a. Parties’ Right to a Physical Hearing in the *Lex Arbitri*

1. *Does the lex arbitri of your jurisdiction expressly provide for a right to a physical hearing in arbitration? If so, what are its requirements (e.g., can witness testimony be given remotely, etc.)*?

Short answer: No.

The Bulgarian Law on International Commercial Arbitration (the “LICA”) is a modified version of the 1985 UNCITRAL Model Law.\(^1\) It applies to international arbitration proceedings seated in Bulgaria (LICA, Article 1) and, with some adaptations, to domestic arbitrations as well (LICA, para. 3 of its Transitional and Final Provisions).

The LICA does not expressly provide for a right to a physical hearing in arbitration.

2. *If not, can a right to a physical hearing in arbitration be inferred or excluded by way of interpretation of other procedural rules of your jurisdiction’s lex arbitri (e.g., a rule providing for the arbitration hearings to be “oral”; a rule allowing the tribunal to decide the case solely on the documents submitted by the parties)?*

Short answer: No conclusive answer can be given.

As the LICA does not expressly provide for the parties’ right to a physical hearing in arbitration, it has to be examined whether such a right can be inferred or excluded on the basis of other provisions of the Bulgarian arbitration law.

The basic provision is Article 22 of the LICA,\(^2\) which proclaims that the parties in the arbitration are equal, and requires the tribunal to provide an equal opportunity to each of them to defend their rights. The due process principle formulated in this provision is an overriding mandatory principle of Bulgarian arbitration law.

The LICA contains very few provisions related to the conduct of the arbitration procedure, thus largely leaving the matter to be regulated by the parties and the tribunal.

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* Assen Alexiev is an arbitrator based in Sofia, Bulgaria.


2. LICA, Article 22: “The parties to the arbitral proceedings shall be equal. The arbitral tribunal shall give each party the opportunity to defend its rights”.

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Article 24 of the LICA\(^3\) provides that the parties may agree on the procedure to be followed in the arbitration. In the absence of such an agreement, the tribunal is free to conduct the arbitration, and the hearings in particular, as it deems appropriate. In both cases, the tribunal is obliged to provide equal opportunities to the parties to defend their rights, which is interpreted to mean that the arbitrators should not comply with an agreement of the parties that breaches the principles of equality and due process.\(^4\)

Articles 30, 31, 35 and 36 of the LICA\(^5\) contain provisions that regulate certain matters related to the hearing, but these provisions do not define what “hearing” means, do not expressly mention that the hearing must be “physical” or “oral”, and do not prescribe how the hearing should be conducted.

Article 25 of the LICA\(^6\) provides that the parties may agree on the place where the arbitration proceedings will be conducted, failing which the tribunal will fix this place, taking into account the circumstances of the case and the convenience to the parties. In view of the broad discretion enjoyed by the arbitrators to decide how to conduct the procedure, this provision may by itself be interpreted as allowing them to order a remote

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\(^3\) LICA, Article 24: “The parties may agree on the procedure to be followed by the arbitral tribunal for the carrying out of the proceedings. Failing such agreement, the arbitral tribunal conducts the arbitration in such manner as it considers appropriate. In both cases, it is bound to give each party an equal opportunity to defend its rights”.


\(^5\) LICA, Article 30: “The parties may agree that the dispute be resolved on written evidence and pleadings only without being summoned. The arbitral tribunal may order a hearing with the participation of the parties if it considers that this is necessary for the correct resolution of the dispute”. LICA, Article 31: “(1) The parties have to be informed in due time for the hearing, the site inspection and the examination of documents, goods or other property to be undertaken by the arbitral tribunal. (2) (New – SG No. 8/2017) Each party may check the case from a distance, including through the internet page of the arbitration institution. (3) (former para. 2 – amended SG No. 8/2017) Written evidence and statements as well as expert reports shall be delivered to the parties in due time”. LICA, Article 35: “The arbitral tribunal shall continue the proceedings and render an award on the evidence before it even if one of the parties or both of them fail to appear at the hearing”. LICA, Article 36: “(1) The arbitral tribunal may appoint one or more experts to prepare a report for the clarification of some issues which require special knowledge. It may order the parties to give the experts any necessary information or to provide access to documents, goods or other property, when this is necessary for the preparation of the report. (2) The arbitral tribunal on the request of either of the parties or on its own initiative may order the expert, after submission of his report, to participate in a hearing to provide clarifications. On request of the parties, other experts may also be appointed to report on the disputed issue”.

