



# 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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# Kosovo

Sokol Elmazaj



Delvina Nallbani



Boga &amp; Associates

## 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
Law On Resolving Conflict of Laws with Regulations of Other Countries (“Official Gazette of SFRY”, no. 43/82 and 72/82 – as amended).	Applies to all jurisdictions for judgments in civil law matters.	Section 2.
Law no. 04/L-213 On International Legal Cooperation in Criminal Matters.	Applies to all jurisdictions for judgments in criminal law matters.	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?**

Kosovo has not yet adopted a law regarding the recognition and enforcement of foreign judgments in civil law matters and old Yugoslav law, namely the Law “On Resolving Conflict of Laws with Regulations of Other Countries” (“Official Gazette of SFRY”, no. 43/82 and 72/82 – as amended) is still in force.

Judgments in criminal law matters are recognised based on the Law on International Legal Cooperation in Criminal Matters (Law no. 04/L-213).

The enforcement of foreign judgments is carried out based on the provisions of the Law on Enforcement Procedure (Law no. 04/L-139 as amended by the Law no. 05/L-118).

The Law on Courts (Law no. 03/L-199 as amended by Law no. 04/L-171 and Law no. 05/L-032) establishes the jurisdiction of the courts with regard to the recognition of foreign judgments and the provision of international legal assistance.

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

A “judgment” capable of recognition and enforcement shall be considered a final and enforceable decision under the law of the country in which it was taken as well as a settlement reached before a court. In addition, a decision of another authority which is equivalent to the court decision in the country where it was taken shall also be capable for recognition and enforcement.

In criminal matters, final judgments issued by courts of other States against citizens or permanent residents of the Republic of Kosovo may be recognised and enforced in the Republic of Kosovo, if the judgment contains types of sanctions foreseen by the Kosovo Law.

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

In civil law matters, a request for recognition of the foreign judgment should be submitted to the General Section of the Basic Court where the defendant/debtor resides or is located. The applicant should accompany his request for recognition with a confirmation of the competent foreign court or other authority that the decision is final and enforceable under the law of the country in which it was taken. In addition to the mentioned confirmation, the applicant must submit a declaration of enforceability of that decision under the law of the country in which it was taken.

The request for recognition should be accompanied by the foreign judgment in question and with a judicial translation of the decision into one of the Kosovo official languages (i.e. Albanian and Serbian), if it is in a foreign language.

In criminal matters, the procedure for recognition and enforcement may be initiated on the basis of a written request received by the Ministry of Justice. The request should be accompanied by the original or a certified copy of the foreign judgment and any other relevant documents. If the foreign judgment is in a foreign language, a judicial translation in one of the Kosovo official languages should also be submitted to court.

After reviewing the formal requirements of the request, the Ministry of Justice shall transmit it, together with the supporting documents received, to the competent court. The competent court to decide on the request for recognition and enforcement is the Basic Court in the territory where the sentenced person resides or is located. In case the residence or location of the person cannot be determined, the Basic Court of Pristina shall be competent.

#### 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?

Such a connection is not explicitly provided by law. In criminal matters, foreign judgments submitted for recognition and enforcement should regard citizens or permanent residents of the Republic of Kosovo.

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

The process of recognition of the foreign judgments and the enforcement of such judgments usually includes two individual legal proceedings, namely the process of recognition and the process of execution. The purpose of recognition of a foreign judgment is to make such judgment equal to a judgment of a Kosovo court, i.e. to produce legal effects in the Republic of Kosovo. In this regard, foreign judgments need to be recognised in the territory of the Republic of Kosovo by the competent court before they can be enforced. Once recognised by Kosovo courts, foreign judgments constitute enforcement titles based on which the applicant may initiate the enforcement procedure.

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

The applicant should submit a request to the competent court Basic Court to recognise and declare enforceable the foreign judgment in the territory of the Republic of Kosovo.

The foreign judgment, which has been recognised and declared enforceable within the territory of the Republic of Kosovo is considered an enforcement document based on which the applicant may initiate the enforcement procedure. The enforcement procedure is conducted by the court or private bailiff when the applicant files the enforcement proposal.

Upon the proposal of the applicant, the court or private bailiff issues an enforcement decision/order within seven days from the receipt of the proposal. The other party may object and appeal such decision/order; and the enforcement is applied after the decision on enforcement becomes final (i.e. if the debtor does not object or after the procedure pursuant to the legal remedies, objection and appeal, is finished).

