

CONSIDERATIONS ON THE HISTORICAL DEVELOPMENT OF ARBITRATION AND NEW TENDENCIES IN THE DEVELOPMENT OF NATIONAL AND INTERNATIONAL ARBITRATION

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ABSTRACT: *The domestic and international arbitration have greatly developed lately, more and more natural persons and corporate bodies appeal to this form of private justice as a result of countless advantages they provide in comparison with the state justice.*

In Romania, as well, the arbitration has become more and more an institution of present interest, being more and more profitable, in compliance with the rhythm of commercial life, with the difficult and slow mechanism, with the traditionalism and the rigidity of the civil law procedure.

The arbitration procedure lacks the exaggerated formalism, being achieved by famous specialists in the field in which the conflict between the parties has the possibility to reach an equitable decision which meets the parties' requirements, thus the parties may carry on their collaboration benefiting from numerous advantages, which may lead to its proliferation in even more fields of the economic and social life.

KEY WORDS: *Arbitration, arbiter, arbitration procedure, ad-hoc arbitration, institutionalized arbitration, international arbitration.*

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In the foreign judicial literature, it was stated that the arbitration, in its simplest form, is the parties' convention which largely defines the relation between the context and the private law, to settle directly or indirectly the dispute between the parties which involves a person or more persons so that the appointed persons could bring in a final verdict in the respective case, instead of the official judiciary system¹.

The great scholar Epicur said "there is no justice in itself, but only mutual agreements, from one case to another, in which the parties agree not to harm one another", taking into consideration that „generally, justice is the same for all the people, a useful

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¹Fouchard, Gillard and Goldman on International Commercial Arbitration, Kluwer, 1999.

instrument for the mutual relations ", thus "natural justice is a contract concluded between the people which do not intend to harm one another and not being harmed by the others"².

There are no accurate data regarding the origin of the arbitration.

The first known data concern The Peace Treaty which was negotiated with the southern countries of Greece in 337 B.C., when Philip the second, the father of Alexander the Great used the arbitration as a means of solving the disputes in the field of establishing the territories.

Even older documents show that King Solomon also practiced arbitration for solving some disputes during his reign.

Arbitration and mediation represented procedures used by the civilizations in Mesopotamia, Ancient Greece, Rome, by the Common Law system or by the Medieval Europe³.

In England, the arbitration institution is older than the common law system, being used as a means of solving the commercial disputes. A "brithen" who acquired an education in a school of Law and had not become an official judge, earned his life in schools, arbitrating the disputes between the parties who agreed to comply with an arbiter's decision. If he abandoned the case or he could not decide, regardless the reason, he had to pay eight ounces of silver. In 1705 the traders in Dublin decided to set up a court for hearing the disputes, where verdicts were brought in faster than the verdict brought in according to the state judiciary procedure.

In Sweden, the arbitration appeared in 1359, and in 1669 it is enacted the acknowledgement of the verdicts reached by arbiters⁴.

In the United States of America, before the appearance of the modern state, the people who are nowadays called American local tribes resorted to arbitration and used arbitration as a means of both solving the conflicts between the members of the respective tribes, and the disputes between the tribes.

The first president of the U.S.A., George Washington, included an arbitration clause, which provided that, for any arising dispute, the arbiters must try to solve it and reach a verdict for solving this conflict, the arbiters' verdicts being as binding as any verdict reached by the Supreme Court of Justice⁵.

At the beginning, the arbitration, was a reasonable and moral means of solving the potential litigations, but it was not accepted as a method preferred by workers and business people, being supported by the federal government. In the Interstate Commerce Act in 1887, it was provided the voluntary arbitration clause for the workers of the railway industry.

The Workers Union in the U.S.A. had a special role regarding the evolution of the arbitration, also by making the big companies, which were set up, admit that any business must appeal to such means for solving disputes; according to the opinion of union

²Gh. Vlăduțescu, *Etica lui Epicur*, the Scientific Publishing House, Bucharest 1972, pag. 59-60.

