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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

37th meeting
Strasbourg, 5-8 December 2017

Other complaints

**Presumed negative impact of hydro-power plant
development on the Vjosa river
(Albania)**

- REPORT BY THE COMPLAINANT -

*Document prepared by
EcoAlbania, Albania*

- UPDATED 9 AUGUST 2017 -



Date 09.08.2017

REPORT

Subject: Complaint No. 2016/5: Presumed negative impact of hydro-power plant development on the Vjosa river (Albania)

UPDATES ON THE ISSUE

- ***Poçem hydropower project***

The lawsuit filed by EcoAlbania in the Administrative Court was assessed in a period of 5 months' time by the Court in more than 6 hearing sessions. On May 2nd, 2017 the Administrative Court in Tirana decided to rule against the construction of Poçem hydropower project. The court found both Public Authorities (Ministry of Energy and Industry and Ministry of Environment) and the private developer of the project (the Turkish company, "KOVLU Enerji") to have completed law infringements over the process.

The Environmental Declaration has already expired because the company did not start the works for the period of 2 years from the date that the Environmental Declaration was issued. The deadline was on April 24th, 2017. According to Albanian legislation the company must repeat the entire process, starting by preparing the EIA report again and re-applying for the new Environmental Declaration. Up to the time being no submission of EIA and no request for new Environmental Declaration to the responsible authority was completed.

According to the concessionary contract the Turkish company had 6 months from the moment of the contract signed to deliver the Detailed Implementation Project. The contract was signed on September 5th, 2016 while the company has not submitted the Detailed Implementation Project to the National Agency for Natural Resources up to the time being.

The Ministry of Energy and Industry as well as the Ministry of Environment announced on May 4th the appeal of the court decision. The process is ongoing, however this cannot prohibit the start of the construction by the company since the claim by EcoAlbania to freeze the construction was refused by the court.

- ***The Kalivaç hydropower project***

On May 26th, 2017 the Albanian Government took the decision to cancel unilaterally the concessionary contract with the Italian Company "B.E.G spa" for the construction of the Kalivaç hydropower plant. After almost 20 years a series of postponements the cancellation was made officially public in the Agency for Public Procurement. (Annex 1 attached).

In the same day the Ministry of Energy and Industry announced officially the open of the call for other companies to apply for the project. (Please refer to the terms and conditions set by the Ministry of Energy and Industry).

The deadline for the applicants to submit the proposals was the 17th of July 2017.

POSITION UPON THE REPORT OF MINISTRY OF ENVIRONMENT

The Poçem hydropower project it is planned to be constructed not in a Protected Area. However in the Complaint no. 2016/05, sent by EcoAlbania the area is assessed to be of high importance in terms of biodiversity and conservation (please refer to the detailed report and to the list of affected species). The fact that the area is not under protection is due to limited scientific knowledge so far. In this regard the scientist's initiative on conducting research in the area is ongoing. Not later than October 2017 a report on the species, habitats and the impact of hydropower will be drafted and published by the group of independent scientists from Albania, Germany, Austria etc.

The foreseen impact of impact on the Bern Convention species and habitats cannot be mitigated by the measures listed in the EIA study of Poçem hydropower. This EIA report as assessed by the international independent experts is not appropriate. Mainly this report is copy-pasted from different reports. (Please refer to the update report upon the Complaint no. 2016/05 of EcoAlbania).

The EIA has been approved by the National Agency of Environment but that is part of the non-correct process on issuing the hydropower permissions in Albania. The group of independent experts as well as the Administrative Court prove that the EIA turned out to be weak. (Please refer to the update report upon the Complaint no. 2016/05 of EcoAlbania).

The cumulative impact of the hydropower it has never been assessed in the Vjosa River basin. This assessment is missing for the Entire Albanian riverine network as well.

In contrary to what is described into the Ministry of Environment report, the Kalivaç hydropower has never been completed. The distance is not a factor/indicator for the assessment of the impacts that a hydropower dam can cause to the habitat/species that live up and downstream. (Please refer to the update report upon the Complaint no. 2016/05 of EcoAlbania).

