THE ARBITRATION IN THE GREEK LAW

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1. *What is the legal source of the rules regulating arbitration in your country?*

It is understood that the legal foundation of arbitration within the Greek legal order lies in the Constitution and particularly in article 8 thereof, which states: "No person shall against his will be deprived of the judge assigned to him".[1] The Greek law on arbitration is codified in two basic legal documents: the Code of Civil Procedure[2] (hereinafter: CCP) provides the framework for domestic arbitration, while Law 2735/1999[3] on international commercial arbitration (hereinafter: LICA) regulates international commercial arbitration by closely following the UNCITRAL Model Law on International Commercial Arbitration. Specialised provisions and other issues connected with the arbitration process are also found in various secondary legal documents.[4]

It becomes clear from the above that the resolution and settlement of disputes through arbitration emanates from the Constitution and the relevant secondary legislation alone, thus excluding case law and custom as sources of arbitration law.

[1] Constitution of Greece of 1975, as amended in 1986 and 2001.

[2] Law 44/1967, in force as of 16 September 1968, as amended by Laws 958/1971, 2331/1995 and 2915/2001.

[3] *Government Gazzette* A 167 of 18 August 1999.

[4] See *e. g.* Legislative Decree 4220/1961 ratifying the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards; articles 7 and 46-49 of the Introductory Law to the CCP; and laws ratifying major public works contracts containing arbitration clauses, such as Law 2338/1995 ratifying the agreement between the Greek State and Consortium Members concerning the Athens International Airport.

2. *In your country, does mandatory arbitration, besides voluntary arbitration, exist (i.e. mandatorily imposed by heteronomous rules)? What prevents the introduction of mandatory arbitration?*

As already mentioned above, article 8 of the Constitution specifically prohibits the deprivation of one's right to the judge assigned to him (*i. e.* the 'natural' judge) contrary to his will. Thus mandatory arbitration has been held repeatedly as unconstitutional.[5] It must also be underlined that by virtue of article 7(1) of the Introductory Law to the CCP all mandatory and compulsory arbitrations have been abolished. Under Greek law, arbitration is mandatory in cases whereupon the law establishes an arbitral jurisdiction; arbitration is compulsory when by declaration of one of the parties interested, all other parties are under obligation to arbitrarily resolve the dispute.[6]

3. *How are arbitrators appointed?*

3.1. *With reference to voluntary arbitration, is there arbitration in which the parties' will is subject to limitations as to appointment of arbitrators?*

In both domestic and international (voluntary) arbitration, the parties' will is subject to certain limitations, although the former sets fewer restrictions than the latter. In both cases, legal persons cannot be appointed as arbitrators. Moreover, persons who are partially or totally incapacitated, as well as those who have lost their civic rights for reasons of conviction by a court of law, may not be appointed as arbitrators.[7]

The parties are not limited as to the number of arbitrators they can appoint. The CCP only goes so far as to set out a rule whereupon one or more persons, as well as a court of law, may be appointed (article 871[1], CCP). The LICA identifies the number of arbitrators to three (article 10, LICA). These provisions are not, however, mandatory, therefore it can be argued

[5] Within the Greek legal system, when a court of law establishes that a statutory provision is unconstitutional, the latter is not given effect. *See*, among others, *Athens Court of Appeals*, decision 4168/1982, Dike, 1982, pp. 689-690.

[6] K. D. Kerameus/D.G. Kondylis/N.Th. Nikas (St. Koussoulis), *Code of Civil Procedure: Article-by-Article Commentary* II [in Greek] Athens 2000, p. 2042.

[7] Article 871(2) CCP states: "Those lacking the capacity to conclude legal acts, those having a limited capacity to conclude legal acts, those deprived due to criminal conviction of the exercise of their civic rights and legal entities cannot be appointed as arbitrators".

that the parties are free to agree on the appointment of an even number of arbitrators.

In domestic arbitration, strict conditions apply as to the appointment of acting judges as arbitrators. A judge may only be appointed as sole arbitrator or chairman upon condition of a minimum 5-year prior service in the judiciary (article 871A[2]). Moreover, the appointment of a specific judge is prohibited: the arbitration agreement (and the appointing party) may only go so far as to specify the court from which a judge will be designated, without reference to a judge's rank or personal abilities. The appointment is made upon selection of a judge from a list kept at the selected court of law, subject to the provisions of the CCP (article 871A [3-5]).

There is no limitation as to the appointment of foreign nationals as arbitrators. The LICA contains specific provisions on the subject,[8] while the tacit position of the CCP is held to be favourable to similar interpretation.

