



ISTANBUL MEDENİYET UNIVERSITY
INSTITUTE OF GRADUATE STUDIES
DEPARTMENT OF PRIVATE LAW

**Online Dispute Resolution in Turkish and Kazakhstan
Law**

Master's Thesis

Diana Sharginova

September 2024



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Supervisor

Asst. Prof. Dilek Aydemir

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STATEMENTS

Style and Reference Manual Statement

Having reviewed this thesis written under my supervision, I confirm that it has been written in accordance with the Chicago Manual of Style 17th Edition and used its footnote reference format consistently throughout the entire text.

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Declaration of Originality

I hereby declare that all information in this dissertation has been obtained and presented in accordance with academic rules and ethical conduct. I also declare that, as required by these rules and conducts, I have fully cited and referenced all material and results that are not original to this work.

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Diana Sharginova

GENİŞ ÖZET

Türk ve Kazakistan Hukukunda Çevrimiçi Uyuşmazlık Çözümü

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Bilgi ve iletişim teknolojilerinin gelişmesiyle birlikte çevrimiçi iletişimin ilerlemesi, aynı zamanda siberuzayın kısıtlamalardan arınması ve ortak alana dönüşmesiyle başlayan yeni tür problemlerin ortaya çıkması uygun çözüm yollarını gerektirmeye neden oldu. Çevrimiçi uyuşmazlık çözümü (ODR), teknolojilerin gücünü geleneksel uyuşmazlık çözüm yöntemleriyle birleştiren benzersiz bir araç olarak ortaya çıktı. E-müzakere, e-arabuluculuk ve e-tahkim gibi çevrimiçi yöntemlerin, ayrı ayrı veya birlikte uygulandığında, maliyet ve zaman tasarrufu sağladığı kanıtlanmıştır. Buna rağmen, ODR prosedürleri COVID-19 salgını nedeniyle yaygın olarak kullanılmaya başlanana kadar tartışmalara konu olmaya devam etmişti. İlk başta, çevrimiçi uyuşmazlık çözümü sadece dijital platformlarda ortaya çıkan uyuşmazlıkların çözüm süreci olarak algılanıyordu. Günümüzdeyse, bu yöntemlerin etkinliği ve kolaylığı yüzünden, çevrimiçi veya çevrimdışı olmasına bakılmaksızın birçok uyuşmazlık türüne uygulanmaktadır. Bu çalışmanın amacı çevrimiçi uyuşmazlık çözümü sisteminin özelliklerini, artılarını ve eksilerini incelemektedir. Aynı zamanda, çevrimiçi uyuşmazlık çözüm türlerini uluslararası düzenlemeler ve ülkelerin uygulama deneyimleri ile birlikte araştırmaktadır. Ayrıca bu çalışma, çevrimiçi uyuşmazlık çözümü süreçlerini yürütmek amacıyla icat edilen veya uygulanan mevcut platformları ve uygulamaları tetkik etmektedir. Özellikle, Türk ve Kazakistan mevzuatını karşılaştırmalı olarak analiz etmek ve çevrimiçi

uyuşmazlık çözümü yöntem ve platformlarının prosedürlerimize olası uygulama yollarını araştırmaktadır.

Çevrimiçi uyuşmazlık çözümü yöntemleri, özellikle e-ticaret, tüketici hakları, iş ilişkileri ve uluslararası ticaret gibi alanlarda daha çok kullanım görmektedir. Genellikle, e-ticaret alanında tüketiciler ve satıcılar arasındaki uyuşmazlıkların tabiatı daha çok düşük maliyetli ya da uzak mesafeli oluyor. Dolayısıyla, tarafların ortaya çıkmış sorunları mahkemeye başvurusu için harcayacak maliyetleri, çözüm süreci gerektiren zaman ve bir arada bulunma amacıyla ödenecek seyahat masrafları uyuşmazlık nedeninin değerini her türlü aşar. İş ilişkilerinde ise, çalışanlar veya şirketler arası uyuşmazlıklarında tarafların bir araya gelmesi onların arasında psikolojik baskı yaratabilir, çözüm sürecinin çevrimiçi sağlanması bunun gibi olaylarda büyük bir avantaja dönüşür. Böylece, hizmet ve iş sözleşmelerindeki anlaşmazlıklar etkili bir şekilde çabuk çözüme ulaşabiliyor. Ayrıca, uyuşmazlık taraflarının farklı ülkelerde bulunması onların ortak nokta ve mevzuat bulmalarını çözüm süreci boyunca daha da zorlaştırıyor. Bu yüzden, uluslararası tahkim ve arabuluculuk süreçleri ülkeler arası uyuşmazlıklara uygun çözüm olabilir.

Bu yöntemlerin birçok avantajları var, zaman ve maliyet tasarrufu sağlaması dışında, kullanıcıların farklı kesimlerine kolay adalete erişimi ve karşı taraflar arasındaki iletişimi basitleştirmeyi sağlamaktadır. Örneğin, şu an Türkiye’de geleneksel mahkemelerde iş yoğunluğu dolayı çoğu işlerin çözülmesi aylar hatta yıllardır sürebiliyor, bu kıyasta ODR yöntemleri daha hızlı ve uyuşmazlık tarafları için uygundur. Buna ek olarak, coğrafi engelleri kaldırır, taraflar geleneksel mahkemeye gelme, bir alanda bulunma ve yol maliyetleri gibi dezavantajlardan serbest olur. Dünyanın her yerinden, her zamanda katılabilirler ve dil farklılıkları da yeni teknolojilerin desteğiyle artık bir engel olmayacaktır. Ayrıca, geleneksel yöntemlere karşıtı çevrimiçi uyuşmazlık çözüm

yöntemleri daha esnektir, tarafların istekleri, ihtiyaçları ve zaman ayarlarıyla düzenlenebilir bir rahat çözüm sürecidir.

Çevrimiçi uyuşmazlık çözümleri içinde, e-müzakere, dünyadaki en yaygın yöntemlerin biridir. Genelde, insanlar müzakere ettiklerinin farkında olmadan bile bu metodu kullanıyorlardır, buna neden müzakerenin ilk baştan insanlar arasındaki temel iletişim yöntemi olmasıdır. Bu metot, taraflara doğrudan, üçüncü taraf katmadan platformlar üzerinde iletişim kurarak sorunlarını çözmeye imkân sağlıyor. Ayrıca, çözüm süreci yapay zekâ araçları ve otomatik sistemler üzerinde destekleniyor.

E-arabuluculuk, ortaya çıkan uyuşmazlığı başarılı bir sonuca ulaştırmak için üçüncü taraf desteği yani arabulucunu davet ederek çözüm sürecini sürdürmek. Arabulucu tarafları ayrı ayrı dinleyerek, onlara kendi görüşlerin yeterli bir şekilde anlatmaları ve ortak bir noktaya gelmeleri için imkanlar sağlar, ancak onun tavsiyeleri ve kararları zorunlu değil, nihai karar hakkı taraflara aittir.

E-tahkim ise, e-arabuluculuktan en önemli özelliği bu çözüm yönteminin son kararının mahkemeler tarafından tanınıp, uygulanması. Taraflar bu yöntem türünü seçerken, hakemin son kararı bağlayıcı olacağına hazır olmaları önemlidir. Ayrıca, elektronik tahkimde, bütün belgeler e-ortamda kaydedilip taşınabilir veya sanal platformlarla prosedür desteklenebilir.

Bütün avantajlarına rağmen, çevrimiçi uyuşmazlık çözüm yöntemlerin de dezavantajları var, bu çalışma onları inceleyerek çözüm yollarını bulmaya yöneliktir. Çevrim içi uyuşmazlık çözüm yöntemlerin kullanımındaki ilk zorluk, internete kolayca erişim ve yeni teknolojileri kullanma yeteneğine sahip olmamaktır. Buna neden, genelde büyük ve merkezi şehirler dışındaki

bölgelerde internete erişim kısıtlı ve aynı anda toplumun bazı kesimleri yeni teknolojileri kullanma eğitime ihtiyaçları olabilir. Böylece, taraflar arasında eşitsizlik doğabilir ve çözüm süreci başarısız sonuca ulaşabilir. Bir sonraki dezavantaj, uluslararası uyuşmazlıklarda hukuki sorunların ortaya çıkmasıdır. Örneğin, yargı bölgelerinde bazı uluslararası anlaşmaların tanınmaması ve dolayısıyla yöntem sonucunda alınan kararların uygulanmamak durumudur. Öte yandan, tarafların çevrimiçi platformlara güven eksikliği ve teknolojilerin iki tarafa aynı şekilde adil imkân sağlaması hakkında endişeli olmaları. Günümüzde, siber saldırılar, teknolojik hatalar ve bağlantı kopukluğu gibi sorunlar bu süreci daha da zorlaştırıyor. Ayrıca, yüksek maliyetli veya büyük şirketler arası uyuşmazlıklarda sürecin tamamen gizli olmasına özellikle önem veriliyor ve bunun gibi çevrimiçi riskler göze alınması mümkün değil. Teknoloji kullanımında pek bilgiye sahip olmayan veya geleneksel uyuşmazlık çözümü yöntemlerine alışan taraflar için prosedürün tamamen çevrimiçi olması belirsizlik hissi yaratabilir. Böylece, geleneksel yöntemlerde yüz yüze görüşmelerin insan iletişimine veren etkisi, çevrimiçiyken eksik kalabilir gibi korkular yaratabiliyor. Son olarak, çevrimiçi uyuşmazlık yöntemleri birçok avantajlar sunsa da aynı anda dijital sorunlar, iletişim kopukluğu veya gizlilik riskleri gibi bir sürü dezavantajları ortaya çıkarıyor. Bu yüzden, bu dezavantajları daha detaylı incelemek, onları aşmak için dünya çapında denetimleri bulmak ve çözüm yollarının dikkatle ele alınması kendi ülkelerimizde etkili çözümler bulmaya bire bir imkân sağlıyor.

Tezin ilk bölümünde çevrimiçi anlaşmazlık çözümünün genel kavramı ve yasal çerçevesi ele alınmaktadır. E-müzakere, e-arabuluculuk ve e-tahkim gibi yöntem türleri ayrı ayrı araştırılacaktır. Böylece, her türüne detaylı bir şekilde gelişimi, yürütülmesi ve türleri hakkında inceleme yapılmaktadır. Onların artıları ve eksikleri, özellikleri araştırılmaktadır. Devamında, her yöntem önce geleneksel haliyle açıklanmakta, ardından çevrimiçi versiyonları örnek platformlarla

desteklenerek sunulmaktadır. E-müzakere kısmında, müzakere türleri ve bunların dijital ortamdaki işleyişi incelenmekte; e-arabuluculuk bölümünde WIPO, eBay ve ICDR gibi platformlar örnek olarak gösterilmekte; e-tahkim kısmında ise yine ICDR, eBRAM ve ICC gibi kurumların online hizmetlerine yer verilmektedir. Bu bölümde her yöntemin işleyişi, yapısı, avantajları ve sınırlılıkları karşılaştırmalı biçimde değerlendirilerek, çevrimiçi yöntemlerin geleneksel yöntemlere alternatif olarak nasıl şekillendiği ortaya konmaktadır. Böylece ODR'nin temel yapı taşları ve teorik temelleri açık bir şekilde anlaşılır hale gelmekte, sonraki bölümlerde yapılacak pratik analizler için zemin hazırlanmaktadır.

Çalışmanın ikinci bölümü ise, çevrimiçi uyuşmazlık çözümü yöntemlerini uygulama zorlukları ve onların çözümleri üzerine odaklanılmıştır. İlk kısımda CyberSettle, Clicknsettle ve Modria gibi ODR platformları ele alınmakta; bu platformların yapısı, sunduğu hizmetler ve çözüm süreçleri detaylı olarak açıklanmaktadır. Bölümün ikinci kısmında ise Singapur ve Birleşik Krallık gibi ülkelerde ODR uygulamaları ve sistemleri analiz edilmekte, bu ülkelerdeki dijital uyuşmazlık çözüm mekanizmalarının genel hukuk sistemi içindeki rolü değerlendirilmektedir. Ayrıca, bu sistemlerin ne ölçüde etkili olduğu, hangi alanlarda daha çok tercih edildiği ve teknolojik altyapılarının kullanıcı deneyimine etkisi gibi konular da dikkate alınmaktadır. Böylece bu bölüm, farklı yargı sistemlerinde ODR'nin gelişimi hakkında kapsamlı ve karşılaştırmalı bir bakış açısı sunmaktadır.

Tezin üçüncü bölümünde Türkiye ve Kazakistan'da çevrimiçi uyuşmazlık çözüm yöntemleri irdelenmektedir. Önce, çevrimiçi uyuşmazlık çözüm yöntemlerinin Türkiye'deki hukuki tanınması incelenmektedir. Devamında, aynı şekilde Kazakistan'da çevrimiçi uyuşmazlık çözüm yöntemleri nasıl uygulandığı, hukuki tanınması ve şu anki yeri analiz edilmektedir. Bölümün devam eden aşamasında, iki ülkedeki ODR metotlarının uygulanması detaylı

incelenerek karşılaştırmalı analiz yapılmaktadır. Yani, iki ülkeye de ait bu konudaki benzerlikler veya farklılıklar tespit edilmektedir. Türkiye ve Kazakistan arasındaki farklılıklar incelenerek, etkili olan metotlar veya platformlar ödünç alınabilir ve uyarlanabilir. Bu karşılaştırma hem mevcut uygulamaların iyileştirilmesi hem de yeni düzenlemelere ışık tutması açısından önemlidir. Ayrıca, iki ülkenin dijitalleşme düzeyleri ve hukuki altyapıları dikkate alınarak, daha verimli ve erişilebilir çevrimiçi uyuşmazlık çözüm modelleri geliştirilebilir. Bu bölüm, aynı zamanda bölgesel iş birliği olanaklarına da zemin hazırlamaktadır.

Tezin son kısmında ise, çalışmada toplanan tüm bilgiler sonuçlandırılmaktadır. Günümüzde, çevrimiçi uyuşmazlık çözümü birçok alanda geleneksel mahkeme prosedürlerine etkili alternatif olarak başarılı bir şekilde uygulanmaktadır. Buna rağmen, hukuki tanınma veya teknolojik destek gibi alanlarda farklı zorluklar ele alınarak birçok yeni çözüm yolları bulunmalı. Ancak, bu günkü yaygınlaşma hızına bakarak gelecekte bu yöntemlerin geniş bir kullanım alanı bulup, etkili olacağı öngörülmektedir.

Anahtar Kelimeler: Çevrimiçi Uyuşmazlık Çözümü, Bilgi ve İletişim Teknolojileri, E-ticaret, Uluslararası Sözleşmeler, Alternatif Uyuşmazlık Çözümü, ODR Platformu, Siberuzay

ABSTRACT

Online Dispute Resolution in Turkish and Kazakhstan Law

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Progress of online communications, that took its beginning from turning Cyberspace to free from restrictions common space and developed along with information and communication technologies improvement, also caused new types of problems which requested convenient ways of solutions. Online dispute resolution, appeared as a unique instrument combining capabilities of technologies with traditional method of dispute resolution. From the moment of its first application these online methods, like e-negotiation, e-mediation and e-arbitration proved to be cost-effective and time saving, regardless separately or all together. Nevertheless, ODR procedures remained as the subject of controversies till its wide implementation during COVID-19 pandemic. However, today it is applied to many types of disputes, regardless of whether they occur online or offline, due to the effectiveness and convenience of this method. The objective of this work to open characteristics, pros and cons of ODR system. This thesis examines types of online dispute resolution along with international regulations and countries implementation experiences. Furthermore, the purpose of this work to explore existing platforms and applications invented or applied in order to conduct ODR processes. Also, the purpose of this work, to comparatively analyze Turkish and Kazakhstan legislation as well as research of possible ways of application ODR methods and platforms into our procedures.

Keywords: Online Dispute Resolution, Information and Communication Technologies, E-commerce, International Conventions, Alternative Dispute Resolution, ODR Platform, Cyberspace

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ABBREVIATIONS

AAA	: American Arbitration Association
Ad Hoc	: For This Situation
ADR	: Alternative Dispute Resolution
AI	: Artificial Intelligence
AIFC	: The Astana International Financial Centre Item not recived
App.	: Application
Art.	: Article
BATNA	: Best Alternative to a Negotiated Agreement
B2B	: Business-to-Business
B2C	: Business to Consumer
CEDR	: Center for Effective Dispute Resolution
CJTS	: Community Justice and Tribunals System
COVID-19	: Coronavirus Disease 2019
CPL	: Consumer Protection Law
E-Arbitration	: Electronic Arbitration
eBRAM	: Electronic Business-Related Arbitration and Mediation
E-Commerce	: Electronic Commerce
e.g.	: Example
EFS	: Electronic Filing System
eGov	: Electronic Government
E-Mediation	: Electronic Mediation
E-Negotiation	: Electronic Negotiations

etc.	: And So, On
EU	: European Union
GenAI	: Generative AI
GDPR	: General Data Protection Regulation
HMCTS	: Her Majesty’s Courts & Tribunals Service
IAC	: International Arbitration Centre
ICANN	: Internet Corporation for Assigned Names and Numbers
ICC	: International Chamber of Commerce
ICDR	: The International Centre for Dispute Resolution
ICT	: Information and Communication Technologies
INR	: Item Not Received
ISTAC	: Istanbul Arbitration Center
IT	: Information Technology
MIT	: Massachusetts Institute of Technology
NAM	: National Arbitration and Mediation Corporation
OCMC	: Online Civil Money Claim
ODR	: Online Dispute Resolution
PC	: Personal Computer
PDF	: Portable Document Format
RK	: Republic of Kazakhstan
SaaS	: Software-as-a-Service
SC	: Supreme Court
See id.	: See the Previously Cited Source

SNAD	: Item Not as Described
SRA	: Solicitors Regulation Authority
Sui Generis	: Not Like Anyone or Anything Else, Therefore ‘Unique’
Supra	: Something Mentioned Earlier
TURKSTAT	: Turkish Statistical Institute
UDRP	: Uniform Domain Name Dispute Resolution Policy
UNCITRAL	: United Nations Commission on International Trade Law
US	: United States of America
UYAP	: Ulusal Yargı Ağı Projesi (National Judiciary Informatics System)
v.	: Versus
WIPO	: World Intellectual Property Organization

INTRODUCTION

Development of information and communication technologies (ICT) and internet appeared new types of disputes and they required fast and easy solutions. Online Dispute Resolution (ODR) became a great tool as long as it was online variety of Alternative Dispute Resolution (ADR).¹ It is a prevalent misconception, nonetheless, that ODR is limited to the online form of ADR only. Online courts are regarded as ODR as well.² Online courts are constrained by judicial norms and work with less freedom than online alternative dispute resolution procedures, which offer far greater flexibility. Indeed, there are ongoing debates regarding the nature of ODR. Some lawyers view it as a distinct and innovative method, while as it's mentioned above, others classify it merely as the online version of Alternative Dispute Resolution (ADR). To consider ODR as online version of ADR much more beneficial for the reason of making dispute resolution procedure easier, effective and the solution to enforce.³ ADR has established effective legal tools, and ODR can implement them in an online setting. However, ODR method has its own pros and cons, it diverges notably from the ADR method in terms of implementation and challenges encountered in the process.⁴

Most vital advantage of ODR making access to justice affordable for wide range of citizens.⁵ ODR is advantageous in terms of timing and cost because it does not require offline involvement. Online sessions are significantly less expensive because there are no ticket purchases or travel-related fees to consider. Since no need of traveling to the court

¹ Julio César Betancourt and Elina Zlatanska, "Online Dispute Resolution (ODR): What Is It, and Is It the Way Forward?", 79 *International Journal of Arbitration, Mediation and Dispute Management*, Issue 3, 2013, n.d., 256, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2325422.

² Thomas Schultz, "Online Dispute Resolution: An Overview and Selected Issues," *Economic Commission for Europe*, June 7, 2002, n.d., 2, <https://ssrn.com/abstract=898821>; Emine Gökçe Karabel and Dilek Aydemir, "Medeni Usul Hukukunda Yargılamanın Hızlandırılması ve Adalete Erişim Hakkı Bakımından Çevrimiçi Yargılama ve Yapay Zekanın Kullanımı (The Use of Online Proceedings and Artificial Intelligencein Civil Procedure Law with Respect to Acceleration of Proceedings and the Right to Access to Justice)," *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi* 29, no. 1 (July 6, 2023): 534, <https://doi.org/10.33433/maruhad.1263609>.

³ Schultz, 4.

⁴ Cemre Çise Kadioğlu, "Bricks and Clicks: Online Dispute Resolution Mechanisms and Implementation of Online Arbitration in Turkey for Cross-Border Business to Consumer E-Commerce Disputes," *ASBU Digital Law Review (BHD)* 1, No.1 (2019): 116.

⁵ Michael Legg, "The Future of Dispute Resolution: Online ADR and Online Courts," *Forthcoming Australasian Dispute Resolution Journal* [2016] UNSWLRS 71, n.d., 2, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2848097.

it also time saving. Indeed, in cases where a citizen faces offline participation challenges due to a disability, this technology-based approach to Online Dispute Resolution could be particularly beneficial. Moreover, the ODR approach is often applied in international conflicts to streamline communication between individuals who speak different languages, using online translators for this purpose.⁶

Human aspects such as lack of confidence or competency in public communications should be emphasized here, as the ODR method is mostly applied to business-to-consumer (B2C) disputes.⁷ This is the reason why, provided that firms are mostly represented by seasoned attorneys, the ODR method may be advantageous, particularly for customers. Since they usually do not own any legal experience to represent their interests properly on court. In large international commercial⁸ and business-to-business (B2B) disputes, there is a preference for utilizing offline formats in resolving conflicts, as it's in ADR.⁹ This is because they prioritize confidentiality, gathering evidence and witnesses, holding live hearings. Maintaining the reputation and safeguarding trade secrets is crucial for large business owners.¹⁰ The consequences of choosing between them (ADR or ODR) depend on factors like the nature of the dispute and parties involved. In essence, it should be noted that not only sales but service provision disputes also frequent subject to an ODR procedure.

This study aims to analyze structure of ODR and its applicability to Turkish and Kazakhstan legislation. It will also survey demand of ODR after period of COVID-19. It will compare advantages and disadvantages of ODR and its effectiveness in dispute solving from other ways of dispute resolution.

Work consists of three parts, it will observe concept of ODR, evaluation of ODR, history of development, first works on this topic. The proposed study will analyse advantages of

⁶ Legg, 2.

⁷ Legg, 2.

⁸ Gabrielle Kaufmann-Kohler, "Online Dispute Resolution and Its Significance for International Commercial Arbitration," *International Commercial Arbitration*, Paris 2005, 455–56.

⁹ Kadioğlu, "Bricks and Clicks: Online Dispute Resolution Mechanisms and Implementation of Online Arbitration in Turkey for Cross-Border Business to Consumer E-Commerce Disputes," 116.

¹⁰ Kadioğlu, 116.

ODR methods in dispute resolution, especially in the era of online communications. It will survey importance of ODR for the development of e-commerce today, will examine different cases. It will examine key aspects for adaptation of ODR methods in domestic legislation. The study will compare legislation of both countries for integration of these methods in their legislation. It will research international experience of ODR applicability and its beneficial ways to adopt it in our countries. The fact that the proposed study is comparative research between Turkish Law and Kazakhstan Law contributes to its originality. Furthermore, it will include a field study of the rate of ODR appliance after COVID-19. Since quarantine, when all human interaction went from real world to the cyberspace some spheres of human activities kept functioning online, since they figured out that it is more beneficial, much cheaper and time saving. Proposed study analyses this theory.

PART I

1.LEGAL FRAMEWORK OF ONLINE DISPUTE RESOLUTION

1.1. CONCEPT OF ONLINE DISPUTE RESOLUTION

1.1.1. General Definition

Concept of ODR widely known today, however first official recognition to this term were given by United Nations Commission on International Trade Law (UNCITRAL) in 2017.¹¹ According to Technical Notes on Online Dispute Resolution¹², ODR is a system to settle disagreements utilizing electronic communications and other technology for information exchange.¹³ In simple words, ODR is a type of dispute resolution that employs technology to help resolve issues between parties.¹⁴ This document outlines for main principles of ODR: transparency, independence, expertise and consent. Moreover, Technical Notes does not have any legal force, does not function as an instructional tool, and does not prevent the ODR method from being used in conjunction with other laws, regulations and dispute resolution methods.

Commonly, online dispute resolution (ODR) was used to settle conflicts in the e-commerce industry, especially cross border conflicts; but in recent years, particularly since the COVID-19 pandemic began, the effectiveness of ODR techniques has become increasingly relevant, regardless of the disagreement's source—online or offline.¹⁵ The preferences for dispute resolution in B2C and other significant disputes have been

¹¹Available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf>. Accessed 25.08.2022.

¹² Available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf>. Accessed 04.09.2022.

¹³ “UNCITRAL Technical Notes on Online Dispute Resolution,” 2017, 15.

¹⁴ Chitranjali Negi, “Concept Online Dispute Resolution in India,” *SSRN Electronic Journal*, 2015, <https://doi.org/10.2139/ssrn.2596267>; Betancourt and Zlatanska, “Online Dispute Resolution (ODR): What Is It, and Is It the Way Forward?”; Muhammed Danyal Khan, Serkan Kaya, and Rao Imran Habib, “Global Trends of Online Dispute Resolution (ODR) with Reference to Online Trade in Pakistan,” *Review of Economics and Development Studies* 4, no. 2 (January 9, 2019): 303–11, <https://doi.org/10.26710/reads.v4i2.415>; Gabrielle Kaufmann-Kohler et al., “Online Dispute Resolution: The State of the Art and the Issues,” *University of Geneva*, December 2001,14; Otabek Pirmatov, “Online Dispute Resolution - Fantasy Or Reality?,” *Online Dispute Resolution* 13 (2022); Ethan Katsh, Janet Rifkin, and Alan Gaitenby, “E-Commerce, E-Disputes, and E-Dispute Resolution: In the Shadow of ‘eBay Law,’” 2000.

¹⁵ Colin Rule, “Online Dispute Resolution and the Future of Justice,” *Annual Review of Law and Social Science*, May 13, 2020, 5, <https://doi.org/10.1146/annurev-lawsocsci-101518-043049>.

influenced by pandemic-related restrictions, and this trend is anticipated to grow progressively every year.¹⁶ It is imperative to dispel the common misconception that ODR exclusively transpires in a fully digital context, as it is essential to recognize that ODR procedures may incorporate information and communication technologies selectively, particularly when tackling disputes of an international nature.¹⁷

ODR can be separated into two broad groups based on the degree of utilization of information technology.¹⁸ They are commonly referred as technology-assisted and automated ODR.¹⁹ The first kind is technology- assisted ODR, where the human element plays a major part in resolving the disagreement, technology serves to enhance communication and information sharing and to guarantee the security and confidentiality of transactions.²⁰ In technology-assisted ODR, the process is still facilitated by technology, but there is significant human involvement.²¹ Technology is used to assist mediators, arbitrators, or parties in communicating, managing documents, or analyzing case data. However, key decisions and negotiations are made by humans, with technology acting as a support tool.²² The second type is automated ODR, where a comprehensive information technology application is employed to manage the entire online trial process,²³ potentially minimizing or replacing the involvement of individuals with computers and specialized software programs. Automated ODR uses artificial intelligent

¹⁶ Dilek Aydemir and Serkan Kaya, “Çevrimiçi (Online) Tahkime İlişkin Güncel Meseleler Ve Küresel Salgın Döneminde Tahkim”, (Contemporary Issues of Online Arbitration and Arbitration in the Age of Covid-19), *Uluslararası Ticaret ve Tahkim Hukuku Dergisi*, Cilt No.:11, Sayı:1, 2022, 101.

¹⁷ Dilek Aydemir and Serkan Kaya, “Çevrimiçi (Online) Tahkime İlişkin Güncel Meseleler Ve Küresel Salgın Döneminde Tahkim”, (Contemporary Issues of Online Arbitration and Arbitration in the Age of Covid-19), *Uluslararası Ticaret ve Tahkim Hukuku Dergisi*, Cilt No.:11, Sayı:1, 2022, 9.; Betancourt and Zlatanska, “Online Dispute Resolution (ODR): What Is It, and Is It the Way Forward,” 1;

¹⁸ Aydemir and Kaya, “Çevrimiçi (Online) Tahkime İlişkin Güncel Meseleler Ve Küresel Salgın Döneminde Tahkim”, 9.

¹⁹ Cemre Çise Kadioğlu, “Bricks and Clicks: Online Dispute Resolution Mechanisms and Implementation of Online Arbitration in Turkey for Cross-Border Business to Consumer E-Commerce Disputes,” *ASBU Digital Law Review (BHD)* 1, No.1 (2019); Maria Melis Halicioglu, “Online Dispute Resolution and Its Applicability in Turkey” (Istanbul Medeniyet University Institute of Graduate Studies, Section of Private Law, 2019).

²⁰ Halicioglu, “Online Dispute Resolution and Its Applicability in Turkey.”

²¹ Cemre Çise Kadioğlu, “Bricks and Clicks: Online Dispute Resolution Mechanisms and Implementation of Online Arbitration in Turkey for Cross-Border Business to Consumer E-Commerce Disputes,” *ASBU Digital Law Review (BHD)* 1, No.1 (2019): 117–18.

²² See id.

²³ Cemre Çise Kadioğlu, “Bricks and Clicks: Online Dispute Resolution Mechanisms and Implementation of Online Arbitration in Turkey for Cross-Border Business to Consumer E-Commerce Disputes,” *ASBU Digital Law Review (BHD)* 1, No.1 (2019): 117.

and algorithms extensively to settle disputes with little to no human involvement.²⁴ From the time the disagreement is submitted until the ultimate decision or settlement is made, the entire process can be automated.²⁵ In certain instances, the system generates results automatically and judgments are made in accordance with predetermined criteria or data analysis.²⁶ Conducting a hearing by audio and video transmission is a distinct idea, but still, it cannot be assessed separately from online dispute resolution procedures.²⁷ Because dispute is resolved via the application of technology in both approaches. The distinction between these two is that, although technology is employed continuously in online dispute resolution procedures, it is only employed in the hearing process when conducting a hearing by audio and video transmission. Therefore, the whole dispute resolution process, from the moment of filing documents until the decision is issued, must be conducted utilizing technology in order for the approach to be referred as ODR.²⁸

1.1.1.1. Technical Aspects of ODR Execution

Online Dispute Resolution- is a process that uses digital platforms and technology to settle conflicts; it frequently includes arbitration, mediation, and negotiation.²⁹ ODR can resolve a variety of conflicts, these are steps on how the procedure usually starts and is carried out:

1) The process starts with the submission of a complaint: When one party files an electronically complaint or claim, the dispute resolution procedure starts.³⁰ In this purpose desinged special ODR platforms or websites, and can be utilized

²⁴ See *supra*, note 23.

²⁵ Krishna Rastogi et al., "Technical Intercession of Artificial Intelligence in Solving Online Dispute Resolution," in *2023 IEEE Devices for Integrated Circuit (DevIC)* (2023 IEEE Devices for Integrated Circuit (DevIC), Kalyani, India: IEEE, 2023), 194–98, <https://doi.org/10.1109/DevIC57758.2023.10134915>.

²⁶ See *id.*

²⁷ Hüseyin Zorlu, "Çevrim İçi Uyuşmazlık Çözüm Yöntemlerinin Temel Yargısal İlkeler Kapsamında İncelenmesi" (yüksek lisans tezi, 2022), 82.

²⁸ Barış Mıdık, *Sorularla Çevrim İçi Uyuşmazlık Çözüm Yöntemleri* (On İki Levha Yayıncılık, 2022), 10–11.

²⁹ Karim Benyekhlef and Fabien Gélinas, "Online Dispute Resolution," *University of Montreal*, January 2005, 131; Ethan Katsh, "ODR: A Look at History. A Few Thoughts About the Present and Some Speculation About the Future," *Eleven International Publishing The Hague, Netherlands*, n.d.; Ethan Katsh and Janet Rifkin, "Online Dispute Resolution : Resolving Conflicts in Cyberspace" (San Francisco: Jossey-Bass, 2001), 226; Mr S Kulkarni, "Online Dispute Resolution Mechanisms in India- A Reality A Case Study of the Online Consumer Mediation Centre, Bangalore," n.d.; Anna N. Kutovaya and Karine R. Khadzhi, "Online Dispute Resolution: International, Domestic and Private Practices and Further Prospects for Development," *International Trade and Trade Policy*, 2020, <https://doi.org/10.21686/2410-7395-2020-4-95-112>.

³⁰ Emir Bayramoğlu, "Online Dispute Resolution And Direct Enforcement In The Age Of Smart Contracts" (Master Thesis on International Business Law Program, Tilburg Law School, 2018).

communication technologies. For example, The European Union Online Dispute Resolution Platform³¹, CodeLegit³² and Kleros³³ blockchain arbitration systems, Cybersettle³⁴, Squaretrade³⁵ programs.

2) Selection of a resolution mechanism: The platform or the parties may decide whether to use negotiation, mediation, or arbitration to resolve the issue. The choice of mechanism depends on the nature of the dispute, applicable laws, and the preferences of the parties involved.³⁶

3) Submission of information and details of the dispute: Both parties, after the start of the process, required to submit relevant information, documents, or evidence related to the dispute.³⁷ This may include contracts, emails, evidences, and any other relevant papers.

4) If negotiation is chosen, through some platforms this process maybe held completely automated and potential settlement options may be suggested via artificial intelegent driven tools that analyze the claims and base on historical data. The automated negotiation method differs from other approaches in resolving disputes fully on its own, without the assistance of an impartial third party.³⁸ Automated online negotiation dispute resolution is a method often used to resolve monetary disputes.³⁹ The two most favored suppliers of dispute resolution services in the context of automated negotiation are Cybersettle and Smartsettle.⁴⁰ In case of mediation, the session are often conducted via video conferencing or teleconferencing, and online chat. Example that can be given regarding the institution of electronic mediation is the Center for Effective Dispute Resolution (“CEDR”).⁴¹ (See chapter 2.2.2.2. of this work for more detailed information regarding

³¹ <<https://www.odreurope.com/eu-odr-platform>>. Accessed 07.04.24.

³² <<http://codelegit.com>>. Accessed 02.06.24.

³³ <<https://kleros.io>>. Accessed 05.06.24.

³⁴ Russell Weiss, “Some Economic Musings on Cybersettle,” n.d.

³⁵ <<https://www.squaretrade.com>>. Accessed 05.06.24.

³⁶ Julio César Betancourt and Elina Zlatanska, “Online Dispute Resolution (ODR): What Is It, and Is It the Way Forward?” 79 *International Journal of Arbitration, Mediation and Dispute Management*, Issue 3, 2013, n.d., https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2325422.

³⁷ Dr Pablo Cortés, “Online Dispute Resolution Services: A Selected Number of Case Studies,” no. 6 (2014).

³⁸ Pablo Cortés, *Online Dispute Resolution for Consumers in the European Union*, 1st ed. (London: Routledge, 2010), 64, <https://doi.org/10.4324/9780203847756>.

³⁹ Inan Uluc, *Prof. Dr. Ramazan Arslan’a Armağan 2. Cilt (Online Uyuşmazlık Çözümü)* (Yetkin Kitabevi, n.d.), 1618.

⁴⁰ <www.cybersettle.com>; <<https://smartsettle.com>>. Accessed 19.05.24.

⁴¹ CEDR, based in London, provides services in 12 different sectors. Consumers who have a dispute with a company regarding a product or service they purchased have the opportunity to resolve the dispute electronically, out of court, through the CEDR system. <https://www.cedr.com/about_us/>. Accessed 06.05.24.

“CEDR”). During online arbitration, the arbiter conducts online arbitration by reviewing the submissions made by each party and conducting hearings by video conference or written submissions. One of the first attempts at electronic arbitration was the Virtual Magistrate Project. The project aimed to provide a quick and inexpensive solution to the parties in dispute within 72 hours.⁴²

5) If the dispute is resolved by negotiation or mediation, a settlement agreement is created and signed electronically.⁴³ If it goes through arbitration, an award is issued.

1.1.2. E-Negotiation

1.1.2.1. An Overview

Negotiation can be named as the primary mean of resolving disputes since through it, sides try to resolve conflict situations without third party's involvement and in essence the most fundamental types of communication overall.⁴⁴ In all conflict situations, people attempt to negotiate a solution before bringing the issue to the higher authorities. Therefore, reaching a mutually agreeable solution on one's own is far preferable than accepting a legally binding decision from another, negotiation has become most preferable tool.⁴⁵ Negotiation⁴⁶ is a skill used by people to reach mutual understanding

⁴² Cortés, *Online Dispute Resolution for Consumers in the European Union*, 54.

⁴³ Cemre Çise Kadioğlu, “Bricks and Clicks: Online Dispute Resolution Mechanisms and Implementation of Online Arbitration in Turkey for Cross-Border Business to Consumer E-Commerce Disputes,” *ASBU Digital Law Review (BHD)* 1, No.1 (2019).

⁴⁴ Stephen B. Goldberg et al., *Dispute Resolution Negotiation, Mediation, Arbitration, and Other Processes*, Sixth edition (New York: Wolters Kluwer Law & Business, 2012); Betancourt and Zlatanska, “Online Dispute Resolution (ODR): What Is It, and Is It the Way Forward?”; Nikola Simkova and Zdenek Smutny, “Business E-Negotiation: A Method Using a Genetic Algorithm for Online Dispute Resolution in B2B Relationships,” n.d.; Ernest Thiessen, Paul Miniato, and Bruce Hiebert, “ODR and E-Negotiation,” n.d., <http://www.ombuds.org/odrbook/thiessen.pdf>; Halicioglu, “Online Dispute Resolution and Its Applicability in Turkey.”

⁴⁵ Roger Fisher, William Ury, and Bruce Patton, “Getting to YES, Negotiating Agreement Without Giving In” (Penguin Books, 2011), 21.

⁴⁶ Another crucial term in negotiation – BATNA (best alternative to a negotiated agreement). People negotiate to produce something better than the results they can obtain without negotiating. Goldberg et al., *Dispute Resolution Negotiation, Mediation, Arbitration, and Other Processes*, 28. Fisher, Ury, and Patton, “Getting to YES, Negotiating Agreement Without Giving In,” 110. BATNA is the best alternative course of actions available to a side in the event if negotiation will fail and a deal cannot be reached. Understanding your own BATNA and the BATNA of the other party will help you appear much more powerful and confident during negotiations. Goldberg et al., *Dispute Resolution Negotiation, Mediation, Arbitration, and Other Processes*, 28;29. Nevertheless, sometimes this is difficult to learn BATNA of opposite side. Before coming up with one or more strategies to take their negotiation more seriously, the parties may evaluate a variety of possibilities. Thiessen, Miniato, and Hiebert, “ODR and E-Negotiation,” 13. BATNA is a useful tool for making the appropriate decisions; a strong BATNA reduces mistakes and increases the parties' ability to operate with flexibility during dispute resolution process. Prior to creating your BATNA, rank your possibilities in the most realistic way and rely on the facts rather than assumptions. Since an incorrectly calculated BATNA can play crucial role in decision-making and lead to large losses. Likewise, possessing stronger assets doesn't always guarantee a favorable outcome because

and sometimes find solutions to problems before they arise, not only in conflict situations.⁴⁷ Negotiations may be conducted on the basis of a negotiation clause or on the initiative of the parties.⁴⁸ Thus, a negotiation clause is not a mandatory factor, but its presence simplifies the dispute resolution procedure, since it establishes the conditions under which negotiations must be conducted and provides clarity for the conduct of negotiations.⁴⁹

Regarding international regulations, the Unidroit Principles of International Commercial Contracts from 2016 highlight the importance of negotiation and how it can be formalized through specific clauses.⁵⁰ Regulations discuss negotiations in several provisions, primarily addressing the general duties of parties during negotiations and the consequences of bad faith or failed negotiations. According to them, parties do not responsible for unsuccesfull negotiation and free to negotiate, however they obliged to act in good faith, and do not negotiate without clear will to reach consensus.⁵¹ Parties engaged in negotiations or breakups in bad faith are responsible for any damages incurred by the counterparty.⁵² Also, during course of negotiation, if one party gave confidential information another party obliged not to disclose that information or use improperly; otherwise, the party that violated this obligation must compensate for the damage in the amount of the benefit received as a consequence.⁵³ Additionally, these guidelines stipulate that the final written agreement excludes all conditions and agreements concluded before it and prevails over all others.⁵⁴ In cases where, by agreement of the parties, they come

while negotiation side with the strongest BATNA typically prevails. In “Getting to Yes”, by authors Fisher, Ury and Patton outlined the three primary processes for creating a BATNA: making list of potential solutions in case of unsuccessful negotiation, selecting the most realistic ones to turn them into workable substitutes and weighing all options to pick out the best one. Possessing a strong BATNA and willing to end negotiation process will enable you to negotiate better terms in any contract. Fisher, Ury, and Patton, “Getting to YES, Negotiating Agreement Without Giving In,” 113.,114. Likewise, occasionally both sides may have too good BATNA’s then best resolution in this case will be not to negotiate at all.

⁴⁷Goldberg et al., *Dispute Resolution Negotiation, Mediation, Arbitration, and Other Processes*, 26.

⁴⁸Hugh Beale, *Chitty on Contracts*, 35th ed., vol. 1 & 2, Common Law Library, 2023; Robert Hillman, *Principles of Contract Law*, Concise Hornbook Series (West Academic Publishing, 2013).

⁴⁹Hillman, *Principles of Contract Law*.

⁵⁰Unidroit Principles of International Commercial Contracts from 2016, < <https://www.unidroit.org/wp-content/uploads/2021/06/Unidroit-Principles-2016-English-bl.pdf>>. Accessed 03.06.24.

⁵¹Unidroit Principles of International Commercial Contracts from 2016, < <https://www.unidroit.org/wp-content/uploads/2021/06/Unidroit-Principles-2016-English-bl.pdf>>. Accessed 03.06.24. Art. 2.1.15.

⁵² See id.

⁵³Unidroit Principles of International Commercial Contracts from 2016, < <https://www.unidroit.org/wp-content/uploads/2021/06/Unidroit-Principles-2016-English-bl.pdf>>. Accessed 03.06.24. Art. 2.1.16.

