https://doi.org/10.31489/2024L4/113-122 Received: 12 August 2024 | Accepted: 25 September 2024

UDC 347.9(574+73)

Sh.T. Baikenzhina[1*], E. Juchnevicius[2].

[1]*Karaganda Buketov University, Karaganda, Kazakhstan;*
[2]*University of Gdansk, Gdansk, Poland*
(**E-mail: baikenzhina89@mail.ru)*

[1]*ORCID ID: 0009-0004-5773-9217*
Scopus ID: 57216963887, [2]*ORCID ID: 0000–0001–7390–4885*

Alternative ways of resolving corporate disputes in the Republic of Kazakhstan and in the USA. Comparative analysis

The article provides a comparative analysis of the tools of alternative ways of resolving corporate disputes (ADR) in the Republic of Kazakhstan and the USA. The purpose of this study is to identify key differences and similarities in the approaches of the two countries to the use of mediation, arbitration and other ADR mechanisms in the corporate sphere. In this regard, legislative sources, mechanisms and practices of ADR application in both jurisdictions were studied. The main methods considered in the study include an empirical comparison of mediation and arbitration, with an emphasis on the specifics of their regulation and implementation in each country. The results of the study allow us to conclude that the ADR system in the United States is deeply integrated into corporate processes and is widely used to resolve corporate disputes. In Kazakhstan, on the contrary, ADR in the corporate segment is not developing as dynamically as in the States. However, it is successfully advancing through government initiatives and the introduction of international standards. The main conclusions of the study can emphasize the importance of government support and increasing confidence in ADR in Kazakhstan, as well as the success of long-term application of these methods in the United States. A comparative analysis in the study showed that Kazakhstan can extract positive aspects from the American experience to further improve its system of alternative corporate dispute resolution.

Keywords: corporate dispute, alternative method, out-of-court procedure, arbitration, mediation, negotiations, mediation, court, judgment, agreement, business, civil case.

Introduction

The latest trends in the development of corporate legislation in the Republic of Kazakhstan are aimed at strengthening the stability of the listening state, civil society and increasing the attractiveness of the domestic economy as an object of attraction for private domestic and foreign investments. Consequently, any foreign element in the long term tries to implement its culture and customs, including legal ones, into a new environment. In this regard, the dynamics of the growth of corporate disputes, as well as the risk of their occurrence, is becoming a noticeable phenomenon in the Republic of Kazakhstan. For the first time, only in 2015, norms regarding the resolution of corporate disputes were introduced into the Civil Procedure Code of the Republic of Kazakhstan. The legal definition of the term "corporate dispute" is fixed at the legislative level. These innovations are not accidental.

However, as of today, the law enforcement practice for resolving corporate disputes in the light of recent changes to the Civil Procedure Code of the Republic of Kazakhstan has not yet developed, questions regarding the consequences of the application of the procedural law still arise, the concept of corporate dispute itself is also a novelty in Kazakh legislation.

If we turn to the Civil Procedure Code of the Republic of Kazakhstan (hereinafter referred to as the CPC of the Republic of Kazakhstan), in part 1 of Article 27 we will see the legislative definition of "corporate dispute", which reads:

However, corporate disputes can be regulated not only in court. The popularity of alternative ways to resolve corporate disputes is growing every year. Alternative dispute resolution methods involve out-of-court dispute resolution methods. In the Republic of Kazakhstan, the following main types of alternative ways of resolving corporate disputes can be distinguished:

1) Negotiations;

2) Mediation or intercession;

* Corresponding author. E-mail: *baikenzhina89@mail.ru*

3) Arbitration.

Some Kazakhstani civil lawyers distinguish reconciliation and mini-proceedings as separate types of alternative ways to resolve corporate disputes. Nevertheless, we tend to classify the reconciliation procedure as negotiations, and the mini-trial procedure as mediation or intercession.

Kazakhstan is actively studying the foreign experience of developed countries on reconciliation and alternative dispute resolution methods. For example, in an article entitled "The experience of foreign countries in conciliating the parties to a civil dispute: using the example of European countries", authored by A.B. Shaimenova, the experience of such European countries as Great Britain, France, Spain, Germany and Poland was studied [1]. In turn, we will attempt to analyze the Kazakh and American alternative approaches to corporate dispute resolution.

Methods and materials

A comparative analysis of alternative ways of resolving corporate disputes in the Republic of Kazakhstan and the United States used a comparative legal research method. This study is based on an analysis of the civil jurisdiction of Kazakhstan and the United States in the corporate sector. Case materials from judicial practice were also used. Based on the analysis of judicial practice on corporate disputes, the authors have allowed options for resolving these disputes through alternative settlement. The regulatory framework governing the resolution of corporate disputes in the Republic of Kazakhstan and the United States has been studied. A comparative analysis of the legislation of the two countries allowed us to take a deeper look at the various legal subtleties of alternative ways of resolving corporate disputes.

