

Accelerated Arbitration: An Expedited Method of Resolving Disputes

Associate professor **Maria João MIMOSO**¹

Abstract

When we speak of international commercial arbitration, we refer to arbitration that has as its object the resolution of commercial disputes on an international scale, between individuals or legal entities, whether these are companies or even States. In the vast majority of situations, we are dealing with commercial relationships of the most diverse nature, including international purchase and sale contracts, large-scale contracts, and license agreements in the field of intellectual property, among others. The advantages of international arbitration lie in its effectiveness when confronted with state justice, due to the neutrality of the arbitration forum, the precise knowledge of the arbitrators, the greater flexibility of the arbitration process, confidentiality, among others. However, it turned out that, in reality, there are problems. Over the last few years, the players have expressed some concerns, especially about the costs and the extension of procedural deadlines, which has made arbitration less appealing and increasingly equated with the justice of state courts. It should be noted that medium-sized companies are the most affected, either because they do not have the possibility of accessing this form of justice, not knowing it, or because they consider it to be very costly in view of the procedural costs it entails. With the purpose of harmonizing expedited arbitration, UNCITRAL created and made available on September 19, 2021, the Expedited Arbitration Rules that can be adapted by the parties. The figure of accelerated arbitration comes, therefore, to present itself as an optimized and simplified process, showing shorter deadlines so that disputes can be resolved quickly and economically. Given the novelty and importance of the subject, we intend to reflect on this new arbitration modality and its consecration by the most prestigious arbitration institutions, e.g. international Chamber of Commerce; American Arbitration Association; Arbitration Institute of the Stockholm Chamber of Commerce; Swiss Arbitration Association.

Keywords: *accelerated; arbitration; commercial; disputes; procedural celerity.*

JEL Classification: K41

1. Introduction

Arbitration is, without a doubt, the preferred means of resolving disputes in the context of international trade.

The success of arbitration is based, mainly, on two fundamental characteristics: one is the enforceability of arbitral awards, facilitated by one of the most successful instruments in the world, the 1958 New York Convention (CNY) on

¹ Maria João Mimoso – Portucalense University; researcher at the Reserch Center Instituto Jurídico Portucalense, Portugal, mjmarbitragem@gmail.com.

the recognition and enforcement of foreign arbitral awards². The other is the avoidability of national judicial courts, thus overcoming the lack of speed of the latter and the necessary impartiality/neutrality that the parties aim for in an international arbitration³. In addition to the specialized knowledge of the arbitrators and flexibility regarding the applicable law in international arbitrations.

The Queen Mary University of London, in research prior to 2021, said that arbitration, either as an autonomous option or in conjunction with another means of extrajudicial dispute resolution, was identified as the preferred mechanism for resolving international disputes.⁴ In its 2021 survey, it again underlines the unquestionable preference for arbitration as a means of resolving cross-border disputes.⁵

Despite the success that has been reported, it should not be thought that refereeing is immune to criticism. The high costs of the arbitration process⁶ show

² The CNY 1958 allows international arbitration to have a role that goes beyond the recognition and enforcement of arbitral awards. On the one hand, the Convention also regulates arbitration agreements and their effects in relation to the competence of national judicial courts to decide on the merits of the matter, excluding it. On the other hand, we can say that it operates a division of roles between the various orders in presence. The CNY assumes that international arbitration has a headquarters, a location with a specific origin and, therefore, in a way linked to national laws. Despite the criticisms, this aspect was very important to understand which national legal systems may be involved. It adopted the idea of a foreign judgment integrated in a national legal system (country of delivery of the sentence). See article V, 1 of the CNY. We cannot forget that this is an instrument with more than 135 ratifications, which reflects its acceptability and application.

³ Gerbay, R. (2014). *Is the end nigh again? An empirical assessment of the "Judicialization" of International Arbitration*. „The American Revue of International Arbitration“, Volume 25, n° 2. Center of International Commercial and Investment Arbitration, Columbia Law School, pp. 223-247; Florescu, C. I. (2020). *Emerging tools to attract and increase the use of international arbitration*, „Juridical Tribune – Tribuna Juridica“, Vol. 10, Issue 2, p. 256.

