

ARBITRAGE, AN EFFICIENT ALTERNATIVE FOR RESOLVING TRADE DISPUTES IN ALBANIA, COMPARATIVE OVERVIEW WITH AUSTRIA, ARMENIA, ARGENTINA, AND BULGARIA.

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Abstract

Arbitration is a new form of dispute resolution in the commercial field in Albania. Economic development has led many international companies to invest in Albania. This topic will focus on the concept of arbitration as the public interest in recognizing this new form of dispute resolution is broad, but what never changes is the argument as to why we turned to arbitration. The parties set the arbitral tribunal in motion and as such have the burden of proof to prove that their claims are based on facts and evidence. Of particular importance in this paper will be the advantages and disadvantages of arbitration as a way of resolving disputes. Another special aspect where we need to dwell will be the contribution of national courts in resolving arbitration disputes. This paper will deal extensively with the place it occupies in Albanian legislation. An important place of this paper will be the analysis of practical cases as a way of combining theory and practice. It would be of particular interest to make comparisons between Albanian legislation and Austria, Argentina, Armenia and Bulgaria. The reason for this comparison is to bring about a radical change in the resolution of trade disputes through arbitration. An important place of this paper will be the analysis of practical cases as a way of intertwining theory and practice. It would be of particular interest to make comparisons between Albanian legislation and Austria, Argentina, Armenia and Bulgaria. The reason for this comparison is to bring about a radical change in the resolution of trade disputes through arbitration. An important place of this paper will be the analysis of practical cases as a way of intertwining theory and practice. It would be of particular interest to make comparisons between Albanian legislation and Austria, Argentina, Armenia and Bulgaria. The reason for this comparison is to bring about a radical change in the resolution of trade disputes through arbitration.

Albania needs the recognition of arbitration as an opportunity to resolve the dispute as every action affects the image of the company but also of our country. Models from different countries will help us bring a new but above all efficient approach.

Keywords: Hybrid, national court, legislation, effectiveness, development, influence, comparison.

INTRODUCTION

Arbitrage is one of the new forms of dispute resolution in the commercial field. Given the situation in the Albanian judicial system, the courts are dragging out commercial cases of a commercial nature.

The problem is the lack of experts in this field of law. Many companies have spent tremendous monetary values and have spent their time going to court to resolve issues. Drafting contracts is another important issue as the way it is drafted and processed has brought unexpected results. By unexpected results we mean a lack of interpretation of the relevant provisions or unclear provisions or of a general character.

Many executives of different companies do not implement the contract correctly, causing conflicts of a binding nature.

An important problem in Albania is that the manner of terminating the contract has not established international arbitration. The parties have the freedom to choose the procedure for drafting the arbitration procedure. Arbitration is an efficient way which means that the resolution of the conflict will be quick and its decision is binding as the parties have expressed their will for the way of resolving the dispute. National courts have a significant contribution as it becomes possible to recognize the decision of the arbitral tribunal and it will be executed directly as national court decisions.

The impact of international court decisions in case of loss will cost the state budget and Albanian taxes millions of euros. Its role is very important as it directly contributes to the administration of justice and the delivery of a fair and impartial decision.

Purpose of the paper

The purpose of the work behavior was:

- I. To highlight the positive approaches that arbitration has brought by various advantages and disadvantages.
- II. To understand the reasons for the efficiency of arbitration and its importance in resolving disputes in the commercial field
- III. To interpret arbitral awards as they are complex in nature
- IV. To compare different countries in front of Albania
- V. To assess the role of the national court in recognizing and enforcing arbitral tribunal decisions.
- VI. To bring applicable models that Albania has the opportunity to make its internal parts.

Working methods

The methods I used for this paper are:

- 1. Research method: Through the research method I have used Albanian and international literature which have brought results in my work. I have also researched Albanian and international court decisions, the Code of Civil Procedure of the Republic of Albania, the New York Convention and various conventions on the procedure of arbitration.
- 2. Analytical method: Through research I have analyzed the information and the benefit that will bring to my work. In court decisions I have tried to bring the main part of what the court has decided in specific cases, is the court decision fair and where is it based as a court decision
- 3. Comparative Method: The comparative method has helped me to understand the differences and commonalities between other countries and Albania for the place that arbitration occupies in their legislations.
- 4. Case study method: Practical case studies will provide a practicality for understanding how the international arbitral tribunal resolves a commercial dispute.

1. Understanding arbitration, its types, its use and its advantages and disadvantages.

Arbitration is a hybrid form of dispute resolution in the commercial field. Arbitration is a private consensual way and its decision is binding on the parties. In itself it is a way that has no economic cost and is faster than the judicial system.

