

A Comparative Analysis of Environmental Activism in Albania, Romania and Serbia: Lessons in Civil Society Enforcement of Administrative Law¹

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Abstract

Private enforcement mechanisms are gaining importance in contemporary administrative law, not least due to the insufficient capacity of public authorities to ensure compliance with a burgeoning body of legislation in an array of administrative domains. This is particularly prominent in the environmental realm, where civil society is recognized as the watchdog of environmental protection, holding both public authorities and private investors accountable. Since access to justice in environmental matters is a prerequisite of sustainable development, environmental NGOs, grassroots movements and similar stakeholders engaged in environmental activism are an indispensable piece of the compliance puzzle. This paper explores the described phenomenon through the comparative analysis of three cases of environmental activism in the Balkans – the Roşia Montană movement against the construction of an open-cast gold mine in Romania, the Vjosa River environmental movement in Albania opposing the construction of hydropower plants and the protests against the construction of a lithium mine in the Jadar Valley in Serbia. Building on earlier research on the bottom-up environmental access to justice in the Balkans and relying on theoretical approaches from social movements and legal mobilization literature from the perspective of administrative law, the author investigates factors that prompt and/or hinder civil society activism in the environmental context and what they teach us about the enforcement of administrative law in general.

Keywords: *civil society, third-party enforcement, environmental law, administrative law, environmental activism, Balkans.*

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1. Introduction

The complexity of modern-day legal systems that *inter alia* entails blurred lines between the public and the private spheres (and law), the national and the transnational problems and (legal) solutions, as well as a proliferation of legislation in an ever-growing array of administrative domains – revealed the weakness of traditional enforcement mechanisms that rely on the states' administrative apparatuses. As a response to the lack of capacity, resources, expertise and even will on the part of the public authorities, civil society has emerged as a complementary enforcement mechanism.

This diverse and somewhat elusive category of actors that lies at the intersection of “the State and the market”³ has been recognized by international institutions such as the European Bank for Reconstruction and Development (EBRD), as “an entry point for better and more inclusive investment and more effective political transition.”⁴ In a similar vein, the European Commission emphasized the “important role of civil society as a “compliance watchdog” supporting the European Green Deal”.⁵

This is understandable given the polycentricity of the environmental domain, where private economic interests interact and collide with environmental ones, as well as with broader societal interests related to the protection of health and livelihood of people etc. Seeing how in the case of disputes, “the decision-maker is also a player in the polycentric dispute at hand, in so far as it is representing one among the possibly numerous relevant general interests”⁶ – civil society emerges as the guardian of the latter, especially when public authorities seem to ‘side’ with private investors through favorable legislation and policy instruments. This is well-illustrated by the surge of climate change litigation cases before national and supranational judicial bodies which are instigated by non-governmental organizations (NGOs) and other more or less organized civil society actors,⁷ as well as by the proliferation of grassroots environmental activism across the globe and especially in developing countries of the Global South and the so-called Global East – of which the Balkan countries are representative.⁸

³ Roberto Caranta, “Civil Society Organizations and Administrative Law”, *Hamline Law Review* 36, issue 1, article 4 (2013): 49.

⁴ European Bank for Reconstruction and Development, *The EBRD's approach to civil society engagement*, 2024-29, July 2024, available at: <https://www.ebrd.com/who-we-are/civil-society-overview.html>, accessed: 1 November 2024.

⁵ Suzanne Kingston *et al.*, “Magnetic law: Designing environmental enforcement laws to encourage us to go further”, *Regulation & Governance* 15, no. 1 (2021): 143.

⁶ Roberto Caranta, “Civil Society Organizations and Administrative Law”, 55–56.

⁷ Joana Setzer, Catherine Higham, *Global trends in climate change litigation: 2024 snapshot*, Policy report (Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science, 2024). For a detailed study on extant development of climate change litigation, see: Ivano Alogna, Christine Bakker, Jean-Pierre Gauci, *Climate Change Litigation: Global Perspectives* (Brill Nijhoff, 2021).

⁸ More on the classification of the Balkan countries as belonging to the capitalist periphery or the Global East, see: Jelisaveta Petrović, “*Ekologija*” na periferiji Evrope: stvaranje ekološkog pokreta u Srbiji [“Ecology” on the Periphery of Europe: The Creation of an Environmental Movement in Serbia] (Službeni

The reasons for that could be sought in the unfortunate fact that, owing to a combination of socio-political factors with deep historical roots,⁹ it is a region that has been facing serious environmental hazards, which have intensified in the last decade.

Severe air pollution in Serbia and North Macedonia, poor quality of drinking water that contains methane, arsenic and other dangerous substances in parts of Vojvodina¹⁰ or the devastating floods that hit Serbia, Croatia and Bosnia and Herzegovina in 2014 are just a few examples. A surge of large-scale infrastructure projects, concluded mostly with foreign investors (from China, the Arabian Peninsula, various European countries etc) that rely heavily on the exploitation of natural resources and have tipped the scale in favor of (personal) profit over sustainability and public interests are significant factors that paved the way for such somber scenarios. Allegations of corruption and instances in which legislation providing legal bases for such projects was ‘custom-made’ to suit investors’ needs and passed without prior (or merely illusory) public consultations, poorly (if at all) conducted environmental impact assessments and complete disregard for requests to provide information regarding any vital aspect of the project – contrary to European standards and the obligations stemming from ratified international instruments such as the Aarhus Convention¹¹ – revealed the weakness of representative democracy in the Balkan countries, further eroding trust in governments and policy-makers, as well as the stability and reliability of public institutions.

At the same time, this also prompted the awakening of mechanisms of direct democracy, among which environmental activism and social movements play an important part. Prominent examples include the Roșia Montană movement in Romania that opposed the construction and exploitation of an open-cast gold mine, environmental movement in Albania concerning the construction of hydropower plants on the Vjosa

glasnik, 2020), 24–26; Bojana Todorović, “Environmental Access to Justice in the Balkans Through the Lens of EU Enlargement: Between *top-down* and *bottom-up* Europeanisation” in *Europeanisation of Access to Justice in Environmental Matters: The Aarhus Convention in the Balkans*, eds. Bojana Todorović, Roberto Caranta (forthcoming with Hart Publishing).

⁹ Analyzing the Serbian context, Vukelić and Petrović consider the “combination of the socialist legacy (large industrial sites placed very near the residential areas, outdated technology and lack of care for the environment) and the negative effects of transition, economic recession and war” to be the main ‘culprits’ of such an environmental *status quo*. Jelisaveta Vukelić and Irena Petrović, “Social Capital as a Basis for Collective Action – the Case of Environmental Activism in Two Towns in Serbia”, in *Social and cultural capital in Western Balkan societies*, eds. Predrag Cvetičanin, Ana Birešev, (Center for Empirical Cultural Studies of South-East Europe and Institute for Philosophy and Social Theory of the University of Belgrade, 2012) 75, 81. For a more elaborate analysis of the historical, economic and political factors that have shaped the environmental realities in selected Balkan countries, see: Bojana Todorović, Roberto Caranta, “Introduction” in *Europeanisation of Access to Justice in Environmental Matters: The Aarhus Convention in the Balkans*, eds. Bojana Todorović, Roberto Caranta (forthcoming with Hart Publishing).

¹⁰ Serbian northern autonomous province. Stefan Mirković, “Vojvodina: Hundreds of Oil Wells and the Worst Drinking Water” (*CINS*, March 23, 2021), <https://www.cins.rs/en/vojvodina-hundreds-of-oil-wells-and-the-worst-drinking-water/>, accessed: November 12, 2024.

¹¹ The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June 1998. More about the background to and the text of the Aarhus Convention available at: <https://unece.org/environment-policy/public-participation/aarhus-convention/introduction>.

river and the fight against the exploitation of lithium in western Serbia envisaged by the “Jadar” project – which are analyzed in this paper.

Building on earlier research on the bottom-up Europeanization of environmental access to justice in the Balkans,¹² the author relies on desk research that combines theoretical models proposed by social movements and legal mobilization literature with that on the enforcement of environmental law in order to identify factors that prompt and/or hinder civil society law enforcement in the environmental domain, especially in unfavorable legal and/or political settings. This is complemented by a law in context approach to the comparative analysis of the three case-studies from Romania, Albania and Serbia – which forms the substantial cornerstone of this paper. The structure of the paper is as follows. First, a theoretical framework on the role of civil society as third-party enforcement mechanisms, especially in environmental legal waters is set up. Second, the main developments in the selected instances of environmental activism are presented and subsequently compared through the prism of factors such as the *political and legal environments* in which they took place, the *structure of civil society actors* involved, the *strategies* relied upon in the enforcement of law and the *effects* of their efforts. The paper concludes with ‘lessons learned’ on civil society enforcement of environmental law and thus paves the way for further research in this field.

2. Enforcement of administrative law by civil society: a conceptual framework

The “evolution” of administrative law implied in the Introduction to this paper, is visible in its “bases”, as well as “in the ways at which decisions [be they individual or general, BT] are arrived” and put into effect.¹³ This brought with it a changed position of citizens and their organizations *vis-à-vis* the public administration and “blurred the boundary between the citizen and the State, with civil society often assuming a pivotal role between the two.”¹⁴ The State and its public administration are no longer seen as the sole guardians of public interests¹⁵ and civil society is increasingly taking upon the role of “monitoring the executive” and “upholding the rule of law from below”.¹⁶

Before further delving into the role of civil society enforcement of administrative law – especially in the domain of environmental protection – it is necessary to take a moment to specify what is understood by *civil society* and *enforcement* in the context of this paper. While it is not the author’s intention to provide a definition of either term, their malleability and lack of academic consensus on how to conceptualize them merits further clarification.

¹² Bojana Todorović, “Environmental Access to Justice in the Balkans Through the Lens of EU Enlargement: Between *top-down* and *bottom-up* Europeanisation”.

¹³ Roberto Caranta, “Civil Society Organizations and Administrative Law”, 46.

¹⁴ Roberto Caranta, “Civil Society Organizations and Administrative Law”, 46.

¹⁵ Roberto Caranta, “Civil Society Organizations and Administrative Law”, 47.

¹⁶ Aikaterini Tsampi, “The Role of Civil Society in Monitoring the Executive in the Case-Law of the European Court of Human Rights: Recasting the Rule of Law”, *Utrecht Law Review* 17, Special Issue: Rule of Law from Below, no. 2, (2021): 102–115.

