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IS ARBITRATION FAIR? PERSPECTIVES FROM THE USA AND UZBEKISTAN

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ABSTRACT

This research examines the arbitration law of the USA and Uzbekistan. It will start with the analysis of the US arbitration law examining issues of policy favoring arbitration, preemption, employment disputes, class arbitration, and punitive damages, as well as measures that have been taken to limit consumer and employment arbitration, including Arbitration Fairness Act (2018) and the Forced Arbitration Injustice Repeal Act (2021) introduced in the Senate as part of the legislative efforts to curtail arbitration use albeit unsuccessfully. It will be argued that the Federal Arbitration Act (FAA) enacted in 1925 was not initially intended to cover consumer and employment disputes, which has evolved out of court interpretation of the FAA led by the US Supreme Court. It also reviews the empirical studies conducted on the use of arbitration that reveal very interesting findings. The second part of the work is devoted to examining Uzbekistan's arbitration law and practice, which was adopted recently compared to the US. Uzbek arbitration law expressly excludes labor disputes, and consumer disputes are subject to court jurisdiction according to the law on consumer protection. In the end, economic court practice on the challenged arbitration decisions is considered. Finally, it will conclude by drawing some inferences from both jurisdictions.

INTRODUCTION

The use of arbitration is expanding in many jurisdictions, including in Uzbekistan. The law and practice of arbitration in developed jurisdictions such as the US is a valuable source of experience for Uzbekistan. For this purpose, the present research is organized as follows. It consists of two parts. The first part examines the US arbitration law and practice and draws conclusions based on the research findings. The second part will examine the law and practice of domestic arbitration[1] in Uzbekistan, comparing them with that of the US. It will conclude by drawing conclusions based on the research findings.

1. ARBITRATION IN THE USA

1.1. Overview

Arbitration in the US has made a remarkable transformation. It has not been recognized by courts in the early stages of its development. Courts were not supportive of enforcing the agreement of parties to arbitrate.[2] Now, the scope of arbitration has extended to encompass consumer and employment cases. US authors are puzzled whether this kind of trend was initially intended by the Federal Arbitration Act of 1925 (FAA) in the first place. The current state of US arbitration law has evolved out of the application and interpretation of the FAA by the judiciary led by the US Supreme Court.

1.2. Policy Favoring Arbitration

The US Supreme Court has been active in promoting policy favoring arbitration nationwide. In *Southland Corp. v. Keating*, it stated: *"In enacting § 2 of the federal Act, Congress declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration."*[3] Section 2 of the FAA reads as follows:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.[4]

In *Hill v. Gateway 2000, Inc.* US Court of Appeals for the Seventh Circuit compelled the customer who had purchased a computer through a telephone order and brought action against the manufacturer. The manufacturer sought enforcement of the arbitration clause, which had been included in terms sent to the buyer in a box in which the computer was shipped. The Court held that terms sent in the box, which stated that they governed sale unless the computer was returned within 30 days, were binding on the buyer, who did not return the computer.[5]

The customer contended that the arbitration clause did not stand out. The Court stated:

> Yet an agreement to arbitrate must be enforced save upon such grounds as exist at law or in equity for the revocation of any contract… [P]rovision of the Federal Arbitration Act is inconsistent with any requirement that an arbitration clause be prominent. A contract need not be read to be effective; people who accept take the risk that the unread terms may, in retrospect, prove unwelcome.[6]

Thus, consumers should be vigilant in order not to be trapped in such kind of situations. Frequent-

1 International arbitration is governed separately by the Law of the Republic of Uzbekistan "On International Commercial Arbitration" of 16 February 2021. <https://lex.uz/docs/5698676>. See also Snider T., Masadikov S., Dilevka S. (2021, March 24) Uzbekistan Adopts Law on International Commercial Arbitration. *Kluwer Arbitration Blog*. <https://arbitrationblog.kluwerarbitration.com/2021/03/24/uzbekistan-adopts-law-on-international-commercial-arbitration/> [Last access: 29.10.2024].

2 Overby, A. (1985-1986). "Arbitrability of Disputes under the Federal Arbitration Act." 71 *Iowa Law Review. pp.* 1137-1139.

3 *Southland Corp. v. Keating*, 465 U.S. 1, 10, 104 S. Ct. 852, 858, 79 L. Ed. 2d 1 (1984).

4 Federal Arbitration Act (1925). Section 2. <https://www.govinfo.gov/content/pkg/USCODE-2019-title9/html/USCODE-2019-title9.htm> [Last access: 29.10.2024].

5 *Hill v. Gateway 2000, Inc.*, 105 F.3d 1147 (7th Cir. 1997).

6 *Id.*

ly, such arbitration clauses in contracts are in small print. And it takes real effort for an ordinary consumer to decipher. But do they have any other options other than acceptance? And the answer is NO in many situations.

