



Choice of Forum for Dispute Resolution: A Comparison of State Courts and Arbitration

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Abstract: This article examines the issue of choosing between state courts and arbitration institutions for resolving commercial disputes arising in business activities, with a particular focus on the Republic of Kazakhstan. Based on a comparative analysis, four key criteria are investigated: the amount in dispute, the nature and essence of the conflict, the time and quality of proceedings, and the impartiality of the decision rendered. It is concluded that state courts offer lower direct costs (such as court fees), but are characterized by a relatively lengthy process due to workload and multiple layers of jurisdiction. In contrast, arbitration provides the parties with procedural flexibility, the ability to select arbitrators, and often resolves disputes more quickly, although it requires payment of arbitration fees and may be vulnerable to the risk of "pocket" adjudications. In conclusion, it is emphasized that under both Kazakhstani and international practice, entrepreneurs should take into account the specific features of their dispute and carefully assess the reliability of arbitration in advance. A combination of analysis of national legislation, international legal norms (the New York Convention, the UNCITRAL Model Law), and examples from practical cases allows for the formulation of practical recommendations on selecting the optimal mechanism for resolving commercial conflicts.

Keywords: state court, commercial arbitration, arbitration fee, court fee, impartiality, corruption risks, multi-instance litigation, Republic of Kazakhstan, commercial disputes, entrepreneurship.

Introduction: The development of entrepreneurship in modern times, particularly in the Republic of

Kazakhstan, has led to a significant increase in the number of commercial disputes [1, 2]. While the state seeks to support the private sector [1], the more active market processes become, the more pressing the question of ensuring the protection of entrepreneurs' rights and choosing the most effective method for resolving conflicts becomes [3, 4]. Traditionally, businesses resort to state courts; however, according to the Tax Code [5], court fees, the heavy workload of judges, and potential procedural delays often force businesses to seek alternatives in arbitration institutions. On the other hand, commercial arbitration itself [6] guarantees flexibility and relatively short resolution times, yet it comes with its own limitations and risks, including the necessity for an arbitration agreement and the absence of a fully multi-instance process [7, 8].

Thus, the choice between state courts and arbitration becomes paramount. This choice determines not only the costs and timelines but also the effectiveness of the final protection of the parties' rights [9]. Moreover, international practice demonstrates the growing role of arbitration—especially in cross-border disputes where the enforceability of decisions in different jurisdictions is crucial [10, 11]. The issue becomes even more relevant when considering the presence of certain corruption risks and sanctions regimes that influence the choice of forum [12]. All of this underscores the urgent need for scientific analysis and the systematization of criteria for choosing the forum for dispute resolution in light of established Kazakhstani and international practices.

Scientific research comparing state courts and commercial arbitration has a fairly extensive basis [2, 4]. Some works provide detailed analyses of the types of arbitration agreements, the procedure for enforcing arbitration awards, and international approaches to the arbitrability of disputes [3, 7]. At the same time, many existing publications focus primarily on international ad hoc or institutional arbitration within the chambers of commerce of developed countries [9]. This article relies on materials that examine in detail the peculiarities of judicial and arbitration dispute resolution in the Kazakhstani context, as well as on the results of several primary sources cited in scientific publications [2, 3, 4, 12] and legislative acts of the Republic of Kazakhstan [1, 6]. Thus, this work systematizes the main criteria for choosing a forum for dispute resolution as applied to entrepreneurial activity, taking into account the most relevant aspects—from cost to impartiality.

The main aim of the article is to conduct a comprehensive comparison between state courts and arbitration from the perspective of both Kazakhstani

and international law enforcement practices, and to formulate practical recommendations for selecting a mechanism for resolving commercial disputes.

In this way, the work contributes to the development of legal theory and practice by highlighting the most significant issues in choosing between state courts and arbitration, using the Kazakhstani experience and international sources as examples.

MATERIALS AND METHODS

Economic activity in the private sector, especially in Kazakhstan, forms the foundation for sustainable growth and prosperity, but at the same time leads to an increase in the number of commercial disputes. The state, aiming to ensure lawful, fair, and peaceful resolution of such disputes, establishes a judicial system that provides guarantees for the protection of entrepreneurs' rights [1]. However, in practice, businesses are increasingly turning to alternative mechanisms, including various forms of arbitration [4, 9]. Below, we consider the basic nature of state courts and commercial arbitration, as well as the legal prerequisites and limitations associated with arbitration agreements.

