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Kappou Efthymia, MEN 21015

Thesis Supervisor: Farantouris Nikolaos

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Το έργο που εκπονήθηκε και παρουσιάζεται στην υποβαλλόμενη διπλωματική εργασία είναι αποκλειστικά ατομικό δικό μου. Όποιες πληροφορίες και υλικό που περιέχονται έχουν αντληθεί από άλλες πηγές, έχουν καταλλήλως αναφερθεί στην παρούσα διπλωματική εργασία. Επιπλέον τελώ εν γνώσει ότι σε περίπτωση διαπίστωσης ότι δεν συντρέχουν όσα βεβαιώνονται από μέρους μου, μου αφαιρείται ανά πάσα στιγμή αμέσως ο τίτλος. / The intellectual work fulfilled and submitted based on the delivered master thesis is exclusive property of mine personally. Appropriate credit has been given in this diploma thesis regarding any information and material included in it that has been derived from other sources. I am also fully aware that any misrepresentation in connection with this declaration may at any time result in the immediate revocation of the degree title.

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ABSTRACT

The field of energy law is a fairly new field and "litigious" one. In other words, energy law is intertwined with various areas of law, such as public international, European, administrative, tort, commercial, insurance but also criminal law.

As far as energy disputes are concerned they have not so far make substantial engagement with the issues of their judicial resolution. In terms of practice application, in the Greek area there is currently a case energy difference, which was resolved through the arbitral pathway.

This study aims to present the existing legislative framework for the arbitration of disputes which arise from the energy sector focusing on institutional permanent arbitration of RAE. In the context of this thesis, comparisons are made regarding to energy arbitration at the international level. Specifically, laws and particularly those applicable in international as well as domestic arbitration regarding energy disputes are presented in detail. Moreover, the provisions governing the permanent arbitration of RAE are thoroughly analyzed.

Furthermore, the manner in which RAE arbitration has been organized is captured, focusing on the legal and operational problems that arise. Finally, from a procedural point of view, the first arbitral decision under the auspices of RAE, concerning a dispute about energy, published by an arbitral tribunal is analyzed.

Finally, an attempt is made in order to be formulated a reflection for further thinking regarding the development of Greek arbitration legislation under the auspices of the RAE by raising concerns about the apparent influence of Greek arbitration provisions by international arbitration.

INTRODUCTION

Nowadays, the slowness of the courts in terms of adjudicating disputes and issuance of decisions is worldwide known. This fact forces recourse to alternative mechanisms of dispute resolution. Moreover, nowadays as international trade is developing with a rapid pace, the lack of a competent international court to resolve international commercial disputes in conjunction with the need neutrality and speedy resolution of disputes make international arbitration as the most appropriate and rapidly developing means of dispute resolution.

Internationally, arbitration is one of the three classic ways resolving a dispute, which has been created between two or more parties. The other two mechanisms are judicial resolution and mediation.

As an out-of-court way of resolving disputes, arbitration has been established many years ago through the provisions of articles 867 et seq. of the Civil Code, which concern internal arbitration. There is also legislation in Greece for international arbitration. The institution of arbitration has largely overcome the disadvantages of the tactic justice in Greece and offers speed and flexibility as a dispute resolution method.

As far as arbitration in energy disputes is concerned, it is not only offered but recommended as a procedure of resolving the energy differences, especially if we take into account the lack of coding of the relevant national and European energy legislative framework as well and the fact that energy disputes have a specialized object in the sense that require specialized knowledge on the part of the arbitrators. Regarding the issue of "arbitrability" of energy disputes, it is worth mentioned that these are amenable to arbitration because these are disputes of private law, where there is authority to dispose of them.

Greece has acquired an independent authority for energy, called the Energy Regulatory Authority (RAE), which was established by Law 4001/2011 and was organized by permanent arbitration mechanism, in the context of which was issued in 2013 a first arbitral decision on an energy dispute. The establishing permanent arbitration mechanism in the energy sector has quite a long way of importance, as it is an interdisciplinary field and there is intense legislative mobility and constant developments regarding this permanent arbitration mechanism. The creation of a permanent arbitration mechanism under the auspices of RAE serves the need for

speedy resolution of disputes, which is better served by the arbitration process than by the procedure of regular courts.

The need for a specialized resolution mechanism in the energy sector and the differences arising from activities arising from this sector is better served by the list of arbitrators specialized for this purpose and who are also selected with caution and under the auspices of RAE. Furthermore, it is especially important that arbitrators should be able to provide opinion on energy issues on behalf of the specialist in the field of energy. Finally, through the existence of a permanent energy dispute resolution mechanism, trade and economy are strengthened and a climate of trust is enhanced and security in the relevant investment sector.

CHAPTER 1

1.1. The role of Energy

Energy is important for most activities of modern society. It represents a basic human need. In people's daily life, energy is used for the simplest and the most complicated necessities in order people's daily routine become more comfortable and convenient. Energy is needed for almost anything and everything in life.

According to the latest information of the statistics of International Energy Agency, the main sources of energy widely used worldwide are oil and coal and especially oil dominates the supply of energy around every corner of the world. However, natural gas has also appeared on the global energy market for many decades.

Nowadays, the vital importance of the good of energy is reflected in the society and the economy both at the level of national states and at the level of associations of states, such as the European Union. Energy constitutes one of the factors that shape the international relations between states, affects economy, politics and except from the above mentioned energy has become the subject of ecology and protection of the environment[1].

In the context of the internal market, energy sector shows intense investment activity with mergers between companies, cooperation agreements and capital-intensive investments. At the same time, intense activity is observed in the composition of a distinct supervisory and regulatory framework for the energy sector, with efforts made in order to understand, capture and address the most specific concerns and challenges related to energy markets, while ensuring energy sufficiency and security, the protection of consumers and the healthy conditions of competition between businesses. On the other hand, many times disputes arise between companies which active in the energy sector or between states and private investors in the energy sector, usually with strong elements of foreignness. Therefore, the energy disputes present a strong element of internationalization especially in the last decades when

[1] https://www.imperialoil.ca/en-ca/company/about/the-importance-of-energy

there are constantly emerging needs to buy, sell or exchange wealth-producing energy sources.

The most significant aim regarding the concept of energy is the consolidation of energy security worldwide. Energy Security is currently one of the main energy policy goals, at international level. The importance of Energy Security has increased in recent decades at the international level, mainly due to the increasing dependence of 16 industrialized economies from imported consumption energy, but also due to the increase in the frequency of disturbances of supply. However, despite the great importance of energy security, the term "Energy Security" has no clearly defined, which makes measurement difficult, but also the balance of the goal against other energy goals policy. The common idea behind from all the different definitions of Energy Security can be identified as *"the absence of, protection from, or the adaptability to threats caused by or having impacts on the energy supply chain".*

As expected, the increasing use of more energy sources by states as well as the need to find sensible solutions to ensure the achievement of "Energy Security" have caused massive energy disparities to emerge both nationally and internationally. In recent years, the method of resolving existing energy disputes with the arbitration method has been widely observed. As noted by the 2020 ICC Dispute Resolution Statistics, the energy sector historically generates a significant number of ICC cases. In 2020, the ICC registered 167 new cases related to the energy industry. In the area of investor-state disputes, the energy sector is also prominent. The 2020 Annual Report issued by the International Center for Settlement of Investment Disputes (ICSID) shows that the energy sector continues to dominate the caseload.

1.2. Legal nature of Energy

A. The legal nature of Energy in Greek Law

According to civil Greek law, electricity as well as any other form of energy is considered a movable and expendable thing, which is subject to authority as it is limited to a certain area as well as subject to exploitation by its owner. In particular, electricity belongs to "intangible goods" or "intangible objects or elements", has economic value and subjects to authority, because it is injected into a pipeline and

runs through a specific network or system. Additionally, considered by law, as a thing, electricity is self - sufficient, therefore it can acquire legal autonomy and individuality and become the subject of tortious and rem rights and corresponding tortious and rem actions respectively.

In fact, the object of the right in rem and the right in rem can only be the electricity that is subject to authority, for example that produced by power plants and injected into the transmission system or the distribution network. Therefore, the acquisition of ownership over the energy in general begins from the time when it is channeled into a pipeline. This fact affects the determination of the legal characterization of the contracts, which are drawn up with an enforceable supply of electricity. In any case, the legal characterization of the energy supply contract, for consideration, is not uniform and varies according to the circumstances. Most commonly, it is a mixed contract, which has elements of sale, lease, project, lease of thing, etc. Therefore, the choice of applicable rules is made based on the will of the parties.

Greek energy market is regulated by the Ministry of Environment and Energy and the Greek Regulatory Authority for Energy (RAE). MEE is in charge of setting the country's energy policy and issuing secondary legislation, while RAE is an independent administrative authority, established on the basis of the provisions of Law 2773/1999, transposing Directive 96/92/EC on the liberalization of the electricity market.

Although initially limited, compared to other jurisdictions, RAE's role was enhanced notably following the implementation of the third EU Energy Package by virtue of Law 4001/2011 as well as the Law 4425/2016. Following this reform, RAE is designated as the competent authority responsible for the security of energy supply and the granting, modification and revocation of all producer certificates and licenses required for the undertaking of energy activities, including the production, transmission, distribution, and supply and trading of electricity and natural gas. RAE's other competencies include the approval of the tariffs of non-competitive activities, the granting of exemptions to the third-party access regime, the certification of transmission system operators for both electricity and gas and the certification of distribution system operators for gas. It is expected that the role and tasks of RAE will be further expanded to include the provisions of Directive 944/2019, when transposed into Greek law.

The legal framework of renewable energy sources is based on various directions legal directions. Under the Greek electricity sector legislation, the development,

construction, commissioning and operation of any type of RES power plant (e.g., wind, photovoltaic, hydro, biomass) is governed by numerous and extensive administrative decisions and acts. More specifically, Law 3468/2006 as in force provides for a broad procedural framework for the **licensing of renewable power production units in Greece.** For a RES station to be constructed and operate, the following main licenses need to be issued:

1. an electricity production license or a producer's certificate;
2. an approval of environmental terms (or an exemption therefrom);
3. an installation license and
4. an operation license.

Another worth mentioning law is the law regarding RES in Greek Law System, namely the Law 3851/2010. This Law is related to the acceleration of the development of renewable energy sources as well as cites the ways to deal with climate change. According to this law, Greece increases the national target regarding the use of RES so that it reaches 20% in the final energy consumption[2].

Regarding operations **in the natural gas sector**, they are heavily regulated in Greece, while licenses are required in order to own and manage an independent natural gas transmission system, and proceed with the activities of distribution and supply of natural gas. These types of licenses are issued by RAE following an application by the interested party. In certain situations, (e.g. if a transmission system serves a public interest, a distribution grid is subsidized by domestic or EU sources, or multiple applications are to be submitted for a particular area), a tender process may need to be launched by RAE to grant the necessary license.

The Licensing Regulation covers the type and the content of application for the granting, amendment and revocation of the following licenses, required for the conduct of the respective natural gas activity:

1. an independent natural gas system license.
2. an independent natural gas system operator license.
3. a natural gas distribution network license.

[2] https://ecopress.gr/i-exelixi-ton-ape-kai-to-nomothetiko-plaisio-stin-ellada/

4. a natural gas operation license and
5. a natural gas supply license.

The National Natural Gas Transmission System (NNGTS) registry regulation (Ministerial Decision Δ1/A/5816/2010 for gas trading) and the Natural Gas Licensing Regulation (Ministerial Decision 178065/ 2018 for gas supply) allow legal entities to apply for registration with the NNGTS registry and to be granted gas supply license respectively, as long as they are:

1. seated in the EU or in the European Economic Area;
2. a Member State of the Energy Community;
3. a country having entered into bilateral agreements either with the EU or Greece or
4. a legal entity with a branch in Greece.

According to Law 4685/2020, important changes in the shareholding structure of a license or certificate holder, even if they result in a change of the entity designated for the funding of a project, will be subject to mere notification requirements without triggering an obligation to amend the producer certificate or the production license. Changes in the legal form or the shareholding structure of a holder of a gas supply license need to be notified to RAE for the purposes of amending the respective license. As regards listed companies, the aforementioned requirement applies only in cases of a change of control.

In compliance with the ownership unbundling rules applying to natural gas distribution system operators (DSOs) and gas transmission system operators (TSOs), any intended change in their shareholding structure needs to be notified and further approved by RAE, while the unbundling certification provisions of Law 4001/2011 shall apply. RAE has to be informed and grant its prior approval if:

1. a person (individual or legal entity) acquires a shareholding in a DSO or TSO;
2. the participation of an existing shareholder reaches or exceeds 20, 33 or 50 per cent;
3. the DSO or TSO becomes a subsidiary of a shareholder due to a change of a shareholding participation or change of control; or

4. there is a change in its legal form.

For listed companies, an amendment application shall be submitted in the case of a change of control within the meaning of Article 3 of Regulation (EC) 139/2004 of the Council of 20 January 2004. If the change in the corporate or shareholding structure results in a change of control that falls under the procedure of preventive control of concentrations under Article 5 of law 3959/2011, the licensee shall also submit to RAE a copy of the decision of the Hellenic Competition Commission on the notified concentration.

Similarly, the electricity transmission system operator (ADMIE) (certified under Article 11 of the Electricity Directive 2009/72/EC, Law 4001/2011 and RAE's decision 475/2017, regarding TSOs in relation to third countries) has the obligation to notify RAE, in compliance with the applicable ownership unbundling rules, any intended change in its shareholding structure or a change of control, underpinned also by adequate reasoning for continuous compliance with a number of other obligations, including those related to the security of supply.

Finally, the Greek state is statutorily the sole shareholder of HHRM. In addition, the concessionaires of upstream petroleum rights may not, without the prior consent of the Greek cabinet of ministers, be controlled, directly or indirectly, by non-EU entities.

B. The legal nature of Energy in European legislation & jurisprudence

In European legislation and jurisprudence as well as in the terms of the European Federation of Energy Traders (EFET) Model Convention, electricity is treated as a thing. In these terms there are provisions for the parties to bear the risk, as well as contractual terms for their obligations in relation to the delivery and receipt of the service, as well as defining cases of force majeure in the event of an abnormal development of the contractual relationship.

At the European - Union level, there is a multitude of legislation, directives, acts regarding the rules governing energy at all stages of its exploitation by the member states. European Union tools are mainly the primary and secondary regulations. These regulations aim at the formulation of a common, unified and liquid energy market that provides equity among competitors, high protection of consumers and generally the development of a solid basis for the supply of electricity and natural gas when and where it is needed.

The basic goals of EU energy policy in the context of free movement of persons, services and capital are described in art. 194 of the Treaty on the Functioning of the EU and consist of the completion of the internal energy market, the safety of security of supply, sustainable development and competition.

a) Ensuring security of energy supply in the Union.

Regarding natural gas, **Regulation (EU) No 994/2010** cites measures to ensure security of gas supply and aimed at the re-enforcement of mechanisms for crisis prevention and resolution.

However, the repeal of the aforementioned Regulation and the issuance of a newer one was deemed necessary, having as a basic pillar the further reinforcement of regional cooperation for crisis prevention and the establishment of common emergency plans through the creation of a solidarity mechanism between interconnected Member States (directly or via third countries) in order to secure supply at least for the solidarity protected customers. Hence, **Regulation (EU) 2017/1938** of 25 October 2017 was issued concerning measures to safeguard the security of gas supply.

Furthermore, in order to reinforce EU energy security, **Decision No 994/2012/EU** of the European Council was enacted establishing information exchange mechanisms with the Commission concerning intergovernmental agreements between Member States and third countries in the field of energy. The decision in question was repealed on May 2nd 2017 by a newer Decision **2017/684/EU**.

b) Climate change - Promotion of energy efficiency and energy saving and the development of new and renewable energy sources (RES), use of alternative fuels, as well as the development of an ETS (Emissions Trading System).

Relevant legislative acts are the rules concerning the:

1. promotion of power generation from RES [**Directive 2018/2001/EU**, amends **Directive 2009/28/EC** and repeals the latter as of July 1st, 2020], which defines an EU wide binding target for RES of 32% – at least – of gross final energy consumption by 2030, by contribution of each Member State to the framework of the integrated national energy and climate plans,

2. use of biofuels and other renewables in transport **[Directive 2003/30/EU]**, according to which biofuels or other renewable fuels are promoted for the replacement of diesel or petrol in transport, so as to contribute to the attainment of the climate change targets.

3. development of the trans-European transport network **(Regulation (EU) No 1315/2013)** and alternative fuel infrastructures **[Directive 2014/94/EE]** concerning the framework of measures for the deployment of alternative fuel infrastructures (defined as electricity, hydrogen, biofuels as defined in Directive 2009/28/EC, synthetic and paraffinic fuels, natural gas, including biomethane, and liquefied petroleum gas (LPG), and the minimum standards of such infrastructure (including the recharging points for electric vehicles and natural gas and hydrogen vehicles refueling), in accordance with the specific national policy framework provisions,

4. geological storage of CO_2 [**Directive 2009/31/EC]**, which enacts the legal framework for the environmentally safe storage of CO2, in the territory of the Member States, their exclusive economic zones and on their continental shelves, to contribute to the fight against climate change,

5. greenhouse gas emission allowance trading system **[Directive 2003/87/EC]**, which applies to energy activities, production and processing of ferrous metals and mineral industry, so as to promote the reduction of emissions (EU target for a decrease of at least by 40% until 2030) in a cost efficient and economically effective manner,

6. energy efficiency [**Directive 2018/2002/EU,** which amends **Directive 2012/27/EU ,** repealing Directives 2004/8/EC and 2006/32/EC], which foresees an improvement of energy efficiency of at least 32.5% by 2030, as well as the energy performance of buildings **[Directive 2018/844/EU]**, which mainly amends the provisions of **[Directive 2010/31/EU]**, so as to adapt to the new technologies and for their further enhancement in order to achieve the target for reduction of greenhouse gas emissions (taking into consideration that the building stock is responsible for 36% of the total EU CO2 emissions), providing for a 3% average annual renovation rate,

7. Regulation on the governance of the Energy Union and Climate Action [**Regulation 2018/1999/EU**,repealing **Regulation (EU) 525/2013** as of

1 January 2021, that enacts a governance mechanism, so as to ensure the achievement of the 2030 and long-term objectives and targets of the Energy Union and to stimulate cooperation between Member States, on the basis of integrated national energy and climate plans covering 10-year periods.