Discussion

In Kazakhstan, the bulk of civil law disputes, including corporate ones, are resolved through negotiations. It should be noted that Kazakhstani entrepreneurs tend to use conciliation procedures more often. So, the usual clause for our contracts was that in case of disagreement, the parties would try to settle it through negotiations. However, most often this reservation is of a formal nature. In reality, neither the parties to the dispute nor their representatives (lawyers) are ready for qualified negotiations. Traditionally, when a dispute arises, they turn to justice for protection, which is much more expensive, meaning time, money, and emotional stress.

In judicial practice, there are also cases when, in corporate disputes, a mediation agreement is concluded after a decision of the court of first instance. We would like to share a similar case considered in the city of Karaganda.

In 2015, the State judicial system of Kazakhstan resolved 99 % of civil law conflicts in society. This state of affairs is a monopoly on justice [2]. To date, the situation has not changed much. If the settlement of disputes between individuals in court is a completely understandable phenomenon, since society still perceives the court as the only instrument of justice, then corporate disputes should be resolved by more modern methods. To date, the legislation of Kazakhstan regulates several tools for alternative resolution of corporate disputes. The competent and conscientious application of such methods can lead to a more effective result and satisfy all parties to a corporate dispute.

The plaintiff, a non-profit joint-stock company, appealed to the Specialized Interdistrict Economic Court of the Karaganda region with requirements for the defendant to replace goods of inadequate quality within the framework of the guarantee obligation. By the decision of the specialized interdistrict economic Court of the Karaganda region, the plaintiff's claims were denied in full. Disagreeing with the decision of the court of first instance, the plaintiff appealed this decision. In the appeal, the plaintiff requests that the decision of the court of first instance be reversed and a new decision be made to satisfy the plaintiff's claims in full, referring to arguments similar to those indicated in the statement of claim and given in court at the court session. During the consideration of the appeal stage, the parties appealed to the court of appeal with an application for approval of the terms of the mediation agreement and the termination of proceedings in the case, since they reached agreement on the settlement of the dispute in this civil case. Judicial Board, after listening to the opinion of the parties who asked to approve the agreement on the settlement of the dispute by a mediation agreement, checking the content of this Agreement, the conclusion of the prosecutor, considered that the agreement was subject to approval, since its terms did not contradict the law, did not violate the rights and legitimate interests of third parties and terminated the proceedings in this case.

According to paragraph 4) of Article 424 of the CPC of the Republic of Kazakhstan, the decision of the court of first instance is subject to cancellation with termination of proceedings on the grounds provided for

in paragraph 5) of Article 277 of the CPC of the Republic of Kazakhstan. The parties concluded a settlement (mediation) the agreement and it was approved by the court [3].

The comparative analysis was conducted not in order to identify which country uses alternative ways of resolving corporate disputes better or worse, but in order to draw a parallel between two countries with different legal systems and consider the possibility of mutual implementation. Given that Kazakhstan has experience in implementing the norms of common law in its jurisdiction, we believe that the comparative analysis will serve as a theoretical basis for further in-depth study of this issue.

Results

In Kazakhstan, the bulk of civil law disputes, including corporate ones, are resolved through negotiations. It should be noted that Kazakhstani entrepreneurs tend to use conciliation procedures more often. So, the usual clause for our contracts was that in case of disagreement, the parties would try to settle it through negotiations. However, most often this reservation is of a formal nature. In reality, neither the parties to the dispute nor their representatives (lawyers) are ready for qualified negotiations. Traditionally, when a dispute arises, they turn to justice for protection, which is much more expensive, meaning time, money, and emotional stress.

In judicial practice, there are also cases when, in corporate disputes, a mediation agreement is concluded after a decision of the court of first instance. We would like to share a similar case considered in the city of Karaganda.

The plaintiff, a non-profit joint-stock company, appealed to the Specialized Interdistrict Economic Court of the Karaganda region with requirements for the defendant to replace goods of inadequate quality within the framework of the guarantee obligation. By the decision of the specialized interdistrict economic Court of the Karaganda region, the plaintiff's claims were denied in full. Disagreeing with the decision of the court of first instance, the plaintiff appealed this decision. In the appeal, the plaintiff requests that the decision of the court of first instance be reversed and a new decision be made to satisfy the plaintiff's claims in full, referring to arguments similar to those indicated in the statement of claim and given in court at the court session. During the consideration of the appeal stage, the parties appealed to the court of appeal with an application for approval of the terms of the mediation agreement and the termination of proceedings in the case, since they reached agreement on the settlement of the dispute in this civil case. Judicial Board, after listening to the opinion of the parties who asked to approve the agreement on the settlement of the dispute by a mediation agreement, checking the content of this Agreement, the conclusion of the prosecutor, considered that the agreement was subject to approval, since its terms did not contradict the law, did not violate the rights and legitimate interests of third parties and terminated the proceedings in this case.

According to paragraph 4) of Article 424 of the CPC of the Republic of Kazakhstan, the decision of the court of first instance is subject to cancellation with termination of proceedings on the grounds provided for in paragraph 5) of Article 277 of the CPC of the Republic of Kazakhstan. The parties concluded a settlement (mediation) the agreement and it was approved by the court [3].