⁴ See the results of 2018 International Arbitration Survey: The Evolution of International, The status quo: “97% of respondents indicate that international arbitration is their preferred method of dispute resolution, either on a stand-alone basis (48%) or in conjunction with ADR (49%). “Enforceability of awards” continues to be perceived as arbitration’s most valuable characteristic, followed by “avoiding specific legal systems/national courts”, “flexibility” and “ability of parties to select arbitrators”. “Cost” continues to be seen as arbitration’s worst feature, followed by “lack of effective sanctions during the arbitral process”, “lack of power in relation to third parties” and “lack of speed”. An overwhelming 99% of respondents would recommend international arbitration to resolve cross-border disputes in the future”.

⁵ In particular, an overwhelming majority of the respondent group (90%) showed a clear preference for arbitration as their preferred method of resolving cross-border disputes, either as a standalone method (31%) or in conjunction with ADR (59%). Only an aggregate of 4% is equally split between 'ADR only' and 'cross-border litigation' as standalone options, while 6% indicated a preference for 'cross-border litigation together with ADR'.

⁶ International arbitration should be cheaper for the simple reason that, as a rule, it is currently not possible to appeal the arbitral award. Although this factor contributes to the speed of arbitration justice and, consequently, to a greater ease in the enforceability of arbitration decisions, the main complaint about international arbitration, in the last two decades, lies, above all, in its cost, with special emphasis on the attorneys' fees for the parties, followed by experts' fees. Not forgetting the administrative costs paid upfront in institutionalized arbitrations.

the highest number of criticisms leveled at it, followed by the absence of sanctions for irregularities committed in the arbitration process, inefficiencies on the part of the arbitrators and little procedural celerity⁷. The latter has gained prominence in recent times, given the possibility of extending the deadlines provided for in many of the laws that regulate voluntary arbitration, whether from a state source or from an institutional source.⁸

In this sense, in an attempt to overcome the existing malaise regarding “traditional” arbitration, several institutions created “Fast-Track Arbitration” mechanisms. We speak, in particular, of the Swiss Rules of International Arbitration of Geneva by the Chamber of Commerce, Industry and Services (CCIG) that, incidentally, pioneered the introduction of rules for expedited proceedings.⁹ Other regulations from other entities follow, albeit a little later.

It is worth noting the Arbitration Rules of the International Chamber of Commerce, ICC¹⁰, the Rule of the Court of Arbitration of the Official Chamber of Commerce, Industry and Services of Madrid¹¹, Commercial Arbitration Rules and Mediation Procedures da American Arbitration Association¹² and the Rules for Expedited Arbitrations do Arbitration Institute of the Stockholm Chamber of Commerce¹³.

In this scenario, the United Nations Commission for International Commercial Law, UNCITRAL, also introduced, in September 2021, the Expedited Arbitration Rules (UNCITRAL EA Rules), although it is a soft law text, aimed only at *ad hoc* arbitrations.

⁷ Chan S.C., Leng Sun, Tan, W. (2013). *Making Arbitration Effective: Expedited Procedures, Emergency Arbitrators and Interim Relief*. „Contemporary Asia Arbitration Journal”, Vol. 6, No. 2, pp. 349-371 Available: <https://ssrn.com/abstract=2397661>.

⁸ CFR. Portuguese Voluntary Arbitration Law (2011); Spanish Arbitration Act (2003), amended in 2011; French Civil Procedure Code, Book IV – Arbitration (amended 2011); CCI Arbitration Rules (2021); Swiss Rules of International Arbitration (2021); UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006. Swiss Rules of International Arbitration, Article 42. Available at: <https://www.swissarbitration.org/wp-content/uploads/2021/12/Swiss-Rules-2021-EN-1.pdf>.

