Kluwer Arbitration Blog

New Era Begins in Albania: Parliament Passes Arbitration Law

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For years, Albania did not have a self-standing arbitration law or even any legislative provisions specifically on arbitration. Until 2013, the Albanian Civil Procedure Code did contain some provisions on arbitration, but these were repealed in 2013. On 6 July 2023, after several years of discussions and drafts, the Albanian Parliament adopted an arbitration law which will fill this gap (Law No 52/2023 on Arbitration in the Republic of Albania; the "Law"). While the Law is based on the UNCITRAL Model Law on International Commercial Arbitration (the "Model Law"), this post highlights certain specificities concerning, *inter alia*, (i) the arbitration agreement, (ii) the appointment and challenge of arbitrators, (iii) the explicit inclusion of the possibility of virtual or hybrid hearings, and (iv) the grounds for any recourse against an award.

Arbitration Agreement

The Law (Section II) requires that an arbitration agreement must be in writing. An agreement expressed through electronic means of communication fulfils this requirement. As an exception to the requirement of written form, an arbitration agreement can be considered valid if the proceedings have been initiated and the other party has not objected to the tribunal's jurisdiction. Going beyond the Model Law and similar to Article 11 of the Serbian Arbitration Law, the Law provides that an arbitration agreement may also be validly concluded concerning disputes that were already brought before a court, unless the court has exclusive jurisdiction.

The Law contains an explicit rule on the interpretation of arbitration agreements, which requires that arbitration agreements be interpreted in accordance with the parties' ultimate objective of having their dispute resolved through arbitration. This uncommon provision seemingly calls for an interpretation in favour of the validity of an arbitration agreement.

If a claim is brought before a court in a matter which is the subject of an arbitration agreement, the court must decline jurisdiction unless the arbitration agreement is manifestly void. Compared to the Model Law, the Law, therefore, contains a higher threshold ("manifestly") and more limited grounds (only if the arbitration agreement is "void") for courts to assume jurisdiction if a party to

the dispute submits that there is an arbitration agreement.

The Appointment and Challenge of Arbitrators

The Law (Section III) provides that a person who was found guilty of committing a crime or was prohibited by a final court decision from holding public office cannot be an arbitrator.

If the parties have not determined the number of arbitrators, the Law provides a default of three arbitrators. In cases where one of the parties does not appoint an arbitrator or the party-appointed arbitrators do not appoint the presiding arbitrator (and the parties have not chosen an appointing authority or the latter fails to appoint an arbitrator), the Law provides recourse to the courts, which must then appoint an arbitrator in 30 days.

The Law provides a list of grounds based on which an arbitrator can be challenged. These include the failure to meet the eligibility requirements provided by the Law, prior representation of one of the parties in a dispute between the same parties, familial relationships, and the general Model Law clause concerning justifiable doubts as to an arbitrator's impartiality or independence.

There have been discussions concerning the Law's use of the masculine gender when describing the prohibited familial relationships with the parties or their representatives (including the use of the term "[the arbitrator's] wife"). Under Albanian law, the generic masculine is used as a stand-in for all genders. While it would indeed be preferred that the Law used gender-neutral language, its masculine terminology does not restrict its application in any way.

Like the Model Law, the Law provides that the parties must challenge an arbitrator within 15 days after becoming aware of a ground for challenge or within 15 days after the constitution of the tribunal, if the party was aware of the ground for challenge before then. The tribunal must decide on the request in 15 days. If it rejects the request, a party can challenge the arbitrator before a court within 30 days. Building on top of the Model Law, the Law provides a relatively short timeframe for the court to decide on the challenge, as it stipulates that a decision must be rendered in 15 days from the receipt of the request.

Virtual or Hybrid Hearings

The Law (Article 30) follows recent developments and reform proposals in other countries (*see e.g.*, the White Paper on the Modernization of German Arbitration Law) concerning an explicit provision that allows virtual and hybrid hearings. It therefore provides that a tribunal can hold a

physical hearing, a virtual hearing, or even a hybrid between the two. This is a welcome development that dispels any questions regarding the potential impact of holding a virtual hearing on the validity of an award.

Recourse Against an Award

When it comes to recourse against awards issued by tribunals seated in Albania, the Law (Section VII) departs from the Model Law. The grounds for setting aside an award in Article 44 mirror those of the Model Law. However, unlike the Model Law, the Law does not differentiate between the grounds which must be raised by the party and grounds which the court considers *ex officio* (*i.e.*, arbitrability and public policy).

The provisions governing enforcement of awards issued by tribunals seated in Albania (Article 46) refer to the grounds for setting-aside an award (Article 44). The court can therefore reject the granting of exequatur if it considers that there are one or several grounds to set-aside the award. However, because Article 44 does not clearly provide which of the grounds for setting-aside an award can be considered *ex officio*, the reference to it in Article 46 extends that uncertainty also to the enforcement of awards issued by tribunals seated in Albania. Article 46 prevents a party from mounting the same attack on the award twice, as it provides that when a setting-aside application was unsuccessful, the court deciding on the exequatur is precluded from reviewing any potential grounds for refusal of enforcement anew.

With regard to awards issued by tribunals seated outside of Albania, Article 47 of the Law provides the grounds to refuse recognition of an award, which mirror the ones provided by Article V of the New York Convention (including the differentiation between grounds that may be considered *ex officio* and grounds that must be raised by a party). The Law again departs from the New York Convention and the Model Law by providing a non-exhaustive list of grounds (by using the term “include”). This seemingly broadens the potential scope of refusal of recognition to other grounds that are not provided by the New York Convention. However, in practically all cases, a court will not be able to go beyond the grounds listed in Article 47 of the Law due to hierarchy of norms, *i.e.*, the fact that the New York Convention, as a treaty ratified by Albania, supersedes domestic legislation.

Conclusion

The Law provides a significant improvement for legal certainty concerning arbitration in Albania, as it fills almost a decade-old vacuum left by the repeal of the arbitration provisions in the Civil Procedure Code. It builds on the Model Law and adds certain modern elements, such as the possibility to have virtual or hybrid hearings. Besides the requirement of a written arbitration

agreement, the Law's provisions on the validity and interpretation of the arbitration agreement are also fairly liberal. There remains, however, room for further development regarding the framework governing the recourse against awards issued by tribunals seated in Albania.
