„N I C O L A E T I T U L E S C U” U N I V E R S I T Y
F A C U L T Y O F L A W
D O C T O R A L S C H O O L

PhD THESIS

THE RISK IN CONSTRUCTION CONTRACTS

PhD THESIS SUMMARY

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I. CONTENT OF THE DOCTORAL THESIS

CHAPTER VI - ALLOCATION OF RISKS IN STANDARDIZED CONSTRUCTION CONTRACTS IN ROMANIA

II. THE THEME OF RESEARCH AND ITS SCIENTIFIC IMPORTANCE

The present doctoral thesis is entitled *"The Risk in Construction Contracts"*.

The building and infrastructure construction industry is the main engine of economic development, which contributes and directly influences the economic and social development of the states of the world. It is estimated that this industry generates US$7.28 trillion in revenue globally annually, contributing an average of 5-7% of a country's gross domestic product[1].

The multidisciplinary and transnational character of this field of activity, as well as the complexity of the commercial and administrative relations that the construction activities involve, have generated over time and continue to generate in the legal field, in all states of the world, numerous challenges at doctrinal and jurisprudential level regarding the correlation of international norms and customs specific to the industry with the legislative provisions applicable in each of these states.

Taken over by FIDIC[2] from Anglo-Saxon law, and constantly adapted to be used internationally and in countries with civil law systems, standardised construction contracts aimed, *inter alia*, at legally smoothing the roughness between the rules proposed by them and local regulations, evolving over time into a genuine transnational codification of construction practices and customs of general application. However, the interpretation and application of the different provisions of standardised forms of contract in different jurisdictions remains decisively influenced by the provisions of national law applicable to each of those forms.

Until the end of the 1990s, standardized contractual forms developed by FIDIC were used in Romania sporadically, occasionally. As in other Eastern European states, also in Romania the contractual conditions for works began to be widely used with major investments in the field of national infrastructure, financed under the pre-accession programs to the European Union (*e.g.* PHARE, ISPA or SAPARD) by the Commission of the European Union and the European Development Bank. In 2010, the standardized forms of FIDIC contract were formally incorporated into the legislation Romanian by decision of the Romanian Government (*i.e.* H.G. 1405/2010), being used in the field of public procurement until their replacement by national standardized contracts for works approved by H.G. 1/2018.

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[1] According to statistical data published by Eurostat available at URL: https://ec.europa.eu/eurostat/databrowser/view/ei_bsbu_q_r2/default/table?lang=en, access date 01.03.2024

[2] FIDIC - *Fédération Internationale des Ingénieurs Conseils* or *the International Federation of Consulting Engineers*

It should be noted that, from the public information available until the completion of this PhD thesis, so far, Romania seems to be the only country in the world where, in order to ensure a unitary, predictable, transparent and stable contractual framework in public procurement in the field of national infrastructure works, the standardized contractual conditions issued under the auspices of FIDIC have been adopted by a normative act. Also, regarding the national standardized contracts for construction contractors approved by H.G. 1/2018, substantially inspired by the general contractual conditions issued by FIDIC in 2017, it can be noted that these are the most voluminous and detailed standardized forms of contract used in European public projects, thus being perpetuating the Anglo-Saxon concept underlying the elaboration of the original forms of this type of contracts.

Similarly to the challenges encountered in other countries of the world, also in Romania the development of contractual relations under FIDIC standardized forms has known over time numerous syncopes, generated mainly by the lack of correlation of the concepts of Anglo-Saxon law specific to this type of contracts with some provisions of the Romanian common law. Even if through the national standardized contracts for construction works approved by H.G. 1/2018 some of these inconsistencies and mismatches have been removed, the continued use in this type of contracts of notions such as *risk* or *risk events in the* broad sense attributed to them in Anglo-Saxon law and FIDIC contracts[3] continues to generate many confusions in practice.