⁹ Scherer, M. (2005). *Acceleration of Arbitration Proceedings – The Swiss Way: The Expedited Procedure under the Swiss Rules of International Arbitration*, in Jörg Risse, Guenter Pickrahn, et al. (eds), SchiedsVZ. „German Arbitration Journal”, Kluwer Law International; Verlag C.H. Beck oHG 2005, Volume 3 Issue 5, pp. 229-238. Available at: https://newsite.lalive.law/wp-content/uploads/2017/07/msc_acceleration_of_Arbitration_Proceedings.pdf.

¹⁰ ICC Rules of Arbitration, Article 30: Expedited Procedure. Available at: <https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/>.

¹¹ The 2020 Rules apply to arbitrations commenced on or after 01 September 2020 until 01 February 2022 included, “51. *Fast Track proceedings, 1. The parties may agree to have the arbitration proceedings governed by the fast track proceedings established in this article* “(…). <https://www.arbitramadrid.com/wp-content/uploads/2022/01/Reglamento-CAM-2020-ENG-PDF.pdf>.

¹² Commercial Arbitration Rules and Mediation Procedures, Expedited Procedures, pp. 34-38. Available at: <https://adr.org/sites/default/files/Commercial%20Rules.pdf>.

¹³ Rules for Expedited Arbitrations do Arbitration Institute of the Stockholm Chamber of Commerce. Available at: https://sccinstitute.com/media/178161/expedited_arbitration_rules_17_eng_web.pdf.

In this way, we aim to achieve an efficient framework in the face of requests from players, trying to optimize the respective cost-benefit of arbitration, not neglecting the quality of decisions.

We intend to demonstrate the main guidelines of this “sub” type of voluntary arbitration, highlighting some precautions to be taken into account when choosing it.

2. Arbitration efficiency *versus* some dilemmas

The parties, in the international trade context, when intending to enter into their contractual relations, must pay special attention to the clauses relating to the resolution of future disputes that may arise from the contract. It should be noted that, most of the time, the parties do not know each other, they are not based on the same continent, and they belong to different legal systems, therefore, they must seek to prevent possible conflict situations.

Consequently, the use of arbitration, together or not with other means of extrajudicial resolution ends up promoting the desired predictability and legal certainty.

It should also be underlined the fact that the parties, normally companies (which are essentially business-to-business relationships), intend to be successful in their contractual relationships, avoiding the search for new business partners. This search, besides generating costs, also entails uncertainties. In other words, each contract presupposes its own *modus operandi*, requiring special care in the elaboration of its clauses, e.g. the prevention of possible disputes through “multi-tiered dispute resolution clauses” (escalation clauses¹⁴).¹⁵

As it has been established, mainly due to the influence of the Model Law on international commercial arbitration, the arbitration decision can only be challenged through an annulment action, making dilatory maneuvers unfeasible and, therefore, generating speed in the delivery of arbitration decisions. (Article 34 UNCITRAL Model Law on International Commercial Arbitration).

In the context of international arbitration, the issue of the law applicable to the merits of the case is also of special importance¹⁶. Among the various possibilities available to the international arbitrator, it is important to highlight the

¹⁴ Kayali, D. (2010). *Enforceability of Multi-Tiered Dispute Resolution Clauses*. „Journal of International Arbitration”, Volume 27, Issue 6, pp. 551-577. Available at: <https://doi.org/10.54 648/joia2010033>.

¹⁵ The escalation clause is a means by which the parties to a contract can provide that any disputes will be resolved successively by alternative means of conflict resolution. It is intended, with the hypotheses listed in this contractual clause, to resolve the dispute effectively, saving time and the psychological wear and tear that litigation entails.

¹⁶ Lando, O. (1991). *The Law Applicable to the Merits of the Dispute*. In Sarcevic (ed.), *Essays on International Commercial Arbitration*, Boston, London 1991, at pp. 129 et seq. Available at: <https://www.trans-lex.org/114900>.

uses and customs of international trade¹⁷ although sectorial, national rules, neutral and easily understood by operators of international trade, which, in addition to the characteristics of flexibility and adaptation to the dynamics of this type of relationship, allow for fair and equitable solutions for the parties¹⁸.

