

The International Comparative Legal Guide to:

# Competition Litigation 2009

A practical insight to cross-border Competition Litigation



Published by Global Legal Group with contributions from:

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# Albania

Renata Leka



Gerhard Velaj



## Boga & Associates

### 1 General

1.1 Please identify the scope of claims that may be brought in Albania for breach of competition law.

Law no. 9121 dated 28.07.2003 “On Competition Protection” as amended (the “Competition Law”) governing competition issues in Albania, sets forth that any person who is hindered in performing its activity due to a prohibited agreement or by an abusive practice may present to the Tirana District Court a lawsuit requesting: (i) removal or prevention of the competition restricting practices that may be carried out or are carried out in breach of the law; (ii) compensation or payment of damages relief in accordance with relevant provisions of the Civil Code.

1.2 What is the legal basis for bringing an action for breach of competition law?

Actions for breach of competition law are based on: (i) Law no. 9121 dated 28.07.2003 “On Competition Protection” as amended; (ii) Law no. 8116 dated 29.03.1996 “Civil Procedure Code of the Republic of Albania” as amended (hereinafter “Civil Procedure Code”); and (iii) Law no. 7850 dated 29.07.1194 “Civil Code of the Republic of Albania” as amended (hereinafter “Civil Code”).

1.3 Is the legal basis for competition law claims derived from international, national or regional law?

The legal basis for Competition Law derives from the national law.

1.4 Are there specialist courts in Albania to which competition law cases are assigned?

There are no specialist courts in Albania to which competition law cases are assigned. Competition Law entitles Tirana District Court to examine the competition law cases. According to the provisions of the Civil Procedure Code the commercial section of Tirana District Court is entitled to examine the competition law cases.

1.5 Who has standing to bring an action for breach of competition law and what are the available mechanisms for multiple claimants? For instance, is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation?

The Competition Law provides that any person may present a lawsuit in front of the court when the performing of the activity is hindered due to a prohibited agreement or by an abusive practice.

Additionally, Civil Procedure Code provides that the claim may be submitted to the Court from more than one plaintiff or against more than one defendant if: (a) they have shared rights or shared obligations over the subject of the lawsuit; and (b) their rights or obligations from the facts or law point of view have the same base.

1.6 What jurisdictional factors will determine whether a court is entitled to take on a competition law claim?

The Albanian Competition Law does not provide for the jurisdictional factors that will determine the competence of the court on the competition law cases.

The Competition Law provides that only Tirana District Court is entitled to take on competition law cases, pursuant to the general provisions of the Civil Procedure Code.

1.7 Is the judicial process adversarial or inquisitorial?

The Albanian judicial process is adversarial.

### 2 Interim Remedies

2.1 Are interim remedies available in competition law cases?

Yes, interim remedies are available in the competition law cases.

2.2 What interim remedies are available and under what conditions will a court grant them?

Competition Law provides that when facing serious and non-reparable damage and when cases of prohibited agreements and abusive practice of dominant position as defined in the Competition Law are likely to occur, the Court, upon request of the plaintiff, may issue temporary injunction orders evaluated as appropriate for the case.

### 3 Final Remedies

**3.1 Please identify the final remedies which may be available and describe in each case the tests which a court will apply in deciding whether to grant such a remedy.**

Tirana District Court, upon request of the plaintiff for the removal or prevention of the restricting practices may decide that:

- a. the agreement breaching the competition law is entirely or partially null and void, with retroactive effects; and/or
- b. the undertaking which has breached the competition law has the right to contact with the hindered undertaking under the common trade conditions.

The above cases are indicative and the court may decide for other remedies depending on the specific case. Additionally, the Court may also decide on compensation or payment of damages relief, in accordance with relevant provisions of the Civil Code.

**3.2 If damages are an available remedy, on what bases can a court determine the amount of the award? Are exemplary damages available?**

The Civil Code provides that the damages will be awarded from the effective/direct damage as a result of the decline in property value and the lost income/profits.

Additionally, the Civil Code defines loss of profit as the profit that would have been generated from performance of the activity “under common conditions of the market” if the damage has not occurred. The Civil Code does not determine the method of the calculation of the loss of profit. In Albania, there are no exemplary damages available.

**3.3 Are fines imposed by competition authorities taken into account by the court when calculating the award?**

When calculating the award the court proceeds according to the provisions of the Civil Code. The fines imposed by the competition authority are not taken into consideration.

### 4 Evidence

**4.1 What is the standard of proof?**

The Civil Procedure Code provides that the judge grounds its decision on the facts presented in the legal proceeding. Additionally, the evidences should be taken in accordance with the provisions of the Civil Procedure Code.

According to the Civil Procedure Code proof constitutes the: (i) party’s confessions; (ii) witness testimony; and (iii) documents and the expert opinion.

