The Arbitration Ruling

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Abstract - The arbitration ruling is binding on the parties under the arbitration convention and the law, and it is treated as a final judgment. The arbitration ruling is a jurisdictional act through which the arbitral court, composed of arbitrators appointed by the parties in the arbitration agreement or under that convention, settles with a certain procedure. The arbitral ruling is enforceable and forcefully executed as a judgment.

Key-Words – Arbitration, convention, international trade, agreement

1. Introduction

1.1. Concept. Legal requirements. The legal nature of the arbitration ruling.

1.1.1. Legal provisions

The arbitration ruling is subject to several chapters from Book IV of the Romanian Civil Procedure Code, including

- chapter IV "The arbitration ruling" – article no. 601 – 607;
- title V "Declaring the arbitration ruling void" – article no. 608 – 613;
- title VI "Enforcement of the arbitration ruling" – article no. 614 – 615;

and also from Book VII, about International civil trial, including

- title IV "International arbitration and the effects of international arbitral rulings" , chapter I "International arbitral trial" – article no. 1110-1120;
- chapter II "The effects of the international arbitral rulings" – article no. 1123-1132.

The provisions of the Romanian Civil Procedure Code are developed by the regulations of the permanent arbitration institutions, to which express reference is made.

Of these regulations, priority is given to the Rules of Arbitration of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Bucharest, which is regulating the most advanced in the field, serving as a model for other such institutions in the country.

1.1.2. Definition

The arbitration ruling is a jurisdictional act through which the arbitral court, composed of arbitrators appointed by the parties in the arbitration agreement or under that convention, settles with a certain procedure, an arbitral litigation resulted in law or based on an explicit agreement of the parties, in fairness.

The arbitration ruling is binding on the parties under the arbitration convention and the law, and it is treated as a final judgment having the force of *res judicata* and being also capable of being enforced.

The arbitration ruling has the same status in law as the whole arbitration and it is binding on the parties just like a contract. According to article no. 615 of Civil Procedure Code, the arbitral ruling is enforceable and forcefully executed as a judgment.

1.2. Categories of Arbitration Rulings

The classification of the arbitral rulings is made according to several criteria:

- As the amid dispute is resolved or not, the rulings are divided into sentences and conclusions.
- After spreading the contents of "conviction" rulings fall into the full judgment and partial judgment.
- After the criteria of "conviction", there are rulings only "conviction" or "conviction" alternative;

• After the appearance of the duration of action, proper judgment and provisional judgments;

• As it may or may not be enforceable, arbitral rulings are divided into enforceable judgment and unenforceable judgment;

• After the arbitral institution who gives the ruling or after the way how the arbitration is organized, there are rulings gave in ad hoc arbitration and rulings gave in institutionalized arbitration;

• After how the court is composed, the judgment of one arbitrator and the judgment of a court of arbitration board;

• Once the powers granted to the arbitrator, arbitration rulings can be as strict or in equity;

• After their effects rulings may be constitutive or declaratory;

• As the parties have not participated in the debate proceedings, decisions may be given in the presence or absence of the parties.

2. The Form and the Content of the Arbitration Ruling

The ruling shall be made in written form and must contain the particulars specified by article no. 603 of Civil Procedure Code.

Therefore, it must be written and communicated to the parties within one month from the date of pronunciation. This term is not a limitation period, but it must be respected for the need for speed of arbitration, because overcoming it could attract liability under the provisions of article no. 565.

According to the practice of the Court, the ruling shall be written by an umpire and finalized with arbitrators who entered the composition of the arbitral court.

The arbitration ruling does not exist if it does not take a written form, this requirement being expressly provided by law. This requirement is necessary for several reasons: to preserve them, to communicate it to the parties and the reasons underpinning knowledge solution for the exercise of judicial review and enforcement of the arbitral ruling.

The content of the arbitration ruling is established by art. 603 paragraph 1 Civil Procedure Code and it is similar to the judicial decision:

- the nominal composition of the arbitral court, place and date of the judgment;

- the name of the parties, their domicile or residence or, where applicable, name and address, the name of the representatives of the parties and other persons who participated in the debate dispute;

- mentioning the arbitration convention under which the arbitral proceedings;

- the subject of the dispute and a summary of the parties;

- factual and legal grounds for the judgment, and in case of fairness arbitration reasons as underlying the solution;

- the judgment;

- signatures of the arbitrators and, if necessary, arbitration assistant's signature.

