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PROCEDURES IN THE COURT OF ARBITRATION IN CASES OF INTERNATIONAL TRADE LITIGATION

PhD Thesis Summary

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ARGUMENTUM

International trade arbitration has been given significant attention in the last decades due to the development of international trade and foreign investment.

In addition to its practical importance, the study of international trade arbitration also implies the analysis of the rules in these institutions of arbitration, respectively that of the legal regulations, which ensure the correct, impartial and efficient settlement of cases of litigation. Through this research a development of these regulations can be observed, which is closely linked to the economic development and the existing political system in different states.

The progressive development of international trade arbitration is the result of the effort made by both private and public persons. Thus, meanwhile private persons sustained the evolution and successful usage of international trade arbitration, international conventions in the domain and regulations of arbitral institutions have also contributed to it, by recognizing and executing of arbitral decisions.

International trade arbitration has progressively become highly accepted all over the world. Its success is reflected in the increased number of settled litigations with this alternative method, in the inclusion of arbitration clauses in international contracts and also in the fact that businessmen prefer this method of settlement as the solution for their cases of litigation. The development of this private jurisdiction is the consequence of the adaptation on a large scale of international arbitral conventions and of the usage of arbitration in the settlement of new litigation categories.

The spread of international trade arbitration can be explained by many factors. Thus, it has been concluded that proceedings in courts of law don't offer adequate means for the settlement of cases resulting from international trade litigations. Moreover it has also been concluded through the practice of specialty, that the maintaining of business relations in very important for traders; they apply for arbitration in case they cannot reach amiable settlement.

Arbitration has proven to be an adapted form of justice to the needs of businessmen, as they have shown great interest towards it. The irrefutable advantages of arbitration need to be highlighted. Thus the choice of arbitrators permits that the parties opt for the help of those persons who they can trust and represent a high level of professionalism for them. Similarly, the arbitrators can be exempted from the rigorous application of the law, the parties having the possibility to opt for the settlement of litigation in equity.

Another advantage of the arbitration procedure is its suppleness against he rigidity and conservative character of proceedings in the court of law. But the conservativeness of state courts does not have to be regarded as an inconvenience, because it ensures the stability of legal relations.

Arbitration is also responsible for not making the differences between the parties public, as the divulgation of such could lead to the deterioration of contractual relations between the parties, but also to the discovery of compromising details by a third party. The discretion, which characterizes this proceeding and which corresponds entirely to the legal and commercial relations between the partners, does not mean that the trade arbitration has an occult character.

The majority of internal regulations recognize and promote arbitration, the decisions being pronounced as final and obligatory for the parties of litigation. The possibility of attacking the arbitral decision with an action of annulment is limited to certain causes provided restrictively and does not imply the reanalysis of the subject matter in the litigation.

The celerity of settlement in disputes between the parties of a contract is also an indubitable advantage of arbitration. Unlike in state justice, here the parties are offered the guarantee for a short term settlement of the litigations, corresponding totally to the requirements of international trade law.

Among the disadvantages of international arbitration the following can be enlisted: the risk of aggravation of differences in legal and ethical concepts the arbitrators relate to, the limitations of confidentiality provided by arbitration, the lack of possibility for the court of arbitration to take corrective measures if these are needed.

As far as confidentiality is concerned, although the regulations of procedures in arbitral institutions stipulate it as being the responsibility of arbitrators and administrative staff, it does not extend to other participants in the arbitration procedure like the witnesses and experts.

Referring to the lack of imperium in the court of arbitration, it can be observed in the administration of evidence and the taking of temporary, insuring measures in the sense that the parties are obliged to address legal institutions for measures of constraint against witnesses and experts, or to obtain measures with provisory character.

The court of arbitration does not have the power to connect many litigations in course of proceeding at the same time, which can lead to contradictory decisions in the arbitration process.

As far as expenses are concerned, although initially it was considered an advantage, at present the costs of arbitration are rather high, fact that has lead to its tagging as " justice of luxury".

Arbitration implies a certain risk due to the remission of the competences of the court and the proceeding followed by them in the settlement of litigation, and of the guarantees of independence and impartiality offered by state justice.

In international trade arbitration has proven to have an indubitable utility and effectiveness. Nevertheless, arbitration cannot be considered a concurrent for state justice forasmuch both variants of dispute settlement have advantages as well as disadvantages.

The necessity for research and thoroughgoing study of international trade arbitration proceedings derives from its practical importance, as well as in the resolution of litigation in the domain of international trade law. In fact, alongside with the development of international commerce its main mechanism for the settlement of litigation has developed as well, namely international arbitration.

This paper sets out to analyze the procedures in the resolution of international trade litigation by arbitration, taking into consideration the stipulations of international conventions, arbitration institutions and national legislation. Regulations will be analyzed comparatively in the light of due jurisprudence and that of opinions expressed in legal literature, with the purpose to highlight the actual tendencies in the domain of international trade arbitration.

Chapter I
GENERAL CONSIDERATIONS

Arbitration has been defined as " a special legal system, derogatory from common law", " a conventional way of resolution of litigation determined by particular individuals invested by the litigant parties with legal power." The term arbitration consists of more components with regard to the arbitration tribunal, the proceeding and the dispute situation.

The republished Code of Civil Procedures of 2010 defines arbitration in art. 541, par. 1 as an alternative jurisdiction with private character.

The judicial nature of arbitration has been the subject of a substantial controversy. Three main points of view have been consecrated: one that entitles arbitration with a contractual character, one that allocated it with strictly jurisdictional character and one that confers a mixed judicial character to arbitration.

According to a contractual conception arbitration represents a collection of legal documents with contractual character. The basis of this type of arbitration is constituted by the will of the parties, who, by understanding the situation of the dispute and its resolution by arbitration, are the ones who determine the arbitrators and their power, the regulations to be followed in the proceeding and the method of establishing the resolution they come to. According to this opinion, the will of the parties is recognized as a normative value above the judicial nature of arbitration, without negating nevertheless, that the interference of the authority of state institutions is inevitable in the assurance of effectiveness of contractual regulations imposed by the parties.

The jurisdictional thesis of arbitration sustains that the state holds legislative and jurisdictional monopoly, in the name of which it has the obligation and right to distribute justice on the entire territory of the country in which its sovereignty manifests in all categories of litigation. According to this opinion, the institution of arbitration represents a delegated form of justice which is exerted by people, who are not employees of the state.

Our literature of specialty agrees with the mixed character of arbitration, both contractual and jurisdictional. The component elements of arbitration condition each other and confer to this institution a complex character.

International commercial arbitration demonstrates many forms with a lot of criteria in their classification. The main criteria are the following: organizational structure; the power conferred to arbitrators; their material and functional competence.

According to the organizational structure, arbitration can be occasional and institutional. Arbitration is institutional if the competence of the dispute resolution is given by one of the parties to an institution or permanent organization with an organizational structure, staff and own regulations, whereas the occasional, ad-hoc arbitration is constituted only for a certain dispute.

