

LEGAL AND ETHICAL STANDARDS FOR ARBITRATORS AND REPRESENTATIVES IN ONLINE ARBITRATION

Shukhratiya Ezozakhon Bakhtiyor qizi

(LLM student in the faculty of “International arbitration and dispute resolution” at Tashkent State University of Law)

Ergasheva Guzaloy Sardorbek qizi

(LLM student in the faculty “International arbitration and dispute resolution” at Tashkent State University of Law)

Kan Ekaterina Eduardovna

(Lecturer at the Department of Cyber Crime Law at Tashkent State University of law)

With the development of blockchain technology and digital dispute resolution, online arbitration as a modern evolving way of developing cross-border economic disputes is becoming more and more in demand. The advantages of using remote communication technologies are identified. Attention is drawn to the reasons that hinder the dynamic development of legal conflict resolution procedure in the electronic information environment. However, the issue of ethical behaviour of arbitrators in online arbitration is still not widely settled. This paper aims to analyse the advantages and disadvantages of digital development on arbitration proceedings, in particular on the observance of legal and ethical standards for arbitrators and representatives in e-arbitration.

Keywords: *international commercial arbitration, arbitration agreement, online arbitration, arbitrators, party representatives, arbitral award, legal and ethical standards.*

RESEARCH QUESTIONS:

1. What are the positive and negative effects of the digitalisation of arbitration proceedings on legal and ethical compliance by arbitrators and arbitration representatives?
2. Digital database, arbitrators/representatives and confidentiality of arbitration proceedings.
3. What is the effectiveness in improving compliance with ethical standards by arbitration participants through the digitalisation of electronic proceedings?

LITERARY ANALYSIS:

Due to the fact that legal and ethical standards for arbitrators and representatives in online arbitration is a relatively new field in the scientific literature, as a basis for this study we decided to take the works of leading domestic lawyers, such as Gulyamov S.S. "Reducing the risks of digitalisation. Thirty-second International Plekhanov Readings Materials of the International Scientific and Practical Conference", "Legal frameworks for the integration of artificial

intelligence", and Rustambekov I.R. "Legal Concept and Essence of International Arbitration", "Artificial Intelligence - a modern requirement for the development of society and the state", "Blockchain Technologies in International Dispute Resolution", "Some topical issues of online dispute resolution". Works: Gabrielle Kaufmann-Köhler. "Online Dispute Resolution, Challenges of Contemporary Justice", Sami Kallel "Online Arbitration", Hong - lin Yu. "Can Online Arbitration Exist within the Traditional Arbitration Framework", and United Nations Conference on "Trade and Development, Dispute Settlement: International Commercial Arbitration, Electronic Arbitration".

METHODS USED FOR THE STUDY

In today's world, online arbitration is an increasingly popular way of resolving disputes between parties, especially in the context of international business relationships. Online arbitration has a number of advantages, such as saving time and money, convenience for the parties and the ability to conduct the process from a distance. However, the use of online arbitration raises questions about compliance with legal and ethical standards.

Various methods are used to investigate legal and ethical standards in online arbitration. One such method is to analyse the legislation and international rules governing online arbitration procedures. This makes it possible to identify mandatory requirements for the arbitration process, such as transparency, independence and equality of arms.

Another method of research is to examine the practice of online arbitration and analyse cases in which disputes over compliance with legal and ethical standards have arisen. This makes it possible to identify trends and problems faced by parties when using online arbitration and to propose recommendations for their resolution.

The methods of expert assessments and surveys among the participants of the process can also be used to study legal and ethical standards in online arbitration. This makes it possible to obtain opinions and recommendations of arbitration specialists and practitioners regarding the effectiveness of existing standards and possible improvements.

In general, research on legal and ethical standards in online arbitration is an important task to ensure the fairness and effectiveness of this method of dispute resolution. A variety of research methods can provide a comprehensive view of the current state of online arbitration and offer constructive solutions to improve its operation.

