

Theoretical Considerations on the Notion of European Citizenship

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Abstract

European Union regulations must comply with the fundamental principles of Public International Law, as set out in the operative part of the Treaty of Lisbon. Consequently, this legal-political architecture establishes the four freedoms. Among these, freedom of movement is one of the most important, not only in terms of the coherence needed in conducting business, but also in the importance that Member States attach to achieving an ever-closer link between European nations, an objective already mentioned in the preamble of the Union Treaty. This objective is closely linked to the political concept of European citizenship, which will also have to be argued from a legal point of view. This article aims at highlighting some of the legal aspects of citizenship, which will have to be at the core of the concept of a united Europe, being able to be recognized as such by all Member States.

Keywords: *European Union, citizenship, European citizens, European Union citizens' rights.*

JEL Classification: K10, K33

1. General framework

The notion of citizenship has designated different legal situations, depending on the historical epoch to which we refer and, consequently, depending on the socio - political paradigm of those times.

Thus, the term citizenship has appeared first in the fortification-cities of Sparta and Athens, in both cases implying a strong loyalty to the fortification. The difference is that in the case of Athens it was exercised in a “democratic” form, being attributed only to a small number of citizens, among whom certain categories of people were not found, such as: slaves, women or children.

The period of the existence of the Roman Empire brought new valences of the notion of citizenship, which would reflect the realities of that era, consecrating the notion of *civitas sine*², a legal situation for the persons belonging to the conquered peoples. The concept of multiple citizenship appeared in this context too, and more importantly, the notion of citizen of the empire began to be associated with the so-called “civic virtues” that imposed a certain conduct on those who received the quality mentioned, forcing them to be devoted to obligations and laws, and willing to fight for the welfare of the empire, etc.

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² Citizens with civic rights, but without the right to elect or be elected.

Reflecting on the classical tradition of “civic virtues”, various thinkers and politicians have interpreted the concept of citizenship in various forms, over time. For example, Niccolo Machiavelli understood by citizenship, the love of freedom, understood as disobedience to foreign taxes, but also the permanent obligation of citizens to fulfil their responsibilities, obligations imposed by education, religion or severe sanctions in case of non-compliance.

A different interpretation is found in Montesquieu’s work, who understood the concept of citizenship as a source of stability for the state, as well as in Jean-Jacques Rousseau’s work, who considered that freedom presupposed both civic virtue and involvement in public affairs and political decision-making. In his view, citizens were only those who took part in the exercise of “sovereign power”.

The closest to today's notional meaning of citizenship was Jean Bodin, who first drew attention to the link between citizenship, territoriality and sovereignty. The direct consequences arising from this relationship lead to the formation of **the four conditions of citizenship**, confirmed and exploited by countries that, after the Peace of Westphalia, would reorganize their ideology on the foundations of state building on principles that later formed the basis of nation states:

- the legitimate power over a territory at a given time is exercised by a single sovereign;
- no person may be subjected to several sovereigns simultaneously;
- all citizens living on the same territory enjoyed the same legal status indiscriminately, being in the same relationship with the sovereign;
- foreigners were forbidden to have the relations that the citizens had with the sovereign.

Starting with the 18th century, during the assertion of the nationalist current, the identity element became an essential part of citizenship. During this period, the two principles of granting citizenship actually crystallized, the states facing the solution of a practical situation, that of determining who has the status of citizen and therefore the quality of member of the political community and who does not. Thus, the states have resorted to one of the two principles *ius sangvinis* or *ius soli*, the first referring to blood ties, and the second principle defining the community on territorial criteria.

Neither of the two principles is perfect, in the sense that it presents a series of inconveniences such as in the case of the *jus sangvinis* principle which risks, by its application, affecting the legitimacy of an ethnically diversified state, and *jus soli* which presents shortcomings from the point of view of emigrants, given the impossibility of automatic inclusion of immigrants or granting the status of citizen to persons born accidentally on the territory of the respective state.

For these reasons, if in the period up to the beginning of the twentieth century most states defined citizenship according to the principle of *ius sangvinis*, nowadays most states have decided to combine the two principles.

In a more laborious analysis of the legal content of the notion of citizenship, T.H. Marshal agrees that citizenship means full membership of a community in his paper *Citizenship and Social Class*, but states that its members have the opportunity to express themselves on how to achieve this association. Thus, it can be argued that, starting from different types of communities, it is possible to arrive at different variants of interpretation of citizenship. In general, however, their structure is identical and includes three notional categories:

- political citizenship, which grants the person who holds it the right to participate in the decision-making process:
- social citizenship, which gives the holder the right to a fair standard of living, ensured through free and non-discriminatory access to social and educational life.
- civil citizenship, which guarantees the freedom and equality of the person before the law, ensured by the existence of a fair legal system.