Based on the powers conferred to arbitrators, arbitration can happen in equity or at law. Arbitration at law settles disputes according to the law similarly to a court of law. Arbitration in equity is the one in which arbitrators are exempted from the application of legal regulations, the judgment being made according to the forethoughts of arbitrators. In general it has been observed that a limited number of international arbitration conventions stipulate enabling the arbitrators to judge "ex aequo et bono" or as "amiable compositeur", although such clauses are only possible in the light of their free will. Opting for arbitration in equity makes the verifying of any private law institution useless, nonetheless, the

enabled arbitrators to judge in this way, are not interdicted to make their judgment based on law, whenever its application results in the fairest decision or when they have to refer to certain texts and passages from a law, which respond best to the idea of equity.

According to their material competences we can distinguish arbitrations with general competence in the subject matter of international trade and arbitrations with special competences. Among the arbitrations with general competence in the subject matter if international trade, there are the following: Court of Arbitration of the International Chamber of Commerce in Paris , Court of Arbitration in London, The Dutch Institute of Arbitration, The American Arbitration Association, The Permanent Court of Arbitration of the German Commission for Problems in Arbitration. Arbitrations with special competence are those specialized for certain disputes springing from the trade of goods, as for instance the Arbitration Tribunal of Cotton Stock in Bremen, London Corn Trade Association.

According to the criteria of territorial competence, arbitrations are divided in bilateral, regional and international arbitrations.

Bilateral arbitrations have the competence to solve exclusively disputes between two subjects as of right belonging to the two party states of he convention. In this category belongs the French -German Arbitration Chamber for Products of the Soil and the American-Canadian Commercial Arbitration Commission.

Arbitrations of regional character have the competence to resolve international commercial disputes between subjects as of right, belonging to countries in a certain geographical region, between whom a convention has been signed, as for instance: The Scandinavian Arbitration Commission for leather and the Inter-American Commercial Arbitration Commission, whose competences include commercial partners in the American States Organization.

Arbitrations with an international vocation have a territorial competence, which extends to a planetary scale, having the ability to settle litigation between any country of the world, like the Court of Arbitration of the International Chamber of Commerce in Paris.

Legal sources about international trade arbitration are characterized by diversity and constant transformation, having been imposed by the dynamics of exterior commercial operations and international economic cooperation.

Under the auspices of the former Society of Nations two multilateral conventions have been signed in Geneva in the subject-matter of arbitration: The Geneva Protocol on Arbitration Clauses of 24 September 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 26 September 1927.

Due to the Geneva Protocol on Arbitration Clauses of 24 September 1923, the participant states are obliged to recognize the validity of the compromise and the arbitral clauses referring to commercial contracts or any other susceptible subject-matter, which are to be subjected to an arbitration procedure.

As far as the Convention on the Execution of Foreign Arbitral Awards of 26 September 1927, is concerned it was only open for the participants in the 1923 Protocol. By this convention the contracting states engage to recognize on their territory the authority of an arbitration award pronounced on the basis of a compromise or an arbitration clause, as well as its execution, in conformity with available procedural regulations in the respective country.

Under the aegis of The United Nations Organization new conventions have been adopted in the subject matter of arbitration, respectively The New York Convention of

1958, The European Arbitration Convention of Geneva 1961 and the Washington Convention of 1965.

The New York Convention of 1958 referring to the recognition and execution of foreign arbitration awards is applied for the recognition and execution of arbitration awards given on the territory of a different state from the one where the recognition and execution of arbitrary award is required, resulting from disputes between physical and judicial entities. Similarly, the Convention is applied for arbitration awards which are not considered national sentences in the country where their recognition and execution is required.

The Geneva International Trade Arbitration Convention of 1961 sets out to establish a legal system for the convention on exterior trade arbitration and the regulation of a suitable procedure.

As for the Washington Convention on the regulation of relative differences deriving from investments of states and individuals of other states in 1965, this has a restricted area of application, regulating only the differences deriving from investments of states and physical or legal entities of other states.

International organizations encourage the resolution of international commercial litigation by arbitration, and as duly follows they have promoted a series of international conventions, models and uniform laws. The United Nations Commission for International Commercial Law has elaborated the Rules of Arbitration UNCITRAL of 28 April 1976 and the UNCITRAL model law for international commerce arbitration of 21 June 1985.

On an internal scale, due to Decision no. 7 of 2013 regarding the approval of organizational and functional norms of the procedures of the Court of International Trade Arbitration of the Chamber of Commerce and Industry in Romania, the Leading Committee of the Chamber of Commerce and Industry in Romania have acknowledged he Regulations of arbitration procedures of the International Trade Arbitration Court and approved the Regulations regarding the organization and functioning of the Court of International Trade Arbitration of the Chamber of Commerce and Industry in Romania . The modification of Regulations regarding arbitration procedures was necessary as a result of the adoption of the new Code of Procedure from 2010, republished for its adaptation to the stipulations of the new normative act.

The regulations regarding the organization and functioning of the Court of International Trade Arbitration of the Chamber of Commerce and Industry in Romania stipulates the attributions of this institution as far as the organization of arbitration, elaboration of arbitration models, promotion of the arbitration activity, unification of procedure regulations, evidence of arbitral practices, evolution of the institution of arbitration and the organization of alternative methods for the resolution of disputes are concerned.

According to art. 1 from the Regulations of the Court of International Trade Arbitration of the Chamber of Commerce and Industry in Romania, the Court of Arbitration is a permanent arbitration institution, without legal personality, independent in the exertion of its attributions.

The rules of arbitration procedures of the International Trade Arbitration Court are structured in two parts, part I called “Institutional Arbitration” and part II, entitled “Ad-hoc Arbitration” and it contains four annexes. Part I from the Regulations of arbitration procedures analyses widely the necessary conditions for a valid finalization of an

arbitration convention, the formation of an arbitration tribunal, the pre-arbitration procedure and the procedure of arbitration itself. Part II of the Regulations of arbitration is applicable in situations when the arbitration convention results from an agreement between the parties not to apply any of the rules of institutionalized arbitration in the resolution of the dispute.

Resources of the Court of Arbitration consists of the arbitration taxes collected for the provision of services and the taxes of registration, the quantum of which is established by the Norms regarding arbitration taxes and expenses.

The Romanian Code of Civil Procedure from 2010, republished contains regulations referring to international arbitration under title IV, entitled " International arbitration and the effects of foreign arbitration awards" from Book VII entitled " International Civil Procedure". In the subsidiary, provided any aspect of the establishment of the arbitration tribunal exists, the procedure, the arbitration award, completion, communication and its effects, that are not regulated by the parties in the arbitration convention and they are not given to any arbitration tribunal for resolution, these will be resolved by applying the corresponding dispositions referring to internal arbitration.

Chapter II.
THE ARBITRAL TRIBUNAL

Requirements for having the quality of an arbitrator mainly refer to the quality of a natural or legal person/entity, to citizenship and skill.

In international arbitration the arbitrator can be a natural or legal person, thus resulting from the analysis of stipulations of art. I, par. 2. of the New York Convention of 1958.

On an internal level, the Code of Civil Procedures of 2010, republished stipulates that any natural person can be appointed as arbitrator, in full capacity of his duties.

As for the citizenship of the arbitrators, the New York Convention, the Geneva Convention and UNCITRAL model law do not contain any limitations.

The regulation concerning the organization and functioning of the Court of International Trade Arbitration of the Chamber of Commerce and Industry in Romania stipulates that the appointed arbitrator can be of Romanian or foreign citizenship as well.

