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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Bureau of the Standing Committee

18-19 March 2024
Strasbourg

New complaint: 2023/1

**Alleged habitat destruction due to the construction of the Skavica
Hydropower Plant on the Drin River (Albania)**

- GOVERNMENT REPORT -

*Document prepared by
Ministry of Tourism and Environment of Albania*



REPUBLIC Of Albania
MINISTRY OF TOURISM AND ENVIRONMENT

No. _____ Prot.

Tirana, on January 31, 2024

Subject: Complaint No. 2023/1: New Complaint: Albania: Alleged habitat destruction due to the construction of the Skavica Hydropower Plant (Skavica HPP) on the Drin River

Dear Mr. Poutiers,

In response to the compliant “Alleged habitat destruction due to the construction of the Skavica Hydropower Plant (Skavica HPP) on the Drin River the following information provides in chronological manner the process in relation to the above captured subject:

1. The applicant 'Albanian Power Corporation' sh.a, according to Law No. 12/2015 'On some amendments to Law No. 10440, dated 07.07.2011, 'On Environmental Impact Assessment' and DCM No. 714, dated 06.11.2019, on some amendments and additions to DCM 686, dated 29.07.2015, 'On the approval of rules, responsibilities, and deadlines for the development of the procedure for the transfer of the Decision and Environmental Declaration,' as amended, has applied through the e-Albania system with application number AN180120230008, dated 18/01/2023, regarding the notification procedure of the extended EIA for the 'Skavica Hydropower Plant' project, located in the Kukës region.

Following this application, the National Environmental Agency (NEA) has issued its response letter to the subject (with number 205/1 protocol, dated 16.01.2023), in which it is indicated that the application (in accordance with Law on EIA that cites that dams and other installations designed to impede the outflow of water or to permanently store water, when a new or additional volume of water impeded or stored is over 10 million m³), is categorized and falls under Annex I, point 15.

At the time of submission of request for the conduction of Public Hearings, the National Environmental Agency (NEA) will adhere to all legal procedures of the aforementioned DCM, with regard to the implementation of:

- **The Decision of the Council of Ministers 247/2014 'On determining the rules, requirements, and procedures for informing and involving the public in environmental decision-making,'**
- **The Decision of the Council of Ministers No. 268, dated 27.4.2023, 'On some additions and changes to Decision No. 247, dated 30.4.2014, of the Council of Ministers, 'On determining the rules, requirements, and procedures for informing and involving the public in environmental decision-making.'**

Through a letter dated 23.02.2023, the National Environmental Agency (NEA) has requested completion of documentation with the following information/documentation:

- information on copies of permits, authorizations, and licenses held by the developer for the proposed project, in accordance with the provisions made in the current legislation, as well as the competent institutions for permitting/authorizing/licensing the project, in implementation

- of DCM 686/2015, as amended, Chapter II. Development of the Extended EIA Procedure, Point 1/k);"
- clarification of the appropriate alternative according to the opinion of the National Agency of Territorial Planning where: It is found that the footprint marked with a red line (option 1B) of the 'Skavica' Hydropower Plant intersects with the natural monument 'Karsti i Arnit,' declared by DCM No. 187, dated 25.03.2021, 'On some changes and additions,' and DCM No. 303, dated 10.05.2019, 'On the approval of the revised updated list of Albanian natural monuments.' Additionally, this part (option 1B) is located in the protected area 'Munellë,' declared by DCM No. 60, dated 26.01.2022, 'On the declaration of Natural Ecosystems as Managed Natural Reserves/Nature Park (Category IV), as well as Approval of the Change of Status and Existing Surface Areas of Protected Environmental Zones,' in the central subzone (ZQ) and in the subzone of traditional and sustainable use (ZPT/Q). The other proposal, the footprint marked with a yellow line (option 2), is not within the territory of protected areas."

According to Law No. 81/2017 'On protected areas,' Article 17, Points 2 and 3 it is stated that; In a 'Natural Monument,' the protection level applied is the same with the one applied to 'Nature Strict Reserve', defining that those areas are protected and managed to preserve the specific natural, cultural, historical, and archaeological characteristics and phenomena for which it has been declared a monument. Natural monuments are surrounded by a buffer zone with a width of up to 200 meters from the perimeter of the monument.

Also in the Article 19, Point 1, of the law on protected areas, it is quoted that: 'Managed Natural Reserves or Nature Parks' are declared territories that represent areas with active human interventions for the management of species and habitats, while ensuring the preservation of habitats and meeting the specific requirements of species of regional and local importance, as well as areas that are used for research, educational, and cultural purposes.

According to DCM No. 60, Annex No. 22, it is stated that In the Central Subzone, marked on the map as ZQ, includes the main forest habitats and shrubs and is designated as an area with high and rare values for natural heritage and biodiversity, applying the highest level of protection to ensure an undisturbed territory. Scientific research and the development of free ecotourism activities in nature are allowed in this subzone."

