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Alternative Dispute Resolution In Azerbaijan: Comparative Analysis On Main Problems

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ABSTRACT

Nowadays, it is difficult to imagine the resolution of disputes in international and domestic commercial relations without the arbitration and mediation processes. In today's globalized world, where countries are integrated, and commercial relations are intertwined, alternative dispute resolution, along with litigation, plays an essential role in the resolution of commercial disputes. Especially if the parties are in different jurisdictions, alternative dispute resolution becomes more critical for them. And integration into the modern world is one of the main factors for the all-round development of every country. For this reason, after the collapse of the USSR, countries which gained independence also started integrating into international law, international economic processes and associations. As a post-Soviet state, the Republic of Azerbaijan also adopted many conventions and became a member of different international organizations. Azerbaijan's integration process also made the establishment of new dispute-resolution mechanisms necessary for the country.

Introduction

Azerbaijan bases its foreign economic relations on the principles of peaceful coexistence and stable mutual benefit based on trade, economic, scientific and technical cooperation with other countries. [1] The Republic carries out fundamental and multifaceted reforms in order to create and improve an independent national economy based on modern market relations and

[1] E. Suleymanov, O. N. Aras, Economy of Azerbaijan, *Sharg-Garb*, Baku, 2016, p. 12.

provide its effective integration into the world economic system. The successful attraction of foreign investments increases the efficiency of development of the economic entities, current and future activities of different economic sectors, organizational and economic structures, as well as the efficiency of the national economy. In this regard, the increase in the volume of investments in accordance with the instructions and tools for the rational expression of investment significantly contributes to the productivity of the interaction of economic entities and government bodies at all levels of administration.[2]

The growing interest of foreign countries in the economy of Azerbaijan is reflected in a number of international agreements concluded between these countries and Azerbaijan. The Republic has signed large-scale agreements with influential corporations around the world. Among them, the conclusion of oil and gas contracts and other agreements which play a significant role in the development of mutual cooperation is one of the most important factors in the integration of Azerbaijan into the international community. Bilateral investment treaties that serve as the basis for company-to-country agreements are also some of the major elements in this area, as the level of investment activities is one of the main factors in optimizing the structure of the economy, increasing technical and economic level of the production, and determining the economic growth in the country.

For this reason, the development of Azerbaijan's foreign economic relations necessitates the establishment of a mechanism for the resolution of legal disputes which may arise between the states that participate in these relations. The State, which has been developing through a market economy for about 30 years,[3] has started creating a favourable economic and legal basis for the activities of both domestic and overseas businesses. The process is still ongoing, as judicial and legal reforms in Azerbaijan during the last decades have created effective mechanisms for the restoration of violated rights of individuals, legal entities and foreign investors,[4] such as preventing the confiscation of property. There is also a legal basis in Azerbaijan for the emergence and development of alternative dispute resolution (ADR) methods and their application for the settlement of disputes arising from the economic relations of commercial parties. The development of ADR in Azerbaijan can also be considered as a measure to support entrepreneurship in the country in terms of the resolution of their problems in this area by providing faster, more flexible and more efficient settlement of disputes.

However, there are significant problems in Azerbaijan in the area of the development of ADR. For example, although there are enough lawyers, specialists and experts in the areas of civil law and international law in Azerbaijan, however, there are few specialists in the area of ADR law, including arbitration law and arbitration procedural law. This problem arises from the lack of interest in ADR by businesses in Azerbaijan. There is also a problem of a lack of highly qualified personnel to organize ADR processes in accordance with modern world standards and to achieve a fair and professional settlement of disputes. Additionally, the experience of lawyers in this area is still unsatisfactory compared to

[2] V. Mirkamal, Beynəlxalq Arbitraj Prosesi, Azərbaycan Arbitraj və Mediasiya Mərkəzi, Bakı, 2011, p. 10.

[3] A. Nəzərli, Innovasiya, səffaflıq və tərəqqinin təminatı: Azərbaycanda məhkəmə hüquq islahatları, Bakı, Mart 2020.

[4] Ibid.

international standards. There is a strong need to improve the Azerbaijani legal framework for the wider application of ADR in the country as well.

In the Article, I will carry out a discussion in the relevant area by taking into consideration the noted problems. There is a shortage of literature around ADR in Azerbaijan, as there are almost no scientific research and practical experience resources. Those interested in this area, also experts, can get information only from the literature published via the internet in foreign languages. Although some newspaper articles and brochures recently published by society have partially closed the gap in this area, however, the literature problem still remains. For this reason, I hope this article will contribute to the improvement of respective literature in the country. Also, in Azerbaijan, there is a strong need for targeted awareness-raising activities to increase the popularity of the idea of arbitration and make it more effectively understood by businesses.

The article will realize a legal analysis of Azerbaijan's problems regarding ADR. Part 1 will look at the recent developments of the ADR in Azerbaijan, also the major elements which necessitated them. The part will also discuss the current position of the Republic of Azerbaijan in international economic relations and its importance for the development of ADR in the country. In this part, some suggestions will also be made for accelerating the development of ADR in Azerbaijan. Part 2 will mainly focus on Azerbaijan's problems in the area of ADR under national legislation. The part will also suggest some recommendations in order to solve the country's current problems in the relevant area. During the research, scientific resources by different legal systems' scholars will be referred to. Comparative analysis will also be carried out in the Article by taking into consideration the experience of Kazakhstan in this area, which is also a post-Soviet country and has significant similarities with Azerbaijan. These experiences will help the author to develop strong proposals to use for the development of ADR in Azerbaijan by solving the problems and closing gaps in the relevant area.

1. ADR in Azerbaijan: Major Factors for Development

1.1. Main Reasons in Azerbaijan for ADR

Foreign economic relations of the countries are first of all formalized by the interstate agreements concluded between the parties to these relations. [5] These international agreements specify the obligations of the concluding states, the mechanism for the resolution of disputes, also the legislation applicable to these relations. [6] As Johnson noted in 1993, states which are the recipient countries have already started preferring ADR in foreign investment relations in order to provide an efficient investment climate for foreign investors and, in this way, attract foreign capital to the national economy. [7] On the basis of international agreements concluded with other states, foreign investors (both legal entities and entrepreneurs) belonging to those states are considered subjects of civil law in Azerbaijan. This factor necessitates the development of ADR in Azerbaijan, specifically for strengthening the inflow of foreign investment to the country and signing and implementing large-scale oil

[5] See G. M. Grossman, *The Purpose of Trade Agreements*, National Bureau of Economic Relations, Cambridge, March 2016.
[6] Ibid.
[7] O. Thomas Johnson Jr., Alternative Dispute Resolution in the International Context: The North American Free Trade Agreement, 46 *SMU Law Review*, 1993, pp. 2183-84.

and gas contracts. Dispute resolution clauses under these contracts, including ADR also make it necessary for the State to provide the improvement of ADR in Azerbaijan.

