The International Arbitration Review

Sixth Edition

Editor
James H Carter

Law Business Research

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EDITOR'S PREFACE

International arbitration is a fast-moving express train, with new awards and court decisions of significance somewhere in the world rushing past every week. Legislatures, too, constantly tinker with or entirely revamp arbitration statutes in one jurisdiction or another. The international arbitration community has created a number of electronic and other publications that follow these developments regularly, requiring many more hours of reading from lawyers than was the case a few years ago.

Scholarly arbitration literature follows behind, at a more leisurely pace. However, there is a niche to be filled for analytical review of what has occurred in each of the important arbitration jurisdictions during the past year, capturing recent developments but putting them in the context of the jurisdiction's legal arbitration structure and selecting the most important matters for comment. This volume, to which leading arbitration practitioners around the world have made valuable contributions, seeks to fill that space.

The arbitration world is consumed with debate over whether relevant distinctions should be drawn between general international commercial arbitration and international investment arbitration, the procedures and subjects of which are similar but not identical. This volume seeks to provide current information on both of these precincts of international arbitration, treating important investor–state dispute developments in each jurisdiction as a separate but closely related topic.

I thank all of the contributors for their fine work in compiling this volume.

James H Carter
Wilmer Cutler Pickering Hale and Dorr LLP
New York
June 2015

Chapter 9

BULGARIA

Assen Alexiev and Boryana Boteva[1]

I INTRODUCTION

Arbitration as a means of dispute resolution was legally adopted in Bulgaria at the end of the 19th century. In the first half of the 20th century, it was used to resolve both civil and commercial cases, and the arbitrators had the power to resolve disputes *ex aequo et bono*.

After Bulgaria became part of the communist bloc, its legislation was completely revised and new socialist laws were adopted. For a long period, the now-repealed Code of Civil Procedure of 1952 allowed arbitration only in legal disputes between Bulgarian socialist organisations and foreign enterprises. Disputes between local socialist organisations were resolved by the state arbitration courts, which were actually specialised state courts. The Court of Arbitration of the Bulgarian Chamber of Commerce and Industry acted as a voluntary court of arbitration in disputes between Bulgarian socialist organisations and foreign non-socialist companies, and as a compulsory court of arbitration under the Moscow Convention,[2] if the defendant was a Bulgarian entity.

At the end of the socialist era in Bulgaria, the country gradually started building its free market economy. With the enactment in 1988 of the Law on International Commercial Arbitration (LICA), Bulgaria became one of the first countries to adopt the 1985 UNCITRAL Model Law on International Commercial Arbitration (the Model Law). Since its adoption, the LICA has undergone several amendments, aimed at broadening its scope and streamlining arbitral proceedings. The 2006 amendments to the Model Law have not yet been considered for adoption.

1 Assen Alexiev and Boryana Boteva are partners at Sabev & Partners.

2 The Convention on the Settlement By Arbitration of Civil Law Disputes Resulting from Relations of Economic and Scientific-Technical Cooperation, Moscow, 26 May 1972.

Apart from the LICA, certain provisions of the Civil Procedure Code (CPC), the Private International Law Code (PILC) and the Law on Commerce are relevant to the legal regime of arbitration in Bulgaria.

The Republic of Bulgaria signed the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) on 17 December 1958, and it entered in force for Bulgaria on 8 January 1962. The New York Convention was published in the Bulgarian State Gazette, Issue No. 2 of 1965. Bulgaria has made the following reciprocity reservation: 'Bulgaria will apply the Convention for recognition and enforcement of foreign arbitral awards when the awards are issued in the territory of another contracting State. With regard to awards issued in the territory of a non-contracting State, it will apply the Convention only on the basis of strict reciprocity.'

The European Convention for International Commercial Arbitration was signed by the Republic of Bulgaria on 21 April 1961 and ratified on 13 May 1964. This Convention was published in the State Gazette, Issue No. 57 of 1964.

The International Centre for Settlement of Investment Disputes (ICSID) Convention[3] was signed by the Republic of Bulgaria on 21 March 2000. It was ratified on 13 April 2001 and entered in force on 13 May 2001. Bulgaria is also a party to the Energy Charter Treaty (ECT) and ratified it on 15 November 1996.

