THE PRINCIPLE OF CONFIDENTIALITY IN ARBITRATION. APPLICATION AND LIMITATIONS OF THE PRINCIPLE

Lecturer **Bazil OGLINDĂ**[1]

Abstract

Over the years, arbitration has grown to be the preferred means of dispute resolution by commercial entities. One of the benefits that build the attraction for this system of dispute resolution was the principle of confidentiality. One issue that needs to be analyzed is about the reasons why confidentiality is so important in business. Confidentiality is a principle largely embraced in arbitration, but, as we will see, the principle is not an absolute one. There are a set of questions that needs to be answer to, like: Who is bound by the duty of confidentiality? Does this refer only to the parties or does it expands to other actors involved in the arbitral proceedings? What happens with the obligation of confidentiality when issues are brought before a court, taking in account the principle of open justice? We will see that in some countries are procedural laws allowing the courts to order an arbitration claim to be heard in public or in private. Another important aspect that has arisen in the last period is regarding the public policy and the protection of public interest as a limitation to confidentiality of arbitration. This is a sensitive matter especially when one of the parties is a state or a state entity. This study aims to explore the principle of confidentiality in arbitration by focusing on its domain and on its limits, both from the comparative approach and from the Romanian approach. Knowing all this aspects, we will realize the importance of having professional counseling when drafting an arbitration clause and how this can be the missing puzzle piece of your business.

Keywords: *internațional arbitration; principle of confidentiality; aplications; limits.*

JEL Classification: K33, K41

I. Introduction

Representing a fundamental principle of arbitration, confidentiality guarantees the efficient protection of the interests of the parties.

Taking into consideration the characteristics of the parties, the market, as well as the implicated actors, there was the need to find a series of principles through which to better represent the interests of the parties. Confidentiality is one of this principles.

As we will see, lack or superficiality of regulation in this matter can lead to debates concerning the modus operandi of this principle. There are opinions that plead for the existence of an implicit obligation to maintain confidentiality as well as contrary opinions that accept confidentiality only when it is stated expressly by regulations.

Moreover, it is important to make the difference between the ”private character” and “confidentiality” in international arbitration. The private character handles the right of the subjects, other than arbitrators, parties, their representatives and witnesses, to participate in the judgement or to have knowledge about the judgement[2]. Confidentiality, on the other hand, is a more restrictive notion, referring to the disclosure of certain documents, information or evidence to third parties in connection to the arbitral proceeding.

II. The Principle of Confidentiality in comparative law of arbitration

A. The most relevant legislation that states the principle of confidentiality in international arbitration.

a) UNCITRAL Arbitration Rule (as revised in 2010)

[1] Bazil Oglindă - Law Department, Bucharest University of Economic Studies, bazil.oglinda@oglindalawyers.ro .

[2] G.B. Born, *International Commercial Arbitration*, Vol II – *International Arbitral Procedures*, II ed., 2014, p. 2782.

Article 34 (5). "*An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority*."

b) ICC Arbitration Rules APPENDIX I - Article 6 Confidentiality

The work of the Court is of a confidential nature which must be respected by everyone who participates in that work in whatever capacity. The Court lays down the rules regarding the persons who can attend the meetings of the Court and its Committees and who are entitled to have access to materials related to the work of the Court and its Secretariat.

c) Milan Chamber of Arbitration 2010 Arbitration Rules:

"Art.8: 1. *The Chamber of Arbitration, the parties, the Arbitral Tribunal and the expert witnesses shall keep the proceedings and the arbitral award confidential, except in the case it has to be used to protect one's rights.*

2. *For purposes of research, the Chamber of Arbitration may publish the arbitral award in anonymous format, unless, during the proceedings, any of the parties objects to publication*"

d) Rules of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation

Art. 25: *The arbitrators, reporters, experts appointed by the arbitral tribunal, the ICAC and its staff, and the RF CCI and its staff shall refrain from disclosing information about disputes settled by the ICAC, which they become aware of and which may impair the legitimate interests of the parties.*

e) ICSID Administrative and Financial Regulations

Regulation 22 Publication

(1) *The Secretary-General shall appropriately publish information about the operation of the Centre, including the registration of all requests for conciliation or arbitration and in due course an indication of the date and method of the termination of each proceeding.*

