

## ANNULMENT OF THE ARBITRATION AWARD

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**ABSTRACT:** *The action for annulment appears to be the unique means of appealing that can be exercised against the arbitration award, similar in content and effects to the recourse against judgments, though being not a devolutive appeal. As the legal nature of this means of appeal is concerned, it is determined by the conclusive feature of the arbitration award which is not likely to be appealed and may be put into force. Since in the common law procedure, such a decision can be challenged only by recourse, the action for annulment is a means of appeal having similar characteristics to the recourse, though with some peculiarities arising from the reasons which may be invoked in support thereof and, with the entire regulatory similarity they are not identical to the cases of annulment in the matter of recourse. This study aims to analyze the reasons for which the action for annulment of the arbitration award may be exercised in the Romanian law in the light of doctrine and jurisprudence.*

**KEYWORDS:** *arbitration award, action for annulment, arbitral tribunal, procedure, means of appealing.*

**JEL CODE:** *K 49*

The rules of arbitration procedure of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania from 2014 provide in the Article 75 that the arbitration award may be canceled only by action for annulment on the grounds provided by the Code of Civil Procedure.

The grounds of the action for annulment are characterized by a great diversity, aiming to penalize non-compliance with the rules established by the arbitration agreement of the fundamental principles or imperative rules (Macovei, 2009). These are reflected in the contents of the Article 608 of the Romanian Code of Civil Procedure of 2010, republished, and correspond to the grounds stated by the UNCITRAL Model Law, Article 34, being even more numerous and formulated in a more synthetic way.

### **1. THE LAWSUIT WAS NOT SUSCEPTIBLE TO SETTLEMENT BY ARBITRATION:**

Non-arbitrability as a ground for annulment of the arbitration award is mentioned in the Article 608, para. 1, letter a) of the Code of Civil Procedure of 2010, republished.

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Article 542, paragraph 1 of the Romanian Code of Civil Procedure of 2010, republished, sets out a number of disputes that cannot be resolved by arbitration: those concerning marital status, individuals' capacity<sup>1</sup>, inheritance division, family relationships and rights to which the parties cannot order.

By analyzing these legal provisions we conclude that the disputes considered to involve interests of public order can not be subject to arbitration, disputes such as those involving public legal persons; criminal litigation; contentious administrative disputes; litigation covering administrative jurisdictional liability; disputes in the field of taxation; disputes in matters of agricultural real estate<sup>2</sup>; disputes concerning the privatization<sup>3</sup>, disputes over some tradable goods withdrawn from the civil circuit, labor disputes (Căpățână & Cozmanciuc, 1997), claims for injunctive relief<sup>4</sup>.

With respect to litigation of commercial companies, such as those relating to operations concerning goodwill, litigation covering the nullity of the company, the actions that challenge the decisions of the general meetings<sup>5</sup>, of shareholders, the oppositions of the social creditors or of other persons etc., these usually fall on within the jurisdiction of the courts<sup>6</sup>. There is also a category of litigation in this area which may be subject to arbitration, respectively those on corporate rights which the parties may decide upon by concluding a transaction.

It was argued that disputes regarding intellectual property rights are the exclusive jurisdiction of the courts as the regulation of these rights is of real interest for the public order given their feature of absolute rights (Căbuz-Băgnaru , 2010). In terms of repairing damage derived from the disregard of an intellectual property right, the holder may resort also to arbitration (Deleanu & Deleanu , 2005).

In what concerns Competition Law, Article 20, paragraph 6 of Law no. 21/1996<sup>7</sup> on competition provides that the judgments ruled by the Competition Council, in a plenary hearing, are signed by the President, on behalf of the Competition Council and may be challenged within 30 days from the publication or, where appropriate, from the communication, within the procedure of contentious administrative at the Court of Appeal of Bucharest. Therefore, the legal text excludes the jurisdiction of an arbitral tribunal. In case the unfair competition facts cause property or moral damage, we consider that there is no impediment for such a dispute to be settled by arbitration.

Prior to the entry into force of the Code of Civil Procedure of 2010, republished, the doctrine ( Prescure & Crișan, 2010) considered the possibility for an arbitral tribunal to settle an issue request for demand for payment in accordance with the provisions of G.O.

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<sup>1</sup> See Article 34 and Article 37 in the Civil Code of 2009, republished in 2011.

<sup>2</sup> Law no. 18/1991 of the Agricultural Real Estate, republished in the Official Gazette, Part I, no. 1 of 5 January 1995, establishes a procedure incompatible with the settlement of any disputes by means of arbitration.

<sup>3</sup> See Article 40, para. 1 of Law no. 137/2002 on certain measures for accelerating privatization, published in the Official Gazette, Part I, no. 215 of 28 March 2002.

<sup>4</sup> See the Judgement of the Court of Appeal Bucharest, Section VI - commercial, no. 165 of 2006, in *Revista Română de Drept al Afacerilor*, 2008, no. 2, p. 129.

<sup>5</sup> See Decision no. 153 of 18 January 2011 of the High Court of Cassation and Justice, Commercial Section, in *Revista Română de Dreptul Afacerilor*, 2011, no. 2, p. 118.

<sup>6</sup> See Law no. 31 of 1990, republished in the Official Gazette, Part I, no. 1066 of 17 November 2004.

<sup>7</sup> Republished in the Official Gazette, Part I, no. 742 of 16 August 2005.

no. 5 of 2001<sup>8</sup>, respectively of a request for issuance of the order for payment according to E.O. no. 119 from 2007<sup>9</sup>, concluding that they are not to be judged in the light of national and European provisions currently in force. Thus, applying the specific rules specific to the demand for payment in the field of arbitration would inevitably lead to results such as: either the abusive suppression of the request for annulment which is specific to this procedure and its replacement with an action for annulment of the arbitration award or the suppression of the action for annulment of the arbitration award and its replacement with the application for annulment, but for specific reasons of arbitration or the combination, completely original, unique and anachronistic of the two specific means of appealing and essentially incompatible<sup>10</sup>. We believe that all these considerations are valid in regard to the demand for payment procedure, regulated by Title IX of the Code of Civil Procedure of 2010, republished.

The jurisprudence of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania has also stressed that, in the matters of challenge on enforcement the jurisdiction of the courts is exclusive, disputes on challenge on enforcement are likely to be susceptible of arbitration, so that an arbitration clause which would provide such a power is characterized as absolute nullity<sup>11</sup>.