**4.2 Who bears the evidential burden of proof?**

The plaintiff bears the burden of proof.

**4.3 Are there limitations on the forms of evidence which may be put forward by either side? Is expert evidence accepted by the courts?**

The parties may submit to the court any evidence that is considered as proof according to the Civil Procedure Code such as: (i) party’s

confessions; (ii) witness testimony; and (iii) documents and the expert evidence. The documents should be in original or notarised copy and in case of documents in foreign languages a certified translation into Albanian is required by the court.

**4.4 What are the rules on disclosure? What, if any, documents can be obtained: (i) before proceedings have begun; (ii) during proceedings from the other party; and (iii) from third parties (including competition authorities)?**

Pursuant to the Civil Procedure Code, the documents should be disclosed by the parties to each other during the preliminary hearing of the Court proceeding. The Court upon request of the interested party may order the other party or a third party, which does not participate in the court proceeding, to submit documents when they are deemed as necessary by the Court. Additionally, the Court may officially request to the public administration authorities written information on the documents that are in their files.

**4.5 Can witnesses be forced to appear? To what extent, if any, is cross-examination of witnesses possible?**

Yes, witnesses can be forced to appear in front of the Court when they refuse to testify without reasonable grounds. Additionally, a fine is applied to the witnesses by the court. The cross-examination is admitted in case the testimonies of the witnesses are contradictory. The cross-examination is performed *ex partes* or *ex officio* by the court.

**4.6 Does an infringement decision by a national or international competition authority, or an authority from another country, have probative value as to liability and enable claimants to pursue follow-on claims for damages in the courts?**

The infringement decision issued by a national and international competition authority may be presented at the Court as evidence by the claimant. However such decisions are not binding for the Court in taking its final decision.

**4.7 How would courts deal with issues of commercial confidentiality that may arise in competition proceedings?**

As a general rule, the court process is opened to the public. Nevertheless, the court may decide to judge the case with closed doors when the publication of commercial confidentiality and industrial inventions may violate interests that are protected by law.

### 5 Justification / Defences

**5.1 Is a defence of justification/public interest available?**

The Albanian legislation does not contain any provisions on the defence of public interest in the competition law cases.

**5.2 Is the “passing on defence” available and do indirect purchasers have legal standing to sue?**

The “passing on defence” is not explicitly provided by the Albanian legislation. Nevertheless according to the Civil Procedure Code anyone may intervene in the court proceeding, when whole or part of the rights object of the claim is claimed by the intervener. The

latest may present a lawsuit against one or both parties in the court proceeding.

## 6 Timing

### 6.1 Is there a limitation period for bringing a claim for breach of competition law, and if so how long is it and when does it start to run?

Competition Law does not provide for any specific limitations; thus, the provisions of the Civil Code apply. According to the article 114 of the Civil Code the limitation period for bringing a claim for breach of competition is 10 years.

In case of tortious liability, according to the article 115 of the Civil Code, actions claiming damages relief are subject to a limitation of 3 years, while for contract breaches the limitation period for claiming damages relief is limited to a period of 10 years.

The limitation period for such damages actions starts running from the date when the claimant is or should have been aware of the damage and the person who caused the damage.

### 6.2 Broadly speaking, how long does a typical breach of competition law claim take to bring to trial and final judgment? Is it possible to expedite proceedings?

Since the Competition Law is relatively new and only few competition claims are brought to the court, it is not possible to provide for a consistent timeframe of the trial and final judgment.

Based on our judiciary practice, claims arising from matters other than competition law infringement before the District Courts last approximately 3-6 months. The hearing of the appeal before the Appeal Court takes place within 6-12 months from the filing of the appeal and the Appeal Court decision might be rendered at usually on the hearing date. The Appeal Court usually delivers the written decision within 30 days from the appeal process commencement.

Whilst for the Supreme Court, the case will not be examined before 1 year. Usually the Court decides upon the examined issues in one or two hearing séances.

The Albanian Civil Procedures Code does not provide specific time frames for interim measures and court injunctions, whilst from the judiciary practice such claims results to be examined within a timeframe of 10 days from the day of filing of the interim measures request.

## 7 Settlement

### 7.1 Do parties require the permission of the court to discontinue breach of competition law claims (for example if a settlement is reached)?

Competition Law does not require the parties to obtain the permission of the Court to discontinue the breach of the competition law claims.

## 8 Costs

### 8.1 Can the claimant/defendant recover its legal costs from the unsuccessful party?

The Albanian Civil Procedure Code provides for the obligation of

the unsuccessful party to pay the legal costs.

