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CHALLENGES IN IMPLEMENTING FIDIC DUE TO DISCREPANCIES BETWEEN CONTRACTUAL TERMS AND LOCAL LEGISLATION. COMPARATIVE ANALYSIS

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The purpose of a contract is to set out the rights, responsibilities and liabilities, of the parties and can be described as a “means to allocate risk between parties”. The main differences between the Spatial Development Act (SDA) in Bulgaria and the FIDIC contractual terms consist in the greater degree of universality of FIDIC and the greater specificity of the rules of the Bulgarian legislation. SDA focuses on the procedural side of the construction stages. The FIDIC contractual terms regulate the relationship between the Contractor and Employer, but do not prescribe the exact form of acts required during the construction process, as the SDA does. This paper synthesizes some specific positions that Bulgarian legislation introduces and the way it foresees mandatory judicial requirements regarding different aspects of the construction process in comparison to FIDIC contractual terms. An overview of the lack of clear view on the compatibility of the FIDIC mechanism with Bulgarian legislation is made, which creates serious uncertainties for domestic and foreign investors in Bulgaria.

Keywords: FIDIC; Spatial development act; comparative analysis

DESAFÍOS EN LA IMPLEMENTACIÓN DE FIDIC DEBIDO A DISCREPANCIAS ENTRE LOS TÉRMINOS CONTRACTUALES Y LA LEGISLACIÓN LOCAL. ANÁLISIS COMPARATIVO

El propósito de un contrato es establecer los derechos, responsabilidades y responsabilidades de las partes y puede describirse como un “medio para distribuir el riesgo entre las partes”. Las principales diferencias entre la Ley de Desarrollo Espacial (SDA) en Bulgaria y los términos contractuales de la FIDIC consisten en el mayor grado de universalidad de la FIDIC y la mayor especificidad de las normas de la legislación búlgara. SDA se enfoca en el lado procesal de las etapas de construcción. Los términos contractuales de la FIDIC regulan la relación entre el Contratista y el Empleador, pero no prescriben la forma exacta de los actos requeridos durante el proceso de construcción, como lo hace la SDA. Este documento sintetiza algunas posiciones específicas que introduce la legislación búlgara y la forma en que prevé requisitos judiciales obligatorios con respecto a diferentes aspectos del proceso de construcción en comparación con los términos contractuales de la FIDIC. Se hace una descripción general de la falta de una visión clara sobre la compatibilidad del mecanismo FIDIC con la legislación búlgara, lo que crea serias incertidumbres para los inversores nacionales y extranjeros en Bulgaria.

Palabras clave: FIDIC; Ley de desarrollo espacial; análisis comparativo

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1. Introduction

1.1. Research Background

Researchers and practitioners in the construction and legal sectors alike have questioned the possibility of creating a “common law of construction contracts” across countries and regions owing to the vast and often insurmountable differences between national jurisdictions (Knutson, 2005). However, despite various differences and gaps, the applicability of FIDIC contracts – when transposed into the framework of national jurisdictions – has yielded effective and working results, which in turn implies that there is enough substantive common ground upon which to build and adapt FIDIC contracts and terms to the requirements of national legislature (Charrett, 2019). In this regard, Bulgarian progress remains somewhat stunted and far behind the experience of other EU members such as France, Germany and the UK, to name but a few, which merits further research into why FIDIC guidelines are yet to become a comprehensive and regularly used instrument in the drafting of construction contracts under Bulgarian law.

Therefore, the purpose of this research paper is to synthesise the specific positions and provisions that Bulgarian legislation introduces as well as the mandatory judicial requirements and stipulations of Bulgarian law compared to FIDIC contractual terms. This study will also establish the apparent lack of a clear and unanimously agreed upon perspective on the compatibility between the FIDIC mechanism and Bulgarian legislation. This in turn, it can be argued, has created significant confusion and uncertainty for both domestic and foreign investors in Bulgaria, and therefore has hindered the further economic development where the construction sector in the country is concerned. The main thesis that this paper will thus aim to establish is that investing time and resources in improving the compatibility of both construction frameworks will inevitably bring about benefits for all stakeholders involved in the process. In terms of legislative benefits, the Bulgarian legal framework can be further clarified in order to avoid confusion about rules, roles, risks and responsibilities. With regard to investors, contractors and builders, the more practical application of FIDIC books will speed up the construction process and facilitate the establishing of proper, adequate and mutually beneficial relations.

