



LEGAL ISSUES OF ARBITRATION AND CHALLENGING DECISIONS IN STATE COURTS IN UZBEKISTAN

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ABSTRACT	KEYWORDS
The article examines the issues of consideration of cases in arbitration courts, challenging the decision of the arbitration court in state courts. It is concluded that arbitration is an alternative method of dispute resolution, providing the parties with flexibility and expedited consideration of the case. However, the limitation of its competence and the possibility of challenging decisions in the economic court ensure a balance between the independence of arbitration courts and the right of the parties to protect their interests in the state judicial procedure.	Arbitration court, state court, jurisdiction, competence, agreement, invalidity.

Introduction

In the Republic of Uzbekistan, the Law “On Arbitration Courts” is in force, adopted on February 8, 2006¹. The arbitration court shall independently decide whether or not it has jurisdiction to consider a dispute referred to it for resolution, including in cases where one of the parties to the arbitration proceedings objects to the arbitration proceedings on the grounds of the absence or invalidity of the arbitration agreement. For this purpose, the arbitration agreement, drawn up as a clause in the contract, must be considered as independent of the other terms of the contract². The conclusion of the arbitral tribunal that the contract containing the clause is invalid does not entail by operation of law the invalidity of this clause.

In a permanent arbitration court, the place of arbitration proceedings shall be determined in accordance with the rules of the permanent arbitration court³.

¹ Узбекистан З. Р. О третейских судах //ЗРУ-64. – 2006. – Т. 16.

² Эсанова З. Н. ПРОИЗВОДСТВО ПО ДЕЛАМ, СВЯЗАННЫМ С РЕШЕНИЕМ ТРЕТЕЙСКОГО СУДА И ИСПОЛНЕНИЕ СУДЕБНЫХ ОПРЕДЕЛЕНИЙ ПО ДЕЛУ (ПРИ АНАЛИЗЕ ЗАКОНОДАТЕЛЬСТВА РЕСПУБЛИКИ УЗБЕКИСТАН) //ББК. – 2020. – Т. 72. – С. 399.

³ Абдумуталов П. А. ПЕРСПЕКТИВЫ РАЗВИТИЯ ТРЕТЕЙСКИХ СУДОВ В РЕСПУБЛИКЕ УЗБЕКИСТАН: НА ПРИМЕРЕ ЗАКОНОДАТЕЛЬСТВА ЗАРУБЕЖНЫХ СТРАН //Oriental renaissance: Innovative, educational, natural and social sciences. – 2022. – Т. 2. – №. 5-2. – С. 1024-1032.

In a temporary arbitration court, the place of arbitration proceedings is determined by agreement between the parties to the arbitration proceedings. In the absence of such agreement, the place of arbitration proceedings is determined by the arbitration court itself, based on the circumstances of the dispute.

Unless the parties to the arbitration proceedings have agreed otherwise, the arbitration proceedings are conducted in the state language.

The arbitration court may require the parties to the arbitration proceedings to translate documents and other materials into the language of the arbitration proceedings⁴.

A party to the arbitration proceedings submitting documents and other materials not in the language of the arbitration proceedings must ensure their translation.

The arbitrator shall not have the right to disclose information that became known to him during the arbitration proceedings without the consent of the parties to the arbitration proceedings or their legal successors⁵.

The arbitrator may not be questioned as a witness about information that became known to him during the arbitration proceedings. The plaintiff sets out his demands in a statement of claim, which is submitted to the arbitration court in writing. A copy of the statement of claim is sent to the defendant.

The statement of claim must indicate:

- the date of the statement of claim;
- the names and locations (postal addresses) of legal entities, last names, first names, patronymics, places of residence of individuals who are parties to the arbitration proceedings;
- the plaintiff's demands;
- the circumstances on which the plaintiff bases his demands;
- evidence confirming the grounds for the claims;
- the price of the claim;
- a list of documents attached to the statement of claim.

The statement of claim must be signed by the plaintiff or his representative. If the statement of claim is signed by the plaintiff's representative, a power of attorney or other document certifying the representative's authority must be attached to the statement of claim⁶.

