

ENVIRONMENT PROTECTION UNDER THE ALBANIAN DOMESTIC LEGISLATION

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Abstract

Environment protection is of higher importance in developing countries like Albania. This paper shows how the new Albanian governmental and social bodies have faced this emerging challenge in favor both of the wellbeing and higher standards of environment of proper citizens. The rapid urban development which characterized the Albanian transition from the '90s till nowadays has increasingly marked environmental standards. In addition, educational campaigns in favor of environmental protection have almost been absent although non-governmental agencies in the field are numerous. The awareness of the Albanian citizens at the beginning of the democratic processes towards issues of environment and sustainable development has been at the lowest ever; only with the improvement of economic standards and better quality of life, this sensibility towards the environment modified the fundamental social interests in favor of sustainable development without renouncing anyway from economic targets. The efforts of the government and the civil society in favor of the creation of a environmental mentality within the Albanian society is one of the clearest effects of the integration process towards the European Union which pays due attention to the environmental issues. The Albanian legislation, in the wake of the European one, tries to set up a complex of rules for the protection of environment under all its aspects. There is still much to do but the master route remains the European one.

Keywords: Environment, human rights, EU integration, pollution, environmental damage

Introduction

Starting from the 90-s and onwards the new Albanian democratic society, alongside many tasks to solve, was also faced with complex environmental problems. The new state, political forces, professors, environmentalists and the most emancipated part of the society committed themselves thus emphasizing their involvement in the environment (Pamuku

& Proko, 2009). For several years, Albania has been involved in rapid urban developments, which is not associated with a small cost in the environmental plan. Increased consumption, transportation, urban or inert waste, discharge of sewage into seas and rivers, indiscriminate cutting of forests, erosion of river beds, burning tires, erosion of mountains, uncontrolled constructions, etc., are just some of the occurred environmental impacts. It is undeniable that over the last ten years, the environment and its protection are subjected to a process of a long and thorough evaluation. As it was intended, this process is becoming a reality with the adoption of contemporary attitudes towards the environment and its protection, this is also deemed as an important step in efforts to integrate into Europe.

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Albania and the environment

Until today some phenomena have occurred for the first time in the Albanian reality, which are (Ministry of Environment, 2004): formulation of strategies, action plans and programs for the environment and its components; adoption of a new Albanian environmental legislation; establishment and functioning of state structures for the protection and management of the environment; the involvement of civil society in environmental issues, mainly through the creation and operation of environmental NGOs; defining the roles and responsibilities of stakeholders in the environmental field such as the state and its special bodies, civil society and interested public, NGOs, business investors, etc; establishment and functioning of close co-operation with international environmental factors such as international and intergovernmental organizations, regional and global, with different states, in particular neighboring countries and regional ones, etc.; integration on initiatives, global and regional strategies and plans, becoming signatory and a party to international environmental conventions, protocols and agreements; formulation and implementation of many important environmental projects in the Albanian environment supported by strong foreign donors.

Twenty years after the historic Rio Summit, Albania has experienced significant economic growth and poverty reduction. Access to education, health-care and water has also seen improvements and there has been a large increase in the participation of civil society in policy-making, to improve communication on the Internet. Despite positive developments, significant gaps and implementation challenges still remain. Many environmental challenges remain unresolved and have become more acute. Greenhouse gas emissions continue to rise, especially in urban areas, moreover, climate changes add more to the environmental problems in Albania. Contamination of water resources and marine environment is serious, especially in the

vicinity of cities and industrial areas, due to sewage. Such pollution poses more serious problems. Soil erosion and soil contamination pose serious concerns. Waste management situation in Albania is at a very low level becoming thus a major source of pollution (United Nations, 2012). Over the past decades, sustainable development has been fueled by a number of adopted documents and policies. The development of sustainable use of natural resources aims to prevent environmental pollution also from degradation and to promote environmental protection in Albania. Since the Rio Conference, progress towards achieving sustainability is assessed in different ways.

Environmental non-profit organizations have played an important role in environmental protection these recent years. In Albania there are about 100 environmental organizations, most of which are active. Most environmental NGOs are situated in Tirana, but there are many environmental NGOs in the districts, although their activity is lower. Major environmental NGOs in Albania are Eper Center, The Institute for Environmental Policy, *Ekolevizjaj* (Eco-movement), Eden Center, etc.

To track the progress of the new environmental legislation drafting, the period of drafting and approval can be divided into two parts. The first part corresponds to the years 1990- 2000 and the second part: from 2001 until today. By 2002, environmental protection was based on the 1993 law entitled "Environmental Protection", as amended in 1998. During this period, laws that significantly helped environmental management, were drafted and adopted in other areas. Therefore, in the Criminal Code of 1995, a separate chapter on the environmental crimes is included (Criminal Code, 1995). With the adoption and the effective implementation of the Constitution of the Republic of Albania, some principles and requirements for environmental protection such as, the principle of sustainable development and public right of access to environmental information, became constitutional norms.

