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# **Litigation & Dispute Resolution 2022**

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*Authored by:* **Gerhard Velaj & Silvi Tafilica**



# Recent Changes in Litigation & Dispute Resolution in Albania

## LITIGATION IN ALBANIA

- **Legal system and 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 Code of Civil Procedure (hereinafter referred to as the “CCP”), approved with law no. 8116, dated 29.03.1996, amended by law no. 8181, dated 23.12.1996, law no. 8431, dated 14.12.1998, law no. 8491, dated 27.05.1999, law no. 8535, dated 18.10.1999, law no. 8601, dated 10.04.2000, law no. 8812, dated 17.05.2001, law no. 9062, dated 08.03.2003, law no. 9953, dated 14.07.2008, law no. 10052, dated 29.12.2008, law no. 49/2012, law no. 122/2013 and law no. 160/2013, law no. 114/2016 dated 03.11.2016, law no. 38/2017 dated 30.03.2017, law no.44/2021 dated 23.03.2021.

## *Common Issues in Litigation and Dispute Resolution Laws and Regulations*



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- **Structure of court system and levels of appeal in Albania**

According to law no. 98, dated 06.10.2016 “*On Organization of the Judicial System in the Republic of Albania*”, as amended, the civil court system is organized in the following structures:

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

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

The District Courts are organized in specialized sections for allocation of the particular cases according to the subject of the claim, such as:

- section for civil disputes;
- section for family disputes; and
- section for commercial disputes insolvency proceedings.

With law no. 49/2012 “*On Administrative Courts and Adjudication of the Administrative Disputes*” as amended, the specialized courts for the adjudication of administrative disputes were established. Administrative courts are organized as: (i) Administrative Courts of First Instance; (ii) the Administrative Court of Appeal; and (iii) the Administrative College of Supreme Court.

- **Main stages in civil proceedings and their duration**

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

- (i) filing of the lawsuit and the evidences by the plaintiff/s;
- (ii) notification of the lawsuit to the defendant and other parties;
- (iii) filing of the statement of defense and the evidences by the defendant/s;
- (iv) the preliminary actions of the sole judge, where, inter alia, it is decided whether a preliminary hearing will occur;
- (v) preliminary hearing (*i.e.*, examination of requests for main and secondary intervention, for procedural replacement, procedural transition, change of the cause of action or of the object of the lawsuit, filing of the counterclaim, the appointment of the expert etc.);
- (vi) judicial hearings and examination;
- (vii) closing arguments; and
- (viii) final decision.

The duration of the proceedings in each level of the civil courts should last no longer than two years. In other words, cases in the District Court, the Appeal Court and in the Supreme Court may be examined within 2 (two) years from the filing date of the lawsuit/appeal.

Proceedings in both Administrative Courts of First Instance and the Administrative Court of Appeal must be completed within one year from their beginning.

- **Exclusive jurisdiction clauses**

The jurisdiction of Albanian courts is regulated by article 37 of the CCP, which provides that the jurisdiction of Albanian courts cannot be transferred to a foreign jurisdiction by agreement of the

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parties, except when the legal proceeding is related to a dispute 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. The exclusive jurisdiction of Albanian courts is also regulated by law no. 10428, dated 02.06.2011 "*On Private International Law*", which provides for several cases when the Albanian courts have exclusive jurisdiction.

- **Costs of civil court proceedings**

The costs of civil proceedings in Albania are provided in the Decision no. 641, dated 23.12.2020 of the High Judicial Council and include: (i) the judicial tariff, expenses for the acts to be carried out (*i.e.*, notifications); (ii) the costs for the acts of expertise; (iii) lawyers' fees and other necessary expenses incurred during the trial (*i.e.*, expenses for witnesses, different examinations, etc.). The judicial tariff is calculated according to the value of the claim. For claims with a value up to ALL 150,000, the judicial tax is ALL 1,500, whilst for claims with a value exceeding ALL 150,000, the judicial tariff is 1% of the claim's value. Such tariff is paid by the plaintiff upon filing the claim.

The CCP provides for the obligation of the unsuccessful party to pay the legal costs. The judicial costs shall be charged to the defendant to the extent of the part of the lawsuit that is accepted by the court. The defendant is entitled to request payment of judicial costs incurred, in proportion to the rejected part of the lawsuit. The defendant is entitled to request payment of the judicial costs incurred, even in the event of the trial's dismissal.