The arbitrability of disputes in Bulgaria is regulated mainly by Article 19(1) of the CPC. The parties to a dispute involving a pecuniary right that may be disposed of may agree that the dispute be settled by an arbitration court, with the exception of the following types of disputes:

a disputes in respect of absolute rights over immoveable property or possession of immoveable property. However, disputes involving relative contractual rights in respect of immoveable property, and disputes in relation to ownership rights over moveable property, are arbitrable;

b disputes in respect of alimony;

c disputes in respect of rights under an employment relationship. However, disputes under management agreements between companies and their directors are arbitrable;

d disputes involving non-pecuniary rights;

e administrative and other public law disputes;

f disputes involving non-transferable personal rights and disputes in relation to personal or marital status and origin;

g civil law disputes that may be initiated by a prosecutor or where the participation of a prosecutor is required; and

i disputes under Article 694(1) of the Commercial Act for declaratory judgments establishing the existence of receivables from an insolvent company that have not been accepted in the insolvency proceeding.

3 The Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

Under the LICA, an arbitration is 'international' if the domicile or the seat of at least one of the parties is not in Bulgaria. If the domicile or the seat of all parties to the arbitration is in Bulgaria, the arbitration is 'domestic', regardless of whether any or all of the parties have foreign shareholders.

All awards issued in international and domestic arbitrations taking place in Bulgaria are treated as Bulgarian awards and may be directly enforced. The awards issued in arbitrations taking place abroad are treated as foreign, and are subject to recognition and enforcement procedures in Bulgaria.

All international and domestic arbitrations taking place in Bulgaria are regulated by the LICA. It applies to international arbitration of commercial disputes and to domestic arbitration of commercial or non-commercial disputes. The international arbitration of non-commercial disputes is included within the domain of arbitration by virtue of Article 19(1) of the CPC, but is not explicitly included within the scope of the LICA.

The LICA provides that the arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes that may arise or have arisen between them in respect of a defined contractual or non-contractual legal relationship (Article 7(1) of the LICA). A submission agreement may relate to a non-contractual legal relationship, such as tort or unjust enrichment. The arbitration agreement must be in writing. The written form is deemed to have been complied with if the arbitration agreement is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of communication. An explicit reference in writing by the parties to general conditions that contain an arbitration clause is regarded as sufficient to establish an agreement to arbitrate their disputes under the agreement to which these general conditions apply.

Under Article 7(3) of the LICA, an arbitration agreement is deemed to exist when the respondent, in writing or in a declaration recorded in the minutes of the arbitration hearing, accepts that the dispute be examined by the arbitral tribunal, or when the respondent participates in the arbitral proceedings without challenging the jurisdiction of the arbitral tribunal.

There are no restrictions as to the persons who may be parties to an arbitration (Article 19(1) of the CPC). A state or a state agency can be a party to both international commercial arbitration and domestic arbitration (LICA, Article 3 and Paragraph 3 of the Transitional and Final Provisions).

Under Article 637 of the Law on Commerce, after the opening of the insolvency proceedings against the debtor, no new court or arbitral proceedings on pecuniary civil or commercial cases against the same debtor, other than claims by third parties, owners of property in the insolvency estate – for defence of their rights, employment disputes, and disputes related to debts secured with the property of third parties – are admissible. All pending court and arbitral proceedings on pecuniary civil and commercial cases against a party, with the exception of labour disputes for monetary receivables and disputes for debts secured with property of third parties, must be stayed upon the opening of insolvency proceedings against the same party. The requirement of the stay of the proceedings does not apply to pending cases in which the debtor in the insolvency proceedings is acting as defendant, and the respective court or tribunal has admitted for joint resolution counterclaims or set-off defences raised by the debtor. Article 637 further stipulates that

the stayed proceedings shall be terminated if the receivable of the respective creditor (acting as claimant in the stayed proceeding) is accepted in the insolvency proceeding. If the receivable of the creditor is not accepted in the insolvency proceeding, the stayed proceedings shall be resumed and continued with the participation of the receiver in insolvency and the creditor. If the receivable was accepted in the insolvency proceeding, but another creditor has filed an objection against its acceptance, the stayed proceedings shall be resumed and continued with the participation of the receiver in insolvency, the creditor and the person who has filed an objection against the acceptance of the receivable.

Under Article 638 of the Law on Commerce, all execution proceedings against the debtor are stayed after the commencement of the insolvency proceeding.

