

Perceptions of Online Dispute Resolution in the Bucharest Business Environment

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Abstract

The contemporary world highly impacted by COVID-19 brought many changes in solving business disputes, the focus being currently on the digitalization of alternative dispute resolutions. As a consequence of the decrease of economic growth due to the decrease of business activities, many business parties found themselves in incapacity to fulfil their contract agreements, which lead to an increase in ADR. Also, taking into account the pandemic situation, ADR moved online, the main purpose being to handle them in a flexible, cost-effective manner.

The purpose of this research is to analyze the perceptions of Bucharest's corporations regarding online ADR, the main objectives being to identify its advantages and limitations in a pandemic situation. The paper critically analyzes the main bibliographic sources in the field of online alternative dispute resolution, the method of research applied being quantitative. For a better understanding of the corporate perspective in Bucharest related to online alternative dispute resolution, a questionnaire was applied to 110 working professionals. The research highlights the positive perceptions of employees in spite of the problems arising from online ADR. The originality of the paper resides in the fact that it systematically analyses the current landscape and future directions of ODR in Romania, with main focus on Bucharest, highlighting perceptions of business corporations on the subject, having practical implications on dispute service providers, practitioners, customers, law makers and scholars in dealing with the ODR practices.

Keywords: Online dispute resolution (ODR); alternative dispute resolution (ADR); ODR practices; online mediation; online arbitration.

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Introduction

COVID-19 highly impacted not only economy around the globe but also justice in an unprecedented manner. Due to this pandemic situation, regulators were urged to adapt their services, this being also the case of ADR services. Consequently, online dispute resolution (ODR) developed from the ADR, adapting traditional ADR to the virtual world, however keeping the main aim of solving disputes outside of litigation. As a relatively new concept, the ODR emerged at the end of the 20th century, encapsulating "a wide array of online procedures and technological tools that disputants and neutrals use to resolve disputes" (Sela, 2017, p. 634; Tecău, et al., 2020).

There are scholars who consider that, "since this genesis, the shift in mediation to videoconferencing platforms – which has now been underway for more than a decade – has accelerated" (Sourdin and Zeleznikow, 2020). There are other terms that are used interchangeably for this concept: Internet dispute resolution (iDR) electronic ADR (eADR) and online ADR (oADR).

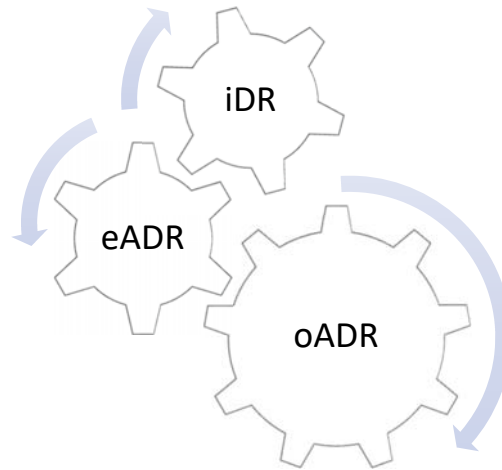


Figure no. 1. Terms for ODR

Source: the authors

Online dispute resolution (ODR) is perceived as a manner to solve conflicts differently from traditional legal systems, by making use of the online or the offline environment. There are several ways in which ADR can be carried out online: either on the Internet through email, chat, and videoconferencing or by combining these methods of “online” and “offline.” These are also known as synchronous and asynchronous communication ways.

Review of the scientific literature: online dispute resolution – advantages and disadvantages

In these challenging pandemic times, when the global society faces a growth in online activities and services, as well as in e-commerce, traditional ADR techniques seem no longer appropriate. Also, since Covid-19 imposes social distance, online dispute resolution appears as the most natural and feasible manner of sorting things out (Tecău, et al., 2020). ODR platforms copy the classical ADR process (arbitration and mediation) with the only difference that ODR uses different technologies. Thus, even if there are many common features between ODR and ADR, the technological factor provides a particular set of both benefits and drawbacks.

