



## ADVANTAGES OF ARBITRATION COURTS OVER STATE COURTS

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### ANNOTATION

Ensuring the rule of law in our country, effectively regulating foreign trade activities in order to improve the investment environment, developing alternative mechanisms for resolving economic and civil disputes and guaranteeing the rights of subjects, reforms in the field of law and justice, first of all, human rights, freedoms and legal interests is aimed at comprehensive protection. These are gradual and gradual reforms, giving the state the role of the main reformer, ensuring the rule of law, implementing a strong social policy. At this point, it should be noted that today in Uzbekistan, as one of the methods of alternative dispute resolution, the advantages of arbitration courts over state courts are attracting everyone's interest. In this article issues related to the advantages of arbitration courts over state courts are considered.

**Keywords:** Arbitration court, state court, arbitration, difference of courts, priority aspects, economic dispute, civil dispute.

### ANNOTATION

Мамлакатимизда қонун устуворлигини таъминлаш, инвестициявий муҳитни яхшилаш борасида ташқи савдо фаолиятини самарали тартибга солиш, иқтисодий ва фуқаролик низоларни ҳал қилишнинг муқобил механизмларини ривожлантириш ҳамда субъектлар ҳуқуқларини кафолатлаш, ҳуқуқни муҳофаза қилувчи ва суд-ҳуқуқ соҳасида амалга оширилаётган ислоҳотлар, аввало инсон ҳуқуқлари, эркинликлари ва қонуний манфаатларини ҳар томонлама ҳимоя қилишга қаратилгандир. Бу давлатга бош ислоҳотчининг ролини бериш, қонун устуворлигини таъминлаш, кучли ижтимоий сиёсатни амалга ошириш, босқичма-босқич ва аста-секинлик билан давом этаётган ислоҳотлардир. Шу ўринда таъкидлаб ўтиш жоизки, бугунги кунда Ўзбекистонда низоларни муқобил тартибда ҳал қилиш усулларида бири сифатида ҳакамлик судларини давлат судларига нисбатан афзаллик жиҳатлари барчанинг қизиқишини уйғотиб келмоқда. Мазкур мақолада ҳакамлик судларини давлат судларига нисбатан афзаллик жиҳатлари билан боғлиқ бўлган масалалари кўриб чиқилади.





**Keywords:** Hakamlik sudi, davlat sudi, aribitraj, sudlar farqi, afzalik jihatlari, iqtisodiy nizo, fuqarolik nizo.

## ANNOTATION

Обеспечение законности в нашей стране, эффективное регулирование внешнеэкономической деятельности в целях улучшения инвестиционной среды, развитие альтернативных механизмов разрешения экономических и гражданско-правовых споров и гарантирование прав субъектов, реформы в сфере права и правосудия, в первую очередь, прав, свобод и законных интересов человека направлена на всестороннюю защиту. Это поэтапные и постепенные реформы, отводящие государству роль главного реформатора, обеспечивающие верховенство закона, реализующие сильную социальную политику. Здесь следует отметить, что сегодня в Узбекистане, как один из методов альтернативного разрешения споров, всеобщий интерес вызывают преимущества третейских судов перед государственными судами. В данной статье рассматриваются вопросы, связанные с преимуществами третейских судов перед государственными судами.

**Klyuchevye slova:** Третейский суд, государственный суд, арбитраж, разница судов, хозяйственный спор, гражданский спор.

Today, despite the development of the arbitration system, there is no single concept of "alternative dispute resolution" that is traditionally used for the operation of the arbitration court, even in the international arbitration practice. For example, one of the documents of the United Nations Commission on International Trade Law (UNCITRAL) stated that "the concept of alternative dispute resolution procedures is not clear and can be interpreted as a broad category covering various alternatives to state courts." In this regard, in order to determine ways to develop arbitration as a young court compared to competent courts, it is necessary to study the history of its emergence, determine the advantages of the arbitration court compared to competent courts, and analyze the possibilities of eliminating the existing shortcomings.

