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The Effectiveness of Solving Commercial Disputes: Alternative Dispute Resolution Vs Commercial Litigation in Kosovo

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**The Effectiveness of Solving Commercial Disputes:
Alternative Dispute Resolution Vs
Commercial Litigation in Kosovo**

An Honors Society Project

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August, 2021

Abstract

This study assesses the effectiveness of Alternative Dispute Resolution (ADR) mechanisms, particularly through a comparison between the two ADR pillars – Arbitration and Mediation, and Commercial Litigation in resolving business disputes. The study specifically draws parallels with respect to time, cost, and user-satisfaction as key indicators in assessing which one of these pathways of solving commercial disputes is most effective for businesses in Kosovo. Consistent with the literature review, businesses resort to commercial litigation because of common practice, whereas mediation is chosen because it is a traditional, and historically successful method of solving disputes through an intermediary – even in cases of blood feuds. The analysis is conducted based on the secondary data and primary data collected through a survey with 107 businesses (N=107). The findings from the survey support the literature review and showcase that businesses in Kosovo are unaware of Arbitration as an ADR mechanism, arbitration and mediation yield high rate of user-satisfaction, commercial litigation is ineffective, as well as that commercial justice in Kosovo should improve via a cross collaboration of the relevant actors of commercial justice. The study stresses the importance of having a convenient business dispute resolution ecosystem so that businesses can thrive even in times of adversity with one-another. Finally, it offers recommendations to improve the business doing environment of Kosovo in the way commercial disputes are handled, and increase ADR usage, on three levels: government, institutions such as American and Kosovo Chamber of Commerce, and businesses.

Keywords: commercial, ADR, litigation, dispute, resolution.

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Contents

Abstract	1
Acknowledgements	2
Abbreviations.....	5
List of Tables	6
List of Charts	6
Statement of the Problem	7
Literature Review	8
Commercial Disputes	8
Commercial Litigation	8
Commercial Litigation in Kosovo	9
Inexistence of a Stand-alone Commercial Court.....	9
Insufficient expertise of judicial staff concerning commercial issues.	10
Backlog of commercial cases	10
Alternative Dispute Resolution (ADR).....	11
Arbitration	12
Arbitration in Kosovo	12
The American Chamber of Commerce in Kosovo ADR Center	13
Kosovo Chamber of Commerce Permanent Arbitration Tribunal.....	14
Lack of awareness on Arbitration in Kosovo.....	15
Mediation	15
Mediation in Kosovo.....	16
Mediation Procedure	17
Online Mediation	17
Commercial Litigation vs Arbitration vs Mediation	18
Cost	19
Time	20
User satisfaction	20
Key Takeaways.....	21
Research Hypotheses	21
Methodology.....	22

Secondary data.....	22
Primary Data.....	22
Data Limitations	23
Survey results and Discussion	23
Conclusions	34
Recommendations	35
Recommendations for the Government	36
Development of a Commercial Code.....	36
Establishment of a Commercial Court.....	36
Promote Mediation and Online Mediation.....	36
Information packages for Newly Registered Businesses.....	37
Recommendations for American and Kosovo Chamber of Commerce	37
Recommendations for the Business Community.....	37
Arbitration Usage	37
Mediation Usage.....	38
References	39
Appendix A	46
Appendix B.....	50
Appendix C.....	54

Abbreviations

ADR – Alternative Dispute Resolution

AmCham Kosovo - American Chamber of Commerce in Kosovo

CL – Commercial Litigation

CJA – Commercial Justice Activity

DRM – Dispute Resolution Mechanisms

EDB – Ease of Doing Business

EBRD – European Bank for Reconstruction and Development

EU – European Union

KCC - Kosovo Chamber of Commerce

KJC - Kosovo Judicial Council

MOJ - Ministry of Justice

JSSP – Justice System Strengthening Program

PBC - Prishtina Basic Court

SME – Small and Medium-sized Enterprises

UNICTRAL - United Nations Commission on International Trade Law

USAID – United States Agency for International Development

List of Tables

Table 1: Commercial Litigation vs Arbitration vs Mediation

Table 2: Comparison of cost between business dispute resolution mechanisms

Table 3: Comparison of time between business dispute resolution mechanisms

Table 4: Comparison of user satisfaction rate between business dispute resolution mechanisms

Table 5: Cross-tabulation of data: Satisfaction level with Commercial Litigation and Mediation

Table 6: Cross-tabulation: Business awareness of Dispute Resolution Mechanisms

List of Charts

Chart 1: Types of Businesses surveyed

Chart 2: Open Businesses Chart

Chart 3: The geographical reach of businesses surveyed.

Chart 4: Are you aware of DRM?

Chart 5: How can a dispute be resolved?

Chart 6: Perception of cost of DRM

Chart 7: Perception of Time of DRM

Statement of the Problem

Businesses, as part of their standard operating procedures engage in transactions with entities such as partners, suppliers, and clients. To maintain healthy relationships with their entities, most businesses engage in agreements, very often in the form of legal contracts. But, when agreements are flouted – thus *a commercial dispute* happens, businesses need to solve that dispute. Solving a *commercial dispute* can be done traditionally – through a court or commercial litigation, and the alternative way – through the two pillars within the Alternative Dispute Resolution (ADR) mechanism, such as Arbitration and Mediation (Costello, 2020). When choosing one method over the other, businesses are interested in *the time, cost, and satisfaction with the entire process (user-satisfaction) as three indicators of the effectiveness* of the mechanism through which they solve their dispute. In other words, they are *indirectly* interested in part with the Enforcement of Contracts indicators, which measure “time and cost to resolve a commercial dispute and the quality of judicial processes which yields user satisfaction” (World Bank, 2020). For many developing countries, including Kosovo, the main mode of resolving commercial disputes has been commercial litigation (“WTO ...”, 2004). However, according to the 2012 Commercial Law Assessment of the European Bank for Reconstruction and Development (EBRD), Kosovo’s judiciary system has a problem with massive backlog cases that have been accumulated since 1999, “in lack of a Commercial court, case delays, lack of expertise, the small number of judges and professional collaborators in the Basic Court of Prishtina where all commercial cases are handled” (p. 12-15). Considering this situation, international development agencies and unions from the United States and European Union have continuously supported the development of the justice system in Kosovo, particularly by supporting the current capacities until a commercial court is established and building awareness over the ADR mechanisms as an efficient out-of-court option to solving business disputes (p. 16). This study will compare the effectiveness of the ADR mechanisms in Kosovo as opposed to commercial litigation, which leads to solving commercial disputes effectively, enhancing the attractiveness of doing business in Kosovo, and ultimately improvement of the overall business climate.

Literature Review

Commercial Disputes

If left unattended, a simple misunderstanding between two parties can quickly turn into a disagreement. This disagreement, in the business world, is known as a commercial dispute, and it can rise slowly or abruptly. Businesses consider the mode of resolution as a very crucial decision to undertake considering the high stakes that usually characterize a commercial dispute. A commercial dispute, defined more formally, refers to “a disagreement between parties to a commercial transaction which arises out of that transaction” (“Commercial Dispute”, 1). Disputes arise usually when one of the parties, or even both, feel as if the rights that have been determined at the beginning of the partnership are marginalized by action or inaction from the party[ies] involved (“Understanding how disputes arise”, 3). Major catalysts of a commercial dispute, as discussed by Herrig & Vogt (2014); Haddad (2020); Patten (2018); and Curley & Rothman (n.d.), depending on the type of business or company are related to competition, internal disputes among shareholders and/or partners, professional failure and negligence, fraud, or even intellectual property infringement (Duckett, 2020).

The traditional way of solving disputes refers to **commercial litigation**, whereas the alternative way refers to **Alternative Dispute Resolution (ADR)** mechanisms such as **Mediation** and **Arbitration**.

Commercial Litigation

Commercial litigation developed simultaneously to commercial laws that can be evidenced as back as in the ancient Babylonia (today's Iraq), where any kind of trade-related to merchandise was followed up with an agreement in front of a third party so that the affair was regulated and disputes among merchants would not arise (“commercial law”, 2018). And, even if those disputes would arise, they would be solved very quickly since the third party who liaised with the two merchants had the power to adjudicate that dispute without any other powerful authority involved (“commercial law”, 2018). Litigation is defined as the “legal process of determining a resolution to a dispute in a law court” (“The principles of litigation”, 2014). Commercial litigation, on the other hand, refers to the same legal process but that specifically concerns the resolution of a dispute that governs business transactions, with one exception of maritime law or “concerning navigation and overseas commerce” (“commercial

law” and “Maritime Law”, 2018). Commercial litigation is practiced around the world; however, it is a judicial landscape that is constantly changing. For example, in Europe, many countries have established or are establishing international business courts, because of “expanding international businesses, changing regulatory requirements, increasing corporate scrutiny and complex cross-border transactions” (Bauw, 2019).

Commercial Litigation in Kosovo

In Kosovo, commercial litigation along with the entire judicial system is governed by the law on Courts 06/L-054, specifically article 8 which structures the court system with the Supreme Court, the Court of Appeals and Seven (7) Basic Courts across the major municipalities in Kosovo (3). Commercial and administrative matters are exclusive to the designated departments of Economic Affairs within the Basic Court of Prishtina (6). Although the establishment of the judiciary system, like numerous state-building processes was and is still supported by international expertise such as from USAID and the EU, Kosovo is still developing a well-functioning judicial system. The Ministry of Justice, as of 2020 has committed that the Government of Kosovo considers a reform on the judicial system with key emphasis on commercial justice as a crucial step to undertake in order to add a strong pillar to the justice system (“Reforms in commercial justice are a precondition for attracting foreign investment – AmCham Kosovo”, 2020). Furthermore, USAID CJA considers “case delays, lack of expertise, the small number of judges and professional collaborators as main problems with commercial litigation is faced” (“Judiciary challenges have a negative impact on efficient solving of commercial disputes – AmCham Kosovo”, 2021).

Inexistence of a Stand-alone Commercial Court

Kosovo does not have a standalone Commercial Court. In a virtual forum organized by AmCham, where representatives from the law community, Ministry of Justice and USAID Commercial Justice Activity were present, there was a common belief/agreement that the inexistence of this court is causing drawbacks for the business community and it is preventing to attract the foreign investment (“Establishment of a commercial court should remain a priority for the new Government - AmCham Kosovo”, 2019). Among other discussions, program representative of USAID CJA’s stated: “After a careful performance evaluation at the Department for Economic Affairs, including here case management, decision-making and

engagement of judges or supportive staff, it has been estimated that it is absolutely necessary for the justice system in Kosovo to have a commercial court” (“Judiciary challenges have a negative impact on efficient solving of commercial disputes – AmCham Kosovo”, 2021). Besides the inexistence of a Commercial Court, there are two other issues concerning commercial litigation status quo in Kosovo, namely insufficient expertise of the judicial staff concerning commercial issues and the backlog of commercial cases.

Insufficient expertise of judicial staff concerning commercial issues.

The current capacity of judicial staff in Kosovo, regarding expertise in commercial disputes is inadequate. Proponents of commercial justice in Kosovo as well as international experts claim that because the judicial system in Kosovo is designed in such a way that it extends into many departments, thus judges, prosecutors and especially court or support staff are not specialized in commercial issues (“Private sector engaged in establishing a commercial court – USAID”, 2020). Further the EU Kosovo Report of 2020, concludes that Kosovo’s performance on administration of justice is poor, that is why it must work very hard to strengthen the capacity of judges, prosecutors, and support staff (“Kosovo* 2020 Report - European Union Commission”, 2020).

