

**Muja Law** brings you the latest issue of the *Legal Update*.

Recently in the Official Journal No.111, dated 27.07.2023, has been published the Law No. 52/2023, dated 06.07.2023 “*On arbitration in the Republic of Albania*” (hereinafter referred to as “*the Law*”).

The Law defines the rules for the organization and the development of domestic and international arbitration procedures when the place of arbitration is in the Republic of Albania.

The provisions of the Law shall apply to all domestic and international arbitration proceedings, when the place of arbitration is in the territory of the Republic of Albania.

*Some of the most important provisions of the Law are as follows:*

#### ❖ The Law

In virtue of the Law, the arbitration procedure may be organized by a permanent arbitration institution, according to its procedural rules and the provisions of the Law, when the **arbitration agreement** provides that the arbitration procedure shall be conducted by a permanent arbitration institution.

The parties may agree on the settlement of the dispute through *ad hoc* arbitration. The *ad hoc* arbitration procedure takes place according to the rules defined by the parties in the agreement of arbitration, as well as according to the provisions of the Law.

#### Scope of the arbitration agreement

The Law provides that the subject of an arbitration agreement may be **any property claim or demand arising from a property relationship**, except when the special legislation prohibits the resolution of the dispute through arbitration or when it determines that the resolution of a dispute through arbitration can only be conducted in certain conditions.

#### Form of arbitration agreement

In virtue of the Law, the arbitration agreement is made in writing, otherwise it is void. The

arbitration agreement shall fulfill the form required in virtue of the provisions of the Law, even if the will of the parties is expressed through fax, telegram, telex, electronic mail or other means of communication or data recording, which can be documented and provide a proof of written arbitration agreement.

In cases where one party is a consumer according to the definition of the legislation in force for the protection of consumers, the arbitration agreement must be **personally signed** by the parties and be separate and independent from the basic agreement.

The Law provides that the clause of the arbitration agreement, when it is part of a contract or agreement, constitutes a **special agreement and independent from** the other terms of the contract. Invalidation of the contract does not ipso jure invalidate the arbitration agreement.

Exceptionally, the arbitration agreement is valid even when, despite the fact that the parties have not implemented the provisions of the Law regarding the form of the agreement, the arbitration procedure **has begun and the other party has not objected to the lack of jurisdiction of the arbitration court.**



## Conditions to be an arbitrator

In virtue of the Law, an arbitrator can only be a natural person who has full legal capacity to act. The arbitrator must be independent and impartial. The arbitrator must meet the qualification criteria or the eligibility conditions specified in the arbitration agreement or the regulation of the permanent institution of arbitration.

In addition to the professional qualifications of the arbitrator, defined in the agreement between the parties or the regulation of the permanent institution of arbitration, the arbitrator must simultaneously fulfill the following conditions:

- a) the arbitrator must not have been convicted by a final court decision for committing a criminal offense;
- b) the arbitrator must not have been banned from the right to practice public functions with a final court decision.

## Jurisdiction of the arbitration court

The arbitration court has the right to review and decide whether the dispute is in its jurisdiction, as well as determine the validity of the arbitration agreement.

## Place of arbitration

In virtue of the Law, the parties have the right to designate the place of arbitration in the arbitration agreement. In case it has not been appointed by the parties, the place of arbitration is determined by the arbitration court, taking into consideration the circumstances of the dispute, as well as the suitability for the parties.

In case the arbitration procedure is organized by a permanent arbitration institution, the country of arbitration, when it has not been appointed by the parties, is appointed

according to the procedural rules of the permanent arbitration institution.

### Claim, statement of defense and counterclaim

In virtue of the Law, the plaintiff is obliged to submit the claim and the evidence which supports the claim, as well as the defendant is obliged to submit the statement of defense and the evidence on which the statement of defense is supported within the deadline set by the parties or in cases where the parties have not set a deadline, within the deadline set by the arbitration court. The parties may attach any other evidentiary document to the claim or statement of defense, as well as determine any other evidence that can be obtained.

Unless the parties have agreed otherwise, the parties have the right to add, subtract or change the claim or statement of defense. The parties may not add, reduce or amend the claim or the statement of defense when the arbitration court deems that the request for addition, reduction or amendment is submitted late and causes delay in the examination and resolution of the dispute.