³D. Roebuck, *Cultural Differences and Mediation*, 2002, pag.135-136 and *Best to Reconcile: Mediation and Arbitration in the Ancient Greek World*" 66 *Arbitration*,2002, pag. 275.

⁴ Also see <http://www.sccinstitute.com> .

⁵ Robert V. Massey, Jr., "History of Arbitration and Grievance Arbitration in the United States", West Virginia University Extension Service, Institute for Labor Studies and Research, 322 S. Kanawha Street, Carter Hall, Beckley, WV 25801, pag. 2.

members, besides the already known advantages, the arbitration institution enjoys a high morality in comparison with the procedures used in the court of justice.

Before 1930, in the United States, the arbitration was an instrument used, mainly, in negotiation. During the rapid industrialization, after 1930 and during the enforcement of the National Act of Labor Relations in 1935, the arbitration institution began to develop rapidly, thus becoming widely accepted in The United States.

Subsequently, the number of collective bargaining labor litigations, which contain arbitration clauses, has spectacularly increased. In 1944 the Office of Labor Statistics showed that 73% of the labor contracts in America provided such a clause, and in the early '80s this statistical figure reached 95%, nowadays it has reached 98%.

According to the Federal Arbitration Act in 1925, the arbitration was institutionalized, increasing and outlining its credibility, and later on, in 1991 it was passed the Congress Act of Civil Rights which encouraged the use of arbitration for the enforcement of the non-discriminatory laws.

In Rome, during The Middle Ages, the arbitration was one of the favorite methods of solving both commercial disputes and disputes in other fields. The judge could represent a unique court when he was appointed as a sole judge - *judex unus*, or as an arbiter - *arbiter*.

The judge settled more difficult cases, and when he was an arbiter, he settled the cases regarding the disputes between relatives and neighbors, such as the escapes from non-division or boundaries tracking.⁶

Therefore, for instance, in a case of filing a claim for a land the petitioner alleged that he was the land owner and the judge was appointed arbiter and if he established that the petition is reasonable, he reached the verdict according to which the respondent must give the land to the petitioner. If the respondent refused to do so, the arbiter was appointed judge and reached, according to the common law procedure, the verdict according to which the respondent was fined an amount of money established by the petitioner. As the petitioner was tempted to overvalue the litigation object, binding the respondent to pay him a larger amount of money, the respondent could prefer the first dispute solving which involves the verdict reached by the judge which was appointed arbiter.

Judicias arbitrive postulatio – was a petition addressed to the magistrate so that he could appoint a judge or an arbiter.

In Ancient Greece, the conflicting parties were asked if they want to resort to the private arbitration, to solve the litigation within the civil society or to appeal to the state court.

During Homer's times, the family disputes or the disputes between friends were mainly solved according to the arbitration procedures.

Once the state appeared, the private arbitration did not disappear, developing in a different manner from one period to another. They appealed to state courts if the litigation could not be solved by mediation or arbitration.

An interesting aspect of the Athenian private legal system is represented by the decrees privatization. The old state city did not have police force and a small number of slaves were servicing the magistrates.⁷

⁶ G. Dumitru - Curs de drept roman, Bucharest 1948, page 164.

Although in some Asian countries there was a positive feedback to the internationalization and modernization of arbitration, especially in the international trade in fields such as energy, natural gases, petroleum, and in other fields, different cultural, legal, institutional and, last but not least, educational issues hindered the arbitration development, in comparison with its development rhythm in other states.

Subsequently, understanding the role and the importance of arbitration, many Asian countries became parties in the international arbitration conventions, in the Law Model UNCITRAL, setting up many specialized centers both in the domestic and international arbitration⁸. However, many Asian countries continued to be devoted to the traditional values in the matter of dispute solving⁹.

