Rumanian Contracts of Delivery: A Comparative Analysis

George W. Nash

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RUMANIAN CONTRACTS OF DELIVERY: A COMPARATIVE ANALYSIS

GEORGE W. NASH*

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* LL.B. (Buffalo) 1966; LL.M. (Harvard) 1967; Member New York Bar.

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THE Soviet Union began to build a socialist economy as early as 1917. It has achieved what communist economists call the first stage on the road toward communism, i.e., a socialist economy, and is now building a communist economy. The other planned economy countries had a much later start, after World War II. Naturally their respective degree of socialization of the economy is much less advanced. On the one hand, Poland, Bulgaria, Hungary, and East Germany claim a transitory stage, something in between capitalism and socialism. On the other, Yugoslavia, Czechoslovakia, and Rumania claim to have achieved a socialist economy which is now undergoing a process of further improvement. In fact, it is difficult to detect a difference in the degree of socialization of the different economies. There are no economic factors that could objectively justify calling the first group popular democracies (a misnomer, having no economic connotation) and the second, socialist republics. Yugoslavia aside, all other planned economy countries follow, to a very important degree, the Russian model of economic development giving priority to the steel industry and mining. It may be that the close attention paid to Soviet experience was an important factor in the recent adoption by Rumania of a more independent political line. When the Soviet Union suggested at a 1963 Comecon meeting that Rumania should put more emphasis on development of agriculture and the lumber industry and slow down its drive for more steel, the Rumanians felt betrayed. They thought it was unfair for the Soviets to dissuade their younger allies from following the successful line of Soviet economic development built primarily on heavy industry. Their reaction was a renewed determination to continue the development of steel and extractive industries. Upon Soviet refusal to cooperate in the building of the country's most important and expensive siderurgic combine, Rumania, started to build stronger commercial ties with the free world and seek cooperation in Western Europe for building the "Galati" siderurgic combine and other projects. Moreover, Rumania's new independent line and increasing trade with the free world caused more scientific and cultural intercourse with the Western countries. It is partly due to this orientation that Rumanian legal and economic institutions can be more accurately studied and analyzed by interested westerners.

This article will attempt to analyze one Rumanian institution (typical of...
RUMANIAN CONTRACTS

all planned economies), namely, the “contract of delivery” entered into by state enterprises pursuant to planned “tasks” and “allocations.”

Some introductory remarks may be helpful for a better understanding of Rumanian economic law:

First, the decision to follow the Soviet model of economic development brought with it respect for the Soviet science of planning and this respect has remained unchanged in spite of the new independent line. It is a paradox that while officials of the Soviet Communist Party are criticized for their ideologically erroneous attempt to create big brother and small sister countries within the family of communist nations, while compulsory studying of Russian is abandoned and high school students have a choice between English, French, and Russian, Soviet planners and economic lawyers maintain their prior status as authorities. Bratus, Haffina, Novitzki, Luntz, and other Soviet jurists dealing with problems of economic law are as highly regarded and as often cited as they were prior to the independent line. Their importance for Rumanian economic law still equals that of Ionascu, Barasch, Statescu, or Popescu.

Secondly, Rumania has a very strong civil law, to be more precise, French civil law, background. Rumania was a Turkish colony for centuries and not until late in the nineteenth century were the two provinces of Moldavia and Wallachia (Muntenia) merged into independent Rumania. The newly created country chose to become a kingdom. When the German prince Karl von Hohenzollern was offered the crown, the state was faced with having a king and independence but no legal system to go along with it. So the Rumanians did what may be characterized as most expedient. They adopted in 1865 as their own: (a) the Belgian constitution, (b) the French civil code, and (c) the Italian criminal code, all three of which were believed to be the most advanced of their kind. The resulting national legal system indebted to the French by reason of the Napoleonic Code came under further French influence because a substantial number of Rumanian lawyers were trained at French universities. Jurists trained in France gained a virtual monopoly of Rumanian law professorships. French training continued (with brief interruption during both world wars) until 1948.3 The last nineteen years in the Soviet orbit have been insufficient to overcome the solid French background. Many of today’s leading economic lawyers were educated in France. For instance, Traian Ionascu formerly taught civil law at Victor Babes law school and until 1948 from French textbooks. (The author was one of his students.) Two short decades would probably be insufficient to eradicate such a strong tradition in any part of the world.

Thirdly, Rumanians adapt very easily. The above described genesis of the national legal system may be an illustration of Rumanian expediency. The Soviet science of planning and economic law was just as easily domesticized. Furthermore, due to the smaller size of the country, many of the Soviet compli-

cations were avoided. The lack of information and of a federal system did not plague Rumanian planning as it did the Soviets. A historical prospective of Soviet trials and errors made it possible for the Rumanians to avoid some of the difficulties and develop a command economy without undergoing major reorganizations.

Lastly, more than in any other planned economy, lawyers play an active role in the economy. Rumania has a relatively high number of legally trained persons, a substantial proportion of which are employed as corporation counsel. Under Rumanian law, every enterprise, large or small, has to have a legal office with one or more attorneys, depending upon size. Attorneys in such offices are not members of the bar. They are employees with fixed incomes. In 1948, when the legal profession was newly organized under socialist principles about 80% of the members of the bar were expelled for political reasons such as participation in politics or wealth. However, they were not disqualified from becoming corporation counsels. As political influence and wealth are likely to come rather late in a lawyer's career, the body of corporation counsels, that emerged from the reform, was a group of older lawyers with a strong civil background and trained in traditional legal concepts and terminology, in contrast with the group of younger members of the bar. Its Soviet origin notwithstanding, economic law became the specialty of conservative lawyers dealing in traditional legal concepts and language.

An introductory remark about the terminology used:

The term delivery (supplying) contract has a different meaning within the legal system of a market economy and that of a command economy. While in a market economy it may refer to an agreement entered into pursuant to the free will of contracting parties (who could just as easily have abstained from contracting), in a command economy it deals with contracts entered into pursuant to an economic plan leaving less, or in many cases no, choice to the parties. It should be stated from the outset, that it is the second category that will be analyzed. The analysis will be limited to contracts concluded by two state enterprises and dealing with delivery of goods. The topic as limited above is by no means the only logical treatment of the subject. As a matter of fact, Rumanian scholars sometimes lump together into a single group all contracts between state enterprises, including contracts for service. Others would accord separate treatment to all contracts having at least one state enterprise participant. A further group of writers distinguish between "planned" contracts having both the sale and the purchase specifically set forth in the plan and the merely "regulated" contracts where either the purchase or the sale is specified in the plan without the other party to

5. Law 3 of Jan. 19, 1948, in Col. 11.
the future transaction being named. Whatever the logical justification for a different approach, the limitation to a very important group of contracts has the virtue of making the analysis less difficult and more understandable. Moreover it should be noted that leading Soviet jurists have chosen the identical category as their topic of a comprehensive study.

Because many institutions are common to Rumania and other eastern European communist countries, except Yugoslavia, the terminology of communist countries or iron curtain states may not be adequate and may also have a political connotation unnecessary for this study. For this reason the choice fell upon “planned economy countries” or “planned economies” as a shorthand expression for the Soviet Union, Poland, Czechoslovakia, Eastern Germany, Hungary, Rumania, and Bulgaria. As used in this study the term never includes France or any country using planning that has not been enumerated above.

I. MANDATORY CONTRACTING

A. Introduction

The title is suggestive of a contradiction. There is a tendency to associate contracts with freedom of contract, with the right to abstain from entering into an agreement. One must forget such traditional principles for purposes of the analysis which follows. Marxism has a theoretical justification for the non-existence of the choice or right to abstain from contracting. It denies that choice has ever existed under any legal system because under capitalism, economic realities and pressures make any free choice illusory. The following discussion will not dwell upon possible theoretical justifications for socialist concepts. Focus will be upon meaning, role, and purpose within the framework of a planned economy.

As a general rule, a state enterprise is neither bound nor entitled to fulfill a planned task without first entering into a contract. “The plan standing alone does not generate any concrete obligation that may be fulfilled by a state enterprise.” It is the prevailing view in Soviet literature, and the literature of other planned economies as well, that a delivery contract is indispensable for the existence of any right and duty.

As a matter of practical necessity, most often the plan is insufficiently detailed and does not enable the parties to proceed without further inquiry as to what they are expected to do. The filling in of the details is always a practical necessity and constitutes for Rumanian lawyers the primary function of the

10. Hereinafter referred to as Germany.
plan.\textsuperscript{12} But the question remains: When there is an exceptional case and the plan is sufficiently explicit with respect to all obligations of the parties so that there remains nothing for the contract to specify in addition to the plan, are the parties entitled to performance on the basis of the plan alone, or may the absence of a contract constitute a good defense for nonperformance?

\section*{B. The Minute Specification Theory}

Rumanian Arbitraj consistently held that there is no duty to perform a planned task when a contract is lacking.

While the deepening (filling in the details) of the plan is as a general rule the primary function of contracts, there are many other functions as well, and one may not disregard them. Minute specifications contained in the plan may make further deepening a useless formality. Nevertheless, fulfillment of the planned task is not called for when no contract exists.\textsuperscript{13}

In this respect, Rumanian practice differs from that of Bulgaria. A celebrated decision of the Highest Bulgarian Arbitraj\textsuperscript{14} held that it is within the discretion of arbitraj to compel preformance of planned tasks in the absence of a contract, provided the plan is \textit{sufficiently detailed} and explicit with respect to the reciprocal obligations of the parties. The Bulgarian decision, an exponent of the so-called \textit{minute specification theory}, was criticized by Rumanian scholars for failing to recognize the important roles of delivery contracts in addition to deepening of the plan. “The more details there are in the plan the more opportunities there are for errors and the more important the contract becomes as a device for checking planning errors” argues a leading authority.\textsuperscript{15} “The solution in case of the overly detailed plan is not to dispense with the contract but rather to compel its conclusion.”\textsuperscript{16}

Whatever the theoretical difference between the Rumanian and Bulgarian approaches to the problem of the detailed plan, there is practically no difference in result because, in both states as well as in all the other planned economies, contracting for funded goods is compulsory.\textsuperscript{17} State enterprises are required to contract shortly after taking cognizance of their planned tasks.\textsuperscript{18} If either potential party to a contract fails to take the necessary steps leading toward the conclusion of a contract, it may be compelled to do so.\textsuperscript{19} Consequently, the plaintiff in Bulgaria may sue directly for performance, while in Rumania he achieves

\begin{flushright}
15. T. Ionascu & E. Barasch, supra note 6, at 128-29.
16. Id. at 129.
17. See D. 265 of June 25, 1949 (Rum.), art. 1; D. 199 of May 14, 1949 (Rum.), art. 27.
18. HCM 524 of June 23, 1951, art. 8.
\end{flushright}
RUMANIAN CONTRACTS

the same result by first demanding that defendant be compelled to contract. The only occasion when it would make a difference, would occur when both parties neglected their duties to get in touch until the allocation order has become inoperative\textsuperscript{20} (after December 31). However, in view of the fact that such neglect constitutes a misdemeanor\textsuperscript{21} or can give rise to a disciplinary act\textsuperscript{22} under the law of either country, it is most unlikely that such neglect would occur frequently.

C. The Superimposition of Duties Theory

All planned economies agree that there is a duty to contract. There are differences in approach concerning the nature of the duty, whether it is administrative, civil, or both. There are also differences in the procedure intended to bring about the desired result. Under some laws the seller has the obligation to make the first step, while under others the burden falls to the buyer. Sometimes both parties may have the concurrent obligation to take the initiative. There is considerable variance concerning grounds upon which a motion to compel contracting may be resisted. However, one basic obligation is common to all planned economies: everywhere contracting on the basis of the plan is mandatory.

Under Rumanian law the obligation to enter into a contractual relationship is twofold: administrative and civil.

(a) The administrative duty to contract: As soon as the seller acquires knowledge of its duties under the plan, it has an administrative obligation to enter into a contractual relationship with the beneficiary specified in the plan, or to take the first necessary steps in order to ascertain who the beneficiary is when not specifically designated. Failure to act may result in disciplinary or even criminal liability for the negligent employees\textsuperscript{23}. Furthermore, it may result in diminution of the director’s fund\textsuperscript{24} and the loss of bonuses and other incentives for the staff of the enterprise at fault\textsuperscript{25}. There seems to be a consensus among the jurists of planned economies in this respect\textsuperscript{26}.

(b) The civil duty to contract: Jurists in most planned economies have difficulty in rationalizing the private right of action to compel contracting solely as an outgrowth of an administrative duty. The explanation for this conceptual difficulty may reside in the traditional dichotomy between administrative duty giving rise to a public action on the one hand, and a civil duty giving rise to a private action on the other. Most jurists elaborate on the existence of a second

\textsuperscript{20} Under the Bulgarian view compensation could be awarded, but under the Rumanian view it could not. On operative validity of allocation orders, see generally infra Part III(F), pp. 397-402.

\textsuperscript{21} Rum. Pen. Code arts. 242 (criminal negligence), 245 (abuse).

\textsuperscript{22} D. 255 of Aug. 29, 1953, arts. 1-2.

\textsuperscript{23} Id. See also Rum. Pen. Code arts. 242, 245.

\textsuperscript{24} HCM 1653 of Oct. 8, 1955.

\textsuperscript{25} Instr. CSP, MF & CC Sind. 2321 of Oct. 8, 1955.

\textsuperscript{26} I. Novitzki & L. Luntz, supra note 11, at 101; O. Ghenchin, Soviet Civil Law ch. XIX, § 1(9) (Moscow 1950).
and distinct duty of a civil character that can be enforced through a motion to compel contracting.

(c) The superimposition theory: With the exception of Hungarian jurists, who recognize administrative law as the sole source of the duty to contract and who analyze a motion to compel contracting in terms of an administrative remedy privately enforced, and except for an isolated contrary view of a Soviet jurist whose theory is the nonexistence of any duty other than a civil duty to contract, the great majority of the jurists of planned economies, including the Soviets, talk about an administrative duty plus a superimposed civil duty to contract.

A typical statement of this theory of superimposition of duties having identical objects is that given by a classic of Rumanian economic law:

Reciprocal rights and obligations of state enterprises do not and cannot originate from an administrative duty to contract. An obligation toward the state may not generate private rights of action for state enterprises which all have planned tasks and which are all equal in relation to each other. For reciprocal duties (and rights) to exist, it is necessary to advance from administrative law into the sphere of civil law. The administrative action of planning in addition to assigning concrete tasks creates a civil law relationship between the parties, the object of which is the duty (and right) to make a contract. A contrary view seems to be in disregard of the fundamental feature of an administrative law relationship, namely that of subordination of one party to another. It would be a departure from a generally accepted view to contend that administrative law generates a civil duty to contract enforceable through private right of action, to contend that in addition to the administrative duty to contract it enables the parties to make a motion to compel contracting. Such a contention ignores how effective civil law remedies can be when they are complementary to administrative remedies in furtherance of the same goal, that of making certain that a contract will be entered into. By misunderstanding an essential feature of delivery contracts, such as that of having at their disposal administrative and civil remedies to ensure that an administrative and a civil duty to contract will be fulfilled, a correct analysis of delivery contracts and their special problems becomes very difficult indeed.

One can easily discern the author's struggle to deal with a novel institution, such as a planned relationship, in traditional terms of administrative and civil duties. The authors justify their refusal to conceive that administrative duties may generate civil actions, by their intention not to depart from generally accepted views. However, they fail to take into account that the particular kind of

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27. See G. Eorsy, Contractele planificate [Planned contracts] ch. IV, § 13(3) (Buc. 1956).
30. T. Ionascu & E. Barasch, supra note 6, at 143.
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civil action necessary to compel contracting is not really a civil action in the traditional sense of the word. It is not only a remedy that an aggrieved party may elect, but is at the same time an obligation of the "aggrieved" party to sue, and failure to do so may bring a disciplinary sanction or criminal prosecution. The mandatory nature of the suit to compel contracting, may perfectly justify the Hungarian analysis in terms of an administrative remedy. Indeed, functionally the private "right" of action is very much like any other administrative obligation: the plaintiff may be as unhappy about the planned contractual relationship as is the defendant, but nevertheless has to take the necessary steps to comply with the plan against his own desires.

