

The International Comparative Legal Guide to:

Litigation & Dispute Resolution 2009

A practical insight to cross-border Litigation & Dispute Resolution



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Aivar Pilv Law Office
Anderson Mori & Tomotsune
Arias & Muñoz
Binder Grösswang
Boga & Associates
Borislav Boyanov & Co.
Bredin Prat
Carey y Cía.
Coronel & Peréz
Dechert LLP
Dittmar & Indrenius
Eversheds Saladžius
Fenech & Fenech Advocates

Gencs Valters Law Firm
Georgiades & Mylonas
Gleiss Lutz
Gómez-Acebo & Pombo Abogados, S.L.P.
Ivor Fitzpatrick & Company
Janežič & Jarkovič
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Lovells

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Premnath Rai Associates
Schellenberg Wittmer
Sergio Bermudes Advogados
SJ Berwin LLP
Stikeman Elliott LLP
Yukov, Khrenov & Partners

Albania

Gerhard Velaj



Boga & Associates

Valbona Gjonçari



I. LITIGATION

1 Preliminaries

1.1 What type of legal system has Albania got? Are there any rules that govern civil procedure in Albania?

The legal system of Albania is based on the continental judicial system and the courts are led by the law. Civil procedure in Albania is governed by the Civil Procedure Code (hereinafter referred to as CPC) approved with law no.7850, dated 29.07.1994, amended by law no.8536, dated 18.10.1999 and no.8781, dated 03.05.2001.

The legal profession is ruled by the law no. 9109, dated 17.07.2003 “On the legal profession in the Republic of Albania” that defines advocacy as free, independent, self-regulated and self-governed profession. Lawyers are free to act in front of all the Albanian Courts, without restrictions.

1.2 How is the civil court system in Albania structured? What are the various levels of appeal and are there any specialist courts?

According to the law no.9877, dated 18.2.2008 “On Organisation of the judicial system in the Republic of Albania”, the civil court system is organised in the following structures:

- (i) District Court;
- (ii) Appeal Court; and
- (iii) Supreme Court.

There are 2 levels of appeal: (i) Courts of Appeal; and (ii) Supreme Court.

Under the provisions of the CPC, the parties can appeal the District Court decisions to the Court of Appeal within 15 days. The Appeal Court decisions may be appealed to the Supreme Court within 30 days. Against the decisions of the District Court regarding jurisdiction and competence issues can be filed special appeal to the Supreme Court within 5 days. The abovementioned appeal terms start from the next day of the announcement or notification date of the decision.

Under the CPC, the first level of the Albanian court is organised in specialised sections for allocation of the particular cases according to the subject of the claim such as: (i) section for family disputes; (ii) section for commercial disputes; and (iii) section for administrative disputes.

According to the law no.9877, dated 18.2.2008 “On Organisation of the judicial system”, the section for the administrative disputes will

be reorganised in the form of a separate court, specialised in such issues, by a new law that has not been approved yet.

1.3 What are the main stages in civil proceedings in Albania? What is their underlying timeframe?

The main stages in civil proceedings in the District Court are:

- filing the lawsuit with the court;
- notification of the lawsuit to the defendant and other parties;
- preliminary hearing (i.e. exchange of evidences between the parties);
- judicial hearings and examination;
- last summons; and
- final decision.

The CPC provides limitation terms regarding the filing of the law suit with the court (question 2.2 below), and a minimal term of 10 days for the notification of the lawsuit to the defendant or third parties.

Based on our judiciary practice, the preliminary hearing can take place within 3 weeks from the filing of the lawsuit with the court by the plaintiff, including the notification phase. The duration of the proceedings in the District Court may last approximately 3-6 months. While, the hearing of the appeal before the Court of Appeal takes place within 6-12 months from the filing date. In the Supreme Court the cases are not examined before 1 year.

1.4 What is Albania’s local judiciary’s approach to exclusive jurisdiction clauses?

Regarding the exclusive jurisdiction clauses, the Albanian Court bases its decision to the article 37 of CPC, which provides that jurisdiction of Albanian Courts can not be transferred to a foreign jurisdiction by agreement of the parties, except when the legal proceeding is related to an obligation among foreign parties, or among an Albanian and a foreign party (physical person or legal entity), when such exemptions have been stipulated in the agreement.