1.2. Research Objectives

The study aims to analyze and provide comprehensive answers to the following research aims and objectives:

- To analyze the differences between Bulgarian legislature (namely, the Spatial Development Act) and the general FIDIC contractual terms
- To provide a comparative overview of the roles and differences in construction contracts, as defined by the SDA and FIDIC
- To relate the most regularly dispute resolution mechanisms in Bulgaria with FIDIC best practices and procedures
- To provide analytical conclusions on the relative compliance that can be established between Bulgarian legislature and FIDIC

1.3. Research Structure

The following chapter will provide a brief overview of the methodological framework of this study that will set the stage for the critical analysis and discussion. Then, the results part, which comprises the bulk of this paper, will present the main challenges that loom ahead of the implementation of FIDIC in compliance with Bulgarian national and local legislations. These

challenges and hurdles revolve around discrepancies between the general terms and rules of FIDIC contracts and the specificity and focus of Bulgarian laws and regulations. Thus, the paper will offer a comparative analysis and overview of the differences between the two frameworks, and then it will narrow down its focus upon the conceptualization and identification of the roles and responsibilities established by both frameworks. Afterwards, the two major dispute resolution mechanisms in Bulgaria will be reviewed in order to adequately relate their functioning to FIDIC practices. Then, any other discrepancies between Bulgarian law and FIDIC contracts that are considered to be of relevance to this discussion will be critically analyzed and compared. Finally, the concluding remarks will establish the findings that can be drawn on the basis of the compiled and discussed data and will offer suggestions and guidelines for further research into this subject matter.

2. Research Methodology

2.1. Research Strategy

The case study method was selected among all other research strategy choices due to the fact that it allows the researcher to delve in deeper into the contextual background of any research subject and phenomenon (Meriam, 2009). In this manner, one can analyze in a comprehensive and in-depth manner any given phenomenon rather than focusing on a single variable and factor and limiting the analysis to that. A major problem of the case study approach relates to the fact that its results and findings cannot always be applied to other studies (Saunders et al., 2011) but this is not the purpose of the current study. Consequently, the case study of the still limited application of FIDIC in Bulgaria and its uncertain relation to Bulgarian legislature will be examined. If not for lack of time and the scope of this study, a multiple case study analysis might have been utilized instead, which would have allowed the researcher to draw comparisons across several case study countries and the extent of FIDIC applicability in them.

2.2. Type of Data to be Collected

For the purpose of fulfilling the pre-set objectives of this study, secondary data alone will constitute the source of raw data being collected and analyzed. What this implies is that governmental legislation documents and papers, peer-reviewed books and journal articles as well as online sources will be used in this study. Compared to primary data, secondary data can be collected much faster and is more comprehensive because there is already a bulk of data available (Burns and Bush, 2003). Furthermore, as previously mentioned, the limited timeframe for this study hinders the collection of primary data, which would have included interviews or surveys with stakeholders in the process or professionals who have knowledge of Bulgarian legislature and/or FIDIC terms. In addition to this, qualitative data was selected over quantitative since the purpose of this study is to explore in great detail and from various aspects and perspectives the possible compliance between Bulgarian law and FIDIC. Quantitative data would have yielded limited results that could not easily explain the many variables, factors and other issues to consider when discussing and analyzing this subject matter.

2.3. Research Instruments

Due to the fact that the main source of research information for this study will be formed of documentation in electronic or paper format, the most preferable and appropriate method of data analysis tool will be content analysis. (Saunders et al., 2011). Content analysis facilitates the researcher's work in examining the full texts of the selected sources and identifying patterns,

trends or keywords, which are then used to code the most relevant research categories for the data analysis and results sections (Saunders et al., 2011). In other words, content analysis is a flexible instrument, which allows the researchers to break down the raw data into smaller, coherent and more easily understandable and explainable categories or codes. That is why it was selected as the preferred option for this study, which will attempt to identify and analyze the most important points of similarity and difference (i.e. these are the research codes/categories) between Bulgarian legislature and FIDIC contracts and terms.

