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"ODR - will technological advance replace the tradition ?"

In my speech I would like to introduce you to a new solution relating to the mediation. It's an innovative system of resolving disputes over the internet, which is called Online Dispute Resolution.

Mediation is one of the basic methods of alternative dispute resolutions. For the first time the term was coined in the United States in the 70's of the twentieth century . It should be noted that the term was adopted very quickly, because back in the 90 's of the XX century it was widely used in many countries, including : France, Canada or Germany.

The central idea of mediation is to resign the rivalry between the parties and focus on the solution of the dispute. Computerization nowadays advances at a very fast pace and includes more and more aspects of our lives. Information systems are present almost everywhere: in banks, courts , schools , libraries , shops and means of public transport, which make us adjust the dispute resolution processes to current living conditions. Therefore, the changes should apply both to the mediation itself and modernization of the methods of its conduct, corresponding to the conditions of the present society. To accomplish this task ODR, were introduced, which are primarily used to solve disputes typical for the Internet, such as disputes over domain registration or resulting from widely used electronic commercial transactions.

To begin with, we have to say where the process comes from and how it originated. The first online mediation was carried out in 1996 in the United States. The case concerned a computer hobbyist from Kansas , who founded the Web site publishing there information from radio, television and the local papers. What is more, parts of it were directly copied from the paper version of the newspaper. The editor of the newspaper contacted the owner of the site and sued him for copyright infringement. Defendant ceased running his site as soon as possible and began to look for a conciliatory way of solving this dispute satisfactory to both parties.

The case went to the Office of the Online Ombudsman (Online Ombuds Office), which operated for only a few months as a part of an academic project at the Center for Information Technology and Dispute Resolution at the University of Massachusetts . Its founders, Ethan Katsh and Janet Rifkin , agreed to help in mediation in the dispute by sending letters in electronic form , and then in negotiating the settlement itself. The process lasted less than a month and was a success . The owner of the newspaper founded his own website and agreed about the disputable site to be run according to the earlier rules.

Nowadays, a huge potential of the Internet allows to solve disputes , to which the traditional model of

mediation is applied. The development of this area confirms an increasing number of providers of such services and the interest of international organizations in promotion methods of conflict resolutions by means of internet. Good examples are numerous international conferences organized, among others, by the UN ESCAP (United Nations Economic and Social Commission for Asia and the Pacific). Along with the increasing development of online mediation it became necessary to systematize the procedures for conducting the process. Online Mediation begins with targeted messages transmitted electronically to the parties in proceedings at the same time or separately. Negotiations may take place in the so-called chat rooms; one website may be used for talks with each party separately, and on the other one for a joint session. Some providers of e-mediation refrain from conducting the first joint session online by going directly to the so-called electronically accompanied negotiations, in which the mediation process is "guided" by a computer system. These negotiations are usually employed when conducted on a large scale.

If no agreement is achieved, the next step is a separate session with each party.

E-mediation, as opposed to the traditional form, which is associated with direct contact, is conducted using electronic means of communication, but when it comes to applied strategies, styles and types of services provided one cannot talk about full circumvention of the basic assumptions of mediation. Internet communication in most cases takes form of a text, and is characterized by its asynchronism. It should be mentioned here that sometimes the procedure is conducted in the form of a teleconference, but this method may only be used as a supportive one.

In classic mediation proceedings three parties are generally involved, the third being a mediator. In the online - five. The first three are the same as in a traditional mediation, while the fourth is technology (email, chat room, video conferencing), and fifth party - a provider of technology such as the owner of a website who allows you to conduct online mediation. A big advantage of the online mediation is that websites offering online mediation provide both the conduct of the process and a mediator.

The ODR includes three types of conduct: in the first mediator acts independently using their own website. In the second acts using the tools offered by technology provider and in the third offers only services of mediators who act on his behalf. Speaking of ODR one should not forget about the protection of confidential information that are transmitted during the process. This fact may influence the outcome of the later legal proceedings, which may be initiated in the absence of an agreement.

Confidentiality of the information is valid both for the individual and joint sessions. It should also be noted that any information disclosed may not be used as evidence in subsequent court proceedings.

The most important advantage of ODR is its non-binding and consensual character. This is a big advantage considering the fact that the internet, in terms of culture, is a colourful environment and participants taking part in such proceedings are aware of the dangers they may face while doing business online.

