elni REVIEW

ISSN 1618-2502

No 1/2018

ENVIRONMENTAL
LAW NETWORK
INTERNATIONAL

RÉSEAU
INTERNATIONAL
DE DROIT DE
L´ENVIRONNEMENT

INTERNATIONALES
NETZWERK
UMWELTRECHT

elni REVIEW

CONTENTS

Editorial

The current issue of *elni Review* contains several contributions focussing on different aspects in the field of European environmental law practice.

In his profound article "The genome editing technique is covered by Directive 2001/18 – Comment on Advocate Bobek's Opinion in case C-528/16" *Ludwig Krämer* argues that genome editing must be understood as being covered by the provisions of Directive 2001/18 on the deliberate release of genetically modified organisms into the environment.

"The ECJ Rules Environmental NGOs Must Have Access to Justice in Water Law Procedures" by *Summer Kern* and *Gregor Schamschula* assesses the current developments of implementation with regard to access to justice in Austrian Water Law. The ruling in question can certainly be seen as a milestone in environmental case law.

The article by *Erjon Muharremaj* "The role of legislation and courts in the protection of the environment in the European Union and its impact on the European integration of Albania" delivers interesting insights with regard to the current state of environmental law in Albania and its shortcomings with regard to jurisdiction. This certainly will have an impact on the acquisition negotiations with the European Union.

Finally, *Martin Führ, Jaqui Dopfer, Kilian Bizer et. al.* discuss simulation games as a method for regulatory impact assessments. They set out their experiences with the method acquired during the impact assessment of the EIA Amending Directive 2014/52/EU.

The current issue of the *elni Review* delivers information about recent developments; a summarized version of the "Peoples' Climate Case"-application delivered by the applicants and a review of the book "Environmental Crime in Europe" by the editors Andrew Farmer, Michael Faure and Grazia Maria Vagliasindi.

We hope you enjoy this issue.

Nicola Below/Martin Führ

July 2018

The role of legislation and courts in the protection of the environment in the European Union and its impact on the European integration of Albania

Erjon Muharremaj

1 Introduction

This paper analyses the main role of legislation and courts in the protection of the environment in the EU and its impact on the course of the European integration of Albania, a candidate country for EU membership. It begins with a brief analysis of the relationship between EU law and domestic law of Member States. It continues with the analysis of the relationship between international law and domestic law in Albania, and sets out the role of the courts in the protection of environment in the EU. Further, the scope of the analysis includes the challenges, the status, and the role of courts in the process of the approximation with the environmental acquis in Albania. Lastly, it is argued that the protection of the environment is multi-faceted and requires an integrated approach. Although Albania has generally harmonised its environmental legislation with the acquis communautaire, it must make serious efforts towards its proper implementation in practice.

2 Relationship between EU law and domestic law of Member States

In the framework of EU legislation, environmental issues fall into the category of the common competencies shared between the Union and its members. Member States exercise their competencies when they are not exercised by the Union itself. Among others, this sphere includes the environment, agriculture and fisheries (with the exception of the protection of marine biological resources), energy, etc. The Treaty on European Union,[1] in its Art. 3 (5) TEU stipulates that "In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, *the sustainable development of the Earth*, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the *strict observance and the development of international law, including respect for the principles of the United Nations Charter*" [emphasis added]. Further, in Art. 21 TEU, the EU pursues common policies and actions in order to foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty and to help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development.

It should be noted, that neither the Treaty establishing the European Economic Community (TEEC) nor the Treaty on European Union (TEU) explicitly declare the supremacy of the *acquis communautaire* in relation to national legislation of the Member States. Rather, it is based on rulings of the European Court of Justice (ECJ). Besides, the environment is subject to the competencies of the Community and the Single European Act (SEA), which is based on the wide interpretation of Art. 2 of the TEEC stipulating the objectives of the Community. By striving to balance the economic interests in the freedom of movement of goods and the interests for the protection of the environment, the ECJ has deemed considerations of the latter obligatory, which may also legitimise restrictions on trade. To this end the ECJ has applied the concept of the *"centre of gravity"*, which implies allowing the use of the provisions of the TEEC in harmonising domestic legislations, in order to guarantee the protection of the environment.[2]

