

# ROLE OF ARBITRATION AS AN ALTERNATIVE TO STATE JUSTICE

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## **Abstract**

*Arbitration is an alternative jurisdiction to state justice, characterized by privacy. As part of managing this type of jurisdiction, the parties to the dispute and the competent Arbitral Tribunal may establish other rules of procedure which may depart from common law; such rules shall not be contrary to public order or to the binding provisions of the law.*

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## **I. A brief overview of arbitration**

From a historic perspective, arbitration was tackled both in the Code Calimach in the year 1817<sup>2</sup>, as well as in Code Caragea in the year 1818. In the Code of Civil Procedure adopted in 1865 and effective on 11 December 1865, in Charter IV – “On Arbitrators”, the juridical institution of ad hoc arbitration was regulated.

Ad hoc arbitration, as originally regulated in Charter IV of the 1865 Code of Civil Procedure, was used as voluntary arbitration during the time of market economy (particularly for the settlement of domestic and international commercial litigations), especially after World War II.

Through the amendment included in 1900 in the 1865 Code of Civil Procedure through article 342, the parties were allowed not only to reach a compromise for the purpose of settling the disputes by arbitration, but also to include a compromissory clause in the contracts providing for the settlement of any future disputes by way of the same procedure. The 1900 amendment remained in force until 1993; these provisions tackled mainly ad hoc arbitration.

During the inter-war period, Romania contributed to the development of the Protocol on arbitration clauses - this Protocol was signed in Geneva, on 24 September 1923, and ratified through the Law of 21 August 1925 - as well as of the Convention on the Execution of Foreign Arbitral Awards, signed in Geneva on 26 September 1927 and ratified by the Law of 26 March 1931; both were international tools completed under the League of Nations.

During the after-war period, substantial amendments in the organization and regulation of commercial arbitration occurred, such as Law 5/1954, under which State Arbitration, competent to settle disputes in socialist units, was organized and operated; this body was dissolved in 1985 through the Council of State Decree no. 81/1954. A very important aspect to be clarified is that state arbitration had nothing in common with the arbitration institution as regulated by Charter IV of the Code of Civil Procedure, in force at the time.

In 1976, through Resolution no. 98 of 15 December, the UN General Assembly adopted the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL)<sup>3</sup>. Romania joined the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted on 10 June 1958 in New York, through Decree 186 of 21 July 1961; Decree no. 62 of 7 June 1975 ratified the Convention on the Regulation of Investment Disputes between States and Nationals of other States, signed in Washington on 18 March 1965. Romania took part in the adoption at Helsinki of the Final Act of the Conference on Security and Cooperation in Europe of 1 August 1975. The modernization of arbitration was enacted by Law 59/1993, which made a substantial amendment to the former regulation of the Code of Civil Procedure of 1865; Charter IV

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<sup>2</sup> Art. 1828 of Code Calimach sets forth the following: “the parties to the dispute may not only reach a settlement on the object of the dispute, but also submit the dispute for others to decide upon it; in this case, we are speaking about an *arbitrium* (arbitration award)”.

<sup>3</sup> The late Romanian specialist Ion Nestor also contributed to these Rules.

of the “On Arbitration” in the New Code of Civil Procedure created a legal framework harmonized with the provisions of international instruments in force on the matter. The New Code of Civil Procedure<sup>4</sup> and the law providing its enforcement brought major amendments in the matter of arbitration. These were absolutely necessary for the law to be in agreement with the current realities, as well as with the need to solve conflicts rapidly, safely and in compliance with the consecrated principles of the Romanian Civil Code.

## II. Definition of arbitration. Types of arbitration. The characteristics, the advantages of and principles used in arbitration

Unlike state justice, which is an institution with a high level of rigidity, arbitration, through the benefits resulting from its strengths, is a preferred option of international business media. Some of the features mentioned as being important include the freedom of the parties to choose their arbitrator (judge), which is not an option in state justice; also, the parties opting for arbitration always consider the private and confidential characteristic ensured by this type of justice; also, arbitration is a fast way of solving disputes between the parties, compared to the slow proceedings of state justice. The parties have the opportunity to determine themselves efficient and smooth proceedings which meet their needs, and at the same time cut the costs implied by court proceedings<sup>5</sup>.