According to paragraph 1 of paragraphs 1-2) of Article 548 of the Tax Code of the Republic of Kazakhstan, the amount of the state fee paid is subject to refund to the plaintiff in the event of a mediation agreement [4].

Guided by paragraphs 4) of Article 424, paragraph 6) of Article 277, part 1 of Article 180 of the CPC of the Republic of Kazakhstan, paragraph 1 of paragraphs 1-2) of Article 548 of the Tax Code of the Republic of Kazakhstan, the appeals board for civil Cases determined: The decision of the specialized interdistrict economic court of the Karaganda region in this case should be canceled. To approve a written voluntary and equal settlement agreement on the settlement of the corporate dispute on the following conditions: The defendant undertakes, within the framework of the warranty obligation, to replace the goods of inadequate quality, in strict accordance with the technical specification. The delivery dates must be agreed with the plaintiff in advance. The plaintiff considers that he has fulfilled his obligations from the moment the parties sign the act of acceptance and transfer of the goods and the consignment note.

Based on the results of the analysis of this corporate dispute, one conclusion can be drawn. The Court of First Instance did not make enough efforts to resolve this corporate dispute through mediation. It ruled in favor of the defendant. If the plaintiff had not appealed this decision through the appeals board, he would have been left in a procedural loss. It is important to note the efforts of the appeals board, which helped the

parties reach a common consensus and helped resolve this dispute through mediation. The decision of the court of first instance has been overturned. Accordingly, thanks to the highly professional board of appeal, which helped to come to an amicable agreement, none of the parties is considered a loser or a winner.

Using the example of this case, we want to raise the importance of the role of the judge of the first instance in resolving corporate disputes by alternative means. The judge of the first instance must make all his professional and procedural efforts to resolve the corporate dispute. Because the result of resolving a corporate dispute should not be someone's gain or loss, but a solution adjusted for both sides. In this example, we have depersonalized the parties, the judge and the appeals board. However, on the platform of the Judicial Cabinet of the Republic of Kazakhstan https://office.sud.kz / any authorized user can find similar cases on corporate disputes [5].

The following corporate dispute, which we would like to describe, has also reached the court of appeal. This civil case was considered in 2023 by the judicial board for civil cases of the Almaty City Court. The plaintiff of the corporate dispute, Bite Product LLP, filed a claim against the defendants GALANZ bottlers JSC and ADAL SU LLP. The main claim of the plaintiff was to declare illegal an internal local act, namely an order. This order restricted the access of employees of Bite Product LLP to the territory leased by the plaintiff. The plaintiff's statements indicated that the order restricting access to the territory prevented the plaintiff from fully carrying out his activities. By the decision of the court of first instance, the statement of claim was satisfied in full. The court recognized the actions of the defendants — GALANZ bottlers JSC and ADAL SU LLP as illegal, and also ordered to pay the costs of the state fee. Disagreeing with the verdict of the court of first instance, one of the defendants, that is, JSC GALANZ bottlers, files an appeal. In accordance with the arguments of GALANZ bottlers JSC, they have the right to restrict access in order to preserve and protect property and prevent other threats and risks. However, the appellate instance remained in solidarity with the decision of the court of first instance. The decision was left unchanged, thereby the appellate instance confirmed the validity of the plaintiff's primary claims, as well as the violation of their rights to unhindered and free access to the rented premises.

We believe that with the right approach of corporate lawyers on both sides, this dispute could be settled through mediation. Since such categories of cases, on access to rented premises, on the right to unhindered business activity, are suitable for constructive mediation. To begin with, during the negotiations, the parties could openly discuss the reason for issuing an order restricting access to the territory, then the plaintiff of Bite Product LLP could understand and analyze exactly what factors influenced such a decision by the defendants. A mediation process could help both sides agree on reasonable terms of access to the disputed territory. For example, the parties could set certain time limits, jointly purchase additional video surveillance cameras, agree on rules for visiting premises, and establish a watch, taking into account the interests of each of the parties.

In the case of settlement of this dispute by a mediation agreement, the parties could include such basic points as the definition and consolidation of rules of interaction in case of similar situations in the future. At the same time, the resolution of this corporate dispute through mediation would save time and resources, including financial ones. Also, the plaintiff of Bite Product LLP would have avoided losses, and the defendants would have defended their interests without losing in court.

The United States of America (hereinafter referred to as the USA) can be confidently called one of the founders of the Institute of modern corporate law. It should be noted that in addition to regulating disputes between legal entities, this branch of jurisprudence regulates legal relations related to the securities market.

In the United States, corporate disputes are most common in commercial law. It should be noted that in most cases, these disputes are resolved out of court. The out-of-court procedure is a less formal procedure compared to the procedure for resolving corporate disputes in the courts. In turn, non-judicial methods make it possible to significantly relieve the judicial system, while resolving the corporate dispute that has arisen in a short time [6; 9].

