# Kluwer Arbitration Blog

## Top 10 Things to Know About Arbitration in Bulgaria

Martin Zahariev (Dimitrov, Petrov & Co.) · Monday, December 27th, 2021

Being a Member State of the EU and a party to the New York Convention (NYC), the Republic of Bulgaria is an attractive destination to locate the seat of your arbitration proceedings. This is especially so if you are seeking a neutral venue where costs for travel, accommodation and similar, would be significantly lower in comparison to other European jurisdictions traditionally selected as arbitration friendly to host international arbitration cases.

The Bulgarian International Commercial Arbitration Act (ICAA) is based on UNCITRAL Model Law. As discussed in previous posts on Kluwer Arbitration Blog (KAB), the latest amendments to the ICAA were made back in 2017, and the other major reform worth mentioning took place in 1993. Thus, the legal framework is relatively constant and predictable, whereas sudden and drastic changes are rather uncommon.

Below is a list of the **top 10 things** about arbitration in Bulgaria you probably do not know, which may be useful if you are considering this option or if you are otherwise involved in arbitration concerning Bulgaria.

### 1) Seat of Arbitration

Art. 19(2) of Bulgarian Civil Procedure Code (CPC) stipulates that arbitration may be seated abroad where at least one of the parties has:

1. its habitual residence,
2. seat according to its statutory acts, or
3. place of actual management outside of Bulgaria.

This rule can be read as a prohibition on seating an arbitration in a foreign country if none of the preconditions under (i) – (iii) is present. The ambiguities surrounding this limitation were subject to analysis on KAB before. Recent Bulgarian case law reaffirms that the said prohibition is mandatory, it cannot be derogated by an agreement of the parties and its violation can lead to invalidity of the entire arbitration agreement. It should be clarified that the prohibition does not encompass agreeing on institutional arbitration where the arbitral institution itself is seated (established) abroad. Rather, the rule applies to agreeing on the **seat of the arbitration abroad (i.e. to the place**

**where the arbitration proceedings shall legally be deemed conducted)** without the mentioned preconditions, thus avoiding the applicability of the ICAA and Bulgarian law to the dispute and the proceedings. Simply put, although the ICC International Court of Arbitration is seated in Paris, the parties which do not meet the requirements under (i) to (iii) may still agree on arbitration under the ICC Rules with their seat in Sofia, Bulgaria, and this will be fully valid.

In an interesting case, a party sought enforcement of an Austria-seated arbitration award in Bulgaria. The award was made in a dispute between two entirely Bulgarian parties (without habitual residence, seat, or place of management outside Bulgaria). The respondent argued that the award should not be enforced in Bulgaria due to a contradiction with public policy and invalidity of the arbitration clause. The court held that the foreign award between two Bulgarian parties could not be considered contrary to public policy, as the said provision of the CPC, although mandatory, had no such public significance and the underlying dispute was, in principle, arbitrable. The validity of the clause should also not be assessed in light of Art. 19(2) of the CPC, as this matter, according to the NYC, is to be determined by the law chosen by the parties or the law of the country where the award was made (the law of the seat of the arbitration). In the said case, both criteria led to applicability of the Austrian law, instead of the Bulgarian law. Ultimately, the court decided that deviation from this rule could not be a ground for non-enforcement of the foreign award under the NYC.

### 2) Arbitrators

Arbitrators may be Bulgarian or foreign citizens. In domestic arbitration proceedings (i.e., arbitration between parties domiciled or having their seat in Bulgaria), only Bulgarian citizens may act as arbitrators. Foreign citizens may be arbitrators to domestic arbitration only where one of the parties to the dispute is an enterprise with predominant foreign participation (i.e. the capital is owned by foreign majority shareholders). Also, individuals are eligible to be appointed as arbitrators if they have:

1. full legal capacity,
2. not been convicted of an intentional crime of general nature,
3. a higher education,
4. at least 8 years of professional experience, and
5. high moral standing.

The law does not require that arbitrators have a law degree, thus opening the possibility to appoint arbitrators with different expertise depending on the nature of the dispute – engineers, architects, economists, IT specialists, scientists, etc.

### 3) Domestic Arbitration Can Be in Bulgarian Language Only

Unlike the legal regime applicable to international arbitration conducted in Bulgaria, where the parties are free to agree on the language of the proceedings, domestic arbitration should be conducted in Bulgarian only. The ICAA does not allow the parties

to agree otherwise, even if they are enterprises with predominant foreign participation or other connection with a foreign country.