3.2. *With reference to mandatory arbitration, has the parties' will any influence on the appointment of arbitrators?*

As already mentioned above,[9] mandatory arbitrations are considered as unconstitutional within the Greek legal order. Under the most exceptional circumstances upon which such arbitration will be compatible to the Constitution, the parties' will has influence in the appointment of the arbitrators, since it is the parties who make such choice and designation.

3.3. *How is arbitrators' impartiality guaranteed?*

Arbitration is understood as the rendering of justice by third private individual(s) by way of agreement of the parties to the dispute. Thus the arbitrators are called upon to fulfil the same duty that is vested upon the state judges. Therefore arbitrators have the right of independence and the duty to observe the same level of impartiality as guaranteed for state judges.[10]

The impartiality of arbitrators is guaranteed by the provisions on challenge and liability: indeed, in domestic arbitration, several grounds for challenging judges (article 52 [1], CCP, applicable also in the challenge of

[8] *See* article 11(1): "No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties".

[9] Under 2.

[10] To this extent see *Athens Court of Appeals*, decision 6839/1996, 27 *EllDni*, 1986, 1486 *et seq.*

arbitrators as provided for in article 883[2] CCP) regard the arbitrators' special interest in the outcome of the dispute, close kinship with one of the parties and any previous act or testimony as witness, representative[11] or counsel to one of the parties in the dispute. Similarly, in international arbitration, circumstances likely to give rise to justifiable doubts as to the arbitrators' impartiality and independence at all times relevant will support a challenge (article 12, LICA).

Additionally, an arbitrator is liable for fraud and gross negligence in the fulfilment of his duties (article 881, CCP). Also, the request or acceptance of bribes in order to conduct a case in a way favourable to one part or detrimental to another is a misdemeanour punishable by law (article 237 of the Criminal Code). It should be noted that no civil and no criminal liability cases against arbitrators has ever been reported.

3.4. *Is arbitration with more than two parties regulated by a specific set of rules?*

Multiparty arbitration is a possibility under Greek law. However, no specialised rules have been elaborated as yet. Consequently, tribunals and courts have resorted to the interpretation of the existing arbitration legislation. Thus the *Areios Pagos*[12] had initially held,[13] in regard of a construction partnership between three partners, that when one partner appoints an arbitrator, the second party validly appointed another arbitrator both for himself and the third partner. Subsequent court decisions[14] in other cases have taken into closer consideration the particularities of multiparty arbitration, by utilising, for instance, the criterion of the parties' conflicting interests, as elaborated by legal doctrine.

3.5. *Are there specific rules on the contractual relation between the parties and the arbitrators?*

The contractual relation between parties and arbitrators creates rights and obligations to all persons engaged.

[11] *Athens Court of Appeals*, decision 1966/1972, 20 *Nov*, 1972, 1453 *et seq*.

[12] The *Areios Pagos* is the Supreme Court in both civil and criminal jurisdictions, adjudicating on applications for cassation filed against decisions of lower courts.

[13] *Areios Pagos*, decision 1381/1980, 12 *Dike*, 1981, 189 *et seq*.

[14] *See*, among others, *Piraeus Multi-Member Court of First Instance*, decision 727/1987, 1 *Diaitissia*, 1992, 72 *et seq*.

Once an arbitrator accepts his appointment, the *receptum arbitri* is established (arg. 883 [1], CCP) and he is subsequently under the primary obligation to take part in the arbitral process, as his duty so requires, culminating with the issuing of the award. The arbitrator cannot be forced to exercise his duties, however the parties have the right of attacking him with a lawsuit claiming damages, if he does not do so (article 881, CCP). The arbitrator has the right to request release from his duties only on serious grounds, subject to state court approval (article 880 [2], CCP). The abovementioned rules apply in domestic arbitration principally, as the LICA does not contain detailed provisions on such matters, given the more flexible nature or international arbitral proceedings.

The arbitrator has the primary right of remuneration for the carrying out of his duties. Different rules apply as to the determination thereof, depending on the domestic (articles 882, 882A, CCP) or international (article 32, LICA) character of the arbitration.

