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ECONOMIC COMMISSION FOR EUROPE

Meeting of the Parties to the
Convention on Access to Information,
Public Participation in Decision-making and
Access to Justice in Environmental Matters

(Second meeting, Almaty, Kazakhstan, 25 - 27 May 2005)
(Item 6 (a) of the provisional agenda)

IMPLEMENTATION REPORT

Albania^{*/}

Based on the reporting format annexed to decision I/8

1. Provide brief information on the process by which this report has been prepared, including information on which types of public authorities were consulted or contributed to its preparation, on how the public was consulted and how the outcome of the public consultation was taken into account and on the material, which was used as a basis for preparing the report.

This report was prepared by the Ministry of Environment of Albania in cooperation with the Regional Environmental Center Country Office Albania (REC). Due to the fact that the Ministry of Environment prepared the draft Strategy for the Implementation of the Aarhus Convention in cooperation with the REC, it was important to have their opinion and contribution to this document. This report was discussed with other ministries, such as those dealing with issues of health, agriculture, transport and tourism. The report was also available on the REC website for comments from NGOs.

^{*/} This document was submitted after the second meeting of the Parties in accordance with Decision II/10 of the Meeting of the Parties (ECE/MP.PP/2005/2/Add.14) that called upon all Parties at the time of the deadline for submission of the implementation reports and that failed to submit such reports to the secretariat to do so by 15 September 2005. The document will be considered at the sixth meeting of the Working Group of the Parties to the Aarhus Convention (5-7 April 2006).

2. Report any particular circumstances that are relevant for understanding the report, e.g. whether there is a federal and/or decentralized decision-making structure, whether the provisions of the Convention have a direct effect upon its entry into force, or whether financial constraints are a significant obstacle to implementation (optional).

This is the first report for Albania, and the institution responsible for the implementation of the Convention is the Ministry of Environment, including its structures in the Prefectures (Regional Environmental Agencies). Lack of funds from the State budget makes the implementation of the Convention difficult, especially on issues that directly affect the general public and/or the interested part of the civil society.

ARTICLE 3

3. List legislative, regulatory and other measures that implement the general provisions in paragraphs 2, 3, 4, 7 and 8 of article 3.

(a) The integration of Convention requirements into national legislation was identified as an important direction of work, which would ensure implementation of its requirements. It was implemented by the Ministry of Environment as a priority, along with legislative reform, the approximation of Albanian standards to the EU ones, and the urgent need for completing the environmental legislation, the latter of which had been incomplete until 2000. In the end, the results were positive. Many of the new environmental laws and by-laws are drafted, aiming at law enforcement. During 2002-2003, a full package of environmental laws was approved by the Parliament and the Government, which include:

Laws:

1. The Law for Environmental Protection No. 8934, date 5.09.2002 (Chapter X, art. 77, 78, 79, 81)
2. The Law for Protected Areas No.8906, date 6.06.2002
3. The Law for Protecting the Air from Pollution
4. The Law for the Protection of Marine Environment for Disease and Damages
5. The Law on Taxes over Carbon and Plastic Charges
6. The Law for Environmental Treatment of Polluted Waters
7. The Law for Environmental Impact Assessment
8. The Law for Environmental Administration of Tailings
9. The Law for Protection of Trans-boundary Lakes
10. The Law for Chemical Preparations and Substances

Decisions of Minister's Council:

1. The Decision "For Environmental Monitoring of Republic of Albania"
2. The Decision "For National Environmental Action Plans "
3. The Decision "For Air Emissions Standards"
4. The Decision "For Proclaiming the Monuments of Albanian Nature"

5. The Decision “For Proclaiming the Zone of Butrint – Ramsar Zone”
6. The Decision “For Approval of Management of Coastal Zone”
7. The Decision “For Establishing the Institute of Environment”
8. The Decision “For Regulations and Procedures for Notification of Protected Areas”
9. The Decision “For Temporary Air Emission Standards”
10. The Decision “For Certification of Specialists for Preparation of Environmental Impact Assessments (EIA) and Environmental Auditing”
11. The Decision “For Administration of Protected Areas”
12. The Decision “For Procedures of Environmental Licenses” etc.

Considering all the laws within the whole legal framework there has been a complete and detailed inclusion of Convention requirements, in accordance with the nature and field of each law and decision. In addition to that, the Convention requirements were reflected in the Constitution of the Republic of Albania, rendering them in constitutional articles. Furthermore the “Law for the Right to Information on Official Documents”, and the “Law for People’s Ombudsman” were approved. Public information and its participation in decision-making have also been treated within the Administrative Procedures Code, the Law for Organization and Functioning of Local Governance, and the Law for Civic Emergencies.