Although the legal problem generated by the use of standardised forms of contracts for construction works is a complex, challenging one, scientific research in this area has so far remained relatively small in number, being generally limited either to analysing those contracts from the sole perspective of the Romanian common law, or to analysing only certain specific aspects related to them, such as the applicable limitation period and the courts competent to hear disputes arising from such contracts.

Starting from these premises, this paper includes the results of the in-depth research of the main standardized contractual conditions for construction works used in Romania both between professionals and between them and contracting authorities, from the perspective of all applicable legal norms of civil law, administrative law and public procurement. In particular, the risk events specific to each such contract were

[3] It should be noted that, unlike Romanian civil law, in Anglo-Saxon law and standardized contracts issued by FIDIC "contract risk" or "risk events" designate not only fortuitous cases, force majeure or hardship, but also all disruptive events that could occur during the performance of the contract, resulting in deviation from the initial agreement of the parties recorded at the time of conclusion of the contract, whether they have arisen from causes beyond the control of the parties, or are the result of improper performance of contractual obligations by one of the parties or their representatives or employees

analyzed comparatively, as well as the principles and distribution of the negative consequences of the occurrence of these events between the contracting parties.

The element of novelty bring to the civil law landscape by the doctoral thesis consists in the integrated, systematic approach of the legal and contractual provisions regarding the contract for construction works, but also in the opinions expressed regarding the intervention of risk events and the allocation of their consequences, in the specialized literature, Romanian and foreign, and relevant case-law, from both national and comparative law perspectives.

Thus, the doctoral thesis is the first specialized work in contemporary Romanian doctrine which, under the pretext of analyzing the distribution of risks between the parties to standardized contracts for construction works, performs a complete, thorough review of the legal norms applicable both to the simplest of these types of contracts, but also to some of the most complex, intended to regulate legal relations of public law arising under administrative law and public procurement, starting with the Roman period, continuing with the Calimach and Caragea codes, and the Civil Code of the United Romanian Principalities, and ending with the legislative provisions of the current Civil Code, administrative law and public procurement law. From this perspective, the paper is of particular interest to practitioners involved in the field of carrying out such standardized contracts, be they lawyers, economists, engineers, architects or consultants, both by synthesizing and systematizing the applicable legislation depending on the civil or administrative nature of the contract, but also by the solid benchmarks it offers for judicious navigation through the multitude of incident normative acts, while highlighting differences in the principles of interpretation applicable to one or other of the types of standardised contracts studied.

Last but not least, the distribution of risks in standardized construction contracts concluded under the auspices of Romanian law is a topical subject, being part of the efforts to deepen and clarify the divergent contractual issues encountered in practice, in order to improve the conflicting contractual conduct of the parties and to prevent as much as possible contractual disputes.

III. THE MAIN OBJECTIVES OF THE RESEARCH AND ITS METHODOLOGY

During the scientific research of the proposed theme underlying the elaboration of the doctoral thesis, the following objectives were pursued:

1. Research and description of the political, religious, social and economic historical context in which the construction contract appeared and developed over the centuries, starting with the prehistoric period and ending with the modern era;

2. Research and description of the emergence and evolution in the Roman provinces and in the Romanian historical regions of the precursor of the current construction contract - the lease of works contract;

3. Analysis of the civil and administrative contract for construction from the perspective of existing regulations in Romanian law;

4. Identification and definition of the concept of *risk*;

5. Comparative analysis of the allocation of risks in standardized construction contracts concluded under Romanian law;

6. Identification and description of the negative consequences of risk events;

7. Analysis of guarantees and insurances specific to standardized construction contracts;

8. Comparative analysis of contractual claims and dispute resolution procedures;

9. Identifying current legal challenges and trends in standardized construction contracts;

10. Propose de *lege ferenda* solutions to improve the performance of contractor contracts.

In order to achieve the proposed objectives, during the scientific research activity were used several complementary methods of analysis, which allowed an integrated and complete approach to the issues studied in the doctoral thesis. Thus, in particular:

- *The historical method* was used to research the regulations of the Romanian law regarding the lease of works and the construction contract from the perspective of their succession in time, but also to highlight the evolution of various standardized forms of contract from their appearance to date;

- *The systematic and teleological method* involved approaching the bibliography, the legal and contractual provisions underlying the research in an integrated manner, in accordance with the applicable legal principles and the hierarchy of normative acts;

- *The logical method* was used to interpret the analyzed contractual provisions, but also to corroborate them with the applicable legislative provisions, theoretical and practical aspects;

- *The comparative method* was mainly used to establish the similarities and differences between the analyzed standardized contracts regarding the distribution

between the parties of the negative consequences of risk events, but also for the comparative analysis of the vision of various legal systems on construction contracts;

- Last but not least, *the linguistic method* was used to establish the correct meanings of the contractual texts, by comparing the Romanian language versions of standardized contracts issued by FIDIC with their original English versions, identifying and removing translation differences that could have substantially changed the original meanings of those texts.

IV. THE STRUCTURE OF THE THESIS

The doctoral thesis is structured in thirteen (13) chapters, each of which consisting of several sections.

Chapter I of the thesis offers a synthetic description of the evolution in time of constructions in the historical, political, religious, social and economic context specific to each epoch, starting with the prehistoric period and ending with the modern era. In this sense, the thesis follows the evolution over the centuries, especially within the European space, of the way of ensuring and organizing the essential elements for building constructions, namely construction materials and equipment, labor, and financing.

Chapter II of the paper analyzes the appearance and evolution of the lease agreement, as a precursor of the construction contract, in the Roman provinces and in the Romanian historical regions. In the light of the introductory considerations regarding the primordial role played in the evolution of law by the circulation of concepts, principles, institutions and legal texts from one society to another, respectively by the loan, transposition and mutual influence between the various legal systems, the doctoral thesis describes the main features of the *locatio conductio operis faciendi* specific to Roman law, of *năimirea lucrărilor și a lucratului* provided for in the Calimach Code, of *tocmelile de slujbe* in the Caragea Code, and, respectively, of the *construction or building enterprise* regulated by the Civil Code of 1864.

Chapter III is dedicated to presenting the main forms of construction contracts regulated currently under the Romanian law. The following shall be analysed in detail in this regard:

- *The construction contract* regulated by the Romanian Civil Code adopted by L. 287/2009, Book V - *About obligations*, Title IX - *Various special contracts*, Chapter VI - *Contractor contract* (art. 1851-1880),

- *The administrative construction contract* regulated in L. 554/2004 *on administrative litigation,* L. 98/2016 *on public procurement,* L. 99/2016 *on sectoral*

procurement, L. 100/2016 *on works concessions and service concessions,* and in the methodological rules of these laws, as well as

- *Standardized construction contracts*, based on standardized forms of contract issued by *Fédération Internationale des Ingénieurs Conseils* - FIDIC, formally transplanted into the Romanian administrative law by adopting H.G. 1405/2010, and subsequently replaced by national standardized forms of contract adopted by H.G. 1/2018.

The doctoral thesis highlights the similarities of the administrative construction contract with the civil construction contract in terms of the similar object of both contracts, but also, especially, the particularities of the administrative construction contract regarding the parties, the legal characters, the conditions of validity, the rules of interpreting the unclear clauses, its conclusion, execution and termination, particularities arising from its nature of a public contract regulated by normative acts of an administrative nature.

The chapter ends with the analysis of standardized construction contracts as a tool elaborated and developed in order to create a familiar contractual framework for contractors with international activity, incorporating global good practices in the field, and protecting them in their relationship with governments in states with the most diverse political and legal systems, regardless of the legal regulations existing at local level, through a balanced allocation of contractual risks between the parties, an adequate guarantee of the performance of obligations, and through the possibility that, in the event of any contractual disagreements, they may be settled by arbitration organized under the auspices of a third-party, impartial international body, not under the authority or political or legal influence of either party (*i.e.* the International Court of Arbitration of the International Chamber of Commerce based in Paris), according to the procedural rules specific to this body.