⁵⁴ See id. Art. 2.1.17.

to the conclusion that any changes or termination of the contract must be carried out in a special form, any possibility of deviation from these form is excluded.⁵⁵ In accordance with the Unidroit Principles of International Commercial Contracts, these regulations together emphasize the significance of good faith, openness, and fairness in the negotiating process. Although, the principles do not specifically mention "online" negotiation, the broad and flexible nature of the principles allows for negotiations through various forms of communication, including electronic means.⁵⁶ Likewise, agreement or any other act isn't required to be in particular form, it may be proven by any means, which also permit online negotiation and submission of documents via electronic means.⁵⁷ Also, in accordance with Article 1.10 of this UNIDROIT Principles, notification such as applications, requests or any messages of intent may be delivered between the parties by any means under the relevant circumstances, i.e. including electronic. Thus, the UNIDROIT Principles do not restrict carrying out negotiation online, as long as the procedure adheres to principles such as good faith and mutual agreement between the parties.

In order to the negotiation⁵⁸ decision be legally binding, it has to be result of parties' clear agreement, which is signed by both participants.⁵⁹ Afterwards, this agreement becomes enforceable by law. During online negotiation procedure, this agreement can be signed electronically and delivered between parties via e-mail and other convenient communication means.⁶⁰ For example, in Turkiye, in cases where the parties can dispose

⁵⁵Unidroit Principles of International Commercial Contracts from 2016, < <https://www.unidroit.org/wp-content/uploads/2021/06/Unidroit-Principles-2016-English-bl.pdf>>. Accessed 03.06.24. Art. 2.1.18.

⁵⁶ See id. Art.1.1.

⁵⁷ See id. Art.1.2.

⁵⁸Another concept in negotiation – bottom line. Bottom line, most frequently set in protection purposes, anticipating the worst outcome that can be tolerated.⁵⁸ Fisher, Ury, and Patton, "Getting to YES, Negotiating Agreement Without Giving In," 108.A bottom line, is a position that cannot be replaced. You have to know in addition that nothing said by the other party will influence your bottom line. Setting a bottom line has another drawback in that it limits decision-making flexibility.⁵⁸ In perspective, in order to avoid making poor choices and to keep regrets in check, it's helpful to know bottom line. In comparison of these two concepts: bottom line and BATNA, second one is a better measuring standard during the resolution process due to its extensibility and adaptability. Regarding the disclosure of bottom line and BATNA to the other party, depends on a several factors, and each negotiating situation is unique. To avoid seeming weak, most parties, nonetheless, attempt to conceal these aspects, also the most empathetic side is sometimes seen as the weakest side as well, therefore parties often attempt to hide their actual interests and objectives.

⁵⁹ "Are Negotiations Legally Binding," October 5, 2023.<<https://www.necademy.com/negotiation-skills/are-negotiations-legally-binding/>>. Accessed 05.03.24.

⁶⁰ Thiessen, Miniato, and Hiebert, "ODR and E-Negotiation."

of their own free will, courts encourage parties to settle dispute (sulh)⁶¹ and lawyers also may call both parties to settle.⁶² Settlement is the method which requires the minimum with regards to procedural rules and is much easier for the parties to express their raw opinions and requests.⁶³ If an agreement is reached as a result of the settlement, it is signed and has the same character as a court decision.⁶⁴ As for Kazakhstan, parties permitted to resolve the dispute through a participatory procedure, before court retires to make a final decision.⁶⁵ Participatory procedure, is actually negotiating without the participation of a judge between the parties to resolve the dispute with the assistance of their lawyers.⁶⁶ The judge in whose proceedings the case is located shall check the content of the agreement on dispute settlement in accordance with the negotiation procedure and shall issue a ruling on its approval.⁶⁷ It should be emphasized that in Kazakhstan, as well as in Turkiye, provision on negotiations prior to a court's decision-making process specifies in the Civil Procedure Law, and that any conclusions reached during this process are equivalent to those rendered by a judge.

1.1.2.2. Types of Negotiation

1.1.2.2.1. An Overview

It should be mentioned that negotiations are typically divided into two categories: deal-making and conflict resolution.⁶⁸ Deal making is a more informal and flexible approach that focuses on reaching a mutually beneficial agreement between two or more parties.⁶⁹ While conflict resolution, is organized procedure used to settle a particular problem or disagreement between parties.⁷⁰ Aim of conflict resolution, finding a compromise that meets the requirements and interests of all parties concerned.⁷¹ Deal-

⁶¹Code of Civil Procedure, no:6100, was published in Resmi Gazete and accepted 12.01.2011. <<https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6100.pdf>>. Accessed 20.06.24. Art. 137(1); 139(1);140(2).

⁶²1136LawofAttorney07.04.1969,

<<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=1136&MevzuatTur=1&MevzuatTertip=5>>.Art.35/A.

⁶³ Baki Kuru, Arslan Ramazan, and Yılmaz Ejder, *Medeni Usul Hukuku Ders Kitabı* (Yetkin Kitabevi, 2014), 513.

⁶⁴ See id.

⁶⁵Code on Civil Procedure of the Republic of Kazakhstan, from 31 October, 2015, <<https://adilet.zan.kz/rus/docs/K1500000377>>. Accessed 09.06.24. Art. 181.

⁶⁶ See id.

⁶⁷ Code on Civil Procedure of the Republic of Kazakhstan, from 31 October, 2015, <<https://adilet.zan.kz/rus/docs/K1500000377>>. Accessed 09.06.24. Art. 182.

⁶⁸ Goldberg et al., *Dispute Resolution Negotiation, Mediation, Arbitration, and Other Processes*, 26.

⁶⁹ Zohreh Eghlimi, "Differences Between Dispute Resolution and Deal Making," 26.20.23.

⁷⁰Goldberg et al., *Dispute Resolution Negotiation, Mediation, Arbitration, and Other Processes*.

⁷¹ See id.

making is frequently employed before to a problem in order to avoid future conflicts, whereas dispute resolution is typically utilized after a conflict has already occurred.⁷² However, commonly these categories are not separated without any special ground for it. In some circumstances, negotiation may serve in both types at once. As a matter of fact, we can say that all people negotiators and it is a fundamental method for obtaining what you want from people.⁷³ A one-on-one negotiation process is not always required; on occasion, interests of one or both parties may be represented by negotiating team.⁷⁴ Regarding to it, there are also multiparty negotiations where in one process more than two teams may be involved.⁷⁵

1.1.2.2.2. Automated and Assisted Online Negotiation

Also, online negotiation can be divided into automated negotiation and assisted negotiation methods.⁷⁶ Automated online negotiation dispute resolution is a form of dispute resolution technique that is typically used to settle financial disputes; in this type of online negotiation, the system resolves the disagreement entirely without the need for participation by an impartial third party.⁷⁷ Here is how this system works: Complaining party contacts with dispute resolution service provider and makes request, further service provider establishes connection with the other party of the dispute.⁷⁸ When connection is established, via automatic acceptance of offer, parties start to upload their resolution offers to the system, it happens secretly from each other.⁷⁹ This method also called ‘Blind Bidding’.⁸⁰ When by parties reached agreements, became close to the proposed options of both sides, approximately between 5 to 30 %, agreement is reached and system resolves

⁷² Eghlimi, “Differences Between Dispute Resolution and Deal Making.”

⁷³ Roger Fisher and Scott Brown, “Getting Together: Building Relationships as We Negotiate,” 1989, xxvii.; Betancourt and Zlatanska, “Online Dispute Resolution (ODR): What Is It, and Is It the Way Forward?,” 259.

⁷⁴ Goldberg et al., *Dispute Resolution Negotiation, Mediation, Arbitration, and Other Processes*, 26.

⁷⁵ Goldberg et al., 26. See also, for guidance on multiparty negotiations Lawrence Susskind, Robert Mnookin, Luke Rozdeiczer, and Boyd Fuller, *What We Have Learned About Teaching Multiparty Negotiation*; and for advice in dealing with team negotiations, Jeanne Brett, Ray Friedman, and Kristin Behfar, *How to Manage Your Negotiating Team*.

⁷⁶ Nilay Dağdelen Yaşar, “Elektronik Tüketici Uyuşmazlıklarının Çözümünde Alternatif Yollar: Çevrimiçi Uyuşmazlık Çözüm Yöntemleri” (Yüksek Lisans Tezi, Koç Üniversitesi Sosyal Bilimler Enstitüsü, 2019), 90.

⁷⁷ Cortés, *Online Dispute Resolution for Consumers in the European Union*, 64.

⁷⁸ Yüksel Bozkurt, “Elektronik Alternatif Uyuşmazlık Çözüm Süreci,” Mart 2008. s.4.

⁷⁹ Cortés, *Online Dispute Resolution for Consumers in the European Union*, 64.

⁸⁰ Suzanne Van Arsdale, “User Protections in Online Dispute Resolution,” *Harvard Negotiation Law Review*, 2015, 118; Inan Uluc, “International Online Dispute Resolution” (Master of Laws, PENNSYLVANIA STATE UNIVERSITY, 2013), 12.

dispute by opening decision to the parties.⁸¹This approach requires an internet connection and an access device, such a computer or smartphone, to access the cyberspace.⁸² Its operating system is simple to use. As long as there is an internet connection, the parties may complete the necessary transactions for the dispute settlement from anywhere in the world.⁸³ Examples of the most preferable automated negotiation providers Cybersettle(See chapter 2.1.1. of this work for more detailed information) and Smartsettle.⁸⁴In the assisted online negotiation method, the dispute resolution provider does not participate in the resolution of the dispute by the parties.⁸⁵When utilizing the online negotiating strategy, the parties decide what is agreed upon; the dispute resolution system provides the parties with an electronic space for communication alone. Online negotiation assistance systems may also be used to give functions including sending out contact forms, establishing deadlines, reminding parties, and outlining the key points of the agreement to the parties.⁸⁶ Except this, in assisted negotiation providers do not participate in the procedure of negotiation.⁸⁷ Assisted negotiation in comparison to automated negotiation, provide with limited opportunities and as a consequence less expensive.⁸⁸ In this regard, must be noted that assisted negotiation less popular, since it doesn't involve in dispute resolution procedure.⁸⁹ Examples of the most preferable assisted negotiation provider is a Squaretrade.⁹⁰

1.1.2.2.3. Interest, Right and Power Focused Negotiation

Negotiations also categorized into three groups based on their bargaining focus: right-focused, interest-focused and power-focused.⁹¹All three of these focuses occur during the negotiating process, but experience has shown that the interest-focused negotiation is the

⁸¹ See id.

⁸² Yaşar, "Elektronik Tüketici Uyuşmazlıklarının Çözümünde Alternatif Yollar: Çevrimiçi Uyuşmazlık Çözüm Yöntemleri," 91.

⁸³ See id.

⁸⁴ See, Chapter 2.1. of this thesis.

⁸⁵ Yaşar, "Elektronik Tüketici Uyuşmazlıklarının Çözümünde Alternatif Yollar: Çevrimiçi Uyuşmazlık Çözüm Yöntemleri," 98.

⁸⁶ Arsdale, "User Protections in Online Dispute Resolution," 114.

⁸⁷ Melis Ercan, "Uyuşmazlıkların Online Çözüm Yöntemleri," (Yüksek Lisans Tezi, Ankara, Gazi Üniversitesi Sosyal Bilimler Enstitüsü, 2012), 92.

⁸⁸ Yaşar, "Elektronik Tüketici Uyuşmazlıklarının Çözümünde Alternatif Yollar: Çevrimiçi Uyuşmazlık Çözüm Yöntemleri," 98.

⁸⁹ Cortés, "Online Dispute Resolution Services: A Selected Number of Case Studies," 17.

⁹⁰ See, Chapter 2.1. of this thesis.

⁹¹ William L. Ury, Jeanne M. Brett, and Stephen B. Goldberg, "Getting Disputes Resolved" (Jossey-Bass Inc., Publishers, 1988), 228,4; Goldberg et al., *Dispute Resolution Negotiation, Mediation, Arbitration, and Other Processes*, 26.

most beneficial to both sides.⁹² "Expanding the pie"⁹³ also referred to the interest-focused negotiation since it gives the participants more resources to distribute among themselves.⁹⁴ Interest-based negotiation is also relatively cost-effective⁹⁵ and as opposing parties may seek distinct goals, which can be useful to comprehend their viewpoints and identify potential path to agreement.⁹⁶ The main idea of interest-focused approach, it helps to figure out real problems, through exchanging less important problems for more important ones, the dispute can be resolved to the benefit of both sides.⁹⁷ Additionally, this method helps to save better relationship between parties and avoid its recurrence. During one negotiating process focus may switch between of these three depending on the circumstances,⁹⁸ however to stick on one especially will be more productive. Focusing on the right or power while negotiating usually end up each party making accent on their private interests only, which may be quite selfish and also called as trying to catch "biggest part of the pie".⁹⁹ Usually sticking over right or power shows that one party doesn't especially care about other parties' interests¹⁰⁰ or in other words "try to pull the blanket over themselves". This also led to the conflict situations and misunderstandings between participants of negotiation. However, to avoid giving the impression that the empathetic counterparty is weaker and more easily manipulated emotionally, some negotiators avoid to highlight an interest-based strategy.¹⁰¹ Even during chatting online or emailing where facial expressions and emotions not obvious, showing empathy to other counterparty may be detected as weakness. Because of this, parties rarely rely on interest-focused negotiation during video or teleconferences; instead, they often want to establish dominance and persuade the other party to agree to their terms.¹⁰² Right focused

⁹² Goldberg et al., *Dispute Resolution Negotiation, Mediation, Arbitration, and Other Processes*, 26.

⁹³ See *id.*, 26.

⁹⁴ Fisher, Ury, and Patton, "Getting to YES, Negotiating Agreement Without Giving In.", 26.

⁹⁵ Goldberg et al., *Dispute Resolution Negotiation, Mediation, Arbitration, and Other Processes*, 26.

⁹⁶ For example: A disagreement arises between the director of production and the director of sales regarding the quantity of bicycle models that should be produced. The sales director desires to increase model production. His passion is in bicycle sales; when more models are available, customers have more options, which boosts sales. The manufacturing director's goal is to make fewer models. Reducing production costs is of significance to him; greater costs equate to more models. See also, Goldberg et al., 27.

⁹⁷ Jossey-Bass (1988); Program on Negotiation at Harvard Law School 3- 19 (1993)

⁹⁸ Goldberg et al., *Dispute Resolution Negotiation, Mediation, Arbitration, and Other Processes*, 26.

⁹⁹ Fisher, Ury, and Patton, "Getting to YES, Negotiating Agreement Without Giving In," 40.

¹⁰⁰ Fisher, Ury, and Patton, 26; Goldberg et al., *Dispute Resolution Negotiation, Mediation, Arbitration, and Other Processes*, 40.

¹⁰¹ Goldberg et al., *Dispute Resolution Negotiation, Mediation, Arbitration, and Other Processes*, 26.

¹⁰² Andrea Kupfer Schneider et al., "Ethics in Legal Negotiation: A Cross-Cultural Perspective," *Marquette University Law School*, April 2013.

negotiation is likewise challenging too, and frequently require the assistance of a third party(mediator)¹⁰³. Moreover, trying to resolve a conflict by power is also tough since the concept of power is highly contested so can drive the parties to miscalculations and as a result worsen the dispute.¹⁰⁴ Certain things are unavoidable, like the opponent's superior strength or resource advantage. Especially, it is evident during the online process, when a natural imbalance between the parties may arise from the possibility that one side has access to superior technology and is more knowledgeable about how to use them.¹⁰⁵ While the other party, may not have sufficient experience in using technology, which will make it difficult for them to convey their thoughts and exercise their legal rights to the fullest extent.¹⁰⁶ This can be especially noticeable when the parties are from different regions or even countries, because some countries are much more technologically advanced and have more experience in the practice of online dispute resolution, while even within one country the conditions of awareness and technological support may differ.¹⁰⁷ For example, in many countries, central cities have more advantages, while regions may not even have free access to the Internet and, as a consequence, citizens in such areas do not have sufficient knowledge in the use of technology and, as a result, do not trust these methods, preferring traditional methods to them. Any negotiation strategy in this situation seeks to: shield you from entering into an agreement that you ought to reject and assist you in maximizing the strength at your disposal so that any agreement you reach would maximize your satisfaction.¹⁰⁸ However, sticking on one or all three focuses, while negotiations doesn't guarantee dispute resolution, on practice, parties may opt to back out of a disagreement or simply begin avoiding one another. The reasons behind this decision could differ from one party not being able to come to a satisfactory resolution, to the situation losing significance for one or both parties.¹⁰⁹ Even if these are online negotiations, the parties still need to ensure that the process is carried out in a comfortable environment, so it is important to also consider financial and planning

¹⁰³ See *id.*, 27.

¹⁰⁴ *Goldberg et al.*, 27.

¹⁰⁵ Thiessen, Miniato, and Hiebert, "ODR and E-Negotiation."

¹⁰⁶ See *id.*

¹⁰⁷ Fisher, Ury, and Patton, "Getting to YES, Negotiating Agreement Without Giving In."

¹⁰⁸ Fisher, Ury, and Patton, 107.

¹⁰⁹ *Goldberg et al.*, *Dispute Resolution Negotiation, Mediation, Arbitration, and Other Processes*, 27.

aspects, as some parties may not have the resources to further invest in conflict resolution.¹¹⁰

1.1.3. E- Mediation

1.1.3.1. Traditional Mediation Procedure

Before starting section about online mediation, this work gives general information regarding traditional mediation and the procedure for conducting it. Mediation as one of the alternative dispute resolution methods, seeks to resolve dispute in a calm and reasonable manner through an independent and impartial third party.¹¹¹ In other words, mediation is a voluntary process, through which parties can engage in continuous dialogue with a third party that acts objective, independent and supports their efforts to resolve conflicts on their own.¹¹² Mediators¹¹³ are not decision-makers like judges or arbitrators, their duty is to assist the parties in the negotiation process and to ensure communication between the parties.¹¹⁴ The nature of the decisions reached as a result of

¹¹⁰ Goldberg et al., 27. See also: Jossey-Bass (1988); Program on Negotiation at Harvard Law School 3-19 (1993).

¹¹¹Seda Öznumcu, “Hukuk Uyuşmazlıklarında Arabuluculuk Sürecinde Aktif Dinlemenin Rolü ve Önemi,” *Bahçeşehir Üniversitesi Hukuk Fakültesi Dergisi* 10 (2016): 8; Ali Yeşilirmak, *Türkiye’de Ticari Hayatın ve Yatırım Ortamının İyileştirilmesi İçin Uyuşmazlıkların Etkin Çözümünde Doğrudan Görüşme, Arabuluculuk, Hakem-Bilirkişilik ve Tahkim: Sorunlar ve Çözüm Önerileri* (İstanbul: On İki Levha, 2011), 18.

¹¹²Brown Henry and Arthur Marriott QC, *ADR: Principles and Practice - Softcover* (London, 1999), 127; Ersen Perçin, “Alternatif Uyuşmazlık Çözüm Yöntemlerinden Arabuluculuğun Hukuksal Düzenlemelerdeki Yeri,” *Public and Private International Law Bulletin* 31, no. 2 (September 20, 2012): 177; Hakan Pekcanitez, Oğuz Atalay, and Muhammet Özekes, *Medenî Usûl Hukuku (Ders Kitabı)* (İstanbul, 2018), 607–8; *Uzak Doğu’da Arabuluculuk Anlayışı İle Türk Hukuk Sisteminde Arabuluculuk Kurumuna Genel Bir Bakış* (İstanbul, 2013), 19; Ejder Yılmaz, *Hukuk Sözlüğü* (Ankara, 2011), 97.

¹¹³Regardless of the type of mediation, online or traditional, it has to be in compliance with terms of the agreement and realization procedure have to comply with accordance to the law. Dafna Lavi, “Three Is Not a Crowd: Online Mediation-Arbitration in Business to Consumer Internet Disputes” 37 (2016): 14. Therefore, mediator must also abide by certain regulations and norm, in order to fairly carry out his duties. American Arbitration Association, “Model Standards of Conduct for Mediators,” September 2005. For this reason, mediators obliged to pass some special preparation classes. These classes frequently include talks, debates, and a simulated mediation in which participants acted as both sides of the resolution process. L. Ury, M. Brett, and B. Goldberg, “Getting Disputes Resolved,” 51. See also Sara Cobb, A Narrative Perspective on Mediation: Toward the Materialization of the “Storytelling”. Mediators who took these kinds of trainings will have better observation skills and gain a deeper grasp of dispute participant’s psychology. They establish guidelines outlining when participants can speak and the manner in which they should communicate during mediation sessions. Ethan Katsh, Janet Rifkin, and Alan Gaitenby, “E-Commerce, E-Disputes, and E-Dispute Resolution: In the Shadow of ‘eBay Law,’” 2000, 731.

¹¹⁴ Süha Tanrıver, “Hukuk Uyuşmazlıkları Bağlamında Alternatif Uyuşmazlık Çözüm Yolları ve Özellikle Arabuluculuk,” *Türkiye Barolar Birliği Dergisi*, 2006, 165; Ziya Akıncı, *Milletlerarası Tahkim* (İstanbul: 4. Baskı, 2016), 10; Benyekhlef and Gélinas, “Online Dispute Resolution,” 46; Zeynep Derya Tarman, “Mediation as an Option for International Commercial Disputes,” *Annales de La Faculte de Droit d’Istanbul*, 2017, 232.

the mediation process are not legally binding.¹¹⁵ Compliance with the result of mediation remains at the discretion of the parties and even after the decision is made, the parties still free to fill a lawsuit.¹¹⁶ According to Turkish law, mediation is governed by the "Law on Mediation in Civil Disputes," which defines mediation as a voluntary process of communication between parties intended to ensure understanding and reach a consensus, occasionally suggesting a solution.¹¹⁷ Which is also involves the participation of an independent, unbiased third party who has received specialized training¹¹⁸ (for mediation in Kazakhstan, see Chapter 3.2.2. of this thesis). It must be noted, that Türkiye's legislation provides for both types of mediation: by the will of the parties and obligatory before civil proceedings.¹¹⁹ (for mediation in Türkiye, see Chapter 3.1.2.3. of this thesis).

Regarding international regulations according mediation, there are several key frameworks governing mediation. Start with, UNCITRAL Model Law on International Commercial Mediation from 2002, amended in 2018.¹²⁰ It covers international commercial disputes and includes provisions for both online and in-person mediation. This legislation offers a thorough framework for mediation in many jurisdictions and is widely utilized as the foundation for national mediation laws.¹²¹ Next, United Nations Convention on International Settlement Agreements Resulting from Mediation commonly known as the Singapore Convention on Mediation.¹²² Convention went into force, on September 12, 2020,¹²³ for the 8 may of 2024, Convention has 56 signatories

¹¹⁵ Ziya Akıncı, "Milletlerarası Ticari Uyuşmazlıkların Alternatif Çözüm Yolları," *Banka ve Ticaret Hukuku Dergisi*, 1996, 104.

¹¹⁶ See id.

¹¹⁷ 6325 Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu, <<https://www.mevzuat.gov.tr/mevzuatmetin/1.5.6325.pdf>>. Art. 16(1). Law "On Mediation" of the Republic of Kazakhstan dated January 28, 2011, No. 401-IV. <<https://adilet.zan.kz/rus/docs/Z1100000401/z110401.htm>>. Art. 2.

¹¹⁸ See id.

¹¹⁹ Yaşar, "Elektronik Tüketici Uyuşmazlıklarının Çözümünde Alternatif Yollar: Çevrimiçi Uyuşmazlık Çözüm Yöntemleri," 58.

¹²⁰ UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/22-01363_mediation_guide_e_ebook_rev.pdf>. Accessed 12.08.24.

¹²¹ See id.

¹²² United Nations Convention on International Settlement Agreements Resulting from Mediation, (the Singapore Convention on Mediation); <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/EN/Texts/UNCITRAL/Arbitration/mediation_convention_v1900316_eng.pdf>.

¹²³ Dilek Aydemir, "Multi-Tiered Dispute Resolution Clauses after UML on Mediation 2018 and the Singapore Convention," *Public and Private International Law Bulletin* 41, no. 1 (May 31, 2021): 219, <https://doi.org/10.26650/ppil.2021.41.1.819689>.

including Türkiye and Kazakhstan and 14 countries that have ratified it.¹²⁴ The Singapore Convention on Mediation enhances the certainty and enforceability of mediated outcomes, thereby fostering greater confidence in the mediation process, just like the 1958 New York Convention¹²⁵ to arbitration.¹²⁶ Through the establishment of a standardized framework for the acceptance and enforcement of mediated settlement agreements, the Convention aims to encourage the use of mediation as a practical substitute for litigation and arbitration.¹²⁷ European Union Mediation Directive (2008/52/EC), in order to encourage the use of mediation in cross-border civil and commercial disputes within the European Union, the EU Mediation Directive was approved in 2008.¹²⁸ The directive offers a structure to guarantee that mediation is available, effective, and uniform between EU member states.¹²⁹ International Chamber of Commerce (ICC) Mediation Rules, one of the most popular frameworks for mediating international business disputes is the 2014 revision to the ICC Mediation Rules.¹³⁰ Because of the rules' flexibility, parties can mediate either in addition to or instead of arbitration or litigation.¹³¹ World Intellectual Property Organization (WIPO) Mediation Rules, patent, trademark, and copyright disputes are among the intellectual property related disputes that are settled under the WIPO Mediation Rules.¹³² Online and in-person mediation is handled by WIPO's Arbitration and Mediation Center.¹³³ All these regulations provide legal certainty for mediated outcomes, making mediation an increasingly attractive option for resolving cross-border disputes.

¹²⁴ For more information <<https://www.singaporeconvention.org>>. Accessed 08.05.2023.

¹²⁵ Convention on the Recognition and Enforcement of Foreign Arbitral Awards. New York. 10 June 1958, <https://treaties.un.org/doc/Treaties/1959/06/19590607%2009-35%20PM/Ch_XXII_01p.pdf>. Accessed 15.05.24.

¹²⁶ Doan Thanh Huyen et al., “Report On Viet Nam’s Possibility To Accede To The United Nations Convention On International Settlement Agreements Resulting From Mediation,” (2021), 8. Eunice Chua, “The Singapore Convention on Mediation and the New York Convention on Arbitration: Comparing Enforcement Mechanisms and Drawing Lessons for Asia,” *Asian International Arbitration Journal* 16, no. Issue 2 (November 1, 2020): 116, <https://doi.org/10.54648/AIAJ2020018>.

¹²⁷ Colin Rule, “Online Dispute Resolution for Business,” 2002, 93–94.

¹²⁸ Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0052>>. Accessed 09.06.24.

¹²⁹ See id.

¹³⁰ ICC Mediation Rules, <<https://iccwbo.org/dispute-resolution/dispute-resolution-services/adr/mediation/mediation-rules/>>. Accessed 10.06.24.

¹³¹ See id.

¹³² WIPO Mediation Rules, <<https://www.wipo.int/amc/en/mediation/rules>>. Accessed 10.06.24.

¹³³ See id.

1.1.3.1.1. Steps of Mediation Procedure

Depending on the nature of the disagreement, the mediator's background and the mediation techniques employed, the mediation process may unfold differently in each instance.¹³⁴ Nonetheless, steps of mediation process is pretty cyclical and divided into five phases.¹³⁵ They are as follow: preparation, opening stage, review, negotiation and conclusion.¹³⁶ At first step, the necessary preparations for the mediation are made.¹³⁷ Parties must select a mediator, they can choose based on the experience, competency or by mutual decision.¹³⁸ The mediator at this stage receives documents and information regarding the nature of the dispute in order to understand the background of the problem and the parties' positions.¹³⁹ Also at this stage, the mediator may arrange a meeting with the parties individually or jointly, to get to know each other and as an evaluation process to assess whether the dispute is suitable for mediation.¹⁴⁰ The opening of mediation, begins when all parties enter the mediation room, either in person or virtually.¹⁴¹ At this point, the mediators offer introductory remarks during which,¹⁴² if needed, they reintroduce themselves, go over the mediation process protocol, and introduce the parties.¹⁴³ Regarding the rules governing the mediation process, they are also established at this stage, and if parties have not signed mediation agreement at the preparation stage, they must do so after reviewing the rules at this stage.¹⁴⁴ If needed, the mediator also

¹³⁴Orymbek Toikin, "Türk, Rus ve Kazak Hukvuku Bakımından Arabuluculuk", (Doktora Tezi, İzmir, Dokuz Eylül Üniversitesi, 2024), 106. Kitap Editörleri: Ali Yeşilirmak, Elif Kısmet Kekeç, and Alper Bulur, *Temel Arabuluculuk Eğitimi Katılımcı Kitabı*, Üçüncü Basım (Ankara: Arcs Matbaacılık, 2021).(Marla da Concelçio Oliveira, Dr. Rimantas Simaitis, Arabuluculuk Sürecine Genel Bakış, 83).

¹³⁵Nancy H. Rogers, *A Student's Guide to Mediation and the Law*, n.d.

¹³⁶Kitap Editörleri: Yeşilirmak, Kekeç, and Bulur, *Temel Arabuluculuk Eğitimi Katılımcı Kitabı*. (Marla da Concelçio Oliveira, Dr. Rimantas Simaitis, Arabuluculuk Sürecine Genel Bakış, 83).

¹³⁷Yeşilirmak, Kekeç, and Bulur. (Marla da Concelçio Oliveira, Dr. Rimantas Simaitis, Arabuluculuk Sürecine Genel Bakış, 84).

¹³⁸Christopher W. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 4th Edition (San Francisco: Jossey-Bass, 2014), 20.

¹³⁹Aled Davies, "Understanding the Mediation Process in the UK," October 2, 2024, <<https://www.mediatoracademy.com/blog/mediation-process>>. Accessed 09.07.2024. L. Ury, M. Brett, and B. Goldberg, "Getting Disputes Resolved"; Goldberg et al., *Dispute Resolution Negotiation, Mediation, Arbitration, and Other Processes*.

¹⁴⁰Yeşilirmak, Kekeç, and Bulur, *Temel Arabuluculuk Eğitimi Katılımcı Kitabı*. (Marla da Concelçio Oliveira, Dr. Rimantas Simaitis, Arabuluculuk Sürecine Genel Bakış, 84). Davies, "Understanding the Mediation Process in the UK."

¹⁴¹Davies, "Understanding the Mediation Process in the UK."

¹⁴²Yeşilirmak, Kekeç, and Bulur, *Temel Arabuluculuk Eğitimi Katılımcı Kitabı*. (Prof. Dr. Recep Tayfun, Arabuluculuğun Aşamaları: Hazırlık Aşaması, 93)

¹⁴³See id.

¹⁴⁴Yeşilirmak, Kekeç, and Bulur, *Temel Arabuluculuk Eğitimi Katılımcı Kitabı*. (Prof. Dr. Recep Tayfun, Arabuluculuğun Aşamaları: Hazırlık Aşaması, 93)

warns about possibility to work in both joint and private sessions.¹⁴⁵ Thus, opening stage allows parties to make their initial statements too, sometimes it becomes first direct discussion between parties which is meant to reach better mutual understanding. Third stage, review, the purpose of this stage is to bring the light to events, emotions and other important issues related to the current dispute.¹⁴⁶ The parties are given the opportunity to speak in turn and present their positions in full.¹⁴⁷ As an alternative to concentrating just on viewpoints, the mediator might probe for underlying needs and interests through questioning.¹⁴⁸ This facilitates the transition from win-lose to problem-solving thinking.¹⁴⁹ Mediator uses a range of skills and techniques to uncover the hidden reasons and priorities of the parties and encourage them to speak openly with each other.¹⁵⁰ If necessary, the mediator may hold private meetings with each party to better understand their motives and to calculate possible terms for resolving the conflict.¹⁵¹ Information obtained during these meetings is considered confidential unless the parties themselves have given permission to share it with others.¹⁵² Next, negotiation stage, the parties exchange views on the divisive topics and provide a range of potential solutions.¹⁵³ At this point, the mediator invites the parties to talk through all potential options and present how each option can be applicable.¹⁵⁴ To determine which alternative will please both sides, the participants evaluate each of the possibilities that have been put out and attempt to rank them.¹⁵⁵ This phase may go on longer than the others, during which the mediator, remaining neutral and devoid of suggestions, maintains the parties' focus and helps them reach a consensus.¹⁵⁶ Last step, conclusion, as a result of the mediation process, an

¹⁴⁵ See id.

¹⁴⁶ Yeşilirmak, Kekeç, and Bulur, *Temel Arabuluculuk Eğitimi Katılımcı Kitabı*. (Dr. Elif Kısmet Kekeç, Arabuluculuğun Aşamaları: İnceleme Aşamaları, 137).

¹⁴⁷ Yeşilirmak, Kekeç, and Bulur; (Dr. Elif Kısmet Kekeç, Arabuluculuğun Aşamaları: İnceleme Aşamaları, 137).

Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 4th Edition., 21.

¹⁴⁸ R.A.B. Bush and J.P. Folger, *The Promise of Mediation: The Transformative Approach to Conflict* (Wiley, 2004), 35.

¹⁴⁹ See id.

¹⁵⁰ Davies, "Understanding the Mediation Process in the UK."

¹⁵¹ Henry J Brown and Arthur L. Marriott, *ADR Principles and Practice*, 3rd. (London: Sweet & Maxwell, 2011).

¹⁵² Karl Mackie, *A Handbook of Dispute Resolution: ADR in Action* (London: Routledge, 2014), 25.

¹⁵³ Yeşilirmak, Kekeç, and Bulur, *Temel Arabuluculuk Eğitimi Katılımcı Kitabı*. (Prof. Dr. Ünsal Sıgır, Arabuluculuğun Aşamaları: Müzakere Aşamaları, 155)

¹⁵⁴ Davies, "Understanding the Mediation Process in the UK."

¹⁵⁵ See id.

¹⁵⁶ Fisher, Ury, and Patton, "Getting to YES, Negotiating Agreement Without Giving In."

agreement may be successfully reached or not, due to various circumstances such as too late or too early reference to the resolution process, extremely different conditions and expectations of the parties.¹⁵⁷ Also, an agreement may not be reached immediately after the completion of mediation but much later if the parties retain the ability to communicate with each other.¹⁵⁸ In the event that mediation is successful, an agreement is drafted, with the mediator's assistance if needed.¹⁵⁹ Upon execution, this agreement becomes either non-binding or binding upon the parties, as stipulated under the terms and circumstances of agreement.¹⁶⁰

1.1.3.2. Online Mediation

Online mediation is nearly identical to traditional mediation in terms of its goals and procedure with the exception of the fact that the proceedings take place in an online setting.¹⁶¹ However, in order for the process to be called online mediation, it is not enough to use only technologies; for this, the entire process from start to finish must be carried out through these technologies.¹⁶² Therefore, this approach makes use of encrypted chats, video conferencing, teleconferencing, and emails.¹⁶³ Regarding decisions made during online mediation process, similar to traditional mediation, they are not legally binding unless all parties agree that in the reached agreement conclusion will be binding.¹⁶⁴ Commonly e-mediation process starts by filling of complaint form through the e-mediation service provider by one of the disputing parties.¹⁶⁵ Sometimes, on the websites of the service providers posted a link to the contracted e-mediation platform where users can access the complaint form and start e-mediation.¹⁶⁶ Further below, examples of online mediation and platforms providing it, will be included in this research.

¹⁵⁷ Davies, "Understanding the Mediation Process in the UK."

¹⁵⁸ Yeşilirmak, Kekeç, and Bulur, *Temel Arabuluculuk Eğitimi Katılımcı Kitabı*. (Prof. Dr. Ali Yeşilirmak, Ara buluculuğun Aşamaları: Sonuç /Anlaşma Aşaması, 180).

¹⁵⁹ See id.

¹⁶⁰ Davies, "Understanding the Mediation Process in the UK."

¹⁶¹ Armağan Ebru Bozkurt Yüksel, "Elektronik Ticarete Elektronik Alternatif Uyuşmazlık Çözüm Süreci," *Mevzuat Dergisi*, 2008, 5.

¹⁶² Barış Mıdık, *Sorularla Çevrim İçi Uyuşmazlık Çözüm Yöntemleri* (On İki Levha Yayıncılık, 2022), 37.

¹⁶³ Susan Naus Exon and Soomi Lee, "Building Trust Online: The Realities of Telepresence for Mediators Engaged in Online Dispute Resolution" 49 (2019), 110.

¹⁶⁴ Akıncı, "Milletlerarası Ticari Uyuşmazlıkların Alternatif Çözüm Yolları," 104.

¹⁶⁵ Esther van den Heuvel and Esther, "Online Dispute Resolution as a Solution to Cross-Border e-Disputes: An Introduction to ODR.," 2000, 12.

¹⁶⁶ Haitham Haloush and Bashar H. Malkawi, "Internet Characteristics and Online Alternative Dispute Resolution," *Harvard Negotiation Law Review*, 2008, 335.

1.1.3.2.1. Online Mediation Example: WIPO Online Mediation Service

The World Intellectual Property Organization (WIPO) provides online mediation services of intellectual property and technology related disputes under framework of WIPO Mediation Rules¹⁶⁷ and WIPO Checklist for the Online Conduct of Mediation and Arbitration Proceedings.¹⁶⁸ The parties to the dispute may choose how the mediation will be conducted, including through phone conversations, video conferences, or online resources, in accordance with Article 10 of the WIPO Mediation Rules¹⁶⁹, which subsequently allows to conduct online mediation sessions. Additionally, the WIPO Center provides technical support for organizing, planning, and running mediation sessions, this includes no cost, secure access to WebEx and Zoom for parties, mediators to use in their online proceedings.¹⁷⁰ At the same time, parties and mediators free to choose online platforms from one of these: WebEx¹⁷¹, Zoom, Teams, WhatsApp, and Skype for Business.¹⁷² The WIPO Center recommends that the parties submit their requests for mediation by email to the address shown on their website, or otherwise using the WIPO IP Portal.¹⁷³ Upon submission, a copy of the Request for Mediation will be sent

¹⁶⁷ “WIPO Mediation Rules”, Effective from July 1, 2021, < <https://www.wipo.int/amc/en/mediation/rules/> >. Accessed 10.07.24.

¹⁶⁸ “WIPO Checklist for the Online Conduct of Mediation and Arbitration Proceedings”, < <https://www.wipo.int/amc/en/eadr/checklist/index.html> >. Accessed 10.07.24.

¹⁶⁹ The mediation shall be conducted in the manner agreed by the parties, including meetings by telephone, videoconference or using online tools. If, and to the extent that, the parties have not made such agreement, the mediator shall, in accordance with these Rules, determine the manner in which the mediation shall be conducted. “WIPO Mediation Rules”, Article 10, Effective from July 1, 2021, < <https://www.wipo.int/amc/en/mediation/rules/> >. Accessed 10.07.24.

¹⁷⁰ “WIPO Checklist for the Online Conduct of Mediation and Arbitration Proceedings”, Choice of Online Platform 4), < <https://www.wipo.int/amc/en/eadr/checklist/index.html> >. Accessed 10.07.24.

¹⁷¹ Cisco Webex products provide capabilities including online meetings, team messaging and file sharing. The suite is considered a leading collaboration platform in the unified communications area and is geared toward both small group collaboration for SMBs as well as large group meetings for enterprise-wide deployments. Users can join video conferences from a desktop or mobile app. A web version of Webex is available as well -- although more features are available on the other versions. Users can also share files and participate in team messaging features. The service is supported by both Cisco Webex Meetings and Webex Teams apps. Alexander S. Gillis, “Cisco Webex,” December 2020, <<https://www.techtarget.com/searchunifiedcommunications/definition/Cisco-Webex>>; Aruna Ravichandran, “WebEx AI Delivers Real-World Benefits That Transform Customer and Employee Experiences,” 2024, <<https://blog.webex.com/customer-experience/webex-ai-action-real-world-benefits-customer-employee-experiences/>>.

¹⁷² “WIPO Checklist for the Online Conduct of Mediation and Arbitration Proceedings”, Choice of Online Platform 3), < <https://www.wipo.int/amc/en/eadr/checklist/index.html> >. Accessed 10.07.24.

¹⁷³ “WIPO Mediation Case Filing Guidelines,” n.d., <<https://www.wipo.int/amc/en/mediation/filing/>>. Accessed 11.07.24.

to the other party.¹⁷⁴ Also, WIPO Center developed WIPO eADR¹⁷⁵ optional online case management tool, which facilitates conduction of cases allowing securely submit and access case-related information through a single secure portal.¹⁷⁶ Features include electronic submission of communications and documents, a summary of case information, timelines, contact details, and financial status of the case.¹⁷⁷ Notably, WIPO eADR is specifically tailored for alternative dispute resolution (ADR) proceedings and utilized by parties involved in mediation and arbitration.¹⁷⁸ It is vital to note that, while eADR platform provide managing of ongoing cases, the submission of request to initiate online mediation process through the WIPO eADR platform not possible.¹⁷⁹

A brief review of the WIPO's online mediation procedure: the process starts from the request of the one party and notification of other.¹⁸⁰ If both parties agreed in participating, mediation procedure starts.¹⁸¹ Following the mediator's nomination, the parties decide on a preferred online meeting platform and set a timeframe for the procedure.¹⁸² The WIPO Mediation Rules forbid recording throughout the process, and all discussions and material are kept private.¹⁸³ The mediator must also maintain impartiality in accordance with these guidelines.¹⁸⁴ By uploading the results to the WIPO eADR platform and notifying the parties, the mediator can also electronically transmit the negotiated agreement to the parties at the conclusion of the mediation sessions.¹⁸⁵ Additionally, the results of the

¹⁷⁴ See id.

¹⁷⁵ First introduced in 2005, and regularly upgraded, parties have used WIPO eADR facilities in some 30% of WIPO Arbitration and Expedited Arbitration cases. WIPO eADR allows parties and neutrals to securely submit communications electronically into an online docket. Such submissions may be made in different formats, and may be uploaded into WIPO eADR as stand-alone files or into a hierarchical filing structure. Users receive email alerts of any such submission being made and may access the online docket at any time during the proceedings. For more information, see: < <https://www.wipo.int/amc/en/eadr/wipoeadr/>>. Accessed 12.07.24.

¹⁷⁶ "WIPO eADR", < <https://www.wipo.int/amc/en/eadr/wipoeadr/>>. Accessed 11.07.24.

¹⁷⁷ See id.

¹⁷⁸ See id.

¹⁷⁹ "WIPO Mediation Case Filing Guidelines," n.d., <<https://www.wipo.int/amc/en/mediation/filing/>>. Accessed 11.07.24.

¹⁸⁰ See id.

¹⁸¹ See id.

