**Improving coverage and effective management of marine and coastal protected areas project**

**Legal opinion**

The management System of Marine and Coastal Protected Areas Network in Albania

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# Legislation on PAs management

Actually the Albanian legislation on Protected Areas, has no provisions for special management of MPA or CPA, but addresses them similarly like other protected areas. Thus, initially let’s first make analyses of the Albanian legislation on the management of Protected Areas (PA).

The main law which regulates PA management in the Republic of Albania is law no. 8906, dated 06.06.2002 “On Protected Areas”,[[1]](#footnote-1) amended with law no. 9868, and dated 04.02.2008 “On some additions and amendments in law no 8906 dated 6.6.2002 “On Protected Areas”[[2]](#footnote-2) Based on the definition stated in law , “Protected areas” are declared the terrestrial, water, marine and coastal territories defined for the protection of biodiversity, natural and cultural riches, associating, managed legally and based on contemporary scientific methods. As seen in the above stated definition, aiming at a full recognition of the MPA and CPA, the analyses of a series of other laws is necessary. The relevant laws can be categorized as in the following:

## Laws on general environmental regulation:

1. Constitution of the Republic of Albania (1998)
2. Law no. 10 431, date 09.06.2011 “On Environmental protection”*.[[3]](#footnote-3)*
3. Law no. 10 440 dated 07.07. 2011 “On Environmental Impact Assessment”.[[4]](#footnote-4)
4. Law no. 10 448 dated 14.7.2011 “On Environmental permit”.[[5]](#footnote-5)
5. Law no. 10 433, dated 16.6.2011 “On inspection in Republic of Albania”.[[6]](#footnote-6)
6. Law no.10 081, dated 23.2.2009 “On licenses, authorizations and permits in Republic of Albania” and no. 10137, dated 11.05.2009 “On some amendments to the existing legislation on licenses, authorizations and permits in Republic of Albania”

## Laws on protection of special environment elements:

### Sea

a.1. Law no. 8905 dated 06.06.2002 “On protection of marine environment from pollution and damages”, amended.[[7]](#footnote-7)

a.2. Law no. 9251, dated 8.7.2004 “Marine Code of Republic of Albania”.[[8]](#footnote-8)

a.3. Law no. 8875 dated 04.04.2002 “On Albanian marine guard”, amended.[[9]](#footnote-9)

a.4. Law no. 111/2012 “On Integrated Water Management”*.[[10]](#footnote-10)*

*a.5.* Law no. 9115, dated 24.07.2003 “on Environmental treatment of polluted waters”, amended.

*a.*6. Law no. 64/2012 “On fishery”*.[[11]](#footnote-11)*

### Other environment elements:

b.1. Law no. 9587 dated 20.07.2006 “On Biodiversity Protection”,changed*.[[12]](#footnote-12)*

b.2. Law no. 10119 dated 23.04.2009 “On Spatial planning”,changed*.[[13]](#footnote-13)*

b.3. Law no. 9385, dated 04.05.2005 “On forestry and forest service”,changed*.[[14]](#footnote-14)*

b.4. Law no. 10463, dated 22.09.2011 “On integrated waste management”, changed*.[[15]](#footnote-15)* Article 40;

b.5. Law no. 8897, dated 16.05.2002 “On air protection from pollution”.[[16]](#footnote-16)

*Frame law on Protected Areas,* law no. 8906, dated 6.6.2002 "On protected areas" – amended, (in the following this will be referred as LPA) and DCM no. 266, dated 24.4.2003 “On establishment of Protected areas administration”, which forecasts the basic management competences for the respective PAs. These competences are:

* *Development of policies*: via management plans(articles 15 & 17 of LPA)
* *Regulatory*via management plan, arrangement of activities even in private property within PAs ( articles 15, 19, 25 of LPA and point 4 , DCM no. 266, dated 24.4.2003);
* *Administrative responsibility*:starting with setting up inventory of the resources (point 4/gj , DCM no. 266), inventory of land usage property and usage rights (art. 15), inventory of regulation according to the zoning and management plan;
* Rights *to manage public property*, including waters, forests, other natural resources, etc., directly, or by delegating authority to third party (article 12 of LPA).
* *Collection* of f*ees from use of PAs* (point 4 , DCM no. 266);
* *Responsibility for implementation* (article 17 of LPA, DCM no. 266 infrastructure implementation, including protection and maintenance);
* *Control competencies* (point 4 , DCM no. 266);
* *Monitoring competencies*(DCM 266, foresees competencies for monitoring the data collected by the monitoring programs);
* *Sanctions* imposedthrough competenciestoprohibit or put fines(article 32 of LPA, DCM no. 266).

# Structures for the administration and management of MPA and CPA

According to article 23/1 of law no. 8906, dated 6.6.2002 "On protected areas” –amended, the state authority charged with the administration of a protected area is the Administration of the Protected Area (APA), which is stated in the Decision of the Council of Ministers on proclamation of the protected area. Aiming at a better understanding of the APA functionality, let’s analyze the management within a PA.

## *Management* (monitoring, inspection)

The Albanian environment legislation, in the frame law on environment protection (law no. 10431, dated 09.06.2011 “On environment protection”), uses the term “environment inspection”, while the law on PA does not use the term “inspection” but uses the term “monitoring” of PAs.[[17]](#footnote-17)

The law on PAs also introduces the concept of the PA management plan. According to article 15/1 of PAs law: *The ministry of Environment, other central and local government organs or in cooperation with the thirds, develop the management plan for each protected area.*

In this sense, we are of the opinion that “Management Plan” includes “inspection”, as well as “monitoring”, specifying no difference between them, but what really counts in our analysis is to define the body which will perform these functions.