\(^6\) LICA, Article 25: “The parties are free to agree on the place for the carrying out of the arbitral proceedings. Failing such agreement, this place shall be determined by the arbitral tribunal having regard to the circumstances of the case and the convenience of the parties”.
hearing, if this is appropriate under the circumstances and is convenient to the parties, unless the parties have agreed otherwise.

Article 30 of the LICA\(^7\) provides that the parties may agree that the case will be decided solely on the basis of written evidence and written submissions without holding a hearing. Notwithstanding such an agreement, the arbitrators may schedule a hearing with the participation of the parties if they deem this necessary for the correct resolution of the dispute. This provision requires the holding of a hearing, absent a contrary agreement by the parties. The hearing must be “with the participation of the parties”, but it is open to interpretation whether “participation” requires physical presence or allows remote participation through telephone or videoconference.

Under Article 35 of the LICA\(^8\), the arbitrators have to continue the arbitration proceedings and to issue an award on the basis of the evidence even if one or both of the parties “do not appear” at the hearing. This provision is also open to interpretation as to whether the parties should appear physically or may do so remotely.

Taking into account the above provisions of the Bulgarian arbitration law, it can be concluded that the parties have a right to a hearing, but in the lack of relevant case law on the issue, no definite answer may be given as to whether this necessarily means a right to a physical hearing.

It can however be said that the LICA does not exclude the possibility for remote hearings, taking also into account the analysis in sub-paragraph b.3 below. Pursuant to Article 24 of the LICA, the parties may agree on whether to allow for remote hearings or to exclude them in general or with respect to certain procedural actions (such as examination of witnesses). If they have reached such an agreement, the arbitrators will have to follow it, ensuring that the equality and due process principles are complied with.

It is important to note that the general practice of arbitration in Bulgaria (reflected in the expectations of the parties) includes the carrying out of at least one (and usually more) physical hearings for discussion of procedural matters, taking of evidence and oral pleadings of the parties. In light of this practice, it would be an exception, rather than the rule, that the parties would contemplate the possibility for remote hearings when discussing the text of their arbitration agreement, although this would be recommendable in the present situation, caused by the COVID-19 pandemic.

If the parties have incorporated the rules of an arbitral institution in their arbitration agreement, and these rules allow remote hearings at the request of a party or at the discretion of the arbitral tribunal, the arbitrators will have to comply with such rules. By

\(^7\) LICA, Article 30: “The parties may agree that the dispute be resolved on written evidence and pleadings only without being summoned. The arbitral tribunal may order a hearing with the participation of the parties if it considers that this is necessary for the correct resolution of the dispute”.

\(^8\) LICA, Article 35: “The arbitral tribunal shall continue the proceedings and render an award on the evidence before it even if one of the parties or both of them fail to appear at the hearing”.

4
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way of an example, since 2019 the Arbitration Rules of the Bulgarian Chamber of Commerce and Industry (“BCCI”)\(^9\) provide in their Article 24(5) that:

“At a party’s request and with the consent of the other party, the Arbitral Tribunal may hold an open hearing by a videoconference upon the party’s submission of a well-grounded request and good reasons for such a request and provided that the available technical means allow such videoconference”.

With new amendments, effective as of 1st January 2021, the BCCI Rules also provide in their Article 24(6) that:

“The Arbitral Tribunal, given the circumstances, may at its discretion and upon hearing of the parties, on the basis of a well-grounded ruling, hold an open hearing entirely or partially from a distance by a videoconference by an electronic platform selected by the Arbitral Tribunal. The Arbitral Tribunal may not apply Art. 30, Paragraph 4, Sentence 2. In this event, the Arbitral Tribunal shall adopt rules regarding questioning and interrogation from a distance, which rules shall guarantee the establishment of the interrogated person’s identity and exclude the usage of auxiliary materials or the interference of a third party during the interrogation thus far unrevealed before the Arbitral Tribunal. The same rules shall apply in the event of hearing of an Expert from a distance”.

