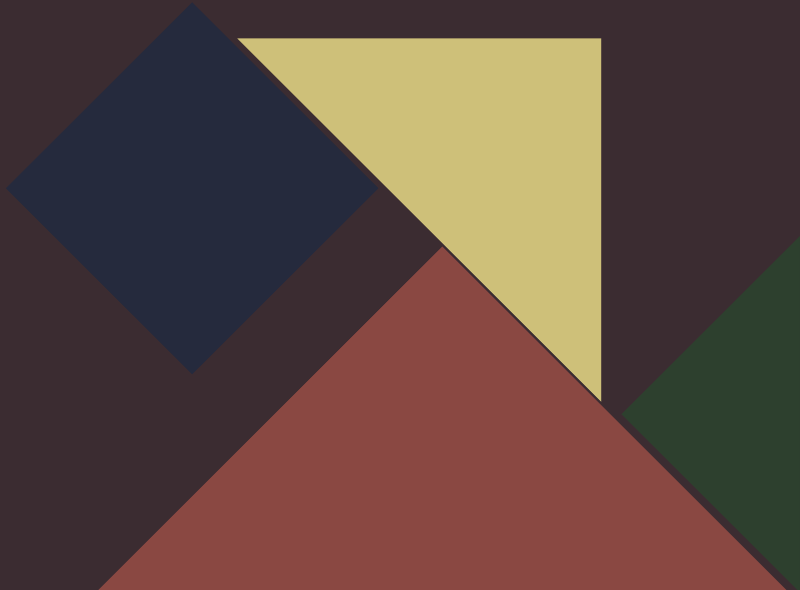
RESEARCH ON ALTERNATIVE DISPUTE RESOLUTION IN THE REPUBLIC OF ARMENIA



Research On Alternative Dispute Resolution In The Republic Of Armenia

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Alternative dispute resolution in the Republic of Armenia
Authors of the study: A. Khzmalyan, H. Malkhasyan, H. Movsesyan

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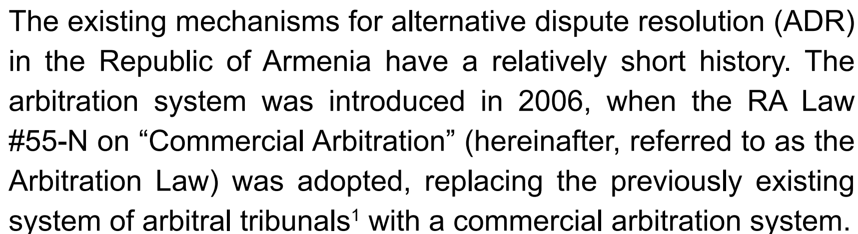
INTRODUCTION



The existing mechanisms for alternative dispute resolution (ADR) in the Republic of Armenia have a relatively short history. The arbitration system was introduced in 2006, when the RA Law #55-N on “Commercial Arbitration” (hereinafter, referred to as the Arbitration Law) was adopted, replacing the previously existing system of arbitral tribunals[1] with a commercial arbitration system.

The Arbitration Law is based on the UNCITRAL Model Law on International Commercial Arbitration, and accordingly the Republic of Armenia is considered a UNCITRAL Model Law on International Commercial Arbitration country[2], the Republic of Armenia has been a member of the 1958 New York Convention “On the Recognition and Enforcement of Foreign Arbitral Awards” (hereinafter, referred to as the New York Convention) since 1998.

At present, the Arbitration Law and the general legislative framework have largely been brought into line with the requirements of

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1 See: Republic of Armenia law #219 dated 5 May 1998 “On arbitration courts and arbitration procedures”

2 See UNCITRAL Model Law on International Commercial Arbitration:
https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status

these two international documents. However, despite legislative regulations, arbitration is not sufficiently developed in Armenia, and disputes are rarely submitted to arbitration. In addition, some issues in RA legislation and judicial law enforcement practices continue to remain relevant. These issues will be discussed in detail below.

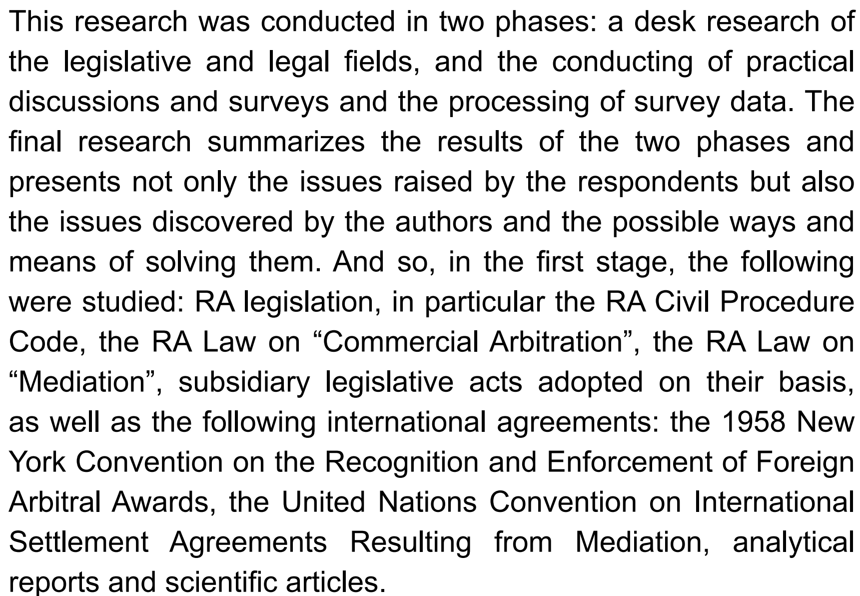
In Armenia, lawyers generally refrain from advising their clients on arbitration as a means of resolving disputes. However, it is somewhat encouraging that lawyers choose arbitration as an ADR mechanism for particularly complex financial or large construction contracts, in cases with an international element. In general, lawyers regard secrecy and the recognition and enforcement of judgments in other countries as advantages of arbitration. When choosing arbitration, lawyers mainly pay attention to the costs, the favorableness of the legislation and legal practice in the arbitration country (in terms of arbitration), the availability of a list of professional and recognized arbitrators and professionalism.

The number of arbitration cases in Armenia is extremely low. In this regard, the financial arbitration of the Union of Banks of Armenia is to some extent an exception, however, it specializes in the claims of financial organizations against their customers (mainly debt collection cases), the technical and narrow nature of which means that one cannot draw conclusions about the general development of arbitration practices, and it cannot be a basis for the general development of arbitration in the country. The mediation system was first introduced in Armenia in 2015, when regulations on mediation with the participation of a licensed mediator were incorporated into the RA Civil Procedure Code. Relations concerning mediation were regulated in more detail with the adoption of the 2018 RA Law #351-N on “Mediation” (hereinafter referred to as the Law on Mediation). In addition, on 26.09.2019, the RA signed (but has not yet ratified) the United Nations Convention on International Settlement Agreements resulting from Mediation, although the provisions of this Convention apply only to agreements reached as a result of mediation (conciliation) in another State.

In general, there are more problems in the field of mediation than in the field of arbitration. These problems are both legislative and practical.

Currently, there are significant problems with licensed and operating mediators. In particular, out of more than 50 licensed mediators, only about 25-30 are active in the sector, and not as their main line of work. The issue of the number of mediators is more severe in the marzes. In this regard, coherent steps need to be taken to ensure the presence of mediators in the marzes. At present, according to data received, there are mediators in Gyumri and Dilijan, however there is no data on other marzes.

METHODOLOGY



This research was conducted in two phases: a desk research of the legislative and legal fields, and the conducting of practical discussions and surveys and the processing of survey data. The final research summarizes the results of the two phases and presents not only the issues raised by the respondents but also the issues discovered by the authors and the possible ways and means of solving them. And so, in the first stage, the following were studied: RA legislation, in particular the RA Civil Procedure Code, the RA Law on “Commercial Arbitration”, the RA Law on “Mediation”, subsidiary legislative acts adopted on their basis, as well as the following international agreements: the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the United Nations Convention on International Settlement Agreements Resulting from Mediation, analytical reports and scientific articles.

The desk research was followed by a series of interviews and surveys with various representatives of the sector; this stage, through written questionnaires presented in Appendix 1, engaged lawyers from organizations (including large financial institutions, banks and credit organizations). In addition, using the questionnaire in Appendix 2, oral discussions were held

with licensed and operating mediators, arbitrators listed in the arbitration court attached to the RA Chamber of Commerce and Industry, representatives of RA state bodies, courts and the Supreme Judicial Council, as well as with experts in the field (operating both in the RA and abroad).

Within the course of the interviews, the results and identified issues of the desk research were discussed and other practical issues were identified, which later were discussed during meetings and discussions with other respondents. The identified issues were discussed with the international expert at all stages of the report.

The analysis of the RA legislation allows us to conclude that the legislative field in the field of arbitration is in accordance with the international agreements of the Republic of Armenia and is largely in line with the best international experience in this field.

Most of the surveyed specialists are of the opinion that the problems related to the development of arbitration in Armenia arise not so much from the legislative as from practical problems. Nevertheless, some legislative gaps and problems as regards the practice of applying legislation continue to hamper the development of arbitration in Armenia.

Below, the authors have isolated the main problems which were identified as a result of the surveys and research.

LEGISLATIVE AND LEGAL APPLICATION ISSUES IN THE FIELD OF ALTERNATIVE DISPUTE RESOLUTION (ADR) IN THE REPUBLIC OF ARMENIA

1.1. ARBITRATION

1.1.1. The issue of invalidity of agreements in judicial practice

It appears that the most significant issue concerns the approach taken by the RA courts in challenging the validity of arbitration agreements (examining claims to declare them invalid).

The question of whether, where an agreement contains an arbitration clause, a dispute over the invalidity of the agreement should be subject to arbitration, has been discussed in the civil case EKD/1910/02/13. In this case, the Court of Cassation concluded with the position expressed in its 18.07.2014 decision, namely that the examination of claims to declare an agreement invalid is exclusively under the court’s jurisdiction. This conclusion was based on the constitutional guarantees for judicial protection of rights and freedoms and the guarantees of Article 13 of the ECHR, as well as the provision of Article 13(1) of the RA Civil Code, according to which the protection of civil rights is implemented by the court in accordance with the subordination of the cases defined by the RA Civil Procedure Code.

Such a comment has made it virtually impossible for the arbitral tribunal to examine the claims of invalidity of the transaction, which, in turn, could negatively affect the attractiveness of arbitration as a dispute resolution mechanism, as the parties wouldn't have confidence that the existence of an arbitration clause would prevent the examination of the case in the courts. Under this approach, each party would have the legal option to avoid arbitration and move the dispute to court, simply by filing a claim for invalidity of the agreement (contract) underlying the dispute.

In order to solve this problem, on June 19, 2015, Article 13(1) of the RA Civil Code was amended by RA Law #74-N on "Making an amendment and an addition to the RA Civil Code" stipulating that the protection of civil rights is exercised not only by the court, but also by the arbitral tribunal, which in the text should then be called a "court" ("hereinafter referred to as court").