2. The notion of European citizenship

The atrocities and aftermath of World War II have convinced humanity that a new approach to international relations must be decided, with care for man first. In this regard we recall the adoption of the Universal Declaration of Human Rights, in 1948, which, even if it did not have binding legal force, has the merit of synthesizing the main rights that a person can enjoy, regardless of the state in which they live.

The provisions of the documents establishing the Council of Europe, the Coal and Steel Community, the European Economic Community or the Atomic Energy Community are in the same context, expressly referring to the creation of a Europe of welfare that should bring closer its peoples.

Perhaps this conviction of European states that only by bringing their citizens closer together they will be able to create the premises for a good understanding on the old continent has made the architecture of the European community a *sui generis*, both institutionally and in terms of the notion of citizenship. The new concept launched by the Member States of the European Union, the European citizenship concept is quite controversial ever since it was launched in the sphere of public debates, and has been considered artificial by many analysts, claiming that it is a construction whose aggregation process is still ongoing.

However, *European citizenship* marks a new stage in the long history of the European Union, symbolizing the idea of a community of goals and means that is built by the member states of the European Union, by the peoples of these states, deriving from the fundamental idea that underpinned the European construction, that of ensuring peace, allowing peoples to live together by virtue of common, freely agreed rules and institutions. In this regard, Robert Schuman stated more than half a century ago in the preamble of the ECSC Treaty that “We do not unite states, but people”, this being the means to fulfil “shared destiny”.

The concept of *European citizenship* did not exist in this form from the beginning. First there was the notion of *Europe of citizens* which over time has evolved and become more nuanced. In 1979, a 1976 decision on how to elect members of the European Parliament by direct universal suffrage was implemented in all Member States, and in 1984, in the final reports of the Adonnino Committee set up by the Fontainebleau Council, which were adopted in 1985 it was intended to *give a more human dimension to the community experience*³.

These reports referred to facilitating the free movement of persons, better information of citizens, promoting language learning, adopting identification symbols to show membership to the great European family (anthem – the Ode to Joy by L. Van Beethoven was chosen - the flag, the passport, the European driving license, that became real since 1996).

However, it was not until 1990, at the initiative of the Spanish Government, that the concept of *European citizenship* was adopted, which was to be legally enshrined in the Maastricht Treaty, the provisions of which first appear as follows (Article 8 - first paragraph): “Any person holding the nationality of a Member State shall be a citizen of the Union.”

Subsequently, in order to eliminate confusion and ease public reactions to speculation on this issue, the Amsterdam Treaty (1997) adds that “citizenship of the Union complements national citizenship and does not replace it”. Also, in the process of drafting the European Constitution and in the discussions on the future of Europe, the subject of citizenship was reopened, enriching it with new aspects.

The Treaty of Lisbon clarifies the evolution direction of the European Union and addresses the notion of citizenship accordingly, complementing it with the legal regulation of European conduct in this area by adopting the Charter of Fundamental Rights of the European Union.

Beyond the notion and idea, however, there is a political reality of European citizenship that is perceived, in turn, differently. Some experts consider it a simple sketch of this valence, and others appreciate that this dimension is strong enough. In any case, it has become clear that the current notion of *European citizenship* has both a legal and a political value that is both a set of rights and a political institution.

As a set of rights, European citizenship helps to observe the composite

³ See Barbu Berceanu, *Cetățenia – monografie juridică*, All Beck, Bucharest, 1999, p. 35 et seq.; Bertossi Christophe, *Les frontières de la citoyenneté en Europe: nationalité, résidence, appartenance*, Le Harmattan, Paris, 2001, p. 120 et seq; Walter Cairns, *Introducere în legislația Uniunii Europene*, Universal Dalsi, 2001, p. 45; Louis Cartou, *Communautés Européennes*, Dalloz, Paris, 1991; Ionel Cloșcă, Ion Suceavă, *Tratat de drepturile omului*, Europa Nova, Bucharest, 1995, p. 125 et seq.; Nicolae Darie, *Uniunea Europeană. Construcție. Instituții. Legislație. Politici comune. Dezvoltare*, Matrix Rom, Bucharest, 2001, p. 80 et seq.; Augustin Furea, *Manualul Uniunii Europene*, Universul Juridic, Bucharest, 2006, p. 225 et seq.

nature of the European Union, which is itself a community of law, a socio-economic system and increasingly a political entity. The rights, first enshrined in the Maastricht Treaty and later supplemented in Amsterdam, Nice, and more recently in the Charter of Fundamental Rights of the European Union, adopted by the Treaty of Lisbon, exist not only in the treaties but also in other normative acts, such as decisions or directives of the EU Council.