1.5 What are the costs of civil court proceedings in Albania? Who bears these costs?

Under the provision of the CPC, the costs of civil proceedings in Albania are: (i) the tax on the acts, expenses for the acts to be carried out (i.e. notification); (ii) the costs for the acts of expertise; and (iii) the lawyer expenses and other necessary expenses occurred during the trial (i.e. expenses for witness, different examination). The tax on the act is calculated according to the value of the claim. Such tax is paid by the plaintiff upon filing the claim.

The expert and the lawyer costs vary significantly depending on the size and complexity of the case, working hours and fee levels. The CPC provides for the obligation of the unsuccessful party to pay the legal costs.

Despite the above, the cases where the claim is partially accepted or when the court finds justified reasons, may decide for the costs to be paid by the unsuccessful party in proportion with the accepted claim, or that each party should pay its own costs.

1.6 Are there any particular rules about funding litigation in Albania? Are there any contingency/conditional fee arrangements? Are there rules on security for costs?

There are no particular rules about funding litigation in Albania. Under the CPC, any person that has a legal, actual and directly interest may file a lawsuit with the court.

The law does not provide specific regulation on the contingency or conditional fee, but permits the lawyer and the client to define the fee in mutual agreement. Under the provisions of the Law no. 9109, dated 17.07.2003, "On the legal profession in the Republic of Albania" the remuneration for the service rendered by the lawyers is defined:

- (i) in agreement between the client and the lawyer;
- (ii) by the court and the prosecutor's office when the lawyer is nominated *ex officio*; and
- (iii) by law.

Regarding the security costs the Albanian legislation does not provide any concrete regulation.

2 Before Commencing Proceedings

2.1 Are there any pre-action procedures in place in Albania? What is their scope?

The pre-action procedures are not obligatory to be followed in all civil cases. Under Civil Code, article 463, such procedures are mandatory when the obligation of the parties derives from a contract without a predefined term. In such case, before starting the court proceedings, the parties undertake all the necessary actions to resolve the dispute out of court. The party pretending the default delivers to the other party a written request for the voluntary execution of the obligation. The Civil Code provides for a 15-day term for the execution of the obligation.

Referring to our judiciary practice, the parties in dispute follow these procedures also in other civil cases. The scope of such procedures is to resolve the dispute in agreement between the parties, without going to court.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

The Albanian Civil Code provides various limitation terms according to the types of the claims.

The limitation term to file claims deriving from the payment of contractual penalty clauses is 6 months; 1 year for claims deriving from the spedition contracts; 6 months for claims deriving from the transport contracts either of goods or travellers by railway, vehicles, or airplanes; 2 years for claims for the payment of compensations from the insurance and reinsurance contracts; 3 years for claims for the payment deriving from rent contracts (i.e. apartments, shops, and other immovable property); 3 years for claims for the payment

arising out of contractual duty and the claims for the return of unjust profit.

The Civil Code also provides a general limitation term of 10 years for claims, the limitation terms of which are not provided differently by the law. The limitation terms or any other provision defined in the Civil can not be changed upon agreement of the parties.

The limitation term for claims regarding administrative issues is thirty days from the date of the announcement of the decision of the higher administrative organ which has considered the complaint in administrative scale, except when the law stipulates the direct appeal to the Court. In this case, the term starts from the date of the announcement or of the notification of the administrative act against which the lawsuit is filed. Under the Civil Code the limitation term starts from the day when the subject acquires the right to file the claim. Pursuant the CPC the limitation term, defined in weeks, months or years terminates their respective last day.

The right of the claim which is not exercised within the limitation term defined by law extinguishes and can be not exercised any more in front of the court.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in Albania? What various means of service are there? What is the deemed date of service? How is service effected outside Albania?

Is there a preferred method of service of foreign proceedings in Albania?

Under the CPC, the legal proceedings of the case in court start with the submission of the lawsuit by the plaintiff or by his legal representative. The court should notify the defendant and any third parties regarding the lawsuit within 10 days from the submission by the plaintiff.

The court officer delivers the notification. The defendant or the third party is deemed as notified upon receipt of the notification delivered by the court officer. Even when the defendant or the third party refuses to accept the notification he is considered notified. In such case the court officer notes in the notification act the refusal and when possible attests such fact through potential witnesses.

When notification personally to the defendant is not possible, the court addresses the notification to the residence or working place of the defendant and when such addresses are unknown, the notification is announced in the District Court and other public location used for the announcements, in the city of residence or birth of the defendant.

The notification of the acts to a foreign state is made upon ordered letter through the Ministry of Justice, which sends such acts to the respective country.