From the point of view of types of ODR, these are: online mediation, online arbitration and online negotiation, although the last one is used to a lesser extent.

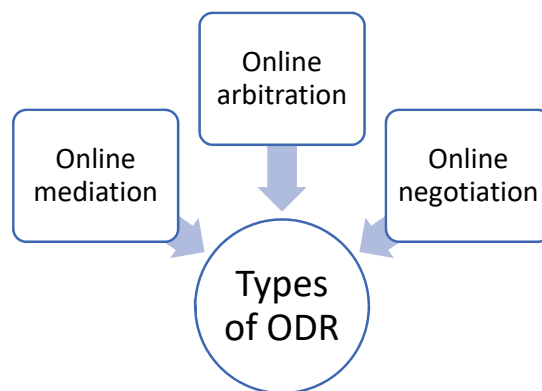


Figure no. 2. Types of ODR

Source: the authors

First, the online mediation will be analysed. Online mediation starts due to the desire of implied parties to enter a broad-based consultation after being involved in a conflict (Mania, 2015, p. 76). Usually, the process of online mediation begins with an e-mail that the third party sends to the parties involved, enclosing essential data on proceedings.

According to Mania (2015), “virtual meetings are conducted in so-called ‘chat rooms’, which constitute virtual versions of meeting rooms. These can be carried out separately with each party or simultaneously with all parties” (Mania, 2015, p. 79). Most of the time, online mediation is conducted via written communication, not being based on meetings in real time, which rarely occur (Hopt and Steffek, 2013, p. 291).

Online arbitration stands as the second type of ODR, standing as the process through which parties who pursue arbitration submit their proofs, documents and usually communicate with the arbitrator through different “technological platforms such as email, video/audio conferencing, online platforms, electronic signatures and e-filing” (Muigua, 2020, p. 3; Nemțeanu and Dabija, 2021). In the virtual arbitration, the arbitrator delivers “a final and legally binding decision, the award, which can be enforced by the parties and can be registered with a court and thereafter enforced like a court judgment” (Lavi, 2016, p. 885).

Accordingly, the suitability of the ODR is subject to debate. Some scholars argue in favour of ODR, by stating that technology conducts to a more accessible, flexible, faster and less expensive dispute resolution process (Rabinovich-Einy and Katsch, 2019, p. 59). Also, according to Van Arsdale (2015), an ODR „platform may also pursue benefits such as greater efficiency, overcoming human biases, and convenience by implementing technologies in new and creative ways” (Van Arsdale, 2015, p. 117). In a more complex perspective, the development of ODR programs was seen as a complement and support for legal processes, reducing the backlog, accelerating court developments and dispositions, at the same time also facilitating access to justice due to the diminishment of economic and procedural obstacles in solving conflicts (Gomez, 2019).

Critics find this process as inadequate, particularly since the internet cannot be seen as a ‘mirror image’ of the real world (Larson, 2019, p. 432). Additionally, academics argued that “the claimed efficiencies of ODR come at the expense of procedural quality, due to the limitations that the online environment imposes on human communication” (Sela, 2018, p. 98). At the same time, critics highlighted that “the inter-personal processes of negotiation and mediation are fundamentally dependent on an elusive quality or aspect dubbed ‘the human touch’. The cold impersonal environment of the internet, the arguments went, is inherently bereft of the human touch” (Ebner, 2021). To all these were added issues such as privacy and confidentiality, which still remain unsolved aspects even nowadays (Ebner and Zeleznikow, 2016, p. 298; Abedi, Zeleznikow and Brien, 2019).

Perceptions of the ORD in the Bucharest business environment

The quantitative research is based on a questionnaire designed to understand the perceptions of online dispute resolution in the Bucharest business environment. The questionnaire consisted of two sections (A to B). Section A focused on demographic information from respondents. The next section, made up of 14 questions highlights the perceived advantages and disadvantages of ODR technology by users. Respondents were drawn from medium-sized (SMEs) and large enterprises in Bucharest. Before applying the questionnaire, the respondents were asked to answer whether they did or not use ADR or ORD during the past three years. Consequently, a dataset of 112 respondents was drawn after respondents answered this question.