According to the substantiation of the draft law, inspite of the fact that the development of ADR is a priority, *"the current regulations of the RA Civil Code and the RA Law on "Commercial Arbitration" have taken the developments of judicial practice in a different direction, limiting the possibility of resolving disputes arising from a number of legal relations through commercial arbitration (see, for example, the decision of the RA Court of Cassation dated 18.07.2014 on the civil case No. EKD /1910/02/13). The problem is specifically that the interpretation of Article 12 of the current edition of the RA Civil Code only indirectly makes it clear that the arbitral tribunal is considered a court in the sense of this Code, however this is where the uncertainty comes from, because first of all, it is not clear whether it only refers to equating the arbitral tribunal to a court in the sense of said article (particularly since the said article is, first of all, aimed at regulating the boundaries of civil rights), or whether the arbitral tribunal can be considered a court in*

the sense of the means of protecting the same civil rights[3] (Article 13(1) of the RA Civil Code).

Despite the fact that the legislator directly referred to the above-mentioned stance of the RA Court of Cassation (the dispute over the invalidity of the agreement is exclusively subject to review in the courts) and stressed its intention to change the provision of the law that is the basis for that stance, judicial practice continues to follow the previous position. In particular, in the decision of civil case KD2/0548/02/18 of the RA Civil Court of Appeal dated 16.04.2019, it was stressed that: *"the amendments referred to in the legislation were made in order to clarify the legal norm, which does not imply that all methods of protection of rights have been reserved for "commercial arbitration…". Taking into account one of the basic and most important powers of the Court of Cassation, namely interpreting the law and ensuring its uniform application,* ***the Court of Appeal states that the decision of the Court of Cassation revealed the possibility of application of other legal protection rights besides protection by the courts, and it found that the sole application of court protection in the settlement of disputes arising in cases of particular complexity and importance was not on the grounds that the law in force at that time excluded the application of other protection rights, but rather, the grounds were the efficiency of court protection, the uniqueness of cases with similar requirements, and the special public significance of the issue."***

Such a position of the Civil Court of Appeal implies that despite the above-mentioned legislative changes, the parties of an agreement containing an arbitration clause may, in any case, apply to the court for invalidity of the agreement. In other words, in judicial

3 See *Article 13(1) of the RA Civil Code*: http://www.parliament.am/drafts.php?sel=showdraft&DraftID=7563&Reading=0

practice, the possibility of examining in arbitration a dispute over the invalidity of the agreement remains unresolved.

As a result, in practice, the court ignores the principle[4] of the arbitration clause (reservation), being independent and separate from other provisions of the agreement in cases when the invalidity of the transaction (separability doctrine) is discussed.

It is noteworthy that the European Court of Human Rights has explicitly acknowledged the validity of arbitration agreements and confirmed that they are generally compatible with the European Convention on Human Rights and Fundamental Freedoms.[5] The European Court of Human Rights has also made it clear that a freely entered into agreement to resolve a dispute through arbitration legally deprives a person of the right to go to court under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[6]

A number of respondents also noted the issue as a priority.

Therefore, **it is necessary to clearly provide in legislation that in case of an arbitration agreement, the issue of the invalidity of the transaction, among others, can be examined by the arbitral tribunal.**

1.1.2. The issue of providing a writ of execution.

Currently, according to the RA Civil Procedure Code, applications for writs of execution for the compulsory enforcement of arbitration

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4 Which is also enshrined in Article 16(1) of the Arbitration Law.

5 See for example: *Deweer v. Belgium, ECtHR judgment of 27 February 1980, Series A, No.35, § 49*, see also: *Suda c. République tchèque, no 1643/06, § 48, 28 octobre 2010; Tabbane c. Suisse, Décision du 01.03.2016; app. N. 41069/12, § 25:*

6 *Pastore v. Italy, Decision by Court (second section) of 25 May 1999, case N 46483/99.*

awards, for which the RA has been the place of arbitration, are examined within a month (RA Civil Procedure Code, article 323). In practice, there are problems with this time limit, and it is not observed due to the case burden of the courts.

Concerns over this issue are mainly expressed by representatives of the financial and banking sector. In this regard, it should be taken into account that the above-mentioned sector is dominated by the demands for the confiscation of small amounts of money, in respect of which the courts usually use simplified proceedings which do not require the parties to be present at court hearings and provide a speedy investigation, and the likelihood of an appeal in such cases is low. In this case, the issue of the deadlines for receiving a writ of execution virtually eliminates the advantage of arbitration as a means of a prompt examination of the dispute.

In this regard, proposals have been made to authorize the arbitral tribunal to issue a writ of execution. Although some issues related to the issuance of a writ of execution by the arbitral tribunal may be mitigated by reserving the issuance of the writ of execution to an arbitrator other than the arbitrator(s) examining the dispute, but even in this case, **delegating the function of providing a writ of execution to the arbitral tribunal is problematic,** as it is part of the traditional state function of enforcement. The international expert also expressed a negative attitude towards such a possible solution, noting that such an approach is not accepted in international practice, and that writs of execution are provided by the courts.

At the same time, the issue raised requires a solution that can be provided by training judges and/or through judges specialized in arbitration cases. Given the fact that this issue is also related to the issue of the general efficiency of the courts, it is discussed in more detail below.

1.1.3. Examination of corporate disputes in arbitration

Representatives of the "Centre for Legislation Development and Legal Research" Foundation of the RA Ministry of Justice have expressed the opinion that it is necessary to study the possibility of handing over corporate disputes to arbitration, thereby expanding the scope of disputes subject to arbitration, taking into account the fact that such a practice exists in many European countries.

In 2018 the possibility of concluding a shareholders' agreement was clearly provided for in the RA law on "Joint-Stock Companies", and the ability to submit disputes to arbitration can be beneficial for the parties to such an agreement. In addition, in such cases, as a rule, the parties to the agreement use the services of lawyers and are relatively well informed about their rights, which increases the likelihood that they will consider the possibility of submitting disputes to arbitration.

In this regard, there have been some concerns that corporate disputes can often affect the rights of third parties (for example, an appeal against the decision of a legal entity's governing body may affect the rights of a third party to a transaction approved by that decision). However, in accordance with the general principle, the arbitration award may only have legal consequences for the parties to the arbitration agreement (inter partes). Therefore, in practice, the examination of a dispute by an arbitral tribunal may only be possible with the consent of all persons whose rights may be affected by the arbitral tribunal's judgment. Therefore, in such problematic cases, the arbitral tribunal will not consider the dispute without the consent of a third party, and if the tribunal examines the dispute without the participation of the third party, the arbitration award, in respect of the rights of such persons, shall be subject to annulment by the court in accordance with the Arbitration Law and the RA Civil Procedure Code.

Therefore, it is expedient to consider the possibility of resolving corporative disputes through arbitration **(i.e. including them in the Arbitration Law under the definition of "commercial") – except for disputes where the subject of the claim is the adoption or challenging of corporate decisions on the reorganization or liquidation of a legal entity – taking into account the tendencies in advanced legal systems in that regard**.

1.1.4. Examination of a case by the court when there is an arbitration agreement

According to the current legal regulations, the court of first instance leaves the claim or application without examination if, before the end of the time limit set for the submission of a response to the claim, the defendant refers to the arbitration agreement between the parties to submit the dispute to the arbitral tribunal, provided that the possibility of applying for arbitration on the basis of the agreement still exists.[7] Therefore, the existence of an arbitration agreement does not in itself exclude the examination of the case by the court, if the defendant does not object to it. Moreover, the mere existence of an arbitration agreement is not a grounds for returning the claim.

In this regard, some respondents have suggested revising this regulation: that instead, the mere existence of an arbitration agreement in the contract should be grounds for not accepting the submission of a court claim. The proposal is based on the idea that in some cases mandatory arbitration should be envisaged (without the possibility of going to court, if there is an arbitration agreement) if we want to encourage and develop arbitration in Armenia, especially its usage by financial institutions as the main ADR mechanism. It

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7 See: RA Civil Procedure Code, article 180

was also stated that such an approach could increase confidence in arbitration, because when something becomes mandatory, there is a secondary perception that it is reliable and dependable, otherwise the state would not make it mandatory.

The authors are reluctant to accept this suggestion, as an arbitration agreement is based on the free will of the parties, and the parties may at any time refuse to apply it. Also, such an approach does not follow from the principle of disposition enshrined in the RA Civil Procedure Code. Therefore, as long as one of the parties to the dispute has not claimed their right to submit the dispute to arbitration, the examination of a case in court should not be ruled out purely on the basis of the existence of an arbitration agreement.

1.1.5. The need for clear regulations of conflicts of interest

According to some respondents, the lack of mechanisms, criteria and guidelines for revealing the conflict of interests of arbitrators is a big problem in Armenia. Although, according to the law, each institution must have its own rules of conduct for arbitrators, in a small market like Armenia, where there is a high probability that the arbitrator examining the case and the party's representative will have a conflict of interest, more stringent and legislative solutions are needed. There are many cases when the head of the arbitration institution, most of the arbitrators included in the list of arbitrators of the same institution and the representatives of the parties applying for arbitration work in the same law firm.

In this regard, it is necessary to legally define **the requirement to introduce conflict of interest regulations in arbitration institutions and in cases of ad hoc arbitrations, and to base their content on the best practice of the IBA Guidelines on Conflict of Interest**.

1.1.6. The term “incapacity” in the Arbitration Law

According to some respondents, the use of the term “incapacity” in Article 36(1)(1)(a) of the Arbitration Law (as a basis for rejecting the recognition and implementation of an arbitration award) is a result of the incorrect translation of section 5 of the New York Convention. In this regard, the Convention applies the term “the parties… were, under the law applicable to them, under some incapacity…”, which, in contrast to the term “incapacity” (which applies only to the competency of individuals to enter into a transaction), also refers to those legal entities which, according to applicable law, do not have legal capacity (for example, a legal entity was not registered at the relevant time, or its registration was terminated or suspended), or on whose behalf the agreement was signed by a person without such authority.

Accordingly, **in Article 36(1)(1)(a) of the Arbitration Law it is necessary to add the words “or did not have the authority to enter into the arbitration agreement” after the word “incapacitated”**.

1.1.7. The term “Nullity” in the Arbitration Law

According to Article 16(1) of the Arbitration Law, the decision of the arbitration tribunal to declare the contract null and void does not by itself or by law invalidate the recourse to arbitration. This provision actually refers only to one of the two possible types of invalidity, namely nullity, whereas it should have referred to the invalidity of the transaction in general.

Accordingly, **it is necessary to replace the term “null” in Article 16(1) of the Arbitration Law with the term “invalid”.**

1.1.8. The issue of reexamining the arbitration award in its essence

One of the interviewed experts expressed concern that, despite the fact that according to Article 319 of the RA Civil Procedure Code, the arbitration award can be revoked by the court only on the grounds defined by the Arbitration Law, in practice the courts tend to examine the case in a broader sense, even to some extent reconsidering the arbitration award. Although the expert didn't provide more detailed information on the nature of the problem, the authors believe that this concern may be due to the fact that, according to Article 323(2) & 323(4) of the RA Civil Procedure Code, the court may, in order to obtain clarifications during the examination of the application, convene a court hearing and request relevant documents. Theoretically, there is a risk that the courts may, by applying these regulations, start reviewing the case from a material point of view, thereby baselessly expanding the scope of the issues to be examined by them. This, in turn, can have a negative impact on Armenia being a pro-arbitration system. In addition, the fact that, in the event of a decision to convene a hearing, the period for reviewing an application is subject to an extension (the 1-month limit becomes 2 months) means that these provisions may be applied by the court to extend the examination period in respect of a claim to issue a writ of execution.

