

ARBITRATION LEGAL FRAMEWORK, A COMPARATIVE ANALYSIS BETWEEN THE ALBANIAN AND KOSOVA LEGISLATION

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Abstract

The focus of this paper will be to address the legal framework that meets the arbitration between the two countries that Albania and Kosovo referring to the provisions provided for by international legislation. Arbitration is perceived as the engine of resolving conflicts peacefully due to procedures which it represents. Arbitration proceedings are appropriate and flexible, transparent, simplified and controlled by the parties in dispute. Arbitration mechanisms are preferable because of its different characteristics from those of public institutions like the courts, resulting in the selection as the primary mechanism to resolve disputes which led to expansion issues.

Even though the two countries are very similar to each other, in language and culture, they have different structure forms of politics, economics and legal matters, this distinctness between Albania and Kosovo has brought interest comparison analysis of laws that of how each state treats arbitration. This study will present, the arbitration legal framework of the Albanian state, the arbitration legal framework of the Kosovo state and reference of these two states to the international legal framework. This study will also focus on identifying the problems and shortcomings of current legislation that both countries in the field of arbitration.

Keywords: *arbitration, arbitration procedures, legislation, Albania, Kosovo.*

1. Introduction

Arbitration practice is perceived by the parties as the best method to use for those who are interested in finding a solution to satisfy both parties. Arbitral judgments are similar to conflicts in the international arena that have concluded a "non-zero sum" which means both sides can win, not a "zero-sum game" which means neither party loses or wins everything.¹ Arbitration is a judgment, a legal tool, and provides solutions similar to a court since it's an informal content and rigid as a court. In a description that makes sense legal arbitration, according to the Oregon Department, is the fastest way to get a decision on a possible dispute. The arbitration procedure is more flexible and less formal than a court hearing or trial², but more formal than mediation or negotiation.³

Arbitration is dedicated to resolving disputes outside the doors of the courts, as the decisions of arbitral tribunal's deal with state like institutions. Before an arbitrator, the three arbitrators or before an arbitral tribunal called in another form of private judgment as disconnected from public institutions. The choice of method is also convenient arbitration to the parties, perhaps because businesses will be able to avoid lengthy procedures and costly litigation. Parties also considering the advantages that arbitration are a method that would allow complete freedom in the choice of arbitrators who may be one, three or more, but always in odd number, the two arbitrators nominated by the parties shall appoint a third.

Arbitration is a dispute resolution method which reads as seen adequate, because of its character and what it offers. It is necessary to specify exactly what we will discuss in this paper, since legal arbitration is a method referring to peaceful settlement of disputes that arise between states. However, disputes not only arise between a state and international organization or even between international organizations themselves, disputes that are primarily political and legal nature. The history of mankind has shown countless conflicts that existed between the countries, which later necessitate the adoption of the Hague Convention in 1899. It was later completed in 1907 for resolving conflicts peacefully, as well as creating the United Nations that take into account the method of arbitration in resolving conflict.

But the analysis of this study does not refer to international conflicts of a political nature, even though Kosovo is a newly established country that emerged from a conflict with another state Serbia. Analysis of this study will be referred to the arbitration procedures in both countries, the procedure governing arbitration in the field of economic relations and international commercial arbitration. Although the analysis is focused on the internal legislation of the two states cannot refer to the international community, as parties to the agreement will be a foreign business. The paper will analyze the concept of arbitration to make it well known of what represents it and the arbitration procedures in the Albanian legal framework and Kosovo. Also, the importance of the arbitration agreement and the

¹ Goldstein, J.S. (2001). "International Relations". Game theory. Tirana: Dituria. Page 87.

² Oregon Courts. Oregon Juridical Department. <http://www.oregon.gov>.

³ Arbitration Basics. Nolo law for all. <http://www.nolo.com>.

Kosovo Albanian legislation coupled with the invalidity of the arbitration agreement. Lastly, it will analyze the character of arbitration and appeal against the decision of the arbitral tribunal, the law of both states.

