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# An Overview of International Arbitration in Albania

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**Recourse to international arbitration as a means of resolving international disputes became increasingly popular in Albania after the opening of the economy in the 90s. Even though many years have passed since then, not much has been done to improve the legislation that regulates arbitration in the country. There are nevertheless signs that the country is slowly moving towards becoming an arbitration-friendly country.**

## Introduction

Recourse to international arbitration as a voluntary and consensual process for resolving international disputes first emerged in Albania in the early years of the 90s, shortly after the country fully opened to international commerce in 1991.

There are many factors that shaped international arbitration in Albania during this transition from a centralized economy into a fully open economy: the developments of the domestic legal profession, more international commerce, foreign investments and the overall posture of the domestic public institutions.

Domestic legislation has had little to no impact on the development of international arbitration because there has not been a meaningful initiative of the legislator to improve the legislation that regulates arbitration, including international arbitration. As a result, Albania does not today have a modern, arbitration-friendly arbitration legislation.

Arbitration proceedings are governed by the Albanian Civil Procedural Code (the 'CPC'). This has been the case for a long time and will remain the case unless and until Albania adopts the new law on international arbitration (the 'New Law').<sup>1</sup> Initially, the CPC included rules on international arbitration in its Chapter VI.<sup>2</sup> These provisions were however

subsequently abrogated, leaving only the provisions of Chapters IV and V, which are the general provisions that apply to arbitration procedures in Albania.<sup>3</sup>

Unfortunately, the abrogation of the rules specific to international arbitration found in Chapter VI of the CPC did not coincide with the approval of the New Law. Although a draft New Law based on the UNCITRAL Model Law was placed on the agenda of many governments in Albania in the past,<sup>4</sup> it was never presented for parliament approval.<sup>5</sup> Consequently, there are no provisions specific to international arbitration in Albania, either in the CPC or in any other law.

The remaining provisions in Chapters IV and V of the CPC are applicable for the domestic ad hoc arbitrations (the 'Rules'). The Rules create confusion and controversy, especially in respect of the distinction between 'domestic' arbitration and 'international' arbitration. The CPC provides that these Rules apply to arbitration proceedings when the parties reside in Albania and the seat of arbitration is Albania.<sup>6</sup> However, the CPC does not define what is 'domestic' arbitration nor what is 'international' arbitration.

Arbitral Court Decision (Arts 428-433); Chapter V – Appeal against the arbitral tribunal's decision (Articles 434-438); and Chapter VI – International Arbitration (Articles 439-441).

1 Forecasted on the Albanian National Plan for the European Integration 2018-2020 (Decision Nr. 246 dated 09.05.2018) referred to the Chapter 23 of the legislative approximation with European law.  
2 Chapter I – General Provisions (Articles 400-406); Chapter II – Formation of the arbitral tribunal (Articles 407-414); Chapter III – Arbitration (Articles 415-427); Chapter IV –

3 Law No. 8812 dated 17.5.2001 abrogated the specific provisions on international arbitration.

4 First attempt was between years 2005 and 2008.

5 Another initiative to process for approval in the parliament is late 2019 and currently for public consultation. It is expected to be presented for approval in the parliament in the end of year 2020 or beginning year 2021.

6 Article 400 CPC, <https://qbz.gov.al/preview/63ca3bd6-ed1c-42d4-a44f-05c970f7714d>.

Apart from these Rules, Albania has signed and ratified international conventions relevant to international arbitration, such as the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the 'New York Convention'),<sup>7</sup> the European Convention on International Commercial Arbitration,<sup>8</sup> and the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID / Washington Convention).<sup>9</sup>

The local courts have had little to no role to play in the development of the arbitration. The local courts do respect the will of the parties, foreign or not, to arbitrate their disputes in accordance with their arbitration agreement. In case of a court proceeding initiated by one party in violation of an arbitration agreement, Albanian courts will respect the *kompetenz-kompetenz* principle and refuse to hear the case if the parties agreed to have it resolved by arbitration.<sup>10</sup>

## I - Choices about international arbitration

There are no mandatory rules in respect of international dispute resolution in Albanian law. There are only specific rules relating to the exclusive jurisdiction of the domestic courts.<sup>11</sup>

All the entities involved take a reasonably flexible approach to negotiating arbitration clauses. Their preferences are mostly driven by their respective bargaining position, the nature of the contract, the source of their funding, as well as the perceived performance and neutrality of the local courts.