8. The roadmap for achieving the European Green Deal **(COM (2019) 640)** was issued by the EU on 11/12/2019. According to this roadmap it is expected that:

c) Promotion of the optimum interconnection of energy networks, mainly through the characterization of projects as "Projects of Common Interest" (PCI) and funding from the European Investment Bank and the Cohesion Fund (art. 177 of the Treaty on the Functioning of the EU). According to **Regulation (EC) No 2236/95,** projects of common interest have priority in the granting of Community aid. **Decision No 1364/2006/EC** lays down the basic guidelines for trans-European energy networks which specify PCIs and priority projects among the trans-European electricity and gas networks. **Regulation (EU) No 347/2013** sets the guidelines for trans-European energy infrastructure, defining 12 corridors and priority areas in energy networks and foreseeing expediting measures for the relevant permitting procedures of PCIs. The Regulation in question was amended by **Regulation (EU) No 1391/2013,** so as to define the Union list of projects of common interest. Furthermore, **Regulation (EU) No 1316/2013** establishes a mechanism for the facilitating of funding, the Connecting Europe Facility (CEF) aiming at the support of priority projects from 2014-2020 in the sectors of energy, transport and telecommunications.

The provisions of **Regulation No 617/2010,** which was replaced by **Regulation (EU) No 256/2014,** contribute to the effective implementation of the above, which in turn request that Member States notify the Commission of investment projects in energy infrastructure within the European Union.

d) Ensuring the functioning (integration) of the internal energy market, which is estimated to create a healthy and safe investment environment which will fund the development of infrastructure as well as provide the possibility to consumers to enjoy "value for money" energy services. The creation of competitive energy markets, taking into consideration the particularities of each Member State (eg. SGEI), as well as security of supply requirements, will contribute to the integration of the internal energy market.

The above mentioned policies aiming at the integration of the internal energy market have taken place gradually through legislative measures (energy packages) adopted between 1998 and 2009. To date, these legislative packages are as follows:

The 1st energy package (1998-2003), which primarily comprises Directives pertaining to common rules for the internal energy markets for electricity and natural gas, established the national regulatory authorities and introduced the right of Third Party Access (TPA), as well as the obligation for accounting and operational unbundling. It is noted that each Member State was allowed to choose on its own the necessary regulatory measures as well as the market design depending on the particular structural and operational conditions. The national regulatory authorities were given the ever so important role of market supervision and monitoring of compliance with the above principles and of regulation of the electricity supply tariffs. In this context, **Directive 98/30/EC** concerning common rules for the internal market in natural gas was issued.

The 2nd energy package (2003-2009), comprising mostly Directives on common rules for the internal electricity and gas markets and Regulations on conditions for access to the network for cross-border exchanges in electricity and for access to the natural gas transmission networks, attempted to extend the results of the 1st energy package by introducing the right of consumers to freely choose and easily switch their supplier, as well as the obligation of **legal separation** between the activities of generation/supply and transmission or distribution. Specifically, **Directive 2003/55/EC** and **Regulation (EC) No 1775/2005,** were issued for natural gas, the latter of which sets the technical rules for access to the transmission networks, as well as the rules for capacity allocation and congestion management.

The 3rd energy package (2009-to date): Despite the important progress accomplished in the energy sector, obstacles were still noticed relating to healthy competition in the wholesale gas and electricity markets, due to the fact that the markets remained primarily national with relatively limited cross-border trade and high concentration levels. In order for the European Commission to detect the obstacles to the development of effective competition in these markets, the European Commission launched in 2005 the Energy Sector Inquiry, which was completed in 2007. Based on the results of this sector inquiry and in order to tackle the identified problems in the gas and electricity market, the 3rd energy package was adopted, which mainly contains Directives on common rules for the internal market in electricity and the internal

market in natural gas, **a Regulation establishing the Agency for Cooperation of the Energy Regulators (ACER),** as well as Regulations on conditions for access to the network for cross-border exchanges in electricity and for access to the natural gas transmission networks. The main amendments brought about by this new legislative package consist of the ownership unbundling of the transmission activities from the generation/supply activities, the reinforcement of responsibilities and independence of the regulatory authorities and the cooperation among regulators, system operators and the European Commission, as well as the enhancement of transparency of information. In particular, with respect to natural gas, the 3rd energy package includes the following:

- **Directive 2009/73/EC** concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, which is amended by virtue of **Directive 2019/692/EU** having as an objective to ensure that the rules governing the internal gas market of European Union also apply to gas transmission systems between a member state and a third country, up to the border of the member state's territory and territorial sea.
- **Regulation (EC) No 715/2009** on the conditions for access to the natural gas transmission networks and repealing Regulation (EC) 1775/2005, which contains measures on congestion management and provides for the establishment of the European Network of Transmission System Operators for Gas (ENTSO-G).
- **Regulation (EC) No 713/2009** establishing an Agency for the Cooperation of Energy Regulators, which is repealed as of July 4th 2019 with the entry into force of the new **Regulation (EU) 2019/942**.

The 3rd energy package is supplemented by a series of Directives and Regulations, primarily the following:

– **Directive 2003/96/EC** concerning the restructuring of the Community framework for the taxation of energy products and electricity.

– **Directive 2008/92/EC** concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users, which obliges Member States to ensure that the relevant prices and pricing mechanisms are announced to Eurostat twice per year.

– **Regulation (EU) No 1227/2011** on wholesale energy market integrity and transparency (known as "REMIT" Regulation), according to which ACER is vested with the responsibility of monitoring energy wholesale natural gas and electricity markets through the collection and processing of data related to market transactions. ACER is also given the responsibility of investigation of possible abusive market practices, as well as the coordination of appropriate penalties for breaches of the provisions of REMIT, the application of which is the responsibility of the Member States. REMIT was supplemented by the provisions of **Implementing Regulation (EU) No 1348/2014** on data reporting, implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011. [For further information please see relevant **"Requirements of REMIT"** sub-section of the "Regulatory Framework" section.]

– **Commission Decision 2010/685/EU** amending Chapter 3 of Annex I to Regulation (EC) No 715/2009 concerning the technical information necessary for network users to gain effective access to the system.

– **Commission Decision 2012/490/EU** amending Annex I to Regulation (EC) No 715/2009, regarding congestion management procedures on the natural gas transmission networks (**CMP**), effective since **September 2012**, which were supplemented by **Commission Decision (EU) 2015/715**.

– **Regulation (EU) No 984/2013** establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and supplementing Regulation (EC) No 715/2009, which was repealed by **Regulation 2017/459/EU** (CAM) in force as of **April 2017**

– **Regulation (EU) No 312/2014** establishing a network code on balancing in gas transmission networks (BAL), in force as of **1 October 2015**.

– **Regulation (EU) No 703/2015** of the Commission establishing a network code on interoperability and data exchange rules (**Interoperability),** in force since **1 May 2016.**

– **Regulation 2017/460/EU** establishing a network code on harmonized transmission tariff structures for gas (TAR), the provisions of which shall apply as of 31 May 2019.

Finally, the most significant novelty in the field of energy at a European level is the formulation of the Energy Charter Treaty (ETC). This treaty provides a multilateral framework for energy cooperation among European member – states, which is unique under international law. It promotes energy security through the operation of more open and competitive energy markets, while respecting the principles of sustainable development and sovereignty over energy resources. The treaty was signed in 1994 and entered into force in April 1998.

In summary, any form of energy is not only a thing but also a tradable good and service with significant legal, economic and social significance. As a good, it is of particular social and economic interest and plays a prominent role in the life of every European consumer as well as in the operation of every business. Under the above circumstances, the European legislator characterizes energy activities as services of public interest or public utility. In fact, the nature of energy as a public good allows but also imposes the exercise of state interventionist policy in it, making energy an area of special policy and Union harmonization and action[3].

CHAPTER 2

2.1. Definition of Arbitration

Arbitration is a private form of binding dispute resolution (adjudication), conducted before an impartial tribunal, often of experts in the relevant field, otherwise lawyers, which emanates from the agreement of the parties, but which is regulated and enforced by the State. Parties that are involved in the arbitration procedure wish by this way to resolve their disputes not in a judicial system but at the same time they pursue to issue a binding decision and an award that may be enforceable to national courts. The State requires the parties to honor their contractual obligation to arbitrate, provides for limited judicial supervision of arbitral proceedings, and supports the enforcement of arbitral awards.

The parties are empowered to choose both the arbitrators and the type of arbitration (institutional or ad hoc) as well as the choice of rules governing the conduct of the arbitration and the language to be used in the negotiations among them. Arbitration

[3] https://repo.euc.ac.cy/bitstream/handle/123456789/2131/%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20.pdf?sequence=1

thus gives the parties the desirable autonomy and control in order to observe and check the process that will be used to resolve their disputes. This autonomy might be very useful in the context of international commercial arbitration because the parties do not want to resolve according to the laws and jurisdiction of the other's party system of judgment (home court advantage).

Generally, arbitration offers a more neutral forum where each side believes it is more possible to have a fair hearing. Furthermore, parties have the flexibility of being able to adjust the dispute resolution process to the needs of the parties and they also have the chance to choose arbitrators who have an excellent knowledge of the subject of the dispute and they will be suitable for each time dispute resolution.

2.2. Types of Arbitration.

A. Institutional Arbitration.

At an institutional arbitration a specialized institution intervenes and undertake the role of controlling the arbitration procedure. An advantage of institutional arbitration is the fact that each institution has its own pre-formulated rules, which in fact most of the time enjoy great recognition and applicability.

In institutional arbitration, involving parties may choose by agreement or by arbitration clause or by private agreement, the appeal to an arbitration center, which applies specific rules arbitration and has a special list of available arbitrators.[4] The institution mainly has organizational and supervisory responsibilities and at the same time provides secretarial, administrative and logistical support with specialized personnel, in order to carry out the arbitration procedure faster and more efficient, without procedural problems. The arbitration center is competent to pursue the enforceability of the decision that will the referees issue. The arbitral tribunal is responsible for adjudicating it dispute, while operating independently of the arbitration center, under the auspices of, however, this and in accordance with its regulation.

Another significant advantage of institutional arbitration is that parties are free choose the arbitrator who will settle their dispute exclusively through the directory that each

[4] A. Redfern, M. Hunt, Law and Practice International Commercial Arbitration, Second Edition, Sweet & Maxwell London, 1991.

institution has, while at the same time they do not have the freedom to deviate from the predetermined one arbitration process.[5] Moreover, the award that will be issued is easier to obtain enforceability and not be contested by the parties because of the it is issued by a well – known institution and some institutional rules provide for scrutiny of the draft award before the final award is issued. A dissatisfied party could then appeal to an arbitral tribunal of second instance which would be able to confirm, vary, amend or set aside the draft award.

On the other hand, institutional arbitration has disadvantages too. It is a very expensive type of arbitration due to administrative fees for services and use of the facilities. Another flaw of the procedure regards the bureaucracy from within the institution, which can lead to delays and additional costs.

Generally, there are numerous institutions (approximately 1200 institutions) for arbitration such as the London Court of International Arbitration (LCIA), the International Chamber of Commerce (ICC), the Dubai International Finance Centre (DIFC) and the Dubai International Arbitration Centre (DIAC). However, parties should take into consideration that the selection process of an arbitration institution is very difficult as some institutions may deal with rules which are not adequately drafted.

B. Ad hoc Arbitration

At ad hoc arbitration parties do not refer to an institution but they decide to formulate alone all the aspects of the arbitration such as the number of arbitrators, the appointment of those arbitrators, the applicable law and the procedure for conducting the arbitration. It is possible for the parties to decide that applicable will be the rules of a specific arbitration center, but without this means that this arbitration becomes institutional as it has not been set under the supervision of an arbitration center or they may choose the UNCITRAL (United Nations Commission on International Trade Law) Arbitration Rules, which are frequently used in ad hoc arbitrations.[6]

The main pros of ad hoc arbitration is that an adequate structured ad hoc arbitration is more cost effective than an institutional arbitration, because parties will only have to pay fees for the arbitrators, lawyers or representatives while at the institutional arbitration parties have to pay extra fees for the operation of the institution. Furthermore, ad hoc arbitration is more flexible because gives parties the autonomy

[5] K. Kalavros, Arbitration Law I, 2nd Edition, Sakkoulas Publications, 2011.
[6] www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2010Arbitration_rules.html.

to schedule all the arbitration process themselves. However, an ad hoc arbitration may be disadvantageous, if one of the parties engages in deliberate obstruction of the process. In this case, the lack of an administering institution may lead the dispute to the courts in order to move the arbitration forward.

C. Internal/Domestic Arbitration.

An arbitration may be characterized as internal, if the dispute of arbitration does not show any element of foreignness and therefore it is subject to a domestic jurisdiction of the state courts of a country.

In particular, in the context of Greek legal system the provisions of articles 867 – 902 of the Civil Code regulate the arbitration resolution of internal disputes. According to article 867 of the Civil Code, in order for a case to be submitted to the arbitration process they must be met cumulatively the following conditions: *a) to concern a private law dispute, with an exception the disputes referred to in article 663 of the Civil Code, as it was replaced by Law 4335/2015, b) to conclude an agreement between the parties and c) the parties to have the power to dispose of the subject of the dispute.*[7]

The subject of arbitration is anything that can be submitted to the jurisdiction of the state courts. In other words, any dispute of private law that has already arisen or will arise in the future from certain legal relationship. Furthermore, the agreement of the parties must be writing, as it is subject to the constitutive document type, while as far as necessary its content is sufficient if the agreement states a specific dispute or a future one, from a specific cycle of legal relationship, which will be resolved by arbitration. Finally, the parties have no unchecked power to submit their disputes to its institution mediation, but are significantly limited by public policy.

D. International Arbitration.

An arbitration procedure is defined international if the subject of dispute belongs into the international jurisdiction of courts of a country, which is determined by the application of the relevant national provisions of procedural international law. In the case where the legal arbitration relationship is not exclusively linked to a single country, but to more, at any stage, from the drawing up of the agreement until the substantial resolution of the dispute, then we refer to the international arbitration. One

[7] Article 867 of the Civil Code.

type of International Arbitration is International Commercial Arbitration, i.e submission to arbitration of disputes arising from international trade.

The most handful guide for international arbitration is the Model Law on International Trade United Nations Commission on International Trade (UNCITRAL) Arbitration, which is the basis for similar regulations in numerous countries, unifying the rules on international commercial arbitration. In Greek legislation, this model law was incorporated by the Law 2735/1999. [8] Furthermore, international arbitration in Greece is also regulated by various international conventions that the country has ratified such as the New York Convention of 1958 «regarding the recognition and execution of foreign decisions of arbitration».[9]

In summary, there is no predetermined definition for international arbitration as each national law sets its own conditions for the separation of national from international arbitration. At the same time, this opinion is strengthened by the fact that the UNCITRAL Model Law introduces a special legislative regime for international arbitration but it does not determine the type or the extent of disputes, which may be submitted to arbitration, thus giving the discretionary ability to define the requirements in each legal order.

i. The International Commercial Arbitration

It is known that «foreign investments» are sought after by all its states international community. In Greece, foreign investment is absolutely necessary. In our country, however, there is no attractive investment environment, as well this happens when a foreign investment goes through as few as possible risks in a certain state. The risks of foreign investment often come from the host state itself, which sometimes «arbitrarily» itself, against the foreign investor. In the context of their promotion and attraction investments, a special branch of international law has even been created, the «Foreign Investment Law».

However, «investment» as a legal concept does not have a commonly accepted definition. There is, after all, no multilateral treaty that regulates its entirety matter of foreign investment law. In this context, investment is defined for the implementation

[8] Article 1§1 of Law 2735/1999.
[9] Rules regarding international arbitration in Greek legal system are appeared in Civil Code and particularly in articles 903,905 and 906 of Civil Code.

needs of each legal instrument, national, bilateral or more rarely at the multilateral level.

International investment disputes are disputes between states and foreigner investors. More specifically, these are «legal disputes, which have as object claims or demands of the parties, which are based on rights, obligations or duties relating to, or arising from a particular investment».

In fact, arbitral tribunals apply national or international law, in order to resolve investment disputes between foreign investors and the host states. Because of the freedom of the litigants and the arbitrators to determine the law applicable to the arbitration, due to it hybrid nature of the legal relationship between "foreign investors" and states reception of the investment, there is a significant interaction between the national and the international legal order as well as in the implementation of relevant legislation arrangements in the context of arbitration between an investor and its host state investment.

To sum up, international investment arbitration is the dominant one extrajudicial mechanism for the resolution of international investment disputes which arise between states and especially between states that host foreigner investments and foreign investors or their own investments, due to default on the part of one of the parties to an international investment treaty (bilateral or multilateral), an investment agreement or international customary law. All international investment treaties, in fact, provide that the differences that may arise between the contracting states, from their interpretation or execution, shall be resolved by international arbitration, which after all, they organize specifically with their provisions.