However, the most important reason for which the international business community has opted and continues to opt for arbitration is probably the fact that the act of justice takes place according to the will of the parties from the very beginning, starting with the signing of the contract. In arbitration, the parties get to determine the applicable law or the system of law governing the contract expressing their will, as well as the manner of settlement of potential disputes.

Thus, a possible definition of the institution of **arbitration** could be that it represents a procedure for the settlement of a dispute through private justice, within which each of the parties is entitled to appoint its own judges (the arbitrators). The purpose of appointing such arbitrators is for them to give an award, which following its ruling is binding on the parties to the dispute. Arbitration proceedings are carried out pursuant to the rules set forth by a set of rules selected through the will of the parties (usually, such arbitration rules are referred to in the arbitration clause). Through the arbitration clause, the parties have the opportunity to select one or more arbitrators for the purpose of ruling a final award.

Those who have resorted to arbitration have selected from the multiple forms of arbitration which can be applied to a possible dispute or to an already existing dispute. For instance, upon signing a contract, its signatories may opt for ad hoc arbitration, for institutionalized arbitration or for arbitration in equity; the process of justice shall be carried out pursuant to the will of the parties.

Arbitration may also be defined depending on its type – domestic and international.

Thus, arbitration shall be deemed as being **domestic** when its scope is the settlement of disputes concerning juridical relations falling under the exclusive scope of a state’s national legislation.

The **international** characteristic of arbitration may thus be defined in relation to the connection of the juridical relation to several systems of law; this relation envisages several states. Also, the international characteristic is given by both the different nationalities of the parties, and the fact that arbitration of this type may only be settled by an international arbitration institution.

The possibility of exerting their own will as part of commercial arbitration is also manifested in terms of the form of arbitration selected by the parties.

The characteristics of arbitration include the following:

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<sup>4</sup> The New Romanian Code of Civil Procedure was adopted by Law 134/2010, published in the Official Monitor no. 485 of 15 July 2010 and republished, pursuant to art. 80 of Law no. 76/2012

<sup>5</sup> There are different opinions concerning the costs of arbitration, i.e. while some authors state that generally speaking arbitration is less costly than when going to court, such as the case originally shown, others, as is the case of Y. Guyon in his book *L’arbitrage*, Droit poche, 1995, no. 8 underlines that arbitration is <a fancy kind of justice, only reserved to wealthy parties >.

- arbitration is both an institution, and a procedure ;
- as a way of resolving a dispute, arbitration results from the will of the parties;
- the parties may agree on solving their dispute only within the limitations of the law<sup>6</sup> ;
- by agreeing to solve their dispute by way of arbitration, the parties thus avoid the competence of the court ;
- the dispute in relation to which arbitration is foreseen may be a virtual or an actual one.

About international trade law, it suffices to mention the long list of states which signed international Conventions, such as the Convention of 10 June 1958 in New York or the Convention of 18 March 1965 in Washington to convince ourselves of the perception which the worldwide legislations have on arbitration.

This constancy of arbitration in time and space has led numerous authors to assert that arbitration was the primitive form of justice, prior to public justice<sup>7</sup>. Also, etymology and history confer to the words arbitrator and arbitration the meaning and the connotations of impartiality, measure, safety, will, decision, and assessment.

As stated before, arbitration is not a successor of state justice, nor does it aim at prejudicing the latter's scope; arbitration and state justice do not compete against each other, rather they complete each other and they fill the gaps of dispute resolution means.

