Toni Deskoski*
Vangel Dokovski**

Review Scientific Paper
UDC: 341.6(495.6)
doi: https://doi.org/10.56461/SPZ_24411KJ
Received: 16. 10. 2024.
Revised: 13. 11. 2024.
Accepted: 13. 1. 2025.

ARBITRATING DISPUTES IN THE REPUBLIC OF NORTH MACEDONIA

Summary

This paper deals with the arbitration framework in North Macedonia, presenting the dualistic approach to domestic and international arbitration as provided by the national Law on International Commercial Arbitration (hereafter: LICA) and the national Code of Civil Procedure (hereafter: CPA). The LICA is based on the 1985 UNCITRAL Model Law on International Commercial Arbitration, which provides a legal framework for resolving disputes with an international element, allowing the parties the freedom to choose between *ad hoc* or institutional arbitration. Contrary to that, domestic disputes are exclusively reserved for institutional arbitration. Furthermore, this paper addresses subjective and objective arbitrability, and analyzes the arbitrability of corporate, employment and defamation disputes. The procedural aspects of arbitration, particularly the role of institutional arbitration in North Macedonia and the governing rules for arbitration procedures, are also exploited.

The issue of recognition and enforcement of foreign arbitral awards in North Macedonia is also analyzed in this paper. Recent judicial practices have demonstrated deviation from the Private International Law Act (hereafter: PIL Act), notably turning *ex parte* proceedings into contradictory ones, which undermines the PIL Act. A case involving the refusal to recognize a Partial ICC

* PhD, Full Professor, Ss. Cyril and Methodius University in Skopje, Iustinianus Primus Faculty of Law.
E-mail: *t.deskoski@pf.ukim.edu.mk*
ORCID: *https://orcid.org/0009-0000-3481-5951*

** PhD, Associate Professor, Ss. Cyril and Methodius University in Skopje, Iustinianus Primus Faculty of Law.
E-mail: *v.dokovski@pf.ukim.edu.mk*
ORCID: *https://orcid.org/0009-0007-6808-6532*

Award from Poland and later setting aside the award illustrates these issues, as the court failed to properly apply the LICA and the PIL Act. This deviation is also analyzed in the paper.

Keywords: arbitrability, arbitral award, institutional arbitration, *ad hoc* arbitration, 1958 NY Convention.

ARBITRAŽNI SPOROVI U REPUBLICI SEVERNOJ MAKEDONIJI

Sažetak

Predmet istraživanja u ovom radu tiče se arbitražnog okvira u Severnoj Makedoniji. U radu se analizira dualistički pristup domaće i međunarodne arbitraže predviđen nacionalnim Zakonom o međunarodnoj trgovinskoj arbitraži i nacionalnim Zakonom o parničnom postupku. Zakon o međunarodnoj trgovinskoj arbitraži zasniva se na UNCITRAL Model Zakonu o međunarodnoj trgovinskoj arbitraži iz 1985. godine. Ovaj zakon, sa jedne strane, pruža pravni okvir za rešavanje sporova s međunarodnim elementom tako što omogućava strankama slobodu izbora između *ad hoc* i institucionalne arbitraže, dok su, sa druge strane, domaći sporovi isključivo rezervisani za institucionalnu arbitražu. Takođe, ovaj rad bavi se i pitanjem subjektivne i objektivne arbitrabilnosti i analizira arbitrabilnost korporativnih sporova, sporova iz radnih odnosa, kao i sporova zbog klevete. Proceduralni aspekti arbitraže i posebno uloga institucionalne arbitraže u Severnoj Makedoniji i pravila koja se odnose na arbitražne postupke su takođe obrađeni u ovom radu.

Pored toga, u radu se analizira i pitanje priznavanja i izvršenja stranih arbitražnih odluka u Severnoj Makedoniji. Nedavna praksa sudova ukazala je na odstupanja od Zakona o međunarodnom privatnom pravu, posebno pretvaranje *ex parte* postupaka u kontradiktorne. Na kraju, autor analizira i slučaj odbijanja priznanja presude MKS od strane Poljske i kasnije poništavanje iste, u kojem sud nije pravilno primenio Zakona o međunarodnoj trgovinskoj arbitraži, kao i Zakon o međunarodnom privatnom pravu.

