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Alternative dispute resolution in digital government*

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Abstract: A significant number of people around the world have difficulties with access to justice, and most of the legal conflicts do not reach the consideration by public authorities. Nowadays e-justice and law tech are removing some barriers. The workload in the courts has increased all over the world. The problem of "not everyone can go to the court" turns into a problem of "not everyone will receive a quality service in the court". The solution can be Digital Dispute Resolution (DDR) as an alternative dispute resolution (ADR) option. The analysis of ADRs in different countries showed that most states use classical conflict resolution methods. However, some countries are implementing online dispute resolution (ODR) which is not able to change the situation significantly and prevent a "docket explosion" in the justice. One possible way to change the situation is to integrate ADR into digital government. The authors have substantiated the necessity of developing DDR and analyzed the difference between this technology and e-justice. The DDR systems are being tested in some countries, but it used in the highly specialized cases, for example, in the smart contract disputes. The proposed ADR system describing in the article has to be integrated with digital government. The authors present main DDR principles and prove that the Artificial Intelligence disputes conclusion is not a part of justice and should be regarded exclusively as ADR.

Keywords: "Docket explosion"; Digital dispute resolution; Digital government; Social media arbitration; Process mining

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Introduction

In law, "dispute" is used as a synonym for "social conflict", which is not entirely true since the conflict has several meanings. For example, open conflict (dispute, fight, struggle), subjective conflict (perception by one subject of another as a person having opposite beliefs or interests, or that the other party has somehow harmed the subject of the conflict).[1] Understanding this phenomenon is important for determination of the methods for their settlement. To resolve an open conflict, direct influence on its subjects may be required, for example, to stop a fight. To resolve a subjective conflict, it is necessary to influence the perception of reality by the subject of the conflict, for example, by convincing him of the fairness and reasonableness of the situation that caused his dissatisfaction. Speaking about dispute resolution in a digital government, we proceed from the limited impact of digital technologies on the objects of reality. Therefore, we consider ADR as a system for resolving subjective legal conflicts.

One of the main ways to resolve social conflicts is a law. Explicitly or implicitly, in most studies of law and society, the "moral-functionalist" concept of law appears, which considers it as means of resolving and preventing conflicts.[2] The law resolves conflicts through the actions of public authorities, which either take an active part in their settlement, or create conditions for their resolution by civil society institutions. The efficiency of these methods provides the state with an increase in the level of trust between legal entities, which has a direct impact on the national economy and the social environment. In the context of globalization and the widespread introduction of remote work mechanisms, these factors may be crucial for the choice of a place of residence and work by subjects of the digital economy who are no longer tied to a specific geographical location.

For global competition in the digital economy, the state must ensure a high level of access to justice for all subjects of law. The World Bank, investigating the practice in the field of improving access to justice, notes that among the factors, that can have a significant impact on this area, there is a system of alternative dispute resolution (ADR).[3] Alternative dispute resolution is a method of resolving a conflict by creating a final algorithm for the actions of the parties to the dispute, accepted by the parties to the conflict, without contacting public authorities. Some authors distinguish the following types of ADR: negotiations, arbitration, mediation,

1 DEAN, G. P. Social Conflict: Some Basic Principles. *Journal of Dispute Resolution*, v. 2007, Iss. 1, 2007. art. 8, p. 151-156.

2 AUSTIN, T. T. Law as a Weapon in Social Conflict. Oxford University Press. *Social Problems*, v. 23, n. 3, p. 276-291, 1976. Available at: https://doi.org/10.2307/799774.

3 MARU, Vivek. Access to Justice and Legal Empowerment: A Review of World Bank Practice. *Justice and development working paper series*, n. 9. Washington, DC: World Bank. 2009. Available at: https://openknowledge.worldbank.org/handle/10986/18102 License: CC BY 3.0 IGO.

reconciliation.[4] The World Bank offers another classification: arbitration, conciliation, mediation, dispute resolution councils, including ombudsmen, expert definitions.[5] However, this list is not exhaustive, and alternative dispute resolution methods can be implemented in other forms, for example, using digital technologies. The Civil Justice Council's 2021 Report on mandatory ADR in the UK considers information technology as a third party involved in the dispute resolution.[6] This method is called as Digital Dispute Resolution (DDR).

Digital transformation, affecting changes in the public administration and economy, causes the emergence of new categories of disputes and increases the workload in the courts. The potential of ADR to solve this problem has not been disclosed, since the system uses old methods. It seems that a promising option for its evolution may be its integration into the digital government. The result of this integration we consider as DDR.

1 The value of alternative dispute resolution for society

1.1 Dispute resolution

Each State performs a similar list of functions, among which a special place is occupied by the judicial, which consists in conflict resolution. The importance of conflict resolution is confirmed by the principle of separation of powers, which provides for the creation of an independent branch of government for the administration of justice. Official statistics show the demand for this function among the population. Citizens often resort to the help of public authorities in resolving conflicts, for example, the increase in the number of lawsuits in 2020 in the United States was 5%,[7] in 2021, there was no growth, which the Administrative Department of the US Courts associated with a "lockdown" conducted due to the COVID-19 pandemic.[8] In Russia, the growth of disputes considered by courts in 2021 amounted to 2.5%, and a total of 39.23 million cases were considered

[4] KUMARI, Preeti. Alternative Dispute Resolution (ADR), June 14, 2020. Available at SSRN: https://ssrn.com/abstract=3626625.

[5] Alternative Dispute Resolution Center Manual – a Guide for Practitioners on Establishing and Managing ADR Centers. The World Bank Group, 2011. 131 p. Available at: https://web.worldbank.org/archive/website01553/archived/www.wbginvestmentclimate.org/uploads/15322_MGPEI_Web.pdf.

[6] Compulsory ADR. The Civil Justice Council's report on compulsory alternative dispute resolution (ADR) has been published today (Monday 12 July 2021), p. 59. URL: https://www.judiciary.uk/wp-content/uploads/2021/07/Civil-Justice-Council-Compulsory-ADR-report-1.pdf.

[7] Federal Judicial Caseload Statistics 2020. URL: https://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2020.

[8] Federal Judicial Caseload Statistics 2021. URL: https://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2021.

by courts during the year.[9] In Brazil, according to Conselho Nacional de Justiça, 75.4 million cases remain pending in court proceedings in 2021.[10] To reduce the number of court disputes, different countries use different methods to solve this problem, for example, the institution of the Ombudsman.

In Jordan, the Ombudsman is a specific legal instrument used to monitor public authorities, which is part of the Government's efforts to improve the public sector. At the same time, it provides an alternative dispute resolution process compared to filing cases in the courts, thereby reducing pressure on the judicial system and providing remedies that may be more accessible than the courts for certain categories of disputes.[11] The Ombudsman, together with arbitration and mediation, constitute the ADR system. The ADR can be conditionally divided into two groups:

1. Social methods of alternative dispute resolution, which include alternative dispute resolution institutions that are not regulated by the rules of law, which, for example, include customs, religious norms, etc. An example of such methods is an appeal for dispute resolution to an authority that does not have a legal status, including a religious leader, a leader of a social community.

