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Arbitration in Romania
by T. Cole

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Arbitration in Romania

Tony Cole[1]

1. The Interviews

The interviews on which this report is based were performed as part of a research project funded by the United Kingdom's Economic and Social Research Council. Interviews were performed in 47 countries, including 127 cities and 1,042 interviewees.[2] Further information on the project is available on the project website (https://commercialarbitrationineurope.wordpress.com).

Four interviews were performed in Romania, involving 13 participants, with all interviews taking place in Bucharest on 12 May 2023. All interviews were performed by the author. Interviews were recorded and then professionally transcribed. Interviewees were identified through a combination of legal guides (WhosWhoLegal, Chambers, Legal500), recommendations, and internet research. A list of interviewees who have chosen to be publicly identified is available on the project website.

Interviews lasted approximately 90 minutes and were semi-structured, drawing from a list of topics but guided by the discussion as it evolved. In addition to this discussion, during the interviews participants were asked to name three "leaders" of arbitration in Romania (domestic or international) and three "leaders" of arbitration internationally (whether or not Romanian), and to discuss what characteristics qualified them as "leaders". Finally, interviewees were also asked to respond to up to three hypothetical situations, describing how they believed the situation should be addressed, with each situation being altered by the interviewer as discussion progressed.

2. The Arbitration Market

Although many jurisdictions in Eastern Europe have struggled to develop an active arbitration market since the collapse of communism, Romania has developed a consistent, if still limited in both size and scope, arbitration market sufficient to support a number of individuals with international reputations. The explanation for this difference, it is argued here, is Romania's distinct historical experience in arbitration. This Report will, therefore, begin with an overview of the development of arbitration in

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[2] As of 17 January 2025. A limited number of additional interviews will be performed prior to conclusion of the research in August 2025.

Romania since the middle of the 20th century, as an example of how historical developments can shape the form of an arbitration market and practice.

Although Romania was a communist State and a member of the Warsaw Pact from 1948 until the revolution in 1989, interviewees emphasised that both domestic commercial arbitration and international commercial arbitration were practised in Romania throughout this period, although only in specific forms. While commercial arbitration was not legally available to private companies until after the 1989 revolution, it had been used for the settlement of disputes between domestic state enterprises since 1949.[3] In turn, at the level of international arbitration, the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania (CCIR) was established in 1953 to facilitate arbitration between Romanian state enterprises and foreign private companies.[4] Indeed, Romania was one of the first countries to adopt and implement the New York Convention, ratifying it in 1961, three years after it was first opened for signature.[5]

Interviewees noted that this background in arbitration, even though focused on state enterprises, created the unusual situation that Romania entered the post-communist 1990s already having a small group of experienced and respected arbitrators and arbitration lawyers, rather than needing to establish an arbitration market and practice from nothing after communism was replaced. Moreover, while arbitration was new for private companies in the 1990s, the post-revolution reorganisation of state enterprises into either private companies or State-owned autonomous entities[6] resulted in a group of commercial actors with significant prior experience with arbitration. One interviewee gave as an example that larger production and export contracts in this period would standardly include arbitration agreements, precisely because the Romanian party was a former state enterprise already familiar with arbitration.

The 1990s then saw the establishment of a number of smaller specialised arbitration courts, such as the Court of Arbitration of the Romanian National Union of Handicraft and Production Cooperatives Association (established in 1991) and the Arbitration Chamber of the Bucharest Stock Exchange (established in 1994).[7] In addition, the 1990 law regulating Chambers of Commerce in Romania, of which there is one in each county, required them to make provisions for ad hoc arbitration, with many

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[3] Cristina Ioana Florescu, "A Century of Romanian Arbitration: Historical Milestones, from Tradition to Modernity", 8 Law Review 236 (2018) at 244; Viorel Roș & Andreea Livădariu, "Value Added Tax on Arbitration Fees" (2022) at 392, paper presented at CKS 2022, Challenges of the Knowledge Society, 20 May 2022, 15th Edition, Bucharest, Romania (on file with author).

[4] Florescu, *supra* n. 1, at 244.

[5] See https://www.newyorkconvention.org/contracting-states.

[6] Florescu, *supra* n. 1, at 248.