2.3. Characteristics of Arbitration

a. Consent

Maybe the most essential characteristic of the institution of Arbitration is the «consensus» among the involved parties. The parties consent is that element on which the whole institution of arbitration is based. It may limit the power of arbitrators because they have only the ability to secede about the disputes that are under the arbitration agreement. Arbitrators are also expected to apply rules, procedures, and laws chosen by the parties. Parties express their consent to submit any future dispute to arbitration in a written agreement which is a clause in the commercial contract

among them. However, if they do not have and arbitration term in their agreement, they can subsequently agree to arbitrate after a dispute has arisen. This tact is named as «submission agreement».

b. Nongovernmental Decision Makers

Arbitrators are citizens and as a result they have not any connection with the government. From this perspective, they will logically weigh less heavily any questions of public policy or public interest, because they conceive their primary responsibility as deciding the one dispute the parties chose them to decide. Moreover, arbitrators are most of the times very thoughtful of the parties and considerate in their interactions with them. This is because, parties chose their arbitrators and of course arbitrators want to be chosen again. They try to shape some characteristics and be even-tempered, thoughtful, fair-minded and reasonable. Another essential element for arbitrators is that they do not have to be lawyers. There are many cases in which more technical than legal issues arise, the resolution of which is better to be undertaken by someone specialized in the respective issue than by a lawyer. In some industries, the technical skills of architects and engineers cause them to be chosen as arbitrators. When there are three arbitrators, usually each party will choose one arbitrator, and the third, who will be the chair – arbitrator, will be chosen by the other two party chosen arbitrators. Arbitrators that are occupied with international disputes are expected to be impartial and independent because if they do not comply with these principles, they may be challenged either before the arbitral institution or a court if there is evidence that they are not independent and impartial.

c. A final and binding decision/ award

One more vital way that justifies why more and more citizens or institutions choose arbitration for their dispute resolution is the equivalence of arbitral result to that of the state Jurisdiction. The arbitral award is binding on the parties involved enforceability and res judicata, respectively with a court decision. Generally, the award of arbitration cannot be appealed to a higher level court. Although there are exceptional opportunities to appeal, in some jurisdictions a party can challenge an award only if there is some defect in the process. However, under most arbitration laws the only grounds for setting aside an award will be limited, such as a defect in the procedure, or an instance where the arbitrators exceeded their powers and decided an issue that was not before them. Once the arbitrators issue an award, the party that has lost may

comply with the terms of the award but if it does not, the prevailing party will try to have the award recognized and enforced in the loosing party's jurisdiction. Basically, the award cannot be challenged on the merits. If the award has recognized in the loosing party's jurisdiction, it is considered to have the same legal result as a court judgment and for this reason can easily be enforced as a judgment in that jurisdiction.[10]

2.4. Advantages and Disadvantages of Arbitration

A. Advantages

The wide variety of advantages that this institution can offer, has contributed important in considering arbitration - mainly abroad- as the most preferable method of out-of-court settlement of a dispute, with the parties to make sure to include an arbitration clause in their contracts. The major advantages that parties take into consideration in order to select the specific way of resolving a conflict in compared to going to court are the followings:

ii. The private character of the procedure

The arbitration process is characterized by intense secrecy and confidentiality. The arbitration process is taken place behind «closed doors», prohibiting participation and monitoring of this by third parties, with the exception of the case where there is a relevant agreement of parts. This convenience is very important for huge companies that many times are parties of the arbitration procedure, because these companies do not want their confidential information and data about their business operations to be published.

iii. The «fast» procedure

It is a fact that judicial resolution of disputes accompanies most of the times with long delays. For this reason, it was inevitable the recourse to out-of-court dispute resolution mechanisms. This can easily be explained if we consider that in the case of the regular procedure in the first degree the decision may be issued within 8 months, while in the arbitration procedure the decision can be issued within 6 months. At the same time,

[10] Gary B. Born, Chapter 26: Recognition and Enforcement of International Arbitral Awards, in International Commercial Arbitration (Second edition 2014).

the fact that the appeal to the award of arbitration is allowed under limited grounds facilitates the faster conduct of the process.

iv. Lower cost of the procedure

The costs of arbitration are very limited in relation to judicial resolution of disputes. The unofficial character of the process contributes significantly to the faster presentation and examination of witnesses and allows the parties to introduce more evidence for examination, than they might examine during a trial, where time is limited and the caseload extremely high. However, the cost of each arbitration procedure varies and is a function of many factors. Especially, some of the factors that contribute to the formulation of the final cost are - indicatively and not restrictively - the subject of the dispute, the conduct of the arbitration agents, the remuneration of the arbitrators as well as any unjustified appeals to the state courts. Something worth pointing out is the fact that for the arbitrators both for the internal arbitration in the territory of Greece and for the international commercial arbitration, payment of their expenses is foreseen as well as their remuneration for the services offered.

v. Parties have the opportunity to choose the arbitrators

One of the most notable features offered in arbitration is the parties' free choice of arbitrators. In particular, the free choice of arbitrators by the parties provides the possibility to resolve any dispute by a competent and specialized arbitrator who will have complete knowledge and experience in each issue.[11] At the same time, the contradictory parties have the possibility to choose an arbitrator with a nationality different from their own parties, in order to avoid any discriminatory behavior on his part judge of the contracting party's country, as well as procedural failures due to the lack of knowledge of the foreign procedural system.[12] Of course, this is also the most important disadvantage of arbitration as it involves risks of bias.

v. Enforceability of arbitration awards

From the moment the arbitrator issues the arbitral award, it automatically becomes enforceable and binds all parties to the arbitral dispute. The enforceability of international arbitral awards can be declared more easily as a large number of states

[11] Latham & Watkins, Guide to International Arbitration, 2019

[12] F. Berlingieri, International Maritime Arbitration. Journal of Maritime Law and Commerce, 1979

(specifically 156)[13] have signed and contracted to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Under the New York Convention, courts are required to enforce an award unless there are serious procedural irregularities, or problems that go to the integrity of the process.[14]

B. Disadvantages

As discussed above, the advantages of arbitration are numerous and particularly important. However, as in every subject and in every institution there are also disadvantages. In this case, the advantages offered by the institution of arbitration can be reversed and become disadvantages that will make arbitration less attractive as a method of resolving private disputes.

i. Delays and high financial cost

Despite the fact that arbitration is normally a faster and cheaper dispute resolution process in relation to the court system, may delays and consequently more costs. Specifically, the selection of arbitrators can be accompanied by significant delays, either of the parties, which unreasonably delay the appointment of the arbitrators, or on behalf of the arbitrators themselves, who often present various obstacles to accepting their appointment. The fact that the parties bear the costs of the fees of the arbitrators and of any third parties who intervene in the trial for the better conduct of the trial (e.g. experts, lawyers, interpreters, etc.) also contributes to the increase in the costs of the arbitration. Of course, the cost each time increases or decreases depending on the type of arbitration that the parties will choose (institutional or ad hoc).

ii. Conflicting Arbitration awards

The lack of publicity of arbitration decisions has a negative impact the difficulty of creating a coherent body of case law, which is necessary in order to implement consistent and similar solutions, which contribute to creation of a legal certainty. At the same time, because of the limited of arbitral awards that receive publicity, there is a greater difficult in predicting the legal outcome of a case. [15]

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[13] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, opened for signature June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38 ("New York Convention")

[14] Article 5 of the New York Convention 1958.

[15] D. Horowitt, The Pros and Cons of Arbitration. COLEMAN & HOROWITT, 2009.

iii. No right to appeal

In the context of arbitration, the right to appeal is extremely limited and only in exceptional cases is arbitration therapy possible decision to overturn[16]. Therefore, some parties in the United States have already included in their arbitration clauses an agreement that any award would be subject to review on the merits in court. However, in 2008, the U.S. Supreme Court ruled that parties cannot contract for judicial review of the merits of an award.[17]

iv. Evidence

The rules applicable to the evidentiary procedure of the arbitration are more relaxed than those of litigation. However, this can be proven prejudicial to any of the conflicting parties. In particular, there is a possibility an arbitrator to rule against a party based on the above evidence, a fact which inflicts significant effects on the defeated.[18] On the one hand, less searching speeds up the arbitration process and leads to a faster decision. On the other hand, there are issues in which more research and more evidentiary purposes are necessary, such as in antitrust disputes where the aggrieved party must prove a violation which he can only prove if he has access to the documents of the offending party

v. No coercive powers of arbitrators

Arbitrators have no coercive powers. In other words, they don't have the power to punish a party that doesn't go along with it request of a court. A court, may impose a fine for contempt if a party does not comply with a court order. The referees, on the other hand, they cannot impose sanctions, although it can impose adverse inferences if a party does not comply with a court order or order. Nevertheless, the London Court of International Arbitration (LCIA) have introduced more powers to the arbitrators in order to control the conduct of the parties. Of course, many times is necessary the tribunal or the parties to seek the assistance of courts if there is an issue that need compliance.

3.4. Types of Arbitration.

[16] D. Horowitt, The Pros and Cons of Arbitration. COLEMAN & HOROWITT, 2009.
[17] 9 U.S.C. §§ 1–16
[18] D. Horowitt, The Pros and Cons of Arbitration. COLEMAN & HOROWITT, 2009.

E. Institutional Arbitration.

At an institutional arbitration a specialized institution intervenes and undertake the role of controlling the arbitration procedure. An advantage of institutional arbitration is the fact that each institution has its own pre-formulated rules, which in fact most of the time enjoy great recognition and applicability.

In institutional arbitration, involving parties may choose by agreement or by arbitration clause or by private agreement, the appeal to an arbitration center, which applies specific rules arbitration and has a special list of available arbitrators.[19] The institution mainly has organizational and supervisory responsibilities and at the same time provides secretarial, administrative and logistical support with specialized personnel, in order to carry out the arbitration procedure faster and more efficient, without procedural problems. The arbitration center is competent to pursue the enforceability of the decision that will the referees issue. The arbitral tribunal is responsible for adjudicating it dispute, while operating independently of the arbitration center, under the auspices of, however, this and in accordance with its regulation.

Another significant advantage of institutional arbitration is that parties are free choose the arbitrator who will settle their dispute exclusively through the directory that each institution has, while at the same time they do not have the freedom to deviate from the predetermined one arbitration process.[20] Moreover, the award that will be issued is easier to obtain enforceability and not be contested by the parties because of the it is issued by a well – known institution and some institutional rules provide for scrutiny of the draft award before the final award is issued. A dissatisfied party could then appeal to an arbitral tribunal of second instance which would be able to confirm, vary, amend or set aside the draft award.

On the other hand, institutional arbitration has disadvantages too. It is a very expensive type of arbitration due to administrative fees for services and use of the facilities. Another flaw of the procedure regards the bureaucracy from within the institution, which can lead to delays and additional costs.

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At ad hoc arbitration parties do not refer to an institution but they decide to formulate alone all the aspects of the arbitration such as the number of arbitrators, the appointment of those arbitrators, the applicable law and the procedure for conducting the arbitration. It is possible for the parties to decide that applicable will be the rules of a specific arbitration center, but without this means that this arbitration becomes institutional as it has not been set under the supervision of an arbitration center or they may choose the UNCITRAL (United Nations Commission on International Trade Law) Arbitration Rules, which are frequently used in ad hoc arbitrations.[21]

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article 867 of the Civil Code, in order for a case to be submitted to the arbitration process they must be met cumulatively the following conditions: *a) to concern a private law dispute, with an exception the disputes referred to in article 663 of the Civil Code, as it was replaced by Law 4335/2015, b) to conclude an agreement between the parties and c) the parties to have the power to dispose of the subject of the dispute.*[22]

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The most handful guide for international arbitration is the Model Law on International Trade United Nations Commission on International Trade (UNCITRAL) Arbitration, which is the basis for similar regulations in numerous countries, unifying the rules on international commercial arbitration. In Greek legislation, this model law was incorporated by the Law 2735/1999. [23] Furthermore, international arbitration in Greece is also regulated by various international conventions that the country has ratified such

[22] Article 867 of the Civil Code.
[23] Article 1§1 of Law 2735/1999.

as the New York Convention of 1958 «regarding the recognition and execution of foreign decisions of arbitration».[24]

In summary, there is no predetermined definition for international arbitration as each national law sets its own conditions for the separation of national from international arbitration. At the same time, this opinion is strengthened by the fact that the UNCITRAL Model Law introduces a special legislative regime for international arbitration but it does not determine the type or the extent of disputes, which may be submitted to arbitration, thus giving the discretionary ability to define the requirements in each legal order.

ii. The International Commercial Arbitration

It is known that «foreign investments» are sought after by all its states international community. In Greece, foreign investment is absolutely necessary. In our country, however, there is no attractive investment environment, as well this happens when a foreign investment goes through as few as possible risks in a certain state. The risks of foreign investment often come from the host state itself, which sometimes «arbitrarily» itself, against the foreign investor. In the context of their promotion and attraction investments, a special branch of international law has even been created, the «Foreign Investment Law».

However, «investment» as a legal concept does not have a commonly accepted definition. There is, after all, no multilateral treaty that regulates its entirety matter of foreign investment law. In this context, investment is defined for the implementation needs of each legal instrument, national, bilateral or more rarely at the multilateral level.

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In fact, arbitral tribunals apply national or international law, in order to resolve investment disputes between foreign investors and the host states. Because of the freedom of the litigants and the arbitrators to determine the law applicable to the

[24] Rules regarding international arbitration in Greek legal system are appeared in Civil Code and particularly in articles 903,905 and 906 of Civil Code.

arbitration, due to it hybrid nature of the legal relationship between "foreign investors" and states reception of the investment, there is a significant interaction between the national and the international legal order as well as in the implementation of relevant legislation arrangements in the context of arbitration between an investor and its host state investment.

To sum up, international investment arbitration is the dominant one extrajudicial mechanism for the resolution of international investment disputes which arise between states and especially between states that host foreigner investments and foreign investors or their own investments, due to default on the part of one of the parties to an international investment treaty (bilateral or multilateral), an investment agreement or international customary law. All international investment treaties, in fact, provide that the differences that may arise between the contracting states, from their interpretation or execution, shall be resolved by international arbitration, which after all, they organize specifically with their provisions.

3.5. Sources of International Arbitration

A. The New York Convention

The New York Convention of June 10, 1958 *«on the recognition and enforcement of foreign arbitral awards»* is the most important international text on international arbitration. The text of the Convention emerged later by the initiative of the International Chamber of Commerce (International Chamber of Commerce – ICC) and was adopted by the UN Economic Commission (UNECE). The first countries which ratify the Convention were its socialist countries Europe and then Sweden followed by other non-European countries. Nowadays, all[25] member states of the European Community are parties to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958.

According to Article 1 par.1 of New York Convention *«T his Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State*

[25] Case C-185/07, PROPOSALS OF THE ATTORNEY GENERAL JULIANE KOKOTT of 4th of September 2009.

where their recognition and enforcement are sought». Therefore, it is established that the Convention applies only to the recognition and execution of foreign and non-domestic decisions.

Finally, the New York Convention contains reservations, one of which is the commerciality reservation. According to this reservation, the contracting states may declare that will apply the Agreement only to disputes arising from conceptual relationships contractual or non-contractual, which are considered commercial disputes according to the national legislation of the state that makes such a declaration. (*forum recognitionis*)

B. The European Convention of 1961

The European Convention on International Commercial Arbitration was signed in Geneva on 1961 and is a regional treaty and was an important step in legislative history of arbitration, because it also regulated issues beyond it recognition and execution of arbitration awards.

The special importance of this Convention lies in the fact that its regulations are not limited to the field of recognition and enforcement of arbitral awards, but deal in particular with certain issues, which were not adequately regulated in many national laws, such as the ability of public organizations to enter into arbitration agreements (Article 2), the ability of arbitrators to decide on their jurisdiction (Article 5) and the law applicable to the substance of the dispute (Article 7).

C. The UNCITRAL Model Law

The Model Law on International Arbitration is a work of the Commission of United Nations for International Trade Law (UNCITRAL). It was prepared 1985, revised in 2006 and has been proposed as a model for national legislators, with the aim of international harmonization of arbitration law.

The Model Law is not binding in itself, but individual states can incorporate it in their internal legislation and then it becomes binding14. Today it is point of reference, as many states have adopted it, with small or major modifications. In Greece, the model Law was adopted with minimal modifications based on the pre-existing legislative system on arbitration with N. 2375/1999, lex arbitri of international arbitration based in the Greek Territory.

D. The rules of UNICTRAL

The United Nations Commission on International Trade Law (UNCITRAL) in 1976 established Arbitration Rules (UNCITRAL Regulation). These Rules are chosen by the parties in most ad hoc arbitrations that are not held under the auspices of an organization. Moreover, the Rules in question have been adopted by many arbitration centers, mainly regional ones, with some modifications.

The before mentioned UNCITRAL Model Law on International Arbitration, adopted in 1985, must be distinguished from the UNCITRAL Rules.

The UNCITRAL Regulation may have been drawn up and adopted to provide an effective international tool of general acceptance for the resolution of international commercial disputes between private parties involved in international commercial transactions, however, it is widely used both for the resolution of international disputes by arbitration, as well as and for the resolution of disputes between states and foreign private individuals, especially foreign investors.

More specifically, it is a procedural tool, i.e. a set of rules of a procedural nature, which mainly provides for the way the arbitral tribunal is constituted, the conditions of its competence, the way the arbitration is conducted by the arbitral tribunal and the law applicable to the resolution of the difference. The Rules apply only if they have been expressly adopted by the parties to resolve one or more disputes by arbitration.