**In conclusion, compared to state justice, arbitration has the following undisputed advantages:**

- The parties may agree to solve their asset-related disputes by arbitration, which suggests the idea of partnership, this allows the keeping and continuation of business relations, and human relations between the entities involved, in general;
- Usually carried out through arbitrators appointed by the parties, it increases trust of the parties and the guarantee of competence of those in charge with the settlement<sup>8</sup>;
- Arbitrators' liability for damages enhances their exigency and prudence;
- Arbitration ensures confidentiality, which cannot be overlooked, particularly when it comes to commercial relations. The award of the Arbitral Tribunal is not ruled in a public hearing either, it is notified to the parties;
- Arbitration has the chance of getting freed from some of the useless, obstructive or exaggerated procedural standards. Thus, subject to the observance of public order and good morals, as well as the binding provisions of the law, the parties may, by way of an arbitration agreement or through a written deed concluded subsequently, determine the "procedural norms which the Tribunal needs to abide by as part of the settlement of the dispute";
- Although arbitration itself may be deemed as an amiable way of settling a dispute, the parties may also agree on the "procedure for a potential prior conciliation".

Arbitration is an opportunity to escape useless, obstructive or exaggerated procedural canons. Thus, subject to compliance with public order or good morals, as well as the binding provisions of the law, the parties may establish the "procedural norms which the Tribunal needs to abide by as part of the settlement of the dispute" through an arbitral award or a subsequently concluded written deed.

Although arbitration may be deemed as a form of amicable settlement of the dispute, the parties may also agree on the "procedure of a potential conciliation."

Common as in the case of civil procedure common provisions, the principles of arbitration include the following: the active role of the judge; the principle of verballity of the hearings; and the principle of availability. As opposed to the case of common law, in arbitration we take note of the

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<sup>6</sup>The law may be expressed in two ways: either by allowing the parties to resort to arbitration in some disputed matter, thus rendering arbitration voluntary, or by providing imperatively that certain disputes should be solved by arbitration, thus conferring arbitration a coercive feature. (J. Robert, *L'arbitrage-droit interne, droit international prive*, Dalloz 1993, page 3).

<sup>7</sup>See GLASSON, TISSIER and MOREL, *Role of Arbitration in International Progress*

<sup>8</sup> Arbitration is thus a relation of trust between the parties and the arbitrators.

principle of confidentiality as characteristic of arbitration, as opposed to the principle in public hearings applicable to civil trial.<sup>9</sup>

### III. Various arbitration institutions – an overview

Upon analyzing the arbitration jurisdictions with a specific scope of settling international disputes, we find that they can be divided into two major categories:

1. On the one hand, there are the arbitration bodies whose scope is to settle any unspecialized disputes; any type of dispute between a state and a trader of another state may be settled under this type of arbitration<sup>10</sup>;
2. On the other hand, there are specialized arbitration bodies dedicated to the settlement of disputes between definite subjects or to special matters<sup>11</sup>.

We shall provide a distinct definition to some of the most important arbitration institutions:

**a. The ICC – the International Chamber of Commerce** is a non-profit institution established in 1919, right after the end of World War I; its structure included meritorious businessmen from Belgium, France, Italy, Great Britain and the United States.<sup>12</sup>

In the past years, arbitration institutions have undergone major changes at the level of arbitration regulations. For instance, the New ICC Rules entered into force on 1 January 2012; it consists of 41 articles and 5 annexes. The ICC Rules for amicable dispute resolution shall be approached as distinct from the ICC Rules of Arbitration; the two are distinct methods for the settlement of disputes.

The ICC Arbitration Rules establish the function of the International Court of Arbitration, its purpose and discretion to make urgent decisions, definitions of the Arbitral Tribunal, of the Respondent and the Claimant, as well as the procedural steps to be followed following the launch of arbitration. At the same time, the ICC Rules provide for the arbitration costs, the arbitral award and other general provisions.

For instance, when speaking about the constitution of arbitral tribunals, the Rules use a range of terms with specific meanings. It is very important for these terms to be understood in their exact meaning for an appropriate enforcement of these Rules.

A selection of arbitrators and the constitution of arbitral tribunals to the ICC proceedings equal an accurate understanding of such terms.