Chapter IV studies the ways of regulating works contracts in English, French and German law, presenting individually and comparatively the specifics of each of these legal systems regarding the conclusion and modification of contracts, the standardized forms of contract used in each jurisdiction, the taking over of works, the defects notification period, the means of resolving contractual disputes and the applicable limitation periods.

From this perspective, the doctoral thesis captures the influence that Anglo-Saxon law has exerted through standardized construction contracts elaborated by FIDIC, substantially inspired by the standardized forms of contract elaborated in England, on continental law of civil origin, but also the different way in which, unlike Romanian law, the principles and institutions of Anglo-Saxon law have been

transplanted and harmonized with the existing provisions of civil codes relating to construction contracts in French and German law.

Chapter V includes considerations relating to disruptive events, more or less foreseeable at the time of conclusion of the contract, which may influence the course of performance of the contract, resulting in deviations, varying in nature and scope, from the parties' original legitimate purpose and expectations. Within this framework, the concepts of *risk, imputability of risk* and *attribution of risk under the* auspices of Romanian law, *risk* in the contract for construction works regulated by the Civil Code, and the notion of *risk* in Anglo-Saxon law are analyzed and defined.

Chapter VI is intended for a thorough analysis of risk allocation in standardized contracts for construction works commonly used in Romania. For this purpose, it is studied comparatively how to pre-allocate risks in:

- Standardized contractual forms issued by FIDIC - First Edition 1999 and Second Edition 2017, found in private sector projects, and in

- Standardized forms based on or inspired by FIDIC contract conditions, used in the field of public works - General Conditions of Contract First Edition 1999 (adopted by H.G. 1405/2010), Special Conditions of Contract for Works designed by the employer (adopted by M.T. Order no. 146/2011), Special Conditions of Contract for equipment and constructions, including design (adopted by M.T. Order no. 146/2011 and updated/amended by MT Order No. 600/2017), and the General Conditions of Contract for Public or Sectoral Works (adopted by H.G. no. 1/2018),

depending on which contracting party is to bear the consequences of their intervention, the risks being allocated to the contractor or employer, shared between the contractor and the employer, or borne alternately by the employer or by the contractor.

Chapter VII sets out the negative consequences of the occurrence of risk events during the execution of works contracts - delay in the execution of the contract, and the recording of damages, losses and additional costs - the types of compensation to which the parties are entitled under the standardized forms of contract analyzed, and how these compensation are quantified.

Chapter VIII explores the guarantees to be provided by the contractor according to standardized forms of contract in terms of their purpose and amount, period of validity, method of constitution, conditions under which they can be retained by the employer, and conditions under which they must be returned to the contractor. In this respect, the guarantee for participation in the contract award procedure, the guarantee for the advance payment, the performance guarantee constituted by a guarantee instrument, the retention money as a method of establishing the

performance guarantee, the guarantee for the payment of the amounts granted to the contractor by a decision of the dispute adjudication board, but also the guarantees that the contractor benefits from for the payment of the price - the legal mortgage of the architects and contractors, and the guarantees which may be provided for this purpose by means of guarantee instruments.

Chapter IX reviews the types of insurance that must be established, mandatorily according to the standardized forms of contract analyzed, in order to cover losses incurred as a result of the possible intervention during the execution of contracts of unpredictable, unexpected risk events, which cause injuries, deaths or material damage (*e.g.* accidents at work, hidden defects in materials or workmanship, professional negligence, fires, floods, etc.).

Chapter X is dedicated to contractual claims, respectively the formal procedure provided by each of the standardized forms of contract studied for one party to inform the other party of the occurrence of a risk event that disrupts the performance of the contract, and of the claims that that party may have regarding the compensation of the negative consequences recorded as a result of the occurrence of the event. Also, the chapter describes the procedure that the engineer/supervisor, by virtue of its role as mediator of the parties' divergent interests, must go through, in order to reach an agreement between them on the object of the claim, and, to the extent that this is not possible, in order to issue a determination/decision on the claim in question, binding on the parties until it is reassessed/reviewed by a dispute adjudication board, arbitral tribunal or court, as the case may be.