3. Discussion: Challenges in FIDIC Implementation in Bulgaria

3.1. Comparative Overview of the Bulgarian Spatial Development Act and FIDIC

The purpose of any contract is to set out the rights, responsibilities and liabilities of the parties. Consequently, any contract can be described as being a “means to allocate risk between parties”, thus distributing the burdens of risks and responsibility in a mutually agreed manner. Contractual relations in the construction sector are of a particularly high importance. On the one hand, they are of high significance, but, on the other hand, they also determine the work, life and leisure conditions for any given society in the long run (Milkov, 2010). In this manner, they affect a wide range of other societal relations and circumstances. Contractual relations in the construction sector, however, are considered to be quite complex compared to other industries. Fulfilling them properly and adequately entails the possession and use of knowledge from diverse areas of science as well as the utilization of practical skills and a practical mindset. These types of relations are highly regulated in order to ensure and guarantee the underlying and most socially beneficial purpose that they should pursue – that of grounding construction projects upon the tenets of national and local legislation and legality (Milkov, 2010).

The most significant Bulgarian legislative regulation in this regard is the so-called **Spatial Development Act (SDA)**, which represents the legislative regulation of the construction process in Bulgaria and can be characterized as a broad type of legal regulation that is also quite heterogeneous, and, for the most part, imperative in nature. The legal framework contains a number of organizational and structural legal norms. It also covers a number of legal norms that provide legal definitions, and norms that strictly regulate different construction procedures. The SDA explains the legal regulations for the entities which intend to participate in any type of public relations revolving around the construction sector and process (Leonidov, 2010).

At the same time, one of the increasingly adopted trends in Bulgaria relates to the creation and usage of the so-called standard forms of the **International Federation of Consulting Engineers (FIDIC – Federation internationale des ingenieurs-conseils)**. They are applied more often and directly in contract practices in Bulgaria. Numerous financing organizations explicitly stipulate that contracts in the investment process must be aligned with the “books” of FIDIC. In a similar manner and even though they are not required to implement the FIDIC general rules in the drafting stages of their contracts, more and more participants in the construction process in Bulgaria have started to adopt the best practices that are discussed in the FIDIC books. Although these best practices do not possess the status and recognition of a source of law and rights, they undoubtedly exert a strong influence upon the process of drafting contracts in the country.

The core differences between the FIDIC contractual terms and the Bulgarian SDA norms pertain to the larger degree of **universality** under FIDIC compared to the greater **specificity** and narrowed focus of the rules of the Bulgarian legislation (Fakti.bg Team, 2005). SDA focuses on the procedural side of the construction stages. The FIDIC contractual terms regulate the relationship between the Contractor and the Employer, but do not prescribe the exact form of acts required during the construction process, which is in fact what the SDA predominantly does.

There are currently no **standard forms** in general use in Bulgaria. In theory, the international financing institutions require FIDIC Conditions of Contract to be used. In 2016, at the request of the Bulgarian Construction Chamber, the Bulgarian Society of Construction Law developed Contract Agreements and Particular Conditions for the FIDIC Red and Yellow Books, which were harmonized with the national legislation. However, empirical research has shown that at present FIDIC forms are used only in 1% out of all construction contracts in the country, which is a comparatively low figure across the European region (Spasova et al., 2016). In December 2016, for the purpose of further discussion, the Bulgarian State Public Procurement Agency published a set of draft standard forms for construction contracts, which were also intended to become mandatory for public procurement. The proposed forms were criticized by construction law experts and have not entered into force yet. The FIDIC Red and Yellow Books (1999 edition) will be used, together with the Particular Conditions, which in turn are harmonized with Bulgarian legislation. These standard forms are currently open for consultation.

In Bulgaria, the term '**construction contract**' is not defined as such in the legislation. A construction contract is a kind of contract for services. All contracts for services are generally subject to the rules for any 'the contract for work', which are governed by the Obligations and Contracts Act (OCA). Under a 'works contract', a contractor undertakes at their own risk to conduct work for another party. In exchange, the second party offers a specific remuneration whereas the contractor promises to produce particular work results that have been agreed upon. This broad definition makes it clear that works contracts, and construction contracts in particular, are not limited to building projects but also cover contracts involving the manufacture of goods; not only the realization of new projects, but also repair works and works for the maintenance of goods (Spasova, 2018). The price to which the contractor is entitled to does not have to be determined in detail; it is sufficient to clarify and establish it that the contractor is entitled to some sort of payment. A specific requirement of the SDA is that construction contracts must be concluded in writing. Compliance with the legal requirements and regulations established by the SDA is mandatory in all cases, regardless of whether they are included in the terms of the FIDIC contract, since they are applicable under Bulgarian national law. In light of this, the terms of the FIDIC contract might continue to be applicable, even if they are not amended. However, changes are usually introduced in order to meet the above requirements (Ministry of Regional Development and Public Works [MRDPW], 2020).