Some states have tried to alleviate difficulties associated with consumer arbitrations. For example, section 1284.3 (b) (1) of the Code of Civil Procedure of California provides:

> All fees and costs charged to or assessed upon a consumer party by a private arbitration company in a consumer arbitration, exclusive of arbitrator fees, shall be waived for an indigent consumer. For this section, "indigent consumer" means a person having a gross monthly income that is less than 300 percent of the federal poverty guidelines. Nothing in this section shall affect the ability of a private arbitration company to shift fees that would otherwise be charged or assessed upon a consumer party to a nonconsumer party.[7]

In *Gutierrez v. Autowest, Inc.*, lessees of an automobile who brought an action against the lessor under state consumer protection statutes providing nonwaivable rights were entitled to challenge a pre-dispute arbitration clause as unconscionable on the basis that the fees required to initiate the arbitration process were unaffordable; the agreement failed to provide the consumers with an effective opportunity to seek a fee waiver, and an agreement was implied in the arbitration clause that unaffordable fees would not be allocated to the consumer at any point in the arbitration process.[8]

1.3. Preemption

It is an established rule that the FAA preempts a state law. In *Southland Corp. v. Keating*, mentioned above, individual actions and a class action by convenience store franchisees were brought against the franchisor alleging, among other things, fraud, breach of contract, and violation of disclosure requirements of the California Franchise Investment Law. The Superior Court, Alameda County, ordered arbitration of all claims except those based on the statute. The California Court of Appeal reversed as regards the statutory claim. The California Supreme Court held that statutory claims were not arbitrable.[9]

The California Franchise Investment Law provides: *"Any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this law or any rule or order hereunder is void."*[10]

The Supreme Court held:

> The California Supreme Court interpreted this statute to require judicial consideration of claims brought under the State statute and accordingly refused to enforce the parties' contract to arbitrate such claims. So interpreted, the California Franchise Investment Law directly conflicts with § 2 of the Federal Arbitration Act and violates the Supremacy Clause.[11]

Justice Stevens, in a dissenting opinion, stated: *"Given the importance to the State of franchise relationships, the relative disparity in the bargaining positions between the franchisor and the franchisee, and the remedial purposes of the California Act, I believe this declaration of State policy is entitled to respect."*[12]

As D. Schwartz argues: *"If original congressional intent is the touchstone of a statute's preemptive effect, Southland was plainly wrong. The historical record clearly shows that the FAA was intended to be a procedural statute for the federal courts, that it was not intended to preempt state law, and that it was designed to reverse the "ouster doctrine" but otherwise preserve all applicable state contract law."*[13] He further contends:

> The preemptive effect given to the FAA as a result of Southland provides a prime example of the intrusion on state sovereignty resulting from

7 The Code of Civil Procedure of California (2002). Section 1284.3. <https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CCP&division=&title=9.&part=3.&chapter=3.&article= >

8 *Gutierrez v. Autowest, Inc.*, 114 Cal. App. 4th 77, 7 Cal. Rptr. 3d 267 (2003).

9 *Southland Corp. v. Keating*, 465 U.S. 1, 104 S. Ct. 852, 79 L. Ed. 2d 1 (1984).

10 Franchise Investment Law (1970). *Part 6. General Provisions.* Section 31512. <https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CORP&sectionNum=31512> [Last access: 29.10.2024].

11 *Southland Corp. v. Keating*, 465 U.S. 1, 10, 104 S. Ct. 852, 858, 79 L. Ed. 2d 1 (1984).

12 *Id*. at p. 863.

13 Schwartz, D. (2004). Correcting Federalism Mistakes in Statutory Interpretation: The Supreme Court and the Federal Arbitration Act. *Law & Contemporary Problems*, 67(5), p.8.

preemption. It has done considerable violence to the notion of the states as "laboratories for experimentation" by shutting down state experiments in the regulation of arbitration agreements and inhibiting state case law development in this field.[14]

M. Weston, commenting in general about preemption, argues: *"Given the preemptive effect accorded to the FAA, the ability of the states to enact protective legislation to ensure fairness in arbitration or access to the courts has been significantly, and unduly, limited."*[15]

1.4. Measures to Limit Arbitration

Attempts are being made to curtail the use of arbitration. A clear example of this is the Motor Vehicle Franchise Contract Arbitration Fairness Act (2002), which requires consent in writing from parties to a motor vehicle franchise contract. Section 1226 (a) (2) provides:

> Notwithstanding any other provision of law, whenever a motor vehicle franchise contract provides for the use of arbitration to resolve a controversy arising out of or relating to such contract, arbitration may be used to settle such controversy only if, after such controversy arises, all parties to such controversy consent in writing to use arbitration to settle such controversy.[16]

As C. Chiappa and D. Stoelting explain, this Act was *"designed to redress an alleged disparity in bargaining power between motor vehicle dealers and manufacturers, the Act makes pre-dispute arbitration clauses in motor vehicle franchise contracts unenforceable under the FAA unless both parties consent after the dispute arises."*[17] They make a forward-looking conclusion:

> By creating an exemption for motor vehicle dealers, Congress has raised expectations among other groups that seek similar treatment. If motor vehicle dealers merit protection from mandatory arbitration, why not contracts involving consumers and employees that may well result from disparate bargaining power? Congress is now likely to come under pressure to create more exemptions from the FAA and to curtail long-standing U.S. Supreme Court precedent that broadly construes the FAA.[18]

In 2010 the Congress adopted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), section 921(f) of which entitles the Securities and Exchange Commission to restrict mandatory pre-dispute arbitration by providing the following:

> The Commission, by rule, may prohibit or impose conditions or limitations on the use of agreements that require customers or clients of any investment adviser to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.