State courts, according to the Constitutional Law of the Republic of Kazakhstan dated December 25, 2000, No. 132-II "On the Judicial System and the Status of Judges of the Republic of Kazakhstan" [1], serve as the official judicial authority empowered to hear civil, administrative, and criminal cases. Their key characteristics include:

- **Mandatory Nature of Judicial Acts:** Decisions are rendered in the name of the state, and non-compliance leads to the application of coercive measures.
- **Multi-Instance Structure and Procedural Guarantees:** The possibility to appeal decisions at the appellate and/or cassation levels increases the likelihood of correcting judicial errors [7].
- **Specialization of Judges:** In large cities, there are specialized panels or courts for civil cases, economic disputes, etc., although the assignment of a particular case depends on the internal structure and may not take into account the specific nuances of the conflict.
- **Overload:** A large number of cases in process often leads to lengthy proceedings, which does not always meet the interests of entrepreneurs who expect prompt resolution [2].

An alternative mechanism for economic disputes is commercial arbitration [6]. In arbitration, the parties, by agreement, submit disputes that have arisen or may

arise in the future to independent arbitrators who do not have the status of state judges [9]. The main features of arbitration proceedings can be summarized as follows:

- **Procedural Flexibility:** Unlike the rigidly regulated procedural norms of state courts, arbitration rules often allow for an adaptable process – including accelerated proceedings or the agreement on specific stages by the parties [4].
- **Ability to Choose Arbitrators:** The parties appoint the arbitrator (or arbitrators) themselves based on qualifications, experience, and competence in the specific subject matter. This feature is particularly valuable in cases requiring specialized knowledge [7].
- **Confidentiality:** Arbitration proceedings are often conducted without public hearings and without disclosing materials publicly, which appeals to entrepreneurs who wish to preserve business reputation and protect proprietary information [8].
- **Finality of Decisions:** In most cases, the arbitrators' verdict is final and enforceable in accordance with the law (see Article 54.1 of the Arbitration Law No. 488-V [6]). However, cancellation or review of a decision is possible only on a limited set of grounds [11].

In Kazakhstan, arbitration proceedings are separated

from the judicial system, meaning they are not directly part of it [1]. Nevertheless, arbitration performs a similar function in resolving economic disputes and is intended to relieve the burden on state courts [3]. In many cases, entrepreneurs prefer arbitration because it:

- Allows for prompt conflict resolution (assuming professional arbitrators and effective rules).
- Provides the opportunity to control the composition of decision-makers.
- Minimizes the “procedural details” that often complicate case review in regular courts.

However, there are also drawbacks. First, there are cases of “pocket arbitrations,” where one of the parties has created or is affiliated with an arbitration institution and effectively “secures” the desired decision [12]. Second, entering arbitration incurs additional expenses (arbitration fees), which may be higher or lower than court fees depending on the specific institution. Third, the procedural guarantees for review in state instances (appeals, cassation) for arbitration cases are extremely limited, imposing additional responsibility on the parties when choosing the forum [7].

For a clear demonstration of the differences between the state judicial system and arbitration, the following comparative Table 1 can be provided.

Table 1. Comparison of the State Judicial System and Arbitration [1, 5, 6, 11]

Criterion	State Court	Arbitration
Legal Basis	Constitutional Law of the RK No. 132-II (2000); other procedural codes	RK Law No. 488-V "On Arbitration" (2016); arbitration rules (e.g., MCOAS, other institutions)
Status of Decision-Makers	State judges, appointed or approved in accordance with the law	Arbitrators (not state judges) chosen by the parties or appointed by the arbitration institution
Nature of Proceedings	Formal procedural norms, multi-instance process, and, in most cases, open hearings	Flexible rules, limited grounds for appeal, generally confidential proceedings
Cost	Court fees, the amount of which is regulated by tax legislation	Arbitration fee plus possible registration fees, which may be higher or lower than state court expenses
Enforcement of Decisions	The state ensures enforcement; judicial acts are binding on all	Binding as an arbitration award, but recognition and enforcement may be required (New York Convention, 1958)
Time for	Can be prolonged due to court	Generally faster with effective rules;

Criterion	State Court	Arbitration
Resolution	overload and formal procedures	depends on the arbitrators' competence and the parties' cooperation

Table 1 reflects the key features of both dispute resolution forms [2, 4, 10]. It is evident that both approaches have their strengths and limitations, and the choice should be made based on the specific circumstances, the parties' interests, and the nature of the business.