Today, in most of the Asian jurisdictions, mediation, conciliation, arbitration are considered the favorite methods of conflict solving¹⁰, countries such as China, Japan, Korea, Taiwan, Indonesia or Singapore share a common procedure for mediation and arbitration¹¹, in comparison with the Western countries where conciliation and arbitration are two different separate methods of dispute solving, especially in the commercial field¹². This Asian culture influences even the enforcement of the Western method for dispute solving in the Asian– Pacific region.¹³

However, the growth of commercial relations between the Asian states and countries from other continents and, as a result, the increasing number of commercial litigations has determined China's Government, in 1956 to establish an arbitration body to solve the international commercial litigations. The respective authority was called the Commission of International Economic and Commercial Arbitration¹⁴, being the main arbitration institution for dispute solving between the foreign and Chinese companies.¹⁵

Until 1995 there has not been any arbitration legislation in China. In China, the first law on arbitration entered into force on 11th November 1995¹⁶.

According to the provisions and instructions in article 257 of the Chinese Code of Civil Procedure, of the 5th article of the The Arbitration Law, the parties agree to solve the litigation according to arbitration procedures and they must not file for a lawsuit in court and, similarly, the court must refuse the cases which contain an arbitration convention. In

⁷ Roderik T. Long, *Civil Society in Ancient Greece: The case of Athens* – presented at the Liberty Fund Conference on Civil Society, Arlington VA, on 29th May 1998.

⁸ A.F.M. Maniruzzaman, "International Commercial Arbitration in the Asia Pacific: Asian Values, Culture and Context", 30 *International Business Lawyer* (edition no. 11,2002), page 508.

⁹ Charles R. Regan, "Emerging Dispute Resolution Techniques in the Pacific Basin", 9 *Arb. Int'l* (1993), pag.131; See Taylor and M. Pryles, "The Cultures of Dispute Resolution in Asia", in *Dispute Resolution in Asia* (ed., M. Pryles) Kluwer Law International, The Hague (1997), pages 1-24.

¹⁰ <http://www.aseansec.org>; Low Sui Pheng, "The Influence of Chinese Philosophies on Mediation and Conciliation in the Far East", 62 *Arbitration* (no.1, February 1996), page 16.

¹¹ M. Scott Donahey, "The Asian Concept of Conciliator/Arbitrator: Is it Translatable to the Western World ?", 10 *ICSID Review* (no.1 of 1995), pages 121-128.

¹² Conciliation Rules; Anthony Connerty, "A Foreign Arbitration Held in China", 65 *Arbitration* (no. 3, August 1999), page 203. Also see British Columbia International Commercial Arbitration Act, B.C. Rev. Stat. (1986), chapter 14, section 30(1)

¹³ M. Scott Donahey quoted work, page 121.

¹⁴ China International Economic and Trade Arbitration Commission (CIETAC).

¹⁵ Paglee, Charles D., *Institute for Transnational Arbitration's News and Notes, China Consolidates Arbitration Law, Amends CIETAC Rules and Joins I.C.C.*, January 1995, Southern Methodist University (USA), School of Law, page 1.

¹⁶ Clifford Chance Newsletter, *Domestic Arbitration in China*, December 1996, Vol. C16, page 1.

China, any issue subject to arbitration will be strictly limited to the terms of the arbitration convention, as the arbitration institution does not have the competence to solve aspects which are not mentioned in the arbitration convention¹⁷.

In Romania, the Law of Calimach came into force in 1817, in Moldavia and it enforced for the first time the modality to solve the disputes which occurred during the closing of an arbitration contract, thus eliminating the difficult and long procedure of the courts at that time.

Today, the arbitration, generally speaking, and the institutional arbitration especially, have been widely used to solve the commercial litigations and the *foreign trade* litigations¹⁸. Certain permanent arbitration institutions¹⁹ and even the international organizations adopted their own procedural rules and regulations²⁰.

Being supported by proofs, verified by practice, doctrine, in the contemporary economic and social context and its international, cross border dimension, the arbitration becomes again a performant, modern institution. On the contrary, in comparison with the difficult and slow mechanism, with the tradition and rigidity which seem to be in accordance with the obsolete aspect of the legal principles, specific to the courts, the arbitration has a different rhythm in lawsuits, according the rhythm of the commercial life.