Chapter XI analyzes the stages of resolving contractual disputes resulting from standardized construction contracts, after issuing the engineer's determination/supervisor's decision and crystallizing the dispute. In this regard, the contractual stages and formalities of the dispute adjudication board, communication of the notice of dissatisfaction / notification of disagreement, the attempt to settle disputes amicably, and that of dispute settlement by courts or through institutionalized arbitration are taken, focusing on the particularities of each dispute resolution modality depending on the civil or administrative nature of the standardized forms of contract studied.

Chapter XII includes a review of the main contemporary challenges and trends in the field of construction contract, starting from identifying the opportunistic contractual behavior of the parties as the main source of the ineffectiveness of standardized contracts, and continuing with the presentation of the current legal and technological means by which the parties' divergent interests are tried to be aligned - standardized contracts of relational type, *smart contracts*, and the use of building

information modelling (BIM). The chapter concludes with the presentation of modern techniques for resolving contractual disputes through decentralized justice, a model for dispute resolution by combining technologies and concepts from *blockchain*, *crowdsourcing* and *game theory*.

Chapter XIII contains the general conclusions of scientific research, the study of normative acts, jurisprudence and specialized doctrine leading to the outline of several *de lege ferenda* proposals for internal normative acts, presented below.

V. CONCLUSIONS AND *DE LEGE FERENDA* PROPOSALS

Since the initiation of the scientific research that is the subject of this doctoral thesis in 2018, the legislation applicable to construction contracts has undergone numerous changes, especially in the field of public works contracts. Even though some clarifications and improvements have been made to the regulatory provisions on the provision of guarantees, prior procedures and limitation periods applicable to administrative contracts, there are still some legislative inconsistencies and uncertainties on which the legislator's intervention would be welcome, in particular with regard to the following aspects:

- ***Simplifying and correlating legal warranty periods and limitation periods in the field of construction defects*** - Currently, according to the legal provisions in force[4] The taking over of constructions is carried out in two (2) stages:

- taking over upon completion of works (referred to in the Civil Code *as provisional taking over*), when the defects notification period begins to run, and

- final taking over, which will be organized within a maximum of *ten (10) days* from the expiration date of the defects notification period[5].

The defects notification period shall be established by agreement of the parties, respecting the minimum durations imposed by L. 10/1995[6], as follows:

- *5 years* for constructions classified in importance categories A (*i.e.* constructions of exceptional importance, such as, for example, nuclear reactors, tall dams or located on difficult terrain, constructions with unique character, with special heritage value) and B (*i.e.* buildings of particular importance, e.g. railways, motorways, bridges, ports, airports, or buildings of particular heritage value);

- *3 years* for constructions classified in importance category C (*i.e.* constructions of normal importance, such as residential buildings with more than two

[4] C. civ. - art. 1878 para. (1), and H.G. 343/2017 - art. 3
[5] H.G. 343/2017 - art. 24
[6] C. civ. - art. 1879 para. (1), and L. 10/1995 - Art. 7 para. (3)

levels, current industrial and agrozootechnical constructions, constructions with usual characteristics and functions, but with heritage values);

- *1 year* for constructions classified in importance category D (*i.e.* low-importance constructions, such as, for example, residential buildings with a maximum of two levels, household outbuildings or temporary constructions).

Once the acceptance is carried out at the end of the works, the risks of construction will be transferred to the employer[7], but the contractor will have the obligation to guarantee the employer against qualitative defects and defects of the construction occurred during the defects notification period established according to the law[8] for reasons not related to improper operation of the construction[9].