Another advantage is the short duration of the process itself. In this way of conducting mediations, there are two time constraints, the first of them less defined, which in itself does not significantly affect the time, is the limit granted to the parties to assume their attitude, precisely state their purpose and comment on the other's party proposal. The second is the period for the conclusion of the mediation settlement, which usually ranges from several hours to 60 days. As I mentioned before, ODR is a very flexible process and allows you to adapt techniques to individual needs and circumstances of the parties. All this is done in a short time and is a major advantage for people who cannot afford to travel or to go expense associated with it, often entailing disproportionate costs in relation to the value of the dispute itself. When talking about the costs of acts of legal proceedings it should also be mentioned that using ODR parties do not pay tuition fees for a professional lawyer, resigning from his participation, because the substance of their argument is already settled, and the problem is how to determine the compensation. In the online mediation procedure the parties do not bear the cost of telephone charges and teleconferencing, travel expenses of a mediator as well as the costs of sending documents and other materials.

Another positive aspect is its asynchronous nature, which allows the parties to mediate in any place and time convenient for them. It is a good solution in terms of the economics of the process, because we do not have to deal with the situation when the mediator negotiates only with one party while the other one is not engaged at all. Such solution allows the mediator to sacrifice more time and attention to all parties and to analyze their situation more

accurately.

A twenty – four hour availability allows you to make a contact quickly and complete the whole process efficiently and at any time you wish.

In my opinion, a big advantage is that the entire process is recorded and at any time there is a possibility **to refer** to the parties' earlier pronouncements. It is particularly important in the mediations, which are time consuming and include wide - spread issues .

The positive aspects of ODR may also include a greater distance between the parties , reducing the power of negative emotions during communication and the ability to choose the best mediator for the case, regardless of geographical constraints .

Using only a text when conducting an online mediation is the main disadvantage, which eliminates the participation of non-verbal signals and the use of psychological techniques by the mediator , which enable to calm a party in case of an emotional tension .

A party often can not cope with a problem of a distance between a party and a mediator and a lack of his/her full involvement in the case.

It should be noted that the essence of traditional mediation is informalisation , direct contact between the mediator and the parties. The fact that the parties can express their feelings and observe the reactions of the mediator is a very important factor which affects the success of the whole process of reaching a settlement.

According to Joseph W.Goodman's article analyzing the way portals provide services in the field of ODR act , many people chose traditional mediations, because, in contrast to a process in the courtroom, they can express emotions , which sometimes acts as a kind of catharsis.

While an online mediation focuses on **the** essence of the dispute to be resolved , it leaves out non - substantial elements , which can negatively affect a well -being of the parties and, as a result, have a negative impact on the process.

The geographical distance separating the parties is often a big psychological barrier . However, it should be noted that technological progress, i.e. communication via IM video , web cameras or mobile phones with internet access, may help overcome this problem.

An element of anonymity have to be also taken into account , because it is often a factor influencing the decision of the parties to terminate the dispute in a non-traditional way.

It should also be noted that the ODR requires continuous access to the Internet and computer skills , which can be a problem for the elderly, handicapped or people with very poor sight.

Supporters of ODR argue that this way of conducting a dispute can be used in any case , but it is hard to imagine using it in family or criminal cases where the factor of direct contact with the other party is an important element and has a huge impact on the outcome of the process.

When talking about the legal regulations concerning the ODR one cannot forget about conclusions concerning the online system for settling consumer disputes (Regulation on consumer ODR) , published by the European Commission in Brussels on 29 November 2011.

It is based on Art. 114 of the Treaty on the Functioning of the European Union.

In the justification of this document , we read that the current system of ADR concerning the settlement of consumer disputes is not homogenous , incomplete and only in few systems, consumers can submit complaints via the online dispute resolution system .

Lack of an effective method of redress in connection with complaints arising from cross-border online transactions has harmful consequences for both consumers and businessmen.

Consumers are losing not being able to make abroad purchases over the internet; this way they miss the possibility to compare the costs of the products on the wider EU market and purchase them where they are cheaper .

Businesses, especially small and medium-sized , are discouraged from acquiring the administrative personnel necessary to deal with disputes with consumers living in other member countries . It hinders the development of a digital home market.