The countless questions arising nowadays in the judicial literature regarding the state justice, may also have some responses, according to the global status of arbitration, in the contemporary, economic and social legal context, the state justice being even more overloaded, more difficult and more time-consuming.

A fact is certain: the arbitration institution has rapidly developed. It has developed along with the international economic development and changes, so that it currently established a suitable legal framework and one can find it, with no exception, in all the legal systems compatible with the principles of free economy and international cooperation.

Furthermore, its cross-border dimensions has established nowadays the order of priorities: it is first of all, a significant international institution, which developed in accordance with the international legal system so that its acquisition or assimilation by its own legal system become an inherent condition for the participants in the world trade.

¹⁷ Article 17 (1) of the Arbitration Law and Article 260 (1) of the Law of Civil Procedure.

¹⁸ For further details regarding the arbitration, see: V. Roș, *Arbitrajul comercial internațional*, the Official Journal Publishing House, Bucharest, 2000, p. 25 and the next; I. Leș, *Tratat de drept procesual civil*, All Beck Publishing House, Bucharest, 2001, p. 675; I. Deleanu, S. Deleanu, *Arbitrajul intern și internațional*, Rosetti Publishing House, Bucharest, 2005, p. 9 and the next; Fl. Măgureanu, G. Măgureanu, *Drept procesual civil. Curs pentru masterat. Dreptul afacerilor*, 2nd edition, Universul Juridic Publishing House, Bucharest, 2009, p. 86 and the next.

¹⁹ The International Chamber of Commerce (ICC), was set up in 1923, on the basis of the French legislation in 1901 and it is the only arbitration institution and strictly performs in the area of the international litigations, having an adequate organizational and procedural structure.

²⁰ For instance, the Arbitration Regulation of the United States Nations Commission for the commercial law – UNCITRAL. Also see O. Căpățînă, *Aplicarea în România a Legii - model și a regulamentului de arbitraj al UNCITRAL*, in the Commercial Law Magazine no. 7-8/1996, p. 6 and the next.

Speaking about the tendencies in the development of the commercial arbitration means that we have previously accepted the idea that we witness its evolution and this is an unquestionable truth.

The international political development in the last decade has brought favorable perspectives to consolidate the position and role of the arbitration in the international legal field. The fundamental characteristics of the arbitration institution are in accordance with those of the commercial law and most of the times turn into advantages, on the one hand, and the existence of an unitary law is well-represented in this matter, on the other hand. Arbitration and especially the international arbitration meets better the requirements for the harmonization of the commercial jurisdiction and the two factors - subjective and objective, justify the privileged status of this institution in comparison with the state justice, especially in the commercial field and not only.

The new contemporary period of the domestic commercial arbitration began in 1990 when the Decree - Law no. 139/1990 was passed, regarding the chambers of commerce and industry in Romania²¹. The normative act, which was considered very liberal, offered the possibility of organizing the ad-hoc arbitration, as an expertise service offered to traders.

According to the provisions in art. 11 of the mentioned normative act, the Chamber of Commerce and Industry of Romania was appointed to organize on request the ad-hoc arbitration²² and according to art. 13, it was set up, near the Chamber of Commerce, the International Commercial Court of Arbitration, as a permanent arbitration institution.

Despite the contents of the texts in the mentioned law is not detailed, this law provided in Romania the legal way of accessing the arbitration, updating it, after a period of more than four decades.

According to Law no. 15/1990²³ regarding the reorganization of the state economic units as autonomous units and commercial companies, it is regulated the right of the new legal entities to appeal to arbitration, art. 51 providing in paragraph (1) that „Each litigation in which autonomous units are involved or commercial companies with a state capital shall be under the competence of the common law courts”, and in the paragraph (2) “In order to solve the litigations between the autonomous units and commercial companies they may also appeal to arbitration”.

Consequently, within the new created context, where the Romanian legislator was dealing with the provision of an adequate general legal framework, of a new economic order, Romania’s arbitration institutions also subscribed to the series of institutions which benefited from legal priority recognition.

