

# **Analyzing the Existing Mechanisms for Settling Disputes and Conflicts between Water Users, between Water Users and WUAs, between WUAs and Water Management Organization Coupled with National Legislations in Force in the Fergana Valley**

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The legislations of all countries in the Fergana Valley, starting from the constitutional regulations and regulations of the civil law and procedural legislation, provide for the opportunity for legal remedy of infringed rights in the process of ownership relations and non-pecuniary relations. The legislations also provide for the mechanisms and detailed procedures of the pre-trial inquiry, preparation and judicial trial, legal decision and appeal against a sentence in accordance with the appellate jurisdiction or review proceedings.

In accordance with the national legislations and WUA Charters, disputes and conflicts between WUA members and the WUA Board can be investigated by the Arbitration Commission of the WUA, the Arbitration Commission of the Canal Water Committee, Aksakals' Courts that were established in the framework of the local administration, and the WUA Controlling Department under the Ministry of Agriculture and Water Resources (was established only in the MAWR in Kyrgyzstan).

The WUA Arbitration Commission may examine all issues related to activity of a WUA and its members, as well as the disputes with water users not being members of the WUA but having contractual relations with the WUA. The issues related to relations of a WUA and the water management organization can be examined by the Arbitration Commission under the Canal Water Committee, members of which are the representatives of water management organization and WUA. Their joint work represents the mechanism that prevents the conflict situations. *In case of the non-agreement of one of conflict parties with a judgment of the Arbitration Commission of a WUA or the Canal Water Committee regarding recovering damages, the case may be tried by the competent court according to established legal procedures.*

Aksakals play a crucial role in settling arisen conflicts. They, as a rule, evaluate those or other incidents and form the public opinion. Their interference in the examination of those or other disputes between WUA members and a WUA or between a WUA and the water management organization, as well as between water users would mitigate the social tensions and stop further development of disputes.

The proposed ways for settling disputes and conflicts without the reference to the judicial authorities have an advantage of fast consideration and resolution and the lack of large financial expenditures that take place under the reference to the judicial authorities. Mechanisms of conflict resolution were considered taking into account the specificity of legal systems in the neighboring countries in the Fergana Valley.

## **The Kyrgyz Republic**

The judicial system in Kyrgyzstan was established in line with the Constitution of the Kyrgyz Republic. The judicial system consists of the Constitutional Court that executes the constitutional legal procedures and the system of courts of general jurisdiction that execute the criminal procedure, civil trial, and administrative proceedings. In addition, there is the system of arbitration tribunals that execute the public justice in the field of economic relations between economic entities, institutions, and organizations independently from the patterns of ownership and types of economic activity.

The intermediate courts and aksakals' courts are also active in Kyrgyzstan, which consider economic disputes and conflicts in case of reference to them. There are the established procedures for reference to the courts, judicial trial, judgment of court and its execution, as well as the procedures for appealing against a sentence and review proceedings.

The participation of natural persons and legal entities in the civil process and arbitration proceedings is accompanied by the execution of documents under drafting of which the existing legislation and law enforcement practice should be taken into account. In accordance with the existing national legislation, abovementioned types of disputes can be settled by the following entities:

***A number of the disputes between WUA members and the WUA can be examined by the Arbitration Commission of the WUA.***

Under the mutual agreement of parties, the disputes can be considered and settled in the aksakals' courts and in courts of general jurisdiction. The interpersonal conflicts of WUA members can be settled in the same way. In accordance with the Law "On Aksakals' Courts" passed in the Kyrgyz Republic, *the aksakals' courts can examine the documents on disputes and conflicts submitted by the following bodies:*

- local courts for civil cases;
- courts; public prosecutors, investigatory powers with the court order (the documents on criminal cases that were closed for applying the measures of community-based correction in accordance with the procedural criminal law); and
- the appropriate governmental bodies responsible for the control of administrative infringements of the law using the procedures provided for in the Administrative Code.

The aksakals' courts can also try cases according to the written requests of citizens (under the agreement of parties) to resolve the ownership and family disputes for the purpose of conciliating the parties. The aksakals' courts are not competent to deal with the cases, for which there is already adjudication or penalty under administrative law, as well as for which the aksakals' court decision was already made within its competence. After adjudicating the guilt of persons brought to trial, the aksakals' court can give judgment for executing one of the following punishments:

- a) to pronounce a warning;
- b) obligation to adduce the public excuse to an injured party;
- c) to pronounce the public disgrace;
- d) obligation of a party at fault to pay the damages;
- e) monetary penalty at the rate up to three minimum salary established according to the legislation of the Kyrgyz Republic or forced public works;

If necessary, the aksakals' court has the right to transfer a case to the investigatory powers and court. The aksakals' court has to inform the body (an executive officer) that sent the case within 10 days about measures of community-based correction imposed on the persons who committed administrative infringement of the law. This court does not have the right to pass judgment that disparages the self-respect of people.

