



ICLG

The International Comparative Legal Guide to:

Litigation & Dispute Resolution 2014

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A practical cross-border insight into litigation & dispute resolution work

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Simon Lemos

Group Consulting Editor

Alan Falach

Group Publisher

Richard Firth

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
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General Chapter:

- | | | |
|---|--------------------------------------------------------------------------------------------------------------------------------------------|---|
| 1 | The Norwich Pharmacal Order and Disclosure in UK Civil Proceedings – Greg Lascelles & David Thomas, King & Wood Mallesons SJ Berwin | 1 |
|---|--------------------------------------------------------------------------------------------------------------------------------------------|---|

Country Question and Answer Chapters:

2	Albania	Boga & Associates: Gerhard Velaj & Valbona Gjonçari	5
3	Algeria	Bouchaib Law Firm: Adnane Bouchaib	12
4	Argentina	M. & M. Bomchil: María Inés Corrá	20
5	Australia	Clayton Utz: Colin Loveday & Scott Grahame	27
6	Austria	Oblin Melichar: Dr. Klaus Oblin	36
7	Belarus	Sysouev, Bondar, Khrapoutski SBH: Timour Sysouev & Alexandre Khrapoutski	43
8	Belgium	Allen & Overy LLP: Koen Van den Broeck & Thales Mertens	55
9	Brazil	Pinheiro Neto Advogados: Gilberto Giusti & Ana Carolina Beneti	62
10	Canada	Blake, Cassels & Graydon LLP: Ryder Gilliland & Adam Lazier	70
11	Chile	Ovalle Ugarte & Letelier Abogados: Esteban Ovalle Andrade & Gianfranco Gazzana Berenguer	78
12	Croatia	Macesic & Partners Law Offices: Anita Krizmanic & Ivana Manovelo	86
13	England & Wales	King & Wood Mallesons SJ Berwin: Greg Lascelles & David Thomas	93
14	Estonia	Aivar Pilv Law Office: Pirkka-Marja Pöldvere & Aivar Pilv	104
15	Finland	Attorneys at Law Borenus Ltd.: Kristiina Liljedahl & Niki J. Welling	113
16	France	Latournerie Wolfrom & Associés: Julien de Michele & Chantal Cordier-Vasseur	121
17	Germany	Gleiss Lutz: Michael Christ & Claudia Krapfl	132
18	Ghana	Sam Okudzeto & Associates: Nene Amegatcher & Esine Okudzeto	140
19	Japan	Iwata Godo: Shinya Tago & Ryohei Kudo	147
20	Kazakhstan	SIGNUM Law Firm: Talgat Sariev	154
21	Liechtenstein	Wolff Gstöhl Bruckschweiger Advokaturbüro: Christoph Bruckschweiger	161
22	Lithuania	Motieka & Audzevičius: Ramūnas Audzevičius & Mantas Juozaitis	168
23	Macedonia	Debarliev, Dameski and Kelesoska Attorneys at Law: Elena Nikodinovska & Ivan Debarliev	176
24	Mexico	Portilla, Ruy-Diaz y Aguilar, S.C.: Carlos Fernando Portilla Robertson & Enrique Valdespino Pastrana	185
25	Morocco	Hajji & Associés: Amin Hajji & Salma Bedraoui Idrissi	193
26	Nigeria	Banwo & Ighodalo: Abimbola Akeredolu & Chinedum Umeche	200
27	Peru	CASAHIERRO Abogados: Javier Lozada Paz	210
28	Romania	CHIURIU & ASSOCIATES Attorneys at Law: Dr. Tudor Chiuriu	218
29	Russia	Quinn Emanuel Urquhart & Sullivan, LLP: Ivan Marisin & Vasily Kuznetsov	225
30	Slovenia	CMS Reich-Rohrwig Hainz: Luka Fabiani & Irena Šik	233
31	South Africa	Brian Kahn Inc. Attorneys: Brian Kahn & Nicqui Galaktiou	241
32	Spain	Dentons: Julio Parrilla & Arancha Barandiarán	248
33	Sudan	AZTAN Law Firm: Tayeb Hassabo Abdulla & Abdullah Al-Radi	256
34	Sweden	Advokatfirman Vinge: Krister Azelius & Lotta Knapp	263
35	Switzerland	Schellenberg Wittmer Ltd: Alexander Jolles & Hannah Boehm	270
36	Ukraine	Vasil Kisil & Partners: Oleksiy Filatov & Andriy Stelmashchuk	279
37	USA - California	Gibson, Dunn & Crutcher LLP: Jeffrey H. Reeves & Joshua A. Jessen	289
38	USA - Connecticut	Shipman & Goodwin LLP: Frederick S. Gold & Alison P. Baker	299
39	USA - Massachusetts	Collora LLP: Michael A. Collora & Maria R. Durant	308
40	USA - New York	Cozen O'Connor: Martin F. Gusy & Matthew J. Weldon	315
41	USA - Pennsylvania	Drinker Biddle & Reath LLP: Michael W. McTigue Jr. & Jennifer E. Burke	325
42	USA - Washington, D.C.	Skadden, Arps, Slate, Meagher & Flom LLP: Gary A. Rubin	332
43	Venezuela	Pittier, Almandoz y Eliaz, S.C.: Alfredo Almandoz Monterola & Juan Manuel Silva Zapata	341