Section 1028 (a) of the Dodd-Frank Act provides that the Bureau of Consumer Financial Protection (Bureau) shall conduct a study of and shall provide a report to Congress concerning the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services. And Section 1028 (b) provides further authority to the Bureau:

> The Bureau, by regulation, may prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties if the Bureau finds that such a prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers.

As I. Szalai, commenting on the Dodd-Frank Act, argues: *"Congress has, in effect, delegated authority to government agencies to amend the FAA through rules and regulations. When these govern-*

14 Id. at 13.

15 Weston, M. (2007-2008). Preserving the Federal Arbitration Act by Reining in Judicial Expansion and Mandatory Use. *Nevada Law Journal*, 8. pp. 385-388.

16 Motor Vehicle Franchise Contract Arbitration Fairness Act (2002). Section 1226. <https://www.congress.gov/106/bills/hr534/BILLS-106hr534eh.pdf> [Last access: 29.10.2024].

17 Chiappa, C. & Stoelting, D. (2002-2003). Tip of the Iceberg? New Law Exempts Car Dealers from Federal Arbitration Act. *Franchise Law Journal*, 22, p. 219.

18 Id. at 220.

ment agencies in the near future consider adopting regulations restricting the use of arbitration agreements, there will likely be much debate and lobbying about whether the use of arbitration agreements should be limited."[19]

In accordance with section 1028(a) of the Dodd-Frank Act, the Bureau in March 2015 announced its Arbitration Study Report to Congress.[20] According to the study, more than 75 percent of consumers surveyed in the credit card market did not know whether they were subject to an arbitration clause in their contract. Fewer than 7 percent of those consumers covered by arbitration clauses realized that the clauses restricted their ability to sue in court.[21]

In October 2015, the Bureau announced the Proposal to ban arbitration clauses in consumer credit contracts. Director of the Bureau Richard Cordray said: *"Companies are using the arbitration clause as a free pass to sidestep the courts and avoid accountability for wrongdoing. The proposals under consideration would ban arbitration clauses that block group lawsuits so that consumers can take companies to court to seek the relief they deserve."*[22]

The goal of the proposed rules can be summarized as follows:

A day in court for consumers: The proposals under consideration would give consumers their day in court to hold companies accountable for wrongdoing. Often, the harm to an individual consumer may be too small to make it practical to pursue litigation, even where the overall harm to consumers is significant. Previous CFPB survey results reported that only around 2 percent of consumers surveyed would consult an attorney to pursue an individual lawsuit as a means of resolving a small-dollar dispute. In cases involving small injuries of anything less than a few thousand dollars, it can be difficult for a consumer to find a lawyer to handle their case. Congress and the courts developed class litigation procedures in part to address concerns like these. With group lawsuits, consumers have opportunities to obtain relief they otherwise might not get.

Deterrent effect: The proposals under consideration would incentivize companies to comply with the law to avoid lawsuits. Arbitration clauses enable companies to avoid being held accountable for their conduct; that makes companies more likely to engage in conduct that could violate consumer protection laws or their contracts with customers. When companies can be called to account for their misconduct, public attention on the cases can affect or influence their individual business practices and the business practices of other companies more broadly.

Increased transparency: The proposals under consideration would make the individual arbitration process more transparent by requiring companies that use arbitration clauses to submit the claims filed and awards issued in arbitration to the CFPB. This would enable the CFPB to better understand and monitor arbitration cases. The proposal under consideration to publish the claims filed and awards issued on the CFPB's website would further increase transparency.[23]

The Arbitration Fairness Act was introduced in the Senate on 22 March 2018 also stresses the initial purpose of the FAA and developments in arbitration law by providing:

(1) The Federal Arbitration Act (now enacted as Chapter 1 of Title 9 of the United States Code) was intended to apply to disputes between commercial entities of generally similar sophistication and bargaining power.

(2) A series of decisions by the Supreme Court of the United States have interpreted the Act so that it now extends to consumer disputes and employment disputes, contrary to the intent of Congress.

(3) Most consumers and employees have little or no meaningful choice whether to submit their claims to arbitration. Often, consumers and employees are not even aware that they have given up their rights.

(4) Mandatory arbitration undermines the development of public law because there is inadequate transparency and inadequate judicial review of arbitrators' decisions.

