

Bulgaria

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I. LITIGATION

1 Preliminaries

1.1 What type of legal system has Bulgaria got? Are there any rules that govern civil procedure in Bulgaria?

Bulgarian law pertains to the Continental (Civil) law system. Bulgarian courts recognise and apply particular set of substantive codified laws. The main legislative acts that govern civil procedure in Bulgaria are the Civil Procedure Code (CPC) and the Judiciary Act. Other relevant legislation includes the Bar Act, the State Liability Act, etc.

1.2 How is the civil court system in Bulgaria structured? What are the various levels of appeal and are there any specialist courts?

Bulgaria has a three-instance court structure, which is made up of regional and district courts, courts of appeal and the Supreme Court of Cassation.

The regional courts always act as first instance courts. Their decisions are reviewed by the district courts as second instance courts. The judgments of district courts, when they act as a first instance, are subject to appeal before the courts of appeal. Courts of appeal always act as second instance courts.

The Supreme Court of Cassation adjudicates on the second-instance judgments of either district courts, or courts of appeal. Bulgarian civil law makes no provision for specialist courts.

1.3 What are the main stages in civil proceedings in Bulgaria? What is their underlying timeframe?

The CPC sets the main stages in civil proceedings in Bulgaria as follows:

- submission of a statement of claim before the respective court;
- service of the statement of claim to the respondent; the latter is entitled to submit a written response to the statement of claim within 1 month as from the date of service, and the response should be served back to the plaintiff;
- examination by the court of the statement of claim lodged and the other documents as to their conformity with the formal requirements of the CPC and the admissibility of the action(s) brought.

- rendering a ruling by the court ascertaining all preliminary issues before bringing the case to trial (e.g. the subject matter of the case, the parties, the evidence, whom the burden of proof lies with, etc.);
- the court hears the case with the participation of the parties (the presence of other attendees is also possible subject to the respective provisions of the CPC).

The CPC does not provide a specific timeframe for the development of a case. It does, however, set out the principle that the court must examine cases and renders its decisions within a reasonable period of time.

1.4 What is Bulgaria's local judiciary's approach to exclusive jurisdiction clauses?

The parties are entitled to agree on exclusive jurisdiction in favour of a foreign court, in so far as the case does not fall under the exclusive jurisdiction of the Bulgarian courts. If Bulgarian courts do not have exclusive jurisdiction and a case is brought before a Bulgarian court, such court will review the case unless the respondent objects on the ground that the parties have agreed on the exclusive jurisdiction of a foreign court. The deadline for making such an objection is the moment of submission of the response to the statement of claim at the latest. The respective Bulgarian court shall decide on this matter, applying the rules of *Council Regulation (EC) No 44/2001* on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Bulgarian court shall have exclusive jurisdiction over matters concerning:

- rights *in rem* in immovable property or possession of immovable property situated in Bulgaria;
- the validity of the constitution, the nullity or the dissolution of companies or any other disputes on corporate issues of Bulgarian legal entities; and
- the validity of entries in public registers kept in Bulgaria; etc.

1.5 What are the costs of civil court proceedings in Bulgaria? Who bears these costs?

Commencing civil proceedings in Bulgaria involves certain costs besides legal fees. These costs normally include: the state fee for initiating the proceedings, a state fee for appealing (as the case may be), expenses for expert opinions, etc. As a basic principle, the state fee for initiating the proceedings shall be paid by the plaintiff (evidence for such payment shall be attached to the statement of claim). Further, during the proceedings each party makes an advance deposit to the court for the costs incurred regarding the

steps which the said party has moved for. However, all state fees and reasonable legal fees of the party in whose favour the court adjudges shall be finally assumed by the party that has lost the case.

1.6 Are there any particular rules about funding litigation in Bulgaria? Are contingency fee/conditional fee arrangements permissible? What are the rules pertaining to security for costs?

A contingency fee/conditional fee arrangement is permissible under Bulgarian civil procedure law, although not explicitly regulated. Such fee would depend on the outcome of the case and therefore be subject to the common rules of reimbursement of the costs incurred in the proceedings, set out in the previous section.

As an integral part of the whole amount claimed, costs are subject to interim measures intended to secure an eventual collection of the amount in case of positive outcome of the proceedings.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

Bulgarian procedure law does not provide for any formalities prior to initiation of the proceedings.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

Prescription under Bulgarian law is mostly considered as a substantive law issue (yet there is a continuing debate on that matter).