Overall, 76 respondents were ‘Male’ while 36 were ‘Female’ (representing 71.74% and 28.26% of the respondents, respectively). As far as the professional background of the respondents, 51.79% were from “Legal Department”, 25.00% indicated “Acquisition Department”. However, some (11.61%) indicated “Management” and 11.61% were from “Other” departments. In terms of the practice experience the majority (58.87%) had between 10 and 15 years’ practical involvement and experience in their professions. From the educational point of view, the largest number of respondents (65.22%) indicated “Law” as background.

Table no. 1 summarizes respondents' professional backgrounds.

Table no. 1. Professional background of the respondents

Professional background	No.	%
Legal Department	58	51.79
Acquisition Department	28	25.00
Management	13	11.61
Other	13	11.61

Source: authors' research

However, even if respondents knew about ODR, they have not used ODR so far (61%). Therefore, a large majority had not used ODR previously in their work. Also, respondents perceptions of ODR were questioned no matter if they had used it or not. There were mixed results in terms of personal attitudes regarding ODR. When asked about effectiveness, most participants were neutral (47%) but when asked whether they were in favor of face-to-face meetings or online meetings, most of the respondents (82%) considered face-to-face meetings as more suitable for dispute resolution.

This proves certain skepticism towards ODR techniques, ADR techniques being favored. Despite this, most respondents expressed a belief that exclusively utilizing ODR could adequately lead to conflict dealing. Fifty-six percent (56%) believed they could use ODR and forty-four percent (44%) did not agree. Respondents also took into account the accessibility (81%), flexibility (83%) and the fact that an ODR is a less expensive (89%) dispute resolution process. At the same time, respondents answered positively when asked about whether ODR enhanced the ability to manage information (88%) and implied transparency (78%).