The principle of the parties' autonomy of will in choosing the applicable law as well as some discretion left to the international arbitrator, especially in the absence of that choice, make this mode of justice one of the most appealing.¹⁹ Added to this is the harmonized and, therefore, predictable regime regarding the recognition and enforcement of foreign arbitral awards implemented by the CNY, which is responsible for the greater success of arbitration.

In addition to the aforementioned advantages, arbitrations, especially international ones, have been increasingly prolonged in time due to the complexity of the cases, the large number of documents to be analyzed by the arbitrators and the need to hear experts and witnesses.

According to the typology of voluntary, institutional or *ad hoc* arbitration, the very course of the arbitration process and procedures will have an impact on the time of the arbitration. It should be remembered that the former has an administrative structure capable of supporting arbitration, while the latter assumes that all procedural activity is incumbent upon the parties, their representatives or whomever they designate for the purpose. The greater onerousness of the first is opposed to the lesser of the second.

As for this last note, excessive onerousness of arbitration, especially international, we verified that, at first, the situation depends on the chosen entity, on the administrative costs to be paid to the arbitration administrator, then assuming a special expressiveness in the expenses with the travel of the various parties involved in the process and their respective fees. In *ad hoc* arbitration, of course, the cost will depend on the place chosen for its proceedings, plus the costs of lawyers, arbitrators and administrative support expenses. The latter are of lesser

¹⁷ We are referring to *lex mercatoria*. Berthold Goldman defined it as a set of customary principles and rules, spontaneously created in the context of international trade, without reference to a particular system of any national law.

¹⁸ Fiorati, J. J. (2004). *A lex mercatoria como ordenamento jurídico autônomo e os Estados em desenvolvimento*. „Revista de Informação Legislativa”, Volume 41, n° 154, pp. 17-30.

¹⁹ UNCITRAL Model Law on International Commercial Arbitration. *Article 28. Rules applicable to substance of dispute: (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules. (2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable. (3) The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur only if the parties have expressly authorized it to do so. (4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.*

importance when compared to institutional arbitration²⁰.

We are facing therefore a favorable environment for the emergence of a more agile arbitration, in terms of time and costs.

3. Expedited arbitration

We note that arbitration has lost much of its splendor, especially in the last two decades, even though it is an effective means when compared to state courts.

Expedited arbitration, by the way, does not appear as a means of extrajudicial resolution different from ordinary or traditional arbitration. When talking about expedited arbitration, it is intended to emphasize, above all, the reduction of costs and time.

Alongside these concerns, we cannot minimize another, no less important, which is based on the quality of arbitration. The expectations of all stakeholders, as well as the parties, are based on the search for a fair and equitable solution. In short, the motto should be guided by increasing the efficiency and quality of the arbitration process²¹.

The expression "expedited arbitration" presupposes exactly what the term arbitration means - an alternative way of resolving private disputes between one or more people, previously designated by agreement of the parties²² -, with an increase in the possibility of speeding up and simplifying the procedural aspects of arbitration. Speed is intended, but at the same time respect for certain standards of procedural guarantees. It should be noted that this is not an urgent procedure, to be carried out by an urgent/emergency²³ arbitrator or to request provisional and injunctive measures from a state court in support of the arbitration²⁴.

²⁰ Morton, P. (2010). *Can a World Exist Where Expedited Arbitration Becomes the Default Procedure?* „Arbitration International”, Volume 26, Issue 1, 1 March 2010, pp. 103-114. Available at: <https://doi.org/10.1093/arbitration/26.1.103>.

²¹ Esplugues Mota, C. (2020). *Los trabajos de la CNUDMI en materia de arbitraje acelerado y el mantra de la celeridad. Psicoanálisis del Arbitraje: Solución o Problema en el Actual Paradigma de Justicia*. Editora Silvia Barona Vilar. Editorial Tirant lo Blanch; N.º 1 edición.

²² Mimoso, M.J. (2009). *Arbitragem do Comércio Internacional, Medidas Provisórias e Cautelares*. Editor: Quid Juris.

