma’lum bir mamlakatning davlat siyosatiga nisbatan qo‘llash qiyin bo‘lsa-da, u “delokalizatsiya nazariyasi” tomonidan kafolatlangan. Taqdim etilgan yechim elektron arbitrajni elektron shartnoma sifatida ko‘rib chiqishni va shu tariqa BMTning “Xalqaro shartnomalarda elektron aloqalardan foydalanish to‘g‘risida”gi Konvensiyasi mandati ostida darhol tan olishni taklif qiladi.

O‘zbekistonda hakamlik sudlari, xalqaro arbitraj, onlayn va elektron arbitraj faoliyatini tashkil etish va davlat tomonidan qo‘llab-quvvatlash mamlakatda olib borilayotgan sud islohotlarini ta’minlash va iqtisodiyotni liberallashtirish, shuningdek, xususiylashtirishni kengaytirish, xo‘jalik yurituvchi subyektlar sonini ko‘paytirish va ular o‘rtasidagi nizolarni hal etishga yordam beradi. Tajriba shuni ko‘rsatadiki, dunyo mamlakatlarida kapital aylanib turmasa, xo‘jalik yuritish samarali bo‘lishi mumkin emas. Sanoati rivojlanayotgan mamlakat iqtisodiyoti investitsiyalarga asoslangan sanoat kapitalining aylanib turishiga bog‘liqdir. Qonun ustuvorligi — bu davlat hokimiyati va boshqaruvi organlari chiqarayotgan hujjatlar, mansabdor shaxslarning xatti-harakatlari faqat va faqat Konstitutsiya hamda qonunlarga muvofiq bo‘lishi shart, deganidir. U yoki bu mamlakatda mavjud ijobiy investitsion muhit va xalqaro hamjamiyatning investitsion nizolarni samarali hal etish qobiliyati birgalikda investorlarning muayyan mamlakatga investitsiyalarni kiritishiga turtki bo‘la oladi.

O‘zbekistonda biznes subyektlarining huquqlari va qonuniy manfaatlarini himoya qilish kafolatlarini ta’minlash, ishbilarmonlik muhitini yaxshilash va mamlakatimizning investitsiyaviy jozibadorligini oshirishda nizolarni hakamlik sudlarida hal qilish mexanizmining joriy etilgani alohida ahamiyatga ega.

O‘zbekston Respublikasi Adliya vazirligi xalqaro va xorijiy tashkilotlarda O‘zbekiston Respublikasi manfaatlarining huquqiy himoyasini ta’minlash, xalqaro

hamjamiyat, xorijiy investorlarni milliy huquq tizimi va o‘tkazilayotgan huquqiy islohotlar haqida o‘z vaqtida xabardor qilish sohasida xalqaro arbitraj va sud muhokamalari masalalari bo‘yicha xalqaro va xorijiy tashkilotlarda O‘zbekiston Respublikasi manfaatlarining huquqiy himoyasini ta’minlashda Tashqi ishlar vazirligi hamda boshqa davlat organlari va tashkilotlari bilan idoralararo hamkorlikni amalga oshiradi.

Hozirgi vaqtda O‘zbekiston sud organlari tomonidan 200 dan ortiq doimiy faoliyat yurituvchi hakamlik sudlari ro‘yxatga olingan bo‘lib, ularning 160 tasi O‘zbekiston hakamlik sudlari assotsiatsiyasi va uning vakolatxonalari, 15 ta savdo-sanoat palatasi va uning hududiy bo‘linmalari va 30 ta boshqa yuridik shaxslardir.

O‘zbekiston Respublikasi Iqtisodiy protsessual kodeksi va Fuqarolik protsessual kodeksiga muvofiq, sudya kelishuv bitimini tuzish yoki nizoni muqobil hal qilish imkoniyatini aniqlaydi va huquqiy oqibatlarini tushuntiradi. Jahon amaliyotidan ma’lumki, yuridik jamiyatda nizolarni hal qilishning muqobil mexanizmlarini yaratish jismoniy va yuridik shaxslarning buzilgan huquqlarini tiklashga erishishning samarali vositasi hisoblanadi.

O‘zbekistonning ishbilarmonlik muhitini yanada yaxshilash va sarmoyaviy jozibadorligini oshirish maqsadida korxonalarda xorijiy investorlarning huquq va manfaatlari samarali himoya qilinishi lozim. Ammo bunga to‘sqinlik qiladigan bir qator tizimli muammolar mavjud. Bundan tashqari, amaldagi qonunchilik, jumladan, “Xalqaro tijorat arbitraji to‘g‘risida”gi O‘zbekiston Respublikasi Qonuni tomonlarning xorijiy arbitrlarni jalb qilish va chet el qonunlarini qo‘llash bilan aloqador xalqaro arbitraj standartlariga muvofiq investitsiya nizolarini ko‘rib chiqish imkoniyatlarini cheklaydi. Qolaversa, O‘zbekistonda xalqaro arbitraj qarorlarini ijro etishning aniq huquqiy mexanizmlarining yo‘qligi xorijiy investorlarning mamlakat sud tizimiga bo‘lgan ishonchiga salbiy ta’sir ko‘rsatmoqda. Bu esa mamlakatning sarmoyaviy jozibadorligini pasaytiradi. Shuningdek, mahalliy hakamlarni hamda xalqaro arbitraj sohasidagi boshqa mutaxassislarni tayyorlash va qayta tayyorlash yo‘lga qo‘yilmagan.

O‘zbekiston milliy qonunchiligida tadbirkorlikni himoya qilish to‘g‘risidagi bir qancha qonunlar mavjud. Xususan, O‘zbekiston Respublikasining Konstitutsiyasi, Iqtisodiy protsessual kodeksi, “Maxsus iqtisodiy zonalar to‘g‘risida”, “Investitsiyalar va investitsiya faoliyati to‘g‘risida”, “Davlat-xususiy sheriklik to‘g‘risida”, “Tadbirkorlik faoliyati erkinligining kafolatlari to‘g‘risida”, “Auditorlik faoliyati to‘g‘risida”gi qonunlar kabilar bunga misol bo‘ladi.

Tarmoqlar va hududlarni modernizatsiya qilish, ularning raqobatdoshlik darajasini oshirish, eksport salohiyatini rivojlantirish masalalari doimiy e’tiborimiz markazida bo‘lishi lozim. Buning uchun xorijiy sarmoyalar va ilg‘or texnologiyalarni hamda axborot-kommunikatsiya tizimlarini barcha sohalarga yanada faol jalb etishimiz zarur bo‘ladi.

Shu bilan birga, biznesga xorijiy investorlarning huquq va manfaatlarini samarali himoya qilishga, ishbilarmonlik muhitini yanada yaxshilashga va O‘zbekistonning investitsion jozibadorligini oshirishga imkon bermaydigan qator tizimli muammolar mavjud. Jumladan:

birinchidan, amaldagi qonunchilik, shu jumladan, „Hakamlik sudlari to‘g‘risida”gi O‘zbekiston Respublikasi Qonuni tomonlarning investitsiya nizolarini xalqaro arbitraj standartlariga muvofiq ko‘rib chiqish, xorijiy hakamlarni jalb qilish va chet el qonunlarini qo‘llash imkoniyatlarini cheklaydi;

ikkinchidan, O‘zbekistonda xalqaro arbitraj qarorlarini ijro etishning aniq huquqiy mexanizmlarining yo‘qligi xorijiy investorlarning mamlakat sud tizimiga bo‘lgan ishonchiga salbiy ta’sir ko‘rsatmoqda va shu bilan mamlakatning sarmoyaviy jozibadorligini pasaytirmoqda;

uchinchidan, mahalliy hakamlarni va xalqaro arbitraj sohasidagi boshqa mutaxassislarni tayyorlash va qayta tayyorlash yo‘q.

Nizolarni onlayn hal qilish va ijro etish bo‘yicha milliy qonunchilik mavjud emas, chunki ODR (nizolarni onlayn hal etish) platformalaridan foydalanish bilan bog‘liq yana bir masala — bu onlayn yechim qo‘llashni majburlash. Qaysi sud qarorni bajarishi kerak — hakamlik bitimi imzolangan joy sudi, hakamlik sudi, qaror qabul qilingan joyning sudi, OPC (Sanoatlashgan sohalarda ma’lumotlarni xavfsiz almashish uchun ochiq muloqot platformasi) obyekti jismonan joylashgan joyi yoki Internet serverlar o‘rnatilgan joy?

Ushbu tadqiqotda turli xil huquqiy tizimlarga asoslangan hakamlik tizimlari rivojlangan mamlakatlar tajribasi o‘rganildi, xususan, Germaniya, Buyuk Britaniya, Yaponiya, Singapur, MDH davlatlari, Qozog‘iston va Birlashgan Millatlar Tashkiloti tomonidan qabul qilingan UNCITRAL model qonuni shular jumlasidan.

Xalqaro arbitraj xalqaro savdo, tijorat va sarmoyaning deyarli barcha sohalarida biznes hamkorlar o‘rtasidagi nizolarni hal qilishning maqbul usuliga aylandi. Xalqaro arbitraj taraflarga nizolarni shaxsiy, maxfiy, iqtisodiy va vaqtni tejaydigan usulda, o‘z xohishiga ko‘ra neytral sudda hal qilishga imkon beradi. Ammo kimdir maxfiylikni hakamlik sudining eng muhim jihati deb biladi va sud jarayonini hal qiluvchi narsa deb hisoblaydi.

Elektron arbitraj qarorining chiqarilishi bir qator huquqiy oqibatlarga ega bo‘lib, ulardan eng muhimi elektron arbitraj qarori chiqarilgandan so‘ng darhol qonuniy kuchga kirishi va qonuniy kuchga ega bo‘lgandan keyin darhol ijro qilinishidir. Bu esa agar yangi qonuniy yoki faktik dalillar mavjud bo‘lsa ham, agar sud qarori bekor qilinmagan bo‘lsa ham, nizoni sudda qayta ko‘rib chiqishning oldini oladi. Ushbu oqibatlarning birinchisi, tomonlarni sud qarori to‘g‘risida xabardor qilishdir, chunki bu xabarnoma qarorni ijro etish bosqichini boshlaydigan birinchi protsedura hisoblanadi. Shundan kelib chiqqan holda, muhokama qilinadigan ikki jihat bor: qaror haqida xabar berish va qarorni ijro etish.

Qaror elektron shaklda onlayn tarzda taqdim etiladi va tomonlar elektron arbitraj provayderi yoki/va arbitraj sudi tomonidan xabardor qilinadi. Ushbu elektron xabarnoma tomonlarga qarorning mazmuni haqida ma’lumot beradi va ixtiyoriy ravishda unga rioya qilishga, uni amalga oshirishga yoki unga nisbatan murojaat qilishga tayyorlanish imkonini beradi. Ba’zi milliy qonunlarda arbitrajda qarorlar to‘g‘risida elektron xabar berish bilan bog‘liq muammo yoki tashvish yo‘q va Angliya hamda Uels kabi ba’zi mamlakatlar bunga juda liberal yondashadi.

Ingliz arbitraj qonunining (1996) 55(1)-bandiga muvofiq, tomonlar qaror to‘g‘risida xabar berishga qo‘yiladigan talablar bo‘yicha kelishib olishlari mumkinligi ta’kidlanadi.

Bunday holda, tomonlar arbitraj qarori elektron arbitrajda tez-tez uchraydigan elektron pochta orqali xabardor qilinishi yoki ular uchun ochiq bo‘lgan xavfsiz platformaga yuklanishi kerakligiga rozi bo‘lishlari mumkin.