4. *How is the relation between arbitrators and judge regulated?*

4.1.-4.6. *Is there a form of arbitration within the context of a trial whose carrying out is imposed on the parties by the judge they addressed to? Are the rules regarding competence and lawsuit pendency applied? How is the arbitration plea deemed? A jurisdiction plea or merits of the case plea? Can* traslatio judicii *(i.e. the shifting) between arbitrators and ordinary judge (and vice versa) be applied? Does lawsuit pendency before the State judge (*lis apud iudicem pendens*) prevent arbitrators from deciding on the controversy? Does lawsuit pendency before arbitrators (*lis apud arbitros pendens*) prevent the State judge from deciding on the controversy?*

From the conceptual underpinnings of arbitration law, it is clearly deduced that dispute resolution by resort to the state courts and alternative dispute resolution by resort to arbitration are modes of adjudication clearly distinct the one from the other.[15] The relation between state judge and arbitrator at the outset of the arbitration proceeding is further illustrated below:

[15] The LICA recognises the above fundamental distincition in article 5 thereof, by stating that "In matters governed by this Law, no court shall intervene except where so provided in this Law".

a) When an arbitration agreement has been concluded between two parties and one of them brings an action concerning a dispute that is covered by the agreement before the state courts, the other party must invoke the agreement in *limine litis*, at the (first) hearing held before the state court (article 263, CCP). Failure to do so will lead to the establishment of jurisdiction by the state court, which cannot be questioned at any later stage of the trial proceedings.

   If the other party invokes the arbitration agreement, thus challenging the jurisdiction of the state court, the latter is under duty to refer the parties to arbitration, according to article 264, CCP. However, the same article provides that the consequences emanating from the filing of the action before the court (mainly lawsuit pendency and immutability of the court's jurisdiction and competence) remain in force so that the case can be brought before the court once again, if at some point the arbitration agreement seizes to exist.

b) When an arbitration agreement has been concluded between the parties and one of them invokes its invalidity before the state courts in order to establish the court's jurisdiction, the state court has the power to examine the validity of the arbitration agreement. The decision of the state court shall constitute *res judicata*.

c) When a trial before the state courts is pending and the parties to the dispute agree to resolve the dispute by arbitration, such agreement must be invoked before the state court at the (first) hearing following the conclusion of the agreement, by penalty of inadmissibility. The state court is then under duty to refer the parties to arbitration (article 870 [1], CCP).

d) Finally, state courts have the jurisdiction to rule on the validity or invalidity of the arbitration agreement, when a party so requests, prior to the initiation of the arbitral procedure.[16] It has been ruled that the state courts have the same power even after the arbitral process has been initiated,[17] however, in theory it is strongly supported that, in view of the *kompetenz-kompetenz* theory, recognised by articles 887, CCP and 16, LICA, the arbitrators enjoy exclusive pow-

[16] *Athens Court of Appeals*, decisions 7796/1978, *Dike*, 1978, pp. 699-702 and 12086/1979, *Dike*, 1983, pp. 33 and 34.

[17] *Areios Pagos*, decisions 403/1989, *Diaitissia*, 1992, pp. 129 and 130 and 1404/1990, *ibidem* 131.

ers to rule on the invalidity in such instances, for reasons of minimising both elevated costs and the danger of the issuing of conflicting court decisions and arbitral awards. The above power vested to the arbitrators may always be reviewed by an application for setting aside the award.

4.7. *Is the suspension of an arbitral proceeding taken into consideration while waiting for a decision of a preliminary question by the State judge?*

The only instance at which the arbitral proceeding is suspended while a preliminary question is pending before the state court is found in domestic arbitration during a challenge procedure: if an arbitrator has been challenged by a party, the arbitrator is under obligation to abstain from his duties from the time of initiation of the challenge procedure and up to the issuing of a decision by the competent single member court of first instance (articles 883 [2], 59 and 878 [1], CCP). By contrast, in international arbitration, subject to the parties' agreement, the arbitral tribunal may carry on the arbitration proceeding while the challenge is pending (article 13, LICA).

4.8. *Is the suspension of a proceeding pending before the State judge taken into consideration while waiting for a decision of a preliminary question by arbitrators?*

See above under 4.1-4.6.

5. *Which are the forms of an arbitration proceeding?*

5.1. *Is there a voluntary arbitration in which the parties' will is limited as to the proceedings regulation?*

Subject to the right of the parties to agree otherwise, in both domestic and international arbitrations the procedure is determined by the arbitrators (article 886, CCP; article 19, LICA). Therefore, if the parties have not included in their agreement provisions on procedural issues concerning the place and time of arbitration and the procedure to be followed, then the arbitrators are in principle competent to make the relevant choices. It is at times usual that such agreement of the parties will take the form of reference to institutional rules of local, national or international institutions.

However, the above principle is observed in institutional and *ad hoc* arbitrations alike.

It should also be underlined that certain general principles emanating from the jurisdictional character of arbitration,[18] such as the principle of equality, the right of oral or written representation and the right of producing evidence, must be observed by the parties and the arbitrators alike when deciding on procedural issues (article 886 [2], CCP; article 18, LICA).

