

University Doctoral (PhD) Dissertation Abstract

ARBITRATION AGREEMENT: EFFECTS AND EFFICIENCY

A critical Analysis and Framework for Reform in Palestine

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Debrecen, 2026

a. Aim of the Research

The crucial purpose of this dissertation is to provide a comprehensive critical analysis of the arbitration agreement within the Palestinian legal context, assessing its legal effects and practical efficiency. As the foundation of international commercial arbitration, the arbitration agreement's role is explored as a strategic response to the global and local demand for economically practical dispute resolution systems. The study specifically seeks to provide the theoretical ammunition necessary to support a robust Palestinian arbitration system and inform eloquent legislative reform.

Central to this aim is addressing the current reality of commercial arbitration in Palestine. The research examines the unique challenges posed by the Palestinian environment, including the impact of the Israeli occupation, jurisdictional fragmentation (across the West Bank, Gaza Strip, and East Jerusalem), and the resulting reliance on tribal or non-official justice systems. By examining these factors, the study aims to identify why the existing framework remains underdeveloped and less efficient than international models, despite efforts to align with global standards.

To achieve this overarching goal, the research pursues several specific objectives:

- **Legal Analysis and Validity:** It explores the formal and objective conditions required for a valid arbitration agreement in Palestine, examining its effects on contractors, third parties, and the subject matter of the dispute.
- **Comparative Assessment:** By adopting a comparative analytical approach, the research evaluates how different jurisdictions conceptualize and enforce arbitration agreements. It specifically analyzes international standards—such as the UNCITRAL Model Law and the New York Convention—against regional practices in the Middle East and Israel to identify best practices applicable to Palestine.
- **Institutional Evaluation:** The study identifies the roles of public and private actors, such as the Palestinian Chamber of Arbitration (PCA) and the International Chamber of Commerce (ICC), to determine the availability of qualified cadres and the adequacy of the legal infrastructure.

- **Framework for Reform:** Ultimately, the research aims to propose a "Synthesis Model for Palestinian Arbitration Reform". This involves offering concrete legislative proposals to the Palestinian legislator to revitalize the legal framework, thereby enhancing investor confidence, reducing litigation risks, and fostering international trade and foreign investment.

b. Methodology and Research Structure

The research methodology of this thesis is characterized by a "methodological mixture" that combines doctrinal research with an empirical approach and comparative legal analysis.

- **Doctrinal Approach:** This method is central to the study, providing a systematic presentation and analysis of the legal rules and principles governing arbitration agreements. It focuses on legal authority, the nature of justice, and the relationship between various legal rules to explain areas of difficulty and predict future developments in the field.
- **Empirical and Comparative Analysis:** The doctrinal work is supplemented by an empirical focus to acquire firsthand insights from key stakeholders. Furthermore, a comparative approach is used to evaluate international and regional instruments alongside Palestinian laws, examining best practices from diverse jurisdictions.
- **Data Sources:** The study utilizes both primary and secondary data. Primary sources include statutory enactments (such as the Palestinian Arbitration Law No. 3 of 2000), legal precedents, international conventions (like the New York Convention and UNCITRAL Model Law), and qualitative interviews. Secondary sources include academic journals, textbooks, and expert articles.

The research structure is divided into two primary types of chapters:

- **Theoretical Foundations:** Chapters 1 and 3 establish the conceptual and international framework, covering the history, nature, and types of arbitration, as well as global, European, and regional specificities.
- **Palestinian Context and Reform:** Chapter 2 focuses on the concept and validity of the arbitration agreement itself. From Chapter 4 onwards, the dissertation centers on the

Palestinian legal landscape—addressing territorial fragmentation (West Bank, Gaza, East Jerusalem) and identifying various institutional actors. The final sections synthesize these findings to offer legislative proposals and a "Synthesis Model" for reform.

c. Relevance and Scope of the Research

The relevance of this research is rooted in the increasing global demand for economically practical systems to resolve trade disputes, where commercial arbitration has become a strategic necessity for developing countries navigating economic upheavals. In the Palestinian context, this study is critically important due to the prolonged nature of local trade disputes, which have historically jeopardized social cohesion and discouraged investment. Furthermore, the research addresses a significant academic void, as there is a notable lack of comprehensive studies exploring the "reality of commercial arbitration in Palestine" and its unique legal challenges.