The parties to an international arbitration are free to agree on a place of arbitration in Bulgaria or abroad. In an arbitration between Bulgarian parties, the place of arbitration must always be in Bulgaria.

Article 38(1) of the LICA provides that the arbitral tribunal in an international arbitration is to decide the dispute in accordance with the law chosen by the parties. Unless otherwise agreed, this choice of law refers to the substantive law and not to the conflict of laws rules. If the parties have failed to designate the applicable law, the arbitral tribunal will apply the law specified by the conflict of law rules that it considers applicable.

In domestic arbitration cases, the arbitrators have to apply Bulgarian law to the dispute, unless the legal relationship in dispute contains an international element that according to the PILC leads to the application of a foreign law. In the latter case, the parties are free to choose the applicable substantive law, and if they have failed to do so, the arbitral tribunal will apply the conflict of laws rules that it considers applicable (LICA, Paragraph 3(3) of the Transitional and Final Provisions).

In all domestic arbitrations, the language of the proceedings must be Bulgarian (LICA, Paragraph 3(1) of the Transitional and Final Provisions). In international arbitrations, the parties are free to choose the language(s) of the arbitration (LICA, Article 26).

Any physical person of legal age and full legal capability can be an arbitrator. Persons who are not citizens of the Republic of Bulgaria may be appointed as arbitrators in international arbitration cases. In domestic arbitration cases this would be possible only where the appointing party is a Bulgarian company with foreign majority shareholders (LICA, Paragraph 3(1) of the Transitional and Final Provisions). In other domestic arbitration cases, only Bulgarian citizens may be appointed as arbitrators (LICA, Paragraph 3(1) of the Transitional and Final Provisions).

The Bulgarian court system includes regional, district and administrative courts, military courts, courts of appeal, a Supreme Court of Cassation and a Supreme Administrative Court. Separately, there is a Constitutional Court, which rules, *inter alia*, on requests for declaring laws or acts of national institutions being contrary to the Constitution.

The state courts have jurisdiction on civil, administrative and criminal cases. The proceedings are normally run on a two or three-tier system. One of the exceptions is related to the procedure of setting aside of arbitration awards rendered in Bulgaria – it is

a single-tier procedure where the Supreme Court of Cassation has exclusive jurisdiction (see details below).

i Competence of the courts related to arbitration

The Sofia City Court has the following functions related to arbitration:

a appointment of arbitrators in non-commercial disputes;
b taking of decisions on challenges of arbitrators;
c taking of decisions on the termination of the mandate of the arbitrator;
d issuance of writs of execution on the basis of Bulgarian arbitral awards and settlement agreements reached in arbitrations taking place in Bulgaria; and
e taking of decisions in recognition and enforcement proceedings in relation to foreign arbitral awards.

Under Article 37 of the LICA, the arbitral tribunal or an interested party, with the approval of the tribunal, may request any state court to collect certain evidence according to the provisions of the CPC.

The arbitrators have the power to grant provisional measures, but their order is not enforceable, and the parties will need the assistance of the courts in order to obtain an enforceable attachment of assets according to the procedure regulated by Articles 389 to 403 of the CPC, or to carry out the procedure for the preservation of evidence under Articles 207 to 209 of the CPC. Provisional measures may also be requested with respect to future claims before their submission to an arbitral tribunal. The requests for such measures may be submitted either to a regional or to a district court, to be determined on the basis of the claimed amount, the permanent address or the seat of the claimant, or the location of the immoveable property (where applicable). Provisional measures may not be granted against the state, state institutions, municipalities and health institutions (Article 393 of the CPC). The enforcement of granted provisional measures is carried out by enforcement agents according to Articles 400 and 401 of the CPC.

Arbitral awards rendered in Bulgaria do not need leave for enforcement. With its delivery to one of the parties, the award enters in force and becomes binding and directly enforceable in the same way as a Bulgarian court judgment that has entered into force (Article 41(3) of the LICA and Article 404(1) of the CPC). Similarly, the awards issued by ICSID tribunals are directly enforceable. The enforcement procedure is initiated by the interested party, which files a request for the issuance of a writ of execution to the Sofia City Court. This court has the exclusive authority to issue writs of execution on the basis of Bulgarian arbitral awards and settlement agreements reached in arbitrations taking place in Bulgaria (Article 405(3) of the CPC; Article 119 of the PILC).