Ključne reči: arbitrabilnost, arbitražna odluka, institucionalna arbitraža, *ad hoc* arbitraža, Njujorška konvencija iz 1958. godine.

1. General Overview

Alternative dispute resolution (ADR) refers to any out-of-court dispute resolution method. These alternative methods are historically rooted back in ancient Greece. ADR gained significant popularity in the 1980s as a response to costly, lengthy, and often ineffective court procedures. The *ratio* of alternative dispute resolution (ADR) methods is to provide a more efficient and suitable dispute resolution forum. While ADR is used predominantly in commercial disputes, it has also been applied in other areas of law, such as labor law for example. In principle, ADR relies on the consent of the involved parties to allow a third, independent party to resolve a dispute (either current or future) rather than going through a national court.

Arbitration is the most formal and the most used alternative dispute resolution method. By selecting arbitration as a dispute resolution forum, the parties effectively exclude the option of resolving the same dispute through national courts. In particular, the parties are replacing traditional court protection with protection provided by arbitrators. While offering flexibility and respecting the party autonomy, still there are some restrictions to the party autonomy and the powers of the arbitral tribunals. Specific limitations are expressed through mandatory rules that the parties in the dispute and the arbitrators must adhere to. Such norms set the boundaries within which both the parties and the arbitrators must operate. For instance, the parties cannot waive their right to be heard. Arbitral tribunals on the other hand must observe the principle of due process.

In this paper, we will show that arbitration is not perfect when experiments with arbitrators' fees are made and when the courts disrespect the international obligations and deviate from such rules.

2. Legal Framework – Dualistic Approach

The legal theory of arbitration and the North Macedonian national legislation accept a dualistic approach to the nature of the arbitration, differentiating between domestic and international arbitration by applying different legal rules. For disputes involving an international element, the parties are free to choose *ad hoc* or institutional arbitration.[1] Contrary to that, for domestic disputes, the parties are limited to agreeing solely on institutional arbitration.[2] The

[1] The unofficial English version of the Law on International Commercial Arbitration is available at the following link: https://www.international-arbitration-attorney.com/wp-content/uploads/2013/07/Macedonia-Arbitration-Law.pdf, 14. 11. 2024.

[2] Under Article 441 (1) of the Code of Civil Procedure, in disputes without international

most significant change in the field of arbitration in North Macedonia occurred in 2006, when the Law on International Commercial Arbitration was enacted (hereafter in: LICA).[3] The LICA was drafted using the text of the 1985 UNCITRAL Model Law on International Commercial Arbitration, and applies only to disputes with an international element.

According to Article 3 of the Law on International Commercial Arbitration, arbitration is classified as arbitration with a foreign element if one of the following conditions applies at the time when the arbitration agreement is concluded: one of the parties is a natural person with domicile or habitual residence in a foreign country, a legal entity with its place of business in a foreign country, or the place where a substantial part of the commercial obligations is to be performed, or the location most closely connected to the subject matter of the dispute.

In other cases, where is no foreign element, arbitration is classified as domestic and, as such, it is regulated by the Code of Civil Procedure (hereinafter: CCP).[4] In particular, disputes without a foreign element that involve rights that are freely disposable by the parties can only be resolved before arbitral institutions established by chambers of commerce.

As for the multilateral conventions concerning the International Commercial and Investment Arbitration, North Macedonia has signed and ratified several multilateral conventions:

- Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (hereinafter: the 1958 New York Convention);
- The 1961 European Convention on International Commercial Arbitration (ECICA), and
- The 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

element, the parties may agree solely on institutional arbitration. The text of the Code of Civil Procedure is available on the following link: https://www.pravda.gov.mk/upload/Documents/ЗПП%20редакциски%20пречистен%20текст%202015(1).pdf, 14. 11. 2024.

