

ALBANIA

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS ⁺

1. Law ●
 - a. Framework ●
 - b. Adherence to international treaties ●
 - c. Limited court intervention ●
 - d. Arbitrator immunity from civil liability ●
2. Judiciary ●
3. Legal expertise ●
4. Rights of representation ●
5. Accessibility and safety ●
6. Ethics ●

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Albania is a civil law country which has transitioned, during these last 20 years, from a centrally planned to a market-oriented economy. Albania has received EU candidate status in June 2014. Foreign investments play a key role for the integration and economic development of Albania but then foreign investors need also an attractive legal environment, especially in terms of legal certainty, fair treatment and dispute resolution mechanism.

Although arbitration is considered as the most important and advantageous dispute resolution mechanism for commercial disputes, Albania does not currently have a domestic arbitral institution and as it shall be further detailed below, since year 2013 the Albanian Parliament is expected to approve a law regulating domestic and international arbitration procedures. Actually, the only domestic law provisions related to arbitration that are in force in Albania concern the recognition and enforcement of international arbitration awards. Albania being also a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the only possibility offered to parties willing to submit disputes to arbitration, is to opt for foreign arbitration and thereafter have the foreign arbitration award recognised in Albania.

Lacking an arbitration law, this arbitration guide for Albania shall focus mostly on the issue of recognition of international arbitration awards in Albania.

Key places of arbitration in the jurisdiction	Tirana
Civil law / Common law environment?	Civil law
Confidentiality of arbitrations?	ϕ
Requirement to retain (local) counsel?	ϕ
Ability to present party employee witness testimony?	ϕ
Ability to hold meetings and/or hearings outside of the seat?	ϕ
Availability of interest as a remedy?	ϕ
Ability to claim for reasonable costs incurred for the arbitration?	ϕ
Restrictions regarding contingency fee arrangements and/or third-party funding?	ϕ
Party to the New York Convention?	Yes
Other key points to note	ϕ
WJP Civil Justice score (2018)	0.45

ARBITRATION PRACTITIONER SUMMARY

Chapter IX, Title III of the Second Part of the Albanian Civil Procedure Code (the “ACPC”),¹ Articles 393 to 399 contain the provisions relating to the recognition and enforcement of foreign judgements. These are also applicable to international arbitration awards.

Under Article 394 of the ACPC, foreign judgements are not recognized and enforced in the Republic of Albania, if:

- (a) according to Albanian law, the foreign court was not competent for the matter; or
- (b) the claim and the claim notice has not been properly and timely notified to the defaulting defendant, to allow it to organise its defense; or
- (c) the Albanian courts have already issued a diverging decision between the same parties in relation to the same matter and scope;
- (d) a claim is pending before Albanian courts and has been filed prior to the date on which the foreign judgement became final; or
- (e) the foreign judgement became final contrary to the law of the jurisdiction in which it has been taken; or
- (f) the foreign judgement is contrary to the fundamental principles of the Albanian legislation (i.e. public policy).

Pursuant to Article 399 of the ACPC, the provisions of Article 394 of the ACPC shall apply *mutatis mutandis* to international arbitration awards.

The ACPC further provides that if specific agreements exist between the Republic of Albania and foreign countries, then the terms of the international agreement shall apply regarding the recognition and enforcement of judgements of that country.

As a matter of fact, under Article 122 of the Albanian Constitution,² any international agreement ratified by law becomes part of the domestic legislation upon its publication on the Official Gazette of the Republic of Albania. Article 122 of the Albanian Constitution further provides that in case of conflicts between the provisions of the domestic laws, and those of ratified international agreements, the provisions of the latter shall prevail.

As the Republic of Albania ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, self-executing provisions of the New York Convention are part of the domestic legislation in Albania. Moreover, in compliance with the Albanian Constitution³ and the ACPC, in case of conflict, provisions of the New York Convention shall prevail.

Under the New York Convention, Albania has undertaken to accomplish, *inter alia*, the following obligations: recognize and enforce foreign arbitral awards and recognize agreements to submit disputes to international arbitration.

