

Recommendations and Proposals on Developing Additional Legal Instruments for Dispute Resolution in Fergana Valley's Countries

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Alternative methods of dispute resolution that do not require considerable financial expenditures and organizational efforts in comparing with judicially deciding the economic controversies exist in many developed countries along with the judicial procedure of economic dispute resolution. An arbitration tribunal is the kind of the institute of alternative methods for settling the economic controversies and, according to its nature, presents the extrajudicial body. *The principles of voluntariness and confidentiality to the body that decides essentially their controversies are the basis for forming and activity of arbitration tribunals.* These principles are reflecting not only the right of parties to treat an arisen dispute in the arbitration tribunal but also the right to participate in forming a composition of the arbitration tribunal, specifying the procedure for adjudication and dispute resolution.

An arbitration tribunal is the non-governmental court; therefore it does not possess the tools to enforce the execution of its decisions.

In Kyrgyzstan, the arbitration tribunals are active since 2001. The fact of passing the law “On the Arbitration Tribunals in the Kyrgyz Republic” confirms that the process of developing and strengthening the institute of arbitration tribunals for settling economic controversies in the national agrarian sector acquires the dynamic nature. The legislations of Tajikistan and Uzbekistan provide for the possibility to treat economic controversies in arbitration tribunals.

Beyond question, the arbitration tribunal has a number of perceived potential advantages over the judicial proceedings.

Firstly, the arbitration is often faster than litigation in court. When parties refer to the court they should potentially follow three formal procedures, including appeal and supervision procedures. An arbitration tribunal is the only instance that provides a final and binding decision.

Secondly, judges of the arbitration court are appointed by the government, at the same time, the dispute parties have the opportunity to select arbitrators of an arbitration tribunal from the proposed list. Moreover, this list can include not only legal professionals but also arbitrators with an appropriate degree of expertise (economists, financial officers, engineers etc) who are capable to examine the crux of economic disputes.

Thirdly, an arbitration tribunal can be cheaper and more flexible for businesses, since it is not necessary to go through three instances as in case of the arbitration court.

And finally fourthly, there are less potential conditions for corruption in an arbitration tribunal.

In case of real conflict situations and disputes, there are formal and informal mechanisms for their resolution at the farm level, for example, the aksakals' court legalized in Kyrgyzstan. Aksakals (wise and respected elders) always stood high in population's esteem in Central Asian countries.

Aksakals' courts are the community-based and self-government institutions that are voluntarily established on the basis of election procedures and aimed at the decision of cases, which were submitted to them according to the procedures established by the court, public prosecutor, departments of home affairs and other governmental bodies and their officials in accordance with the national legislation in force. Aksakals' courts are formed from the elders or other citizens who have gained the indisputable prestige, in line with

the resolution of citizens' assemblies held in administrative units or according to the resolution of another self-government institution on the territory of villages, settlements and towns.

Taking into consideration that the national legislations of Uzbekistan and Tajikistan provide for an opportunity to transfer the cases related to commercial and economic disputes to the arbitration tribunals, it would be expedient to entrust the aksakals' courts with deciding these cases. A procedure of pre-trial in the aksakals' courts being applied in Kyrgyzstan is recommended to disseminate over Tajikistan and Uzbekistan as the model procedure.

The law of the Kyrgyz Republic "On Water Users Associations" provides for the need in Regulatory Department for monitoring WUAs' activity. The Department of Water Resources of the Kyrgyz Republic was entrusted with executing such functions by the appropriate governmental decree. This department should have a sufficient influence on the water authorities and WUAs and has to be the mediator settling their disputes related to water resources management.

The similar regulatory departments for monitoring WUAs' activity would be necessary to establish under the Ministries of Agriculture and Water Resources of Tajikistan and Uzbekistan for resolution of the following disputes:

- between WUAs and the water management organization;
- between WUA's members and a WUA over the matters of rights and duties of parties; and
- between a WUA and water users not being the members of a WUA over the matters of water services.

The recommended mechanisms for settling the different disputes between water users and WUAs, WUAs and the WMO, water users and relevant authorities are given in the table below.

No	Type of dispute	Dispute resolution bodies			
		WUA Arbitration Commission	Arbitration Commission of the Canal Water Committee	Aksakals' Courts (under the local authorities)	Regulatory departments under MAWR xx)
1	2	3	4	5	6
1	Non-compliance with provisions of the Agreement on irrigation water delivery and other water services signed by water users and a WUA	v		v	v
2	Non-compliance with provisions of the Agreement signed by the Water Management Organization and WUAs		v		v
3	Breach of the established schedule of water use by a WUA member (unauthorized water diversion, unauthorized construction of a new off-takes etc.)	v		v	
4	Deterioration of irrigated farmland conditions of WUA members due to inactivity or insufficient activity related to O&M of irrigation and drainage systems:				
	• WUA	v			v
	• Inter-farm drainage network				

