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INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION

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PROJECTS

Does a Right to a
Physical Hearing Exist
in International
Arbitration?

SLOVAK REPUBLIC

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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 Act No. 244/2002 Coll. on arbitration proceedings (“Slovak Arbitration Act”) does not expressly provide for a right to a physical hearing. The Slovak Arbitration Act is based on the UNCITRAL Model Law and it governs both domestic and international arbitration proceedings seated in the Slovak Republic.

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: It can be excluded.

The Slovak Arbitration Act leaves parties free to define the format of arbitration proceedings, including whether an oral hearing will be required. Such agreement of the parties is binding on an arbitral tribunal.¹ Within the broad scope of discretion provided to them by the Slovak Arbitration Act, the parties can also agree whether an oral hearing can take place remotely or will require physical presence of the parties.

In the absence of parties' agreement, the decision on the format of arbitration proceedings (including whether to hold an oral hearing or to conduct the proceedings in

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¹ According to Section 26(1) and (2) of the Slovak Arbitration Act, unless the parties have agreed on the procedure for the arbitration proceedings, the arbitral tribunal shall decide whether to hold oral hearings or conduct the proceedings in writing only. The arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party, unless otherwise agreed by the parties. The Slovak Arbitration Act expressly provides that the parties are free to agree on the rules to be followed by the arbitral tribunal in conducting the proceedings (unless the Slovak Arbitration Act states otherwise).

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writing only) is at the arbitral tribunal's discretion. The arbitral tribunal shall prepare and conduct the arbitration in a manner it considers appropriate, preserving equality of the parties and the right of each party to act before the arbitral tribunal.² This means that arbitral proceedings may be held without hearings at all and that the tribunal can rule solely on the basis of documents. However, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party, unless otherwise agreed by the parties.³

In addition, unless parties agree otherwise, an arbitral tribunal may carry out actions relevant for arbitration proceedings (e.g., examination of witnesses) "at any place it considers appropriate".⁴

According to Slovak legal theory, conducting hearings through videoconferencing is *per se* possible.⁵ An arbitral tribunal should consider, in particular, legal principles of efficiency, speed and economy of arbitration proceedings.⁶ This may lead to the arbitral tribunal's conclusion that a remote hearing is the most appropriate format, having regard to the particular circumstances of a case.

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*

² According to Section 26(2) of the Slovak Arbitration Act, the parties are free to agree on the rules to be followed by the arbitral tribunal in conducting the proceedings unless the Slovak Arbitration Act states otherwise. Failing such agreement, the arbitrator shall prepare and conduct the arbitration in such manner as he considers appropriate, always in a manner that preserves equality of the parties and the right of each party to act before the arbitral tribunal. Unless otherwise agreed by the parties, arbitral proceedings shall be closed to the public.

³ Section 26(1) of the Slovak Arbitration Act provides that, unless the parties have agreed on the procedure of arbitration proceedings, the arbitral tribunal shall decide whether to hold oral hearings or conduct the proceedings in writing only. The arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party, unless otherwise agreed by the parties.

⁴ According to Section 23(2) of the Slovak Arbitration Act, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

⁵ Juraj GYÁRFÁS, "§ 23" in Juraj GYÁRFÁS, Marek ŠTEVČEK et al., *Zákon o rozhodcovskom konaní* (C.H. Beck 2016) p. 367.

⁶ These principles are enshrined in general rules on civil procedure but also extend to arbitration proceedings.

jurisdiction, either expressly or by inference, provide for a right to a physical hearing in the general rules of civil procedure?

Short answer: No.

As stated in the previous answer, under Slovak *lex arbitri* there is no right to a physical hearing where parties have not specifically agreed on it in the arbitration agreement.

This stands in contrast with Slovak rules on civil procedure⁷ that provide that a court shall hold an oral and public hearing⁸ to give parties the opportunity to present their lawsuits and statements orally and directly.⁹ A hearing shall take place in a courtroom at the seat of the court hearing the matter (“Relevant Court”).¹⁰ In the interpretation of this provision, legal theory expressly refers to the “court building”.¹¹ This is, furthermore, supported by the Decree on Administration and Office Order¹² which provides that “in the court building, a hearing [...] can be held only in a courtroom”¹³ and sets out requirements for courtroom facilities.¹⁴

Under specific circumstances, a hearing can also be conducted at place other than a courtroom at the Relevant Court.¹⁵ Such circumstances arise, specially, “if a number of persons summoned for a hearing that are expected to appear before court exceeds the

⁷ General rules on civil procedure for dispute proceedings are codified in the Act No. 160/2015 Coll. on civil dispute procedure (“Act on Civil Dispute Procedure”).

