СТОПАНСКА КОМОРА
НА СЕВЕРНА МАКЕДОНИЈА
ECONOMIC CHAMBER
OF NORTH MACEDONIA

CEI
CENTRAL EUROPEAN INITIATIVE

ONLINE INTERNATIONAL ARBITRATION CONFERENCE

BUSINESS AND ARBITRATION IN AN ERA OF GLOBALIZATION - CHALLENGES AND PERSPECTIVES -

11–12 May 2021

Publisher:
Economic Chamber of North Macedonia
Dimitrie Cupovski 13 Str., 1000 Skopje

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https://arbitraza.mchamber.mk

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CIP - Каталогизација во публикација
Национална и универзитетска библиотека "Св. Климент Охридски", Скопје

347.769(062)

ONLINE international arbitration conference (2021)
Business and arbitration in an era of globalization : challenges and perspectives / Online international arbitration conference, 11-12 May
2021 ; [editors Elena Milevska-Shtrbevska, Nena Nikolovska]. - Skopje :
Economic chamber of North Macedonia, 2021. - [40] стр. : илустр. ; 30 см

ISBN 978-608-66070-8-1

а) Арбитража -- Собири

COBISS.MK-ID 53870853

"OUR VISION, MISSION AND VALUES"

Elena Milevska Shtrbevska, Ph.D., Secretary General of the Permanent Court of Arbitration attached to the Economic Chamber of North Macedonia

The economic circumstances and business ambience are changing constantly. New technologies are being applied and innovations appear that radically alter the products, markets, and the importance of the market players. The means of communication and doing business are changing. Inevitably, all these dynamic processes require strategic thinking and positioning both in the segment of legal risk management and in the method for resolving potential conflicts that may arise out of the business ventures. What we have concluded so far, and which has not changed in our country, is the fact that there is no special study into the methods the enterprises in North Macedonia employ to deal with the disputes that emerge from their business activities. Nevertheless, the method the trade disputes are being resolved points to the conclusion that a significant percentage of companies have no strategic approach concerning conflict management and methods for resolving disputes. Considering the fact that disputes between business entities are a reality, something that cannot be eradicated, something that negatively affects further business ventures, it is high time to stimulate the domestic companies to also think strategically in the segment of dispute resolution.

The International Arbitration Conference, which we are organizing for the third year in a row with the support of CEI, will ensure sharing of domestic and international experiences of the advantages of using arbitration. Our idea and concrete goal are precisely made up of our efforts to contribute to the affirmation of arbitration as an alternative method of resolving disputes between business entities, part of a systemic approach concerning management and resolution of conflicts.

The analyses of the disputes submitted to the Permanent Court of Arbitration attached to the Economic Chamber of North Macedonia in the past ten years lead to the conclusion that arbitration is generally sought by larger companies that are export-oriented, which turn to arbitration at the proposal or recommendation of their foreign business partners. In times where the access to information on resolving disputes through arbitration has never been easier, it would be perhaps laughable to conclude that companies are insufficiently informed about arbitration and therefore, traditionally and without considering possible alternatives, they entrust the jurisdiction to the state courts. However, it is likely that in those initial stages of negotiations over the trade agreements, the constant desire for progress and success, business expansion, and the possibility of swift communication with the entire world naturally contribute to failing to

consider the potential disputes and the method of their resolution. Therefore, the matter ends up being regulated in the traditional, most customary manner. The experienced managers of the larger companies, which are predominantly multinational and spread out across several countries, regions, or continents, who had the opportunity to see what a halt in the commercial cooperation due to a dispute means, are also aware of the significance of the issue of regulating the jurisdiction in an event of a dispute.

Our recommendation, not only to the large multinational companies, but to every company in general, regardless of whether they are small or large, production or service, export or import companies, is to contribute to raising the public awareness that arbitration offers plenty of advantages in resolving potential disputes. These advantages include the possibility of retaining good business relations, shorter dispute duration, confidentiality, specialization, option to choose an arbitrator, language, and other possibilities not provided by the state courts. Ultimately, the two parties in conflict obtain a final and binding decision, which can be enforced in our country and in almost every other country in the world without any issues. This stems from the fact, of which we can boast about today, that there is a global mechanism in place for recognition and enforcement of foreign arbitral awards, covering every country that has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, among others, North Macedonia and over 160 countries in the world.

What is our wish and vision?

1. We wish to prompt a change in the way of thinking and in the attitude toward the issue of dispute resolution between business entities.
2. We wish to contribute to a development of an arbitration culture among the business entities!

Last, but not least:

3. As an arbitration institution, we are also prepared to do anything necessary to promote and develop the arbitration in our country. If the first of these activities was the organization of an arbitration conference, the following activity, which we have already implemented last month, and which depended on us, was the modernization of the operating rules of Arbitration Court, that is, the adoption of the latest Arbitration Rules of the Permanent Court of Arbitration attached to the Economic Chamber of North Macedonia (Skopje Arbitration Rules). You can find more details on that in the section about the recommendations for promotion and development of arbitration, which, if they are recognized as an opportunity and a prospect by the business world, I genuinely believe will contribute to making arbitration part of the doing business philosophy and thereby, part of the success story of the business entities in the segment of legal risk management.

PANEL I:
How is Covid-19 Changing Arbitration?

Moderator:
Goran Rafajlovski, Ph.D.,
founder and manager of Rafajlovski Consulting & Audit Skopje,
President of the Permanent court of Arbitration attached to the Economic Chamber of North Macedonia

Panelists:

- COVID-19: PROCEDURAL AND SUBSTANTIVE WATERSHED FOR INTERNATIONAL ARBITRATION?
  Andrea Carlevaris, Ph.D., BonelliErede law firm, Rome, Italy

- THE NEW BRAVE GREEN WORLD: THE ROLE AND TRANSFORMATION OF OIL &G AS AFTER COVID
  Rytis Valunas, Klaipedos Nafta, Klaipėda, Lithuania

- IS COVID-19 MAKING ARBITRATION A BETTER AND MORE EFFICIENT TOOL?
  Stefano Azzali, Milan Chamber of Arbitration, Milan, Italy

Andrea Carlevaris, Ph.D.,
BonelliErede law firm

COVID-19: PROCEDURAL AND SUBSTANTIVE WATERSHED FOR INTERNATIONAL ARBITRATION?

The Covid-19 pandemic has changed the practice of international arbitration with long-terms effects, with respect to both procedural and substantive issues.

As far as the procedure is concerned, the emergency did not result in a revolution, but rather in an evolution of habits and practices which were not totally unknown to arbitration practitioners, e.g., the conduct of remote hearings and the exchange of electronic documents only. While these practices already existed, they have undergone an unprecedented acceleration over the past 15 months. The impossibility or extreme difficulty of travelling and the move towards the exclusive use of electronic communications have become the norm during the sanitary emergency. While it is difficult to predict the future, it is to be expected that many of the procedural modalities developed to arbitrate during the pandemic will affect the practice of arbitration forever, or at least well beyond the (hopefully near) end of the emergency.