A Bulgarian arbitral award may be set aside by the Supreme Court of Cassation if the party requesting the setting aside proves one of the following grounds:

a the party was under some incapacity at the time of the conclusion of the arbitration agreement;
b there is no arbitration agreement or it is not valid under the law chosen by the parties, or failing such a choice – under the LICA;
c the subject matter of the dispute is not capable of settlement by arbitration or the award contravenes the public policy of the Republic of Bulgaria;

d the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable to participate in the proceedings due to causes beyond its control;

e the award deals with a dispute not contemplated by the arbitration agreement or contains a decision on issues beyond the subject matter of the dispute; or

f the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties unless this agreement contravenes a mandatory provision of the LICA, or – failing such an agreement – when the provisions of the LICA were not complied with.

The action for setting aside of a Bulgarian arbitral award may be initiated through the raising of a claim for setting aside before the Supreme Court of Cassation. This claim must be raised within three months from the day on which the claimant has received the award. After expiry of this time limit, the award may not be contested on any grounds. The party claiming the setting aside may request the stay of the enforcement proceedings in respect of the award. A stay may be granted by the Supreme Court of Cassation only if the party provides security in an amount equal to the value of the claims resolved with the award.

The procedure for recognition and enforcement of foreign arbitral awards is set out in Articles 117 to 122 of the PILC and in the LICA. The international treaties entered into by Bulgaria will be applied to the recognition and enforcement of foreign arbitral awards (Article 51 of the LICA).

A foreign award is recognised by the institution or court before which it is submitted. In the case of a dispute regarding the conditions for recognition of a foreign award, the party interested in obtaining recognition may file a claim for a declaratory judgment with the Sofia City Court, which is the only competent institution to issue a decision for recognition of the award. A party seeking to enforce a foreign award in Bulgaria has to file a claim for enforcement before the Sofia City Court. If the Court admits the claim for recognition of a foreign arbitral award, it will issue a declaratory judgment for its recognition. With the entry into force of this judgment, the award will have a *res judicata* effect in Bulgaria in relation to the dispute resolved by it. If the Court admits a claim for enforcement of a foreign arbitral award, it will issue a judgment for its enforcement. Such judgment is subject to the general appeal procedure. With the entry into force of this judgment, the award will be enforceable in the same way as a Bulgarian court judgment or a Bulgarian arbitral award.

There is a number of arbitration institutions in Bulgaria, the oldest of which is the Court of Arbitration at the Bulgarian Chamber of Commerce and Industry.

II THE YEAR IN REVIEW

i Developments affecting international arbitration

In 2014, the Confederation of Employers and Industrialists in Bulgaria (KRIB) established a new arbitration institution – the KRIB Court of Arbitration.[4] This arbitration institution was established with the aim of providing a modern, efficient and reliable choice for the resolution of business disputes through the adoption of the best practices of the international commercial arbitration. The KRIB Court of Arbitration is particularly focused on meeting the needs of the international investors and companies operating on the Bulgarian market and provides a valid alternative to the state courts and the expensive proceedings before international arbitration institutions.

The Rules of Arbitration of the KRIB Court of Arbitration (the KRIB Rules) were adopted following extensive consultations among the member companies of the KRIB and Bulgarian arbitration specialists, and adopt modern solutions to various aspects of arbitration, while also taking into consideration the specifics of the Bulgarian environment:

a the KRIB Court does not have a mandatory list of arbitrators, and the arbitrators nominated by parties are subject to confirmation by a commission of the KRIB Court. When the parties come from different countries, the president of the tribunal must be from a neutral country. This approach is in contrast with the standard practice of Bulgarian arbitral institutions, which have mandatory lists of arbitrators and encourage the appointment of local arbitrators;

b the KRIB Court is the first Bulgarian institution to officially adopt the IBA Guidelines on the Conflict of Interest in International Arbitration and the IBA Rules of Ethics for International Arbitrators. This ensures the transparency, predictability and fairness of the arbitral process through the implementation of international standards for disclosure by arbitrators. Challenges of arbitrators are decided by the Arbitration Council of the KRIB Court, rather than by the arbitrators themselves, as practised by the other Bulgarian arbitration institutions;

c the KRIB Rules encourage the early identification of the issues in dispute and of the evidentiary means for their determination through provisions that require the preparation by the tribunal of a report on the case and of a timetable for the arbitration shortly after the constitution of the tribunal;

d parties may at any time agree to conduct the arbitration either in Bulgarian or in English, and if they fail to agree on this issue, the language of the arbitration is fixed by the tribunal, taking into account all relevant circumstances, including the language of the contract. This solution is in contrast to the practice of the other Bulgarian arbitral institutions, which adopt Bulgarian as the default language of the arbitration even in international disputes, if the parties have not agreed otherwise;