[3] The unofficial English version of the Law on International Commercial Arbitration is available at the following link: https://www.international-arbitration-attorney.com/wp-content/uploads/2013/07/Macedonia-Arbitration-Law.pdf, 14. 11. 2024.

[4] The text of the Law on Litigation Procedure is available on the following link: https://www.pravda.gov.mk/upload/Documents/ЗПП%20редакциски%20пречистен%20текст%202015(1).pdf, 14 November 2024.

3. On the Question of Arbitrability

The arbitration agreement is the cornerstone of the parties' consent to resolve their dispute through arbitration, thereby excluding court jurisdiction. It serves as the foundation for their obligation to submit their dispute to arbitration. However, like any other contract, an arbitration agreement must meet specific legal requirements in order to be valid. *Firstly*, it must be concluded by parties who have the legal capacity to enter into such an agreement (*capacité de compromettre*). *Secondly*, the agreement must pertain to a dispute that is eligible for arbitration. These two requirements define the concept of "arbitrability" (from the Latin *arbitratio*, meaning arbitration, and *bilis*, meaning possibility or eligibility), which is established to safeguard the public interest. The notion of arbitrability gained significance and became a focus of analysis in the legal theory and practice with the adoption of the 1958 New York Convention. For example, Article V(2)(a) of the 1958 New York Convention provides for the possibility of refusing recognition and enforcement of an arbitral award if "*the subject of the dispute is not eligible for arbitration.*" While the Convention and its *travaux préparatoires* do not use the term "arbitrability," this clear language refers to it. This notion has since been incorporated into numerous international instruments and national legislation (See: Born, 2015, pp. 73-90).

3. 1. Subjective Arbitrability

Subjective arbitrability refers to the ability of persons (natural, legal or the states) to enter into a valid arbitration agreement, or more specifically, to be a party to an arbitration proceeding.

In North Macedonia, there has never been any dilemma whether the country can enter into arbitration agreements. In fact, North Macedonia is a member of the 1961 European Convention on International Commercial Arbitration, and adheres to Article II, paragraph 1 of the Convention. Therefore, the LICA also deals with "*subjective arbitrability*" in matters to refer to the possibility of the country and public legal entities to resolve international commercial disputes through arbitration. While this issue is not expressly addressed in the UNCITRAL Model Law on International Commercial Arbitration, it was deemed necessary by the national legislator to include it in the LICA to eliminate any uncertainty about the validity of arbitration agreements concluded by North Macedonia.

In short, the LICA adopts the doctrine of "*limited State immunity*." Pursuant to Article 1, paragraph 7 of the LICA, not only North Macedonia and its legal entities, but also local self-government units and their established entities, and the city of Skopje, have the right to enter into arbitration agreements. This broad scope of

subjective arbitrability is consistent with international practices and provides legal certainty for foreign investors entering into contracts with public legal entities in North Macedonia.

4. Objective Arbitrability – Point of View in North Macedonia

The term "objective arbitrability" refers to the possibility of disputes over a certain matter to be settled by arbitration. When considering objective arbitrability, it is essential to present some of the most important characteristics and specificities:

Firstly, although international instruments that focus on international arbitration address and incorporate the concept of arbitrability, this concept is ultimately defined and applied at the national level. The scope of what may be settled through arbitration depends solely on national legislation. Exercising their sovereignty, states determine which disputes can be resolved by arbitration and which must be addressed by national courts. In national legislations, the limits of arbitrability are set in two ways: *positive approach* – mostly in the laws on arbitration, where it is provided as a general rule on which disputes or which types of disputes can be submitted to arbitration; and *negative approach* – mostly in other laws that do not contain direct provisions relating to arbitration (for example: in private international law codes), but contain provisions stipulating that national courts have exclusive jurisdiction over certain disputes.

Secondly, arbitrability is a temporal concept. It is not time-fixed and changes over time. In modern times, the scope of arbitrable disputes has expanded, meaning that many matters previously classified as non-arbitrable are now capable of being settled by arbitration.

Thirdly, arbitrability is not an isolated concept; it interacts with a broader set of legal tools, such as public policy and mandatory rules, which can override party autonomy and consent. These tools allow national courts to uphold fundamental values of public policy (see: UNCITRAL, 2016).