⁸ According to Section 12 of the Act on Civil Dispute Procedure, the oral hearing is generally held in public unless the law provides otherwise. According to Section 14 of the Act on Civil Dispute Procedure Act, the hearing is public unless the law provides otherwise; the public can be excluded from the proceedings only for serious reasons provided by law. According to Section 177(1) of the Act on Civil Dispute Procedure, the court shall order a hearing to hear the merits.

⁹ Robert ŠORL, “§ 177” in Marek ŠTEVČEK, Svetlana FICOVÁ, Jana BARICOVÁ, Soňa MESIARKINOVÁ, Jana BAJÁNKOVÁ, Marek TOMAŠOVIČ et al., *Civilný sporový poriadok* (C.H. Beck 2016) p. 656.

¹⁰ According to Section 173(1) of the Act on Civil Dispute Procedure, unless it is necessary to conduct a hearing at a different suitable place, a hearing shall be conducted at the courtroom at the seat of court.

¹¹ Robert ŠORL, “§ 173” in M. ŠTEVČEK, S. FICOVÁ, J. BARICOVÁ, S. MESIARKINOVÁ, J. BAJÁNKOVÁ, M. TOMAŠOVIČ et al., *Civilný sporový poriadok*, fn. 9 above, p. 644.

¹² Decree of the Ministry of Justice of the Slovak Republic No. 543/2005 Coll. on Administration and Office Order for District Courts, Regional Courts, the Special Court and Army Courts (“Decree on Administration and Office Order”).

¹³ Decree on Administration and Office Order, Section 35.

¹⁴ *Ibid.* Annex 7.

¹⁵ According to Section 173(1) of the Act on Civil Dispute Procedure, unless it is necessary to conduct a hearing at a different suitable place, a hearing shall be conducted at the courtroom at the seat of court.

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courtroom capacity.”¹⁶ Nevertheless, even in such cases a hearing shall take place in a room at another court or public authority or at private venue.¹⁷

However, a party’s right to a physical hearing in civil proceedings is not an absolute right. There are a few exceptions allowing courts to decide on the matter without holding a hearing at all. These exceptions are as follows: (i) the matter requires only simple legal assessment, factual assertions relied upon are not disputed by the parties and the value of claims (without ancillary claims, e.g., interest) do not exceed EUR 2,000; (ii) parties agree that a case will be decided without hearing; or (iii) law stipulates it is not required to hold a hearing¹⁸ (e.g., in case of rendering payment order or default judgment resulting from respondent’s default).¹⁹

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.

The Act on Civil Dispute Procedure may only apply to arbitration proceedings (i) where an issue is not regulated in the Slovak Arbitration Act, and (ii) only insofar as the solution offered under the general rules of court procedure may be applied in light of the nature of the issue in question.²⁰ The right to a physical hearing does not fall within this scope for two reasons.

Firstly, general procedural rules link the right to a physical hearing essentially to the court buildings. Courtrooms are reserved for court hearings and it would not be possible to conduct arbitration hearings in there.

Secondly, the legislator did not intend to regulate all aspects of the organization and activities of arbitration tribunals in order to protect parties’ contractual freedom.²¹ The legislator limited the application of general rules of civil procedure so that arbitral institutions and tribunals can autonomously modify the procedure.²² Therefore, the principle of subsidiarity laid down in the Slovak Arbitration Act shall be interpreted as

¹⁶ R. ŠORL, “§ 173” in M. ŠTEVČEK, S. FICOVÁ, J. BARICOVÁ, S. MESIARKINOVÁ, J. BAJÁNKOVÁ, M. TOMAŠOVIČ et al., *Civilný sporový poriadok*, fn. 9 above, p. 645.

¹⁷ *Ibid.*

¹⁸ Section 177(2) of the Act on Civil Dispute Procedure.

¹⁹ Sections 265(1) and 273 of the Act on Civil Dispute Procedure.

²⁰ According to Section 51(3) of the Slovak Arbitration Act, if an issue relating to proceedings cannot be resolved under the Slovak Arbitration Act, the provisions of the general court proceedings regulation shall apply if appropriate under the circumstances.

²¹ Explanatory memorandum to the Slovak Arbitration Act, ad Section 51.

