

## COMPLAINT

### TO THE ENERGY COMMUNITY SECRETARIAT AGAINST ALBANIA CONCERNING FAILURE TO COMPLY WITH ENERGY COMMUNITY LAW

**To:** Energy Community Secretariat  
Am Hof 4  
1010 Vienna  
AUSTRIA

**CC:** Commission of the European Communities  
Attn: Secretary General  
Rue de la Loi 200  
B-1049 Brussels  
BELGIUM

Delegation of the European Union to Albania  
ABA Business Center, Rr. Papa Gjon Pali II, 17th floor  
Tirana  
ALBANIA

Ministry of Tourism and Environment  
Tirana, Albania

Ministry of Infrastructure and Energy  
Tirana,  
ALBANIA

## COMPLAINT

### TO THE ENERGY COMMUNITY SECRETARIAT AGAINST ALBANIA CONCERNING FAILURE TO COMPLY WITH ENERGY COMMUNITY LAW

<b>1. Name of the complainants:</b> EcoAlbania	<b>1. Name of the complainants:</b> EuroNatur	<b>1. Name of the complainants:</b> RiverWatch
<b>2. Represented by:</b> Mr. Olsi Nika	<b>2. Represented by:</b> Mr. Gabriel Schwaderer	<b>2. Represented by:</b> Mr. Ulrich Eichelmann
<b>3. Nationality</b> Albanian	<b>3. Nationality</b> German	<b>3. Nationality</b> German
<b>4. Address of the Registered Office:</b> Kavaja St.   P. "GLOBE" Trade Center   Ap. 11/3, Tirana, 1010, Albania	<b>4. Address of the Registered Office:</b> Westendstraße 3 78315 Radolfzell Germany	<b>4. Address of the Registered Office:</b> Neustiftgasse 36, 1070 Vienna Austria
<b>5. Telephone/fax/Email:</b> <b>E-mail:</b> o.nika@ecoalbania.org <b>Mob:</b> +355 (0) 69 29 44 757 <b>Tel:</b> +355 (04) 431 7720 <b>Fax:</b> +355 (04) 431 7720 <b>Web:</b> www.ecoalbania.org	<b>5. Telephone/fax/Email:</b> <b>E-mail:</b> gabriel.schwaderer@euronatur.org <b>Tel:</b> +49 (0) 7732 92 720 <b>Fax:</b> +49 (0) 7732 92 7222 <b>Web:</b> www.euronatur.org	<b>5. Telephone/fax/Email:</b> <b>E-mail:</b> ulrich.eichelmann@riverwatch.eu <b>Mob:</b> +43 676 6621512 <b>Web:</b> www.riverwatch.eu

## 6. Field and place (s) of activity:

The Center for Protection of the Natural Ecosystems in Albania (**EcoAlbania**) is a non for profit, Albanian based NGO dedicated to the protection of biodiversity of Albania. EcoAlbania was created on 15th of December 2014 as a joint initiative of professors of the Department of Biology of the Tirana University and the “Save the Blue Heart of Europe” team in Albania. Its goals and activities are to protect the natural ecosystems and their ecological interactions through the protection of the wildlife and their habitats with the belief that the use of the renewable natural sources should be sustainable for the human wellbeing in the country. In addition it strives to stop the increasing destruction and help on the recovering of natural environment. In this way, it aims to strengthen the friendly coexistence of man and nature in Albania.

**RiverWatch** is a society for the protection of rivers. It is a non-governmental NGO, based in Vienna, Austria and it was founded in 2012 as an initiative to take action for the protection of riverine ecosystems worldwide. Its ambition is to preserve the last unimpaired rivers as well as restoring those already canalized or dammed. The Organization engages globally against projects that destroy rivers, particularly dam projects. RiverWatch is a campaigning organisation; that is, we act in opposition to certain projects and promote public awareness.

**EuroNatur** is a charitable foundation which was founded in 1987 by BUND (Friends of the Earth Germany), Nabu the longest-established nature and biodiversity conservation association of Germany and DUH (German Environmental Aid). It is based in Radolfzell and is legally, organisationally and financially independent, autonomous and not affiliated to any political party.

EuroNatur foundation is campaigning together with its partners for a Europe with free-flowing rivers, ancient forests and a rich variety of cultural landscapes. In so doing it is helping to provide enough wild spaces for wild animals and migrating birds. In the various themed pages on our website, you can find out about a diversity of projects for species conservation and changing agricultural policy to be in harmony with nature.

