Environmental Impact Assessment and the legal reform in Albania

Prof. Xhezair Zaganjori
Chief Justice, Supreme Court

Erjon Muharremaj PhD/c
Lecturer, School of Magistrates

EUFJE Annual Conference
Budapest, Hungary
17 – 18 October 2014

Outline

- General overview
- International legal framework
- Domestic legal framework
- Approximation with the EU legislation – *acquis communautaire*
- Further measures
- Conclusions
ALBANIA
Southeast Europe

Area: 28,748 km²
Population: 2,831,741

Candidate country for EU membership.

INTRODUCTION

- Albania, rich in biodiversity of flora and fauna:
- Flora: 29% of the European species (its area, 0,26% of the total area of Europe).
- 300 species of medicinal plants
- 350 species of trees & shrubs
- Forests: 1 million ha (36% of the area).
• Network of Protected Areas: 15.1% of the country’s territory.
• Aim: Protected Areas should reach 17% of the territory (including the establishment of the Alpine Park and the Underwater Protected Areas).
• Several species of fauna close to extinction. Illegal hunting - severe problem.
• Need of improvement of the legal framework and awareness raising campaign.

Protected Areas:
15.1% of the total area
15 National Parks established
Protection of wild flora...

[Laurus nobilis  Salvia officinalis  Gentiana lutea]

... and fauna

• Comprehensive and integrated measures are needed for the protection and development of flora and fauna: forests, pastures, wild birds and animals.
### Endangered flora species

Enlisted in the **Flora Red List** as species endangered by extinction. Their harvest in their natural habitat is forbidden. Their harvesting can be allowed only through a special permit.

<table>
<thead>
<tr>
<th>Species</th>
<th>Image</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Salvia officinalis</em></td>
<td><img src="image1.png" alt="Salvia officinalis" /></td>
</tr>
<tr>
<td><em>Hypericum perforatum</em></td>
<td><img src="image2.png" alt="Hypericum perforatum" /></td>
</tr>
<tr>
<td><em>Sanza-Gentiana lutea</em></td>
<td><img src="image3.png" alt="Sanza-Gentiana lutea" /></td>
</tr>
<tr>
<td><em>Vaccinium myrtillus</em></td>
<td><img src="image4.png" alt="Vaccinium myrtillus" /></td>
</tr>
<tr>
<td><em>Colchicum autumnale</em></td>
<td><img src="image5.png" alt="Colchicum autumnale" /></td>
</tr>
<tr>
<td><em>Juniperus communis</em></td>
<td><img src="image6.png" alt="Juniperus communis" /></td>
</tr>
</tbody>
</table>

---

### Albania is a party to:

- UNECE Convention on EIA in a Transboundary Context and its Protocol;
- Aarhus Convention;
- Convention on the Protection and Use of Transboundary Watercourses and International Lakes;
- Convention on the Conservation of European Wildlife and Natural Habitats;
- Convention on Transboundary Effects of Industrial Accidents, etc.
Transboundary agreements for the protection of biodiversity

- Bilateral Memorandum of Understanding with Montenegro, for the Joint Management of Transboundary Waters (Lake Shkodra);
- Bilateral Agreement with Macedonia, for the Protection and Sustainable Development of Lake Ohrid;
- Bilateral Agreement with Greece for the Establishment of the Permanent Commission for the Transboundary Waters;
- Trilateral Agreement with Macedonia and Greece for the protection of Lake Prespa);

- Bilateral Agreement with Macedonia for the Establishment of the National Park - Shebenik-Jabllanic;

- Bilateral Agreement with Montenegro for the establishment of the National Park – “Bjeshkët e Namuna”.

• European integration – national priority.
• The Stabilization Association Agreement (SAA) with the EU signed in 2006. In force since 2009.
• Article 108 of the SAA: The parties undertake to develop and strengthen cooperation in the fight against environmental degradation, in order to promote environmental sustainability.
• National Plan for Approximation under implementation.
• Beneficiary of the IPA, together with the other Western Balkan countries and Turkey.

- Environmental legal framework is relatively new compared to that of other European countries.
- First environmental policies: National Environmental Strategy, 1993;
- National Environmental Action Plan, 1994;
- Albanian Constitution, 1998: sustainable development (Art. 59/d) and the right of public access to environmental information (Art. 56) become constitutional principles.
• Law “On Environmental Protection”, 2002: EIA for the first time in the Albanian legislation;
• The entire Chapter IV dedicated to EIA: applied to all public and private projects of natural or legal persons that could have an impact on the environment;
• Article 27: transboundary context – application of the principles of the UNECE Convention on EIA;
• Law “On environmental protection from transboundary impacts”, 2007: applicable on all the projects and activities that are listed in Annex I of the Convention.

• Repealed and replaced by Law “On Environmental Protection”, 2011;
• Embodied the principles:
  ➢ sustainable use of natural resources;
  ➢ prevention;
  ➢ polluter pays;
  ➢ protection at a high degree;
  ➢ integration;
  ➢ public participation & transparency, etc.
• Included two separate provisions: on EIA and on Environmental Strategic Assessment (ESA);

• Established the National Environmental Agency (NEA).

• Specific Law Nr. 10 440, “On Environmental Impact Assessment”, 2011: it set the institutional framework for the EIA;

• Divided the projects in 2 categories:
  i. preliminary report on the EIA for projects of Annex II;
  ii. deep EIA report, for projects of Annex I.
• The decision whether deep EIA is required, competence of NEA.
• Rules and deadlines for the EIA procedure: proposal of the Minister of Environment → approval by the Council of Ministers (CoM)
• A week later, it was enacted Law nr. 10 448, 2011, “On Environmental Permits”;

  &

• Divided the environmental permits into three types, A, B, and C, depending on the impact on the environment.