The Romanian Code of Civil Procedures of 1865, in the republished version of 1993, stipulated that only the foreign party can appoint arbitrators of foreign citizenship, the parties also having the possibility to appoint a member or a third country as the supervisor of judge. Such a limitation was considered unjustified and at present the Romanian Code of Civil Procedure from 2010 republished, does not contain this restriction of citizenship.

The condition referring to full capacity of practice of rights is a means of protection for the parties meant to ensure a minimum guarantee for the accomplishment of the legal procedure. The arbitrator has to be in charge of all his civil rights, this being a requirement that will be assessed according to his personal law.

In the contents of regulations concerning arbitration there is another condition of becoming an arbitrator, which refers to a high moral consideration and having recognized competences is law , commerce or international economic relations.

The parties are free to establish other criteria for the selection of arbitrators in addition to the ones settled by law of arbitration regulations which correspond with their interests. These criteria do not have to bee very rigorously established to make the selection of arbitrators even more difficult. In most cases the parties assess the experience, knowledge, professionalism, language skills (in the language of the procedure) and availability of arbitrators.

The requirement referring to impartiality and independence of arbitrators is mandatory even if it is not specifically expressed in the majority of arbitration regulations.

Although, at first sight they could be considered synonyms, the concepts "independence" and "impartiality" have different meanings. Thus the term "independence", mainly used in national law and in arbitration regulations, means the lack of any relation of any kind, between the parties and the arbitrators, as for instance a professional or business relation or the existence of the arbitrator's own interest in solving the case. "Impartiality" refers to the lack of any biased attitude and of any preconceptions about the dispute being judged. Impartiality is more difficult to be judged, as it is mainly on a psychical level, which can be invoked simply on the basis of the subjectivity of the party with the interest, this consequently having the obligation to prove objectively the source of mistrust in the arbitrator.

As far as the number of arbitrators is concerned, the New York Convention of 1958 and the Geneva Convention of 1961 do not contain any references. The majority of arbitration regulations stipulate that the parties are free to decide upon the number of arbitrators and, in the absence of such convention, the arbitral tribunal will be formed by either a unique arbitrator or three arbitrators.

With reference to the institution of the arbitral tribunal the New York Convention of 1958 stipulates that, in case the parties haven't agreed differently, the institution of the arbitral tribunal will be subjected to the laws of the country where the procedure is to be taking place. The parties are free to establish the procedure of establishing the arbitral tribunal and in the absence of such agreement, the regulations of arbitration stipulate the possibility that the interested party addresses the competent court of law.

Differently from the regulations in the arbitral procedure regulations of the Court for International Trade Arbitration of the Chamber of Commerce and Industry in Romania from 2011, presently available laws do not stipulate the possibility of appointing an arbitrator by the parties, but exclusively by the Nomination Authority. The titulary and suppleant arbitrators are designated with consideration to their professional qualifications, experience and implication in the activity of their Arbitral Court, after consulting the elements of the case, thus having the possibility to assess the value of the litigation and the complexity of the case. The solution regarding the uneven number of arbitrators was imposed for practical purposes to avoid the difficulties which could appear if the arbitral tribunal was composed of an even number of arbitrators and their opinions were equally divided.

In the absence of concrete criteria, the formulation in the present Regulations permits the Nomination Authority to designate the persons and the number of arbitrators with discretion.

In case there are reasons for suspecting the arbitrators of not being impartial and independent, they can be recused by the parties.

Petitions for recusation can be made against any arbitrator with disregard to the modality of their designation, be that according to the regulations of arbitral institutions, be that according to the stipulations of national law.

The UNCITRAL model law stipulates that the arbitrator can be recused only if legitimate doubts of impartiality and independence exist or if he does not possess the necessary qualifications. One party can revoke an arbitrator only for reasons that have been acknowledged only after his designation.

As for the causes of recusation, the Regulations for arbitral procedures of the Court for International Trade Arbitration of the Chamber of Commerce and Industry of 2013 have explicit references to the stipulations of the Code of Civil Procedures, which shall be applied accordingly. Thus an arbitrator can be recused in the following situations: when the arbitrator does not dispose of the qualifications pre-established by the parties; when there is a reason for recusation of arbitrators according to the Regulations adopted by the parties or, in their absence, by arbitrators; when there is a reasonable doubt concerning impartiality and independence of arbitrators.

The arbitrator or spervisor who finds that there is a reason for recusation with a doubt of his impartiality and independence is obliged to abstain. The Romanian Code of Civil Procedure from 2010 republished, does not contain stipulations for the abstention or arbitrators in international arbitration, therefore the stipulations from the same normative act, referring to internal arbitration, are to be applied. The person, who finds out that there is a case of recusation against him, is obliged to inform the parties and other arbitrators before accepting his assignment as an arbitrator, and if such situation occurs after designation and accepting, immediately after acknowledging it. Regarding the first variant we can speak about a refusal of the nomination rather than abstention. The abstention of the arbitrator is not an equivalent of recognition of the case of recusation.

The revocation of the arbitrator can be demanded in accordance with the Arbitral Procedure Regulations of the Trade Arbitration Court in the following situations: if, after signing the assignment the arbitrator refuses to comply without justification, if the arbitrator does not take part in the arbitration sessions without justification; if the arbitrator hesitates in the resolution of the dispute, without reasonable justification; if the award is not pronounced in the pre-established time ; if the confidential character of the procedure is not respected.

These situations refer to the conditions which are imputable to arbitrators, stated by any member of the board of the Court and it is assessed in the board, which has the right of awarding even if the arbitrator was elected by the parties.

As far as the replacement of an arbitrator is concerned, according to the Arbitral Procedure Regulations of the International Trade Arbitration Court, it has to be done in 3 days from acknowledging either a case of abstention, recusation, revocation, renunciation, death or other causes for impediment by the Nomination Authority.

International conventions and the UNCITRAL model law do not contain any provisions on the arbitrators' responsibility.

There are arguments about immunity granting in the sense that the arbitrators fulfill a qvasi-jurisdictional function so that they do not become the subjects of the dissatisfaction of the parties. Similarly, the possibility that the parties hold the arbitrators responsible for payment of damages could encourage them to intimidate the arbitrators. Moreover, in the absence if immunity many qualified persons would refuse to arbitrate. The idea that

arbitrators could be exonerated of any responsibility gave birth to worries that indifference, fraud and abuse of power will be encouraged.

In the regulations of arbitral institutions and national law the responsibility of arbitrators has been limited to certain limitative situations, like: in case he refuses the case after having accepted; does not take part in the awarding sessions without justification or he does not give the verdict in the pre-established conventional or legal period of time, he does not respect the confidential character or the arbitration by publishing or divulgating information he has obtained due to his role as arbitrator, without the authorization of the parties; if he disobeys with ill-faith and negligence other contractual duties; if he commits any errors that could lead to the annulment of the arbitral award; if he accepts the assignment although there is a situation of incompatibility.

Referring to the basis of the arbitrators' responsibility there is no unitary opinion. Thus the thesis of the strictly contractual nature of arbitrators has been sustained, which derives from non-fulfillment or deficient fulfillment of contractual obligations, as well as from the fact that the responsibility of arbitrators stands on delictual grounds. We consider that the responsibility of arbitrators has mixed – contractual and delictual -grounds.

Chapter III
THE PROCESS OF ARBITRATION

Contrary to the court of law, the activity of the arbitral tribunal is based on the arbitral convention.

