

## BROADENING THE USE OF ALTERNATIVE DISPUTE RESOLUTION IN AZERBAIJAN

Prepared by Damir Kaufman\*, Eva Maria Melis, Amit Mukherjee, and Christian Michel-Casulleras  
Governance Global Practice

Technical support financed by the World Bank is helping Azerbaijan's Ministry of Justice broaden its efforts to modernize the judicial system. The Judicial Services and Smart Infrastructure Project (JSSIP) aims to improve access, transparency, and delivery of justice services, both nationally and internationally, through alternative dispute resolution (ADR). This issue of Governance Notes explores how it works in Azerbaijan and the knowledge gained through experience to enhance it.

### WHAT IS ALTERNATIVE DISPUTE RESOLUTION?

Any means of settling disputes outside of the courtroom falls under the category of alternative dispute resolution. Its goal is to resolve disputes prior to or during formal administrative or adjudicative procedures, which can be costly and time-consuming. Although not intended to replace more traditional approaches, ADR can provide long-term solutions to employer and employee relations or to conflicts within families through stakeholder participation and buy-in. Traditional dispute resolution procedures can impose a decision by a judge where neither party is satisfied and the conflict continues or even escalates.

The JSSIP focuses on mediation and arbitration, the two most common alternative methods, and is financing an ADR pilot at Baku Yasamal District Court to test improvements in areas of access, speed, and cost-effectiveness.

### International Arbitration

Arbitration in Azerbaijan is used to settle commercial disputes between international commercial and economic entities through a disinterested third party or an arbitration panel. Both sides can agree on one arbitrator, or each side can select one arbitrator and the two arbitrators elect a third. Evidence is heard and a decision is made, which can be binding. Deliberations can last from a few days to a week. A written decision, or arbitral

award, is issued, but opinions are not part of the public record. Azerbaijani law recognizes the right of parties to refer a dispute to arbitration in another country or to a court in Azerbaijan, which will apply international law.

### Mediation

Mediation can be employed for both international and domestic disputes. Applying the values of neutrality, impartiality, confidentiality, and consensus, mediators endeavor to reach a mutually convenient, efficient, and durable agreement to a dispute. The mediator's role is to encourage clear communication and provide a space for productive discussion. Instead of a binding solution, proposals are suggested to help the disputants arrive at an agreeable decision.

Mediation can be effective in resolving minor disputes without destroying business relationships or involving courts and significant legal expenses. It also ensures the parties avoid becoming trapped in settlements they don't support, unlike arbitration where decisions can go against the will of the parties.

### ARBITRATION AND MEDIATION PRACTICES

At the center of the country's system, the Azerbaijan Arbitration and Mediation Center (AAMC) advocates the use of alternative dispute resolution methods and raises public awareness about the advantages of ADR as well as its mechanisms for resolving economic disputes. The center also trains professional arbiters and mediators, and publishes best practices. The AAMC consists of three institutional bodies: the Azerbaijan International Commercial Arbitration Court (AICAC), National Arbitration Court, and Baku Mediation and Conciliation Service.

### International Arbitration in Azerbaijan

In 2003, Azerbaijan took its first step toward advocating and applying alternative dispute resolution. The AAMC

\* Currently Secretary General, Ministry of Economy of Croatia

set up the AICAC, the first and only international arbitration court in the country. Today, it has 30 accredited arbitrators. Disputing parties may select independent arbitrators of any nationality, proceedings may be conducted in any language preferred by the parties, and applicable material and procedural law may be chosen by the parties, except for matters to be resolved through legislation. International investors rely on the provisions of the Foreign Investment Law to govern dispute resolution. Investment disputes may be resolved either by Azerbaijani courts or in accordance with procedures agreed to by the parties, such as using a forum approach.

The only national court officially involved with international arbitration is the Supreme Court. The Law on International Arbitration gives the Supreme Court supervisory and advisory functions with respect to arbitration, but only in international commercial cases. Since the establishment of the AICAC, only six cases have been decided by the Supreme Court. The low level of cases could indicate that international businesses distrust arbitration, or arbitration as a method is still in its infancy. There are also discrepancies regarding data from the AAMC and the Ministry with respect to the number of arbitrators and the level of use of arbitration in Azerbaijan.

### Approach to Commercial Disputes

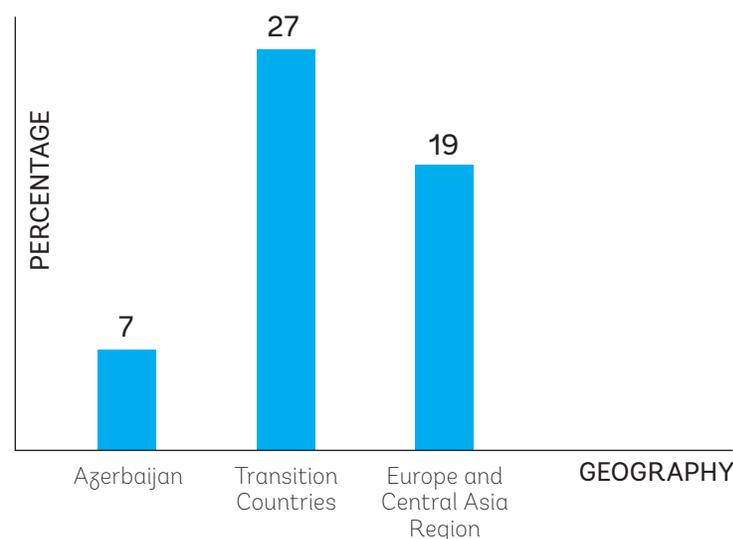
In international commercial arbitration cases, Azerbaijan follows international conventions dating to 1958: the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the European Convention on Foreign Commercial Arbitration, and the Washington Convention on the Settlement of the Investment Disputes between States and Nationals of Other States, which provides for arbitration through the International Center for Settlement of Investment Disputes.

