**International Conference**

**Constitutional Courts – guardians of the environment**

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***Presentation by Sonila Bejtja***

***Judge at the Constitutional Court of Albania***

Dear Presidents of the Constitutional Courts,

Dear judges, colleagues and other participants,

At first, I would like to take this opportunity to express my sincere thanks to the organizers of this very interesting and special event, which aims to increase the role of Constitutional Courts in the protection of environmental rights. It is an honour for me as a judge of the Constitutional Court of Albania to participate in this Conference and say a few words about the experience of Albanian judiciary in the protection of the right to a healthy environment.

Article 59 of the Constitution of the Republic of Albania has provided for the state obligation, within its constitutional powers and the means available, in addition to the private initiative and responsibility, to aim, among other things, a healthy and ecologically adequate environment for the present and future generations.

Approximation of legislation with *aquis communitaire* in all the areas, including the environmental one, remains a priority of the Albanian state. Article 108 of the Stabilization and Association Agreement has provided that the parties will develop and strengthen cooperation in the very important task of combating environmental degradation, with the aim of promoting environmental sustainability. The cooperation is mainly focused on priority areas related to the Community acquis in the field of environment.

The Republic of Albania has ratified a number of international conventions in the field of environment, such as the Basel Convention “On the Control of Transboundary Movements of Hazardous Wastes and their Disposal”, the Bern Convention “On the Conservation of European wildlife and natural habitats”, the Rotterdam Convention “On **the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade”, the Aarhus Conventions “On** access to information, public participation in decision-making and access to justice in environmental matters”.

The Aarhus Convention, described as the most ambitious endeavor in the field of "environmental democracy" undertaken by the United Nations, was ratified by Albania in 2001. In its preamble, this convention has sanctioned that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself. It is based on three main pillars (access to environmental information, participation in environmental decision-making and access to justice).

Access to justice in environmental matters, considered as the most essential pillar of the Aarhus Convention, without the existence of which the rights provided by the other two pillars are unenforceable, has been regulated by Albanian legislation by means of a specific legislation on environmental protection, and recently by the law no. 49/2012 "On the organization and functioning of administrative courts and adjudication of administrative disputes".

The third pillar of the Aarhus Convention comprises three important elements: 1. The possibility of active legitimacy to set the court into motion; 2. Practical realization of the right, avoiding the high costs of judicial proceedings; 3. The possibility that the court decision restores the violated right. The convention stipulates that in order to bring a case before a court, the person must have a sufficient interest in the case or a certain right violated. The Convention refers to national legislation so that the public has more extended rights to be addressed to the court on matters related to access to information or participation of public in the decision-making process.

Following the ratification of Convention, the Albanian environmental legal framework has been supplemented with laws and bylaws in order to implement it in practice.

Thus, article 48 of the law no. 10431 dated 09.06.2011 "On environmental protection", has foreseen that in case of threat to the environment, its pollution and damage, the public has the right: a) to ask the relevant public authorities to take appropriate measures, within the respective deadlines and in accordance with the competencies assigned to them by law; b) to file a lawsuit in court, in accordance with the requirements provided for by the Code of Civil Procedure, against a public authority or a natural/legal person that has caused damages to the environment or threatens to damage it.

Other adopted laws in the field of environment are also the laws related to the protection of land, water, air, biodiversity, protected areas, integrated waste management, environmental impact assessment, climate change, etc.

The ordinary courts in Albania have already handled several cases related to environmental law, but they still make up a very small number. Such are for example the case of a lawsuit against a business not meeting the required technical conditions, whose activity caused pollution in the environment around the city of Lezha. This lawsuit was won in court by the residents who filed the lawsuit. The other case is that of a lawsuit against a fish processing firm, which caused noises and pollution in the surrounding environment. This lawsuit was admitted by the court, but there isn’t still set a deadline for taking the necessary measures by the firm. The third case is that of a lawsuit objecting the arrival of a ship loaded with genetically modified seeds, filed with a court by an activist. The result was turning the cargo back.[[1]](#footnote-1)

Another important case was that of objecting the construction of two hydropower plants on Valbona River, filed with the court by a number of activists and an association for the protection of environment. The applicants demanded the suspension of the concession contracts, alleging that this activity would have a very negative impact on the environment, flora, fauna and biodiversity of that area. There is currently in force a measure of suspension imposed by the Administrative College of the High Court[[2]](#footnote-2) until the final result of the case.

As to the legitimacy (locus standi) of the plaintiffs, the Albanian High Court held that the right to go to/be addressed to the court regarding environmental matters is distinguished from the other cases of judicial litigations, where the parties go to court to seek the restoration of a certain violated right. Environmental matters are polycentric in nature, far from the formal contradictory aspect of an ordinary civil/administrative adjudication. Due to the nature of the allegedly violated rights in environmental matters, it is difficult to meet one of the essential requirements for filing a lawsuit, the direct interest, as in these cases the protected rights are of a general nature.

The Albanian High Court has been referred to the case law of the European Court of Justice regarding the active legitimacy of environmental associations to address the court, in particular to the case Lesoochranarske zoskupenie VLK v. Slovakia (known as the Slovak brown bear case).

Pursuant to the provisions of Aarhus Convention, the High Court concluded that the plaintiffs had active legitimacy in filing the lawsuits related to environmental matters, as long as a "sufficient interest" in the present case was proven, imposing the measure to secure the lawsuit.

The Albanian Constitutional Court has not yet any submitted cases related to the environmental law, but it has upheld that state should take all the necessary measures to protect human dignity, human rights and freedoms, constitutional order, property, environment, to punish any illegal attempts against them, and to ensure that no person is unjustly prosecuted and punished (see decision no. 14, dated 21.07.2008 of the Albanian Constitutional Court).

Nevertheless, when such case will present itself in the future, and the Court will be dealing with the environmental law, it will be guided by the practice and the case law of other European courts.

Signing of the Paris Agreement in 2016 implies that Albania has joined the countries which are committed to maintaining the global temperature rise to 2°C. For this purpose, it has been approved the law on climate change of 2020, which represents the contribution of Albanian state to the engagement undertaken in Paris. Regardless of the fact that Albania’s impact on the climate changes constitute a very small part at global level, it is of particular importance to take concrete steps to reduce greenhouse gas emissions by 2050.

The development of recent years shows that environment has become a priority for Albanian state. However, despite the progress in the legal framework, Albania still has a lot of work to do to rank itself alongside other European countries in terms of concrete measures in the field of environment. It must complete its mission/aim of approximating the *acquis communitaire* with its domestic legislation and, most importantly, ensure its implementation in practice. The use of concrete mechanisms in achieving these objectives will lead to the reduction of greenhouse gases in various sectors of the economy. This will not be possible without the active participation of the public and its involvement in projects that have an impact on the environment, raising of awareness and legal culture of individuals and organizations regarding the environmental issues and, most importantly, without building the courts’ capacities in order to properly address and adjudicate these matters.

Thank you very much for your attention!

1. <https://iep-al.org/test/ëp-content/uploads/2015/02/Zbatimi-i-Konvent%C3%ABs-s%C3%AB-Aarhusit-n%C3%AB-Shqip%C3%ABri-p%C3%AB> përpjekjet-dhe-zbatimi-i-politikave.pdf [↑](#footnote-ref-1)
2. Decision of the High Court no. 00 – 2021 – 1177, dated 21.07.2021 [↑](#footnote-ref-2)