Review Article
DOI: https://doi.org/10.22598/iele.2026.13.1.8

THE DUE LEGAL PROCESS IN THE LAW "ON ARBITRATION IN THE REPUBLIC OF ALBANIA" THE CONFLICT WITH INTERNATIONAL / EUROPEAN LAW

Anna Xheka [*]
Julejda Gërxhi [**]

ABSTRACT

The Law "On Arbitration in the Republic of Albania" is a recently adopted statute, enacted in mid-2023. This, together with the lack of a well-established arbitration culture within the Albanian justice system, places its implementation within a framework of challenges of both a practical and a theoretical nature. The focus of this paper is the analysis of the principle of legality, which simultaneously converges with the principle of due legal process, as provided for by the law in its formal aspect. This analysis is conducted through a comparison with international standards, including European norms, as well as with the consolidated jurisprudence of the European Court of Human Rights (ECtHR), and is limited to a single element: the guarantees concerning the impartiality and independence of the arbitral tribunal, considered strictly within the law's formal meaning. The methodology used is a combination of doctrinal legal analysis and comparative analysis, based on national and international legal provisions. The doctrinal legal analysis has been carried out by referring solely to the formal legal provisions of Albanian arbitration law, without extending to their application in case law, since such an extension would deviate from the purpose of this paper. This analysis has included the case law of the European Court of Human Rights due to the role that the jurisprudence of the latter plays as a genuine source of law in Albania. At the conclusion of the analysis, the authors find that the new Law on Arbitration raises significant concerns regarding the formal guarantees of the impartiality and independence of the arbitral tribunal.

Key words: *arbitration, the Law "On Arbitration in the Republic of Albania", the Geneva Convention, the New York Convention, the European Court of Human Rights.*

[*] University "AleksandërMoisiu", Faculty of Political and Juridical Sciences, Durrës, Albania, annaxheka@uamd.edu.al

[**] University "AleksandërMoisiu", Faculty of Political and Juridical Sciences, Durrës, Albania, julejdaaliaj@uamd.edu.al

1. INTRODUCTION

Alternative dispute resolution through arbitral tribunals is new in Albania. Despite the fact that arbitration was formally part of the domestic legal system through regulations adopted immediately after the change of systems, by Presidential Decree No. 682, dated 04/11/1993[1], *"On the Dissolution of State Arbitration,"* as well as through its inclusion in the Code of Civil Procedure by Law No. 8116, dated 29/3/1996[2], due to the lack of accompanying necessary secondary legislation, the envisaged provisions remained almost unenforceable for a long period, until they were completely repealed by the amendments made in 2013.

For more than 20 years, since 2000, the few arbitration initiatives or proceedings which for the most part consisted of processes for the recognition of foreign decisions of international arbitral tribunals were based on two important ratified international instruments, namely: the Convention *"On the Recognition and Enforcement of Foreign Arbitral Awards,"* New York, dated 10/6/1958 (NYC), ratified by Law No. 8688, dated 9/11/2000, and the European Convention on International Commercial Arbitration, Geneva, 21/4/1961 (Geneva Convention), ratified by Law No. 8687, dated 9/11/2000.

Within the framework of the EURALIUS V project *"Consolidation of the Justice System in Albania,"* financed by the EU, a specific law was drafted and adopted in 2023 for the first time in the legislative history of Albania, namely Law No. 52/2023 *"On Arbitration in the Republic of Albania."*

The law aims to regulate domestic and international arbitration conducted within the territory of the Republic of Albania, mainly based on the UNCITRAL Model Law on International Commercial Arbitration.

The new law has no impact with regard to the process of approximation of domestic legislation with that of the European Union (EU), since there are no acquis norms (such as Regulations or Directives) that directly regulate arbitration matters in EU Member States. The EU Member States themselves are still discussing the so-called *"European Passport,"* which aims at a common regulation at EU level of the arbitration process or the recognition of its awards.

Law No. 52/2023 *"On Arbitration in the Republic of Albania,"* as an entirely new instrument of alternative justice, presents multidimensional challenges in its implementation.

[1] Decree of the President of the Republic of Albania No. 682 "On the Dissolution of State Arbitration", 4.11.1993.

[2] Law No. 8116 "Code of Civil Procedure of the Republic of Albania", 29.3.1996.

From a structural and substantive perspective, this law incorporates provisions of both of the aforementioned conventions, thus constituting a law that regulates both domestic and international arbitration procedures when the latter are conducted in Albania, as well as the process of recognition/refusal of recognition of foreign arbitral awards.[3]

In this paper, the authors focus on a very important element of due legal process, namely the formal guarantee of the impartiality of the arbitral tribunal in the new arbitration law, as well as comparative aspects (compatibility or conflict) with international and European law concerning the consequences of violations of the law with regard to the impartiality of arbitrators, also examined from the perspective of the jurisprudence of the European Court of Human Rights (ECtHR)and the Court of Justice of the European Union (CJEU), since this element intersects two important legal parameters: the principle of legality and that of due legal process.