- 6 FEBRUARY 2017 -**No. Prot.____****February 6th, 2017**

Subject: **Position Letter** regarding the report prepared by Ministry of Environment in Albania about the Complaint no. 2016/05: Presumed negative impact of hydro-power development on the Vjosa River in Albania

To: Ms. Iva OBRETENOVA
Directorate of Democratic Governance,
Culture and Diversity Council of Europe
F-67075 Strasbourg Cedex

Dear Ms. Iva Obretenova, dear Members of the Standing Committee,

In this position letter, we respond to the letter of the Ministry of Environment in Albania (MoE) from (January 17th, 2016) in regards to EcoAlbania's complaint addressed to the Bern Convention secretariat. We would like to present our arguments and position on the report of the Ministry of Environment (MoE) as follows:

INACCURATE DATA

The EIA Report that the MoE sent as an annex to their letter is not the final report. Therefore all argumentation made by MoE is based on a draft EIA. The EIA report was prepared by the concessionaire company, who applied for Environmental Declaration on the basis of this report. (for the EIA report see *Annex 1 AL language & Annex 2 EN language*). In their letter, the MoE states that the Poçem HPP is not located on the Vjosa River's main course ("*Case referred to the media for Poçem HEC has no connection with the main course as it is positioned above Kalivaç below this zone.*"). This is incorrect: Poçem and Kalivaç are both planned to be constructed on the Vjosa's **main course**. (see map in *Annex 3*). The concession for the Kalivaç HPP (located 10-12 km upstream the projected Poçem dam) was issued to an Italian company in 1997. Constructions started in 2002 but stopped in 2003 and have now been on hold for more than a decade. Thus, **in contrary to what the MoE letter states**, the Kalivaç HPP has never been **completed**. ("*So far from the information from MEI (Ministry of Energy and Industry) there is only Kalivaçi HPP constructed*") (see photo of incomplete Kalivaç dam construction site in *Annex 4*). Furthermore, the map of protected areas in Albania featured in the MoE's letter is not up to date. (find attached the updated map: *Annex 5*).

SOGREAH STUDY

The Sogreah study is very often used as a reference point in the MoE's letter. This is a general study carried out not only for the Vjosa River basin, but also for two other river basins in Albania. In contrast to the argumentation in the MoE's letter, the authors of the Sogreah study did not assess any data about biodiversity or ecological values. Instead, they focused only on the hydropower potential. According to the MoE's letter, "*In 2014 the Government of Albania decided to go with the plan for 8 HPP to be constructed*" Once again, this is not correct. The construction of 8 dams along the Vjosa (including Poçem HPP) are only part of Sogreah recommendations while the Albanian government never officially took a decision to build 8 dams on the Vjosa. The MoE's letter report also states that the Poçem HPP is part of the **government's objectives**. So far, the Ministry of Energy and Industry (MEI) is merely preparing a "Strategy of Energy". Thus, this particular project is not based on any official strategic policy.

UNCOOPERATIVENESS & LACK OF TRANSPARENCY

Moreover, the Albanian authorities demonstrate constant uncooperativeness and a lack of transparency. In 2016, EcoAlbania sent 3 letters to the National Environmental Agency (NEA) and MoE asking for the EIA report and Environmental Declaration of the Poçem HPP but have received either inappropriate information or no answer at all. Furthermore, we requested from the MEI to provide the concessionary contract many times, but they continuously refused to send it without giving reason. In December 2016, the Commissioner for the Right to Information and Protection of Personal Data has taken a decision that obliges the MEI to make the requested information available. Still, the ministry has yet to provide the information.

