



**EUROPEAN TRIBUNAL IN DEFENSE OF AQUATIC ECOSYSTEMS
THE KOPAONIK MOUNTAIN RIVERS VS. THE STATE OF SERBIA**

FINAL VERDICT

In the case of the Kopaonik Mountain Rivers, Earth Law Center, Earth Thrive and Prav(d) za reke Kopaonika i Srbije (in English "Rights for the Kopaonik Mountain Rivers and Serbia") (hereinafter "the plaintiffs") versus the State of Serbia and the European Commission, for the European Tribunal in Defense of Aquatic Ecosystems (hereinafter "the Tribunal"), by virtue of the hearing held on 24 April 2021¹, delivers the following verdict:

I. Law applicable to the European Tribunal in Defense of Aquatic Ecosystems

1. The Tribunal is established to promote universal respect for the rights set forth in the Universal Declaration of the Rights of Mother Earth (hereinafter "the Declaration") in order to foster harmonious coexistence between human beings and other entities of the community of life.
2. The Declaration was approved by the Peoples' Conference on Climate Change and

¹ Watch the Tribunal hearing again: <https://www.facebook.com/102874091171981/videos/249721506633391>

the Rights of Mother Earth, which met in the city of Cochabamba, Bolivia, from 19 to 22 April 2010. At this conference, 142 countries were represented by official delegations, groups and social movements. This Declaration is the first international civil society instrument to consider Nature as a subject of rights, thus going beyond the anthropocentric paradigm of environmental protection.

3. The Declaration recognises, in Article 2, that Mother Earth has the right to live, to be respected, to regenerate, to continue its life cycles and processes without human disturbance, to maintain its identity and integrity as a collective of distinct, self-regulating and interrelated beings, to have access to water as a source of life, to enjoy full health, to be free from contamination, pollution and toxic wastes, as well as the right to its full and prompt restoration.
4. The Tribunal has also considered whether ecocide has been committed in this case. The Tribunal will apply the definition of the crime of ecocide presented to the International Criminal Court in 2010 by Polly Higgins.
5. Similarly, the Tribunal takes account of the relevant European instruments for the protection of Nature, the environment and biodiversity, such as the Water Framework Directive (2000/60/EC) or the Convention on Biological Diversity.

II. Competence

6. The Tribunal shall have the competence to promote the respect and recognition of the rights established in the Universal Declaration of the Rights of Mother Earth, in order to promote harmonious coexistence between human beings and the rest of the living community within the European Union. This competence is based on Article 3 II B of the Universal Declaration of the Rights of Mother Earth, providing that “human beings, all States and all public and private institutions have the duty to recognize and promote the full and complete application of the rights and obligations set out in this Declaration ”.
7. To this end, it is the responsibility of this tribunal to investigate and adjudicate on any violation of the rights, or breach of the responsibilities established in the Declaration,

whether committed by the State, private or public legal entities, and/or individuals.

III. Procedural background of the case

8. In light of the Tribunal's competence as described above, the judges of the Tribunal decided to use this opportunity to review existing laws in France and the EU, in order to highlight the ways in which these existing environmental laws have been ignored by the parties involved, and not enforced by the State / the EU. The judges have also taken the opportunity to consider whether this case is grave enough to warrant the application and sanctions of the crime of ecocide, a crime that many are proposing should exist at international and national levels, in certain cases of extreme harm to Nature. On the occasion of the call for applications for the European Tribunal for the Defence of Aquatic Ecosystems launched by the European Hub of the Global Alliance for the Rights of Nature at the end of 2019, the associations Earth Law Center, Earth Thrive and Prav(d) za reke Kopaonika i Srbije filed an application relating to the case of the destruction of watercourses in the Balkan region, in particular the rivers of the Kopaonika Mountain in Serbia, impacted by the presence and construction of new hydroelectric dams.
9. During a hearing process, the Tribunal listened to the allegations made by claimants on behalf of the Kopaonik Mountain rivers. In particular, it heard about the impacts of hydroelectric dams on fish and the stability of river flows, as well as on all the human and non-human beings that depend on them.
10. On the basis of the evidence provided and in response to the request of the claimants, the Tribunal has decided to accept the Kopaonik Mountain Rivers case as a potential violation of the rights of aquatic ecosystems under the Declaration; as a potential case of ecocide, and as a contravention of the European requirements of the Water Framework Directive and other legislation for the protection of nature, committed by private and public persons.
11. On 2 April 2021, the Secretariat of the Tribunal (hereinafter "the Secretariat"), in communications addressed (see attached letter) to the State of Serbia, made known

this decision and invited the Prime Minister of Serbia, the representatives of the European Union responsible for the European green deal, Mr. Frans Timmermans and Commissioner Kadri Simson to participate in the Tribunal. The latter two responded and declined the invitation (see attached letter).

12. The Tribunal, composed of Judges Richard Falk, Valerie Cabanes, Cormac Cullinan, Tom Goldtooth and Lisa Mead, set the hearing, which was held virtually due to the COVID 19 outbreak, for April 24, 2021.
13. In a hearing that lasted three hours, the Tribunal considered oral and written evidence presented by Zoe Lujić, presenter of the case and founder of Earth Thrive; Dr Jelena Drmanac, clinical biochemist and local witness; Professor Predrag Simonovic, scientific expert; Ulrich Eichelmann, Balkan rivers expert and witness; Grant Wilson, Earth law Center attorney; and Marie Toussaint, political expert.