The key terms used in the ICC Rules with respect to the selection of arbitrators are the following: “**nomination**”, “**confirmation**”, “**appointment**” and “**proposal**”. The “**appointment**” of an arbitrator may only be made by one or several parties (art. 12(3)-12(5)), by the co-arbitrators, when they have the power to nominate the Chairman of the Arbitral Tribunal (art. 12(5)) or through another external method to the agreed upon ICC arbitration proceeding. Once nominated, the arbitrator needs to be “**confirmed**” by the Court (art. 13(1)) or by the Secretary General (art. 13(2)). When he/she is not nominated, the arbitrator shall be “**appointed**” by the Court (art. 12(3) -12(5)). Generally, appointments are based on a “**proposal**” by the ICC National Committee or Group (art. 13(3)), although the Court is also entitled to directly appoint arbitrators in certain circumstances (art. 13(4)).

In the case of a nomination, the parties receive the resume of the nominated arbitrator as well as any other relevant statements. Arbitrators are bound to complete and to submit to the ICC Court Secretariat the Statement of acceptance, availability, independence and impartiality. As

<sup>9</sup> In this respect, see V.M. Ciobanu, *Tratat teoretic și practic de procedură civilă*, National Publishing House, vol. I, p. 606; I. Stoenescu, G. Porumb, *Drept procesual civil român*, Editura didactică și pedagogică, București 1966, p. 59-67.

<sup>10</sup> This category also includes arbitration organized under the Rules of Arbitration and Conciliation for Settlement of International Disputes between Two Parties of Which Only One is a State, developed in 1993 under the Permanent Court of Arbitration at The Hague (PCA);

<sup>11</sup> Representative for this category is the jurisdiction established under the Convention for the Settlement of Investment Disputes between States and Nationals of Other States, concluded in Washington on 18 March 1965 under the auspices of the UN.

<sup>12</sup> The ICC was established in France. In the meanwhile, the ICC has become an international institution reuniting members of over 150 countries. The Chairman of the ICC is elected for a 2-year mandate from among the businessmen personalities - A Guide to the ICC Rules of Arbitration-

previously mentioned, confusion is generated when the terms “**appointment**” and “**confirmation**” are inaccurately used in arbitration; this can create actual issues, particularly in arbitration clauses. The range of inaccurately used terms in arbitration also includes the following notions: “**objection**”, “**challenge**” and “**replacement**”. The Court shall take objections into account upon deciding whether or not to confirm the arbitrator. The parties may challenge the arbitrator only following his/her appointment and confirmation. Subsequently, in most cases, the Court shall “replace” the removed arbitrator.

**b. ICSID** is the abbreviation for the “International Centre for the Settlement of Investment Disputes” which is part of the World Bank group. It was created under the Washington Convention of 1965, with the purpose of settling investment disputes by way of two different procedures: arbitration and conciliation.

Romania has supported the use of international arbitration as a means of settlement of commercial disputes. Romania was one of the first countries to sign the Washington Convention in 1965 concerning the settlement of investment disputes between states and nationals of other states – the ICSID Convention. Also, it subsequently entered into numerous bilateral treaties – The Bilateral Investment Treaty. International Arbitration under the ICSID provides foreign investors in Romania with a neutral forum which they can resort to in case of conflicts, as well as one which they can have access to at a high level of expertise.

**The ICSID Convention** sets forth that, under the circumstances of registration with the ICSID of a dispute between the national of a contracting state/natural person or legal entity meeting the requirements of the Convention and another contracting state, a state party to the Convention, as respondent, the legally established Arbitral Tribunal shall rule upon its competence, i.e. on its jurisdiction.