²¹ Published in the Official Gazette, Part I no. 65 of 12th May 1990. Decree Law no. 139-1990 was abrogated by Law no. 335/2007, published in the Official Gazette, Part I no. 836 of 06th December 2007, modified by Law no. 39/2011, published in the Official Gazette, Part I no. 224 of 31st March 2011.

²² Among the attributions established by the Chamber of Commerce and Industry of Romania and the territorial Chambers of commerce and industry performed, they provided the liability at art. 5 letter j “shall organize, on demand, the ad-hoc arbitration”.

²³ Published in the Official Journal, Part I no. 98 of 08th August 1990. The law was modified, including by the Government’s Emergency Ordinance no. 58/2007, published in the Official Gazette, Part I no. 439 of 28th June 2007.

The mentioned provisions came into force in 1993, after the consistent modification of Book 4th, the arbitration procedural rules of the arbitration institutions established by the chambers of commerce, being drawn up according to the new regulations in the Code of Civil Procedure.

The mentioned organic law had as a perspective the traditional ad-hoc arbitration, although it was organized by the Chamber of Commerce and Industry of Romania and it is obvious that it was an institutional arbitration.

As a matter of fact, we also consider that there is an apparent discordance between the provisions of the organic law and the actual state confirmed by all the territorial arbitration commissions, well-known authors consider that the term ad-hoc arbitration used by the normative act strictly refers to the modality of establishing an arbitration court and not to the proper form of arbitration which is institutional. Thus, the resulted arbitration is administered or organized, whereas the arbitration court shall always be an ad-hoc arbitration, settling a certain litigation and having the same period of time.²⁴ Furthermore, the term was meant to show the private characteristic of the arbitration, as opposed to the binding one, which is more familiar to most people, when the the law was passed²⁵.

New arbitration institutions were set up by domestic normative acts, which enact the arbitration as a trial or judging alternative for certain determined fields, delimited either according the qualification of the involved subjects, or according to the object of litigations.

Thus, in the first category we mention the Arbitration Court UCCECOM, established by the Council of UCCECOM no. 1/1991 and no. 9/1992, for solving both the commercial litigations between the organizations of the craftsmen's cooperative, and between these organizations and their cooperating members, according to the arbitration convention between the parties. Its regulation has many similarities with the one of the Bucharest Arbitration Court²⁶.

In the second category we enumerated the institutions, according to the specialization of the litigious object: the Arbitration Chamber of the Bucharest Stock Exchange Market and the Arbitration Chamber of the RASDAQ Market, established according the provisions in art. 77 of the Law no. 52/1994 regarding the securities and the stock exchange, as well as in the Regulation no. 6/1998 regarding the organization and operation of the self-regulating body for the markets regulated by securities, whose Regulation was passed in 1999; the Central Arbitration Commission, organized by the de National House of Health Assurance and the Doctors' College in Romania according to art. 85-87 of Law no. 145/1997; the arbitration commission set up on according to art. 32 align. (1) of the Law no. 168 of 1999²⁷ to solve the conflicts of

²⁴ Fl. Măgureanu, G. Măgureanu, *Drept procesual civil. Curs pentru masterat. Dreptul afacerilor*, 2nd edition, Universul Juridic Publishing House, Bucharest, 2010, page 60 and the next.

²⁵ I. Băcanu, *Organizarea arbitrajului „ad-hoc” de către Camerele de Comerț și Industrie din România*, the Commercial Magazine, Law no. 3/1991.

²⁶ V. Roș, *Arbitrajul comercial internațional*, the Official Gazette Publishing House, Bucharest. 2000, page 18 and the next.

²⁷ The Law regarding labor conflict solving was published in the Official Gazette, Part 1, no. 582 of 29th November 1999. The Law was modified, including by Law no. 62/2011 on the social dialogue, published in the Official Gazette, Part I no. 322 of 10th May 2011.

interest, which establish the labor conditions when the collective labor contracts are negotiated”.

Law no. 62/2011 on the social dialogue²⁸, provided in art. 27 that „in order to reach the goal according to which they are established, the trade unions are entitled to use specific means, such as: negotiations, procedures of solving the litigations by conciliation, mediation, arbitration, petition, strike picket, march, meeting and riot or strike, under the terms provided by the law”.

