

INSTITUTIONAL ARBITRATION IN THE REPUBLIC OF NORTH MACEDONIA LEGAL REFORMS AND CIVIL CASE EXPERIENCE

Leandrit MUSTAFI, Landonita ILJAZI, Nazmije SHAQIRI

¹*Faculty of Law

^{*}landonita@gmail.com nazmije.shaqiri@unite.edu.mk

Abstract

This paper examines the development of institutional arbitration in the Republic of North Macedonia. The study is based on doctrinal and comparative legal analysis, combined with an examination of institutional practice and available case-related data from the Permanent Court of Arbitration within the Economic Chamber. This combined approach makes it possible to assess both the legal framework and its implementation in practice.

The analysis shows that arbitration offers clear advantages in commercial disputes, particularly in terms of efficiency, confidentiality, and procedural flexibility. At the same time, several challenges continue to affect its wider use. These include the absence of clearly defined procedural timelines, insufficient awareness among small and medium-sized enterprises, and the continued reliance on state courts for the enforcement of arbitral awards.

Although arbitration has been increasingly recognized as an alternative to court litigation, its practical application within the national legal system remains limited. While the legal framework is largely aligned with international standards, the findings suggest that arbitration in North Macedonia has not yet reached its full practical potential. The paper therefore highlights key limitations in its current application and points to the need for strengthening institutional capacity and promoting greater use of arbitration in practice.

Keywords: arbitration, civil disputes, Economic Chamber of the Republic of North Macedonia, UNCITRAL rules, legal framework, alternative dispute resolution.

1. Introduction

Arbitration is a recognized method of dispute resolution that allows parties to settle disputes outside the system of state courts. In North Macedonia, it is regulated by the Law on Arbitration adopted in May 2006, which reflects internationally accepted standards and emphasizes principles such as efficiency, confidentiality, and party autonomy.

As noted by Kellor (1941, p. 3), “of all humanity’s ventures in the pursuit of peace and justice, arbitration is among the oldest.” The roots of arbitration can be traced back to Roman law, particularly to the concept of *compromissum*, understood as an agreement between parties to submit their dispute to a third party and accept the decision rendered.

Despite these legal foundations, the practical use of arbitration remains relatively modest. In particular, there is a lack of detailed empirical and critical analysis addressing how arbitration functions in practice and how effective it is within the broader legal system. Existing research has mainly focused on the normative framework, while less attention has been given to the day-to-day operation of arbitration institutions and their relationship with state courts.

In practice, its broader use remains limited. This can be linked, among other factors, to insufficient awareness within the business community regarding the role, functioning, and practical advantages of arbitration compared to traditional litigation.

2. Theoretical-Legal Perspective

From a legal perspective, arbitration is considered a flexible and neutral way of resolving disputes, relying on the autonomy of the parties, which is often seen as an advantage over the courts.

In North Macedonia, it is mainly regulated by the 2006 Law on Arbitration, built on the UNCITRAL model and in line with international standards. Within this framework, arbitration provides both legal stability in commercial relations and procedural flexibility, as many elements of the process are determined by the parties themselves.

However, in practice this flexibility can bring challenges. The heavy reliance on the autonomy of the parties sometimes creates inequalities, especially when one party has more bargaining power, while the lack of more detailed regulation can affect the consistency and predictability of decisions.

3. Methodological Framework

This study relies on a combination of doctrinal and comparative analysis, supplemented by data from institutional practice. The legal analysis examines the legal framework for arbitration in North Macedonia, including domestic law and international instruments such as the UNCITRAL Model Law and the New York Convention, while the comparative approach helps to assess it in a broader context.

The empirical part is based on Chamber of Commerce reports and case data, providing a practical overview of the functioning of arbitration and its relationship with the courts. However, the lack of comprehensive data, especially before 2015, makes long-term analysis difficult and indicates limited use of arbitration. Available academic findings show 52 cases between 2015 and 2022, but earlier figures remain unavailable (Zoroska Kamilovska & Rakočević, 2023). This gap makes it difficult to fully assess developments over time and also suggests that arbitration is not yet widely used in North Macedonia.

Although public data are limited and the analysis relies mainly on institutional sources, this combined approach allows for a balanced assessment of the legal framework and its implementation in practice.

4. Institutional Arbitration in North Macedonia

Although the institutional framework for arbitration in North Macedonia is in line with international standards, its use in practice remains limited. The low number of cases indicates that it is not yet a primary means of resolving business disputes.

This is related to factors such as lack of information, limited knowledge of the procedures and preference for the courts. Therefore, the existence of a good framework does not necessarily guarantee widespread use in practice.

