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CAN ONLINE DISPUTE RESOLUTION PREVAIL OVER THE TRADITIONAL METHODS OF RESOLUTION?

Abstract
Digitalization involves the implementation of digital technologies in various areas of life, in everyday life, in production, at work, in government structures, in business and it has not bypassed the legal environment either. When disputes arise, the parties usually go to court for litigation, but there are also methods of resolving disputes outside the court, the so-called alternative dispute resolution methods. Technological development has also changed the vector of dispute resolution through alternative methods (arbitration, mediation and negotiation) and created what is known as "Online Dispute Resolution" (online arbitration, online mediation and online negotiations).

This article analyses the potential opportunities and obstacles for functioning alternative forms of dispute resolution through digital transformation. Moreover, the article examines legal instruments for implementing online dispute resolution at the regional level, particularly, regulations and directives in the European continent. The last analysis of the article is devoted to possible emerging technologies in the online dispute resolution domain.

Annotasiya
Rəqamsallaşma həyatın müxtəlif sahələrində, gündəlik həyatda, istehsalatda, işdə, dövlət strukturlarında, biznesdə rəqamsal texnologiyaların tətbiqini əhatə edir və bu, hüquq mühitindən də yan keçməyib. Mübahisə yarandıqda tərəflər adətən çəkişmələr üçün məhkəməyə müraciət edirlər, lakin mübahisələrin məhkəmədən kənar həlli üsulları da mövcuddur ki, onlara mübahisələrin alternativ həlli üsulları deyilir. Texnoloji inkişaf mübahisələrin alternativ üsullarla (arbitraj, mediasiya və danışıqlar) həlli vektorunu da dəyişmiş və mübahisələrin onlayn həlli (onlayn arbitraj, onlayn mediasiya və onlayn danışıqlar) kimi tanınan üsullarını yaratmışdır.

Bu məqalə rəqəmsal transformasiya vasitəsilə mübahisələrin alternativ həlli formalarının işləməsi üçün potensial imkan və problemləri təhlil edir. Bundan əlavə, məqalə regional səviyyədə mübahisələrin onlayn həllinin həyata keçirilməsi üçün hüquqi alətləri, xüsusilə də, Avropa qitəsindəki qayda və direktivlərini araşdırır. Məqalənin son təhlil hissəsi mübahisələrin onlayn həlli sahəsində mümkün inkişaf edən texnologiyalara həsr edilmişdir.

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Introduction

The advancement of digital technologies at a breakneck pace has wholly changed the daily life of people, moving the latter from the physical world to the virtual one, where events happen instantly, bringing with them both many opportunities, for instance, time and financial resources savings, flexibility and emotional control, and legal uncertainties, such as security and confidentiality of ODR, lack of physical contact between the parties and digital divide. The development of the digital environment has influenced many areas of life, especially in the domain of commerce. Consequently, commerce has been moved to cyberspace, which is fast and cost-effective, bringing high benefits to both consumers and traders. The transformation of commercial activity into the Internet space has created problems and issues that do not even exist in the physical space due to the structure and functioning of the cyberspace, in other words, traditional mechanisms for resolving commercial and other disputes of a local and international nature do not seem to be sufficient on the Internet platform.

The emergence of traditional alternative dispute resolution (hereinafter ADR) methods, such as arbitration, mediation and negotiation, was envisioned as bypassing litigation in order to resolve disputes quickly and efficiently. Subsequently, with the development of e-commerce and digital technologies, it became necessary to resolve disputes arising in the online environment. Considering the above-mentioned aspects, new dispute resolution methods in cyberspace have been introduced, which are related to digital technology. These dispute resolution methods have been termed "online dispute resolution". Online dispute resolution (hereinafter ODR) can be classified as traditional alternative dispute resolution methods such as arbitration, mediation and negotiation, using electronic technology capabilities, with the provision of the participation of third-independent parties, an arbitrator or mediator without the physical presence of all parties.

Recent events in the world clearly show that humanity cannot give a well-deserved answer to disasters with existing methods. In particular, the pandemic COVID-19 that has swept the whole world has proven how essential digitalization processes are not only in the technological world but also in the legal environment. As a result, lawyers, judges, arbitrators, mediators, parties to disputes were forced to adapt to new realities. Undoubtedly, this process takes some time; however, it is necessary to identify problematic aspects that become obstacles for successful adaptation, and legal analysis of existing legal norms is necessary. All these events have once again proved the importance of clearly establishing the theoretical and practical aspects of the implementation of the activities of the ODR.

This article consists of four parts respectively. The first part of the article examines the historical development of ODR, the concept of ODR in order to understand the essence of the issue and lists the main advantages and disadvantages of ODR. Then, the second part provides information on ODR forms and examines in more detail one of the main ODR forms – Online Arbitration. The article compares online arbitration with traditional arbitration and examines in detail the main advantages and disadvantages of online arbitration. The third part of the article deals with the legal instruments that are applicable to ODR in Europe, further discusses Regulation 524/2013/EU in detail and describes the ODR platform which was created on the basis of this Regulation, as well as the complaint procedure on the platform. The last part of the article is devoted to the possible future development of the ODR, namely, the concept of using Artificial Intelligence in the ODR is considered and the answer to the question is given: Can Artificial Intelligence (AI) replace the Human Arbitrators?

I. History of development and the definition of the Online Dispute Resolution

A. The history of the development of online dispute resolution

The history of the development of online dispute resolution methods is directly correlated to the development of the Internet in general. The invention of the Internet in 1969 and the first three decades of its existence show that there have been just a few disputes. The United States National Science Foundation (hereinafter the US "NSF") banned the use for commercial purposes of the Internet till 1992.[1] Therefore, "there were no commercial or consumer disputes".[2] Possibility of conducting commercial activities via the Internet were given by the US "NSF" since 1992. Before the US "NSF" network

[1] Jay P. Kesan, Rajiv C. Shah, *Fool Us Once Shame on You – Fool Us Twice Shame on Us: What We Can Learn from the Privatizations of the Internet Backbone Network and the Domain Name System*, 79 Washington University Law Quarterly 89, 99 (2001).

[2] Mohamed S. Abdel Wahab, Ethan Katsh and Daniel Rainey, Online Dispute Resolution: Theory and Practice: A Treatise on Technology and Dispute Resolution, 10 (2012).

was mainly used for educational and academic purposes.[3] With the granting of permission to conduct commercial activities via the Internet, disputes began to arise between buyers and sellers. "Within the last 20 years, commerce has increasingly been conducted over the Internet, selling goods and providing services electronically".[4] The history of the development of online dispute resolution begins in 1995. Some authors distinguish four stages in the formation of online dispute resolution, and some jurists only three.