3.2 Are any pre-action interim remedies available in Albania? How do you apply for them? What are the main criteria for obtaining these?

According to article 202 of CPC, the plaintiff may apply for pre-action interim remedies when there are reasons to doubt that the execution of the decision shall become impossible or difficult.

The court may accept the request for the pre-action interim remedy when:

- a. the lawsuit is based on evidence in writing; and
- b. the plaintiff gives guarantees at the amount and type set by

the court for the potential damage that might be caused to the defendant by the injunction measures.

The pre-action interim remedies are allowed for all types of claims and at any stage of the proceedings, until the final decision. Such request may be filed also before filing the lawsuit. In such case the lawsuit must be filed within 15 days from the Court decision that approved the pre-action interim remedies request.

The pre-action interim remedies consist in:

- a. sequestering the movable and immovable assets as well as the credits of the debtor; and
- b. other appropriate measures taken by the court including the suspension of execution.

Against the decision of the court which has decided to accept, to change or to reject the request for pre-action interim remedies, the parties may appeal to the Appeal Court within 5 days from the date of the announcement or the notification date of the court decision.

3.3 What are the main elements of the claimant's pleadings?

Under article 154 of the CPC, the lawsuit should be written in the Albanian and must indicate the competent court; first name, father's name, surname, place of residence of the plaintiff and of the defendant and of their representatives, if there are any; the subject of the lawsuit; the indication of the facts, circumstances, documents and other evidences and the legal base of the lawsuit; the requirements of the plaintiff; and the value of the lawsuit when the subject is measurable.

3.4 Can the pleadings be amended? If so, are there any restrictions?

Article 185 of CPC, provides that the plaintiff during the judicial proceedings has the right to add, reduce or amend the subject of the claim, without changing its legal cause. When such changes are made during the absence of the other party, the latest should be notified in writing.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

Under the CPC, the main elements of the defence against the claim are the rejections and the counterclaim. The defendant has the right to file a counterclaim when has a related subject with the claim or when between the claim and the counterclaim can be made compensation. The counterclaim can be filed at any time prior to the conclusion of the judicial examination.

4.2 What is the time-limit within which the statement of defence has to be served?

The civil proceedings in Albania are adversarial and based on such principle the CPC provides that the defendant may perform his defence throughout the civil proceeding.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on liability by bringing an action against a third party?

Under the CPC (article 192) the parties may call into the proceedings a third person they believe to have a common case with, or from

whom they may request a guarantee or compensation related to the conclusion of the case. The third person has the right to perform all procedural actions which are allowed to the parties, except those which constitute the possession of the subject of the dispute.

4.4 What happens if the defendant does not defend the claim?

Under the CPC is provided that the court resolves the dispute in conformity with the mandatory legal provisions and makes an accurate determination of the facts and actions related to the dispute, without being bound to any determination proposed by the parties. Even when the defendant does not defend the claim or does not take part in the proceedings, the Court has the duty to perform a complete and accurate judicial examination and to base its decision only on facts submitted during the legal proceedings.

4.5 Can the defendant dispute the court's jurisdiction?

Under the CPC the defendant has the right to dispute the jurisdiction of the court. The court of its on motion, at any stage of the proceedings, can take into consideration, whether the case under consideration falls under judicial or administrative jurisdiction. Decisions regarding jurisdiction issues can be appealed directly to the Supreme Court.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

Under the CPC, everyone may intervene in a judicial process taking place among other persons by filing a claim with the court against either parties or one of them, when he claims partially or totally the ownership of the asset/item or the right, subject of the dispute in consideration, or related to the conclusion of the proceedings. Under the CPC such action is defined as the main intervention.

As secondary intervention is defined the right of a third person to intervene in a legal proceeding, taking place between others, when has interest to support one of the parties. Such person joins the party during the proceeding to assist it.

As mentioned in question 4.3 above the parties may call into the proceedings a person they believe have a common case with of from whom they may request a guarantee or compensation related to the conclusion of the case. Third persons are also summoned by the court, when the latest estimates that they should be present in a proceeding of their interest.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

It is possible to consolidate claims with connected subjects even when those are considered by different judicial bodies. In such case the claims may be examined into a joint proceeding and judged by the court of the place of residence of one of the defendants. Several claims may be joined into a single claim, when are addressed to the same administrative organ, have the same subject and fall within the competence of same court.