[7] George Măgureanu, "Considerations on the Historical Development of Arbitration and New Tendencies in the Development of National and International Arbitration", 48 Curentul Juridic 123 (2012), at 129.

Chambers subsequently also establishing their own court of arbitration to provide institutional arbitration.[8]

Interviewees noted that this initial foundation was then further developed by elements of contracting practice, particularly in public procurement for large-scale construction projects. In this context, the involvement of European Union funding (Romania formally applied for European Union membership in 1995), the World Bank and the International Monetary Fund resulted in the adoption of FIDIC contracts requiring arbitration at the International Chamber of Commerce (ICC).[9]

Interviewees noted that additional support for the use of arbitration then arrived in the early 2000s with the first investment arbitration cases brought against Romania. While in absolute terms such cases might be limited (only 9 were commenced from 2001-2010),[10] they provide significant multi-year work for those involved, and give a very high profile to the use of arbitration to settle disputes. Interviewees noted that the 2008/9 financial crisis then provided a further boost to arbitration, both from disputes arising out of construction-related contracts that incorporated arbitration, and from disputes arising out of M&A contracts, which in Romania standardly involved foreign parties and provided for foreign-seated arbitration.

Multiple interviewees highlighted that the most prominent counterpoint to these positive impacts on the development of arbitration in Romania occurred in 2012, when the CCIR, by far Romania's most prominent arbitral institution, changed its arbitration rules to remove the power of parties to select their own arbitrator. Instead, that power was delegated to the President of the Chamber of Commerce and Industry of Romania, who then received 10% of the arbitration fee applicable in an arbitration as payment for making that appointment(s).[11] That individual was subsequently arrested in March 2014 and then convicted of accepting a bribe in exchange for influencing the outcome of an arbitration.[12] In 2014, the CCIR's Rules were changed again to re-adopt party

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[8] Gheorghe Dinu & Raluca Antoanetta Tomescu, "General considerations regarding arbitration proceedings in the New Code of Civil Procedure", at 2, available at https://www.academia.edu/15648187/General_considerations_regarding_arbitration_proceedings_in_the_NEW_CODE_OF_CIVIL_PROCEDURE (last accessed 17 January 2025); Florescu at 240.

[9] *See generally* Oana Ruxandra Gherghina, "FIDIC Contracts Status under the New Civil Code", in 9 Conferința Internațională Educație și Creativitate pentru o Societate Bazată pe Cunoaștere – DREPT 162 (2015)

[10] https://investmentpolicy.unctad.org/investment-dispute-settlement/country/174/romania/respondent.

[11] *See, e.g.* Cornel Marian, "Party-appointed Arbitrators: the Lesser of Two Evils?" (2012), https://arbitrationblog.kluwerarbitration.com/2012/02/22/party-appointed-arbitrators-the-lesser-of-two-evils/ last accessed 17 January 2025).

[12] "Former Romanian trade chamber president released on parole", Romania-Insider.com, 6 November 2017, *available at* https://www.romania-insider.com/mihail-vlasov-released-parole (last accessed 17 January 2025); Alina Grigoras, "Former CCIR president Vlasov sentenced to 4 years in prison", The Romania Journal, 27 February 2015, *available at* https://www.romaniajournal.ro/society-people/law-crime/former-ccir-president-vlasov-sentenced-to-4-years-in-prison/ (last accessed 17 January 2025).

appointment of arbitrators,[13] but multiple interviewees pointed to this period as having an ongoing impact on the reputation of arbitration in Romania, including a residual distrust of arbitration by many people in Romania outside the group of arbitration practitioners.

Interviewees also highlighted a final stage in this historical narrative that occurred in 2017, when Romanian legislation, which had previously required the use of ICC arbitration in public procurement contracts for construction projects, was altered to require instead that Romanian courts be used. Interviewees reported that this change lasted only 6 months, at which point the legislation was altered again to re-incorporate arbitration, but this time using the CCIR, rather than the ICC. Interviewees noted that this had resulted in a further boost to the arbitration market in Romania.