In North Macedonia, the limits of objective arbitrability are established by the LICA and the Act of Private International Law (PIL Act). These laws set forth a two-part test to determine whether a dispute is arbitrable. Specifically, Article 1(2) (6) of the LICA states that "*international commercial arbitration resolves disputes concerning matters that the parties may settle,*" and that "*this Law shall not affect any other law of the Republic of North Macedonia under which certain disputes may be subject only to the jurisdiction of a court in the Republic of North Macedonia*."

The second condition derives from the PIL Act. This Act regulates the exclusive court jurisdiction. If the PIL Act designates exclusive jurisdiction of the courts

of North Macedonia over specific types of disputes, such disputes are considered non-arbitrable.

In recent years, the issue of objective arbitrability has often been raised regarding several types of disputes in North Macedonia, particularly in the context of corporate, employment and defamation cases.

5. Arbitrability of Corporate and Employment Disputes in North Macedonia

The determination of arbitrability of corporate and employment disputes has been a debatable question in some jurisdictions, considering the application of public policy considerations. As a general rule, corporate disputes are arbitrable. In corporate disputes, there is no need to protect individuals or to deprive them of the disposition of claims as a consequence of a state monopoly on judicial power. Shareholder resolutions in commercial companies involve an economic interest. Consequently, disputes arising from them are arbitrable. The actual, practical problem lies in the process of making the arbitration agreement. The submission of this kind of corporate dispute to arbitration requires a specifically drafted arbitration clause that is adapted to the characteristics of the situation at hand.

The substantive law of North Macedonia includes provisions that regulate arbitration in specific types of corporate and employment disputes. For instance, Article 41 of the Law on Trade Companies allows shareholders to agree to amicably settle disputes related to company contracts or statutes through methods such as mediation and negotiation (see: Art. 41, Law on Trade Companies). If an amicable resolution is not possible, the parties may agree to proceed with arbitration.

Regarding labor arbitration, the question of the arbitrability of employment disputes is addressed by a specific type of labor arbitration under the Law on Labor Relations (Art. 172, Law on Labor Relations). This pertains to a distinct form of arbitration without an international element. In the case of individual or collective labor disputes, the employer and employee may agree to resolve the matter through a designated body established by law.

The Law on Amicable Settlement of Employment Disputes (LASEM) establishes such bodies (Art. 1, Law on Amicable Settlement of Employment Disputes). Specifically, Article 29 of the LASEM states that an individual dispute may be resolved before an arbitrator, upon agreement of the parties, if the dispute involves: 1) termination of an employment contract, or 2) failure to pay wages (see: Art. 29, Law on Amicable Settlement of Employment Disputes).

For collective disputes, Article 183 of the Law on Labor Relations permits collective agreements to provide for arbitration to resolve collective labor disputes

(Art. 183, Law on Labor Relations). The collective agreement outlines the composition, procedure, and other relevant aspects of the arbitration process. If both the employer and employee agree to arbitrate a labor dispute, the resulting arbitration award is final and binding for both parties. However, the unsatisfied party may bring an action against the arbitral decision before national courts of first instance.

6. Arbitrating Defamation Disputes in North Macedonia

In 2012, North Macedonia implemented a legislative reform, decriminalizing insult and defamation. The Law on Civil Liability for Insult and Defamation was enacted, and the Criminal Act was amended accordingly to decriminalize defamation and insult. Hence, there has been a change in the type of responsibility for defamation and insult from criminal to civil law, and therefore to the type of court proceedings in which legal protection is provided to those who have been affected by these wrongs. After the entry into force of the new Law, instead of in criminal proceedings, the existence of defamation or insult is to be established in civil proceedings, in accordance with the new legal nature of the responsibility of the perpetrator of the insult or defamation. The compensation of damages for insult or defamation can only be effected in civil procedure. The provisions of the Law on Obligations, the Code of Civil Procedure, and the Law on Enforcement apply to the procedure for the determination of liability for insult or defamation and compensation for damages unless otherwise determined by the Law (Art. 4, para. 2, Law on Civil Liability for Insult and Defamation).