The defendant has the right to submit to the plaintiff and to the arbitration court a response to the statement of claim, setting out his objections in it. The response to the statement of claim is submitted to the plaintiff and to the arbitration court in the manner and within the time limits stipulated by the rules of arbitration proceedings⁷.

The response to the statement of claim shall be signed by the defendant or his representative. A power of attorney or other document certifying his authority shall be attached to the response signed by the defendant's representative. If the arbitration rules do not specify the period for submitting a response to the statement of claim, then the said response shall be submitted before the beginning of the arbitration court hearing.

⁴ Ильда К. Арбитраж (третейский суд): история создания и правовая природа // Вестник Российского университета дружбы народов. Серия: Юридические науки. – 2018. – Т. 22. – №. 2. – С. 269-288.

⁵ Отахонов Ф. Организационно-правовые меры по развитию международного коммерческого арбитража в Узбекистане. С–1 // Режим доступа: <http://cisarbitration.com/2014/02/14/арбитраж-в-узбекистане>.—Дата доступа. – 2020. – Т. 22.

⁶ Отахонов Ф. Некоторые вопросы взаимодействия третейских судов с компетентными судами // in Library. – 2018. – Т. 18. – №. 1. – С. 50-61.

⁷ Хайрулина А., Хабибуллаев Д. Медиация как новый вид альтернативных способов разрешения споров в Узбекистане // Общество и инновации. – 2021. – Т. 2. – №. 3/5. – С. 494-501.

During the arbitration proceedings, the parties to the arbitration proceedings have the right to change their claims or objections to the claim.

Submission of evidence: Each party must submit evidence to support its claims and objections. If the evidence is insufficient, the arbitral tribunal may request additional⁸.

Service of documents. Unless otherwise agreed by the parties, copies of all documents submitted by one party shall be served on the other. Documents shall be deemed to have been received on the date of delivery.

Participation of the parties: Each party shall be given an equal opportunity to present its case. The court shall hear the case with the participation of the parties or their representatives. Notices of hearings shall be sent in advance. The proceedings are usually closed.

Minutes of the meeting: Minutes of the meeting are kept unless the parties agree otherwise.

Consequences of failure to submit documents: Failure to submit documents or failure to appear at the meeting does not stop the process if the reason is recognized by the court as invalid. The failure of the defendant to appear is not considered an admission of the claim. Choice of court and judges: The parties can choose the arbitration court and a specific judge, which allows them to trust the process and select a specialist depending on the situation⁹.

Flexibility and Speed: Arbitration offers flexibility in the location and timing of litigation, and faster dispute resolution than state courts.

Confidentiality: Arbitration proceedings are closed, protecting trade secrets and reducing the risk of external pressure.

Responsibility of Judges: Judges are paid based on the quality of their work and reputation, which motivates them to be impartial.

Lower Costs: Arbitration is generally less expensive and participants report that it is less prone to corruption.

Relationship Preservation: Arbitration helps parties find mutually beneficial solutions, which helps maintain normal business relationships.

A party to an arbitration may declare that the arbitral tribunal lacks jurisdiction to hear a dispute submitted to it before the arbitration commences on the merits of the dispute.

A party to arbitration proceedings has the right to claim that the arbitral tribunal has exceeded its jurisdiction if, during the arbitration proceedings, the subject of the arbitration proceedings becomes an issue whose consideration is not provided for by the arbitration agreement or which cannot be the subject of arbitration proceedings in accordance with the law or the rules of the permanent arbitration court¹⁰.

The arbitration court is obliged to consider the application of a party to the arbitration proceedings, filed in accordance with parts two and three of this article. Based on the results of the consideration of the application, a determination is made.

That is, if an issue is being considered that should not be discussed, the party may state that the court does not have the right to do so.

⁸ Кадирбаев А., Умарова К. ФОРМИРОВАНИЕ И РАЗВИТИЕ МЕЖДУНАРОДНО-КОММЕРЧЕСКИХ АРБИТРАЖЕЙ В РЕСПУБЛИКЕ УЗБЕКИСТАН.