Arbitration is one of the methods known as alternative dispute resolution. It is a process where both parties come together and agree to abide by and respect the arbitrator's decision. This is one of the avenues you can try instead of going to court to file a complaint and resolve the dispute. The arbitrator is usually a lawyer familiar with the area of law being decided. The arbitrator's decision is binding on both parties, although decisions may be appealed, in some cases. Arbitration is used as a form of





private resolution between the parties through the appointment of an arbitrator, and is a useful means of quickly and fairly resolving disputes arising from commercial transactions in the field of goods and services. Arbitration has many advantages for disputing parties due to their trust in arbitrators, confidentiality of information, speed of resolution, lower court fees and international recognition of arbitral awards.

**State Courts** - By "litigation" we mean going to court to resolve disputes between parties. It is a legal proceeding initiated between opposing parties to enforce or protect a legal right. In this process, the case goes to court, where a judge (who is appointed by the court as the litigant) makes a decision on the matter after considering all the evidence presented by the lawyers. If the parties do not agree with the decisions of the court, if certain conditions are met, they can appeal to the higher court to ensure justice. The court has a clear and formal procedure for resolving disputes between interested parties, which must be strictly followed. However, due to the rigor and high cost of litigation, there are cases where the parties resort to arbitration.

Arbitration and state litigation are formal dispute resolution methods. They differ in who hears the dispute, how the process works, and whether the decision can be appealed. This article discusses the main differences between these two methods of dispute resolution. A trial is an ancient process that involves resolving issues through a court of law with a judge or jury.

On the other hand, arbitration involves two parties agreeing to work with a neutral third party to resolve the dispute. Bilateral arbitration hears economic and civil disputes.

Type of work. The case is conducted privately in the arbitration court, i.e. between two parties, and in public courts - in the courtroom;

How is a judge selected? The parties choose the judge of the Arbitration Court, and the State Court appoints the judge - the participation of the parties is limited.

A mandatory appeal is generally not possible in arbitration. Appeals can be made in state courts.

Use of lawyers. In the arbitration court, the lawyer is chosen at the discretion of the parties, and in the trial courts, the extensive use of lawyers is important.

The arbitration court from the economic and civil court:

1. One of the biggest differences is that cases are resolved quickly in arbitration. The arbitration court consists of only one stage, unlike other courts, there are no appeal, cassation, or control instances.

According to the American Bar Association, the average time from the start of an arbitration case to a final award is about seven months, while the average time for a civil case is 23 to 30 months, depending on how busy the court is.





**2.** The parties to the arbitration agreement shall not be held criminally or administratively liable;

**3.** Costs for arbitration proceedings are limited to the arbitrator's fee (depending on the size of the claim, the arbitrator's expertise and costs) and attorney's fees. You may also have to pay the cost of the venue for the arbitration .

The costs of a state court proceeding include attorney fees, pretrial motions and interrogatories, document review, and court costs, which can be very high.

**4.** The main purpose of the arbitration court is to initiate the agreement of the parties and to create voluntary cooperation between the parties;

**5.** Economic and civil cases are considered and decided by the arbitration court. But in civil courts only disputes concerning citizens are considered, and in economic courts only economic disputes concerning legal entities are considered;

**6.** Confidentiality of arbitration proceedings is guaranteed by the Law "On Arbitration Courts":

"The arbitrator has no right to disclose the information that became known to him during the arbitration without the consent of the parties to the arbitration or their legal successors. The arbitrator may not be questioned as a witness about the information that became known to him during the arbitration proceedings . such rules are set.

**7.** The amount of the arbitral fee shall not exceed 50 percent of the state duty paid in civil or economic cases.

**8.** The decision of the arbitration court comes into force from the day of its adoption;

**9.** Courts on economic and civil matters do not have the right to examine the circumstances determined by the arbitration court or to reconsider the content of the decision of the arbitration court:

"The competent court does not have the right to verify the circumstances identified by the arbitration court or to reconsider the content of the arbitration court's decision while considering the application for annulment of the arbitration court's decision"

**10.** Another aspect guaranteed by the law is that in the case of voluntary non-execution of the decision of the arbitration court, it can be enforced in the appropriate manner. In this case, the arbitrary non-executed decision of the Arbitration Court is submitted to the competent court and implemented by obtaining a writ of execution. Which one is better ? This, of course, depends on the dispute and the disputing parties, which we will consider in detail below.