EIA PROCEDURES

Regarding the procedures following the EIA preparation and public consultation, a violation of the law “*On environmental impact assessment*”, (no. 10440, dated 7.7.2011) and the Decision of the Council of Ministers (DCM) “*On the approval of rules, responsibilities and deadlines for the development of the procedure on the environmental impact assessment*” (no.13, dated 4.1.2013) is evident. The public consultation mentioned in the MoE report was utterly inappropriate. According to the mentioned DCM, the NEA in cooperation with Regional Environmental Agency (REA) have an obligation to inform the respective Local Government Unit (LGU) in regards to the organizing of the public consultation. This has never happened. (see *EcoAlbania correspondence with all relevant LGU-s of the valley: Annex 6*). An information meeting was indeed held but absurdly, none of the affected residents were informed or invited. The actual participants of the meeting were mainly people working for the Fieri public administration and for the Consultant Company which prepared the EIA. (see *EcoAlbania correspondence with all relevant LGU-s of the valley: Annex 7*).

EIA CONTENT

At least 60% of the EIA document is “copy-pasted” from other documents. Consequently, the EIA is a blend of several EIAs from all over Albania, while an in situ biodiversity study of the HPP area is completely missing. In the chapter “Biodiversity study” of the EIA one can barely find a single authentic sentence, since it constitutes an unprofessional mixture of different reports like “*The management plan of the National Park Bredhi i Hotoves-Dangëlli*” located in the upper part of the Vjosa valley and a general description which is just copied from other sources entirely outside the Vjosa valley.

The EIA lacks almost everything that makes up a proper assessment, for instance:

- 1 Flora and fauna were not surveyed whatsoever and data on rare species was not collected
- 2 60 percent of the EIA text was simply copy-pasted from other documents and refers in part to completely different geographical regions
- 3 Hydrological, morphological and ecological processes were not evaluated and potential long-term effects of the project were not discussed
- 4 The mitigation measures provided are very general and not related to the particular project.

The arguments in the MoE’s letter that the dam will have no impact on the candidate Emerald site “Vjosa – Nartë” is not based on any reliable data and is therefore merely an unfounded opinion of the MoE. The distance is not a factor (indicator) that can measure or assess the impact of a dam on a natural river system that provides a physic-biologic longitudinal connectivity.

Albanian and international scientists have already analyzed the EIA. Their assessment reads: “*The conclusions of the EIA have been plucked out of thin air and are not based on comprehensible data. Unfortunately, the submitted EIA does not meet international standards and represents rather a caricature of an EIA than a serious basis for decision*” (<http://www.ecoalbania.org/renowned-scientists-confirm-environmental-assessment-for-pocem-hydropower-project-is-a-farce/>).

In December 2016, the renowned scientists have sent a position paper to Albanian Government in which they demand an appropriate EIA to be carried out. According to MoE's letter, the list of affected species that EcoAlbania sent as to Bern Convention "*refers to the Vjosa valley as the whole*". *This is not true*. The list of species, compiled by a group of renowned Albanian experts, is site-specific, which means it includes only species that occur in the Poçem area where the HPP is foreseen.

LAWSUIT

A lawsuit regarding the Poçem HPP was filed with the Administrative Court (first instance) on December 2nd, 2016.).

The plaintiffs are 38 residents of the Kutë village, Mallakastër Municipality (representing the direct affected local community) as well as the NGOs EuroNatur, Riverwatch and EcoAlbania. The claims of the lawsuit are as follows:

- *Finding of absolute invalidity of the environmental declaration issued by the Minister of Environment and proposed by National Environmental Agency;*
- *Finding of absolute invalidity of the order of Minister of Energy and Industry and every other act of the Minister which precedes the one that has decided on the realization of the concession procedures;*
- *Finding of absolute invalidity of all decisions and administrative acts which stem from the order of the Minister of Energy and Industry;*
- *Finding that the contract between Ministry of Energy and Industry (MEI) and the company "KOVLU ENERGI" sh.p.k. is illegal;*
- *Suspension of the contract between MEI and the company until final resolution of the issue in a final decision (enactment).*

The claims of the lawsuit are based mainly on the violation of two main pillars of the Aarhus Convention: *The right of access to information and the right of access to public participation*. These pillars are also part of Albanian domestic legislation which has been violated by Albanian authorities in regards to the Poçem hydropower project.

We kindly ask you to take this letter into consideration,

Respectfully,

Olsi Nika

Executive Director

EcoAlbania