The Dispute Resolution Review

Third Edition

Editor
Richard Clark

Law Business Research

The Dispute Resolution Review

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Third Edition

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ROMANIA

Levana Zigmund[*]

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 Civil Procedure Code ('the CPC'). The CPC has been recently amended by Law No. 202/2010 (the 'Little Reform Law')[1], a law expressly designed to introduce elements of procedural celerity in advance to the new Civil Procedure Code, which will replace the CPC entirely on 15 July 2011. The commentary *infra* takes into consideration the procedures as currently in force. A brief outline of the main amendments to be brought by new Civil Procedure Code will be included in the last section.

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 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 and tribunals acting as first instances depending on the nature and value of the litigation, while the courts of appeal deal with first or final appeals.

The High Court of Cassation and Justice acts exclusively as a court of last resort, also settling exceptional procedural incidents (such as motions to relocate trial for legitimate suspicion) and the final appeal in the interest of the law, an extraordinary challenge filed by the General Prosecutor or the colleges of the courts of appeal seeking

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1 The provisions are part of Law No. 202/2010, published in the OGR No. 714 of 25 November 2010, having entered into force upon 25 November 2011.

to obtain a decision, binding for all inferior courts, to unify practice on certain matters. Such decisions are published in the Official Gazette of Romania.

Generally, courts are organised in divisions specialised by matter. With the number and specialisation of the divisions depending on the occurrence of specific cases, the structure of courts of the same level may vary largely.

Since 2005, the law has permitted divisions within generalist tribunals to be severed and organised separately. Four such tribunals have been established to date (a tribunal for minors and family matters and three commercial tribunals).

With the number, range and complexity of disputes dramatically increasing in past years against the backdrop of economic growth and legislative changes, especially generated by Romania's accession to the EU on 1 January 2007, parties are increasingly having recourse to ADR procedures, especially arbitration, even though the vast majority of disputes are still adjudicated in courts. Mediation was only introduced in 2006 and its practice is still to be developed, helped by the March 2010 amendments to the mediation law, which require the courts to recommend the procedure to litigating parties.

II THE YEAR IN REVIEW

Early in 2010, in a press statement of 25 February 2010, the European Court of Human Rights ('the ECHR') announced the start of a pilot procedure concerning Romania's inability to set up an effective restitution and compensation mechanism of assets belonging to the victims of the former communist regime. The pilot procedure, a creation of ECHR jurisprudence, entails the identification of a recurring issue, rooted in the same type of legal setback, which causes the ECHR to be faced with a large number of similar claims, and allows the Court to single out one particular case as a landmark treatment of the Member State's legal quandary. As a result, the ECHR not only deals with the specific case at hand, but also designs a list of recommendations to eradicate the enduring problem that it has identified. All similar cases are then suspended, until the Member State's endorsement of legislative, budgetary or administrative measures purported to support the ECHR's guidance.

In view of the above, the ECHR's pilot ruling of 12 October 2010 in *Maria Atanasiu and others v. Romania*[2] is of significant weight for Romania's legal conception of ownership and restitution laws. The ruling castigates the Romanian state's massive delays in implementing an effective mechanism of restitution of property and imposes a general positive obligation on Romania to ensure the effective protection of ownership rights. In particular, the Court stresses the necessity for an urgent decrease of the timeframe of existing restitution procedures and for a streamlining of the compensation system conceived by the state.

In Decision No. 8 of 18 October 2010, the High Court of Cassation and Justice clarified a long-standing controversy dividing the practice of Romanian courts by stating that insult and libel are not deemed criminal offences. The disputation started as a result of the Romanian Constitutional Court's pronouncement of the unconstitutionality

2 Cases No. 30.767/05 and 33.800/06.

of legal norms discriminating insult and libel: several courts found that, these norms having been declared unconstitutional and hence void, insult and libel were thus *de jure* incriminated, by reinstatement of prior criminal legislation. This interpretation has now been overturned by the High Court, which pronounced its decision in settling a final appeal in the interest of the law. The decision is likely to boost freedom of expression.

