

Procedural Mechanisms for Implementing Alternative Dispute Resolution Methods in Construction Contracts

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Abstract: This article examines the procedural mechanisms for implementing alternative dispute resolution methods in disputes arising from construction contracts. It focuses on the theoretical foundations and advantages of mediation and arbitration, along with comparative analysis of international practices and current applications in Uzbekistan. The paper highlights the need for efficient, fair, and cost-effective resolution of complex, multi-party conflicts in the construction sector. It also presents recommendations for improving the legal framework, enhancing mediator training, and developing institutional infrastructure.

Keywords: construction contract, dispute resolution, mediation, arbitration, procedural mechanism, Uzbekistan, legal reform.

The increasing number and complexity of disputes arising in the construction sector have made the search for effective mechanisms to resolve such disputes a pressing and topical issue. In particular, court practice shows that cases related to residential construction disputes are increasing year by year. Traditional judicial proceedings are typically lengthy and costly [1, p. 85], which creates serious challenges for resolving disputes in a prompt and fair manner. Therefore, from both academic and practical perspectives, the implementation of alternative dispute resolution methods has become a matter of significant importance.

Alternative dispute resolution methods refer to a set of processes whereby parties seek to resolve their disputes through mutual agreement without referring the matter to a state court. The concept of alternative dispute resolution primarily encompasses methods such as mediation, arbitration (courts of arbitration), and, in some cases, conciliation (settlement through advisors). Theoretically, alternative dispute resolution originates from the practice of the Anglo-American legal system and is currently widespread on a global scale. It is based on the concept of procedural justice, meaning that if the dispute resolution process is conducted fairly and impartially, the outcome is deemed just. American philosopher J. Rawls introduced the concept of “pure procedural justice,” which defines such a situation as one in which an agreement reached through fair procedures is recognized as just regardless of its content [2]. The mediation process is a clear example of the pure procedural justice defined by Rawls, wherein parties achieve a mutually acceptable solution with the assistance of a neutral facilitator, while aligning their respective interests.

Jeremy Bentham, within his utilitarian philosophy, criticized the judicial system, referring to delays and costs inherent in traditional litigation as “evils,” and advocated for simplifying court procedures and ensuring their openness to the public. In accordance with the principle of “the greatest happiness for the greatest number,” he maintained that the purpose of judicial proceedings must be to achieve the greatest

justice for the benefit of the greatest number of people, and for this reason, procedures must not be unnecessarily complex or cause harm and inconvenience to individuals [3]. Alternative dispute resolution methods serve precisely this purpose – resolving disputes without excessive formalities and high costs – thereby giving practical effect to Bentham’s ideas.

However, theoretical foundations demonstrate not only the advantages of alternative dispute resolution methods, but also their limitations. From the perspective of Karl Marx’s class theory, disputes – particularly those in capital-intensive sectors such as construction – stem from clashes of economic interests. Marx emphasized that “law can never stand above the economic structure of society and the conditions of material life,” thereby indicating that the concept of justice is inherently linked to the material base of society [4]. The theoretical basis of alternative dispute resolution characterizes it as an effective tool for resolving disputes: it seeks to reach a prompt solution aligned with the parties’ interests through a fairly organized process. However, the theoretical success of these methods depends on the conduct of the parties involved, their equality of rights, and the degree to which the resulting agreement is supported by robust enforcement mechanisms. The subsequent sections will examine how these theoretical aspects are reflected in practice, particularly in disputes arising from construction contracts.

Disputes arising from construction contracts are associated with complex multilateral relationships and possess distinct procedural and substantive legal characteristics. Firstly, construction projects typically involve large financial investments and extend over long periods. Such projects engage numerous stakeholders, including contractors, clients, subcontractors, investors, and project designers. Failure to perform contractual obligations, or inadequate performance thereof, may result in significant financial losses and delays. Should a dispute arise, its resolution through court proceedings may take several years and potentially suspend construction activities. For example, within the framework of the well-known “Big Dig” infrastructure project in Boston, United States, special Dispute Review Boards (DRBs) were established to resolve conflicts before they escalated to litigation. This mechanism proved effective for large-scale projects: data indicate that over 98% of such projects were concluded without reaching arbitration or court proceedings based on DRB recommendations [5]. Thus, in the construction sector, it is essential to identify disputes at an early stage and resolve them without delaying the project, as delayed justice may lead to substantial economic losses.

Secondly, construction disputes are often technically complex and require specialized knowledge. In court proceedings, judges or arbitrators are frequently compelled to appoint detailed technical expert examinations, which in turn prolongs the adjudication process. Alternative methods, such as arbitration, enable the parties to appoint expert arbitrators at their discretion. In particular, in international construction contracts, it is common practice to engage arbitrators with expertise in construction law and engineering. In the case of Germany, courts generally rely on the conclusions of technical experts when reviewing construction disputes. However, in recent years, the use of adjudication (a decision by an independent expert aimed at the prompt resolution of contractual disputes) and mediation has also emerged as a growing practice [6]. Research indicates that approximately 100,000 construction-related disputes are resolved through court proceedings annually in Germany, while only about 2% of such disputes are addressed through alternative dispute resolution methods. Experts attribute this low rate to insufficient awareness and lack of experience regarding ADR in the construction sector. Therefore, in construction disputes, involving a qualified mediator or arbitrator at an early stage to clarify technical aspects, identify contentious issues, and develop potential settlement options may help resolve the matter without resorting to litigation.