U.S. Judge Elizabeth S. Stong of the Eastern District of New York in the article “Investor and Investment Dispute Resolution — some notes on the US experience and international experience with Economic and Commercial Courts” (2022) extensively reviewed the procedure for resolving investor and investment disputes based on US experience and international practice. Prior to her appointment as a judge, Ms. Stong actively prosecuted economic and commercial disputes, including investor and investment disputes, in federal and state courts, as well as in arbitration courts. Judge Elizabeth S. Stong notes that the focus is on the creation of specialized judicial units to handle commercial cases, such as the Commercial Division in New York, as well as the role of federal courts and diverse jurisdictions. The U.S. judicial system also has special-

ized courts for complex financial and commercial disputes. At the same time, the same courts consider alternative dispute resolution procedures, such as mediation, and emphasize the importance of specialization of judges and staff [7; 4].

Corporate disputes in the United States are regulated comprehensively. The package of measures includes such mechanisms as the activities of the legislator to improve corporate law; judicial procedures for resolving corporate disputes; the activities of state administrative bodies to identify and investigate violations of corporate legislation; the activities of self-regulatory organizations; the use of alternative dispute resolution procedures; the formation of public opinion [8; 132]. Consequently, in addition to alternative methods of resolving corporate disputes, government administrative bodies are also authorized to resolve them in the United States. The decisions taken by these bodies are quasi-official in nature.

Arbitration and mediation, familiar to Kazakhstani legislation, are the main alternative tools for resolving corporate disputes in the United States. Arbitration proceedings in the USA have a number of advantages, such as:

• High speed of corporate dispute resolution;

• No need to use complex regulatory rules and standards about evidence;

• Accessibility of the process in the price aspect;

• The opportunity to choose the optimal composition of the court, which will allow the most effective and objective consideration of the case;

• Informal atmosphere of the hearings on the dispute;

• There is no mandatory need for the participation of representatives of the parties" [9].

For example, New York has a Code of Arbitration Proceedings. However, there are elements of general legal proceedings in the arbitration of cases. For example, witnesses to a corporate dispute must take an oath before testifying. Before signing an arbitration clause, the parties to a corporate dispute must understand the consequences of considering the case in an arbitration court. For clarity, we want to give a practical example. The arbitration at the New York Stock Exchange consists of a director and 7 lawyers. As a result, the judges are selected by the parties to the dispute from the proposed list, which includes brokers and other competent specialists in the past who can boast of extensive practical experience in the field of corporate governance. It is noteworthy that there are cases when they are not even lawyers. The procedure for reviewing cases in arbitration in the United States takes place most often at a round table.

There is no uniform legal definition of the term mediation in the United States. Moreover, it has become both more and less widespread in various regions. It is noteworthy that New York belongs to the latter, that is, less widespread. For a clearer understanding of this institution of mediation, you can use Article 2(1) of the Uniform Law on Mediation. According to the specified normative act, mediation is "a process where the mediator provides comprehensive assistance in communication, as well as negotiations between the parties to the dispute to reach a voluntary agreement regarding their conflict" [10].

Thus, a comparative analysis of alternative ways of resolving corporate disputes in the Republic of Kazakhstan and the United States is based on several key aspects: legislative framework, mechanisms and practice of application. Let's take a look at these aspects in more detail.

In Kazakhstan, Alternative Dispute Resolution (ADR) is regulated by the Law on Mediation (2011) and the Law on Arbitration (2016). These laws regulate the basic forms of ADR. Mediation and arbitration are used in corporate disputes related to small and medium-sized businesses. At the same time, the Astana International Arbitration Center (IAC) and the Astana International Financial Center (AIFC) play an important role in the development of ADR.

In the USA, the ADR system is significantly developed. Legal institutions such as mediation, arbitration and judicial mediation (settlement conferences) can be distinguished. The legislative sources for these processes may vary from state to state, but in general, the basis for arbitration in the United States is the Federal Arbitration Act (1925). It is important to note that arbitral awards are legally binding, and in the case of corporate disputes, such processes often become a standard (precedent) for resolving issues between companies, investors and shareholders. If we talk about mediation in the United States, it is used at almost all levels of corporate disputes, from conflicts between shareholders to more complex disputes involving large corporations and international partners. In some states, mediation is mandatory at the stages of the trial. An important feature of mediation in the USA is the participation of professional mediators who have deep knowledge of law and business.

In Kazakhstan, mediation and arbitration continue to gain popularity in legal circles, but there is still a need to increase confidence in these dispute resolution methods among the corporate sector. The Govern-

ment of Kazakhstan is actively working to create favorable conditions for the use of ADR tools, including raising awareness among entrepreneurs and lawyers about the benefits of alternative conflict resolution methods.

In the USA, ADR has long been a standard practice in the corporate environment (since 1925). Moreover, the inclusion of arbitration clauses in corporate contracts has become a common practice. The main reasons for the popularity of ADR in the United States is the ability to avoid lengthy court procedures and maintain confidentiality. It is also important to note the corporate culture in the United States, which respects the resolution of disputes out of court, so as not to damage the reputation of companies. American courts actively support ADR and often require out-of-court procedures before the trial begins. This reduces the burden on the judicial system and helps to resolve disputes faster.

