



ICLG

The International Comparative Legal Guide to:

International Arbitration 2019

16th Edition

A practical cross-border insight into international arbitration work

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- **Preface** by Gary Born, Chair, International Arbitration Practice Group & Charlie Caher, Partner, Wilmer Cutler Pickering Hale and Dorr LLP

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Albania

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1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of your jurisdiction?

The validity of an arbitration agreement/clause under the Albanian law shall be assessed according to the Civil Code provisions about the validity of contracts in general. Unfortunately, from November 2013, Albania does not have a law on domestic arbitration. The relevant provisions in the Code of Civil Procedure have been abrogated since then. On the other hand, international arbitration, where the state of the foreign party/ies has adhered the European Convention on International Commercial Arbitration of 1961, shall be subject to the provisions of such Convention. Albania ratified the Convention upon law no. 8687 of 9 November 2000. According to the said Convention (Article VI), should the place of arbitration be in Albania, the validity of the arbitration agreement/clause shall be subject to the Albanian law, unless the parties have agreed on a different law.

1.2 What other elements ought to be incorporated in an arbitration agreement?

As mentioned above, specific legislation to govern arbitration procedures in Albania is missing. Therefore, it is advisable to provide for a very detailed arbitration clause and refer to rules of arbitration of a permanent international arbitration institution. That would assure at least clarity of the procedures to be followed by the parties and arbitrator/s in case of arbitration of a dispute.

1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

In general, local courts have acknowledged and enforced the arbitration agreement/clauses among the parties, despite the lack of specific legislation on arbitration.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in your jurisdiction?

As explained above, Albania is missing a law and/or specific law

provisions that governs the enforcement of domestic arbitration proceedings.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

International arbitration proceedings, where the state of the foreign party/ies has adhered to the European Convention on International Commercial Arbitration of 1961, shall be subject to the provisions of such Convention, which was ratified by Albania upon law no. 8687 of 9 November 2000.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

The European Convention on International Commercial Arbitration of 1961 ratified by Albania upon law no. 8687 of 9 November 2000 is the only piece of legislation that governs international arbitration. The purpose of the said convention is to create some common ground for arbitration proceedings taking place among parties from the Member States. However, the convention relies on the domestic legislation of each Member State regarding arbitration procedures.

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in your jurisdiction?

The provisions of the European Convention on International Commercial Arbitration of 1961 ratified by Albania upon law no. 8687 of 9 November 2000 are to be considered the only mandatory provisions ruling the international arbitration proceedings among parties residing in countries which are members of the Convention.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of your jurisdiction? What is the general approach used in determining whether or not a dispute is “arbitrable”?

We cannot answer this question due to lack of relevant legislation as explained thus far and/or case law developed by local courts.

3.2 Is an arbitral tribunal permitted to rule on the question of its own jurisdiction?

We cannot answer this question due to lack of relevant legislation as explained thus far and/or case law developed by local courts.

3.3 What is the approach of the national courts in your jurisdiction towards a party who commences court proceedings in apparent breach of an arbitration agreement?

The local courts will dismiss the case and instruct the parties to follow the arbitration procedures as agreed in the contract.

3.4 Under what circumstances can a national court address the issue of the jurisdiction and competence of an arbitral tribunal? What is the standard of review in respect of a tribunal's decision as to its own jurisdiction?

Such issue could be brought before local courts at the stage of recognition and enforcement of a foreign arbitral award or at the enforcement of a domestic arbitral award. Alternatively, one of the parties can bring an action before a local court arguing that the dispute cannot be arbitrated because local courts have exclusive jurisdiction. In order to establish that, the local courts would refer to the provisions of the Code of Civil Procedure which provide for their exclusive jurisdiction such as regarding disputes on real estate, real estate rights, succession law and administrative law.

3.5 Under what, if any, circumstances does the national law of your jurisdiction allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

We cannot answer this question due to lack of relevant legislation as explained thus far and/or case law developed by local courts.