Civil society is a fluid concept that takes many different shapes and forms, depending on the author's background, preferences and perspective.¹⁷ In this paper, civil society is understood broadly, to include different forms of citizens' associations that have a more (such as NGOs) or less formalized structure (such as grassroots movements, informal networks, campaigns, citizen initiatives, organized community action etc.)¹⁸ and which pursue "[...] general interests as opposed to commercial or profit oriented interests".¹⁹

Focus on organized citizen activity instead of individual action is rooted in the understanding that "organized political actors"²⁰ are the fuel of modern democracies and the fact that civil society organizations (CSOs) are more equipped with "the time and resources to oversee and investigate public and private activities and to blow the whistle on wrongdoings [...]".²¹

The latter brings us to the other, similarly elusive concept, that of enforcement. As Hofmann *et al.* note in the context of EU law, "enforcement is a word which is widely used [...] but a term which is rarely defined".²² In a comprehensive and interdisciplinary study of enforcement in EU law that cuts across different sectors, actors and methods, Scholten and Stähler explain enforcement from the legal standpoint "as part of a policy cycle – an essential part to ensure that regulation (making and adoption of laws, including transposition and application for EU laws) attains its purposes", with the aim of "enhancing compliance with laws".²³ In a similar vein, Kingston *et al.* describe enforcement "as encompassing not only more traditional mechanisms such as litigation, but all efforts aimed at improving compliance with environmental rules, including more informal mechanisms of encouraging compliance, such as monitoring, education, and the provision of information to regulatees".²⁴ In this paper, enforcement is understood in a similarly broad manner, as the process that follows "after law has taken effect and can be applied by relevant actors".²⁵ Furthermore, these 'relevant actors' include a wide variety of stakeholders, such as "public officials, public agencies or private organizations and individuals."²⁶ As

¹⁷ Gianluca Sgueo, *Beyond Networks - Interlocutory Coalitions, the European and Global Legal Orders* (Springer, 2016), 30–34; Roberto Caranta, "Civil Society Organizations and Administrative Law", 47–49.

¹⁸ In a similar vein: Bojana Todorović, "Environmental Access to Justice in the Balkans Through the Lens of EU Enlargement: Between *top-down* and *bottom-up* Europeanisation".

¹⁹ Roberto Caranta, "Civil Society Organizations and Administrative Law", 48.

²⁰ Miodrag Jovanović, "U odbranu bavljenja politikom, Novo okupljanje" [In the defense of engaging in politics, New gathering], *Radar*, November 7, 2024, 22–24, 24.

²¹ Roberto Caranta, "Civil Society Organizations and Administrative Law", 50.

²² Herwig C.H. Hofmann *et al.*, *Administrative Law and Policy of the European Union* (Oxford University Press, 2011), 690.

²³ Miroslava Scholten, Leander Stähler, "Introduction to Research Handbook on the Enforcement of EU Law", in *Research Handbook on the Enforcement of EU Law*, ed. Miroslava Scholten (Edward Elgar, 2023), 3–4.

²⁴ Suzanne Kingston *et al.*, "Empowering Through Law: Environmental NGOs as Regulatory Intermediaries in EU Nature Governance", *Transnational Environmental Law* 12, no. 3, (2023): 472.

²⁵ Miroslava Scholten, Leander Stähler, "Introduction to Research Handbook on the Enforcement of EU Law", 2.

²⁶ Miroslava Scholten, Leander Stähler, "Introduction to Research Handbook on the Enforcement of EU Law", 2.

recognized by the European Commission in its communication *Enforcing EU law for a Europe that delivers*, “effective application and enforcement on the ground require several other actors to play their part [...]”, since [f]or the system to function effectively, it relies both on the full commitment of national authorities responsible for the proper application and enforcement of the law, and the involvement of the public, civil society, business and others to identify potential breaches.²⁷

If enforcement is ‘in the hands’ of public authorities and is concerned with the protection of public interests, it falls under the ambit of *public law enforcement* that and can be further sub-divided into administrative and criminal law enforcement. On the other hand, when enforcement is ensured by individuals or their organizations primarily by acting as private parties before courts and other conflict resolution fora, it is classified as *private law enforcement*.²⁸ A good example of the latter is the public procurement remedies mechanism developed at the EU level, which relies heavily “on the initiative of competitors and the ability of national courts (or review bodies) to vindicate economic operators’ rights”.²⁹

This division is not so stark, however, and in particular fields “plaintiffs not only protect their own interests but also serve en passant the general interest in effective and efficient enforcement of the law”.³⁰ As Franck aptly notices, [w]here private individuals [and even more so, their associations, BT] are in a position to file suit against a public authority to force it to take enforcement measures, this can be conceived as a hybrid that involves both private initiative and public capacity to enforce the law.³¹

A good example thereof is environmental protection, that lies at the fuzzy intersection between public and private enforcement and the intertwining of public and private interests, when environmental NGOs and other members of the civil society set into motion national and transnational legal (and political) mechanisms in order to safeguard broader societal interests instead of (solely) their own.

Before taking a closer look at civil society enforcement of environmental law in sub-section 2.1, we will briefly reflect on the different strategies employed by civil society in the enforcement of law more broadly. Eilstrup-Sangiovanni and J.C. Sharman find that these “fall on a spectrum from indirect action, focused on monitoring, surveillance and investigation, to direct action, including civil litigation, criminal prosecution, and interdiction”.³² In a similar vein, Colli draws on social movements literature to differentiate between *inside strategies* that “directly contact policymaking

²⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Enforcing EU law for a Europe that delivers*, COM(2022) 518 final, 6–7.

²⁸ Miroslava Scholten, Leander Stähler, “Introduction to Research Handbook on the Enforcement of EU Law”, 5.

²⁹ Roberto Caranta, Vítězslava Fričová, “EU procurement and concessions law”, in *Research Handbook on the Enforcement of EU Law*, ed. Miroslava Scholten (Edward Elgar 2023): 415–430, 415.

³⁰ J-U Franck, “Private Enforcement versus Public Enforcement”, in *Law of Remedies: A European Perspective*, eds. Hofmann F., Kurz F., *Intersentia*, (2019): 108.

³¹ Franck J-U, “Private Enforcement versus Public Enforcement”, 108.

³² Mette Eilstrup-Sangiovanni, J.C. Sharman, “Enforcers beyond Borders: Transnational NGOs and the Enforcement of International Law”, *Perspectives on Politics* 19, no. 1 (2021): 134.

institutions (elected representatives or civil servants)”, and *outside strategies*, which rely on “using public opinion or going through the public to influence policymakers”, such as through “organising petitions, protests or getting members to write to or call their representatives.”³³

On a final note, theory of legal mobilization provides useful insights as to why certain groups ‘mobilize the law’ and their choice of legal and/or political strategies in order to do so. For instance, Vanhala and Kinghan offer a particularly broad definition of legal mobilization that goes beyond the enforcement of law through litigation and other similar legal procedures (including administrative procedures, arbitration etc.), to encompass “any type of process by which individual or collective actors invoke legal norms, discourse or symbols to influence policy or behaviour”.³⁴

2.1. Civil society enforcement of law in environmental matters

Environmental law is a complex and dynamic legal field that to a large extent overlaps with administrative law, not least “regarding permits, prohibitions and orders related to the obligation to undertake certain activities in order to prevent harmful effects on the environment”.³⁵ Even so, environmental (administrative) matters possess their own distinctive features, of which Krämer highlights two that are of interest for the present study. The first is that the “environment itself has no voice and cannot defend itself in court”³⁶ – which further deepens the already “polycentric and asymmetric nature of administrative disputes”.³⁷ Seeing how the State and its institutions more often than not are one of the “players” in such disputes and representative of interests that at times collide with environmental ones,³⁸ “it is important to allow civil society to represent the environment and have decisions by public authorities or private interests controlled by the courts”.³⁹ What is more, non-state actors, including (environmental) NGOs and other civil society actors are considered “as having a central role in achieving sustainable development”.⁴⁰

³³ Francesca Colli, “Beyond the inside-outside divide: fuzzy-set measurement of configurations of strategies in NGO campaigns”, *Interest Groups and Advocacy* 8, no. 4, (2019): 524.

³⁴ Lisa Vanhala, Jacqui Kinghan, “Literature review on the use and impact of litigation”, *Public Law Project*, April 10, 2018, <https://publiclawproject.org.uk/resources/literature-review-on-the-use-and-impact-of-litigation/>, 5.

³⁵ Stevan Lilić, Mirjana Drenovak-Ivanović, *Ekološko pravo* [Environmental Law] (Faculty of Law University of Belgrade, 2014), 31.

³⁶ Ludwig Krämer, “Article 47 of the Charter and Effective Judicial Protection in Environmental Matters: The Need to Grant Civil Society the Right to Defend the Environment”, in *Article 47 of the EU Charter and Effective Judicial Protection, Volume 1: The Court of Justice’s Perspective*, eds. Matteo Bonelli, Mariolina Eliantonio and Giulia Gentile (Hart Publishing 2022), 195.

³⁷ Roberto Caranta, “Civil Society Organizations and Administrative Law”, 55 – 56.

³⁸ Roberto Caranta, “Civil Society Organizations and Administrative Law”, 55 – 56.

³⁹ Ludwig Krämer, “Article 47 of the Charter and Effective Judicial Protection in Environmental Matters: The Need to Grant Civil Society the Right to Defend the Environment”, 195.

⁴⁰ Sandra Cassota, “The Development of Environmental Law within a Changing Environmental Governance Context: Towards a New Paradigm Shift in the Anthropocene Era”, *Yearbook of International Environmental Law* 30, no. 1 (2019), 58.

The second distinctive feature is the “existence of an international agreement on procedural environmental rights”.⁴¹ Here, Krämer is referring to the already mentioned Aarhus Convention, a multilateral agreement that brings together environmental protection and human rights, by imposing an obligation to its Parties to guarantee the rights of access to environmental information, participation in decision-making concerning the environment, as well as access to justice in environmental matters to the public *vis-à-vis* public authorities.⁴² In that way, the Convention “goes to the heart of the relationship between people and governments”.⁴³

The Aarhus Convention is said to “democratize” the enforcement of environmental law, by providing individuals and their organizations and, in particular, environmental non-governmental organizations (ENGOS) with “privileged legal rights to participate in environmental governance and to bring environmental judicial proceedings, in recognition of their particular ‘importance’ in ensuring environmental protection”⁴⁴ thus effectively making them “key actors in the private enforcement of environmental law.”⁴⁵ This is done, on the one hand, by expanding the so-called national legal opportunity structures (LOS) for private enforcement of environmental law.⁴⁶ Namely, States which are Parties to the Aarhus Convention are required to embed procedural standards – regarding legal standing, transparency, costs of proceedings and the like – in their legal systems.⁴⁷

On the other hand, members of the civil society are provided with transnational venues for raising their grievances – such as the Aarhus Convention Compliance Committee mechanism,⁴⁸ or the recently introduced rapid response mechanism for the protection of environmental defenders.⁴⁹ The importance of this feature of the Aarhus

⁴¹ Ludwig Krämer, “Article 47 of the Charter and Effective Judicial Protection in Environmental Matters: The Need to Grant Civil Society the Right to Defend the Environment”, 195.