The scope of the research encompasses a multi-dimensional analysis of the Palestinian legal landscape, specifically:

- **Legal and Statutory Framework:** The study primarily centers on Palestinian Arbitration Law No. 3 of 2000. It also examines the draft of the new Palestinian Arbitration Law, which aims to modernize procedures such as requiring courts to reject cases already subject to arbitration.
- **Jurisdictional Fragmentation:** A key focus is the complex legal milieu of the West Bank, Gaza Strip, and East Jerusalem, including specific mechanisms used in Area "C" and Hebron (H2).
- **International Alignment:** The scope includes an evaluation of Palestine's compliance with international standards, specifically the UNCITRAL Model Law (1985/2006) and the 1958 New York Convention.
- **Conflict and Occupation:** The research analyzes how the Israeli occupation and political instability hinder the effective implementation and enforcement of arbitration agreements.

By bridging the gap between theoretical international frameworks and the practical Palestinian reality, this research offers a pathway to revitalizing the legal infrastructure to support foreign direct investment and social stability.

d. Findings of the Research

The research undertaken in this dissertation has systematically investigated the legal, institutional, and practical dimensions of commercial arbitration in Palestine, with particular emphasis on the arbitration agreement as the foundational element of the arbitral process. Through a mixed-methodological approach combining doctrinal analysis, comparative legal review, and qualitative assessment, the study has tested five core hypotheses concerning the development, efficiency, and challenges of arbitration in the Palestinian context. The findings are presented below, structured according to the research hypotheses and key thematic areas identified in the study.

Hypothesis 1: The arbitration framework in Palestine remains underdeveloped due to regulatory gaps, lack of enforcement mechanisms, and limited institutional support, making it less efficient than international arbitration models.

The dissertation confirms that Palestine's arbitration framework is indeed underdeveloped in comparison to recognized international models, but not consistently across all dimensions. The regulatory construction, positioned on Arbitration Law No. 3 of 2000 and its 2004 Executive Regulations, provides a basic structure that is mainly modeled on the UNCITRAL Model Law (1985, with 2006 amendments). This represents a significant legislative effort to align with international standards. However, critical regulatory gaps persist:

- **Uncertainties in Key Definitions:** The law's definition of arbitration and the arbitration agreement (Article 5) lack the precision found in more mature systems (e.g., Egypt's Law No. 27 of 1994). This has led to interpretive challenges in Palestinian courts, particularly regarding the scope of arbitrable matters and the validity of arbitration clauses.
- **Incomplete Procedural Systematization:** While the law and regulations outline procedures, they lack detailed provisions on modern arbitration challenges, such as temporary measures, multi-party arbitration, and the integration of digital or online

dispute resolution (ODR) mechanisms. This contrasts sharply with progressive reforms in jurisdictions like the UAE (Federal Arbitration Law, 2018).

- The political and administrative split between the West Bank and Gaza Strip has resulted in a parallel legal system. Although Law No. 3 of 2000 is ostensibly valid in both territories, its interpretation and application differ due to the distinct judicial and administrative systems that have emerged since 2007. In East Jerusalem, the legal vacuum is even more pronounced, with Palestinian law having little practical power and Israeli law providing few avenues for arbitration involving Palestinian people.

The absence of enforcement tools is a greater burden than regulatory inadequacies. The investigation discovered that, while Article 47 of the Arbitration Law affords arbitrate awards for the force of court judgments upon confirmation by a competent court, the enforcement process is overwhelmed with impediments:

- **Judicial Indecision and Inconsistency:** Palestinian courts, notably at the first instance level, differ in their familiarity and dedication to the pro-arbitration ideas that underpin the law. There were instances where courts narrowly interpreted arbitration agreements or engaged in procedural procedures beyond the limited grounds provided by law, compromising the finality and efficiency of arbitration.
- **Political and Security Interference:** In sensitive cases, particularly those involving public entities, powerful business figures, or cross-jurisdictional issues between Areas A, B, and C of the West Bank, the enforcement of arbitral awards can be hampered by political pressure or the inability of enforcement authorities to operate effectively across fragmented zones of control.
- **Challenges in Recognizing and Enforcing Foreign Arbitral Awards:** Despite being a signatory to the 1958 New York Convention, Palestine's recognition and enforcement process is inefficient. Courts frequently subject such awards to a *de novo* assessment that approaches the requirements for setting aside a domestic award, which contradicts the Convention's intent.