In advance to the 2011 entry into force of its new Civil Procedure Code, Romania undertook a partial reform of the CPC via the Little Reform Law, which adopts a set of amendments aimed at accommodating heavy ECHR critiques regarding the duration of trials and the enforceability of judgments. As expressly stated in its Statement of Reasons, the law is designed to limit the ways in which trial timeframes are most commonly extended in current practice, by putting forward a series of measures prescribed by the new Civil Procedure Code: (1) the possibility of superior courts to approve a restart of proceedings has been limited; (2) intervals between hearings have been shortened, with courts having the option to hear a given case on successive days; and (3) the law approves service of documents by fax, e-mail and telephone to increase the celerity of proceedings.

The Little Reform Law also purports to reduce the current overburdening of the courts in specific fields of dispute resolution by introducing a set of alternative remedies, such as divorce by notarial or administrative procedures.

The rule of the double-degree jurisdiction has been eradicated in relation to a number of minor disputes, such as disputes of small pecuniary value.

III COURT PROCEDURE

i Overview of court procedure

The CPC and other legislation are made available online on various websites, among which is the website of the Ministry of Justice.[3] Because of the volume and frequency of amendments to existing legislation, including the CPC, 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.

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 all patrimonial commercial disputes the claimant must invite the respondent to direct conciliation in an attempt to private settlement before taking action. This prior procedure may be completed in 30 days. Proof that the required preliminary procedure has been completed is required in court.

3 http://legislatie.just.ro.

Civil and commercial 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 currently set at 500,000 lei for civil and 100,000 lei for commercial matters, the local court or the tribunal adjudicates in the first instance.

The CPC provides the minimal contents for claims but there are no claim forms made available or required by courts. Proof of having paid the legal stamp must be attached. Certain formal requirements may be fulfilled after the issue of the claim, within the term set by the judge. The respondent is allowed at least 15 days (five in urgent matters) between the date of service and the first hearing and must submit an answer at least five days in advance.

All evidence taken in the proceedings must be first admitted in principle by the judge and will be directly administered by the judge. Admissible evidence in court is limited by law and includes documents, witnesses, the interrogatory of the parties, expert reports and on-site assessments.

First instance decisions are usually challengeable by first appeal, an ordinary challenge seeking revision on the merits, within 15 days of service. A timely filed first appeal automatically stays the enforcement of the decision. New evidence is admissible at first appeal, hence adjudication may occasionally take as long as at first instance.

Decisions passed in first appeal may be challenged by final appeal within 15 days of service. The final appeal is an extraordinary challenge, which may only be filed for limited reasons and does not automatically stay the enforcement of the decision under review. New evidence is usually limited to documents in final appeals and decisions (irrevocable) 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).

Court decisions become enforceable on being vested with executory power by the competent local court and are enforced by bailiffs, who are public officers organised under the coordination and control of the Ministry of Justice. The enforcement procedures entail that writs of execution are transmitted by the claimant to the bailiff, who will have to request the competent court the approval of his request to enforce the title. Once such approval is issued, the bailiff can proceed to enforcement.

Enforcement may be contested on formal grounds, usually applications containing also a request for a stay, subject to a bond. Decisions passed on such contestations are subject only to final appeal.

Among the available urgent procedures, most common are injunctions, with various applications. They may be filed in civil and commercial matters 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 with its reasons is released within 48 hours. Injunctions may not settle the case on its merits, are enforceable immediately and challengeable only by final appeal within five days of service.

Urgent applications have been made available in recent years to expedite recovery of debts and alleviate the courts' caseloads. Certain, liquid and exigible debts, civil or commercial, deriving from works and services, recognised by the debtor and ascertained

by documents (agreement, invoice) may be claimed by way of a motion to pay, a very commonly used procedure, introduced in 2001.[4]

In 2007,[5] implementing Directive 2000/35/EC on combating late payments in commercial transactions, the injunction to pay was made available, applying to certain, liquid and outstanding debts deriving from commercial agreements between companies or companies and authorities. The court must issue the order within 90 days of registration.

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 court judging the case on the merits and are settled in chambers, without the summoning of the parties, by immediately executory order challengeable only by final 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, damages being awarded to the association, not 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.

v Service out of the jurisdiction

Any natural person or legal entity who is a party, a witness or a participant to the civil or commercial 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 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.[6]

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

5 Introduced by Government Emergency Ordinance No. 119/2007, published in the OGR No. 738 of 31 October 2007.

6 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,

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

Since 2007,[7] 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.