After the final taking over, the contractor will be liable only *"for the hidden defects of the construction, arising within 10 years from the reception of the work, as well as after the fulfillment of this term, throughout the existence of the construction, for the defects of the resistance structure resulting from non-compliance with the norms [...] of execution in force on the date of its completion".* [10]

As for the limitation of the substantive right of action for construction defects, according to the provisions of the new Civil Code, it will begin to run:

- *For apparent (patent) defects* - from the date of signing the final acceptance report by the employer or the expiration of the term for remedying apparent defects granted to the contractor by the employer through the final acceptance report, as the case may be[11];

- *For hidden (latent) defects* - after the expiration of a warranty period of *three (3) years* from the date of delivery or final acceptance of the construction, unless the hidden defect was noticed earlier, when the limitation will begin to run from the date of its identification[12].

As follows from the above, in Romanian law, the system of guarantee terms is currently complicated, confusing, especially because of the division of the taking over (reception) of constructions into *two (2) moments*: *provisional* reception and *final* reception, but also because of the numerous legislative changes regarding reception made after 1990 without ensuring an adequate correlation between them.

In illustrating these statements, we have presented as an example the situation of a category A or B construction, for which, after provisional reception, a first warranty period of at least *five (5) years will begin to run*, at the expiry of which,

[7] C. civ. - art. 1878 para. (2)
[8] L. 10/1995 - Art. 25 lit. k)
[9] H.G. 343/2017 - art. 28 para. (1)
[10] L. 10/1995 - Art. 30
[11] C. civ. - art. 1880 para. (1) and 2530 para. (1)
[12] C. civ. - art. 2531 para. (1) (b)

under ideal conditions, final reception will take place, from the date of which the general limitation period of *three (3) years* will begin to run for actions relating to hidden defects in construction. Also from the final reception, the warranty period of *ten (10) years* will begin to run, and upon expiration of the decennial guarantee, the general limitation period of *three (3) years* for actions relating to hidden defects of the construction will begin to run.

Under the legal provisions in force, any project in the mentioned categories will actually have two receptions, a cumulative warranty duration of *fifteen (15) years*, plus a generous limitation period of *three (3) years* what will allow the employer to bring an action against the contractor regarding hidden defects of the construction at any time within a maximum period of *eighteen (18) years*.

De lege ferenda, I consider that the current system of guarantee periods should be updated and simplified, following the model currently existing in French and German law, by establishing a single moment of acceptance (reception) of constructions from which all legal guarantee periods begin to run, both that of *perfect completion* of this for the remedy by the contractor of the nonconformities recorded by the beneficiary in the reception report, as well as in the decennial guarantee report.

Equally, I consider that the correlation between the warranty periods and the limitation periods existing in the Civ. Civ. fr. should also be taken over, by establishing a single limitation period of *ten years (10) years* from the date of receipt of the works for actions to trigger the liability of contractors who owe the decennial guarantee and their subcontractors for defects in the structure of the construction or its inseparable equipment, which make it improper to use the construction according to its intended purpose.

- Introduction of compulsory insurance for the decennial guarantee - As outlined in the literature[13]: *"The ultimate reason for the existence of any obligation is its execution. Securing the obligation shall constitute a measure to ensure such performance."*

Currently, although L. 10/1995 establishes for the contractor a guarantee period of *ten (10) years* for hidden defects of the work, a term that begins to run from the date of final acceptance of the construction, the Romanian legislation does not provide for a way to guarantee the fulfillment by the contractor of the remedial obligations that may be incumbent on him under the decennial guarantee.

De lege ferenda, we consider that even in this situation should be embraced the solution C. civ. fr. according to which, before starting works in the case of private construction contracts, respectively, at the time of submitting the bid in the procedure

[13] C. Stătescu, C. Bîrsan, *op. cit.*, p. 415

for awarding a public procurement contract, the contractor is obliged to prove the conclusion of an insurance intended to cover the equivalent value of the remedial obligations incumbent on him under the guarantee decennical, which it will maintain throughout the warranty period until its expiry.

