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The Rise and Popularity of Arbitration in the Banking Sector in the EU

Abstract

This paper aims to explain the relationship between the court and the tribunal of arbitration. This paper examines the importance of resolving disputes in the banking sector through arbitration versus regular courts' advantages and disadvantages, especially in the banking sector of Kosovo. The paper focuses particularly on the growing popularity of arbitration in the banking sector in Kosovo, ultimately, arbitration as a dispute resolution procedure, especially disputes that are related to the obligation of the policy, extent of a loss or damage and other related issues with the terms of the insurance contract (policy). It concludes that the quick and effective resolution of disputes from the banking sector should see arbitration as the most efficient alternative for resolving disputes with greater professionalism and safety.

KEYWORDS: Arbitration, Bank, Banking Sector, Court, Insurance Company

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1 Introduction

In the past, disputes in the financial sector were typically resolved through the regular courts of the relevant state.

However, as the financial sector has grown and diversified, tensions have arisen in each country due to the coexistence of two dispute resolution systems from the financial and banking sectors. These two systems include the regular courts and arbitration tribunals. A different logical approach suggests that the coexistence of two parallel systems is not a straightforward

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proposition. It complicates the debate and simultaneously increases the tension regarding the resolution of conflicts from the financial and banking sectors, as well as regular courts or arbitration tribunals. In order to enhance the competitiveness of the banking sector in Kosovo, a number of measures have been implemented with the objective of aligning local legislation with the *acquis communitaire*. Furthermore, the institutional arbitration tribunals are encouraging the incorporation of an arbitration clause in the contracts concluded within the banking sector.

To create a common market that enables the free movement of people, goods, capital, and services, cooperation between countries is increasing in each field, especially in the financial and banking sectors.

Therefore, the need to create a legal framework that serves economic development is a prerequisite that each state must fulfil. The Balkan states, especially Kosovo, aspire to join the EU, and any negative effect should make efforts to improve and constantly improve the regulatory framework in accordance with international standards.

The opening of Kosovo's economy has brought an increase in foreign direct investments, especially in the banking sector. Foreign investments in the banking sector have influenced the growth of the deposit base and, thus, the growth of lending. The greater the degree of integration of the European banking sector, the more secure this market will be. The banking sector's functioning in the European system is ensured and regulated based on EU banking law and the Basel Accords[1].

The creation of a suitable environment for foreign direct investments in the banking sector contributes to the possibility of resolving possible disputes between the parties in arbitration tribunals and not in permanent courts based on international investment laws.

1 The Basel Committee, initially named the Committee of Banking Regulations and Supervisory Practices, was established by the central bank governors of the Group of Ten countries at the end of 1974. It has since expanded its membership to 45 institutions from 28 jurisdictions and has established a series of international standards for bank regulation, most notably the accords on capital adequacy. Although these standards are in and of themselves non-binding, they are issued when agreed by the BCBS and as such, its members are committed to transposing them into their own legislation in one form or another. In the EU, Basel III has been implemented by the Capital Requirements Directive IV (CRDIV) and the Capital Requirements Regulation (CRR).

Therefore, Park[2] has emphasized that bankers sometimes must enforce judgments in their favor against assets located outside the country where the judgment was rendered. However, since few lenders had the foresight to incorporate arbitration clauses in their loan agreements, banks were in a different situation. In recent years, it appears that people have become more and more accustomed to arbitration in the international financial community.

In recent years, binding arbitration agreements have become a feature of many contracts between and with employers for consumer goods and services[3].

The group of skeptics presents the idea that the banking sector is not attracted by arbitration, and this banking industry is somewhat immune to arbitration tribunals[4]. Arbitration to settle disputes is now widespread and is a standard feature in business, consumer, and employment contracts[5]. An international discussion has developed on the suitability and advisability of arbitration in this field; therefore, bankers prefer judges to arbitrators. It is supported by the fact that international arbitration procedures of international financial transactions are seldom the subject matter[6].