According to the authors, however, the problem is not so much legislative as practical, and **it is necessary to work with judges (using trainings, round table discussions and other similar tools), so that the latter exercise their powers under Articles 323(2) and 323(4) of the RA Civil Procedure Code more narrowly, thereby avoiding, within the scope of the application review, the examination of issues which are outside the scope of the Court's grounds for annulment of the arbitration award.**

1.1.9. The issue of suspending the proceedings to issue the writ of execution

An analysis of the legislation shows that there are certain problems concerning the examination of an application for annulment of the arbitration award and a parallel application for the issue of a writ of execution of the same arbitration award. In particular, there is no requirement that both applications be considered within the same proceedings in such a case. Instead, according to Article 323(6) of the RA Civil Procedure Code, the proceedings for issuing a writ of execution are suspended if an application for an annulment of the judgment has been filed. In practice, this regulation gives the defeated party the opportunity to postpone the execution for several months by submitting an application for the annulment of the judgment (including cases when such an application has no legal basis).

Accordingly, **it is proposed to redraft Article 323(6) of the RA Civil Procedure Code, stipulating that the application for an annulment of the judgment should be considered within the same proceedings as the application for a writ of execution, and that a joint decision will be made for both applications.** With regard to the adoption of this provision, it will be necessary to clarify in which judge’s proceedings the cases are joined.

1.2. MEDIATION

Regulation of the mediation process in Armenia is governed by the 2018 RA Law on “Mediation” and the RA Civil Procedure Code of the same year. Although both legal acts contain important provisions, there are a number of significant legal and practical issues in the field of mediation which can be a significant obstacle to the development of the institute of mediation in Armenia: Below we present the main issues that have been identified through discussions with specialists and study of the legislation.

1.2.1. The main issue concerning the writ of execution

The legislation does not clearly regulate the issues related to the compulsory execution of the agreement concluded as a result of mediation.

In particular, according to Article 186(6) of the RA Civil Procedure Code, the court, upon receiving the mediator’s notice that the dispute has been resolved through mediation, either approves or rejects the mediation agreement reached between the parties, or terminates the proceedings, maintaining the confidentiality of the

mediation. Accordingly, if the mediation agreement is approved by the court, the issue of its compulsory execution shall be resolved in accordance with the general procedure established for judicial acts.

However, there is a legislative gap in cases when mediation takes place without applying to the court.

Specifically, Article 288 of the Code stipulates that if, as a result of mediation, a mediation agreement has been concluded extrajudicially with the participation of a licensed mediator, each party to the mediation shall have the right to apply to the Court of General Jurisdiction of its place of residence within six months after the date of concluding the mediation agreement with the request that the court confirm the mediation agreement signed between the parties. This is especially problematic when a mediation agreement envisages an implementation period of more than six months, and one of the parties ceases to comply with the terms of the mediation agreement after that time limit. In such a case, the other party is in practice deprived of the opportunity to immediately receive a writ of execution on the basis of a mediation agreement and will have to apply to the court to force the other party to comply with the agreement. One of the interviewed experts said that although there is a problem in this regard, in his opinion, in practice it is unlikely to have a mediation agreement that envisages an implementation period of more than 6 months. However, the authors cannot agree with such a position, as in practice it is not possible to exclude the possibility of a mediation agreement which envisages a longer period of time, and the current legislative provisions limit the applicability of extrajudicial mediation.

In this regard it is proposed that **after the word "during", in Article 288(1) of the RA Civil Procedure Code, to add the words "*and if the implementation of the agreement lasts longer than six months, then within the period specified for the implementation of the agreement, but not more than three years*".**

1.2.2. The issue of managing the register of mediators

According to Article 17 of the Law on Mediation, the Ministry of Justice, in accordance with the procedure established by the Minister of Justice, manages the register of licensed mediators including their workload and specialization. The register of licensed mediators is posted on the website[8] of the Ministry of Justice, but the procedure for registering their workload and specialization has not been established yet. The existence of this procedure is especially important in cases when the court appoints the mediator because, according to Article 184(5) of the RA Civil Procedure Code, the criteria for appointment are specialization and workload.

This issue has also been raised by a number of mediators who have also mentioned the following issues:

- Due to the lack of information on specialization and workload, when appointing a mediator the courts are often obliged to contact the Ministry of Justice to verify the relevant data, and the latter tries to make the relevant checks among mediators using personal contacts, which makes the process subjective.

- The data of the mediators in the register are not presented in a unified format (for example, the CVs are not uniform), which makes it difficult to compare them.

- Some mediators argue that the registry should be run by a self-governing organization of mediators on a separate website, not by the Ministry of Justice on its website.

8 See the register of licensed mediators: http://www.justice.am/page/582

Although all the proposals are, in principle, acceptable, the proposal for the mediators' self-regulatory organization to run a separate website is currently considered premature by the authors, as the organization does not currently have sufficient resources for this purpose.

Accordingly, in order to implement Article 17 of the Law on Mediation, the authors propose to **establish a procedure for the registration of mediators' workload and specialization, which will ensure, as far as possible, the comprehensive recording of the workload and the availability of this data for the courts, as well as to launch an online platform for registering mediators.**

1.2.3. The procedure for appointing mediators

There have been a number of concerns about the procedure for appointment of mediators by the courts. In particular, the following issues were raised:

- There are no clear procedures for how a judge selects and appoints a mediator. In this regard, the authors note that the Civil Procedure Code sets out general rules and criteria for appointment, which currently are not fully implemented due to the incompleteness of the registry and the absence of a registration procedure for workload and specialization. Therefore, it is not possible to assess the relevance of this issue at present.

- There has been a proposal to introduce a self-regulating and self-governing system for the appointment of mediators (as has been done for bankruptcy administrators). Whilst generally welcoming such an approach, the authors suggest considering it as a long-term goal, which should follow the full implementation of the mediators' registry system.

- It is not specified whether, within a certain period of time, the parties are obliged to contact the mediator appointed by the court, or the other way round. In practice, the mediator often has to contact the parties and persuade them to meet with him/her. Moreover, the courts do not provide the appointed mediator with the contact data of the parties or the case files, which significantly complicates the process of getting into contact with the parties and becoming acquainted with the case.

- Some of the surveyed mediators also mentioned the issue of deadlines. In particular, it was noted that the court often sets a short deadline for mediation (for example, 2 weeks), which is often not enough to find the parties, get acquainted with the case and carry out the actual mediation. At the same time, the authors want to point out that if the above-mentioned issues concerning the mediator's appointment are resolved (proper provision of case files, provision of the contact data of the parties, etc.), it is possible that the issue of deadlines will not arise, at the same time taking into account the right of the parties to jointly petition the court to extend the deadline for up to six months.

- Some mediators see a problem in the fact that if mediation is assigned in the early stages of the case, this deprives the mediator of the opportunity to obtain some evidence, for example if expert examination is required. However, the authors do not consider this concern to be justified, as expert examination can be requested upon the initiative of the parties, and mediation does not imply court support to obtain evidence. At the same time, the courts should assess the importance for the successful implementation

of the mediation of having results examination or other evidence and, if this can significantly affect the success of the mediation, ensure that they do so prior to the appointment of the mediator.

In connection with the issues raised, proposals were made to clarify the procedure for appointing a mediator at the legislative level, setting specific deadlines and obligations regarding the meeting between the mediator and the parties, and setting out procedures and conditions for providing data and case files to the parties.

It was also stressed that there is a need to provide judges with clear guidelines and to encourage them to send disputes to mediation, given that the role of the courts in the establishment and development of the institution of mediation can be huge.

Based on the issues and proposals raised, the authors propose to establish in the RA Civil Procedure Code (probably by supplementing Article 184 or including a new Article 184.1) that:

- **The decision on the appointment of a mediator, as well as the contact details of the parties at the disposal of the court (including, if possible, telephone numbers), as well as copies of the court claim and the response to the claim shall be provided to the mediator.**

- **The Mediator has the right to get acquainted with the case files.**

- **Within 10 days after receiving notice of the assignment of mediation, the parties are required to present themselves at the mediator's office, or to get into contact with the mediator in an agreed manner.**

In addition, there is a proposal to:

- **Work with judges (using training, round table discussions, and other similar tools) to present them the essence of mediation, its benefits, as well as to encourage them to assign mediation and provide sufficient time for it** (within the three-month period prescribed by law).

1.2.4. The qualification and licensing of mediators

According to Article 14(5) of the RA Law "On Mediation", the procedure for the formation and activities of the Mediators' Qualification Commission, the awarding of qualifications and the issuance of qualification degrees is established by the RA Government. According to the RA Prime Minister's resolution #1120-A dated August 22, 2018 "On approving the measures ensuring the implementation of the RA laws "On Mediation" and "on making additions and amendments to the RA Law "on the Justice Academy"", it was envisaged that a draft decision of the RA Government "on establishing the procedure for the formation and activities of the Mediators' Qualification Commission, the awarding of qualifications and the issuance of qualification degrees and on rescinding RA Government resolution #720-N dated 2 July 2015" was to be submitted to the RA Prime Minister's Office in November, 2018. However, it has not been adopted yet, as a result of which it is not possible to license mediators.

In reality mediators have only been licensed once, almost 5 years ago, after which almost half of the mediators have not been engaged in mediation, while it is not the main line of employment for the other half.

Accordingly, in order to involve people who are interested in mediation, **it is necessary to adopt the procedure for the**

formation and activities of the Mediators' Qualification Commission, the awarding of qualifications and the issuance of qualification degrees, and to organize the qualification of mediators.

At the same time, a number of mediators have expressed concern about the previous legislative requirements regarding qualification. In particular, the following concerns were voiced:

- Previously, the qualification exam consisted only of questions examining knowledge of legislative provisions. Taking into account the fact that mediation requires skills that have nothing to do with **one's knowledge of the law**, **proposals have been made to include case-studies in the qualification examination**, which will be solved by the latter, **as well as mock mediations**, in which candidates will demonstrate their skills in mediation and conducting negotiations. According to the respondents, this approach is based on international best practice regarding qualification of mediators. The authors generally agree with this proposal, **but its application should be considered after a more detailed assessment of its feasibility**.

- The Qualification Commission consists of representatives of the Ministry, former and current judges, one psychologist, one lawyer and only one mediator. This approach does not take into account the significant difference between mediation and litigation and other legal activities, and **does not ensure sufficient representation of mediators in the qualification commission**. Some mediators also stressed the desirability of involving international experts and mediators, but the latter is technically

problematic and therefore it is problematic to include such a requirement in the legal regulation.

- The fact that former judges who applied to become mediators were exempt from testing again does not take into account the significant difference between mediation and litigation. In this regard, the authors note that the exemption of former judges, as well as legal scholars from taking the exam is well-founded when the examination is based on the testing of legal knowledge (as it has been in the past). However, the authors consider the approach of the exemption of former judges from taking the exam to be reasonable. It is also in line with international practice in this area.

1.2.5. The training of mediators

Some of the respondents raised the issue of training mediators. In particular, although Article 18 of the Law on Mediation provides for the mandatory annual training for mediators with a minimum duration of 24 academic hours, in reality no such training has been conducted to date. As a result, mediators need quality training, which, however, is not carried out. In reality, this situation is due to the lack of financial resources and internal capabilities of the self-regulatory organization of mediators, as it is the responsibility of the organization to organize the training. In order to solve this problem in the medium term, **the self-regulatory organization of mediators needs support in organizing trainings, including the involvement of specialists with international experience**.

As an additional comment, the lack of Armenian literature on mediation was mentioned, which is an additional obstacle to improving qualification and developing mediation. It should be noted that this in itself can be a serious obstacle to the dissemination of vocational education and knowledge in the field of mediation.