²² Explanatory memorandum to the Act No. 336/2014 Coll., ad point 82 (Section 51(3)).

a guideline rather than as restricting the parties' and tribunals' discretionary power under Section 26 of the Slovak Arbitration Act.²³

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: N/A

The Slovak Republic does not provide for a right to a physical hearing in arbitration.²⁴

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.

An arbitral tribunal is bound to carry out arbitral proceeding in the manner agreed by the parties.²⁵ Depending on the specific circumstances of a case, failure to conduct a physical hearing despite the parties' agreement may lead to various legal consequences:

²³ Juraj GYÁRFÁS, "§ 51" in J. GYÁRFÁS, M. ŠTEVČEK et al., *Zákon o rozhodcovskom konaní*, fn. 5 above, p. 664. See also sub-paragraph a.2 above.

²⁴ See sub-paragraph a.2 above.

²⁵ According to Section 26(2) of the Slovak Arbitration Act, the parties are free to agree on the rules to be followed by the arbitral tribunal in conducting the proceedings unless the Slovak Arbitration Act states otherwise. Failing such agreement, the arbitrator shall prepare and conduct the arbitration in such manner as he considers appropriate, always in a manner that preserves equality of the parties and the right of each party to act before the arbitral tribunal. Unless otherwise agreed by the parties, arbitral proceedings shall be closed to the public.

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(i) setting aside of the arbitral award;²⁶ (ii) non-recognition/non-enforcement of the arbitral award;²⁷ or (iii) no legal consequences at all.

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.

The Slovak Republic does not provide for a right to a physical hearing in arbitration.²⁸ However, if the parties had expressly agreed to hold physical hearings, the arbitral tribunal is bound by the parties' agreement.²⁹ Where the parties had specifically agreed that the hearings shall take place exclusively physically and the arbitral tribunal nevertheless decides, in breach of their agreement, to hold the hearing remotely, a party may raise a challenge, but must do so without undue delay in accordance with Section

²⁶ According to Section 40(1)(a)(4) of the Slovak Arbitration Act, a domestic arbitral award may be set aside by a relevant court only upon a request by a party against another party if the party to the arbitration proves that the arbitral procedure was not in accordance with the agreement of the parties or, in the absence of such agreement, was not in accordance with provisions of the Slovak Arbitration Act, in case this could have had an impact on the decision on the merits. See sub-paragraph d.9 below.

²⁷ According to Section 50(1)(d) of the Slovak Arbitration Act, the court may refuse recognition and enforcement of a foreign arbitral award at the request of the party against whom it is invoked only if that party proves to the competent court where recognition or enforcement or execution is sought that the arbitral procedure was not in accordance with the agreement of the parties or, in the absence of such agreement, was not in accordance with the law of the country where the arbitration took place, provided that it could have had an impact on the decision on the merits of the case. See sub-paragraph e.10 below.

²⁸ See sub-paragraph a.2 above.

²⁹ According to Section 26(1) of the Slovak Arbitration Act, unless the parties have agreed on the procedure of arbitration proceedings, the arbitral tribunal shall decide whether to hold oral hearings or conduct the proceedings in writing only. The arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party, unless otherwise agreed by the parties.

17a³⁰ of the Slovak Arbitration Act.³¹ In any event, such irregularity can only lead to the setting aside of the award if it is established that the decision to hold the hearing(s) remotely could have affected the outcome and an action to set aside an arbitral award was filed within 60 days from the date of delivery of contested arbitral award.³²

If parties did not agree on a remote hearing, the arbitral tribunal shall prepare and conduct the arbitration in such manner as it considers appropriate.³³ Provided that equality of the parties and the right of each party to be heard are preserved, not conducting a physical hearing does not constitute a ground for setting aside under Section 40(1) of the Slovak Arbitration Act. However, if a party considers that not conducting a physical hearing is prejudicial to that party's rights (e.g., under Section 40(1)(a)(2) of the Slovak Arbitration Act),³⁴ it must timely raise an objection during the arbitration proceedings under Section 17a of the Slovak Arbitration Act in order to be able to rely on it as a ground for setting aside,³⁵ as well as file an action for setting aside within 60 days from the date of delivery of the contested arbitral award.

