UDC: 346.9

THE ADVANTAGES OF SOLVING COMMERCIAL DISPUTES BY ARBITRATION

Ljupka Petrevska[1], Marija Bulatovic[2], Ivana Petrevska[3], Miroslava Petrevska[4]

[1]*Faculty of Business Studies and Law, University Union Nikola Tesla, Belgrade, Serbia, ljupka.petrevska@fpsp.edu.rs*

[2]*Institute of Public Health of Serbia „Dr Milan Jovanovic Batut“, mmbulatovic@gmail.com*

[3]*Preschool Teacher Training and Business Informatics College of Applied Studies-Sirmium, Sremska Mitrovica, Serbia, ipetrevska@yahoo.com*

[4]*The College of Tourism, Belgrade, Serbia, miroslava.petrevska@gmail.com*

Abstract: *Solving disputes which come from legal entities' business activities demands, among other, rapid action, safety for the parties involved in the dispute, decision finality, dispute confidentiality, saving time and money. In case that the value of the incurred dispute is financially important for the parties, the more important it is that the dispute gets its final decision as soon as possible. Leaving such disputes to court authorities, regardless of indisputable benefits, cannot answer many specific legal entity needs who have found themselves in a dispute on some subject, and to whom saving time and gaining profit are the most important guidelines in business dealings. The following text shows comparative advantage of arbitration compared to classic judicial proceedings in disputes which occur among legal entities, then comparing certain arbitration types which are available to the parties in the dispute, whereby the objective weaknesses of certain arbitrations are not excluded. Arbitration, whether it is understood as an alternative form of handling disputes, or as a judicial mechanism for solving problematic situations, deserves quality analysis and application in practice in a degree which would be according to the results, as well as all objective advantages of this mechanism.*

Keywords: *Arbitration, ad hoc arbitration, institutional arbitration, accelerated arbitration.*

INTRODUCTORY REMARKS

When it comes to commercial disputes that result from not respecting the contractual provisions, the idea on court settlement is most frequently the one that appears first. However, regardless of the rich court practice in this field, alternative mechanisms for dispute resolution in the economy primarily have the form of arbitration, offer numerous advan-

tages and also have a respectable practice which was developed along the development of overall economic and trade activities.

Usual legal terminology marks the arbitration, along with negotiation and mediation, as alternative method for dispute resolution.

In the historical beginning of resolving the disputes that are similar to the today's institute of arbitration and prior to the formation of institutions in the form of courts, disputes that result from contractual relations were solved by looking for a neutral instance which a priori does not support either party in the dispute, and which mediated in getting some kind of an agreement between the parties of the dispute. During the achievement of one such agreement, the parties have respected the decision that was made by a neutral instance.

Rich professional references that deal with the issue of arbitration resolution of disputes witness in favour of the fact that arbitration took place very early and that some elements of it can also be found in Ancient Egypt, then Ancient Rome and Ancient Greece, as we as in practice at European courts. The first rules that regulated the issues of arbitration have appeared around 15th – 16th century in England and United States of America. Therefore, in these historical beginnings it is possible to find certain traces and elements of arbitration practice, while the real development of arbitration appeared in 20th century, at the time when in many European countries and United States of America there were laws made that also regulated the issue of arbitration and offered this institute as an official alternative to court practice.

At the very beginning of regulating the arbitration activities, the arbitration was practiced as an *ad hoc* possibility, while institutional regulation came somewhat later. Institutional regulation of arbitration has precisely led to the establishment of private organizations whose task was primarily to perform arbitration procedures. The greater development of this institute has taken place parallel with the development and intensification of international trade flows, so today's situation in this field is such that most countries have special laws about arbitration and special arbitration institutions. Abritrary resolution of disputes is most frequently used in economic practice, i.e. it is the most suitable for resolving the disputes with international element in economy.

