

Consumer Online Dispute Resolution

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Abstract. Online dispute resolution is the alternative dispute resolution using information and communication technologies. This mechanism contains a synthetic set of multifarious procedures, from automated decision-making to the independent contractor's involvement, aimed at reaching an agreement between the disputing parties. According to the UN Resolution, online dispute resolution is the most preferred way to protect the rights of consumers, that is, people who receive services. At the same time, entrepreneurs are also interested in developing online dispute resolution platforms, as this allows them to resolve a dispute directly with the consumer, rather than wasting time and money on litigation. It is necessary to take into account the pre-trial dispute resolution mechanisms existing in the world practice aimed at increasing customer confidence in purchasing goods or services online, introducing the institution of online dispute resolution using the technological platform into Russian practice.

1. Introduction

Technical and technological development has a huge impact on all areas of socio-economic processes. Today trade cannot be imagined without the use of information and communication technologies. With the development of digital economy, the growth of distance trading and online services, new mechanisms are needed to resolve disputes arising between participants in civil-law transactions. E-commerce is no longer satisfied with the prevailing legal regulation of public relations.

The online dispute resolution system (hereinafter - the DRS) has been actively developing throughout the world for the past ten years. The DRS increases access to justice in the consumer sphere, as it offers a simpler procedure for dispute resolution, for example, in case of an insignificant amount in dispute, and at the same time increases consumer confidence in online commerce. The use of information technology in dispute settlement was called the "fourth party", since the DRS is considered as an independent entry point into conflict management [2]. A fourth party may from time to time act as a neutral mediator in resolving a dispute by implementing procedures for automating negotiations and assisting in finding options for an agreement [2, 3].

2. Research objectives

To consider the introduction of the Russian online dispute resolution institution, it is necessary to analyze the international law, practice of online dispute resolution with consumers on various platforms; to identify the limitations of the draft law "On Amending the Law of the Russian Federation "On Protection of Consumer Rights" and the Federal Law "On Alternative Procedure of

Dispute Resolution with Participation of a Mediator (mediation procedure)” regarding the creation of a legal basis for the system development of alternative online dispute resolution mechanisms”.

3. Research relevance

The entire e-commerce market value (including the sale of goods and services) was estimated at \$ 26 billion by the end of 2016. In Russia, in 2017, the value of goods sold via the Internet was \$ 18 billion, in 2020 and 2023 the turnover can reach \$ 31 billion and \$ 52 billion, respectively [4].

However, nowadays there is no special legislative regulation related to the DRS in Russia. At the same time, the need to create an appropriate system of mechanisms is primarily determined by the increasing number of consumer complaints related to online purchases and online services delivery. Back in 2016, the Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing noted in the annual report "the annual increase in consumer complaints against business entities whose activities in the sale of goods are carried out via the Internet: if in 2012 there were 3,412 complaints (in 2013 - 6,072, in 2014 - 7 815), then in 2015 - already 8 536, and in 2016 - 8 765.” Secondly, it is necessary to minimize the costs of consumers and the state for the judicial protection of violated consumer rights and business administration costs for processing and storage of consumer claims in paper form [5].

The Sociological Examination Laboratory of the Institute of Sociology of the Russian Academy of Sciences conducted a study and clarified the attitude of consumers to the initiative of the Ministry of Economics to introduce an Internet platform in Russia for pre-trial dispute resolution in Internet trading [6]. According to this survey, 94% of buyers admit that such a mechanism is needed in modern Russia; 84% are ready to use platform services; 61% of respondents indicated that they would make more purchases via Internet if an electronic service was created to resolve disputes.

As can be seen from the above, the idea of creating an electronic platform for pre-trial dispute and conflict resolution in online trading has found unequivocal support among consumers who will be able to more effectively protect their rights, which will lead to an increase in the number of transactions via Internet.

The question of what can be considered an online dispute resolution is still controversial. It is unclear whether it is a new method or a new independent type of alternative dispute resolution.

Some suggest that this is the use of information and communication technologies in judicial activity [7], others that it is a method to resolve disputes using remote communication technologies [8]. Other authors that the DRS is a unique form of dispute resolution using information and communication technologies developed specifically to support the dispute settlement using electronic means [9, 10]. However, at the current development stage of online dispute resolution, this is not just the possibility of conducting classical conciliation procedures and arbitration using information and communication technologies, but a fundamentally new mechanism for implementing these procedures through the use of a technological platform for online dispute resolution [11]. In addition, online dispute resolution procedures involve two main varieties: 1) dispute resolution through online arbitration; 2) online dispute resolution by the parties to the litigation (on their own or with a contractor).