From a substantive point of view, Covid-19 is at the origin of numerous claims and defenses in commercial disputes that were difficult to anticipate when contracts were concluded, including, among others, claims and defenses based on force majeure, impossibility of performance, change of fundamental circumstances, hardship and other analogous notions in numerous legal systems. The applicability of these traditional legal and contractual notions to the new circumstances has proved, and is proving, problematic, and is requiring the elaboration of new notions and interpretative tools. Finally, the pandemic had a major impact on investor-State disputes, giving rise to investors' claims and States' defenses, which are likely to fuel investment disputes for many years.

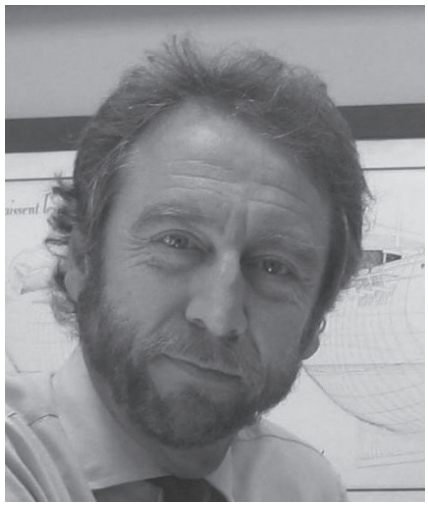
As a result of these developments, both procedurally and substantially, Covid-19 will likely constitute a watershed event for international arbitration.

Rytis Valunas,
Klaipedos Nafta

THE NEW BRAVE GREEN WORLD: THE ROLE AND TRANSFORMATION OF OIL & GAS AFTER COVID

The energy sector has been highly affected in the past year due to the Covid pandemic as global demand went down tremendously affecting entire industry and value chains. Many companies, especially from the oil industry, caught themselves in a situation they never dealt with previously. Institutions and governments and particular, the EU and the USA under newly elected President Biden, responded with ambitious policy and financial packages aimed at achieving substantial carbon emission reductions and turning economies green.

Rytis Valunas will share his view on the further developments in energy with focus on Europe and how companies like KN, which is an oil and LNG terminals operator, is adapting to the new challenges by looking for ways to bridge the old and new worlds of energy with more climate-friendly forms of energy, such as gas and LNG, renewable fuels, and new forms of liquid energy like hydrogen. Finally, Rytis Valunas will share some personal insights on latest and possible coming trends in arbitration disputes in energy and related infrastructure projects.



Stefano Azzali,
Milan Chamber of Arbitration

IS COVID-19 MAKING ARBITRATION A BETTER AND MORE EFFICIENT TOOL?

The Covid-19 pandemic impacted the arbitration market in all its aspects. Among others, it forced the arbitration institutions to modify their services, moving from a traditional "in presence" activity to an entirely "virtual" intervention and action. It also led the arbitral centers to a more effective collaboration among themselves, in order to provide to users answers and solutions to the emergency situation.

Many of these changes are probably (and hopefully) going to stay after the pandemic, so making arbitration a better and more efficient tool (in terms of cost, time, diversity, type of disputes and users) and institutions key players in the development of a "quality arbitration."

Panel II:
Achieving Efficiency in Arbitration Proceedings

Moderator:
Prof. Toni Deskoski, Ph.D.,
Faculty of Law "Iustinianus Primus" Skopje,
Member of the Presidency of the Permanent court of Arbitration attached to the Economic Chamber of North Macedonia

Panelists:

- EFFICIENCY OF ARBITRATION PROCEEDINGS - MYTH OR REALITY
  Prof. Milena Djordjevic, Ph.D., University of Belgrade Faculty of Law, Belgrade, Serbia

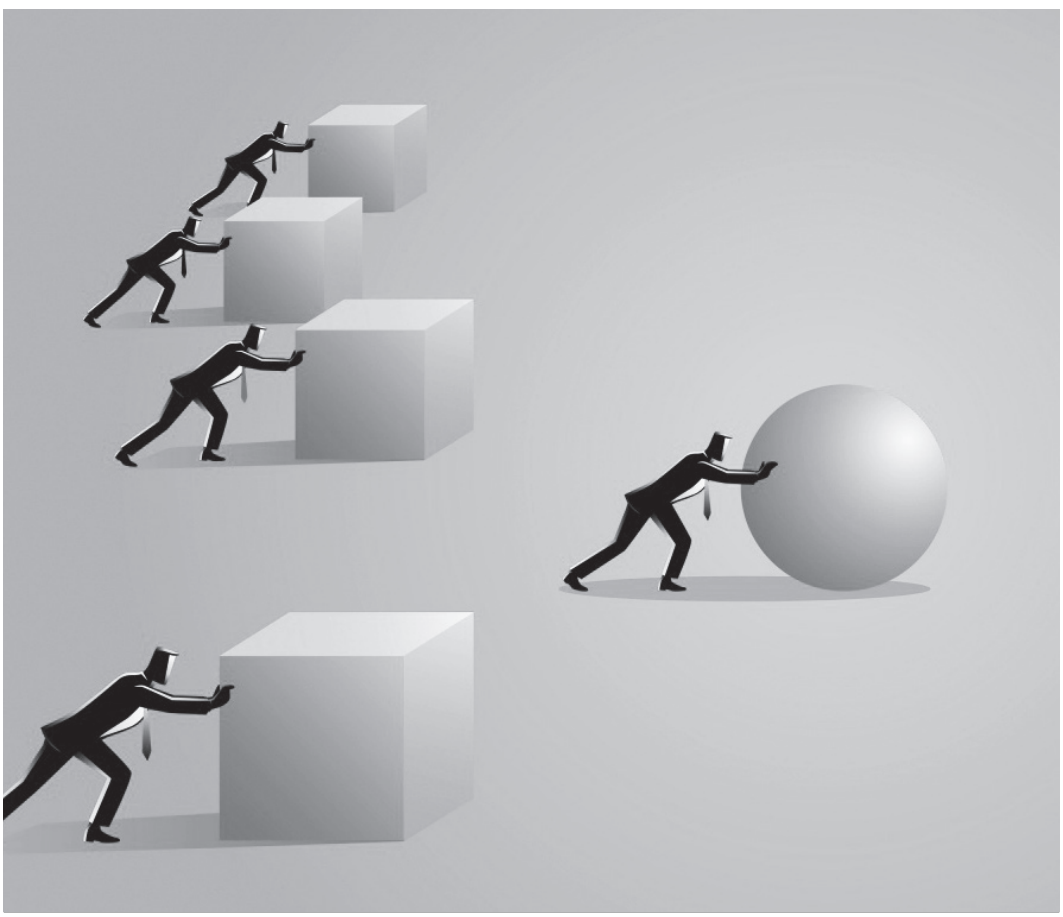
- THE UNDER – APPRECIATED "SOFT" ELEMENTS OF PROCEDURAL EFFICIENCY
  Prof. Tony Cole, Leicester Law School, Arbitrator/Mediator at JAMS, Leicester, United Kingdom

- SOME HERETICAL THOUGHTS FROM A COUNSEL ABOUT EFFICIENCY IN ARBITRATION
  Thierry Augsburger, Four Knights LLC, Geneva, Switzerland

Prof. Milena Djordjevic, Ph.D.,
University of Belgrade Faculty of Law

EFFICIENCY OF ARBITRATION PROCEEDINGS - MYTH OR REALITY

The topic "Achieving Efficiency in Arbitration Proceedings" is being widely discussed in the arbitration community for a while. How to achieve greater efficiency of the proceedings? The panelist will discuss the concept of efficiency via its, in her opinion, three constituting pillars: time, cost and quality.