In order to confirm this principle consolidated by ECJ case law, Declaration 17 was added to the Treaty of Lisbon, which stipulates the supremacy of the *acquis communautaire*. The declaration is accompanied by the Opinion of the Legal Service of the Council, Nr. 11197/07 of 22 June 2007, which stipulates that, *"It results from the case-law of the Court of Justice that primacy of EC law is a cornerstone principle of Community law. According to the Court, this principle is inherent to the specific nature of the European Community. At the time of the first judgment of this established case-law (Costa/ENEL, 15 July 1964, Case 6/64) there was no mention of primacy in the treaty. It is still the case today. The fact that the principle of primacy will not be included in the future treaty shall not in any way change the existence of the principle and the existing case-law of the Court of Justice."*[3]

Moreover, Art. 216 of the Treaty on the Functioning of the European Union (TFEU) states that, *"The Union*

1 The treaties of the European Union are available at: http://eur-lex.europa.eu/collection/eu-law/treaties/treaties-force.html (last accessed 18 March 2018).

2 Ludwig Krämer, *"The Single European Act and Environmental Protection, Reflections on Several New Provisions in Community Law"*, Common Market Law Review, Vol. 24, 1987, p. 682-688.

3 Opinion of the Legal Service of the Council, Nr. 11197/07, date 22 June 2007, available at: http://www.cvce.eu/en/obj/opinion_of_the_legal_service_on_the_primacy_of_ec_law_22_june_2007-en-4692675c-dea2-4360-b6b6-42f769ee0d8a.html (last accessed 18 March 2018).

may conclude an agreement with one or more third countries or international organizations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope". Under these circumstances, where the protection of the environment is one of the objectives of a treaty to which the EU is a party, its environmental provisions automatically apply to the Member States as well.

On the other hand, ECJ case law has an important role in safeguarding the implementation of those provisions since the landmark judgment in the *Costa v. ENEL*-case, because *"... it* [ECJ] *interprets the Treaty and other parts of the legislation in such a manner, by emphasizing the spirit, and not the letter of the Treaty. The Court sees the Community as a living organization, which grows, thinks, and interprets the meaning of the provisions of the Treaty and the secondary legislation of the Community and reacts in a flexible manner*."[4]

Apart from ensuring the practical implementation of the *acquis communautaire* in general, the ECJ possesses the mechanism of the judicial review of the uniform or *quasi* uniform implementation of European environmental law. It thus plays a crucial role in the development of national environmental legislative conformity to European law.[5]

According to the former ECJ legal advisor Francis Jacobs, *"...the protection of the environment, as a public interest, was awarded a constitutional status by the ECJ even before a legal basis existed in the text of the Treaty. It was established as a fundamental objective of the Community, which in certain circumstances and conditions prevails even over the principles of free trade."*[6] *Jacobs* refers to the ECJ judgment in the case *Danish Bottles*,[7] in which the Court confirmed once again what it had ruled in its previous judgment Nr. 240/83, 7 February 1985, *Procureur de la République v Association de défense des brûleurs d'huiles usagées*, that the protection of the environment is one of the main objectives of the Community. This can thus justify some restrictions on the principle of the free movement of goods, stipulated in Art. 30 TEEC. In the *Danish Bottles* case, the ECJ went further, ruling that, "…protection of the environment is a *mandatory requirement* which may limit the application of Art. 30 TEEC." [emphasis added]. However, in the view of the Court, measures adopted to protect the environment must not "go beyond the inevitable restrictions which are justified by the pursuit of the objective of environmental protection".[8] Following this, the ECJ ruled that the restrictions imposed by Denmark were disproportionate to the objective pursued.

Compared to the time of the aforementioned judgments in the 1980's, it can be said that European environmental law is not a separate or minor legal stream today, since it affects the drafting of policies of nearly every sector. Today, the ECJ continues its important facilitating role. In the case *Commission v. Ireland*, Nr. C-494/01, the ECJ analysed the responsibility of Ireland regarding the implementation of Art. 4, 5, 8, 9, 10, 12, 13 and 14 of the Council Directive 75/442/EEC on Waste. The Court ruled that in principle, nothing stops the Commission from finding that apart from the fact that Ireland has not implemented these specific provisions, the latter has not complied with the code of conduct of its authorities, which have adopted a practice that goes contrary to its provisions. As a corollary, it concluded that this infringement stemmed from conflicting practices adopted by the national authorities and that this was well demonstrated in the case under consideration.[9]