According to law no. 62 of LMM, the environment inspection is carried by the State Inspectorate of Environment, Forests, Waters and Fishing. This Inspectorate is established on the basis of DCM no. 223, dated 13.03.2013[[18]](#footnote-18) and is under the jurisdiction of the Minister of Environment. It is organized in two levels: central ( General Department within the Ministry) and local (in each county).[[19]](#footnote-19)

Article 17/3 of law on PA, foresees that in the management plans preparation process there should be involved the public and private institutions, juridical persons, national and foreign, environmental nonprofit organizations (applying rules and procedures of competition and tendering).While article 20 of this law, foresees that the Ministry of Environment develops the monitoring objectives for the protected areas, leads the organization and the Ministry engages the public and private institutions for the *implementation of the monitoring plans* (conform the rules and procedures of competition and tendering).

So the law on PA introduces the concept of PA *management plans and monitoring programs* *implementation* even by private subjects and not only by government institutions.

Anyway, we can state that protection and administration of a PA cannot be performed by private entities, as stated in article 3 point 15 of LPA; the Administration of Protected Areas is defined as: “*state entity charged with protection and administration of a concrete protected area”* (which strictly means that only the state entity can protect and administer a PA).

In spite of the above restriction, the law on PA, for certain environment elements, has allowed the delegation of authority. So article 12/2 foresees that: “Management of forest and related resources, waters and related resources, as well other resources under state ownership located within a protected area, is carried by the administration of the area protection. The administration can perform this task *directly or* *through a subject it authorizes*. We notice that the terminology used in the above articles leaves space for interpretation, because “*protection and administration*”, include *management*, but the latter (so management), can’t be stated that include in every case even” *protection and administration*”.

We are of the opinion that the Administration of Protected areas should have full autonomy within the territory of the PA and for avoiding overlapping competencies with other organs operating in the environment field; it should be the only organ which has all environment related competencies within the PA territory.

Taking into consideration the principle *Lex specialis, derogat generalis*,[[20]](#footnote-20) we are of the opinion that any amendment to the PA law with the aim of avoiding any overlapping, should state clearly the idea that the PA Administration is the only organ which exercises all environment inspection powers (other polices) with the protected Area.

## Granting of environment permits

The National Environmental Agency is the competent authority which determines the conditions for entitled entities to get the environment permit. It is under the jurisdiction of the Ministry of Environment which exercises its power in the whole territory of the Republic of Albania via its central office in the Ministry and regional branches in the districts, (known as Regional Environment Agencies)

Taking into consideration the PAs Law but also the legislation approved afterwards about the environmental permits (laws no. 10081, date 23.2.2009 “On licenses, authorizations and permits in the Republic of Albania” and no. 10137, date 11.05.2009 “On some changes to the existing law on Licenses, authorizations and permits in the Republic of Albania; as well as law no. 10 448 date 14.7.2011 “on environmental permits”), we note that depending on the activity type, there exist two different procedures for getting the environment permit about an activity to be carried within a PA.

Besides the usual procedure as stated in the general legislation on environmental permits (3 above mentioned laws), in case of public constructions within the territory of protected areas ( in case of marine PAs or coastal marine PAs the constructions/platforms in water would be part of the permit), article 19/4 of law on PAs states that the above mentioned constructions can only be made based on general regulatory studies and plans, which are approved by the Council of Territory Adjustment of the Republic of Albania.

# Existing structures for the management of PAs and proposals for setting up the CPAs structures

The 2012 law on PAs, foresaw that after its approval, the existing structures which performed the administration of protected areas (which were under the jurisdiction of the General Department of Forestry) to gradually transfer under the jurisdiction of the Protected Areas Administration which would be defined upon a decision of the Council of Ministers. (Article 23 of PA Law).

In 2003, based on decision no. 266, date 24.4.2003 the Council of Ministers decided to approve a Frame decision on setting up the Administration of Protected Areas. It should be emphasized that this decision was limited, because it stated that it was the General Department of Forestry and Pastures that would decide on the protection administration only for: 1. National parks and 2. Managed natural reserves (the protected areas under category II & IV).

The administration of these PAs was under the jurisdiction of the General Department of Forestry and Pastures and at that time this department was with the Ministry of Agriculture and not under the Ministry of Environment.

This decision (which is still valid), defines the tasks and services to be performed by the Administration of Protected Area as in the followings:

1. Administration of PAs
2. Protection of PAs ( police function);
3. Follow up and implementation of the area management plan;
4. Follow up the implementation of the annual programs of area monitoring and bio monitoring in cooperation with institutes and specialized departments charged with monitoring and publishing of relevant data;
5. Development of regulation on the area administration and protection; local regulation on fishing, hunting, protection of forests, pastures, medicinal plants if existing in the area;
6. Put fines in case of offenses and collect fines;
7. Collects fees on the use and exploitation of protected areas;
8. Contacts users of all kinds;
9. Controls users and visitors;
10. Implements the necessary infrastructure works for the use of protected areas;
11. Sets up regional environmental file as part of the national file;
12. Fruitfully uses the area maintenance funds;
13. Publishes every year data on the area situation;
14. Documents activities, investments, scientific research carried in the area;
15. Prepares and publishes every year ‘end the annual report on the area situation and submits it to the Ministry of Environment, General Department of Forests and Pastures and other local government organs;
16. Cooperates with scientific research institutions, with environmental NGOs and the community for area protection and conservation of its biodiversity;
17. Organizes in collaboration with local government organs , scientific research institutions, education and culture institutions, environmental NGOs as well as with the community, awareness activities and produces various publications to introduce the area values;
18. Coordinates the celebration of environmental events and special days related to the area.