3. Deliberation and Pronunciation of the Arbitral Ruling

In all cases, the judgment must be preceded by deliberating in secret, with the participation of all arbitrators in person, being recorded in the ruling this participation.

This debate, like the entire development process, must be made taking into account the following fundamental principles of arbitration proceedings:

3.1. The Fundamental Principles of Arbitration

-The Principle of equal treatment of litigants.

This principle is present in all stages of the arbitral process, the failure to conduct concerned with the invalidity of the arbitration ruling. CAB Rules of Arbitration of the Arbitration Procedure provide that all parties must provide, under penalty of nullity of the arbitration award, equal treatment. Applying this principle requires unrestricted access to all procedure subject to the case.

- The Principle of the right to defense.

This principle has two meanings in the material sense it includes the whole complex of rights and procedural safeguards that are established by law in order to enable the parties to defend their legitimate interests. In a formal sense, that means the right to defense and the right side to get a defender to have such a qualified defense.

- The Principle of the contradictory.

The essence of this principle is that it provides the parties the opportunity to express their

views on all matters of the subject of arbitration judgment. Observance of the parties assumes the correct information about the existence of the arbitration process, the claims at issue, evidence and evidence in defense administered.

Also, the court may not raise and settle by default, an exception without put it, in advance, in debate and also the court may not take into consideration the objections raised by the parties by written conclusions.

- *The Principle of flexibility of arbitration proceedings.*

This principle is reflected in the fact that the entire procedure of the arbitration shall be conducted according to the free will of the parties, dominant in all its forms. In support of the principle of flexibility may be brought arguments related to the lack of solemnity of hearings, how colloquially the debates are, the lack of attire required - elements that confer conduct arbitration proceedings look informal.

-*The Principle of confidentiality.*

Confidentiality is one of the advantages that arbitration proceedings have against the state judgement.

Resorting to arbitration the parties feel more protected from the point of view of professional information security and credibility in terms of their quality of traders.

- *The Principle of availability.*

From the material point of view, the principle of availability requires that the parties can manage the dispute according to their procedural interests, while from the procedural meaning of this principle, the parties have the possibilities to use the procedural means provided by the law.

- *The principle of the right to a fair trial.*

Public policy should govern any trial proceedings - arbitration or common law - following the guarantees of a fair trial.

The failure to guarantee a fair trial constitutes a violation of procedural public policy, this being severely penalized by annulment of the arbitration.

- *The principle of the active role of the arbitrators.*

The active role of arbitrators is focused on highlighting all issues which can lead to the best solution in the law or in equity issues brought before the arbitral court. Arbitrators may require production of evidence or clarify certain situations or even can try resolving the dispute on the basis of reconciliation of the parties.

The arbitrators participate in debates and deliberation personally and their participation is mentioned in the decision and in the session.

The arbitral court may consist of one or more arbitrators in accordance with the rules of the arbitration clause or arbitration institution that organizes institutionalized arbitration.

If the arbitral court is composed of an odd number of arbitrators, the ruling shall be taken by majority of vote. If an arbitrator has a different opinion he will draw up and sign a separate opinion showing the reasons on which it is based.

If the court is composed of an even number of arbitrators and they cannot agree on the solution, it will proceed to the appointment of an umpire who will rally to one solution, one may change or may render another decision, but only after hearing the parties and the other arbitrators.

If an arbitrator is unable to participate in the deliberations, delivery may be delayed for up to 21 days, subject to compliance with the arbitration term.

3.2. The term of judgement

The arbitral ruling must be issued within the period set by the parties or by the law.

The parties may freely determine, by convention, the period within which the arbitral court has to give the judgment. In the absence of explanations given by the parties, a settlement period of five months is given, the period running from the date of constitution of the arbitral court.

Also, under the term provided by law, the pronunciation of the arbitration ruling may be suspended or extended, depending on the situation.

