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RIGHTS AND DUTIES OF AN ARBITRAL TRIBUNAL

Business sector in Kosovo may have wondered, why should it arbitrate? If you ask me, the neutrality of arbitration, its confidentiality and ability to adapt to the needs of businesses, make arbitration the perfect tool to settle commercial disputes. Independence and impartiality of the Arbitration Tribunal, which, through experienced professionals - arbitrators, only complement the aforementioned benefits of this tool, urging to be used and adapted to the needs of the business community. With that in mind, the counter question would be "why not?

Arbitration has been established as a dispute resolution mechanism in the field of commerce. In the international arena, arbitration has been accepted as a tailored-made process to adapt to the specifics of *doing business*. Arbitration provides and guarantees fast and efficient procedure. When compared to the work of courts in the Republic of Kosovo, efficiency of the procedure reflected in quicker adoption of the final award should have resulted in higher interest of the business community towards arbitration. While still being in the lead, in comparison to other departments of basic courts, the Commercial Department of the Basic Court in Pristina still faces many challenges and difficulties to their work, such as the backlog of cases and lack of expertise in properly solving cases of commercial nature. The judges of this Department themselves advocate for arbitration, being aware of its ability to accurately respond to the needs of businesses.

Arbitrating means solving your case with the help of an independent and impartial expert, a professional of a certain field, be that one or three, and being fairly certain that the case will be solved in an absolute transparency and confidentiality, thanks to the safeguards the arbitration procedure guarantees.
As such, arbitration cases shall be further treated, analysed and settled by an Arbitration Tribunal. In other words, the case shall be treated, analysed and solved by an arbitrator or panel of arbitrators that have been chosen by the parties to the case. But, how does this really function?
The arbitral procedure is initiated and established based on the *arbitration clause*, agreed upon by both parties, within their original contract. Actually, this arbitration clause determines the Arbitration Tribunal. With this clause, the parties agree on the institution that shall arbitrate their dispute, might as well agree on the venue, rules of procedure, including number of arbitrators, language used in the proceedings and the applicable legislation. Looked from a different angle, parties actually have the power of creating the whole procedure or in other words, creating their own Arbitration Tribunal, comprised of a certain number of

arbitrators that shall know from the very beginning, which rules to apply, which legislation, on the certain language of the procedures. *Does sound good, right?* Nevertheless, businesses in Kosovo avoid arbitration clauses, even though they are highly unsatisfied with courts' performance.

Arbitration Tribunal is established when arbitrators are appointed upon agreement of both parties. Prior to the establishment and taking over the role of an arbitrator, the latter is obliged to offer *a declaration of independence* that guarantees impartiality towards the parties and also, discloses potential conflict of interest, which might, if so agreed by the parties, disengage the said arbitrator from further proceedings. However, once agreed on the appointment of arbitrators, the parties establish the *Arbitration Tribunal.*

Once established, the Tribunal takes over the proceedings, starting from the submitted claim. Arbitrators, through the powers vested in them by the Tribunal's rules and regulations guide the whole process and act in accordance with the foreseen rules of procedure. Parties to the case should be aware of the fact that there might be issues that could be not foreseen by the Rules of Procedure. Yet again, such cases are left to the parties to settle them mutually or delegate the power to the Arbitration Tribunal to decide on such matters.
One of the pressing issues that has been settled and amended based on the practice within the level of international arbitration, was the issue of *conflict of interest* between an arbitrator and a legal counsel to one of the parties. There have been times when Arbitral Institutions had not foreseen actions as to such situations and therefore, it was difficult to assess reaction towards the situation where conflict of interest was not *prima facie* evident or was only claimed to exist, by one of the parties. Knowing that the final award on such cases could be easily challenged by the other party, it was imperative such issue be assessed mindfully by arbitration practitioners. Nowadays, rules and guidelines of arbitral institutions do pay closer attention to cases of conflict of interest thereby ensuring more safeguards to the process and the stability of the arbitral award.

The duties of arbitrators are clear when it comes to disclosure of conflict of interest or any other information that might pose a threat towards their independence and impartiality. In cases when, based on the information provided by an arbitrator, a party give rises to the doubts towards arbitrator's impartiality, based on objective reasoning, said party might request removal of that arbitrator. Such measures are foreseen in order to guarantee the independence and impartiality of an arbitrator and leave no room for questioning of the final arbitral award.
Knowing that there is no right to appeal the final award, very little room is left for an unsatisfied party to attempt submitting the claim for the annulment of the arbitral award to the competent court. Legal grounds for such annulment are those foreseen in the New York Convention on Recognition and Enforcement of Arbitral Awards that were transposed as such within national legislation, as is the case in the Republic of Kosovo. Such grounds are only related to potential breach of the arbitral procedure and based on this fact, Arbitration Tribunal is

obligated to lead the arbitral process diligently, based on the written rules and principles of fairness, equality and efficiency of proceedings.

The safeguards imposed to the arbitration proceedings should serve as to convincing the business community that arbitration is the perfect tool to dispute resolution in the commercial field. It is my view that businesses should at least require more information and express further interest in understanding the procedure, so that the internationally followed trend be accepted by the businesses operating in the Western Balkan countries. Scholars and arbitration practitioners from the Western Balkans have been striving hard to introduce arbitration to the business sector out of the desire to sell the right idea, at the right time, to the commercial sector doing business in the countries in transition, that should, in their own interest, adapt to the internationally spread and adopted mechanisms, such as arbitration.

In the composition of the Arbitration Tribunal, parties easily find guaranteed independence, impartiality and absolute guarantee of transparency to the process. More importantly, Arbitration Tribunal offers expertise, which is crucial to solving the case and satisfying the primary interest of the parties. Beyond all, the Arbitration Tribunal is obliged to confidentiality, thereby being an additional tool to protecting the reputation of the business. With all this in mind, businesses should give it a try and opt for an arbitration procedure in order to experience its perks and advantages. At the end of the day, *why not?*

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