Mesquita LV, 'The contract as a tool for conflict management: procedural agreements and digital innovation' (2025) 2 EJPLT.
DOI: https://doi.org/10.57230/EJPLT252LVM

EJPLT
ISSN 2704-8012



The contract as a tool for conflict management: procedural agreements and digital innovation

Il contratto come strumento di gestione del conflitto: accordi procedurali e innovazione digitale

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Abstract

Dispute resolution is evolving from a judicial monopoly toward alternative methods increasingly shaped by digital technologies and artificial intelligence. The transition to Online Dispute Resolution, now irreversible, calls for tools that safeguard party autonomy and ensure procedural security. In this context, procedural agreements play a central role: they allow parties to define and control key aspects of the process, ensuring that individual preferences are respected. In the digital age, such agreements represent a crucial balance between innovation and self-determination.

La risoluzione delle controversie sta evolvendo dal monopolio giudiziale verso metodi alternativi, sempre più influenzati dalle tecnologie digitali e dall'intelligenza artificiale. La transizione verso l'Online Dispute Resolution, ormai irreversibile, richiede strumenti che tutelino l'autonomia delle parti e offrano sicurezza. In questo contesto, gli accordi procedurali assumono un ruolo centrale: permettono di definire e controllare il processo, garantendo il rispetto delle preferenze individuali. Nell'era digitale, tali accordi rappresentano un equilibrio tra innovazione e autodeterminazione.

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Keywords: procedural law; procedural agreements; digital justice; online dispute resolution; digital age

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1. Introduction.

The efficiency of the justice system is central to attracting and sustaining economic investment. According to some studies,[1] there is a clear and significant link between judicial efficiency and economic performance. Efficient courts reduce transaction costs and provide greater certainty in contract enforcement, which directly influences firms' willingness to engage in trade credit and investment. Where justice systems are slow or unpredictable, firms face higher risks and are less likely to extend credit or enter long-term business relationships. The authors[2] also show that judicial inefficiency disproportionately affects small and medium-sized enterprises, which rely more heavily on external credit and are less able to absorb enforcement costs. They further find evidence that inefficient courts can constrain market competition and limit overall economic growth by discouraging productive investments and innovation. Conversely, improvements in judicial efficiency enhance access to finance, foster business dynamism, and support a healthier economic environment. The study therefore concludes that strengthening judicial systems is not only a matter of legal fairness but also a crucial component of economic policy, with tangible effects on trade, credit, and growth.

Access to justice is also a factor which contributes to development,[3] although it has less impact on growth in richer countries. Access to justice increases growth by making the government more accountable and improving institutional quality. It leads to a lower share of public consumption in GDP, less public corruption, higher total productivity, better protection of property rights and better regulation of credit markets.

The development and modernisation of this sector are vital for creating a stable and predictable environment for business operations. High costs of accessing justice, procedural delays, and the complexity of legal processes

[1] I Aguiar-Díaz, E Mruk, MV Ruiz-Mallorquí, 'How judicial efficiency impacts trade credit and doubtful receivables' (2024) 57 European Journal of Law and Economics 63. <https://doi.org/10.1007/s10657-024-09793-0>.
[2] Ibid.
[3] A Deseau, A Levai, M Schmiegelow, 'Access to justice and economic development: Evidence from an international panel dataset' (2025) 172 European Economic Review 104947. <https://doi.org/10.1016/j.euroecorev.2024.104947>.

often deter investors, undermining confidence in the system and increasing perceived risks. By reducing uncertainty, minimising costs, and fostering trust, a modernised justice sector attracts both domestic and foreign investment, stimulates economic activity, and supports societal development. Ultimately, the efficiency of the justice system reflects a nation's commitment to upholding the rule of law and fostering sustainable economic growth.[4]

An inefficient justice system generates significant transaction costs, compelling economic actors to allocate additional resources either to the resolution of disputes or to the mitigation of legal uncertainty. The excessive duration of judicial proceedings delays the settlement of conflicts, undermines contractual performance, and jeopardises the stability of commercial relations. Such delays may further entail reputational harm and substantial financial losses. The adverse impact is particularly pronounced for small and medium-sized enterprises, as well as for foreign investors, who frequently lack both the financial capacity and the specialised local knowledge required to navigate complex procedural frameworks effectively.