19 Szalai, I. (2010). An Obituary for the Federal Arbitration Act: An Older Cousin to Modern Civil Procedure. *Journal of Dispute Resolution.* pp. 391-393.

20 Consumer Financial Protection Bureau. (2015). *Arbitration study: Report to Congress*. <https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf>

21 Id.

22 Id.

23 Id.

(5) Arbitration can be an acceptable alternative when consent to the arbitration is truly voluntary and occurs after the dispute arises.[24]

The Forced Arbitration Injustice Repeal Act was introduced in the Senate on 1 March 2021. According to Sec. 2, the purposes of this Act are to:

(1) prohibit pre-dispute arbitration agreements that force arbitration of future employment, consumer, antitrust, or civil rights disputes; and

(2) prohibit agreements and practices that interfere with the right of individuals, workers, and small businesses to participate in a joint, class, or collective action related to an employment, consumer, antitrust, or civil rights dispute.[25]

1.5. Employment Disputes

In *Circuit City Stores, Inc. v. Adams,* the employer brought an action under the FAA to enjoin the employee's state court employment discrimination action and to compel arbitration. The United States District Court for the Northern District of California ordered arbitration, and the employee appealed. The United States Court of Appeals for the Ninth Circuit reversed, holding that all employment contracts were beyond FAA's reach. Certiorari was granted. The Supreme Court held that only employment contracts of transportation workers were exempted from the FAA.[26] Provision of the FAA excluding from its reach *"contracts of employment of seamen, railroad employees, or any other class of workers engaged in ... interstate commerce"* did not exclude all employment contracts, but rather exempted from the FAA only contracts of employment of transportation workers, and thus the FAA preempted the state employment law that restricted ability of non-transportation employees and employers to enter into arbitration agreement.[27]

As M. Weston points out: "In *Circuit City Stores, Inc. v. Adams*, the Court effectively shut down state regulatory efforts to restrict the arbitration of employment cases by reading, despite clear legislative intent otherwise, that the express exemption in section 1 of the FAA, which excludes *"contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce," applies only to transportation employees."*[28]

1.6. Class Arbitration

In consumer contracts, companies tend to include a provision that excludes class arbitration. In *AT&T Mobility LLC v. Concepcion,* customers brought a class action against the telephone company, alleging that the company's offer of a free phone to anyone who signed up for its cellphone service was fraudulent to the extent that the company charged the customer sales tax on the retail value of the free phone. The United States District Court for the Southern District of California denied the company's motion to compel arbitration. Company appealed. The United States Court of Appeals for the Ninth Circuit affirmed. Certiorari was granted, and the Supreme Court held that the Federal Arbitration Act preempts California's judicial rule regarding the unconscionability of class arbitration waivers in consumer contracts.[29]

As H. Aragaki observes: *"State courts have set precedents, and state legislatures have passed countless measures aimed at staving off what appears to be the relentless colonization of procedure by contract. But the force of these responses is increasingly doubtful after Concepcion."*[30]

1.7. Punitive Damages

In *Mastrobuono v. Shearson Lehman Hutton, Inc.,* petitioners filed an action in the Federal District Court, alleging that their securities trading ac-

24 Arbitration Fairness Act (2018). Section 2591. <https://www.congress.gov/bill/115th-congress/senate-bill/2591/text> [Last access: 29.10.2024].

25 Forced Arbitration Injustice Repeal Act (2021). Section 505. <https://www.congress.gov/bill/117th-congress/senate-bill/505/text> [Last access: 29.10.2024].

26 *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 121 S. Ct. 1302, 149 L. Ed. 2d 234 (2001).

27 Id.

28 Weston, M. (2007-2008) Preserving the Federal Arbitration Act by Reining in Judicial Expansion and Mandatory Use. *Nevada Law Journal*, 8, pp. 385-387.

29 *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 131 S. Ct. 1740, 179 L. Ed. 2d 742 (2011).

30 Aragaki, H. (2014). The Federal Arbitration Act as Procedural Reform. *New York University Law Review*,89. pp. 1939-1958.

count had been mishandled by respondent brokers. An arbitration panel, convened under the arbitration provision in the parties' standard-form contract and under the FAA, awarded petitioners punitive damages and other relief. The District Court and the Court of Appeals disallowed the punitive damages award because the contract's choice-of-law provision specifies that "the laws of the State of New York" should govern, but New York law allows only courts, not arbitrators, to award punitive damages.[31] Certiorari was granted. The Supreme Court held that the contract between securities brokerage firms and customers permitted the arbitration panel to award punitive damages to customers.[32]

The Supreme Court reiterated the policy favoring arbitration and held that "if contracting parties agree to include claims for punitive damages within the issues to be arbitrated, the FAA ensures that their agreement will be enforced according to its terms even if a rule of state law would otherwise exclude such claims from arbitration."[33]