3.3. The formal requirements of the arbitration ruling

From the point of view of article no. 603 Civil Procedure Code, it requires that the arbitration ruling must be put in written form and signed by all arbitrators, unless it is drawn up a separate opinion.

Failure to comply with these conditions leads to form deprivation effect of the judgment in question, which cannot be rendered enforceable for enforcement nor invoked as *res judicata*.

3.3.1. Features of arbitral ruling

• *The binding force*. The ruling settled by a court of arbitration based on an arbitration agreement, in a valid and proper form with the minimum content, is binding on the parties just as a judgment.

• *The finality* of the arbitration ruling consists in the solution itself of the dispute settled by the arbitral court, which is final. No other court will be able to adjudicate it. It can be challenged by an action for annulment, which is however restricted to the grounds provided by law and which relate to procedural matters and not formal aspects of the merits process will only fund research for finding of invalidity of the arbitration ruling.

• *Enforceability*. After communication it has the effects of a final judgment, and because of its enforceability can be brought out by force against those in refusing execution on one's own will based on investing the decision with executor's formula by the courts.

Suspension of the arbitration ruling may be made under the same conditions as it may request suspension of enforcement of a judgment.

The decision may be corrected or completed under the law, at the request of the parties within 10 days from communication.

3.3.2. Communication and registration of the arbitral ruling

The arbitration decision shall take effect from the date of communication, because Romanian law assimilates the judgment regarding the effects and implementation of the procedural act of communication.

The arbitration decision shall be communicated to the parties within one month from the date of pronunciation.

After communication, according to article no. 607 Civil Procedure Code, the arbitral court, within 30 days from the date of communication, will submit the case file to the court that in the absence of the arbitration agreement would have had jurisdiction to resolve the dispute, attaching and evidence of communication of the decision arbitral parties.

If the arbitration is organized by a permanent institution, the file is kept at that institution, who shall communicate the courts only if one party does not perform its obligations provided for in determination and declaration of enforceability is required.

4. Execution of Foreign Arbitration Decisions

4.1. The Term of Foreign Arbitration Decision

According to the provisions of article no. 1123 Civil Procedure Code, by foreign arbitral decision, Romanian law indicates a decision settled in a foreign state which in Romania is not considered as national judgment. Regarding the effects of foreign arbitral decisions, Romanian Civil Procedure Code law refers to the provisions of private international law. This law also calls for assimilation, meaning the assimilation effects of foreign arbitral decisions to the effects of foreign judgments.

According to article no. 1124 of Civil Procedure Code, any arbitration decision mentioned by article no. 1123 is recognized and can be executed in Romania if the dispute forming the subject thereof may be settled by arbitration in Romania and only if that decision does not include contrary provision against Romanian private international law.

Foreign arbitral decision have effects in Romania only after certain checks are made by Romanian courts of law.

4.2. Acknowledging of an International Arbitral Ruling

The deadline for recognition of an arbitration decision involves the administration, in the state in which recognition is sought, the effects of judgment arbitration.

The main effect of recognition, is that the decision issued by the foreign arbitral court, is definitively recognized.

Recognition gives to the foreign arbitral decision the effect of res judicata and it also prevent the same dispute settlement again. Upon recognition of foreign arbitral decision will have res judicata in respect of the same treatment as a judgment of a national court.

The conditions of recognition are the followings:

• *Positive conditions*

☐ The decision shall be final according to the law of the state where it was rendered;

☐ The arbitration court should have been competent to rule according to the law where the judgment was rendered;

☐To be reciprocity regarding the effects of arbitral decision between Romania and the State of judgment.

- *Negative conditions*

☐ The decision shall not be the result of fraud committed in the procedure followed abroad;

☐Do not violate the public policy of private international law;

☐The dispute should not have been settled between the same parties by a decision, even not final, by the Romanian courts, or may not be currently under adjudication before the foreign court is seized.

If not achieving any of these conditions, this can lead to refusal of recognition.

4.3. Enforcement of Foreign Arbitral Decisions

Enforcement may be direct (in kind) or indirectly (equivalent). In any of its forms, enforcement debtor may not wear on the person, but only on his property. Exclusion of enforcement on the person (via imprisonment debtor bad payer) is a fundamental feature of our civil rights. Such a procedure, even if it were permissible in law of the State in which the judgment was given, cannot be accomplished in Romania.