Keeping in mind that the Ministry of Environment is the main responsible institution for the *enforcement of the environmental legislation* (its competencies are stated in law no. 10431, dated 09.06.2011 “On environment protection”)[[21]](#footnote-21), taking into consideration the changes in the structures of ministries (during the last 8 years, GDFP has been under the jurisdiction of the Ministry of Environment and not Ministry of Agriculture), as well as looking in the administration and management of protected areas its entirety, we think that one way for PA management and administration (including MPA and CPA), might be as in the following:

**Setting up a General Department for the Administration of Protected Areas in the Ministry of Environment and every protected area to have its administration (Administration of the protected Area).**

This Administration should be composed of various fields’experts (depending on characteristics of each protected area) and not only of forestry specialists (as stated in the DCM no. 266, dated 24.4.2003).

# Management Committees in the PA

According to DCM no. 86, dated 11.05.2005 “For setting up the management committees of the protected areas”, if a MPA or CPA is part of a protected area under the status of National Park, Managed Natural Reserve, or Protected landscape (category II, IV and V of protected areas), then besides the *Administration of the protected Area*, there is also another responsible organ which is the: Management Committee (MC) .[[22]](#footnote-22)

According to DCM no. 86, dated 11.05.2005 the Management Committees are organized in local level and follow up the management plans’ implementation of the areas for which are set up. The management committees are composed of representatives from public and not public institutions where the protected area is located, and in concrete terms by:

1. Representative of the Ministry of Environment;
2. Representative of the General department of Forestry and Pastures;
3. Representative of the Ministry of Territory Adjustment and Tourism;
4. Representative of the municipality or municipalities, in whose territory the protected area is located;
5. Communes’ heads, in whose territory the protected area is located;
6. Representative of county or counties council, where the protected area is located;
7. Representative of the prefecture or prefectures where the protected area is located;
8. Representative of the Regional Environmental Agency of the qark where the protected area is located ;
9. Director of the Department of forestry service in the area;
10. Representative of land owners, in cases when there is private land ownership within the protected area;
11. Representative of nonprofit organizations in national or local level involved in protected areas issues.

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The representative of the Ministry of Environment will act as the chairman of the Management committee.

The protected area administration plays the role of the technical secretariat for the Management committee and its tasks consist in:

a) Preparation of the documents for the management committee meeting;

b) Informing the members on the next meeting;

c) Keeping the minutes of the meeting;

ç) Preparation of the 2 years report on the protected area situation.

The management committee shall meet not less than twice a year; its meetings are open and are valid when attended by not less than 2/3 of members.

The management committee is responsible for the administration and protection of the protected area, this responsibility is achieved by following up:

a) The implementation of the area management plan and the programs developed in details conform its requirements;

b) The enforcement of legal and sublegal provisions by the protected are administration and entities which carry their activity in this area;

c) Protection of area quality and promotion of the ecological development of surrounding environments;

ç) Implementation of requirements on the sustainable use of the area natural resources.

The main tasks of the Management Committee are:

1. To contribute to the preparation of the area management plan, to ensure its compatibility with the local and sectorial development strategies and plans giving proper attention that these would abide by the area protection requirements;
2. To organize, monitor the implementation of the area management plan and licensed activities carried in its territory;
3. To provide its opinion about the area natural resources, as well as for the issuance of environmental permits on activities allowed to be carried within the area;
4. To approve the detailed elements of the respective requirements for signing and execution of contracts by the area administration with any private and state subjects, native or foreign, for carrying out activities within the area as per the fees defined;
5. To analyze performing of duties and functions by the PAs administration;
6. To analyze the revenues and expenditures ‘reports and decide about the investments trend in the area;
7. To approve the regulations prepared by the PA administration which guarantee the area protection, usage and administration;
8. To approve the biannual report on the status of the protected area, which is published 2 months after its approval;
9. To propose to the Ministry of Environment, based on the completed studies, changes of the area management plan, extension of borders, as well as additional measures for its quality improvement;
10. To examine the owners and subjects ‘complains who perform their activity in the area about any administration action in the area;
11. To ask the relevant organs stop the implementation of project and activities which though carried outside the area territory have negative impact or go contrary to its development goals;
12. To ask the environment chief inspector carry controls over the activities carried in the area and in the surroundings, for mitigating and avoiding any negative impacts;
13. To promote the development and implementation of projects for improving the area qualities;
14. To coordinate activities with the respective basin council with which it should continuously share data;
15. To collaborate with the Ministry of Territory Adjustment and Tourism for the promotion of protected areas even as areas of touristic interest.

We are of the opinion that the Management Committee function’ legal base should be revised. This is explained by the fact that there exist overlapping competencies of the basic act with other laws on whose basis the management committee is established (DCM no. 86, dated 11.05.2005 “On establishing the PA Management committee”).

In concrete terms, the committees are assigned with duties and responsibilities for the:

1. Administration of PAs[[23]](#footnote-23), while the law on Protected Areas gives this competence to the Council of Ministers which make a case by case decision[[24]](#footnote-24).
2. Controlling of the Protected Areas Administration [[25]](#footnote-25), ne nje kohe qe kjo eshte detyre funksionale e varesise hierarkike nga keto Administrata varen (Ministry of Environment or Agriculture at the time when these administrations were part of the General Department of Forestry).
3. Detailed approval of requests ‘elements about signature and implementation of contracts by the area administration with private and state, native and foreign subjects for carrying activities in the area and paying of respective fees. (chapter IV, point 2b of DCM 86), keeping in mind that such activities should be granted an environmental permit and according to the existing legislation these permits are issued by other organs.
4. Quality protection of PAs[[26]](#footnote-26), while conform article 66 of law “On environment protection”, inspection (part of which is the PA quality protection) is a competence of the Environment Inspectorate.