CHAPTER 3

3.1. Award of Arbitration and its binding results.

In general parties proceed to arbitration because they expect that the result of arbitration will be final and binding among the involving parties. The decision of arbitration is known widely as «award» and is the final decision of arbitrators. A tribunal has the obligation to make every effort to formulate a final and enforceable award. This obligation stems from various statutory rules regarding arbitration[26]. In addition, arbitrators strive to make an enforceable award because in the event that this does not happen due to their indifference, neglect or lack of care, then they face the very high probability that they will not be selected again in the future for another arbitral dispute either by the same either from different parties.

[26] See, e.g., LCIA Rules, art. 32.2.

A final and binding arbitral award has res judicata effect. Therefore, the same claims cannot be arbitrated or litigated again between the same parties, as long as the award has not been vacated. Res judicata is also known as «claim preclusion». From the time when an award has been confirmed by a court, it has the same res judicata effect as a court judgment. Furthermore, sometimes even unconfirmed awards might be recognized as res judicata.

Moreover, another significant point is that not only claims but also issues of fact or law that are essential to the final award and have been previously determined in an arbitration may, under the doctrine of collateral estoppel or «issue preclusion» be precluded in a subsequent action that is not between the same parties, or does not involve the same cause of action. Nevertheless, sometimes civil law jurisdictions provide preclusive effect to views of an award's reasoning in a way that looks like the application of issue preclusion.

The characteristic of the arbitral award that is really essential is confidentiality. The parties can provide for confidentiality of the proceedings and the award in the arbitration agreement and this is necessary especially in the case of ad hoc arbitration and the case when parties have chosen institutional arbitration but the rules of the Institution do not offer the maximum protection. In arbitration practice, there are different opinions between keeping awards private and confidential and making them generally available in order to be used as guidelines to other similar future cases. If parties have information about how similar cases have been conducted, it can make their settlement discussions more efficient, innovative, and thoughtful. In sum, the more important it is for parties to keep their award and the relevant evidence confidential, the more diligent their attorneys must be to ensure that if the laws and the rules do not adequately protect their client, the arbitration agreement will do so.

3.2. Enforcement of an Award.

The rule most often is that once the award is made, the losing party to the arbitration voluntarily complies with what is stated in the award. On the other hand, there are not a few cases in European and international arbitration jurisprudence, which reflect the reluctance of the losing party to comply with the decision of the arbitral tribunal, which leads the party that prevailed in the dispute to initiate legal proceedings to consolidate the award in the territory of the territory of the opposing state. However, the good news is that regardless of the disobedience of the losing party, the award most often

becomes enforceable. Enforceability is why states choose arbitration as a means of resolving their disputes. In fact, international practice has shown that there are very limited and narrow grounds for unenforceability of an arbitral award.

A) Principles governing enforcement and recognition of an award.

According to article 3 of the New York Convention countries recognize foreign arbitral awards as binding and enforce them in accordance with national law, consistent with the provisions of the Convention. The terms «recognition» and «enforcement» are usually used together but they have different meanings.

On the one hand, when a court recognizes an award, it admits that the award is valid and binding and therefore the court gives the award a unique result with respect to the matters analyzed in the award. Furthermore, a recognized award can be relied on as a set-off or defense in related litigation or arbitration. The award has an official legal status, so issues determined by the award usually cannot be litigated or arbitrated again.

On the other hand, enforcement may mean different things in a variety of jurisdictions. In some jurisdictions, it may mean the process by which an international arbitration award is reduced to a judgment. In other jurisdictions, it may mean using whatever official means are available in the enforcing jurisdiction to collect the amount owed or to otherwise carry out any mandate provided in the award.[27] However, another term that is often used for «enforcement» is «execution.» Execution usually refers to the means by which relief under an award is obtained according to the legal procedure of the jurisdiction that authorizes the award. When an award provides for monetary compensation from the defendant to the plaintiff and the first of them is not willing to give it immediately, then the second of them can seek recognition and enforcement of the award in a state in which the defendant has assets.

B) Reasons/Grounds for non - enforcement of an Award according to New York Convention.

The New York Convention provides only a limited number of defenses to enforcement, and which national courts interpret narrowly. These defenses are exhaustive, meaning they are the only grounds on which non enforcement can be based. Five kinds of

[27] Margaret L. Moses, The Principles and Practice of International Commercial Arbitration, 3rd Edition.

defenses are found in Article 5 par.1 and two additional defenses in Article 5 par.2. The five Article 5 par.1 defenses are a. incapacity and invalidity, b. lack of notice or fairness, c. arbitrator acted in excess of authority, d. the tribunal or the procedure was not in accord with the parties' agreement and e. the award was not yet binding or had been set aside. The two in Article 5 par.2 defenses are 1. lack of arbitrability and 2. violation of public policy[28] and they may be invoked by the court «sua sponte».

The most significant feature of the defenses that are thoroughly analyzed in article 5, is that they are not have any relation with the merits. In other awards, an award is impossible to not be enforced in the case that the tribunal and the arbitrators did not implement the law correctly or they did not assess the facts in a correct way.

Grounds of non – enforcement:

1. Incapacity and Invalidity

The first defense located in Article 5 par.1a of the Convention consists of two sides: a) there is some incapacity of the party or b) the agreement is invalid, either under the law chosen by the parties or if the parties did not choose a governing law, then under the law of the country where the award was made.[29] There is no need of those two parts to apply cumulatively in order an arbitral award be unenforceable in a state.

To begin with, «incapacity» may involve issues such as sovereign immunity or maybe a question of whether the arbitration agreement was signed by someone who did not have authority to act for the corporate party. On the other hand, «invalidity» may simply be a question of meeting the form requirements of the law that parties have chosen or the law of the seat of arbitration. Questions of invalidity may also regard the correct formation of a contract to arbitrate. In general, consent to arbitrate should be clear and most jurisdictions require that the consent must be in a writing type.[30]

2. Lack of Notice or Fairness

According to Article 5 par. 1b the second ground for the refusal of an award. This articles analyzes that in arbitration procedure all parties must be given proper notice of various subjects regarding the process of arbitration such as the selection of arbitrators or the arbitral proceedings. Generally, during arbitration procedure parties

[28] See Article 5 of the New York Convention.
[29] See Article 5 par.1a of the New York Convention.
[30] The writing requirement is descripted in Article 3 of the New York Convention.

is necessary to have the chance to support their view with arguments and this means that if parties do not have the appropriate notice of different aspects of the procedure, they will probably not be able to support adequate their position. This defense is really essential for the parties because by this the fair process of arbitration is ensured.

3. Acts of Arbitrator that excess his authority

This third ground for non - enforcement of an arbitral award deals with the conduct of the arbitrators that compose the arbitral tribunal at each dispute. Arbitrators are chosen by the parties and as a result their power derives from the powers that parties have given to them. Article 5 par. 1c provides that an award will not be enforceable if it concerns a dispute inconsistent with the terms of the parties' arbitration agreement or if the decision issued concerns issues that do not fall within the scope of the agreement.[31]

4. The Tribunal or the Procedure Is Not in Accord with the Parties' Agreement

Article 5 par. 1d describes another defense for non – enforcement. An award is not enforceable in the territory of the losing party or in any third state if either the constitution of the tribunal or the arbitral procedure was not consistent with the agreement of the parties.[32] If the parties did not accomplish to make an agreement on either of these two issues then the constitution of the tribunal and the arbitral procedure must be in compliance with the law of the country where the arbitration took place. This defense is rarely implemented, and when it is implemented, it is not have the most successful results.

5. The Award is not yet binding or has been set aside

According to fifth defense in Article 5 par.1e the award is not enforceable unless it has become binding among parties. There is not a clear and adequate definition of «binding» in the Convention but most courts contemplate that an award is binding if there is no way of an appeal on the merits. The selection of the word «binding» was made in the New York Convention in order to avoid matters raised under its predecessor, the 1927 Geneva Convention. Under the Geneva Convention, in some countries, awards first had to be confirmed in the jurisdiction where they were made

[31] See Article 5 par. 1c of the New York Convention.
[32] See Article 5 par. 1d of the New York Convention.

before they could be enforced in another jurisdiction. This requirement of two separate judicial processes was known as «*double exequatur*».[33] An award that is binding could be enforced without first be confirmed in the rendering jurisdiction. Arbitration awards are generally cannot be appealed on the merits, an award of an arbitral tribunal will most likely be considered binding.[34]

Moreover, Article 5 par.1e provides that an award is enforceable under the requirement of not have been set aside or not be cancelled. It is necessary to point out that in order to cancel an award the losing party has to apply to the court that the award was rendered and in order to enforce an award the prevailing party must apply to a court where the losing party has its assets.

When a party achieves to vacate an award in the court of the jurisdiction where the arbitration took place, then the award has no further legal effects and cannot be enforced in any other jurisdiction. Specifically, the award cannot be enforced in the jurisdiction where it was set aside. Nevertheless, the result differs when the enforcement of an award has been refused because in this case the award is not annulled. In the case when the prevailing party has not succeeded in enforcing the award in the jurisdiction in which the losing party has assets, then - if the losing party has also assets in another state – it may purse its satisfaction to the others state jurisdiction.

6. The two additional defenses under the New York Convention

As has already pointed out, Article 5 provides, except from the defenses in par.1, another two grounds for the non-enforceability of an arbitral award. The second subsection of Article V deals with grounds for enforcement that can be raised by the court *«sua sponte».* If a court finds that the subject matter of the dispute is not arbitrable under the law of its jurisdiction or if it discovers that enforcement would be contrary to the public policy country of the state, then recognition and enforcement may be refused.[35]

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[33] Margaret L. Moses, The Principles and Practice of International Commercial Arbitration, pages 236-238, 3rd Edition.
[34] Margaret L. Moses, The Principles and Practice of International Commercial Arbitration, pages 236-238, 3rd Edition.
[35] Margaret L. Moses, The Principles and Practice of International Commercial Arbitration, pages 236-238, 3rd Edition.

a. Subject matter not arbitrable

In the last decades, more and more disputes fall under the regime of their arbitral resolution. However, there are some disputes that traditionally cannot be arbitrated. In addition, different jurisdictions may provide that some disputes are subject to arbitration and others are strictly not subject to arbitration. The most common types of disputes that are arbitrated are those arising from contractual or commercial relationships, which parties are considered free to resolve without any supervision or intervention by the court.

The arbitrability of various subjects may differ widely from jurisdiction to jurisdiction. As a consequence, before parties begin an arbitration in a particular jurisdiction, they ought to ensure that the matters they intend to arbitrate are arbitrable. However, there are many cases in which awards have been denied on the ground of non-arbitrability.

b. Public Policy

It is provided in Article 5 par.2 that an award is not enforceable in a state if its content is contrary to the provisions of public policy of that state. Public policy is not defined in the Convention, and thus presents the possibility of a broad base for refusing enforcement. However, most courts interpret narrowly the meaning of public policy in order to restrict its wide extent.

Although it is observed an arbitrary use of the content of public policy in most countries, courts seem willing to refuse enforcement on public policy grounds. Actually, awards are so rarely turned down for reasons of public policy which has made the courts to review the application of the public policy defense in order to formulate it more than a theoretical defense and to apply it with more flexibility.[36]

CHAPTER 4

4.1. Energy disputes resolved by arbitration

4.1.1. Investor – State disputes in the Energy Sector

[36] Κ. Καλαβρός/Δ. Μπαμπινιώτης, Η Σύμβαση της Νέας Υόρκης του 1958 - online κατ' άρθρο ερμηνεία.

Nowadays, the most common disputes in the energy sector, which are solved by the method of arbitration, are the disputes between Investors and States. In other words, states want to attract foreign investments that will bring financial benefits and wealth in their territory and economy. On the other hand, investors try to ensure that their investments will be made in a safe environment and try to reduce the risk of arbitrary and unfair actions of the investing state and its government. Therefore, states have formulated bilateral, multilateral investment treaties and protective legislation.

First of all, Investor – State disputes may be characterized as contract-based disputes. Most of the times, private companies in the energy sector usually negotiate the terms of agreements and end up in an agreement with the State itself or companies owned/controlled by the State. In this type of energy contracts, there is usually an arbitration clause, in the sense that the contracting parties have foreseen that any dispute arising from the interpretation or execution of this contract will be resolved by resorting to the arbitration method.[37] As a result, arbitrations which derive from energy contracts with States are not so different from purely commercial arbitrations between private parties, unless the contract allows for investor-State arbitration.[38]

Another legal basis for arbitrable energy disputes are treaties among countries. Treaties may be bilateral and multilateral, depending on the number of parties in the treaty.

On the one hand, bilateral investment treaties (BITs) are concluded between two states. In the context of the investment contract, which is signed by parties involved in the investment (foreign investor and its host state investment), there is a wide discretion of action, but at the same time they act under the requirements of a bilateral investment treaty (Bilateral Investment Treaty –BIT), if of course there is one. Bilateral Investment Treaties contain all the principles applicable to "investment protection", which must be respected and implemented by its host state investment. Additionally, they contain provisions which systematically delete the procedure to be followed, in case a difference arises from one investment agreement between a specific contracting state and a national of another contracting state. This contributes to "legal foreseeability" on the part of the investor, as the most BITs contain

[37] Hege Elizabeth Kjos, Applicable Law in Investor-State Arbitration, The Interplay between National and International Law.
[38] S. Vorburger and A. Petti, *Arbitrating Energy Disputes* in M. Arroyo (ed.), *Arbitration in Switzerland: The Practitioner's Guide* (2018), pp. 1284-1285.

provisions, which establish a specific time-limited period for amicable settlement and they then allow for ICSID or ad hoc arbitration. However, the parties are free to choose that too "traditional" option of recourse to the ordinary courts of the state reception of the investment.

On the other hand, there are multilateral treaties in which many states are parties. A more typical example is the Energy Charter Treaty (hereafter ECT). The Energy Charter Treaty was signed in December 1994 and entered into legal force in April 1998. Currently there are fifty-three Signatories and Contracting Parties to the Treaty. [39] The Energy Charter Treaty provides a multilateral framework for energy cooperation that is the most important under international law. It is formulated in order to ensure energy security through the operation of more open and competitive energy markets but the treaty also promotes the principles of sustainable development and sovereignty over energy resources.

Regarding the way energy disputes are resolved under the auspices of the ECT, Part V and in particular Articles 26-28 of the ECT contain a specific system for resolving investment energy disputes. These regulations have particular importance because through them the confidence of investors is enforced and consequently they are encouraged to invest the funds them cross-border in other states-territories. This system of dispute resolution aims to ensure the required for investor's predictability and their protection from state sovereignty of the host state of the investment, so that the latter does not deviate from the Treaty obligations. ECT includes several resolution mechanisms disputes, which are linked to specific objects of the Treaty. In particular, mechanisms are provided for the resolution of disputes, such as arbitration between investor and state for investment disputes[40], arbitration between reserve for non-commercial disputes[41] as well as that provided for in article 29 ECT method *(panel system)* for commercial disputes.[42]

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[39] https://www.energycharter.org/process/energy-charter-treaty-1994/energy-charter-treaty/

[40] Article 26 par.1 of ECT: *«Disputes between a Contracting Party and an Investor of another Contracting Party relating to an Investment of the latter in the Area of the former, which concern an alleged breach of an obligation of the former under Part III shall, if possible, be settled amicably.»*

[41] See Article 27 ECT.
[42] See Annex D της ECT.

Arbitration between an Investor and a State under the provisions of ECT, is described in Article 26 of the ECT. This method has remarkable positive results in the resolution of energy - investment disputes, which arise from contracts signed between a particular investor (usually a private entity) and host state of the investment. In fact, these disputes before the conclusion of the contract for their resolution of Investment Disputes between States and Nationals of Other States (ICSID) and of ECT, may have led to political conflicts and disruption of relations between states. In the context of ECT, in case of investment in energy sector, the investor can choose to apply for the relevant dispute in international arbitration, having at his disposal four available arbitration proceedings.

Generally, ECT has formed a unique multilateral law framework for energy cooperation. The value of the ECT's regulations are likely to increase as part of efforts to building a legal system for global energy security guided by the principles of open, competitive markets and sustainability development. It is worth mentioning, as innovative, the settings of ECT in in relation to the mechanisms for resolving disputes between states (state to state) and between an investor and a state (investor to state).[43]

The methods of resolving a dispute which arises from the interpretation and application of important provisions of the Treaty are described thoroughly in articles 26-28.

Initially, Article 26 (1) of the ECT provides for its activation amicable settlement of the dispute, if this is possible by specifically defining: «*Disputes between a Contracting Party and an Investor of another Contracting Party relating to an Investment of the latter in the Area of the former, which concern an alleged breach of an obligation of the former under Part III shall, if possible, be settled amicably».* This is reasonable because friendly settlement was the first method that used in Bilateral Treaties, on which ECT has based.

Next, in article 26 paragraph 2 all the options provided by the Treaty are mentioned in the event that the possible dispute cannot be settled amicably as required by paragraph 1 of the same article. Specifically, article 26 par.2 reads as follows: «*If such disputes cannot be settled according to the provisions of paragraph (1) within a period of three months from the date on which either party to the dispute requested amicable*

[43] See the introduction of ECT.

settlement, the Investor party to the dispute may choose to submit it for resolution: (a) to the courts or administrative tribunals of the Contracting Party to the dispute; (b) in accordance with any applicable, previously agreed dispute settlement procedure; or (c) in accordance with the following paragraphs of this Article».