¹⁸² WIPO Checklist for the Online Conduct of Mediation and Arbitration Proceedings", Choice of Online Platform 3), < <https://www.wipo.int/amc/en/eadr/checklist/index.html> >. Accessed 10.07.24.

¹⁸³ "WIPO Mediation Rules", Article 15, Effective from July 1, 2021, < <https://www.wipo.int/amc/en/mediation/rules/> >. Accessed 10.07.24.

¹⁸⁴ See id, Article 8.

¹⁸⁵ "WIPO eADR", < <https://www.wipo.int/amc/en/eadr/wipoeadr/> >. Accessed 11.07.24.

mediation process can be sent to their registered email addresses.¹⁸⁶ In cases when outcome of the mediation needed for the submission to the court, parties can submit electronically signed agreements as a valid evidence.¹⁸⁷ Thus, through Mediation and Arbitration Center, WIPO offers online mediation service in IP and technology disputes from assisting online request, conducting remote process and delivery of conclusion by electronic means, creating opportunities to online mediation without requiring parties to physically attend.

1.1.3.2.2. Online Mediation Example: eBay's Online Mediation Service

In order to resolve disputes between buyers and sellers on its marketplace, eBay was a pioneer in the use of ODR systems.¹⁸⁸ This is the brief overview of eBay's ODR systems' evolution: In 1999, eBay collaborated with professor Ethan Katsh from the University of Massachusetts and piloted Online Ombuds Center program.¹⁸⁹ Pilot became one of the first examples of ODR in e-commerce, by resolving in two weeks 150 complaints regarding eBay transactions.¹⁹⁰ After Online Ombuds Center success, in early 2000's eBay collaborated with independent ODR provider Squaretrade.¹⁹¹ This partnership provided eBay customers with structured dispute resolution services, making them able to use expert mediation services along with assisted negotiation tools which in result made transaction issues resolve quicker.¹⁹² In 2002, eBay strengthen the platform's security and incorporated payment mechanism by acquiring PayPal.¹⁹³ Later, this led to the development of independent Resolution Center that handles issues pertaining to both eBay transactions and PayPal payments.¹⁹⁴ To the year 2010, eBay' ODR systems was managing over 60 million disputes which strengthen internal ODR capabilities of eBay.¹⁹⁵ Thus, led to transition of eBay from external provider like SquareTrade to in-

¹⁸⁶ See id.

¹⁸⁷ See id.

¹⁸⁸ Thomas Schultz, "Ebay: A Legal System in the Making?" n.d.

¹⁸⁹ For more information, check <https://odr.info/history/?utm_source=chatgpt.com>. Accessed 12.07.24.

¹⁹⁰ Amy J. Schmitz and Colin Rule, "Lessons Learned on Ebay," *University of Missouri*, 2018, 15.

¹⁹¹ "Dispute Resolution Overview," n.d.,

<https://pages.ebay.com/services/buyandsell/disputeres.html?utm_source=chatgpt.com>, Accessed 12.07.24. SquareTrade official website <<https://www.squaretrade.com>>. Accessed 12.07.24.

¹⁹² See id.

¹⁹³ Louis F Del Duca, Colin Rule, and Kathryn Rimpfel, "eBay's De Facto Low Value High Volume Resolution Process: Lessons and Best Practices for ODR Systems Designers," n.d.

¹⁹⁴ Duca, Rule, and Rimpfel.

¹⁹⁵ For more information, check <https://odr.info/history/?utm_source=chatgpt.com>. Accessed 12.07.24.

house Resolution Center.¹⁹⁶ By making this change, eBay was able to keep direct control over dispute resolution mechanisms.¹⁹⁷ Today, eBay's Resolution Center functions as a strong forum for settling conflicts and making impact in wider adoption of ODR methods in e-commerce.¹⁹⁸

eBay's online mediation system helps buyers and sellers resolve conflicts without the need for litigation.¹⁹⁹ System designed to handle issues related to: item not received (INR), item not as described (SNAD), payment issues, refunds and returns complaints.²⁰⁰ The goal is to maintain customer trust by facilitating fast, fair and cost-effective dispute resolution service.²⁰¹ For this purpose, eBay use: eBay Resolution Center²⁰², PayPal Dispute Resolution System²⁰³ for payment-related conflicts and eBay Customer Support Chat²⁰⁴ for manual intervention in complex cases.²⁰⁵ eBay utilizes AI-driven technology to support online mediation, system evaluates situations and makes recommendations for solutions based on prior experience with dispute resolution.²⁰⁶ This is a more detailed description of the procedure: Incoming complaints are evaluated by AI algorithms, which then automatically categorize them into specified groups such as "item not as described" or "item not received."²⁰⁷ The algorithm can suggest fixes such as issuing a refund or requesting a return, based on past data and user behavior trends.²⁰⁸ For instance, the system can benefit the buyer if the seller has a history of similar complaints.²⁰⁹ AI detects fraud or abuse trends such as repeated fake complaints, then disables or flags accounts

¹⁹⁶ Duca, Rule, and Rimpfel, "eBay's De Facto Low Value High Volume Resolution Process: Lessons and Best Practices for ODR Systems Designers"; Schultz, "Ebay: A Legal System in the Making?"

¹⁹⁷ See id.

¹⁹⁸ Schmitz and Rule, "Lessons Learned on eBay."

¹⁹⁹ "New 'Legal' Borders on The Internet: eBay, Inc. V. Bidder's Edge, Inc.," *Vedder, Price, Kaufman & Kammholz*, 2000.

²⁰⁰ eBay Money Back Guarantee Policy, <<https://www.ebay.com/help/policies/member-behaviour-policies/ebay-money-back-guarantee-policy?id=4210>> . Accessed 12.07.24.

²⁰¹ See id.

²⁰² For more information, <[ebay.com/resolution](https://www.ebay.com/resolution)>. Accessed 13.07.24.

²⁰³ For more information, <<https://www.paypal.com/us/webapps/mpp/security/seller-dispute-resolution>>. Accessed 13.07.24.

²⁰⁴ For more information, <<https://www.ebay.com/help/home>>. Accessed 13.07.24.

²⁰⁵ eBay Help-Resolving Issues with Sellers, <<https://www.ebay.com/help/buying/resolving-issues-sellers/resolving-issues-sellers?id=4011>>. Accessed 13.07.24.

²⁰⁶ Example of eBay AI driven system functioning and claim to it, <https://community.ebay.com/t5/Buying/Is-eBay-use-A-I-to-judge-the-disputes-and-make-verdit/td-p/32689314?utm_source=chatgpt.com>. Accessed 13.07.24.

²⁰⁷ See id.

²⁰⁸ eBay Money Back Guarantee Policy, <<https://www.ebay.com/help/policies/member-behaviour-policies/ebay-money-back-guarantee-policy?id=4210>> . Accessed 12.07.24.

²⁰⁹ Ethan Katsh and Orna Rabinovich-Einy, "Digital Justice: Technology and the Internet of Disputes" (Oxford University Press, 2017).

that are abusing the system.²¹⁰ At the same time, without the need for human assistance, AI chatbots in customer support chats assist users in navigating the dispute process, provide answers to often asked questions, and lead parties through the settlement process.²¹¹ If issue were not resolved customer address to the eBay resolution center which is a self-service platform, where disputes can be filed, tracked, and managed.²¹²

The steps in eBay's dispute resolution procedure often go like this: Firstly, a buyer uses eBay customer support chat to get in touch with the seller directly if they have a problem with a purchase.²¹³ Commonly, at this point, most of the disputes are settled between the buyer and seller by finding a consensus on partial compensation, refunds, or swaps.²¹⁴ If communication is unsuccessful, the next step for the buyer is to report the problem to eBay's Resolution Center.²¹⁵ Afterwards, the seller has three to five days to respond to the complaint and offer a solution.²¹⁶ During this period, users can open, monitor and handle cases related to their transactions, guaranteeing transparency.²¹⁷ In cases when direct negotiation between the buyer and seller fails, eBay intervenes as a neutral mediator, evaluating the dispute based on available documentation, including communication records, tracking information, product descriptions, and any additional evidences provided by the parties.²¹⁸ The final decision is made by eBay, which may include approving a refund and return request, or dismissing the case.²¹⁹ If a refund is approved, eBay processes the transaction promptly through PayPal or another payment method chosen by the buyer.²²⁰ The whole mediation process on eBay, is governed by

²¹⁰ Arno R. Lodder and John Zeleznikow, "Developing an Online Dispute Resolution Environment: Dialogue Tools and Negotiation Support Systems in a Three-Step Model," 2007.

²¹¹ Katsh and Rabinovich-Einy, "Digital Justice: Technology and the Internet of Disputes."

²¹² eBay Resolution Center, < <https://www.ebay.com/help/home>>.

²¹³ Resolving issues with the seller, <<https://www.ebay.com/help/buying/resolving-issues-sellers/resolving-issues-sellers?id=4011>>. Accessed 13.07.24.

²¹⁴ See id.

²¹⁵ eBay's Resolution Center, <<https://signin.ebay.com/ws/eBayISAPI.dll?SignIn&ru=https%3A%2F%2Fresolutioncenter.ebay.com%2F&sgfl=sm&smuid=e368c543134e42768d180c9adcbe04ff>>. Accessed 13.07.24.

²¹⁶ eBay Money Back Guarantee Policy, <<https://www.ebay.com/help/policies/member-behaviour-policies/ebay-money-back-guarantee-policy?id=4210>>. Accessed 13.07.24.

²¹⁷ See id.

²¹⁸ Disputes and Seller Protection, <<https://export.ebay.com/en/seller-performance/case-resolution/>>. Accessed 13.07.24.

²¹⁹ eBay Resolution Center: Prevent and Recover eBay Disputes, < <https://www.chargeflow.io/blog/ebay-resolution-center-prevent-ebay-disputes>>. Accessed 14.07.24.

²²⁰ See id.

eBay's User Agreement, which appears after account registration on website.²²¹ Users must click the "Agree" box to accept the Clickwrap²²² agreement, which contains provisions for arbitration, mediation, and dispute resolution, when they register an account.²²³ Users are thought to continuously assent to updates in their agreement while using the eBay site.²²⁴ Additionally, user agreements may contain regionally specific provisions, such as a mandatory arbitration clause or a waiver of class action lawsuits.²²⁵ The online mediation system offered by eBay is a methodical, technologically advanced dispute resolution procedure created to safeguard both consumers and sellers.²²⁶ It guarantees that users may conduct transactions with confidence, encourages settlements, and reduces the need for litigation.²²⁷

1.1.3.2.3. Online Mediation Example: ICDR Online Mediation Service

The International Centre for Dispute Resolution (ICDR)²²⁸ is the component of the American Arbitration Association (AAA)²²⁹, one of the largest ADR organizations in the world. The ICDR provides dispute resolution services in places selected by the parties all around the world.²³⁰ Any language selected by the parties may be used for ICDR arbitrations and mediations.²³¹ The "ICDR International Dispute Resolution Procedure, International Mediation Rules," which include 19 provisions and permit mediation to be

²²¹ eBay's User Agreement, <<https://www.ebay.com/help/policies/member-behaviour-policies/user-agreement?id=4259>>. Accessed 14.07.24.

²²² A *clickwrap agreement* (or click-through agreement) is a type of digital contract in which a user must affirmatively consent to the terms and conditions of a service or software by clicking a button or checkbox that states something like "I agree" or "Accept." The key characteristic of a clickwrap agreement is that users are required to act to manifest their consent before proceeding to use the service. These agreements are commonly used for: Website sign-ups, mobile apps, software installations and e-commerce transactions. Robert A. Hillman, Jeffrey J. Rachlinski, "Standard-Form Contracting in the Electronic Age", Cornell Law School, 24.10.2001.

²²³ eBay's User Agreement, <<https://www.ebay.com/help/policies/member-behaviour-policies/user-agreement?id=4259>>. Accessed 14.07.24.

²²⁴ See id.

²²⁵ Important User Agreement Update, <<https://community.ebay.com/t5/Announcements/Important-User-Agreement-Update/ba-p/35040582>>. Accessed 14.07.24.

²²⁶ Schultz, "Ebay: A Legal System in the Making?"; "New 'Legal' Borders on The Internet: eBay, Inc. V. Bidder's Edge, Inc."; Duca, Rule, and Rimpfel, "eBay's De Facto Low Value High Volume Resolution Process: Lessons and Best Practices for ODR Systems Designers."

²²⁷ See id.

²²⁸ The International Centre for Dispute Resolution, <<https://www.icdr.org>>. Accessed 14.07.24.

²²⁹ American Arbitration Association (AAA), <<https://www.adr.org/>>. Accessed 14.07.24.

²³⁰ About the American Arbitration Association (AAA) and the International Centre for Dispute Resolution (ICDR), <<https://www.icdr.org/about>>. Accessed 14.07.24.

²³¹ See id.

conducted entirely or in part online, govern mediation procedure.²³² The procedure is voluntary, private and not legally binding.²³³ Through online negotiations led by impartial mediator, the approach facilitates mediation in arbitration procedures as well as mediation on its own.²³⁴

The process of ICDR online mediation, is as follow: By submitting a request to the regional offices of the ICDR, any party to the dispute may start the mediation procedure.²³⁵ Request can be sent by fax, mail, courier and email.²³⁶ Also, request can be submitted via ICDR's online portal AAA WebFile.²³⁷ AAA WebFile is the digital case management platform, from submitting a claim to handling correspondence and documents, it enables mediators, and parties to manage every stage of mediation or arbitration proceedings online.²³⁸ If the parties to the dispute have previously agreed in the contract to resolve the dispute through mediation, then the party initiating the dispute must notify the opposing party about the start of the process, and also provide all necessary information, contacts and a brief summary of the nature of the dispute.²³⁹ A party may seek notification of the other party by the ICDR if there was no prior agreement between the parties to undertake mediation.²⁴⁰ The ICDR will then get in touch with the other party and attempt to get approval for the mediation process.²⁴¹ Afterwards, mediator who is acceptable to both parties will be appointed from ICDR's international panel.²⁴² Additionally, necessary are the mediator's objectivity, the process's secrecy, and the

²³²ICDR International Mediation Rules, <https://www.icdr.org/sites/default/files/document_repository/ICDR_Rules_1.pdf?utm_source=icdr-website&utm_medium=rules-page&utm_campaign=rules-intl-update-1mar>. Accessed 14.07.24.

²³³ About the American Arbitration Association (AAA) and the International Centre for Dispute Resolution (ICDR), <<https://www.icdr.org/about>>. Accessed 15.07.24.

²³⁴ICDR International Mediation Rules, <https://www.icdr.org/sites/default/files/document_repository/ICDR_Rules_1.pdf?utm_source=icdr-website&utm_medium=rules-page&utm_campaign=rules-intl-update-1mar>. Accessed 15.07.24.

²³⁵ICDR International Mediation Rules, Article 2; <https://www.icdr.org/sites/default/files/document_repository/ICDR_Rules_1.pdf?utm_source=icdr-website&utm_medium=rules-page&utm_campaign=rules-intl-update-1mar>.

²³⁶ Email at casefiling@adr.org.

²³⁷ AAA WebFile, <www.icdr.org>. Accessed 16.07.24.

²³⁸ AAA WebFile system provides the following key functions: Online filing of mediation/arbitration requests, secure document management, real-time status tracking, communication tools and electronic invoicing & payments. The portal is accessible 24/7 from anywhere in the world. It is especially beneficial for international disputes managed by the ICDR.

²³⁹ ICDR International Mediation Rules, Article 2, Part 2; <https://www.icdr.org/sites/default/files/document_repository/ICDR_Rules_1.pdf?utm_source=icdr-website&utm_medium=rules-page&utm_campaign=rules-intl-update-1mar>. Accessed 14.07.24.

²⁴⁰ ICDR International Mediation Rules, Article 2, Part 3.

²⁴¹ See id.

²⁴² AAA WebFile User Guide, <<https://www.adr.org/aaawebfile>>. Accessed 15.07.24.

confidentiality of any papers related to it.²⁴³ Parties use the safe AAA WebFile system to electronically submit statements and supporting documentation.²⁴⁴ Third parties cannot be invited to the mediation process or take part in it without the agreement of both parties.²⁴⁵ Recording of mediation proceedings is also not permitted.²⁴⁶ Online sessions conducted using Zoom²⁴⁷, WebEx²⁴⁸ and Microsoft Teams.²⁴⁹ A number of factors might cause mediation to end, including the parties coming to an agreement, in which case they can ask the ICDR to grant them confirmation.²⁵⁰ Along with the consent of the parties, mediator may draft a settlement online and sign it electronically.²⁵¹ If no party gets in touch with the mediator for 21 days following the mediation procedure, the mediation may also be deemed finished.²⁵² Both the mediator's formal rejection to continue the case and any party's unwillingness to participate in the mediation process can end it.²⁵³ To sum up, ICDR Online mediation service is efficient for international disputes, secure for digital communication and document flow, and has wide range of expert mediators.²⁵⁴

1.1.4. E- Arbitration

1.1.4.1. Traditional Arbitration Procedure

Through the private dispute resolution procedure of arbitration, parties consent to have their disagreement heard by an impartial third party, the arbitrator, who then issues a

²⁴³ ICDR International Mediation Rules, Article 5, <https://www.icdr.org/sites/default/files/document_repository/ICDR_Rules_1.pdf?utm_source=icdr-website&utm_medium=rules-page&utm_campaign=rules-intl-update-1mar>. Accessed 15.07.24.

²⁴⁴ Also, there is AAA WebFile App on AppStore, < <https://apps.apple.com/kz/app/aaa-webfile/id1583990143> >. Accessed 16.07.24.

²⁴⁵ ICDR International Mediation Rules, Article 11; <https://www.icdr.org/sites/default/files/document_repository/ICDR_Rules_1.pdf?utm_source=icdr-website&utm_medium=rules-page&utm_campaign=rules-intl-update-1mar>. Accessed 14.07.24.

²⁴⁶ ICDR International Mediation Rules, Article 13.

²⁴⁷ Zoom, <<https://zoom.us/ru/signin#/login>>. Accessed 15.07.24.

²⁴⁸ WebEx, <<https://www.webex.com/>>. Accessed 15.07.24.

²⁴⁹ Microsoft Teams, <<https://www.microsoft.com/ru-ru/microsoft-teams/log-in?market=ru>>. Accessed 16.07.24.

²⁵⁰ ICDR International Mediation Rules, Article 14; <https://www.icdr.org/sites/default/files/document_repository/ICDR_Rules_1.pdf?utm_source=icdr-website&utm_medium=rules-page&utm_campaign=rules-intl-update-1mar>. Accessed 17.07.24.

²⁵¹ AAA WebFile User Guide, < <https://www.adr.org/aaawebfile> >. Accessed 15.07.24. ICDR International Mediation Rules, <https://www.icdr.org/sites/default/files/document_repository/ICDR_Rules_1.pdf?utm_source=icdr-website&utm_medium=rules-page&utm_campaign=rules-intl-update-1mar>. Accessed 17.07.24.

²⁵² ICDR International Mediation Rules, Article 14.

²⁵³ See id.

²⁵⁴ About the American Arbitration Association (AAA) and the International Centre for Dispute Resolution (ICDR), < <https://www.icdr.org/about> >. Accessed 14.07.24.

legally enforceable ruling known as an arbitral award.²⁵⁵ In contrast to court litigation, arbitration is usually private, adaptable, and voluntary, and the procedure may be customized to meet the interests of the parties.²⁵⁶ To overview key features of traditional arbitration: first, opportunity to choose arbitrator and his neutrality.²⁵⁷ Then, the rules, arbitration location, language, number of arbitrators, and processes are all can be chosen by the parties.²⁵⁸ Timelines and processes can be altered, and arbitration hearings and verdicts are often private and less formal than court proceedings.²⁵⁹

The New York Convention²⁶⁰ makes arbitral awards enforceable and binding.²⁶¹ The foundation of international arbitration law is the New York Convention (1958)²⁶², often

²⁵⁵ Chitranjali Negi, "Concept Online Dispute Resolution in India," *SSRN Electronic Journal*, 2015, <https://doi.org/10.2139/ssrn.2596267>; Mark Batson Baril and Donald Dickey, "MED-ARB: The Best of Both Worlds or Just A Limited ADR Option?," n.d.; Aydemir and Kaya, "Contemporary Issues of Online Arbitration and Arbitration in the Age of Covid-19"; Bobette Wolski, "ARB-MED-ARB (AND MSAs): A Whole Which Is Less Than, Not Greater Than, The Sum of Its Parts?," n.d.; L. Ury, M. Brett, and B. Goldberg, "Getting Disputes Resolved"; Schultz, "Online Dispute Resolution: An Overview and Selected Issues"; Armağan Ebru Bozkurt Yüksel, "Online International Arbitration," *Ankara Law Review*, 2007; "Arbitration in the Age of Covid-19: Contemporary Issues of Online Arbitration," n.d.; Seda Özmumcu, "Online Arbitration and its Applications in the Context of Online Dispute Resolutions in the World and Our Country," *İstanbul Hukuk Mecmuası*, October 26, 2020, 431–54, <https://doi.org/10.26650/mecmua.2020.78.2.0007>.

²⁵⁶ Negi, "Concept Online Dispute Resolution in India," 4.

²⁵⁷ UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006; <<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/mal-digest-2012-e.pdf>>.

Accessed 16.07.24.

²⁵⁸ Aydemir and Kaya, "Contemporary Issues of Online Arbitration and Arbitration in the Age of Covid-19"; Lavi, "Three Is Not a Crowd: Online Mediation-Arbitration in Business to Consumer Internet Disputes"; Schultz, "Online Dispute Resolution: An Overview and Selected Issues"; Hong-lin Yu and Motassem Nasir, "Can Online Arbitration Exist Within the Traditional Arbitration Framework?," *Journal of International Arbitration*, 2003; Serkan Kaya, "Access to Justice for Turkish Consumers in the Digital Age: The Need for Enhancing Consumer Dispute Resolution Through Online Dispute Resolution," n.d.; Wolski, "ARB-MED-ARB (AND MSAs): A Whole Which Is Less Than, Not Greater Than, The Sum of Its Parts?"; "Arbitration in the Age of Covid-19: Contemporary Issues of Online Arbitration"; Kadioğlu, "Bricks and Clicks: Online Dispute Resolution Mechanisms and Implementation of Online Arbitration in Turkey for Cross-Border Business to Consumer E-Commerce Disputes"; Özmumcu, "Online Arbitration and its Applications in the Context of Online Dispute Resolutions in the World and Our Country"; Chinthaka Liyanage, "Online Arbitration Compared To Offline Arbitration and The Reception of Online Consumer Arbitration: An Overview of The Literature," *SriLanka Journal of International Law*, 2010; Amro Ihab, "Online Arbitration in Theory and in Practice: A Comparative Study in Common Law and Civil Law Countries," 2019.

²⁵⁹ Yu and Nasir, "Can Online Arbitration Exist Within the Traditional Arbitration Framework?," 1.

²⁶⁰ The New York Convention, <<https://www.newyorkconvention.org/text>>. Accessed 16.07.24.

²⁶¹ See id.

²⁶² The following are some of the New York Convention's main articles: Foreign and non-domestic arbitral awards are recognized and enforced under Article I. Reciprocity reservations allow governments to apply the Convention solely to awards made by other signatory nations. Article III: In compliance with their respective procedural rules, contracting nations are required to acknowledge and uphold arbitral rulings. Article IV: Parties requesting enforcement must submit the following documents: the written

known as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.²⁶³ It gives international arbitration rulings worldwide legal authority by guaranteeing that arbitral awards rendered in one contractual state are accepted and enforceable in other contracting nations.²⁶⁴ Primary goals of convention, to encourage consistent execution of arbitral rulings; restrict the grounds for denial of enforcement; and uphold the independence and finality of arbitration as a means of resolving disputes.²⁶⁵ One of the most extensively ratified treaties in international private law, the Convention has more than 170 contracting nations as of 2024.²⁶⁶ Türkiye has signed the Convention on July 30, 1991²⁶⁷ and Kazakhstan on October 20, 1995.²⁶⁸ Both countries made two standard reservations: they apply convention only to arbitral awards made in the territory of another contracting state; and only to disputes considered commercial under national law.²⁶⁹ For companies and people utilizing cross-border arbitration, it offers assurance.²⁷⁰ Effective enforcement of arbitral rulings, including those resulting from online arbitration platforms, is made possible in large part by the New York Convention.²⁷¹

arbitration agreement; the original or certified copy of the arbitral ruling; and any necessary translations. Article V lists a few reasons why enforcement may be denied, such as: Invalidity or incapacity of the arbitration agreement; insufficient notice or opportunity to present a case; award outside the purview of arbitration; procedural irregularities; award not yet binding or set aside; and public policy of the enforcing state. <<https://www.newyorkconvention.org/text>>. Accessed 18.07.24.

²⁶³ See id.

²⁶⁴ The Convention covers: Non-domestic awards, even if they are made in the same nation but contain international components (such as foreign law or parties); Foreign arbitral awards, or awards rendered in a country other than the one where enforcement is sought. <<https://www.newyorkconvention.org/text>>. Accessed 17.07.24.

²⁶⁵ The New York Convention, <<https://www.newyorkconvention.org/text>>. Accessed 16.07.24. G.B. Born, *International Commercial Arbitration*, 3rd ed. (Kluwer Law International, 2021).

²⁶⁶ United Nations Commission on International Trade Law (UNCITRAL), Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), <<https://www.newyorkconvention.org/countries>>. Accessed 21.06.24.

²⁶⁷ The New York Convention Guide, <https://newyorkconvention1958.org/index.php?lvl=cmspage&pageid=11&menu=852&opac_view=-1>. Accessed 20.07.24. New York Convention, List of Contracting States and Declarations, <<https://www.newyorkconvention.org/list+of+contracting+states>>. Accessed 21.06.24.

²⁶⁸ New York Convention, List of Contracting States and Declarations, <<https://www.newyorkconvention.org/list+of+contracting+states>>. Accessed 21.06.24.

²⁶⁹ See id.

²⁷⁰ Alan Redfern, *Law and Practice of International Commercial Arbitration* (Sweet & Maxwell, 2004).

²⁷¹ The New York Convention, <<https://www.newyorkconvention.org/text>>. Accessed 18.07.24.

The following steps are frequently included in the traditional arbitration²⁷² process: Arbitration agreement, either agreed upon when a disagreement occurs or as part of a contract.²⁷³ The arbitration process²⁷⁴ then begins when one party notifies the other party or the arbitral institution of the arbitration.²⁷⁵ Then, appointed arbitral tribunal, which typically consists of one or three arbitrators appointed by an organization or selected by the parties.²⁷⁶ Next step, the preliminary hearing, where the scheduling for the hearing, document submission, and procedural timeframe are discussed.²⁷⁷ Afterwards, each party

²⁷² Types of Arbitration: When parties choose not binding decision it motivates them to resolve dispute before litigations, since after arbitration procedure they already aware of probable decisions in the court. L. Ury, M. Brett, and B. Goldberg, "Getting Disputes Resolved," 53. This type of arbitration also called as Advisory Arbitration. When it comes to the binding arbitration, it's nature usually contractual and agreement between parties serve as guarantee of arbitration enforceability. Nature of this kind of arbitration may be not beneficial for unequal players in the process, like B2C disputes since one party limited by bargaining power. Lipsky, David B, Rocco M. Scanza, Mary Newhart, and Richard D. Fincher. "Whose Job is it Anyway? Preparing Arbitrators for Consumer Dispute Resolution Programs.", (2008), 12. The third alternative, arbitral compromise, can be initiated in response to disputes; yet, it is not commonly used as it is difficult to reach consensus when disagreements already exist. Negi, "Concept Online Dispute Resolution in India," 5. However, pre-dispute arbitrations still remains in demand rather than post-dispute arbitration. Lavi, "Three Is Not a Crowd: Online Mediation-Arbitration in Business to Consumer Internet Disputes," 900. Another one, final offer arbitration, this type of process forces arbitrator to choose one of the suggested options of the sides as the final conclusion, this fact highly motivates parties to make their offers objectively better than opposite party's. L. Ury, M. Brett, and B. Goldberg, "Getting Disputes Resolved," 57.

²⁷³ LCIA Arbitration Rules 2020, < https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx>. Accessed 21.07.24.

²⁷⁴ Also, there are external influencing factors due to them, the need for e-arbitration may differ based on the cultures of the various nations. Daniel Rainey, "ODR and Culture, in Online Dispute Resolution: Theory and Practice: A Treatise on Technology and Dispute Resolution". For example, Asian nations tend to be more collectivist than individualistic nations like the US. Tai-Heng Cheng, "Reflections on Culture in Med-Arb," n.d., 422. Nevertheless, dividing parties to this kind of cultural attachment quiet challenging since members of the international dispute may own some other international, cultural experience which makes this assumption fundamentally incorrect.²⁷⁴ There is also rational choice theory, which states that people may conclude rational decision if they will receive rational and correct information. For example, see Gary S. Becker, "The Economic Approach to Human Behaviour", (1976). However, many have disputed this theory, claims that most people, without even noticing it, are frequently biased in their decision-making. Richard H. Thaler, Cass R. Sunstein, "Nudge: Improving Decisions About Health, Wealth, and Happiness", (2009); Avinash K. Dixit, Barry Nalebuff, "The Art of Strategy: A Game Theorist's Guide to Success in Business and Life", (2008). Regarding to this, came up a notion concerning how unconscious bias may impact arbitral awards. Matthew Gearing, "A Judge in His Own Cause? Actual or Unconscious Bias of Arbitrators", 46-51. As a consequence, experts from various cultures frequently bring distinct default viewpoints and assumptions, conscious or unconscious, so this can affect their work. Paul H. Cohen, "Bytes and Prejudice: Technology as A Means to Address Unconscious Bias in Arbitrators," n.d., 59.

²⁷⁵ 2021 Arbitration Rules, < <https://iccwbo.org/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/>>. Accessed 22.07.24.

²⁷⁶ UNCITRAL Arbitration Rules, < <https://uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration>>. Accessed 22.07.24.

²⁷⁷ Gökem Çakır and Erdiç Dalar, "Arbitration via Internet Environment 'Online Arbitration,'" Summer 2018; Jeffrey H Dasteel, "Consumer Click Arbitration: A Review of Online Consumer Arbitration Agreements," n.d.

submits their claims, defenses, and supporting documentation.²⁷⁸ Further, starts legal arguments, expert examinations, witness testimony, and oral hearings.²⁷⁹ Following deliberation, the tribunal renders a final written award, often within a predetermined time frame.²⁸⁰ Final arbitral award under the New York Convention, can be enforced in over 170 countries.²⁸¹

1.1.4.2. Online Arbitration Procedure

Online arbitration is a legally binding dispute resolution procedure that can be completed entirely or in part online.²⁸² After analyzing the parties' electronic submissions, an impartial third-party arbitrator issues binding award.²⁸³ The standard procedure for online arbitration includes: Initiation of the proceedings, it begins with the submission of an arbitration request by email or a platform and electronic payment of fees.²⁸⁴ Arbitrator to the case can be appointed via online platforms or regarding institutional rules.²⁸⁵ The online exchange of contributions, including claims, answers, and supporting documentation, comes next.²⁸⁶ Hearings are then held, by online communication means, like Zoom,²⁸⁷ Microsoft Teams²⁸⁸, Cisco Webex.²⁸⁹ The arbitrator then electronically issues the award after reviewing the digital record.²⁹⁰ If formal requirements are fulfilled,

²⁷⁸ Mohamed S. Abdel Wahab, "ODR and E-Arbitration," n.d.

²⁷⁹ Goldberg et al., *Dispute Resolution Negotiation, Mediation, Arbitration, and Other Processes*; Ihab, "Online Arbitration in Theory and in Practice: A Comparative Study in Common Law and Civil Law Countries"; Gökçe Kurtulan, "The Arbitrability of Consumer Disputes Under Turkish Law," 2017.

²⁸⁰ See id.

²⁸¹ New York Convention, List of Contracting States and Declarations, <<https://www.newyorkconvention.org/list+of+contracting+states>>. Accessed 21.06.24.

²⁸² Kaufmann-Kohler, "Online Dispute Resolution and Its Significance for International Commercial Arbitration."

²⁸³ Schultz, "Online Dispute Resolution: An Overview and Selected Issues," 6.

²⁸⁴ Aydemir and Kaya, "Contemporary Issues of Online Arbitration and Arbitration in the Age of Covid-19"; Ihab, "Online Arbitration in Theory and in Practice: A Comparative Study in Common Law and Civil Law Countries"; Ahmet Dülger, "Tahkim Duruşmalarının Online Yapılması: İstac ve Abu Dabi Tahkim Merkezi Kuralları İncelemesi," n.d.

²⁸⁵ UNCITRAL Arbitration Rules, <<https://uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration>>. Accessed 22.07.24. LCIA Arbitration Rules 2020, <https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx>. Accessed 21.07.24. 2021 Arbitration Rules, <<https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/>>. Accessed 22.07.24.

²⁸⁶ See id.

²⁸⁷ Zoom, <<https://zoom.us/ju/signin#/login>>. Accessed 23.07.24.

²⁸⁸ Microsoft Teams, <<https://www.microsoft.com/ru-ru/microsoft-teams/log-in?market=ru>>. Accessed 22.07.24.

²⁸⁹ WebEx, <<https://www.webex.com/>>. Accessed 25.07.24.

²⁹⁰ See id.; Lavi, "Three Is Not a Crowd: Online Mediation-Arbitration in Business to Consumer Internet Disputes," 898.

an online award is enforceable under the New York Convention (1958).²⁹¹ Further below, examples of online arbitration and platforms providing it, will be included in this research.

1.1.4.2.1. Online Arbitration Example: ICDR Online Arbitration Service

As it is stated in section 1.1.3.2.3. of this thesis, one of the forerunners in international dispute resolution, the American Arbitration Association²⁹², is the parent organization of ICDR. The ICDR has greatly increased the scope of its online arbitration infrastructure in response to the growing need for distant dispute resolution, particularly in the wake of COVID-19.²⁹³ From filing to award delivery, it started to provide completely digital arbitration services.²⁹⁴

Online arbitration process, starts with filling a request through AAA WebFile²⁹⁵ system or sending email to the ICDR.²⁹⁶ Then the claimant must issue a notice of arbitration to the respondent and the ICDR administrator in order for arbitration to begin.²⁹⁷ Once the administrator receives notification and the fees are paid online, the arbitration is considered to have officially commenced.²⁹⁸ Notice to the administrator must consist of the parties' and their representatives' contact details, the arbitration clause, citation of the applicable contract, an explanation of the main facts and the dispute and the requested remedy.²⁹⁹ Also, optional to include suggestions on the arbitrators, the location and language of the arbitration.³⁰⁰ The other party has 30 days from the date of notification to respond.³⁰¹ The arbitration will proceed notwithstanding the respondent's failure to

²⁹¹ The New York Convention, <<https://www.newyorkconvention.org/text>>. Accessed 18.07.24.

²⁹² American Arbitration Association, <<https://www.adr.org/Support>>. Accessed 19.07.24.

²⁹³ ICDR: Who We Are, <https://www.icdr.org/about_icdr>. Accessed 15.07.24.

²⁹⁴ See id.

²⁹⁵ AAA WebFile, <www.icdr.org>. Accessed 16.07.24.

²⁹⁶ ICDR International Arbitration Rules 1 March 2021, <https://www.icdr.org/sites/default/files/document_repository/ICDR_Rules_1.pdf?utm_source=icdr-website&utm_medium=rules-page&utm_campaign=rules-intl-update-1mar>. Accessed 28.07.24.

²⁹⁷ ICDR International Arbitration Rules, Article 2(1).

²⁹⁸ See id, Article 2(2).

²⁹⁹ See id, Article 2(3).

³⁰⁰ ICDR International Arbitration Rules, Article 2(3).

³⁰¹ ICDR International Arbitration Rules 1 March 2021, Article 3(4); <https://www.icdr.org/sites/default/files/document_repository/ICDR_Rules_1.pdf?utm_source=icdr-website&utm_medium=rules-page&utm_campaign=rules-intl-update-1mar>. Accessed 28.07.24.

submit an answer.³⁰² If necessary, the administrator may extend this time limit.³⁰³ Before establishment of arbitral tribunal, the administrator may initiate conference to discuss agreement moments, choosing arbitrator and perspectives of the procedure.³⁰⁴ Also, by the request of one party, an *emergency arbitrator* may be appointed within a day.³⁰⁵ An emergency arbitrator can award any protective measures, but once arbitral tribunal established, the emergency arbitrator will no longer have authority.³⁰⁶ Additionally, there is an expedited arbitration process that enables disputes up to \$500,000 to be settled more rapidly and before a single arbiter.³⁰⁷ If there wasn't agreement in advance between the parties regarding the number of arbitrators, then one arbitrator will be chosen.³⁰⁸ Any method for selecting the arbitrators may be agreed upon by the parties, however the administrator may choose from the ICDR list if the parties cannot agree on an appointment procedure.³⁰⁹ Within 45 days of the arbitration starting, the arbiter must be chosen.³¹⁰ The arbitral tribunal has the authority to issue interim or partial awards in addition to its final decision, and the award may be electronically signed and delivered.³¹¹ In summary, the ICDR offers a thorough and cutting-edge framework for online arbitration in international conflicts.³¹² The ICDR guarantees efficiency through its safe online platform, such as AAA WebFile.³¹³ The organized procedure, from filing to award, shows how traditional arbitration principles can be successfully applied to the digital world, making ICDR a prime example of contemporary dispute resolution in action.³¹⁴

³⁰² Katsh and Rabinovich-Einy, "Digital Justice: Technology and the Internet of Disputes."

³⁰³ ICDR International Arbitration Rules 1 March 2021, Article 3(4); <https://www.icdr.org/sites/default/files/document_repository/ICDR_Rules_1.pdf?utm_source=icdr-website&utm_medium=rules-page&utm_campaign=rules-intl-update-1mar>. Accessed 28.07.24.

³⁰⁴ Gabrielle Kaufmann-Kohler et al., "Online Dispute Resolution: The State of the Art and the Issues," *University of Geneva*, December 2001; Kaufmann-Kohler, "Online Dispute Resolution and Its Significance for International Commercial Arbitration." ICDR International Arbitration Rules 1 March 2021, Article 4; <https://www.icdr.org/sites/default/files/document_repository/ICDR_Rules_1.pdf?utm_source=icdr-website&utm_medium=rules-page&utm_campaign=rules-intl-update-1mar>. Accessed 28.07.24.

³⁰⁵ ICDR International Arbitration Rules, Article 7.

³⁰⁶ See id.

³⁰⁷ ICDR International Arbitration Rules 1 March 2021, Article 1(4); <https://www.icdr.org/sites/default/files/document_repository/ICDR_Rules_1.pdf?utm_source=icdr-website&utm_medium=rules-page&utm_campaign=rules-intl-update-1mar>. Accessed 12.05.24.

³⁰⁸ ICDR International Arbitration Rules, Article 12.

³⁰⁹ See id, Article 13.

³¹⁰ See id, Article 13(3).

³¹¹ ICDR International Arbitration Rules 1 March 2021, Article 32; <https://www.icdr.org/sites/default/files/document_repository/ICDR_Rules_1.pdf?utm_source=icdr-website&utm_medium=rules-page&utm_campaign=rules-intl-update-1mar>. Accessed 12.05.24.

³¹² Katsh and Rabinovich-Einy, "Digital Justice: Technology and the Internet of Disputes."

³¹³ AAA WebFile, <www.icdr.org>. Accessed 16.07.24.

³¹⁴ ICDR: Who We Are, <https://www.icdr.org/about_icdr>. Accessed 15.07.24.

1.1.4.2.2. Online Arbitration Example: eBRAM Online Arbitration Service

Electronic Business-Related Arbitration and Mediation (eBRAM) is a non-profit, non-governmental platform that was established in Hong Kong in 2018 to facilitate online contract administration, arbitration, and mediation.³¹⁵ The Hong Kong government backs eBRAM, which is a component of the region's plan to develop into a global center for technology and law.³¹⁶ The platform's unique feature is its active use of cloud computing and AI to streamline workflows and translation, providing automatic translation into Chinese, English, and other languages.³¹⁷ eBRAM makes use of contemporary IT technologies, such as digital document filing and electronic signatures, secure video conferencing for hearings and discussions, and data encryption and privacy (GDPR compliant³¹⁸).³¹⁹

Using the eBRAM platform, online arbitration is carried out as follows: The application for arbitration must be submitted through the secure online platform eBram, and these disputes will then be resolved in accordance with the eBRAM Arbitration Rules 2021.³²⁰ The notice of arbitration shall include information mentioned in the Article 3(3.4) of Arbitration Rules.³²¹ Next step, an electronic notice is issued to the defendant, who has 30 days from the date of notice to provide a response to the application.³²² The dates of response and reception are automatically recorded by the platform.³²³ After receiving the notification, the parties have 30 days to choose an arbitrator; if they don't, eBRAM will appoint one from the list of arbitrators who have been approved by eBRAM.³²⁴ Depending on the conditions, either one or three arbitrators may be chosen.³²⁵ Unless it

³¹⁵ eBRAM International Online Dispute Resolution Centre, About Us, <<https://www.ebram.org/overview.html>>. Accessed 09.04.24.

³¹⁶ Department of Justice, The Government of the Hong Kong Special Administrative Region; "Online Dispute Resolution (ODR) and LawTech," n.d., <https://hklegalcloud.ebram.org/>; <<https://hklegalcloud.ebram.org/>>. Accessed 08.04.24.

³¹⁷ eBRAM Online Arbitration, <https://www.ebram.org/online_arbitration.html>. Accessed 08.04.24.

³¹⁸ Following the General Data Protection Regulation (GDPR), a set of guidelines created by the European Union (EU) to safeguard people's privacy and personal information, is known as GDPR compliance.

³¹⁹ eBRAM Online Arbitration, <https://www.ebram.org/online_arbitration.html>. Accessed 08.04.24.

³²⁰ eBRAM Arbitration Rules 2021, Article 3, <https://www.ebram.org/arbitration_rules/>. Accessed 10.05.24.

³²¹ eBRAM Arbitration Rules 2021, Article 3(3.4).

³²² eBRAM Arbitration Rules 2021, Article 4.

³²³ eBRAM Online Arbitration, <https://www.ebram.org/online_arbitration.html>. Accessed 08.04.24.

³²⁴ eBRAM Panel of Arbitrators; <<https://www.ebram.org/panel/arbitrators/>>. Accessed 09.05.24.