DEFINITION OF ARBITRATION AND SOURCES OF ARBITRATION LAW

There were numerous attempts to define the arbitration and they are recorded in case of both national and foreign authors. For example, D. Mitrović saw arbitration as „resolution of disputes by a person mutually determined by parties to the contract in the arbitration agreement and, on the other hand, non-state body that solves the dispute that emerged". Then, professor T. Varadi determined arbitration as „non-state institution that resolves the disputes entrusted by the parties that found themselves in a dispute", while professor G. Knezevic defended the attitude that in case of arbitration, its functional character is more important in relation to its organizational character, i.e. the activity of arbitration is more important than the institutional form the activity is expressed on, since the activity is always the same, while oragnizational forms are susceptible to changes.

Among the foreign authors, we can mention V. Lev who set aside main characteristics of arbitration in the following manner: 1. Its the method taht serves for dispute resolution, 2. Disputes are solved by third, i.e. neutral parties that are given mandates by the parties of

the dispute; 3. Mandate also determines the frameworks in which the arbiters many move; 4. Arbitration and trial are similar in the aspect of method, except the case of resolving by the principle ex aequo et bono; 5. That is the method for resolving the disputes of a private character, i.e. arbiters are controlled by the parties, rather than the court; 6. Arbitration decision is final in the aspect of legal remedy; 7. Arbitration decision is obligatory for the parties having in mind that they have had a tacit agreement regarding the respecting of an arbitration decision; 8. Arbitration decision is independent from court bodies in most cases, except some issues, for example compulsory execution.

National Law on Arbitration does not contain the definition of arbitration, since it can be used with several meanings, depending on the context. From all the professional efforts invested in the attempt of a more precise defining of arbitration, we can reach significant elements that define this issue. Therefore, those elements can be defined as: 1. Arbitration is a manner, i.e. method for resolving disputable legal relations between two or more parties; 2. The dispute was entrusted for resolving to the third party, i.e. third parties that were given a mandate by the parties within which they can operate; 3. Arbitration decision is mandatory for the parties since they have accepted the obligation with the very act of entrusting a mandate to arbiters; 4. Execution of arbitrary decision is provided by the state through coercion in case that a party refuses to execute arbitration decision voluntarily.

Sources of arbitration right are classified into material and formal, where by the material sources we imply the will of an authority in one state which is competent for the adoption of regulations that regulate functioning and establishment of arbitration. As formal sources of arbitration law, there appear arbitration agreement of the parties, law on arbitration or the law that regulates judicial process in a country, inter-state bilateral agreements, then international conventions, either multilateral or regional, individual rules of arbitration institutions, international trade customs, arbitration practice and a contribution given by the science of law.

For the regulation of this issue at the international level, the year 1985 is very important when the United Nations Commission on the International Trade Law (UNCITRAL) adopted the model of the Law on International Trade Arbitration (Goldštajn, Triva, 1987, as well as the year 2006 when the same UN Commission has adopted the Model of rules on international trade arbitration. These two sources of international law are significant due to setting widely accepted standards that are applicable to both international and internal, national arbitrations. The third source of international law in the field of arbitration is the New York Convention on recognition and execution of foreign arbitration decisions, and for all international sources of arbitration law there is the same rule that they can have effect in practice only after the ratification by individual countries, by which the mentioned international sources get the strength of a law. In addition to these three sources, bilateral agreements can also have the strength of international sources of arbitartion law, under the condition that they contain arbitration clause based on which physical and legal entities of the signatory countries could appear as parties in dispute before some mutual arbitration.

When it comes to the national sources of the law in the field of arbitration, certainly the most important source is the Law on Arbitration, but that is not the only source, but there also appear other laws, such as Corporate Law, Law on Obligations, Law on Extra-Judicial Proceedings and the like.