The general term of limitation under Bulgarian law is 5 years, unless it is otherwise provided by a law. Some claims are precluded within a 3 year period. For monetary obligations the prescription period starts as of the date on which the obligation became due and payable. After this date the creditor has the (substantive) right to opt for forcible fulfilment of its rights by lodging a claim. The prescription is also subject to stopping or suspension (the latter refers to the cases where a new prescription shall start to run as from the moment of suspension), under detailed conditions set forth in the CPC.

In addition, exercising some procedural rights within an already commenced civil lawsuit is also subject to preclusion. However, the latter is a procedural law matter as opposed to the prescription described above. The CPC provides for different preclusion periods, often determined not as a specified period of time, but rather as a concrete stage until which the parties are entitled to exercise certain procedural rights.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in Bulgaria? What various means of service are there? What is the deemed date of service? How is service effected outside Bulgaria? Is there a preferred method of service of foreign proceedings in Bulgaria?

Civil proceedings are commenced upon receipt of the statement of claim in the court (Art. 125 of the CPC). The CPC provides for a

few main types of service, namely in person (including through another person); by means of telephone, fax, or telegram; via an e-mail; by post or courier with a registered mail. It is also possible that service be effected by means of the filing of the summons/notice with the case records, by means of posting of a notification, or by publication thereof (in practice each Bulgarian court maintains a separate technical department with special court officials solely in charge of summoning).

The date of service depends on the particular method of service applied by the court, as follows:

- For service in person - this is the date of handing the summons over to the party, or its representatives, as the case may be.
- For service by other means - the date of service is deemed to be the date of factual receipt, or the date on which the party appears to have received the summons, evidenced by the respective receipt of delivery, by a written confirmation of the delivery, or by a copy of the electronic record of the service.

Service outside Bulgaria is effected in compliance with the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents (The Service Convention), as well as the Council Regulation (EC) No 1348/2000.

3.2 Are any pre-action interim remedies available in Bulgaria? How do you apply for them? What are the main criteria for obtaining these?

Under the CPC, interim measures of protection may be imposed as conservatory measures (e.g. freezing of bank accounts, detain on shares and company participations, attachment of real estates of debtor etc.) for the purpose of securing the enforcement of a court judgment, which is expected to be rendered, or for preserving the *status quo*, i.e. the factual or legal situation so as to safeguard rights, the recognition of which is sought from the competent court.

The earliest moment at which a Bulgarian court may be requested to impose a conservatory measure is the time prior to filing the statement of claim.

The procedure involves the following steps:

- The applicant submits an application to the court, which specifies the requested provisional measure, the relief to be sought under the claim on the merits and the value of the claim
- The court should resolve on the application at a closed session, held on the day on which the application was submitted.
- The court would grant the request for a conservatory measure only if there is sufficient written evidence, presented by the plaintiff in support of his potential claim. The evidence must convince the court that there is a substantial possibility that the requesting party will succeed on the merits. Moreover, the court may grant a request for the imposition of a conservatory measure against a monetary deposit made by the applicant. The court is authorised to order the applicant to make a deposit, even though the applicant may have presented sufficient written evidence.

3.3 What are the main elements of the claimant's pleadings?

Pursuant to the CPC, the statement of claim shall be written in the Bulgarian language and duly signed by the claimant. Further, the statement of claim shall contain the following:

- a reference to the court;
- the name and address of the parties;

- the value of the claim, if the latter is capable of evaluation;
- a narrative of the facts and circumstances upon which the claim is based; and
- the relief sought.

3.4 Can the pleadings be amended? If so, are there any restrictions?

The statement of claim could be amended at any time before its service to the respondent. As of this moment, its amendment is also possible but subject to a number of rules and restrictions, set forth in the CPC. First of all, the plaintiff is allowed to change the cause of action subject only to permission by the court if such amendment does not impede the defence to the action. Secondly, the plaintiff is entitled to change the amount of the claim prior to the end of the proceedings.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

The CPC provides for specific requirements as to the content of the response similar to those required for the statement of claim. Besides the common requirements for reference to the court and case number and the name and address of the respondent, the response must also state:

- the respondent's position on both the admissibility and the merits of the claim;
- a stand on the facts and circumstances on which the case is based, including a statement on whether the action is well-founded; and
- the oppositions to the action and the circumstances upon which such oppositions are founded.

