

I DIRITTI GLI OBBLIGHI E LE RESPONSABILITA' DEGLI ARBITRI DERIVANTI DAL CONTRATTO DI ARBITRATO

ABSTRACT

The object of this study is the reconstruction of the case of "arbitration agreement", identifying in particular the rights, obligations and responsibilities of all possible profiles on the referees in the performance mandate entrusted to them by the parties to the dispute.

In the first chapter, on the one hand, the evolution has in-depth interpretation of the instrument arbitration, seeking, with the help of the general principles, to identify the true nature of arbitration and its differences with the possible shapes related, on the other, have deepened the hypotheses of the relationship reconstructive particular referees, in order to demonstrate the typical nature of the arbitration agreement, the regulation of which can be deduced from the provisions of the Code of Civil Procedure - articles 806 ss. - and, for any shortcomings by the rules of substantive law relating to contracts.

In the second chapter, it was first reconstructed analytically the structure of the arbitration agreement, and with reference to the process of formation of contract case, and with reference to the legal position of the parties to the contract.

In particular, it was found that the typical rules of arbitration of the contract involves an exception to the principle of knowledge in art. 1326 c.c., because the second paragraph of art. 820 c.p.c. confirms the suitability of the acceptance by those in charge to take effect immediately, making it run for making awards. Thus, the conclusion of the arbitration agreement would be with the simple acceptance of the arbitrators and not with the knowledge that it have the parts.

Regarding the analysis of the legal position of the parties to the contract for arbitration, with the idea that this contract is a shop with parts subjectively complex, has rejected the thesis of the personification of the arbitration panel as the subject of law distinct from individual referees. The "collegial process" to reach the award is made to be considered as a tool framework established by the legislature to regulate the phenomenon of "subjective complexity".

It has subsequently moved to the attention of the act on the analysis given by the arbitration panel, stressing that these are acts of individual referees and do not converge collegial act, which was blamed at all, save the ability to record dissent some members of the judging. The statements of the arbitrators will retain their relevance even after the enactment of the award, as they are called to the formation of a complex act in relation to which is not realized and melting of individual will.

Therefore, each arbitrator shall be individually related rights and obligations distinct: each is the owner in full autonomy, subjective legal situations, which is why all of the arbitrators is not a single part of the contract to arbitration.

Extending the reasoning of the complex subject with reference to the protagonists of the dispute, it was found that even in this case does not justify the need to create an independent center of interest which meets the expressed consent of the parties; would rather speak of parallel beam of multiple statements, which acquire independent legal significance.

A corollary of these results of investigation was the idea that the report raised particular referees would not a single contract arbitration, but a plurality of stores, consisting of every part of judgement and individual arbitrators. So, should not talk of contract arbitration, but arbitration agreements.

In the second part of the second chapter, has deepened the legal obligation to make the award within a certain period, such as principal obligation incumbent on referees after the completion of the arbitration agreement. It was concluded that it is indivisible obligation to joint implementation which does not apply the discipline of the bonds of solidarity. In fact, the benefits payable by the members of the arbitration panel shall have no obligations of the character of equivalence: the arbitrators are obliged to proceed together to the stands.

On the basis of considerations relating to the profile of "subjective complexity" of the arbitration agreement and analysis of the nature of the obligations arising from it in the hands of the referees, it is amplified to the discipline of responsibility and the right to compensation of arbitrators referred to, with art. 813-ter and 814 c.p.c.

In the third chapter, we proceeded, however, the analysis of specific cases of liability of the officials, trying to reconstruct the applicable rules with the help of the general principles of substantive law on obligations and contracts.

In particular, it is rebuilt the relationship between the contracting parties and the Secretary of arbitration tribunal, where his participation in the proceedings is expressly requested by the litigants or when this need is manifested only by the arbitrators. Moreover, the same process of interpretation of contract case was made in the event that the arbitrators deem it appropriate to use the work of a technical consultant during the course of the proceedings.

In both cases we have tried to understand what are the responsibilities imposed on the profiles of members of the arbitration, if any fraudulent or negligent conduct of the Secretary of arbitration or expert have caused the breach of contract in respect of referees the provision by them due to make his award within a certain time.

In the second part of the third chapter, however, have addressed two issues particularly delicate: on the one hand, it has analyzed the recent changes in legislation and interpretation, international and national level, about the question concerning confidentiality in arbitration, seeking to seize any existence of a duty of confidentiality on the part of the arbitrators in contract arbitration, on the other, has clarified the tax treatment of the arbitration and any profiles of the responsibilities imposed on referees in relation to registration and stamp duty.

In the last chapter, the purpose of investigations focused on a preliminary study of the phenomenon and regulations adopted arbitration administered by arbitral institutions, analyzing, in particular, the legal nature of the administration agreement for arbitration with the parties in dispute agree to engage the services of an arbitrator to settle the dispute.

Therefore, next to the particular contractual relationship establishment, it has rebuilt the relationship between the parties and the arbitrators in the arbitration administered by focusing on the contract in any case of arbitration, and the relationship between the arbitrators and the arbitration institution.

Based on these results interpretation, it sets out the responsibilities imposed on the extent of possible profiles arbitration, which in respect of the contending parties is responsible for whenever defaults on liabilities incurred under the contract administration

for arbitration. The main obligation imposed on the establishment of arbitration is to ensure the smooth operation of the procedure, particularly respecting the rules that have been prepared by the parties when they have adhered to the regulation.

In this regard it was noted that as a rule the institution is not responsible for the activity carried on by the arbitrators that it has appointed itself or that the contending parties have chosen specially crafted lists, since in this case could not fit the details of the case under art. 1381 cc., not being able to qualify the promisor the fact of the third body.

With regard to the relationship shares-arbitrators, also administered as part of the arbitration, negotiating the instrument used to formalize the relationship with members of the arbitration is the arbitration agreement. In general, therefore, the contractual agreement that binds the parties and arbitrators in the arbitration has the same features that has administered the arbitration ad hoc.

With reference, however, to the relationship referees-establishment, it has concluded that the reconstruction in terms of both the contractual relationship between the parties and arbitral institution and the relationship between parties and arbitrators, seems to follow the consequence of the absence of any contractual relationship between arbitrators and institution, even if the name of the arbitrator shall be indicated in the lists drawn from among those listed by the arbitration.

However, it was also stated that he would not exclude the possible existence of a social contact between referees and institution, which would mean the possibility to occur the infringement of a legally protected interest, with the consequent rise of a right to compensation give the benefit of the institution or arbitrators.