- Clarification of the notion of "worker" in Art. 1856 C. Civ. - By a provision derogating from the principle of relativity of the contract, the Civil Code[14] establishes that *persons* who, under a contract concluded with the contractor, have carried out an activity within or in connection with construction works subject to a contractor contract for construction works without being paid by the contractor, will benefit from the right to claim payment of claims directly from the employer, but only within the limit of the amounts that the employer owes to the contractor at the time of bringing the action.

Even if art. 1856 of the Civil Code refers generally to *persons*, and not to *natural or legal persons*, the title of the article -*"Direct action of workers"* denotes the intention of the legislator to make a delimitation of the category *of workers*, essentially natural persons, who benefit from direct action against the employer, from that of *subcontractors*, to which another article of the Civil Code refers to - Article 1852 and which, *per a contrario*, does not benefit from that action.

Given that the wording of Article 1856 of the Civil Code is equivocal, I consider that, *de lege ferenda,* it will be necessary to clarify this issue by reconciling the title of the article with its content, so that the intention of the legislature regarding the persons included in the sphere of holders of direct action against the employer can no longer be questioned.

In this context, however, it should also be noted the European trend manifested in the field of public procurement to include subcontractors among the persons who can benefit from the direct payments mechanism, as well as to streamline their performance to such an extent that payments are made *"without subcontractors having to request such a direct payment"*.[15]

- Correlating the duration of dispute resolution with the dynamics of contractual obligations - Especially in public works contracts, the protection of the contractor against a possible abuse of authority by the employer resulting from his (always) privileged contractual position or from the pursuit of an opportunistic interest can only be ensured by appeal to the competent court or arbitration, respectively by obtaining effective remedies quickly against the actions of the beneficiary.

[14] C. civ. - art. 1856
[15] According to Directive 2014/24/EU - art. 71 para. (7)

In practice, obtaining such remedies may in some cases prove extremely cumbersome, and the procedure is often too lengthy to meet the urgent needs of the contracting parties. In this regard, it should be noted, by way of example, the situation of provisional or protective measures which, according to L. 101/2016, including performance guarantees, can be obtained only by suspending the execution of the administrative public procurement contract until the resolution of the action on the merits, at the request of either party[16], being inadmissible the use of the injunction procedure in this matter.

Equally, in principle, according to the provisions of the CCIR Rules[17], prior to the commencement of arbitration, until the formal submission of a request for arbitration and the constitution of the arbitral tribunal, at the request of one of the parties, an emergency arbitrator appointed for this purpose by the President of the arbitral court may grant interim or precautionary measures, by means of a conclusion binding on the parties, issued in principle no later than *ten (10) days* after the date on which the emergency arbitrator became aware of his appointment[18]. On the other hand, however, it should also be noted the solution of the Bucharest Court of Appeal[19], which accepted the request for annulment of a conclusion issued by the emergency arbitrator appointed under the auspices of the CCIR Rules, considering that the procedural rules of the mentioned institution regarding the emergency arbitrator contravene the mandatory legal provisions of the Code of Civil Procedure and Public Order.

In the light of these clarifications, *de lege ferenda*, I consider it is necessary to review the entire procedural system for resolving disputes arising from administrative construcion contracts, in order to substantially reduce the time for solving those disputes, by correlating it with the contractual requirements and legitimate expectations of the parties, but also by identifying and properly allocating the human and financial resources necessary for this desideratum.

[16] L. 101/2016 - art. 53 para. (2)
[17] Rules of Arbitration of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania in force as of 1 January 2018
[18] CCIR Rules - art. 40, Annex II - *Emergency arbitrator* - art. 8 and 9
[19] Civil Decision No. 76/25.07.2019, issued in file no. 2739/2/2019 - *National Company for Road Infrastructure Management (C.N.A.I.R.) S.A. v. Association Copisa Constructora Pirenaica S.A. – Copisa Constructii S.R.L.*, presented in C.R. Rugină, *Interim reliefs in the age of smart contracts technology, in Challenges of the Knowledge Society - CKS 2021*, p. 265, consulted on 01.03.2024 at: http://cks.univnt.ro/articles/15.html

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