In addition, the respondent has to point out the evidence and the specific circumstances which have to be proved, and has to present all written evidence in his/her possession.

The respondent is allowed to bring a counterclaim and/or defence of set-off. However, the CPC imposes some restrictions in that regard. First of all, a counterclaim could be brought only if it corresponds to the subjective jurisdiction of the court and is related to, or could be associated with, the initial claim, or can be set-off against it.

4.2 What is the time limit within which the statement of defence has to be served?

The CPC provides for a one-month period, within which the defendant must submit its response to the court. The term starts as from the date that the defendant is served with the statement of claim. This one-month term qualifies only for the general civil proceedings.

In case of commercial litigation, the deadline is two weeks as from the service of the statement of claim.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on liability by bringing an action against a third party?

Passing on liability is possible by bringing an action against a third party within pending civil proceedings.

By the answer to the statement of action, the defendant can bring into the lawsuit a third party who is not yet a party to the action but may ultimately be liable for the plaintiff's claim and has the right to intervene in order to assist. The joinder shall not be granted if the third party does not have a permanent address in the Republic of Bulgaria or is resident abroad. Further, simultaneously with the motion for joinder, the defendant may bring a recourse action for joint examination of the cases. Once brought into the case, the third party has at its disposal the right to perform all court procedural steps with the exception of the steps constituting disposition of the subject matter of the dispute.

4.4 What happens if the defendant does not defend the claim?

As a general rule, the defendant is required to stand on the plaintiff's allegations and contest them, to cite evidence and to present written evidence in possession thereof with the response to the statement of claim at the latest. Failure to do so would preclude these procedure rights, save when the omission is due to exceptional unforeseen circumstances. Simply said, it would be considered an admission of the truth of the opposing party's pleading.

Moreover, if the defendant has failed to submit statement of defence in due time and fails to appear during the first hearing of the case without having asked for examination of the case in the absence thereof, the court may, upon plaintiff's request, render a default judgment which is final and binding for the parties subject to reversal proceedings.

4.5 Can the defendant dispute the court's jurisdiction?

The defendant is entitled to challenge the court's jurisdiction. However, the CPC provides for different deadlines with regard to that, depending on the type of jurisdiction which is challenged.

The court's jurisdiction over the subject matter of the case (subjective jurisdiction) could be challenged at any stage of the proceedings, both before first and second instance. The territorial jurisdiction may be challenged within the time limit for the submission of the statement of defence, except for the territorial jurisdiction related to the location of the real estate under dispute, which could be contested until the end of the court trial before the first instance.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

A third party may intervene into civil proceedings at any time prior to the conclusion of the trial in the court of first instance, in order to assist one of the parties. Intervention by a third party is permissible only if such intervening party has an interest that the judgment is rendered in favour of the party which it supports.

In addition, either the plaintiff or the defendant may opt for joinder of a third party subject to the conditions set forth in the CPC. Should the third party has successfully intervened and taken part in the proceedings, the reasoning of the judgment shall be binding *vis-à-vis* the party assisted thereby or the party who has joined said third party.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

The CPC allows the consolidation of cases on either a subjective or objective basis. First, it is possible to consolidate cases with a different subject matter, but pending between the same parties, if (i) such cases fall under the jurisdiction of one and the same court, and (ii) are subject to examination under the same procedure.

Apart from this, the CPC recognises a consolidation of cases, which are interconnected because of full or partial identity of the subject matter, and which fulfill the requirements mentioned above.

Consolidation is possible either through initial joinder of actions, or *ex officio* by the respective judge at his/her own discretion, if the latter has detected such possibility is available.

5.3 Do you have split trials/bifurcation of proceedings?

If the court considers the joint examination of consolidated cases would be difficult, or impossible, the latter is empowered to rule on split examination of the cases. The resolution of the court is not subject to appeal.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in Bulgaria? How are cases allocated?

The initial allocation of the cases is made contingent on the rules for court jurisdiction. Bulgarian courts have general jurisdiction, i.e. they hear all types of cases, allocated to specific divisions maintained within certain courts. Sometimes the divisions could be subdivided into different departments.