The prevalence of arbitration clauses in credit contracts has undergone a notable shift. The ongoing developments within the banking sector of the EU are prompting this industry to gradually lose its previous confidence in the regular courts as a primary avenue for resolving potential disputes. Arbitration proceedings are conducted in arbitration centers such as ICSID, which aim to decentralize disputes by offering a forum for dispute resolution governed by international investment law, independent from national legal and political institutions, and before ad hoc tribunals rather than a permanent court[7].

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2 William W. Park, „Arbitration in banking and finance" *Arbitration in Banking and Finance*, 17 (1998): 213.

3 Thomas J. Stipanowich, Amy J. Schmitz, *Arbitration* (Boston: Aspen Publishing, 2022), 4.

4 James Freeman, „The Use of Arbitration in the Financial Services Industry" *Business Law International*, 16 (2015): 77.

5 Joseph L. Daly, „Arbitration: The Basics" *Journal of American Arbitration*, 5 (2006): 1.

6 Norbert Horn, „The Development of Arbitration in International Financial Transactions" *Arbitration International*, No. 3 (2014): 279-296.

7 Florence Dafe, Williams Zoe, „Banking on Courts: Financialization and the Rise of Third-Party Funding in Investment Arbitration" *Review of International Political Economy*, No. 5 (2021): 1362-1384.

The absence of regular courts to adjudicate cases arising from international trade has had a profound impact on the banking industry[8]. Consequently, the various foreign-capital banks that invest in the banking sector in different territories are interested in including an arbitration clause in their contracts, as the majority of transactions are international in nature.

The popularity of arbitration has been growing in the banking and finance sector for various reasons, as argued by Hatami Alamdari[9]. In addition to these reasons, there are also the unique characteristics of arbitration, such as the indisputable applicability and worldwide recognition of the arbitration decision. Additionally, there is a discrepancy between the general commercial sphere and arbitration in banking and finance[10].

Currently, the arbitration of cases from the financial sector is considered one of the challenges of globalism and is often interpreted as a tendency to „privatize" the judiciary. However, the optimists of using the alternative dispute resolution mechanism (hereinafter referred to as „ADR") count the advantages of arbitration based on the complexity of cases from the financial sector and the necessity for expertise, the confidentiality of the process, and broad international enforceability under Convention on the Recognition and Enforcement of Foreign Arbitral Awards[11].

Arbitration's flexibility during the review process is considered its most significant advantage. This flexibility is expressed in various ways, including determining the time and place of sessions, the involvement of actors in the process, the language used, the hearing of witnesses, and other technical matters.

The LCIA[12] has identified several factors that have contributed to the growing popularity of arbitration. These include the increasing involvement of parties from diverse jurisdictions, the efforts of institutions, and the reduction of fear factors.

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8 Oscar A. Ruiz del Rio, „Arbitration Clauses in International Loans" *Journal of International Arbitration*, No. 4 (1987): 45.

9 Bahar Hatami Alamdari, *The Emerging Popularity of International Arbitration in Banking and Financial Sector–Is this a Fashionable Trend or a Viable Replacement?* (doctoral thesis, University of London, 2016).

10 Irene Han, „Rethinking the Use of Arbitration Clauses by Financial Institutions" *Journal of International Arbitration*, No. 2 (2017): 207-237.

11 Gerard J. Meijer, Richard H. Hansen, „Arbitration and Financial Services", [in:] *Controlling Capital. Public and Private Regulation of Financial Markets*, ed. Nicholas Dorn (London: Routledge, 2016), 193-209.

12 Paula Hodges, Hannah Ambrose, *Use of Arbitration in the Banking and Finance Sector (Part 1): Lcia Statistics Show Growth*. (Herbert Smith Freehills, 2022).

This article will address two research questions:

R.Q. 1: How does the popularity of arbitration increase in the financial and banking sectors in the EU?
R.Q. 2: What is the role of arbitration in the banking sector – case of Kosovo?

To answer the research questions, we will analyze and present the findings that are useful in offering some answers. Legal documents, national and international reports, and other data and documents from the EU institutions and the Central Bank of Kosova and other institutions are analyzed in combination with qualitative research methods, and desk research was used in the article.