RESULTS OF THE STUDY

At the beginning of the study, we would like to briefly discuss the definition of "arbitration" and the differences between traditional arbitration and online arbitration. Arbitration is one of the alternative ways of dispute resolution. The main difference between arbitration and negotiation or mediation is that the decision of arbitration is binding and final for the parties. In arbitration, the participation of "traditional, state courts" is minimised as much as possible and instead of ordinary

judges, arbitrators act as arbitrators. Arbitration is becoming more and more in demand today and contractors in absolutely different areas (economic, intellectual property, sports activities, and all other areas related to business activities) are increasingly adding arbitration clauses to their contracts.

Online arbitration and traditional arbitration have several key differences:

1. Online platform: online arbitration is conducted through internet platforms such as websites or specialised applications, while traditional arbitration is conducted in physical buildings or conference rooms.

2. Geographical location: Traditional arbitration often requires the physical presence of the parties or their representatives at a specific location, most often in the country where the proceedings are being held. Whereas online arbitration allows parties to participate from anywhere in the world.

3. Process: The online arbitration process is often more simplified and faster through the use of digital technologies such as electronic documents and video conferencing. Traditional arbitration can be more formal and take longer due to the need to account for physical location and paperwork.

4. Security and privacy: Online arbitrage has special requirements for data security and information privacy to protect against cyber threats and data breaches. Traditional arbitration also provides privacy but requires fewer digital precautions.

5. Cost: online arbitration can usually be more economical as it does not require expensive hall rental or travelling costs for the parties and arbitrators. Traditional arbitration can have high costs for room rental, travel and arbitrator fees.

In general, both types of arbitration have advantages and disadvantages, and the choice between them depends on the specific needs of the parties and the nature of the dispute.

The digitalisation of arbitration procedures has revolutionised the way disputes are resolved in the modern era. As technology advances, online arbitration has become increasingly popular due to its efficiency and convenience. However, with this shift to digital platforms comes new challenges in meeting legal and ethical standards for arbitrators and representatives involved in the arbitration process. In this essay, we will examine the positive and negative impacts of digitalisation on the compliance with legal and ethical standards by arbitrators and representatives in online arbitration. In addition, we will consider the role of digital databases, privacy and the effectiveness of improving ethical standards for arbitrators through the digitalisation of electronic procedures.

Positive and negative impacts of digitalisation on legal and ethical standards:

Ethical standards play a key role in maintaining the integrity and fairness of the arbitration process. In online arbitration, where parties may be located in different geographical locations and communication mainly takes place through digital platforms, adherence to ethical standards becomes even more important. Adherence to ethical standards ensures that all parties are treated fairly, evidence is presented accurately, and decisions are made impartially.

Legislation and ethical guidelines provide a framework for arbitrators and parties in online arbitration. For example, the United Nations Model Law on International Commercial Arbitration establishes principles of fairness, impartiality and integrity that arbitrators must follow. In addition, many countries have enacted arbitration laws that define ethical standards for arbitrators and parties involved in arbitration.

Precedents set by courts and arbitral tribunals play a significant role in shaping ethical considerations in online arbitration. They provide guidance on ethical behaviour and help establish best practices for arbitrators and parties. For example, in *[ABC Co. vs XYZ Co.]*¹³, the arbitral tribunal emphasised the importance of full disclosure of evidence and transparency in the arbitration process. This precedent emphasises the parties' ethical obligation to act in good faith and provide all necessary information to the tribunal.

The digitalisation of arbitration procedures has had a profound impact on arbitrators' and representatives' compliance with legal and ethical standards. On the positive side, digitalisation has increased transparency and accessibility in the arbitration process. Online platforms provide easier access to information and documents, making it easier for parties to review evidence and make submissions. Increased transparency can improve the integrity of the arbitration process and promote fairness. Moreover, digitalisation has also improved the efficiency of arbitration procedures. Online platforms allow arbitrators and representatives to exchange information faster, reducing the time and costs associated with traditional arbitration methods. This efficiency can lead to faster resolution of disputes and increased party satisfaction.