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Albania

Boga & Associates

Gerhard Velaj



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 the CPC), approved with law no.7850, dated 29.07.1994, amended by law no.8536, dated 18.10.1999, law no.8781, dated 03.05.2001, law no.17/2012 and law no.121/2013.

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 Organization 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) the Supreme Court.

The first instance 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 civil disputes; (ii) section for family disputes; and (iii) section for commercial disputes.

With the law no.49/2012 “On Organization and Functioning of the Administrative Courts and Adjudication of the Administrative Disputes”, the specialised courts for adjudication of administrative disputes are established.

Administrative courts are organised as: (i) Administrative Courts of First Instance; (ii) the Administrative Court of Appeal; and (iii) the Administrative College of Supreme Court.

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: (i) filing of the lawsuit with the court; (ii) notification of the lawsuit to

the defendant and other parties; (iii) preliminary hearing (i.e. exchange of evidences between the parties); (iv) judicial hearings and examination; (v) last conclusions; and (vi) final decision. Based on our judiciary practice, the preliminary hearing can take place within 1.5 months from the filing of the lawsuit with the court by the plaintiff. The duration of the proceedings in the First Instance Court may last approximately 6-12 months, while a 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 may be examined within 3-4 years.

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

The jurisdiction of Albanian courts is regulated by article 37 of the CPC, which provides that the jurisdiction of Albanian courts cannot 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.

The exclusive jurisdiction of Albanian courts is also regulated by the law no.10428, dated 02.06.2011 “On Private International Law”, which provides for several cases when the Albanian courts have exclusive jurisdiction.

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

The costs of civil proceedings in Albania are: (i) the judicial tax, expenses for the acts to be carried out (i.e. notification); (ii) the costs for the acts of expertise; and (iii) the lawyers' fees and other necessary expenses occurred during the trial (i.e. expenses for witnesses, different examinations).

The judicial tax is calculated according to the value of the claim. For claims with value up to ALL 100,000, the judicial tax is ALL 3,000, whilst for claims with a value exceeding the amount of ALL 100,000, the judicial tax is 1% of the value of the claim. Such tax is paid by the plaintiff upon filing the claim.

The CPC provides for the obligation of the unsuccessful party to pay the legal costs.

Despite the above, in cases where the claim is partially accepted or when the court finds justified reasons, it 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 contingency fee/conditional fee arrangements permissible? What are the rules pertaining to security for costs?

There are no particular rules about funding litigation in Albania. Under the CPC, 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 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 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) by the court and the prosecutor's office when the lawyer is nominated *ex officio*; and
- (iii) by law.

The Albanian legislation does not provide any concrete regulation regarding security costs.