The complainants party in cooperation with each other have launched in 2013, the “Save the blue heart of Europe” campaign that aims to preserve the most valuable river stretches from the destruction caused by hydropower projects in the Balkan peninsula. In cooperation with local partners, the NGOs ‘EuroNatur’ and ‘RiverWatch’ have launched the “Save the Blue Heart of Europe” campaign aiming to save this natural European heritage from destruction.

## 7. Party alleged by the complainant not to have complied with Energy Community law:

Republic of Albania, in the name of the following administrative authorities:

- Ministry of Infrastructure and Energy;
- Ministry of Tourism and Environment;
- National Agency of Environment.

## 8. Fullest possible account of facts giving rise to the compliant

Vjosa River is reputed to be the last big free-flowing, river in Europe, outside Russia. According to data published by 'Save the Blue Heart of Europe', a campaign launched by the complainants, the Albanian government plans to build eight dams<sup>1</sup> on the Albanian main course of the Vjosa River. In addition, there are plans to construct 34 hydropower plants at the tributaries of the Vjosa. To date, the Ministry of Infrastructure and Energy has granted licenses for the construction of two hydropower plants (HPPs) on the Vjosa, specifically at Kalivaç and Poçem, while several hydropower plants are already under construction on the river's tributaries. The complainants, along with residents of the affected areas has used different domestic legal means, including a comprehensive lawsuit to the Administrative Court, to prevent negative impact of the development of the Poçem HPP. Additionally, a lawsuit against Kalivaç project to Administrative Court is under preparation on the basis of substantial breaches in the Environment Impact Assessment, feasibility study and public consultation procedures. The complainants are filing this complaint to the Energy Community, pursuant to the "Procedural Act 2008/01/MC-EnC on Rules of Procedure for dispute settlement under Treaty as amended by Procedural Act 2015/04/MC-EnC of 16 October 2015 on amending Procedural Act 2008/01/MC-EnC of 27 June 2008 on Rules of Procedure for dispute settlement under the Treaty", aiming to internationalize the issue and to bring at the attention of the Energy Community, the failure of the Republic of Albania to comply, under the Treaty and the principles of Energy Community law.

### 8.1. Poçem Hydro Power Plant

#### 8.1.1 Project description

On 09 May 2016, the Albanian government declared as winner of a concession agreement the joint venture of two Turkish companies "Ayen Enerji Şirketi Anonymous" and "Çınar-San Hafriyat Nakliyat Turizm Insaat San Ve Tic Ltd.Sti" to build a large dam on the Vjosa River. The project "Poçem" features a 23-25-meter-high dam that would directly affect one of the most valuable sections of the Vjosa River due to flooding and resettlement of local community; in addition to the serious downstream effects on environment. The reservoir size would be 23.5 km<sup>2</sup> with a volume of 295 million m<sup>3</sup> of water. The annual energy output was planned to be 305.4 million kWh. The costs of the project were projected with 160.1 Million EUR.<sup>2</sup> According to the technical report of the project, the area affected will be the villages of Vllahine, Sevaster, Shkoze, Dusharak, Allirajt, Dautajt, Poçem, Kuta, Krahas, Bregas, Agaraj, Banaj and Kalivaç (13 villages) 2,500 ha of land and 247 people.<sup>3</sup>

---

<sup>1</sup> Vjosa the last Europe's wild river, EcoAlbania 2018 [http://www.ecoalbania.org/wp-content/uploads/2018/03/FactSheet\\_Vjosa\\_HQ.pdf](http://www.ecoalbania.org/wp-content/uploads/2018/03/FactSheet_Vjosa_HQ.pdf)

<sup>2</sup> Ministry of Energy and Industry (2015), "Technical report on HPP Pocem", prepared by Abkons and GRAAlbania, (Tirane: 13 March 2015), p.18

<sup>3</sup> Ibid., (p.20)

### 8.1.2. Legal breaches and contradictions of the Albanian domestic legal framework

The legal procedure is currently ongoing, however, it is to be highlighted that the information regarding the Environmental Impact Assessment (EIA), Environmental Declaration and Public Hearing regarding this particular project was continuously hidden for more than 7 months, despite the insistence of EcoAlbania to get this information from the responsible authority (National Agency for Environment).