1.2.6. Lack of rules concerning the conduct of mediators and mediation

According to Article 5(3) of the Law on Mediation, the self-regulatory organization of mediators must define the details of the mediators' rules of conduct, and Article 8(2) of the law presumes that the self-regulatory organization of mediators must also establish mediation rules.

However, these rules have not been approved yet. In fact this problem has to do with the quorum of the meeting of the self-regulatory organization of mediators, as well as with its resources and capabilities, and in order to resolve this issue as soon as possible, it is necessary **to assist the self-regulatory organization of mediators (including with the involvement of international experts) in developing the details of the mediators' rules of conduct and the rules of conciliation**.

1.2.7. The application of mediation agreements signed in foreign countries

In Armenia, the issues related to the recognition and implementation of extrajudicial mediation agreements signed in foreign countries are also not regulated by law. Taking into account the fact that on September 26, 2019 the Republic of Armenia signed the United Nations Convention on "International Settlement Agreements Resulting from Mediation" (which, however, has not yet been ratified at the time of writing this report), it is necessary to bring the RA legislation in line with the provisions of the Convention, as well as to ensure the ratification of the Convention. As this issue is generally beyond the scope of the research (it is not related to the development of mediation in Armenia), the authors do not make specific recommendations in this regard.

1.2.8. The courts' direction of the parties to mediation

According to Article 167(1)(6) of the RA Civil Procedure Code, the court is obliged, by explaining the essence of mediation, to find out whether the parties to the case do not want to resolve the dispute through mediation. Many mediators note that although the courts consistently/routinely ask the parties whether they want to resolve the dispute through mediation, few judges take the time time to explain to the parties what the difference between litigation and mediation is and what benefits mediation will bring to the parties. Here are some possible reasons for this problem:

- Judges do not take mediation seriously as an ADR measure.
- There is professional "competition", presumably, there is a misconception that if a judge cannot reconcile the parties, the mediator will also not be able to do so.
- The content of the obligation to explain the essence of mediation is not clearly defined, also no liability is defined for judges who don't fulfill this obligation.

As a possible solution, **it is proposed to introduce (for example, through the Supreme Judicial Council) a simple and easy to understand information sheet or guidelines on mediation and its benefits, which judges will use to explain the nature of mediation to the parties to the dispute**.

1.2.9. The issue of the (in)effectiveness of the self-regulatory organization of mediators

Separate from other legislative and legal practice issues, there is the issue of the effectiveness of the self-regulatory organization of mediators (Mediators' SRO).

In this regard, the surveyed mediators noted a number of legislative and practical issues.

Out of the mentioned issues, the key issue is the inability to make decisions because of the absence of a quorum. According to the law, at least half of the members must be present to ensure a quorum at the meetings of the Mediators' SRO. At the same time, in accordance with Article 20 of the Law on Mediation all licensed mediators automatically become members of the Mediators' SRO. Given that currently the vast majority of licensed mediators are not interested and do not engage in mediation, recently not enough members have been present to ensure a quorum and make decisions. As a result, the Mediators' SRO cannot actually make decisions, and it even has a problem with electing a new president, as there is no quorum for approving the procedure to appoint a president and for electing a president.

In this regard, proposals have been made to make the membership of the Mediators' SRO non-compulsory, to make more flexible the legislative requirements regarding quorum and decision-making, or to stipulate that unfounded absence from meetings may lead to liability, even the suspension of membership.

The authors believe that mandatory membership is an essential condition for the activities of a self-regulatory organization. As for the reduction of the quorum threshold, it is against the principle of internal democracy, which plays a key role in the activities of such organizations. At the same time, the authors believe that the suspension of a mediator's license should be a last resort.

Therefore, as the most optimal solution to the problem, the authors propose **to make an addition to Article 21 of the Law on Mediation, according to which, when calculating the quorum of the General Assembly, members who did not participate in the previous two general meetings without a valid reason (about**

which such member must notify the organization in writing within a reasonable time) shall not be taken into account.

At the same time, taking into account that a significant number of licensed mediators do not actually engage in mediation, the authors suggest **supplementing Article 16 of the Law on Mediation, to the effect that mediators may apply to suspend their own status** (for example, if they do not intend to engage in mediation).

1.3. INTRODUCTION OF FREE MEDIATION AND COMPULSORY MEDIATION

The issue of free mediation

According to Article 184(2) of the RA Civil Procedure Code, if there is a high probability that the dispute will be solved through mediation, the court may, on its own initiative, prescribe on a one-off basis up to 4 hours of free mediation. The law, however, does not define any mechanism for financing this free mediation. It is also not clear whether each mediator is obliged to carry out such free mediation, and if so, how many hours in total.

Some respondents believe that the undertaking of free mediation by mediators is necessary for the development of the sector, and the mediators themselves should be motivated in doing free work for the development of the sector. An opinion was also voiced that if the mediator properly manages the case then, in addition to the 4 hours pro bono, each time the mediator will also perform paid compensation. In particular, the author of the opinion noted that, as a rule, it takes several hours to get acquainted with the case, to contact the parties and for preliminary discussions, and the actual mediation will be carried out mainly on a paid basis.

However, the majority of the surveyed mediators consider the concept of free mediation to be problematic. It is noted that mediators would be obliged to work without pay, which contradicts both the principles of freedom of choice of occupation and fair pay and equality (for example, there are mechanisms for state funding for the work of Public Defenders who are involved in the work of the Public Defender's Office). In addition, some respondents noted that the parties to the dispute have a hard time understanding that the 4 free hours include getting acquainted with the case and dealing with organizational issues. Instead, the parties believe that the 4 hours only concern the work involving their direct participation. Accordingly, a proposal was made that state subsidies should be available for the purpose of providing free mediation to the parties.

In any case, it should be noted that the issue of free mediation is problematic for mediators and in fact hinders the development of the sector, prompting mediators to avoid conducting mediation on the initiative of the court.

The possibility of introducing mandatory mediation

A number of respondents noted that in order to develop mediation more effectively, it is necessary to introduce mandatory mediation for certain types of disputes, which will create sufficient demand for mediation, thereby promoting its development.

At the same time, there are those who oppose such an approach, because they believe that Armenia is unable to implement mandatory mediation for the following reasons:

- Currently, the number of mediators (only 25-30 of the licensed mediators currently practice mediation, and not even as their main occupation) is not sufficient

to meet high demand. Moreover, even among the existing mediators, there is a qualification problem.

- There are no training courses for the existing mediators.

- At present, there is no clear and coordinated mechanism for selecting mediators which would take into account the specialization and workload of the mediator.

- The existing regulations already allow the courts to assign court-imposed mandatory mediation to resolve the dispute, so there is no need to introduce the concept of mandatory mediation in the classical sense. It will be sufficient for the judges to use the relevant power correctly and properly.

- There are no financial incentives that will encourage qualified professionals to focus on mediation and make it their main practice.

- Mandatory mediation will not be possible without state funding.

- The self-regulatory organization of mediators is not yet operating effectively, and at the same time the sector does not have sufficient state support.

From the results of the surveys, it can be concluded that mandatory mediation can be an effective way to develop mediation, but only if it is preceded by the adoption of a number of by-laws and practical reforms. In particular, this refers to the adoption and introduction of a qualification procedure for mediators, the full introduction of the register of mediators, ensuring training of mediators, as well as the necessary state support for strengthening the self-regulatory organization of mediators.

In this regard, it should be noted that in recent years mandatory mediation has become quite widespread in a number of countries. According to the European Parliament Committee on Legal Affairs, mandatory mediation could have a positive impact on the reduction of litigation duration and government spending[9]. In this regard, it is noted that it is necessary to calculate the extent to which it will be possible to reduce the duration and costs, as well as to use the opportunity of reimbursing some of the costs of the dispute by the state, as an incentive mechanism.

Some countries have imposed mandatory mediation for a wide range of disputes (in particular Italy and Greece), but such an approach is often criticized and causes problems in practice (including challenges to the constitutionality of the relevant provisions).

Most of the countries that have introduced mandatory mediation use it in limited areas. Mediation is a prerequisite for going to court in France, the United Kingdom and Lithuania (family disputes), and Spain (labor disputes). As a rule, the duration of mandatory mediation in these countries does not exceed 3 months, after which the parties are free to go to court.[10]

In general, the main areas of mandatory mediation are family and labour disputes, as well as neighbour disputes. Moreover, given that RA legislation already has short deadlines for some types of labour disputes (disputes concerning amending or terminating the employment contract or subjecting the employee to disciplinary measures), and that the court costs are not significant, therefore in Armenia's case in theory the introduction of mandatory mediation for family disputes can be discussed (except for alimony claims).

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9 NOTE, DIRECTORATE GENERAL FOR INTERNAL POLICIES POLICY DEPARTMENT C: CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS, LEGAL AFFAIRS, "Quantifying the cost of not using mediation – a data analysis".

10 See: European Handbook for Mediation Lawmaking, EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ), As adopted at the 32th plenary meeting of the CEPEJ, Strasbourg, 13 and 14 June 2019, pp. 53-57.

At the same time, it should be noted that a number of countries use the practice of a short, mandatory information meeting with the mediator instead of mandatory mediation, which allows the parties in the dispute to quickly make a decision and assess whether the dispute between them is generally resolvable through mediation[11]. In addition, such informative meetings can to a certain extent solve the issue of the judge explaining the essence of mediation.

Based on the above, the authors suggest:

a) **To forego the 4-hours' free mediation, instead providing for a mandatory free information meeting with the mediator in cases where there is a reasonable probability that the dispute can be resolved through mediation.**

b) **After the full establishment of the system of mediation, to consider a period of up to 1 month of mandatory mediation (as a precondition for going to court) for family disputes (except for alimony claims).** At the same time, the court can decide to exempt the parties from this rule, based on their property status.

11 See: European Handbook for Mediation Lawmaking, EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ), As adopted at the 32th plenary meeting of the CEPEJ, Strasbourg, 13 and 14 June 2019, p. 55.

CHAPTER 2.

PRACTICAL ISSUES RELATED TO ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

2.1. ARBITRATION

Most of the surveyed specialists are inclined to believe that the low development level of arbitration in Armenia is due not so much to legislative as to practical problems. Among them, the lack of trust in arbitration, the lack of awareness of the activities of arbitration institutions, as well as the insufficient development of these institutions and the insufficient involvement of qualified specialists, including those with international experience, are mentioned. The insufficient economic development of RA is mentioned as one of the possible objective reasons. In this regard, it is noted that arbitration is a sought-after ARD mechanism in economically powerful countries with developed business environments, where the potential customers of arbitration realize its effectiveness and advantages, while the same cannot be said about the business environment in Armenia. The surveys also revealed certain technical issues.

Since both the problems and the ways to solve them are interconnected, we present the problems first, and then the possible ways of solving them.

2.1.1. Obstacles to the development of arbitration

The lack of awareness

Most experts say that the lack of awareness is one of the main obstacles in the development of arbitration. First of all, the awareness of society, but also to some extent, that of lawyers, is low, both in terms of the essence of arbitration and its advantages (rapid examination of disputes and the absence of reexamination, potentially lower cost of monetary claims, the right to choose an arbitrator, the opportunity for compulsory enforcement, the partial mechanism of judicial control, the possibility to apply to secure the claim even before the start of arbitration or the appointment of an arbitrator, secrecy).

First and foremost, it is due to the lack of awareness that arbitration, as a rule, is not perceived as a practical mechanism for resolving disputes in Armenia.