Limited institutional support is a third pillar of this finding. Palestine lacks a robust, internationally recognized permanent arbitration institution. Existing initiatives, such as the Palestinian International Arbitration Center (PIAC), operate with limited resources, caseload, and visibility. The absence of a thriving institutional ecosystem means:

- Parties have little guidance on drafting effective arbitration clauses.
- There is no centralized roster of vetted arbitrators with specialized expertise.
- Administrative support for managing arbitration proceedings (e.g., hearing facilities, translation, document handling) is largely ad hoc and private.
- Training and continuous professional development for arbitrators and arbitration lawyers are sporadic and not standardized.

Conclusion on Hypothesis 1: The Palestinian arbitration framework is structurally present but operationally weak. It suffers not from a complete absence of law, but from a combination of ambiguous regulations, an inconsistent and sometimes resistant enforcement judiciary, and a critical deficit in the institutional infrastructure necessary to make arbitration a reliable and preferred mode of dispute resolution. This confirms its underdevelopment relative to efficient international models.

Hypothesis 2: Despite Palestine's efforts to align its arbitration laws with international standards, political instability and jurisdictional fragmentation hinder the effective implementation of arbitration agreements.

This hypothesis touches the core of Palestine's unique predicament. The research unequivocally demonstrates that the de jure alignment of Law No. 3 of 2000 with the UNCITRAL Model Law is critically undermined by de facto political and jurisdictional realities.

- Political Instability: The perpetual state of political tension, both internally (Fatah-Hamas divide) and externally (Israeli-Palestinian conflict), creates an environment of profound legal uncertainty. Investors and contracting parties are hesitant to commit to

arbitration seated in Palestine due to fears that a change in the political situation could render the arbitral process or the enforcement of an award impossible. The research identifies this as a primary deterrent to the use of domestic arbitration in international commercial contracts involving Palestinian parties.

- Jurisdictional Fragmentation: This is the most significant practical barrier identified. The Oslo Accords' division of the West Bank into Areas A (Palestinian civil and security control), B (Palestinian civil control, Israeli security control), and C (full Israeli control) creates a legal labyrinth.
 - Area C & Hebron H2: In these areas, which constitute over 60% of the West Bank and include most natural resources and strategic territory, Palestinian law and judicial authority are not recognized by the occupying power. An arbitration award rendered in Ramallah concerning a project or asset in Area C cannot be enforced by Palestinian authorities. Conversely, recourse to Israeli courts or arbitration is often impractical or politically unacceptable for Palestinian parties. This creates a "justice vacuum" where commercial disputes are frequently left unresolved or pushed into informal, potentially coercive, dispute resolution channels.
 - East Jerusalem: The annexation of East Jerusalem by Israel places its Palestinian residents in a legal limbo. They are generally subject to Israeli law but lack full political rights. Arbitration agreements specifying Palestinian law or forums are unenforceable in Israeli courts, while Palestinian courts have no jurisdiction. This forces Palestinian businesses in East Jerusalem into a form of legal arbitrage, often opting for arbitration in third countries (e.g., Jordan, Egypt, or further abroad), which increases cost and complexity.
 - West Bank-Gaza Split: The administrative and legal schism means that an arbitration award rendered in Gaza based on the same Palestinian law may face significant procedural hurdles and political resistance to enforcement in the West Bank, and vice-versa.

The research found that these fragmented jurisdictions severely compromise the fundamental principle of party autonomy enshrined in arbitration law. Parties cannot freely choose a seat of arbitration or governing law with confidence that their choice will be respected, and the resulting award enforced across the territories where their assets or operations might be located. This fragmentation effectively balkanizes the Palestinian legal market, making a unified, efficient national arbitration system currently unattainable.

Hypothesis 3: The lack of specialized arbitration courts, trained arbitrators, and adequate legal infrastructure significantly affects the efficiency and fairness of commercial arbitration in Palestine.

The human and institutional capital necessary for a functional arbitration regime is underdeveloped in Palestine, directly impacting both the perceived and actual quality of arbitral justice.

- Lack of Specialized Arbitration Courts: Palestine does not have courts dedicated to arbitration matters. Supervision and enforcement functions are distributed among ordinary civil courts. Judges in these courts, while generally competent, often lack specialized training in arbitration law and its distinct philosophy. This leads to:
 - Excessive judicial intervention in procedural matters.
 - Lengthy ratification processes for arbitral awards.
 - Inconsistent rulings on challenges to arbitration agreements or awards, creating legal uncertainty.
- Shortage of Trained Arbitrators: The research identifies a critical shortage of professionals who are both substantively expert in complex commercial fields (e.g., construction, telecoms, finance) and procedurally adept in international arbitration practice.
 - Pool Composition: The existing pool of arbitrators is dominated by retired judges and senior lawyers with strong litigation backgrounds but limited

exposure to the flexible, party-driven procedures of modern international arbitration.