The process of arbitration is subjected to a number of principles which are again the subjects of a non-unitary opinion. As far as we are concerned, we consider that in the arbitral procedure the principle of equality of parties, the principle of right to defense, the principle of contradictoriality, the principle of procedural flexibility, the principle of confidentiality and the principle of non-interference of court have to be respected.

The principle of equality between parties in the procedure of arbitration implies granting the same procedural rights to all the parties and ensuring a balance in their procedural situation. The right to equal treatment of all the parties includes avoiding any illegitimate discrimination and the guarantee that any of the parties will have the possibility to sustain or defend their rights. This principle is formulated in the UNCITRAL model law and in the content of the majority of arbitral regulations.

The right to defense signifies the mixture of procedural means, one party disposes of, in the civil procedure to defend or realize its own rights or legitimate interests. The right to defense in a material sense is expressed in the following rights of the parties: the right to acknowledge the claims and defense of the other parties; citation of parties for participation in the litigation debate; the right to suggest evidence. In a formal sense, the right of defense signifies the possibility of the parties to hire qualified defense. The necessity to respect the right of defense is stipulated in international conventions and the regulation of arbitration institutions.

As for the principle of contradictoriality, this signifies the possibility of the parties to discuss and resolve any issue of fact and of right in the process of arbitration. The respect for the principle of contradictoriality demands that the arbitral tribunal ensures each party the possibility to make use of their procedural rights, to present and argue the basis of fact and of right which support their demands or defense. There are no exceptions of

matter or procedure, which could be resolved without having been debated upon in a contradictorial debate between the parties.

The flexibility of the arbitral procedure means that the arbitration is characterized by flexibility, fluidity, not being tributary to rigid formalities, which characterize common procedural law, the will of the parties being the principal element in the dynamics of the arbitration procedure. This flexibility springs from the lack of solemnity in the arbitral procedure/ trial and the colloquial means of debate. This is possible as the parties are not implacable adversaries most of the time, they just wish to resolve a transactional dispute. This principle has not been consecrated legally but its existence can be deduced from the mixture of regulations referring to arbitration.

The principle of confidentiality is considered to be one of the advantages of arbitration, it is not stipulated in international arbitral conventions. The most important regulations of arbitration generally contain stipulations with reference to confidentiality but they refer only to certain phases of the arbitral procedure.

The UNCITRAL model law, as well as the majority of national legislation, does not contain stipulations in this sense, but the majority of regulations for different arbitral institutions consecrate the obligation for confidentiality.

For ensuring confidentiality the regulations for arbitral procedures of the Court for International Trade Arbitration of the Chamber of Commerce and Industry in Romania stipulate that the arbitral tribunal, Arbitral Court and the staff of the Chamber of Commerce and Industry in Romania do not have the right to divulgate or publish any information they acquire through the process of arbitration without being authorized to do so by the parties. However, they can be published partially or in an outline or commented on in legal matters if they appear in magazines, researches or collections on the practice of arbitration, without giving the names of the parties or information that could jeopardize their interests. The file of dispute is also confidential, no other person having access to them, without the approval of the parties, except the involved persons. Moreover the president of the Court of Arbitration can authorize from case to case the investigation of each file in scientific or research purposes, but only after a resolution of the dispute has been reached or an irrevocable legal sentence has been given.

The obligation for confidentiality is most clearly stipulated in the Arbitration Regulations of the World Organization of Intellectual Property, which defines the term of confidential information and the situations in which they can be made public.

International conventions in the matter of arbitration and Romanian legislation recognize the principle of non-interference in the arbitration procedure by the court of law, which confers efficiency to the arbitration procedure.

The parties can agree on the applicable laws in the procedure. However, the autonomy in this sense is limited by the necessity of respecting public order, equality in treatment and the principle of right of defense.

As for the applicable law for the matter of the litigation, the contractual parties are free to appoint it, either in the content of the initial contract or the one signed later, in a separate agreement.

Similarly, the parties can establish in their contract, that it has to be liable to lex mercatoria. The content of the lex mercatoria is not determined precisely, containing a series of elements with unlimited enumeration: international public law; uniform regulations; general principles of law; regulations of international organizations;

contractual standards. The following principles of lex mercatoria are generally accepted: pacta sunt servanda; rebus sic stantibus; the principle of interpretation and execution of contracts in good faith, the principle of interpretation in favorem validitatis; the principle of useful effect; principle of interpretation against proferentum; the principle of balance between parties, reciprocal obligations; exceptio non admipleti contractus; the principle of integral reparation of prejudice; preservation of public order.

If the parties do not have a separate agreement concerning the law they are willing to apply, it will be appointed by the arbitral tribunal.

The notification of the arbitral tribunal requires the registration of a request for arbitration, having a similar role with a calling for legal action. The request for arbitration will have a different content depending on what the parties have agreed upon in the arbitration convention or depending on the applicable arbitration regulations and national law.

As far as the content of the notification is concerned, the regulations of arbitral institutions have two ways of approaching this issue: some rules refer only to the necessity of a short document which only notifies the adversary about the start of the arbitration procedure, whereas others stipulate that such a request should be longer, more detailed, containing the presentation of the present situation with relevant facts and legal arguments.

The answer of the defendant to the request of the claimant has to be submitted in the pre-established term and has to contain the position and attitude of the defendant to all the issues at right and of fact mentioned in the request. If the defendant has his own pretentions to the request of the claimant, he has the possibility to formulate a reconventional demand. The majority of arbitral regulations permit the formulation of a reconventional demand, but some limit this opportunity of the defendant to pretentions deriving only from the same legal relation, whereas others do not contain stipulations in this matter.

The location where the arbitral procedure is to take place has a special significance, although there are opinions which say that this tendency has been diminishing. Firstly, law courts in the circumscription of which the arbitration takes place have the competence to annul the arbitral award, which presents interest, as some legislations permit a detailed control of an arbitral award, whereas others do not. Secondly the parties will choose a place for the procedure, where legislation facilitates and supports the process of arbitration and the state courts have certain experience in complex commercial arbitration. Moreover, it is to be taken into consideration that the selection of location will affect the selection of arbitrators and arbitral procedures.

The language of the procedure has a very important practical role. Thus, the choice of language in which the procedure will procede affects the choice of arbitrators, lawyers and even the efficiency of the witnesses' declarations. Moreover, in case one of the parties does not know the designated language it is necessary that he starts the procedure of payment for effective translations, and in case the other party knows the designated language, this could even jeopardize the balance of the procedure.

As for the modality of the process of the debates in front of the arbitral tribunal, most regulations stipulate that the debates have to take place verbally, but there are regulations which permit the resolution of the dispute only on the basis of written documentation.

A general rule of international trade arbitration is that all the parties have to prove their affirmations. Moreover, it is a consecrated right of the arbitral tribunal to ask for any other evidence in a determined period of time.

The regulations referring to the administration of evidence stipulate that these should remain at the discretion of the arbitral tribunal, which has the opportunity to apply a flexible procedure for stating the situation of fact. The efforts to eliminate the existing differences between different legal systems have concretized lately by the creation of an international legal system for processes in international trade arbitration, as well as the Regulations of the International Bar Association for the administration of evidences.

Chapter IV
THE ARBITRAL AWARD

The arbitral litigation is finalized by an arbitral award, the most important act in the whole procedure, as it means the realization of the purpose of the arbitration, namely, the resolution of the dispute.