Even in the following points of the DCM no. 86, dated 11.05.2005, the committees have the tasks “to organize and monitor the implementation of the management plan and other licensed activities carried out in the territory (chapter IV, point 2b), or “to approve the regulations prepared by the administration of the protected area....” (Chapter IV, point 2e), while based on other normative acts other bodies are charged with such tasks.

Even in the framework of the legislative techniques, it is not possible that one sublegal act (DCM no. 86, dated 11.05.2005) give competences to one organ, which by law are given to another organs (law on Environment protection; Law on Protected areas.).

So a better administration of the PAs and avoidance of duplications can be reached by clearly and precisely defining the competences.

Even when making a deeper legal analysis, we again notice gaps in respect to administration related tasks assigned to the committees. So the above analysis of the PA legislation states that PA administration is not a task to be assigned to private entities, while membership of committees consisted also of private entities.[[27]](#footnote-27)

We are also of the opinion that the respective normative act which will complement/ customize the functioning of the Management Committees , should also set the means available to the committees for the fulfillment of given tasks, in case the tasks assigned are not fulfilled voluntarily by the respective subjects. So either there should be defined the measures/sanctions to be undertaken by the committees, or there should be foreseen which institutions can the committees ask (or collaborate) for taking these measures.

The above stated some aspects of legal adjustment for setting up and functioning of Management committees, while as for these committees competences are concerned, these will be defined in details depending on the completion of their legal base.

# Possible samples for PAs administration

The public status of a PA, has been traditionally regarded as the only available option in protecting the underrated assets as nature protection is. Anyway, the positive experience of public-private partnership in nature protection at international level, (mainly developing countries) shows that there exist the possibility for improvement through professional management and marketing, for reducing the public subsidy need and mobilizing the capital for PA and biodiversity infrastructure investments. The best choice of such partnership structure depends largely on the capacity of the actual public management entity.

Taking into consideration the difficulties of governments for ensuring sufficient financial resources, some PA agencies has developed autonomous samples which allow a managerial approach functioning as business and a greater financial independence. And some governments have entered into public private partnerships.

These partnerships can be classified in 2 broad categories, with different levels of responsibilities and risk for the private partnership:

***Traditional touristic partnership****.* The private partner usesthe (natural) assets of the Government for providing services and generating revenues, such as from operational shops and restaurants.

***Biodiversity management partnership*** The private partner performs a public function on behalf of the government, such as protection of public natural assets in the protected areas.

Deciding on the most suitable alternative depends on the technical and managerial capacities of the management entity in the site. The protected area needs (for environment rehabilitation and investments in the basic infrastructure of the PA ) and support level for the reforms among interested parties play also an important role.

In the context of the general considerations on possible changes in Public entity status, the series of the following alternatives starting with a simple public management, or a public private partnership, should be taken into consideration.

## Fully public model:

The PA management is considered a legitimate government function, which should be fully funded through taxes. Decision making is the responsibility of the state agency staff, with considerable public participation, that is subject to the legislative supervision and the transparency is legally required. The financial resources of the Agency are open to public scrutiny.

*Disadvantages*: The model requires the non users of the PA services to pay through taxes; the bureaucrats lack the incentives to control costs and are not quick to respond to changing public demand.

*Advantages*: having available parks to be used by the public with little or no direct cost, comprehensive decision making, and ability to undertake non economic actions( non profit), such as biodiversity protection and ecosystem integrity.

## Public services model:

PA acts as a public service (in essence, the entrance and usage fees, but no tax burden for the non users).

*Disadvantages:* Fee payment is regressive from social aspect, thus discouraging its use by low income people.

*Advantages:* The main objective is that PA becomes self financing and sustainable. The paid taxes increase efficiency thus causing managers become more responsible toward the PA users and their needs.

## Outsourcing model

The public entities ensure funds, but the private ones compete for the production rights (based on patronage model)- with the official exposure for ”benefits” – or in separate enterprises or activities which might generate profits (tourism).

*Advantages*: Outsourcing might offer some agencies short term savings. It might make needs ‘management more flexible and reduce agencies’ budgets. *Disadvantages*: with this partnership, the long term consequences/benefits to PAs are highly uncertain.

## Direct partnership with nonprofit organizations

*Advantages*: same characteristics as above.

*Disadvantages*: economic weakness in the long term and lack of management transparency.

## A fully private management

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The private firm or subject signs a contract (specifying the special obligations on protection of environment, wild animals, public reception pritjes publike) with public subjects for supporting the actual management of PAs. On the other hand, the private firm/subject will pay based on its management profits.

*Advantages*: The main advantage of such a model is efficiency, and there are no procedures on the bargain of taxes and expenses for the public subjects.
*Disadvantages*: Uncertainty for a long term period; the private firm should generate profits. Moreover it implies that the commercial development of the PAs should be the main concern of the managers, not respecting the objective of environment protection. Environmental/ecological factors might be sacrificed to tourism development.

Based on the analyses of PAs administration models in Europe, the result shows that in general these are managed by public entities, with a certain level of budgetary independence from the Ministry of Environment. There are also cases of private public partnerships, but are mainly for management of certain services of economic importance, such as touristic and recreational activities, etc.

It’s worth mentioning that in case the fully private management scheme will be applied for the PAs in our country, the law on ”Protected Areas” should be amended accordingly.

A special model is also the case of Conservatoire du Littoral (CL) in France.

CL is a state public institution with national character under the jurisdiction of the Ministry responsible for environment protection, whose main work scope is good environmental administration of the protected area. This institution is established based on law in 1975 and has set up an inventory of immovable property (reference is always made to assets at the seaside), which has been benefited through free of charge transfer of state properties, donations, expropriations or through purchases in case of private properties.

After these properties’ transfer, CL through contracts gives these assets to be used to state entities (e.g. local government organs), or to private entities (e.g. different associations). It’s worth emphasizing that these use’ contracts, have stringent environmental related provisions to be respected by the property using entities.

