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Global Legal Group

## The International Comparative Legal Guide to: Telecommunication Laws and Regulations 2012

A practical cross-border insight into  
telecommunication laws and regulations

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# Kosovo

Sokol Elmazaj



Agron Krasniqi



## Boga & Associates

### 1 Framework

#### 1.1 What are the overall policies and objectives for the electronic communications industry and have these been published in draft or final form? What legislation is relevant to telecommunications and radio frequencies?

Law no. 2002/7 “On Telecommunications”, as amended (the “Telecommunications Law” and/or “Law”), and related secondary legislation serves as a guideline of policies and objectives for the electronic communications industry in Kosovo. Said Law and related secondary legislation governs telecommunications and radio frequencies in Kosovo. The Ministry of Development is empowered by the Law on Telecommunications (article 3) to define the policies of telecommunications in Kosovo and draft the secondary legislation related to the sector.

The Telecommunication Regulatory Authority, established as an independent entity, has the power and is responsible for implementation of the policies defined by the Ministry of Transport and Telecommunications, in compliance with the provisions of the Law, as well as to adopt secondary legislation in the form of administrative instructions and instructions (secondary legislation) necessary for implementation of the Law (article 3 of the Law).

The Telecommunications Law states at the very beginning that it aims to promote the investments and free competition in the market, establishing a transparent legal and regulatory environment, based on the Directives and Regulations of the European Union and other international telecommunications standards and practices.

#### 1.2 Is Kosovo a member of the World Trade Organisation? Has Kosovo made commitments under the GATS/GATT regarding telecommunications and has Kosovo adopted the WTO Basic Telecommunications Agreement?

The Kosovo State, whose independence was recognised internationally from a significant number of countries, is not yet a member of the World Trade Organisation, therefore no commitments are made under the GATS/GATT regarding telecommunications and/or the WTO Basic Telecommunications Agreement as of today.

However, Kosovo is part of the International Monetary Fund (IMF) and World Bank Group Organisations such as the International Bank for Reconstruction and Development (IBRD); the International Finance Corporation (IFC); the International Development Association (IDA); the Multilateral Investment Guarantee Agency (MIGA); and the International Centre for the Settlement of Investment Disputes (ICSID). Kosovo Parliament

passed Law no. 03/L-152 dated 29.05.2009, which authorised the government of the Kosovo to do all that is required for adhering to said organisations.

#### 1.3 How is the provision of electronic communications networks or services regulated? Is the provision of electronic communications networks or services open to competition in Kosovo?

The Telecommunications Law takes into account the Directives and Regulations of the European Union and other international telecommunications standards and practices with respect to the promotion of transparent market entry conditions and a competitive marketplace in the telecommunication industry in Kosovo (article 1.2).

#### 1.4 Which are the regulatory and competition law authorities? How are their roles differentiated? Are they independent from the government?

The regulatory body established by the Telecommunications Law to regulate and foster the development of the telecommunications sector in Kosovo is the Telecommunications Regulatory Authority (the “TRA”). In virtue of article 4/1 of the Law on Telecommunication, the Telecommunications Regulatory Authority (the “TRA”) is established as an independent regulatory body and shall implement the policies of the Government and the Ministry pursuant to the Telecommunications Law, and all other implementing legislation enacted pursuant thereto.

The competition body to ensure the development of a sound market economy in Kosovo by prohibiting acts that restrict, suppress or distort competition is the Kosovo Competition Authority, established by Law no. 2004/36; the Law on Protection of Competition (hereinafter “the law” or “Competition law”), dated 10.12.2010.

Therefore both these entities are independent governmental bodies.

#### 1.5 Are decisions of the national regulatory authority able to be appealed? To which court or body?

The official acts and decisions of the TRA are subject to judicial review and appeal by any legible party through administrative court procedures, as designated by the applicable laws in Kosovo (article 11.8).

## 2 Authorisation

### 2.1 What types of general and individual authorisations are used in Kosovo?

The Kosovo legislation does not provide for general and individual authorisations.

The providers of telecommunications services in Kosovo are eligible to offer networks and telecommunications services upon: (i) authorisation (i.e. the written permission issued by the TRA, acknowledging the registration of an operator's intention to provide telecommunications services to the community); and/or (ii) a licence (i.e. written permission issued by the TRA to a service provider required in all cases involving an end-resource, such as the right to use number or frequency allocation, and space on a utility pole, tower or in a conduit).

The authorisation comprises all and any kind of electronic communication networks and services that do not involve use by the provider of frequencies and numbers, whereas the licence is granted to those providers whose activity involves the use of end-resources.

