

Adjudication as a method of dispute resolution in international construction projects

Abstract

The subject of this thesis is an analysis of the use of adjudication as a relatively new, and in the Czech environment not yet well-studied, method of dispute resolution concerning a range of disputes arising between the subjects of contractual relationships in the field of construction projects containing a foreign element. The focus on so-called international construction projects reflects the current trend of expansion of construction entrepreneurs into foreign markets and the formation of multinational groups of construction entrepreneurs. This trend brings construction entrepreneurs into the environment of international business relations, where the presence of foreign element conditions the need to choose or determine the applicable law of a given contractual relationship using the conflict of laws principles. Adjudication is defined in this thesis as an alternative method of dispute resolution in which a dispute is submitted to an expert (or more often a group of three impartial and independent experts) specialized in the given area of the subject matter of the dispute, vested with the power (given by contract or by law) to decide the dispute between the parties in an interim binding manner while retaining the possibility of a subsequent judicial or arbitral review. In addition to a broader introduction of this method, the aim is also to reveal the advantages and disadvantages of adjudication vis-à-vis traditional non-judicial alternatives to dispute resolution (mediation and arbitration). This objective is achieved by comparison of these methods based on selected criteria specific to construction projects and the rational needs of their participants.

The thesis is structured into four parts, divided into chapters and subchapters. The first part explains in detail the concept of a construction project and specifies the range of circumstances under which a construction project becomes international. The second part introduces the concept of adjudication, the history of its development, the regulation of the contractual use of this method based on the FIDIC standard conditions of contract, and foreign legal regulation of adjudication in selected countries. The admissibility of the contractual use of adjudication under Czech law is further analyzed. The third part deals with the legal regulation of international mediation and arbitration as two main alternatives to adjudication. The fourth part contains a summary comparison of these alternative dispute resolution methods in terms of financial costs, time burden, and the nature and enforceability of their outcome. The conclusion of the thesis evaluates the results of the performed comparison.

Key words: adjudication, alternative dispute resolution, construction project