In some countries with a weak system of State power, a parallel system of conflict resolution is being formed, for example, in Somalia.[12] Similar dispute resolution methods are also used in countries with a developed system of public administration, for example, expert opinions that are used in the settlement of legal conflicts in the field of construction (Germany, Italy, USA, etc.). Such expert opinions are not regulated by the norms of law, and in order to apply them, the parties must agree to their use in their legal relations.

These methods are provided by customs, and their execution is guaranteed by the force of public censure. The institution of social reputation, in the conditions of the information society, is often a means of coercion sufficient to ensure that the subjects of the conflict comply with the decision of the social arbitrator. For example, rating and feedback systems on digital platforms may have more significant negative consequences for a legal entity than legal means of coercion to lawful behavior.

[9] The Chairman of the Supreme Court of the Russian Federation summed up the work of the courts for 2021. URL: https://www.vsrf.ru/press_center/mass_media/30781/.

[10] Justiça em Números 2021. Conselho Nacional de Justiça.

[11] CUVILLIER, Emmanuel; ALMAROOF, Salam. A Jordan Ombudsman Bureau with Enhanced Capacity. 2015.

[12] Accessing Justice: Somalia's Alternative Dispute Resolution Centers by International Development Law Organization. URL: https://www.idlo.int/publications/accessing-justice-somalias-alternative-dispute-resolution-centers.

2. Legal methods of alternative dispute resolution include institutions of conflict resolution, enshrined in the norms of law. Conditionally, they can be divided into two groups according to the binding nature of the final decision for the parties.

2.1. Arbitration is the process of resolving legal disputes by appointing an arbitrator, an independent, neutral third party who listens and examines the specifics of the dispute and makes a final and binding decision, called an arbitration award. This process is similar to the judicial process, since it involves the issuance of a decision, however, the parties choose their own arbitrator and the way in which the arbitration will take place. For example, if the dispute is fairly simple and does not involve any factual issues, the parties may agree to waive a formal hearing and provide the arbitrator with only written statements and documentation, which is called a document-only arbitration, whereas in other cases the parties may wish for a full hearing.

2.2. Mediation is a dispute resolution process that focuses on the skills of effective communication and negotiation of a particular person chosen by the parties. The mediator's duties do not include making a decision on disputed issues, but only assistance in reaching agreement between the parties to the legal conflict. There are several types of intermediaries:

- persons who carry out mediation activities on a gratuitous basis (representatives of NGOs);

- persons engaged in mediation on a professional basis for a fee paid by the parties to the conflict (notary, lawyers, mediators, etc.);

- persons engaged in mediation on a professional basis for a fee received from the state (ombudsman).

The list of types of alternative dispute resolution is not exhaustive, because it is influenced by cultural characteristics, the legal system of the country, etc. For example, in New Zealand, when resolving disputes involving Maori under the Te Ture Whenua Maori Law, the mediation model must comply with Tikanga customs.[13] Alternative dispute resolution methods based on Adat have been successfully used in Aceh communities in Indonesia,[14] what is typical for the systems of Islamic law.

In case law countries, early neutral evaluation (ENE) methods are used when an independent and impartial evaluator (usually a retired High Court judge) giving an assessment/evaluation of the merits of each side's case. The evaluation is confidential, without prejudice and non-binding – importantly, this means that it is

[13] MORRIS, Grant Hamilton; ALEXANDER, Katie. Inclusiveness or Tokenism? *Culture and Mediation in New Zealand's Dispute Resolution Statutory Regimes*, 28 ADRJ 170, August 1, 2017). Available at SSRN: https://ssrn.com/abstract=3258090.

[14] FAJRI, M. Kasim; NURDIN, Abidin. Study of Sociological Law on Conflict Resolution Through Adat in Aceh Community According to Islamic Law. *Jurnal Hukum Keluarga dan Hukum Islam*, Samarah, v. 4, n. 2, p. 375-397, 2020. DOI: 10.22373/sjhk.v4i2.8231.

not shared with the trial judge. In the USA, ADR refers to any method of resolving disputes without litigation: mediation, arbitration, conciliation, negotiation, and transaction. Transaction as ADR is not used in all countries of the world.

1.2 "Docket explosion" in a justice

The presence of success in the development of ADR systems in different countries is noted by all experts. At the same time, none of them indicates the presence of a reference ADR variant that can significantly reduce the workload on judges. The growing number of disputes in court reduces the quality of justice and creates a snowball problem. For example, in India, the existence of a "Docket Explosion" has already been recognized, when courts accept more cases for consideration than they consider.[15]

At the same time, public authorities and international organizations recognize the existence of problems with access to justice. For example, the World Justice Project, based on the results of an analysis conducted in 101 countries, found that about half of the population (49%) have faced at least one legal problem over the past two years. Of these, 29% sought advice from family members or friends, 17% turned to the authorities or a third party for mediation.[16] The reasons for refusing to resolve issues in court are: significant legal costs, low level of legal competence, long terms of consideration of cases, organizational barriers.

Barriers to access to justice exist in all countries. For example, in the United States, it may take 26.1 months from filing an application to a civil court (data from 2020-2021).[17] In Europe, the time for consideration of civil and commercial disputes in the first instance is on average 250 days, for example, in Lithuania - 97 days, in Italy – 532 days.[18] Research commissioned by the European Parliament's Department of Policy on Citizens' Rights and Constitutional Issues revealed the following problems of access to justice in the European Union:

1. Shortcomings in the organization of the national judicial system, for example, the lack of effective guarantees for the independence of judges in individual countries.

2. Procedural obstacles, for example, the complexity of drafting and filing appeals to the court, short deadlines for appeal in certain countries.

[15] SIROHI, Parikshet; CHHACHHAR, Varun. Docket Explosion of Courts in India, May 25, 2010. Available at SSRN: https://ssrn.com/abstract=1615385 or http://dx.doi.org/10.2139/ssrn.1615385.

[16] Global Insights on Access to Justice 2019. World Justice Project. 2019. 128 p.

[17] United States District Courts – National Judicial Caseload Profile. URL: https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0331.2021.pdf.

[18] HARLEY, Georgia; SAID, Agnes. Fast-Tracking the Resolution of Minor Disputes: Experience from EU Member States. Washington, DC: World Bank, 2017. URL: https://openknowledge. worldbank.org/handle/10986/26100.

3. High fees for filing documents in court in some countries.

4. High cost of legal services in some countries.

5. Long periods of court proceedings in individual countries.

6. Non-enforcement of court decisions in certain countries.[19]

This makes it possible to consider reliable data from the World Justice Project, which indicate that 1.4 billion people around the world cannot meet their daily needs in the field of civil and administrative justice. For example, in the United States, low-income citizens have not received any or sufficient legal assistance for 92% of their civil law problems.[20] This allows us to argue that the shortcomings of public administration restrain the growth of the number of court disputes. With the removal of barriers, the growth in the number of cases in the courts will increase by more than 2 times.