- (i) Authorisation is issued subject to compliance with certain conditions, which include, at a minimum, applicant's agreement for the following:
  - a) to provide services to the public on a transparent, non-discriminatory basis;
  - b) to provide subscribers with a standard, non-discriminatory, written contract, which will be available to the TRA, upon request;
  - c) to implement systems that will ensure all subscribers receive detailed and accurate billing;
  - d) to establish an effective dispute settlement procedure for subscribers; and
  - e) to publish and provide adequate public notice of changes in access conditions, including tariffs, quality and availability of services.

The TRA establishes applicable classes or categories of services for authorisations, which may include the following:

- a) data services, including fixed packet- or circuit-switched data services offered to the public;
  - b) value-added data transmission services, including multimedia, internet and electronic mail;
  - c) value-added voice transmission services, such as store-and-forward and voicemail services, audio-text and tele-text services, video-conferencing, re-forwarding of messages, videophones;
  - d) premium rate services, such as shared cost, shared revenue or free-phone toll-free and calling cards; and
  - e) satellite personal communications services.
- (ii) The number of the licences that the TRA may grant is unlimited, except the technical limitations related to the efficient use of the radio frequency spectrum, as specified in the frequency spectrum resources plan. In the event of radio frequency limitation, the TRA selects licences by the way of the tender or auction process, pursuant to the applicable Law (article 22.2 of the Law).

Service providers seeking to provide telecommunications services that require a Licence under this Law shall prepare and deliver to the TRA a description of services and the general conditions that set out in detail the prices.

A licence is issued by the TRA, in case the provider possesses sufficient financial resources and technical capabilities to fulfil the conditions of the licence.

According to the TRA's regulation no. 180/07 dated 11.06.2007 "On fees payable by the providers applying for the telecommunications services", the providers of telecommunications service must pay the fee of EUR 50 (fifty) prior to their application with the TRA for being equipped with the licence and/or authorisation. This fee application is non-refundable in case the provider withdraws the application.

In 2005, the TRA passed the Regulation on Licences and Authorisations, which determines types of authorisations/licences – of which there are various types – which can be issued from TRA:

- (i) a licence for mobile telecommunications;
- (ii) a licence for paging services;
- (iii) a VSAT licence;
- (iv) a licence for public services for radio mobile networks;
- (v) a licence for linking and international equipment;
- (vi) a licence for international telecommunication services;
- (vii) a licence for national cable services;
- (viii) a licence for providing internet services; and
- (ix) a licence for services with added value.

### 2.2 Please summarise the main requirements of Kosovo's general authorisation.

Please refer to our comments in question 2.1 herein above.

### 2.3 In relation to individual authorisations please identify their subject matter, duration and ability to be transferred or traded.

Kosovo legislation does not provide for any specific individual authorisations. Please refer to our comments in question 2.1 herein above.

As regards the transfer or trade of licences and authorisations, it should be noted that according to article 26/3 of the Telecommunications Law, no licence shall be transferred to any person, including transfers pursuant to a judicially ordered liquidation, without the prior written consent of the TRA.

The law is silent regarding the transfer of the authorisation.

## 3 Public and Private Works

### 3.1 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

The TRA establishes the rules for use of the public and/or private-owned properties for the telecommunications services and service providers, including, but not limited to transmission towers for wireless services, utility pole attachments for wire-line services and other applicable infrastructure forms. The TRA also establishes rules for minimising the accidental destruction or damage of network facilities, including the underground or aerial transmission cables (article 27).

### 3.2 Is there a specific planning or zoning regime that applies to the installation of telecommunications infrastructure?

According to article 27 of the Telecommunications Law, the TRA shall establish rules for the use of publicly and privately controlled property with respect to telecommunications services and service providers, including, but not limited to, transmission towers for wireless services, utility pole attachments for wireline services and other applicable infrastructure forms. The TRA shall also establish



rules for minimising the accidental destruction or damage of network facilities, including, but not limited to, underground or aerial transmission cables. To the best of our knowledge such rules are not published by the TRA.

Moreover, article 22/7 (e) of the Telecommunications Law states that subject to the licence requirements the licensee must comply with the general conditions required for the protection of the environment and the planning regime as well as the sharing of the facilities relative to the telecommunication services.

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### 3.3 Are there any rules requiring established operators to share their infrastructure, e.g. masts, sites, ducts or cables (i.e. dark fibre)? Are there any proposals to mandate 'passive access' to such basic infrastructure?

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According to article 67 of the Telecommunications Law, the provider who has the licence to use radio frequencies must agree to joint use/share with any providers of the antenna facilities, devices and installations, taking into consideration the technical parameters.

