

Worldly Perspectives

Bulgaria's Major Mediation Steps Include Cash Back on State Filing Fees

BY GIUSEPPE DE PALO AND MARY B. TREVOR

Bulgaria operates under a continental law system, in which the courts apply written law rather than judicial precedents. Civil and commercial matters are heard by the civil and commercial departments of the regional and district courts, the courts of appeal, and the Supreme Court of Cassation. There is a separate system of administrative and military courts, but no further specialization of courts.

Regional courts generally act as the first instance courts, with a few exceptions where cases exceeding specified amounts in dispute go directly to the district courts. Appeals of regional court judgments go to the appropriate district court, while first-instance judgments of district courts can be challenged before courts of appeal. The Supreme Court of Cassation reviews on points of law, over second-instance decisions, provided that admissibility requirements for cassation are met.

ARBITRATION'S WIDE RANGE

Arbitration has been a popular alternative to the state courts for more than 100 years. Bulgarian legislation grants "courts of arbitration" competence over a wide range of matters, excepting any rights in rem, questions concerning possession of corporeal immovable

property, and obligations or rights pursuant to an employment relationship, which are subject to the state courts' jurisdiction only.

Arbitration is now governed by the International Commercial Arbitration Act—adopted in 1988 and since amended—which applies to purely domestic disputes as well as international. In addition, depending on the parties' agreement, various institutional arbitration rules may apply. Enforcement of international awards also is governed by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which Bulgaria is a party.

A number of arbitration courts are currently available in Bulgaria. Generally, courts

of arbitration can be divided into general and specific, open and closed, and regional and national. The most popular among the courts are the Courts of Arbitration for the Bulgarian Chamber of Commerce and Industry.

Each arbitration court autonomously and separately defines the criteria that the arbiters are required to meet.

MEDIATION: INTRODUCTION, THEN AN ACT

Bulgaria was introduced to mediation in the middle of the 1990s by mediation organizations and mediators who had received their training and experience mostly in the United States. The continuing efforts of these organizations, generally supported by the U.S. Agency *(continued on next page)*



The Basics

The Republic of Bulgaria is situated on the Balkan Peninsula and is bordered by the Black Sea to the east. Greece and Turkey lie to the south, Romania to the north, and Serbia and Macedonia to the west. Bulgaria has a population of about 7.15 million people, mostly ethnic Bulgarians (84%), with the balance of the population being mostly Turks (9.4%) and Roma (4.7%). Its capital and largest city is Sofia.

Because of its strategically important geographic location, Bulgaria has served as a major crossroads between Europe, Africa and Asia. Once a communist state, Bulgaria transitioned to democracy in 1990, after the Communist Party collapsed. The National Assembly adopted a new constitution in 1991, and Bulgaria has since moved toward democratic development and a market economy.

Bulgaria is now a parliamentary democracy. The head of the state is the

president—currently George Parvanov—who embodies the unity of the nation and represents the republic in its international relations. The head of government is the prime minister. The National Assembly is a one-chamber parliament with 240 members who are directly elected every four years. The Council of Ministers is the executive state body and directs the country's domestic and foreign policy. The prime minister nominates its members for election by the National Assembly.

In the 20 years since its transition to democracy, Bulgaria's economy has grown rapidly despite political and economic crises. The country has been a member of the Council of Europe since 1991. In 2004, Bulgaria joined NATO, and on Jan. 1, 2007, the nation officially became a European Union member. (The sources for this information include www.cia.gov/library/publications/the-world-factbook and www.investbg.government.bg.)

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for International Development (US-AID), have led to a community of trained mediation professionals. This community operates family and commercial mediation centers. The activity led to the adoption of the Bulgarian Mediation Act in 2004. The act helped promote mediation because it established clear requirements for mediators' registration, training, and conduct, as well as for mediation procedure.

The new Civil Procedure Code, in force since 2008, added rules that have further promoted mediation use. The code enables case referrals to mediation at different litigation stages and it obliges judges in family proceedings to refer parties to mediation. In addition, the code gives mediators the right to refuse to testify about a dispute they have mediated.