5.1.-5.2. *With reference to mandatory arbitration, has the parties' will any influence on the proceedings regulation?*

See above under 3.2.

5.3.-5.4. *Which are the arbitrators' powers regarding the collection of evidence? Is judicial assistance to arbitrators taken into consideration for purposes of evidence collection?*

Matters concerning the collection of evidence also fall under the general principle noted above: if no provision is stipulated in the arbitration agreement, the arbitral tribunal has the power to decide the rules according to which the evidence shall be collected. In both domestic and international arbitration, the taking of evidence may be carried out by the competent justice of the peace (article 888[3], CCP; article 27, LICA). In practice, the taking of evidence is carried out in accordance to the rules found in the CCP (articles 335-351).

A state court sitting as an arbitral tribunal has the power to order compulsory measures in order to force a witness to testify. All other arbitral tribunals do not have such power. They may, however, request such measures by the competent justice of the peace (article 888, CCP).

5.5.-5.6. *Is it possible for third parties (a) to be joined as parties in arbitral proceedings (b) intervene in arbitral proceedings? Can more than one connected arbitration proceedings be unified?*

Although Greek arbitration law does not contain elaborate rules on the issues addressed above, a very favourable stance towards such forms of multiparty arbitration is maintained. Thus, consolidation of arbitration pro-

[18] These principles enjoy universal character: to this regard see article V (1) (b) of the New York Convention and article X (1) (b) of the European Convention.

ceedings and joinder of parties (article 74, CCP) will be allowed by the arbitrators upon condition that the parties to the dispute do so agree. Similarly, intervention of third parties (articles 79-85, CCP) to the arbitral proceedings is also allowed: principal intervention (*i.e.* intervention by which the intervener is claiming the object of the dispute) is allowed when the third party has concluded an arbitration agreement with both parties to the dispute, while an accessory intervention (*i.e.* intervention by which the intervener supports one of the parties to the dispute) is allowed when the third party has either concluded an arbitration agreement with both parties to the dispute or is bound by the existing arbitration agreement (*ex*: a third party beneficiary or an assignee).

6. *Which is the possible content of arbitrators' measures?*

6.1.-6.3. *Can arbitrators render declaratory awards (i.e. awards which clarify a legal relationship which is uncertain) and constitutive awards (i. e. awards which create, modify or extinguish a legal relationship; e. g. the agreement is terminated for default)? Can arbitrators deliver summary measures? Can arbitrators grant precautionary measures?*

Subject to the provisions of the arbitration agreement and the substantive law applicable to the merits of the dispute, the arbitral tribunal has the power to issue declaratory awards, awards on performance and awards on modification of a legal relationship (constitutive awards).

By contrast, arbitrators in domestic arbitrations are not allowed to grant, modify or revoke provisional remedies (articles 889[1] and 685, CCP). Any such decision remains unenforceable. However, nothing precludes a party to request the competent single member court of first instance to issue such measures.

In international arbitration, the arbitral tribunal may order interim measures of protection, if no agreement of the parties to the contrary exists (article 17, LICA), even when the tribunal has not as yet acquired jurisdiction, in which case the enforcement of the award is ordered by the competent single member court of first instance.

7. *With reference to voluntary arbitration*:

7.1.-7.4. *Upon which criteria is determined the area of controversies which can be submitted to arbitration? Is arbitration admitted for controversies*

whose object consists of rights which cannot be disposed of by the parties? Does the area of controversies which can be submitted to arbitration coincide with the area of disposable rights and/or with the area of controversies which can be transacted? Can the mandatory nature of rules to be applied be a limit to the possibility to submit the controversy to arbitration?

Greek arbitration law utilises two closely connected criteria in order to determine which controversies may be submitted to arbitration: the first is related to the legal nature of the dispute, while the second is related to the adjudicatory power recognised to any court of law.

As far as the legal nature of the dispute is concerned, Greek law provides that only private law disputes may be subject to arbitration (article 867, CCP). A 'private law' dispute is one that involves a controversy as to the existence, the scope or the subject matter of any right or legal relationship governed by private law. This criterion in itself is not, however, completely accurate, since it has been held that even disputes governed by public law, such as taxation disputes, may also be resolved trough arbitration.[19] Thus the application of a second criterion is helpful in determining the area of controversies that may be submitted to arbitration: the objective purpose of any arbitration is identical to the objective purpose of any trial before the state courts[20] and therefore, what cannot be judicially resolved can neither be resolved through arbitration.[21]