³²⁵ See id.

is agreed otherwise, the language of the procedure must be Chinese or English.³²⁶ Parties use the system to post screenshots, videos, documents, and other types of evidence.³²⁷ Timestamps, security, and automated sorting are all supported by the platform.³²⁸ eBRAM Virtual Hearing Rooms, can be used to conduct online hearings, and the hearings may be recorded.³²⁹ A specifically created safe online setting for real-time video hearings between parties, is known as an eBRAM Virtual Hearing Room.³³⁰ They are not external tools like Microsoft Teams or Zoom.³³¹ They are a component of eBRAM's safe online platform³³², which was created specifically for resolving legal disputes. A party will be considered to have declined to attend the online hearing in cases of non-appearance, unless there is a force majeure occurrence.³³³ An electronic arbitration award is issued by the arbiter.³³⁴ After being signed, the award is posted on the website, and is available for the parties to download.³³⁵

1.1.4.2.3. Online Arbitration Example: ICC Online Arbitration Service

The International Chamber of Commerce (ICC), has gradually embraced digital innovation in international arbitration.³³⁶ ICC offers a strong online arbitration framework with digital case administration and remote procedural alternatives that fully enable virtual procedures, even if it does not run a comprehensive in-house video hearing infrastructure.³³⁷ The ICC introduced ICC Case Connect, a safe cloud-based case management tool, in 2022.³³⁸ Opus 2-powered ICC Case Connect facilitates easy online

³²⁶ eBRAM Arbitration Rules 2021, Article 19, <https://www.ebram.org/arbitration_rules/>. Accessed 11.05.24.

³²⁷ eBRAM Online Arbitration, <https://www.ebram.org/online_arbitration.html>. Accessed 08.04.24.

³²⁸ eBRAM International Online Dispute Resolution Centre, About Us, <<https://www.ebram.org/overview.html>>. Accessed 09.04.24.

³²⁹ Hearing Support Services, <https://www.ebram.org/hearing_support/>. Accessed 07.05.24.

³³⁰ Video Conferencing System, <<https://www.ebram.org/lawtech/vc/>>. Accessed 09.06.24.

³³¹ See id.

³³² Technical features include end-to-end encryption, role-based participant separation, waiting areas and private meeting spaces for private conversations, document and screen sharing, and the ability to record sessions. Video Conferencing System, <<https://www.ebram.org/lawtech/vc/>>. Accessed 09.06.24.

³³³ eBRAM Arbitration Rules 2021, Article 28, <https://www.ebram.org/arbitration_rules/>. Accessed 12.05.24.

³³⁴ eBRAM Arbitration Rules 2021, Article 34.

³³⁵ See id.

³³⁶ About ICC, <<https://iccwbo.org/about-icc-2/>>. Accessed 21.05.24.

³³⁷ See id.

³³⁸ 'ICC launches ICC Case Connect: Secure online case management made easy', 12.10.22.; <<https://iccwbo.org/news-publications/news/icc-launches-icc-case-connect-secure-online-case-management-made-easy/>>. Accessed 20.05.24.

case administration to improve arbitration efficiency and teamwork.³³⁹ Centralized tracking of procedural orders, schedules, and deadlines; electronic submission of all case documents; real-time communication between parties; secure storage and document access for all participants throughout the arbitration are all made possible by this requirement for all new ICC arbitrations.³⁴⁰ By replacing email correspondence, this technology lowers security concerns and delays while facilitating arbitration for parties located in various countries.³⁴¹

Conducting Online Hearings on ICC online arbitration process, starts with the submitting request³⁴² by the claimant through ICC Case Connect platform.³⁴³ For cases registered from the October 2022 it is mandatory to communicate only via ICC Case Connect Platform, which was launched in 2022 as a cloud-based case management service.³⁴⁴ Answer to the request must upload to the platform the respondent within 30 days after receiving of request.³⁴⁵ Article 5 of ICC Arbitration rules states necessary information list that must contain answer to the request by the respondent.³⁴⁶ With the consent of the parties or by an appointment by the ICC, an arbitral tribunal may be established with one or three arbitrators.³⁴⁷ After the establishment of arbitration tribunal, the platform is utilized for the introduction of tribunal to the parties.³⁴⁸ A case management meeting is then held to determine the schedule, communication format, and norms of exchange.³⁴⁹ Even though, all pleadings are submitted via ICC Case Connect, it does not include its

³³⁹ “File your Request for Arbitration, Do I have to use ICC Case Connect?”; < https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/file-a-request/?utm_source=chatgpt.com#block-accordion-4>. Accessed 25.06.24.

³⁴⁰ See id.

³⁴¹ See id.

³⁴² Request should contain information regarding Article 4(3) of ICC Arbitration rules 2021; <<https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/#block-accordion-26>>. Accessed 25.05.24.

³⁴³ ICC Case Connect platform entrance, <<https://icc-efiling.on.opus2.com>>. Accessed 24.05.24.

³⁴⁴ “File your Request for Arbitration, Do I have to use ICC Case Connect?”; < https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/file-a-request/?utm_source=chatgpt.com#block-accordion-4>. Accessed 25.06.24.

³⁴⁵ ICC Arbitration Rules 2021, Article 5; <<https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/#block-accordion-26>>. Accessed 14.05.24.

³⁴⁶ See id.

³⁴⁷ ICC Arbitration Rules 2021, Article 12; <<https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/#block-accordion-26>>. Accessed 14.05.24.

³⁴⁸ ICC Arbitration Rules 2021, Article 13.

³⁴⁹ ICC Arbitration Rules 2021, Article 24.

own video conferencing feature.³⁵⁰ Most often, remote hearings are conducted using external tools like: Zoom, Microsoft Teams, or any secure, agreed-upon video conferencing software.³⁵¹ Article 26(1) of the ICC 2021 Arbitration Rules specifically permits remote hearings, while Article 3(1) permits electronic submissions of case documents.³⁵² The final award's issuing, is the next step: The award is electronically drafted and signed by the arbitral panel, approved by the ICC Court, and then submitted through Case Connect service.³⁵³ After that, the parties are informed and given a PDF of the award that has been electronically signed, which is available to download.³⁵⁴

Online arbitration, whether through ICDR³⁵⁵, eBRAM³⁵⁶, or ICC³⁵⁷, typically follows a similar procedural framework: it starts with electronic filing, is run through secure digital platforms, and frequently ends with virtual hearings. The fundamental goal of all institutions is the same, despite technological and structural variations, such as the use of proprietary platforms or artificial intelligence tools: to provide effective, easily accessible, and equitable conflict resolution in a digital setting.

³⁵⁰ ICC Arbitration Rules 2021, Article 26.

³⁵¹ See id.

³⁵² ICC Arbitration Rules 2021; <<https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/#block-accordion-26>>. Accessed 14.05.24.

³⁵³ ICC Arbitration Rules 2021, Article 34.

³⁵⁴ See id.

³⁵⁵ ICDR: Who We Are, <https://www.icdr.org/about_icdr>. Accessed 15.07.24.

³⁵⁶ eBRAM Online Arbitration, <https://www.ebram.org/online_arbitration.html>. Accessed 08.04.24.

³⁵⁷ About ICC, <<https://iccwbo.org/about-icc-2/>>. Accessed 21.05.24.

PART II

2.ODR PLATFORMS AND IMPLEMENTATION

2.1. ODR PLATFORMS

2.1.1. Cybersettle

Cybersettle the pioneering platforms in the field of ODR.³⁵⁸ Cybersettle, were founded by Charlie Brofman in 1996, the main focus industries of platform were minor civil disputes, personal injury lawsuits, and insurance claims.³⁵⁹ It made use of a proprietary “double-blind bidding”³⁶⁰ procedure in which parties made private settlement bids without being aware of the other party's numbers.³⁶¹ The system automatically resolved the claim at the average of the two sums if the offers overlapped within a certain range.³⁶² The goal of this automation was to lower the expenses related to conventional discussions and speed up the settlement process.³⁶³ Also, users have chance to involve third non-interested party to help parties through telephone.³⁶⁴ Originally, at the beginning platform were directed to settle insurance disputes³⁶⁵ but for today, they claim to resolve every year 3 trillion dollars’ worth commercial cases³⁶⁶ in various areas between municipalities

³⁵⁸ Cybersettle Walkthrough, <https://www.slideshare.net/slideshow/cybersettle-walkthrough/3287941?utm_source=chatgpt.com>. Accessed 14.07.24.

³⁵⁹ Kaya, “Access to Justice for Turkish Consumers in the Digital Age: The Need for Enhancing Consumer Dispute Resolution Through Online Dispute Resolution,” 79; Mohinur Bahramova, “International Experience in the Use of Digital (Electronic) Arbitration (on the Example of the American Arbitration Association, Cybersettle and the World Intellectual Property Organization),” *Общество и инновации* 3, no. 3/S (May 9, 2022): 326–36, <https://doi.org/10.47689/2181-1415-vol3-iss3/S-pp326-336>, 333. See also, <<https://www.crunchbase.com/organization/cybersettle>>. Accessed 05.01.2024.

³⁶⁰ Double-sided blind bidding is a type of auction where both parties submit their bids and offers anonymously to a central operator, < <https://www.breenpower.nl/energymarketdata/day-ahead-market/double-sided-blind-auction-bidding.html#:~:text=Double%2Dsided%20blind%20auction%20bidding%20is%20a%20type%20of%20auction,central%20auctioneer%20or%20market%20operator>>. Accessed 24.05.24.

³⁶¹ Cortés, “Online Dispute Resolution Services: A Selected Number of Case Studies,” 173. See also, <<https://www.cybersettle.com>>.Katsh, Rifkin, and Gaitenby, “E-Commerce, E-Disputes, and E-Dispute Resolution: In the Shadow of ‘eBay Law,’” 720. Wheeler, Michael A., and Gillian Morris. “Cybersettle.”, Harvard Business School Case 902-158, (December 2001).

³⁶² See id.

³⁶³ See id.

³⁶⁴ Annaleigh Hobbs, “Online Dispute Resolution: Other ODR Software”, (April 19, 2024).

³⁶⁵ Cortés, 173.

³⁶⁶ See <<https://www.cybersettle.com>>. Accessed 20.01.2024.

to business and people in general.³⁶⁷ For instance, through obtaining this platform City of New York conserved approximately more than 10 million dollars in 2004.³⁶⁸

Cybersettle automated negotiation process, started with case initiation by one party on Cybersettle's secure website.³⁶⁹ During negotiation procedure, up to three private financial demands or offers, or three rounds of negotiations, might be made by each side.³⁷⁰ These numbers were kept private and weren't shared with the other side.³⁷¹ The bids from both sides would be compared by Cybersettle's algorithm, and the system would automatically settle the claim at the average of the two matching numbers if any offer from one party matched or overlapped with an offer from the other party within a certain threshold, such as 30% or a certain cash amount.³⁷² Both parties were informed of the agreement and the settlement amount in the event that a settlement was achieved.³⁷³ Early settlements are the goal of Cybersettle, and if no agreement was reached after three rounds, the parties may choose to use other negotiation techniques, such online mediation.³⁷⁴

From the first obtaining of Cybersettle till today, platform evaluated as cost-effective, time saving program with a great impact to the dispute resolution legal industry.³⁷⁵ After restructuring, the business is currently known as Cybersettle Holdings Inc.³⁷⁶ Its transition from a conventional online dispute resolution platform to a fintech Software-

³⁶⁷ Cortés, "Online Dispute Resolution Services: A Selected Number of Case Studies," 173. See also J. Krause, "Settling it on the Web. New Technology, Lower Costs Enable Growth of Online Dispute Resolution", American Bar Association Journal, (October 2007).

³⁶⁸ See *supra*, note 284.

³⁶⁹ Cybersettle Walkthrough, <https://www.slideshare.net/slideshow/cybersettle-walkthrough/3287941?utm_source=chatgpt.com>. Accessed 14.07.24.

³⁷⁰ Cybersettle Official Website, < https://www.cybersettle.com/?utm_source=chatgpt.com>. Accessed 20.04.24.

³⁷¹ See *id.*

³⁷² Levin, Diane J., "Cybersettle Makes the Case for Resolving Disputes Online", 27.02.2008, < <https://mediate.com/cybersettle-makes-the-case-for-resolving-disputes-online/>>. Accessed 12.03.24.

³⁷³ Cybersettle Official Website, < https://www.cybersettle.com/?utm_source=chatgpt.com>. Accessed 20.04.24.

³⁷⁴ See *id.*

³⁷⁵ Bahramova, "International Experience in the Use of Digital (Electronic) Arbitration (on the Example of the American Arbitration Association, Cybersettle and the World Intellectual Property Organization)," 333. See <<https://www.cybersettle.com>>. Accessed 10.01.2024.

³⁷⁶ Kieran Powell, "C-Suite Perspectives On AI: Vinodh Swaminathan Of Cybersettle On Where to Use AI and Where to Rely Only on Humans," *Medium*, n.d.

as-a-Service (SaaS)³⁷⁷ provider is reflected in this transformation. The business is currently concentrating on using Generative AI (GenAI)³⁷⁸ technology to help digitally negotiate and settle financial transactions in a variety of sectors.³⁷⁹ Cybersettle analyzes vast amounts of case data using GenAI to provide the best settlement ranges.³⁸⁰ Through real-time overlap detection and offer comparison between the two parties, AI systems automate the double-blind bidding procedure.³⁸¹ The technology instantly resolves the conflict if a match is discovered within a certain threshold, negating the need for human middlemen.³⁸² Based on past resolutions, claim categories, and historical trends, the algorithm forecasts probable settlement outcomes.³⁸³ Cybersettle's double-blind bidding procedure was still automated prior to the incorporation of AI, but it was considerably more rule-based and manually organized, depending on secure software instead of AI or machine learning.³⁸⁴ Therefore, even if it was "automated" in terms of processing and secrecy, it lacked the predictive and intelligent optimization features that modern AI integration offers.³⁸⁵

³⁷⁷ Fintech SaaS - is a kind of model where financial businesses, start-up's, or service providers deliver financial services and solutions through software applications via cloud-based platforms. For more information, see <

³⁷⁸ Generative AI, is a type of AI that can create new content and ideas, including conversations, stories, images, videos, and music. It can learn human language, programming languages, art, chemistry, biology, or any complex subject matter. For more information, see <

³⁷⁹ Powell, "C-Suite Perspectives On AI: Vinodh Swaminathan Of Cybersettle On Where to Use AI and Where to Rely Only on Humans."

³⁸⁰ MedQuest and Cybersettle Financial Services Announce Strategic Partnership to Offer Financing Services for Litigation Lawyers, 23.02.24; < https://www.cybersettle.com/press-releases/medquest-and-cybersettle-financial-services-announce-strategic-partnership-to-offer-financing-services-for-litigation-lawyers?utm_source=chatgpt.com >. Accessed 12.09.24.

³⁸¹ See id.

³⁸² Diane J. Levin, "Cybersettle Makes the Case for Resolving Disputes Online," *Mediate.Com*, February 27, 2008.

³⁸³ Bahramova, "International Experience in the Use of Digital (Electronic) Arbitration (on the Example of the American Arbitration Association, Cybersettle and the World Intellectual Property Organization)."

³⁸⁴ Michael A. Wheeler and Gillian Morris, "Cybersettle," *Harvard Business School Case 902-158*, December 2001, 15.

³⁸⁵ See id.

2.1.2. Clicknsettle

The National Arbitration and Mediation Corporation (NAM) introduced Clicknsettle, an online dispute settlement tool, in 1999.³⁸⁶ The online negotiating process began when one of the parties submitted a case via Clicknsettle's secure website.³⁸⁷ A 60-day negotiating period was agreed upon by both sides, during which time they may make offers and counteroffers.³⁸⁸ Same as on Cybersettle, confidential offers were filed by each side and Clicknsettle would automatically settle the case in the middle of the two amounts.³⁸⁹ Nevertheless, platform have a special “final bid” function that alerted the other side that their opponent had entered a “walk away” amount.³⁹⁰ This feature incentivized parties to submit their best bids.³⁹¹ Additionally, during the 60-day period, the platform permitted an infinite amount of bids and counteroffers.³⁹²

According to the most recent data available, Clicknsettle's website is no longer operational, and the platform has shut down.³⁹³ Nonetheless, arbitration and mediation are still offered as alternative conflict resolution procedures by its parent firm, National Arbitration and Mediation Corporation (NAM).³⁹⁴ The proprietary ODR case management system, myADR, was created by NAM to improve and expedite the online administration of arbitration and mediation cases.³⁹⁵ Clients may access all case-related data, through the safe and intuitive myADR site.³⁹⁶ Clients may efficiently track case

³⁸⁶ “ClickNsettle resolves to handle any dispute”, Best of Show: Legal Services, (October 07, 2001), Available at <<https://www.businessinsurance.com/article/20011007/story/10005105/clicknsettle-resolves-to-handle-any-dispute>>. See also <<https://www.crunchbase.com/organization/clicknsettle-com>>. Accessed 25.01.2024.

³⁸⁷ Barbara L. Jones, “A look at some online ‘cyber settling’ services”, Minnesota Lawyer, (September 2000).

³⁸⁸ Anita Ramasastry, “Online Alternative Dispute Resolution: An Issues Primer”, San Francisco, California, (11-12 September 2000). Barbara L. Jones, 1.

³⁸⁹ Barbara L. Jones, (September 2000).

³⁹⁰ Jones, Barbara L., “A Look at Some Online ‘Cybersettling’ Services”, 25.09.2000; <https://minnlawyer.com/2000/09/25/a-look-at-some-online-8216cybersettling8217-services/?utm_source=chatgpt.com>. Accessed 23.04.24.

³⁹¹ See id.

³⁹² See id.

³⁹³ Paul Motion, “It’s Litigation Jim But Not as We Know It,” *The Journal of Law Society of Scotland*, April 1, 2000.

³⁹⁴ National Arbitration and Mediation Corporation is a prominent U.S.-based provider of alternative dispute resolution (ADR) services, offering arbitration and mediation solutions across various legal sectors., <<https://www.namadr.com>>. Accessed 13.05.24.

³⁹⁵ MyADR, <https://www.namadr.com/about/why-nam/my-adr/?utm_source=chatgpt.com>. Accessed 23.04.24.

³⁹⁶ See id.

turnaround times and program performance thanks to the technology.³⁹⁷ There is also, access case data in real-time on any mobile device thanks to NAM's supplementary myADR mobile app, which guarantees flexibility and convenience.³⁹⁸ For remote mediations and arbitrations, NAM also utilizes video conferencing tools, such as Zoom, Webex Meetings, and Skype.³⁹⁹

2.1.3. Modria

Modria is a four-stepped ODR system designed by Colin Rule and Chittu Nagarajan, in year 2011.⁴⁰⁰ After six years of functioning it was obtained by Tyler Technologies.⁴⁰¹ Colin Rule, one of the first ODR innovators who were leading eBay dispute resolution system, founded this platform after receiving license from eBay for his previously co-produced software.⁴⁰² Colin Rule after his experiences before, concluded that his new system must give people and small businesses chance to implement ODR for their benefits, since the demand for this procedure were growing day by day.⁴⁰³ Modria directed on all types of disputes, regardless cost,⁴⁰⁴ object of dispute, from financial to family and from public to individual.⁴⁰⁵ Process of Modria consist of four steps, three of them ODR procedures and analysis as a starter of the process.⁴⁰⁶ Online forms that gather structured data to effectively evaluate and categorize the disagreement can be used by parties to launch claims.⁴⁰⁷ Furthermore, Modria, enables asynchronous negotiation,

³⁹⁷ MyADR Case Management, < https://www.namadr.com/services/myadr-case-management/?utm_source=chatgpt.com>. Accessed 22.04.24.

³⁹⁸ MyADR, < https://www.namadr.com/about/why-nam/my-adr/?utm_source=chatgpt.com>. Accessed 23.04.24.

³⁹⁹ Videoconferencing (Virtual ADR), < <https://www.namadr.com/services/video-conferencing/>>. Accessed 23.04.24.

⁴⁰⁰ Cortés, “Online Dispute Resolution Services: A Selected Number of Case Studies”; Kaya, “Access to Justice for Turkish Consumers in the Digital Age: The Need for Enhancing Consumer Dispute Resolution Through Online Dispute Resolution”; Scott Shackelford and Anjanette Raymond, “Building the Virtual Courthouse: Ethical Considerations for Design, Implementation, and Regulation in the World of ODR,” *SSRN Electronic Journal*, 2014, <https://doi.org/10.2139/ssrn.2387912>. See also, <<https://www.colinrule.com>>, <<https://web.archive.org/web/20130113194100/http://www.modria.com/>>

⁴⁰¹ <<https://www.colinrule.com>>. Accessed 07.02.2024.

⁴⁰² B.H. Barton, “The Lawyer’s Monopoly — What Goes and What Stays”, 82 *Fordham Law Review* 3067, (2014), 3075–3076.

⁴⁰³ See *id.*

⁴⁰⁴ Cortés, “Online Dispute Resolution Services: A Selected Number of Case Studies,” 175.

⁴⁰⁵ See *id.*

⁴⁰⁶ See <<https://aaa-nynf.modria.com>>. Accessed 08.02.2024.

⁴⁰⁷ What is Modria?; <<https://www.tylertech.com/Portals/0/OpenContent/Files/4080/Modria-Brochure.pdf>>. Accessed 12.02.24.

allowing parties to trade proposals without having to be present at the same time.⁴⁰⁸ The system refers cases to arbitrators or mediators in the event that negotiating is unsuccessful.⁴⁰⁹ The Modria platform selects arbitrators or mediators based on the host institution's procedural guidelines.⁴¹⁰ Instead of making the choice itself, Modria offers customizable processes for party selection, automated assignment, and institutional appointment, guaranteeing impartiality and flexibility.⁴¹¹ In cases when remote hearing is required, Modria can link with third-party technologies like Zoom or Webex, but the Modria interface is used to plan and control the live session.⁴¹² Once agreement is reached, the platform can generate binding agreements or awards and, upload it into the Modria system.⁴¹³ The parties are notified through the dashboard.⁴¹⁴ The decision can be downloaded, printed, or submitted to courts for enforcement if needed.⁴¹⁵

Modria, poses various tools to make dispute resolution process as effective as possible, e.g. it has comfortable applications, support customer-focused close collaboration of experts with users and provide organizations with technical support to obtain easy integration of ODR systems in their services.⁴¹⁶ Moreover, disputes on the platform usually resolves before any attendance of third parties and the interaction of neutral party provided only in case when first steps of mechanism were not effective.⁴¹⁷

⁴⁰⁸ See id.

⁴⁰⁹ Products & Services for the Public Sector, < <https://www.tylertech.com/products/online-dispute-resolution>>. Accessed 12.02.24.

⁴¹⁰ For more information, see < https://losangelescafam.modria.com/?utm_source=chatgpt.com>. Accessed 12.02.24.

⁴¹¹ See id.

⁴¹² See id.

⁴¹³ What is Modria?; <<https://www.tylertech.com/Portals/0/OpenContent/Files/4080/Modria-Brochure.pdf>>. Accessed 12.02.24.

⁴¹⁴ See id.

⁴¹⁵ See id.

⁴¹⁶ Rule, "Online Dispute Resolution and the Future of Justice"; Katsh and Rabinovich-Einy, "Digital Justice: Technology and the Internet of Disputes."

⁴¹⁷ Cortés, "Online Dispute Resolution Services: A Selected Number of Case Studies," 175; Kaya, "Access to Justice for Turkish Consumers in the Digital Age: The Need for Enhancing Consumer Dispute Resolution Through Online Dispute Resolution," 80.

2.2. ODR ACROSS JURISDICTIONS

2.2.1. ODR in Singapore: eLitigation and CJTS

2.2.1.1. Singapore's eLitigation

In January of 2013, Singapore's eLitigation system launched replacing the earlier Electronic Filing System (EFS)⁴¹⁸ to better serve the evolving needs of the legal community.⁴¹⁹ The system lessens the need for paper-based procedures by enabling the electronic filing of legal documents and offering integrated case management.⁴²⁰ Using their registered SingPass IDs,⁴²¹ users gain access to eLitigation, guaranteeing safe and verified system access.⁴²² The eLitigation system in Singapore have similarities with National Judiciary Informatics System (UYAP) in Turkiye,⁴²³ both systems are extensive electronic judicial platforms created to improve the effectiveness and accessibility of their respective legal systems.⁴²⁴ However, they have distinctive differences in their user access, eLitigation serves legal professionals, allowing law firms to file and manage cases electronically within Singapore's judiciary.⁴²⁵ Individuals representing themselves must use Service Bureaus for filing.⁴²⁶ Thus, eLitigation system provide case management and online document submission, but do not conduct remote hearings directly, usually courts issue Zoom links via eLitigation system for remote hearing.⁴²⁷ And these hearing via

⁴¹⁸ The Electronic Filing System (or EFS) is the Singapore court system's electronic platform for filing and serving documents in court proceedings, which has been in use since 2000; < https://en.m.wikipedia.org/wiki/Integrated_Electronic_Litigation_System?utm_source=chatgpt.com>. Accessed 13.03.24.

⁴¹⁹ Integrated Electronic Litigation System, < https://en.m.wikipedia.org/wiki/Integrated_Electronic_Litigation_System?utm_source=chatgpt.com>. Accessed 12.03.24.

⁴²⁰ eFiling Process, <https://www.elitigation.sg/_layouts/IELS/ELITWebHelp/eFiling/eFiling_Process.htm?utm_source=chatgpt.com>. Accessed 14.04.24.

⁴²¹ Singpass is a trusted digital identity that allows residents to access government and business services online. Secure and convenient access to over 2,700 services across 800 government agencies and businesses. Over 41 million transactions every month by 5 million users. For more information, see < <https://www.tech.gov.sg/products-and-services/for-citizens/digital-services/singpass/#:~:text=Singpass%20is%20a%20trusted%20digital,month%20by%205%20million%20users.>>. Accessed 16.04.24.

⁴²² eFiling Process, <https://www.elitigation.sg/_layouts/IELS/ELITWebHelp/eFiling/eFiling_Process.htm?utm_source=chatgpt.com>. Accessed 14.04.24.

⁴²³ For more information, see the section 3.1.3.3.2. of this thesis.

⁴²⁴ eLitigation, <https://www.judiciary.gov.sg/services/elitigation?utm_source=chatgpt.com>. Accessed 15.04.24.

⁴²⁵ See id.

⁴²⁶ See id.

⁴²⁷ Virtual Hearings for eLitigation Subscribers, <https://www.elitigation.sg/Documents/Virtual_Hearing_Stage_2b_User_Guide.pdf>. Accessed 13.04.24.

Zoom are conducted synchronously.⁴²⁸ Here is the short overview, how online litigation happens through utilizing of eLitigation service: Court papers and applications are submitted through the eLitigation system by attorneys or Service Bureaus for self-represented litigants.⁴²⁹ All case-related changes, instructions, and documents are saved and accessible inside the system, and the case is given a court reference number.⁴³⁰ The parties are notified and a hearing is scheduled by the Registrar.⁴³¹ Hearing alerts via the eLitigation dashboard or an email associated with the eLitigation account are the two ways that hearing details, including Zoom video conference links, are sent.⁴³² Before the start of the litigation hearing, parties are required to: Make use of the proper equipment, assure the ability to share documents, frequently by transferring all files to eLitigation beforehand.⁴³³ At the commencement of the online hearing, the judge takes attendance, goes over the process, and starts the hearing.⁴³⁴ Evidence from eLitigation filings or screen sharing may be used during the hearing.⁴³⁵ Following hearing arguments from both parties, the court may: Orally render a decision or hold out on making a choice and then email or use eLitigation to deliver it.⁴³⁶ Ultimately, judgments and orders are posted on eLitigation.⁴³⁷ The portal allows parties to download, enforce, or appeal the verdict.⁴³⁸

2.2.1.2. Singapore's Community Justice and Tribunals System

Community Justice and Tribunals System (CJTS)⁴³⁹ is a dedicated online platform that was developed by the State Courts of Singapore to manage certain types of claims, like: Small Claims Tribunals, Employment Claims Tribunal, Community Dispute Resolution Tribunals and Protection from Harassment Court cases.⁴⁴⁰ CJTS offer online mediation

⁴²⁸ See id.

⁴²⁹ eLitigation, <https://www.judiciary.gov.sg/services/elitigation?utm_source=chatgpt.com>. Accessed 15.04.24.

⁴³⁰ See id.

⁴³¹ Virtual Hearings for eLitigation Subscribers, <https://www.elitigation.sg/Documents/Virtual_Hearing_Stage_2b_User_Guide.pdf>. Accessed 13.04.24.

⁴³² See id.

⁴³³ Guide on the Use of Video Conferencing and Telephone Conferencing – Singapore Courts, < Guide on the Use of Video Conferencing and Telephone Conferencing – Singapore Courts https://www.judiciary.gov.sg/docs/default-source/attending-court-docs/supreme_court_guide_video_conferencing_telephone_conferencing.pdf>. Accessed 15.04.24.

⁴³⁴ See id.

⁴³⁵ See id.

⁴³⁶ Singapore Judiciary – eLitigation Services, < <https://www.judiciary.gov.sg/services/elitigation>>. Accessed 16.04.24.

⁴³⁷ See id.

⁴³⁸ See id.

⁴³⁹ Official website, <<https://www.judiciary.gov.sg/services/cjts>>. Accessed 15.04.24.

⁴⁴⁰ See id.

and online negotiation services, via chat-based online mediation with a court-appointed mediator or online negotiation procedure to settle disputes independently.⁴⁴¹ Here is how online mediation process works via CJTS platform: After filing a claim with the appropriate tribunal, parties use their SingPass to log into CJTS⁴⁴². Through a chat-based platform on CJTS, mediation occurs, with a mediator designated by the court facilitating communication between the parties.⁴⁴³ In order to get to a mutually agreeable resolution, the mediator assists both parties in considering potential options.⁴⁴⁴ The chat-based eMediation lowers emotional conflict by giving parties time to reflect.⁴⁴⁵ This implies that instead of using video conferences, the parties and the mediator assigned by the court communicate in writing and in real time via the CJTS platform.⁴⁴⁶ The matter moves forward to a tribunal hearing if the parties cannot agree, but if they do, the settlement may be delivered via the system.⁴⁴⁷

Regarding online negotiation via CJTS Platform, negotiation is also initiated via platform, system provides parties with a secure chat-based interface where they can offer solutions, respond and attach relevant documentation.⁴⁴⁸ Online negotiation is asynchronous, which means parties do not need to be present online at the same time, which is really convenient.⁴⁴⁹ If agreement will be reached as a result of e-negotiation, the terms can be submitted to the tribunal for a consent order.⁴⁵⁰ In cases of unsuccessful negotiation, case can be transferred to the e-mediation.⁴⁵¹

⁴⁴¹ Who we are, <<https://www.judiciary.gov.sg/who-we-are>>. Accessed 21.05.24.

⁴⁴² CJTS System, <cjts.judiciary.gov.sg>. Accessed 21.05.24.

⁴⁴³ Mediation, <<https://www.judiciary.gov.sg/alternatives-to-trial/mediation>>. Accessed 23.05.24.

⁴⁴⁴ See id.

⁴⁴⁵ Mediation, <<https://www.judiciary.gov.sg/alternatives-to-trial/mediation>>. Accessed 23.05.24.

⁴⁴⁶ CJTS User Guide, <<https://cjts.judiciary.gov.sg/listing/userGuides>>. Accessed 23.04.24.

⁴⁴⁷ See id.

⁴⁴⁸ CJTS User Guide, <<https://cjts.judiciary.gov.sg/listing/userGuides>>. Accessed 23.04.24.

⁴⁴⁹ See id.

⁴⁵⁰ For more information, see <<https://cjts.judiciary.gov.sg/home>>. Accessed 24.04.24.

⁴⁵¹ See id.

2.2.2. ODR in United Kingdom: OCMC and CEDR

2.2.2.1. Online Civil Money Claim System

Online Civil Money Claim (OCMC)⁴⁵² system is the pilot program started in march 2018, in accordance with Civil Procedure Rules.⁴⁵³ The goal of this pilot was to modernize and digitize the civil judicial system in England and Wales as part of a larger reform program run by Her Majesty's Courts & Tribunals Service (HMCTS).⁴⁵⁴ Pilot was initially scheduled to run until 30 November of 2023, however it was extended till 1 October of 2025, through 170th Practice Direction Update, which came into force on 18 July 2024.⁴⁵⁵ The platform was once restricted to claims up to £10,000.⁴⁵⁶ Since then, it has grown to handle claims up to £25,000, allowing for a wider variety of civil disputes.⁴⁵⁷ OCMC provides a completely online procedure for submitting and handling money claims, enabling consumers to oversee their cases around-the-clock via a safe dashboard.⁴⁵⁸ As evidence of the platform's ability to facilitate conflict resolution, 48% of the 10,250 mediation appointments made through OCMC in 2023 ended in settlements.⁴⁵⁹

⁴⁵² Fact sheet: Online Civil Money Claims, < <https://www.gov.uk/government/publications/hmcts-reform-civil-fact-sheets/fact-sheet-online-civil-money-claims>>. Accessed 20.04.24.

⁴⁵³ CPR – Rules and Directions, < <https://www.justice.gov.uk/courts/procedure-rules/civil/rules>>. Accessed 20.04.24. Emine Gökçe Karabel and Dilek Aydemir, “The Use of Online Courts and Artificial Intelligence in Respect of the Right to Access to Justice and to Accelerate the Proceedings in Civil Procedure,” *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi* 29, no. 1 (July 6, 2023): 530–73, <https://doi.org/10.33433/maruhad.1263609>.

⁴⁵⁴ Her Majesty's Courts and Tribunals Service (HMCTS), in collaboration with the Ministry of Justice, initiated the multi-year HMCTS Reform Programme. By utilizing digital technology to increase accessibility, effectiveness, and transparency, it seeks to modernize the legal system in England and Wales. The program, which was first announced in 2016, involves improvements in the administrative, criminal, family, and civil courts and is backed by more than £1 billion in government financing. “HMCTS Reform MOJ Evaluation: Progress Report”, 23.03.23. <<https://www.gov.uk/government/publications/hmcts-reform-moj-evaluation-progress-report>>. Accessed 12.04.24.

⁴⁵⁵ 173rd PD Update: amendments to PD 51R (Online Civil Money Claims Pilot), by Practical Law Dispute Resolution.; < [https://uk.practicallaw.thomsonreuters.com/w-044-5958?contextData=\(sc.Default\)&transitionType=Default&utm_source=chatgpt.com&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-044-5958?contextData=(sc.Default)&transitionType=Default&utm_source=chatgpt.com&firstPage=true)>. Accessed 12.04.24.

⁴⁵⁶ Fact sheet: Online Civil Money Claims, < <https://www.gov.uk/government/publications/hmcts-reform-civil-fact-sheets/fact-sheet-online-civil-money-claims>>. Accessed 20.04.24.

⁴⁵⁷ See id.

⁴⁵⁸ See id.

⁴⁵⁹ See id.

The claimant must first register for a Government Gateway account and then submit a claim in order for OCMC procedure to begin.⁴⁶⁰ Also, to issue the claim, a court fee must be paid.⁴⁶¹ Once the claim is submitted, the defendant has 14 days from the date of notification to respond.⁴⁶² This deadline may be extended to 28 days by the request of responded.⁴⁶³ Defendant may respond to the claim, by: paying the amount claimed, disputing the claim, or not respond at all. In cases when defendant fails to answer to the notification within deadline, the default judgement can be made.⁴⁶⁴ Also, in cases when both parties agree, free mediation via telephones can be arranged.⁴⁶⁵ The key features of the system include, 24/7 accessibility and the opportunity to manage the case at every stage.⁴⁶⁶

2.2.2.2. The Centre for Effective Dispute Resolution

The Centre for Effective Dispute Resolution (CEDR) is the one of the top ADR organizations in the UK and throughout the world.⁴⁶⁷ CEDR is a non-profit organization that was founded in 1990 with the goal of enhancing access to justice by advocating and offering alternatives to litigation.⁴⁶⁸ A comprehensive range of ODR services are provided by CEDR: online mediation, online negotiation, and online adjudication and arbitration, particularly in regulatory and consumer contexts.⁴⁶⁹ Disputes with solicitors or law firms, under schemes approved by the Solicitors Regulation Authority (SRA) or Legal Ombudsman; disputes with broadband, phone, or mobile providers, under Ofcom; disputes between customers and gas, electricity, or water suppliers, under Ofgem or similar regulators; and complaints involving vehicle purchases, servicing, and warranties, under schemes like the Motor Ombudsman or manufacturer-linked ADR programs are among the areas where CEDR only provides ODR services.⁴⁷⁰

⁴⁶⁰ Make a court claim for money, < https://www.gov.uk/make-court-claim-for-money/after-you-make-your-claim?utm_source=chatgpt.com>. Accessed 20.04.24.

⁴⁶¹ See id.

⁴⁶² CPR – Rules and Directions, Part 7 < <https://www.justice.gov.uk/courts/procedure-rules/civil/rules>>. Accessed 20.04.24.

⁴⁶³ See id.

⁴⁶⁴ Karabel and Aydemir, “The Use of Online Courts and Artificial Intelligence in Respect of the Right to Access to Justice and to Accelerate the Proceedings in Civil Procedure,” 13–14.

⁴⁶⁵ See id.

⁴⁶⁶ Fact sheet: Online Civil Money Claims, < <https://www.gov.uk/government/publications/hmcts-reform-civil-fact-sheets/fact-sheet-online-civil-money-claims>>. Accessed 20.04.24.

⁴⁶⁷ CEDR official website, <<https://www.cedr.com/>>. Accessed 05.05.24.

⁴⁶⁸ See id.

⁴⁶⁹ CEDR's Model Documents, <<https://learn.cedr.com/model-mediation-documents>>. Accessed 05.05.24.

⁴⁷⁰ Submitting a Complaint, <<https://www.cedr.com/submit-a-complaint/>>. Accessed 06.05.24.

The ODR service via CEDR conducted in these steps: The company must receive a formal complaint from the customer first.⁴⁷¹ The customer determines if the company is a part of a CEDR-approved program and if the complaint falls within the parameters such as the dispute type and time limit.⁴⁷² Checking eligibility is possible through the CEDR Consumer Portal.⁴⁷³ The customer uses CEDR's website to complete an online complaint form.⁴⁷⁴ Relevant documentation must be attached.⁴⁷⁵ After confirming the complaint, CEDR informs the company.⁴⁷⁶ The company is asked to respond within a certain window of time, often 15 working days.⁴⁷⁷ CEDR may try to reach an early settlement through: Email or phone negotiations.⁴⁷⁸ Adjudication is the next step in the lawsuit if no settlement is reached: Written submissions from both parties are examined by a CEDR arbitrator or adjudicator.⁴⁷⁹ There are no live or in-person hearings; everything is based on documents.⁴⁸⁰ Within 20 to 30 working days, the adjudicator typically renders a written verdict.⁴⁸¹ The decision is communicated digitally through the site or by email.⁴⁸²

The United Kingdom has adopted ODR through platforms like the Online Civil Money Claim (OCMC) system and the Centre for Effective Dispute Resolution (CEDR). OCMC allows individuals to manage civil money claims entirely online, including filing, responding, and accessing free mediation, while CEDR offers online mediation, negotiation, and arbitration services, particularly in regulated consumer sectors. Both systems reflect the UK's commitment to increasing access to justice through digital innovation and efficiency.⁴⁸³

⁴⁷¹ Mediation Schemes, <<https://www.cedr.com/commercial/mediationschemes/>>. Accessed 06.05.24.

⁴⁷² See id.

⁴⁷³ Submitting a Complaint, <<https://www.cedr.com/submit-a-complaint/>>. Accessed 06.05.24.

⁴⁷⁴ CEDR provides ADR resources free to download for our clients including Lawyers, Litigants in Person, and Mediators, <<https://www.cedr.com/commercial/resources/>>. Accessed 07.05.24.

⁴⁷⁵ Mediation Schemes, <<https://www.cedr.com/commercial/mediationschemes/>>. Accessed 06.05.24. Submitting a Complaint, <<https://www.cedr.com/submit-a-complaint/>>. Accessed 06.05.24.

⁴⁷⁶ See id.

⁴⁷⁷ Help & Guides, <<https://www.cedr.com/consumer/general/help-guides/>>. Accessed 07.03.24.

⁴⁷⁸ How CEDR works, <<https://www.cedr.com/consumer/general/help-guides/>>. Accessed 07.03.24.

⁴⁷⁹ See id.

⁴⁸⁰ See id.

⁴⁸¹ What is Adjudication?, <<https://www.cedr.com/consumer/general/help-guides/>>. Accessed 07.03.24.

⁴⁸² See id.

⁴⁸³ Her Majesty's Courts and Tribunals Service (HMCTS), in collaboration with the Ministry of Justice, initiated the multi-year HMCTS Reform Programme.

PART III

3.ONLINE DISPUTE RESOLUTION IN TURKIYE AND KAZAKHSTAN

3.1. LEGAL RECOGNITION OF ODR IN TURKISH LAW

3.1.1. In General

Online Dispute Resolution has proven its effectiveness and benefits, but at the beginning of the path regarding to the challenges, like lack of appropriate regulations and convenient online platforms, inability to use electronic utilities and so on, made usefulness of this method subject for debates.⁴⁸⁴ Regarding efficacy of ODR methods, it has proved own advantages especially during COVID-19⁴⁸⁵, the pandemic period when almost all aspects of human life's and interaction shifted to the internet and gained online character.⁴⁸⁶ According to the population growth rate of Turkish Statistical Institute (TURKSTAT), for the year 2021 population of Turkiye was 84,7 million people⁴⁸⁷ and 76,5% of them were daily Internet users⁴⁸⁸, for the year 2023 number of population hit 85 millions⁴⁸⁹ and it's quite predictable from previous statistics that internet utilization rate also grew in direct ration to this indicators. This data makes clear why ODR received legal and global recognition and at the same time many countries demanded adaptation of these methods to resolve conflict situations. The global use of Internet and becoming of it undividable as well as vital part of human life's, brought ODR methods high demand, at the same time with other countries Turkey obtained harmonization's with international

⁴⁸⁴ Kaya, "Access to Justice for Turkish Consumers in the Digital Age: The Need for Enhancing Consumer Dispute Resolution Through Online Dispute Resolution," 229.

⁴⁸⁵ Ahmet Dülger, "Tahkim Duruşmalarının Online Yapılması: İstac ve Abu Dabi Tahkim Merkezi Kuralları İncelemesi," in *Koronavirüs Döneminde Güncel Hukuki Meseleler Sempozyumu* (İstanbul, 2020), 118.

