



# ICLG

The International Comparative Legal Guide to:

## **Enforcement of Foreign Judgments 2018**

### **3rd Edition**

A practical cross-border insight into the enforcement of foreign judgments

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## EDITORIAL

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Welcome to the third edition of *The International Comparative Legal Guide to: Enforcement of Foreign Judgments*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations relating to the enforcement of foreign judgments.

It is divided into two main sections:

Two general chapters. These chapters are designed to provide readers with a comprehensive overview of key issues affecting the enforcement of foreign judgments, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in the enforcement of foreign judgments in 36 jurisdictions.

All chapters are written by leading lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Louise Freeman and Chiz Nwokonkor of Covington & Burling LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.com](http://www.iclg.com).

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# Albania

Gerhard Velaj



Boga &amp; Associates

Eno Muja



## 1 Country Finder

**1.1 Please set out the various regimes applicable to recognising and enforcing judgments in your jurisdiction and the names of the countries to which such special regimes apply.**

Applicable Law/ Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
The Hague Convention on the recognition and enforcement of foreign judgments in civil and commercial matters, 1971.	All countries signatory to the Convention.	Section 3.
The European Convention on Human Rights, 1950.	All countries signatory to the Convention.	Section 3.
The Hague Convention on the recognition of divorces and legal separations, 1970.	All countries signatory to the Convention.	Section 3.
The Hague Convention on the recognition and enforcement of decisions relating to maintenance obligations, 1973.	All countries signatory to the Convention.	Section 3.
Law No. 8116, dated 29.3.1996 “Albanian Code of Civil Procedure”, as amended.	Republic of Albania.	Section 2.

## 2 General Regime

**2.1 Absent any applicable special regime, what is the legal framework under which a foreign judgment would be recognised and enforced in your jurisdiction?**

Law No. 8116, dated 29.3.1996 “Albanian Code of Civil Procedure”, (“ACCP”) as amended, articles 393–399, provide the general legal framework under which a foreign judgment could be recognised and enforced in Albanian jurisdiction. These provisions are in line

with the Hague Convention on the recognition and enforcement of foreign judgments in civil and commercial matters. Nevertheless, when there is a special agreement for the purpose of recognition and enforcement of foreign judgments between the Republic of Albania and the foreign country, the agreement prevails.

These articles also provide the basic procedural steps to be followed on the procedure of recognition and enforcement of the foreign judgment.

**2.2 What constitutes a ‘judgment’ capable of recognition and enforcement in your jurisdiction?**

A foreign judgment should comply with the following criteria to be recognised and enforced in Albania:

- (i) the foreign court has jurisdiction to resolve the dispute;
- (ii) the defendant/respondent has been duly notified in case the foreign court has ruled in absence of the defendant;
- (iii) the same case among the same parties has not been judged in Albania;
- (iv) action has not been filed with an Albanian court prior to the foreign judgment becoming final and enforceable;
- (v) the foreign judgment has become final in compliance with the respective country legislation; and
- (vi) the said judgment complies with the basic principles of the Albanian legislation (article 394 of ACCP).

**2.3 What requirements (in form and substance) must a foreign judgment satisfy in order to be recognised and enforceable in your jurisdiction?**

The foreign judgment should be submitted in an original, or certified true copy accompanied by a statement/certificate issued by the foreign court that the decision is final.

The foreign judgment should be translated into Albanian and should be apostilled/legalised in compliance with The Hague Convention of 05.10.1961 “For Abolishing the Requirement of Legalization for Foreign Public Documents” (article 396 of ACCP).

**2.4 What (if any) connection to the jurisdiction is required for your courts to accept jurisdiction for recognition and enforcement of a foreign judgment?**

The Albanian courts accept jurisdiction when the party that must fulfil the obligations as per the foreign judgment and/or the assets over which the judgment can be enforced are located in Albania.

**2.5 Is there a difference between recognition and enforcement of judgments? If so, what are the legal effects of recognition and enforcement respectively?**

Albanian law distinguishes between recognition and enforcement of judgments.

Recognition is intended to introduce into the Albanian legal order the situation established by a foreign judgment. If a foreign judgment is recognised, it has a *res judicata* effect, therefore, Albanian courts are bound by it and are barred from hearing a claim on the same subject matter between the same parties. The foreign judgment acquires the same legal force and effects as an Albanian judgment, providing full access to the available enforcement measures under Albanian law. In this regard, enforcement allows a party to take concrete steps to execute the decision in the Albanian territory.