IV. The facts

14. Spanning over 180,000 square miles in southeastern Europe, the Balkan region is renowned for its biodiversity. Known as the blue heart of Europe, it is home to Europe's last wild rivers, which form some of the most pristine and unique river ecosystems in the world. These ecosystems are of great symbolic and cultural importance to the surrounding communities.
15. The complex geology, geography and history of the Balkan region have resulted in a remarkable biodiversity. The rivers of the Balkans represent one of the most vital hotspots for European freshwater biodiversity, providing habitats for a large number of species, many of which are threatened and/or endemic. In the Balkans, 69 different fish species can be found that are found nowhere else in the world. Balkan rivers are also home to more than 40% of all threatened freshwater mollusc species in Europe.
16. Some territories remain totally isolated and untouched. A hydromorphology assessment carried out on 35,000 km of Balkan rivers in 2012 identified 30% "pristine" rivers and 50% "very healthy" rivers (the highest percentages in Europe).

17. The Kopaonik Mountains are among the most important mountain ranges in Serbia.

Historically, this area has been of interest to mining companies, due to the presence of silver ore. In 1981, however, the government of Serbia approved the creation of the Kopaonik National Park in order to protect this exceptional area. Indeed, the park is a rich ecosystem of natural hydrological treasures, including rivers like the Samokovska, Gobeljska or Brzečka, and their waterfalls, such as Jelovarnik, one of the highest waterfalls in Serbia, forming a network of life. Several emblematic lakes also adorn the park, such as the Semetešk round lake, fed by underground springs that ensure the health and sustainability of the waterways. In this national park there are also famous spas - Jošanica and Lukovska - whose waters reach a temperature of 88°C. The whole hydrological network has guaranteed the prosperity of the inhabitants of the territory and the preservation of the animal and plant species that depend on it.

18. The fish populations present in the Kopaonik Mountains are salmonids: salmon, trout, brook trout, etc. These species, some of which are migratory and rheophilic (inhabiting cold, fast flowing, oxygen-rich streams with larger pebbles and gravels on the bottom), have special biological requirements and are therefore directly dependent on the conservation of aquatic ecosystems. Like many local species, the brook trout is listed as a "protected wildlife species", and its protection, management, hunting, use and population enhancement are regulated². The Institute for Environmental Protection in Serbia states that "the importance of Kopaonik for biodiversity conservation is justified by the fact that 11.9% of the endemic species of the Balkan highlands grow on this mountain. In addition, 50 species listed on the Red List of Flora of Serbia, four species listed on the European Red List and 30 species of plants from this mountain range that are listed as natural rarities of Serbia grow here."³.

19. The birds, mammals and butterflies that live in the dense coniferous and mixed

² More information : <https://npkopaonik.rs/zivotinjski-svet/>

³ Read: <https://www.zzps.rs/wp/np-kopaonik/?lang=en>

hardwood forests owe their health to the springs, gorges, streams and bogs that make up the Kopaonik Mountains hydrological system.

V. Causes of damage

20. These rivers are threatened by thousands of small dams and diversions that fragment and drain these last wild rivers.
21. Small hydropower plants in Serbia and the Balkans in general have a significant impact on aquatic ecosystems, water sources - rivers, streams, lakes, springs, aquifers, watersheds, etc., and the ocean into which many of these water sources flow. Animal populations - fish species, freshwater mollusks, freshwater crustaceans, bird species and many other species that are part of the web of life that depends on healthy and intact freshwater ecosystems, are direct victims of hydroelectric dams.
22. During the first decade of the 2000s, the majority of the Balkan countries embarked on plans to build hydropower plants to meet their renewable energy targets. Between 2010 and 2012, the first inventory of existing and planned hydropower plants in the Balkan region was conducted as part of the "Save the Blue Heart of Europe" campaign. In 2019, there were 636 hydropower plants on the tributaries of the Danube in Slovenia, Croatia, Bosnia and Herzegovina, Serbia and Montenegro, the majority of which were small hydropower plants. In the Balkans, there are currently 108 hydropower plants under construction and 1,480 in operation, 45% of which are located in protected areas.
23. Also in the Balkans, some 3,000 hydropower plants are planned to be built, of which about one third would be in protected areas. There has been a significant increase in hydropower development, with the number of plants doubling between 2015 and 2020 (from 714 to 1,480 plants in operation). If we consider small hydropower plants (those under 1 MW), the increase is even more evident (590 to 1,324). If the construction of hydropower plants continues at its current rate, it is estimated that almost one in ten fish species in Europe will be threatened with extinction, doubling the number of threatened species.

24. Approximately 75% of threatened fish species and 70% of threatened molluscs are highly vulnerable to dam construction and resulting habitat modification, which is the most serious threat to freshwater fish and molluscs in the Balkans.
25. In Serbia, the situation is similar. From 2015 to date, dam developers have installed about 100 small hydropower plants and some 800 more dams are planned. Currently, 14 are under construction. These dams threaten endangered species such as the marbled, soft-lipped and Prespa trout, the Huchon (or Danube) salmon, the white-legged crayfish and the Balkan lynx. Almost all of the small hydropower dams have been installed in small streams in the mountainous regions of Serbia, which are home to endangered species of brown trout, as well as Danube barbel (*Barbus balcanicus*), common sculpin (*Cottus gobio*), loach (*Barbatula barbatula*) and minnow (*Phoxinus phoxinus*), among others.
26. In the Kopaonik Mountains, rivers and other watercourses have not been spared and despite the status of a National Park, hydroelectric dams have been built. This endangerment of river ecosystems and nature in Serbia is not only legal under national and European law, but is very much the result of the legal and economic system in Serbia in particular, and more widely in the Balkans and the EU, which encourages the exploitation of water ecosystems for electricity generation.