The sources of arbitration law can be classified into imperative or mandatory and dispositive, i.e. facultative. Mandatory sources of arbitration law are, for example, regulations of public order that the countries apply in the territory of their competences in case of regulating the relations between their subjects, in case of which there always appears a foreign element. As a dispositive sources of arbitration law we can mention, for example, the rules of UNCITRAL, which are applied conditionally in case of ad hoc arbitrations, if and in the manner in which the parties in the dispute agree regarding their validation.

POSSIBLE APPROACHES IN RESOLUTION OF ECONOMIC DISPUTES

The tendency in modern business is aimed towards more and more frequent practice of extra-judicial resolving of potential economic disputes. The basis for such a practice can be found in previous agreements of the parties, through which they have agrred to use the arbitration mechanism in case of any type of dispute and such previous agreements most frqeuently avoid the addressing to the court. In case of previous agreements between economic subjects that regulate their business relations, and in case of which it is not clearly defined by a special clause which mechanisms and laws are applied for resolving potential disputes, it most frequently happens that, if there comes to disputable situations, they look for solutions in such cases through judicial proceedings, since the courts are an automatic and implying manner of solving the disputes, if otherwise is not precisely defined.

In case of economic disputes, economic subjects can, in addition to courts, choose the using and prediction of one of the alternative forms of solving them, which, among other things, refer to the processes of negotiation, mediation and arbitration. Economic subjects are more and more oriented on the choice of some of the alternative forms in order to avoid strictly formal and very often long judicial processes. The economists who do business today apply modernization in all business segments and in all situations that can have an effect on their economic activities, and thus in the apsect of solving possible disputes with their partners with whom they establish contractual business relations they tend to predict the appearance of disputable situations as well, even in the negotiation phase and during making of the contract, as both the best and most economic manner to resolve them.

In international framework, it often happens that disputable issues are presented before the institution or the body that is of *ad hoc* character and that is only similar to the arbitration, it is not equivalent, since it brings attitudes, opinions and suggestions for solving the disputes and which as such are not suitable for growing into execution title, regardless of the fact that they can seem extremely authoritative. Such opinions and recommendations are mainly given by persons who are experts and they most frequently refer to the issues of technical nature.

In addition, the disputes occured in economy can be given over, in some situations and under certain conditions, to the institutions taht represent real arbitration institutions because their decisions are suitable for compulsory execution and the specificity of these institutions is in the fact that they limit their activity only to the consideration of the issues of technical nature[1].

Then, institutions for conciliation and mediation represent special and very often regu-

1 An example of such an institution is Abritration Court for Cotton with headquarters in Avre, France.

lar arbitrations as well. The role of conciliators (mediators) is interesting and it is within the range from giving interpretations and explanations of the attitudes, up to the suggestion of compromises, in which case mediation ends with suggestions. Therefore, when it comes to the institutions of this type, ultimate fate of the resulted dispute depends on the parties of the dispute and this fact contains the main difference in relation to arbitration, whose decision is mandatory for the parties.

When the subjects that enter business relations decide to turn to abritration for the dispute occured within that relation, it is good to mention that entrusting the dispute to arbitration happens based on arbitration agreement, which can be ina form of a compromise or compromisory clause. Compromise is a written agreement of the parties to entrust a specific dispute that has already occurred to the arbitration, while compromisory clause is a part of the main contract that is concluded between parties and it refers to all the disputes that can result from contractual relationship. Therefore, we can conclude that arbitration clause is a special legal unit and its fate in the legal aspect does not depend on the main contract, i.e. the situations in which it comes to the nullity of the main contract do not have any impact and they do not have nullity of arbitration clause as a consequence. In addition, there is an open possibility for the arbitration, based on compromisory clause, to decide on the validity of the main contract.

In case of arbitration, the principle „competence-competence" is valid, which implies that the arbiters own the competence to decide on their authorizations themselves and, on the contrary the efficiency of arbitration procedure could be brought to question. When the arbiters make a decision that they are competent for some issue, that necessarily means that they can also make a decision.