In the arbitration procedure, the solutions are limited to the initial agreement of the parties, limited to monetary expenses, in a council of 3 members resolving disputes exceeding 30,000 euro in value, each party counts one arbitrator and the chairman of the arbitration appoints the chairman of the council. They are all appointed to judge the dispute fairly and justly. The arbitrators review the information collected from the parties in written form or during the hearing, but must avoid ex-parte discussions, respecting the principle of impartiality and deciding fairly and justly. The parties themselves in the arbitration procedure have a key role.

Arbitration proceedings and awards are largely non-public(confidential) which is relevant for businesses, the level of confidentiality is determined by the parties themselves and regulated by the arbitration agreement. The arbitrator and administrative staff are not allowed to discuss the

case outside the arbitration hearing. The arbitration award is final and binding on the parties, they have no right of appeal unless the parties request judicial review of the award although this may be required in certain cases.

4.1 Institutional vs Ad Hoc Arbitration: In North Macedonia, institutional arbitration as said above is managed under the supervision of a permanent body, such as the Permanent Court of Arbitration operating within the Economic Chamber. This institution provides established procedural rules, administrative support, and official lists of qualified arbitrators. Institutional arbitration is generally preferred in more complex commercial disputes, with its own rules, in the administration of the procedure from beginning to end. The parties adapt to the rules of the institution, these rules formulated by professionals. However this structure approach may also reduce procedural flexibility and increase costs, especially for smaller disputes.

Flexibility is the main advantage of ad hoc arbitration, the parties have the exclusive right to adapt their needs and desires to the process towards the resolution of their case. However, the parties can opt for well-written rules, such as the UNCITRAL Model Rules for Arbitration. The UNCITRAL Rules mean the arbitration rules of the United Nations Commission on International Trade Law, these are the complete rules that the parties can use if they choose ad hoc arbitration. The advantage lies in the fact that they do not need to draft their own rules and do not have to pay for the UNCITRAL rules. The economic aspect is also characteristic of this type of arbitration. Ad hoc arbitration usually costs less than institutional arbitration, the parties do not pay institutional fees, but simply negotiate the price of the arbitrators' services.

The time aspect of ad-hoc arbitration is faster than institutional arbitration, because there is no need to go through all the procedures that usually take time. Arbitration at the Macedonian Chamber of Commerce is an institutional arbitration, established on the basis of the Law on the Macedonian Chamber of Commerce and the Statute of the Macedonian Chamber of Commerce. An independent body, which can resolve disputes that arise between parties that are members of the Macedonian Chamber of Commerce, members of the Macedonian Chamber of Commerce and other persons, as well as between other domestic and foreign legal entities, if the parties contract this competence.

The distinction between institutional and ad hoc arbitration represents a fundamental aspect of arbitration practice, as each model offers specific advantages and limitations. While ad hoc arbitration provides greater flexibility and potentially lower costs, its effectiveness depends heavily on the parties' expertise, organizational capacity, and willingness to cooperate.

The relatively limited use of ad hoc arbitration in practice may therefore reflect a lack of familiarity with self-administered procedures. Despite its theoretical advantages, it remains less frequently used compared to institutional arbitration.

4.2 Domestic vs International Arbitration: Domestic arbitration in North Macedonia applies to disputes in which all parties are Macedonian nationals or legal entities and the seat of arbitration is located within the country, connected to national legislation and judicial practice. Such proceedings are governed primarily by the Law on Arbitration and relevant procedural legislation. These cases usually arise from internal commercial and civil relationships, and arbitral awards are enforceable in a manner comparable to domestic court judgments, subject to the grounds for refusal established by law.

In contrast, international arbitration arises when a dispute contains a cross-border element, such as when the parties have their places of business in different states or when the underlying transaction involves multiple legal systems. International arbitrators are appointed with good

knowledge of the rules of the international trade profession, and are people of high integrity, not only morally but also professionally.

In international arbitration, only the first instance is adjudicated. The international arbitration award cannot be appealed, but the annulment of the award may be requested. In such cases, the state court decides, considering the place where the arbitration process takes place. The annulment of the arbitral award may be requested only for the reasons of the procedure. For example, for issues of lack of jurisdiction of the tribunal, the application of a substantive or formal law other than that determined by the parties by agreement. The procedure before the arbitration is conducted behind closed doors in order to protect business interests and business secrets.

As North Macedonia is a party to the New York Convention, foreign arbitral awards are generally recognized and enforced in accordance with its provisions. According to Zoroska Kamilovska and Rakočević (2023), between 2015 and 2022 there were 16 cases involving an international element, compared to 36 cases without such an element.

The limited possibility of appealing arbitral awards may raise concerns, particularly in more complex disputes. The absence of broader judicial review, while intended to preserve finality, may be perceived by some parties as a potential risk, especially in situations involving significant financial or legal complexity. Overall, international arbitration contributes to the integration of North Macedonia into the global economic system; however, its effectiveness ultimately depends on how institutions function in practice.