Comparing alternative ways of resolving corporate disputes in Kazakhstan and the United States, it is undoubtedly necessary to take into account the following distinctive factors:

1. Different legal systems. If the USA is a primordial precedent country of the Anglo-Saxon legal system, the source of which is common law, then Kazakhstan belongs to the Romano-German system of law.

2. The history of the formation of corporate law. In the USA, corporate law as a separate institution of civil law arose and was formed much earlier than in Kazakhstan. This, in turn, is of great importance in the formation of alternative ways to resolve corporate disputes.

3. The state structure. The United States is a federal republic that consists of 50 states. There are certain peculiarities in the jurisdiction of each state. Even the procedure for resolving corporate disputes may differ from one state to another. Whereas, according to the Constitution, the Republic of Kazakhstan is a unitary state.

Of course, these factors may raise a logical question: then what is the point of comparing the approaches of alternative ways of resolving corporate disputes in two completely different countries? The following logical answers can be given to this question.

Firstly, in Kazakhstan, the possibilities of implementing some norms of the Anglo-Saxon legal system governing the resolution of corporate disputes are currently being very vigorously discussed. This is confirmed by the quite successful activities of the Astana International Financial Center and its court, operating on the principles of common law.

Secondly, both countries are democratic. The only difference is that the Republic of Kazakhstan is a much younger country compared to the United States.

And finally, both the United States and Kazakhstan are supporters of the dynamic development of alternative ways to resolve corporate disputes. A vivid confirmation of this is the fact that it was in the USA that the institute of mediation first appeared exactly in the understanding that we introduced it into the legislation of Kazakhstan.

However, even in the United States, there are corporate disputes that could not be resolved out of court. One of the most high-profile examples of a protracted corporate dispute in the United States is the multi-year litigation between commercial giants such as Apple and Epic Games. We believe that these companies do not need to be presented. This corporate dispute began in 2020 and continues to this day. The plaintiff is Epic Games, which is the developer of the Fortnite game. Epic Games' main claim is that Apple charges a 30 % commission on every online purchase on the App Store platform. In order to circumvent the commission, Epic Games is introducing an alternative payment system for users. Apple's response was not long in coming. They immediately removed the Fortnite game from the App Store platform. The main argument of Epic Games in the trials was that they accused Apple of unfair monopolistic behavior. According to Epic Games:

1) Apple maliciously uses its dominant position on marketplaces;

2) Aggressively targets and imposes unfavorable conditions on mobile app developers;

3) Suppresses competition.

In relation to this corporate dispute, the judge comes to the following decision (September 2021):

1. Apple was not recognized as a monopolist.

2. Apple should allow mobile app developers to allow alternative payment systems and include links to alternative payment systems.

However, both Apple and Epic Games, having disagreed with the decision of the court of first instance, file an appeal. For the Apple giant, this dispute is of great importance, since further rules of operation, including the procedure for charging a commission on the App Store marketplace, depend on the outcome of this case. As a result, Apple may lose significant revenue from purchases of online products, including gaming applications. This corporate dispute is of great importance in general for the digital content industry and

online stores, since the final outcome of this dispute may form the basis of an American precedent and in the future regulate legal relations between owners of online platforms and developers of mobile applications [10].

Another high-profile, protracted and expensive dispute in the history of the corporate world can be called litigation between two mobile giants Apple and Samsung. The dispute between the main tech companies has become an occasion for discussion and observation not only by IT specialists, but also by corporate lawyers, lawyers, and ordinary fans of these companies. The essence of the dispute lies in patent violations and copyrights related to smartphone technology. We would like to immediately note the fact that the case was settled by a mediation agreement. The plaintiff, Apple, accused Samsung of violating copyrights, namely patents. According to Apple's arguments, the defendant uses the design and interface of Apple smartphones in bad faith. In turn, Samsung claimed a violation of its patent rights. A large-scale process between these two companies began in 2011. Apple has demanded damages for copyright infringement. The whole world was watching this large-scale corporate conflict. In the course of court proceedings, court decisions were rendered in favor of one side, then in favor of the other. According to the initial court decision, Apple was awarded more than $1 billion. However, by another decision, this amount was reduced. As a result, each side of the corporate dispute has incurred significant costs, of course, including reputational ones. After many years of litigation, appeals, and contesting compensation amounts, the parties came to a decision to settle this dispute through mediation. And only in 2018, Apple and Samsung reached a mediation agreement. Of course, the terms of this agreement remained confidential. But most importantly, both sides have renounced their claims against each other [11].

Based on the analysis of the American experience in resolving corporate disputes, the main key positive aspects of mediation can be identified. They are as follows:

1. Reduction of legal costs. In the USA, legal support in court is a very expensive service. Resolving a corporate dispute through mediation significantly reduces court costs.

2. Maintaining business relations between the parties. Any competitors, despite market competition, cooperate on cybersecurity and other production issues. Also, the settlement of a dispute through mediation can significantly increase trust in each other and reduce the intensity of the conflict.