THE ADVANTAGES OF THE ARBITRATION IN RELATION TO THE CLASSICAL JUDICIAL RESOLUTION OF DISPUTES IN ECONOMY

Although in expert circles there still is the dispute regarding whether the arbitration is one of the forms of alternative resolution of disputes or the arbitration along with judicial process is among the judicial mechanisms for disputes resolution, regarding main characteristics of arbitration resolution of disputes in economy there came to a respectable consensus.

In the Manual for training that refers to arbitration and which was prepared by the Agency for International Development (USAID-CLE) – Commercial Legislation and Execution (CLE) there are analytically classified some of the most important characteristics of arbitration (USAID, 2014: 6-7):

- The issue of the constraint of solution – arbitration solutions are limited by previous, initial agreement which was achieved by contractual parties and most frequently the constraint refers to financial costs, court injunctions, as well as court warrants.
- The issue of bodies in an arbitration procedure – each of the two parties to the contract which have found themselves in the dispute name one arbiter each, and then he chooses the third one, who has the chairman role and all thre arbiters are named in order to solve the dispute. In case that arbitration panel has more than three arbiters, it is important to pay attention for the total number to be odd.
- The issue of relations between arbiters named and parties to the dispute – parties to

the dispute submit necessary, useful and usable information on the subject situation to the named arbiters; such information, essential for the procedure itself are submitted in either written for or within the dispute itself, where it is important for the arbiters not to use the possibility of *ex parte* discussion.

- The issue of a key role in arbitration procedure – parties that are in a dispute and that have chosen arbitration, in the very procedure have a secondary role, since the presentation and representation of their attitudes takes place through lawyers, which have an active role in this procedure.

In addition to the above-mentioned, we can also stress the independence of arbitration clause in contracts by which we regulate business relations between the two parties, so in situations when the contracts are concluded for a defined period and it occurs that it is required to refer to arbitration clause at the moment when period of the contract has expired, the clause that refers to arbitration is still valid and it can still be used[2]. This characteristic gives a big contribution to the legal security in business relations.

Companies, which are the subjects of contemporary business processes have an increasingly developed awareness of the significance and advantages that are offered by the possibility of arbitrating possible disputes that result from their business, but they simultaneously do not neglect or forget about the potential weaknesses of such a mechanism for dispute resolution. Will there prevail positive objective facts in relation to the arbitration or, however, some of its weaknesses will be crucial, it depends on specific disputes, amount and financial values of the jobs they refer to, as well as the characteristics and prevailing choice of economic subjects that are found in the dispute. For example, for some disputes and some companies, finality and committment of arbitration decision can be an advantage, while the same characteristic in some other situation and in some other companies can be considered as insufficiency.

According to the analysis made for the needs of the application of Manual for training that refers to arbitration (USAID-CLE, 2014: 8-9), there are pointed out some of the main differences between arbitration and judicial procedure:

- The issue of jurisdiction – when the companies choose that contractual clause that regulates the issue of solving potential disputes contains the possibility of court settlement of such disputes, then the issue of jurisdiction can bring up several problems. Namely, the most frequent situation is that in commercial disputes with the foreign element, which are solved through court bodies, the dispute is considered before the court bodies of the country in which one of the dispute parties have their headquarters. Possible situation is for the parties to the contract to agree to give the subject in to the jurisdiction of court bodies of some third, neutral state, but such a possibility of legislation of many countries is often not recognized. In addition, the clause that regulated the issue of jurisdiction, in case of those contracts that predict the possibility to resolve the disputes in court, can very often be subject to impugnment in cases when the competence is provided for „the competent court" due

2 „If the parties (legal entity with headquarters abroad and legal entity with headquarters in Serbia) for the dispute during contract execution have agreed the International arbitration is competent, and that contract is concluded for a defined period that expired, it does not mean that the contract stopped being valid over time in the aspect of contracted judicial competence when it is about a dispute that occurred during contract execution, because it is about a compromise clause – arbitration agreement which does not share the fate of basic contract in the aspect of duration", Decision of High Commercial Court, Pž.11125/2005, 13.01.2016.

to inappropriateness of final choice of the competent court authority.