• Competent authority for the issuance of the environmental permits - National Licensing Centre (NLC);

• Follows the signature of the environmental permit by the Minister of Environment, after the review of the application by the National Environmental Agency (NEA).
• After two years - Law Nr. 91/2013, 2013, ”On Strategic Environmental Assessment”;  
• SEA to be carried out in all the cases of plans and programs for: agriculture, forests, fishing, energy, industry, mining, transport, waste management, water management, telecommunications, tourism, local and national plans on urban and rural spatial planning, landscape protection, and land use.

• Exceptions - projects related to:  
  i. national security;  
  ii. civil emergencies;  
  iii. state finance and budget.

• Phases of the process:  
  1. informing the MoE by the proposing authority;  
  2. consultation with the groups of interest;  
  3. drafting the preliminary report;  
  4. consultation with the groups of interest and the public;
5. drafting the final SEA report;

6. consideration of the proposal;

7. declaration of the minister;

8. decision making by the NEA;

9. monitoring and reporting of the impact on the environment of the plan or program.

• 10 bylaws enacted: CoM decisions and minister directives:
  • CoM Decision Nr. 249, 2003, “On approval of environmental permits and the documentation for the elements of the environmental permit”;
• CoM Decision Nr. 994, 2008, “On the participation of the public in decision-making”;

• Partly repealed by CoM Nr. 247, 2014, “On defining the rules, requirements and procedures for informing and including the public in the environmental decision making”.

• Monitoring: Directorate of EIA and Permits, in the Ministry of Environment

---

**EIA Procedural Provisions**

Phases of the preliminary procedure of the EIA:

a. Submission of the request and accompanying documentation by the developer to the National Licensing Centre (NLC) → National Environmental Agency (NEA);

b. Consultation of the NEA with the other institutions and the publication of the request;

c. Decision making by the NEA → informing NLC & MoE & other consulted institutions → publication of the decision in the National Register of Licenses and Permits.
• EIA procedure is part of the development consent decision;

• CoM Decision Nr. 502, 2011, “On the uniform regulation for the control of the territorial development”; 

• Apart from the EIA, requires: the submission of the approval from the NEA, the Forest Service (when applicable), the water authorities, and the relevant authorities for the engineering, architectural, seismic, geologic, and fire protection authorities.

• Regional Environmental Directorates (RED) - Regional Branches of NEA: issue the EIA consent – following the EIA Report;

• Local Government Territorial Adjustment Council LGTA (small projects), & National Council for the Territorial Adjustment NCTA (large projects) grant the development consent.
• EIA procedure is also part of the permitting procedure;
• Law Nr.10 081, 2009, “On licenses, authorizations and permits in the Republic of Albania” - Permits that allow the activities that can have an impact on:
  i.  water reserves;
  ii. use of ozone depleting substances;
  iii. waste management;
  iv. fisheries and aquaculture;
  v.  forests, meadows, medicinal plants;
  vi. wild fauna, hunting; &
  vii. licensing of the experts.

• NEA → relevant ministries & REA → LGU.
• Drawbacks:
  b. absence of provisions on cumulating of projects - each project has to be evaluated separately for EIA
  c. no provisions for preventing the possibility of breaking-up the big projects.
<table>
<thead>
<tr>
<th>Access to environmental information</th>
</tr>
</thead>
</table>

- Constitution (Art. 56);

- Law “On Environmental Protection”;

- CoM Decision Nr. 16, 2012 “On Public Access to Environmental Information”;

- Prime Minister's Order Nr. 202, 2005, “On improving transparency through an increased use of the internet and improvement of existing websites”
• Law on EIA: any interested party, has the right of the administrative appeal, against the acts or omissions of the ministry.

• Law on Environment Protection: the right to lodge a judicial appeal in case of a threat to the environment, pollution or its damage

• The public (which includes NGO’s) have the right: a) to request from the public authorities to take the necessary measures; b) to file a claim in the court against the public authority, or the legal and natural person that have caused environmental damage, or that threaten to damage the environment.

• If a person is denied legal standing, he/she can seek the remedy before a court.

• Definition of the public:
  -Law on Environment Protection: one or more natural or legal persons...associations, organizations and their groupings;

  -CoM Decision Nr. 247, 2014: every interested party has the right to lodge an administrative appeal during the EIA procedure.
• Definition of the interested party - Code of Administrative Procedures: any natural or legal person, or state body, whose legal rights and competence have been infringed, or might be infringed during the administrative procedure.

• Law 49/2012, “On the organization and functioning of the Administrative Courts and the judicial settlement of the administrative conflicts”: the right to lodge a claim at the court to any subject who pretends that a legal right or interest has been infringed by an act or omission of the public body.

• Individuals need to be affected, in order to challenge an EIA decision at the court.

• No legal provisions as to the manner that an individual has to be affected, this is decided by the court on a case by case basis.

• Both administrative and judicial decisions can have suspending effects.

• Courts can order the suspension of the EIA decision when an irreparable damage can be caused to the interests of the claimant.
• Courts can change or amend any administrative decisions, including imposing new conditions regarding environmental matters.

• Monitoring is obligatory.

• State Inspectorate of Environment, Forests, and Waters has monitoring and sanctioning competences.

• Fines for non-compliance: up to 2.000.000 Albanian lek (ALL), approximately 7,200.00 Euro.

• Criminal sanctions can be imposed when the developer presents falsified documentation during the EIA proceedings.

• Decisive role for the judiciary.

• Awareness raising for the environmental issues – equally important.

• Judge Learned Hand (1944): “Liberty lies in the hearts of men and women. When it dies there, no constitution, no law, no court can save it; no constitution, no law no court can even do much to help it”.
THANK YOU!