The removal of barriers to access to justice is quite successful within the framework of an electronic state that allows you to receive public services online without traditional barriers: deadlines, cost, procedural complexity. Services in this case are understood by us in a broad sense: education, healthcare, justice, civil registration, etc. In an offline state, to file a claim, you need to contact a lawyer who would help you draw it up, then visit the bank to pay the necessary fees, then make copies of the documents, certify them by forming a set of applications. In an electronic state, it is not even necessary to get up from a chair and have knowledge in the field of law to file a claim. In most cases, it is necessary to fill out a form in the Legal Technique application, upload it on the court's website, and pay for the bank card fee. The increase in the availability of services leads to an increase in demand for it, and in the case of justice, to an increase in the workload on judges.

These conclusions are confirmed by statistics on countries actively implementing e-justice. For example, Estonia, thanks to the unique program of universal digital identification of citizens, is a leader in the development of an electronic state in the world. In 2020, the number of judges in Estonia remains the same as 20 years ago, but the number of court cases has doubled during this time.[21] A significant contribution to the increase in the workload on judges is made by legal tech applications, which use "no win no fee" policy, whereby consumers are only charged for success. The Cambridge Handbook of Lawyering in the Digital Age notes that a significant part of the population that previously refused to exercise

[19] Effective Access to Justice. PE 596.818 //Policy Department C: Citizens' Rights and Constitutional Affairs European Parliament. B-1047. Brussels. European Union, 2017. 166 p.

[20] The Justice Gap. URL: https://justicegap.lsc.gov/.

[21] Artificial intelligence as the new reality of e-justice. URL: https://e-estonia.com/artificial-intelligence-as-the-new-reality-of-e-justice/.

the right to justice has already gone to the courts with small claims.[22] If LegalTech technologies continue to develop, the barrier to access to justice will be removed, then we can expect a paralysis of the state dispute resolution system.

The authors consider the hypothesis proven that the development of electronic justice and legal tech poses a threat of collapse of judicial proceedings. At the same time, different ways to prevent it are being tested by different countries. The most fashionable in jurisprudence and the most ambiguous from the point of view of human rights is the use of Artificial Intelligence by courts. Within the framework of this article, it is proposed to use the DDR system for this purpose, which is a kind of ADR. To understand what kind of environment it will have to be implemented in, the study analyzed ADR in 31 countries around the world.

2 Alternative dispute resolution in different countries

An effective dispute resolution system ensures a high level of trust, which leads to a reduction in associated costs and contributes to the development of the economy.[23] Considering the shortcomings of the justice system existing in all countries, States have accumulated a wealth of experience in developing alternative dispute resolution systems. Let's look at examples of ADR used by different countries. The authors have studied the experience of many countries, but due to the limited volume of the article, several economically developed countries located on different continents have been selected: Asia, Europe, South and North America.

2.1 Brazil

The Brazilian Constitution enshrines the right to a reasonable length of trial. At the same time, on average, several years pass between the filing of a claim and the determination of a lower court judge, and it may take several more years to obtain a decision on the initiation of enforcement proceedings. In this regard, alternative dispute resolution methods are actively used in the country.

1. Arbitration. It is regulated by the Brazilian Arbitration Act (Federal Law No. 9307) of 1996, as amended in 2015 by Federal Law No. 13129, as well as the

[22] DE ELIZALDE, F. Legal Tech in Consumer Relations and Small-Value Claims: A Survey. *In*: L. DIMATTEO, A. Janssen; P. ORTOLANI, F.; DE ELIZALDE, M. Cannarsa; DUROVIC, M. (Ed.). *The Cambridge Handbook of Lawyering in the Digital Age* (Cambridge Law Handbooks, p. 159-178). Cambridge: Cambridge University Press, 2021. doi:10.1017/9781108936040.013.; FERREIRA, D.; GIOVANNINI, C.; GROMOVA, E.; DA ROCHA SCHMIDT, G. Arbitration Chambers and trust in technology provider: impacts of trust in technology intermediated dispute resolution proceedings. *Technology in Society*, n. 68, 101872, 2022.

[23] SHAVELL, Steven. Alternative Dispute Resolution: An Economic Analysis. *The Journal of Legal Studies*, v. 24, n. 1, p. 1-28, 1995. JSTOR, http://www.jstor.org/stable/724588.

Brazilian Code of Civil Procedure, adopted in 2016. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards has been applied in the country since 2002. The legislation provides freedom of choice of arbitration, the activity of which does not require any license.

The list of disputes within the jurisdiction of arbitrators is quite wide and includes disputes with state-controlled companies, labor disputes, consumer protection disputes, etc. The arbitration clause in this case must be drawn up in writing. In Brazil, an arbitration award is not subject to appeal, except in certain cases.

2. Mediation. The Brazilian Mediation Act 2015 (Federal Law No. 13140) included rules concerning judicial and non-judicial mediation. The Civil Procedure Code of 2016 expanded the use of mediation, making it a standard stage of judicial proceedings. The novelty of the law is the possibility of transferring a dispute with a state body to a mediator. In 2021, Brazil signed the United Nations Convention on International Trade Agreements Arising from Mediation (Singapore Convention).

3. Online dispute resolution (ODR). A new method of dispute resolution that can be used at the discretion of the parties. An example of its use is the Samarco case, where the courts established a base for compensation of damage to persons affected by a natural disaster, individual compensation agreements were concluded and signed by citizens through an online information system.

4. Dispute Boards. They are not regulated by Brazilian legislation but are used to resolve disputes in certain areas of business activity.[24]

2.2 China

ADR in China has its own peculiarities, it includes arbitration, people's mediation, which allows concluding an agreement that has legal force (the parties can apply to the court for its enforcement), as well as labor arbitration regulated by Labor Law.

1. Arbitration. The Arbitration Law of the People's Republic of China establishes the basic legal framework for regulating arbitration activities. Many regional and national arbitration institutions have been established in the country. Their decisions are final and not subject to appeal. The parties have the right to apply to the court in whose jurisdiction the person, organization or property participating in the arbitration is located to enforce the decision of the arbitration court. China is a member State of the New York Convention.

2. Mediation. People's Mediation Law of China regulates the activities of non-judicial civil mediation. Civil mediation is very common and popular: courts often

[24] REIS PORTO, M.; BARBOSA DOS SANTOS, J. A aplicação dos dispute boards nos contratos empresariais no Brasil. *Revista Brasileira de Alternative Dispute Resolution*, v. 3, n. 5, p. 137-157, 2021.

order parties to refer cases to people's mediation bodies for mediation before filing a lawsuit. The validity of mediation agreements is recognized by law.

2.3 India

There is a large shortage of judges in India, which forces the state to actively popularize ADR methods, which is noted in the decisions of the Supreme Court.[25] In the case of Perry Kansagra v. Smriti Madan Kansagra, he identified the types of disputes in which ADR can be the best alternative to litigation (cases concerning trade, commerce and contracts, disputes between the insurer and the policyholder, bankers, and customers).[26] According to the Supreme Court, the attraction of foreign investments also contributes to the development of ADR.[27]

1. Arbitration. India is a party to the Geneva Protocol on Arbitration Clauses of 1923, the Convention on the Enforcement of Foreign Judgments of 1923, the New York Convention of 1958. The country has a Law on Arbitration. In 2020, India adopted the Industrial Relations Code, which allows employers and employees to agree to submit a dispute to arbitration through a written agreement.