⁹ Султонова С. Г. К. СРАВНИТЕЛЬНЫЙ АНАЛИЗ АЛЬТЕРНАТИВНЫХ СПОСОБОВ РАЗРЕШЕНИЯ СПОРОВ РЕСПУБЛИКИ УЗБЕКИСТАН С ЗАРУБЕЖНЫМИ СТРАНАМИ //Eurasian Journal of Law, Finance and Applied Sciences. – 2024. – Т. 4. – №. 5. – С. 256-257.

¹⁰ Ибратова Ф., Миркамилова М., Каршиева Ф. Значение, роль и сущность медиации в экономических спорах //International journal of professional science. – 2022. – №. 4. – С. 11-17.

The decision of the arbitration court on a dispute under the jurisdiction of the economic court may be challenged by a party to the arbitration proceedings by filing an application to cancel the decision of the arbitration court with the economic court within thirty days from the date of its receipt¹¹.

The decision of an arbitration court on a dispute within the jurisdiction of an economic court may also be challenged by persons not involved in the case, on whose rights and obligations the arbitration court made a decision.

Filing an application to set aside an arbitration court decision suspends proceedings to enforce the arbitration court decision until the economic court completes proceedings on the dispute¹².

The jurisdiction of cases by the arbitration court and its competence to consider a dispute consists of three component criteria that influence whether the arbitration court can or cannot consider the dispute that has arisen:

- subjects of the dispute (disputing parties);
- subject of the dispute (relationships from which the dispute arose);
- procedure for resolving the dispute agreed upon by the parties.

The disputing parties in the arbitration court may be legal entities, individual entrepreneurs and citizens, including foreigners. It follows that, in terms of subject composition, the arbitration court has jurisdiction over disputes considered by both economic courts and civil courts¹³.

It should be noted that the exceptions are state authorities (khokimiyats, the Cabinet of Ministers, etc.) and state administration bodies (ministries, departments, state committees, agencies, etc.), which cannot be a party to arbitration proceedings (part two of article 5 of the Law of the Republic of Uzbekistan "On Arbitration Courts"). Therefore, disputes involving such bodies cannot be referred to an arbitration court for resolution and are considered exclusively by state courts. However, joint-stock companies, banks, industry associations, despite the presence of state capital in their authorized capital, are independent subjects of legal relations, are not state authorities or administration bodies, and therefore can be a party to arbitration proceedings.

Arbitration courts resolve disputes arising from civil legal relations, including economic disputes arising between business entities. Here, arbitration courts also combine cases and disputes under the jurisdiction of both economic courts and civil courts¹⁴.

Despite the unification of the jurisdiction of economic courts and civil courts in arbitration courts, not all disputes considered by these state courts can be considered by an arbitration court. Thus, an arbitration court does not consider disputes arising from administrative, family and labor legal relations, as well as other disputes that, in accordance with the law, cannot be considered by an arbitration court¹⁵.

An application to set aside an arbitral award shall be filed in writing and signed by the party to the arbitration challenging the award or its representative.

¹¹ Есенбекова Ф. Т., Эсанова З. Н., Ибратова Ф. Б. Правовые особенности утверждения мирового соглашения экономическим судом в Узбекистане // НАУКА И СОВРЕМЕННОЕ ОБРАЗОВАНИЕ: АКТУАЛЬНЫЕ ВОПРОСЫ, ДОСТИЖЕНИЯ И ИННОВАЦИИ. – 2021. – С. 156-158.

¹² Ибратова Ф. Правовые вопросы медиация как альтернативный способ урегулирования споров // Слияние экономических и правовых идей: перспективы для инновационного роста. – 2023. – С. 5-14.

¹³ Ибратова Ф. Б. и др. СОСТАВ ДОКАЗАТЕЛЬСТВ, ЗАФИКСИРОВАННЫХ В СУДЕБНЫХ ДОКУМЕНТАХ // INNOVATIVE DEVELOPMENTS AND RESEARCH IN EDUCATION. – 2024. – Т. 3. – №. 28. – С. 281-286.