VI. Legal framework applicable to the present case

27. This Tribunal refers to what is written in the Universal Declaration of the Rights of Mother Earth, which is applicable to the protection of streams, rivers and watercourses impacted by human activities in that it provides for the right of the entities that make up the community of Life to live and exist; the right to be respected; and to the continuity of their life cycles and processes, without human disturbance; the right to maintain their identity and integrity as distinct, self-regulating and interrelated beings; the right to water as a source of life; the right to full health; the right to be free from contamination, pollution and toxic waste, and the right to full and prompt redress for violations of the rights recognized in this

Declaration resulting from human activities. The Declaration also imposes duties on all States, and all public and private institutions (Article 3(2)). Those duties include the duties to act in accordance with the rights and obligations recognized in the Declaration; to recognize and promote the full implementation and enforcement of the rights and obligations recognized in the Declaration; to establish and apply effective norms and laws for the defence, protection and conservation of the Rights of Mother Earth; to respect, protect, conserve and where necessary, restore the integrity, of the vital ecological cycles, processes and balances of Mother Earth; to guarantee that the damages caused by human violations of the inherent rights recognized in the Declaration are rectified and that those responsible are held accountable for restoring the integrity and health of Mother Earth, and to establish precautionary and restrictive measures to prevent human activities from causing the destruction of ecosystems or the disruption of ecological cycles.

28. The Water Framework Directive, a European reference text, will also be applied by the Tribunal, since Serbia is one of the States applying for accession to the European Union and, as a result, it is obliged to adopt the "acquis communautaire", i.e. to accept and transpose into national legislation all the European law in force. That directive is intended to guarantee a high level of protection for aquatic ecosystems at Community level. The Tribunal emphasises what is established in its Preamble:

"(1) Water is not a commodity like any other but a heritage that must be protected, defended and treated as such.

(33) The objective of good water status should be pursued for each river basin so that measures for surface water and groundwater belonging to the same ecological and hydrological system are coordinated.

(34) For the purposes of environmental protection, it is necessary to ensure greater integration of the qualitative and quantitative aspects of both surface water and groundwater, taking into account the natural conditions of water circulation in the hydrological cycle.

(40) In the field of pollution prevention and control, Community water policy should

be based on a combined approach aimed at reducing pollution at source by setting emission limit values and environmental quality standards.

Article 1

Object

The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater, which:

(a) prevent further degradation, preserve and enhance the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on them;

(b) promote sustainable water use based on the long-term protection of available water resources;

(c) aims to enhance the protection of the aquatic environment and to improve it, in particular through specific measures designed to progressively reduce discharges, emissions and losses of priority substances, and the cessation or phasing out of discharges, emissions and losses of priority hazardous substances;

(d) ensure the gradual reduction of groundwater pollution and prevent further pollution; and

(e) helps mitigate the effects of floods and droughts,

and thus contributes:

- to ensure an adequate supply of good quality surface water and groundwater for sustainable, balanced and equitable water use,

- to significantly reduce groundwater pollution,

- to protect territorial and marine waters,

- to achieve the objectives of relevant international agreements, including those aimed at the prevention and elimination of pollution of the marine environment by Community action under Article 16(3), to cease or phase out discharges, emissions and losses of priority hazardous substances posing an unacceptable risk to or via the aquatic environment, with the ultimate aim of achieving concentrations in the marine environment close to background levels for naturally occurring substances

and close to zero for man-made synthetic substances."

29. Furthermore, Directive 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources provides that *'consistency of the objectives of this Directive with Union environmental law should be ensured. In particular, Member States should take into account, during the assessment, planning or licensing of renewable energy installations, all Union environmental law and the contribution of energy from renewable sources to the achievement of environmental and climate change objectives, in particular in comparison with non-renewable energy installations'*. The development of renewable energies must therefore take place in accordance with other EU environmental policies, in particular the Community's water policy.

VII. Considerations of the Tribunal regarding the Rights of Nature in relation to the facts presented

30. The Tribunal forthwith considers whether there have been violations of the Rights of Nature in this case. In particular, the Tribunal focuses on the rights of all those animals, fish, crustaceans, plants and other living beings that have no voice - the inhabitants of the Kopaonik Mountain Rivers, forming the living communities of the rivers whose rights may have been violated by the construction of hydroelectric dams.

31. From these facts it is clear that the rivers of Kopaonik Mountain and its flora and fauna may have suffered a violation of their right to water as a source of life, as well as the right to full health. The situation affecting the rivers of Kopaonika Mountain is also the same throughout Serbia and the Balkans in general.

32. Indeed, small-scale hydroelectric installations, especially run-of-the-river hydroelectricity ("ROR") projects in Serbia and the Balkans, have a devastating effect on freshwater ecosystems. In this type of plant, there is no or very little water retention or storage. Hydroelectric power depends on the natural flow of rivers. ROR diverts all or part of a river through an intake structure and is then channeled

downstream through one or more turbines to generate electricity. Unlike conventional hydropower, run-of-river hydropower does not dam a river, but it does divert large amounts of water, and canals can become almost completely dry after pipelines are installed. Studies have concluded that the cumulative impacts of several small diversions generally outweigh those of a single large dam.

33. However, almost all small hydropower plants in Serbia are RORs, most of which are installed in small rivers in mountainous regions that are home to endangered species of brown trout, as well as other endemic species. The process of constructing RORs begins with the damming of mountain streams and the construction of intake structures, after which branch pipes are installed, ranging from 1 to 3 km, and sometimes up to 5 km in length. The pipes carry the water to the turbines, from where it returns to the river. The construction is carried out with heavy machinery, resulting in the complete destruction of the riverbed and riparian area, with serious consequences for the living organisms of the adjacent aquatic and terrestrial ecosystems.