8. *To the extent that your jurisdiction recognizes a right to a physical hearing, does a breach thereof constitute per se a ground for setting aside (e.g., does it constitute 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*

³⁰ According to Section 17a of the Slovak Arbitration Act, a breach of any provision of the Slovak Arbitration Act which may be derogated from by agreement, or a breach of any arbitration agreement of the parties shall be taken into consideration only where the affected party raised an objection in the statutorily given or agreed time period: in the absence of any such time period, such breach shall only be considered without undue delay from the time when the affected party became aware of such breach.

³¹ Procedural irregularities can be a ground for setting aside of award only under the condition that the affected party raised an objection in accordance with Section 17a of the Slovak Arbitration Act. Otherwise, the affected party cannot rely on such procedural irregularities in an action for setting aside of the award under Section 40(4) of the Slovak Arbitration. According to Section 40(4) of the Slovak Arbitration Act, the court shall not take into account reasons to set aside an arbitral award under paragraph 1(a), if the affected party has not raised them in the arbitration within the prescribed time period or otherwise without undue delay.

³² See sub-paragraph d.9 below.

³³ Section 26(2) of the Slovak Arbitration Act.

³⁴ According to Section 40(1)(a)(2) of the Slovak Arbitration Act, a domestic arbitral award may be set aside by a relevant court only upon a request by a party against another party if the party to the arbitration proves that it was unable to participate in the arbitration proceedings.

³⁵ Otherwise, the affected party cannot rely on such violation in an action for setting aside of the award under Section 40(4) of the Slovak Arbitration. According to Section 40(4) of the Slovak Arbitration Act, the court shall not take into account reasons to set aside an arbitral award under paragraph 1(a), if the affected party has not raised them in the arbitration within the prescribed time period or otherwise without undue delay.

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of the public policy/due process principle, or has otherwise caused actual prejudice?

Short answer: N/A

The Slovak Republic does not provide for a right to a physical hearing in arbitration.³⁶

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: It depends on the particular circumstances of a case.

Failure to conduct a physical hearing does not constitute *per se* a ground for setting aside. However, if specific pre-conditions are met, an arbitral award can be potentially set aside due to such failure on the grounds that: (i) a party was unable to present its case;³⁷ (ii) the arbitral tribunal did not carry out arbitration proceedings in the manner agreed by the parties (i.e., where the parties had agreed to hold a physical hearing);³⁸ or (iii) the arbitral award is contrary to the public policy of the Slovak Republic.³⁹

Ad (i). Party's ability to participate in arbitration proceedings shall be interpreted as meaning that a party must be provided with an opportunity to present its claims, evidence and defences. Failure to provide that opportunity infringes a party's right to due process and right to be heard.⁴⁰ This ground for setting aside applies only to cases where: (i) a

³⁶ See sub-paragraph a.2 above.

³⁷ According to Section 40(1)(a)(2) of the Slovak Arbitration Act, a domestic arbitral award may be set aside by a relevant court only upon a request by a party against another party if the party to the arbitration proves that it was unable to participate in the arbitration proceedings.

³⁸ According to Section 40(1)(a)(4) of the Slovak Arbitration Act, a domestic arbitral award may be set aside by a relevant court only upon a request by a party against another party if the party to the arbitration proves that the arbitral procedure was not in accordance with the agreement of the parties or, in the absence of such agreement, was not in accordance with provisions of the Slovak Arbitration Act, in case this could have had an impact on the decision on the merits.

³⁹ According to the Section 40(1)(b) of the Slovak Arbitration Act, a domestic arbitral award may be set aside by a relevant court only upon a request by a party against another party if the court finds that there exist grounds for which recognition and enforcement of a foreign award would be rejected even without motion of a party under Section 50(2) of the Slovak Arbitration Act.

⁴⁰ Juraj GYÁRFÁS, "§ 40" in J. GYÁRFÁS, M. ŠTEVČEK et al., *Zákon o rozhodcovskom konaní*, fn. 5 above, p. 542.

party is, in fact, completely excluded from participation in arbitration proceedings;⁴¹ (ii) a party raised a challenge without undue delay (or within agreed period if applicable) in accordance with Section 17a of the Slovak Arbitration Act;⁴² and (iii) an action to set aside an arbitral award was filed within 60 days from the date of delivery of contested arbitral award.⁴³

Considering that remote hearings are not *per se* incompatible with the due process principle, the courts should focus on the particular circumstances of the case. The arbitral tribunal shall preserve equality of the parties and the right of each party to act before the arbitral tribunal. Thus, the arbitral tribunal shall ensure that conducting remote hearing shall not constitute a breach of the due process principle.