The Law on Civil Liability for Insult and Defamation regulates civil liability for damages inflicted on the honor and reputation of a natural person or a legal entity by an insult or defamation. Under Articles 6 and 8 of the Law on Civil Liability for Insult and Defamation, a person shall be held liable for insult if they, with the intent to humiliate, make a statement, engage in behavior, make a publication, or use any other means to express a demeaning opinion about another person that harms their honor and reputation. In addition, a person shall be held liable for defamation if they present or disseminate false facts that damage the honor and reputation of another person with an established or apparent identity before a third party, intending to harm that person's honor and reputation, having known, or having been obligated to know, that the facts are incorrect.

After the intervention of the legislator, the question of the boundaries of arbitrability under North Macedonian law arose. Once again, this question needs to be answered relying on the double test for arbitrability that has already been established: 1. Are defamation disputes considered disputes over rights that parties can

freely dispose of, and 2. Is there exclusive court jurisdiction provided by the PIL Act or any other procedural act for this type of dispute?

The 2012 decriminalization of insult and defamation transferred the existence of insult or defamation to civil law, where judicial protection is provided in civil (litigation) proceedings. The deadline for filling a formal letter of complaint is three months from the day the plaintiff becomes aware or should have become aware of the insulting or defamatory statement and of the identity of the person who has caused the damage, but not later than within one year from the day the statement has been communicated to a third person (Art. 20, Law on Civil Liability for Insult and Defamation). Consequently, it has been transformed into the right that can be freely disposed of by the parties, which in turn provided the first condition for its arbitrability based on the provision of Article 1 (2) of the LICA, and Article 441 (1) of Law on Civil Procedure. Before 2012, only the right of compensation was at the free disposal of the parties. The question of liability was part of the Criminal Code, and thus the parties were not in a position to freely dispose of their rights. Thus, the question of liability for insult and defamation was not arbitrable.

As for the second condition, the Law on Civil Law Liability for Insult and Defamation, as well as other laws of North Macedonia, do not provide for *forum exlusivum* of the national courts for disputes related to insult and defamation. Hence, the second requirement is also fulfilled concerning objective arbitrability - there are no provisions in favor of exclusive court jurisdiction.

7. Ad Hoc and Institutional Arbitration

The Permanent Court of Arbitration, attached to the Economic Chamber of North Macedonia (hereafter in: PCA), was established in 1993 as a permanent arbitral institution that resolves disputes with and without an international element. In 2021, new PCA arbitration rules were enacted (hereafter in: PCA Rules). PCA Rules deal with questions such as the PCA organization, the PCA jurisdiction, the arbitrators, and the proceedings before the arbitral tribunals (panel of arbitrators or sole arbitrator) in domestic and international cases. Arbitral proceedings administrated by the Arbitration Court commence with a statement of claim (Art. 10, para. 1, Arbitration Rules of the Permanent Court of Arbitration – attached to the Economic Chamber of North Macedonia – PCA Rules).

Article 10 (3) of the Rules stipulates the minimum requirements for a statement of claim under the Rules: (a) the complete names of the parties, including the company name and headquarters for each legal entity, as registered with the Central Registry of North Macedonia or any other relevant registry, along with

verification from the respective registry and details of an authorized representative or agent, if applicable; (b) the parties' contact details, including addresses, phone numbers, fax numbers, and an email address for receiving submissions or notices; (c) the remedy or relief being sought; (d) a statement outlining the facts supporting the claim; (e) supporting evidence; (f) the arbitration agreement, if one has been established; (g) a suggestion for the number of arbitrators, the language to be used, and the arbitration seat, if these have not been previously agreed upon the parties; (h) the nominated arbitrator; (i) the stated value of the claim; and (j) the claimant's signature or electronic signature.