In the second part of the above application types of studies were clearly indicated, including " Study on the use of Alternative Dispute Resolutions in the European Union in 2009 , " Assessment of the compliance costs including administrative costs / Burdens and businesses linked to the use of Alternative Dispute Resolution (ADR) " from 2011 and " Cross - borders ADR in the European Union " from 2011.

All of these studies were to determine the proper function of mediation in the European Union , so as to provide a solid foundation for the introduction of a new solution which is the ODR .

In March 2011, during the debate on alternative dispute resolution for the internal market and consumers, organized by the Commission and the European Parliament, a lot of support was shown for the development of ODR . The same year in April workshops on improving ADR

(" ADR how to make it work better? ") were also conducted and ODR was directly indicated as an effective method of improving the functioning of ADR.

There were also consultations with the European Data Protection Supervisor (EDPS) concerning this problem.

The proposal also contains an assessment of the effects resulting from these changes; it was agreed that only a combination of two instruments for ADR and ODR can provide access to impartial, transparent and effective means for out of court consumer disputes related to cross-border e-commerce transactions . Referring to the legal aspects of conducting ODR, valid in the European Union we learn how it should function.

ODR platform is to take the form of an interactive website which is the only way of access for consumers and entrepreneurs who wish to settle out of court disputes arising from cross-border e-commerce transactions.

Access to the platform will be possible in all official EU languages , and free of charge. Consumers and traders will be able to submit a complaint via the electronic form available on the website. The platform will check whether the complaint can be dealt with , and will try to bring about agreement between the parties with regard to its transmission to the ADR competent to resolve the dispute.

Within the framework of the ADR system and within 30 days from the date of receiving the complaint, an attempt will be made to resolve the dispute in accordance with the procedures applicable to a given system .

The ADR will have to provide a platform some data related to the course of a dispute , among other things : the date of the notification of the dispute , the date of settlement of the dispute and the outcome of the dispute .

Under the proposal a network of online dispute resolution advisers will be created called " ODR network adviser " , which will consist of one contact point for online dispute resolutions from each member countries . In the application there are also guidelines for entrepreneurs who will be obliged to inform consumers about the ODR platform . This information should be easily, directly and permanently available on the entrepreneur' website, as well as in case when a consumer complains against a entrepreneur .

Regulations also apply to surveillance to be carried out by a specially appointed body. Its results will be presented in the annual report on the activities of the platform. Every three years the Commission will have to submit a report on the application of the Regulation to the European Parliament and the Council.

It should also be borne in mind that any data which entered the platform using site and ADR systems will be stored in a special database and will be subject to data protection laws .

The application has been created basing on the principle of subsidiarity, which aims to increase confidence in the digital retail market and create new opportunities for entrepreneurs.

The creation of the ODR platform will be a necessary tool to support an electronic commerce and to ensure that European consumers will have the same level of protection and promotion of competitive practices among entrepreneurs .

The proposal is also consistent with the principle of proportionality , as it seeks to implement the most effective way to achieve the relatively lowest cost.

Instead of creating a whole new structure at the level of European Union ,intended legislation are to be based on the existing national ADR schemes complying with the requirements laid down in the relevant Union provisions .

The proposed rules have been examined in terms of proportionality and subject to consultations , so as to ensure that they are proportionate and proper .

An important aspect of the proposal is also the fact that all the activities are to be a part of the Consumer Programme for years 2014-2020 .

Financial resources for the execution of the application for the years 2012-2020 will amount to 4,586 million euros at current prices.

In Poland since September 2013 a system to mediate online, website . Bezsądu.pl, has been officially operating. From an interview with Martin Jurecki , Chief Operating Officer of the portal Mediation Institute in Warsaw, we can learn that using this system , you can resolve disputes concerning family, private , working force and entrepreneurs matters in three languages.

The conversation is conducted in the form of a chat . The parties are to make an appointment at a certain time at the computer and work out answers to basic questions about the dispute.

The economic issues concerning disputes in the contracts , settlements of accounts, debts , financial claims , collaborations, harassments and dismissals of employees are explained. It also includes issues relating to divorce , division of property , child custody arrangements or maintenance rates .

One mediation lasts up to 3 hours , but may be extended for a period of several days or weeks , but then each session lasts no longer than 3 hours .

In my paper I wanted to show the ODR as a modern way of resolving disputes , the need for a strongly connected with technological progress, in particular increasing the efficiency of transactions conducted via the Internet.