In short, it can be said that the first category of rights, the economic and social rights of the European citizen, have already been guaranteed to the citizens of each Member State, in one way or another, by the very fact that all Member States are parties to conventions and international declarations in this field.

Therefore, we can speak of four large groups of rights, three of which are political in nature. Of the latter, we mention only *the right of free movement and residence throughout the Union for all categories of European citizens*⁴, *the right to vote and to stand as a candidate in the European Parliament* and, in accordance with the rules of the Treaty of Amsterdam, also *in municipal elections*⁵, as well as *to enjoy diplomatic and consular protection in a third country vis-à-vis the EU*.

The conditions of applicability of the latter law require the state to which the European citizen belongs not to have diplomatic representation in a third country where the applicant for diplomatic protection is located. The latter shall be entitled to request assistance from the diplomatic missions of any Member State existing in that territory, which shall in turn be obliged to provide it under the same conditions as those offered to nationals of that State.

In this context, it should be noted that the right to petition the European institutions in one of the 23 official languages of the Union is granted to cover the Union's lack of democratic transparency and to bring the citizen closer to the European administration.

As a political institution, European citizenship is the expression of all political or intergovernmental negotiation processes, interpretations, community impulses and social mobilizations. It is at this level that we can find the dynamics of European citizenship, its novelty and, at the same time, its most controversial aspects.

⁴ It involves entering, residing and staying in the territory of another Member State.

⁵ The conditions required to hold the right to vote and to stand as a candidate in the Member State of residence are: 1. to have European citizenship (i.e. the nationality of one of the Member States); 2. to be resident in the Member State where the candidacy is voted or applied for; 3. to be in accordance with the provisions of the State of residence regarding the right to vote and to stand as a candidate and applicable to nationals of that State (in accordance with the principles of equality and non-discrimination between voters and national and Community candidates).

Analysing the political composition of the concept of European citizenship, Catherine de Wenden emphasizes⁶ that one of the major obstacles in defining and establishing a European citizenship is precisely its evolving character in permanent transformation, which gives it a dose of instability and unexpected. The political content of European citizenship is given precisely by the institutional transformations that the political decisions taken by the European Union and, ultimately by the Member States, entail, the place of this concept in the community architecture being very important.

Given the growing role of the European Parliament in the decision-making process, which is the voice of the peoples, it can be concluded that the EU institutions are increasingly concerned to be closer to the citizens of the Member States and, consequently, to address them in a non-discriminatory manner, treating all Europeans, regardless of their country of origin, with the same unit of measurement.

However, this approach requires the creation and use of *sui generis* political instruments, such as the *European citizenship*, which would allow for a unitary framework for expression and communication between the citizens of the Member States, providing them with equal opportunities to participate in the political life of the community. The famous European logo unity through diversity was conceived in the same spirit.

3. Conclusions

The concept of European citizenship **cannot be legally substantiated** in the light of current imperative rules of international law, the sovereignty of EU Member States continuing to be the cornerstone of this international organization, as is clear from the provisions of the Lisbon Treaty. Consequently, citizenship remains exclusively within the scope of national regulations, defining the relationship between the person and the state to which he or she belongs, any other interpretation falls within the scope of international cooperation between states, whether bilateral or multilateral.

The use of the term European citizen continues to be confined **exclusively to the logic of political discourse**. It is difficult to identify the exact nature of this *sui generis* prototype of citizenship which seems to respect neither the German national tradition of the *ius sanguinis* principle nor the French tradition of *civic citizenship*, but which practically combines the two, competing with state sovereignty on its own nationals and at the same time legitimizing itself against it by the fact that it is defined by the rules of each Member State to lay down the rules for granting and withdrawing national citizenship.

The use of the concept of citizenship in the sphere of Public International

⁶ Withol de Wenden, Catherine, *La citoyenneté européenne - European Citizenship*, Paris, Presses de Sciences Po, Paris, 1997, p.7.