The ***first*** stage in the development of online dispute resolution can be called an experimental or hobbyist stage, which cover 1995-1998 years.[5] The first projects of this period are such projects as Virtual Magistrate, Mediate-Net, and the Online Ombuds Office.[6] The Virtual Magistrate was launched in 1995 by the National Center for Automated Information Research at Villanova University (Philadelphia, USA). One of the main goals of this project was to prove that the use of technology can resolve disputes much faster and more economically than the traditional dispute resolution methods.[7] The "VM had the competence to deal with disputes arising from defamation, intellectual property, fraud and illegal appropriation of commercial secrets, etc".[8] The complaint was considered within three days after the filing of the application, and the proceedings took place by e-mail.[9] The Virtual Magistrate project was unsuccessful for several reasons; one of them was the wrong choice of the type of dispute resolution, disputes were considered with the help of arbitration, it would be better to consider using meditation to succeed.[10] Another reason was the use of primitive software and the lack of sufficient cyber security during the hearings.

After attempting the project mentioned above in 1996, an Online Ombudsman Office was established that offers mediation services for all disputes arising in cyberspace.[11] "The Online Ombudsman Office provided both online ombudsman mechanism and online mediation services".[12] Furthermore, this project operated on a gratuitous basis; that is to say, the parties could receive mediation services free of charge. In 2003, this project suspended its activities and is currently not operational. This project is considered vital because it was focused on a specific market; that is, dispute

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[3] Jie Zheng, Online Resolution of E-commerce Disputes: Perspectives from the European Union, the UK, and China, 36 (2020).
[4] Faye Fangfei Wang, Online Dispute Resolution: Technology, Management and Legal Practice from an International Perspective, 2 (2009).
[5] Pablo Cortes, Online Dispute Resolution for Consumers in the European Union, 55 (2010).
[6] Zheng, *supra* note 3.
[7] Aashit Shah, *Using ADR to Solve Online Disputes*, 10 Richmond Journal of Law and Technology, 3 (2004).
[8] Cortes, *supra* note 5, 54.
[9] Richard Michael Victorio, *Internet Dispute Resolution (IDR): Bringing ADR into the 21st Century*, 1 Pepperdine Dispute Resolution Law Journal 279, 283 (2001).
[10] *Supra* note 5.
[11] *Ibid.*
[12] *Supra* note 3, 37.

resolution in the electronic market prompted users to use this program and thus was beneficial for that period.[13]

The ***second*** stage in the development of online dispute resolution can be described *as the exploration phase* (1998-2010).[14] With the growth of e-commerce and the launch of platforms such as eBay, Amazon and The Uniform Dispute Resolution Procedure ushered in a new phase of online dispute resolution. One of the best examples of online dispute resolution during the *exploration phase* is eBay. Established in 1995, eBay is one of the largest online e-commerce markets, in which it annually benefits more than 80 billion through the sale of more than 800 million products.[15] After the creation of the platform, one of the biggest problems was the lack of trust among buyers, as they doubted that they would get what they expected. To dispel this doubt and create a state of trust among customers, "eBay created the first Trust and Security team, which was tasked with ensuring the trustworthiness of the eBay ecosystem".[16] Along with the trust and security system, there are three other systems such as fraud investigations, feedback and reputation (to ensure transparency and exchange of information with users) and protections/resolutions.[17] The creation of a dispute resolution system for eBay can be considered an analogue of creating justice for the country on an Internet platform since eBay has more than 250 million users, and this can be considered on a scale equal to that of the great powers.

Most transactions run smoothly, just like in regular trading; disputes may arise from time to time due to commercial activities. In this context, eBay has partnered with SquareTrade, an impartial and globally available provider of dispute resolution services between buyers and sellers. From the inception of the SquareTrade platform until June 2008, when it continued to operate as a provider of alternative online dispute resolution methods, it was used as an online dispute resolution solution for over 1,200,000 disputes in five different languages in over 120 countries.[18]

Disputes that arise can be divided into two main groups:[19]

- Disputes raised by buyers (this mainly includes disputes regarding the quality of products, the expected delivery time of products);
- The second group of disputes is made up of disputes initiated by sellers (such disputes mainly concern problems with payment).

The eBay online marketplace has over ten million items sold at any given

[13] *Supra* note 5.
[14] *Supra* note 3, 37.
[15] Colin Rule, *Designing a Global Online Dispute Resolution System: Lessons Learned from eBay*, 13 University of St. Thomas Law Journal 354, 354 (2017).
[16] Amy J. Schmitz and Colin Rule, The New Handshake: Online Dispute Resolution and the Future of Consumer Protection, 33 (2017).
[17] *Ibid.*
[18] Steve Abernethy, Building Large-scale Online Dispute Resolution & Trustmark Systems, 2 (2003). Available at: https://www.mediate.com/Integrating/docs/Abernethy.pdf (last visited Nov. 21, 2021).
[19] Schmitz and Rule, *supra* note 16, 35.

time, and millions of transactions are processed every week. In such an environment, SquareTrade helped parties who did not have other practical options for resolving disputes, increasing their sense of trust and reducing risks that potential buyers could avoid. As of 2010, eBay resolved over 60 million disputes annually through its online dispute resolution platforms, more than even the US courts.[20] One of the big problems faced by eBay is the volume of disputes and the lag in resolving disputes since workers do not have time and effort to resolve all disputes, and thus eBay needs to resolve disputes using the software program. But the problem was how to do it in an appropriate way.[21]

The ***third*** stage of development can be called the *institutionalization* of online dispute resolution, which has begun in 2010 and continues to this day. The adoption by the United Nations Commission on International Trade Law and the European Union in 2016 of relevant documents in online dispute resolution can be considered the harmonization of standards in this area. After the outbreak of coronavirus infection, the online dispute resolution system again gained wide popularity since, in almost all countries, it was impossible for the opposing sides to meet physically.