The questions raised for discussion and analysis in this paper are:

a - Is Albanian arbitration law fully harmonized with the jurisprudence of the European Court of Human Rights, as a genuine source of law in Albania, with regard to the impartiality of arbitrators?

b - Does Albanian arbitration law, from the formal aspect of its provisions, guarantee due legal process with regard to the impartiality of arbitrators?

2. THE IMPARTIALITY OF ARBITRATORS IN ALBANIAN ARBITRATION LAW: COMPARATIVE ASPECTS WITH INTERNATIONAL AND EUROPEAN LAW

2.1. THE LEGAL REGULATION OF THE IMPARTIALITY OF ARBITRATORS IN ALBANIAN ARBITRATION LAW AND THE CONSEQUENCES IN CASE OF VIOLATION OF THE LAW RELATED TO THIS REGULATION

The impartiality and independence of arbitrators in Law No. 52/2023 appear as their obligation based on Article 13.2, as well as Articles 17, 18, and 19 of the law, with the consequences of non-compliance with this obligation ma-

[3] Law No. 8688 "On the Accession of the Republic of Albania to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958", 9.11.2000; Law No. 8687 "On the Accession of the Republic of Albania to the European Convention on International Commercial Arbitration, Geneva, 21 April 1961", 9.11.2000; Law No. 52/2023 "On Arbitration in the Republic of Albania", 6.7.2023.

terializing in two legal institutions, namely the *"Annulment"* of a domestic arbitral award, provided for in Article 44, and the "Refusal of Recognition" of a foreign arbitral award, provided for in Article 47 of the law. With regard to the institution of "Annulment" of a domestic arbitral award, Article 44, letter (d), provides that the award shall be annulled if:

> *"the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the provisions of this law or with the arbitration agreement, provided that such violation has consequences for the manner in which the dispute was resolved by the arbitral tribunal."*[4]

With regard to the institution of *"Refusal of Recognition"* of a foreign arbitral award, Article 47, letter (d), provides as one of the grounds for refusal of recognition when: *"the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, in the absence of such an agreement."*[5]

It is clearly evident that the same factual situation *"the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the provisions of this law or with the arbitration agreement* "produces different sanctions in the two aforementioned institutions. It leads to the refusal of recognition of a foreign arbitral award, but does not annul the decision of a domestic arbitral tribunal if it occurs. In order for the latter to be possible, it is additionally required as a precondition that the violation has had consequences on the resolution of the dispute on the merits. In other words, it must be proven that, had the violation not occurred, the arbitral tribunal would have reached a different decision.

2.2. THE LEGAL REGULATION OF THE IMPARTIALITY OF ARBITRATORS IN THE NYC AND THE CONSEQUENCES IN CASE OF VIOLATION OF THE LAW RELATED TO THIS REGULATION

The NYC has as its object the recognition and enforcement of arbitral awards rendered in the territory of a State other than that where recognition and enforcement are sought.[6]Law No. /2023, in Article 47 thereof, has incorporated Article V of this Convention, despite the fact that the object of the law does not expressly provide for the legal regulation of the institution of "Recognition or

[4] Law No. 52/2023 "On Arbitration in the Republic of Albania", 6.7.2023, Article 44(d).

[5] Ibid., Article 47(d).

[6] Law No. 8688 "On the Accession of the Republic of Albania to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958", 9.11.2000, Article 1.

Refusal" of foreign arbitral awards. Article V(1)(d) of the Convention provides as one of the grounds for refusal of recognition of a foreign award when:

> *"The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place."*[7]

Meanwhile, Article 5(1)(b) of the Convention provides that another ground for refusing recognition of a foreign arbitral award exists where:

> "*the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present its case, …"*[8]

In a comparative view with Article 47(d) of Law No. 52/2023, it is clearly established that with regard to this institution, Albanian law complies with the provisions of the Convention and does not constitute a violation of the principle of legality.

2.3. THE LEGAL REGULATION OF THE IMPARTIALITY OF ARBITRATORS IN THE EUROPEAN CONVENTION ON ARBITRATION AND THE CONSEQUENCES IN CASE OF VIOLATION OF THE LAW RELATED TO THIS REGULATION

The Geneva Convention has as its object the legal regulation of the conduct of international arbitration proceedings in all of their elements.[9]

Article 9 thereof provides for the institution of the "Annulment" of an arbitral award, and one of the grounds for its annulment is when:

> *"...the constitution of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement, and, failing such agreement, with the provisions of Article 4 of this Convention."*[10]

---

[7] Law No. 8688 "On the Accession of the Republic of Albania to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958", 9.11.2000, Article 5.d.

[8] Law No. 8688 "On the Accession of the Republic of Albania to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958", 9.11.2000, Article 5.1.b.

[9] Law No. 8687 "On the Accession of the Republic of Albania to the European Convention on International Commercial Arbitration, Geneva, 21 April 1961", 9.11.2000.

