

## The Development of Environmental Law in Albania: Historical Overview of Efforts toward Full Approximation with the *Acquis Communautaire*

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**Abstract:** The anthropogenic impact on the environment during the last decades in Albania has increased through various forms and dimensions. The environmental protection law is the complex umbrella legislation encompassing issues of environmental protection, making for a range of different, legal and multifaceted interests and regulatory techniques concerning socio-political conflicts, as well as the advancement of environmental knowledge and science. In this paper, I provide a broad survey on the development and challenges presented with the implementation of the Albanian environmental Law. I present not just the structural basis of the framework Law on Environmental Protection, but its performativity as well, placing an emphasis on challenges that have presented toward its implementation and cases of its practical enactment. Furthermore, I stress that Albania will need to develop and implement laws and legal institutions that do not exist at present, or that need significant changes to meet the requirements posed by the EU integration process. Environmental protection is a formal competency of the EU towards approximation and adoption of EU Directives, and, therefore, will be part of the negotiations. The conclusions in this paper show the evolution of the concept of environment and its protection, analyses the EU Environmental Directives approximation reform, while emphasizing the need to empower public authorities and strengthen capacities to fully implement environmental legislation and increase public awareness.

**Keywords:** environmental protection law, structure of environmental law, development of environmental law, Albania

### Introduction

This paper reflects on the evolution of the primary framework law on environmental protection in Albania, which I will analyse in three separate periods that also reflect three separate stages of the overall economic development of the country. The development of a modern environmental legal system based on democratic principles began only in 1991. The first period is 1990-2000, which represents the main transitional period of the country; the second period is the 2000-2010 decade when Albania's economy started developing further and the country left its transitional period behind and putting into place efforts to become an EU member country; and the third period is the current 2010-2020. Albania's new environmental legislation was created mainly during the last decade, based on the Constitution of the Republic of Albania and includes various types of normative acts, such as general and special laws on the environment and its constituents, Decisions of the Council of Ministers (DCMs), ministerial orders and instructions, specific regulations, standard norms, etc.

The legal system is based on the following hierarchy: the Constitution, primary legislation (laws) and supporting normative acts, such as by-laws, government decisions, decrees, ministerial orders, regulations, instructions and standards. The Constitution of the Republic of Albania approved in 1998, in Article 56, stipulates that "[everyone has the right to be informed on the status of the environment

and its protection". This Article recognizes the right to be informed on the status of the environment and its protection, but, at the same time, it implies the existence of a protective and qualitative system. It calls upon Albanian authorities to preserve a healthy environment, ecologically suitable for present and future generations in a national heterogeneous natural setting. However, as Jaro Mayda's states in his paper, *Environmental Legislation in Developing Countries: Some Parameters and Constraints*, the main problem with environmental legislation does not rely on the greatness and variety of the natural resources system. "In most jurisdictions, the major constraints are conceptual and structural. Environmental law should not be understood as just another new system of rules and agencies (Mayda 1985, pg. 997)". Social policies tackling environmental protection could not be developed without efficient implementation of environmental legislation in Albania.

### First Decade: 1990-2000

During the transition period in Albania, political attention toward the environment and its defence has been considerable, although Albania was experiencing severe environmental consequences due to the centralized economic system it employed before the 1990s. During this period, more attention was paid to the creation and strengthening the structures for environmental protection at the central and local level, at creating a new legal framework to appropriately formulate sustainable policies, ensure

adherence to a range of agreements and cooperation in international environmental protection programs.

The Constitution, adopted by the Parliament in 1998, required of responsible institutions to maintain a healthy, ecologically sound environment for present and future generations. For the first time in the Constitution of the Republic of Albania in Chapter IV 'Freedom and Economic, Social and Cultural Rights', Article 56 recognized that "Everyone has the right to be informed about the state of the environment and about the state of the environment and its protection". Along the same lines, Chapter 5 on Social Objectives, Article 59/1 states that "The state, within the constitutional powers and the means it possesses, and in addition to initiative and private responsibility, aims to d) a healthy and ecologically sound environment for present and future generations; dh) rational use of forests, waters, pastures and other natural resources on the basis of the principle of sustainable development (Albanian Constitution)."