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1	2	3	4	5	6
			v		v
5	Violation of WUA members' rights on the compensation in case of damaging of crops or irrigated plot due to ill-made O&M of on-farm irrigation and drainage systems	v			v
6	Non-fulfillment of duties provided for in the WUA Charter by a WUA member regarding timely payments for water services; careful use of equipment and machinery belonging to a WUA ; reimbursing expenditures related to repairing or replacement of parts of equipment and machinery belonging to a WUA and damaged due to ill use and maintenance	v			
7	Violation of WUA members' rights related to his participating in the decision-making process in a WUA: to vote at the general meeting of a WUA, to discuss and form the agenda of the general meetings, to use services granted				

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	by a WUA, to propose candidates for election to the management bodies of WUA; and to be elected to these bodies.	v			v
8	Interpersonal conflicts	v	v	v	
9	Labor disputes between WUAs and their personnel	v			
10	Non-compliance with provisions of the Agreement on irrigation water delivery and other water services signed by water users not being WUA's members and a WUA, as well as problems related to the compensation of damages	v			v
11	Changes in volumes and time of irrigation water delivery within a WUA		v		v
12	Considerable daily deviations from planned water levels in the canal in the process of water use in a WUA		v		v
13	Ill-founded reducing the volume of water supply by the Canal Administration to WUAs at the				

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	expense of use brackish return water being formed on the WUA's territory		v		v
14	Disputes due to the interference of local authorities of different levels into WUA water supply (or the group of WUAs) and separate farms (or the group of farms):				
	• District administration		v		v
	• Provincial administration		v ^{x)}		v
15	Disputes between water users	v		v	

^{x)} with the participation of a representative of the BISA

^{xx)} at present, they are active in Kyrgyzstan and Tajikistan

Disputes due to the interference of provincial administration into the matters of irrigation water supply should be considered by the Canal Water Committee with the participation of dispute parties and under involving a representative of the Basin Irrigation System Administration (BISA).

If the parties cannot reach the consensus in the dispute under consideration they may transfer this case for proceedings at law into the economic court or common law court.

To prevent disputes between water users themselves, between water users and WUAs, and between WUAs and water management organizations it is necessary:

- to install water-measuring devices at water users' off-takes;
- to draw up the scientifically-grounded plan of water use for a WUA as a whole and for each farm – WUA's member prior to the beginning of water applications;
- to enhance governmental and community-based monitoring of irrigation water use;
- to create the environment of transparency and public awareness of activity of governmental water management bodies and water users associations;
- to improve and upgrade irrigation and drainage systems of different levels; and
- to conduct the training seminars for WUA personnel and farmers, from time to time, considering the topics related to the water use practice; water, land and civil legislation; integrated water resources management with involving water users into the water resources management process.

How the recommendations for resolving the water disputes and other controversies are being practically implemented?

These matters are described below by way of the case study of the pilot WUA "Akbarabad." In the growing season of 2007, the managers of five private farms brought their complaint to the Kuva District Office of Ministry of Agriculture and Water Resources and the Arbitration Commission of WUA "Akbarabad" about insufficient volumes of water delivered by this WUA for irrigation of cotton. The Arbitration Commission has established facts that water delivered for irrigation of cotton was used by farmers for irrigating secondary crops, an area of which was planned as 20% of the area under cereal crops for this dry year against 80% in the average year. Nevertheless, farmers have irrigated all their areas under secondary crops and caused the water stress of cotton. Farmers were notified about the gross violation of water use rules.

WUA's personnel with the assistance of the public have established facts that the farms "Isomidinov" and "Gulirano" practiced unauthorized water diversion from the WUA canal. The formal report about these violations was drawn up by the WUA personnel; and this document was brought to the WUA's Arbitration Commission. The WUA's Arbitration Commission decided to reduce irrigation water delivery to some farms and temporarily to suspend irrigation water delivery to these farms. In addition, the administration of WUA "Akbarabad" has addressed to the Provincial Water Inspectorate with its request to penalize the farmers who violate the irrigation schedule established for the irrigation canal "RP-1". By the resolution of the Provincial Water Inspectorate, these farmers were penalized in accordance with the established procedure.

Private farms having the state order for cotton and wheat were debtors of the WUA. The WUA, which has the right in accordance with the Charter to suspend granting its services when its members do not pay for services in timely manner, is going on with the notification about their arrears. In the case under consideration, farmers were informed that water services of the WUA will be discontinued if they will not pay off debts in the established terms.

According to the farmers' complaint, under distributing water through the WUA canals "Akbarabad-2" and "RP-1", the volumes of water delivered to private farms were two times less against their applications and the planned volumes of water use. A reasonableness of this complaint was established in the course of field audit; and by the decision of the WUA Council and administration, managers of hydro-operational sites who breached the procedure of water use were deprived 50% of their monthly bonus.

The private farm "Malika" brought its complaint to the Kuva District Office of Ministry of Agriculture and Water Resources (KDO MAWR) about the lack of irrigation water delivery by the WUA. The commission

consisting of representatives of the KDO MAWR, District Association of Private Farmers, Arbitration Commission, Council and administration of the WUA “Akbarabad” has established that in 2007, the private farm “Malika” did not conclude the agreement on water delivery with WUA at all. After concluding the agreement on irrigation water supply between the WUA and the private farm, water delivery to this farm was started.

