The Dispute Resolution Review

Sixth Edition

Editor
Jonathan Cotton

Law Business Research

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EDITOR'S PREFACE

Building on the previous five editions under the editorship of my partner Richard Clark, I am delighted to have taken on the role of editor from him. *The Dispute Resolution Review* has grown to now cover 54 countries and territories. It is an excellent resource for those, both in-house and in private practice, whose working lives include involvement in disputes in jurisdictions around the world.

The Dispute Resolution Review was first published in 2009 at a time when the global financial crisis was in full swing. Against that background, a feature of some of the prefaces in previous editions has been the effects that the turbulent economic times were having on the world of dispute resolution. Although at the time of writing the worst of the recession that gripped many of the world's economies has passed, challenges and risks remain in many parts of the world.

The significance of recession for disputes lawyers around the world has been mixed. Tougher times tend to generate more and longer-running disputes as businesses scrap for every penny or cent. Business conduct that was entrenched is uncovered and gives rise to major disputes and governmental investigation. As a result of this, dispute resolution lawyers have been busy over the last few years and that seems to be continuing as we now head towards the seventh anniversary of the credit crunch that heralded the global financial crisis. Cases are finally reaching court or settlement in many jurisdictions that have their roots in that crisis or subsequent 'scandals' such as *LIBOR*.

The other effect of tougher times and increased disputes is, rightly, a renewed focus from clients and courts on the speed and cost of resolving those disputes, with the aim of doing things more quickly and for less, particularly in smaller cases. The Jackson Reforms in my home jurisdiction, the United Kingdom, are an example of a system seeking to bring greater rigour and discipline to the process of litigation, with a view to controlling costs. Whether such reforms here and in other countries have the desired effect will have to be assessed in future editions of this valuable publication.

Jonathan Cotton
Slaughter and May
London
February 2014

Chapter 41

ROMANIA

Levana Zigmund[1]

I INTRODUCTION TO DISPUTE RESOLUTION FRAMEWORK

Disputes in Romania are settled in court in the vast majority of cases, under procedures regulated mainly by the new Civil Procedure Code (CPC). The CPC entered into force on 15 February 2013, has carried out a systemic and extensive overhaul of the Romanian dispute resolution model. With a specific focus on acceleration of trial proceedings, the new regulation has reformed both the schedule and the content of proceedings taking place in various phases of the lawsuit, while attempting to clarify many of the controversies raised by interpretable provisions in the former regulation.

The commentary here takes into consideration the procedures as currently in force. A brief outline of the main amendments envisaged to be brought to the CPC is included in Section II, *infra*.

The judicial system in Romania comprises:

a local courts;

b tribunals;

c courts of appeal (there are 15 courts of appeal in Romania, the largest being the Bucharest Court of Appeal, with 23 local courts and six tribunals); and

d the High Court of Cassation and Justice, Romania's supreme court.

The system is designed to ensure a double-level jurisdiction, with local courts, tribunals or courts of appeal acting as first instances depending on the nature and value of the litigation, while the High Court of Cassation and Justice acts exclusively as a court of last resort, also settling requests for unification of practice.

With the number, range and complexity of disputes dramatically increasing in past years against the backdrop of economic growth and legislative changes, especially

1 Levana Zigmund is a partner at Țuca Zbârcea & Asociații.

generated by Romania's accession to the EU on 1 January 2007, parties are increasingly resorting to ADR procedures, especially arbitration, even though the vast majority of disputes are still adjudicated in the courts. Mediation was only introduced in 2006 and its practice is still to be developed, helped by a July 2012 amendment to the mediation law that will require litigating parties to prove that they have taken part in an information meeting regarding the advantages of mediation.[2]

II THE YEAR IN REVIEW

The focus of the year was the entry into force of the new Civil Procedure Code, a substantial and structural reform of all aspects of procedural civil law.

While an original enactment date had been set for 1 September 2012, a government emergency ordinance issued immediately prior to this deadline postponed the moment of entry to 15 February 2013, quoting 'financial budgetary restrictions that have delayed measures of absolute necessity for the preparation of the judicial system in view of the new Civil Procedure Code'.[3] Furthermore, in view of the same rationale, the Romanian parliament has granted a three-year postponement of entry of the Code's provisions relating to trial administration of evidence in the judge's chambers.