As stated at the outset of this section, the preceding discussion is not presented just a historical narrative, but because it is useful for understanding the nature of Romania's contemporary arbitration market. The experience of both Romanian lawyers and State enterprises with arbitration prior to the 1989 revolution provided a foundation for the spread of arbitration in subsequent years, even though the restriction of arbitration to government enterprises also meant that private businesses and individuals lacked that same experience. In turn, Romania's rapid moves towards joining the European Union opened up opportunities for funding of large-scale construction projects, necessary in a sizeable country with significant underdeveloped rural areas,[14] that then introduced consistent use of ICC arbitration through FIDIC contracts. This focus on the higher levels of international arbitration was then re-emphasised through Romania's engagement with investment arbitration and then the 2008-9 financial crisis.

In turn, while in many jurisdictions, arbitration is focused in a single city and operates through a single dominant institution, the legislative action taken in the early 1990s to encourage support of arbitration included areas outside Bucharest, Romania's capital and main arbitration centre. This geographically widespread support of arbitration appears to have been successful, with interviewees describing a local Romanian arbitration market in which the Bucharest-based CCIR is clearly dominant, but in which arbitrations occur regularly at institutions located across Romania. One interviewee gave as examples of successful regional arbitral institutions those in Cluj-Napoca, Iasi, Timisoara, Brasov, and Constanta.

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[13] Cristina Elena Candea, "International Commercial Arbitration in Romania: Can the New Changes Release the Tension Instilled in the Past?" (2014), https://arbitrationblog.kluwerarbitration.com/2014/11/28/international-commercial-arbitration-in-romania-can-the-new-changes-release-the-tension-instilled-in-the-past/ (last accessed 17 January 2025)

[14] Iulian Stănescu, "Living conditions in rural areas in Romania from 1990 to 2020", 32 Calitatea vieţii 1 (2021).

While little information is publicly available on exactly how common such non-Bucharest arbitrations are, one study covering the period 2017-2019 reported 402 arbitrations being registered over that 3-year period by the CCIR, while 218 were registered (in total) by four other regional institutions (the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry Cluj; the Court of Commercial and Maritime Arbitration attached to the Constanța Chamber of Commerce, Industry, Navigation and Agriculture; the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry Iași; the Court of Arbitration attached to the Chamber of Commerce and Industry of Dolj County).[15] A similar perspective comes from the fact that of the 344 challenges to arbitral awards in Romanian from 2017-2020, 26% of them were lodged at a court outside Bucharest.[16]

Nonetheless, although when presented in this fashion, the narrative of arbitration in Romania sounds impressively positive, interviewees repeatedly emphasised the limits that also exist. Interviewees expressed the view, for example, that despite the regular engagement of Romanian arbitration lawyers in international arbitrations, it was extremely rare for Romanian lawyers to be hired for an arbitration not involving any Romanian party. In turn, while interviewees noted that there is consistent work available for those currently regularly engaged in arbitration, they also emphasised that this market has not increased significantly over the past decade.

Perhaps most notably, interviewees drew a distinction between international and domestic arbitration, with interviewees consistently agreeing that domestic arbitration is less common. This might initially be surprising given the caseloads just noted at the regional (non-Bucharest) arbitral institutions, but was attributed to the international nature of Romania's economy, along with Romania's size and regional economic diversity. One interviewee commented that even at the regional (non-Bucharest) arbitral institutions arbitrations would often be international, relating to an economic activity prominent in that region (e.g. maritime disputes in Constanta), or simply taking advantage of the geographic proximity of the regional institution compared with Bucharest (by way of example, Iași is a 5.5 hour drive to Bucharest, Cluj-Napoca 6 hours, and Timișoara 7 hours).

Moreover, while interviewees did note an increased willingness of local businesses to have their arbitrations handled by local lawyers as leads, rather than taking them to foreign counsel abroad, they also highlighted that even when an arbitration superficially appears to involve only Romanian parties, the substantive reality is often different, due to substantial foreign beneficial ownership of Romanian

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[15] Cornelia Tabîrță, "Selected statistics regarding the state of commercial arbitration in Romania" (2022), https://www.ibanet.org/selected-statistics-commercial-arbitration-Romania (last accessed 17 January 2025).
[16] *Id*.

businesses. As a result, a superficially "domestic" dispute may be going to arbitration, rather than litigation, because of the preference for arbitration of a foreign beneficial owner.

