

LEGAL ISSUES CONCERNING THE IMPLEMENTATION OF CONVENTIONS AND EU DIRECTIVES IN THE FIELD OF BIODIVERSITY PROTECTION IN ALBANIA

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Conventions and International Protocols

Until 1990, the participation of Albania in international organizations and agreements was only formal and very limited. The environmental Conventions that were signed and ratified by the parliaments until the political turn are:

- On February 4, 1975 Albania ratified the Agreement “**For Non-proliferation of Nuclear Weapons.**”
- On March 26 1975, Albania ratified the Convention “**On the Prohibition of the Development Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on their Destruction.**”
- On March 20, 1979 Albania ratified the Convention concerning “**The Protection of the World Cultural and Natural Heritage**”. As part of UNESCO, the World Heritage Committee, which administers the List of World Heritage, was established.

After 1990, Albania started to participate in the international environmental organizations and to benefit from the rights of this participation by trying to fulfil its legal duties as a member and participant. The environmental conventions of which Albania is a party are as follows:

- On May 30, 1990, Albania participated by accession to the **Barcelona Convention “For the Protection of the Mediterranean Sea against Pollution”** Decree no.7365 (Barcelona, February 16, 1976).
- On October 4 1991, Albania ratified the **ESPOO Convention (Finland) “On Environmental Impact Assessment in a Transboundary Context.”**
- On March 18, 1992 Albania signed the convention “**On the Protection and Use of Transboundary Watercourses and International Lakes**” (Helsinki March 17, 1992). The ratification of the convention was done on January 5, 1994.
- The convention “**On Transboundary Effects of Industrial Accidents**” was approved in principle on March 17, 1992, and was ratified on January 5, 1994.
- On November 29, 1995 Albania participated by accession to the **Convention on Wetlands of International Importance especially as Waterfowl Habitat** (known as the **Ramsar Convention**) (Ramsar, 1971). Though Albania was not yet part of this convention, the Council of Ministers with the Decision no. 413 of 22 August 1994 declared the area of Divjaka-Karavasta as a “**Specially Protected Natural Ecosystem**”. Albania ratified this convention on March 29, 1996.
- On October 31, 1995 Albania signed the Bern Convention (September 19, 1979) “**For the Protection of Flora and Wildlife Fauna of the Natural Environment in Europe,**” which was ratified by the Parliament

on March 2, 1998. The ratification of this Convention was one of the Short Term Actions (1-5 years) foreseen in the Biodiversity Strategy and Action Plan of Albania.

- On November 16, 2000 the parliament ratified (law no. 8692) **The Convention on Protection of Migratory Species of Wildlife** known as the **Bonn Convention** (Bonn, on June 23, 1979, entry into force on 1983). Before this step, Albania signed two protocols of this convention (for the Mediterranean mammals and for the *Numenius tenuirostris*).
- On December 22, 1999 Albania has adhered in **The Convention on Desertification and dryness aiming to combat these phenomena in countries suffering form them** (December 4, 1996).
- Albania became a party to **The Convention on the Protection of the Ozone Strait (Wien Convention)** and **The Protocol of Montreal on Substances that damage the Ozone Strait** - law 8463 of October 03, 1999.

Albania participated in the Earth Summit “The Environment and Development” of the United Nations (UN) (Rio de Janeiro, 1992). The most important documents (around 500) that were approved are:

- **Agenda 21** – a complex program for the development of ecological actions.
- **Rio Declaration on Environment** that proclaims 27 principles following the ones included in the Stockholm Declaration of 1972.
- Convention on **Climate Change**. The Council of Ministers approved the accession of Albania to this convention by the decree no. 580 on June 29, 1993.
- Convention “**On Biological Diversity**”. Albania signed this convention on January 5, 1994 and it entered into force on April 5, 1994.
- Declaration on “**Forest Related Principles**” a non-mandatory declaration but an important step towards the composition of an international convention for the forests which will later be mandatory.

The **Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters** (Aarhus-Denmark, June 25, 1998). Albania was among the 35 countries, which signed this convention. This Convention was ratified in November 2000, law no.8672.

Albania is also a party to the “**Adriatic Initiative**,” together with Italy, Slovenia, Croatia, Greece, and the EU.

