



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

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

1

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.



3

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).**



4

- **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.**

5

Protected Areas:
15.1% of the total area
15 National Parks established

■	Rezerve Strikt Natyrore
■	Park Kombetar
■	Monument Natyre
■	Rezerve Natyrore e Menaxhuar
■	Peisazh i Mbrojtur
■	Rezerve e Resurseve te Menaxhuara

6

▪ Protection of wild flora...

[*Laurus nobilis*



Salvia officinalis

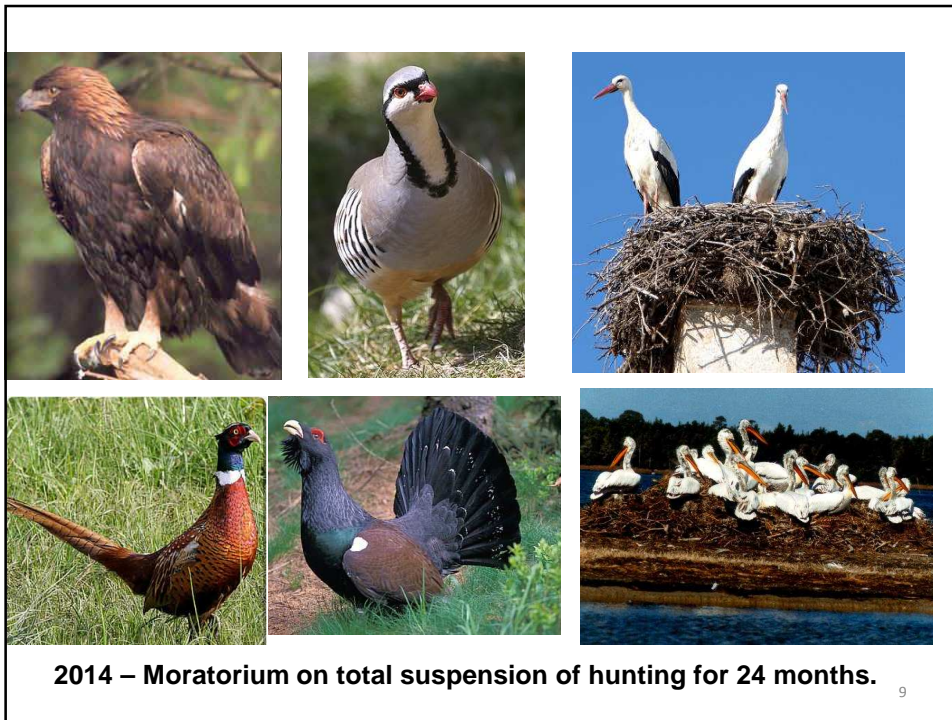


Gentiana lutea]



... and fauna





- **Order of the Minister of Environment of 2007 – Red List: includes 395 species of flora and 587 species of fauna – according to IUCN classification.**
- **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.

Salvia officinalis



Hypericum perforatum



Sanza-Gentiana lutea



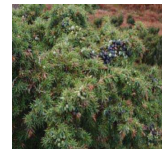
Vaccinium myrtillus



Colchicum autumnale



Juniperus communis



11

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.**

12

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);**

13

- **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”.**

14

- **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.**

17

- **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.**

18

- **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;**

19

- **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)**

20

- **A week later, it was enacted Law nr. 10 448, 2011, “On Environmental Permits”;**
- **Transposed Directive 2008/1/EC of EP and of the Council, 15.1.2008 - integrated pollution prevention and control**
- &
- **Directive 2001/80/EC of EP and of the Council, 23.10.2001, on the limitation of emissions of certain pollutants into the air from large combustion plants.**

21

- **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).**

22

- After two years - Law Nr. 91/2013, 2013, "On Strategic Environmental Assessment";
- Transposed Directive 2001/42/EC of EP and of the Council, 27.6.2001, on the assessment of the effects of certain plans and programs on the environment;
- 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.**

23

- 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;

24

- 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.**

25

- 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. 268, date 24.4.2003, “On the certificate of specialists to assess the impact on the environment and environmental audit”, repealed and replaced in 2008, “On certification of specialists for EIA and environmental audit”**

26

- **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**

27

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.**

28

- 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.

29

- 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*.

30

- 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.

31

- NEA → relevant ministries & REA → LGU.
- Drawbacks:
 - a. No compliance with the EIA Directive and Directive 92/32/EEC and Directive 2009/147/EC – no “one stop shop” on EIA, for a unified and fully informed decision;
 - 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.

32

- **For the linear infrastructure projects, the total length is considered: if the whole project exceeds the minimal length for the EIA procedure, it must be carried out.**

- **Appeals:**
 - **Administrative review, before the NLC, or the other decision making institution. Superior authority – MoE.**

 - **Judicial review, before the Administrative Court → Appeal → Supreme Court.**

33

Access to environmental information

- **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”**

34

- 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.

35

- 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.

36

- 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.*

37

- 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.

38

- **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.**

39

- **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”.***

40