Date of arbitration law?	ϕ
UNCITRAL model law? If so, any key changes thereto?	ϕ

¹ Available at: <http://qbz.gov.al/botime/kodi%20i%20procedures%20civile.html>.

² Available at: <https://www.parlament.al/wp-content/uploads/2015/10/kushtetuta-perditesuar-1.pdf>.

³ Under Article 122 of the Albanian Constitution, any international agreement ratified by law becomes part of the domestic legislation upon its publication on the Official Gazette of the Republic of Albania.

Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	ϕ
Availability of <i>ex parte</i> pre-arbitration interim measures?	ϕ
Courts' attitude towards the competence-competence principle?	ϕ
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	<p>Under Article 394 of the ACPC, foreign judgements are not recognized and enforced in the Republic of Albania, if:</p> <ul style="list-style-type: none"> (a) according to Albanian law, the foreign court was not competent for the matter; or (b) the claim and the claim notice has not been properly and timely notified to the defaulting defendant, to allow it to organise its defense; or (c) the Albanian courts have already issued a diverging decision between the same parties in relation to the same matter and scope; (d) a claim is pending before Albanian courts and has been filed prior to the date on which the foreign judgement became final; or (e) the foreign judgement became final contrary to the law of the jurisdiction in which it has been taken; or (f) the foreign judgement is contrary to the fundamental principles of the Albanian legislation (<i>i.e.</i>, public policy). <p>Pursuant to Article 399 of the ACPC, the provisions of Article 394 of the ACPC shall apply <i>mutatis mutandis</i> to international arbitration awards.</p>
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	ϕ
Other key points to note?	ϕ

JURISDICTION DETAILED ANALYSIS

1. Legislative evolution in Albania in the field of arbitration

The ACPC used to regulate both domestic and international arbitration procedures. However, Law 8812 dated 17 May 2001⁴ repealed the provisions governing international arbitration and projected that such provisions be contained in a separate law.

In 2013, the Parliament approved a Law 122/2013,⁵ aimed at reforming part of the ACPC. According to Articles 30 and 49 of the law, the ACPC provisions governing domestic arbitration were to be repealed as of the date of approval of a new law on arbitration. Article 49 of the same law tasked the Albanian Council of Ministers with the mission to draft the law governing domestic and international arbitration. Pursuant to this Article, a draft was to be submitted to the Parliament for approval within three months from the entry into force of Law 122/2013.

However, with Law 160/2013,⁶ the Albanian Parliament amended the text of transitory provisions of the above-mentioned Article 49 of Law 122/2013. The new text of this Article does not contain references to the term for the submission and approval of the draft law on domestic and international arbitration. Thus, it implicitly renders Article 30 of Law 122/2013 which repeals ACPC provisions on domestic arbitration immediately applicable.

Following the approval of Law 122/2013, the Albanian Ministry of Justice has circulated with the legal community a draft law on domestic and international arbitration. The draft law was based on UNCITRAL Model Law.

Nevertheless, to this date, the Albanian Parliament has not approved a law governing international and/or domestic arbitration.

2. Procedure of enforcement of foreign arbitral awards in Albania

As above mentioned, Article 399 of the ACPC provides that the procedure for recognition and enforcement of foreign judgments shall also apply for the recognition and enforcement of international arbitration awards.

Foreign arbitral awards can be enforced in Albania provided that they are “recognised” in Albania pursuant to the provisions of the ACPC. According to the ACPC, recognition of a foreign arbitral award is granted by the competent court of appeal⁷ upon request of the interested party. Once recognised, foreign arbitral awards have the same effects as domestic judgements.

The procedure for recognition of an international arbitral award is initiated by submitting a lawsuit in front of the competent court of appeal. Even though formally such proceedings are considered as of a declarative nature (gracious process), the court of appeal shall demand that the other party (the aggrieved party) is duly summoned to attend the hearings.

