Needs Assessment and Sustainability of Alternative Dispute Resolution (ADR) in Civil Disputes Resolving

Elizabeta SPIROSKA
e-mail: e.spiroska979@gmail.com

Mirjana RISTOVSKA
e-mail: mimaristovska@yahoo.co.uk

"When the wind changes direction,
There are those who build walls and
Those who build windmills"-
Chinese proverb

Abstract

This paper is a brief introduction for the needs assessment and sustainability of alternative dispute resolution (ADR) in the area of civil law. The principal focus is on the idea that, when it comes to using ADR, one size does not fit all. This paper shows that, the success of ADR interventions largely relies on a thorough understanding of the socio-cultural and economic context in which ADR intervention will be implemented and developed. This is why the mechanisms of the justice system, current legislation, the absence of rule of law, the types of dispute settlement, and culture are key factors in evaluating the potential of ADR. Alternative dispute resolution is inextricably linked with the notion of justice.

The paper is composed of Introduction, two parts and Conclusion. Introduction provides a brief overview of the term "alternative dispute resolution" and importance of ADR analysis. Part I describes the main factors that influence the choice of ADRs, with mention that all factors are equally important in the implementation of ADRs, and their sequence in the text is random choice of the authors. Part II describes the options of providing appropriate methods for ADRs sustainability. The Conclusion gives a brief but useful picture of paper.

Key words: alternative dispute resolution (ADR), culture of settlement, judicial reforms, ADR analysis, civil disputes

Introduction

The term "alternative dispute resolution" or "ADR" is an umbrella term, used to describe various methods of resolving disputes outside of traditional methods, such as litigation. Sometimes the "A" in ADR is defined as "appropriate" rather than "alternative" to emphasize that ADR refers to finding the most appropriate way to resolve the dispute. Sometimes there is no "A", but simply the phrase "dispute resolution" as a way to show that all potential approaches for resolving the dispute are acceptable. Regardless of which acronym is indicated, the concept of ADR is based on expanding the tools available to resolve disputes.

The increasing importance of dispute resolution is a reflection of the global growth in alternative dispute resolution (hereinafter: ADR) as the preferred methods of resolving disputes, a trend that is likely to continue into the 21st Century. When it comes to using ADR, one size does not fit all. Each state needs to work through how it can use ADR most effectively. Each state will face its own challenges. But, some of the common responses and challenges that state encounter when seeking to change behaviour in managing conflict using ADR have been identified.

To explain the structure of this behavior, ADRs need to be considered in their institutional context: through their advantages and disadvantages, the selection criteria, the degree of interdependence with the legal system, economic context, as well as infrastructure and financial sustainability. Also, it is necessary to identify the parameters that determine the possibilities of successful ADR intervention: economic development, the strength and organization of the private sector, political stability, legal framework to support ADR, but also less quantitative and more general aspects, such as respect for the rule of law and the culture of settlement within the existing judicial system.

ADR services are achieved through different forms and are governed by different sets of substantive and procedural rules.

Analysis of ADRs are necessary to determine if ADR actually is efficient and cost-reducing system.

I. Factors that Influence the Choice of ADR

The list of factors that influence the choice of ADR, particularly single out the following:

1. ***The ability of the legal system to resolve civil disputes through litigation***

This indicator is a process needed to estimate the time and costs required for the civil litigation and enforsment of the judgment. When considering the

probability that a society will benefit from ADR, actually, assess the condition of existing disputes, rule of law, legal certainty and whether the use of ADRs can play an important role in overcoming their own potential weaknesses.[1]

1.1. Duration of the civil litigation

In different countries, the duration of the civil litigation is different and depends on a number of objective and subjective factors: the steps of the procedure, the availability of human and financial resources, the quality of court case management strategies and policies designed to deal with delay of the cases. If the judicial system can not handle the number of cases, overdue cases create further delays. In some jurisdictions there is a mandatory procedure of pretrial[2]: a proceeding held before an official trial, where the parties can reach an agreement with the help of the court or their lawyers or legal teams.[3] Pretrial requires certain legal mechanisms and appropriate culture.