⁴² Jonas Ebbesson *et al.*, *The Aarhus Convention: An Implementation Guide*, 2nd edn (United Nations Publication, 2014).

⁴³ The United Nations Economic Commission for Europe (UNECE), Aarhus Convention, “Introduction”, <https://unece.org/environment-policy/public-participation/aarhus-convention/introduction>, accessed: November 12, 2024.

⁴⁴ Suzanne Kingston *et al.*, “Empowering Through Law: Environmental NGOs as Regulatory Intermediaries in EU Nature Governance”, 470.

⁴⁵ Thijs Etty *et al.*, “The Quest to Close the Accountability Gap in Environmental Law”, *Transnational Environmental Law* 12, no. 3 (2023): 462.

⁴⁶ As Vanhala explains, legal opportunity structures (LOS) are one of the building blocks of legal mobilization that factor in the decision of individuals or groups whether or not to mobilize the law. In essence, this concept rests on the understanding that “features of the legal and judicial systems will shape the likelihood and outcomes of legal mobilization”. Lisa Vanhala, “Environmental Legal Mobilization”, *Annual Review of Law and Social Science* 18, (2022): 105.

⁴⁷ Lisa Vanhala, “Environmental Legal Mobilization”, 106; Bojana Todorović, “Environmental Access to Justice in the Balkans Through the Lens of EU Enlargement: Between *top-down* and *bottom-up* Europeanisation”, section 2.2.

⁴⁸ UNECE, Environmental Policy, Public Participation, “Background”, <https://unece.org/env/pp/cc/background>, accessed November 10, 2024.

⁴⁹ UNECE, “Rapid response mechanism to protect environmental defenders established under the Aarhus Convention”, <https://unece.org/climate-change/press/rapid-response-mechanism-protect-environmental-defenders-established-under>, accessed November 10, 2024.

framework directly follows from the cross-border nature of environmental challenges and any efforts in mitigating them. Having access to available legal mechanisms before transnational fora, but also forging ties with other groups and movements at the regional and international levels, members of the civil society externalize their legal and/or political battles. In that way, they exert pressure on national policy-makers (but also private corporations) to abide by the (domestic and international) laws and standards – a phenomenon known in literature as the “boomerang effect”. As Sgueo explains, “via these connections to transnational networks, national NGOs gain access to international public opinion, donor organizations, supranational regulators, and Western governments, which can then be mobilized to put pressure on the norm-violating state.”⁵⁰ The goal of such strategies is threefold: the first is getting the issue on the international agenda and thus shaming the norm-violating state. The second is the attempt to legitimate the claims of domestic groups – which closely relates to the first. Finally, the third purpose of transnational networks is to challenge norm-violating states through a structure operating at the transnational level.⁵¹

Naturally, such transnational efforts could be particularly impactful in complex and sensitive political contexts, such as those of the post-socialist societies with traditionally weak ‘civic impact’⁵² and unfavorable political opportunity structures (POS). The latter include “both structural aspects that affect groups’ access to a system (e.g. resources and networks, elite allies and opportunities for political engagement) and the receptivity of the system to groups’ claims or demands”.⁵³ Szabo, Shriver and Longo explore the interplay of political and environmental threats as the drivers of bottom-up environmental activism and consider factors such as resources, the ability to forge alliances with elites (including the academic community), “receptiveness of formal political structures”, as well as “the repressive nature of the state” – as POS factors that drive the “success or failure” of environmental activism.⁵⁴

However and regardless of the comparative differences regarding POS, there is a global trend of a ‘shrinking civil space’, from “basic freedoms being under threat to a decrease in public funding and restrictions to advocacy”⁵⁵ – to which Western countries and their institutions are not immune either.⁵⁶ Thus, one of the many paradoxes of the

⁵⁰ Gianluca Sgueo, “Converging Methods of Governance at the Supranational Level – The Role of Civil Society”, *e-Pública* 3, no. 3, (2016): 126.

⁵¹ Gianluca Sgueo, “Converging Methods of Governance at the Supranational Level – The Role of Civil Society”, 126.

⁵² Christian Puecker, Tamara Steger, “Protecting the Last Wild River in Europe from Hydropower Development in Albania: An Environmental Movement Strategy in a Flawed Democracy”, *Case Studies in the Environment* 7, no. 1, (2023): 4.

⁵³ Francesca Colli, “Legal opportunity structures: social movements in the European courts”, in *Interdisciplinary Research Methods in EU Law*, eds. Rossana Deplano *et al.* (Edward Elgar, 2024): 101 – 102.

⁵⁴ Adriana Szabo, Thomas E. Shriver, Stefano Longo, “Environmental threats and activism against extractive industries: The case of gold mining in Rosia Montanã Romania”, *Journal of Rural Studies* 92, (2022): 27.

⁵⁵ Tina Divjak, Goran Forbici, *Study on the future evolution of civil society in the European Union*, European Economic and Social Committee, Brussels 2018, 2.

⁵⁶ Michael Frost, UN Special Rapporteur on Environmental Defenders, “State repression of environmental

modern world is the growing importance of the civil society sector in ensuring adequate and timely enforcement of law whilst having to overcome significant challenges on that path.

3. Selected case-studies from the Balkans

As pointed out in the Introduction to this paper, environmental activism in the Balkans is a good starting point for exploring the role of civil society in the enforcement of administrative law in environmental matters. Apart from the already outlined reasons, this is also due to the communist/socialist legacy of the countries in the region, which paved the way for traditionally weak civil society (at least in comparison to their Western counterparts), the predominantly vertical axis of governance,⁵⁷ widespread distrust in the State and public authorities, a weak institutional framework and fragility of democracy.⁵⁸ The relevance of the selected case-studies is also illustrated by the fact that enforcement of environmental norms and standards – most of which are derived from EU law⁵⁹ – is the Achilles' heel of both Central and Eastern European Member States, and candidate countries, such as Albania and Serbia.⁶⁰

3.1. The Roşia Montană movement

The movement against the planned construction and operation of an open-cast gold and silver mine in western Transylvania is considered the “most relevant post-communist environmental mobilization in Romania”.⁶¹ Its roots can be traced back to 1995, when the Canadian mining company *Gabriel Resources* and its UK subsidiary – *Gabriel Jersey* – first emerged with the intention of investing in a large-scale mining project.⁶² In 1997, the *Roşia Montană Gold Corporation* was established as a joint

protest and civil disobedience: a major threat to human rights and democracy”, [2024], available at: <https://unece.org/climate-change/press/un-special-rapporteur-environmental-defenders-under-aarhus-convention-releases>.

⁵⁷ Richard B. Stewart, “State Regulatory Capacity and Administrative Law and Governance Under Globalization” <https://www.iilj.org/working-papers/state-regulatory-capacity-and-administrative-law-and-governance-under-globalization/>, November 6, 2024.

⁵⁸ More on the evolution of civil society in the Balkans against the backdrop of their historical legacy in: Bojana Todorović, “Environmental Access to Justice in the Balkans Through the Lens of EU Enlargement: Between *top-down* and *bottom-up* Europeanisation”, section 3 and Bojana Todorović, Roberto Caranta, “Introduction”.

⁵⁹ Krämer estimates that “in more than half of the EU Member States (the 12 that joined the EU after 2004, as well as Greece, Spain, Portugal, Ireland, and probably Italy and Luxemburg), almost 100 percent of national environmental law is derived from EU legislation” and that in most of the other Member States, national legislation is “70–80 percent EU-derived”. Ludwig Krämer, “EU Enforcement of Environmental Laws: From Great Principles to Daily Practice - Improving Citizen Involvement”, *Environmental Policy and Law* 44, no. 1/2, (2014): 250.

⁶⁰ Sanja Bogojević, Mirjana Drenovak-Ivanović, “Environmental Protection Through the Prism of Enlargement: Time for Reflection”, *Common Market Law Review* 56, no. 4, (2019): 949–77.

⁶¹ Sorina Soare, Claudiu D. Tufiş, “Roşia Montană, the revolution of our generation: from environmental to total activism”, *European Politics and Society*, (2020): 1.

⁶² Sorina Soare, Claudiu D. Tufiş, “Roşia Montană, the revolution of our generation: from environmental

venture company between the State and the investor, in order to “develop and exploit mining projects in Roșia Montană” and obtain permits that the national legislator requires for that purpose.⁶³

The investor promised to rely on innovative and sustainable technology and to support the economic revival of a region ravaged by unemployment after the majority of mines were closed down in the process of EU integration and transition to market economy, as well as the global financial crises.⁶⁴ With a 2000-year long history of mining in the region and experience with accidents related to extractive projects, the local community was not convinced of the sustainability of the proposed technology and feared devastating consequences to the surrounding nature and the ecosystem if an open-cast cyanide-base mine project were to be realized. In addition to the threats of environment damage, local residents were facing the threat of expropriation of their land and resettlement. What is more, the area had previously been declared a cultural heritage site.⁶⁵ The cumulative effect of these factors led to the slow but steady opposition that started locally, but later on it spread all over the country, as well as across borders.

One of the landmark moments was the establishment and registration of *Alburnus Maior*, a locally-based NGO, that formally launched the campaign against the Roșia Montană mine in 2002, promoting the “opposition against open pit mining, the use of cyanide, and forced relocation of the community”.⁶⁶ The campaign gained support from individuals and groups with diverse backgrounds and ideological beliefs. In addition to religious and academic communities, a strong transnational network consisting of renown environmental organizations such as Greenpeace enabled the transfer of know-how, dissemination of information and added to the pressure on the decision-makers, which created an “unprecedented mobilisation, at least temporarily catalysing civil society development through network campaigning”.⁶⁷ Moreover, due to the possibility of a spillover effect of the project across borders, cooperation with Hungarian NGOs enabled the pressure on Hungarian public authorities that resulted in the activation of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention).⁶⁸

The big game-changer for the movement was the involvement of Stephanie Roth, a French-Swiss journalist and environmentalist that had previously been involved

to total activism”, 2.