Figure 1: Map of Serbia with the locations of the current PHNs installed (in blue) and planned (in red) ⁴

⁴ Source : www.cins.rs/kroz-racun-za-struju-placacemo-politicare-i-sumnjive-investitore/

34. The flows of the rivers intended to be used for the installation of RORs are low, ranging from 0.030 to 7.500 m³ s⁻¹, e.g. the Zabeoški River (a tributary of the Brevina River) and the Mlava River (a tributary of the Danube River), respectively. The majority of them are below 1 m³ s⁻¹. The power generated by the turbines is also generally low; only a few of them exceed 1MW, with only one reaching up to 5,520MW (Sultanovačka stream, a tributary of the Samokovka river in the "Kopaonik" national park), and the vast majority (more than 50% of them) generating less than 0.25MW.
35. These small hydroelectric plants degrade and fragment habitats, disrupt natural sediment transport and other elements of the hydrological regime, alter river depths and widths, interfere with fish migration routes, deplete and pollute surface and groundwater, increase erosion, cause deforestation, and degrade air and soil quality, among other impacts. In addition, there are secondary impacts resulting from the construction of access roads, demolition of stream beds, water withdrawal for pipeline installation, logging for transmission lines, and deposition of waste materials in rivers (e.g., equipment) during the construction process.
36. The research carried out so far in the territory of the Kopaonik Mountain, in the foothills area, has revealed the strong impact of RORs. Using bibliographic data from fisheries management plans, the cumulative effect of numerous RORs operating in a line along the Jošanica River (Figure 2 and Table 1 below), it has been found that there has been a decrease in the abundance, biomass and, above all, the average age of brown trout specimens in the river.



Figure 2. An example of RRHP installed at a montane stream in Serbia, with the common hydrological situation occurring at least during the eight months each year (left, the disfunctional, vertical-slot fish pass with the scarce, insufficient water flow; middle, the dam diverting the water to the pipeline; right, the concrete dam's overflow for the excessive water, ending with the pipeline's overflow outlet on the side cover of the pipeline's beginning; notify the surplus of water from the maximal installed amount of abstraction at the intake facility and pipeline, going back to the stream bed, while the fish pass remained without enough water) (personal photo library).

37. Due to the small number of records available, longitudinal analysis of fisheries management and monitoring plan data (Figure 2) revealed differences in the relative biomass of brown trout between streams without RORs and those with RORs installed. In addition, the results show that brown trout biomass was more affected in two streams where multiple RORs were installed, than in streams where only one was present (Table 1).

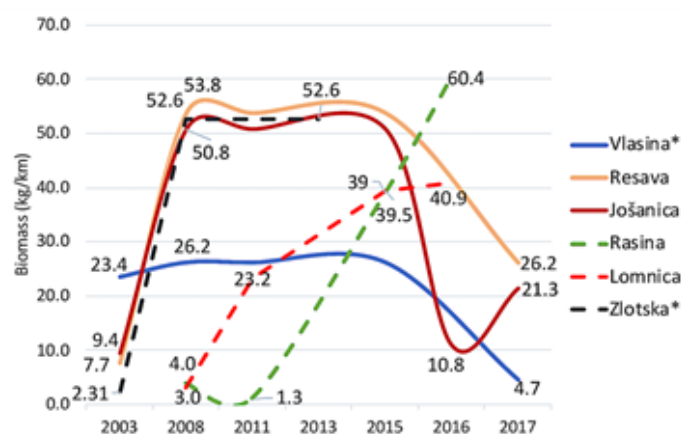


Figure 3. Relative biomass of brown trout (asterix denotes streams with brown trout populations important for conservation) in streams with (solid line) and without (dashed line) RRHPs since 2003 (the construction of RRHPs started in 2015).

Stream	No. of records	RRHPs occurrence	Species number	ρ	$b \pm SE_b$
Vlasina*	4	+++	1	-0.5	-2.18 \pm 1.418
Resava	4	+	2	0.5	1.74 \pm 4.842
Jošanica	4	+++	3	0.4	-0.22 \pm 2.232
Rasina	4	-	4	0.8	4.47 \pm 1.029
Lomnica	4	-	1	1.0	2.72 \pm 0.734
Zlotska*	3	-	5	0.9	1.74 \pm 4.842

Table 1. Number of records for brown trout biomass in time, indication of occurrence of RRHPs (-, devoid of; +, occur singly; +++, occur more than one), total number of fish species in streams, Spearman Rank Correlation coefficients (ρ) and Linear Regression values b (with the standard errors SE_b) featuring each of montane streams (asterix denote conservationally important brown trout populations) where impact of RRHPs on the relative biomass of brown trout was explored

38. The field experiment conducted on six of the streams with RORs installed revealed that in five of them the water temperature increased, and in four the amount of dissolved oxygen decreased, while in all of them the conductivity of the water increased in the sections along the diversion (conductivity is the ability of water to pass an electric current. Conductivity depends on the chemicals present and the temperature of the water).
39. Changes in habitat characteristics (reduced flow, warmer water, lower oxygen levels, and destruction of the hydromorphology of the original streams, turning them into straight, quiet, low-lying rapids) and proximity to the higher order streams they join, have favoured fish species in the downstream fish community that are tolerant of warmer, less oxygen-rich water. They have spread upstream and displaced native brown trout in the section downstream of the intake facility, changing the fish community structure.
40. Experts at the Tribunal hearing noted that the abundance of brown trout has declined and the age structure has been dramatically altered in the stream sections along the diversion pipes compared to the sections upstream of the intake facilities

on all streams studied (Table 2). The sharp decline in the number of brown trout cohorts and the presence of only the youngest individuals (0+ - 1+) in the stream sections along the pipeline suggest that brown trout in the downstream sections are probably not using this section. This implies a lack of connectivity between the two stream sections.