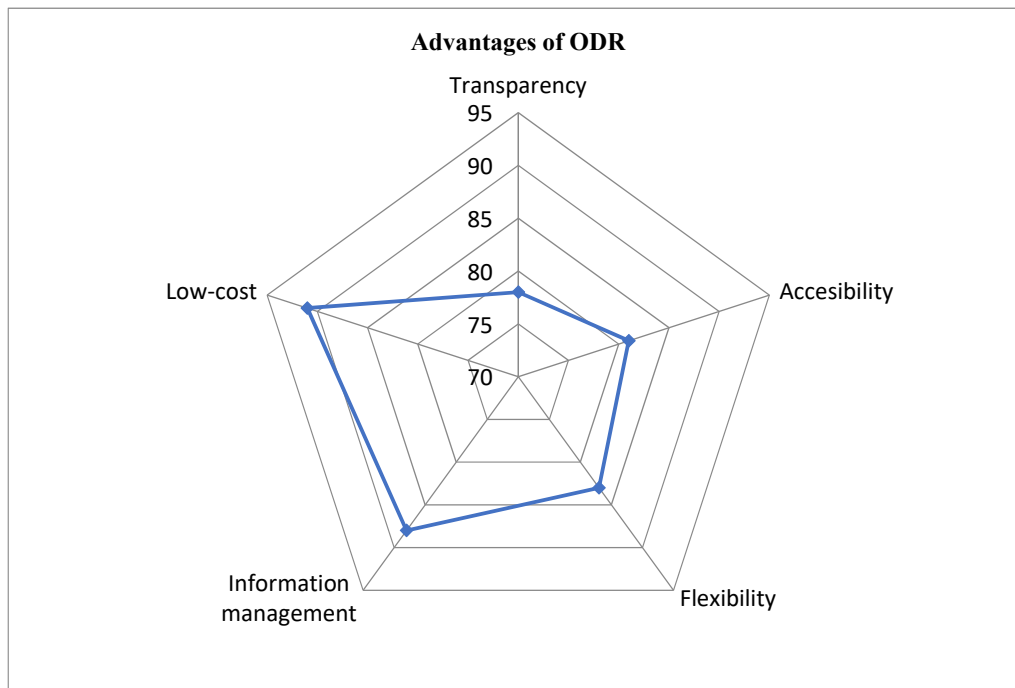


Figure no. 3. Advantages of ODR

Source: authors' research

As a concluding remark, on the one hand, respondents seem attached to traditional ADR techniques, but on the other hand, they do value features of ODR such as: accessibility, flexibility, low-cost, ability

to manage information and transparency. Summing up, the research strongly suggests that respondents although used to ADR proceedings are ready to embrace ODR as a tool which can render justice due to high transparency and good information management.

The skepticism respondents still perceive about ODR, comes from a lack of trust of the technology environment, which lacks personal feelings and therefore interaction between the parties. This negative feeling can potentially inhibit trust between parties and therefore results even in high scepticism about ODR. However, in spite of a good perception regarding ADR, it becomes obvious that ODR does offer added value when compared to the traditional ADR, whether it is transparency, cost efficiency or flexibility and transparency. Although face-to-face meetings are more appealing to many respondents the other advantages that ODR imply could make them choose ODR instead of ADR, particularly in pandemic times.

One of the two main findings is that the results suggested respondents positively acknowledged ODR proceedings but that there were negative implications of ODR in terms of online/virtual meetings.

Conclusions

Starting from the above-mentioned aspects, taking into consideration the rapid changes of the society and the challenges posed by the pandemic situation, traditional ADR techniques are no longer an option, which leads us to modern techniques, using the electronic system at a high extent. Due to restrictions that currently appeared and to continue their activity as smooth as possible, different businesses consider that commercial conflicts need to be solved in a rather modern manner, through ODR, which depend on an electronic system (online) and not on face-to-face encounters, which are no longer seen as feasible (Schmitz, 2018).

Indeed, as Schmitz (2018) states, “ODR is particularly efficient and effective in global e-commerce disputes. It offers means to a remedy where none exist in the face-to face world. It therefore offers protection for cross-border deals and helps garner trust from buyers who may fear purchasing overseas. Bypassing the traditional legal system through ODR also allows parties to reduce or eradicate jurisdictional problems and helps to expedite participation of emerging economies in the global e-market. Moreover, when e-commerce becomes trustworthy, it strengthens expansion of the digital economy. ODR therefore creates a win-win for companies and consumers in a world moving to online transactions” (Schmitz, 2018, p. 45).

The research focused on current views and use of ODR of businessmen working in the Bucharest environment, along with their perception of it by focusing on their practice. The study revealed that businessmen in Romania (Bucharest) who participated in this research viewed ODR with suspicion regarding the virtual involved meeting and did not use it on large scale. However, in spite of this, there was a general feeling of wanting to use due to several advantages it involved, such as accessibility, flexibility, low-cost, ability to manage information and transparency. Consequently, the general opinion was that ODR would be of help, particularly in pandemic times.

The ODR use in pandemic times was hardly researched in the Romanian literature reviews (Piroșcă, et al., 2020), which turns our research in a pioneering one. Key limitations would be presented below together with future directions in research. Thus, further research is still needed in order to find out more about best practices, but also about practitioners’ views on the matter. A limitation of the current research is that it focused only on commercial ODR.

Hopefully the Romanian academic research would flourish from this article on. Even if this research cannot make any generalizations about Romanian businessmen compared to others across the globe, the respondents’ answers suggest Romanian usage of ODR is limited. Still, taken into account these pandemic times, there is big potential in this field to develop. Another limitation resides in the content of the questionnaire which could have focused on specifically questions concerning number of cases and types of cases engaged with ODR, questions dealing with the platform, with the mediators, cases settled with ODR and so on. All in all, ODR requires close examination in Romania and around the world.

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