There are provisions that expressly prohibit transactions or the compromise in some areas in various national laws.

Thus, French law prohibited the conclusion of agreements on arbitration, of disputes concerning the status and capacity of persons, those relating to divorce and separation from the body, as well as in disputes of interest for corporate and public settlements, respectively those that are of great interest for the public order (Mihnea, 2000).

Article 806 of the Italian Code of Civil Procedure provides that the parties can resolve by arbitration all matters except those relating to personal status and separation of body and other disputes that can not be the subject of a transaction (Piotr & Andrej, 2009).

The Polish Civil Procedure Code provides in the content of Article 1157 that may be settled by arbitration disputes involving property and non-property rights or tradable, except cases of alimony.

The law on arbitration of Slovenia provides that disputes to be arbitrated are the property disputes and any other disputes if the parties conclude so (Puharic, 2009). According to Article 4, paragraph 2 of the same normative act, any individual or legal person, including the Republic of Slovenia or any other entity of public law may conclude an arbitration agreement.

In Russia, the Code of Arbitration Procedure determines the categories of disputes which are in the exclusive jurisdiction of the courts. It is made reference to: the disputes

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<sup>8</sup> Published in the Official Gazette of Romania, Part I, no. 422 of 30 July 2001, amended by Law no. 295 of 2002, G.E.O. no. 142 of 2002 and Law no. 195 of 2004, abrogated by the Code of civil procedure of 2010, republished on 15 February 2013.

<sup>9</sup> Published in the Official Gazette of Romania, Part I, no. 738 of 31 October 2007, abrogated by the Code of Civil Procedure of 2010, republished on 15 February 2013.

<sup>10</sup> See the Arbitration award of the Court of International Commercial Arbitration of 10 February 2011, with note by Ion Deleanu, in *Pandectele Române*, 2011, no. 2, p. 232.

<sup>11</sup> See the arbitration award no. 74 of 30 March 2010 of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania, with note by Ștefan Scurtu, in *Pandectele Române*, 2011, no. 7, p. 237.

arising from administrative relations, in the exercise of the right of ownership or other real rights on the immovable property situated or registered in the land register in the Russian Federation, disputes arising out of the invalidation of putting into possession in the Russian Federation, disputes arising from the procedures of bankruptcy or other disputes listed in the Code of Arbitration or other laws (Marina, 2009).

The Civil Procedure Code of the Republic of Moldova from 2000 does not allow the settlement by arbitration of labor disputes, family, contentious administrative, declaration of insolvency, temporary cessation of validity and revocation of licenses that target business activity as well as those that are examined in the order of special procedure (Cojuhari, 2009).

In accordance with Article 582, subsection 2 of the Austrian Code of Civil Procedure, family law disputes can not be subject to arbitration neither the litigation between tenants of residential areas which are wholly or partly governed by Austrian law relating to owners or tenants, nor the law on condominiums or non-profit associations (Aschauer, 2007).

In the Belgian law disputes that can not be resolved by arbitration are the disputes arising from contracts of employment, insurance and exclusive sales agreements (Mihnea, 2000).

The Brazilian law on arbitration no. 9307 of 23 September 1996 provides in Article 1 that people have the capacity to contract may submit to arbitration their disputes regarding property rights on which they may order.

In the Chinese law, disputes arising from contracts and other disputes relating to property rights and interests between citizens, legal persons and other organizations being on equal footing may be subject to arbitration, as provided by Article 2 of the Law on arbitration.

In Switzerland, Article 5 of the Convention on International Arbitration of 1969 provides that arbitration may resolve disputes concerning rights on which the parties may order, unless they are of the state courts' jurisdiction, on the basis of mandatory legal provisions.

The decision of the national legislature to reserve certain disputes for the state courts is usually closely linked to public order, a concept which is difficult to confine (Deleanu & Deleanu, 2005).

It was argued (Bortolotti, 2008) that many of the national legal provisions intend to exclude from the incidence of arbitration some disputes in order to protect the party considered "weaker" (*ie* distributors, sales agents) from the suppliers or managers of foreign companies.

The international case law also faced the problem of analyzing the issue of arbitrability in different cases.

In the case of *Hi-Fert Pty Ltd and Cargill Fertilizer Inc vs Western Bulk Carriers and Maritime Carriers (Australia) Ltd*, the Federal Court of Wales held that a claim invoking the breach of trade practices may be subject to arbitration (Bortolotti, 2008).

Intellectual Property Disputes shall be deemed to be of the national courts' jurisdiction. However, the tendency is to consider as being subject to arbitration the matters relating to intellectual property rights agreements, except where they relate to the very existence or validity of such a right (Bortolotti, 2008).

Although, initially, the unfair competition disputes were considered as non-arbitrable, anyway later more cases were solved in this way<sup>12</sup>.

Differences in consumer rights matters were considered non-arbitrable, if the arbitration agreement was concluded before the birth of the conflict (Moses, 2008). It was considered that a consumer can not make a decision fully aware on the choice of arbitration until after the outbreak of the dispute.

It seems that only in the United States arbitration agreements are recognized as valid in this field regardless of the time of their conclusion, with the consequent substantial reduction of cases brought for solving to the courts<sup>13</sup>.

The Court of Cassation of France ordered the cancellation of a compromissory clause inserted in a contract of international carriage, stating that it is possible to resort to arbitration, but only after the dissolution of such a contract, when the rights deriving from it become available (Jaquet & Delebeque, 2007).

Since the matter of arbitrability is a delicate issue, depending in most cases on the provisions of national laws, it is preferable that the parties verify whether or not that dispute is arbitrable before concluding the arbitration agreement.

In case the dispute is non-arbitrable, the notification of the arbitral tribunal will be void, therefore the arbitration agreement can not eliminate the jurisdiction of national courts and any judgment on such a dispute shall not be recognized and enforced<sup>14</sup>. In case law, it was found that in a few cases the recognition and enforcement of a foreign arbitration award was refused on the ground that the dispute was not susceptible of settlement by arbitration (Băcanu, 2005).

## **2. THE ARBITRAL TRIBUNAL RESOLVED THE DISPUTE WITHOUT AN ARBITRATION AGREEMENT OR UNDER A VOID OR NON-OPERATIVE AGREEMENT:**

The lack, invalidity or non-operability of the arbitration agreement is regulated as a ground for cancellation of the arbitral award in Article 608, paragraph 1 letter b) of the Code of Civil Procedure of 2010, republished.