- **Rules about funding litigation, security for costs and contingency fee/conditional fee arrangements**

There are no particular rules about funding litigation in Albania. Any person that has a legal, actual and direct interest may file a lawsuit with the court. The law does not provide specific regulation on contingency or conditional fees but permits lawyers and their clients to define the fee in mutual agreement.

Under the provisions of law no. 55, dated 23.07.2018, "*On the Attorney Profession in the Republic of Albania*", the remuneration for the service rendered by lawyers is defined: (i) in agreement between the client and the lawyer; (ii) in accordance with the provisions of the legislation in force for legal aid guaranteed by the state; (iii) with a success fee, determined in the agreement entered into in advance between the lawyer and the client in the case of successful defense or representation; (iv) any other remuneration provided in the acts and practices of international organizations, to which Albania adheres.

If there is no agreement between the client and the lawyer, the remuneration of the latter is defined in accordance with the order no. 1284/3, dated 16.03.2005 "*On Approval of the Tariffs for Lawyer's Remuneration*" of the Minister of Justice and Chairman of National Chamber of Advocacy. Albanian legislation does not provide any concrete regulation regarding security costs.

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- **Assigning a claim or cause of action and financing of litigating procedures from non-parties**

There are no constraints to assigning a claim (especially monetary claims) based on general principles on the assignment of rights under the provisions of the Albanian Civil Code. Claims arising from strictly personal rights cannot be assigned.

Albanian law does not regulate the financing of litigation proceedings by a non-party to such proceedings.

## **BEFORE COMMENCING PROCEEDINGS**

- **Formalities prior to the initiation of proceedings**

Albanian law does not provide for any mandatory pre-action procedures to be followed by the parties, other than the obligation of the creditor to serve to the debtor a notice for payment (or discharging any other contractual obligation) within at least 15 days if the contract does not provide for a term (article 463 of the Civil Code).

Nonetheless, the parties must comply with the pre-action procedures to which they have agreed in the contract.

- **Limitation periods pertaining to the bringing proceedings to civil courts**

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

The limitation term to file claims, deriving from the payment of contractual penalty clauses, is: six months; one year for claims deriving from expedition contracts; six months for claims deriving from transport contracts of either goods or travelers by railway, vehicles or airplanes; two years for claims for the payment of compensations from insurance and reinsurance contracts; three years for claims for payment deriving from rent contracts (*i.e.* apartments, shops and other immovable property); and three years for claims for 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 term for claims regarding administrative disputes is 45 days.

The limitation terms cannot be changed upon agreement of the parties.

The limitation term starts from the day when the party acquires the right to file the claim.

The right of a claim that is not exercised within the limitation term defined by law extinguishes and cannot be exercised to any further extent in front of the court.

## **COMMENCING PROCEEDINGS**

- **Commencing of civil proceedings**

Civil proceedings commence with the submission of the lawsuit by the plaintiff or by his legal representative.

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The court should notify the parties of the date of the hearing. The notification is made by the court officer, through the mail service or via email, if such information is provided in the lawsuit or statement of defense. If the notification cannot be accomplished in the above ways, then it is proceeded with public announcement in the relevant court, in the residence and in the administrative unit of the person to whom this notification is addressed. The court should also provide the defendant and the third parties (if any) with the lawsuit and the evidences submitted by the plaintiff.

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.

The announcement of acts of a foreign state is done through the Ministry of Justice, which passes them on to the District Court of the place where the announcement should be made.

- **Pre-action interim remedies**

The plaintiff may apply for pre-action interim remedies when there are reasons to doubt that the enforcement of the court decision for his rights shall become impossible or difficult.

The court may issue 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 consist of: (i) seizure of the debtor's assets; and (ii) other appropriate measures taken by the court, including the suspension of execution.

- **Main elements of a lawsuit**

The lawsuit should be written in Albanian and must indicate: the competent court; the personal data of the plaintiff, the defendant and their representatives, if there are any; the electronic addresses of the plaintiff and his representative; the cause of action of the lawsuit; the value of the lawsuit when the subject is measurable; the legal base of the lawsuit; the indication of the facts and circumstances, documents and other evidences; the requirements of the plaintiff; a list of witnesses the plaintiff requires to summon to the court; the evidence required to be taken by the defendant and third parties, specifying the reasons and location of such evidence; the type of expertise required to be performed during the proceeding and the data of third parties seeking to be summoned. Besides, the lawsuit must also be accompanied by the payment of the judicial fee.

- **The possibility of amending the pleadings**

The CCP provides the right of the plaintiff to change the legal base of the lawsuit during the judicial proceedings.

The plaintiff is also entitled to add, reduce or amend the cause of action of the lawsuit without changing its legal base.