3 Relationship between international and domestic law in Albania

The relationship between general international law and the Albanian domestic law has been defined in several articles of the Albanian constitution. In the beginning, its Art. 5 states that the *"Republic of Albania respects the international law that is binding upon it."* At first sight, this provision can be understood as a formulation of a general character, made by a country that declares that it will act in the international arena according to the generally accepted norms of the community of states. In their entirety, these norms would include the treaties, customary law, general principles, doctrine and case law, where the latter two serve as secondary, complementary sources to the first three, which are considered as the main normative sources, within the meaning

4 Allan F. Tatham, *"EC Law in Practice. A Case-Study Approach"*, HVG-Orac, 2006, p. 21 and Alexandre Kiss, Dinah Shelton, *"Manual of European Environmental Law"*, Cambridge: Grotius Publications, 1993, p. 22.

5 Gyula Bándi, *"ECJ Environmental Jurisprudence – The Role of Explanatory Provisions"*, p. 11, in Gyula Bándi, (eds.), *"The Impact of ECJ Jurisprudence on Environmental Law"*, Akaprint Kft, 2009.

6 Francis Jacobs, *"The role of the European Court of Justice in the Protection of the Environment"*, Journal of Environmental Law, 2006, Vol. 18, Nr. 2, p. 194.

7 ECJ judgment, Nr. 302/86, 20.9.1988, *Commission of the European Communities v. Kingdom of Denmark*, available at: http://curia.europa.eu/juris/showPdf.jsf;jsessionid=9ea7d2dc30d59fff14b66b78496fa271f18da1a09f5b.e34KaxiLc3qMb40Rch0SaxuNbNz0?text=&docid=95033&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=361426 (last accessed 18 March 2018).

8 *Ibid*., para. 11.

9 ECJ judgment, Nr. C-494/01, 26.4.2005, para. 27, available at: http://curia.europa.eu/juris/showPdf.jsf;jsessionid=9ea7d2dc30d509ab2b017680409a94aaadca0c537c51.e34KaxiLc3qMb40Rch0SaxuNc3j0?text=&docid=58802&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=159073 (last accessed 18 March 2018).

of Art. 38 of the Statute of the International Court of Justice (ICJ).

But a narrow meaning of this provision would restrict it to the confines of a formal declaration with no specific value. This is because the behaviour of states according to the norms of international law is a *sine qua non* condition for them to participate in the international arena, such that this provision would not represent any novelty. As such, a wider meaning should be attributed to Art. 5, referring to other provisions of the Albanian Constitution, despite it being said that *"This article* [Art. 5] *must be interpreted in such a narrow manner, closely linked only to Article 122 of the constitution, which means that Republic of Albania recognizes and abides by the ratified international treaties, which are published in the Official Gazette, because in this manner they become part of the domestic legal system of our country."*[10]

Based on the constitutional provisions, the treaties to which Albania is a party, including environmental ones, have become part of the domestic legal system through the ratification of laws by the Parliament. As such, it can be mentioned that Law No. 8216 of 13 May 1997, adhered Albania to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal; Law No. 8294 of 2 March 1998, ratified the Berne Convention on the Conservation of European Wildlife and Natural Habitats; Law No. 8556 of 22 December 1999, adhered Albania to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD); Law No. 8672 of 26 October 2000, ratified the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters; Law No. 9021 of 6 March 2003, adhered Albania to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Law No. 10277 of 13 May 2010, adhered Albania to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, etc.

As it can be seen, Albania has become a party to several main environmental conventions, and their provisions have been adopted in its domestic legislation.

4 The role of the courts in the protection of the environment in the EU

The majority of the environmental cases adjudicated by the ECJ are initiated by the Commission against the Member States, based on Art. 258 (former-220) and Art. 260 (former-228) TFEU. If the Commission holds the opinion that a Member State has not fulfilled an obligation deriving from the Treaties, it issues a reasoned opinion on the issue, after granting the possibility to the Member State to provide its own comments. If the Member State does not comply with the opinion within the deadline set by the Commission, the latter may take the case to the ECJ, after the State has presented its comments. When the Commission takes the case to the ECJ pursuant to Art. 258, because the Member State has not fulfilled its obligation to transpose a directive enacted according to the legislative procedure, it can set a reasonable fine to be paid by the Member State. If the ECJ finds that there is an infringement, it can rule on the amount to fine the Member State, not to exceed the amount set by the Commission. The obligation to pay begins on the date set by the Court in its judgment.