This scientific paper employs comparative law, domestic law, and legal materials to elucidate the contours of extant doctrine pertaining to international arbitration. The article proffers an incentive for further study of the field and the resolution of the intricate relationship between regular courts *and* arbitration tribunals. Finally, the article demonstrates that the mechanisms of alternative dispute resolution (ADR) have contributed to the resolution of a considerable number of disputes pertaining to specific transactions. Moreover, it has recently gained greater recognition and is becoming increasingly popular in the banking and finance sector.

2 Results and discussion

2.1. The rise of arbitration in the banking sector of Kosovo

The financial and banking sector in Kosovo is subject to a multitude of challenges. Kosovo is a small state in Southeast Europe that declared its independence on February 17, 2008. Prior to this, the banking industry in Kosovo operated from 1999 to 2008 without yet gaining the legal status of an independent and sovereign state. The banking sector in Kosovo in the 1990s was almost destroyed. At this time, the People's Bank of Kosovo was inactivated and functioned as a separate unit of the system of nine People's Banks (Central), which constituted a unit of the federation of former Yugoslavia.

In addition to the political path of Kosovo, its banking system has also developed, supervised UNMIK administration[13] by the Central Banking Authority as the predecessor of the Central Bank of Kosovo[14].

Based on the Constitution of the Republic of Kosovo[15], CBK has public legal subjectivity based on articles 11 and 140 of the Constitution[16] and the provisions of the law on the CBK[17]; it also has administrative, financial, and managerial autonomy. The CBK's role and function are twofold: firstly, to ensure stability in the banking sector and, secondly, to ensure stability in the financial sector. This latter function is contingent upon economic development. The banking system of Kosovo is structured into two tiers, with the CBK occupying the first tier and commercial banks comprising the second tier.

Currently, Kosovo operates 12 commercial banks[18] , which will comprise 6.76 billion euros of banking sector assets in 2022, resulting in an increase of 13.4 percent compared to the 11.3 percent increase in the previous year[19]. The law regulates the legal basis on which the banking system of Kosovo operates on banks, other micro-financial institutions, and non-banking financial institutions[20]. In addition to the CBK and commercial banks, other participants in the banking sector in Kosovo include

13 The Security Council, by its Resolution 1244 of 10 June 1999, authorized the Secretary-General to establish an international civil presence in Kosovo – the United Nations Interim Administration Mission in Kosovo (UNMIK) – in order to provide an interim administration for Kosovo under which the people of Kosovo could enjoy substantial autonomy.

14 Central Bank of Kosovo, *Functions and Responsibilities*, 2024.

15 *Constitution of the Republic of Kosovo*. Official Gazette of the Republic of Kosovo, K-09042008. Published: 09.04.2008.

16 See: Constitution of the Republic of Kosovo: Article 11 [Currency]1. „The Republic of Kosovo uses as legal tender one single currency. 2. The Central Banking Authority of Kosovo is independent and is called the Central Bank of the Republic of Kosovo. Article 140 [Central Bank of Kosovo]1. The Central Bank of the Republic of Kosovo is an independent institution which reports to the Assembly of Kosovo. 2. The Central Bank of the Republic of Kosovo exercises its competencies and powers exclusively in accordance with this Constitution and other applicable legislative instruments".

17 Law on Central Bank of the Republic of Kosovo. Official Gazette of the Republic of Kosovo, No. 77, 16 August 2010, Law No.03/L –209.

18 Central Bank of Kosovo, *Lists of licensed/registered financial institutions*, 2023.

19 Central Bank of Kosovo, *Annual Report 2022*, 2022.

20 Law on Banks, Microfinance Institutions and Non-Bank Financial Institutions. Official Gazette of the Republic of Kosovo, No. 11, 11 may 2012, Law No. 04/L-093.

insurance companies, microfinance institutions, non-banking institutions, exchanges, and money transfer agencies.