E. Micheletti, commenting on *Mastrobuono,* concludes:

> While the objective application of Mastrobuono has the theoretical effect of undermining the FAA federal policy of allowing parties' intentions to control, there are some positive practical consequences. The objective application of Mastrobuono in such cases protects parties of unequal bargaining power from unfairly and unknowingly contracting away their arbitral rights. Additionally, it will promote contractual certainty by requiring parties to clearly articulate their intentions in contract provisions.[34]

So, companies can include a waiver of awarding punitive damages in their standard contracts, and consumers will not have a clue that they are giving away their rights again. And following *Mastrobuono* courts will enforce such kind of arrangement, which is convenient for companies. As W. Burnham sums up the disadvantages of arbitration:

> What is being given up when someone agrees to arbitration is substantial. There is no right to trial by a jury or before a legally trained judge. And, unlike arbitration between parties on relatively equal financial footing, consumers, employees, or patients rarely have much meaningful input – not just on whether to agree to arbitration – but also on who the arbitrators will be or what rules will govern the procedure. The grounds for judicial review of arbitration decisions are limited, mainly fraud or corruption, and none of them go to the merits of the dispute. On the other hand, the winner of the arbitration can gain immediate access to a court to enforce the decision.[35]

Thus, as analyzed above, unless parties to a contract have equal bargaining power as a merchant to merchant dealings, US practice suggests that arbitration is not fair for consumers and employees who are trapped in well-drafted arbitration clauses.

1.8. Empirical Studies

A survey conducted by R. Sommers "revealed that most consumers do not pay attention to, let alone understand, arbitration clauses in their everyday lives. Over 92% of respondents report that they have never based a decision to use a product or service on whether the terms and conditions contain an arbitration agreement. When prompted, they largely endorse the following reasons: they were unaware of the arbitration clause, they did not read the terms and conditions, and they thought they had no choice but to agree to mandatory arbitration. Moreover, many respondents presume that if a dispute arises, they will still be able to access the public courts, notwithstanding that they agreed to the terms and conditions. Consumers are largely unaware of opportunities to opt out of mandatory arbitration. They generally do not pay attention to or retain information about the steps required to opt out successfully (e.g., contacting the company within a specified time period)."[36]

31 *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 52, 115 S. Ct. 1212, 1213, 131 L. Ed. 2d 76 (1995).

32 Id. at 1212.

33 Id. at 1216.

34 Micheletti, E. (1996). Mastrobuono v. Shearson Lehman Hutton, Inc.: Another Piece of the Federal Arbitration Act Policy Puzzle. *Delaware Journal of Corporate Law*. 21, pp.1027-1064.

35 Burnham, W. (2016). *Introduction to the Law and Legal System of the United States.* West Academic Publishing. 6th ed., pp. 274-275.

36 Sommers, R. (2024) What do consumers understand about predispute arbitration agreements? an empirical investigation. *PLOS ONE*, 19(2), e0296179. <https://doi.org/10.1371/journal.pone.0296179>

The results of another study establish that a strong arbitration effect exists, meaning that individuals are less likely to resort to the arbitration procedure in their contracts after a dispute arises.[37]

2. ARBITRATION IN UZBEKISTAN

2.1. Country Overview

Uzbekistan, with its over 37 million population[38] is situated in Central Asia. Tashkent is the capital city, other ancient cities of Samarkand (2750 years old) and Bukhara (2500 years old) used to be on the route of the Great Silk Road that united East and West.

Uzbekistan is a unitary nation-state, and its legal system is based on Civil (Romano-Germanic) Law. Article 10 of the Civil Code of Uzbekistan[39] provides that protection of civil rights can be carried out by the court, economic court, and arbitration court depending on jurisdiction or contract.

2.2. Arbitration Law

The Law "On Arbitration Courts" of 16 October 2006, entered into force on 1 January 2007, has created the legal base for domestic arbitration. Before the adoption of this law, arbitration on the territory of Uzbekistan was governed by Annex No. 3 to the Civil Procedural Code of the Soviet Socialist Republic of Uzbekistan (23 March 1963), but arbitration was hardly used in practice during that period because of the absence of relations based on private property.

Unlike in other countries such as Germany, France, and the UK, where arbitration acts govern domestic as well as international arbitration, Uzbek Law "On Arbitration Courts" governs mainly domestic arbitration.

Most of the permanent arbitration courts are established at the Chamber of Commerce and Industry of Uzbekistan ("CCI")[40] and the Association of Arbitration Courts of Uzbekistan ("AAC"). The Ministry of Justice keeps the register[41] of the permanent arbitration courts, and its number is 252, with 908 arbitration court judges as of 1 April 2021.[42]

The number of cases considered by arbitration courts is gradually rising, and more and more commercial entities are including arbitration clauses in their contracts. From 2007 to 2017, arbitration courts at the CCI considered 8,689 cases for a total of 411.2 billion Uzbek sums ($48.8 million).[43]

Still, a lot of work needs to be done to facilitate the referral of disputes to arbitration courts in Uzbekistan, including, among others, widespread popularization and support of state courts.