The principle, adopted by the Bulgarian civil procedure law, is to list explicitly the cases falling under the jurisdiction of the district courts when acting as first instance courts. All other cases, not specifically reserved for the district courts, are under the competence of regional courts as first instance courts.

The internal allocation of claims lodged to a specific court is normally a matter of administrative governance of the respective court. The allocation to concrete judges or panels should be effected electronically, based on random selection.

6.2 Do the courts in Bulgaria have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

Courts in Bulgaria have broad case management powers. Civil proceedings in Bulgaria are conducted in accordance with the *ex officio* principle. It means that the courts perform *ex officio* all procedural steps necessary for the progress and resolution of a case. The courts supervise the admissibility and due performance of all actions of the parties.

The CPC provides for various interim applications that parties to civil proceedings may utilise during the process. These may include, e.g. applications for imposition of measures of interim relief; applications related to proving the claim as appointment of an expert witness, or disclosure of additional evidence, etc.

6.3 What sanctions are the courts in Bulgaria empowered to impose on a party that disobeys the court's orders or directions?

Bulgarian courts have powers to impose sanctions in order to guarantee timely and effective proceedings. The courts may impose fines on the parties to the proceedings if they disobey or fail to comply with the orders of the court. In addition, the court may impose fines on witnesses and expert witnesses, should they fail to appear, or testify, or give an expert opinion without a reasonable excuse. Any third party who does not participate in the proceedings may also be fined if it refuses to present a document or other evidence which has been established to be in the possession of the said party, for inspection by the court. The amount of the fine is provided by the CPC and could vary between BGN 50 (approx. EUR 25) to BGN 1200 (approx. EUR 600), dependent on the type of the breach and the court's assessment thereof.

In addition, the presiding judge has the power to expel any person (including any of the parties), who breaches the orders during the hearings.

6.4 Do the courts in Bulgaria have the power to strike out part of a statement of case? If so, in what circumstances?

The courts have the right to dismiss the claim if the latter does not comply with the requirements for admissibility, provided for by the CPC. Should the statement of claim include joined claims, it is possible that the court strikes out part of the statement of claim (concerning some of the claims) and admits the other part (although, such outcome is rather rare).

6.5 Can the civil courts in Bulgaria enter summary judgment?

Bulgarian civil procedure law does not recognise the summary judgment within its Common law meaning.

However, the CPC provides for some rules relating to commercial disputes which resemble the summary judgment and bring for similar practical effect. The court is empowered, either pursuant to request by a party, or at its own discretion, where all evidence has been presented and if hearing of the parties in person is not necessary, to hear the case in close session. In such a case, the court must afford to the parties an opportunity to present written defences and replies.

6.6 Do the courts in Bulgaria have any powers to discontinue or stay the proceedings? If so, in what circumstances?

The court is empowered to stay the proceedings on the following grounds, which are explicitly provided by the CPC:

- by consent of the parties;
- in the event of death of any of the parties;
- where it is necessary to institute tutorship or curatorship for any of the parties;
- where a case is examined in the same or in another court and the judgment in the said case would be relevant to the correct resolution of the pending dispute;
- where, upon examination of a civil case, criminal circumstances are discovered and the outcome of the civil dispute depends on the establishment of the said circumstances;
- where the Constitutional Court has admitted to examination on the merits and motion whereby the conformity of a law applicable to the case with the Constitution is contested; and

- in the cases expressly provided for in law.

The court would discontinue the proceedings, if:

- in a proceeding stayed by mutual consent of the parties, none of them has moved for the resumption of the proceedings within six months after the stay thereof;
- upon waiver, or withdrawal of the claim; and
- a settlement has been reached between parties to proceedings. In such case the court has to approve the settlement agreement before it rules on a termination of the case.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in Bulgaria? Are there any classes of documents that do not require disclosure?

The Bulgarian procedural law does not entertain the concept of disclosure as known under the Anglo Saxon legal system.

Each party is entitled to ask the court to order the other party to present a specific document, which is of relevance for the proceedings and is allegedly in possession of such party. Should the latter fail to do so, the court may draw adverse inference from the party's failure to present the document and may assume, in the latter's detriment, that the respective facts have been proved.