According to official information, the EIA was presented to the public during a Public Hearing on 28 February 2015 in Fieri town. However, the local community and the local government units affected by this HPP project are not in Fieri town but further upstream in Kuta and Poçem and they were not informed despite the several attempts to get the information. Following the above grounds, EcoAlbania, RiverWatch and EuroNatur as well as 38 local habitants from Kuta village, filed a lawsuit due to an inadequate EIA as well as the absence of proper public consultation of affected residents. Both procedures are required by Albanian law for projects of this kind however, their application was a farce. For the EIA commissioned by the project applicants and approved by the Ministry of Environment, no in situ examination was carried out, no data on occurrences of species or projected impacts on ground water was conducted, and 60 percent of the text was simply copy-pasted from other assessments and thus not even site-specific.<sup>4</sup>

On 24 April 2015, the Concession Company was provided with the approval of the Environmental Impact Assessment (EIA) issued by the Minister of Environment through decision no. 17, dated 24.04.2015.

In addition, on 14 April 2015, the National Agency of Natural Resources a subordinated body of the Ministry of Infrastructure and Energy issued the technical peer review on the feasibility study submitted with the unsolicited proposal. The total investment for the construction of Poçem is in the amount of 100.9 million Euro VAT excluded, with an installed capacity of 99.500 kW and electricity production of 305.4 million kWh.

Upon being formally provided with the EIA approval (part of which is also the public information and participation) and the technical peer review, on 05 September 2016, the Concession Company signed with the Ministry of Infrastructure and Energy the Concession Contract into the BOT Concession Agreement no. 2174 Rep. no 755/4 Kol., with an SPV named "KOVLU ENERGI" sh.p.k (formed by the union of two Turkish companies "AyenEnerjiŞirketi Anonymous" and "Çinar-San HafriyatNakliyatTurizmlnsaat San Ve Tic Ltd.Sti") for building a large dam on the Vjosa River and constructing the Poçem HPP.

However, the procedures of preparing and adopting the EIA, and consequently of signing the Concession Contract have been carried out in serious **breach and bypassing of the environmental legal framework** in force. Due to this reason and considering the high sensitivity deriving from the special and crucial place in the daily lives of the people that live along Vjosa`s banks, the opposition against this project has been fierce since the beginning by residents, environmentalists, scientists, local administrators etc. Even the European Union criticized the project in its statement on the Enlargement report in April 2016. The European parliament called upon the Albanian government "*...to control the development of hydropower*

---

<sup>4</sup> EcoAlbania (2017). "Albanian Court stops dam project on the Vjosa", Tirana, 3 May 2017; <http://www.ecoalbania.org/albanian-court-stops-dam-project-on-the-vjosa/>

*plants in environmentally sensitive areas such as around Vjosa River as well as in protected areas....”*, to adjust the quality of EIA to EU standards and to better inform and include the public in the planning procedure<sup>5</sup>.

On the basis of the utterly inadequate EIA as well as a highly deficient public consultation process, the NGOs EcoAlbania, Riverwatch and EuroNatur, as well as 38 affected residents filed a lawsuit against “Poçem” on the Vjosa with **the Albanian Administrative Court** in December 2016 - the first-ever environmental lawsuit in Albania.

On May 2, 2017, the Court through decision no. 1813 (*Annex A*), decided to rule in favour of the free-flowing Vjosa and against the construction of the projected Poçem HPP based on the following legal arguments:

- The Company has not acted in accordance with Article 6 of the Decision of Council of Ministers no. 247, dated 30.04.2014, “*On the determination of the rules and requirements of the procedures for information and involvement of the public in environmental decision making*” because there has not been a public notification in written or audio-visual local media and national media, nor have there been informing signs in the place of the project development, etc. The meeting of the representatives of the Concession Company and its environmental consultants on 18.03.2015 was not conducted with the residents of the area where the HPP was planned to be constructed, whilst public information and participation in the EIA has been fictitious and not exhaustive (page 47 of Administrative Court’s Decision);
- The approval of the EIA issued by the Ministry of Infrastructure and Energy has been issued in violation of the Law 10440/2011 “*On the environmental impact assessment*”, in particular there has been no consultation with the public consistencies, while other responsible authorities such as National Agency of Environment, Local Agency of Environment and Municipalities of the affected areas have neither provided their confirmation nor have they participated in the public consultations meeting in violation of the Decision of Council of Ministers No.13 of 2013 “*On the rules, procedures, terms and liabilities for conducting the EIA*”). The approval is also in violation of article 7 of the Law 111/2012 “*On integrated water management*” and the DCM no.416, dated 13.5.2015, “*On approval of the general and special conditions, accompanying documents, validity deadlines, application forms for authorization and permits, review and decision making procedures, and authorization forms and permits for the use of water resources*”, which specifies that it is a competence of the Ministry of Agriculture to decide on the administration and usage of the water resources, and not Ministry of Infrastructure and Energy. Hence MIE has acted beyond its competences. Consequently, the approval of the EIA is ruled to be null and void by the Court and thus shall be deemed to have never been issued. All other procedural and material acts granted on the basis of such an EIA are therefore invalid;