3. Saving time. Meditation has enabled many U.S. companies to settle disputes faster, as opposed to lawsuits that have dragged on for several years.

We consider it is necessary to recall one of the most high-profile and protracted corporate disputes in the Republic of Kazakhstan. This dispute is also notable for the fact that it ended with the signing of a settlement agreement relatively recently: in July 2024. We are talking about a corporate dispute between the Government of Kazakhstan and Moldovan businessmen-investors Anatol Stati and Gabriel Stati. This corporate dispute lasted about 14 years. Among the people, this dispute even has its own name — “The Matter of the Stati”. The essence of the dispute is as follows: in 2010, the Kazakh side accused investors of violating tax legislation, namely, evasion, as well as violation of national conditions for the operation of oil fields. At that time, the subsoil users owned oil and gas assets. The initiators of the litigation were Anatol and Gabriel Stati, who lost control of oil and gas assets and began a protracted series of international arbitration proceedings. The main requirement of the Article is the payment of $500 million by the Kazakh side.

Another feature of this corporate dispute is the fact that it covers the jurisdiction of several countries. By the way, the businessmen themselves are Moldovan citizens, the dispute was considered by the Swedish arbitration court, the defendant's side is the Kazakh Government. In July 2024, the corporate dispute ended with the signing of a peace agreement. The terms of the agreement are non-public and remain confidential. The only known fact is that the terms of the settlement agreement received support from Tristan Oil's creditors. This company has previously participated in the development of Kazakhstan's oil fields. The settlement of this dispute by the international arbitration court and the conclusion of its settlement agreement, of course, strengthened the investment climate in Kazakhstan, as well as attracted the attention of large foreign investors.

However, the Stati themselves claim the opposite fact. To the media and the public, they declare their winnings in this lawsuit. The closed nature of the resolution of this corporate dispute allows the parties to maneuver when making public statements. But the fact remains indisputable that in Kazakhstan, both domestic and international corporate disputes have begun to be resolved by alternative methods, which naturally shows the positive practice of using such international institutions as arbitration and mediation.

Conclusions

Summing up the results of a comparative analysis of alternative ways of resolving corporate disputes in the Republic of Kazakhstan and the United States, we would like to note that both countries demonstrate the importance of such legal instruments as arbitration and mediation. At the same time, the United States has a more developed and complex ADR system, which is deeply integrated into corporate and legal structures and is practically inseparable. Kazakhstan, in turn, is at the stage of active implementation of these methods, especially through the AIFC platforms and other arbitration institutions, which makes ADR a promising direction for the country's corporate sector.

Based on the above, we have come to the following conclusions:

1) Consider the possibility of legislating the binding nature of arbitration clauses in the Republic of Kazakhstan, applying the practice of the United States.

2) To develop in the Republic of Kazakhstan a legislative procedure for the immediate execution of arbitral awards. This proposal can be implemented on the basis of enforcement proceedings by analogy with the norms of the Law of the Republic of Kazakhstan on enforcement proceedings and the status of bailiffs.

3) Create a pool of professional arbitrators specializing in corporate dispute resolution in the Republic of Kazakhstan. Professional arbitrators should first of all aim at the peaceful settlement of a corporate dispute by successfully applying alternative methods.

These proposals will allow for more active use of alternative ways of resolving corporate disputes, which in turn will generate a positive trend as a reduction in the burden on judges in the Republic of Kazakhstan, as well as an increase in the effectiveness of alternative ways of resolving corporate disputes.

References

1 Шайменова А.Б. Опыт зарубежных стран по примирению сторон гражданско-правового спора: на примере европейских стран / А.Б. Шайменова // Вестн. Караганд. ун-та. Сер. Право. — 2019. — 93. — № 1. — [Электронный ресурс]. — Режим доступа: https://law-vestnik.ksu.kz/index.php/law/article/view/33/20

2 Baikenzhina Sh.T. Mediation as a tool for the settlement of civil legal disputes / Sh.T. Baikenzhina, G.A. Il'yassova // Bulletin of the Karaganda University. Law Series. — 2015. — No 1(77). — P. 113-119. — [Electronic resource]. — Access mode: https://law-vestnik.ksu.kz/index.php/law/issue/view/22/22

3 Civil Procedure of the Republic of Kazakhstan. Unofficial translation. — [Electronic resource]. — Access mode: https://online.zakon.kz/lawyer?m=s#text=%D0 %B3 %D0 %BF%D0 %BA%20 %D1 %80 %D0 %BA&spos=1&tSuffix=1&swhere=3&baseId=1

4 Code of the Republic of Kazakhstan dated December 25, 2017 No. 120-VI "On taxes and other mandatory payments to the budget (Tax Code)". Unofficial translation. — [Electronic resource] — Access mode: https://online.zakon.kz/lawyer?m=s#text=%D0 %BD%D0 %B0 %D0 %BB%D0 %BE%D0 %B3 %D0 %BE%D0 %B2 %D1 %8B%D0 %B9 %20 %D0 %BA%D0 %BE%D0 %B4 %D0 %B5 %D0 %BA%D1 %81&spos=1&tSuffix=1&swhere=3&baseId=1