7.2 What are the rules on privilege in civil proceedings in Bulgaria?

The privilege and confidentiality of any attorneys' documents, equipment, or correspondence with clients, are guaranteed by Bulgarian law. This principle equally applies to all forms of dispute resolution, acknowledged in Bulgaria. In addition, all facts, or recordings related to attorney - client relations are also privileged and confidential, i.e. they could not be used as evidence in the proceedings.

7.3 What are the rules in Bulgaria with respect to disclosure by third parties?

Each party may request the court to oblige any third party, which is not a party to the proceedings, to present a document which is considered to be of relevance for the case. Should the third party fail to deliver the document so demanded without any sound reason, the latter could be fined by the court and would be liable for damages to the party on whose request the disclosure has been ordered.

7.4 What is the court's role in disclosure in civil proceedings in Bulgaria?

The court plays a leading role regarding the disclosure in civil proceedings in Bulgaria. This role is to a great extent predetermined by the *ex officio* principle, taking place in the civil proceedings. In accordance with this principle the court shall perform *ex officio* all procedural steps necessary for the development and closure of the case. The court facilitates the parties to clarify the factual and legal aspects of the case, including by way of requiring the disclosure of relevant facts and circumstances from both the parties to the case and any third parties.

7.5 Are there any restrictions on the use of documents obtained by disclosure in Bulgaria?

Documents obtained by the means of disclosure within civil proceedings should be used strictly for the purposes of such proceedings. Apart from this principle, the CPC does not provide for any explicit restrictions on the use of documents obtained by disclosure in civil cases.

8 Evidence

8.1 What are the basic rules of evidence in Bulgaria?

The general rule is that each party has to present evidence in order to prove its statements and facts, which are contested. Further, the CPC provides for a set of special rules concerning the admissibility of different types of evidence depending on the facts and circumstances that have to be proved.

Two types of facts do not need to be proved by way of evidence:

- facts in respect of which a legal presumption exists (generally presumptions are rebuttable except where the law does not allow rebuttal); and
- any facts of common knowledge and any facts known to the court *ex officio*.

8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

The CPC allows for the following groups of evidence:

- testimonies;
- written evidence;
- parties' explanations;
- expert opinions; and
- evidence collected through inspection and certification.

All statements made by the parties, including any confessions, or acknowledgments of facts, are subject to the independent evaluation of the court. The court can make an adverse finding with regard to circumstances for the clarification of which the party has failed to appear or has refused to answer without reasonable excuse, as well as where the party has given evasive or unclear answers.

8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

One of the most important features of testimonies is that they need to be rendered directly before the court in order to be validly collected. Any written statement, made out of the court, or any statement gathered in violation of the special rules for collection provided for by the CPC, could not be classified and used as evidence.

Furthermore, the CPC provides for an extensive list of restrictions, subject to which testimonies are inadmissible.

8.4 What is the court's role in the parties' provision of evidence in civil proceedings in Bulgaria?

Based on the *ex officio* principle and the principle of establishment of the truth, the court has a fundamental role in the process of a parties' provision of evidence. The court shall admit the evidence which is relevant and meet the requirements for formal validity. In

addition, the court has the discretion to appoint an expert to report on certain issues.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in Bulgaria empowered to issue and in what circumstances?

With regard to the type of claim filed, the court may render the following types of judgments: (i) judgments, which officially proclaim the existence, or non-existence, of a certain legal relationship, a right, a fact, etc.; (ii) judgments directly ordering the performance of a certain civil obligation (e.g. paying an amount of money, fulfilment of contractual obligation, etc.). Based on such judgment, the plaintiff would be able to apply for issuing of a writ of execution and to commence forcible execution proceedings thereon; and (iii) judgments by which the court grants relief by intervening directly into the parties' relation, by bringing in a certain legal change demanded by the plaintiff.

Depending on the nature of the proceedings, the following court acts are possible:

- judgments on the merits of the case - it is a decision arrived at after the facts have been presented and the court has closed the proceedings and has reached the point where a final determination of the case shall be made;
- rulings - rulings are issued to set procedural matters, accompanying the final decision of the court; and
- orders - with this decision the court normally determines some points, or directs some steps in the proceedings not included in the judgment.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

Under Bulgarian civil law, the court may award compensation (including non-monetary compensation) for the damages suffered by the plaintiff because of the defendant's wrongful conduct. Damages include both actual losses and loss of profits suffered by the injured party.