Backlog of commercial cases

Any case that remains unresolved in courts for more than 24 months is considered backlog. Kosovo Judicial Council (KJC) had developed a strategy on National Backlog Reduction in 2013 that recognizes the backlog reduction, among other issues, to be as “one of the critical issues facing the Kosovo judiciary”. It is important to note that the massive backlog of cases as an issue starts with civil and criminal cases and extends to commercial cases. One of the many goals in this National Strategy of the KJC is to not overload the backlog in case the backlog is not reduced. However, the results from the work of the KJC shows slightly the opposite to those goals. In 2018, the backlog of unresolved commercial cases amounted to 1124 cases. The Basic Court of Prishtina accepted another 659 cases, adding to 1783 cases in process. The number of resolved cases during 2018 is 697, whereas unresolved are 1086. To give some perspective to these numbers, *the efficiency rate¹ - clearance of commercial cases* – of the court in 2018 was **39.09%**. In 2019, following the same logic, the efficiency rate of

¹ Efficiency rate = $\frac{\text{Resolved cases in set year}}{\text{Total cases accepted and inherited during set year}} \times 100$

the commercial cases was **37.27%**. In 2020, the efficiency rate is **28.11%** where we see a drop on efficiency (“Raporti Statistikor i Gjykatave 2020”, 2021).

This drop-in efficiency rate in a period of three years may seem alarming, but it is also evident that procedures in court are bound to last longer and that during 2020, the COVID-19 pandemic has slowed down the processes of the courts. Although the USAID-funded Justice Strengthening System Program (2015-2020), managed to reduce the overall backlog cases by 84.88% across all Kosovo Basic Courts, there is still much to be done (“Factsheet justice system strengthening program – USAID”, 2020). Bajram Miftari, judge and leader of the Department for Economic Affairs at the Prishtina Basic Court highlighted the slowed operations of litigation as a result of restrictions from COVID-19 and the abrupt shift to essential staff (“COVID19 has affected commercial justice by restricting the work of the courts – AmCham Kosovo”, 2020). It must be noted that courts have offered their services to businesses continuously, but only a small number of judgments were able to be issued due to unprecedented circumstances. Miftari added that the businesses were promised a closure after the pandemic eases out and that the postponement of so many cases does not mean a reduction in acceptance of cases, but rather a sign that the courts should maybe investigate other modes of adjudicating i.e., online hearings, in case the pandemic continues for a longer period (2020).

Further, the same EU Commission report of 2020 that advises to increase judicial capacities, recommends Kosovo’s Ministry of Justice to “step up efforts to reduce the backlog of cases, including by using alternative dispute resolution tools and in particular mediation, the use of which should be properly financed and promoted” (“Kosovo* 2020 Report - European Union Commission”, 2020).

Alternative Dispute Resolution (ADR)

ADR refers to “a method of settling disputes through arbitration, consultation, dispute mediation, etc., outside the framework of court proceedings” (Newman, 2020). Otherwise stated, ADR mechanisms solve disputes through procedures that do not require going to a court; rather, they include a third party to reach fairness and closure on that disagreement. It should be noted, perhaps with utmost regard, that alternative dispute resolution as a mechanism in comparison to the court works only and if the two parties that are engaged in the disagreement are fully committed to finding a solution (Newman, 2020).

Arbitration

Some of the first known cases of Arbitration go back almost 3 centuries ago (Emerson, 1970). However, countries around the world have started to fully embrace arbitration over the past 100 years, so in the early 20th century, by “enacting laws whereby a strong pro arbitration policy has emerged, and arbitration has become prevalent in commercial disputes” (Centner & Ford, 2019). American Bar Association defines arbitration as “a private process where disputing parties agree that one or several individuals (arbitrator/s) can make a decision about the dispute after receiving evidence and hearing arguments” (“Dispute Resolution Processes: Arbitration”, n.d.). In arbitration, no facilitative discussion between the disputing parties is practiced, rather, after arguments are heard, it is to the arbitrator's discretion to announce the final judgment (Newman, 2020). It does sound very similar to a court, since an arbitrator can be easily confused with a judge, in that, their roles are somewhat similar. However, when choosing arbitration, disputing parties are opting for a more private settlement method and control over whether their pleads are being heard equally, on top of an award (decision) given at the end that benefits both parties. Arbitration can be binding, and non-binding. According to Newman, “[b]inding arbitration means the parties have waived their right to a trial through a clause, agree to accept the arbitrator's decision is final and, usually, there is no right of appeal of the decision; whereas non-binding arbitration means the parties can request a trial if they don't accept the arbitrator's decision” (2020). The non-binding arbitration is uncommon since courts are subject to charge more after the information that parties could not solve the dispute in arbitration tribunal is presented. Arbitration is suggested to be practiced when parties do not want to waste time, want the final judgment to be taken by a third party, and are even willing to pay more in order to avoid other recurring costs.

Arbitration in Kosovo

Arbitration to Kosovo is a familiar term and procedure practiced officially from 2010 (if not earlier unofficially), supported by USAID’s programs of that time to establish Tribunals and ADR Centers to solve disputes in general, and commercial disputes especially with the newer programs/projects enacted after 2010 (Konrad et al., 2020). Gojani & Sejdiu (2018) claim that the rise of arbitration in Kosovo came because of “a dysfunctional and inefficient court system unsuitable to the demands of the market” (1). The rise of arbitration is attributed to two major events:

(1) the adaptation of pro-arbitration legal framework through “the Law on Arbitration” which was adopted in 2007 which law “sets forth the rules for arbitration agreements, arbitration proceedings, and the recognition of arbitral awards made inside and outside Kosovo” (“Law N. 02/1-75”, 2007);

(2) and the establishment of arbitration institutions/centers (Gojani & Sejdiu, 2018).

On another note, Qehaja & Mulaj (2016) explain that businesses must consider Arbitration as the go-to mechanism to resolve disputes because arbitration centers in Kosovo were established for businesses in specific. They further inform that the current ADR centers offer quicker resolutions while taking both parties’ consent into account and offering multiple options to choose from that benefit all.

Kosovo is in line with an international arbitration mentality, because it follows the UNCITRAL – *United Nations Commission On International Trade Law – Arbitration Rules* model that “provides a comprehensive set of procedural rules upon which parties may agree for the conduct of arbitral proceedings arising out of their commercial relationship and are widely used in ad hoc arbitrations as well as administered arbitrations” (“UNCITRAL Arbitration Rules | United Nations Commission On International Trade Law”, n.d.).

Presently, Kosovo has two tribunals for ADR, one within the American Chamber of Commerce in Kosovo for both Arbitration and Mediation, and the other within the Kosovo Chamber of Commerce - Kosovo Permanent Tribunal of Arbitration.

The American Chamber of Commerce in Kosovo ADR Center

The American Chamber of Commerce in Kosovo has established the Alternative Dispute Resolution Center “with the intent of improving the business climate in the country, through making arbitration an available out-of-court mechanism for settling disputes of commercial character, arising from business transactions” (“About – AmCham Kosovo”, 2021). A regulatory charter establishes the four bodies of the center beginning with the steering council comprised of prestigious academics, renowned law practitioners such as arbitrators and mediators, as well as the executive director of AmCham Kosovo. The responsible person

for the Arbitration center is the Secretary-General who is another comprising body of this center. Following the Secretary-General is the Secretariat of the Center as well as the panels of arbitrators. This ADR center has a total of 34 arbitrators listed on their official website that are at the businesses' disposal to arbitrate disputes. The arbitrators are a balanced mix of international and local law practitioners which is to the businesses' advantage, given the variety of expertise to choose from.

Cases can be filed through the Arbitration Center Filing Service that operates within the office of the Secretary-General. The procedure is rather simple, a statement of claim and a registration fee is sufficient to start the resolution process. If the disputing parties have an arbitration clause included in their contract, then they can immediately send all required documents as explained at the Filing Service to a specific address. If the disputing parties do not have an arbitration clause, they can decide before-hand to proceed with the arbitration procedure or they can insert a model clause as follows:

1. *The appointing authority shall be ... [name of institution or person]*
2. *The number of arbitrators shall be ... [one or three].*
3. *The place of arbitration shall be ... [town and country].*
4. *The language to be used in the arbitral proceedings shall be*
5. *The applicable substantive law is²*

The procedure of arbitration may seem complicated if read directly from the charter, however, the Arbitration Law of Kosovo focuses on international models such as UNCITRAL for rules such as provide a base for how a procedure should go about.

Kosovo Chamber of Commerce Permanent Arbitration Tribunal

Kosovo's Permanent Arbitration Tribunal Center resides within the Kosovo Chamber of Commerce (KCC). This center, which was inaugurated in 2011, is regulated with its charter through three bodies, namely the Presidency, the President, and the Secretary. The center currently has 30 qualified and reputable arbitrators with experience in various fields of business, which is a roster that is growing continuously. KCC is working to develop a case management system and so far, they report to have resolved seven cases in a mix of fields with a mix of profiles of businesses who have had disputes ("Arbitration – Kosovo Chamber of

² <https://www.amchamksv.org/model-arbitration-clause/>

Commerce”, 2015). KCC claims confidence in Arbitration as a quick, less bureaucratic, valid, flexible, cost-efficient, and confidential procedure. In contrast to AmCham, KCC provides the Case library, where the summaries of cases are open data, meaning freely readable and downloadable by all. The model clause suggested by KCC is almost identical to the one suggested by AmCham.

Lack of awareness on Arbitration in Kosovo

Albeit these two centers are established and offer services for businesses, there is a big concern over the lack of awareness of Arbitration in Kosovo. To promote arbitration, a series of virtual forums have been organized by USAID Commercial Justice Activity and AmCham Kosovo in December 2020 as part of the Commercial Justice Days in pursuit of raising awareness on ADR (“Raising knowledge of the arbitration procedure is of essential importance – AmCham Kosovo”, 2020). Rogova, Nezaj-Shahu & Morina, law practitioners, among other discussions in this forum, agree that raising awareness on ADR is crucial in Kosovo- because very few businesses are aware of such dispute resolution mechanisms and how straightforward the procedure is. They ensure the business community that the procedure is fast, gives parties their sought-after privacy, as well as control over the procedure such as choosing the arbitrators (“Raising knowledge of the arbitration procedure is of essential importance – AmCham Kosovo”, 2020).

Mediation

Mediation is defined as the process by which disputing parties include a mediator, a third party that is unbiased to the case but is knowledgeable of that field, with whom parties sit down to reconcile and find common ground (Leonatti et al., 2016). Mediation in ancient Greece and Rome was considered a ‘noble procedure’, which attributes mediation a synonym of a peaceful resolution of a dispute. Differently from arbitration, the control here lays very much on the parties both on the content of the discussion and the agreement at the end. The purpose of a mediator is to structure the process that would otherwise be called a negotiation, Mediator paves the discussion’s way to reaching an agreement which is important regardless of the parties having the last word. Newman (2020) emphasizes that a “mediator listens and helps identify the issues in the dispute, offering options for resolution and assists in crafting a

settlement” (7). Mediation is a preferred method when disputing parties have a long-lasting relationship and want to continue the amicability that could otherwise be lost.