"Post-trial" or legal remedies and enforcement of the judgment, also has an impact on the overall length of resolving disputes. A key economic indicator, necessary to consider in assessing the ability of the system to resolve disputes, is its ability to implement agreements or enforcement of the judgment. The ability to carry out contracts and judgments is crucial on the individual business level by ensuring the return of money, goods or services and at the same time increases business confidence. Lack of proper enforcement of contracts is daunting for the economic growth as well as for the foreign investments.[4]

[1]Indicator for the initial idea of the need for ADRs, are the reports with a detailed review of judicial proceedings, judicial acts, studying the reality of the courts, their capacity, efficiency, and public confidence in the courts. Once assessments have confirmed the need for ADRs, their successful implementation requires investigation of the overall environment in which ADRs will exist and be conducted.

[2]This is particularly the case in the United States where the scope of pre-trial discovery is the widest of any common law country. By way of contrast with the transparency required discovery process in the US and other common law countries, most civil code jurisdictions have a more restrictive approach and often have no formal discovery process.

[3]For example, in the UK, from the total number of recorded cases, less than 10 percent are resolved by the courts. Similar is the case with the USA, See: Bingham, B, L., Nabatchi, T., Senger,J., Jackman, S.M.*:"Dispute Resolution and the Vanishing Trial: Comparing Federal Government Litigation and ADR Outcomes"*, at: http://works.bepress.com/lisa_bingham/1/

Oposite of this, in India, only 10 percent of all disputes brought before the courts, are resolved in pretrial.

[4]Tao, Z., Wang, S.: *"Foreign Direct Investment and Contract Enforcement"*, Journal of Comparative Economics 26, no. 4, 1998, p. 761–82.

1.2. Costs of the civil litigation

The longer lasting the court procedure, the greater the costs of the procedure. The costs of the procedure are direct, court`s costs and attorney's fees, and indirect related to time spent, loss of income, bribery and corruption. These costs vary greatly from state to state. In some legal systems, is dificult for potencial clients to initiate the litigation, because of the costs of the procedure[5], and especially given the fact that in most cases these costs exceed the amount of the potential award. While in most jurisdictions the party losing the dispute is obligated to reimburse the cost of the procedure,[6] on the other hand, it is important to note that, even for the party succeeding in the dispute, whether the costs of the procedure will be successfully offset depends on the procedural rules and the financial ability of the party that failed in dispute. In some jurisdictions, the judiciary appears more as an obstacle than as a facilitator in resolving disputes. Outside of the scope of corruption in the judiciary, various reasons may contribute to this perception: low professional standards of judicial, frustration with the way proceedings are conducted and biased judges. As a consequence, investors refrain from expanding the business beyond local markets, where trading partners belong to the same commercial community. The above parameters can be resolved through extensive reform of the judicial system in which ADR is projected as a mandatory way to resolve disputes.

1.3. Legal certainty

In order for the parties to consider ADRs, a minimum level of respect for the rule of law is required, whether ADRs are practiced outside of or within the formal judicial institutions. The rule of law, the efficiency of the formal court system and confidence in the judiciary, or legal certainty, are measured by various indicators. Some of the indicators are the following:

1.3.1. The time it takes to perform the obligation, calculated in calendar days, from the date the plaintiff filed the lawsuit in court until judicial decision becomes final and enforceable and the obligation is fulfilled;

1.3.2. The price, determined as a percentage of the claim and

1.3.3. The number of procedural steps that the client must take, from the initial action of filing the lawsuit to the fulfillment of the obligation, where a

[5]"...In a country like India, growth of alternative dispute resolution mechanism becomes imperative because of the large economic inequalities present in the country...", See: Shama, S., Malhotra, S.: "*Economic Analysis of Alternative Dispute Resolution"*, Gujarat National Law University, Forthcoming, July 2013, at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2293251

[6]This is not a universal principle; in the United States each side must bear its own costs.

step is defined as any action between the parties or between them and the judge or between them and other official persons.[7]

2. The economic development of the country

Both economists and jurists have realised that economic growth and legal development grow hand in hand. It is understood and accepted that ADR is the most suited dispute resolution method for promoting global trade and commerce.

