BALKAN RESEARCH JOURNAL

DOI: https://doi.org//10.69648/RNFD2777

Balkan Research Journal(BRJ), 2026; 3(1): 25-35

brj.ibupress.com

Online ISSN: 2955-2524

Application: 14.03.2026

Revision: 18.04.2026

Acceptance: 20.05.2026

Publication: 22.05.2026

Gjorgjieva, D. (2026). Jurisdiction of the arbitral tribunal to decide on its own jurisdiction. Balkan Research Journal, 3(1), 25-35. https://doi.org//10.69648/RNFD2777

Dijana Gjorgjieva

International Vision University, Gostivar, North Macedonia

https://orcid.org/0009-0006-6077-0463

Correspondence concerning this article should be addressed to Dijana Gjorgjieva.

Email: dijana.gjorgieva@vision.edu.mk

BALKAN JOURNALS

# Jurisdiction of the Arbitral Tribunal to Decide on Its Own Jurisdiction

**Dijana Gjorgjieva**

Abstract

Competence de compétence (German: Gerichtsverfassungsrecht; French: Kompetenz-Kompetenz; Spanish: Competencia para determinar la competencia) is a core concept of arbitration procedural law. It is a specific principle aimed at preventing the arbitral process from being undermined at the outset by state courts, as well as eliminating the possibility of a positive conflict of jurisdictions (between arbitrate and state courts).

Simultaneously, by acknowledging the arbitral tribunal's power to rule independently on its own jurisdiction and on any jurisdictional objections raised by the parties, arbitration is affirmed as a separate and autonomous alternative means of resolving disputes.Owing to its efficiency and speed, it increasingly displaces the traditional idea of state court litigation.

For this reason, it can rightly be concluded that the competence de compétence is the cornerstone (pierre angulaire) of arbitration, and thus a challenge for every researcher. This is because, through this doctrine, the autonomy of arbitration vis-vis state adjudication is protected, and the effectiveness of arbitral justice is ensured.

*Keywords:* Competence de compétence, arbitral jurisdiction, autonomy, state courts, dispute resolution

## Introduction

The principle of competence-competence is a fundamental pillar of contemporary arbitration law, empowering an arbitral tribunal to decide on its own jurisdiction, including issues concerning the existence, validity, and scope of the arbitration agreement. By doing so, it reinforces the independence of the arbitral process, promotes procedural efficiency, and reduces early involvement of national courts. In practice, this principle is essential for ensuring quicker and more effective resolution of disputes referred to arbitration.

In the legal system of the Republic of North Macedonia, arbitration is primarily regulated through the provisions of the Law on International Commercial Arbitration, which largely follows the solutions contained in the UNCITRAL Model Law on International Commercial Arbitration. Macedonian arbitration law recognizes the competence of arbitral tribunals to rule on objections relating to their jurisdiction, including objections concerning the validity of the arbitration agreement itself. Such regulation reflects the broader tendency of contemporary arbitration systems to strengthen party autonomy and promote arbitration as an efficient alternative mechanism for dispute resolution.

The jurisdiction of the arbitral tribunal to decide on its own jurisdiction is closely connected with the principle of separability of the arbitration agreement. According to this principle, the arbitration clause is considered legally independent from the main contract in which it is contained. Consequently, even if the main contract is alleged to be null, void, or terminated, the arbitral tribunal may still retain jurisdiction to determine the dispute and assess the validity of the arbitration agreement independently.

In Macedonian arbitration practice, the application of the kompetenz-kompetenz doctrine contributes to greater legal certainty and procedural economy. At the same time, judicial control is not entirely excluded, since national courts preserve the authority to review arbitral jurisdiction at specific stages of the proceedings, particularly during actions for annulment or recognition and enforcement of arbitral awards. Therefore, Macedonian arbitration law attempts to establish a balance between arbitral autonomy and judicial supervision.

## The Development of the Competence-Competence Doctrine in Arbitration Procedure Theory

The doctrine of competence de competence originated in German procedural theory. This took place in the 19th century, after arbitration was first recognized as a private means of resolving disputes, which subsequently gave rise to questions about its relationship with state-based adjudication (Jakeli, 2023). The foundation for the emergence of this doctrine lies in a new, revolutionary concept of arbitration that sought to promote arbitral adjudication as a distinct system of justice in the context of the dominance (*imperium*) of state courts.

This modern, revolutionary conception of arbitration developed within German procedural theory (*mos docendi germanicus*) as a reaction to and critique of the traditional French concept of adjudication (*mos docendi gallicus*), which was closely linked to national state protectionism and viewed arbitration with suspicion.