2. Changes In Arbitration Proceedings Both Speaking Countries

Courts are two types of arbitration, arbitration temporary called 'ad hoc arbitration', the case of Albania and permanent arbitration termed 'institutional arbitration', the case of Kosovo. European Convention on International Commercial Arbitration provide that the parties to an arbitration agreement shall be free to submit their disputes: (a) to a permanent arbitral institution; in this case, the arbitration proceedings shall be held in conformity with the rules of the said institution;⁴ or (b) to an ad hoc arbitral procedure; in this case, they shall be free inter alia.⁵

2.1 Arbitration Proceedings Under Albanian Law

The Civil Procedure Code is the code that handles the arbitration institute in the domestic legal order of the Albanian state. Moreover, it includes other provisions as those expressed in the Laws on "Foreign Investment", "State Ombudsman", and the "Internal Rules Bar". "**Arbitration procedure**" means any procedure of the arbitration court system regardless of whether it takes place or not by a permanent arbitral institution.⁶ "**Arbitral tribunal**" means a sole arbitrator or judge on the arbitration panel.⁷ Arbitration court is there as a choice for the treatment of a particular case and at the time of trial of the case, this court's temporary ad - hoc ceases to exist, as in the case of Albania. In the Albanian state arbitration procedure trials, conducted when the participants in the process are residing or staying in the Republic of Albania and the country of the arbitration procedure located in its territory⁸, this legislation regarding the internal state.

In Albanian, state representation and protection of interests of the Albanian state at foreign courts and international bodies, judicial or supervisory character, performed by the State Attorney, through representative office in foreign courts, international arbitration and international.⁹ While the representation and protection procedures in international arbitration conducted by informing the relevant institution, which is the party of the proceedings, State Advocacy in connection with litigation against other states.¹⁰ The institution concerned shall communicate to the State Bar, the petition and all available documentation regarding the matter. Also, the institution concerned along

⁴ European Convention on International Commercial Arbitration of 1961 Done at Geneva, April 21, 1961 United Nations, Treaty Series, vol. 484, p.364 No. 7041 (1963-1964). Art. 4, par. 1, a.

⁵ European Convention on International Commercial Arbitration of 1961 Done at Geneva, April 21, 1961 United Nations, Treaty Series, vol. 484, p.364 No. 7041 (1963-1964). Art. 4, par. 1, b.

⁶ Code of Civil Procedure of the Republic of Albania. (Law no. 8116, 29 Mars1996, as amended). Title IV "Arbitratin", Art. 401, page 144.

⁷ Ibid

⁸ Code of Civil Procedure of the Republic of Albania. (Law no. 8116, 29 Mars1996, as amended). Title IV "Arbitratin", Art. 400, page 144.

⁹ Law No. 10. 10018, dated 13.11.2008 "On State Advocacy". The Republic of Albania.

¹⁰ Internal Regulation "On the Organization and Functioning of the State Bar." Representation and protection procedures in foreign courts, and international arbitration. Republic of Albania. Art. 13, page 7.

with documentation of his delegates Managing Director's entitlement to representation through a written authorization signed by the institution.¹¹

Albanian legislation clearly explains the use cases to arbitration proceedings in international conflicts or disagreements known as the international arbitral awards. The most common cases of such disputes in the global trend of today will be about the relations in economic foreign countries. For this reason the Albanian legislation the provisions of the law on foreign investment, its Article 8 of the resolution specifies that: If a dispute arises foreign between a private investor and an English or an English party state enterprise or company, which has not been settled through an agreement, the foreign investor may choose to settle the dispute according to any kind of previously agreed upon and applied procedures. If there is no procedure foreseen for the settlement of disputes, then the foreign investor has the right to submit the dispute for resolution to a competent court or arbitrator of the Republic of Albania, according to its laws.¹²