²³ The emergency arbitrator, as a rule, is appointed by the arbitration institution itself and has jurisdiction to enact provisional and precautionary measures. Once the arbitral court is instituted, the functions of the emergency arbitrator are extinguished due to its provisional nature and precariousness. Cfr ICC Rules of Arbitration, Article 29: Emergency Arbitrator: *1) A party that needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal (“Emergency Measures”) may make an application for such measures pursuant to the Emergency Arbitrator Rules (...)*.

²⁴ Casey, B., Lal, Hamish (2020). *Ten Years Later: Why the ‘Renaissance of Expedited Arbitration’ Should Be the ‘Emergency Arbitration’*, „Journal of International Arbitration”, Volume 37, Issue 3, pp. 325-340. Available at: <https://doi.org/10.54648/joia2020015>.

Expedited arbitration, as the expression suggests, is related to the arbitration's limited duration, of the stages of the arbitration procedure, with restrictions on documents, hearings, maximizing the electronic means of communication²⁵. These factors are necessarily linked to another aspect of the matter, which we cannot fail to emphasize, the lower complexity of the disputes to be considered.

In short, issues where hearings can be dispensed, with probative elements in a smaller number, especially in the case of testimonial or expert evidence.

It can easily be concluded that the workload will decrease, both for the arbitrator, who becomes the only one, and for the other intervening parties, resulting in greater benefits for the parties, namely greater speed and lower costs. However, we have some skepticism in claiming that it will diminish the arbitrator's work. The latter becomes unique, and although the questions submitted are of lesser complexity and value, it does not mean that the former should not be concerned with the quality of the content of the decision to be made.

Certainly, the appointed arbitrator will do justice to the precise technical knowledge required by the dispute and the institution where the arbitration will take place will charge lower costs, especially in terms of the arbitrator's fees.

It should be noted that the parties and the chosen arbitration institution may agree to the expedited procedure for a complex issue, but which, even so, is consistent with the *modus operandi* of the former. Everything will be in being able to compress deadlines and steps, without jeopardizing the quality of the decision and respect for procedural principles.

It is now necessary to highlight some notes on some arbitration regulations, especially from institutions with great prestige in international arbitration, which have established expedited arbitration, in order to understand their guidelines.

It was in the 2004 version of the *Swiss Rules of International Arbitration* that rules on "Expedited Procedure" in arbitration were introduced for the first time.

The parties are required to agree or that the value of the case does not exceed one million Swiss francs, unless relevant circumstances dictate otherwise. Arbitration proceedings must be conducted in accordance with the general rules contained in the Swiss Rules, bearing in mind that for expedited arbitration, deadlines can be shortened, namely for the appointment of arbitrators and for the parties to present the respective procedural documents. Unless the parties agree that the dispute be decided based on documentary evidence, the arbitral court will hold a single hearing for the cross-examination of witnesses and experts, as well as for oral argument. The award will be rendered within six months from the date

²⁵ Esplugues Mota. C. (2022). *Cinco cuestiones diferentes y una misma institución: algunas claves en torno al futuro del arbitraje comercial internacional/ Five different issues and the same institution: Thinking of the future of international commercial arbitration*. „Revista Cubana de Derecho”, Volume 2, nº 1, pp. 410-439. Available at: <https://revista.unjc.cu/index.php/derecho/article/view/121/196>.

on which the institution forwarded the case to the arbitral court, and may, in exceptional circumstances, be extended. The arbitral court shall state the reasons upon which the award is based in a summary process, unless the parties have agreed that the award is not reasoned.

The *Arbitration Rules ICC*, as of 2017, provide an expedited procedure that provides for simplified arbitration with reduced fee scales.

In accordance with the 2021 rules, the ICC has expanded the scope of application of the provisions regarding expedited arbitration, *cf.* article 30 and annex VI, increasing the threshold for their automatic application from US\$2 million (in the 2017 rules) to US\$3 million.

A sole arbitrator may be appointed, notwithstanding any provision contrary to the arbitration agreement or taking into account certain characteristics of the case.

