

Annex 6 to the Communication to the Aarhus Convention Compliance Committee on phase II of the Kostolac B Power Project and Serbia's failure to comply with Article 6 and Article 9 of the Convention.

Overview of the relevant provisions in Serbian national law (in Serbian and English translation).

Law on Environmental Impact Assessment ("Law on EIA") ("Official Gazette of the Republic of Serbia" no. 135/2004 and 36/2009).

Article 5

The developer of a project for which impact assessment is mandatory as well as a project, for which the need for impact assessment has been identified, may not proceed with the implementation, ie construction and execution of the project without the consent of the competent authority to the impact assessment study.

Article 18

Environmental impact assessment study, and approval of the environmental impact assessment study, or the decision that the environmental impact assessment is not necessary, are the integral part of the documentation submitted with the request for issuance of the permission for construction, or with the notification of commencement of construction (construction, carrying of works, change of technology, change of activity and other activities).

Article 28

Project developer is obliged to commence with realisation, or construction and implementation of the project within two years from the date of receipt of the decision on the approval of the environmental impact assessment study.

On the expiry of the deadline from paragraph 1 of this article, at the request of the project developer, the competent authority may decide to issue a decision for development of a new environmental impact assessment study, or for an update of an existing study.

At the request of the project developer, competent authority shall decide on the update of the environmental impact assessment study, even if in the process of construction, or project implementation, project developer had to deviate from the documentation that was the basis of the approved environmental impact assessment study.

The request referred to in paragraph 3 of this article, shall be submitted before applying for a permit to build, according to the amended documentation.

The request referred to in paragraphs 2 and 3 of this article contains details prescribed for determination of the scope and content of the environmental impact assessment study.

Provisions of this Law on the scope and content of the environmental impact assessment study and decision on approving the environmental impact assessment study shall be applicable to the procedure on the request referred to in paragraphs 2 and 3.

Serbian:

Član 5

Nosilac projekta za koji je obavezna procena uticaja i projekta za koji je utvrđena potreba procene uticaja, ne može pristupiti realizaciji, odnosno izgradnji i izvođenju projekta bez saglasnosti nadležnog organa na studiju o proceni uticaja.

Član 18

Studija o proceni uticaja i saglasnost na studiju o proceni uticaja, odnosno odluka da nije potrebna procena uticaja na životnu sredinu, sastavni su deo dokumentacije koja se prilaže uz zahtev za izdavanje odobrenja za izgradnju ili uz prijavu početka izvođenja projekta (izgradnja, izvođenje radova, promena tehnologije, promena delatnosti i druge aktivnosti).

Član 28

Nosilac projekta dužan je da sa realizacijom, odnosno izgradnjom i izvođenjem projekta otpočne u roku od dve godine od dana prijema odluke o davanju saglasnosti na studiju o proceni uticaja.

Po isteku roka iz stava 1. ovog člana, na zahtev nosioca projekta, nadležni organ može doneti odluku o izradi nove studije o proceni uticaja ili ažuriranju postojeće studije o proceni uticaja.

O ažuriranju postojeće studije o proceni uticaja, nadležni organ odlučuje, na zahtev nosioca projekta, i ako u toku izgradnje, odnosno izvođenja projekta, nosilac projekta mora da odstupa od dokumentacije na osnovu koje je izrađena studija o proceni uticaja na životnu sredinu na koju je data saglasnost.

Zahtev iz stava 3. ovog člana podnosi se pre podnošenja zahteva za izdavanje odobrenja za izgradnju po izmenjenoj dokumentaciji.

Zahtev iz st. 2. i 3. ovog člana sadrži podatke propisane za zahtev za određivanje obima i sadržaja studije o proceni uticaja.

Na postupak po zahtevu iz st. 2. i 3. ovog člana shodno se primenjuju odredbe ovog zakona kojima se uređuje određivanje obima i sadržaja studije o proceni uticaja i odlučivanje o davanju saglasnosti na studiju o proceni uticaja.

