

## THE ARBITRAL DECISION PRONOUNCED IN AD-HOC DOMESTIC-LAW ARBITRATION IN THE REGULATION OF THE NEW ROMANIAN CODE OF CIVIL PROCEDURE

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### Abstract

*The need to relieve the Romanian judicial system from the large number of cases, coupled with the assignment of specific prerogatives to certain people, bodies or institutions regarding the settlement of certain disputes, has resulted in the extension of arbitration as a significant way of settling litigations of a private nature.*

*This article presents some issues referring to arbitration in Romania, and then analyze, from the perspective of the New Romanian Code of Civil Procedure, the features of a settlement pronounced as a result of ad-hoc domestic-law arbitration, called arbitral decision, stressing elements of novelty and essential changes brought to it.*

**Key words:** *litigation, arbitral tribunal, arbitral decision*

### Introduction

*Arbitration is one of the alternative paths<sup>1</sup> made available to parties by both the old and the New Romanian Code of Civil Procedure for the cessation of disputes between them.*

*In legal doctrine, arbitration has been defined as “a conventional jurisdiction of private law for the settlement of certain litigations by one or several people, as part of a procedure based on the autonomy of will of the parties and in compliance with public order, mores and the imperative stipulations of the law”<sup>2</sup>.*

*In arbitral matters the settlement pronounced on the litigation between the parties bears the name of arbitral decision.*

### 1. General issues referring to arbitration and arbitral decision

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<sup>1</sup> For efficient arbitration, mediation and legal action in settling disputes, see C. Ș. Georgia, *Despre mediere și arbitraj în societatea civilă românească*, in *Fiat Iustitia*, no. 1/2012, p. 94.

<sup>2</sup> In the same vein, H. Motulsky, *Écrits. Études et notes sur l'arbitrage*, Dalloz Publishing House, 1974, préface Goldman, Ph. Fouchard, apud I. Deleanu, *Tratat de procedură civilă*, vol. II, Universul Juridic Publishing House, Bucharest, 2013, p. 442, footnote no. 1; G. Mihai, *Arbitrajul internațional și efectele hotărârilor arbitrale străine*, Universul Juridic Publishing House, Bucharest, 2013, p. 33; for the definition of international arbitration in international private law, see D. Berlingher, *Drept internațional privat*, Cordial Lex Publishing House, Cluj-Napoca, 2012, p. 227.

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The current regulation of arbitration is found in Book IV of the New Romanian Code of Civil Procedure, which can be regarded as common law in arbitral matters. In addition to these stipulations, incidental in the matter, with regard to certain forms of arbitration, are normative documents of internal law, such as the Law of Chambers of Commerce in Romania no. 335/2007<sup>3</sup>, which governs institutionalized arbitration, as well as international documents, such as: the European Convention on International Commercial Arbitration (1961) and the Arbitration Rules of the United Nations Commission on International Trade Law – UNCITRAL (1976), as amended on 6 December 2010.

The forms which arbitration can take are diverse and differ in relation to the criterion<sup>4</sup> applied in classification. Thus, depending on how it is organized, distinction can be made between occasional arbitration, also called ad-hoc arbitration, conducted on the initiative and through the will of the litigating parties<sup>5</sup>, and institutionalized arbitration, which is introduced by the provisions of the New Romanian Code of Civil Procedure, is exercised uninterruptedly, and is organized by permanent arbitration institutions or by chambers of commerce. In relation to the criterion of the legal framework in which arbitration is conducted, distinction is made between domestic-law arbitration, which targets legal relations without a foreign element, and international arbitration, which refers to a litigation that is derived from a relation of international private law or international trade law.

Regardless of the form taken by arbitration, the settlement pronounced on the litigation between the parties will be an arbitral decision. This is governed by the provisions of art. 601-615 of the New Romanian Code of Civil Procedure.

In the legal doctrine, arbitral decision<sup>6</sup> is defined as the act by which, based on prerogatives conferred by the arbitration convention, arbiters settle litigious matters brought before them by the parties<sup>7</sup>.