4 The official website of the KRIB Court of Arbitration is at www.arbitration.bg.

e parties have the opportunity to use party-appointed experts. This contrasts with the common practice in Bulgaria to have only tribunal-appointed experts who are appointed without prior consultation with the parties;

f the KRIB Court of Arbitration is the first Bulgarian arbitral institution to adopt a procedure for independent and impartial monitoring of the quality of the arbitration awards, similar to the scrutiny of awards carried out by the ICC International Court of Arbitration. The scrutiny is carried out by a commission of the KRIB Court, which examines all draft awards prior to their notification for their compliance with the formal requirements of the applicable law and of the KRIB Rules, and may give draw the attention of the tribunal to substantial and procedural issues; and

g to promote transparency and predictability, the KRIB Rules require the publication of all awards in a redacted form.

ii Arbitration developments in local courts

In recent years, Bulgarian courts have published a number of judgments with importance for various aspects of arbitration. The following are of particular note:

Decision No. 62 of 18 May 2011 in commercial case No. 1182/2010 of the Supreme Court of Cassation, Commercial Collegium, II Commercial Division

This decision was issued in proceedings for setting aside of a domestic arbitration award initiated by an insolvent company. The Supreme Court of Cassation held that by resolving the claim of a creditor of the insolvent company for a declaratory judgment establishing the existence of a receivable of the creditor that was not accepted in the insolvency proceeding, the BCCI Court has breached the imperative provision of Article 694(1) of the Commercial Act, which provides that claims for declaratory judgments for the existence of receivables that have not been accepted in the insolvency proceeding can only be raised before the insolvency court. Thus, the arbitration award has resolved a non-arbitrable dispute, for which reason the Supreme Court of Cassation set it aside. This decision clarifies that disputes under Article 694(1) of the Commercial Act are not arbitrable, which is important in view of the general principle that the parties to a dispute involving a pecuniary right that may be disposed of may agree that the dispute be settled by arbitration, unless the law provides otherwise.

Decision No. 112 of 30 August 2011 in commercial case No. 696/2010 of the Supreme Court of Cassation, Commercial Collegium, II Commercial Division

In this decision, issued in proceedings for the setting aside of a domestic arbitration award, the Supreme Court of Cassation ruled that Article 195 of the Act on the Judiciary prohibits judges from acting as arbitrators. For this reason, they cannot be included in the list of arbitrators of an arbitration court and cannot be appointed to act as arbitrators. This decision is an important precedent that clarifies the issue, on which there were conflicting views in the past.

Decision No. 71 of 2 September 2011 in commercial case No. 193/2010 of the Supreme Court of Cassation, Commercial Collegium, II Commercial Division

With this decision, again issued in proceedings for the setting aside of a domestic arbitration award, the Supreme Court of Cassation decided that an arbitration clause providing for a unilateral right of one of the parties to choose whether to refer a dispute between the parties to a court or to an arbitration tribunal is null and void under Article 26(1).1 of the Obligations and Contracts Act. According to the Court, the unilateral right to choose the method for dispute resolution has the characteristics of a potestative right, which can only be established by law, and not by contract. This court decision is an important precedent that sets a limit to the contractual freedom of the parties to agree on the method for settlement of their disputes by entering into arbitration agreements that provide for an alternative competence of courts and arbitration tribunals.