The newly-enacted Article 25(2) of the BCCI Rules provides that:

“If upon receiving of the Ruling of the Arbitral Tribunal under Art. 24, Paragraph 6, a party to the arbitration case notifies the Arbitral Tribunal, that this party does not have the technical facilities for online participation, this party shall be assisted by the AC at the BCCI for such participation. In the event if such party nevertheless refuses to participate at a hearing by videoconference for no good reason, this refusal of the party shall not serve as grounds for not holding of the arbitration hearing in the manner provided for in Art. 24, Paragraph 6.”

As can be seen, the BCCI Rules allow remote hearings not only at the request of a party, but also at the discretion of the arbitral tribunal. The fact that the BCCI Arbitration Rules allow remote hearings suggests that they do not per se breach the principles of equality and due process when this possibility is provided in the procedural rules incorporated in the arbitration agreement between the parties.

To confirm whether remote hearings are indeed in compliance with the principles of equality and due process even if the possibility for them has not been included in the

arbitration agreement, it has to be examined whether these principles establish any threshold requirements for the arbitration hearings, including that the hearings must be physical. In this regard, it is necessary and useful to make reference to the regulation of hearings in litigation, set out in the Bulgarian general rules of civil procedure discussed in the following paragraph.

b. Parties’ Right to a Physical Hearing in Litigation and its Potential Application to Arbitration

3. In case the lex arbitri does not offer a conclusive answer to the question whether a right to a physical hearing in arbitration exists or can be excluded, does your jurisdiction, either expressly or by inference, provide for a right to a physical hearing in the general rules of civil procedure?

Short answer: Yes.

The rules of civil procedure in Bulgarian courts are established in the Civil Procedure Code (the “CPC”), adopted in 2008. Article 11 of the CPC, entitled “Publicity and immediacy”, provides that cases are being heard orally in open court hearings, unless the law requires a closed hearing. This provision of the CPC is interpreted as establishing the principles of orality and immediacy of court proceedings. The principle of orality requires that the procedural actions in the litigation take place orally, and the principle of immediacy requires the judge issuing the court decision to have personally heard the final pleadings of the parties (Article 235(1) of the CPC). Further, Article 135(1) of the CPC provides that the hearings are in principle being held at the court’s premises, and Article 140(3) of the CPC provides that the court schedules an open hearing for which it summons the parties. The interpretation of these provisions leads to the conclusion that in litigation the parties have a right to a physical hearing in the courtroom.

With the latest amendments to the CPC, adopted by the Bulgarian Parliament in November 2020, the possibility to hold remote hearings was introduced. Paragraph 1 of the Additional Provisions to the CPC provides that “videoconference” means a communication link through a technical device for the simultaneous transmission and

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10 CPC, Article 235(1): “The court decision is issued by the judicial panel that has participated in the hearing in which the examination of the case was completed” (free translation by the Author).
11 CPC, Article 135(1): “The hearings on the cases are carried out in the premises of the court. The carrying out of hearings outside of the premises of the court is permissible if this will avoid greater expenses” (free translation by the Author).
12 CPC, Article 140(3): “The court schedules an open hearing on the case, for which it summons the parties to whom it serves a copy of the ruling under subsection 1. The court may also notify to the parties its draft report on the case and guide them towards mediation or other method for voluntary resolution of the dispute” (free translation by the Author).
reception of image and sound between participants in the proceeding, located at different places, which allows the recording and archival of the information on an electronic carrier. The new Article 135a of the CPC\(^\text{13}\) provides that each party may request to participate in a hearing through videoconference when it is not able to appear “immediately” before the court. Under Article 156a of the CPC\(^\text{14}\), witnesses of fact, expert witnesses and parties’ explanations may be heard through videoconference upon a reasoned request by a party, and are allowed if the witness or the party is not able to appear “immediately” before the court and is located outside of the court district of the district court at the location of the court hearing the case. It is notable that the participation of these persons in a hearing through videoconference is only at the request of a party, apart from expert witnesses, who may be heard by videoconference at the initiative of the court as well.