Mediation in Kosovo

Mediation for Kosovar Albanians begins with the traditional dispute resolution methods that were encoded by “Kanuni i Leke Dukagjinit” - or the “collection of orally transmitted principles, norms and rules which have governed the lives of Albanians for centuries” (9). Muharremi & Bucaj (2016) explored how mediation has proven successful in Kosovo’s societal culture. Kanuni was an informal constitution that regulated multiple facets of life, including resolutions of disputes (9). Kanuni recognizes two methods of tackling disputes: blood feuds and mediation (10). While blood feuds were a way of acquiring self-justice by bloody vengeance, mediation saved Albanians from both blood feuds and other disputes such as property, family, and business issues altogether in a peaceful way (11). Mediation in accordance with Kanun does not only look to practice forgiveness and reach common ground, but also reconcile broken relationships and restore peace (12). Mediation reached its peak in Kosovo in the 1990s, specifically with the event of resolving blood feuds among families which left a historical mark in the development of Kosovo's dispute resolution heritage. Also known as “Pajtimi i gjaqeve”, mediation of blood feuds by the most renowned mediator Anton Çetta, managed to reconcile thousands of families and had almost completely disappeared these feuds by the mid-1990s (Çetta & Neziri, 2001). Hence, the Albanian tradition (Kosovar tradition) with its significant Book on Code of Ethics called “Kanun”, glorifies mediation as an effective method of reconciling disputing parties. Similarly, Tutuli (2015) concludes that the traditional success of practicing mediation in Kosovo is nowadays supported strongly by Mediation Law that was enacted in 2008 (“Mediation as an ADR Mechanism in Kosovo”, 2015). Mediation is viewed as an effective mechanism whether it is voluntary – as practiced culturally, or, referred by courts – as defined by law (since courts can and do refer cases to mediation).

According to the Law on Mediation, mediation centers are established inside Basic Courts all over Kosovo. Basic Courts hold jurisdiction to send parties to mediation. However, Mediation services can also be sought at the AmCham ADR Center as mentioned above.

Mediation services took a hit from COVID-19 as well but given the extensive need to ease out the burden of the courts, online mediation was established with the help of USAID.

Mediation Procedure

Figure 1 explains a customary mediation procedure, that starts with disputing parties agreeing to mediate and is finalized after professionally led mediation sessions into a signed agreement.

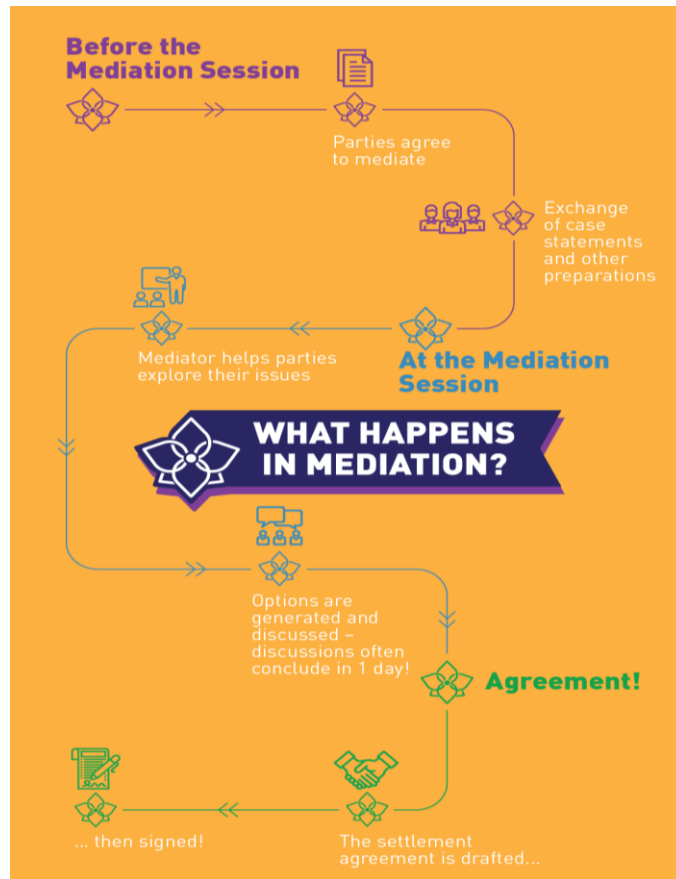


Figure 1: The Mediation Procedure

Source: “Mediation Process”. (2020). Ministry of Law. Government of Singapore

Online Mediation

With the outbreak of COVID-19, The USAID-funded Commercial Justice Activity, implemented by Checchi and Company Consulting, rapidly switched to virtual alternatives to continue support in mediation case referral and established the online mediation. Courts started referring cases to online mediation after KJC and USAID agreed on a user-friendly, reliable,

and secure online platform. Three cases had been referred and resulted in a settlement in May of 2020 from online mediation (“Checchi Helps Implement Online Mediation in Kosovo”, 2020).

Commercial Litigation vs Arbitration vs Mediation

As early as in the 1980s, arbitration and mediation were considered as prudent and highly cost-effective to keep businesses out of litigation that could otherwise damage both parties regardless of who won and who lost the dispute; and this was approved by approximately 600 large corporations in the US reporting considerable savings in time and money (B. Carver & A. Vondra, 1994). Litigation has been the go-to way of solving business disputes (Lisnek, 1993). However, many businesses have come to understand that litigation terminates a dispute very rigidly, giving parties involved no possibility for the amicability to be preserved. Thus, businesses are each day and more considering adhering to alternative methods (Lisnek, 1993). This preference extends to several reasons. Globally, ADR's importance and credibility go beyond speed and cost because it puts both parties in control in focusing on the issue, it helps preserve the relationships, and of most importance for some businesses – it is a more private dispute settling legal landscape (Australia Local Court, 2014). Multiple researchers such as Raynor (2006), Rosu (2010), and Love (2011), focus on *time*, *cost*, and *user satisfaction* to explain effectiveness of solving business dispute through one dispute resolution mechanism. However, the table compares the three procedures on these three indicators, while also adding the formality of the procedure, and an advantage and disadvantage as seen from the eyes of the disputing parties.

<i>Mechanism</i>	<i>Commercial Litigation</i>	<i>Arbitration</i>	<i>Mediation</i>
<i>Formality of procedure; Jacobson (2014).</i>	Formal (strict rules and procedures)	Not as formal as a Court, but not informal as is Mediation	Informal (parties sit down with mediator and converse)
<i>Cost Gervais (2012)</i>	Expensive in comparison to mediation, but less than arbitration	The most expensive of all three	Less expensive than both court and arbitration
<i>Time; Jacobson (2014).</i>	The most time consuming of all three	Less time consuming than court, more time consuming than mediation	Less time consuming than court and arbitration

<i>Advantage; Allen (2009)</i>	Decisions can be appealed	Privacy and confidentiality of process	Amicability is preserved; Win-win situation
<i>Disadvantage; Costello (2019)</i>	Zero-sum game (one party wins, one loses).	For unsatisfied parties, closure cannot be appealed	Either party can withdraw at any point in the process

Table 1: Commercial Litigation vs Arbitration vs Mediation

Cost

According to World Bank Doing Business Report of 2020, and the AmCham ADR Center cost calculator: the average cost to resolve a commercial dispute is a measure of average attorney/arbitrator(s) fees, as well as administrative costs such as costs of hearings or court costs, translation services and alike (“Arbitration Cost Calculator 2021 – AmCham Kosovo”) & (World Bank, 2020). Since the Doing Business Report of 2020 measures the average cost based on a claim value of EUR 7,097, this will be the baseline cost to compare the three methods as presented in the Table 2 below:

Average cost to resolve a commercial dispute		
Commercial Litigation	Arbitration	Mediation
34.4% of claim value³ For EUR 7,097 of claim value, the cost of commercial litigation in total would be: EUR 2441.40	13% of claim value⁴ For EUR 7,097 of claim value, the cost of Arbitration in total would be: EUR 896.15	Note: Since mediation is priced per session and not per claim value, the cost of 1 mediation session is 25 EUR. ⁵

Table 2: Comparison of cost between business dispute resolution mechanisms

In comparison to neighboring countries, for example with Serbia: the cost of commercial litigation is (39.6%)⁶ of the claim value, and cost for arbitration is (38%)⁷ of claim value. The EU average cost on claim value is 26.6%, whereas the best regulatory performance

³ World Bank. (2020). Doing Business 2020-Kosovo

⁴ American Chamber of Commerce. (2021). Arbitration Cost Calculator.

⁵ Qehaja, Rr., & Mulaj, V. (2016). Mediation as an Alternative Manner of Dispute Resolution in Kosovo. Acta Universitatis Danubius. Juridica, Vol 12, No 3 (2016).

⁶ World Bank. (2020). Doing Business 2020-Serbia.

⁷ Belgrade Arbitration Center. (2021). Arbitration Cost Calculator. Arbitration Association.

is 0.1%. Kosovo stands relatively well in comparison to Serbia, but rather far from the EU average and very far from best regulatory performance. All data pertain to year 2020.

Time

Time is measured by the maturity of the cases in court, meaning from the time a dispute is filed to the point where it reaches closure – is resolved. Table 3 represents the average time required to reach a closure.

Average Time to resolve commercial disputes		
Commercial Litigation	Arbitration	Mediation
1033 days⁸	Approximately 30 days⁹	Depends on parties, some disputes reach agreement in one session (however by law it must never surpass 90 days).

Table 3: Comparison of time between business dispute resolution mechanisms

The EU Average to resolve disputes according to the Doing Business Report is 496.4 days, whereas the best regulatory performance is 120 days¹⁰. In Serbia, the average time to solve a commercial dispute through court only, in lack of data for arbitration, is 622 days¹¹.

User satisfaction

According to the Justice Strengthening System Program of USAID, the Court User Satisfaction rate is 24.8% in 2020 (p. 80). According to user satisfaction surveys from Commercial Justice Activity for Arbitration is 100%, whereas for Mediation is 78%.

User satisfaction Rate		
Commercial Litigation	Arbitration	Mediation
24.8%	100%¹²	78% ¹³

⁸ “Raporti Statistikor i Gjykatave 2020”. (2021). Këshilli Gjyqësor I Kosovës. Departamenti I Statistikës.

⁹ “Unpublished official data from the USAID Commercial Justice Activity”. (2021).

¹⁰ World Bank. (2020). Doing Business 2020-Kosovo

¹¹ World Bank. (2020). Doing Business 2020-Serbia.

¹² “Unpublished official data from the USAID Commercial Justice Activity”. (2021).

¹³ “Unpublished official data from the USAID Commercial Justice Activity”. (2021).

Table 4: Comparison of user satisfaction rate between business dispute resolution mechanisms

***Note on USAID Commercial Justice Activity data. The author has received permission to use relevant unpublished data from this program, to enrich this study, and these data are indicated with a footnote attached to them. ***

Key Takeaways

The literature review, although with limitations in terms of available research that is relevant directly to this study can be concluded with these key takeaways:

- Kosovo’s Legal Framework for Commercial Dispute Resolution mechanisms is operant, following international models such as UNICTRAL.
- The Kosovo courts are working at the best of their current capacities, however, due to backlog of cases, the absence of a Commercial Court, and inexperienced staff in handling commercial disputes it is proving inefficient in dispute resolutions.
 - Resolutions through Commercial Litigation incur costs – both in time, and money in the long term that could otherwise be avoided by businesses if they resorted to Mediation or pay more for Arbitration in pursuit for the fastest resolutions.
- The Alternative Dispute Resolution Mechanisms are functional, with two tribunals in Kosovo, offering services in three languages and with a roster of prestigious local and international law practitioners on the field.
- According to the tabular comparison on cost, time, and user satisfaction:
 - Users are highly satisfied with Arbitration services, and satisfied with Mediation services, whereas unsatisfied with Court.
 - Commercial litigation is the most expensive based on claim of value as seen from the Ease of Doing Report and calculated via the AmCham Cost Calculator.
 - Mediation is the cheapest and the fastest dispute resolution mechanism.
- A drawback of ADR in Kosovo is the lack of awareness among the business community, especially over Arbitration.