- Training Deficits: There are no mandatory certification or continuous training programs for arbitrators. While occasional workshops are offered by local bar associations or NGOs, they are insufficient to build a critical mass of globally competitive arbitration practitioners.
- Diversity and Specialization: The pool lacks diversity in terms of specialized industry knowledge (e.g., engineering, IP, energy) and is predominantly male and older, potentially affecting the perception of fairness and relevance among younger business communities.
- Inadequate Legal Infrastructure: This encompasses both "hard" and "soft" infrastructure.
 - Hard Infrastructure: There is a lack of modern, neutral hearing facilities equipped with translation services, videoconferencing technology, and secure document management systems. This forces arbitration into law firm offices or hotel conference rooms, which may lack neutrality or necessary amenities.
 - Soft Infrastructure: Supporting services are underdeveloped. There are few specialized arbitration secretariats, experienced arbitration clerks, or experts in cross-examination and international evidence-taking procedures (e.g., IBA Rules on Evidence). The legal publishing sector produces minimal commentary or case reporters on Palestinian arbitration law, hindering the development of a coherent jurisprudence.

Impact on Efficiency and Fairness: This triad of deficits has a direct impact:

- Efficiency: Proceedings are often delayed due to procedural disputes that a specialized court would resolve swiftly, and due to arbitrators who may apply overly formalistic, court-like procedures. The lack of institutional case management also contributes to delays.

- **Fairness:** The potential for unconscious bias is heightened when arbitrators lack training in neutrality and conflict-of-interest standards tailored to arbitration. The absence of a diverse arbitrator pool may limit parties' ability to select an arbitrator who fully understands the technical or cultural context of their dispute. Furthermore, the high cost of importing foreign arbitrators and counsel, necessitated by the local skills gap, can disadvantage smaller Palestinian enterprises, raising concerns about access to justice.

Hypothesis 4: Enhancing arbitration mechanisms in Palestine will lead to increased foreign investment by providing a more reliable and predictable dispute resolution framework.

The research strongly supports the logical and empirical connection between effective dispute resolution mechanisms and foreign direct investment (FDI). Interviews with legal practitioners and a review of investment climate surveys indicate that international investors consistently rank "enforceability of contracts" and "dispute resolution neutrality" among their top concerns.

- **Current Deterrent:** The findings related to Hypotheses 1-3 collectively paint a picture of an arbitration system that is not yet "reliable and predictable." Foreign investors, when contracting with Palestinian entities, overwhelmingly insist on arbitration seats outside Palestine (typically in Cairo, Amman, Dubai, or London) and the application of foreign law. This is a clear vote of no confidence in the domestic system and represents a loss of potential economic activity (e.g., arbitrator fees, legal services, hospitality) for Palestine.
- **The Reform Dividend:** The research modeling, drawing on comparative examples like Egypt (post-1994 law reform) and the UAE (post-2018 law reform), suggests that a concerted enhancement of Palestinian arbitration mechanisms would directly address investor concerns. Key enhancements would include:
 1. **Legislative Modernization:** Enacting clear, detailed, and internationally harmonized amendments to the Arbitration Law.

2. **Judicial Specialization:** Establishing a dedicated commercial or arbitration chamber within the higher courts to handle all arbitration-related matters, staffed by specially trained judges.
 3. **Institutional Strengthening:** Developing a credible, well-resourced, and independent permanent arbitration institution with modern rules and an international panel of arbitrators.
 4. **Capacity Building:** Implementing systematic training programs for judges, arbitrators, and lawyers in international arbitration practice.
- **Depending on Broader Reforms:** The research also cautions that arbitration reform alone is insufficient. Hypothesis 4's promise is contingent upon parallel progress in two areas:
 - **Macro-Political Stability:** No degree of legal refinement can fully compensate for the existential risks posed by severe political instability or conflict. Arbitration requires a minimum level of state functionality to support the process and enforce outcomes.
 - **Clarification of Jurisdictional Boundaries:** As long as the legal black holes of Area C and East Jerusalem persist, any dispute involving assets or operations in those areas will remain outside the reach of an enhanced Palestinian arbitration system, limiting its attractiveness for a large segment of potential investment.

