

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014. This survey was updated in 2016.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

BULGARIA

Responses submitted by:

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Location: Sofia, Bulgaria

1. Would your jurisdiction be described as a common law or civil code jurisdiction?

The Bulgarian jurisdiction is civil code jurisdiction.

2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?

The method of adjudication is adversarial.

3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?

A special test for junior judges is held approximately once per year, depending on the number of free slots. Judges are appointed, promoted, demoted, transferred and removed from position by the Supreme Judicial Council. When the decision for appointment, promotion, demotion and transfer of the judge enters into force the Supreme Judicial Council informs them to assume their duties within one month. The required qualifications for a judge are:

- a. Bulgarian nationality;
- b. degree in Law;
- c. completed six-month internship period and passed the test for acquiring legal competence;
- d. possession of moral and professional qualities as per the Code of Ethics of the Bulgarian magistrates;
- e. not been sentenced to prison for intentional criminal offence, regardless of rehabilitation;
- f. not an elected member of the Supreme Judicial Council who has been disciplinary dismissed for impairing the prestige of the judiciary;
- g. not suffering from a mental illness.

In first instance civil court proceedings, the judge is usually appointed after preliminary electronic selection by the head of the respective court department. The selection process is random and fully computerized.

In second instance (appeal) court proceedings and in cassation instance proceedings (this is the court proceeding before the Supreme court of Cassation which is the third (last) court instance in Bulgaria), a composition of three judges is also selected electronically in a random manner. Each appeal court consists of several departments, which are divided into compositions of three judges. The Supreme Court of Cassation consists also of several departments, which are divided into compositions of three or five judges. The judges in each composition are permanent.

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4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?

In 2007, specialized administrative were established courts in Bulgaria, which are only competent to handle administrative disputes. There is an administrative court in each Bulgarian district. In 2011, specialized criminal courts were established, which handle the penal cases against organised crime.

5. Is arbitration an option and when? If so, what rules are typically used?

According to the Bulgarian Civil procedural code, parties could agree on arbitration if the dispute is commercial/financial. Arbitration is not possible for disputes concerning real estate rights, employment rights or alimony/support money.

Usually, the arbitration clause is incorporated in the agreement (commercial, trade, sale, lease etc.) between the parties but it can also be incorporated in an explicit arbitration agreement. The arbitration clause should be in writing and it generally provides for the competent arbitration institution, place of jurisdiction and the applicable law. Each arbitration institution in Bulgaria has its own rules, which are applicable and binding for the parties who chose the respective institution for dispute resolution.

6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?

The courts do not enforce ex officio an arbitration agreement to preclude other forms of litigation. They are obliged to terminate the court case only when any of the involved parties objects on the ground of the existing arbitration clause. The court will not terminate the pending case if it finds the arbitration clause/agreement null and void, non-enforceable or impossible to fulfill.

7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?

Mediation is not mandatory for court proceedings in Bulgaria.

8. What is the process for pre-hearing fact discovery (if any)?

(a) Are there provisions for mandatory document disclosures?

According to the Bulgarian Civil procedural code the claimant is obliged to disclose all written evidence and to request further evidence when filing the claim or with the extension of the claim (on commercial disputes) and the defendant is obliged to disclose his written evidence and to request further evidence when filing the response to the claim.

(b) Is there provision for oral examinations of the parties or others?

Oral explanations of the parties can be made during an open court hearing only as the Bulgarian Civil procedural code does not allow pre-hearing (prior the open hearing) examinations..

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According to the Bulgarian Civil procedural code each of the parties is entitled to make statements and give oral explanations during an open hearing. Parties are not entitled to testify as witnesses. The parties can give oral explanations before the court on certain matters or facts defined in advance.

Oral explanations of the parties differ from the so-called “opening or closing submissions” which are not regulated by the Bulgarian civil procedural law. Usually, the trial begins with filing a written statement of claim which is accompanied by all evidence the claimant disposes at this stage. At the beginning of the trial the parties do not make open submissions as they have already set out their arguments and evidence in the claim respectively in the response of the claim. Oral explanations of the parties are kind of oral evidence when the opposite party or the court would like to receive answers on specific relevant question/s related to the case.