Successful implementation of ADR mechanisms depends on the degree of economic development of the country. Different levels of economic development require different approaches to the achievements and possibilities of ADR intervention.[8] ADR follows the rules of supply and demand, so that the volume of commercial disputes is an important indicator of the nature and possibilities of ADR intervention. When the number and value of commercial disputes are low, ADR focuses on these specific items. The commercial disputes are particularly suitable for being solved through ADR, because the relations within which they arise are usually long, complex relationships among the parties and the parties, generally, have an interest in continuing the business relationship.

On the other hand, regional trade blocks also play an important role in the economic development of their countries. A typical requirement for membership in certain trade blocks is the inclusion of ADRs as part of the legal system of the country.[9]

ADR practice can vary depending on the sector, some sectors have well-developed ADR infrastructure and services, and in other sectors ADR is at an earlier stage of development. For example, in Hong Kong, ADR has been practiced in the construction sector for a long time, but other sectors are only beginning to use this method of dispute resolution.

[7]http://www.doingbusiness.org/MethodologySurveys/EnforcingContracts.aspx. Another indicator set includes the Council of Europe's CEPEJ report, at http://www.coe.int/T/dghl/cooperation/cepej/default_en.asp (accessed October, 2013).

[8]In economically developed countries, the private sector with developed private sector ADRs are recognised as a bussiness tool.

[9]The EU Directive 2008/52/EC on 21 May 2008 aims to facilitate access to ADR and to promote amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings, and those states who aspire to become members should demonstrate that EU requirements are met. Countries such as Republic of Macedonia, Bosnia and Herzegovina, Croatia, and Serbia implemented ADR as part of their accession curriculum for EU membership.

3. Political stability and the Government will

Comparative legal analysis of the historical development of ADR indicates that, the successful introduction, implementation and development of ADRs, requires goodwill of the government and a minimum level of political stability, mainly because of the time needed for implementation of ADR.[10] [11] The probability of changes in the policy or priorities of the Ministry of Justice or its equivalent in the country, could adversely affect ongoing projects in varying degrees, from serious setbacks on deadlines to a complete failure of the reforms. For example, in post-conflict countries, the perception of justice sends a message that the complete confidence in justice is lost, so a better solution is ADR as a part of a broader judicial reform.[12] Strong confidence in the common forms of dispute resolution through modern judicial systems also shows a willingness of society to look at alternative ways of resolving disputs.[13]

[10]See: McManus, M., Silverstein, B.: "*Brief History of Alternative Dispute Resolution in the USA*", CADMUS, Volume I, Issue 3, October, 2011.

[11]"... The role of ADRs, with the participation of the government in litigation is becoming more important and more prevalent. ADR can help the government in saving resources, which in itself is of significant public interest. More importantly is that ADR can help the government resolve at once the entire dispute resolution than the "parts" as it could be the case with litigation. ADRs also, include opposing sides more directly in shaping the decision for the dispute and can often provide a result that is beyond the capabilities of a court, utility, i.e. beyond its capabilities and features. Because of the direct participation of the parties in mediation, ADR can produce higher levels of satisfaction with the results. Accordingly, the use of ADR by the government, could lead to much more than just results... U.S. citizens have won the victory, always got the justice, whether it comes from justice tribunal appointed under Article III of the Constitution or with the use of ADR..", See: Peter R. Steenland, Jr and Peter A. Appel.: *"The Ongoing Role of Alternative Dispute Resolution in Federal Government Litigation"*, University of Toledo, Law Review,Vol.27, 1996, p.805.