In order to reduce the length of the proceedings before the ECJ and to avoid delays in delivering justice, the Court first takes the Opinion of the Advocate General. The ECJ, apart from the 28 judges, one for each Member State, also includes 9 Advocates General, elected by agreement between the Member States, for a 6-year mandate with the possibility of re-election. The role of the Advocate General is very important because he is the first to deliver an opinion on the legal qualification of a case, which he submits to the ECJ. Statistics show that the ECJ follows the opinion of the Advocate General in about three quarters of its judgments.[11]

With regard to the interpretation of domestic legislation compared to that of the provisions of the respective EU directives, the ECJ ruled in *Marleasing SA*, Nr. 106/89, that Member States are obliged to take all the necessary measures, be they of a general character or specific measures, in order to guarantee the fulfilment of the directive's objective. This is compulsory for all authorities of the Member States, including their domestic courts, for the cases under their jurisdiction. From this it can be inferred that in the application of the domestic law, the domestic court must interpret the law in light of the meaning, wording and objective of the directive. As the ECJ has ruled in other cases, the exclusion in principle of the possibility of the individual to rely on these directives is contrary to their compulsory character, stipulated in Art. 249 of TEEC. This holds especially true in the case of directives that aim at the control and reduction of pollution, drafted with the purpose of protecting public health.[12]

[10] Xhezair Zaganjori, *"Vendi i së Drejtës Ndërkombëtare në Kushtetutën e Republikës së Shqipërisë" (Position of international law in the constitution of the Republic of Albania)*, Jeta Juridike, Nr. 2, February 2004, School of Magistrates, Tirana, p. 32.

[11] The composition and functioning of the ECJ, and the procedure followed in the judgments, including the environmental cases, are available at: http://curia.europa.eu/jcms/jcms/Jo2_9089/?hlText=environment

[12] ECJ judgment, Nr. 106/89, 13.11.1990, Marleasing SA and La Comercial Internacional de Alimentación SA, available at: http://eur-lex.europa.eu/resource.html?uri=cellar:384f064c-f467-4dda-a3cb-a44d930a6e25.0002.06/DOC_1&format=PDF (last accessed 18 March 2018).

Domestic courts of Member States are in fact those who interpret *acquis communautaire* during their everyday work, including the environmental *acquis*, together with the ECJ, which guarantees the uniform implementation of the EU legislation and avoids the possibility of different or opposite interpretations by the domestic courts. The latter can refer their cases to the ECJ for an interpretation of the *acquis*, where it decides whether or not the legislation of that member is in line with the *acquis communautaire* . Through a request for a preliminary ruling, domestic courts may even request the evaluation of the validity of an EU legal act. In these cases, the ECJ ruling is not simply an answer given to the domestic courts through an opinion, but it is given in the form of a fully reasoned judgment, which is binding on the domestic courts for the solution of the dispute under consideration. The judgment is directed not solely at the requesting court, but to all the other domestic courts of the EU Member States that are ruling on disputes with a similar object. It is precisely through such requests for preliminary rulings that every EU citizen can request the interpretation and clarification of the norms that have an impact on him/her. Notwithstanding the fact that such a request to the ECJ can be directed only by a domestic court, all parties to a dispute, together with the Member States and the EU institutions can take part in the proceedings before the ECJ. Through such rulings, many principles of the *acquis communautaire*, the environmental ones included, have been interpreted by the ECJ.[13]

Differing from the domestic courts, which operate in a narrower framework, within a more or less homogenous environment and a unique legal culture, the ECJ must undertake the role of interpreter in a context where different legal cultures co-exist.[14]

The role of the courts in the protection of the environment is so important that it can even widen the scope of territorial application of the legal norms themselves. In the case *Commission v. United Kingdom*, the ECJ emphasised that *"...it is common ground between the parties that the United Kingdom exercises sovereign rights in its exclusive economic zone and on the continental shelf and that the Habitats Directive* [Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora – emphasis mine] *is to that extent applicable beyond the Member States' territorial waters. It follows that the directive must be implemented in that exclusive economic zone."*[15]

5. Approximation with the environmental acquis in Albania: challenges, status and role of courts

For many years now, EU membership has been the main objective of the foreign policy of the Republic of Albania, with efforts being put into the European integration process. Considering such a relationship between the *acquis communautaire* and the domestic legislation of the EU Member States, the same relationship should thus exist with Albanian domestic law. Albania has the status of a candidate country for EU membership, and at this stage of the integration process a fundamental document is the Stabilisation and Association Agreement (SAA), signed on 12 June 2006 and entered into force on 1 April 2009.

