



Methodological Manual

Legal Expert for Framing the Investigative Methodology on Allied Justice – as part of the Response by Police and Justice Institutions to Environmental Harm.

Name of the Project: **“Environmental Justice in Albania”**

Reference number: **IPA III/2023/452-010**

Job title: **Legal Expert for Framing the Investigative Methodology on Allied Justice – as part of the Response by Police and Justice Institutions to Environmental Harm.**

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1. Project Context and Scope of this Methodological Manual

The protection of the environment remains a worrying problem although the great attention of the community now days. It is intended and expected that the awareness of environmental protection of all actors who act on the environment and who have the potential to endanger it through their activities will increase. “EJA” project objectives are access to environmental justice in Albania by improving legal and judicial capacities, and increasing public participation.

This methodological approach outlines the scope of the project and the appropriate methodologies to have a real picture of the legal background on environment rights and the way courts in Albania have developed case law in this field.

They are divided into separate tasks that shall be followed in close consultation with the project team.

2. Task 1: Define assessment time frames for the analyses.

Assessing environmental justice in Albania, or any other region, involves evaluating how environmental policies, practices, and conditions impact the community. Defining assessment time frames for such analyses requires a structured approach to ensure comprehensive and effective evaluation. In the context of this project, which aims to enhance access to environmental justice in Albania by improving legal and judicial capacities, and increasing public participation it is crucial

¹ If the applicant judges the allocated timeframe to be insufficient to complete the tasks, they can request a review of the assignment duration in their application, providing sufficient evidence documenting the need for a longer duration.





implementing effective assessment timeframes. The number of lawsuits seeking to protect the environment as a matter that belongs mainly to the future generations are on the rise in several jurisdictions including Albania. Environmental rights are invoked in several types of disputes that raises a number of hard questions for law practitioners.

In determining the time frame in which the information related to environmental issues will be collected, it is important to take into consideration the limited data related to these issues in the past as well the fact of the overloaded situation that the judicial system in Albania is facing. The back log of cases and the small number of judges has increased the time limits. Consequently, in order to have a clear view regarding the number and type of environmental court cases in Albania, this search should considerate a period of 10 years which shall include 2013-2023.

This period will allow to have usable and important data related to criminal offenses in the field of the environment, referring to the 2019 changes in the Criminal Code. Law No. 44/2019² amended criminal legislation providing new criminal offenses which were intended to cover as many aspects of environmental damage as possible³.

3. Task 2: Conduct a mapping of key institutions for investigation.

The determination of judicial jurisdiction in the focus of this project is related to the legal problematics related to the protection of the environment. There are fundamental problems in determining the boundaries between administrative and criminal judicial jurisdiction, in the punishment of activities harmful to the environment thus it is necessary to develop this project in these two jurisdictions.

On 2022⁴ the courts of first instance of general jurisdiction have been reorganized into 13 (thirteen) courts of judicial districts. Meanwhile, the administrative courts of first instance are reorganized into the Administrative Court of First Instance Tirana, and the Administrative Court of First Instance Lushnjë. Courts of appeal of general jurisdiction has been reorganized into a Court of Appeal of General Jurisdiction which operates throughout all the territory of the Republic of Albania, just as the Administrative Court of Appeal of Tirana has operated since its creation. Determining the judicial jurisdiction where the research and data collection will take place is of fundamental importance in order to get the appropriate information about the problematics faced in environmental matters. In order to have a clear picture, it is necessary to develop the research in:

² "On some additions and changes to law no. 7895, dated 27.1.1995, "Penal Code of the Republic of Albania",

³ These changes defined criminal offenses committed by physical or legal persons, intentionally or negligently. Legislation in the field of the environment and ionizing radiation has advanced quite recently, transposing important parts of the EU acquis into national legislation the environment.

⁴ The decision of the Council of Ministers nr 495 /2022 "On the reorganization of judicial districts and territorial powers of the courts".





1. The Administrative Court of the First Instance of Tirana, in which administrative disputes are judged in a large volume, taking in consideration territorial competence of this court determined from the headquarters of central public institutions with an impact on environmental issues as the Ministry of Environment and Tourism, the Ministry of Infrastructure and Energy, the National Agency for the Environment, the National Agency for Protected Areas etc. In its territorial jurisdiction are included: Tiranë, Durrës, Shkodër, Kukës, Dibër, Elbasan, Lezhë dhe Korçë municipality.
 2. The Tirana Administrative Court of Appeal, where are judged appeals against the decisions of the administrative courts of first instance.
 3. Court of First Instance of General Jurisdiction, Criminal Chamber where are judged criminal proceedings related to criminal offenses against environment. In its territorial jurisdiction are included: Tiranë, Kamzë, Vorë and Krujë municipality.
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4. The Court of Appeal of the General Criminal Jurisdiction, where are judged appeals against the decisions of the court of first instance regarding criminal offenses against environment.