Stream	Sample	Number of fish species	Brown trout			
			Relative abundance (ind. ha ⁻¹)	Relative biomass (kg ha ⁻¹)	Annual natural production (kg ha ⁻¹)	Age classes
Jošanica	1	2	735	26.000	12.975	0+ - 3+
	2	2	286	2.122	0	0+
Brezanska	1	4	90	3.840	1.035	1+ - 5+
	2	2	0	0	0	-
Gokčanica	1	1	2250	63.563	0.572	1+ - 2+
	2	4	67	0.800	0	1+
Kolska	1	1	289	2.978	0.312	1+ - 2+
	2	1	50	0.450	0	1+
Sokoljska	1	2	39	20.664	11.943	1+ - 5+
	2	2	20	0.580	0	1+
Panjica	1	1	533	24.853	13.209	0+ - 3+
	2	2	50	0.850	1.767	0+ - 1+

Table 2. Streams' samples in the sections upstream of the water intake facility (1) and along the derivation (2).

41. Biomass analysis of brown trout and river barb also revealed that the upstream sections of streams are well differentiated from their downstream counterparts (Figure 3).

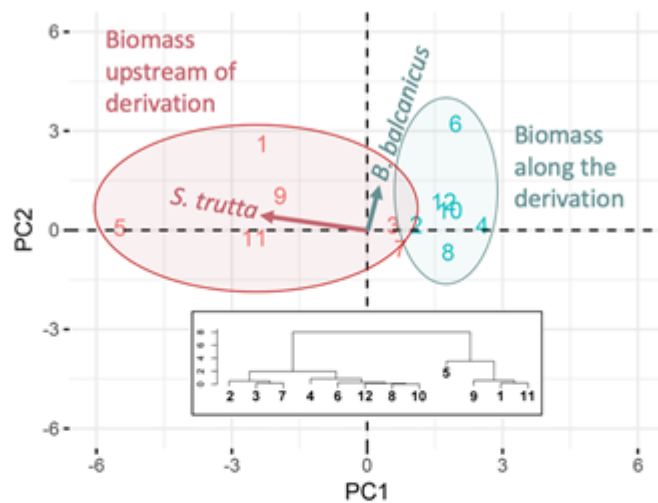


Figure 3. Biplot of the first two Principal Components' loadings (in a vector form, i.e., arrows) and scores revealing their determination by variation in biomass of particular fish species, grouped by the sections of streams (odd numbers denote section upstream of and even numbers downstream sections along the derivation) that these scores represent, with the relationship between sections as assessed by their Complete Linkage clustering using the Euclidean distances between them (1 and 2, Jošanica River; 3 and 4, Brezanska River; 5 and 6, Gokčanica River; 7 and 8, Kolska River; 9 and 10, Sokoljska River; 11 and 12, Panjica River).

42. Results from specific streams, where a steady flow regime in the downstream section could be observed, revealed that this was not sufficient to mitigate the effects of the dam and allow for restoration of the native fish community. The adverse effects of RORs on the mountain stream ecosystem, especially on fish species and in particular on the resident brown trout, cannot be mitigated by fish ladders, due to the lack of migratory instinct in these and other fish species. It is also impossible because the water flow is too low to effectively feed the fishways and the ROR pipes simultaneously, and because of the lack of control of the operation of the RORs during low flows. Stocking hatchery-reared brown trout under such circumstances of low flow and habitat destruction is also ineffective and poses high conservation risks to native brown trout stocks.

43. With the estimated total length of all streams along the diversions being more than 20% of their total length, the brown trout stocks there are at great risk. Brown trout populations - which are native and of great conservation importance - are suffering the greatest harm. Lack of control over compliance with the low-water license by the competent authorities and outdated legislation in the energy and Nature protection sectors are the main causes of the negative effects of ROR on mountain stream

ecosystems. The 856 sites planned in Serbia for the construction of new RORs are therefore a cause for concern.

44. It is clear from these findings that the facts constitute a violation of the Rights of Nature to water as a source of life and the right to full health, as well as their right to be free from contamination and pollution within the meaning of the Universal Declaration of the Rights of Mother Earth, and also a violation of the objectives of the Water Framework Directive, which provides for qualitative and quantitative protection of watercourses.
45. In summary, the rivers of the Kopaonik Mountains have been heavily impacted by the policy of dams implemented throughout Serbia, with identical situations seen in ecosystems all throughout the Balkans. As the above facts have shown, the cumulative effects of the dams have resulted in the violation of the rights of the rivers of the Kopaonik Mountains, Serbia and the Balkans.
46. Furthermore, as the data indicates, the cumulative impact of dams on the territory has resulted in aquatic ecosystems no longer being able to continue their natural life cycles. The rivers of the Kopaonik Mountain, Serbia and the Balkans have the right to exist and function according to their natural cycles, which have ensured the sustenance of the water cycle and all the entities dependent on it since time immemorial.
47. These facts show that the Kopaonik, Serbian and Balkan rivers, flora and fauna, whose water cycle is affected by the dams, are victims of a violation of their right to full and prompt redress for violations of the rights recognized in this Declaration resulting from human activities, in that the State has currently not allowed the restoration of the degraded ecosystems.
48. The violation of all these rights recognized in Article 2 of the Universal Declaration of the Rights of Mother Earth therefore implies, on the part of the Serbian State, the urgent need for effective action to restore the ecological continuity of the watercourses, which may require removal of dams, and to prevent any new additional violations in the future.