XULOSA

Xalqaro arbitraj faoliyatini raqamlashtirish va huquqiy asoslarini takomillashtirish masalalari mavzusida o‘tkazilgan tadqiqot natijasida quyidagi nazariy va amaliy xulosalar ishlab chiqildi:

1. Raqamli makonda nizolarni hal qilishga doir tushunchalar tizimi va ularning ta’riflari (o‘n bitta atamadan iborat konseptual apparat) shakllantirildi va ilmiy asoslandi:

Raqamli makonda nizolarni hal qilish — kibermakonda axborot, tovar, ishlar, xizmatlarni olish, foydalanish, egalik qilish, qayta ishlash va uzatish bilan bog‘liq ijtimoiy, iqtisodiy va huquqiy munosabatlardan kelib chiqqan shartnomaviy-huquqiy nizolarni raqamli vositalar ishtirokida hal etish jarayoni;

Raqamli arbitraj — kibermakonda elektron tizimlar yoki sun’iy intellekt tizimlari hamda elektron vositalar asosida nizoni ko‘rib chiqish elektron platformasi;

Nizolarni onlayn hal qilish (ODR) — bu sud majlisida taraflarning jismoniy ishtirokisiz nizolarni ko‘rib chiqib, onlayn platforma asosida faoliyat ko‘rsatadigan ixtisoslashgan hakamlik turi. Onlayn arbitraj ikkala onlayn muomala va tranzaksiyalardan kelib chiqadigan nizolar va oflayn rejimda yuzaga keladigan nizolar uchun ham qo‘llanilishi mumkin.;

Onlayn arbitraj yurisdiksiyasi — bu uning kibermakonda transchegaraviy elektron tijoratdan kelib chiquvchi nizoni ko‘rib chiqish vakolatini va mustaqil ravishda ushbu vakolatning mavjudligini hal qilish huquqini anglatadi;

Onlayn arbitraj kelishuvi — bu Internet tizimida elektron imzodan foydalangan holda real vaqt rejimida shartnomaviy-huquqiy munosabatlardan kelib chiqqan yoki kelib chiqishi mumkin bo‘lgan nizolarni alohida shartnoma yoki asosiy shartnomaga band sifatida kiritgan holda nizoni hal etish bo‘yicha kelishuv;

Onlayn arbitraj hal qiluv qarorini tan olish va ijro etish — bu ko‘rib chiqilgan transchegaraviy elektron tijorat nizolari yuzasidan qabul qilingan qarorning offlayn qaror singari so‘zsiz tan olinishi va ijro qilinishi jarayoni. Qabul qilingan onlayn qaror quyi turuvchi yurisdiksiya sudiga murojaat qilinib, ijro varag‘i olingandan so‘ng offlayn qaror bilan teng yuridik kuchga ega bo‘ladi;

Elektron tijorat platformasi — bu taraflar, ya’ni sotuvchi va xaridor maxsus elektron dasturdan foydalangan holda o‘zi izlagan tovar, xizmat va ishlarni xuddi real hayotdagi do‘kondek sotishi/ijaraga berishi yoki sotib olishi/ijaraga olishi bilan bog‘liq tijoriy munosabatlarni amalga oshirishga xizmat qiluvchi kibermakondagi bozor;

E-auksion elektron savdo platformasi — bu elektron onlayn-auksionlar va tanlovlarni tashkil etish va o‘tkazish uchun zarur axborotni kiritish, saqlash va qayta ishlash, shuningdek, istagi bo‘lgan jismoniy va yuridik shaxslarning bunday auksionlar va tanlovlar jarayonlariga bevosita kirish va ishtirok etish imkonini ta’minlaydigan axborot tizimi;

Elektron onlayn-auksion — bu savdo platformasi orqali jismoniy va yuridik shaxslarga auksion obektini sotish (ijaraga berish) bo‘yicha narxni oshirib yoki tushirib borish tamoyilida onlayn o‘tkaziladigan savdo shakli;

Elektron logistika savdo portali — bu yuk tashish bo‘yicha elektron savdolar o‘tkazilishini, ular to‘g‘risidagi e’lonlar va boshqa zarur bo‘lgan axborotning elektron shaklda joylashtirilishini, elektron savdolar o‘tkazilishini ta’minlovchi operatorning maxsus veb sayti;

Elektron tizim — bu barcha manfaatdor shaxslar foydalana oladigan, yuk tashish bo‘yicha savdo subektlari o‘rtasida elektron savdolar o‘tkazilishini ta’minlaydigan tashkiliy, axborot va texnik vositalarning dasturiy majmuyi.

2. Nizolarni raqamli hal qilish huquqiy instituti vujudga kelganligi asoslandi. Nizolarni elektron hal etishda raqamli arbitraj masalasi va uning yurisdiksiyasi tahlil qilinib, bunda raqamli arbitraj sun’iy intellekt asosida ishni ko‘rib chiqishi, Internet tarmog‘ida hamda smart kontraktlar asosida vujudga keluvchi nizolarni hal etishda samarali mexanizmga aylanishi mumkinligi asoslab berildi. Shu bilan birga, raqamli arbitraj yurisdiksiyasi tegishli serverning joylashgan joy qonuni yoki tegishli domenni ro‘yxatdan o‘tgan joy qonuniga bo‘ysunishi to‘g‘risida maxsus kollizion normalar kiritilishi taklifi ishlab chiqildi.

3. Raqamli arbitraj mavjud arbitraj markazlari tomonidan joriy etilishi va ularning yurisdiksiyasiga bo‘ysunishi ideal holat ekanligi hamda uning qarorlari arbitraj markazi tomonidan rasmiylashtirilishi uning ijrosini ta’minlashga xizmat qilishi ilmiy-amaliy jihatdan asoslab berildi.

4. Elektron arbitraj (Raqamli arbitraj) va uning huquqiy tartibga solinishi konsepsiyasi ishlab chiqildi. Xalqaro xususiy huquq munosabatlaridan kelib chiqib, yuzaga keladigan yoki yuzaga kelishi mumkin bo‘lgan hamda arbitraj sudiga taalluqli bo‘lgan nizo, taraflarning kelishuviga binoan, ko‘rish uchun arbitraj sudiga topshirilishi mumkin. Arbitraj sudi o‘z yurisdiksiyasiga, shu jumladan, arbitraj shartnomasining mavjudligiga yoki haqiqiyligiga yoxud nizoning predmetiga qo‘shilishiga qarshi har qanday e’tirozni qabul qilishi mumkinligi va arbitraj sudi da’voni dastlabki savol sifatida yoki mohiyat bo‘yicha yakuniy arbitraj sudi qarorida hal qilishi isbotlandi.

5. Elektron arbitrajda foydalanuvchilar, ularning ma’lumotlarini va huquqlarini himoya qilish, shuningdek raqamli arbitraj etikasi masalalari huquqiy tartibga solinishi zarurati asoslab berildi va konseptual jihatlari ko‘rsatib berildi.

6. Taraflar arbitrajni har qanday holat, protsessual tartib va muddatga muvofiq olib borishlari ve bu tartib quyidagi talablarga javob berishi kerakligi asoslandi:

I) taraflarga har doim o‘z dalillari va hujjatlarini taqdim etish uchun vaqt va imkoniyat beriladi;

II) taraflar har qanday tinglov muhokamasi yoki uchrashuv haqida oldindan xabardor qilinadi;

III) taraflar qarshi taraf taqdim etgan har qanday dalil yoki hujjatdan foydalanish va uni ko‘rib chiqish huquqiga ega.

Agar taraflar belgilagan qoidalar yuqorida ko‘rsatilgan talablarga mos kelmasa, jarayon haqiqiy emas deb topilishi mumkinligi, agar qonun hujjatlariga rioya qilinsa va har ikki tomon o‘z da’vosini taqdim etishga ruxsat berilsa, tomonlar jarayonni o‘tkazish usulini erkin tanlashi mumkinligi asoslab berildi.

7. Onlayn arbitraj taraflarga jarayonni amalga oshirish usulini tanlash erkinligini berishi asoslab berildi. Bunda nizolarni hal qilish uchun eng maqbul shartlar va protsessual bosqichlarni tanlash imkoniyati yaratilishi, ushbu jarayon erkinligi turli sud an’analariga ega bo‘lgan mamlakatlarda yuzaga keladigan muammolarni bartaraf etishi mumkinligi ko‘rsatib berildi.

8. Onlayn arbitraj faqatgina jarayonga nisbatan qo‘llanilib, an’anaviy arbitraj jarayonlari bilan bog‘liq boshqa qonun yoki qoidalarni bekor qilmasligi asoslab berildi.

9. Onlayn arbitrajni davom ettirish uchun taraflar onlayn arbitraj shartnomasini rasmiylashtirishlari lozimligi isbotlab berildi. Bunda onlayn arbitraj shartnomasi kamida quyidagi shartlarni o‘z ichiga olishi kerak:

I) onlayn arbitrajga sabab bo‘ladigan nizo yoki nizolar turi;

II) elektron aloqa vositalaridan foydalanish bo‘yicha kelishuv va ulardan foydalanish tavsifnomasi;

III) arbitr yoki arbitrlar saylanish uchun bajarishi kerak bo‘lgan talablar va ularni tayinlash tartibi;

IV) tomonlarning jug‘rofiy joylashuvi yoki ular aloqa va bildirishnomalarni oladigan joy;

V) elektron xabarlar va bildirishnomalarni oladigan taraflarning axborot tizimi manzili;

VI) nizoni hal qilish uchun amaldagi qonun va uni amalga oshirish uchun vakolatli sud;

VII) jarayonda almashiladigan ma’lumotlarning maxfiyligi va yaxlitligini himoya qilish uchun ko‘riladigan xavfsizlik choralari;

VIII) dalillarni taqdim etish qoidalari.

Ushbu qoida arbitraj shartnomasida bo‘lishi kerak bo‘lgan asosiy moddiy talablarni belgilab beradi. Shartnoma jarayon uchun asosiy hisoblanadi va iloji boricha, to‘liq bo‘lishi kerak. Keltirilgan talablar faqat onlayn arbitrajning ishlashi uchun minimal asoslardir. Shu bilan birga, shartnomada taraflar jarayon davomida duch kelishi mumkin bo‘lgan barcha vaziyatlarni, imkon qadar, batafsil bayon qilishlari kerak.

Bu talablarning ba’zilari ushbu shartnomani an’anaviy arbitraj shartnomasidan ajratish uchun ishlatiladi, dalillarni taqdim etish qoidalari yoki arbitrlarni tanlash kabi amaliy masalalarni hal qilish uchun boshqa talablar belgilanishi lozimligi isbotlandi.

10. Raqamli arbitrajni tartibga solishning bir usuli qaror qabul qilish jarayonida shaffoflikni talab qilishdir. Bu qaror qabul qilish jarayonida

foydalaniladigan algoritmlar va ma'lumotlar manbalarini oshkor qilishni, shuningdek, sun'iy intellekt arbitraj provayderlari o'z modellarini qanday o‘qitish va sinab ko‘rishlari haqida shaffof bo'lishini ta'minlaydigan qoidalarni yaratishni o'z ichiga olishi mumkinligi asoslab berildi.

11. Raqamli arbitrajni tartibga solishning yana bir yondashuvi raqamli arbitraj provayderlarini o‘z qarorlari uchun javobgarlikka tortadigan nazorat mexanizmlarini o'rnatishdir. Bu raqamli arbitraj provayderlarini nazorat qiluvchi va ularning qaror qabul qilish jarayonlari uchun standartlarni belgilaydigan tartibga soluvchi organni yaratishni o'z ichiga olishi isbotlandi.

12. Olib borilgan tadqiqotlarga asosan, raqamli arbitraj tizimlari sun’iy ekanligini hisobga olib, yolg‘onni aniqlash va yumshatish choralarini qo'llash orqali raqamli arbitrajni tartibga solish muhim ahamiyatga ega. Bu sun'iy intellekt arbitraj provayderlaridan o‘z tizimlarini yolg‘on guvohlik uchun muntazam ravishda sinab ko‘rish va tekshirishni, aniqlangan har qanday yolg‘onni kamaytirish uchun choralar ko‘rishni talab qilishni o‘z ichiga olishi mumkinligi ko‘rsatib berildi.

13. Tahlillarga asosan, raqamli arbitraj adolat, hisobdorlik va shaffoflik masalalari kabi muhim axloqiy sifatlarga amal qilinishi yuzasidan shubha keltirib chiqarishi mumkin. Ushbu xavotirlarni bartaraf etish uchun raqamli arbitraj provayderlaridan kamsitmaslik, adolat va oshkoralik tamoyili kabi axloqiy ko'rsatmalar va tamoyillarga rioya qilishlarini talab qiladigan qoidalar kiritilishi mumkinligi asoslab berildi.

14. Yana bir ilmiy yangi g‘oya - arbitrajda inson va raqamli arbitraj qarorlarini birlashtirgan gibrid modellar imkoniyatlarini o‘rganishdir. Bu inson arbitrlariga qaror qabul qilishda yordam berish uchun sun'iy intellektdan foydalanadigan tizimlarni ishlab chiqishni yoki inson va raqamli arbitraj qarorlarini qabul qilish kombinatsiyasidan foydalanadigan gibrid tizimlarni yaratishni o'z ichiga olishi isbolandi.

15. Aniqlanishicha, onlayn arbitraj kiberxavfsizlik va maxfiylik bilan bog'liq bo‘lgan kam uchraydigan muammolarni keltirib chiqaradi. Ushbu muammolarni hal qilish uchun onlayn arbitraj provayderlaridan kiberxavfsizlik va maxfiylikni ta'minlash bo'yicha qat'iy choralarni qo'llashni talab qiladigan qoidalar kiritilishi mumkin. Bu shifrlash, ikki faktorli autentifikatsiya kabi choralarni o'z ichiga olishi asoslab berildi.