Prof. Tony Cole, Leicester Law School, Arbitrator/Mediator at JAMS

THE UNDER – APPRECIATED "SOFT" ELEMENTS OF PROCEDURAL EFFICIENCY

This talk will address elements of the handling of an arbitration by a tribunal that are often overlooked in discussions of procedural efficiency. This is not to say that they are more important than standard topics, such as procedural conferences and Redfern schedules, but simply that they are rarely addressed in this context. Simply put, this talk will address the evidence that there are certain elements of being an arbitrator, of how an arbitrator performs their role, that themselves impact on the procedural efficiency of an arbitration. Not because of the consequences of a particular decision, such as whether to allow wide-ranging document disclosure or to limit the number of oral witnesses, but because of how an arbitrator's approach contributes to the "feel" of an arbitration. That is, how the way that a tribunal performs its role can affect the behavior of the parties and their lawyers, in turn impacting on procedural efficiency. To do this, the discussion will draw on psychological literature to discuss the available empirical evidence on how individuals involved in a dispute resolution process respond to the way that process is handled, including the degree to which they themselves have an active role in designing the procedures and the varying potential impacts of an arbitrator adopting an "adversarial" or "inquisitorial" approach.

Thierry Augsburger,
Four Knights LLC, Geneva, Switzerland

SOME HERETICAL THOUGHTS FROM A COUNSEL ABOUT EFFICIENCY IN ARBITRATION

If asked, almost all arbitration practitioners and users of arbitration will confirm that efficiency is a key issue in international arbitration. Many institutions have issued guidelines or notes with the goal to make arbitration proceedings more efficient. In some instances, the fees of an arbitrator will directly depend on an appraisal by the institution of her or his "efficiency", whatever that is meant to be. On the other hand, every arbitration counsel has experienced instances in which a well-intended focus on efficiency has, in the end, had a detrimental effect on his or her endeavours to represent his or her party's interests. Indeed, one's efficiency may become the other's violation of due process. In this respect, it is noteworthy that most arbitration laws provide for the setting-aside of an award for the violation of due process in the arbitral process, while none does so for inefficient proceedings. Similarly, the desirability of efficiency often varies depending on the role a party finds itself in or – more generally speaking – of its interests. In some instances, to represent your client's interest best possibly will mean to push for what by some will be seen as an inefficiently cost- or timewise. Finally, not everything that is done with the goal of promoting efficiency really achieves this goal. Maybe sometimes less would be more? This presentation will therefore focus on the counsel view of efficiency in arbitration and on how, sometimes, just because something could be done more efficiently, this does not necessarily mean that it should be done that way.

Panel III:
The Use of Arbitration in Key Sectors

Moderator:
Tatjana Shterjova Dushkovska, Ph.D.,
director of Branch associations Directorate,
Economic Chamber of North Macedonia,
Secretary General of WB6 Chamber Investment
Forum – Trieste, Italy

Panelists:

- ARBITRATION IN THE AGE OF COVID & CLIMATE CHANGE
  Malgorzata Surdek, CMS, Warsaw, Poland, ICC Court member

- ARBITRATION IN THE AGE OF COVID & CLIMATE CHANGE
  Scott Vesel, Three Crowns LLP, Manama, Bahrain

- ARBITRATION IN THE AGE OF BIG DATA
  Eliane Fischer, Rothorn legal, Zurich, Switzerland

Malgorzata Surdek, CMS,
ICC Court member

ARBITRATION IN THE AGE OF COVID & CLIMATE CHANGE

Changes in the natural world and the policy responses to them are changing the way business is done and the sorts of disputes that arise.

Scott Vesel,
Three Crowns LLP

ARBITRATION IN THE AGE OF COVID & CLIMATE CHANGE

The panelist will discuss emerging trends in arbitration through the lenses of Covid and climate change, focusing on the substantive aspects rather than procedural ones.

Eliane Fischer,
Rothorn legal

ARBITRATION IN THE AGE OF BIG DATA

Where once lack of information was a major challenge, abundance of data now poses ever bigger hurdles. The amount of data that we process in arbitration proceedings has increased exponentially over time. While some years ago, it may have still been feasible to print out and read the correspondence exchanged between the contracting parties in a medium sized construction project, we now regularly resort to search functionalities and document review software to establish the facts of a case. On this panel, we will discuss how the massive increase of available data has changed the way arbitration proceedings are conducted all the way from the arbitrator selection process to the enforcement of the award. Will AI and Algorithms take over the work of junior lawyers or replace arbitrators all together? We will focus on the stages of the proceedings that are most affected by the influx of data and the tools to grapple with it.

Keynote Speech

Vladimir Khvalei,
Baker & McKenzie

"INTERNATIONAL ARBITRATION IN CENTRAL AND EASTERN EUROPE: AN OVERVIEW

Vladimir heads the firm's CIS Dispute Resolution Practice Group. He has extensive experience participating in litigation in Russia, Kazakhstan, Belarus and Ukraine, as well as in international arbitration cases under the UNCITRAL Arbitration Rules, arbitration rules of the ICC, SCC, LCIA, HKIAC, SIAC, ICAC and other arbitral institutions, both as party counsel and arbitrator.

Vladimir is included on the lists of arbitrators of arbitration institutions in Russia, Austria, Azerbaijan, Belarus, Kazakhstan, UAE, China, Hong Kong, Malaysia, Singapore, US, and Israel. Mr. Khvalei is included on the list of tutors, examiners, and assessors of the Chartered Institute of Arbitrators (CIArb).

Vladimir is the former Vice President the ICC International Court of Arbitration (2009-2018); Vice Chair of the ICC Commission on Arbitration and ADR; LCIA Court Member (2014-2019); IBA Arbitration Committee Vice-Chair (2013-2014). Vladimir Khvalei has been constantly recognized as one of the leading experts in dispute resolution within Russia and across the CIS by Chambers, Legal 500, PLC Which Lawyer and Who's Who Legal. Described by clients as a "very well-known figure in the international arena," Mr. Khvalei has been named "Lawyer of the Year" in international arbitration by Best Lawyers 2014.

As a keynote speaker of the international arbitration conference, Vladimir Khvalei will address international arbitration trends in Central and Eastern Europe.