In short, due to their specific nature, disputes in the construction sector require resolution based on the formula of “efficiency + expertise + multilateral consensus.” Therefore, the introduction of out-of-court settlement and arbitration mechanisms is becoming an integral component of the effective resolution of construction-related conflicts.

In 2020–2021, significant steps were taken towards the integration of alternative dispute resolution methods into the judicial system of the Republic of Uzbekistan. In particular, on 24 August 2020, the Plenum of the Supreme Court adopted a special resolution “On the Application of Pre-Trial Settlement Procedures in Civil Courts.” The resolution recommended that, upon receiving a statement of claim, if the parties appeared amenable to mediation, the court should postpone the hearing and allow time for mediation proceedings. As a result, reconciliation centers were established under several regional courts, and judges have increasingly sought to facilitate amicable settlements between parties rather than proceeding directly to adjudication. For instance, statistics from the Surkhandarya Regional Court indicate that in 2022, 270 civil cases were resolved through mediated agreements. Although this does not yet represent a substantial proportion of total case volume, the trend is increasing. Additionally, the Presidential Decree of the Republic of Uzbekistan No. PF-6079 of 5 October 2020, “On the Approval and Effective Implementation of the Digital Uzbekistan – 2030 Strategy,” identified the development of pre-trial dispute resolution institutions as a distinct priority within judicial reform initiatives. Overall, the legislation of Uzbekistan has established the necessary legal framework for the implementation of the primary forms of alternative dispute resolution — mediation and arbitration. However, for legal norms to be effective, it is essential to develop practical skills for their application and the requisite institutional infrastructure. Going forward, it is advisable to make the inclusion of ADR clauses standard practice in construction contracts (e.g., a mandatory referral to a mediator before initiating formal proceedings), and to strengthen the role of judges as facilitators who assist the parties in reaching settlement. Moreover, the 2018 Law on Mediation should be refined based on practical experience, and the system for training and accrediting mediators must be reinforced to meet current needs.

An analysis of international experience demonstrates that each country is developing its own mechanisms for alternative dispute resolution (ADR) based on its unique legal and economic context. Countries such as the United States have achieved substantial success in reducing the burden on their judicial systems by extensively applying mediation and arbitration [5]. European nations, particularly France, have managed to cultivate a culture of mediation even without imposing normative obligations – supported by a high level of legal awareness among citizens and strong backing from the legal profession [5]. China has elevated mediation to the level of state policy, treating dispute resolution as a means of ensuring social stability. In contrast, transition economies such as Russia and Uzbekistan are implementing ADR institutions through a top-down reform approach – that is, initiating legal changes first and subsequently promoting application in practice. Naturally, this process faces several challenges, including issues related to personnel, public and business confidence, and the establishment of legal infrastructure.

Based on the above analysis, it is evident that the current legislation contains certain ambiguities and gaps. For instance, the Law “On Mediation” does not provide provisions specific to the construction sector – it regulates mediation procedures in general terms. However, construction disputes frequently involve multiple parties (such as the client, general contractor, subcontractors, and others), whereas mediation is typically designed for bilateral agreements. Therefore, it is necessary to establish provisions in the legislation governing multiparty mediation procedures. For example, in mediations involving three or more parties, additional rules and protocols should be developed (such as the procedure for conducting separate sessions with each party, the format for formalizing the settlement agreement, etc.). Another legal issue concerns the formation of arbitration agreements. Although arbitration clauses are often included in construction contracts, their contents are sometimes improperly drafted — for instance, failing to specify which arbitral institution is competent, the applicable language, or the seat of arbitration. This creates complications when a dispute arises: one party may insist on arbitration, while the other challenges the validity of the clause, leading to delays. Therefore, the following recommendation is proposed: to develop and circulate a model arbitration clause for construction contracts. Such a clause may read, for example: “Any dispute arising out of or in connection with this contract shall be submitted to arbitration under the rules of the Tashkent International Arbitration Centre (TIAC), with three arbitrators, seated in Tashkent, and conducted in

accordance with the applicable arbitration rules.” If such a model clause is developed by the Ministry of Justice or the Arbitration Centre under the Chamber of Commerce and Industry, and disseminated among construction entities, it would help ensure the correct drafting and enforceability of arbitration agreements.