16. Onlayn arbitraj xizmatlaridan foydalanishda foydalanuvchilarning himoyalanganligini ta'minlash uchun onlayn arbitraj provayderlari foydalanuvchi va provayder o'rtasida nizo yuzaga kelgan taqdirda nizolarni hal qilish mexanizmlarini taklif qilishni talab qiladigan qoidalar yaratilishi zarurati ko‘rsatib berildi. Bu onlayn arbitraj provayderlarini nazorat qiluvchi va foydalanuvchilarning shikoyatlarini ko'rib chiqadigan tartibga soluvchi organni yaratishni o'z ichiga olishi asoslantirildi.

17. Onlayn arbitraj xizmatlarining sifati va ishonchliligini ta'minlash uchun onlayn arbitraj provayderlari uchun texnik standartlarni o'rnatadigan qoidalar qo'llanilishi mumkinligi ko‘rsatib berilib, ushbu standartlar ma'lumotlarni saqlash

va olish, ma'lumotlar xavfsizligi va platformadan foydalanish kabi muammolarni hal etishga xizmat qilishi ko‘rsatib berildi.

18. Tahlillarga asosan, onlayn arbitraj xizmatlari texnik tajriba darajasidan yoki jismoniy qobiliyatlaridan qat'i nazar, barcha foydalanuvchilar uchun ochiq bo'lishi kerak. Buni hal qilish uchun onlayn arbitraj provayderlaridan veb-kontentga kirish bo'yicha ko'rsatmalar (WCAG) kabi foydalanish ko'rsatmalariga rioya qilishni talab qiladigan qoidalar kiritilishi lozimligi isbotlandi.

19. Tadqiqot doirasida, sun'iy intellekt (SI) tezroq, samaraliroq va tejamkor jarayonlarni amalga oshirish orqali nizolarni hal qilishda inqilob qilishi mumkinligi isbotlangan.

20. Tadqiqot doirasida nizolarni hal qilishda sun'iy intellektdan foydalanishga qaratilgan va ma'lumotlarni himoya qilish, maxfiylik, intellektual mulk va sun'iy intellektga asoslangan qarorlar uchun javobgarlik kabi muammolarni hal qiladigan yangi qonun qabul qilish zarurati va talabi isbotlangan.

SI arbitraji (raqamli arbitraj) va nizolarni onlayn hal qilishni tartibga soluvchi qonunga kiritilishi lozim bo‘lgan quyidagi asosiy tamoyillar ishlab chiqilgan:

Adolat va xolislik tamoyili, shaffoflik tamoyili, ochiqlik tamoyili, ma'lumotlarni himoya qilish va maxfiylik tamoyili, hisobdorlik/mas'uliyat tamoyili, qonuniy muvofiqlik tamoyili.

21. Tahlillarga asosan, SIga asoslangan nizolarni hal qilish jarayonlarining bir xilligini ta'minlash maqsadida xalqaro standartlarni o'rnatish kerak. Ushbu qabul qilinajak, SI arbitraji (raqamli arbitraj) xalqaro standartlarida sun'iy intellektga asoslangan qarorlar qabul qilishning axloqiy va huquqiy oqibatlarini ko‘rib chiqishi lozimligi isbotlandi.

22. SI arbitraji (raqamli arbitraj) va nizolarni onlayn hal qilishning huquqiy tartibga solinishi yangi qonunlar, xalqaro standartlar, kontseptual asoslar, blokcheyn texnologiyasidan foydalanish, hamkorlikdagi tadqiqotlar, ta'lim va o'qitish dasturlarini talab qiladi. Ushbu sa'y-harakatlar sun'iy intellektga asoslangan nizolarni hal qilish jarayonlari adolatli, shaffof va xolis bo'lishini ta'minlashga yordam beradi.

23. Tadqiqot davomida, SI arbitraji (raqamli arbitraj) va nizolarni onlayn hal qilish foydalanuvchilari uchun “Axloq kodeksi” zarurligi isbotlandi, bu jarayonlar barcha ishtirokchilar uchun adolatli va teng qo‘llanilishi ta'minlanishi lozimligi asoslantirildi. Qabul qiiingan kodeks foydalanuvchilarning ushbu texnologiyalardan foydalanishda mas'uliyatli va axloqiy tarzda harakat qilishlarini ta'minlash uchun amal qilishi kerak bo'lgan ko'rsatmalar va standartlarni taqdim etishi kerak. Ushbu kodeksga asosan, taqdim etilgan ma'lumotlar himoya qilinishi, maxfiylik ta’minlanishi va qaror qabul qilishda neytrallikka amal qilinishi lozimligi singari talablar joriy etilishi isbotlandi. “Axloq kodeksi”ning qabul qilinishi taraflarga SI tomonidan nizolarni hal qilish jarayonlariga ishonchni mustahkamlashga yordam berishi asoslab berildi. Umuman olganda, “Axloq kodeksi” sun'iy intellekt yordamida nizolarni hal qilish jarayonlarining adolatli, shaffof va axloqiy tarzda ishlashini ta'minlashi uchun juda muhimligi isbotlab berildi.

24. Raqamli arbitraj va nizolarni onlayn hal qilish bo'yicha SI reglamenti uchun ishlab chiqilishi zarur bo'lgan quyidagi kontseptual huquqiy asoslar qabul qilinishi lozimligi isbotlandi: *ma'lumotlarni himoya qilish va maxfiylik, algoritmik shaffoflik, adolat va xolislik, qonunga muvofiqlik, foydalanish imkoniyati, hisobdorlik/mas'uliyat tamoyili.*

25. Dissertatsiya doirasida, onlayn arbitraj nizolarni hal qilishning innovatsion modellari uchun imkoniyatlarni taqdim etishi ko‘rsatib berildi. Innovatsion modellarga asoslangan xizmatlarni taklif qiluvchi onlayn arbitraj provayderlarini rag'batlantirish yoki provayderlardan xizmat takliflarining bir qismi sifatida taklif qilishni talab qilish orqali bunday modellarni ishlab chiqish va joriy qilishni rag'batlantirishi zarurligi asoslantirildi.

26. Ish yuritish jarayonida elektron shaklda taqdim etilgan, almashtirilgan yoki yaratilgan barcha hujjatlardan foydalanish mumkin bo‘lishi hamda taraflar barcha xabar almashish bilan bog‘liq quyidagi qoidalarga amal qilishi lozimligi asoslab berildi:

I) taraflar barcha xabarlar yuborilishi kerak bo‘lgan manzilni ko‘rsatishi kerak;

II) taraflar ish yuritish bilan bog‘liq barcha xabarlarni o‘zlari ko‘rsatgan manzilga yuboradilar. Kelishilgan elektron aloqa vositalari orqali va taraflar ko‘rsatgan manzilga yuborilmagan har qanday aloqa yuridik kuchga ega bo‘lmaydi.

Ushbu qoida onlayn arbitraj tartibida taraflar o‘rtasidagi muloqotning xususiyatlarini belgilab beradi.

Taraflar o‘rtasidagi xabarlarning xarakteristikasi xabar yuboruvchidan kelganligiga ishonch hosil qilish uchun yetarli bo‘lishi va xabarning o‘zgarmasligini hamda jo‘natuvchining xabarni yuborganligini inkor eta olmasligi lozim.

27. Taraflar arbitraj muhokamasi joyi uchun istalgan manzilni tanlashlari mumkinligi, biroq onlayn arbitraj jarayonining xususiyatini hisobga olgan holda, taraflar arbitraj muhokamasi joyini tanlashi yoki ko‘rsatishi shart emasligi isbotlab berildi.

28. Agar taraflar arbitraj uchun joy tanlamaslikka qaror qilsalar, ular har qanday holatda ham quyidagi ma’lumotlarni ko‘rsatishlari kerakligi asoslab berildi:

I) arbitrlar nizoni hal qiladigan moddiy huquq. Tomonlar nizoni *ex ayequo et bono* sifatida hal qilish uchun arbitrlarga ruxsat berishlari mumkin;

II) arbitraj jarayonidan kelib chiqadigan har qanday nizolarni hal qilish uchun vakolatli yurisdiksiya;

III) qarorni ijro etish bo‘yicha vakolatli yurisdiksiya.

Yuqoridagilardan kelib chiqib, onlayn va raqamli arbitraj qoidalarini milliy qonunchilikda aks ettirish, shuningdek, UNCITRAL namunaviy qonuniga hamda Nyu-York Konvensiyasiga ham tegishli o‘zgartirish kiritilishi zarurati asoslab berildi.

Bularning barchasi O‘zbekiston Respublikasida xalqaro raqamli va onlayn arbitraj faoliyatini huquqiy tartibga solish samaradorligini oshiradi, milliy darajada

huquq ustuvorligi hamda huquqni himoya qilish usullariga murojaat qilishning ta'minlanganligiga, shuningdek, mamlakat investitsiyaviy iqlimi jozibadorligi oshishiga xizmat qiladi.

SCIENTIFIC COUNCIL ON AWARDING SCIENTIFIC DEGREES DSc.07/30.12.2019.Yu.22.01 AT THE TASHKENT STATE UNIVERSITY OF LAW

TASHKENT STATE UNIVERSITY OF LAW

BAKHRAMOVA MOKHINUR BAKHRAMOVNA

ISSUES OF DIGITALIZATION AND IMPROVEMENT OF THE LEGAL FRAMEWORK OF INTERNATIONAL ARBITRATION

12.00.03 – Civil law. Business Law.
Family Law. International Private Law.

ABSTRACT
of doctoral (Doctor of Science) dissertation on legal sciences

Tashkent – 2023

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The doctoral dissertation (DSc) is available at the Information-Resource Center of Tashkent State University of Law (registered under No.1151), (Address 100047, Amir Temur street, 35. Tashkent city. Phone: (99871) 233-66-36).

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INTRODUCTION (abstract of DSc thesis)

The actuality and relevance of the dissertation theme. International trade relations and investment activities are developing rapidly in the world. At the same time, there are many disputes related to them. International trade and investment dispute resolution are the urgent issues facing the world community in today's fast-paced world. Due to this demand, several types of dispute resolution are being developed. After the COVID-19 pandemic, online dispute resolution was rated as the most convenient system in the digital environment as the most demanding method of dispute resolution. According to statistics and reports of centers specializing in online dispute resolution at the end of 2021, 46.72% (78,440) of cases considered for online dispute resolution were cross-border disputes and 53.28% (89446) are included in the category of national disputes. Among them, the sectors that caused the most disputes are airlines (aviation sector (15.9%), online clothing store (9.87%), trading of goods related to information technologies (6.69%), hotel services (3.99%), etc. The largest number of appeals for online dispute resolution is in the Federal Republic of Germany (1456), Austria (486), Hungary (190), the Netherlands (142) and other countries contribute [1].There are more than 200 digital platforms aimed at resolving new disputes (digital arbitration), and more than 1000 disputes have been considered. These figures are a prime example of the importance of effective dispute resolution in the digital environment[2].

Developed to resolve disputes worldwide in a digital environment, the program works only online. Unlike other court software that provides an online interface for discrete tasks, such as online filing of documents and online hearings, users of Alternative Dispute Resolution (ADR) do not go to court for traditional requests. The program is not a technological platform designed for making court decisions, but a tool to assist the court in resolving the disputes or cases of the applicants. Dispute resolution in a digital environment enables parties to resolve disputes confidentially, quickly, at their own discretion, and impartially, and to ensure that the decision is enforced worldwide. In this regard, special attention is being paid to the wide introduction of information technologies in this field. Also, it is necessary to clearly define the basis of the organization of its activity and regulatory mechanisms. It should be noted that today, as a research direction of significant scientific and practical importance, the issues of reviewing the dispute, determining the right and authority to resolve it, canceling the review of the dispute on the online platform, or recognizing and enforcing its decision special attention is being paid.

In our republic, systematic work is being carried out in the field of ensuring the rule of law, judicial system, and alternative dispute resolution mechanisms, improving the investment environment, effectively regulating foreign trade activities, and guaranteeing the rights of subjects in the direction of rapid business development. "Active attraction of foreign investments to sectors and regions of our country's

[1] https://ec.europa.eu/consumers/odr/main/?event=main.statistics.show
[2] https://odr.info/provider-list/ . http://www.odreurope.com/odr-services/odr-platforms-apps

economy by improving the investment environment"[1] has been evaluated as one of the priority directions of the development of the economic and social sphere. In this direction, further improvement of law enforcement practice is of urgent importance.

The Civil Code[2] of the Republic of Uzbekistan of August 29, 1996, The Code of Economic Procedure[3] of January 24, 2018, and the Laws on "On Informatization" №. LRU-560-II of December 11, 2003, "On Arbitration Courts" №. LRU-64 of October 16, 2006, "On Electronic Commerce" №. LRU-385 of May 22, 2015, "On Investments and Investment Activities" №. LRU-598 of May 25, 2019, "On International Commercial Arbitration" №. LRU-674 of December 16, 2021, Decrees of the President of the Republic of Uzbekistan dated June 19, 2017, №. PD-5087 "On measures to radically improve the system of state protection of legitimate interests of business and further development of entrepreneurial activity", November 5, 2018, №.PR-4001 "On the establishment of the Tashkent International Arbitration Center (TIAC) under the Chamber of Commerce and Industry of Uzbekistan", April 29, 2019, №. PD-4300 "On measures to further improve the mechanisms for attracting foreign direct investment in the economy of the Republic". This dissertation research will to some extent serve in the implementation of the decisions and tasks set out in other legislation on the subject.