(c) *Are there limits on the length of oral examinations?*
Not provided.

(d) *Are witness statements or summaries to be provided before the hearing?*
Not provided.

9. What is the process for pre-hearing expert disclosure (if any)?

(a) *Are expert reports or written summaries required to be exchanged?*

According to the Bulgarian civil procedural code the expert opinion should be in writing and should be filed with the court at least 7 days before the next court hearing in order to be admissible.

(b) *Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?*
No

(c) *Are there provisions requiring experts to meet and narrow issues before the hearing?*
No

10. Are there other notable discovery rules?

No.

11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?

Not applicable under Bulgarian law.

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12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?

There is a special enforcement proceeding under the Bulgarian Civil procedural code in which the creditor brings a motion to the court for issuance of an ordinary/immediate execution order and writ of execution against the debtor. There are no court hearings in this proceeding. The court renders its ruling based on the motion and enclosed evidence only. The threshold for filing a motion for issuance of an ordinary execution order is BGN 25,000. The debtor (defendant) can then object to the execution order and the creditor file a regular claim for ascertaining the existence of its receivable. If the claimant does not file a regular claim, the court annuls the issued execution order.

The threshold is not a requirement when a motion is based on explicitly enumerated grounds/documents such as notary deeds, promissory notes, notarized contracts etc. In this case, the court immediately issues the execution order and writ of execution against the defendant who can then object to the enforcement. The objection does not stop the execution but the creditor (plaintiff) is advised to file a regular claim for ascertaining the existence of its receivable.

13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?

There is no special process for pre-hearing evidence admissibility. The court usually decides on the admissibility of the evidence requested with the claim or response to the claim in a close hearing. The court renders a ruling on the admission or non-admission of the evidence. This assessment of evidence is possible only within pending court procedures.

14. What is the standard for admissibility of expert evidence?

In Bulgaria, experts can only be individuals who are duly licensed and registered in a list of experts to the respective court institution (the lists of experts to all courts are published in the State Gazette).

15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?

The court itself cannot appoint its own experts. The parties are those who make requests for expertise and determine its type and the court decides whether to admit them. When the court accepts the parties' application, it is only entitled to appoint an appropriate expert or experts.

16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?

Lawyers are obliged by law to keep the secrets of their clients (privacy) without a time limit, even in case of testimony in a trial against a former client.

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17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?

Documents, which concern the private and/or family life of the party or may lead to criminal investigation against the party or its relatives, do not have to be disclosed. Similarly, a witness may refuse to testify regarding facts that may cause damage to him or to relatives of the party.

18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?

There are no privilege disputes in Bulgaria.

19. Briefly, describe the trial process?

- Stage 1: Submission of the claim before the court, opening of the case by the court, exchange of documents and statements, scheduling of the first open (public) court hearing.
- Stage 2: Examination of the case in open (public) court hearing/s to clarify the factual side of the argument. Collecting all admitted evidences.
- Stage 3, final stage: Judgment of the court.

(a) Are there opening submissions, in what form and of what length?

There are no opening submissions.

(b) What is the order of presentation of witnesses?

Either party may call a witness to clarify relevant facts on the case. In terms of transparency and equity, the witnesses of both parties are examined together in one court hearing.

(c) Who conducts examination and in what order?

A witness is first examined by the party or its counsel who requested it's summoning and after that, the other party or its counsel can cross-examine. The judge can also, at any time, pose questions to the witness.

(d) What is the process for closing submissions?

Closing written submissions can be filed upon request if the court has allowed doing so. They can be filed after finishing the court phase of gathering evidence. The court usually determinates a deadline for filing the closing submissions and the terms of exchange and response.

20. Please identify any other notable trial procedures.

- Special short procedure initiated by the creditor for issuance of an execution order and writ of execution against the debtor (defendant). The court decides on the motion in a close hearing in a very short time period.