Videoconferences are allowed and scheduled by the court after it has checked the technical possibility for their carrying out and has satisfied itself that there is a need for videoconference. The respective party, witness of fact and expert witness participate to

\(^{13}\) CPC, Article 135a: “(1) Each party may request to participate in a court hearing through videoconference, when it is not able to appear immediately before the court. (2) For the videoconference the party attends a specially equipped room in a district court specified according to art.156a, subsections 2-4, a prison or arrest premises. (3) The court informs the parties for the conditions for carrying out of the videoconference” (free translation by the Author).

\(^{14}\) CPC, Art.156a: “(1) The gathering of evidence through videoconference may take place upon the request of a party, and the examination of expert witnesses – also ex officio by the court. (2) The examination of a factual witness and the explanations by a party through videoconference are admissible when they are not able to appear immediately before the court and are located outside of the court district of the district court whose seat coincides with the seat of the court hearing the case. (3) The examination of an expert witness through videoconference is admissible when due to professional engagements or other objective circumstances the expert witness is not able to appear before the court hearing the case and is located outside of the court district of the district court whose seat coincides with the seat of the court hearing the case. (4) The court determines the date and hour for carrying out of the court hearing in which videoconference will be used after checking the possibility for its carrying out with the closest district court to the location of the party, the factual witness or the expert witness, respectively in the prison or the arrest premises, where the person is located. (5) The factual witnesses, parties and expert witnesses whose statements will be heard through videoconference, are summoned for the date and hour of the court hearing, and they are notified of the court where they have to appear, respectively the prison or arrest premises, where the videoconference will be used. (6) The identity of the person who will participate through videoconference, is checked by the official under art.150(3) who attends the videoconference. (7) The translator or interpreter attend the court room of the court in which the hearing takes place, unless the specific circumstances require their attendance with the person who is being heard” (free translation by the Author).
the hearing by attending a special videoconference room at the premises of the district court closest to its location. Notably, Article 156a(6) of the CPC requires the identity of each person participating to a hearing through videoconference to be verified by a court official attending the videoconference, and Article 143(4) of the CPC\textsuperscript{15} provides that when a hearing is held through videoconference, the court controls the compliance with the technical requirements for the carrying out of procedural actions in electronic form, that the communication link allows the simultaneous transmission and reception of image and sound, that the procedural actions are being understood by all participants to the hearing located at different places, and that a recording of the hearing is being made. In addition, Article 150(6) of the CPC\textsuperscript{16} requires that the parties have to be notified in advance that a recording of the remote hearing will be made and will be appended to the case file, and Article 151(6) of the CPC\textsuperscript{17} requires such recording to be kept until the expiration of the time limit for preservation of the case file in the archives of the court.

The introduction in the CPC of provisions allowing the carrying out of remote hearings in Bulgarian state courts shows that the lawmakers regard this option as not per se breaching the principles of equality of the parties and due process, as long as remote hearings are being carried out according to the above requirements. It can also be said that remote hearings would not breach the principle of orality, as long as all procedural actions, statements and arguments are made orally during the remote hearing, and the principle of immediacy, as long as the videoconference link used for the hearing allows for a simultaneous exchange of arguments or evidence, which the newly-adopted provisions of the CPC for hearings through videoconference are directed to ensure. The new provisions cannot be interpreted as excluding the existence of a right to a physical hearing in litigation, as the participation of a party in a court hearing through videoconference is only upon its own request, and it always has the opportunity to physically appear before the court hearing the case. However, it can be said that these new provisions limit to a certain extent the right to a physical hearing, because a party may be summoned to give explanations to the court through videoconference if it is not able to physically appear before the court for reasons that do not make the participation in a videoconference impossible as well, and factual and expert witnesses may be examined by videoconference at the request of the other party to the case.

\textsuperscript{15} CPC, Article 143(4): “When a hearing is being held through videoconference, the court monitors: (1) for the compliance with the technical requirements for the carrying out of procedural actions in electronic form and the ways for their carrying out, provided in chapter 18(a) of the Law on the Judiciary; (2) that the used communication link allows the simultaneous transmission and reception of image and sound; (3) that the procedural actions are perceived by all participants in the hearing, located in different places; (4) for the recording of the videoconference” (free translation by the Author).