Late in the year, by a ruling pronounced against the Romanian state in *Vlad and Others v. Romania* (26 November 2013), the European Court of Human Rights (ECtHR) held that there was a 'systemic problem' of the Romanian judicial system with regards to the excessive length of trial proceedings. It acknowledged the existence of approximately 700 allegations of breaches of the 'reasonable time' requirement laid down in Article 6, Section 1 of the European Convention on Human Rights (ECHR) by the Romanian state and called upon it to 'either amend the existing range of legal remedies or to add new remedies, such as a specific and clearly regulated compensatory remedy, in order to provide genuine effective relief for violations of these rights'.

On 4 October 2013, the Romanian government issued an emergency ordinance adopting a new Insolvency Code, which provided significant alterations of the current procedure applicable to companies reaching impossibility of payment of outstanding debts.[4] In the same month, the Constitutional Court dismissed the entire Insolvency Code as unconstitutional, reinstating the former legislation on the matter.[5] In this respect, the Court reiterated that emergency ordinances can only be enacted in extraordinary circumstances in need of urgent regulation, while noting that the newly passed piece of legislation did not justify the fulfilment of such criteria.

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2 The amendment has been introduced by Law No. 90/2012, published in the OGR No. 462 of 9 July 2010, which entered into force on 15 February 2013.

3 Government Emergency Ordinance No. 44/2012 was published in the OGR No. 606 of 23 August 2012.

4 Government Emergency Ordinance No. 91/2013 was published in the OGR No. 620 of 4 October 2013.

5 Constitutional Court Decision No. 447/2013 was published in the OGR No. 674 of 1 November 2013.

III COURT PROCEDURE

i Overview of court procedure

The CPC and other legislation is made available online on various websites, among them the website of the Ministry of Justice.[6] Because of the volume and frequency of amendments to existing legislation, especially after 1990, laws are not always republished to include the latest changes. Therefore, texts of laws may be presented by different sources as a compilation of norms as in force at a certain date.

ii Procedures and time frames

Procedures and time frames differ depending upon the nature, object and procedural stage of the claim and the practice of different courts may vary, making it difficult to predict with accuracy the time frame of a court procedure. The new CPC has instituted courts' obligation to clearly estimate the duration of a trial at the moment of commencing proceedings, with a view to accommodating ECHR requirements regarding the reasonable duration of litigation.

Preliminary procedures to taking action are provided in certain matters, pending which the claim is to be denied as either premature or inadmissible. Most notably, in debt recovery disputes, the creditor is expected to notify the debtor of delay before taking action, if not otherwise provided by way of exception in the law or agreed by the parties. The notice of delay will have to include a reasonable deadline for the payment of debt. If such prior notice is omitted, the debtor will benefit from a reasonable time frame inside which payment of debt will lead to the dismissal of the claim, with legal fees to be borne by the creditor. On the other hand, the CPC has repealed the mandatory conciliation procedure for creditor–debtor disputes.

Also, claimants in litigation that can undergo mediation (litigation valued under 50,000 lei, labour litigation, consumer protection disputes) are required to undergo a prior information meeting on the benefits of mediation.

Disputes are submitted to the competent court at the seat or domicile of the respondent, as a rule. Depending on the value of the litigation – the threshold is currently set at 200,000 lei – the local court or the tribunal adjudicates in the first instance.

The CPC provides the minimal contents for claims but generally there are no claim forms made available or required by courts (such claim forms exist in case of special procedures, such as low-value claims). However, the judge is expected to develop a written correspondence with the claimant in order to ensure the fulfilment of all validity requirements concerning his application, if needed. Proof of having paid the legal stamp must be attached. Certain formal requirements may be fulfilled after the issue of the claim, within a maximum 10-day term set by the judge. The respondent will then be required to submit a statement of defence against the claim in a maximum 25-day deadline from the date of service. The statement of defence will be served to the claimant, who is to file a response in a 10-day deadline. Once this time limit has lapsed, the judge will appoint a hearing date in a maximum of 60 days.

6 http://legislatie.just.ro.

All evidence taken in the proceedings must be first admitted in principle by the judge and is directly marshalled by the judge. The categories of admissible evidence in court are limitedly provided by law and include documents, witnesses, interrogatory of the parties, expert reports, legal assumptions, admissions and on-site assessments.