Panel IV: Recognition and Enforcement of Awards in Three SEE Countries

Moderator:
Valentin Pepeljugoski, Ph.D.,
Attorney at law, Law Office Pepeljugoski Skopje, Member of the Presidency of the Permanent court of Arbitration attached to the Economic chamber of North Macedonia

Panelists:

- RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN SERBIA
  Marija Sobat, GBS Disputes, Paris, France

- RECOGNITION AND ENFORCEMENT OF AWARDS IN NORTH MACEDONIA
  Prof. Vangel Dokovski, Ph.D. Faculty of Law Iustinianus Primus – Ss. Cyril and Methodius University, Skopje, North Macedonia

- RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN CROATIA
  Juraj Brozović, Faculty of Law, University of Zagreb

Marija Sobat,
GBS Disputes

RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN SERBIA

The presentation will be divided in three parts.

In the first part, a general overview of the legal framework of recognition and enforcement of foreign arbitral awards in Serbia will be provided. In particular, she will discuss what courts are competent to grant or refuse to grant recognition and enforcement of a foreign arbitral award and what are the necessary steps that a party seeking recognition and enforcement of a foreign arbitral award must undertake in order to enforce an award rendered in its favor. As the New York Convention only applies to "foreign" arbitral awards, she will also discuss what awards Serbian law considers to be "domestic" and what "foreign" for the purposes of the New York Convention.

In the second part, the panelist will analyze court decisions and draw some conclusions as to whether Serbian courts are uniformly and consistently applying the New York Convention (based on the court decisions that are publicly available), whether there are any idiosyncrasies in enforcing arbitral awards, and whether the stance of Serbian courts can be defined as "pro-arbitration." To understand whether Serbian courts have the pro-arbitration approach, the panelist will also briefly look at how Serbian courts applied Article II (3) of the New York Convention which deals with enforcement of arbitration agreements.

In the third and final part of the presentation, the panelist will select a few substantive issues relating to recognition and enforcement, such as objective and subjective arbitrability, validity of the arbitration agreement, due process and/or public policy. Given the panelist's access to a limited number of court decisions on recognition and enforcement, she will also – where relevant – take into account court decisions on setting aside of awards.

Prof. Vangel Dokovski, Ph.D.
Faculty of Law Iustinianus Primus –
Ss. Cyril and Methodius University

RECOGNITION AND ENFORCEMENT IN NORTH MACEDONIA

In cases where the arbitral award was rendered abroad (outside of North Macedonia), the award is to be considered as a foreign arbitral award and thus subject to recognition and enforcement proceedings. This recognition and enforcement in North Macedonia are regulated by the Law on International Commercial Arbitration (2006) and the Private International Law Act (2020). Under Article 37 (3) of the Law on International Commercial Arbitration (2006), the recognition and enforcement of foreign arbitral awards shall be carried out according to the provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

As a starting point, the decision must qualify as an arbitral award within the meaning of the New York Convention in order to be recognized and enforced in North Macedonia. Then, the interested party must file a request for recognition concerning the procedure, the New Private International Act from 2020 have provided modern instrument to the effective recognition and enforcement of Foreign Awards in North Macedonia. The motion for the declaration of recognition and enforceability is to be decided by a court decision in an ex-parte proceedings, without hearing the opposing part at the first phase. During this stage, the court shall examine only the conditions which are to be examined ex officio under article V (2) of the New York Convention i.e., the violation of public policy and non-arbitrability of the dispute.

After a decision on recognition is issued, the opposing party is served with that decision and is entitled to file an objection based on the conditions laid down in Article V (1) of the New York Convention with the same court. These grounds must be raised and established by the party opposing the recognition. It is only then when the court must hold a hearing. Afterwards, the unsuccessful party may file an appeal with the Appellate Court. An appeal is also possible against court ruling refusing the application for recognition in the first

phase. However, the courts departed from the procedure for recognition and enforcement for both courts and arbitral awards (same procedure was provided in the previous PIL Act of 2007). Even at the first stage, courts are providing the request for recognition directly to the opposing party and thus turned the ex-parte proceedings into contradictory two-party proceedings, based on the concept laid down in Article 6 European Convention on Human Rights.

Juraj Brozovic,
Faculty of Law University of Zagreb

RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN CROATIA

Recognition and enforcement of foreign arbitral awards in Croatia is subject both to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards and the Croatian Law on Arbitration. In this contribution, the proceedings for the recognition and enforcement of foreign arbitral awards in Croatia are addressed, with emphasis on the grounds for challenging the awards and their understanding in Croatian case law. Finally, the occurrence of such cases is analyzed in the light of the available judicial statistics.

Panel V: Legitimacy of International Arbitration

Moderator:
Ilija Mitrev Penushliski,
Counsel,
Three Crowns LLP Paris, France.

Panelists:

- TRANSPARENCY AND STATE DEFENSE IN INVESTMENT ARBITRATION: THE SEARCH FOR BALANCE
  Jaroslav Kudrna, Ph.D., Czech Ministry of Finance

- REGULATORY SPACE AND INVESTMENT ARBITRATION
  Crenguta Leaua, Ph.D., LDDP, Bucharest, Romania

- THE MULTILATERAL INVESTMENT COURT: PROS AND CONS
  Olena Perepelynska, Integrites, Kyiv, Ukraine

Jaroslav Kudrna, Ph.D.,
Czech Ministry of Finance

TRANSPARENCY AND STATE DEFENSE IN INVESTMENT ARBITRATION: THE SEARCH FOR BALANCE

During the panel on "Legitimacy of International Arbitration", Dr. Kudrna will first discuss transparency in investor-state arbitration as a necessary prerequisite for legitimacy of the whole system. However, he will also address potential difficulties associated with transparency in investment arbitration, particularly whether it can have a negative impact on the state defense in investment proceedings. Finally, he will consider the ways to address the identified difficulties and the overall balance between transparency and other desirable virtues any investment arbitration proceeding should have. As a second topic, Dr. Kudrna will tackle the issue of consistency of investment awards. He will illustrate this issue with concrete examples from the Czech treaty arbitration practice and then discuss potential solutions, particularly whether a creation of a multilateral investment court could remediate this issue.

Crenguta Leaua, Ph.D., LDDP

REGULATORY SPACE AND INVESTMENT ARBITRATION

Critics of investment arbitration consider that investment law is constraining the states' regulatory space, i.e., the host governments' regulatory autonomy and call for reform to re-establish more regulatory space, especially in the areas of economic and social policy.

While most BITs' renegotiations produce treaties with less room for host governments to regulate, some states initiated efforts to renegotiate their BITs as far as ISDS is concerned, for the purpose of preserving more of their regulatory space.