If a dispute arises foreign investment between a foreign investor and a private party government or a state enterprise or Albanian organization, which has not been settled amicably, the foreign investor may choose to settle the dispute under any procedure previously agreed and enforceable. If not foresee any procedure for resolving disputes, the foreign investor has the right to approach a court or arbitrator of the Republic of Albania, in accordance with its laws. If a dispute arises between a foreign investor and the Albanian public administration, which has not been settled through an agreement, the foreign investor may submit the dispute for resolution to a competent court or arbitrator of the Republic of Albania, according to its laws. If the dispute relates to expropriation, compensation for expropriation or discrimination, as well as to transfers as provided in article 7 of this law, the foreign investor may submit the dispute for resolution to the International Center for Settlement of Investment Disputes ("Center"). The International Center for Settlement of Investment Disputes was established by the Convention for the settlement of investment disputes between the states and citizens of other states, approved in Washington, on 18 March 1965.¹³

Every decision of international arbitration according to this article is final and irrevocable for the parties in dispute. The Republic of Albania undertakes to apply without delay the provisions of these decisions and assure their implementation within its territory.¹⁴ Any decision of the international arbitration under this section is final and binding on all parties to the dispute. The Republic of Albania undertakes to implement without delay the provisions of these decisions and to ensure their implementation in its territory. Albanian state in handling arbitration procedures of international arbitration governed by the law regulating specific sets as well as Article 439 of the Code of Civil Procedure.¹⁵ While it flaring run international arbitration regulation is only the existence of this article (Art.439) while Article 440 for "Determination of Proceedings" and "Applicable Law" Article 441, are repealed.

¹¹ Ibid.

¹² Law No. 17. Dated 7764. 02.11.1993 "On foreign investments". Republic of Albania. Art.8, par. 1.

¹³ Law No. 17. Dated 7764. 02.11.1993 "On foreign investments". Republic of Albania. Art.8, par. 2.

¹⁴ Law No. 17. Dated 7764. 02.11.1993 "On foreign investments". Republic of Albania. Art.8, par. 2.

¹⁵ Code of Civil Procedure of the Republic of Albania. (Law no. 8116, 29 Mars1996, as amended). Title IV "Arbitratin", Art. 439, Art. 440, Art. 441, page 158.

2.2 Arbitration Proceedings In Kosovo Legal Framework

Kosovo's legal framework governing domestic arbitration by the **Arbitration Law** adopted on 23 September 2008 and meets legal framework including the **Law on Contested Procedure**, and the **Law on Executive Procedure**. Country of Kosovo excepts for arbitration legislation, the Convention recognizes as Convention New York 1958 and the UNCITRAL rules. Unlike Kosovo, Albanian legislation is set Permanent Tribunal of Arbitration at the Chamber of Commerce of Kosovo. Organizational structure and mandate are set forth by the act establishing the Permanent Arbitration Tribunal. Act establishing the Permanent Arbitration Tribunal in Kosovo Chamber of Commerce, in its Article 1 paragraph 2 states that: "Permanent Tribunal is independent in its work".¹⁶

In connection with the organization of the arbitration in Kosovo legislation will be a combination of two types of arbitration; for one it will have more permanent institutional arbitration Permanent Arbitration Tribunal and secondly it will have temporary ad hoc arbitration. Its permanent character expressed in the Law on Chamber of Commerce, its Article 26 stipulates that "the Kosovo Chamber of Commerce has the **Permanent Arbitrage** that is competent to resolve disputes between members of Kosovo Chamber of Commerce and between the members and other natural and legal entities".¹⁷

In connection with the arbitration proceedings, the tribunal determines the development of the trial and the language to be used in accordance with the issue that will discuss. If parties have not agreed otherwise, the same procedure is always used for arbitration provisions in the Albanian state. The arbitration procedure continues with the reply to the claim and counter. Claim within the deadline agreed by the parties or determined by the arbitral tribunal, the claimant submit his claim and the evidence on which the indictment. The defendant is duty to file reply to the petition and the evidence on which it relies. Within the period determined by the arbitral tribunal, the claimant scarf claim the facts that will be supporting his state, and the respondent state shawl his defense claim in respect to the facts and support.¹⁸ Arbitral proceedings are terminated by the issuance of a final decision or order of the arbitral tribunal to terminate the arbitration procedure.