The parties involved in a dispute can choose to have it resolved by either a sole arbitrator or a panel of three arbitrators. If the arbitration agreement specifies an even number of arbitrators, an additional arbitrator would be appointed by the President of the Arbitration Court to ensure an odd number of arbitrators. For disputes valued at 30,000 EUR or less, a sole arbitrator would generally be assigned, unless both parties agree within 15 days of receiving the statement of claim that a panel should hear the case. Conversely, disputes exceeding 30,000 EUR in value would be handled by a panel unless the parties agree within 15 days to proceed with a sole arbitrator. The Arbitration Court has two designated lists of arbitrators, from which sole arbitrators, arbitral tribunals, and presiding arbitrators are appointed in the vast majority of cases: one list for disputes with an international element, and another one for domestic disputes. These lists are compiled and approved by the Chamber's Managing Board, following a proposal from the Presidency of the Arbitration Court (Art. 18, PCA Rules).

Under Article 20 of the PCA Rules, an Arbitration Panel consists of three arbitrators. Unless the parties have agreed otherwise, the process of formation of the Arbitration Panel is as follows: the claimant first appoints one arbitrator within the statement of claim, while the respondent appoints one arbitrator in their reply to the claim. The Presiding Arbitrator is then appointed by the President of the Arbitration Court.

If either party fails to appoint an arbitrator in their initial submissions, the Secretary of the Arbitration Court would send them a reminder and invitation, allowing 15 days from receipt of the request for the party to make the appointment. Should the party fail to appoint an arbitrator within this period, the President of the Arbitration Court would appoint an arbitrator on their behalf. In cases involving multiple parties, the co-litigants are expected to appoint a single common arbitrator. If they fail to reach an agreement or if they each appoint different individuals, the responsibility of appointing an arbitrator is in the hands of the President of the Arbitration Court. This procedure ensures the timely formation of the Arbitration Panel even in complex multi-party disputes (Art. 21, PCA Rules).

The only restriction in *ad hoc* arbitration cases is outlined in the Code of Civil Procedure. According to Article 441, in domestic arbitration cases, the parties are not permitted to choose *ad hoc* arbitration. However, this restriction does not apply to disputes that have an international element, where the parties can freely opt for *ad hoc* arbitration if they wish. In case of *ad hoc* arbitration involving disputes with an international element, the Arbitration Court may undertake, upon agreement by the parties, specific functions as outlined in the applicable PCA Rules. These functions include serving as the appointing authority in both *ad hoc* arbitrations and those conducted under the auspices of other arbitration institutions as long as this is agreed upon by the parties involved. Additionally, the Arbitration Court can provide administrative support by organizing hearings, offering facilities, and supplying the necessary equipment to facilitate arbitration and conciliation proceedings, even when these are governed by rules other than those outlined in the Arbitration Court Rules.

One of the main features of the proceedings in front of the PCA is the structure of arbitrators' fees. According to the 2022 PCA Rules, the fee for a sole arbitrator in both domestic and international disputes is set at €500. In domestic and international cases involving a panel of arbitrators, the total fee amounts to €1.000. In practice, the value of the dispute does not influence the arbitrators' fees. Consequently, many arbitrators no longer wish to accept nominations to serve in arbitration proceedings.

8. Recognition and Enforcement of Foreign Arbitral Awards in North Macedonia

The relevant provisions concerning the recognition and enforcement of foreign arbitral awards are contained in the LICA and in the PIL Act. According to Article 37(3) of the LICA, the recognition and enforcement of foreign arbitral awards are governed by the provisions of the New York Convention, signed on 10 June 1958. An arbitral award is classified as foreign if it was rendered outside North Macedonia, thereby making it subject to recognition and enforcement proceedings.

The procedure for the recognition and enforcement of foreign court and arbitral awards is regulated by the PIL Act, specifically addressing non-litigious processes for the recognition and enforcement of foreign judgments (Arts. 165-172, PIL Act). This same procedure applies to foreign arbitral awards.

Upon receiving a proposal for the recognition and enforcement of a foreign arbitral award, the court of first instance begins by examining *ex officio* the grounds for refusal of recognition and enforcement as provided by the New York Convention

(public policy and non-arbitrability). If the court determines that no such obstacles exist, it will render a decision to recognize and enforce the foreign arbitral award. The court will then notify the opposing party informing them of their right to file an objection within 30 days from the receipt of the decision.