While this definition is broadly assimilated in the literature, controversies exist with regard to the legal nature of this procedural act. Thus, while some authors<sup>8</sup> embrace the thesis of the dualistic legal nature of the arbitral decision, determined by its conventional and jurisdictional facet, other authors<sup>9</sup>, whose opinion we share, adopt the thesis of jurisdictional nature of this procedural act. The argumentation of this opinion is based on the legal stipulations enshrining the arbitral decision as an enforcement order and states that its enforcement is made “exactly like a judicial decision” (art. 615 of the New Romanian Code of Civil Procedure).

The text of art. 601 of the Romanian civil procedural law enshrines the principle of settling litigations between the parties based on the main contract and the applicable legal norms

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<sup>3</sup> Law no. 335/2007 was published in the Official Gazette of Romania, Part I, no. 836 of 6 December 2007, was updated and supplemented by Law no. 39/2011 published in the Official Gazette of Romania, Part I, no. 224 of 31 March 2011.

<sup>4</sup> D. Lupașcu, D. Ungureanu, *Drept internațional privat*, Universul Juridic Publishing House, Bucharest, 2012, p. 315.

<sup>5</sup> For the capacity required for individuals to be professionals, see M. N. Stoicu, *Conditions governing the exercise of commercial activities by professionals*, in *Studia Universitatis Vasile Goldiș, Arad Economics Series*, Vol. 22 Issue 2/2012, p. 96-97.

<sup>6</sup> For the concept of foreign arbitral decision in international private law, see D. Berlingher, *op. cit.*, 2012, p. 234.

<sup>7</sup> M.- C. Rondeau-Rivier, *Arbitrage. La sentence arbitrale*, in *Juris-Classeur*, 1996, fasc. 1042, nr. 1, p. 2, apud I. Deleanu, *op. cit.*, vol. II, p. 579.

<sup>8</sup> S. Zilberstein, I. Băcanu, *Desfășurarea hotărârii arbitrale*, in *Dreptul*, no. 10/1996, p. 29-31; M. N. Costin, S. Deleanu, *Dreptul comerțului internațional*, vol. I, Lumina Lex Publishing House, Bucharest, 1994, p. 217.

<sup>9</sup> Gh. Beleiu, *Hotărârea arbitrală și desfășurarea ei*, in *Revista de drept comercial*, no. 6/1993, p. 14-15; I. Deleanu, *op. cit.*, vol. II, p. 578-579.

<sup>10</sup>, but, at the same time, also allows the settlement of the litigation according to equity rules, subject to the existence of the express agreement of the parties.

It can be seen that the decision is deliberated in secret, and adopted with a majority of votes. The pronouncement is passed as established by the arbitral convention or, in its absence, by the arbitral tribunal, and can be postponed by at most 21 days, but only subject to meeting the term of arbitration (6 months of the date of establishment of the arbitral tribunal – our emphasis). Under such conditions, assigning a value that, in our opinion, is excessive to the principle of autonomy of will of the parties, the pronouncement of the decision is left at the discretion of the parties by arbitral convention, and only in its absence, to the discretion of the arbiters who settled the litigation. The result of deliberation shall be summarized into minutes, which will have to briefly comprise the content of the operative part of the decision and, when applicable, the minority opinion.

The arbitral decision is adopted following the debates, and must be drafted in writing. In relation to its content, stated in the provisions of art. 603 of the New Romanian Code of Civil Procedure, which almost identically reiterates those of ex-art. 361 in the old Romanian civil procedural regulation, the existence, with certain particularities, of the same elements that any judicial decision must comprise is remarked:

a) the nominal composition of the arbitral tribunal, the place and date of the pronouncement of the decision;

b) the name and surname of the parties, their domicile or residence or, as applicable, the name and location, the name and surname of the representatives of the parties, as well as of the other people who participated in the debate on the litigation;

c) the mention of the arbitral convention based on which the arbitration proceeded;

d) the object of the litigation and the brief arguments of the parties;

e) the *de facto* and *de jure* reasons of the decision, and in the case of arbitration in equity, the reasons on which the settlement is based under this aspect;

f) the operative part;

g) the signatures of all arbiters, subject to art. 602 para. (3) and, if applicable, the signature of the arbitral assistant.