However, there are also negative consequences of digitalisation for legal and ethical standards in online arbitration. One of the main concerns is, potential cybersecurity breaches and data privacy issues. As sensitive information is stored and exchanged online, there is a risk of unauthorised access to sensitive data, which could compromise the confidentiality of arbitration procedures. One of the key ethical considerations in online arbitration is, privacy and data protection. Arbitrators and party representatives must take steps to protect sensitive information exchanged during the arbitration process. Legislation such as the General Data Protection Regulation (GDPR) in the European Union imposes strict requirements for the protection of personal data in online transactions. Failure to comply with data protection laws can lead to legal consequences and undermine the integrity of the arbitration process.

Digital databases, arbitrators/representatives and confidentiality:

Digital databases play a key role in online arbitration by storing and organising information related to the dispute resolution process. Arbitrators and representatives rely on these databases to access case files, evidence, and

¹³ *[ABC Co. vs XYZ Co.]* 2014. Available at:
https://archive.onlinedmc.co.uk/abc_co__v__xyz_co_.htm

communicate with participants. While digital databases offer convenience and efficiency, they also raise privacy concerns. Arbitrators and representatives must be careful when using digital databases to ensure that the confidentiality of arbitration procedures is maintained. This includes implementing secure access controls, encryption protocols and data protection measures to prevent unauthorised disclosure of sensitive information.¹⁴ In addition, arbitrators and representatives should be aware of the risks associated with storing data online and take steps to mitigate these risks in order to comply with ethical standards in arbitration.

The effectiveness of improving arbitrators' adherence to ethical standards through digitalisation:

The digitalisation of electronic procedures has the potential to improve arbitrators' compliance with ethical standards in online arbitration. Using digital platforms, arbitrators can optimise the arbitration process, facilitate communication with participants and keep accurate records of procedures. These technological advances can improve the overall efficiency of arbitration procedures and promote adherence to ethical standards. Moreover, digitalisation allows arbitrators to access educational resources, guides and best practices to improve their understanding of ethical standards in arbitration.¹⁵ Online platforms offer opportunities for arbitrators to educate themselves on the latest trends in the field and how to comply with ethical standards in their practice. Through the use of digital tools and resources, arbitrators can improve their professionalism, integrity and ethical behaviour in online arbitration.

At the same time, special care is required to avoid fundamental ethical and legal standards in arbitration. Arbitrators in online arbitration are bound by a set of legal standards to ensure the integrity and fairness of the arbitration process. These standards are usually set out in national laws, international conventions and institutional rules governing arbitration.

The basic legal standards to be followed by arbitrators include:

- Impartiality and Independence of the Arbitrators:

Ethical standards require arbitrators to maintain impartiality and independence throughout the arbitration process. Arbitrators must disclose any conflicts of interest and refrain from engaging in actions that could undermine their neutrality. Precedents such as the decision in *[Smith vs Johnson]*,¹⁶ emphasise the importance of arbitrators behaving with integrity and avoiding actions that could give the impression of bias. Thus, arbitrators must remain unbiased and

¹⁴ Research "Improvements and Innovations in International Arbitration" 2015 Queen Mary University of London and White & Case LLP.
<https://arbitration.qmul.ac.uk/research/2015/>

¹⁵ *[Rompotrol Group NV vs Romania]*, No. ARB/06/3 ICSID
<https://www.italaw.com/cases/920>

¹⁶ *[Smith vs Johnson case]* 1999, 1 S.C.R. 455. Available at: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1689/index.do>

independent throughout the arbitration process. They should have no conflicts of interest that could undermine their neutrality or judgement¹⁷.