---

<sup>5</sup> <https://balkanrivers.net/en/news/european-parliament-demands-national-park-vjosa-and-stop-hydropower-projects>

- The Order of the Minister of Infrastructure and Energy, no. 228 dated 24.11.2015 "On the establishment of the concession award committee of the "Poçem" hydropower plant, as amended, is absolutely invalid as it is issued on the basis of an absolutely invalid act such as the EIA approval;
- Decision No.1 of 21.04.2016 of the Commission for the Evaluation of the Offers of the Ministry of Energy and Infrastructure, by being based on the approval of the EIA is also an absolutely null and void act and therefore granting of the Concession Contract to the Concession Company is absolutely invalid.

Finally, the Court concluded that the all administrative acts and procedures **are absolutely invalid** because they have been issued in contradiction of the procedures foreseen by law and the BOT Concession Agreement no. 2174 Rep. no 755/4 Kol., dated 05.09.2016, with an SPV named "KOVLU ENERGIJI" sh.p.k (formed by the union of two Turkish companies "AyenEnerjiŞirketi Anonymous" and "Çinar-San HafriyatNakliyatTurizmInsaat San Ve Tic Ltd.Sti") for building a large dam on the Vjosa River and constructing the Poçem HPP, **is deemed absolutely null and void and thus without any legal consequence. (Annex A)**

Following this decision, the Albanian Ministry of Infrastructure and Energy as well as the Ministry of Environment and the Turkish construction company have filed an appeal to the Tirana Court of Appeal.

### 8.1.3. Legal breaches and contradictions of Energy Community law and Bern Convention rules

The Government of Albania has breached not only the domestic legislation but also the rules and procedures envisaged in the Energy Community law. For ease of reference we are breaking down herein below, the administrative proceedings carried out by the Concession Company and the State.

The legal procedure for obtaining the full set of permits by the Concession Company is currently ongoing, however, it needs to be highlighted that the lack of legal and regulatory compliance of the project is substantially relevant to the domestic regulations and Energy Community law. In accordance with **article 12** and Chapter II of the Rules of Procedure of 16 October 2015 on dispute settlement under the Treaty we are bringing forth this claim as a private body to the Secretariat, with the aim to prevent that Poçem hydropower plant project is developed as its implementation is in strong contradiction and breach of the **Energy Community law** as explained below.

Pursuant to Directive 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment with amendments introduced by Directive 2014/52/EU of 16 April 2014 (*incorporated and adapted by Ministerial Council Decision 2016/12/MC-EnC of 14 October 2016 on adapting and implementing Directive 2011/92/EU of the European Parliament and of the Council, and amending the Treaty establishing the Energy Community*), general principles for the assessment of environmental effects should be laid down with a view to supplementing and coordinating development consent procedures governing public and private projects likely to have a major effect on the environment.

Development consent for public and private projects which are likely to have significant effects on the environment should be granted only after an assessment of the likely significant environmental effects of those projects has been carried out. That assessment should be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the public likely to be concerned by the project in question. Additionally, among others, also the Aarhus Convention is an international piece of legislation, (*where Albania has ratified with law no.8672 dated 26.10.2000*) that is affected by the matter at hand considering that it aims to guarantee rights of public participation in decision-making in environmental matters in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being. Article 6 of the Aarhus Convention provides for public participation in decisions on the specific activities listed in Annex I thereto and on activities not listed which may have a significant effect on the environment.

In line with the general principles laid down above, article 6 and 8 of the Directive 2011/92/EU sets forth that the state shall ensure that, within reasonable time-frames, the following is made available to the public concerned:

- any information gathered during the preparation of the environmental impact assessment of the specific project;
- the main reports and advice issued to the competent authority or authorities at the time when the public concerned is duly informed;
- the information provided for in Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC.

The results of consultations and the information gathered shall be duly taken into account in the development consent procedure. The Energy Community Secretariat shall ensure that the environmental impact assessments of the projects referred to in paragraph 1 of this Article, fulfil the requirements of Directive 2011/92/EU as amended by Directive 2014/52/EU.