\textsuperscript{16} CPC, Article 150(6): “After notifying the participants in it, a video recording is made for the carried-out videoconference. The video recording is included in the case file” (free translation by the Author).

\textsuperscript{17} CPC, Article 151(6): “The recording of the videoconference is kept until the expiration of the time limit for preservation of the case file” (free translation by the Author).
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In the Author’s view, these recent developments support a conclusion that the carrying out of remote hearings in arbitrations seated in Bulgaria would not be contrary to the principles of equality and due process, if each party agrees to participate remotely in the hearing and each participant in the hearing has access to technical means for carrying out of the videoconference, which ensure the simultaneous transmission and reception of image and sound, and understands what procedural actions are being made by all participants in the hearing.

4. If yes, does such right extend to arbitration? To what extent (e.g., does it also bar witness testimony from being given remotely)?

Short answer: No.

It is well established in the Bulgarian legal doctrine, arbitration practice and case law that the CPC is not a subsidiary source of law that is mandatory for arbitrations seated in Bulgaria. However, Bulgarian arbitrators often apply certain principles and solutions of the CPC to arbitration, usually after discussion with the parties or after informing them about this (see, e.g., Article 3(3) of the BCCI Arbitration Rules).

c. Mandatory v. Default Rule and Inherent Powers of the Arbitral Tribunal

5. To the extent that a right to a physical hearing in arbitration does exist in your jurisdiction, could the parties waive such right (including by adopting institutional rules that allow remote hearings) and can they do so in advance of the dispute?

Short answer: Yes.

Bulgarian arbitration law provides that the parties may agree on the procedure to be followed in the arbitration (see Article 24 of the LICA cited above). Their agreement will be valid as long as it does not breach the principles of equality and due process. In view of the analysis offered in the previous paragraphs above, the parties may agree to have remote hearings in their arbitration. They may agree on this either expressly in their arbitration agreement, or by referring to the rules of an arbitral institution that allow remote hearings. The LICA allows the parties to agree on the procedure both before the dispute and after its commencement and the appointment of the arbitrators.

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18 BCCI Rules, Article 3(3): “Regarding issues not governed by the Law on International Commercial Arbitration, by these Rules or by an agreement of the parties, the arbitrators shall proceed in accordance with their reasonable discretion, guided by the nature of the arbitration and the issue at dispute, ensuring in any event equal opportunity for defense to each party”.

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6. *To the extent that a right to a physical hearing in arbitration is not mandatory or does not exist in your jurisdiction, could the arbitral tribunal decide to hold a remote hearing even if the parties had agreed to a physical hearing? What would be the legal consequences of such an order?*

**Short answer:** No.

The arbitral tribunal has to comply with the agreement of the parties on the procedure to be followed in the arbitration, unless their agreement breaches the principles of equality and due process. Therefore, an order by the arbitrators that is contrary to the agreement of the parties, and against which one or more of them have timely protested, may serve as ground for the setting aside of the arbitral award under Article 47(1)(6) of the LICA.¹⁹

At the same time, it can be the case that the parties’ agreement to hold a physical hearing cannot be performed due to the fact that the physical assembly in the hearing room of all participants would be in breach of the then applicable mandatory epidemic containment measures ordered by the competent health authorities. It is notable that such a breach may lead to criminal liability under Article 355 of the Bulgarian Penal Code. In such cases, it may be argued that the arbitrators, also taking into account their obligations to ensure that the dispute is resolved quickly and economically (see, e.g., Article 20(1) of the BCCI Arbitration Rules),²⁰ may order a remote hearing. There is however no information whether such scenario has occurred in practice.

**d. Setting Aside Proceedings**

7. *If a party fails to raise a breach of the abovementioned right to a physical hearing during the arbitral proceeding, does that failure prevent that party from using it as a ground for challenging the award in your jurisdiction?*

**Short answer:** Yes.

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¹⁹ LICA, Article 47(1): “The award may be set aside by the Supreme Court of Cassation if the party requesting the setting aside proves one of the following grounds: [...] (6) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties unless this agreement contravenes a mandatory provision of this law, or – failing such an agreement – when the provisions of this law were not complied with».

