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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

38th meeting
Strasbourg, 27-30 November 2018

Possible file

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

- REPORT BY THE COMPLAINANT -

*Document prepared by
EcoAlbania, Albania*

- October 2018 -



Date 22.10.2018

REPORT

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

Updates on the issue

- ***The Poçem hydropower project***

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 Administrative court.

- ***The Kalivaç hydropower project***

On June 8th, 2018 the Albanian **Ministry of Infrastructure and Energy** signed the concessionary contract with the joint venture “AYEN- ALB” (a consortium of Albanian company “Fusha sh.p.k” and the Turkish AYEN ENERJI” for the construction of Kalivaç hydropower in a B.O.T form (built-operate-transfer). The concession duration is foreseen to last 35 years. (Annex 1)

After receiving the concessionary contract through confidential channels EcoAlbania, started to request more information in regard the Kalivaç Project, i.e. the Environmental Impact Assessment and the Feasibility Study:

On 26th of June 2018, EcoAlbania sent in parallel 4 letters of request for information addressed: (Annex 2a-2d)

1. to **Ministry of Tourism and Environment** asking for the Environmental Impact Assessment Report for Kalivaç Hydropower project; (*Annex 2a*)
2. to **National Agency for Environment** asking for the Environmental Impact Assessment Report for Kalivaç Hydropower project; (*Annex 2b*)
3. to the **Ministry of Infrastructure and Energy** asking for the Feasibility Study for Kalivaç Hydropower project; (*Annex 2c*)
4. to the **National Agency for Natural Resources** asking for the Feasibility Study for Kalivaç Hydropower project (*Annex 2d*)

On 27th of June 2018 EcoAlbania received response from the **National Agency for Environment** stating that there was no submission of any EIA Report regarding the Kalivaç Hydropower project and therefore no Environmental Permit was issued for the certain project. (Annex 3).

Meanwhile the Ministry of Tourism and Environment has given its answer on 23rd of July 2018 (Annex 3).

On 5th of July 2018 the **National Agency for the Natural Resources** answered to EcoAlbania’s request through the official answer in (Annex 5). In this response the Agency is stating that they have receive no documents from MIE in regard the Kalivaç project. At the same time the Agency is stating

that the responsible authority to be asked for that is the Contracting Authority which is the Ministry of Infrastructure and Energy.

The **Ministry of Infrastructure and Energy** has never reply to EcoAlbania request for information. Considering the last experience with the involvement of the Commissioner for the Right of Information and Personal Data Protection, where was no success, there has been filed no complaint by EcoAlbania.

Another answer to EcoAlbania's request to **National Agency for Environment** was received on (Annex 6) stating again that they have received no EIA by "AYEN-ALB" company regarding the construction of Kalivaç hydropower project.

After all these steps EcoAlbania has not yet secured the requested information by the public authorities (i.e. Environmental Impact Assessment and Feasibility Study for Kalivaç project) and this makes the situation even more complicated when it is about a project of public interests and it has to respect the transparency criteria, laws and regulations – which is obviously not the case.

EcoAlbania's position upon the situation

The Kalivaç hydropower project is not planned to be constructed in a protected area. However, in the Complaint no. 2016/05, sent to the Bern Convention by EcoAlbania, the project area is shown to be of high importance in terms of biodiversity and conservation (see Annex I and Annex II the complaint). 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. In the last two years, there have been three scientific collecting data field trips.

So far the findings are impressive with more than 40 species reported for the first time in Albania and one new species of stonefly named *Isoperla Vjosae*. (Annex 11 of T-PVS/Files (2018)19).

In spring 2018 there several scientific field trips took place in the Vjosa watershed, which will be followed by a publication on the species, habitats and the impact of hydropower that that will shortly be published by a group of scientists from Albania, Austria and Germany etc.

Considering on-the-spot appraisal for the affected area from Kalivaç and Poçem hydropower as the first step already taken by the Convention, we see the option of opening a case file as crucial and urgent, as the start of the construction would compromise any other decision towards the protection of the last free flowing river of Europe.

During this spring – summer 2018 there have been conducted "in situ" measurements of the sediment transport of the Vjosa River near the Kalivaç-Poçem area by a group of researchers by the University of Natural Resources and Life Science, Vienna.

(Germany). So far, the preliminary data shows that, the construction of the Kalivaç and Poçem hydropower projects would cause a "lose-lose-lose" situation in terms of biodiversity loss-social conflicts generation-economic loss in mid and long term. However, the full publication of the data will be published in early 2019.