The Law "On Arbitration Courts" consists of 59 Articles that regulate the establishment of an arbitration court (permanent, *ad hoc*), its jurisdiction, arbitration agreement, requirements for arbitration judges, conduction of arbitration proceedings, challenge of arbitration court decision, and its enforcement.

Arbitration is also regulated by appropriate rules of the Civil Procedure Code (CPC)[44] and the Economic Procedural Code (EPC)[45]. Court proceedings are suspended in case of the existence of a valid arbitration agreement.

According to Article 5 of the Law, a permanent or an *ad hoc* arbitration court can be established. Government bodies are not permitted to establish arbitration courts and be a party to the arbitration agreement. This means that in case of a dispute in which a party is a company with state shares, this dispute cannot be subjected to and resolved in arbitration court.

The Law states that arbitration courts are not legal persons.[46] The permanent arbitration court can be established by a legal person and functions under it. The legal person notifies the local

37 Ghodoosi, F., & Sharif, M. (2023) Arbitration Effect. *American Business Law Journal,* 235, p. 242. <https://ssrn.com/abstract=4010102>

38 As of 1 July 2024, Statistics Agency under the President of the Republic of Uzbekistan. <https://stat.uz/ru/press-tsentr/novosti-goskomstata/55410-demograficheskaya-situatsiya-v-respublike-uzbekistan-yan-var-mart-2024-goda-2> [Last access: 29.10.2024].

39 <https://lex.uz/docs/111181>

40 <https://chamber.uz/en> [Last access: 29.10.2024].

41 <https://lex.uz/docs/1405185> [Last access: 29.10.2024].

42 <https://lex.uz/docs/5386771> [Last access: 29.10.2024].

43 <https://uztag.info/ru/news/treteyskimi-sudami-uzbekistana-rassmotreny-bolee-8-5-tys-del> [Last access: 29.10.2024].

44 <https://lex.uz/docs/5535095> [Last access: 29.10.2024].

45 <https://lex.uz/docs/3523895> [Last access: 29.10.2024].

46 Article 5 of the Law "On Arbitration Courts" (2006). <https://lex.uz/docs/1072094> [Last access: 29.10.2024].

department of justice about the establishment of a permanent arbitration court. This requirement also applies in the case of *ad hoc* arbitration and should be done by a chairman or a sole arbitration judge before commencing the proceedings.

2.3. Jurisdiction of Arbitration Courts

The jurisdiction of the arbitration courts is identified in Article 9 of the Law. They resolve disputes emerging out of civil legal relations, including commercial disputes. The arbitration courts do not consider disputes that arise out of administrative[47], family, and labor relations. There are also other exclusions to the jurisdiction of the arbitration courts that can be found in different acts. For example, insolvency, corporate, investment, and competition cases are considered by the Economic Courts of Uzbekistan.[48]

As to the applicable substantive law in arbitration proceedings, the arbitration courts resolve disputes based on the legislation of Uzbekistan terms of a contract, taking into consideration customs of business relations. If the relations of parties are not directly regulated by the legislation or an agreement between the parties and there is no applicable rule of customary business relations, then the arbitration court applies the rules of the legislation that regulate similar relations (an analogy of law), or in case of a failure of this method, the rights and obligations of the parties are determined out of the purpose of the legislation and requirements of fairness, reasonableness, and justice.[49]

2.4. Consumer Disputes

Article 29 of the Law "On Protection of Consumer Rights" of 26 April 1996 provides that in case of violation of consumer rights, he has the right to go to court. Claims are filed at the location of the defendant, consumer, or at the place where the damage was caused unless otherwise established by legislative acts. Such claims are exempt from state duty.[50] However, there is no express prohibition of arbitration for consumer disputes in the legislation of Uzbekistan, and there are no available reported cases of such a category of disputes.

2.5. Arbitration Agreement

An arbitration agreement can be done as a clause in a contract or in the form of a separate agreement that should be in writing. It is considered to be concluded in written form if it is contained in a document signed by parties or concluded by way of exchange of letters or use of electronic communication means that provide fixation of such agreement. In case of failure to follow these rules, the arbitration agreement is considered to be invalid.[51]

2.6. Requirements for Arbitration Judges

A judge of the arbitration court should meet particular requirements set by Article 14 of the Law. He or she should be a citizen of Uzbekistan not younger than 25 years old who could provide impartial resolution of a dispute, directly or indirectly not interested in the outcome of a dispute, independent from the parties to the arbitration agreement, and consented to execute obligations of the arbitration judge. According to paragraph 4 of Article 14 of the Law, a person cannot be a judge of an arbitration court if he or she is incapacitated, convicted; whose powers as a judge, advocate, notary, interrogator, prosecutor, or other law enforcement personnel were ceased for committing an offense which is incompatible with his/her professional activity; and who is according to his/her official status determined by law cannot be chosen (appointed) as an arbitration judge.

An arbitration judge who is acting solely or

47 Tsurtsumia, S. (2021). Prospects for using arbitration for resolving the disputes arising out of administrative contracts. *Law and World, 7*(2), 130-147.