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in your jurisdiction and what is the typical length of such periods? Do the national courts of your jurisdiction consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

Statute of limitation periods are set by the provisions of the Civil Code. Such period is three (3) years for tort claims and ten (10) years for contractual claims. Shorter periods could be applicable depending on the nature of claim and type of contract. Despite these provisions being part of the substantive law (i.e. Civil Code), they have a purely procedural nature. Anyhow, there is no consolidated case law to make such a clear distinction.

3.7 What is the effect in your jurisdiction of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

The insolvency proceedings legislation in Albania establish the principle that trials pending before the opening of insolvency proceedings against an entity that is a party to such trial may continue until final judgment. Final judgment cannot be enforced outside the insolvency proceedings. The insolvency administrator

may seek the case to be transferred for ruling to the insolvency court before the final judgment of the court where the dispute is pending. The insolvency law is silent about pending arbitration proceedings. In view of the above-mentioned principle established by the said law, we may assume that it applies to arbitration proceedings as well. However, given that the insolvency law is new, there is no case law or jurisprudence which provides certainty in this regard.

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

We cannot answer this question due to lack of relevant legislation as explained thus far and/or case law developed by local courts.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

We cannot answer this question due to lack of relevant legislation as explained thus far and/or case law developed by local courts.

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

We cannot answer this question due to lack of relevant legislation as explained thus far and/or case law developed by local courts.

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

We cannot answer this question due to lack of relevant legislation as explained thus far and/or case law developed by local courts.

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

We cannot answer this question due to lack of relevant legislation as explained thus far and/or case law developed by local courts.

5.3 Can a court intervene in the selection of arbitrators? If so, how?

We cannot answer this question due to lack of relevant legislation as explained thus far and/or case law developed by local courts.

5.4 What are the requirements (if any) imposed by law or issued by arbitration institutions within your jurisdiction as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators?

We cannot answer this question due to lack of relevant legislation as explained thus far and/or case law developed by local courts.

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in your jurisdiction? If so, do those laws or rules apply to all arbitral proceedings sited in your jurisdiction?

There are no laws or rules governing the procedure or arbitration in Albania. There are only few provisions in the Code of Civil Procedures which recognise the domestic and international arbitral awards to be enforceable.

6.2 In arbitration proceedings conducted in your jurisdiction, are there any particular procedural steps that are required by law?

There are no laws or law provisions at all in Albania that govern the arbitration proceedings.

6.3 Are there any particular rules that govern the conduct of counsel from your jurisdiction in arbitral proceedings sited in your jurisdiction? If so: (i) do those same rules also govern the conduct of counsel from your jurisdiction in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than your jurisdiction in arbitral proceedings sited in your jurisdiction?

There are no laws or law provisions at all in Albania addressing this topic.

6.4 What powers and duties does the national law of your jurisdiction impose upon arbitrators?

There are no laws or law provisions at all in Albania addressing this topic.

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in your jurisdiction and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in your jurisdiction?

There are no laws or law provisions at all in Albania addressing this topic with regard to arbitration proceedings. However, based on our experience in international arbitration proceedings taking place in Albania, foreign lawyers did freely participate in such proceedings.

6.6 To what extent are there laws or rules in your jurisdiction providing for arbitrator immunity?

There are no laws or law provisions at all in Albania addressing this topic.

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

There are no laws or law provisions at all in Albania addressing this topic.

7 Preliminary Relief and Interim Measures

7.1 Is an arbitral tribunal in your jurisdiction permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitral tribunal seek the assistance of a court to do so?

There are no laws or law provisions at all in Albania addressing this topic.

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

There are no laws or law provisions at all in Albania addressing this topic.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

There is no approach or case law developed by the courts in Albania due to lack of legislation governing arbitration proceedings.

7.4 Under what circumstances will a national court of your jurisdiction issue an anti-suit injunction in aid of an arbitration?

There are no laws or law provisions at all in Albania addressing this topic.

7.5 Does the law of your jurisdiction allow for the national court and/or arbitral tribunal to order security for costs?

There are no laws or law provisions at all in Albania addressing this topic.