[12]One of the ways to minimize the risk of failure of the ADRs introduction, is to conduct a pilot project that focuses on a small number of low-value cases, encouraging the parties to choose ADRs. International Finance Corporation (World Bank Group) – IFC, has supported introduction of mediation in Southeast Europe since 2003. Six pilot projects have been launched: two in Bosnia and Herzegovina in May 2004 and May 2005, three in Serbia in July 2006, and, one in Macedonia in 2006, where implementation of mediation still is in its beginning.

[13]Mediation as an ADR mechanism in the People`s Republic of China is practiced more than two thousand years. Its central position has been established thanks to the joint effect of several factors, including the undeveloped jurisprudence of imperial China.

Any legal change requires considerable time to implement. But, it is also very important to remember that if the existing laws are sufficient, there is no need to change.

4. Legal framework

4.1. Laws and bylaws regulating ADR

All types of ADR rely on a certain legal framework. Comparative legal analysis confirm that, in many countries, minimalistic regulation of this substance is shown as an advantage, because this kind of regulation gives freedom to the direct stakeholders (courts and parties) to shape the programs tailored to the needs of users. But it is also risky as some issues depend on the autonomy of the parties.[14] In the context of the legal framework for the ADR, a distinction is made between the basic legal framework, articals to support and promote the use of ADR, internal rules for ADR, and ADR statutory reference of the need for creation of additional legal acts. ADR seeks its own legal framewor to work.[15] Such rules typically include procedural aspects of ADR, initiation, termination, costs and the appointment of those who will implement the ADR mechanisms. They also can set the standards for accreditation of the third party, and standards for enforcement of procedures.[16] A common thread in the legal regulation of ADR includes the fact that

[14]For example, the content of the principle of confidentiality …"for a minimum degree of compatibility of civil procedural rules with regard to how to protect the confidentiality of mediation in any subsequent civil and commercial judicial proceedings or arbitration..", contained in the EU Directive 2008/52/EC on 21 May 2008 and in the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law.

[15]Depending on the organization of the judicial system, the rules relating to ADR can take the form of law, administrative guidance or court rules of procedure or the procedure can be ordered to go beyond the requirement of the consent of the trial court or the presiding judge.

[16]While ADRs are based on a certain number of minimal procedurale guarantees, they can take the form of general principles laid down at a legislative level and can then be implemented and developed at an infra-legislative level in codes of conduct. The guiding procedural principles can thus take the form of ethical rules. In reality, the codes of conduct are given particular attention in the functioning of ADRs. Their development provides proof of the efforts of practitioners to guarantee the quality of ADRs. In this regard, the procedural rules which they lay down are designed to guarantee the impartiality of third parties, to define precisely the role of third parties during the procedure, to determine the deadline by which a solution must be found and to make proper arrangements for the agreements to be concluded. These codes could thus be an excellent means of enhancing the quality of ADRs, See: Commission of the European Communities, "*Green Paper on Alternative Dispute*

the laws should ensure enforcement of what is decided.[17] Therefore it is necessary to assess the need and timing of the introduction of necessary or new legal acts. Some approaches to ADR belonging to the private sector do not depend on legislation.[18]

4.2. The relationship between the resolution of disputes through ADR intervention and the formal legal system

4.2.1. Referral to ADR

Activating the mechanisms or rules and recommendations aimed at promoting the use of ADR is another important aspect of ADRs implementation. Legislative recommendations are particularly important for the court related and court annexed ADRs. The referral can be implemented at different levels, from simple notes or written instructions from the presiding judge to formal acts of parliament and international treaties. The prevailing scientific belief is that any kind of dispute can be resolved by ADR models.[19] The procedure for determining the cases that will be referred to ADR needs to include an understanding of the case type and its suitability for ADR, i.e. to consider the needs and goals of the dispute and to see the kind of relationship between the parties. The decision to use ADR should be made on the basis of a range of factors, including the best way to serve the specific interests of the parties and to ensure that justice is accessible, efficient, and effective for the involved parties.[20] Equally important to the proper selection of

Resolution in Civil and Commercial Law", Brussels, 19.04.2002 COM(2002) 196 final.