Law is closely related to the notion of state, having the role of highlighting the connection between it and the people living on its territory. The fundamental objective of the construction of Europe is to achieve the closest possible union between the peoples of Europe, for which the European Union has been created and developed as a *sui generis* international organization of the Member States. The question how the citizens of the Member States relate to the European Union and, consequently, what are the ideological elements that underlie the concept of European citizenship arises inevitably.

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The role of courts in the procedure for recognizing and enforcing foreign arbitral awards. Comparative look at the Romanian Code of Civil Procedure and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted in New York (1958)

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Abstract

The purpose of this paper is to identify the main procedural steps that the court must go through in the procedure for the recognition and enforcement of foreign arbitral awards, without seeking a thorough analysis of all possible procedural incidents that may occur in such cases. procedures. At the same time, in this material we did not intend to analyze the merits of requests for recognition/enforcement of foreign arbitral awards, respectively the validity of these requests in relation to the defenses that may be made by persons against whom the recognition/enforcement of arbitral awards or issues which can be invoked, ex officio, by the court. More precisely, we limited ourselves to identifying and analyzing the attributions of the court, from a procedural perspective, in the situations in which the court is invested with requests having as object the recognition and/or execution of the arbitral awards. Also, the procedural means available to the parties in these proceedings were also addressed in the context of the subject of this paper. Within these limits, we referred to the provisions of the Code of Civil Procedure and the provisions of the New York Convention, as these are the main normative instruments, of particular importance in the analyzed field.

Keywords: *foreign arbitral award, Code of Civil Procedure, New York Convention, recognition and enforcement of foreign arbitral awards.*

JEL Classification: K22, K41

1. Establishing the applicable normative framework

The first procedural stage that the Romanian court invested with solving a request having as object the recognition and/or execution of a foreign arbitral award must go through is to establish which are the normative provisions applicable to the case brought before the court.

In this context, we find that the procedure of recognition and/or execution of foreign arbitral awards is regulated by art. 1124 - 1133 Code of Civil Procedure.

We also note that, by Decree no. 186/1961, Romania ratified the Convention for the Recognition and Enforcement of Foreign Arbitral Awards,

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adopted in New York on June 10, 1958.

Thus, the Romanian court will have to establish which are the situations in which, regarding the recognition and enforcement of foreign arbitral awards, the provisions of the Code of Civil Procedure are applicable and which are the situations in which the provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards New York, on June 10, 1958, to which Romania acceded by Decree no. 186/1961.

In carrying out this approach, the provisions of art. 11 para. (1) and (2) of the Romanian Constitution.

In this sense, we note that art. 11 para. (1) of the Romanian Constitution stipulates that: "the Romanian state undertakes to fulfill exactly and in good faith the obligations incumbent on it from the treaties to which it is a party", and art. 11 para. (2) of the Romanian Constitution stipulates that: "treaties ratified by the Parliament, according to the law, are part of domestic law"².

In these conditions, the court is obliged to apply the Convention for the Recognition and Enforcement of Foreign Arbitral Awards, as this international instrument has been ratified by the Romanian legislature, in cases where the agreement is incidental in the case with which the court is invested.

More precisely, the Romanian judge must establish whether the New York Convention is applicable to the concrete case with which the court is invested, by reference to the scope of application of this convention.

To the extent that the New York Convention is not applicable in the case brought before the court, the Romanian judge is to apply, as a rule, the provisions of the Code of Civil Procedure³, unless there are special legal provisions applicable to certain categories of foreign arbitral awards.

2. Scope of the New York Convention⁴

Article I (1) of the New York Convention provides as follows: "It shall also apply to arbitral awards which are not considered as national judgments in the State in which their recognition and enforcement is sought."

Taking advantage of the conclusions of the ICCA Guide for the Interpretation of the New York Convention, we note that the notion of "arbitral award"

² For an analysis of these constitutional provisions, see Ș. Deaconu, E.S. Tănăsescu in I. Muraru, E.S. Tănăsescu (coord.), *Constituția României. Comentariu pe articole*, 2nd ed., Ed. C.H. Beck, 2019, p. 107 – 116.

³ On the relationship between the New York Convention and the provisions of the Code of Civil Procedure see Ș-Al Stănescu in V. M. Ciobanu, M. Nicolae, *Noul Cod de procedură civilă comentat și adnotat*. Vol. II. Art. 527 – 1134, Ed. Universul Juridic, Bucharest, 2016, p. 1766, 1767.