4. Task 3: Outline methodologies and sources for examining justice practices.

Applying both qualitative and quantitative research methods will be essential for outlining the appropriate sources for the project. Data collection strategies will contribute to the development of a thorough examination of judicial practices. Employing different methodologies and utilizing a diverse range of sources, shall lead in the understanding of environmental justice practices in Albania, identify gaps and challenges, and recommend improvements to enhance the effectiveness of environmental protection law and enforcement.

Every court in the judicial system functions on the bases of a electronic system where is reflected every case in process and completed. This system allows the court not only to have data related to the number and type of cases judged. In addition to statistical data, this system contains also the argumentation of the court decisions that can be available to the parties, but also to other interested individuals in an anonymized form. Obtaining information about environmental issues from the courts is essential to have real data on these disputes.

In order to obtain the relevant information about court practices several methods can be used as:

- 1) Consultation of the court website at www.gjykata.gov.al where every court has to publish their court decisions.
- 2) Request for information addressed to each of the courts designated above⁵. The request shall include not only statistics and numbered data but above all should require the court decisions text

⁵ The procedure for obtaining information is provided for in Law No. 119/2014 “On the right for information”. The request can be delivered electronically or physically.





according to the criteria explained in section 4. The court decision argumentation can be delivered electronically after the anonymizing process of the personal data.

The request for data on environmental cases in Albanian courts should include information about the number of cases registered in the court related to environmental protection, the type of decisions taken from the court, if the case is appeal in the Court of Appeal and if the decision has become enforceable. Some of the data that can help to understand the situation are:

1. **Number of Cases:** How many environmental cases have been registered and examined by the courts in the determined period specified per each year.

The identification of the administrative cases related to the environment can be oriented through:

- a) The object of the lawsuit: Cases where the object of the lawsuit is the approval or the rejection of the environmental permit, construction permit, the construction permits of Hydropower's or other infrastructure public project, Decision of the Council of Ministers for the protected area.
- b) Cases where the object of the lawsuit is the right for information in environmental matters.

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- c) Cases where the defendant is a public body as the Ministry of Environment, The National Environment Agency or the National Agency of Protected Areas⁶.

The identification of the criminal cases related to the environment can be oriented through the object of the criminal proceeding related to the criminal offence against environment provided from the Criminal Code.

2. **Types of Issues:** Categories of environmental problems that are examined, such as for:

- a) The Administrative judicial jurisdiction: The right for information in environment issues, hydropower cases, environment administrative contraventions etc.
- b) The Criminal judicial jurisdiction: Proceedings related to air pollution, water pollution, waste of natural resources, and each of the criminal offence provided from the Criminal Code.

3. **Type of decisions:** Statistics on the type of court decisions, such as the cases concluded with a final decision or non-final decision, number of cases won by plaintiffs and those by the defendant, cases that has been enforced or not.

⁶ This is because often, the object of the claim in the electronic system of the courts does not contain elements that connect the issue with elements of the environment.





The information taken from the court in this phase will lead to the next phase where can be identified specific case studies.

5. Task 4: Provide criteria for selecting environmental abuse case studies

The criteria for selecting case studies and examples of environmental abuse should align with the process of evaluating legal cases and extracting critical insights, which will aid in identifying and analyzing case studies that illustrate judicial responses to environmental abuse. This will ensure that the analysis is both relevant and impactful. This information ideally should be taken for each year in order to make a comparison of the data and to evaluate the trend.

Selecting environmental abuse case studies from criminal, and administrative courts requires careful consideration to ensure that the cases provides valuable insights into how the Albanian legal systems address environmental violations. The set of criteria to guide the research process when requiring information from the courts and identify the case studies is as follows:

- 1) Regarding environmental disputes in administrative courts, case studies must be identifiable by referring to:
 - Cases where the object of the lawsuit is the approval or the objection of the environmental permit, the construction permits of Hydropower's or other infrastructure works, Decision of the Council of Ministers for the protected area.
 - A special importance must be given to matters that have as their object the right for information in environmental matters. These cases are presented by individuals, organizations or journalists in defence of the environment and must evaluated exclusively.