⁶³ Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd. v. Romania. ICSID Case No. ARB/15/31 (March 8, 2024), paras. 9–10.

⁶⁴ Adriana Szabo, Thomas E. Shriver, Stefano Longo, “Environmental threats and activism against extractive industries: The case of gold mining in Rosia Montană Romania”, 28.

⁶⁵ Cristina Elena Parau, “Impaling Dracula: How EU Accession Empowered Civil Society in Romania”, *West European Politics*, 32, no. 1, (2009): 130.

⁶⁶ Adriana Szabo, Thomas E. Shriver, Stefano Longo, “Environmental threats and activism against extractive industries: The case of gold mining in Rosia Montană Romania”, 31.

⁶⁷ Cristina Elena Parau, “Impaling Dracula: How EU Accession Empowered Civil Society in Romania”, *West European Politics*, 32:1, (2009): 130.

⁶⁸ Cristian Branea, “Models of Contention and Participation of Civil Society in Roșia Montană Environmental Conflict”, *Romanian Journal of Society and Politics* 2, (2013): 89.

in another environmental campaign in Romania. She brought with her the experience and knowledge in framing a campaign so that a wide variety of strategies were employed. They included, on the one hand, raising “cultural awareness” by organizing a festival, art performances and other “creative strategies through online and public efforts to keep the public informed and engaged”.⁶⁹ On the other, they concerned legal battles on both national and international fronts in order to “ensure that all documents were complying with the Romanian and European Union environmental, mining and heritage preservation regulations [...]”.⁷⁰

The main point of legal contention concerned the flawed Environmental Impact Assessment (EIA) Procedure, required under national and EU law.⁷¹ Since crucial environmental information regarding the project had been withheld by the national authorities and members of the civil society had largely been excluded from the possibility of participating in this vital administrative procedure, NGOs pursued legal action before national courts that led to the suspension of some of the issued administrative acts.⁷² Moreover, the network of local, national and international NGOs – supported by the EU MEPs – filed a complaint to the Aarhus Convention Compliance Committee, which initially found that Romania was not in compliance with Article 4 of the Aarhus Convention and recommended that it take the necessary measures in order to remedy the situation.⁷³

The movement peaked in 2013 with the planned amendments to the Law on Mining that aimed at qualifying the Roșia Montană project as one of ‘national interest’. Such a legal qualification would not only enable the government to conduct the forced expropriation and resettlement of local residents, but it also clearly demonstrated that the State was ready to put economic interests – notably the investor’s – before environmental and societal ones.⁷⁴ After a series of mass protests that lasted for several months, the draft law was eventually withdrawn, signaling the first victory of the campaign.⁷⁵ As Szabo, Shriver and Longo note, “[...] environmental threats served as a mobilizing force, but the political threats of expropriation served as an essential catalyst for solidifying the campaign.”⁷⁶

⁶⁹ Adriana Szabo, Thomas E. Shriver, Stefano Longo, “Environmental threats and activism against extractive industries: The case of gold mining in Rosia Montană Romania”, 31.

⁷⁰ Adriana Szabo, Thomas E. Shriver, Stefano Longo, “Environmental threats and activism against extractive industries: The case of gold mining in Rosia Montană Romania”, 31.

⁷¹ Cristian Branea, “Models of Contention and Participation of Civil Society in Roșia Montană Environmental Conflict”, *Romanian Journal of Society and Politics* 2, (2013): 91–97.

⁷² Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd. v. Romania. ICSID Case No. ARB/15/31 (March 8, 2024), para. 26.

⁷³ The Committee took note of the fact that Romania did in fact act upon the recommendation. United Nations, Economic and Social Council, Report of the Compliance Committee with regard to communication ACCC/C/2005/15, ECE/MP.PP/2008/5/Add.7, April 16, 2008, para. 33.

⁷⁴ Adriana Szabo, Thomas E. Shriver, Stefano Longo, “Environmental threats and activism against extractive industries: The case of gold mining in Rosia Montană Romania”, 32.

⁷⁵ Adriana Szabo, Thomas E. Shriver, Stefano Longo, “Environmental threats and activism against extractive industries: The case of gold mining in Rosia Montană Romania”, 32.

⁷⁶ Adriana Szabo, Thomas E. Shriver, Stefano Longo, “Environmental threats and activism against extractive industries: The case of gold mining in Rosia Montană Romania”, 33.

An important aspect of the bottom-up opposition to the mining project concerns Romania's EU accession trajectory. What is more, this factor led certain scholars to divide the Roşia Montană movement timeline into the *pre-accession* (1995 – 2007) and the *post accession* (after 2007) phase, based on the influence the outlook of accession and/or membership in the EU had on the success of the campaign. These authors find that the vulnerability of the Romanian executive to external criticism, especially that coming from the EU institutions in the pre-accession stage, “have created favourable conditions for pushing the claims of collective actions” and “induced a short-lived formal compliance with bottom-up requests”.⁷⁷ On the contrary, the influence of the *EU factor* was largely ‘diluted’ in the post-accession stage,⁷⁸ and the impetus to persevere with the movement could rather be sought in its connection to broader societal concerns such as widespread corruption and the “attack” of the State on the “rule of law and national sovereignty”.⁷⁹ Still, accession brought with it the requirement to properly transpose the abundant EU environmental *acquis*, which meant that “the EIA Process had to be carried out not only under Romanian law, but also within a legal framework that was consistent with EU requirements and standards”⁸⁰ – thus providing civil society with an additional legal ‘arsenal’.

The synergy of the different strategies led to additional legal and political victories that eventually put an end to the mining project, such as listing Roşia Montană as a UNESCO world heritage site in 2021.⁸¹ Moreover, on March 8, 2024, the International Centre for Settlement of Investment Disputes (ICSID) rejected the investor's claims for compensation due to Romania's alleged expropriation and breach of the Canada-Romania and UK-Romania Bilateral Investment Treaties. Much to the surprise of the international community, the ICSID tribunal found that the claim was unfounded and ordered the claimant to reimburse the Romanian state for the costs of participating in the arbitration procedure.⁸² Assessing the claim that the “politization” of the project as a result of the pressure exerted on the national authorities following the 2013 mass protest affected the outcome of administrative procedures, the tribunal concluded that while “[p]olitics were at play here, as this was a complex project with national and transboundary implications, touching on environmental, social, legal, and economic issues [...]”, this does not imply “[...]that the process was “politically” influenced in the manner alleged by Claimants, i.e., in violation of fundamental notions

⁷⁷ Sorina Soare, Claudiu D. Tufiş, “‘Roşia Montană, the revolution of our generation’: from environmental to total activism”, *European Politics and Society*, (2020): 14.

⁷⁸ Sorina Soare, Claudiu D. Tufiş, “‘Roşia Montană, the revolution of our generation’: from environmental to total activism”, 14.

⁷⁹ Adriana Szabo, Thomas E. Shriver, Stefano Longo, “Environmental threats and activism against extractive industries: The case of gold mining in Rosia Montană Romania”, 32.

⁸⁰ Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd. v. Romania. ICSID Case No. ARB/15/31 (March 8, 2024), para. 783.

⁸¹ Adriana Szabo, Thomas E. Shriver, Stefano Longo, “Environmental threats and activism against extractive industries: The case of gold mining in Rosia Montană Romania”, 32.

⁸² <https://www.ccchr.eu/en/case/environmental-protection-versus-investment-law-the-goldmine-in-rosia-montana-romania/>, 4 November 2024.

of justice and in violation of due process and Claimants' rights".⁸³

3.2. The Vjosa River movement

Thanks to its abundant water resources, Albania's energy supply has been heavily reliant on hydropower.⁸⁴ This trend has been exacerbated due to the country's obligations stemming from the membership in the Energy Community⁸⁵ and expectations on the EU accession path,⁸⁶ that come hand-in-hand with financial incentives in the form of loans and feed-in tariffs from the government and large financial institutions such as the EBRD.⁸⁷ This resulted in a 'mushrooming' of hydropower plants (HPP) across the country.⁸⁸

The construction of HPPs is mainly awarded on the basis of concession agreements with private investors, albeit without the stringent competitive tendering procedure in the case of so-called small HPP that produce up to 2 MW of energy, paving the way for corruption and lax conditions for obtaining the concessions. Puecker and Steger highlight that "[a]s of 2019, 223 HPPs were approved outside of the concession system".⁸⁹ In addition to distrust in the legality of the procedures underpinning the construction of HPPs, scientific evidence of the detrimental effect to the water beds and the flora and fauna, as well as the livelihood of the local population that outweigh economic benefits – contributed to an atmosphere of great dissatisfaction and resulted in instances of conflict and bottom-up opposition.⁹⁰

One such particularly potent instance concerns the battle for the preservation of the Vjosa river. While several HPPs had already been built and operated on the Vjosa and its tributaries, the projects related to the construction of the Kalivaç and Poçëm HPPs were the last drop that ignited bottom-up resistance due to the fear of devastating consequences for the river, which has significant environmental, touristic, agricultural and emotional value and enjoys the status of a "national tourist treasure and a culturally

⁸³ Para 1196.

⁸⁴ According to one study, the reliance on this renewable energy source is as high as 96.47% in Albania. Barbara Pavlaković *et al.*, "Small hydropower plants in Western Balkan countries: status, controversies and a proposed model for decision making", *Energy, Sustainability and Society* 12(9), (2022): 5.

⁸⁵ The Energy Community is "an international organisation which brings together the European Union and its neighbours' and which aims at extend the EU internal energy market rules and principles to countries in South East Europe, the Black Sea region and beyond on the basis of a legally binding framework". Energy Community, <https://www.energy-community.org/aboutus/whoweare.html>.

⁸⁶ Aleksandra Piletić, "Renewable energy and EU-led authoritarian neoliberalization: small hydropower in Rakita, Serbia and the upscaling of environmental struggles", *Globalizations* 21, no. 6, (2024): 1097–1098.

⁸⁷ <https://www.ebrd.com/news/2011/ebd-finances-private-sector-renewable-power-generation-in-albania-.html>, 6 November 2024; Aleksandra Piletić, "Renewable energy and EU-led authoritarian neoliberalization: small hydropower in Rakita, Serbia and the upscaling of environmental struggles", 1097–1098.

⁸⁸ Barbara Pavlaković *et al.*, "Small hydropower plants in Western Balkan countries: status, controversies and a proposed model for decision making", 4.