5 Судебный кабинет Республики Казахстан. — [Электронный ресурс]. — Режим доступа: https://office.sud.kz/

6 Альтернативные механизмы разрешения споров. Обзор зарубежного опыта. — Ташкент, 2017. — [Электронный ресурс]. — Режим доступа: https://www.undp.org/sites/g/files/zskgke326/files/migration/uz/un_uzb_Alternative_dispute_resolution_mechanisms_rus.pdf

7 Стонг Э. Разрешение споров, связанных с инвесторами и инвестициями. Некоторые заметки об опыте США и международном опыте работы с экономическими и коммерческими судами / Э. Стонг. — 2022. — [Электронный ресурс]. - Режим доступа: https://sud.kz/sites/default/files/pagefiles/razreshenie_sporov_svyazannyh_s_investorami_i_investiciyami_-_opyt_ssha.pdf

8 Андреева А.Р. Правовое регулирование корпоративных конфликтов в зарубежных странах (на примере Великобритании и США) / А.Р. Андреева. — [Электронный ресур]. — Режим доступа: https://cyberleninka.ru/article/n/pravovoe-regulirovanie-korporativnyh-konfliktov-v-zarubezhnyh-stranah-na-primere-velikobritanii-i-ssha.

9 USA Uniform Mediation Act. — [Electronic resource]. — Access mode: https://heinonline.org/HOL/LandingPage? handle=hein.journals/eznlwrw24&div=6&id=&page=

10 Summerfield R. Artificial intelligence for alternative dispute resolution / R. Summerfield. — [Electronic resource]. — Access mode: https://www.corporatedisputesmagazine.com/artificial-intelligence-for-alternative-dispute-resolution

11 Lee J. The Apple Patent Fight Between Apple and Samsung: Interviews with Korean and Korean-American Attorneys / J. Lee. — [Electronic resource]. — Access mode: https://www.law.uci.edu/centers/korea-law-center/news/klc-samsung-apple.pdf

Ш.Т. Байкенжина, Э. Юхневичус

Қазақстан Республикасы мен АҚШ-тағы корпоративтік дауларды шешудің баламалы тәсілдері: салыстырмалы талдау

Мақалада Қазақстан Республикасы мен АҚШ-тағы корпоративтік дауларды шешудің баламалы тәсілдерінің (ADR) құралдарына салыстырмалы талдау жүргізілді. Бұл зерттеудің мақсаты екі елдің медиацияны, төрелікті және корпоративтік саладағы басқа да ADR-тетіктерді қолдану тәсілдеріндегі негізгі айырмашылықтар мен ұқсастықтарды анықтау. Осыған байланысты екі юрисдикцияда да ADR қолданудың заңнамалық көздері, механизмдері мен тәжірибесі зерттелді. Зерттеуде қарастырылған негізгі әдіс ретінде медиация мен арбитражды эмпирикалық салыстыру қолданылды, оларды әр елде реттеу және енгізу ерекшеліктеріне баса назар аударылды. Зерттеу нәтижелері АҚШ-тағы ADR жүйесі корпоративтік процестерге терең енген және корпоративтік дауларды шешу үшін кеңінен қолданылады деген қорытынды жасауға мүмкіндік береді. Қазақстанда, керісінше, ADR корпоративтік сегментте онша серпінді екпін көрсетуде емес. Алайда, Үкіметтің бастамалары мен халықаралық стандарттарды енгізу арқылы оң өзгерістер көрсетуде. Зерттеудің негізгі қорытындылары Қазақстандағы ADR-ге мемлекеттік қолдау мен сенімділікті арттырудың маңыздылығын, сондай-ақ осы әдістерді АҚШ-та ұзақ мерзімді қолданудың табыстылығын атап өтуге болады. Зерттеудегі салыстырмалы талдау Қазақстанның корпоративтік дауларды баламалы шешу жүйесін одан әрі жетілдіру үшін американдық тәжірибеден оң аспектілерді ала алатынын көрсетті.

Кілт сөздер: корпоративтік дау, балама әдіс, соттан тыс тәртіп, төрелік, медиация, келіссөз, сот, шешім, келісім, бизнес, азаматтық іс.

Ш.Т. Байкенжина, Э. Юхневичус

Альтернативные способы разрешения корпоративных споров в Республике Казахстан и США: сравнительный анализ

В статье проведен сравнительный анализ инструментов альтернативных способов разрешения корпоративных споров (ADR) в Республике Казахстан и США. Цель данного исследования — выявление ключевых различий и сходства в подходах двух стран к применению медиации, арбитража и других ADR-механизмов в корпоративной сфере. В этой связи были изучены законодательные источники, механизмы и практика применения ADR в обеих юрисдикциях. Использовалось эмпирическое сравнение медиации и арбитража, с акцентом на особенности их регулирования и внедрения в каждой стране. Результаты исследования позволяют сделать вывод, что система ADR в США глубоко интегрирована в корпоративные процессы и широко применяется для разрешения корпоративных споров. В Казахстане, напротив, ADR в корпоративном сегменте развивается не так динамично. Однако успешно продвигается через правительственные инициативы и внедрение международных стандартов. В качестве основных выводов в исследовании можно отметить важность государственной поддержки и повышения доверия к ADR в Казахстане, а также успешность долгосрочного использования этих методов в США. Авторами отмечено, что Казахстан может извлечь положительные аспекты из американского опыта для дальнейшего совершенствования своей системы альтернативного разрешения корпоративных споров.

