

**EUROPEAN FEDERATION OF FOUNDATION CONTRACTORS**

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**Dispute resolution / France**

**Dispute resolution in construction**

Dispute resolution in construction depends on a number of factors:

* the type of work being carried out
* whether it is a public or private contract
* the nature of the dispute (financial or technical)

A public contract will fall within the jurisdiction of the adminstrative and a private contract within that of the judiciary.

**Arbitration**

A dispute can be settled by arbitration if both parties agree and the contract contains an arbitration clause, which can be included either at contract stage or when a dispute arises.

Arbitration can be used in all types of contract and disputes, but there are more restrictions in the pubic works domain. The advantages of arbitration are speed, confidentiality and the Arbitrator's knowledge of the subject. The disadvantage is cost.

The method is fairly free. A professional arbitration committee can be used (eg the FNTP committee ) or the arbitrator can be agreed between the parties.

**Civil of Administrative Jurisdictions**

If the dispute is straightforward and does not require expert evaluation, the dispute can be brought directly in front of the jurisdiction, according to the following procedure:

* a generating act (a summons which must be brought to the relevant court)
* the hearings where individual evidence is exchanged
* the arguments for and against
* a decision and if necessary the Court of Appeal
* If expert evaluation is necessary it can either be amicable or determined by a court (judicial).

Note: The expert's report does not actually hold any weight and will need the approval of a judge. However, in practice and in order to save time, the parties can reach an agreement between themselves, using the expert's report simply as a guideline.

Also: If the principle of judicial approval is used the courts will merely confirm the terms of the report - usually some months after its submission.

In a straightforward dispute there is a choice of using arbitration or statutory jurisdiction. The advantage of arbitration lies in the speed, but an opponent may complicate matters in order to gain time.

In France the principle of 'contradictoire' should be kept in mind. This means that whether it is an expert evaluation, a judicial hearing, or an arbitration procedure, all parties have the right to react to comments made by the opponent. It is therefore necessary to disclose the 'evidence' (ie the facts of the dispute) and to allow the other party enough time to study the facts and respond.