[10] Law No. 8687 "On the Accession of the Republic of Albania to the European Convention on International Commercial Arbitration, Geneva, 21 April 1961", 9.11.2000, Article 9, final

In a comparative view with Article 44(d) of Law No. 52/2023, it is clearly observed that the Geneva Convention does not set as a precondition for annulment the proof that the arbitral tribunal would have resolved the dispute on the merits differently. For the Convention, it is sufficient that a violation of the law related to the constitution of the tribunal or the arbitral procedure has occurred in order to bring about the consequence of annulment of the award. In this sense, Law No. 52/2023 has gone beyond the Convention, thereby producing a conflict of legal norms and violating the principle of legality. The legal regulation of the Convention is the one that shall be applied, as an act that prevails in the hierarchy of norms.

2.4. LEGAL REGULATION OF THE IMPARTIALITY OF ARBITRATORS IN THE UNCITRAL MODEL LAW AND THE CONSEQUENCES IN CASE OF VIOLATION OF THE LAW RELATING TO THIS REGULATION

The United Nations Commission on International Trade Law Model Law, drafted in 1985 and amended in 2006, establishing the uniform regulatory framework for international arbitration procedures, has attached particular importance to due legal process with regard to the impartiality of arbitrators.

In its Article 12, the Model Law provides for the obligation of arbitrators to be impartial, requiring them to disclose any circumstances that may give rise to justifiable doubts regarding their impartiality or independence.[11]

Article 18 of the Law, which states; "*The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case*"[12], is one of the fundamental due process provisions in international arbitration, because it requires that: both parties must be treated equally and each party must have a full and fair opportunity to present evidence, submit arguments, respond to the other side, participate effectively in the proceedings.

With regard to the issue analyzed in this paper, Article 34 of the Law is of particular importance, as it provides for the cases in which an arbitral award may be set aside, and one of the grounds for setting aside is that provided in Article 34(2)(a)(iv), as follows:

paragraph.

[11] UNCITRAL Model Law on International Commercial Arbitration, 1985, <https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration>, last accessed on 10/5/2026.

[12] UNCITRAL Model Law on International Commercial Arbitration, 1985, <https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration>, last accessed on 10/5/2026, Article 18.

> "*the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law.*"[13]

This provision refers to Article 9 of the Geneva Convention on the Execution of Foreign Arbitral Awards (*grounds for setting aside the award*), as well as to Article 5(1)(d) of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (*grounds for refusing recognition of the award of an international arbitral tribunal*).

The systematic doctrinal legal analysis leads us to the conclusion that all three of the above-mentioned provisions are in full harmony with one another across the three international instruments.

Meanwhile, when compared with Article 44 of the Albanian Arbitration Law (*grounds for setting aside an arbitral award*), it is clearly evident that this provision has gone beyond the provisions of the three aforementioned international legal instruments, since it establishes as a precondition for annulment not only the proof that the composition of the arbitral tribunal or the arbitral procedure was contrary to the agreement of the parties, but also the hypothetical proof that the merits of the case would have been resolved differently had the agreement of the parties been respected.

Such a situation places the Albanian Arbitration Law, *prima facie*, in a two-dimensional conflict with the international framework; a direct conflict, since the Albanian law has literally established a condition that is not found in the international instruments, and at the same time a conflict of legislative harmonization, because the additional condition places it outside the scope of international harmonization.

Apart from this *prima facie* conflict, the situation inherently presents the impossibility of applying the annulment mechanism, since the imposed condition — "*proof that the merits of the case would have been resolved differently if the agreement regarding the composition of the arbitral tribunal or the arbitral procedure had not been disregarded*" — constitutes an impossible mission. The resolution on the merits is an attribute of the law, the facts, and the inner conviction of the arbitral tribunal, and any attempt to prove the above condition amounts to mere speculation without any legal value.

[13] Ibid., Article 34.

3. THE GUARANTEES OF ALBANIAN ARBITRATION LAW IN RELATION TO ARTICLE 6.1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR) REGARDING TRIAL BY AN INDEPENDENT TRIBUNAL, AS AN ELEMENT OF DUE PROCESS OF LAW

In addition to the above analysis referring to the control of the principle of legality of the independence and impartiality of the arbitral tribunal in Albanian arbitration law, particular doctrinal importance is attached to the analysis of this element in the context of another important international instrument, namely the ECHR, from the perspective of due process of law. An impartial and independent tribunal is one of the elements of due process according to the now consolidated jurisprudence of the European Court of Human Rights (ECtHR).

The legal debate "prima facie" in this regard has first been oriented toward the legitimacy or otherwise of the ECtHR to examine arbitral tribunal decisions, given that the latter are private natural or legal persons and their violations cannot be attributed to the respective State. Added to this are the claims occasionally raised according to which individuals who have agreed to resolve their disputes through arbitration have waived the exercise of the right to a fair trial guaranteed by the Convention in favor of arbitration. This then leads to the analysis of violations of Article 6.1 of the ECHR in cases of legal breaches related to the composition of the arbitral tribunal or the arbitral procedure.