For example, if a party does not have access to the Internet, remote participation does not ensure the party's rights mentioned above and physical presence is, therefore, necessary. Failure to conduct a physical hearing may thus result in setting aside of an arbitral award.

Ad (ii). An arbitral tribunal is bound to carry out arbitral proceedings in a manner agreed by the parties.⁴⁴ Arbitration rules governing the arbitration proceedings shall be considered also a part of the parties' agreement.⁴⁵ In the absence of parties' agreement, an arbitral tribunal shall conduct a procedure in a standard fashion anticipated by Slovak Arbitration Act.⁴⁶ This ground for setting aside applies only to cases where: (i) the outcome of the case could have been different had a breach of parties' agreement or a

⁴¹ *Ibid.* p. 543.

⁴² *Ibid.* p. 542. Procedural irregularities can be a ground for setting aside of award only under the condition that the affected party raised an objection in accordance with Section 17a of the Slovak Arbitration Act. Otherwise, the affected party cannot rely on such procedural irregularities in an action for setting aside of the award under Section 40(4) of the Slovak Arbitration Act. According to Section 40(4) of the Slovak Arbitration Act, the court shall not take into account reasons to set aside an arbitral award under paragraph 1(a), if the affected party has not raised them in the arbitration within the prescribed time period or otherwise without undue delay.

⁴³ According to Section 41 of the Slovak Arbitration Act, an application for setting aside may be made within 60 days from the date on which the party making that application has received the award. If a party has requested that an award be corrected under Section 36, the time shall commence upon delivery of the decision to correct the award.

⁴⁴ According to Section 26(2) of the Slovak Arbitration Act, the parties are free to agree on the rules to be followed by the arbitral tribunal in conducting the proceedings unless the Slovak Arbitration Act states otherwise. Failing such agreement, the arbitrator shall prepare and conduct the arbitration in such manner as he considers appropriate, always in a manner that preserves equality of the parties and the right of each party to act before the arbitral tribunal.

⁴⁵ J. GYÁRFÁS, "§ 40" in J. GYÁRFÁS, M. ŠTEVČEK et al., *Zákon o rozhodcovskom konaní*, fn. 5 above, p. 547.

⁴⁶ In accordance with Section 26(2) of the Slovak Arbitration Act, the arbitral tribunal is free to conduct the arbitration in a manner it considers appropriate, while preserving equality of the parties and the right of each party to act before the arbitral tribunal.

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breach of the Slovak Arbitration Act in the absence of parties' agreement not occurred; (ii) a party concerned raised a challenge without undue delay (or within agreed period if applicable) in accordance with Section 17a of the Slovak Arbitration Act;⁴⁷ and (iii) an action to set aside an arbitral award was filed within 60 days from the date of delivery of contested arbitral award.⁴⁸

For example, considerable technical difficulties (e.g., bad quality of transmission) suffered during cross-examination by the one party only may infringe the principle of equality. Moreover, specific circumstances of the case (e.g., physical evidence other than documents) may interfere with presenting the evidence in a remote fashion, preventing a party from having suitable opportunity for presentation. In these cases, the violation of the parties' agreement to hold a physical hearing may lead to setting aside of an arbitral award, if it could have affected an arbitral tribunal's decision.

Ad (iii). Slovak law favours restrictive interpretation of public policy. Not every procedural irregularity or infringement of a right to be heard or equality of parties shall be considered a breach of public policy. It is for the court to determine whether the public policy was breached or not. However, the threshold should be high. A violation of public policy is constituted only if: (i) fundamental principles of Slovak legal order are breached; (ii) a breach of fundamental principles is evident; (iii) a breach is of intensity incompatible with Slovak legal order;⁴⁹ and (iv) an action to set aside an arbitral award was filed within 60 days from the date of delivery of contested arbitral award.⁵⁰

If not conducting a physical hearing resulted in a material breach of fundamental principles of Slovak legal order, an arbitral award may be set aside on the ground of public policy violation. This is likely if conducting a remote hearing violated due process

⁴⁷ Procedural irregularities can be a ground for setting aside of award only under the condition that the affected party raised an objection in accordance with Section 17a of the Slovak Arbitration Act. Otherwise, the affected party cannot rely on such procedural irregularities in an action for setting aside of the award under Section 40(4) of the Slovak Arbitration Act. According to Section 40(4) of the Slovak Arbitration Act, the court shall not take into account reasons to set aside an arbitral award under paragraph 1(a), if the affected party has not raised them in the arbitration within the prescribed time period or otherwise without undue delay.