Most cases, arbitration is faster and less expensive than state court. The average time between the initiation of a case and the publication of a final decision takes months



instead of years. Since attorney's fees are the largest expense of litigation, the discretionary use of attorneys in arbitration can save considerable money.

Another advantage of arbitration is planning and customization for the convenience of the parties. An informal environment can lead to faster resolution of disputes, and speedy resolution of business disputes and avoidance of lengthy and costly appeals is critical to most businesses.

On the other hand, litigation may be a better alternative. Sometimes it is better to resolve a dispute in an open courtroom. If you have concerns about finding an arbitrator or need to resolve legal principles, a trial may be preferable for you.

Every small business situation is different, and you may have one that outweighs the other. Talk to your attorney before deciding whether to go to arbitration or state court. Calculation of the goals of creating and operating an arbitration court and international commercial arbitration directly in Uzbekistan (it helps to reduce the burden on state courts and increase the investment attractiveness of Uzbekistan and de-offshore the national economy, increase the speed of proceedings on possible types of disputes and its advantages, proceedings the speed, relative secrecy of the process is the same protection for internal corporate disputes, for example, for family disputes over the distribution of property, in the presence of an arbitration clause in international arbitration courts, holding the debtor's assets abroad liable.

At this point , it can be noted that Professor MMMamasiddikov touched on the advantages of considering disputes in arbitration courts. In particular, according to the scientist, when considering disputes in arbitration courts:

- Parties have the opportunity to independently choose a judge. The parties may choose among the arbitrators in the list of arbitrators approved by the legal entity that established it in permanent arbitration courts. The judge of the temporary arbitration court is chosen by the parties to the arbitration agreement on the basis of mutual agreement;
- Disputes are resolved in one instance. Arbitration courts do not form a single system and are not subordinate to each other, that is, there is no higher instance of the arbitration court;
- Work is carried out in short periods. The law "on arbitration courts" does not specify the term of consideration of the dispute in the arbitration court. This period shall be specified in the arbitration agreement concluded between the parties or in the regulations of permanent arbitration courts. Foreign experience shows that, for example, in the regulations of arbitration courts operating in the russian federation, the term of consideration of cases is set at 20 days from the selection of the court composition;





- The costs of the arbitration court are several times less than the court costs incurred for hearing and resolving disputes in commercial and civil courts, and no state duty is charged for claims submitted to arbitration courts;
- The arbitration proceedings are confidential and may not be disclosed. The arbitrator shall not have the right to disclose the information that became known to him during the arbitration without the consent of the parties to the arbitration or their legal successors;
- Arbitration shall be determined in accordance with the agreement of the parties. The charter and regulations of the permanent arbitration court have the advantage of holding the hearing in a place convenient for the parties and the court.

In general, the arbitral tribunal has very broad powers to determine the appropriate procedure. Indeed, this is one of the defining characteristics of arbitration, unlike courts, where there is a strict procedure. However, it depends on the general respect for due process or natural justice, i.e. the equality of the parties and the opportunity to be heard. For example, Article 17(1) of the UNCITRAL Rules contains a general power for the arbitral tribunal "to conduct the arbitration (arbitration) on the basis of equal treatment of the parties and at the appropriate stage as it deems appropriate" and to each party in the arbitration (arbitration) proceedings. They are given a fair opportunity to present their work.

Dispute prevention and mitigation is an integral part of a functional business strategy in any jurisdiction. The opinions of these scientists, considering the advantages of arbitration courts today, it would certainly be appropriate to expand the jurisdiction of this court in handling disputes.