¹⁴ Babakulovna I. F., Abdurazzakovna T. T. Ibratova FB, Tashbaeva TA Mediation agreement on a labor dispute: theory and practice // Editorial team. – 2021. – Т. 2021. – С. 45.

¹⁵ Бабакуловна И. Ф., Ибратова Ф. Б., Еркебаева Ж. А. Медиация как альтернативный способ разрешения экономических споров.

An application to set aside an arbitral award shall indicate:

- 1) the name of the economic court to which the application is filed;
- 2) the name and composition of the arbitral tribunal that adopted the contested award, its location;
- 3) the names (last name, first name, patronymic) of the parties to the arbitration, their location (mailing address) or place of residence;
- 4) the date of the arbitral award;
- 5) the date of receipt of the contested arbitral award by the party filing an application to set aside the said award;
- 6) the demand to set aside the arbitral award and the grounds on which it is contested.

An application to set aside an arbitral award may indicate telephone numbers, fax numbers, an e-mail address and other information.

The following documents shall be attached to the application for cancellation of the arbitral award:

- 1) a certified copy of the arbitral award. A copy of the award of a permanent arbitral tribunal shall be certified by the chairman of this arbitral tribunal; the signature of the arbitrator on the copy of the award of the temporary arbitral tribunal shall be notarized;
- 2) a duly certified copy of the arbitration agreement;
- 3) documents submitted in support of the claim for cancellation of the arbitral award;
- 4) documents confirming payment of the state fee and postal expenses in the established manner and amount;
- 5) a document confirming the sending of a copy of the application for cancellation of the arbitral award and the documents attached thereto to the other party to the arbitration proceedings.

If the application for cancellation of the arbitral award is filed by a representative of a party to the arbitration proceedings, a power of attorney confirming his authority to sign the application shall be attached to the application¹⁶.

In case of non-compliance with the requirements provided for in parts one and two of Article 223 of the Economic Procedural Code of the Republic of Uzbekistan, the application for cancellation of the arbitral award shall be subject to refusal to accept in accordance with the rules provided for in Article 154 of the Economic Procedural Code of the Republic of Uzbekistan.

In case of non-compliance with the requirements provided for in part three of Article 37 of the Economic Procedural Code of the Republic of Uzbekistan, in parts one, two, four and five of this article, the application for cancellation of the arbitral award shall be returned to the applicant in accordance with the rules provided for in Article 155 of the Economic Procedural Code of the Republic of Uzbekistan.

An application to set aside an arbitration court decision is considered by a judge alone in accordance with the rules provided for in the Economic Procedural Code of the Republic of Uzbekistan¹⁷.

When preparing a case for trial, at the request of a party to the arbitration, the judge may request from the arbitration court the case materials, the decision on which is being contested in the economic court, in accordance with the rules provided for by this Code for requesting evidence. The parties to the arbitration shall be notified by the economic court of the time and place of the court hearing. The

¹⁶ Ибратова Ф. Б. Хозяйственно-процессуальное право. – 2011.

¹⁷ Feruza I., Sevinch M. Ibratova F., Mamadiyeva S. Mediation in economic proceedings in the Republic of Uzbekistan and in the Federal Republic of Germany //Editorial team. – 2021. – T. 2. – №. 1. – С. 132-138.

failure of the said persons, duly notified of the time and place of the court hearing, to appear shall not be an obstacle to the consideration of the case¹⁸.

When considering a case in a court session, the economic court establishes the presence or absence of grounds for the cancellation of the arbitration court decision, as provided for in Article 226 of the Economic Procedural Code of the Republic of Uzbekistan, by examining the evidence presented to the court in support of the stated claims and objections¹⁹.

When considering a case in a court session, the economic court does not have the right to examine the circumstances established by the arbitration court or to review the arbitration court's decision on the merits.