Vjosa River Basin Council is another Albanian authority that has a voice in a decision making process. This collegial body is met regularly to assess, discuss and decide in principle on projects and interventions of anthropogenic nature on the Vjosa River Basin. The last meeting was held on October 10th 2018. During the meeting were discussed some small hydropower projects in the Vjosa tributaries, whereas there have been no discussion regarding the 2 big hydropower projects of Kalivaç and Poçem. The minutes of the meeting are yet not published.

Outlook of the situation

The battle for the protection of the Vjosa River is reaching a very decisive stage and considering this EcoAlbania and its partners will use all legal means to protect this unique natural heritage from dam construction. In this regard filing lawsuit against Kalivaç project to Administrative Court is under

finalization and the EIA and feasibility study as well as the public consultation procedures will be the main pillars where the next lawsuit will stand.

Filing a complaint to the Energy Community is another tool, which will be used soon and in parallel with the domestical legal battle in the Albanian Court.

Another important step that will take place in early December 2018 is the Scientific Conference for Vjosa River system. The conference will serve as a tool to share all the scientific data collected in the last 2-3 years of field work and scientific research in the Vjosa river basin and mainly in the 2 affected area of Poçem and Kalivaç where potentially that dams will be constructed.

The Conference will serve as well as an opportunity to invite the decision-makers to be aware of the scientific importance of this special ecosystem. Therefor the aim is that the conference will be organized in close cooperation with the Ministry of Environment in Albania.

NB: The annexes to this document are not included in this report as they are in Albanian language. They are however available for consultation upon request before the Secretariat to the Bern Convention.

- March 2018 -



Date 12.03.2018

REPORT

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

UPDATES ON THE ISSUE

- ***The 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 Enerjji") to have completed law infringements over the process.

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 Administrative 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.

In the same day the Ministry of Energy and Industry announced officially the open of the new call for other companies to apply for the project. (Please refer to the terms and conditions set by the Ministry of Energy and Industry). (Annex 1)

The deadline for the applicants to submit the proposals was the 18th of July 2017.

On October 2017 at the Public Procurement Journal No. 43, date 30.10.2017 on pages (317-321), was made public the competition held in regard the Kalivaç hydropower project. In this document is also stated that the temporary joint venture of "Ayen Enerjji" and "Fusha" sh.p.k was the winner of the competition with the best offer delivered by them in 28th of August 2017. (Annex 2).

Taking into consideration that the winner company is the same as in the Poçem hydropower, which is proved by the Administrative Court that has failed to meet the law requirements in regard the environmental and public consultation criteria, EcoAlbania started to request more information in regard the Kalivaç Project, i.e. the Environmental Impact Assessment and the Feasibility Study:

In 16th of November 2017, EcoAlbania sent in parallel 4 letters of request for information addressed: (Annex 3a-3d)

1. to **Ministry of Tourism and Environment** asking for the Environmental Impact Assessment Report for Kalivaç Hydropower project; (Annex 3a)
2. to **National Agency for Environment** asking for the Environmental Impact Assessment Report for Kalivaç Hydropower project; (Annex 3b)

3. to the **Ministry of Infrastructure and Energy** asking for the Feasibility Study for Kalivaç Hydropower project; (*Annex 3c*)
4. to the **National Agency for Natural Resources** asking for the Feasibility Study for Kalivaç Hydropower project (*Annex 3d*)

On 30th of November 2017 EcoAlbania received response from the National Agency for Environment stating that there was no submission of any EIA Report regarding the Kalivaç Hydropower project and therefore no Environmental Permit was issued for the certain project. (Annex 4). The Ministry of Tourism and Environment has given no answer at all.

On 20th of December 2017 the National Agency for the Natural Resources answered to EcoAlbania's request through the official answer in (Annex 5a). In this response the Agency is stating that they have receive no documents from MIE in regard the Kalivaç project. At the same time the Agency is informing the Ministry of Infrastructure and Energy upon the request sent by EcoAlbania.

At the same day on 20th of December 2017 the Ministry of Infrastructure and Energy replied to EcoAlbania request for information via the letter as in (Annex 5b). The letter is stating that the Feasibility study is object of the Law for trademarks and therefor in respect of the data confidentiality of the company, this information cannot be given.

Taking into consideration the fact that the Ministry of Tourism and Environment refused to respond to EcoAlbania's request; and the fact that the Ministry of Infrastructure and Energy refused to give the information without any specific legal basis;

On 9th of January 2018 EcoAlbania filed in parallel two complaints to the Commissioner for the Right of Information and Personal Data Protection. The complaints were filed against refusal o to provide information from both, Ministry of Tourism and Environment (Annex 6a) as well as the Ministry of Infrastructure and Energy. (Annex 6b)

On 2nd of February 2018, The Commissioner for the Right of Information and Personal Data Protection called the meeting with Parties before the decision. There were called two separate meetings by the Commissioner; One between EcoAlbania and the representatives of the Ministry of Tourism and Environment. (Annex 7a) and the other one between EcoAlbania and Ministry of Infrastructure and Energy (Annex 7b).