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## DEFENDING A CLAIM

- **Main elements of a statement of defense**

The main elements of defense are the counterarguments and the counterclaim. The defendant is entitled to submit a counterclaim when it has a related subject with the claim or when compensation can be made between the claim and the counterclaim. The counterclaim can be submitted as long as the order for scheduling the court hearing has not been issued.

- **The time limit for serving the statement of defense**

The defendant should submit the statement of defense, not later than 30 days from the notification of the lawsuit (art. 158/1 of the CCP).

- **Passing on or sharing liability by bringing an action against a third party**

Under article 184 of the CCP, when it emerges during a trial that the lawsuit is brought against a defendant to whom it must not have been brought, on the request of the interested party the court may allow the replacement of the defendant by the person against whom the lawsuit should have been brought. For such replacement the court must first receive the approval of both parties and of the person who comes in the place of the defendant.

- **Non-participation of the defendant in the judicial proceedings**

Under the CCP it 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.

- **Objection to the jurisdiction of the court by the defendant**

The defendant has the right to dispute the jurisdiction of the court.

The court, also at any stage of the proceeding, can verify whether the case falls under its jurisdiction.

The decision of the court to take the case out of jurisdiction, may be appealed by the parties directly to the Supreme Court. On the other hand, the confirmation of jurisdiction may be appealed together with the final or non-final decision.

## JOINDER & CONSOLIDATION

- **Intervening in a judicial proceeding by a third party**

Under the CCP, anyone may intervene in a judicial process taking place among other persons by filing a claim with the court against either both parties or one of them, when he/she claims partially or totally

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the right, subject of the dispute. According to article 189 of the CCP, such an action is defined as the main intervention.

The right of a third party to intervene in a legal proceeding when it has interest in supporting one of the litigant parties is defined as the secondary intervention. Such person joins the party during the proceeding to assist it.

The parties may call into the proceeding 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.

Third persons are also summoned by the court if they should be present in a proceeding of interest to them.

The new amendments to the law anticipate that all of the aforementioned actions may be performed as long as the order for scheduling the court hearing has not been issued.

- **Consolidation of two sets of proceedings**

It is possible to consolidate two sets of proceedings when they have connected subjects (art. 57 of the CCP).

- **Bifurcation of proceedings**

The plaintiff may present multiple claims in a lawsuit.

The court may decide to consider the claims separately if it decides their joint consideration may cause difficulties in the proceedings (art. 159 of the CCP).

## **DUTIES & POWERS OF THE COURTS**

- **Powers of the courts on case management and interim applications that parties may make**

The court manages the judicial process through its decisions and orders.

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 on the evidences presented during the judicial process.

During the proceedings, the court, upon request of the parties, may rule on the following interim applications:

- interim measure;
- amendment of the subject or a change of the legal base of the claim;
- orders for specific disclosure;
- sanctions for the parties that do not comply with the procedural rules;
- unification of claims;
- bifurcation of the case; and
- suspension or dismissal without prejudice of the case.

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- **Sanctions in case of a party disobeying the court's orders or directions**

The court may impose fines ranging from ALL 50,000 – 100,000 to parties that disobey the court orders or directions.

Likewise, the parties that abuse their rights in the process (*i.e.*, filing of abusive lawsuits, complaints, requests or allegations, either repeated and malicious, or when they deliberately seek to delay the trial, or when it is found that the parties or their representatives have concealed or distorted in bad faith or with serious guilt, important facts and circumstances related to the case) may also be fined within the aforesaid value.

- **Circumstances where the courts have the power to strike out part of a statement of case or dismiss a case entirely**

The court overrules part of a statement of case or dismiss it entirely when, (i) the claim is groundless and not supported by evidences, or the plaintiff is not legitimated to file the claim, or the claim has been filed after termination of the statute of limitation.

- **Circumstances when the court can stay or discontinue the proceeding**

An Albanian court decides to stay the proceeding when:

- the case cannot be solved prior to the termination of another administrative, criminal or civil case;
- a stay of the proceeding is requested by both parties;
- one of the parties dies or the legal person terminates its activity;
- one of the parties does not possess or has lost the juridical capacity to act and it is necessary to appoint a legal representative for this party;
- it is required by law; and
- one of the parties submits the request for resolution of the case through mediation and the court deems it reasonable.

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 renounces from the case;
- the court finds that the case does not fall within the jurisdiction of the court, as well as when the lawsuit could not be filed, or the trial could not continue; and
- it is required by law.