Such renegotiations took place mainly when renegotiating the BITs in force by either (i) keeping the old treaty in place, but amend it with a new protocol, or (ii) by signing an entirely new investment treaty, adding a clause that terminates the prior BIT – BIT replacement or (iii) by substituting a BIT with a 'free trade agreement' (FTA) that includes an investment protection chapter). There are also cases where states have only issued documents of joint binding interpretations, aimed to clarify the scope and nature of their BIT obligations, excluding other possible interpretations than those mutually agreed.

As to the change in content of the BITs regarding ISDS that is restricting the state's regulatory space, to the effect of making it less restrictive, one can note (i) the request of case-by-case consent of States for ISDS, (ii) the requirement for the investor to initiate procedures with the domestic courts before an international arbitration, (iii) the provision of a possibility for the parties to the BITs to provide an interpretation of the BIT, with mandatory effect on the investors, (iv) the increase of transparency of international arbitration, including express possibility of an amicus curiae, (v) provisions including in the BITs various alternatives to arbitration, such as conciliation or mediation, in which case states have an opportunity to defend regulatory policies in the face of investor complaints, (vi) a narrowing of the scope of the ISDS by limitations in the scope of the ISDS or by providing exclusions of defined claims or policy areas from the scope of the ISDS, (vii) introduction of a statute of limitations for the investors' claims.

Olena Perepelynska,
Integrites

The multilateral investment court: Pros and Cons

During the panel on "Legitimacy of International Arbitration", Olena Perepelynska will discuss various problems of investment-treaty arbitration, which could undermine legitimacy of the system. She will also analyze potential solutions related to creation of the multilateral investment court. Olena will consider the arguments on consistency, predictability, transparency, independence and impartiality of tribunal, cost- and time-efficiency, control mechanism, etc. She will also address the critics to the proposed MIC.

ARBITRATION IN NORTH MACEDONIA

PERMANENT COURT OF ARBITRATION ATTACHED TO THE ECONOMIC CHAMBER OF NORTH MACEDONIA

1. What are the development prospects for the arbitration in our country?

The situation with democracy and the rule of law in our country is undoubtedly the greatest challenge, and it is more than evident that the road taking on that challenge is rather thorny, but also damaging to the business sector, to the citizens, and the society in general. In such circumstances, it is logical to ask if the current interest of the business community should focus on *solely economic issues*. It might sound like a platitude, but the answer is that we need to promptly invest joint efforts into consistent implementation of the rule of law, being a fundamental principle of every modern democratic country. After the rule of law and the legal state are positioned on solid grounds, then we can discuss the initiatives of the business community on stimulation of the economic growth, promotion of the competitiveness, dealing with the shortage of skilled and qualified labor, promotion of entrepreneurship, and general improvement of the business climate in the country.

To materialize the enlargement prospects, an essential firm commitment to meeting the political criteria and the rule of law remains essential, which also includes carrying out reforms concerning Chapter 23 – Judiciary and fundamental rights, and Chapter 24 – Justice, freedom, and security. Therefore, issues related to the rule of law and the legal state are closely tied to our European aspirations. This implies implementation of reforms in the judicial system, fight against corruption, grey economy, organized crime, efficient implementation of the laws and their equal application, freedom of the media, respecting human rights, efficient functioning of the institutions of the system, especially the judiciary (courts, public prosecution, Judicial Council)… Considering the complex nature of the necessary reforms, this will represent a long-term process. The strategic orientation and the adoption of the key European values such as the rule of law,

are essential to the future progress of this country.

In the segment of judiciary and fundamental rights, especially regarding the quality of justice, the latest European Commission report on our country explicitly concludes that efforts are needed to further promote the use of **alternative dispute resolution**, including through the relevant chambers. This unquestionably confirms the need to affirm the Permanent Court of Arbitration attached to the Economic Chamber of North Macedonia, being an independent arbitration institution that offers an alternative to the judicial system years on end, providing a method for resolving disputes between business entities, however, unfortunately applied sporadically. Encouraged by the real need to promote and develop arbitration as method of dispute resolution, which is now upheld as a recommendation and a necessity by the international factor, we deem that we must be more present in the public with topics related to methods for resolving trade disputes, and the possibilities and the advantages the Arbitration Court has to offer in this regard.

The Permanent Court of Arbitration of the Economic Chamber of North Macedonia, in its decades-long experience and operation, continuously advocates affirmation and heightening of the application of arbitration in trade disputes, considering that the existence of an efficient system of legal protection is a precondition for favorable business climate and unhindered operation of the real sector.

As part of its efforts toward development of arbitration and approximation of the European experiences to the Macedonian arbitration practice, the Permanent Court of Arbitration attached to the Economic Chamber of North Macedonia, with the support of the Central European Initiative (CEI), is also organizing an international conference about *Business and Arbitration in the Era of Globalization: Challenges and Perspectives*.

The Arbitration Court is traditionally organizing this Conference for the fifth time, while this is the third conference that receives the support of our partner CEI. The activities of the Arbitration Court have been recognized internationally, which is evident in the fact that over 70 professionals and renowned experts from the domestic and international arbitration community have spoken at the conferences we have organized in the past years, gathering over 400 participants – people from the business community, the judicial and academic community, and the wider public.

The speakers at this year's Conference are prominent theoreticians and practicians from the country and abroad, including lawyers from world-leading law firms, arbitrators with long experience and university professors from 14

countries from the region and Europe, and even beyond (France, England, Romania, Ukraine, Serbia, Poland, Switzerland, Russia, etc.). The Conference program will be dedicated to current topics in the area of arbitration, with a special review of the impact of globalization and the Covid-19 pandemic on the dispute resolution through arbitration, practical issues related to the efficiency of the arbitration proceedings, the application of arbitration in key sectors, recognition and enforcement of foreign arbitration awards in Central and Eastern European countries, as well as the legitimacy of international arbitration.

Arbitration has proven to be a tool and a mechanism for dispute resolution that the business community needs. Therefore, the business entities are the most frequent users of arbitration, and events of this nature are necessary to familiarize the companies with the modern trends in the area of the arbitration laws, as well as with the possibilities for promotion of arbitration as a method of dispute resolution.

2. What are the advantages of using arbitration for dispute resolution?

As an alternative method for resolving disputes between business entities, arbitration offers multiple advantages. These are only some of them:

• Impartiality and expertise in the decision-making

The arbitrators that take part in the dispute resolution are experts in their area, and they are obliged to provide a written statement about their independence and impartiality in the proceedings. The Arbitration Court is a private and independent body, which is not a part of any state judicial system. Being a non-state body, the Arbitration Court can be constituted at the will of the parties, which may appoint arbitrators from different countries and agree to hold the arbitration proceedings in a third country, aiming to neutralize the distrust and the fear from a potentially subjective process. This advantage that arbitration offers is especially prominent in disputes with international elements, that is, when the business entities are based in different countries.

• Single instance procedure and speed

In arbitration proceedings, the matter in dispute is decided in only one instance, while the procedure generally takes 6-9 months. The deadlines set by the Arbitration Court for filling submissions are usually no longer than 30 days. The arbitration proceedings provide no possibility for a complaint as legal

remedy. This single instance regime of arbitration is explained with the fact that the court of arbitration is convened as a result of the will of the parties, which independently appoint the arbitrators in the dispute, choosing themselves whether the dispute will be resolved by a sole arbitrator or an arbitration tribunal.