The significant levels of foreign beneficial ownership of Romanian businesses was described as particularly prominent in export-focused businesses, and interestingly was argued to be a dampener for the growth of Romania's international arbitration market. In the example of one interviewee, a Romanian company engaged in the manufacture and export of auto parts will often be part of a broader corporate family of a German (or other) car manufacturer. As a result, any dispute is likely to be resolved "internally" within the corporate family, rather than submitted to arbitration.

Consistent with this picture, interviewees described arbitration in Romania as predominantly involving construction disputes (one interviewee placed the proportion at 70-80% based on their own experience), particularly relating to public infrastructure projects. However, statistics indicate greater diversity at the regional institutions.[17]

When asked why the Romanian arbitration market remains relatively limited in size, despite an arguably solid foundation in international disputes and in construction, interviewees often referenced the perceived high cost of arbitration, which was described as an increasing concern for parties. However, most notably in the context of the preceding discussion, interviewees also consistently highlighted a combination of a widespread lack of knowledge and understanding of arbitration outside the relatively small group of lawyers regularly involved in arbitration, and a parallel lack of trust. Interviewees repeatedly particularly highlighted the 2012-14 period discussed above as damaging public trust in arbitration.

However, more than one interviewee also commented on what was seen to be a relatively insular group of arbitration practitioners, in the sense that while active efforts have been made to raise levels of understanding of arbitration amongst younger lawyers and law students, similar efforts have reportedly not been made to spread understanding of arbitration beyond that group, to businesses and others involved in the decision to adopt arbitration agreements. Arguably, this might reflect a market context in which the more senior practitioners in the field have the benefit of reliable practices in significant cases, often guaranteed through legislative preference for arbitration in procurement-related disputes. As a result, those best placed to encourage and support such efforts to spread the understanding and use of arbitration, have less incentive to do so.

[17] *Id*.

3. Arbitration Institutions

There was consistent agreement amongst interviewees that the CCIR is Romania's most important arbitral institution, both in terms of caseload and its impact. Overall, the CCIR was described positively by interviewees, with the individuals involved in the leadership and Board of the institution since 2015 praised for moving it beyond its previous difficulties and aligning its rules more closely to international expectations (as opposed to domestic Romanian court processes). The Court also organises Bucharest Arbitration Days, which was consistently praised by interviewees, particularly as a means of connecting local and foreign practitioners. Finally, the CCIR is the sponsor of the Romanian Arbitration Journal, a well-regarded forum for publications on both Romanian and foreign arbitration.

Nonetheless, while such activities indicate a degree of engagement by the CCIR in the development of arbitration in Romania, interviewees noted that such efforts are overwhelmingly led by individuals, rather than by the institution itself. Interviewees noted in this respect that the CCIR has limited funding, and so realistically does not have the capacity to provide the types of training and events that leading institutions provide in some other jurisdictions. As a result, while the institution was seen by interviewees as important for Romanian arbitration, and as open to change where needed, it was not seen as itself a driver of such change, relying instead on external practitioners leading efforts that the institution then supported.

Notably, while interviewees, all of whom were located in Bucharest, were aware of arbitrations at institutions outside Bucharest, and reported involvement with them, few interviewees reported real knowledge of non-Bucharest arbitration, beyond an awareness that it occurred. Similarly, no account was given of serious attempts to develop inter-institutional connections amongst the arbitral institutions across Romania, or to use the existence of this range of institutions to foster a nationwide group of arbitration practitioners. Rather, the impression given by interviewees was of local arbitration practices operating in largely distinct markets and focused on local institutions. However, it should be emphasised that this was never expressly stated by any interviewee, and so reflects only an impression by the interviewer based on those things that were said.