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- Special court procedure for preliminary protection of a future claim. The purpose of the procedure is to prevent the risk that the debtor may dispose of his property during the process which could impede the creditor to collect its receivables under the court decision. If the court allows the preliminary protection, it determines a time-limit of one month for submission of the claim.
- Pronouncement of “in absentia judgment” (judgment in absence of one of the parties). This procedure is applicable when the parties demonstrate negligence to the case and the claim is most probably grounded/ungrounded. The “in absentia judgment” is final.
- Short-term court proceedings, which are applicable for an explicitly enumerated disputes such as labor disputes, violation of intellectual properties right, etc.
- Procedure for recognition and enforcement of decisions and rulings given in other countries - members of European Union

21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?

In civil matters (as a general rule), the burden to prove any particular positive fact is borne by the party alleging that fact. The plaintiff normally has the burden of proof, but the defendant can be required to establish certain defenses. In addition, the Bulgarian civil law recognises the guiltiness presumption where the defendant has to prove that he is not guilty respectively or is not liable for the damages.

The defendant is liable for all damages which are a direct consequence of his inappropriate actions except in case of contributory negligence. In cases of contributory negligence the court usually reduces the claimed compensation on its own discretion. The nature and the amount of the damages caused can be proven with all admissible evidence, but in most cases expert opinions (economical, accounting, medical etc.) are used.

22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?

The damages, which could be recovered, are actual suffered loss and loss of profits. These are compensatory damages but the plaintiff could also claim pre-judgment legal interest and/or contractual penalty as well as a legal interest accumulated from the date of filing the claim until final payment of the debt. Each party could claim recovery of all court costs spent and attorney’s fees effectively paid on the case where the court shall rule the recovery only in case of positive decision for the respective party.

23. If punitive damages are available, what is the threshold for recovery, and range of awards?

In case that contractual penalty is claimed on a commercial dispute, a threshold is not provided. If such penalty is claimed in a civil lawsuit between individuals, the court is entitled to reduce the amount of the penalty if it is deemed excessive.

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24. Are there time limits for bringing claims? Responding to claims? Please describe.

Under the Bulgarian civil law there are two limitation periods for bringing actions (to assert claims) – a 3-years prescription period and a 5-years general prescription period. The deadline for filing a response to the claim in general civil cases is one-month starting from the date of service of the claim.

In commercial disputes a special procedure applies. After filing the claim the court opens a court case and sends a copy of the claim to the defendant/s. The defendant may file a response to the claim in 2-week term. After the receipt of the response, the claimant may (but is not obliged to) amend, extend, complete or clarify the initial claim by submitting an additional claim incl. to present additional evidence and make evidence requests in another 2-week term. On his side, respectively, the defendant has the right to respond to the additional claim incl. to present additional evidence and make evidence requests again in a 2-week term. This is the so called double exchange of documents under the Bulgarian Civil Procedural Code.

25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?

According to the Bulgarian civil procedural code, as a rule, the claim should be filed with the court competent for the district/region where the seat and/or the domicile of the defendant/s is located. When the defendant is a foreigner or a foreign company, and there is no other agreed jurisdiction between the parties, the competent jurisdiction is the respective court in Sofia. The conveniency of the foreign defendant could not play any role as the parties can change the jurisdictions established by the law only by signing a contract.

Contractual jurisdiction is applicable to class actions and employment disputes only if the agreement has been signed after the dispute has started.

Contractual jurisdiction is not allowed for property disputes only.

26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.

A third interested party may be called to join the pending case on the side of one of the parties in order to be bound by the res judicata of the court decision. A third interested party may also step-in voluntarily in the pending case to help one of the parties when it is interested in rendering a court decision in favor of that party.

A third party may be called to join until the first court hearing but could step-in upon its own request until the conclusion of the trial in the first instance. The court shall decide on the request for stepping-in and/or joining of the third interested party. Third interested party could actively intervene in the trial including to present evidence and to make evidence requests.

The defendant could be replaced in case of waiving of the claim towards him as well.

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27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).

Generally, the party who loses the case should bear the legal cost of the other party. The party should present evidence to the court for all costs paid and make a list of the costs. The amount of the legal costs, which shall be recovered, is calculated pro rata to the adjusted/overruled part of the claim.

In case of termination of the case upon request of the plaintiff (waiver or rejection of claim), the defendant is also entitled to claim recovery of its legal costs.