Law on Planning and Construction, "Official Gazette of the Republic of Serbia", No. 72/2009, 81/2009 - 64/2010, 24/2011, 121/2012, 42/2013, 50/2013, 98/2013, 132/2014, 145/2014, 83/2018, 31/2019 and 37/2019

Article 137, paragraph 1

Construction permit shall be issued for the entire facility, or part of the facility, if that forms a technical and functional unit, or for several cadastral parcels, or parts of the cadastral parcels for construction of linear infrastructural facilities.

(...)

Article 138a

Construction can be accessed on the basis of a binding decision (“pravosnažno rešenje”¹) on construction permit and notification of works referred to in Article 148 of this Law.

The investor may also proceed with the construction on the basis of the final decision (“konačno rešenje”)² on construction permit and notification of works referred to in Article 148 of this Law, at his own risk and responsibility.

If a party has initiated an administrative dispute, and the investor, for this reason, does not start construction of the facility until the decision becomes final, the investor is entitled to compensation for damages and lost profits in accordance with the law, if the claim is found to be unfounded.

Serbian:

Član 137

Građevinska dozvola izdaje se za ceo objekat, odnosno za deo objekta, ako taj deo predstavlja tehničku i funkcionalnu celinu, odnosno za više katastarskih parcela ili delova katastarskih parcela za izgradnju linijskih infrastrukturnih objekata.

Član 138a

Građenju se može pristupiti na osnovu pravosnažnog rešenja o građevinskoj dozvoli i prijavi radova iz člana 148. ovog zakona.

Investitor može pristupiti građenju i na osnovu konačnog rešenja o građevinskoj dozvoli i prijavi radova iz člana 148. ovog zakona, na sopstveni rizik i odgovornost.

Ako je stranka pokrenula upravni spor, a investitor iz tog razloga ne započne sa građenjem objekta do pravosnažnosti rešenja, investitor ima pravo na naknadu štete i na izgubljenju dobit u skladu sa zakonom, ako se utvrdi da je tužba neosnovana.

The Law on Administrative Disputes (“Official Gazette of the Republic of Serbia”, no. 111/2009)

Article 23

The claim, as a rule, does not delay execution of an administrative act against which it was submitted.

However, if the plaintiff requests so, the Court may delay execution of an adopted administrative act, until rendering of a court verdict, if the execution could cause damage which could be hardly compensated to the plaintiff, whereas delay would not be granted contrary to the public interest, nor if it would cause damage of bigger scope nor damage that could not be compensated by the opposite party, i.e. the interested party.

¹ Decision with final force and effect against which appeal cannot be filed, or the administrative procedure cannot be initiated.

² Decision that is final in administrative procedure against which appeal cannot be filed.

Exceptionally, a party in the administrative procedure may request the court to delay execution of administrative act even before the claim was submitted, in case:

- 1) Of urgency
- 2) When the appeal to administrative act was submitted in administrative procedure and the appeal does not have possibility to suspend execution

The court will decide on the submitted request for temporary suspension within 5 days from submission.

Serbian:

Član 23

Tužba, po pravilu, ne odlaže izvršenje upravnog akta protiv koga je podneta.

Po zahtevu tužioca, sud može odložiti izvršenje konačnog upravnog akta kojim je meritorno odlučeno u upravnoj stvari, do donošenja sudske odluke, ako bi izvršenje nanelo tužiocu štetu koja bi se teško mogla nadoknaditi, a odlaganje nije protivno javnom interesu, niti bi se odlaganjem nanela veća ili nenadoknadiva šteta protivnoj stranci, odnosno zainteresovanom licu.

Izuzetno, stranka iz upravnog postupka može tražiti od suda odlaganje izvršenja upravnog akta i pre podnošenja tužbe:

- 1) u slučaju hitnosti;
- 2) kada je izjavljena žalba koja po zakonu nema odložno dejstvo, a postupak po žalbi nije okončan.

Po zahtevu za odlaganje izvršenja sud odlučuje rešenjem, najkasnije u roku od pet dana od dana prijema zahteva iz st. 2. i 3. ovog člana.