When it comes to arbitration, prediction of this mechanism in contracts by which we regulate business relations between economic subjects gives the possibility to overcome almost all doubts in relation to jurisdiction, which can be open in case that he mechanism selected for resolving the disputes is the court. The base for such a claim is in the fact that the arbitration agreement is observed as a type of an agreement that is neutral and that cannot be affected by politics or judicial structures of any parties to the dispute, regardless of the fact that procedure is lead in one of the home countries – parties to the dispute.

- The issue in relation to the application of the decision, i.e. verdict – when it comes to the application of arbitration decisions, and since they most frequently relate to the disputes occured in international economic flows, this issue is regulated by New York Convention on the Recognition and Enforcement of Foreign Arbitral Decisions (New York Convention on Recognition and Execution of Foreign Arbitration Decisions) from the year 1958, which prescribes that all the arbitrary decisions that are made in the countries that signed and accepted the Conventuon are also applied in the territory of jurisdiction of all other signatories of the Convention, in the same way as national decisions are applied. In relation to the application of judicial decisions, although this issue is regulated by the Hague Convention on the Application of Foreign Judgements, the practice has shown frequent problems regarding this issue and cases in which there comes to the lack of application or inadequate and incomplete application of judicial decisions in all interested countries. The issue of applying final decision is also the greatest problem of court settlement of commercial disputes.
- The problem of time and financial saving, i.e. cost saving – precisely this issue is most frequently the crucial and essential for the selection of an arbitrary manner for solving commercial disputes. The cost price of arbitration procedure is always lower than the price of judicial process for the same case. Namely, judicial processes can be led in more than one level, and judicial decisions are subject to the right to complain, so all those options consequently lead to the increase of the cost price of judicial procedure. In addition, the saving of time resource for the dispute parties is also not negligible, since the arbitration procedure can be ended for a day, when arbitration courts have sessions and finally make a decision regarding one dispute. On the other hand, procedures that are led before judicial bodies can last much longer and also, due to a great number of diverse cases that courts are burdened with, just to schedule the hearing and to wait for it often requires much more time than it is the case with arbitration. Since it is about commercial disputes and that the companies in their business are led by the principle of profit and less costs, it is understandable for the arbitration to be a better alternative that is offered to them for the situations of potential disputes with their business partners.
- The issue of secrecy, i.e. confidentiality and privacy – Respectable confidentiality level of the process that is led before arbitration courts is also an important fact for the selection of arbitration for solving both national and international commercial courts. Which confidentiality level will be respected and applied it depends on the arbitration rules regarding which the parties in the dispute have previously reached the consensus and that confidentiality level is confirmed by the very agreement on arbitration. On the other hand, judicial processes are led in a manner that is open for the public interested and in their case there is no privacy and confidentiality that is offered by arbitration courts whose employees cannot publicly express any facts that refer to dispute and parties to the dispute.