⁸⁹ Christian Puecker, Tamara Steger, "Protecting the Last Wild River in Europe from Hydropower Development in Albania: An Environmental Movement Strategy in a Flawed Democracy", 2.

⁹⁰ Christian Puecker, Tamara Steger, "Protecting the Last Wild River in Europe from Hydropower Development in Albania: An Environmental Movement Strategy in a Flawed Democracy", 2.

and nationally symbolic artifact”.⁹¹

Both projects concern a concession for the construction of a HPP given to the same investor from Turkey and “in the absence of sufficient public tendering”, which led some authors to suggest that this was a result of “Albanian intentions to strengthen relations with Turkey which had proved to be a reliable partner for Albania in the past”.⁹² Alleging a “highly inadequate” environmental impact assessment procedure that was conducted only after the concession contract had already been signed, as well as a “highly deficient public consultation process”, a group of NGOs joined by local residents decided to challenge the decision to construct the Poçëm HPP before the competent Administrative court.⁹³ In 2017, the Court ruled in the favor of the plaintiffs, finding that all administrative acts and procedures are deemed absolutely null and void, and thus without any legal consequence, because they have been issued in contradiction of the procedures foreseen by law and the Concession Agreement for building a large dam on the Vjosa River and constructing the Poçëm HPP.⁹⁴

The defendants – the Ministry of Infrastructure and Energy, the Ministry of Environment and the Turkish construction company as the investor – filed an appeal to the Tirana Court of Appeal, which rejected the appeal in 2024 and, thus, upheld the first instance judgment.⁹⁵ This successful legal battle fought to “impede the destructive exploitation” of the Vjosa river, paved the way for yet another victory of the civil society before Albanian courts. After the competent ministry rejected the developer’s request for an approval of the environmental impact assessment and issued a negative reasoned conclusion *i.e.* environmental declaration⁹⁶ for the Kalivaç HPP, the investor challenged the decision in an administrative dispute. A group of NGOs led by EcoAlbania and local residents, along with two international NGOs, joined the dispute on behalf of the defendant. Just like in the previous case, the Administrative Court of Tirana rejected the lawsuit and upheld the ministry’s decision to stop the construction of the Kalivaç.

Alongside the legal battles, the movement against the construction of the HPPs and for granting the Vjosa river the status of “National Park” that would shield it from

⁹¹ Christian Puecker, Tamara Steger, “Protecting the Last Wild River in Europe from Hydropower Development in Albania: An Environmental Movement Strategy in a Flawed Democracy”, 1.

⁹² Initially, the concession for the construction of the Kalivac HPP was granted to an Italian company back in 1997, but it was subsequently terminated due to substantial delays and a new concession was awarded to a Turkish investor in 2017. Christian Puecker, Tamara Steger, “Protecting the Last Wild River in Europe from Hydropower Development in Albania: An Environmental Movement Strategy in a Flawed Democracy”, 6.

⁹³ Maja Pravuljac, Małgorzata Smoljak, *Are Balkan Countries Safeguarding Their Rivers? A Legal Analysis of Environmental Standards in Six Western Balkan countries* (ClientEarth, EuroNatur and Riverwatch, 2024), 28.

⁹⁴ Maja Pravuljac, Małgorzata Smoljak, *Are Balkan Countries Safeguarding Their Rivers? A Legal Analysis of Environmental Standards in Six Western Balkan countries*, 28.

⁹⁵ <https://citizens.al/en/2024/07/24/gjykata-e-apelit-anulon-vendimin-per-ndertimin-e-hidrocentralit-te-po-cemit-ne-vjose/>, 6 November 2024.

⁹⁶ The environmental declaration represents a ‘reasoned conclusion’ of the competent ministry on the submitted environmental impact assessment report and with it the project in question may be approved, approved with certain conditions or rejected, Maja Pravuljac, Małgorzata Smoljak, *Are Balkan Countries Safeguarding Their Rivers? A Legal Analysis of Environmental Standards in Six Western Balkan countries*, 24.

further exploitation grew both with respect to participants and employed strategies. The turning point in the movement took place in 2014, when the national battle was embedded into a “continent-wide network of water movements fighting for water as a common good” *i.e.* the *European Water Movement*, therefore “uniting environmental activists from the Balkans with those from other parts of Europe.”⁹⁷ More specifically, two environmental NGOs – Austrian “Riverwatch” and “Euronatur” from Germany – “launched the initiative “Save the Blue Heart of Europe” to protect rivers in the Balkans from further exploitation and to preserve them as a European heritage.”⁹⁸ These ENGOS also joined the aforementioned lawsuits submitted by EcoAlbania.

On the other hand, the said administrative disputes were complemented with an array of activities, including protests, cultural events such as concerts or a campaign with a transnational outreach and coverage, that was endorsed by celebrities like Leonardo DiCaprio.⁹⁹ What is more, members of the civil society availed of international legal instruments in addition to national administrative and litigation procedures. Notably, EcoAlbania, RiverWatch and EuroNatur filed a complaint to the Secretariat of the Energy Community alleging “violations of the EU Directive on Environmental Impact Assessment (EIA) related to the Kalivaç and Poçem hydro-energy projects”, in particular regarding the failure to conduct public consultations.¹⁰⁰ Upon receiving the complaint the Secretariat sent an Opening Letter to Albania “addressing its concerns with regard to the environmental impact assessment of the HPP Poçem project on the Vjosa river” and, its in compliance with the Directive 2011/92/EU on EIA.¹⁰¹ EcoAlbania also filed a complaint to the Standing Committee under the Bern Convention on the Conservation of European Wildlife and Natural Habitats of which Albania is a signatory.¹⁰² In its Recommendation No. 202 (2018), the Standing Committee recommended that the Albanian Government, *inter alia*, “[...] suspends both Kalivaç and Poçem hydropower plant projects - as their implementation would pose compliance concerns with the Bern Convention [...]” and “[u]ndertakes a thorough consultation with local people to discuss development plans and EIAs.”¹⁰³ The

⁹⁷ Aleksandra Piletić, “Renewable energy and EU-led authoritarian neoliberalization: small hydropower in Rakita, Serbia and the upscaling of environmental struggles”, 1101.

⁹⁸ Christian Puecker, Tamara Steger, “Protecting the Last Wild River in Europe from Hydropower Development in Albania: An Environmental Movement Strategy in a Flawed Democracy”, 2.

⁹⁹ Christian Puecker, Tamara Steger, “Protecting the Last Wild River in Europe from Hydropower Development in Albania: An Environmental Movement Strategy in a Flawed Democracy”, 9.

¹⁰⁰ EcoAlbania, “Albania fails to fulfill the requirements of the Energy Community” (Press release, February 26, 2019), <https://ecoalbania.org/shqiperia-deshton-ne-permbushjen-e-kerkesave-te-komunitetit-te-energjise/?lang=en>, accessed: November 14, 2024.

¹⁰¹ Energy Community, “Secretariat opens dispute settlement procedure against Albania for non-compliant environmental impact assessment of HPP Poçem”, <https://www.energy-community.org/news/Energy-Community-News/2020/09/15a.html> (September 15, 2020), accessed: November 28, 2024. More on this dispute resolution mechanism under the Energy Community Treaty: <https://www.energy-community.org/legal/cases/dispute.html>, accessed: November 28, 2024.

¹⁰² More on the Bern Convention: <https://www.coe.int/en/web/bern-convention/presentation>; Christian Puecker, Tamara Steger, “Protecting the Last Wild River in Europe from Hydropower Development in Albania: An Environmental Movement Strategy in a Flawed Democracy”, 8.

¹⁰³ Council Recommendation No. 202 (2018) of the Standing Committee, adopted on 30 November 2018, on the planned hydro-power plant developments on the Vjosa river (Albania), recommendations 1 and 6.

diverse efforts led to Vjosa River obtaining the status of “*Wild River National Park*” in 2023, the recommendation of the European Parliament to the Albanian government to reconsider its policy of granting concessions for hydropower plants, as well as the “encouragement” from the Council of Europe “to halt the construction of HPPs on both Poçëm and Kalivaç due to their ecological impacts and the “wild” status of the river.”¹⁰⁴

3.3. Protests against the “Jadar” project

The final case-study in this paper also concerns an extractivist project envisaging the construction of a mine, this time of the so-called ‘white gold of the energy transition’ i.e. lithium.¹⁰⁵ After a series of explorations that spanned over several years, in 2004 geologists hired by the British-Australian mining company Rio Tinto and its local subsidiary – Rio Sava Exploration – discovered ‘jadarite’ in the Jadar River Valley in western Serbia, a ‘lithium sodium borosilicate mineral’¹⁰⁶ that was quickly coined the ‘Serbian kryptonite’ by some media outlets due to its chemical composition.¹⁰⁷

In the context of a skyrocketing demand for lithium and boron on the global market, seeing how these are key raw materials used in the emerging electric vehicles industry, needless to say that the discovery of a rich source of these minerals was seen as a lucrative opportunity.¹⁰⁸ From the geopolitical perspective, plans to construct the biggest lithium mine in Europe that would encompass the entire production chain were considered a possibility to “decouple from the dependence on distant mining and Chinese processing and to ensure supply chain security” – which is why the project has been publicly endorsed by the US, the UK, the EU and several of its Member States.¹⁰⁹

While the stance of the Serbian President Aleksandar Vučić and other officials towards Rio Tinto and the project formally fluctuated depending on the atmosphere in the wider population, in essence they not only backed it, but also ensured the amendment of relevant sectoral legislation that enabled an expedited obtainment of necessary permits in order to begin its realization.¹¹⁰

¹⁰⁴ Christian Puecker, Tamara Steger, “Protecting the Last Wild River in Europe from Hydropower Development in Albania: An Environmental Movement Strategy in a Flawed Democracy”, 6.

¹⁰⁵ <https://www.weforum.org/videos/lithium-energy-transition/> (1 nov. 24); Nina Djukanovic, “Green are Fields, Not Mines’: The Case of Lithium Mining and Resistance in Serbia” (MPhil Dissertation, Oxford University, 2022), 13.

¹⁰⁶ Borislava Manojlović, Espoir Kabanga, “Extractivism and Conflict: Comparative Study of Serbia and the DRC”, *The Journal of Social Encounters* 7, no. 1, (2023): 69.

¹⁰⁷ Nina Djukanovic, “Green are Fields, Not Mines’: The Case of Lithium Mining and Resistance in Serbia”, 31.