In the case that the investor chooses to submit the dispute to the institution of arbitration, then the ECT provides him with four options which are described in article 26 par. 4 of the Treaty. Particularly, according to Article 26 par.4: «*In the event that an Investor chooses to submit the dispute for resolution under subparagraph (2)(c), the Investor shall further provide its consent in writing for the dispute to be submitted to: (a) (i)The International Centre for Settlement of Investment Disputes, established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington, 18 March 1965 (hereinafter referred to as the "ICSID Convention"), if the Contracting Party of the Investor and the Contracting Party party to the dispute are both parties to the ICSID Convention; or (ii) The International Centre for Settlement of Investment Disputes, established pursuant to the Convention referred to in subparagraph (a)(i), under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (hereinafter referred to as the "Additional Facility Rules"), if the Contracting Party of the Investor or the Contracting Party party to the dispute, but not both, is a party to the ICSID Convention; (b) a sole arbitrator or ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (hereinafter referred to as "UNCITRAL"); or (c) an arbitral proceeding under the Arbitration Institute of the Stockholm Chamber of Commerce.»*

However, in each case of the above options, it does not derive from article 26 of the ECT, the (procedural) obligation for the applicant investor to exhaust domestic remedies first, before resorting to arbitration. If the investor decides by which of the above procedures arbitration will proceed, then some are required to be filled conditions under Article 26 of the ECT. The arbitral tribunal should, therefore, to rule on its jurisdiction in relation to its subject matter of a specific dispute (rationae materiae), on the specific (adversaries) of persons (ratione personae) as well as on the certain point in time which the difference arose (ratione temporis).

Another contract that provides for arbitration as a way to resolve energy disputes is the Convention of International Centre for Settlement of Investment Disputes (ICSID

Convention). The contract entered into force on 14.10.1966 and to date, the ICSID convention has been signed by 159 states. The International Center for Settlement of Investment Disputes (ICSID) is one of the five intergovernmental organizations that consist the World Bank group, was founded in 1966 by ICSID convention and its mission is to promote increased flows of international investment, providing an impartial and effective international forum for the resolution of disputes between host States of investments and foreign investors.

The ICSID Convention and the ECT in its field of resolution of international energy disputes have not only many common characteristics but also many differences. ECT is a multilateral treaty, most of its provisions have a substantive and not a procedural character. The main purpose of ECT is to regulate investments in the energy sector among states. On the other hand, the ICSID Convention contains procedural provisions arrangements, with the primary objective of promoting and economic development in international investment in any sector, through creation favorable investment environment. One of the most important advantages of ICSID Convention is that it provides a specific dispute resolution system, the ICSID arbitration. In particular, it provides through arbitration rules, in order to achieve the «legal predictability». In addition, within ICSID there is an institutional function arbitration, which guarantees supervision of the arbitration process by institutions. Therefore, in the ICSID Convention, the procedure takes precedence character and its regulations are aimed at its procedural structure arbitration.

Finally, the last legal basis for an Investor-State dispute is domestic investment law-based disputes[44]. Domestic laws aimed at encouraging foreign investment may provide for the host state's unilateral consent to arbitration. Investor consent, in turn, may normally be expressed by written communication or by filing a request for arbitration. Unlike treaty disputes, the offer of arbitration in domestic laws is not always subject to the criterion of nationality.[45]

4.1.1.1. Expropriation/nationalization.

[44] https://www.acerislaw.com/resolving-energy-disputes-through-arbitration/#_ftn19\

[45] S. Vorburger and A. Petti, *Arbitrating Energy Disputes* in M. Arroyo (ed.), *Arbitration in Switzerland: The Practitioner's Guide* (2018), p. 1289.

Expropriation disputes have been a long-standing feature of energy disputes since the 1970s. Disputes arising from nationalization/expropriation belong to the broader branch of investor-state energy disputes (Investor to State disputes). Energy disputes, especially those that are based on expropriation/nationalization have contributed to the development of international law.

Expropriation is about a government claiming private property under its sovereign capacity. On the other hand, nationalization is a type of expropriation, i.e. again the state becomes the owner or controller of assets or activities that until now belonged to the private sector. However, nationalization covers generally entire industry or geographic region. Nationalizations usually take place when there are significant social, political and economic changes. In the energy sector expropriations appear in three types: nationalizations, regulatory or fiscal measures tantamount to a taking and cancellation of contractual rights.

Generally, it is a fact that energy disputes that include expropriation topics seem to conquer a very good place in the list of the largest damages awards that have issued in Investor – State arbitrations. In the context of arbitration in energy disputes with the object of expropriation/nationalization, the requested and desired result of the award to be issued is generally compensation, since the return of the investment itself often not possible or reasonable.

4.1.2. Private disputes in the energy sector.

Despite what was analyzed above regarding the energy disputes between investors and states, in energy disputes it is a fact that the majority of arising disputes are mainly of a private nature. In other words, the energy disputes most often subject to arbitration are energy disputes between private companies - energy providers based either in the same or in different states.

Opposing parties are typically the Department for Business, Energy and Industrial Strategy (BEIS) and the energy regulator, who can be subject to judicial reviews and administrative challenges. For commercial, corporate, finance or construction disputes, generally large corporates are involved, mostly from the same jurisdiction. However, for construction disputes in particular, parties are often from different jurisdictions as

the construction supply chain is global, especially in relation to disputes involving the supply of turbines solar panels and so on.[46]

In general, these disputes arise out of a wide variety of transactions. If private disputes can be resolved by arbitration, they will fall into the overall heading of commercial arbitration grounded in contracts.

4.1.3. Arbitration in disputes regarding Renewable Energy Sources.

Renewable energy sources tend to take the world by storm. However, their appearance is not a recent phenomenon. On the contrary, renewable energy sources have made their appearance as early as 1900.

In recent years, of course, climate change has been at the center of European and international interest as it is an issue that requires transnational cooperation and friendly relations between states in order to save the planet in the best possible way and with the least losses. Naturally, due to the increased discussion of the issues of climate change and renewable energy sources, in recent years the disputes stemming from RES have been increasing. As a result, it becomes imperative to resolve any issues that arise. The most effective way in theory and jurisprudence is arbitration.

It is worth mentioning that renewable energy projects have many common elements with the conventional ones. In particular, renewable projects are capital-intensive, long-term and complicated[47]. At any stage and level of the project, disputes may be emerged. Generally, renewable energy projects usually involve many parties from different jurisdictions and usually introduce new technologies. Naturally, the chances of disputes arising are increased due to the excessive needs to supply and evaluate new technologies.

However, despite the potential disputes that may arise from the installation and operation stages of a renewable energy source, not many disputes have arisen, resulting in RES arbitration holding a small share of the arbitration market. Nevertheless, this does not apply to all countries. In some states, the disputes stemming from the operation of RES are numerous and various. The most typical example is Spain. Spain,

[46] https://www.clydeco.com/en/insights/2021/10/dispute-resolution-power-renewable-energy

[47] https://www.fieldfisher.com/en/insights/arbitration-an-answer-to-disputes-in-the-renewable

has been as a hotspot for arbitration disputes under Bilateral Investment Treaties (BITs) concerning renewable energy projects, while Italy has also a high number of claims and France may observe an increase in claims following recent changes to its solar PV feed-in tariff regime. Most of the Spanish cases were initiated before the Court of Justice of the European Union's (CJEU) *Achmea* ruling of March 2018, which concerned the incompatibility of internal arbitration of EU Bilateral Investment Treaty with EU law and the ruling of CJEU that was issued in September 2021 regarding the Energy Charter Treaty which does not cover internal disputes of European countries. As of September 2021, in Spain were arose 50 claims by investors in the renewable energy sector, as the country tended to amend its energy regulatory environment and revoke some of the incentives which provided to developers of renewable energy projects over the past two decades.

In summary, arbitration of disputes arising from renewable energy sources has been increasing over the years and will continue to increase as renewables become established in the various states.

CHAPTER 5

5.1. The permanent arbitration of the Regulatory Authority for Energy (RAE) and its basic characteristics.

Nowadays, more and more different kinds of arbitration are found in Greek legislation to resolve issues arising from various sectors. These types of arbitration contribute to the resolution of specialized private law disputes and thus to the promotion and development of the economy and trade, but also in decongesting the work of regular courts. In regards to the future of the institution of permanent arbitration within the Regulatory Authority for Energy in Greece (RAE), this will depend mostly on the confidence of the businesses that are active in the energy sector regarding the institution of arbitration, such as it happens in all cases of permanent organization arbitration in institutional centers.

The founding law of RAE N. 2773/1999 cites the provision for the possibility of organizing permanent arbitration under the RAE. In particular, in paragraph 2 of Article 8 of the aforementioned law states that: «*With the Regulation of Internal Operation and Management may provide for the organization of permanent arbitration in the R.A.E.*

and to be defined what disputes can be brought under it, and the details of the organization of the arbitration, with an analogous application of par. 2 of article 902 of the Civil Code Procedure. In principle, the provisions of articles 867 to 900 of the Code of Civil Procedure. The same Regulation may also, by way of derogation from these provisions, to define: a) instead of the single-member court of first instance to decide on cases of articles 878, 880 par. 2 and 884 of the Code of Civil Procedure the R.A.E. the the President or a committee of its advisors, b) the obligation to elect the arbitrators and the arbitrator from a list of arbitrators drawn up periodically by the R.A.E., c) the arbitration procedure, in accordance with the provisions of article 886 par. 2 of Code of Civil Procedure, d) the substantive law to be applied by co arbitrator and the arbitrators, e) the information that the arbitration decision must contain, with but the observance of the provisions of article 892 par. 2 of the Code of Civil Procedure.» [48]

The RAE arbitration institution has been set up in such a way that it is appropriate for the resolution of both domestic and international disputes. This is proven by the flexible structure that has been adopted in the Regulation, with distinct chapters regarding the rules applicable to domestic and international arbitration, in accordance with the arbitration provisions of the Civil Code and Law 2735/1999 on international commercial arbitration.

Under the permanent arbitration of RAE are subject all disputes between parties, which are active in any way in the field of energy, as defined in article 37 of Law 4001/2011 and in the Arbitration Regulation of RAE. The report is broad, both in terms of subjects and object, so it can also include disputes created by casually involved in the energy sector parties. Disputes that may be submitted to its permanent arbitration RAE, refer to disputes between natural or legal persons, which active in the energy sector, as well as among selected ones customers, which are defined in Law 4001/2011 and businesses that practice energy activities. Particularly, the article 37 par.1 of Law 4401/2011 analyzes the following: «*Permanent arbitration is hereby established to RAE, to which the following are subject for resolution: (a) differences between persons acting are made in any way in its domain energy, (b) differences between Eligible Customers, such as; these are specified in the provisions hereof of law and of companies that practice Energy Activities. As "eligible customers" means customers who have the right to choose their supplier or who directly purchase natural gas or electricity under the provisions of*

[48] See Article 8 par. 2 of Law 2773/1999.

law. 4001/2011. "Energy activity" is "the production, transport, distribution and supply of electricity or natural gas, as well as h use of liquefied natural gas and the use of a storage facility natural gas", (c) any difference arising between the above persons from the application of the relevant text national and European legislation.»[49]

It is obvious that the above broad wording of provisions at Article 2 of the Regulation includes all disputes that may also arise between persons who may participate occasionally in the energy sector. In any case, in its institutional arbitration RAE are subject, according to the explanatory statement, exclusively to disputes of private law, as required by article 867 of the Civil Code, in which explicit reference is made.

The second paragraph of article 2 of the Regulation also states that requests for receipt cannot be submitted to the permanent arbitration of RAE interim relief nor applications for revocation requests and reform injunctions of insurance decisions measures, which however subject to Article 26 of the Regulation regarding international arbitration, but also of article 35 of Law 4001/2011, which concerns cases requiring urgent action. It is noted that this provision it has a procedural nature, i.e. it concerns the type of jurisdictional authority of permanent arbitration in RAE and does not concern the nature of the disputes.

The arbitration of RAE is not mandatory and presupposes a written agreement between the parties. This agreement makes compulsory adjudication of the dispute by arbitration, if it had been agreed before it arises, while on the contrary if the difference arises later, it is required subsequent agreement.

The multidimensional nature of RAE's energy law, containing elements of public, commercial, civil and European law in a complex sequence but also the diversity of the energy sector, forced the Greek legislator to resort to mechanisms to speed up the resolution of disputes that arise between the actors involved, giving a relevant competence for the procedural settlement of disputes in specialized organ. The mechanism of fast and expert justice in private disputes, which may arise in the special context of the energy market's operation, is the permanent arbitration, while the specialized body which is duly charged with the motion and processing of the process of voluntary arbitration resolution of disputes is none other than RAE.

[49] See Artcle 37 par.1 of Law 4401/2011.

The importance of the existence of arbitration as a judicial mechanism, in the context of energy market is self-evident. This version of the judicial resolution of disputes arising in individual energy sectors is "de facto" time-consuming, in the context of burdened Greek judicial of reality, process, which the nature of energy disputes, as disputes arising from dynamic business activity. Therefore, the slow resolution of energy differences is extremely ineffective and thus inappropriate and undesirable. It is reasonable that the "dispute resolution time" factor is very important in the restoration of energy conflicts, especially with regard to the effectiveness of the legal protection of the affected party, which is and the question. In this context, the arbitration resolution of energy disputes, which is based and starts from the voluntary choice of both parties to submit their pending or future dispute to the speedy, flexible and alternative to this jurisdictional judgment mechanism, it is an appropriate and as a result a desirable process.

One of the most important advantages of this alternative judicial mechanism is the fact that the resolution of energy disputes requires scientific expertise which they have or should have the arbitrators chosen by the parties, while this advantage is not exist in the case of the judicial resolution of relevant disputes. Furthermore, it is known that the disputes arising from the action and transactions in energy market require not only a scientifically sound approach to emerged issues and specialized legal knowledge but usually an interdisciplinary and not purely legal approach and investigation.

Finally, the institution of RAE arbitration has been set up in such a way in order to be suitable for the resolution of both domestic and international disputes. This is proven by the flexible structure that has been adopted in Regulation, with separate chapters regarding the rules applicable to domestic and international arbitration, in accordance with the arbitration provisions of the Civil Code and Law 2735/1999 on international commercial arbitration. Moreover, for the best and most comprehensive structure of the Arbitration Regulation were taken into account not only the current relevant domestic legislation, corresponding regulations of other countries' Energy Regulatory Authorities but also regulations of arbitration of international arbitration organizations.

5.2. Arbitration Agreement under RAE

As has already been pointed out, in accordance with Article 37 par.2 of Law 4001/2011, the inclusion in the arbitration procedure of one dispute requires drawing up a written arbitration agreement between parts. Similarly, Article 4 of the Regulation stipulates

that the affiliation agreement dispute in the permanent arbitration of RAE is drawn up in writing.

The above mentioned provisions do not constitute a simple repetition of the provision of Article 867 of the Civil Code according to which «Private law disputes may be arbitrated by agreement…»[50]. This rule refers to the general agreement for arbitral resolution and not to agreement to submit the dispute to permanent arbitration. Therefore, the permanent arbitration in RAE is required a special agreement of the parties, on the basis of which the arbitration is organized.

However, it should be noted that the component document type is an element of the special reality of the agreement and based on the Regulation Arbitration, in article 4 a written agreement is required and as such is also considered the agreement, which is drawn up by an exchange of signed letters, telegrams or signed faxes. In other words, an attempt is made to expand the concept of the document type, seeking increased protection of the parties without prejudice to trade and international transaction practice (for international arbitration). Nevertheless, if the parties bound by the agreement to submit the dispute to arbitration, appear and take unconditionally part in the arbitration process, the lack of compliance with the press document is cured. If the arbitration agreement of RAE concerns future disputes, then it is valid only if it is drawn up in writing and refers to a certain legal relationship[51]. The existence of an agreement is the foundation of the arbitration proceedings, as through it the parties delimit their objective and subjective limits of the jurisdiction of the arbitrators.

5.3. Procedural and Substantive applicable law in RAE arbitration.

The procedural and the substantive applicable law have many differences. The first one refers to the procedural part, in other words the rules under which the arbitral procedure will be conducted while the second lists the «legal matter», the substantive law which the arbitrators will be called upon to apply and the arbitrator in order to resolve the dispute. It is worth mentioning that the agreement of the parties, which will determine the arbitration procedure, is independent of the arbitration agreement and is not subject

[50] See Article 867 of Greek Civil Code: «*Private law disputes may be arbitrated by agreement if those entering into the agreement have the power to freely dispose of the subject matter of the dispute. The differences referred to in article 614 no. 3 are not arbitrable*.»

[51] See Article 868 of Greek Civil Code: *«An agreement to arbitrate future disputes is only valid if it is in writing and refers to a specific legal relationship out of which the disputes will arise.»*

to a certain type, while it is generally governed by the rules of article 25 of the Civil Code[52].

Specifically, as far as the law of the arbitration procedure is concerned, in accordance and agreement with article 37 par. 3 of Law 4001/2011, article 13 par. 1 of the Regulation, provides that *arbitrators and the co-arbitrator form at their discretion the arbitration process, unless otherwise provided in arbitration agreement*, while below the Regulation in article 15 par. 2 provides that *«In international arbitrations conducted in the RAE applicable arbitration rules procedure are the rules of the law of the place of arbitration».* The freedom of the parties in determining the arbitration proceedings extends from the regulation of specific procedural issues to the selection of a certain institutional arbitration regulation or the assignment to another body of designing a procedural framework.