The arbitration court's decision is subject to cancellation by the economic court if the party to the arbitration proceedings that filed an application to cancel the arbitration court's decision provides evidence that:

- 1) the arbitration agreement is invalid on the grounds provided by law;
- 2) the arbitration court's decision was made on a dispute not covered by the arbitration agreement or not falling under its terms, or contains conclusions on issues that go beyond the arbitration agreement. If the arbitration court's conclusions on issues covered by the arbitration agreement can be separated from the conclusions on issues that are not covered by such agreement, then only that part of the arbitration court's decision that contains conclusions on issues not covered by the arbitration agreement may be canceled;
- 3) the composition of the arbitral tribunal or the arbitral proceedings did not comply with the provisions of Articles 14, 15, 16 and 25 of the Law of the Republic of Uzbekistan "On Arbitration Courts";
- 4) the arbitral tribunal's decision was made in violation of the requirements of parts one and three of Article 10 of the Law of the Republic of Uzbekistan "On Arbitration Courts";
- 5) the party to the arbitral proceedings against which the arbitral tribunal's decision was made was not properly notified of the selection (appointment) of the arbitrators or of the time and place of the arbitral tribunal's hearing and therefore could not present its explanations to the arbitral tribunal.

The decision of the arbitration court is subject to cancellation by the economic court if the dispute considered by the arbitration court cannot be the subject of arbitration proceedings in accordance with the law, or the dispute was considered by an arbitration court formed in violation of the requirements of Article 5 of the Law of the Republic of Uzbekistan "On Arbitration Courts", or the arbitration court made a decision on the rights and obligations of persons not involved in the case²⁰.

Based on the results of the consideration of the case on the annulment of the arbitral award, the economic court shall issue a ruling in accordance with the rules provided for by this Code for making a ruling.

The ruling of the economic court on the annulment of the arbitral award or on the refusal to annul the arbitral award shall also contain:

- 1) information on the contested arbitral award and the place where it was made;
- 2) information on the name and composition of the arbitral tribunal that made the contested award;
- 3) the name (last name, first name, patronymic) of the parties to the arbitration proceedings;

¹⁸ Babakulovna I. F. Ibratova FB, Yerkebayeva Zh. A. Mediation as an alternative way to resolution of economic disputes //Editorial team.

¹⁹ Ibratova F. B. et al. Effective and Reasonable Implementation and Application of the Principle of Ability to Be Heard Under Foreign and National Legislation of the Republic of Uzbekistan //Middle European Scientific Bulletin. – 2021. – T. 18. – C. 485-501.

²⁰ Feruza I., Shirinboy S. Ibratova F., Shirinov Sh. Legal issues consideration of a case about divorce in Uzbekistan //Editorial team.

4) an indication of the annulment of the arbitral award in whole or in part or a refusal to satisfy the applicant's claim in whole or in part.

The cancellation of the arbitration court's decision does not prevent the parties to the arbitration proceedings from re-applying to the arbitration court in accordance with the arbitration agreement, if the possibility of applying to the arbitration court has not been lost, or from applying to the economic court in accordance with the general rules provided for in the Economic Procedural Code of the Republic of Uzbekistan.

If the arbitration court's decision is canceled by the economic court in whole or in part due to the invalidity of the arbitration agreement, or the decision was made on a dispute not covered by the arbitration agreement, or does not fall under its terms, or contains conclusions on issues not covered by the arbitration agreement, the parties to the arbitration proceedings may apply to the economic court for resolution of such a dispute in accordance with the general rules provided for in the Economic Procedural Code of the Republic of Uzbekistan.

The determination of the economic court on the case of cancellation of the decision of the arbitration court may be appealed (contested) in the manner established by the Economic Procedural Code of the Republic of Uzbekistan. Thus, arbitration proceedings are an alternative method of dispute resolution, providing the parties with flexibility and expedited consideration of the case. However, the limitation of its competence and the possibility of challenging decisions in the economic court ensure a balance between the independence of arbitration courts and the right of the parties to protect their interests in the state judicial procedure.

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