With the final act on a case, the court of the relevant instance adjudicates, inter alia, on costs. The party that has requested the award of costs shall present to the court, no later than the close of the last hearing and before the court of the relevant instance, a list of its costs and supporting evidence.

Subject to an explicit request by the interested party, the court is also empowered to award the interests accrued over the principal amount claimed.

9.3 How can a domestic/foreign judgment be enforced?

Enforcement of domestic judgments is carried out by virtue of a writ of execution. A writ of execution is issued on the basis of a final court judgment, which has entered into effect upon the request of the party that benefits from the judgment. Forcible execution can be carried out either by a private or State bailiff.

Different rules for the enforcement of foreign court judgments apply depending on whether the judgment was issued in EU Member State, or outside the EU.

- With respect to judgments issued in an EU Member State - enforcement is governed by the rules of *Council Regulation (EC) No. 44/2000* on jurisdiction and the recognition and

enforcement of judgments in civil and commercial matters. A judgment rendered in an EU country shall be recognised in Bulgaria without any special procedure being required.

- With respect to judgments issued outside the EU - enforcement is governed by the Private International Law Code and by a number of bilateral treaties, which Bulgaria is a party to. In general, these judgments are subject to recognition before their enforcement is declared. However, under no circumstances may a foreign judgment be reviewed as to its substance.

9.4 What are the rules of appeal against a judgment of a civil court of Bulgaria?

The CPC provides for an extensive list of rules concerning both the right and the grounds for appeal and the appeal procedure.

All judgments rendered by first instance courts are subject to appeal before the respective appellate courts. The appellate court is empowered to review the contested judgment both regarding substantive and procedural law issues.

The Bulgarian law system also recognises the cassation appeal of appellate judgments. Cassation appeal can be lodged before the Supreme Court of Cassation, which can carry out a review only on points of substantive law. The grounds for cassation appeal are as follows:

- the judgment is null and void;
- the judgment is inadmissible; and
- the judgment is erroneous by reason of violation of the substantive law, a material breach of the rules of court procedure, or ill-founded.

Pursuant to the latest amendments of the CPC, only judgments concerning claims exceeding certain monetary amount are allowed for referral to the Supreme Court of Cassation (for civil claims the threshold is no less than BGN 5,000 (approx. EUR 2,500) and for commercial claims the threshold is no less than BGN 10,000, (approx. EUR 5,000)).

However, a referral to the Supreme Court of Cassation follows a stringent screening process which is provided by the CPC and which is carried by the Supreme Court of Cassation itself. Thus, the Supreme Court of Cassation shall leave the cassation appeal. This may only occur where: the court has rendered a decision on a material or procedural matter which:

- has been adjudicated upon in controversy with the practice of the Supreme Court of Cassation;
- has been settled by the courts of law in different manner; or
- is of importance for the accurate application and the development of law.

II. DISPUTE RESOLUTION

1 Preliminaries

1.1 What methods of dispute resolution are available and frequently used in Bulgaria? Arbitration/Mediation/Tribunals/Ombudsman? (Please provide a brief overview of each available method.)

Arbitration is a well-established and widely used method of dispute resolution. Arbitration may be institutional or *ad hoc*, and in either case it takes place on the basis of an explicit arbitration agreement/clause between the parties. Where an arbitration agreement exists, the courts must relinquish jurisdiction. Once

rendered, the arbitration award has the same effect as a court judgment.

As a method of dispute resolution, mediation is a voluntary and confidential procedure for out-of-court resolution of legal and non-legal disputes whereby a third party mediator assists the parties in reaching a settlement. It is still rarely used compared to arbitration.

The Ombudsman in Bulgaria is empowered to examine complaints regarding violation of citizens' rights and freedoms by State and municipal authorities, i.e. it could not be recognised as a classical instrument for resolution of civil disputes within the meaning given by civil law.

Tribunals are not allowed in any form under Bulgarian law and they are not permitted by the constitution.