⁴⁸ According to Section 41 of the Slovak Arbitration Act, an application for setting aside may be made within 60 days from the date on which the party making that application has received the award. If a party has requested that an award be corrected under Section 36, the time shall commence upon delivery of the decision to correct the award.

⁴⁹ J. GYÁRFÁS, "§ 40" in J. GYÁRFÁS, M. ŠTEVČEK et al., *Zákon o rozhodcovskom konaní*, fn. 5 above, pp. 555-557 and 560.

⁵⁰ According to Section 41 of the Slovak Arbitration Act, an application for setting aside may be made within 60 days from the date on which the party making that application has received the award. If a party has requested that an award be corrected under Section 36, the time shall commence upon delivery of the decision to correct the award.

requirements or was in breach with an arbitration agreement⁵¹ provided that the abovementioned conditions (including the intensity principle) are met. Otherwise, the latter violation/breach falls within the scope of Section 40(1)(a) of the Slovak Arbitration Act.

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 on the specific circumstances of a case.

If specific pre-conditions are met, recognition and enforcement of an arbitral award can be refused due to irregularities in the procedure,⁵² violation of party's right to present its case⁵³ or violation of public policy.⁵⁴

Procedural irregularities shall be assessed in respect of the *lex arbitri* at the seat of arbitration. Therefore, a court vested with an opposition to the recognition and enforcement of an award due to the failure to conduct a physical hearing would look at

⁵¹ Respecting agreements freely entered into (including arbitration agreements) is a part of public order. See J. GYÁRFÁS, “§ 40” in J. GYÁRFÁS, M. ŠTEVČEK et al., *Zákon o rozhodcovskom konaní*, fn. 5 above, p. 557-558.

⁵² According to Section 50(1)(d) of the Slovak Arbitration Act, the court may refuse recognition and enforcement of a foreign arbitral award at the request of the party against whom it is invoked only if that party proves to the competent court where recognition or enforcement or execution is sought that the arbitral procedure was not in accordance with the agreement of the parties or, in the absence of such agreement, was not in accordance with the law of the country where the arbitration took place, provided that it could have had an impact on the decision on the merits of the case.

⁵³ According to Section 50(1)(b) of the Slovak Arbitration Act, the court may refuse recognition and enforcement of a foreign arbitral award at the request of the party against whom it is invoked only if that party proves to the competent court where recognition or enforcement or execution is sought that it was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable to present its case.

⁵⁴ According to Section 50(2) of the Slovak Arbitration Act, the court having jurisdiction to recognise, enforce or perform execution shall refuse to recognise and enforce a foreign arbitral award even if not requested to do so by the party against whom the foreign arbitral award is sought to be enforced if it discovers that, under the laws of the Slovak Republic, the substance of the dispute cannot be arbitrated or that its recognition and enforcement would be against public policy.

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whether a right to a physical hearing existed at the seat. This ground for refusal of recognition and enforcement is constituted, however, only if the outcome of the case could have been different had procedural irregularities not occurred.⁵⁵

On the other hand, party's right to present its case and a potential breach of public policy shall be both examined with regards to Slovak legal order. Whether a right to a physical hearing exists at the seat of arbitration is irrelevant in these cases.

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: The Slovak Republic has not addressed the challenges to holding physical hearings yet.

Although some small adjustments of procedural rules were adopted, they were of temporary nature, aiming to avoid the spread of the coronavirus and preserve parties' rights.⁵⁶ For example, these measures: (i) suspended prescription and limitation periods; (ii) suspended procedural periods; (iii) limited conducting of hearings only to the extent necessary; and (iv) postponed enforcement.

⁵⁵ According to Section 50(1)(d) of the Slovak Arbitration Act, the court may refuse recognition and enforcement of a foreign arbitral award at the request of the party against whom it is invoked only if that party proves to the competent court where recognition or enforcement or execution is sought that the arbitral procedure was not in accordance with the agreement of the parties or, in the absence of such agreement, was not in accordance with the law of the country where the arbitration took place, provided that it could have had an impact on the decision on the merits of the case.

⁵⁶ Act No. 62/2020 Coll. on certain emergency measures in relation to the spread of the dangerous contagious human disease COVID-19 and in the judiciary, amending certain laws, Sections 1-2 and 3a.