Litigation costs are recognised as a human rights concern under Article 6(1) ECHR, which guarantees the right of access to a court. The European Court of Human Rights evaluates such costs through proportionality analysis, assessing whether financial barriers undermine effective access to justice. Key factors include excessive court fees, stamp duties, or security for costs, unreasonable methods of cost calculation, and disproportionate or unjustified claims by state authorities. The Court also scrutinises situations where non-pecuniary damages are offset by high costs or where a litigant's vulnerability is disregarded. These elements act as warning signs that litigation costs may breach the fair balance between individual rights and legitimate aims.[5]

This topic raises several considerations and questions, particularly regarding the gradual erosion of the judicial monopoly. As courts no longer hold exclusive control over the resolution of disputes concerning disposable rights, parties are increasingly empowered to take an active role in shaping how their conflicts are addressed. This shift has fostered the expansion of consensual dispute resolution mechanisms, grounded in the autonomy of the parties and expressed through procedural agreements.

The increasing adoption of alternative dispute resolution (ADR) mechanisms, such as mediation and arbitration, has further enhanced the efficiency of justice systems, particularly in the digital age. These mechanisms allow disputes to be resolved quickly and flexibly, addressing the rapid transformation of economic and legal landscapes. Digitalisation also plays a transformative role, streamlining court processes, reducing delays, and improving access to legal information, thereby strengthening the alignment between justice and economic investment.[6]

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[4] The Report of the Permanent Observatory of Justice in Portugal underlines this. Boaventura de Sousa Santos, Conceição Gomes, *A Administração e Gestão da Justiça. Análise comparada das tendências de reforma* (Coord) (Centro de Estudos Sociais da Faculdade de Economia da Universidade de Coimbra 2001) 3-4.

[5] See S Djajić, 'Unlocking Justice: Access to Court and Litigation Costs Under the European Convention on Human Rights' (2025) 24 The Age of Human Rights Journal e9282 <https://doi.org/10.17561/tahrj.v24.9282>.

[6] Sousa Santos and Gomes, *Administração e Gestão da Justiça* (n 4) 153.

Procedural agreements offer an additional tool for enhancing efficiency and trust in the justice system. They empower parties to choose the most suitable method for resolving disputes – whether mediation or arbitration – and to define specific procedural aspects. This flexibility reduces the time and expense of dispute resolution while providing greater predictability and legal certainty, essential for fostering a competitive economic environment. However, procedural agreements must respect fundamental principles of procedural law, such as the right to be heard and equality of arms, ensuring both parties can present their case fairly. By balancing efficiency with procedural safeguards, these agreements contribute to modernising the justice system, strengthening trust among economic actors, and supporting sustainable and ethical growth.

Traditionally, procedural agreements can be used to define the rules of the proceedings, to prevent disputes, to choose a dispute resolution method through mediation or arbitration or a combination of these two mechanisms, or even to put an end to a dispute by agreement of the parties. Bringing the advantages of empowering parties to choose ADR methods into the digital age naturally extends to the evolution of procedural agreements. These agreements could enable parties to specify the online mechanisms they are willing to adopt (or reject) and outline the extent to which artificial intelligence (AI) may be used in the resolution process.

The digital age has reinforced and streamlined the use of these mechanisms, adapted to the new digital age. Let's look at some of the issues associated with the topic: What are ADRs and ODRs? How did the ODR movement begin? What impact has digital development had on this phenomenon? What examples do we have? What is their relationship with the will of the parties and procedural deals?