Another legal aspect concerns enforcement. What happens if a mediation agreement or arbitral award is not complied with? Under the current procedure, a mediation agreement relies on the parties’ voluntary performance; if not fulfilled, the aggrieved party may initiate a new lawsuit in court. This undermines the value and effectiveness of the agreement. To address this issue, the enforcement mechanism for mediation agreements should be improved by recognizing such agreements as enforceable instruments. For example, if the agreement is certified by a notary and thereby acquires executive force, or if it is approved by a court through a separate decision and issued with a writ of execution (currently, such agreements are typically incorporated into a court ruling, which does not constitute a clearly defined mechanism), enforcement reliability would be ensured. With respect to arbitral awards, pursuant to the 1958 New York Convention, a court may refuse to issue a writ of execution only on limited grounds (e.g., invalidity of the arbitration agreement, violation of fundamental procedural principles). Nevertheless, in practice, domestic courts occasionally conduct a substantive review of arbitral awards, particularly when state interests are implicated. This can negatively affect the national investment climate. Therefore, the following is proposed: the Plenum of the Supreme Court should adopt a resolution “On the Recognition and Enforcement of Arbitral Awards,” providing explicit guidance to courts that annulment or refusal to enforce arbitral awards shall only be permitted under the grounds expressly provided by law and subject to narrow interpretation. This will enhance the confidence of foreign investors and discourage local parties from evading arbitration.

In Uzbekistan, one of the most significant organizational challenges in the implementation of alternative dispute resolution (ADR) mechanisms is the shortage of qualified personnel and infrastructure. At present, the training of mediators is being carried out by several non-governmental centers and legal institutions; however, both the number and quality of such programs remain insufficient. Many executives and legal professionals within construction organizations lack the necessary qualifications in mediation. Therefore, it would be beneficial to introduce specialized training and certification programs in mediation for professionals operating in the construction sector. For example, courses titled “Construction Dispute Mediator” could be established under the auspices of the Builders’ Association or the Chamber of Commerce and Industry. Such programs would train professionals who possess both an understanding of construction law and technical knowledge, as well as the skills required to conduct effective negotiations.

Another organizational issue relates to inter-agency coordination. Currently, matters concerning mediation and arbitration are handled separately by the Ministry of Justice, the Supreme Court, the Chamber of Commerce and Industry (through arbitration centers), and various non-governmental mediation organizations. There is no unified platform or cooperation mechanism among them. For this reason, it is necessary to establish a “Republican Council for Alternative Dispute Resolution.” This council would bring together representatives of various institutions and sectors, maintain statistics on the use of ADR, identify problems, and develop policy proposals. For example, it would analyze which categories of cases are most prevalent in the courts and which are suitable for mediation, and issue corresponding recommendations. In the construction sector, the council could identify at which stages disputes most frequently arise (e.g., project estimates, deadlines, quality issues) and, based on that analysis, develop improvements to contractual provisions and preventive measures. As a result of the council’s activities, documents such as a “Roadmap for Resolving Construction Disputes” could be developed.

At present, many citizens and employees adhere to the belief that “if you do not win in court, there is no justice.” Even when a settlement is reached through alternative dispute resolution (ADR), one of the parties may later feel regret and perceive that justice was not served [7, p. 101]. To prevent this, attention must be given to psychological aspects during the mediation process: the mediator must ensure not only

that an agreement is reached but also that the parties are satisfied with and genuinely accept the outcome. This, in turn, depends on the mediator's qualifications and training. Therefore, a methodology for training mediators in psychology and communication should be implemented. Additionally, it is necessary to raise public awareness about the benefits of ADR. The media should highlight successful examples of mediation, and promote the idea that "those who reconcile are the true winners." In particular, it is important to instill the notion that when disputes in construction are resolved peacefully, housing is delivered on time, additional expenses and legal costs are avoided, and ultimately, such outcomes serve the interests of homeowners and the general public.

Another important aspect is the lack or insufficiency of statistical data. Currently, there is no precise statistical accounting in Uzbekistan concerning mediation or arbitration – for example, how many construction disputes were resolved through mediation in 2022, how many were adjudicated through arbitration, and the average duration of such proceedings remain unknown. It would be beneficial if the Ministry of Justice or the Supreme Court published special reports containing such information. This is a methodological issue: without statistical analysis, it is difficult to determine which areas require focused attention. For instance, a study conducted in Germany revealed that in 2017, more than 100,000 construction disputes were filed with the courts, yet only around 2,000 were addressed through alternative dispute resolution mechanisms [6]. We do not know the comparable ratio for Uzbekistan. It is likely that many large-scale construction disputes in the country are resolved informally behind closed doors or based on unilateral decisions by influential parties. This, too, is problematic – if ADR mechanisms were better established, such disputes could be formalized and brought within the bounds of legal and transparent procedures.

In conclusion, the implementation of alternative dispute resolution methods for disputes arising from construction contracts is a necessity of the times. This approach reduces the burden on the judicial system, accelerates access to fair adjudication, and ensures the stable continuation of construction processes. In the context of legal reforms in Uzbekistan, the initial steps toward broad application of ADR mechanisms have been taken, and it is now essential to develop them consistently. Taking into account theoretical insights and international experience, strengthening ADR institutions will enhance the legal culture within society, dispel the stereotype of "the losing party is the guilty party," and instead affirm the principle that "the reconciled party is the successful party." Ultimately, this serves the advancement of the rule of law and the establishment of justice.

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