¹⁶ Act Founder of the Permanent Tribunal of Arbitration at the Chamber of Commerce of Kosovo. Adopted on 27 June, 2011. Art. 1, par. 2.

¹⁷ Law No. 16. 2004/ 7 For Kosovo Chamber of Commerce. Art. 26.

¹⁸ Law No. 13. 02 / L - 75. Law on Arbitration. The Republic of Kosovo. Art. 20.

3. The Importance Of “Arbitration Agreement “In An Arbitration Hearing, And The Kosovo Albanian Legislation.

It identifies what is important in a process of arbitration is that arbitration agreements be established based on the parties. The parties express their willingness to resolve arbitration courts outside doors classic, and **this agreement between the parties is written**. Almost all conventions and laws that treat arbitration provisions specify in their arbitration agreement be in writing and this determines the importance of the implementation of the decision taken by a court of arbitration, because their parties will complete in writing agree to settle their dispute through an arbitration court. Certainly won't exclude other perspectives about the form of drafting the arbitration agreement, which is formulated in another way but not in writing. In legislation, between Kosovo and Albania, the UNCITRAL Model Law - Nations Commission States International Trade Law, Article 7, paragraph 2, “the arbitration agreement is a written agreement”.

While the European Convention on International Commercial Arbitration stated, that “arbitration agreement ” is either an arbitration clause in a contract or an arbitration agreement, the arbitration agreement will be signed by the parties.¹⁹ These parties, which are involved in an exchange letters, telegrams, or in a tele-communication and relations between states whose laws do not require that an arbitration agreement is in writing, any arbitration agreement concluded in the form authorized by these laws.²⁰ This means that different countries provide different guidelines for a written arbitration agreement or not as defined in the laws of their legal framework.

The two Albanian-speaking countries, on this issue, have clearly established the importance of a written agreement. “Arbitration Agreement” means an agreement between two or more persons, some or all legal disputes which have arisen or which may arise among them, shall be subject to arbitration²¹. Similar interpretation was also expressed in the Model Law UNICITRAL in Chapter II Article 7 thereof, in giving a definition of the Arbitration Agreement, from point 1 to point 5 of this detailed article explaining ways, means and reasons for writing the arbitration agreement. Law on Arbitration in Kosovo in Chapter II of the provisions of the Arbitration Agreement provides that the Arbitration Agreement entered into written form.²² This requirement is deemed to have been respected even if the conclusion of the Arbitration Agreement is recorded by means of an exchange of letters, telefaxes, telegrams or other means of telecommunication or electronic communication, by means of a bill of lading if the latter contains an express reference to an Arbitration clause, or in the event of an exchange of statements of claim and defense, in which the existence of an agreement is alleged by one party and not denied by the other.²³

¹⁹ European Convention on International Commercial Arbitration of 1961 Done at Geneva, April 21, 1961 United Nations, Treaty Series, vol. 484, p.364 No. 7041 (1963-1964)

²⁰ Ibid

²¹ Law No. 13. 02 / L - 75. Law on Arbitration. The Republic of Kosovo. Art. 2.

²² Law No. 13. 02 / L - 75. Law on Arbitration. The Republic of Kosovo. Art. 6, par. 1.

²³ Law No. 13. 02 / L - 75. Law on Arbitration. The Republic of Kosovo. Art. 6, par. 2.

The condition of a written agreement states in relevant laws specify if a consumer is a party to an Arbitration Agreement. The Arbitration Agreement is considered to be concluded in writing, if only all parties to the Arbitration Agreement personally sign the document containing the Arbitration clause. The signature, referred to in this paragraph, may be substituted by an electronic signature subject to compliance with the relevant legislation on electronic signatures. If a consumer is a party to the arbitration agreement, it's deemed to be concluded in writing only if all parties to the arbitration agreement personally sign the document containing the arbitration clause. Signature affected in this paragraph may be replaced by an electronic signature in accordance with appropriate for electronic signatures.²⁴ Failure to comply with requirements set out in paragraph 2 and 3 of this article shall not be considered by the arbitral tribunal, unless the parties initiate arbitration proceedings.²⁵