5.3 Do you have split trials/bifurcation of proceedings?

Albanian courts have discretion to allow the splitting of trials when it is deemed that the complexity of the case may delay the proceedings. According to the article 159 of the CPC the plaintiff may present in a lawsuit many claims. In such case the Court may decide to consider the claims separately, when estimates that their joint consideration may cause difficulties in the proceedings.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in Albania? How are cases allocated?

Under the CPC the first level of the Albanian court is organised in specialised sections, where cases are allocated according to the subject of the claim. According to the article 320 of CPC the sections are divided as follows:

- (i) section for family disputes;
- (ii) section for commercial disputes; and
- (iii) section for administrative disputes.

6.2 Do the courts in Albania have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

The Court rules for all requests of the parties without exceeding the limits of the claim, conducting a fair independent and impartial trial within a reasonable time frame and bases its decision upon the evidence presented during the hearings.

During the proceedings the court upon request of the parties or of its own motion may rule on the following interim applications:

- interim injunction;
- amendment of the subject or change of the legal base of the claim;
- orders for specific disclosure;
- sanctions for the parties that do not comply the procedure rules;
- unification of claims;
- bifurcation of the case; and
- suspension of the trial process.

Regarding the cost consequences please see question 1.5 above.

6.3 What sanctions are the courts in Albania empowered to impose on a party that disobeys the court's orders or directions?

The Court may impose fines up to ALL 30,000 to parties that disobey the court orders or directions. Furthermore, the Court may impose fines up to ALL 30,000 to the witness or expert that has not appeared to the Court without reasonable causes and is entitled to order their obligatory presence during the hearing. Also fines are imposed to the witness refusing to testify or to experts refusing to deliver their opinion.

6.4 Do the courts in Albania have the power to strike out part of a statement of case? If so, in what circumstances?

The court has the power to strike out the whole or part of a statement of case of its own motion when the claim is not based in law and is not supported by evidence, or the parties are not

legitimated to file the claim. The court may strike out the statement of case upon request of the parties when the claim has been filed beyond the legal terms provided by the CPC or by other laws.

6.5 Can the civil courts in Albania enter summary judgment?

The definition of the summary judgment is not regulated in the CPC. The Albanian civil courts are obliged to carry out a complete judicial examination and follow all the proceeding phases, before giving a final decision.

6.6 Do the courts in Albania have any powers to discontinue or stay the proceedings? If so, in what circumstances?

Under the CPC the Albanian court has the power to decide to stay the proceeding when:

- the case can not be solved prior to the termination of an administrative, criminal, or civil case;
- the stay of the proceeding is requested by both parties;
- one of the parties dies or the juridical person terminates its activity;
- one of the parties does not possess or has lost the juridical capacity to act and is necessary to appoint a legal representative for this party; and
- is required by law.

The court may discontinue the proceedings when:

- none of the parties has requested within six months the recommencement of the suspended proceeding, when such suspension was decided by the court upon their request;
- the plaintiff withdraws from the case; and
- is required by law.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in Albania? Are there any classes of documents that do not require disclosure?

Under the CPC the documents should be disclosed by the parties to each other and to the Court during the preliminary hearing or until the conclusion of the judicial examination. The Court upon request of the interested party may order the other party or a third party to submit documents, when deemed as necessary. As well the Court may officially request by the public administration authorities to provide the documentation kept on their files or information upon such documentation. The parties should disclose only evidence relevant to the dispute. It is not required to disclose evidence supporting facts widely or officially known.

7.2 What are the rules on privilege in civil proceedings in Albania?

Under article 235 of the CPC the representatives of the parties can not be summoned to testify on information they have received in their capacity of representatives.

Also, the spouse, children, parents, grandparents, or cousins of the parties until the second line, are included in the category of privilege. They can not be summoned as witnesses in a civil proceeding with the exception of the cases when their testimony is necessary for the case resolution. The above-mentioned persons can not be punished in case they refuse to testify.

The CPC does not provide specific rules for the disclosure of the documents classified as privileged. However article 173 of the CPC defines the cases when the hearings are conducted without the presence of the public, such as when related to the safety of the classified information of national security; when required by the interest of the underage persons or the private life of the parties and other persons involved in the process; when named commercial secrets or industrial patents, which publication might damage interests protected by law; and the cases when the court reasons that the publication of certain information might prejudice the interest of justice.

7.3 What are the rules in Albania with respect to disclosure by third parties?

The Court upon the request of the interested party, and when deems necessary may order a third person to present evidences related to the dispute. The court informs the third person for the time, place and manner of disclosing the evidence. The requesting party has the duty to inform the court on the location of such evidence, its characteristics and the facts aimed to prove with the requested evidence.