Under the traditional notion of mos docendi gallicus, an arbitral tribunal lacks the authority to independently determine its own jurisdiction (Triva & Uzelac, 2007). This is because the state is sovereign, and only the state is authorized, within its territory (principle of territoriality), to determine which body, state or arbitral, has jurisdiction to resolve disputes arising from civil law relationships (Gorgieva & Doneva, 2025). Allowing arbitral tribunals to decide on their own jurisdiction would imply the existence of two equal judicial sovereignties within the same territory, potentially leading to anarchy, abuse in the administration of justice, and the undermining of the state's *iurisdictio*.

In contrast, the newer revolutionary concept of mos docendi germanicus recognizes that an arbitral tribunal has the authority to independently rule on its own jurisdiction (González de Cossío, 2007). This is because an agreement between the parties to submit disputes to arbitration essentially implies their intention not to resort to state courts for resolving disputes arising from a specific civil law relationship (Boucaron-Nardetto, 2011). Therefore, where there is an agreement between the parties to derogate from state jurisdiction and prorogate arbitral jurisdiction, the arbitral tribunal must be granted the authority (capacity) to decide on its own authority.

Accordingly, the arbitrator, as the judge of its own competence, has both the first and the last word in deciding on jurisdiction, total competence (*Kompetenz-Kompetenz*). This approach prevents procedural misuse, eliminates the risk of parallel proceedings on the same dispute between the same parties in both state and arbitral

forums, and avoids situations where parties attempt to challenge the validity of the arbitration agreement in state court while arbitration is still in progress.

This view in German arbitration procedural theory was instrumental in the development of the principle of competence-competence within Anglo-American law.

Due to the evident shortcomings of both the traditional and the revolutionary concepts regarding the arbitral tribunal's *competence de compétence*, the modern understanding of this doctrine is positioned somewhere between these two approaches. This is because the traditional arbitration framework permits a respondent, simply by challenging the tribunal's jurisdiction, to halt the arbitral process until a state court decides on the question of jurisdiction. On the other hand, the revolutionary concept ignores the fact that arbitration is constructed as a subsystem of state adjudication and, therefore, must be subject to a certain degree of control by state courts.

For this reason, modern arbitration theory adopts a combined concept of *competence de compétence*. This means that the arbitral tribunal may determine its own jurisdiction and assess the validity of the arbitration agreement on its own, although this remains subject to review by a competent state court within appropriate limits.Accordingly, the arbitral tribunal has the first word on its jurisdiction, while the state court has the final say.

In this context, the question arises as to when state courts should exercise control over the arbitral tribunal's decision on jurisdiction, before, during, or after the arbitral proceedings. Although approaches differ across national procedural systems, arbitration doctrine generally considers that a tribunal's positive ruling on its own jurisdiction is not conclusive. Accordingly, such a decision may be subject to review by a state court either during the arbitration in separate non-contentious proceedings, or after the proceedings have ended in an action to set aside the arbitral award.

According to some legislative solutions, certain grounds for lack of jurisdiction (such as arbitrability and public policy) may also be raised during the enforcement proceedings of a domestic arbitral award.

As to whether a state court may determine the arbitral tribunal's jurisdiction before the tribunal has made its own ruling, most national procedural systems answer this question in the negative. This is because such intervention could undermine the arbitral process. Undoubtedly,.the core of the competence-competence doctrine is the respect for the parties' intention to have their disputes resolved by

arbitration, which requires state courts to refrain from intervening until the arbitral tribunal has decided on its own jurisdiction (Triva & Dika, 2004).

However, this does not mean that state courts do not control the jurisdiction of arbitral tribunals. The arbitral tribunal has the right to rule on its own jurisdiction subject to subsequent judicial control (Stanković, 1999). Such judicial oversight of arbitration is carried out through annulment proceedings against the arbitral award, as well as through the procedures governing the recognition and enforcement of arbitral decisions.

## Decisions of the Arbitral Tribunal on Its Own Jurisdiction

The arbitral tribunal's authority to rule on its own jurisdiction can be exercised in two forms: by issuing a positive ruling affirming jurisdiction, or by issuing a negative ruling declining jurisdiction over the claim. In both cases, these are independent decisions of the tribunal, made autonomously and free from any interference or pressure by state courts (Samuel, 1989).