¹⁰⁸ Bojana Todorović, “Environmental Access to Justice in the Balkans Through the Lens of EU Enlargement: Between *top-down* and *bottom-up* Europeanisation”.

¹⁰⁹ Christin Stuehlen, Felix Anderl, “Transnational companies in environmental conflicts: Rio Tinto, anti-mining resistance in Serbia, and them contradictions of Europeanization”, *Z Friedens und Konfliktforsch*, (2024): 3.

¹¹⁰ Mina Petrović, Jelena Pešić, “Potentials and Obstacles for the Transnationalisation of Recent Environmental Struggles in Serbia”, *Sociologija i proctor* [Sociology and space], 61 (2023) 227 (2): 397-422, 409.

The investor's assurances of 'clean' and 'sustainable' technology, as well as significant economic gain for the region were met with skepticism and scientific evidence of irreparable harm to the environment and the livelihood of the local population. Especially given that the proposed mining site was envisaged in the vicinity of the city of Loznica, a densely-populated area with fertile agricultural lands, that has been cultivated by local farmers for decades.¹¹¹ After the Spatial Plan for the Jadar project was made publicly available in 2019 and revealed that the status of the land owned by the local farmers had been changed without their knowledge, the threat of displacement of the local community became more palpable. What ensued were various bottom-up instances of resistance, that first started at the local level but quickly expanded to include other parts of Serbia potentially affected by lithium mining by other companies, and eventually spread across the entire country – making this a national movement.¹¹²

Since this kind of mass mobilization required access to timely information and logistics, the local population aligned with 'activist groups' from other parts of the country, and a network of environmental organisations opposing lithium mining – the Association of Ecological Organisations of Serbia – was formed, uniting six organizations from the parts of Serbia most affected by lithium mining projects.¹¹³ In addition to that, newly founded activist groups, local grassroots and national initiatives, along with already established NGOs and environmental activists joined the movement opposing Rio Tinto and the construction of the mine.¹¹⁴ They were also supported by individual members of the academic community and scientific experts, as well as institutions, including the Faculties of Biology and Forestry at the University of Belgrade, the Institute of Chemistry, Technology and Metallurgy and the Serbian Academy of Sciences and Arts.¹¹⁵ Prominent voices against Rio Tinto and the 'Jadar' project include actors – among which the Australian-Serbian actress Bojana Novaković "has become one of the leading faces of Serbia's growing eco-movement".¹¹⁶ Moreover, even members of diverse political parties expressed their support for the movement.

Similarly to the story with the Roșia Montană environmental movement, a significant milestone occurred with planned amendments to the Law on Expropriation and the Law on Referendum, which were aimed at enabling the government to

¹¹¹ Nina Djukanovic, "Green are Fields, Not Mines": The Case of Lithium Mining and Resistance in Serbia", 41.

¹¹² European Greens, "European Greens stand in solidarity with people in Serbia opposing the Rio Tinto Jadar mining project" (September 26, 2024), <https://europeangreens.eu/news/european-greens-stand-in-solidarity-with-people-in-serbia-opposing-the-rio-tinto/>, accessed: October 24, 2024.

¹¹³ Nina Djukanovic, "Green are Fields, Not Mines": The Case of Lithium Mining and Resistance in Serbia", 40.

¹¹⁴ Mina Petrović, Jelena Pešić, "Potentials and Obstacles for the Transnationalisation of Recent Environmental Struggles in Serbia", *Sociologija i proctor* [Sociology and space], 61, no. 2, (2023): 409.

¹¹⁵ Nina Djukanovic, "Green are Fields, Not Mines": The Case of Lithium Mining and Resistance in Serbia", 46.

¹¹⁶ Sasa Dragojlo, Interview: "Bojana Novakovic: Stopping Rio Tinto in Serbia is 'a Fight for Survival'", (27 January 2023, *Balkan Insight*), <https://balkaninsight.com/2023/01/27/bojana-novakovic-stopping-rio-tinto-in-serbia-is-a-fight-for-survival/>, accessed: 2 November 2024.

expropriate land in the ‘public interest’ more easily.¹¹⁷ Consequently, mass road blockades were organized in Belgrade in early 2022, that eventually led to the withdrawal of the planned legislative amendments, as well as the cancellation of the project and withdrawal of issued permits.¹¹⁸ What ensued was the legal (re)action of Rio Tinto. The investor threatened to initiate investor-state arbitration under the UK-Serbia Bilateral Investment Treaty and even “submitted a formal notice of dispute to the Serbian government”.¹¹⁹ Within the framework of the Serbian legal system, the investor filed as much as nine lawsuits against the decisions of various public authorities,¹²⁰ and also initiated proceedings before the Constitutional Court, challenging the legality and constitutionality of the Government’s 2022 decree which abolished the Jadar spatial plan. On 11 July 2024, the Constitutional Court of Serbia held a session in which it found the contested Government decree unconstitutional and illegal, as a result of which the Serbian Government passed a new decree in order to officially reinstate the project.¹²¹ This opened the floodgate for a new series of protests across Serbia.

In the meantime, and right after the presidential, parliamentary and local elections were scheduled to take place just months after the mass road blockades,¹²² President Vučić and other public officials changed their rhetoric once again and continued publicly endorsing the project – allegedly after Rio Tinto provided the necessary guarantees that the project follows stringent environmental standards.¹²³ On November 21, 2024, the Ministry of Environmental Protection of Serbia issued a Decision on the Scope and Content of the Environmental Impact Assessment Study for the mining part of the Jadar project.¹²⁴ The “national and international network of activists, experts and local farmers and landowners”¹²⁵ and one of the most prominent

¹¹⁷ Vladimir Unkovski-Korica, “The anti-capitalist struggle against environmentally-destructive neoliberalism in Serbia” (Counterfire, January 24, 2022), <https://www.counterfire.org/article/the-anti-capitalist-struggle-against-environmentally-destructive-neoliberalism-in-serbia/>, accessed: 1 November 2024.

¹¹⁸ Borislava Manojlović, Espoir Kabanga, “Extractivism and Conflict: Comparative Study of Serbia and the DRC”, 70–71.

¹¹⁹ “Arbitrations and Related Cases Involving Rio Tinto”, <https://www.acerislaw.com/arbitrations-and-related-cases-involving-rio-tinto/> (Aceris Law, August 24, 2024), accessed: 1 November 2024.

¹²⁰ Vladimir Spasić, “Rio Tinto filed nine lawsuits against Serbia” (*Balkan Green Energy News*, November 15, 2023), <https://balkangreenenergynews.com/rio-tinto-filed-nine-lawsuits-against-serbia/>, accessed: 1 November 2024.

¹²¹ Igor Todorović, “Serbia officially revives Rio Tinto’s lithium mining project Jadar” (*Balkan Green Watch*, July 16, 2024), <https://balkangreenenergynews.com/serbia-officially-revives-rio-tintos-lithium-mining-project-jadar/>, accessed: 15 November, 2024.

¹²² Nina Djukanovic, “Green are Fields, Not Mines’: The Case of Lithium Mining and Resistance in Serbia”, 74.

¹²³ Euan Sadden, “Serbian government to reinstate permits for Rio Tinto lithium project”, (July 16, 2024), <https://cilive.com/commodities/metals-mining/news-and-insight/071624-serbian-government-reinstate-permits-rio-tinto-lithium-project>, accessed: 2 November 2024.

¹²⁴ Balkan Green Energy News, “Jadar project timeline: a full overview of the most controversial investment in Serbia’s recent history”, <https://balkangreenenergynews.com/jadar-project-timeline-a-full-overview-of-the-most-controversial-investment-in-serbias-recent-history/>, accessed: November 28, 2024.

¹²⁵ Marš sa Drine, <https://marssadrine.org/en/>, accessed: November 29, 2024.

and vocal opponents of the “Jadar” project – Marš sa Drine (*Get off the Drina*) – immediately reacted by calling on citizens to use their right to an administrative appeal against the said decision of the Ministry of Environmental Protection and providing their legal assistance in the process.¹²⁶ It is clear that the future of the (legal) battle against the lithium mine is still uncertain.

It is important to understand the socio-political background against which the social media campaigns, petitions, street protests, road blockades and other strategies in the campaign occurred. These activities were building on “decades of political protests, but also years of rising environmental consciousness.”¹²⁷ Moreover, Djukanovic talks of the “[...] traumatic history and heritage and the emotional geographies of the area”, whereas the individual drive to support the local population’s opposition to the project is viewed through the lens of “a continuation of the long history of defending their land against foreign invaders - or investors”,¹²⁸ as well as their “deeply personal” connection to the land.¹²⁹ Thus, the protests against the project were “primarily driven by environmental and social concerns [...]”,¹³⁰ but “gained mass support by exploiting [...] the broad dissatisfaction with deepening authoritarian tendencies, but also with expanding processes of commodification and neoliberalisation of natural resources.”¹³¹

Another aspect worth considering is the transnationality of the movement against Rio Tinto, which Petrović and Pešić refer to as ‘limited’.¹³² On the one hand, support has come from ENGOs from Bosnia and Herzegovina and ties with international initiatives and networks dedicated to the same cause have also been forged.¹³³ A good example of the latter is the “Jadar Declaration”, signed by environmental organizations from Serbia, but also from Chile, Spain, Portugal, Germany and some other countries, which formally embedded the fight against Rio Tinto into the global anti-mining movement.¹³⁴ On the other hand and as already

¹²⁶ Vladimir Spasić, “Marš sa Drine: Priključite se tužbi protiv rešenja o proceni uticaja za projekat Jadar” (*Get off the Drina: Join the lawsuit against the impact assessment decision for the Jadar project*) (*Balkan Green Energy News*, November 28, 2024), <https://balkangreenenergynews.com/rs/mars-sa-drine-prikljucite-se-tuzbi-protiv-resenja-o-proceni-uticaja-za-projekat-jadar/>, accessed: November 29, 2024.

¹²⁷ Nina Djukanovic, “Green are Fields, Not Mines’: The Case of Lithium Mining and Resistance in Serbia”, 72.

¹²⁸ Nina Djukanovic, “Green are Fields, Not Mines’: The Case of Lithium Mining and Resistance in Serbia”, 56.

¹²⁹ Nina Djukanovic, “Green are Fields, Not Mines’: The Case of Lithium Mining and Resistance in Serbia”, 57.

¹³⁰ Borislava Manojlović, Espoir Kabanga, “Extractivism and Conflict: Comparative Study of Serbia and the DRC”, 70.