The dependence of the research on the priority areas of development of science and technologies in the republic. Dissertation research was carried out according to priority direction II of the Development Strategy, which envisages the development of science and technology in the republic, that is, "Making the principles of justice and the rule of law the most basic and necessary condition for development in our country."

Review of foreign scientific research on the topic of the dissertation.[4] Scientific studies on issues of digitalization of international arbitration and improvement of legal frameworks are conducted in the world's leading scientific centers and higher educational institutions, including the United States of America: Stanford University, Yale University, Harvard University, Columbia University, New York University; Great Britain: the University of Oxford, University of Cambridge, University of Reading, Queen Mary University, City University; European Union: Leiden University, Humboldt-Universität; Singapore Academy of International Arbitration, National University of Singapore; Middle East countries: University of Dubai, Dubai International Arbitration Center; Hong Kong International Arbitration Center; University of Newcastle, Australia; Russian Federation: Lomonosov Moscow State University, Kutafin Moscow State Law University, Tomsk State University, G.V.Plekhanov Russian Academy of Economics and higher education and other scientific research institutions.

The following scientific results have been achieved as a result of foreign scientific research on the issues of digitalization of international arbitration activities and the improvement of legal frameworks in the world. In particular: heuristic and cognitive approaches to the concept of digital arbitrage are justified. The legal framework for digital arbitration has been further developed (Stanford University, Yale University, Harvard University, Columbia University, and New York University). In order to ensure the rights of international investors, the conceptual basis for further expansion of the areas of application of digital arbitration, including attracting grants to the scientific field of digital arbitration at the expense of the financial resources of international organizations (the University of Oxford, University of Cambridge, University of Reading, Queen Mary University, City University). It is proposed to determine the evolution of the development of digital arbitration through modern bibliometric analysis and to take the necessary measures to organize the activities of advanced commercial companies to further improve the use of digitized systems in the arbitration process (Singapore International Academy of Arbitration, National University of Singapore). In the establishment of effective digital arbitration systems, the experience of advanced foreign countries has been proposed to introduce issues of digitalization of international arbitration activities on the basis of weak and strong technologies (Hong Kong International Arbitration Center, Newcastle University, Australia).

In the world, scientific research work is being carried out in the following priority directions aimed at finding legal problems of digital arbitration and their solution. In particular, facilitating the system of digital arbitration by establishing international centers based on digitized systems, introducing multi-level digital arbitration systems, using digital arbitration databases to strengthen the economic protection of investors, improving the legal basis for the use of digital arbitration, and applying digital arbitration in various fields, further improvement of the legal basis of the agreement, implementation of international digital arbitration standards into national legislation, etc.

The extent of study of the problem. Resolving international and local disputes within the framework of digital arbitration activities and clarifying its powers, as well as legal analysis of the determination, determination of the law and jurisdiction applicable to these relations, international experience in this regard, and the practice of foreign countries' legislation and law enforcement as an independent research object in our country not studied.

[1] Decree of the President of the Republic of Uzbekistan dated January 28, 2022 No. PD-60 "On the Development Strategy of New Uzbekistan for 2022-2026" // National database of legislative information, 01.29.2022, 06/22/60/0082 - hip.

[2] Collection of Legislation of the Republic of Uzbekistan dated 05.10.2020, No. 03/20/640/1348.

[3] National Database of Legislation 13.01.2021, No. 03/21/663/0013.

[4] Review of foreign scientific research on the topic of the dissertation: https://siepr.stanford.edu/publications/tipping-scales-balancing-consumer-arbitration-cases, https://library.law.yale.edu/news/yale-law-school-consumer-arbitration-data-archive, https://guides.library.harvard.edu/law/international-arbitration, https://cicia.law.columbia.edu/content/about, https://law.nus.edu.sg/nuslawacademy/certificate-programmes/graduate-certificates/gcia/#overview, https://www.law.ox.ac.uk/content/international-commercial-arbitration, https://www.lcil.cam.ac.uk/cuarblcil-lecture-series,https://www.reading.ac.uk/ready-to-study/study/2023/law-pg/llm-international-commercial-law, https://arbitration.qmul.ac.uk, https://www.city.ac.uk/prospective-students/courses/postgraduate/international-litigation-and-dispute-resolution,https://www.universiteitleiden.nl/en/law/research,https://llm.law.hku.hk/arbdr/,https://www.rewi.hu-berlin.de/en/sp/angebote/master/idr, https://cil.nus.edu.sg/research/international-disputeresolution/singapore-international-arbitration academy/, https://www.siarb.org.sg/,https://ud.ac.ae/ud_programs/llm-arbitration-and-dispute-resolution/,https://www.diac.com/en/home/, https://www.hkiac.org, https://www.newcastle.edu.au, https://www.uzh, https://www.uni-frankfurt.de,https://www.msu.ru/, https://msal.ru/, http://igpran.ru/, https://www.tsu.ru/, https://gubkin.ru/;https://www.rea.ru/ru/abiturientu/Pages/abiturientu.aspx,https://sgmu.ru.

Some issues of alternative dispute resolution within private law were discussed by the scientists of our country – H.Rakhmonkulov, S.Gulyamov, I.Rustambekov, B. Samarhodzhaev, O. Okyulov, F. Otakhonov, Sh. Masadikov, D.Khabibullaev, A.Suleymenova, Sh.Joldasova and others[1].

G.Born, E.Alpaydin as scientists who researched legal regulation of international arbitration activities in foreign countries, the determination of its jurisdiction, clarification of powers, and the development of new directions in recent years. – P. Cortes, A. Lodder, A. Schmitz, A. Agrawal, A. Mills, A. Halevy, A. Musella, A. Berg, S. Brahms, I. Banttekas, C. Hodges, C. Liyanage, R Catherine, D. Neuberger, D. Zielinski, E. Johnson, E. Katsch, F. Sander, F. Steffek, E. Gaillard, J. Goldsmith, J. Thornton, S. Shackelford, B. Barton, J. Betancourt, J. Clanchy, J. Hope, J. Paulsson, J. Carton, and others[2] can be shown as researchers who have studied the legal regulation of digitalization and improvement of the legal framework of international arbitration in foreign countries, defining its jurisdiction, its powers, and new directions.

In the CIS countries, researchers who have conducted research in the field are M.Fedotov, E.Leanovich, M.Yegorova, M.Boguslavskyi, L.Anufriyeva, and others[3] can be mentioned.

However, the work of the named scholars in our country is related to the general aspects of online dispute resolution, issues of digital arbitration and its jurisdiction, and legal regulation mechanisms based on artificial intelligence that have not been comprehensively studied. Therefore, a comprehensive study of this issue is relevant.

Relation of the dissertation research with the research plans of the higher educational institution where the dissertation is performed. The research work was carried out as part of the fundamental project of the research plan of the Tashkent State University of Law entitled "Improving the theoretical and methodological foundations for creating a legal mechanism to increase the attractiveness of the investment environment and reduce the risk."

The aim of the research from the point of view of the jurisdiction of international arbitrations, consists in developing proposals and recommendations aimed at further improving the regulation of their activities and increasing the effectiveness of legislation and law enforcement practices in this area.

Research tasks:

to determine the legal concept and essence of dispute resolution in the digital environment;

study the digitalization of arbitration and the resolution of disputes by artificial intelligence;

to reveal the theoretical concept of the jurisdiction of dispute resolution in the digital environment;

defining the basic principles of digital arbitration jurisdiction;

classification of powers of the digital arbitration court and arbitrators;

analysis of legal regulation of digital arbitration activities and issues of recognition and enforcement of its decisions;

[1] The complete list of the works of these scientists is shown in the list of used literature of the dissertation.
[2] The complete list of the works of these scientists is shown in the list of used literature of the dissertation.
[3] The complete list of the works of these scientists is shown in the list of used literature of the dissertation.

describe the relationship between national courts and international digital arbitration;

to determine prospects for the development of legislation and law enforcement practice in Uzbekistan;

development of proposals for improvement of legislation and law enforcement practice.

The object of research is a system of legal relations related to the national and international legal regulation of international digital arbitration of disputes within the framework of international online trade and economic activity.

The subject of research legal regulation of international digital arbitration activities, scientific and practical problems in determining the scope of online mechanisms for resolving disputes with the help of artificial intelligence, national legislation, law enforcement practice, international legal documents, legislation and practice of foreign countries and existing conceptual approaches, scientific and theoretical consists of views and legal categories.

Research methods. Methods such as historical, systematic analysis, comparative-legal, logical, generalization, comprehensive research of scientific sources, induction, and deduction, and analysis of statistical data were used in the research.

The scientific novelty of the research is following:

the issues of appointing, rejecting, terminating the validity of the arbitrator's powers, making decisions on the jurisdiction of the arbitration court, assisting in obtaining evidence, as well as the annulment of the arbitration decision shall be carried out by the competent state court of the location of the arbitration on the basis of the law of the location of the arbitration and its the need to determine the basis for recognition and implementation of security measures within the scope of their powers is substantiated;

arbitrators, experts appointed by the arbitration, employees of the arbitration institution - it is justified that they cannot be summoned and questioned as witnesses regarding the circumstances that became known to them during the arbitration or arbitration proceedings;

it is based on the fact that measures to secure a claim pending in an arbitration court can be considered by an economic court upon the application of a party to the arbitration proceedings, as well as that the decision of the arbitration to refuse to satisfy the demands of the claim is the basis for canceling the security measures by the economic court;

it is justified that the court leaves the statement of claim without consideration if there is an agreement of the persons participating in the case on the transfer of this dispute for resolution by an arbitration court or arbitration and the possibility of applying to an arbitration court or arbitration has not been lost, and if the defendant who objects to the consideration of the case in the economic court , no later than its first statement on the merits of the dispute, will file a petition for the transfer of the dispute for resolution by an arbitration court or arbitration;

the role, importance and conceptual legal status of the Arbitration Commission as a case resolution mechanism in resolving disputes arising from contracts concluded on the stock exchange are substantiated;

issues of recognition and enforcement of decisions taken on disputes arising in the economic sphere and other cases, if the place of arbitration is located in the Republic of Uzbekistan, recognition and enforcement of the decision is provided for in the national legislation of the Republic of Uzbekistan and justified to solve it taking into account the specific characteristics.

Practical results of the research are as follows:

the formation of "online dispute resolution in the digital environment" as a new legal practice in international practice and the consideration and resolution of disputes based on established regulations by international centers operating online were conceptually substantiated;

author definitions were developed for such concepts as "Dispute Resolution in the Digital Space", and "Digital Arbitration","Artificial Intelligence", "Online Dispute Resolution (ODR)", "Online Arbitration Jurisdiction", "Electronic Commerce Platform", "Electronic Online Auction", "Electronic Logistics Trading Portal";

internal and external factors affecting the activity of the international digital arbitration jurisdiction were identified;

it has been proven that online arbitration is carried out in accordance with the conditions specified in the contract concluded between the parties, gives the parties the freedom to choose the method of implementation of the process, allows to choose the most optimal conditions and procedural stages for resolving disputes;

it has been argued that online dispute resolution, in particular, digital arbitration jurisdiction rules are specific and limited, applying various aspects of mandatory and conditional arbitration jurisdiction;

the relevance of interrelated evidence was determined and proposals for improving the online procedural mechanisms for processing jurisdictional claims were substantiated;

in the field of international arbitration, the need to establish a digitized mechanism for resolving cross-border disputes and their jurisdiction through the introduction of online dispute resolution and electronic arbitration platforms, and the expediency of using the law of the location of the server as a new conflict norm was justified.

Reliability of research results. In the study, international law and national legal norms, experience of developed countries, law enforcement practice, and results of analysis of statistical data were summarized, formalized with relevant documents, conclusions, proposals, and recommendations were approved, and their results were published in leading national and foreign publications. The obtained results were approved by the competent structures and put into practice.

Scientific and practical significance of research results. The scientific significance of the research results is that the scientific-theoretical conclusions, proposals, and recommendations contained in it can be used in future scientific activities, law-making, law enforcement practice, interpretation of the relevant norms of legislation on alternative dispute resolution mechanisms, in the context of the

improvement of national legislation. It can also be used in the teaching of legal subjects such as "International private law", "International e-commerce arbitration", "Alternative dispute resolution", "Dispute resolution in Intellectual property" and preparation of methodological recommendations.