Under "Contract of the Century" which was signed by 11 well-known oil companies from 7 countries for the exploitation of Azerbaijan's oil and gas resources in the Caspian Sea,[8] hundreds of new agreements were additionally signed between the Azerbaijani and foreign companies on the implementation of this contract.[9] In addition to a reflection of the general principles of foreign economic relations, recent oil contracts concluded by the Republic of Azerbaijan also highlight provisions on scope and duration of the work to be carried out, financing procedures, losses, prices, settlement rules and the bank guarantees,[10] that enlarge the scope of ADR in Azerbaijan by requiring its operation in these areas as well.

Signing and implementing the agreements on the construction of pipelines from Azerbaijan to Italy that carry Azerbaijani gas to the European energy market, the implementation of the "Silk Road" project, and the establishment of the Alat Free Economic Zone, which is supposed to provide a regional investment hub and boost competitiveness are also some of the major factors for the development of ADR in Azerbaijan. [11] In this regard, Azerbaijan aims to get two main benefits under the development of ADR in the country: firstly, to keep current economic relations at a high level with the foreign oil and gas companies by resolving the respective disputes through ADR, which is more suitable for them, secondly, as Johnson noted,[12] to accelerate the attraction of the foreign capital to the country in the future.

1.2. Development of ADR in Azerbaijan

Third World countries have generally been acting as defendants in arbitral tribunals and have mostly been losing the cases since the 1980s. [13] Some in these countries believed that the international arbitration system (or panels) is used as a tool by the Western countries in order to defeat the other states and squeeze them out of the international commercial sphere.[14] In order to close this gap, ADR started being established and improving in these countries and gained international prestige. This also acted as a helpful practice around ADR for the post-Soviet countries, including Azerbaijan, that helped the country to integrate into the modern world and improve economic relations with the other countries. For example, in Estonia, *Law on the Arbitration Court under the Chamber of Commerce and Industry* was adopted in 1991 and under this law, the Arbitration Court of Estonia was established in the same year. [15] Also, in Ukraine, *the law on international Commercial Arbitration* was adopted in 1994 and based on this law, two arbitration institutions were established under the Chamber of Commerce and Industry of Ukraine – the International

[8] E. Cəlilova, Azərbaycanın neft sənayesi və onun inkisaf mərhələləri, Azərbaycan Dovlət Iqtisad Universiteti, Bakı, 2015, p. 8.
[9] Ibid.
[10] Ibid.
[11] F. Afandiyeva, The Perspectives of Foreign Economic Relations of Azerbaijan with EU, Azərbaycan Dovlət Iqtisad Universiteti, Baku, 2018, p. 28 and see *Law of the Republic of Azerbaijan on the Alat Free Economic Zone* (2018) at http://www.e-qanun.az/framework/39078.
[12] See *supra note* 7.
[13] See D. Gaukrodger, K. Gordon, Investor-State Dispute Settlement: A Scoping Paper for the Investment Policy Community, OECD Working Papers on International Investment, OECD Publishing, 2012.
[14] Ibid.
[15] See website of the Estonian Chamber of Commerce and Industry at https://www.koda.ee/en/.

Commercial Arbitration Court and the Maritime Arbitration Commission. [16] In Lithuania, *Law on Commercial Arbitration* was adopted in 1996 and in the same year, two main Lithuanian permanent arbitration institutions – the Arbitration Court at the Association International Chamber of Commerce Lithuania and the Vilnius International Commercial Arbitration were established. [17] Developments in the area of ADR in other post-Soviet states, such as in Latvia and Georgia were also seen in those years. [18]

After Azerbaijan's independence from the Soviet Union, *Code of the Economic Procedure of the Republic of Azerbaijan* and *Law of the Republic of Azerbaijan on the Arbitration Court* were adopted in the Republic in 1992. [19] According to these acts, economic disputes in the Republic of Azerbaijan had to be resolved by the Arbitration Court. [20] Although this newly established court was being called as the "Arbitration Court", however, it was completely a state court, not an ADR institution in a classical meaning. In business negotiations and meetings with the foreign investors and lawyers, the illogical explanation of the "Arbitration Court" acting as a state court was creating many difficulties in the mutual relations. For this reason, the term "Arbitration Court" was replaced by the term "Commercial Court" in the new Constitution of the Republic of Azerbaijan that was adopted in 1995. [21] However, it should be noted that this body is still called the "Arbitration Court" in Russia. [22]

The formation of a free business environment in Azerbaijan, the emergence of microeconomic structures, development of economic and trade relations between domestic and foreign businesses are some of the major factors that supported the development of ADR in Azerbaijan because Azerbaijan realized fundamental reforms in the country for creating and improving a free national economy on the basis of the world's modern market economy and providing its effective integration into world economic relations. As a result, Azerbaijan applied effective investment programs successfully and took the necessary steps for improving the efficient investment climate in the country. [23]

Additionally, resolution of the disputes on certain issues in the international trade, business and economic relations in the courts that are located far away from Azerbaijan causes a number of difficulties for local entrepreneurs such as travel costs, unknown procedures, language problems, etc. [24] For this reason, this situation also necessitated the development of ADR in the

[16] See *Law of the Republic of Ukraine on the International Commercial Arbitration* (1994) at https://icac.org.ua/wp-content/uploads/Law-of-Ukraine-On-International-Commercial-Arbitration-2.pdf.

[17] See R. Daujotas, Arbitration in Lithuania (Practitioner's Report), Vilnius, July 2016. Note: both institutions were merged into one institution in 2003 – the Vilnius Court of Commercial Arbitration.

[18] See website of the Latvian Chamber of Commerce and Industry at https://www.chamber.lv/en/node/36 and *Law of the Republic of Georgia on Private Arbitration* (1997) at http://images.mofcom.gov.cn/ge/accessory/200810/1224011349183.pdf.

[19] See at http://www.e-qanun.az/framework/7033.

[20] See *supra note* 2, p. 12.

[21] See *Constitution of the Republic of Azerbaijan* (1995), Article 125(2) at http://www.e-qanun.az/framework/897 and *Law of the Republic of Azerbaijan on the Courts and Judges* (1997), Article 19 at http://e-qanun.gov.az/framework/3933.

[22] See *Russia: International Arbitration Laws and Regulations 2020*, published by ICLG on 24/08/2020 at https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/russia.

[23] M. Isgəndərli, Maliyyə bazarlarında bankların investisiya fəaliyyətinin təhlili və qiymətləndirilməsi, Azərbaycan Dovlət Iqtisad Universiteti, Bakı, 2017, p. 11.

[24] See *supra note* 2, p. 56.

country and the establishment of an arbitral body located in Azerbaijan and having no legal procedural ties with the government bodies. That body, as an arbitral institution in Azerbaijan, should have an independent, fair, non-subjective and simple procedure for the resolution of disputes as in the experience of the other countries.