On the one hand, in international arbitration parties are free to choose the procedure that will be applied to the arbitration but they are limited by the rules which constitute the compulsory law of the place of arbitration, namely by rules which establish certain minimum freedoms and rights. For instance an arbitration which is conducted in Greece, the contracting parties are limited to its determination procedure from the compulsory law provisions of the Civil Code and Law 2735/1999. The equal treatment of the parties is a fundamental feature of the private sector judicial mechanism and thus it is a check addressed both to them arbitrators, as well as to the parties, who are not entitled to shape the process in a manner deviating from the principle of equality. This principle acts objectively by governing the entire process. In other words this principle is implemented the formation of the arbitral tribunal until issuance of arbitration award. Also, this principle acts subjectively because it concerns all parties of the arbitration process, even those who co-signed the agreement without participation necessarily in a specific trial.

Arbitration Regulation of RAE is in the same spirit, where articles 13 par. 2 for domestic arbitration and article 22 par. 2 for international arbitration stipulate that *«During the arbitration procedure, the principle of equality of the parties, they should be called to attend the discussions develop their claims orally or in writing and provide the means of proof».* The above provisions refer to and specify the content of the «right to be

[52] See Article 25 of Civil Code: *«Contractual liabilities are regulated by the law to which the parties have been subjected. If not exists, the law applicable to the contract is applied from the set of special conditions».*

heard», which also consists of the right of parties to develop their factual claims and provide the means for the proof of these. Moreover, it has great importance that the issue of compliance with these rules escapes the discretion of the parties and they must be respected regardless of the type of procedure the parties have specified. In case of lack or invalidity of the parties' agreement to the procedure, the arbitral tribunal may alternatively choose the litigants rules which in its judgment are the most suitable for the quick and effective resolution of the dispute, determining the law that will govern it process as a whole and taking into account the will of the parties. Therefore, for security and stability reasons the arbitrators after their selection from the parties, become masters of their own procedure *(master of his own procedure)* and they undertake to organize the arbitration process, excluding the parties from redefining the process in case of any change in circumstances.

On the other hand, as far as the law applicable to the substance of the dispute is concerned, it is worth mentioned that use is made of the possibility of deviation which provided for in case d' of Article 902 par. 2 subsection b' of the Civil Code[53], according to which the presidential decree establishing and organizing permanent arbitration may specify «the substantive law to be applied by the co - arbitrator and the arbitrators». The aforementioned provision of Article 24 of the Internal Regulation Operation and Management of RAE tends to ensure that in any case Greek substantive law will be applied. In order to enhance the above, there is the provision 13 par. 12 of the RAE Arbitration Regulation according to which, *«If it is not defined otherwise in the arbitration agreement, the arbitrators shall adjudicate the dispute on its basis applicable national and European legislation».*

In the context of international arbitration, according to Article 19 of Regulation of RAE, the arbitral tribunal implements the rules of law chosen by the parties. The exclusive power of the parties to choose is acknowledged by their agreement, on the basis of which the arbitrators will be called upon to resolve the dispute. The purpose of this provision is the consolidation of the freedom of the parties to choose rules from among different ones legal systems, otherwise to split their legal relationship into sections by

[53] See Article 902, par.2, case d': *«The decrees of paragraph 1 define which disputes can be submitted to the arbitration of each chamber, exchange or association, as well as the details for the organization of the arbitration. The provisions of articles 867 to 900 apply to these arbitrations; the same decrees may, by way of derogation from these provisions, define […..] d) d) the substantive law to be applied by the arbitrator and the arbitrators.»*

submitting it to different rules, which are no longer in force or to call into force rules of uniform law or international convention not yet in force. This consolidation is really essential for the aim of international arbitration. In any case, based on Article 19 par. 4 of Regulation, the arbitral tribunal decides in accordance with the terms of the contract and after taking into account the business ethics appropriate to the specific transaction.

5.4. The establishment of the arbitral tribunal under the auspices of RAE

The composition of the arbitral tribunal in the permanent arbitration of RAE is three - member and the people who compose it must be chosen from the list of arbitrators and co-arbitrators drawn up every two years with decision of the President of the Authority. The list includes RAE members, members of Technical Chambers and Bar Associations, as well as professors of Universities of any level with specialized knowledge in the differences that are subject to arbitration. If the parties do not appoint an arbitrator or co-arbitrator, they are defined by the President of the Authority according to the proportional application of the provisions of the Civil Code. The qualifications (particular characteristics of an arbitrator) and the process of inclusion in the lists maintained by RAE are all described in detail APPENDIX I (List of arbitrators – Qualifications of arbitrators) of the Arbitration Regulation.

Furthermore, it is regulated that it is not allowed to appoint incompetent arbitrators and limited legal capacity as well as those who have been deprived due to conviction the exercise of their political rights. In case the parties do not specify arbitrator or co-arbitrator, then after ten working days of the submission request for arbitration - and unless the arbitration agreement provides otherwise - they can be appointed by the President of RAE, after a proposal by its Plenary. The application for the appointment of an arbitrator or arbitrators is submitted by the parties, while the arbitrators can also submit an application for the appointment of an arbitrator. The decision of the President of RAE on the appointment of arbitrators or co-arbitrators shall not be revoked after the commencement of the arbitration process. If for any reason the nominees refuse or are prevented from conducting the arbitration, then they are replaced by a decision of the President of RAE, following a request from any of the parties.

Despite the above mentioned, we should point out that the designation of someone as an arbitrator or co-arbitrator does not have a coercive nature, since he reserves the right to refuse his appointment. In other words, whoever may for good reason refuse to perform his duties after leave of the President of RAE, after a relevant

recommendation of the Plenary. In this case the parties may appoint a new arbitrator or co-arbitrator, while if they do not appoint a new within eight working days, then he is appointed by the President of RAE, after relevant recommendation of the Plenary.

As it is reasonable and consistent with the concept of arbitration, each arbitrator must be independent and impartial to the parties. Specifically, the arbitrator before his establishment must sign a declaration of acceptance, availability, impartiality and independence. Impartiality refers to the perception and position of the referee in relation to essence of the difference. The impartial referee should have none kind of personal relationship with the substance of the dispute. This means that under dispute arbitration should not be associated with any positive and/or negative consequences for the interests and the general legal position of the arbitrator, so that the latter not to expect any benefit from the outcome of the arbitration. Useful "tool" for understanding and managing its concepts independence and impartiality in international, in particular, arbitration are the "International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration, (2014)372" (Guidelines for conflicts of interest in international arbitration by the International Bar Association), with the list of cases contained therein (Red list, Orange list, Green list). The arbitrators should deal with the dispute for the first time; because it is not allowed to use their private knowledge while their engagement with the dispute.

According to the Regulation of of RAE, before his appointment or acceptance, arbitrators sign a written declaration of "acceptance, availability, impartiality and independence" which they address to the Special Permanent Secretariat RAE Arbitration. Special mention should be made for the corresponding obligations of the arbitrator, although apparently the Regulation of Arbitration of Rae means in this case also the co-arbitrator, as there is a model in Appendix 4 declaration under the title: "Declaration of independence of arbitrator and co-arbitrator", where the independence and objectivity of his judgment is responsibly declared undersigned, based on the facts known to him. The arbitrator must, that is to "disclose" in writing to the Special Secretariat of the Arbitrator Tribunal of RAE all the facts or conditions that may put in question its independence, as well as all conditions that can raise reasonable doubts as to his impartiality. Further the Secretariat informs the parties in writing and makes a decision deadline for submitting comments from them.

Regarding the responsibility of arbitrators and arbitrator, they are responsible, in the performance of their duties, only for fraud and gross negligence, so not for slight negligence.[54]

The arbitral tribunal ought to ensure that the proceedings and the publication of the decision be completed within six (6) months[55] from its initiation arbitration proceedings[56]. If the above deadline is not met, the President of RAE, after the request of any of the parties, sets a reasonable deadline for the completion of the arbitration process.

It is worth mentioning that the President of RAE or the secretariat of the arbitral tribunal do not operate 'ex officio' in this case, but it is required an application of any of the parties. However, Article 3 par. 2 of the Regulation of Arbitration of RAE provides that in the duties of the secretariat of the arbitral tribunal is also responsible for meeting the deadlines, as above for the publication of the arbitral award.

In any case, he arbitration agreement stops to be valid if it does not defines otherwise, if the arbitrators or arbitrator which have been appointed by the agreement or thereafter agreed by the contracting parties, die or are not accepted within time within ten (10) days of their appointment and no substitutes have been appointed or the way of replacing them, whether the term of validity of the agreement has passed was set by the same or the deadline that the President of RAE set for the completion of the procedure, or finally the contracting parties agree in writing on its abolition agreement.

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[54] Article 7 of the Regulation RAE Arbitration.

[55] Article 37 § 6 of Law 4001/2011: "The arbitral tribunal ensures that the procedure up to the publication of the decision to be completed within six (6) months from the initiation of the procedure arbitration"

[56] The provision is equivalent to Article 30 of the ICC Arbitration Rules (Article 30- Time Limit for the Final Award), which defines (in more detail in relation to the above provision) specifically that: *"1. The time limit within which the arbitral tribunal must render its final award is six months. Such time limit shall start to run from the date of the last signature by the arbitral tribunal or by the parties of the Terms of Arbitration or, in the case of application of Article 23 (3), the date of the notification to the arbitral tribunal by the Secretariat of the approval of the Terms of Arbitration by the Court. The Court may fix a different time limit based upon the procedural timetable established pursuant to Article 24 (2). 2. The Court may extend the time limit pursuant to a reasoned request from the arbitral tribunal or on its behalf own initiative if it decides it is necessary to do so" It is noted that the time management of arbitration procedure and the power to grant an extension to the issuance of the arbitral decision, in the institutional arbitration of the ICC, it is held by the "Court", which functions as the central administration of the ICC but not as a judicial body and not the arbitral tribunal.*

Finally, the arbitral tribunal may request the RAE to express its opinion regarding issues related to its (RAE) regulatory functions, as an independent Authority, and are critical to the resolution of the specific dispute, as provided for in article 37 par. 7 of the law 4001/2011[57]. Under certain circumstances, however, the RAE opinion in question, can play the role of "special expert opinion", for this reason in fact the above possibility of RAE should be used with sparingly and carefully, especially when a member of the arbitral tribunal participates RAE.

5.5. Internal Arbitration of RAE

I. Establishment of the arbitral tribunal

The parties may appoint arbitrators and co-arbitrators once they have agreed to submit their dispute to the permanent arbitration of RAE. Otherwise, each party appoints an arbitrator. Agreement, which states that one of the parties appoints an arbitrator for the other party as well or that the parties may appoint an unequal number of arbitrators, is void. If the co-arbitrator is not defined by the arbitration agreement, then arbitrators (that have chosen by the parties) have to determine their co- arbitrator, according to 874 of the Civil Code.[58] In case of death, refusal or any impediment of appointed arbitrators or the arbitrator to conduct the arbitration; their replacement is planned[59].

Regarding the remuneration of the arbitrator and the co-arbitrator, the parties are required to advance half of the fee in question, as well as the costs of the procedure, which include the secretary's fee. The specification of the amount of the advance payment is made, with a decision of the arbitration tribunal, while its final determination

[57] "7. The arbitral tribunal may by its decision request RAE to issue an opinion on issues that touch on its regulatory powers and are critical for the resolution dispute".

[58] "If there are more arbitrators and with the arbitration agreement, no provided otherwise, the arbitrators must appoint the arbitrator within fifteen days of the last, according to article 873 par.2 notification and to announce it to the parties that concluded the agreement."

[59] According to Article 875 of Civil Code: *"1. If the arbitrator appointed by one of the parties dies or for any reason refuses or is prevented from conducting the arbitration or withdraws, the other party may call upon the party who appointed that arbitrator in writing to appoint another, within a period of at least eight days . The party to whom the summons is addressed must, within the specified period, announce to the one who summons it the arbitrator appointed by him. 2. If the co- arbitrator appointed by the arbitrators dies or for any reason refuses or is prevented from conducting the arbitration and the arbitrators do not appoint another, either party may in writing invite the arbitrators to appoint another arbitrator within a period of eight days and announce it to the parties who concluded the agreement."*

as the above fee, but also the costs of the arbitration takes place with the same the arbitral award.

II. The arbitration process

The arbitration process begins with an application (request of arbitration). Article 11 of the Arbitration Regulation of RAE states in its first paragraph in detail the minimum content, which the (written) application should have an application for arbitration (request for arbitration), namely: *"(a) full name, or surname, address and contact details of each party, (b) complete name, address and contact details of the persons who represent the claimant in the arbitration, (c) a description of the dispute and of facts upon which the request for arbitration is based and upon which the claims are made, (d) the claim in a clear, definite and succinct and, if possible, monetary valuation of the non money requests, (e) reference to the arbitration agreement, and, if the requests based on more than one arbitration agreement, ref of all arbitration agreements, under which each is served requests and (f) any claim related to the composition of the arbitral tribunal court, the place of arbitration, as well as the law applicable to it".*

The application is submitted to the Special Secretariat of the Arbitration Tribunal of RAE which then forwards it to the one against whom it is directed, immediately with registered letter with acknowledgment of receipt or by any other convenient means and with proof of receipt. The defendant in the arbitration application, called "respondent" submits response within sixty (60) days of receipt of the application. The minimum content of the answer contained in the second paragraph of article 11 and concerns the following elements: *"(a) complete name or surname, address and other contact details of the defendant the application, (b) full name, address and contact details of of persons representing him in the arbitration, (c) pleadings and observations on the subject matter of the dispute and in particular on the facts, on which the arbitration request is based and based on which the requests, (d) response to the request, (e) each claim and proposal in relation to; with the constitution of the arbitral tribunal, the place of arbitration, as well as the applicable law".* In the same period, the respondent of the application can file a counterclaim, which should contain the above mentioned elements of application. The application and the return are carried out in the same way. They are deposited in the Special Secretariat of the arbitration tribunal of the RAE, which forwards without delay by registered letter with acknowledgment of receipt or by any other convenient way and with proof of receipt to the applicant.

As far as the seat of arbitration is concerned, Article 12 of RAE's Arbitration Regulations, stipulates that the parties have the power to determine the place of arbitration. If there is no agreement of the parties, either because the parties neglected to appoint a place or because they failed to agree on the same place, the place of arbitration is determined by the arbitral tribunal taking into account the circumstances of each case and the views of the parties. Moreover, the arbitral tribunal may, after consultation with the parties, hold meetings in any place which considerate appropriate, in order to cross-examine, to examine witnesses, experts or the parties or even to act autopsy or to receive document knowledge.

The evolution of the arbitration process is reflected in Article 15 of RAE Arbitration Regulation. The arbitration proceedings are conducted before the arbitrators and the co - arbitrator, who constitute the arbitral tribunal and act together. The arbitrators and the co - arbitrator invite the parties to submit their allegations and their comments on what is mentioned in the application of arbitration, to the answer and to the possible response of the defendant to the application, within a period of 30 days from the receipt of the relevant information. In the rest the arbitrators and the co - arbitrator form at their free discretion the arbitration, unless otherwise provided in the arbitration agreement.

According to Article 15 par. 4 of RAE Arbitration Regulation, during the arbitration process is strictly observed the principle of both sides hearing and the equality of the parties, they should be called to attend the discussions, develop them orally or in writing their claims and provide the means of proof.

The direction of the discussion belongs to the arbitrator, and the parties have right to attempt all procedural acts and to be present in person, after or by proxy. Unless otherwise provided in the arbitration agreement, the case is heard, even if the parties fail to answer the other party, to make allegations and/or provide evidence.

The arbitral tribunal has the power to decide on the jurisdiction, as well as for its existence or validity arbitration agreement. For this purpose, arbitration clause contained in contract is considered as an independent agreement. Therefore, decision of the arbitrator court that the contract is void does not necessarily imply and invalidity of the arbitration clause.

In the context of concentration, the claims of the parties in certain stages of the process, it is foreseen that after its submission response of the defendant to the application, an

objection of deficiency cannot be raised jurisdiction of the arbitral tribunal. The projection of said objection does not it is excluded, however, by the fact that the party presenting it has defined it arbitrator or assisted in his appointment.

Further, the objection that the arbitral tribunal is overstepping its bounds of its authority is proposed as soon as the relevant issue arises in arbitration process. In both cases, however, the arbitral tribunal may accept an objection, which is submitted at a later time, if consider its late submission justified.

On the above objections, the arbitral tribunal may decide either with a preliminary decision or with the (final) decision on the merits of the dispute. If the arbitral tribunal rules, through preliminary ruling that it has jurisdiction, then the arbitration process is continued and a decision is issued on the merits, an integral part of which is considered the preliminary ruling. The preliminary ruling is appealed only together with the decision on the merits, according to the terms and procedure applicable to the annulment action.

Regarding the evidentiary procedure, each party bears the burden of proof of his claims. However, the arbitral tribunal may distribute the burden in a different way of proof, if it judges that a certain litigant justifiably cannot to meet the burden of proof that rests on it, while at the same time presumes that the evidence is in the possession of the other party and exercise a material influence on the adjudication of the dispute.

If a request is submitted concerning the disclosure of documents and information from one party to the other, the arbitral tribunal orders the production of documents and information it deems necessary for its satisfaction request, regardless of whether these are specifically mentioned in the request, it is enough to specify the object of the proof. In fact, the arbitral tribunal to identify the above documents and data, directs special question to the party against whom the application is directed, so that determine which documents and information are in his possession, if the opposing party is not able to determine them precisely.

On the other hand, the arbitral tribunal have the power to request, either "ex officio" or at the request of a party, the performance of an expert opinion (expert's opinion) by a natural or legal person with special experience or knowledge of art or science on a particular subject, especially on issues of regulatory competence or knowledge object of RAE. However, they are absent from the relevant meeting the members of RAE, who may have been designated as arbitrators or co-arbitrators in the specific arbitral process. It is particularly important and a disadvantage for her "attractiveness" of the arbitration

process in the permanent arbitration of RAE, that in domestic arbitration, the arbitral tribunal may not rule on requests for interim measures, as well as on requests for revocation or reform of decisions on injunctive measures.