### 4) Consumer Disputes Are Non-Arbitrable

With the amendments of 2017, the rules on arbitrability were further supplemented. Prior to these amendments, Art. 19(1) of the CPC stipulated that all types of disputes concerning rights capable of being valued in monetary terms were arbitrable, except for:

1. disputes in respect of absolute rights over immovable property or possession of immovable property,
2. disputes in respect of alimony, and
3. labor disputes.

With the adoption of the amendments, another type of disputes was declared non-arbitrable, namely (iv) disputes where one of the parties thereto is a consumer. The consumer protection legislation was also changed – any clause in a contract concluded between a trader and a consumer by which the parties assign to an arbitral tribunal the resolution of a dispute between them, outside the special procedures for alternative resolution of consumer disputes under the consumer legislation, was declared null and void. Non-arbitrability as per the case law affects not only future, but also awards already rendered in consumer disputes – they were declared null and void, irrespective of whether they were favorable for the consumer or not.

### 5) Special Arbitrability for Concessions

The Bulgarian Concessions Act (CA) contains a special rule (Art. 154(3)) which further supplements the general notion of arbitrability envisaged in the CPC. According to this rule, only disputes related to a concession agreement the value of which is above the "European threshold" may be resolved by arbitration. As of 1 January 2020, the said threshold is set by the European Commission at EUR 5,350,000 (amount valid as per November 2021). If the concession agreement is below that value, disputes related to it may only be resolved by the state courts under the general rules of civil procedure (Art. 154(2) of the CA).

### 6) Certain Arbitral Awards are Null and Void

Arbitral awards rendered in non-arbitrable disputes are not subject to traditional set-aside proceedings. They are directly declared null and void. An *ex officio* inspection of the validity of the award is regulated when issuing writs of execution for the purposes of enforcement and the courts should refuse enforcement if they find the respective award null and void.

### 7) Public Policy Is No Longer a Ground for Setting Aside Domestic Arbitration Awards

Believe it or not, contradiction with public policy cannot be used as a basis for recourse against the award. Bulgaria is probably a unique example in that respect, at least as a country where arbitration legislation is based on the UNCITRAL Model law. It is still unclear whether this amendment was deliberate, as there were views that public policy was a concept inherent to private international law only and as a result should not at all be applied to Bulgarian arbitrations (i.e., arbitrations seated in Bulgaria), or whether it was an unintentional legislative mistake. Whatever the reason for this misfortunate legislative failure, you need to find other grounds for justifying your claim for setting aside a domestic Bulgarian award in case of flagrant violations of the fundamental legal principles and notions of fairness.

### 8) Administrative Control Over Arbitration

The Minister of Justice through its Inspectorate is entitled to exercise control over arbitral institutions and arbitrators for compliance with the ICAA. Inspection may be initiated *ex officio* or upon complaint by an interested party. The chairman of the inspected arbitral institution is obliged to ensure free access to the official premises and to the official archive for the purposes of the inspection. The Minister of Justice may issue mandatory instructions to arbitral institutions and arbitrators for remedying established violations of the law. Examples of such violations are failure to retain the documents from the closed cases in the archive of the arbitral institution as required by the ICAA (the entire case file should be retained for 10 years as of closure of the proceedings and after this term elapses, only the awards, the reasons thereof and the concluded settlement agreements should be retained), maintaining lists with arbitrators that do not meet the legislative criteria (see 2) above), resolving non-arbitrable disputes, etc. In any case, this administrative control is addressed at the general activity of the arbitral institutions and arbitrators related to administering the disputes and complying with the ICAA and should not affect the merits of an ongoing dispute.

### 9) Administrative Fines for Arbitrators and Pecuniary Sanctions for Arbitral Institutions

Arbitrators and arbitral institutions that render an arbitral award in a dispute with a consumer may be subject to sanctions. For arbitrators, the sanctions vary from approx. EUR 255 to approx. EUR 1,275 and for legal entities they are up to approx. EUR 2,555. In case of repeated violation, the sanctions are tripled. An arbitrator or legal entity failing to comply with the instructions of the Minister of Justice may be sanctioned with up to approx. EUR 1,275.

### 10) Arbitration Bulgaria

A group of enthusiasts has recently launched a new blog about arbitration in Bulgaria. Anyone interested in arbitration in Bulgaria can find useful information in English, such as:

1. excerpts from the key legal acts governing the arbitration in that jurisdiction,
2. FAQs related to the entire arbitration process – from the very conclusion of the arbitration agreement and the form for its validity, through the peculiarities in the proceedings, securing, rendering, setting aside and enforcing arbitral awards, and
3. regular brief updates in plain language about the latest news, trends and case law.

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