2. Mediation. Mediation was first officially recognized in the Labor Disputes Act of 1947, where officials appointed in accordance with article 4 of the Law "are obliged to mediate and facilitate the settlement of labor disputes." Today, mediation centers have been established by various High Courts, including in Delhi, Madras, Gujarat, Kolkata, Kerala, Allahabad, and Karnataka. In 2019, India signed the United Nations Convention,[28] officially recognizing the settlement agreements arising because of mediation in international commercial disputes.

3. Lok Adalats. India has had a long history of resolving disputes through the mediation of village elders. The current system of Lok Adalats is an improvement on that and is based on Gandhian principles. This is a non-adversarial system, whereby mock courts (called Lok Adalats) are held by the State Authority, District Authority, Supreme Court Legal Services Committee, High Court Legal Services Committee, or Taluk Legal Services Committee, periodically for exercising such jurisdiction as they think fit. These are usually presided by a retired judge, social activists, or members of the legal profession.[29]

4. Other forms of ADR. The ADR mechanism is contained in the Law on Micro, Small and Medium-sized Enterprises, which provides that if a company

[25] Afcons Infrastructure Limited v. Cherian Varkey Construction, (2010) 8 SCC 24.
[26] Perry Kansagra v. Smriti Madan Kansagra, I (2019) DMC 568 SC.
[27] Afcons Infrastructure Limited v. Cherian Varkey Construction (2010) 8 SCC 24, most recently relied on in Perry Kansagra v. Madan Kansagra, 2019 SCC Online SC 211.
[28] United Nations Convention on International Settlement Agreements Resulting from Mediation.
[29] Lok Adalat. The National Legal Services Authority (NALSA). URL: https://nalsa.gov.in/lok-adalat.

has not received a payment or has become a victim of default, it can apply to a specialized council, initiate mandatory reconciliation. In case of failure, the case will be referred to arbitration. The Labor Relations Code 2020 also provides for the appointment of conciliators as one of the measures for resolving labor disputes.

2.4 USA

There is a problem of access to justice in the country, and to solve it, the U.S. Department of Justice created the Office for Access to Justice (ATJ).[30] The length, cost and complexity of the trial leads to the fact that the subjects of law are trying to settle their disputes out of court using ADR, the list of which may differ in different states.

1. Arbitration. In the United States, arbitration agreements are governed by the Federal Arbitration Act. The parties can independently determine the dispute resolution algorithms using recognized arbitration instructions, for example, the instructions of the International Chamber of Commerce or the American Arbitration Association. In the contract, the parties may determine the qualifications and experience of the arbitrator. Unlike judges, whose cases are randomly assigned without regard to biography or experience, arbitrators are often appointed or selected precisely because they have special experience in the issues to be considered. Unlike court proceedings, arbitration proceedings are confidential.

Arbitration proceedings can be completed within a few months, which will lead to lower costs for lawyers and the proceedings themselves. In particular, arbitration procedures provide fewer opportunities for disclosure, including fewer depositions and little or no written disclosure. Arbitral awards are binding and can only be set aside in certain circumstances, as specified in state and federal arbitration laws. After the decision is made by the arbitrator or the arbitration commission, it must be confirmed in court. After approval, the decision is reduced to a judicial decision, which can be enforced by the winning party in court.

2. Mediation. Mediation can be appointed at any time. Mediators are often chosen based on their experience in matters to be settled. And the information disclosed during mediation may not be disclosed as evidence in any subsequent arbitration, judicial or other proceedings. The results of mediation are binding if the parties conclude an appropriate agreement.

3. Expert definition. This procedure is not regulated by legislation or procedural rules. Expert determination is often included in construction and energy contracts as a mechanism for resolving disputes before initiating arbitration.

[30] Mission Office for Access to Justice (ATJ). URL: https://www.justice.gov/archives/atj.

2.5 France

ADR is often used in France, which is facilitated by the time the case is considered by the court (from 12 to 18 months). The following ADRs are used in the country.

1. Arbitration. The International Chamber of Commerce, headquartered in Paris, is widely used in both domestic and international arbitration. The updated set of rules for its consideration of legal conflicts was adopted in 2021.[31] According to French law, in accordance with the principle of competence, French courts called upon to rule on a dispute must declare themselves incompetent when an arbitration clause is applied and allow the arbitral tribunal to make a decision. The decision of international arbitration is not subject to appeal (unlike domestic arbitration, where decisions can be appealed to the court of appeal). Arbitration is regulated by the Law on Arbitration as amended by Decree No. 2011-48 of January 13, 2011 and the Code of Civil Procedure.

2. Mediation and conciliation. Decree No. 2012-66, which entered into force in 2012, approved Book V of the Code of Civil Procedure of France, dedicated to the peaceful settlement of disputes. In France, there is a difference between the level of training of mediators and intermediaries. Mediators are not required to undergo special training or have any experience if they are qualified to understand the nature and subject of the dispute. On the contrary, intermediaries are unpaid court employees who must have at least three years of legal experience. Agreements reached through these procedures may be made binding by the judge with the consent of the parties. Resolution No. 2019-1333 of December 11, 2019 introduced the obligation to resort to these procedures before the start of the trial at a claim price of less than 5,000 euros.

3. Participatory procedure. In addition to the usual mediation and reconciliation in France, there is this negotiation mechanism, which is both procedural and contractual in nature. Law No. 2010-1609 of December 22, 2010 introduced this peaceful method of dispute resolution into the Civil Code for the first time. The 2012 resolution defines the scope of its application and consequences, as well as its confidentiality.

4. Other forms of ADR. In some areas, French law provides for special tribunals, commissions, or quasi-judicial bodies with limited jurisdiction, for example, in matters of social security, competition, journalism and broadcasting.

[31] The International Court of Arbitration of the International Chamber of Commerce. Arbitration Rules 2021. URL: https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/.

2.6 Germany

German corporations often use out-of-court dispute resolution methods, such as arbitration, mediation and conciliation.

1. Arbitration. The rules governing arbitration proceedings in Germany are contained in book X of the Code of Civil Procedure, which almost completely repeats the provisions of the UNCITRAL Model Law. The jurisdiction of arbitration extends to any domestic or foreign dispute, unless it concerns rental agreements, family disputes, for example, guardianship or guardianship. The legislation provides for many features of dispute resolution, implemented with the participation of ordinary courts. The country is a party to various international agreements related to arbitration: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, the Convention on the Settlement of Investment Disputes between States and Citizens of Other States of March 18, 1965, the European Convention on International Commercial Arbitration of April 21, 1961, the Protocol on arbitration clauses of September 24, 1923, etc.

2. Mediation. The Mediation Act of 2012 defines mediation as a confidential and structured procedure in which the parties, with the assistance of one or more intermediaries, voluntarily and on their own responsibility seek a peaceful resolution of their dispute. It contains provisions aimed at ensuring the independence and impartiality of the mediator, as well as confidentiality of mediation. In Germany, federal lands are given the right to establish a mandatory pre-trial mediation procedure for certain types of claims, for example, claims for up to 750 euros, disputes between neighbors.