The constitutional basis for the membership of Albania in the EU can be found in Art. 122 (3) and Art. 123 of the Constitution of the Republic of Albania, which stipulates the primacy of the norms deriving from an international organisation over domestic law in case of conflict between these norms, and the transfer of state competencies to the international organisations for certain issues, pursuant to agreements with these organisations.[16] Despite some earlier opinions for a non-certain status of the EU law *vis-á-vis* Albanian legislation,[17] these constitutional provisions altogether give the EU the status of a higher organisation.[18] An interesting development was the proposed amendment to the Constitution, in the framework of the justice system reform, currently under way in Albania. According to the proposal of the Group of Experts of High Level, the amended Art. 122 (2.1) of the amended Constitution would stipulate that *"2/1. The European Union law shall prevail over the domestic law of the Republic of Albania"*.[19] This was a clear provision of the absolute primacy of EU law over the domestic law of a country

13 Further information on ECJ rulings related to the protection of the environment can be found at: http://curia.europa.eu/jcms/jcms/Jo2_9089/?hlText=environment (last accessed 18 March 2018).

14 Ludwig Krämer, *"EC Environmental Law"*, London, Thomson-Sweet&Maxwell, 2007, p. 51.

15 ECJ judgment Nr. 6/04, 20.10.2005, *Commission of the European Communities v. United Kingdom of Great Britain and Northern Ireland*, par. 117, available at: http://curia.europa.eu/juris/showPdf.jsf?text=&docid=60655&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2836 (last accessed 18 March 2018).

16 Constitution of the Republic of Albania, available at: https://www.constituteproject.org/constitution/Albania_2016?lang=en (last accessed 18 March 2018).

17 Alfred Kellermann, *"Impakti i anëtarësimit në BE në rendin e brendshëm ligjor të Republikës së Shqipërisë" (Impact of EU membership on the domestic legal order of the Republic of Albania)*, "E drejta parlamentare dhe politikat ligjore", Nr. 1, 2007.

18 Luan Omari, Aurela Anastasi, *"E drejta kushtetuese"*, ABC, 2010, p. 61.

19 The consolidated version of the Constitution of the Republic of Albania integrating the draft constitutional amendments is available at: http://www.euralius.eu/images/Justice-Reform/Consolidated-version-of-the-Constitution-Integrating-the-draft-Constitutional-Amendments.pdf (last accessed 18 March 2018).

which has not even opened the accession negotiations yet with the EU, let alone become a member. This has happened at a time when even the current EU members do not have such formulations in their constitutions, taking into account the debate over the supremacy of EU law within the organisation itself. However, this provision was not included in the final version of the amended Constitution.

In the current stage of the integration process, in the framework of the SAA, Albania's undertakings regarding the environment are stipulated in its Art. 108, which states that *"The Parties shall develop and strengthen their cooperation in the vital task of combating environmental degradation, with the aim of promoting environmental sustainability. Cooperation shall mainly focus on priority areas related to the Community acquis in the field of environment."*[20] The approximation of Albanian environmental legislation with the *acquis communautaire* is part of the National Plan for the Implementation of the Stabilisation and Association Agreement (NPISAA) enacted with this specific purpose.

All of the Albanian governments since the 1990s have set the approximation of the domestic law with the *acquis communautaire* and its effective implementation as one of their main priorities. Understandably, Albania must ensure that current and future legislation should strive towards the gradual approximation with the *acquis communautaire*, but it is equally important to understand that *"approximation"* does not mean simply *"copy & pasting"* European legislation. Rather, it means the drafting of comprehensive legislation, and most importantly, its implementation in practice. As far as the approximation is concerned, according to Art. 70 of the SAA the approximation will occur in two phases. In the first transition phase of 10 years, the approximation shall include the main areas of the common market, competition, trade, public procurement, intellectual property, and the standardisation and certification of products. In the second phase the approximation will continue in the remaining areas. In the same article, it is stipulated that apart from the approximation, Albania will ensure that its current and future legislation will be duly implemented.