With the onset of the transitional period in Albania, the harsh impact of the past centralized economy on the environment became immediately evident. Environmental legal reform started in post-communist Albania with the approval of the National Assembly of the Republic of Albania with the first democratic Law no. 7664, date 21.1.1993, "On the protection of the environment" repealing Decree no. 5105, date 30.10.1973, "On the protection and conservation of the environment". This law was comprised of six chapters. Chapter 1 of the General Provisions recognized that the protection of the environment constitutes a fundamental condition for ensuring the development of society, as well as a national priority whose main strategic elements are: the prevention and reduction of air pollution and other contaminations of any kind; the preservation of biodiversity according to the biogeographic natural base of the country; rational use of natural resources and avoidance of overproduction; ecological rehabilitation of areas damaged by anthropic activity or natural destructive phenomena; and preservation of ecological balance and improvement of life's life. According to the Law of 1993 "On the protection of the environment", the latter is defined as the entirety of natural elements and factors together with human beings, their actions and interactions.

Natural elements and factors were considered water, air, soil and solar radiation, plant and animal organisms, as well as all the processes and phenomena that derive from their interaction and that condition their being. Anthropogenic factors were represented by the existence of human society and its economic activity. Protection of the environment was defined as the activity that aims to prevent degradation,

preservation and improvement of life. The pollution of the environment was delineated as the change of its quality as a result of the creation and introduction of physical, chemical or biological factors, or man-made sources from within or outside the country. The destruction of the environment was determined to be the deterioration of the physical-chemical and structural characteristics of the natural ecosystem, the reduction of biological production and diversity of natural and man-made ecosystems, ecological balance and life quality degradation mainly caused by air and soil pollution and other disasters.

The second and third Chapters of the 1993 Law envisaged environmental impact assessment and permits for activities that impact the environment. These types of activities were very limited, but the fact that for the first time the Environmental Protection Act qualified all activities of legal and physical persons, domestic and foreign who exercise their activities in the territory of the Republic of Albania to exercise an environmental impact which could be assessed by authorities, constituted a novelty. Precisely the Environment Impact Assessment was envisaged based only on national and local territorial and urban development plans, as well as activities that had significant environmental impact and in cases where projects or activities were or are likely to be hazardous to the environmental, as well as local projects according to judgement and determination by local government bodies. Environmental permits in 1993 were provided for economic and social activities, such as the construction and commissioning of various works with national and local advantages, the exploitation of mines, water resources of interest for fishing, and in the case of coastal areas, use was granted for projects that were to improve water flow. The 1993 Law on Environmental Protection in Albania did not foresee protection through prevention and rehabilitation from the impacts of works, or projects, on the environment, and as this analysis shows, it was up to the free will of the decision-making bodies of the public administration to decide whether activities or projects need an Environment Impact Assessment, or environmental permit. The special provisions of the Law on Environmental Protection provided only a series of by-laws for their implementation, by perceiving the problems encountered at that time as based on a special vertical legislation, specifying that the revocation of environmental permit was rendered by a Decision of the Council of Ministers, including a sub-legal act or legal waiver on the right of a subject to hold a permit. During this decade, I analysed the first framework Law "On the Protection of the Environment", which was regarded as a significant innovation at the time, as it envisioned and established the first institutional on environmental

protection in Albania, gradually raising awareness on the need for a clean and healthy environment. Policies and scenarios or environmental strategies after the 1990s, giving priority to health protection deriving from a clean environment were drafted at central level, through the Ministry of Health and Environmental Protection. Chapter IV of the 1993 Law "On Environmental Protection" provided for control and information on the state of the environment, supervision of natural and man-made environmental elements, observation and recording of changes, and monitoring of sources and causes of the environment these changes. Environmental control was a task assigned by the Ministry of Health and Environmental Protection, the Environmental Protection Committee and Regional Agencies according to territorial units.