The real reason underlying the majority analysis in terms of civil duties and remedies may rather be found in a general reluctance of planned economies to characterize their institutions as being of an administrative character. Civil law in the public mind is associated to a certain degree with private initiative and efficiency as opposed to administrative law, which is more connected with notions of a lack of freedom and inefficiency. It is preferable, psychologically, to present things as if they were utterly decentralized, as if success of the plan depends upon the deliberate choice of each state enterprise and each staff member involved. Regardless of how much freedom of action for the individual enterprises may be found in a thoroughly regulated field, such as delivery contracts, jurists, with the exception of the Czechs, continue to speak in terms of civil duties, private rights of action, and civil law, refusing to accept the notion of a new economic law. Their attitude tends to present the system in a form that is more acceptable to the people's aspiration for more freedom and private initiative.

D. The Advance Action Theory

A widely accepted, though not unchallenged, theory in planned economy states relates to the existence of a duty on the part of state enterprises to prepare for future contracts. As soon as the plan becomes known, and the state enterprise has sufficient knowledge enabling it to work on its tasks, it cannot idly sit by and wait until all procedures leading to the contract are fulfilled and the contract signed, but rather has an affirmative duty to inquire about raw materials, organize production, and even to start work while the exchange of letters with the buyer takes place or even while precontractual litigation settles the differences between the parties.32 The existence of such a duty has never been tested in

31. "It is not difficult to imagine a planned economy in which the lower agencies slavishly perform their tasks as small gears in a huge machine. The contractual doctrine encourages the economic agencies, the enterprises to feel that they themselves undertake the tasks, working out and concluding the contracts which alone bind them." Mihaly, The Role of Civil Law Institutions in the Management of Communist Economies: The Hungarian Experience 8 Am. J. Comp. L. 310, 315-16, cited by H. Berman, supra note 29, at 140.

court, mainly for two reasons. First, the proof is very difficult and the quantum of damages resulting from lack of advance action is very hard to assess. It is easier for plaintiffs to claim compensation for late contracting or late delivery, in which case it is not necessary to prove any failure on the part of defendant and, in which case, there are no worries about the measure of recovery because the contract fixes the damages to certain percentage of the selling price.33 Secondly, the burden of proof of lack of negligence is on the defendant and it is fair to say that the burden can virtually never be carried successfully. The plaintiff is very rarely required to submit any proof other than the number of days of delay.34

The existence of a duty to take advance action would, in fact, bring Rumanian law very close to the much discredited minute specification theory of the Highest Bulgarian Arbitraj, to the effect that a seller is under a duty to perform when a sufficiently detailed plan enables him to do so. The advance action theory may even be a more radical blow to the importance of contracts, because it forces state enterprises to act without a contract in all cases and not just in the exceptional case of an overly detailed plan. Although the two theories are very similar in nature and effect, the advance action theory is psychologically preferable to the minute specification theory, because it bases the duty to act on contract rather than on a command of the planning authority. This may account for the isolation of the more logical Bulgarian view and the popularity of the somewhat forced theory based on a contract that has not been concluded.

E. The Theory of Incorporation

There is a consensus among planned economy lawyers, that delivery contracts incorporate the following by implication if they fail to do so in express terms: (1) the plan; and (2) fundamental principles of the state's economic policy. The theory has its origin in the statutes directing arbitraj, when deciding a case, to take into account the plan and economic policy. Rumanian law has such a provision35 as does the law of other planned economies.36 Rather than considering the activities of arbitraj as overriding the contract and imposing external elements, scholars have preferred to consider the activity as an enforcement of implied contractual clauses. The practical consequences of such an incorporation is a drastic reduction of invalid contracts. As will be explored in more detail later, delivery contracts having illegal clauses will at the same time contain implied legal ones. All the court has to do in such a case is to choose between two conflicting clauses, and naturally its choice must fall upon the implied legal ones.37 In the phase of precontractual litigation, the incorporation of

33. See, e.g., St. on Del. Prod., 2 Sov. Stat. & Dec. No. 2, at 23 (U.S.S.R. 1965); D. 265 of June 25, 1949, art. 2(b) (Rum.).
36. See, e.g., State Arbitraj Law of 1960, art. 18, para. 1 (Bulg.); Law of Nov. 8, 1958, §§ 4-7 (Czech.). On Soviet law, see H. Berman, supra note 29, at 126.

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the economic policy presents no theoretical difficulties. It is not in disregard of the role delivery contracts are supposed to play because no contracts have been concluded as yet. The practice is hailed as the best safeguard of the interests of both parties and that of the State. A more delicate problem is presented when a contract exists and in the name of contract discipline its clauses should be denied enforcement. The apparent conflict between an adjudication based on the law of the parties as expressed in their contract and administrative-economic expediency as materialized in general economic policy is eliminated by the ingenious incorporation of the second into the first. As the leading Rumanian treatise states:

What is true for arbitraj in precontractual litigation is equally true for both parties. Having demonstrated its applicability of the theory of incorporation to arbitraj we are relieved of the necessity of repeating the argument with respect to the parties. Both parties and arbitraj have a duty to take into account, in the manner prescribed, the general principles of economic policy which is another expression of centralized regulation of delivery contracts. It is a concept that escapes adequate consideration by some jurists and so we find it necessary to dwell upon it: An essential method of getting the final version of a delivery contract is this procedure of supplementing its content.

F. Centralized Regulation

The theory of incorporation was mentioned as an expression of centralized regulations. Another expression of the same kind of regulation is the body of basic conditions of delivery, as they are called in Rumanian law or special conditions of delivery, to use the Soviet statutory language. They are in essence regulations differing from industry to industry, governing quality of goods, methods of reception, packaging and shipment, conventional penalties and fines for breach of contract. State enterprises having similar activities must incorporate by reference into all their delivery contracts the basic conditions of delivery of their respective industry. Yet another expression of centralized regulation are general contracts concluded by higher economic authorities in the name of the subordinate enterprise, mandatory clauses that must appear in every contract, and prohibited clauses that may not be used.

While basic conditions and other centralized regulation, when taken sepa-
rately, would leave room for private initiative, one has to take into account the fact that they are all interrelated, so that a future analysis of additional aspects of delivery contracts is necessary before arriving at any conclusion as to their nature and role in the legal and economic system of Rumania.

II. CONTRACTING PROCEDURE

A. Contracting Campaign

As a general rule, all contracts must be entered into within a period called the “contracting campaign,” which starts after the plan for the following year is made public and ends before that plan goes into effect, or, to use planning terminology, starts after the launching of and ends before the start of the annual plan. In Rumania, timing and duration of the contracting campaign is subject to annual determination by the Council of Ministers.46 All planned economies use contracting campaigns,47 though their timing, duration and procedure may vary; e.g., in Soviet law, timing and duration is determined as part of the five year plan and is not subject to change. As a matter of practice in Rumania, the campaign lasts from six to seven weeks and takes place in October and November of each year. For example, for the years 1961 and 1962, provision was made for the campaign to last from October 1 to November 15 of the preceding year, allowing thirty days for signing most of the domestic contracts and forty-five days for entering into contracts involving machinery used for export trade.48

The reason for such an early contracting campaign is to enable the enterprises to organize adequately for the plan, and to enable planning authorities to correct eventual errors that may be revealed as a result of the contracting campaign.49

B. Post Campaign Contracting

The last day of the contracting campaign does not operate as a statute of limitations and does not bar an action to compel contracting. If there were a failure to contract, the guilty enterprise would be subject to fines, damages, loss of funds for bonuses, etc.,50 the negligent employees would have to face disciplinary penalties or even criminal liability,51 but a contract would still have to be entered into.

C. Operative Validity

The duty or right to contract continues as long as the planned tasks and allocations are operative and this is generally until the last day of the plan, December 31. There are two important qualifications to the general rule: (a)

46. HCM 524 of June 23, 1951, art. 9, para. 1.
47. See, e.g., D. CM of April 21, 1949, art. 2 (USSR); Hung. Civ. Code art. 398(1).
49. See Editorial “Scinteia” (official daily newspaper of the Rumanian Workers’ Party) Dec. 27, 1961 at 5397; T. Ionascu & E. Barasch, supra note 6, at 213.
Special provisions in the plan or separate legislation sometimes establish a shorter or longer operative validity for certain tasks and allocations. For instance, allocations of perishable farm products often have an operative validity of three months as opposed to tasks involving construction, for which the period is two years. It should be noted that the practice of planning in installments for each trimester separately does not affect the operative validity of the allocation, which remains annual. An allocation order providing for 1,000 units in trimester I, 1,000 in trimester II, 1,000 in trimester III and 1,000 in trimester IV of the year 1968 and, unless subject to the limitation discussed below, arbitraj may compel the parties to enter into a contract as late as December, 1968.

(b) The operative validity notwithstanding, arbitraj does not compel contracting and must deny enforcement of allocation orders when it is certain that the task can no longer be fulfilled because of the delay. Such exceptions are very strictly construed. For instance, in 1956, a suit was brought upon an allocation order for wool to be produced by a farm and delivered during the second trimester of 1956. The plaintiff petitioned to arbitraj to compel the defendant farm to make a contract, although he had failed to sue during the contracting campaign which took place in October of 1955. Plaintiff was late even with respect to the delivery date set forth in the allocation order. Defendant opposed the suit on two alternative grounds. First, that the operative validity of the allocation order had expired on June 30, 1955; and, second, the allocation order should be denied enforcement because harvesting of wool is a once a year affair taking place in the spring, so that a delay thereafter makes performance impossible. The defendant lost on both grounds with arbitraj holding: (a) specification of a certain trimester in an allocation order has no impact on operative validity for a full year unless specifically stated in the plan; and (b) the seasonal character of wool harvesting does not make the performance impossible as long as the product itself is not perishable and can easily be stored for many years.

D. Voluntary Contracting

Regardless of differences concerning the clauses of a contract, assuming neither potential party expressly refuses to enter into it, their relationship comes under the heading of voluntary contract. In such case, it is incumbent upon the seller to prepare a draft of a proposed contract and send it to the beneficiary. The beneficiary has an obligation to sign the draft and return it to the seller within five days. (No extension of such period may be agreed upon.) He must
do so regardless of whether or not he agrees with the draft. In case of disagreement, however, he must make a notation on the face of the draft: "with reservation as specified in list of divergences No. . . ." and, at the same time, forward to the seller a list of divergences containing all his objections and counterproposals. The seller has in turn a five day period during which he may attempt to negotiate directly. If there is a failure to reach an understanding, the seller must resort to arbitraj. Regardless of divergences and litigations, as soon as the draft is signed and returned by the buyer to the seller, a contract has been concluded and the parties are under a contractual duty to start performance. Continuing disagreement and litigation does not excuse inaction. When pre-contractual litigation finally eliminates divergences between the parties, and a decree sets forth the terms of a contract, such decree is in the nature of an interpretation of the preexisting contract between the parties, rather than an order to act in one way or another. The solution of arbitraj, being based on the plan and basic principles of economic policy, both of which are incorporated by implication into every contract, is, in fact, making an interpretation of implied clauses of the contract. The difficulty with this approach is in a situation where both the seller's and the buyer's proposals are perfectly compatible with plan and policy, such as disputes concerning details. The filling in of disputed specifications can hardly be said to result from anything expressed or implied in the contract. This may explain the more realistic view, taken by the Prime Arbiter of the Soviet Union, leaving to arbitraj to determine case by case at what point in time a contract was entered into—that is, the choice between the time the proposed draft was returned or the divergence settled. Identical was the practice of Rumanian arbitraj until 1960, when the Prime Arbiter of Rumania [hereinafter referred to as PAS] criticized arbitraj for erroneously applying the law and instructed arbitraj to uniformly consider a contract concluded when the proposed draft was returned and to incorporate retroactively the solution of the divergence into the contract. The position taken by the PAS in 1960 was not a new one as similar instructions had been issued in 1956 and 1957, but arbitraj was reluctant to abide by them until the imperative instructions accompanied by sharp criticism brought them back to socialist legality. Interestingly, Soviet writers prefer the Rumanian view to that of their own Prime Arbiter, which they criticize on the ground that it fails to provide

59. HCM 524 of June 23, 1951, art. 8 para. 3. The term list of divergence corresponds to "protocol of disagreements" in Soviet law, see generally H. Berman, supra note 29, at 123.
60. HCM 524 of June 23, 1951, art. 8, para. 5. Under Soviet law the purchaser rather than the seller has the obligation to resort to arbitraj, see H. Berman, supra note 29, at 123.
61. HCM 524 of June 23, 1951, art. 8, para. 7.
62. On theory of incorporation see generally supra Part I(D), pp. 383-84.
63. See Ionascu & Barasch, supra note 6, at 220-22.
64. Instr. PA of Dec. 9, 1940 (U.S.S.R.).
sufficiently definite standards and to recognize that without exception a contract has been concluded once it has been signed.67

The departure from traditional contract law with respect to the principle that acceptance cannot vary the terms of the offer is not an invention of planned economies. The requirements of a more rapidly moving commercial activity have long since eroded the old concept, and acceptance of an offer with some additions even under the Uniform Commercial Code [hereinafter UCC] does not necessarily prevent the formation of a contract, unless acceptance is expressly and strictly conditioned by the offer upon the original terms.68 Even to allow silence to operate as an acceptance of a counterproposal does not seem a strange concept to a more modern commercial law.69 However, the existence of a post-contractual relationship, with respect to the very points on which the parties specifically refused to agree and with respect to which a precontractual litigation is being conducted, presents considerable conceptual difficulty. It would have been much easier to say that when agreement cannot be reached arbitration will tell the parties what to do. However, anything that would make the parties act upon orders instead of upon the contract of their choice would have a harmful psychological impact, so that jurists prefer a line of analysis that stresses the role played by contracts.

The tendency to consider that a contract has been concluded may sometimes conflict with the policy of having the parties as a matter of practice get in touch, put things on paper, negotiate, and in the course of their dealings discover eventual planning errors. An obvious conflict arises in case of the offeree's delay in returning or failure to return the proposed draft. If within the five day period provided for the return of the proposed draft,70 the buyer fails to comply with his legal obligation, one could easily apply the theory that "when there is a duty to speak silence constitutes acceptance" as a justification for imposing a contractual relationship upon the parties.71 On the other hand, such analysis would enable the buyers to refrain from negotiating and would prevent the imposition of fines for late contracting or noncontracting. Because of this, the majority view is that silence does not operate as acceptance but that the buyer is guilty of breach. The most accurate measure of damages being specific performance, the buyer will be held to the terms of the proposed draft as compensation for his failure to enter into a contractual relationship.72 Liability of state enterprises being predicated upon fault,73 obviously the damages theory cannot apply when

68. See Uniform Commercial Code § 2-207(2)(a) [hereinafter cited UCC].
69. See, e.g., id. § 2-207(2).
70. HCM 524 of June 23, 1951, art. 8, para. 2.
the nonreturn of the proposed draft is due to circumstances beyond the control of the parties. For such case, the statute being silent, the PAS has given the seller an election of remedies. First, to petition for enforcement of the proposed draft. If arbitraj finds that the buyer was at fault, the contract as originally proposed by the seller will be imposed as damages, and if not at fault, arbitraj will hold that a contract was concluded when the reply should have reached the seller and will adjust the divergences between the parties. The second remedy is to repudiate the contract and to notify the buyer that because of his delay no contractual relation was created. This may be done only if it does not impair the seller's ability to fulfill his annual plan, such as when sufficient alternative buyers for the same or similar products are at hand, or when allocation orders in excess of the production plan have been issued. Failure to be prompt in informing the buyer will not bind the seller to his proposed draft, but will also force upon him compliance with the late-coming list of divergences, on the theory that the buyer may be justified in interpreting silence as an acquiescence, and relying upon it. Assuming the requirement of promptness was complied with, the buyer still may petition to arbitraj and a decision will be made with due regard to both parties' plan and the state's interest in having the annual plan fulfilled. All of these ancillary compunctions make the choice of the second remedy highly unlikely. The condition of having at hand an additional buyer with an allocation order or of having orders in excess of the plan would seem to entitle the seller to refuse contracting in the first place and would enable him to defend successfully a suit without having first to offer a contract and subsequently attempt to withdraw it. Because of these possibilities there are no reported cases of successful repudiation by reason of delayed reply and the election remains a platonic expression of private initiative.