Notwithstanding the above, in cases where the claim is partially accepted or when the court decides that there are justified reasons, it might decide that the costs should be paid by the unsuccessful party in proportion with the accepted claim, or for each party to pay its own legal costs.

### 8.2 Are lawyers permitted to act on a contingency fee basis?

Law no. 9109, dated 17.07.2003, "On the legal profession in the Republic of Albania" provides that the remuneration for the service rendered by the lawyers is defined: (i) in agreement between the client and the lawyer; (ii) by the court or the prosecutor's office when the lawyer is nominated *ex officio*; and (iii) by law.

Law no. 9109 does not provide specific regulation/prohibition on the contingency fee, but allows the parties to define the fee in agreement with each other.

### 8.3 Is third party funding of competition law claims permitted?

Competition Law does not provide for any provisions ruling the third party funding of claims.

## 9 Appeal

### 9.1 Can decisions of the court be appealed?

Pursuant to the Albanian Civil Procedure Code the District Court final decisions can be appealed within 15 days to the Court of Appeal, while the Appeal Court final decisions can be appealed within 30 days to the Supreme Court, for specific reasons defined in the Civil Procedure Code.

Furthermore, the Civil Procedure Code provides for the cases when the appeal against the District Court decision is filed directly with the Supreme Court.

## 10 Leniency

### 10.1 Is leniency offered by a national competition authority in Albania? If so, is (a) a successful and (b) an unsuccessful applicant for leniency given immunity from civil claims?

Article 77 of the Competition Law governs leniency issue. In addition the Albanian Competition Authority has passed a special Regulation "On fines and leniency".

The law provides that the applicant is not immune from civil claims, despite the procedure initiated with the competition authority.

### 10.2 Is (a) a successful and (b) an unsuccessful applicant for leniency permitted to withhold evidence disclosed by it when obtaining leniency in any subsequent court proceedings?

The Competition Law and the Regulation "On fines and leniency" do not provide any rules concerning the disclosing of evidence.

On the other hand, the Civil Procedure Code empowers the Court to order the leniency applicant, upon the request of the other party, to submit such evidence in the Court hearing.



### Renata Leka

Boga & Associates  
Deshmoret e 4 Shkurtit  
PO Box 8264  
Albania

Tel: +355 4225 1050  
Fax: +355 4225 1055  
Email: rleka@bogalaw.com  
URL: www.bogalaw.com

#### Work experience:

Boga & Associates (1997-present).  
Lecturer of "Albanian Business and Labor Law" at University of New York in Tirana (2004-present).  
Attorney, Krisafi Law Offices (1996-1997).

#### Key qualifications:

Ms. Leka is a legal manager in Boga & Associates. Her practice focuses on competition, banking, corporate and finance, including syndicated lending, project finance, structured finance and issues of debt securities.

She has acquired sound experience in Competition law, Commercial law, Banking and Finance, Intellectual Property law, Mergers and Acquisitions, Privatisations, Litigation etc. She has managed a variety of finance transactions involving corporate governance issues and diligences, secured loan facilities and security packages with respect to commercial property and assignment of contractual interests.

She has advised clients regarding the legal and regulatory framework on competition, antitrust issues, trademarks and other issues related to intellectual property rights.

Ms. Leka is a member of the Tirana Bar.

#### Education:

Law Faculty, University of Tirana, Albania (1996).  
The College of Law of England and Wales; Practice Diploma in International Intellectual Property Law (2006).

#### Languages:

Albanian, English, Italian.



### Gerhard Velaj

Boga & Associates  
Deshmoret e 4 Shkurtit  
PO Box 8264  
Albania

Tel: +355 4225 1050  
Fax: +355 4225 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 competition, banking and finance, real estate, taxation, and commercial/corporate disputes.

Mr. Velaj has managed a number of legal advices regarding banking issues, property disputes, real estate development issues etc. He was involved in a few competition litigation cases in Albania mainly interim injunction orders.

#### Education:

Law Faculty University of Tirana, Albania (1998).

#### Languages:

Albanian, English, Italian.

## BOGA & ASSOCIATES

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The practice maintains its commitment to quality through the skills and determination of a team of attorneys and other professionals with a wide range of skills and experience.

Boga & Associates represents a broad spectrum of high-profile clients, including financial institutions, local and international, banking entities, commercial companies, international and governmental agencies, airlines, industrial complexes, mining and petroleum concerns, non-profit organisations, embassies, public utilities.

Over the years the firm has advised in the areas of privatisation of national resources and enterprises, concessions, real estate transactions, credit facilities, custom issues, tax and accounting issues etc.

During 2007 and 2008 Boga & Associates was rated as the best legal firm in Albania from Chambers and Partners and International Financial Law Review (IFLR) in the fields of Corporate, Finance, Dispute Resolution, Real Estate and Intellectual Property.