(b) The country is lacking an environmental education and awareness strategy, but the Directorate for Communication of the Ministry of Environment has tackled this problem with the following measures:

- lectures directed at high school students;
 - briefings on environmental issues with university students;
 - training sessions with written and electronic media journalists;
 - encouraging the participation of school students and other groups in the activities of environmental days.
- (c)
- The first administrative measure has been the establishment of an Information Center at the Ministry of Environment. Where a specialist dealing with NGOs acts as focal point for the communication between NGOs and the Ministry;
 - The Ministry of Environment has signed a memorandum of cooperation with the most active environmental NGOs (30 NGOs) in June 2002;
 - The Ministry of Environment has signed the declaration of the European Commission for supporting the most active environmental NGOs;
 - The Ministry of Environment (MoE) has financially supported the NGOs through projects financed from the state budget. Only for the year 2003, the MoE has disbursed 1,547,600 ALL (Albanian leke), nearly 11,459 Euro. For the year 2004, the NGOs projects financed by the MoE, the Netherlands and from other sources have reached the sum of 3,000,100 ALL, nearly 242,527 Euro.

(d) There are no cases of prosecution, harassment or penalization toward persons for exercising their rights in conformity with the Convention.

4. Describe any obstacles encountered in the implementation of any of the paragraphs of article 3 listed above.

- Lack of a national strategy of environmental education;
- Lack of effectiveness in implementing the memorandum of cooperation between the MoE and the NGOs;
- The low level of environmental awareness linked to the economic problems of the country.

5. Provide further information on the practical application of the general provisions of the Convention.

6. Give relevant web site addresses, if available:

The Ministry of Environment of Albania: www.moe.gov.al;

REC – Country Office Albania: <http://albania.rec.org/>

ARTICLE 4

7. List legislative, regulatory and other measures that implement the provisions on access to environmental information in article 4.

(a) The Convention requirements were reflected in The Constitution of the Republic of Albania, rendering them in constitutional articles. In addition, the “Law for the Right to Information on Official Documents” and the “Law for People’s Ombudsman” were approved. Public information and its participation in decision-making have also been treated within the Administrative Procedures Code, the Law for Organization and Functioning of Local Governance and the Law for Civic Emergencies. In all these legal acts, the right for information is ensured without stating an interest. The time limit for answering the requests for information is stated in the “Law for the Right to Information on Official Documents” and is 30 days after receiving the request. The answers to these requests have been immediate so far, due to a low number of written requests. The most important part of the requests is from persons coming to the Information Center of the MoE to fund required material.

The environmental publication of the MoE “Mjedisi Shqiptar” (the Albanian environment), presenting the most important environmental issues from different viewpoints (including those from experts of the Ministry, and those from other experts of the field outside of the institution, etc.), is another form of providing environmental information to the public. In addition, the web site of the Ministry is always available to the public.

(b) There have been no cases of postponing the timeline of 1 month since receiving a request.

(c) (i) In the cases where the MoE does not possess the requested information, the address and person to be contacted for that specific information is provided.

(ii) There have been no cases of unreasonable requests.

- (iii) There have been no cases of requests for material in the course of completion etc.
- (d) This kind of information is treated in the article 29, paragraph 2, of the “Law on environmental protection”, No.8934, of 5.09.2002.
- (e) In these cases the applicant has been immediately informed about the public authority holding the information.
- (f) No such cases have occurred.
- (g) No cases of refusal have occurred.
- (h) No charges are applied for providing information.

8. Describe any obstacles encountered in the implementation of any of the paragraphs of article 4.

9. Provide further information on the practical application of the provisions on access to information, e.g. are there any statistics available on the number of requests made, the number of refusals and their reasons?

10. Give relevant web site addresses, if available:

Ministry of Environment of Albania: www.moe.gov.al

ARTICLE 5

11. List legislative, regulatory and other measures that implement the provisions on the collection and dissemination of environmental information in article 5.

- (a) Public authorities that possess and update environmental information are central and local authorities.

Existing at the first level are the authorities responsible for protection of environment and its components, such as the Ministry of Environment, Regional Environmental Agencies, Environmental Inspectorate and other inspectorates, General Directorate of Forestry and Pastures, General Directorate of Fisheries, inter-sector organisms for environment such as the inter sectoral committee for implementation of NEAPs, Inter-ministerial Council for implementation of action plans on health and environment, the Group for keeping desertification under control, etc.

Existing at the second level are other central authorities with assigned responsibilities to manage environmental resources, such as natural resources and minerals. This group includes Line Ministries and respective structures.

Existing at the third level there are inter-sectoral authorities at central and local levels, which manage the territory and/or water resources, such as the Territory Adjustment Councils (TACs) of all levels, national Waters and Basins Council, National Committee of Tourism, whose decision-making is directly related to environment.