(2) *If both parties to a proceeding consent to the publication of: (a) reports of Conciliation Commissions; (b) arbitral awards; or (c) the minutes and other records of proceedings, the Secretary-General shall arrange for the publication thereof, in an appropriate form with a view to furthering the development of international law in relation to investments.*

f) ICSID Arbitration Rules At. 48 alin.4:

The Centre shall not publish the award without the consent of the parties. The Centre shall, however, promptly include in its publications excerpts of the legal reasoning of the Tribunal.

g) Viena rules

Article 2 alin.4: *The members of the Board […] have the duty to keep confidential all information acquired in the course of their duties.*

Article 4 alin.4: *The Secretary General and his Deputy […] have the duty to keep confidential all information acquired in this function.*

Article 41 Publication of Awards: *The Board and the Secretary General may publish anonymized summaries or extracts of awards in legal journals or the VIAC's own publications, unless a party has objected to publication within 30 days of service of the award.*

B. Area of Application of the principle of confidentiality

Among the companies that refer their disputes to arbitration, a recent study[3] identified that 50% of those companies consider confidentiality an implicit obligation, being part of the nature of arbitration, regardless of its recognition within the contract.

[3] 2010 International Arbitration Survey: Choices in International Arbitration", http://www.arbitrationonline.org/research/2010/index.html, last consulted on November 1, 2015.

However, since 1990 there are decisions in foreign jurisprudence that admitted confidentiality as an intrinsic element of arbitration.[4]

In this respect, it has been stated that "there is no doubt over the fact that people that use arbitration in England pay significant importance to confidentiality, as an essential characteristic of arbitration."[5]

The principle of confidentiality covers all the phases of the arbitral proceedings: the written phase (documents prepared in order to initiate arbitration and further used documents), the oral phase, the arbitral award, any claim in front of the national courts in connection with a request for arbitration (art. 62 English Civil Procedure Rules).[6]

In practice appeared some problems related to the subjects whose presence is necessary for the proper course of the arbitral proceedings.[7]

Scholars confirm the necessity of confidentiality in domains such as competition law, intellectual property law, and in any other situations where there are involved information falling under the protection of commercial secrets rules. On the other hand, nor it is desired to make public some issues such as bad faith, inconsequent behavior, lack of financial resources or other claims that might prejudice the image and reputation of a company.[8]

For a long time arbitrability of competition law issues was a controversy subject both in European and American doctrine.[9] The main reasons invoked were in connection to the confidential character of arbitration, which as considered inadequate for judgement of competition law matters, taking into consideration that competition legislation protects public interests and that some business behaviors can damage the interests of many people. Now, it seems that doctrine's[10] opinion on the subject in unanimous in favor of the arbitrability of competition law issues of the claim brought in front of the arbitrators.

An unusual idea that appeared in the arbitral practice was the request that documents transmitted by one of the parties are not disclosed to the other party, but only at the disposal of the arbitral tribunal. In this way, information in the field of intellectual property are to be protected (Fujitsu arbitration). Such a request was considered inadmissible, but, in the doctrine, it was stated that parties, through drafting of the arbitration agreement, can impose such extensions of the principle of confidentiality. Thus, if parties did not had the necessary diligence at the moment of drafting the arbitration agreement, it would be extremely difficult to reach such an agreement after a conflict has arisen.[11]

Although English jurisprudence recognizes the implicit obligation of maintaining confidentiality regarding the procedures and documents in connection with an arbitral proceeding, other states, like Australia, adopted a different tendency, denying the existence of an implicit obligation of maintaining the confidentiality.[12] In this respect, it has been decided: "It must be cristal clear that, for example, the fact that a document is used in arbitration does not confer confidential character or any privilege that one party could prevail of in subsequent procedures. It is not a question of imunity or public interest. It is an issue of an implicit obligation, residing from the nature of

---

[4] Australian High Court, Esso Australia Resources Limited v Plowman (1995) 183 CLR 10 and Swedish Supreme Court, Bulgarian Foreign Trade Bank Ltd v Al Trade Finance Inc N T 1881-99, judgment 27 October 2000 ("Bulbank").