Those Bulgarian construction and engineering companies that have been engaged in international projects have been well-acquainted with the FIDIC contractual terms ever since the 1960s. Nevertheless, it seems that these terms represent a novel and unknown challenge for the Bulgarian bureaucratic administration, which is currently responsible for the regulation of those international construction contracts that have been concluded on the basis of FIDIC. The major **challenges** that plague the administration include its own lack of knowledge and preparedness coupled with the lack of skilled personnel for the preparation of tender documentation and for the management of contracts based upon FIDIC terms. These hurdles in turn hinder the proper and adequate implementation and application of FIDIC in Bulgaria (Bobeva & Nikolov, 2017). FIDIC and the SDA determine the rules for project implementation in divergent ways. According to FIDIC, the person or entity that provides the means of financing is also the one that determines the rules. When the SDA regulation was still in the making, this notion was not taken into consideration and consequently it is now difficult to reconcile FIDIC contractual terms to the respective tenets of the Bulgarian legislative framework.

3.2. Roles and responsibilities as defined by the SDA and FIDIC

The SDA provides an ample and exhaustive list of the various participants in the construction process, mainly: "Participants in the construction process shall be the Contracting authority, the Builder, the Designer, the Consultant, the private entity exercising Technical supervision over the structural part, the Site manager and the Supplier of machinery and technical equipment. The relationships of the participants in construction shall be regulated by written contracts" (MRDWP, 2020).

The participants are defined as follows:

The Contracting authority is "the owner of the property, the person in favor whereof a right to build in another's property has been created, or the person enjoying a right to build in another's property by virtue of a special statute. The contracting authority or a person thereby authorized shall ensure everything necessary for the commencement of construction." Spatial Development Act, Bulgaria)

The Designer is a role in the construction process that has the required "technical qualifications" and performs supervision over the structural part of all construction works of Category One to Category Five inclusive.

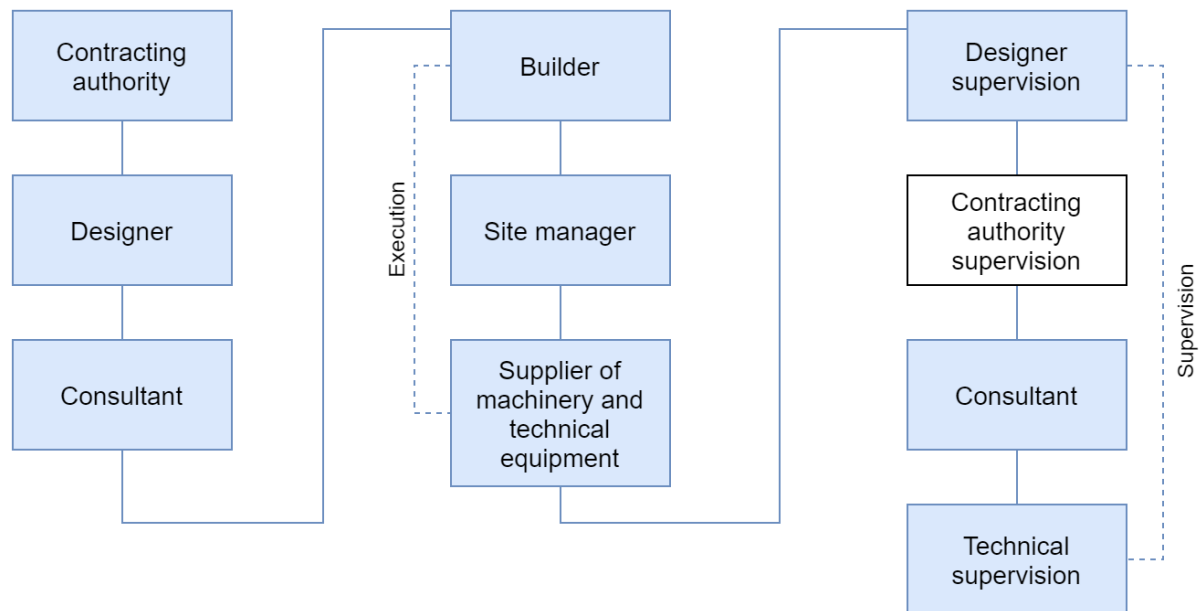
The Builder is generally responsible for execution of the building and erection works including materials, manufactures, products and other such conforming to the essential requirements to construction works. They can also subcontract the performance of particular types of building and erection works or of parts (stages) of the construction work.