E. Arbitral Contracting

Thus far discussed have been: (a) contracts entered into without the help of arbitraj, and (b) with the help of arbitraj either adjudicating divergences or imposing a contract as damages for the defendant's failure to return promptly the proposed draft—or promptly assert its unwillingness to contract. Regardless of how much disagreement may be found in the divergences, and regardless of the fact that the buyer may have agreed only to extremely different terms, with the existence of a contract based only on the fact that the buyer did not expressly refuse to enter into any contract at all, the activity of arbitraj is still considered as merely auxiliary to the voluntary contracting of the parties.

It is only when either the buyer or the seller expressly rejects the invitation to enter into any kind of contractual relationship that arbitral contracting comes into play. In contrast with the role played in voluntary contracting, when arbitraj either settles divergences on the basis of the plan or makes findings as to the

74. See I Mat. 202-04.
75. HCM 1397 of Aug. 18, 1954, art. 5 (rules of procedure for arbitraj).
timeliness of notifications and whether or not the delay was due to the fault of a party, arbitral contracting involves a limited judicial review of the planning activity in the sense that, if there is contradiction between production plan and allocation order, arbitraj will invalidate one or the other, totally or partially.\textsuperscript{76} It often happens that arbitraj does the same type of review when it handles divergences, because divergences do not necessarily relate only to minor details, but often involve the partial invalidation of one or both orders.\textsuperscript{77} However, many legal consequences depend upon litigation within the framework of a divergence or that of arbitral contracting. For example, assuming that the beneficiary has an allocation order for 1,000 widgets, and the manufacturing plant believes it is under no duty to produce such merchandise or that the orders were given in excess of the plan, the manufacturing plant may be well advised to make a proposed draft to sell to beneficiary a certain small amount of widgets and let the beneficiary submit a list of divergences to arbitraj. Similarly, if the beneficiary does not need the 1,000 gadgets contained in a proposed draft, he would do better not expressly to refuse to contract but rather to make a divergence upon the quantity and declare himself willing to buy a small amount. The consequence of having divergence rather than arbitral contracting is that no late contracting fines may be imposed if it later turns out that the divergence was wrong. This is the result of the analysis discussed previously, that a contract is deemed concluded when the draft was returned,\textsuperscript{78} and the decision upon divergence becomes retroactively incorporated into the contract\textsuperscript{79} without entitling the adversary to late contracting fines or damages. On the other hand, when it comes to late performance of the contract, a divergence, when compared with arbitral contracting, may tend to become a disadvantage because of late performance fines (that are higher than late contracting fines)\textsuperscript{80} to which the parties may be subjected from an earlier date due to the retroactive incorporation of the divergence into the contract.

When handling a motion to compel contracting, arbitraj may totally invalidate an order (allocation or delivery) or it may enforce it partially or totally and compel the defendant to enter into a contractual relationship.\textsuperscript{81} When the second alternative is present, arbitraj may go one step further and make a decision \textit{in lieu} of contract. Earlier practice gave complete discretion to arbitraj of which course of action to take.\textsuperscript{82} However, since 1955, upon the order of the PAS to avoid the duplication of litigation which results from causing the parties to litigate divergences separately, and to render decisions \textit{in lieu} whenever practical,\textsuperscript{83} arbitraj has virtually abandoned decisions compelling contracting. Ru-

\textsuperscript{76} Instr. PAS 6560 of 1953.
\textsuperscript{77} In a divergence suit see, e.g., Dec. PAS 3114 of Dec. 30, 1965 partially invalidated a delivery order for 500 sheep and ordered the parties to contract for 200 sheep.
\textsuperscript{78} HCM 524 of June 23, 1951, art. 8, para. 7.
\textsuperscript{79} Instr. PAS 14 of June 18, 1960.
\textsuperscript{80} Customary per diem late contracting fine is 0.1%, late performance fine 0.3%.
\textsuperscript{81} Instr. PAS 6560 of 1953.
\textsuperscript{82} I Mat. 199.
\textsuperscript{83} Instr. PAS 1 of Feb. 15, 1955, in Cul. 150.
manian scholars criticize the new approach for being excessive and formalistic and would prefer the older practice giving arbitraj discretion. The practice of Soviet arbitraj, Czechoslovak arbitraj, and Bulgarian arbitraj, are similar to the current Rumanian practice, in that the decision by arbitraj in a law suit based on refusal to contract is deemed the contract and the parties are under an obligation to start performance. On the other hand, the German law contains provisions similar to the pre-1956 Rumanian practice allowing arbitraj to simply order that the parties make a contract and let the parties follow through the entire procedure, including eventual divergences.

F. Late Contracting Fines

Late contracting fines are a device to pressure the parties to enter into the contract. They are imposed in the form of an ancilliary relief to a motion to compel contracting. A separate suit for fines cannot be brought. If the motion to compel contracting fails because it is too late for the contract to be performed, late contracting fines cannot be imposed. In a certain sense, they constitute minimum liquidated damages because they are imposed without proof of actual damages. Furthermore, plaintiff may prove that his damages are in excess of the fines and may recover the difference. Moreover, the plaintiff may recover actual damages for noncontracting, even though his motion to compel contracting and request for fines were unsuccessful, provided the solution was not prompted by invalidity of the allocation. On the other hand, the plaintiff may not waive his right to late contracting fines; he is under a duty to sue for them and, failing to do so, arbitraj has the duty to consider the imposition of late contracting fines ex officio.

Rumanian arbitraj imposes late contracting fines from the date the buyer should have returned the seller's proposal with or without divergences, regardless of whether or not the contracting campaign was still going on. This differs from the Soviet practice, criticized by scholars of imposing fines from the cutoff date

86. Law of Nov. 8, 1958, § 24(2).
87. Rules Implementing State Arbitraj Law, art. 47.
91. P. Sapkina, Perfectarea Furnizariilor Prin Contracte si Solutionarea Litigiilor Precontractuale [Improvement of deliveries through the use of contracts and solution of pre-contract disputes] ch. I, § 2 (Moscow 1961); see also Borzova, supra note 85, at 203.
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of the contracting campaign although the parties were under a duty to contract prior to the cutoff date.

The five day reply periods,92 the contracting campaign cutoff dates,93 and the election to repudiate the contract94 would seem to constitute a limitation upon the time available for entering into a contractual relationship. In practice they do not really cut off the rights and duties of the parties but merely serve the same purpose as late performance fines, to force the parties to contract at an early date.

The explanation for this may be found in the importance for planned economies of having delivery contracts concluded as early as possible, so that arbitraj may help the parties iron out all divergences and organize their work in due time95 and in the even greater importance of having all planned contractual relationships effectuated.96 The law puts all possible pressure on state enterprises in furtherance of early contracting, but carefully safeguards the opportunity to contract at any time during the annual plan when there is still a chance that the contract will be performed.

III. FORM AND CONTENT

A. In Writing

The only express statutory requirement concerning the form of delivery contracts, was that provided in legislation prior to [1951] Decree of the Council of Ministers of Rumania 524, requiring that they be in writing.97 In spite of the Decree having no express requirement that delivery contracts be in writing, it has universally been interpreted as implying the written form.98 There is an identical requirement in the law of all planned economies.99 There is more variation with respect to the implied requirement that the contract be integrated into a single instrument rather than expressed in an exchange of letters. There is a split among the writers100 and the instructions of the PAS are equivocal because they mention that generally a single instrument will be required without specifying the circumstances under which an exception may be made.101 Earlier instructions of the PAS indicate that contracts made in disregard of the prescribed form may not be invalidated but that the guilty employee should be subjected to

92. HCM 524 of June 23, 1951, art. 8, paras. 2 & 5.
93. HCM 524 of June 23, 1951, art. 9.
95. See Ionascu & Barasch, supra note 12 at 90.
97. See D. 265 of June 25, 1949, art. 1.
98. See I Mat. 60-62.
100. Accord, Constantinescu, Despre Contractele Reglementate [Regulated contracts], [1957] 2 AS 20; Witzman, Contributii Ale Practicei Arbitrale la Independirea Sarclilor Economice Ale Planului de Stat [The contribution of arbitraj to the fulfilment of the economic tasks of the plan], [1960] 5 JN 783, 792. Contra, Ionascu & Barasch, supra note 6, at 278.
disciplinary action. However, it is not clear whether the instructions would excuse the disregard of the single instrument requirement or only that of minor forms like standard clauses. On the other hand, arbitraj is reluctant to invalidate any contract and constantly enforces contracts not meeting the single instrument requirement. Such practice is in line with that of Soviet arbitraj. Other planned economies have statutes expressly dispensing with the single instrument requirement. On the whole, it does not constitute a serious problem, so long as the parties exchange letters and do, in fact, deal with the details involved and have an opportunity to check for eventual planning errors.

B. Preliminary Contracting

A much more important problem and more lively debate concerns the requirement of preliminary contracting (in contrast with concomitant contracting) with regard to which there has been a constant change in the practice of arbitraj and the instructions of the PAS. The law prohibits the State Bank and Investment Bank from making payments on any invoice which is not accompanied by a certain number of documents, among which must be the preliminary contract and delivery order. Because most financial accounts of state enterprises are handled by the State Bank (with the exception of those handled by the Investment Bank), and payments are made exclusively through banking channels, the provision amounts to an outlawing of concomitant contracts because negligent sellers would not be able to collect. There was a loud outcry against the hardship to the negligent seller who must bear the entire loss as compared with the windfall to the negligent buyer who can keep the merchandise without paying for it. Arbitraj began to circumvent the law by allowing suits based on a theory of unjust enrichment. They directed the State Bank to pay money representing unjust enrichment to a party rather than representing the purchase price, although the quantum paid was usually measured by the contract price. The practice of arbitraj weakened the pressure on state enterprises to make preliminary contracts and the PAS was soon going to intervene. As a matter of fact, he answered the criticism of hardship by pointing out that the measure is in no way different from fines and penalties designed to enforce contractual discipline. He concluded that there is no reason to feel sorry for delinquent enterprises. As such admonition proved insufficient, the PAS in 1954 issued specific instructions ratifying the procedure of arbitraj in allowing suits for unjust enrichment but demanded that arbitraj take an additional step, that of ordering successful plaintiffs to pay over the award into a special fund of the Ministry of Finance. The instructions were designed to maintain pressure on

103. See R. Halfina, Rolul si Esenta Contractului in Dreptul Socialist Sovietic [The role and essence of contract in socialist Soviet civil law] 246 (Buc. ESPLEJ 1956); Novitzki & Luntz, supra note 11, at 216.
105. HCM 524 of June 23, 1951, art. 15(c).
106. See I Mat. 305-06.
the parties and to eliminate the possibility of a windfall to the buyer, who, as a result, is now under an obligation to pay for the merchandise, in addition to being subject to disciplinary action. The results were not entirely satisfactory because sellers having neglected to make an anticipatory contract were discouraged from later fulfilling the planned obligations. They would rather couple their initial indiscipline with further wrongful inaction, in order to avoid performance for the benefit of the Ministry of Finance. This prompted, in 1957, a partial withdrawal of the earlier instructions, in the sense that sellers were allowed to retain the payments received for the merchandise if the contract, although concomitant, was otherwise in conformity with the plan. Concomitant contracts were accorded all the effects of preliminary contracts such as implied warranties. At the same time, stronger disciplinary measures were implemented against employees neglecting preliminary contracting.108

C. Contracts with Limited Effects

Only one year later there was a new change, designed to put pressure on buyers. The effects of concomitant contracts were limited to: (a) the buyer’s right to have the merchandise delivered and (b) the seller’s right to have the price paid for it.109 This, in effect, denies to buyers the implied warranties in case of concomitant contracts. The new treatment remains the law with two modifications. One deals with accounts handled by the Investment Bank. Under no circumstances can such payments be based on concomitant contracts or unjust enrichment.110 The other increases disciplinary liability of employees neglecting their duties with respect to preliminary contracting.

An interesting application of the new doctrine of contracts with limited effects came in 1962. In cases of contracts with full effects, it is the constant practice of arbitraj to protect buyers with an implied warranty against out of pocket losses due to retroactive price increases. The effect of such a warranty is to allow intermediaries, who have actually resold merchandise at the old and lower price, to offset their out of pocket losses against the price difference they would have to pay to the seller on the basis of the new price. In the case of a concomitant contract, the seller was allowed to recover from the buyer the entire price difference without the buyer being allowed to offset the losses incurred with respect to the merchandise resold at the old price. The court reasoned that allowing the offset would, in fact, amount to a violation of the 1958 instructions denying to concomitant contracts any effects other than delivery of merchandise and payment, because the offset was not part of the price difference but an expression of an implied warranty specifically denied by the instructions.111

The new concept of contracts with limited effects is severely criticized by

writers as having no statutory basis and no logical justification. Further, the authors fail to perceive a reason for treating contracts with payments to be handled by the Investment Bank, differently than contracts with payments to be handled by the State Bank. The authors are in disagreement concerning a possible solution to the problem. Some would give the concomitant contracts unlimited effects but would penalize the seller by making him pay over to the State the price received; others would deny concomitant contracts all effects whatsoever and treat delivery as if no contract were made between the parties; and finally, a third group would treat the contract as if it were a civil contract for unplanned goods. Criticism and controversy notwithstanding, the new type of contracts has survived.