Article no. 1124 of Civil Procedure Code provides that foreign arbitral decision which are not brought out voluntarily by those forced to execute them, can be put into enforcement in Romania, by applying accordingly the provisions of articles no. 1094-1101.

Enforcement must first be accepted by the competent judicial authorities of the requested state.

The judicial procedure in which a foreign arbitral award is enforced, after the control exercised over them by the courts of the state in which enforcement is sought, is called exequatur.

The conditions required for the exequatur are imposed by the state law where the enforcement is going to be done, and varies usually from one state to another.

The conditions which must meet for foreign decision to be declared enforceable in Romania are set out by article no. 1103 to which are added two conditions:

- the decision is enforceable according to the law court which issued it;

- the right to require enforcement is not prescribed under Romanian law.

4.4. Weight and Importance of Foreign Arbitral Decisions

Foreign decisions, since coming from competent courts, have in front of Romanian courts probative value with respect to the facts they set. This solution is consecrated by the Civil Procedure Code, dealing with the probative value of foreign arbitral awards rendered by a competent arbitral court.

In Romania, foreign arbitral decisions enjoy probative value, distinct from res judicata, the truth of the findings of fact contained in the motivation (as distinct from its judgment), but depending on the nature of the facts alleged by the interested party.

If there are facts established personally by the foreign arbitral court which are recorded as such in the decision, these facts benefit of probative value gave by the state law from which the decision comes. This is a proof until declaring it false.

The fact that the opponent refuses to recognize the findings of the foreign decision judgment, their probative value does not decrease in the state in which that judgment is invoked. The weight subsists until forgery is declared in the state where the judgment was given.

4.5. The Effects of Transactions Concluded before an Arbitral Foreign Court

Transactions concluded before an arbitral foreign court produce effects that the state laws where were concluded provides them and they can be enforceable in Romania, if they meet the requisite conditions by Romanian law. The execution is under the law by the court in the jurisdiction where it is to make the enforcement.

Conditions and procedure for obtaining recognition and/or enforcement are required for recognition and/or enforcement of foreign arbitral decisions which confirms the transaction.

4.6. The Procedure of Acknowledging and Executing Foreign Arbitral Decisions

4.6.1. Cases of Application

To the extent that a person refuses to recognize the effects of a foreign arbitration decision, the interested party to obtain recognition has two procedural routes, main and incidental way.

Between the two ways there are no differences regarding the procedural court and through which the request is settled.

The application for recognition is solved principally by the court in where is domiciled or headquartered the party who refused to recognize the foreign judgment. In this case, the Romanian court will rule on the application by a judgment which would be applicable to the judgments referred to the expressed provisions of Civil Procedure Code.

The second way, the incidental one, occurs when the application is resolved by the court, hearing another trial, in which the exception is applied to the power of ruling, the exception based on the foreign judgment, the court is required to verify the conditions for recognition of a foreign decision.

The court will rule on the objection by a particular ruling, which cannot be appealed separately.

The demand for recognition will be made according to the requirements for the application for summons, which shall be attached:

- copy of the foreign arbitral decision;
- definitively proving in its country of origin.
- the copy that proves that the summon and the complaint was communicated to the party that was not present before the foreign court.
- any other document, which demonstrates, in addition, that foreign arbitral decision fulfills all the other conditions.

Application for recognition shall be settled in contentious proceedings, which necessarily require quoting the interested parties, both those who made the request, and the one that refused to recognize. The contentious procedure is contradictory, allowing the defendant to defend themselves using all available evidence. The defendant cannot invoke defenses but calling into question the merits of their cases abroad.

4.6.2. The procedure of declaration of enforceability

Foreign decisions which are not executed of one's own will, can be executed in Romania based on the investing decision, requested by the concerned party, by the court where the execution is to be made.

The material competence is the same as for the recognition, territorial jurisdiction is different, however. If recognition, territorial jurisdiction belongs to the court within whose jurisdiction the interested party is domiciled, in case of declaration of enforceability of the foreign decision, the court in the jurisdiction which is competent to be made the enforcement.