[17]In contrast, the solutions provided in the Draft Law on Mediation in the Republic of Macedonia on October 2013, inter alia, provide deleting of the existing mediators from the Directory of Mediators of the Republic of Macedonia and termination of the existing Chamber of mediators of the Republic of Macedonia. (article 63, 66 of the Draft Law on Mediation), at: http://www.sobranie.mk/ext/materialdetails.aspx?Id=ec65ae1c-9aa7-412f-a154-9855b9357068 (accessed October, 2013).

[18]In the United States, Australia, Canada, England, various ADR methods were practiced in the private sector long before the courts began to develop programs of court-annexed ADR. A similar situation is the case in the People`s Republic of China.

[19]"The point I want to make is that ADR works in labor management for the same reasons it works for family law and community justice. The combative nature of litigation limits its effectiveness in cases where both parties have a relationship that could be harmed", See: Shin, J.*:"Discussion on the Models of ADR"*, Legal Studies Honors Thesis, Spring 2011, Thesis Advisor: Eric Talley.

[20]Law Reform Commission: "*Alternative Dispute Resolution: mediation and Conciliation"*, Report, Law Reform Commission, Dublin, 2010, p.9.

cases suitable for ADR, is choosing the optimal point in the dispute when it will be referred to ADR.[21]

The legislations use different approaches to referral of ADR[22] and cooperation with the formal justice system. Some systems automaticall referr of all issues to mediation or other ADR mechanism, without analyzing whether the dispute is suitable to be solved in such a way. Other systems, identify specific criteria for referrl. The criteria which determine which cases are suitable for solving through ADR are usually determined under the law of the particular state.

4.2.2. ADRs Agreement

In this context, the question of the legal nature of the agreement arising from ADRs is particularly important. Indeed, the question of the legal qualification of the agreement arising from ADR mechanism determines for the effectiveness of ADRs. Agreements between parties can thus be implemented in so far as they are made enforceable, either because the judge gives his approval and issues an enforceable order or the parties have recourse to an authentic deed executed before a public official, such as a notary.[23]In certain states the transactions set out in the minutes of an approved ADR session are deemed to be enforceable. Consequently, the question of the validity of this agreement (and therefore of its effectiveness) depends on the law as dictated by the rules governing conflicts of laws.

5. Involvement of all stakeholders

In the case of ADR reforms, it is especially important to include all subjects who are in any way related to the use of ADR. First, many of the stakeholders

[21]ADRs can be conducted before commencing a civil proceding or, after the commencement of litigation. The parties can agree that the ADR is the most appropriate way to resolve their mutual disputes or the court may refer the parties to ADRs.

[22]The procedural rules may order a halt to the proceedings so interested parties can consider settling the dispute through an ADRs. If the parties refuse, the court asks the parties to submit reasons why their dispute can not be resolved through an ADR mechanisms. The courts can even penalize parties for unreasonable refusal to resolve the dispute with ADRs, reducing court fees for the parties engaged in ADRs. Finally, the judges may be given the opportunity to call for the resolution of disputes by ADRs.

[23]In the Republic of Macedonia, a solution that provides legal enforceability of the agreement reached in the mediation procedure, with its validation before a notary is associated with additioanl costs (often much higher than the cost required for conducting the original procedure). This extra cost is seen as one of the reasons the use of ADRs has not yet appealed in The Republic of Macedonia., The Law on Mediation, Official Gazette of The Republic of Macedonia, 2006, No.60/06, artical 22, at: http://www.pravda.gov.mk/documents/ZAKON%20ZA%20MEDIJACIJA.pdf.

involved in the existing trials are influential professionals (lawyers) or senior members of society (officials, judges, members of the business community) who have great control over the current processes, enjoy varying degrees of power and autonomy and are accustomed to doing things on a certain way.[24] Each change can be seen as a threat to their position or at least as loss of previous benefits. Second, ADR reforms may challenge the interests and monopoly that certain interested parties have on dispute resolution. In many states, judges and lawyers have the exclusive right to resolve disputes through the judicial system of the state.[25] Accordingly, they are the guardians of many disputes in society and have an interest in protecting their roles. Therefore, it is not surprising that even when the system does not work and it is clear that alternative dispute resolution could help in resolving these issues, interested groups oppose these challenges, in order to preserve their position. Key stakeholders in the implementation of ADR are the business community, business organizations such as chambers of commerce, trade bodies etc., associations of professionals such as lawyers, notaries, judiciary, Bar associations, Ministry of Justice and the existing ADR organizations.[26] An