Another determining factor affecting the applicability of arbitration is the presence of an arbitration agreement. According to Article 8.1 of the RK "On Arbitration" Law (2016), referral of a dispute to arbitration occurs only if there is a corresponding written agreement between the parties. The disputing parties may include an arbitration clause directly in the main contract (based on the principle of party autonomy) or establish a separate agreement [2]. Such an agreement typically specifies which arbitration institution will hear the potential dispute, the procedure for appointing arbitrators, the language of the proceedings, and other procedural aspects.

However, not all categories of disputes are subject to arbitration. Both international practice and national legislation provide for a number of exceptions related to personal non-property rights, family and labor disputes, as well as issues of a public law nature [9]. In Kazakhstan, a specific list of restrictions is provided in Articles 8.8–8.10 of the Arbitration Law (2016). If a dispute is not "arbitrable," the only option for resolution remains state courts [1].

Thus, the overall characterization of state courts and arbitration, as well as the requirements for an arbitration agreement, demonstrate that although commercial arbitration creates a more flexible and potentially faster alternative to state justice, it retains several vulnerabilities—from the risks of "pocket" arbitrations to high costs. Nevertheless, given the

overload of state courts and the need to resolve economic disputes quickly and confidentially, arbitration mechanisms are increasingly in demand by entrepreneurs.

RESULTS AND DISCUSSION

In commercial disputes, the amount subject to recovery is often the decisive factor, as overall costs depend on it. According to general rules, the court fee payable to the state budget when a legal entity files a property dispute in a state court is 3% of the claim amount (see Article 610.1.1 of the Tax Code of December 25, 2017, No. 120-VI "On Taxes and Other Mandatory Payments to the Budget") [5]. Thus, filing a case in a state court would cost 30,000 tenge, not including expenses for legal representation, expert opinions, and other potential costs. However, this is only the basic level of judicial expenses: additional costs are often required for paying representatives, conducting expert examinations, and other related procedures [2, 9].

In arbitration, there is no obligation to pay a court fee, but arbitration fees must be paid to cover the arbitrators' work, and in some cases, a so-called "registration fee" is also required [6]. Data analysis shows that for the same claim amount—1,000,000 tenge—the final payments in commercial arbitration in Kazakhstan sometimes average 264,560 tenge. The specific tariffs of different arbitration institutions vary significantly, ranging from 20,000 tenge to 716,475 tenge, not including possible registration fees [4]. Additionally, the party must consider payment for attorneys, experts, translators, etc., which can significantly increase the overall costs.

For illustration of the cost differences and potential additional expenses, Table 2 is provided below.

Table 2. Cost Differences and Possible Additional Expenses

Parameter	State Court	Arbitration
Basis for Payment	Court fee (3% of the claim for a legal entity)	Arbitration fee plus possible registration fee
Example for a Claim of 1,000,000 tenge	30,000 tenge (excluding expenses for representatives, experts, etc.)	On average 264,560 tenge (sample range: 20,000–716,475 tenge, excluding additional expenses)

Parameter	State Court	Arbitration
Obligation for Further Expenses	Depends on the complexity of the dispute (involvement of specialists, translators, etc.)	A similar situation: it is often necessary to cover costs for attorneys, experts, translators, and organizing hearings
Overall Assessment of Accessibility	Relatively cheaper compared to some arbitrations, but may take longer time	May be more expensive, but it offers a more flexible procedure and the ability to choose arbitrators
Additional Expenses	Costs for appeals, cassation, and court fees for filing complaints	Possible expenses for expedited proceedings, payment for an arbitration panel (if multiple arbitrators are appointed), venue rental, etc.

The issue of financial burden is closely related to the nature and essence of the dispute itself. If a non-trivial contract structure is anticipated (for example, complex brokerage activities in a foreign market or the involvement of multiple co-executors), engaging an arbitrator with the appropriate expertise can prove critically important [7]. In such situations, arbitration is a more advisable option because the parties have the opportunity to choose an expert who is specifically competent in that field [8]. Conversely, if the dispute is relatively simple and not burdened with specific peculiarities, a general jurisdiction court or an economic court (depending on the subject matter) is fully capable of rendering a decision without significant risk of incompetence [3, 4].