[5] Secretary General of the ICC, *Report on the Arbitration*, Bill dated February 1996, the Departmental Advisory Committee ("DAC").

[6] Art. 62.10 (1) Hearings: *The court may order that an arbitration claim be heard either in public or in private.*

[7] *Tillam v Copp* (1847) and *Re Haigh* (1861) 3 De G F & J 157.

[8] S.Azzali, *Confidentiality vs. Transparency in Commercial Arbitration: A False Contradiction To Overcome*, 2012, http://blogs.law.nyu.edu/transnational/2012/12/confidentiality-vs-transparency-in-commercial-arbitration-a-false/, last consulted on November 1, 2015.

[9] I. Lazăr, *Aspecte legate de arbitrajul comercial internațional în materie de concurență în Uniunea Europeană*, „Revista Română de Drept Privat", no. 6/2011.

[10] I. Kokkoris, I. Lianos, *The Reform of EC Competition Law: New Challenges*, Ed. Kluwer Law International, Alphen aan den Rijn, 2010, p. 79; Ph. L. Landolt, *Modernised EC Competition Law in International Arbitration*, Ed. Kluwer Law International, Haga, 2006, p. 94 şi urm.; J. F. Poudret, S. Besson, *Comparative Law in International Arbitration*, ed. Sweet & Maxwell Ltd., London, 2007, p. 299.

[11] J Paulsson; N.Rawding, , *The Trouble with Confidentiality*, „Arbitration International" no. 3/1995", p. 315.

[12] The Australian High Court in *Esso Australia Resources Ltd v Plowman* [1995] 128 ALR 391

arbitration itself. If, although there exists an implicit obligation, disclosure is still necessary for a correct settlement of the dispute, the latest must prevail. But, in order to reach a conclusion, the court has to take into consideration, among other aspects, if there are other ways, less expensive, in order to get the necessary information, without prejudice to the implicit obligation of confidentiality."[13]

C. Limitations of the principle of confidentiality in international arbitration

English courts[14] identified the following methods of limitation of the principle of confidentiality: parties agreement, court decision (when necessary for the protection of the rights of one party) when there is a reasonable necessity (for defining the concept of reasonable necessity the court referred to the nature and scope of the procedures in which the information is to be used; the problem with regard to which the information is necessary; the competence of the tribunal that will make use of such information; the costs and utility of obtaining such information/evidence from other sources).

Moreover, the principle will be limited in case the interest of justice requires. In this respect, it is considered to be in the interest of justice the situation in which the court is to issue a decision based on the sincere statement of a witness.[15] However, there will be no limitation in case there cannot be established a direct connection between the arbitration and consequent procedures.[16] This type of court practice was confirmed in time in the British environment, the same limits being covered by a decision of the Court of Appeal from 2008[17]: order of law or courts, interest of justice or public interest; protection of the rights of one party towards a third party (either in order to support the requests towards the third party or in order to substantiate the defense against the requests of a third party); party's agreement.

In a decision from 1993, the English court stated that one of the limitations of the principle of confidentiality refers to the possibility of one of the parties in arbitration to prevail on the documents/award/information used during the arbitral proceedings in order to protect its rights in front of an eventual prejudice of those rights by a third party. In this respect, the court decided that: "it was reasonably necessary for the protection of legal rights of a participant in arbitration towards a third party, that the arbitral award be presented to the third party in order to substantiate the defense or as ground for a request, a discretization in such circumstances does not constitute a breach of the obligation of confidentiality. […] Documents such as requests, witness statements, hearing reports or others, are part of the area of application of the confidentiality obligation in arbitration."[18]

In the process of revising the UNCITRAL Arbitration Rules, it appeared the need for a greater transparency, especially regarding the arbitrations based on BIT's (Bilateral Investment Treaties).[19] Also, the parties may include a clause that regulates confidentiality or can insert an arbitration clause that touches as well the issue of confidentiality. Through parties will, the confidential character can be promoted by choosing a set of arbitration rules that incorporates the principle of confidentiality. Transparency may bring another important advantage to arbitration, access to a database of arbitral jurisprudence that can generate predictability and consistency, as for people to have the possibility to anticipate the winning chances and, of course, in comparison to former decisions, to have the certainty that their arbitral proceeding was a fair one, even in loosing cases.