D. Short Form Contracts

The various Ministries are entitled to waive the requirement of a full-fledged delivery contract with respect to delivery of small quantities of goods. Each Ministry may allow delivery of merchandise, by simply issuing a confirmation of the order and without going through the ritual of a proposed draft, answer, etc. "The order coupled with a confirmation is assimilated to a contract and will enable the State Bank or Investment Bank respectively to make the requisite payments."115 Although the decree uses the words "assimilated to a contract," arbitraj has constantly interpreted the provision as allowing short from contracting rather than dispensing with a contract altogether or substituting orders for a contract. Consequently, all effects of a full-fledged contract were accorded to the short form contract, with buyers having the benefit of all express and implied warranties. The PAS, having to decide the legality of the treatment of short form contracts, in 1954 issued instructions inviting arbitraj to continue its practice with respect to planned contracts.116 The silence of the instructions with respect to regulated contracts left part of the question unsettled until 1960, when a decision of the PAS with respect to an order coupled with a confirmation treated it as a short form contract and gave it all the effects of a contract. As the goods involved called not for a planned contract but for a regulated one, the decision of the PAS settled the entire problem.117

There are two circumstances under which short form contracts may not be used regardless of the amount of money involved: (a) when there are divergences between the parties with respect to any term, and (b) when special orders are involved, calling for manufacture of products which the seller is not ordi-

112. See, e.g., Ionascu & Barasch, supra note 6, at 298.
114. See, e.g., Severin, Zece Ani Dela Infiintarea Arbitrajului de Stat [Ten years since the organization of arbitraj], [1959] 3 AS 1, 6.
115. HCM 524 of June 23, 1951, art. 12, para. 1.
118. See HCM 524 of June 23, 1951, art. 12, para. 2.
nantly in the practice of keeping in stock or selling.\textsuperscript{119} In both circumstances, the parties must fulfill the requirements with respect to full fledged contracts. In contrast to domestic trade, there is no prohibition against the use of short form contracting in foreign trade regardless of the amount involved.\textsuperscript{120}

E. Mandatory Clauses

The contracting parties must include in every contract a reference to the basic conditions of delivery, the state standards applicable and the legal basis for the contract price, and also state the numbers and dates of allocation orders and delivery orders on the basis of which the contract is concluded.\textsuperscript{121} There are no legal issues with respect to these requirements other than the result if the parties omit them. The answer is simple; arbitraj will incorporate them by implication into the contract. A more complicated problem arises with respect to conventional damages clauses. On the one hand, their inclusion into every delivery contract is mandatory.\textsuperscript{122} On the other, the duty to standardize conventional damages was delegated to the various Ministries, which were under an obligation to fix the amount of late performance fines and low quality penalties to be applied with respect to contracts of subordinate enterprises.\textsuperscript{123} The fines and penalties, as fixed by the Ministries, were to become part of the basic conditions of delivery. Some of the Ministries provided for both fines and penalties, others for penalties but not for fines, and still others for fines and not for penalties. Thus the basic conditions of delivery varied in this respect from industry to industry. The question arose whether, in case of basic conditions making no provision with respect to penalties, the parties to the contract should include them because they are mandatory under the law or should refrain from including them because the question has been delegated to the Ministries, preempting the right of the parties to deal with the problem. The PAS has chosen the second alternative.\textsuperscript{124} The solution was criticized as allowing the silence of an inferior body, the Ministry, to override the express command of a superior body, the Counsel of Ministers, which issued the decree.\textsuperscript{125}

F. Prohibited Clauses

1. Affecting Duration of the Contract

Most allocation orders and delivery orders have operative validity until the end of the year.\textsuperscript{126} At that time the annual plan terminates and all unfulfilled

\textsuperscript{119} See HCM 524 of June 23, 1951, art. 15(c), para. 3.
\textsuperscript{121} See D. 265 of June 25, 1949, art. 2.
\textsuperscript{122} See D. 265 of June 25, 1949, art. 2(k); HCM 524 of June 23, 1951, art. 2(b).
\textsuperscript{123} For a similar requirement in the Soviet Union, see H. Berman, \textit{supra} note 29, at 132.
\textsuperscript{124} See HCM 524 of June 23, 1951, art. 14(a).
\textsuperscript{125} See Instr. PAS 3 of Jan. 21, 1956.
\textsuperscript{126} See T. Ionascu & E. Barasch, \textit{supra} note 6, at 236.
orders expire, or to be more technical, lose their operative validity. The parties may not derogate from the operative validity by providing that the contract may be canceled during the year and may not authorize delivery in a subsequent year because this would implicitly affect the duration of the contract.  

What the parties may not anticipate in their contract arbitraj may later achieve indirectly. For instance, arbitraj may authorize a repudiation of the contract prior to the expiration of the year if, as a result of the seller's delay, the goods have become unusable to the purchaser. Conversely, arbitraj may compel a beneficiary not to reject goods delivered during a subsequent calendar year by virtue of the right to cure the defects of a prior attempted delivery or by imputing the performance to a future allocation order. In either case, arbitraj bases his action on considerations existing at the time of the lawsuit without contractual provisions anticipating those contingencies.

In this respect, Soviet law is more flexible, allowing contractual arrangements for repudiation of the contract independently from operative validity. But also in Soviet law such arrangements may be subject to invalidation by the courts if contrary to national economic planning acts. Operative validity being regulated by national economic planning acts, it may well be that any contractual termination of an obligation prior to the expiration of operative validity may be thrown out by arbitraj.

Hungarian legislation is similar to that of the Soviet Union authorizing contractual arrangements concerning the duration of delivery contracts.  

2. Affecting Mode of Payment or Credit

No contractual arrangement is authorized with respect to mode of payment or extension of credit. The parties cannot stipulate for prepayment or a downpayment of any sum of money, nor can they extend credit for any length of time. The law takes care of all these problems by directing the State Bank or Investment Bank to transfer to the account of seller from that of the purchasing enterprise the sum of money representing the price of the delivered merchandise. For that purpose the seller must prove to the Bank that the delivery order and allocation orders exist, that a contract has been concluded, and that the merchandise has been accepted by the common carrier for shipment. The activity of the State Bank (or Investment Bank) may be compared to that of

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129. See I Mat. 233-34.
133. See D. 265 of June 25, 1949, arts. 3, 9, para. 2.
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American Banks handling documentary letters of credit, in so far as they transfer funds on the basis of documents without regard to existing controversies between the parties.

Also under Soviet law, credit relations between state enterprises and payments, being subject to central regulation by the U.S.S.R. council of ministers, are excluded from contractual arrangements. Similar treatment of credit relations may be found in the law of other planned economies as well.

A justification for such a high degree of centralization may be found in the great importance given to centralized credit by Rumanian economists: "Credit is the highest form of mobilizing and allocating financial resources of enterprises, of the population and the budget in order to provide for the needs of production and distribution in accordance with state planning." Because of the foregoing, commerical credit had to be abolished and credit is now handled exclusively by banks guided by the objectives of the economic plan.

There are two exceptions to the law prohibiting state enterprises from demanding advance payments. One relates to certain construction contracts and the other to certain contracts involving farm products. In both cases, sellers are authorized to demand downpayments in accordance with the basic conditions of delivery if the conditions provide such a clause. There is no exception authorizing credit.

3. Requiring Performance Bonds or Deposits

There are no statutory provisions outlawing performance bonds or deposits of a sum of money in order to insure the performance of an obligation. On the contrary, it was popular for Ministries to provide in their basic conditions of delivery, that bonds be posted or money be deposited to insure a timely return of containers by the purchaser. But the PAS invalidated these arrangements and ordered the Ministries to refrain from such provisions in the basic conditions of delivery. The PAS thought that performance bonds and money deposits impinge upon the credit system in that they immobilize funds and that there exist more efficient arrangements which can be used in order to achieve the desired promptness in return of containers. As ministries and state enterprises promptly realized what the PAS was suggesting, it became a standard practice to sell and resell containers and to insure a prompt resale and redelivery of containers, by setting stiff late performance fines in the basic conditions and the delivery contracts.

136. See R.S.F.S.R. Civ. Code arts. 391-92, 2 Sov. Stat. & Dec. No. 2, at 22 (U.S.S.R. 1964): "All financial dealings of 100 (new) rubles or more must be handled by the banks, a central clearing house is provided for all commercial transactions and the entire system operates on the basis of bookkeeping deductions." H. Bermani, supra note 29, at 143.
139. Id. at 30.
140. See D. 265 of June 25, 1949, art. 3, para. 2.
141. See id. art. 3, para. 3.
142. See I Mat. 259-61.
Later, a special decree dealing with containers and packaging again raised the issue of deposits and performance bonds by providing that contracts may contain such clauses if authorized by law.\textsuperscript{143} No authorizing statute was enacted and probably none will follow because the sale and resale technique proves satisfactory to cope with the problem.\textsuperscript{144}

Again, Soviet law is less restrictive and allows for the inclusion of clauses requiring performance bonds (pledge).\textsuperscript{145}

4. Providing for Joint Liability or Suretyship

The reasons for outlawing joint liability and suretyship are similar to those which have prompted the outlawing of deposits: their effect upon the credit system. While no express statutory prohibitions are in effect, the PAS held that:

When one of the joint debtors pays more than his share or when the surety rather than the principal debtor makes the payment, what in effect takes place is an extension of credit by one joint debtor to the other or by the surety to the principal debtor . . . .

Postponement of payment until the time when the right to contribution or the right of regress is finally enforced for all practical purposes is similar to commercial credit and likewise has no place in our system of centralized bankcredit and should not appear in economic contracts.\textsuperscript{146}

The situation in Soviet law differs with respect to suretyship which can be utilized by state enterprises to secure performance of obligations and with respect to negotiable instruments where joint liability of state enterprises is permitted. Otherwise, “joint liability, occurring frequently in contracts between citizens has no economic justification in relations between state enterprises.”\textsuperscript{147}

In Czechoslovakia, what is called joint obligation is not really joint because “... the contract shall specify the shares or shall state which of the organizations and by what time shall determine the shares; otherwise such contract shall not be valid . . . .”\textsuperscript{148}

5. Authorizing the Merchandise to Remain in Seller’s Custody

It was a widespread practice in the Soviet Union to disguise delay in performance of a planned task in the form of an agreement providing for continuous custody by the seller of merchandise that in fact has not yet been produced. The purpose of the practice was to forestall the expiration of delivery orders and evade banking regulations prohibiting advance payments. Because of the high

\textsuperscript{143} HCM 869 of May 21, 1955.
\textsuperscript{144} See A. Vijoli, \textit{supra} note 138, at 120.
\textsuperscript{146} I Mat. 258-60.
\textsuperscript{147} Ghenchin, \textit{supra} note 26, at ch. XXI, § 2; Art. 35 of Fundamentals of Civil Legislation of the U.S.S.R. and Union Republics, \textit{supra} note 145, at 74.
potential for abuses, Soviet arbitraj outlawed custody arrangements as early as 1934.  

Rumanian arbitraj, having the benefit of Soviet experience, has carefully circumscribed the use of custody arrangements. Merchandise can be left in the custody of the seller only in emergency situations such as inadequate storage facilities at the purchaser enterprise, when specifically enumerated in the basic conditions of delivery, and preceded by a Ministerial verification. In one case, arbitraj proved lenient and waived the requirement of a specific provision in the basic conditions of delivery and preliminary Ministerial verification, and agreed to enforce a custody agreement upon satisfactory proof that the buyer was a newly formed corporation with inadequate storage facilities. There is no reason to believe that arbitraj would follow the precedent in future cases presenting the same issue. It is more likely that the judicially created prohibition will be enforced literally in the future with the very lenient decision of arbitraj standing as an exception to the rule.

6. Increasing or Decreasing Liability for Breach

The wording of the statute would seem to prohibit the contractual elimination of liability for breach but to allow the limitation of such liability: "Basic conditions of delivery and contracts may not provide clauses contrary to decrees or statutes, clauses excusing the enterprise from the consequences of a breach of contract." A narrow interpretation would uphold agreements merely modifying liability either by partially limiting it or by increasing it to the level of strict liability. A contrary interpretation was adopted by the PAS. Citing as authority the theories of Novitzki and Luntz, the PAS ordered the invalidation of any contractual modification of liability for breach. The basis was that limited liability is an excuse pro tanto expressly prohibited by the statute while strict liability constitutes an insurance clause, in violation of the insurance monopoly granted by statute to the State Insurance Administration.

While the sweeping prohibition against any contractual modification of liability for breach is widely acclaimed by Rumanian jurists as well as those of other planned economies, the grounds relied upon by the PAS are criticized and alternative justifications are offered, such as the superimposition of civil

150. Custody arrangements are expressly authorized by HCM 524 of June 23, 1951, art. 2, para. 1.
151. I Mat. 27.
153. See T. Ionascu & E. Barasch, supra note 6, at 356.
154. HCM 524 of June 23, 1954, art. 2, para. 5.
155. See D. 38 of Feb. 6, 1952, art. 2, para. 2.
156. See I Mat. 256-58.
and administrative duties; the latter, having identical object with the former, fixes its limits and prevents contractual modification.158

G. Conclusion

An analysis of various requirements with respect to form and content discloses a conflict between two policies.

On the one hand, it is desirable to have the parties actively participate in the conclusion of the contract and, in fact, work out some details and deepen the plan because it relieves the planners from overly detailed planning and provides the parties with more incentive to work. There is a well known reluctance to act merely as an executioner of commands coming from above.

On the other hand, planning discipline is equally desirable because the enterprises cannot be as familiar with economic policies as are the planners, and are less trustworthy because of the selfish interest of management in complying with success indicators without regard to the real interests of the economy.

It appears that at present the second policy prevails over the first and the contribution of the parties to the contract is often disregarded for the sake of a more effective discipline and for the prevention of dishonesty.

IV. TOTAL AND PARTIAL INVALIDITY OF DELIVERY CONTRACTS

A. Introduction

Planned economy states handle the problem of invalidity in a manner totally distinct from traditional contract law.

The latter differentiates between absolutely void contracts that may be judicially declared as such at the request of any interested person and relatively void or voidable contracts that may be invalidated only at the request of one of the contracting parties. Traditional contract law further divides the second group into totally voidable contracts, and partially voidable contracts containing one or more invalid clauses that, short of destroying the entire contract, will be severed by the court and disregarded.

Planned economies, as a general rule, do not classify contracts into absolutely void and relatively void because in every case any interested person or authority may seek the invalidation of any contract. At the same time, total invalidations are rarely sought. The usual case is a suit involving the invalidation of one or more clauses. A simple disregard of the invalid clauses is equally unlikely. The practice of arbitraj is to rewrite the invalid clause so as to make it legal.

B. Total Invalidity

Under Rumanian law, there is only one ground resulting in total invalidity, that of lack of a valid allocation and/or delivery order. No express statutory

158. See T. Ionascu & E. Barasch, supra note 6, at 366.

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provision so provides but it is generally believed that it is implicit in the rationale of art. 34, pars. 1-2 of D. 31 of Jan. 30, 1954.159

Soviet arbitraj has the same practice of rewriting invalid clauses rather than throwing out the invalid clauses or the entire contract.160

In the early days of planning, there were more instances of contracting without the requisite allocation followed by an invalidation by arbitraj or the PAS.161 An invalidation by the PAS, ordered on June 10, 1958, prompted the issuance of instructions the next day to the effect that contracts made by parties not in possession of legal allocation and/or delivery orders be invalidated and the violation brought promptly to the knowledge of the interested Ministries for proceedings against the guilty persons. The PAS further ordered that the merchandise be returned and payments refunded. If restitution were to prove impossible, a monetary equivalent was suggested.162

The instructions contain two ambiguities. One is the requirement of allocation orders in possession of contracting parties at the time of contracting. A literal interpretation would call for an invalidation of contracts concluded while allocation orders were in the mails and would prevent a Ministry from ratifying a contract by subsequently issuing allocation orders. It would constitute a departure from the earlier PAS position stating that:

invalidity is no purpose per se, when its prerequisites disappear it should never be declared. It exists in order to help the fulfillment of the plan but saving contracts serves the same purpose. A contract null initially with the reasons of its nullity having disappeared prior to a judicial determination of the issue should never be invalidated because it would be meaningless formalism to make the parties conclude a new agreement instead of saving the old one.163

No ratification by subsequently issued allocation order has occurred since the new instructions, but it appears to be a matter of careless drafting rather than an intention to change the earlier position.

The other ambiguity is the requirement of legal allocation orders. Without going into the mechanics of planning it should be emphasized that ministries do not have a free hand in allocating goods and orders may turn out to be illegal for several reasons. One possible interpretation would allow arbitraj to scrutinize the legality of allocation orders and invalidate contracts made in reliance on such orders. This is the interpretation suggested by some scholars164 relying upon a similar solution in Soviet law.165 Another possible interpretation would deny

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159. See S. Statescu, supra note 113, at 250-52; Ionascu & Barasch, supra note 6, at 385.
163. 4 Mat. 270.
164. T. Ionascu & E. Barasch, supra note 6, at 388.
165. O. Ioffe, Raspunderea in Dreptul Civil Sovietic [Liability in Soviet civil law] 102
arbitraj the right to pass upon the validity of allocation orders. Among the authors embracing this interpretation is M. Witzmann, who has suggested in law review articles that legal allocations mean requisite allocation orders and that contracts would be safe from judicial invalidation once the parties are in possession of allocation orders prima facie valid. The personality of Mr. Witzmann, a distinguished lawyer and law professor, and moreover his position as a PAS, give his view expressed in a private capacity much weight, so it is not surprising that arbitraj adopted the practice of referring all cases involving illegal allocation orders to the competent Ministry.

An intensive, permanent and concurrent control by the various ministries, and the State Bank prevents the problem from becoming acute. The context in which the violation sometimes occurs is that of an “expired” order. While in theory an expired allocation order is no allocation order at all so that the goods would have to be returned and payments refunded, arbitraj is reluctant to disregard it completely and to order restitution. Rather, it prefers to impute performance upon a future delivery order and allows the parties to keep the merchandise and the money. The reluctance of arbitraj is especially justified in cases where restitution would upset the current plan of the beneficiary and in cases of a relatively short period of delay. Another technique used by arbitraj is its willingness to hold that performance took place at an earlier date and that the seller was merely “curing” the defects of the earlier performance.