- The issue of prediction – Prediction, as a very important issue in all disputes with the foreign element, in the field of commercial activities gives advantage to arbitration, where disputable situations are solved immediately, i.e. in one day, day of the hearing, when arbitration decision is made and it is not possible to file a complaint. Precisely that finality of decision and inability for it to be changed at some other arbitration levels is another difference between judicial and arbitrationresolving of commercial disputes, which gives advantage to arbitration because one court verdict per one case does not necesarily mean that it will be final verdict, i.e. that the subject dispute will in the end be solved in the manner that was primarily decided.
- The issue of specialization – difference between classical courts and arbitration courts and the segment of specialization, in the aspect that the court for solving the disputes offeres exclusively the judges, i.e. lawyers, while arbitration courts offer the posibility to choose arbiters of the most appropriate profession and specialization that is adequate for the dispute subject. Therefore, arbiters are not necessarily lawyers, they own specializations froma wide range of fields and issues and such personnel of arbitration courts is also another advantage of this type of solving the disputes in economy, compared to judicial processes. The companies that were found in dispute can, depending on the nature of disputable issue, choose the most professional arbiters for the specific disputable situation, which is of a great importance when it comes to courts that refer to big financial amounts.
- The issue of flexibility – the option of flexibility and adaptation of processes in the most adequate manner are most certainly greater in case of arbitration processes than in case of judicial acting in commercial courts. Flexibility offered by arbitration refers to the fact that in its case the parties to the dispute are the ones that form the process itself, primarily with the consensual selection of the rules of procedure, as well as consensus for some of the non-adequate rules for a specific dispute to be avoided and not applied. Judicial processes, on the other hand, have rigid and strict rules that exist are are applied independently of the desire and will of the parties that found themselves in the dispute and they are not susceptible to the adaptation to specific situations.
- The issue of finality, i.e. finalization – Unlike judicial decisions that you can complain about and that can, therefore, be solved at a several elvels, arbitration decisions are both final and mandatory for parties to the dispute once they are made and there is no possibility to file a complaint. There are exceptional cases when the parties that have left disputable situation to solving through arbitration mechanisms and when one of them is not satisfied by the result and then judicial consideration of arbitartion decision is required. Regardless of these exceptional situations, it is believed that through arbitration it is faster and easier to reach final solution, i.e. final decision.

TYPES OF ARBITRATION

Adaptability of arbitration process, essentially significant for companies, in addition to the above mentioned factors also implies the possibility to select the type of arbitration that will be applied in the specific dispute. In the practice, we can until now identify the appearance of institutional arbitration, *ad hoc* arbitration, as a special type of accelerated arbitration.

Therefore, when the companies in dispute choose arbitration as a mechanism by which they will solve disputable issue, the next choice that opens for them refers to the possibility to select the leading of arbitration procedure based exclusively on the rules of one specifically mentioned arbitration institution, or leading the process of arbitration based on *ad hoc* procedure. Main difference between these two possibilities, institutional and ad hoc arbitration, refers to the fact that in case of accepting institutional arbitration the procedure per the dispute is led by an institution in accordance with its defined rules, while in case of *ad hoc* arbitration, the very parties that found themselves in a dispute and that have chosen the arbitration reach the consensus regarding the procedure of specific arbitration for their case.

The practice of institutional arbitration can be found in case of a series of international organizations such as, for example, International Court of Arbitration which is formed at International Chamber of Commerce, then International Court of Arbitration with headquarters in London, Center for Continuing Arbitration with headquarters in Vienna, and many others.

The recognized advantages that come along with the selection of institutional arbitration refer primarily to the strong institutional aid and support to the parties at any moment and regarding each issue that can appear during the procedure. Then, each arbitration institution has its own, carefully and highly professionally set rules of behaviour, which is a facilitating circumstance for each party to the dispute and when it comes to the companies that are in a situation in which they must turn to arbitration mechanism, this previously professionally set rules of the process, which can be accepted according to the free choice and will, simultaneously bring along a great savings in time, which is a criterion of a great significance for all business subjects.

In addition, decision for institutional arbitration provides a high level of prediction, since the interested parties in that situation have a rather useful possibility of previous observation and consideration of arbitration procedure, i.e. they have apossibility to prepare for entering one such procedure in the best manner. In the same way, the important fact is that in case of institutional arbitration there is open and additional possibility for the economic subjects in dispute to agree on the change of some individual rules of the process which they consider inappropriate or not useful and to, therefore, through institutional support adapt the procedure entirely to the specificity of own disputable issue. Potentials of institutional arbitration are still expressed through the possibility for the parties in the dispute to accept the so-called pattern clauses on arbitration, by which they avoid the efforts and situations in which they could due to bad and imprecise clause they made themselves get into a conflict with the interpretation of clause validation, which can happen if it is insufficiently and unprofessionally developed.