There are various reasons for the low level of awareness. There are no advertisements promoting or disseminating arbitration, there are few events and discussions dedicated to arbitration. The educational component is also insufficient: the legal departments of many universities do not have courses/programmes dedicated to arbitration.

The fact that judges lack sufficient information on arbitration is also problematic, particular in cases involving supporting arbitration and when it is necessary for a court to appoint an arbitrator.

Systemic and organizational problems

In terms of the system, a central issue in Armenia is the absence of a strong, reputable and well-known arbitration institution/

center, as well as the lack of a sufficient number of professional and experienced arbitrators (including those with international experience). It is noteworthy that even a considerable number of the arbitrators involved in the permanent arbitration institution attached to the Chamber of Commerce and Industry of the Republic of Armenia have not been appointed arbitrators in any case and have no real experience as arbitrators.

Undoubtedly, there is here the “chicken and egg problem”: it is difficult to decide whether the other issues discussed are the reason for the absence of a well-established arbitration institution, or vice versa. However, it should be noted that in order to develop arbitration it is necessary to work in parallel to solve all these problems. Without a sufficiently strong arbitration institution, actions taken to solve other issues will not produce a satisfactory result and could even backfire.

Among the organizational issues, the respondents mentioned the absence of electronic management tools (for example, for submitting documents and receiving information) and the incomplete presentation of information about arbitrators (in the information provided there is no precise data about the narrow specialization of the arbitrator and his/her experience in the field of arbitration). The latter issue is especially problematic when it is necessary to appoint an arbitrator in court, as judges do not have enough information to make a choice.

Lack of trust

In general, the lack of trust is due to other issues in the field of arbitration, which have been discussed above. Respondents cite the lack of awareness as the most likely cause of public distrust, as well as the perception that if there are corruption risks in independent courts with well-regulated procedures, then the

corruption risks are higher in an arbitration institution that does not have such guarantees and procedures. It should be noted that the level of awareness is not high even among specialists (lawyers). Moreover, privacy is sometimes perceived as a risk factor for possible abuse and corruption.

An additional factor in avoiding arbitration among both the public and attorneys is the absence of the opportunity to appeal against the verdict. Attorneys, in particular, have voiced the opinion that in some cases attorneys avoid arbitration because if they participated in the selection of arbitrators it is then harder to explain to the client that a potential defeat is the result of corruption (rather than in fact a result of the weak case of the party or the wrong actions of the lawyer).

To some extent, the financial aspect is also problematic, namely, at first glance arbitration is more expensive (both in terms of arbitrators and arbitration institution costs and attorneys' fees). However, this concern is partly due to a lack of awareness, because at the very least, in the case of a monetary claim, if there are court hearings in the courts of appeals and cassation, the court costs are usually higher.

A number of lawyers say that a significant factor is that in actual arbitration institutions (an exception is the Court of Financial Arbitration of the Union of Banks of Armenia (UBA) which, however, due to its narrow specialization cannot affect the overall picture of the sector) there is a disproportionately large number of representatives of one or more law firms or other people with close ties to each other (as the head of arbitration institutions and an arbitrator), which raises significant doubts about impartiality and objectivity.

In this regard, the problem is exacerbated by shortcomings regarding arbitrators' conduct and ethics rules, which were discussed above in the section on legislation.

Issues concerning competition

Some respondents say that there is a degree of competition between the courts and arbitration. According to the respondents, the courts do not want to "share" their power with any other structure and have a problem trusting arbitration.

It was noted that it is necessary to enter into a dialogue with the courts to ensure a more tolerant and constructive approach to arbitration by the courts. In this context, it was in expressly proposed to clarify the approach that it would be more appropriate to resolve a significant number of cases (taking into account the nature of the dispute, complexity, confidentiality requirements, etc.) through arbitration without burdening the courts, given that the courts in any case retain the right to declare the arbitral award invalid.

The issue of "competition" with the courts is also related to the fact that after the adoption of the current RA Civil Procedure Code, the courts began to resolve disputes over small sum monetary claims through simplified proceedings, which provides a quick examination of the case. In addition, there is a possibility for the plaintiff to "remotely manage" the case (that is, to pursue the case without attending court hearings), and the fact that debtors, especially those indebted to financial institutions, rarely appeal against decisions. As a result, the court is in fact more attractive than arbitration in terms of the duration and simplicity of the case. However, this problem mainly concerns the examination of financial organizations' monetary claims against borrowers, and cannot be considered a general obstacle to the development of arbitration in Armenia. The disputes submitted to arbitration tend to be more complex, and in such cases these issues do not play a significant role.

2.1.2. Ways of raising awareness, confidence-building and development

Steps needed to develop arbitration, as cited by respondents,

were: raising awareness, confidence-building measures and systemic solutions. The latter are discussed separately below.

Some respondents said that awareness raising should be carried out not at the national level and with the general public, but within narrow professional and potential “users” – law firms, attorneys, banks, lawyers of large companies – who can actually develop and activate the sector, providing it with both cases and a large number of quality arbitrators.

The following were mentioned as steps to raise awareness and build confidence:

i. Expand arbitration teaching in universities (not all universities currently teach arbitration).

ii. Ensure its active promotion and dissemination among students, organize moot courts more often.

iii. Conduct specialized trainings for practicing arbitrators and attorneys, draft and disseminate educational materials (the authors consider it necessary, in this regard, to increase the work with judges to develop a constructive dialogue on arbitration).

iv. Regularly hold professional discussions in a professional environment (including in the form of working groups) on the development of arbitration in the RA, especially in the context of judicial reform.

v. Incentivize banks and other financial institutions to transfer their disputes to arbitration.

vi. Promotional measures by the state, even including state participation in the sending of some cases to arbitration (when the state acts as a subject of private law).

vii. The state to take steps to present Armenia to the world or the region as an attractive place for arbitration (based on the compliance of RA legislation with international standards and ensuring accessibility and possible privileges, for example, tax benefits).

Some respondents also noted that, in order to strengthen confidence in arbitration, it is necessary to ensure the establishment of a new arbitration institution with an international element. This proposal is discussed in more detail below.

The authors believe that **the proposals made in paragraphs (i) - (iv) are very important, but not sufficient to ensure a proper level of awareness and confidence in arbitration**. Specifically, the authors believe that **these measures should in principle be combined with the solution of issues in the legislative** (the introduction of conflict of interest regulations in arbitration institutions is particularly important in this respect) **and organizational** (the introduction of electronic management tools in particular) **sectors**. **<u>Only the parallel implementation of all the above-mentioned means can create sufficient preconditions for the development of arbitration in Armenia</u>**.

At the same time, although it is more important to raise awareness in the professional field, **however, it should be followed by awareness raising among business people as a minimum**, through business unions (Chambers of Commerce and Industry, employers' organizations, sector associations) and business-focused events. These should include clear information on the benefits of arbitration, as well as some "success stories" (explanatory information on arbitration cases, excluding the disclosure of confidential data, positive testimonials about arbitration from the participants, etc.).

In the opinion of the authors, the importance of working with banks and other financial organizations is exaggerated. Thus, most of the

lawsuits of such organizations are related to the collection of relatively small sums of money. It is better to continue the examination of such claims in court (taking into account the possibility of simplified proceedings) or the Financial Arbitration of the Union of Banks. Due to the simplicity and technical nature of such cases and their relatively small claims, their examination in arbitration cannot significantly contribute to the development of arbitration.

In terms of handing over more complex cases to arbitration, awareness campaigns directed at banks and other financial institutions have no significant feature, unlike campaigns directed at other enterprises, and a special approach to them does not seem justified.

As for the promotion of arbitration by the state, the authors believe that it is unrealistic to expect the state demand that private law cases involving it be handed to arbitration, as such a move could be seen as a show of distrust of the judiciary. However, as such, encouragement from the state would be welcome.

Lastly, one can only talk about undertaking steps of the state to present Armenia as an attractive place for arbitration in the world if this is in parallel with the development of a strong local international or regional arbitration center, and concrete steps must be taken based on the actual situation.

2.1.3. The need for a new arbitration institution and the improvement of existing institutions

Although some respondents claim that it is necessary to create a new arbitration institution in Armenia, most respondents believe that there is no such need. There is an opinion that one must first create demand for arbitration, and only then think about the creation of new arbitration institutions. According to the relevant specialists,

the creation of the institution should be dictated by demand, and its creation should not be an end in itself for the state.

Although in general agreeing with the proponents of the “natural” development scenario, the authors consider it necessary to mention once again that there is a “chicken and egg” dilemma in this regard. It is difficult to say for sure whether the other issues discussed above are due to the lack of a well-established arbitral institution, or vice versa. In the authors’ opinion, the causal relation in this case is two-way. The issue can be solved both by strengthening one of the existing arbitration institutions and by creating a new one. As a rule, a country’s main arbitration institution is established under the national Chamber of Commerce and Industry. This implies that in Armenia, in theory, the possibility of strengthening and developing a permanent arbitration institution attached to the RA Chamber of Commerce and Industry can be considered. However, in this regard, it should be borne in mind that some respondents have doubts about the multifacetedness and specialization of the current staff of the institution, as well as the transparency of internal procedures. Therefore, it is important for the relevant structure to be open to the expansion of the composition of the arbitrators and to the increase of qualification and transparency and the implementation of other reforms. Otherwise, the authors will be more inclined to create a new arbitration institution, as it will not be constrained from the beginning by historical problems and possible rating risks.

Regardless of the chosen option, it will be necessary to take a number of steps to strengthen the arbitration institution. In this regard, the respondents have presented the following proposals:

a) Proposals for developing/improving existing institutions:

i. Reviewing arbitrator lists, creating a unified and electronic database that will enable easy selection and assignment of an arbitrator.

ii. Creation of international arbitration capabilities, supplementing the list of arbitrators with new and professional international arbitrators.

iii. Drafting and implementation of procedures, guidelines and regulations on conduct, ethics and conflicts of interest.

iv. The advertising and promotion of existing institutions to enhance their international reputation.

b) Proposals for the establishment of a new arbitration institution:

i. Develop a model and estimate the volume of cases which will be submitted to the institution. Most of the respondents think that it is necessary to ensure the capacity to examine both domestic and international arbitration cases, to have a multi-profile arbitration center.

ii. Find and involve international experts, arbitrators and specialists of international arbitration centers, establish modes of cooperation with such centers, especially in the first 1-2 years after its establishment.

iii. Involve our compatriots who have succeeded in the field of arbitration in the Diaspora, many of whom are currently ready and willing to help Armenia.

iv. Develop rules and other procedures in accordance with international standards, to have a clear system for both the management of the center and the proper conduct of arbitration through the center (a proper secretariat).

v. Take measures to increase the attractiveness of choosing Armenia as the place of arbitration among businessmen from the CIS countries.

In fact, in both cases the respondents' proposals are quite similar, and based on them we can summarize the main steps (including the authors' proposals based on the analysis):

i. **Creating a database containing detailed information about arbitrators involved in the arbitration institution** (including detailed information on specializations and experience).

ii. **Expanding the list of arbitrators by involving both local experts and well-known Diaspora experts on arbitration or the laws of individual countries** (primarily targeting countries with the most frequently used law in the world and the region (England, Switzerland, Russia, some US states: New York, California, Delaware, etc.).

iii. **Establish cooperation with international arbitration centers to exchange experience and receive professional support** (e.g. mentoring of arbitrators).

iv. **Introduce a case management system** (including online case management, remote hearing management mechanisms, a secretariat of the institution with clear powers and capabilities)**.**

v. In cooperation with the state (and if possible, with the support of the state) **to undertake measures to promote the concept of Armenia as a regional arbitration venue** (at least through awareness campaigns, and preferably through the provision of certain privileges by the state).