### C. Partial Invalidity

Any illegality other than lack of an allocation order constitutes grounds for partial invalidity of the contract. In traditional contract law, invalid clauses would result in the entire contract being declared illegal unless they were considered not essential to the contract, in which case they would be merely severed and ignored. Although all clauses are essential in delivery contracts, the validity of the contracts is not affected by the illegality of one or more clauses, because conceptually the contract initially incorporates by implication the plan and basic economic policies of the state. In theory, what arbitraj does is merely to interpret a contract having two sets of conflicting clauses, one set express and illegal, the other set implied and legal. As a result of the interpretation, a real and
complete version of the contract will be ascertained by the court, with the implied legal clauses in place of the illegal ones.

Also, neither the statute nor arbitraj use the terms "invalidation" or "rewriting" with respect to the activity described above. The statute deals with "arbitral modification of clauses found inconsistent with statutes or other norms."171 The PAS suggests "adaptation by arbitraj of the contract"172 and calls it "updating the contract to conform it to the requirements of the plan."173 By whatever name it is called, it is, in fact, a rewriting of illegal clauses. Its effects are retroactive and performance and payments made under the old version may be subjected to restitution and refund.

Some authors suggest that updating would be possible in exceptional circumstances by simply eliminating the illegal clause without replacing it with a pre-established norm. The example given is that of a requirement for a downpayment which could simply be ignored by the interpreting court.174 However, arbitraj did not abide by the suggestion and continues in all cases not only to eliminate the invalid clauses, but also to replace them. An illustration of the standard practice in this respect is the following: A contract gives the seller an election between two alternative courses of action in case of the buyer's failure to make the timely reception of goods. He could either make the reception himself, and proceed with the shipping of the goods, a practice called delivery with autoreception and which is mandatory, or he could continue to keep the goods in his custody, a practice which is illegal. The PAS not only eliminated the second alternative from the contract, but replaced it with the provision from the basic conditions of delivery stating that delivery with autoreception is mandatory for all contracts.175 An explanation for the additional work performed by arbitraj in replacing the illegal clauses when it could have simply ousted them may be found in what is commonly referred to as the "educational role" of arbitraj, that of teaching the parties how to draft their contract. It should be repeated that the above constitutes, in theory, an interpretation by arbitraj of the contract, "arbitraj orders nothing, it merely ascertains the content of the contract."176

The statute also contains a provision dealing with a situation in which arbitraj is unable to ascertain the content of a contract because of the interrelation of the invalid clauses with the rest of the contract. In such a case, arbitraj is authorized to make a finding that no contract exists.177 At first glance, it would seem that the illegality of one or more clauses could lead to a complete invalidation of the contract if such clauses are essential to the contract and the rest of the contract is directly related to the invalid clause. The interpretation by the PAS is different:

171. Id. art. 25.
172. I Mat. 264.
174. See T. Ionascu & E. Barasch, supra note 6, at 400.
176. T. Ionascu & E. Barasch, supra note 6, at 407.
arbitraj will proceed with the adaptation of the contract even though the parties would prefer to abstain from the contract as adapted. Only an objective cause, such as impossibility of performance of the adapted contract, can justify a finding by arbitraj that no contract exists.  

In the interpretation of the PAS, the existence of an illegal clause or its interrelation with the rest of the contract becomes meaningless because objective causes such as impossibility of performance constitute independent grounds for excusing the parties from entering into a contractual relationship.

D. Conclusion

The substantive provisions dealing with invalidity demonstrate a strong policy against invalidation of delivery contracts. An enterprise once bound by a contract has very little chance of completely avoiding the contractual relationship. The essential clauses of the contract may have to be rewritten or the prices changed, but nevertheless, an uninterrupted continuous relationship exists. The procedure exemplifies a policy of complete distrust of the parties, once they have made the mistake of entering into an agreement with an illegal clause. It is the judge who rewrites the contract and does it without regard to the wishes of the parties.

Finally, the theoretical justification suggests a policy of maintaining the appearance of a consensual relationship at all stages, with as little administrative interference as possible. That is, the state enterprises and they alone, are the authors of the contract, including the judicial version thereof, the contribution of arbitraj being merely incidental—that of interpreting what the parties have implied to begin with.

V. Modification of Delivery Contracts

A. Consensual Modifications

In traditional contract law, a consensual modification of a pre-existing contract is generally possible. The Anglo-American concept of consideration, which may sometimes prevent the enforceability of a modifying agreement unless separate consideration can be shown, constitutes an exception to the rule. Even that exception has lost its importance. Under more modern legislation in the United States, in a commercial context, the parties no longer have to worry about consideration when they modify their contract. Therefore the general rule is that there is as much freedom with respect to modification as there is with respect to initial contracting. The same rule prevails in the Rumanian Civil Code.

With respect to state enterprises, it is only natural that a legal system severely limiting and regulating initial contracting will also circumscribe modifi-

178. I Mat. 265-66.
179. See UCC § 2-209(1).
cation contracts.\textsuperscript{181} However, in areas in which the parties are more or less free initially to make a contractual arrangement, one would expect that they will subsequently be able to agree upon a modification, and conversely, with respect to matters prohibited initially, one would suppose that the parties will have to refrain from modification as well.

Interestingly, the parties to a delivery contract may have either more or less freedom of action at the time they negotiate a modification, as compared to the time they first made the contract. On the one hand, a matter from which the parties cannot depart in their initial contract is the quantum of merchandise to be delivered, as specified in the allocation order. When they first contract, they must do so to the full extent of the allocation order. An agreement for a smaller quantity is illegal, even though the buyer may prove that he does not need the goods and has so notified the Ministry.\textsuperscript{182} Subsequently, when it comes to a modification, the parties may be in a position where the law allows them to reduce the quantity to be delivered under the contract to a figure lower than that specified in the allocation order. This happens when, due to technological changes, the buyer is capable of fulfilling his plan by using a smaller quantity of goods, and the seller at the same time is capable of fulfilling his plan in spite of the reduction, \textit{e.g.}, by overfulfilling his export commitments. When both conditions are met, the parties may make the modifying agreement without violating the law.\textsuperscript{183} On the other hand, a matter which the parties may initially make an arrangement by consent is the delivery date. When they first contract, they are bound only by the trimester specified in the delivery order and are free to set the date anywhere between the first and the last day of that trimester. Subsequently, relative to modification, the parties may accelerate the delivery date but they may not postpone it because arbitraj has interpreted such a postponement as a waiver of the buyer's non-waivable right to late performance penalties.\textsuperscript{184}

**B. Modifications Caused by Planning Changes**

In traditional contract law, the parties may rely on the final version of their agreement as constituting the law of the parties.\textsuperscript{185} No such reliance is justified with respect to delivery contracts, because, as a matter of law, they are always subject to modifications by virtue of planning changes. Even executed contracts may be retroactively modified and restitution ordered. Only at the end of the plan (December 31) can state enterprises be certain that the contracts as concluded or performed will not be subjected to any modification by virtue of an overhaul of the plan.

The modifications caused by planning changes are far more numerous and

\[^{181}\text{See HCM 524 of June 23, 1951, arts. 10(a), (b).}\]
\[^{185}\text{See, \textit{e.g.}, Rum. Civ. Code art. 969, para. 1.}\]
important than the consensual changes. In addition, they present more difficult legal and technical problems and thus have received more extensive treatment by the PAS and scholars.

The PAS enumerates the following circumstances, all of which are planning changes, in which a contract will be considered modified:

(a) The replacement of the state enterprise under a duty to fulfill a planned task with another enterprise;
(b) replacement of the object of the planned task;
(c) imposition of a new date for the fulfillment of the task;
(d) increase or decrease of the planned task;
(e) order for cancellation; and
(f) order for discontinuation.\footnote{186}

The first two circumstances eliminate the effects of the initial contract and call for the conclusion of a new one. This is referred to as the \emph{extinguishing and creative effect} of planning changes. There is a new administrative and civil duty imposed upon the parties to contract with each other, and at the same time, there is again an opportunity for precontractual litigation with respect to divergences.\footnote{187} The other four circumstances have absolutely no existing or creative effect. Consequently, no new contracts will be entered into, nor will precontractual litigation take place, but the parties may litigate the interpretation of the modified portion of their contract.\footnote{188}

A typical example of planning changes affecting delivery contracts can be found in the 1961 joint instructions of the PAS and the State Planning Committee of Rumania [hereinafter CSP] with respect to the impending overhaul of the 1962 Plan subsequent to the termination of the contracting campaign for 1962:

\begin{quote}
When the overhaul of the 1962 State Plan will result in modification of allocation orders, the Ministries and other central organs in collaboration with local authorities will modify the schedules and within 5 days notify the enterprises with respect to the modifications of allocations.

In case of a change in parties or replacement of the object of the allocation the notified parties will proceed to the conclusion of new contracts. In case of a change concerning the quantity or delivery schedule without replacing the parties or changing the object of the contract, the existing delivery contracts will be adapted in order to conform to the planning changes. The adaptation will be contained in a separate writing. Disputes concerning the interpretation of modifications caused by changes in allocations may be submitted to arbitraj.\ldots\footnote{189}
\end{quote}

\begin{footnotes}
\footnote{186. II Mat. 420, 446, 449.}
\footnote{188. \textit{Id.} at 62-63.}
\footnote{189. Joint Instr. PAS \& CSP 18 of Oct. 20, 1961.}
\end{footnotes}
While these instructions were designed to deal with only the 1962 overhaul, they are illustrative of a general pattern followed in all cases of systematic planning changes.

A more difficult legal problem is presented when isolated planning changes occur, and the planning authorities do not follow through with correlative adjustments. Because consumption is almost completely planned, the reduction of one order necessarily causes a chain reaction and affects the plans of other enterprises as well. The plant, whose allocation orders for raw materials has been curtailed, will in turn fail to satisfy all its customers and will breach some of its delivery contracts unless it plan is also decreased and its contracts implicitly modified. These forced breaches caused by isolated planning changes are commonly referred to as the indirect influence of planning changes, the consensus being that they are excusable.\textsuperscript{190}

The isolated planning changes present two delicate problems. The first is the difficulty of arbitraj tracing every breach, and the likelihood that state enterprises will attempt to defend on the grounds of indirect influence somewhere along the line. It should be remembered that a breach by a state enterprise's supplier is no excuse for its own subsequent breach, unless due to planning changes. The second problem is the undesirability of permitting state enterprises to determine priorities among customers by allowing them to elect the contracts to be fulfilled and those to be breached, when planning changes make it impossible to fulfill them all.

The laws of Germany\textsuperscript{191} and Hungary\textsuperscript{192} contain a partial solution to the problem. They withhold from the state enterprises any discretion in case of isolated planning changes, and direct them to reduce proportionately the deliveries to all customers unless the Ministries dispose otherwise. In contrast, Rumanian law makes no provision, but the PAS directs state enterprises to immediately notify the central authorities and request that adjustments be made,\textsuperscript{193} and the Joint Instructions of the PAS and the CSP\textsuperscript{194} contain elaborate and speedy procedures to be followed by central and local authorities, with respect to correlative adjustments, which have the effect of converting isolated planning changes into a systematic overhaul. The instructions has succeeded in eliminating many of the problems inherent in chain reactions caused by isolated changes.

When changes take place, the directly affected enterprise is under no obligation to petition for a decree modifying the initial contract; nor is a writing signed by both parties necessary. The only requirement is notification to the

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\textsuperscript{191} Law of Dec. 11, 1957, § 84.

\textsuperscript{192} D. CM 50 of 1955, art. 13(4).

\textsuperscript{193} II Mat. 439.

other party with respect to the modification. This is a judicially created requirement, based on the principles of comradely attitude, collaboration and mitigation of damages. Failure to obtain a prompt notification may entitle the innocent party to recover damages, but will not prevent the automatic modification of the contract so long as "it is against the interests of the national economy to compel the purchase of goods that have become unnecessary by virtue of the planning change."195

C. Damages Caused by Planning Changes

"A problem arises with respect to allocation of expenses incurred by one of the parties prior to the cancellation of its tasks by the planning authorities. Should it be reimbursed for such expenses (the principle of compensation) or should it bear the expenses (the principle of localization)? 190 Soviet scholars have passionately debated the question and drawn conflicting conclusions. The supporters of the compensation principle are headed by Askenazi, the exponents of the localization principle are under the leadership of Amfiteatrov and Venehdiktov. Ioffe takes an eclectic approach advocating that the localization principle be applied in cases in which both parties are subordinate to the same authority, and the compensation principle when the parties are subordinates of different authorities. 197 After some initial indecision, Soviet arbitraj adopted the principle of localization.198

Rumanian law, like Soviet law, is silent on how damages caused by planning changes ought to be born. On the other hand, scholars and arbitraj have not even considered the possibility of any solution to the problem other than the principle of localization, a principle that has been applied constantly over the years,199 and invariably praised by scholars.200

D. Conclusion

On the whole state enterprises have a very limited role in the case of planning changes. The chain reaction set in motion by an isolated change calls upon central and local authorities to make correlative adjustments without requiring from the state enterprises anything other than notification. The law probably could establish guidelines and enable state enterprises to participate in the process by determining priorities among customers. Such a decentralization would not be revolutionary so long as state enterprises make the same kind of determination when their inability to fulfill all orders is caused by other

196. O. Ioffe, supra note 160, at 455.
197. O. Ioffe, supra note 165, at 123; Ioffe, supra note 160, at 456-57.
198. O. Ioffe, supra note 160, at 456.
than planning changes. Moreover, such a participation has the psychological advantage of a conscientious involvement in the planning process of otherwise passive state enterprises. It has not been done, and the reasons are probably the difficulty of giving adequate guidelines and the feeling that it is more prudent to centralize decision-making in such touchy areas.

While state enterprises are relegated to passivity with respect to planning changes, arbitraj has chosen for itself a passive role limited to notification with respect to illegal allocation orders. The law is silent concerning the procedure to be followed and what it does is to order arbitraj to refrain from the enforcement of contracts not based on legal allocation orders. The provision can fairly be interpreted as bestowing more power upon arbitraj. Nevertheless arbitraj has thought it more prudent not to scrutinize the legality of allocation orders but to let the central organs clarify such issues.201

It may well be that under the influence of the recent decentralizing trend in Soviet economic law and in that of other planned economies, Rumania will allow arbitraj and state enterprises a more active role in matters of illegal or modified orders.

VI. Performance
A. Specific Performance

In traditional contract law, specific performance can be required only when special circumstances are present, such as the uniqueness of the object of the contract. Ordinarily, the debtor has a choice between specifically performing his obligation or making payments representing the equivalent of his obligation. Presumably the creditor is not hurt, because he can enter the free market and "cover" by purchasing elsewhere.202

The situation is quite different where consumption is planned, the flow of goods regulated and no free market exists, leaving the creditor no possibility to "cover." Money payments do not enable the holder of an allocation order directed toward one enterprise to go out and buy from another enterprise. Consequently, they do not really benefit the creditor who is unable to procure the goods he has bargained for. Moreover, the fulfillment of the entire plan is jeopardized when state enterprises are allowed to pay instead of perform.