Research Hypotheses

This study draws the following research hypotheses:

1st Hypothesis: Businesses are likely to solve their disputes through Commercial Litigation and Mediation because it has historically and culturally proven to be the norm. The first as the go-to law mechanism, and the second based on tradition way back when blood feuds were resolved using an intermediary.

2nd Hypothesis: Businesses are unaware of Arbitration as a dispute resolution mechanism.

3rd Hypothesis: ADR is more effective in resolving business disputes than court because it is cheaper, faster and yields post-resolution satisfaction.

Methodology

This project intends to draw a comparison of the effectiveness of the alternative methods of solving disputes as opposed to commercial litigation, particularly as seen through the lens of time, cost, and user satisfaction. This study is a mixture of primary and secondary qualitative data, including the literature review, data from USAID CJA and a survey conducted with businesses.

Secondary data

Secondary data were mainly collected through available reports, research papers, and existing open data by relevant institutions. The Official Gazette of the Republic of Kosovo supplied for the legal infrastructure, the KCC, and AmCham Kosovo for the information on ADR centers, and the International and Local Arbitration Journals to enhance the literature review. The Doing Business Report of Kosovo is an asset that laid out the comparative portion of this study based on the above-assigned indicators, whereas other studies, research, and even blogs by eminent law practitioners, law firms, and international institutions such as the World Bank complement the readily available data sections on this study. Last but not least, as indicated with a note above the USAID Commercial Justice Activity has supplied unpublished data to enrich this study since this program is designed to support infrastructure for improved commercial litigation as well as alternative dispute resolution mechanisms. Secondary data also contribute to an important part of this study – that is, to test the hypotheses.

Primary Data

Considering that the secondary data explain the effectiveness of both these methods in an international context, mostly based on the pragmatic experiences of other countries, the primary data consists of a survey distributed to businesses across Kosovo to measure their

perception, experience, and knowledge on commercial disputes. This survey is important especially considering that the literature review highlights a lack of awareness among the business community for arbitration, and reports from KCC showcase a rather low number of resolved cases through KCC's Arbitration center, on top of a huge backlog of untreated cases by the Department of Economic affairs of PBC. The survey consisted of 14 questions, directed at businesses of diverse organizational structure, industry, and region. The survey was distributed via online channels such as social media including LinkedIn and Facebook; through acquaintances who are business-owners, and intermediaries such as the American Chamber of Commerce who have shared it with their members. The survey collected a satisfying number of responses from businesses, with a total of N=107. The survey was conducted in the Albanian Language to ensure data comprehensiveness and quality through a higher reach of businesses that operate in Kosovo that might not be acquainted so much with the English language.

Data Limitations

Conducting any kind of study during a pandemic such as in times of COVID-19 has proven difficult, especially in obtaining data. That is why convenience sampling was the chosen mode for this specific study. A challenge in measuring user satisfaction was prevalent, considering the low number of businesses using ADR Services such as arbitration, and the number of businesses who have yet to receive an adjudication of their case through commercial litigation. However, given the supply of data from USAID CJA, surveys on user satisfaction and other relevant data from the final report of the USAID Justice Strengthening System Program were acquired. In parallel, a perception-based survey is a great display of how ADR mechanisms are digested by businesses, and whether what works internationally is absorbable in the case of Kosovo. Nonetheless, the survey managed to capture an considerable response rate, with a wide geographical reach and a mix of types of businesses, therefore, the results have high content and construct validity.

Survey results and Discussion

To ensure objective assessment of the awareness, perception, and judgement of businesses over ADR and Commercial litigation, the survey was designed in such a way as to capture a mix of businesses in terms of size, operating sector as well as geographical reach. First, when the survey was distributed, careful consideration was given to the type of

businesses that received the survey to match the representation of all business community in Kosovo. The basis for the representation was taken from the Open Business Website powered by Open Data Kosovo, where 172,278 active businesses in Kosovo are listed. Chart 1 explains the representation of the type of businesses in Kosovo, whereas Chart 2 represents the type of businesses surveyed.

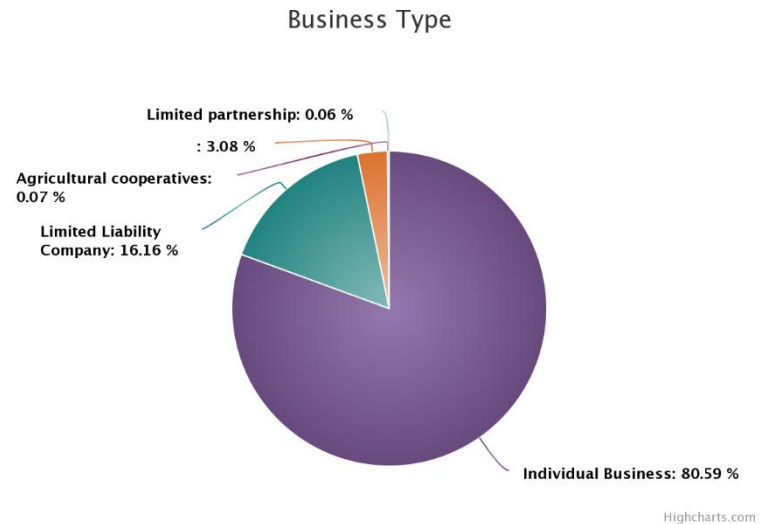
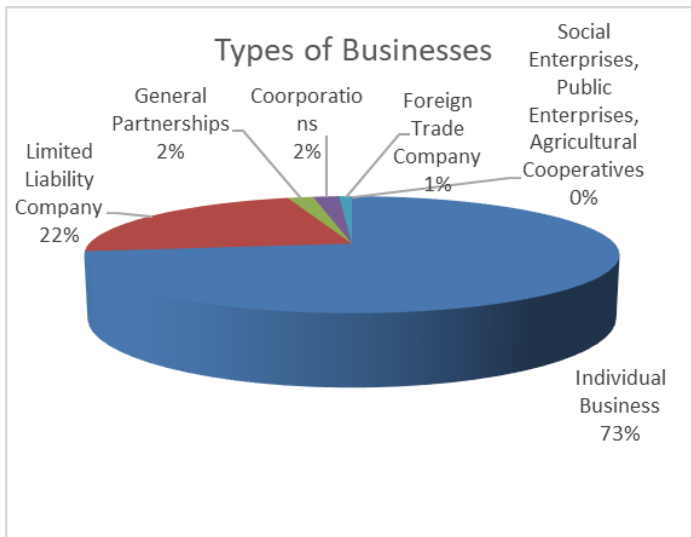


Chart 1: Types of Businesses surveyed

Chart 2: Open Businesses Chart

In total, 73% of the respondents were individual businesses, 23% limited liability companies, 1.8% general partnerships, 1.8% corporations, and 0.4% foreign trade company. No social enterprises, public enterprises, or agricultural cooperatives responded. Charts 1 and 2 show that the surveyed businesses and the existing businesses in Kosovo are almost similar in terms of the type, thus the sample is a great representation of the businesses in Kosovo.

Second, the survey focused on the number of employees that the businesses employ. While the type of business may indicate the number of employees, around 50% of businesses surveyed employ a maximum of 10 employees, whereas only 2% employ over 250 employees. Around 40% of businesses employ 11-50 employees, and the remaining with 51-250 employees. This is particularly important because according to a report from the European Union (n.d.), businesses of the Small and Medium Enterprise (SME) type are more prone to disputing because of the high stakes involved – which was uncovered in the literature review.

SMEs are all businesses that employ fewer than 250 employees (“Entrepreneurship - Enterprises by business size - OECD Data”, 2018). The survey managed to capture 104 SMEs in Kosovo. Next, the survey spanned geographically across Kosovo. Given that many of businesses in Kosovo are founded, located, and operate in the capital city – Prishtina, 55% of the businesses surveyed belong to this region. Chart 3 visualizes this representation.

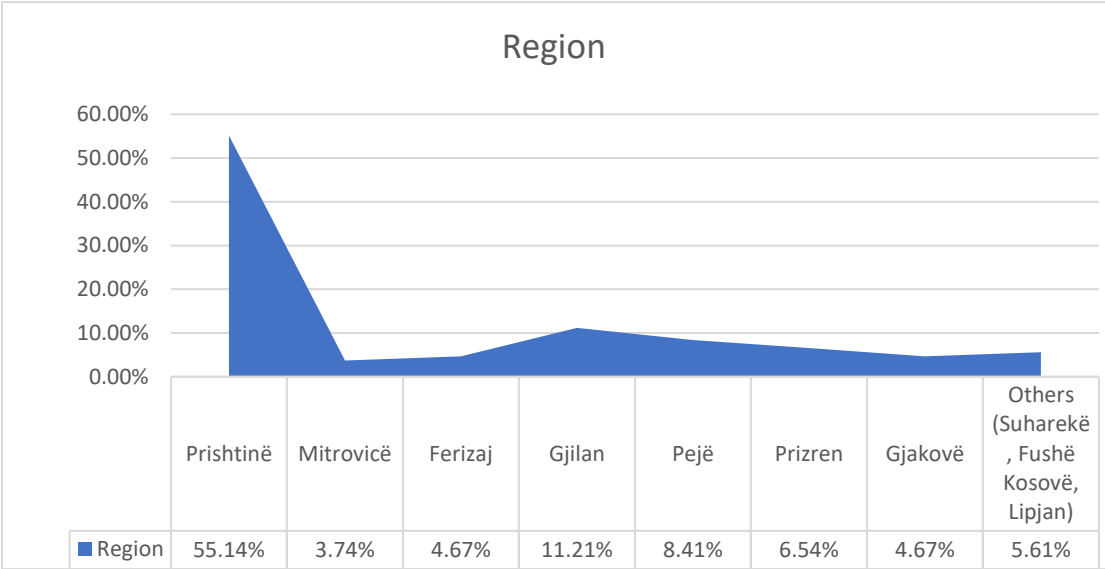


Chart 3: The geographical reach of businesses surveyed.

This representation is satisfactory because it did not leave out businesses operating in other regions. The significance here stands on the surveyor’s judgment that many times businesses outside the capital city may be prone to less exposure to information that concern dispute resolution, especially because the largest economy is the capital city. However, 45% of other businesses surveyed belong outside the capital city – that are equally likely to face disagreements that can result in disputes.

Next, while there was not a specific study that assessed in what kind of industry or operating sector were businesses more likely to have a dispute, so that the surveyor would focus on getting more businesses on those sectors, it captured a diverse group in terms of industry. The survey was dominated by the field of professional services among the respondents with 52% of businesses operating in this field. 10% of businesses operate in the manufacturing sector, and likewise in the construction sector. 19% of the respondents operate in the field of Trade, whereas ICT and Others with 3% and 6% respectively.