First instance sentences are usually challengeable by first appeal within 30 days of service; the first appeal is an ordinary challenge seeking revision on the merits. A timely filed first appeal automatically stays the enforcement of the sentence. New evidence is admissible in first appeal, hence adjudication may occasionally take as long as the first instance trial.

Decisions passed in first appeal or without right of appeal may be challenged by final appeal within 30 days of service. The final appeal is an extraordinary challenge to be retained within the jurisdiction of the High Court of Cassation and Justice under a double limitation: it may only be filed for a limited set of reasons; and its scope is restricted to examining the legality of judgments without any reassessment of the factual premises of the dispute. New evidence is limited to documents in final appeal, and final appeal decisions may be passed even after a single hearing.

Other extraordinary forms of legal redress are revision (for the discovery of new evidence, contrary decisions etc.) and the motion to annul (mainly for lack of jurisdiction or failure to fulfil service procedures).

Court decisions are enforced by bailiffs, who are public officers organised under the coordination and control of the Ministry of Justice. The enforcement procedures entail that the writs of enforcement are handed over to the bailiff, who is required to obtain permission from the competent court before proceeding to enforcement.

Enforcement may be contested on formal grounds only for alleged irregularities in the enforcement procedure. The actual writ of enforcement may not be criticised within such contestation (as void or otherwise vacated) except for in expressly provided cases. Usually contestations include a request for a stay of enforcement, admissible subject to a bond. Decisions passed on such contestations are subject to first appeal only.

Among the available urgent procedures, injunctions, with various applications, are most common. They may be filed prior to or during trial to obtain temporary measures to preserve rights, prevent, mitigate or remedy damages, or eliminate impediments that may forestall enforcement. The court may decide on the application in chambers, without summoning the parties. The injunction is to be issued by the court within 48 hours, with motivation. Injunctions may not settle the case on its merits, are enforceable immediately and are challengeable by first appeal only, within five days from service.

Certain, liquid and outstanding debts, deriving from works and services and ascertained by documents (agreement, invoice) may be claimed by way of injunctions to pay, a special urgent procedure regulated by the CPC.[7]

As interim procedures, the CPC makes available injunctions to seize tangible assets or place liens on bank accounts to preserve the rights of the creditor, as well as injunctions for the judicial seizure of litigated assets. Interim applications are filed to the

7 Introduced by Government Ordinance No. 5/2001, published in the OGR No. 422 of 30 July 2001.

court judging the case on the merits and are settled in chambers (without the summoning of the parties in the case of injunctions to seize assets or place liens), by an immediately executory order challengeable only by first appeal within five days of service. The court may request the applicant to deposit a bond.

iii Class actions

The CPC recognises the right of associations with legal personality to take action, in the name of their members, to protect their collective interests, with damages being awarded to the association rather than directly to the individual members. Representative or collective actions may be filed, for instance, by the Consumer Protection Association, under the Consumer Code, by non-governmental organisations in the field of human rights against acts of discrimination that harm the interests of a community or group of people, by consumer protection associations and other non-governmental organisations, as well as by the National Authority for Consumer Protection against providers of services on the electronic marketplace, but they are still highly uncommon.

iv Representation in proceedings

Under the CPC, any individual with full legal capacity and all legal entities with legal personality may represent themselves in court proceedings in first instance and in the first appeal phase. Legal representation in the final appeal phase has to be performed by a lawyer, under penalty of nullity.

v Service out of the jurisdiction

Any natural person or legal entity who is a party, a witness or a participant to a civil lawsuit in Romania may be served judiciary or extra-judiciary documents outside the jurisdiction, with the permission of the court.

Service is made through the Ministry of Justice by mail, directly to the party, or to the competent authorities in the country of residence, or to Romania's diplomatic mission or consulate in that country, depending on the provisions of the international conventions in place between Romania and the relevant jurisdiction.[8]

To avoid excessive delays, the parties are permitted by law to ensure service by express mail or courier at their own expense.

Since 2007,[9] courts are permitted to serve persons outside the jurisdiction without the intermediation of the Ministry of Justice. Judiciary and extra-judiciary documents may be served in EU countries by a notary public or bailiffs through the local courts.