According to Article 396 of the ACPC, the request for recognition of an international arbitration award filed with the competent court of appeal should be accompanied from the following documents:

- (a) certified and legalised copy of the arbitration award duly translated into Albanian language;
- (b) copy of a certification/statement issued from the arbitral institution that has issued the award, that the award is final;

⁴ Available at: <http://80.78.70.231/pls/kuv/f?p=201:Ligj:8812:17.05.2001>.

⁵ Available at: <http://80.78.70.231/pls/kuv/f?p=201:Ligj:122/2013:18.04.2013>.

⁶ Available at: <http://80.78.70.231/pls/kuv/f?p=201:Ligj:160/2013:17.10.2013>.

⁷ The court of appeal of the place of residence of the applicant.

(c) power of attorney, if the application is filed by a representative of the interested party.

The ACPC does not require the submission of the arbitration agreement, as a condition to the recognition of the foreign award in Albania. Such provisions depart from the provisions of Article 4 of the New York Convention, which requires that the application for enforcement of an award should be accompanied by the arbitration agreement.

The conflict has been identified by the Albanian High Court, which has ruled, in a decision N° 00-2014-1350 dated 24 April 2014 that the original arbitration agreement or a duly certified copy thereof must also be submitted to the court of appeal when applying for recognition of a foreign arbitral award, even if it is not specifically required by the ACPC.

It should be mentioned that in general, court proceedings for recognition of an international arbitration award are performed smoothly and promptly and are completed in one single court session.

Nevertheless, some problematic issues, to be further defined below, still subsist and should be eventually addressed by the new arbitration law that should be approved hopefully in the near future in Albania.

2.1 Enforceability of Interim Arbitral Awards

As mentioned above, based on the ACPC, one of the documents that should be filed with the court of appeal for recognition of a foreign arbitral award is a certification issued by the arbitral institution that has rendered the award, that the award is “final”. The refusal of recognition of interim decisions refers in fact to interim decisions that are rendered by a foreign judicial court. Indeed, the provisions of Article 396 of the ACPC regulate the procedure of recognition of foreign judgments in Albania, and apply, based on the provisions of Article 399 of the ACPC, *mutatis mutandis*, also to the recognition and enforcement of foreign arbitral awards.

A strict literal interpretation of the above provisions implies that interim arbitral awards may not be recognised and enforced in Albania.

This interpretation has been adopted by Albanian courts at least in regard to foreign judgments. For instance, in the case *Sky Petroleum INC vs. the Republic of Albania*, Sky Petroleum INC had submitted with the Tirana Court of Appeal a request for recognition of a decision of the Court of Texas (USA) for an interim order of security. By decision N° 32/1010 dated 1 March 2012 the Tirana Court of Appeal has refused to recognise the foreign interim decision on the basis of Article 396 of the ACPC. The court stated that the request for recognition of a foreign judgment in Albania must be accompanied by a statement issued from the foreign court that the decision has become final.

The above interpretation, however, appears to be inconsistent with the provisions of the New York Convention which does not exclude *a priori* the recognition and enforceability of interim or partial arbitral awards. According to the relevant doctrine and the judicial practice, in these the substantial content and the effects of the interim award should be taken into consideration in order to determine the award's final status.

2.2 Payment of court tax

Under Albanian law, a claimant that files a lawsuit for examination of the merits of a dispute with Albanian courts is required to pay a court tax equal to 1% of the claim. Although the procedure for recognition of an international arbitral award is not contentious, and no court tax should apply, there have been cases in practice where courts of appeal have refused recognition of the award on the grounds that the applicant had failed to pay the 1% court tax.

For instance, in the decision N° 82 dated 7 September 2007 *I.C.M.A., AGRI.BEN SAS vs. Republic of Albania*, the Tirana Court of Appeal refused recognition of an ICC award (case 12112/ACS Geneva), based, *inter alia*, on the reason that the applicants had not paid the 1% court tax over the claim granted by the arbitral award.

In the decision No 6 dated 1 June 2011, the High Court overruled the above decision of the Tirana Court of Appeal. Unfortunately, the grounds for this decision were not related to the request for payment of the court fee.