In emergencies the information is disseminated immediately by the National Committee for Emergencies and the cross border project.

(b) The web site of the ministry is always available to the public, as well as the REC web site.

(c) The Ministry of the Environment is in charge of publishing the national State of the Environment report every 2 years. The last report was published in 2000 and is available as a hard copy and on the Internet. The next report is planned to be released in April 2005.

(d) "The Law for Environmental Protection", article 56, specifies more broadly all the details relating to the obligation of governmental authorities for making public the environmental information. Governmental authorities collecting environmental information publicize it to the media, newspapers, or other appropriate bodies, to ensure public awareness. Once the governmental authorities, physical and legal persons notice environmental pollution or damage, they inform the public on the negative impact, and on the measures taken to prevent these adverse effects so that the public can protect their health and safety.

Buyers or consumers should be informed orally, or in writing, by physical or legal persons, about the negative health and environmental impacts of delivered services. Classification of confidential data for national security is administered according to the requirements of the Law "For governmental secret classified information", no. 8457, of 11.02.99.

In order to familiarize the general public with environmental information and requirements, the information Center of the Ministry of Environment publishes the Environmental Bulletin and distributes it free. The website is also readily available for all interested members of the public etc.

Another group of publications is: "Compendium of Environmental Legislation of Albania" and other legal documents that provide data to the public and guidelines for procedures. For instance, in the environmental field, the official documents accessible to the public are: strategies, action and management plans, monitoring programs, State of Environment Reports, registers' content, licenses and group inspection reports.

The same standards apply for governmental structures responsible for water, land and territory planning, forests and meadows, mineral resources, etc.. When we reach this level of transparency and communication, the relationship between the government and the public on environmental issues will improve considerably.

So far many actors have contributed to the publication and information related activities, especially REC and, other NGOs such as Milieu Contact, "Mass media and the Environment" etc.

(e) Other operators are the Albanian Chamber of Commerce and Industry which inform the public about their activities and products.

12. Describe any obstacles encountered in the implementation of any of the paragraphs of article 5.

Lack of funds for other publications.

13. Provide further information on the practical application of the provisions on the collection and dissemination of environmental information in article 5, e.g. are there any statistics available on the information published?

The Ministry of Environment publishes its own magazine on environment, the compendium of Albanian environmental legislation (Albanian and English versions) and other stakeholders publish leaflets, posters, newspapers or other kind of publications on specific occasions. There are no statistics on the amount of publications on environmental matters.

14. Give relevant web site addresses, if available:

Ministry of Environment: www.moe.gov.al; Council of Minister: www.keshilliministrave.gov.al; Albanian Chamber of Commerce: root@ccitr.tirana.al

ARTICLE 6

15. List legislative, regulatory and other measures that implement the provisions on public participation in decisions on specific activities in article 6.

(a) In order to ensure public participation in environmental impact assessment processes, the Law “For Environmental protection”, states:

1. Within the process of Environmental Impact Assessment and Strategic Environmental Assessment, all interested groups do participate, especially local authorities, general public and non-governmental organizations.
2. Throughout the decision-making process, the responsible authority provides the documentation on the required information for public use, within a certain timeline.
3. While making the decision, the responsible authority takes into consideration the opinion of local authorities, the public and non-governmental organizations.

However for processes less important than EIA, such as, for instance, the drafting of management plan for protected areas, the Law for “Protected Areas” assigns the Ministry of Environment to consider “the results generated from cooperation and advising activities with civil society groups, especially with community groups inside or around the respective protected area, including a summary of comments and their feedback on the proposal”.

(b) The Law for “Environmental Impact Assessment” has entered into the implementation phase, including public participation, public discussion and consideration of its opinion, according to the article 6 of the Convention. The article requires public participation to decide on certain activities, listed in annex 1 of the Convention, and other unlisted activities which might have a negative impact on the environment. The practical use of these requirements is the main objective of the Ministry of Environment and Regional Environmental Agencies. Since recently, community opinion has been consulted about any subject involving licensing sought procedures.

A discussion is underway with the community of Vlora and other interested groups at national level regarding the possibility of building a Thermo Power Plant and oil tankers at the seaside. Based on such experiences, a more intensive debate among the Ministry, local government and community in the coming years is expected.

16. Describe any obstacles encountered in the implementation of any of the paragraphs of article 6.

17. Provide further information on the practical application of the provisions on public participation in decisions on specific activities in article 6, e.g. are there any statistics or other information available on public participation in decisions on specific activities or on decisions not to apply the provisions of this article to proposed activities serving national defence purposes.