¹³¹ Mina Petrović, Jelena Pešić, “Potentials and Obstacles for the Transnationalisation of Recent Environmental Struggles in Serbia”, *Sociologija i prostor* [Sociology and space] 61 (2023) 227 (2): 397-422, 410.

¹³² Mina Petrović, Jelena Pešić, “Potentials and Obstacles for the Transnationalisation of Recent Environmental Struggles in Serbia”, 411-415.

¹³³ Mina Petrović, Jelena Pešić, “Potentials and Obstacles for the Transnationalisation of Recent Environmental Struggles in Serbia”, 414.

¹³⁴ Nina Djukanovic, “Green are Fields, Not Mines’: The Case of Lithium Mining and Resistance in Serbia”, 84.

mentioned, the impetus of cross-border support is diminished by the more or less overt endorsement of the Jadar project by the EU officials and institutions, as well as individual Member States such as Germany. Apart from the lack of criticism or expressed concern regarding the allegations of procedural irregularities underpinning the project, as well as the rule of law and human rights breaches, the project has been described as a “very good opportunity for the socio-economic development of Serbia”.¹³⁵ What is more, in July 2024 under the auspices of the Critical Raw Materials Summit held in Belgrade, the EU and Serbia signed a Memorandum of Understanding for establishing a strategic partnership on raw materials, battery production chains and electric vehicles.¹³⁶ Thus, the “drive for accessing critical raw materials” as a flagship of the European Green Deal is understood to indirectly and “inevitably exacerbate existing political battles, as well as create new ones”.¹³⁷

3.4. Comparative assessment

All three presented cases concerned environmental activism directed towards highly invasive projects that are estimated to have serious and irreversible consequences on the surrounding ecosystem, and the health and livelihood of the local population – such as their displacement or their main source of income (agriculture and farming). Social movements literature also describes the similarities between hydropower development and extractive projects relying on the exploitation of natural resources, from the standpoint of “[c]oncerns for livelihoods, landscapes, and local and democratic values [...] especially when public consultation, benefit-sharing mechanisms, and social safeguards are lacking”.¹³⁸

Aside from this apparent resemblance, the remainder of this section turns our comparative lens to the following factors: *legal and political environment*, the *spectrum of civil society actors involved*, *strategies employed* or the (long- and short-term) *effects of these movements*, in order to single out regularities or differences that would bring us closer to understanding the role of civil society environmental activism in the enforcement of law. The methodological approach draws inspiration from previous academic studies. One of them is the analysis of the environmental movement against hydropower development in Albania, in which Puecker and Steger take an open-ended approach to identifying what “helps or hinders the movement” in such a way that “captures their dynamics and all that comes into play across actors and their roles,

¹³⁵ Raluca Besliu, ‘Protecting Nature, Empowering People: Environmental Protests in the Balkans’ (*Green European Journal*, 5 June 2023), <https://www.greeneuropeanjournal.eu/protecting-nature-empowering-people-environmental-protests-in-the-balkans/>.

¹³⁶ Tatjana Dordevic, “Why a lithium mine project in Serbia worries the European Union” (*Aspenia Online*, October 21, 2024), <https://aspeniaonline.it/why-a-lithium-mine-project-in-serbia-worries-the-european-union/>, accessed: November 7, 2024.

¹³⁷ Kalina Arabadjieva and Sanja Bogojević, “The European Green Deal: climate action, social impacts and just transition safeguards”, *Yearbook of European Law* (2024) 1–22 at 10.

¹³⁸ Christian Puecker, Tamara Steger, “Protecting the Last Wild River in Europe from Hydropower Development in Albania: An Environmental Movement Strategy in a Flawed Democracy”, 4.

political scales and forums”.¹³⁹ The other is Colli’s more focused comparative analysis of “the litigation behaviour and strategies of social movements by examining legal opportunity structures” – albeit in EU law.¹⁴⁰

3.4.1. Legal and political environments

The opposition to the construction of HPPs or gold and lithium mines initially concerned irregularities directly related to the projects. For instance, the overall lack of transparency surrounding them, failure to conduct public consultations or organizing them in such a way as to effectively exclude members of the public, as well as the inadequateness of administrative procedures leading up to the issuing of relevant permits – and especially the environmental impact assessment procedures. However, as the movements progressed, they revealed deeper dissatisfaction with the legal and political systems and links to anomalies such as corruption and rule of law and human rights breaches that are deeply rooted in the historical reliance on heavy industry and the exploitation of natural resources during communist/socialist rule and the oftentimes painful transition to market economy in the process of EU integration.¹⁴¹ Prioritizing foreign (direct) investments over environmental protection and the well-being of citizens appears to be a common consequence of these processes.¹⁴² The Romanian and Serbian examples reveal astounding similarities in that respect, since their governments and decision-makers went to great lengths in creating a more favorable legal environment for the investors and by amending existing legislation on mining to pave the way for a ‘smooth’ realization of the projects.

This brings us to another important question related to the role of the EU in prompting/hindering civil society activism in this context. Namely, the Roșia Montană environmental movement started at the time Romania was a candidate country, albeit with a very ‘palpable’ membership outlook. That factor, along with its accession in 2007 prompted vibrant legislative activity in order to fully align with the EU legislation and timely and effectively transpose the relevant environmental *acquis*. Moreover, the movement also benefited from the credible membership perspective by exerting bottom-up pressure on the public authorities to comply with the relevant national and EU norms and standards – albeit more so in the pre-accession stage than afterwards.

Albania and Serbia are candidate countries whose membership perspective is not as certain as was the case in Romania at the time the environmental movement developed, which makes the role of the EU even more complicated. First of all, the ‘EU political yardstick’ is not as powerful for exerting bottom-up pressure on the executive.

¹³⁹ Christian Puecker, Tamara Steger, “Protecting the Last Wild River in Europe from Hydropower Development in Albania: An Environmental Movement Strategy in a Flawed Democracy”, 5.

¹⁴⁰ Francesca Colli, “Legal opportunity structures: social movements in the European courts”, 97 – 115.

¹⁴¹ Bojana Todorović, “Environmental Access to Justice in the Balkans Through the Lens of EU Enlargement: Between *top-down* and *bottom-up* Europeanisation” and Bojana Todorović, Roberto Caranta, “Introduction”.

¹⁴² More on the struggles of transitioning from socialist/communist models to market economy: Joseph E. Stiglitz, “Whither Reform: Ten Years of the Transition”, Paper Prepared for the Annual World Bank Conference on Development Economics, Washington, D.C., April 28-30 (1999).

Second, the whether EU representatives expressed criticism or at least concern regarding the observance of law and administrative procedures in the contested projects or otherwise failed to do so – had the effect of either providing more impetus to civil society activism or diluting it *vis-à-vis* national authorities. With respect to Albania's fight against the construction of HPP on the Vjosa river (and hydropower in general), the European Parliament recommended the ban of dam construction and thus expressed its concerns with the questionable government practice in this domain. Additionally, the concerns expressed by the Secretariat of the Energy Community also carry with it at least some political weight for a country aspiring to accede to the EU.

Conversely, in comparison to the other two above mentioned movements, the EU's stance towards the "Jadar" project and the environmental activism that opposed it is considerably milder to say the least. In the case of lithium-mining, both representatives of the key EU institutions such as the European Commission and individual EU Member States seem ready to disregard the grave violations of its own environmental standards and those imposed at the international level (e.g. through the Aarhus Convention) as well as human rights and rule of law violations due to the importance of the lithium-mining project for the EU's green transition. In addition to the lack of support from Brussels, an autocratic regime that disregards the interest of the people/environment and weak and unresponsive institutions all further restrict the POS and LOS for environmental activism in Serbia. Illustrative of this somber trend are the planned changes to the Law on Environmental Impact Assessment that envisage broadening the discretion of public authorities when deciding on bypassing the environmental impact assessment procedure or narrowing standing for environmental NGOs – threaten the already weak position of civil society as watchdogs of public interests and the environment in private investment projects and, thus, set Serbia even further away from the adherence to standards of transparency, public participation and access to justice established by the Aarhus Convention.¹⁴³

3.4.2. Structure of civil society actors

In all three cases the protests were initiated by local communities which were directly impacted by the planned projects later on spread both nationally and across borders, forging regional and international ties and networks. The transnationality of the movements is particularly visible in the Romanian and Albanian cases, where external stakeholders – be they individual experts or prominent ENGOs – with experience, resources and know-how they were willing to share, have proven to be crucial for providing additional momentum to the movements, but also for pursuing successful litigation before national courts.

Due to the fact that the movements were inextricably intertwined with other

¹⁴³ Sreten Đorđević, „Vladin Predlog Zakona o proceni uticaja na životnu sredinu: Izmene po meri investitora, na štetu građana” [The Government's Proposal of the Law on Environmental Impact Assessment: Changes tailored to investors, to the detriment of citizens], *Radar* 7 November 2024, 35; Sanja Bogojević, “The Erosion of the Rule of Law: How Populism Threatens Environmental Protection”, *Journal of Environmental Law* 31 (2019): 1–2.

environmental, political and societal issues, they attracted individuals and organizations from across the ideological and political spectrum. They were, thus, not homogenous. In addition to a wide variety of individuals activists and organizations, the movements relied heavily on experts from national scientific institutions and organizations. While that provided the scientific basis for their arguments opposing the projects, prominent persons such as actors, ecologists, politicians and intellectuals provided the visibility of the protests as well as through social media – especially important when the main media outlets are not independent from the executive, as is the case in Serbia.¹⁴⁴

3.4.3. Strategies employed

The analysis of national case-studies has shown that members of the civil society tend to diversify their strategies in order to mobilize the law and preserve momentum among its supporters. Hence, both inside and outside strategies were relied upon – from mass protests and road blockades, social-media campaigns, cultural events, but also litigation against the government and/or other public authorities, as well as the investors, in order to challenge the legality of administrative acts that enabled the implementation of the projects.

That combining legal with political strategies renders better results than if it were to be used in isolation is an argument also upheld by social movements literature, which reveals that “courts (also) remain a necessary, if by no means a sufficient, forum for public interest work”.¹⁴⁵ Moreover, it is said that “litigation can build public awareness, help frame problems as injustices, and reinforce a sense of collective identity, all of which can build a political base for reform”.¹⁴⁶ That is in line with Vanhala’s understanding of LOS as a malleable concept that can be shaped and ‘stretched’ by individuals and groups who pursue litigation in legal systems that are unfavorable towards private (environmental) law enforcement¹⁴⁷ – which pioneering examples of environmental litigation in Albania and Romania demonstrate.