For these reasons, it should not be surprising that the general rule is specific performance of delivery contracts. The rationalization varies slightly from author to author. While some believe it is the consequence of the administrative duty to fulfill the plan,203 other would explain it on the basis of both the administrative and the civil duty with respect to plan fulfillment.204

There is no statutory provision requiring specific performance in all cases. In

201. Witzman, supra note 166, at 5.
202. See UCC § 2-711(1)(a).
203. See, e.g., S. Statescu, supra note 113, at 289.
204. Ionascu & Barasch, supra note 187, at 141-43.
many instances, it is the PAS who takes the initiative in formulating the principle expressly:

The fundamental rule is that economic contracts without exception ought to be performed specifically. Performance by equivalent (compensation of damages) is admissible only exceptionally when specific performance is no longer possible.\(^{205}\)

The formulation of the PAS is not too different from that of the Soviet authors Novitzki and Luntz:

The principal method of satisfying the creditors is compelling the debtor to perform his obligation specifically (the principle of real performance). The awarding of a money equivalent (damages for nonperformance) rather than insistence on specific performance is an extreme measure that ought not be taken by arbitraj except when performance is no longer possible.\(^{206}\)

How long is it possible to demand specific performance and when does the possibility for specific performance end? The answer depends upon the length of operative validity of the allocation order, a concept discussed earlier in connection with prohibited clauses.\(^{207}\) As long as the allocation order has operative validity, and this is with a few statutory exceptions the end of the fiscal year,\(^{208}\) specific performance remains a possibility and may be demanded. On the other hand, once the allocation order loses its operative validity (expires, becomes stale, lapses), specific performance is no longer possible, and neither may the creditor demand it nor the debtor voluntarily comply. The PAS makes it very clear that:

Termination of operative validity means that the task no longer exists. Specific performance is an outgrowth of the planned task and is justified only for the purposes of insuring that the task will be performed. Once the task has disappeared, specific performance is not only unjustified, but impossible because the remedy can not exist independently of the obligation.\(^{209}\)

**B. The Duty to Accept Performance**

The seller's obligation of specific performance, has a correlative obligation on the buyer’s side, that of accepting performance. In Anglo-American law, both obligations come under the same heading: the buyer's duty to accept the goods and pay their price rather than reject them and pay damages is also referred to as specific performance. With respect to delivery contracts the obligations not only have different titles but are, in fact, different. Whereas specific performance by the seller is determined by contract, the acceptance by the buyer goes beyond the contract and is, in fact, determined by the plan. The buyer must accept late

\(^{205}\) Instr. PAS 2352 of March 25, 1952, in Cul. 41.
\(^{207}\) See generally *supra* Part III/\( \text{I} \), pp.
\(^{208}\) See BCM 524 of June 23, 1951, art. 9, para. 1.
\(^{209}\) Instr. PAS 2353 of March 25, 1953, in Cul. 42.
performance or partial performance if the goods are useful under the plan, regardless of contractual provisions. The justifications offered by Rumanian scholars and by those of other planned economies are very similar in that they explain the duty to accept performance as the extension of the duty to fulfill the plan, a duty owed to society rather than to the other party to the contract.

C. The Duty to Collaborate and Reciprocally Facilitate Performance

The principles of specific performance and of acceptance of performance can be better understood in the light of an additional obligation for both parties, that of helping each other’s efforts leading toward performance. There is an express requirement created by the PAS that: “the parties...help each other so that reciprocal performance be facilitated.” The authors define it as “a duty to make contributions to the other party’s performance” and vividly describe the new species of creditors and debtors that are created as a result of such a collaboration: “...socialist creditor and socialist debtor, bound by solidarity and common interests materialized in the plan. Both parties and the entire socialist society have a common goal resulting from the connection of the plan with the contract.”

D. The Requirement of a “Comradely” Attitude

The requirement of a comradely attitude is broader than that of collaboration, even though sometimes the concepts are used interchangeably or in combination, such as “comradely collaboration.” It is difficult to adequately explain the legal significance without referring to the political connotation of the term. It means the attitude of a fellow communist. A “comradely” enterprise like a fellow Communist Party member, would refrain from pursuing its own interests when those of society are at stake; it would refrain from insisting on contract rights that are not essential to the plan when a conciliatory attitude might better serve the interests of plan fulfillment, and on the other hand, would go beyond contractual or statutory duties when performing under the plan, or prove merciless when the interests of the plan so require.

The laws of Czechoslovakia, Hungary and Germany expressly em-
body the combined concept of comradely collaboration. The German law attempts to describe it:

... socialist enterprises must prove comradely collaboration both when contracting and when performing. Each is under an obligation to help the other in the performance of the contract and in the fulfillment of the plan and to take into account permanently and with respect to every action, the influence its attitude is likely to exert upon the plan fulfillment by the other party. 218

The areas where “comradely” attitude is most often invoked are notification of the other party when there is no statutory duty to do so and in connection with the exercise of the right of rejection. 219 It is invoked in many other circumstances as well. Recently, arbitraj relied upon lack of “comradely” attitude and imposed liability upon a state enterprise for failure to unload a freight car. The defendant’s inaction was explained by the fact that it did not order the goods that were erroneously shipped to it. Arbitraj criticized the enterprise for its passivity when the interests of the economy were at stake and held that a comradely attitude required a prompt unloading of the freight car, followed by a notification of the seller and a request for instructions in connection with reconsignment. 220

E. The Requirement of a Complete and Exact Performance

The voluminous body of central regulations would lack effectiveness if performance were allowed to differ from that required by the contract. This prompted a declaration by PAS that: “Each contracting party has not only a right but also a duty to insist on a complete and exact performance and to enforce every possible right by using all available legal means.” 221 The requirement of a complete and exact performance could fairly be interpreted as being implicit in the contract itself or as being part of an expression of a “comradely” attitude. On the other hand, the “comradely” attitude is a conglomerate concept which includes among others a conciliatory feature, so that one could easily be misled into believing that the buyer ought to accept performance no matter how inadequate. In light of these, the requirement of a complete and exact performance comes as an important limitation on the duty to be conciliatory and constitutes a qualification of the “comradely” attitude doctrine. 222

F. Place of Performance

Allocation orders and delivery orders do not usually specify the place of performance. It is customary for the basic conditions of delivery to make such

218. Id. (Emphasis added.).
221. H Mat. 285.
a specification and the most frequently used formula is: "Reception at seller's place of business, delivery f.o.b. common carrier locality of seller." It is not a mandatory formula—some basic conditions of delivery depart from the general custom and provide for another alternative while other basic conditions make no provision, allowing the parties to determine by contract the place of performance. However, if neither the basic conditions of delivery nor the parties provide for a place of performance the presumption is that they intended the customary formula.223

It is also frequently provided in basic conditions of delivery and contracts that the seller invite the buyer to the seller's place of business for a reception of the goods prior to delivery, and it is mandatory for the seller to make the "autoreception" (reception for the account of the buyer) where the buyer fails to comply with the invitation. Some basic conditions of delivery require that a delegate of the local authorities be present when autoreception takes place.

In the great majority of cases, the buyer does not avail himself of the opportunity to make the reception before delivery. Autoreception is the customary practice in all but the overly technical industries. The principal reasons accounting for a virtual nonexistence of receptions are the following:

(a) Lack of personnel. The organizational setup, i.e., the number of employees, their duties and their salaries are centrally regulated.224 Unless an overly technical industry is involved, state enterprises do not usually have in their organizational setup employees that can be paid and used for such purpose.

(b) Lack of travel funds. The funds allocated to state enterprises must be spent for the purposes for which they are earmarked225 and one of the most restricted and limited funds are those available for travel of employees.226

(c) Submission to autoreception does not constitute a waiver of the buyer's right to sue for damages. The presence of neutral delegates at the autoreception does not restrict in any way buyer's right to sue. This is natural because the delegate of the local authority does not really represent the interests of the buyer at the autoreception. Moreover, the delegate, as a matter of practice, does not participate at the autoreception but subsequently merely signs the documents. The reason for this is the very small number of delegates the cities and towns employ, e.g., Timisoara, an industrial city of 160,000 had only two delegates on its payroll in 1962. The limited number of delegates cannot possibly partici-


226. See Reg. to HCM 858 of June 12, 1957, No. 31(b).
participate at the same time in many different places where their presence would be required. As a result, the delegates refrain from all participation. Rather they remain permanently at the city hall where sellers may locate them more readily for the purposes of obtaining the requisite signature.

The practice of autoreception is so deeply imbedded that, even though the parties may attempt to contract against it, arbitraj will imply it into the contract.227 Moreover, even though a statute may provide for a mandatory reception at the place of buyer,228 arbitraj will construe the statute as not being in derogation of the general authorization for a reception at the place of the seller.228 Nevertheless, the very popular autoreception has very little, if any, legal effect. A document of autoreception, signed by a neutral delegate, supplemented by another document issued by the common carrier certifying that the goods received for shipment conformed to the contract, was recently held insufficient to prevent the buyer from suing for shortages and inferior quality, and, moreover, was insufficient to shift the burden of proof from the seller to the buyer.230

G. Time of Performance

Allocation orders usually specify the trimester of performance but not the exact date. The parties are entitled to agree upon spreading the performance over the duration of the trimester in convenient installments. Sometimes the trimester specified in the allocation order sets the limits for the duration of the contract by terminating the operative validity of the order. This does not happen often, and when it does it is usually in connection with the allocation of perishable goods.231 More frequently, the trimester specified in the allocation order does not affect operative validity so that performance in a subsequent trimester does not become illegal.232 Moreover, late performance does not entitle the buyer to reject the goods unless they have become absolutely useless due to the delay.233 In order to recover late performance fines or damages under the provisions of the Civil Code the buyer would have to serve a notice of delay, a condition very similar to the notice of breach requirement of the UCC.234 Although there is no provision dispensing with notice of delay when delivery contracts are involved, the PAS has considered that:

the formality [notice of breach] is absolutely incompatible with contract discipline and the principle of hozrasciot. When state enterprises are involved, each ought to perform on the very date set forth in the contract without the necessity of a remainder by the unit to whom performance is owed.

228. HCM 14 of 1965, art. 4, para. 1 (reception of livestock).
231. See HCM 524 of June 23, 1954, art. 9, para. 2.
232. See id. art. 9, para. 1.
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The PAS further suggested that arbitraj apply the principle of Dies interpellat pro homine to the effect that the contractual due date by itself constitutes a notice of delay entitling the buyer to recover damages and fines for late performance.235

H. Imputation of Performance

A debtor occasionally may owe several past due obligations to the same creditor. A partial performance may arguably be "imputed" against ("applied to," "matched with") any one obligation.

Traditional contract law, as a general rule, allows the debtor to impute when performing. In case of silence by the debtor the creditor may impute when giving the receipt. When both parties are silent there are presumptions to the effect that the most onerous obligation was meant to be satisfied first or that the parties intended to impute against the oldest obligation first.

Rumanian law gives the debtor the customary discretion to impute performance with the exception of past due interest having mandatory priority of imputation and, in the case of silence by both parties, the presumption is that a chronological imputation was intended.236

No express provision for a different handling of the problem when state enterprises are involved can be found. However, the PAS has completely abandoned the statutory provision and created a separate rule applicable to delivery contracts. State enterprises are denied discretion; imputation takes place in strictly reverse-chronological order, that is, against the most recent obligation first.237 The reasons for such a revolutionary shift relate to an equitable handling of success indicators. Failure to perform in the first trimester of a year would statistically show up as a late performance in all subsequent trimesters if imputation were to follow the statutory pattern. This would occur because a performance during the second trimester would relate back to the obligation of the first and leave the obligation of the second unsatisfied. To prevent this and to enable state enterprises to be successful despite a poor start, the PAS reversed the presumption applicable to contracts between citizens. A few years later, the PAS partially restored the right of imputation, and state enterprises now have discretion when different contracts are involved. They still lack the power of imputation when several installments of the same contract are due.238

In the Soviet Union, imputation is subject to contractual arrangements between the parties and it is customary for special conditions of delivery to provide for various patterns of imputation.239

235. II Mat. 357.
237. II Mat. 344.
I. Rejection for Late Performance

There is a provision specifically authorizing the beneficiary, in case of delay in performance, to notify the seller that performance of the past due obligation will not be accepted, and to refuse any attempted late-delivery. The provision taken at face value would give discretion to state enterprises and would allow rejection to become a possible course of action in relations between state enterprises. In reality, shortly after the enactment of the decree, the PAS qualified the right of rejection as: "an exceptional right to be exercised by the beneficiary solely for legitimate reasons. Late performance in and of itself in insufficient grounds for rejection." Thereafter he admonished arbitraj to scrutinize carefully the legitimacy of the reasons relied upon by state enterprises when attempting to reject for late performance. Additionally, the burden of proof was placed on the rejecting party. The implementation by arbitraj of the legitimacy theory became a virtual judicial repeal of the right of rejection. A recent decision, refusing the right of rejection, mentions by way of dicta what might constitute a legitimate reason: “when the delay results in a total uselessness of the goods for the rejecting enterprise, under the present plan and subsequent plans.” Rumanian scholars generally support the requirement of legitimacy of rejection. They consider the practice of arbitraj justifiable in view of the fact that the statute authorizes rejection regardless of the seller’s negligence and that the limitation on the right of rejection is useful to the plan and may also protect innocent sellers.

The law of Germany and that of Hungary grant the beneficiary a right to withhold acceptance from performances of past due obligations, regardless of fault. Time did not permit a research of the degree to which German and Hungarian arbitraj have qualified the right of rejection. A leading German work on the subject “Liability for late performance; Liability for rejection in breach of contract and in neglect of the duty of collaborate” as the title suggests, stands for the proposition that the right is qualified by an obligation of the purchasing enterprise to collaborate with the seller and help him fulfill his plan. On the other hand, the Bulgarian Law and various Special Conditions of Delivery effective in the Soviet Union would tend to indicate that the Bulgarian and Soviet practice is that of specifying in the special conditions and the

240. HCM 524 of June 23, 1951, art. 10.
242. II Mat. 359.
245. See S. Statescu, supra note 113, at 313; Ionascu & Barasch, supra note 187, at 262.
contract the precise circumstances under which the right of rejection for late performance could be exercised.

J. Quality of Performance

In the early days of planning, there was a scarcity of goods and almost anything could be sold on the domestic market without regard to quality. There was no need for an emphasis on quality and all efforts were concentrated in the direction of quantity. As productivity increased, and more goods became available, greater concern had to be shown for better products and state enterprises had to be educated to raise the quality of consumer goods. For this purpose, the institution of “quality inspectors” was created, a body of technicians individually assigned to different enterprises with duties relating exclusively to quality of production.251 The goods became standardized252 and meeting the quality requirements set by “STAS” (state standards) became a success indicator on equal footing with quantity of production.253 The STAS were changed from time to time and their quality requirements became more and more stringent.254 Since 1961 STAS quality no longer constitutes a target but rather a minimum that ought to be exceeded.255 Quality requirements are strictly enforced. For example, an application by a manufacturer for a waiver of recently imposed quality requirements and a permission to deliver goods conforming to the prior STAS was unsuccessful in spite of the fact that the applicant was able to prove that his production facilities were outdated and unsuited for production meeting the requirements of the new STAS.256 Generally, arbitraj authorizes a derogation from STAS quality requirements only when the STAS itself provides for a possibility of derogation.257 Moreover, arbitraj penalizes the derogating manufacturer by initiating the promulgation by the CSP of a special low price for the merchandise involved.258 Intentional and unauthorized derogation from STAS constitutes an economic crime with the guilty employees possibly facing criminal prosecution.259

For a quality-raising policy to be effective, litigation involving defective merchandise must not be discouraged. Buyers failing to make the reception of merchandise at the seller’s plant and consenting that the seller make it on their behalf (autoreception) are not precluded from litigating the issue of quality after another chance to inspect the goods, this time at their own place of business.260

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251. HCM 1211 of July 9, 1955, art. 4.
253. HCM 3896 of Dec. 2, 1953, art. 9, para. 1.
255. 2 HCM 1800 of Jan. 9, 1961, No. 2.
Arbitraj went even further. Actual reception by the buyer (rather than autoreception) was held not to constitute a waiver of the buyer's right to compensation for inferior quality. At the same time, arbitraj held that the buyer was liable for damages caused to the manufacturer. On the whole, the buyer recovered compensation decreased by the damages he caused through negligent reception. The PAS agreed with arbitraj that the right to compensation had not been waived. Nevertheless, the decision was reversed on the grounds that it was an error to decrease the compensation due to the buyer instead of making two awards dealing with the rights of each party separately. The PAS pointed out that what arbitraj did was a judicial setoff likely to interfere with an equitable administration of success indicators by failing to pinpoint negligence on both sides. The PAS further suggested that judicial setoff is inapplicable to claims arising from delivery contracts. Since then, judicial setoff remains mandatory for reciprocal claims of citizens and forbidden for reciprocal claims of state enterprises.