⁴⁸⁶ Louis F. Del Duca, Colin Rule, and Zbynek Loeb, "Facilitating Expansion of Cross-Border E-Commerce-Developing a Global Online Dispute Resolution System (Lessons Derived from Existing ODR Systems - Work of the United Nations Commission on International Trade Law)," *SSRN Electronic Journal*, 2011, <https://doi.org/10.2139/ssrn.1970613>; Inan Uluc, "International Online Dispute Resolution" (Master of Laws, Pennsylvania State University, 2013).

⁴⁸⁷ Turkish Statistical Institute "Population and Annual Population Growth Rate, 2007-2023", <<https://data.tuik.gov.tr/Bulten/Index?p=The-Results-of-Address-Based-Population-Registration-System-2023-49684>>. Accessed 03.03.2024.

⁴⁸⁸ Turkish Statistical Institute "Average Internet Usage Frequency of Individuals (%), 2020, 2021", <[https://data.tuik.gov.tr/Bulten/Index?p=Survey-on-Information-and-Communication-Technology-\(ICT\)-Usage-in-Households-and-by-Individuals-2021-37437](https://data.tuik.gov.tr/Bulten/Index?p=Survey-on-Information-and-Communication-Technology-(ICT)-Usage-in-Households-and-by-Individuals-2021-37437)>. Accessed 05.03.2024.

⁴⁸⁹ See *supra*, note 487.

conventions in order to create positive environment for the functioning of online dispute resolution mechanisms.⁴⁹⁰

3.1.2. Consumer Dispute Resolution in Turkey

3.1.2.1. An Overview

According to the statistics of TURKSTAT, for the year 2021 percentage of individuals involved in e-commerce relationship was for 7,8% more than for the year 2020.⁴⁹¹ Population of Türkiye comparatively younger than in many EU countries, since new generation prefer to order everything from internet, started from food and also, clothing, books, electronic utilities, tickets for different trips and even educational courses.⁴⁹² Thus, e-commerce in Türkiye rapidly developing same as everywhere in the world yet, it is proposed that if it will continue in this speed it will take vital place not only in domestic but also in international economy.⁴⁹³ In this regard, today appeared many different types of new professions and businesses carrying their activities through Internet.⁴⁹⁴ For example, those are very popular and widely used Turkish e-commerce platforms: Hepsiburada⁴⁹⁵, Yemeksepeti⁴⁹⁶, Trendyol⁴⁹⁷, Sahibinden⁴⁹⁸ and etc. To avoid disputes and fraud during shopping on these platforms, there are special software tools that provide online shopping assistance, one of them ‘Şikayetvar.com’.⁴⁹⁹ Şikayetvar, was founded in 2001, it claims to be the first complaint platform worldwide, and for today, to have 30

⁴⁹⁰ Kaya, “Access to Justice for Turkish Consumers in the Digital Age: The Need for Enhancing Consumer Dispute Resolution Through Online Dispute Resolution,” 124.

⁴⁹¹ See *supra*, note 488.

⁴⁹² “Piramit E-Commerce, Unprecedented Growth Rate of e-Commerce in Turkey,” n.d., <<http://www.piramiteticaret.com/Blog/turkiye-de-e-ticaretin-bas-dondurucu-buyume-hizi-66.aspx>>. Accessed 11.03.2024.

⁴⁹³ Adnan Veyssel Ertemel, “An Exploratory Analysis of Online Shopping Behavior In Turkey,” n.d., 3.

⁴⁹⁴ Şule Özmen, Ağ Ekonomisinde Yeni Ticaret Yolu: E-Ticaret, Genişletilmiş (İstanbul Bilgi Üniversitesi, 2009), 1.

⁴⁹⁵ It is one of the first e-commerce web-sites, which is working since 2000. In 2021 it become first in Turkey company listed in NASDAQ Stock Exchange.

⁴⁹⁶ The platform digitalized more than 32 thousand restaurants and established takeaways system in them. It was established in 2001 and was invested by European Founders Fund in 2008.

⁴⁹⁷ Trendyol founded as a website selling clothing in 2010, however it became shopping platform with a market valuation of over \$1 billion, selling different types of goods. See for more information <<https://www.trendyol.com/whoweare>>. Accessed 20.06.24.

⁴⁹⁸ Sahibinden was founded in 2000 by Taner Aksoy in order to give consumers and seller convenient database with detiled photos and assembled advertisements.

⁴⁹⁹ Serkan Kaya, “Dispute Prevention and Resolution in Online Shopping,” n.d., 168. Şikayetvar have 134K followers on Facebook, 65,6K followers on Instagram and Youtube channel with more than 2K followers. The company has even smartphone application and work with a huge number of businesses, starting from hospitals like Medipol, banks like Deniz bank, markets Şok, Migros, Trendyol, Boyner and many others. Eda Begen, “Consumer E-Dispute: Online Dispute Resolution in Turkey” (2018), 56. See for more information <<https://www.sikayetvar.com/>>. Accessed 29.07.24.

million visitors and more than 450 thousand disputes solved in a year.⁵⁰⁰ This online shopping assistant which acts like a private ombudsman⁵⁰¹, provide consumers with additional information about companies and offer fast and easy solution for arising problems, which is advantageous for both parties of the dispute.⁵⁰² Şikayetvar claims that, they are bridge between consumers and businesses, it plays role of consumer voices to deliver complaints to the business owners and thus, helps companies to gain trust, supply with feedback system which in turn helps to attract dissatisfied customers back and improve flaws.⁵⁰³ On the website of ‘Şikayetvar.com’, it is possible to find information and complaints about interested company, goods, models and marks.⁵⁰⁴ On the first page, user reach to the finder section and after typing needed item or mark, the page address to the database with all the complaints according the given topic and categories of it.⁵⁰⁵ The user can reach to the solution faster if the problem already was discussed and solved on the platform, but if he wants to write a new compliant, the system offers to write message or film a video.⁵⁰⁶ Moreover, in order to avoid fraudulent profiles, Sikayetvar provides the complainants with an SMS that contains a "verification code" in order to detect users.⁵⁰⁷ For the consideration of complaint, it must be related to the purchase of goods and services and unresolved issues.⁵⁰⁸ Furthermore, special editors instructed by company lawyers check compliant for the grammatical mistakes and correspondence with laws to avoid damaging the institution's reputation and prevent false discontent.⁵⁰⁹ The complaint is addressed to the organization or business in question so that it can provide a resolution as quickly as possible, the grievance will be made public on the website and distributed to thousands of followers in the meantime.⁵¹⁰ The business that receives the four-stage complaint might respond to it by writing something to be posted online or by getting in

⁵⁰⁰See for more information
<<https://www.sikayetvar.com/yardim#:~:text=İnternetin%20henüz%20hayatımıza%20bu%20denli,ihraç%20ettiği%20ilk%20iş%20modelidir>>.

⁵⁰¹ Begen, “Consumer E-Dispute: Online Dispute Resolution in Turkey,” 56.

⁵⁰² Serkan Kaya, “Dispute Prevention and Resolution in Online Shopping,” n.d., 168.

⁵⁰³ See id., for more < <https://www.sikayetvar.com/hakkimizda>>.

⁵⁰⁴ See for more, < <https://www.sikayetvar.com/>>. Accessed 29.07.24.

⁵⁰⁵ See id.

⁵⁰⁶ See *supra*, note 504.

⁵⁰⁷ Kaya, “Access to Justice for Turkish Consumers in the Digital Age: The Need for Enhancing Consumer Dispute Resolution Through Online Dispute Resolution,” 152.

⁵⁰⁸ See id.

⁵⁰⁹ See id.

⁵¹⁰ See for more, < <https://www.sikayetvar.com/>>. Accessed 29.07.24.

touch with the person who filed the complaint.⁵¹¹ Regardless of the fact that Şikayetvar is a private company, it can be compared in functionality to the ‘Howard’ software tool, which was established in 19 November, 2007 in European Parliament Office in Dublin.⁵¹² ‘Howard’ can be explained as a website to check if a certain trader can be trusted, which function as a private ombudsman to enhance safety of consumers.⁵¹³

Besides Şikayetvar.com, these e-commerce platforms that were mentioned above (Hepsiburada⁵¹⁴, Yemeksepeti⁵¹⁵, Trendyol⁵¹⁶, Sahibinden⁵¹⁷ and etc.) developed ODR systems among themselves, by utilization of AI Technologies. The example of it, Trendyol Assistant.⁵¹⁸ It is an application which was built on the State Machine architecture⁵¹⁹ and created as a step before connecting users to the real person customer representatives and intended to settle customer problems 24/7.⁵²⁰ Trendyol Assistant is an automatic system that presents categories of potential issues and provides quick and simple remedy with only a few clicks.⁵²¹

⁵¹¹ See id.

⁵¹² European Commission. Directorate General for Health and Consumers., *The European Consumer Centres Network 2007 ANNUAL REPORT* (LU: Publications Office, 2008), 11, <https://data.europa.eu/doi/10.2772/46141>.

⁵¹³ The process of Howard’s work, is following: the user can check URL address of the European website of the company he wishes to purchase something and Howard gives all the available information with positive or negative feedbacks. Howard a great tool not only for the avoidance from fraudulent but also adviser for reliable traders. In addition, Howard gives price comparisons and explains the rights to cancel a warranty. When a site is recently registered or a purchase on them requires prepayment, it is vastly helpful. J.A. Luzak, “Recent Developments in European Consumer Law,” May 2, 2011.

⁵¹⁴ It is one of the first e-commerce web-sites, which is working since 2000. In 2021 it become first in Turkey company listed in NASDAQ Stock Exchange.

⁵¹⁵ The platform digitalized more than 32 thousand restaurants and established takeaways system in them. It was established in 2001 and was invested by European Founders Fund in 2008.

⁵¹⁶ Trendyol founded as a website selling clothing in 2010, however it became shopping platform with a market valuation of over \$1 billion, selling different types of goods. See for more information < <https://www.trendyol.com/whoweare>>. Accessed 20.06.24.

⁵¹⁷ Sahibinden was founded in 2000 by Taner Aksoy in order to give consumers and seller convenient database with detailed photos and assembled advertisements.

⁵¹⁸ See <<https://www.trendyol.com/yardim/sorular>>. Accessed 29.07.24.

⁵¹⁹ State machines are an effective technique for modelling computer processes because of their strong behaviour consistency, clearly defined state transitions, and ease of understanding and development. Gökhan Birinci, “Trendyol Asistan’ı Nasıl Geliştirdik?” June 22, 2020, <<https://medium.com/trendyol-tech/trendyol-asistanı-nasıl-geliştirdik-fba27071393>>.

⁵²⁰ See also <<https://www.trendyol.com/yardim/sorular>>. Accessed 30.07.24.

⁵²¹ See id.

3.1.2.2. Consumer Arbitration Boards and Consumer Courts

3.1.2.2.1. Consumer Arbitration Boards

3.1.2.2.1.1. In General

Although, there is no ODR mechanism fully solving consumer disputes, it should be mentioned that from the moment of Türkiye's EU membership process began, Türkiye's consumer protection policy was developed.⁵²² The right to protection of health, economical safety and access to justice are the primary rights of consumers.⁵²³ According to the Turkish Code on Consumer Protection (CPL) No:6502, consumer arbitration boards and consumer courts authorized to resolve consumer disputes.⁵²⁴ For the year 2024, the dispute's with worth under 122.000 TL are obliged to be under consideration of consumer arbitration committees.⁵²⁵ Consumer arbitration boards are composed of a provincial directorate of trade chairperson⁵²⁶, a rapporteur⁵²⁷, representatives from the municipality, bar association, chamber of commerce, or industry, and, if available, a consumer organization with bar association members appointed on a rotating basis in cities with multiple bar associations.⁵²⁸ According to the nature of consumer arbitration boards, there are many doubts, some scholars consider them as a compulsory arbitration, some as ADR and some as a unique dispute resolution mechanism.⁵²⁹

⁵²²Kaya, "Access to Justice for Turkish Consumers in the Digital Age: The Need for Enhancing Consumer Dispute Resolution Through Online Dispute Resolution," 123.

⁵²³ "Council Resolution of 14 April 1975 on a Preliminary Programme of the European Economic Community for a Consumer Protection and Information Policy OJ 1975, No.C92/1," n.d. Also, law on consumer protection No:6502, accepted 07.11.2013., Article 1, states the same, "The purpose of this Law is to take measures that protect the health, safety and the economic interests of the consumer, to compensate the loss of the consumers, to ensure protection of the consumers from environmental hazards, which inform and educate the consumers in accordance with public interest; to promote self-protecting initiatives by the consumers and to regulate particulars on the promotion of the voluntary organizations for establishing policies regarding this matter".

⁵²⁴Law on Consumer Protection was published in the Official Gazette and entered into force on 07 November,2013,<<https://ticaret.gov.tr/data/5d42a9b313b87632542a2dae/LAW%20ON%20CONSUMER%20PROTECTION.pdf>>. Accessed 30.07.24.

⁵²⁵See<<https://ticaret.gov.tr/tuketici/tuketici-hakem-heyetleri/tuketici-hakem-heyetlerine-iliskin-bilgilendirme-metni>>.

⁵²⁶A representative from the local Provincial Directorate of Trade, under the Ministry of Trade. "Tüketici Hakem Heyetleri Yönetmeliği".

⁵²⁷ Specialist responsible for preparing case files and reports. "Tüketici Hakem Heyetleri Yönetmeliği".

⁵²⁸Resmi Gazete 2022 "Tüketici Hakem Heyetleri Yönetmeliği", Madde 8, <<https://www.resmigazete.gov.tr/eskiler/2022/09/20220921-1.htm>>. Accessed 25.07.24.

⁵²⁹Kaya, "Access to Justice for Turkish Consumers in the Digital Age: The Need for Enhancing Consumer Dispute Resolution Through Online Dispute Resolution," 123.

3.1.2.2.1.2. Application to Consumer Arbitration Boards

Application to the consumer arbitration boards must consist fully filled application form and all the concerning documents with dispute evidences to be submitted.⁵³⁰ Applications can be submitted electronically using an e-signature⁵³¹ via the Consumer Information System (TÜBİS)⁵³² and e-government⁵³³ site, either in person or through a lawyer.⁵³⁴ Onwards, submitted applications can be monitored through TÜBİS portal.⁵³⁵ Upon receiving an application, the Consumer Arbitration Board may request additional information, which applicants must provide within thirty days of notification.⁵³⁶ In line with Article 107/A of the Tax Procedure Law,⁵³⁷ these requests are made electronically,

⁵³⁰See <<https://ticaret.gov.tr/tuketici/tuketici-hakem-heyetleri/tuketici-hakem-heyetlerine-iliskin-bilgilendirme-metni>>. Accessed 25.07.24.

⁵³¹An *electronic signature* is a technology-neutral concept that includes all methods used to electronically sign data, documents, and materials. An electronic signature refers to different technical solutions, including biometric and digital signatures that enable the identification of signees. Yildirim, “Application Areas of E-Signature Technology in Supply Chain and Its Effects on Supply Chain Management”, 2022, 251. In Türkiye, the term Electronic Signature (E-Signature) began to be used instead of the term digital signature with the Electronic Signature Law No. 5070. (Electronic Signature Law No. 5070, 2004). Mustafa Uçmaz, “Türkiye’de Sayısal İmza (E-İmza) ve Adalet Bakanlığı’nda E-İmza Kullanımının Değerlendirilmesi”, 2010, 51. Electronic signature which entered Turkish Law within the scope of the “E-Transformation Turkey Project” launched in 2003, plays vital role in activation and widespread use of both UYAP and electronic notification. Mustafa Gülen ve Uğur Ömürgülenşen, ‘Türkiye’de e-İmza Alanındaki Hukuki Düzenlemeler ve Bazı Kamu Kurumlarındaki e-İmza Uygulamaları’, 2011, 1, Sosyo Ekonomi 197, 208-209.

⁵³²The Republic of Turkey's Ministry of Trade created the TÜBİS, or Consumer Information System, as a digital platform to expedite and improve the resolution of consumer complaints. Customers can use this system to follow the progress of their application, check the results, and apply through the e-Government Gateway without needing an electronic signature. See for more information <<https://tuketicişikayeti.ticaret.gov.tr>>. Accessed 26.07.24.

⁵³³Electronic government (*e-Government*) is a government that interacts with government bodies, citizens, and organizations in an electronic format with minimal personal (physical) interaction. Electronic government is based on an electronic document management system, government automation systems, and other information systems. In Turkey, e-Government Gateway opened to the public in 2008, becoming a framework for the integration of hundreds of public institutions and the provision of thousands of public services. As Turkey's digital face, efforts are being made to improve the platform's services, provide more content, and offer round-the-clock assistance to the general public, governmental organizations, and private businesses. The information technology-based e-government application has acquired global popularity and been utilized extensively and quickly. Direct access to the most frequently used services is offered by the e-Government Gateway, which offers a wide range of services from education to transportation, from social security and insurance to justice. Identity verification methods like e-Government Password, Mobile Signature, e-Signature, T.R. ID Card, and Internet Banking can be used to get access to the e-Government Gateway. See for more, <<https://e-devlet.turkiye.gov.tr/bilgilendirme?konu=siteHakkinda>>.

⁵³⁴See *supra*, note 520.

⁵³⁵See <<https://kahramanhukukdanismanlik.com/tuketici-mahkemesine-nasil-basvurulur/>>. Accessed 30.07.24.

⁵³⁶Resmî Gazete, “Tüketici Hakem Heyetleri Yönetmeliği”, 21.09.22, Article 13, <<https://www.resmigazete.gov.tr/eskiler/2022/09/20220921-1.htm>>. Accessed 30.07.24.

⁵³⁷(*Bu Kanun hükümlerine göre tebliğ yapılacak kimselere, 93’üncü maddede sayılan usullerle bağlı kalınmaksızın, tebliğe elverişli elektronik bir adres vasıtasıyla elektronik ortamda tebliğ yapılabilir. Maliye Bakanlığı, elektronik ortamda yapılacak tebliğle ilgili her türlü teknik altyapıyı kurmaya veya kurulmuş olanları kullanmaya, tebliğe elverişli elektronik adres kullanma zorunluluğu getirmeye ve kendisine*

and responses can be sent to the board's official email address.⁵³⁸ The board convenes at least twice monthly, with decisions reached through members voting after case deliberations.⁵³⁹ While the standard review period is six months, complex cases may extend up to nine months.⁵⁴⁰ Decisions are binding, and parties are notified electronically within fifteen days post-decision.⁵⁴¹ The finalized decision is recorded in the TÜBİS system, signed by board members, and archived both digitally and physically.⁵⁴² Parties have fifteen days to appeal to the Consumer Court if they disagree with the decision.⁵⁴³

As a result, it can be concluded that most part of consumer arbitration board dispute resolution procedures may be completed online without requiring applicants to physically be present, which is very practical and advantageous. However, even all these relief of procedure through digitalization does not cancel extensive workload, which negatively affects speed of decision making by consumer arbitration boards.⁵⁴⁴ In this regard, it must be noted, the Ministry of Customs and Trade released statistics showing that 727 thousand consumer complaints were filed with consumer arbitration committees in 2023.⁵⁴⁵ Of those complaints, about 707 thousand reached a decision, with roughly half of the decisions going against the consumers' wishes and the other half in their favor.⁵⁴⁶

elektronik ortamda tebliğ yapılacakları ve elektronik tebliğe ilişkin diğer usul ve esasları belirlemeye yetkilidir.)213 “Vergi Usul Kanunu”, Article 107/A, <<https://www.mevzuat.gov.tr/mevzuatmetin/1.4.213.pdf>>. Accessed 30.07.24.

⁵³⁸Resmî Gazete, “Tüketici Hakem Heyetleri Yönetmeliği”,21.09.22, Article 13/6, <<https://www.resmigazete.gov.tr/eskiler/2022/09/20220921-1.htm>>. Accessed 30.07.24.

⁵³⁹ See id, Article 14/1.

⁵⁴⁰ See id, Article 21.

⁵⁴¹ See id, Article 23.

⁵⁴² See id, Article 22.

⁵⁴³ See id, Article 27.

⁵⁴⁴Kaya, “Access to Justice for Turkish Consumers in the Digital Age: The Need for Enhancing Consumer Dispute Resolution Through Online Dispute Resolution,” 148.

⁵⁴⁵“İl Bazında Başvuru ve Karar Sayıları 2023,” n.d. See <<https://tuketici.ticaret.gov.tr/yayinlar/istatistikler/istatistikler>>. Accessed 18.05.2024.

⁵⁴⁶See id.

3.1.2.2.2. Consumer Courts

3.1.2.2.2.1. In General

Furthermore, consumer courts⁵⁴⁷ work as an appeal body for decision of consumer arbitration boards⁵⁴⁸ and, also consider cases with value exceeding 122.000 TL.⁵⁴⁹ In cases when the parties want to appeal to the consumer arbitration board decisions, they may refer to the consumer courts within 15 days of the Board's award notification.⁵⁵⁰ Mandatory mediation, or mediation as a prerequisite to litigation, is another important topic that must be taken into consideration.⁵⁵¹ The "Law on Modifications to the Civil Procedure Code and Certain Other Laws" states that Article 59 modifies the CPL by requiring mediation before applying to consumer courts.⁵⁵² It does, however, clarify that this adjustment does not apply to instances involving consumer disputes under the jurisdiction of the consumer arbitration board or cases involving appeals of the board's decisions.⁵⁵³

3.1.2.2.2.2. Application to Consumer Courts

Regarding application to the consumer courts or obligatory mediation, since 2015 consumers able to file a suit by utilization of e-signature⁵⁵⁴ on the UYAP Citizen Portal Information System and with updates made from June 29, 2020 it is possible to apply for mediation in this system, too.⁵⁵⁵ The conflict resolution procedure has sped up significantly as a result of this changes. It's also crucial to note that in addition to the

⁵⁴⁷ Since the legislation stipulates that all trial-related expenses are either covered by the Ministry in the event that the applicant loses or by the defendant in the event that he wins, it may be claimed that consumer courts are highly well adapted for the protection of consumers financial interests. Law No:6502, On Consumer Protection, Art.73(3).

⁵⁴⁸ Also, Kaya, "Access to Justice for Turkish Consumers in the Digital Age: The Need for Enhancing Consumer Dispute Resolution Through Online Dispute Resolution," 138.

⁵⁴⁹ See id.

⁵⁵⁰ Law on Consumer Protection was published in the Official Gazette and entered into force on 07 November, 2013,

Article 70/3. <<https://ticaret.gov.tr/data/5d42a9b313b87632542a2dae/LAW%20ON%20CONSUMER%20PROTECTION.pdf>>. Accessed 30.07.24.

⁵⁵¹ See for more <<https://www.resmigazete.gov.tr/eskiler/2020/07/20200728-14.htm>>. Accessed 26.07.24.

⁵⁵² "Hukuk Muhakemeleri Kanunu İle Bazı Kanunlarda

Değişiklik Yapılması Hakkında Kanun" was published in the Official Gazette and entered into force on 22 July, 2020, Article 59, < <https://www.resmigazete.gov.tr/eskiler/2020/07/20200728-14.htm>>. Accessed 26.07.24.

⁵⁵³ See id.

⁵⁵⁴ Kaya, "Access to Justice for Turkish Consumers in the Digital Age: The Need for Enhancing Consumer Dispute Resolution Through Online Dispute Resolution," 154.

⁵⁵⁵ "Uyap Arbuluculuk Başvurusu Nasıl Yapılır?" February 15, 2022. For more <<https://www.alfaarbuluculuk.com/uyap-arbuluculuk-basvurusu-nasil-yapilir/>>. Accessed 28.06.2024.

application process, the mediation process may be completed fully online, through teleconferencing⁵⁵⁶ or any other electronic means.⁵⁵⁷ Remarkably, mediation conducted via teleconference by using e-signature is quite convenient.⁵⁵⁸ In view of the fact that, presence of e-signature eliminates the need in wet signatures, which in turn simplifies the process.⁵⁵⁹ After the mediation session, the final decision is made in UDF format,⁵⁶⁰ whether it ends in agreement or disagreement. The steps involved are as follows: The UDF file is initially sent to the parties, but firstly signed by the mediator.⁵⁶¹ The parties cannot change anything in this file, all they have to do is put their electronic signatures next to the mediator's signature.⁵⁶² The mediator is authorized to contact with the parties at every step of the mediation process by whatever means, as stated in Regulation on The Law on Mediation in Legal Disputes, Art.10.⁵⁶³ Likewise, application to the consumer courts, requires a petition and supporting documentation.⁵⁶⁴ Documents must consist of evidences, like invoices, receipts, pictures, videos and other evidence of the service or product to support the issue and also explain fully reason of submission a law suit.⁵⁶⁵

⁵⁵⁶A technology known as teleconferencing allows many individuals to converse at the same time via the phone or through an application, either with audio alone or video plus audio. This communication method, which we use frequently in daily life, is important since it became quite resultative while applying to the ODR mechanisms. Mahmut Acerce, "Arabuluculukta Telekonferans Dönemi," n.d., <<https://www.hititarabuluculuk.com/arabuluculukta-telekonferans-donemi/>>. Accessed 26.07.24.

⁵⁵⁷Mahmut Acerce, "Arabuluculukta Telekonferans Dönemi," n.d., <<https://www.hititarabuluculuk.com/arabuluculukta-telekonferans-donemi/>>. Accessed 26.07.24.

⁵⁵⁸"Arabuluculukta E-İmza Kullanımı," August 24, 2022, <https://avukat-arabulucu.com/arabuluculukta-e-imza-kullanimi/~:text=Telekonferans%20yöntemi%20ile%20arabuluculuk%20faaliyeti,olmaksızın%20e-imza%20ile%20tamamlanabilir.<https://avukat-arabulucu.com/arabuluculukta-e-imza-kullanimi/~:text=Telekonferans%20yöntemi%20ile%20arabuluculuk%20faaliyeti,olmaksızın%20e-imza%20ile%20tamamlanabilir.> .> Accessed 23.05.2024.

⁵⁵⁹ See id.

⁵⁶⁰ The OSTA (Optical Storage Technology Association) created the Universal File Format (UDF), a file system designed for optical media. A portable format supported by a number of operating systems is UDF. As the new standard, UDF has supplanted ISO 9660, particularly in read/write media.

⁵⁶¹ See *supra*, note 548.

⁵⁶² See id.

⁵⁶³ Regulation on The Law on Mediation in Legal Disputes, was published in the Official Gazette on 02 June, 2018. "Article 10 – (1) The mediator may meet with each of the parties individually or together. He/she may use any means of communication for this purpose." And Art.17(2) of the same regulation. <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=24638&MevzuatTur=7&MevzuatTertip=5>>. Accessed 24.06.24. Also, Art.15 - (2) of the The Law on Mediation in Legal Disputes, No: 6325. <<https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6325.pdf>>. Accessed 25.07.24.

⁵⁶⁴Yonca İşsever Çapa, "Tüketici Mahkemesi ve Görevleri," July 5, 2023, <<https://www.capa.av.tr/tuketici-mahkemesi-ve-gorevleri/#:~:text=6502%20sayılı%20Tüketicinin%20Korunmasına%20Dair%20Kanun%20M.73%20ile%20tüketici,ilişkin%20davalara%20tüketici%20mahkemeleri%20bakacaktır>>. Accessed 28.07.24.

⁵⁶⁵Moreover, follow Article 119 of the Civil Procedure Code, No. 6100, for full details on the petition's content requirements.

Additionally, the Law on Consumer Protection, Article 73(8) stipulates that, final decisions of consumer courts must be transferred to the Ministry in order to notify, through UYAP system.⁵⁶⁶ However, there are drawbacks to filing an application with the consumer courts as well. One of the main disadvantages of using consumer courts for conflicts involving consumers is the excessive workload of the courts, which causes unjustified delays in the administration of justice and prolongations the duration of cases.⁵⁶⁷ This illustrates the need and validity of mediation as a preliminary to litigation by showing the clear advantage of settling the disagreement during the mediation process in order to get justice swiftly and easily.⁵⁶⁸ Additionally, there is a system known as E-Trial that greatly simplifies the hearing procedure; which will be explained in the section 3.1.3. below.

To sum up, despite the fact that today in Türkiye there is no special ODR platform for resolution of consumer disputes, there are still a lot of aspects of digitalization which ease this process. The primary drawback of this system, in spite of all these advances, is the length of the dispute resolution period—quite lengthy when compared to contemporary international norms.⁵⁶⁹ In this regard, there are various suggestions in the doctrine.⁵⁷⁰

⁵⁶⁶Law on Consumer Protection, No:6502 was published in the Official Gazette and entered into force on 07 November, 2013.

<[https://ticaret.gov.tr/data/5d42a9b313b87632542a2dae/LAW%20ON%20CONSUMER%20PROTECTI ON.pdf](https://ticaret.gov.tr/data/5d42a9b313b87632542a2dae/LAW%20ON%20CONSUMER%20PROTECTI%20ON.pdf)>. Accessed 30.07.24.

⁵⁶⁷ Kurtulan, “The Arbitrability of Consumer Disputes Under Turkish Law,” 254.

⁵⁶⁸ Kaya, “Access to Justice for Turkish Consumers in the Digital Age: The Need for Enhancing Consumer Dispute Resolution Through Online Dispute Resolution,” 148.

⁵⁶⁹ See *supra*, note 558.

⁵⁷⁰ Professor Serkan Kaya provided suggestions for the establishment of an ODR platform in Turkey in his work “Access to Justice for Turkish Consumers in the Digital Age: The Need to Improve Consumer Dispute Resolution through Online Dispute Resolution”. *The main idea of his proposal for establishing a non-profit Online Dispute Resolution (ODR) platform in Turkey, modelled after EU and UNCITRAL standards. Through automated tools, negotiation, and alternative dispute resolution (ADR) techniques including mediation, the platform seeks to effectively settle customer issues. It would categorize disputes, provide legal guidance, and connect consumers with traders to find solutions. Cases would go to consumer courts or ADR organizations if they couldn't be settled. The platform would be government-supported, with possible funding from businesses or EU projects. The goal is to improve consumer access to justice while reducing costs and legal burdens.*

3.1.2.3. Compulsory Mediation in Other Disputes

3.1.2.3.1. Labor Disputes

In Turkish legal system compulsory mediation applied not only in consumer disputes⁵⁷¹ but in a number of other cases, such as employer-employee⁵⁷², commercial⁵⁷³ and disputes within the scope of Law No. 7445.⁵⁷⁴ It must be pointed out, that for the first-time mandatory mediation was implemented in labor disputes according to the Law No. 7036 on Labor Courts in 2018.⁵⁷⁵ Mandatory mediation in labor disputes is applicable in the following cases: claims pertaining to unpaid wages, severance pay and notice compensation, and reinstatement claims following an unjust dismissal.⁵⁷⁶ However, compensation claims resulting from work accidents or occupational diseases, as well as any cases linked to these, are exempt from mediation as a mandatory stage.⁵⁷⁷ Article 3(22) of the Law on Labor Courts⁵⁷⁸ states, that the “Regulation on the Law on Mediation in Legal Disputes”⁵⁷⁹ regulates the application, assignment, and other matters relating to mediation.

Although there are no provisions for conducting mediation process entirely online, several components of the obligatory mediation process are already conducted through

⁵⁷¹6502 “Tüketicinin Korunması Hakkında Kanun”, Article 73/A, <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=6502&MevzuatTur=1&MevzuatTertip=5>>. Accessed 09.08.24

⁵⁷²7036 “İş Mahkemeleri Kanunu”, Article 3, <<https://www.resmigazete.gov.tr/eskiler/2017/10/20171025-8.htm>>. Accessed 09.08.24

⁵⁷³6102 “Türk Ticaret Kanunu”, Article 5/A, <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=6102&MevzuatTur=1&MevzuatTertip=5>>. Accessed 10.09.24.

⁵⁷⁴7445 “İcra ve İflas Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun”, <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=7445&MevzuatTur=1&MevzuatTertip=5>>. Accessed 20.08.24.

⁵⁷⁵7036 “İş Mahkemeleri Kanunu”, Article 3, <<https://www.resmigazete.gov.tr/eskiler/2017/10/20171025-8.htm>>. Accessed 09.08.24. Didem Yardımcıoğlu, “İş Hukukunda Dava Şarti Arabuluculuk İle Hakem-Bilirkişiliğin Birlikte Uygulanması Halinde Karşılaşılabilecek Durumlar (Situations that may be Encountered when Mandatory Mediation in Labour Law and Expert-Determination are Applied Together),” *Türkiye Adalet Akademisi Dergisi* YOK, no. 56 (October 12, 2023): 465–96, <https://doi.org/10.54049/taad.1374522>.

⁵⁷⁶7036 “İş Mahkemeleri Kanunu”, Article 3, <<https://www.resmigazete.gov.tr/eskiler/2017/10/20171025-8.htm>>. Accessed 09.08.24.

⁵⁷⁷ See id.

⁵⁷⁸7036 “İş Mahkemeleri Kanunu”, Article 3, <<https://www.resmigazete.gov.tr/eskiler/2017/10/20171025-8.htm>>. Accessed 09.08.24.

⁵⁷⁹Resmi Gazete 30439, 02.06.2018, “Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu Yönetmeliği”, <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=24638&MevzuatTur=7&MevzuatTertip=5>>. Accessed 10.08.24.

electronic communication means.⁵⁸⁰ They are as follows: Application for mediation as a condition of the trial, is submitted by one of the parties by means of a petition, by filling out forms offline or also possibly electronically.⁵⁸¹ To finalize assignment of mediator, through the Mediator Information System,⁵⁸² the selected mediator completes the appointment after being selected from a pre-compiled list of mediators.⁵⁸³ To start mediation process⁵⁸⁴, assigned mediator invites parties for the first meeting, through utilization of all available means of communication including online ones.⁵⁸⁵ Meetings are often conducted in person, but with both participants' permission, they can also be conducted online.⁵⁸⁶ In cases when mediator was unable to get in touch with the parties, the final protocol details the ways in which they tried to do so and the reasons why they were unsuccessful.⁵⁸⁷

3.1.2.3.2. Commercial Disputes

Another area where compulsory mediation was introduced after labor disputes, is commercial disputes in 2019 with new amendments in Turkish Commercial Code No. 6102.⁵⁸⁸ In cases specified in Article 4 of Turkish Commercial Code, where the subject

⁵⁸⁰Toikin, “Türk, Rus ve Kazak Hukuku Bakımından Arabuluculuk”; İlknur ÇAVDAR KISACIK, “Sigorta Uyuşmazlıklarında Arabuluculuk ve Tahkim” (Yüksek Lisans Tezi, İstanbul, İstanbul Ticaret Üniversitesi, 2024).

⁵⁸¹Resmi Gazete 30439, 02.06.2018, “Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu Yönetmeliği”, Article 23(3), <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=24638&MevzuatTur=7&MevzuatTertip=5>>. Accessed 10.08.24.

⁵⁸²<<https://arabulucu.uyap.gov.tr/main/arabulucu/index.jsp?v=3784>>. Accessed 12.08.24.

⁵⁸³There is no way to select a mediator from outside of this list when mediation is prerequisite to litigation. “Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu Yönetmeliği”, <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=24638&MevzuatTur=7&MevzuatTertip=5>>. Accessed 10.08.24.

⁵⁸⁴Regarding mediation process, after the start of it mediator has to decide within 3 weeks and this period can be extended for one more week. In cases of not reaching consensus after mediation the applicant must attach original or mediator approved copy of final decision to the court. Court gives additional one week for applicants without submitted final decision to complete this requirement, otherwise their application will be dismissed as a result of not fulfillment of requirement.

⁵⁸⁵“Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu Yönetmeliği”, <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=24638&MevzuatTur=7&MevzuatTertip=5>>. Accessed 10.08.24.

⁵⁸⁶“Ortaklığın Giderilmesi Davalarında Zorunlu Arabuluculuk(2024)”, <<https://www.akademikhukuk.org/ortakligin-giderilmesi-davalarinda-zorunlu/#:~:text=Evet%2C%2001%20Eylül%202023%20tarihinden,açmadan%20önce%20arabulucuya%20başvurulması%20gerekmektedir>>. Accessed 20.08.24.

⁵⁸⁷See id.

⁵⁸⁸6102 “Türk Ticaret Kanunu”, Article 5/A, <<https://www.mevzuat.gov.tr/mevzuatmetin/1.5.6102.pdf>>. Accessed 11.09.24.

is the payment of a certain amount of money⁵⁸⁹, it is mandatory to apply for mediation before filing a lawsuit.⁵⁹⁰ Commercial disputes without financial claim⁵⁹¹ are not subject of mandatory mediation. Same as in labor disputes, mandatory mediation in commercial disputes also regulated by HUKAK⁵⁹² and HUKAK Yönetmeliği.⁵⁹³ However, commercial disputes differ from labor disputes in the length of permitted mediation period, it is six weeks long and also can be extended for an additional two weeks.⁵⁹⁴

3.1.2.3.3. Rental Disputes

Disputes involving rental relations are also in the list of those subject to mandatory mediation before filing a claim.⁵⁹⁵ Some examples within this context: disagreements over rent receivables, rent determination, adaptation, return of the rented property, permission to show the rented property and security of it.⁵⁹⁶ However, there is an exception which do not fall under obligatory mediation in rent disagreements, it is eviction of rented real estates through non-judicial execution.⁵⁹⁷

3.1.2.3.4. Disputes within the Scope of Law No.7445

Additional dispute categories covered by mandatory mediation include disputes regarding the distribution of movable and immovable properties and the dissolution of the partnership, disputes arising from condominium ownership, neighboring rights and agricultural.⁵⁹⁸ All these categories of disputes became subject of mediation as a

⁵⁸⁹Commercial disputes involving monetary claims: payment of debts, compensation claims, breach of commercial contracts, unfair competition cases with monetary aspects and disputes related to shareholder rights if they involve financial claims.

⁵⁹⁰“Türk Ticaret Kanunu”, Article 4.

⁵⁹¹Like: disputes related to company dissolution, intellectual property rights without a monetary claim, disputes with public policy concern like bankruptcy cases.

⁵⁹²6325 “Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu”, <<https://www.mevzuat.gov.tr/mevzuatmetin/1.5.6325.pdf>>. Accessed 19.08.24.

⁵⁹³Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu Yönetmeliği”, <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=24638&MevzuatTur=7&MevzuatTertip=5>>. Accessed 10.08.24.

⁵⁹⁴6102 “Türk Ticaret Kanunu”, Article 5/A (2), <<https://www.mevzuat.gov.tr/mevzuatmetin/1.5.6102.pdf>>. Accessed 11.09.24.

⁵⁹⁵6325 “Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu”, Article 18/B, <<https://www.mevzuat.gov.tr/mevzuatmetin/1.5.6325.pdf>>. Accessed 19.08.24.

⁵⁹⁶Umut Yeniocak, *Kira Bedelinin Belirlenmesi Kira Tespit ve Kira Uyarlama Davaları*, 3. (Ankara, 2023), 152; Aytekin Çelik and Hakkı Mert Doğu, “Kira Uyuşmazlıklarında Dava Şartı Arabuluculuk ve Ticari Dava Şartı Arabuluculuk Üzerindeki Etkileri,” *Selçuk Üniversitesi Hukuk Fakültesi Dergisi*, May 16, 2024, 816, <https://doi.org/10.15337/suhfd.1410937>.

⁵⁹⁷2004 “İcra ve İflas Kanunu”, <<https://www.mevzuat.gov.tr/mevzuatmetin/1.3.2004.pdf>>. Accessed 20.08.24.

⁵⁹⁸7445 “İcra ve İflas Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun”, <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=7445&MevzuatTur=1&MevzuatTertip=5>>. Accessed 20.08.24.

prerequisite to litigation on September 1, 2023 with amendments according to the Law No. 7445.⁵⁹⁹ Mandatory mediation in all of these issues is intended to reduce the load on the courts while also promoting good relations and collaboration, as these disagreements frequently emerge between groups of individuals who want to remain good relationship.⁶⁰⁰ Procedure of mediation in all these disputes are the same, regulated by the “Regulation on the Law on Mediation in Legal Disputes” and possible be held partly online with the will and permission of parties.⁶⁰¹

3.1.3. E-Trial

3.1.3.1. An Overview

Artificial Intelligence and new technologies were integrating in civil judiciary, with the development of technologies and need to be in line with world’s new standards.⁶⁰² However, pandemic period made this not only result of development but obligatory factor to continue functioning of these processes worldwide.⁶⁰³ Regarding the integration of technologies in civil proceeding, in Türkiye the most vital update was made to the Civil Procedure Code on 22 July 2020, Article 149.⁶⁰⁴ This article outlines the procedures for holding hearings via audio and video broadcasting, or in other words procedure of electronic trial.⁶⁰⁵ However, it must be mentioned that very first provisions pertaining to the holding of hearings by audio and video transmission in Türkiye, were included in the criminal proceeding, to the Criminal Procedure Code No. 5271 earlier, in 2004.⁶⁰⁶ In criminal proceedings, hearings conducted by audio and video transmission are done using

⁵⁹⁹ See id.

⁶⁰⁰ Özge YeniCe Ceylan, “Ortaklığın Giderilmesinde Dava Şartı Arabuluculuk,” *İnönü Üniversitesi Hukuk Fakültesi Dergisi* 14, no. 2 (December 31, 2023): 510–25, <https://doi.org/10.21492/inuhfd.1377452>; Çaydar Kisacık, “Sigorta Uyuşmazlıklarında Arabuluculuk ve Tahkim.”

⁶⁰¹ Resmi Gazete 30439, 02.06.2018, “Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu Yönetmeliği”, <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=24638&MevzuatTur=7&MevzuatTertip=5>>. Accessed 10.08.24.

⁶⁰² Anar Mirzayev, “Medeni Yargılamada E-Duruşma” (Bursa, T.C. Uludağ Üniversitesi, 2023), 12.

⁶⁰³ Mirzayev, 13.

⁶⁰⁴ Karabel and Aydemir, “The Use of Online Courts and Artificial Intelligence in Respect of the Right to Access to Justice and to Accelerate the Proceedings in Civil Procedure”; Tuğba Orta, “Medeni Yargıda E-Duruşma Uygulanması” (Ankara, Hacettepe Üniversitesi, 2024); Mirzayev, “Medeni Yargılamada E-Duruşma.”.

⁶⁰⁵ Code of Civil Procedure, No:6100, was published in Resmi Gazete and accepted 12.01.2011. <<https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6100.pdf>>. Accessed 20.06.24.