8 Romania is a party to the 1954 Hague Convention and has concluded a number of bilateral conventions on the matter (among others with Belgium, France, Greece, Italy, Poland, Spain, Hungary).

9 Introduced by Law No. 189/2003, republished in the OGR No. 543 of 5 August 2009.

vi Enforcement of foreign judgments

Starting from its accession to the EU, the procedure for enforcement of foreign judgments in Romania differs depending on whether the judgment was passed in an EU or in a non-EU Member State.

For judgments delivered in EU Member States, Council Regulation No. 44/2001 on the jurisdiction, recognition and enforcement in civil and commercial matters is directly applicable in Romania. According to this simplified procedure, the interested party submits its application for enforcement to the competent local court, having attached a certificate issued by the court that passed the judgment, and the local court limits its verifications to the enforceability of the judgment.

The procedure for the recognition and enforcement of judgments delivered outside the EU is regulated by the CPC. In order to obtain recognition and enforcement, the claimant must prove that the foreign judgment is final, that the foreign court had jurisdiction to rule on the case and that reciprocity exists with respect to the acknowledgement of the foreign judgments between Romania and the respective non-EU Member State.

vii Assistance to foreign courts

Assistance to foreign courts in civil matters may consist in service of process, transmission of legislation and information on legislation, taking of evidence and granting access to justice to foreign citizens. Assistance is provided in answer to letters rogatory from the foreign courts, directly or through diplomatic channels, addressed to the Ministry of Justice, which verifies observance of formal requirements and forwards it to the competent court and collects the answers. Courts of appeal may exchange information directly with courts of equivalent rank in EU Member States.

viii Access to court files

Hearings in Romanian courts are public as a rule, and judgments are always passed in a public hearing. Information on dates set for hearings may be obtained from the national online portal of the courts or from the courts' archive offices. Written submissions and evidence in relation to ongoing proceedings are not available to the public.

After the proceedings are completed, members of the public may obtain information on the name of the parties, the object of the case and the decision passed by the court. Decisions found relevant for the application or interpretation of the law may be published in full in case-law collections, legal reviews, etc.

ix Litigation funding

Support of litigation by a third party is permitted in Romania by way of assignment of litigious rights, following which the assignor loses *locus standi* in trial.

Funding litigation for a share of process is not permitted, but lawyers may charge a retainer to which a success fee is added, determined pro rata from the proceeds.

Natural persons with residence in Romania or in the EU who are unable to support litigation without jeopardising their own or their family's welfare are permitted to request public aid to fund civil litigation.[10]

IV LEGAL PRACTICE

i Conflicts of interest and Chinese walls

In Romania, lawyers are prohibited by statute[11] from assisting or representing parties with adverse interests. When a conflict of interest occurs lawyers must inform their clients and abstain from revealing any confidential information they may possess. Lawyers may however provide legal assistance to clients with adverse interests if such clients, made aware of the conflict, so agree, or to help them reach settlement. Representation in court of clients with adverse interests is forbidden under any circumstances.

The law permits Chinese walls only based on the consent of the relevant clients, only provided that the law firm ensures confidentiality of information and only for legal assistance in relation to non-litigious matters.

ii Money laundering, proceeds of crime and funds related to terrorism

The law preventing money laundering and terrorism financing,[12] amended in 2008 to fully comply with EU Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, directs lawyers to obtain identification data from their clients before entering an engagement or providing legal services, or whenever they become aware of an attempt to engage in a transaction related to money laundering or terrorism financing. Lawyers must keep the documents attesting their clients' identities and the financial transactions performed in the interest of their clients for five years and must submit a report to the National Anti-Money Laundering Office whenever they suspect that a certain financial operation is related to money laundering or terrorism financing.

iii Other areas of interest

Courts may exempt the losing party, normally ordered to bear all legal costs, from reimbursing some of the winning party's lawyers' fees when found excessive.

The legal assistance agreement concluded with the client in compliance with the statutes is deemed a writ of execution and may be enforced on being vested by the competent court.

10 Introduced by Government Emergency Ordinance No. 51/2008 published in the OGR No. 327 of 25 April 2008.

11 The professional activity of lawyers is governed by Law No. 51/1995 and by the Statute of the Legal Profession, published in the OGR No. 45 of 15 January 2005. Among other sources, see www.baroul-bucuresti.ro/home.