The arbitral tribunal will confirm its jurisdiction over a particular dispute where an arbitration agreement is in place, the agreement is valid, and the legal relationship in dispute, for which protection is sought, falls within the scope of that agreement (Stanković, 1999). This is because the arbitral tribunal derives its authority and competence to adjudicate from the arbitration agreement, which represents the foundation (*alpha*) of the arbitral proceedings. A positive decision on jurisdiction is considered a preliminary decision, since arbitration was established as an alternative, not a complete substitute, for civil litigation, i.e., as a form of private adjudication based on the parties expressed will. For that reason, a ruling by which the arbitral tribunal affirms its jurisdiction may be reviewed by state courts either during the arbitration or after it has concluded.

The arbitral tribunal will find that it lacks jurisdiction where no arbitration agreement exists, where the agreement does not satisfy the requirements for validity, where the dispute is not included within or is not clearly covered by the arbitration clause, or where the parties have agreed to arbitrate matters that are not legally arbitrable under applicable law (such as disputes excluded from arbitration).

A negative decision, by which the tribunal rejects the claim and declares itself incompetent, is a final decision that is not subject to state court review, since the parties still retain the right to seek legal protection through regular civil court

proceedings. This is because simply agreeing to arbitration does not eliminate the parties' right to bring their claims before state courts.Furthermore, even though the parties have concluded an arbitration agreement, such an agreement *per se* does not impose an obligation but merely creates the possibility for arbitration. Accordingly, an arbitrator may, at their discretion, accept or refuse to arbitrate a particular dispute (Triva & Uzelac, 2007).

However, whenever the parties have agreed to arbitration, that agreement must be upheld and given effect. In this regard, the competence-competence principle helps prevent abusive or bad-faith conduct, especially when a party knowingly starts court proceedings despite the existence of arbitral jurisdiction or raises objections to the validity of the arbitration clause solely as a delaying tactic.

In this sense, both the effects of the principle of *competence de compétence* act as safeguards against dilatory tactics by parties before or during arbitral proceedings. The relationship between this principle and such tactics is further reflected in the introduction of maximum time limits within which a party may challenge the tribunal's jurisdiction, as well as in the fact that a party cannot appeal the arbitral tribunal's decision once it has declared itself competent and rendered a decision on the dispute.

## Benefits (Advantages) of the Legal Recognition and Regulation of the Doctrine of Competence de Competence in Arbitration Law

The primary advantages of regulating the competence-competence doctrine in arbitration law include making arbitral proceedings more efficient and ensuring that the parties' agreement to resolve disputes through arbitration is effectively carried out.

If the arbitrate tribunal renders a decision affirming its jurisdiction to hear and decide a specific claim for legal protection, this means that it potentially has the authority *pro futuro* to rule on objections by the parties challenging its jurisdiction *in concreto* (Boisson de Chazournes, 2010).

Without such *competence de compétence*, the respondent could, by contestingthe tribunal's authority to hear and decide the case (at the latest upon submission of the statement of defense), initiate a potentially lengthy court proceeding before a state court. This would ultimately undermine the very essence of arbitration, its speed and efficiency in decision-making.

On the other hand, allowing state courts in civil proceedings to decide on objections regarding the arbitral tribunal's lack of jurisdiction creates a paradox. For instance, when the parties dispute the validity of the arbitration agreement or raise related issues such as objective or subjective arbitrability, they are ultimately drawn into court proceedings, even though they originally intended to avoid state courts by choosing arbitration.This leads to an ironic situation: the desire to avoid state courts must be realized through recourse to those same courts, which must first permit the parties to proceed with arbitration. Ultimately, this increases litigation rather than relieving the burden on state courts (Hermann, 1994).

From the foregoing, it may be concluded that the doctrine of *competence de compétence* was introduced into arbitration theory and legislation not for theoretical embellishment, but out of practical necessity.

This doctrine contributes both to the faster resolution of domestic and international civil and commercial disputes and to the effective enforcement of the parties' decision to arbitrate. It is closely connected, in principle, to the arbitration agreement itself and to the concept that the arbitration clause is independent and separable from the main contract.

The doctrine of competence-competence and the principle of autonomy of the arbitration agreement are two core concepts in arbitration law, both rooted in the parties' intention to exclude the jurisdiction of state courts and to refer their disputes to arbitration. Nevertheless, they are not the same. The existence of an arbitration clause does not, by itself, guarantee that the arbitral tribunal will uphold its jurisdiction.In this sense, the tribunal's power to affirm its jurisdiction represents, in the strict sense, the practical realization of the parties' decision to resolve disputes through arbitration, thereby giving full effect to their arbitration agreement. At the same time, the invalidity of the main contract does not automatically invalidate the arbitration clause, since the arbitration agreement is considered independent and does not necessarily follow the legal fate of the underlying contract, reflecting the procedural theory of arbitration.