¹A very important arbitration is the investment arbitration which is spreading rapidly. It deals with arbitration proceedings with investors against states through treaties or domestic law. Arbitration is enshrined in the New York Convention which clearly sets out the rules of international arbitration and the manner in which arbitration is conducted.

²The advantages of resolving an arbitration dispute are:

¹ <https://www.acerislaw.com/cfare-eshte-arbitrazhi-nderkombetar/>

²M.Hetemi “Arbitrazhi” page 7

- ✓ It has low cost and fast solution
- ✓ Arbitrators are not "state judges"
- ✓ Has flexible character.
- ✓ is the innovative method of resolving the dispute
- ✓ The procedure can be confidential to avoid negative publicity
- ✓ The court decision is binding and the arbitrators are independent.
- ✓ The parties also have the right to choose the foreign language to be used for the agreement.
- ✓ Judicial decisions are easier to enforce.
- ✓ The language of the arbitrator is chosen by the parties themselves during the arbitration procedure
- ✓ There is no political part
- ✓ The trial procedure is determined by the parties.

2. The role of the Albanian court in resolving commercial disputes and the execution of the arbitral award.

The Albanian court has an important role in the execution of the decisions of the arbitral tribunals.³The decision of the arbitral tribunal constitutes an executive title and will be executed in the same way as an ordinary court decision.⁴The court, through the executive title, also issues the execution order.

An important contribution to the execution of arbitration awards is the New York Convention, where Albania has ratified this convention, making it an internal part of it.⁵To ensure the recognition of the decision and then the execution of the decision will need 1) the original of the decision or a photocopy 2) the original of the convention of Article 2 or a photocopy in the proper manner. Regarding the language in case they will not be in the official language then the agreement will be translated by official or sworn translators.

⁶There is also the possibility that the state itself is subject to arbitration. The state that has signed this convention has the right to submit a reservation to reflect the restrictions provided by Albanian law.⁷The role of the national court is important as it helps in the recognition and execution of the decision so it is the last stage for the decision to produce the desired legal effects.⁸Recognition of foreign court decisions including arbitration should be done through the application which is attached 1) copy of the decision to be implemented and translation into Albanian 2) certificate from the court that the decision has become final and its translation 3) power of attorney.

³Article 510 of the Code of Civil Procedure of Albania

⁴Article 511 / bi Code of Civil Procedure of Albania

⁵Article 4 of the New York Convention

⁶A.Spahiu Doctoral dissertation "" p. 89

⁷Article 396 of the Code of Civil Procedure of Albania.

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⁹ <https://www.acerislaw.com/cfare-eshte-arbitrazhi-nderkombetar/>

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¹¹Beth A Simmons Richard H Steinberg “International law and relations 11-12

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4) Practical cases

4.1) Marko Tel & Hes Kablo Albania, ZTE Albania LLC and third party Albtelecom Sh.A.

¹⁷Marko tel & Hes Kablo company is a simple company and ZTE Albania LLC is a limited liability company registered with the National Business Center. We have an entrepreneurship contract between Marko Tel & Hes cable Albania and Albtelecom Sh.a where the object contracts were the realization of works for the cable network. In this contract is included the company ZTE Albania Shpk. The entrepreneurship contract also stipulates that the law for resolving the dispute will be English and Welsh law and any kind of dispute will be settled amicably. In case of any dispute they will go to the arbitral tribunal in London.

The questions posed in this case are:

what kind of arbitration is domestic or international?

Should the Albanian court change the place chosen by the parties to resolve the dispute by arbitration?

According to the court of cassation, arbitration is international and not domestic. International arbitration is regulated by a special law. With regard to the second question, the court has no right to intervene in the place chosen by the parties to resolve the dispute by arbitration. Once we have the free will of the parties and it is defined in the contract as such then the national court will have to recognize and execute the decision of the international arbitration court. Execution of the arbitral award will be the same as the execution of other decisions.

4.2) Copri & Actor company in front of the Albanian state

¹⁸Copri Actor is a company that deals with the construction of public works. Copri Actor would build the Tirana-Elbasan highway with a roundabout in Farka. According to the contract that the company had made with the Albanian state, the construction of the road with two carriageways and the construction of junctions would also include the construction of entry and exit tunnels. With a decision of the dispute board has determined the obligation of the Albanian state to pay the obligations to the company including VAT. The Albanian state has denied that these decisions are binding. The Albanian state requested that the case be tried by three arbitrators and as such the secretariat accepted the request by notifying the parties and also the case was tried together with an arbitrator.

4.3) Alaphi against the Turkish state

¹⁹The case concerns a concession to develop, build, finance and transfer a combined cycle power plant to Turkey. In 1997, a feasibility study was conducted and approved by the Ministry of Energy and Natural Resources of the Republic of Turkey. We also have an agreement with General ElectricGroup where this subsidiary would provide certain funds for the development of the project. The first company sought to convert the concession because under Turkish law 4501 they allowed the conversion. the Turkish state itself to attract investors has opposed the company guarantees. The relevant law is the Energy Floor Treaty and the reciprocal agreement.