Since the arbitration agreement concluded by the parties is the foundation of any arbitration, a valid arbitration (Roş, 2000) can not exist in its absence.

The arbitration agreement can be expressed in the form of a compromissory clause or under the form of compromise.

The compromissory clause is mainly expressed by the consent of the parties regarding a main contract by a stipulation inserted in the contents of the contract or by a separate document (Roş, 2000) to subject the disputes that will arise on their contractual relations to a particular arbitration. Typically, the compromissory clause is only a preparatory act, prior to the birth of any dispute.

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<sup>12</sup> For instance *Mitsubishi Motors v. Soler Chrysler-Plymouth* 473 US 614 (1985), *Eco Swiss China Time Ltd. v. Benetton International N. V.* File C-126/97 (1999)

<sup>13</sup> *Idem*, p. 217.

<sup>14</sup> See Article 2, section 1 and Article 5, section 2, letter a) of the Convention in New York on the recognition and enforcement of the foreign arbitral awards 1958.

The arbitration clause draws binding effects on the parties in the sense that once the contract was signed containing such a clause, they are obliged to comply with the judgment to be issued by the body with the designated jurisdiction (Costin & Deleanu, 1997). By this clause, the jurisdiction of the courts is removed by conferring the arbitrators powers on the resolving of disputes between the contracting parties and by allowing the organization of a procedure that would lead to a judgment that can be enforced.

If the parties do not appoint arbitrators in the clause, it shall neither have the compromissory clause value nor the compromise value (Tudor R. Popescu, 1983). Therefore, the parties will necessarily have to conclude a new agreement between them, called “compromise”, stating therein the specific dispute which is the subject of arbitration and arbitrators’ name.

Basically, such a contractual stipulation obliges parties to conclude a compromise in the event of a dispute arisen between them related to the contract.

The compromissory clause must be written in such a way that it leaves no doubt regarding the will of the contracting parties to submit to arbitration any disputes that may arise between them concerning the execution of the contractual obligations. In case law, the dissolution of the arbitration award was ordered for this reason, stating that the compromissory clause is not valid in cases where the parties have stipulated that any disputes between the parties shall be settled amicably, and if unresolved they will appeal to courts or to arbitration<sup>15</sup>.

The existence and the content of the compromissory clause may be proved by any means of proof, unless the applicable law in accordance with the conflict rules of private international law provides otherwise (Costin & Deleanu, 1997)<sup>16</sup>.

Being linked to the existence of a contract, the compromissory clause naturally lasts as long as the contract is in force (Tudor R. Popescu, 1983). Also, the assignment of the contract involves also the assignment of the compromissory clause in the same manner and with compliance with the same formal requirements, except in cases where the compromissory clause was concluded *intuitu personae* (Costin & Deleanu, 1997). Therefore, the arbitration clause is an incidental part of the main contract in which it is included (Beligrădeanu, 2001).

Although it is contained in a contract, the compromissory clause is in its turn a complete contract with its own physiognomy and a specific object.

The second form of the arbitration agreement is compromise. This is the act whereby the parties agree that the dispute arising between them shall not be subject to the ordinary jurisdiction, but to an arbitration institution, specifying the conditions under which the designated arbitration will rule (Tudor R. Popescu, 1983).

The doctrine laid down the conditions to be met for the existence of a compromise:

The first condition has in view the fact that the compromise must refer to an existing dispute.

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<sup>15</sup> See Commercial Judgement no. 35 of 17 March 2009 of the Court of Appeal Bucharest, Section V Commercial, published Tudor Chiuariu, Roxana Giurea, *Arbitrajul intern și internațional. Reglementare. Doctrină. Practică arbitrală și judiciară*, Universul Juridic Publishing House, Bucharest, 2012, p. 114.

<sup>16</sup> Judgment C.A.B. no. 6 of 13 January 1981, published in extract by Dumitru Mazilu and Daniel-Mihail Șandru, *op.cit.*, p. 228.

Therefore, the dispute must be actual and to be entered as such in the act of compromise. If the parties referred to a dispute that was not born yet then we would face a compromissory clause, not a compromise.

The existence of the dispute is of the nature of the agreement to be compromised, its absence is practically equivalent to the absence of the subject of the contract leading to the nullity of the act of compromise and of the sentence that would be given in these circumstances (Tudor R. Popescu, 1983).

The jurisdiction of the arbitrators regarding applications to intervene is the same as for the main applications. As for the additional applications, they are not taken into account only to the extent that its subject is contained in the act of compromise or it constitutes an indispensable accessory of the main application, such as for example, the interest (Tudor R. Popescu, 1983).

Referring to the counterclaim, it may appear in the compromise as one of its objects. To the extent it is not provided in the act of compromise, the counterclaim may be received by arbitrators only if it is presented as a defense against the main application (Costin & Deleanu, 1997).

The second prerequisite for the validity of the act of compromise is for the will of the parties to submit the dispute to arbitration to be expressed (Mazilu, 2011), so that it will demonstrate unambiguously that arbitrators are vested with the power to judge (Tudor R. Popescu, 1983).

In the contents of the act of compromise, the parties shall appoint the arbitrator or the arbitrators that shall rule on their dispute by specifying the name or in any other manner likely to create certainty regarding the identity of the person appointed.

The lack of designated arbitrators in the contents of the act of compromise<sup>17</sup> is sanctioned by nullity, nullity which can be covered if the parties subsequently fill it in (Costin & Deleanu, 1997).

The third prerequisite is for the act of compromise to contain all information on the organization of the arbitration agreed upon as well as on the procedure for arbitration. The parties also set the period within which the arbitration is to take place, period which shall be subject to the rules of common law in what concerns the calculation, but which may be extended by the parties expressly or tacitly<sup>18</sup>. The act of compromise may also contain a clause by which arbitrators may decide on, in equity.

In case of parties' option for an institutionalized arbitration all requirements shall be considered accomplished simply by referring to the institution of arbitration rules (Măgureanu, 2004).

If the time limit set by the parties for the duration of arbitration expires, it has the effect of keeping the situation as it was at the time the fact that ended the term. Thus, if the act of compromise contains a recognition or a confession, or obligations assumed by the parties, these remain to the case and can be opposed subsequently by any party to the other party (Tudor R. Popescu, 1983).

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<sup>17</sup> See Decision no. 758 of 1998 of the Commercial section of the Supreme Court of Justice, published in extract by (Mazilu, 2003).