In case the providers fail to enter into agreement for joint utilisation of antenna facilities, any of them may apply to the TRA to resolve the dispute according to procedures set forth in this Law.

Please also refer to our comments provided for questions 3.1 and 3.2 above.

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## 4 Access and Interconnection

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### 4.1 How is network-to-network interconnection and access mandated?

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Providers offering public telecommunication services are obliged to assure the network-to-network interconnection.

The service provider authorised to offer interconnection services must be registered at Kosovo's register of business organisation according to the UNMIK Regulation 2001/6 of 8 February 2001, and Law 02/L-123 "On Business Organizations", as amended, and pay the respective applicable fees (articles 40.1 (d); 40.2; and 40.3 of the Law).

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### 4.2 How are interconnection or access disputes resolved?

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According to article 11.2 of the Telecommunication Law, the TRA is in charge to resolve disputes between the telecommunication service providers, upon its own motion or based on the request of any of the service providers involved in the dispute.

The TRA within 6 (six) weeks following the application for dispute resolution must resolve either to accept or reject the application notifying the parties for the purposes therefore.

In case the application for dispute resolution is accepted by the TRA, the latter convene a hearing for the purposes of ascertaining all facts by the providers and resolve to either accept or reject the claim.

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### 4.3 Which operators are required to publish their standard interconnection contracts and/or prices?

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Service providers based on mutual negotiations enter into a written contract providing for the financial terms and technical conditions of network interconnection. This contract reflects all of the requirements set forth in this Law.

Subject to article 56.6 of the Law, the service provider, upon the written request of the TRA, shall supply the latter with any

contracts for interconnection so required. The interconnection contracts between the providers are made publicly available by the TRA, excluding the specific information deemed to be business confidential as identified and agreed by the parties (article 56.6).

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### 4.4 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?

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Service providers who have significant market power (i.e. the wholesaler) providing access interconnection must offer it on a cost-oriented basis. The TRA is in charge of reviewing the fees and stipulating the financial formula for cost allocation or imposing limits on the fees (article 53.3 of the Telecommunication Law).

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### 4.5 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

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According to article 42.1 of the Telecommunications Law, providers of public telecommunication networks and services must ensure appropriate separation of the organisational and accounting levels to facilitate the distribution of incomes, expenditures and costs for each telecommunications service performed. Further, the providers must annually audit the financial statements according to international accounting standards and as required by applicable Kosovo Laws or UNMIK Regulations, publish the audited financial statements and submit such annual report to the TRA.

Service providers of public telecommunications services with significant market power shall clearly separate the organisational structures and the financial records of its various activities in order to accurately account for the profits and losses of each individual commercial activity (article 45.3 of the Law).

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### 4.6 How are existing interconnection and access regulatory conditions to be applied to next generation (IP-based) networks?

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The Telecommunications Law is silent on access to regulatory conditions applicable to so-called next generation networks or IP-based networks.

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### 4.7 Are owners of existing copper local loop access infrastructure required to unbundle their facilities and if so, on what terms and subject to what regulatory controls? Are cable TV operators also so required?

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The Law is silent on requirements for cable TV operators.

Please refer to our comments in question 4.1 above.

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### 4.8 Are there any regulations or proposals for regulations relating to next-generation access (fibre to the home, or fibre to the cabinet)? Are any 'regulatory holidays' or other incentives to build fibre access networks proposed? Are there any requirements to share passive infrastructure such as ducts or poles?

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The Telecommunications Law is silent on provisions regarding next-generation access (fibre to the home, or fibre to the cabinet) and/or incentives to build fibre access networks and to the best of our knowledge there is no regulation proposed.

The Law is silent on requirements for passive infrastructure such as ducts or poles.

## 5 Price and Consumer Regulation

### 5.1 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

Service providers seeking to provide telecommunications services based on the licence issued by the TRA must deliver to the late description of services and the general conditions, providing in detail the prices for such services.

Pursuant to article 23 of the Telecommunications Law, the TRA must issue written approval of the prices provided by the service provider no later than after 7 (seven) days, unless the TRA determines that additional information and/or calculations are required.

The TRA may order the service provider to change the prices and conditions, even after the TRA's approval, if it determines that such changes are necessary to protect the end users and/or the competition in the market.

### 5.2 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?

Telecommunication services in Kosovo are based on the cost efficiency rule, meaning that for the same service offered by the same service provider the price must be equal throughout Kosovo territory (article 24 of the Law).