The practical significance of the research results is manifested in the activity of law-making, in particular, in the process of preparing normative legal documents and making changes and additions to them, in improving the practice of applying the law, as well as in the teaching of private and international law in higher legal educational institutions.

Implementation of research results. The scientific results of the research work were used in the following:

appointment of an arbitrator, satisfaction of an arbitrator's rejection, making a decision on the termination of the arbitrator's powers, making decisions on the issue of the jurisdiction of the arbitration court, assisting in the collection of evidence, as well as an application for annulment of the decision of the arbitration in the place of economic arbitration the application to be brought to court, recognition and enforcement of security measures, application for security measures pending in the arbitration court, at the place of arbitration or at the place of registration of the debtor state, or, if the debtor state if the place of registration is unknown, proposals for determining the basis of submitting the property to the economic court in the place where it is located. It was reflected in the fifth part of Article 37 of the Law "On Amendments and Additions to Certain Legislative Documents of the Republic of Uzbekistan" (Act No. 06-13/35 of July 15, 2022 of the Senate of the Oliy Majlis of the Republic of Uzbekistan). These proposals should be applied when the economic court is considering applications for making decisions on the issue of the jurisdiction of the arbitration court, recognizing and enforcing security measures, taking security measures, and assisting in obtaining evidence. These proposals served to determine the authority to make a decision;

arbitrators, experts appointed by the arbitral tribunal, employees of the arbitration institution, arbitrators - suggestions that they cannot be summoned and questioned as witnesses in connection with the circumstances that became known to them during the arbitration or arbitration proceedings the Republic of Uzbekistan "On amendments and additions to certain legal acts of the Republic of Uzbekistan in connection with the adoption of the Law of the Republic of Uzbekistan dated May 16, 2022, No. LRU-769 "On International Commercial Arbitration" It was reflected in the second part of Article 53 of the Law (Act No.04/2-09/3348 of July 8, 2022, of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan). These proposals served to improve the legal basis of the obligation not to provide information in connection with its establishment;

the assumption that the measures to secure a claim pending in the arbitration court can be considered by the economic court at the request of a party to the arbitration proceedings, as well as the decision of the arbitration court to refuse to satisfy the claims, is the basis for canceling the security measures by the economic court. In connection with the adoption of the Law of the Republic of Uzbekistan “On International Commercial Arbitration” dated May 16, 2022 No. 769 of the Republic of Uzbekistan amended and supplemented some legislative documents of the

Republic of Uzbekistan Article 93, part six, and Article 99, part eight of the Law on Amendments (Act of the Senate of the Oliy Majlis of the Republic of Uzbekistan dated July 15, 2022 No. 06-13/35).These proposals are subject to consideration by the arbitration court in the economic court at the request of an interested person and are applied when the economic court considers applications for the execution of a claim;

the parties involved in the case have an agreement to refer the dispute to the national arbitration court or international arbitration court, and the opportunity to apply to the national arbitration court or international arbitration court has not been missed, and if there is an objection to the consideration of the case in the economic proposal of the court that the defendant should file a petition on the transfer of a dispute to national arbitration or international arbitral tribunal no later than its first appeal on the content of the dispute, paragraph 2 of Article 107 of the Economic Procedure Code of the Republic of Uzbekistan in connection with the adoption of the Law of the Republic of Uzbekistan No.769 legislative acts of the Republic of Uzbekistan" reflected in paragraph 9 of Article 1 (Act of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan dated July 8, 2022 No. 04/2-09/3348). The implementation of this proposal served to improve the defendant's right to file a petition to refer the dispute to arbitration or an arbitral tribunal no later than his first appeal on the content of the dispute;

proposals for the settlement of disputes related to the conclusion and execution of fixed-term contracts by the Arbitration Commission of the exchange under the Cabinet of Ministers of the Republic of Uzbekistan "Introduction of trading in futures contracts on commodity exchanges and the creation of electronic logistics (Act of the Ministry of Justice of the Republic of Uzbekistan No. 811-5/6628 dated October 14, 2022). This proposal was used to resolve disputes related to futures contracts by an arbitration commission;

issues of recognition and enforcement of the decision of the arbitration court, if the place of arbitration is in the Republic of Uzbekistan, are resolved taking into account the specifics provided for by the Law of the Republic of Uzbekistan "On International Commercial Arbitration" adoption of the Law of the Republic of Uzbekistan "On International Commercial Arbitration" dated May 16, 2022 No. 769 of the Republic of Uzbekistan, some legislative acts of the Republic of Uzbekistan (Act of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan dated July 8, 2022 No. 04/2-09/3348). The implementation of this proposal served to determine the procedure for the recognition and enforcement of decisions of foreign courts and arbitrations in accordance with the Law of the Republic of Uzbekistan "On International Commercial Arbitration".

Approbation of research results. The results of this research were discussed at 16 scientific-practical conferences, including 8 international and 8 national scientific-practical conferences.

Publication of research results. A total of 53 scientific works were published on the topic of the dissertation, including 1 training manual, 9 monographs, and 43 scientific articles (24 in international publications).

Structure and volume of the dissertation. The content of the dissertation consists of an introduction, 4 chapters, a conclusion, a list of used literature, and appendices. The length of the dissertation was 215 pages.

THE MAIN CONTENT OF THE DISSERTATION

In the introductory part of the dissertation (doctoral dissertation annotation), the relevance, and necessity of the research topic, its dependence on the main priority directions of the development of science and technology of the republic, a review of foreign scientific research on the topic, the level of research of the problem, the topic of the higher education institution where the dissertation is being carried out - information about the connection with research works, its goals and tasks, object and subject, methods, scientific novelty, and practical result, reliability of research results, scientific and practical significance, implementation, approval, publication of results, structure, and volume of the dissertation.

The first chapter of the dissertation entitled **"Digitalized online dispute resolution systems and their legal basis"** contains an analysis of the theoretical basis for the development of the problems discussed in the subsequent chapters of the study. This chapter analyzes the concept of online disputes in the digital space and their legal status, the legal basis of digitalized online dispute resolution systems, as well as the legal aspects of international, regional, and bilateral online dispute resolution.

Taking into account the theoretical and practical importance of the development of international trade and economic cooperation, the dissertation clarified the current importance of international digital arbitration. It is based on the approach that online dispute resolution in digital arbitration is fully AI-based technologically feasible, functionally equivalent to human arbitrators, and based on a system permitted by law. Another important element of the process is the hearing, where the parties have the opportunity to present their case. If an AI-based system can technologically enable parties to be heard (and seen) at a hearing, there is no conceptual objection to characterizing this part of the process as a "hearing." This does not mean that a hearing conducted by an AI-based system will mimic a traditional hearing conducted by human arbitrators. Rather, it provides what is essential to an AI-based hearing: a forum for the parties to be heard and present their case. Fully AI-based arbitration systems are technically possible in the future. If such systems are able to perform the same functions as human arbitrators, not only at the same level but also more efficiently and qualitatively, questions about the current legal framework will inevitably arise. that is, it provides a forum for parties to be heard and to present their case. Fully AI-based arbitration systems are technically possible in the future. If such systems are able to perform the same functions as human arbitrators, not only at the same level but also more efficiently and qualitatively, questions about the current legal framework will inevitably arise. that is, it provides a forum for parties to be heard and to present their case. Fully AI-based arbitration systems are technically possible in the future. If such systems are able to perform the same functions as human arbitrators, not only at the same level but also more efficiently and qualitatively, questions about the current legal framework will inevitably arise.

As noted above, the legal framework of traditional arbitration may apply to the online version. There are also certain aspects and issues where such provisions are

likely to be interpreted in such a way as to allow an online arbitration award to be valid in all jurisdictions.

Some issues that may require special rules or clarification are:

I) not all jurisdictions recognize the authenticity of electronic documents and signatures, which raises doubts about the validity of the electronic arbitration agreement and the possibility of enforcing the decision issued in the form of an electronic document;

II) processes of service and notices carried out by electronic means should be regulated;

III) applicable law requires the parties to choose the place of arbitration, which may not be possible for an online process;

IV) special provisions are required to ensure that due process of law is followed given the rapid pace of electronic communications;

V) it is necessary to regulate the characteristics of the means of communication that can be used in online arbitration;

VI) it is necessary to develop security measures necessary to protect the confidentiality and integrity of the process;

VII) enforcement mechanisms are likely to be very difficult, especially for those procedures where it may be convenient to use enforcement mechanisms that do not require judicial intervention.

The author argues that having a model law for online arbitration can have many advantages. First, it is a step towards regulating online arbitration, providing first ideas about the rules it needs. Second, it allows for some level of harmonization around the world. Finally, new technological advances in electronic communication are flexible tools that can be easily modified in cases where existing legislation is outdated or incomplete.

The researcher analyzes the special legal status of international digital arbitration as a legal process aimed at resolving disputes between companies or individuals in different countries, usually by including provisions on online disputes that can arise under a contract without resorting to court. evaluates. Analyzing the approaches of a number of scientists (H.Rakhmonkulov, S.Gulyamov, I.Rustambekov, B.Samarhodzhaev, O.Okyulov, F.Otakhonov, Sh.Masadikov, D.Khabibullaev, A.Suleymenova, Sh.Joldasova) based on the fact that international digital arbitration courts have a number of advantages over state courts. In this case, international digital arbitration is a suitable way to achieve a quick and high-quality result.

Dissertation on definitions of international arbitration and foreign scholars on this issue (G.Born, E.Alpaydin, P.Cortes, A.Lodder, A.Schmitz, A.Agrawal, A.Mills, A.Halevy, A.Musella, A.Berg, S.Brahms, I.Banttekas, C.Hodges, C.Liyanage, R.Catherine, D.Neuberger, D.Zielinski, E.Johnson, E.Katsch, F.Sander, F.Steffek, E.Gaillard, J.Goldsmith, J.Thornton, S.Shackelford, B.Barton, J.Betancourt, J.Clanchy, J.Hope, J.Paulsson, J.Karton), analyzing the opinions of international digital arbitration business entities in different countries or as a legal process aimed at resolving online disputes between individuals, usually defined by including an agreement to submit future disputes to international digital arbitration, concluded.

According to the author, having a model law for online arbitration can bring many advantages. First, it is a step towards regulating online arbitration, providing first ideas about the rules it needs. Second, it allows for some level of harmonization around the world. Finally, new technological advances in electronic communication are flexible tools that can be easily modified in cases where existing legislation is outdated or incomplete.

Enforcement of an online arbitration award arising from a pre-dispute clause in US consumer arbitration is not inconsistent with the public policy exception in Article V(2) of the New York Convention[1]. In stark contrast to the Court of Justice of the European Union, the US Supreme Court strictly applies the arbitration rules for consumer disputes under the Federal Arbitration Act (FAA). The FAA (Federal Arbitration Act) was enacted in 1925 in response to widespread judicial hostility to arbitration agreements. The main substantive provision of the law is mentioned in section 2. That is to say: "Arbitration clauses in commercial contracts are valid, irrevocable, and enforceable except for any statutory or statutory grounds for termination." The US Supreme Court has interpreted this clause to mean that arbitration agreements can only be invalidated based on "generally applicable contract defenses such as fraud, duress, or bad faith." [2]

"Digital Dispute Resolution", "Artificial Intelligence", "Online Dispute Resolution (ODR)", "Online Arbitration Jurisdiction", and "Online Arbitration Agreement", are based on the study of the legislation and doctrine of foreign countries. The author's definition of terms such as "recognition and enforcement of online arbitration decision", "e-commerce platform", and "E-auction electronic trading platform" was formed.

In particular, the Online Court includes at least the following stages. First, an automated online trial stage is designed to help litigants state their cases and upload evidence to an interactive website without legal representation. Second, a conciliation phase by newly established 'Case Managers', who are clerks with legal qualifications and experience, who are trained by judges and report to them. Finally, pending cases are decided by an actual judge, in a face-to-face trial, by video or telephone, or by a decision based solely on written submissions, depending on which is the most appropriate step. The decision on the determination procedure will be the object of the procedural order of the head of the case,

Importantly, a decision resulting from the discovery phase can be enforced in a district court, for which it will have the same legal status as a district court decision. However, unlike an Online Arbitration Award, an Online Court Award must be fully reviewed on its merits. In fact, an online judgment can be reviewed in an ordinary appeal in the district court. Although permission is required to appeal online, the losing party is both a fact and will have the right to appeal on

[1] A. Schmitz "Drive-Thru Arbitration in the Digital Age: Empowering Consumers through Regulated ODR," Baylor L. Rev. 2010, afl. 62, 208 ("Arbitration that ends with a final award is subject to arbitration under the FAA and its strict enforcement").

[2] Doctor's Associates, Inc. c. v. Casarotto, 517 US 681 (1996), 687; Perry v. Thomas, 482 US 483 (1987). – P. 492–493.

issues. In addition, with the permission of the district court, the losing party has the right to appeal a second time to the Court of Appeals.