## **DISCLOSURE**

- **Rules of disclosure in civil proceedings**

The parties in a civil proceeding should disclose to each other and to the court all the evidence relevant to the dispute.

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When the evidence, on which the solution or clarification of the case depends, is at risk of disappearing or its obtainment will become difficult, it may be obtained upon court's order before filing the lawsuit (article 292 of the CCP).

For disclosure of documents which constitute state secrets, the permission of public authorities is required.

- **Rules on privilege in civil proceedings**

Under article 235 of the CCP, the attorneys of the parties cannot be summoned to testify on information they have received in their capacity as legal representatives. Also, the spouses, children, parents, grandparents or cousins of the parties, until the second line, are included in the category of privilege. They cannot be summoned as witnesses in a civil proceeding, with the exception of cases when their testimony is necessary for the case resolution. The above-mentioned persons cannot be punished in case they refuse to testify.

- **Rules pertaining to disclosure by third parties**

The court, at the request of an interested party in the civil proceeding, may order a third party to submit documents when deemed as necessary.

The court may also officially request the public administration authorities provide the documentation kept on their files or information upon such documentation, if necessary, for the proceeding.

When the information required constitutes a state secret, the court requests the permission of the state authorities to obtain such information.

- **The court's role in disclosure in civil proceedings**

The court supports the disclosure process in a civil proceeding.

- **Restrictions on the use of documents obtained by disclosure**

The evidences disclosed in a civil proceeding may be used only for the proceeding and for no other purposes.

However, in cases when disclosure of information has taken place in a public hearing, there are no restrictions for the publication of such information.

## **EVIDENCE**

- **Basic rules of evidence**

The parties are permitted to prove the facts they claim during the adjudication process by submitting to the court only evidences related and necessary for the case.

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- **Types of evidence**

Evidence should be submitted in accordance with the provisions and principles of the CCP. Pursuant to the article 213 of the CCP, only evidence that is necessary and related to the dispute is admissible under examination. Evidence includes: the confessions of the parties; witness testimony; written documents; and the opinion of experts.

The court appoints one or more experts when, for the identification or clarification of facts related to the dispute, a certain expertise in science, technical issues or art is required.

- **Rules regarding witnesses, witness statements and depositions**

The proof of facts through witnesses is widely accepted by the court, with the exception of cases when proof is specifically required through documents. The court may summon witnesses at the request of the parties. The witnesses are questioned in the hearing, in the presence of the parties and their representatives.

- **Rules on instructing expert witnesses, preparing expert reports and giving expert evidence in court**

The court assigns the duties to the expert, after taking the parties' opinions. The expert provides a written report. The court and the parties may address questions to the expert regarding the expert's report.

The expert bases his report on the evidence submitted by the parties in the proceeding. However, the expert can also request additional documents and perform verifications, as necessary, for the preparation of the report. The expert cannot give legal opinion on the case. The report of the expert is not binding but it is assessed by the court in conjunction with the other evidences.

## **JUDGEMENT & ORDERS**

- **Types of judgments and orders in civil courts**

The court issues orders, non-final decisions and the final decision.

The orders are taken by the court in order to ensure that the judicial process is carried out in compliance with the provisions of the CCP.

Upon the non-final decisions, the court terminates the adjudication process without solving the merits of the case. Upon the final decision, the court resolves the case on the merits.

- **Rulings on damages/interests/costs of the litigation**

Albanian courts are entitled to rule on the damages, interests and costs of the litigation through their decisions.

- **Recognition and enforcement of domestic/foreign judgments**

A domestic final judgment can be enforced by the bailiff, upon request of the interested party.

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A foreign judgment should be recognized in Albania by the competent Court of Appeal in order to be enforced.

The Court of Appeal does not make a new evaluation of the merits of the case but examines only if the foreign court decision complies with the following criteria:

- (i) the foreign court had 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 court decision becoming final and enforceable;
- (v) the foreign court decision has become final in compliance with respective country legislation; and
- (vi) the said decision complies with the basic principles of the Albanian legislation.

The procedure with the Court of Appeal begins upon filing the request for recognition of a foreign court's decision, supported by the original or certified true copy of the decision and a statement/certificate issued by the said court that the decision is final.

- **Rules of appeal against a judgment of a civil court**

The final decisions of the District Court can be appealed by the parties to the Appeal Court, within 15 days, starting from the following day of the notification of the written decision.

The Appeal Court's decisions can be appealed to the Supreme Court within 30 days, starting from the following day of the notification of the written decision.

However, the Appeal Court's decisions are enforceable and the appeal in the Supreme Court does not suspend the enforcement procedures, unless specifically decided by the Supreme Court.