Law no. 7664, date 21.01.1993, "On the Protection of the Environment", was accompanied by some additions and amendments, by Law no. 8364, date 02.07.1998, and changing the definition of hazardous waste as toxic gaseous waste, infectious and radioactive substances that have the effect of damaging the natural state of water, soil and air with consequences to human health and articulating for the first time the principle of sustainable development, - adding that institutions, physical and legal persons are obliged to preserve and protect the environment and use it sustainably. This law foresaw the establishment of the National Environment Protection Agency, as the competent body in the Republic of Albania. The National Environmental Protection Agency was a specialized body concerning environmental protection, environmental impact assessment environmental permits, control and enforcement of administrative penalties, operating under the Council of Ministers, whose chairman was the Chief Inspector of Environment. As far as the Regional Environmental Agencies were concerned, they were perfectly structured and inspectors became members of District Councils on Territorial Regulation.

At a time when Albanian society experienced major and rapid changes in the context of democratic developments, out of all the social issues it really concerned itself with, it first of all focused on the

problems related to environmental conservation and protection. Out of the first pluralistic and democratic decade, 1990-2000, the evolution of the Environmental Framework Law demonstrated a lack of sufficient knowledge on the legal aspects of environmental issues. The most appropriate solution seemed to have resided, albeit never undertaken, in the harmonization of activities of all links, groups, and individuals included in the implementation of the Law.

## **Second Decade: 2000-2010**

According to the assessment of second decade 2000-2010 Albania established its first Ministry of Environment in September 2001. The creation of the Ministry in 2001 continued the trend toward giving greater importance and authority to the environmental protection authorities. On the framework of the Law no.8934 dated 05.02.2002 on Environmental Protection, the new Ministry of Environment should cooperate and coordinate with central and local government institutions, the public and non-profit organizations to increase the level of enforcement of environmental legislation and its responsibilities on preparation of draft agreements, conventions, protocols, projects and programs that are carried out in the framework of bilateral and multilateral cooperation, including with international environmental organizations, and to follow their implementation when they are finalized (UNECE, 2012).

The new Ministry of Environment in Albania established in 2002 had six Directorates: the Directorate for Pollution Control and Prevention; the Directorate for Natural Resources and Biodiversity Management; the Directorate for Environmental Impact Assessment and Information; the Directorate for Environmental Policy and Project Implementation; the Directorate for Environmental Legislation and Foreign Relations; and the Directorate for Personnel, Organization and Services. The functions and substructures not well-defined and the sufficient staff not be trained to do all these tasks were the challenges for a stronger position of the environmental authority from 2001.

"The 2002 Law on Environmental Protection is a comprehensive framework law with the following objectives:

- Rational use of the environment and reduction of discharges into and pollution of the environment, prevention of its damage, rehabilitation and restoration of damaged environment;
- Improvement of environmental conditions, related to the quality of life and protection of public health;
- Preservation and maintenance of natural resources, renewable and non-renewable, rational and efficient management by ensuring their regeneration;
- Coordination of the state activities to meet the environmental protection requirements;
- International cooperation in the field of environmental protection;

- Promotion of public participation in environmental protection activities;
- Coordination of the economic and social development of the country with the requirements of environmental protection and sustainable development.
- Establishment and strengthening of the institutional system of environmental protection on national and local level (UNECE, 2002)."