<sup>18</sup> *Idem*, p. 185.

The arbitration agreement, as a contract, must fulfill validity conditions of the agreements in general regarding the parties consent, capacity, subject and cause (Sălăgean, 2001).

Regarding consent, in case law, sometimes, situations arose where the parties have invoked the absence of the arbitration agreement<sup>19</sup> or the nullity for the lack of valid consent (Secu, 2000). In the arbitration agreement, the vices of consent are the error, the deceit and violence. Regarding the error, it may regard the subject of the dispute, the identity of the parties but also the qualities attributed at the time of conclusion of the arbitration agreement or of the institution responsible with the arbitration organization (Roş, 2000). The case law of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania<sup>20</sup> showed that the support of one party, meaning that the bidder, by the contract form that he had drafted, carried out an injunction on the will of the other party, by imposing in an abusive way a compromissory clause preset in favor to the Arbitration Court in Bucharest, does not meet the conditions provided by Articles 953-961 of the Civil Code of 1864 (applicable as *lex causae*) to establish a vice of consent and therefore to affect the validity of the agreement concluded and signed by both parties.

For the vices of consent which entail the nullity of the agreement to be invoked in an action for annulment it was shown that it is necessary for this matter to be invoked also before the arbitral tribunal up to the first hearing (Roş, 2000). Therefore, if the validity of the agreement has not been questioned before the arbitral tribunal up to the first hearing, the party is deprived of the right to plead the second time, during the proceedings before courts or before the state jurisdiction.

Regarding the capacity to conclude an arbitration agreement it was initially appreciated that the state and its dismemberments can not leave the state jurisdiction in order to resort to private justice (Băcanu, 2005). Currently, the rules of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania provide in Article 9 that, under the law or under the international conventions to which Romania is a party, the state and the public authorities have the power to conclude arbitration agreements in order to resolve the arbitrable disputes.

This provision has ended discussions that took place in the legal literature on the ability of the state and public authorities to enter into arbitration agreements. Regarding the autonomous administrations, the state-owned companies and private companies may conclude arbitration agreement (Roş, 2000).

The subject of the arbitration agreement is to resolve a dispute by way of private justice respectively the circumvention of that dispute from the jurisdiction of the court (Roş, 2000).

The matter of the arbitration agreement is examined differently as we face a compromissory clause or a compromise, in both cases they must exist, they must be lawful and moral (Roş, 2000).

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<sup>19</sup> See Decision of the High Court of Cassation and Justice, Commercial Section, no. 5009 of 11 December 2003, published on [www.scj.ro](http://www.scj.ro).

<sup>20</sup> See Judgement no. 162 of 22 December 1997, in *Jurisprudența comercială arbitrală 1953-2000*, Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry, Bucharest, 2002, pp.7-8.



In terms of form, incident is the Article 8 of the Rules of Court of Arbitration attached to the Chamber of Commerce and Industry of Romania which states the need of concluding the arbitration agreement in writing. Likewise are the provisions of Article 548, paragraph 1 of the Romanian Code of Civil Procedure of 2010, republished, according to which the arbitration agreement is concluded in writing, under penalty of nullity.

Similar texts exist in other legislations, for example Article 1443 of the French Procedure Code according to which “the arbitration clause must, under the penalty of nullity, to be stipulated in writing in the main agreement or in a document to which it refers, Article 808, paragraph 1 of Italian Procedure Code, Article 2640 of the Civil Code of Québec and Article 6 of the Spanish Law on Arbitration no. 36/1988 (Leş, 2010).

The doctrine noted that one can distinguish between the legal systems of the states that have signed the Convention in New York and who chose to fulfill the form requirements of the arbitration agreement as a necessary prerequisite *ad probationem*, while other states continue to apply an excessive formalism to the arbitration agreement (Trari-Tani, 2011).

Since the legislature does not expressly state whether the lack of written form is sanctioned by absolute or relative nullity, in the legal literature views were different. At first glance, taking into consideration the fact that in case of arbitration the parties waive the guarantees provided by the state justice, we might conclude that the parties will, should be included in the written form, required *ad validitatem*, under the penalty of nullity in case of non-compliance (Dănăilă, 2003).

Analyzing overall the provisions of the Civil Procedure Code and the case law regarding this matter<sup>21</sup>, which held that an arbitration agreement may result even from the introduction by the applicant of a request for arbitration and the acceptance of the defendant that this request to be settled by the Court of Arbitration, it results that the document is a requirement *ad probationem* and not *ad validitatem*<sup>22</sup>. Naturally, the flexibility that characterizes the arbitration procedure also influences the formal requirements of the arbitration agreement (Deleanu & Deleanu, 2005).

Faced with the absence or invalidity of an arbitration agreement, the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania in certain situations jurisdiction and found it was not competent therefore it closed the arbitration proceeding<sup>23</sup> and in other cases it has declined its jurisdiction in favor to the competent court<sup>24</sup>.

### 3. THE ARBITRAL TRIBUNAL HAS NOT BEEN CONSTITUTED IN ACCORDANCE WITH THE ARBITRATION AGREEMENT

The reason sanctions the failure or breach of the parties’ agreement regarding the establishment and the composition of the arbitral tribunal (Deleanu & Deleanu, 2005), as

<sup>21</sup> Judgment of C.A.B. no. 6 of 13 January 1981; Judgment no. 205 of 2001 Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania, published in *Revista de Drept Comercial*, 2002, no. 3, pp. 142-144.

<sup>22</sup> For additions regarding the form of the legal act, see (Reghini & Diaconescu, 2004).

<sup>23</sup> See Judgement no. 57 of 1 April 1999, published in *Revista de Drept Comercial*, 1999, no. 7-8, p. 253.

<sup>24</sup> See Judgement no. 229 of 17 November 2003, published in *Revista de Drept Comercial*, 2004, no. 4, p. 297.

provided by Article 608, paragraph 1, letter c) of the Romanian Code of Civil Procedure of 2010, republished. Usually, in case law, the compromissory clause does not contain provisions on the establishment and composition of the arbitral tribunal, often the parties indicating the permanent arbitral institution to which they intend to apply to (Băcanu, 2005).

In ad hoc arbitration, where there are no provisions for the establishment of the arbitral tribunal shall be applicable the provisions of the Code of Civil Procedure.