The private farm “Sayfutdinov” brought its complaint to the Council and Arbitration Commission of the WUA “Akbarabad” with the information that over the period of 6 to 10 August this farm had to receive irrigation water by a flow rate of 50 l/sec according to its application and the plan of water use. However, the private farm “Mamatkhon” during two days (7 to 8 August) practiced unauthorized water diversion from the canal by a flow rate of 30 l/sec, resulting in the dispute between these two farms. The Council and Arbitration Commission of the WUA “Akbarabad” have resolved this conflict situation: the private farm “Sayfutdinov” has received the planned volumes of irrigation water; and the private farm “Mamatkhon” was strictly notified that in case of repeated unauthorized water diversion from the canal it will be penalized. Thus, private farms and WUAs address not only to the WUA’s Arbitration Commission but also to the Provincial Water Inspectorate and WUA Council and administration to resolve arisen disputes related to water use.

Figures 5.34, 5.35, and 5.36 give the trends of different types of disputes arisen in pilot WUAs “Akbarabad” (Uzbekistan), “Zerafshan” (Tajikistan) and “Japalak” (Kyrgyzstan) that were treated by WUA’s Arbitration Commissions over the period of 2005 to 2007.

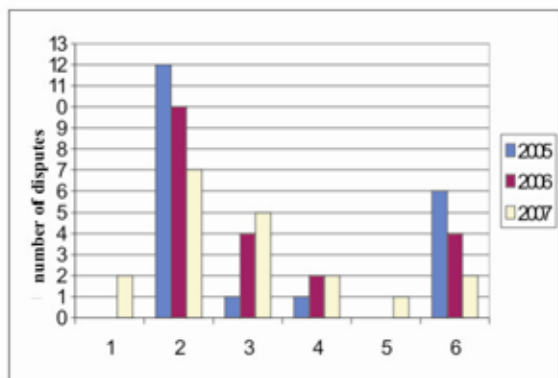


Figure 5.34 Trends of Disputes Resolution in the Arbitration Commission of the WUA “Akbarabad” (2005 to 2007)

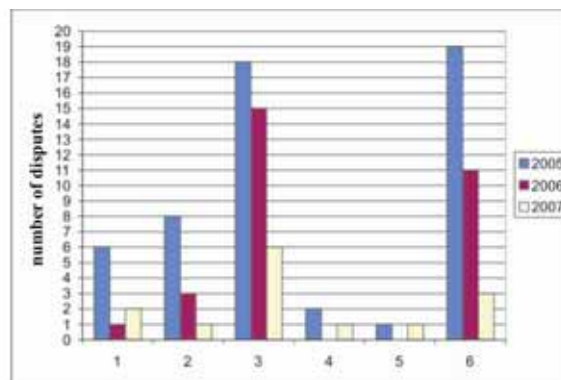


Figure 5.35. Trends of Disputes Resolution in the Arbitration Commission of the WUA “Japalak” (2005 to 2007)

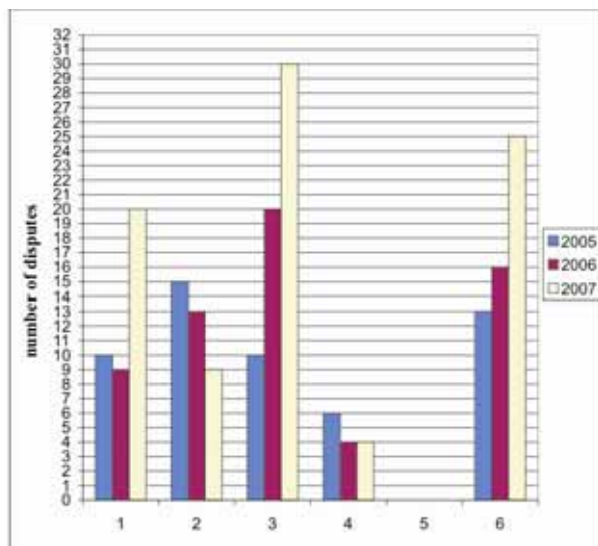


Figure 5.36 Trends of Disputes Resolution in the Arbitration Commission of the WUA “Zarafshan” (2005 to 2007)

Types of disputes:

- 1 – breach of irrigation water delivery;
- 2 – breach of the water use plan;
- 3 – ill-timed fees;
- 4 – labor disputes;
- 5 – relations with non-members of a WUA;
- 6 – relations between water users.

Diagrams show that each WUA has own “painful points” that require those or other efforts in order to resolve and eradicate them and how WUAs managed to do this. There are trends of appreciable reducing the number of disputes in the pilot WUAs “Akbarabad” and “Japalak.”

As regards the pilot WUA “Zarafshan,” the increase in the number of disputes related to breaches of irrigation water delivery, violations of water use rules by water users, and ill-timed fees for water services of the WUA is observed here. This fact may be, to a large degree, explained by the process of increasing the number of water users in the WUA. Dispute resolution by the Arbitration Commission with involving

the interested parties is the factor of stabilizing the general situation in the WUA that promotes strengthening the discipline of water users and WUAs in different fields of their activity.