To solicit greater response rate from businesses, the first question that was posed on the survey was to understand whether respondents knew any business that has had a dispute. From 107 businesses, 81 (75.7%) responded yes, whereas the remainder responded that they are unaware of a business that is going or went through a dispute.

The second question was designed to differentiate the businesses surveyed between those which will share their experience with using dispute resolution, and those that will use their perception and judgement in assessing time and cost as the two indicators of effectiveness of ADR and Commercial Litigation. Further, 54% of businesses claim to have had or currently have one dispute, whereas 46% of them have not had one, nor do they have one currently. Respondents that choose “Yes” in this question were redirected to the third one, whereas the respondents that choose No, were immediately redirected to the questions on awareness and perception that will be elaborated in more detail later.

From 54% of businesses who have answered yes to the second question, 38% of them have resorted to commercial litigation; 28% of them have solved the dispute via mediation; whereas, 33% of businesses surveyed have yet to choose the method of dispute resolution and resolve their disputes. There was one business which has resolved the dispute through a private enforcement agent (as per what their contract instructed). A great portion of the SME's have solved their disputes through court which due to the historical legacy related to courts and the idea of suing directly to the highest authority of case adjudicating. For mediation, on the other hand, some SMEs choose an intermediary that is a highly respected elderly, an imam, or even a group of men to reach closure, besides using the mediation centers within the AmCham and KCC. The surveyor holds discretion of grouping the following responses under Mediation category: “Agreement in the presence of elderly”; “Agreement in the presence of an imam”; and “Agreement among men”. This was done because these settlement methods pertain to the literature review findings that so many disputes have been solved in unconventional ways of Mediation such as including an intermediary that would be an elderly, or clergy, rather than going on a designated Mediation center.

Businesses that have yet to resolve their disputes were further asked: How will you solve the current dispute? The results indicate a tendency of businesses to resort to commercial

litigation again, with 23%, and approximately 8% via mediation, even though 61% of the respondents claim they have not decided yet what mechanism they will choose, while another 8% of respondents will consult their contract. These two findings are in support of *the first hypothesis*, which claims that businesses in Kosovo tend to choose commercial litigation and/or mediation as preferred method to resolve the dispute. In line with literature review, this support comes from two perspectives: first, businesses choose commercial litigation because it is the go-to mechanism and the common practice worldwide as the first instance disagreeing parties tend to resort to. Second, businesses choose mediation from the engrained perception that if mediation throughout history could help solve blood feuds, it can also solve feuds over a misunderstanding, lack of accountability from parties etc. Or, put differently, if mediation solved feuds whose level of severity was the highest whereby murder was included in the conversation, it is almost certain it can solve feuds that do not include taking revenge over a human life in the conversation.

In both questions above, businesses also had the option to choose arbitration. However, as this pertains to the second hypothesis, we will discuss responses of businesses over arbitration after we delve on the satisfaction level that businesses reported for commercial litigation, and mediation, to conclude the findings that connect with the first hypothesis.

Out of the 67% of businesses who have claimed to have resolved their disputes, regardless of the mechanism they have used, 27.5% of them claim dissatisfaction. Satisfied businesses amount to 10 in total, from which 6 are highly satisfied whereas relatively satisfied and a little satisfied are 12 and 7 respectively. To give a better viewpoint on the satisfaction of businesses with the mechanism, I will cross-analyze what mechanism was used and what satisfaction level do businesses claim over that choice in Table 1.

Dispute Resolution Mechanism	Satisfaction Level				
	Not satisfied	Somewhat satisfied	Relatively satisfied	Satisfied	Very satisfied

Mediation			3	4	10
Commercial Litigation	11	7	3	1	

Table 5: Cross-tabulation of data: Satisfaction level with Commercial Litigation and Mediation

Businesses who resorted to Mediation to solve their dispute have yielded a positive satisfaction with 59% of them being highly satisfied, 24% as satisfied, and 16% of the businesses as relatively satisfied. Businesses who resorted to Court to solve their dispute have reported mostly dissatisfaction with this mechanism, with 50% of the businesses being dissatisfied, 32% of businesses being a little satisfied, 14% of businesses as relatively satisfied, and only 4% as satisfied.

Recalling on the literature review findings, the dissatisfaction with the courts are closely related to cost, time and zero-sum decision. Even the businesses that claim full or relative satisfaction ought to be those who have had the ruling in their favor. The fact that none of the businesses are fully satisfied with the court, draws us toward two ideas: the first, bureaucracy behind the cases going through court to find a resolution; and the second, the recurring costs over multiple hearings between the first day of filing and the day of the ruling. Mediation, on the other hand, showcases a high satisfaction from businesses, and this may be from the control parties have over the process, the procedure is fast, and it is relatively cheap. The relatively satisfied businesses can be those whose ruling was not against the favor, meaning they felt as if they bargained more than the opposing party did.

Now, let us revisit Arbitration. As per literature review, one key takeaway was that businesses are unaware of arbitration as a dispute resolution mechanism. This led to the second hypothesis. With this finding in mind, the survey was designed to capture businesses' awareness over Arbitration. In the two preceding questions, none of the businesses had resorted to Arbitration to resolve their past disputes (0 respondents), nor did they plan to resort to arbitration to resolve their current disputes (0 respondents). Thus, the survey finds that

businesses not only did not choose Arbitration to resolve their dispute(s), but they also disregard Arbitration as an option. In an attempt to measure their awareness, the following question was posed to the businesses surveyed: Are you aware of the ways in which a dispute between two businesses can be resolved?

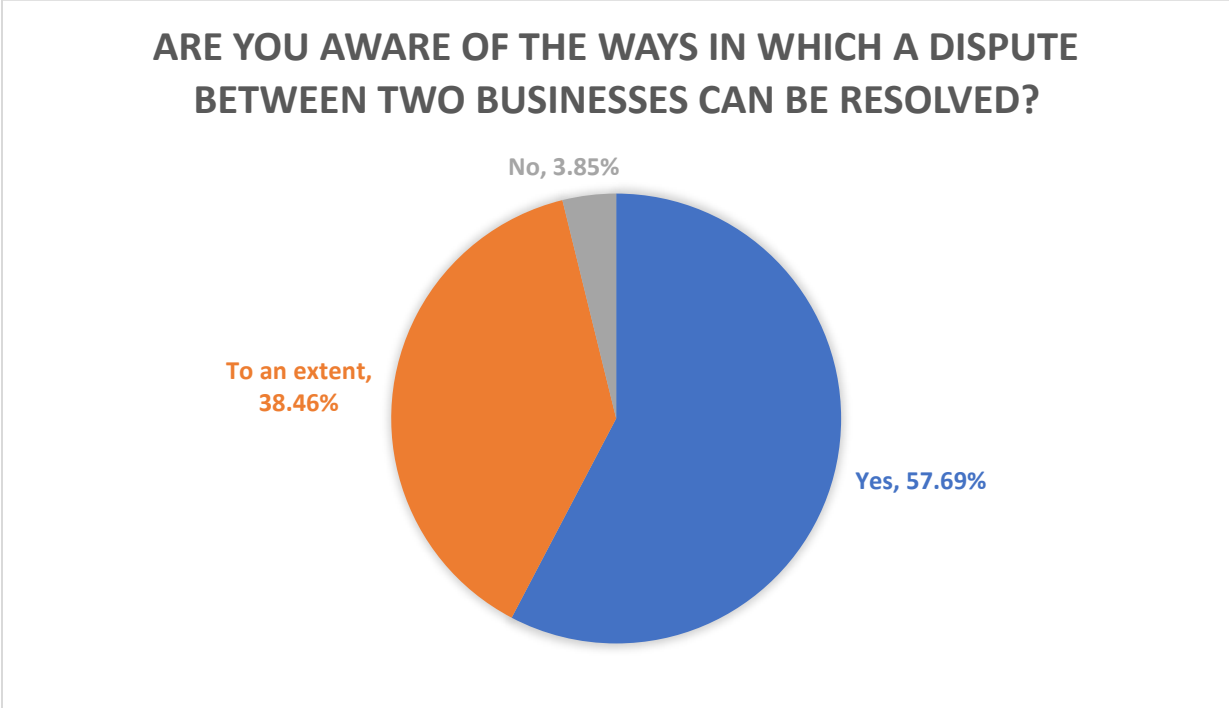


Chart 4: Are you aware of DRM?

Most businesses responded that they are to a certain extent. A considerable number of businesses responded Yes, and a minority responded No. The next question provided options of Dispute Resolution Mechanisms for businesses to select from. Businesses choose as follows:

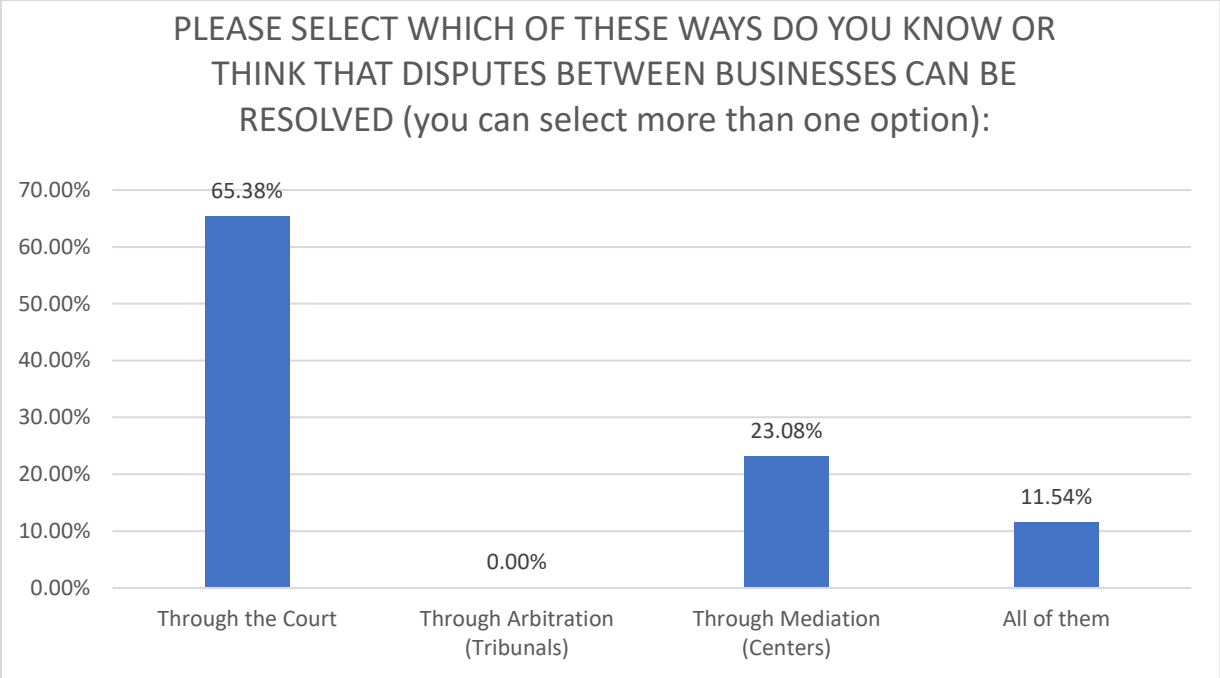


Chart 5: How can a dispute be resolved?

Businesses seem to not know that Arbitration is a mechanism to solve business disputes. This question was designed so that businesses were able to select more than one question. We will cross-examine these two questions' answers in Table 2, to get a close-up on business awareness.