As regards the operative part of the arbitral decision, it should be noted that it must comprise the solution of admission or rejection of the demand for arbitration.

The Romanian procedural norms establish that it is the task of the arbiter who had a different opinion to draft and sign the separate opinion, mentioning the considerations on which it is based [art. 603 para. (2) of the New Romanian Code of Civil Procedure]. This rule operates correspondingly also in the case of expressing the concurring opinion. Certain clarifications demand expressions of separate opinion and concurring opinion. The separate opinion signifies the lack of agreement of its author with the settlement pronounced by the other arbiters. The

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<sup>10</sup> The Annex to the Decision no. 1/2014 for the approval of the Rules of arbitral procedure of the Court of International Trade Arbitration attached to the Chamber of Commerce and Industry of Romania (published in the "Official Gazette of Romania", Part I, no. 613 of 19 August 2014) states that, when settling the litigation, if applicable, the arbitral tribunal must take into consideration trade customs and the general principles of law [art. 63 para. (1)].

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concurring opinion involves the author's full agreement with it, but the consideration that the reasons on which it is based are other than those established by the majority of arbiters<sup>11</sup>.

In the same vein are the stipulations of para. (3) of art. 603 in the New Romanian Code of Civil Procedure which state that: "In case the arbitral decision refers to a litigation connected to the transfer of ownership rights and/or the establishment of another right *in rem* on an immovable asset, the arbitral decision shall be presented to the judicial court or to a notary public to obtain a judicial decision or, as applicable, an authentic notarial act. After verification of compliance by the judicial court or by the notary public, and after the fulfillment of procedures required by the law and the payment of the ownership transfer fee by the parties, registration will be made into the land register, whereas ownership will be transferred and/or another right *in rem* will be established on that immovable asset." These stipulations are contradictory<sup>12</sup> in the entirety of regulations in the matter, which state that the arbitral decision is an "enforcement order and is enforced exactly like a judicial decision" (art. 615 of the new Romanian civil procedural law), and that the arbitral decision is "final and binding" (art. 606 of the new Romanian civil procedural law), disregarding these provisions and inappropriately adding the fulfillment of an insufficiently regulated procedure for its application. The regulation of the procedure is lacking because it does not stipulate the elements that the judicial decision and the notarial act must comprise. Likewise, it can be seen that they assign to the notary public prerogatives that exceed his competence<sup>13</sup>.

The arbitral decision must also comprise aspects regarding the expenses<sup>14</sup> occasioned by the organization and conduct of arbitration. In this sense, by exemption from common law and by valorization of the principle of autonomy of will of the parties, the New Romanian Code of Civil Procedure establishes that these expenses, as well as the arbiters' fees, evidence administration expenses, travelling expenses for the parties, arbiters, experts, witnesses, etc. are paid according to the agreement of the parties. If there is no convention on arbitral expenses, they "are incurred by the losing party, in full if the arbitration request is fully approved, or proportionally to what was granted, if the request is partly approved" [art. 595 para. (2) of the new Romanian procedural law].

The procedural norms also foresee the possibility of the litigating parties requesting the clarification, completion and correction of errors in the arbitral decision (art. 604 of the New Romanian Code of Civil Procedure). However, a novelty element brought by the new procedural regulation is the establishment of the possibility of the parties to request the clarification of the decision, the other procedures being also found in the previous procedural regulation (ex-art. 362). The clarification of the operative part or the removal of contrary provisions can be requested by any of the parties to arbitration, if they have doubts regarding the meaning, scope or application of the operative part of the decision, or if it comprises contrary provisions. The completion of the decision can be requested if, in the pronounced decision, the arbitral tribunal failed to pronounce itself on a head of claim or on a related or incidental claim. The correction of errors in the arbitral decision can be requested in the case of material errors in the text of the arbitral decision or other evident errors that do not change the substance of the settlement, as well as calculation errors, but it can also be done *ex officio*. The establishment of a legal

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<sup>11</sup> I. Leș, *Noul Cod de procedură civilă. Comentariu pe articole. Art. 1-1133*, 1<sup>st</sup> edition, C. H. Beck Publishing House, Bucharest, 2013, note under art. 603.