The Law dedicated an entire chapter, respectively chapter VI to the mediation and the arbitration procedure for the promotion of amiable and reasonable solutions to the collective labor disputes, by establishing the Office for Mediation and Arbitration of the Collective Labor Disputes, which is under the supervision of the Ministry of Labor, Family and Social Security. The members of this Office shall establish the body of mediators and the body of arbiters for the collective labor disputes.

Other normative acts, according to provisions as a rule, limit themselves to regulating the arbitration as a trial or judging alternative, without an additional expressed provision or, by simply making a reference to the common law provisions in the field. For instance, the methodological norms regarding the legal framework for organizing auctions, presenting offers, adjudicating, contracting and payment for buildings, which were passed according to Order no. 784/34N/1998 by the Ministry of Finance and the Ministry of Public Works and Territory Organization²⁹, provide that the litigations on contracts between corporate bodies may also be solved by arbitration, if the parties agree it, the arbiters being chosen according to the parties' consent.

Also, Law no. 8/1996 regarding the copyright and the related rights³⁰, in article 122, provided that, if a contract for wire re-broadcasting is to be concluded, it may not be settled by the parties, they must appeal to arbiters, appointed according to the provisions in the Code of Civil Procedure.

As far as we are concerned, we consider that such provisions are incompatible with the idea of solving litigations within an arbitration center, of an arbitral institution with non-specialized competences, which are not limited to a certain commercial field or to certain qualified persons, for instance the arbitration commissions, which are under the supervision of the territorial chambers of commerce and industry or the International Arbitration Court of Bucharest, having competences in the domestic or international commercial arbitration.

The organization of arbitration centers with general competences, in each arbitrary field, was done by the Chamber of Commerce and Industry, as it is stated in the text of the art. 340, without granting any circumstances to the object of litigation, be it civil or commercial, corresponds to the attributions, goals and objectives of the Chambers of Commerce and Industry.

We consider the harmonized and unitary practice of the territorial commissions is fair, as well as the activity of the Bucharest Arbitration Court, so as to enhance its material competences in the field of commercial litigations, without granting any circumstances determined by certain commercial fields. The aspect

²⁸ Published in the Official Gazette, Part I no. 322 of 10th May 2011.

²⁹ Published in the Official Gazette, Part I, no. 230 and 230 bis and modified by Order no. 553/1999, published in the Official Gazette, Part I no. 267 of 10th June 1999.

³⁰ Published in the Official Gazette, Part I, no. 60 of 26th March 1996.

justifies the statement that while they have general commercial competences, other arbitration institutions, for instance, the two Arbitral Chambers of the Bucharest Stock Exchange Market and, respectively, the RASDAQ Market have specialized competences. The art. 77 of the Law no. 52/1994³¹ as well as the article.34 paragraph (4) of the Regulation no. 6/1998, it is not established their exclusivity in solving the litigations in the regulated field, “they can only be analyzed in order to be solved” by one of the two Arbitration Chambers and this aspect does not eliminate the possibility of the parties to choose another jurisdictional alternative. Subsequently, the Law no. 52/1994 was abrogated it was replaced by several normative acts, including the Law no. 297/2004 regarding the capital market³², in art. 134, paragraph (6) providing that „The market operator may establish an arbitration system for solving the disputes between the providers and/or the issuers whose financial instruments are admitted for dealing on the markets administered by the respective operator”.

Also in these cases, in comparison with the regulations regarding the arbitration commissions, which are under the supervision of the Chamber of Commerce and Industry, we consider there is no obstacle for the subjects that have the litigation within the competence field of one of the respective arbitration chambers to choose, however, in favor of the commission, which is under the supervision of a territorial chamber or even opt for the International Arbitration Court of Bucharest. The securities transactions belonging to the category of related commercial facts do not exceed the material competence of these arbitration centers. The solution is in total accordance with the parties’ autonomy of consent, specific to arbitration in general, with its voluntary aspect, which a specialized institution cannot ignore or limit. It cannot operate according to other principles than the ones specific to the jurisdictional field to which it belongs. Otherwise, if the arbitration represented an obligatory jurisdictional modality in the analyzed field, the necessity for an arbitral convention would be eliminated, after an agreement is reached by the parties involved in the dispute, to whom the passed Regulation dedicates an entire chapter (Chapter 2).