In the meantime reality had shown acute problems related to the management, use, and more efficient protection of the environment and existing environmental law. Activities that have an impact on the environment have increased, becoming present in various branches and sectors, extending across the country, affecting and seriously jeopardizing important environmental components. At the national level, and more specifically the protection of the environment, was set as a constant demand of the priorities for the integration in the European Union, within which domestic environmental legislation should harmonize with the standards and requirements of the EU. In such conditions, the fulfillment of the environmental legislation and its approximation with EU directives are considered as a single task and have been identified as a top priority in state

obligations on the environment and as an important step in Albania's EU integration.

Environmental legislation in Albania

The creation of a new legislation was a need of time that could not be tolerated or avoided, it is developed in the New National Plan of Action of the Environment in 2001 and has taken the first place in the queue of tasks that the Ministry of Environment has been committed to resolve. Pursuant to this task, a legal package for the environment is designed, where more urgent laws will be involved to fill the significant legislative gap that existed in the protection of the environment.

Currently, Albania has established its completed and very applicable environmental law. Gradually, the environmental law has been consolidated as a separate branch of the Albanian law. Moreover, not only that there is an Albanian law of the environment, but it also has its sub-divisions, where each of these laws and regulations belong to the main components or environmental issues. Therefore, now it can be considered an almost complete legislation committed to the conservation of biodiversity and its components. It includes the Law on Forests and Forest Protection, the Law on Fisheries and Aquatic Life, the Law on Seeds and Seedlings, the Law on Wildlife and hunting, Horticulture Protection Law, Law on Protected Areas, Law on Protection of Trans-Border Lakes, Forests and Pastures Law, Law on Protection of Nature Medical, Ether and Oil. In addition, another group is made with laws that protect the environment from pollution and damages as the Law of Air Protection from Pollution, the Law on Environmental Treatment of Solid Waste, the Law on Public Dispose of Waste, the Law on Environmental Treatment of Wastewater, the Law on the regulatory Framework of Water Supply and Waste Destruction and Treatment of Water, and the Law on Chemical Compounds, etc. Another special group will consist of laws regulating the processes of environmental impact assessment and environmental permit issuing the environmental impact.

The legal system is based on a hierarchy: the Constitution, primary legislation (qualified laws) and supporting normative acts, such as laws, government decisions, decrees, ministerial orders, regulations, guidelines and standards. The Constitution, adopted in 1998, calls on the Albanian authorities to maintain a healthy life in an ecologically suitable environment for present and future generations (Albanian Constitution, 1998). The Republic of Albania has adopted a number of laws in the field of environmental protection, showing its commitment to environmental protection. The Ratification of international agreements is done by law under Part Seven, Chapter I and II of the Constitution "International Agreements" (Hitaj, 2013). Articles 116, 121 and 122 of the Constitution, sanction that:

international agreements ratified by Albania are classified as laws and become part of the national legislative system after its publication in the Official Journal. International agreements are directly applicable, except if they are not self-applicable and the application requires a new law to be approved (Committee, 2002). Once ratified, international treaties have precedence over national laws (Hitaj, 2013; Sinagra & Bargiacchi, 2009).

Albanian legislation in the field of Environment represents a general legal framework within which relationships in the environmental field can be developed normally. This legislation forms the basis necessary for the activities of use, management and environmental protection to be lawful (Schrijver & Weiss, 2004). It legally responds to current developments and the medium-term prospects and provides sustainable solutions to problems arising from the practice in the field of environmental protection (Andrzejewski, 2009). It may be noted that this legislation is at the same level of development and changes with those of the respective neighboring countries of the region, thereby creating fundamental premises to undertake joint regional activities in the field of environment in order to facilitate services in this field, and to guarantee the same protection of environmental ecosystems, that are managed by two or more countries (Gillespie, 2001). Principles and requirements for the environmental protection and in particular the adoption of European norms on environmental emissions, this legislation is becoming unified with the EU directives (Jack, 2009). This leads to the increase of opportunities for foreign investment.

Environmental protection and responsibility for environmental damage

The environmental protection objectives under the Albanian legislation and the Albanian environmental law, influenced by the EU integration process (Hinteregger, 2008), are:

- a) prevention, control and reduction of water, soil, air pollution and any other kind of pollution;
- b) conservation, protection and enhancement of nature and biodiversity;
- c) preservation, protection and improvement of environmental sustainability with public participation;
- d) prudent and rational use of nature and its resources;
- e) preservation and restoration of cultural and aesthetic values of the landscape;
- f) protection and improvement of environmental conditions;
- g) protecting and improving the quality of human life and health (Law No. 10, 2011).

Environmental protection from pollution damage constitutes a national priority and it is mandatory for every resident of the Republic of Albania, for all state bodies, as well as natural and legal persons, whether

they are domestic or foreign, who exercise their activities in the territory of the Republic of Albania. Components of the environment are protected from pollution, separately and in combination, by taking in consideration the interactions between them. In case of a threat to the environment, its pollution and damage, the public has the right to: ask the respective public authorities to take appropriate measures within the terms and in accordance with the authority granted by the law; to sue in court, in accordance with the terms of the Code of Civil Procedure, against the public authority or the natural person or legal entity, which has caused damage to the environment or are likely to damage it.