## 6 Numbering

### 6.1 How are telephone numbers and network identifying codes allocated and by whom?

Telephone numbers and network identifying codes are allocated by the TRA, which is in charge of administering the Plan of Numbering, and ensures the efficient use of the numbers/serial numbers by the providers of telecommunication services in Kosovo (article 37 of the Telecommunication Law).

### 6.2 Are there any special rules which govern the use of telephone numbers?

The use of numbers and serial numbers must have prior approval from the TRA.

The TRA is in charge of preparing the plan numbering and assigning numbers to the service providers on a non-discriminatory basis (article 37.1 of the Law).

### 6.3 How are telephone numbers made available for network use and how are such numbers activated for use by customers?

The Telecommunications Law is silent on the procedures of numbers activation for use by the customers.

### 6.4 What are the basic rules applicable to the 'porting' (i.e. transfer) of telephone numbers (fixed and mobile).

The TRA assigns the numbers for an indefinite period of time.

According to article 39 of the Telecommunication Law, the assignment of numbers by a service provider is not transferable,

except in the following cases:

- (i) the subscriber of a fixed public telephone network wishing to change the service provider of the telecommunication services is eligible to keep the geographical numbers assigned, provided he/she stays within the same geographical location; or
- (ii) the subscriber possesses non-geographical numbers, in which case he/she may port the number assigned when the service provider of the telecommunication is changed.

## 7 Submarine Cables

### 7.1 What are the main rules governing the bringing into Kosovo's territorial waters, and the landing, of submarine cables? Are there any special authorisations required or fees to be paid with respect to submarine cables?

The Telecommunications Law is silent on any rules governing the bringing of the submarine cables into Kosovo's territorial waters; this is due to the geographic position of the Republic of Kosovo located on the mainland.

## 8 Radio Frequency Spectrum

### 8.1 Is the use of radio frequency spectrum specifically regulated and if so, by which authority?

Subject to article 28 of the Telecommunications Law, service providers seeking to use radio frequencies shall obtain a granting of rights to use such frequencies from the TRA prior to the provision of such services. The TRA shall grant the right to use radio frequencies pursuant to this Law and other relevant legislation.

### 8.2 How is the use of radio frequency spectrum authorised in Kosovo? What procedures are used to allocated spectrum between candidates - i.e. spectrum auctions, comparative 'beauty parades', etc.?

As per our comments in question 8.1 above, the use of frequencies in Kosovo is the subject of the licence issued by the TRA. The TRA classifies certain spectrum resources as reserved for auction procedures and not available on the basis of an individual request, including, but not limited to, mobile services in GSM standard, and fixed wireless services (article 28.4 of the Law).

### 8.3 Are distinctions made between mobile, fixed and satellite usage in the grant of spectrum rights?

The Telecommunications Law does not make a distinction between mobile, fixed and satellite usage when granting the spectrum rights.

### 8.4 How is the installation of satellite earth stations and their use for up-linking and down-linking regulated?

The Telecommunications Law is silent on regulation and installation of satellite earth stations and their use for up-linking and down-linking.

### 8.5 Can the use of spectrum be made licence-exempt? If so, under what conditions?

The TRA is in charge of defining the band of radio frequencies

which are not subject to licensing from the TRA and shall make such information open for the public domain (article 28.3).

#### **8.6 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?**

The granting of the licence for the use of a radio frequency spectrum is subject to an annual fee (article 35.1 of the Law).

Subject to the Ordinance of the ART “On Licences and Authorisations” (see [www.art-ks.org](http://www.art-ks.org)), this fee levies on 1% of the licensee annual turnover.

The licence to use radio frequencies related to security and defence of the Republic of Kosovo or protection against natural and/or disasters and/or for amateur radio is exempted from this annual fee.

#### **8.7 Are spectrum licences able to be traded or sub-licensed and if so on what conditions?**

The Telecommunications Law allows the transfer of a licence to use a frequency spectrum only upon prior approval by the TRA (articles 34.1), while it is silent on the possibility to trade or sub-license.

However, based in our experience, no licence may be trade/sub-licensed without prior approval from the competent authority which has issued it.

### **9 Data Retention and Interception**

#### **9.1 Are operators obliged to retain any call data? If so who is obliged to retain what and for how long? How are data protection (privacy rules) applicable specifically to telecommunications implemented in Kosovo?**

Yes, the providers of telecommunications services in Kosovo are obliged to retain call/traffic data for at least 3 (three) years (article 75.3).

As it concerns data protection, Kosovo parliament passed new Law no. 03/L – 172 “On the protection of personal data”. Based on the protection of personal data, the traffic and billing data shall be processed in accordance with the confidentiality requirements of this Law and other applicable Laws.