While briefly addressing what ADRs and ODRs are and tracing the origins of the ODR movement, the focus will shift to examining the transformative impact of digital developments on these mechanisms. The core of the discussion will explore the interplay between these mechanisms, party autonomy, and the use of procedural agreements, analysing how such agreements can shape the resolution process, particularly in the context of digital and online tools.

2. Alternative and Online Dispute Resolution.

2.1 The phenomenon of de-judicialisation and the emergence of ADR.

The landscape of dispute resolution has undergone a significant transformation in recent decades, marking a paradigm shift away from the traditional monopoly of judicial proceedings. This evolution reflects a growing recognition that courtroom litigation, while sometimes necessary, is not always the most effective or efficient way to resolve conflicts.

Increasingly, individuals, businesses, and even governments are turning to consensual and extrajudicial methods of dispute resolution, including mediation, arbitration, and negotiation, which offer parties greater control

over the process and outcomes of their disputes. They often provide faster, more cost-effective, and less adversarial ways to address conflicts compared to court litigation.

This shift is driven by several factors, including overburdened court systems, the high costs and lengthy timelines associated with litigation, and a growing awareness of the benefits of collaborative problem-solving. Moreover, many of these alternative methods allow for more creative and tailored solutions that can better address the underlying interests of the parties involved.

As a result, we are witnessing the end of the judicial system's monopoly on dispute resolution. While courts continue to play a crucial role in upholding the rule of law, they are increasingly viewed as one option among many in a diverse landscape of conflict resolution mechanisms.

2.2 Legislative milestones for ADR methods in Portugal and the European Union.

In Europe, influenced by developments in the United States, ADR began to emerge, prompting national and European legislators to create legal frameworks to regulate these procedures.[7] Over time, ADR has gained increasing recognition as an essential component of the legal landscape, offering efficient and cost-effective solutions for resolving disputes. In Portugal, the legal framework for ADR has evolved significantly. The foundation was laid with Law 31/86, which established the framework for voluntary arbitration in the country. Although not recent, this law marked an important step in formalising arbitration as an alternative to judicial proceedings. This framework was later modernised with Law 63/2011, which aligned portuguese arbitration practices with international standards, including the UNCITRAL Model Law. In addition, the establishment of Justice of the Peace Courts (Julgados de Paz) through Law 78/2001 provided a unique combination of mediation and simplified judicial proceedings, enhancing access to justice for citizens. Another milestone was Law 29/2013, known as the Mediation Law, which set out general principles for mediation in civil, commercial, family, and labor disputes. Furthermore, Law 144/2015 implemented the EU Directive on consumer ADR, creating a comprehensive framework for consumer dispute resolution entities and aligning Portugal with European standards.

At the European Union level, several legislative milestones have shaped the development of ADR mechanisms. Recommendation 98/257/EC established key principles for out-of-court bodies handling consumer disputes, laying the groundwork for consistent standards across member states. Directive 2008/52/EC, known as the Mediation Directive, aimed to facilitate access to ADR by encouraging the use of mediation in cross-border civil and commercial matters, thereby promoting amicable dispute resolution. Regulation (EU) 524/2013 created an online dispute resolution platform for consumer disputes, marking a significant step towards integrating ADR into the digital

[7] See S Barona Vilar, *Arbitraje y Justicia en el siglo XXI* (Civitas Ediciones 2007), 49-50.

sphere and providing a user-friendly tool for resolving disputes online. However, despite its initial promise, the platform has not achieved the expected level of success. As a result, the European Union is currently taking steps to improve the regulatory framework and explore more flexible and effective solutions to enhance online dispute resolution mechanisms[8]. Complementing these efforts, Directive 2013/11/EU, the Consumer ADR Directive, ensured that consumers could submit complaints against traders to ADR entities for all types of domestic and cross-border disputes involving contractual obligations.

Collectively, these legislative measures have been instrumental in promoting and regulating ADR methods, making them more accessible, reliable, and effective for both citizens and businesses across Europe. They underscore the growing importance of ADR in fostering a more efficient and inclusive justice system.