Decision No. 249 of 11 February 2013 in commercial case No. 399/2012 of the Supreme Court of Cassation, Commercial Collegium, II Commercial Division

This decision was issued in proceedings for setting aside of a domestic arbitration award. The Supreme Court of Cassation discussed the effects of the invalidity of a contract on the validity of the arbitration clause contained in the same contract. The Court expressed the view that the validity of the arbitration clause has to be examined not only in respect of the general requirements for the validity of contracts, but also in respect of certain specific requirements for taking decisions by commercial companies (such as the requirements under Articles 137(7) and 236 of the Commercial Act).[5] In this case, a long-term rent agreement containing an arbitration clause was signed by the chairman of the board of directors of a joint-stock company, but it was not proven that the board of directors had taken a decision for the entry into this transaction as required under the by-laws of the company. The Supreme Court of Cassation found that the non-compliance with the requirement of Article 236 of the Commercial Act led to the invalidity not only of the rent contract but also of the arbitration clause contained therein. According to the Court, the lack of a decision by the board of directors meant that the company had not formed a valid will not only for the entry into the rent contract, but also for the conclusion of the arbitration clause, notwithstanding the fact that the contract was made in writing and was signed by the legal representative and authorised signatory of the company. This decision of the Court questions the well-established principle of the autonomy of the arbitration agreement and undermines the jurisdiction of the arbitrators to resolve disputes where a party alleges the invalidity of the underlying contract due to non-compliance with a certain specific requirement that is not applicable to arbitration agreements in general. It remains to be seen whether this decision will remain an isolated example, and how it will affect the practice of the courts and arbitral tribunals in the future.

5 Article 137(7) requires a decision of the general assembly of limited liability companies for the entry into certain types of transactions. Article 236 contains a similar requirement in respect of joint-stock companies, but provides an option the by-laws of the company to grant the power for taking such decisions to the board of directors of the company.

Decision No. 122 of 18 June 2013 on commercial case No.920/2012 of the Supreme Court of Cassation, Commercial Collegium, II Commercial Department

This decision was also issued in proceedings for setting aside a domestic arbitration award. The Supreme Court of Cassation discussed whether in case of an assignment of contractual receivables the arbitration clause in the original contract is valid in the relations between the debtor and the assignee of the receivables. The Court expressed the opinion that the assignment of receivables under a contract containing an arbitration clause does not make the assignee a party to the same arbitration clause. According to the Court, in order for the assignee to become a party to the arbitration clause, the two original parties to the arbitration agreement must give their consent for the assignee to replace one of them, otherwise the arbitration clause remains valid only between the original parties to the contract. This decision adopts the reasoning contained the previous Decision No. 70 of 15 June 2012 in commercial case No. 112/2012 of the Supreme Court of Cassation, Commercial Collegium, I Commercial Division, and is in contrast to the practice of the BCCI Court. In 2009, the Collegium of Arbitrators of this institution issued a special decision, binding for all arbitrators acting under the auspices of the BCCI Court, that the arbitration clause in a contract between the assignor and the debtor has force also in the relations between the assignee and the debtor. The Supreme Court reasoning has to be taken into account in negotiations for the assignment of receivables, and potential assignees should consider requesting an express consent of the debtor the assignee to become party to the arbitration agreement, if such exists between the assignor and the debtor.

Decision No. 102 of 17 July 2013 on commercial case No.1106/2012 of the Supreme Court of Cassation, Commercial Collegium, I Commercial Department

In this decision, issued in proceedings for the setting aside of a domestic arbitral award, the Supreme Court of Cassation discussed the question what procedure has to be followed by the arbitral tribunal to which the case is remitted after an arbitral award in the same dispute has been set aside. According to the Court, the reinstituted arbitration proceeding has to continue from the phase when the irregularity that was the reason for the setting aside of the original award took place. In the Court's view, the previous stages of the proceeding remain valid and should not be repeated. This decision of the Court clarifies an issue on which the law is silent.

Decision No. 213 of 11 December 2013 on commercial case No.3299/2013 of the Supreme Court of Cassation, Commercial Collegium, I Commercial Department

In a decision issued in proceedings for the setting aside of an arbitral award issued in an international arbitration case, the Supreme Court confirmed its long-standing practice of restrictively interpreting the notion of public policy as grounds for the setting aside of arbitral awards. The Court held that if an award does not sufficiently discuss all arguments of the party, this may in certain cases amount to a procedural error, but would not amount to a breach of public policy. The court reiterated its long-standing position that the discussion by the arbitrators on the relevant facts and the adoption by them of certain legal conclusions is not subject to review by the court, as the latter could not act as an appeal instance. The discussed decision confirms the pro-arbitration approach of the Bulgarian Supreme Court of Cassation.