3.1. THE "RATIONE PERSONAE" STANDING OF THE ECTHR TO EXAMINE CLAIMS RELATING TO THE IMPARTIALITY OF THE ARBITRAL TRIBUNAL

In an analysis of Article 3 of Law No. 52/2023, it is clearly evident that arbitrators do not represent State will, but are individuals or private entities.[14] Consequently, logically, they are relieved of the obligations borne by the courts of the

[14] "Arbitrator" is a natural person appointed in accordance with the provisions of this law to examine and resolve a dispute between the parties through arbitration proceedings," Article 3.1 of Law No. 52/2023 "On Arbitration in the Republic of Albania", 6.7.2023.
"Permanent arbitration institution" is a legal person, established by natural or legal persons, domestic or foreign, in accordance with Albanian law, whose object of activity is the organization of arbitration proceedings," Article 3.4 of Law No. 52/2023 "On Arbitration in the Republic of Albania", 6.7.2023.
"Arbitral tribunal" is a single arbitrator or a panel of arbitrators, appointed in accordance with the rules provided for in the arbitration agreement or by this law for the resolution of a dispute," Article 3.4 of Law No. 52/2023 "On Arbitration in the Republic of Albania", 6.7.2023.

ordinary judicial system in the Republic of Albania, to which the right to a due legal process under the ECHR refers. In other legal systems, the lack of public status is expressly stated in literal terms, such as Article 813, paragraph 2, of the Italian Code of Civil Procedure: *"Arbitrators are not qualified as public officials or as persons entrusted with a public service."*[15]

However, this initial conclusion is undermined by the subsequent provisions of Law No. 52/2023, which provide for the intervention of courts of the ordinary judicial system pursuant to Article 11 and Article 23 (interim measures), Article 12 (actions before courts), Article 15 (appointment of arbitrators), Article 19 (procedure for the challenge of arbitrators), Article 20 (failure to perform duties), Article 22 (jurisdiction), Article 35 (court assistance in the taking of evidence), Articles 44 and 45 (annulment of the award), as well as Article 47 (recognition or refusal of recognition of a foreign award).[16]

In this context, a series of procedural elements of the arbitration process are subject to control by the courts of the ordinary judicial system, which for this reason renders the right to a due legal process a right that may also be claimed in relation to arbitral tribunals. The ECtHR has by now developed consolidated jurisprudence concerning this right, referring to cases from other countries with a long-standing tradition of arbitration and where arbitration law is far more arbitration-friendly with regard to the independence of arbitration.

In the case of Beg S.p.A. v. Italy, the ECtHR emphasized:

> *"The Court further observes that in certain circumstances exhaustively listed, the Italian law in force at the relevant time conferred jurisdiction on the domestic courts to review the validity of arbitral awards, granting them powers to declare such awards enforceable … and in particular to rule on actions for nullity aimed at reviewing the lawfulness of the arbitration proceedings, including the lawfulness of the composition of the arbitral tribunal, and this irrespective of any waiver of the right to appeal against the award as agreed by the parties in the arbitration clause … The Italian law also conferred jurisdiction on the domestic courts to examine applications for recusal brought against an arbitrator … In this context, the Court notes that the Rome District Court … declared the arbitral award enforceable, thereby giving it legal effect within the Italian legal order … It also notes that the Rome District Court … examined and dismissed the applicant's requests for recusal …"*

[15] Article 813, Paragraph 2, of the Royal Decree No. 1443 "Italian Code of Civil Procedure", 28.10.1940.

[16] Law No. 52/2023 "On Arbitration in the Republic of Albania", 6.7.2023; Articles 11, 12, 15, 19, 20, 22, 23, 35, 44, 45, and 47.

> *"Thus, the impugned acts or omissions involve the responsibility of the respondent State under the Convention (see, mutatis mutandis, Mutu and Pechstein v. Switzerland, nos. 40575/10 and 67474/10, § 67, 2 October 20). It follows that the Court has jurisdiction ratione personae to examine the applicant's complaint relating to the acts and omissions of the ACR (the arbitral tribunal) as assessed by the Italian domestic courts."*[17]

Likewise, in the judgment Ali Rıza and Others v. Turkey, the ECtHR stated:

> *"The Court reiterates that Article 6 § 1 of the Convention secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal. Thus, this Article embodies the 'right to a court' or the 'right of access', which is the right to institute proceedings before courts in civil matters, and constitutes only one aspect of it."*[18]

In the case Lithgow and Others v. the United Kingdom, the ECtHR stated:

> *"This access to a court must not necessarily be understood as access to a court of the classic kind, integrated within the standard judicial machinery of the country; thus, a 'tribunal' may be a body set up to determine a limited number of specific issues, provided that it always offers the appropriate guarantees."*[19]

In the case Suda v. the Czech Republic, the ECtHR stated:

> *"Accordingly, Article 6 does not preclude the establishment of arbitral tribunals to resolve certain monetary disputes between individuals."*[20]