2.3. Online Dispute Resolution: concept and scope.

Online Dispute Resolution (ODR) initially gained prominence as a method to support consensual dispute resolution processes using electronic tools. These systems, predominantly offered by private companies, were developed to enhance client services and reduce reliance on litigation.[9] Examples of functionalities include online chat rooms and videoconferencing, designed to facilitate swift and cost-effective agreements. Some platforms go further, integrating AI and big data to propose solutions based on precedent cases, offering users tailored and data-driven resolutions.

From a business perspective, providing ODR mechanisms not only builds client loyalty and enhances market trust but also indirectly promotes access to justice and reduces the burden on judicial courts. Despite their economic motivations, these private-sector initiatives help mitigate resignation among users by offering accessible and efficient alternatives to traditional litigation. Consumer disputes have become a key area of application for ODR systems. As Fred Galves points out, "another benefit of ODR is its flexibility; various manifestations of ODR are possible. For example, the parties might agree to use all the procedures of the online system, but then have the final arbitration proceeding in person, as sort of a hybrid of ODR and traditional, in-person

[8] Regulation (EU) 524/2013, which established the European Online Dispute Resolution (ODR) platform, is currently undergoing a repeal process as per proposal COM(2023) 647 final, presented on 17 October 2023. The initiative aims to discontinue the ODR platform due to its limited uptake and overlap with other ADR mechanisms. The proposal also includes amendments to Regulations (EU) 2017/2394 and (EU) 2018/1724 to ensure coherence within the European legislative framework. This change reflects the European Commission's commitment to streamlining consumer protection mechanisms whilst maintaining effective channels for dispute resolution through existing national and cross-border facilities.

[9] eBay and Amazon pioneered the implementation of ODR in e-commerce, with eBay introducing its Resolution Center in the late 1990s and handling millions of cases annually. These early private ODR systems demonstrated the potential for automated and assisted dispute resolution in online marketplaces, serving as influential models for subsequent ODR developments in both private and public sectors. See AJ Schmitz, J Martinez, 'ODR and Innovation in the United States', in MSA Wahab, E Katsh, *Online Dispute Resolution: Theory and Practice: A Treatise on Technology and Dispute Resolution* (Eleven International Publishing 2021) 3-5; E Katsh, C Rule, 'What We Know and Need to Know about Online Dispute Resolution' (2016) 67 (2) South Carolina Law Review 329-344.

ADR".[10]

In recent years, a broader interpretation of ODR has emerged, encompassing systems that integrate multiple dispute resolution mechanisms – both consensual and adjudicative – within a single platform. These systems aim to address the evolving needs of the parties, ensuring that when consensual solutions are not possible, adjudicative mechanisms, such as judicial intervention, remain available. This broader definition includes all online dispute resolution systems, regardless of whether they are public or private.

While there is no universal consensus on the definition of ODR, it is widely understood as the application of digital technologies to prevent, manage, and resolve disputes through a variety of tools. Unlike traditional ADR, which is grounded in strict confidentiality, ODR systems often incorporate data collection from previous negotiations and rulings. This data is processed to enhance "intelligent" platforms and refine their capabilities over time.[11]

2.4 ODR models.

ODR emerged in the United States during the mid-1990s, driven by the exponential growth of e-commerce and the need for innovative mechanisms to address disputes arising in the digital environment. Early platforms not only laid the groundwork for modern ODR systems but also showcased a variety of approaches to resolving conflicts efficiently and cost-effectively. Three pioneering initiatives – Virtual Magistrate Project, Cybersettle, and Smartsettle – played a crucial role in shaping the field.[12]

The Virtual Magistrate Project (VMAG) was one of the earliest attempts to resolve internet-related disputes online. Its primary focus was on issues such as spam, intellectual property conflicts, and disputes between internet users and service providers. The process was designed to be simple and efficient. So, parties submitted their disputes via an online form, and a volunteer arbitrator, referred to as a virtual magistrate, reviewed the case and rendered a decision. The entire process was conducted through email, with a goal of resolving disputes within 72 hours. While VMAG was praised for its innovative approach, it faced significant challenges. Case volumes were low, jurisdictional ambiguities created enforcement difficulties, and the technological infrastructure of the time limited its functionality. Despite these obstacles, VMAG is considered a seminal project in ODR, offering valuable lessons for future systems.