²⁰ BCCI Rules, Article 20(1): “The Arbitral Tribunal shall supervise the preparation for the hearing of the case and shall take measures for clarification of the circumstances concerning the case and its supplementation with evidence in order to ensure its efficient, inexpensive and correct resolution. For this purpose, the case may be heard at a preliminary session without summoning the parties. However, the Arbitral Tribunal shall inform the parties about the measures adopted and the terms for their realization”.
Article 5 of the LICA\textsuperscript{21} provides that a party that is aware of a breach of a non-mandatory provision of the LICA or of a requirement of the arbitration agreement and continues to participate in the proceedings without timely raising an objection, may not refer to this breach afterwards. In practice this means that the party may not refer to this breach as a ground for the setting aside of the award.

8. \textit{To the extent that your jurisdiction recognizes a right to a physical hearing, does a breach thereof constitute \textit{per se} a ground for setting aside (e.g., does it constitute \textit{per se} a violation of public policy or of the due process principle) or must the party prove that such breach has translated into a material violation of the public policy/due process principle, or has otherwise caused actual prejudice?}

\textbf{Short answer:} No.

The list of grounds for setting aside arbitral awards is exhaustive and each of them has to be proven by the party requesting the setting aside of the award. It is notable that the contravention with public policy was abolished in 2017 as ground for the setting aside of Bulgarian arbitral awards.

A party which bases its request for setting aside the award on a claim that it had a right to a physical hearing which was breached by the arbitrators, may refer to the ground for setting aside under Article 47(1)(6) of the LICA,\textsuperscript{22} i.e., that the arbitral procedure was not in accordance with the agreement of the parties, unless this agreement contravenes a mandatory provision of the LICA, or – if there is no agreement between

\textsuperscript{21} LICA, Article 5: “A party which knows that any provision of this Law from which the parties may derogate or that any requirement under the arbitration agreement has not been complied with, and yet continues to participate in the arbitration proceeding without stating its objection immediately or within the specified time limit, cannot rely on the non-compliance”.

\textsuperscript{22} LICA, Article 47(1): “The award may be set aside by the Supreme Court of Cassation if the party requesting the setting aside proves one of the following grounds: (1) the party was under some incapacity at the time of the conclusion of the arbitration agreement; (2) there is no arbitration agreement or it is not valid under the law chosen by the parties, or – failing such a choice – under this law; (3) (Abrogated – SG No. 8/2017) (4) the party making the application was not given notice of the appointment of an arbitrator or of the arbitral proceedings or was unable to participate in the proceedings due to causes beyond its control; (5) the award resolves a dispute not contemplated by the arbitration agreement or contains decisions on issues beyond the subject matter of the dispute; (6) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties unless this agreement contravenes a mandatory provision of this law, or – failing such an agreement – when the provisions of this law were not complied with”.
the parties – that the provisions of the LICA were not complied with. Therefore, the party will have to prove that there is an arbitration agreement between the parties providing that only physical hearings may be held in the arbitration, or argue that the LICA contains a requirement to the same effect. However, as discussed in paragraph a above, no conclusive answer may be given at the moment whether the latter is so. On the other hand, it is also worth noting that the party will not be required to prove that the breach has caused actual prejudice.

9. In case a right to a physical hearing in arbitration is not provided for in your jurisdiction, could the failure to conduct a physical hearing by the arbitral tribunal nevertheless constitute a basis for setting aside the award?

Short answer: Yes.

Please see sub-paragraph d.8 above.

As discussed above under sub-paragraph c.6, in case the parties have agreed to have only physical hearings in the arbitration, the failure to conduct a physical hearing by the arbitral tribunal may also constitute a basis for setting aside the award.

e. Recognition/Enforcement

10. Would a breach of a right to a physical hearing (irrespective of whether the breach is assessed pursuant to the law of your jurisdiction or otherwise) constitute in your jurisdiction a ground for refusing recognition and enforcement of a foreign award under Articles V(1)(b) (right of the party to present its case), V(1)(d) (irregularity in the procedure) and/or V(2)(b) (violation of public policy of the country where enforcement is sought) of the New York Convention?

Short answer: It depends.

