

2018 - O nouă Convenție internățională în materia soluționării alternative a disputelor

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În anul 1989 Francis Fukuyama a scris un eseu intitulat „*Sfârșitul istoriei*”, iar în anul 1992 a transformat acest eseu într-un volum: „*Sfârșitul istoriei și ultimul om*”

Directii privind dezvoltarea progresivă a Mijloacelor Alternative:

- mijloace tehnice cu implicații directe asupra procedurii: e-mail, audieri prin video-conferința, audio-conferința
- Adoptarea de noi instrumente: convenții sau model – law
- Dezvoltarea de noi mijloace de solutionare a litigiilor: Med-Arb

UNCITRAL

- Working Group I: Micro, Small and Medium-sized Enterprises
- Working Group II: Dispute Settlement
- Working Group III: Investor-State Dispute Settlement Reform
- Working Group IV: Electronic Commerce
- Working Group V: Insolvency Law
- Working Group VI: Security Interests

In sesiunea din 5-9 Februarie 2018 a WG II de la New York s-au adoptat:

- United Nations Convention on International Settlement Agreements resulting from mediation
- UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements

Scope of application:

This Convention applies to international agreements resulting from mediation and concluded in writing by parties to resolve a commercial dispute

Article 2. General principles

Each Contracting State shall enforce a settlement agreement in accordance with its rules of procedure, and under the conditions laid down in this Convention.

Article 3. Definitions

1. 'international'
2. 'writing'
3. 'mediation'

Article 4. Application

A party relying on a settlement agreement under this Convention shall supply to the ***competent authority of the Contracting State*** where relief is sought:

- “(a) The settlement agreement signed by the parties;
- “(b) Evidence that the settlement agreement resulted from mediation, such as:
 - “(i) The mediator’s signature on the settlement agreement;
 - “(ii) A document signed by the mediator indicating that the mediation was carried out;
 - “(iii) An attestation by the institution that administered the mediation;or
- “(iv) In the absence of (i), (ii) or (iii), ***any other evidence acceptable to the competent authority***

“Article 5. Grounds for refusing to grant relief

- A party to the settlement agreement was under some incapacity;
- The settlement agreement is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it

Article 6. Parallel applications or claims

If an application or a claim relating to a settlement agreement has been made to a court, an arbitral tribunal or any other competent authority which may affect enforcement of that settlement agreement, the competent authority of the Contracting State where the enforcement of the settlement agreement is sought may, if it considers it proper, **adjourn** the decision on the enforcement of the settlement agreement and may also, on the request of a party, order the other party to give suitable security.

Article 7. Other laws or treaties

This Convention shall not deprive any interested party of any right it may have to avail itself of a settlement agreement in the manner and to the extent allowed by the law or the treaties of the Contracting State where such settlement agreement is sought to be relied upon.

Article 8. Reservations

Article 9. Depositary

Article 10. **Signature**,
ratification, acceptance,
approval, accession

Article 11. Participation by regional economic integration organizations

- This Convention **shall not prevail over conflicting rules of a regional economic integration organization** if, under article 4, an application is submitted to a competent authority of a State that is a member of such an organization and all the States relevant under article 3(1) are members of any such organization.

TEMELE propuse:

Uniform principles for the quality and efficiency of arbitral decisions, propunere care ar îngloba următoarele sub-teme:

- expedite arbitration;
- emergency arbitration;
- arbitration clauses on non-signatory parties
- adjudication for long-term contracts

Concluzii

1. România va fi membră în grupurile de lucru până în anul 2022
2. Un moment important va fi în 2019 (Președinția Consiliului UE, candidatura la Consiliul de Securitate și GL UNCITRAL)
3. conectarea României la efervescența din domeniul arbitrajului
4. situația atipică din România – promovarea arbitrajului

Vă mulțumesc!