7.6 What is the approach of national courts to the enforcement of preliminary relief and interim measures ordered by arbitral tribunals in your jurisdiction and in other jurisdictions?

There is no approach or case law developed by the courts in Albania due to lack of legislation governing arbitration proceedings.

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in your jurisdiction?

There are no laws or law provisions at all in Albania addressing this topic.

8.2 What powers does an arbitral tribunal have to order disclosure/discovery and to require the attendance of witnesses?

There are no laws or law provisions at all in Albania addressing this topic.

8.3 Under what circumstances, if any, can a national court assist arbitral proceedings by ordering disclosure/discovery or requiring the attendance of witnesses?

There are no laws or law provisions at all in Albania addressing this topic.

8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal and is cross-examination allowed?

There are no laws or law provisions at all in Albania addressing this topic.

8.5 What is the scope of the privilege rules under the law of your jurisdiction? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

According to the Law on the Profession of the Lawyer (*law no. 55/2018 – article 10*), only information and documents provided by the client to the lawyer are covered by privilege. Note that this provision is very basic (not elaborated) and the case law is missing.

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of your jurisdiction that the award contain reasons or that the arbitrators sign every page?

There are no laws or law provisions at all in Albania addressing this topic.

9.2 What powers (if any) do arbitral tribunals have to clarify, correct or amend an arbitral award?

There are no laws or law provisions at all in Albania addressing this topic.

10 Challenge of an Award

10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in your jurisdiction?

There are no laws or law provisions at all in Albania addressing this topic.

10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

There are no laws or law provisions at all in Albania addressing this topic.

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

There are no laws or law provisions at all in Albania addressing this topic.

10.4 What is the procedure for appealing an arbitral award in your jurisdiction?

There are no laws or law provisions at all in Albania addressing this topic.

11 Enforcement of an Award

11.1 Has your jurisdiction signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

NY Convention on Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 was ratified without any reservation upon law no. 8688, dated 9 November 2000, passed by the Albanian Parliament.

11.2 Has your jurisdiction signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

No, there are none.

11.3 What is the approach of the national courts in your jurisdiction towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

We have not encountered any issue or resistance of local courts regarding recognition and enforcement of foreign arbitral awards. The recognition of a foreign arbitral award is a procedure that the applicant should initiate by filing an application with the competent Albanian Court of Appeals. The application should have attached the documents listed in Article IV of NY Convention. The Court of Appeals will not make an evaluation of the merits of the case, but the recognition may be refused only for the reasons listed under Article V of NY Convention. Similarly, in case the arbitral award is made in a state which is not a member of NY Convention, the Albanian Court of Appeals would only examine whether (i) the arbitral tribunal had jurisdiction to resolve the dispute, (ii) the respondent has been duly notified of the proceedings in case the arbitral tribunal has proceeded in absence of the respondent, (iii) the same dispute among the same parties has not been judged in Albania, (iv) the arbitral award is final, and (v) the arbitral award complies with the basic principles of the Albanian legislation.

11.4 What is the effect of an arbitration award in terms of *res judicata* in your jurisdiction? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

We can state that the *res judicata* principle is implied by the Code of Civil Procedure by recognising the arbitral award to be an enforceable title/deed as a final judgment. However, explicit law provisions to address this topic are missing.

11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

Albania is missing legal provisions and/or case law that define public policy grounds for refusing enforcement of an arbitral award.

12 Confidentiality

12.1 Are arbitral proceedings sited in your jurisdiction confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

There are no laws or law provisions at all in Albania addressing this topic.

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

There are no laws or law provisions at all in Albania addressing this topic.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

There are no laws or law provisions at all in Albania addressing this topic.

13.2 What, if any, interest is available, and how is the rate of interest determined?

There are no laws or law provisions at all in Albania addressing this topic.

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

There are no laws or law provisions at all in Albania addressing this topic.