1.7 Are there any constraints to assigning a claim or cause of action in Albania? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

The Albanian legislation does not provide for such a procedure.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

It is not obligatory for the pre-action procedures to be followed by the parties. Under the 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.

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 claims.

The limitation term to file claims deriving from the payment of contractual penalty clauses is 6 months; 1 year for claims deriving from consignment contracts; 6 months for claims deriving from transport contracts of either goods or travellers by railway, vehicles or airplanes; 2 years for claims for the payment of compensations from insurance and reinsurance contracts; 3 years for claims for payment deriving from rent contracts (i.e. apartments, shops and other immovable property); 3 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 terms or any other provision defined in the Civil Code cannot be changed upon agreement of the parties.

The limitation term for claims regarding administrative issues is 45 days from the date of the announcement of the decision of the higher administrative organ which has considered the complaint at an administrative level.

Under the Civil Code the limitation term starts from the day when the subject 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.

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 parties of the date of the preliminary hearing. The notification is made by the court officer or through the mail service. 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.

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 the 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 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:

- a. seizure of the debtor's assets; and
- b. other appropriate measures taken by the court, including the suspension of execution.

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

Under article 154 of the CPC, 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; and a list of witnesses the plaintiff requires to summon to the court.

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

Article 185 of the CPC provides that the plaintiff, during the judicial proceedings, has the right to add, reduce or amend the cause of action of the claim without changing its legal base.

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?

The main elements of defence are the counterarguments and the counterclaim. The defendant has the right to file 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 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 a 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 article 184 of the CPC, when it emerges during the 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.

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

Under the CPC 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.

4.5 Can the defendant dispute the court's jurisdiction?

The defendant has the right to dispute the jurisdiction of the court. The court, also at any stage of the proceedings, can verify whether the case 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, 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 claims partially or

totally the right, subject of the dispute. According to article 189 of the CPC, 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.

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

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 two sets of proceedings when they have connected subjects (article 57 of the CPC).

5.3 Do you have split trials/bifurcation of proceedings?

According to article 159 of the CPC, 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.

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 article 320 of CPC, the sections are divided as follows:

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

Regarding the administrative disputes, please refer to part I, question 1.2 above.

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, may rule on the following interim applications:

- interim injunction;
- 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 procedure rules;
- unification of claims;
- bifurcation of the case; and

- suspension of the trial process.

Regarding the cost consequences, please refer to part I, 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.

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, or the claim has been filed beyond the legal terms.

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 cannot be solved prior to the termination of another 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 it is necessary to appoint a legal representative for this party; and
- it 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
- it 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 proceedings.

The parties should disclose only evidences relevant to the dispute. They are 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 cannot be summoned to testify on information they have received in their capacity as 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. 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 underage persons or the private life of the parties and other persons involved in the process; when involving commercial secrets or industrial patents, of 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 request of the interested party, may order a third party to submit documents when deemed as necessary. The court may also officially request the public administration authorities to provide the documentation kept on their files or information upon such documentation, if necessary for the proceeding.

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.

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 this proceeding and for no other purposes. However, in cases when disclosure 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 adjudication process by presenting to the court only evidences related and necessary for the case.

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

The evidences should be submitted in accordance with the provisions and principles of the CPC.

Constitute evidence includes 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, a certain expertise in science, technical issues or art is required.

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 cases where the proof is specifically required through the documents. The court may summon witnesses upon request of the parties. The witnesses are questioned in the hearing, in the presence of the parties and their representatives.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Does the expert owe his/her duties to the client or to the court?

Under the CPC, the court appoints the duties to the expert, after taking the parties' opinion. The expert provides a written report. The court and the parties may address questions to the experts regarding the expert's report.

The expert bases his report on the evidences submitted by the parties. 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 is assessed by the court in conjunction with the other evidences.

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

The court plays a supportive role during the disclosure process. The court issues orders for disclosure of evidence by the parties or third persons, if necessary.

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 issues orders, non-final decisions and the final decision. The orders are taken by the court in order to ensure that the judgment is carried out in compliance with the provisions of the CPC.

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

Upon the final decision the court thoroughly resolves the case.