Article 510/c of the ACCP provides that the recognition decisions on foreign judgments are considered as executive titles and the Court of Appeal issues the enforcement order with the recognition decision. In this regard, recognition and enforcement are closely linked, as foreign judgments can only be declared enforceable, and executed if the conditions for the recognition of foreign judgments set out in article 394 of ACCP are met.

**2.6 Briefly explain the procedure for recognising and enforcing a foreign judgment in your jurisdiction.**

The request on recognition and enforcement of a foreign judgment should be submitted to the Court of Appeal. The request might also be submitted by diplomatic means where it is permitted by international agreement and on a reciprocity basis.

The Court of Appeal does not make a new evaluation of the merits of the case but examines only if the foreign judgment complies with the criteria indicated in question 2.2 above.

The decision of the Court of Appeal for recognition of a foreign judgment is then enforced through the bailiff upon request of the interested party.

**2.7 On what grounds can recognition/enforcement of a judgment be challenged? When can such a challenge be made?**

The recognition/enforcement of a foreign judgment can be challenged when such judgment does not comply with the criteria indicated in questions 2.2 and 2.3 above.

The challenge can be made during the procedure of recognition before the Court of Appeal.

**2.8 What, if any, is the relevant legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters?**

The ACCP does not elaborate on specific subject matters, but gives the overall principles on which the recognition and enforcement of foreign judgments can be done.

Nevertheless, certain multilateral conventions to which Albania is a party, including those listed at question 1.1 above, contain specific subject matter provisions as to recognition/enforcement. These conventions complement recognition/enforcement regimes in specific subject matters.

**2.9 What is your court's approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?**

According to article 394 of ACCP, when the same case among the same parties has been judged in Albania or is pending before the Albanian court prior to the foreign judgment becoming final and enforceable, the Court of Appeal may reject the recognition of the foreign judgment.

**2.10 What is your court's approach to recognition and enforcement of a foreign judgment when there is a conflicting local law or prior judgment on the same or a similar issue, but between different parties?**

In virtue of article 394 of ACCP, a foreign judgment may not be recognised in Albanian law when it conflicts the basic principles of the Albanian legislation.

The law does not provide any impediments for recognition of foreign judgments on the same or a similar case between different parties.

**2.11 What is your court's approach to recognition and enforcement of a foreign judgment that purports to apply the law of your country?**

The law does not provide any impediments for recognition of such foreign judgments.

**2.12 Are there any differences in the rules and procedure of recognition and enforcement between the various states/regions/provinces in your country? Please explain.**

There are not any differences in rules and procedure of recognition and enforcement between various regions in Albania. The same procedure and rules apply.

**2.13 What is the relevant limitation period to recognise and enforce a foreign judgment?**

The Albanian law does not provide for a limitation period.

Based on our experience, the recognition procedure before the Court of Appeal may last approximately three to four months. In case of recourse to the Supreme Court, the procedure might last up to three years.

The enforcement procedure with the bailiff normally takes up to six months.

**3 Special Enforcement Regimes Applicable to Judgments from Certain Countries**

**3.1 With reference to each of the specific regimes set out in question 1.1, what requirements (in form and substance) must the judgment satisfy in order to be recognised and enforceable under the respective regime?**

The foreign judgment should comply with the criteria indicated in questions 2.2 and 2.3 above to be recognised and enforced in Albania.

**3.2 With reference to each of the specific regimes set out in question 1.1, does the regime specify a difference between recognition and enforcement? If so, what is the difference between the legal effect of recognition and enforcement?**

As explained in question 2.5 above, recognition is intended to introduce into the Albanian legal order the situation established by a foreign judgment. The foreign judgment acquires the same legal force and effects as an Albanian judgment, providing full access to the available enforcement procedures under the Albanian law. The enforcement relates to the compulsory execution of foreign judgments after they have been recognised.

The European Convention on Human Rights provides for an exception from the above general rule. The convention provides that the High Contracting Parties undertake to abide by the final judgment of the European Court of Human Rights in any case to which they are parties. In this regard, there is not any need for prior recognition of the judgment, considering that the parties have agreed to abide by the decisions of the European Court of Human Rights.