All the above actors offer competitiveness and attractiveness in the banking sector, which enables economic development in the country. Also, they offer banking products and services released in the market; they must be in harmony with the standards and the European framework in the banking field. In the last decades, in co-existence with this system, the normative order developed by the EU is based on the principle of the effectiveness of EU law and the duty of sincere cooperation between Member States and the Union[21].

However, the large number of unresolved legal cases in the banking sector remains worrying, which is believed to be around 7,800 cases from 2000 to 2017, translated into a value of 150,367,847.72 EUR[22]. Therefore, the debate on the review of unresolved court cases has become a challenging topic, considering that the prolongation of the review of these cases automatically affects the blocking of these monetary means and consequently affects the economic developments in Kosovo.

In light of the development trends in the banking sector and the globalization of transactions in the banking industry, CBK has taken action intending to enable the fastest and most efficient resolution of the accounts that come from the banking industry. Therefore, in the law on CBK,[23] the possibility of conducting a judicial review in regular courts or in an arbitration tribunal is expressly defined and is expressly regulated in Article 77[24] which provides: „In any court or arbitration proceeding against the Central Bank, a member of the Central Bank's decision-making bodies or its staff, or an agent of the Central Bank in carrying out their duties to the Bank; The court or arbitration panel in reaching its decision may examine whether the defendant acted unlawfully or in an arbitrary or capricious

21 Manuel Penades Fons, „The Effectiveness of EU Law and Private Arbitration" *Common Market Law Review*, No. 4 (2020): 1069-1106.

22 „Potential of banking sector in Kosovo: Challenges and Opportunities" *The Kosovo Banker*, No. 16 (2019): 1-52.

23 Law on Central Bank of the Republic of Kosovo. Official Gazette of the Republic of Kosovo, No. 77, 16 August 2010, Law No. 03/L-209.

24 See: Law on Central Bank of the Republic of Kosovo (Law No.03/L –209), Article 77 (Judicial review): „1.3. the action in question shall continue without restriction during the period of an appeal and any further appeal or other judicial proceedings related to the appeal; and 1.4. the court or arbitration panel shall be authorized, in appropriate cases, to award monetary damages to injured parties, but shall not enjoin, stay, suspend or set aside the actions of the Central Bank".

manner in light of the facts and the relevant Law and regulations; A member of the Central Bank's decision-making bodies or its staff, or an agent of the Central Bank, including a person previously holding such a position, shall not be liable for damages or otherwise liable for acts or omissions performed pursuant to and in the course of the duties and responsibilities performed on behalf of the Central Bank unless it has been proven that such acts or omissions constitute intentional wrongful conduct or gross neglect"[25]. Additionally, the CBK facilitates the examination of banking sector disputes through arbitration as an alternative dispute resolution (ADR) method, utilizing the expertise of institutional tribunals. In Kosovo, two other institutional arbitration tribunals, established under the Kosovo Chamber of Commerce and the American Chamber of Commerce, continue to advocate for the inclusion of arbitration clauses in credit contracts.

In 2017, the CBK approved the Regulation for the procedures that determine the functioning of the Arbitration Tribunal[26]. Based on this Regulation, a dispute between the parties can be resolved through arbitration only if there is an agreement between the parties, and the arbitration agreement is valid only if it is concluded in writing. Furthermore, the Arbitration Tribunal stipulates that the jurisdiction may address all matters pertaining to the obligation set forth in a policy, including the handling and adjustment of damage and other matters related to the terms of the insurance contract (policy). This Regulation is in accordance with the Law on Arbitration in Kosovo[27].

In this law, Article 39 (1) regulates the recognition and execution of decisions issued outside Kosovo: „Kosovo courts recognize arbitration decisions issued outside Kosovo as binding and execute them if the decisions in question have been recognized and declared enforceable".