In the case Tabbane v. Switzerland, the ECtHR stated:

> *"Arbitration clauses, which have undeniable advantages for the individuals concerned, as well as for the administration of justice, do not in principle infringe the Convention."*[21]

The ECtHR goes further when it also limits the voluntary waiver by an individual, expressly made, of Convention rights in a given arbitration process, by requiring guarantees proportionate to its importance *"In the case of certain*

---

17 ECtHR: Beg S.p.A. v. Italy, Application No. 5312/11, summary §§ 65 & 66.

18 ECtHR: Ali Riza and Others v. Turkey, Applications No. 30226/10 and others, *App. 30226/10 and 4 others, § 171.*

19 ECtHR, Lithgow and Others v. the United Kingdom, Applications Nos. 9006/80; 9262/81; 9263/81: 9265/81; 9266/81: 9313/81 and 9405/81, App. 9006/80; 9262/81; 9263/81; 9265/81; 9266/81; 9313/81; 9405/81, § 201.

20 CtHR, Suda v. the Czech Republic, Application No. 1643/06, § 48.

21 ECtHR: Tabbane v. Switzerland, Application No. 41069/12, 1.3.2016, § 25.

Convention rights, a waiver, to be effective for the purposes of the Convention, requires minimum guarantees commensurate with its importance."[22]

Therefore, ultimately, the will to resolve a dispute through arbitration does not deprive the individual of his or her rights under the ECHR (Article 6.1 thereof) to a due legal process with regard to the impartiality and independence of arbitrators, regardless of the type of arbitration, whether based on positive law in force or on equity and fairness (*ehaequo et bono*)[23]. Even in cases where the individual expressly waives Convention rights, such waiver is not absolute. It is assessed in relation to the minimum guarantees proportionate to the importance of the Convention, and the jurisprudence of the ECtHR has emphasized that, notwithstanding a written waiver of the Convention by a party, such waiver does not include a waiver of the minimum guarantees of the Convention, such as the guarantee of a due judicial process within the meaning of Article 6.1 of the ECHR.

3.2. THE FORMAL GUARANTEES OF AN INDEPENDENT AND IMPARTIAL TRIBUNAL IN ALBANIAN ARBITRATION LAW

Article 6.1 of the ECHR guarantees every individual the right to a due legal process.[24]

The analysis of the independence and impartiality of the arbitral tribunal, also within Albanian law, necessarily requires compliance with European legal standards, with particular focus on due process of law as embodied in Article 6.1 of the ECHR, as well as the interpretation given to this provision by the European Court of Human Rights. This perspective is essential in order to assess whether arbitration, as an alternative dispute resolution mechanism, guarantees respect for the core of the right to a fair trial.

At the level of domestic law, Albanian arbitration law, at first glance, establishes a system of guarantees aimed at ensuring the functional integrity of

[22] ECtHR: Mutu and Pechstein v. Switzerland, Applications Nos. 40575/10 and 67474/10, § 96.

[23] Whereas Law No. 52/2023 "On Arbitration in the Republic of Albania", 6.7.2023 recognizes both institutional arbitration and ad hoc arbitration, as well as both forms "according to the law in force" and *ex aequo et bono*, with regard to the enforcement of the award it recognizes only ritual arbitration, whose award is binding.

[24] Everyone has the right to have his or her case heard fairly, publicly and within a reasonable time by an independent and impartial tribunal established by law, which shall determine both disputes concerning his or her civil rights and obligations and the merits of any criminal charge against him or her, Article 6.1 of the ECHR.

the Arbitral Tribunal. The status of the arbitrator is conceived as a quasi-judicial function, which presupposes respect for the principles of independence and impartiality, similar to those applied to judges within the judicial system. The obligation to disclose circumstances that may affect impartiality and the mechanisms for the exclusion of arbitrators serve as preventive guarantees against conflicts of interest and as essential elements for the credibility of the procedure.

The provision of judicial control over certain aspects of the arbitration procedure, set out in several articles of Albanian arbitration law, as well as control through annulment of arbitral awards, indicates a formally accountable approach in respect of due process of law[25]. The discussion and analysis concern whether this formal approach guarantees, "de facto," in an objective sense, the impartiality of the arbitral tribunal.

The ECtHR, as the final supervisory court for compliance with this obligation, also in relation to arbitral awards, has repeatedly laid down the criteria that must be met by an independent and impartial tribunal.