The e-commerce development on the basis of trading platforms has led to research on transnational consumer law. Consumer law arising out of the norms and standards of national legal systems is criticized as inhibiting cross-border trade development. Thus, Professor Graf-Peter Callies notes that the transnational consumer law is an alternative to erosive national consumer law in the period of globalization [12, 13].

At the same time, some authors suggest that the disputing parties during the negotiations are “in the shadow of the law” and this right is not the right of any jurisdiction, but the right of a specific platform (for example, eBay), therefore they consider the platform as a kind of entity with sovereign power over the online lives of users [14].

4. Theoretical part

4.1. International law and practice of online dispute resolution with consumers

The Organization for Economic Cooperation and Development (hereinafter referred to as the OECD) in the Recommendations on Consumer Protection in the Context of Electronic Commerce adopted on 12/09/1999, declared the importance of developing alternative procedures for the settlement of consumer disputes in the field of electronic commerce, including those carried out online. Namely, consumers should be provided with effective access to a fair, easy-to-use, transparent and effective mechanism for timely resolution of local and cross-border disputes in the field of electronic commerce and the possibility of obtaining the required compensation, as expected, without the need to incur excessive costs and burdens; such mechanisms may include non-judicial mechanisms, such as handling internal complaints and alternative dispute resolution.

In 2016, the United Nations Commission on International Trade Law (UNCITRAL) introduced "Technical Comments on Online Dispute Resolution" [15] (hereinafter referred to as Technical Comments) reflecting the elements and principles of the DRS procedure, which allows for a "wide range of approaches and forms". Based on paragraph 2 of the Technical Comments, the procedure described there allows a "wide range of approaches and forms." A broad approach allows for a variety of dispute resolution procedures and the participation possibility of various independent individuals.

The UN General Assembly pointed out the need to establish mechanisms for the settlement of disputes arising out of cross-border transactions, indicating that one of such mechanisms is the online dispute resolution, recommended that "all states and other interested parties use the Technical Comments in the development and implementation of online dispute resolution systems in the face of cross-border transactions" [16].

Online dispute resolution is widely developed in the countries of the European Union. In 2013, the EU Directive on Alternative Dispute Resolution for Consumers [17] (hereinafter - ADR Directive) and the EU Regulation on Online Dispute Resolution for Consumer Disputes [18] (hereinafter - ODR Regulation) were adopted to expedite and simplify the resolution of consumer disputes.

ADR Directive gives consumers the opportunity to conveniently, quickly resolve a dispute with a business operator using accredited arbitration centers that meet the minimum standards specified in the Directive. However, the Directive does not oblige the consumer to resort to the arbitration center for dispute resolution. Moreover, only the consumer is entitled to appeal to the arbitration center. The seller does not have the opportunity to resort to the arbitration center even in case of non-payment of the goods (Article 2 (2) (g)).

With a view to ensure the professionalism of arbitrators and the transparency of arbitration centers' activity, as well as to provide consumers with the opportunity to make conscious choice, ADR Directive prescribes that each arbitration center should ensure the full disclosure of information about its activities (Article 7); provide information on the procedure for appointing arbitrators and dispute resolution, the average dispute resolution duration, the costs for resolving disputes, the total number of disputes and the percentage of findings in favor of the seller; post reports on the cases conducted, information about the dismissal reasons and frequently encountered problems during action proceeding (Art. 19). These provisions designed so that the consumer can make a free and informed choice of the arbitral institution.

The consumer (online buyer of the product or service) fills out an electronic application form (complaint form) and sends it to the relevant product (service) seller for consideration. The seller, in its turn, offers the buyer the appropriate Alternative Dispute Resolution entity (The ADR entity) listed on the ODR platform website. As soon as the consumer and the seller have agreed on which particular ADR entity will adjudicate, the complaint is automatically transferred to this institution. The ADR entity must review the dispute and get the result within 90 days.

ADR Directive provides the possibility of judicial proceedings without the personal participation of the parties and without the mandatory participation of legal representatives.

Under Article 7 of ADR Directive, consumer arbitration is free of charge or involves payment of

nominal costs.

The ODR Regulation creates the organizational and technical conditions for the implementation of the online dispute resolution system provided by ADR Directive. In particular, the Regulation provides a functioning mechanism for arbitration centers by creating a single Internet platform. The provisions of the Regulation also provide assistance to EU Member States in creating a transparent and effective system of alternative dispute resolution between consumers and online sellers.

The ODR platform project began its work on February 15, 2016. The project is supported and managed by the European Commission.