The code also ensures the enforcement of settlement agreements reached in mediation. Where the parties have reached agreement concerning payment of money or obligations for delivery of particular goods, the parties can present the agreement, with notarized signatures, for the issuance of a court enforcement order.

In pending court cases where the parties reach a settlement agreement, they may present it before the court and request its implementation in a court settlement agreement, which will have the legal effect of an enforceable court decision. There is a significant financial incentive to reach such agreements: the parties enjoy a refund of 50% of the state fee paid for the court action.

AN ADR EXPERIENCE: THE COURT SETTLEMENT CENTER

The biggest achievement in the promotion of Bulgarian mediation in recent years, however, came as a result of a unique process of cooperation between judges and mediators. In 2009, a group of judges and mediators from the Professional Association of Mediators in Bulgaria (www.pamb.info) organized training for judges in mediation techniques. It was conducted by mediation trainers from Harvard University and supported by US-AID through the German Marshall Fund, a Washington, D.C., public policy and grant-making institution that

promotes cooperation between North America and Europe on global issues.

After the training, judges and mediators started the Settlement Center, a mediation referral program at the biggest Bulgarian court, the Sofia Regional Court. The center is a one-of-a-kind operation in Bulgaria and in Europe, since it is an entirely self-organized structure operating through the coordinated efforts of judges and mediators working on their own initiative without any financial support.

Bulgaria's ADR Push

The locale: Shifting to Eastern Europe, *Worldly Perspectives* examines Bulgaria.

Are prospects better here than other smaller nations? Undoubtedly. The history is short, but the steps, including major national legislation and a mediation center, are significant.

How is mediation used? We have a property example for you, and a leading mediator talks about a small household case with big results.

The founding judges and mediators established clear rules for the Settlement Center, as well as a management body consisting of judges and mediators. A roll of about 50 mediation practitioners, including mediators and judges, volunteer in the center. The Sofia court provides important administrative support, a case manager, and a courthouse venue for the Settlement Center. The Professional Association of Mediators in Bulgaria provides expert management support and volunteer mediators from its members.

The Settlement Center has operated since March 2010, providing free mediation services and information for parties in pending court cases every working day, and staffed by mediators who work in shifts. A timetable is available to the parties, who can choose in advance a specific date, time and mediator for their mediation session. Mediators are experienced professionals from the fields of law, engineer-

ing, real estate, psychology, and company management, who dedicate their time to provide a quality mediation service to parties.

The center already has addressed many referred cases. About two-thirds of the referred cases were mediated and about half of the mediated cases were successfully settled. Most of the cases have involved property disputes (more below).

As a result of the successful first season of the Settlement Center, it will re-open this fall with new and improved opportunities for mediating parties. Additional mediation rooms have been provided by the court, and additional mediators will join the program to meet the increasing needs of the parties. The mediators will continue to work with judges to ensure media coverage of the center's achievements and to involve donors, all in the hope of continuing the center's mission to feed the growing flame of mediation in Bulgaria.

WHEN SMALL CAN BE BIG

Most of the Settlement Center cases involve property disputes. One of its most interesting cases relates to a tiny share of a property, with huge importance.

An investor who was buying a large piece of real estate, step by step, from a significant number of co-owners, faced difficulties with purchasing the last parcel. He owned 47 out of 48 shares of the real estate, but not the smallest share—equal to about 50 square meters. The resistant co-owner insisted on a double price of 25,000 Euros, being aware that his share was the key to the title to the entire parcel.

The investor was so angered by this demand that he filed a partition case in court, and was ready to pay a 120,000 Euro state fee (calculated based on the evaluation of the entire property), rather than the 25,000 Euros price.

Mediation helped the parties break the deadlock by decreasing the emotional pressure and helping them focus on their actual interests and risks. With the mediator's help, they agreed on 17,000 Euros, and the deal was done. For another example, see the box opposite.

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Overall, in Bulgaria, mediation is becoming more and more popular, thanks to the number of people already trained as mediators and the people who have already tried mediation,

all of whom are spreading the word. Indeed, awareness-raising events and mediation trainings for lawyers, judges and company managers, as well as training programs for students

in secondary schools, will be the main focus of the Bulgarian mediation organizations for the next few years.

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Next month: More in Eastern Europe as Worldly Perspectives moves to Romania.

