

LEGAL RELATIONS OF FOREIGN COMPANIES IN ALBANIA

Ardvin Kraja
PhD Candidate/European
University of Tirana
ALBANIA

ABSTRACT

Globalisation brought the opening of international markets for the commercial activities by foreign companies. The latter require a more detailed and delicate legal regulation within the activity they pursue. Twenty-five years ago, Albania was part of the communist system, creating a de facto and de jure gap regarding the opening of the market to foreign companies. The legislation has evolved drastically, creating the necessary conditions for the operation of these companies in the framework of economic development. The process of approximation of legislation with the European Union has brought facilities for foreign operators seeking to expand their business in post-communist countries. Concerning this process, Albania has adopted a normative corpus in business right by creating the necessary legal framework to enable and create the necessary conditions for international companies to pursue their activity of trading. Various Albanian governments but also various international agreements have played an important role in establishing normative corpus. Partner countries have a particular importance regarding the interventions and subsidies that created commercial legislation.

Keywords: Law, legal framework, companies, responsibility, business, abuse, business.

INTRODUCTION

In August 1991 was created the "Law of Commercial Activity", which allows foreign companies to raise capital and profit from commercial activity on Albanian territory. In this context, some joint ventures were involved in small investments, in textile shops and shoe factories, fishing, etc. Oil and gas companies gained concession rights for fuel seeking. During that period Albania joined the IMF, which set the condition to remain faithful to agreements in order to obtain loans from the World Bank and other international financial institutions. On 17th July, 2008 was adopted the Law no. 9959 "On foreigners", which regulates the movement of foreigners (natural or juridical) in Albania, as well as the permit of stay conditions. The law in question defines the functions and competences of state authorities and other Albanian public/private entities including foreign trading companies.¹ Despite the economic and political reforms undertaken by various governments since 1992, Albania is one of the poorest countries in Europe. The Level of Economic Freedom in Albania is 66.0, placing Albania 53rd in the index of recent years. This rank is mostly driven from the freedom of trade growth, property rights (that remain not only a social, but also an economic wound), reduction of corruption and labor freedom, detaching Albania from the communist system not only de jure but also de facto. Despite the slowdown of the global economy, the country has been able to maintain economic stability.²

¹ Law No. 9959, dt. 17.7.2008 "For foreigners"

² <http://www.heritage.org>

LITERATURE REVIEW

Investment and legal freedom

Internal and foreign firms are treated equally under the law and almost all sectors are open to investment. Foreigners cannot purchase agricultural land but they can rent it for 99 years. Referring to the law, they can buy land for commercial activity, if the proposed investment is three times higher than the price of land. These companies may own 100% of the shares of Albanian companies, and the monetary secession from the country is legal.³

Currently, inadequate infrastructure, weak rule of law, poorly defined property rights, excessive bureaucracy and corruption discourage foreign investment in Albania. Examples of monetary large companies in the telecommunications field are: Vodafone Albania JSC, Telecom Albania JSC, etc., in the field of mineral resources are Bankers Petroleum JSC, etc. These companies came to our country to pursue commercial activity. For the registration by the Tax Authorities, a firm must first possess the legal right to operate, meaning that it needs a court decision.

Ratified international treaties prevail over domestic legislation. Wholesale enterprises with foreign shareholders who are registered in Albania as legal persons are allowed to own any land plot, as long as foreigners can buy land through companies they created legally in Albania. Problems remain in the system of cadastre and property titles. Multinational companies that invest in Albania have the right to employ foreign citizens. Funds related to investments can be transferred abroad in a convertible currency, calculated at the exchange rate on the date of transfer. There may be restrictions for non-payment of taxes or transfers and for failure to fulfill obligations and court decisions. As mentioned above, in Albania property problems are innumerable and there have been cases that have affected the activity of foreign companies, demanding state intervention for the solution of the conflicts.

Recently was drafted a bill on mutual protection and encouragement of investments that protects and guarantees the investments of foreign investors, which was signed from Albania together with 37 other countries. Despite "reforms", priority for government remains the investment in energy and infrastructure. In addition, currently under public - private partnership (PPP) the government has a series of negotiations in many other sectors of the economy. Thus, in collaboration with other donators, the government is expected to seek additional fundraising in partnership with the private sector. Public - private partnership is considered as a real potential to generate savings in the economy and release budget funds to be used in priority sectors. The essence of these measures consists in reducing the administrative burden and cost of doing business.

If we refer to the companies' activities in Albania, the areas and ways that these foreign companies operate in our country are different. Some of the forms used are: subsidiaries, branches and representative offices. The activity of these companies is regulated under the Law of Concessions and the Law of Commercial Activity. Law no. 9663, dt. 18.12.2006 "For Concessions" has constantly encountered changes, where lawmaker aimed to improve the standard of transparency, fairness in the trial (Fairness), access to information and participation in procedures for stakeholders. These changes came mainly as a result of the requirements of concerned companies and that has brought problems of their treatment

³ Nuni, A. Hasneziri, L. "Civil Law II (Property)", "Morava", Tirana, 2010, pg. 23

practices. However, concessions can be negotiated without a competitive procedure only in cases specified by law and with the approval of the Council of Ministers. In addition, the law provides no standard contracts or clauses but provides basic norms and principles of the provisions of the concession contract, which allow parties' flexibility in defining the terms of the investment, including the grandfathering clauses. This flexibility includes the application of different remuneration schemes concession. The law has removed any restrictions or conditions of the double standard of private entities about the obtaining concessions. The bid evaluation process is clearly defined in law and any decision of this phase can be appealed in administrative and judicial bodies. It should be mentioned that the relationship between the contracting authority and the concessionaire shall be governed by Albanian law, while the various entities that have joined to submit an offer together are free to choose the legal regime that regulates relations between them.⁴