The Builder is obliged to appoint a technically qualified person under labor contract to carry out the site management of the construction works. This **Site manager** shall be a civil engineer or a civil engineering assistant who shall manage the building works on site. The Contracting authority may commission the supply and installation of the machinery and technical equipment of the construction work to a **Supplier**. Any such Supplier shall be responsible for the quality and prompt execution of the said supply and installation, as well as for the related acceptance trials.

The Consultant shall perform conformity assessment of the development project designs and/or shall exercise construction supervision on the basis of a written contract with the Contracting authority. The Consultant should be licensed by the Minister of Regional Development for this purpose.

The person exercising **Technical supervision** shall be responsible for legally conforming commencement of the construction work and supervising the completeness and correct drafting of all documentation. They also monitor the compliance with the conditions for occupational safety in construction, do the energy efficiency evaluation and have many other duties.

Figure 1: Bulgarian SDA roles in the construction process



In 1999, the state transferred some of its duties as a construction control authority to private sector consulting companies, which were licensed and later registered by the government. To qualify for licensing, they are required to have architects, engineers and lawyers specified in the mandatory 'lists of qualified staff'. Each and every one of these individuals must meet the pre-set minimum statutory criteria of experience in their respective professions.

Interesting specifics related to these roles in the construction process are:

The **Consultant** is defined as the participant in the construction process who is responsible for ensuring the compliance of the design and construction with the regulations in force. The scope of review of the design and construction supervision is mandated by the SDA. They perform the following functions according to the tenets of the contract to the Employer: evaluates the compliance of the design with the existing legal requirements and the construction works supervision; reviews and exercises control over the delivery and proper usage of the construction materials; conducts pre-investment investigation, manages the design process and coordinates the construction process up until the commission stage (this also includes reviewing the quantities, quality and compliance of the works with the contract and SDA requirements). In turn, the **Employer** must sign a contract with a registered consultant for the supervision of all projects which are defined by the SDA as being either high- or medium-risk. The responsibilities of the registered **Consultant** are backed up with considerable sanctions for any potential infringement upon the legal requirements. The consultant is in this manner the Employer's agent; the Consultant may also act as a project manager or as 'The Engineer' in a FIDIC project, but has a neutral role when checking the compliance of the design with mandatory standards and when supervising construction work. The SDA also provides for mandatory inspections by an appointed **Designer** at key points during the construction process - the so-called "designer supervision" procedure during the construction stage, which refers to handling copyright issues and overseeing the proper implementation of the pre-set design plan (Jaeger & Hök, 2010). As a result, the Employer must enter into a contract with the architect and other designers whose job is to further elaborate upon the relevant and detailed design for 'supervision by designers'. In case of changes in the course of construction, the designer provides instructions using those already recorded in

the so-called 'Order Book', which is kept on site by the contractor. Any such instructions must also be confirmed by the registered Consultant (Spassova, 2019).

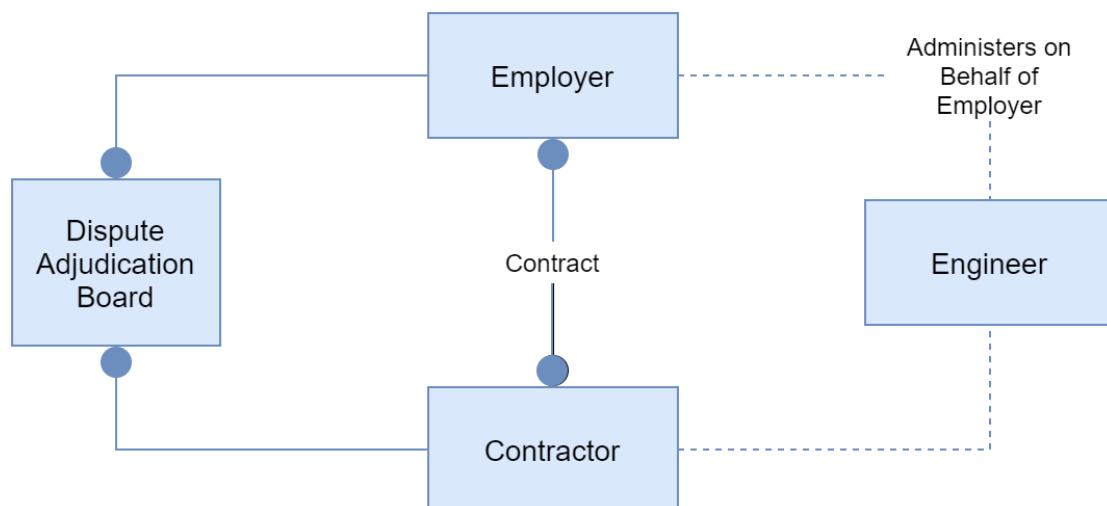
The FIDIC contractual rules lack the breadth and specificity that SDA allocates to determining the roles and responsibilities of all participants in the construction process. Under FIDIC, there exist the so-called contractual parties, which include the **Employer** and **Contractor**, whereas the relevant institutions are the **Engineer** and the **Dispute Adjudication Board**. According to FIDIC, the Employer is the client who commissions and finances the execution of the construction works (Milkov, 2010).