In the contents of the reason for annulment is also included the non-compliance which refers to the arbitrator in person (lack of full capacity for exercising legal rights, failure of citizenship condition, lack of quality or of the special qualification of the arbitrator) but also violating the rules of composition of the arbitral tribunal or the rules of appointment, dismissal or replacement of arbitrators (Băcanu, 2005).

The Romanian doctrine also stressed that irregularities in the constitution of the arbitral tribunal are not limited to the baseline, being a vice that can occur also in the course of litigation, such as the case where a replacement arbitrator attended the trial without having been appointed according the arbitration Convention<sup>25</sup>.

In practice, this ground for cancellation of the arbitral award was rarely invoked, and when it was invoked, most often it was considered ungrounded.

Thus, in a case<sup>26</sup> it was noted that, since the applicant did not understood to appoint his/her own arbitrator this led to the application of the provisions referring to the appointed arbitrator by the Appointing Authority, the applicant's representative having no objection in this regard. Under these circumstances it was noted that the conditions provided by law for the annulment of the arbitration award are not fulfilled.

Omission of the names of arbitrators in the contents of the arbitration agreement does not affect its validity as long as the parties have referred to the Rules of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania, which compensate for this omission<sup>27</sup>.

Regarding the moment when a possible objection must be invoked regarding the constitution of the arbitral tribunal, this shall be the first hearing.

#### **4. THE PARTY MISSED THE HEARING WHEN THE DEBATES TOOK PLACE AND THE SUMMONING PROCEDURE WAS NOT LEGALLY FULFILLED**

This reason for annulment is provided by Article 608, paragraph 1 letter d) of the Romanian Code of Civil Procedure of 2010, republished. It covers the compliance by the arbitral tribunal with the two fundamental principles: the principle of the rights of defense and the principle of the contradictoriality of the debate (Prescure & Crișan, 2010).

The summoning the parties is intended to provide the participation of the litigants at the presentation, argumentation and demonstration of their rights in the course of litigation, to discuss and refute the assertions made by each of them, and to express their

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<sup>25</sup> Idem, p. 73.

<sup>26</sup> See Decision of the Court of Appeal Bucharest, Section VI Commercial, no. 110/R of 25 January 2010, published on <http://www.jurisprudenta.org>.

<sup>27</sup> See Arbitration Award no. 50 of 27 February 2004, ruled in Case no. 325 of 2003, published in *Revista Română de Arbitraj*, 2010, no. 4, p. 73.

views in order to establish the truth and to rule a sound and lawful judgment (Ciobanu, 1997).

The case law of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania, faced with the invoking of this reason for annulment of the arbitral award held that “filing a statement of defense or a counterclaim, even if it is mentioned the settlement term of the cause, it can not compensate for lack of procedure, case in which the applicants were deprived of the possibility of producing evidence in establishing the objective truth<sup>28</sup>.

In another case, the illegal summoning of the party was invoked motivated by the fact that the party had been summoned to the address which the opposing knew, but to the dilapidated headquarters<sup>29</sup>. The reasoning of the court was that it is not of great importance the place where appellant has established her/his headquarters, as long as the party did not made changes in the Trade Register, as on the date of the award pronouncement the party was registered at the same location.

Regarding the summoning of the parties, we will take into consideration the provisions regarding the communication of the procedure documents contained in the Article 36, paragraph 1 of the Rules of Court of Arbitration attached to the Chamber of Commerce and Industry of Romania. Thus, the communication with the parties can be done by any means that enables the transmission of the document wording and the confirmation for its receipt: letter with acknowledgment of receipt or postal receipt, bailiff, fast mail, electronic mail, telegram, telex, fax, courier.

The rules above establishes the institution of the acknowledged deadline in Article 49, paragraph 3 in that the party who was present or legally represented at a hearing shall not be summoned throughout the arbitration, as it is assumed that the party has acknowledged the term, with the exceptions provided by the same rules.

The absence of the legally summoned parties does not prevent the resolving of the case, even if the parties have not requested judgment in absentia, the court eventually resolving the dispute, unless there were situations where the postponement was requested for good reasons.

##### **5. THE JUDGMENT WAS DELIVERED AFTER THE ARBITRAL DEADLINE SET BY THE TRIBUNAL ARBITRATION, ALTHOUGH AT LEAST ONE OF THE PARTIES DECLARED THAT THE PARTY UNDERSTANDS TO INVOKE THE CADUCITY AND THE PARTIES HAVE NO LONGER AGREED TO THE CONTINUATION OF THE PROCEEDINGS**

This reason for annulment is provided by Article 608, paragraph 1 letter e) of the Romanian Code of Civil Procedure of 2010, republished.

The term provided in Article 23, paragraph 1 of the Rules of the Court of Arbitration attached to the Chamber of Commerce and Industry of Romania in 2014 is no more than 6 months. The judgment will be issued within this term unless the parties have expressly

<sup>28</sup> See Judgment of the Timis Tribunal, Commercial Section, no. 52 of 25 January 2008, published on <http://www.jurisprudenta.org>.

<sup>29</sup> See Decision no. 12 of 14 February 2003 of the Court of Appeal Bucharest, Section VI Commercial, published by Ion Băcanu, *op.cit.*, p. 76.

agreed on the extension of arbitration and there hasn't been any reason to extend the deadline set by the arbitration rules.

The doctrine<sup>30</sup> held that the release of the arbitration award means, in fact, also the drafting of the arbitration decision, as it wasn't provided the period for drafting the wording of the decision after the deliberation of the arbitrators as the common law did. Otherwise we wouldn't be able to discuss about the compliance with the term of arbitration, as there didn't exist any penalty in cases where the arbitrators did not comply with the period of one month for drafting the judgment.

We disagree with this interpretation, opposing the clear wording contained in Article 605, paragraph 1 of the Code of Civil Procedure of 2010, republished<sup>31</sup> according to which the arbitration award will be notified to the parties within one month from the date of its delivery. Therefore, the legislature makes a clear distinction between judgment and its drafting as well as in the common law. Regarding non-compliance with a month period for drafting the award, indeed, such a situation can not affect the validity of the arbitration award but it may attract liability of the arbitrators for not fulfilling their duties.

In the content of the Rules of International Commercial Arbitration Court at the Chamber of Commerce and Industry of Romania it is clearly differentiated the stage of drafting the disposition of the award, which occurs soon after the deliberation and judgment release, from the stage of drafting the arbitration award. Therefore, the term of the arbitration expires on the arbitration judgment date, which equals the moment when the disposition is drafted.