Are you aware of Dispute Resolution Mechanisms?	Through Court	Through Arbitration (Tribunals)	Through Mediation (Centers)	All of them
Yes	60%	0	27%	13%
No	0.03%	0	0	0
To an extent	70%	0	20%	10%

Table 6: Cross-tabulation: Business awareness of Dispute Resolution Mechanisms

From the cross-examination, we can see that only 13% of the businesses who answered they are aware of dispute resolution mechanisms selected all the provided alternatives. 60% of the respondents in this section choose only commercial litigation/court, whereas 27% of them choose only mediation. The businesses who claimed to be aware to a certain extent, 70% of them selected court, 20% of them mediation centers, and only 10% of them selected all. The businesses who choose option “All of them” might not even be well aware of arbitration, given that in previous questions arbitration was disregarded, and this selection might have been random or circumstantial. chosen on convenience. Whereas the businesses who claimed that they are not aware, choose court as the only option – which proves fair to the initial response they provided.

In this portion of surveyed businesses, we can claim lack of awareness over Arbitration as a dispute resolution mechanism, which *supports the second hypothesis*. While there is a big number of businesses who have not decided yet which route to choose, maybe if there was better awareness among the business community, at least some of them would choose arbitration.

The second part of the survey, measures businesses perception over cost and time for alternative dispute resolution mechanisms and whether businesses are willing to pay more for a faster resolution of their dispute. The first question asked was : Do you think it costs more to resolve disputes between businesses through alternative or traditional methods? I will present both charts, first, and then continue discussing the findings for both.

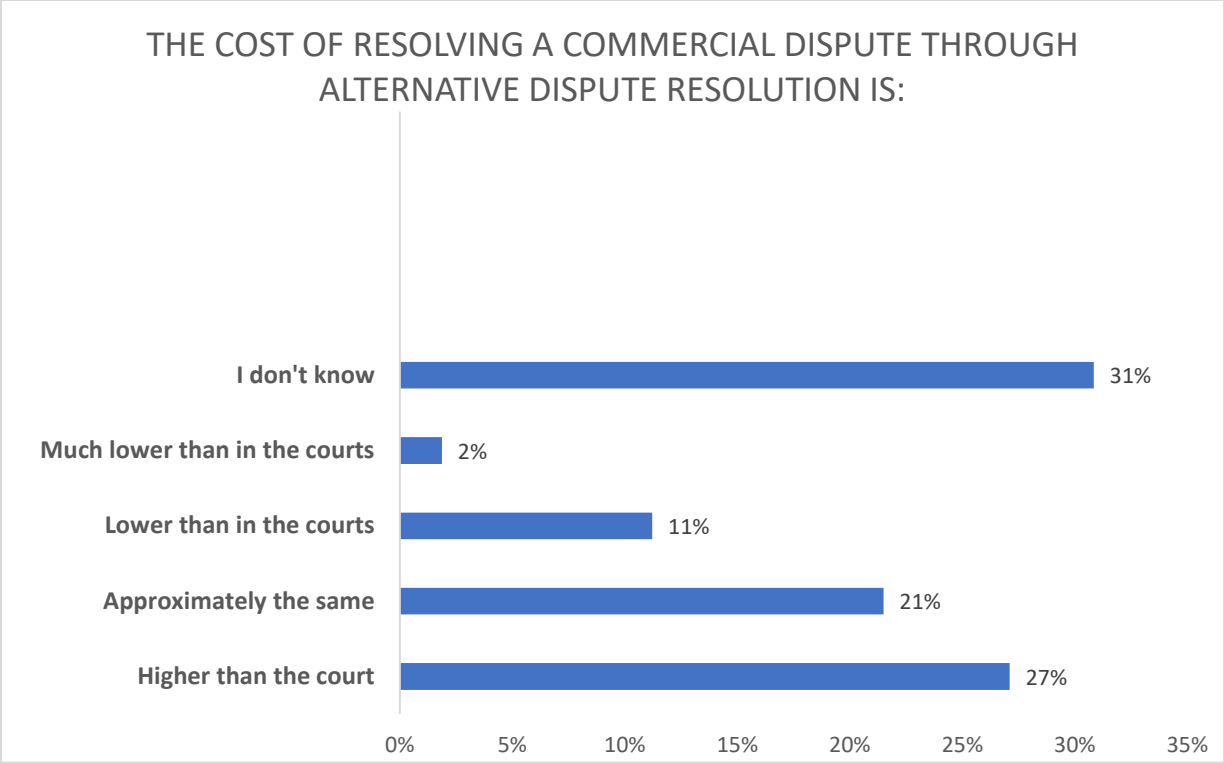


Chart 6: Perception of cost of DRM

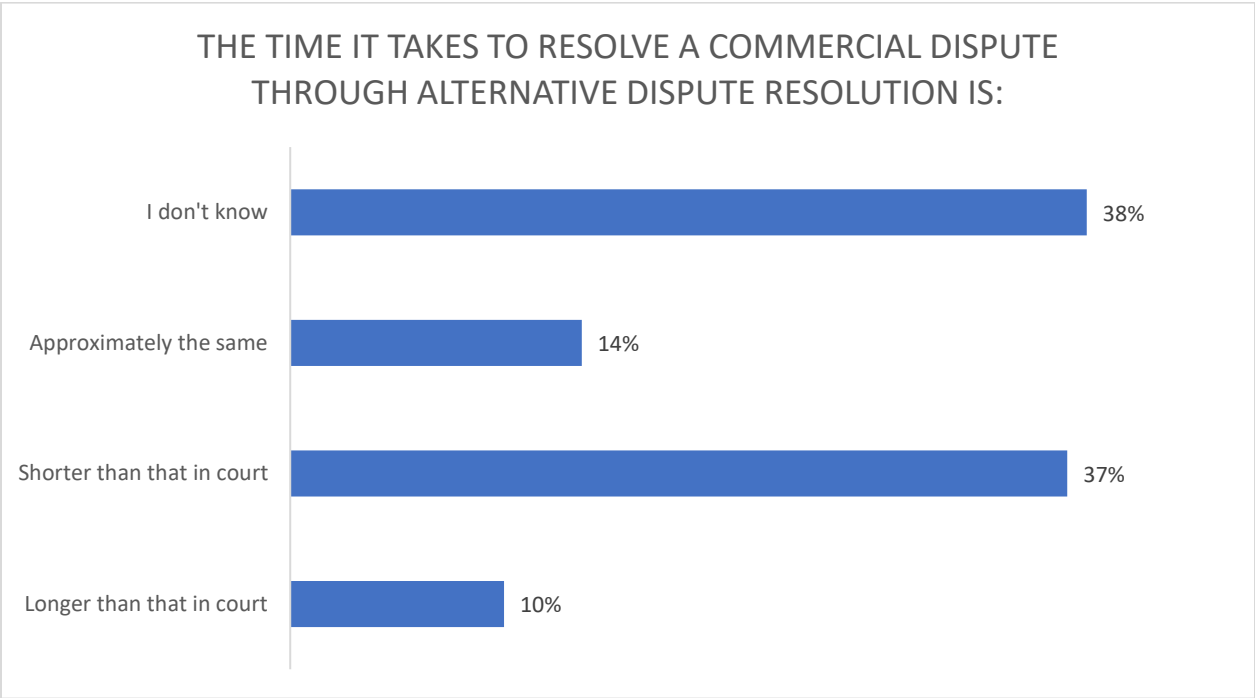


Chart 7: Perception of Time of DRM

The questions in this part of the survey were framed in a comparison mode, given that the study itself draws a comparison of commercial litigation and ADR. In this way, both questions, on cost and time, were asked by comparing ADR with courts. The majority of businesses claim to be unknowledgeable on both instances (time and costs), which already supports the third hypothesis, at least partially.

Regarding cost, approximately 13% of the businesses perceive resolving a dispute via ADR as cheaper than commercial litigation, whereas 48% perceive ADR as approximately the same or more expensive than commercial litigation. From literature review, we have concluded that both mechanisms within ADR, are cheaper than commercial litigation. While arbitration as a procedure is more expensive than commercial litigation because it is faster, it then becomes cheaper in long-term than commercial litigation, because procedures in court are bound to last longer thus impeding recurring costs that amount to a higher value than arbitration. For mediation, on the other hand, is apparent that it is cheaper, since according to Law on Mediation parties pay a very symbolic amount for the case, no matter how many sessions they need to resolve the dispute. In this case, businesses are unaware of ADR as a cheaper resolution mechanism than commercial litigation. This further supports the third hypothesis.

With regard to time to resolve a dispute, a considerable number of the businesses surveyed are aware that ADR takes less time to provide closure to a dispute with 37% of the businesses claiming so. In addition to 38% of businesses who have no clue, another 24% of businesses claim ADR is longer than in courts which is usually not the case in reality. Such findings support the third hypothesis, namely that ADR is more effective in resolving business disputes than court because it is cheaper, faster and yields post-resolution satisfaction.

Lastly, businesses declare that they are ready to pay more to have a faster resolution of their disputes. The result show that 87% of businesses would be ready to pay more as compared to 13% of businesses who would not. This shows that in case businesses were aware of Arbitration, considering their willingness to pay more for a faster resolution, they would be resorting to arbitration as a dispute resolution mechanism.

Conclusions

The aim of this study was to assess the effectiveness of alternative dispute resolution mechanisms such as arbitration and mediation in commercial dispute resolution, in comparison to commercial litigation in Kosovo. The literature review entailed that if commercial dispute resolution would rely solely on commercial litigation, it would be ineffective as seen by the lens of time, cost and user-satisfaction. Three reasons for this claim are as follows. In Kosovo, commercial litigation is regulated by a designated law on courts that appoints all jurisdiction for commercial cases to only one department within the Prishtina Basic Court, that of Economic Affairs. In such a way, with the inexistence of a standalone commercial court, this has led to some drawbacks in dispute resolution. In addition, in the department, there is lack of proper human resources i.e., inexperienced staff and insufficient expertise in handling commercial cases. And with the poor administration of justice come the backlog of commercial cases - the cases that remain unresolved. While the court's efficiency in general is increasing, for civil and criminal cases, for commercial cases there has been a drop as of 2020. The drop is reasoned by the onset of the COVID-19 pandemic that has stalled operations in courts, thus slowing down the handling of cases. This did not mean that the courts were not functioning at all, in fact, they were functioning but only to the best of their allowed capacities. Adding the poor user satisfaction rate, commercial litigation is not effective. Considering that courts are ineffective, there are other dispute resolution mechanisms created to work in a symbiosis with the courts to provide options for businesses. That is why it was important to draw a comparison with the Alternative Dispute Resolution Mechanisms as well. The exiting literature suggested that ADR in Kosovo is established with a set legal framework, and that Kosovo has established adequate centers where procedures for dispute resolution can be followed. However, a drawback of ADR in Kosovo was found to be the lack of awareness of business community, especially for Arbitration although the user satisfaction rate for Arbitration is the highest and for Mediation is highly satisfactory as well.