Conclusion on Hypothesis 4: Enhancing arbitration is a necessary but not sufficient condition for significantly boosting FDI. It is a critical piece of infrastructure that must be built, but its full utility depends on a more stable and coherent political-geographic context.

Hypothesis 5: Political and legal challenges arising from the Israeli occupation negatively impact the recognition and enforcement of arbitration agreements and awards in Palestine.

This hypothesis is validated as the most profound and intractable challenge identified by the research. The occupation is not merely a background political condition; it is an active legal and practical disruptor of the arbitral process.

- Impact on Recognition of Agreements:
 - Choice of Law and Seat: Palestinian parties in East Jerusalem or involved in transactions tied to Area C are often unable to select Palestinian law or a Palestinian seat in their contracts with international partners, as such choices are considered unenforceable by counterparties aware of the jurisdictional realities.
 - Undermining Party Autonomy: The inability to freely negotiate these fundamental terms constitutes a direct infringement on the principle of party autonomy, the cornerstone of arbitration.
- Impact on Enforcement of Awards:
 - Physical and Legal Barriers: An award rendered in Palestine (e.g., Ramallah) in favor of a Palestinian party against a counterparty with assets only in Area C or Israel cannot be enforced by Palestinian authorities. The Palestinian claimant must then seek enforcement in Israeli courts, a process that is expensive, time-consuming, and politically charged. Israeli courts may refuse enforcement on public policy grounds related to security or may subject the award to scrutiny beyond the New York Convention's limits.
 - The "Separation Barrier" as a Legal Wall: The West Bank separation barrier physically embodies the legal fragmentation. It impedes the free movement of lawyers, arbitrators, witnesses, and documents, making the practical conduct of arbitration logistically difficult for any dispute spanning both sides.
 - Reciprocity and the New York Convention: While both Israel and Palestine are parties to the New York Convention, the non-recognition of Palestinian statehood by Israel means that, in practice, Israeli courts do not treat Palestinian arbitral awards as "foreign awards" from a sovereign state entitled to automatic recognition under

the Convention. They are instead treated under a more discretionary and less favorable legal regime.

- Case Study – Hebron (H2) and Area C: The research’s focused analysis on Hebron’s H2 sector and broader Area C reveals a context where commercial activity is heavily constrained by military orders, settlement activity, and dual legal systems. Arbitration agreements here are often rendered moot, as the ultimate enforcement authority resides with Israeli military courts or civil administrations that do not recognize Palestinian arbitral authority. This has led to a proliferation of informal, tribal, or merchant-council mediation, which, while culturally embedded, lacks the transparency, consistency, and binding force of formal arbitration.

Conclusion on Hypothesis 5: The occupation creates a superstructure of legal disability that paralyzes key functions of the arbitration system. It negates the finality of awards, violates party autonomy, and introduces a layer of political risk that transcends ordinary commercial risk. This negative impact is not a side effect but a central, defining characteristic of attempting to administer justice through arbitration in a context of fragmented sovereignty.

Synthesis of Findings: The Palestinian Arbitration Paradox

The research findings collectively reveal a Palestinian Arbitration Paradox. On one hand, there exists a formal legal framework (Law No. 3 of 2000) that is reasonably modern and ostensibly aligned with global standards—a testament to the Palestinian Authority’s legislative aspirations. On the other hand, the practical reality is a system crippled by political fragmentation, institutional underdevelopment, and the overarching constraints of occupation.

The efficiency and attractiveness of arbitration in Palestine are not primarily hampered by a badly drafted law, but by the impossibility of creating a unified legal field upon which that law can operate. The comparative analysis with Israel (Chapter 3) is instructive. Israel’s arbitration system, while facing its own challenges (arbitrator quality, cost), operates within a coherent sovereign jurisdiction with strong courts that support the arbitral process. Palestine lacks this sovereign coherence.

Besides, the research finds that the theoretical benefits of arbitration—speed, confidentiality, party autonomy, specialized decision-makers—are largely nullified in the Palestinian context. Delays are caused by judicial inexperience and political interference. Confidentiality is less valued when the greater fear is outright non-enforcement. Party autonomy is circumscribed by geopolitical realities.

The shortage of specialists negates the benefit of expert adjudication.

Emergent and Informal Systems: A critical finding is that in the voids created by the formal system's deficiencies, alternative practices have emerged. In Area C, East Jerusalem, and even within Areas A and B for smaller disputes, businesses and individuals resort to:

- Tribal Arbitration (Sulh): Used extensively in commercial and civil disputes, especially where the formal system is inaccessible or distrusted.
- Chamber of Commerce Mediation: Local chambers in cities like Ramallah, Hebron, and Nablus play an active, informal mediation role.
- Certain communities use religious councils to resolve disagreements.