In contrast with this, the SDA abides by the everyday practice of mass construction and identifies the Employer as the owner of the property, the person or entity that is given the right to construction on a foreign property, and the person or entity that has the right to undertake construction works on a foreign property by virtue of a special law.

FIDIC also does not employ the concept of “**Builder**” because it narrows down the scope of the implementation. The Builder in this case is the **Contracting authority** that executes the construction work under the supervision of the Engineer and in accordance with the construction contract.

The **Engineer** stands for the last participant in FIDIC contracts. The relations between the contractor and the Engineer are especially arranged in a contract for engineers under FIDIC, which is an entirely separate contract the contract for construction works. As a rule, this contract will be forged first, and only then will the international tender process be held. According to the SDA, there are two varieties of Engineers – the one that conducts construction supervision and the so-called “Consultant”. The Consultant in the reading of the SDA is the person who is tasked with evaluating the compliance of the investment projects and/or exercising construction supervision. However, the SDA does not specify the responsibilities of the Consultant with regard to the approval of payments to the builder whereas FIDIC designates this task as one of the core priorities of the Engineer. Under FIDIC, the builder receives the allocated payment amounts based upon the degree of the construction works that have been completed during a specific month, which in turn is supervised on a daily basis by the Engineer.

Figure 2: FIDIC roles and responsibilities



3.3. Dispute resolution mechanisms in Bulgaria

In Bulgaria, the most popular alternative dispute resolution (ADR) mechanisms are **arbitration** (national and international) and **mediation**. Construction disputes are in principle arbitrable (unless the consumer is a party to the dispute). **International arbitration** is governed by the provisions of the International Commercial Arbitration Act (ICAA). Its provisions (with minor exceptions) apply to domestic arbitration as well. In order to take a dispute to arbitration, the parties should have concluded an arbitration agreement in writing beforehand (Zahariev & Milcheva, 2017b). The need to have the documentation set in writing is considered met in cases when an arbitration agreement is contained within a document which has been already signed by the parties or if it is included within an exchange of letters, telexes, telegrams or any other method of communication between the parties. An arbitration agreement is considered as being concluded when the respondent, in writing or by an application included in the minutes of the arbitration proceedings, agrees that the dispute should be resolved by arbitration.

Alternatively, the agreement is reached when the respondent takes part in the arbitration proceedings through lodging an answer in writing, providing evidence, bringing a counterclaim or attending an arbitration hearing without questioning the jurisdiction of the arbitrator or panel.

The second ADR mechanism is **mediation**, which is governed by the provisions of the Mediation Act (MA). The process is defined as a voluntary and confidential ADR procedure where a third person (mediator) helps the disputing parties in reaching an agreement. Disputes subject to possible mediation include civil, commercial, labour, family and administrative ones that deal with consumer rights, as well as other disputes (including transnational ones) between natural persons and legal entities. A settlement agreement reached in a mediation procedure has the same legal force as a court judgment and is subject to approval by district courts. Third party determination is also recognized under Bulgarian law, although not for resolving legal disputes, and it is instead valid for supplementing some contractual clauses (e.g. by determining the price or quality of construction materials). Under the MA, if the parties agree that a third party shall determine certain terms and conditions of the contract, such determination will become binding, provided that the third party has determined them in compliance with: (1) the objectives of the contract; (2) the other provisions of the contract; and (3) commercial custom. According to some scholars, the decisions of the Engineer and of the Dispute Adjudication Boards under FIDIC forms of contract can be treated as third-party determinations although this theory has not been confirmed in practice (Spasova et al., 2016).