3. Online dispute resolution. The EU Directive 2013 on consumer alternative dispute resolution and the regulation on the settlement of disputes with consumers on the Internet are aimed at providing consumers and sellers with a simplified, fast, and inexpensive out-of-court procedure for settling their disputes. The Directive has direct application in the EU member States and has been implemented in German legislation since 2016.

4. Adjudication. It means the establishment of a permanent decision-making board for a certain project. It is often used in construction projects. The decision of adjudication boards is usually provisionally binding. These are backup dispute resolution mechanisms for specific projects established by the agreement between the parties to avoid escalation of disputes. Although it is successfully applied, there are no legal norms regulating it in Germany.

5. Expert determination. The parties resort to expert opinions in disputes on technical or accounting issues, for example, in connection with determining the purchase price in transactions. They usually require an expert to prepare a written

opinion, which, depending on the decision of the parties, may be either mandatory or optional. In Germany, there are no rules of law governing it.

2.7 Generalization

The studied ADR experience in different countries shows common features in the development of technology.

1. In most cases, ADR applies only to certain disputes categories. States generally promote ADR in two ways:

- to reduce the workload in the courts, for example, in disputes which are widespread - cases with a low claim value, labor disputes, etc.;

- to increase confidence in the system of authorities, for example, in cases with a foreign investor requiring a high level of trust in the arbitrator.

It seems that DDR can help to resolve only the first category of disputes.

2. The parties agree to apply ADR forms even which are not regulated by the law (for example, an expert definition). Consequently, at the initial stage the development of DDR can take place without strict legal regulation and the creation of "regulatory sandboxes".

3. Countries striving for a digital economy use new types of ADR, for example, ODR. These dispute resolution methods are usually limited to the use of the Internet for communication between the parties of the conflict and an independent mediator. The usage of this technology speeds up the dispute resolution and reduces its costs, but ODR cannot be used as DDR.

4. ADR is based on the more flexible rules, and it can adapt to new digital technologies faster. Competition with state courts will stimulate this process. Thus, in our opinion, ADR adapts faster than courts to the technologies of the digital government and will be able to prevent the problem of "docket explosion".

3 Access to justice in an e-government

Access to justice is the foundation of the rule of law. The need to ensure it is recognized by all countries of the world, as well as the existence of significant shortcomings in their judicial systems. This encourages States to use methods to improve the effectiveness of justice. Today, the main one is the electronic justice system.

There is no single understanding of this term. For example, in Europe, within its framework, the transfer of justice to the marketplace mode is carried out. The European e-justice Portal is conceived as a future electronic one-stop shop in justice. As a first step it strives to make your life easier by providing information on justice

systems and improving access to justice throughout the EU, in 23 languages.[32] To ensure that the potential of e-justice is fully embraced in the development and rights protection context, UNDP's Global Program for Strengthening the Rule of Law, Human Rights, Justice and Security for Sustainable Peace and Development has spotlighted this area as one of the priorities of its justice work in the program phase IV (2022-2025).

UNDP has surveyed e-justice projects globally. This massive undertaking materialized into a series of products: a research paper "E-justice: Digital Transformation to Close the Justice Gap".[33] The toolkit presents seven specific tools for anyone working on e-justice to use in the design process to centre human rights and rule of law, and the map highlights over 200 projects allowing e-justice pioneers to connect globally and learn from each other. An analysis of these projects suggests that in most cases, e-justice means that courts post information about their activities on official websites and communicate with participants in the trial via the Internet. These innovations have shown a significant effect, increasing access to justice in countries of the world with different legal systems and different structures of judicial authorities. For example, in Indonesia, E-justice has improved legal proceedings in the religious courts of Serang.[34]

Scientists and law enforcers often make the mistake of considering e-justice as an element of "e-democracy". In legal science and regulatory legal acts, terms are used that denote various state-legal concepts of the use of information technologies in the field of public administration: "electronic democracy", "electronic government", "open government", "digital government". All of them were initially considered as part of the "open government" concept. In 2011, the international organization Open Government Partnership was established,[35] in 2022, it includes 77 countries and 76 administrative units. According to the cases of the organization's participants, they have successfully implemented technologies that provide access to justice, fiscal openness, mechanisms for reviewing complaints by public authorities, social audit, and open contracts. However, in legal science, the concept of "open government" has given way to "electronic democracy".

[32] European e-Justice Portal. URL: https://e-justice.europa.eu/home?action=home.

[33] Global Map of E-Justice Initiatives. URL: https://www.rolhr.undp.org/content/ruleoflaw/en/ejusticemap.html.

[34] AULAWI, Anton; ASMAWI, Muhamad. Effectiveness of E-Court in Improving Service Quality at Serang Religious Courts / Advances in Social Science, Education and Humanities Research, v. 410. 1st International Multidisciplinary Conference on Education, Technology, and Engineering (IMCETE 2019). URL: ttps://www.researchgate.net/publication/339819026_Effectiveness_of_E-Court_in_Improving_Service_Quality_at_Serang_Religious_Courts.

[35] Open government partnership. Articles of governance. URL: https://www.opengovpartnership.org/wpcontent/uploads/2019/06/OGP_Articles-of-Governance_2019.pdf.

The disadvantage of e-democracy is the lack of countries in the world that fully advise the standards of democracy. This is confirmed by studies analyzing the decline in the number of citizens participating in the electoral process in all countries and the crisis of parliamentarism.[36] At the same time, the introduction of information technology in public administration provokes the formation of a digital panopticon, which also casts doubt on the possibility of mixing the concepts of electronic democracy and electronic justice. This allows us to assert that the countries creating the electronic state system are between "electronic democracy" and "electronic autocracy". It is possible to assess their position in this area by analyzing digital indicators.[37] The key indicators are the principles of working with personal data, the possibility of algorithms influencing human rights, the protection of privacy and digital assets in cyberspace.

Thus, it is advisable to consider e-justice as an element of the "electronic state", which is characterized by the active use of the Internet by public authorities to post information, communicate with citizens and companies, and provide public services. For example, in the UK, when resolving disputes between the tax service and the taxpayer, it is possible to use alternative dispute resolution.[38] This service is included in the electronic state system, which involves electronic interaction between citizens and public authorities.[39]

This service is included in the electronic state system, which assumes electronic interaction between citizens and public authorities. The electronic government structure is not monolithic, but includes "e-executive", "e-justice", "e-parliament". It is important to note that the center of each element is the state information systems built on various information technologies. In order to comply with the principle of separation of powers and maintain the operability of critical information infrastructure, it is necessary to ensure the independence of these systems. For example, the transfer of legal proceedings to electronic form and the drafting of judicial acts in electronic form requires full independent control of the court over the information system, excluding the possibility of interference in it by the executive.

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[36] EVSIKOV, K. Mechanisms of participatory democracy in realization of the constitutional right of citizens to participate in the management of public affairs. *Journal of Russian Law*, v. 6, p. 36-49, 2019. DOI: 10.12737/jrl.2019.6.4.