## The Doctrine of Competence de Compétence in Comparative Arbitration Procedural Law

In comparative arbitration procedural law, the doctrine of competence-competence is applied with differing boundaries and consequences across national legal systems (Kalantzi, 2023). This becomes evident when comparing different national

legislative solutions governing arbitration. For this purpose, German, French, and Spanish arbitration laws may serve as representative examples within the European continental arbitration tradition.

In German arbitration law, the competence-competence principle is set out in Book 10 of the German Code of Civil Procedure (ZPO), particularly in Sections 1032 and 1040. Under Section 1032 ZPO, an arbitral tribunal is empowered to determine its own jurisdiction, which includes assessing whether an arbitration agreement exists and whether it is valid.Under Section 1040 of the ZPO, if a dispute covered by an arbitration agreement is filed before a state court, the court is required to declare the claim inadmissible, as long as the defendant raises a timely objection before the hearing on the merits begins.

In French arbitration law, the competence-competence principle is governed by Article 1448 of the French Code of Civil Procedure (NCPC). This provision requires state courts, when faced with a dispute covered by an arbitration agreement, to decline jurisdiction unless the arbitral tribunal has not yet been formed or the arbitration agreement is clearly null or incapable of being applied.

Based on the above-mentioned national legislative solutions, it can be concluded that each national arbitration framework independently determines the limits and effects of the principle of *competence de compétence*. In this context, the principle may be regulated either unilaterally or in a binary manner, meaning that the same legal rules may apply to both domestic and international arbitration, or separate regimes may exist.

Unfortunately, in comparative arbitration procedural law there are also legislative systems that do not regulate the principle of *competence de compétence*. A notable example is the Chilean Arbitration Act. Such situations should be addressed and minimized by arbitration theory and practice to the greatest extent possible.

## The Competence-Competence Doctrine in Macedonian Arbitration Procedural Law

The competence-competence doctrine in Macedonian arbitration law has been shaped largely by German and French arbitration theory and legislative practice. As a result, Macedonian legislation reflects a limited, rather than absolute, version of this principle, under which the arbitral tribunal has the power to determine its own jurisdiction, but its decisions remain open to later review by state courts. This approach is reflected in the legal rules governing both domestic and international

commercial arbitration in North Macedonia (Zoroska-Kamilovska, 2015).

According to Article 445 of the Law on Civil Procedure (2010), if the parties have agreed to submit a particular dispute to arbitration and one party nonetheless files the same claim before a state court, that court is required, upon the defendant's timely objection, to decline jurisdiction. In such a case, the court must annul any procedural steps already taken and reject the claim. The objection must be submitted no later than the preparatory hearing, or, if no preparatory hearing is held, at the main hearing before the case is argued on its merits.

According to Article 8 of the Macedonian Law on International Commercial Arbitration (2006), when the parties have concluded an arbitration agreement, a state court seised of the same dispute must, upon the defendant's objection, decline jurisdiction, invalidate any procedural actions taken, and reject the claim, unless it determines that the arbitration agreement is void, ineffective, or impossible to perform. At the same time, the existence of court proceedings does not prevent arbitration from being initiated or continued, and an arbitral tribunal may still issue a decision even while the dispute is pending before a state court.

At the same time, Article 16 of the Law on International Commercial Arbitration (2006) provides that the arbitral tribunal has the authority to determine its own jurisdiction, including questions regarding the existence and validity of the arbitration agreement. Any jurisdictional objection must be submitted no later than the filing of the response to the claim. The tribunal may address such objections either in a separate preliminary decision or include its ruling on jurisdiction in the final award on the merits.

Judicial control over the arbitral tribunal's decision on its jurisdiction is exercised after the conclusion of arbitral proceedings, through proceedings for setting aside the arbitral award. In this way, Macedonian arbitration law adopts a solution that recognizes arbitration as an autonomous alternative dispute resolution mechanism in relation to civil litigation, but still within the framework of the state legal system rather than outside it.

An analysis of the doctrine of *competence de compétence* in the regimes governing domestic arbitration and international commercial arbitration in Macedonian law shows that the arbitration agreement typically constitutes a negative procedural precondition for conducting civil litigation. This is clearly reflected in the legal provisions regulating domestic arbitration in disputes arising from civil law relations without a foreign element, where the parties have agreed to arbitration. In such

cases, any positive conflict of jurisdiction (between state courts and arbitral tribunals) is resolved in favor of arbitration through the application of the principle of *competence de compétence*.