Also, the Civil Procedure Code of the Republic of Albania recognizes and regulates the institute of arbitration, and its provisions governing the arbitration agreement. Can be judged by arbitration procedure only if there is an agreement of the parties, by which they agree to submit to arbitration disputes which have arisen or may arise from a contract concluded between them.²⁶ Unlike arbitration law in Kosovo, which specifies in paragraph 1 of Article 6, the agreement is written, the Code of Civil Procedure of the Republic of Albania, determining that the arbitration agreement is written through Article 404 provides that the provision addresses the invalidity of the arbitration agreement. For more clearly, it says that: Stressing the importance of an arbitration agreement in writing the provisions of applicable Code of Civil Procedure consider void an arbitration agreement if it is not reflected in its written agreement with key parties with a document or other written that refers to it, as can be telegram, telex any other tool that makes accurate documentary evidence.²⁷

4.1. The Invalidity Of The Arbitration Agreement

Certainly both speaking legislation will have provisions that determine when the condition is invalid for judging the dispute by arbitration. In the case of the Albanian state invalidity of the arbitration agreement is specified in the Code of Civil Procedure, while in the state of Kosovo is not defined in the Law on Arbitration but in the Law on Contested Procedure part of the legal framework for arbitration in Kosovo. The conditions that make an agreement invalid are the following:

(i) The requirement of a written agreement, the Albanian law is defined in Code of Civil Procedure, section 404, as mentioned above, the Kosovo law is defined in the Law on Contested Procedure, section 511 paragraph 2 Agreement on arbitrator. It can by parties be broken to resolve a dispute or to solve disputes that can appear among

²⁴ Law No. 13. 02 / L - 75. Law on Arbitration. The Republic of Kosovo. Art. 6, par. 3.

²⁵ Law No. 13. 02 / L - 75. Law on Arbitration. The Republic of Kosovo. Art. 6, par. 4.

²⁶ Code of Civil Procedure of the Republic of Albania. (Law no. 8116, 29 Mars1996, as amended). Title IV "Arbitratin", Art. 403, page 145.

²⁷ Code of Civil Procedure of the Republic of Albania. (Law no. 8116, 29 Mars1996, as amended). Title IV "Arbitratin", Art. 404, page 145.

legal relationship material. "Agreement on arbitrator is only valid if it is done in a written form".²⁸ Agreement on arbitrator is considered in the form Written even if it is done through letters, telegrams, or other means of telecommunication that can test the written agreement arbitration agreement is considered in writing even when it is connected to an exchange of letters, telegrams, telex or other means of telecommunication that can prove the written agreement.²⁹ Agreement on arbiter is considered written if it is done through charge exchange, where the plaintiff claims that there is an agreement, and the accused does not deny such a possibility.³⁰ Agreement on arbitrator can be examined and may be proved only through documents.³¹

(ii) The manner of appointment of the arbitrator or arbitrators. Code of Civil Procedure states that: The agreement of the parties, is invalid if it is not foreseen in the way of appointing the arbitrator or arbitrators, as well as the subject of the dispute, when it effectively born.³² While the Law on Contested Procedure, Article 516, paragraph 5, that one party that does not want to use the powers under paragraph 1 (*If the arbiter is not named in the set time, and there is nothing else from the agreement, state court proposes the arbiter according to the parties' proposition*) and 2 (*If the arbiters can decide on the president, and nothing else comes out from the agreement, the state court names him/her by any arbiters' proposition or any parties' proposition*) of this article can ask by charges from the competent court for arbiter and arbitrary president naming to present arbitrary agreement as not valid.³³

(iii) If the arbitrator refuses trusted mission. Code of Civil Procedure states that: Agreement with the judgment invalidated arbitration procedure, when an arbitrator appointed under this procedure does not accept mission entrusted.³⁴ In Article 517 of the Contested Procedure Law in Kosovo each party can ask by charges from state court to declare arbitrary agreement as not valid if: a) the parties can not agree on the arbiter within thirty (30) days that they should name together; b) the person that has been as assigned as arbiter can not or will not exercise this obligation.³⁵

In Kosovo arbitration legislation, Arbitrary court decides on its own competence, as well as for rejections on arbitrary agreement validity.³⁶

4. Character of an arbitration and appeal against the decision of the court of arbitration under the law of both states.

²⁸ Law No. 14. 03/ L- 006. Law on Contested Procedure. The Republic of Kosovo. Art. 511, par. 2.

