

**VIAC CAN Newsletter for the CEE region**

**CASE LAW FROM THE REGION**

**Romania**

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**1. Romanian insolvency judges have jurisdiction to hear applications for the recognition of foreign arbitral awards in the framework of insolvency proceedings**

In a recently published decision of 24 May 2024, the Bucharest Court of Appeal has decided that an insolvency creditor may request the insolvency judge to recognise a foreign arbitral award as an incidental matter in the course of insolvency proceedings.

The case concerned a creditor that sought to enforce a foreign arbitral award in Romania against a company undergoing insolvency proceedings. The award creditor applied to be registered on the list of insolvency creditors without having previously sought the recognition of the arbitral award in Romania. To overcome the time constraints related to the debtor's insolvency and be able to actively participate in the insolvency proceedings immediately, the award creditor requested that the insolvency judge recognise the foreign arbitral award as an incidental (preliminary) matter in the insolvency proceedings. The insolvency judge declined jurisdiction in favour of the civil law court that has general jurisdiction to hear applications for the recognition and enforcement of foreign arbitral awards. In ruling so, the insolvency judge relied on provisions of the Romanian insolvency law limiting its jurisdiction to matters related to the conduct of insolvency proceedings.

This jurisdictional issue was later referred to the Bucharest Court of Appeal, which had to decide whether the insolvency judge or the general civil court had jurisdiction to hear the application for the recognition of the foreign arbitral award.

In a final decision, the Bucharest Court of Appeal held that, although the ordinary civil law courts have jurisdiction to hear the applications for the recognition of foreign arbitral awards, such applications can also be made incidentally in other proceedings. In the latter case, the court that has jurisdiction to hear the main dispute reviews the incidental application to recognise the foreign arbitral award relied upon by any of the parties. The Bucharest Court of Appeal noted that the special provisions of the Romanian insolvency law and the limited competence of insolvency judges do not prevent them from hearing such incidental applications for recognition of foreign arbitral awards.

The interpretation of the Bucharest Court of Appeal facilitates the enforcement of foreign arbitral awards against award debtors undergoing insolvency in Romania, as the award creditors are not kept at bay in the insolvency proceedings pending recognition of their award by the ordinary civil law court.

**2. Romanian High Court has ruled on who can administer institutional arbitration in Romania**

On 26 August 2024, the Romanian Court of Cassation and Justice (the “*High Court*”) published its binding decision of 17 June 2024 on the uniform interpretation and application of Art. 616 (1) of the Romanian Code of Civil Procedure (“*Romanian CCP*”) regarding institutional arbitration. This decision is the most notable development concerning institutional arbitration in Romania in recent years as it limits the types of entities that can administer arbitration in Romania.

In essence, the High Court has established that non-governmental organisations of public interest (*NGOs*) may administer institutional arbitration in Romania only if authorised by law to do so.

The matter was escalated by Romania’s General Prosecutor, who referred the question to the High Court of whether associations and foundations established in accordance with domestic law can include in their statutes the purpose of organising institutional arbitration. This referral was prompted by the inconsistent case law on the lawful establishment of associations and foundations founded with the mission of (inter alia) administering institutional arbitration. In this context, the number of “pocket” arbitral institutions had been on a continuous increase in Romania.

The High Court recalled that, pursuant to Art. 616 (1) of the Romanian CCP, institutional arbitration can be administered by either a governmental domestic or international institution or an NGO of public interest, “under the conditions of the law”.

As regards NGOs, the High Court held that NGOs whose statutes include the activity of administering institutional arbitration, without being so empowered under the law, operate unlawfully.

The High Court is the supreme judicial authority in Romania and its interpretation in the decision of 17 June 2024, as published on 26 August 2024, is binding.