2.2. MEDIATION

The research undertaken proves the fact that the lack of success of the institute of mediation in Armenia, the scarcity of cases and the inefficient operation of the system are all the result not only of a flawed legislative field, but also of a number of operational and practical problems. From these issues, first of all, it is necessary to single out the lack of awareness, and the lack of trust resulting from it, the existence of skepticism among the courts and judges towards the institute of mediation, and the lack of support resulting from it, as well as the lack of qualified, experienced and reputable mediators in the market, etc. In addition, it should be noted that the success of the institute of mediation in Armenia will be in great danger if the state fails to give the required support. Improvement of the situation will be possible if both legislative and organizational reforms are implemented.

In this regard, the authors have highlighted below the main practical challenges and problems facing the institute of mediation and the possible ways to solve them.

2.2.1. Practical issues in the field of mediation

Lack of awareness

Lack of awareness is one of the most practical issues of any type of ADR, including mediation. It is difficult to say for sure whether the lack of awareness is due to the fact that the institute is not fully established in the Republic of Armenia, or vice versa: the institute is not fully established because there is a lack of awareness. However, awareness issues have their own particular role in Armenia. According to most respondents, there is a lack of awareness and a lack of information about the benefits of mediation, both among the general public and in the legal community, particularly among attorneys, judges, and even some licensed mediators.

This issue is related to the lack of information on important features of mediation such as its essence, significance, content and the way it differs from litigation and arbitration procedures. It is evident that in order for people to want to resolve the dispute between them through mediation and to approach a mediator, it is first of all necessary for them to have an idea about the main advantages of mediation, what makes it more effective and attractive, what kind of disputes are most likely to be resolved through mediation. All this requires awareness, as well as the availability of brief information.

It is more problematic when lawyers lack awareness. As long as the attorney is not interested in resolving the case through mediation, or does not personally trust and believe in the effectiveness of mediation, or does not attend the mediation, or does not explain the advantages of mediation to his/her client, it is impossible to talk about the establishment or expansion of the institute of mediation. In this regard, the role of the attorneys' community in the development of the institute of mediation is very important.

Almost all of the respondents agreed that the most common information errors among the public and attorneys concerned the following:

- Lack of awareness about the differences between mediation and litigation or arbitration proceedings.
- Lack of awareness about the secret nature and secrecy of mediation.
- Lack of awareness about the benefits of extrajudicial mediation.
- The widespread misconception that a mediator is a body that resolves a dispute like a judge, who is obliged to resolve the dispute for or on behalf of the parties by making a decision.
- The lack of understanding that the parties are the real ones resolving the dispute, and that the role of the mediator is simply to provide a negotiation platform and to promote the negotiations.

In this regard, it is very important to note that most of the mediation procedures currently underway in the Republic of Armenia are cases of compulsory mediation appointed by the court (as regards the role of the court and the lack of support, see the next section). There are only a few cases where the parties to the dispute have independently and extrajudicially involved the mediator and actually resolved the dispute through mediation. One of the chief reasons for this practice, apart from the flawed regulations of extrajudicial mediation, is the lack of information about and awareness of it.

Issues of Trust

The lack of awareness often leads directly to a lack of trust. In this

regard, the problem is also related to the issues raised concerning arbitration.

Most of the respondents think that there is a misunderstanding in Armenia that if a judge with many years of experience and higher education is not able to reconcile the parties and resolve the dispute between them, then how should they trust the settlement of the dispute to a mediator, in respect of whom there are no such high legal requirements. The problem here is again the lack of awareness and information, as the broad strata of society still do not understand the role of the mediator and his/her most important skills.

It should be noted that some respondents believe that this lack of trust and sceptical approach can also be observed in a number of judges as well as among their colleagues and other mediators and attorneys. Although many have not witnessed neither the effectiveness nor the ineffectiveness of mediation, they still have a biased approach. And if people within the system do not have confidence in a specific institution, it is very difficult to demand such trust from the average RA citizen.

As a rule, a person can only trust something if he/she is aware of it and if he/she has seen or heard about another's experience of its effectiveness and indispensability. Here, it is very important to present "success stories" in the form of didactic materials to the public and, through their example, to show the benefits of mediation to the public. This will be presented in more detail below.

Lack of judicial support

As has already been mentioned, most of the mediation cases currently being conducted in the Republic of Armenia are carried out through mediation appointed by the courts. As a result, the role of the courts is very important in the process of developing mediation in the Republic of Armenia. It is noteworthy that the development

and widespread use of mediation is, first and foremost, in the interests of the courts, as it can ease the burden on the courts and reduce the number of cases. It is also a great opportunity to direct the full potential of the judiciary to effectively solve particularily difficult disputes instead of focusing on small and simple cases. However, many of the respondents mentioned that the courts do not cooperate sufficiently with the mediators and do not support the establishment of the institute, in some cases even citing the reason as the tendency of the courts to “compete”. In other words, the lack of trust and awareness leads leads the courts and mediators not to perform the function of complementing each other.

Many respondents cited the failure to provide clear and concise information to the parties on mediation proceedings and the failure to appoint mediation when there is clearly plentiful grounds to do so as a glaring manifestation of the lack of support from the courts. In this regard, proposals have already been made above for additional regulation concerning the appointment of mediation, as well as mandatory mediation and a mandatory information meeting with the mediator.

In any case, in addition to legislative changes, it is necessary to work with judges (through trainings, round table discussions, etc.) to introduce information, materials and tools which they can use to present the essence of mediation to the parties in a more comprehensive way.

Furthermore, many of the mediators are attorneys and based on their own experience they mention that at present there are very few judges in Armenia who carry out objective assessments of cases and, if necessary, appoint mandatory mediation. In this regard, it should be noted that during the first round of qualification of mediators on the pilot program implemented in the Court of General Jurisdiction of the administrative districts of Avan and Nork Marash, during which the mediators were in the court

building, and the case was immediately handed over to mediation. During this period, about 10-12 cases immediately ended through mediation. In fact, such an approach almost completely eliminates all logistical problems related to the appointment of a mediator, handing over the case files to the mediator, establishing contact between the parties to the dispute and the mediator, or the need to travel elsewhere to conduct mediation.

In general, it is necessary to work long-term with the courts in order for the latter to be more involved in the development of mediation. Presented below are the most focused proposals for solving this problem.

Other issues

At present, the Mediators' SRO does not have a sufficient funding mechanism and is unable to provide annual training to its members, or provide them with the necessary conditions (places) for mediation. Until mediation is developed, it cannot be expected that mediators will always be able to access at their own expense office space for mediation. In this regard, it is worth noting the experience of some countries, where the courts have suitable areas for mediation.

A separate issue arises from the use of the term "mediation", as the population often confuses it with the "Financial System Mediator". The Financial System Mediator is a dispute-resolving and decision-making body, as opposed to a licensed mediator, who has no right to resolve the dispute or make a decision in place of the parties. According to many, awareness will not solve this problem: it is necessary to address and resolve this issue at the legislative level.

However, the authors do not consider a legislative solution to be very appropriate in this case, as it would not be very realistic to

rename the Financial System Mediator (which is actually a long-established, effective and well-known structure), while another possible term for mediation – "mediatsia".[12]

2.2.2. Recommendations for raising awareness, building trust and developing mediation

The analysis shows that in order to ensure the development of mediation in the Republic of Armenia, it is necessary to carry out a series of coordinated actions (by both state bodies, mediators and other specialists in the field). Taking into account the main challenges in the development of mediation, the authors are convinced (and this is also the opinion of the majority of respondents) that the primary link in the dissemination of information on mediation should be the courts, lawyers and attorneys.

In addition, the range of "consumers" of mediation is wider (compared to arbitration), and therefore awareness-raising work should be done among all those who actually have a dispute. Such targeting is more effective than awareness-raising among the general population, since people who do not currently have a dispute are unlikely to pay much attention to awareness-raising measures. Whereas a person with a dispute may actually be interested in the fastest, most efficient, and cheapest way to resolve a dispute.

However, it should be borne in mind that mediation awareness campaigns should only be organized if there are trained mediators, because otherwise, if participants are not involved and if mediation is not conducted properly, awareness campaigns on the development of the mediation system may mainly have

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12 The ordinary Armenian word for "mediation" is "հաշտարարություն" ("hashtararutyun").

a negative effect. Therefore, in order to develop the institute of mediation, it is necessary to adopt a step-by-step model of development in which, in the first stage, the specialization and training of mediators will be carried out, i.e. to ensure the proper quality and level of conducting mediation, and in the second stage public awareness will be increased, ensuring demand for the already formed structure.

Summarizing the series of suggestions offered by the respondents and supplemented by the authors, the authors present the following proposals:

i. **Before organizing awareness campaigns, conduct a capacity assessment of mediation in Armenia,** which can be done by assessing the knowledge and professional training of currently licensed mediators, as well as by checking the extent to which they are still interested in conducting mediation (including compiling a corresponding list by specialization).

ii. **Carry out a preliminary assessment of the types of disputes potentially subject to mediation.** In particular, it is necessary to identify the types of disputes where the parties are most likely to apply for a mediator and resolve the dispute through mediation.

iii. **Conduct awareness-raising activities among the general population.** The activities should include the uploading of online materials and regular updates (preferably through the creation of the Mediators' SRO website), the dissemination of information through social networks (which will be available to both the general public and the parties to a specific dispute), the distribution of printed materials (as a rule, in courts and law firms in order to ensure their availability to the parties to disputes and to customers), as well as the display of educational materials on television (in

the past such materials were filmed and circulated on public television for a period). In particular, using online resources, clear and didactic, educational audiovisual materials, “success stories” and testimonials of people who have previously used mediation should be posted. Awareness-raising should also be carried out, taking into account the availability of specialized mediators.

iv. **Conducting awareness-raising activities, trainings and seminars among judges and attorneys, especially with the involvement of international experts.** These activities can include seminars, roundtable discussions, and trainings.