VIII. Considerations of the Tribunal on the allegations of the crime of ecocide in relation to the facts presented

49. The Tribunal intends to rule on the allegations of the crime of ecocide being committed, which has been raised by the Applicants. In the absence of a single definition of ecocide in international law, the Tribunal will adopt the definition of the crime of ecocide as proposed to the State Parties of the Rome Statute in 2010, by the lawyer Polly Higgins, and as requested by the associations that defended this case during the Tribunal's hearing, namely

"Ecocide is the loss of, or significant damage to, or destruction of ecosystems in a given area, whether by human action or other causes, to such an extent that the peaceful enjoyment of the inhabitants of that area has been or will be seriously impaired. "

50. The Tribunal notes that recently a group of lawyers and jurists within the [Stop Ecocide](#) Foundation have proposed an alternative definition of ecocide, but this definition was not yet known at the time of the presentation of this case and will therefore not be applied here.

51. For ecocide to be characterized, the offence must result in significant damage to or destruction of ecosystems in a given territory.

52. In the present case, the environmental impacts of the hydroelectric dams, not only on the rivers of the Kopaonik Mountain, but also across Serbia and the entire Balkan region, and in particular the fragmentation of ecological continuity, the endangerment of species, in particular fish species, as well as all of the above-mentioned impacts, constitute significant damage to (if not destruction of) the aquatic ecosystems of the territory of Kopaonik Mountain, Serbia and the Balkans. Taking the whole Balkan region into account, the damage is very widespread and long-lasting.

53. Because of the artificial Nature of these dams, built by human hands, there is no doubt that the causal link between the destruction of ecosystems and human

action is demonstrated. Thus, the damage caused is indeed man-made as provided for in the definition of the crime of ecocide.

54. More importantly, the Tribunal determines the harm suffered by the inhabitants of the territory whose peaceful enjoyment has been or will be (if more dams are constructed) seriously impaired. As a result of the above impacts, and through the testimony given during the Tribunal's hearing, the Tribunal concludes that hydroelectric dams adversely affect rivers as strategic reserves of water as a source of life for many species; for human consumption and for the vital needs of many other species; for agriculture and as suppliers of water for recharging river basins; for the protection of biodiversity; and also as a source of scientific information and as natural entities of outstanding status in terms of cultural identity, spirituality, aesthetics or recreation for river-related communities. The Tribunal therefore recognizes the impairment suffered by these inhabitants of their right to peaceful enjoyment, which has been seriously diminished by the cumulative impacts of the dams built on the Kapaonik Mountains, in Serbia and across the Balkans.

55. Although the Tribunal has only seen evidence relating to the damage done to the Kopaonik Mountain Rivers, it is clear that the damming of any river has immediate and lasting negative consequences for the impacted ecosystems. Therefore, it is possible to conclude that the operators of hydroelectric dams and the State of Serbia are jointly responsible for a crime of ecocide committed against the rivers of the Kopaonik Mountains. Furthermore, there is a case of ecocide to answer in relation to the construction of other dams in Serbia, which have had similarly negative consequences. The judges can also extrapolate from this that other States in the Balkans are likely to have committed or allowed to commit crimes of ecocide as a consequence of their dam-building programs.

IX. Considerations of the Tribunal regarding the conduct of the State in relation to the facts claimed

56. Art. 3(a) of the Universal Declaration of the Rights of Mother Earth explicitly

recognizes that "Human beings, all States and all public and private institutions shall ... act in accordance with the rights and obligations recognized in this Declaration.

57. The acts and omissions of private actors in Serbia who finance and construct hydroelectric dams without regard for the environment are responsible for the violation of environmental laws, non-compliance with licensing requirements, pollution of rivers and surrounding ecosystems during the construction of small hydroelectric power plants and other destructive activities. Thus, they contribute to the serious and long-lasting impacts caused to Mother Earth.

58. But if fault can be laid at the door of those directly responsible, i.e. the owners of the hydroelectric dams, it is first and foremost the State of Serbia that must be held responsible in this case.

59. The State of Serbia has not only failed to prevent damage and protect watercourses, including the rivers of the Kopaonik Mountain, it has provided incentives to encourage the activities that damage these watercourses. Yet it is primarily the responsibility of the state to ensure that the fundamental Rights of Mother Earth are recognized and enforced. The main aggressor is therefore the Government of Serbia itself, which has acted in violation of the Universal Declaration of the Rights of Mother Earth, by allowing, through its acts and omissions, the widespread development of small hydroelectric power plants in sensitive mountain rivers and streams throughout Serbia, without adequate safeguards, monitoring and remedial measures. This is contrary to the duties of a State in article 3(2) of the Declaration.

60. Indeed, like many Western legal systems, Serbian laws define Nature as mere human property and encourage its maximum exploitation for economic purposes. Serbian environmental laws have thus failed to prevent the degradation of the country's rivers.

61. In addition, the Law on Environmental Protection establishes the general principles of environmental protection in Serbia. However, these principles are not sufficient to protect watercourses from the onslaught of small hydropower. While Article 16 of the Law imposes a general obligation on entities that "use natural resources or property"

to take preventive measures for environmental protection, this provision does not specify the robustness and effectiveness of these "protections" - and, in practice, these protections have not materialized for river projects.

62. Article 17 of this law also states that activities "which threaten the environmental capacity, natural balance, biodiversity, hydrographic, geomorphological, geological, cultural and landscape values or which in any way degrade the quality and properties of the natural property are not allowed in a protected natural property". Although Article 17 applies to "protected natural properties" (special natural reserves, natural parks and species protected in this way), such as the Kopaonika Mountains Park, it does not provide any effective protection against small-scale hydropower on the ground.