⁶⁰⁶ “Ceza Muhakemesi Kanunu” No:5271, was published in Resmi Gazete in 17.12.2004. <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5271&MevzuatTur=1&MevzuatTertip=5>>. Accessed 18.07.24.

the SEGBİS.⁶⁰⁷ In civil proceeding, to start with the term of an electronic trial, it is a court proceeding that follows all procedural rules, but in which one or more parties participate virtually using AI technologies.⁶⁰⁸ In line with the Judicial Reform Strategy carried out by the Ministry of Justice Information Technology Department with the support of the European Union, which was developed with the goal of ensuring safe and accessible justice, e-trials were added to the Turkish legal system with the Law No. 7251, Art.17⁶⁰⁹, which is known as the third judicial package.⁶¹⁰ Currently for the year 2024, 3235 civil courts in 81 provinces are using e- trials, and since the application’s launch, one million 398 thousand 306 e- trials have taken place.⁶¹¹ E-trial system gained singularly attention and need during COVID-19 pandemic period, through allowing attendance to the civil hearings online from any location.⁶¹² Crucial to note that, judge in this case participates to the hearing from courtroom, and party or the lawyer from remote. The specifics of the site of attendance will be thoroughly explained in the section 3.1.3.2.3, which follows below.

Although, e-trial came into use after SEGBİS, it can be claimed that e-trial poses broader concept than SEGBİS.⁶¹³ The reason for that, is the fact that to the e-trial system, which allows participants to attend hearings from anywhere in the world, SEGBİS allows

⁶⁰⁷SEGBİS (Audio and Visual Information System), made it possible to record hearings and take statements by Chief Public Prosecutor's Office and the criminal court, also record and hear statements from people (suspects, defendants, witnesses, complainants, participants, etc.) who are not under their jurisdiction or who are unable to appear in person. See, “SEGBİS Ne Demek? SEGBİS’in Açılımı Nedir?,” December 12, 2019.< <https://www.hurriyet.com.tr/gundem/segbis-ne-demek-segbisin-acilimi-nedir-41395880>>. Accessed 19.06.14. Primary rules regarding pertaining to the SEGBİS are in the Criminal Procedure Code No. 5271 and Regulation on the Use of Audio and Video Information System in Criminal Proceedings. See, 17 Aralık 2004 tarihli ve 25673 sayılı Resmî Gazete, “Ceza Muhakemesi Kanunu”, <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5271&MevzuatTur=1&MevzuatTertip=5>>. Accessed 19.06.2024. “Ceza Muhakemesinde Ses ve Görüntü Bilişim Sisteminin Kullanılması Hakkında Yönetmelik”, <<https://www.mevzuat.gov.tr/anasayfa/MevzuatFihristDetayIframe?MevzuatTur=7&MevzuatNo=15315&MevzuatTertip=5>>. Accessed 18.06.2024. Orta, “Medeni Yargıda E-Duruşma Uygulanması,” 5.

⁶⁰⁸ Mirzayev, “Medeni Yargılamada E-Duruşma,” 36.

⁶⁰⁹ See <<https://www.resmigazete.gov.tr/eskiler/2020/07/20200728-14.htm>>. Accessed 21.06.24.

⁶¹⁰ Karabel and Aydemir, “The Use of Online Courts and Artificial Intelligence in Respect of the Right to Access to Justice and to Accelerate the Proceedings in Civil Procedure,” 563. Mirzayev, “Medeni Yargılamada E-Duruşma,” 82. See also, < <https://edurusmabilgi.adalet.gov.tr/e-durusma-81-ilde-3235-hukuk-mahkemesinde-uygulanıyor>>. Accessed 20.06.24.

⁶¹¹ See, for more information <<https://edurusmabilgi.adalet.gov.tr/e-durusma-81-ilde-3235-hukuk-mahkemesinde-uygulanıyor>>. Accessed 22.06.24.

⁶¹² See id.

⁶¹³ Gökçe Varol, “Ses ve Görüntü Nakli Yoluyla Duruşma Yapılmasına İlişkin Olarak 7251 Sayılı Kanun’la Yapılan Değişikliklerin Doğrudanlık İlkesi Kapsamında Değerlendirilmesi,” *Anadolu Üniversitesi Hukuk Fakültesi Dergisi* 8, no. 1 (January 28, 2022): 75, <https://doi.org/10.54699/andhd.1039509>.

participants to engage in hearings in courtrooms and certain locations specified in the SEGBİS regulation through audio and video transmission.⁶¹⁴ Since the term online dispute resolution has gained a broader base, in addition to traditional methods such as online mediation, arbitration or negotiation, online courts are also considered as an ODR.⁶¹⁵ This can be explained as a consequence of work in order to use technologies for bringing traditional legal system and alternative dispute resolution techniques into electronic setting.⁶¹⁶ The e-trial system's introduction also aims to promote procedural economy, or the idea that trials should be done with less money and labor.⁶¹⁷ The e-trial application is of great importance in terms of facilitating access to justice services, while also being significant tool for lawyers which saves their time and simplify labor.⁶¹⁸

3.1.3.2. Procedure of E-Trial

3.1.3.2.1. E-Trial Request

1) To use the system, firstly lawyers have to send “E-trial request” through UYAP Portal⁶¹⁹ or CELSE Mobile application.⁶²⁰ Additionally, UYAP data is used in conjunction with a secure electronic signature, mobile signature, or other techniques to accomplish the identification of the party's attorney, the party participating in the e-trial with its attorney and parties, witnesses, and other interested parties who attend the e-hearing due to their illness, old age, or disability.⁶²¹ The identification of other relevant parties carried out by the editor-in-chief, court clerk or prison officer and a report shall be made on this.⁶²²

⁶¹⁴ See id.

⁶¹⁵ Barış Mıdık, “Medenî Yargıda E-Duruşma Pilot Uygulaması ve Yargının Elektronik Dönüşümü Üzerine Bazı Düşünceler,” *Lexpera.Blog* (blog), n.d., B.

⁶¹⁶ See id.

⁶¹⁷ Serdar Kale, “Ses ve Görüntü Nakledilme Yoluyla Duruşma İcrası (HMK m. 149),” 2013, 143.

⁶¹⁸ Varol, “Ses ve Görüntü Nakli Yoluyla Duruşma Yapılmasına İlişkin Olarak 7251 Sayılı Kanun’la Yapılan Değişikliklerin Doğrudanlık İlkesi Kapsamında Değerlendirilmesi,” 73.

⁶¹⁹ According to the, Art.5 of Regulation on Conducting Hearings through Audio and Video Transmission in Civil Proceedings, “Information, papers, and evidence can be instantaneously sent via UYAP during the e-trial process”.

⁶²⁰ Adalet Bakanlığı Bilgi İşlem “E-Duruşma Kullanım Kılavuzu.”.

⁶²¹ Adalet Bakanlığı, “Hukuk Muhakemelerinde Ses ve Görüntü Nakledilmesi Yoluyla Duruşma İcrası Hakkında Yönetmelik” (Regulation on Conducting Hearings through Audio and Video Transmission in Civil Proceedings) was published in Resmi Gazete on 30 June, 2021. < <https://higm.adalet.gov.tr/Resimler/SayfaDokuman/3062021121049EDurusma%20%20Yonetmelik.pdf> >. Art.12.

⁶²² See id.

2) In order for the request to be approved, it must be sent at least two working days before to the trial's start.⁶²³

3) Afterwards, requests will be handled by judge roles in the competent courts.⁶²⁴ In single-judge courts, the authority that will decide on answer of the e-hearing request is the judge.⁶²⁵ In collective courts, the person who will decide on the e-hearing request is the presiding judge.⁶²⁶ At least 24 hours prior to the hearing date, the judge will render a final decision on whether to grant or deny the request for an electronic trial.⁶²⁷ If a submission was made less than 2 business days' notice, the system will automatically decline the request.⁶²⁸ Despite this, Art. 9 of the "Regulation on Conducting Hearings through Audio and Video Transmission in Civil Proceedings" states also two more reasons request to be rejected, they are: request violates rights or purposely drag out the trial or due to technical, legal or any other issues it's impossible to held online trial.⁶²⁹

4) Further, request that was accepted provide lawyers with possibility to join online trial via video conference when court activates the system. Consequently, by selecting the "Join the Trial" option from the "Trial Query" menu on the CELSE app or UYAP portal.⁶³⁰ Other participants to the hearing are present in courtroom.⁶³¹

⁶²³ See id. Art.8(2)- *It is requested from the court at least two business days before the hearing date through e-hearing, UYAP mobile applications, lawyer or citizen portal.*

⁶²⁴ See id. See also, Umur Yıldırım, "E-Duruşma Talebi Örneği," May 21, 2024, <<https://kadimhukuk.com.tr/makale/e-durusma-talebi-ornegi/#:~:text=E%2Dduruşma%2C%20hukuk%20yargılamalarında%20aynı,dığer%20ilgililerin%20dinlenilmelerini%20sağlayan%20sistemdir>>. Accessed 19.07.24.

⁶²⁵ Aziz Serkan Arslan, *E-Duruşma Hukuk Yargılamasında Videokonferans Yöntemi (E-Duruşma)* (HMK m.149) (On iki Levha Yayınları, 2023), 158.

⁶²⁶ See id.

⁶²⁷ Adalet Bakanlığı, "Hukuk Muhakemelerinde Ses ve Görüntü Nakledilmesi Yoluyla Duruşma İcrası Hakkında Yönetmelik" (Regulation on Conducting Hearings through Audio and Video Transmission in Civil Proceedings) was published in Resmi Gazete on 30 June, 2021. <<https://higm.adalet.gov.tr/Resimler/SayfaDokuman/3062021121049EDuruşma%20%20Yönetmelik.pdf>>. Art.9(1).

⁶²⁸ See id.

⁶²⁹ Adalet Bakanlığı, "Hukuk Muhakemelerinde Ses ve Görüntü Nakledilmesi Yoluyla Duruşma İcrası Hakkında Yönetmelik" (Regulation on Conducting Hearings through Audio and Video Transmission in Civil Proceedings) was published in Resmi Gazete on 30 June, 2021. <<https://higm.adalet.gov.tr/Resimler/SayfaDokuman/3062021121049EDuruşma%20%20Yönetmelik.pdf>>. Art.9(2).

⁶³⁰ See <<https://edurusmabilgi.adalet.gov.tr>>. Accessed 19.07.24.

⁶³¹ Adalet Bakanlığı, "Hukuk Muhakemelerinde Ses ve Görüntü Nakledilmesi Yoluyla Duruşma İcrası Hakkında Yönetmelik".

3.1.3.2.2. Ex officio E-Trial

Modifications made to Civil Procedure Code in 2020, granted judge's with power to summon to e-trial, in cases when parties cannot freely dispose the case, at the same time with recognition of a unilateral request as sufficient base for conducting e-trial.⁶³² Lawsuits defending individual rights, divorce and separation, paternity, nullity of marriage, and population record rectification are a few examples of lawsuits where parties do not have rights to freely dispose the subject of the case.⁶³³ Also, it doesn't matter to the judge when deciding whether to proceed with an e-trial if the case qualifies for an ex officio⁶³⁴ probe or not.⁶³⁵ However, electronic hearing is not allowed, in cases when, there will be a significant difference between the witness's testimony before the court than somewhere else and the use of this method will create obstacles for the judge in assessing the evidence.⁶³⁶ The reason for that, is the fact that listening to a witness through electronic means demands greater focus than listening to any expert or specialist.⁶³⁷ Since, witness testimony is considered poor evidence, because given that it can be difficult for a witness to recall an incident and speak the truth, or that they can purposefully provide false testimony.⁶³⁸ Thus, in contrast to an electronic hearing, it may be more advantageous for the judge to speak with the witness face-to-face and for the parties or the court to be able to ask direct, prompt questions of the witness.⁶³⁹ In this regard, important thing is that the person attending the hearing electronically aware that

⁶³² Orta, "Medeni Yargıda E-Duruşma Uygulanması," 93. Adalet Bakanlığı, "Hukuk Muhakemelerinde Ses ve Görüntü Nakledilmesi Yoluyla Duruşma İcrası Hakkında Yönetmelik" (Regulation on Conducting Hearings through Audio and Video Transmission in Civil Proceedings) was published in Resmi Gazete on 30 June, 2021. <<https://hgm.adalet.gov.tr/Resimler/SayfaDokuman/3062021121049EDuruşma%20%20Yönetmelik.pdf>>. Art.10.

⁶³³ Abdurrahim Karşı, *Medeni Muhakeme Hukuku* (İstanbul: 4. Baskı, 2014), 261–62. There are more cases in which the parties cannot freely dispose the subject of the case, some of these public order cases are clearly defined by law and some by Supreme Court decisions.

⁶³⁴ The concept of ex officio, defined as spontaneous by the Turkish Language Association, can be expressed as the judge making her own decision in legal processes without any request.; Mustafa Yolcu, "What does ex officio mean?", 14.01.21, < <https://www.efeshukuk.com/en/resen-ne-demek/>>. Accessed 18.07.24.

⁶³⁵ Emre Kıyak, "Duruşmada Etkinlik Kazanan Yargılama İlkeleri İle Usulî Müktesep Hak Işığında Türk Hukuk Yargılamasında Eş Zamanlı Ses ve Görüntü Aktarımıyla Duruşma Yapılmasının Olması Gereken Sınırları," *Bahçeşehir Üniversitesi Hukuk Fakültesi Dergisi*, 2021, 1466–67.

⁶³⁶ Mirzayev, "Medeni Yargılamada E-Duruşma," 102.

⁶³⁷ Mıdık, "Medenî Yargıda E-Duruşma Pilot Uygulanması ve Yargının Elektronik Dönüşümü Üzerine Bazı Düşünceler."

⁶³⁸ Sabri Şakir Ansay, "Mahkemelerimizde Yemin," *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, 1954, 117; Banu Uluşan, "Medeni Yargılama Hukukunda Tanığın E-Duruşma İle Dinlenilmesi ve Kişisel Verilerin Korunması: Alman Hukukuyla Karşılaştırmalı Bir Değerlendirme", *TBB Dergisi*, 2024, 161.

⁶³⁹ Orta, "Medeni Yargıda E-Duruşma Uygulanması," 95.

he is performing actions in the presence of the court, in order to prevent procedural inequality that may arise from the party do not physically attending the hearing.⁶⁴⁰

3.1.3.2.3. Place of Attendance to E-Trial

The Civil Procedure Code's Article 149 states that attendees of the hearing via audio and video transmission may do so "from where they are located."⁶⁴¹ However, Art.11 of Regulation, specifies that, location from which participation in e-trial will be conducted, based on the participants.⁶⁴² Thus, for example:

“1) The judge cannot conduct the electronic hearing from his home, office, or any other location specified in the rule; instead, the hearing must be held in the courthouse.⁶⁴³

2) Lawyers may participate in an e-trial from their legal office, locations designated by the bar association for this purpose, the courthouse, or any other location that satisfies the requirements outlined in Article 5 of the Regulation.

3) The parties and witnesses, experts, etc. may attend the e-trial from the place designated for this purpose in the courthouse or penal institutions where they are located.

4) The party, who will be interviewed may attend together with attorney from the places same as for attorneys.

5) And other participants who, for a variety of reasons, would like to participate virtually must do so from locations that comply with Regulation Article 5.”⁶⁴⁴

⁶⁴⁰ Tuğçe Arslanpınar Tat and Nedim Meriç, *Dijital Çağda Medeni Yargı 2022'den Bakış*, “*Elektronik Ortamda Duruşma ve Diğer Yargı Faaliyetlerinin İcrası*” (Adalet Yayınevi, 2022), 210.

⁶⁴¹ Code of Civil Procedure, No:6100, was published in Resmi Gazete and accepted 12.01.2011. <<https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6100.pdf>>. Accessed 20.06.24.

⁶⁴² Adalet Bakanlığı, “Hukuk Muhakemelerinde Ses ve Görüntü Nakledilmesi Yoluyla Duruşma İcrası Hakkında Yönetmelik” (Regulation on Conducting Hearings through Audio and Video Transmission in Civil Proceedings) was published in Resmi Gazete on 30 June, 2021. <<https://hgm.adalet.gov.tr/Resimler/SayfaDokuman/3062021121049EDurusma%20%20Yonetmelik.pdf>>.

⁶⁴³ Kıyak, “Duruşmada Etkinlik Kazanan Yargılama İlkeleri ile Usulî Müktesep Hak Işığında Türk Hukuk Yargılamasında Eş Zamanlı Ses ve Görüntü Aktarımıyla Duruşma Yapılmasının Olması Gereken Sınırları,” 1467.

⁶⁴⁴ Adalet Bakanlığı, “Hukuk Muhakemelerinde Ses ve Görüntü Nakledilmesi Yoluyla Duruşma İcrası Hakkında Yönetmelik” (Regulation on Conducting Hearings through Audio and Video Transmission in Civil Proceedings) was published in Resmi Gazete on 30 June, 2021. <<https://hgm.adalet.gov.tr/Resimler/SayfaDokuman/3062021121049EDurusma%20%20Yonetmelik.pdf>>. Art.11.

Article 5 of the Regulation outlines the primary requirements that must be fulfilled by the location where other process participants' ability to participate in electronic hearings will be guaranteed.⁶⁴⁵

3.1.3.2.4. Prohibitions During E-Trial

An electronic hearing is governed by the same rules and guidelines as a hearing held in person before the court.⁶⁴⁶ Judge has the authority to stop any sound, picture, or conduct that disturbs the order of the hearing and, if need, to end the e-hearing.⁶⁴⁷ Attendees at electronic hearings who, in spite of earlier warnings, continue to disturb the order or behave inappropriately in front of the court may be arrested right away and subject to a four-day disciplinary punishment.⁶⁴⁸ Also, audio and video recordings cannot be made during the hearing, and photography is not permitted.⁶⁴⁹ If the trial calls for it, the court may, nevertheless, record the case file as long as the secrecy provision is upheld.⁶⁵⁰ The trial's ban on audio and video recording helps to safeguard privacy, ensure the impartiality of the courts, and expose relevant facts.⁶⁵¹ It is challenging to ascertain, nevertheless, if the hearing was recorded during the e-hearing by the parties or by a third party.⁶⁵² This indicates that the location of the e-hearing ought to be one that is appropriate for scrutiny for these issues.⁶⁵³

3.1.3.3. Technical Aspects of E-Trial

3.1.3.3.1. In General

Since e-trial is the technical product, technological aspect of it, is its fundamental component.⁶⁵⁴ Short consideration of technical aspects of e-trials gives the opportunity to understand the principle and aspects of the system's operation and will also allow to see

⁶⁴⁵“It must be devoid of any form of guidance or influence, and it must be such that the individual in question is able to see their body language, facial expressions, attitudes, and actions, as well as comprehend their emotions and pay attentive attention to what they have to say”.

⁶⁴⁶ See *supra*, note 147. Art.14(1).

⁶⁴⁷ Code of Civil Procedure, No:6100, was published in Resmi Gazete and entered into force 12.01.2011. See Art.151. <<https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6100.pdf>>. Accessed 26.07.24. Arslan, *E-Duruşma Hukuk Yargılamasında Videokonferans Yöntemi (E-Duruşma) (HMK m.149)*, 178.

⁶⁴⁸ See *id.*

⁶⁴⁹ See *id.* Art.153.

⁶⁵⁰ Orta, “Medeni Yargıda E-Duruşma Uygulanması,” 130.

⁶⁵¹ See *id.*

⁶⁵² Orta, “Medeni Yargıda E-Duruşma Uygulanması,” 135.

⁶⁵³ Öztekin, Selçuk: “Hukuk Muhakemeleri Kanunu'nun Aleniyyet İlkesine İlişkin 28 İnci Maddesi İle Ses Ve Görüntü Nakledilmesi Yoluyla Veya Başka Yerde Duruşma İcrasına İlişkin 149 Uncu Maddesinde 7251 Sayılı Kanun'la Yapılan Değişiklikler Hakkında Bazı Düşünceler”, *Adalet Dergisi*, 2021, 658.

⁶⁵⁴ Mirzayev, “Medeni Yargılamada E-Duruşma,” 46.

the future enhancement prospects of this technology, though of course without going into specifics that are outside the scope of main topic. There are seven components that make up the technological framework of the courtroom's audio and visual hearing equipment.⁶⁵⁵ The electronic trial system needs to be closed and reopened in the event that any of these components malfunction or if there is a technical issue involving the internet connection, etc.⁶⁵⁶ In case of problem persists, e-trial has to end and circumstances must be noted.⁶⁵⁷ Decision on removing or saving of file from proceeding depends on the origin of issue, if problem were caused by party and representatives, it will be removed.⁶⁵⁸ In cases, when issue arose due to unforeseen technical reasons, file will not be removed from proceeding.⁶⁵⁹ In this instance, an excuse petition must be filed together with the e-trial request and the Ministry of Justice will then conduct a technical analysis of the matter.⁶⁶⁰ However, there are also examples of private businesses carrying out technical analysis, due to the fact that the public sector lacks the capacity to keep up with technological advancements.⁶⁶¹ Training workers or enhancement of IT systems used in this industry is quite expensive.⁶⁶² Governance of e-trials the same as courtroom hearings⁶⁶³, however there are special technical requirements that should be followed in order to conduct e-trial.⁶⁶⁴ That technical requirements: internet connection with at least 8mb. speed and working microphone and camera, with enough quality to transmit audio

⁶⁵⁵ Mirzayev, 53. These include: an IP camera, a microphone, an audio mixer (to improve sound quality), an audio monitor, a data backup system, a software module for video conferences and record-keeping tools.

⁶⁵⁶ Adalet Bakanlığı, "Hukuk Muhakemelerinde Ses ve Görüntü Nakledilmesi Yoluyla Duruşma İcrası Hakkında Yönetmelik" (Regulation on Conducting Hearings through Audio and Video Transmission in Civil Proceedings) was published in Resmi Gazete on 30 June, 2021.

<<https://higm.adalet.gov.tr/Resimler/SayfaDokuman/3062021121049EDurusma%20%20Yonetmelik.pdf>>. Art.13(8).

⁶⁵⁷ See id.

⁶⁵⁸ Code of Civil Procedure, No:6100, was published in Resmi Gazete and accepted 12.01.2011. Art.150(1) <<https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6100.pdf>>. Accessed 20.06.24.

⁶⁵⁹ See *supra*, note 114. Art.13(9).

⁶⁶⁰ Aziz Serkan Arslan, *E-Duruşma Hukuk Yargılamasında Videokonferans Yöntemi (E-Duruşma)* (HMK m.149) (On iki Levha Yayınları, 2023), 199. Also, according to the Art. 13(10) - *The Ministry shall notify the court upon request of any technological issues and their origin* of "Regulation on Conducting Hearings through Audio and Video Transmission in Civil Proceedings".

⁶⁶¹ Mirzayev, "Medeni Yargılamada E-Duruşma," 54.

⁶⁶² See id.

⁶⁶³ Adalet Bakanlığı, "Hukuk Muhakemelerinde Ses ve Görüntü Nakledilmesi Yoluyla Duruşma İcrası Hakkında Yönetmelik" (Regulation on Conducting Hearings through Audio and Video Transmission in Civil Proceedings) was published in Resmi Gazete on 30 June, 2021.

<<https://higm.adalet.gov.tr/Resimler/SayfaDokuman/3062021121049EDurusma%20%20Yonetmelik.pdf>>. Art.14(1).

⁶⁶⁴ In the e-Hearing catalogue of the Ministry of Justice,

<<https://rayp.adalet.gov.tr/resimler/468/dosya/soru-cevap-avukat-05-11-202014-12.pdf>>.

and video and Google Chrome internet browser.⁶⁶⁵ During the e-hearing, no other devices should be connected to the internet and thus, it is preferable to have a wired internet connection built directly to the devices used for communication.⁶⁶⁶

3.1.3.3.2. UYAP

As for UYAP Citizen Portal Information System⁶⁶⁷, which is included in e-government applications, is the one of the best examples of technological advancements and digitalization under Türkiye's Civil Procedure Law.⁶⁶⁸ Since 1998 the system was made under the purpose of making access to all judicial institutions easily reachable for citizens.⁶⁶⁹ It can be accessed by citizens, consumers and lawyers through e-government system or e-signature, it helps to carry out many judicial procedures online, collect vital information regarding case fees, document submission and track enforcement proceedings online.⁶⁷⁰ In this regard, it should be emphasized that users must have an e-signature in order to file a lawsuit or take other action online; without one, they may only see the system's core information through the e-government portal entrance.⁶⁷¹ This requirement was put in place to protect citizens' private information.⁶⁷² The platform is vital tool for people with lack of time or finances in comparison to traditional litigation processes, it provides with opportunity to complete all bureaucracy online through one click.⁶⁷³ Although it still need work, UYAP already has received recognition on a global

⁶⁶⁵ See id.

⁶⁶⁶ See id.

⁶⁶⁷ To file or monitor their case in an electronic setting, citizens can visit <<https://vatandas.uyap.gov.tr/main/vatandas/giris.jsp>>. Accessed 23.06.24.

⁶⁶⁸ Emine Gökçe Karabel and Dilek Aydemir, "The Use of Online Courts and Artificial Intelligence in Respect of the Right to Access to Justice and to Accelerate the Proceedings in Civil Procedure," *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi* 29, no. 1 (July 6, 2023): 562, <https://doi.org/10.33433/maruhad.1263609>.

⁶⁶⁹ Yaşar, "Elektronik Tüketici Uyuşmazlıklarının Çözümünde Alternatif Yollar: Çevrimiçi Uyuşmazlık Çözüm Yöntemleri," 177; Serkan Kaya, "Access to Justice for Consumers In Turkey: The Need For Enhancing Consumer Dispute Resolution Through Online Dispute Resolution," *Ankara Hacı Bayram Veli Üniversitesi Hukuk Fakültesi Dergisi* 26, no. 1 (January 31, 2022): 225–60, <https://doi.org/10.34246/ahbvuhfd.1066655>.

⁶⁷⁰ Kaya, "Access to Justice for Consumers in Turkey," 245.

⁶⁷¹ Kaya, "Access to Justice for Turkish Consumers in the Digital Age: The Need for Enhancing Consumer Dispute Resolution Through Online Dispute Resolution," 154.

⁶⁷² See id.

⁶⁷³ Code of Civil Procedure, No:6100, was published in Resmi Gazette and entered into force 12.01.2011. See Art.445 states provisions on Electronic transactions, especially UYAP. <<https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6100.pdf>>. Accessed 26.07.24.

scale and won many awards.⁶⁷⁴ The platform is currently quite helpful and has a strong possibility of developing into an ODR system in the future.⁶⁷⁵

3.1.3.3.3. CELSE

The Ministry of Justice Information Processing Department created the CELSE Mobile Application in a month in response to an inquiry from the Ministry of Justice, and it was released on April 5, 2018.⁶⁷⁶ CELSE is the free of charge application that can be downloaded on the AppStore and Google Play Store on all types of devices.⁶⁷⁷ The application from the first days of launching were well-liked as they allowed lawyers to list, query, and file cover information for case files and enforcement as well as party and attorney information.⁶⁷⁸ With updates made on January 12, 2021 it gained more than one thousand downloads on the first day of updates, since it became even more convenient for lawyers.⁶⁷⁹ Even with all these options to access case details, schedule hearings, and track impending ones on the calendar, the upgrade made a significant difference by streamlining e-trial participation.⁶⁸⁰ It became possible to participate to e-trial via CELSE mobile app. using password that was created on UYAP portal.⁶⁸¹ The ability to examine documents with party's records on the "my files" section menu is another enhancement.⁶⁸² Similarly, chosen information might now be viewed as a notice.⁶⁸³

3.1.3.3.4. AI Technologies in E-Trial

Today, AI technologies integrated in e-trial system functioning are effective in many aspects, for example they can successfully detect background noises which in turn,

⁶⁷⁴ Meral Güneş, "UYAP Bilgi Sisteminin Bilgiyi Yaratma, Koruma ve Transfer Etme Açısından Adalet Bakanlığı Çalışanlarının Örgütsel Öğrenme Sürecine Etkisinin İncelenmesi: Uzman Kullanıcılar Üzerinde Bir Uygulama" (Yüksek Lisans Tezi, Ankara, Gazi Üniversitesi Eğitim Bilimleri, 2012); Ahmet Türkan and Arzu Erdiçertürk, "Akademik Çalışmalar Bağlamında UYAP'a Bakış," *Dicle Üniversitesi Adalet Meslek Yüksekokulu Dicle Adalet Dergisi*, 2017.

⁶⁷⁵ See Karabel and Aydemir, "The Use of Online Courts and Artificial Intelligence in Respect of the Right to Access to Justice and to Accelerate the Proceedings in Civil Procedure," 564.; for recommendations according improvement of UYAP system in order to solve ODR disputes quicker.

⁶⁷⁶ "Yeni Mobil Uygulama 'Celse' Avukatların Hizmetine Sunuldu," April 6, 2018. See <<https://uyap.gov.tr/Yeni-Mobil-Uygulama-Celse-Avukatların-Hizmetine-Sunuldu>>.

⁶⁷⁷ "CELSE Uygulamasına E-duruşma Özelliği";21.04.22. < <https://edurusmabilgi.adalet.gov.tr/celse-uygulamasina-e-durusma-ozelligi>>. Accessed 17.05.24.

⁶⁷⁸ Mirzayev, "Medeni Yargılamada E-Duruşma," 82.

⁶⁷⁹ "Celse Uygulamasında 3 Yeni Güncelleme";21.04.22. <<https://edurusmabilgi.adalet.gov.tr/celse-uygulamasina-e-durusma-ozelligi>>. Accessed 17.05.24.

⁶⁸⁰ See id.

⁶⁸¹ T.C. Adalet Bakanlığı, E-Duruşma Bilgilendirme, "CELSE Uygulamasına e-Duruşma Özelliği". Accessed 15.07.24.

⁶⁸² See id.

⁶⁸³ See *supra*, note 578.

provide qualitative communication without any uproar.⁶⁸⁴ It is even possible today to detect people by faces through these applications, and thus enhance video communication, correct face lightening and etc.⁶⁸⁵ The ability to track and identify participants' moods and provide the coordinator with feedback on this information is a significant improvement in data analysis.⁶⁸⁶ Additionally, AI using video can interpret a speaker's body language in addition to their mood to determine whether or not the given information is true.⁶⁸⁷ Nevertheless, all these enhancement in AI technologies open new risks and need in improvement of multi-level encryption systems, multi-factor authentication and other security measures for save integration of AI in the processes.⁶⁸⁸ From this point, it can be assumed that all these digitalization in dispute resolution system with implementation of new applications have many benefits, but at the same time brings up new risks especially when goal is the fair and accessible justice system.

3.1.4. ISTAC

3.1.4.1. An Overview

The Istanbul Arbitration Center (ISTAC) is a neutral, independent, and self-governing organization that offers mediation and arbitration services to settle business disputes between parties in Türkiye and beyond.⁶⁸⁹ Regardless of the fact, that previously some other arbitrations centers announced rules about hearing witnesses through online means⁶⁹⁰, the Istanbul Arbitration Center released the "ISTAC Online Hearing

⁶⁸⁴ Mirzayev, "Medeni Yargılamada E-Duruşma," 55.

⁶⁸⁵ Jana Soukupová, "AI-Based Legal Technology: A Critical Assessment of the Current Use of Artificial Intelligence in Legal Practice," *Masaryk University Journal of Law and Technology* 15, no. 2 (September 30, 2021): 279–300, <https://doi.org/10.5817/MUJLT2021-2-6>.

⁶⁸⁶ IPMatica Company, "Что Влияет На Развитие Отрасли Видео-Конференц-Связи в 2021 Году? (What Is Driving the Video Conferencing Industry in 2021?)," HABR community of IT specialists, March 23, 2021. Accessed 10.07.24.

⁶⁸⁷ See *supra*, note 608.

⁶⁸⁸ See *supra*, note 610. For more detailed information regarding technologies and tool of e-trial, see Mirzayev, "Medeni Yargılamada E-Duruşma," 50–55.

⁶⁸⁹ ISTAC Hakkında, <<https://istac.org.tr/tr/hakkimizda/istac-hakkinda/>>. Accessed 10.06.24.

⁶⁹⁰ 1) IBA Rules on the Taking of Evidence in International Arbitration, 2010; Hague Conference Draft Guide to Good Practice on the Use of Video-Links under the Evidence Convention-1970 on the Taking of Evidence Abroad in Civil or Commercial Matters

2) Non-binding regulations of International Bar Association (IBA) and the Hague Conference

3) The International Chamber of Commerce (ICC) has published the "ICC Guidance on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic" (ICC COVID-19 Guidance). ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic, <<https://iccwbo.org/publication/iccguidance-note-on-possible-measures-aimed-at-mitigating-the-effects-of-the-covid19-pandemic/>>, Accessed 10.06.24.

Procedures and Principles" for the first time in the world, in April 2020.⁶⁹¹ Dünya Newspaper released news titled "The World's First from Istanbul Arbitration Center" on their website in 2020.⁶⁹² It was the outcome of the broadcast that took place on Thursday, April 23, on a program hosted by Law Academy and ISTA on YouTube.⁶⁹³ The invited visitor, ISTAC President Ziya Akıncı, provided information regarding the newly implemented online arbitration law at that time as well as the Board's operations during the epidemic.⁶⁹⁴ This digest of procedures and principles that was published during spread of the global COVID-19 epidemic worldwide, consist in total of 10 articles, that determine regulation of arbitration cases conducted through video conference or teleconference.⁶⁹⁵ Video conferencing, is the system where sound and vision have the same importance simultaneously, when teleconferencing is the system by sending and receiving sounds, or in simple word it is telephone conversation of several people.⁶⁹⁶ This difference in approach is important because it explains the preparation time for an electronic hearing, as well.⁶⁹⁷ During online arbitration procedure convenient place with properly operating software and hardware must be provided and ISTAC may assist with that in case of need.⁶⁹⁸ Online arbitration procedure may be held upon request of one of

4)The Joint Arbitration Association (CIArb) has also published the "Guidance on Remote Dispute Resolution Proceedings". CIArb Guidance Note on Remote Dispute Resolution Proceedings, <<https://www.ciarb.org/media/8967/remote-hearings-guidance-note.pdf>>, Accessed 11.04.24.

5)"Seoul Protocol on Video Conferencing in International Arbitration" prepared by the Korean Commercial Court of Arbitration (KCAB) in cooperation with the Seoul International Dispute Resolution Center (SIDRC) and shared with the public in 2018. Seoul Protocol on Video Conferencing in International Arbitration, <http://www.kcabinternational.or.kr/user/Board/comm_notice_view.do?BBS_NO=548&BD_NO=169&CURRENT_MENU_CODE=MENU0025&TOP_MENU_CODE=MENU0024>, Accessed 10.06.24.

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⁶⁹² İstanbul Tahkim Merkezi'nden dünyada bir ilk – "ISTAC Çevrimiçi Duruşma Usul ve Esasları", <<https://istac.org.tr/tr/istanbul-tahkim-merkezinden-dunyada-bir-ilk-istac-cevrimici-durusma-usul-ve-esaslari/>>. Accessed 21.05.24.

⁶⁹³ See id.

⁶⁹⁴ See *supra*, note 673.

⁶⁹⁵ "İstac Çevrimiçi Duruşma Usul Ve Esaslari", <<https://istac.org.tr/tr/uyusmazlik-cozumu/tahkim/istac-cevrimici-durusma-usul-ve-esaslari/>>. Accessed 11.07.24.

⁶⁹⁶ Mirzayev, "Medeni Yargılamada E-Duruşma," 185; Dülger, "Tahkim Duruşmalarının Online Yapılması: İstac ve Abu Dabi Tahkim Merkezi Kuralları İncelemesi"; Seda Özümücü, "Dünyada ve Ülkemizde Online Uyuşmazlık Çözümleri Bağlamında Online Tahkim ve Uygulamaları," *İstanbul Hukuk Mecmuası*, October 26, 2020, 431–54, <https://doi.org/10.26650/mecmua.2020.78.2.0007>.

⁶⁹⁷ See id.

⁶⁹⁸ Özümücü, "Dünyada ve Ülkemizde Online Uyuşmazlık Çözümleri Bağlamında Online Tahkim ve Uygulamaları," 448. "İstac Çevrimiçi Duruşma Usul Ve Esaslari", Art.3(3)- The Arbitrator, the Arbitration Committee or the parties may request technical support from the ISTAC Secretariat regarding the hearing. The ISTAC Secretariat will, to the extent possible, provide explanations and support to the arbitrators and the parties on technical matters.

the parties or single arbitrator, arbitration board ex officio decision, same as in e-trial procedure. Arbitrators are given a great deal of latitude in how they run the hearings under the Arbitration Rules.⁶⁹⁹ Arbitrators may use this discretion to make any procedural judgments that are required to guarantee that the proceedings are carried out in a way that promotes procedural economy.⁷⁰⁰ However, when arbitration is held in Türkiye and there is no foreign element involved, the Code on Civil Procedure serves as lex arbitri, or statute law, and all of its peremptory provisions must be followed throughout the procedure.⁷⁰¹ Nevertheless, this does not mean that they cancel or contradict with the rules of online arbitration released by ISTAC. Also, hearings can be conducted using blockchain technology or other infrastructure, and applications that enable the instantaneous transfer of audio and visual media over the internet can be utilized.⁷⁰² In certain situations, it is suggested to render a well-reasoned interim ruling regarding online arbitration to arbitrator, they are: parties lack sufficient technological equipment, are unable to agree on a convenient time for the hearing, or in any other situation that can lead to inequality between the parties.⁷⁰³

3.1.4.2. Procedure of ISTAC Online Hearing

Before and after the case is filed, even if before parties were against online arbitration, it is possible by decision of arbitration board or the parties to hold online hearing in accordance with ISTAC Online Hearing Procedures and Principles.⁷⁰⁴ Istanbul Arbitration Center, consist of national and international boards with 4-5 members in each, on the head of it, Prof. Dr. Ziya Akıncı, is the president of ISTAC Board of Arbitration.⁷⁰⁵ In arbitration processes, the parties can decide about how the hearing will be structured, it is even possible for the parties to agree that the arbitration board would settle their disagreement without a hearing.⁷⁰⁶ Nevertheless, the first and most crucial aspect of online arbitration is the fact, that parties must not physically be in the same location;

⁶⁹⁹ Mustafa Serdar Özbek, *Tahkim Hukuku* (Ankara: Yetkin Yayınları, 2022), 1411.

⁷⁰⁰ See id.

⁷⁰¹ Dülger, “Tahkim Duruşmalarının Online Yapılması: Istac ve Abu Dabi Tahkim Merkezi Kuralları İncelemesi,” 130.

⁷⁰² Dülger, 128.

⁷⁰³ Özbek, *Tahkim Hukuku*, 1413.

⁷⁰⁴ Dülger, “Tahkim Duruşmalarının Online Yapılması: Istac ve Abu Dabi Tahkim Merkezi Kuralları İncelemesi,” 124.

⁷⁰⁵ See for more, <<https://istac.org.tr/en/about-us/boards-of-arbitration/national-board/>>. Accessed 20.05.24.

⁷⁰⁶ Akıncı, *Milletlerarası Tahkim*, 215.

otherwise, the procedure will not be online arbitration and would instead just involve partial participation through audio or video conferencing.⁷⁰⁷ The vital step before procedure, is preparations before hearing and creation of technical infrastructure in order to conduct successful online arbitration.⁷⁰⁸ During the hearing it is not possible to any third party to join the process, except the cases when about them single arbitrator or arbitration board notified and accepted.⁷⁰⁹ To preserve clear audio and visuals throughout the hearing, each party to the online arbitration speaks in turn, while other participants turning off their microphones at that time.⁷¹⁰ Giving each speaker permission to speak and enough time to do so is a manifestation of their rights to a fair trial and parties equality.⁷¹¹ Likewise, during online arbitration procedure, with permission of arbitrator or arbitration board, documents may be electronically transferred, same as during e-trial procedure.⁷¹² Participation of witnesses and expert to the hearing, are also regulated by ISTAC Online Hearing Procedure and principles, according to the Article 8, witnesses can only be heard by video conference; teleconferencing is not permitted in this case because the speaker's face, emotions, and body language must be visible to the arbitrator and other participants during the hearing.⁷¹³ Further, provision about bringing of any document by witness or showing any other to them during the hearing are also under consideration of arbitrator or arbitration board.⁷¹⁴ Same as during e-trial in civil procedure,⁷¹⁵ these documents may be provided by electronic means and afterword's the

⁷⁰⁷ Online hearings establish a virtual courtroom by connecting all participants from various locations. But video conferencing is when, the courthouse is fully set up, and although everyone is there, only a select few participants connect to the courtroom distantly. Dölger, "Tahkim Duruşmalarının Online Yapılması: Istac ve Abu Dabi Tahkim Merkezi Kuralları İncelemesi," 127.

⁷⁰⁸ Özümucu, "Dünyada ve Ülkemizde Online Uyuşmazlık Çözümleri Bağlamında Online Tahkim ve Uygulamaları," 448. Art.3 of "Istac Çevrimiçi Duruşma Usul Ve Esasları", <<https://istac.org.tr/tr/uyusmazlik-cozumu/tahkim/istac-cevrimici-durusma-usul-ve-esaslari/>>. Accessed 13.07.24. Dölger, "Tahkim Duruşmalarının Online Yapılması: Istac ve Abu Dabi Tahkim Merkezi Kuralları İncelemesi," 128.

⁷⁰⁹ See id. Also, it would be against Article 4 of the Rules and the arbitration secrecy principle to witness communications from individuals who have not been approved by the arbitration committee.

⁷¹⁰ "Istac Çevrimiçi Duruşma Usul Ve Esasları", <<https://istac.org.tr/tr/uyusmazlik-cozumu/tahkim/istac-cevrimici-durusma-usul-ve-esaslari/>>. Accessed 13.07.24.

⁷¹¹ Dölger, "Tahkim Duruşmalarının Online Yapılması: Istac ve Abu Dabi Tahkim Merkezi Kuralları İncelemesi," 129. Art.7 "Istac Çevrimiçi Duruşma Usul Ve Esasları", <<https://istac.org.tr/tr/uyusmazlik-cozumu/tahkim/istac-cevrimici-durusma-usul-ve-esaslari/>>. Accessed 13.07.24.