On the other hand, some of the FIDIC-based contracts used in Bulgaria have not been amended and envisage use of the DAB. However, Bulgarian legislation has neither adopted specific regulations regarding the use of dispute boards as an interim dispute resolution mechanism, nor specific rules regarding the enforcement of decisions. Also, there is no publicly available case law on this matter. Some legal scholars and practitioners have expressed the opinion that the dispute board decisions (and, in particular, DAB decisions) can be qualified as third-party determination, which is recognized by Bulgarian law. According to the said provision, third-party determination shall become binding to the parties only where the third party has made the determination in compliance with the objectives of the contract, its remaining content and the commercial custom (Zahariev & Milcheva, 2017b).

3.4. Other major discrepancies between the SDA and FIDIC and their specifics

The other main differences between the SDA as well as its system of by-laws and FIDIC contractual terms, which do not possess the status and recognition of statutory acts, relate to the

differing philosophies that both frameworks follow. Eng. Adriana Spassova, a FIDIC Accredited Adjudicator and Module 1 Trainer, summarizes the main problems applying FIDIC as related to:

- Particular conditions not solving discrepancies between FIDIC, EC regulations and Bulgarian law.
- Bureaucratic procedures for approval of Addendum for change of any unit rate of contract price (“Contract price shall not be changed” – condition in the Contract agreement imposed by the EC Delegation, prohibited new unit rates)
- EC financing approved before Employer executed obligatory procedures
- World Bank rarely used FIDIC before MBD Harmonized Edition was published (Spassova, 2016)

Framework contracts are frequently used in Bulgaria for repairs and rehabilitations of schools, roads, railroads, public utilities, energy efficiency projects, financed with public funds. One commentator on framework agreements in Bulgaria concludes, that “Perhaps the insufficient knowledge of the essence and the advantages of the framework agreements is a reason they to be concluded relatively rarely for the public procurement in Bulgaria.” She notes the benefits of framework agreements for the taxpayers, contractors and especially for the innovation and competitiveness of SMEs. In order to have a collaborative working environment, all participants in the construction process may sign an alliance contract. This will ensure easier project management, providing tools for the mandatory early warning. Presently the framework agreements for public works in Bulgaria are only for construction works or only for design or supervision services, which cannot bring the benefits of the framework alliance agreements. Also, the public clients do not use them for innovations and cost saving. Framework alliance contracts have potential in Bulgaria. They can support BIM23 and can facilitate the transfer of data and know-how on projects constructed with public and private funds (Spassova, 2018).

Bulgarian legislation also introduces some specific positions and provides mandatory statutory requirements regarding different aspects of the construction process, including (Zahariev & Milcheva, 2017a):

- The position of the independent construction supervisor (which is similar to that of an Engineer but with the added mandatory obligations to verify compliance with construction requirements)
- Special requirements with respect to the capacity of the Designer
- Specific requirements for the design disciplines and design content
- Specific requirements for drafting and signing documentation to evidence the lawful commencement of the construction process and its compliance with the statutory construction requirements
- Specific procedure for commissioning
- Statutory warranty periods (longer than the usually agreed defects notification periods)

A new sub-clause defines this “Warranty Period”, which shall be no less than the minimum period provided for under the SDA regulation. A new clause introduces the mandatory SDA requirements. The mandatory provisions of the health and safety legislation are implemented in the amendment: the functions of “Health and Safety Coordinator” shall be performed by the Engineer; the “Health and Safety Plan” shall be updated by the Contractor. The Commencement Date shall be the date of the Protocol for Construction Site Opening according to the requirements of the relevant SDA regulation. The Taking-Over Certificate shall be issued after the Protocol for ascertaining the fitness of the construction for acceptance according to the SDA has been signed (Spassova, 2018).

Other common amendments in Bulgaria include (Zahariev & Milcheva, 2017a):