**ICSID Competence** – Disputes to be deferred to ICSID jurisdiction shall derive directly from an investment. ICSID competence is based on a purely consensual side, i.e. on the willful agreement of the parties. Both parties’ consent is an indispensable requirement for triggering ICSID competence. The mere fact of the Convention ratification by the host state and the state of whose the investor is a national does not suffice in itself; ratification of the Convention does not mean the obligation to use such proceedings to settle disputes. This obligation is generated only after the states make their express agreement to subject a particular dispute or a certain category of disputes to ICSID arbitration. As a result, the decision to establish the type of investment dispute which they deem arbitrable under ICSID remains at the absolute discretion of contracting states. According to the Convention provisions, the written consent of both parties is necessary; as a result, the clauses included in bilateral treaties are simply an offer which needs to be expressly accepted, just as in the case of their submittal to the national legislation on investments. Although the provisions of the bilateral treaty do not tackle the investor made acceptance, a *mutatis mutandis* interpretation suggests that this situation also implies acceptance of by investor of ICSID competence<sup>13</sup>.

**Language of the Proceedings under ICSID** – Pursuant to ICSID Regulations, English may be the procedural language of arbitration. Documents submitted in another language than English shall be accompanied by a sworn translation. The witness/witnesses shall make statements in their language, and simultaneous interpretation into the language of the proceedings shall be provided. Arrangements shall be provided by the ICSID. The parties shall inform the ICSID Secretariat on the requests for interpretation no later than four weeks before the hearing (Administrative and Financial Regulations 30(3) and (4); Arbitration Rules 20(1) (b) and 22).

**Bilateral Investment Treaties** – A main impediment to foreign investments in developing countries in case of a dispute was that they should have an efficient remedy for settling disputes. The Romanian State signed numerous international treaties and provided investors with actual and

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<sup>13</sup> In practice, we point to the AMT c. Zaire case, where the Tribunal noted the following: *in cazul de fata se intampla ca AMT sa opteze pentru o procedura in fata ICSID. AMT si-a exprimat optiunea fara niciun echivoc, care impreuna cu oferta facuta de catre Zair prin Tratat, creaza consimtamantul necesar pentru a valida asumarea competentei de catre ICSID.*

effective means of settling investment disputes<sup>14</sup>. In view of protecting foreign investors, many states entered into bilateral investment treaties and provided foreign investors with minimum standards for tackling the treatment of their investments as well as a mechanism for the settlement of disputes in order for the investor to have a direct right to launch a proceeding against the host state before a competent arbitration forum. The state shall always be a Respondent and its actions shall be judged pursuant to the general standards imposed by international law. Bilateral investment treaties provide an international solution to investors who do not trust local jurisdictions<sup>15</sup>.

Three requirements need to be met in order for the ICSID procedure to be used:

- The parties need to agree that their dispute be settled according to the ICSID procedure;
- The dispute needs to be between contracting states;
- The dispute shall be legal, derived from investments.

Although the term investment is not defined in the Convention, in practice it includes investment in services, in technology, as well as the traditional capital forms of investment.<sup>16</sup>

Attempts were made to establish the basic principles<sup>17</sup> governing the responsibility of states for internationally wrongful acts; we mention that a strict distinction was kept between this task and the task of defining rules binding states; the breach of such rules may trigger liability. Defining a rule and the content of the obligation it incurs is one thing, and it is another to establish the infringement of the respective obligation and the consequences of the breach.

ICSID sets out to promote “a climate of mutual trust between states and investors leading to an increased steering of resources towards developing countries. In order for it to acquire the competence to settle disputes, it is necessary for the dispute to occur between two contracting states and to be generated by an “investment”<sup>18</sup>.

**c. The LCIA**, i.e. The London Court of International Arbitration, is one of the oldest institutions, with a tradition which goes back a long time; it was established in 1892. The institution was completely internationalized and modernized in 1985, when a new set of rules was promoted. All these rules were, in their turn, amended following January 1998.

**d.** Another institution is the **SIAR** (Swiss International Arbitration Law), in force as of 2012.

In 2004, for the purpose of harmonizing arbitration rules, the Chambers of Commerce and Industry of Basel, Berne, Geneva, Neuchatel, Ticino, Vaud and Zurich replaced the former rules set forth by the Swiss International Arbitration Rules. For the purpose of providing arbitration services, the Chambers founded the Swiss Chambers' Arbitration Institution. For the management of arbitrations under the Swiss Rules, the Swiss Chambers' Arbitration Institution established the Court of Arbitration. The Swiss Chambers' Arbitration Institution provides domestic and international arbitration services, as well as further dispute settlement services, pursuant to the law applicable in Switzerland and in any other country.