Decision No. 629 of 25 April 2014 on commercial case No.8444/2013 of the Sofia City Court, Commercial Department, VI-18th Panel

This decision was issued in proceedings for the recognition and enforcement of a foreign arbitral award. To grant the claim, the Sofia City Court *ex officio* verified the compliance with all positive and negative prerequisites for the granting of the claim both under the New York Convention and under Article 117 of the Bulgarian Private International Law Code, which is applicable to the recognition and enforcement of foreign judicial acts. This decision of the court confirms a long-standing practice that has to be taken into account when recognition and enforcement of international arbitral awards is sought in Bulgaria.

Decision No. 3246 of 7 May 2014 on civil case No.3648/2012 of the Sofia City Court, I Civil Department, 19th Panel

In a decision issued in civil proceedings for a declaratory judgment for the non-existence of a debt, the Sofia City Court held that a receivable ascertained with an arbitral award could be validly set off with a debt prior to the setting aside of the same arbitral award, and that the setting aside of the award did not affect the set-off that had already taken place earlier. This decision is an important precedent that reinforces the legal security and predictability.

Decision No. 66 of 7 July 2014 on commercial case No.4036/2013 of the Supreme Court of Cassation, Commercial Collegium, I Commercial Department

In a decision issued in proceedings for the setting aside of an arbitral award, the Supreme Court departed from its previous practice on the application of Article 301 of the Commercial Act (see e.g., Decision No. 106 of 28 October 2011 in commercial case No. 400/2011 of the Supreme Court of Cassation, Commercial Collegium, I Commercial Division). Under this legal provision, a commercial contract signed by a person without representative powers is valid if the merchant does not contest the contract immediately after obtaining knowledge of it. The Court held that Article 301 does not apply to the arbitration clause, and unless expressly ratified in writing it will remain invalid, although the merchant has not opposed the contract signed on its behalf without representative powers.

iii Investor–state disputes

The Bulgarian Constitution provides in its Article 19 that the Bulgarian economy is based on the principles of the free enterprise, that the law creates and guarantees equal conditions for business activity to all physical and legal persons, and that the investments and the business of Bulgarian and foreign persons are protected by the law. The Bulgarian Law on the Encouragement of Investments (LEI) establishes the principle that where international treaties to which Bulgaria is a party provide for more favourable terms for foreign investments, these terms take precedence over national standards (Article 3(1) of the LEI). The LEI also provides that any foreign investment made prior to legislative amendments imposing statutory restrictions limited to foreign investments only shall be governed by the legal provisions that were effective at the time when the investment

was made (Article 23 of the LEI). The Republic of Bulgaria is party to about 60 bilateral investment treaties (BITs).

The Republic of Bulgaria has been involved in the following investment arbitration proceedings.

Plama Consortium Limited v. Republic of Bulgaria[6]
The award in this case was rendered on 27 August 2008, and is the first ICSID award on the merits under the ECT.

The claimant, Plama Consortium Limited, Cyprus, acquired shares of Plama AD, a local oil refinery. In 2002, the claimant filed claims for approximately US$146 million against Bulgaria pursuant to the Bulgaria–Cyprus BIT and the ECT. The claims arising under the Bulgaria–Cyprus BIT were dismissed for lack of jurisdiction. The claims under the ECT were rejected, as the tribunal found that the alleged investment was premised on the fraudulent misrepresentation of the identity and qualification of the investors, which were material to Bulgaria's decision to grant an authorisation for the admission of the investment under Bulgarian law. The tribunal also ruled that even if the claimant were entitled to the protections of the ECT, the claims would still fail for lack of merit. On 27 September 2011, Plama Consortium Limited filed a request for a revision proceeding. On 9 December 2011, the proceeding was stayed for non-payment of the required advances pursuant to ICSID Administrative and Financial Regulation 14(3)(d). On 9 July 2012, the tribunal issued a procedural order for the discontinuance of the proceeding for lack of payment of the required advances.

Accession Eastern Europe Capital AB and Mezzanine Management Sweden AB v. Republic of Bulgaria[7]
The claimants have filed an ICSID claim against Bulgaria in relation to waste management services. The claims were registered on 20 January 2011. On 23 July 2012, the ICSID Secretary-General issued a procedural order taking note of the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 45.

Novera AD, Novera Properties BV and Novera Properties NV v. Republic of Bulgaria[8]
The claimants have filed an ICSID claim against Bulgaria in relation to waste management services. The claims were registered on 3 July 2012. The case is pending.