- The defendant in the claim: Often, the object of the claim does not contain elements that connect the issue with elements of the environment. Under these conditions, the request for information must request information about cases related to the claim with the plaintiff or the defendant of the National Environment Agency or the National Agency of Protected Areas.
- 2) Regarding criminal courts, the case studies will be related to the criminal proceedings for criminal offences against environment:
 - Air, water and land pollution Article 201 of the Criminal Code.
 - Waste management Article 201/a of the Criminal Code.
 - Transportation of waste Article 201/b of the Criminal Code
 - Dangerous activities Article 201/c of the Criminal Code
 - Nuclear materials and dangerous radioactive substances Article 201/ç of the Criminal Code.
 - Damage to protected species of wild flora and fauna Article 202 of the Criminal Code.
 - Trade in protected species of wild flora and fauna Article 202/a of the Criminal Code.





- Damage to habitats in protected environmental areas Article 202/b of the Criminal Code.
- Ozone-depleting substances Article 203 of the Criminal Code.
- Prohibited fishing Article 204 of the Criminal Code.
- Illegal cutting of forests Article 205 of the Criminal Code.
- Cutting of decorative and fruit trees Article 206 of the Criminal Code.
- Destruction by fire of forests Article 206/a of the Criminal Code.
- Negligent destruction by fire of forests Article 206/b of the Criminal Code.'

Court decisions about environment matters represents an overview of the real problematic issues that individuals, organizations, media and the public organs have to deal in their everyday activities. Analyzing these court decisions should lead to effective recommendations in procedural and material law related to environment.

Criteria to identify administrative case studies of great interest are:

- Public interest
- Right for information about environment matters
- Access to justice, Legitimacy
- Borden of proof in administrative trial
- Administrative liability and the criminal liability in environment contraventions

Criteria to identify criminal case studies of great interest are:

- Public interest
- Environment damages
- Technical expertise in environment cases
- Administrative liability and the criminal liability in environment contraventions

Examples of administrative case studies analyze

Example No. 1:

Case law Judgment no. 49 dated 18.01.2021 of the First Instance Administrative Court of Tirana

The plaintiff: A community of 8 residents of Administrative Unit Derjan, in Mat

the defendant: the Energy Regulatory Entity (ERE) and "Seka Hidropower" ltd, First

Instance Administrative Court of Tirana Summary:

1. In this case, the plaintiff is a community of 8 residents of Administrative Unit Derjan, in Mat.

The plaintiff has sued the Energy Regulatory Entity (ERE) and "Seka Hidropower" ltd, which is the concession company of the contract for construction of "Seka" hydropower plant. This company is provided by ERE with the license to produce the electricity in "Seka" and "Zais" hydropower plants.





After filing an administrative complaint at ERE, the plaintiff has filed a lawsuit claiming the annulment of the license provided for the company to produce the electricity, pretending the license is issued against the law. The plaintiff pretended that the hydropower plants are constructed and a part of them lies within the protected area “Lurë – Mali i Dejes”. This activity is contrary to the status of the protected area and forces the competent authorities not to approve the licensing. The Administrative Court has directly implemented the Aarhus Convention, in order to legitimate the plaintiff in the process. The Courts noticed that the right of the public to file lawsuits on environmental issues is provided by Article 9 of Law no. 8672/2000 which has ratified the Aarhus Convention. As per the Court, the plaintiff lives or have a life closely related to the area where the hydropower plants are built, therefore referring to domestic law and the Aarhus Convention they have the legitimacy to access the court filing lawsuits, as subjects of interest in environmental matters, to seek restoration of a violated right.

As per the merits of the case, the court accepted the lawsuit, annulling the administrative act issued by ERE, the license providing the “Seka Hydropower” company the right to produce electricity. The court concluded that the license provided to the defendant, is issued against the law, not respecting the provisions of the law “On protected areas”, specially the article 16 which prohibits the building of hydropower plants in natural reserves and water resources.

The defendant appealed the decision in the Appeal Administrative Court. The Appeal Court rejected the appeal with the same reasoning. As per the legitimation, the Appeal Court referred to the Aarhus Convention. The Court underlined that the Aarhus Convention has principles and rules, regarding access to justice in environmental cases. The Appeal Court has noted that domestic legislation in the field of the environment provides for the same approach as 13 the Aarhus Convention regarding the access to justice of the public in matters related to the environment, not only for the right of information and consultation, but also the right to challenge acts and actions on environmental issues or related to them. As per the merits of the case, the Appeal Court affirmed the first instance court judgment, with the same reasoning.