- Some contracts provide for the inclusion of an individual who performs the role of a 'financial beneficiary'. This term is used to distinguish the Employer from the person that shall make use of and benefit from the works.
- Priority of documents is excluded from the general conditions and provided for in the contractual agreement.
- Introduction of the obligation of the contractor to disclose data related to the execution of the project to the European Commission.
- Additional obligations of the Engineer to cover the statutory functions of the independent construction supervisor according to Bulgarian legislation.
- Some of the Engineer's powers concerning the determination of additional costs or time or certifying variations that are subject to prior approval by the Employer.
- Determinations that lead to an increase of the contractual price become effective after signing an addendum and approval of the financial institution for the projects financed by financial institutions.
- List of required permits to be obtained by the contractor according to Bulgarian legislation.
- Additional obligations of the contractor to keep the so-called 'order book' and to execute all built drawings as defined by Bulgarian legislation.
- In particular for those projects that are financed via EU funds, the introduction of an obligation of the contractor to allow for external auditing by a financing institution.
- Additional obligation of the contractor to ensure that the Designer has full design capacity according to Bulgarian legislation.
- Amendment concerning the time period during which the taking-over certificate can be issued; the document is issued following the certificate for commissioning according to Bulgarian legislation.
- Additional obligation for the contractor to remedy defects within the statutory warranty period regardless of the issuing of the performance certificate.
- The procedure for filing claims forwarded to the Dispute Adjudication Board (DAB) is sometimes removed from contracts.
- Contracts sometimes include a term for commencing arbitration after the performance certificate is issued.

4. Conclusion & Recommendations for Future Research

In conclusion, the lack of a clear view on the compatibility of the FIDIC mechanism with Bulgarian legislation creates uncertainties for domestic and foreign investors in Bulgaria. Still there are possibilities to accommodate the legislation by maintaining to the greatest extent possible the General Terms of Services established under the FIDIC framework. FIDIC forms of contract are commonly used for public work projects constructed by international contractors. As of 2012, the Bulgarian Spatial Development Act expressly introduced the option of using the FIDIC forms on any projects fully or partially financed by international financial institutions or funded by the European Union. Usually, the Red Book 1999 and Yellow Book 1999 are used in Bulgaria. This can be achieved provided that the specific conditions and requirements are concise, clear and predominantly aimed at harmonizing the contract with the most critical requirements of the national legislation (such as copyright supervision, construction supervision, compliance assessment of the investment projects, order book, safety and health coordinator, The Safety and Health Plan, construction site opening and placing into service according to the SDA).

In other words, and to hearken back to the above-discussed universality of the FIDIC standard conditions compared to the particular and narrow nature of the Bulgarian legal norms, FIDIC facilitates the governing of the relations between the builder and the contractual authority. Therefore, these contractual terms do not concern themselves with a detailed arrangement of the procedures and their documentation as the SDA does. Furthermore, the FIDIC terms do not give the exact form of the acts that need to be drawn up during the construction process as the SDA does, but they simply suggest procedures for action on the basis of specific hypothetical scenarios that can take place in the construction process. The FIDIC rules provide for some significant discrepancies regarding the arrangement of the relations between the participants in the construction process in Bulgaria. This in turn leads to a significant practical problem, given the fact that the contractual relations between these participants are to a great extent highly dependent upon and determined in accordance with the administrative and legal development of each particular construction project.

Nevertheless, despite the above-mentioned differences and discrepancies, it can be argued that FIDIC contracts are applicable in the Bulgarian context, and their use should in fact be encouraged for the purposes of simplicity and efficiency. Several alterations that have been made to the SDA over the years as well as the inherently flexible nature of the FIDIC terms and contracts would allow both to complement rather than to contradict each other. Consequently, there are no legal or insurmountable barriers to the implementation of FIDIC in the local context – it would simply need to be adapted to the specific legal and procedural requirements, wherever possible, in order to ensure that it is adequately used and that it is in compliance with the local rules and regulations. Future studies of the author would be related to possible ways to digitize, optimize and organize the existing knowledge base. This will support the implementation of FIDIC and its more widespread usage in the construction sector in Bulgaria bringing its values and benefits.

Despite the extensive research that was conducted in order to present this study, more in-depth analysis and discussions are warranted with regard to adapting and resolving the differences between FIDIC and Bulgarian legislature. In fact, primary research would prove of immense value in this case as a bigger sample comprising various practitioners and analysts from different backgrounds would be asked to contribute to the discussion. In particular, it would be interesting to conduct a comparative interview process with professionals who have already had some experience with FIDIC against those who have little or no acquaintance with the term. Primary research findings can thus build upon and complement the conclusions that were reached in this study on the grounds of secondary data only. Furthermore, comparative research would also yield relevant and valid findings, and future researchers could conduct a multiple case study analysis of Bulgaria and other European countries, which have already introduced and utilized FIDIC contracts to a much greater extent. In this manner, potential pitfalls as well as best practices can be revealed and then utilized in a practical manner for Bulgarian construction contracts in the future.

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