In addition to the obligation of meeting the STAS quality requirements, sellers extend warranties coming very close to the implied warranties under the UCC. There are slight differences in formulation—"absolutely satisfactory for the purpose" or "fit for a certain purpose" but on the whole purchasers are well protected, and there is no possibility such as under the UCC to exclude or modify the implied warranties.

The use of state standards to insure the quality of performance is a common procedure for all planned economies for their domestic trade.

K. Risk of Loss

The prohibition against contractual modification of liability was interpreted to prevent the parties from making a contractual allocation of the risk of loss. The general rule is that the seller must bear the risk of loss until the merchandise is accepted by a common carrier for shipment, at which point the risk of loss shifts to the buyer. The only exception relates to contracts under the basic conditions of delivery requiring performance at the buyer’s place of business. In this circumstance risk of loss remains on seller until the merchandise reaches its destination. In practice, however, the seller always retains the risk of loss until the merchandise is in possession of the buyer regardless of place of performance. Three concepts account for the fact that the statutory allocation of risk is with-
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out practical significance: (1) responsibility for inadequate packaging and shipping is on the seller; (2) there is a presumption that all transport losses are caused by inadequate packaging or shipping; (3) the only way to overcome the presumption is identification by the seller of the real causes accounting for the loss. In practice, the seller can never fulfill such a burden. Proof by the seller that losses of cement occurred through a hole in a freight car was held insufficient to overcome the presumption of inadequate packaging or shipping, and moreover, was interpreted as evidence of the seller's failure to inspect the freight car prior to shipment.

L. Payment

The monopoly of the State Bank and Investment Bank in handling the accounts of state enterprises and effectuating all financial transactions has resulted not only in a total prohibition against commercial credits and judicial setoffs, but also in a limitation upon the various methods of payment otherwise used by the commercial community. For instance, neither may a right to obtain payment be assigned to a third party, nor the duty to make payment delegated. "Assignment or delegation by involving strangers to the planned task interferes with the effectiveness of banking control and violates banking regulations." Moreover, the right to obtain payment cannot be waived directly or indirectly, or replaced by a right to obtain services, or exchanged for a right to obtain delivery of goods.

In contrast with the method of payment, which is not susceptible of variation, "the price is always subject to subsequent changes ordered by competent authorities to the effect that the current official price be applied." The principle as expressed by the PAS is not self-explanatory because current price in the context of a subsequent price change may mean any one of the following alternatives: (1) official at the time of delivery, (2) official at the time of payment, or (3) official at the end of the year, that is, a retroactive application of the last price to all transactions under the same plan. All three alternatives have been applied at one time or another. At first, "official at the time of payment" constituted the current price in the interpretation of the PAS and the basic conditions of delivery prior to 1956 incorporated the second alternative. In 1956, the PAS adopted the "official at the time of delivery" interpretation, a shift which is reflected in all basic conditions of delivery subsequent to 1956. Furthermore, by

274. T. Ionascu & E. Barasch, supra note 187, at 596, 600-01.
275. II Mat. 491.
1960, the PAS had realized that some price changes were intended as a rectification of erroneous prior prices and that it would be unfair in such cases not to give them retroactive effect. Therefore the Arbiter provided for a possibility of retroactive price changes, if there was an unequivocal statement by the Price Committee of the CM or the CSP that retroactivity was intended.\textsuperscript{279} This encouraged the Ministry of Food Products and Ministry of Agriculture to promulgate prices to be retroactively applied for two years.\textsuperscript{280} Shortly thereafter, retroactivity of the new prices was cut in half by arbitraj\textsuperscript{281} and since then it has been settled that the limits on retroactivity of official prices are set by the duration of the plan.

Occasionally merchandise does not fit exactly the nomenclature of the state standards and therefore the price becomes subject to dispute. It may even turn out ultimately, that there is no official price for the particular merchandise. When faced with having no official price for merchandise manufactured under a delivery contract, arbitraj experimented with pricing and applied the prices promulgated for related goods with small adjustments upward or downward. The procedure did not meet the approval of the PAS, who labeled it "tampering with prices, prohibited to parties and arbitraj alike." At the same time, arbitraj was reminded that only the central authorities have the right and duty to set prices and that, lacking official prices, arbitraj must comply with the instructions of the PAS of June 17, 1960, providing for a stay of litigation pending notification of the CSP and promulgation of an official price.\textsuperscript{282} The policy of centralized price setting and of not allowing arbitraj the slightest leeway is so strong that subsequently, arbitraj was instructed to consult CSP with respect to the prices when there are the slightest derogations from the STAS as authorized by the STAS itself,\textsuperscript{283} and recently arbitraj has ruled that the delivery of goods under a contract was prohibited until the CSP had set the prices, even though the operative validity of the allocation order expired in the interim.\textsuperscript{284}

\textbf{M. Mandatory Litigation}

The command of the PAS is explicit: "Each contracting party has not only the right but also the duty to demand from the other a complete and exact performance and to enforce every possible right by using all available legal means."\textsuperscript{285} This oft-quoted sentence expresses not only the principle of complete and exact performance, but also that of mandatory litigation. It invites state enterprises to file every claim they could possibly be entitled to under the law. The PAS was more explicit when he specified that "Plaintiff must sue for specific performance, plus conventional penalties [for late performance or inferior

\textsuperscript{279} Instr. PAS 13 of June 17, 1960.
\textsuperscript{280} Order MIA & MAG 182 of 1961.
\textsuperscript{285} II Mat. 285.
At first arbitraj followed the suggestion literally and when shortly before the year end it was already certain that the seller was unable to perform, arbitraj thought it had nonetheless a duty to require that the buyer amend his complaint for damages and include a claim for specific performance. The result was that generally, state enterprises were disabled from recovering damages without, at the same time, going through the often hopeless ritual of a suit for specific performance. The instructions, instead of furthering litigation, had the effect of making litigation more costly and more difficult. This prompted a more realistic approach in 1958, when the PAS authorized arbitraj to entertain a complaint solely for damages when it appeared that specific performance could not be obtained. As a result of the new approach, litigation became more prompt, and the practice of some state enterprises of waiting until the end of the plan with a suit for damages alone, rather than suing promptly for damages plus specific performance, was no longer justified. Nevertheless, the legal community gave the new approach a mixed reception. Some scholars denounced it as a "... dangerous retreat from planning discipline and from the principle of specific performance preventing arbitraj from securing plan fulfillment in situations when it ought to try and may succeed," while others greeted and acclaimed it as a manifestation of socialist realism. The exception created by the PAS is far less important than it would seem from the vehemence of the debate, as long as compulsory litigation to the fullest extent of all rights remains the rule, with respect to damages, fines, and penalties in all cases and with respect to specific performance when there is the slightest chance that it may be obtained.

N. Active Role of Arbitraj

Implementing the principle of compulsory litigation, arbitraj either directs the parties to amend their complaints or invites them to make oral arguments with respect to further claims that ought to be litigated. The latter procedure is called "to subject additional claims to discussion by the parties" and has the advantage of being more expedient than the former. Failure of arbitraj to detect the claims that were omitted by the parties and to subject them to discussion constitutes a reversible error, commonly referred to as "failure to practice an active role." Active role is defined as "an obligation to help the parties in vindication of their legal rights" and does not constitute a monopoly of arbitraj, but is a judicial attitude mandatory for ordinary courts as well. As applied to ordinary courts, it has never been interpreted as requiring the judges to help draw the complaint, with the exception of cases involving alimony and lay-

men acting as their own attorney. Arbitraj, on the other hand, no matter what the size of a state enterprise's legal staff, must make sure that no conceivable claim has been overlooked. This may seem an educational device teaching lawyers to do a good job or an equitable way of relieving state enterprises from the consequences of inefficient representation. But in reality things are completely different. On the one hand, attorneys understand precisely what they are doing when they refrain from making all claims. They are aware of the difficulties the adversary is facing; they are cognizant of the impact of lawsuits on success indicators in deteriorating the chances of the loser without at the same time improving those of the winner; they would prefer to maintain good relations for the future by not causing defendant's management to lose its bonuses. On the other hand, additional compensation or fines generally do not represent a profit for the winner in so far as the enterprise may have to deposit them into a special fund, or may be entitled to use them only for specified purposes or may see its own allocation of funds reduced accordingly. Consequently, active role does not come into play to help state enterprises and their attorneys but rather prevents them from exercising an informed and deliberate waiver.

The purpose behind the principle is obvious, and it is the same which lead to the banning of judicial setoffs: arbitraj should not be hindered in pinpointing negligence of state enterprises. Complacent restraint in litigation must be overcome by a vigilant active role if unworthy management is to be prevented from collecting bonuses.

VII. CONSEQUENCES OF BREACH

A. Liability for Fault v. Strict Liability

The general rule in all planned economies is that liability for breach of delivery contracts is predicated on fault. The differences between various countries are limited to the exceptions from the rule, that is, the areas of strict liability and the burden of proof. The general pattern is that of a rebuttable presumption of negligence in most circumstances and an absolute presumption of negligence—resulting in strict liability—in a few specified situations. The burden of proof necessary to overcome the presumption is generally a very difficult one. Czechoslovakian law serves as a typical example:

The organization [state enterprise] shall free itself of its liability if it proves that it could not have prevented the damage even by exerting all the efforts it can be expected to make. However, it may not free itself of its liability by pointing to the fact that it was implementing the measures of superior organs. The German and Hungarian counterparts are very similar in nature.

Rumanian law provides that:

293. Law of Dec. 11, 1957, §§ 37-38 (Ger.); D. CM 50 of 1955 § 3, para. 1 (Hung.).
The debtor of an obligation will be held to pay compensation for breach or late performance even though there was no bad faith on its part provided it fails to prove that the breach was due to foreign causes beyond its responsibility. No compensation will be awarded when the breach was caused by act of God or accident.  

The standard of care in the quoted passage of the Czech Law seems to be determined by a subjective test, namely, the efforts the breaching enterprise can be expected to make. In contrast, the standard in Rumanian law is objective: "the question to be asked is whether the leading enterprise in the field could have performed under the circumstances by exerting utmost care and diligence." Hungarian scholars believe that the test applied in Hungary should be objective and require a very high standard, on the grounds that an average enterprise or a reasonable enterprise is inappropriate for activity connected with the plan.

In practice, the standard of care required of Rumanian enterprises approaches strict liability. It is no defense that one's own supplier failed to deliver necessary materials or that a machine broke down. There is a presumption that a collaboration with the supplier would have induced him to deliver in time and that the machine could have remained functional through better upkeep. Applying the presumption, arbitraj constantly imposes liability under the circumstances. There are a few exceptional cases to the contrary. In one case, indispensable materials being imported failed to arrive in time at the defendant's plant. It was held that the defendant was not negligent because: "foreign suppliers cannot be expected to collaborate comradely with Rumanian state enterprises so that defendant could not do anything about the delay." In another case, a machine broke down after its life expectancy had terminated and after repeated applications for its replacement were denied by the Ministry. Arbitraj held that defendant could not prevent normal wear of the machine by better upkeep, that it had done everything a leading enterprise was expected to do, and that it could not be held responsible for the Ministry's failure to grant the application. But generally, the fault of the Ministry is no excuse to the subordinate enterprise. For example, in one instance the Ministry ordered the defendant to stop all deliveries and hold its inventory for export purposes. The enterprise complied and requested that its plan be changed. The Ministry did not reduce the plan and the defendant was held liable to domestic customers to whom it had failed to deliver by complying with the stop order.

"Despite the general requirement that there is no liability for breach of contract without fault... a fictitious fault is assumed to exist." See H. Berman, supra note 29, at 136.


There are only two situations in which what would otherwise be a breach is authorized without a corresponding revision of the plan or reduction of the orders: (a) when technological advancement reduces or eliminates the need for the allocated merchandise the beneficiary may cancel part or all of his order; and (b) when technological advancement enables a manufacturer to produce superior products and thereby reduce his output of inferior products allocated to the beneficiary, he may deliver a lesser quantity. In both circumstances the desirability of technological advancement overrides contract discipline and the innovator is allowed to breach without compensating the other party. The PAS may be credited with this development when he stated that: "Innovation is a common goal of both parties. It has an exceptional value for the development of our planned economy. Arbitraj should avoid discouraging it by imposing liability on innovators in connection with their innovation."

B. The Right of Rejection

The general rule is that a beneficiary may reject the goods delivered in violation of contractual obligations, such as late delivery or of substandard quality. Absolute on its face, the right was qualified by the PAS and in case of late performance there is an express order of the PAS that the beneficiaries must prove additional legitimate reasons if they intend to reject. The only legitimate reason accepted by arbitraj to the present date is that the merchandise has become useless to the buyer because of the delay. Although the PAS never expressly qualified the right of rejection for inferior quality, it has universally been held that the same "additional legitimate reasons" qualification which is applicable when delay is involved, must also apply to inferior quality.

The extension of the doctrine is due partly to the obligation of all buyers to demand specific performance and partly to the absolute right of sellers to cure defective performance, a right that extends beyond the date of delivery set forth in the contract. By virtue of these two concepts, the seller is in a situation to recondition the goods or replace them and later redeliver them to the buyer with the result that what started out as a breach for inferior quality ends as merely late performance.

The following excerpt is illustrative of the interplay of legal concepts which in effect wipe out the right of rejection for inferior quality:

Delivery of merchandise of an unsatisfactory quality may produce one of the following consequences:
(a) The beneficiary will recondition the goods at the expenses of seller or,

301. Witzman, Cauzele de Exonerare de Raspundere, Altele Decit Forta Majora si Culpa Creditorului in Raporturile Dintre Organizatii Socioliste [Excuses from liability of state enterprises, other than acts of God or negligence of the creditor], [1961] 6 JN 21, 23.
304. See T. Ionascu & E. Barasch, supra note 187, at 481-82.
(b) The beneficiary will deduct from the price, the difference in value between what was contracted for and what was delivered, provided the deduction is in accordance with price legislation and conventional penalties applicable to substandard deliveries, or
(c) The beneficiary will send the goods to seller for reconditioning or substitution, or
(d) The beneficiary will reject the goods.

At the same time, the purchasing enterprise is under a duty to demand specific performance rather than damages from the seller, to whom an opportunity must be granted to correct his errors and in line with planning discipline make a complete and exact performance. Such duty cannot be avoided by simply rejecting the goods, unless the enterprise is justified to do so because at the time the goods would meet the contractual standard of quality, they would no longer be useful to the purchaser.306

The right to cure is so powerful that in some cases it may extend not only beyond the contractual date of delivery but also into the next year, that is, beyond the operative validity of the allocation order. The PAS has authorized this result, which seems somewhat in conflict with the annual character of planning, by relying on a theory that delivery and cure are two distinct obligations:

It happens that the beneficiary demands reconditioning of the goods to meet the quality requirements of the contract. The seller is under a duty to recondition in the shortest possible time and does so within the same year. No problems are presented in connection with the allocation order because it is still operative. Sometimes reconditioning can not be achieved within the same year and it has been suggested that it would be illegal to deliver reconditioned goods in a subsequent year because the allocation order has expired. This is not so because only the initial delivery was based on the allocation order; after that, the duty to improve the performance and raise its quality to the legal and contractual standard constitutes a distinct and independent obligation.306

While the arguments relied upon are often criticized, the result reached is generally accepted by the legal community.307 The alternative theory suggested is that the right to cure is implicit in Art. 11 D. 167 (1958) as modified by D. 218 of July 1, 1960, which authorizes implied warranties for hidden defects to extend beyond the year's end and also extends the seller's obligation to recondition goods with hidden defects. "We can see no economic or legal interests that require a longer period for reconditioning of hidden defects and a shorter period for visible ones."308 The alternative theory fails to recognize

305. See E. Roman & E. Gorun, supra note 239, at 126.
that customarily the statute limitations for suits based on warranties against hidden defects start to run from discovery;\(^{309}\) that the seller's right to cure traditionally terminates on the date of delivery or a few days later;\(^{310}\) and that the two concepts are totally different! Whatever the underlying theory, the results of extending the right to cure into a post-plan year are a reduction in the number of unfulfilled tasks and a softening of the chain reaction impact any nonfulfillment is likely to cause in a planned economic system.