12 Law No. 656/2002 published in the OGR No. 904 of 12 December 2002, recently amended.

Lawyers from the EU may provide legal assistance in Romania on fulfilling formalities required by statute; however, there are certain restrictions regarding clients' representation in court.

V DOCUMENTS AND THE PROTECTION OF PRIVILEGE

i Privilege

Romanian law acknowledges a position of privilege in favour of certain categories of people (including lawyers and notaries public), based in essence on their profession or relation with the parties, and a privilege of confidentiality for certain information in consideration of its importance.

For lawyers, privilege may consist in exemptions from the obligation to testify, immunity from criminal liability for opinions expressed or submissions made during the exercise of their profession, protection from orders to divulge professional secrets and confidentiality of all correspondence.

An interdiction to intercept and record conversations between lawyers and their clients was declared unconstitutional on the grounds that, in compliance with the practice of the ECtHR, interceptions may be made whenever there is plausible information that the lawyer is involved in criminal activities.[13]

Similarly to lawyers, legal consultants, who are employees of the client, not members of the Bar, enjoy protection by the law with regard to the professional documents in their possession, in their office or domicile, which may only be seized based on special authorisation in criminal investigations.

Lawyers who have obtained their professional qualification in EU states and who exercise their profession permanently in Romania are subjected to the same professional conduct rules as national lawyers. If their activities are only occasional, a difference exists between the case of representation, governed by the same rules as those applicable to nationals, and other services, where the rules of the state of origin will apply, with certain exceptions, such as professional secrecy, which will be governed by Romanian statutes.

ii Production of documents

Under the CPC, each party shall bring the evidence it deems necessary to support its own claims. At the request of the party, the court may order the opponent to produce documents in its possession, where possession is deemed only the physical control and not also the legal control. It is incumbent on the applicant to prove that the documents exist, that they are in the possession of the opposing party and that they are relevant to the case.

The court will verify the legality, credibility, relevance (the logical connection between the requested evidence and the facts it allegedly demonstrates) and conclusiveness of the documents requested. Even if the documents satisfy the conditions, the court will decline the request if the documents contain personal information, are qualified as

13 Decision No. 54/2009 of the Constitutional Court, published in the OGR No. 42 of 23 January 2009.

confidential (for instance, parties' allegations during mediation are confidential and may not be used as evidence in subsequent litigation or arbitration) or when their disclosure could trigger a criminal investigation against a party to the dispute or against third parties. If the documents regard both parties, or have been referred to by the other party in trial, or there is a legal obligation on the party to present the document in court, the request may not be denied.

If the party refuses to produce the document, hides or destroys it, the court may deem proven the claims for which the document would have served as evidence.

The CPC does not expressly regulate a procedure for the production of documents stored overseas, electronically or otherwise. The general rules described above, however, permit the parties to request (provided they also prove that the documents exist in the possession of the other party), and the court to allow, that documents stored overseas be brought in court as evidence.

While the CPC does not address the matter of evidence held by a third party but under the control of a litigant, requests to produce may be made for documents in the possession of authorities, legal entities or natural persons not parties to the dispute.

The court decides on such request considering the relevance of the documents rather than the relation of control there might be between a party and the entity possessing the documents. If the third party fails to produce the requested documents, the court may impose fines.

Special rules regarding the production of documents under the party's control, rather than mere possession, are provided for limited situations in special laws, such as in the case of industrial drawings and designs, or in the case of trademarks.

Electronic documents were added to the list of admissible evidence in 2001.[14] Electronic documents containing an electronic signature have the same power as privately made documents or, if recognised by the party against which they are proffered, the power of authenticated documents. If the document is contested, the court may order expert investigation. A practice in this matter is yet to develop.

Romanian law does not require parties to store electronic back-up versions of their documents. A 2009 enactment required the providers of publicly available electronic services and networks to store certain data (traffic and tracking data only) for six months and to make it available based on authorisation to authorities competent to investigate, detect and prosecute serious crime. Even though this enactment was rendered ineffective by a decision of the Constitutional Court,[15] a new regulation aiming to the same effect was adopted in the middle of 2012,[16] among protests and public outcry from the civil society.