A particularly important recent development regarding arbitral institutions in Romania is the 2024 decision by Romania's High Court of Cassation and Justice limiting the ability of non-governmental organisations to operate arbitral institutions. In order to do so, they must now receive explicit authorisation from the government. This does not directly affect the CCIR or the other institutions operated by regional chambers of commerce, as these already have explicit legislative authorisation to administer arbitrations. However, it does bring into question the viability of other institutions, particularly the more specialised institutions discussed above. Most prominently, it has

already resulted in the closure of the Bucharest International Arbitration Court (BIAC), which was established in 2016 under the auspices of the American Chamber of Commerce. The website of the BIAC is now non-operational other than an Announcement that "[t]o ensure compliance with the [High Court of Cassation and Justice of Romania] decision, the Board of the American Chamber of Commerce in Romania (AmCham Romania) has resolved to cease all institutional arbitration activities conducted by the Bucharest International Arbitration Court (BIAC) under AmCham's auspices."[18]

With respect to foreign institutions, interviewees commented that although in the early 2000s there had been a balance between the Vienna International Arbitral Centre (VIAC), the Zurich Chamber of Commerce (ZCC), the London Court of International Arbitration (LCIA), and the International Chamber of Commerce (ICC), the ICC is now the clearly dominant foreign institution in Romania. VIAC was reported to still have a regular Romanian caseload, particularly relating to western Romania due to historical and cultural Germanic and Hungarian connections in that area, but interviewees commented that the LCIA and the ZCC are now rarely used.

4. The Arbitration Community

Despite the presence of an active arbitration practice in Romania, interviewees did not view there as being a genuine "arbitration community", in the sense of a group of practitioners who self-identify as part of a group and coordinate activities relating to arbitration. Rather, interviewees confirmed that while the group of arbitration practitioners is small enough that people knew one another, activities are predominantly led by individuals rather than coordinated. In turn, while the CCIR was seen by interviewees as important for the local arbitration market, its limited financial capacity for community-development activities (training, networking events, etc.) means that it is not able to serve as the core for the development of a more coherent arbitration community.

This situation is arguably exacerbated by the prominence of ICC-related work for the leading practitioners in Bucharest, as a professional focus on such work necessarily increases the importance of networking and connection-building abroad rather than within Romania. Indeed, it is notable that while Bucharest Arbitration Days was specifically highlighted by interviewees as an important forum for networking, emphasis was placed on the opportunity that event provides to connect with foreign practitioners,

[18] https://bucharestarbitration.org/?password-protected=login&redirect_to=https%3A%2F%2Fwww.bucharestarbitration.org%2F (last visited 17 January 2025).

rather than to bring together local practitioners. Consistent with this, multiple interviewees commented on the desirability of travelling internationally for networking.

This does not, though, mean that there are no serious opportunities for local networking, and one interviewee highlighted an annual meeting of the General Assembly of Arbitrators of the CCIR as providing such an opportunity. However, even this event was not described as reflecting the existence of a community of arbitrators centred on the CCIR, but only as providing an opportunity to connect with other local arbitrators.

Finally, interviewees highlighted as an obstacle to the development of a local arbitration community that due to the limited arbitration market and the significant number of individuals interested in arbitration, most arbitration practitioners also engage in litigation or transactional work. As a result, it can be difficult to justify spending significant amounts of time or money on networking activities for something that provides only a portion of professional income.

There is clearly a foundation in place for an arbitration community to form in Romania, and given the existence of a regular arbitration practice, successful efforts at arbitration education (discussed below), and a clear and genuine passion for arbitration amongst the interviewees, it is initially surprising that interviewees were so consistent in their view that no coherent arbitration community exists. It is, however, more understandable in the context of the relative fragmentation of Romanian arbitration already discussed. While arbitration practice is spread across Romania, and Bucharest-based practitioners receive cases at non-Bucharest institutions, no interviewee highlighted any engagement with institutions or events outside Bucharest. In turn, the focus of leading Bucharest practitioners on an ICC-related practice means that despite the involvement of such individuals in the CCIR, their career- and practice-development is better served by focusing abroad than by expanding their connections within Romania. Finally, the success of efforts to expand arbitration education in Romania has resulted in a greater number of lawyers interested in arbitration and able to claim the substantive knowledge necessary to practice it – which in the context of an arbitration market that interviewees stated has not increased over the past decade creates further competition for the available work and reduces the ability of practitioners to focus on arbitration.