The most significant advantage available through institutional arbitration certainly refers to open and provided possibility to select an arbiter who will act in the specific dispute. Therefore, in case of this type of arbitration, the companies that are in a dispute choose to leave the selection of the arbiters to the arbitration institution and thus many possible misunderstandings and encounters between then regarding the selection of arbiters are avoided. Arbitrary institutions have a list of arbiters, who are respectable people of their profession and who can be named for acting in fields and disputes that correspond to them. In thsi way, if the selection of arbiters is left to the institution, this reduces the time required to prepare

the procedure because the parties are not the ones that negotiate the price with arbiters, but the favour is offered by arbitration institution.

The help of institution in arbitration process includes each type of logistic and administrative support, by which arbitration court and parties to the dispute are released from this obligation, which ultimately contributes to the acceleration of the process and saving of time. In addition, decisions that are the product of institutional arbitration have a greater strength before court bodies in relation to the decisions resulting from *ad hoc* arbitration, where there is a greater possibility for the judicial bodies to reject them in certain disputable situations.

Ad hoc arbitration carries along certain advantages for the companies that have the need to solve the dispute through this mechanism. The most important advantage is the flexibility, i.e. high level of adaptibility, which is the result of a given freedom to the parties in dispute to independently decide on all important elements of the procedure and thus to entirely adapt the arbitration process to their specific needs. This possibility offered is especially useful for parties to the dispute that have a great knowledge and experiences in regard to arbitration and they do not own enough knowledge on the procedure they get into. Significant aid in case that parties to the dispute lack experience is offered by the Model of arbitration rules of UNCITRAL, which the parties can accept and apply in case that their choice for solving the case is *ad hoc* arbitration.

Ad hoc arbitration gives the possibility of additional and significant saving of time and money to the companies that solve their disputes through this mechanism. For it, it is possible to set aside less financial funds than in case of institutional arbitration where it is necessary to pay the services of arbitrarion institution and the only thing that is up to the parties is to negotiate independently with the arbiters selected on the compensation for their engagement. When it comes to saving of time, we reach it by avoiding unnecessary and, in a specific case, the procedures from which there is no use. Therefore, in case of *ad hoc* arbitration, the companies in dispute come only through the most necessary procedures and thus they do not lose time and they do not have an empty walk in their entire functioning. In addition, in case of ad hoc arbitration, the parties that are in dispute are not obliged to accept all the rules of UNCITRAL, but they have the possibility to adapt them to their specific dispute, which there is another advantage of the selection of *ad hoc* arbitration.

Certainly, for the companies that have a dispute in business and that solve it through arbitration, it is useful to get to know all the advantages and disadvantages of institutional and *ad hoc* arbitration, in order to have a required capacity to make the most appropriate choice. A special type of arbitration process, which is significant especially for the subjects that act in economy at the international level and that do jobs with great financial foresign is the accelerated arbitration. This type of arbitration was promoted and introduced by International Court of Arbitration in the beginning of the 1900's, by which it provided an adequate answer to the existing criticism that refered to the length of arbitration process in disputes with a foreign element. This has actually meant that the International Court of Arbitration has created arbitration rules which can accelerate the regular arbitration procedure. In case of accelerated arbitration, leading of the process is entrusted to one arbiter and a complete process is based on written documents submitted to the acting arbiter or on one hearing that is held in this case. A constraint that is still related to the accelerated arbitration refers to the fact that this process is still not common possibility in many countries and, at

the same time, prior to the decision to select the accelerated arbitration process, it is required for the parties to the dispute to have precise information whether it is legally possible to apply the accelerated procedure in their case.