• Confidentiality

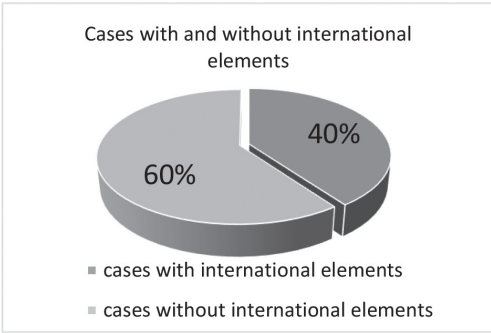
Arbitration hearings are closed to the public, and all documentation related to the arbitration proceeding is confidential. The arbitration proceedings are not burdened with strict formalities and can be adapted to the requirements and expectations of the parties. The goal is to achieve mutually acceptable solution for the parties and for that reason, the arbitrators indicate throughout the proceedings the possibility of resolving the dispute through settlement.

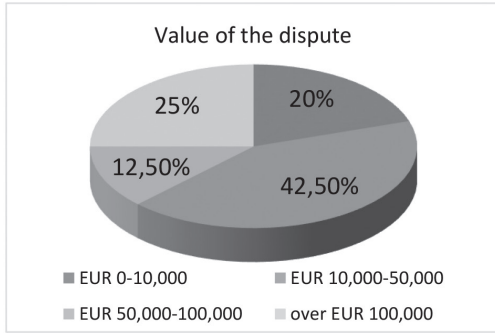
• Arbitration awards are final and binding

Disputes before the Arbitration Coutry finish with an award that is binding, and if the obligations are not fulfilled voluntarily, it may be subject to compulsory enforcement, that is, an award made in arbitration proceedings is equal to a final court decision and represents grounds for compulsory enforcement. The arbitration laws lay down a simpler regime for recognition and enforcement of foreign arbitration awards in the contracting states of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). However, if we consider the number of contracting states, we can conclude that this is a large figure, that is, over 160 countries.

3. How many and what type of disputes are being resolved before the Permanent Court of Arbitration attached to the Economic Chamber of North Macedonia?

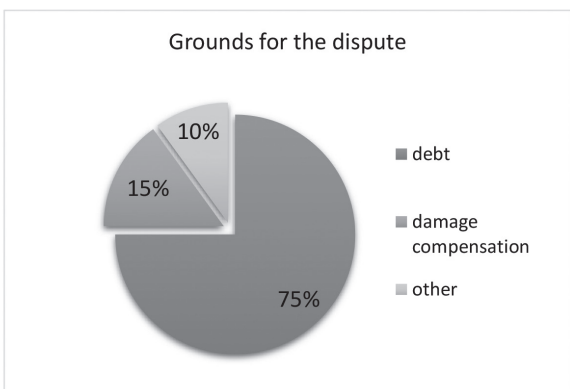
The arbitration practice is being continuously developed and promoted in recent years. Statistics on the operation of the Arbitration Court show that from the total number of arbitration proceedings commenced in the period 2015-2020, 60% were disputes without international elements, whereas **40%** were disputes with international elements. Moreover, most of the commenced arbitration procedures or **42.5%** involved disputes with values of EUR 10-50,000, **25%** were disputes with values of over EUR 100,000, 20% were disputes with values under EUR 10,000, and 12.5% were disputes with values of EUR 50-100,000.





Withing the analyzed period, the trade entities that appear as parties in the arbitration proceedings originate from the following countries: **RN Macedonia, Turkey, Bulgaria, Kosovo, Romania, Russia, Croatia, Saudi Arabia, Serbia, China, etc.**

In the last three years, the proceedings commenced before the Permanent Court of Arbitration attached to the Economic Chamber of North Macedonia included claims that arise from **contacts of sale, contracts for business cooperation, public procurement contracts, construction contracts, contracts for providing security services, and others.**



Most of the claims in the proceedings were on the grounds of **debt (75%), damage compensation (15%), and other (10%).**

It is no coincidence that in the global business circles, arbitration is one of the most preferred methods for resolving business disputes. To that end, this only confirms that the solution to the lengthy and inefficient judicial proceedings in this country, but also in the region, is precisely turning to greater promotion and application of arbitration as a method of dispute resolution, especially trade disputes. The traditional methods of dispute resolution before the courts are not always the best solution, rather the opposite, global trends are showing an increasing application of alternative methods for resolving disputes between business entities such as arbitration.

Why? Here are specific indicators:

The average length of the proceedings commenced before the Permanent Court of Arbitration **is constantly decreasing – in 2020,** it was **184 days,** that is, **approximately six months**. This proves the expedience and efficiency of arbitration. **If we compare this with the length court proceedings**, which according to the reports of the RNM Judicial Council about the first instance courts ranged between 234 and 679 days in 2020, and if we add the time for the appellate procedure before the appellate courts, which ranged between 440 and 709 days, **the total average duration of the first and second instance court proceedings is at least 600 days longer. We can agree that this is far longer than the arbitration proceedings, which finish in a single instance with a final and binding award.** Simply put, there is no comparison.

This implies that there is real potential for promotion of the situation, which can be achieved not only by improving the transparency and efficiency of the courts, but also by **strengthening the awareness of using arbitration, for the simpler and flexible procedure, the expedience in the decision-making, lower total costs, single instance, greater autonomy of the will of the parties (concerning the appointment of arbitrators, language and place of arbitration, etc.), facilitated regime for recognition and enforcement of the arbitration awards abroad** (the Convention on the Recognition and Enforcement of Foreign Arbitral Awards was signed on 10 June 1958 in New Year and is ratified by more than 160 countries in the world), etc.

The business sector is dynamic. Therefore, our message to the companies is to follow the modern trends even in in the area of dispute resolution, and to use arbitration as an alternative resolution method as much as possible. This, as stated before, is a recommendation from the European Commission given in the latest 2020 EC Report in the segment of the judiciary and the quality of justice.

4. Skopje Arbitration Rules – step forward to more efficient arbitration proceedings, adapted to the contemporary requirements of the business world

Considering the globalization process, starting from the regional connection and action, but also the action and connection on the European soil, up to the expansion of the export activities way beyond, including the countries in the Near and Far East, USA, and other countries across the ocean, we should be aware of the need of taking on new challenges at an institutional level to keep pace with the requirements of the companies and their business, which is increasingly becoming global and much less local. To keep track of their requirements, we need to have a strategic approach for every issue that is significant for a successful business, one of which is certainly the method of dispute resolution. When concluding deals, these disputes may seem too far, as if they would never happen. However, this does not mean one should approach this callously when it comes to regulating this in advance. Laying down an arbitration clause in the trade agreements is not a frequent occurrence in our arbitration practice, as opposed to the world.