63. Similarly, Article 36 of the same Law requires an environmental impact assessment for certain projects, including water management. However, for hydroelectric facilities, the projects specifically requiring an environmental impact assessment are those with a capacity of more than 50MW and those that may require one are those with a capacity of more than 2MW. All hydroelectric facilities below 2MW are therefore excluded, although studies have concluded that the cumulative impacts of several small diversions generally outweigh those of a single large dam.

64. Moreover, when small hydropower projects are approved, they are not always conducted properly due to lack of oversight and corruption. A 2018 study found that many small hydropower plants were even violating existing rules (despite their laxity), including placing run-of-river pipelines directly into the heart of a river, bringing heavy machinery directly into a channel, or otherwise breaking the law. Part of the problem is the lack of enforcement. The number of dams being built is so high and the number of monitors is so low that it is virtually impossible to oversee all projects. Witnesses at the Tribunal hearing reported that there have also been several instances of alleged irregularities, including allegations that construction projects were carried out without permits. Mandatory public debates were conducted without recording, and the locations of these debates were changed at

the last minute without public notification. Municipalities have published land use plans that include sites that do not actually exist within their boundaries or do not exist at all, activists have received threats from investors, and some local government officials own dams, increasing the potential for conflicts of interest.

65. The Law on Environmental Protection also does not protect small Serbian rivers. Article 35 defines three different protection regimes that can be established in a protected area. However, there is a general exception to all degrees of protection, according to which the government retains the possibility of authorizing certain works in protected areas, "especially in the field of energy... if these projects are of general interest and national importance". This broad loophole has been, and will continue to be, used to install small hydroelectric power plants in some of Serbia's most sensitive ecosystems. Furthermore, in the 2014 Energy Law of Serbia, it was established that the use of renewable energy sources is in the national interest of the Republic of Serbia. The classification of hydropower as "renewable" is completely misleading. Just because the water is constant does not mean that the rest of the ecosystem being affected is also renewable. Although the Ministry of Environmental Protection has drafted amendments to the Law on Environmental Protection (which would prohibit the construction of small hydropower plants in protected areas), respect for the Rights of Mother Earth requires the protection of all ecosystems from a holistic perspective.

66. In addition to inadequate environmental protections, Serbia is creating economic incentives for small hydro. One of the main drivers for the influx of ROR hydro is a Serbian government decree of feed-in tariffs to subsidize energy from "renewable" sources. In 2020, the feed-in tariff for hydropower increased from 10.41 to 12.40 euro cents per 1 kWh, and it has already increased fivefold in 2021. In addition to the feed-in tariffs, "the national power company offers strong incentives and is committed to buying the electricity produced by the plants at a price 50% higher than the market price."

67. Inadequate environmental laws, significant loopholes and exceptions, weak

monitoring and enforcement, corruption and government feed-in tariffs/other incentives inevitably lead to the continued destruction of rivers by small hydropower plants in Serbia. The state is therefore guilty.

X. Considerations of the Tribunal on the conduct of Europe in relation to the facts presented

68. In view of its hoped-for accession to the EU, Serbia is acting in accordance with certain EU directives, including those on renewable energy. The EU Directive on the Promotion of Renewable Energy Sources (RED Directive) has prompted many current and future member states to provide economic incentives for the development of small hydro.
69. The reform of renewable energies in the EU has been guided by Directive 2009/28 / EC of 23 April 2009 on the promotion of the use of energy produced from renewable sources, which requires individual Member States to " achieve different targets for the use of renewable energy sources. In 2018, a revised Directive came into force, raising the EU-wide renewable energy consumption target from 20% to at least 32% by 2030, with a requirement to reassess the target by 2023, with the aim of potentially increasing it again. With the inclusion of hydropower in the definition of "renewable energy" in Article 2(1), there is a clear strong incentive to increase the use of hydropower plants.
70. The EU also issues guidance on how Member States can promote the use of renewable energy sources through support schemes. A support scheme is defined in the Directive as any "instrument, scheme or mechanism...that promotes the use of energy from renewable sources by reducing the cost of that energy, [or] by increasing the price at which it can be sold", and also includes the provision of "investment grants, tax exemptions or reductions, tax refunds...green certificates, and direct price support schemes, including feed-in tariffs and fixed or degressive premium payments". For example, Serbia, as part of its obligations as a signatory to the Energy Community Treaty, was required to ensure that 27% of its electricity

consumption comes from renewable sources by 2020. Under an incentive support scheme, electricity producers in Serbia can sell this "green energy" to a state-owned power company at a state-guaranteed premium price of 12.6 euro cents/kWh (in 2018), with the final price paid by consumers largely subsidized by the government.

71. These requirements and incentive schemes eventually cover almost the entire territory of the Balkan region. The Balkan nations of Bosnia and Herzegovina, Serbia, Montenegro, Kosovo, Northern Macedonia and Albania are not EU Member States. However, these countries are all contracting parties to the Energy Community Treaty and are therefore obliged to comply with the provisions of the 2009 Renewable Energy Directive, as agreed in the Treaty.

72. The European Union and the Energy Community have also acted in violation of the Universal Declaration of Mother Earth's Rights, by allowing through their actions and omissions - including by defining small hydro and other destructive forms of energy as "renewable energy" despite their permanent and deleterious effect on ecosystems and by encouraging their development in order to meet the EU's renewable energy commitments - the large-scale development of small hydro throughout Serbia and the Balkans without adequate safeguards, monitoring or remedial measures. Their actions and omissions are in violation of the duties of States and public bodies set out in article 3(2) of the Declaration.