4.3 Practical benefits and limitations: Practical experience indicates that arbitration in North Macedonia offers several notable advantages. These include procedural efficiency, confidentiality, and the possibility of appointing arbitrators with specific expertise. Such features make arbitration particularly suitable for commercial disputes, where both technical knowledge and discretion are often essential.

However, these advantages should be viewed with a degree of caution. In practice, arbitration does not always result in significantly faster or less costly proceedings. This is especially evident in cases involving multiple arbitrators, where the duration and overall costs may approach those of traditional court litigation. Another important limitation concerns the absence of clearly defined procedural deadlines for the issuance of arbitral awards within the applicable legal framework. This may lead to uncertainty and reduce some of the expected efficiency gains associated with arbitration.

In addition, the limited scope of judicial review, while reinforcing the finality of arbitral awards, may restrict available remedies in cases involving procedural or substantive errors. This can influence how the fairness of the process is perceived, particularly by parties with limited prior experience in arbitration.

These findings suggest that arbitration should not be viewed solely as a legal mechanism, but also as a matter closely linked to information, professional practice, and broader business culture.

In the Republic of Macedonia, the process of recognition of arbitration awards is, in fact, a process of limited review of foreign arbitration awards. The legal system of the Republic of Macedonia has adopted a system of limited review (*controle limite*) of foreign arbitration awards, in which the award is not subject to review on the merits and is not allowed to be amended. The court shall deliver the decision on recognition to the opposing party, namely to the other participants in the procedure in which the foreign arbitration award was made, and shall advise them that they may file an objection against the decision on recognition within 15 days from the date of receipt of the decision. This objection shall be filed with the court that issued the decision on recognition, which in this case shall decide in a panel of three judges. If the decision following the objection depends on disputed facts, the court shall schedule a

hearing and after holding the same it shall decide. From this we can conclude that the deliberation procedure is adversarial, because the opponent of the proposer is given the opportunity to object to the recognition of foreign arbitration awards, based on the existence of the foreseen obstacles, the existence of which he is ready to prove. Against the ruling by which the court has rejected the proposal for the recognition of the foreign arbitration award and against the ruling by which it has been decided according to the objection, an appeal is allowed to the competent court of appeal, within 8 days from the date of receipt of the decision. The court decides on the costs of the procedure for the recognition of the foreign arbitration award according to the rules that would be applied in the case when the same matter would be decided by a court or another body of the Republic of Macedonia (Pg. 312, Arber Ademi, Doctoral Thesis, Tirana, 2015-The main legal source for the recognition and enforcement of foreign arbitration awards is the Law on Private International Law of the Republic of Macedonia, specifically Articles 111-116.)

4.4 The Legal and Institutional Framework: Arbitration in North Macedonia is primarily regulated by the Law on International Commercial Arbitration, which contains 40 articles, the provisions of which are included in IX chapters, largely reflecting the structure and principles of the UNCITRAL Model Law. This legislation governs key aspects of the arbitral process, including arbitration agreements, the composition and powers of arbitral tribunals, the conduct of proceedings, and the recognition and enforcement of arbitral awards. In addition, the Litigation Act regulates matters concerning the interaction between arbitration and state courts. In the Republic of Macedonia, in addition to multilateral conventions on international arbitration, such as convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (hereinafter: the 1958 New York Convention), The 1961 European Convention on International Commercial Arbitration (ECICA), and the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States, bilateral agreements are also presented as legal sources of international commercial arbitration. This helps build a solid legal base and improves countries credibility in resolving international disputes.

Although a modern legal framework exists, it does not automatically guarantee effective implementation in practice. The main challenge lies in the gap between formal rules and the way they are actually implemented. Although the law recognizes the autonomy of the parties, procedural flexibility and the enforceability of arbitral awards, their functioning depends heavily on the role and sustainability of institutions, especially the courts.

Meanwhile, the Permanent Court of Arbitration provides an important institutional basis, but its role could be strengthened through more transparency and cooperation with businesses. Ultimately, the effectiveness of arbitration depends not only on the law, but also on its integration into the legal and economic system.

5. Legal Reforms and Practical Experience

Reforms have been undertaken in North Macedonia to increase procedural efficiency, legal certainty and to bring practice closer to international standards. State courts have generally maintained a supportive approach to arbitration, especially in the recognition and enforcement of awards, positively influencing trust in this mechanism.

However, experience shows that legal changes are not sufficient to increase the use of arbitration. Despite reforms, the number of cases remains low. This is related to structural and cultural factors, such as continued reliance on courts, limited knowledge of arbitration and lack of institutional promotion.