#### **9.2 Are operators obliged to maintain call interception (wire-tap) capabilities?**

No. The Law does not foresee any provider’s obligation to maintain capabilities for call interception (wire-tap).

#### **9.3 What is the process for authorities obtaining access to retained call data and/or intercepting calls? Who can obtain access and what controls are in place?**

Call data required for certain purposes such as for billing and/or traffic and users information and/or finding out frauds and/or marketing of a service provider may be processed only by personnel under the supervision of the service provider, and their access to such traffic data shall be to the extent needed to accomplish such work (article 75.4 of the Telecommunications Law).

However, according to article 77.1 of the Law, service providers of public telecommunication networks and services may identify/find out the caller, without prior approval of the latter, in the event of

disturbances or threatening calls to a subscriber.

The service provider stores the information gathered by tracing and forwarding it to the subscriber, and/or to the Kosovo authorities in connection with criminal proceedings or the securities in Kosovo.

### **10 The Internet**

#### **10.1 Are conveyance services over the internet regulated in any different way to other electronic communications services? Which rules, if any, govern access to the internet at a wholesale (i.e. peering or transit) and/or retail (i.e. broadband access) level? Are internet service providers subject to telecommunications regulation?**

The Law does not regulate the internet in a different way to other electronic communication services. In virtue of the Law, the internet is considered one of the components of the telecommunication services.

#### **10.2 How have the courts interpreted and applied any defences (e.g. ‘mere conduit’ or ‘common carrier’) available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?**

To the best of our knowledge, there is no court precedent in this regard.

#### **10.3 Are telecommunications operators and/or internet service providers under any obligations (i.e. provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?**

There are no provisions in the Law obligating providers to assist content owners whose rights is/or may be infringed by means of file-sharing or other activities.

#### **10.4 Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks? Are there any ‘net neutrality’ requirements?**

There are no provisions in the Law obliging the providers to differentially charge and/or block different types of traffic over their networks, nor any ‘net neutrality’ requirements.

#### **10.5 How are ‘voice over IP’ services regulated?**

There are no provisions in Law regulating voice over IP services.

#### **10.6 Are there any rules to prevent, restrict or otherwise govern internet or email communications, in particular, marketing and advertising communications?**

There are no provisions in Law preventing, restricting or otherwise governing internet or email communications, including marketing and advertising communications.

**11 USO****11.1 Is there a concept of universal service obligation; if so how is this defined, regulated and funded?**

The Telecommunications Law ensures there is universal service; that is, a set of services to which all users shall, upon request, have access to at affordable price, notwithstanding their place of residence.

The TRA elects the provider of the universal services, based on the open bid procedure. The provider of the universal service is obliged to provide the users with access to emergency services, including police, fire and medical ambulance dispatch, etc.

All providers of Telecommunications Services must make a reasonable and non-discriminatory contribution to fund the universal service (article 49.3 of the Law).

**12 Foreign Ownership Rules****12.1 Are there any rules restricting direct or indirect foreign ownership interests in electronic communications companies whether in fixed, mobile, satellite or other wireless operations?**

The Telecommunications Law does not provide restriction related to direct or indirect foreign ownership interest in electronic communications companies.

**13 Future Plans****13.1 Are there any imminent and significant changes to the legal and regulatory regime for electronic communications?**

To the best of our knowledge there are no imminent and significant changes to the legal and regulatory regime for telecommunications services in Kosovo.



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Mr. Elmazaj is a partner at Boga & Associates, which he joined in 1996. He has managed several investment projects in Kosovo jurisdiction including international clients operating in telecommunication, real estate and energy. In the field of telecommunication, he has built a vast experience in managing telecommunication projects, including licensing and regulatory issues, network build, diverse contractual matters etc.

Mr. Elmazaj has also acquired excellent experience in other areas, such as commercial/corporate, telecommunication, competition, energy, litigation, IP issues, banking and finance, mergers and acquisition, real estates etc.

He managed a number of due diligences for international clients considering to invest in Albania or Kosovo in the fields of industry, telecommunications, banking real estate etc.

Mr. Elmazaj graduated from Faculty of Law at the University of Tirana, Albania (1996). He is an Albanian native and speaks excellent English and Italian and is admitted to practice law in Albania and Kosovo.

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Mr. Krasniqi is an associate at Boga & Associates. He joined the firm in 2009.

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He is a prominent young lawyer and devoted to assist international clients in assignments where Boga & Associates engages.

He performs his tasks under direct supervision of the firm Country Manager and Partner, Mr. Sokol Elmazaj.

Mr. Krasniqi is has gained an experience in corporate law, mergers and acquisition, projects financing, telecommunication, real estate and employment.

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