1.2 What are the laws or rules governing the different methods of dispute resolution?

The arbitration in Bulgaria is governed by the International Commercial Arbitration Act, which implements the UNICITRAL Model Law on International Commercial Arbitration. The CPC also provides some relevant rules. In addition, each particular arbitration proceeding would be governed by specific rules of arbitration, adopted by the arbitration institution where the case is submitted for examination (e.g. the Court of Arbitration with the Bulgarian Chamber of Commerce and Industry). Bulgaria is also a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Mediation is governed by the Mediation Act of 2004. Mediators in Bulgaria are subject to registration in the Uniform Register of Mediators with the Bulgarian Ministry of Justice. The Mediation Act establishes special requirements regarding the training of mediators and their professional capacity to act as mediators.

The institution of the Ombudsman is governed by the Ombudsman Act of 2003.

1.3 Are there any areas of law in Bulgaria that cannot use arbitration/mediation/tribunals/Ombudsman as a means of dispute resolution?

Pursuant to the CPC, any civil and commercial pecuniary claims could be referred to arbitration, except for: (i) claims concerning rights *in rem* or possession of immovable property; (ii) alimony claims; and (iii) claims related to labour law disputes.

Subject to mediation may be any civil, commercial, labour and family law disputes, administrative law disputes related to consumer rights, as well as other disputes between natural and/or legal persons. However, mediation shall not be conducted if a law or another statutory instrument provides for a different dispute resolution procedure.

As outlined in question 1.1, above, the Ombudsman is entitled to act only in case of violation of citizens' rights by State and municipal authorities.

2 Dispute Resolution Institutions

2.1 What are the major dispute resolution institutions in Bulgaria?

The Court of Arbitration with the Bulgarian Chamber of Commerce and Industry is usually considered the major alternative resolution institution in Bulgaria. Other important institutions are the

Arbitration Court with the Bulgarian Industrial Association and the National Institute for Reconciliation and Arbitration in case of collective labour disputes.

The major mediation institutions are the Mediation Centre with the Arbitration Court at the BCCI and the Institute for Dispute Resolution with the National Association of Mediators.

2.2 Do any of the mentioned dispute resolution mechanisms provide binding and enforceable solutions?

Arbitral awards, once entered into force, have *res judicata* effect. It means that parties are barred from bringing other subsequent arbitration or judicial proceedings involving the same claim. The final arbitral award shall be binding upon the parties and the public authorities in the country with little option for revocation (only upon particular conditions exhaustively listed in the International Commercial Arbitration Act).

The binding force of international arbitration awards is predetermined by its recognition in Bulgaria. This issue is governed by the New York Convention or by the bilateral treaties, to which the country is a party. The competent national court is the Sofia City Court, unless otherwise provided in the relevant international instrument.

In accordance with the Mediation Act, a mediation agreement is binding solely upon the parties and may not be held adverse to any persons who did not participate in the procedure.

3 Trends & Developments

3.1 Are there any trends in the use of the different dispute resolution methods?

As of the present moment, besides arbitration, other methods for alternative dispute resolution are not frequently used in Bulgaria. Disputes are usually referred either to court or to arbitration.

Arbitration is increasingly important in commercial disputes with significant pecuniary interest and disputes with international element. There is a marked trend of an increasing number of significant international commercial arbitrations.

3.2 Please provide, in no more than 300 words, a summary of any current issues or proceedings affecting the use of those dispute resolution methods in Bulgaria?

Undoubtedly, the adoption of the latest CPC (Promulgated, State Gazette No. 59/20.07.2007, effective as of 01.03.2008, lastly amended, State Gazette No. 100/21.12.2010) and the novel order-for-payment procedure presented thereby could be acknowledged as one of the most important events affecting the entire area of dispute resolution in Bulgaria.

The order-for-payment procedure was introduced as an alternative to the ordinary civil proceedings. Its main purpose is fast and efficient recovery of outstanding debts, over which no legal controversy exists. The core of the procedure is that the applicant may request immediate performance only on the basis of certain documents, or evidence, provided for in the CPC without the need to commence ordinary civil proceedings or arbitration.

Since the procedure simplifies, speeds up and reduces the costs of litigation significantly, there is an increasing number of persons who have recourse thereto. Moreover, the procedure applies to both civil and commercial claims, thus providing a considerable option for both domestic and foreign persons to claim their rights.

The option is further substantiated by the procedure for European order for payment, provided for Regulation (EC) No 1896/2006 of the European Parliament and of the Council and applicable in Bulgaria since the latter is an EU Member State. Regulation permits the free circulation of European orders for payment

throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.



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