The second chapter of the dissertation entitled **"Online arbitration and its enforcement"** describes online arbitration, its legal concept, and essence, the procedure for resolving disputes in online arbitration, the legal regulation of online arbitration activities, as well as procedural aspects of recognition and enforcement of online arbitration decisions. considered.

The rules created for online arbitration allow the use of electronic contracts. They must also ensure that due process is not compromised by the rapid pace of electronic communications. Finally, such regulations must take steps necessary to protect the security and confidentiality of documents and information exchanged in the regulatory process. This should be done through the necessary mechanisms of simple and cost-effective implementation of the decision.

The parties may choose different means of electronic communication to conduct the process. Each tool has its advantages and disadvantages. Therefore, the parties should consider the most convenient means in each case, taking into account the specific characteristics of the dispute and the dispute.

In all cases, the means of communication and other procedural rules chosen by the parties must ensure the confidentiality and security of the process and ensure compliance with applicable laws.

Parties may choose out-of-court mechanisms to enforce a judgment, including the use of the power of attorney, automatic credit card payments, and other technological mechanisms.

Online arbitration rules should be harmonized to avoid discrepancies in different local rules. A harmonized legal framework provides certainty to disputants of different nationalities regarding the applicable procedural rules. However, achieving harmonization may be a difficult task, as negotiations on an international convention are likely to take many years. The Model Law helps to harmonize the legal framework, but because it is a flexible tool, the degree of harmonization is likely to be lower.

The most practical way to have harmonized legislation on this subject is to provide all countries with a model law for each country to adopt.

Taking into account all of the above, we can conclude the following about the second chapter of this dissertation:

Can the existing legal framework for traditional arbitration apply to online arbitration? The existing legal framework for traditional arbitration does not preclude the possibility of online arbitration. However, online arbitration has characteristics that distinguish it from traditional arbitration and may require special rules. For example, online arbitration is conducted only through electronic means of communication, and the use of such means must be regulated. Similarly, the use of electronic documents and signatures requires a special set of rules that do not exist in the current legal framework of arbitration.

Therefore, although the current legal framework of arbitration does not prohibit the online procedure, it is useful to design its legal framework based on its specific features. Such a legal framework should regulate the use of electronic

means of communication. It should also determine the measures to be taken to recognize the authenticity of electronic documents and signatures and ensure the fairness, security, and confidentiality of the process.

As mentioned above, online arbitration has certain characteristics that are not covered by the legal framework applicable to traditional arbitration. It therefore requires a set of rules governing the special features that distinguish it from traditional arbitration.

These rules allow the conclusion of electronic contracts, regulate the use of electronic means of communication, oblige the parties to introduce security mechanisms to protect the confidentiality and security of documents and information exchanged during the arbitration process, allow the use of electronic documents and signatures, simplify the decision of the arbitration court, should also create effective enforcement mechanisms.

An arbitration agreement is an agreement under which the parties agree to resolve their dispute through online arbitration rather than in court or other ADR (alternative dispute resolution) organizations.

The arbitration agreement must be in writing, and the agreement can be concluded through electronic means of communication. The consent of the parties must be confirmed by their handwritten or digital signature.

The online arbitration agreement must, at a minimum, include the disputes that may be arbitrated. The procedure for using electronic means of communication, the information system through which they receive notifications, and their geographical location for receiving court notifications, as well as protecting the confidentiality and integrity of information exchanged in this procedure security measures for the purpose of arbitration may also be specified in the arbitration agreement.

The online arbitration procedure should be designed in such a way that the speed of the process should not affect fairness and equality between the parties. Basic procedural guarantees, such as the right to present evidence, impartiality, and a decision within a reasonable time, must be respected.

Online arbitration rules must provide both parties with equal access to electronic means of communication, and those means must be easy to use, open to both parties, and allow for the submission of all evidence and documents.

Finally, the process may take reasonable steps to ensure the integrity and confidentiality of information exchanged in arbitration.

The third chapter of the dissertation entitled **"Digital (electronic) arbitration and its legal regulation"** deals with issues of digitalization of international arbitration and resolution of disputes by artificial intelligence, international experience of digital (electronic) arbitration application (American Arbitration Association, CyberSettle, and World Intellectual Property In the example of the organization) and digital (electronic) arbitration, the issues of legal regulation and recognition and enforcement of its decisions are analyzed.

As this chapter shows, the processes in both traditional and e-arbitration processes require the formation of tribunals with the consent of the disputing parties. Also, both types of arbitrations need mutually selected arbitrators. In

addition, if no agreement is reached between the disputing parties, the national court of the jurisdiction where the arbitration is held may appoint an arbitrator on behalf of the parties.

In order to identify the factors that distinguish foreign arbitral awards from domestic awards, it is necessary to clarify several contradictions and reasons. Thus, issues of uniformity may be considered in relation to the nationality of the parties to the dispute, the territory of the "venue" the binding law applicable to the arbitration, or the "venue" of the award. From a legal and judicial perspective, the place of award distinguishes the criteria between domestic and foreign arbitration. This specific criterion is defined in the New York Convention of 1958, which recognizes the enforcement of foreign arbitral awards. It is therefore expected that member states of the New York Convention will have laws reflecting this practice, whereby a foreign arbitral award will be enforceable in their territory.

First, states should generally revise their arbitration laws for unnecessary mandatory elements. As discussed, private autonomy and freedom of contract are fundamental to arbitration. Arbitration laws should be permissive, not mandatory unless compelling reasons dictate otherwise. Equal treatment and the right to present one's case are such compelling reasons. But when it comes to practical procedural rules, party autonomy should prevail. For example, the jurisdiction should not impose an obligation to appear in person at court hearings or require witnesses to testify in person. Because various conditions may prevent the receipt of evidence.

Second, states should try to help define legal information to improve the development of machine-learning tools for arbitration. Such tools currently (and will for the foreseeable future) dominate the market for AI (artificial intelligence) applications for arbitration. Judgments should be easily and freely available in the lingua franca of international trade, including English. Arbitral tribunals must publish their decisions at least anonymously. In addition, courts must also publish decisions at least anonymously. On the other hand, there is tension between the preference of most commercial actors for privacy on the one hand and access to technology-friendly arbitration laws

Third, although the concept of arbitrability does not differ between traditional and e-arbitration, some states may wish to exclude certain arbitrable disputes from e-arbitrability. Proponents of the delocalization theory believe that the concept of a “foreign” arbitral award is consistent with the nature of an electronic award. However, the theory of delocalization contradicts the current provisions of the New York Convention. Its Article 5(1)(e) provides that the court of the country where enforcement is requested has the right to refuse enforcement if the judgment is not binding under the law of the country where the judgment was issued.

From another point of view, this distinction ignores the reality of the arbitral tribunal, since the making of the court's rules requires the arbitrator to take into account the national public policy of the jurisdiction where the award is enforced. Thus, it was argued that all arbitration rules should be under the control of a single body, without much regard for the "venue" of the arbitration.

Some points revealed by the literature review justify skepticism about arbitration guidelines in developing countries. Often, these decisions are issued in a foreign country under the supervision of an International Arbitration Center located in a Western country. A dispute can involve a single consumer or a group of companies from different nationalities. Statistics show that developing countries lose 90% or more of foreign arbitration cases.

However, the current situation is that Article 3 of the New York Convention provides for the recognition and enforcement of foreign arbitral awards to ensure justice in each member state that has signed the convention.

Some legal scholars argue that e-arbitration is a logical development of traditional offline arbitration and its methods, but that traditional arbitration principles are inadequate for the electronic environment. On the other hand, a number of researchers believe that e-arbitration is invalid without following the requirements and principles of traditional arbitration. Here they refer to the need for "writing" and F2F (face-to-face) sessions between disputing parties. However, there is now a hybrid arbitration style that uses the model of a traditional arbitral tribunal with new technological developments. Electronic arbitration procedures are suitable for the modern online environment of the virtual community. Disputes in this regard may arise primarily through electronic means and must therefore be resolved expeditiously through electronic means. However, there are a number of significant problems with e-arbitration, such as its failure to adhere to the basic principles of traditional international commercial arbitration. Furthermore, it is assumed that the parties have the necessary technical skills and experience to use it properly. In addition, there are the following problems: i.e. its non-compliance with the basic principles of traditional international commercial arbitration is an example of this. Furthermore, it is assumed that the parties have the necessary technical skills and experience to use it properly. In addition, there are the following problems: i.e. its non-compliance with the basic principles of traditional international commercial arbitration is an example of this. Furthermore, it is assumed that the parties have the necessary technical skills and experience to use it properly. In addition, there are the following problems:

- privacy and security of the electronic arbitration process;
- relevant communications;
- organizing and conducting arbitration proceedings online;
- integrity of relevant information;
- authentication of relevant documents.

In the UAE, there are problems with using the Internet for transactions, in addition to illiteracy among people of different ages. Commentators identified this as a lack of ICT (Information Communications and Technology) training for the national population. This means that a large number of people in the UAE cannot effectively conduct a range of online services, let alone arbitrage.

In addition, the collectivist nature of UAE society may also hinder the widespread use of e-arbitration. In an interview with a professor of commercial law at the United Arab Emirates University, he noted that what hinders e-arbitration is people's trust in it and how open they are to the idea. Abu Dhabi

Securities Islamic Bank said UAE nationals need to learn more about e-arbitrage, as many are not familiar with how it works.

"Application and regulatory issues of online and digital arbitration in the Republic of Uzbekistan" in the fourth chapter of the dissertation, the unique aspects of the implementation of the online and electronic dispute resolution system in the Republic of Uzbekistan and the issues of improving the legislation on the organization of online and electronic arbitration activities and the enforcement of decisions in the Republic of Uzbekistan were studied.

This chapter has attempted to begin the discussion on the arbitral award by first introducing the definition of the arbitral tribunal as a "binding and conclusive decision on the subject of the dispute". The dispute then turned to the issuance of electronic arbitration awards. and as noted, in agreeing to a mutual "venue" for arbitration, the disputing parties will by default decide on the venue of the award. Although this is difficult to apply to the public policy of a particular country, it is warranted by the theory of delocalization. The proposed solution proposes to consider e-arbitration as an electronic contract and thus immediate recognition under the mandate of the UN Convention on the Use of Electronic Communications in International Contracts.

Organization of arbitration courts, international arbitration, online and electronic arbitration in Uzbekistan, and support by the state to ensure the judicial reforms carried out in the country and the liberalization of the economy, as well as the expansion of privatization, increasing the number of economic entities. Experience shows that if capital does not circulate in the countries of the world, economic management cannot be effective. The economy of an industrialized country depends on the circulation of investment-based industrial capital. The rule of law is the documents issued by state authorities and management bodies, which means that the actions of officials must be in accordance with the Constitution and laws only. A positive investment environment in one or another country and the ability of the international community to effectively resolve investment disputes together can motivate investors to invest in a particular country.

Ensuring guarantees of protection of the rights and legal interests of business entities in Uzbekistan, improving the business environment and investment attractiveness of our country the introduction of the mechanism for resolving disputes in arbitration courts is of particular importance.

The Ministry of Justice of the Republic of Uzbekistan provides legal protection for the interests of the Republic of Uzbekistan in international and foreign organizations, timely inform the international community and foreign investors about the national legal system and ongoing legal reforms in the field of international arbitration and court proceedings. implements interdepartmental cooperation with the Ministry of Foreign Affairs and other state bodies and organizations in ensuring legal protection of the interests of the Republic of Uzbekistan in international and foreign organizations.

Currently, more than 200 permanent arbitration courts are registered by the judicial authorities of Uzbekistan, 160 of which are the Association of Arbitration

Courts of Uzbekistan and its representative offices, 15 chambers of commerce and industry and its regional divisions and 30 are other legal entities.

In accordance with the Code of Economic Procedure and the Code of Civil Procedure of the Republic of Uzbekistan, the judge determines the possibility of concluding a settlement agreement or alternative resolution of the dispute and explains the legal consequences. It is known from world practice that the creation of alternative dispute resolution mechanisms in the legal society is an effective means of achieving the restoration of the violated rights of individuals and legal entities.

In order to further improve the business environment of Uzbekistan and increase its investment attractiveness, the rights, and interests of foreign investors in enterprises should be effectively protected. But there are a number of systemic problems that prevent this. In particular, the absence of a legal framework regulating international arbitration in Uzbekistan is a clear example of this. This leads to increased costs for foreign investors and local businesses who are forced to resort to international arbitration. In addition, current legislation, including the Law of the Republic of Uzbekistan "On International Commercial Arbitration", limits the ability of parties to consider investment disputes in accordance with international arbitration standards related to the involvement of foreign arbitrators and the application of foreign laws. In addition, the lack of clear legal mechanisms for the enforcement of international arbitration decisions in Uzbekistan has a negative impact on the confidence of foreign investors in the country's judicial system. This reduces the investment attractiveness of the country. Also, the training and retraining of local arbitrators and other experts in the field of international arbitration have not been established.