Another advantage of transparency is represented by the possibility of evaluation of the arbitrators and arbitral institutions, being a way of assertion of both competence and professionalism of the arbitrators.[20] In this case, for example, the Rules of arbitral procedure of the Court of Milan

[13] Court Of Appeal, Dolling-Baker V. Merrett And Another. *Law Reports* Version At [1990] 1 W.L.R. 1205.
[14] *Ali Shipping v Shipyard Trogir*.
[15] *London and Leeds Estates Ltd v Paribas Ltd (No 2)*.
[16] *Insurance Company v Lloyd's Syndicate* [1995] 1 Lloyd's Rep 272.
[17] *Emmott v Michael Wilson*.
[18] Hassneh Insurance v Mew5[1993] 2 Lloyd's Rep 243.
[19] Official records of the General Assembly, 63rd Session, Supplement No. 17 (A/63/17).
[20] S.Azzali, op. cit., http://blogs.law.nyu.edu/transnational/2012/12/confidentiality-vs-transparency-in-commercial-arbitration-a-false/, last consulted on November 1, 2015.

expressly provide the obligation of confidentiality, but provide as well the exception for this obligation, allowing the publication of arbitral awards for scientific research.

The ICC Secretariat has a similar prerogative, in the sense that is publishes summaries of arbitral awards issued by ICC. The awards are anonymized by removing the names of the parties, geographic and industrial elements that would allow the identification of the parties.

Another limitation of the principle of confidentiality is represented by the joinder of arbitral proceedings, case in which third parties to the legal relationship will become aware of the issues brought in front of arbitration. Even the use of materials produced for the purposes of arbitration in any other scope then for the course of the proceeding is seen as a limitation of the confidentiality (for example the use of documents in other proceedings).[21]

In accordance with the Lithuanian Civil Procedural Code, procedures regarding recognition and enforcement of arbitral awards are public. However, a party that seeks to maintain confidentiality can file a request in this respect, and the court will analyze the case.[22]

In North-America, jurisprudential approaches concerning the confidentiality of procedures subsequent to the issuing of the arbitral award (annulment of the award, enforcement of the award) alternated between the recognition of the principle and rejection of the principle in contrast to the principle of publicity. In this respect, it has been said that: "Once the parties concluded a settlement or obtained an arbitral award, and the settlement or the arbitral award become the object of a dispute of the competence of national courts, they have to be available for the public as any other information."[23] In other situations[24], the confidentiality has been maintained with regard to the amounts of money granted by the arbitral award. Thus, in another case[25], the amount of damages granted in arbitration was made public at the moment of initiation of the procedure of enforcement of the arbitral award.

III. National conception

A. The most important legal acts that are consecrating the principle of confidentiality

a) The regulation in the Code of Civil Procedure

The importance of confidentiality in the arbitral procedure is consecrated in an explicit way in art. 565 CCP: *„Arbitrators are responsible, under law, for damage, if they do not respect the confidential nature of arbitration, by publishing or disclosing information which they receive as arbitrators, without the consent of the parties."*

The confidentiality subordinates even to the obligation of the arbitrator to respect the privacy of the litigation, a constitutive element of the parties trust regarding the person of the arbitrator being this confidentiality of trial. The privacy of arbitration is express consecrated in art. 541 (1) CCP. Starting from this legal regulation, the doctrine of the old civil code of procedure explained the fact that *„the arbitration is not governed by the principle of publicity"*.