Unlike the rules governing domestic arbitration, which generally prevent a dispute from being pursued simultaneously before both state courts and arbitral tribunals, the framework for international commercial arbitration is more permissive and, in certain cases, allows parallel proceedings. This is based on the need for enhanced judicial oversight in disputes with a foreign element, as well as on the objective of supporting and reinforcing the use of arbitration.

In other words, even in international commercial arbitration, the arbitration agreement generally operates as a procedural bar to court litigation. However, if a case is brought both before a state court and an arbitral tribunal, and the court concludes that the arbitration agreement is invalid, inoperative, or unenforceable, it will retain jurisdiction instead of declining it. At the same time, arbitration is not necessarily halted, since the arbitral tribunal may still proceed with the case if it determines that it has jurisdiction.

## Concluding Observations

The principle of *competence de compétence* is a fundamental principle of arbitration procedural law. In arbitration theory, it attracts significant interest due to purely practical reasons. This is because, thanks to this principle, arbitration is established as an autonomous form of adjudication alongside state courts, dilatory tactics by parties acting in mala fide before or during arbitration are prevented, and the speed of arbitration proceedings is increased.

The principle of *competence de compétence* in arbitration law was introduced in the mid-19th century by German constitutional procedural theory. Since then, it has become a standard feature of arbitration theory and is legally regulated in almost all national arbitration procedural legislations. Differences between national legislations can be observed in terms of the scope and effects of this principle. These differences reflect varying scholarly positions and understandings regarding the purpose of this principle, originally provided by mos docendi germanicus and mos docendi gallicus. In this context, Macedonian arbitration procedural legislation adopts a modern solution for regulating the principle of *competence de compétence*, consistent with contemporary arbitration understandings of the doctrine as a cornerstone of arbitration.

The key advantages of regulating the competence-competence principle lie in making arbitration proceedings more efficient and in ensuring that arbitration agreements are effectively applied and respected.

## References

Boucaron-Nardetto, M. (2011). *Le principe de compétence-compétence en droit de l'arbitrage*. Université Nice Sophia Antipolis (Doctoral thesis).

Boisson de Chazournes, L. (2010). The principle of compétence de la compétence in international adjudication and its role in an era of multiplication of courts and tribunals. In M. Arsanjani, J. Cogan, & S. Weissner (Eds.), *Looking to the future: Essays in honor of W. Michael Reisman* (pp. 1027–1064). Martinus Nijhoff.

González de Cossío, F. (2007). El principio compétence-compétence revisitado. *Revista de Arbitragem e Mediação, 4*(13), 100–122.

Gorgieva, D., & Doneva, N. (2025). Prohibition of double and multiple lis pendens in court proceedings: Solutions and dilemmas in Macedonian law. *The Review of Law, International Politics and Economics, 1*(2), 97–109. https://doi.org/10.5281/zenodo.17931126

Herrmann, G. (1994). The arbitration agreement as the foundation of arbitration and its recognition by the courts. In A. J. van den Berg (Ed.), *International arbitration in a changing world* (ICCA Congress Series, Vol. 6, pp. 41–50). Kluwer Law International.

Jakeli, M. (2023). *Competence-competence principle in international commercial arbitration* [Master's thesis, Mykolas Romeris University].

Kalantzi, A. (2023). Parallel arbitral proceedings: An analysis of the issue of parallel arbitrations in international commercial arbitration within the European legal space. *The Italian Review of International and Comparative Law, 3*(1), 1–27. https://doi.org/10.1163/27725650-03010001

Law on Civil Procedure. (2010). *Official Gazette of the Republic of Macedonia*, No. 116/2010.

Law on International Commercial Arbitration of the Republic of Macedonia. (2006). *Official Gazette of the Republic of Macedonia*, No. 39/2006.

Samuel, A. (1989). *Jurisdictional problems in international commercial arbitration: A study of Belgian, Dutch, English, French, Swedish, Swiss, U.S. and West German law*. Schulthess Polygraphischer Verlag.

Stanković, G. (1999). *Arbitražno procesno pravo*. Pravni fakultet, Niš.

Triva, S., & Dika, M. (2004). *Građansko parnično procesno pravo* [Civil procedural law]. Narodne novine.

Triva, S., & Uzelac, A. (2007). *Hrvatsko arbitražno pravo* [Croatian arbitration law]. Narodne novine.

Zoroska-Kamilovska, T. (2015). *Арбитражно право* [Arbitration Law]. Ss. Cyril and Methodius University, Faculty of Law "Iustinianus Primus".