Policy brief

The Development of the Institution of Intermediary Courts (Arbitration) in Armenia

International Center for Human Development
19 Sayat Nova,
Yerevan, Armenia
Tel.: +3741 58-26-38
Fax: +3741 52-70-82
e-mail: mail@ichd.org
www.ichd.org

DFID Department for International Development

Do all roads lead to court?

"Are you involved in a dispute? Take it to court!" This statement can certainly be considered as one of the catchphrases of the new, more civilized existence. However, one needs to ask whether there is only one path to choose for resolving disputes.

In countries with well-established independent judicial systems, along with courts, a number of other institutions exist that offer alternative forums for dispute resolution (among which are the arbitration bodies). It is possible to prevent disputes before they break out. However, once one occurs, their settlement is possible through several alternative methods that can be beneficial and cost-efficient for both parties. They may also ensure a speedy process, objectiveness, unbiased treatment and a unique approach to each individual case. And what are our alternatives to serve the needs of the new and rapidly developing civil and contractual multilateral relationships forming the market economy?

We have what we have

In 1999 the law "RA Intermediary Courts and Intermediary Court Procedures" was ratified, and in compliance with this a few intermediary courts have been established adjacent to several organizations. There is already a certain, albeit small, demand for the services offered by these institutions (annually 25-30 cases heard). For an evolving institution this indicator seems to fall in line with common sense. It seems that the judicial system does not have any complaints as well: the intermediary courts share the workload to some extent and, at the same time, are still quite far from being a serious competitor. The business sector is still prone to favor "traditional" methods of resolving disputes, which implies that the core players are not yet vexed with the current status quo, and those who are interested in alternatives are not yet successful in voicing the challenges and concerns to the public and authorities.

There is yet another issue: the legislative disarray. A law based on arbitration content has been adopted, though under the name "intermediary", which results in a violation of the major doctrines of both institutions (arbitration and mediation systems) and eventually may impede the prospect of future developments. Arbitration and mediation have different, though important, and mutually complementary functions. The real problem here is not how the court is defined, but rather the fact that the substitution of the arbitration court, as it was defined during the Soviet era, with "intermediary" has fallen flat. The theme has been worked out, the draft of legislative reforms already prepared[1], and currently the issue is pressing. Even more, a new foundation has been laid for the development of the intermediary as an institution (for instance, the new Armenian Labor Code ratified in 2004).

[1] See, for instance, "The Necessity of Reforms in Armenia regarding the International Trade Arbitration", Vesna Lizich, April 2001, #3, working paper, AEPLAC, TACIS

By joining the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the country has opened up its doors to foreign arbitrations. However, not having a classical arbitration system and arbitration court, we have failed in the most crucial part: ensuring our entrance into the rest of the world.

Challenges

The Armenian legislation regarding intermediary courts, ratified six years ago, was the basis for the establishment of this new institution. However, it should be noted that it is significantly behind the international arbitration legislation, does not take into consideration international practice and does not include a series of norms regulating a number of principal issues.

One should not ignore the fact that arbitration is part of the justice system and, as such, serves to implement justice, and its insurance, either publicly or "privately". The state has, de facto, a monopoly on jurisprudence, whereas arbitration is perceived as its step-child. The challenges are not restricted only to the framework of legislative and authoritative responsibilities**.** The entrepreneurial layer of society, which is largely represented within the legislative power, does not contribute to the formation of the new system. This may sound contradictory, for it seems that they should be the major stakeholders and, by far, the most interested in change.

There are certainly many issues. However, there seems to exist an invisible impediment that hinders the development of this institution by regarding it as a competitor to the court system, threatening to weaken its monopoly, which consequently may result in the loss of control and redistribution of responsibilities.

What to do?

The issue is twofold and thus requires a twofold approach to its solution. Given the existing reality, it appears more urgent to draw a clear line between mediation and arbitration, and deliberate over the development of each separately. In regard to arbitration courts, there is a need to reform the legislative norms that for some reason jeopardize the reliability of arbitration courts and exaggerate the reliability of the others.

Thus, there is a clear need for legislation reform which, in turn, needs public support. First, the current reality requires that the system of alternative resolutions of disputes be at the center of attention of the educational curriculums. Second, arbitration education should not be restricted to a university setting, but should rather be taken to the public at large and target its legal consciousness and sense of justice. Third, the entrepreneurial layer should perceive itself as the direct beneficiary of this institution and thus should use a variety of tools to influence the regulation of issues. Finally, policy makers can contribute considerably to the fast development of this institution as another step toward a "more civilized economy and existence".

The paper is elaborated based on the opinions passed by the participants of the discussion on "The Development Perspectives of the Institute of Arbitration Courts", which took place on March 25, 2005. The roundtable discussion was attended by independent analysts, government officials, entrepreneurs, and representatives of the international organizations.