⁷¹² Art.6 of "Istac Çevrimiçi Duruşma Usul Ve Esasları", <<https://istac.org.tr/tr/uyusmazlik-cozumu/tahkim/istac-cevrimici-durusma-usul-ve-esaslari/>>. Accessed 13.07.24.

⁷¹³ See id. Art.8.

⁷¹⁴ See id.

⁷¹⁵ Mirzayev, "Medeni Yargılamada E-Duruşma," 185.

questions regarding them can be applied to the witnesses.⁷¹⁶ All of these means, directed in order to ensure security and safeness of information during procedure of arbitration, in this regard another aspect that must be noted is the record of the hearing.⁷¹⁷ Participants are not allowed to record anything throughout the hearing without permission of the arbitrator or arbitration board.⁷¹⁸ The Arbitrator or Arbitration Board may decide to record hearing via audio or video means, in cases that audio record was made they may decide to transcribe it into written form, and cost of this procedure will be attached to the parties.⁷¹⁹ Afterword's, when decision of the procedure will be made, the records will be shared with parties.⁷²⁰ Since online arbitration aims to settle conflicts through online dispute resolution processes, in situations involving international parties, using translators during the process is allowed to guarantee the efficacy and convenience of the approach.⁷²¹ Alongside with notifications and approval from the arbitrator or arbitration board, translator can attend to the hearing with the person for whom he translates and also, online separately.⁷²² The processes of e-arbitration and e-trial in civil proceedings are quite similar, but e-arbitration is far more adaptable, simple, and convenient to use for both local and international conflicts.⁷²³ In this context, steps of ISTAC in the way of online procedure, is indispensable in order to provide fair trial in a short time, by convenient way.⁷²⁴

3.2. LEGAL RECOGNITION OF ODR IN KAZAKHSTAN LAW

3.2.1. Electronic Judicial Procedure

3.2.1.1. An Overview

In Kazakhstan, steps towards digitalization of courts were started before the pandemic, the situation with the COVID-19 epidemic accelerated this process, revealing the need

⁷¹⁶ See *supra*, note 660. Art.8(2).

⁷¹⁷ Akıncı, *Milletlerarası Tahkim*; Dülger, "Tahkim Duruşmalarının Online Yapılması: Istac ve Abu Dabi Tahkim Merkezi Kuralları İncelemesi"; Aydemir and Kaya, "Contemporary Issues of Online Arbitration and Arbitration in the Age of Covid-19"; Özbek, *Tahkim Hukuku*; Özmumcu, "Dünyada ve Ülkemizde Online Uyuşmazlık Çözümleri Bağlamında Online Tahkim ve Uygulamaları"; "ISTAC Tarafından Tahkim Davalarına İlişkin Çevrimiçi Duruşma Usul ve Esasları Yayınlandı," April 20, 2020.

⁷¹⁸ "ISTAC Tarafından Tahkim Davalarına İlişkin Çevrimiçi Duruşma Usul ve Esasları Yayınlandı," April 20, 2020. Art.10.

⁷¹⁹ See *id.*

⁷²⁰ See *id.*

⁷²¹ Mirzayev, "Medeni Yargılamada E-Duruşma," 186.

⁷²² See *supra*, note 664. Art.9.

⁷²³ Mirzayev, "Medeni Yargılamada E-Duruşma," 187.

⁷²⁴ "ISTAC Tarafından Tahkim Davalarına İlişkin Çevrimiçi Duruşma Usul ve Esasları Yayınlandı."

for changes in legislation allowing court hearings to be held fully online.⁷²⁵ Electronic trial in civil judiciary, primarily governed by Civil Procedure Code, chapter 11-1.⁷²⁶ This chapter were added to the Code in accordance with Law № 241-VI, in 2nd April, 2019.⁷²⁷ Chapter consist of 4 Articles, regarding format of civil proceedings, electronic documents, participation in a court hearing by using technical means of communication⁷²⁸ and electronic protocol.⁷²⁹ The format of the civil proceedings up to the choice of the suer, can be electronically or in paper.⁷³⁰ However, the format of the proceeding can be changed regarding decision of parties or technical capabilities of the process.⁷³¹ If an e-trial format is chosen, created electronic civil case going to be an original act that will enter into the court's automated information system.⁷³² All case documents will be converted to the appropriate format and certified by the court in situations when the trial's format changes throughout the proceedings.⁷³³ Participant activities and court procedural acts may all be produced electronically. However, in order for them to be considered comparable to written form, they must be confirmed⁷³⁴ by an electronic digital

⁷²⁵Т.Б. Амрашев, “Судебные Заседания в Режиме «Online». Плюсы и Минусы.(Court Hearings in Online Mode. Pros and Cons.),” n.d.<https://online.zakon.kz/Document/?doc_id=34814246&pos=3;52#pos=3;52&sdoc_params=text%3D%25D0%25BE%25D0%25BD%25D0%25BB%25D0%25B0%25D0%25B9%25D0%25BD%2520%25D1%2581%25D1%2583%25D0%25B4%26mode%3Dindoc%26topic_id%3D34814246%26spos%3D1%26tSynonym%3D0%26tShort%3D0%26tSuffix%3D1&sdoc_pos=>>.Accessed 12.06.24.

⁷²⁶Гражданский процессуальный кодекс Республики Казахстан (Civil Procedure Code of the Republic of Kazakhstan), from 31 October, 2015, № 377-V 3RK. <<https://adilet.zan.kz/rus/docs/K1500000377#z2003>>. Accessed 24.05.24.

⁷²⁷ Law “On Amendments and Supplements to Certain Legislative Acts of the Republic of Kazakhstan on the Development of the Business Environment and Regulation of Trade Activities”, № 241-VI, 02.04.19. <<https://adilet.zan.kz/rus/docs/Z1900000241#z216>>. Accessed 22.05.24.

⁷²⁸ See id.

⁷²⁹ The fourth part were added to the Chapter with Law “On Amendments and Supplements to the Civil Procedure Code of the Republic of Kazakhstan on the issues of introducing modern formats of court work, reducing unnecessary judicial procedures and costs”, № 342-VI, from 10.06.20.

⁷³⁰ Гражданский процессуальный кодекс Республики Казахстан (Civil Procedure Code of the Republic of Kazakhstan), from 31 October, 2015, № 377-V 3RK. <<https://adilet.zan.kz/rus/docs/K1500000377#z2003>>. Accessed 10.06.24. Art. 133-1(1).

⁷³¹ See id.

⁷³² *Judicial Room* - automated information system of the court, is the single window for access to electronic services of judicial bodies of the Republic of Kazakhstan. <<https://office.sud.kz/index.xhtml>>. Accessed 11.06.24. See for more, Chapter 3.2.1.4.1. of this thesis.

⁷³³ See *supra*, note 677.

⁷³⁴ See *supra*, note 681. Art.133-2(1).

signature.⁷³⁵ Moreover, these documents may be prepared through utilization of Judicial Cabinet.⁷³⁶

Furthermore, all simplified (written) processes cases have been evaluated electronically, without summoning the parties from February 14, 2018.⁷³⁷ Consideration of cases in electronic format provides for the introduction of 100% electronic legal proceedings - from the stage of filing and registering an application to sending a judicial act that has entered into legal force for execution.⁷³⁸ Duration of period for consideration of simplified processes⁷³⁹ compose one month. No later than the next working day following the date of acceptance, the court tells the parties via email, cell phone, or other secure communication method that the case is being considered under simplified (written) procedures.⁷⁴⁰ The decision on the process is also submitted online; after the decision is made, the parties receive a copy of the court decision, which is sent to them by mail no later than three working days after the decision is made or transmitted to them using means of communication that track receipt.⁷⁴¹

⁷³⁵*Electronic digital signature (EDS)* - a set of electronic digital symbols created by means of electronic digital signature and confirming the authenticity of an electronic document, its ownership and the immutability of its content; In Kazakhstan, the electronic digital signature was put into use in 2003 together with the Law № 370-II "On electronic document and electronic digital signature", from 7th January, 2003. Electronic digital signature tools - a set of software and hardware tools used to create and verify the authenticity of an electronic digital signature; According to the Art. 10 of the Law mentioned above, an electronic digital signature (EDS) is equivalent to the signatory's own signature and entails the same legal consequences. Types of storage for which you can obtain an EDS: file system, Kaztoken, E-Token, AKEY, JaCarta, identity cards. There are two types of keys: public key of an electronic digital signature – a sequence of electronic digital symbols accessible to any person and intended to confirm the authenticity of an electronic digital signature in an electronic document; and private key of an electronic digital signature – a sequence of electronic digital symbols intended to create an electronic digital signature using electronic digital signature tools. There are two ways to obtain an EDS: 1) submit an application to the Government for citizens; 2) remote registration (online) on the e-government portal <<https://egov.kz/>>. Accessed 12.05.24. The validity period of the EDS is 1 year from the date of issue.

⁷³⁶ See supra, note 681. Art.133-2.

⁷³⁷ Татьяна Ковалева, "Сделать Суды Страны Умными - Одна Из Основных Задач Верховного Суда (Making the Country's Courts Smart Is One of the Main Tasks of the Supreme Court)," November 23, 2018, 2.

⁷³⁸ See id.

⁷³⁹ Cases involving disagreements over children's rights, apart from disagreements over alimony collection are not considered in the simplified process. In the event that the judicial action taken in this case may infringe upon the rights and legitimate interests of third parties, as per the petition filed by a party in this regard, and in other cases listed in Part 3 of Articles 267-1 and 267-2, then the case will not be considered in simplified proceedings. Code on Civil Procedure of the Republic of Kazakhstan, from 31 October, 2015, Chapter 21-1, <<https://adilet.zan.kz/rus/docs/K1500000377>>. Accessed 09.06.24.

⁷⁴⁰ The procedure for simplified (written) proceedings is regulated by Chapter 21-1 of the Civil Procedure Code of the Republic of Kazakhstan. <<https://adilet.zan.kz/rus/docs/K1500000377>>. Accessed 09.06.24.

⁷⁴¹ Code on Civil Procedure of the Republic of Kazakhstan, from 31 October, 2015, Chapter 21-1, Art. 267-4(1), <<https://adilet.zan.kz/rus/docs/K1500000377>>. Accessed 09.06.24.

3.2.1.2. Participants to E-Trial

3.2.1.2.1. In General

Another vital topic related to conducting e-trial, regulations on who can participate to online trial via technical means. It should be mentioned that, judges and secretaries do not work remotely, they present in courtroom during e-trial, while the rest of the participants to the trial may participate online at their request or initiative of the court.⁷⁴² Participants must employ technical methods that will allow the presiding judge to verify their identification if they choose to take part in the trial using electronic means.⁷⁴³ Likewise, in cases of attendance to the e-trial of military personnel, imprisoned people or patients in medical institutions, all listed above procedures of identification and connection by electronic utilities will be carried out by cooperation of these institutions.⁷⁴⁴

3.2.1.2.2. Role of Court Secretary

Protocol compliance is the responsibility of the court secretary; to guard against modifications, electronic protocol must be validated by the secretary's digital signature.⁷⁴⁵ Before the court session starts, the court secretary checks that the audio and video recording devices are operational so that the proceedings may be recorded.⁷⁴⁶ The secretary ensures that both the verbal and visual records of the proceeding are of good quality by checking the audio and video recording.⁷⁴⁷ The court secretary is in duty of recording every speaker and attaching a copy of these recordings to the trial's

⁷⁴² Бахыт Тукулов, “Об Основных Особенности и Трудностях Онлайн Правосудия в Казахстане (On the Main Features and Difficulties of Online Justice in Kazakhstan),” n.d., 1.

<https://online.zakon.kz/Document/?doc_id=38917445>. Accessed 21.06.24. Гражданский процессуальный кодекс Республики Казахстан (Civil Procedure Code of the Republic of Kazakhstan), from 31 October, 2015, № 377-V ЗРК. <<https://adilet.zan.kz/rus/docs/K1500000377#z2003>>. Accessed 10.06.24.

⁷⁴³ Гражданский процессуальный кодекс Республики Казахстан (Civil Procedure Code of the Republic of Kazakhstan), from 31 October, 2015, № 377-V ЗРК. <<https://adilet.zan.kz/rus/docs/K1500000377#z2003>>. Accessed 10.06.24. Art.133-3.

⁷⁴⁴ See id.

⁷⁴⁵ Гражданский процессуальный кодекс Республики Казахстан (Civil Procedure Code of the Republic of Kazakhstan), from 31 October, 2015, № 377-V ЗРК. <<https://adilet.zan.kz/rus/docs/K1500000377#z2003>>. Accessed 10.06.24. Art.283.

⁷⁴⁶ Об утверждении Правил технического применения средств аудио-, видеозаписи, обеспечивающих фиксирование хода судебного заседания, хранения и уничтожения аудио-, видеозаписи, доступа к аудио-, видеозаписи (On approval of the Rules for the technical use of audio and video recording equipment that ensure the recording of the course of a court hearing, storage and destruction of audio and video recordings, access to audio and video recordings)<<https://adilet.zan.kz/rus/docs/V1500012457>>. Accessed 12.05.24. Chapter 2, 8).

⁷⁴⁷ See id, Chapter 2, 11).

protocol.⁷⁴⁸ Additionally, if it is not possible to begin or continue recording the process, the hearing participants are informed first, but the trial proceeds, and the court secretary thereafter drafts and signs a report.⁷⁴⁹ The secretary has to report full situation to the judge and after proceeding, the administrator of the district court about technical problems, in order to inform employee of relevant unit of Judicial Administration to fix it.⁷⁵⁰

3.2.1.3. Electronic Protocol

3.2.1.3.1. In General

During e-trial, an electronic protocol is drawn up, it is an audio or video recording of a court hearing.⁷⁵¹ In some cases audio recorded protocol can be accompanied by a text transcript through utilization of automatic text recognition technique.⁷⁵² No modifications are allowed to the electronic protocol, it must be certified by the secretary's electronic digital signature.⁷⁵³ Rules for the technical use of audio and video recording equipment that ensure the recording of the course of a court hearing, storage and destruction of audio and video recordings, access to audio and video recordings were approved by order of the Head of the Department for Support of Court Activities under the Supreme Court of the Republic of Kazakhstan, on 24 November 2015.⁷⁵⁴ The Procedures for: technical use of audio and video recording equipment that ensures the recording of the course of a court hearing, the procedure for storing and destroying audio and video recordings of a court

⁷⁴⁸ See id. Chapter 2, 12).

⁷⁴⁹ Об утверждении Правил технического применения средств аудио-, видеозаписи, обеспечивающих фиксирование хода судебного заседания, хранения и уничтожения аудио-, видеозаписи, доступа к аудио-, видеозаписи (On approval of the Rules for the technical use of audio and video recording equipment that ensure the recording of the course of a court hearing, storage and destruction of audio and video recordings, access to audio and video recordings) <<https://adilet.zan.kz/rus/docs/V1500012457>>. Accessed 12.05.24.

⁷⁵⁰ Chapter 2, 17); 18) of Об утверждении Правил технического применения средств аудио-, видеозаписи, обеспечивающих фиксирование хода судебного заседания, хранения и уничтожения аудио-, видеозаписи, доступа к аудио-, видеозаписи (On approval of the Rules for the technical use of audio and video recording equipment that ensure the recording of the course of a court hearing, storage and destruction of audio and video recordings, access to audio and video recordings) <<https://adilet.zan.kz/rus/docs/V1500012457>>. Accessed 12.05.24.

⁷⁵¹ Гражданский процессуальный кодекс Республики Казахстан (Civil Procedure Code of the Republic of Kazakhstan), from 31 October, 2015, № 377-V 3RK. <<https://adilet.zan.kz/rus/docs/K1500000377#z2003>>. Accessed 10.06.24. Art.133-4.

⁷⁵² Procedure of drawing up a protocol regulated by the Civil Procedure Code of the RK, Chapter 26.

⁷⁵³ See *supra*, note 751. Art. 283, 5).

⁷⁵⁴ Об утверждении Правил технического применения средств аудио-, видеозаписи, обеспечивающих фиксирование хода судебного заседания, хранения и уничтожения аудио-, видеозаписи, доступа к аудио-, видеозаписи (On approval of the Rules for the technical use of audio and video recording equipment that ensure the recording of the course of a court hearing, storage and destruction of audio and video recordings, access to audio and video recordings) <<https://adilet.zan.kz/rus/docs/V1500012457>>. Accessed 12.05.24.

hearing and the procedure for access to audio and video recordings of a court hearing are regulated according to the set of this rules.⁷⁵⁵ According to this rules, here is the cases when there is no audio or video recording of the trial: when it is a simplified proceeding in written form without invitation of the parties to the process or there is technical problems, lack of appropriate equipment.⁷⁵⁶ Regarding storage of already recorded trials, they must be kept on file in the court data system for a minimum one year from the day of judicial act entering into force.⁷⁵⁷ Further, after expiration of this period, recorded trial will be automatically destroyed from the data storage, and audio, video record of the trial will be transferred to the court's electronic archive system.⁷⁵⁸

3.2.1.3.2. Acquaintance with E-Protocol

Additionally, familiarization with the e-trial records may be carried out at the parties' request.⁷⁵⁹ Storage of data by audio and video recording systems is centralized; through electronic services, it makes possible to remotely review audio and video recordings on a specific court case, both for judges of higher courts and for participants in the process.⁷⁶⁰ Furthermore, after familiarization with records, all materials have to be checked by court employee through detailed rewatching to ensure its integrity.⁷⁶¹ Moreover, upon the request of parties' court may provide copies of the e-trial records, in civil proceedings this copies must be given in 5 days from the date of accepting request by the court, with the exception of situations in which the session was held in a closed court.⁷⁶² Those involved in a case that is heard in a closed court session are only given opportunity to

⁷⁵⁵ See id.

⁷⁵⁶ See supra, note 746. Chapter 2.

⁷⁵⁷ Chapter 3, 23. of Об утверждении Правил технического применения средств аудио-, видеозаписи, обеспечивающих фиксирование хода судебного заседания, хранения и уничтожения аудио-, видеозаписи, доступа к аудио-, видеозаписи (On approval of the Rules for the technical use of audio and video recording equipment that ensure the recording of the course of a court hearing, storage and destruction of audio and video recordings, access to audio and video recordings) <<https://adilet.zan.kz/rus/docs/V1500012457> >. Accessed 12.05.24.

⁷⁵⁸ See id. Chapter 3.

⁷⁵⁹ Chapter 4 of Об утверждении Правил технического применения средств аудио-, видеозаписи, обеспечивающих фиксирование хода судебного заседания, хранения и уничтожения аудио-, видеозаписи, доступа к аудио-, видеозаписи (On approval of the Rules for the technical use of audio and video recording equipment that ensure the recording of the course of a court hearing, storage and destruction of audio and video recordings, access to audio and video recordings) <<https://adilet.zan.kz/rus/docs/V1500012457> >. Accessed 12.05.24.

⁷⁶⁰ “О Применении Информационных Технологий в Судопроизводстве (On the Application of Information Technologies in Legal Proceedings),” December 2, 2022, 4.

⁷⁶¹ See id., Chapter 4, 29.

⁷⁶² See id.

view the audio and video recording of the court session in court.⁷⁶³ Before making copies of records, court employee format the materials in safety regards.⁷⁶⁴ Every individual, prior receiving of hearing record copies is warned about requirements of legislation on the protection of personal data and responsibilities in cases of violation of them.⁷⁶⁵ After reviewing or receiving copies of the records, individuals must make the appropriate note on the petition about receiving a copy of it and acquaintance with privacy policy.⁷⁶⁶

3.2.1.4. Technical Aspect of Online Proceeding

3.2.1.4.1. Judicial Cabinet

Judicial Cabinet – is a single window access for all judicial body online services, it launched first in 2014.⁷⁶⁷ It allows an individual, their representative, or attorney to send an electronic appeal and application, pay the state fee online, view court documents⁷⁶⁸, check the status of their case⁷⁶⁹, print out court decisions, and manage procedural deadlines whenever it's convenient for them, without having to leave their home or office.⁷⁷⁰ The service provides access to 12 sections: legal proceedings, court hearing schedules, online conversation, electronic power of attorney, external assessment questionnaire, reception of citizens, my letters, checking for court cases, courts-GIS,

⁷⁶³ Chapter 4, Article 32 of Об утверждении Правил технического применения средств аудио-, видеозаписи, обеспечивающих фиксирование хода судебного заседания, хранения и уничтожения аудио-, видеозаписи, доступа к аудио-, видеозаписи (On approval of the Rules for the technical use of audio and video recording equipment that ensure the recording of the course of a court hearing, storage and destruction of audio and video recordings, access to audio and video recordings)<<https://adilet.zan.kz/rus/docs/V1500012457> >. Accessed 12.05.24.

⁷⁶⁴ See supra, note 757. Chapter 4, 33.

⁷⁶⁵ See id. Chapter 4, 31.

⁷⁶⁶ See id.

⁷⁶⁷ Supreme Court of the Republic of Kazakhstan, Judicial Cabinet. <<https://office.sud.kz>>. Accessed 10.06.24.

⁷⁶⁸ Even after submission of claim offline, if citizen agrees to receive electronic notifications, can receive an SMS messages with a login and password indicating that a court document has been issued based on their application, access to which is implemented on the Judicial Cabinet. Therefore, a citizen can save time and money by not having to deal with bureaucracy. Махмұт, “Информационные Технологии в Судебной Системе (Information Technology in the Judicial System).”, 20.02.23.

⁷⁶⁹ Additionally, participant to the trial may independently check the procedural deadlines for the case's consideration are being met, if not, they can report the violation to the Supreme Court of the Republic of Kazakhstan's by Call Center 1401, which will help promptly eliminate shortcomings in the work of the courts. Темирганова, “Внедрение Информационных Технологий В Судах (Implementation of Information Technologies in Courts).”.

⁷⁷⁰ Махмұт, “Информационные Технологии в Судебной Системе (Information Technology in the Judicial System)”; Мелине Члудян, “Электронное Судопроизводство (Electronic Legal Proceedings),” January 25, 2024; Айгуль Сулейменова, “«Судебный Кабинет» и Его Преимущества (‘Judicial Cabinet’ and Its Advantages),” n.d.; Г.М. Касимова, “Судебный Кабинет Республики Казахстан: Инновационные Возможности Для Граждан (Judicial Cabinet of the Republic of Kazakhstan: Innovative Opportunities for Citizens),” May 16, 2024; Темирганова, “Внедрение Информационных Технологий В Судах (Implementation of Information Technologies in Courts).”

proceeding participant calendar, E-mediation.⁷⁷¹ Each of these sections is aimed at simplifying legal proceedings and providing convenient service for citizens. For example, by means of the “Checking for Court Cases” it is possible to obtain information about the dynamics of the consideration of cases and the decisions made on them.⁷⁷² The service “Courts-GIS” is a map with which users can find contacts of courts, lawyers, mediators, notaries in a specific region.⁷⁷³ Before a court hearing begins, the “Online Conversation ” option is intended to facilitate an online discussion between the parties involved in the case.⁷⁷⁴ By clicking the “Go to online conversation” button after choosing the case number from the service window’s left column, will start an online discussion.⁷⁷⁵ This is acceptable as a negotiation form created especially to help resolve disputes before trials.⁷⁷⁶

The system finds favor around citizens, in comparison to 2014 when only 5% of applications were submitted online, for the year 2022 this rate composed over 90% of total applications.⁷⁷⁷ 900,000 papers were filed via the Judicial Office in 2022.⁷⁷⁸ Owner and administrator of the Judicial Cabinet is the Supreme Court (SC) of the RK, adding and removing users from the Judicial Cabinet, modifying access permissions, and approving users to post and communicate in the Judicial Cabinet is in response of SC of the RK.⁷⁷⁹ Any individual or legal entity can become a user of the Judicial Cabinet, for that they have to accept terms of user agreement which pops up during registration and

⁷⁷¹ Айгерим Дуйсембай, “Судебный Кабинет: Как Он Работает и Для Чего Нужен (The Judicial Cabinet: How It Works and What It Is For),” April 13, 2024, <<https://informburo.kz/cards/sudebnyi-kabinet-kak-on-rabotaet-i-dlya-cego-nuzen>>. Accessed 20.04.24.

⁷⁷² Supreme Court of the Republic of Kazakhstan, Judicial Cabinet. <<https://office.sud.kz>>. Accessed 10.06.24.

⁷⁷³ Дуйсембай, “Судебный Кабинет: Как Он Работает и Для Чего Нужен (The Judicial Cabinet: How It Works and What It Is For).”

⁷⁷⁴ Supreme Court of the Republic of Kazakhstan, Judicial Cabinet. <<https://office.sud.kz>>. Accessed 10.06.24.

⁷⁷⁵ Дуйсембай, “Судебный Кабинет: Как Он Работает и Для Чего Нужен (The Judicial Cabinet: How It Works and What It Is For).”

⁷⁷⁶ Supreme Court of the Republic of Kazakhstan, Judicial Cabinet. <<https://office.sud.kz>>. Accessed 10.06.24.

⁷⁷⁷ “О Применении Информационных Технологий в Судопроизводстве (On the Application of Information Technologies in Legal Proceedings),” 1. <<https://sud.gov.kz/rus/content/cifrovizaciya>>. Accessed 07.05.24.

⁷⁷⁸ “О Применении Информационных Технологий в Судопроизводстве (On the Application of Information Technologies in Legal Proceedings),” 2.

⁷⁷⁹ Supreme Court of the Republic of Kazakhstan, Judicial Cabinet. <<https://office.sud.kz>>. Accessed 10.06.24.

register via electronic digital signature in the Judicial Cabinet.⁷⁸⁰ There are several possible ways of logging in to the Judicial Cabinet: via electronic digital signature, electronic government (eGov)⁷⁸¹ and through scanning of QR code in eGov mobile app.⁷⁸² The joint integration of the judicial office of the Supreme Court of the Republic of Kazakhstan and the electronic government enables users of the mobile application to log in and even sign a document in the judicial office via QR codes.⁷⁸³ Judicial Cabinet – allows to have complete transparency over relationship between the judicial system, law enforcement system and people;⁷⁸⁴ It also makes it possible to avoid a lot of difficulties and get the best possible outcome at minimal cost.⁷⁸⁵ However, there are also, some flaws of this service: “1) documents submitted via Judicial Cabinet, frequently or totally are not included in the case, since secretaries sometimes fail to print these online documents.⁷⁸⁶ Consequently, the court might not consider them while evaluating the case; 2) the act of submitting evidence via scanned copies through the ”

⁷⁸⁰See id.

⁷⁸¹Electronic government - is a single mechanism for interaction between the state and citizens, as well as between state bodies, ensuring their coordination with the help of information technologies. It is the mechanism that has made it possible to reduce queues at state bodies and simplify and speed up the receipt of certificates, permits and much more. The basis for the creation of the “electronic government” portal is the Decree of the President of the Republic of Kazakhstan dated November 10, 2004 No. 1471 “On the state program for the formation of “electronic government” in the Republic of Kazakhstan for 2005-2007”. The “electronic government” portal has been operating since 2006. Through the e-government portal, users can remotely apply and receive a digital signature online in the shortest possible time.

⁷⁸²“eGov Mobile” - mobile government platform that aimed at providing public services and services to the population of the RK through mobile devices, as well as creating an additional and effective channel for interaction between the country's population and the state, in order to achieve sustainable social development. The main components of the system include: iOS, Android - designed to provide public services and “electronic government” services via smartphones. “SMS gateway” - ensures the receipt and sending of SMS messages to citizens on public services provided within the short toll-free number “1414”. “Mobile Citizens Database” (MCDB) - designed to accumulate and store personal information about the user of the electronic government. For the year 2022, was established that number of users of eGov mobile app, per month compose 2,4 million citizens, and about 50 thousand government services are provided per month.

⁷⁸³“Иски и Заявления в Судебном Кабинете Можно Подписывать с Помощью Egov Mobile (Claims and Applications in the Court Office Can Be Signed Using Egov Mobile),” n.d.

⁷⁸⁴There is also a smart assistant judge, a robot that registers, analyzes, and prepares a draft judicial act. The process of sanctioning decisions of private bailiffs on travel bans and court orders has been robotized. For example, in 2022, out of 121.5 thousand materials received, 118 thousand were registered by a robot, 3.7 thousand materials were rejected. The issuance of court orders for the collection of alimony for minor children has also been robotized: 5,687 applications were registered robotically in 2022. Also, in real time, 850 court performance metrics are tracked by a single monitoring system.⁷⁸⁴ О Применении Информационных Технологий в Судопроизводстве(On the Application of Information Technologies in Legal Proceedings) О Цифровизации Судебной Системы(On the Digitalization of the Judicial System)< <https://sud.gov.kz/rus/content/cifrovizaciya>>. Accessed 11.06.24.

⁷⁸⁵Члудян, “Электронное Судопроизводство (Electronic Legal Proceedings).”, 25.01.24.

⁷⁸⁶Тукулов, “Об Основных Особенности и Трудностях Онлайн Правосудия в Казахстане (On the Main Features and Difficulties of Online Justice in Kazakhstan).”

Judicial Cabinet " program sets the stage for the fabrication of evidences.⁷⁸⁷ Through online submission opens a lot of doors to manipulate evidences via new AI technologies.⁷⁸⁸ Here are few suggestions how these drawbacks in the system of Judicial Cabinet can be improved: 1) The installation of a system that automatically adds all submitted papers to the digital case file, eliminating manual printing by secretaries and mandatory confirmation system about received documents. 2) Use blockchain technology for safe tracking and authentication, and mandate that all submitted papers include a certified electronic digital signature (EDS). Implementation of AI-powered verification tools that can detect inconsistencies or manipulations in scanned documents, and verification as an obligatory step for the submission of documents online.

3.2.1.4.2. Applications Utilized for E-Trial

Direct recommendations of the Supreme Court during the COVID-19 period to hold all court hearings online forced an urgent transition to a remote format of legal proceedings.⁷⁸⁹ The venue for holding court hearings via videoconferencing is courtrooms equipped with technological communication equipment.⁷⁹⁰ As of 2022, more than 1,176 electronic courtrooms were registered.⁷⁹¹ Participants in the process using personal means of communication must ensure high-quality video and audio recording of their participation, as well as stable data transmission via a Wi-Fi connection with an Internet speed of at least 4G.⁷⁹² In 2022, 52 thousand court hearings were held using video communication and 280 thousand using mobile video conferencing.⁷⁹³

⁷⁸⁷ See id.

⁷⁸⁸ See *supra*, note 760.

⁷⁸⁹ See *infra*, note 791.

⁷⁹⁰ Правила применения технических средств связи, обеспечивающих участие в судебном заседании, и требования к ним (Rules for the use of technical means of communication ensuring participation in a court hearing and requirements for them); from 15 October 2019, Утвержден приказом Руководителя Департамента по обеспечению деятельности судов при Верховном Суде Республики Казахстан (Approved by the order of the Head of the Department for Ensuring the Activities of Courts under the Supreme Court of the Republic of Kazakhstan). <https://sud.gov.kz/sites/default/files/pagefiles/pravila_tss_rus.pdf>. Accessed 12.06.24.

⁷⁹¹ "О Цифровизации Судебной Системы (On the Digitalization of the Judicial System)."

⁷⁹² See id.

⁷⁹³ Also on its website, the Supreme Court gives recommendations for conducting a high-quality and successful video conference, such as: prepare and charge your equipment; be in a good internet zone; be in a room with good lighting; eliminate noise interference; ask family members and strangers not to distract you; do not be distracted by other things; speak clearly, do not interrupt others; turn off the microphone if you are not speaking; observe etiquette in clothing, behavior and rhetoric. <<https://sud.gov.kz/rus/content/kak-prinyat-uchastie-v-sudebnom-zasedanie-posredstvom-mvks>>. Accessed 12.05.24.

Despite that, it was readily evident in the early days after the courts' online transition that the IT tools and resources at the disposal of Supreme Court were not intended for the large-scale, distant review of cases.⁷⁹⁴ Mobile application of Judicial Cabinet, right after start of utilization began to receive many objections, since it was not allowing execution of group video calls, with more than two participants.⁷⁹⁵ While conducting conference via this app., participants were forced to participate in turn, without ability to see and hear each other.⁷⁹⁶ This was a direct violation of adversarial principle of the proceeding, at once this was also challenging to guarantee the impartiality and completion of the case's investigation in such situation.⁷⁹⁷ Consequently, Supreme Court permitted widely used messengers and in practice, the parties connected to the court hearing via audio-video communication tools: WhatsApp, TrueConf⁷⁹⁸, Zoom and Skype.⁷⁹⁹ Since almost every citizen has WhatsApp on their mobile phones, and convenience of this application, it has seen the most utilization in online proceedings.⁸⁰⁰ At the very first stages of online proceedings, there was lack of regulatory frameworks regarding conduction of these processes via several applications.⁸⁰¹ However, today "Rules for the use of technical means of communication ensuring participation in a court hearing, and the requirements for them", from 21 October 2019, determine the procedure for the use of technical means of communication to ensure participation in a court hearing, and are developed in accordance with Part Four of Article 133-3 of the Civil Procedure Code of the Republic of Kazakhstan.⁸⁰² Additionally, the list of regulatory actions is updated daily. For instance,

⁷⁹⁴Виталий Водолазкин, "Дистанционное Правосудие По-Казахстански" ("Remote Justice, Kazakhstan Style"), 28.05.2020.< <https://www.agka.kz/ru/дистанционное-правосудие-по-казахст/>>. Accessed 05.07.24.

⁷⁹⁵ See id.

⁷⁹⁶ See *supra*, note 791.

⁷⁹⁷ Сулейменова, "«Судебный Кабинет» и Его Преимущества ('Judicial Cabinet' and Its Advantages.)" <<https://prg.kz>>. Accessed 12.05.24.

⁷⁹⁸ A corporate messenger for video conferencing and secure communication, running on popular operating systems and browsers. For example, when persons held in a pre-trial detention facility participate in a court hearing, the connection is made via the regular Internet using the TrueConf program. Н.Ахметзакиров, "Суды Казахстана в Условиях Цифровой Трансформации" ("Kazakhstan's Courts in the Context of Digital Transformation"), декабрь 2020 г.

⁷⁹⁹ See *supra*, note 260.

⁸⁰⁰ Ковалева, "Сделать Суды Страны Умными - Одна Из Основных Задач Верховного Суда (Making the Country's Courts Smart Is One of the Main Tasks of the Supreme Court)."

⁸⁰¹ Елдос Жумаксанов, "О Трансформации Правосудия в Рамках Цифровизации (On the Transformation of Justice in the Framework of Digitalization)," n.d.

⁸⁰² Правила применения технических средств связи, обеспечивающих участие в судебном заседании, и требования к ним (Rules for the use of technical means of communication ensuring participation in a court hearing and requirements for them); from 15 October 2019, Утвержден приказом Руководителя Департамента по обеспечению деятельности судов при Верховном Суде Республики

in August 2024, the city of Almaty's Department of Judicial Administration created a guide that outlines the process for communication between the parties to the trial using WhatsApp groups.⁸⁰³ According to the guide, each created case group in the Almaty City Court will be clearly structured and filled with all the necessary information: group description, court information, secretary contacts, case number, subject of the dispute.⁸⁰⁴ The development of such guidelines is crucial for the appropriate management of the legal system's operations on these platforms and systematization of their work. However, using WhatsApp and other communication tools during an e-trial has drawbacks of its own.⁸⁰⁵ For instance, court hearing confidentiality is compromised, particularly during closed-door proceedings where it can be challenging to maintain complete confidentiality because WhatsApp video conversations can be recorded.⁸⁰⁶ Furthermore, interrogating a witness is one of the circumstances in which complete safety cannot be achieved since there is no assurance that anybody else who could be in the same room as the witness, will be removed.⁸⁰⁷

These issues in utilization of widely used messengers can be sorted out by implementation and utilization of secure court-approved special platforms designed for the holding of hearings. Additionally, to guarantee safety and impartiality of the witness, provision of testimony from designated secure locations, such as court-affiliated offices or legal centers can be a solution. In these regards, 360° room scan camera may be also a great tool to remotely control independence of witnesses.

Казахстан (Approved by the order of the Head of the Department for Ensuring the Activities of Courts under the Supreme Court of the Republic of Kazakhstan). <https://sud.gov.kz/sites/default/files/pagefiles/pravila_tss_rus.pdf>. Accessed 12.06.24.

⁸⁰³ Groups made in WhatsApp messenger are used for communication with the parties in order to handle any organizational and technical concerns. The absence of a single standard led to the emergence of pointless inquiries about the case number and other information. Furthermore, these calls are time wasters, indignations. <<https://almaty.sud.kz/kaz/content/almaty-kalalyk-sotynyn-baylanys-mlimetteri-0>>. Accessed 15.05.24.

⁸⁰⁴ Official website of the Almaty City Court, <<https://almaty.sud.kz/kaz/content/almaty-kalalyk-sotynyn-baylanys-mlimetteri-0>>. Accessed 11.06.24.

⁸⁰⁵ Амрашев, “Судебные Заседания в Режиме «Online». Плюсы и Минусы. (Court Hearings in Online Mode. Pros and Cons.).” (Court Hearings in Online Mode. Pros and Cons.)

⁸⁰⁶ See *infra*.

⁸⁰⁷ Тукулов, “Об Основных Особенности и Трудностях Онлайн Правосудия в Казахстане (On the Main Features and Difficulties of Online Justice in Kazakhstan).”

3.2.2. Online Mediation

Mediation in Kazakhstan is regulated by the Law "On Mediation", which came into force on 5th August, 2011.⁸⁰⁸ In addition to defining the principles and process of mediation, this law also governs public relations in the context of mediation organization in the Republic of Kazakhstan and specifies the mediator's position.⁸⁰⁹ It is vital to note that, mediation, especially online mediation, is quite new in Kazakhstan. To be more precise, the practicing of this method in dispute resolution increasingly began to grow relatively recently. The scope of application of mediation includes disputes on civil, labor, family and other legal relations, as well as on criminal cases of minor and moderate severity.⁸¹⁰ Law does not establish strict restrictions regarding procedure and method of conducting mediation.⁸¹¹ By the party's permission, may be applied regulations established by any mediator organization.⁸¹² Likewise, mediation can be conducted online through telephone conversation, video conferencing, e-mail exchange and in any other way via electronic communication means.⁸¹³ By mutual consent between the parties, the law also allows the drafting of an electronic agreement for mediation process and its signing with an electronic signature for subsequent exchange via e-mails.⁸¹⁴ Article 18 of the Law "On Mediation", in part 3) establishes vital regulations regarding conducting of online mediation. According to them, with permission of parties and own initiative participants in mediation, may engage in the mediation procedure by using technical means of communication and sign settlement agreement with digital signature.⁸¹⁵ The parties may exchange digitally signed copies of the dispute resolution agreement via email without having to physically exchange the originals, as long as the mediator signs the

⁸⁰⁸ Law "On Mediation" of the Republic of Kazakhstan dated January 28, 2011, No. 401-IV. <<https://adilet.zan.kz/rus/docs/Z1100000401/z110401.htm>>. Accessed 05.07.24.

⁸⁰⁹ Урегулирование Споров Путем Медиации (Dispute Resolution Through Mediation); <<https://egov.kz/cms/ru/articles/mediation>>. Accessed 05.07.24.

⁸¹⁰ Law "On Mediation" of the Republic of Kazakhstan dated January 28, 2011, No. 401-IV. Art. 1(1). <<https://adilet.zan.kz/rus/docs/Z1100000401/z110401.htm>>. Accessed 05.07.24.

⁸¹¹ Т.Б. Амрашев, "Порядок Проведения Виртуальной Медиации (Procedure for Conducting Virtual Mediation)," May 14, 2019.

⁸¹² Law "On Mediation" of the Republic of Kazakhstan dated January 28, 2011, No. 401-IV. Chapter 3, Art. 17(2). <<https://adilet.zan.kz/rus/docs/Z1100000401/z110401.htm>>. Accessed 05.07.24.

⁸¹³ See id. Art.17(1).

⁸¹⁴ See *infra*, note 815.

⁸¹⁵ Law "On Mediation" of the Republic of Kazakhstan dated January 28, 2011, No. 401-IV. Chapter 3, Art. 18(3). <<https://adilet.zan.kz/rus/docs/Z1100000401/z110401.htm>>. Accessed 05.07.24.

document.⁸¹⁶ The same procedure is applied to the agreement on refusal of mediation.⁸¹⁷ It must be noted, that amendments regarding conducting of mediation through electronic means in 3rd Chapter of Law “On Mediation” appeared with the Law № 84-VII, in 20 December 2021.⁸¹⁸ Mediation can be employed, both before and after the commencement of legal procedures,⁸¹⁹ and it can be terminated at every stage.⁸²⁰ The mediation process needs to be finished within thirty calendar days after the start of the process, time may be extended till sixty calendar days in total.⁸²¹

Since May 2018, online mediation procedure has been integrated into the functionality of the “Judicial Cabinet”.⁸²² The user-friendly functionality provides a multitude of options for the service user, hence fostering the growth of online dispute resolution institution.⁸²³ Integration of mediation in “Judicial Cabinet”, can be explained as a result of court recommendation to use online dispute resolution methods prior to trial since, court proceedings have many challenges and difficulties for all the parties of the dispute.⁸²⁴ After selection of mediation in the system, a list of mediators with their areas

⁸¹⁶ See *id.* Art. 27.

⁸¹⁷ See *id.* Art. 26.

⁸¹⁸ Закон “О внесении изменений и дополнений в некоторые законодательные акты Республики Казахстан по вопросам совершенствования гражданского процессуального законодательства и развития институтов внесудебного и досудебного урегулирования споров”(Law “On Amendments and Supplements to Certain Legislative Acts of the Republic of Kazakhstan on Issues of Improving Civil Procedural Legislation and Developing Institutions of Out-of-Court and Pre-Trial Dispute Resolution”); 20.12.21.; <<https://adilet.zan.kz/rus/docs/Z2100000084#z250>>. Accessed 07.08.24.

⁸¹⁹ The plaintiff and the defendant, have the right to conclude a mediation agreement with the participation of mediators, or by its approval by the judge during the trial procedures in accordance with the Civil Procedure Code of the Republic of Kazakhstan. Т.Б. Амрашев, “Три Шага До Медиации (Three Steps to Mediation),” October 26, 2020.

⁸²⁰ See *id.*

⁸²¹ Law “On Mediation” of the Republic of Kazakhstan dated January 28, 2011, No. 401-IV. Chapter 3, Art. 23. <<https://adilet.zan.kz/rus/docs/Z1100000401/z110401.htm>>. Accessed 05.07.24.