¹⁵Article 396 of the Code of Civil Procedure of Albania.

¹⁷No.11243-01441-00-2013 and Reg. Founder No. 00-2013-1735 of Decision (356)

¹⁸Decision of the arbitral tribunal dated 1.9.2020

¹⁹Decision of the arbitration court dated 10.7.2014

The decision of the court was in favor of the Turkish state because the company did not prove the facts that made possible the conduct of the other party in the process and as such the burden of proof belongs to the latter. as such it has not persuaded the arbitral tribunal to rule in favor of the company.

4.4) BG Group vs. Argentina.

²⁰BG Group company is a British corporation part of a consortium that was part of Metro Gas, an Argentine company that distributes natural gas in Buenos Aires and had a 35-year license. The US dollar will be used to calculate the gas tariff. In 2001 Argentina experienced an economic crisis one of these measures was to calculate from the US dollar to the peso (Argentine currency). The British corporation appealed to the international arbitration court regarding this after the BIT treaty was violated and even this action by the company was considered expropriation. Argentina claimed that the competent court was not the arbitral tribunal and that the levels of the judiciary within the state should be consumed. A decree of the Argentine president where she stopped for 180 days the execution of the final decisions of her court in the economic field also when she was facing the state then these measures had to be renegotiated. BG Group also appealed to the United States Court of Justice as to who's responsible for interpreting and enforcing the provisions of the court or arbitrator in local court cases? for damages he had caused to the company BG Group.

5) Models of Austria, Armenia, Argentina and Bulgaria

5.1) The Austrian model

²¹Austria does not distinguish between commercial and non-commercial matters, but has specific rules for their regulation. The center of arbitration is in Vienna where the parties are provided with impartiality and professionalism. Arbitrage occupies an important place in Austrian legislation Articles 577 to 618 Austrian civil procedure code. Part of Austrian arbitration law is also when the seat of arbitration is not defined. The center of arbitration in Vienna is attached to the Austrian Federal Chamber of Commerce. acting as the appointing or managing authority in ad-hoc proceedings as well as unilaterally provided arbitration agreements. In Austria there are also some small organizations that deal only with minor internal disputes. Regarding the cost of the arbitrator fee there is no mechanism or agreement however the parties are required to provide advance on the costs for initiating arbitration proceedings. In case the other party refuses to provide the advance, the general secretariat obliges the other party to prepay the amount within 30 days from the receipt of the request. In case the fee has not been paid in full, the Secretary General has the right to close the procedure. The fees of the arbitration procedure are high due to the complexity of the case. Regarding the cost of the arbitrator fee there is no mechanism or agreement however the parties are required to provide an advance on the costs for initiating the arbitration proceedings. In case the other party refuses to provide the advance, the general secretariat obliges the other party to prepay the amount within 30 days from the receipt of the request. In case the fee has not been paid in full, the Secretary General has the right to close the procedure. The fees of the arbitration procedure are high due to the complexity of the case. Regarding the cost of the arbitrator fee there is no mechanism or agreement however the parties are required to provide an advance on the costs for initiating the arbitration proceedings. In case the other party refuses to provide the advance, the general secretariat obliges the other party to prepay the amount within 30 days from the receipt of the request. In case the fee has not been paid in full, the Secretary General has the right to close the procedure. The fees of the arbitration procedure are high due to the complexity of the case.

5.2) Armen Model:

²²In Armenia all disputes are part of arbitration with the exception of marital disputes concerning community property. The difference is in the part of the arbitrators that must be odd numbers to prevent blockages. In case there is no one in the procedure for appointing arbitrators, it is automatically applied. The parties have the right to challenge an arbitrator within 15 days after being informed about the establishment of the arbitral tribunal, stating the reasons for the objection. Competent court may decide the objection and the application to the Armenian national court is made within 30 days after the party has received the decision to reject the objection.