Since the time passing factor in resolving the dispute can not be the only reason for caducity only where one party has notified the other party and the arbitral tribunal that it acknowledges to invoke caducity until the first hearing, the existence of the two conditions is required to be analyzed cumulatively by the court<sup>32</sup>.

Moreover, the Code of Civil Procedure of 2010, republished came with a welcome addition to this ground for cancellation of the arbitral award compared to the previous regulation, mentioning in the Article 608, paragraph 1 letter e) the need for the arbitration award to be issued after the expiry of the arbitration term, but only if one party declared that it intends to invoke caducity and if the parties have not agreed on the abidance of the trial.

## **6. THE ARBITRAL TRIBUNAL RULED ON THINGS THAT WERE NOT ASKED OR GAVE MORE THAN WAS ASKED**

This ground for annulment of the arbitration award in Article 608, paragraph 1 letter f) of the Romanian Code of Civil Procedure of 2010, republished, penalizes the non-compliance with the principle of availability, establishing in the civil procedural law grounds for recourse as well as grounds for revision.

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<sup>30</sup> *Idem*, p. 469.

<sup>31</sup> The orders are similar to those contained in Article 363, para. 1 of the Code of Civil Procedure republished version of 1993.

<sup>32</sup> See Decision no. 510 of 18 June 2008 of the Court of Appeal Galați, Commercial Section and Decision 265/R of 4 May 2009 of the Court of Appeal Galați, Commercial, Maritime and River Section, published on <http://www.jurisprudenta.org>.

Unlike the common law where the analysis of the reasons the application is made by the subject of the claim, in arbitration this analysis relate to both the subject of the claim and to the powers assigned to the arbitrators by the parties (Băcanu, 2005).

The *plus petita* cases can be encountered when, for example, the pronounced award ruled the cancellation of the penalty clause although only the amendment of this clause requested, in the meaning of reducing the amount of penalties<sup>33</sup>. Also, when the applicant requested order for payment of amounts due and the court and forced to pay fruit too, or when the applicant requested compensation for non-compliance with the obligation, and the court ordered the termination, or when they were awarded judgment costs although not required (Roș, 2000).

Situations of *plus petita* was revealed in the court practice<sup>34</sup> where the applicant was granted an amount greater than that applied for, since the latter is supposed to be due from the evidence prepared, in this case an accounting expertise.

The older jurisprudence has held that even if the judges were authorized to judge in equity, their judgment is still limited to the subject of judgment as they neither can assign what is not requested nor give more than required<sup>35</sup>.

The courts faced with actions for annulment based on this reason appreciated that the way of analyzing and interpreting the evidence produced by the arbitral tribunal may not constitute grounds for the annulment of the arbitral award.

In another case, the action in annulment promoted for the same reason was admitted, stating that the arbitration court ordered the sale of a land area and ordered the defendant to take out a mortgage the property under litigation, although the applicant did not individualized the space under litigation, neither presented it in its application to any value of the sale<sup>36</sup>.

For the reason comprising *ultra petita*, the action for annulment was admitted in a case where the arbitral tribunal ordered the admission, partially, of the request for arbitration, forcing the defendant to pay a sum of money and also by acknowledging the termination of the contractor agreement between the parties<sup>37</sup>. In the recitals of its decision, the court held that in the disposition of the arbitration award was also mentioned the termination of the contractor agreement no. 1321/518/1999 without this being requested by either party, to be questioned by the parties and to be motivated separately by the arbitral tribunal.

## **7. THE ARBITRATOR AWARD DOES NOT INCLUDE THE DISPOSITION AND THE REASONS, DOES NOT DISPLAY THE DATE AND PLACE OF DELIVERY, OR IS NOT SIGNED BY THE ARBITRATORS**

This reason for the action for annulment is found mentioned in Article 608, paragraph 1 letter g) of the Code of Civil Procedure of 2010, republished.

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<sup>33</sup> See Decision of the Supreme Court of Justice, Commercial Section, no. 7656 of 2001, published by (Boroi & Spineanu Matei, 2011).

<sup>34</sup> See Decision of the High Court of Cassation and Justice, Civil and Intellectual Property Section no. 3157/2006, published by ( Boroi & Spineanu Matei, 2011).

<sup>35</sup> See Judgment no. 389 of 1937 of Ilfov Tribunal, Notary Section, published by (Boroi & Spineanu Matei, 2011).

<sup>36</sup> See Judgment of the Court of Appeal Bucharest, Section V Commercial, no. 32 of 2006, published by (Vlasov, 2009).

<sup>37</sup> See Decision of the Court of Appeal Bucharest no. 590 R of 6 November 2002, published by (Băcanu, 2005).

The wording of the legal text has been criticized in doctrine, stating that it brings together two of the essential elements of the judgment by the conjunction “and” as this can be interpreted literally, meaning that the annulment of the judgment will not conclude only in the cases where both elements are missing in each group (Chiariu & Giurea, 2012). We disagree with this view, since each of the issues of the arbitral award displays a meaning of its own, so that the lack of any item must be punished.

### **8. THE ARBITRATOR AWARD VIOLATES THE PUBLIC ORDER, MORALS OR THE MANDATORY PROVISIONS OF LAW**

This reason for annulment is found mentioned in Article 608, paragraph 1 letter h) of the Code of Civil Procedure of 2010, republished.

It is noteworthy that the drafting of this reason for the cancellation of the arbitral award is more extended than that contained in Article 34, paragraph 2 letter b) ii) of the UNCITRAL Model Law, which refers only to the case of violation of the public policy of the state.

The legal literature ( Dănăilă, 2003) has shown that this reason of exercising the action for annulment is not an open door through which can penetrate all sorts of reasons, as noted in case law, but is a kind of an outlet in the meaning that, if the previous eight reasons would not punish the violation of any public order provision, such a breach should not remain without consequences. The scope of this reason is confined to the violation of the fundamental principles of arbitral but also the non compliance with the rules of exclusive jurisdiction, provided by orders, mandatory in nature.

Indeed, the wording of the latter reason for annulment is very general and therefore the magistrate referred to, with the action for annulment to determine to what extent by the arbitration award were actually violated the mandatory legal rules, the public order or the morals. This task proved extremely difficult given that in the Romanian law, currently, the public order and good morals have no legal definition ( Prescure & Crișan, 2010).