The arbitral award is the act that finalizes the arbitral procedure, the final purpose of the arbitral activity, having a double nature: contractual and jurisdictional. The jurisdictional nature of the award derives from the unilateral character of the legal act, which the arbitral procedure is finalized by, having the effects of a court sentence on the parties, whereas the contractual nature of the award derives from the compromise signed by the parties for the designation of arbitrators to resolve the litigation.

In the procedural regulations of arbitral tribunals different categories of arbitral awards are mentioned, like: final award, partial awards, awards pronounced as a result of an agreement between the parties, awards pronounced in the absence of one party, these not being defined with precision yet.

The final award represents the decision containing the resolution of all the litigious aspects of the case and it ends the mission of arbitrators, but it can refer to the solution for only one aspect of the dispute between the parties.

Partial awards are decisions referring to a part of the parties pretentions in the process of arbitration, other pretentions to be solved in a future arbitral procedure. The regulations of arbitral institutions contain stipulations referring to the possibility that the arbitrators pronounce partial awards, and others even encourage them to do so in certain situations.

The freedom of arbitrators to determine if it is recommended to give a partial award can be exercised only in the conditions established by the parties. Consequently, has to be respected if the parties agree to exclude partial awards and they prefer that only one final award will be pronounced in the entire litigation. The possibility for partial awards represents an advantage for the arbitral tribunal, especially if the litigation is complex, as it could lead to the economizing of resources, money and time.

Awards pronounced as a result of agreement between the parties are decisions reached due to an agreement between the parties which puts an end to the dispute between them. The regulations of arbitral institutions and national legislation permit arbitrators to five out awards pronounced as a result of agreement between the parties, but they are not allowed to impose these on them. Many times the parties wish to incorporate these decisions in the arbitral award so that it can be enforced on any party in case it does not

fulfill the undertaken obligations. In addition, an award pronounced as such confers to the agreement of the parties a high level of formality.

As for awards pronounced in the absence of a party, these refer to situations when one of the parties is not present in the moment of pronunciation although he has been summoned.

The majority of arbitral regulations explicitly refer to the absence of one party at the debates, but it is obvious that the pronunciation of a decision cannot be jeopardized by the absence of any part, not even if both are absent although they have been legally summoned. It has been stated, that the arbitral tribunal has the implicit competence to continue the debates and reach a decision even if one of the parties is absent. These cases are not different in any way from those, where both parties are present and the award pronounced this way is equally valid, provided the principles of the procedure have been respected, most importantly the principle of contradictoriality and the equality of parties.

The regulations of arbitral institutions stipulate that the tribunal makes an unanimous decision or by majority of votes, some even mentioning that the president of the arbitral tribunal makes the decision alone if the majority cannot be summoned. As for the deliberation of arbitrators, no specific form is stipulated but naturally the most preferable method is personal meeting of arbitrators. Other variants for deliberation are the exchange of questionnaires, notes or the exchange of the decisional project, as well as communication via telephone, fax or video conference.

In case the parties opted for an arbitral institution, there are cases when such an institution has attributions of control over arbitral awards. The Regulations of the International Court for Arbitration in Paris contain stipulations about the control over arbitral awards. Thus, before signing any award, the arbitral tribunal has to hand in a draft of the award to the Court, which can perform any modifications on its form without affecting the decisional freedom of the arbitral tribunal or it can highlight certain substantial matters. No award can be pronounced without the approval of the Court as far as its form is concerned.

These stipulations have been the subject of divergent opinions, with considerations that such a proceeding of the International Court for Arbitration in Paris represents a support in the processing of the award but it can also be an encroachment of the arbitrators' independence, not taking into consideration the requirements of an equitable procedure.

Conventions of major importance do not impose conditions in the form of arbitral awards.

Nevertheless, the written form of awards has been recognized as an implicit requirement. There are a series of essential elements which the arbitral award has to contain: the location, date of pronunciation and the motivation of the award.

It is mandatory that the location of arbitration is indicated so that it can be verified if the arbitration was made in the location established by the parties in the arbitral convention or in conformity with it.

The date of pronunciation of the award is very important for many reasons: it is necessary because it has to be verified if the terms for awarding and the deadlines of notifications have been respected.

As far as the motivation of the award is concerned, the rules for some arbitral institutions imperatively stipulate the necessity of motivation, whereas others do not impose such a condition.

As far as the remediation of material errors in the contents of awards is concerned, international conventions regarding arbitration do not contain any regulation but the majority of arbitral rules stipulate remediation in such matters. Material errors are mistakes made in the names, position and affirmation of parties or those in calculations or any other mistake in arbitral awards and settlement.

In cases when the dispositions of the award are so ambiguous that the parties could deliberately misunderstand it significance, the interpretation of the arbitral award can be requested. This interpretation does not alter the meaning of the arbitral award, it only clarifies its meaning to the parties.

If the tribunal omits to pronounce in any requested matter, the parties have the right to ask for completion. The regulations of certain arbitral institutions contain stipulations referring to the completion of arbitral awards, whereas others do not. Nevertheless in the practice of arbitration such a possibility ha been recognized unanimously.

The effects of an arbitral award are res judicata/case law, enforceability and the force of evidence.

As far as the case law of the arbitral award is concerned, it could be assessed in two senses: in the negative sense the exception of case law guarantees the impossibility for further discussions on the same litigious matter after its final and irrevocable resolution, and in the positive sense, the party whose alleged right has been recognized can prevail with this right.

Arbitral procedure regulations of the Court for International Trade Arbitration of the Chamber of Commerce and Industry of Romania stipulate that the arbitral sentence has enforceability and it can be enforced similarly to a court sentence, obliging the party against which it was pronounced, to act accordingly with good will.

The arbitral award has the power of evidence of an authentic document, although this quality is not mentioned in any legal stipulation. Nevertheless, the authentic character of an arbitral award is to be recognized, on the one hand, because the arbitrators are not trustees of the parties, but legal persons similar to judges, on the other hand, because the republished Code of Civil Procedures of 2010 recognizes the force of evidence of foreign arbitral awards. In such conditions, the force of evidence of national arbitral awards needs to be recognized.

Chapter V
ANNULMENT OF ARBITRAL AWARDS

Arbitral awards can be annulled only by an annulment procedure.

In the matter of arbitration international conventions do not define expressively the causes for annulment of an arbitral award.

As far as the UNCITRAL model law is concerned, it contains dispositions referring to the necessary conditions for the promotion of an annulment procedure against arbitral awards, and the causes for which an arbitral award can be annulled, are defined with limitations. Thus, the arbitral award can be annulled at the request of one party if he proves that: one party was affected by an incapacity or the convention was not legally available or in the absence of indications in this sense, in the virtue of the laws of the country where it was pronounced; the party who promotes the annulment procedure was not duly informed

about the designation of arbitrators or about the arbitration procedure or if it was impossible to present its case; the sentence refers to matters that have not been included in the compromisory clauses or it contains decisions that exceed the stipulations of the compromise; nevertheless, if the stipulations of the sentence in relation with the dispute in question can be separated from those not subjected to the arbitral procedure, only the parts that are not subjected to the arbitral procedure can be annulled; the constitution of the arbitral tribunal or the arbitral procedure was not in conformity with the convention between the parties or, except the situations when such a convention is in contradiction with the stipulations of a mandatory Law model, or in the absence of such convention, in conformity with the stipulations of Law model UNCITRAL; if the subject of the dispute is not susceptible to be regulated by an arbitral procedure; if the award is in contradiction with the public order of the state.