*Disputes due to financial payments should be considered in the general jurisdiction court in accordance with established judicial procedure, in case of disagreement of one of the parties and if one of the parties is a citizen.* When parties are legal entities or citizens having the status of an individual entrepreneur gained according to the legitimate procedure, an arbitration tribunal (arbitration<sup>1</sup>) investigates such cases. An arbitration tribunal can also investigate disputes between WUAs and the water management organization regarding the payment terms for services, ill-timed payments and related penalty fees. At the same time, they have the opportunity to reach the consensus through bringing the matter before the Arbitrage Commission of the Canal Water Committee.

*The legislation of Kyrgyzstan also provides for the procedure for adjudication in the extrajudicial bodies – in the arbitration (arbitration tribunal), in accordance with the law “On Arbitration in the Kyrgyz Republic.”* Unless otherwise agreed by the parties or the law, provisions of this law are used under transferring a dispute case, in which one party or both parties are citizens, to the arbitration.

An action proceeding related to the compensation of damaging WUA members' crops or irrigated plots due to ill-fulfilled O&M of irrigation systems in WUAs should be considered in the general jurisdiction court, if one of the parties is a natural person (a citizen) and in the arbitration if the parties are the legal entities or one of the parties is a citizen - an individual entrepreneur. Labor controversies between the WAU administration and its personnel can be considered in the general jurisdiction courts. However, the extrajudicial procedure for such controversies in the WUA Arbitration Commission is also possible by mutual consent of parties.

## **The Republic of Tajikistan**

The judicial authority in the Republic of Tajikistan is being exercised by means of the constitutional, civil, criminal, arbitration and administrative legal proceedings. The legal procedures for proceedings are specified in the laws of the Republic of Tajikistan. The judicial system of the Republic of Tajikistan consists of the Constitutional Court, Supreme Court, Supreme Economic Court, Military Court, Court of Gorno-Badakhshan Autonomous Province, as well as provincial, district and city courts and the courts of arbitration of the Gorno-Badakhshan Autonomous Province, other provinces and Dushanbe City.

The Supreme Economic Court of the Republic of Tajikistan is the major judicial body that decides economic controversies and other cases, exercises the judicial review according to the code of practice and interprets the matters of jurisprudence.

*Some types of controversies, mentioned in the first section, can be resolved by the territorial civil courts and economic courts.* Economic proceedings are regulated by the economic code of practice of the Republic of Tajikistan.

*In Tajikistan, proceedings and deciding the specific economic controversies are possible in the intermediate court (arbitration) established for treating such cases.* The procedures for proceedings and deciding the specific economic controversies are specified by the Regulations No 426 dated May 15, 1997 was approved by the Majlisi Milliy (National Assembly) of the Republic of Tajikistan.

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<sup>1</sup> Arbitration is a proceeding in which a dispute is resolved by an impartial adjudicator whose decision the parties to the dispute have agreed will be final and binding.

## The Republic of Uzbekistan

The judicial system of the Republic of Uzbekistan consists of: i) the Constitutional Court, Supreme Court, and Supreme Economic Court; ii) Supreme Civil and Criminal Courts of the Republic of Karakalpakstan; iii) provincial and Tashkent City's civil and criminal courts; iv) inter-district and district (city) civil courts and district (city) criminal courts; v) military courts; and vi) courts of arbitration of the Republic of Karakalpakstan and provincial and Tashkent City's courts of arbitration.

The Supreme Court of the Republic of Uzbekistan is the supreme body of judicial authority in the field of civil, criminal and administrative legal proceedings. The Supreme Court of the Republic of Uzbekistan has the right of supervision over the judicial practice of Supreme Civil and Criminal Courts of the Republic of Karakalpakstan, provincial, city, district and military courts. The Supreme Court of the Republic of Uzbekistan treats the cases as the trial court and exercises the judicial review. The cases that have been treated by the Supreme Court of the Republic of Uzbekistan as the trial court can be treated by as the court of cassation or according to the appellate process.

*The Supreme Economic Court of the Republic of Uzbekistan is the supreme body of judicial authority in the field of economic legal proceedings.* The Supreme Economic Court of the Republic of Uzbekistan has the right of supervision over the judicial practice of the economic court of the Republic of Karakalpakstan, and provincial and Tashkent City's economic courts. The Supreme Economic Court of the Republic of Uzbekistan treats the facts of cases as the trial court and exercises the judicial review and the appellate process.

*All types of abovementioned controversies can be resolved by the territorial civil courts and economic courts.*

Proceedings are regulated by the civil code of practice and the economic of code of practice of the Republic of Uzbekistan. *In Uzbekistan, proceedings and deciding the specific economic controversies are possible in the intermediate court (arbitration) established for treating such cases.*