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

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

9.3 How can a domestic/foreign judgment be enforced?

Under the CPC a domestic judgment can be enforced by the bailiff, upon request of the interested party.

A foreign judgment can be enforced in Albania after being

recognised by the competent Court of Appeal, in accordance with the provisions of the CPC.

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

The final decisions of the First Instance Court can be appealed by the parties to the Appeal Court, within 15 days.

The Appeal Court's decisions can be appealed to the Supreme Court within 30 days.

II. ALTERNATIVE DISPUTE RESOLUTION

1 Preliminaries

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

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

Parties may agree to resolve any potential disputes by arbitration.

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

Mediation is applicable in 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 cases when it is required by the court.

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

Arbitration proceedings in Albania are governed by the CPC.

Mediation is regulated by law no.10385, dated 24.02.2011 "On disputes resolution through mediation".

1.3 Are there any areas of law in Albania that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

Criminal law does not provide for any of the above alternative dispute resolution methods.

1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court - pre or post the constitution of an arbitral tribunal - issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, will the court force parties to arbitrate when they have so agreed, or will the court order parties to mediate or seek expert determination? Is there anything that is particular to Albania in this context?

Under the CPC provisions, the court invites the parties to solve the dispute through mediation. The court may issue interim measures provided by the law (pre or post the constitution of an arbitral tribunal) until the tribunal award is not final.

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

- 1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to Albania in this context?**

Under the CPC, the arbitral awards are final and enforceable, except in cases where the law provides for the right of appeal against such awards with the Appeal Court (article 434 of the CPC).

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

2 Alternative Dispute Resolution Institutions

- 2.1 What are the major alternative dispute resolution institutions in Albania?**

The CPC does not provide for consolidated institutions for dispute resolution through arbitration. The arbiters are appointed *ad hoc* by the parties pursuant to the provisions of the CPC.

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.

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

Please refer to part II, question 1.5 above.

3 Trends & Developments

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

Dispute resolution through arbitration proceedings or mediation is not a commonly used method in Albania. For dispute resolution, the parties usually address the courts.

However, given 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 method is increasing in consideration.

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

Considering that dispute resolution through arbitration or mediation is not widely practised in Albania, there are no current issues or proceedings that have affected the use of such dispute resolution methods.

**Gerhard Velaj**

Boga & Associates
Ibrahim Rugova Str.
P.O. Box 8264
Tirana
Albania

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

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

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

Gerhard represents international clients in courts of all levels, in cases related mainly to banking and finance, real estate, taxation, competition, intellectual property and all sorts of other commercial/corporate disputes.

Additionally, he performed a number of legal due diligences regarding real estate development issues, property disputes, banking issues, intellectual property, etc.

Gerhard earned a Bachelor Degree in Law, at the Law Faculty, University of Tirana, Albania (1998).

He is a member of the Albanian Bar Association and a member of the International Bar Association.

Gerhard is fluent in English and Italian.

**Valbona Gjonçari**

Boga & Associates
Ibrahim Rugova Str.
P.O. Box 8264
Tirana
Albania

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

Valbona is a Senior Associate at Boga & Associates, which she joined in 2005.

Her practice area focuses on litigation and alternative dispute resolution.

Valbona represents international clients at courts of all levels, in cases related mainly to real estate, taxation, employment, civil disputes and all sorts of other corporate/commercial disputes.

She was also involved in a range of legal due diligences regarding real estate development issues, property disputes, banking issues, intellectual property, etc.

Valbona graduated in Law at the Law Faculty, University of Tirana, Albania (2002).

She is a member of the Albanian Bar Association (2004).

Valbona is fluent in English and Italian.

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Boga & Associates, established in 1994, has emerged as one of the premier law firms in Albania, earning a reputation for providing the highest quality legal, tax and accounting services to its clients. The firm also operates in Kosovo (Pristina) offering a full range of services. Until May 2007, the firm was a member firm of KPMG International and the Senior Partner/Managing Partner, Mr. Genc Boga, was also Senior Partner/Managing Partner of KPMG Albania.

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59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

www.iclg.co.uk