Challenges of the EU itself regarding the implementation of this legislation arise firstly from the fact that it is very wide and diverse, including matters related to climate change, protection of air, water, soil, biodiversity, up until the management of chemicals and waste. Also, the environmental *acquis* includes diverse techniques, beginning with those that guarantee the standards of products in order to reach environmental objectives, continuing with restrictions and prohibitions, the use of economic instruments, the defining of delicate zones that require a higher level of protection, the evaluation of plans and programmes that have an impact on the environment, up to those that guarantee the participation of the public in environmental decision making. Further, the environmental *acquis* must be also implemented in diverse conditions and natural environments, as diverse as the world that surrounds us, beginning with the diverse national and regional environments, different administrative divisions, and different regions that intertwine issues of transnational relations. Apart from these aspects, the implementation of the environmental *acquis* is further complicated if we take into account the fact that it includes issues to which the public is very sensitive and always ready to put into action the mechanisms at its disposal that challenge the decision making of the authorities through administrative and judicial review. To these can be added the challenges that are related to the lack of respect by the national authorities for the deadlines set by the environmental *acquis*, the lack of knowledge and capacities in the domestic public administrations, deficiencies in the capacities of domestic law-enforcing authorities, and the lack of investment in the infrastructure that guarantees the abatement of pollution and the protection of the environment. Lastly but no less importantly, there are the challenges that stem from the continuous enlargement of the EU, including countries that come from former totalitarian systems, with mentalities and capacities totally different from those of the existing Member States.[21]

EU environmental legislation is adopted by the Member States (by the same token it is also adopted gradually by the candidate countries) almost exclusively through directives. Under these circumstances, these rules are not directed to the legal subjects, but rather to the Member States, in the form of "requests" to harmonise their legislation, which as a consequence obliges the subjects to act in accordance with the domestic harmonised norms. As stipulated in the Sixth Programme of Environmental Action of the Community of 2007, EU legislation stands behind 80% of the domestic environmental legislation.[22]

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20 Art. 108, Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part, available at: http://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22009A0428(02)&rid=1 (last accessed 18 March 2018).

21 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on implementing European Community Environmental Law {SEC(2008) 2851} {SEC(2008) 2852} {SEC(2008) 2876}, p. 3, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008DC0773&from=EN (last accessed 18 March 2018).

22 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Mid-term review of the Sixth Community Environment Action Programme {SEC(2007) 546} {SEC(2007) 547}, p. 3, available at:

Regarding the role of the EU directives in domestic Albanian law, the Supreme Court of the Republic of Albania ruled in its judgment of the Civil Bench, Nr. 22 of 19 January 2011: *"Regardless of the fact that our country is not yet a full member of the European Union, its directives (regulations) are a guidance for our legal practice."* Also, in another *dictum* of the Supreme Court, it is mentioned that Albania will ensure that its existing and future legislation will be properly implemented and imposed (Art. 70 of the Stabilisation and Association Agreement, ratified by Law Nr. 9590 of 27 July 2006), as it has been confirmed in the firmly-held stance of the Albanian judiciary.[23]

The fact that the Albanian judiciary is already referring to EU legislation is a very positive and welcoming development, even for its procedural aspects. In its unifying judgment Nr. 2 of 27 March 2012, the Joint Benches of the Supreme Court ruled regarding the deadlines that: *"The same position is held by the Regulation (EEC Euratom) Nr. 1182/71 of the Council, date 03.06.1971, that states the applicable norms for the time periods, dates and deadlines, which are applied for the acts of the Council or the Commission, which are approved or will be approved, based on the Treaty that established the European Economic Community or the Treaty that established the European Community of Atomic Energy."*

Also, in another case, the Court of First Instance of Tirana referred directly to the jurisprudence of the ECJ, although not related to the protection of environment, but to that of the consumer.[24]

Despite the very limited jurisprudence relevant to the implementation of the environmental legislation, the domestic courts of Albania must play an important role in the integration process through the interpretation of the environmental *acquis*.