[37] POLYAKOVA, T.; MINBALEEV, A. The concept and legal nature of digital maturity. Gosudarstvo i pravo, v. 9, p. 107-116, 2021. DOI: 10.31857/S102694520016732-6. GROMOVA, E.; TITOVA, E.; KONEVA, N. Legal barriers to the implementation of digital industry (Industry 4.0). *The Journal of the World Intellectual Property*, v. 1, n. 25, p. 186.

[38] Compliance checks: alternative dispute resolution - CC/FS21. URL: https://www.gov.uk/government/publications/compliance-checks-alternative-dispute-resolution-ccfs21.

[39] Online form to apply for ADR. URL: https://www.tax.service.gov.uk/submissions/form/apply-foralternative-dispute-resolution-to-settle-tax-dispute/did-hmrc-issue-a-decision-giving-you-a-right-to-appeal?n=0&se=t&ff=t.

The development of electronic justice influences the development of alternative dispute resolution. For example, in 2021, the Supreme Court of China adopted the Rules of Online Litigation, which, among other things, regulated the mediation process via the Internet or an electronic judicial platform.[40] In addition, the Beijing Internet Court has built a judicial blockchain platform "Tianping Chain", focusing on solving the problems of storing electronic evidence and online verification of evidence in the chain, as well as gradually expanding the blockchain to areas such as law enforcement and management of the source of litigation.

The electronic state had a significant impact on ADR, which led to the emergence of Online Dispute Resolution (ADR).[41] Researchers in different countries note the convenience of this technology and its effectiveness for ensuring access to justice, for example, in Australia,[42] Turkey.[43] The single European Online Dispute Resolution Platform (ADR) operates in all European countries. All online retailers and traders in EU, Iceland, Liechtenstein or Norway are obliged to provide an easily accessible link to the ODR platform and an e-mail address for the ODR platform to contact you (Article 14 of the Regulation (EU) nº 524/2013[44]). Today, it is impossible to imagine the existence of digital commerce without this type of ADR. However, the potential of ODR is limited, and digital technologies should be used to increase the efficiency of ADR.

The development of electronic justice is proceeding in a similar way. Since the peak of efficiency growth due to the institutions of the "electronic state" has been passed in many countries. Public authorities are beginning to use end-to-end digital technologies:

- big data analytics;
- artificial intelligence;
- virtual and augmented reality;
- quantum technologies;

[40] 《人民法院在线诉讼规则》本月起施行 网上审案,便民又规范. URL: https://www.court.gov.cn/zixun-xiangqing-317061.html

[41] AMY, J.; SCHMITZ, Lola Akin Ojelabi; ZELEZNIKOW, John. Ohio State Legal Studies Research Paper, n. 680. Researching Online Dispute Resolution to Expand Access to Justice, GIUSTIZIA CONSENSUALE (CONSENSUAL JUSTICE), p. 269-303, 2022.

[42] LEGG, Michael. The Future of Dispute Resolution: Online ADR and Online Courts, July 18, 2016. Forthcoming – *Australasian Dispute Resolution Journal*, UNSW Law Research Paper, n. 2016-71, Available at SSRN: https://ssrn.com/abstract=2848097.

[43] KADIOGLU, Cemre. Bricks and Clicks: Online Dispute Resolution Mechanisms and Implementation of Online Arbitration in Turkey for Cross-Border Business to Consumer E-Commerce Disputes, January 8, 19. ASBU Digital Law Review (BHD), v. 1, n. 1, 2019. Available at SSRN: https://ssrn.com/abstract=4083115.

[44] Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) OJ L 165, 18.6.2013, p. 1-12 (BG, ES, CS, DA, DE, ET, EL, EN, FR, GA, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV). Special edition in Croatian: Chapter 15, v. 28, p. 202-213. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1426859531321&uri=CELEX:32013R0524.

- distributed registries;
- conventional technologies;
- digital platforms.

These information technologies provide great potential for the development of the economy, social sphere, and public administration. However, their application requires new rules and principles of legal regulation, which are considered within the framework of the "digital government" concept. The importance of the development of this direction is noted by the Department of Economic and Social Affairs UN,[45] the Organization for Economic Co-operation and Development (OECD).[46] Analysis of the existing justice system suggests that Digital Government will become a new stage in the development of ADR, which can be called Digital Dispute Resolution (DDR).

4 Digital Dispute Resolution in the Digital Government

4.1 Digital Dispute Resolution definition

Scientists and practitioners at national and international levels speak about Digital Dispute Resolution. For example, in 2021, a conference was held at the UN site [47] and UK Jurisdiction Taskforce recently announced the publication of its Digital Dispute Resolution Rules.[48] The rules are recommended for use by the Law Commission of England and Wales in 2021.[49] The importance of such events and documents cannot be overestimated. Despite the active research in jurisprudence, a unified understanding of the essence of DDR has not been formed. The points of view proposed by some authors[50] are highly controversial. For example, the opinion that a software algorithm created within the framework of a certain digital technology (supervised learning, smart contracts, etc.) is a third-party ADR, as well as the hypothesis that smart contracts, digital enforcement and internal complaint handling, a new era of dispute resolution by contract without a neutral third-party dawn, in the opinion of the authors, is wrong. In the future, such a position may create problems in determining who is responsible for making an illegal decision within the DDR. It is more logical from the point of view of the right to recognize the creator or user of the ADR algorithm as the party resolving the

45 Digital Government. URL: https://publicadministration.un.org/en/ict4d/Good-Practices-for-Digi-

46 Digital government. URL: https://www.oecd.org/gov/digital-government/.

47 Conference UN. Dispute Resolution in the Digital Economy. March 2021. URL: https://uncitral.un.org/ru/disputeresolutiondigitaleconomy.

48 Digital Dispute Resolution Rules UK Jurisdiction Taskforce. URL: https://35z8e83m1ih83drye280o9d1-wpengine.netdna-ssl.com/wp-content/uploads/2021/04/Lawtech_DDRR_Final.pdf.

49 Smart Legal Contracts: advice to Government, Law Commission of England and Wales, 2021, para 5.156. URL: https://perma.cc/4WFA-2JYP.

50 WAGNER, Gerhard; EIDENMUELLER, Horst G. M. *Digital Dispute Resolution*, June 22, 2021. Available at: SSRN: https://ssrn.com/abstract=3871612 or http://dx.doi.org/10.2139/ssrn.3871612.

conflict. The Cambridge Handbook of Lawyering in the Digital Age indicates that legal scholars, referring to arbitration or mediation, often take it for granted that these language labels are sufficient to designate a certain procedure, which is completely unacceptable.[51] None of these terms is monolithic, and each of them denotes a family of phenomena that may differ significantly. Thus, DDR cannot be defined unambiguously. We understand by it a wide range of alternative dispute resolution procedures using digital technologies. The key difference that makes it possible to distinguish DDR from other ADR is the use of an algorithm in the dispute resolution process that forms the final decision or part of it, regardless of the will of the person who is a third party. At the same time, dispute resolution can be fully automated, for example, smart contracts, or can be sanctioned by a person, for example, the approval by an arbitrator of a decision created by artificial intelligence. Although DDR is in its infancy and requires testing, it is possible to propose the principles of its implementation in the Digital Government system.