Example No. 2:

Judgment no. 80-2021-1696 dated 28.05.2021 of the First Instance Administrative Court of Tirana

The plaintiff: “Ayen-Alb”, a joint-stock company

The defendant: the Ministry of Energy, The Ministry of Environment, National Environment Agency

Third parties: The associations “Eco Albania”, “EuroNatur” and “Riverwatch”, as well as 39 residents of the Kalivac project area the case is decided Jurisdiction: First Instance Administrative Court of Tirana Summary:

In the judgment no. 80-2021-1696 dated 28.05.2021, the plaintiff is “Ayen-Alb”, a jointstock company, also the concession company which has been declared the winner and has entered into a concession contract with the Ministry of Energy for the construction of the Kalivac hydropower





plant on the Vjosa River. The concessionaire had the obligation to obtain the necessary permits and licenses, including the Environmental Statement, the administrative act issued by the Ministry of Environment which provides the environmental impact of the targeted project. The Ministry of Environment, based on the proposal of the National Environment Agency has issued a negative Environmental Statement for the construction of the Kalivac hydropower plant.

The negative environmental statement provided that the construction of the project on the Vjosa River would have quite negative impacts on the environment with long-term consequences, including: land floods, use of explosives during construction, serious threat to flora and fauna in the ecosystem, damage to the microclimate, decline water quality and its physicochemical qualities, the damage to the biodiversity of the Vjosa river, one of the biggest in the Balkans, where live hundreds of living species, some of them unknown to science, etc.

This project has also been strongly opposed by the civil society, national and international organizations and many celebrities who have demanded the cancellation of the project on the Vjosa River, one of the largest, last wild rivers in Europe flowing 200 kilometers into Albanian territory. The plaintiff filed an administrative appeal and subsequently filed a lawsuit claiming the annulment of the environmental statement as taken in violation with the law. The plaintiff claimed that the impact on the environment would not be negative and asked to continue with the project, as the winner of the concession contract.

The associations “Eco Albania”, “Euro Natur” and “Riverwatch”, as well as 39 residents of the Kalivac project area have intervened in this judgment. The Administrative Court ruled in their favor by arguing that they are interested parties in the environmental decision-making process and referring to domestic law and the Aarhus Convention are entitled to be parties in this 12 judgment, to be heard and present their claims.

As per the merits of the case, the First Instance Administrative Court of Tirana rejected the lawsuit, with the arguments that this statement is provided in accordance with the law. The court underlined that this administrative act provides with all the arguments that have led the competent authority to issue a negative environmental statement and there is no reason for this act to be declared invalid. It was also noted that at the time of the trial the Vjosa River was declared a managed national park / nature reserve with high importance.

6. Task 5: Suggest sources to be consulted and propose methodologies for data collection

- 1) Informative meeting about the project with the presidents of the courts and the media relations specialist can be very useful to present the importance of the project and the impact that environmental issues have on the community. These meeting should create bridges to facilitate the process of communication.





- 2) Consultation of the public annual reports of the Courts that could lead to statistic data related to the research⁷.
- 3) Consultation with the Facebook and Instagram web site of each administrative and criminal court included in the project.
- 4) Consultation of the public annual reports of the High Judicial Council that could lead to statistic data related to the research.⁸
- 5) Web consultation, media articles about issues of public interest. Journalists meetings could be useful confronting their opinions on environment cases.
- 6) Meetings with organizations for the protection of the environment that have presented their lawsuits or legal cases presented in a court.

7. Deliverables

The expert assigned to the use of this methodological manual shall be responsible for following the procedure set forth, herein. The expert shall nonetheless be in direct consultation with the project team regarding activities conducted, progress, draft-products, and other relevant tasks to be fulfilled. Moreover, any changes to the implementation schedule due to unforeseen issues that could arise, shall be communicated to the project team.

Pertaining to the tasks, these include:

- Preparation of a reporting template based on the tasks set forth in this methodological approach;
- Periodical reporting regarding the accomplishment of each task;
- Any evidence collected during the research phase shall be kept and reported.

Pertaining to the “Cap & Gap” Report:

- Preparation of “Cap & Gap’s” draft-chapter, titled: “Judicial System Response to Environmental Harm in Albania”;
- Reviewing of “Cap & Gap’s” draft-chapter, titled: “Judicial System Response to Environmental Harm in Albania” in consultation with the project team;
- Finalization of the chapter.

⁷ www.gjykata.gov.al

⁸ www.klgj.al