To date, Uzbekistan has determined its position on arbitration courts based on its theoretical and practical experience in arbitration courts in foreign countries. In Uzbekistan, arbitration courts should conduct their activities independently on the basis of impartiality and legality, ensuring equal rights of the parties to the arbitration, as well as in order to create wide opportunities and help entrepreneurs. Unfortunately, in our opinion, there is insufficient awareness of the possibility of resolving disputes through arbitration and its advantages in all regions of the republic. Many lawyers and professionals are not sufficiently aware of the existence of the right to arbitration.

According to scientist A.Khakberdiev, the arbitration court has the following advantages in terms of dispute resolution, different from civil courts and economic courts:

- The arbitration court considers not only economic cases, but also civil cases and decides based on its own principles;



- In economic courts, only economic disputes related to legal entities are considered, and in civil courts only disputes related to citizens;
  - Arbitration courts, including disputes between legal entities, disputes between citizens regarding debt transactions. Regardless of whether there is a written receipt of a loan agreement between citizens or not, the arbitration court considers disputes and makes a legal decision;
  - Parties have the opportunity to independently choose a judge. The parties may choose among the arbitrators in the list of arbitrators approved by the legal entity that established it in permanent arbitration courts. The judge of the temporary arbitration court is chosen by the parties to the arbitration agreement on the basis of mutual agreement
  - The case is resolved quickly in the arbitration courts (because only one instance is provided for in the arbitration court, there are no appeal and cassation instances like other courts. The decision of the arbitration court is final);
  - The highest goal is directed to the agreement of the parties and cooperation between the parties is maintained. In the first place, ways to bring the parties to a compromise are sought, and then efforts are made to ensure that the relations between them are not disturbed so that they can continue to cooperate;
  - Confidentiality of arbitration proceedings is guaranteed by law. The arbitration will be heard in closed session. It ensures that there is a dispute between the parties, as well as that any specific aspects of the dispute are not disclosed, and commercial secrecy is maintained;
  - Only the court and disputing parties participate in the arbitration court without the participation of the prosecutor;
  - The parties are not subject to criminal and administrative penalties;
  - The costs of the arbitration court are fifty percent less than the court costs for hearing and resolving disputes in the competent courts, and no state duty is charged for claims submitted to the arbitration courts;
  - Arbitration shall be determined in accordance with the agreement of the parties. According to the statutes and regulations of the permanent arbitration court, the hearing may be held at a place convenient for the parties and the court;
  - The decision of the arbitration court shall be effective from the date of adoption.
- The experts of the International Labor Organization analyzed the specific advantages and disadvantages of the existence of various special processes and alternative ways (mediation, arbitration, arbitration) in resolving disputes arising from labor relations and expressed a number of conclusions.



In particular, its advantages are:

- ☞ The possibility to compare and choose alternative ways of resolving the dispute between the parties (by choosing arbitration, arbitration or mediation);
- ☞ Provides an opportunity for the parties to be well aware of the advantages and disadvantages of each proposed alternative;

Along with its positive aspects, such as the variety of alternative ways to resolve conflicts, it also has negative aspects, and they are as follows:

- ☞ Having different solutions to one type of legal dispute;
- ☞ In practice, the division of these roads into several types causes confusion in its use.

Based on the above, it can be said that the resolution of individual labor disputes through arbitration has its own advantages, which can be seen in the following:

- ☞ During the settlement of individual labor disputes in the arbitration, it is conducted based on the procedure that is not strictly defined by normative legal documents, but on the contrary, agreed between the parties. Unlike the court system, the resolution of individual labor disputes through arbitration is much more flexible, and since there are no various bureaucratic obstacles, written documents full of endless information, the parties will have the opportunity to get accurate information faster in terms of conclusions about the current disputed situation.
- ☞ The opportunity to save time and money for disputing parties in arbitration. Consideration and resolution of individual labor disputes by the arbitration court in a short period of time is considered one of the main principles of the institute of labor disputes. Arbitration will be conducted directly on the basis of these principles. For example, the results of a study conducted by the university of north carolina showed that it takes an average of 360 to 470 days to resolve a dispute directly in court.
- ☞ It is possible for the parties to control individual labor disputes arising during arbitration. In this case, it is reflected in the fact that the disputing parties in arbitration proceedings can not only participate in the process of conducting the dispute, but also directly monitor the actions of the other party.
- ☞ In the process of resolving the dispute in arbitration, all cases are determined according to the direct wishes of the parties. Unlike the competent court system, these alternatives are not considered mandatory.
- ☞ Individual labor disputes are resolved in one instance. There is no higher instance of the arbitration court.
- ☞ Good relations between the conflicting parties. The arbitration proceedings are confidential and may not be disclosed. The arbitrator shall not have the right to disclose the information that became known to him during the arbitration without the







consent of the parties to the arbitration or their legal successors;

- ☞ Arbitration shall be determined in accordance with the agreement of the parties. According to the statutes and regulations of the permanent arbitration court, the hearing may be held at a place convenient for the parties and the court;
- ☞ Satisfaction with the result and voluntary execution of the decision. It is one of the main features of arbitration. The main goal of arbitration between the disputing parties is to achieve an effective result, which is the voluntary fulfillment of the obligations in time.
- ☞ It follows that arbitration has several advantages over competent court proceedings in terms of dispute resolution and proceedings. These advantages are mentioned in the second paragraph of the first chapter of our research work. However, it is safe to say that in the practice of Uzbekistan, online arbitration is not available as one of several problems in the procedure and proceedings of the arbitration court.

Based on the above, it is no exaggeration to say that some of the advantages and disadvantages of using online arbitration may be:

- ☞ Neutrality, the Internet is a neutral medium for disputing parties;
- ☞ Online remote dispute resolution based on an arbitration agreement concluded by the parties or their representatives. In this case, the parties can transfer documents, information and messages only from their workplaces, by connecting to the organization's website or through other online means of communication;
- ☞ Can save time and increase efficiency by organizing more efficient, online arbitration: can collect documents in the right place when using the website and do not need to spend;
- ☞ Time can be saved, documents can be sent and checked anytime and anywhere;
- ☞ A procedure to assist the parties and reduce the costs of the online arbitration process, which may inadvertently lead to high costs;
- ☞ Online arbitration is not like traditional arbitration, not only sending documents or using video conferencing, but all proceedings are conducted online, without any face-to-face meetings;
- ☞ The arbitrator is chosen by the disputing parties unilaterally or by both parties in accordance with the provisions of the statute appropriate to the arbitration;
- ☞ An agreement to use online arbitration is not a written process that must be ratified by the parties by electronic signature, but each party's online submission of the submission indicates that it agrees to submit the arbitration online.

In addition, there are some disadvantages of online arbitration that should be considered and addressed before the existence of this process can be safely used by the parties, which are:





- ✎ In online proceedings, due to the use of the Internet by a large number of citizens, it is necessary to prevent the participation of persons unrelated to the dispute from the point of view of security issues, and to avoid the appearance of various signal noises. There are no special platforms for sending documents online
- ✎ Taking into account that the application of online arbitration procedures has not yet been tested, after that, work should be carried out to eliminate the shortcomings that have arisen.
- ✎ Arbitral awards are not directly enforced in online arbitration, but many such awards face problems.
- ✎ It is more difficult to verify the signature of online documents, but it can still be done with a more complex evidence procedure.

The arbitral tribunal has different names in different countries. For example, in Russia it is called the Treteysky Court, in Europe it is called the Arbitration Court. Another important point is that in Uzbekistan the Court of Arbitration and the Court of Arbitration are regulated separately and each is a separate court system. The Law of the Republic of Uzbekistan "On International Commercial Arbitration", adopted by the Legislative Chamber on August 5, 2020 and approved by the Senate on September 11, 2020, is the legal basis of the arbitration court, whose task is international commercial arbitration. is to regulate relations in the field of arbitration.

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