ODR platform performs the following functions: 1) fill out a complaint form and file a complaint in electronic form; 2) informing the respondent party about the complaint; 3) choose a person competent to provide ADR services; 4) manage cases online and conduct online dispute resolution through the ODR platform; 5) translation of the information necessary for the parties to resolve the dispute into the languages of all EU member states; 6) electronic form development for sending disputant information to a person competent to provide ADR services 7) feedback system that will allow the parties to express their opinion on the ODR platform functioning, etc.

eBay resolves up to 60 million disputes per year on its platform. The advantage of handling large number of disputes is that the same problems are repeated, so it is possible to group disputes into categories. On the eBay dispute resolution platform, buyers can send a "Fraud notification letter" and also the following types of complaints: "Goods are not received by the buyer", "Goods do not meet the description", or "Unpaid goods". Limitations on the top price of a dispute are set in the system for certain categories (for example, for a vehicle - US \$ 50,000, for equipment — US \$ 20,000). Moreover, compensation is limited to the price of the goods and, as a result, buyers cannot recover losses associated with the purchasing of goods. If the dispute cannot be resolved directly between the buyer and the seller, it will be redirected to the Resolution Services Team, which will consider the claim and decide whether to fully or partially satisfy the claim, or to refuse to satisfy it.

One may note that any DRS platform is focused on reducing the number of complaints. The success of reaching an agreement between the disputants depends on the dispute nature, accuracy of the information provided, and ability of the software or a neutral third party to collect, evaluates and analyze facts and evidence [19].

5. Online dispute resolution in Russia

Russia lags behind developed countries in terms of DRS. As a rule, the parties neglect the possibility of reconciliation as each of them is confident in its own rightness and is not ready for a compromise. In addition, a part of consumer small claims (up to 10 thousand rubles) does not reach the courts, since the costs of judicial review are disproportionate to the claim cost and the time spent protecting the violated right. For sellers, service providers, the complaint review raised by consumers is also costly, since the entrepreneur incurs the costs of organizing a claim review service, managing claims, and paying a possible fine in case of refusal to satisfy consumer requirements.

The Law of the Russian Federation of 07.02.1992 No. 2300-1 "On Protection of Consumer Rights" [20] (hereinafter - the Law on Protection of Consumer Rights) and the Federal Law of 27.07.2010 No. 193-FZ "On Alternative Procedure of Dispute Resolution with Participation of a Mediator (mediation procedure)" [21] does not provide for online dispute resolution as a mechanism for protecting consumer rights, although it does not contain obstacles. In addition, in Russia, the practice aimed at protecting consumer rights using the DRS mechanisms is formed mainly in the field of Internet commerce, for example, "Beru", "Yandex.Market", "Avito", etc. Therefore, it is necessary to form a legal framework for the DRS system development in an attempt to create favorable conditions for the development of consumer online dispute resolution practices in Russia, as well as to provide guarantees for respecting consumer rights when implementing the DRS procedures.

In 2017, the Government of the Russian Federation approved the Digital Economy program [22] and proposed a regulatory action plan. In accordance with this plan, in 2019, the draft federal law "On Amending the Law of the Russian Federation "On Protection of Consumer Rights" and the Federal

Law “On Alternative Procedure of Dispute Resolution with Participation of a Mediator (mediation procedure)” regarding the creation of a legal basis for the system development of alternative online dispute resolution mechanisms” was developed aiming at creating a system of pre-trial dispute resolution associated with the protection of consumer rights and developing an institute for independent quality evaluation of goods and services.

The proposed consumer related dispute resolution model is notionally correct.

The amendments involve the creation of ODR platform, which is an information system including a website and (or) a program for the pre-trial consumer related dispute resolution in the sale of goods, performance of work or providing services. Moreover, aggregators of goods and services, sellers create platforms on a voluntary basis. The operator of such a platform is the person carrying out operational activities. A notification procedure for registering platforms and including them in the lists of the Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing is supposed.

The most important principles of the ODR system are the voluntary and free participation of consumers in online dispute resolution.

According to the law, the consumer has the right to bring a claim to the manufacturer, service provider, seller, authorized organization, importer and aggregator owner within the framework of this platform. At the same time, the consumer is not deprived of the opportunity to resolve the dispute in any legal way (offline).

The pre-trial dispute resolution procedure will be considered complied with if the 10-day period from the application date has expired or the responsible person decided to satisfy, partially satisfy or refuse to satisfy the submitted claim and such a decision was received by the consumer using the online platform before the expiration of this period (Article 16.2).