In short, the forces behind the development of arbitration in Romania, as described above, have helped sustain a successful arbitration market, but have arguably done so in a way that did not require coordinated activity by Romanian arbitration practitioners to build or sustain that market. Significant arbitration work was made available through governmental decisions and at the insistence of foreign financers, and this work reportedly remains in regular supply, but perhaps precisely for that reason there was little evidence amongst senior interviewees of a felt need to

expand the arbitration market. Instead, concerns regarding the stagnation of the market were left to less senior interviewees to express. Practitioners at this level are, after all, more likely to be directly impacted by the growth in the number of junior practitioners wishing to enter arbitration practice, and the competition for work that this brings, and so are more likely to feel the need for increased engagement with parties and non-arbitration lawyers. At this stage, however, the interviews indicate that this recognition has not yet resulted in active efforts by less senior practitioners to build an arbitration community, even if only a community specifically focused on less senior practitioners.

5. Gender and Arbitration

Of the 13 arbitration practitioners interviewed in Romania, 9 were women, and there was consistent agreement that at the level of arbitration counsel gender is not a significant issue in Romania. Interviewees attributed this to a significant extent to Romania's history, as during the communist era women were expected to work and to take on professional roles alongside men. This was described as resulting in a situation in which legal practice in Romania, rather than just arbitration, is broadly balanced between men and women. Indeed, interviewees noted that at the moment more Romanian judges are female than male, and more women than men currently attend law school.

Nonetheless, while interviewees highlighted that many of Romania's leading arbitration counsel are women, they also noted that women are less likely to have leading institutional roles (e.g. interviewees highlighted that at the time of the interviews there was only one woman on the board of the CCIR). In turn, while the list of arbitrators at the CCIR at the time of the interviews was relatively balanced between men and women (approximately 60/40), interviewees noted that the group of arbitrators actually handling cases regularly was dominated by men. More broadly, interviewees noted that however unconcerned arbitration practitioners themselves might be with gender, broader Romanian society remains significantly more conservative. By way of example, after the 2020 Parliamentary elections, only 18.24% of elected representatives were female,[19] and when responding to a World Bank survey 83% of respondents stated that a woman's primary responsibility is to care for the home and family.[20]

In this respect, Romania repeats a tendency seen in a number of other jurisdictions, in which arbitration practice is described by interviewees as open to women and as treating them equally, but the point at which arbitration practice

[19] "Replies of Romania to the list of issues in relation to its sixth periodic report", United Nations Committee on Economic, Social and Cultural Rights, E/C.12/ROU/RQ/6 (2023), at 6.
[20] Monica Robayo-Abril, Chifundo Patience Chilera, Britta Rude, and Irina Costache, Gender Equality in Romania: Where Do We Stand? (2023), at 75.

encounters the wider community becomes the point at which gender becomes an obstacle.

6. Courts and Arbitration

Arbitration-related cases are split amongst Romanian courts, with local courts responsible for recognition and enforcement of arbitral awards, while the 15 regional Courts of Appeal are the courts of first instance for annulment of awards. Although interviewees were broadly positive about the approach of Romanian courts to arbitration, noting specifically the low rates of success of actions for annulment of arbitral awards (interviewees reporting a rate of 5% in the Bucharest Court of Appeal), most interviewees agreed that the courts' positive attitude towards arbitration did not always reflect a solid understanding of arbitration on the part of judges.

Interviewees particularly highlighted in this respect that Romanian arbitration law permits courts hearing an action for annulment of an arbitration award to verify that any mandatory provisions of Romanian law had been applied correctly by the arbitrator(s). Importantly, this relates not only to public policy, as is common in many jurisdictions, but to the broader category of mandatory law. Interviewees saw this as particularly problematic given what they viewed as a tendency of Romanian judges to view mandatory law broadly, rather than including only laws expressly stated to be mandatory. Interviewees described this as a creating a situation in which an award might be annulled simply because the arbitrator(s) applied a law incorrectly or applied it differently than would the court. This criticism should, however, be seen in the context of the low success rate of annulment actions in Romanian courts, as already noted, so is best understood as reflecting a frustration of practitioners rather than an indication that Romanian courts routinely engage in the substantive review of arbitral awards.