If an objection is filed, the court that initially issued the recognition decision will reconsider the matter in a panel of three judges. The court will decide on the objection after conducting a hearing, ensuring that the right to defense is respected throughout the process.

If the decision to reject the recognition request or the decision made by a panel of three judges following the objection is unfavorable for one of the parties, an appeal may be filed with the competent appellate court within 15 days from the receipt of the decision.

In practice, however, courts have deviated from the PIL Act provisions, often delivering the recognition request directly to the opposing party, and transforming *ex parte* proceedings into contradictory proceedings involving both parties. This shift can be seen in two recent decisions: Decision No. 3 PSO-58/16, refusing the recognition of a foreign arbitral award by the Civil Court of First Instance in Skopje, and Decision No. 3 PSO1 3/19, granting recognition of a foreign judgment by the same court. Judges have justified the need for a hearing at every stage of the proceedings and for serving the opposing party with the recognition and enforcement request by citing Article 6 of the European Convention on Human Rights. Unfortunately, this practice has been adopted by all first-instance courts in North Macedonia. However, neither Decision No. 3 PSO-58/16 nor Decision No. 3 PSO1 3/19 explains the reasoning behind the court's departure from the *ex parte* proceedings outlined in the PIL Act.

9. Refusing a Request for Recognition and Setting Aside Foreign Arbitral Award – the Polish Arbitral Award Saga

In North Macedonia, not so many cases have gone through the process of recognition and enforcement of foreign arbitral awards. Unfortunately, there is a precedent that goes directly in contradiction with the bases of the arbitration law, procedure, and internationally recognized standards. In particular, the court refused to recognize a Partial ICC Award (Poland) due to a violation of due process and public policy. In this case, the application for recognition was submitted to the Skopje First Instance Court (Skopje II) on 20 April 2016 on behalf of NDI S.A against GRANIT AD Skopje. The petitioner submitted the following documents: 1. The Partial Award, 2. The Arbitral Agreement, and 3. The Judgment of the Court

in Gdansk for recognition and enforcement of the Partial Award under Art. 1202 of Part V of the Polish Civil Procedure Code.

On 20 May 2016, a hearing was held and the Civil Court in Skopje, and the recognition and enforcement were refused due to a. Violation of the public policy (based on the Articles of the PIL Act as substantive conditions for recognition and enforcement of foreign judgments); b. Lack of impartial decision by the arbitration tribunal due to bias of one of the arbitrators (Claimant's nominee), and c. Lack of proof that the Partial Award is enforceable (based on the Articles of the PIL Act on foreign judgments). The Court also rejected the recognition of the judgment from the Court in Gdansk. This decision represents a clear violation of the provisions of the 1958 New York Convention, i.e., application of national law instead of the 1958 New York Convention. Instead of applying the conditions contained in the1958 New York Convention, the Court applied the conditions for recognition and enforcement of foreign arbitral awards from the PIL Act. As for the findings of the alleged lack of impartial decision by the arbitral tribunal due to the bias of one of the arbitrators, the Court neglected the fact that during the arbitral proceedings, this question was settled in favor of no bias of the arbitrator.

On 10 June 2016, an Appeal was filed to the Appellate Court in Skopje due to the violation of the procedure for recognition and enforcement and improper application of the substantive law. However, the Appellate Court in Skopje rejected the appeal on 15 July 2016.

After that, on 12 October 2016, a motion for an extraordinary legal remedy was filed: Repeating of the Proceedings (before the Appellate Court) due to the improper constitution of the Court, one of the judges in the panel which decided on the appeal had to be exempted: The Presiding Judge in the proceeding in the Appellate Court was/is a wife of an employee in Granit (Respondent), and he is a shareholder in Granit. And once again, on 16 February 2017, the motion was denied by the Appellate Court.