Environmental conventions where Albania is making preparation for participation:

- **Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Destruction**. The convention was adopted in 1989, and entered into force in May 1992.
- **The Convention on International Trade in Endangered Species of Flora and Fauna (CITES)** signed in Washington DC March 3, 1973 with amendments done in Bonn June 22, 1979.
- **The European Convention on Landscape** (Strasbourg, 19.08.2000)

Transfrontier Initiatives

Memorandum of Understanding between the Albanian Government and Macedonian Government for the Protection of Ohrid Lake – 1996

Memorandum of Understanding between the NEA and the Macedonian Ministry of Environment and Physical Planning concerning cooperation in the field of Environmental Protection and sustainable development – 2000

Prespa Declaration – 2000

NATIONAL CONSTITUTION

The Constitution of the Republic of Albania approved in 1998 provides for further improvement and completion of the legal and institutional framework in the field of environment, nature and biodiversity protection. Article 59 provides for a healthy and ecologically adequate environment for the present and future generations; rational exploitation of forests, waters, pastures and other natural resources on the basis of the principle of sustainable development;

The Parliament is the main authority of the legislative system. The **Commission on Health and Environment** is the main body within the Parliament responsible for the environment.

LAWS

A basic law on environment has existed since 1967. The development of a modern legal system for environmental protection based on democratic principles began in 1991. The Albanian legal system needs further development in the future. There are a number of laws, which have been approved since 1991 that represent an important advancement in the legislative area.

Law On Environmental Protection (LEP)

The main law on environment in Albania is the law no.7664/1993 "On the Environment Protection" (LEP). The law considers environmental protection as an essential condition for the social development and a national priority. The law defines several objectives, which are necessary for a sustainable development:

- a) prevention from any kind of pollution;
- b) conservation of biological diversity according to the country's bio-geographical natural basis;
- c) rational administration of natural resources and avoidance of their over-exploitation;
- d) ecological rehabilitation of areas damaged by the antropogenic activities or natural phenomena ;
- e) preservation of ecological balance and improvement of life quality.

The protection of ecosystems is obligatory for all state organs and legal and natural persons. This protection, according article 4, includes the protection of water, atmospheric, land ecosystems and the protection of nature and landscape. Other detailed by-laws and rules ensure the protection of these elements as well. The law defines an obligation of all institutions, natural and legal persons to preserve and protect the environment in a **sustainable way**. These persons besides their duty have the right to notify, in case of threat, pollution or damage to the environment, the competent authorities and to ask from them to protect the environment or to interrupt illegal activities.

Article 6 of the law foresees, as the new Constitution expresses, the implementation of principles and norms of environmental international conventions, agreements and treaties where Albania is party. Furthermore, this article foresees that even in cases where Albania is not a party, it considers, knows and respects the generally accepted principles and norms of the international environmental right". Though, the above mentioned quotation can be considered as a legal and political commitment of Albania to respect international standards in the environmental field "within the constitutional competencies and available means" (quote Constitution).

This law has a new view of the environment, according to the international conventions and concepts. It is the same for the environmental impact assessment and the right of people to be informed on this procedure (art.12).

The law defines that NEA, in collaboration with other concerned institutions, approves the levels of polluting materials that are discharged in water, land and air. The standards to be referred to are those defined in the EU directives. The same rules exist for the collection, preservation and transportation of dangerous wastes and substances as well as, for the use of renewable or non-renewable natural resources.

In regard to the **protected areas**, NEA has the competence to approve regulations, guidelines and management plans for all categories of protected areas, which should be done with other concerned ministries and institutions.

Law 7623 / 1992 On Forests and Forest Service Police

The purpose of this law is the protection management of forests with the purpose of environment protection.

Article 12 describes five categories of '*protected areas*': 1) **national forests parks**, 2) **nature reserves** 3) **scientific reserves** 4) **nature monuments** and 5) **landscapes and industrial trees**. The designation of national parks and nature reserves requires a decision of the Council of Ministers while the other categories require special decision of GDFP. The preservation, management and every activity in these areas is carried out according special regulations of the GDFP. There are no regulations set out by GDFP regarding some of areas, which have been declared by the Council of Ministers as protected areas. Except two or three of them, which have a management plan, no other protected areas have any kind of legal regulation.