## II - Choice of the law governing the substance of the contract

Apart from specific rules on the applicability of Albanian law to certain specific contracts, i.e. real estate contracts, labour agreements, consumer contracts, etc.,<sup>12</sup> Albanian law recognizes that contracts are governed by the law chosen by the parties.<sup>13</sup>

Thus the parties do have the liberty to negotiate the governing law of their contract, regardless of whether the contract is to be performed in Albania. These are the typical cases where the bargaining power of the foreign counterpart is almost at par with the bargaining power of the Albanian party, which is for instance the case when a foreign counterpart is invited to invest in a particular segment of the market. On the other hand, if the Albanian counterpart has more bargaining power, it is very likely that Albanian law will be chosen as the governing law of the contract.

## III - Choice of the seat of arbitration

There is no mandatory rule that forces an Albanian party to choose the seat of arbitration in Albania. Even the Rules,<sup>14</sup> which do not apply to international arbitration, allow the parties to freely choose the seat of arbitration in their arbitration agreement.

If it is not chosen by the parties in their agreement, the choice of the seat is mostly influenced by the choice of arbitral institute and convenience.

## IV - Choice of the arbitration institution

Albanian entities look to avoid unpredictability in the outcome of the arbitration. This is traditionally linked to a lack of trust in the domestic court system. However, arbitration users have yet to assess the comparative neutrality and 'internationalism' of arbitral institutions.

Albanian private entities do not have any specific preference and rely heavily on the advice of their local counsel as to the choice of an arbitral institution.

## V - Appointment of arbitrators

Similarly to the choice of an arbitral institution, Albanian entities approach the appointment of arbitrators mostly based on their prior experience of arbitration. There are no mandatory rules or internal policies in this respect.

<sup>7</sup> Law No. 8688, dated 9.11.2000.

<sup>8</sup> *Ibid.*

<sup>9</sup> Entry into force on 14.11.1991.

<sup>10</sup> Supreme Court Decision Nr. 00-2018-407, dated 25.1.2018.

<sup>11</sup> Law No. 10428 dated 2.6.2011 on 'Private International Law', Article 72.

<sup>12</sup> *Ibid.*, Articles 36-37, 48-55.

<sup>13</sup> *Ibid.*, Article 45.

<sup>14</sup> Article 419 CPC.

## VI - Confidentiality

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There are no mandatory rules imposing on the parties to preserve confidentiality of the arbitration proceedings.

It is certain that some confidentiality obligations will be incumbent on the parties as a result of the contractual arrangements they entered into and further by the application of arbitration rules to which the parties adhered for their dispute resolution.

## VII - Time, costs and delay

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In the majority of arbitration cases, Albanian entities appear as a respondent.

As such, the time and delay inherent to arbitral proceedings do not appear to have been an issue of concern to Albanian parties, except for the costs that are beyond the control of the parties.

## VIII - Recognition and enforcement of arbitral awards

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Proceedings for the recognition and enforcement of an international arbitration award in Albania must be initiated before the competent Court of Appeal (the 'Court').

The Court seized of a motion for the recognition and enforcement of an international arbitration award will apply the New York Convention subject to the following conditions:

First, the Court will verify *prima facie* whether the request submitted from one of the parties' complies with the formal procedural conditions set in the CPC.<sup>15</sup> The Court will not examine the merits of the case, but will verify whether the arbitration award is in conformity with the basic rules concerning the jurisdiction, and whether the parties of the arbitration had the right to their day in arbitral tribunal. There is a possible appeal against any Court's decision before the Supreme Court within 30 days from the date of its notification. Alternatively, it is also possible to submit a request for setting aside an award.

Second, the enforcement of the award is mainly a proactive procedural action under the CPC. The execution is performed after the Court that recognized the arbitral award has issued an execution order, according to the CPC.

## Conclusion

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International arbitration in Albania is still at the crossroads in many respects. On the one hand, the foreign counterparts did 'force' Albania to move slowly towards international arbitration. But on the other hand, there is quite a long way to go, starting with the enactment of an adequate legal framework.<sup>16</sup> Albania can nevertheless be considered as an 'arbitration friendly' country. There are no mandatory rules which over-regulate and/or confuse international arbitration proceedings in Albania.

Further, there are no specific rules empowering the local courts to interfere with international arbitration proceedings. Apart from the recognition and enforcement of the award, local courts are not resorted to in a view to jeopardizing international arbitration proceedings.

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15 Supreme Court Decision Nr. 00-2014 - 1350 i Vendimit (175) dated 24.04.2014.

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16 Draft UNCITRAL Model Law is expected to be approved in the near future.