The non-final and intermediate decisions can be appealed within a term of five days.

## **SETTLEMENT**

- **Mechanisms that facilitate the settlement process**

Under the CCP, during the preliminary actions of the proceeding, depending on the nature of the case, the judge should make all efforts to encourage the parties to settle the dispute amicably. The judge should repeat such efforts at any stage of the proceeding.

The parties may choose as well to settle their disputes extra-judicially through mediation which is regulated by law no. 10385, dated 24.02.2011 "*On Mediation in Disputes Resolution*", as amended.

## **ALTERNATIVE DISPUTE RESOLUTION**

- **Methods of alternative dispute resolution available in Albania**

In Albania, disputes can also be resolved by arbitration or mediation.

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Mediation is also applicable in resolving all civil, commercial and familiar disputes.

- **Rules that govern the different methods of alternative dispute resolution**

Albania is missing a domestic arbitration law, since 2013 when the relevant provisions of the Albanian Civil Procedure Code were repealed.

However, a draft law on arbitration has been prepared hoping that will be approved soon. The approval of such law would help on the development of the arbitration culture among Albanian business entities and encourage them to resolve the disputes through arbitration.

With regard to international arbitration, Albania has adhered to the European Convention on International Commercial Arbitration of 1961 upon law no. 8687 of 9 November 2000 as well as the NY Convention on Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 upon law no. 8688, dated 9 November 2000.

Mediation is regulated by law no. 10385, dated 24.02.2011 "*On Mediation in Disputes Resolution*", as amended.

- **Areas of the law that cannot use alternative dispute resolution methods**

Criminal law does not provide for any of the above alternative dispute resolution methods, except for certain criminal offences, disputes arising out of which, may be subject to mediation.

- **Interaction among the court and the alternative dispute resolution methods**

The court invites the parties to solve the dispute through mediation.

The court declares lack of jurisdiction/competence if the parties have agreed to arbitration.

- **The nature of awards/agreements in alternative dispute resolution methods**

According to the Mediation Law, the settlement agreements reached through mediation are binding for the parties and enforceable in the same manner as domestic arbitration awards.

The law does not provide for any sanctions if the parties refuse to mediate. The parties can freely decide to solve the dispute through mediation.

- **Main alternative dispute resolution institutions in Albania**

Albanian law does not provide for consolidated institutions for dispute resolution through arbitration.

On the other hand, the Mediation Law provides for the establishment of the National Chamber of Mediators and the Chambers of Mediators as consolidated institutions for performing the mediation process. The mediators are licensed and registered at the Register of Mediators with the Ministry of Justice. The parties can appoint the mediators for resolution of their dispute from the Register of Mediators.

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**Boga & Associates**, established in 1993, has emerged as one of the premier law firms in Albania and Kosovo, earning a reputation for providing the highest quality of legal, tax and accounting services to its clients. From 2000, until May 2007, the firm was a member firm of KPMG International and the Senior Partner/Managing Partner, Mr. Genc Boga was also Managing Partner of KPMG Albania.

With its diverse capabilities and experience, the firm acts for leading businesses in most major industries, including banks and financial institutions, as well as companies working in insurance, construction, energy and utilities, automobile, entertainment and media, mining, oil and gas, professional services, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods sectors. The firm also enjoys an outstanding litigation practice, representing clients before all levels of the Albanian judicial system.

Over the years, the firm has advised on privatization transactions, concessions, real estate transactions, setting up businesses, credit facilities and customs and tax issues, all with a keen sensitivity to developments in the Albanian and Kosovo business environment.

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**Gerhard Velaj** is a Partner at Boga & Associates, which he joined in 2000.

His core practice area is arbitration, litigation and alternative dispute resolution overarching a wide range of business issues in Albania.

Gerhard is a recognised practitioner and represents international clients in courts of all levels, in cases related mainly to real estate, banking and finance, taxation, competition, intellectual property and all sorts of other commercial/corporate disputes. He is a member of the ICC Commission on Arbitration and ADR.

**Silvi Tafilica** is an associate at Boga & Associates, which she joined in 2020.

Her practice focuses mainly on litigation and alternative dispute resolution.

She has extensive experience in court litigation, representing international and domestic clients in a wide range of business issues in Albania, across a wide range of sectors such as real estate, employment, damage relief, taxation, banking, civil disputes and all sorts of other commercial/corporate disputes.

She also advises regarding real estate development issues, property disputes, banking issues, also drafting and/or reviewing of development agreements, real estate purchase and mortgage agreements.