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[10] F Galves, *Virtual Justice as Reality: Making the Resolution of E-Commerce Disputes More Convenient, Legitimate, Efficient, and Secure* (University of Illinois Journal of Law, Technology & Policy 2009) 1-62.

[11] About the concept of ODR, see D Nunes, CM Paolinelli, 'Novos designs tecnológicos no sistema de resolução de conflitos: ODR, e-acesso à justiça e seus paradoxos no Brasil' (2021) 46 (314) Revista de Processo 4-5; K Mania, 'Online dispute resolution: The future of justice' (2015) 1 (1) International Comparative Jurisprudence 76-86.

[12] These models were analysed by taking into account: R Gellman, *A Brief History of the Virtual Magistrate Project: The Early Months* (National Center for Technology and Dispute Resolution, 1996); ML Tushman, K Herman, *Cybersettle (A)* (Harvard Business School Case 406-041, 2006); J Barnett, P Treleaven, 'Algorithmic Dispute Resolution – The Automation of Professional Dispute Resolution Using AI and Blockchain Technologies' (2017) The Computer Journal; EM Thiessen, A Soberg, 'SmartSettle Described with the Montreal Taxonomy' (2003) 12 Group Decision and Negotiation 165-170.

Cybersettle, established in 1998, marked a shift towards automation in dispute resolution. Founded by lawyers in New York, it became the world's first automated settlement negotiation platform. Cybersettle introduced a blind bidding system where parties could submit up to three confidential offers. If the offers overlapped within a predefined range, the platform automatically calculated the settlement by splitting the difference. This system was particularly effective for resolving insurance claims, financial disputes, and commercial settlements. Cybersettle's innovative use of technology to streamline negotiations earned it significant acclaim, and its success demonstrated the potential of automation in reducing costs and delays. However, the platform was also criticised for its limited applicability to more complex disputes.

Smartsettle emerged as a more sophisticated platform, leveraging advanced algorithms to optimise agreements. Unlike Cybersettle, which focused on monetary disputes, Smartsettle was designed to handle multi-variable negotiations, making it suitable for complex cases such as commercial contracts, family disputes, and environmental agreements. Its system provided visual tools for analysing proposals and offered algorithm-generated settlement suggestions, enabling parties to explore creative solutions that might not have been apparent through traditional negotiation methods. Smartsettle was widely praised for its adaptability and potential to handle intricate disputes, but its reliance on advanced technology required a learning curve for users and limited its accessibility in its early years.

Each of these platforms contributed distinct innovations to the field of ODR. VMAG demonstrated the feasibility of resolving disputes entirely online, even if its practical implementation was constrained by the limitations of its time. Cybersettle's automated negotiation system showcased the efficiency of blind bidding for straightforward financial disputes, while Smartsettle's algorithmic approach provided a glimpse into the future of data-driven conflict resolution. These initiatives highlighted both the opportunities and challenges of integrating technology into dispute resolution, offering valuable insights that continue to influence the development of ODR systems today.

3. Traditional procedural agreements.

It is possible to empower parties in dispute resolution through procedural agreements – contracts that allow parties not only to select the dispute resolution mechanism they wish to pursue but also to define procedural aspects of that mechanism, provided these are legally permissible and fall within the scope of the parties' autonomy under the applicable procedural law. Let us consider some examples in abstract terms, without focusing on any specific legal system.

Procedural agreements may include pre-dispute resolution clauses, such as mandatory negotiation periods, tiered dispute resolution processes with defined timelines for each phase, and agreements to attempt mediation as a first step, followed by arbitration agreements. Another example is forum

selection agreements, which enable the parties to choose a specific court or jurisdiction, opt for private arbitration, or resort to judicial courts for certain types of disputes, always within the limits set by applicable procedural law.