4.2 Disputes classification in the Digital Dispute Resolution

In each country there is a list of disputes that the state allows to settle with the help of ADR. In our opinion, all these disputes can be divided into:

- disputes, the solution of which can be algorithmized;
- disputes with difficult algorithmization.

To create a DDR, it is advisable to start with the algorithmization of disputes related to the first group. The second group should be used for machine learning. It seems that the future stage of the development of justice will be the use of artificial intelligence. Today, its use, considering the level of technology development, is associated with several risks that are unacceptable for the administration of justice. Other researchers hold a similar point of view.[52] Therefore, it is advisable to create and test artificial intelligence systems for the administration of justice within the ADR. Moreover, solutions created by Artificial Intelligence should be considered as DDR. Then the proceedings leave the logical trap, assuming that the decision is made not by the judge, but by the algorithm.

In court, a judge must always make a decision to resolve a legal conflict, he/she may oblige the parties to upload information to Artificial Intelligence, which

[51] ORTOLANI, P. Digital Dispute Resolution: Blurring the Boundaries of ADR. *In:* L. DIMATTEO, A; JANSSEN, P. Ortolani; F. DE ELIZALDE, M. Cannarsa; M. DUROVIC (Ed.). *The Cambridge Handbook of Lawyering in the Digital Age* (Cambridge Law Handbooks, p. 140-156). Cambridge: Cambridge University Press, 2021. doi: 10.1017/9781108936040.011.

[52] REDDEN, J.; BANKS, D., & Criminal Justice Testing and Evaluation Consortium, 2020. Artificial Intelligence Applications for Criminal Courts. U.S. Department of Justice, National Institute of Justice, Office of Justice Programs. URL: https://cjtec.org/files/5f5f943055f95.

makes a decision recognized by the DDR act. The formed decision can be made by the parties or challenged in court. The proposed scheme reduces the risks of adverse consequences from shortcomings in the operation of the algorithm formed by machine learning methods and does not retain the status of the court.

It seems that the use of artificial intelligence for adjudication is possible only after the creation of a strong Artificial Intelligence, which is currently a technically unsolved task.[53]

4.3 "ADR-first" in the Digital Dispute Resolution

For disputes, the solution of which can be algorithmized, the state should establish the ADR-first rule. In different countries, the question of whether it is possible to consolidate the obligation of ADR for litigation is debated. Many states have followed this path and have fixed ADR-first in legislation. The authors failed to identify examples of negative consequences from such a decision. Regarding the compliance of the ADR-first principle with human rights, we consider it appropriate to rely on the logic set out in the Civil Justice Council's report on compulsory alternative dispute resolution (UK, 2021).[54] The document substantiates the argument that ADR should be considered as an integral part of the dispute resolution process, which makes it possible to consider ADR-first not contrary to article 6 European Convention on Human Rights.[55]

4.4 Negative motivator in the Digital Dispute Resolution

ADR stimulation can occur in two ways:

- a positive motivator;
- negative motivator.

For a positive motivator, a significant change in the legal system is not required since economic expediency encourages the parties to use ADR. This fact is confirmed by the experience of different countries. A negative motivator for stimulating the use of ADR today is an inefficient justice system. In a digital government, this motivator will disappear, and the status of the court will increase. Consequently, the parties will seek to apply to the court for dispute resolution and ignore DDR. For example, in Russia, the development of the institute of mediation

[53] MINBALEEV, A. V.; EVSIKOV, K. S. Anti-Corruption Information Technologies. *Journal of Siberian Federal University-Humanities and Social Sciences*, v. 14, n. 12, p. 1674-1689, 2022.

[54] The Civil Justice Council's report on compulsory alternative dispute resolution (ADR) 2021. URL: https://www.judiciary.uk/wp-content/uploads/2021/07/Civil-Justice-Council-Compulsory-ADR-report-1.pdf.

[55] European Convention on Human Rights as amended by Protocols nº 11, 14 and 15 supplemented by Protocols nº 1, 4, 6, 7, 12, 13 and 16. URL: https://www.echr.coe.int/documents/convention_eng.pdf.

has a significant negative impact on the increase in the speed of consideration of cases. In the country, the cost of litigation has always been at a low level, which has been supplemented by the electronic justice system, which is gradually reducing the time for consideration of cases. As a result, the demand for the services of mediators is minimal, and the parties began to fall into court more often.

In a digital government, it is necessary to create a new negative motivator to stimulate demand for DDR. A variant of such an incentive may be "significant compensation of state costs for judicial review of the dispute, collected from the losing party in case of its refusal to apply DDR or execute an optional DDR decision." For example, the court directs the parties to use DDR based on Artificial Intelligence. The system makes a decision that does not suit one of the parties, then she has the right to go to court with the same dispute. If the court makes a similar decision during the consideration of the case, the initiator pays the court costs of the state and the opposing party in two times the amount.

4.5 Digital Government Process Mining in the Digital Dispute Resolution

Central to the construction of a digital government is the adaptation of public services to the needs of the population. One of the ways to achieve this goal is to move to proactive provision of public services. The state, based on the information available to it, analyzes to whom a particular service can be provided, and then either informs the person about the possibility of receiving it, or provides it automatically. At the same time, the citizen is not required to collect additional documents and make applications. For example, in Russia, from January 1, 2022, citizens can automatically receive payments for temporary disability or maternity based on an electronic sick list, which all medical organizations place in the unified federal information system "Social Insurance".[56]

The application of this principle in the field of DDR does not lie on the surface. Indeed, it is impractical to resolve a person's dispute if he does not declare it. However, we believe that in the Digital Government, the authorities should focus on the prevention of disputes. Thus, the proactive provision of DDR services consists in the analysis of existing or emerging legal conflicts and legal gaps to eliminate them promptly before the appearance of mass reasons for court cases.

[56] Decree of the Government of the Russian Federation of 11/23/2021 No. 2010 "On approval of the Rules for Obtaining by the Social Insurance Fund of the Russian Federation the information and documents Necessary for the Appointment and Payment of benefits for temporary disability, pregnancy and childbirth, one-time allowance at the birth of a child, monthly allowance for childcare". URL: http://pravo.gov.ru.

Let's consider proactive DDR on the example of legal conflicts between citizens and public authorities. In a digital government, the actions of any official leave a digital footprint. When building an integrated public administration system, all these traces are recorded in a single Data Lake. Taking into account that the state compiles an algorithmic process for each of its functions, this data warehouse will contain information about all deviations of a particular official or authority from the established process. Then the information technology used today in commercial companies and called Process Mining can identify these inconsistencies and analyze their causes.

It seems that Process Mining in the Digital Government is a DDR method, then it is advisable to transfer the management of this system, based on the established ADR institutions, to the Ombudsman for the Protection of Human Rights.

4.6 Automation Dispute Resolution in the Digital Dispute Resolution

At this stage, we assume that the state can transfer a significant amount of its functions to an algorithmized system that can be automated. For example, a system for providing social assistance, a system for recording acts of civil status. In this case, the decision is made not by a specific official, but by an algorithm. At the same time, the authors proceed from the need to prevent the emergence of the problem of the "dictatorship of the algorithm". It seems that a system of selective human control can resist this. an official of public authorities must selectively check at least 10% of transactions made automatically and 100% of transactions for which a citizen's complaint of dissatisfaction with a public service has been submitted. This control system is one of the ADR methods in the digital government, providing dispute resolution between a person and a state algorithm.