Disputes arising from the international agreements to which the parties belong, surely can't be settled in the local courts of Azerbaijan to which either party belongs. In other words, local courts of Azerbaijan are not a convenient forum for the parties or for one of them to be able to resolve the disputes arising from international agreements.[25] There are strong reasons for this argument. Because it is a certain risk to be entrusted to an Azerbaijani court, as a party doesn't know the State's laws, legislative system, form of election of judges and procedural rules for consideration of the case.[26] Also, as in some other European countries, [27] civil proceedings must be conducted in the official language of the Republic of Azerbaijan, [28] which necessitates the translation of certain documents such as contracts, etc. into the language of proceedings and, of course, reduces the foreign party's activities in the process which is conducted in the foreign language.

Additionally, Azerbaijan has reciprocity problems, as the system of agreements on recognition and enforcement of the Azerbaijani local court decisions is not perfect like in many other countries.[29] For this reason, as the 1958 New York Convention guarantees the recognition and enforcement of arbitral awards in the territories of the other states, arbitration becomes more preferrable for the foreign businesses in Azerbaijan. Also, the cases are heard openly in the local courts of Azerbaijan, [30] which can facilitate dissemination of the trade secrets.

All the noted developments and problems accelerated improvement of ADR in Azerbaijan and the establishment of the first arbitral institution in the country. Thus, Azerbaijan International Commercial Arbitration Court (AICAC) was established in the country on November 11, 2003.[31] The establishment of AICAC was an important development for the Azerbaijani legal society on the way to improving a legal state and is of special importance in the protection of the foreign investors and domestic businesses' rights in Azerbaijan.

AICAC, a permanent arbitration court, is located in Baku. [32] Lawyers and public representatives from Azerbaijan have been elected to the membership of the AICAC on the basis of competition, also the presidium, chairman's office and the secretariat of the Court have been formed.[33]

Also, in the country, enlightenment has been carried out with the aim to achieve recognition of the AICAC in the country and generally, popularization of the arbitration

[25] Ibid, p. 50.
[26] Ibid.
[27] I. Bambust, A. Kruger, T. Kruger, Constitutional and Judicial Language Protection in Multilingual States: A Brief Overview of South Africa and Belgium, 211 *Erasmus Law Review*, Vol. 5, Issue 3, 2012, pp. 211-232, p. 216 and see Article 30 of *the Belgian Constitution* (1994) at https://www.senate.be/doc/const_fr.html#const.
[28] See *supra note* 21, Article 127(10).
[29] See *supra note* 2, p. 51 and R. Michaels, Recognition and Enforcement of Foreign Judgments, Max Planck Institute for Comparative Public Law and International Law, *Heidelberg and Oxford University Press*, 2009, p. 6.
[30] Ibid and see *supra note* 21, Article 127(5).
[31] See Statue of the Azerbaijan International Commercial Arbitration Court, Baku, 11 November 2003.
[32] See website of the AICAC at https://www.arbitr.az/en?2.
[33] Ibid.

ideas, also ensuring the confidence of the dispute parties to an independent arbitral tribunal. For this reason, for the first time, the statues of the world's leading arbitration institutions, normative documents on ADR were used and published in the country. Also, awareness-raising activities on ADR were carried out in Azerbaijan and some seminar-trainings were organized for the development of the national personnel in the area of ADR.

1.3. Major Problems of the AICAC

Nowadays it should be one of the important plans for the Azerbaijani arbitration specialists to carry out extensive explanatory work in the area of legal education in parallel with the solution of the organizational and legal problems of the AICAC, also acquaint the legal and business community in the country with legislative materials, international experience and scientific-practical aspects of the ADR research. The gaps and confusions in the activities of the AICAC necessitate this.

Although Azerbaijan established an ADR institution in the country, it has not reached the goal in this area. Thus, as ADR has not developed in the country as planned and litigation in the Azerbaijani court system doesn't satisfy the foreign businesses, they prefer to settle the relevant disputes in overseas ADR institutions. And this negatively affects Azerbaijan in two aspects: firstly, it hinders the development of ADR in the country, secondly, prevents the promotion of the foreign investment attraction to Azerbaijan.

Furthermore, lack of interests by both the foreign and domestic businesses against the AICAC sustainably decreases its activity. I certainly consider this result comes from the AICAC's non-professional system. As nowadays ADR becomes more preferable for the international businesses than the litigation because of its significant advantages, however, the unprofessional activities of the AICAC that are surely not suitable to the parties' expectations, can't provide those advantages. And for this reason, the businesses in Azerbaijan prefer litigation for the effective and fair resolution of their disputes. As Graving noted that as the international commercial arbitrations are doing their job very well, they continually adapt to the evolving needs of their constituents. [34] I also consider this development which Graving noted, nowadays is like an obligation for all the arbitral institutions all over the world that also helps them to develop and make their activities more effective. Unfortunately, the AICAC doesn't ensure the interests of the parties, also its statue is not professionally complied with the international standards and needs to be updated regularly by taking into consideration the current effective practice. For example, the Statue determines the approximate scope of the disputes that may be the subject of an arbitral tribunal, however it doesn't specify which disputes are not object to the arbitration.[35] Also, there is no provision in the Statue on the content of the arbitration clauses.[36]

All the mentioned problems are considered by me as some of the main difficulties in this area, that prevent development of ADR in Azerbaijan. Also, as it is generally noted that the newly established arbitration institutions or institutions without a proven track record should be avoided and the AICAC is also on this list, [37] it still seems difficult for this institution to be successful.

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[34] R. J. Graving, The International Commercial Arbitration Institutions: How Good A Job Are They Doing? *American University International Law Review* 4, no. 2 (1989): 319-376, p. 370.

[35] See *supra note* 31.

[36] Ibid.

[37] See Ashurst Quick Guides, *International Arbitration: Which Institution?*, p. 2 at

As it was discussed that the professionalism is one of the main problems of the AICAC, it is also the most important factor for development of the ADR institutions. Nowadays some difficulties also happen in the experiences of the different ADR institutions in the world, however, the professionals' quality activities in those institutions play an important role in their development. For example, although the number of available arbitrators is generally smaller and there is a general lack of good hearing facilities at the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), however, it has a strong reputation all over the world and, is considered as a neutral venue and one of the most suitable venues for both Eastern and Western parties.[38] Also, the profile of the Singapore International Arbitration Centre (SIAC) nowadays grows rapidly and it is considered as one the fastest growing institutions in terms of the caseload, although the SIAC has some problems such as being new.[39] Additionally, the SIAC regularly updates its rules in order to demonstrate the best practice and strengthen professionalism.[40]

Also, Azerbaijani legal professionals mainly refer to the procedural theory in their ideas against arbitration, [41] and its development is prevented as an independent area of law. Because procedural theorists prefer the procedural elements of arbitration in its definition. According to this theory, arbitration institutions are special part of the state justice and all the factors and stages of the arbitral procedures, also the arbitration clauses are the subject to the procedural law, and the arbitral awards, which are provided as a result of these procedures, are the same with the decisions of the state courts.[42]

Nowadays it is very important to improve the activities of the AICAC based on the effective international practice. This also includes the development of the ADR ideas and institution in Azerbaijan. Also, training of professional and experienced staff to participate in the AICAC activities can increase trust against this institution's activities. In this way, the effective and fair resolution of disputes can also be provided. Generally, availability of strong professional staff to settle the disputes in an independent ADR institution in Azerbaijan can create a basis for the effective protection of the foreign and domestic investors' rights and the resolution of commercial conflicts on the basis of mutual trust and cooperation. Development of the AICAC as an independent ADR institution can play a significant role in ensuring the interests of international companies and foreign businesses investing in Azerbaijan and the whole region. This can also have a great impact on the creation and development of a free enterprise environment in the country.