The project provides an opportunity for a responsible person to avoid a fine encouraging the use of ODR platforms. This requires his good faith participation in dispute resolution procedures using the online platform and reviewing consumer claims through platform before going to court. At the same time, in such procedures the presumption of good faith acts towards named persons.

The parties are not bound by the requirements declared by the consumer in the process of dispute settlement (Clause 4 of Article 39.3). For example, instead of demanding the consumer to correct the product defects, the parties may agree on product return and reimbursement providing a discount for future purchases to the consumer, etc.

The draft law does not determine the content of ODR procedures; it is up to the platform operators to decide, so each operator can create its own ODR model. However, the platform operator is obliged to provide the dispute parties with: 1) the possibility of filling claims and other information necessary for claims review in electronic form; 2) the possibility of receiving information by consumer about the progress and results of the claims review; 3) the possibility of attracting experts, specialists, mediators and other independent contractors to the dispute by the parties for their assistant in dispute settlement, if such an opportunity is provided for by the platform rules (Clause 3 of Article 39.4).

In addition, the project entrusts the platform operator with the obligation to provide the dispute party, if requested, with information on the dates of filing the consumer’s claim and review findings in the application form established by the procedural legislation necessary for bringing a case before the court within five days.

However, the draft law contains only one exception for consumer disputes can be resolved using the ODR procedures. These are disputes arising out of the provision of financial services, the mechanism for pre-trial dispute resolution for which is provided for by the Federal Law No. 123-FZ of 4 June, 2018 "On the Commissioner for the Rights of Consumers of Financial Services" [24]. Only disputes that are not subject to review by the Consumer Rights Representative of the financial services can be resolved through the online dispute resolution platform.

6. Practical relevance, suggestions

Notwithstanding the foregoing, the project cannot be called ideal.

Firstly, the draft law provides for the seller's right to include in the contract a condition on mandatory pre-trial dispute resolution using the platform. But this condition does not deprive the consumer of the right to present his claims to the seller (contractor, aggregator owner) in a different form without using the platform. Therefore, the consumer, regardless of the form (online, offline), will have to submit a claim to the seller before filing a lawsuit. In addition, at present, the consumer must comply with such a procedure only in some cases (for example, communication services, passenger transportation), which significantly neutralize the draft law provisions' importance. As practice shows, today the courts address cases regardless of whether there was a violation of the pre-trial dispute resolution, an agreement on arbitration or, for example, agreement on mediation.

Secondly, provisions should be made for the administrative liability of the platform operator for violating the rules introduced in Chapter III.1. Consumer Protection Act.

Thirdly, according to the Article 39.4 of the draft law, the authorized body will respond to incoming complaints regarding platforms that violate the rules specified by law. In the event of a systematic gross violation of the review procedure of consumer claims, the Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing is entitled to send a notification on the violation inadmissibility to the platform operator. And in case the operator fails to comply with the order, the Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing will have the right to exclude platform information from information resource, which will not entail the termination of the platform.

Fourthly, according to the project, an unfair seller has the opportunity to escape liability for a fine up in refusing to satisfy the consumer's requirements. For this, only the fact of responsible person's participation in the dispute resolution procedure is sufficient. The burden of proving dishonesty of the responsible person lies with the consumer.

Fifth, the project provides for the platform operator's right to carry out consumer identification. However, the absence of obligations arising from identification may entail difficulties associated with the extension of the provisions of the Law on the Protection of Consumer Rights to particular legal relations (subjective criterion). At the same time, it is necessary to establish the purpose of the acquisition of goods (for example, when purchase large number of technically complex goods), which should not be associated with business.

7. Conclusion

Online dispute resolution is certainly a tool with high potential in terms of consumer protection. This mechanism makes it possible to resolve disputes when the cost of goods, work and services is insignificant. However, strong motivation of the parties to cooperate is necessary for the effective ODR operation.

Both dispute parties benefit, that is, the consumer can quickly solve his problem with minimal costs, and the seller can reduce the complaint review structure costs, minimize legal costs and also demonstrate customer-oriented approach. This leads to strengthening economic ties, improving the entrepreneur reputation and serving as the basis for increasing the number of transactions.

Russian consumers are already accustomed to purchasing goods via the Internet, including AliExpress, eBay, OZON, etc. And if the content of the pre-trial online dispute resolution procedures proposed by the Russian platform operators will be in line with the best foreign practices, consumers will be happy to use the online dispute resolution platforms, so the long period of testing will not be required.

Using the consumer related dispute resolution practice in the future, it will be necessary to extend this experience to the settlement of other civil disputes (for example, rental housing, loan agreements, division of property, etc.).

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