

Albanian case law regarding access to justice in energy related cases

1. The Aarhus Convention, also called "the democracy in the field of environment", is one of the most important acts in the field of environmental legislation in Albania, ratified by law since 2001. There are a lot of natural water resources in Albania and as a result, a number of hydropower plants have been built in our country. Recently, the government's efforts to build more hydropower plants in our water resources have been opposed not only by the local population, but also by many national and international organizations with focus on environmental protection.

2. Today, I would like to present the Albanian case law regarding energy related cases, the access to justice and how Albanian courts have successfully implemented the Aarhus Convention to provide access to justice of the groups of interest in these cases.

1. Judgment no. 80-2021-1696 dated 28.05.2021 of the First Instance Administrative Court of Tirana

3. In the judgment no. 80-2021-1696 dated 28.05.2021, the plaintiff is "Ayen-Alb", a joint-stock company, also the concession company which has been declared the winner and has entered into a concession contract with the Ministry of Energy for the construction of the Kalivac hydropower plant on the Vjosa River. The concessionaire had the obligation to obtain the necessary permits and licenses, including the Environmental Statement, the administrative act issued by the Ministry of Environment which provides the environmental impact of the targeted project. The Ministry of Environment, based on the proposal of the National Environment Agency has issued a negative Environmental Statement for the construction of the Kalivac hydropower plant.

4. The negative environmental statement provided that the construction of the project on the Vjosa River would have quite negative impacts on the environment with long-term consequences, including: land floods, use of explosives during construction, serious threat to flora and fauna in the ecosystem, damage to the microclimate, decline water quality and its physico-chemical qualities, the damage to the biodiversity of the Vjosa river, one of the biggest in the Balkans, where live hundreds of living species, some of them unknown to science, etc.

5. This project has also been strongly opposed by the civil society, national and international organizations and many celebrities who have demanded the cancellation of the project on the Vjosa River, one of the largest, last wild rivers in Europe flowing 200 kilometers into Albanian territory.

6. The plaintiff filed an administrative appeal and subsequently filed a lawsuit claiming the annulment of the environmental statement as taken in violation with the law. The plaintiff claimed that the impact on the environment would not be negative and asked to continue with the project, as the winner of the concession contract.

7. The associations “Eco Albania”, “EuroNatur” and “Riverwatch”, as well as 39 residents of the Kalivac project area have intervened in this judgment. The Administrative Court ruled in their favor by arguing that they are interested parties in the environmental decision-making process and referring to domestic law and the Aarhus Convention are entitled to be parties in this judgment, to be heard and present their claims.

8. As per the merits of the case, the First Instance Administrative Court of Tirana rejected the lawsuit, with the arguments that this statement is provided in accordance with the law. The court underlined that this administrative act provides with all the arguments that have led the competent authority to issue a negative environmental statement and there is no reason for this act to be declared invalid. It was also noted that at the time of the trial the Vjosa River was declared a managed national park / nature reserve with high importance.

II. Judgment no. 49 dated 18.01.2021 of the First Instance Administrative Court of Tirana

9. In this case, the plaintiff is a community of 8 residents of Administrative Unit Derjan, in Mat. The plaintiff has sued the Energy Regulatory Entity (ERE) and “Seka Hidropower” ltd, which is the concession company of the contract for construction of “Seka” hydropower plant. This company is provided by ERE with the license to produce the electricity in “Seka” and “Zais” hydropower plants.

10. After filing an administrative complaint at ERE, the plaintiff has filed a lawsuit claiming the annulment of the license provided for the company to produce the electricity, pretending the license is issued against the law. The plaintiff pretended that the hydropower plants are constructed and a part of them lies within the protected area "Lure- Mali i Dejes". This activity is contrary to the status of the protected area and forces the competent authorities not to approve the licensing.

11. The Administrative Court has directly implemented the Aarhus Convention, in order to legitimate the plaintiff in the process. The Courts noticed that the right of the public to file lawsuits on environmental issues is provided in Article 9 of Law no. 8672/2000 which has ratified the Aarhus Convention. As per the Court, the plaintiff lives or have a life closely related to the area where the hydropower plants are built, therefore referring to domestic law and the Aarhus Convention they have the legitimacy to access the court filing lawsuits, as subjects of interest in environmental matters, to seek restoration of a violated right.

12. As per the merits of the case, the court accepted the lawsuit, annulling the administrative act issued by ERE, the license providing the “Seka Hydropower” company the right to produce electricity. The court concluded that the license provided to the defendant, is issued against the law, not respecting the provisions of the law “On protected areas”, specially the article 16 which prohibits the building of hydropower plants in natural reserves and water resources.

13. The defendant appealed the decision in the Appeal Administrative Court. The Appeal Court rejected the appeal with the same reasoning. As per the legitimation, the Appeal Court referred to the Aarhus Convention. The Court underlined that the Aarhus Convention has principles and rules, regarding access to justice in environmental cases. The Appeal Court has noted that domestic legislation in the field of the environment provides for the same approach as the Aarhus Convention regarding the access to justice of the public in matters related to the environment, not only for the right of information and consultation, but also the right to challenge acts and actions on environmental issues or related to them. As per the merits of the case, the Appeal Court affirmed the first instance court judgment, with the same reasoning.

III. Judgment no. 322-2021 dated 21.07.2021 of the Supreme Court of Albania

14. I would also like to briefly present a judgment of the Supreme Court, where the Aarhus Convention is directly implemented to legitimate the plaintiff in the process.

15. In this case, the plaintiff is a community of 27 residents of Margegaj village in the north of Albania and the “Land” association which object is to promote and protect the environment. The plaintiff has sued among others the Ministry of Energy, the Ministry of Environment, the National Environmental Agency and the companies that have obtained the permits, claiming that the construction and operation of hydropower plants in the area of Valbona Valley may seriously damage the environment of Valbona National Park.

16. The defendant has obtained all the necessary permissions and licenses to develop the project, including the permission for use of water reserve for the hydropower production. The plaintiff has filed a lawsuit in the First Instance Administrative Court of Tirana claiming that this activity will have quite a negative impact on the environment, flora, fauna and the biodiversity of this area.

17. The Administrative First Instance Court has rejected the lawsuit ruling that the plaintiff did not present any evidence such as photographs, environmental damage assessment documents to prove the damage to the environment. The Administrative Appeal Court dismissed the appeal, affirming the lower court decision, with the same reasoning.

18. The Administrative College of the Supreme Court regarding the legitimation of the plaintiff in the process has ruled that in this case there exist the conditions for securing the claims (*interim measures*), as it is evident the reasonable doubt for the possibility of causing a serious, irreversible and immediate damage to the plaintiff and the Court considers that taking the interim measures does not seriously affect the public interest. Interpreting the standards set out in the Aarhus Convention and in the Albanian legislation, the College ruled that the right to access to justice on environmental issues differs from other cases of litigation, where the parties access the justice to reclaim a violated right. Environmental issues are polycentric in nature, far from the formal contradictory aspect of a normal civil/administrative trial. Due to the nature of the claimed violated rights in environmental issues, is difficult to meet one of the essential

procedural conditions for filing a lawsuit, the direct interest, as in these cases rights of a general nature are protected.

19. This was a brief presentation of the Albanian case law regarding the access to justice in energy related cases. I hope in other meetings to bring major achievements of the Albanian courts of law regarding the implementation of the Aarhus Convention not only in the energy related cases, but in every environment case.

Thank you very much for your attention,

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Seconded-judge of the Supreme Court of the Republic of Albania