Currently, only the United Nations Commission on International Trade Law adopted on 13 December 2016 Technical Notes on Online Dispute Resolution, are valid at the international level, drawn up in the form of a descriptive document reflecting the elements of the online dispute resolution procedure.[22] Accordingly, this act is advisory in nature and provide only soft law.[23] UNCITRAL Technical Notes on Online Dispute Resolution, drawing attention to the growing volume of international electronic commerce and the need for new solutions to resolve disputes arising from international electronic commerce, consists of twelve chapters. The need to create such an act was due to a number of factors, the main one of which is a sharp increase in the number of cross-border transactions concluded online, including sales contracts and contracts for the provision of low-cost services concluded using electronic communications.[24] The purpose of the Technical Notes is to promote the development of online dispute resolution and to assist their administrators, platforms, neutrals and parties to the procedure.[25] The principles underlying online dispute resolution procedures, as commented by UNCITRAL: *impartiality, independence, efficiency, due process, fairness, accountability and transparency*.[26] Section III of the UNCITRAL Commentaries

[20] Orna Rabinovich-Einy, Ethan Katsh, *Reshaping Boundaries in an Online Dispute Resolution Environment,* 1 International Journal of Online Dispute Resolution 5, 29 (2014).
[21] *Supra* note 2, 35.
[22] *Supra* note 3.
[23] *Id*., 216.
[24] *Id*., 38.
[25] UNCITRAL, Technical Notes on Online Dispute Resolution, art. 3 (2016).
[26] *Id*., art. 7.

outlines the stages of the online dispute resolution procedure: negotiation, facilitated settlement and the third (final) stage.[27] It should be noted that there is a reason why the third stage, namely the final stage, was not regulated in detail, and there was no assessment regarding the arbitral award. The issue that led to the blocking of the work process of UNCITRAL Working Group III and on which the disagreement arose was related to the arbitration process. When it was understood that no consensus could be reached on this issue, UNCITRAL decided that the parties involved in arbitration should be set out in a separate document and should not be subjected to a regulation in this context.[28] The United States argued that the outcomes of the ODR process should be binding; however, the European Union stated that the results of the ODR process should not be mandatory; in the end, there was no consensus between the countries.[29] Meanwhile, there are no other international normative legal acts aimed at regulating the procedure for resolving disputes online.

B. Definition of online dispute resolution

There is no fully common agreement as to what ODR is and no internationally binding definition of it. "The term is primarily applied to a dispute resolution process that is conducted online (rather than only being supported by ICT), and/or to a process where online software carries out all or a major part of a dispute resolution process".[30] "The concept of ODR involves the practice of ADR methods that use online technologies to facilitate the resolution of conflicts. ADR principles and practices are the foundation for ODR practice".[31] Here the definition adopted by the UNCITRAL Technical Notes on Online Dispute Resolution can be highlighted. According to paragraph 24 of the Technical Notes on Online Dispute Resolution:

> *"Online dispute resolution, or "ODR", is a "mechanism for resolving disputes through the use of electronic communications and other information and communication technology. The process may be implemented differently by different administrators of the process and may evolve over time"*.[32]

However, this definition does not fully reveal the essence of online dispute resolution, it is necessary to refer to the definitions made by various authors.

When defining the concept of online dispute resolution, the authors Katsh and Rifkin use such definition as the role and functions of the fourth party. It

[27] *Id*., art. 18.
[28] Mehmet Kalafatoğlu, *Yabancı Unsurlu E-Tüketici Uyuşmazlıklarının İnternet Üzerinden Çözülmesi (Online Dispute Resolution) Konusunda, Görüş, Düşünce ve Öneriler,* 2 Banka ve Ticaret Hukuku Dergisi 301, 339 (2018).
[29] *Supra* note 16, 45.
[30] Susan Blake, Julie Browne and Stuart Sime, A Practical Approach to Alternative Dispute Resolution, 69 (2014).
[31] Lucille M. Ponte and Thomas D. Cavenagh, Online Dispute Resolution (ODR) for E-Commerce, 18 (2005).
[32] UNCITRAL, *supra* note 25, art. 24.

means that ODR is based on technological software; in addition to the third-party present at the dispute resolution, the so-called fourth party plays a significant role for the arbitrator or mediator as an auxiliary role. The fourth party does not replace the third party, but participates as an ally, and their interaction with each other affects the resolution of disputes between the parties. All technological capabilities used in the process of online dispute resolution can be called the fourth party. "For example, without the fourth party, it would not be possible for the online mediator to discuss with parties, store information that is exchanged about the dispute, schedule meeting times, evaluate proposals and claims, or draft and potentially enforce agreements".[33]

Moreover, Martin Gramatikov differentiates ODR in two senses: broad and strict senses.[34] In the broad sense online dispute resolution is a dispute resolution method based on the traditional alternative dispute resolution using sophisticated technology. This concept broadly corresponds to the aforementioned concept of the "fourth party". The use of technology in resolving disputes in cross-border disputes facilitates the process for the parties since the parties can resolve the dispute without leaving their country using online mediation or online arbitration. It should be noted that the parties thus reduce costs. According to the strict sense, the functioning of online dispute resolution is in an automated system, which means the absence of a third party – the mediator, the participation of only conflicting parties using automation to resolve the corresponding dispute. This method of dispute resolution has its disadvantages, namely, in complex disputes, the use of automation can be considered unreliable, in particular, when choosing the applicable law to the dispute. In addition, if the dispute is resolved using automation, then there will be no agreement of the parties since in the traditional method of dispute resolution, the consensual nature of the decision is considered one of the important factors. The automation method can be considered beneficial for a certain range of cross-border disputes.

Thus, having considered the positions of some authors and provisions of the UNCITRAL Technical Notes on online dispute resolution 2017, from our point of view, the following concept to the term of online dispute resolution can be given:

> *"Online dispute resolution – are the disputes that are arising both offline and in the cyber environment, using the sophisticated technologies for a quick, effective resolution of the problem, using methods and principles of alternative dispute resolution, as well as providing the parties with the services of a mediator as an independent third party and supporting the parties through the implementation of*

[33] Janet Rifkin, *Online Dispute Resolution: Theory and Practice of the Fourth Party,* 1 Conflict Resolution Quarterly 117, 121 (2001).
[34] Martin Gramatikov, Costs and Quality of Online Dispute Resolution: A Handbook for Measuring the Costs and Quality of ODR, 40 (2012).

artificial intelligence without human intervention".

In order to understand the possibility of prevailing online dispute resolution over the traditional methods of dispute resolution, it would be beneficial to examine some advantages and disadvantages of ODR.

Some ***advantages*** of ODR compared with traditional ADR:

1. Time and financial resources savings. Internet, the parties may be located in different countries and there may be a long distance between them, ODR methods will provide advantages by saving time as well as reducing transportation costs.[35] Internet, the parties may be located in different countries and there may be a long distance between them, ODR methods will provide advantages by saving time as well as reducing transportation costs.[36]

2. Flexibility. There is an opportunity for parties provided by ODR to choose neutrals no matter where they are located.[37] Therefore, ODR brings the parties instantly in touch with neutrals.