The statement is also valid for the litigations within the competence area of the Arbitration Court, which is under the supervision of UCCECOM, respectively for the litigations between the organizations of the craftsmen cooperative and those between them and their cooperating members; also, according to its own regulation, “they belong entirely“ to the institution appointed to solve them. The judicial literature interpreted the strictness of the text „not in the sense that the private arbitration regarding the cooperating relations would be the monopoly of the Court, but in the sense that, within UCCECOM, there is only one permanent arbitration institution – the Court to which the parties may appeal only if they concluded an arbitral convention, including a reference to this Court.³³ The interpretation is in the spirit of the large autonomy of agreement which mainly characterize the arbitration institution.

³¹ Published in the Official Gazette, Part I no. 210 of 11/08/1994.

³² Law no. 297/2004 regarding the capital market was published in the Official Gazette, Part I no. 571 of 29th June 2004. The Law was modified, including by Law no. 97/2006, published in the Official Gazette, Part I no. 375 of 02nd May 2006.

³³ Ion Băcanu, Arbitrajul ad-hoc și arbitrajul instituțional în legislația română actuală, „Dreptul” no. 9/1993, page 14.

It is unquestionable the preference for the organized, institutional arbitration forms. Among these, today, in Romania, the commercial arbitration commissions which are under the supervision of the chamber of commerce and industry and obviously the Bucharest Arbitration Court have had a more fruitful activity. In time, their establishment foregoes the establishment of other permanent structures, this aspect being only one of the reasons. It is also significant the material competence, which is much more generous in this case and, we consider it a subjective factor, and the much greater transparency of the institutions, according to which they operate in the commercial area, being however far from their actual potential; this way our main goal is to persuade traders that this procedure is very useful and advantageous.

Regarding the tendency of the arbitration for the institutional arbitration, the traditional modality of organizing the arbitration - the ad-hoc form - has presently become outdated; it has started to irreversibly go down.

In the relatively recent regulations, one can notice its legal aspect in different legal texts. For instance, article 78, paragraph (1) of the Law no. 52/1994 regarding the securities and the stock exchange, mentioned previously, stipulated that "The parties may appeal to the ad-hoc arbitration, the arbitration convention must comprise, under the sanction of nullity, provisions regarding the constitution of the court and the arbitration procedure" and in paragraph. (3) "the provisions of Book 4th in the Code of Civil Procedure are enforced both in the arbitration organized by the Arbitration Chamber and by the ad-hoc arbitration". According to Law no. 297/2004 on the capital market, mentioned previously, it is no longer made reference to the ad-hoc arbitration, article 134 paragraph 6 stipulating that "the arbitration for solving the disputes between the providers and/or issuers...." and we believe such an approach refers, first of all, to the institutional arbitration.

As a matter of fact, the orientation noticed at the national level corresponds and subscribes to the international one, which started a few decades ago and is still a well-known phenomenon, which reduced arbitration to its starting form, the ad-hoc arbitration, "having the role of a poor relative"³⁴ of the institutional arbitration.

Their comparative analysis constantly offered the source of logical argument to the writers, concerning the decline of the former type of arbitration and the evolution and proliferation of the latter type of arbitration. Statements as "using pre-established procedural rules, which enable the interested persons to acquire them in time" or "the possibility of using simplified arbitration conventions, using the services of qualified staff", outline the advantages of the institutional arbitration and as a result, justify the participants' predilection to use it in the commercial operations and procedures. Besides this, there is also the parties' greater confidence in the operation of an institution, in a centre with a permanent judicial practice and a consistent professional exercise.