Facing the challenge of being in step with the times, that is, appropriately adapting our arbitration institution as a reaction to the changes and the requirements of the modern enterprises, we took a step forward regarding the normative framework that regulates the proceedings before the Permanent Court of Arbitration attached to the Economic Chamber of North Macedonia, the organization of the institution, but also the regulation of some of the procedures that were not completely regulated.

During the conferences we organized, we have concluded multiple times that we need to establish a single system of rules in our country that will regulate both the domestic and international trade arbitration with a law, against the current situation where we have provisions about the proceedings before the selected courts in the Law on Civil Procedure (which covers the disputes without international elements), and provisions on the proceedings with international elements regulated by the Law on International Trade Arbitration.

Considering the fact that the amendments to these laws in this regard are an activity that does not depend on us alone, we decided to make changes where we can that is, to the arbitration rules, certainly harmonized with the existing regulations as such.

Adhering to the European experiences and the practices of the developed countries, the Permanent Court of Arbitration of the Economic Chamber of North Macedonia established the new Arbitration Rules (Skopje Arbitration Rules) on

29/04/2021, which provide for novelties in the arbitration proceedings, aiming at further promotion of the efficiency and shorter arbitration proceedings. In the development of these specific solutions, we took into consideration the arbitration rules of the London Court of International Arbitration, Vienna International Arbitral Centre, the International Court of Arbitration of the International Chamber of Commerce in Paris, but also the arbitration rules of the regional countries, including Croatia, Serbia, Montenegro, the Ljubljana arbitration rules, etc.

We have selected some of the more significant novelties, which should also be regarded as an implementation of the proposals and recommendations for promotion of the arbitration that were formulated, namely:

- The **structure of the Rules has been changed.** Therefore, the arbitration rules that regulate the proceedings before the Permanent Court of Arbitration have been moved to the front, followed by two appendices, one of which involves the organization of the Permanent Court of Arbitration, and the other covers another novelty, that is, precisely regulated emergency arbitrator proceedings. The idea is to have the Rules focus on the rules of the procedure since these represent the basis of the arbitration proceedings, and the internal organization is not a primary concern of the parties that are interested in employing arbitration.
- **Application of modern techniques and technologies in the communication process was provided**, considering that their importance and speed of practical implementation was evident in a situation of pandemic. The new arbitration rules allow **the parties and the other participants in the proceedings to file the submissions and other written notices via electronic mail** to an email determined by the Permanent Court of Arbitration, together with an obligatory written copy sent to the address of the Permanent Court of Arbitration. Moreover, Article 42 lays down that the Arbitration Court may determine to **conduct the witness hearing through video conferencing**, which is a novelty that was not explicitly regulated to date.
- Aiming to achieve an even greater level of certainty concerning the impartiality and independence of the arbitrators, we introduced the obligation for **confirmation of the nominated arbitrators for the proceedings before the Permanent Court of Arbitration**, decided by the President of the Permanent Court of Arbitration. Namely, in accordance with Article 26 of the Arbitration Rules, the President of the Permanent Court of Arbitration confirms the appointment of the arbitrator, taking

into consideration the independence and impartiality statement given by the nominated arbitrator, but also any other circumstances that may arouse a reasonable doubt over his or her impartiality and independence, the availability and the possibility for quality and timely execution of the arbitrator duty, as well as the potential comments from the parties. The President of the Permanent Court of Arbitration may also opt to refuse to confirm the arbitrator and in such cases, the Secretary General of the Permanent Court of Arbitration summons the party, that is, the arbitrators, and determines a deadline for another nomination. This additional verification should provide a better confirmation of the independence and impartiality of the appointed arbitrators.

- The Arbitration Court was assigned with the duty to determine a **procedural timetable** through a decision, immediately upon its constitution without any delays, and following a prior meeting with the parties, **with the possibility of determining additional rules for the conduct of the proceedings, if it deems that such rules are necessary.** With the procedural timetable, the Arbitration Court determines the deadlines for the potential written submissions, the date, that is, the dates of the oral arguments, the time limit of the arbitration award and other elements it deems necessary. The additional rules for conducting the proceedings are usually related to the written submissions, evidence, witnesses, expert witnesses, and the hearing. The Arbitration Court has the duty to send the procedural timetable to the parties and the Secretary General of the Permanent Court of Arbitration. Moreover, the Rules provide for amendments to the procedural timetable, following a counseling with the parties, aiming to ensure continuous and efficient conduct of the proceedings.
- In favor of greater efficiency and expedience of the proceedings, **the possibility of making an award without holding oral arguments** has been regulated in case none of the parties wishes for oral arguments, and if the Arbitration Court assesses that the submitted letters and evidence are sufficient for making an award. In this case, the proceedings are conducted on the grounds of the submitted letters and evidence, which is concluded in the procedural timetable.
- **The emergency arbitrator proceedings have been regulated in case** the party requires urgent temporary measure and cannot wait until the constitution of the Arbitration Court. The proceedings before an emergency arbitrator are regulated in Appendix II of the new Arbitration Rules. If the parties agree to suspend the application of the rules relating

to the emergency arbitrator proceedings, they will not apply.

- **A time limit of nine months from the constitution of the Arbitration Court** has been introduced, **in which the Arbitration Court is obliged to make the arbitration award,** which can only be extended in the manner determined by the Arbitration Rules, only for valid reasons, elaborated in detail by the Arbitration Court.

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With the rising globalization, including the globalization of commerce, arbitration is becoming an increasingly popular mechanism for dispute resolution. Arbitration is a method of dispute resolution that is an alternative to the proceedings before the state courts and it is based on the free will of the parties. The arbitration proceedings end with a final and binding award, which the parties are obliged to enforce without any delays. On average, the arbitration proceedings last shorter than the court proceedings. Considering the fact that successful business operation requires unhindered business relations, as well as quick and efficient completion of the transactions between the business entities, it is quite understandable why we should strive for resolving the disputes through arbitration, being a more efficient and more effective mechanism for dispute resolution than the state courts. The arbitration proceedings resolve the matter in dispute in a single instance and there are no further examinations of the award of the arbitration tribunal. This is explained with the fact that the Arbitration Court (sole arbitrator or arbitration tribunal) is selected because of the consensual will of the parties, which appoint arbitrators for the proceedings. Arbitration provides quicker and simpler dispute resolution without any serious negative repercussions for the business relation of the parties. Arbitration arguments are closed to the public and the entire documentation relating to the arbitration proceedings is confidential. The arbitration proceedings are usually conducted in a more relaxed atmosphere, by arbitrators appointed by the parties. This increases the efficiency of the arbitration proceedings and decreases the possibility for bias during the decision-making process. When it comes to disputes with international elements, generally neither party wishes to entrust the dispute resolution to the national judicial system of the other party nor seeks options to resolve the dispute in its own country. Being a non-state body, the Arbitration Court may be constituted by arbitrators from different countries that are appointed by the parties, and the place of arbitration may be a third country that guarantees the independence and impartiality of the arbitrators. If we add

the simpler regime for recognition and enforcement of foreign arbitration awards, in accordance with the New York Convention, then arbitration should definitely become the most preferred option when deciding how and whom to entrust the jurisdiction to in an event of a dispute.