However, invoking the reason referred to in Article 608, paragraph 1, letter h) of the Romanian Code of Civil Procedure of 2010, republished must not be a pretext to examine the merits and the legality of the arbitration award, for a review of the merits of the dispute<sup>38</sup>. With regard to economic matters of private law, the provisions of interest for the public order are rare, because here the private interests and autonomy will prevail (Dănăilă, 2006). It should be stressed, however, that the public order in arbitration does not coincide with the public order in the judicial procedure, as neither the internal public order coincides with the public order of private international law ( Băcanu, 2005). The public order of private international law has a vague sense, abstract and astir, reason for which it is not clarified neither in national regulations nor in the international regulations (Babiuc, 2007). By joining notions of “public order” and “mandatory rules” it basically suggests that the two have a different content, so that the mandatory rules shall not necessarily be included, in its concept of public order. The doctrine and case law mentioned, as examples, the reasons for the exercise of the action for annulment falling among the provisions analyzed: non-compliance with the principle of adversarial, of the

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<sup>38</sup> See Decision of the High Court of Cassation and Justice no. 4393/2003, published in *Revista de Drept Comercial*, 2005, no. 4, pp. 172-175.

equality of the legal treatment<sup>39</sup> and the right to legal defense<sup>40</sup>, the fact that the arbitration award does not include the reasoning, the violation or disregard of *res judicata* (Deleanu & Deleanu, 2005).

It was found that the reason for annulment is most often invoked, but also the most imprecise formulated (Prescure & Crișan, 2010). In one case where this reason for annulment was raised, the court found that it is not grounded related to the fact that the non-compliance with the conventional provisions shall not constitute grounds for the annulment of the arbitral award as the contractual relations between the parties are governed by the principle of freedom of will and concerns relations of private law from which the parties may derogate<sup>41</sup>. In the perimeter of this reason for annulment are not included the criticism regarding the establishment of the facts, or on the application of the ruling legal provisions, but only criticism on the violation of the mandatory provisions of law, independent of *de facto* situation established<sup>42</sup>.

In legal literature (Severin, 2011) it was appreciated that, *de lege ferenda*, the arbitration award should be canceled only in case the violation of public order is substantial, effective and blatant, as stated by the French jurisprudence.

**9. AFTER THE PRONOUNCING OF THE ARBITRATION JUDGMENT, THE CONSTITUTIONAL COURT RULED ON THE OBJECTION RAISED IN THAT CASE, DECLARING AS UNCONSTITUTIONAL THE LAW, ORDINANCE OR A PROVISION OF A LAW OR OF AN ORDINANCE WHICH WAS THE SUBJECT OF THAT OBJECTION OR OTHER PROVISIONS OF THE CONTESTED MEASURE, WHICH, NECESSARILY AND OBVIOUSLY CAN NOT BE DISSOCIATED FROM THE PROVISIONS SPECIFIED IN THE NOTIFICATION**

This plea for annulment is provided by Article 608, paragraph 1 letter i) of the Romanian Code of Civil Procedure of 2010, republished.

According to Article 142, paragraph 2 of the Constitution, the Constitutional Court consists of nine judges, appointed for a term of 9 years. Three of the judges are appointed by the Chamber of Deputies, three by the Senate and three by the President. The doctrine argued that by the manner of recruitment, the Constitutional Court shapes as an organ dependent on a political majority, rarely impartial (Drăganu, 2000).

The Constitutional Court pronounces decisions, judgments and issues permits.

One of the tasks of the Constitutional Court is to rule on objections of unconstitutionality of laws and ordinances, brought up before courts of law or to the courts of commercial arbitration.

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<sup>39</sup> See Decision no. 82 of 13 January 2006 of the High Court of Cassation and Justice, Commercial Section, in *Revista Română de Drept al Afacerilor*, 2006, no. 5, p. 149.

<sup>40</sup> See Decision no. 1914/2003 of the Court of Appeal Bucharest, Section VI Commercial, published by (Băcanu, 2005).

<sup>41</sup> See Decision no. 2612/26.09.2008 of the High Court of Cassation and Justice, Commercial Section, available on [www.scj.ro](http://www.scj.ro) and Decision of the High Court of Cassation and Justice, Commercial Section, no. 4788 of 18 October 2005, published in *Revista Română de Drept al Afacerilor*, 2006, no. 1, p. 107.

<sup>42</sup> See Decision of the High Court of Cassation and Justice, Commercial Section, no. 747 of 21 February 2006, in *Revista Română de Drept al Afacerilor*, 2007, no. 3, p. 82.

The objection can be raised at the request of one party or *ex officio* by the court or the commercial arbitration. Also, the objection can be raised by the prosecutor before the court, in cases where he is involved.

The referral to the Constitutional Court is ordered by the court before which the objection of unconstitutionality was raised, through a resolution that shall include the views of the parties, the court opinion on the objection and shall be accompanied by evidence submitted by the parties. If the exception has been initiated *ex officio*, the judgment must be justified, containing both the parties' submissions and the evidence needed.

If the exception is inadmissible, the court rejects through a reasoned request the referral to the Constitutional Court. The judgment can only be challenged by recourse to the next higher court within 48 hours of pronouncement. The recourse shall be judged within 3 days.

According to Article 31, paragraph 3 of Law no. 47 of 1992, the provisions of laws and ordinances in force found to be unconstitutional, cease their legal effects within 45 days of the publication of the Constitutional Court decision if, in the meantime, the Parliament or the Government, if appropriate, does not adjust the unconstitutional provisions to the Constitutional provisions. During this period the provisions declared unconstitutional are suspended by law.

Prior to the amendment of Law no. 47 of 1992<sup>43</sup> by the Law no.177 of 2010<sup>44</sup>, Article 29, paragraph 5 provides that, during the settlement of the objection of unconstitutionality, the case will adjourn. The existence of this provision resulted in the invocation, in many cases, in bad faith, of the objection of unconstitutionality, in order to delay their resolution.

In order the party invoking such an objection accepted by the Constitutional Court to have its interests protected, this ground for cancellation of the arbitral award was introduced in the Code of Civil Procedure.

Analyzing the reasons for which the action for annulment may be exercised, two categories may be distinguished. The first category comprises the reasons specific to arbitration as the non-arbitrability of the dispute, the non-existence of the arbitration agreement, the nullity or its inoperative feature; the failure to establish the arbitral tribunal in accordance with the arbitration agreement; the caducity of the arbitration due to the release of judgment after the deadline agreed by the parties or determined by law. The second category considers reasons which are common also for the means of appealing against the judgment, respectively the lack or failure of the summoning procedure; exceeding the subject of the claim by ordering plus or ultra petita; the lack of the date and place of the judgment, the lack of the arbitrators' signatures and the violation of public order, morals or the mandatory provisions of the law.