Ключевые слова: корпоративный спор, альтернативный метод, внесудебный порядок, арбитраж, медиация, переговоры, посредничество, суд, судебное решение, соглашение, бизнес, гражданское дело.

References

1 Shaimenova, A.B. (2019). Opyt zarubezhnykh stran po primireniiu storon grazhdansko-pravovogo spora: na primere evropeiskikh stran [The experience of foreign countries in conciliation of the parties to a civil dispute: using the example of European countries]. *Vestnik Karagandinskogo Universiteta. Seriia Pravo — Bulletin of Karaganda University. Series Law*, 93(1). Retrieved from https://law-vestnik.ksu.kz/index.php/law/article/view/33/20 [in Russian].

2 Baikenzhina, Sh.T., & Ilyassova, G.A. (2015). Mediation as a tool for the settlement of civil legal disputes. *Bulletin of Karaganda University. Series Law*, 1(77), 113–119. Retrieved from https://law-vestnik.ksu.kz/index.php/law/issue/view/22/22

3 Civil Procedure of the Republic of Kazakhstan. Unofficial translation. Retrieved from https://online.zakon.kz/lawyer?m=s#text=%D0 %B3 %D0 %BF%D0 %BA%20 %D1 %80 %D0 %BA&spos=1&tSuffix=1&swhere=3&baseId=1

4 Code of the Republic of Kazakhstan dated December 25, 2017 No. 120-VI “On taxes and other mandatory payments to the budget (Tax Code)”. Unofficial translation. Retrieved from https://online.zakon.kz/lawyer?

m=s#text=%D0 %BD%D0 %B0 %D0 %BB%D0 %BE%D0 %B3 %D0 %BE%D0 %B2 %D1 %8B%D0 %B9 %20 %D0 %BA%D0 %BE%D0 %B4 %D0 %B5 %D0 %BA%D1 %81&spos=1&tSuffix=1&swhere=3&baseId=1

5 Sudebnyi kabinet Respubliki Kazakhstan [Judicial office of the Republic of Kazakhstan]. Retrieved from https://office.sud.kz/ [in Russian].

6 (2017). Alternativnye mekhanizmy razresheniia sporov. Obzor zarubezhnogo opyta [Alternative dispute resolution mechanisms. Review of foreign experience]. Tashkent. Retrieved from https://www.undp.org/sites/g/files/zskgke326/files/migration/uz/un_uzb_Alternative_dispute_resolution_mechanisms_rus.pdf [in Russian].

7 Stong, E. (2022). Razreshenie sporov, sviazannykh s investorami i investitsiiami. Nekotorye zametki ob opyte SShA i mezhdunarodnom opyte raboty s ekonomicheskimi i kommercheskimi sudami [Investor and Investment Dispute Resolution: Some Notes on U.S. and International Experience with Economic and Commercial Courts]. Retrieved from https://sud.kz/sites/default/files/pagefiles/razreshenie_sporov_svyazannyh_s_investorami_i_investiciyami_-_opyt_ssha.pdf [in Russian].

8 Andreeva, A.R. Pravovoe regulirovanie korporativnykh konfliktov v zarubezhnykh stranakh (na primere Velikobritanii i SShA) [Legal regulation of corporate conflicts in foreign countries (on the example of Great Britain and the USA)]. Retrieved from https://cyberleninka.ru/article/n/pravovoe-regulirovanie-korporativnyh-konfliktov-v-zarubezhnyh-stranah-na-primere-velikobritanii-i-ssha [in Russian].

9 USA Uniform Mediation Act. Retrieved from https://heinonline.org/HOL/LandingPage? handle=hein.journals/eznlwrw24&div=6&id=&page=

10 Summerfield, R. Artificial intelligence for alternative dispute resolution. Retrieved from https://www.corporatedisputesmagazine.com/artificial-intelligence-for-alternative-dispute-resolution

11 Lee, J. The Apple Patent Fight Between Apple and Samsung: Interviews with Korean and Korean-American Attorneys. Retrieved from https://www.law.uci.edu/centers/korea-law-center/news/klc-samsung-apple.pdf

Information about the authors

Baikenzhina Shiryn Takenovna — Master of juridical sciences, PhD student of the Department of Civil and Labor Law, Faculty of Law, Karaganda Buketov University, Karaganda, Kazakhstan; e-mail: baikenzhina89@mail.ru;

Juchnevicius, Edvardas Edvardovich — Doctor hab., International Cooperation Coordinator, University of Gdansk, Gdansk, Poland; e-mail: *ed.juchnevicius@gmail.com.*