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 enforcement of judgments delivered outside the EU requires the interested party to file a request for *exequatur* prior to enforcement.[8] The local court may not revise the judgment on its merits but will verify its enforceability in Romania according to its public policy.

vii Assistance to foreign courts

Assistance to foreign courts in civil and commercial 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 missions, 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, with few exceptions, and judgments are always passed in public hearing. Information on dates set for hearings may be obtained from the clerk or from the websites of some of the courts. 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.

Hungary).

7 Introduced by Law No. 189/2003, most recently amended in 2007 by Law No. 44/2007 published in the OGR No. 174 of 13 March 2007.

8 Regulated by Law No. 105/1992 republished in the OGR No. 337 of 19 May 2003.

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.

To avoid speculative transactions, the other party in the dispute may, if the assignment was made during trial, purchase the right from the assignee, against the same price as paid by the assignee, with interest, and end the proceedings.

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.

The possibility to request public aid to fund civil litigation was recently introduced[9] for natural persons with residence in Romania or in the EU who are unable to support litigation without jeopardising their or their family's welfare.

IV LEGAL PRACTICE

i Conflicts of interest and Chinese walls

In Romania, lawyers are prohibited by statute[10] 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,[11] amended in 2008 to fully comply with EU Directive No. 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.

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

10 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.

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

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.

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, confidentiality of all correspondence.

A recent 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 ECHR, interceptions may be made whenever there is plausible information that the lawyer is involved in criminal activities.[12]

Such rules of privilege apply differently to in-house lawyers only to the extent they are not members of the Bar under an exclusivity agreement with one client, but legal consultants, who are not members of the Bar, but employees of the client. For such legal consultants, the obligation of confidentiality is limited in time by contract and negotiable. Similarly to lawyers, legal consultants 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.

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

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 adversary to produce documents in its possession, where possession is deemed only physical control and not also 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 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 the claims for which the document would have served as evidence to have been proven.

The CPC does not expressly regulate a procedure for the production of documents stored overseas, electronically or otherwise. The general rules described above permit however 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.

Also, the CPC does not address the matter of evidence held by a third party but under the control of a litigant, but 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 order it to pay compensation for damages caused by delay.

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 have been added to the list of admissible evidence in 2001.[13] 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. Starting on 1 January 2009, the providers of publicly available electronic

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

services and networks must store certain data (traffic and tracking data only) for six months to make it available to the competent authorities for investigation, detection and prosecution of serious crime, based on authorisation.[14]

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.

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, seated in Bucharest, which handles international as well as local, commercial and civil disputes. The Arbitration Rules of the Court, available on its website,[15] as enacted on 25 March 2010, 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 parties may agree to have one arbitrator or a tribunal formed of two or more arbitrators. If the parties fail to provide the number of arbitrators, the tribunal shall be formed of three arbitrators, two appointed by the parties and a president appointed by the arbitrators.

Unless the parties otherwise agree, arbitral tribunals must deliver the award within six months from constitution, with possible extensions of up to two months. During interim requests the five-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

14 By Law No. 298/2008 published in the OGR No. 780 of 21 November 2008.

15 http://arbitration.ccir.ro.

limitedly by the CPC (such as invalidity of the arbitration clause, the matter was not arbitrable, the award breaches public policy rules).

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 not yet very common due especially to the 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.

To make arbitration more appealing to the public and provide a viable alternative to the urgent procedures made available for settling creditor-debtor disputes, the Court of International Commercial Arbitration has adopted procedures for an expedited arbitral procedure, wherein the award is to be passed in approximately one month from application, and for an electronic expedited arbitration, where the procedural steps are carried out online. A practice is yet to develop in this regard.

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 its respective domestic law.[16] An award is deemed 'foreign' if passed outside the jurisdiction or if not domestic due to a strong preponderance of foreign elements. Foreign arbitral awards must be first acknowledged executory power in Romania (*exequatur*) to be enforced, but the two applications may be made concomitantly.

iii Mediation

Even though the Romanian Chamber of Commerce and Industry provided the service of mediation since 2003, among other ADR mechanisms, mediation has been only recently regulated in Romania, in 2006,[17] 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.

16 Law No. 105/1992 published in the OGR No. 245 of 1 October 1992.

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

The public awareness on mediation is relatively limited and the practice is still in an incipient stage. The entry into force, in March 2010, of a legal amendment to the mediation laws requesting all judging and arbitration panels, as well as any other jurisdictional authorities, to present and recommend mediation to disputing parties[18] is expected to increase the assimilation of mediation as an efficient ADR procedure. With no restriction in establishing mediation centres under the law, the number of associations providing and promoting the service of mediation is constantly 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.