Moreover, we observe the option of the legislator to exclude the principle of publicity from the fundamental principles of the civil trial which are applicable in the arbitration. Thus, in the consideration that, in arbitration matter, exists a highly necessary condition of confidentiality, we can conclude that the principle of publicity, found in art. 17 CCP, it's removed.

b) The rules of arbitral procedure of the Arbitration Court attached to the RCCI

[21] M. Collins, *Privacy and Confidentiality in Arbitration Proceedings*, „Arbitration International", Vol. 11, No. 3, 1995, p.321.
[22] V. V. Pavan, A. Smaliukas, *Arbitration Guide IBA Arbitration Committee LITHUANIA April 2014*, p.12, http://www.ibanet.org/Document/Default.aspx?DocumentUid=E8DF3800-DB62-44C7-8F32-C40967BCBE36, last consulted on November 1, 2015.
[23] *Mead Johnson & Co. v. Lexington Ins. Co.*, Dkt. No. 3:11-cv-43-RLY-WGH (S.D. Indiana Sept. 2011).
[24] *Citing Herrnreiter v. Chicago Housing Authority*, 281 F.3d 634, 637 (7th Cir. 2002).
[25] American Arbitration Association, *Getty Petroleum Marketing Inc. and Bionol Clearfield LLC*, Case No.50 198T0039810, avaible online at: http://blog.internationalpractice.org/wp-content/uploads/2011/10/08162011bionel_award.pdf, last consulted on November 1, 2015.

Art. 7. The principles of arbitral procedure

(3) The case file is confidential. No person, except those involved in the course of the litigation, have acces to the case file without the written accord of parties.

(4) The Arbitration Court, the arbitral tribunal, as well as the personal of the Chamber of Commerce and Industry of Romania have the obligation to assure the confidentiality of arbitration, lacking the right to publish or disclosure the data that they become aware in the accomplishment of their duties, without the accord of parties.

Art. 19. The revocation of the arbitrators and the presiding arbitrator.

(1)Committing any of the followed acts attracts, in relation with the gravity of the act, the revocation of the arbitrator or of the presiding arbitrator from certain litigation: c) don't respect the confidential nature of arbitration, publishing of disclosing in a deliberately way data that he became aware as arbitrator, without having the authorization of the parties.

As in the regulation of the CCP, in this case too we observe the importance of the principle of confidentiality. As seen, the file itself it's confidential. However, the parties have the freedom to limit the content of this principle, but only with their written accord, showing in an implicit way the importance that the legislator is giving to the confidential nature of the file. This is strengthened by the obligation of the Arbitration Court, the arbitral tribunal, as well as the personal of the Chamber of Commerce and Industry of Romania to assure the confidentiality, through a double obligation – non publication and nondivulgation.

We see consecrated even a sanction of the arbitrator – the revocation, in the case that he doesn't respect this principle, without the solution of parties.

c) Constitutional consecration of the principle

The Constitutional Court of Romania, in the decision nr. 203/2006 specified*: „The court retained that arbitration is an exception from the principle according to which the justice is made through the judicial courts and it represents the efficient juridical mechanism, made to assure an impartial judiciary trial, a faster and a less formal, confidential, finalized through decisions who can be executed enforced. The arbitration it's organized and it works according to the arbitrational convention which has been concluded between the parties, with the compliance of the principle of the freedom of will, with the reserve of the compliance of the public order, the good morals and the imperative dispositions of the law […]".*

B. The field of application of the principle of confidentiality. The national conception of the principle of confidentiality.

Having in mind the quality of merchants of the parties, but even the nature of the litigations which are submitted to arbitrators, the legislator considered that the publicity who characterizes the normal judicial trial does not appear anymore as necessary and justified: *„a public knowledge on the documents in that litigation would only erode the trust and the stability inside the business environment that would also affect the image and the honorability of the parties participating in arbitration among the merchants inside that area.*

Next, we will make a short analysis of the area of this principle, analysis which will refer to the subjects upon whom the obligation will devolve, the procedural aspects who are falling under this obligation, as well as the time in which this principle is active.

i) People that are bound by the principle of confidentiality:

On the first hand, there is a right of the parties to benefit from this confidentiality in virtue of the existence of a commercial relationship, relation that might suffer in certain situations if third parties would becom aware of the existing dispute. Aside from the above-mentioned relationships, it would be possible to have changes on the competition market, abnormal changes that could intervene between the parties and third parties, as well as only between the parties. This right to confidentiality, that is the starting point, in our opinion, of the entire regulation in this matter, has as subjects of the

correlative obligation of confidentiality the parties, the arbitrators and the auxiliary personnel that makes contact with the procedural acts of a case.

ii) Issues that fall under the confidentiality principle:

We consider as issues that can fall under the confidentiality principle the names of the parties, the names of the arbitrators, the nature of the dispute, the object of the dispute, the value of the claim as well as the entire arbitral proceeding.