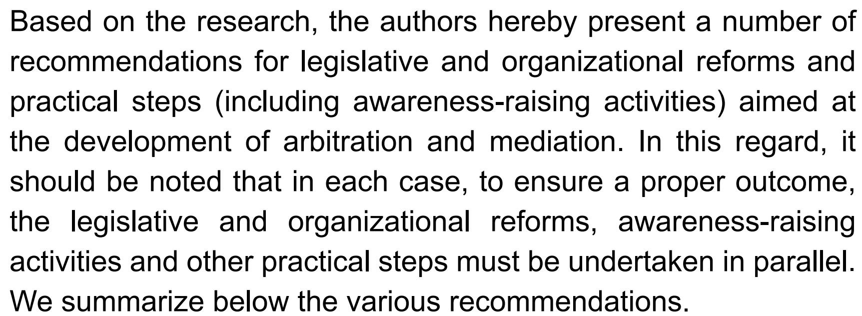
v. **The introduction/organization of educational programs and/or courses dedicated to mediation in universities (probably together with arbitration, within the framework of courses on ADR).**

vi. **Work with judges (through trainings, roundtable discussions, the Supreme Judicial Council’s usage of circulars and other), encouraging them to be more active in directing the parties to the dispute to mediation and explaining its essence to the parties.**

vii. **Consider the possibility of conducting mediation in court buildings or the allocation of an area adjacent to them, or the provision of office space to the Mediators’ SRO.**

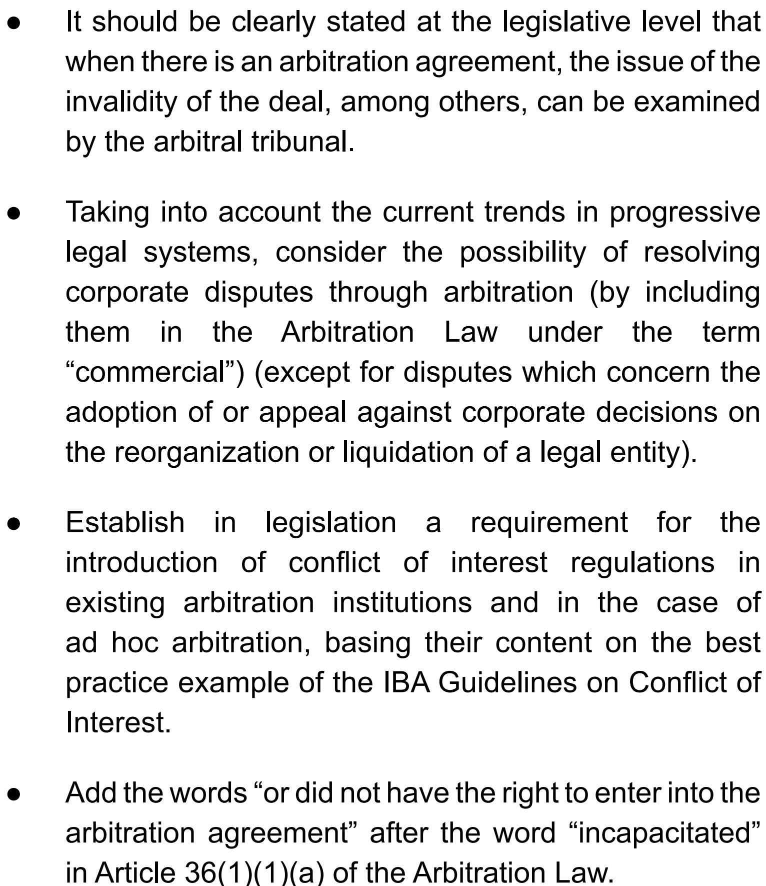
viii. **Pending the Self-Regulatory Organization of Mediators achieving long-term financial stability, support its ongoing administrative costs and provide office space.**

SUMMARY
OF THE RECOMMENDATIONS



Based on the research, the authors hereby present a number of recommendations for legislative and organizational reforms and practical steps (including awareness-raising activities) aimed at the development of arbitration and mediation. In this regard, it should be noted that in each case, to ensure a proper outcome, the legislative and organizational reforms, awareness-raising activities and other practical steps must be undertaken in parallel. We summarize below the various recommendations.

ARBITRATION



- It should be clearly stated at the legislative level that when there is an arbitration agreement, the issue of the invalidity of the deal, among others, can be examined by the arbitral tribunal.

- Taking into account the current trends in progressive legal systems, consider the possibility of resolving corporate disputes through arbitration (by including them in the Arbitration Law under the term “commercial”) (except for disputes which concern the adoption of or appeal against corporate decisions on the reorganization or liquidation of a legal entity).

- Establish in legislation a requirement for the introduction of conflict of interest regulations in existing arbitration institutions and in the case of ad hoc arbitration, basing their content on the best practice example of the IBA Guidelines on Conflict of Interest.

- Add the words “or did not have the right to enter into the arbitration agreement” after the word “incapacitated” in Article 36(1)(1)(a) of the Arbitration Law.

- Replace the term “null” in Article 16(1) of the Arbitration Law with the term “invalid”.

- Work with judges (using trainings, round table discussions and other similar tools), so that the latter exercise their powers under Articles 323(2) and 323(4) of the RA Civil Procedure Code more narrowly, thereby avoiding, within the scope of the application review, the examination of issues which are outside the scope of the Court’s grounds for annulment of the arbitration award.

- Redraft Article 323(6) of the RA Civil Procedure Code, stipulating that the application for an annulment of the judgment should be considered within the same proceedings as the application for a writ of execution, and that a joint decision will be made for both applications (also clarifying in which court proceedings the cases are to be joined).

- Expand the teaching of arbitration in universities.

- Ensure its active propaganda and dissemination among students, organize arbitration moot courts more often.

- Provide professional training for practicing arbitrators and attorneys, prepare educational materials and disseminate them (in this regard the authors consider it necessary to increase the work with judges in order to form a constructive dialogue on arbitration).

- To regularly hold professional discussions in professional environments (including in the form of working groups) on the development of arbitration in

the Republic of Armenia, especially in the context of judicial reform.

- After conducting awareness-raising campaigns among specialists, also conduct awareness-raising activities among business representatives.

- To create a database with detailed information about the arbitrators involved in the arbitration institution (including detailed information on specializations and experience).

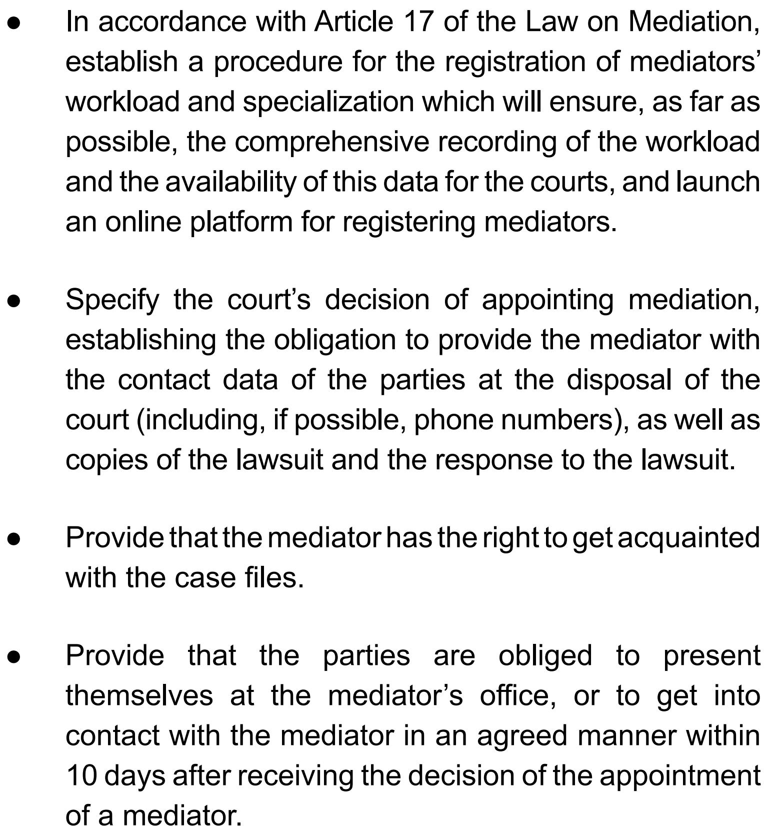
- To expand the list of arbitrators by involving both local experts and well-known Diaspora experts on arbitration or the laws of individual countries (primarily targeting countries with the most frequently used law in the world and the region (England, Switzerland, Russia, some US states: New York, California, Delaware, etc.).

- To establish cooperation with international arbitration centers to exchange experience and receive professional support (e.g. mentoring of arbitrators).

- To introduce a case management system (including online case management, remote session management mechanisms, a secretariat of the institution with clear powers and capabilities).

- In cooperation with the state (and if possible, with the support of the state) to undertake measures to promote the concept of Armenia as a regional arbitration venue.

MEDIATION



- In accordance with Article 17 of the Law on Mediation, establish a procedure for the registration of mediators' workload and specialization which will ensure, as far as possible, the comprehensive recording of the workload and the availability of this data for the courts, and launch an online platform for registering mediators.

- Specify the court's decision of appointing mediation, establishing the obligation to provide the mediator with the contact data of the parties at the disposal of the court (including, if possible, phone numbers), as well as copies of the lawsuit and the response to the lawsuit.

- Provide that the mediator has the right to get acquainted with the case files.

- Provide that the parties are obliged to present themselves at the mediator's office, or to get into contact with the mediator in an agreed manner within 10 days after receiving the decision of the appointment of a mediator.

- Work with judges (using trainings, round tables discussions, etc.) to present the essence of mediation and its benefits to the latter, encouraging them to be more active in directing the parties to the dispute to mediation and to explain its essence to the parties, as well as regarding the need to provide sufficient time for the conduct of mediation (within the three-month period established by law).

- Adopt the procedure for the formation and activities of the Mediators' Qualification Commission, the awarding of qualifications and the issuance of qualification degrees and to organize the qualification of mediators.

- Consider the appropriateness of introducing case-studies to be solved and mock mediations in the mediators' qualification exam along with questions testing one's knowledge of the legislation.

- Through legislation, guarantee a greater representation of mediators in the Mediators' Qualification Commission.

- Assist the Self-Regulatory Organization of Mediators in the medium term in organizing trainings, including by engaging specialists with international experience.

- Assist (including with the help of international experts) the Self-Regulatory Organization of Mediators to draft detailed rules of the mediators' code of conduct and the rules of mediation.

- Develop (for example, through the Supreme Judicial Council) a simple and easy to understand information sheet or guideline on mediation and its benefits, and

disseminate it among judges, which will be used by judges to explain the essence of mediation.

- Make an addition to Article 21 of the Mediation Law, whereby, when determining the quorum of the General Meeting, members who have not participated in the sittings of the previous two General Meetings without good reason (concerning which the mediator must notify the organization within a reasonable time) shall not be included in the calculation of the number of members.

- Make an addition to Article 16 of the Mediation Law, enabling mediators to apply to suspend their status.

- Forego the free 4-hour conciliation period, instead establishing a mandatory free information meeting with the mediator in cases where there is a reasonable probability that the dispute can be resolved through mediation.

- Implement a step-by-step model for the development of mediation, at the first stage ensuring a proper level of qualification and training of the mediators, and then conduct awareness-raising activities.

- Assess the abilities and potential through a preliminary assessment of mediators' specializations and interests.

- After the development of the mediation system, consider the requirement of a period of up to 1 month of mandatory mediation (as a precondition for going to court) for family disputes (except for alimony claims).

- Conduct awareness-raising activities among the general population (the uploading of online

materials and regular updates, the dissemination of information through social networks, the distribution of printed materials, as well as the broadcasting of educational materials on television (in the past such material was filmed and circulated on public television for a certain period), including simple and didactic, instructional audio-visual materials, success stories and/or testimonials from people who have used mediation before).

- Conduct awareness-raising activities, trainings and seminars among attorneys, especially with the involvement of international experts. These activities may include seminars, roundtable discussions and trainings.

- Introduce/organize in universities educational programs and/or courses dedicated to mediation (probably together with arbitration within the framework of courses on ADR).

- Consider the possibility of conducting mediation in court buildings or the allocation of an area adjacent to them, or the provision of corresponding office space to the Mediators' SRO.

- Pending the Self-Regulatory Organization of Mediators achieving long-term financial stability, support its ongoing administrative costs and provide office space.