To this date, no unifying court decision has been rendered on the matter in Albania. Although in the vast majority of cases, the payment of the court fee is not required, the issue still remains unclear.

2.3 The grounds for refusal of enforcement of a foreign arbitral award under Albanian law

As mentioned above, under Article 394 of the ACPC, the Court of Appeal shall recognise and declare an international arbitration award enforceable, unless the court assesses that:

- (a) according to Albanian law, the foreign court (of arbitration) was not competent for the matter; or
- (b) the claim and the claim notice has not been properly and timely notified to the absent defendant, to allow it properly to present its defense; or
- (c) the Albanian courts have already issued a diverging decision between the same parties in relation to the same matter and scope;
- (d) the Albanian courts are hearing a claim which has been filed prior to the date upon which the foreign judgement (arbitral award) became final; or
- (e) the foreign judgement (arbitral award) became final contrary to the law of the jurisdiction in which it has been taken; or
- (f) the foreign judgement is not compliant with the fundamental principles of the Albanian legislation (the public policy principle).

Further, in a unifying decision⁸ N° 6 dated 1 June 2011, the Albanian High Court stated that in cases related to the recognition of international arbitration awards, the court should also and always consider the requirements of Article 5 of the New York Convention.

The above “obstacles” to the recognition of foreign arbitral awards, as set out under the ACPC, may seem redundant and not fully in accordance with the provisions of the New York Convention.

For instance, the provisions of Article 394 (paragraphs a. and d.) of the ACPC seem to contradict the obligations imposed by the New York Convention, specifically with the obligation to exclude the jurisdiction of a national court when it is seized of an action in a matter in respect of which the parties concluded an arbitration agreement.

They also reopen the issue of verification of the jurisdiction of the arbitration tribunal. Based on the above provision of the ACPC, Albanian courts are granted such power given that they must refuse recognition of an award where the dispute concerned by the award might not be in the competence of the court of arbitration that has issued the award.

Further, the refusal of enforcement of an arbitral award due to the submission of a lawsuit with an Albanian court, before the date the arbitral award has become final, may be used intentionally as an artificial barrier to the enforcement of an award by the party against whom it is invoked. The party may file a lawsuit with an Albanian court deliberately and use this as ground to object to the enforcement of the foreign arbitral award issued over the dispute.

As an example, in the decision N° 122 dated 14 December 2010, the Tirana Court of Appeal assessed the issue of the existence of a parallel lawsuit pending before Albanian courts. The case concerned the recognition in the Republic of Albania of the ICC award N° 14869/A VH/JEM/GZ between *Rohde Nielsen A/S* and *the Ministry of Transport and Telecommunication of the Republic of Albania* dated 19 September 2009. The Court of Appeal found that “*there does not exist any pending process between these parties in an Albanian Court,*

⁸ Decisions of the Albanian High Court that unify court practice.

and the claimant has proved by a certification, issued by the Court of Tirana No 6115/1 dated 15.11.2010, which confirms that there is no pending civil lawsuit concerning Rohde Nielsen A/S.”.

Such verification implies that the Court of Appeal would have refused to recognise the arbitral award if the defendant had filed a lawsuit in front of Albanian courts against Rohde Nielsen A/S. This would be contrary to the spirit of the New York Convention which aims to facilitate the conditions for recognition and enforcement of foreign arbitral awards.

2.4 The concept of “public policy” under Albanian law

Regarding the last obstacle, set out under Article 394 (paragraph f.), it is important to note that the Albanian legislation does not provide a statutory definition of “public policy”. Taking into account that the provisions refers to “*the fundamental principles of the Albanian legislation*”, Albanian courts are not required to take into consideration “*international*” or “*transnational*” public policy, unless such public policies are part of binding international law provisions according to the Albanian Constitution.⁹