7.4 What is the court's role in disclosure in civil proceedings in Albania?

The Court supports the disclosure process in a civil proceeding. Upon parties request or of its own motion the court may order the parties or a third person for specific disclosure of evidence.

7.5 Are there any restrictions on the use of documents obtained by disclosure in Albania?

Under the CPC the evidence disclosed in a proceeding may be used for these proceeding and for no other purposes. However, in cases when disclose of evidence has taken place in a public hearing, there are no restrictions for the publication of such evidence.

8 Evidence

8.1 What are the basic rules of evidence in Albania?

Under the CPC, (article 213), the parties are permitted to prove the facts they claim during the legal proceeding by presenting to the court only evidences related and necessary for the proceeding.

8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

The evidence in order to be admissible by the Court should be taken in accordance with the provisions and principles of the CPC. Constitute evidence the confessions of the parties; witness testimony; documents; and opinion of experts.

The Court appoints one or more experts when for the identification or clarification of facts related to the dispute is required a certain expertise in science, technical issues or art. The experts provide their opinion in writing, but can be summoned to testify in a hearing where and to be cross examined by the court and the parties. The opinion of the expert is not binding but is estimated by the Court in harmony with the other disclosed evidence.

8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

The proof of fact through a witness is widely accepted by the Court with the exception of the cases when is specifically required the proof through a document. The witnesses are examined in the hearing séance, in the presence of the parties and their representatives. When the witness can not attend the hearing due to special circumstances as provided in the CPC, the Court may decide to examine him outside the Court, by a member of the judging body. The testimony of such witness is taken prior to the hearing and is read during the hearing in presence of the parties. The Court upon request of the parties may summon the witnesses. When the witnesses refuse to appear in Court, the latest may apply a fine on the witnesses and order its obligatory attendance.

8.4 What is the court's role in the parties' provision of evidence in civil proceedings in Albania?

Under the CPC the Albanian Court plays a supportive role during the disclosure process. The Court issues orders for disclosure of evidence by the parties or third persons, either upon the requests of the parties or of its own motion.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in Albania empowered to issue and in what circumstances?

The court takes interim, non-final and final decisions and to issue orders. The interim decisions are taken by the court during the hearings in order to assure that the judgment is carried out in compliance with the provisions of the CPC. The decision to discontinue the case is a non-final decision. Characteristic of the non-final decision is that such decisions terminate the legal proceeding without solving the case. Upon the final decision the court resolves thoroughly the case.

The court issues orders to support the disclosing procedure, the appearance of the witnesses or experts, etc.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

The Albanian court is entitled to rule on the damages, interests and costs of the litigation through its decisions.

9.3 How can a domestic/foreign judgment be enforced?

Under the CPC the domestic/foreign judgment can be enforced upon the request of the party. For this purpose, on request of the party an order of execution is issued by:

- the court which has taken the decision; and
- the Court of Appeals with regard to decisions by courts of foreign countries and of foreign arbitration courts which have been given implementation power in conformity with the provisions of CPC.

The execution order with the respective court decision is enforced by the Bailiff Office upon request of the creditor.

9.4 What are the rules of appeal against a judgment of a civil court of Albania?

The parties can appeal the District Court decisions to the Court of Appeal. The Appeal Court decisions may be appealed to the Supreme Court only for the specific reasons defined in the CPC. The decisions of the District Court, regarding competence and jurisdiction issues, may also be directly appealed to the Supreme Court. Also the CPC provides for the special appeals against the District Court decisions, the term of which is settled to 5 days.

Another manner of appeal is the request for the revision of a final court decision. It can be filed directly to the Supreme Court within 30 days from the day when the revision cause was discovered by the party.

II. DISPUTE RESOLUTION

1 Preliminaries

1.1 What methods of dispute resolution are available and frequently used in Albania? Arbitration/Mediation/Tribunals/Ombudsman? (Please provide a brief overview of each available method.)

In Albania the disputes can be resolved in the tribunals and also by arbitration and mediation. Arbitration proceeding can be followed only if the parties have defined in the executed agreement, to solve by arbitration the any potential disputes.

Mediation, according to law no.9090, dated 26.6.2003 "On disputes resolution through mediation" (hereinafter referred to as Mediation law), is applicable in resolving all civil, commercial, familiar disputes, subject to the court consideration. Mediation, is applicable in the cases when it is requested and accepted by the parties, prior or after the dispute has arisen, when it is obligatory by law, and in the cases when it is required by the court, arbitral tribunal or the respective state institution according to law.