It is also so important to broaden the views of the Azerbaijani public, businesses and lawyers on the need for ADR and continue the awareness-raising activities for better recognition of the AICAC in Azerbaijan and the abroad. To organize training of highly qualified specialists (arbitrators) with the knowledge of the international experience in the ADR law, arbitration procedural law, private international law and trade relations with the aim to achieve the normal operation of the

https://www.ashurst.com/-/media/ashurst/documents/news-and-insights/legal-updates/2017/december/quickguide---comparison-of-the-major-arbitral-institutions.pdf.

[38] Ibid, p. 7 and see the website of the SCC at https://sccinstitute.com/scc-platform/.

[39] Ibid and see the website of the SIAC at https://www.siac.org.sg/faqs/siac-general-faqs.

[40] Ibid.

[41] See *supra note* 2, p. 27.

[42] See С. Н. Лебедев, Международный коммерческий арбитраж: компетенция арбитров и соглашение сторон / *Торгово-промышленная палата СССР*. Moscow, 1988, p. 59.

AICAC and fair, professional, also the effective resolution of the commercial conflicts should also be considered important in this regard.

Publishing new books is also important to close the literature gaps in ADR. Additionally, it would be helpful to establish a scientific resource centre and library under the AICAC that can be open to all the interested persons, especially, foreign and domestic businesses, lawyers, researchers and students.

2. Main Problems in the Azerbaijani Legislation on ADR

2.1. Negotiations in Azerbaijani Practice

One of the most popular and preferred methods of the ADR for parties is to communicate with each other and negotiate directly for the resolution of disputes in commercial relations. The major advantage of this method is that it lets parties themselves control the process and solution.[43]

As negotiations are also considered as an informal alternative to the litigation,[44] even in the practice of some post-Soviet countries where the laws don't have any provisions for the negotiations,[45] such as in Azerbaijan and Russia, judges often propose the negotiations to parties for achieving a settlement agreement between themselves.[46]

Unlike litigation and arbitration proceedings, negotiations are not regulated based on the special procedural rules, so, depending on the specific circumstances, the form and procedures of the negotiations are determined by the parties themselves.[47]

2.2. ADR in the Azerbaijani Legislation: Major Problems

Generally, at international level, legal regulation of the ADR activities is realized through the provisions of the international conventions and bilateral international agreements. Some recommendatory international documents also play a key role in this area.[48] At national level, this process is carried out through the norms of national legislation.

As a source of the international law, bilateral international agreements highlight the necessary provisions for the arbitral procedures. Nowadays many states sign bilateral agreements that govern trade, economic and investment relations, and may also provide rules for the settlement of ADR disputes, also for the recognition and enforcement of arbitral awards. Under these agreements, the parties (States) may also establish the conduct rules for the arbitration activities. These agreements have also been signed by Azerbaijan with Uzbekistan on partnership in the improvement of gas sector, also with Turkey on mutual promotion and protection of the investments.[49]

[43] See Alternative Dispute Resolution at the website of the Cornell Law School (https://www.law.cornell.edu/wex/alternative_dispute_resolution) by T. Esmaili, last updated in June 2017, accessed in February 2021.

[44] See A. Peters, International Dispute Settlement: A Network of Cooperational Duties, *EJIL* 14, 2003, pp. 1-34, p. 12.

[45] See *supra note* 2, p. 18.

[46] Ibid.

[47] See *supra note* 44, p. 13.

[48] See UNCITRAL Model Law on International Commercial Arbitration (UN, 1994) at https://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/06-54671_Ebook.pdf.

[49] See *Order of President of the Republic of Azerbaijan dated on 4 July 2001 on the Signed Documents between the Republic of Azerbaijan and the Republic of Uzbekistan during the Fourth Meeting of the Joint Intergovernmental Commission on Cooperation on April 18, 2001 in Tashkent* at http://www.e-qanun.az/framework/4403, also *Resolution of Parliament of the Republic of Azerbaijan dated on 14 June 1994 on Ratification of*

Republic of Azerbaijan adopted the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on November 9, 1999.[50] And Article 151 of the Constitution of Azerbaijan notes 'if there is a conflict between the normative legal acts (national laws) included in the legislative system of the Republic of Azerbaijan (except for the Constitution and acts adopted by referendum) and international treaties to which Azerbaijan is a party, those international treaties are applied'.[51]

On the basis of international law and treaties, Azerbaijan also improved its national legislation. In this regard, we can note about the adoption of *Law of the Republic of Azerbaijan on International Arbitration* (1999) on November 18, 1999 based on the norms of the 1958 New York Convention.[52] Also, an ADR institution in Azerbaijan – the AICAC was established 4 years after the adoption of this law,[53] and this kind of experience (late establishment) had not been seen in the other post-Soviet countries.[54] This is also one of the factors that prevented the development of ADR in the country.

Also, by adoption of the Convention, as Azerbaijan took obligations to improve its national legislation in accordance with its norms, the State improved the other relevant laws by making amendments to them.[55] The list is long, thus, *Law on the Protection of Foreign Investment* (1992), *Law on the Commodity Exchange* (1994), *Law on Investment Activities* (1995), *Law on Bankruptcy* (1997), *Law on Pledge* (1998), *Law on Insurance* (1999), *Code of Civil Procedure* (1999), *Law on Securities* (2000), also *Law on the Enforcement of Court Decisions* (2001) highlight the relevant norms regarding ADR.[56]

Although Azerbaijan improved the national legislation in accordance with the international treaties in this area, however, significant problems remain and should be discussed. For this reason, I categorize and discuss major problems in the Azerbaijani legislation on ADR.

2.2.1. Disputes to be considered in Arbitration

One of the gaps in the Azerbaijani legislation is that it doesn't clearly define which disputes can be considered in arbitration. Article 444 of *Azerbaijani Code of Civil Procedure* (1999) lists disputes which are not subject to the investigation in foreign courts, and they can only be subject of the Azerbaijani courts.[57] The scope of disputes is accurately determined, and it can't be changed by the agreement of parties, including arbitration agreements.[58] Thus, Article 465 of the Code on the refusal to recognize and enforce orders of the foreign states explains that if the consideration of the case falls within the exclusive competence of the Azerbaijani courts, enforcement of the noted orders shall be refused.[59] Based on the Article 476 of the

the Agreement between the Republic of Azerbaijan and the Republic of Turkey on Mutual Promotion and Protection of Investments at http://www.e-qanun.az/framework/8910.