These agreements may also stipulate mandatory waiting periods before initiating formal dispute resolution proceedings. Additionally, procedural agreements can address evidentiary matters, such as setting rules for expert testimony or determining the admissibility of certain types of evidence, such as written witness statements, which parties may agree to accept.

Confidentiality can also be safeguarded through agreements that protect sensitive information during dispute resolution or through non-disclosure agreements covering mediation discussions or settlement negotiations. Depending on the applicable procedural law, some of these aspects may already be ensured by existing legislation, but parties may further tailor their agreements to address their specific needs. For instance, procedural agreements may include waivers of class actions, enabling disputes to be resolved individually rather than through collective actions.

Other agreements might establish qualifications for decision-makers, specifying the expertise required of arbitrators or mediators, or even predetermining a panel of neutrals approved by both parties. Simplified procedures, such as summary judgments or early neutral evaluations, may also be agreed upon for specific types of disputes.

Finally, some agreements may allow exceptions for interim relief, enabling parties to seek urgent judicial intervention when necessary, or establish protocols for data sharing and preservation, particularly regarding the handling of electronic evidence.

These procedural agreements can be tailored to the parties' specific needs and the nature of their relationship. They may be incorporated into broader contracts or executed separately to create a more efficient and predictable framework for preventing and resolving potential disputes.

Although it is uncommon to find a general clause explicitly allowing the creation of procedural agreements, such a provision exists in Brazilian law, specifically in Article 190 of the Civil Procedure Code enacted in 2015. This article states: «Art. 190. When the proceedings concern rights that permit settlement, it is lawful for fully capable parties to stipulate changes to the procedure in order to adapt it to the specificities of the case and to agree on their procedural burdens, powers, rights, and duties, either before or during the proceedings».

Sole paragraph. The judge, either ex officio or upon request, shall review the validity of the agreements provided for in this article, refusing to apply them only in cases of nullity, abusive inclusion in an adhesion contract, or when one party is in a manifestly vulnerable situation.[13]

[13] For further discussion on this topic, see F Didier Jr, *Negócios jurídicos processuais atípicos no CPC-2015* (Editora JusPodivm, 2016).

4. Procedural agreements in the digital era.

4.1. ODR systems: from first to second generation.

The digital age has transformed dispute resolution, giving rise to online dispute resolution. First-generation ODR systems largely replicated existing ADR processes in a digital format. While offering some advantages in terms of accessibility and speed, they often lacked the flexibility and sophistication needed to address the unique challenges of online disputes. Second-generation ODR systems, however, utilize technology to fundamentally transform dispute resolution through the application of AI.[14] These systems incorporate functionalities such as automated negotiation systems, where AI-powered platforms handle simple disputes automatically by analysing settlement patterns to propose fair resolutions. They also include intelligent case management, where AI categorizes and prioritizes disputes, assigning cases to appropriate human mediators or arbitrators. Predictive analytics leverage algorithms to analyse past data and predict potential outcomes, helping parties make informed decisions. Natural language processing enables AI to review documents, identify key issues, and summarize complex legal texts. AI-driven chatbots and virtual assistants guide parties through the initial stages of the process, answering questions and assisting with documentation. Emotion recognition and sentiment analysis help mediators understand the emotional states of the parties and tailor their approach accordingly. Real-time language translation facilitates online dispute resolution in cross-border or multilingual disputes. Decision support systems provide human mediators with relevant case law, regulations, and precedents. Bias detection identifies potential biases in decision-making, promoting fairness. Lastly, outcome simulation tools help parties visualize different scenarios and potential consequences.

The potential of second-generation ODR systems introduces new challenges for parties in effectively utilising these mechanisms. As such, it is crucial that parties are afforded the opportunity to define the parameters of the mechanisms they wish to employ and establish the boundaries within which they consent to their use, particularly regarding the application of AI.