XI. DECISION

73. The European Tribunal In Defense of Aquatic Ecosystems rules on behalf of those animals, fish and plants that have no voice, the inhabitants of the Kopaonik river mountains, Serbian and Balkan rivers, humans and non-humans alike, who form the living community of the rivers whose rights have been violated by the construction of hydroelectric dams.

74. The Tribunal states that in the Kopaonik Mountain Rivers vs. the State of Serbia case there is a clear violation of the Rights of Nature.

75. The acts and omissions of the Serbian government, the European Union and the

Energy Community have resulted in significant degradation or death of rivers, reduction or total elimination of flows in many water bodies, significant loss of habitat and alteration of habitat connectivity, declines in populations of fish species and many other species, some of which are now threatened with extinction, as well as many other serious and long-lasting impacts on Mother Earth.

76. Consequently, the Tribunal finds the Serbian State and the European Commission liable for wrongful failure to act and for ecocide.

77. The Tribunal enjoins the defendants to adopt the following measures:

For Serbia :

- Pass a national law and/or constitutional amendment recognizing the rights of rivers and creating an independent body of legal guardians to represent these rights;
- Implement the optimal basic rights of rivers to flow in relation to downstream minimum flows;
- Undertake the deconstruction of dams that are causing these impacts, especially those on the Kopaonik, in order to allow these ecosystems to begin to regenerate, and carry out the pertinent restorative measure on those rivers where dams were built.
- Put a halt on all new hydroelectric dam projects until the cumulative impacts of these dams can be assessed, and conclude that the Rights of Nature are respected;
- Remove the loophole that excludes environmental impact studies for hydropower projects below a 2MW threshold and require that all environmental impact studies for hydropower projects be cumulative, basin-wide assessments of the impacts of dams taking into account the whole ecosystem.

78. For the European Union :

- The EU must recognize the rights of aquatic ecosystems at EU level with emphasis on river and watershed rights;
- New hydropower plants must be excluded from the renewable energy category within the framework of the objectives set by the Renewable Energy Directive, because this form of energy production degrades aquatic ecosystems;
- Subsidies for small hydro must be completely eliminated.
- The European directive on renewable energies must be amended in order to add provisions relating to hydroelectric power and the carrying out of environmental impact studies in order to ensure that the installations do not infringe the Rights of Aquatic Ecosystems.

This decision is certified by:

Co-secretariat of the European Tribunal in Defense of Aquatic Ecosystems

Olivia Gervais

Camille Bouko-Levy

Natalia Greene

Signatories of the document - TRIBUNAL JUDGES

Cormac Cullinan

Valérie Cabanes

Tom Goldtooth

Richard Falk

Lisa Mead

ANNEX

Correspondence with the perpetrators

Dear Mrs Simson,

The European Hub of the Global Alliance for the Rights of Nature is organizing the Tribunal for the Rights of Aquatic Ecosystems, and its fourth hearing will be held on April 24th, 2021.

Among the five cases relating to aquatic ecosystems dealt with by the Tribunal, the Balkan Rivers case is presented.

The Balkan rivers are some of the last free flowing and wild rivers of Europe and are a hotspot for biodiversity with unique ecosystems and wildlife, including the critically endangered Balkan lynx. They are home to 69 different fish species that live nowhere else in the world, and their beds provide shelter for over 40% of all endangered freshwater mollusk species in Europe.

However, those rivers are now highly endangered with the plans to build over 2,500 dams on just about every one of them.

Local mobilization on the mountain Koaponik started in 2013 when by exchanging information about huge dam ecocide on social networks, a wave of resistance spread. The mountain Kopaonik rivers became a demonstrative “classroom” of Nature destruction.

The plaintiffs have identified the European Commission as being one of the responsible parties for the environmental river's destruction and surrounding ecosystems and its consequences, both environmental and human.

The European Tribunal for the defense of aquatic ecosystems will hold its fourth hearing on April 24th at 5:00 p.m. (Paris time). As part of the defense, we cordially invite you to take part in this hearing. We strongly recommend you to participate in order to be able to present your defense.

Due to the global pandemic, this hearing will be held online and will be broadcasted on social networks. If you agree to participate, please contact us so that we can give you access to the zoom login link for the hearing. If you agree, you have 15 minutes to present your defense.

If you confirm your participation, please write to us indicating the name of the representative.

For more information about the tribunal and the Balkan case, please visit: <https://www.rightsofnaturetribunal.org/cases/balkan-rivers-case/>

Yours sincerely

The co-secreteriat

Olivia Gervais, Camille Bouko Levy, Natalia Greene

RESPONSE

Dear Secretariat Team,

First of all please accept our apologies for this very belated reply to you. On behalf of European Commissioner Kadri Simson, we want to thank you for your kind invitation. Regretfully, due to other commitments, we are not in a position to give you a positive reply. Thank you for your understanding.

Yours sincerely,

Mrs Véronique Mägi

Assistant to Cabinet Members

Mrs Laure Chapuis

Mr Thor-Sten Vertmann

Cabinet of Commissioner Kadri Simson in charge of the Energy Portfolio

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If you haven't yet registered your organisation in the European Commission Transparency Register, you are kindly requested to do so.

European Commission transparency register:

<http://ec.europa.eu/transparencyregister/info/homePage.do>

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-----Original Message-----

From: tribunal@therightsofnature.org <tribunal@therightsofnature.org>

Sent: Friday, April 2, 2021 11:00 AM

To: CAB SIMSON CONTACT <CAB-SIMSON-CONTACT@ec.europa.eu>

Subject: Invitation - Tribunal in defense of aquatic ecosystems