In Romanian law art. 80 of the Arbitral procedure regulations of the Court for International Trade Arbitration of the Chamber of Commerce and Industry of Romania of 2013 stipulates that arbitral awards can be annuled only by a procedure of annulment for one of the reasons stipulated by the Code of Civil Procedures.

The reasons for the commencement of an annulment procedure are formulated in art. 608 on the republished Romanian Code of Civil Procedure from 2010. This enlisting is limitative, as well as the regulations from the Code of Civil Procedures of 1865. The reasons for this procedure are characterized by great diversity, following the idea of sanctioning disrespect for the regulations of the arbitral convention and of fundamental imperative regulations. These correspond with the reasons given in art. 34 of UNCITRAL model law, being even more numerous and formulated in a more synthetically.

Non-arbitrability as the reason for annulment of an arbitral award is mentioned in art. 608, par. 1, letter a) from the republished Code of Civil Procedures of 2010. The scope of arbitral litigations is defined in art. 5 of Arbitral procedure regulations of the Court for International Trade Arbitration of the Chamber of Commerce and Industry of Romania by mentioning the disputes which cannot be resolved by an arbitral procedure, as well as the litigations referring to marital status and capacity of people, family relations and those rights, that the parties cannot dispose of. This enumeration is not limitative. As a result, only patrimonial litigations can be resolved by arbitration, except those, which refer to rights the parties cannot dispose of. Thus, litigations with non-patrimonial rights as subject cannot be resolved with this method.

The absence, unavailability or inoperativeness of the arbitral convention is regulated as a reason for annulment of the arbitral award in art. 608, par. 1, letter b) from the republished Code of Civil Procedures of 2010. Forasmuch, the basis of any arbitration is the arbitral convention signed by the parties, in its absence no valid arbitration can exist.

The reason stipulated in art. 608, par. 1, letter c) from the republished Code of Civil Procedures of 2010 sanctions the non-fulfillment or encroachment of convention concerning the constitution and composition of the arbitral tribunal. Usually, in practice, the compromissory clauses do not contain stipulations referring to the constitution and composition of the arbitral tribunal, most frequently the parties indicate the permanent institution of arbitration they opt for. In the ad-hoc arbitration, if there are no stipulations referring to the formation of the arbitral tribunal, the stipulations of the Code of Civil Procedures will be applied. This reason for annulment also contains non-conformity regarding the person of the arbitrator (no capability of exercise of rights, non-fulfillment

of citizenship conditions, the absence of special arbitral qualifications) and non-observance of the regulations referring to the formation of the arbitral tribunal of denomination, revocation and replacement regulations .

Non-observance of the right to defense and the principle of contradictoriality of debates are sanctioned in art. 608, par. 1, letter d) from the Code of Civil Procedures of 2010. The summoning of parties is destined to ensure the participation of parties in the litigation, presentation, argumentation and proof of their rights through the process, to be able to discuss contradict the affirmations made by the other party and to express his point of view in the quest for truth and the pronunciation of a legal and solid decision.

The pronunciation of a decision after the expiry of the pre-established deadline for it, in case at least one of the parties declares that he intends to invoke the lapse, and the parties have not agreed on the continuation of judgment, it is considered a reason for annulment of the arbitral award in conformity with art. 608, par. 1, letter e) from the republished Code of Civil Procedures of 2010.

The non-observance of the principle of availability, in the sense that the arbitral tribunal has pronounced in things they were nor required to or has given more than asked for, is sanctioned in, art. 608, par. 1, letter f) of the republished Code of Civil Procedures of 2010.

The lack of compliance, reasons, date and location of pronunciation from the contents of the arbitral award can lead to the annulment of the arbitral award in conformity with art. 608, par. 1, letter g) from the republished Code of Civil Procedures of 2010.

Non-observance of public order, of good manners and of imperative provisions of the law is one of the reasons for annulment in conformity with art. 608, par. 1, letter h) from the republished Code of Civil Procedures of 2010.

In case, after the pronunciation of the arbitral award, the Constitutional Court rules over the invoked exception by declaring the law, order or provisions from a law having been the subjects of the exception or other provisions from the assailed act as being non-constitutional, which obviously and necessarily cannot be dissociated from the provisions that were mentioned and referred to, the parties can opt for annulment of the arbitral award in conformity with art. 608, par. 1, letter i) from the republished Code of Civil Procedures of 2010.

None of the reasons for annulment can lead to the reassessment of the merits of the case.

As far as the competence for resolution in the procedure of annulment is concerned, it is explicitly delimitated in Art. 610 of the republished Romanian Code of Civil Procedure from 2010, and belongs to the court of appeal in the precincts of which the arbitration took place. In the regulations of the Code of Civil Procedures of 1865 this competence belonged to the court of law immediately superior to the competent court in case of the absence of an arbitral convention.

The procedure of annulment can be introduced in a month from the date of communication of award. As the term of one month is perfectly legal, imperative, peremptory and absolute, non-fulfillment of the annulment procedure leads to the incapacity to perform such action. In the case of the reason stipulated in art. 608, par. 1, letter i) from the republished Code of Civil Procedures of 2010 the period is 3 months starting from the moment of the issuance of the decision of the Constitutional Court in Part I from the Romanian Official Gazette .

The term of the annulment procedure runs from the valid date of communication of the decision. If the arbitral award was completed, directed or clarified on the means of its meaning, length and application of disposals, the term is calculated from the date of communication of awards pronounced as such, the respective decision being an integral part of the initial award to be completed, directed or clarified.

As far as the motivation of the annulment procedure is concerned, although there are no references in any law to stipulate that expressively it is obvious that the annulment procedure has to be argued on legal grounds.

The procedure of annulment does not have a suspensive effect of execution. Nonetheless there is the possibility that the court suspends the execution of the arbitral award against which the annulment was started after depositing a pre-established caution.

If the court finds that the procedure of annulment is well-founded, the legislator regulates two hypothesis:

In a first hypothesis, admitting the action, the Court of Appeal will annul the award and in cases stipulated in art. 608, par. 1, letters a), b) and e) from the republished Code of Civil Procedures of 2010, and will send the case to be judged in the competent court to be resolved in conformity with the law.

In a second hypothesis, for other cases stipulated in art. 608, par. 1. from the republished Code of Civil Procedures of 2010, it will send the case to be judged by the arbitral tribunal if at least one of the parties requires it. On the contrary, if the dispute is in a judicial phase, the court will pronounce on the main issue in the limits of the arbitral convention. In case evidence is needed for the decision on the main issue, the court will give a judgment only after examining the evidence. Practically, in the second situation the court will pronounce two judgments: first annuling the arbitral award, then a resolution for the main issue of the case. The decisions pronounced in these two phases will be reflected distinctively in the unique judgment. If the parties have agreed that the litigation will be resolved by the arbitral tribunal in equity, the court of appeal will resolve the case in equity. We have to point out that in the regulations of the Code of Civil Procedures of 1865, the resolution of the annulment of arbitral awards by courts of arbitration was excluded.