In this context, procedural agreements can serve as an essential tool, enabling parties to tailor the dispute resolution process to their specific needs and ensuring that their autonomy and preferences are respected. These agreements provide a framework for balancing the innovative capabilities of AI-driven systems with the safeguards necessary to maintain fairness and trust in the resolution process.

4.2 Procedural agreements: Enhancing security and trust in ODR.

When faced with an actual or potential dispute, parties often seek to take an active role in shaping how it will be resolved, selecting mechanisms that align with their objectives and facilitate compromise and consensual

[14] For more on second-generation ODR systems, see R Susskind, *Online Courts and the Future of Justice* (Oxford University Press 2019) 263-275.

outcomes. In the digital age, the availability of second-generation ODR systems, which combine traditional methods with advanced technologies such as AI, offers significant opportunities but also raises important considerations. Procedural agreements are essential in this context, as they enable parties to address potential concerns and tailor the ODR process to their specific needs, ensuring that it reflects their values and preferences while safeguarding the fairness and security of the proceedings.

Through procedural agreements, parties can determine in advance the most suitable ODR platform for their dispute, ensuring that the chosen forum is both secure and appropriate. This level of clarity fosters trust in the process and reduces uncertainties. Furthermore, these agreements allow parties to explicitly define the role of AI within the resolution process. They may decide whether to utilise AI-driven tools for tasks such as negotiation, data analysis, or decision support, thereby addressing concerns about transparency, control, and ethical considerations.

In addition, procedural agreements provide the flexibility to establish hybrid human-AI models that balance the efficiency of automation with the nuanced expertise of human professionals. For instance, AI could manage preliminary stages, such as organising claims or offering analytical insights, while human mediators or judges handle the more complex and sensitive aspects of the dispute. This integration of technology and human judgment ensures that the process remains both efficient and responsive to the unique characteristics of each case.

Moreover, procedural agreements empower parties to decide whether the resolution process should remain strictly consensual or, if necessary, escalate to an adjudicative or heterocompositive approach. By providing a structured framework for expressing their intentions, these agreements enhance the overall effectiveness of ODR systems while fostering a sense of security and control. They bridge the gap between technological innovation and the fundamental principles of justice, enabling parties to fully harness the potential of second-generation ODR systems while addressing challenges such as data protection, procedural transparency, and equitable access.

5. Conclusions.

The rapid evolution of technology, alongside a paradigm shift in the administration of justice towards a citizen-focused and participatory model, highlights the growing importance of selecting dispute resolution methods that align with the unique circumstances of each case and the preferences of the parties involved. In areas governed by available rights, individuals should have the ability to construct a resolution process that reflects their specific interests, if this is based on mutual agreement. This flexibility not only enhances access to justice but also fosters greater trust in the system.

The emergence of ODR introduces significant opportunities but also complex challenges, particularly in designing and managing mechanisms that are both effective and secure. Legal frameworks must strike a balance between embracing innovation and upholding essential procedural principles.

Within this context, parties should have the autonomy to not only accept or reject a proposed resolution method but also actively influence the structure and scope of the process to ensure it meets their needs. When opting for ODR, safeguarding the autonomy and security of the parties becomes paramount. This requires the integration of tools and frameworks that empower individuals to engage in the process while mitigating risks associated with advanced technologies, such as AI. These risks may include biases in automated decision-making, data privacy concerns, and the potential for reduced transparency.

Procedural agreements are uniquely positioned to address these issues, providing a mechanism for parties to establish clear boundaries, define acceptable uses of technology, and ensure that the resolution process remains fair and equitable. By proactively crafting procedural agreements, parties can anticipate and manage the challenges posed by technological advancements. These agreements enable a tailored approach that not only reflects the will of the parties but also ensures their protection in an increasingly digital world. As such, procedural agreements are not merely a tool for dispute resolution but a fundamental safeguard for preserving the balance between innovation, autonomy, and justice in the digital age.