In principle, no constructions are allowed in these property premises, entry made through strict rules, environment harming activities are prohibited and many other restrictions are in place. So, we can summarize that the restrictions foreseen for Protected Areas are applied (case by case depending on area categorization). The main goal is to maintain the most natural state of the environment CL has in its inventory.

The decision making organ of this institution is the Administrative Council, which is composed of an equal number of representatives from central and local government as well as prominent science figures and environment personalities.

Actually this institution owns a surface of 152.000 ha (about 12 % of French coast), has about 100 staff and annual budget of 30 million euro (of which 25 million are used for getting new surfaces and good administration of the existing surfaces).

# Structures on protection and administration of marine waters and harbors

Unlike the structures which administer the PAs, MPA and CPAs have other characteristics that whole being related to sea have other structures which have competences in this field.

These structures are set up to protect and administer the Albanian marine waters as well as ports.

Due to the fact that one of the main pollution causes of the MPAs and CPAs are the ships, in cases of their normal activity or in cases of marine disasters (especially transport ships catastrophes, e.g.oil tankers), legislation on sea protection and ship control should be given a special importance.

Albania has a satisfactory legislation in this field, which besides what is presented at the beginning of this material, also foresees:

* Law no. 9130 dated 08.09.2003 “On Port Authority”
* Decision of Council of Ministers No. 569, Dated 10.09.2004 “For the Approval of the Port Authority Statute and its Reorganization”.
* Law no. 9281, dated 23.09.2004 “On Safety in Ships and Ports”.
* Law no. 8766, dated 05.04.2001 “For the Fire Protection and Rescue”.
* Law no. 8756, dated 26.03.2001 “For Civil Emergency”.
* Law no. 10 109, dated 02.04.2009 “For maritime administration in the Republic of Albania”.
* Decision of Council of Ministers no. 892, dated 21.12.2011 “On the approval of Regulations “On criteria for ships which operated on ports of the Republic of Albania”.
* Internal Regulation of Port Authority “For the Organization and Functionality of Port of Durres Authority”, approved by Decision of Council of Ministers No 86, Dated 25.12.2006.

Likewise, our country has ratified the main conventions which regulate this field:

* Law no. 9852, date 26.12.2007 “On accession of Republic of Albania in Paris Memorandum of Understanding “Port State Control”
* Law no. 9594, dated 27.07.2006 “On the accession in the International Convention “On the prevention of pollution from ships”, 1973 amended with protocol of year 1978 (MARPOL 73/78)”;
* Law no. 8690, dated 16.12.2000, “On the accession of the Republic of Albania in the Convention “For the protection of the Mediterranean Sea against pollution, (Barcelona Convention)
* Law no. 9495, dated 20.03.2006, “On the accession of the Republic of Albania in the International Safety Convention”, London -UK, 28 April 1989.
* United Nations Convention on the Law of Sea Law. No 9055, dated 24.4.2003 “On the accession of the Republic of Albania to the "Convention on the Law of Sea".

In our context, (of protection and better administration of MPA and CPA) we note there is no legal forecast for a coordination of the marine structures, with the environmental structures which administer the PA.

In the framework of SELEA[[28]](#footnote-28) project, it is prepared an Action plan for the Implementation of Directive 2000/59/EC “On the receiving portal installations of wastes generated by the ship and load excess” changed by Directive 2002/84/EC, Regulation (EC) 2007/71/EC and Regulation (EC) 1137/2008, which is delivered to the Ministry of Environment, in which are described in details the structures which will administer the harbors, as well as the necessary legislative changes [[29]](#footnote-29).

Given the world experiences, where work groups are ready to act in case of marine disasters, as well as special guide and manuals on how to act in such cases, we are of the opinion that Albanian legislation needs to be completed with the relevant acts.

Likewise given that such issues are resolved with legal acts and not sublegal ones, this constitutes one more reason for drafting a new law and not amending the existing legislation.

# Legal mechanism for using revenues generated by the MPA and CPA

Actually the protected areas (which include MPA and CPA) have no financial independence as far as their generated revenues. The protected areas (PA) are state funded and all revenues they generate are deposited to the state budget. Different PA administrations have proposed the idea of using the self generated revenues.

These revenues might be generated as in the following:

1. From different activities allowed by the respective legislation to be carried in the PA (commercial, cultural or sport related).
2. From tickets (bought in defined parts of the PA, whose visit requires ticket purchase).
3. Rent, timetable on the temporary use of special surfaces of PAs.
4. Producing of clips, video clips or photo albums for family events in the PA territory.
5. Sale of publications, or other PA products.

Not wishing to elaborate more on the PA generated revenues as this issue belongs to economists; we will be focused on the legal aspect of revenues’ use

Actually, the only national park (National park included in the subcategory of protected Areas), which is entitled by law to administer the revenues it generates, is Butrinti National Park. So the decision of the Council of Ministers no. 928, dated. 28.12.2011 “On the use of Butrinti national park revenues” (afterwards based on the Joint Instruction of three ministries of Culture, Youth and Sports, Finance and Environment) completed the legal base for the use of revenues generated by the park itself.

It’s important to emphasize that the legal reference which has authorized this way of revenues administration does not relate to environment legislation, but to cultural heritage legislation. Consequently in our case (MPA and CPA), the same legal reference cannot be applied.

With the aim of self administration of revenues by MPA and CPA, we recommend the amendment of law no. 8906, dated 6.6.2002 “On protected areas” – amended. Only after this law amendment, the respective DCM for each zone can be issued.

We hereby clarify that the generated incomes can be divided in different ratios, between MPA budget and state budget. So it does not mean that upon the amendment of the Law on Protected Areas 100 % of the budget will be transferred to the MPA administration, This will be decided case by case in the relevant decisions.