The national legislation of Uzbekistan contains several laws on the protection of entrepreneurship. In particular, the Constitution of the Republic of Uzbekistan, the Code of Economic Procedure, Laws "On Special Economic Zones", "On Investments and Investment Activities", "On Public-Private Partnership", "Entrepreneurial Activity on the guarantees of freedom", "On auditing activities" are an example of this.

The issues of modernization of networks and regions, increasing their level of competitiveness, and development of export potential should be at the center of our constant attention. For this, it is necessary to actively attract foreign investments and advanced technologies and information and communication systems to all areas.

At the same time, there are a number of systemic problems that do not allow businesses to effectively protect the rights and interests of foreign investors, further improve the business environment, and increase the investment attractiveness of Uzbekistan. Including:

- firstly, the lack of a legal basis regulating international arbitration in Uzbekistan leads to an increase in the costs of foreign investors and local enterprises, who are forced to resort to international arbitration in foreign countries to resolve disputes;

- secondly, the current legislation, including the Law of the Republic of Uzbekistan "On Arbitration Courts", limits the parties' ability to consider investment disputes in accordance with international arbitration standards, to attract foreign arbitrators, and to apply foreign laws;

- thirdly, the lack of clear legal mechanisms for the enforcement of international arbitration decisions in Uzbekistan has a negative impact on the confidence of foreign investors in the country's judicial system, thereby reducing the country's investment attractiveness;

- fourthly, there is no training and retraining of local arbitrators and other experts in the field of international arbitration.

Another issue with the use of ODR (online dispute resolution) platforms is the enforcement of online resolution, as there is no national legislation on online dispute resolution and enforcement. Which court should enforce the award - the court of the place where the arbitration agreement was signed, the court of arbitration, the court of the place where the award was made, the place where the OPC (Open Communication Platform for Secure Industrial Data Exchange) facility is physically located, or the place where the Internet servers are installed?

In this study, the experience of countries with developed arbitration systems based on different legal systems was studied, in particular, the UNCITRAL model law adopted by Germany, Great Britain, Japan, Singapore, CIS countries, Kazakhstan, and the United Nations.

International arbitration has become an acceptable method of resolving disputes between business partners in almost all areas of international trade, commerce, and investment. International arbitration allows the parties to resolve their disputes in a private, confidential, economical, and time-saving manner, in a neutral court of their choice. But some see confidentiality as the most important aspect of arbitration and consider the proceedings to be decisive.

The issuance of an electronic arbitration award has a number of legal consequences, the most important of which is that the electronic arbitration award enters into legal force immediately after it is issued and is immediately enforceable after it becomes legally binding. This prevents re-examination of the dispute in court, even if there is new legal or factual evidence, even if the court decision has not been annulled. The first of these consequences is to notify the parties of the court's decision since this notification is the first procedure that starts the execution phase of the decision. Based on this, there are two aspects to discuss: the notification of the decision and the enforcement of the decision.

The award will be submitted electronically online and the parties will be notified by the e-arbitration provider and/or the arbitral tribunal. This electronic notice informs the parties about the content of the decision and allows them to voluntarily prepare to comply with it, implement it or appeal against it. Some national laws have no problem or concern with electronic notification of awards in arbitration, and some countries, such as England and Wales, take a very liberal approach. 55(1) of the English Arbitration Act (1996) states that the parties may agree on the requirements for notice of the award.

In this case, the parties may agree that the arbitral award should be notified by e-mail, which is common in e-arbitration or uploaded to a secure platform accessible to them.

CONCLUSION

The following theoretical and practical conclusions were developed as a result of the research conducted on the issues of digitalization of international arbitration and improvement of legal frameworks:

1. A system of concepts and their definitions (conceptual apparatus consisting of eleven terms) for solving problems in digital space was formed and scientifically based:

Dispute resolution in digital space - the process of resolving contractual and legal disputes arising from social, economic, and legal relations related to the acquisition, use, ownership, processing, and transmission of information, goods, works, and services in cyberspace with the participation of digital means;

Digital arbitration - is an independent institution that resolves a dispute before a court within an operating center that has the authority to consider a dispute based on electronic means such as e-mail and electronic file management systems using the Internet in cyberspace;

Online Dispute Resolution (ODR) - is a specialized type of arbitration that takes place on an online platform without the physical presence of the parties in a court session. Online arbitration can be used for both disputes arising from online dealings and transactions and disputes arising offline.

Online Arbitration Jurisdiction means its authority to arbitrate a dispute arising from cross-border e-commerce in cyberspace and its authority to independently decide whether such authority exists;

Online arbitration agreement - is an agreement to resolve disputes arising or may arise from contractual-legal relations in real-time using an electronic signature in the Internet system, including as a clause in a separate contract or main contract;

Recognition and enforcement of an online arbitration - award is the process of implicitly recognizing and enforcing an adjudicated cross-border e-commerce dispute as an offline award. An online decision will have the same legal force as an offline decision after being appealed to a court of lower jurisdiction and receiving a writ of execution;

Electronic commerce platform - is a service for the implementation of commercial relations in which the parties, i.e., the seller and the buyer, use a special electronic program to sell/rent or buy/rent the goods, services, and works they are looking for, just like in a real-life store. marketplace in cyberspace;

E-auction electronic trading platform - is an information system that allows the entry, storage and processing of information necessary for the organization and conduct of electronic online auctions and contests, as well as direct access and participation in the processes of such auctions and contests for individuals and legal entities who wish to do so;

Electronic online auction - is a form of online trading on the principle of raising or lowering the price for selling (renting) the auction object to individuals and legal entities through a trading platform;

Electronic logistics trade portal - is a special website of the operator that provides electronic trades for cargo transportation, posting of announcements and other necessary information about them in electronic form, electronic trades;

Electronic system - is a software set of organizational, informational, and technical tools that can be used by all interested parties, and which ensures electronic transactions between the subjects of trade in cargo transportation.

2. The creation of a legal institution for digital dispute resolution is substantiated. The issue of digital arbitration in electronic dispute resolution and its jurisdiction is analyzed, and it is also substantiated that digital arbitration can become an effective mechanism for resolving disputes arising on the basis of artificial intelligence, the Internet and smart contracts. At the same time, a proposal was made to introduce special conflict of laws rules that the law of the location of the corresponding server or the right of the place of registration of the corresponding domain should apply to the jurisdiction of digital arbitration.

3. It is scientifically and practically substantiated that the introduction of digital arbitration by existing arbitration centers and the subordination of their jurisdiction is an ideal situation, and the formalization by the arbitration center of its decisions serves to ensure its implementation.

4. The concept of electronic arbitration (Digital Arbitration) and its legal regulation have been developed. A dispute arising from international private law relations that arises or may arise and is subject to consideration in arbitration may be referred to arbitration by agreement of the parties. It is proved that the arbitral tribunal may consider any challenge to its jurisdiction, including any challenge to the existence or validity of an arbitration agreement or the subject matter of the dispute, and that the arbitral tribunal will resolve a claim by way of a provisional or on the merits of a final award.

5. The need for legal regulation of the protection of users, their data and rights, as well as the ethics of digital arbitration in electronic arbitration is substantiated and conceptual aspects are shown.

6. It has been argued that the parties must conduct arbitration in accordance with any situation, procedure and time limit, and this procedure must meet the following requirements:

I) the parties are always given time and opportunity to present their evidence and documents;

II) the parties will be notified in advance of any hearing or meeting;

III) the parties have the right to use and consider any evidence or documents submitted by the opposing party.

It is argued that if the rules established by the parties do not meet the above requirements, the process may be invalidated, while observing the legal documents and allowing both parties to present their claims, the parties are free to choose the way the process is conducted.

7. It has been argued that online arbitration gives the parties the freedom to choose how the proceedings are conducted. It is shown that the possibility of choosing the most optimal conditions and procedural stages of dispute resolution, the freedom

of this process allow us to eliminate the problems that arise in countries with different judicial traditions.

8. It is stated that online arbitration applies only to the process and does not replace any other law or regulation that pertains to traditional arbitration processes.

9. It has been proven that in order to proceed with online arbitration, the parties need to sign an online arbitration agreement. At a minimum, an online arbitration agreement must include the following terms:

I) the type of dispute or disputes giving rise to online arbitration;

II) an agreement on the use of electronic means of communication and a description of their use;

III) the requirements to be met by an arbitrator or arbitrators in order to be elected and the procedure for their appointment;

IV) the geographical location of the parties or the place where they receive messages and notifications;

V) the address of the information system of the parties receiving electronic messages and notifications;

VI) the applicable law for resolving the dispute and the competent court for its implementation;

VII) security measures taken to protect the confidentiality and integrity of information exchanged in the process;

VIII)rules for presenting evidence.

This provision defines the main essential requirements that must be in the arbitration agreement. The contract is central to the process and should be as complete as possible. These requirements are only the minimum basis for the operation of online arbitration. At the same time, in the contract, the parties must describe in as much detail as possible all the situations that they may encounter in the process.

Some of these requirements are used to distinguish this agreement from a traditional arbitration agreement, setting out other requirements to deal with practical issues such as rules for presenting evidence or choosing arbitrators.

10. One way to regulate digital arbitration is to require transparency in the decision-making process. This includes exposing the algorithms and data sources used in the decision-making process, as well as creating rules to ensure that AI arbitration providers are transparent about how they train and test their models.

11. Another approach to regulating digital arbitrage is to create oversight mechanisms whereby digital arbitrage providers are held accountable for their decisions. This may include the creation of a regulatory body that oversees digital arbitrage service providers and sets standards for their decision-making processes.

12. According to research, it is important to regulate digital arbitrage by applying fraud detection and mitigation measures, given that digital arbitrage systems are artificial. It has been suggested that this could include requiring AI arbitration providers to regularly test and review their systems for fraud, and to take steps to mitigate any fraud detected.

13. According to the analysis, digital arbitration may raise doubts about the adherence to important ethical qualities such as fairness, accountability, and transparency issues. To address these concerns, it has been argued that regulations

requiring digital arbitration providers to adhere to ethical guidelines and principles such as the principle of non-discrimination, fairness, and transparency could be introduced.

14. Another scientific new idea is to explore the possibilities of hybrid models in arbitration that combine human and digital arbitration decisions. This has proven to involve the development of systems that use artificial intelligence to assist human arbitrators in decision-making or the creation of hybrid systems that use a combination of human and digital arbitration decision-making.

15. It has been found that online arbitration raises rare issues related to cybersecurity and privacy. To address these issues, regulations may be introduced that require online arbitration providers to implement strong cybersecurity and privacy measures. It has been argued that this includes measures such as encryption and two-factor authentication.

16. In order to ensure the protection of users when using online arbitration services, it was pointed out that there is a need to create rules that require online arbitration providers to offer dispute resolution mechanisms in the event of a dispute between the user and the provider. It was argued that this would include the creation of a regulatory body that would monitor online arbitration providers and handle user complaints.

17. In order to ensure the quality and reliability of online arbitration services, it is indicated regulations establishing technical standards for online arbitration providers may be applied, and these standards serve to address issues such as data storage and retrieval, data security, and platform use.

18. Based on the analysis, online arbitration services should be accessible to all users, regardless of their level of technical experience or physical abilities. To address this, it has been argued that regulations requiring online arbitration providers to adhere to usage guidelines such as the Web Content Accessibility Guidelines (WCAG) should be introduced.

19. Research has shown that artificial intelligence (AI) can revolutionize dispute resolution by making processes faster, more efficient, and cost-effective.

20. The research demonstrates the need and demand for new legislation that focuses on the use of AI in dispute resolution and addresses issues such as data protection, privacy, intellectual property, and liability for AI-based decisions. The following basic principles have been developed that should be included in the law governing AI arbitration (digital arbitration) and online dispute resolution: The principle of fairness and impartiality, the principle of transparency, the principle of openness, the principle of data protection and confidentiality, the principle of accountability/responsibility, and the principle of legal compliance.

21. Based on the analysis, international standards should be established in order to ensure the uniformity of AI-based dispute resolution processes. It has been argued that these upcoming international standards for AI arbitration (digital arbitration) should address the ethical and legal implications of AI-based decision-making.

22. Legal regulation of AI arbitration (digital arbitration) and online dispute resolution requires new laws, international standards, conceptual frameworks, the use of blockchain technology, collaborative research, education, and training programs.

These efforts help ensure that AI-based dispute resolution processes are fair, transparent, and impartial.