<sup>12</sup> For criticism brought to the stipulations of para. (3) of art. 603 of the New Romanian Code of Civil Procedure, see I. Leș, *Hotărârea arbitrală în reglementarea Noului Cod de procedură civilă*, in *Dreptul* no. 10/2011, p. 14-16.

<sup>13</sup> C. Roșu, *Drept procesual civil. Partea specială*, 3<sup>rd</sup> edition, C. H. Beck Publishing House, Bucharest, 2010, p. 328-329.

<sup>14</sup> The text of art. 600 in the New Romanian Code of Civil Procedure establishes the possibility of regularization of arbitral expenses, if there is one more or less difference, at the latest by arbitral decision, and their payment until the communication of the decision to the parties.

stipulation was proposed *de lege ferenda* for this situation, similar to that regulated by art. 442 para. (1) of the New Romanian Code of Civil Procedure in common law, referring to the possibility of correcting material errors comprised in a decision<sup>15</sup>. It should be noted, however, that the term in which an application can be filed for the conduct of any of these procedures is 10 days of the date of receipt of the decision. It can be seen that in institutionalized domestic-law arbitration, the term in which one can request the correction of material errors in the arbitral decision, the clarification of the operative part and the completion of the decision is different, namely 15 days of the date of receipt of the decision (art. 69-71 of the Rules of arbitral procedure of the Court of International Trade Arbitration attached to the Chamber of Commerce and Industry of Romania). *De lege ferenda* we believe that the provisions of the New Romanian Code of Civil Procedure should expressly establish the application of the penalty of forfeiture in the case of not filing the application for correction, clarification or completion of the arbitral decision within the 10-day term, given the imperative nature of this term.

Differences between the procedures stipulated by art. 604 appear in connection with the obligation or non-obligation to summon the parties on the occasion of the conduct of the procedure and with regard to the procedural act through which the arbitral court pronounces itself. In this sense, in the case of correcting errors, the parties are summoned “if the arbitral tribunal deems it necessary”, with the latter pronouncing itself through a deed of correction, whereas in the case of the other two above-mentioned procedures, summoning is compulsory, and the settlement pronounced on the request will take the form of a resolution. On the resolution of clarification or completion or deed of correction, the arbitral tribunal must pronounce itself “immediately”, as these procedural acts will be an integral part of the arbitral decision. Likewise, it should be noted that, similar to common-law norms, the parties do not have the obligation to incur expenses related to the clarification, completion or correction of the decision.

Procedural norms stipulate the obligation of communicating the arbitral decision to the parties within no more than one month of the date of its pronouncement.

As regards the effects of the arbitral decision, they are the same as those generated by any judicial decision<sup>16</sup>: compulsoriness, divestiture of the arbitral tribunal<sup>17</sup>, *res judicata*, enforceability, probative value, declaratory effect, prescription.

Regarding these effects, the provisions of art. 606 of the New Romanian Code of Civil Procedure are limited to stating that the arbitral decision that was communicated to the parties is final and binding. The final character of the arbitral decision designates the idea of impossibility in exercising an ordinary means of appeal with regard to the arbitral decision, as well as its ability to be translated into practice by way of enforcement.

Likewise, even though legal provisions do not expressly regulate, we believe, as do other authors<sup>18</sup>, that the arbitral decision benefits from *res judicata* authority.

As regards the storing of the file case, is established the arbitral tribunal obligation to file it together with the evidence of having communicated the arbitral decision, to the district court in whose jurisdiction the arbitration takes place, within 30 days of the date of communication of the decision or of the date of its clarification, completion or correction. It can be seen, however, that, in the case of institutionalized arbitration, organized by a permanent institution, the file must be stored at that institution [art. 619 para. (5) of the New Romanian Code of Civil Procedure].

## 2. Annulment of the arbitral decision

The only procedural means stipulated by both the old and the New Romanian Code of Civil Procedure by which the arbitral decision can be annulled<sup>19</sup> is the action for annulment<sup>20</sup>.

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<sup>15</sup> I. Leș, *Noul Cod de procedură civilă...*, *op. cit.*, note under art. 604.