Following the literature review, a survey distributed to businesses in Kosovo found that the three hypotheses derived from literature review were supported. First, that businesses are indeed more likely to choose commercial litigation and mediation as their preferred methods

of resolving dispute, the first because it is generally the norm or the go-to mechanism of law, and the latter because it has proven historically successful in resolving feuds with the presence of an intermediary, even in most extreme cases such as blood feuds. Second, the survey finds that businesses are unaware that Arbitration is a dispute resolution mechanism with all of its benefits. Reckoning from the secondary data, arbitration is a procedure that allows for a faster resolution of disputes, although not necessarily cheaper - but that the majority of businesses surveyed in Kosovo have claimed that they are willing to pay more for less time-consuming procedures. Businesses surveyed did not resolve any disputes via arbitration, and nor were they willing to choose arbitration as one of their plans to solve their current disputes. Third, that altogether ADR is more effective in resolving commercial disputes, when compared using time, cost, and user-satisfaction as the indicators of effectiveness. This was found through the existing evidence and confirmed by the survey results.

Commercial disputes hinder commercial justice, and their resolution is very important as it creates a conducive environment for doing business in Kosovo, and ultimately improvement of the overall business climate which attracts foreign investors. While some of the most common reasons why businesses engage in a dispute revolve around competition, negligence, or professional failure, it is not common that businesses know how to handle them properly. Commercial justice cannot be achieved without a cross-collaboration of relevant actors therefore a series of recommendations to achieve commercial justice in Kosovo are be offered in the next section.

Recommendations

While conducting this study, the findings show that besides businesses' lack of awareness, or the lack of a commercial court, in principle, the entire infrastructure of commercial justice needs improvement. That is why, a series of recommendations are given on three levels: actions required by government of Kosovo, support from the AmCham and KCC, and suggestions for businesses on the dispute resolution mechanisms usage.

Recommendations for the Government

Development of a Commercial Code

The first recommendation for the government of Kosovo is the Development of a Commercial Code. A group of legal experts on the field of commercial law, business community representatives, and officials from institutions such as MOJ, AmCham and KCC must work together and develop a unified, harmonized law (based on a set of laws) that determines and regulates how businesses engage in day-to-day commercial transactions. It would be a code that would apply to all businesses in Kosovo, by providing standards in how businesses operate and resolve disputes, as well as how disputes are handled and by what institutions. This action proves that the judicial system becomes more innovating and will increase trust in the judicial system and increase foreign investment.

Establishment of a Commercial Court

This recommendation, deriving from one of the drawbacks of commercial litigation, or the inexistence of a standalone commercial court should be replaced with the establishment of a strong pillar of the justice system in Kosovo. Therefore, the next recommendation for the government of Kosovo, is to establish the Commercial Court. The MOJ should utilize the help from USAID CJA and push strongly for the law on Commercial Court as one of the priorities to be voted in the parliament. This should be concluded in 2021. It will incite more reliability on the judiciary by businesses and investors since it ensures timely court decisions and alleviate the damage that parties incur when disputing. In light of the establishment of this court, government of Kosovo must strengthen its current capacities, both in human resources, considering only two judges adjudicate commercial cases in PBC, and especially in terms of expertise by training judicial staff and making them experts on the field of commercial justice.

Promote Mediation and Online Mediation

Since Mediation and Online Mediation are incorporated in the judicial system, so, the sessions are conducted inside Basic Courts across Kosovo, it is also essential to promote these two services. The promotions can be done via multiple channels, considering but not limited to National Television Channel, official website of the MOJ and social media channels.

Information packages for Newly Registered Businesses

New businesses who register at The Business Registration Agency, shall, after claiming their business certificate as well as their registry/fiscal number, get an information package with extended information on how to run a successful business, how to manage relationships, practice enforcement of contracts, and managing commercial disputes – whereby, extended information on ADR and Commercial Litigation is provided.

Recommendations for American and Kosovo Chamber of Commerce

1. Continue supporting and raising awareness for Alternative Dispute Resolution mechanisms, particularly for Arbitration. These two centers shall continue with their current efforts, and even enhance them more to spread more information about the arbitration tribunals that can be found in both of them.
2. Create mock Arbitration days for businesses. Both centers can designate open-visit days on their centers, where they can offer mock arbitration tribunal sessions, so that businesses can see what the procedures are, how does the tribunal function, what steps should businesses take to initiate a case there, and just increase awareness aware that disputes can be resolved through Arbitration.
3. Both of these centers must strongly and perpetually advocate for businesses to include arbitration or mediation clauses in their contacts for their own benefit.

Recommendations for the Business Community

In addition to including arbitration, and, mediation clauses, businesses should do the following:

Arbitration Usage

Businesses should use arbitration in case they are opting for a more private, confidential, and less time-consuming procedure. They should use arbitration if they are willing to pay more in return for faster resolution. Arbitration is probably the most suitable mechanism for large companies or businesses that engage in high-risk and time-sensitive activities, and not SMEs – considering that a dispute can determine the life of an SME and the high costs of arbitration may not be affordable for them.

Mediation Usage

SMEs should practice mediation because it is cost and time effective, as well as it helps disputing parties preserve amicability. In case this does not work, they can always resort to other means such as commercial litigation, however, they should try mediation first. Online mediation is also at the disposal of disputing SMEs and it is a very effective way to solve disputes, in times when in-person communication is not possible.

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Appendix A

Appendix A offers additional charts from the survey to complement the discussions section above:

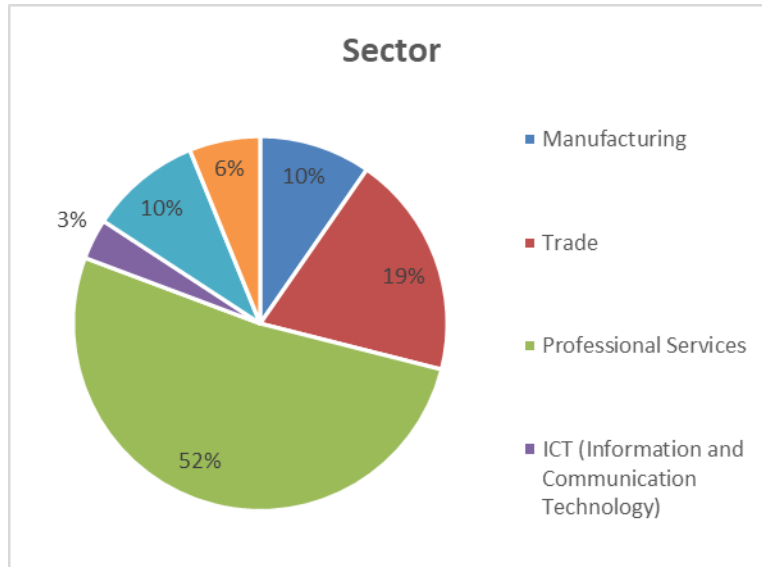
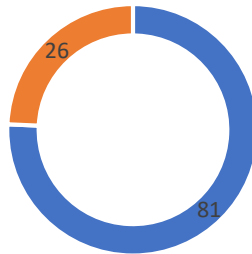


Chart 1 Appendix A: The operating sector of the surveyed businesses



Chart 2 Appendix A: The size of the surveyed businesses

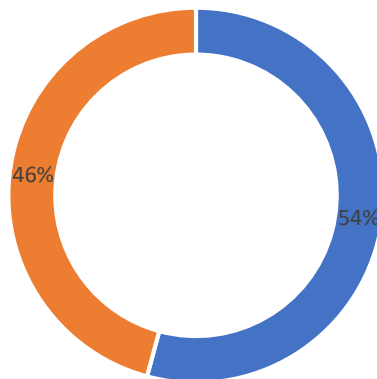
Do you know of any business that has had disagreements with any individual, partner or other business?



■ Yes, I know businesses who have/had a dispute
■ No, I do not know a business who has/had a dispute

Chart 3 Appendix A: Do you know any businesses that have/had disagreements with any individual, partner, or other business?

Do you have, or have you ever had, disagreements with other individuals, partners, or businesses?



■ Yes ■ No

Chart 4 Appendix A: Do you have, or have you had any disagreements with individuals, partners, or other businesses?

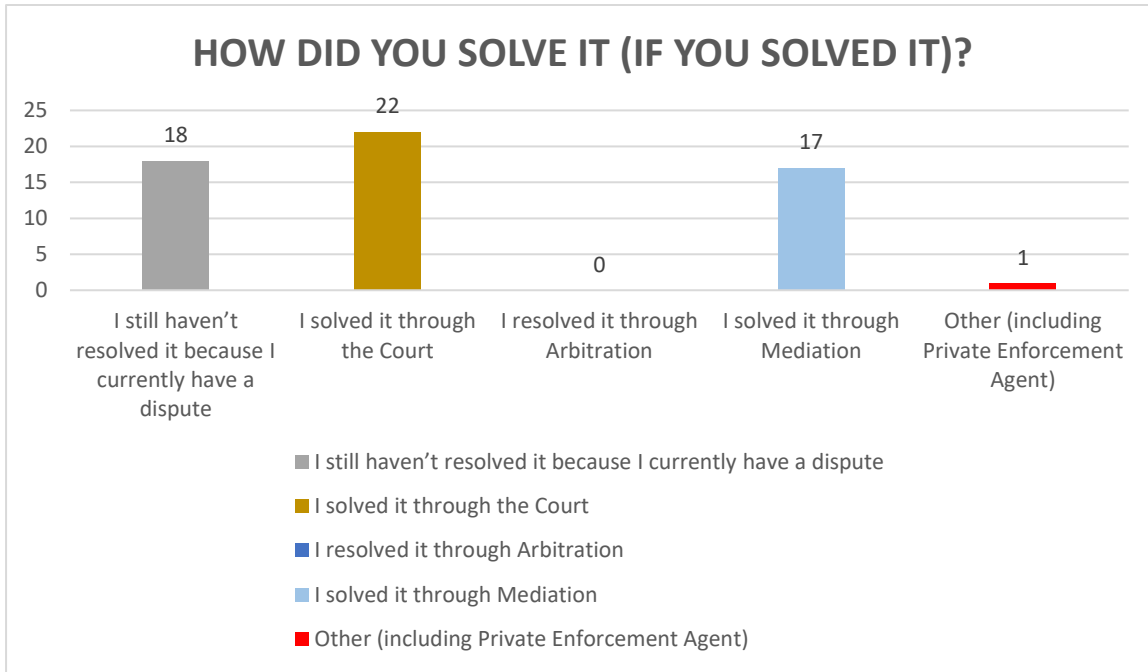


Chart 5 Appendix A: How did you the dispute (if you did so)?