The field of Environment Protection Law (2002) applied to protect environment from pollution and damage constitutes national priority for all state institutions physical and legal persons, foreign and nationals that exercise their activities within Albanian territory. For the purpose of Law definition "Environment" was the entity of interactions of biotic and non-biotic elements, which enhance and feed the living life on earth, including the natural biophysical environment of air, soil, water, diversity of biologic ecosystems, human health, values of cultural, scientific, religious and social heritage. This law emphasizes more specific impact of human activities and biological diversity compared with the 1993 law. For the first time the law contains the principles of environmental protection as Principle of sustainable development, Principle of precaution, Principle of prevention, Principle of "polluter pays" and etc. This law contains 11 chapters which envisages a more transparent procedure for the environmental impact assessment process, that of issuing an environmental permit, enhancing the quality of environmental information management, providing environmental policies, strategies and programs for the protection of the air, water pollution, nature biodiversity use and protection of soil, the humus layer, water, air, human building environment, waste, including hazardous waste, and environmental charges and taxes. prevention and reduction of environmental pollution, including establishing norms; monitoring and information; control of the state of the environment. The Albanian political development of 2000s led to the establishment of the Ministry of Environment who raised as a priority formulation of new legislation on protection of environment. On the beginning of 2000s influence of the European Union standards has been weak on Albanian legislation on environmental protection. The purpose of Law no. 8934, dated

05.02.2002, "On environmental protection" was to regulate the relationship between man and the environment, protecting environmental constituents and processes environmental protection and to implement requirements for an environmentally clean environment. As effort for the decade 2000-2010 addressed on environment protection area in Albania we can mentioned new laws and sub-laws include

nature protection areas, biodiversity protection, air protection, gaseous emission standards and monitoring systems. Preparation of the draft laws amended existing sectoral laws include the legislation on water and soil management and horizontal legislation too including on environmental impact assessment and environmental information, so that these important tools of environmental management comply with EU legislation. Although the progress mentioned the gaps remain, because the existing legal framework needs to be further developed on area of waste management, including hazardous waste, chemicals, industrial accidents, permits and environmental auditing. From 2004 the ministry of Environment has taken new role and responsibilities in the country as the Ministry of Environment, Forest and Water Administration. This ministry exercises its jurisdiction through the Environment and Forestry Agency as a legal, public and budgetary institution. The Agency of Environment and Forestry (AEF) was established by the Decision of Council of Ministers no. 579, dated 23.08.2006, "On the establishment of the Agency for Environment and Forestry" in the framework of restructuring of Institute of Environment and Institute of Forestry and Pasture Researches. Despite the establishment of the agency, the Ministry of Environment was centralized because all the protocols were there the environment permits, Environment Impact Assessment procedure, were approved within the ministry and the agency carried out only the role of monitoring activities of environmental situation and environmental information publication. In June 2006, Albania signed a Stabilization and Association Agreement with the European Union as the first step towards EU membership, SAA came into force on 1 April 2009, following its ratification by the 25 EU member states which constituted the EU at the time the SAA was signed by the Albanian Parliament. The ratification process was concluded and completed with the ratification by the Greek Parliament on 15 January 2009. This gave Albania the opportunity to submit its application for (potential) E.U. candidate country status. "The environmental acquis comprises over 200 major legal acts that cover horizontal legislation, water and air quality, waste management, nature protection, industrial pollution control and risk management, chemicals and genetically modified organisms (GMOs), noise and forestry (CNVP, 2018)." Compliance with the acquis requires significant investment (ibid). This requires capacity, time and significant financial resources, especially in environmental infrastructure A strong and well-equipped administration at national and local level is required to apply and enforce the environment acquis, as well as monitor its implementation (European Commission).

“[T]he process of drafting national environmental legislation and policies has been based on requirements defined by the approximation of EU environmental legislation. Albania considered this task extremely important and concentrated its efforts on fulfilling the obligations, sometimes paying less attention to the existing conditions and capacity within the country which, in the short term, are not always sufficient to adapt to the new requirements. The National Plan of Action for Approximation of Environmental Legislation was prepared and the Implementation of National Plan for Approximation of Environmental Legislation project was launched with the financial support of the EU’s Community Assistance for Reconstruction, Development and Stabilization (CARDS) 2006 Programme to facilitate the implementation of the Plan (UNECE, 2012).”