# Approximation process of PA legislation

One of the conditions to be met by our country in the framework of the EU membership is the legislation approximation. Referring to the environment legal framework, the Ministry of Environment, besides its work in the context of integration process and legislation approximation completed by other ministries, has been fortunate to have had the EU financial support these 10 years, specifically for the environment legislation approximation. More specifically, two 4years long projects have been completed and another third project is almost finished with main object on the Albanian environment legislation approximation.[[30]](#footnote-30)

In this context we may say that the legislation which regulated the activity of MPA is in harmony with EU relevant legislation. Anyway this does not mean that the approximation level is 100 %. Above all we can benefit from the up to date best European experiences.

In the framework of a soon EU membership of our country, it should be highlighted that EU legislation would be obligatory for Albania.

In this context, it’s worth mentioning Directive no. 2008/56/EC of the European Parliament and Council of Europe “On the marine strategic framework”, which foresees among others even the preparation of marine national strategies (point 11 of the Directive: “...*each member country should prepare a marine strategy for its marine waters which while being specific for its waters reflects the general perspective of the region or sub region in question*”).

Related to this point’ enforcement, we notice that the seas’ strategy is indirectly mentioned in the National Environment Strategy or in the Strategy”On biodiversity”, but recommend the development of a separate strategy for seas and marine waters.

In the framework of legislation approximation, in the process of developing the strategy of seas and marine waters, we recommend to consider the Decision of the Council of Europe dated. 01.09.2010 “On *the criteria and methodological standards to be followed for better environmental storage of marine waters.*

In the framework of the intergovernmental cooperation, we can mention the governmental Commission on water issues with neighboring countries. This commission has been established pursuant to the law already abolished “On water resources” of year 1996.[[31]](#footnote-31)

Even the new law “On the integrated management of water resources” 111/2012, article 22, foresees setting up of **the special commissions for the transborder waters administration**.**[[32]](#footnote-32)**

Unlike the previous legislation which foresaw only one commission, the first paragraph of article 22 of the above mentioned law foresees the establishment of more than one commission. Likewise the commission scope of work as envisaged by the new law is much wider (the previous law charged the Commission only with problems solution, while this law charges this commission with: “ *the administration of transborder waters*, *management of neighboring countries relations about these waters*,...”.

Currently the legal framework for the establishment of these Commissions is not completed, but based on the above mentioned Article, these commissions might also be authorized to coordinate the strategies, or regional plans of marine and marine waters management with other countries.

# A new law or amendment of the existing legislation?

One of the key questions that arises to the policy makers and lawyers at the moment of regulating a special branch (in our case the Protection of Marine and Coastal Areas), is: *New law, or amendment of the existing legislation*?

When describing at the beginning of this report the legislation applied in the PA and CPA, it resulted that there are about 25 different acts (laws and DCMs), which foresee the provisions to be enforced in the PA and CPA ( not including here the international conventions signed by our country and which are applicable in the MPA and CPA ).

The competences of different institutions operating in the MPA and CPA are distributed in different normative acts, which bring about an overlap of responsibilities, or in some cases even parallel responsibilities.

The previous analysis made by other institutions about the MPA and CPA have shown problems related to the content of laws (lack of MPA definition, See the report on PA lack assessment, Marine Biodiversity and legislation on marine protected areas [[33]](#footnote-33), or other issues raised in this analysis).

*So under actual conditions for a better administration/management of the marine protected areas, the preparation of a new law would be necessary* (which afterwards would be completed with relevant sub legal acts which assist in the good administration of the MPA and CPA).

The development of a separate law on MPA and CPA would be the best case not only for setting up the new structures (which can be completed only based on law), but also for good coordinating and clarifying the competencies of institutions which actually operate within the MPA and CPA.

We are of the opinion that our proposal for the preparation of a new law is in harmony with the policies of the actual government,[[34]](#footnote-34) which is committed to establish new rules on coast protection.

# Sanctions stipulated by the environment legislation and which can be applied in the MPA and CPA

One of the mechanisms each law has for its enforcement, are sanctions in case of violations of the law[ stipulations.

The frame law which regulates the PA administration (law no. 8906 dated 06.06.2002 amended), different from all environment legislation (and not only the environment one), asks the Council of Ministers to define the sanctions, as well as entities to find out violations.[[35]](#footnote-35)

Since 11 years before when this law was approved, the Council of Ministers has approved no sanctions pursuant to article 32/2 of law on PA. In spite of what is stated above, the laws regulating specific elements of environment, foresees different sanctions.

The Albanian Penal Code at Chapter IV on Criminal Acts against the environment provides for the following offences:

*Article 201 - Polluting the air: Polluting the air through the emission of smokes, gasses and other toxic radioactive substances, when it increases the normal limit allowed, and when the act does not constitute administrative contravention, constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment.*

*The same act, when it has caused serious consequences to the life and health of people, is sentenced up to ten years of imprisonment.*

*Article 202 - Transporting toxic waste: Transporting toxic and radioactive waste transit into the Albanian territory or their depositing therein is sentenced from one to five years of imprisonment. The same act, when it has caused serious consequences to the life and health of people, is sentenced from five to fifteen years of imprisonment.*

*Article 203 - Polluting the water: Polluting the waters of the seas, rivers, lakes or the springs of water supply system with waste either toxic or radioactive or other substances, which break the ecological balance, is sentenced up to five years of imprisonment. The same act, when has caused serious consequences to the life and health of people, is sentenced from five to fifteen years of imprisonment.*

*Article 204 - Prohibited fishing: Fishing undertaken at a prohibited time, place and methods constitutes criminal contravention and is sentenced to a fine or to up three months of imprisonment. Fishing undertaken through means of public danger like explosives, poisonous substances, etc, constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment.*