EVN AG v. Republic of Bulgaria[9]
This proceeding is related to the electricity supply and distribution operations of the claimant in Bulgaria. The claims were registered on 19 July 2013. The case is pending.

6 ICSID case No. ARB/03/24.

7 ICSID case No. ARB/11/3.

8 ICSID case No. ARB/12/16.

9 ICSID case No. ARB/13/17.

Atomstroyexport v. National Electric Company
According to publicly available information, in July 2012 the Russian company Atomstroyexport has commenced ICC arbitration against the Bulgarian state-owned National Electric Company in relation to the terminated project for the construction of the Belene Nuclear Power Plant on the river Danube in northern Bulgaria. The claims of the Russian company are said to exceed €1 billion. The case is pending.

Energo-Pro a.s. v. Republic of Bulgaria (ICSID case No. ARB/15/19)
This proceeding is related to the electricity supply and distribution operations of the claimant in Bulgaria. The claims were registered on 26 May 2015 and the case is pending.

III OUTLOOK AND CONCLUSIONS

Arbitration has become a popular and widely accepted method for resolving disputes in Bulgaria, and Bulgarian companies very often include arbitration clauses in their agreements.

The publicly available case law shows that, with a few exceptions, Bulgarian courts have adopted a general pro-enforcement attitude towards arbitration. At the same time, due to the rapid adoption of new legislation of the country mainly in view of Bulgaria's membership of the EU, the practice and case law on the interpretation and application of many aspects of the substantial and procedural law are yet to emerge and settle.

Appendix 1

ABOUT THE AUTHORS

ASSEN ALEXIEV

Sabev & Partners

Assen Alexiev has been a partner at Sabev & Partners since the establishment of the firm in 1998. He has extensive expertise from a transactional and dispute resolution perspective in the fields of mergers and acquisitions, intellectual property, information technology, pharmaceuticals and protection of competition.

Mr Alexiev is a member of the Sofia Bar and a qualified European trademark and design attorney. He represents and advises both local and international clients in various disputes before the Bulgarian courts and arbitration institutions, the Bulgarian Commission for Protection of Competition, the Patent Office of Bulgaria and other governmental institutions.

Since 2004, Assen Alexiev has regularly acted as domain name panellist at the WIPO Arbitration and Mediation Center in disputes under the Uniform Dispute Resolution Policy approved by ICANN in 1999. He is also a domain name panellist at the Czech Arbitration, ADNDRC, KLRCA and ACDR.

In 2014, Assen Alexiev participated in the establishment of the Court of Arbitration at the Confederation of Employers and Industrialists in Bulgaria (KRIB), where he now serves as Vice-President of the Court.

In 2007, Mr Alexiev organised the establishment of the Bulgarian National Committee of the ICC, and served as its first secretary general. In 2008, he was elected as a member of the ICC International Court of Arbitration, where he is currently serving his third term. Assen Alexiev is a member of IAI, ILA, ICCA and of the ICC Task Force on national rules of procedure for recognition and enforcement of foreign arbitral awards pursuant to the New York Convention of 1958. He is also the country reporter for Bulgaria at the Institute for Transnational Arbitration.

BORYANA BOTEVA

Sabev & Partners

Ms Boteva has been a partner at Sabev & Partners since the establishment of the firm in 1998. She is an attorney practising mainly in the fields of mergers and acquisitions, project finance and providing of security; privatisation and concessions, public procurement, international commercial arbitration and international taxation.

In the field of arbitration, she has been advising both Bulgarian and foreign clients in several arbitration cases before the Bulgarian Chamber of Commerce and Industry. From 2003 to 2006, she led the Bulgarian counsel's team advising the Republic of Bulgaria (through the Ministry of Finance and the Post-Privatisation Control Agency) in two parallel arbitration proceedings related to non-fulfilment of the privatisation agreement for the former national carrier – Balkan Airlines.

Ms Boteva's career includes work as a legal adviser at Barents Group (Europe), Bulgaria branch (later renamed and now part of BearingPoint Inc, USA) (1996–1998), expert and head of the legal department at the Privatisation Agency of Bulgaria (1993–1996), and in-house lawyer in two Bulgarian commercial companies (1988–1993).

Ms Boteva is a member of the Sofia Bar Association (since 1999) and the International Bar Association (since 2001), and has been registered as a mediator on commercial disputes with the Register of Mediators at the Bulgarian Ministry of Justice (since 2006).

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