Article 867, CCP states that the dispute is arbitrable if the parties have the power to freely dispose of the subject matter of the dispute. By an objective standard, this translates to the necessity of existence of a substantive law provision allowing for such free disposition. Thus, for instance, matrimonial disputes, as well as disputes arising between parents and children may not be resolved through arbitration. By a subjective standard, the capacity of such free disposition is also required. For example, a bankrupt person may not enter an arbitration agreement concerning disputes arising from the bankrupt estate, because the bankrupt has no power of free disposition thereof. The administrator in bankruptcy, however, may validly conclude such agree-

[19] *See Special Supreme Court*, decision 12/1993, *Dni* (1994) 302 *et seq.* and also *Areios Pagos*, decision 159/1996, *EEmpD* 1996 491-492; *Council of State*, decision 198/1995, 1 *DEE* (1995) 329-330 I.

[20] *Areios Pagos*, decision 550/1996, 3 *DEE* (1997) 734.

[21] It should also be noted that for reasons of public interest, articles 867, CCP and 3 (4), LICA also prohibit resort to arbitration for certain categories of labour disputes.

ments, upon condition that he enjoys such power to dispose the bankrupt's holdings in accordance to article 577 of the Law on Commerce.

7.5. *Do controversies which can be submitted to arbitration coincide with controversies which may be subject to arbitration clause?*

In both domestic and international arbitration, Greek law provides for disputes that may or may not be "submitted to arbitration" (article 867, CCP; article 1 [4], LICA). It is therefore understood that reference to arbitration and/or arbitration clause is, in essence, reference to identical situations uniformly addressed and resolved by the legislator.

7.6. *Which are the subjective limits of validity of arbitration and arbitration clause?*

The arbitration agreement (article 869, CCP) is regarded as a contract of procedural nature regulated by private law and not by procedural rules. Therefore its objective limits are defined by the private law provisions on the capacity of natural and legal persons to conclude legal acts, including contracts (articles 65 *et seq.* and 127 *et seq*., Civil Code): in essence, any natural person older than 18 years of age may conclude an arbitration agreement; legal persons are bound by the agreements validly entered into by their representatives. Representation is also allowed for natural persons, while those who are partially incapacitated may validly enter an agreement in person when so allowed by the state courts, and in all other cases they are bound by one entered into by their representative.

Issues pertaining to third parties and the extent to which an arbitration agreement affects them are also resolved in light of the legal nature of the arbitration agreement as a procedural contract regulated by private law, and also its purported intention, *i.e.* the exclusion of the jurisdiction of the state courts in favour of the arbitral tribunal. If the arbitration agreement has not been concluded *intuitu personae*,[22] an issue usually left open to interpretation, any third party that succeeds one of the original parties to the arbitration agreement (or the contract containing such agreement) will be bound by it.[23]

[22] *Athens Court of Appeals*, decision 6920/1985, 34 *Nov*, 1986, pp. 231, 232 II.

[23] *Thessaloniki Court of Appeals*, decision 3006/1995, *EpiskED* 1996 379; *Piraeus Single Member Court of First Instance*, decision 452/1991, *END* 1992 353, 356; *Thessaloniki Court of Appeals*, decision 87/1999, 5 *DEE*, 1999, p. 741.

7.7. *Is an autonomous action admitted in order to verify the validity of the arbitration agreement?*

See above under 4.

7.8. *Is arbitration on issues non-exhausting the object of a jurisdictional proceeding admitted? (e. g. where arbitrators are demanded to quantify the damages resulting from a certain event, without prejudice to the issue relating to the right for compensation of these damages).*

Arbitrations covering disputes of this nature are allowed, provided that the valid and existing arbitration agreement covers disputes of such kind.

8. *Are there different types of voluntary arbitration?*

8.1. *Is it possible to distinguish among the different types of arbitration in relation to the nature of the proceedings and/or to the relations between arbitration proceedings and state jurisdictional proceedings and/or to the effects acknowledged to the award and/or to its appeal regulation?*

The Greek legislator has been successful in distinguishing two forms of arbitral dispute resolution mechanisms: the domestic and the international. All arbitrations of pure domestic character fall under the former and are regulated by a rather strict and rigid legislative framework, as elaborated in the CCP. Arbitrations of an international character, by either objective or subjective criteria, fall under the latter and are regulated by the LICA, which provides a rather more self-regulated framework, in conformity to the flexibility required in the international trade practice. With the exception of the one concerning institutional and *ad hoc* arbitrations, a matter left to the decision of the parties in both domestic and international arbitrations, any other distinction does not seem to be possible for the present time.