A second concern noted by interviewees related to decisions by the Bucharest Court of Appeal on the appointment of emergency arbitrators by the CCIR. The ability to request an emergency arbitrator had been introduced into the CCIR's rules in 2018, and was described by interviewees as a popular addition, with more requests for appointments than had been expected. However, the Bucharest Court of Appeal has subsequently set aside decisions by emergency arbitrators, either because the use of an emergency arbitrator was said to be inconsistent with the parties' arbitration agreement (e.g. the arbitration agreement specified that there would be three arbitrators but only one emergency arbitrator was appointed), or on the ground that Section 585 of the Romanian Code of Civil Procedure reserves to courts the power to hear requests for provisional measures or interim relief prior to the establishment of the arbitral tribunal (and so implicitly precludes such decisions being made by an emergency arbitrator). Indications of a more positive approach to this issue can

potentially be seen in a September 2023 decision, issued after these interviews were performed, in which the Bucharest Court of Appeal addressed a decision by an emergency arbitrator but did not challenge the legitimacy of the emergency arbitrator procedure. Nonetheless, the Court did still annul the emergency arbitrator's award, in a reflection of the concern expressed in the previous paragraph, on the ground that the award breached mandatory provisions of Romania's public procurement law.

With respect to judges working as arbitrators, interviewees commented that while a decade ago it was common for judges from Romania's higher courts to become arbitrators after retiring, this is far less common now, and most arbitrators in Romania are lawyers. That said, retired judges were still seen as influential in domestic arbitration practice, given their prominence and prestige, with one interviewee describing them as implicitly setting the tone for domestic arbitration procedure. Concerns were expressed in that respect that retired judges often did not fully appreciate the difference between arbitration and litigation, and could be expected to adopt court-like procedures and be open to motions made on purely technical grounds, rather than focusing on the resolution of the underlying dispute.

7. Arbitration Procedure

As might be expected given the preceding discussion, interviewees described arbitral procedure in Romania as differing based on the context of the arbitration and the individuals involved. This means not just whether an arbitration is domestic or international, but the past experiences of the participants, particularly the arbitrators, and whether that experience involves significant amounts of international arbitration or primarily domestic litigation.

Domestic arbitrations, as well as most arbitrations at the CCIR, were described as functioning much like court litigation. This was attributed to the fact that many practitioners in such arbitrations, including arbitrators, will have limited international experience, as well as to the ongoing norm-setting impact of prominent retired judges. One interviewee described the similarity to litigation as extending to the point that there would be no advance procedural scheduling of the arbitration, with parties attending repeated smaller hearings and finding out at the hearing what the next steps in the arbitration would be.

However, interviewees also emphasised that this approach was gradually changing, even domestically, with younger practitioners and arbitrators in particular being influenced by their experiences with international arbitration and by training on international arbitration that is now more easily available. As a result, interviewees stated that when an arbitration involves either younger practitioners or older

practitioner with significant international experience, even domestic arbitrations will often proceed in accordance with procedures familiar to international arbitration.

A further change noted by interviewees was the decreased importance in Romanian arbitration of academics serving as arbitrators. Interviewees commented that this used to be a prominent feature of arbitration practice, particularly in the 1990s after the revolution, as academics were respected and had played a role as arbitrators during the communist era. Because of this, academics in the 1990s were part of a limited group of experienced Romanian arbitrators. However, this was described as having now changed, with full-time academics no longer having a substantial role as arbitrators. This doesn't mean that no academics at all work as arbitrators, but interviewees commented that contemporary "academic" arbitrators in Romania are predominantly also practitioners, to a significant degree because academic pay is so poor that legal academics need the additional income from working as a practitioner.

Nonetheless, despite the increasing influence of international arbitration procedures on Romanian arbitration, interviewees noted an ongoing expectation that Romanian arbitrators would reflect in fundamental ways standards characteristic of Romanian judges. Most notably, Romanian arbitrators were described as expected to adopt an inquisitorial approach to the proceedings, focusing on attempting to get the correct outcome and apply the law correctly, rather than adopting the more "adversarial" practice of allowing the parties' to control the procedure and then issuing a decision based primarily on the parties' submissions.