Finally, the applicable law of the internal arbitration under RAE is the applicable national and European legislation, unless otherwise stated in the arbitration agreement. Furthermore, it is no possible to be excluded the application of compulsory law rules by arbitration agreement.

5.6. International Arbitration of RAE

I. Designation of International Arbitration and establishment of the arbitral tribunal

According to the article of the Arbitration Regulation of RAE, international is the arbitration when: *"(a) the parties have, at the time of entering into the arbitration agreement, their establishment in different States or (b) one of the following places, is not located in the State in which the parties have their establishment: (ba) the place of arbitration, if that is specified in the arbitration agreement or arises from it, (bb) any place in which is to be performed a significant part of the obligations arising from the commercial relationship or o place with which the subject matter of the dispute is closely connected or (c) the parties expressly agreed that the subject matter of the arbitration agreement relates to more countries."*

In cases of RAE international arbitration, the rules of the law of the place of arbitration shall apply. However, based on agreement of the parties the application of rules of articles 867 to 901 of the Civil Code and in this case. The affiliation to the relevant articles of the Civil Code does not negate the nature of the arbitration as international. This setting is not clear as it is not specified if in the case of international arbitration, where the parties agreed as *'lex arbitri'* the provisions of articles 867-901 of the Civil Code, the third section applies again of Regulation of Arbitration of RAE on international arbitration.

With reference to the jurisdiction of the arbitral tribunal, this is regulated in article 16 thereof RAE's Arbitration Regulation, where it is specified that the arbitral tribunal rules on the jurisdiction and its existence or validity arbitration agreement. For this reason, an arbitration clause, which is contained in contract is considered a separate agreement and eventual decision of the arbitrator court that the contract is void does not necessarily imply nullity of the arbitral clause.

The article 17 of RAE's Arbitration Regulation refers to the designation of the arbitrators and the co - arbitrator as well as the composition of the arbitral tribunal court. For the aforementioned establishments, articles 5 and 10 of RAE's Arbitration Regulation are implemented with the proviso that in case of international arbitration, special importance is given regarding the selection requirements of the arbitrators, in their experience in internationals arbitrations, fluency in the use of foreign languages, as well as in general their experience in international dispute resolution. Further, for the definition arbitrators, what is stated in article 11 of Law 2735/1999 shall apply.

The parties are obliged to pay the fees of the arbitrators and the co - arbitrator to advance half of their remuneration, as well as the expenses of procedure, including the secretary's fee. The amount of the advance is determined by the arbitral tribunal by its act. THE final clearing of the remuneration of the arbitrators and the arbitrator, as well as of the costs of the procedure is carried out, with the arbitral award. Most important is the fact that the restrictions on the remuneration of arbitrators which fall under the provisions of the Greek Civil Code do not apply, if the arbitration or the dispute has any element of foreignness or directly or indirectly affects them international or cross-border transactions.

II. Arbitral Procedure under International Arbitration of RAE

The arbitral procedure in international arbitration is almost the same as the arbitral procedure followed in case of internal/domestic arbitration. More specifically, in case of international arbitration under the auspices of RAE are implemented the following mentioned.

First of all, according to the Article 18 of RAE's Arbitration Regulation, the arbitration application should contain at least the following information: *"(a) full name, address and contact details of each of the parties, (b) full name, address and details communication of the persons representing the applicant in the arbitration, (c) description of the dispute and the facts on which it is based 180 request for arbitration and upon which the claims are made, (d) the claim in a clear, definite and concise manner and, where possible, monetary valuation of non-monetary requests, (e) the arbitration agreement, and, if the requests are based on more than one arbitration agreement, reference to all arbitration agreements under which each of requests are made, and (f) each allegation and proposal in relation to the composition of the arbitral tribunal, as well as its language and place arbitration, as well as the law applicable to it".*

The arbitration application is submitted to the Special Secretariat of the Arbitrator Court of RAE, which then forwards it to the defendant without delay by registered letter with acknowledgment of receipt, or by anyone another convenient way and with proof of receipt. The defendant of the application can within 60 days of receipt of the application to submit a response which it should contain the same information as the applicant's application.

Within the same deadline, the defendant of the application may file a counter petition, which should have the minimum content of the application, like this mentioned above. The counter petition is made in the same way as the application. However, the above deadlines may be extended upon request according to the application, by decision of the Special Permanent Arbitration Secretariat. Moreover, contrary to what is provided for in internal arbitration, the defendant of the application may file a rejoinder to each answer within thirty days from the receipt of the reply from the Special Permanent Secretariat Arbitration.

Article 19 of the RAE Arbitration Regulation states that the arbitral tribunal shall apply the rules of substantive law they have chosen the places. Unless otherwise expressly agreed, the reference to law or judicial system of a state is considered as a direct reference to substantive law and not in the rules of private international law in question state. If the parties did not provide in this regard, the arbitral tribunal applies the substantive law determined by the private rule of international law, which the arbitral tribunal considers to be consistent more in this particular case.

The arbitral tribunal decides by judicial decision (conciliator), only in the case that the parties have expressly authorized it for this purpose. In any case, the arbitral tribunal shall decide in accordance with terms of the contract and after taking into account the appropriate business ethics in that particular transaction.

In international arbitration, it is reasonable that regulation is also required for determining the language of the procedure. It is about article 21 of RAE's Arbitration Regulation, which states that the parties have the power to determine the language or languages which are used in the arbitration process, while if there is no relevant agreement, the matter is regulated by the arbitral tribunal. Additionally, if there is no different provision by the parties, the above definition applies for each written statement of the parties, the oral procedure, the decisions and the notifications of the arbitral tribunal. The arbitral tribunal may order that the documents be accompanied by a

translation to language or in the languages agreed upon by the parties or determined by the same.

The arbitration procedure is conducted before the arbitrators and the co –arbitrator who constitute the arbitral tribunal and act jointly. The arbitrators and the co- arbitrator invite the parties to submit their claims and observations on what is stated in the request for arbitration, the answer and the counterclaim of the defendant's application within a period of 30 days. Otherwise the arbitrators and the co - arbitrator formulates the arbitration at their free discretion procedure, unless otherwise provided in the arbitration agreement.

The discussion is conducted by the arbitrator and the parties have the right to attempt all procedural acts and to appear in person or to appear with a lawyer. Unless otherwise specified by the arbitration agreement, the case goes to trial even if the parties fail to answer and make allegations or produce evidence.

5.7. The Arbitral Award under the Permanent Arbitration of RAE

Article 14 of RAE's Arbitration Regulation analyzes all the characteristics and parameters of an arbitration decision in the context of RAE's internal arbitration. The decision is made jointly between the arbitrators and the co-arbitrator both for the admissibility and the merits of the application. If there isn't unanimity, the decision is made by the arbitrators and the arbitrator by majority.[60] The arbitral award shall be drawn up in writing and personally signed by the arbitrators and the co - arbitrator. If one of the arbitrators or the co - arbitrator refuses or is unable to sign, then the decision is affirmed on the one hand his refusal and on the other hand the fact of his participation in arbitration process and the conference. In this case, the decision is signed by other members of the arbitral tribunal.[61]

The mandatory content of the arbitration award includes: a) the name and surname of the arbitrators and the co-arbitrator, b) the place and time of its publication, c) the name and surname of those who participated in arbitration procedure395, d) the reasoned and e) the dispositive f) the final determining the remuneration of the arbitrators and the arbitrator, as well as the costs of the procedure.[62]

[60] See Article 14 par.1 of RAE's Arbitration Regulation.
[61] See Article 14 par.3 of RAE's Arbitration Regulation.
[62] See Article 14 par.3 of RAE's Arbitration Regulation.

In order for the arbitration decision to be considered complete, it is required the signature by the arbitrators and the co – arbitrator. [63] Then, the arbitrator or on his order one of the arbitrators is required to file the original of the arbitration award in secretariat of the Single Member Court of First Instance, in whose district the decision was issued. In addition, there is an obligation to file a copy of it decision and to the Special Secretariat of Permanent Arbitration of the RAE. Also, a copy of the arbitral award is served with proof of receipt to those who executed the arbitration agreement and to those who participated in procedure.[64]

The arbitral award is not, nor is it allowed to be, challenged by legal means the filing of an appeal against it before other arbitrators. It constitutes 'res judicata', within the meaning of articles 322, 324 to 330 and 332 to 334 of Greek Civil Code.[65]

Against the arbitral award issued on an energy dispute in the permanent arbitration of the RAE, an action for annulment may be brought if the reasons of article 897 of the Civil Code, and in accordance with the provisions of articles 898 to 900 of the Civil Code. Its recognition can also be sought non-existence of the arbitral decision with a lawsuit under the terms of the order of article 901 of the Civil Code.

On the other hand, in the context of international arbitration, articles 27 to 31 of the fourth part of the RAE Arbitration Regulation are applied, which have almost the same regulations as those applicable in the context of domestic/internal arbitration. As in the context of domestic arbitration, so in this case of arbitration, the arbitrators and co-arbitrators jointly decide on the admissibility and validity of the application. If there is no unanimity, the decision is taken by the arbitrators and the arbitrator by majority.[66] The completion of the arbitral award requires the signature by the arbitrators and the arbitrator, according to the terms of the article 27 § 2 of the Civil Code.[67]

After the issuance of the arbitral award, its text signed by the arbitral tribunal, notified by the Secretary of the RAE Arbitration Court in the parties, which at any time and upon their request, they may receive certified copies of the decision by the special Permanent Arbitration Secretariat of RAE[68]. However, the same is not the case with third parties,

[63] In accordance with Article 14 par.2 of RAE's Arbitration Regulation.
[64] See Article 14 par.5 of RAE's Arbitration Regulation.
[65] See Article 14 par.8 of RAE's Arbitration Regulation.
[66] See Article 27 par.1 of RAE's Arbitration Regulation.
[67] In accordance with Article 27 par.2 of RAE's Arbitration Regulation.
[68] See Article 27 par.1 and par.2 of RAE's Arbitration Regulation.

who are not entitled to receive copies of it decision, apparently for reasons of ensuring privacy, of confidentiality and the secrecy of the arbitration.

By submitting the dispute to arbitration, in accordance with the provisions of RAE's Arbitration Regulation, the parties undertake to comply without delay with arbitration award, which they cannot challenge in any way before other arbitrators, except of course for the possibility of insult with the remedies provided for in Law 2735/1999.

In any case, it is possible, after starting the arbitration process for the parties to reach an amicable resolution of their dispute. In in this case, article 28 of the RAE Arbitration Regulation provides that the settlement is recorded by the arbitral tribunal in the form of an arbitral award. It is noted here, that the subject of international debate is the question of whether the arbitrators must or can propose compromise solutions, during its conduct arbitration process so that the parties can reach a solution and arrive in the amicable settlement of their dispute.

Finally, regarding the correction and interpretation of the arbitral award, Article 33 of Law 2735/1999 applies here[69]. Analogous application also of Law 2735/1999 and in particular of article 34[70] thereof, it is also done with regard to the issue of annulment of the arbitral award.

5.8. The first arbitration award of RAE (PPC - ALUMINUM OF GREECE ARBITRATION)

The first arbitral award of permanent arbitration of RAE was awaited with great interest. The success of conducting the first energy dispute resolution arbitration between major of Greek companies - giants in the field of energy would certainly contribute to creation of a climate of trust and reliability among those who operate in the energy sector for

[69] Article 33 of law 2735/1999: "*1. If the parties have not set another deadline, each party may, within thirty (30) days of notification of the arbitration decision, request the arbitral tribunal: a) to correct accounting, graphic or typographical or similar errors in the decision, b) to interpret a specific part of the arbitral decision, without changing its operative part. In any case, the relevant request is notified to the other party. The arbitral tribunal shall rule on the request within thirty (30) days of its receipt. 2. The arbitral tribunal may ex officio correct any error, from those mentioned in paragraph 1, letter a' of this article, within thirty (30) days from the issuance of the arbitral decision. 3. The arbitral tribunal may extend the deadline for correction or interpretation of the arbitral award provided for in paragraph 1 of this article. 4. The provisions of article 31 apply to the correction or interpretation of an arbitral award."*

[70] According to Article 34 par.1 of Law 275/1999: "1. Only an annulment action can be brought against the arbitration decision, in accordance with paragraphs 2 and 3 of this article."

the arbitration in RAE, but would also confirm whether RAE was able to respond and to this new role and to contribute to the smoothness of energy transactions and in the resolution of the respective disputes.

Regarding the subject of this investigation, PPC and ALUMINUM signed the co-promissory note of affiliation to the Permanent Arbitration of the RAE from 16.11.2011, according to article 37 of Law 4001/2011 of the difference between them in terms of pricing conditions, which PPC offered ALUMINUM for the supply of electricity, due to that the negotiations between them had failed fruitless. The two companies jointly agreed to resort to arbitration in order as stated therein: "*as applicable of the Basic Pricing Principles for High Voltage Customers, as formulated by the RAE in its Decision No. 692/6-6-2011, but also taking into account (a) the No. 798/30-6-2011 Decision of RAE and (b) No. 8/2010 Decision of the Arbitration Court, RAE to update and adapt the conditions pricing included in the established, to be implemented between the Parties agreement of 4-8-2010, draft contract dated 5-10-2010 and to form, in within the framework of the above Decisions, the terms of its supply after 6-6-2011 and henceforth contract between the Parties, so that they, on the one hand, respond to the characteristics consumption of ALUMINION and on the other hand to cover at least the costs of PPC.*"

5.8.1. Brief history of the dispute

ALUMINUM had entered into long-term contracts with PPC since its establishment electricity supply contracts. Two of the contracts provided for a time ending on 31.03.2006. PPC sought to freed from the 1960 conventional tariff, which he characterized as damaging. In this context, PPC sent its extrajudicial statement to ALUMINION, with which he declared that he does not wish to extend the validity of this contract. ALUMINUM with her extrajudicial statement on 27.2.2006, one month before the expiry of the contract in question, requested that the termination of the contract by PPC be recognized as invalid, stating its willingness to further extend the contract by an additional five years. Subsequently, ALUMINION filed an application for injunctive relief to take injunctive measures, to temporarily order the suspension of the results of the termination of the contract and for PPC to continue billing it at the provisions therein, until the issuance of a final decision on the main trial. A decision was issued on the said application for interim measures which accepted the application on the main basis her. This decision was challenged by PPC, which requested its revocation, which it succeeded in doing.

Following these, the "Contract for the Supply of High Power Electricity Under Voltage 150 kV - Tariff A" was concluded between PPC and ALUMINUM. According to PPC, the above contract had basic characteristics similar to those of same company had for all respective High Voltage customers and consumers. In the context of this contract, ALUMINION undertook to pay a price based on an invoice that was against that time approved by the Minister of Development and was the basis of billing of all PPC High Voltage customers. Also, an increase was imposed 10% on High Voltage tariffs from 01.12.2007, which was incorporated into the tariff consumption of ALUMINUM. In addition, the possibility was given further increase with a maximum limit during the first application up to 10% of the relevant of High Voltage tariffs, which PPC included in its total, i.e. 10%, in the tariff consumption of ALUMINUM.

Therefore, PPC sought to apply a 10% increase on the current Tariff consisting of regulatory specified non-negotiable basis of that increase, with which it supplied, electricity in Aluminum, without - taking into account the special conditions and its transactional behavior Aluminum - to necessarily precede negotiation with the latter, observed however, the principles of good faith and commercial ethics, preserving them conditions for the development of competition and consumer protection.

On the contrary, ALUMINUM argued that PPC should be negotiated the individual conditions of the contract and in particular the one in which it is specified the price is agreed upon under the stated limitations and specifically the one regarding the establishment of a price ceiling per MWh, not provided for at the bottom of this and that of compliance by PPC with the principles of good faith and of commercial ethics for the drawing up or modification of a supply contract of electricity and safeguarding the conditions for the development of competition and consumer protection.

In short, they were taken down repeated attempts to restart negotiations, towards the above direction, however the parties were unable to reach an agreement on the relevant pricing terms.

5.8.2. Appointment of arbitrators, co - arbitrator and the secretariat of arbitral tribunal and interim awards of the arbitral tribunal

Each of the parties appointed its own arbitrator by his declaration. As there was no agreement of the arbitrators in the person of the co – arbitrator (chairman of the arbitral

tribunal), he was appointed by decision of President of RAE, in accordance with the provisions of article 5 § 4 of the Arbitration Regulation of RAE. All the members of the arbitral tribunal signed a declaration of acceptance of their appointment as well as declarations of independence and impartiality and the two parties signed declarations that they accept them. After its establishment, the arbitral tribunal "appointed" a secretary, in accordance with Article 3 § 2 of the RAE's Arbitration Regulation.

The arbitration process was held at the RAE building. The arbitration tribunal issued a series of interim awards (interim decisions) which involved issues listed in detail in the arbitration award. More specifically, with the minutes number 1/2012, the arbitration tribunal chose the 25.10.2012 as the meeting day, in order for the parties to discuss procedural issues and set the framework for the arbitration. Subsequently, with the minutes numbered 2/25.10.2012, the parties submitted the credentials of their lawyers and stated that they recognize the legal formation of the arbitral tribunal, without submitting reasons for exception of its members. In addition, the chairman of the arbitral tribunal pointed out the obligation of confidentiality of the court secretariat and of members of the Special Secretariat of Permanent Arbitration of the RAE, who signed corresponding statements. In the same minutes, a final date was set for the submission by the parties of requests regarding the arbitration or objections to the validity of the arbitration agreement or jurisdiction of the court. In terms of adjudication process, that of the precautionary measures was agreed in combination with the prescribed one to RAE's Arbitration Regulation, but with full receipt with possibility of issue preliminary ruling on the on the jurisdiction of the court or others special issues and by agreement of the parties, each side to consider two witnesses and to file two affidavits, within the prescribed period time frame.