Additionally, both the Roșia Montană and the Vjosa movements also triggered international dispute resolution mechanisms – under the Aarhus Convention regime in the first, or the Energy Community and Bern Convention, in the latter case. As we have already seen, this type of externalization of local and/or national legal and/or political battles can have an important ‘boomerang effect’.

It is difficult to draw any firm conclusions regarding the “Jadar” movement while it is still ongoing, since it is impossible to predict the future trajectory of the project. The reliance on a particular strategy will also highly depend on the next (legal

¹⁴⁴ Serena Epis, “Serbia: media independence is an exception rather than the rule” (*Osservatorio Balcani e Caucaso Transeuropa*, June 13, 2024), <https://www.balcanicaucaso.org/eng/Areas/Serbia/Serbia-media-independence-is-an-exception-rather-than-the-rule-231977>.

¹⁴⁵ Scott L. Cummings, Deborah L. Rhode, “Public Interest Litigation: Insights from Theory and Practice”, *Fordham Urban Law Journal* 36, no. 603, (2009): 647.

¹⁴⁶ Scott L. Cummings, Deborah L. Rhode, “Public Interest Litigation: Insights from Theory and Practice”, 647.

¹⁴⁷ Vanhala, Lisa. “Legal Opportunity Structures and the Paradox of Legal Mobilization by the Environmental Movement in the UK”. *Law & Society Review* 46, no. 3, (2012).

and/or political) move(s) of both the national authorities and the investor. So far, the analysis has shown that members of the civil society relied somewhat more on protests and blockades as instruments of achieving the enforcement of national and EU environmental standards, rather than litigation. In fact, with respect to the latter they were more reactive than proactive – since they mostly intervened in judicial proceedings initiated by the investor.¹⁴⁸ However, the campaign organized by one of the activist networks to motivate citizens to use their legal right of appeal (and subsequent lawsuits initiating administrative disputes) might also prove to be successful. There also seems to be less reliance on transnational legal mechanisms in comparison to the other two case studies – to the best of the author’s knowledge, so far only the Bern Convention complaints’ mechanism has been activated.¹⁴⁹ Such an approach could be the result of a lack of trust and even disappointment in international institutions, as a result of their passiveness regarding the grievances raised by civil society actors in the mining conundrum – albeit this hypothesis merits further research.

3.4.4. Effects achieved

One of the visible effects of the three analyzed cases is the transnationalisation of civil society efforts across borders. Be it through embedding the efforts into wider campaigns, such as the “Save the Blue Heart of Europe” or connections with other organizations fighting for the same cause – like the Declaration against lithium mining.

In Albania the pioneering environmental lawsuits filed on behalf of NGOs and local residents not only led to favorable outcomes, but also “tested a transforming judiciary and, according to campaign activists, facilitated capacity-building in the dissemination of information by Albania’s public administration.”¹⁵⁰ Moreover, the fight against the proliferation of HPPs was endorsed at the international level by the Council of Europe as well.¹⁵¹

The Roșia Montană movement was successful on several fronts. Not only was the mine construction halted, but it also gained international support. Thus, the World Bank’s International Finance Corporation (IFC) “withdrew support for the mining project [...] expressing its grave social and environmental concerns.”¹⁵² Moreover, the

¹⁴⁸ “Ministry of Mining and Energy without justification continues to extend the deadline for Rio Tinto to obtain license for lithium exploitation in Serbia” (RERI, April 11, 2023), <https://reri.org.rs/en/ministry-of-mining-and-energy-without-justification-continues-to-extend-the-deadline-for-rio-tinto-to-obtain-license-for-lithium-exploitation-in-serbia/>, 7 November 2024. Additionally, members of the civil society in Serbia constitutional appeal targeting the National Assembly’s failure to consider the citizens’ initiative to implement a mining moratorium. For more on this: Igor Todorović, ‘Constitutional Court of Serbia rules in favor of Rio Tinto’s lithium project’ (*Balkan Green Watch*, 11 July 2024), <https://balkangreenenergynews.com/constitutional-court-of-serbia-rules-in-favor-of-rio-tintos-lithium-project/>.

¹⁴⁹ Mina Petrović, Jelena Pešić, “Potentials and Obstacles for the Transnationalisation of Recent Environmental Struggles in Serbia”, *Sociologija i proctor* [Sociology and space], 61 (2023) 227 (2): 414.

¹⁵⁰ Christian Puecker, Tamara Steger, “Protecting the Last Wild River in Europe from Hydropower Development in Albania: An Environmental Movement Strategy in a Flawed Democracy”, 10.

¹⁵¹ Christian Puecker, Tamara Steger, “Protecting the Last Wild River in Europe from Hydropower Development in Albania: An Environmental Movement Strategy in a Flawed Democracy”, 6.

¹⁵² The Goldman Environmental Prize, Stephanie Roth, <https://www.goldmanprize.org/recipient/stephanie->

European Parliament expressed its deep concern that the Roșia Montană mine development poses a serious environmental threat to the whole region and states that it will carefully monitor the project's development, both in terms of its conformity to EU environmental law and also how it relates to Romania's accession to the EU."¹⁵³

As mentioned earlier, the fight against the Rio Tinto project is still ongoing and it is at this point still unclear in which direction it will lead. The cancellation of the permits issued to the investor and the withdrawal of planned amendments to the Law on Expropriation and Law on Referendum and the People's Initiative in the wake of the multi-level elections turned out to be only a temporary victory – a combination of public (bottom-up) pressure and pragmatic political calculations. Not only has the project been reinstated, but it enjoys strong support from the international community as well, spearheaded by the EU. The recent visit to Belgrade of the Commission's President Ursula von der Leyen and statements regarding the "possibility of Serbia becoming a 'leader in the field of electric vehicles'", as well as assurances that "the people of Serbia can be sure that the project will 'respect and preserve nature' in Serbia and that mining operators will 'always listen and cooperate with local communities'", speak of strong EU interest in the continuation of the project.¹⁵⁴

4. Concluding remarks

The topic of this paper is set in an (academic) 'battle-field' where economic interests clash with environmental ones and, ultimately, a story of David and Goliath set in the mountainous Balkan Peninsula, a region with tumultuous history at the epicenter of climate change.

The three case studies analyzed in this paper were chosen as representative of the diversity of the contexts and normative and practical realities of the Balkan countries, which exist alongside their many similarities concerning legal culture and degree of democratization, as well as the relationship between the State and the individual. The environmental movement against the construction of a gold mine in Romania provides insight into civil society activity in a country that formed part of the Eastern bloc, with a communist legacy that for a long time impeded the development of civil society and its active role in decision-making and the enforcement of law.¹⁵⁵ Moreover, Romania is the only one of the three analyzed countries that is an EU Member State, albeit the first 'phase' of the decades-long battle against the mining project took place during the EU accession process – a delicate political moment in which membership was still a goal to be achieved, albeit a credible and 'palpable' goal. That factor significantly impacted the leeway of the involved civil society actors

roth/, accessed: 4 November 2024.

¹⁵³ <https://www.goldmanprize.org/recipient/stephanie-roth/>, accessed: 4 November 2024.

¹⁵⁴ "Von Der Leyen Assures Belgrade Expansion Is Still Priority For EU", (RFE/RL's Balkan Service, October 25, 2024), <https://www.rferl.org/a/serbia-vucic-von-der-leyen-lithium-expansion/33173611.html>, accessed: 8 November 2024.

¹⁵⁵ Bojana Todorović, Roberto Caranta, "Introduction", section 3; Bojana Todorović, "Environmental Access to Justice in the Balkans Through the Lens of EU Enlargement: Between *top-down* and *bottom-up* Europeanisation", section 3.

because it enabled them to exploit the ‘Brussels card’ and exert pressure on the executive to ensure compliance with the EU *acquis* and take them seriously out of fear of EU reprimand.

The landscape around the other two movements is somewhat different. On the one hand, Albania and Serbia are both candidates for EU membership and have had their own experiences with communist rule – the first implying strong centralized decision-making and vertical power structures that impeded the development of civil society, and the second a milder form of socialism that at least nominally relied on decentralization and an active role of citizens in various segments of the society.¹⁵⁶ Both countries are considered fragile democracies with weak institutions where environmental issues only recently came to the fore.¹⁵⁷ It appears that in this case where the outlook of EU membership is not as certain as it was with respect to Romania, the EU is not such a powerful card in the hands of the civil society. This is especially the case in Serbia, where the EU is considered to side with the investor and the Government in supporting the lithium-mining project, despite strong evidence of it being based on administrative acts and procedures that undermine or even violate the EU’s own environmental standards.

In countries with such unfavorable POS, forging of regional and international ties with organizations, networks and movements that fight for the same cause at the regional or international levels is an important and valuable strategy that provides the necessary visibility, resources and know-how to push for the local and national agenda. Moreover, in spite of highly important and successful court cases, litigation alone cannot produce desired results, and needs to be complemented with other strategies (such as engaging in transnational campaigns, protests etc.). As Puecker and Steger notice, applying multiple and diverse tactics [...] legal strategies (e.g., lawsuits) and challenges to EIAs are also comparatively effective when combined as part of an overall environmental mobilization strategy. International links, while not always forged, can also strengthen civic impact, particularly in the post-socialist region.¹⁵⁸

Ultimately, the analyzed examples teach us that civil society enforcement of law is even more compelling and invaluable in contexts in which the culture of environmental protection is still in its infancy – both among the citizens and public authorities. This corrective enforcement mechanism not only contributes to ensuring environmental laws do not simply remain dead letter, but also have an important educational role and help spread awareness of the importance of active citizen involvement for the proper functioning of the legal and political systems – especially those grappling with the erosion of the rule of law and human rights. Thus, civil society serves as a bridge between the individual and the State, the private and the public

¹⁵⁶ Bojana Todorović, Roberto Caranta, “Introduction”, section 3; Bojana Todorović, “Environmental Access to Justice in the Balkans Through the Lens of EU Enlargement: Between *top-down* and *bottom-up* Europeanisation”, section 3.

¹⁵⁷ According to the annual rating of democratic governance by Freedom House, Albania and Serbia ‘transitional or hybrid regimes’, Freedom House, Countries and Territories, “Democracy Scores”, <https://freedomhouse.org/countries/nations-transit/scores>, November 7, 2024.

¹⁵⁸ Christian Puecker, Tamara Steger, “Protecting the Last Wild River in Europe from Hydropower Development in Albania: An Environmental Movement Strategy in a Flawed Democracy”, 4.

sectors, as well as the national and transnational spheres.

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