⁸²² В «Судебном Кабинете» Внедрена Функция Онлайн Примирения (Online Mediation Function Implemented in the “Judicial Cabinet”); Пресс-центр Верховного Суда РК (Press center of the Supreme Court of the Republic of Kazakhstan) 15.05.2018, <<https://sud.gov.kz/rus/news/v-sudebnom-kabinete-vnedrena-funkciya-onlayn-primireniya>>. Accessed 09.06.24. Татьяна Ковалева, “Сделать Суды Страны Умными - Одна Из Основных Задач Верховного Суда (Making the Country’s Courts Smart Is One of the Main Tasks of the Supreme Court),” November 23, 2018.

⁸²³ Урегулирование Споров Путем Медиации (Dispute Resolution Through Mediation); <<https://egov.kz/cms/ru/articles/mediation>>. Accessed 05.07.24.

⁸²⁴ Амрашев, “Три Шага До Медиации (Three Steps to Mediation).” В «Судебном Кабинете» Внедрена Функция Онлайн Примирения (Online Mediation Function Implemented in the “Judicial Cabinet”); <<https://sud.gov.kz/rus/news/v-sudebnom-kabinete-vnedrena-funkciya-onlayn-primireniya>>. Accessed 09.06.24.

of expertise, backgrounds, and contact details appears.⁸²⁵ Additionally, to make the process of choosing a mediator easier, searching parameters such as public organization⁸²⁶, region, mediation language, and types of disputes may be used.⁸²⁷ After selecting of mediator, it is possible to submit online application with all required documents via “Judicial Cabinet”.⁸²⁸ On the system, users can find and download samples of mediation application and settlement agreement.⁸²⁹ The settlement achieved via mediation is forwarded through electronic means to the court overseeing the case if it was carried out as a pre-trial required procedure⁸³⁰ or if the parties mutually agreed to undertake mediation during the legal process.⁸³¹ This functional makes possible to carry out mediation process completely online, and in turn improve convenience and usefulness of mediation as ODR method in Kazakhstan.

According to the statistics for the year 2022, the number of cases referred to mediation was 50,000, and since then, this figure has not decreased.⁸³² The majority of cases subject to mediation are family disputes – 40%, then labor disputes – 30%, and the rest mostly financial or property disputes.⁸³³ In 2024, there were 3,000 qualified mediators working in Kazakhstan.⁸³⁴ Nonetheless, online mediation in Kazakhstan is a relatively new but

⁸²⁵ Мария Дубовая, “В Сервисе “Судебный Кабинет” Появилась Функция Примирения Онлайн (The “Judicial Cabinet” Service Has a New Online Reconciliation Function)”;^{16.05.2018}, <<https://informburo.kz/novosti/v-servise-sudebnyy-kabinet-poyavilas-funkciya-primireniya-onlayn.html>>. Accessed 20.05.24.

⁸²⁶ List of some *mediation centers* in Kazakhstan: Kazakhstan Mediation Center; Institution of professional mediators “Tatulas”; Center for mediation and law “Bitimger” in the city of Taraz; Mediation Center of the “International Human Rights Center”; Mediation Center “Consensus”; Public association “Union of Mediators”.

⁸²⁷ Ковалева, “Сделать Суды Страны Умными - Одна Из Основных Задач Верховного Суда (Making the Country’s Courts Smart Is One of the Main Tasks of the Supreme Court).”

⁸²⁸ В «Судебном Кабинете» Внедрена Функция Онлайн Примирения (Online Mediation Function Implemented in the “Judicial Cabinet”); Пресс-центр Верховного Суда РК (Press center of the Supreme Court of the Republic of Kazakhstan) 15.05.2018, <<https://sud.gov.kz/rus/news/v-sudebnom-kabinete-vnedrena-funkciya-onlayn-primireniya>>. Accessed 09.06.24.

⁸²⁹ Supreme Court of the Republic of Kazakhstan, Judicial Cabinet. <<https://office.sud.kz>>. Accessed 10.06.24.

⁸³⁰ The laws provide for a mandatory pre-trial dispute resolution procedure, for disputes: on the amendment and termination of a contract; on the termination of a property lease agreement; on the transportation of goods, on individual labor disputes between employees and employers, on land disputes; in the field of copyright and intellectual property protection, in the field of consumer protection; in the field of rail transportation and others provided by law.

⁸³¹ Law “On Mediation” of the Republic of Kazakhstan dated January 28, 2011, No. 401-IV. Art. 27. <<https://adilet.zan.kz/rus/docs/Z1100000401/z110401.htm>>. Accessed 05.07.24.

⁸³² “Количество Споров, Разрешаемых Мирным Путем, Не Превышает 20 % (The Number of Disputes Resolved Peacefully Does Not Exceed 20%),” *Ontustik.Kz* (blog), August 9, 2024, <https://ontustiktv.kz/ru/news/50681>.

⁸³³ See id.

⁸³⁴ See id.

promising method of dispute resolution. Its incorporation into the "Judicial Cabinet" system makes mediation easier to access, eases the load on the courts, and gives citizens more practical dispute resolution options.⁸³⁵ Raising public awareness and ensuring dependable technical solutions are essential for the full adoption of online mediation, even while the legislative framework is still being developed.

3.2.3. Online Arbitration

3.2.3.1. An Overview

According to the Law "On Arbitration", of the Republic of Kazakhstan, disputes based on civil law relations are the main subject of regulations by this law.⁸³⁶ However, it is vital to note that, there are significant distinction between traditional and online arbitration.⁸³⁷ During online arbitration whole process is carried out online, while traditional may involve certain aspects of an online hearing.⁸³⁸ The Law of the Republic of Kazakhstan "On Arbitration" specifically permits the completion of the arbitration process completely online, starting with conclusion of the arbitration agreement electronically and ending with the hearing conducted by electronic communication means at the parties' request or on the initiative of the arbitration.⁸³⁹ According to Article 9 of the Law, an arbitration agreement is reached in written form. An agreement is considered to be in written form if it is concluded by exchanging letters, telegrams, telephone messages, faxes, electronic documents or other documents that define the subjects and the content of their expression of will.⁸⁴⁰ Also, communication and the exchange of written messages by the parties is possible by sending telephone messages or telegrams, text messages to a subscriber's mobile phone number or e-mail address, as well as using other means of

⁸³⁵ В «Судебном Кабинете» Внедрена Функция Онлайн Примирения (Online Mediation Function Implemented in the "Judicial Cabinet"); Пресс-центр Верховного Суда РК (Press center of the Supreme Court of the Republic of Kazakhstan) 15.05.2018, <<https://sud.gov.kz/rus/news/v-sudebnom-kabinete-vnedrena-funkciya-onlayn-primireniya>>. Accessed 09.06.24.

⁸³⁶ Закон Республики Казахстан "Об Арбитраже" (Law of the Republic of Kazakhstan "On Arbitration"), 08.04.16; <https://online.zakon.kz/Document/?doc_id=35110250>. Accessed 12.05.24.

⁸³⁷ Елена Ермакова, "О Допустимости Арбитражного Соглашения и Арбитражного Разбирательства в Электронной Форме (On the Admissibility of the Arbitration Agreement and Arbitration Proceedings in Electronic Form)"; 23.11.20. <https://zakon.ru/blog/2020/11/23/o_dopustimosti_arbitrazhnogo_soglasheniya_i_arbitrazhnogo_razbiratelstva_v_elektronnoj_forme>. Accessed 13.06.24.

⁸³⁸ See id.

⁸³⁹ Закон Республики Казахстан "Об Арбитраже" (Law of the Republic of Kazakhstan "On Arbitration"), 08.04.16; <https://online.zakon.kz/Document/?doc_id=35110250>. Accessed 12.05.24. Art.32(3).

⁸⁴⁰ See id. Art. 9(1).

communication that ensure the recording of this messages.⁸⁴¹ Regarding the place of arbitration, it may be chosen by the free will of parties or by the arbitration composition based on what will be most convenient for each party.⁸⁴² This in turn, enables the holding of arbitration proceedings online.⁸⁴³

In the Republic of Kazakhstan, arbitration court can be established to settle particular disputes or to serve as a permanent arbitration.⁸⁴⁴ The Arbitration Chamber of Kazakhstan, a non-profit organization dedicated to promoting arbitrations, brings together arbitrators and arbitrations.⁸⁴⁵ In addition to it, there are separate arbitrations, such as: Kazakhstan International Arbitration⁸⁴⁶, Arbitration Center of The National Chamber of Entrepreneurs of The Republic of Kazakhstan "Atameken"⁸⁴⁷, International Commercial Arbitration "JUS GENTIUM"⁸⁴⁸, etc. All of them carry out their activities in accordance with the Law on Arbitration and other international legislative acts ratified in the Republic of Kazakhstan, and also have their own set of regulations that determine the procedure for organizing their activities.⁸⁴⁹ These regulations also contain provisions regarding online arbitration. For example, the Regulations of The Private Institution "Arbitration Center of The National Chamber of Entrepreneurs of The Republic of Kazakhstan "Atameken", Art. 12 states that request for the initiation of arbitration proceedings may be filed in electronic form, certified by an electronic digital signature.⁸⁵⁰ Likewise, according to these regulations' secretary may hold recording of hearing via

⁸⁴¹ Закон Республики Казахстан "Об Арбитраже" (Law of the Republic of Kazakhstan "On Arbitration"), 08.04.16; <https://online.zakon.kz/Document/?doc_id=35110250>. Accessed 12.05.24. Art.30.

⁸⁴² See id. Art. 22.

⁸⁴³ See *supra*, note 837.

⁸⁴⁴ Закон Республики Казахстан "Об Арбитраже" (Law of the Republic of Kazakhstan "On Arbitration"), 08.04.16; <https://online.zakon.kz/Document/?doc_id=35110250>. Accessed 12.05.24. Art. 4.

⁸⁴⁵ See id. Art.11.

⁸⁴⁶ Казахстанский Международный Арбитраж (Kazakhstan International Arbitration), <<https://arbitrage.kz/skhema-arbitradnogo-razbiratelstva>>. Accessed 13.04.24.

⁸⁴⁷ Арбитражный Центр Национальной Палаты Предпринимателей Республики Казахстан «Атамекен» (Arbitration Center of The National Chamber of Entrepreneurs of The Republic of Kazakhstan "Atameken"), <<https://aca.kz>>. Accessed 13.04.24.

⁸⁴⁸ Международный Коммерческий Арбитраж «JUS GENTIUM» (International Commercial Arbitration "JUS GENTIUM"), <<https://arbitrazh.kz>>. Accessed 14.04.24.

⁸⁴⁹ Закон Республики Казахстан "Об Арбитраже" (Law of the Republic of Kazakhstan "On Arbitration"), 08.04.16; <https://online.zakon.kz/Document/?doc_id=35110250>. Accessed 12.05.24. Art. 3.

⁸⁵⁰ Регламент Частного Учреждения Арбитражный Центр Национальной Палаты Предпринимателей Республики Казахстан «Атамекен» (Regulations of the Private Institution Arbitration Center of the National Chamber of Entrepreneurs of the Republic of Kazakhstan "Atameken"); 16.05.24. <<https://aca.kz/pages/view/2>>. Accessed 12.05.24.

video or audio communication means.⁸⁵¹ Also, they state, that during online hearing place of arbitration proceeding counts as a place of decision is made, regardless of location of parties and arbitral tribunal, which is similar to general definition of place of arbitration.⁸⁵² Moreover, the Rules of Kazakhstan International Arbitration state the possibility of conducting a hearing only on written form, without holding an oral hearing, and since materials can be transferred through electronic means of communication, this procedure may be carried out totally online.⁸⁵³ As a matter of fact, because all of these arbitrations carry out their operations in compliance with the primary Law "On Arbitration," their own regulations pretty similar and contains alike rules. The arbitration centers that conduct effective online arbitration in Kazakhstan will be described below.

3.2.3.2. IAC and AIFC Court

3.2.3.2.1. International Arbitration Centre

Operating under the finest international standards for the settlement of civil and commercial disputes in the AIFC, the International Arbitration Centre (IAC) offers an impartial, economical, and quick substitute for litigation.⁸⁵⁴ Actually, International Arbitration Center is the one of the Astana International Financial Center entities and officially started functioning in 2018.⁸⁵⁵ The IAC panel includes 53 authoritative international arbitrators and mediators from Europe, Asia, the United States, India, Singapore, and Hong Kong, with substantial backgrounds in civil and commercial law.⁸⁵⁶ The IAC provides the parties with choices in selecting the rules and processes, including: arbitration or mediation under the IAC Arbitration and Mediation Rules 2022 or arbitration under the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules.⁸⁵⁷ In compliance with the 1958 UN Convention on the

⁸⁵¹ See id. Art. 48(2).

⁸⁵² See id. Art. 38.

⁸⁵³ Регламент Казахстанского Международного Арбитража (Rules of the Kazakhstan International Arbitration) ; <https://arbitrage.kz/custom/wysiwyg/image/file/20190508/20190508172301_45086.pdf>. Accessed 15.06.24. Art. 36.

⁸⁵⁴ О Международном Арбитражном Центре (About the International Arbitration Centre), <<https://iac.aifc.kz/ru/about-the-iac>>. Accessed 07.05.24.

⁸⁵⁵ *Astana International Financial Center* (AIFC) - is a financial hub where a unique legislative framework specific to the financial industry functions, and whose borders are clearly specified inside the city of Astana, as decided by the President of the Republic of Kazakhstan. "Конституционный Закон Республики Казахстан 'О Международном Финансовом Центре "Астана"' (Constitutional Law of the Republic of Kazakhstan 'On the International Financial Center "Astana"'); 07.12.15.; № 438-V" (n.d.), provides the legislative basis for the activities of the AIFC. <<https://aifc.kz>>. Accessed 10.06.24.

⁸⁵⁶ International Arbitration Centre, <<https://iac.aifc.kz/ru>>. Accessed 15.06.24.

⁸⁵⁷ See *supra*, note 850.

Recognition and Enforcement of Foreign Arbitral Awards, arbitral awards rendered by the IAC have worldwide enforceability in addition to domestic enforcement within the Republic of Kazakhstan.⁸⁵⁸ An important distinction to make, The Law "On Arbitration" does not apply to the IAC's operations.⁸⁵⁹ Since IAC function in independent legislative framework, separated from our legal system, based on the principles of the common law of England and Wales.⁸⁶⁰ Similar independent arbitration jurisdictions exist worldwide, for example Dubai International Financial Centre (DIFC),⁸⁶¹ Singapore International Arbitration Center (SIAC),⁸⁶² Hong Kong international Arbitration Center (HKIAC).⁸⁶³ This structure creates an independent arbitration framework that ensures neutrality, efficiency, and compliance with international standards.⁸⁶⁴ It attracts foreign investors by providing a dispute resolution system separate from national courts, minimizing concerns about bias or political influence.⁸⁶⁵

In order to start arbitration proceeding in IAC, an electronic request for arbitration must be sent by the party to the Registrar.⁸⁶⁶ The IAC has an eJustice system that allows parties to file claims electronically from anywhere in the world, the system officially launched in 2019.⁸⁶⁷ Also, parties may submit documents in person or via email.⁸⁶⁸ The eJustice

⁸⁵⁸ See id.

⁸⁵⁹ Сулейменов М.К.; Дуйсенова А.Е.; “Арбитражный Суд МФЦА: Правовые Основы Деятельности (Арбитражный Суд МФЦА: Правовые Основы Деятельности)”.

⁸⁶⁰ Письмо Председателя Верховного Суда Республики Казахстан от 1 июня 2019 года (Letter from the Chairman of the Supreme Court of the Republic of Kazakhstan dated June 1, 2019), <https://online.zakon.kz/Document/?doc_id=39894669&pos=6;-106#pos=6;-106&sdoc_params=text%3D%25D0%25BE%25D0%25BD%25D0%25BB%25D0%25B0%25D0%25B9%25D0%25BD%2520%25D1%2581%25D1%2583%25D0%25B4%26mode%3Dindoc%26topic_id%3D39894669%26spos%3D1%26tSynonym%3D0%26tShort%3D0%26tSuffix%3D1&sdoc_pos=0>.

Accessed 15.06.24.

⁸⁶¹ See for more information, < <https://www.difc.ae/> >. Accessed 19.06.24.

⁸⁶² See for more information, < <https://siac.org.sg> >. Accessed 20.06.24.

⁸⁶³ See for more information, <<https://www.hkiac.org>>. Accessed 29.06.24.

⁸⁶⁴ Сулейменов М.К.; Дуйсенова А.Е.; “Арбитражный Суд МФЦА: Правовые Основы Деятельности (Арбитражный Суд МФЦА: Правовые Основы Деятельности)”.

⁸⁶⁵ See id.

⁸⁶⁶ The Registrar's duties include the day-to-day management and administration of the IAC, the conduct of arbitration cases and mediation agreements, and the appointment of IAC mediators in accordance with the IAC Arbitration and Mediation Rules.

⁸⁶⁷ Запуск Системы Электронного Правосудия в Суде МФЦА и МАЦ (Запуск Системы Электронного Правосудия в Суде МФЦА и МАЦ); 26.02.2019, <<https://court.aifc.kz/ru/news/aifc-court-and-iac-ejustice-launch>>. Accessed 17.06.24.

⁸⁶⁸ Arbitration and Mediation Proceedings, <<https://iac.aifc.kz/en/arbitration-and-mediation-proceedings>>. Accessed 05.06.24.

system was developed in association with Singapore-based CrimsonLogic company⁸⁶⁹, utilizing the top-tier legal software Chrysalis.⁸⁷⁰ Assisting with the management of legal procedures and electronic document processing, the eJustice system also assists with procedural concerns and offers support to judges and arbitrators.⁸⁷¹ With eJustice system, it is possible to monitor the full online dispute resolution procedure.⁸⁷² Regarding location of the arbitration, it may be freely chosen by the parties, and hearings may be held by video conference or in any other suitable way.⁸⁷³ In practice, most of the processes take place online.⁸⁷⁴ The center also performs online mediation in accordance with principles and rules similar to those governing arbitration, independent from governmental legislative framework.⁸⁷⁵ During the period of COVID-19, IAC continued to provide their dispute resolution services via access to eJustice system on their website and ability to fill case online via this system.⁸⁷⁶ Further, disputes resolved online through audio and video technologies or written submissions by emails.⁸⁷⁷ Additionally, to ensure all users and legal communities to remain connected during COVID-19 period, they also launched online “AIFC Court and IAC Webinar Series”.⁸⁷⁸ To date, 3,159 mediation and

⁸⁶⁹CrimsonLogic is a trusted partner for governments and businesses around the world. For over 30 years, CrimsonLogic has partnered with customers to deliver innovative solutions, products and world-class services in commerce, e-justice and digital government, enabling customers to make meaningful transformations that deliver positive results for governments, businesses and communities.

⁸⁷⁰Запуск Системы Электронного Правосудия в Суде МФЦА и МАЦ (Запуск Системы Электронного Правосудия в Суде МФЦА и МАЦ); 26.02.2019, <<https://court.aifc.kz/ru/news/aifc-court-and-iac-ejustice-launch>>. Accessed 17.06.24.

⁸⁷¹eJustice system, <<https://court-iac-ejustice.com/chrysalis/userregistration/register>>. Accessed 15.06.24.

⁸⁷²Письмо Председателя Верховного Суда Республики Казахстан от 1 июня 2019 года (Letter from the Chairman of the Supreme Court of the Republic of Kazakhstan dated June 1, 2019).

⁸⁷³“Международный Арбитражный Центр, ‘Правила Арбитража и Медиации’ (International Arbitration Centre, ‘Arbitration and Mediation Rules’)” (n.d.), Art.15.

⁸⁷⁴Нестерова Е.В.; “Впечатлений от работы с МАЦ (Impressions from working with the IAC)”, <https://online.zakon.kz/Document/?doc_id=33754642&pos=160;-46#pos=160;-46&sdoc_params=text%3D%25D0%25BE%25D0%25BD%25D0%25BB%25D0%25B0%25D0%25B9%25D0%25BD%2520%25D0%25B0%25D1%2580%25D0%25B1%25D0%25B8%25D1%2582%25D1%2580%25D0%25B0%25B6%26mode%3Dindoc%26topic_id%3D33754642%26spos%3D1%26tSynonym%3D0%26tShort%3D0%26tSuffix%3D1&sdoc_pos=0>. Accessed 09.05.24.

⁸⁷⁵Международный Арбитражный Центр, “Правила Арбитража и Медиации” (International Arbitration Centre, “Arbitration and Mediation Rules”), 25.

⁸⁷⁶“COVID-19 - Online Dispute Resolution at The AIFC Court and IAC”. Available at <<https://court.aifc.kz/en/news/covid-19-online-dispute-resolution-at-the-aifc-court-and-iac>>. Accessed at 25.03.2024.

⁸⁷⁷Available at <<https://court.aifc.kz/ru/about-the-aifc-court>>. Accessed at 25.03.2024.

⁸⁷⁸See id.

arbitration proceedings have been conducted, and parties from 27 countries were involved in commercial disputes.⁸⁷⁹This is 1,006 more proceedings than in 2023.⁸⁸⁰

Also, in 2022, the IAC launched IAC Chambers, a professional dispute resolution support center, the first of its kind in Eurasia.⁸⁸¹IAC Chambers, offers the greatest multipurpose meeting rooms, a full range of digital solutions and support services for conducting hearings.⁸⁸²Through the Centre it is possible to conduct complex multi-jurisdictional hearings in physical, hybrid or virtual formats 24/7 worldwide, while respecting the neutrality and confidentiality of all judicial proceedings.⁸⁸³The International Centre for Dispute Resolution in London and Maxwell Chambers in Singapore, two of the world's top dispute resolution centers, served as the inspiration for the creation of this service, which was developed in collaboration with their support teams.⁸⁸⁴Despite the fact that there were doubts and fears and about operating of IAC under common law principals, in practice IAC strengthens Kazakhstan's position as a regional hub for ADR, making it competitive and appealing in the global area.

3.2.3.2.2. AIFC Court

The AIFC Court, is a judicial body at the AIFC that operates according to the highest international standards for the resolution of civil and commercial disputes.⁸⁸⁵The AIFC Court operates independently and is not part of the judicial system of the Republic of Kazakhstan.⁸⁸⁶The principles and procedural rules of the laws of England and Wales, as well as the standards of the world's leading financial hubs worldwide, have formed the foundation for the development of the AIFC Court's unique procedural

⁸⁷⁹International Arbitration Centre, <<https://iac.aifc.kz/ru>>. Accessed 15.06.24.

⁸⁸⁰Сулейменов М.К.; Дуйсенова А.Е.; “Арбитражный Суд МФЦА: Правовые Основы Деятельности (Арбитражный Суд МФЦА: Правовые Основы Деятельности)”.

⁸⁸¹“Годовой Отчет о Деятельности Международного Финансового Центра «Астана» (Annual Report on the Activities of the International Financial Center ‘Astana’),” 2022, 79.

⁸⁸²Available at <<https://iac.aifc.kz/ru/administrative-facilities-iac-chambers>>. Accessed 10.06.24.

⁸⁸³See id.

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⁸⁸⁵О Суде МФЦА (About the AIFC Court); <<https://court.aifc.kz/ru/about-the-aifc-court>>. Accessed 16.05.24.

⁸⁸⁶Конституционный Закон Республики Казахстан “О Международном Финансовом Центре “Астана”” (Constitutional Law of the Republic of Kazakhstan “On the International Financial Center ‘Astana’”); 07.12.15.; № 438-V, 12; “Годовой Отчет о Деятельности Международного Финансового Центра «Астана» (Annual Report on the Activities of the International Financial Center ‘Astana’),” 79.

regulations.⁸⁸⁷ Criminal and administrative cases are handled exclusively by the national courts of the Republic of Kazakhstan; the AIFC Court does not handle these types of cases.⁸⁸⁸ Claims can be submitted to the court online using eJustice, much like in IAC arbitration, and hearings can be held over video conference.⁸⁸⁹ The AIFC Court conducts proceedings in English and other languages, which allows foreign lawyers and attorneys to participate in the process and makes the AIFC Court an attractive venue for resolving disputes involving foreign companies.⁸⁹⁰ The decisions of the AIFC Court are also subject to enforcement at the international level in accordance with international treaties ratified by the Republic of Kazakhstan.⁸⁹¹ The AIFC Court has jurisdiction over: disputes arising between AIFC participants and relating to any transaction carried out in the AIFC.⁸⁹² As well as disputes referred to the AIFC Court by agreement of the parties.⁸⁹³ After a claim is filed in a Republic of Kazakhstan court, the parties may, if permitted by law, submit a dispute arising from civil law relations to the AIFC Court for consideration, according to Article 24 of the Civil Procedure Code.⁸⁹⁴ 649 attorneys are enrolled to represent parties in the AIFC Court, and the court has rendered 131 rulings thus far.⁸⁹⁵ Also, Turkiye and Kazakhstan have international treaties on legal aid in civil proceedings,⁸⁹⁶ and as of 2022,

⁸⁸⁷О Суде МФЦА (About the AIFC Court); <<https://court.aifc.kz/ru/about-the-aifc-court>>. Accessed 16.05.24.

⁸⁸⁸“Годовой Отчет о Деятельности Международного Финансового Центра «Астана» (Annual Report on the Activities of the International Financial Center ‘Astana’),” 77.

⁸⁸⁹ Правила Суда МФЦА (AIFC Court Rules).

⁸⁹⁰“Годовой Отчет о Деятельности Международного Финансового Центра «Астана» (Annual Report on the Activities of the International Financial Center ‘Astana’),” 77.

⁸⁹¹ Правила Суда МФЦА (AIFC Court Rules).

⁸⁹²Нурлан Шоланов, Юлия Чумаченко, Елена Манаенко, Ардак Идаятова, Тари Культелеев, Александр Чумаченко, Кирилл Грешников, Фарух Иминов; Краткий Обзор Основных Аспектов Права и Деятельности Международного Финансового Центра «Астана» (Brief Overview of the Main Aspects of Law and Activities of the Astana International Financial Center); 2022.

⁸⁹³ See id.

⁸⁹⁴Ж. Асанов; Г. Альмагамбетова; “Постановление Пленарного Заседания Верховного Суда Республики Казахстан От 15 Апреля 2021Года№5 “Об Утверждении Разъяснения № 1 По Отдельным Вопросам Судебной Практики, Связанным с Передачей Спора На Разрешение Суда международного Финансового Центра «Астана» (Resolution of the Plenary Session of the Supreme Court of the Republic of Kazakhstan dated April 15, 2021 No. 5 “On Approval of Explanation No. 1 on Certain Issues of Judicial Practice Related to the Transfer of a Dispute for Resolution by the Court of the Astana International Financial Center”)”.

⁸⁹⁵ Available at <<https://court.aifc.kz/ru>>. Accessed at 25.03.2024.

⁸⁹⁶Нурлан Шоланов, Юлия Чумаченко, Елена Манаенко, Ардак Идаятова, Тари Культелеев, Александр Чумаченко, Кирилл Грешников, Фарух Иминов; Краткий Обзор Основных Аспектов Права и Деятельности Международного Финансового Центра «Астана» (Brief Overview of the Main Aspects of Law and Activities of the Astana International Financial Center); 2022.

Turkiye made up 1.6% of AIFC participants⁸⁹⁷, suggesting that decisions made by the AIFC are also enforceable regarding Türkiye companies.

3.3. COMPARATIVE ANALYSIS

3.3.1. Similarities

Turkiye and Kazakhstan have both recognized the importance of online dispute resolution as a mechanism to streamline conflict resolution in an increasingly digital world. Though each country has its own legal framework, there are notable similarities in their approach to ODR. The fact that both countries have a system of E-Government and E-signature which is vital tool in order to conduct ODR, since all document flow, document ratification conducted via these utilities.⁸⁹⁸ Another important system are UYAP (National Judiciary Informatics System)⁸⁹⁹ in Türkiye and Judicial Cabinet in Kazakhstan,⁹⁰⁰ they share several similarities in how they modernize and digitize their respective judicial systems. UYAP and " Judicial Cabinet " offer digital platforms that facilitate access to a broad array of judicial services. This allows individuals, attorneys, and government organizations to engage with the court system without the need to physically visit courthouses. Both systems facilitate the digital submission of case-related documents, provide users with tools they need to handle their cases more effectively, enhance public access making the judicial process more transparent and accessible to ordinary citizens. Likewise, both platforms emphasize secure digital communication and aimed to reduce the administrative workload of courts, UYAP and Judicial Cabinet are integrated with other government systems to ensure a more seamless exchange of information between various state institutions and the judiciary.

In both countries' mediation can be conducted on the base of free will, but only in Türkiye as an obligatory step before proceeding. As legal framework of Kazakhstan does not impose mandatory mediation for any category of disputes. In both cases, mediation can be carried out online via filling request electronically and afterward's conducting hearing via electronic communication means. It must be noted that request to Online Mediation

⁸⁹⁷“Годовой Отчет о Деятельности Международного Финансового Центра «Астана» (Annual Report on the Activities of the International Financial Center ‘Astana’),” 64.

⁸⁹⁸E-Devlet kapısı, <<https://www.turkiye.gov.tr>>, E-Gov, <<https://egov.kz/cms/ru>>. Accessed 06.05.24.

⁸⁹⁹UYAP Portalı, <<https://vatandas.uyap.gov.tr/main/vatandas/giris.jsp>>. Accessed 07.05.24.

⁹⁰⁰Judicial Cabinet, <<https://office.sud.kz>>. Accessed 07.05.24.

can be made through platforms in Türkiye from 2015⁹⁰¹ and in Kazakhstan from 2018⁹⁰², both in order to enhance ODR institution and reduce workloads in the courts.

Regarding Online Trials, both Türkiye and Kazakhstan electronic trials in civil judiciary governed by Civil Procedure Codes.⁹⁰³ In Türkiye, chapter with amendments regarding e-trial were added in 2020⁹⁰⁴, and in Kazakhstan in 2019⁹⁰⁵. These amendments opened opportunities to conduct online courts and regulate their functioning. These changes, especially played role, during pandemic period when all courts around the world were obliged to switch to remote mode. Regarding these regulations, in both countries judges and secretaries participate to e-trial in the courthouses, when other parties may connect online, procedure of submission documents are also pretty similar, as the rules regarding recording of e-trial procedure.

Both Türkiye and Kazakhstan, have developed legal frameworks that support online arbitration as an extension of traditional arbitration processes. Both Türkiye and Kazakhstan have their arbitration laws in accordance with the UNCITRAL Model Law on International Commercial Arbitration, which supports the use of electronic communications and recognizes the validity of online arbitration.⁹⁰⁶ This harmonization with international standards ensures that both countries are aligned with global arbitration practices. As a consequence, both countries recognize online arbitration as a valid and

⁹⁰¹ Kaya, “Access to Justice for Turkish Consumers in the Digital Age: The Need for Enhancing Consumer Dispute Resolution Through Online Dispute Resolution,” 154.

⁹⁰²В «Судебном Кабинете» Внедрена Функция Онлайн Примирения (Online Mediation Function Implemented in the “Judicial Cabinet”); Пресс-центр Верховного Суда РК (Press center of the Supreme Court of the Republic of Kazakhstan) 15.05.2018, <<https://sud.gov.kz/rus/news/v-sudebnom-kabinete-vnedrena-funkciya-onlayn-primireniya>>. Accessed 09.06.24. Ковалева, “Сделать Суды Страны Умными - Одна Из Основных Задач Верховного Суда (Making the Country’s Courts Smart Is One of the Main Tasks of the Supreme Court).”

⁹⁰³Code of Civil Procedure, no:6100, was published in Resmi Gazete and accepted 12.01.2011. <<https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6100.pdf>>. Accessed 20.06.24. Art.149. Гражданский процессуальный кодекс Республики Казахстан (Civil Procedure Code of the Republic of Kazakhstan), from 31 October, 2015, № 377-V ЗРК. <<https://adilet.zan.kz/rus/docs/K1500000377#z2003>>. Accessed 24.05.24. Chapter 11-1.

⁹⁰⁴Code of Civil Procedure, no:6100, was published in Resmi Gazete and accepted 12.01.2011. <<https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6100.pdf>>. Accessed 20.06.24.

⁹⁰⁵Гражданский процессуальный кодекс Республики Казахстан (Civil Procedure Code of the Republic of Kazakhstan), from 31 October, 2015, № 377-V ЗРК. <<https://adilet.zan.kz/rus/docs/K1500000377#z2003>>. Accessed 24.05.24.

⁹⁰⁶“International Arbitration in Kazakhstan,” November 13, 2021, <https://www.acerislaw.com/international-arbitration-in-kazakhstan/>; Beril Yayla Sapan, Asena Aytuğ Keser, and Kardelen Özden, “Arbitration Procedures and Practice 2023 in Turkey,” February 21, 2023.

enforceable method of dispute resolution. Online arbitration procedure may be started on the request of the parties or initiative of the arbitration, in both countries. Also, it is permitted to submit documents, pleadings and evidences online. Same as in Kazakhstan International Arbitration Center, has a special electronic justice system, by registering in which the parties can submit documents and track all processes online through this platform.⁹⁰⁷ In Türkiye, ISTAC offers an ODR system which allows parties to submit documents electronically and conduct arbitration proceedings digitally.⁹⁰⁸ Since, in both countries adhere New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, arbitration decisions accepted online are legally binding both under the native jurisdictions and abroad.⁹⁰⁹ Both countries allow for online hearings via video conferencing, electronic submission of documents, and the enforcement of decisions online, making the arbitration process more accessible, efficient, and aligned with global practices. These procedures enhance cross-border dispute resolution and promote the use of online arbitration in commercial and international matters. Türkiye as part of its aspirations for EU accession, Türkiye has aligned much of its legislation with EU standards.⁹¹⁰ Kazakhstan, being part of the Eurasian Economic Union (EAEU), is aligning its ODR practices with international models to facilitate cross-border dispute resolution.⁹¹¹ As a result, Türkiye and Kazakhstan have made significant strides in incorporating online dispute resolution into their legal systems.

3.3.2. Differences

Regarding differences in ODR systems of Kazakhstan and Türkiye, countries have legally established online hearings, however, applications via which online hearings are conducted differ. In Türkiye, E-Trial (E-Duruşma) app. is utilized to conduct and participate to the hearing on this platform.⁹¹² However, in Kazakhstan, in practice most of online hearings conducted via WhatsApp app. and other online platforms like Zoom

⁹⁰⁷ International Arbitration Centre, <<https://iac.aifc.kz/ru>>. Accessed 15.06.24.

⁹⁰⁸ ISTAC Hakkında, <<https://istac.org.tr/tr/hakkimizda/istac-hakkinda/>>. Accessed 10.06.24.

⁹⁰⁹ Türkiye from 2 July 1992, Kazakhstan from 20 November 1995, ratified New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-1&chapter=22&clang=_en>.

⁹¹⁰ Abdullah Yuhannan, "Possible Impacts and Potential Benefits from Turkey in the EU's Enlargement Process," n.d.

⁹¹¹ "EAEU," October 16, 2019.; <<https://www.gov.kz/memleket/entities/mfa/press/article/details/583?lang=en>>. Accessed 19.05.24.

⁹¹² <<https://edurusmabilgi.adalet.gov.tr/>>. Accessed 05.07.24.

or Microsoft Teams for this procedure.⁹¹³ As it is mentioned, in the part 3.2.1. of this thesis, utilization of these apps for conducting hearing in Kazakhstan, have at the same time disadvantages especially in the field of security of court proceeding.⁹¹⁴ In this regard, the fact that Turkiye obtained special platform to conduct e-trial and via this platform permission on participating is given to the parties, makes this platform unique and convenient. It must be mentioned, that it is possible to conduct an exchange of experience between Turkiye and Kazakhstan, taking the Turkish platform as an example, develop an analogue in Kazakhstan to improve the e-trial system and solve existing problems. As a matter of fact, in Turkiye, court hearings are not recorded, while in Kazakhstan, audio and video fixation of proceedings are allowed and regulated by legislation.⁹¹⁵ Another difference in E-Trial system, is independent AIFC Courts in the Republic of Kazakhstan, they work on the basis of England and Wales laws, as well as the worldwide standards.⁹¹⁶ The language of communication during all court hearings are English.⁹¹⁷ All documents for use in the Court must be in English or must be translated into English.⁹¹⁸ Another distinctive feature of this court, is that the Chairman and judges of the AIFC Court are appointed and dismissed directly by the President of the Republic of Kazakhstan.⁹¹⁹ The goal of the courts to promote growth of regional trade by increasing trust in administration and access to justice in the AIFC, globally.

Regarding the differences of mediation, in Turkiye is applicable to the resolution of private law disputes arising from transactions or processes over which the parties can freely dispose, including those that contain foreign elements, except disputes involving

⁹¹³ Тукулов, “Об Основных Особенности и Трудностях Онлайн Правосудия в Казахстане(On the Main Features and Difficulties of Online Justice in Kazakhstan).”

⁹¹⁴ Темирганова, “Внедрение Информационных Технологий В Судах(Implementation of Information Technologies in Courts).”

⁹¹⁵ Об утверждении Правил технического применения средств аудио-, видеозаписи, обеспечивающих фиксирование хода судебного заседания, хранения и уничтожения аудио-, видеозаписи, доступа к аудио-, видеозаписи (On approval of the Rules for the technical use of audio and video recording equipment that ensure the recording of the course of a court hearing, storage and destruction of audio and video recordings, access to audio and video recordings)<<https://adilet.zan.kz/rus/docs/V1500012457>>. Accessed 12.05.24.

⁹¹⁶ О Суде МФЦА (About the AIFC Court); <<https://court.aifc.kz/ru/about-the-aifc-court>>. Accessed 16.05.24.

⁹¹⁷ Правила Суда МФЦА (AIFC Court Rules). Part 2.

⁹¹⁸ See id.

⁹¹⁹ Конституционный Закон Республики Казахстан “О Международном Финансовом Центре “Астана”” (Constitutional Law of the Republic of Kazakhstan “On the International Financial Center ‘Astana’”); 07.12.15.; № 438-V.

domestic violence.⁹²⁰ However, in Kazakhstan there is no procedure for reconciliation of the parties through mediation in disputes with domestic violence elements, but, in practice, the application of the provisions of the Law "On Mediation" in administrative proceedings are not prohibited.⁹²¹

Regarding the differences of online arbitration, in Kazakhstan functions International Arbitration Center, which is located in Astana and works under independent regulations, without being attached with countries legislation.⁹²² To sum up, both countries are actively developing ODR systems, however in some aspects Türkiye has more integrated approach, particularly in court integration. Kazakhstan still on its way on building technological framework to support ODR. At this step, can be made exchange of experience between countries to share successful platforms and regulations regarding implementation of ODR.

⁹²⁰The Law on Mediation in Civil Disputes, No 6325, <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=6325&MevzuatTur=1&MevzuatTertip=5>>. Accessed 09.05.24.

⁹²¹ А. Маженова, “Бытовое Насилие в Семье (Domestic Violence in the Family),” April 13, 2020. <<http://astanazan.kz/?p=1724>>. Accessed 10.04.24.

⁹²²О Международном Арбитражном Центре (About the International Arbitration Centre), <<https://iac.aifc.kz/ru/about-the-iac>>. Accessed 07.05.24.

CONCLUSION

The rapid evolution of technology has influenced various aspects of society, including legal systems. One significant development in this context is the rise of Online Dispute Resolution (ODR), which leverages digital platforms to resolve disputes outside traditional courtroom settings. ODR has gained prominence due to its efficiency, accessibility, and cost-effectiveness, offering solutions to challenges posed by conventional dispute resolution mechanisms. In order to define online dispute resolution, this work first defines its terms as well as its parameters. Next, the concept's inception and the phases of its historical evolution are looked at. Regarding the topic of our study, online conflict resolution procedures have arisen since the state court system and alternative dispute resolution procedures had drawbacks for enforcing the right to a fair trial and access to justice. These days, a lot of nations include online dispute resolution techniques into state court processes in an effort to expedite trials and save money. The most prominent illustration of this is found in online courts. Online dispute resolution techniques so directly affect the civil jurisdiction legislation, the state court system, and consequently, basic judicial rights. Because this notion includes components such as equality of arms, the right to be heard, procedural economy, and the principle of publicity, it is crucial to evaluate it in relation to these rights as well as basic judicial rights. With the use of technology, it is anticipated that many of the basic legal rights will come to pass and that these values will be upheld. Online dispute resolution techniques speed up and reduce the expense of litigation, but they also run the risk of breaking some civil procedural law rules. Online conflict resolution methods are not suitable for everyone, depending on their level of technological training or literacy. These methods are also not always applicable or practical. The development of technologically based solutions is the primary means of issue prevention. That being said, this is not a process that will be completed quickly, in a day.

This work examined the frameworks of ODR in Turkish and Kazakhstan law, offering a comparative analysis of how these two jurisdictions have approached the integration of technology into their legal systems. Both countries have taken steps toward digitizing their legal systems and improving access to justice through technology. Both Turkiye and

Kazakhstan have integrated online platforms to handle disputes and both have legislative frameworks that support ODR methods. While Türkiye and Kazakhstan have made significant investments in their technological infrastructure, further improvements are needed to fully support ODR platforms. Reliable internet access, particularly in rural areas, is a challenge in both countries, potentially limiting the accessibility of ODR for some citizens. One of the key challenges for both countries is the lack of public awareness and trust in ODR mechanisms. Many citizens may be unfamiliar with online platforms for dispute resolution, or they may perceive them as less legitimate or effective than traditional court proceedings. One of the key opportunities for both countries is the expansion of ODR beyond already applied disputes. Both Türkiye and Kazakhstan are strategically positioned in regions that are increasingly important for global trade. As such, there is an opportunity for both countries to position themselves as leaders in cross-border ODR, particularly in disputes arising from international trade and commerce. This would require greater harmonization of laws and regulations, as well as cooperation with international organizations and other jurisdictions to develop common standards for ODR. Continued investment in technological infrastructure is essential to support the growth of ODR. Both Türkiye and Kazakhstan should prioritize expanding internet access to rural areas and improving the reliability and security of their ODR platforms. Efforts should be made to promote a cultural shift toward the acceptance of ODR as a legitimate and effective means of resolving disputes. While challenges remain, particularly in terms of legal frameworks, technology, and public acceptance, the potential benefits of ODR—such as increased access to justice, efficiency, and cost savings—are significant. By addressing these challenges and seizing the opportunities presented by globalization and digitization, Türkiye and Kazakhstan have the potential to become leaders in the field of ODR, both regionally and globally.

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