An application of the idea of direct conciliation between the parties prior to issuing claim is provided by the CPC, which makes direct conciliation a pre-action protocol mandatory in all commercial pecuniary disputes, failing which the claim is denied by courts as premature.

More specialised forms of conciliation are provided for disputes concerning public procurement agreements, where conciliation may be carried out by a European Commission-accredited conciliator whenever actions or omissions of the contracting authority infringe European norms in the matter. Land improvement associations may offer conciliation upon request to their members, resulting in a decision binding for the parties and challengeable in court.

In labour law matters, conciliation is a mandatory phase while mediation and arbitration are optional.

VII OUTLOOK AND CONCLUSIONS

The need for a new Civil Procedure Code became evident after Romania's condemnation by the ECHR for failing to judge claims within a 'reasonable time' and for disrespecting court decisions. A more coherent and efficient civil procedure system is absolutely necessary in order to bring Romania in line with the European standards on the efficiency, predictability of duration and finality of the act of justice.

The new Civil Procedure Code has been approved by Law No. 134/2010, published in the Official Gazette of Romania No. 485 of 15 July 2010, and is due to come into force in July 2011.

The reform proposed by the new Civil Procedure Code aims at solving issues raised in the vast jurisprudence and doctrine developed under the reign of the current CPC; for instance, it provides clear wording to define a civil action and the conditions to be met in order to exercise it, as well as a more detailed description of the conditions to be fulfilled in order to be a party in a trial, or clearer rules governing parties' representation, especially concerning legal entities. The new Civil Procedure Code also includes a clear enunciation of the general principles governing Romanian civil procedure, and of the

18 Law No. 370/2009 published in the OGR No. 831 of 3 December 2010.

rules governing admissibility of evidence in a civil trial (which used to be regulated by the Civil Code). It endorses a better regulation of the applicable law in case of conflict of laws, by eliminating the old principle that procedural norms are applicable immediately to all trials, and replacing it with the principle that civil procedure norms will be applicable only to trials commenced after its entry into force.

The act imposes an improved mechanism for trial proceedings, in order to ensure an accelerated progress of the trial. In a first phase, the judge is expected to develop a written correspondence with the claimant in order to ensure the fulfilment of all validity requirements concerning his request, and then to coordinate the submitting of parties' written statements, within a very strict time-frame. The hearing on the merits of the case shall take place within 20 days after such statements are filed

The new Civil Procedure Code allows for a rapid mechanism by which parties can challenge any unjustified delays in the development of a trial, and obtain the fast completion of any lacking measures – the so-called 'contestation of delays'.

In order to avoid overburdening the High Court of Cassation and Justice and excessively prolonging trial duration, a new procedure is enacted for filtering final appeals: a court of three judges will decide whether the final appeal is admissible in principle, and only if so will the file be sent to another three-judge panel to settle it on the merits.

The new Civil Procedure Code also incorporates certain special procedures that had been the object of distinct regulations (such as for the order for payment, for divorce, for the declaration of the death of a person, for adjudication or incapacity) with the purpose of clarifying the civil procedure legislation and making it more predictable and effective. It also introduces a new, fast-track, optional procedure, designed to accommodate claims valued below 10,000 lei, which is entirely written, and aspires to relief the volume of litigation courts are currently faced with.

Some of the procedures currently included in the CPC will also undergo changes. The new Civil Procedure Code intends to make arbitration into a modern and attractive alternative to court litigation. Also, it allows Courts to request the High Court of Cassation and Justice to pass judgment on legal matters that have generated controversial legal practice if the resolution of the dispute depends on the interpretation given to such matters. The existing procedure designated to unify jurisprudence (extraordinary appeal on legal interpretation) will also undergo change, especially regarding the persons entitled to call for this procedure, apart from the General Attorney.

Another change envisaged by the new Civil Procedure Code is a better regulation of the enforcement phase of the trial, which is to 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 efficiently and rapidly. The principle of the legality of the forced execution will be expressly stated, while the various forms of forced execution will be regulated in more detail.

Appendix 1

ABOUT THE AUTHORS

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Levana Zigmund is a partner at Tuca Zbârcea & Asociatii. She co-heads the firm`s international arbitration practice group, being 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 all three successfully finalised ICSID disputes to date. 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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