After the constitution of the arbitral court, neither party may make new claims, unless authorized to do so by the arbitral court. The conference on the conduct of the procedure must take place within a maximum period of 15 days from the date on which the case file is sent to the arbitral court. The arbitral court shall adopt such procedural measures at its discretion, as it deems appropriate. In particular, the arbitral court may decide, after consulting the parties, not to allow documentary production requirements or to limit the number, extent and scope of written submissions and written testimony (both for witnesses and experts).

The period within which the arbitral court must render the final arbitral award is six months from the date of the conference on the proceeding's conduct.

The *Rules of the Court of Arbitration of the Official Chamber of Commerce, Industry and Services of Madrid* also foresee expedited arbitration. It reiterates what we have already seen in other regulations, the possibility of appointing a single arbitrator, unless the arbitration agreement provides otherwise. The deadlines for the arbitrator or arbitrators' appointment may be shortened. If the parties request evidence other than documentary evidence, the court will only hold one hearing for the production of evidence and oral conclusions.

The arbitral court shall decide within four months of the defense's filing or the deadline's expiry for filing it. This period may be extended by another two months. Accelerated arbitration can be applied, by decision of the Court, in all cases where the procedure does not exceed 600,000 Euros. This will occur whenever, due to the circumstances, the use of traditional arbitration is not imposed.

The *Commercial Arbitration Rules and Mediation Procedures of American Arbitration Association, AAA*, provide that expedited procedures can be applied to any dispute not exceeding US\$75,000, providing for the possibility of appointing a sole arbitrator. In the accelerated procedure, the award must be rendered within 45 days of the appointment of the arbitrator (Rules E-7 and E-9 AAA).

The *Rules for Expedited Arbitrations of the Arbitration Institute of the*

Stockholm Chamber of Commerce are an alternative to the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce, SCC Rules and are found in a separate document.

In short, the parties may agree that the accelerated rules should be applied whenever the dispute does not exceed a certain amount or allow the SCC Institute to decide which rules should be applied taking into account the complexity of the case. They provide for limitation of procedural documents, indicating that documents must be concise and presented within a short period of time. Oral hearings are an exception and may take place as prescribed in the rules. The judgment must be rendered within a period of three months and its reasoning depends on the request of a party.

We could not finish this incursion through the main arbitration regulations that enshrine the possibility of expedited arbitration without referring to the *Expedited Arbitration Rules (2021)*.

It is a soft law instrument aimed at accelerated *ad hoc* arbitrations, containing sixteen articles, incorporated as an appendix to the UNCITRAL Arbitration Rules (2013). The latter provide in their article 1 that the Expedited Arbitration Rules (2021) contained in the appendix will apply to arbitration whenever the parties so agree. Its application depends on the amount of the dispute or other established criteria, as mentioned in the aforementioned arbitration institutions' regulations. In order to carry out an expedited arbitration, attention must be paid to the complexity of the case, the parties involved, the amount in question and the possibility that the award can be handed down within six months from the date of establishment of the court, unless otherwise agreed by the parties. Procedural deadlines are compressed. As an example, the period of 15 days counted from the constitution of the arbitral tribunal for the defendant to deduct its defense, can be extended or reduced if the court so deems it. The arbitrator must be unique and appointed by mutual agreement by the parties. We note that the parties and the arbitral court have a general obligation to act "expeditiously", encouraging the use of "any technological means". All this should not, however, jeopardize the principle of due process of law, so that the possibility of enforceability of the arbitral award is not jeopardized²⁶.

Taking into account what is established in the main instruments, we will say that the main characteristics of expedited arbitration are the mandatory appointment of a sole arbitrator; shortened procedural deadlines; restriction of the number of documents and their extension; possibility of waiving hearings; allowing, if it proves to be reasonable, the resolution of the case based on documents

²⁶ Pettibone, P. J. (2021). *Due Process Considerations in Expedited Arbitrations*. „Indian J. Arb. L.“, 10, pp. 175-183. Available at: https://scholar.google.pt/scholar?q=DUE+PROCESS+CONSIDERATIONS+IN+EXPEDITED+ARBITRATIONS&hl=ptPT&as_sdt=0&as_vis=1&oi=scholar.

and written allegations; use of technological means; summary reasoning of decisions, among others²⁷.