In accordance with the Law on Arbitration in Kosovo, the arbitration tribunal is obliged to apply Kosovo legislation in all cases where an international element is present. In the absence of such an element, the tribunal is required to apply the law designated by the parties as the competent law for the material aspects of the dispute. In the event that no such designation

25 Ibidem.

26 Board of the Central Bank of the Republic of Kosovo, *Regulation on Arbitration Tribunal Procedures*, 30 March 2017.

27 Law on Arbitration. Official Gazette of the Republic of Kosovo, No. 37, 10 September 2008, Law No. 02/L-75.

is made, the tribunal must apply the law determined by the rules of private international law.

There are some cases that are decisively foreseen in the Law on Arbitration in Kosovo; then, when the plaintiff proves to me that the other party cannot act, there is no arbitration agreement is not valid, the appointment of the arbitrator, and other cases provided by law.

The arbitration decision is considered *res judicata*, and the lack of judicial control of the arbitration decision is considered a defect of the arbitration process in the arbitration tribunal. As a result, it is impossible to apply extraordinary legal remedies, i.e., post-award revision, which increases the uncertainty of the parties that in the event of errors occurring during the examination, they cannot be reviewed at another stage.

ICSID has prepared the module[28] for post-award remedies and procedures in arbitration. Based on the ICSID Convention, it is provided that the arbitration tribunal's decision is final and binding. However, the convention also outlines a number of tools and procedures that can be employed to enhance the decision in terms of correction and other technical defects, as well as interpretation.

Meanwhile, revision comes into expression only when we have new facts arbitrarily unknown when the decision was issued. Referring to the ICSD module and the convention, they have listed our types of remedies after an award has been rendered; supplementation and rectification were done first, then interpretation, revision, and annulment.

The annulment of a decision may be sought on four bases: firstly, on the grounds that the tribunal was improperly constituted; secondly, on the grounds that the tribunal has manifestly exceeded its powers; thirdly, on the grounds that a member of the tribunal has been corrupt; and fourthly, on the grounds that the tribunal has seriously departed from a fundamental rule of procedure. Case no. KI 122/17[29] illustrates the situation where the applicant requests the evaluation of the constitutionality of the decisions of the first instance court and the second instance court of appeal and execution of the award issued outside Kosovo.

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28 United Nations Conference on Trade and Development. *Dispute Settlement: State-State UNCTAD*. Series on issues in international investment agreements (United Nations: New York and Geneva, 2003), 6.

29 Česká Exportní Banka A.S. vs. Court of Appeal and Basic Court in Pristina. Judgment in case no. KI 122/17, No. ref.: AGJ 1226/18 (Constitutional Court of Kosovo, 30 April 2018).

In light of the current circumstances, it is evident that disputes pertaining to the insurance sector have become a viable option for arbitration. Conversely, commercial bank disputes continue to be a matter of contention, with banks hesitant to address them through arbitration.

2.2. Popularity of arbitration in the banking sector in the EU

The banking sector, particularly in the EU, has been seeking to reduce the level of losses in the banking industry. For decades, the banking sector has been confronted with a dilemma: to continue with the traditional resolution of disputes or to seek an alternative solution such as arbitration. The dynamics of changing a legal system are not so fast that they always adapt in time to the economic flows of that sector[30]. Banks, as participants in the banking sector, are distinct from insurance companies and other actors who have readily represented the alternative resolution of disputes.

The literature emphasizes that the debtor-creditor relationship has not yet decided to fully believe in arbitration. In most cases, the debtor does not fulfill the obligation to the creditor due to his inability to fulfill the debt and not because of the need to interpret the contract[31]. After the global financial crisis of 2008, the banking sector and, in particular, the banking industry's openness to arbitration underwent a significant transformation. Over the past few decades, arbitration has emerged as the dominant method for dispute settlement on a global scale[32].

Therefore, as stated by Hatami Alamdari[33], the factors that may contribute to a less than optimal dispute resolution experience for parties include cultural, linguistic, legal, and business customs differences. Additionally, the complexity of conflict of laws and rules is a significant concern for disputant parties in cross-border disputes.

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30 Robert A. Kagan, „Should Europe Worry About Adversarial Legalism?" *Oxford Journal of Legal Studies*, No. 2 (1997): 165-183.