Then, with the minutes numbered 4/11.1.2013, the date was approved submission of proposals by the parties and it was decided that within 15 days from examination of the last witness, the parties shall file an evaluation of witness statements, affidavits and any expert opinions advisors, as well as anything else they want to add and finally set the day of the oral hearing of the requests and claims and h cross-examination of the first witness on the part of ALUMINUM SA. The specified date was extended and the oral hearing was adjourned with minutes number 7/2013, at the request of the parties. Finally, with the number 18/18.10.2013 minutes, was defined the method of payment of all costs of the arbitration but also was set a period of 8 days from the notification

to the parties, for equal payment by them of the fees of the members of the arbitral tribunal and its secretariat.

At the beginning of the arbitral process, PPC filed a complaint of lack of jurisdiction of the arbitral tribunal *"as a necessary and inevitable consequence and result thereof ALUMINUM's written and persistent refusal to acknowledge the existence and the validity of the Framework Agreement from 04.08.2010".* The arbitral tribunal rejected the said objection accepting that: A)The tribunal is not required to invent from scratch the contractual relationship between the parties, but just to parameterize and configure it within the limits set by the arbitration agreement, B) That when during the first debate the president of arbitral tribunal invited both parties to expressly confirm that agree and accept the revision of the supply terms and conditions drawing up a contract, and that the documents referred to in the first paragraph of the arbitration agreement will be considered, both parties they responded positively. C) That the request for arbitration constitutes in this case a separate contract, independent of the framework agreement. Moreover, even if it had been incorporated into the main framework contract, it would again be considered a separate agreement, as expressly provided in article 13 par. 5 of the RAE Arbitration Regulation, but also in article 887 § 2 of the Civil Code. D) That from submitted evidence and documents, no abuse appears procedural action.

5.8.3. The rationale and the operative part of the arbitral decision (number of decision 1/2013).

According to the decision numbered 1/2013 of the arbitration court, it was decided by a majority of two to one that the ALUMINION will be supplied with electricity by PPC and the latter will supplies electricity to ALUMINUM for a period of time equal to 8,760 hours per year and against the price of €40.7/MWh. In general, the Permanent Arbitration of RAE modified the already existing and functioning one transactional relationship between the parties, with the object of supplying electricity energy.

In the various evidence and allegations which were assessed to a large extent, the arbitral tribunal owns the argument that art ALUMINION's general consumer "profile" differs from that of others customers, in that its electricity needs make up 5% of overall national needs and that if the specific company ceased operations of, PPC would be forced to withdraw two lignite production units, with thus further inflating the problem

of unemployment in Western Macedonia, but also by causing increases in the marginal value of the system, to consumer burden.

As far as the operative part of the adjudicated decision is concerned, the arbitral tribunal decided by majority to dismiss the main and PPC's auxiliary request, the partial acceptance of ALUMINUM's request and the review, readjustment and regulation of the terms supply from 07.01.2010, so that the selling price of electricity for ALUMINUM SA to be 40.7€/MWh. The other applications of parties were rejected. The operative part of the decision also noted that it would be registered for publication by the president of the arbitral tribunal. In addition, the secretariat of the arbitration tribunal is obliged to notify the arbitration on proof decision to the parties.

5.8.4. Relations between PPC and ALUMINUM after the issuance of the arbitration decision

In continuation of the above majority arbitration decision, with an "Extrajudicial Declaration - Termination of Supply Relationship and Declaration of Cessation of Representation rights reserved", PPC terminated its relationship with ALUMINUM for the supply of electricity to its facilities aluminum production plant in Agios Nikolaos in Viotia and in the declaration of cessation representing the registered meters of the relevant facilities. The justification that was put forward by PPC for its complaint supply relationship consisted in the fact that with the decision of the Arbitrator from 1.11.2013 Tribunal, PPC was forced to supply electricity to ALUMINUM at prices below cost, which on the one hand constituted illegal state aid and distortion of healthy competition and, on the other hand, the power to cause its transfer financial burden on other consumers.

The MYTILINEOS group of companies, of which ALUMINION is a subsidiary, responding to a question from the Capital Market Commission, after its above-mentioned announcement of PPC, characterized this move as an abrogation of legitimacy, as well as the arbitration was a procedure institutionally protected by Law 4001/2011. In contrast, the PPC claimed that the price determined by the Arbitration Decision was below it of its cost for the corresponding period, as well as that during the calculation they were made unwarranted errors, omissions, arbitrary assumptions and misused data and thus took actions for the infringement and annulment of the above. After the above announcements and actions, RAE took communication of its position characterizing it as absolutely false and misleading publications regarding the

decision of the Arbitration Court to resolve it difference between the two companies, which brought the RAE as an institutional participant or involved in the Arbitration and implying that the Authority is "responsible" for the decisions of the Arbitration Court. Then of these, RAE proceeded with clarifications in relation to its own institutional role and the its responsibilities.

Specifically, RAE stated that the Arbitration Tribunal of Article 37 of N.4001/2011 constitutes a collective body composed of three (3) members appointed by the parties and is completely independent and distinct from the collective body of the Plenary Session of RAE but also against the executives of the Secretariat of the Authority with completely different powers and responsibilities, as expressly defined in relevant Arbitration Regulation and therefore the Plenary Session of the RAE had no one absolutely participation and we did not convene the Arbitral Tribunal in any way throughout the arbitral process until receiving the relevant arbitral award. Then, RAE edited the identification and numbering of the arbitral award, emphasizing that the reference to the award of the Arbitration Tribunal as "RAE/1/2013" is incorrect since it creates confusion as to the nature of the award and the body issuing it, as well incorrectly refers to a RAE decision. In fact, RAE made a second announcement claiming that there were inaccuracies regarding RAE's involvement in the arbitration process between PPC S.A. - ALUMINUM S.A. and clarified that the Arbitrator was a joint choice of Presidents of the two Groups, namely PPC and ALUMINUM.

Throughout the years 2013 and 2014, PPC and ALUMINUM exchanged with each other numerous extrajudicial statements and letters, with which both companies expressed their views on the basis of their negotiation, the correct method of formulating the price proposal, the price and the cost of the supplied electricity as well as the regulation of each other financial (overdue) outstandings. Furthermore, rich correspondence followed from both sides, from which arose the impossibility of finding a commonly accepted solution in relation with the amount of ALUMINION's electricity supply price from PPC.

Finally, PPC filed a lawsuit before the Court of Appeal of Athens against ALUMINION with a request for the recognition of the non-existence and in the alternative the annulment of the above Arbitration Decision. Afterwards, PPC sent letters to ALUMINION, with which PPC invited ALUMINION for the last time to sign the one proposed by the same news contract, with price invoice A-5 and settlement of its overdue debts ALUMINUM. Subsequently, PPC sent to ALUMINION and ADMIE

extrajudicial deactivation and removal statements representation of ALUMINUM's cashiers. At the same time, ALUMINUM replied in a letter to PPC that it would proceed with the payment of an amount and at the same time called PPC to a meeting in order for the parties to determine the exact corresponding amount.

5.8.5. Observations about the arbitration award

First of all, it is worth noting that the decision of PPC by which it was decided to refer the dispute between PPC and ALUMINUM SA in the arbitration, it had set as an "absolute condition" the formation of temporary pricing conditions on the part of PPC and on-time - consistent payment on the part of ALUMINUM for the consumption of electricity, until the issuance of the arbitration decision. This condition, wasn't respected by ALUMINION, which from the day signing the above agreement stopped paying the debtors "electricity bills" and in any effort of PPC to collect the accumulated debts, ALUMINION put forward the argument of existence possibility of arbitral proceedings, which would ultimately decide on the issue. Then, it can be reasonably argued that this particular arbitration suffers overall by nullity, due to non-compliance with the conditions on which its participation authorization was based PPC in the arbitration agreement on appeal in this case arbitration. The claim in question was, in fact, partially made by PPC on its behalf objection of lack of jurisdiction of the arbitral tribunal.

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Matters of importance to the arbitration also arose during the selection of the president of the arbitral tribunal. In this context, the selection of arbitrators should be done particularly carefully and preferably, this is achieved through an agreement of parts. When such agreement is not possible, a related one is provided selection mechanism. This competence belongs to the permanent arbitration of RAE to the president of RAE. In this case, the person chosen to "serve" as president of the arbitral tribunal, it was expected to raises questions regarding its "compliance" with its requirements impartiality, despite the fact that there was, on his part, a clear statement acceptance, independence and impartiality and although the parties expressly agreed at the choice of said person. This is because the person in question was at the same time a member

of the RAE Plenary, while this could had been avoided by choosing another person. In fact, it should be added that before the commencement of the discussed arbitration, RAE had dealt with various matters concerning the parties and therefore the elected president had also taken part in them. In some of these issues, the elected president had voted, when a vote was required, in favor of one of them parties and specifically ALUMINUM S.A.

Moreover, issues challenging the arbitral award could also exist in relation to the selection of one of the arbitrators. Particularly, press reports questioned the impartiality of the referee who was designated by ALUMINUM SA.

Beyond the above "procedural" or in general procedural issues of the arbitration in question, the decision of the arbitrator with number 1/2013 tribunal of permanent arbitration of the RAE created, regarding the low price set for the supply of electricity, and issues with the EU. In particular, the EU had already decided in the past that the price of electricity, which was already higher than 42 €/MWh, i.e. temporarily determined by RAE (fixed price) for the supply of electricity from ALUMINION S.A., constituted illegal state aid, referring the country to European Court of Justice, regarding this matter.

Finally, important problems regarding European legislation arise from the non-harmonization of the arbitral award with the rules of the market. The arbitral award under review may be absolute according to the dictates of the law and therefore correct, except not necessarily unquestionable in relation to the rules of the energy market. Particularly, the price of electricity supply from a supplier to a customer, no determined by the decision of a court but by the rules of the specific energy market.

Subsequently, the 634/2016 decision of the Tripartite Court of Appeal of Athens was issued, which closed the matter of PPC's appeal against price of the arbitration but also the issue of state aid, since it justifies and validates the way the Arbitral Tribunal acted, rejecting the lawsuit in its entirety as unfounded. As for the actual cost of PPC, the final decision confirms that for pricing must be taken into account the basic pricing principles of electricity, as defined by the RAE decision. In short, the price decided by the arbitral tribunal is not considered illegal either, neither does it constitute state aid, nor is it below PPC's marginal cost. Finally, the decision of the Court of Appeal vindicates the Arbitration subjectively in RAE, as it confirmed the crisis of the E.E. that "the selected arbitrators possessed undoubtedly the appropriate training and expertise, the arbitral

tribunal was established under the organizational auspices of RAE ensuring the independence of arbitrators".

However, the above much-discussed dispute did not end with the decision numbered 634/2016 of the Athens Court of Appeal. PPC filed two complaints before the Commission, arguing that initially the RAE and then the arbitral tribunal granted Mytileneos illegal State aid, insofar as the disputed tariff required it to supply to Mytileneos electricity at a price lower than its cost and, therefore, from market price. By letter of 12 June 2014, the Commission informed PPC that the complaint he had submitted was filed. Following this document, PPC filed an appeal before the General Court, which was registered under the number T-639/14, with a request to annul the content of the decision document to put the complaints on file. During the above procedure, the Commission, by decision of March 25, 2015 1 (in the hereafter: first contested decision), proceeded with the revocation and replacement of the disputed document. In this decision it was supported that the arbitral award did not entail a grant state aid in favor of Mytileneos, on the grounds that the voluntary on behalf of PPC submitting the dispute to arbitration amounted to the conduct of a prudent private individual market investor and that, therefore, no advantage was granted. Subsequently, PPC filed an appeal before the General Court, which was recorded under the number T-352/15, requesting the annulment of the first contested decision. By order of 9 February 2016, the General Court ruled that extradition was refused decision on the appeal in case T-639/14. However, after applying on appeal, Court overturned the decision and referred the case to the General Court, where it was registered under the number T-639/14 RENV.

On 14 August 2017, the Commission issued a second decision (hereinafter: second contested decision), by which were repealed and replaced both the disputed document as well as the first contested decision. Relying on reasons identical to those set out in the first contested decision, this second decision confirms that the arbitral award does not entail the granting of state aid in meaning of Article 107, paragraph 1, TFEU. PPC filed a new annulment action before the General Court against it of the second decision, which was recorded under the number T-740/17.

After deciding on the joint trial of the three pending cases, its third five-member panel General Court accepts the three appeals brought by PPC and cancels both the disputes document as well as the first and second contested decisions (hereinafter, together: impugned acts). With its decision, the General Court provides clarifications regarding

the characterization of the complainant as an "interested party" who is actively legitimized to challenge the Commission's decision on non-formulation objections against a state measure, based on state aid law. In essence, the decision additionally clarifies the content of the Commission's obligation to ascertain whether an arbitral tribunal having powers analogous to those of an ordinary state court granted an advantage, within the meaning of state law aid, setting a supply price for electricity which may not corresponds to the market price.

CONCLUSIONS AND PROBLEMATICS FOR THE FUTURE

It is generally admitted that the recourse to justice concerning energy disputes which arise from energy activities may be particularly costly and time-consuming to any person, who is active in investment and business sector. In the energy sector, after all, the transactions and contracts that unfold are of great economic value, complex in their terms while being compiled from many persons and usually affect a wide range of people.

For this reason, all companies in the field of energy both in national and international level, aim to save time and costs through recourse to alternative ways of resolving energy disputes and mainly through the institution of arbitration that offers speedy resolution, quality of the judgment of the specialized court, its final decision and exclusion of delays and other complications from the involvement of ordinary, national or other courts.

In order to achieve the above mentioned, special arbitrary centers for the resolution of foreign energy disputes formulate groups of experts scientists and experts in various legal, technical and financial fields of energy in order to maximize the efficiency and the effectiveness of arbitration, as an alternative method of resolving energy disputes.

The advantages that arbitration offers to parties that they have chosen it as a way of resolving the differences that arise between them and clearly also refer to RAE arbitration. Through the possibility selection of the persons of the arbitrators and the formation of the arbitration procedure, the virtues of confidentiality, confidentiality, and flexibility are promoted. Based on its principle of acceleration that governs the whole process, the short time is undone period for issuing the arbitral award. In addition to the above, through the binding nature and more specifically the "enforceability" of the arbitral award and its immediate enforceability, the production of “res judicata” makes the solvency of the institution evident.

Regarding the national framework, the first arbitration held under the auspices of the RAE, a dispute between two companies - giants in Greece, which provoked fierce lawyers concerns and various questions to be resolved and to revise the existing legislation on arbitration in Greece. However, despite the problems created by this legal dispute, the creation of a climate of trust and reliability in RAE was promoted on the part of those active in the energy sector companies. In addition, it is concluded that RAE fully responded to its new role, enhancing the smoothness of energy transactions and the resolution of disputes in the energy sector.

The permanent arbitration organized by RAE provides all guarantees for conducting a successful and valid arbitration. However, by looking at the possibility further development there may be space for changes in Arbitration Rules. To be more specific, the rules governing arbitration at the national level including the rules governing RAE arbitration are heavily influenced by international arbitration law. In other words, the national legal order has not attempted to create an arbitration regulation that simulates and is within the framework of Greek values and principles and the Greek legal system. In Greece, arbitration is provided for by the Civil Procedure Code (articles 867-903) and Law 2735/1999 on international commercial arbitration. Furthermore, in Greek legal system is included the New York Convention (1958), which Greece has ratified since 1961.Therefore, it becomes necessary to amend the provisions of article 37 of Law. 4001/2011, in order to avoid problems in the operation of its arbitration RAE, but in any case the identified problems must be addressed with corresponding interventions in the RAE Arbitration Regulation, to the extent that this is allowed. For example, a provision could be implemented according to which the rules on arbitration, which are derived from international legislation, can be applied to the extent that they do not conflict with what is defined in the Code of Civil Procedure and the principles of the Greek legal order. More specifically, the Greek legal order is almost entirely based on international arbitration legislation, but this phenomenon could be limited specifically to disputes that do not contain an element of foreignness. In the afore mentioned disputes, the arbitration regulation of both the RAE and the Greek legal order could focus more on the facts of the Greek legal order and the laws that govern the operation of most companies in Greece that do not present features of foreignness.

In summary, the importance of having one judicial mechanism, such as that of RAE arbitration, in the context of energy market is almost self-evident. After all, the judicial resolution of disputes which arising in the individual energy sectors is in our country extremely time-consuming process, as is the case in general with all kinds of disputes relating to jurisdictional investigation in overloaded Greek courts. The versatility of energy sector in terms of the organization of the energy market and the energy economic planning of the country as well as in issues related to safety, environmental and consumer protection, but also the equality of participation of businesses in the energy market, necessitated the appeal of the Greek legislator in mechanisms for clarifying and speeding up the resolution of disputes that arise between the actors involved. The expert mechanism of justice administration in private disputes, arising in

its context operation of the energy market is the Permanent Arbitration and the specialized body that is suitable and charged with it conduct of the arbitration dispute resolution process is obviously the RAE. Finally, the institution of RAE arbitration must be strengthened and promoted in order to make it more attractive to both domestic and foreign investors, thus constituting an investment for both Greece and Greek justice.

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