Other authors[26] present two main aspects under which the confidential character of arbitration has to be analyzed: arbitration hearings and information/facts/circumstances during and in connection with the administration of evidence.

Taken into consideration the liberty of the parties in limiting the confidentiality, extending implicitly the publicity, only certain aspects in connection with the procedure can be kept confidential.

iii) The activity of the principle of confidentiality:

Regarding the arbitrators' and parties' obligation to maintain confidentiality there is no time limit. However, it can be observed that, in case of issuing an claim for annulment, the principle of confidentiality will be restricted independent from the will of the parties (in the sense of knowing the existence of the litigation and the issues presented during the arbitral proceedings).[27]

C. Exceptions from the principle of confidentiality in Romanian arbitration

A first exception from the principle of confidentiality could be the party autonomy. Taken into consideration the liberty of the parties in creating the content of this rule, there exists the possibility to mold the rule in such way to fit the needs and interests of the parties. Parties may remove from application, even totally, the confidentiality. Being incorporated in the will of the parties, however, we will consider this exception just as an apparent, relative one.

A second exception that can be taken into consideration is the filing of an annulment claim and appeal to the enforcement of an arbitral award, where the principle of publicity (characteristic of the civil litigation) takes the place of the confidentiality principle (characteristic in arbitration).[28]

It can be observed in this case the overlapping of the common procedure with the specific procedure in arbitration. In this situation, the question that arises is which is the mechanism of application of the confidentiality principle in a dispute solved in accordance with the common procedure.

From the perspective of arbitration, the obligation to respect confidentiality of the arbitral proceeding is not limited in time. In the phase of solving the annulment claim of an arbitral award, *confidentiality of the arbitration is subdued by the principle of publicity of the hearings, specific for state justice. This does not mean that the arbitrator does not have any more the obligation to respect the principle of confidentiality of the arbitration.*[29]

In the Romanian doctrine it has been suggested to adapt the legal frame in such a manner as to preserve the characteristics of the arbitration during claims in front of national courts. In this respect, it has been stated that: "Renouncement of the Romanian legislator with regard to appeals in front of national courts, characterized by the dilatory effect in settling the disputes, was necessary, because they were incompatible with the arbitral proceeding, characterized by celerity and confidentiality. Moreover, the rule of confidentiality in arbitration is replaced by the principle of publicity of the hearings and the condition of ruling the decision in public session."[30]

---

[26] T. Prescure, R. Crisan, *Arbitrajul comercial. Modalitate alternativa de soluționare a litigiilor patrimoniale*, Universul Juridic, Bucharest, 2010, p. 161.
[27] *Ibidem*.
[28] A.M. Cobuz-Băgnaru, *op.cit*, p. 41
[29] R.B. Bobei, ibidem.
[30] S. Scurtu, *Hotărâre arbitrală. Exercitarea controlului judecătoresc din perspectiva art. 364 C. pr. civ. Limite*, „Revista Pandectele Române" no. 5/2011.

IV. Conclusion

Confidentiality, as core principle of international arbitration, remains one of the principal attractions for those who choose this method of dispute resolution. There are domains in which publication of certain information constitutes a highly sensitive issue that can have major repercussions over the proper course of the business.

Taking into consideration the above mentioned perspectives, as well as the legal and jurisprudential differences between jurisdictions, we consider as extremely useful a close regulation of the issues that fall under the principle of confidentiality through the drafting of the arbitration agreement itself, agreement that can be written in such a manner as to dismiss the risk of making public some prejudicing details.