Both meetings were supposed to be held on February 8th, 2018 at Commissioners' office. In fact, it was held just the meeting between EcoAlbania and the representatives of the Ministry of Infrastructure and Energy as they were the ones appeared.

The representatives of the Ministry of Tourism and Environment did not appeared at all.

After the meetings, the Commissioner undertook an investigation on both Ministries mentioned above.

- Regarding the complaint against the Ministry of Tourism and Environment, the result was that the Ministry of Tourism and Environment had forwarded EcoAlabnia's Request for Information to the National Agency for Environment, but without notifying EcoAlbania. The Commissioner via the official letter No. 32/3 (Annex 8.a) informed EcoAlbania about this on February 21st, 2018. In this regard the procedure for Ministry of Tourism and Environment is closed at this point as the Commissioner concluded that the information was given to EcoAlbania by the National Agency for Environment.
- Regarding the complaint against the Ministry of Infrastructure and Energy, On February 22nd, 2018, the Commissioner took the Decision No. 31/6 (Annex 8.b) on which has decided:
 1. To accept the Complaint filed by EcoAlbania as in full accordance with the Law
 2. To order the Ministry of Infrastructure and Energy to provide EcoAlbania with the information requested until March 2nd, 2018.
 3. Set a fine of 150,000 ALL (ca. 1,000 €) to the head of the Public-Private Partnership Department of the Energy Sector, in the Ministry of Infrastructure and Energy, Mrs. Etleva Kondi

After the expiration of the deadline set by the Commissioner to the Ministry of Infrastructure and Energy to provide with the information, EcoAlbania sent a request to the Commissioner upon the information regarding the execution of the Decision. At the time being EcoAlbania has receive no response from the Commission.

At the same time, a second letter was sent to National Agency for Environment to request the EIA on March 5th, 2018. (*Annex 10.a*).

On 7th of March 2017, EcoAlbania received the same response form the National Agency for Environment stating that there was no submission of any EIA Report regarding the Kalivaç Hydropower project and therefore no Environmental Permit was issued for the certain project. (*Annex 10.b*).

After all these steps EcoAlbania has not yet secured the requested information by the public authorities (i.e. Environmental Impact Assessment and Feasibility Study for Kalivaç project) and this makes the situation even more complicated when it is about a project of public interests and it has to respect the transparency criteria, laws and regulations – which is obviously not the case.

ECOALBANIA'S POSITION UPON THE SITUATION

The Kalivaç hydropower project is not planned to be constructed in a protected area. However, in the Complaint no. 2016/05, sent to the Bern Convention by EcoAlbania, the project area is shown to be of high importance in terms of biodiversity and conservation (see Annex I and Annex II the complaint). 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. In the last two years, there have been three scientific collecting data field trips.

So far the findings are impressive with more than 40 species reported for the first time in Albania and one new species of stonefly named *Isoperla Vjosae*. (*Annex 11*). In 2018 there will be several more scientific field trips, which will be followed by a publication on the species, habitats and the impact of hydropower that will be drafted and published by the group of independent scientists from Albania, Germany, Austria etc.

OUTLOOK OF THE SITUATION

During this spring there will be “in situ” measurements of the sediment transport of the Vjosa river near the Kalivaç-Poçem area by a group of researchers of the Leibniz Institute of Freshwater Ecology and Inland Fisheries (Germany).

The fact that the information regarding this project of public interest is not made transparent to the groups of interest creates uncertainty and unreliability.

Due to these developments, we see the option proposed by the Bern Convention's Bureau to conduct an on-the-spot appraisal for the affected area from Kalivaç and Poçem hydropower as urgent.

Considering the location and the physiognomy of the river, we would like to emphasize that the best period for the on-the-spot appraisal would be the spring period, optimally mid-May. This period is optimal as the water level is not ant its lowest and at the same time most of biodiversity taxa can be identified easily in this period.

In addition taking into account that by spring 2018, different groups of experts will carry out a lot of scientific data collection on the ground, we see it as an opportunity for the on-the-spot appraisal.

The 2018 is considered to be determinant for the future of the Vjosa river and considering this EcoAlbania and its partners will try the usage of all legal means to protect this unique natural heritage from dam construction. In this regard filing a new lawsuit against Kalivaç project to Administrative Court is being planned and the EIA and feasibility study as well as the public consultation procedures will be the main pillars where the next lawsuit will stand.