18. Give relevant web site addresses, if available:

ARTICLE 7

19. List the appropriate practical and/or other provisions made for the public to participate during the preparation of plans and programmes relating to the environment. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.

Several NGOs have participated in drafting the legislation package. Also, the process of preparing the Strategy for the Implementation of the Aarhus Convention has been open to all NGOs wishing to express their opinions on this matter.

20. Explain what opportunities there are for public participation in the preparation of policies relating to the environment.

For the preparation of the National Strategy for Socio-Economic Development, we have four years' experience in gathering the opinions of the civil society on the environmental issues of this strategy. NGOs and other groups interested in the environment are invited to discuss these issues and their opinions are taken into consideration.

21. Describe any obstacles encountered in the implementation of article 7.

Environmental NGOs are not often interested in those processes.

22. Provide further information on the practical application of the provisions on public participation in decisions on specific activities in article 7.

23. Give relevant web site addresses, if available:

The Ministry of Environment website: www.moe.gov.al

ARTICLE 8

24. Describe what efforts are made to promote effective public participation during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. To the extent appropriate, describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.

For the purposes of the Council of Ministers decision-making, especially when dealing with protected areas and waste import as raw material for production, the opinion of the community living in the surrounding area is obligatory. A negative opinion from the community can block the decision-making process. The community is represented through the elected members of the council of Commune, Region or other local administrative unit.

25. Describe any obstacles encountered in the implementation of article 8.

Lack of legislation knowledge in the communities, especially in rural areas.

26. Provide further information on the practical application of the provisions on public participation in the field covered by article 8.

27. Give relevant web site addresses, if available:

The Ministry of Environment website: www.moe.gov.al

ARTICLE 9

28. List legislative, regulatory and other measures that implement the provisions on access to justice in article 9.

The new legislation has been attentive and supportive to the public's right to complain, by creating the necessary spaces for submitting an administrative environmental complaint. For instance, in the law for Environmental Protection, it is stressed: "anyone has the right to complain for activities that threaten, damage and pollute the environment, and to ask for closing the activity down, in case of risk". Apart from the taken measures, the authorities are obliged to respond to the request within one month from receiving it. Besides, this general confirmation has been detailed in a separate law, for concrete cases. A more inclusive framework of cases for administrative complaints has also been completed.

For the right to environmental information the following normative acts are in place:

- The Code for Administrative Procedures (art. 20 and 51-55)
 - Law no. 8934, 05/09/2002 on "Environmental Protection" (art. 1/2dh, 10/3, 77, 78)
 - Law no.8503, 30/06/1999 on "The right to information on official documents".
- (a) (i) Any person who considers that his or her request for information under article 4 has not been dealt with in accordance with the provisions of that article has access to a review procedure in a court of law. He/She may press charges against the Ministry or

other public institution in the Court of First Instance of the Region where he/she lives.

- (ii) The only possibility is that the Ombudsman takes charge of the question. This is the only attorney who is free of charge. The Ministry of Environment does not have funds available to pay an attorney to follow the question of complaints from the public, so that the person would not have to pay the expenses for the review before the court of law.
- (iii) The decision of the court demanding to provide the disputed information is binding for the public institutions that have refused to provide this information.

(b) According to the national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene the provisions of national law relating to the environment. However, the criteria to be met by the public are not defined in the national legislation.

(c) There is no distinction between normal judicial procedures and the environmental ones. The law provides the basic rights in general for all procedures which are meant to be fair and with reasonable costs and time limits. The decisions of the court are written, published and available to the public. The people who press charges take one copy of the court decision.

There are efforts to inform the public on the right to have access to the court of law, but there are no mechanisms to minimize or omit the financial obstacles to this purpose.

29. Describe any obstacles encountered in the implementation of any of the paragraphs of article 9.

There is still no compatibility of the national judicial procedures with the requirements of the Convention. The implementation of the Convention needs changes to the Penal Code, and the intention is to insert the "crime against the environment" into this code. On the other hand, the judicial officers, judges and prosecutors are not familiar with environmental matters.

30. Provide further information on the practical application of the provisions on access to justice pursuant to article 9, e.g. are there any statistics available on environmental justice and are there any assistance mechanisms to remove or reduce financial and other barriers to access to justice?

31. Give relevant web site addresses, if available:

32. If appropriate, indicate how the implementation of the Convention contributes to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.

While having been definitively positioned on the road of democracy, the public and Albanian Government identify with the Convention, their rights and obligations, and opportunities for involvement and inclusions. They also consider the existing possibilities for reaching agreements and cooperation, to develop alternatives and solutions for a contemporary consideration of the environment, and find support for vital intentions and aspirations, not only for today, but also for the future.