Chapter VI
RECOGNITION AND EXECUTION OF FOREIGN ARBITRAL AWARDS

In conventional law the recognition and execution of foreign arbitral awards can be analyzed in the light of the New York Convention of 1958, Geneva Convention of 1961, Washington Convention of 1965 an Panama Convention of 1975.

The New York Convention institutes the presumption of the regularity of foreign arbitral awards. Art. V mentions that the recognition and execution arbitral awards will not be refused at the request of the party against which it was invoked, except if he proves in front of a competent authority of the country where recognition and execution have been requested, that causes of non-validity exist in the content of the same text.

Consequently, it has been consecrated that an overturn of the evidential burden is possible concerning fulfillment of validity conditions of the foreign arbitral award, facilitating thus and so the extraterritorial efficiency of arbitral awards. This evidentiary legal system represents a major contribution of the New York Convention in promoting international trade arbitration.

By analyzing the cases of non validity established by the New York Convention it can be stated that the following conditions have to be fulfilled so that a foreign arbitral award can be recognized and executed: the competence of the awarding arbitral institution to be in conformity with the compromise of the parties or the compromisory clauses of the agreement between parties concerning their institution in its limits; the formation of the arbitral institution and the arbitral procedure to be in conformity with the agreement between the parties or the legislation of the country where the procedure of arbitration takes place; the arbitral award to become obligatory for the parties, meaning susceptible for execution as soon as it is pronounced, and not annulled or suspended; the right to defense to be respected; reciprocity to exist between the parties; the arbitral award not to interfere with public order in the country where its recognition and execution is required.

In conformity with art. V, Point 1, letter a) from the New York Convention the recognition and execution of a foreign arbitral award can be refused if the parties were affected by incapacity by the arbitral convention or it was not applicable to the law the parties subjected it or in the absence of such indications, in conformity with the legislation of the country where the award was issued. This case is rarely invoked in practice as matters referring to the party's capacity or non validity of the convention occur at beginning or the procedure of arbitration.

Another reason for refusal of recognition and execution of arbitral awards is the defiance of the principle of contradictoriality, of the right to defense and that of equality of the parties, being stipulated by art. V, p. 1, letter b) in the Convention.

According to art. V, p.1, letter c) of the Convention, non-validity of the arbitral award can also be the consequence of trespassing the competences of the arbitral tribunal, be hat in a difference which has not been included in the compromisory clauses of the convention or in the compromise (non petitia), be that solutions which exceed the stipulations of the arbitral convention (ultra petitia).

A refusal of recognition or execution of the arbitral award can also take place if the formation of the arbitral tribunal or the arbitral procedure did not happen in conformity with the convention between the parties, or in the absence of a convention it was not in conformity with the legislation of the country where the arbitration took place. (art. V, p. 1, letter d) in the Convention). This regulation presumes the obedience of all the procedural legislation which were established by the parties, or in the absence of a convention, the legislation of the country where the arbitration took place.

If the award has not become obligatory yet for the parties, or it was annuled or suspended by a competent authority of the country where the procedure of arbitration took place, its recognition and execution can be refused in conformity with art. V, p. 1, letter e in the Convention.

The recognition and execution of foreign arbitral awards can be refused for reasons invoked ex officio when the subject of the dispute is not susceptible, in conformity with the legislation of the country where the recognition and execution of the arbitral award was imposed, respectively if the recognition and execution of the arbitral award would mean a disturbance of public order in the state in question. (art. V, p. 2, letter a) and b) in the Convention).

Art. IX in the Geneva Convention contains disposals referring to the regularity of foreign arbitral awards, thus ensuring them a more secure international stability than the New York Convention. According to this article annulment in one of the contractual states

of an arbitral award will not be regarded as a reason for refusal of recognition and execution, only if such an annulment has been pronounced in the country where the award was issued and only for reasons expressively claimed in its content. These stipulations ensure the efficiency of foreign arbitral awards, due to the fact that by restraining the reasons for annulment of arbitral awards, the provisions of internal legislation of the countries exceeding these, will lose effect. In other words, an arbitral award, even if it is annulled in the country where it was issued, could be recognized and executed on the basis of the convention.

In the content of section VI of the Washington Convention from 1965 entitled "About the recognition and execution of sentences" we can find some regulations of the recognition and execution of foreign arbitral awards. According to art. 54, par. 1, every contractual state recognizes any sentence pronounced in conformity with the stipulations of the Convention and ensures the execution of pecuniary obligations as if it was a permanent judgment of a court functioning on its own territory.

All the retributions in question are assimilated with internal judgment and decree. By this stipulation the Washington Convention consecrates an important innovation, eliminating the intermediary period of control over judgments emanated from other states as far as their international regularity is concerned.

The Panama Convention of 1975 contains regulations referring to the recognition and execution of judgments. The execution of a judgment will be disposed in the same manner as the one pronounced by a national court or a foreign one of common law in conformity with the procedural regulations of the country where it has to be executed and with the provisions of international conventions.

The text of art. 5 in the Panama Convention stipulates a series of reasons justifying the refusal of recognition and execution of a judgment, at the request of the party against who it was pronounced: if the parties of the convention were incapable in conformity with the applicable legislation or if the convention was not valid according the legislation of the state where it was pronounced; if the judgment regards a litigation which has not been included in the content of the convention (nonetheless, if the stipulations of a decision which refer to matters biddable to arbitration can be separated from those that are not biddable to this method of resolution of dispute, the former can be recognized and enforced); if the formation of the arbitral tribunal was not made in accordance with the terms of the convention signed by the parties or in the absence of such convention the formation of the arbitrate tribunal or the procedure of arbitration did not happen in conformity with the legislation of the state where the arbitration has to take place; if thee judgment is not obligatory for the parties yet or it has been annulled or suspended by the competent authority of the state where or in conformity which the award was pronounced.

UNCITRAL model law contains provisions referring to the recognition and execution of judgments in chapter VIII. An arbitral award, indifferent from the state it has been pronounced in, will be recognized as obligatory and will be executed after the finalization of the written procedure in front of the competent court.

Recognition or decreeing the execution of an arbitral judgment can be refused for reasons described in art. 36 from UNCITRAL model law, which are in fact a repetition of those enumerated in art. V of the New York Convention.

In Romanian Law, the provisions referring to the recognition and execution of foreign arbitral awards can be found in the republished Code of Civil Procedures of 2010.

The Romanian legislator makes a distinction between the terms recognition and execution of foreign arbitral awards corresponding to international conventions in the matter of arbitration.

A recognized sentence has res judicata and the observed facts in an arbitral award are opposable to any person, operating at full right, whereas the execution of an arbitral award has to be authorized by he state where it has to be executed.

The republished Code of Civil Procedures of 2010 repeats art. 1124, stipulations from art. V, p. 2 in the New York Convention mentioning two necessary conditions for the recognition and execution of the foreign arbitral award: that the dispute in question has to be susceptible to be resolved by arbitration and the respective award is not allowed to contain any dispositions contrary to public order of international private Romanian law.

In art. 1128 the republished Romanian Code of Civil Procedure from 2010 has completely taken over the situations mentioned in art. V, p. 1 of the New York Convention in the matter of reasons that justify the refusal of recognition and execution of foreign arbitral awards.