The general approach that Albanian courts have with respect to the term “*the fundamental principles of the Albanian legislation*” is that the “*orders contained in a decision of a court of a foreign jurisdiction must not conflict with the laws of the Republic of Albania. The rules applied by the foreign court under the foreign law are not relevant. What is relevant is that the effects of the recognition and enforcement of the foreign decision must not conflict not only with the basic principles, such as jurisdiction, competence, court independence, equality in front of the law, access to justice, adversarial proceedings etc., but also with other principles of the Albanian material law, which would be relevant for the case*”.¹⁰

The concrete manifestations of public policy exception that we have encountered, mostly refer to adoption matters.¹¹ This is mostly due to different migration waves, which Albania has faced in the last 20 years and to the economic situation of Albania, which causes that the substantial majority of cases of recognition and enforcement of foreign judgments relate to family matters. Moreover, the number of cases of recognition and enforcement of foreign judgements is still higher than the number of cases of recognition and enforcement of international arbitration awards.

With respect to business transactions, we have encountered very few cases where the public policy exception has been raised by Albanian courts. One such concrete manifestation of the public policy exception referred to a case related to the recognition of an international arbitral award dated 1993. In the case Iliria Srl against the Council of Ministers of Albania, the public policy argument used by the court in this case was that when the dispute arose, the Albanian legislation did not recognize the resolution of disputes through international arbitration, but only through Albanian courts. The case was finally dismissed on procedural grounds.

Another such manifestation of the public policy exception concerned the enforcement of an arbitral award relating the liquidation of a joint venture company. In its decision No. 82 dated 7 September 2007 between I.C.M.A. s.r.l. AGRI. BEN S.A.S. and the Albanian Ministry of Agriculture, the Tirana Court of Appeal refused recognition and enforcement of an arbitral award, *inter alia*, on public policy grounds. The court considered that disputes related to liquidation procedures of an Albanian company were to be settled by the Albanian courts under the Albanian company law. Despite this *obiter dictum/ratio decidendi*, a careful analysis of the case shows that the dispute did not relate to actual liquidation procedures of the company (I.C.M.A. s.r.l.), but instead to the breach of shareholders’ duties, which thereafter caused financial losses and going concern issues.

⁹ International agreements ratified by law become part of the internal legislation.

¹⁰ Decision N° 342 dated 27.10.2009 of the Albanian Supreme Court.

¹¹ Under Albanian law, adoption is only available for underage persons. As such, Albanian courts have developed a constant approach that any foreign court decision providing for adoption of a person that is 18 years or older should not be recognized and enforced in Albania, as its effects would conflict with the principles of Albanian material law relevant for the case, which should be the Family Code.

In its decision No. 6 dated 1 June 2011, the Supreme Court overruled the Court of Appeal decision refusing to recognize the arbitral award on procedural grounds. The Supreme Court did not discuss the public policy exception argument for this case. The matter was then returned to the Court of Appeal which finally refused to recognise the arbitral award on other procedural grounds.

It must be noted that in both of the above discussed cases, the defendant was a body of the Albanian government. Hence, the possibility that the public policy exception was improperly used by the courts to protect the interest of the State should not be excluded.

2.5 The burden of proof

The ACPC does not provide which of the parties has the burden of proof regarding the grounds for refusal, mentioned above. In fact, Article 397 of the ACPC provides that *"the Court of Appeal examines whether the present award applied for enforcement does not contain provisions that conflict with Article 394"*. Based on a literal interpretation of this provision, the Court of Appeal may examine the existence of the grounds of refusal *ex officio*, *i.e.*, without the request of the interested party.

The New York Convention, on the other hand, is very clear on this point. Article V provides that it is up to *"the party against whom the award is invoked"*: first, to make a request for refusal of the arbitral award applied for enforcement and second, to submit evidences to the competent authority to prove the grounds of refusal.

3. Conclusion

The provisions of Albanian law regulating the issue of recognition and enforcement of foreign arbitral awards show some inconsistencies with the New York Convention that need to be addressed in an upcoming reform. More urgently, a law reform is necessary to regulate both domestic and international arbitration proceedings. The prompt adoption of such regulations has become a necessity in the present conditions of the Albanian economy of continuous increase of international trade relations.