Our expectations are that this Conference will considerably contribute to raising the public awareness here, but also beyond, that this alternative method for resolving disputes between business entities has many advantages, which may contribute to shorter and efficient conclusion of the disputes between the business entities, without bringing the impartiality, objectivity, and expertise of the decision-making process into question, rather the opposite, raising them to another even higher level.

Recommended clause

For the contracting parties that wish to have future disputes referred to arbitration under the Arbitration Rules of the Permanent Court of Arbitration attached to the Economic Chamber of North Macedonia, we recommend the following clause:

"All disputes arising out of this Contract or in connection with it, including the disputes concerning its interpretation or validity, shall be settled by the Permanent Court of Arbitration attached to the Economic Chamber of North Macedonia, in accordance with the Arbitration Rules of the Permanent Court of Arbitration."


ARBITRATION
ARBITRATION

СТОПАНСКА КОМОРА НА СЕВЕРНА МАКЕДОНИЈА
ECONOMIC CHAMBER OF NORTH MACEDONIA

CEI
CENTRAL EUROPEAN INITIATIVE

11-12 May 2021

ONLINE INTERNATIONAL ARBITRATION CONFERENCE - BUSINESS AND ARBITRATION IN AN ERA OF GLOBALIZATION: CHALLENGES AND PERSPECTIVES –

Working language: English/Macedonian
Registration: elena@mchamber.mk; nena@mchamber.mk;

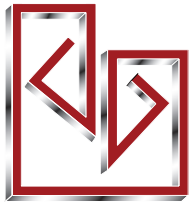
Day 1
Tuesday, 11 May 2021

10:00 – 10:15	**Welcoming addresses**
	• Goran Rafajlovski, Ph.D., President of the Permanent Court of Arbitration attached to the Economic Chamber of North Macedonia • Bojan Marichikj, LL.M, Minister of Justice of North Macedonia (TBC) • Jon Ivanovski, National Coordinator of CEI for North Macedonia (TBC)
10:15 – 10:25	**Introduction speech**
	"Arbitration in North Macedonia: What have we achieved so far?" Elena Milevska Shtrbevska, Ph.D., Secretary of the Permanent Court of Arbitration attached to the Economic Chamber of North Macedonia
10:30 - 11:15	**Panel I: How is Covid-19 Changing Arbitration?**
	Moderator: Goran Rafajlovski, Ph.D., Permanent Court of Arbitration attached to the Economic Chamber of North Macedonia Panelists: • Andrea Carlevaris, Ph.D., BonelliErede law firm, Rome, Italy - COVID-19: PROCEDURAL AND SUBSTANTIVE WATERSHED FOR INTERNATIONAL ARBITRATION? • Rytis Valunas, Klaipedos Nafta, Klaipėda, Lithuania - THE NEW BRAVE GREEN WORLD: THE ROLE AND TRANSFORMATION OF OIL & GAS AFTER COVID • Stefano Azzali, Milan Chamber of Arbitration, Milan, Italy - IS COVID-19 MAKING ARBITRATION A BETTER AND MORE EFFICIENT TOOL?
11:15 – 11:30	Discussion

11:35 – 12:20	**Panel II: Achieving Efficiency in Arbitration Proceedings**
	Moderator: Prof. Toni Deskoski, Ph.D., Faculty of Law Iustinianus Primus - Ss. Cyril and Methodius University, Skopje, North Macedonia Panelists: • Prof. Milena Djordjevic, Ph.D., University of Belgrade Faculty of Law, Belgrade, Serbia - EFFICIENCY OF ARBITRATION PROCEEDINGS - MYTH OR REALITY • Prof. Tony Cole, Leicester Law School, Leicester, United Kingdom - THE UNDER – APPRECIATED "SOFT" ELEMENTS OF PROCEDURAL EFFICIENCY • Thierry Augsburger, Four Knights LLC, Geneva, Switzerland - SOME HERETICAL THOUGHTS FROM A COUNSEL ABOUT EFFICIENCY IN ARBITRATION • Thierry Augsburger, Four Knights LLC, Geneva, Switzerland
12:20 – 12:35	Discussion
12:35 – 13:00	Break
13:00 – 13:45	**Panel III: The Use of Arbitration in Key Sectors**
	Moderator: Tatjana Shterjova Dushkovska, Ph.D., Economic Chamber of North Macedonia Panelists: • Malgorzata Surdek, CMS, Warsaw, Poland, ICC Court member - ARBITRATION IN THE AGE OF COVID & CLIMATE CHANGE • Scott Vesel, Three Crowns LLP, Manama, Bahrain - ARBITRATION IN THE AGE OF COVID & CLIMATE CHANGE • Eliane Fischer, Rothorn legal, Zurich, Switzerland - ARBITRATION IN THE AGE OF BIG DATA
13:45 – 14:00	Discussion

Day 2
Wednesday, 12 May 2021

10:00 – 10:30	**Keynote Speech**
	"International Arbitration in Central and Eastern Europe: An Overview" Vladimir Khvalei, Baker & McKenzie, Moscow, Russia
10:30 – 11:15	**Panel IV: Recognition and Enforcement of Awards in Three SEE Countries**
	Moderator: Valentin Pepeljugoski, Ph.D. Law office Pepeljugoski Panelists: • Marija Sobat, GBS Disputes, Paris, France - RECOGNITION AND ENFORCMENT OF FOREIGN ARBITRAL AWARDS IN SERBIA • Prof. Vangel Dokovski, Ph.D., Faculty of Law Iustinianus Primus – Ss. Cyril and Methodius University, Skopje, North Macedonia - RECOGNITION AND ENFORCMENT OF FOREIGN AWARDS IN NORTH MACEDONIA • Juraj Brozovic, Faculty of Law, University of Zagreb, Croatia - RECOGNITION AND ENFORCMENT OF FOREIGN ARBITRAL AWARDS IN CROATIA
11:15 – 11:30	Discussion
11:35 – 12:20	**Panel V: Legitimacy of International Arbitration**
	Moderator: Ilija Mitrev Penushliski, Three Crowns LLP, Paris, France Panelists: • Jaroslav Kudrna, Ph.D., Czech Ministry of Finance, Prague, Czech Republic - TRANSPARENCY AND STATE DEFENSE IN INVESTMENT ARBITRATION: THE SEARCH FOR BALANCE • Crenguta Leaua, Ph.D., LDDP, Bucharest, Romania - REGULATORY SPACE AND INVESTMENT ARBITRATION • Olena Perepelynska, Integrites, Kyiv, Ukraine - THE MULTILATERAL INVESTMENT COURT: PROS AND CONS
12:20 – 12:35	Discussion



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