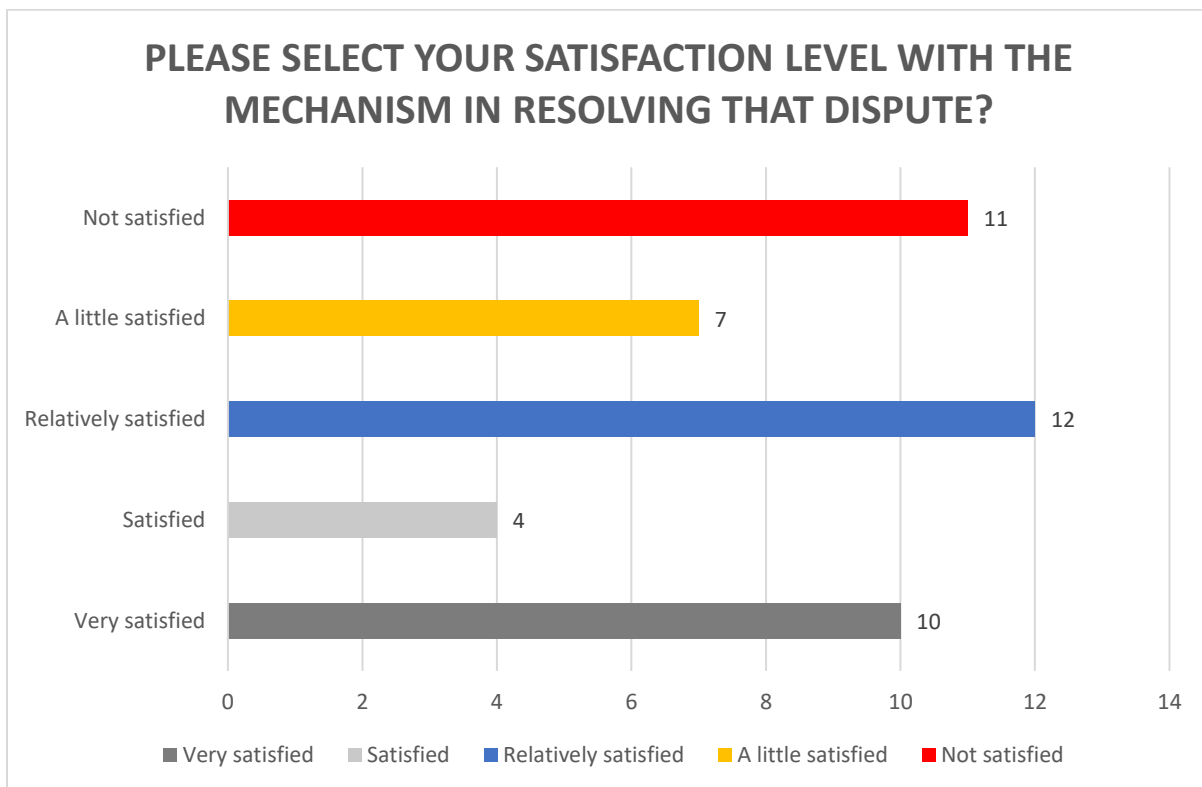


Chart 6 Appendix A: Select the level of satisfaction with your chosen DRM

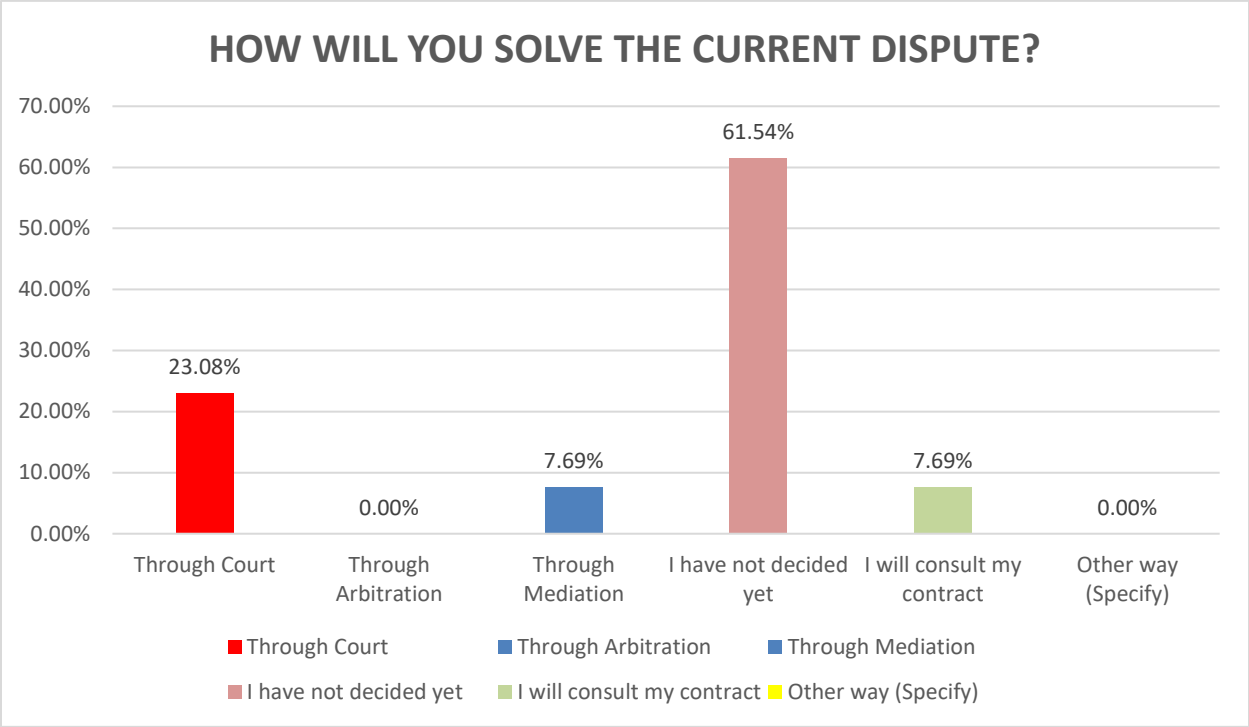


Chart 7 Appendix A: How will you solve the current dispute?

Appendix B

Survey questions as posed in the Albanian language:

1. Cfare lloj biznesi jeni?

- Biznes individual
- Ortakëri e përgjithshme
- Shoqëri me përgjegjësi të kufizuar
- Shoqëri aksionare
- Shoqëri e Huaj Tregtare
- Ndërmarrje shoqërore
- Ndërmarrje publike
- Kooperativa bujqësore
- Tjeter (specifiko)

2. Cilit sektor i perket veprimtaria juaj?

- Prodhim
- Tregti
- Shërbime Profesionale
- TIK (Teknologjia e Informacionit dhe Komunikimit)
- Ndërtimtari
- Tjeter (Specifiko)

3. Sa punëtorë keni në biznesin tuaj?

- 1-10
- 11-50
- 51-250
- Mbi 250

4. Selektoni regjionin tuaj?

- Prishtinë
- Mitrovicë
- Ferizaj
- Gjilan
- Pejë
- Prizren
- Gjakovë
- Tjetër (specifiko)

5. A njihni ndonjë biznes që ka pasur mosmarrëveshje me ndonjë individ, partnerë apo biznes tjetër?

- Po
- Jo

6. A keni pasur ndonjëherë mosmarreveshje me individe, partnere ose biznese te tjera?

- Po
- Jo

7. Si e keni zgjidhur (nëse e keni zgjidhur)?

- Ende nuk e kam zgjidhur, sepse e kam aktualisht një mosmarrëveshje
- E kam zgjidhur përmes Gjyqit
- E kam zgjidhur përmes Arbitrazhit
- E kam zgjidhur përmes Ndërmjetësimit
- Mënyrë tjetër

8. Si do e zgjidhni mosmarrëveshjen aktuale?
- Përmes Gjyqit
 - Përmes Arbitrazhit
 - Përmes Ndërmjetësimit
 - Nuk e kam vendosur ende
 - Si do që të m'a përcakton kontrata me biznesin
9. Ju lutem, përshkruani eksperiencën tuaj gjatë zgjidhjes së asaj mosmarrëveshje?
- Shume i/e kenaqur
 - I/e kenaqur
 - Relativisht i/e kenaqur
 - Pak i/e kenaqur
 - Aspak i/e kenaqur
10. A jeni në dijeni për mënyrat se si mund të zgjidhet një mosmarrëveshje midis dy bizneseve?
- Po
 - Jo
 - Kam disa informata
11. Ju lutem selektoni me cilat nga këto mënyra e dini/mendoni se mund të zgjidhen mosmarrëveshjet midis bizneseve (ju mund te selektoni me shume se nje pergjigje):
- Përmes Gjykatës (Gjyqit)
 - Përmes Arbitrazhit (Tribunaleve)
 - Përmes Ndërmjetësimit (Qendrave)
 - Të gjitha

Ju lutem përgjigjuni pyetjeve më poshtë në bazë të përceptimit tuaj mbi koston dhe kohën që merr secila procedurë e zgjidhjes së një kontesti/mosmarrëveshjeje biznesore

Cfarë mendoni, a kushton më tepër zgjidhja e një mosmarrëveshjeje me mënyrën alternative apo tradicionale? Pra, a kushton më tepër arbitrazhi dhe ndërmjetësimi apo procesi i rregullt gjyqësor?

12. Kostoja e Metodës Alternative është:

- Shumë më e lartë se gjykata
- Më e lartë se gjykata
- Përafërsisht njëjtë
- Më e ulët se në gjykata
- Shumë më e ulët se në gjykata

Cfarë mendoni, a merr më shumë kohë zgjidhja e mosmarrëveshjes midis bizneseve përmes metodës alternative apo tradicionale? Pra, a zgjatë më shumë procedura përmes arbitrazhit dhe ndërmjetësimit apo përmes gjyqësorit?

13. Kohëzgjatja e Metodave Alternative është:

- Më e gjatë se asaj në gjykatë
- Më e shkurtër se ajo në gjykatë
- Përafërsisht njëjtë

14. A do të ishit të gatshëm të paguani më tepër për një procedurë që do të zgjidhte mosmarrëveshjen më shpejtë?

- Po
- Jo
- Nuk jam i/e sigurt

Appendix C

Survey in the English language:

1. What is the type of your business?

- Individual business
- General partnership.
- Partnership.
- Limited Liabilities Companies (L.L.C).
- Joint Stock Companies (J.S.C.).
- Socially owned enterprises.
- Public enterprises.
- Agricultural cooperatives
- Other? (Please specify)

2. What is your operating sector?

- Production
- Trade
- Professional Services
- ICT (Information and Communication Technology)
- Construction
- Other (Specify)

3. How many employees does your business have?

- 1-10
- 11-50
- 51-250
- Over 250

4. Select your region!

- Prishtinë
- Mitrovicë
- Ferizaj
- Gjiilan
- Pejë
- Prizren
- Gjakovë
- Other (Specify)

5. Do you know any business that has had disagreements with any individual, partner or other business?

- Yes
- No

6. Have you ever had disagreements with individuals, partners or other businesses?

- Yes
- No

7. How did you solve it (if you solved it)?

- I have not resolved it yet, because I currently have a dispute
- I resolved it through the Court
- I have resolved it through Arbitration
- I solved it through Mediation
- Other (Specify)

8. How will you resolve the current dispute?

- Through the Court
- Through Arbitration
- Through Mediation
- I have not decided yet

- However the contract with the business determines it

9. Please describe your experience in resolving that dispute?

- Very satisfied
- Satisfied
- Relatively satisfied
- A little satisfied
- Not at all satisfied

10. Are you aware of ways a dispute between two businesses can be resolved?

- Yes
- No
- I have some information

11. Please select which of these ways do you know / think that disputes between businesses can be resolved (you can select more than one answer):

- Through the Court
- Through Arbitration (Tribunals)
- Through Mediation (Centers)
- All of the above

Please answer the questions below based on your perception of the cost and time each business dispute resolution procedure takes.

What do you think, does it cost more to resolve a dispute in an alternative or traditional way?

So does arbitration and mediation or regular litigation cost more?

12. ADR costs:

- Much more than court
- More than court
- Approximately the same

- Lower than court
- Much lower than in court

Do you think it takes more time to resolve disputes between businesses through the alternative or traditional method? So, do procedures take longer through arbitration and mediation or through the judiciary?

13. ADR takes:

- More time than court
- Less time than court
- Approximately the same

14. Would you be willing to pay more for a faster resolution of your dispute?

- Yes
- No
- I am not sure