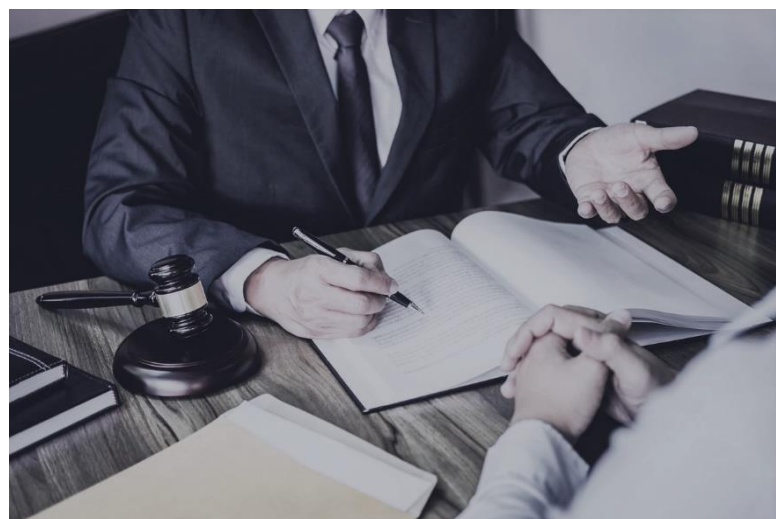
The defendant has the right to file a counterclaim when the request for a counterclaim is based on the same legal relationship for which the parties have concluded the arbitration agreement. The counterclaim shall be presented together with the statement of defense or at a later stage of the arbitration procedure, when the arbitration court, taking into consideration the circumstances of the case, considers that the delay in presenting the counterclaim is for justified reasons. The same rules apply to filing a counterclaim.

### Rules applicable to the foundation of the dispute

The Law provides that in international arbitration proceedings, the arbitration court

resolves the dispute in compliance with the provisions of the material legislation in force **chosen by the parties**. In case the parties do not have determined the applicable legislation, the court of arbitration shall apply the legislation **defined by the rules of private international law**. In all other cases the arbitration court shall apply the Albanian legislation.

The arbitration court may decide resolving the dispute according to the *ex aequo et bono* or *amiable compositeur* principle only if the parties have expressly agreed. The arbitration court, in all cases, shall decide in accordance with the terms of the contract and shall take into consideration the good commercial practices applicable to the legal relationship existing between the parties.



### Decision-making

In virtue of the Law, unless the parties have agreed otherwise, the award of the arbitration court shall be taken by the **majority of the votes of all its members**. The arbitrators who shall have an opposing opinion with the majority shall have the right to present their opinions in writing. **An award signed by a majority of the arbitrators has the same effect as if it had been signed by all the arbitrators.**

Procedural actions, as well as requests for their performance can be examined and decided by

the chairman of the body of arbitrators or one of arbitrators in case the parties or all arbitrators have agreed so.



### Resolving disputes amicably

The Law provides that the parties have the right that during the development of an arbitration procedure, to try to resolve the dispute amicably.

When the parties shall resolve the dispute amicably, they shall submit to the arbitration court their dispute settlement agreement. This agreement, at the request of parties, shall be approved by an award of the arbitration court, except when the content of the agreement is against the public order. The award of the arbitration court for the approval of the dispute settlement agreement has the same effect as any other award taken on the foundation of the case.

With the approval of the agreement of the parties for resolving the dispute amicably, the arbitration court shall decide also the termination of the arbitration procedure.

### Annulment of the award of the arbitration court

In virtue of the Law, the means to appeal against an award of the arbitration court is only

the request for annulment of the award of the arbitration court. The request for annulment of the arbitration court's award shall be filed in front of the Court of Appeal of general jurisdiction, in whose jurisdiction is the place of arbitration, for one the following reasons:

- a) One of the parties to the arbitration agreement did not have the ability to act according to the special law that determines the acquisition of the ability to act, as well as their organization and operation; or
- b) The arbitration agreement is invalid according to the provisions of the legislation in force selected by the parties or by the arbitration court, or, in cases where the parties have not determined the applicable legislation, according to the provisions of the legislation of the Republic of Albania; or
- c) The parties have not been regularly notified of the appointment of an arbitrator or of the initiation of the arbitration procedure, as well as for any other reason, which has not allowed the parties to present their defense; or
- d) The award resolved a dispute that was not examined by the arbitration court or the award resolved a dispute that was not part of the arbitration agreement, as well as one or several disputes resolved by the arbitration court were not within its jurisdiction. In this case, when it is possible for the award on the disputes, which were under the jurisdiction of the arbitration court, to be separated from that part of the award on the disputes that were not part of its jurisdiction, the court shall annule only that part of the award of the court of arbitration that has resolved disputes that were not under its jurisdiction; or
- e) The composition of the arbitration court or the arbitration procedure was not in accordance with the provisions of the law or with the arbitration agreement, provided that their violation has consequences for the way the dispute is resolved by the arbitration court; or



- f) The award has resolved a dispute that is prohibited by law from being resolved through arbitration; or
- g) The execution of the award would be contrary to public order.

*Unless the parties have agreed otherwise, the request for annulment of the arbitration court's award shall be filed within 90 (ninety) days from the date of notification of the award of the arbitration court.* In case a party has requested the correction of errors, the interpretation or supplement of the award, according to the provisions of the law, the deadline shall begin to be calculated from the date of notification of the arbitration court's award that accepts or rejects the request.