28. Are contingency fees allowed?

There is no such kind of fees under the Bulgarian civil procedural law.

29. Is third party funding of claims permitted? Under what circumstances?

To open a case, the court requires the plaintiff to provide evidence that he has paid the state fee. In case a third party pays the fee, the respective party cannot claim recovery of such legal cost.

30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?

Class actions (collective claim) can be brought on behalf of a number of persons, injured by a violation. The most common claim types are for the cessation or prohibition of activities or commercial practices.

The main condition for filing a class action is a violation of the rights of more than two consumers (customers) who can be identified and who have suffered damage of the same origin.

31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?

The Bulgarian Consumers Protection Commission exercises control over the unfair commercial practices and over the safety of foods and services on the market. The Commission, as well as any other non-profit organizations (associations) for protection of the consumers' rights can bring class actions for consumer protection in case of violation of the collective interests of the consumers. The collective claim has to be submitted before the competent regional court.

32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?

The length of the court proceeding depends on the activity of the parties, on the period of serving notifications and documents to the parties and on the number of open court hearings. Usually, a trial on civil legal dispute in the first instance takes approximately from one to three years.

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According to the Bulgarian civil procedural code, generally, the court should render its decision in a reasonable time. The Code stipulates a term of one month as of the last court hearing but, usually, the first instance civil court renders its decision after a couple of months (in worst cases after a year).

33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?

An appeal process is available as a second instance court proceeding. The first instance decisions and the procedural rulings of the courts can be appealed.

The appeal against a first instance decision is heard by a composition of three appeal judges, which is selected electronically on a random principle. Each appeal court consists of several departments (civil, commercial and penal), which are divided into compositions of three judges. The judges in each composition are permanent. A main requirement for holding the position of appeal judge is to have at least 10 years legal practice and experience.

34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?

No.

35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?

The Bulgarian civil procedural code allows disclosure of electronic documents as evidence signed with an electronic signature. Such documents must be submitted as hard copy (paper) only. Currently there is no opportunity to submit graphics, computer animations and presentation, etc., as evidence and use it in trials.

36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?

There is no prior (pre-trial) phase in civil and commercial disputes in Bulgaria. There is no distinction in law competency of legal representation except for junior lawyers. In order to be certified to practice as lawyers, graduated jurists should pass the lawyers exam and be admitted in the relevant Bar Association. After the admission, lawyers are certified to practice legal representation in court. On the other hand, only lawyers with more than 5 years legal experience are allowed to appear before the Supreme Court of Cassation and before the Supreme Administrative Court.

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37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?

In Civil law, in the event of contributory damages, all contributing persons and entities are held liable. Joint liability applies only if explicitly stipulated by the law or by an agreement. Otherwise several liability is effective.

As far as tort law is concerned, when contributory damages have been caused, all tortfeasors are jointly liable.

In case of plaintiff's negligence the defendant's liability may be reduced at the court's discretion in the course of litigation proceedings.

38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be followed?

The Hague Convention must be followed.

39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)

Court assignments under the relevant EU Regulation are carried out regularly by the Bulgarian courts with no obstacles. The courts also apply Regulation (EC) No. 1393/2007 by the European Parliament and the Council from 13 November 2007 regarding the service in the Member States of judicial and extrajudicial in civil or commercial matters ("service of documents") and repealing Regulation (EC) No. 1348/2000 by the Council (OB, L 324/79 from 10 December 2007). The collection of evidences under Regulation (EC) No. 1206/2001 by the Council on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (Effective from 24 July 2007) is also implemented in the Bulgarian Civil procedural code.

40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.

N/A

41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?

Insolvency and commercial disputes.

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42. Are there legislative efforts under way that address any of the litigation practices in your country?

Regarding the cassation proceeding before the Supreme court of Cassation – currently the proceeding before the Supreme court of Cassation is divided onto preliminary and ordinary stages where in the preliminary stage the Court could overrule the cassation motion due to lack of cassation grounds.

Currently, the legislative efforts under way concern elimination of the preliminary check stage.

Regarding execution procedure held before state or private bailiff after the court decision enters into force.