To the best of our knowledge this mandatory provision was not fulfilled by the Albanian administrative authorities in the case of the two HPPs to be constructed in the Vjosa River. For this reason, it is of utmost importance that the Energy Community Secretariat issues **a binding opinion** to the Albanian state to oblige the latter to comply with the Energy Community law.

Additionally, the project poses serious compliance concerns with the **Bern Convention** and other environmental related issues as set out in the Recommendation No. 202 (2018) of the Bern Convention Standing Committee, adopted on 30 November 2018, on the planned hydro-power plant developments on the Vjosa River<sup>6</sup>. (Annex B)

---

<sup>6</sup> The Bern Convention Standing Committee was engaged by EcoAlbania through the official Complaint No. 2016/5. The Standing Committee through its recommendation No. 202 (2018), adopted on 30 November 2018 issued 12 reasoned recommendations to the Republic of Albania against the construction of both HPPs.



## **8.2. Kalivaç Hydro Power Plant**

### 8.2.1 Project description

The first hydropower plant that started to be developed in Vjosa River was the Kalivaç HPP project. The concession of the Kalivaç HPP was given in 1997 but the construction started 10 years later in 2007 and it was halted several times. Initially, the main source of funding was the Italian Becchetti Group and the Deutsche Bank. Construction works remained on hold and the level of completion is in early phases. As a result, on May 26<sup>th</sup>, 2017 the Ministry of Infrastructure and Energy disseminated to the media a press release announcing the decision to cancel unilaterally the concessionary contract with the Italian Company "Hidro s.r.l." for the construction of the Kalivaç hydropower plant. On June 8<sup>th</sup>, 2018 the Albanian Ministry of Infrastructure and Energy signed the Concession 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) (Annex G). Pursuant to articles 11.1 and 12.1 of the Concession Contract, construction works on Kalivaç are projected to cost approximately EUR 125.3 million and will last up to 30 months upon the finalization of permitting process, which itself is foreseen to last 24 months. Therefore, the overall time needed for the completion of the construction works is 54 months. Annual electricity production at the future hydropower plant located near Kalivaç village, in southern Albania, is projected at 366.6 million kWh.

### 8.2.2. Legal non-compliance with domestic legislation on the right to access information, environmental impact assessment requirements<sup>7</sup> and direct actions carried out by Complainants to identify the latter.

EcoAlbania have sent several requests for information in regard the Kalivaç Project, i.e. for the Environmental Impact Assessment and the Feasibility Study.

**On 16<sup>th</sup> of November 2017**, EcoAlbania sent in parallel 4 letters of request for information addressed: (Annex E)

- to Ministry of Tourism and Environment asking for the Environmental Impact Assessment Report for Kalivaç Hydropower project; (Annex E1)
- to National Agency for Environment asking for the Environmental Impact Assessment Report for Kalivaç Hydropower project; (Annex E2)
- to the Ministry of Infrastructure and Energy asking for the Feasibility Study for Kalivaç Hydropower project; (Annex E3)
- to the National Agency for Natural Resources asking for the Feasibility Study for Kalivaç Hydropower project; (Annex E4)

---

<sup>7</sup> Law no 119/2014 "On the right to information";

DCM Nr. 686, 29.07.2015 "On the adoption of rules, responsibilities and deadlines for the development of environmental impact assessment procedure (EIA) and the procedure for transfer of environmental decision and statement"

On 30<sup>th</sup> 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 E5*). The Ministry of Tourism and Environment has given no answer at all. On 20<sup>th</sup> of December 2017 the National Agency for the Natural Resources sent a new reply to EcoAlbania's request through the official answer in (*Annex E6*). In this response the Agency is stating that they have received 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 20<sup>th</sup> of December 2017 the Ministry of Infrastructure and Energy replied to EcoAlbania request for information via the letter as in (*Annex E7*). 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 9 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 to provide information from both, Ministry of Tourism and Environment as well as the Ministry of Infrastructure and Energy. (*Annex E8 and E9*).

On 2 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 and the other one between EcoAlbania and Ministry of Infrastructure and Energy

Both meetings were supposed to be held on February 8<sup>th</sup>, 2018 in the Commissioners' office. In fact, it was 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 show up 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 made available to EcoAlbania the required information through the National Agency of Environment and therefore that reply in the eyes of the Commissioner is sufficient.