Thus, in the case Kleyn and Others v. the Netherlands, it stated:

> *"As is well established in the Court's case-law, in order to determine whether a tribunal can be considered 'independent' for the purposes of Article 6 § 1, regard must be had, inter alia, to the manner of its appointment, the terms of office of its members, the existence of safeguards against outside pressures and the question whether it presents an appearance of independence …"*[26]

In the case Sramek v. Austria, 22 October 1984, it stated:

> *"In determining whether a tribunal can be considered independent as required by Article 6, appearances may also be of importance."*[27]

Beg S.p.A. v. Italy / 2021, Application No. 5312/11

Impartiality normally denotes the absence of prejudice or bias. According to the Court's settled case-law, for the purposes of Article 6 § 1 the existence of

[25] Law No. 52/2023 "On Arbitration in the Republic of Albania", 6.7.2023; Article 11 and Article 23 (interim measures), Article 12 (actions before courts), Article 15 (appointment of arbitrators), Article 19 (procedure for the challenge of arbitrators), Article 20 (failure to perform duties), Article 20 (jurisdiction), Article 35 (court assistance in the taking of evidence), Articles 44 and 45 (annulment of the award), as well as Article 47 (recognition or refusal of recognition of a foreign award).

[26] ECtHR: Kleyn and Others v. the Netherlands, Applications Nos. 39343/98, 39651/98, 43147/98 and 46664/99, § 190.

[27] ECtHR: Sramek v. Austria, Application No. 8790/79, § 42.

impartiality must be determined according to a subjective test, that is, on the basis of the personal convictions and conduct of a particular judge, by ascertaining whether he or she displayed any personal bias or prejudice in a given case, and also according to an objective test, that is, by determining whether the tribunal itself offered sufficient guarantees, in particular through its composition, to exclude any legitimate doubt as to its impartiality.[28]

> *"In this respect, even appearances may be of a certain importance, a principle reflected in the maxim that 'justice must not only be done, it must also be seen to be done'. What is at stake is the confidence which the courts in a democratic society must inspire in the public."*

With reference to the above jurisprudence, what may be analyzed in the context of arbitration law is the objective test, namely whether arbitral tribunals, through their composition, the manner of appointment, resignation or exclusion of arbitrators, provide the guarantees of an impartial tribunal.

Law No. 52/2023, in Articles 15, 16, 18 and 19, sets out the procedural obligations of arbitrators in exercising their function in an arbitration process, as well as provisions on resignation and exclusion when the legal grounds exist.

From the analysis of the above-mentioned articles, an obligation emerges for the arbitrator to complete a declaration of impartiality (Article 16); however, the law lacks the determination of a reference system for notifying the parties thereof, thereby depriving them, where applicable, of the possibility to request the exclusion of a particular arbitrator. Article 19 establishes the obligation of arbitrators to notify the parties in the event of a conflict of interest, but lacks a sanctioning mechanism in cases where this obligation is not fulfilled by them.

In this sense, the above provisions remain more declarative than functional, compounded by the impossibility of annulment of the arbitral award under Article 44(d) of the law, where, even though the interested party may prove that the composition of the arbitral tribunal was not in accordance with the provisions of the law in terms of the declaration of impartiality or conflict of interest, annulment of the award cannot be claimed unless it is cumulatively proven that this violation affected the resolution of the dispute on the merits.[29]

From a systematic reading of the provision, it is evident that, in order for an arbitral award to be annulled due to deviation from the procedure or the composition of the arbitral tribunal, it must first be proven that such deviation influenced the arbitral award, that is, the manner in which the dispute was resolved.

---

[28] ECtHR: Beg S.p.A. v. Italy, Application No. 5312/11, § 129.

[29] ECtHR: Beg S.p.A. v. Italy, Application No. 5312/11, Application No. 5312/11, App. 5312/11, §132.

In other words, the award may be annulled on this ground only if the procedure produced consequences on the resolution of the dispute on the merits; otherwise, it may not.

This provision is irrelevant and unenforceable, rendering "de facto" the annulment of an arbitral award on this ground impossible.

First, there is a complete lack of a referral mechanism capable of establishing that the violation produced consequences on the resolution of the dispute on the merits. Based on the general principle according to which the establishment of facts is considered valid only if it has been made by a final judicial decision, it is presumed that, in the above provision, the ordinary court is the institution of reference for such verification. In this case, the interested party would have to initiate another judicial proceeding through which to prove that; "*if the law regarding the composition of the arbitral tribunal or the arbitration procedure had not been violated, then the manner in which the arbitral tribunal resolved the dispute would have been different*."

This absurd legal condition, first and foremost in substance, burdens the ordinary court with deciding on assumptions as to how the dispute would have been resolved by the arbitral tribunal if the composition of the arbitral tribunal or the arbitral procedure had been in accordance with the provisions of the law or the arbitration agreement. The court has three important elements in its decision-making: the two major premises, the law and the facts upon which it builds its inner conviction.