3. Emotional control. ODR is especially suitable for those disputes that involve too many emotions so that it is better for parties to avoid any physical contact with each other.[38]

4. Two additional parties. In comparison with traditional ADR, ODR includes two more parties called the fourth party and the fifth party: the first and second parties are two disputing parties, the third party is a mediator or an arbitrator, the fourth party is technology, and the fifth party is providers of technology.[39]

Disadvantages of ODR:

1. Security and confidentiality of ODR. Security and privacy during ODR are one of the biggest concerns. Despite the fact that the ODR process is carried out between the parties to the process and there is no participation of third parties as in litigation and is considered an advantage, no matter how secure the firewalls or encryption systems of ODR service providers are, there is always the potential for information and documents stored on the Internet to leak.[40]

2. Lack of physical contact between the parties. When considering ODR, one of the first drawbacks is that the parties do not have the opportunity to meet physically during the process. This fact leads to the fact that the

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[35] Wang, *supra* note 4, 29.
[36] *Ibid.*
[37] *Ibid.*
[38] Arno R. Lodder, John Zeleznikow, *Developing an Online Dispute Resolution Environment: Dialogue Tools and Negotiation Support Systems in a Three-Step Model*, 10 Harvard Negotiation Law Review 287, 302 (2005).
[39] Arno R. Lodder, *The Third Party and Beyond: An Analysis of the Different Parties, in Particular the Fifth, Involved in Online Dispute Resolution*, 15 Information and Communications Technology Law 143, 145 (2006).
[40] Karim Benyekhlef, Fabien Gelinas, *Online Dispute Resolution*, 10 Lex Electronica, 86 (2005).

parties cannot evoke empathy and sympathy for each other.[41] In an ODR, third-party, for instance, mediators also lose their dominance over the parties, as the physical absence of a third party can make it challenging to build trust between the conflicting parties and the third party. Since the ODR is carried out electronically, the parties do not have the ability to interact with each other or with a third party.

3. Digital Divide. The dominance of the idea that people with the Internet and computer skills prefer ODR to those who do not, has lost its meaning.[42] The development of technology at a rapid pace all over the world proves that people progressively develop certain skills. It is undeniable that with ODR the knowledge and skills of the parties may differ. This difference can result in one side with the better skills being in an advantageous position over the other side. Moreover, the development of technology varies from country to country. Poor Internet connection, inability to use different applications can lead to injustice between the parties. As a result, it will be difficult to complete the current ODR process equitably, and this would violate an important principle underlying the ODR concept.[43]

II. Types of Online Dispute Resolution

ODR techniques represent the reorganization of ADR mechanisms using different technologies in terms of their starting point. In this context, as with traditional ADR mechanisms, ODR methods are generally optional, and it is argued that parties always have the option to bring a dispute to court. However, as mentioned earlier, ODR techniques contain many unique techniques in parallel with the development of communication technologies and should not be seen as extensions of ADR mechanisms. There are three types of ODR:

1. Online arbitration;
2. Online mediation;
3. Online negotiation.

Below will be separately considered the online arbitration.

A. Online arbitration

Arbitration is a dispute resolution method in which the parties try to resolve a dispute between them by presenting them before an independent and impartial arbitrator, and at the end of the process, the arbitrators make a binding decision. Undoubtedly, the most important feature that distinguishes electronic arbitration from the traditional method of arbitration is that the process is carried out electronically, as with other ODR methods. There are no legal barriers to arbitration in an online environment. Electronic arbitration is

[41] Lodder, Zeleznikow, *supra* note 38.
[42] Victorio, *supra* note 9, 297.
[43] Joel B. Eisen, *Are We Ready for Mediation in Cyberspace?*, 4 Brigham Young University Law Review 1305, 1336 (1998).

no longer an ephemeral idea, but is increasingly becoming a popular practice, which is used for such procedures as submission of evidence, e-signature and declarations via email of contracts.[44] The dynamics of the further development and application of this practice is positive. This is due to the presence of the COVID-19 pandemic. This increases the chances that electronic arbitration will be used as one of the methods to settle international commercial disputes.

Before the outbreak of the pandemic, we can observe that there were already attempts to transfer the arbitration to the virtual world. Technologies such as video conferencing or telephone were used. However, the pandemic has only made it possible to appreciate the role and effectiveness of electronic arbitration in some international disputes.[45] The positive and negative aspects of electronic arbitration should be noted.

1. Advantages of online arbitration

The main advantage of electronic arbitration is that it is less time consuming. Thus, it carries out the procedure quickly.[46]

The second advantage of this method is that it is cost-effective. For example, in offline arbitration lawyers, arbitrators or disputing parties are faced with the need to travel from one place to another. Their physical presence was mandatory. Thus, electronic arbitration is known for its accessibility and availability. Especially, it benefits small companies to control their expenditure (travel expenses and translation ones). The arbitration costs are shared in an equal way between disputing parties. Despite this, there are cases when losing parties are ordered to pay all costs.[47] It is a good option for those participants who have modest financial assets. They are able to enter into the dispute resolution. Such adversaries as multinational companies can be also challenged by them. It resembles the benefits of fast-tracking arbitration.

The third advantage of the e-arbitration is that it enables to transfer information from paper carriers to digital ones. For example, mobile applications. Arbitrators are provided with the opportunity to hear an unlimited number of attendees in the virtual hearing. This leads to a shortening of the case, which allows it to be viewed from all sides. In addition to that, the availability of muting function in communication is also a positive aspect of virtual hearing. However, it is necessary to have a secure online

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[44] Esra Yıldız Üstün, *Legal Issues in the Practice of E-arbitration,* 11 Czech & Central European Yearbook of Arbitration 117, 117 (2021).

[45] Stephan Wilske, *The Impact of COVID-19 on International Arbitration – Hiccup or Turning Point?*, 13 Contemporary Asia Arbitration Journal 7, 8 (2020).

[46] Mirèze Philippe, Hypochondria About the Place of Arbitration in Online Proceedings (2015), http://arbitrationblog.kluwerarbitration.com/2015/09/16/hypochondria-about-the-place-of-arbitration-in-online-proceedings/ (last visited Nov. 22, 2021).