At the same time, the state has already begun to use blockchain for the digital transformation of individual spheres of government. For example, in Russia, Estonia and several other countries, this technology is used for electronic voting in elections and referendums. This allows us to consider this public service as a kind of smart contract. Accordingly, the dispute resolution procedures in this area can be automated by analogy with the automation of disputes in the financial system proposed by UK Jurisdiction Taskforce of the LawTech Delivery Panel in the Digital Dispute Resolution Rules.

4.7 Creating temporary Digital Dispute Resolution

The World Justice Project, based on the results of an analysis conducted in 101 countries, found that 49% of the population have faced at least one legal

problem over the past two years. The most common in this case are legal conflicts in the field of consumer disputes, housing, debts, insurance, etc.[57] Similar types of disputes are present in all countries of the world. In different countries, the legal system has gaps that generate massive disputes over a certain category of cases. For example, disputes over utility bills or debt collection on a loan. In most cases, such disputes are resolved by the court uniformly, and the arguments of the parties and the evidence are typical. The experience of some countries shows that a specialized ADR mechanism can help resolve these disputes. For example, in New Zealand, a Law on mediation in relation to farm debt was adopted in 2020. Kiwi farmers hold up to $63 billion in debt – an increase of over 270% in two decades. Distinguishes mediation under the Act is that typically, there is no real substantive dispute. The farmers owe the money, and the lenders have the right to enforce (2020). Instead, the emphasis is placed on the practical workability of solutions - such as over the timing, control, and monitoring - to settle the debt.[58]

We proceed from the fact that mass disputes are temporary in nature, and their destruction should occur by changing legislation or law enforcement practice. However, up to this point, ADR can solve the problem. Its mechanisms are especially relevant in the conditions of economic and social crises that create a significant number of disputes of a certain category.

4.8 Social Media Arbitration in the Digital Dispute Resolution

Currently, a significant number of Earth's inhabitants use social platforms to exercise their natural rights, including the right to exchange information, cultural rights, rights to self-development, etc. Social media also has an impact on the development of ADR.[59] In most countries, there is one or more social networks that have a dominant position. Since there are no economic relations between an individual and the owner of the information platform, it is impossible to talk about the regulation of these legal relations by the legislation on the protection of competition. However, social networks, taking advantage of their dominant position, began to cause damage to public relations. One of the most famous examples of such a policy is the blocking of the account of the current US president at the time of the election. The illegality of the actions of IT giants is confirmed by

[57] Global Insights on Access to Justice 2019. World Justice Project. 2019. 128 p. URL: https://worldjusticeproject.org/sites/default/files/documents/WJP-A2J-2019.pdf.

[58] MORRIS, Grant Hamilton. The Final Piece of the Jigsaw: A Longitudinal Study of New Zealand's Commercial Mediation Market. *New Zealand Business Law Quarterly*, v. 26, n. 1, p. 41-58, 2020.

[59] HARSHITA A. SEN, P. Social Media-Tion: A Constructive Approach to Dispute Resolution? *Revista Brasileira de Alternative Dispute Resolution*, v. 3, n. 6, p. 131-145, 2021.

judicial acts adopted in different countries that recognize the illegal blocking of the acanthus of a particular person.

Since the role of information platforms will increase in the digital government, it is advisable to create an appropriate arbitration to settle disputes on this issue. Since the number of disputes can be significant, and the parties to the dispute will not always be able to bear significant costs for its consideration, it is advisable to create a Social Media Arbitration in DDR format. To do this, it is advisable to approve algorithms for assessing the permissibility of blocking an account at the state level or at the level of a public organization.

Conclusion

Today the problems with access to justice are being identified in many countries around the world. According to various researchers, no more than half of all disputes arising in society reaches to the court. Fighting for citizens' access to justice, states attempt to reduce administrative barriers that restrict the citizens' access to the courts. From one side, the e-justice helps to solve this problem, from another side, this solution leads to the exponential growth of the workload in the courts in all countries. For example, there has been a growth in the number of small claims disputes, in which plaintiffs previously avoided proceedings due to high legal costs and difficulties with filing a claim.

This is confirmed by the widespread increase in the workload of judges, which in some countries reaches an unusually large size (so-called "docket explosion"). It is characterized by a low number of court decisions and a high number of lawsuits coming to the court. If this situation persists for a long time, it could lead to a justice system collapse. So, without changing the dispute resolution system at the current level of e-justice development, the justice systems in the many state courts may face with the "docket explosion". As one of the possible ways out of this situation may be the development of alternative dispute resolution methods. We believe that the states have to initiate competition in this area.

Most countries use these methods of dispute resolution, which ensure the settlement of legal conflicts on terms that are more comfortable than offered by state courts. ADR participants are offered shorter decision-making deadlines, lower fees, and a more professional level of decision-makers. Based on the existing practice, which we studied in detail, we have identified the following common features of ADR in different countries.

1. In most cases, ADR applies only to certain disputes categories. States generally promote ADR in two ways:

- to reduce the workload in the courts, for example, in disputes which are widespread - cases with a low claim value, labor disputes, etc.;

- to increase confidence in the system of authorities, for example, in cases with a foreign investor requiring a high level of trust in the arbitrator.

It seems that DDR can help to resolve only the first category of disputes.

2. The parties agree to apply ADR forms even which are not regulated by the law (for example, an expert definition). Consequently, at the initial stage the development of DDR can take place without strict legal regulation and the creation of "regulatory sandboxes".

3. Countries striving for a digital economy use new types of ADR, for example, ODR. These dispute resolution methods are usually limited to the use of the Internet for communication between the parties of the conflict and an independent mediator. The usage of this technology speeds up the dispute resolution and reduces its costs, but ODR cannot be used as DDR.

4. ADR is based on the more flexible rules, and it can adapt to new digital technologies faster. Competition with state courts will stimulate this process. Thus, in our opinion, ADR adapts faster than courts to the technologies of the digital government and will be able to prevent the problem of "docket explosion".

The performed analysis made it possible to substantiate the need to create DDR in the digital government, as well as to propose principles for its development.

1. Classification of disputes.
2. Approval of the "ADR-first" rule.
3. Introduction of a negative motivator for abandoning DDR.
4. Process mining in the digital government (like DDR).
5. Automation of dispute resolution.
6. Creation of temporary DDR algorithms.
7. Social Media Arbitration (like DDR).

Designing DDR based on these principles allows to argue in favour of exclusion of Artificial Intelligence from the trial. All dispute solutions created by Artificial Intelligence should be treated as DDR. Only a judge should make a decision in the court. In order to develop the justice system, we suggest that the court may oblige the parties to use Artificial Intelligence in resolving a legal conflict. The judgement can be accepted by the parties, or they can continue the trial. The proposed scheme reduces the risks of consequences from shortcomings due to possible problems with the algorithm, generated by machine learning methods, and maintains the high public status of the judge.

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