To decide what the resolution would have been under other assumed conditions is an open and impossible speculation for the court. Such a conclusion has already been consolidated by the jurisprudence of the ECtHR:

> *"Since the Court cannot speculate as to what the outcome of the proceedings would have been if the situation had been otherwise, having regard to all the circumstances and in accordance with its normal practice in civil and criminal cases concerning violations of Article 6 § 1 caused by a lack of objective or structural independence and impartiality, the Court does not consider it appropriate to award the applicant financial compensation in respect of pecuniary damage and/or loss of earnings allegedly resulting from the outcome of the domestic proceedings (see Ramos Nunes de Carvalho e Sá v. Portugal, nos. 55391/13 and 2 others, § 104, 21 June 2016)."*[30]

Secondly, to claim annulment of an arbitral award after it has been established by a final decision of the ordinary court that compliance with the law regarding the composition and procedure of arbitration would have resolved the dis-

[30] ECtHR: Beg S.p.A. v. Italy, Application No. 5312/11, §164.

pute on the merits differently (which would normally have to go through all three levels of jurisdiction), simultaneously violates another principle of due process of law, namely the right to be tried within a reasonable time, and fundamentally undermines the very meaning of the role of the arbitral tribunal as a body created to resolve disputes quickly within a short period of time.

Ordinary proceedings through all three instances, according to the current average duration of a case, last between seven and ten years. This means that only after this period could the interested party raise a claim for annulment of the arbitral award under Article 44(d) of the law.

Similarly, problematic is Article 18(e) of the law, according to which one of the situations in which arbitrators resign or parties request their exclusion is: *"in any other case where other circumstances are established that create reasonable doubts as to the impartiality or independence of the arbitrator."*[31]

The law leaves unclear both the subject-matter jurisdiction for establishing such circumstances and the procedural competence, rendering the provision in question, in the same logic as the analysis of Article 44(d) above, merely declarative.

The ECtHR has considered the declaration of impartiality and independence of arbitrators to be an important guarantee within the meaning of Article 6.1 of the Convention, not only in terms of the obligation to submit it, but also in terms of its clarity and exhaustive completeness.

In the judgment Beg S.p.A. v. Italy / 2021, the ECtHR considered a violation of Article 6.1 of the Convention the fact that arbitrator N.I. had not submitted a clear negative declaration of impartiality, even though, in formal terms, such a declaration had been submitted and made known to the parties.

> *"In this respect, it notes that Article 6 of the ACR Rules (see paragraph 41 above) requires arbitrators to indicate, in their written declaration, any relationship with the parties or their lawyers that might affect their independence and impartiality, and any direct or indirect personal or economic interest in the subject matter of the dispute."*[32]
>
> *"Having regard to the above, the Court finds that the applicant company could not be considered to have unequivocally waived either the guarantee of the impartiality of arbitrators, as provided for under the ACR Rules, or the expectation that the domestic courts would ensure that the arbitral award complied with the relevant rules of the Italian Code of Civil Proce-*

[31] Law No. 52/2023 "On Arbitration in the Republic of Albania", 6.7.2023, Article 18(ë).

[32] ECtHR: Beg S.p.A. v. Italy, Application No. 5312/11, §139.

dure, including those relating to the impartiality of arbitrators … Consequently, the arbitration proceedings should have afforded the safeguards provided for in Article 6 § 1 of the Convention …"[33]

"Turning to the examination of the merits of the applicant's complaint, the Court considers, first of all, that, for the purposes of examining the case at hand, determining whether or not N.I.'s impartiality was defective did not depend on the public or private nature of ENEL and ENELPOWER. What is at issue is whether the arbitration proceedings to which the applicant was a party offered the guarantees provided for by Article 6 § 1 of the Convention."[34]

Thus, clearly, even the purely procedural aspect of the lack of clarity of the declaration of impartiality is considered by the ECtHR to constitute a violation of Article 6.1 of the Convention, regardless of its existence and notification to the parties. The ECtHR does not in any way link the violation of Article 6.1 of the ECHR to the precondition that the violation of the law relating to the impartiality of arbitrators must have produced consequences. It is sufficient to establish the legal violation that casts doubt on impartiality (the lack of clarity of the arbitrator's declaration) in order for there to be a violation of due process of law, without speculating on the outcome of the resolution of the dispute on the merits. In this sense, Albanian arbitration law is also in contradiction with the jurisprudence of the ECtHR.

4. GUARANTEES OF ALBANIAN ARBITRATION LAW IN LIGHT OF THE JURISPRUDENCE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

Due to the nature and the specific subject-matter jurisdiction of the Court of Justice of the European Union (CJEU), the jurisprudence of this Court concerning arbitration matters is relatively limited in comparison with that of the European Court of Human Rights. Nevertheless, the doctrine of "European Consensus" guides the positions and decision-making of both courts, producing harmonious jurisprudence.

In the case of the Slovak Republic v. Achmea BV the court emphasizes that "*arbitral tribunals cannot undermine judicial guarantees of EU law"*[35].

[33] Ibid §143.

[34] Ibid §144.

[35] Court of Justice of the European Union (CJEU): Case C-284/16, Slovak Republic v. Achmea BV, ECLI:EU:C:2018:158, 6.3.2018, § 54-58.

Due legal process is one of the fundamental values of the European Union, and therefore the impartiality of arbitrators constitutes a prerequisite for guaranteeing this value.