The Commissioner took the Decision No. 31/6 against the Ministry of Infrastructure and Energy, on 24 February 2018 accepting the Eco Albania's claim and ordered the Ministry of Infrastructure and Energy to disclose the requested information within May 2<sup>nd</sup>, 2018. (*Annex E11*) The Commissioner imposed a monetary fine to the Director of the Public-Private Partnership Department of the Energy Sector, in the Ministry of Infrastructure and Energy, Mrs. Etleva Kondi in the amount of 150,000 ALL (ca. 1,200 €).

After the expiration of the deadline set by the Commissioner, EcoAlbania sent a request to the Commissioner to reply whether or not the Ministry of Infrastructure and Energy has fulfilled the Commissioner's order. (*Annex E14*) To date, EcoAlbania has received no response from the Commissioner. In the meantime, a second letter was sent to National Agency for Environment to request the EIA on March 5<sup>th</sup>, 2018. On 7 March 2017, EcoAlbania received the same 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 E13*)

After all these efforts, EcoAlbania has not yet received 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 since it is a project of public interests and it has to comply with transparency criteria, laws and regulations. It is obvious that the Ministry of Infrastructure and Energy has failed to meet the provisions of the Aarhus Convention on access to information and transparency and a reasonable doubt exists on the non-compliance even with the Energy Community law. Transparency and clearance on such a matter can only be made by the Energy Community.

Furthermore, the winner of the Kalivaç concession is the same company that obtained the right to build the Poçem hydropower, which was ruled to be invalid by the Administrative Court of Tirana.

### ***8.3 Scientific assessments and direct actions carried out by Complainants to highlight technical breaches***

In addition to the factual legal non-compliance of the development of HPP projects in Vjosa River, we are presenting the technical and scientific explanations and evidences against the construction of HPPs as prepared and provided by reputable experts and European institutes.

The Vjosa River flows almost entirely unobstructed from its headwaters in the Pindus Mountains of Greece all the way through Albania to the Adriatic Sea. Such conditions of unobstructed flow have been lost everywhere else in Europe. In its near-natural state, the river is of high value for flood mitigation, water purification processes and the maintenance of a specific biodiversity. The river is an asset to Albanian heritage and represents a precious natural laboratory of significance to all of Europe. From a social and economic point of view, it provides excellent opportunities for future developments, such as tourism.

All this would be destroyed by the hydropower projects currently planned at Poçem and Kalivaç. These projects would disturb the integrity of the river and its environmental services to the people in its valley. The expected threats include:

- Deterioration of groundwater resources;
- Development of toxic algal blooms due to the flooding of fertile agricultural areas;
- Endangering of characteristic habitat types and species listed in the EU Habitats Directive;
- Coastal erosion due to the drastic reduction of sediment transport by the river;

- Loss of livelihood of the residents in the affected area, as their agricultural fields are to be drowned in the projected dam reservoir;
- Considerable reduction of energy production within a period of about 30 years, as the dam reservoir fills up with the high sediment load of the river.

None of these risks have been properly addressed by the Environmental Impact Assessment (EIA) presented in the Poçem project plan. The EIA provided by the Turkish project applicant is entirely inadequate—a caricature. Therefore, we called upon the Albanian government to reject the EIA and facilitate a proper assessment following EU standards and considering alternative low-impact concepts. This requires an interdisciplinary assessment of the hydrological, geomorphological and ecological status quo and a prognosis of the damming effects.

In June 2016, it was organized an international Vjosa Scientific Conference as a cooperation between University of Tirana and University of Vienna. At this occasion, a memorandum was composed, signed by 228 scientists, including the most renowned river ecologists in the world. Particularly, the Memorandum “Research Requirements for a sustainable development in the Vjosa corridor” (Sept. 2016), (*Annex C*), has highlighted the unique value of the river system due to its still intact river continuity. For this reason, the memorandum requested a minimum 3- year moratorium on dam construction works in order to allow for an interdisciplinary pre-impact assessment program carried out by hydrologists, geomorphologists, ecologists and socio-economists.

Furthermore, a renowned team of professors of the Universities and the research institutes of Vienna and Berlin, delivered on 7 December 2016 a letter to the Albanian Prime Minister informing him from a technical perspective on the unsubstantiated environmental impact assessment performed for Poçemi HPP (*Annex D*). The conclusions of this letter found that the Poçem EIA is completely unsubstantiated as are not based on any reliable data, deeming this project practically a farce<sup>8</sup>. Regrettably, the presented EIA does not meet any professional standards, and in its present form it represents rather a **caricature of an EIA than a serious basis for decision**. The professors’ analysis of the Poçem EIA stands in stark contrast with the summarizing statements of the EIA.