**e. PCA – Permanent Court of Arbitration**, with the headquarters in The Hague, was established in 1899 aiming at settling disputes involving a state. The CPA is of interest to practitioners for two reasons:

- First of all, following its original purpose of facilitating the settlement of disputes involving a state;

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<sup>14</sup> Romania entered into bilateral investment treaties with over 80 countries – a significant number of companies compared to other countries in the region – as well as into multilateral treaties such as the Energy Charter Treaty.

<sup>15</sup> Since 2000, Romania has developed 8 requests for the settlement of investment disputes by international arbitration – i.e. 20% of the number of cases in the region.

<sup>16</sup> The Freshfields Guide to Arbitration and ADR < Clauses in International Contracts > 2nd edition; Kluwer Law International

<sup>17</sup> Text adopted by the International Law Commission as part of its 53rd session of 2001 and submitted to the General Assembly as part of the Commission's report on the activity of the respective session (A/56/10). The Report includes comments on draft articles and it is published in the *Yearbook of the International Law Commission, 2001*, vol. II, Part Two, as corrected.

<sup>18</sup> Despite being intensely promoted, the ICSID has settled relatively few cases until present; the main reason is the narrow jurisdiction provided by the Convention, which conditions access on the quality as signatories of states from where the persons or governments to the dispute originate.

- Second of all, the General Secretariat of the PCA holds a major role in designating the appointing authority under the UNCITRAL Rules when the parties have failed to appoint such an authority under an agreement<sup>19</sup>.

This jurisdiction operates as a body with general competence, and its activity is ensured and coordinated by certain stable structures within the PCA and The Hague.

The institutions mentioned as well as many others (over 127 arbitration institutions) create a framework for institutionalized arbitration. As previously mentioned, arbitration has developed greatly in the business world, for which reason Arbitration Regulations have undergone major modifications, both from a proceeding perspective, and from the point of scale of fees and arbitral costs incurred.

#### IV. Online arbitration - a solution for the future

Statistics show clearly that the number of people browsing the Internet has increased greatly; a total 422.2 million of people in the 21 countries included in the survey.

All major arbitration institutions are on the World Wide Web<sup>20</sup>. The American Arbitration Association (AAA) website includes information on the AAA, the practice of this institution and a formatted HTML version of the AAA rules and codes. The same goes for arbitration institutions in Paris, Vienna, Stockholm, Dubai, Germany, Switzerland, etc.

Taking into consideration that the international trading activity is more and more often carried out based on the Internet or the e-mail, the trend of the commercial community having access to the settlement of disputes best suited for this new business environment is deemed natural. Online arbitration has thus become an actual alternative to traditional arbitration. Before the publication of online arbitration regulations, now provided by some of the international arbitration institutions and centres, the field of online arbitration has been gradually developed. The advantages of online arbitration have become more and more obvious and they are not restricted to communication speed, which is just one of the advantages.

Numerous arbitration institutions or centres can be found on the internet; their websites describe the respective institution or centre as well as provide the afferent rules of arbitration, including the online arbitration rules.

Following the establishment of more and more arbitration institutions and centres which accepted and adopted the possibility to settle a dispute by online arbitration, questions were raised concerning the validity of this form of arbitration. A first question was whether or not arbitration conducted by electronic means such as the e-mail, the internet, etc. is valid in the context of the current legal framework set forth for national legislations and international treaties and conventions, of which the most important is the New York Convention (NYC). Also, questions were related to the place of arbitration, in the case of arbitration conducted by electronic means, the possibility of arbitrators to rule by these means and the possibility to issue an electronic award. Such questions are worth a deep review, considering that they represent preconditions of any online arbitration proceeding.