⁴ For a comprehensive analysis of this issue, see the ICCA Guide for the Interpretation of the New York Convention, translated into Romanian by C. Leaua, Ș. Deaconu and C. Cosma and available online at: https://www.arbitrationicca.org/media/11/59130972264406/icca_guide_nyc_romanian.pdf.

benefits from an autonomous interpretation, within the meaning of the Convention, the national judge will determine whether, in particular, in which case it was invested, in respect of which recognition/enforcement is sought may be classified as arbitral.

In this sense, according to art. I (2) of the Convention, "arbitral awards" means not only judgments given by arbitrators appointed for specific cases, but also those given by permanent arbitration bodies to which the parties have submitted.

Also, from the interpretation of art. I (1) of the New York Convention it follows that in order to fall within the scope of the New York Convention, the arbitral award must be given in the territory of a State other than that in which recognition and enforcement are sought or must be considered non-national on the territory of that state.

We emphasize that for the application of the Convention in New York it is not necessary for the State in which the sentence was handed down to be a party to the Convention, except as we shall refer to hereafter.

This conclusion results from art. I (3) of the New York Convention which provides as follows: "At the time of signature or ratification of this Convention, accession to it or notification of extension provided for in Article X, any State may, on the basis of reciprocity, declare that it shall apply Convention only on the recognition and enforcement of judgments given in the territory of another Contracting State. He may also declare that he will apply the Convention only to disputes arising out of legal relationships, whether contractual or non-contractual, which are considered commercial by his national law."

Therefore, interpreting *per a contrario* the aforementioned provisions, it follows that if the state does not formulate a reservation of reciprocity, the New York Convention will be applicable even if the arbitral award has not been pronounced in a member state of this convention.

Romania acceded to the New York Convention, by Decree no. 186/1961, with the following reserves⁵: "Romania shall apply the Convention only to disputes arising out of contractual or non-contractual legal relationships which are considered commercial by its national law. Romania shall apply the Convention to the recognition and enforcement of judgments given in the territory of another Contracting State. With regard to judgments given in the territory of non-Contracting States, Romania shall apply the Convention only on the basis of reciprocity established by agreement between the Parties."

We find, therefore, that Romania has formulated both reservations allowed by art. I (3) of the New York Convention, reason for which the mentioned

⁵ For an analysis of reservations about the application of the New York Convention, see R. Miron, *Procesul arbitral internațional conform reglementărilor naționale*, University Publishing House, Bucharest, 2019, p. 206 – 209 and p. 230 – 234.

convention will be applicable exclusively in the hypothesis of the sentences pronounced in the territory of other signatory states of the convention and only in the situation of disputes considered to be commercial by its national legislation.

Regarding the commercial law relations from the perspective of the Romanian legislation, the doctrine⁶ showed that: “upon Romania's accession to the Convention, the Commercial Code was in force, based on which a clear distinction was made between civil and economic legal relations. Therefore, at the time of Romania's accession to the Convention, the reference to commercial legal relations was taken into account from the perspective of the Commercial Code and the definition of commercial legal relations determined by the provisions of this normative act”.

After the entry into force of the current Civil Code (Law no. 287/2009), as a result of the express repeal of the Commercial Code (art. 230 of Law no. 71/2011 for the implementation of Law no. 287/2009), in doctrine and judicial practice has raised the issue of establishing the categories of disputes to which the New York Convention is applicable, given the legislator's option to suppress trade relations by the entry into force of the new civil law.

Without insisting on the legal arguments, as we would go beyond the scope of this paper, we will allow ourselves to agree with the opinion expressed in the literature⁷, in the sense that as referring exclusively to the legal relations between traders⁸.

Therefore, if the arbitral award handed down in a signatory state⁹ of the New York Convention refers to legal relations that may be classified as commercial, within the meaning of current civil law, the provisions of the New York Convention are applicable in Romania.

However, if the Romanian legislation or another treaty applicable to the legal report in question contains more favorable provisions than the New York Convention, as regards the recognition and enforcement of arbitral awards, the person concerned may avail himself of those normative provisions, as it results from art. VII (1) of the Convention.

We emphasize that, even if the provisions of the New York Convention are applicable in the case brought before the court, for the recognition and execution of foreign arbitral awards, which fall under the Convention, the procedural provisions on the territory of Romania will be applicable, as it results from art. 3 of the Convention.