Finally, consistent with the points already made about the impact of Romania's history on the development of arbitration in Romania, Romania's past experience with corruption, including specifically in the arbitration context, can also be seen to have impacted the Romanian approach to arbitration. Interviewees expressed strong views on the importance of the impartiality of all arbitrators, including party-appointed arbitrators, rather than seeing party-appointed arbitrators as having any specific obligation to their appointing party. Similarly, interviewees emphasised the importance of arbitrators having limited contacts with their appointing party, both before appointment and after. Interviewees stated, for example, that when contacting an arbitrator regarding a possible appointment, it would be appropriate to confirm the arbitrator's availability and that no conflicts existed, but that discussions should not go further. Similarly, while it is not uncommon for party-appointed arbitrators in many jurisdictions to consult with their appointing party during the process of appointing a Chair of the tribunal, interviewees were consistent that they would not expect this to be done in the Romanian context. Finally, one interviewee highlighted that the rules of the CCIR now explicitly prevent individuals serving as an arbitrator in a CCIR arbitration from simultaneously serving as counsel in another CCIR arbitration.

8. Language and Arbitration

Unsurprisingly, given Romania's significant engagement with international arbitration, interviewees expressed the view that it would be difficult to have a successful arbitration practice in Bucharest without strong English. This was, however, qualified by an acknowledgement that some domestic arbitrators were able to focus solely on domestic arbitration in Romanian, and that a different situation might exist outside Bucharest.

This engagement with English is also notably prominent in arbitration-focused educational activities in Romania, with the Vis Moot specifically praised by interviewees for providing students with the opportunity to gain experience of doing legal work in English. More significantly, the International Arbitration LLM offered at the University of Bucharest is only offered in English, ensuring that even local Romanian students with an interest in working in arbitration will have the opportunity to gain experience in using English (one interviewee commented that this was a primary reason they personally took the LLM).

However, despite the importance of English, one interviewee emphasised that possession of a second European language was also seen as beneficial. French specifically was highlighted in this respect, arguably reflecting the important of the ICC in international arbitration practice in Romania, as well perhaps as the similarities between Romanian and French (both being Romance languages).

9. Arbitration Education and Entry into Arbitration Practice

One of the most prominent successes of arbitration in Romania has been the expansion of arbitration education over the past decade in Bucharest. Not only does the University of Bucharest offer an LLM in international arbitration, taught in English to facilitate the involvement of both foreign students and foreign speakers, but interviewees noted that even at the undergraduate level students at the University of Bucharest now have access to an optional course focused on arbitration. Moreover, the University has had an International Arbitration Research Center since 2016.[21] Interviewees noted an observable impact from these efforts, with many entry-level individuals showing a well-developed understanding of arbitration and its norms. One interviewee did note that the International Arbitration LLM now has a smaller number of students per year than a decade ago, but there was no indication in the statements by interviewees that this was seen as reflecting a change in views on its quality or utility, rather than perhaps simply reflecting increased competition from a larger number of arbitration LLMs now available internationally.

[21] https://www.linkedin.com/company/iarc-ub/ (last visited 17 January 2025).

More broadly, interviewees commented that possession of an LLM is an expectation in the Romanian legal market, and that LLM study is normally taken immediately after completing an undergraduate law degree. However, no preference was expressed between foreign LLMs and domestic, and it was noted that in many cases an LLM is taken part-time while working rather than being a pre-hiring requirement.

As in many jurisdictions, participation in the Vis Moot was seen positively, but interviewees emphasised that the perceived benefit from a hiring firm's perspective was not an enhanced knowledge of arbitration, but rather that moot participation indicates that an applicant possesses personal qualities desirable in a junior hire, and that they have already gained some level of experience in the realities of legal practice. Consistent with this view, interviewees emphasised that there are a range of moot options available to students, and did not particularly prioritise the Vis Moot over other leading moots.

Overall, interviewees did not identify a single preferred route for individuals wishing to enter arbitration practice in Romania, emphasising instead the desirability of combining arbitration knowledge and interest with the skills and personal qualities more broadly desirable in legal practice. Arguably this reflects the nature of the Romanian arbitration market, as described above, in which for most practitioners arbitration will only be a proportion of their work, rather than being a full-time specialisation. As a result, too strong a focus on arbitration by a student or other junior applicant may close potential doors, rather than opening arbitration-specific ones. Nonetheless, interviewees were clear in their positive view of the high levels of arbitration understanding they saw in recent graduates, and given the increased commonness in Romania of graduates with such knowledge, engagement with some degree of specialised training in arbitration combined with involvement in mooting (whether Vis or not) is arguably the approach most likely to increase the chance of joining Romania's active group of arbitration practitioners.