

Mgr Damian Bara

Alternative methods of resolving construction disputes

Summary

The aim of the dissertation is to analyze the rules and literature relating to alternative dispute resolution (ADR) in the context of their application to the resolution of disputes arising from the construction law. The result of the work is to verify and confirm the research theses set out in this doctoral dissertation.

The dissertation contains a basic thesis and two auxiliary theses. The main thesis involves an attempt to show that ADRs are applicable in the case of resolving disputes arising from construction law. Due to the characteristics of the construction law and the lack of synthetic provisions relating to the aforementioned issues, it was advisable to undertake this issue and make appropriate analyzes to prove the validity of the main thesis. The first of the auxiliary aids refers to demonstrating the rightness of the statement that the use of ADRs in resolving disputes arising during the implementation of a construction project is a good practice of conduct between entrepreneurs in the construction industry. On the other hand, the purpose of the second subsidiary thesis is to prove that the provisions on amicable proceedings included in the FIDIC Contract Conditions of 1999, in contrast to national regulations regarding ADR and their application in law being developed, regulate in detail the procedure for resolving disputes arising during the investment construction, which in turn speaks for their practical use.

The basic research method that has been applied in the development of this doctoral dissertation is the dogmatic and legal method that takes into account the commonly used methods of interpretation of normative acts, i.e. language, system and functional interpretation. The use of this research method will allow to analyze the provisions on negotiation, mediation and arbitration. In the case of some issues, a historical and legal interpretation has also been applied, which will allow to show the genesis and evolution of both ADRs and the genesis of the development of construction law in Poland. As an alternative, the legal comparative method was used. The necessity to seek solutions developed in other legal systems results mainly from the lack of legal regulations regarding the use of ADR in the construction law as well as the lack of national literature covering the subject of this dissertation.

The work consists of an introduction, four chapters with subsections and endings. Each of the chapters has been divided into subsections, and these in turn into smaller editorial units that allow for a clear dissertation scheme.

The first chapter is of a theoretical nature and has been devoted to preliminary issues. For the sake of clarity, this chapter has been divided into two parts. The first part concerns the origin and development of ADR, with particular emphasis on changes resulting from the growing popularity of these dispute resolution methods. The second part of the chapter will deal with the construction law. The procedure of shaping the construction law was presented, starting from the period of partitions, through the Second Polish Republic, the post-war period to modern times.

The second chapter was devoted to negotiations, with particular emphasis on negotiations in construction disputes. This chapter presents terminological issues regarding negotiations, the assumption of negotiations and a negotiation mode of shaping the agreement. This chapter also deals with the issue of negotiations in the context of resolving disputes arising from the implementation of a construction investment.

The third chapter focuses entirely on the institution of mediation. The legal regulation in the field of mediation in Poland was discussed, in particular an attempt was made to analyze the provisions regarding mediation in specific areas of law, and the issue related to this was discussed on the example of selected countries. The subject scope of the mediation was also presented, the basic principles of mediation, important issues related to the mediation procedure or forms of termination of mediation were brought closer. This chapter also applies to the use of mediation in construction disputes and raises the question of mediation in relation to FIDIC contract terms.

The subject of the last chapter concentrates on the institution of arbitration, with particular emphasis on the use of arbitration in the context of resolving disputes arising during the construction project implementation. This chapter presents, among others the essence and nature of arbitration, the basic assumptions of arbitration, the role of the parties, arbitration issues, arbitration clause as well as all procedural issues related to this institution of ADR. The last issue of this chapter refers to the arbitration regulation contained in the FIDIC Conditions of Contract. Due to the thematic scope, the issue related to the proceedings before the Conciliation Committee was also raised in the light of the regulation contained in the FIDIC Conditions of Contract, which was the stage preceding arbitration.

The final analysis of the subject of work was made in the context of the research thesis.