

ABDRC: Negotiation Outtakes Lawsuits and *Datio in Solutum* in Efficiency

31 August, Bucharest. More than 20 lawsuits came to an end this year because the banks and the consumers decided to submit their disagreements to negotiation via the **Alternative Banking Dispute Resolution Centre (ABDRC)**. While most of the conciliation applications concerned the out-of-court settlement of a dispute, many cases were resolved this year after commencement of court proceedings. A *datio in solutum* case covering three different loans which, after close to 5 years spent in court, was settled by negotiation in just a couple of months, is such an example.



Dan Cristina Mihaela, consumer of Bucharest

"In a nutshell, the story is that I had a datio in solutum case for three different loans taken from the same bank. After my notice of datio in solutum, the bank brought up an action in court. Fortunately, there was a very happy end. I didn't approach the bank for negotiation because I didn't even think that a consumer could pursue this avenue. But, I learned about ABDRC, since I had started to research and consider my options. Having read the in the media and asked around, I found this Centre. My then court lawyers discouraged me. They used to tell me that no bank would accept to negotiate on my case. But the creditor prove very willing to have our disputes put to an end.

When I went to the bank, the people there also recommended ABDRC from the very beginning. They told me we could have it settled fast and with no costs for me. I had three cases resolved in less than six months. As a matter of fact, I don't even image what their faith would have been in court.

Eventually, I had my loans restructured and merged, some fees removed, a lower instalment, and exempt of default penalties for the last five years. I was free of lawsuits. To these, adds also a reduction of approx. EUR 10,000 of my principal. I was very happy to see how willing the people in the bank were to have my problem solved. And also that they accepted claims that they could have very well rejected. It's quite interesting to see that what big law firms could not accomplished, ABDRC did. Then I read more about other people who had their problems solved in a similar fashion. There is still hope for the better in Romania."



Alexandru Păunescu, President of ABDRC Steering Board

"We are witnessing a trend that, to our minds, benefits also the courts, not only the litigants. There are cases where disputes between consumers and banks that are years old, or very fresh, are resolved amicably further to negotiations conducted via ABDRC. Amicable settlements of datio in solutum cases are emerging, too. It is manifest that people don't want to lose their homes, many of them have addressed their past financial problems, and want to resume their deals with banks under fair terms. Fortunately, the compromises made further to the negotiations conducted via ABDRC are financially beneficial. Considering that the clarifications to the term

hardship were qualified by the Constitutional Court of Romania as constitutional, we urge the banks to be more open to any consumer claims for rebalancing their contracts, when the conditions laid down under the law are met. We speak here about those willing to go to court to have address very specific grievances, such as those related to interest, fees, removal or amendment of contractual clauses. And the invitation we extend them is to operate this rebalancing directly, between consumers and banks or non-banking

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*financial institutions, and only when the outcome is not that intended, to pursue the procedures provided by ABDRC, by negotiation and with involvement of an neutral specialist, the conciliator. In fact, we see that also the European Court of Justice recommends individual negotiation. A case completed in 2020, where a consumer of Spain reported allegedly abusive clauses in his contract with the bank, is relevant. The CJEU Judgment in this case (dated 9 July 2020, in case C-452/18) is interpreted to the effect that the parties can negotiated before having clauses deemed or qualified as abusive replaced by new ones. The intention is that the new terms are no longer imposed under a contract or addendum, but agreed-upon by the parties. To conclude, conciliation, compromise and fair solutions can successfully replace the traditional court proceedings, regardless of their stage", says **Alexandru Păunescu, President of ABDRC Steering Board.***

CASES WHERE COURT PROCEEDINGS WERE REPLACED BY AMICABLE SETTLEMENT

Aurora Z., Bucharest

The bank granted the Zs a personal mortgage loan of EUR 35,000 back in April 2008. In September 2016, both the loan agreement and the repayment schedule were ceased further to the *datio in solutum* notice. To settle the dispute and find a solutions for the more than EUR 10,000 outstanding, the bank proposed an amicable settlement for the dispute via ABDRC. The creditor terminated the loan management fee, returned the amount of this fee collected since the loan was granted and until the *datio in solutum* notice, and wrote off a third of the overdue interest. Overall, the direct benefits obtained by the consumer are in excess of EUR 7,500.

Leonard G., Brașov

The bank offers the consumer EUR 7,000 to be applied for the partial repayment of the loan, with a view to amicably settle the dispute pending before the District Court of Brașov since 2021. The parties agree to waive any other claims in connection with the force execution proceedings, the court expenses, the professional fees, and any other amounts due.

Manuela F., Vrancea

For the amicable settlement of the dispute pending before Vrancea Tribunal since 2017, the bank offers EUR 2,764 to the consumer. This amount represents the different between the interest collected under the loan agreement and the 5.8% p.a. flat interest until the final maturity. Each party undertakes to bear their respective costs of the court proceedings.

Ileana V. Iași

The bank shall return to the consumer RON 5,000 and EUR 1,200 with a view to amicably settling the dispute covered by a lawsuit brought up in 2018 and lending before Iași Court of Appeal.

Cristian. I. Z., Iași

The banks pays RON 7,100 to the consumer, and the parties agreed to settle amicably the dispute brought up this year before Iași District Court.

Gheorghe C., Huși

The bank shall pay RON 12,432 to the consumer for the amicable settlement of the dispute between the parties, covered by a 2021 case pending before Huși District Court.

About ABDRC: ABDRC is an entity set up under a European Directive, and intermediates, free of charge and in not more than three months, negotiations between consumers and banks or NBFIs, for contracts/agreements in progress. Consumers from any county of the country may file applications with the Alternative Banking Dispute Resolution Centre (ABDRC), filling-in an online form directly on the website www.csalb.ro. When the bank accepts to enter the conciliation/negotiation procedure, a conciliator is appointed. ABDRC works with 19 conciliators, of the best specialists in law and with relevant experience also in the financial and banking field. Everything is settled amicably, and the understanding between the parties has the power of court judgment. More information about the work of the Centre is available by phone at 021 9414 (charged a normal rate).