The accelerated procedure undoubtedly contributes to increasing the time and cost-effectiveness of arbitration and, as such, makes it more appealing.

It will be necessary to ponder about the fulfillment of procedural guarantees and the quality of the content of the decision, otherwise its efficiency may be compromised and the decision may be annulled or recognition denied²⁸.

The reference to the sole arbitrator is a constant, which is understandable, although relevance should be given to the parties' autonomy in this regard. If this does not happen, the imposition may be seen as a violation of the principle of the parties' autonomy, which is, in fact, a stronghold of international contracting and of the means of resolving out-of-court disputes, with all the legal implications that it entails²⁹.

The compression of deadlines for due diligence's implementation, procedural deadlines, may interfere in the analysis of the situation and, therefore, may constitute a basis for challenging the decision³⁰.

We believe that, in each case, all factors must be considered, not just the value and low complexity of the case, as other circumstances may justify a collective court, or even the acceptance of more evidence and more hearings.

4. Conclusions

Accelerated arbitration emerged from the need to overcome some vicissitudes that have been pointed out to arbitration.

In this regard, the high costs involved and the lack of a quick procedure for low-complexity disputes stand out, especially when we think of small and medium-sized companies with less financial capacity.

With expedited arbitration, it is intended to implement shorter deadlines, facilitating the resolution of disputes faster and at lower costs.

The period for the constitution of the arbitral tribunal until the rendering of the decision is established, usually, between three and six months.

It is common to establish a value for expedited arbitration, providing that matters up to that value can go directly to expedited arbitration, unless the parties have ruled out this possibility or the arbitration center in question, or even the

²⁷ Chahine, J.H. (2020). *Fast track arbitration: a time-efficient procedure that could hinder the award?* In Jus Mundi Blog. Available: <https://blog.jusmundi.com/fast-track-arbitration-a-time-efficient-procedure-that-could-hinder-the-award/>.

²⁸ Heitzmann, P. (2017). *The 2017 ICC Expedited Rules: From Softball to Hardball?* „Journal of International Arbitration”, Volume 34, Issue 2, pp. 121-148. Available at: <https://doi.org/10.54648/joia2017009>.

²⁹ Lucy Reed (2010). *More on Corporate Criticism of International Arbitration*. In Kluwer Arbitration Blog. Available at: <http://arbitrationblog.kluwerarbitration.com/2010/07/16/more-on-corporate-criticism-of-international-arbitration/>.

³⁰ Heitzmann, P., *op. cit.*, p. 145.

arbitral court, has decided that the case, due to its complexity and circumstances, cannot be considered in accordance with the canons of expedited arbitration.

This type of arbitration is aimed at disputes that do not imply a great appreciation of evidentiary elements, and all parties must carefully consider the circumstances of the case, not neglecting the arbitration rules in question.

In this “sub-type” of voluntary arbitration, the various stages foreseen for traditional arbitration may occur, provided that the deadlines can be compressed in the name of greater procedural speed. All of this will inevitably have repercussions on the *modus vivendi* of all the protagonists involved in the arbitration, causing an assertive focus on conflict resolution³¹.

It should also be noted that the parties must agree on expedited arbitration (opt-in) or may decide to exclude it whenever the arbitration rules of the chosen institution provide for its automatic application (opt-out).

To conclude, notice the numbers presented by the ICC in 2020 “*The 2020 figures confirm ICC Arbitration suitability for disputes of all sizes. While the average amount in dispute among the 1,833 pending cases at the end of 2020 was US\$ 145 million, 38% of newly registered cases involved an amount in dispute not exceeding US\$ 3 million – the new threshold for the automatic application of the expedited procedure under the 2021 Arbitration Rules*”. (ICC Dispute Resolution Statistics published, 2020).

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³¹ Rogers, J., Chung, K. (2018). *Summary awards and expedited procedures. Strike out or home run?* In International arbitration report. Published by Norton Rose Fulbright, pp. 14 -16.

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