### **Third Decade: 2010-2011**

The third decade involves the transposition and harmonization of the Environmental Acquis Communautaire with domestic legislation. The Albanian parliament approved the Law on Environmental Protection, no.10431 dated 9.06.2011, replaces the 2002 Law no. 8934 and transposes the Directive 2004/35/EC “On environmental liability” (Albanian Law). The new Law entered into force in 2013. It provides a clear legal basis and framework for further transposition of a large number of environmental directives which are relevant to the protection of the environment. Many new by-laws are required for the implementation of the new Law. During the third period 2010-2020 I exactly analyse Albanian Parliament have been transposed a part of the environmental directives of the European Union as the 2011 Law on Environmental Impact Assessment, No. 10440, aims at improving the existing environmental impact assessment (EIA) system. It fully transposes the Directive of 27 June 1985 “On the assessment of the

“On the assessment of the effects of certain public and private projects on the environment” as amended by Directive 97/11/EC, Directive 2003/35/EC and Directive 2009/31/EC (Albanian Law).

The 2011 Law on Environmental Permitting, no. 10448, establishes measures for permitting the operation of certain groups of polluting activities, measures designed to prevent or, where that is not practicable, to reduce emissions to the air, water and land from such activities, including measures also concerning waste. This Law aims at prevention and control of pollution arising from certain categories of activities in order to achieve a high level of protection of human health and the environment as a whole (Albanian Law).

The primary 2011 Law on Environmental Protection and laws relating to protection of air, water, biodiversity define the responsibilities of MoEFWA. At the same time, according to the Law on Environmental Protection, other linen entities also serve as legal institutions of various parts and components of the environment. The Law “On environment protection” provides a high-level protection for the environment, its preservation and improvement, prevention and reduction of the human health and improvement of the life quality of today and next generations as well as ensuring sustainable development. It consists of the following Chapters: General Provisions, The principles of environment protection, Protection of environment ingredients, Environment protection during the planning process and prevention (ecolex).

The law contains 12 chapters, and in Albania it is qualified as an integrating primary law by European standards, as it also foresees principles but also analyses them as well as bringing integrity to the division of powers and decentralization of the central institution to the other environmental enforcement institutions. This law aims to provide high-level environmental protection, preserving and improving the environment, preventing and reducing the risks to life and human health, providing and improving the quality of life, to the benefit of present - day generations next, as well as providing conditions for sustainable development of the country (Albanian Law). Climate, quality of life, sustainable development definitions bring the wide vision of complexity of environmental constituents. The Legislation on Environmental Protection envisages for the institution of the agencies and other public entities that administer and enforce the environment legal framework. The institution bodies are the Ministry of Environment, (MoE), National Environmental Agency 2014 (“NEA”), the State Inspectorate of Environmental and Forests 2014 (“SEIF”) as a specialized body on environmental control, National Agency of Protected Area 2015 (“NAPA”) and their units established at the regional levels, as well as inter-ministerial bodies approved by the Council of Ministers, to deal with environmental issues. Their units at the regional levels are located in the territory of Albania based of the new law on the Territorial-Administrative Division (2015) on 12 districts, thus all enforcement institutions on implementation of the environmental legislation besides the main office, they have 12 regional agencies according to the 12 districts.

“The Legislation on Environmental Protection deals with sustainable development, the prevention and reduction of risk to human health, the ‘polluter pays’ principle, the priority of pollution prevention over subsequent remediation of the damages caused thereby, rehabilitation and restoration of the

damaged environment, and the establishment and strengthening of the institutional system of environmental protection on a national and local level (UNECE, 2018).”