<sup>16</sup> G. Mihai, *op. cit.*, p. 155-156.

<sup>17</sup> This is the sole effect produced after the pronouncement of the arbitral decision, the rest being produced after the communication of the decision.

<sup>18</sup> I. Leș, *Noul Cod de procedură civilă...*, *op. cit.*, note under art. 606.

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The legal nature of this action is that of a procedural means aimed at the exercise of judicial control over an arbitral sentence<sup>21</sup>.

The interpretation of the provisions of art. 608 para. (1) of the Romanian procedural law shows the interdiction of exercising an ordinary or extraordinary appeal procedure<sup>22</sup> against the arbitral decision. The grounds of unlawfulness for which the action for annulment can be exercised<sup>23</sup> are expressly regulated by the provisions of art. 608 in the new Romanian civil procedural law. They are<sup>24</sup>:

- “a) the litigation was not susceptible to being settled by way of arbitration;
- b) the arbitral tribunal settled the litigation in absence of an arbitral convention or on the grounds of a null or inoperative convention;
- c) the arbitral tribunal was not established in accordance with the arbitral convention;
- d) the party was absent from the hearing when the debates took place and the summoning procedure was not legally fulfilled;
- e) the decision was pronounced after the expiry of the term of arbitration stipulated at art. 567, although at least one of the parties declared that they intended to plead obsolescence, and the parties did not agree with the continuation of judgment, according to art. 568 para. (1) and (2);
- f) the arbitral tribunal pronounced itself on things that were not requested or granted more than requested;
- g) the arbitral decision does not comprise the operative part and the grounds, does not show the date and place of pronouncement, or is not signed by the arbiters;
- h) the arbitral decision infringes public order, mores or the imperative stipulations of the law;
- i) if, after the pronouncement of the arbitral decision, the Constitutional Court pronounced itself on the exception invoked in that case, declaring as unconstitutional the law<sup>25</sup>, ordinance or a stipulation in a law or in an ordinance which made the object of that exception or other stipulations in the contested act, which, necessarily and evidently, cannot be dissociated from the provisions mentioned in the claim.”

In relation to the provisions of the old Romanian Code of Civil Procedure, the current regulation preserves the same legal considerations for the exercise of the action for annulment,

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<sup>19</sup> If only one stipulation fits the grounds for nullity of the arbitral decision, it will determine the nullity of the entire decision (I.C.C.J., Sect. com., decision no. 1247/2010 - unpublished).

<sup>20</sup> Incidentally, this is also regulated by art. 594 as means to appeal decisions pronounced by the arbitral tribunal.

<sup>21</sup> I. Băcanu, *Controlul judecătoresc asupra acțiunii arbitrale*, Lumina Lex Publishing House, Bucharest, 2005, p. 22-33.

<sup>22</sup> See [Bucharest Court of Appeal](#), decision no. 64/06.04.2000, in *Jurisprudența comercială arbitrală 1953-2000*, edited by the Chamber of Commerce and Industry of Romania and Bucharest City, 2002, p. 37.

<sup>23</sup> The same grounds also operate in institutionalized domestic-law arbitration organized by the Court of International Trade Arbitration attached to the Chamber of Commerce and Industry of Romania.

<sup>24</sup> For an exegesis of such grounds, see I. Deleanu, *op. cit.*, vol. II, p. 609 *et seq.*

<sup>25</sup> Regarding the control on the constitutionality of laws, see N. M. Stoicu, *Drept constituțional și instituții politice*, vol. II, Casa Cărții de Știință Publishing House, Cluj-Napoca, 2014, p. 282-286.

with certain corrections: renouncement of the legal ground concerning the existence of provisions that cannot lead to fulfillment, as they can be removed by the arbitral decision clarification procedure; renouncement of grounds determined by the infringement of the principle of procedural availability, in the sense that the arbitral tribunal pronounced itself *minus petita*, since this reason can be invoked through the decision completion procedure. In the same vein, the Romanian procedural civil norms in force add to the previously stated considerations the one according to which, subsequent to the pronouncement of the arbitral decision, the Constitutional Court, following the pronouncement on the exception invoked in that case, declared unconstitutional the law, ordinance or another provision in a law or ordinance that was the object of that exception or other provisions in the contested act.