[50] See *Law of the Republic of Azerbaijan on Adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (1999) at http://www.e-qanun.az/framework/5203.

[51] See *supra note* 21, Article 151.

[52] See the Law at http://www.e-qanun.az/framework/90.

[53] See *supra note* 31.

[54] See the experiences of Estonia, Ukraine, Lithuania, Latvia and Georgia at *supra note* 15, 16, 17 and 18, respectively.

[55] See *supra note* 2, p. 43.

[56] Ibid.

[57] *Code of Civil Procedure of the Republic of Azerbaijan* (1999), Article 444, see at http://www.e-qanun.az/code/9.

[58] Ibid.

[59] Ibid, Article 465.

Code, if the Court considering the recognition and enforcement of the arbitral award decides that the dispute can't be considered in arbitration according to the Azerbaijani legislation, or enforcement of the award contradicts the sovereignty and fundamental principles of the Azerbaijani legislation, then the recognition and enforcement of the award may be refused.[60] The Article recognizes a right for the Court to decide on forum of the dispute, and notes this can be realized according to the Azerbaijani legislation. However, as we discuss, there is no clear norm in this regard under the Azerbaijani legislation. [61] The norm is quite unclear, and it is ambiguous that how the Courts can decide on this in the practice.

Additionally, *Azerbaijani Law on International Arbitration* (1999) doesn't provide the determination, only Article 34 of the Law says that if the Court determines that object of the dispute is not arbitration object under the Azerbaijani legislation, then the award may be annulled.[62] Also, based on the Article 36 of the Law, the Court may refuse to recognize or enforce the award, regardless of the country in which it is issued, if the Court finds that the subject matter of the dispute can't be the subject of an arbitral tribunal under the law of that State.[63]

Thus, neither *Azerbaijani Code of Civil Procedure* (1999), nor *Azerbaijani Law on International Arbitration* (1999) clearly defines the scope of disputes which are the object and subject of the arbitration proceedings and can be heard in arbitration.

So, based on the general legal nature and logic of the Azerbaijani legislation and Article 444 of the Code of Civil Procedure, we can assume some additional conflicts to the list disputes noted in the Article, which may only be subject of the Azerbaijani courts. Thus, the disputes arising from currency or antitrust, privatization of state property, administrative and tax relations may also be subject of the Azerbaijani courts under the national legislation based on Article 444 of the Code of Civil Procedure,[64] and this indirectly explains the rule to us that these disputes can't be considered in arbitration on the basis of Azerbaijani legislation. As I described this piece of legislation, Azerbaijan doesn't comply with the equality and most favoured nation requirements under the 1958 New York Convention.

The relevant practices of Argentina, Saudi Arabia and Tunisia show that if the dispute affects interests of the state or if one of the parties is a state organization, this kind of dispute can't be considered in arbitration, also on the basis of the legislation of these countries, arbitration agreements concluded under these conditions are considered invalid and can't be enforced.[65] According to the Article 449 of *Italian Code of Civil Procedure*, disputes in which one of the parties is an Italian citizen can't be heard in a foreign arbitral tribunal.[66] The same rule is also highlighted in the Article 99 of *Portuguese Code of Civil*

[60] Ibid, Article 476.
[61] See *supra note* 2, p. 103.
[62] See *supra note* 52, Article 34.
[63] Ibid, Article 36.

[64] See *supra note* 57.
[65] See S. M. B. Abbadi, Arbitration in Saudi Arabia: The Reform of Law and Practice, *SJD Dissertations*. Penn State Law Library, 2018, also IBA Arbitration Committee, Arbitration Guide: Argentina, January 2018, p. 8 and Article 7 of the *Tunisian Arbitration Code* (1993) at https://arbitrationlaw.com/sites/default/files/free_pdfs/Tunisia%20Arbitration%20Code.pdf.
[66] *Italian Code of Civil Procedure* (1940), Article 449 at https://www.gazzettaufficiale.it/sommario/codici/proceduraCivile.

Procedure.[67] By highlighting the relevant norms about exceptions, these legislations define the clear scope of the disputes that can be considered in arbitration. However, as we discussed, Azerbaijani legislation doesn't provide the relevant norms.

All the mentioned experiences above, including the experience of Azerbaijan are based on the 1958 New York Convention, as the Article 5(2) of the Convention lets the state parties refuse the recognition and enforcement of the award under some conditions.[68] However, as we saw in in the practice of Azerbaijani legislation, there are relevant gaps in this regard that the norms of Azerbaijani legislation don't explain comprehensively the respective norm of the 1958 New York Convention. The Article demonstrates a general rule about the issues which can be considered in arbitration or not, and it demands the state parties to highlight this general rule more detailed in their national legislations, that is very important in order to provide clarification and ensure the parties' interests.

Here we can also discuss a relevant case in Azerbaijan. Thus, POSCO DAEWOO Corporation registered in the Republic of Korea and Grand Motors LLC registered in the Republic of Azerbaijan signed a purchase contract on the supply of construction equipment. POSCO DAEWOO Corporation was a seller and Grand Motors LLC was a buyer under the contract. The Seller supplied the Buyer with the equipment noted in the contract, however, the Buyer failed to realize the obligations under the contract and refused to pay the agreed amount. The purchase contract concluded between the parties provided negotiations and arbitration as a dispute settlement method. The contract stipulated the provision that the dispute between the parties must be resolved through negotiations, and if no result is reached within 30 days, the dispute will be settled in the Korean Commercial Arbitration Council based on the rules of this institution. Referring to this provision, the Council concluded that it had jurisdiction over the case and issued an award that the defendant Grand Motors LLC must pay the amount agreed in the contract to the plaintiff POSCO DAEWOO Corporation. As a result, POSCO DAEWOO Corporation requested that the Supreme Court of the Republic of Azerbaijan to recognize and enforce the arbitral award. The request of the Corporation was not granted by the Court. Therefore, the Corporation requested to the Constitutional Court of the Republic of Azerbaijan for the recognition and enforcement of the award. The bases for this request by the Corporation were the facts that the Supreme Court didn't take the relevant norms of the legislation of the Republic of Azerbaijan into account while reviewing the request, however, it considered unrelated norms of the legislation, which mention recognition and enforcement of decisions of the foreign state courts, not awards of the arbitrations. Therefore, the Constitutional Court considered the decision of the Supreme

[67] *Portuguese Code of Civil Procedure* (1939), Article 99, see at https://www.indiacode.nic.in/bitstream/123456789/7234/1/ocrportuguese_code_of_civil_procedure%2C_1939.pdf.

[68] For the detailed explanation, see UNCITRAL Secretariat, Vienna International Centre, United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 1958, Article 5(2) at https://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York-Convention-E.pdf. The similar norm is also demonstrated in the Article 6 of the 1961 European Convention on International Commercial Arbitration, see at https://treaties.un.org/doc/Treaties/1964/01/19640107%2002-01%20AM/Ch_XXII_02p.pdf.