The costs related to the production of documents made by third parties are borne by the party who made the request. The rule is that the losing party will bear all the legal costs of the proceedings, including those related to the taking of evidence.

14 By Law No. 445/2001 published in the OGR No. 429 of 31 July 2001.

15 Decision No. 1258/2009 of Constitutional Court, published in the OGR No. 798 of 23 November 2009.

16 By Law No. 82/2012 published in the OGR No. 406 of 18 June 2012.

VI ALTERNATIVES TO LITIGATION

i Overview of alternatives to litigation

Arbitration is the most common ADR procedure in Romania for matters capable of settlement by arbitration, especially commercial ones. Mediation, introduced in Romania in 2006, transposing the European Council Directive 92/13 of 25 February 1992, is yet to develop a practice. Other available ADR procedures are facultative conciliation, mandatory direct conciliation and other specialised ADR procedures limited to certain disputes (labour law, public procurement).

ii Arbitration

The CPC provides the general rules under which the parties may submit disputes to arbitration either to an *ad hoc* tribunal or to one organised at a permanent court.

In *ad hoc* arbitrations, parties may choose the rules to govern the arbitration, either directly or by reference to an established set of norms, and within the confines of public policy rules.

The most-used form of arbitration, however, is institutionalised arbitration carried out under the auspices of permanent courts. Most arbitration requests are referred to the Court of International Commercial Arbitration attached to the Romanian Chamber of Commerce and Industry, established in 1953 and seated in Bucharest, which handles international as well as local, commercial and civil disputes. The Arbitration Rules of the Court, available on its website,[17] as enacted on 2 April 2013, are completed by the general rules provided by the CPC. The number of arbitrators in a panel is limited to three under the Court's Rules.

The arbitration tribunal will be formed by one or three arbitrators, 'depending on the value and complexity of the claim' (Article 16 of the Rules). In contrast to previous regulations on the matter, all arbitrators will be nominated by the Court of Arbitration, with parties being denied a role in the selection procedure.

Unless the parties otherwise agree, arbitral tribunals must deliver the award within six months from constitution, with possible extensions of up to three months. During interim requests the six-month term is suspended. These terms are doubled for international arbitrations.

Arbitral awards are final and binding for the parties and may only be challenged by action for annulment, within one month of the issue of the award, for reasons provided limitedly by the CPC (such as invalidity of the arbitration clause, non-arbitrability of the matter, breach of public policy rules through the award).

The action to annul the award is filed at the immediately superior court to the court competent to settle the dispute lacking the arbitration agreement. The court settling the action for annulment may stay the enforcement of the award provided a bond is placed by the interested party. The decision of the court is challengeable by final appeal.

The number of arbitrations has significantly increased in the past years, especially in commercial matters, but arbitrations are still not very common, due especially to the

17 http://arbitration.ccir.ro.

costs of the proceedings, which are perceived as exceeding the costs of a dispute in court and which, if the parties do not agree otherwise, are borne by the losing party.

Also, with limited grounds to appeal against an award, parties may prefer to issue their claims in court, where a double level of jurisdiction is available. In practice, annulments of arbitral awards are rare.

Foreign arbitral awards are recognised and enforced in Romania in compliance with the New York Convention, to which Romania has been a party since 1961, and the CPC.

An award is deemed 'foreign' if passed outside the jurisdiction or if not domestic due to a strong preponderance of foreign elements. In case of inconsistencies, the New York Convention prevails. The above presented conditions in relation to the recognition and enforcement of foreign judgments issued in non-EU Member States will apply, in principle, to the recognition and enforcement of foreign arbitral awards.

iii Mediation

Even though the Romanian Chamber of Commerce and Industry has provided the service of mediation since 2003, among other ADR mechanisms, mediation has been only recently regulated in Romania, in 2006,[18] in compliance with the recommendations of the European Council regarding mediation and with a view to expanding the existing legal framework of ADR procedures.

Parties may resort to mediation prior to initiating court action or by discontinuing a pending lawsuit. In both cases, agreements reached through mediation are deemed private instruments, but may be authenticated by the notary public or submitted to court to be embodied in an award, challengeable only by final appeal. Mediators have their own professional body, the Mediation Council, established in 2008.