⁶ C. Leaua, *Raporturile juridice comerciale și implicațiile actualului Cod civil cu privire la aplicabilitatea, în România, a Convenției de la New York (1958) privind recunoașterea și executarea hotărârilor arbitrale străine*, „Dreptul” no. 5/2012, p. 103.

⁷ Ibid, p. 110.

⁸ For a detailed analysis of the arguments for retaining this solution, see *ibid*, p. 102 – 110. We note that the subject has also been addressed in the doctrine - see, for example, R. Miron, *op. cit.*, p. 206, 207.

⁹ Including in Romania, if the arbitral award is non-national.

Consequently, regardless of the applicability of the New York Convention, the provisions of the Code of Civil Procedure will be incidental for the recognition and enforcement of a foreign arbitral award, in order to establish the competent court to order the recognition and enforcement of the arbitral award and to establish its own court procedure - of such a request, the aforesaid matters not being expressly covered by the Convention.

3. The trial procedure of the requests for recognition/execution of the foreign arbitral awards

As a preliminary point, we mention that the interested party may request exclusively the recognition of the foreign arbitral award, in order to invoke its *res judicata* authority; may request exclusively the approval of the forced execution on the Romanian territory of a foreign arbitral award, if such a sentence had been previously recognized on the Romanian territory or may request, within a single judicial procedure, both the recognition of the arbitral award and the approval of its forced execution. These conclusions result from the interpretation of art. 1127 of the Code of Civil Procedure.

The court in whose district the domicile or, as the case may be, the registered office is situated, of the person to whom the foreign arbitration award is opposed, is the court competent to resolve the request for recognition and the request for approval of enforcement, regardless of the concrete manner in which they were formulated (together or separately), as it results from art. 1126 para. (1) of the Code of Civil Procedure.

Also, according to art. 1126 para. (2) of the Code of Civil Procedure. In case of impossibility to establish the tribunal, according to the rules provided by art. 1126 para. (1) of the Code of Civil Procedure, the competence will belong to the Bucharest Tribunal.

Applicability of art. 1126 para. (2) of the Code of Civil Procedure may be incidental in judicial practice, for example, in situations where foreign natural or legal persons hold various categories of property in Romania (there is, therefore, the procedural interest of initiating enforcement in Romania), without having, however, established domicile or headquarters in Romania.

Regarding the trial procedure, we note that according to art. 1131 para. (1) of the Code of Civil Procedure: „the request for recognition or execution of the foreign arbitral award is solved by a decision given with the summoning of the parties and which can be appealed only by appeal”.

In accordance with the opinions expressed in the specialized literature¹⁰, we consider that the procedure regulated by art. 1131 para. (1) of the Code of Civil Procedure has a contentious character, as the plaintiff seeks to obtain the

¹⁰ See Ș-Al Stănescu in V.M. Ciobanu, M. Nicolae, *op. cit.*, p. 1779; R. Miron, *op. cit.*, p. 210.

right to invoke the *res judicata* authority of the respective arbitral award in contradiction with the defendant, on the Romanian territory (hypothesis of the request for recognition of the arbitral award) and/or to obtain the right to initiate enforcement against of the defendant, on the territory of Romania (hypothesis of the request for approval of the forced execution).

Consequently, the plaintiff seeks to obtain adverse rights against the defendant, the procedure being contentious, as the conditions imposed by art. 527 of the Code of Civil Procedure for classifying the application as non-contentious¹¹.

Under these conditions, in the absence of derogating legal provisions, the provisions of art. 200 of the Code of Civil Procedure which regulates the verification and regularization of the summons and the provisions of art. 201 of the Code of Civil Procedure which regulates the procedure for setting the first trial term, the aforementioned legal provisions being incidents within the contentious procedure.

We mention that, pursuant to art. 424 para. (1) of the Code of Civil Procedure, the request for recognition and/or execution of the foreign arbitral award will be solved by the court, in the first instance, by pronouncing a sentence.

Exceptionally, by derogation from art. 1131 para. (1) of the Code of Civil Procedure, pursuant to art. 1131 para. (2) of the Code of Civil Procedure, the request for recognition and/or execution of the foreign arbitral award may be resolved without summoning the parties, if it results from the ruling that the defendant has agreed to the admission of the action.

We consider that the purpose of this legal text is to allow the recognition and/or execution of the arbitral award in a shorter time, taking into account the special procedural position of the defendant, respectively that of recognizing the plaintiff's claims.