*Article 205 - Unlawfully cutting forests: Cutting or damaging forests without authorization or when it is undertaken at a prohibited time and places, when the act does not constitute administrative contravention, constitutes criminal contravention and is sentenced to a fine or up to one year of imprisonment.*

*Article 206 - Cutting decoration and fruit trees: Cutting decoration trees and damaging gardens and parks in the cities constitutes criminal contravention and is sentenced to a fine. Cutting trees in fruit or olive plantations and vineyards, after [the application] for cutting permit has been previously refused by the competent authority, constitutes criminal contravention and is sentenced up to three months of imprisonment.*

*Article 207 - Breach of quarantine for plants and animals: Breach of rules of quarantine for plants or animals, when it has led to serious consequences which are either material or which bring serious danger to the life and health of people, constitutes criminal contravention and is sentenced to a fine.*

Moreover at Section IX provides for specific criminal offences related to the violation of land which are relevant to protected areas as well, and including:

*Article 199 Misuse of land: Misuse of land in violation of its designated purpose constitutes criminal contravention and is sentenced to a fine or to up six months of imprisonment.*

*Article 200 Unlawfully taking land: Unlawfully taking land constitutes criminal contravention and is sentenced to a fine or up to two years of imprisonment.*

From the aforementioned criminal acts, most ascertained ones in the protected areas are: *Polluting the water, Illegal construction* and *Prohibited fishing*.

Albania introduced criminal liability for legal entities through the adoption of the Law on the Criminal Liability of Legal Entities (9754/2007). Under the law, legal entities can be held criminally responsible for the conduct of individuals who act on their behalf and to their benefit.

It is worth to mention that according to the articles 281 and 283 of the Albanian Code of Criminal Procedure, each citizen or public official has the legal obligation to a criminal indictment when he ascertains one of the elements of the criminal acts defined in the Albanian Criminal Code. [[36]](#footnote-36)

In addition, with regard to the criminal acts in the environmental field, criminal prosecution shall be exercised *ex officio*. So, if there is no Indictment from the citizens or public officials, is the prosecutor who by own initiative opens the criminal case.

In principal, the law drafting in Albania is based on the principle that criminal sanctions are defined mainly in the Criminal code, while the other specific laws define the administrative sanctions.

Some basic laws relevant to the protected areas, which define the administrative sanctions, are the following:

**Law no. 10431, dated 09.06.2011 “On Environmental Protection”**

*Article 69*: lists 12 administrative contraventions, specifies the penalties for each contravention, and allows sequestration of means and substances, and the temporary or permanent closure of the activity.

**Law no. 9103, dated 10.07.2003 “On protection of transbondary lakes”**

*Article 22*: lists 9 administrative contraventions.

*Article* 23: specifies the penalties for each administrative contravention, including temporary or permanent closure of the activities, depending on the degree of the caused pollution.

**Law no. 9115, dated 24.07.2003 “On Environmental Treatment of Polluted Waters”**

*Article 22*: lists 6 activities which are prohibited in the Republic of Albania.

*Article 23*: lists 10 administrative contraventions.

*Article 24*: specifies the penalties for each contravention, allows the temporary or permanent closure of the activity depending on the degree of pollution caused.

**Law no. 8897, dated 16.05.2002 “On air protection”**

*Article 19*: lists 5 administrative contraventions, with fines and rights of confiscation or suspension for each of them.

**Law no. 10463, dated 22.09.2011 “On Integrated Waste Management"**

*Article 62*: lists 62 administrative contraventions.

It should be emphasized that the environment legislation applied in the PA9 consequently in the MPA and CPA) is incomplete.

Regarding the bodies that enforce the above mentioned laws sanctions there are several bodies as stipulated by law, so one suggestion (not only for MPA and CPA, but for all protected areas in Albania), might be that sanctions imposition in protected areas to be the responsibility of the administrations managing these protected areas.

Equally problematic is also the status of sanctions collection conform the legislation above cited, even in a few cases when fines are charged, these fees are not collected.

So taking into account the up to date situation, no application of the principle “polluter pays” as well as no financial compensation system for the damages caused to the PA can be in place.

# Conclusions:

Preparation of a new separate law for MPA and CPA will clarify and solve the following problems:

1. The managing structure of a MPA or CPA (state, private or joint) .
2. Coordination of competences of all state institutions operating in a MPA or CPA (including central and local government).
3. Involvement of public, environment NGOs, as well as of private physical individuals in the management of a MPA or CPA.
4. Involvement of all interested actors in the development of Strategies and Plans for the protection of MPA and CPA.
5. Defining of sanctions for violations occurring in the MPA or CPA, the body that decides about them and setting up of an efficient mechanism on sanctions collecting mode.
6. Forecast of measures in natural emergencies situation in a MPA or CPA , or coordination in case of environment disasters (e.g. accident of an oil tanker near a MPA or CPA)

Establishment of a centralized steering network for following up the policies implementation and legislation enforcement in MPA or CPA.

Forecast of necessary funds or financial mechanisms for the protection and good administration of the MPA or CPA.