The text of art. 608 in the New Romanian Code of Civil Procedure establishes, in its last two paragraphs, certain restrictions regarding the exercise of the action for annulment. In this sense, there is an express provision of the interdiction on invoking, as grounds for the annulment of the arbitral decision, irregularities that were not raised according to art. 592 para. (1) and (3), that is, until the first hearing where the party was legally summoned, and if it was absent from that hearing, at the first hearing where it was present or legally summoned after the occurrence of the irregularity and before drawing conclusions on the merits; as well as such irregularities that can be remedied by the arbitral decision clarification and completion procedure. Another legal demand is aimed at the evidence of the grounds for annulment, which can be proved only by written documents.

Reiterating the stipulations found in the previous regulation (ex-art. 364<sup>1</sup>), the current one legally enshrines the interdiction of the parties to renounce, by arbitral convention, the right to introduce the action for annulment against the arbitral decision, but only after the pronouncement of the arbitral decision.

Unlike the previous Romanian procedural law, which assigned the competence for judging the action for annulment to the higher court than the one competent in settling incidents regarding arbitration [ex-art. 365 para. (1)], the provisions of art. 610 in the New Romanian Code of Civil Procedure grants the prerogative of settling the action for annulment to the court of appeal in whose jurisdiction the arbitration took place. This court must be notified within the imperative term of one month of the date of communication of the arbitral decision, with the exception of the ground provided at art. 608 para. (1) let. i), when the term is 3 months of the publication of the decision of the Constitutional Court in the Official Gazette of Romania, Part I. If the litigating parties request the correction, clarification or completion of the arbitral decision, the term starts on the date of communication of the decision or, as applicable, the settlement by which the application was solved.

In this context, it is worth noting the possibility conferred by Romanian procedural norms to the court of appeal that was tasked with settling the action for annulment to suspend the enforcement of the arbitral decision against which this procedural means was exercised (art. 612 thesis one of the New Romanian Code of Civil Procedure). This suspension will operate based on art. 484 para. (2)-(5) and (7) which refers to the suspension of enforcement of the decision by the court of appeal, only for sound reasons. The suspension may occur only on the demand of the party which exercised the action for annulment and only with the submission of a bail. We acquiesce, however, to the opinion expressed in the literature, that one should be able to order suspension *ex officio* by the competent court, if there are ineluctable grounds for annulment<sup>26</sup>.

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<sup>26</sup> I. Deleanu, *op. cit.*, vol. II, p. 614.

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The current Romanian civil procedural law establishes in imperative terms that the composition of the panel of judges within the court of appeal which settles the action for annulment is the same as that of the judgment of the first court [art. 613 para. (1) of the New Romanian Code of Civil Procedure], thus no longer making the distinction, as in the previous regulation, between the panel that judges the action for annulment and the one that judges the appeal against the decision of the court of appeal in this matter (ex-art. 366<sup>1</sup>).

At the same time, it is worth noting the legal enshrinement of the obligation to formulate and submit the statement of defense, making an express reference to the provisions of art. 205-208 in the New Romanian Code of Civil Procedure which governs it.

If the action is accepted, the court of appeal, based on art. 613 in the New Romanian Code of Civil Procedure, annuls the arbitral decision and, depending on the invoked grounds, proceeds to:

- send the case to be judged and settled by the competent court, according to the law, for the grounds mentioned at art. 608 para. (1) let. a), b) and e) in the New Romanian Code of Civil Procedure;

- send the case to be re-judged by the arbitral tribunal, if at least one of the parties should expressly request this, for the other grounds stated by art. 608 para. (1) of the New Romanian Code of Civil Procedure;

- pronounce itself of the merits, within the limits of the arbitral convention, in the contrary case, if the litigation is in pending. If the pronouncement on the merits by the court of appeal requires new evidence, the court will pronounce itself on the merits after the administration thereof. In this latter case, the court should first pronounce the annulment decision and, after the administration of evidence, the decision on the merits, and, if the parties expressly agreed to have litigation settled by the arbitral tribunal in equity, the court of appeal will settle the case in equity.