8.2.-8.5. *Is there a contrast between jurisdictional arbitration and contractual arbitration? Does the difference between the two types of arbitration concerns only the award effects or even its structure and/or nature? Is the principle of the arbitration clause autonomy valid in relation to both types of arbitration (i. e. the principle according to which the contract nullity does not necessarily affect the arbitration clause contained therein)? Is equity arbitration admitted* (ex aequo et bono)*?*

As in several other continental jurisdictions, Greek law distinguishes between arbitration and the filling of gaps in a long-term contract. The

former is regulated by elaborate and distinct sets of rules, while the latter is purely regulated by Civil Law. Although the distinction may seem clear in theory, in practice it has caused marginal problems resulting in conflicting court decisions and doctrinal opinions. The current position held by the courts and legal doctrine is that the arbitrators have the power to fill in contractual gaps in long-term contracts where the parties have failed to do so. The difference between arbitration and determination of an intermediate contract term is that, upon filling a contractual gap, when the decision issued by the third party is unfair to one of the parties, then that party may challenge the decision before the state courts and apply for a new decision. By contrast, the merits of an arbitral award may not be challenged or altered before the courts, as the courts may only set the award aside for certain serious procedural anomalies.

In addition, arbitrators may decide *ex aequo et bono* (*arbitrium boni viri*, equity arbitration) if so decided by the parties. The application of domestic rules of public policy may nevertheless not be excluded (article 890[2], CCP).

9. *Does voluntary arbitration include also settlement and assessment agreement (i.e. an agreement aimed at settling a controversy) whenever their content is determined by a third party? Does voluntary arbitration include also the joint mandate to settle and the joint mandate to stipulate an assessment agreement?*

The arbitrator is a private adjudicatory organ, *i.e.* an institution that has been recognised the power to resolve disputes in a binding way. Arbitration is thus distinct from both mediation, a form of dispute resolution aimed at creating and/or sustaining party negotiations, and conciliation which purports to the settlement of a party dispute.

10. *How is contractual expert report (or arbitral expert report) construed?*

10.1 *Which is its regulation?*

A contractual expert report is construed as the appointment of an arbitrator by the parties, following relevant agreement thereof, with the mandate to ascertain in a binding way the existence or the lack of existence of facts, factual attributes or factual conditions. Such expert reports are usual in Greek practice, their regulation, however, has been very recently clari-

fied: in making such agreement, the parties conclude a contract of evidentiary function, aiming to the binding ascertainment of the factual aspect of a certain dispute. This form of expert report, which is not considered as arbitration, is regulated by analogies drawn to the rules governing other similar legal agreements: as to validity and the form of the agreement, the provisions on arbitration are applied;[24] as to the procedure followed, the provisions on expert reports filed in ordinary trials are applied; and as to the determination by a third party of the obligation due, by the rules of Civil Law (article 371 of the Civil Code).

11. *Which is the relation between arbitration and conciliation?*

11.1.-11.3. *Is attempt at reconciliation a necessary step in order to have access to arbitration proceedings? Is attempt at reconciliation used as a necessary step of arbitration proceedings and as a condition in order to proceed with the latter? Is attempt at reconciliation used as an optional method in order to define a controversy regulated by arbitration proceedings?*

With the exception of the Rules of Greek Arbitration Institutions, Greek law contains no provisions relating to conciliation prior to the commencement of or during the arbitral proceedings. The CCP only recognises judicial conciliation as a mandatory form of dispute resolution in the procedure followed before the courts of first instance. In spite of its purported efficiency, conciliation remains rare in practice.

12. *In your country, are there systems of "informal justice" aimed at favouring conciliation-mediation between the parties (Mini-Trial, Summary-Jury trial, Moderated-Settlement, etcetera)?*

In particular:

12.1.-12.4. *Are they forms of alternative justice administered by private or public institutions? Is there a legislative discipline of these forms of alternative justice? Which is the relation between these forms of alternative justice and the state jurisdiction? Which is the relation between these forms of alternative justice and arbitration?*

[24] *Areios Pagos*, decision 1268/1985 34 *Nov*, 1986, p. 862; *Athens Court of Appeals*, decision 8200/1998, 42 *EllDni*, 2001, pp. 1363 *et seq*.

The Greek framework on arbitration is not as developed in this respect when compared to the already existing systems found in other jurisdictions. The parties may choose to conciliate or settle prior to the commencement of the arbitral proceeding and during such proceeding until the rendering of the award, however such cases remain rare in practice and are still to be regulated by the legislator.