International cooperation

Since the political changes of 1991, Albania has strengthened its international ties in environmental issues both globally and regionally. This effort is a result of the interest of Albania for integration into Europe and the international community, in order to obtain financial and technical assistance to resolve the serious problems of its environment, and take advantage of the mechanisms for international cooperation in environmental instruments (Kiss & Shelton, 2007). Over the last decade, Albania has become party in some global and regional environmental conventions, which now form an important part of its legal system. It has strengthened its ties with the United Nations system, international institutions such as the Organization for Security and Cooperation in Europe (OSCE), The North Atlantic Treaty Organization (NATO), and the governments of neighboring and other countries. Albania has been a member of the United Nations since 14 December 1955. It took part in major environmental events in Stockholm and Rio Conference. On 8 September 2000, Albania joined the World Trade Organization (Voigt, 2011) and attended the Ministerial Conference in Doha, Qatar (November 2001). In its international environmental cooperation Albania adheres to the following principles (Louka, 2006; Sands, 2003; Flournoy & Driesen, 2011): openness to cooperation with international institutions; friendly relations with other nations; the supremacy of international rules; and freedom of economic activities with a consideration to environmental problems.

Cooperation with the EU.

Cooperation with the EU on environmental issues is done through EU accession policies and activities, including the harmonization of legislation, and also through projects benefiting from EU support. Areas of cooperation include water quality, air pollution, pollution monitoring, promotion of energy and safety efficiency at industrial plants, classification and safe

handling of chemicals, urban planning, waste management, and protection of forest, flora and fauna.

Bilateral cooperation

Albania has signed bilateral memorandums on cooperation with the Former Yugoslav Republic of Macedonia and Montenegro to provide the development of cooperation in various fields, including the environment. Albania has also developed cooperation with Canada, Germany, Italy, Japan, Switzerland and the United Kingdom.

Liability for environmental damage

The purpose of liability for environmental damage (Kiss & Shelton, 2007), based on the “polluter pays” principle, is:

- a) prevention and compensation of the entire damage caused to the environment;
- b) the rehabilitation of the environment;
- c) introduction of measures and practices to minimize the risk of environmental damage.

The responsibility for environmental damage is determined on the basis of:

- a) environmental damage caused by any of the dangerous activities, as defined by the Council of Ministers, provided in letter "a" of paragraph 3 of this Article, and the potential threat of such harm;
- b) the damage caused to protected species and natural habitats from any professional activity other than those provided for in letter "a" of paragraph 3 of this Article, as well as any potential threat of this damage, as a result of performing these activities, because of the negligence of the operator.

The operator who caused damage is liable if:

- a) does not take the necessary precautions;
- b) does not take the necessary dissuasive measures;
- c) fails to inform the National Environmental Agency about the risk of damage on the environment, which could be triggered, despite of the taken measures or whether the damage may have occurred or not.

If damage has not occurred to the environment, but there is a direct threat for such damage, the operator shall take immediately and without delay all the necessary measures to prevent causing damage to the environment. If the operator fails to fulfill this obligation, the National Environment Agency takes the necessary precautionary measures and the operator is responsible to cover the corresponding costs.

Enforcement of environmental legislation is the responsibility of inspectors from 12 Regional Environmental Agencies. Every month, inspectors conduct several inspections. They can impose fines, withdraw

licenses, suspend or close operations and to apply the Criminal Code with regard to the following environmental crimes: air pollution, toxic waste transportation, water pollution, prohibited fishing , illegal cutting of forests, cutting decorative and fruit trees, destruction of forests and forest environment by fire, negligent destruction of the forest and the forest environment with fire, breach of plants and animals' quarantine (United Nations, 2003).

Compensation for damage to the environment

Physical and legal entities and environmental organizations in the territory, which are directly affected or suffering the consequences of the damage caused to the environment, have the right to refer to the National Environment Agency so it can require from the operator to:

- a) restore the environment to its previous condition;
- b) compensate the damage caused to the environment, in accordance with what is provided in this law, if the return of the environment to its previous state is impossible.

If the National Environment Agency considers the environmental rehabilitation and the return of the environment to its previous state, to be impossible, it obliges the operator to pay for the compensation of damage caused to the environment.

Conclusion

Environment protection is a crucial issue for all the democratic societies all around the world, especially for those new one which aim to join higher standards of economic development at the benefit of proper citizens and their rights (Senyonjo, 2009 Leib, 2011). In this context, the efforts made by both the Albanian legislator and the administrative power assume a particular importance considering the balance process between the right to economically develop and the right of the next (and present) generation to a healthy and sufficient environment. Therefore, a new national strategy of environmental protection is needed given the celerity of the economic reforms undertaken by the central government. Along with the legislative and administrative actions toward the improvement of the environment a new environmental culture dedicated to the young generations is also necessary and imperative. Both education and legislation constitute important pillars for Albanian society in order to strongly build its route towards the European Union and the way to democratic and developed society.

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