The Law provides that when the Court of Appeal decides to annul the award, it may, if deemed reasonable, also decide to send the case for retrial to the arbitration court or order the undertaking of any other action that removes the reasons for the annulment of the award.

#### Review by the Court of Appeal

In virtue of the Law, the Court of Appeal examines the request for annulment of the award according to the established rules in the Code of Civil Procedure for the review of appeal cases. *The Appeal Court shall examine the appeal within 30 (thirty) days from its filing in court.*

The Law provides that submission of the request for annulment of the award does not suspend the execution of the arbitration court's award. Exceptionally, the court, at the request of the party, may suspend the execution of the award when it assesses that there is a risk that a great and irreparable damage may be caused to the party.

*In virtue of the Law, no recourse is allowed to the Supreme Court against the decision of the Court of Appeal.*

#### Awards of an arbitration court in the Republic of Albania

The Law provides that the awards of the arbitration courts, when the place of arbitration is in the Republic of Albania, constitute an executive title and are put into execution after the issuance of the execution order by the judicial district court in accordance with the rules defined in the Code of Civil Procedure.

The judicial district court may reject the request for the issuance of the execution order in the event that there are at least one or several of the reasons for the annulment of the award according to the Law. When the request for the annulment of the award has been examined by the Appeal Court according to the Law, the judicial district court cannot examine whether one or some of the causes for the annulment of the award exist.



#### Awards of a foreign arbitration court

In virtue of the Law, recognition of the final award of an arbitration court outside the Republic of Albania shall take place in accordance with the rules defined in the *New York Convention on the Recognition and Execution of Arbitration Awards*, of June 10, 1958, ratified by the Republic of Albania with law no. 8658, dated 9.11.2000, "*On the accession of the Republic of Albania in the Convention on Recognition and Execution of*

*Foreign Arbitration Awards*", as well as the Code of Civil Procedure.

Reasons for refusing to recognize the final arbitration award of a foreign country include cases where:

- a) According to the provisions that are in force in the Republic of Albania, the dispute cannot be in the jurisdiction of the arbitration court that has granted the award;
- b) The parties to the arbitration agreement, under the law applicable to them, did not have full capacity to act, or the said agreement is not valid under the law to which the parties are subject, or there lacks any determination under the law of the country where the award is given or the party against whom the award is given;
- c) The claim has not been notified to the other party in absence, in a regular and timely manner, to give them the opportunity to defend themselves or they have not been given regular notice of the appointment of the arbitrator or of the arbitration procedure or the party has been unable to present their case;
- d) The award addresses a dispute not provided for in the arbitration agreement or does not fall within the arbitration clause or contains rulings on matters that exceed the scope subject to arbitration; However, if awards on matters subject to arbitration can be separated from those not submitted to arbitration, that part of the award which contains awards on matters subject to arbitration may be recognized and enforced;
- e) The composition of the arbitration authority or the arbitration procedure was not in accordance with the agreement of the parties or there is no such agreement;

- f) The court finds that:
  - i. the object of the dispute cannot be resolved by arbitration according to Albanian legislation;
  - ii. the execution of the award would be contrary to public order.



#### Transitional provisions

The provisions of the Law do not apply to arbitration proceedings commenced before entry into force of this Law, with the exception of cases when the parties have expressly agreed otherwise.

The Law provides that matters that are pending on the day of entry force of the Law in the court of first instance, in the Court of Appeal or the Supreme Court, will continue to be judged according to the provisions of the law effective at the time of filing the claim.

#### *Entry into force*

*The Law enters into force 15 days after its publication in the Official Journal.*



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**Muja Law** is a family-run law office where we work hard for the success of our clients and to provide excellence in legal service. Our roots go back to 2001 when our Managing Partner, Krenare Muja (Sheqeraku), opened her law practice office in Tirana, Albania. Krenare's son Eno joined her in 2014, and the other son Adi entered the practice in 2019. What started in Tirana as a small, family-run law office has grown and flourished in the community for the last 20 years. The office consists of various respected and talented lawyers who possess outstanding educational and community service backgrounds and have a wealth of experience in representing a diverse client base in various areas of the law.

The office is full-service and advises clients on all areas of civil, commercial and administrative law. With significant industry expertise, we strive to provide our clients with practical business driven advice that is clear and straight to the point, constantly up to date, not only with the frequent legislative changes in Albania, but also the developments of international legal practice and domestic case law. The office delivers services to clients in major industries, banks and financial institutions, as well as to companies engaged in insurance, construction, energy and utilities, entertainment and media, mining, oil and gas, professional services, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods. In our law office, we also like to help our clients with mediation services, as an alternative dispute resolution method to their problems.

While we have grown over the past 20 years and become recognized as one of Albania's leading law offices, we are grounded in the essence of "who" we are and "where" we started. We understand the importance of family, hard-work, and dedication.

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