31 William W. Park, „Arbitration in banking and finance" *Arbitration in Banking and Finance*, 17 (1998): 213.

32 Nicolas Ollivier, Caroline dos Santos, „Banking and Finance Disputes: to Arbitrate or not to Arbitrate, that is the Question" *Schweizerische Zeitschrift für Wirtschafts-und Finanzmarktrecht/SZW*, 4 (2020): 449-459.

33 Bahar Hatami Alamdari, „The emerging popularity of international arbitration in banking and financial sector–Is this a fashionable trend or a viable replacement?" (doctoral thesis, University of London, 2016).

In light of these challenges, there has been a growing trend towards the harmonization of legislation to facilitate the realization of banking transactions across borders. This has emerged as a necessity between countries. The concept of international arbitration as an alternative dispute resolution has not been readily embraced, despite the fact that it facilitates a more expeditious, efficacious, confidential, and above all, professional judicial examination. Despite the challenges inherent in the consolidation process, it is a viable option; today, there are no such impediments.

As pointed out by Budnitz[34], financial institutions have turned to arbitration not only to avoid huge losses but also to avoid publicity of the litigation. Williams and Dafe[35] , on the other hand, argue that more than 3,000 bilateral international investment treaties (BITs) and trade agreements containing investment chapters govern investment flows and provide the legal basis for investor-state arbitration; this is considered a great achievement in increasing the use of arbitration as a dispute resolution mechanism.

In the case of Deutsche Bank AG v Sri Lanka[36], a request for the institution of arbitration proceedings under the ICSID, resolution the on Financial Derivative Products, *inter alia* investment protection regime the summary: The Claimant created a specific derivative instrument allowing Sri Lanka's state-owned enterprise to hedge against oil price increases and variations. However, the state-owned enterprise failed to make the monthly payments that were required. The claimant terminated the agreement and initiated ICSID proceedings on the grounds of a breach of the Germany-Sri Lanka BIT[37].

According to another group of authors, it highlights the skepticism of the EU's acceptance of another dispute resolution system, such as arbitration. The EU's adherence to the jurisdiction of international dispute settlement

34 Mark E Budnitz, „Arbitration of Disputes Between Consumers and Financial Institutions: a Serious Threat to Consumer Protection" *Ohio State Journal on Dispute Resolution*, No. 2 (1994): 267.

35 Florence Dafe, Zoe Williams, „Banking on courts: financialization and the rise of third-party funding in investment arbitration" *Review of International Political Economy*, 28, No. 5 (2021): 1362-1384.

36 Deutsche Bank AG V. Democratic Socialist Republic of Sri Lanka, International Centre For Settlement of Investment Disputes. Case No. ARB/09/02, Date of Dispatch to the Parties: 31 October 2012.

37 Ibidem.

mechanisms, the Court of Justice of the European Union (CJEU), has been very critical[38].

The case Slovak Republic v. Achmea B.V.[39] emphasizes, among other things, that: „[...] the arbitration procedure is not in itself capable of ensuring the uniform application of EU law that Article 267 Treaty of the Functioning of the European Union (TFEU) aims to guarantee". Therefore, the court insists that: „[...] prior to the enforcement of the arbitral award, a court of the State may be called on to review the compatibility of the arbitral award with EU law, and can make a reference to the Court if need be".

In the decision of CJEU, it is emphasized that the binding agreements between the member states must be interpreted in the light of EU law. Also, the decision of CJEU it is emphasized that:

> „[...] In line with the Court's rulings on arbitral awards deciding disputes between individuals, the national courts' power to review an arbitral award concerning a dispute between an individual and a Member State can validly be limited solely to breaches of fundamental provisions of EU law. That circumstance should not lead to an arbitration clause such as that in the main proceedings contrary to Article 267 TFEU".

Additionally, the effect of using mechanisms for alternative dispute resolution that come from international agreements concluded by the EU is not, in principle, incompatible with Union law[40]. Article 344 TFEU[41] addresses this situation, specifying that EU Member States are prohibited from using other dispute settlement mechanisms to resolve disputes concerning EU law.