In this situation, compared to the desideratum of the legal text, we appreciate at a first analysis that, in principle, the provisions of art. 200 of the Code of Civil Procedure which regulates the verification and regularization of the summons, but the provisions of art. 201 of the Code of Civil Procedure which regulates the procedure for setting the first trial term, since the application of these legal provisions would be likely to lead to the extension of the term for solving the case, contrary to the purpose pursued by the legislator, by regulating the hypothesis provided by art. 1131 para. (2) of the Code of Civil Procedure.

We emphasize that, even in this situation, in the absence of a contrary legal provision, the sentence pronounced by the court will be subject to appeal, pursuant to art. 1131 para. (1) of the Code of Civil Procedure.

In the absence of derogating provisions, the term of appeal will be the

¹¹ From the interpretation of art. 527 of the Code of Civil Procedure it follows that in order for the proceedings to be classified as non-contentious, it is necessary for the applicant not to seek to establish an adversarial right against the defendant.

one of common law, respectively 30 days from the communication of the decision, as it results from art. 468 para. (1) of the Code of Civil Procedure.

Therefore, regardless of whether the judgment was pronounced with or without summoning the parties, it will be necessary to communicate it so that the term of appeal begins to run.

Also, since art. 1131 para. (1) of the Code of Civil Procedure stipulates that the decision is subject exclusively to appeal, we find that the appellate court will issue a decision, pursuant to art. 424 para. (3) of the Code of Civil Procedure which will not be subject to appeal, as it results from art. 483 para. (2) of the Code of Civil Procedure.

At the end of this section, we emphasize, once again, the fact that the provisions of art. 1126 and art. 1131 of the Code of Civil Procedure are incidents, even if the request is made under the New York Convention.

4. The defenses that the defendant may formulate in a case having as object the recognition/execution of a foreign arbitral award

As a preliminary point, we find that both the New York Convention (art. V point 1) and the Code of Civil Procedure (art. 1129 of the Code of Civil Procedure) regulate grounds for refusal of recognition or enforcement¹² that have the character limiting and which can be invoked exclusively by the defendant in such a procedure, the court not being able to invoke, *ex officio*, these reasons.

Since in this paper we have only addressed the procedural issues, we will not insist on analyzing these reasons¹³, as they would exceed the space and purpose of this material, but we will make some specific findings on the procedural means by which the defendant can invoke the reasons mentioned above.

First of all, we note that, in the first instance, the defendant may invoke these reasons by the objection which he has, as a rule, the obligation to submit in the procedure prior to the fixing of the first trial term, pursuant to art. 201 para. (1) of the Code of Civil Procedure.

However, even if the defendant does not invoke those pleas in the defense, we consider that he has the possibility to invoke reasons for refusal of recognition or enforcement even after the expiration of the term in which the objection had to be filed.

¹² In essence, the reasons for refusal are the following: the inability of the parties to conclude the arbitration agreement; invalidity of the arbitration agreement; the impossibility to capitalize on the defenses within the arbitration procedure; failure to inform the party of the appointment of arbitrators; non-compliance with the agreement of the parties regarding the choice of arbitrators or regarding the arbitration procedure; the settlement, by arbitration, of a dispute that was not provided for in the arbitration agreement, the arbitral award did not become binding or was annulled or suspended.

¹³ For a comparative analysis of the grounds for refusal, see R. B. Bobei, *Arbitrajul intern și internațional. Texte. Comentarii. Mentalități*, Ed. C.H. Beck, Bucharest, 2013, p. 427 – 444; Ș-AI Stănescu in V.M. Ciobanu, M. Nicolae, *op. cit.*, p. 1773 – 1778.

This conclusion is necessary because the non-submission of the objection within the term provided by law attracts the sanction of forfeiture of the right to propose evidence and to invoke exceptions, apart from those of public order, as it results from art. 208 para. (2) of the Code of Civil Procedure, and not the revocation of the right to invoke reasons that are likely to combat the plaintiff's claims, by reference to the provisions of art. 205 para. (2) letter c) of the Code of Civil Procedure.

We also consider that the defendant may invoke for the first-time grounds for refusal, directly in the appeal, or by the objection made to the appeal filed by the plaintiff.

This conclusion is required pursuant to art. 478 para. (2) thesis I of the Code of Civil Procedure which stipulates that: "the parties may not use before the appellate court other reasons, means of defense and evidence than those invoked in the first instance or shown in the motivation of the appeal or in the response".

Therefore, the cited legal text allows the invocation directly in the appeal or in the response to the appeal of new reasons, so that even the reasons for refusal to recognize/enforce the arbitral awards can be invoked for the first time in the appeal.