The application for the declaration of enforceability must meet the same requirements as applications for summons and:

- the copy of the foreign decision;
- definitively proving;
- the copy that proves that the summon and the complaint was communicated to the party that was not present before the foreign court;
- any other document, which demonstrates, in addition, that foreign arbitral decision fulfills all the other conditions;
- proving enforceability of the foreign judgment issued by the court that issued it.

The application for a declaration of enforceability shall be settled after summoning the parties, by a judgment, which is subject to appeal enshrined in the Romanian civil procedural law.

After a final and irrevocable judgment, is issued an enforcement, mentioning the declaration and determination.

The procedure of effective enforcement of foreign arbitral decisions in Romania is conducted in accordance with Romanian law, without extraneous elements of judgment to be of any interest.

4.7. The Effects of Foreign Arbitral Decisions as to the Conventional Law

In order to remediate the difficulties arising from the diversity of national legislation on the effects of foreign arbitral decisions and ease of its use by the international arbitral decisions, states have concluded international treaties by subjecting a regime more liberal than the effects produced by an arbitration decision into a Contracting State in the territory of the other Contracting States.

In arbitration matters were concluded the following major international conventions ratified by Romania:

- ☐ Geneva Protocol, of 1923;
- ☐ Geneva Convention, of 1927;
- ☐ New York Convention, of 10 June 1958, Recognition and Enforcement of Foreign Arbitral Awards (ratified by Romania by Decree no. 186/1961).

It also concluded agreements with regional scope, such as:

- ☐ European Convention on International Commercial Arbitration, adopted in

Geneva on April 24, 1961 (ratified by Romania by Decree no. 281/1963);

☐ Moscow Convention;

☐ Convention on arbitration regarding particular areas;

☐ Washington Convention.

The Geneva Protocol of 1923, is the first action taken by states to recognize and enforce international arbitration decisions abroad.

This protocol endorsed two main objectives:

- ensure the enforcement of arbitration decisions and conventions internationally;
- ensure the enforcement of judgments on the basis of such conventions in the country of establishment of the court.

At its beginning, that triggered the dispute, the states shall ensure that the parties have concluded an arbitration agreement applies to resolve their differences falling within the scope of the arbitration agreement by arbitration, and at the end of arbitration to be secured recognition and enforcement of arbitral decisions their respective territories.

Geneva Convention of 1927 provided that an arbitration award should be recognized as binding on the parties and shall be enforced internationally territory of any State, subject to certain conditions.

Under the Convention, in order to recognize a foreign judgment must meet certain prerequisites and additional conditions, whose probation incumbent party claiming recognition or enforcement.

New York Convention of 1958, represents considerable progress in terms of recognition and enforcement under much simplified and considerable effectiveness.

This Convention shall supersede the 1927 Geneva Convention between States party to both and gives much broader effects to conventions and arbitration clauses.

It definitely adopted an international attitude regarding recognition and enforcement of foreign arbitral awards, enshrining the presumption of regularity international arbitral awards and facilitating their effects. The Convention applies to recognition and enforcement of foreign arbitral awards rendered in a state other than that where recognition and enforcement is sought, on disputes between individuals or legal entities. The Convention shall also apply to arbitral awards not considered as domestic awards in the State where the recognition and enforcement is sought under two reserve: The commercial and reciprocity.

Regarding enforcement, the Contracting States shall endeavor to ensure enforcement of sentences Under the agreement according to their own internal rules of procedure, based on their assumption regularity.

The person requesting recognition and / or enforcement does not have the obligation of proving the regularity of scheduled international sentencing, which is presumed. The burden of proof lies with the party invoking the irregularity.

Convention provides five irregularities that may be invoked by the person who opposes recognition and/or enforcement:

- gap of capacity or lack of a valid arbitration agreement;
- violation of the adversarial principle;
- exceeding the limits of arbitration agreements;
- procedural flaws;
- lack of binding or enforceable sentence. There are also two additional cases which may be raised by both the parties and the court of its own motion:
  - non-arbitral nature of the dispute;
  - public order.

The party seeking recognition and/or enforcement just communicate sentence competent jurisdiction and that the arbitration agreement was the basis thereof. If that party does not have the originals of those documents, certified copies allowed to conform to the original.