6 Conclusions

This analysis has focused on the role of legislation and courts in the protection of the environment in the European Union and its impact on the European integration of Albania at this stage of its integration.

As far as legislation is concerned, in the framework of the implementation of the Stabilization and Association Agreement with the EU, Albania has made progress in the approximation of its environmental legislation with the *acquis communautaire*. Certainly drafting a comprehensive legal framework, even if it is approximated with the *acquis communautaire* as it is in the case of Albania does not, *per se*, guarantee the protection of the environment, if the mechanisms are not in place for its implementation and a strong judiciary to guarantee the rule of law. In this regard, the role of the courts becomes all the more important, since they give practical meaning to the legislation on environmental protection and pave the way for its interpretation in practice. Even though Albania is not yet a member of the European Union, and as such the ECJ judgments have no binding force within its jurisdiction, in practice the Albanian courts must rely on ECJ case law when called to settle the disputes and interpret environmental legislation. Since the major part of the *acquis* on environment protection has been adopted, the corollary would be the adoption of relevant case law as well. But, as it has been shown in this analysis, the very limited domestic case law is not indicative of the important role that the Albanian judiciary should play in the integration process. Just as the ECJ has applied the concept of the "centre of gravity", which implies allowing the use of the provisions of the treaties in harmonising domestic legislations, in order to guarantee the protection of the environment, so must the Albanian courts act through their judgments in the domestic arena.

Despite the progress Albania has made in the harmonisation of its environmental legislation with that of the EU, considerable problems still remain. They can only be solved through close, coordinated cooperation with the relevant EU agencies, in order to guarantee the protection of the environment as a common good which belongs not only to us, but also to future generations.

Recently, the European Commission recommended that the Council open accession negotiations with Albania as a result of the progress made. Nevertheless by reinforcing the approach for the negotiating chapters including the judiciary,[25] a proper implementation of the environmental *acquis* as well is of paramount importance for the whole integration process.

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007DC0225&from=EN

23 Unifying judgment of the Joint Benches of the Supreme Court of the Republic of Albania, Nr. 1, 17.1.2011, p. 13.

24 Judgment nr. 172, date 10.01.2009, Court of First Instance of Tirana, referring to the judgment of the ECJ of 3 July 1991, Case C-62/86, AKZO Chemie BV v. Commission of the European Communities.

25 https://eeas.europa.eu/headquarters/headquarters-homepage/43084/former-yugoslav-republic-macedonia-and-albania-commission-recommends-opening-accession_en (last accessed 20 May 2018).

Imprint

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The Editors would like to thank **Michelle Monteforte** and **Vanessa Cook** (both Öko-Institut) for proofreading the *elni Review*.

We invite authors to submit manuscripts to the Editors by email.

The *elni Review* is the double-blind peer reviewed journal of the Environmental Law Network International. It is distributed once or twice a year at the following prices: commercial users (consultants, law firms, government administrations): € 52; private users, students, libraries: € 30. Non-members can order single issues at a fee of € 20 incl. packaging. The Environmental Law Network International also welcomes an exchange of articles as a way of payment.

The *elni Review* is published with financial and organisational support from Öko-Institut e.V. and the Universities of Applied Sciences in Darmstadt and Bingen.

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If you want to join the Environmental Law Network International, please use the membership form on our website: http://www.elni.org or send this form to the elni Coordinating Bureau, c/o IESAR, FH Bingen, Berlinstr. 109, 55411 Bingen, Germany, fax: +49-6721-409 110, mail: Roller@fh-bingen.de.

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The Öko-Institut (Institut für angewandte Ökologie - Institute for Applied Ecology, a registered non-profit-association) was founded in 1977. Its founding was closely connected to the conflict over the building of the nuclear power plant in Wyhl (on the Rhine near the city of Freiburg, the seat of the Institute). The objective of the Institute was and is environmental research independent of government and industry, for the benefit of society. The results of our research are made available of the public.
The institute's mission is to analyse and evaluate current and future environmental problems, to point out risks, and to develop and implement problem-solving strategies and measures. In doing so, the Öko-Institut follows the guiding principle of sustainable development.
The institute's activities are organized in Divisions - Chemistry, Energy & Climate Protection, Genetic Engineering, Sustainable Products & Material Flows, Nuclear Engineering & Plant Safety, and Environmental Law.