"The subzone of traditional and sustainable use (ZPT/Q) encompasses forest lands, agricultural areas, and pastures, as well as water territories where traditional activities such as forest health improvement, agricultural activities, grazing, collection and cultivation of medicinal and aromatic plants are allowed, with their balanced use. Construction and economic activities causing alteration to the natural state of the ecosystem are not permitted. In the subzone of traditional use and sustainable development, the second level of protection is applied, ensuring a territory with low impact and control of economic, social, agribusiness, recreational, sports, and ecotourism activities. Infrastructure construction follows the approved urban and tourist development plans by the National Territorial Council, which do not jeopardize the ecological integrity of the natural ecosystem and respect the functions of the protected area, ecological values, and those of the natural and cultural landscape." According to the above-mentioned legal acts, the first option (option 1B) is not approved. The project can proceed within the footprint of the second option (option 2), marked on the map with a yellow line, where the territory of protected areas is not affected. **(Map attached)**

From the documents, the response letter from the applicant towards the National Environmental Agency dated 23.02.2023 is missing, and that was the reason that **"In the letter dated 30.03.2023, the National Environmental Agency, again requested the completion of documentation as pointed out in the letter that was sent earlier on 23.02.2023.**

"The applicant, in response to the letter dated 30.03.2023, explained that only after the approval of the first phase, the second phase of the Skavica Hydropower Plant development project can be proceeded further. This phase can be negotiated and finalized according to the provisions of Law No. 38/2021, dated

23.3.2021, "On determining the special procedure for negotiating and executing the contract with Bechtel International Inc., for the design and construction of the Skavica Hydropower Plant."

According to the letter from the National Environmental Agency dated 05.06.2023, regarding the request for completion of documentation and clarification, it is requested for the optimal option of the scenario with accurate technical data for the construction of the Skavica Hydropower Plant, to be presented with a map and coordinates. Additionally, the contract between 'Albanian Power Corporation' sha and Bechtel Limited - Branch in Albania, **was not been signed and didn't contain a date.**"

"Through the letter with protocol number 2892, dated 14.06.2023, for the completion of documentation requested by the National Environmental Agency in the letter referring to point 8, the subject has presented and explained both requested points and has attached a copy of the signed contract."

NEA, in commission 75 on the date 07.07.2023, once again requests the completion of documentation as in the letter issued on 05.06.2023.

Conclusively, the subject has not completed the necessary documentation within the 15-day deadline, resulting in an automatic rejection of the application by the system. **For this reason, the subject needs to restart the procedures from the beginning.**"

With regard to procedures for public hearings, applicant, through consultants, is analyzing the proposed alternatives to choose the best option that meets the technical, financial, environmental, and socio-economic criteria for the construction of the Skavica Hydropower Plant.

With the selection of the optimal scenario, in continuation of communications with the National Environmental Agency as well as in compliance with legal requirements, KESH will restart the procedures for the Comprehensive Environmental and Social Impact Assessment with NEA, according to Law No. 12/2015 "On some changes to Law No. 10440, dated 07.07.2011, "On Environmental Impact Assessment" and DCM No. 714, dated 06.11.2019, on some changes and additions to DCM No. 686, dated 29.07.2015, "On the approval of rules, responsibilities, and deadlines for the development of the procedure for the transfer of the Decision and Environmental Declaration."

We inform you that the Environmental and Social Impact Assessment (ESIA) for the Skavica HPP is being conducted in accordance with the International Finance Corporation (IFC) Performance Standards and other World Bank Group guidelines, Equator Principles, etc. Throughout the process of drafting the Comprehensive Environmental and Social Impact Assessment (ESIA) with the most feasible alternative, a series of activities are planned with the objective of involving interested parties or the wider public. These activities are expected to be carried out in the first six months of 2024.

Currently, the Albanian Power Corporation (KESH) has not submitted a new request to NEA for the conduction of public hearings.

With the resumption of procedures, upon the submission of the new request by KESH (applicant), NEA will follow all legal procedures as outlined in the following DCMs:

- DCM No. 247/2014 "On determining the rules, requirements, and procedures for informing and involving the public in environmental decision-making,
- DCM No. 268, dated 27.4.2023, "On some additions and changes to Decision No. 247, dated 30.4.2014, of the Council of Ministers, 'On determining the rules, requirements, and procedures for informing and involving the public in environmental decision-making.'"

Conclusion:

- There are no construction activities happening with regard to HEC Skavica,

- There is no new application presented to NEA by the applicant;
- The evaluation done by the Constitutional Court:

The Constitutional Court, convened on 30.01.2024, after taking into consideration the request and pretensions as submitted by the claimants, as well as the objections of the interested entities, evaluated that: The court has jurisdiction to examine the compatibility with the Constitution, of the law no. 38/2021, and has no jurisdiction toward the decision no. 485, dated 30.07.2021 of the Council of Ministers, as this decision does not constitute an act of a normative character.

Bearing in mind that the law regulates the Skavica project, in two phases, and the second phase starts only if the first stage is finalized, the Court assessed that the petitioners are only legitimized for the claim of encroachment of the right of information on environmental issues.

Regarding the above, the Court assessed that, since the law is still in the first phase of its implementation, the pretended encroachment by the petitioners before the adoption of the law can still be repaired by taking concrete steps for inclusion of the public to information and decision-making.

The final decision by the Constitutional Court will be announced within the legal deadlines as set in the law no. 8577, date 10.02.2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania", amended and from the Regulation on Judicial Procedures of the Constitutional Court.

- **For all the points mentioned above we request a) not to take into consideration the new complainant; b) or to open the file, as the second phase starts only if the first stage is finalized.**

Government of Albania remains open and committed to fulfil and respond to the requirements or the information that will be addressed by the Bern Convention.