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

In civil matters, the judgment can be challenged on procedural aspects based on an objection submitted by the person against whom the decision is taken, such as:

- the party against whom the decision was taken was not able to participate in proceedings because of the irregularity in proceedings, which include the failure to notify the party regarding the commencement of the proceedings;
- if there is exclusive jurisdiction of the court or other State body in Kosovo regarding the matter in question (this does not apply in cases when the defendant is seeking the recognition of a court decision given in a marital dispute or if the prosecutor is seeking, and the defendant does not oppose, the exclusive jurisdiction of the court in Kosovo);

- if the Kosovo court or other authority has issued a final decision in the same matter or if Kosovo courts recognised another foreign judicial judgment that was taken in the same matter;
- is against the public order in Kosovo;
- if there is no reciprocity, which is presumed unless proven otherwise (the lack of reciprocity is not an obstacle for recognition of a foreign judgment made in a marital dispute and in a dispute to establish the paternity or maternity, as all in cases when the recognition of a foreign judgment is requested by a Kosovo citizen); or
- the foreign judgment is not final and enforceable.

In criminal matters, the court shall refuse the recognition and enforcement of a foreign judgment in one of the following situations:

- the enforcement would be contrary to the fundamental principles of the legal system of the Republic of Kosovo;
- the offence for which the sentence was rendered is of a political nature or military one;
- there are substantial grounds to believe that the judgment was rendered on considerations of race, religion, nationality or political opinion;
- the offence on which the foreign judgment is based is already subject to a final judgment or proceedings in the Republic of Kosovo;
- under national law, the enforcement of the sanction cannot be executed due to statutory limitation or the sanction has been pardoned; and
- the judgment was rendered *in absentia*, unless the requesting State provides supporting information that, according to its law, the person was summoned or otherwise informed personally via a competent representative, of the time and place of the proceedings which resulted in the judgment rendered *in absentia*, or that the person has indicated to a competent authority of the requesting State that he or she does not contest the case, or did not request a retrial or filed an appeal. If the requesting State fails to provide the supporting information, judgments rendered *in absentia* may be recognised and enforced if the person has been provided with the possibility to make an opposition to the judgment and the person did not file an objection within 20 days.

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

Foreign judgments relating to personal status of a citizen of the country in which the judgment was taken shall not be subject to review by the Court regarding the exclusive jurisdiction of the Kosovo court or other State authority, regarding the contradiction with the public order and regarding the reciprocity.

If the foreign judgment relates to the personal status of a Kosovo citizen, such a judgment, in order to be recognised, is subject to review of whether the applicant has submitted a declaration of finality of that decision under the law of the country in which it was rendered and whether there is reciprocity.

#### 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?

In civil matters, a foreign judgment shall not be recognised, if the Kosovo court or other authority has issued a final decision in the same matter or if the Kosovo courts recognised another foreign

judicial judgment that was taken in the same matter. In case there are proceedings pending between parties before local courts, the court will suspend the procedure of recognition of the court until those local proceedings are completed.

Likewise, in criminal matters, the court shall refuse the recognition and enforcement of a foreign judgment, if the offence on which the foreign judgment is based is already subject to a final judgment or proceedings in the Republic of Kosovo.

#### **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 civil matters and criminal matters, a conflicting local law or prior judgment on the same or a similar issue, but between different parties, is not considered by law as a reason to challenge the recognition and enforcement of a foreign judgment, unless it regards a violation of public interest.

However, if the sanction imposed by a foreign judgment in a criminal matter is not in accordance with Kosovo law, the Court may adapt the sanction only where that sanction exceeds the maximum punishment provided for similar offences under the Kosovo law. If the sanction imposed by the foreign court is less than the minimum which may be imposed under the Kosovo law, the court shall not be bound by the minimum provided by Kosovo law and shall impose a sanction corresponding to the sanction imposed in the State in which the judgment was taken.

#### **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 recognition process by the Kosovo court does not consider the merits of the foreign judgment, including the interpretation of Kosovo Law by foreign court or other authority, but rather procedural aspects required for recognition. However, if a foreign judgment is in contradiction with the fundamental principles of the legal system of the Republic of Kosovo, the court shall refuse the recognition of such foreign judgment.

