

CMS | Romanian courts reaffirm limited scope for annulment of arbitral awards



In January 2022, the High Court of Cassation and Justice of Romania upheld a decision of the Bucharest Court of Appeal (no. 93 from 30 June 2021) in rejecting the annulment of an arbitral award, confirming once again that Romanian courts are in favour of arbitration proceedings and do not easily entertain requests for quashing arbitral awards subject to Romanian courts scrutiny.

This decision is a further confirmation that Romania is a safe seat for arbitration proceedings and, in order to avoid the relatively long proceedings for recognition and enforcement of foreign arbitral awards, the parties may opt to establish the seat of arbitration in Romania.

In the above proceedings before the Bucharest Court of Appeal, the claimants requested annulment of an arbitral award based on an alleged breach of the “mandatory provisions of the law” under Art. 608 para.1 letter h of the Romanian civil procedure code. When rejecting the annulment application, the Court underlined that “Art. 608 of the Civil Procedure Code does not give the courts the right to examine how the merits were settled by the arbitral tribunal, but only to check whether the formal requirement of an arbitration have been complied with” (e.g. the existence of a legal arbitration agreement, the establishment of the arbitral tribunal, the observance of the mandatory provisions of law and those that ensure public order and good morals).

Regarding the observance of the mandatory provisions of the law, the Court of Appeal established that before analysing whether any breach may have occurred, it must determine if each of the legal provisions indicated by the claimant is mandatory or not: if the legal norm imposes on the subjects of civil law a specific action or forces them to refrain from certain conduct and, consequently, does not allow exemption from it.

The Court of Appeal established that Art. 1270 Civil Code (regulating the *pacta sunt servanda* principle), as well as articles 1266 – 1269 Civil Code (regulating the interpretation of contractual clauses) cannot be qualified as mandatory provisions. The Court found that the basis of Art. 1270 Civil Code stems from the need to ensure the stability and security of legal relations generated by civil agreements, but at the same time the Civil Code also regulates certain exemption from the application of Art. 1270, meaning that the *pacta sunt servanda* principle does not prevail before the will of the parties. Furthermore, even when interpreting the contractual clauses in accordance with the rules under the Civil Code (i.e. art. 1266 and the following), the Court noted that the will of the parties must prevail, following naturally that all Civil Code provisions on interpretation are not mandatory.

Moreover, the Court of Appeal took note of the fact that the claimant was actually criticising the interpretation and qualification of the facts made by the sole arbitral tribunal, and underlined that “contractual clauses do not constitute legal provisions, thus a possible misinterpretation made by the arbitral tribunal does not equal to a

breach of mandatory provisions of the law.”

Regarding the facts of the case, the Court of Appeal established that Art. 1552 Civil Code on unilateral termination of agreements was observed, based on the following:

- a notification requesting the execution of the debtor’s obligation was sent (via email);
- a deadline for said execution was clearly indicated; and
- a second notification was delivered (via email) after the deadline expired, referencing the termination of agreement for failure of execution.

Importantly, it should be noted that the sole arbitrator firmly established that substance prevails over form: although the second notification was entitled “Payment order”, it was qualified as an unilateral termination notice, based on the actual content of the notice (which referenced the termination of the agreement), and the conduct of the parties’ prior and following the notification. Hence, the sole arbitrator concluded this notification may validly include an unilateral termination decision and a request for payment.

For more information on this decision and arbitrations in Romania, contact your CMS client partner or local CMS experts: [Horia Draghici](#) and [Andra Ionescu](#).