C. Measure of Damages: Compensation v. Fines

The general rule is the traditional right of plaintiff to be compensated for actual losses and unrealized gains—*damnum emergens* and *lucrum cessans*. To state enterprises the rule is applied with utmost care in order to avoid any speculative damages. Thus, losses incurred must be absolutely fixed and certain, paid out-of-pocket expenses. The example given by the PAS is illustrative:

By virtue of the principle of mandatory litigation a manufacturer may be in a position to predict the number of law suits he will be subjected to and the approximate quantum of compensation he will be held to pay to his customers. However, when suing his own supplier for nondelivery of goods which caused him to breach, he may not demand compensation in excess of what he did actually incur to the date of the law suit. Regardless of how reasonably he can foresee his future damages, he must vindicate them in a separate law suit.\(^{311}\)

Further, unrealized gains are measured by *planned gains* and it is not open to plaintiff to prove that he would have overfulfilled the plan and made more profit.\(^{312}\)

In most cases the general rule for actual damages is superseded by an elaborate system of conventional damages called penalties or fines. Their quantum is set forth in the basic conditions of delivery. A customary late performance fine is 0.3% *per diem* of the value of goods that have been delivered after the contract date, but on occasion basic conditions of delivery provide for late performance fines anywhere between 0.1% and 0.5%. There is no customary inferior quality penalty, and some basic conditions state separate penalties for various breaches such as 2% for lower density, 3% for excess humidity, and 4% for inadequate colors. Others call for a uniform 7% penalty for any kind of breach with respect to quality. On the whole, experience has shown that in most cases conventional penalties yield compensation in excess of actual damages. Moreover, plaintiffs are under no duty to prove the quantum of damages when they demand conventional penalties or fines. It is only when conventional damages are inferior to actual damages, that plaintiffs have to

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309. See, e.g., UCC § 2-508(1).
310. See, e.g., id. § 2-508(2).
312. II Mat. 383.
carry the burden of proof in order to recover the excess. Generally, there are
too many difficulties and risks involved in pursuing actual rather than con-
ventional damages. The risks are in what is commonly referred to as "exclu-
sive causation" which translated into concepts familiar to Anglo-American
jurists means a double burden of proof with respect to freedom of contributory
negligence and mitigation of damages. If any part of the damage can be at-
tributed to plaintiff's own negligence or his failure to mitigate, arbitraj will
separate the quantum of damages caused by each party and thereby spoil
plaintiff's success indicators. The possibility of losing bonuses by subjecting
plaintiff's own activity to judicial scrutiny has a strong tendency to discourge
suits for compensation in excess of conventional damages. Ironically, the
plaintiffs would claim actual damages not in order to get more but rather to
recover less from the defendant. They would prefer a lower rather than higher
award because they may not benefit from higher awards that have to be paid
over into special funds and they may be interested in not antagonizing de-
fendant's management by spoiling the success indicators. They cannot waive
their right for conventional damages and claim lesser actual ones. The principle
of compulsory litigation prevents them from doing so. Not even arbitraj
can relieve defendants from the burdens of an excessive conventional damages
award. Occasionally, the conventional damages may absorb a substantial part
of the purchase price. A six month delay at the customary 0.3% rate will wipe
out more than 50% of the value of the goods. In other instances conventional
damages may be in excess of the purchase price and the seller would have
to deliver the goods and also make payments to the beneficiary. It is only with
respect to damages in excess of the purchase price that arbitraj has the duty
to grant relief; it cannot make a reduction of fines wiping out the sellers' right
to be paid. This is in contrast with Soviet law where the parties may elect
actual or conventional damages, and arbitraj has the power to reduce dis-
proportionately high fines and penalties. The difference in approach is
due to the reluctance of Rumanian judges to apply harsh penalties and the
feeling that arbitraj would probably make it a standard practice to reduce the
conventional penalties if it were free to grant relief.

D. Third Party Practice, Impleader

In ordinary courts where the Code of Civil Procedure has not been super-
ceded by instruction of the PAS, or rules of procedure for arbitraj, there is
a liberal third party practice and efforts are made to see that all connected

313. See Instr. PAS 2060 of March 14, 1953, in Cul. 33-37; Economu, supra note 214,at 481-84.
6, 1957; HCM 1153 of July 17, 1957.
problems be resolved in a single law suit.\textsuperscript{320} The multiplicity of law suits does not appear to constitute an evil in the eyes of the PAS, who has downgraded third party practice to the rank of a subsidiary procedure, followed only when there is no other way for defendant to exercise his rights against a third party.\textsuperscript{321} The circumstance, in which impleader is most likely to be permitted, is that of a statute limitation that would run if defendant manufacturer were to litigate the principal suit first and sue his own supplier later. Statute limitations are generally very short, \textit{e.g.}, three years for all suits between private citizens, two years for claims against the State Insurance Company, eighteen for suits involving state enterprises generally and six months for damages arising from defective performance of a delivery contract.\textsuperscript{322} This accounts for the fact that there is still a certain amount of third party practice going on. In contrast with the traditional type of impleader, where liability \textit{over} is limited by the amount involved in the principal suit, in the case of third party practice involving state enterprises, liability \textit{over} depends entirely upon conventional damages and may exceed the liability imposed in the principal suit.\textsuperscript{323}

\textbf{E. The Customary Type of Litigation for Breach of Contract}

A great variety of legal questions are litigated by state enterprises, but the number of law suits involving interesting issues is relatively small. A substantial part of arbitral practice involves a customary type of litigation that can be described as follows:

Plaintiff sues for conventional damages for late performance. Defendant claims that "acts of God" have prevented him from a timely delivery. Arbitraj invites the parties to make oral arguments with respect to additional fines that should be litigated, by reason of plaintiff's failure to apply the correct percentage figure or the real value of the merchandise belatedly delivered. After the preliminary arguments on the additional claims subjected to discussion by the parties, arbitraj orders that the object of the law suit be raised so as to include additional fines. Thereafter, the parties are invited to make preliminary arguments with respect to the admissibility of the defense. Promptly thereafter, the defense is thrown out for failure to state circumstances amounting to "acts of God." This implicitly takes care of the problem of negligence so that the only remaining issue is that of the quantum of damages. The parties are again invited to make oral arguments and the decision is handed down from the bench. The average suit lasts less than thirty minutes; it is the practice of arbitraj to schedule for every judge two disputes for each hour, \textit{i.e.}, from 8:30 a.m. to 3:30 p.m., and it does not often occur that the parties have to

\textsuperscript{323} See D. 265 of June 25, 1949, art. 2(k); HCM 524 of June 23, 1951, art. 5(k).
wait for their turn. The judges can comfortably handle a load of fourteen suits because the few lively debates—mainly planning changes, technological advancements, or stop orders from the Ministry—are more than offset by a multitude of five minute routine law suits.

F. The Modern Contract Law

The private sector of the economy has become insignificant in comparison with the socialist sector and therefore significant development of traditional contract law has not taken place over the period of almost twenty years that has elapsed since the bulk of the economy was nationalized. Nevertheless, a brand new contract law has emerged for the socialist sector. This is only partly the work of the legislative or executive department of the government. A substantial contribution to the modern contract law of Romania was made by two distinguished law professors who held the position of PAS from the early start of arbitraj to the present day. Ion Gheorghe Maurer, presently the premier of Romania, a former lawyer, law professor, and member of the Academy of Legal Sciences, was the first to be nominated. He made a lasting contribution by editing the first volume of the *Materialul*, probably the most important source of modern contract law. His successor, Professor Marcu Witzman, an equally distinguished member of the Academy of Legal Sciences, must be credited with the second volume of the *Materialul* and an important number of comprehensive instructions dealing with various legal problems that traditionalists would have referred to the legislature.

On the whole, the genesis of a modern contract law can be characterized as a common law development. A superficial and sketchy reporting system makes an institutional analysis rather difficult. Nevertheless, such analysis is indispensable for an understanding of the adaptation of the Napoleonic Civil Code to the exigencies of a command economy.

**GENERAL CONCLUSION**

The Romanian contract of delivery is a highly regulated institution. Not only is contracting mandatory to the full extent of the delivery and/or allocation order, but the basic conditions of delivery, state standards, mandatory clauses, prohibited clauses and official prices substantially determine the content of the contract. Moreover, the delivery contract itself is often superseded by such techniques as an implied incorporation of basic economic policies, updating by arbitraj, overhaul of the plan, retroactive price changes, and extra-

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324. The private sector in agriculture is still significant. However, it is subjected to special legislation and contracting of farm products is not governed by the Civil Code but D. 13 of Jan. 25, 1952, and HCM 2089 of Oct. 5, 1955, as modified, HCM 2228 of Dec. 21, 1956.

325. Law 119 of June 11, 1948 (nationalization of the principal means of production); D. 232 of Sept. 9, 1948 (nationalization of certain railroads); D. 302 of Nov. 3, 1948 (nationalization of hospitals and laboratories); D. 303 of Nov. 3, 1948 (nationalization of the movie industry); D. 134 of Apr. 2, 1949 (nationalization of urban pharmacies); D. 418 of May 16, 1953 (nationalization of rural pharmacies).
contractual "advance-action" or comradely obligations. Equally regulated are the remedies. Not only is litigation mandatory to the full extent of legal rights, but the remedies are limited to specific performance plus conventional penalties, with the quantum of penalties predetermined. When occasionally the law appears to make an exception by allowing refusal to contract or rejection of nonconforming goods, arbitraj is prompt in taking away such right by conditioning its exercise to some additional legitimate grounds. On the whole, it seems as though Rumania is the least liberal planner among all planned economies.

On the other hand, there is a high respect for the contract theory and the contractual form. Whenever possible, a doctrine based on contract law is selected and the contractual form is never dispensed with. There is a real concern for having the parties deal with each other. Contracting campaigns start early; late contracting fines are stiff, and concomitant contracts are accorded limited effects. These circumstances put pressure on state enterprises to get in touch promptly and deal with each other. Moreover, the adversary system is carefully preserved for litigation; all additional claims that are suggested by arbitraj must be subjected to discussion by the parties, and all state enterprises must have adequate legal representation. The over all picture conveyed is that of an arms-length bargaining and litigation between independent enterprises.

There is an obvious conflict between form and substance. Such contradiction may be explained in part by the fact that the statutory law based on the Napoleonic Code suffered only minor changes with many of the attorneys handling economic law being rather conservative French-trained people. However, it is equally true that the form as crystallized is perfectly capable of supporting another change, this time toward liberalization. The same formalities will have to be completed, the same ritual will be followed by the same enterprises, but there will be more meaning to it, more freedom, more decisions. Similarly, the same litigation will take place between the same parties but there will be both a real election of remedies and a real possibility of waiver. All these institutional changes may take place without institutional upset since the contract of delivery will be a perfect safety valve for a smooth and orderly transformation.

When is such a liberalization likely to occur? There is no sign in legal periodicals. The research for this article has exposed no reflection of the debates on Liebermanism, decentralization or liberalization that are continuing in the Soviet Union and Czechoslovakia. This is because Rumanians know that it is less painful to adopt a system that has been successfully employed by another country than to be an avant-gardiste. One would safely conclude that no revolutionary changes should be expected until and unless Soviet and Czechoslovak experience proves successful.
# TABLE OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<td>An.</td>
<td>Anals</td>
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<tr>
<td>Annot.</td>
<td>Annotation</td>
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<tr>
<td>Ans. NCA</td>
<td>Answers given by the PAS at the National Conference of Arbitraj held yearly in Rumania</td>
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<tr>
<td>An. Un. Parhon SSJ</td>
<td>&quot;Analele Universitatii Parhon Stiinte Sociale Juridice&quot;</td>
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<td>Arb.</td>
<td>Arbitraj</td>
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<td>Arb. CM</td>
<td>Arbitraj of the Council of Ministers</td>
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<td>Arb. Reg.</td>
<td>Regional Arbitraj</td>
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<td>Arb. Sup.</td>
<td>Supreme Arbitraj (other than Rumania)</td>
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<td>Art.</td>
<td>Article</td>
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<td>AS</td>
<td>&quot;Arbitrajul de Stat&quot;</td>
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<tr>
<td>BS</td>
<td>Banca de Stat</td>
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<td>Buc.</td>
<td>Bucuresti</td>
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<td>Bulg.</td>
<td>Bulgaria</td>
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<td>CC</td>
<td>Central Council</td>
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<td>CC Sind.</td>
<td>Central Council of Rumanian Trade Unions</td>
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<td>CM</td>
<td>Council of Ministers</td>
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<td>Col.</td>
<td>Colectia de Legi</td>
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<td>COMSTA</td>
<td>Comitetul de Standardizare</td>
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<td>CPCM</td>
<td>Comitetul de Preturi pe linga Consiliul de Ministri</td>
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<td>CSP</td>
<td>Comitetul de Stat al Planificarii</td>
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<tr>
<td>Cul.</td>
<td>Culegerea de Instructiuni ale Primului Arbitru de Stat</td>
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<tr>
<td>Czech.</td>
<td>Czechoslovakia</td>
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<tr>
<td>D.</td>
<td>Decree</td>
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<tr>
<td>D. CM</td>
<td>Decree of the Council of Ministers of a planned economy state other than Rumania</td>
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<td>Decision</td>
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<td>Ed.</td>
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<td>Editura Academiei</td>
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<td>Ed. St.</td>
<td>Editura Stiintifica</td>
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<td>ESPLS</td>
<td>Editura de Stat pentru Literatira Stiintifica</td>
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<tr>
<td>ESLEJ</td>
<td>Editura Stiintifica pentru Literatura Economica si Juridica</td>
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<tr>
<td>Ger.</td>
<td>Eastern Germany</td>
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<tr>
<td>HCM</td>
<td>Hotarirea Consiliului de Ministri</td>
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Hung. Hungary
IB Investment Bank
Instr. Instructions
Instr. PAS Instructions of the Rumanian PAS
JN "Justitia Noua" [New Justice, a Rumanian legal periodical]
LP "Legalitatea Populara" [Popular Legality, a Rumanian legal periodical]
M. Ministry
MAg Ministry of Agriculture
Mat. Unofficial compilation of Instruction of the PAS and opinions of the PAS and his staff, called "Materialul" in two volumes.
MF Ministry of Finances
MIA Ministerul Industriei Alimentare [Food Products Ministry]
MIG Ministerul Industriei Grele [Heavy Industry Ministry]
NCA National Conference of Arbitraj, held yearly in Rumania
Off. Official
Off. St. Official Statement [The name for regulations issued by certain Rumanian administrative agencies]
Ord. Ordinance
PA Prime Arbiter of a planned economy country other than Rumania
PAS Prim Arbitru de Stat [Prime Arbiter of Rumania]
Prac. Arb. Practica Arbitrala [Unofficial compilation of Bulgarian arbitraj decisions]
Pol. Poland
Reg. Regulation
Rev. Review
Rev. du Dr. Cont Revue du Droit Contemporain [A legal periodical in French language]
Rom. Rumanian
RPR Rumanian People's Republic
Rum. Rumania
SDS "Statul si Dreptul Sovietic" [A Rumanian periodical on Soviet law]
Sind. Sindicat [Trade Union]
SSJ Stiinte Sociale si Juridice [Legal and social sciences]
STAS State Production Standards
St. on Del. Prod. Statute on Deliveries for Producer Goods
Un. University