These findings suggest that legal reforms should be evaluated not only by their alignment with international standards, but also by their practical effects. In North Macedonia, this shows the importance of supporting reforms with stronger institutions and greater awareness among users.

6. International investment arbitration- selected examples

The legal development of North Macedonia has been significantly shaped by its engagement with international investment arbitration. The cases involving EVN AG and Swisslion DOO illustrate some of the challenges faced by a transitioning legal system.

6.1 EVN AG v. Republic of North Macedonia (ICSID Case No. ARB/09/10): This case concerns the entry of EVN into the electricity market in North Macedonia following privatisation. The main problems arose from the regulation of tariffs and difficulties in collecting payments. The investor alleged that the State failed to provide a stable and fair environment, in breach of the fair and equitable treatment (FET) standard. The case did not end with an arbitration award, but was settled by agreement in 2011, showing that negotiated solutions are often more practical. The case highlights the importance of independent and stable regulation.

6.2 Swisslion DOO Skopje v. Republic of North Macedonia (ICSID Case No. ARB/09/16): In this case, the investor alleged that the State failed to provide appropriate conditions for the investment, in particular with regard to infrastructure and clarity of ownership. This was considered to be a possible form of indirect expropriation, as it significantly affected the value of the investment. A key element was the failure to respect the investor's legitimate expectations. The case shows that even administrative delays and lack of coordination by authorities can bring international responsibility to the state, without necessarily having direct action against the investor.

Generally, these cases reflect the ongoing process of institutional development. They illustrate how international investment law can serve as a framework that encourages higher standards of governance, while at the same time exposing areas where further improvement is needed.

7. Conclusions

The development of institutional arbitration in North Macedonia marks an important step in modernizing the legal system. The existing legal framework, which is largely aligned with international standards, provides a solid foundation for arbitration to function effectively. Overall, the Macedonian experience shows that institutional arbitration can ease the workload of state courts and support the rule of law by offering a reliable alternative for resolving disputes. However, although arbitration has existed for over a decade, the number of cases remains relatively low. This suggests that awareness of arbitration as a legal option is still limited. Greater efforts are therefore needed to inform businesses and encourage wider use of this mechanism. The role of the Economic Chamber in providing information can help improve understanding among business actors.

At the same time, the findings indicate that arbitration is not yet fully used in practice, despite its advantages. It is still not the main method for resolving commercial disputes, especially among small and medium-sized enterprises. This gap between legal development and actual use points to the need for further improvements.

In addition to maintaining the legal framework, in practice it is important to strengthen institutional capacity, improve professional training, and raise awareness among potential users.

The effectiveness of arbitration will depend not only on the law itself, but also on trust, accessibility, and how well it is integrated into the wider legal and economic system. Further progress could be achieved through practical measures such as awareness programs for businesses, better institutional efficiency, and a balanced approach to transparency that respects confidentiality. Continuous training of arbitrators is also essential to ensure consistent and high-quality decisions. Together, these steps would support broader use of arbitration and strengthen its role in dispute resolution in North Macedonia.

References

- [1] Ademi, A. (2015). *Recognition and enforcement of foreign arbitral awards under the Law on Private International Law of the Republic of Macedonia (Articles 111–116)* (Doctoral dissertation).
- [2] Economic Chamber of North Macedonia. (n.d.). *Arbitration and annual arbitration reports (2011–2016)*. <https://arbitraza.mchamber.mk/index.aspx?lng=2>
- [3] International Centre for Settlement of Investment Disputes. (2009). *EVN AG v. Republic of Macedonia (ICSID Case No. ARB/09/10)*.
- [4] International Centre for Settlement of Investment Disputes. (2014). *Swisslion DOO Skopje v. Former Yugoslav Republic of Macedonia (ICSID Case No. ARB/14/21)*.
- [5] Kellor, F. (1941). *American arbitration: Its history, functions and achievements*. American Arbitration Association.
- [6] Mustafi, L. (2018). *Roli dhe funksioni i arbitrazhit në këndvështrimin e kontesteve civile 2011–2016* (Master's thesis). University of Tetova.
- [7] North Macedonia. (2006). *Law on international commercial arbitration* (Official Gazette No. 39/2006).
- [8] United Nations Commission on International Trade Law. (1985). *UNCITRAL Model Law on international commercial arbitration*. United Nations.
- [9] United Nations Conference on Trade and Development. (n.d.). *Investment dispute settlement: North Macedonia*. <https://investmentpolicy.unctad.org/investment-dispute-settlement/country/124/north-macedonia/respondent>
- [10] Zoroska Kamilovska, T., & Rakočević, M. (2023). *Country report on commercial and investment arbitration: North Macedonia*.