1.2 What are the laws or rules governing the different methods of dispute resolution?

Arbitration proceedings in Albania are governed by the CPC and international arbitration is regulated by special law. On the other hand, meditation as dispute resolution method is regulated by the meditation law (question 1.1 above).

1.3 Are there any areas of law in Albania that cannot use arbitration/mediation/tribunals/Ombudsman as a means of dispute resolution?

Under the CPC any monetary claim deriving from an agreement between the parties can be subject to the arbitration proceeding. However the arbitration proceedings can not be applied when the agreement between the parties or the documents related to such agreement do not provide for the solution of the potential disputes through arbitration.

Under the Mediation law, the dispute resolution by mediation, can not be applied when it (i) contains obligations assessable in money and cannot be formulated in writing; (ii) contains obligations for subjects that have not participated in mediation; (iii) has simulation and, for the real conflict, has invalidity reasons; and (iv) when the law requires the dispute resolution in a legal court proceeding.

2 Dispute Resolution Institutions

2.1 What are the major dispute resolution institutions in Albania?

Either the CPC or the Mediation law provides for consolidated institutions for the dispute resolution through arbitration and meditation procedures. The mediators and arbiters are appointed *ad hoc* by the parties pursuant the provisions of the Mediation law and the CPC.

2.2 Do any of the mentioned dispute resolution mechanisms provide binding and enforceable solutions?

Arbitration awards are binding on the parties and enforceable under the CPC. Under Mediation law, the settlement agreements reached in mediation are binding on the parties and enforceable in the same manner as arbitration award. The arbitration awards and the settlement agreement reached through meditation are enforceable upon issuance of the execution order by the competent court.

3 Trends & Developments

3.1 Are there any trends in the use of the different dispute resolution methods?

The dispute resolution through arbitration proceeding or mediation is not a commonly used method. For the dispute resolution, the parties usually address to the courts.

However, being that the use of mediation results in savings in cost and time, in promoting communication between the parties by offering a wide variety of settlement options and assuring confidentiality, this dispute resolution form has gained the consideration as a dispute resolution method.

3.2 Please provide, in no more than 300 words, a summary of any current issues or proceedings affecting the use of those dispute resolution methods in Albania?

Since dispute resolution through arbitration or mediation is not widely practiced in Albania, there are not current issues or proceedings that have affected the use of such dispute resolution methods.

**Gerhard Velaj**

Boga & Associates
Deshmoret e 4 Shkurtit
PO Box 8264
Albania

Tel: +355 4 225 1050
Fax: +355 4 225 1055
Email: gvelaj@bogalaw.com
URL: www.bogalaw.com

Work experience:

Boga & Associates (2000-present).
Law Firm M&M (1999-2000).

Key qualifications:

Mr. Velaj has acquired excellent knowledge and experience on litigation regarding a wide range of business issues in Albania.

He has an extensive experience in litigation representing international client in all court levels in cases related mainly to banking and finance, real estate, taxation, competition, intellectual property and all sorts of other commercial/corporate disputes.

Mr. Velaj has managed a number of legal advices regarding real estate development issues, property disputes, banking issues, intellectual property, etc.

Education:

Law Faculty University of Tirana, Albania (1998).

Languages:

Albanian, English, Italian.

**Valbona Gjonçari**

Boga & Associates
Deshmoret e 4 Shkurtit
PO Box 8264
Albania

Tel: +355 4 225 1050
Fax: +355 4 225 1055
Email: vgjoncari@bogalaw.com
URL: www.bogalaw.com

Work experience:

Boga & Associates (2005 - present).

"VEGA" Company, Tirana, Albania (March 2005- November 2005).

Attorney at Law, Tirana, Albania (2004-2005).

Tirana District Court, Albania (2003 - 2004).

Real Estate Office, Vlora, Albania (2002 - 2003).

Key qualifications:

Ms. Gjonçari has acquired rich experience in the field of dispute resolution regarding most of the commercial and business issues investors face in Albania.

She has been representing clients in cases related mainly to local and national taxes, contractual disputes, administrative issues, labor law disputes and other corporate disputes in all the court levels.

Ms. Gjonçari has participated in a series of legal advices regarding corporate issues, local taxes, property issues, etc.

Education:

Law Faculty University of Tirana, Albania (2002).

Languages:

Albanian, English, Italian.

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