[47] *See* UNCTAD, The Course on Dispute Settlement in International Trade, Investment and Intellectual Property (2003). Available at: https://unctad.org/system/files/official-document/edmmisc232add20_en.pdf (last visited Nov. 24, 2021).

platform for this. Moreover, the need to shift documents is also removed. These aspects help both witnesses and lawyers to focus on key details. It enables all attendees to see the original. The use of software leads to simultaneous translation of the text in a split screen.[48] As a result, the language barrier is removed. It increases the number of participants in a virtual hearing.

2. Disadvantages of online arbitration

The applicability of traditional principles of international commercial arbitrations to online arbitration is questioned many times. Despite the fact that online e-arbitration is considered one of the improved traditional arbitration methods, many scholars still have an opinion that the validity of it can be achieved only if traditional principles and requirements are met.[49] One of the examples is a physical presence while communicating in writing. As mentioned above, due to the e-arbitration, disputes can be resolved in different countries across the world. However, the validity of online arbitration agreement is still questioned. In order to avoid these questions, it is necessary to pay attention to all the factors. For instance, beginning with the determination of the validity of the e-arbitration agreement and ending with the nationality of the e-award. However, it would be better to discuss these issues.

B. The validity of the e-arbitration agreement

The issue of the validity of the arbitration agreement concluded through the exchange of electronic messages remains unresolved. It is essential to identify an arbitration agreement for national courts designed to make appropriate decisions on the recognition and enforcement of a foreign arbitral award. There are two forms of an arbitration agreement under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter New York Convention 1958). The first form concerns the submission to the national court of a genuine agreement to refer the dispute to the appropriate arbitration. The second form concerns the conclusion of an arbitration agreement in writing. According to Article VII of the New York Convention 1958:

"The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award

[48] Jacky Fung, Personal Takeaway from the Warzone: Organizing, Preparing and attending a two-week Virtual Hearing (2020), http://arbitrationblog.kluwerarbitration.com/2020/08/02/personal-takeaway-from-the-warzone-organizing-preparing-and-attending-a-two-week-virtual-hearing/ (last visited Nov. 27, 2021).

[49] *See generally* Jana Herboczkova, Certain Aspects of Online Arbitration (2001). Available at: https://www.law.muni.cz/sborniky/dp08/files/pdf/mezinaro/herboczkova.pdf (last visited Nov. 27, 2021).

is sought to be relied upon".[50]

Based on this provision, it can be concluded that the norms of national law may consider soft requirements for the form of an arbitration agreement. Where the provisions of the New York Convention 1958 on a written agreement apply, the conclusion of an arbitration agreement through the exchange of electronic documents or messages should not be an obstacle to the enforcement of an online arbitration award. According to paragraph 2 of Article II of the New York Convention, *"the term written agreement includes an arbitration clause in a contract or an arbitration agreement signed by the Parties or contained in an exchange of letters or telegrams"*.[51] The meaning of Art. II of the New York Convention 1958 is that the exchange of correspondence is a proper form of an arbitration agreement, and if the provisions of this rule are interpreted in relation to modern realities, then the arbitration agreement concluded by the exchange of e-mail messages or electronic documents must be recognized as valid.[52]

Broad interpretation of Art. II of the New York Convention 1958, which was adopted at the 39th session of UNCITRAL, implies that the list of ways of exchanging data when concluding an arbitration agreement is recognized as not exhaustive.[53]

C. Virtual hearings

One of the most popular practices that is used for arbitration purposes is a *virtual hearing*. Nowadays it enables both parties and lawyers to reduce such costs like travel expenses and other ones. The definition of the virtual hearing in the e-arbitration is online environment used for hearing. It entails arbitral tribunal as well as other participants that are related to the dispute. As a result, they are involved in such processes like the exchange of arguments, evidentiary hearing and cross-examinations. The main difference between offline arbitration and online one is that the former is asynchronous. For instance, filing of written pleadings or correspondence in e-mails.[54] However, in online arbitration can be observed synchronous evidence as well as the exchange of arguments. In the beginning, it seems that virtual hearing is an easy way to resolve disputes that happen frequently. Despite this, thorough analysis demonstrates that legal issues will occur after e-arbitration is

[50] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. 7 (1958).
[51] *Id*., art. 2 (2).
[52] Jasna Arsić, *International Commercial Arbitration on the Internet – Has the Future Come Too Early?*, 14 Journal of International Arbitration 209, 214 (1997).
[53] *See* UNCITRAL, Recommendation Regarding the Interpretation of Article II, Paragraph 2, and Article VII, Paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (2006).
[54] Maxi Scherer, Asynchronous Hearings: The Next New Normal? (2020), http://arbitrationblog.kluwerarbitration.com/2020/09/09/asynchronous-hearings-the-next-new-normal/ (last visited Nov. 22, 2021).

implemented. It includes confidentiality, such barriers like the right of self-defense and access to justice.

One of the main problems with virtual hearing is *synchronous participation*. This type of participation can be an obstacle for arbitrators and councils to agree on a date or time; the possibility of different time zones for the parties further exacerbates this problem. The Seoul guidelines can be shown as one of the best examples for virtual hearings.[55] Although this protocol is not internationally binding, arbitration institutions' adoption of such protocols may create "soft law" in electronic arbitration.

Confidentiality is one of the most important issue that can be jeopardized in the online arbitration as well. Even if participants are provided with the security by software and the process of arbitration is recorded, there is still a risk of data leak. In addition to that, this software is not autonomous, and it is operated by the "fourth side".[56] Therefore, human control creates additional risk for confidentiality.

One of the biggest challenges in electronic arbitration is the *enforcement of online arbitral awards*. There are still questions about the recognition and enforcing procedures of online arbitral awards. The final step of arbitration proceedings is arbitral awards. It includes both awards made by arbitrators appointed for each case and those made by permanent arbitral bodies to which the parties have submitted.[57] However, arbitral awards are not explicitly defined in both national and international arbitration legislation. There are similar requirements provided by both institutional arbitration rules and national laws.[58]

After the online arbitration awards are made, the losing party usually complies with the award. But, if the losing party fails to comply with the decision, the winning party has to go to the national court to enforce the decision. After that, the national court considers the procedure for conducting electronic arbitration, such procedural points as an electronic agreement between the parties, virtual hearings, the seat of e-arbitration, the use of evidence from others during the online arbitration procedure, before deciding on the enforcement of the electronic award. If there are inconsistencies with the procedural parts of the electronic arbitration proceedings, the court will likely reject the enforcement of the e-arbitration award. According to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Law, there is a requirement of the arbitral awards, according to which, the party that is going to apply for recognition and enforcement has to provide the authenticated original award or a certified copy at the time of