According to Article 51(2) of the LICA, the international agreements entered into by Bulgaria are applied for the recognition and enforcement of foreign arbitral awards. Also, pursuant to Article 51(3) of the LICA, the claims for recognition and enforcement of foreign arbitral awards have to be submitted before the Sofia city court, and the court has to apply mutatis mutandis the provisions of Articles 118-122 of the Bulgarian Private International Law Code (the “PILC”), which regulate the recognition and enforcement of foreign court decisions. The case law has established that this reference to the articles of the PILC also includes a reference to Article117. Subsection (2) of Article 117 PILC provides that the foreign court decision will be recognized and enforced in Bulgaria, if

23 LICA, Article 51(2): “The international treaties entered into by the Republic of Bulgaria shall apply to the recognition and enforcement of foreign arbitral awards”.
the respondent was served a copy of the claim, the parties were duly summoned, and no basic principles of Bulgarian law related to their defense have been breached.

The party that resists the recognition and enforcement of a foreign arbitral award has to bring forward all grounds for refusal of the recognition and enforcement under Article V(1) of the New York Convention that it is aware of, and the court will examine at its own motion the existence of the grounds under Article V(2) of the New York Convention and under Article 117 of the PILC.

If a party alleges the existence of the ground under Article V(1)(b) of the New York Convention, it will have to prove that it was unable to present its case because it was denied a physical hearing. In such case the court will examine in light of the *lex arbitri* whether the party has suffered an actual prejudice.

If the party alleges the existence of the ground under Article V(1)(d) of the New York Convention, it will have to prove either that the parties had a valid agreement to hold only physical hearings in the arbitration, and this agreement was breached by the arbitrators, or that the party had a right to a physical hearing under the law of the seat, and this right was breached. In such cases the Sofia city court will apply the law of the seat to the issues of the validity of the parties’ agreement to have only physical hearings in the arbitration, and, respectively, of the existence of the party’s right to a physical hearing.

When the court examines the existence of the ground for refusal of recognition and enforcement under Article V(2)(b) of the New York Convention, it will also apply Article 117(2) of the PILC. If the court decides that Bulgarian law establishes a right to a physical hearing and this right is part of the basic principles of Bulgarian law related to the party’s defense (on which issue no conclusive answer can be given at the moment), this may lead the court to deny the recognition and enforcement of the award.

f. **COVID-Specific Initiatives**

11. *To the extent not otherwise addressed above, how has your jurisdiction addressed the challenges presented to holding physical hearings during the COVID pandemic? Are there any interesting initiatives or innovations in the legal order that stand out?*

**Short answer:** Yes.

As an urgent measure during the state of emergency caused by the COVID-19 pandemic, in March 2020 the Bulgarian Parliament adopted a special Law for the enactment of measures and actions during the state of emergency declared with a decision of the National Assembly of 13 March 2020, and for overcoming the consequences. This Law was subsequently amended to also have effect during the extraordinary epidemical situation in Bulgaria, which is still in effect. Under Article
6a(2) of this Law, during the state of emergency and of the extraordinary epidemiical situation and for two months after its termination, the open court hearings may be carried out from distance, by ensuring the direct and virtual participation of the parties and of the participants in the proceeding. The court has to prepare and immediately publish the minutes for such hearing. The provisions of Article 6a(2) of this Law contain different terminology and more liberal requirements for virtual hearings than the newly-introduced provisions of the CPC, and it remains to be seen how the courts will apply the two regimes while they are both in force.

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24 Law for the enactment of measures and actions during the state of emergency declared with a decision of the National Assembly of 13 March 2020, and for overcoming of the consequences, Article 6a(2): “During the state of emergency, respectively the extraordinary epidemiological situation, and for two months following its repeal, the open court hearings, including the hearings of the Commission for protection of the competition and of the Commission for protection against discrimination, may be held from a distance, by ensuring the direct and virtual participation of the parties and the participants in the litigation, respectively the procedure. For the carried-out hearings, minutes are prepared and are published immediately, and the record from the hearing is preserved until the expiration of the time limit for correction and supplementation of the minutes, unless a procedural law provides otherwise. The court, respectively the Commission for protection of the competition and of the Commission for protection against discrimination notifies the parties when the hearing will be held from a distance”.

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