Court invalid and provided recognition and enforcement of the respective award.[69]

The case shows non-professionalism of the Azerbaijani Courts in the relevant area, that is one of the problems in the development of ADR in Azerbaijan. This problem is directly linked with lack of the relevant practice that comes from the unsuccessful promotion of ADR in the country, which couldn't increase both foreign and domestic businesses' interests in this area.

The respective norms of the Azerbaijani legislation should be improved based on the comprehensive explanation of the relevant norm of the 1958 New York Convention, also the international practice in relevant area, and the legislation must demonstrate the accurate scope of disputes that can be considered in arbitration or not. Because the discussed gaps are significant problems and they create confusions among the parties, also prevent the promotion of ADR in Azerbaijan. Additionally, the Azerbaijani Courts should create efficient practice in the relevant area and consider applicable legislative norms correctly while reviewing requests on recognition and enforcement of the arbitral awards.

2.2.2. Arbitration clauses

Nowadays in many countries, the text, content and terms of contracts between the consumer and the producer are usually determined by the producer. And this weakens the consumer's position as a party, who is already forced to accept this draft contract prepared on the producer's dictation. In this regard, by signing the contract, the consumer also accepts only producer's expression of will.[70]

When concluding international agreements, this problem increases. Because in international agreements, the producer is a foreign legal entity, and the consumer is domestic. In this experience, the consumer is forced to join the draft contract that was prepared in advance by a foreign legal entity, and surely demonstrates the terms which are more favourable to the producer. In these contracts, the arbitral institution hearing the dispute may also be chosen by the producer. And in practice, these arbitral tribunals may also be an organization that the producer is in close contact with.

Some scholars name these agreements as "accession agreements" and consider them as a problem in the commercial relations.[71] For this reason, they note it is important to separate commercial contracts from contracts in which the consumers participate and to increase the role of consumers in their preparation and conclusion in order to strengthen the principle of free expression of the consumers' will.[72] It is also important to consider free expression of the consumers' will during concluding the rent, life insurance against accidents, debt, transportation, purchase and sale of goods, also the services contracts.

In an Indian case, despite the existence of an arbitration agreement, the Court had again required both parties to demonstrate a will to have the dispute heard by the arbitral tribunal.[73] The Court considered this claim

[69] See *Decision of the Constitutional Court of the Republic of Azerbaijan dated on April 15, 2019 on Checking Compliance of the Decision of the Administrative-Economic Board of the Supreme Court of the Republic of Azerbaijan dated on May 16, 2018 on the request of POSCO DAEWOO Corporation* at http://www.constcourt.gov.az/decision/407.

[70] See *supra note* 2, p. 99.

[71] Ibid.

[72] Д. К. Мосс, Автономия воли в практике Международного коммерческого арбитража, Moscow, 1996, p. 73.

[73] Принципы международной коммерческих договоров / Перевод с англ. А. С. Комарова, Moscow, 1996, p. 33.

based on the fact that the stronger party may impose his or her will on the other party during concluding of the contract, which may put the other party in an unfavourable position. [74] So we can note the Court considers that the will expressed by the parties may not be voluntary during concluding of the contract, for this reason, in the course of the trial, the parties should freely express their will again, in other words, they should conclude another arbitration agreement.[75]

As another international practice, Belgian law is useful experience in this discussion, as Article 1678 of *Belgian Arbitration Act* (2013) notes arbitration clause may be considered invalid if either party has an advantage in the appointment of arbitrators.[76] This rule also applies in cases where an agreement is concluded that arbitrators must be appointed by only one party.[77]

Also, Article 2(1) of the Annex I – Uniform Law to the 1966 European Convention providing a Uniform Law on Arbitration notes that an arbitration agreement must show the parties' intention,[78] and Article 3 says an arbitration agreement shall not be valid if it gives one of the parties thereto a privileged position with regard to the appointment of the arbitrator or arbitrators.[79]

Despite the adoption of some laws on consumer protection and the establishment of organizations and government bodies in this area, this problem remains unresolved in Azerbaijan.[80] In the country, the practice of leading monopolistic companies to conclude deals on the terms of typical contracts drawn up by syndicates and consortia continues.[81] And since the party is unable to change the terms, in fact, one is obliged to accept the will of the monopolist. In this situation, actually despite the fact that the contract is concluded voluntarily, it manifests itself as an expression of the stronger party's will. Apparently, here the possibility of choosing the arbitration institution, applicable law and determining the other essential factors is defined at the request of the party concluding a typical contract, and this deprives the other party of this opportunity.

For this reason, the international practice, such as Belgian experience in the relevant area should be taken into consideration in Azerbaijan for improvement of the national legislation. The laws of the Republic in arbitration and the other relevant areas should highlight regulatory norms in this area in order to achieve ensuring both parties' free will. Generally, freedom of parties' will plays a key role in the effective commercial arbitration, as it empowers the parties to guide and manage the arbitration process.[82]

Also, regardless of the type, content of the arbitration agreement must include a number of elements. However, Azerbaijani legislation doesn't provide any norms in this area. Also, the inclusion of these elements and conditions in content of the arbitration agreement increases its applicability and makes the agreement more understandable,

[74] Ibid.
[75] See *supra note* 2, p. 100.
[76] *Belgian Arbitration Act* (2013) and *Belgian Judicial Code* (1967), Articles 1676-1722.
[77] Ibid.
[78] See Council of Europe, Annex I to the European Convention providing a Uniform Law on Arbitration, Article 2(1), Strasbourg, 1966.
[79] Ibid, Article 3.
[80] See *supra note* 2, p. 101.
[81] R. Mahmudzadə, Inhisarcılıgın məhdudlasdırılması və rəqabət fəaliyyətinin dəstəklənməsi istiqamətində dovlət tədbirləri və onların huquqi təminatı məsələləri, Azərbaycan Dovlət Iqtisad Universiteti, Bakı, 2017, p. 32.
[82] M. Ranjbar, M. Dehshiri, General and Specific Conditions of Arbitration Agreement, *Journal of Politics and Law*, Vol. 10, No. 5, 2017, p. 98.

complete and definite. Having the clear norms about this in the legislation of Azerbaijan can also help to inspire commercial parties in Azerbaijan to choose ADR for the settlement of their disputes. For this reason, I think it is important for the Azerbaijani legislation to demonstrate the relevant norms in this area as well.

2.2.3. Other problems

Based on Article 27 of *Azerbaijani Law on International Arbitration* (1999), the arbitral tribunal or, with the consent of the tribunal, a party may apply to the Supreme Court of the Republic of Azerbaijan for assistance in obtaining evidence.[83] And the Court may, within its jurisdiction, comply with this request in accordance with the rules for obtaining evidence.[84] As it can be understood from the content of this Article, it is not the obligation, however it is right of the Court to enforce the request for obtaining evidence. In other words, the Court may not grant this request.[85] Also, as Azerbaijani legislation doesn't stipulate in which cases the Supreme Court must comply with the request for evidence, we should consider that the implementation of this Article will cause some problems in practice.