13. *Is arbitration award validity described by utilising expressions such as* "*decision validity*", "*judgement validity*" *or similar ones?*

The term used to describe the award issued by an arbitral tribunal is "arbitral decision" (article 892, CCP). No exact term is used in the law to describe the "validity" of the arbitral award; the law only goes so far as to provide for the "annulment of an arbitral decision" (article 897, CCP), thus implying that when an arbitral award is not attacked with an action to annul the award (i.e. application for setting aside, article 897, CCP) or an action or objection regarding the non existence of the arbitral award (declaration of non existence of the award, article 901, CCP), it will be a "valid" one.

14. *In your jurisdiction, are there rules containing the following expressions:* "*decision validity*", "*judgement validity*" *or similar expressions used to describe the validity of contractual deeds (e.g. settlement or assessment agreement)? Which are these rules?*

These terms are not applicable within the Greek legal order in relation to arbitral awards, the main reason being that such awards constitute *res judicata* as court decisions.[25] Forms of arbitrations like, for instance, the *arbitrato irrituale* of the Italian law, in which the award has binding effects only between the parties to the dispute, are not known to the legislator.

15. *Independently of the expressions utilised, do award effects and judgement effects issued by the State judge actually coincide?*

In particular:

15.1.-15.2. *Which are the objective and subjective limits of the arbitration award validity? The consequent effects of the award, both for the parties and third parties, are the same effects of a judgement issued by a judge?*

[25] *See* further below under 15.

In both domestic and international arbitration, the arbitral award constitutes *res judicata* (article 896, CCP; article 35[2], LICA). Its objective and subjective limits are the same as those of court decisions: Objectively, it covers substantive and procedural issues that have been adjudged in a final way[26] (article 322, CCP). Additionally, it applies between the same persons acting under the same quality and extends only in regards to the right that has been adjudged, in all cases covering the same subject matter or having the same legal and factual basis (article 324, CCP). It also covers all objections raised and also those that were not raised even though they could have been raised (article 330, CCP). Subjectively, award validity applies in principle for and against the parties to the dispute and their successors (articles 325-329, CCP), the decisive practical rule being, however, that all parties bound by the arbitration agreement shall also be bound by the arbitral award.

15.3. *Does the award not appealed within the terms has the same resistance of a final judgement? In the affirmative, even though it is rendered when lacking an arbitration agreement, or for a controversy which cannot be submitted to arbitration? Even though its measures are contrary to public order?*

There is no recourse against arbitral awards before the state courts. Thus the issuing of a final award is sufficient for the acquisition of *res judicata* and the award may be subsequently enforced. The consequences emanating therefrom are not affected by the existence of grave illegality therein, since any party wishing to attack the award with an application to set it aside or to recognise its non-existence may do so within the time period prescribed by law. In all such cases, the award will remain final and binding, as long as it is not attacked by an application for setting aside or an application for the recognition of its non-existence.[27]

16. *Which are the effects on arbitration proceedings of the constitutional legitimacy issue of the rule that arbitrators are due to apply in the controversy decision?*

[26] Greek law provides for the issuing of final awards. Interim awards, resolving issues such as the jurisdiction of the tribunal or the law applicable to the merits of the dispute, although constituting *res judicata*, are not enforceable.

[27] See further below under 18.

As already discussed above, the arbitrators are under obligation to observe the principle of equality and the right of the parties to be heard, as safeguarded by the Constitution, the applicable national and international laws and as reaffirmed by the jurisdictional nature of the arbitrators' powers and the universal approval thereof.

17. *Is a second instance arbitration admitted?*

A second instance may be agreed upon by the parties in the arbitration agreement. The parties are required to state the conditions, time limits and possibly the proceedings to be followed in such recourse. However, a second arbitral instance remains exceptional in practice.

18. *How can an arbitration award be appealed?*

No method of appeal against an arbitral award before the state courts is permitted (article 895, CCP; article 35, LICA). Therefore an arbitral award may be appealed only before an arbitral tribunal of second instance, if the parties have so agreed, as illustrated above.

Greek arbitration law recognises two methods of recourse against arbitral awards: the application for setting aside in both domestic (article 897, CCP) and international (article 34, LICA) arbitration, and the application for the recognition of the non-existence of the award, provided as a means of recourse against domestic awards solely (article 901, CCP). The grounds for all three methods of recourse, regarding certain various defects in the arbitral proceedings, are well defined, specialised and limited (nullity and voidance of the arbitration agreement; rendering of the award following expiration of the agreement; violation of the agreement or the law on appointment of arbitrators; excess of powers vested on the arbitrators; violation of the principle of equality and the right of the parties to be heard; issuing of an award contrary to public policy or good morals; incapacity of a party to the agreement; etcetera). All applications against an arbitral award are tried by the competent court of appeals, and must be filed within three months of notification of the award. An application of cassation against the decision of the court of appeals may be filed before the Areios Pagos.