Once invoked, the first instance or the appellate court, as the case may be, will have the obligation to put the respective reasons in the debate of the parties, in order to ensure the adversarial nature of the civil process, regulated by art. 14 of the Code of Civil Procedure and the obligation to rule on the reasons invoked by the decision he will pronounce, which will analyze their validity in the considerations of the decision.

Unlike the reasons provided by art. V point 1 of the New York Convention and art. 1129 of the Civil Procedure Code, which can be invoked only by the defendant, both in the case of application of the Code of Civil Procedure and in the case of application of the New York Convention, the court may, *ex officio*, even in the absence of a request for the defendant, to ascertain whether the dispute that formed the object of the arbitral award could be resolved by arbitration in Romania and whether the arbitral award contains provisions contrary to public policy¹⁴, as it results from art. 1125 of the Civil Procedure Code and from art. V point 2 of the New York Convention.

Obviously, in order to respect the adversarial principle, which governs the civil process, insofar as the court will find the possible incidence of one of the

¹⁴ We find that art. 1125 of the Code of Civil Procedure refers to the "public order of Romanian private international law", while in art. V para. (2) letter b) of the New York Convention (1958) refers to the "public order of the country where the recognition and execution of the arbitral award is requested", in this case the public order of Romanian law. Given the framework of the paper, we will not analyze the relationship between the notions mentioned above. For developments on this topic – see Julian D.M. Lew, Loukas A Mistelis, Stefan M Kröll, *Comparative International Commercial Arbitration*, Wolters Kluwer, 2003, p. 721, 722 and Ș-AI Stănescu in V.M. Ciobanu, M. Nicolae, *op. cit.*, p. 1768, 1769.

aforementioned situations, it will have to discuss the application of these normative texts, unable to decide until after hearing the parties.

5. Other procedural issues

In the application of art. IV of the New York Convention¹⁵ or art. 1128 of the Code of Civil Procedure¹⁶, the court will have to verify whether the request for recognition/enforcement of the foreign arbitral award is accompanied by the arbitration award or arbitration agreement, in original or in copy, as well as their translation, if the arbitration award or arbitration agreement does not is written in Romanian.

We emphasize, in view of the normative differences¹⁷, that if the New York Convention is applicable in this case, the aforementioned documents will have to be submitted under the conditions regulated by this international instrument, subject to more favorable legal provisions in domestic law. applicable to the Code of Civil Procedure, the aforementioned documents must be submitted under the conditions prescribed by this normative act.

In the same context, we note that the court invested with the request for recognition/ enforcement of the foreign arbitral award may suspend the trial of this request, if the competent authority of the state where it was pronounced or according to the law of which the arbitral award was handed down is asked to annul or suspend that decision. arbitration, as it results from art. VI of the New York Convention and art. 1130 of the Code of Civil Procedure.

Also, the same normative provisions allow the court to order the submission of a convenient guarantee/bail by the defendant, at the request of the person requesting the recognition/enforcement of the foreign arbitral award, in case the suspension of the trial is discussed.

The procedure to be followed in order to order the suspension of the trial of the case is the one provided by the Code of Civil Procedure, even if the provisions of the New York Convention are incidental, since, as it results from art. 3 of this convention, these aspects concern the trial procedure.

In these conditions, we note that the suspension of the trial of the case is optional, in the case being incident the provisions of art. 413 para. (1) point 3 of the Civil Procedure Code, so that the suspension of the trial of the case will be

¹⁵ For a comprehensive analysis of this article, see the ICCA Guide to the Interpretation of the New York Convention, translated into Romanian by C. Leaua, Ș. Deaconu and C. Cosma and available online at: https://www.arbitrationicca.org/media/11/59130972264406/icca_guide_nyc_romanian.pdf, consulted on 1.10.2020.

¹⁶ For an analysis of this legal text, see Ș-Al Stănescu in V.M. Ciobanu, M. Nicolae, *op. cit.*, p. 1772, 1773.

¹⁷ For example, the New York Convention requires the filing of the original of a duly authenticated judgment or a copy of that original, which meets the conditions for its authenticity, while the Code of Civil Procedure requires the filing of the arbitral award, in original or copy, the party having the obligation to prove the super legalization, based on art. 1093 of the Code of Civil Procedure.

ordered by conclusion, which will be subject, separately, to the appeal for all the suspension period, as it results from art. 414 of the Code of Civil Procedure.

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