The same norm is also highlighted in the Article 28 of *Korean Arbitration Act* (1999).[86]

Australian experience would be helpful for Azerbaijan and the Republic of Korea in this regard. Because in Australian legislation, *Evidence Act* 1995 (Cth) applies to all proceedings in Australian courts, and it also includes arbitrators under Australian law in the term "Australian court".[87] The Act also provides some rights for arbitrators in obtaining evidence.[88] This experience can also be applied in Azerbaijan, and the national legislation can be improved in accordance with this practice. Under this practice, the same rights can be recognized for the arbitrators, and this will prevent the involvement of the Courts in arbitration processes.

However, the Court's assistance for arbitral tribunals in obtaining evidence is an acceptable practice in international law, but it is a problem in Azerbaijani law that the legislation doesn't provide clear norms about it.

Azerbaijani Law on International Arbitration (1999) highlights some norms about the control function of the Supreme Court of the Republic of Azerbaijan on the arbitral awards.[89] Based on the Law, this function can be carried out through the appointment of an arbitrator and termination of mandate of an arbitrator.[90] Also, the control by the Supreme Court on enforcement of the arbitral awards and appeal against the award of the arbitral tribunal to the Supreme Court have been noted in the Law.[91]

Also, as we discussed earlier about the determination of the procedure for the compulsory enforcement of foreign arbitral

[83] See *supra note* 52, Article 27.
[84] Ibid.
[85] See *supra note* 2, p. 205.
[86] See the Act at https://www.wipo.int/edocs/lexdocs/laws/en/kr/kr090en.pdf.

[87] See the Act at https://www.legislation.gov.au/Details/C2016C00605.
[88] A. Duffy QC, *Evidence in Arbitration*, Paper Presented to AMTAC Seminar, Flexibility and a Fair Go, Australian Arbitration Week 2019, p. 3, see at https://amtac.org.au/wp-content/uploads/2019/11/EVIDENCE-IN-ARBITRATION.pdf.
[89] See *supra note* 52, Article 6.
[90] Ibid, see the Articles 11 and 14 of the Law, respectively.
[91] Ibid, Article 35.

awards through state courts,[92] all the noted norms don't comply with the rules of inadmissibility of state interference into arbitration proceedings, which accepted for arbitral tribunals in international law. Generally, it is inadmissible for arbitral tribunals to be dependent on state courts in these forms. For this reason, I consider the noted norms should be repealed.

The legislations of developed countries such as the U.S. also highlight norms about the state court intervention in arbitration.[93] For example, Section 5 of *Federal Arbitration Act of the USA* (1925) provides a norm that if parties' arbitration agreement doesn't regulate the appointment of an arbitrator, then the Court can appoint an arbitrator.[94] As it is clear, the Act provides this process under the certain condition – lack of the rule in the arbitration agreement on the appointment of an arbitrator. This is also considered under the UNCITRAL Model Law based on the same conditions.[95] However, Azerbaijani law doesn't consider this process under the certain conditions, as it notes parties can request to the Court to appoint an arbitrator during concluding of arbitration agreement.[96] This is completely an intervention by the state into the arbitration proceedings.

Generally, as the Courts' assistance in some proceedings to the arbitral tribunals and parties is considered possible under the UNCITRAL Model Law, today many countries' legislations highlight the relevant norms, however, without letting state intervention in a level that is not acceptable in international law. For example, *Hungarian Act on Arbitration* (2017) should be considered a very effective experience in this area.[97] Based on the Model Law, the Act highlights the relevant norms about state intervention on the appointment of an arbitrator, however, it decreases the Court's role in this process at maximum level,[98] by enlarging the scope of the relevant conditions.

Appointment of a certain arbitrator should be a compulsory requirement in the content of the arbitration agreements in all the legislations. As we discussed the relevant problem about the content of the arbitration agreements in the Azerbaijani law, it can have two main benefits for the arbitration: firstly, it will prevent the state intervention into the proceedings, secondly, time-losing problems will not happen.

Generally, all the forms of state intervention into the arbitration should not be acceptable. Bachand also discusses this, and by taking the general international practice into account, he notes that the Courts in some jurisdictions are more receptive to considering the international normative context than their foreign counterparts, and one often comes across – in the same jurisdiction – internationally-minded decisions sitting alongside decisions which inexplicably ignore the relevant international normative context.[99] And such

[92] See *supra note* 57, *Code of Civil Procedure of the Republic of Azerbaijan* (1999).

[93] A. T. Bello, Judicial Intervention in Arbitration: A Comparative Analysis of Nigeria and the United States of America, Babcock University, 2019, p. 14 at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3405449.

[94] See the Act at https://sccinstitute.com/media/37104/the-federal-arbitration-act-usa.pdf.

[95] See *supra note* 48, Articles 4, 5 and 11(2) of UNCITRAL Model Law.

[96] See *supra note* 52, Article 11 of the Law.

[97] See the Act at http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/106843/131257/F-266585574/J2017T0060P_20180102_FIN.pdf.

[98] Ibid, Section 12.

[99] F. Bachand, Court Intervention in International Arbitration: The Case for Compulsory Judicial Internationalism Symposium, 2012 *Journal of Dispute Resolution*, 2012, p. 84.

discrepancies seem to run afoul of the objectives of certainty and predictability which are central to the international arbitration system. [100] For this reason, elimination of the state intervention into arbitration mainly depends on content of the arbitration agreements. Because, as we discussed in the experiences of countries in this area, mainly the lack of relevant provisions in the content of arbitration agreements necessitates the state intervention. And content of the arbitration agreements should be enlarged, also they should contain conditions about all stages of the arbitration proceedings. Additionally, they should regulate the possibilities arising from the arbitration agreement. These possibilities can happen in different issues, for example, an appointed arbitrator will not be able to participate in the proceedings, and the agreement regulates this in advance, and finds an alternative.

2.3. Experience of Kazakhstan

As another post-Soviet state, Republic of Kazakhstan has significant similarities with Azerbaijan. Especially, as Azerbaijan, Kazakhstan is also one of the major energy exporters in the world and it implements many projects in this area.[101] For this reason, concluding international agreements and attraction of foreign investment to the energy sector play an important role in the economy of Kazakhstan as well. Improvement of ADR in Kazakhstan is also important based on the country's economic successes.

Generally, ADR is considered as a developed area in Kazakhstan.[102] Also, the Kazakhstani State recently improved its legislation in this area by making some amendments to it in order to improve effectiveness of ADR and accelerate the attraction of foreign investment to the country.[103]

By making amendments to *Law of the Republic of Kazakhstan on Arbitration* (2016), the State of Kazakhstan improved the regulation of ADR in various aspects. Firstly, choice of foreign law as an applicable law was recognized for parties.[104] Before this improvement, it was required for the parties to choose Kazakhstani law if one of them was a state entity,[105] although the other was a foreign business. And the Law still considers a requirement that if both parties are Kazakhstani citizens or legal entities, then only Kazakhstani law can be chosen as an applicable law.[106] In general, this amendment plays an important role in the international improvement of arbitration in Kazakhstan and creates more desirable ADR environment for the foreign businesses.