In conclusion, we consider that the action for annulment as well as the arbitration award has a mixed legal nature, contractual and jurisdictional, as it can be promoted both for reasons of dissolution which are inherent to a contract but also for reasons of dissolution inherent to a judicial act.

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<sup>43</sup> Published in the Official Gazette, Part I, no. 101 of 22 May 1992.

<sup>44</sup> Published in the Official Gazette, Part I, no. 672 of 4 October 2010.



## REFERENCES

- Aschauer, C., 2007. Noua lege austriacă a arbitrajului. O prezentare introductivă, în principal cu privire la forma convenției arbitrale, precum și cu privire la măsurile provizorii dispuse de tribunalele arbitrale (I). *Revista Română de Arbitraj*.
- Băcanu, I., 2005. *Controlul judecătoresc asupra hotărârii arbitrale*. Bucharest: Lumina Lex Publishing House.
- Beligrădeanu, Ș., 2001. Reprezentarea aparentă și consecințele acesteia cu privire la clauza compromisorie, in *Dreptul*, 2001, no. 9. *Dreptul*, Issue 9.
- Boroi, G. & Spineanu Matei, O., 2011. *Codul de procedură civilă adnotat*. s.l.:Hmanagiu Publishing House.
- Bortolotti, F., 2008. *Drafting and Negotiating International Commercial Contracts*. Paris: ICC Service Publications Publishing House.
- Ciobanu, V. M., 1997. *Tratat teoretic și practic de procedură civilă, vol. I*. Bucharest: Național Publishing House.
- Cojuhari, A., 2009. *Drept procesual civil*. Chișinău: State University of Moldova Publishing House, Faculty of Law.
- Costin, M. N. & Deleanu, S., 1997. *Dreptul comerțului internațional. II. Partea specială*. Bucharest: Lumina Lex.
- Dănăilă, G., 2003. Forma convenției arbitrale. *Revista de Drept Comercial*, Issue 7-8.
- Dănăilă, G., 2006. *Procedura arbitrală în litigiile comerciale interne*. Bucharest: Universul Juridic Publishing House.
- Leș, I., 2010. *Tratat de drept procesual civil, 5th Edition*. Bucharest: C.H. Beck Publishing House.
- Mazilu, D., 2011. *Tratat privind dreptul comerțului internațional*. Bucharest: Universul Juridic Publishing House.
- Măgureanu, F., 2004. Unele considerații privind compromisul în cazul procedurii arbitrale. *Revista de Drept Comercial*, Issue 6.
- Moses, M. L., 2008. *The Principles and Practice of International Commercial Arbitration*. United States of America: Cambridge University Press Publishing House,.
- Prescure, T. & Crișan, R., 2010. *Arbitrajul comercial*. Bucharest: Universul Juridic Publishing House.
- Reghini, I. & Diaconescu, Ș., 2004. *Introducere în dreptul civil, vol. I*. Cluj Napoca: Sfera Juridică Publishing House.
- Roș, V., 2000. *Arbitrajul comercial internațional*. Bucharest: Monitorul Oficial Publishing House.
- Sălăgean, M. I., 2001. *Arbitrajul comercial*. Bucharest: All Beck Publishing House.
- Secu, S., 2000. Consimțământul părților la arbitraj. Existența și exprimarea consimțământului. *Revista de Drept Comercial*, Issue 7-8.
- Trari-Tani, M., 2011. *L'arbitrage commercial international*. Bruxelles: Bruylant Publishing House.
- Vlasov, V. M., 2009. *Arbitrajul comercial. Jurisprudență arbitrală 2007-2009. Practică judiciară*. Bucharest: Hamangiu Publishing House,.
- Babiuc, V., 2007. Ordinea publică de drept internațional în practica arbitrală. *Revista Română de Drept Privat*, Issue 1.

- Căbuz-Băgnaru, A. M., 2010. *Arbitrajul ad-hoc conform Regulilor Comisiei Națiunilor Unite pentru Dreptul comercial internațional, Bucharest, 2010*. Bucharest: Universul Juridic Publishing House.
- Căpățână, O. & Cozmanciuc, M., 1997. Aspecte noi referitoare la competența arbitrajului comercial. *Revista de Drept Comercial*, Issue 2.
- Chiuariu, T. & Giurea, R., 2012. *Arbitrajul intern și internațional. Reglementare. Doctrină. Practică arbitrală și judiciară*. Bucharest: Universul Juridic Publishing House.
- Deleanu, I. & Deleanu, S., 2005. *Arbitrajul intern și internațional, Rosetti Publishing House, Bucharest*. Bucharest: Rosetti Publishing House.
- Drăganu, T., 2000. *Drept constituțional și instituții politice. Tratat elementar. Volume I*. Bucharest: s.n.
- Jaquet, J.-M. & Delebeque, P., 2007. *Droit du commerce international*. Paris: Dalloz Publishing House.
- Macovei, I., 2009. *Dreptul comerțului internațional*. Bucharest: C.H. Beck Publishing House.
- Marina, A., 2009. Arbitrajul în Rusia. *Revista Română de Arbitraj*, Issue 4 (12).
- Mazilu, D., 2003. Convenția arbitrală, efectele și natura sa juridică, in *Revista de Drept Comercial*. Issue no 2.
- Mihnea, R., 2000. Arbitrabilitatea litigiilor comerciale, in *Revista de drept comercial*. 7-8.
- Piotr, N. & Andrej, K., 2009. Un nou set de reguli emise de Curtea de Arbitraj de pe lângă Camera de Comerț din Polonia. *Revista Română de Arbitraj*, Issue no. 1 (9).
- Puharic, K., 2009. Recenta reglementare a arbitrajului și a medierii în materie civilă și comercială din Slovenia. *Revista Română de Arbitraj*, Issue no. 1 (9).
- Severin, A., 2011. Considerații asupra reglementării arbitrajului în Noul Cod de procedură civilă – cu specială privire la arbitrajul instituționalizat. *Dreptul*, Issue 1.
- Tudor R. Popescu, T. R., 1983. *Dreptul comerțului internațional*. Bucharest: „Editura Didactică și Pedagogică” Publishing House.
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