The Law On Hunting And Wildlife Protection (No. 7875, 1994)

The Law on Hunting and Wildlife Protection (no. 7875, 1994) states that the wild fauna of the Republic of Albania is national property that is managed and protected by the state through laws and in compliance with international agreements where Albania is party. The term "wildlife" includes all wild animals and birds that form part of free populations, whether living permanently or temporarily in the Albanian territory. The hunting of the wild fauna is an activity that can be done only in compliance with the norms foreseen in this law and other by-laws. The law defines very clear rules about hunting and sanctions against the break of those rules. The hunting fund is divided in four categories:

- a) Free hunting area
- b) Breeding area
- c) Hunting reserves and
- d) Fauna or nature reserves.

Fauna and nature reserves aim an absolute protection of the wild fauna and other resources living there. Hunting and fishing are prohibited. The study, scientific activities are allowed with the permission of the General Directory of Forests and Pastures (GDFP). The designation of nature reserves is made only through a Decision of the Council of Ministers.

The hunting reserves require a decision of Ministry of Agriculture and Food (MAF). They serve for tourism, recreation hunting and permanent management of the wild fauna. Article 34 prohibits any kind of activity, in the lagoons and swamps within the territory of hunting and fauna reserves, that affects the quality and nature of ecosystem. But such activities have not been stopped after the '90s and such areas have met with an escalating biodiversity loss. This is, also, as a result of the low respect for the nature from the part of the communities living near these areas.

As regards the protected species there is a list of them (Regulation no.2/1995), which includes the brown bear and lynx as strictly protected species and, the gray wolf as protected specie. This last one can be hunted only in case of damage caused to human activities.

Article 19 states that the State supports with budget funds the protection, development and management of wild fauna, natural ecosystems where is fauna and faces the emergent situation in case of natural disaster. It is not clear whether the incomes of the authorities from the hunting activities are used from these authorities for investments towards the protection of natural ecosystems.

Violations related to hunting are sanctioned with fines or abolition of the hunting license. Fishing in high waters and within territories of hunting reserves is done with a permission of GDFP.

The law has a serious lack regarding the hunting of **large carnivores** and the relation of the law with the Penal Code. The penal code has foreseen in article 204 that fishing in prohibited time, means, places and ways is a penal offense. This article, paragraph 2, foresees a harder sanction in case fishing is done with explosives, poisons etc. But there is no penal sanction at all foreseen in the penal code regarding the hunting. There is no prohibition to kill large carnivores without permission in Albania. The penal code foresees an offence only about fishing. This is something absolutely not justifiable, because the damage done to the country, society, and in general to the nature, is very big when, for example, such protected animals, like bears, wolfs and lynxes, are killed, especially when this occurs in national parks or Nature and Fauna reserves.

The **Brown Bear**, according Regulation 2/1995, is strictly protected specie. The regulation (art.22) prohibits:

- a) Any form of intentional capture, detention and killing,
- b) The intentional damage or destruction of reproduction or resting areas,
- c) The intentional disturbance of the species especially during the reproduction and transhumance periods,
- d) The detention or trade of live or dead (killed) specimens of the species, including those bred and their parts or derivatives,
- e) The use of all non selective means of capture and killing and of means that can bring about the extinction or disruption of peace of the populations or individual specimens locally, these means being defined in annex 1 to Regulation 2/1995.

The Bern Convention imposes prohibitions concerning hunting, capture, killing and trade of the species, and obliges Albania to take the appropriate and necessary legislative and administrative measures for the strict protection of species and conservation of its habitats.

Article 32 of the Law "On hunting and Protection of Wild Fauna" has two exceptions regarding this protection:

- a) When the specie presents great danger to people and animal lives, a special decision of GDFP is issued to kill this animal. But this requires a request from the local authority or the DFS. This is also foreseen by the Bern Convention when the species cause serious damages. We don't know if, in this case, there is any other form of preventing the killing of some animals in risk of extinction. In short, what could be a satisfactory solution to this case?
- b) The killing or capture may be allowed for educational and scientific purposes with the approval (decision) of the GDFP (art. 49 of R. 2/1995).

The CITES Convention, where Albania is not yet party but is working to enter, provides for another level of protection for species in risk of extinction. The Law 7875/1994 and the Regulation 2/1995 foresee:

- a) The trade of strictly protected species, species parts or derivatives is forbidden (art.22 of R. 2).
- b) The trade of animal furs, and of live and stuffed wild animals needs a permission of the DFS to prove that the killing or capture was committed according to the law (art.17 of L.7875, above mentioned).
- c) The permission is needed for foreign hunters that are leaving the country with the killed or captured game.

