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LEGAL • TAX • ACCOUNTING

## INTERVIEW

**Forthcoming appointment as ICC  
Court of Arbitration Member  
A new “path” in the career**

### **What drove you to the world of domestic and international arbitration?**

When I started practicing law at Boga & Associates, in 1996, I would spend half of the time as litigation counsel before the Albanian courts and the other half advising clients on transactions, mainly in corporate law and contract law. My professional experience was growing along with the firm in various industries. In addition to our transactional work, we started representing clients in cases of international arbitration involving both jurisdictions covered by the firm, Albania and Kosovo. The litigation experience sparked my curiosity about how the dispute and the submissions of the parties' counsels were understood by the arbitrator. Such interest coincided with a course for training arbitrators sponsored by USAID through the American Chamber of Commerce in Kosovo, in 2011. Following the trainings and certification, I was enrolled as arbitrator in the roster of the American Chamber of Commerce in Kosovo. In 2014, I was appointed Chairman of the Steering Council of ADR Centre of the American Chamber of Commerce in Kosovo.

Currently, I keep on practicing law as a partner at Boga & Associates, covering two jurisdictions, Albania and Kosovo, advising clients on transactions, dispute resolution and, when appointed by the parties, I act as arbitrator.

### **What are the most interesting aspects about working as an arbitrator/arbitration counsel?**

The difference between trials taking place before the courts of law and arbitration is astonishing. The procedures flexibility in arbitration and the understanding of the dispute by the arbitrators provide the parties with the possibility and comfort of submitting and defending their case in the best way possible. In the courts of law, you are faced with rigid procedures and sometimes spend plenty of energy to make sure that judges who are not specialized on commercial transactions understand a complex case. When acting as an arbitrator, I have felt the relief of the parties' counsels from such burdens deriving from their experience in the courts of law.

### **Thinking about your arbitration experience, what do you enjoy in particular during an arbitration proceeding?**

Arbitration starts with the arbitration clause in the contract negotiated and entered into among the parties. In that process, there are many elements that, as a transactional lawyer you

need to consider, the most important of which is making sure you draft a valid arbitration clause.

However, in my experience as an arbitration counsel, I have enjoyed in particular the phase of selecting the arbitrator. That is a significantly important and complex process involving the assessment of the arbitrator's knowledge. You need to make sure of selecting an arbitrator that is, at least, familiar with the field of industry and the substantive law subject to the dispute among the parties. In arbitration proceedings, it is important that the arbitrator selected by each of the parties understands the case. Such understanding would allow him/her to have a sound judgment based on facts when making the award or when discussing the matter with the other members of the arbitral tribunal, while making the award.

**Your appointment as Member of the ICC Arbitration Court is forthcoming. What are your feelings about this new "path" in your career?**

I feel honoured to be appointed Member of the ICC Arbitration Court. This is not an entirely new "path" in my career. As mentioned previously, I have acted as the Chairman of the Steering Council of ADR Centre of the American Chamber of Commerce in Kosovo since 2014. The Steering Council plays a similar role with that of ICC Arbitration Court, in respect to cases arbitrated under the ADR Centre of the American Chamber of Commerce in Kosovo. Certainly, as Member of the ICC Arbitration Court, the tasks would be at a far greater scale, which translates into greater responsibility and cases that are more complex.

**What do you expect to gain from this position?**

What I expect to gain from this position is testing my current knowledge and experience in arbitration and enlarging it further. I hope to use such knowledge and experience to aid improvement of the local arbitration environment and promoting arbitration in Albania and Kosovo.

**Will your busy working schedule be a "bump" in your engagement in this new role?**

I trust that my busy working schedule would not affect my engagement in this new role. The success in my career at Boga & Associates, in addition to hard work, is especially attributed to the great teamwork, which allows me to get involved and handle more than one commitment at a time.

**The lack of appointment of Albanian arbitrators can be considered as problematic. In your opinion why does this happen?**

Unfortunately, Albania has neither a tradition in arbitration nor has developed a customary arbitration practice. The country is lacking an arbitration law. Other than ICC Albania, I am not aware of any local business organization that is a promoter of arbitration. As a result of such unattractive environment, the business community is yet reluctant to refer disputes to arbitration and therefore there are only few practitioners with limited arbitration experience.

It is due to such reasons that, in my view, the Albanian arbitrators are unknown and therefore not appointed.

**Parties usually seek advice from their lawyers as to suitable arbitrators. What would be your advice to your client about choosing an arbitrator?**

As mentioned above, it is essential for the arbitrator to understand the dispute and the arguments of the parties, thus it would be ideal if the arbitrator is experienced and familiar with the field/s of industry involved in the dispute. Therefore, the first thing to look at is the CV of the arbitrators considering for appointment, in order to understand whether he/she has experience as an arbitrator or as a practitioner in the field of the dispute.

**If you had to pick one skill that is most important to have as an arbitrator, what would you say that is?**

I would pick the writing skills. It is the duty of the arbitrator to issue an award that is clear and understandable with respect to fact-finding analysis, reasoning and drawn conclusions. An unclear award could affect the enforcement procedures.

**Upon reflection, are there any decisions you have made that you think will be of inspiration to aspiring young arbitration lawyers?**

My advice is to get involved and combine as much as possible the litigation/ADR practice with the advisory and transactional practice. Having such experience helped me to better understand the parties' perspective, while drafting and negotiating contracts, negotiating settlement or arbitrating disputes, writing and submitting arguments.

*Disclaimer: The views and opinions expressed in this interview are solely personal statements of the author and do not necessarily reflect the stance of ICC Albania. All information posted is merely for educational and informational purposes.*