**3.3 With reference to each of the specific regimes set out in question 1.1, briefly explain the procedure for recognising and enforcing a foreign judgment.**

Please refer to our answer in question 2.6 above.

**3.4 With reference to each of the specific regimes set out in question 1.1, on what grounds can recognition/enforcement of a judgment be challenged under the special regime? When can such a challenge be made?**

Please refer to our answer in question 2.7 above.

## 4 Enforcement

**4.1 Once a foreign judgment is recognised and enforced, what are the general methods of enforcement available to a judgment creditor?**

The procedures for the enforcement of a foreign judgment are provided by the ACCP.

The procedure begins upon filing with the bailiff the request for the enforcement of the foreign judgment. The bailiff notifies the debtor to voluntarily execute the judgment within a period which can vary from five to 10 days.

In case the debtor does not execute the judgment, the bailiff starts the compulsory enforcement.

For the enforcement of monetary obligations, the bailiff will seize the bank accounts and movable/immovable properties of the debtor for debt.

The movable and immovable properties of the debtor can be sold by the bailiff through public auctions.

## 5 Other Matters

**5.1 Have there been any noteworthy recent (in the last 12 months) legal developments in your jurisdiction relevant to the recognition and enforcement of foreign judgments? Please provide a brief description.**

There have been no legal developments in Albanian jurisdiction in the last 12 months to the provisions regarding recognition and enforcement of foreign judgments.

**5.2 Are there any particular tips you would give, or critical issues that you would flag, to clients seeking to recognise and enforce a foreign judgment in your jurisdiction?**

The recognition procedure of a foreign judgment in Albania is not lengthy and complicated. The court tends to proceed quickly in this regard.

It is hard to predict the outcome and the duration of the enforcement process, because various factors would have an impact. The enforcement depends on whether the bailiff will find assets of the debtor to execute. On the other hand, the debtor can challenge with the court the bailiff actions and this would cause the delay of the enforcement proceedings. It is therefore important to closely monitor the enforcement process, both to ensure its formal validity and to prevent undue delays.

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Gerhard is a Partner at Boga & Associates, which he joined in 2000. His core practice area is litigation and alternative dispute resolution overarching a wide range of business issues in Albania.

Gerhard acts as representative of international clients in courts of all levels, in cases related mainly to banking and finance, real estate, taxation, competition, intellectual property and all sorts of other commercial/corporate disputes.

Additionally, he performed in a number of legal due diligences regarding real estate development issues, property disputes, banking issues, intellectual property, etc.

Gerhard is fluent in English and Italian.

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Eno is an Associate at Boga & Associates.

His main areas of practice include IP Law, Data Protection, Labour Law, as well as assistance to clients on different business law aspects. He has previously worked as a private practice lawyer.

Eno graduated in Law at the University of Tirana and obtained a Master of Science degree focused on Private Law in 2014. He has been a member of the Albanian National Chamber of Advocates since 2016.

Eno is fluent in English, Italian, and French.

## BOGA & ASSOCIATES

LEGAL • TAX • ACCOUNTING

Boga & Associates, established in 1994, has emerged as one of the premier law firms in Albania, earning a reputation for providing the highest quality of legal, tax and accounting services to its clients. The firm also operates in Kosovo (Pristina) offering a full range of services. Until May 2007, the firm was a member firm of KPMG International and the Senior Partner/Managing Partner, Mr. Genc Boga, was also the Senior Partner/Managing Partner of KPMG Albania.

The firm's particularity is linked to the multidisciplinary services it provides to its clients, through an uncompromising commitment to excellence. Apart from the widely consolidated legal practice, the firm also offers the highest standards of expertise in tax and accounting services, with keen sensitivity to the rapid changes in the Albanian and Kosovo business environment.

The firm delivers services to leading clients in major industries, banks and financial institutions, as well as to companies engaged in insurance, construction, energy and utilities, entertainment and media, mining, oil and gas, professional services, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods.

The firm is continuously ranked as a "top tier firm" by *The Legal 500*, by *Chambers and Partners* for Corporate/Commercial, Dispute Resolution, Projects, Intellectual Property, Real Estate, as well as by *IFLR* in Financial and Corporate Law. The firm is praised by clients and peers as a "law firm with high-calibre expertise", "the market-leading practice", with "a unique legal know-how", distinguished "among the elite in Albania" and described as "accessible, responsive and wise".

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