[55] *See generally* Seoul Protocol on Video Conferencing in International Arbitration (2020).
[56] Ethan Katsh, *Bringing Online Dispute Resolution to Virtual Words: Creating Processes Through Code*, 49 New York Law School Law Review 271, 284 (2004).
[57] *Supra* note 50, art. 1 (2).
[58] Faye Fangfei Wang, Online Arbitration, 130 (2017).

application.[59] According to Article 3 of the New York Convention, which states "the Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon".[60] This means that if the executive state recognizes the electronic form of the contract, then there should be no obstacles in the recognition and enforcement of the electronic arbitral award.[61]

III. European approach in the context of Online Dispute Resolution

One of the main priorities of the European Union (hereinafter the EU) was the creation of a common economic market and efficient trade between the EU member states. Economic globalization and technological innovations have accelerated trade and service delivery in the EU. This development is also directly related to electronic contracts concluded between the parties. Therefore, it became necessary to create legal protection for consumers and absorb the confidence in transactional transactions with traders, which ultimately contributes to an increase in the volume of electronic commerce.[62] The next documents can be considered as a path for the development of ODR in EU:

1. The European Commission 30 March 1998 Recommendation on arbitration 98/257/EC on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes;
2. The European Parliament and the Council 08 June 2000 Directive 2000/31/EC on certain legal aspects of information society services, in particular, electronic commerce, in the Internal Market;
3. The European Commission 04 April 2001 Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes;
4. The European Parliament and the Council 21 May 2008 Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters;
5. The European Parliament 13 September 2011 Resolution 2011/2026(INI) on the implementation of the directive on mediation in the Member States, its impact on mediation and its take-up by the courts;
6. The European Parliament 25 October 2011 Resolution 2011/2117 (INI) on alternative dispute resolution in civil, commercial and family matters.

The above-mentioned Legal Acts have set the stage for further development of ODR. The following legal acts are considered the most important in the development of ODR in the EU:

1. The European Parliament and the Council 21 May 2013 Directive

[59] *Supra* note 50, art. 4 (1) (a).
[60] *Id.*, art. 3.
[61] Herboczkova, *supra* note 49.
[62] *Supra* note 19, 9.

2013/11/EU on alternative dispute resolution for consumer disputes;

2. The European Parliament and the Council 21 May 2013 Regulation 524/2013/EU on online dispute resolution for consumer disputes.

The aim of the Directive 2013/11 is to achieve "a high level of protection of the rights of consumers of goods and services by filing complaints against traders using independent, impartial, transparent, efficient, fast and fair ADR procedures".[63] The scope of the Directive 2013/11/EC applies to disputes between consumers and traders of EU Member States arising out of sales contracts or service contracts.[64] The exceptions are:[65]

a) disputes in which the participants are individuals working under an employment contract or acting as individual entrepreneurs;

b) disputes over customer complaint handling systems organized at the seller's premises;

c) disputes about the provision of services of a non-economic nature;

d) disputes between traders;

e) disputes about direct negotiations between the consumer and the trader;

f) attempts to resolve the dispute during the trial;

g) cases initiated by the trader against the consumer;

h) health services.

The Directive 2013/11/EU states that EU Member States shall assist consumers in resolving consumer disputes of a cross-border nature through appropriate institutions providing ADR services in the territory of other Member States.[66] The Directive 2013/11 provides for the obligation to propose ADR methods, including all three types (negotiation, mediation and arbitration) through the ADR entity.[67] The Directive 2013/11/EU does not distinguish between non-binding ADR (mediation, negotiation) and binding ADR (arbitration).[68]

A. The Regulation 524/2013/EU

Segmentation of the EU internal market could reduce growth and competitiveness. The internal market of the EU should be understood as how consumers carry out their daily lives by purchasing goods. Consumers play a crucial role in the economic activities of the domestic market and are a central player. The digital transformation of the market has not spared both traders

[63] Directive of the European Parliament and of the Council on Alternative Dispute Resolution for Consumer Disputes, 2013/11/EU, art. 1 (2013).
[64] *Id.*, art. 2 (1).
[65] *Id.*, art. 2 (2).
[66] *Id.*, art. 14.
[67] Pavel Loutocký, *Online Dispute Resolution to Resolve Consumer Disputes from the Perspective of European Union Law: Is the Potential of ODR Fully Used?*, 10 Masaryk University Journal of Law and Technology 113, 166 (2016).
[68] *Supra* note 17, 45.

and consumers.[69] The number of consumers shopping online has grown significantly over the past two decades. In order to build confidence among consumers who transact online, there is a necessity to create a reliable and efficient system that could dismantle barriers.[70] ODR is the most appropriate system to achieve this goal.

The main goal in the adoption of the Regulation 524/2013/EU is to contribute to the effective functioning of the EU internal market through consumer protection. Based on Article 1 of the Regulation 524/2013/EU, it is possible to determine the main objectives in the adoption of this document:[71]

1) First of all, it is consumer protection;

2) Secondly, contributing to the efficient functioning of the EU internal market;

3) Thirdly, the creation of a single EU platform – ODR platform.

One of the main provisions of the Regulation is the scope of its application. Accordingly, the Regulation 524/2013/EU "shall apply to the out-of-court dispute resolution, examining and resolving disputes concerning contractual obligations stemming from online sales contracts concluded between consumers (the EU residents) and online traders".[72] Considering the definitions specified in Article 4 of the Regulation 524/2013/EU, it can be noted that no definition is given to the concept of "online dispute resolution". It is stated in 8th Recital of the Regulation 542/2013/EU that the "ODR offer a simple, efficient, fast and low-cost out-of-court solution to disputes arising from online transactions".[73] Therefore, the main features of ODR are: simplicity, efficiency, fastness, out-of-court solution and online transaction disputes. Article 5 (1) of the Regulation 524/2013 provides the primary conditions for the creation of the ODR platform by the European Commission. The main conditions are:[74]

1) maintenance (including translation functions);

2) financing;

3) ensuring the security of information on the platform.

The ODR platform operates in all EU languages and is free. "The ODR platform should be a single point of entry for consumers and traders to out-of-court dispute resolution".[75] The Member States should establish at least "one ODR contact point" to assist users of the platform.[76]

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[69] Regulation of the European Parliament and of the Council on online dispute resolution for consumer disputes, No 524/2013, recital 6 (2013).
[70] *Ibid.*
[71] *Id.*, art. 1.
[72] *Id.*, art. 2 (1).
[73] *Id.*, recital 8.
[74] *Id.*, art. 5 (1).
[75] *Id.*, art. 5 (2).
[76] *Id.*, art. 7 (1).