Strategies and Plans

The government has adopted the **Biodiversity Strategy and Action Plan (BSAP)** with a lot of objectives which, until now are not being implemented. The BSAP, if implemented, would increase the protected areas to approximately 15% of the territory. BSAP is the main tool toward the implementation of the Convention on Biodiversity.

The BSAP has foreseen as immediate actions to be implemented in the field of legislation the finalization of the Draft Law on Biodiversity, on Protected Areas and Harmonization of existing laws with the Law on Biodiversity. Except the Law on Protected Areas, no other law has reached a final draft to be shown to the parliament for approval. Albania is now in the short-term actions (1-5 years') phase of the Biodiversity Strategy and Action Plan while still has not succeeded in the implementation of the Immediate Actions of it. This strategy has foreseen in the Short Term Actions (1-5 years) the approval of these drafts, the preparation

of the draft law on Administration of Watershed Basins and its approval, the preparation of implementing regulations for biodiversity law and protected areas law.

Another priority set out in this strategy is the strengthening of governmental institutions responsible for biodiversity inventories, management and monitoring. This would made possible for these institutions to fulfill all the responsibilities on environmental protection in general and biodiversity in particular. It is foreseen the creation of the Institute of Nature Conservation (INC).

Conclusions and RECOMMENDATIONS

These years of transition have enriched the experience of Albanian institutions related to the environment. Progress has been achieved, but some other problems and issues are present.

- There are lacks in the legal and institutional framework;
- The existing network of PAs is very limited and poorly managed (6% of the territory);
- There is a lack of existing Protected Areas Management Plans (management plans have been prepared for only 2-3 of the existing PAs);
- Lack of financial resources for effective administration of the PAs;
- Lack of training;
- Lack of protection for endangered species of plants and animals outside the PAs.

Although there are some gaps in the existing laws it has to be mentioned that the adverse impact on the environment is more as e result of the poor implementation and ignorance of the law. In this frame, it can not be expected a solution to the environmental problems unless the responsible and related institutions will cooperate on the law implementation. Until now, this need for cooperation has been over mentioned in meetings and seminars. The time, the immediate problems and urgent solutions call for concrete actions to prevent and reduce the causes and risks of biodiversity loss. To this end, governmental institutions in collaboration with specialized NGOs and/or institutions must, as soon as possible, train their staff, especially the ones working in the field. Though existing laws are appropriate and the high level bodies have qualified staff and good regulations set out for the implementation of these laws, the main problem remains in the field level. The low level bodies face very big problems in the implementation and enforcement of the laws, and this is due also to lacks in authority, support and capacities. The lack of law enforcement, low collection of fines is because of the weak institutions, the corruption of the administrative and judicial system which has had adverse impacts on the environment, and on biological and landscape diversity.

It has to be mentioned that one of the reasons of non cooperation between different institutions is that the NEA is a relatively new structure with limited experience and power in the management of environmental problems of Albania, which are not considered as the most important and immediate problems in comparison with the economic ones.

Though the existing laws have established a relatively complete protection and preservation of the environment the legislative framework in the environmental field needs to be completed with laws that implement the requests of the main conventions, treaties or protocols where Albania is a party. This is a political engagement not only in the national level, but also in the EU European level, where Albania wants to adhere.

The government institutions must take decisions and actions that include the possibility of collaboration with the private sector, taking into consideration that economic and social factors can serve as incentives for the protection of biodiversity from the part of the public. The government institutions must take decisions with open procedures, transparent for the public. Not a single decision will be put in life unless the local communities will be included in its decision-making and implementation process.

It is time to enrich the environmental legislation with two important laws, the law on Protected Areas and the law on Nature Protection and Biodiversity. Another step, is the harmonization of the national environmental legislation with international environmental conventions where Albania is a party and the ones Albania is preparing to ratify. This harmonization is needed also with the EU standards. This is, also, mentioned in the

Law on Environmental Protection where the NEA, in collaboration with other concerned institutions, approves the levels of polluting materials that are discharged in water, land and air. Another important step is the normative acts, by-laws, rules and regulations that implement the existing laws.

Regarding the EU Directives the Albanian government has no obligation to apply them. Albania is not yet part of the European Union, and therefore has no obligation to apply to their rules. But the political engagement towards this community of states obliges Albania to harmonize its laws, institutional structures with those foreseen in the European laws. It is the same for the standards that Albania must meet regarding the pollution levels.