In compared law, the recognition and execution of foreign arbitral awards is obtained as a result of a procedure in court, the petitioner having to hand in a request accompanied by an arbitral award, an arbitral convention, or authenticated copies of these.

The concrete procedure lacks complexity in front of the court and it unreels in celerity, the judge not having the competence to control the merits of the case. The reasons for refusal of recognition and execution of foreign arbitral awards are, in most cases, taken over from the New York Convention of 1958.

CONCLUSION

International commercial relations are considered the main factor of the progress of every country as well as the condition of consolidation of cooperation and understanding between nations.

The importance of international commercial relations imposes that their deployment to be done in the frame of certain regulations. The norms of international commercial law offer the necessary instruments and means to ensure the stability of judicial relations.

In international commercial relations the majority of litigations between the participants is resolved by arbitration as a private form of jurisdiction.

The first chapter of the thesis analyzes the notion and character of arbitration, the forms of arbitration, the occasional and institutional arbitration, arbitration at right, arbitration in equity as well as the internal and international legal framework, realizing a presentation of main conventions in the domain of international trade arbitration, as well as of the evolution of internal law in the question of the institution of arbitration.

With reference to the notion of arbitration, there is no unitary point of view in the doctrine but some common elements can be spotted in the stride of many authors who tried to define this institution: the necessity of the existence of an arbitral convention, the

existence of a dispute between the parties as well as the resolution of the dispute by a person chosen freely by the parties.

As far as the justiciary nature of arbitration is concerned there are many points of view in the doctrine, but the majority of authors tend to agree on the mixed character of arbitration, both contractual and jurisdictional. The two components have their own influences, contributing to the realization of efficiency of arbitration as a means of resolution disputes.

The justiciary framework is characterized by diversity and is in continuous transformation imposed by the dynamics of operations in exterior commerce and international economic cooperation.

The second chapter of the thesis deals with the conditions one person has to fulfill in order to have the quality of an arbitrator, the formation of the arbitral tribunal, revocation and replacement of arbitrators as well as their responsibility.

In order to have the quality of an arbitrator, a person has to fulfill many general conditions, namely the condition of citizenship, the state of being a natural or legal person and the condition referring to the capacity of practice.

An indispensable requirement for arbitrators is that of their impartiality and independence. These are expressively denounced in the majority of arbitral regulations.

Referring to the number of arbitrators the majority of arbitral regulations have consecrated the rule of imparity for avoiding the difficulties deriving from divided points of view in case of an arbitral tribunal formed by an even number of arbitrators.

The regulations of arbitral procedures of the Court of International Trade Arbitration in the Chamber of Commerce and Industry of Romania from 3013 do not stipulate the possibility of denomination of arbitrators by the parties, but only by the Authority of Nomination. We consider that this represents a regression of regulations in contradiction with the majority of regulations in this matter.

The third chapter of the paper discusses the process of the arbitral procedure, examining the applicable principles in the arbitral procedure, applicable laws and the subject matter of disputes, as well as the content of the request for arbitration, the reception of a reconventional request, the process of debate in the litigation, evidence and procedural exceptions.

Differently from the court of law, the arbitral tribunal grounds its activity on the arbitral convention. It can be stated that the majority of national legislation and consecrated arbitral regulations have conferred to the arbitral tribunal the right to pronounce about its own competences.

There are a series of essential rules which set an order to the structure and process of the arbitral procedure. We do not have a unitary opinion as far as the number and content of these principles are concerned, the paper analyzing the principle of equality of parties in the procedure, the principle of the right to defense, the principle of contradictoriality and the principle of non-interference of court in the procedure of arbitration.

As for applicable laws in arbitration, after the assessment of disposals in international conventions, national legislation and the regulations of arbitral institutions we can conclude that they confer complete freedom to parties in the arbitral procedure to determine the rules of the procedure, and in the absence of a convention the arbitrators are the ones to establish the rules applicable to the procedure .

Referring to the applicable law in the subject matter of the dispute, we can affirm that the parties have complete freedom in the choice of the applicable law for the subject matter of the dispute. The arbitral tribunal will determine only one in the absence of such option.

The fourth chapter of the paper analyzes the arbitral award, which is the most important stage of the procedure as it represents the resolution of the litigation. The term arbitral award is not defined in the content of regulations for arbitral institutions, nor in national legislation. As a result, legal literature tried to give its definition. In each case the arbitral award has to be pronounced by arbitrators and has to represent the resolution for the dispute.

The arbitral award has a double nature, one the one hand it is jurisdictional, deriving from a judicial act as a finalization of the procedure, and, on the other and it is contractual deriving from the arbitral convention.

There are many categories of arbitral awards: final awards, partial awards, awards pronounced as a result of agreement between the parties and awards pronounced in the absence of one party.

As far as the content of the arbitral awards is concerned, the majority of national legislation contain stipulations referring to the elements they have to contain.

The communication of the award will have to be done with apt means to ensure that the addressee will receive it.

Correction of material errors, interpretation and completion of awards represent an exception from the rule according to which the arbitral tribunal finalizes its mission, in the moment it has pronounced the arbitral decision. National legislation and regulations of arbitration contain explicit stipulations in this matter.

The fifth chapter analyzes the modality of attack against the arbitral award, as well as its annulment. The procedure for annulment of the award is presented in the UNCITRAL model law, the reasons for such an action being analyzed. Similarly, it examines the national regulations regarding the process of annulment of arbitral awards. We can observe the reasons for annulment mentioned in our national legislation were taken from the UNCITRAL model law, being even more numerous and more synthetically formulated than in the letter.

The last chapter of the paper assesses the recognition and execution of foreign arbitral awards in conformity with the stipulations of the New York Convention of 1958, the Geneva Convention of 1961, the Inter-American Panama Convention of 1975 and of the Washington Convention from 1956.

The same problem is presented in the spotlight of the regulations in the UNCITRAL model law. From the analysis of the reasons that justify the refusal of recognition and execution of arbitral awards we can say that these were taken over from art. 5 of the New York Convention.

The paper also presents the modality the issue of recognition and execution is regulated in the light of the republished Romanian Code of Civil Procedure of 2010. The analysis of reasons that justify the refusal of recognition and enforced execution enlisted in the republished The Romanian Code of Civil Procedure from 2010, we can draw the conclusion that they were taken over from art. V, p. 1. of the New York Convention.

The institution of international trade arbitration is in continuous expansion, being adopted by the majority of commercial partners in the world as a modality of resolution in their disputes.

The comparative analysis of regulations and rules of the procedure of arbitration in different institutions leads to the statement that their stipulations are similar, each containing stipulations referring to the modality of notification of the arbitral tribunal, the formation of the arbitral tribunal, revocation and replacement of arbitrators, the process of arbitration, the administration of evidence, adoption and communication of decisions, etc.

However, on an international level the tendency is to institutionalize international trade arbitration, at present a large number of arbitration centers being established. This development of institutional arbitration versus ad-hoc arbitration is due to the variety of advantages the former offers: the use of pre-established rules, the denomination of qualified persons as arbitrators, the use of the service of auxiliary personnel etc. We do not have to omit the fact that the parties have significant faith in arbitral institutions and their decisions present significant credibility in the courts of law appointed to recognize and execute arbitral awards.

An important tendency of arbitration is its autonomization, in the sense that the parties are fee to decide upon the regulations, location, terms and language of debate in the arbitral procedure.

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