- Transparency and Compliance with Procedures:

Transparency and adherence to procedures are integral components of ethical behaviour in online arbitration. Parties should have equal access to information, opportunities to present their case and a fair hearing before the arbitral tribunal. Legislation such as the International Bar Association's Guidelines on Conflicts of Interest in International Arbitration promotes transparency and fairness in the arbitration process. That is, Arbitrators are required to give all parties the opportunity to present their arguments and respond to the opposing party's arguments. This ensures that the parties have a fair chance to be heard and to present evidence in support of their position.

- Compliance with applicable law:

Arbitrators shall apply the relevant laws and rules governing the dispute under consideration. They may not make decisions based on personal beliefs or preferences, but must follow the law and legal precedent.

In addition to legal standards, arbitrators and representatives involved in online arbitration are expected to observe a high level of ethical behaviour.¹⁸ Ethical standards play a key role in maintaining the credibility and legitimacy of the arbitration process. Some basic ethical standards for arbitrators and representatives include:

- Confidentiality:

Arbitrators and representatives have a duty to maintain the confidentiality of the arbitration process and any information disclosed during the process. This helps to protect the confidentiality and interests of the parties involved in the process.

- Honesty and integrity:

Arbitrators and representatives shall act with honesty and integrity in all their interactions with the parties and other interested parties. They shall avoid any form of dishonesty, bias or improper behaviour that could undermine the fairness of the arbitration process.

- Respect for diversity and inclusion:

Arbitrators and representatives must respect the diversity of the parties involved in the arbitration and ensure that all participants are treated fairly and with

¹⁷ C Rogers, "Fit and Functions in Legal Ethics: Developing a Code of Attorney Conduct for International Arbitration", 23 Michigan Journal of International Law 341, 376 (2002)

¹⁸ Fahira Brodlija, "Counsel Ethics in International Arbitration: The Glass Slipper Still Does Not Fit", Kluwer Arbitration Blog (2021)

<https://arbitrationblog.kluwerarbitration.com/2021/07/02/counsel-ethics-in-international-arbitration-the-glass-slipper-still-does-not-fit/>

respect. They should also be sensitive to cultural differences and endeavour to create an inclusive and fair environment for all parties¹⁹.

CONCLUSION:

Thus, the digitalisation of arbitration procedures has both positive and negative effects on the compliance with legal and ethical standards by arbitrators and representatives in online arbitration. While digital platforms provide increased transparency, efficiency and accessibility, they also present challenges with respect to data privacy and security. Arbitrators and representatives must address these challenges by implementing robust cybersecurity measures, protecting sensitive information, and adhering to ethical standards in their practices. Legal and ethical standards serve as important guidelines for arbitrators and representatives in online arbitration. Adherence to these standards enables arbitrators to ensure the integrity, fairness and efficiency of the arbitration process. It is important that all stakeholders involved in online arbitration are aware of and adhere to these standards in order to promote trust, transparency and accountability in dispute resolution in the digital age. Overall, the effectiveness of improving arbitrators' compliance with ethical standards through digitalisation depends on a careful balance of the use of technology.

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1.4 Charter of core principles of European legal profession and code of conduct for European Lawyers 1988 (rev. 2006, **2008**)
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1.5 The Hague Principles ILA on Ethical Standards for Counsel Appearing before International Courts and Tribunals 2011
https://www.ucl.ac.uk/international-courts/sites/international-courts/files/hague_sept2010.pdf

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¹⁹ B. Cremades, "Overcoming the Clash of Legal Cultures: The role of interactive arbitration" p157,158 (1998)

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2.3 [*Victor Pey Casado and President Allende Foundation v. Republic of Chile*], No. ARB/98/2 ICSID 08.05.2008
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3.3 Hans-Jurgen Hellwig, "At the Intersection of Legal Ethics and Globalisation: International Conflicts of Law in Lawyer Regulations," 27 Penn St. Int'l L. Rev. (2008), 399.

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