The culmination of this procedure occurred on 1 December 2016, when the motion for setting aside of the ICC Partial Award was submitted. The claimant was Granit (Respondent in the Arbitral Award), while the respondent was NDI S.A. (Claimant in the Arbitral Award). Surprisingly, on 8 May 2019, the Court delivered a Judgment for setting aside of the (foreign) ICC Partial Award! This was a clear violation of the LICA where it is clearly stated that annulment applies only to domestic arbitral awards. On 22 July 2019, an appeal to the Appellate Court was submitted by NDI S.A. In the meantime, on 13 January 2017, NDI S.A submitted an application to the European Court of Human Rights in which it substantiated the violation of Article 6 of the ECHR Convention, Article 13 in connection with Article 6 of the Convention, and Article 1 of the Convention Protocol No. 1. The

applicant submitted that the decisions of the state courts in Skopje were rendered with manifest violation of both international law and North Macedonia's national law, and the case is still pending.

This case shows how the court should not act in a procedure for recognition and enforcement of foreign arbitral awards. Instead of applying the 1958 New York Convention, the court has applied the domestic standards from the PIL Act. Furthermore, the Court has annulled a foreign arbitral award, which is a clear violation of Article 35 of the LICA, under which annulment is the only remedy for domestic arbitral awards. The only hope is that this case will be featured in textbooks, and that the students and practitioners will learn how not to act in the course of an international commercial arbitration.

10. Conclusion

North Macedonia's arbitration system is facing real challenges. Although there have been positive changes in the arbitration practice where most of the international commercial contracts embody arbitration clauses, recent events show that there is still a lot of work to be done to ensure that the Republic of North Macedonia is a country *in favorem arbitrandum*. The case regarding the Partial ICC Award is a clear example of how not to deal with recognition and enforcement. The issues surrounding the recognition and enforcement of foreign arbitral awards reveal possible abuse of law in favor of one of the parties. The decision to not recognize the Polish ICC Award raises concerns about fairness and could discourage the flow of international commercial transactions. In addition, the setting aside of foreign arbitral award demonstrates the failure of the courts to apply the LICA and their flawed understanding of the international arbitration law. Therefore, there is an urgent need for proper application of both the PIL Act and the LICA by the judges in North Macedonia, and rethinking the possible court specialization for recognition and enforcement of both foreign court and arbitral awards.

References

Born, G. 2015. *International Arbitration: Law and Practice*, 2nd edition. Kluwer Law International, pp. 73-90

Legal Sources

European Convention on International Commercial Arbitration, Geneva, 21 April 1961, *Official Gazette of SFRY*, International Agreements, No. 12/63.

Law on Amicable Settlement of Employment Disputes, *Official Gazette of the Republic of Macedonian*, No. 87/2007, 27/2014, 102/2014, 30/2016.

Law on Civil Liability for Insult and Defamation, *Official Gazette of Republic of Macedonia*, No. 143/2012.

Law on International Commercial Arbitration, *Official Gazette of the Republic of Macedonia*, No. 39/2006.

Law on Labor Relations, *Official Gazette of Republic of Macedonia*, No. 62/2005, 3/2006, 44/2006, 66/2006, 16/2007, 57/2007, 77/2007, 106/2008, 161/2008, 63/2009, 114/2009, 130/2009, 149/2009, 10/2010, 50/2010, 52/2010, 58/2010, 124/2010, 132/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 106/2014, 113/2014, 20/2015, 33/2015, 72/2015, 129/2015, 27/2016, 134/2016, 120/2018, 110/2019, 267/2020, 151/2021, 288/2021, and 111/2023).

Law on Trade Companies, *Official Gazette of the Republic of Macedonia*, No. 28/2004, 84/2005, 25/2007, 87/2008, 42/2010, 48/2010, 24/2011, 166/2012, 70/2013, 119/2013, 120/2013, 187/2013, 38/2014, 41/2014, 138/2014, 88/2015, 192/2015, 6/2016.

Code on Civil Procedure, *Official Gazette of the Republic of Macedonia*, No. 79/2005, 110/2008, 116/2010, 7/2011.

Private International Law Act, *Official Gazette of the Republic of North Macedonia*, No. 32/2020).