This tendency in the development of arbitration is quite surprising, even in Book 4th of the New Code of Civil Procedure, it is mentioned the institutional arbitration in several articles although it was consistently seen as a legal framework for the ad-hoc arbitration.

³⁴ Ibidem, page 4.

It is true that the institutionalized arbitration simplifies substantially the role of the parties and eliminates to a great extent the obstacles in solving and finalizing the case, so that, it could apply, indirectly, to this alternative in comparison with the ad-hoc arbitration, the chances for the latter form depending on the collaboration between the parties.

The verdicts of the institutional arbitration are more credible, both to the parties and to the summoned courts to which petitions are sent in order to be acknowledged and solved.

Regarding the field of international commercial arbitration, it gets involved in solving the disputes between the parties from different countries and in many cases, the parties come from different cultures.

The international arbitration developed after the enforcement of the New York Convention in 1958. Until two decades ago, the international arbitration was much more used in the countries based on a civil law system and it was less accepted in the United States after the ratification of the Convention in 1970.³⁵

The emerging development of investments and commerce triggered the spectacular development of the international commercial transactions. The use of arbitration turned out to be an efficient alternative for solving the litigations in foreign arbitration courts. The American Arbitration Association meets the high standards, offering high quality arbitration services, outlined in the provisions of the International Centre for Conflict Solving.

Concerning the Arabic Countries, not all of them have similar regulations, some of them do not have separate regulations in the arbitration procedure, such as: Syria (Chapter 4, Articles 506-534 in the Code of Civil Procedure), Lebanon (Volume 2, Chapter 1, Articles 762-821 in the Code of Civil Procedure), the United Arab Emirates (Chapter 4, Articles 203-218 in the Code of Civil Procedure), Qatar (Chapter 13 of the Law of Civil and Commercial Pleadings, Articles 190-210), others such as: Egypt (Law no. 27/1994), Jordanian (Law no. 31/2001), Oman (Sultan's Decree no. 47/1997) and Palestine (Law no. 3/2000), have special laws for this procedure. However, all have similar provisions to the ones provided by the Law Model Uncitral, passed in 1985.

In conclusion, we can say that the constant tendencies at national level are similar to the international current orientations in the matter of arbitration. The national phenomenon cannot be withdrawn and analyzed separately from the general one.

The first ordinary aspect represents the tendency towards the institutionalization of the international commercial arbitration. Today, the number of arbitration centers, either with material competences or general territorial competences or limited to certain fields or geographical areas, is very large. Many countries passed new laws for the arbitration procedure and modified the current ones according to the provisions of the Law Model UNCITRAL, which was passed in 1985, contributing significantly to the harmonization of the regulations in this field, favoring the transnational flow of the arbitration sentences. The flow of modifications and the passing of new national laws for this field is impressive and relevant. Thus, the

³⁵Javier H. Rubinstein, Reflection at the crossroads of the Common Law and Civil Law Traditions, Chicago Journal of International Law, vol. 5.1,2004 - n.tr.

following countries benefited from new regulations: Algeria, in 1993, Egypt in 1994, Italy in 1994, Russia in 1993, Ukraine in 1994, Kazakhstan in 1993, Sweden in 1996, Germany in 1998, etc.

The tendency of the arbitration autonomy has led to a new orientation at international level, which is currently supported both theoretically and practically, and it was identified by the doctrine through the concepts of “de-nationalization” and “de-localization”.

Furthermore, we share the same certainty as the one expressed in the judicial literature, which mentions that the arbitration, according to the parties’ consent “must be deprived of the national regulations”. The studies in this field considered that the most important step towards de-localization was taken by the Law Model UNCITRAL in 1985 which, in the spirit of an almost complete autonomy of the parties, gives them the possibility to freely decide and select the procedures, the applicable rules, the arbitration venue, terms, language used during the arbitration. Unless there is an agreement between the parties, the Law entitles the arbitration court to establish its own rules.

Obviously, the national and the international arbitration will develop, provided that the contribution of the judicial literature and the judicial practice lead to a better awareness of the numerous advantages it has in comparison with the civil law procedure, some of these advantages being outlined by us in this paper.

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