



Mr. Neritan Kallfa

INTERVIEW



Tonucci & Partners

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What is your experience with domestic and international arbitration?

My experience in international arbitration is attributed to the fact of being an academic scholar and a legal practitioner. The academic interest starts in the early 90s after my graduation from the law school. I have attended postgraduate programmes and special courses on international arbitration. In 1995, I completed the Academy of American and International Law in Dallas, Texas and I had a special course on international arbitration. In 1997, I completed the Duke-Geneva Institute in Transnational Law at Universite de Geneve in Switzerland and again I chose a special course on international arbitration. It must be noted that the academic interest on this subject matter is continuous even today and should be as such for any legal practitioner. The experience as a legal practitioner starts from the year 2002 and onward taking on different roles in international arbitration as sole arbitrator, co-arbitrator, counsel, co-counsel, witness expert, expert, etc. for different forums of international arbitrations such ICC, ICSID, UNCITRAL, SCC, etc.

You have worked both as a counsel and an arbitrator. In your experience, could you tell us your opinion about the issue of double hatting? What practices helped you in switching between your roles as a Counsel and an Arbitrator?

Double-hatting is when an individual acts as arbitrator in one case and as a legal counsel in another. This is an international connotation for safeguarding the impartiality of arbitration. The arbitration practice has been highly concentrated on few law firms and professionals globally. As such, it is a concern for these practitioners and especially for the whole industry to tackle the concentration on few firms and professionals because apparently it will always bring up questions on the impartiality of arbitration. In Albania, given that arbitration is not developed, this connotation is somehow imported and applied as such from the international arbitration forums. Personally, I have not experienced similar circumstances as we are not quite often involved in international arbitration due to market constrained i.e. few or no arbitration cases at all. However, regardless of how small the Albanian market is, and although we are inclined to make a full disclosure, it is up to the international arbitration forums to assess and resolve whether our disclosure would effectively impair impartiality. In the majority of the cases, the international arbitration forums do apply a very broad interpretation of any connotation including double-hatting to avoid conflict of interest.



If you had the power to change something in the arbitration proceedings, what would it be?

First of all, changing "something in the arbitration proceedings" would be premature for the current circumstances as we do practice international arbitration. There are no cases or very few, mostly with state as a party to these international arbitration. It should also be noted that we do not have a solid legislation for international arbitration in Albania. However, if I was to change something, I would reorganise hearings i.e. postpone the hearing or set put a new hearing including submissions in case there are unexpected claims or grounds between the parties in the first hearing.

What tips would you share with us about surviving lengthy hearings and managing stress?

It is always a matter of experience. I assume that for a young practitioner from Albania, it always starts with overcoming language barriers, organising huge sources of documents and above all improving writing skills. However, in any case for a practitioner serving as an arbitrator, the first and paramount tip is starting to draft the award from the very beginning of the arbitration process i.e. first submission of the claimant.

Are there any specifics of arbitral practices that you particularly enjoy?

Being part to an arbitration process one needs to assume responsibility and accountability from the very start of the process. Therefore, the confirmation of the appointment itself is a particular moment because a feeling of trust and confidence from the appointee develops. Moreover, working in a group (i.e. co-arbiter with a panel of three or more) is always a moment of particular professional excitement because there is an intense and productive professional exchange of professional knowhow and experiences beyond and across different jurisdictions.

Covid-19 pandemic has affected the way arbitration proceedings are conducted. Do you think that this pandemic is reshaping the future of arbitration?

It is certain that so far the pandemic did bring another impact on the use of technology in arbitration. Actually, arbitration was more prone to the technology for decades. Arbitration embarks technology faster than the court system for several reasons. However, the most notable reason is that arbitration always targets fast and transparent procedures for the parties. Nevertheless, the pandemic brought the use of technology in arbitration to another level: use of technology for the hearings, otherwise known as `distance hearings`. This is not a rule yet but it seems that parties will have the liberty to choose or combine the use of technology for the hearings in the near future.

What practices do you employ to engage and keep up with the recent trends in arbitration?

First, the primary sources are books that are released periodically from prominent authors or publishing houses. Secondly, if attainable I participate in regional meetings in person or zoom and in special programmes. For instance, I successfully participated and completed the ICC Advance Academy of Arbitrator in 2017.

Is there any routine you would recommend to young lawyers that seek to better themselves in the field?

Internationally speaking, the arbitration practice is very competitive. Having in mind that we are lagging behind the advanced arbitration practice in the world and even in the region, young lawyers should work hard to overcome the academic barriers first. There are limited sources in the domestic academic arbitration but there are numerous and qualitative sources abroad. Secondly, young lawyers must contribute to the establishment of arbitration practice in Albania wherever they are serving in the public sector or as a private practitioner in the private sector.

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