B. Complaint procedure according to the Regulation 524/2013

Parties wishing to file a complaint through the ODR platform must complete an electronic complaint form.[77] It should be noted that ease of accessibility and user-friendliness are essential requirements for an electronic complaint.[78] All information provided in the e-complaint must be correct and complete. Completion of an e-complaint "shall be sufficient to determine the competent ADR entity".[79] If the information specified in the e-complaint is incomplete or inaccurate, the ODR platform must inform the relevant party that the e-complaint will not be considered unless the inaccuracies are eliminated. After eliminating all inaccuracies in the e-complaint, the ODR platform must immediately send the e-complaint to the relevant party. Once a consumer and trader agree on an ADR institution that will resolve their dispute, the ODR platform automatically transmits the complaint to that institution.[80] "If the parties fail to agree on an ADR entity within 30 calendar days after the submission of the complaint or if the ADR entity refuses to take the dispute, the complaint will not be processed further".[81] The authorized ADR institution processes the case completely online and achieves the result within 90 days. Traders can complain against consumers only in the case if consumers reside in such countries as: "Luxembourg, Poland, Belgium and Germany".[82]

The European Commission has an obligation to report to the European Parliament and the European Council on the functioning of the ODR platform annually.[83] There are three reports from the European Commission on the functioning of the ODR platform (hereinafter First Report 2017,[84] Second Report 2018,[85] Third Report 2019[86]).

After reviewing all three reports, leads to the following conclusions:

1. Most of the complaints relate to the following retail sectors, respectively 2017-2019: a) airlines (8.5%, 13%, 14%), after the outbreak of COVID-19, almost all flights were suspended; therefore, it can be predicted that the number of complaints against traders in the airline's domain was sparkled;

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[77] *Id.*, art. 8 (1).
[78] *Ibid.*
[79] *Id.*, art. 8 (2).
[80] *Id.*, art. 9 (6).
[81] *Id.*, art. 9 (8).
[82] *See* The European Commission, Complain against a Consumer. Available at: https://ec.europa.eu/consumers/odr/main/?event=main.trader.register (last visited Dec. 30, 2021).
[83] *Supra* note 69, art. 21 (1).
[84] *See* The European Commission, First Report to the European Parliament and the Council on the functioning of the European Online Dispute Resolution Platform established under Regulation (EU) No 524/2013 on Online Dispute Resolution for Consumer Disputes (2017).
[85] *See* The European Commission, Second Report to the European Parliament and the Council on the functioning of the European Online Dispute Resolution Platform established under Regulation (EU) No 524/2013 on Online Dispute Resolution for Consumer Disputes (2018).
[86] *See* The European Commission, Third Report to the European Parliament and the Council on the functioning of the European Online Dispute Resolution Platform established under Regulation (EU) No 524/2013 on Online Dispute Resolution for Consumer Disputes (2019).

b) clothes and shoes (11%, 11%, 10.6%); c) ICT goods (8%, 8%, 6%);

2. The peak of the growth of complaints covers the months of November-January (about 3-4 thousand complaints); the reason for the increase is probably due to the seasonal peak of online purchases;

3. Most complaints are filed in such countries: Germany, England and France (approximately 5-6 thousand);

4. The dramatic increase of awareness and interest among the people. Just in the first year of operation, the website received approximately 1.9 million people; this number was reached its peak in 2018 at 5 million people;

5. Cross-border issues. The data of the three reports show that around 40% of complaints on the ODR platform are cross-border;

6. The data reveals that around 80% of the complaints were closed automatically within 30 days deadline period, and around 2% of complaints reached an ADR body;

7. Approximately 10% of the cases were refused by traders.

In 2019, specific changes were made to the ODR platform. The visitors were asked to pass the so-called "self-test" according to the new changes. Through self-testing, visitors could determine which solution method would be most appropriate or beneficial for their problem and contact the trader bilaterally, the European Consumer Center, or directly with the ADR organization.[87] After the adoption of the new self-testing system, statistics reveals that the interaction of visitors with the platform increased fourfold compared to when consumers could only file a complaint. Therefore, the number of complaints decreased, as the consumers found out that this method of the resolution was not optimal for their problem.

IV. Artificial Intelligence in the Online Dispute Resolution

The ODR system can be divided into two generations. In the first generation of the ODR system, the key link is the person himself, making appropriate decisions independently. In other words, in the first generation of the ODR system, the dominant role is played by arbitrators, mediators or other third parties who have the appropriate skills.[88] Undoubtedly, the use of electronic tools in this system is also necessary to resolve a dispute, however, electronic tools are considered auxiliary, not having independence. The main purpose of electronic tools is to help to simplify data management and improve communication between parties.

[87] *Ibid.*

[88] Davide Carneiro, Paulo Novais, John Zeleznikow and José Neves, Conflict Resolution and Its Context, 215 (2014).

1. Second generation or fourth and fifth party ODR systems

In this system, technology plays a more active and decisive role in dispute resolution. This type of ODR system goes beyond the usual ODR process and is used to generate ideas, define strategies, and make decisions.[89] The role of people in this system is small. Sophisticated technologies used in the second generation of ODR systems include not only the use of communication technologies but also artificial intelligence (hereinafter AI), through which logical conclusions are made. AI in the ODR system is currently developing rapidly, but there are still doubts about the use of artificial intelligence, which is explained by the danger of replacing people with it.[90] In order to understand the use of AI in the ODR system, first, the legal definition of AI should be reviewed.

In April 2021, the European Commission published the Proposal for a "Regulation Laying Down Harmonized Rules on Artificial Intelligence (hence Artificial Intelligence Act) and Amending Certain Union Legislative Acts".[91] The goal of the initiative is to create the first EU legal framework governing the entire lifecycle of AI use in all sectors. The document does not disclose the concept of artificial intelligence; however, it defines four main risk-based approaches to using AI:

1) minimal risk;
2) limited risk;
3) high-risk;
4) unacceptable risk.

AI system or AI can be described as a software or hardware device that displays behavior that imitates intelligence, including collecting and processing data, analyzing and interpreting the information received and endowed with autonomy to perform any actions to achieve specific goals.