23. During the study, the need for a "Code of Conduct" for AI arbitration (digital arbitration) and online dispute resolution users was demonstrated, arguing that these processes should be applied fairly and equally to all participants. An adopted code should provide guidelines and standards that users should follow to ensure that they act responsibly and ethically when using these technologies. According to this code, requirements such as protection of provided information, confidentiality, and neutrality in decision-making have been proven. It was argued that the adoption of the "Code of Ethics" would help the parties to strengthen their confidence in the dispute resolution processes of AI. Overall, a Code of Conduct has proven to be critical to ensuring that AI-assisted dispute resolution processes operate in a fair, transparent, and ethical manner.

24. It has been proven that the following conceptual legal frameworks need to be adopted for the AI regulation on digital arbitration and online dispute resolution: data protection and privacy, algorithmic transparency, fairness and impartiality, legality, accessibility, and accountability.

25. In the framework of the thesis, it was shown that online arbitration provides opportunities for innovative models of dispute resolution. It has been argued that online arbitration providers offering services based on innovative models should encourage the development and implementation of such models by incentivizing or requiring providers to offer them as part of their service offerings.

26. It was justified that all documents submitted, exchanged or created electronically in the course of business may be used, and that the parties should comply with the following rules related to the exchange of messages:

I) the parties must indicate the address to which all communications must be sent;

II) the parties shall send all communications related to the proceedings to the address indicated by them. Any communication not sent through the agreed electronic means and to the address provided by the parties will be null and void.

This rule defines the features of communication between the parties in the online arbitration process.

The parties must have a sufficient characterization of the particular message to be sure that it came from the sender, and deny that the message has been tampered with and that the sender sent the message.

27. It has been argued that the parties may choose any address as the place of arbitration, but given the nature of online arbitration, the parties do not need to choose or specify the place of arbitration.

28. It is argued that if the parties decide not to choose the seat of arbitration, they must in any case provide the following information:

I) substantive law, according to which the arbitrators decide the dispute. The parties may authorize the arbitrators to decide the dispute *ex ayequo et bono*;

II) competent jurisdiction to resolve any disputes arising from the arbitration process;

III) competent jurisdiction for enforcement of the decision.

Based on the foregoing, the need to reflect the provisions on online and digital arbitration in national legislation, as well as amending the UNCITRAL Model Law and the New York Convention, is justified.

All this will increase the effectiveness of the legal regulation of international digital and online arbitration in the Republic of Uzbekistan, will serve to ensure the rule of law and access to legal protection methods at the national level, and will also increase the investment attractiveness of the country.

НАУЧНЫЙ СОВЕТ DSc.07/30.12.2019.Yu.22.01 ПО ПРИСУЖДЕНИЮ УЧЕНЫХ СТЕПЕНЕЙ ПРИ ТАШКЕНТСТКОМ ГОСУДАРСТВЕННОМ ЮРИДИЧЕСКОМ УНИВЕРСИТЕТЕ

ТАШКЕНТСКИЙ ГОСУДАРСТВЕННЫЙ ЮРИДИЧЕСКИЙ УНИВЕРСИТЕТ

БАХРАМОВА МОХИНУР БАХРАМОВНА

ВОПРОСЫ ЦИФРОВИЗАЦИИ И СОВЕРШЕНСТВОВАНИЯ ПРАВОВОЙ БАЗЫ ДЕЯТЕЛЬНОСТИ МЕЖДУНАРОДНОГО АРБИТРАЖА

12.00.03 – Гражданское право. Предпринимательское право. Семейное право. Международное частное право

АВТОРЕФЕРАТ
диссертации доктора по юридическим наукам (Doctor of Science)

Ташкент – 2023

Тема диссертации доктора юридических наук (DSc) зарегистрирована в Высшей аттестационной комиссии при Министерстве высшего образования, науки и инноваций Республики Узбекистан под номером B2022.2.DSc/Yu199.

Докторская диссертация выполнена в Ташкентском государственном юридическом университете.

Автореферат диссертации размещен на трех языках (узбекском, английском, русском (резюме)) на веб-сайте Научного совета (www.tsul.uz) и Информационно-образовательном портале Ziyonet (www.ziyonet.uz).

Научный консультант:	**Рустамбеков Исламбек Рустамбекович** доктор юридических наук, профессор
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Ведущая организация:	**Центр повышения квалификации юристов при Министерстве юстиции Республики Узбекистан**

Защита диссертации состоится 13 июля 2023 года в 10:00 на заседании Научного совета DSc.07/30.12.2019.Yu.22.01 при Ташкентском государственном юридическом университете. (Адрес: 100047, г. Ташкент, улица Сайилгох, 35. Тел.: (99871) 233-66-36; факс: (998971) 233-37-48; e-mail: info@tsul.uz).

С докторской диссертацией (DSc) можно ознакомиться в Информационно-ресурсном центре Ташкентского государственного юридического университета (зарегистрировано за № 1151). (Адрес: 100047, г. Ташкент, ул. А. Темура, 35. Тел.: (99871) 233-66-36).

Автореферат диссертации разослан 27 июня 2023 года.

(протокол реестра № 29 от 27 июня 2023 года).

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ВВЕДЕНИЕ (аннотация докторской (DSc) диссертации)

Цель исследования. С точки зрения компетенции международных арбитражей она заключается в разработке предложений и рекомендаций, направленных на дальнейшее совершенствование регламентации их деятельности и повышение эффективности законодательства и правоприменительной практики в данной сфере.

Объект исследования. Это система правоотношений, связанных с национальным и международно-правовым регулированием разрешения споров в международном цифровом арбитраже в рамках международной онлайн-торгово-экономической деятельности.

Научная новизна исследования заключается в следующем:

обосновано, что вопросы назначения, отвода, прекращения полномочий арбитра, принятия решений по вопросу юрисдикции арбитражного суда, содействия в получении доказательств, а также отмены решения арбитражного суда решаются уполномоченным государственным судом по месту нахождения арбитражного суда на основании закона о местонахождении арбитражного суда, а также необходимость определения оснований для признания и осуществления мер по обеспечению в пределах их полномочий;

обосновано, что арбитры, эксперты, назначенные арбитражем, работники арбитражного учреждения не могут быть вызваны и допрошены в качестве свидетелей по обстоятельствам, ставшим им известными в ходе арбитражного или третейского разбирательства;

обосновано, что меры по обеспечению иска, находящегося в арбитражном суде, могут быть рассмотрены экономическим судом по заявлению стороны арбитражного разбирательства, а решение арбитражного суда об отказе в удовлетворении исковых требований является основанием для отмены мер по обеспечению экономическим судом;

обосновано, что суд оставляет исковое заявление без рассмотрения, если имеется соглашение лиц, участвующих в деле, о передаче данного спора на разрешение третейского суда или арбитража и возможность обращения к третейскому суду или арбитражу не утрачена и если ответчик, возражающий против рассмотрения дела в экономическом суде, не позднее своего первого заявления по существу спора заявит ходатайство о передаче спора на разрешение третейского суда или арбитража;

обоснованы роль, значение и концептуально правовой статус арбитражной комиссии как механизма разрешения дел при разрешении споров, возникающих по договорам, заключаемым на бирже;

обоснована необходимость признания и направления к исполнению экономическими судами Республики Узбекистан решений международных арбитражей, принимаемых по спорам, возникающим в сфере экономики, а также по другим делам, в порядке, предусмотренном соответствующими национальным законодательством Республики Узбекистан.

Внедрение результатов исследования. Научные результаты, полученные в ходе исследовательской работы, использовались как:

предложения об установлении оснований для подачи иска в экономический суд, а именно: заявление о назначении арбитра, удовлетворении отказа в арбитре, принятии решения о прекращении действия полномочий арбитра, принятии решений по вопросу юрисдикции арбитражного суда, отказе в получении доказательств, а также об отмене решения арбитража подается в экономический суд по месту нахождения арбитража, заявление о признании обеспечительных мер и обращении к исполнению, принятии мер по обеспечению иска, рассматриваемого в арбитражном суде, – по месту нахождения арбитражного суда или по месту государственной регистрации должника, или если место государственной регистрации должника неизвестно, по месту нахождения его имущества, нашли отражение в части пятой статьи 37 Закона Республики Узбекистан «О внесении изменений и дополнений в некоторые законодательные акты Республики Узбекистан в связи с принятием Закона Республики Узбекистан «О международном коммерческом арбитраже» от 16 мая 2022 года № 769 (Акт Сената Олий Мажлиса Республики Узбекистан от 15 июля 2022 года № 06-13/35). Эти предложения применяются при рассмотрении экономическим судом заявлений по вопросам юрисдикции арбитражного суда, признания и исполнения обеспечительных мер, принятия обеспечительных мер, содействия в получении доказательств;

предложение о том, что арбитры, эксперты, назначенные арбитражем, работники арбитражного учреждения, не могут быть вызваны и допрошены в качестве свидетелей в связи с обстоятельствами, ставшими им известными в ходе арбитражного или третейского разбирательства, нашло отражение в части второй статьи 53 Закона Республики Узбекистан «О внесении изменений и дополнений в некоторые законодательные акты Республики Узбекистан в связи с принятием Закона Республики Узбекистан «О международном коммерческом арбитраже» от 16 мая 2022 года № 769 (Акт Законодательной палаты Олий Мажлиса Республики Узбекистан от 8 июля 2022 года № 04/2-09/3348). Реализация данного предложения служит совершенствованию правовой базы по обязанностям лиц, участвующих в арбитражном разбирательстве, не предоставлять информацию в связи с тем, что процесс организован конфиденциально;

предложения о том, что меры по обеспечению иска, находящегося в арбитражном суде, могут быть рассмотрены экономическим судом по заявлению стороны арбитражного разбирательства, а также постановлению третейского суда об отказе в удовлетворении исковых требований, является основание для отмены мер обеспечения экономическим судом нашли отражение в части шестой статьи 93 и части восьмой статьи 99 Закона Республики Узбекистан «О внесении изменений и дополнений в некоторые законодательные акты Республики Узбекистан в связи с принятием Закона Республики Узбекистан «О международном коммерческом арбитраже» от 16 мая 2022 года № 769 (Акт Законодательной палаты Олий Мажлиса Республики Узбекистан от 15 июля 2022 года № 06-13/35). Эти предложения применяются при рассмотрении в экономическом суде заявлений об исполнении иска, находящегося в арбитражном суде, по заявлению стороны арбитражного разбирательства;

предложения о том, что ответчик должен подать заявление о передаче спора в арбитражный или третейский суд при наличии возражения против рассмотрения дела в экономическом суде не позднее его первого обращения по содержанию спора, при условии, что стороны, участвующие в деле, имеют соглашение о передаче спора на рассмотрение арбитражного или третейского суда, и не упущена данная возможность обращения в арбитражный или третейский суд, нашли отражение в пункте 9 статьи 1 Закона Республики Узбекистан «О внесении изменений и дополнений в некоторые законодательные акты Республики Узбекистан в связи с принятием Закона Республики Узбекистан «О международном коммерческом арбитраже"» от 16 мая 2022 года № 769 об изменениях в пункте 2 статьи 107 Экономического процессуального кодекса Республики Узбекистан (Акт Законодательной палаты Олий Мажлиса Республики Узбекистан от 8 июля 2022 года № 04/2-09/3348). Реализация данного предложения послужила совершенствованию права ответчика на подачу заявления о передаче спора в арбитражный или третейский суд не позднее его первого обращения по содержанию спора;

предложения по урегулированию споров, связанных с заключением и исполнением фьючерсных контрактов, арбитражной комиссией биржи нашли отражение в постановлении Кабинета Министров Республики Узбекистан «О мерах по внедрению фьючерсных торгов на товарно-сырьевых биржах и организации электронного логистического торгового портала услуг по транспортировке продукции автотранспортом» (Акт Министерства юстиции Республики Узбекистан от 14 октября 2022 года № 811-5/6628). Данные предложения были использованы при разрешении споров, связанных с фьючерсными контрактами, арбитражной комиссией биржи;

предложения о том, что вопросы признания и приведения в исполнение решения арбитражного суда, если местонахождение арбитражного разбирательства в Республике Узбекистан, решаются с учетом особенностей, предусмотренных Законом Республики Узбекистан «О международном коммерческом арбитраже», нашли отражение в пункте 13 части пятой Закона Республики Узбекистан «О внесении изменений и дополнений в некоторые законодательные акты Республики Узбекистан в связи с принятием Закона Республики Узбекистан «О международном коммерческом арбитраже» от 16 мая 2022 года № 769 об изменениях в статье 248 Экономического процессуального кодекса Республики Узбекистан (Акт Законодательной палаты Олий Мажлиса Республики Узбекистан от 8 июля 2022 года № 04/2-09/3348). Реализация данного предложения послужила определению порядка признания и приведения в исполнение решений иностранных судов и арбитражей в соответствии с Законом Республики Узбекистан «О международном коммерческом арбитраже».

Структура и объем диссертации. Диссертация состоит из введения, 4-х глав, заключения, библиографии и приложений. Объем диссертации составляет 215 страниц.

E`LON QILINGAN ISHLAR RO'YXATI
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