²⁹ Law No. 14. 03/ L- 006. Law on Contested Procedure. The Republic of Kosovo. Art. 511, par. 3.

³⁰ Law No. 14. 03/ L- 006. Law on Contested Procedure. The Republic of Kosovo. Art. 511, par. 4.

³¹ Law No. 14. 03/ L- 006. Law on Contested Procedure. The Republic of Kosovo. Art. 511, par. 5.

³² Code of Civil Procedure of the Republic of Albania. (Law no. 8116, 29 Mars1996, as amended). Title IV "Arbitratin", Art. 404, page 145.

³³ Law No. 14. 03/ L- 006. Law on Contested Procedure. The Republic of Kosovo. Art. 511, par. 5.

³⁴ Code of Civil Procedure of the Republic of Albania. (Law no. 8116, 29 Mars1996, as amended). Title IV "Arbitratin", Art. 404, page 145.

³⁵ Law No. 14. 03/ L- 006. Law on Contested Procedure. The Republic of Kosovo. Art. 517, par. 1.

³⁶ Law No. 14. 03/ L- 006. Law on Contested Procedure. The Republic of Kosovo. Art. 520, par. 1.

The character of the decisions issued by a court of arbitration is **final and binding** on the parties that have expressed readiness to issue them with an answer arbitration procedure, that is actually signing the Arbitration Agreement. The arbitration decision has the effect of judging the issue of “res iudicata”³⁷ in the Code of Civil Procedure of the Republic of Albania, the decision of the arbitral tribunal is final in connection with the dispute review, and also it is executed by force. The law provides for arbitration in Kosovo arbitration awards issued inside and outside Kosovo always in accordance with Kosovo legislation.

Arbitral awards in both countries will rely on state legislation relevant to section 427 clearly the Civil Procedure Code states that the arbitral tribunal shall apply the Albanian legislation, in accordance with the Court of Arbitration in Kosovo, which legislation applies. Code of Civil Procedure of the Republic of Albania, explains the decision of the court of arbitration for a majority vote,³⁸ similarly formulated Kosovo laws on arbitration, and handles cases when allowed.

To determine when an arbitral tribunal decisions are not acceptable to the party or parties and seek cancellation or appeal to a higher instance shall refer to the following table to understand and compare the ways provided for in the legislation of the respective countries.

Albania	Kosovo
The decision of the arbitral tribunal may appeal to the appellate court only when:	Annulment of arbitration may be required:
a) arbitral tribunal is formed incorrectly;	a) if there was no agreement on arbitrary or if it is not valid;
b) arbitral tribunal has no right or authority declared its non-dispute for adjudication;	b) if a provision of this law, or the agreement on arbitrary is broken regarding the arbitrary content or the verdict;
c) arbitral tribunal in its decision has exceeded the requirements for which it was invested or is not expressed on one of the main requirements of the claim;	c) if the arbitrary court exceeded its jurisdiction;
d) not respecting the equality of the parties and their right to be heard in a procedure based on the principle of	d) if the verdict is not understandable or if it contradicts itself;

³⁷ The right to arbitration . <http://www.slideshare.net/NasufGrmizaj/e-right-of-arbitrage-22>

³⁸ Code of Civil Procedure of the Republic of Albania. (Law no. 8116, 29 Mars1996, as amended). Title IV "Arbitratin", Art. 429, page 154.

contradiction;	
e) arbitral tribunal's decision is contrary to public order in the Republic of Albania. ³⁹	e) if the court finds that, even if the party does not mention the reason for annulment; The arbitration ruling is contrary to the legal order of our country. ⁴⁰