48 Art. 25 of the EPC (2018). <https://lex.uz/docs/3523895> [Last access: 29.10.2024].

49 Art. 10 of the Law "On Arbitration Courts" (2006). <https://lex.uz/docs/1072094> [Last access: 29.10.2024].

50 <https://lex.uz/docs/14643#17495> [Last access: 29.10.2024].

51 Art. 12 of the Law "On Arbitration Courts" (2006). <https://lex.uz/docs/1072094> [Last access: 29.10.2024].

as a chairman in the arbitration panel should be qualified in law. Except for this requirement, the law permits the parties to agree on other qualifications of the arbitration judge, or they may be determined by the rules of a permanent arbitration court.

The arbitration court rules on its jurisdiction based on the generally accepted "competence-competence" principle, including in cases when one of the parties objects to the arbitration proceeding on the ground of absence or invalidity of the arbitration agreement.

2.7. Challenge to the Award

The decision of the arbitration court can be challenged by one of the parties by applying to the state court[52]. Article 47 of the Law provides the grounds for the annulment of the arbitration decision. The state court cannot review the merits of a case and annuls the arbitration decision if an interested party provides evidence that:

- the arbitration agreement is invalid on the grounds provided by the law;
- the arbitration decision is rendered on the matters that are not covered by the arbitration agreement;
- the arbitration decision was rendered with the violation of the applicable laws;
- the arbitration panel or the arbitration proceedings do not conform with requirements of the law on the qualifications of the arbitration judge, composition of the arbitration panel, challenge of an arbitration judge, and the rules of the arbitration proceeding;
- a party against whom the arbitration decision was rendered was not duly notified about the appointment of the arbitration judges or the time and place of the arbitration proceedings and, therefore, could not present their explanations to the arbitration court;
- Also, the arbitration decision is subject to annulment by the state court if a dispute is out of the arbitration court's jurisdiction according to the law.

52 Economic Court or Civil Court depending on jurisdiction.

The decision of the arbitration court is executed voluntarily according to Article 49 of the Law. In case of non-compliance with this rule, a party can apply for compulsory enforcement to the state court. The compulsory enforcement is carried out in accordance with the Law "On Enforcement of Judicial Acts and Acts of other Bodies" of 29 August 2001[53] based on the enforcement order issued by the state court.

Article 53 of the Law provides that in considering the application for compulsory enforcement, the state court is not allowed to review the merits of the case. However, the state court can reject the application for compulsory enforcement on the grounds specified in Article 47 of the Law "On Arbitration Courts", mentioned above.

Overall, the Law of Uzbekistan, "On Arbitration Courts" is based on generally acknowledged principles of arbitration oriented at the resolution of domestic disputes.

2.8. Challenged Awards

As case statistics in the Economic courts show, only a small number of arbitration court decisions are challenged. For the period of 2023-2024, only ten applications for the challenge were reported, and only 2 cases were annulled. In the first Case No. 4-2101-2303/4311 dated 20 December 2023, the regional Economic court annulled the decision of the arbitration court on the ground that the arbitration agreement was signed by the person who did not have the authority to do so.[54] In the second Case No. 4-1001-2303/29074 dated 26 December 2023, the Supreme Court annulled the arbitration court's decision because the parties referred to the non-existent arbitration court in their contract.[55]

CONCLUSION

Thus, because of the policy favoring arbitration, preemption, and other case law, the reach of the US arbitration law has extended to the parties

53 <https://lex.uz/ru/docs/13896> [Last access: 29.10.2024].

54 <https://public.sud.uz/report/ECONOMIC> [Last access: 29.10.2024].

55 <https://public.sud.uz/report/ECONOMIC> [Last access: 29.10.2024].

with less bargaining power, such as consumers and employees. And tying this category of participants with the arbitration clauses seems unfair. Instead of enacting numerous acts that include measures to limit arbitration in some way or another, it might be logical to make amendments to the FAA itself, expressly delimiting its scope of application.

As to Uzbek arbitration law, Uzbekistan is a civil law country, and the state courts do not have the power to make rules. As Uzbekistan is a unitary state, there is no issue of preemption, and class actions or an award of punitive damages are not practiced. Uzbek law on the arbitration courts expressly excludes family and labor disputes. As to consumer disputes, the rights of consumers are under judicial protection. Therefore, hopefully, Uzbekistan will not face problems with the US, like consumer and employment arbitrations.