Mediators from EU states may have their qualifications recognised in Romania by the Mediation Council, while mediators from non-EU states may practise in Romania on recognition of their qualifications by the Ministry of Education and Research or specialised training.

The public awareness on mediation is relatively limited and the practice is still in an incipient stage. The entry into force, in January 2013 of a legal amendment to the mediation laws requesting litigating parties to prove they have undergone a meeting on the benefits of mediation is expected to increase the assimilation of this ADR procedure. With no restriction in establishing mediation centres under the law, the number of associations providing and promoting the service of mediation is increasing.

iv Other forms of alternative dispute resolution

Conciliation as an ADR form is available in Romania, under the Rules for Facultative Conciliation approved by the College of the Court of International Commercial Arbitration at the Romanian Chamber of Commerce and Industry in 1999.

18 Introduced by Law No. 192/2006 published in the OGR No. 441 of 22 May 2006.

VII OUTLOOK AND CONCLUSIONS

The Romanian dispute resolution framework is currently experiencing one of the most significant, substantial and extensive reforms of the last century, due to the recent enactment of the new Civil Procedure Code alongside a new Civil Code already in force; the enactment of new Criminal and Criminal Procedure Codes is also being prepared. The reform seeks to put in place a legal framework able to answer the needs of contemporary developments of societal relations, with a clear view to coordination with EU law essentials.

High expectations are placed on the system's ability to absorb the new provisions aimed at speeding up trials, and avoid future allegations of systemic failure to settle disputes within 'a reasonable time'. Particular applications of the legislator's need for acceleration of trial proceedings include newly instituted duties of the judge to develop a written correspondence with the claimant in order to ensure the fulfilment of all validity requirements concerning his or her application, and then to coordinate the submitting of the parties' written materials and the organisation of the hearing within a very strict time frame.

New legislation also puts in place a rapid mechanism by which parties can challenge any unjustified delays in the development of a trial, and obtain the fast completion of lacking measures – a procedural challenge against trial tergiversation. Such challenge is available in all instances where courts have failed to act within or pay heed to an established legal deadline, and will have to be settled within five days from application. If the challenge is granted, the court will immediately take measures to eliminate the causes of trial tergiversation.

Trial filtering has been instituted in order to avoid court overburdening: claims lacking formal elements will be dismissed if such omissions are not remedied in short deadlines, final appeals will undergo a preliminary admissibility check performed by a three-judge panel with a view to assessing whether the application complies with formal requirements, as well as whether the final appeal is ostensibly unfounded. This latter screening procedure is expected to lead to a reduction in the number of final appeal cases on the dockets of the High Court of Cassation and Justice.

A fast-track, optional procedure is designed to accommodate claims valued below 10,000 lei. Such procedure is entirely written and aspires to relieve the volume of minor disputes courts are currently faced with.

The enforcement phase of the trial will be conducted by bailiffs only, with a view to guaranteeing that the rights of the debtor are fully observed, and that enforcement procedures are carried out lawfully, efficiently and rapidly.

It is still too early to assess whether these welcomed changes will suffice to address the substantial difficulties Romania faces in its attempt to shape an efficient, cost-effective dispute resolution system. Jurisprudence is yet to develop on many of the novel procedures described above, and interpretation controversies are likely to appear. Nevertheless, the decisive step of legislation enactment has been accomplished.

Appendix 1

ABOUT THE AUTHORS

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Levana Zigmund is a partner at Țuca Zbârcea & Asociații. She co-heads the firm's international arbitration practice group and is widely regarded as a prominent practitioner with impressive advocacy skills. Her expertise encompasses arbitration under the leading institution rules, such as ICC, ICSID, as well as *ad hoc* arbitration proceedings under various national laws. More significantly, she has been very active in investment treaty arbitration in relation to Romania and has built up a solid and successful practice in this area. She was directly involved, either as a team member or coordinator, in the only three successfully finalised ICSID disputes to date, and coordinates a fourth. Levana Zigmund has also acted in complex commercial, real estate, fiscal and administrative disputes.

She has represented public and private companies in joint ventures, corporate governance matters, corporate and commercial transactions, business transfer projects, cross-border investments as well as shipping and transport projects, and has extensive experience in regulatory matters.

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