The first of them refers to the validity of an arbitration agreement concluded by electronic means. Indeed, article II (2) of the New York Convention imposes certain formal requirements concerning the conclusion of an arbitration agreement<sup>21</sup>. Despite being different from traditional agreements concluded in written form, an arbitration agreement concluded through an exchange of e-mails complies however with the formal requirements of the Convention, and it can thus be deemed as a valid arbitration agreement. Also, although not all courts are familiar with e-mails, the

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<sup>19</sup> Following the amendments occurred at the level of the 1992 Rules, the PCA cannot extend its activities.

<sup>20</sup> ICC Paris has a website which users can access to find information on the ICC, the ICC procedures, the list of arbitrators, ongoing projects and the manners of contacting them.

<sup>21</sup> Art.II.2. "A <<written agreement >> is a compromissory clause included in a contract or a compromise signed by the parties, or comprised in an exchange of letters or telegrams."

latter may constitute evidence in an arbitration proceeding, provided that the measures necessary to meet the evidentiary integrity requirements are taken.

Another question refers to the place of arbitration, in case the dispute is deferred for settlement through online proceedings. In such a case, one may say there is no arbitration place, since arbitration proceedings are conducted in the cyberspace, and the place of arbitration is thus impossible to identify. However, the existence or the absence of an actual place of hearings and other proceedings is less relevant as long as, pursuant to arbitration regulations, the place of hearings is the place selected by the parties or by the Arbitral Tribunal pursuant to the applicable arbitration rules.

Confidentiality, which is an essential feature of arbitration, as opposed to the public characteristic of common law courts proceedings, was questioned in the case of online arbitration, considering the alleged lack of confidentiality of electronic means. However, this alleged lack of confidentiality does not mean that electronic means should not be used in arbitration, as it does not prevent their use in the case of traditional arbitration; on the other hand, the parties can resort to the application of stricter security measures, however, at higher costs.

The electronic arbitration award is in its turn seen as different from one made by an Arbitral Tribunal in the case of traditional proceedings. Regardless of whether it is final or provisional, the award needs to be signed in ink by the hand of arbitrators, at least until the electronic signature is accepted in all legislative systems. Even this shortcoming of cyber-science can be easily overcome. Following an explicit agreement of the parties, the arbitral award issued as part of online arbitration proceedings can be released by other means, as it is not compulsory for the award to be submitted by e-mail. Also, the parties may request the Arbitral Tribunal for the award to be submitted by mail, thus using the conventional means of dispatch-receipt by the actual mail service.

However, following a closer look, one can notice that the rules of online arbitration adopted by the various arbitration centres are not very different from the ones set forth by the same institutions in the case of traditional arbitration. It is obvious that online arbitration rules are in agreement with the new requirements of arbitration by electronic means; however the gaps between this type of regulation and the traditional one are insignificant, and one cannot say that online arbitration is a radically new field, with rules and procedures totally different from traditional ones. The major difference between the two types of arbitration consists in the technique which online arbitration implies as part of its performance. Indeed, arbitration proceedings carried out by electronic means may incur certain problems to the parties involved in these proceedings, considering that certain terms implied in these proceedings as well as certain steps which need to be made as part of the arbitration conduct require a higher level of technical knowledge. However, such gaps can be overcome, particularly if we consider the need of the current business community to be up-to-date with technical innovations.

As the stage of implementation of and familiarization with the required proceedings and operations becomes a reality, and software architecture allows the interested parties to communicate faster, thus removing such limitations as time and space, online mediation and arbitration become a viable and accessible alternative. We are of the opinion that, although it is at the beginning of its course, as technique and the opportunities to use the cyber space and the means thus made available develop, online arbitration will become an easy and less costly alternative to traditional arbitration.

## **V. Conclusion**

The novelty of this article consists in an attempt to define the notions used in arbitration, to identify the gaps in state justice, to find much more reasons and arguments for which traders/trading companies would resort to arbitration, to solve the issue of time wasted and to keep professional secrecy in business throughout arbitration, by invoking the principle of confidentiality used in arbitration.



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