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

There are no law provisions in Albania addressing this topic directly. However, our tax legislation provides for the exemption of individuals awarded compensation by a final court judgment. In case of a legal entity, such compensation shall be considered part of income and thus taxable. The law is silent with regard to the case where the awarded party is a foreign legal entity. This treatment could be in theory applied to arbitral awards, but there is no certainty on that.

13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of your jurisdiction? Are contingency fees legal under the law of your jurisdiction? Are there any "professional" funders active in the market, either for litigation or arbitration?

There are no such restrictions set by the Albanian legislation. Contingency fees are recognised by the provisions of the Law on the Profession of the Lawyer (*law no. 55/2018*). To the best of our knowledge, there are there no "professional" funders active in the market, either for litigation or arbitration.

14 Investor State Arbitrations

14.1 Has your jurisdiction signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID")?

Albania has ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID) upon law no. 7515, dated 1 October 1991, passed by the Albanian Parliament.

14.2 How many Bilateral Investment Treaties (BITs) or other multi-party investment treaties (such as the Energy Charter Treaty) is your jurisdiction party to?

According to sources available on the web (<https://investmentpolicy.unctad.org/country-navigator/3/albania>), Albania has in place about 38 Bilateral Investment Treaties (BITs).

14.3 Does your jurisdiction have any noteworthy language that it uses in its investment treaties (for example in relation to "most favoured nation" or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

No noteworthy language is used in these treaties.

14.4 What is the approach of the national courts in your jurisdiction towards the defence of state immunity regarding jurisdiction and execution?

There are specific provisions in the Code of Civil Procedure that govern the enforcement process against state authorities. However, the state is not immune to enforcement in general other than with regards to state-owned movable and/or immovable properties in the country.

15 General

15.1 Are there noteworthy trends or current issues affecting the use of arbitration in your jurisdiction (such as pending or proposed legislation)? Are there any trends regarding the type of disputes commonly being referred to arbitration?

Arbitration in Albania has not been used as a common tool for resolving disputes among Albanian parties. This could explain why

the provisions of the Code of Civil Procedures governing domestic arbitration and international arbitration where the seat was situated in Albania were abrogated on November 2013 and have not been replaced so far by new legislation. The current government of Albania is planning to bring a draft law for discussion among concerned parties and thereafter in Parliament within this calendar year, but there is no certainty.

However, the remaining provisions of the Code of Civil Procedure recognise the domestic arbitral award to be a title/deed that is equally enforceable as a final court judgment. Further, courts have recognised the agreement of the parties to resolve disputes in arbitration and have dismissed disputes brought by one of the parties in such agreement.

On the other hand, the lack of developed legislation governing arbitration proceedings has not created any issues to the recognition and enforcement of foreign arbitral awards.

That said, we may conclude that, despite the almost missing legal framework and undeveloped domestic arbitration, Albania offers a legal environment which is friendly to the recognition and enforcement of foreign arbitral awards.

15.2 What, if any, recent steps have institutions in your jurisdiction taken to address current issues in arbitration (such as time and costs)?

There have been no such steps taken so far.



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Sokol Elmazaj joined Boga & Associates in 1996. He is a partner of the firm and Country Manager for Kosovo.

Sokol has more than 20 years of experience in commercial transactions, litigation and arbitration, across a variety of areas of law in Albania and Kosovo.

He is listed as an arbiter in the roster of the ADR Centre of the American Chamber of Commerce in Kosovo and appointed Chairman of the Steering Council of ADR of the American Chamber of Commerce in Kosovo.

Further, Sokol has extensive expertise in corporate, mergers and acquisitions, project financing, privatisation, real estate projects, energy, telecommunication and dispute resolution.

He is continuously ranked as a Leading Lawyer in major international directories: *Chambers Global*; *Chambers Europe*; and *IFLR1000*.

Sokol is fluent in English and Italian.

BOGA & ASSOCIATES

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Boga & Associates, established in 1994, has emerged as one of the premier law firms in Albania and in Kosovo, earning a reputation for providing the highest quality of legal, tax and accounting services to its clients. 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 major international directories: *Chambers Global*; *Chambers Europe*; *The Legal 500*; and *IFLR1000*.

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