Procedures for enforcing international judgments are established by the Civil Procedure Code, and generally require that judgments be enforced based on the principle of reciprocity. Azerbaijan also entered into several bilateral treaties, principally with neighboring states, to facilitate enforcement of international judgments, and is a party to the Convention on Mutual Legal Assistance in Civil, Family, and Criminal Cases of the Commonwealth of Independent States.

Regarding international arbitral award enforcement in Azerbaijan, a party must file an application for

enforcement to the Supreme Court, which will generally recognize and enforce the award unless the application does not meet the requirements specified within the law. The Doing Business Indicators database of 2016 shows Azerbaijan ranks well when it comes to ease of enforcing contracts. It holds the 28th position among 189 economies and against a regional average of 61. Figure 1 shows that a lower percentage of businesses use courts for dispute resolution in Azerbaijan than in other transition countries or in the Europe and Central Asia Region as a whole. This suggests the justice system is not necessarily regarded as the most effective way of resolving disputes.

**Figure 1. Percentage of Businesses Using Courts for International Dispute Resolution**



### International and Domestic Mediation

Mediation can be applied to four types of disputes in most European countries: civil and commercial, family law, administrative, and criminal cases. In civil disputes or divorce cases, judges may refer parties to a mediator if they believe more satisfactory results can be achieved for both parties. In criminal cases, a public prosecutor can propose alternatives to prosecution, such as establishing compensation agreements.

In Azerbaijan, legislation does not address mediation or inform the conciliation process and its nature. Conciliation is mentioned in the Civil Procedure Code: "Courts in Azerbaijan shall guarantee and protect violated and disputed rights and freedoms, except when their protection is to be carried out in an out-of-court order pursuant to this Code and other laws." The Family Code

states: “If there is an absence of a permission of one of the sides for a marriage breakup, the court has a right to suspend a judgment with appointing a period for conciliation during 3 months. Breakup of a marriage is carried out if there is no conciliation or if spouses (one of them) insist on a marriage breakup.” The informal practice of mediation is seen as a part of the work of nongovernmental organizations mostly regarding commercial and economic cases.

### The Justice System

The court system in Azerbaijan is composed of district or city courts, appeal courts, the Supreme Court, and the Constitutional Court. It also includes specialized units such as military, administrative-economic, and grave crimes courts. The Ministry of Justice develops and executes the activities and budgets of these courts.

### Indicators

- **Case inflow:** The clearance rate of resolved cases, both pending and incoming, in Azerbaijan is 100.5 percent for criminal cases and 99.9 percent for civil cases, which means courts are managing their case inflows well. Compared to the European Union’s average of 146 days to resolve criminal cases and 253 days for civil cases, Azerbaijani courts show considerable efficiency, averaging 56 days for criminal cases and 46 days for civil cases.
- **Court fees and other costs:** The level of court fees and costs is low in Azerbaijan. Adequate incentives may not exist to choose mediation services over litigation, although the cost of ADR is not likely to be significant.
- **Legal limitations:** International commercial arbitration is legally supported in Azerbaijan; however, domestic arbitration and mediation remain relatively neglected and are not taken into consideration in legislation.

## Recommendations for Strengthening the Use of Alternative Dispute Resolution in Azerbaijan

### Institutionalizing ADR

To regulate mediation, other countries have a central body established either as a public entity, such as a directorate within the Ministry of Justice, or as private self-regulated organization, such as a council, professional association, or institute. Through a public entity, the evolution of dispute settlement processes can be better regulated.

### Promoting Mediation

A significant implementation challenge is limited awareness about mediation among litigants, judges, attorneys, and court staff, based on a survey and qualitative interviews. Among those aware of mediation services, few report it as useful in dispute resolution. An outreach initiative is needed along with intensive training for judges, prosecutors, lawyers, and court staff.

### Incentivizing Domestic Arbitration

Greater incentives and publicity need to be provided for domestic arbitration, whose regulation also needs review, with the right to arbitration given to local commercial entities and individual litigants, too. Incentives could be built into the institutional framework to encourage the use of mediation and integrate it into the justice system by touting faster speed, cost savings, privacy and confidentiality, the opportunity to decide the outcome rather than having it imposed, greater flexibility on outcomes, and an environment that is less confrontational or adversarial than court proceedings.

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For more information, contact: [askgov@worldbank.org](mailto:askgov@worldbank.org).