European Geneva Convention 1961 International Commercial Arbitration was mainly regulatory issues related to the establishment and operation of commercial arbitration arising from contracts between partners in European countries. This refers to:

- arbitration agreements concluded for the settlement of disputes which have arisen or will arise from international trade operations between natural or legal persons having their habitual residence when the agreement is concluded or registered in different Contracting States;
- procedures and arbitration decisions based on the aforementioned conventions.

If an arbitration decision is canceled in the origin country due to valid reasons in this country, the arbitration decision is still capable of recognition and enforcement in other Contracting States.

Washington Convention of 1965 for the settlement of disputes regarding investments between States and Nationals of other States aims mainly the establishment of mechanisms for

conciliation and arbitration of international investment and establishing rules applicable to conciliation and arbitration. This convention was established International Centre for Settlement of Investment Disputes (ICSID), with headquarters at the International Bank for Reconstruction and Development with the objective of organizing conciliation and arbitration in disputes over foreign investment.

The arbitral decision is binding to the parties and they must bring it out voluntarily, otherwise they will be applying a similar regime applicable to the enforcement of judgments handed down by their own courts.

5. Conclusion

Arbitration is an alternative private justice that people who have full capacity to exercise rights can resolve property disputes between them, apart from those concerning rights which the law allows no transaction is made.

From 2007-2009, it can be observed among dealers in Romania and across Europe a tendency to choose arbitration instead of the courts. Every trader knows that time is money. It is one of the fundamental rules of trade and generated while basic principles of commercial law.

Advantages consist in:

1. Parties have the opportunity to nominate themselves the arbitrators.
2. This procedure provides quick settlement of cases.
3. The arbitration costs are lower.
4. The dispute, the file and the decision are confidential.
5. The arbitration procedure is completed, as the courts.
6. The arbitration offers the parties a conciliation procedure.

The key to remember is that access to the court, the complaint is valid only with the written consent of the parties in this regard.

Any patrimonial dispute arising out of or in connection with this contract, including its validity, interpretation, execution or termination of its effects, will settle the commercial arbitration, organized by the Chamber of Commerce and Industry, in accordance with the General Rules and the Rules of Arbitration of this House. The arbitral decision is final and binding on the parties committing to execute voluntarily.

The applicant submits at the Secretary of the Arbitration Court a request for arbitration with the documents which bases itself and the name of the arbitrator proposed. The Secretary will forward the request to the other party to the dispute, which within 30 days will present his defenses and will nominate the arbitrator.

That will do the arbitral tribunal consists of one or three arbitrators, according to the will of the parties. It will examine and discuss the dispute in closed meetings. And after deliberation will decide the arbitration decision.

The documents shall be submitted in original or certified copy. If the request for arbitration or the documents submitted in a foreign language, the arbitral court of its own motion or on request, order a translation form of them in Romanian or in other foreign language. The parties may request that the translation be at their expense, by the Court of Arbitration.

The request is addressed to the Court of Arbitration. Within 20 days of receiving the request for arbitration, the respondent shall communicate to the applicant his defense with documents.

If the defendant has a claim against the plaintiff arising from the same legal relationship, he may file a counterclaim, who settled together with the main claim.

The arbitration costs include: the arbitral fee, expenses of taking evidence, translation of documents and debates, the arbitrators fees, attorneys' fees, experts and advisers, travel expenses to parties, arbitrators, witnesses, experts and advisers and other expenditure relating to settlement of the dispute. The parties may participate in the debate dispute personally or through representatives and may be assisted by lawyers, advisers, interpreters or others. With the agreement of the parties and with the consent of the arbitral court, the President of the debate dispute may involve other people.

The arbitration proceedings shall end by pronouncing an arbitration decision, called arbitral decision. If the defendant acknowledges a part of the applicant's claims, the arbitral court, at his request, will settle a partial recognition decision. If the plaintiff waives arbitrary or right itself claimed before the arbitral tribunal, arbitration proceedings are closed by a resolution of the President of the Court of Arbitration.

The arbitral award is final and binding. It brings out voluntarily, the party against whom was pronounced immediately or within the period stated in the judgment. The arbitral award communicated to the parties has the effects of a final judgment.

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