On the same note on 6 December 2018, more than 60 scientists from Albania, Austria and Germany have presented their knowledge about the biodiversity and ecology of the Vjosa – the last wild river in Europe and published it on a scientific volume<sup>9</sup>. Some of the data were published for the first time in Acta ZooBot Austria and were presented in Tirana on a workshop organized from the University of Tirana, University of Vienna and BOKU University, Vienna. The main findings were:

- “These projects would destroy the environmental services that this ecosystem provides for people living in the Vjosa Valley and would lead to the loss of its biodiversity. While, the expected

---

<sup>8</sup> December 2016. Open letter to Albanian Prime Minister from renowned scientists  
<https://balkanrivers.net/sites/default/files/Letter%20Vjosa%20Pocem%20EIA%20critique%20Rama.pdf>

<sup>9</sup>The Vjosa in Albania – a riverine ecosystem of European significance (Acta ZooBot 2018).  
[https://balkanrivers.net/sites/default/files/Acta155-1\\_Web\\_FINAL.pdf](https://balkanrivers.net/sites/default/files/Acta155-1_Web_FINAL.pdf)

damages and threats from hydropower plants have not been adequately assessed in the Environmental Impact Assessment Report (EIA) presented for the Poçem HPP project”, according to **Prof. Fritz Schiemer, from the University of Vienna**.

- “According to preliminary study data, the Poçem hydropower reservoir would be filled with sediments for a period of 30-50 years, bringing the Poçem hydropower plant out of operation. While during the operating period it would require several hundred thousand euros of costs for management and sediment treatment. The case of hydropower plants in Vjosa would bring a lose-lose situation”, according to **Dr. Christoph Hauer, from BOKU University**.

Although the Administrative Court ruled against the construction of Poçem HPP, this decision cannot prohibit the start of the construction by the company since the process is still ongoing and the Administrative Court of Appeal has yet to accept and express itself on the case. Only the decision of the Administrative Court of Appeal shall be binding and enforceable.

#### **8.4. Final remarks**

In summary, the presented arguments shed light on the fact the Republic of Albania severely failed to meet legal requirements which are increasingly based on technical EU standards, EU directives and domestic legislation. In light of the scientific arguments mentioned in this reasoning and the Recommendation No. 202 (2018) of the Bern Convention Standing Committee, these are specific circumstances which in addition to the specifically mentioned articles herein, must also be governed and subject to Directive 2004/35/EC of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage incorporated and adapted by Ministerial Council Decision 2016/14/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive 2004/35/EC of the European Parliament and of the Council.

This Directive should also apply, as regards the damage to protected species and natural habitats, from any occupational activities other than those already directly or indirectly identified by reference to Community legislation, which poses an actual or potential risk for human health or the environment. In such cases the operator should only be liable under this Directive whenever is at fault or negligent with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective. Based on point 3 of the recitals, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. As a matter of fact, according to scientific studies<sup>10</sup> scenarios envisaged under articles 2, 3, 5 and 7 must apply.

---

<sup>10</sup> Apart from the scientific opinions contained in this Complaint letter, 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. 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 made in early 2019

## 9. The provisions of Energy Community law which the complainant considers to have been infringed by the Party concerned:

- Articles 3, 4 (1) (2), 5 (1), 6 and 8 of the Directive 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment with amendments introduced by Directive 2014/52/EU of 16 April 2014
- Article 1 of Ministerial Council Decision 2016/12/MC-EnC of 14 October 2016 on adapting and implementing Directive 2011/92/EU of the European Parliament and of the Council, and amending the Treaty establishing the Energy Community
- Articles 2, 3, 5 and 7 of Directive 2004/35/EC of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage Incorporated and adapted by Ministerial Council Decision 2016/14/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive 2004/35/EC of the European Parliament and of the Council
- Article 6 of the Aarhus Convention provides for public participation in decisions on the specific activities listed in Annex I thereto and on activities not so listed which may have a significant effect on the environment.