1. *Official Journal no* *29/2002, page 902* [↑](#footnote-ref-1)
2. *Official Journal no* *18/2008, page 640* [↑](#footnote-ref-2)
3. *Official Journal no. 89/2011, page 3680* [↑](#footnote-ref-3)
4. *Official Journal no.101/2011, page 4041* [↑](#footnote-ref-4)
5. *Official Journal no.105/2011, page 4151* [↑](#footnote-ref-5)
6. *Official Journal no. 90/2011, pages 3715* [↑](#footnote-ref-6)
7. *Official Journal 29/2002, page 895* [↑](#footnote-ref-7)
8. *Official Journal 55/2004, page 3567* [↑](#footnote-ref-8)
9. *Official Journal 15/2002, page 435* [↑](#footnote-ref-9)
10. *Official Journal no. 157/2012, page 6825* [↑](#footnote-ref-10)
11. Official Journal *no.73/2012, page 3387* [↑](#footnote-ref-11)
12. *Official Journal no.84/2006, page 2847* [↑](#footnote-ref-12)
13. *Official Journal 56/2009, page 2591* [↑](#footnote-ref-13)
14. *Official Journal 44/2005, page 1573* [↑](#footnote-ref-14)
15. *Official Journal 148/2011, page 6825* [↑](#footnote-ref-15)
16. *Official Journal 26/1999, page 825* [↑](#footnote-ref-16)
17. According to article 41 of Law “ on Environment protection”, *Monitoring of the environment situation is observation and registration, conform a defined plan and rule, of environment quality and changes of its components status.*  [↑](#footnote-ref-17)
18. Official Journal no. 52/2013, pages 22/87 [↑](#footnote-ref-18)
19. Actually these are only law regulations, but this structure is not yet set up ( no staff is assigned yet). [↑](#footnote-ref-19)
20. The special law leaves no valid power to the general law [↑](#footnote-ref-20)
21. Official journal no. 89, page 3680, year 2011 [↑](#footnote-ref-21)
22. In our opinion this DCM restricts thwe protected areas where management comittees can be set up ( only for categories II, IV and V of PAs), while article 17/2 of the law “On Protected Areas”, foresees setting up of management committees for all PA categories . [↑](#footnote-ref-22)
23. DCM no. 86, dated 11.05.2005, chapter IV, point 1 “*The Management comittee is responsible for the* ***administration*** *and protection of the area“,*  [↑](#footnote-ref-23)
24. Article 23/1 of law „ On PAs“ The state authority charged with the duty of a PA administration and the administration of the PA*, are determined in the decesion of the Council of Ministers on the proclamation of the protected area*“ [↑](#footnote-ref-24)
25. DCM no. 86, dated 11.05.2005, chapter IV, point 1b “enforcement of legal and sublegal provisions by the protected areas adminstrations and the subjects carrying their activities in the area*“*

point 2d “*to analize performing of duties and functions in the PAs administration”* [↑](#footnote-ref-25)
26. DCM no. 86, dated 11.05.2005, chapter IV, point 1c “protection of area quality and promotion of ecological development of the sorroundings “ [↑](#footnote-ref-26)
27. DCM no. 86, dated 11.05.2005, chapter II, point 1:

*g) the representative of lansowners, when within the PA territory there is private land;*

*gj) representative of the non profit organizations, on national ofr local level, active in the protected area problems;*

*h) other members*. [↑](#footnote-ref-27)
28. This project has the purpose to give the technical assistance for strengthening the capacity of the Ministry of Environment, Forests and Water Administration in Albania for law drafting and enforcement of national environmental legislation. [↑](#footnote-ref-28)
29. http://www.selea.al/content.aspx?id=6&idd=11 [↑](#footnote-ref-29)
30. First project “Approximation of the albanian environment legilstaion to the UE legislation”, funded by the Eurpean Commission (Europe Aid/118904/C/SV/AL), in course of November, 2004 – November, 2006. The second and third projects: SELEA Project of European Commission (Europe Aid/130987/C/SER/AL), have been implemented in the period 2007 – 2013. [↑](#footnote-ref-30)
31. The commission is established based on DCM no. 337, dated. 15.07.1999 and amended with the DCM 124, dated. 02.03.2006 [↑](#footnote-ref-31)
32. *Article 22, Establishment of special commissions for transboundary waters administration*

1. For the protection and administration of transboundary waters special commissions are established, whose composition, functions, responsibilities and duties are regulated by special legal and sublegal acts..

2. Upon the proposal of the National Water Council, by the minister, the Council of Ministers Me propozimin e Këshillit Kombëtar të Ujit, nëpërmjet ministrit, Këshilli i Ministrave appoints a special commission charged with the administration of transboundary waters, administration of relations with neighbouring countries on such waters, basen on the albanian legislation and respective internacional agreements. . [↑](#footnote-ref-32)
33. UNDP publication, Tirane November 2010, page. 128 [↑](#footnote-ref-33)
34. Actually after 8 years of a political coalition governance, another political party is in power. [↑](#footnote-ref-34)
35. Neni 32/2: *Llojet e shkeljeve dhe të masave, si dhe subjektet që konstatojnë shkeljet dhe japin masat përkatëse përcaktohen me vendim të Këshillit të Ministrave.* [↑](#footnote-ref-35)
36. Article 281: Criminal report by public officials

1. Public officials, who during the course of their work or because of their functions or service, receive notice of a criminal offence that is prosecuted *ex-officio*, are bound to lodge a written criminal report even if the person to whom the criminal offence is attributed is not identified.

2. The criminal report is presented to a prosecutor or judicial police officer.

3. Where during civil or administrative proceedings, a fact which constitutes a criminal offence prosecuted *ex-officio* is uncovered, the relevant authority lodges a criminal report to the prosecution office.

4. The criminal report contains the essential elements of the fact (act), the sources of evidence, personal details, residence and anything else which serves to identify the person whom the fact (act) is attributed to, of the injured person and those who are able to clarify the circumstances of the fact (act).

Article 283: Criminal report from citizens

1. Any person that has received notice of a criminal offence prosecuted *ex-officio* must lodge a criminal report of it. In cases specified by law, lodging of criminal report is compulsory.

2. The criminal report is lodged orally or in writing to a prosecutor or to a judicial police officer, personally or through a representative.

3. Anonymous criminal reports may not be used except in cases provided for by article 195. [↑](#footnote-ref-36)