On the other hand, it must be closely analyzed the problem of the principle of publicity, characteristic for state justice, because an eventual subsequent procedure in front of national courts will lead to the complete elimination of the confidentiality veil. It exists, thus, as we presented above, certain jurisdictions where national courts have validated the principle of confidentiality of the arbitral proceeding, maintaining the confidentiality veil throughout the procedures in front of national courts.

Bibliography

1. 2010 International Arbitration Survey: Choices in International Arbitration", http://www.arbitrationonline.org/research/2010/index.html, last consulted on November 1, 2015.
2. A.M. Cobuz-Băgnaru, *Arbitrajul ad-hoc conform regulilor Comisiei Națiunilor Unite pentru Dreptul Comercial Internațional*, Universul Juridic, Bucharest, 2010.
3. American Arbitration Association, *Getty Petroleum Marketing Inc. and Bionol Clearfield LLC*, Case No.50 198T0039810, avaible online at: http://blog.internationalpractice.org/wp-content/uploads/2011/10/08162011 bionel_award.pdf, last consulted on November 1, 2015.
4. Australian High Court, Esso Australia Resources Limited v Plowman (1995) 183 CLR 10 and Swedish Supreme Court, Bulgarian Foreign Trade Bank Ltd v Al Trade Finance Inc N T 1881-99, judgment 27 October 2000 ("Bulbank").
5. C.C. Dinu, *Aspecte de noutate privitoare la hotărârea arbitrală în lumina noului Cod de procedură civilă*, „Revista Pandectele Române", no. 8 from August 31, 2013.
6. Court Of Appeal, Dolling-Baker V. Merrett and another. *Law Reports* Version At [1990] 1 W.L.R. 1205.
7. G.B. Born, *International Commercial Arbitration*, Vol II – *International Arbitral Procedures*, II ed., 2014, p. 2782.
8. I. Deleanu, S. Delenu, *Arbitrajul intern și international*, Rosetti, Bucharest, 2005, p.33.
9. I. Kokkoris, I. Lianos, *The Reform of EC Competition Law: New Challenges*, Kluwer Law International, Alphen aan den Rijn, 2010, p. 79;
10. I. Lazăr, *Aspecte legate de arbitrajul comercial internațional în materie de concurență în Uniunea Europeană*, „Revista Română de Drept Privat", no. 6/2011.
11. J Paulsson; N.Rawding, , *The Trouble with Confidentiality*, „Arbitration International" no. 3/1995, p. 315.
12. J. F. Poudret, S. Besson, *Comparative Law in International Arbitration*, Sweet & Maxwell Ltd., London, 2007.
13. M. Collins, *Privacy and Confidentiality in Arbitration Proceedings*, „Arbitration International", Vol. 11, No. 3, 1995.
14. *Mead Johnson & Co. v. Lexington Ins. Co.*, Dkt. No. 3:11-cv-43-RLY-WGH (S.D. Indiana Sept. 2011).
15. Ph. L. Landolt, *Modernised EC Competition Law in International Arbitration*, Kluwer Law International, Haga, 2006.
16. R.B. Bobei, *Arbitrajul intern și internațional*, CH Beck, Bucharest, 2013.
17. S. Scurtu, *Hotărâre arbitrală. Exercitarea controlului judecătoresc din perspectiva art. 364 C. pr. civ. Limite*, „Revista Pandectele Române" no. 5/2011.
18. S.Azzali, *Confidentiality vs. Transparency In Commercial Arbitration: A False Contradiction To Overcome*, 2012, http://blogs.law.nyu.edu/transnational/2012/12/confidentiality-vs-transparency-in-commercial-arbitration-a-false/, last consulted on November 1, 2015.
19. Secretary General of the ICC, *Report on the Arbitration*, Bill dated February 1996, the Departmental Advisory Committee ("DAC").
20. T. Prescure, R. Crisan, *Arbitrajul comercial. Modalitate alternativa de soluționare a litigiilor patrimoniale*, Universul Juridic, Bucharest, 2010.
21. The Australian High Court in *Esso Australia Resources Ltd v Plowman* [1995] 128 ALR 391