While these methods promote social cohesion and help to resolve many issues, they are not a replacement for a formal, transparent, and binding commercial arbitration system capable of managing large-scale domestic and international investment disputes.

The Path Forward: From Findings to a Reform Framework

The findings do not simply describe problems; they also suggest appropriate remedies. An effective reform program must be multifaceted and pragmatic, recognizing both the need for internal capacity growth and the unchangeable external restrictions.

1. **Immediate Legal-Technical Reforms:** Amend Arbitration Law No. 3 of 2000 to address identified deficiencies by including clearer definitions, mechanisms for temporary measures, and express adoption of the 2006 UNCITRAL Model Law revisions. Create standardized, modern arbitration clauses for Palestinian contracts.

2. **Institutional Development:** Prioritize the construction of a truly autonomous and well-funded Palestinian Arbitration Centre (PAC). This center should keep an international panel of arbitrators, use updated rules (e.g., based on UNCITRAL or ICC norms), and offer training and certification to local arbitrators.
3. **Judicial Capacity Building:** Implement an obligatory arbitration law training program for judges, with an emphasis on a pro-arbitration reading of the New York Convention and the limited scope of judicial review. Consider establishing a specific court of appeals as the sole authority for arbitration-related petitions to build competence and consistency.
4. Encourage the application of the 1983 Riyadh Convention on Judicial Cooperation among Arab States to enforce awards in the Arab world, complementing the New York Convention.
5. **Pragmatic Adaptation to Fragmentation:** Recognize that a Palestinian-seated arbitration may be ineffective for conflicts involving Area C or East Jerusalem. Legal professionals should be taught to steer clients toward the most enforceable hybrid solutions, which may include designating arbitration in a neutral third country (e.g., Jordan) with a choice of law clause that incorporates Palestinian commercial law concepts when possible.
6. Encourage professional dialogues between Palestinian and Israeli arbitration practitioners and jurists to develop practical mechanisms for recognizing and enforcing commercial arbitral awards across jurisdictions, even without a political settlement. This may entail agreements between bar groups or chambers of business.

The conclusions of this study provide a gloomy yet actionable appraisal. The arbitration agreement in Palestine, while legally binding on paper, functions in a context that hinders its effectiveness and efficiency. The framework's underdevelopment is due to severe political and territorial disintegration, rather than a failure of legislative formulation. As a result, any significant change must be both technical (enhancing the law and its practitioners) and political (advocating for the legal coherence and sovereignty required for any conflict resolution system to function).

Until the basic issue of jurisdictional unity is resolved, arbitration's full potential as a tool for commercial justice and economic development in Palestine will remain untapped. The proposed framework for reform presented in the dissertation's final chapter must therefore be viewed as a dual track: developing the best possible system within the current pieces while constantly pursuing the circumstances required for that system to function as a whole.



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MTMT ID: 10083180

List of publications related to the dissertation

Articles, studies (3)

1. **Mahameed, S.:** Commercial Arbitration and its Impact on Developing Countries.
Journal of University Studies for inclusive Research. 7 (38), 156401-156427, 2025. ISSN:
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DOI: <http://dx.doi.org/10.21868/PGnG.2021.1.1>.
Level of HAS Committee on Legal and Political Sciences: C

Conference presentations (1)

4. **Mahameed, S.:** Electronic arbitration - What and Why!
In: Az állam és jog digitális környezete a 21. században. Szerk.: Fejes Zsuzsanna, Szegedi
Tudományegyetem Állam- és Jogtudományi Doktori Iskola, Szeged, 107-120, 2022, (Szegedi
Jogász Doktorandusz Konferenciák, ISSN 2063-3807 ; 12.) ISBN: 9789633068755





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List of other publications

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5. **Mahameed, S.:** Virtual Justice: Bridging Electronic Litigation and Arbitration Practices.
Social Science Research Network. "Epub ahead of print", 1-9, 2025. EISSN: 1556-5068.
DOI: <https://dx.doi.org/10.2139/ssrn.5427434>

**By the directives of HAS Committee on Legal and Political Sciences:
Publications in periodicals level „C”: 1, related to the dissertation: 1.**

The Candidate's publication data submitted to the Tudóstér have been validated by DEENK on the basis of the Journal Citation Report (Impact Factor) database.

20 January, 2026