The Environmental Law Division of the Öko-Institut:
The Environmental Law Division covers a broad spectrum of environmental law elaborating scientific studies for public and private clients, consulting governments and public authorities, participating in law drafting processes and mediating stakeholder dialogues. Lawyers of the Division work on international, EU and national environmental law, concentrating on waste management, emission control, energy and climate protection, nuclear, aviation and planning law.

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The University of Applied Sciences in Bingen was founded in 1897. It is a practiceorientated academic institution and runs courses in electrical engineering, computer science for engineering, mechanical engineering, business management for engineering, process engineering, biotechnology, agriculture, international agricultural trade and in environmental engineering.

The *Institute for Environmental Studies and Applied Research* (I.E.S.A.R.) was founded in 2003 as an integrated institution of the University of Applied Sciences of Bingen. I.E.S.A.R carries out applied research projects and advisory services mainly in the areas of environmental law and economy, environmental management and international cooperation for development at the University of Applied Sciences and presents itself as an interdisciplinary institution.

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sofia

The Society for Institutional Analysis was established in 1998. It is located at the University of Applied Sciences in Darmstadt and the University of Göttingen, both Germany.
The sofia research group aims to support regulatory choice at every level of public legislative bodies (EC, national or regional). It also analyses and improves the strategy of public and private organizations.
The sofia team is multidisciplinary: Lawyers and economists are collaborating with engineers as well as social and natural scientists. The theoretical basis is the interdisciplinary behaviour model of homo oeconomicus institutionalis, considering the formal (e.g. laws and contracts) and informal (e.g. rules of fairness) institutional context of individual behaviour.

The areas of research cover
- Product policy/REACh
- Land use strategies
- Role of standardization bodies
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- Water and energy management
- Electronic public participation
- Economic opportunities deriving from environmental legislation
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elni

In many countries lawyers are working on aspects of environmental law, often as part of environmental initiatives and organisations or as legislators. However, they generally have limited contact with other lawyers abroad, in spite of the fact that such contact and communication is vital for the successful and effective implementation of environmental law.

Therefore, a group of lawyers from various countries decided to initiate the Environmental Law Network International (elni) in 1990 to promote international communication and cooperation worldwide. elni is a registered non-profit association under German Law.

elni coordinates a number of different activities in order to facilitate the communication and connections of those interested in environmental law around the world.

Coordinating Bureau

Three organisations currently share the organisational work of the network: Öko-Institut, IESAR at the University of Applied Sciences in Bingen and sofia, the Society for Institutional Analysis, located at the University of Darmstadt. The person of contact is Prof. Dr. Roller at IESAR, Bingen.

elni Review

The elni Review is a bi-annual, English language law review. It publishes articles on environmental law, focussing on European and international environmental law as well as recent developments in the EU Member States. elni encourages its members to submit articles to the elni Review in order to support and further the exchange and sharing of experiences with other members.

The first issue of the elni Review was published in 2001. It replaced the elni Newsletter, which was released in 1995 for the first time.

The elni Review is published by Öko-Institut (the Institute for Applied Ecology), IESAR (the Institute for Environmental Studies and Applied Research, hosted by the University of Applied Sciences in Bingen) and sofia (the Society for Institutional Analysis, located at the University of Darmstadt).

elni Conferences and Fora

elni conferences and fora are a core element of the network. They provide scientific input and the possibility for discussion on a relevant subject of environmental law and policy for international experts. The aim is to gather together scientists, policy makers and young researches, providing them with the opportunity to exchange views and information as well as to develop new perspectives.

The aim of the elni fora initiative is to bring together, on a convivial basis and in a seminar-sized group, environmental lawyers living or working in the Brussels area, who are interested in sharing and discussing views on specific topics related to environmental law and policies.

Publications series

elni publishes a series of books entitled “Publications of the Environmental Law Network International”. Each volume contains papers by various authors on a particular theme in environmental law and in some cases is based on the proceedings of the annual conference.

elni Website: elni.org

The elni website www.elni.org contains news about the network. The members have the opportunity to submit information on interesting events and recent studies on environmental law issues. An index of articles provides an overview of the elni Review publications. Past issues are downloadable online free of charge.

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