LEGAL SOLUTION TO THE ISSUE OF ARBITRATION IN THE REPUBLIC OF SERBIA

The Republic of Serbia has adopted te Law on Arbitration in 2006. (Law on Arbitration, „Off. Gazette of RS", no. 46/2006) and thus, regulating it by a special act and in a unique manner for the first time, it gave significance to this isse and improved the conditions of business of all businessmen. Prior to the adoption of a special law that regulated the field of arbitration, for the regulation of this issue in Serbia there were applied the parts of the Law on Civil Procedure from 1977. and the Law on the resolution of the conflict of law with the regulations of other countries from 1982. which were obsolete and did not follow the modernization of primarily economic activities at the global level. The Law on Arbitration has filled in previously existing legal gap and answered to the needs of economic practice with a precise regulation of the issues that refer to arbitration, such as the issues of arbitrability, then agreements on arbitration and its main characteristics, issues that refer to arbitration court, arbiters, the very procedure that is led before arbitration court, as well as issues related to making and execution of arbitration decision.

The Law itself proclaims the voluntariness principle as basic, which implies that the application of arbitration mechanisms can occur in situations when parties to the dispute voluntarily accept the arbitration as an offered possibility. As such, it is especially adapted and suitable for the usage by all the companies that do business in the territory of the Republic of Serbia, institutions and commercial courts. The Law recognizes internal arbitration and international arbitration in case of which there is a foreign element, which is a significant support for businessmen that do business both on international market and that make deals with foreign business partners. „International arbitration, in the aspect of this law, is the arbitration whose subject are the disputes from international business relations, especially if: 1. The parties have business headquarters in different countries at the time the agreement on arbitration is concluded; 2. Outside of the country in which the parties have their headquarters there is the place: a) of arbitration, if it is defined in arbitration agreement or based on it, or b) in which it is required to perform a significant part of obligations from the business relationship or a place that subject of the dispute is not related with; 3. where the parties have definitely agreed that the subject of the arbitration agreement is related to several countries". (Law on Arbitration, „Off. Gazette of RS", no. 46/2006)

By regulating all important issues related to arbitration, with relying on international legal sources and good practice from the comparative law, the Law on Arbitration from the year 2006 has brought the required legal security to all the economic subjects from the country, as well as interested investors from abroad.

CONCLUSION

The potentials that are offered by the mechanism of arbitration process for dispute resolution get their greatest expression in economic relations, particularly in relations with foreign element. All the advantages of arbitration process in relation to the classical judicial process which was discussed in this text show and confirm the facts that are widely accepted in expert public that „the arbitration is rapid, less formal than state court, the dispute is solved at the first level if the parties have not agreed on the possibility to nullify arbitration decision; arbiters are very well familiar with the commercial law, they apply valid regulations and they can also be solved, in certain cases, by applying the ex aequo et bono principle" (http://projuris.org/arbitraza.html).

By adopting a special Law on Arbitration from 2006, the Republic of Serbia has entered among the group of countries that have recognized the significance of arbitration for the development of overall business activities and attraction of foreign investors. The thing that must be worked on in the future is certainly the popularization and directing of business world towards wider application of arbitration mechanisms, since the national practice regarding this issue is insufficient. In addition, it is important to strengthen national arbitration mechanisms, particularly due to the fact that disputes from the national field are very often solved before foreign arbitration instutions. In order for such a situation to change, it is required to educate the companies on the significance of arbitration institute, as well as make them feel confident about national arbitration mechanisms and their efficiency.

REFERENCES:

[1] Law on Arbitration, „Off. Gazette of RS", no. 46/2006.

[2] Manual for training: Arbitration, USAID-CLE (Commercial Legislation and Execution), November, 2014.

[3] Radovanov, A. (2008) *Arbitražno rešavanje sporova*, Privredna akademija, Novi Sad, http://projuris.org/arbitraza.html, 14.4.2017.

[4] Decision of High Commercial Court, Pž.11125/2005, 13.01.2016

[5] New York Convention on Recognition and Execution of Foreign Arbitration Decisions, available at: http://www.newyorkconvention.org/11165/web/files/original/1/5/15467.pdf, 14.4.2017.