Also, the new amendments took another step for internationalising ADR in

[100] See W. W. Park, Neutrality, Predictability and Economic Co-Operation, 12 *Journal of International Arbitration* 99 (1995), Ibid.

[101] See Y. Turganbayev, A. C. Diener, Kazakhstan's Evolving Regional Economic Policy: Assessing Strategies of Post-Socialist Development, 59 *Eurasian Geography and Economics* 5-6, 2018, pp. 657-684.

[102] See K. Voropaev, Arbitration Law Reform in Kazakhstan: One Year On, 22 *Asian Dispute Review* 2, 2020, pp. 87-95.

[103] See C. Ford, Kazakhstan Internationalises Arbitration Law, *Kluwer Arbitration Blog*, August 2019.

[104] See *Law of the Republic of Kazakhstan on Amendments to Certain Legislative Acts of the Republic of Kazakhstan Concerning Strengthening the Protection of Property Rights, Arbitration, Optimizing the Judicial Caseload, and Further Humanizing the Criminal Law* (2019) at https://wipolex.wipo.int/en/text/538241.

[105] *Law of the Republic of Kazakhstan on Arbitration* (2016), Article 44 (before amendment), see at https://online.zakon.kz/document/?doc_id=35110250#pos=143;362 and Ibid.

[106] Ibid, Article 44 (after amendment) of the Law.

Kazakhstan, as Article 7 of the 1961 European Convention on International Commercial Arbitration was highlighted in the Kazakhstani legislation.[107] Under the new amendments, the Law says if the parties have not agreed on the applicable law, then it will be defined based on the relevant conflict of laws rules defined by the arbitral tribunal. Before the amendments, the applicable law was being defined based on the Kazakhstani law, however the amendments preferred the norms of the 1961 European Convention in this issue. This also creates an efficient environment for foreign parties that the relevant law which they know better can be chosen in this way.

Additionally, based on the 1958 New York Convention, amendments have also improved the norms of the Law on the recognition and enforcement of arbitral awards. The amendments have removed the norm of the Law that noted the Kazakhstani Court has right to refuse the recognition or enforcement of the award if it has been made possible by the committing of a crime.[108]

Also, before the amendments, the Article 57 of the Law was demonstrating a norm that if the arbitration agreement doesn't state its applicable law, the Kazakhstani Court can refuse to recognize and enforce the relevant award.[109] This norm was also removed by the amendments. Because it is widespread in the practice that many arbitration agreements don't state their applicable law, as most of the parties consider they are governed by the applicable law of their contracts. For this reason, removing this norm should be considered as a significant improvement in this area for the Kazakhstani legislation, as it will encourage foreign businesses to prefer ADR in Kazakhstan for the settlement of their disputes.

The Law was also noting a norm before the amendments that the Court can refuse to recognize or enforce the award if the arbitral tribunal didn't observe "the law",[110] however, it was not clarifying which norm is mentioned. After the amendments, the Law clarifies that "the law" is the law of the place where the tribunal held the arbitration.[111]

In general, the discussed amendments play significant role in the internationalization of the Kazakhstani legislation on ADR, also they will help the improvement of the attraction of foreign investment to the country and create an efficient investment climate for the foreign businesses in Kazakhstan.

Generally, Kazakhstan's development in the legal regulation of national economy, including ADR has always been important for the Kazakhstani State. Regarding improvement of the national legislation on ADR, we can see that 3 years after adoption of the new law in 2016, the State made significant amendments to it, as it assessed all the problems in the relevant area and decided how they can affect the entrepreneurship environment in the Republic. This experience should also be used in Azerbaijan, as it has been effective in Kazakhstan.

Also, experience of Kazakhstan is one of the best examples that show how to make amendments to the national laws on the basis of international conventions. For this reason, Azerbaijan should certainly consider Kazakhstani experience in the relevant area for the improvement of its national legislation. Because Azerbaijan has also

[107] See *supra note* 68 for the Article 7 and *supra note* 104 for the amendments.
[108] See *supra note* 104.
[109] Ibid.
[110] Ibid.
[111] Ibid and Article 57 of the Law.

problems in the legislation that demonstrate discrepancy with norms of the international conventions.

Conclusion

In the conclusion of our research regarding ADR in Azerbaijan, we can generally note that Azerbaijan has taken some steps for the development of this area. However, as research highlighted, there are significant problems that Azerbaijan should take measures to solve. For this reason, it is important for Azerbaijan to consider current problems in this area in the country, also take into consideration the relevant international conventions and practice for the improvement of national legislation.

In general, the training and continuous development of highly qualified personnel to deal with ADR in the country, regular continuation of awareness-raising activities and study of international practice in the relevant area, establishment of a library for domestic specialists to get acquainted with international conventions and practice, to take necessary measures to provide resolution of commercial disputes in the AICAC, also improvement of the national legislation in this area should be major directions for Azerbaijan.

Main way for the improvement of ADR in Azerbaijan should be development of the national legislation in this area. As it is their right, [112] arbitration professionals and lawyers of the country can prepare draft amendments on the laws of Azerbaijan on ADR and submit them to the Parliament.

Also, seminar and trainings in this area should continue and be improved in order to increase knowledge of specialists and businessmen in ADR. They should also be organized for those who will act as arbitrators and this will help them to gain an important experience.

Seminar and trainings should be conducted by experienced, well-known experts in arbitration and international law. Participation of foreign experts in the seminars should also be provided. Studying relevant international conventions and practice should be one of the major purposes of the seminar and trainings.

In order to visually learn the experience of the international arbitration institutions, it is important to organize trips of the Azerbaijani arbitrators abroad or to invite experienced specialists from the world's leading and renowned arbitration institutions to Azerbaijan. One of the AICAC (ADR institution in Azerbaijan) specialists or participants of seminar and trainings should be sent abroad, specially to the developed ADR institutions. In this way, efficient work can also be done for promoting the AICAC at international level through the exchange of experience.

In general, the noted activities will not only have a positive impact on the development of ADR in Azerbaijan, but they will also lead to the formation of a free investment climate, strong competition, fairness, mutual trust and cooperation in the country. By improving ADR in the country, they will also accelerate Azerbaijan's integration into the world economy. So, the directions noted above are important not only for the business environment in Azerbaijan but also for Azerbaijani society.

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[112] See *supra note* 21, Article 96(1) of the Constitution of the Republic of Azerbaijan.

CONFLICT OF INTEREST

The author (s) declares that there is no conflict of interest regarding the publication of this manuscript. In addition, the ethical issues, including plagiarism, informed consent, misconduct, data fabrication and/or falsification, double publication and/or submission, and redundancy, have been completely observed by the authors.

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