[24]"...The programs of alternative dispute resolution (ADR) that depend on non mandatory participation of the parties, often have the low rate of utilization. Lawyers recommendations and encouragement have great influence on the parties to use ADR, so proposals to increase voluntary use of ADR often focus on ways to increase "familiarity" of lawyers with the ADR methods. In the USA only a few empirical studies have examined whether it is more likely that lawyers who attended ADR courses will recommend ADR mechanisms to their clients than lawyers who previously used ADR mechanisms. This study showed that gaining experience with the ADR process has by far the strongest power to influence whether lawyers advise their clients to try the ADR process or to include in the contract a clause for use of ADR. The experience of lawyers with the particular ADR process, either as a lawyer or as a neutral, is often associated with the recommendation for the use of other types of ADR. Continuing legal education in the area of resolution of disputes have proven to be affective in these relationships, while only completing legal school, has proven to have no influence on the recommendation of the use of ADR, although ADR education had a greater impact on lawyers who do not use the ADR... ", See: Wissler, L.R.*: "When Does Familiarity Breed Content?",* A Study of the Role of Different Forms of ADR Education and Experience in Attorneys' ADR Recommendations, Research Fellow, Lodestar Mediation Clinic, Arizona State University College of Law, Vol.2:199, 2002, p.237.

[25]World experience shows that the role of judges and lawyers is crucial, during the introduction of ADR, especially for the court annexed ADR. The judges are those who sholud bridge the gap between adjudication and ADR.

[26]Lukasz Rozdeiczer, L., Alvarez de la Campa, A.: "*Alternative Dispute Resolution Manual: Implementing Commercial Mediation*", Washington, D.C.: IFC, World Bank Group, November 2006, p. 17.

important indicator of the success of the ADRs implementation is the general will of the parties to the dispute to be involved in this process. When organisations that are systematic and embedded users of ADR propose it to counterparties, they typically encounter two main types of resistance to the suggestion, lack of understanding of the process and, less frequently, lack of resources to engage in it.

6. Culture of settlement

On a broader scale, understanding and use of ADRs have great national importance. The process of development and acceptance of ADR services by the environment, usually evidents four phases: a) pioneering work, b) acceptance and adoption of ADR, c) fragmentation, duplication and inconsistency, and d) increase coordination and cooperation. The implementation of ADR at the national level requires public awareness and promotions of the use of ADR for public participation through information campaigns and other activities.[27]

The key to the success or failure of ADR programs, especially if they are associated with the courts, lies in the lack of settlement culture. If there is no culture of resolving disputes in the courts, then the expectation is that the parties, will either not accept the ADR at all or the ADR will be seen just as another process within the judicial system with all the same problems that plague the formal judicial system. ADR should be well enough known among those involved in court proceedings, both individuals and companies, and the legal practitioners.

Cultural changes take time and setting realistic goals.[28] There is no one-size-fits-all approach to conflict resolution, since culture is always a factor. Cultural fluency is therefore a core requirement for those who intervene in conflicts or simply want to function more effectively in their own lives and situations.[29]

Committment to "efficiency and justice" requires law students and lawyers have practical training in the field of ADR. This committment also requires

[27]See: Official Journal of the European Union C 61 E/260 10.3.2004.