#### **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 no such different rules.

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

The limitation period should be assessed under the law governing the foreign judgment. Kosovo law provides a 10-year limitation period for all claims determined by a final court decision or by another relevant authority or through settlement before the court or another relevant authority including those for which a shorter period is stipulated by the statute of limitations. However, periodic claims originating from such decisions or settlements and falling due in the future shall become statute-barred after three years.

The limitation period shall be calculated from the first day after the day the applicant held the right to demand the performance of the obligation, unless stipulated otherwise by law for individual cases.

### **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?**

There is no such specific regime in Kosovo.

#### **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?**

The difference between recognition and enforcement is mentioned under question 2.5.

#### **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 question 2.3 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?**

Judgments can be challenged from formal aspects, during recognition and enforcement.

### **4 Enforcement**

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

Enforcement of judgments are carried out according to the provisions of the Enforcement Law by court or private bailiffs when the applicant submits an enforcement proposal based on the foreign judgment.

The available actions to enforce a judgment include collection of personal incomes and other permanent monetary incomes, blocking of monetary means held in the bank accounts, sale of movable and immovable property, etc.

The enforcement of personal accounts shall apply through their sequestration and transfer.

The enforcement of movable property includes the following procedures: (i) registration, sequestration, and evaluation of the movable property; (ii) sale of the movable property; and (iii) settling the credit from the amount obtained from sale of such items.

Enforcement of immovable property is conducted through the following phases: (i) noting of enforcement in the public register of immovable property; (ii) determining the value of immovable property; (iii) sale of immovable property; and (iv) payment of the enforcement creditor from the amount of money obtained by the sale.

With regard to criminal matters, a person, for whom a request for recognition and enforcement of judgment has been submitted to the Ministry of Justice, may be arrested and placed in detention on remand in accordance with the Kosovo Criminal Procedural Code.

If a request for enforcement of a fine or confiscation of a sum of money has been accepted, the court shall convert the amount into the currency in circulation in the Republic of Kosovo according to the exchange rate recorded by the central bank valid for the day when the judgment was issued. In doing so, the court shall fix the amount of the fine or the sum to be confiscated, which shall not exceed the maximum sum established by the national law for the same criminal offence.

When the request for enforcement concerns the confiscation of a particular item, the court may order the confiscation of that item only if the national law permits confiscation for the same criminal offence or if it allows for the imposition of a more severe sanction. If confiscation of a particular item is not possible, the court may instead decide to confiscate the monetary amount equal to the value of that item if the requesting State agrees.

## 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 not been any noteworthy legal developments in Kosovo regarding the recognition and enforcement of foreign judgments. The Law on International Private Law, which should replace the Law “On Resolving Conflict of Laws with Regulations of Other Countries” (“Official Gazette of SFRY”, no. 43/82 and 72/82 – as amended), is being drafted under the supervision of the Ministry of Justice and should be presented to the public during 2018.

### 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?

Clients should try to meet all the formal aspects when submitting the request for recognition, in order to avoid delays in the process of recognition. It should also be noted that the process of enforcing judgments is time-consuming because of the legal remedies available to the parties. In this regard, the enforcement is applied after the legal remedy process is completed; i.e. after decision on enforcement becomes final.

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Sokol also conducted a broad range of legal due diligences for international clients considering to invest in Albania or Kosovo in the fields of industry, telecommunications, banking, real estate, etc.

He is an authorised trademark attorney and has an expertise in trademark filing strategy and trademark prosecution, including IP and litigation issues.

Sokol is continuously ranked as a Leading Lawyer in the well-known guides *Chambers Global*, *Chambers & Partners* and *IFLR1000*.

Sokol graduated in Law at the University of Tirana in 1996 and is admitted to practise in Albania and Kosovo. He is also an arbiter listed in the roster of the American Chamber of Commerce of Kosovo.

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Delvina is a Senior Associate at Boga & Associates, which she joined in 2012.

Her practice is mainly focused on providing legal advice to clients on a wide range of corporate, business and banking matters. She also provides assistance in advising investors on a number of transactions, including mergers and acquisitions, and privatisations.

Delvina graduated in Law at the University of Zagreb, and is a member of the Kosovo Bar Association

She is fluent in Croatian and English.

## BOGA & ASSOCIATES

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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.

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