5. CONCLUSION

The analysis conducted in this paper concludes that Law No. 52/2023 *"On Arbitration in the Republic of Albania"* appears problematic in terms of violation of the principle of legality, by going beyond the provisions of the Geneva Convention as well as of the United Nations Commission on International Trade Law with regard to the institution of annulment of arbitral awards, as well as due to the lack of formal guarantees of due process of law with respect to the impartiality and independence of the arbitral tribunal, in violation of the ECHR and the jurisprudence of the ECtHR.

These two issues remain among the several challenges that the implementation of this law will face. While the first issue may find an interpretative solution by reference to the hierarchy of norms, the second is truly serious and requires legislative regulatory intervention. From the authors' perspective, this issue is of particular importance, as it concerns one of the fundamental rights of the individual, the right to a due legal process, and stands in open contradiction with the consolidated jurisprudence of the ECtHR, which constitutes a genuine source of law that will be developed in the future, both by arbitral tribunals or Albanian arbitrators and by courts of ordinary jurisdiction when they address various claims related to arbitral decision-making.

Albanian society has suffered from the lack of alternative justice through arbitration for decades following the transition period. The practical challenges of implementing the law in such a context are further aggravated when the law itself, in its formal aspect, appears problematic by failing to guarantee one of the essential elements of due process of law, namely the impartiality of the arbitral tribunal.

The authors strongly recommend that Article 44(d) of Law No. 52/2023 be reviewed in the spirit of the jurisprudence of the ECtHR, by making the institution of "annulment" of arbitral awards in cases of bias of the arbitral tribunal genuinely applicable and not merely declarative.

This article should be amended by removing the requirement of proving that the merits of the arbitration case would have been resolved differently had the arbitration agreement regarding the composition of the arbitral tribunal or the arbitral procedure not been disregarded. The removal of this requirement would simultaneously achieve the harmonization of this article with Article

34(2)(a)(iv) of the United Nations Commission on International Trade Law Model Law, Article 9 of the Geneva Convention on the Execution of Foreign Arbitral Awards, as well as the jurisprudence of the European Court of Human Rights, as a necessity that guarantees due legal process with regard to the impartiality and independence of arbitrators.

LITERATURE

1. Court of Justice of the European Union (CJEU): Case C-284/16, Slovak Republic v. Achmea BV, ECLI:EU:C:2018:158, 6.3.2018.
2. CtHR, Suda v. the Czech Republic, Application No. 1643/06, <https://hudoc.echr.coe.int/eng?i=001-101333>, last accessed on 7/1/2026, 28.10.2010.
3. Decree of the President of the Republic of Albania No. 682 "On the Dissolution of State Arbitration", 4.11.1993.
4. ECtHR, Lithgow and Others v. the United Kingdom, Applications Nos. 9006/80, 9262/81, 9263/81, 9265/81, 9266/81, 9313/81 and 9405/81, <https://hudoc.echr.coe.int/eng?i=001-57526>, last accessed on 27/9/2025, 8.7.1986.
5. ECtHR: Ali Riza and Others v. Turkey, Applications No. 30226/10 and others, <https://hudoc.echr.coe.int/eng?i=001-200548>, last accessed on 7/7/2025, 28.1.2020.
6. ECtHR: Beg S.p.A. v. Italy, Application No. 5312/11, <https://hudoc.echr.coe.int/eng?i=001-210014>, last accessed on 1/7/2025, 20.5.2021.
7. ECtHR: HUDOC database entry, <https://hudoc.echr.coe.int/eng?i=002-11120>, last accessed on 3/2/2026.
8. ECtHR: Kleyn and Others v. the Netherlands, Applications Nos. 39343/98, 39651/98, 43147/98 and 46664/99, <https://hudoc.echr.coe.int/eng?i=001-61077>, last accessed on 7/12/2025, 6.5.2003.
9. ECtHR: Mutu and Pechstein v. Switzerland, Applications Nos. 40575/10 and 67474/10, <https://hudoc.echr.coe.int/eng?i=001-186828>, last accessed on 5/7/2025, 2.10.2018.
10. ECtHR: Sramek v. Austria, Application No. 8790/79, 22.10.1984, <https://hudoc.echr.coe.int/eng?i=001-57581>, last accessed on 27/1/2026.
11. ECtHR: Tabbane v. Switzerland, Application No. 41069/12, 1.3.2016.
12. Law No. 52/2023 "On Arbitration in the Republic of Albania", 6.7.2023.
13. Law No. 8116 "Code of Civil Procedure of the Republic of Albania", 29.3.1996.
14. Law No. 8687 "On the Accession of the Republic of Albania to the European Convention on International Commercial Arbitration, Geneva, 21 April 1961", 9.11.2000.

15. Law No. 8688 "On the Accession of the Republic of Albania to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958", 9.11.2000.

16. Royal Decree No. 1443 "Italian Code of Civil Procedure", 28.10.1940, <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1940-10-28;1443!vig=>, last accessed on 7.1.2026.

17. UNCITRAL Model Law on International Commercial Arbitration, 1985, <https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration>, last accessed on 10/5/2026.