APPENDIX 1

WRITTEN QUESTIONNAIRE FOR LAWYERS

General information			
1.	Name of the organization		
2.	Sphere of activities		
3.	Name, surname and position of the representative		
4.	Contact details		
5.	The organization’s website and social media site		
6.	How often do you recommend Alternative Dispute Resolution (ADR) to the parties to a dispute?	☐ never	☐ a few times a year
		☐ a few times a month	☐ more often
6.1	In which cases would you recommend arbitration in Armenia?		
6.2	Are you aware of arbitration “success stories” in Armenia?	☐ YES	☐ NO

7.	If you were to recommend arbitration to your client, what considerations might affect the choice of the arbitration venue and arbitral institution?		
8.	Have you ever used arbitral institutions in Armenia?	☐ YES	☐ NO
8.1	If yes, than what is your assessment?		
8.2	If no, then why?		
9.	Is there a need to establish a new arbitral institution in Armenia?	☐ YES	☐ NO
9.1	Why?		
10.	Have you ever appointed an Armenian arbitrator/mediator?	☐ YES	☐ NO
10.1.	If yes, what considerations did you take into account when making that choice?		

10.2.	Where did you get information about Armenian arbitrators/ mediators?		
10.3.	If you have used the services of foreign arbitrators before, where did you get information about them?		
11	Are there any specific branches of the economy that are particularly inclined to use alternative dispute resolution/arbitration?	☐ YES	☐ NO
11.1.	If yes, which sectors are they?		
12.	Do you include mediation agreements in the contractual provisions for resolving disputes?	☐ YES	☐ NO
13.	Which customers agree with the arbitration/mediation provisions?		
14.	Which cases are most suitable for the application of arbitration/ mediation?		
15.	What do you think can be done to promote arbitration/mediation in Armenia?		

APPENDIX 2

QUESTIONNAIRE FOR ORAL INTERVIEWS

General information			
1.	Name of the organization		
2.	Sphere of activities		
3.	Name, surname and position of the representative		
4.	Contact details		
5.	The organization's website and social media site		
Legislative issues			
6.	Are there any legislative issues in the field of ADR?	☐ YES	☐ NO
6.1.	If yes, what are the issues?		
7.	Are there any legislative issues in the legal regulation of entering into arbitration/mediation agreements?	☐ YES	☐ NO
7.1.	If yes, what are the issues?		
8.	Are there any problems with the compliance of the international obligations undertaken by the Republic of Armenia?	☐ YES	☐ NO

8.1.	If yes, what are they?		
9.	Are there any issues regarding the legal regulation of the scope of disputes to be submitted to the arbitration examination?	☐ YES	☐ NO
9.1.	If yes, what are they?		
10.	Are there any issues related to the legislative regulation of measures to secure the claim and preliminary orders?	☐ YES	☐ NO
10.1.	If yes, what are they?		
11.	Are there any issues in the regulation of appealing against the arbitral tribunal's decision?	☐ YES	☐ NO
11.1.	If yes, what are they?		
12.	Are there any issues in the regulation of the recognition and enforcement of the arbitral tribunal's decisions?	☐ YES	☐ NO
12.1.	If yes, what are they?		

13.	Are there any issues in the regulation of the recognition and enforcement of foreign arbitration decisions/arbitral awards?	☐ YES	☐ NO
13.1.	If yes, what are they?		
Awareness issues			
14.	Do you see any issues concerning awareness of alternative dispute resolution? What are they?		
15.	How often do you recommend Alternative Dispute Resolution (ADR) to the parties to a dispute?	☐ never	☐ a few times a year
		☐ a few times a month	☐ more often
16.	Do the parties to the dispute understand the essence of mediation and/or arbitration?	☐ yes, well	☐ yes, partially
		☐ yes, but badly	☐ no
16.1.	Concerning which particular issues is their awareness insufficient?		
17.	How do you spread information about ADR mechanisms and their availability?		
18.	What issues do you see as regards trust towards ADR mechanisms?		

19.	What steps need to be taken to build trust in ADR mechanisms?		
The qualification and selection of arbitrators/mediators			
20.	Have you ever conducted mediation? How often do you get cases?	☐ never	☐ a few times a year
		☐ a few times a month	☐ more often
20.1.	If yes, how often?		
21.	Have you ever been an arbitrator?	☐ never	☐ a few times a year
		☐ a few times a month	☐ more often
21.1.	If yes, how often?		
22.	What issues do you see concerning the qualification of mediators?		
23.	What steps need to be taken to improve the qualification of mediators?		
24.	What issues do you see in the selection of arbitrators/mediators?		

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ՀԱՄԱՌՈՏԱԳԻՐ

ՀՀ օրենսդրության վերլուծությունը թույլ է տալիս եզրակացնել, որ արբիտրաժի ոլորտում օրենսդրական դաշտը համապատասխանեցված է ՀՀ միջազգային պայմանագրերին ու հիմնականում համահունչ է այս ոլորտում միջազգային լավագույն փորձին: Հայաստանում արբիտրաժի զարգացման հետ կապված խնդիրները պայմանավորված են ոչ այնքան օրենսդրական, որքան գործնական խնդիրներով:

Թերևս առավել էական խնդիրը վերաբերում է արբիտրաժային համաձայնություն պարունակող պայմանագրերի վավերության վիճարկման հարցում ՀՀ դատարանների որդեգրած մոտեցումը, ըստ որի գործարքն անվավեր ճանաչելու վերաբերյալ պահանջների քննությունը վերապահված է բացառապես դատարանին:

Հայաստանում մեծ խնդիր է արբիտրների շահերի բախման բացահայտման մեխանիզմների, չափանիշների և ուղեցույցների բացակայությունը: Թեև, օրենքի համաձայն, յուրաքանչյուր հաստատություն պետք է ունենա արբիտրների վարքագծի իր կանոնները, այդուհանդերձ, ՀՀ-ի նման փոքր շուկայում, որտեղ մեծ է հավանականությունը, որ գործը քննող արբիտրը և կողմի ներկայացուցիչը կունենան շահերի բախում, անհրաժեշտ են ավելի խիստ և օրենսդրական մակարդակի լուծումներ:

Անհրաժեշտ է աշխատանք տանել դատավորների հետ (վերապատրաստումների, կլոր սեղանների և նման այլ գործիքների կիրառմամբ), որպեսզի վերջիններս խուսափեն դիմումի քննության շրջանակում այնպիսի հարցերի ուսումնասիրությունից, որոնք դուրս են Արբիտրաժի մասին օրենքով սահմանված՝ արբիտրաժի վճռի՝ դատարանի կողմից չեղյալ ճանաչվելու հիմքերի շրջանակից:

Հաշտարարության գործընթացի կարգավորումը ՀՀ-ում իրականացվում է 2018 թ. ընդունված «Հաշտարարության մասին» ՀՀ օրենքով և նույն թվականին ընդունված ՀՀ քաղաքացիական դատավարության օրենսգրքով: Թեև երկու իրավական ակտերն էլ պարունակում են կարևոր կարգավորումներ, այդուհանդերձ, հաշտարարության ոլորտում առկա են օրենսդրական ու իրավակիրառ պրակտիկայի մի շարք էական խնդիրներ, որոնք կարող են զգալի խոչընդոտ լինել Հայաստանում հաշտարարության ինստիտուտի զարգացման համար:

Օրենսդրությունը բավականաչափ հստակ չի կարգավորում հաշտարարության արդյունքում կնքված համաձայնության հարկադիր կատարման հետ կապված խնդիրները:

Արտոնագրված հաշտարարների ռեեստրը տեղադրված է Արդարադատության նախարարության կայքում, սակայն նրանց ծանրաբեռնվածության և մասնագիտացվածության հաշվառման կարգ մինչ օրս սահմանված չէ: Չկան հստակ ընթացակարգեր, թե դատավորն ինչպես է ընտրում և նշանակում հաշտարարին:

Հաշտարարների ինքնակարգավորվող կազմակերպությանը անհրաժեշտ է աջակցություն վերապատրաստումների կազմակերպման հարցում, այդ թվում՝ միջազգային փորձ ունեցող մասնագետների ներգրավմամբ:

ABSTRACT

The analysis of the RA legislation allows us to conclude that the legislative field in the field of arbitration is in accordance with the international agreements of the Republic of Armenia and is largely in line with the best international experience in this field.

Most of the surveyed specialists are of the opinion that the problems related to the development of arbitration in Armenia arise not so much from the legislative as from practical problems.

It appears that the most significant issue concerns the approach taken by the RA courts in challenging the validity of arbitration agreements, namely that the examination of claims to declare an agreement invalid is exclusively under the court's jurisdiction.

The lack of mechanisms, criteria and guidelines for revealing the conflict of interests of arbitrators is a big problem in Armenia. Although, according to the law, each institution must have its own rules of conduct for arbitrators, in a small market like Armenia, where there is a high probability that the arbitrator examining the case and the party's representative will have a conflict of interest, more stringent and legislative solutions are needed.

It is necessary to work with judges (using trainings, round table discussions and other similar tools), so that they will avoid, within the scope of the application review, to examine the issues which are outside the scope of the Court's grounds for annulment of the arbitration award according to the Arbitration Law.

Regulation of the mediation process in Armenia is governed by the 2018 RA Law on "Mediation" and the RA Civil Procedure Code of the same year. Although both legal acts contain important

provisions, there are a number of significant legal and practical issues in the field of mediation which can be a significant obstacle to the development of the institute of mediation in Armenia.

The legislation does not clearly regulate the issues related to the compulsory execution of the agreement concluded as a result of mediation.

The register of licensed mediators is posted on the website of the Ministry of Justice, but the procedure for registering their workload and specialization has not been established yet. There are no clear procedures for how a judge selects and appoints a mediator.

The self-regulatory organization of mediators needs support in organizing trainings, including the involvement of specialists with international experience.

«ԵՀՀ համալսարան» խորագրի ներքո պատրաստված այլ հրապարակումներ

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Ուսումնասիրությունը հայերեն հրատարակություն է, որը կատարել է «Հել-սինկյան ասոցիացիա» հասարակական կազմակերպությունը Եվրասիա համագործակցություն հիմնադրամի և «Իրավունքի ուժ» հասարակական կազմակերպության հետ համագործակցությամբ իրականացվող «Աջակցություն դատաիրավական բարեփոխումներին» ծրագրի շրջանակում: Ուսումնասիրության բովանդակությունը և արտահայտված տեսակետները միմիայն «Հելսինկյան ասոցիացիա» հասարակական կազմակերպությանն են և կարող են չհամընկնել Եվրասիա համագործակցություն հիմնադրամի կամ «Իրավունքի ուժ» հասարակական կազմակերպության տեսակետներին:

ՀՀ-ում վեճերի այլընտրանքային լուծման ոլորտի վերաբերյալ հետազոտություն

Հետազոտության հեղինակներ՝ Ա. Խզմալյան, Հ. Մալխասյան, Հ. Մովսեսյան

Եվրասիա համագործակցություն հիմնադրամ, 2020, 92 էջ

Սույն հրատարակությունը մաս է կազմում «ԵՀՀ համալսարան» խորագրի ներքո իրապարակվող ձեռնարկների շարքի՝ **«Քաղաքացիական հասարակություն» (ՔՀ)** թեմայով: Շարքն ընդգրկում է զրույցներ չորս ծավալուն թեմաների վերաբերյալ.

Քննադատական մտածողություն (ՔՄ)

Պատերազմ և խաղաղություն (ՊԽ)

Քաղաքացիական հասարակություն (ՔՀ)

Կրթություն, պատմության մեթոդաբանություն, մշակույթ և արժեքներ (ԿՊՄՄԱ)

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