[28]"ADR is not as unfamiliar as one might otherwise think. It is a new name for old processes. Nevertheless, more has to be done to create a culture of mediation, and trust in the neutral process.", See: Peter D. Maynard, P.D.: "*Alternative Dispute Resolution, with Emphasis on Arbitration and Mediation"*, AT: HTTP://WWW.MAYNARDLAW.COM/ARTICLES/ALTERNATIVE_DISPUTE_RESOLUTION.HTM

[29]LeBaron, M.: "*Beyond Intractability*", The Beyond Intractability Project, The Conflict Information Consortium, University of Colorado, Boulder, 2003, at: http://www.beyondintractability.org/essay/culture-conflict.

informing and encouraging the customers to use appropriate ADR methods.[30] Universities should be encouraged to provide specific teaching so that ADR becomes a reflex for members of the legal profession.[31] At the very least, the desired level of engagement by the participants will mean their willingness to be part of the process of consultations, attend events, seminars, training, etc. Active support also means allocation of the resourses and other means of support and undertaking commitments and signing of memorandums of cooperation from the ministries, courts and other relevant authorities.

ADR initiatives often carry significant weight of expectations. Thus, the goal of governments and judges may be to reduce court cases, businesses may seek a fair and speedy resolution of disputes, non-governmental organizations could be focused on better access to justice donors want to see the impact of their funding and so on. Unrealistic expectations will generate skepticism about the value of ADR reforms. It is important to recognize that the way of which people manage and resolve disputes is changing and thus involves significant cultural changes in local legal as business culture as well as assumptions about strength and weakness.

II. Sustainability of ADR

For ADR services to be successful in the long term it is necessary to develop a sustainable method for financing.[32] [33] How this will be achieved largely depends

[30]McAdoo, B.: "*The Minesota ADR Experience: Exploration to Institutionalization"*, Hamline Journal of Public Law and Policy, Vol.12, 1991, p.67.

[31]European Commission: "*Summary of responses to the Green Paper on alternative dispute resolution in civil and commercial law"*, JAI/19/03-EN 31 January 2003.

[32]The Alternative Dispute Resolution Program in Domestic Relations cases under Indiana Code § 33-23-6 permits a county to collect a $20.00 fee from a party filing for a legal separation, paternity or dissolution case. This fee is placed in a separate fund and may be used for mediation, reconciliation, nonbinding arbitration and parental counseling in the county in which it is collected. Money in the fund must primarily benefit litigants who have the least ability to pay. Litigants with current charges or a former conviction of certain crimes relating to domestic violence are excluded from participating.

[33]California Dispute Resolution Programs Act of 1986 (Stats 1986, ch. 1313, SB 2064-Garamendi and Stats 1987, ch. 28, SB 123-Garamendi) provides for the local establishment and funding of informal dispute resolution programs. The goal of the Act is the creation of a state-wide system of locally-funded programs which will provide dispute resolution services (primarily conciliation and mediation) to county residents. These services assist in resolving problems informally and function as alternatives to more formal court proceedings. Counties which choose to offer these

on the type of ADR that applies.[34] [35]Although there is a high correlation between the nature of the scheme and the funding i.e. private schemes are usually financed by the industry and public schemes by public funds, ADR bodies established by public law can also be financed by the industry (especially in highly regulated markets).[36] If these services are fully met within the courts or through a court - annexed approaches, then the court has to provide adequate funds for realization of ADR services. Also, the judicial system of some countries provides that part of the funds that involve the court, the other part to be borne by the client. In this case assessment as to whether the party can or is even willing to bear such costs is particulary important. The existing (and already funded) infrastructure can play a positive role in the supply of ADR services.[37] All other ADRs, except purely judicial models, require a sustainable source of income. In this regard, the experience around the world shows that there are different solutions. Individual industry groups can form a fund for their departments. Chambers of commerce have emerged as a positive factor in financing, the Ombudsman, ADR organizations in their infancy.[38] But, if the relevant institutions are biased or do not enjoy the

services to their residents are authorized to allocate up to up to $8 from filing fees in superior, municipal, and justice court actions to generate new revenues for these local programs.

[34]EUROCHAMBRES recognizes the differences that exist in ADR schemes among the Member States, but also within those States. Due to this diversity it is not possible to provide for "a" or "the" most effective funding way for ADR schemes. They believe, however, that the cost should be shared and ought to be carried to a greater or lesser degree, depending on the sector in which the ADR applies by the public, businesses and consumers.