In cases when the company is on the verge of closure due to losses and the transition to the state of insolvency, dissolution is followed by the opening of insolvency proceedings. In all other cases, the closure of the joint stock company will result in the opening of procedures of liquidation in the state of solvency. Provisions on liquidation apply to four forms of companies provided by law for commercial companies. In that case, the law provides two procedures for liquidation of commercial companies: ordinary procedure and the simplified procedure.⁵

Criminal liability of companies

The persons who pursue their trading activity in foreign countries should be responsible for their actions and for the establishment of the legal relations. It often happens that as a result of commercial activity that a certain society may pursue, because of negligence or intentionally, can carry several actions that constitute a violation, causing damage to the environment or assets of persons. Criminal or civil liability of these entities creates legal and social consequences. These cases involve not only the prosecution of the person but also the company which may be national or international and there may be jurisdictional large stretch of social and economic impact on the country where is their activity, but also beyond the areas where there is economic impact.

Nowadays there are some theories of Law that are against this responsibility, reasoning that a company, despite being a legal arrangement, it lacks the soul and the body and is not capable of forming a criminal intent, which violates the principle of criminal punishment in individual form. Thus, the emphasis is put on property, bringing into focus the fact that they lack the legal capacity and therefore cannot be subject to criminal liability.

However, in 2007 was adopted the Law "On the criminal liability of legal persons", which constitutes in itself one of the most important laws and our most significant legislation in criminal law. Under this law, the determination of responsibility sets the basis for the punishment of criminal activity of companies. Criminal liability of legal entities starts when there is an act or omission, the consequences of which constitute a criminal offense and create advantages for legal entities.⁶

⁴Law No. 9663, dt. 18.12.2006 "For Concessions"

⁵Malltezi, A. "The Albanian law of commercial companies", "Mediaprint", Tirana, 2011, pg. 304

⁶Law No. 9754, dated 14.06.2007, "On the criminal liability of legal persons"

Even in cases of mergers and acquisitions or joint ventures, when a legal person changes his status or becomes another legal person based on the principle of "preservation of criminal liability for offenses committed", this person will be responsible for the criminal acts that were committed before the transformation of the company as in the case when a new company is created as well as two or more companies merge.⁷

Concerning the penalties under the criminal liability, Albania has fines that often apply to companies in monetary form that have the advantage of direct influence on companies, providing the capital needed for the compensation of victims concerning the pertaining punishment and prevention of crime in the future. Another type of punishment is the sentence of closure for the company, when the latter may be established for committing offenses or in the case when they use in a large extent their activities to serve the commission of a criminal offense causing serious consequences. In addition to this type of sentence there is the third model in which additional penalties, the committing of a criminal offense may induce the closing of a structure of the legal person temporarily or permanently.

METHODOLOGY

The method applied is the analysis of legislation. The method consists in identifying and formulating legal issues through the analysis of legislation. As part of Civil Law, the system applied includes norms which are codified and provided from specific connections. Since norms govern the general situation, this method serves to identify and solve problems. Jurisprudential analysis of this working paper focuses on the comparison of local competition law with the more efficient systems of such law. In this aspect, the conducted comparison is that of Albanian legislation and its alignment with the *acquis communautaire*.

CONCLUSIONS

Legislative stability and not frequently changing trade laws are the key elements for an environment that supports a strong business climate, foreign investments, stability and the attraction of foreign companies into Albanian territory. Constantly changing laws adversely affect the ability of foreign companies to predict profits. Moreover, the additional costs for current or potential investors bring modifications of business practices such as accounting and auditing, environmental outputs and labor management. Also, even when conditions are favorable at a certain moment, an unstable legislative environment may give the impression to foreign investors and companies which want to operate in the Albanian market that the risk of deepened adverse conditions is higher than potential profits, which might induce them to give up the investment or residence in the Albanian market.

Frequent legal changes, high transaction costs and poor services can make foreign companies flee elsewhere to pursue their activity in order to minimize the risk of economic losses, even though the local market may offer cheap labor. Any instability in the system creates high investment risks, normally sending the higher cost to consumers. Various legal measures can support member states of the OSCE to achieve greater stability by increasing legislative transparency and improve the legislative process, as well the law making. Concerning the foreign investments in Albania or the increase of foreign companies' assets, in order that their

⁷Comprehensive legislation "For traders and trading companies", "Alb Juris", Tirana, 2014, pg. 475

costs are lower and the risk for procedural delay to be minimized, here can be mentioned three sets of variables that provide a more favorable climate to the company:

a) Monetary and fiscal policies; b) Improved infrastructure; c) Improved institutional bureaucracy.

REFERENCES

Books

1. Nuni, A. Hasneziri, L. "Civil Law II (Ownership)", "Morava", Tirana 2010;
2. Malltezi, A. "The Albanian law of commercial companies", "Mediaprint", Tirana 2011;

Website

1. <http://www.heritage.org>

4 or more Authors

1. Law no. 9754, dated 14.06.2007, "On the criminal liability of legal persons";
2. Comprehensive legislation "For traders and trading companies", "Alb Juris", Tirana 2014;
3. Law No.9959, dated 17.7.2008 "For foreigners";
4. Law no. 9663, dated 18.12.2006 "On Concessions";