### 9.1 Rules of procedures for filing the complaint

- Title VII of the Treaty – Implementation of Decisions and Dispute Settlement
- “Procedural Act 2008/01/MC-EnC on Rules of Procedure for dispute settlement under Treaty as amended by Procedural Act 2015/04/MC-EnC of 16 October 2015 on amending Procedural Act 2008/01/MC-EnC of 27 June 2008 on Rules of Procedure for dispute settlement under the Treaty”

## 10. Documents or evidence which supports the compliant:

- **Annex A:** Decision of the Administrative Court of First Instance no. 1813, dated 02.05.2017;
- **Annex B:** Bern Convention standing committee Recommendation No. 202 (2018) of 30 November 2018;
- **Annex C:** Memorandum “Research Requirements for a sustainable development in the Vjosa corridor” (Sept. 2016);
- Annex D: Letter from the team professors of the University of Vienna, Centre of Ecology delivered on December 7th, 2016 to the Albanian Prime Minister informing him from a technical perspective on the unsubstantiated environmental impact assessment performed for Poçemi HPP;
- **Annex E:** Correspondence of EcoAlbania with various national institutions regarding receiving of respective document for Kalivaç HPP:
  - *Annex E (1): Request for information regarding the issuance of environmental declaration for Kalivaç HPP sent to Ministry of Tourism and Environment on 16.11.2017*

- *Annex E (2): Request for Information regarding the issuance of environmental declaration for Kalivaç HPP sent to National Environmental Agency on 16.11.2017*
- *Annex E (3): Request for Information sent to Ministry of Energy and Industry regarding the feasibility study of Kalivaç HPP sent on 16.11.2017*
- *Annex E (4): Request for information regarding the feasibility study of Kalivaç HPP sent to National Agency for Natural resources on 16.11.2017*
- *Annex E (5): Response letter from National Environmental Agency confirming that no EIA or environmental declaration issued on 30.11.2017*
- *Annex E (6): Response letter from National Agency for Natural resources that no feasibility study exists on 20.12.2017*
- *Annex E(7): Response letter from Ministry of Energy and Industry regarding the absence of feasibility study for Kalivaç HPP on 20.12.2017*
- *Annex E (8): Complaint letter against Ministry of Tourism and Environment sent to Commissioner for Data Protection and Information on 09.01.2018*
- *Annex E (9): Complaint letter against Ministry of Energy and Industry sent to Commissioner for Data Protection and Information on 09.01.2018*
- *Annex E (10): Response from Commissioner for Data Protection and Right to Information on 23.02.2018*
- *Annex E (11): Decision of Commissioner for Data Protection and Right to Information against Ministry of Energy and Industry on 24.02.2018*
- *Annex E (12): Second request for information sent to National Environmental Agency on 06.03.2018*
- *Annex E (13): Second response from National Environmental Agency sent on 07.03.2018*
- *Annex E(14): Second letter sent to Commissioner for Data Protection and Right to Information for the execution of the first decision against Ministry of Energy and Industry on 06.03.2018*
- *Annex E (15): Second request for information sent to Ministry of Tourism and Environment on 26.06.2018*
- *Annex E (16): Third request for information regarding EIA on Kalivaç HPP sent to National Environmental Agency on 26.06.2018*
- *Annex E (17): Third request for information sent to Ministry of Energy and Industry regarding feasibility study of Kalivaç HPP sent on 26.06.2018*
- *Annex E (18): Third request for information sent to National Agency for Natural resources regarding feasibility study of Kalivaç HPP sent on 26.06.2018*
- **Annex F:** Decision of the Commissioner for the Right of Information and Personal Data Protection No. 31/6 dated 22.02.2018 ordering and fining the Ministry of Infrastructure and Energy for not disclosing the required information;
- **Annex G:** Concession Contract dated June 8th, 2018 between the Albanian Ministry of Infrastructure and Energy and 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);
- **Annex H:** BOT Concession Agreement no. 2174 Rep. no 755/4 Kol., dated 05.09.2016, with an SPV named “KOVLU ENERGI” sh.p.k (formed by the union of two Turkish companies "AyenEnerjiŞirketi Anonymous" and "Çinar-San HafriyatNakliyatTurizmInsaat San Ve Tic Ltd.Sti") for building a large dam on the Vjosa River and constructing the Poçem HPP. (However as already explained above this contract, is invalidated as per Administrative Court Decision. Final ruling is to be made by the Administrative Court of Appeal)

**11. Confidentiality:**

The complaints authorises the Secretariat to disclose their identities in its contacts with the authorities of the Party against which the compliant is made, other parties or the public.

**12. Place, date and signature of the complainants:**

Tirana on 25/02/2019

Radolfzell on 25/02/2019

Vienna on 25/02/2019

**Olsi Nika**

**Gabriel Schwaderer**

**Ulrich Eichelmann**



Executive Director  
EcoAlbania

Executive Director  
EuroNatur

CEO  
RiverWatch