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An Interview with a Bulgarian Court Mediation Pioneer

The *Worldly Perspectives* columnists spoke with Evgeni Georgiev, a judge at the Sofia Regional Court in Bulgaria. He is a mediation pioneer and a great supporter of mediation, significantly contributing to the establishment and achievements of the first Settlement Center at the Sofia Regional Court.

What is the most important achievement in the field of mediation in Bulgaria in the past three years?

Mediators and judges started to work together—this is the biggest success of mediation in Bulgaria.

Which is your most successful recent mediation?

... [A] 55-year-old neighbor ... stopped me at the front door of the apartment building to ask me to be a witness [as to] what her husband was taking from their home. They had just had a serious argument. I agreed but I proposed to talk to them and see whether I could help somehow. So, we went upstairs in their apartment.

I went with the husband in one of the

rooms and asked the wife to wait in the kitchen. The husband was very reserved but he shared that he had no interest in any joint property they had. The only thing he wanted was to leave because the situation at home was unbearable.

Then, I talked to the lady. She was very open. Almost crying she told me the story of their family life. She also had no interest in the joint property but was willing to split with her husband.

I felt very weak, as if I could not do anything. Most of the cases I had mediated before [involved] only interests and very little emotions. To the contrary, here I had just emotions.

I got them together and told them they had no property problem. I advised them that I could be their witness if they liked. Further, I told them they had a communication problem and better go to a psychologist. Then, I left.

A few days later, my wife told me that she saw the couple shopping in the supermarket. Some time after that I saw them drinking coffee, talking in front of the building, and

their teenage son was around. That might be my most successful recent mediation, if I really helped the couple.

What fosters most mediation in Bulgaria?

You cannot single out just one thing. . . . There are many things combined that help. These are: mediators' activism; judges' support [and] referrals to mediation; support from the bar; media coverage and other forms of publicity, [and] training for mediators.

What are the next steps to make mediation work for more people in Bulgaria?

If we are able to make attorneys think that mediation can help their business we will tremendously increase the use of mediation. At the same time we have to make all judges understand that mediation is a very effective tool for docket management and that they have the power to refer cases to mediation. While working on these two issues we have to make sure that mediators get proper training and meet the highest professional and ethical standards.

International ADR

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Elements of a valid clause: When drafting an arbitration clause, counsel for foreign companies must be aware of the requirements of an enforceable clause under the Arbitration Law: intent to arbitrate; subject matter; and identification of an arbitration commission.

The Arbitration Law of the People's Republic of China was enacted on Aug. 31, 1994, by the National People's Congress. It contained major revisions to the domestic and international arbitration systems. The Arbitration Law became effective as of Sept. 1, 1995.

Under Arbitration Law Art. 16, a valid arbitration agreement must identify an "arbitration commission" to administer the arbitration. If a

clause does not identify an arbitration commission, the clause is void, unless the parties reach a supplementary agreement. Two additional comments to consider when drafting a clause under the Arbitration Law: (i) there is no express prohibition against ad hoc arbitration, but the Arbitration Law's requirement that the agreement identify an arbitration commission essentially precludes recognition of "ad hoc" or "party-administered" arbitration proceedings; and (ii) there is some uncertainty as to whether foreign arbitration institutions qualify as an "arbitration commission."

Regarding (ii), for example, on its website, the ICC states that "[a]lthough there is some uncertainty as to whether foreign arbitration institutions qualify as arbitration commissions within the meaning of the law, it would in any case be prudent for parties wishing to have an

ICC arbitration in Mainland China to include in their arbitration clause an explicit reference to the arbitration institution of their choice." See www.iccwbo.org.

Adjudicative Processes Continued—Domestic and International Distinctions: Before a U.S. company agrees to arbitrate in China, it should appreciate the difference between "domestic" Chinese arbitration and "international" arbitration. An international arbitration involves "foreign-related elements," which is defined in a 1998 opinion of the Supreme People's Court.

A foreign-related element means: (i) one or more parties to the contract are foreign companies or foreign citizens; (ii) a legal relationship is created in a foreign country; or (iii) the subject matter of the dispute is located in a foreign country. See *Opinions on the Implementation*

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