[35]The Florida state office receives no direct state monies. Funds come from a trust, funded by filing fees (locally collected) and mediation certification fees. Annually, $150,000 from the trust fund is distributed to innovative local ADR projects by the state office. Trial court ADR is funded by user fees, county appropriations, and contracts with mediators. [Note: The appellate program, which did not exist in 1996-97, now receives state appropriation money. Also, a 1998 Constitutional amendment will bring about the replacement of county appropriations by state appropriations.]

[36]See: DG SANCO: "*Study on the use of Alternative Dispute Resolution in the EU"*, Final Report, October, 2009, p. 35-37.

[37]"..Because of lack of financial support from the state and the lack of funds, the Chamber of Mediators of the Republic of Macedonia is unable to perform its legally imposed duties imposed and that impacts the overall development of ADRs in the Republic of Macedonia..", the interview with mr. Zoran Petkovic-Bakli, the President of the Chamber of the Mediators of the Republic of Macedonia.

[38]The services provided by Ombudsman Schemes and Regulators are funded either by the state or by the service sector concerned. Trade Arbitration Schemes are partially

confidence of stakeholders, building a new structure over the existing one may not be appropriate and could be detrimental for the existence of the ADRs and their sustainable development.

When the society is begining to use ADRs, it should consider the option of providing these services free of charge, in order to encourage stakeholders to use them. However, it should bear in mind that, the provision of free services is not a strategy to build a sustainable income for any organization. Also, sustainable ADRs development requires the proposed ADR interventions to suit the level of development of ADR in the particular country or sector.

Conclusion

ADR intervention is often introduced within the general scheme of judicial reform, or arising from the desire of the public sector to introduce efficiency in resolving disputes. The initiative for the ADRs may arise from and be implemented by the private sector as well. Whatever approach is selected by the state, a number of questions arise, in particular the requirements with regard to access to justice, the minimum quality standards and the status of third parties. It is necessary to identify the parameters that determine the possibilities of successful ADR intervention: economic development, the strength and organization of the private sector, political stability, legal framework to support ADR, but also less quantitative and more general aspects such as respect for the rule of law and the culture of settlement within the existing judicial system.

Awareness of ADRs should be encouraged through seminars, workshops and other resources, supervising ADRs application and their systematic implementation so their effectiveness will be demonstrated, and the message will reach a large part of the people. Also, despite the existence of an apropriate law that provides for dispute resolution, it is necessary to expand existing or create new facilities, services and infrastructure that will enable the implementation of these rules and will lead to effective ADR practice. Prerequisite for any successful ADR mechanism is an effective coordination on operational and structural level. The

funded by membership fees of the businesses concerned and a fee from the users of the scheme. Otherwise the actual resolution process is paid for by the parties in the dispute, either shared equally between them or on an other basis which they choose to agree. For procedures where ADR could be regarded as part of court proceedings, e.g. mediation and early neutral evaluation, representation can be funded. However, ADR processes which take place entirely independently of judicial proceedings are not funded, at: http://ec.europa.eu/civiljustice/adr/adr_eng_en.htm

court conciliation and determination to achieve the goals of justice are imperative for successful implementation of any ADR mechanism. Proper training of the third part should be a mandatory requirement for understanding disputes and cases and resolve them efficiently.

Also, when making decisions about the implementation of ADR, it is particularly useful to exchanges ideas and share experiences with those who have been through the process. Of course research in legal matters is also necessary. But, any transfer of foreign experience and practice into the national legal system, should be regarded with some critical distance, not only because of the differences between the Anglo-Saxon and the European-Continental legal systems, because they arise from different legal traditions, but also because of differences in each state in specific circumstances.

From the contents of this paper, we can conclude that ADR are useful for promoting the rule of law and other development goals. Properly designed ADR, taken under appropriate conditions, can increase stakeholder satisfaction with the results, reducing delays and reducing the costs of resolving disputes.

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