5.3) The Argentine model

Argentina has a long history in terms of international arbitration. It became part of the Montevideo treaty in 1889. Arbitration in Argentina was governed by the Argentine Civil Code and the national and provincial code of civil and commercial procedure. The international act of international arbitration entered into force in 2018. In every province in

²⁰Decision of the high court dated 5.3.2014

²¹<https://globalarbitrationreview.com/insight/knoë-hoë/commercial-arbitration/report/austria>

²²Chamber-of-Commerce-and-Industry-of-Armenia

Argentina the code applies national courts may apply interim measures and decisions of the arbitral tribunal, but may not review their basis. References to a contract or document may constitute an arbitration agreement, but provided that be specified in the contract. Courts in Argentina will have no jurisdiction unless the arbitral tribunal is constituted and the agreement is void. To oppose the arbitrator the reason may be 1) suspicion of independence or prejudice 2) do not have the special qualification established by the arbitration agreement. The arbitral tribunal decides on the procedure within 5 days. To make a decision contrary to the relevant legislation arbitrator will be fined in large amounts and will no longer have the opportunity to return to work (i.e. for the rest of his life he can not be an arbitrator). In ad hoc arbitration there will be no administrative fee but the remuneration of the arbitrators will be done by agreement between the parties and the arbitrator. The power of the arbitrator in Argentina is very strong and they can decide on the principle of jurisdiction. The arbitrators hold many hearings so that the parties can resolve it amicably. The arbitrator in this case is in the role of conciliator.

5.4) Bulgarian Model

²³The state court assists the arbitral tribunal in gathering evidence for the fair settlement of the dispute and the court where the evidence is located is the competent court that must comply with such a request. There are no time limits for rendering a decision. According to the Bulgarian Arbitration Act, it does not contain any provisions related to the determination of interest and costs. Despite the fact that the arbitral tribunal has no jurisdiction over the dispute, the procedure continues. The parties have the right to request the annulment of the decision in the court of cassation in cases where there is no arbitration agreement, the inability to enter into an arbitration agreement and the agreement is invalid according to the law in force chosen by the parties. The annulment of the decision does not suspend the execution procedure.

Conclusion

- 1) Arbitration is a very effective consensual way of resolving trade disputes.
- 2) In drafting commercial contracts they should be careful about its drafting but also about the inclusion of arbitrage as an economical and fast way to resolve trade disputes.
- 3) The role of national courts is quite important starting with the recognition of the decision made by the court of appeal and in the execution of the decision as if it were a decision of the ordinary court.
- 4) Parties to a trade dispute are the states that may have caused economic damage to the company is obliged to compensate the latter (Becchet's case)
- 5) Arbitrage in its kind also has investment arbitrage.
- 6) The overload in the judicial system and the lack of experts in the field of arbitration has made some issues unresolved causing more conflict, but above all brings undesirable consequences for the parties.
- 7) The goal of the companies has been to maximize profits and the competitive position in the market has led some companies to resolve disputes through arbitration or even mediation.
- 8) The court has a public character and the confidential character that the resolution of the dispute with arbitration has gives it more advantage due to not spoiling the image in public.
- 9) A very important benefit is the fact that the parties choose the arbitrator and the language of the agreement.
- 10) The arbitrage solution is both flexible and neutral
- 11) His decision is binding.

Recommendation

1. Albania needs the opening of the arbitral tribunal and the institutions that will monitor it.
2. The Albanian state cannot interfere in the decisions of the arbitral tribunal
3. Albania needs to work harder and promote arbitrage as a positive opportunity to resolve disputes.
4. The contribution of Albanian youth and the ongoing training of young people who intend to be arbitrators in the arbitral tribunal should be necessary
5. The opening of the arbitration court and the institutions that will monitor it will bring vacancies but above all it will save the financial costs of companies to travel abroad.
6. Effectiveness, independence and impartiality must be qualities to guarantee a fair and transparent process in order to increase public confidence in the courts.
7. The arbitral tribunal must also have the right of the consumer.

²³Bulgarian Arbitration Act

REFERENCES

- [1] Prof Mehdi J Hetemi “Arbitrazhi” edition 2017
- [2] Beth A Simmons and Richard Steinberg International Law and international relations publication 2007
- [3] Zheng Sophia Tang “Jurisdiction and arbitration agreements in international commercial law edition 2014

LAW

- 1) Code of Civil Procedure Republic of Albania
- 2) New York Convention
- 3) Bulgarian act of arbitration
- 4) Austrian Arbitration Act
- 5) Argentine Arbitration Act
- 6) Argentine Code of Civil Procedure
- 7) Armenian act of arbitration

Web

- 1) <https://globalarbitrationreview.com/insight/knoë-hoë/commercial-arbitration/report/austria>
- 2) <https://www.acerislaw.com/cfare-eshte-arbitrazhi-nderkombetar/>
- 3) https://uet.edu.al/epcontent/uploads/2021/11/Punimi_i_Doktoratur%20E2%94%9C%20BDs_Artan_Spahi.pdf

Judicial decisions

- 1) Decision of the high court dated 5.3.2014
- 2) Decision No.11243-01441-00-2013 of Reg. Founder No. 00-2013-1735 of Decision (356)
- 3) Decision of the arbitral tribunal dated 1.9.2020
- 4) Decision of the arbitral tribunal dated 10.7.2014