2. The use of AI in the ODR system

The use of AI in legal practice, as well as in arbitration by the academy, has been discussed for several years. Science often indicates the possibility of using AI in arbitration as an auxiliary tool for arbitrators or even wholly replacing arbitrators with Artificial Intelligence. According to Christine Sim artificial intelligence has the possibility to take over the arbitration. She assumes that AI can replace arbitrators and is theoretically feasible: arbitrators have the right to refer a dispute to an arbitrator freely and the concept of an arbitration agreement does not require the mandatory participation of a

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[89] *Ibid.*

[90] *Ibid.*

[91] *See* Proposal for a Regulation of The European Parliament and of The Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts (2021).

human arbitrator.[92] Also, he notes that the parties can enter into an agreement on the transfer of the dispute for resolution by the AI, and such an agreement could be enforced under the New York Convention 1958.[93]

Nevertheless, there are also certain obstacles to the possibility of the functioning of arbitration through AI:

1) AI bias. This obstacle is due to the fact that AI can inherit from the practice embedded in it. The possibility of bias against companies, which are in most cases the winning side, remains open.[94]

2) Lack of sufficient data. As is known, in contrast to court proceedings, arbitration is carried out confidentially; therefore, there is no sufficient open data on previously considered cases. AI systems are based on information extracted from data and decision making by AI algorithms. In this case, the arbitral awards should be publicly available rather than confidential.[95]

3) AI as a Black Box.[96] Problems related to the legitimacy of decisions made. AI decision-making systems do not explain how the decisions were made, while in traditional arbitration, a human arbitrator gives legitimacy to the arbitral award.[97]

4) A subject of law or an object. The subject of law is considered a person who has the right to exercise subjective rights and bear legal obligations, and the object is accepted – the legal relationship itself. The lack of sole recognition of AI as a subject or object of law, in theory, creates legal uncertainties concerning AI arbitrators. Also, according to the laws of many countries, an arbitrator must have specific personality characteristics – intelligence, independence, impartiality, "diligence".[98] "Concept of fair justice is inseparable from human ethics".[99] It is difficult to imagine that the parties would want their case to be considered by the AI arbitrators since it seems impossible to interview the AI arbitrators, devoid of the emotional responsiveness and "sociological trace" characteristic of a human being.[100]

5) Being heard. Will the AI detect the parties' bad faith behavior in the

[92] Christine Sim, *Will Artificial Intelligence Take over Arbitration?*, 14 Asian Journal of International Arbitration, 5 (2018).
[93] *Ibid.*
[94] Jean R. Sternlight, *Creeping Mandatory Arbitration: Is It Just?*, 57 Stanford Law Review 1631, 1650 (2005).
[95] Malatesta Alberto and Sali Rinaldo, The Rise of Transparency in International Arbitration: The Case for the Anonymous Publication of Arbitral Awards, 72 (2013).
[96] Gizem Halis Kasap, *Can Artificial Intelligence ('AI') Replace Human Arbitrators?*, 2 Journal of Dispute Resolution 219, 229 (2021).
[97] Sim, *supra* note 92, 12-13.
[98] Maud Piers and Christian Aschauer, Arbitration in the Digital Age, 50 (2018).
[99] Zbyněk Loebl, Can a Robojudge Be Fair? (2019), http://arbitrationblog.kluwerarbitration.com/2019/12/16/can-a-robojudge-be-fair/ (last visited Dec. 18, 2021).
[100] Дмитрий В. Красиков, *Искусственный Интеллект: Проблемы и Перспективы Использования в Практике Международного Арбитража*, 4 Государство и Право 122, 127 (2021).

process? Will the parties' right to be heard be respected? Without adequate flexibility and control over the process, the effectiveness of artificial intelligence as an arbiter is nothing more than a myth.

AI can be used to research law and analyze the parties' positions to the dispute, including comparing the conclusions of human arbitrators with the decisions of AI arbitrators. Therefore, at present, full or partial replacement of a human arbitrator is inconceivable and the participation of a human arbitrator is a key condition for an arbitration procedure.[101]

Conclusion

Tracking the historical development of the ODR is a clear example of the fact that the potential for using the ODR is very high. The functioning of the ODR over a 30-year period of development shows positive trends in the use of these tools to resolve, in most cases, commercial disputes. ODR methods have become new mechanisms for resolving disputes arising from electronic contracts. It should be noted that traditional dispute resolution mechanisms should not be viewed as a competitor or alternative to ODR. ODR emerged as a result of technological progress and went beyond the ADRs. It must be recognized that the potential for using ODR is not only to be used to resolve disputes for online disputes but also for offline disputes. In particular, the year 2020 has further strengthened the development of ODR also in offline disputes. Not the adoption of an internationally binding document in the ODR, but only technical recommendations and the lack of a comprehensive concept in the ODR is a barrier to the development of the ODR. In most cases, all states' adoption of an internationally binding document is impossible since the Member States have their interests and points of view. However, in order to achieve effective results, the countries of the world must come to a certain consensus. Until a certain consensus is reached, countries themselves must develop ODR methods on their own. This development at this point occurs mainly at the local level, which gives a certain impetus to the development of the ODR. The lack of a single accepted concept of ODR, in my opinion, is due to the constant development and change of technological capabilities. I think in such a constant development of digital technologies, the adoption of a single concept of ODR could limit the application of new technologies in the future. Therefore, in my opinion, it is better to define the areas of mandatory and alternative (at the discretion of the parties) application of the ODR. Despite the absence of a uniform internationally accepted agreement on the applicability of the ODR, the parties are free to resolve the dispute using the ODR to the extent that the forms of resolution are appropriate to their dispute.

Having considered the forms of the ODR, it can be concluded that as a result of their application, many legal questions and uncertainties arise.

[101] Piers and Aschauer, *supra* note 97, 48.

Unlike traditional arbitration, where decisions are coercive in recognition, the issue remains open in online arbitration. After analyzing the New York Convention 1958, the process of enforcement of traditional arbitral awards can be and applies to an online arbitration award, as soon as it is necessary to clarify the procedural principles of online arbitration so that the criteria for enforcement could be clear for parties and law enforcement.

The European Practice of Laws and ODR Platform functioning is a clear example of the rapid development and high potential of ODR. Statistics only in recent years show how the flow of people who have turned to resolve disputes through the ODR has increased. It is much better, more efficient and faster than, for example, the same litigation or the traditional method of alternative dispute resolution. Thus, both parties maintain their funds and business relationship despite the dispute arising. Therefore, the Win-Win solution is considered beneficial for both parties.

Due to the listed issues in the application of AI, at the moment, it is not possible to use AI in dispute resolution in ODR. However, further development will be able to clarify the application of AI in ODR.