Under the Code of Civil Procedure, against the decision of the court of appeals is not allowed recourse to the High Court.⁴¹ On Contested Procedure Law in the state of Kosovo, a year after the verdict becomes arbitrary and no annulment decree absolute can be requested, After the expiration of one (1) year from the date on which the arbitration judgment is made final, cannot be required annulment.⁴²

5. Conclusion

The story of two twin states, one of them offline at birth imposes a stress similarity and distinctness between them. Similarities that comes from the origin, a common language, customs, and distinctness referring to the political system, legal system, and economy. Kosovo is the newest country in Europe and has a distinct legal framework from that of its neighbor Albania. The legal infrastructure in both countries carries problem, problems and deficiencies that are present due to weak development of countries. These countries are part of the territory of the Western Balkans who witnessed the tragic situation as a result of the communist regimes. Albania's communist regime emerged from 90' years and Kosovo emerged from a wild war for secession of its territory, has left behind consequences which still reflected in the political system, legal system and the organization of the state. However, unlike Kosovo, Albania has experienced a longer transition period, and can now affirm the establishment of a genuine democratic system, the shortcomings and problems associated with the rule of law, justice system, and the arbitration institution, part of this study.

Both countries have problems in terms of arbitration, a problem which particular aspects are similar, but also different in the two countries.

The most important conclusion reached from this study is that in Albania the use of arbitration method is not preferable and applicable as a method. In Albania the arbitration judgment due to the low level of legal modernization, trial and execution of decisions, has led to the failure of this form of judgment. In Albania, many cases are filed with the court of arbitration but only a few cases of those who were present were resolved by arbitration court most of these cases, the court has finished. This represents a negative measure in many respects:

³⁹ Code of Civil Procedure of the Republic of Albania. (Law no. 8116, 29 Mars1996, as amended). Title IV "Arbitratin", Art. 434, page 156.

⁴⁰ Law No. 14. 03/ L- 006. Law on Contested Procedure. The Republic of Kosovo. Art. 529.

⁴¹ Code of Civil Procedure of the Republic of Albania. (Law no. 8116, 29 Mars1996, as amended). Title IV "Arbitratin", Art. 437, page 157.

⁴² Law No. 14. 03/ L- 006. Law on Contested Procedure. The Republic of Kosovo. Art. 530.par. 4.

- insurance in a spirit of cooperation,
- tradition not positive in the resolution,
- the absence of an arbitration agreement, or the relevant clauses in agreements between contractors,
- missing reliability of arbitration institutions,
- corruption etc.

Those who shrink element rule of law and democracy.

Moreover, Albanian legal framework is a vacuum in the arbitration field. The legal framework in Albania does not support arbitration and did not create a separate law which govern the arbitration judgment. Arbitration is included in the Code of Civil Procedure, the Law on Foreign Investment and other laws which do not have primary focus arbitration.

The similar problems between Albania and Kosovo country about arbitration method is that the same problem occurs also in Kosovo.

Often arbitration cases filed with Kosovo ended in court, indicating that arbitration procedures have failed and are presented as non-significant, thus failing to fulfill the mission of creating them. Arbitration courts and arbitrators represent a lack capacity to solve cases within the prescribed period, taking into account that one of the advantages of an arbitral tribunal is to reduce bureaucracy and transparency. Reports by international arbitration courts are characterized by a lack of efficiency in resolving the issues.

A very important difference between Kosovo and Albania, is that the state of Kosovo supports arbitration method. In Kosovo the arbitration judgment is more preferable than Albania. Unlike from Albania, Kosovo has the legal framework for arbitration, Kosovo has the Arbitration Law, and meets legal framework including the Law on Contested Procedure, and the Law on Executive Procedure.

Albania is a country in already mature phase in terms of its experience and development, while Kosovo is still an infant in its development as a new state. Despite shortcomings strides have been made by both countries in the installation of a rule of law, legal certainty and effective arbitration procedure.

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