In case of violation of Legislation on Environmental Protection, the authorities may impose fines and suspend or revoke, temporarily or permanently the environmental permit. Some of the environmental violations represent criminal acts under the Albanian Criminal Code, Chapter IV, Article 201 and following (Albanian Criminal Code). Currently, since 2011, Albania has made progress in the transposition of directives and regulations in environmental protection legislation. In support of National Albanian legislation, in line with European Union, environmental agencies should be enforced despite problems such as limited financial budgets or staff training that will need to implement the new environmental legal framework. A challenge of the implementation of the environmental Acquis approximated in Albanian legislation is the new amendment of the Criminal Code since so far, all violations committed by human activities are considered as administrative violations. The amendments to the Code can only be done by the Ministry of Justice and it will be recommending a good cooperation between Ministry of Environment on the introduction of amendments. The Law on Environmental Protection addresses environmental liability in a separate chapter; however, subsidiary legislation is still needed to make it work. Assistance with drafting the new pieces of legal and policy framework on the environment has been provided to the Government mostly through the EU-funded projects Strengthening Environmental Law Enforcement in Albania (SELEA, 2012–2014) and Institution Building for Enforcing Environmental and Climate Acquis (IBECA, 2015–2017). However, the number of acts in the environmental field transposed without external assistance, through the efforts of the ministry responsible for environmental issues alone, has recently increased. Environmental laws Law on Environmental Protection the Law on Environmental Protection no. 10431/2011, replacing the 2002 Law, entered into force in 2013. It sets the new framework for strategic planning on the environment, environmental assessments, permitting, environmental monitoring, information, liability for environmental damage and other issues. Since 2011, a large number of subsidiary acts were adopted and many EU directives were transposed on the basis of provisions of this Law (UNECE, 2017).

The Law puts the concept of best available techniques (BAT) at the centre of the permitting system. The types of permit (A, B or C) for various types of activities, depending on the capacity threshold of installations,

although the allocation of some activities to certain types of permit is arguable. The Environmental Fund, due to be established under the Law in order to support environmental protection activities, has not been created. Several environmental laws require the development of regular law enforcement reports; however, these have never been prepared based on institutional framework the ministry responsible for environmental issues existed as the Ministry of Environment until September 2017, when the institutional restructuring was implemented by the new Government, resulting in the creation of the Ministry of Tourism and Environment (mjedisi.gov).

Still, much more needs to be achieved to ensure the coherent functioning of the system at both the national and local levels, with efficient vertical and horizontal coordination. Changing the name and duties of the Ministry of Environment every time after the central elections shows the institutional weakness has led to obstacles on the implementation of the environmental legislation. The sustainability of staff inside the ministry and the agencies ensure the coherent functioning of the system at both the national and local levels, with efficient vertical and horizontal coordination.

## **Conclusions and Recommendations**

The biggest problem with Albania’s legal framework, is not the development of the laws but their lack of implementation and enforcement. Poor implementation set out from a number of sources: lack of respect for the law, absence of an ability to measure and monitor compliance; weak enforcement procedures; lack of institutional and administrative capacity, and a dysfunctional distribution of competencies among ministries. The regular analysis of transposition of the EU environmental acquis is conducted but not of of EU directives foresees the protection of an integrated environment. The problem is that some of its articles do not apply since the by-laws have not yet been prepared. Some of the problems related to the large body of legislation adopted in short time period are: lack of coordination and cross-references between various laws, need for additional byelaws for the laws to be implemented, absence of practical enforceable provisions and the unclear relationship between different laws covering similar issues.

Despite the establishment of environmental agencies and structural changes of the Ministry of Environment, this does not lead to the implementation of the law on environmental protection. First, the staff of the environmental institutions must be in line with the workplace and job description, they must be trained with the new amendments of the environmental

protection law, because the nature of the environmental protection law is connected with the evolution of technology and science. The staff and Human resources must be sustainable to work and to get a coherent implementation of the law.

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