19. *Are the above forms of appeal subject to a previous granting of executive validity to the award or, however, subject to the approval of the award by the State judge?*

The above methods of recourse against an arbitral award may be set into motion prior to or subsequently to the granting of the *exequatur*. Any application purporting to the setting aside or the declaration of non-existence of the award does not suspend the enforcement of the award (articles 899 [3] and 901 [3], CCP; article 35 [3], LICA). The competent court may, however, order the suspension of the enforcement procedure, with or without bail, until a final court decision has been rendered, provided that the application has been declared admissible.

20. *Is there a specific regulation for arbitration, whose object is transnational private controversies?*

As already stated above, Greek arbitration law is organised on two distinct pillars, one of which regulates domestic arbitration, in accordance to the provisions of the CCP and the other regulating international arbitrations, in accordance to the provisions of the LICA. Transnational arbitrations, *i. e.* arbitrations bearing no particular legal connection to any jurisdiction, are not regulated by the existing legislation, and thus have to be classified in either one of the two known arbitral modes, depending on the circumstances of each case.

21-24. *How is regulated the granting of executive validity to arbitration award? Is there a specific regulation aimed at granting executive validity to foreign awards? Which is the regulation taken into consideration in order to acknowledge and carry out foreign awards? Which is the principle applied in order to distinguish between national awards and foreign awards?*

a) Awards issued in domestic arbitrations (governed by the CCP) and in international arbitrations (governed by the LICA) are final and binding on the parties and enforceable as soon as they are made (article 904 [b], CCP), provided that no recourse to another arbitral tribunal has been provided for (article 896, CCP; article 35 [2], LICA). The executive validity of the award, *i. e.* the *exequatur*, is not granted by the arbitrators but by the competent judge of the single member court of first instance at the secretariat of which the award has been deposited (article 918 [2] [d], CCP). The judge is not permitted to examine the validity of the award; he may rarely however request proof that the award is based on a valid arbitration agreement.

b) The conditions for the granting of the *exequatur* to foreign[28] arbitral awards differ fundamentally: if an international convention or treaty applies, then the provisions thereof will cover the procedure on enforceability of the award, since, under article 28 of the Constitution, foreign conventions and treaties enjoy force superior to the laws of the land. Therefore, the provisions of the domestic law on arbitration shall in these cases apply only when the applicable international instrument does not fully cover the case in question.

Greece is a party to many multilateral and bilateral conventions concerning the enforcement of foreign arbitral awards.[29]

c) When no international convention or treaty applies, article 903 of the CCP provides for a series of conditions that must be met in order for the granting of the *exequatur* to a foreign arbitral award. Thus the arbitration agreement upon which the proceeding was initiated must have been valid in accordance to the law applicable to it, the subject matter of the dispute that was arbitrated must be arbitrable according to Greek law, there must be no methods of recourse against the awards, either because they are not provided for or because they are no longer pending, the rights of the defeated party must have been observed, the award must not be contrary to a final and binding decision issued by a Greek court on the same subject matter, and finally the award must not be contrary to public policy or good morals.

The enforcement is requested from the competent single member court of first instance. An application for setting aside a foreign arbitral award is not permitted in Greece.[30]

25-26. *How can the same litigation between the same parties pending before a foreign judge affect an internal arbitration proceedings? How*

[28] Although there is no unanimity as to the criterion applied to distinguish foreign awards from domestic awards, it appears that the place of arbitration is in most cases decisive. Recent case law suggests that an award is deemed domestic when the arbitrators apply Greek procedural law, while it will be regarded as foreign when foreign procedural law is applied.

[29] Among others, Greece has signed and ratified the New York Convention on the recognition and Enforcement of Foreign Arbitral Awards, the Geneva Protocol on Arbitration Clauses and the Geneva Convention on the Enforcement of Foreign Arbitral Awards. Greece has also concluded bilateral agreements with many states, such as the Republic of Cyprus, the Federal Republic of Germany and the United States of America.

[30] *Areios Pagos*, decision 889/1985, 26 *EllDni*, 1985, p. 1124.

can a pending foreign arbitration between the same parties, whose object is the same litigation, affect an internal arbitration proceeding?

The existence of multiple court decisions and arbitral awards in litigation between the same parties covering the same dispute creates the potential danger of conflicting decisions and awards. Thus, in a way similar to the one chosen at the internal domestic level, the legislator has created a system according to which (a) a domestic award that has been duly and timely deposited at the Greek courts or (b) a domestic court decision will prevail over any foreign court decision or arbitral award issued between the same parties and covering the same subject matter.