BIBLIOGRAPHY:

1. Aragaki, H. (2014). The Federal Arbitration Act as Procedural Reform. *New York University Law Review*, 89.
2. Arbitration Fairness Act (2018). Section 2591. <https://www.congress.gov/bill/115th-congress/senate-bill/2591/text> [Last access: 29.10.2024].
3. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 131 S. Ct. 1740, 179 L. Ed. 2d 742 (2011).
4. Burnham, W. (2016). *Introduction to the Law and Legal System of the United States.* 6th ed. West Academic Publishing.
5. Case No. 4-1001-2303/29074 dated 26 December 2023. <https://public.sud.uz/report/ECONOMIC> [Last access: 29.10.2024].
6. Case No. 4-2101-2303/4311 dated 20 December 2023. <https://public.sud.uz/report/ECONOMIC> [Last access: 29.10.2024].
7. Chiappa, C. & Stoelting, D. (2002-2003). Tip of the Iceberg? New Law Exempts Car Dealers from Federal Arbitration Act. *Franchise Law Journal*, 22.
8. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 121 S. Ct. 1302, 149 L. Ed. 2d 234 (2001).
9. Civil Procedure Code of the Republic of Uzbekistan (2018). <https://lex.uz/docs/5535095> [Last access: 29.10.2024].
10. Consumer Financial Protection Bureau. (2015). *Arbitration study: Report to Congress*. <https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf> [Last access: 29.10.2024].
11. Economic Procedure Code of the Republic of Uzbekistan (2018). <https://lex.uz/docs/3523895> [Last access: 29.10.2024].
12. Federal Arbitration Act (1925). <https://www.govinfo.gov/content/pkg/USCODE-2019-title9/html/USCODE-2019-title9.htm> [Last access: 29.10.2024].
13. Forced Arbitration Injustice Repeal Act (2021). <https://www.congress.gov/bill/117th-congress/senate-bill/505/text> [Last access: 29.10.2024].
14. Franchise Investment Law (1970). *Part 6. General Provisions.* Section 31512. <https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CORP&sectionNum=31512> [Last access: 29.10.2024].
15. Ghodoosi, F., & Sharif, M. (2023) Arbitration Effect. *American Business Law Journal,* 235. <https://ssrn.com/abstract=4010102>
16. *Gutierrez v. Autowest, Inc.*, 114 Cal. App. 4th 77, 7 Cal. Rptr. 3d 267 (2003).
17. *Hill v. Gateway 2000, Inc.*, 105 F.3d 1147 (7th Cir. 1997).
18. Law of the Republic of Uzbekistan "On Arbitration Courts" (2006). <https://lex.uz/docs/1072094> [Last access: 29.10.2024].
19. Law of the Republic of Uzbekistan "On Enforcement of Judicial Acts and Acts of other Bodies" (2001). <https://lex.uz/ru/docs/13896> [Last access: 29.10.2024].
20. Law of the Republic of Uzbekistan "On International Commercial Arbitration" (2021). <https://lex.uz/docs/5698676> [Last access: 29.10.2024].
21. Law of the Republic of Uzbekistan "On Protection of Consumer Rights" (1996). <https://lex.uz/docs/14643> [Last access: 29.10.2024].
22. *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 52, 115 S. Ct. 1212, 1213, 131 L. Ed. 2d 76 (1995).

23. Micheletti, E. (1996). Mastrobuono v. Shearson Lehman Hutton, Inc.: Another Piece of the Federal Arbitration Act Policy Puzzle. *Delaware Journal of Corporate Law*. 21.
24. Motor Vehicle Franchise Contract Arbitration Fairness Act (2002). Section 1226. <https://www.congress.gov/106/bills/hr534/BILLS-106hr534eh.pdf> [Last access: 29.10.2024].
25. Overby, A. (1985-1986). "Arbitrability of Disputes under the Federal Arbitration Act." *Iowa Law Review,* 71.
26. Schwartz, D. (2004). Correcting Federalism Mistakes in Statutory Interpretation: The Supreme Court and the Federal Arbitration Act. *Law & Contemporary Problems*, 67(5).
27. Snider T., Masadikov S., Dilevka S. (2021, March 24) *Uzbekistan Adopts Law on International Commercial Arbitration*. Kluwer Arbitration Blog. <https://arbitrationblog.kluwerarbitration.com/2021/03/24/uzbekistan-adopts-law-on-international-commercial-arbitration/> [Last access: 29.10.2024].
28. Sommers, R. (2024) What do consumers understand about pre-dispute arbitration agreements? An empirical investigation. *PLOS ONE*, 19(2), e0296179. <https://doi.org/10.1371/journal.pone.0296179>
29. *Southland Corp. v. Keating*, 465 U.S. 1, 10, 104 S. Ct. 852, 858, 79 L. Ed. 2d 1 (1984).
30. Szalai, I. (2010). An Obituary for the Federal Arbitration Act: An Older Cousin to Modern Civil Procedure. *Journal of Dispute Resolution,* 391.
31. The Code of Civil Procedure of California (2002). Section 1284.3. <https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CCP&division=&title=9.&part=3.&chapter=3.&article=> [Last access: 29.10.2024].
32. Tsurtsumia, S. (2021). Prospects for using arbitration for resolving the disputes arising out of administrative contracts. *Law and World, 7*(2).
33. Weston, M. (2007-2008). Preserving the Federal Arbitration Act by Reining in Judicial Expansion and Mandatory Use. *Nevada Law Journal*, 8.