It can be seen that the text of art. 613 in the Romanian civil procedural law only analyzes the solution of accepting the action for annulment. We believe, as do other authors<sup>27</sup>, that the legal text should expressly consider other possible solutions, for example the rejection of the action for annulment or the annulment thereof. According to para. (4) of art. 613, only the decisions of acceptance specified by para. (3) are susceptible of appeal. Yet, in this context, an issue is raised on the way of appeal that could be exercised against decisions to reject or annul the action for annulment. It would seem to us that it is opportune to legally enshrine the appeal as a means of contesting all settlements pronounced by the court of appeal regarding the action for annulment.

### **3. Enforcement of the arbitral decision**

The provisions of art. 614 in the New Romanian Code of Civil Procedure enshrine the principle of willing enforcement of the arbitral decision by the party against which it was pronounced, immediately or on the term provided by this decision. This principle can be found in common law in matters of judicial enforcement [art. 622 para. (1)].

The above-mentioned way of enforcement is always to be followed, especially in disputes of a commercial nature, due to the advantage of allowing the future continuation of collaboration between the litigating parties.

By the completion of art. 614, the provisions of art. 615 in the New Romanian Code of Civil Procedure state that the arbitral decision is enforceable and is enforced just like a judicial decision. In relation to the provisions of art. 614, which establish the rule in this matter, the judicial enforcement of the arbitral decision should be construed as an exception from this rule. In this context, the litigating parties must also consider the norms of the Romanian civil procedural law, which stipulate the possibility of enforcing the arbitral decision against which the action for annulment was exercised (art. 635), as well as those (art. 612 thesis one) which

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<sup>27</sup> I. Leș, *Noul Cod de procedură civilă...*, *op. cit.*, note under art. 613.



grant the Court of appeal judging the action for annulment the possibility to suspend the enforcement of the arbitral decision contested through the action for annulment, under the conditions stated above. On the other hand, the creditor that obtains the valorization of claims by arbitral decision must not ignore the provisions of art. 637 para. (2) of the New Romanian Code of Civil Procedure, which tasks the creditor who requested its enforcement, prior to the settlement of the action for annulment, with the risk of change or annulment of the arbitral decision, as a consequence of exercising the action for annulment.

### Conclusions

Alternative means of settling conflicts, such as mediation or arbitration, through the plethora of options given to parties, including the possibility of opting between the judicial settlement of the conflict or through alternative means, the possibility of choosing the person(s) who will settle that litigation, the possibility of opting between institutionalized and ad-hoc arbitration, contribute to the increase in the parties' degree of confidence in the settlement of the dispute and in the solution taken with regard to it.

The current regulation of arbitration, as a complex, modern and private-law way of conventional settlement of litigation between the parties and, implicitly, of the arbitral decision, allows the obtainment of a pertinent decision by the litigating parties, within a reasonable term and without excessive expenses. The rapidity in settling the dispute by way of arbitration, as compared to its judicial settlement, is determined by the final and binding character of the arbitral decision (art. 606 of the New Romanian Code of Civil Procedure; art. 615 of the New Romanian Code of Civil Procedure). The amount of arbitral expenses is determined by the duration of arbitration, which is being left to the discretion of the parties, the maximum term enforced by the provisions of the Romanian law of civil procedure being 6 months of the date of establishment of the arbitral tribunal.

Although the current procedural regulation of the arbitral decision corresponds to the existing socio-economic realities, we believe that certain legislative rectifications may be brought to it. In this sense, we acquiesce to certain proposals *de lege ferenda* formulated in legal doctrine and presented in this study. For instance, we believe it is useful to introduce a legal provision, similar to the one regulated by common law [art. 442 para. (1) in the New Romanian Code of Civil Procedure], referring to the possibility of correcting material errors comprised in a decision. Likewise, we believe there should be an express stipulation of the penalty that can intervene in the case of not filing the application for correction, clarification or completion of the arbitral decision within the 10-day term stipulated by the Romanian procedural law, namely forfeiture.

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