Decisions taken by other tribunals and not by the CJEU, it should be noted that the CJEU does not consider them because they do not produce

38 Tasnim Ahmed, „The CJEU and the Introduction of International Dispute Settlement Mechanisms within the EU: Is Alternative Dispute Resolution in the EU in safe hands?" *Pepperdine Dispute Resolution Law Journal*, 22 (2022): 491.

39 Slowakische Republik v. Achmea B.V. Case C-284/16. Judgment of the Court of Justice of the European Union („CJEU"), (Grand Chamber), 6 March 2018.

40 Allan Rosas, „The EU and international dispute settlement" *Europe and the World: A Law Review*, No. 1 (2017): 1-29.

41 Article 344 (ex Article 292 TEC) Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for therein. Official Journal 115, 09/05/2008, P. 0194 – 0194.

any legal effect in the EU. Well, we are presented with another situation if we refer to Article 218 of the TFEU:

> „A Member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the Treaties. Where the opinion of the Court is adverse, the agreement envisaged may not enter into force unless it is amended or the Treaties are revised".

In light of this article, it can be interpreted that CJEU recognizes the agreements between the parties if they are based on EU treaties and EU laws, that is, only when they are connected on the basis of EU legislation. A binding judgment of an international court used by an EU Member State might seek to avoid its obligations under EU law[42].

There is a doubt that the arbitrators in the arbitration tribunals cannot always correctly apply the *acquis communautaire. Therefore*, the application of EU law goes outside the EU institutions, which have legal authorizations to interpret and apply EU laws.

Therefore, this „resistance" presented by the CJEU for denying arbitration decisions only in certain circumstances represents a kind of competition between the two judicial review systems. Uniformity of the EU legal order began to be viewed as a potential threat to international integrity at the time when the EU legal order expanded and developed[43]. Despite the advantages of ADR, its flaws can be divided into two groups. Firstly, there are flaws that relate to the subjective elements of the arbitrators, and secondly, there are flaws that relate to the procedural elements. For example, the assignment of sentences based on the personal agenda may prolong the process of examining the case in arbitration. In addition, procedural defects may result from the summary procedure.

42 Jed Odermatt, „The Court of Justice of the European Union and International Dispute Settlement: Conflict, Cooperation and Coexistence" *Cambridge Yearbook of European Legal Studies*, 24 (2022): 88-110.

43 Ibidem.

3 Conclusions

The article examined the banking industry's open-to-resolution option. Given that today, commercial banks operate in markets in different countries and are automatically confronted with the requirements of local legislation, and in the event of arising disagreements between the parties, they must be addressed to regular courts or arbitration, the possibility of resolving the type of judicial examination of the case has increased the possibility for both parties to decide by contract the use of the arbitration clause. The paper addresses the topic of arbitration and its impact on the economy, particularly in terms of the speed of dispute resolution.

The article examined the key difference between the court and arbitration: the element of time and the speed of resolving the dispute. While in regular courts, an economic-commercial dispute can last for years until the final epilogue, it is resolved relatively in arbitration. The research looked at the difference between the regular system of courts and arbitration tribunals in the case of resolving cases arising from disputes in the financial and banking sectors. The article examines the „conflict" between the two systems and their claims about which type of system is more efficient for resolving disputes in this field, explaining their impact on countries' economies. Elaborating on the lack of escalation in judicial review in arbitration.

We concluded that there is no need for significant differences in the drafting of contracts in the banking sector, but should be promoted that the arbitration clause should be incorporated into the contracts; therefore, arbitration is promoted as an alternative possibility to resolve disputes; it also represents higher security for the parties contracting that in the event of a disagreement between the parties, their rights are realized in a fast, professional and efficient process.

Nevertheless, further research is still required to ascertain the significance of arbitration in fostering economic growth and ensuring effective and impartial dispute resolution. Consequently, it can be posited that daily arbitration represents a vital instrument in resolving disputes that arise within the financial sector, particularly within the banking sector.

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