It is important to note that certain categories of disputes are explicitly excluded from arbitration jurisdiction. As mentioned earlier, according to Articles 8.8–8.10 of the RK "On Arbitration" Law (2016), arbitration is not authorized to hear cases arising from personal non-property relations, family matters, or certain public law issues [12]. In such cases, state courts remain the only option [1]. Hence, the overall conclusion is that when choosing between a state court and arbitration, an entrepreneur must consider the specifics of the contract, the level of expertise required from the adjudicator (arbitrator), and the potential legal limitations [9]. If the case involves significant technical or industry-specific nuances and the law permits the dispute to be referred to arbitration, opting for arbitration often provides a more accurate assessment of the circumstances.

The next key criterion is the quality and timeliness of the resolution. Arbitration institutions are generally geared toward expedited proceedings, which is particularly important given high demands for prompt execution [4]. In state courts, an overload of cases can prolong the process, and even the first-instance decision may take several months [3]. Furthermore,

subsequent appeals and cassation further extend the overall duration, though they increase safeguards against judicial errors [7]. In contrast, arbitration often operates in a single instance, and the arbitrators' decision is final [11]. Given that arbitrators are less overloaded and can flexibly adjust procedural rules, cases are typically resolved more quickly [9].

For example, when considering a case between a contractor and a client (both being limited liability companies), the average resolution time at the first instance in a state court is about 2.5 months, while arbitration can resolve the dispute in a shorter period. However, the "single-instance" nature of arbitration may be a disadvantage for a dissatisfied party, as there are no practical review mechanisms beyond the narrow grounds for overturning a decision [12].

Finally, impartiality plays a significant role in the choice of dispute resolution forum. Every entrepreneur expects that the third party deciding the dispute will be independent and unbiased regarding the outcome [7]. In state courts, a strict hierarchy of subordination and judicial accountability to the state theoretically reduces the risk of corruption; however, in practice, case overload and human factors may negatively affect attention to detail [2]. Arbitration, on the other hand, faces the issue of "pocket" institutions, where founders are affiliated individuals who secure the desired verdict for themselves [12]. Moreover, the lack of state oversight (apart from enforcement procedures) can encourage unethical practices, especially in cases involving large sums [9].

If one party believes that its rights have been violated due to the dishonest actions of a judge in a state court, it can appeal or file a cassation, with the discovery of corruption serving as grounds for overturning the decision (Articles 361–371 of the Criminal Code dated July 3, 2014, No. 226-V). In arbitration, however, the opportunity for review is limited: Articles 51 and 52 of the Arbitration Law (2016) specify only a few narrow

grounds (such as procedural rule violations or the absence of an arbitration agreement) under which a decision can be overturned [3]. Consequently, when opting to transfer a case to arbitration, an entrepreneur must ensure the integrity of the arbitration institution or arbitrators, and the initial stage of choosing the dispute resolution forum (by including an arbitration clause in the contract) becomes one of the most critical steps.

Thus, the main conclusion from the analysis is that each of the four aspects—dispute amount, the essence and nature of the disagreements, timeliness/quality of resolution, and impartiality—must be evaluated comprehensively. If the claim amount is significant and the issues require specialized expertise, arbitration may offer more precise evaluation but will be associated with higher costs and limited options for contesting the outcome. In contrast, a state court is less expensive and offers a multi-instance process, but its proceedings often take longer, and overload may reduce both promptness and the depth of detail analysis. Therefore, Kazakhstani entrepreneurs should analyze in advance the nature of potential disputes, the availability of qualified arbitrators, and the specifics of legal restrictions to choose the optimal forum for dispute resolution.

CONCLUSION

Thus, when choosing between a state court and arbitration, the parties must consider several key factors. First, in a state court the expenses for court fees are usually lower than the arbitration fee, but the high workload of judges and procedural complexity often result in prolonged proceedings. Second, arbitration allows for a faster outcome and offers flexible mechanisms for party participation, but its costs can significantly exceed the expenses of litigation in court. Third, impartiality remains a pertinent issue in both courts and arbitration proceedings. In practice, both institutions are exposed to risks of corruption or affiliated actions; however, when disputes are heard in the state judicial system, the party that feels aggrieved by such violations has a better chance of having its rights restored through higher-level courts, whereas in arbitration the possibilities for review are extremely limited.

Overall, while both forums face similar risks of corruption, state judges are somewhat better protected from unethical influence due to state oversight. Although financial costs in court may be lower, arbitration compensates for the price difference with quality and speed of resolution—a significant advantage for many entrepreneurs. In light of all the

above, the final choice depends on the specific conditions, the amount in dispute, and the level of expertise required for the fair and competent resolution of the commercial conflict.

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