

# **NO IMPACTS WITHOUT ASSESSMENT – USING LEGAL TOOLS TO PREVENT HARM TO NATURE AND PEOPLE**



**Success stories from  
across EU**

**Justice and Environment 2020**

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# SUMMARY

Justice and Environment network has been analysing the state and tendencies of the environmental impact assessment procedure (EIA) for more than a decade. The EIA procedure aims to identify and to assess the environmental implications of projects with potentially significant impacts before their authorisation. By updating four earlier Directives (85/337/EEC, 97/11/EC, 2003/35/EC and 2009/31/EC), the Directive 2011/92/EU (the EIA Directive) provides the legal framework for carrying out the EIA of public and private projects in EU.

J&E compiled EIA cases from seven EU countries in a study which shows that legal support to stakeholders, whether in court or even in administrative proceedings, is key to shaping good EIA implementation practices in EU Member States. Legal advice given at the right time could enhance community support for greener alternatives to a mining project like the case in Bulgaria or mobilise the inhabitants of Dubrovnik by means of local referendum to oppose the construction of a luxury golf resort. The variety of types of EIA projects presented here provides a broader perspective to their potential environmental impacts. At the same time, the EIA quality could be significantly improved if local people and civil society organisations (CSOs) have a say in the procedures and if they are provided with quality legal aid.

This study presents several cases including a case from Austria on EIA of a hydropower facility and its impacts on Natura 2000 site, demonstrating that opportunities for public participation and guarantees for environmental protection are quite weak outside the EIA system. EIA procedures, if applied properly, provide a very structured legal and administrative framework for the analysis of environmental impacts of the investment proposals, involving all competent and interested parties. The public participation is a vital element of these procedures, making them inclusive, transparent and fair. The Bulgarian case shows how the impacts of an investment proposal on Natura 2000 areas (e.g. impacts on habitats of the European wolf and brown bear) assessed, as part of the wider EIA, led to prolongation of the procedure and helped to give the time needed to raise concerns about the project's impact on drinking water. In Croatia, a thousand-year-old walled city of Dubrovnik (a UNESCO heritage site) is threatened to be overshadowed by a 20 times larger new development project -a luxury golf resort - and its citizens have mobilised in an unprecedented campaign against it.

The Estonian case reveals how significant changes made to a road construction project were overlooked, and no new EIA was carried out nor was the previous EIA report updated before the permit was issued. Defending the rights of affected landowners resulted in a positive precedent for the future. In Hungary, a project of a windfarm of 16 turbines with impacts on a Natura 2000 site was centre stage for a lengthy legal battle, which resulted in a clear ruling in favour of EIAs to be carried out when needed. In Slovakia, our member VIA IURIS has been successful in highlighting the need to assess also the impacts of small hydroelectric power plants and their cumulative impacts. In Slovenia, the operation of a nuclear power plant was prolonged for 20 years without an EIA, resulting in a court battle, still underway. In all these

cases, the legal expertise of J&E members was of significant value for the final success, and for the quality of the EIA procedures both in these individual cases as well as for all future EIAs.

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# SUCCESS STORIES

## Take the need for EIA procedures seriously (Austria)



I am Gregor Schamschula, an environmental lawyer from Austria, working with ÖKOBÜRO - Alliance of the Austrian Environmental Movement. It consists of 17 Austrian organizations engaged in environmental, nature, and animal protection like GLOBAL 2000 (Friends of the Earth Austria), FOUR PAWS, GREENPEACE CEE, and WWF Austria. ÖKOBÜRO works politically and legally for environmental protection and the alliance of the environmental movement. We provide our members and other environmental practitioners with our expertise in environmental law, public participation and in solving political problems.

One of our main fields of activity is the cooperation with WWF Austria, with which we are monitoring hydropower projects, as they are very prominent in our country. Up to 61% of electricity in Austria stems from hydropower, that's about 64 TWh every year. The lion's share stems from run-of-river hydroelectricity, where over 550 power plants produce around 96 % of hydropower, whereas large pump storage facilities supply around 4 %. While the share of pump storage is small, their capacity is large and can be used in time where energy prices are at their highest. To build those storages, the main solution is to erect large dams in valleys, using the mountains to create a water basin.

Such was the case with the storage facility *Koralmb*, which is a planned project in Styria, Austria. The area was originally a Natura 2000 protected site, but the valley was later taken out of the Natura protection to allow for the hydropower facility to be built. What's more, the project is planned to have the capacity for producing up to 970 Megawatts of electricity. For comparison, this would make it the largest hydropower storage by far, a third more powerful than the current number one.

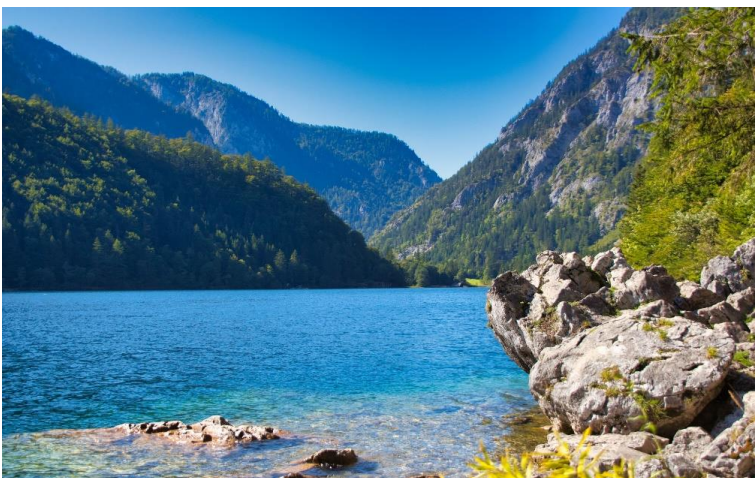


Photo: Pixabay/Leopold Steinersee, Austria

It is obvious that such a large project is destined to undergo an EIA, a process designed to streamline proceedings and investigate the environmental impacts of such a facility. However, the project solicitor wanted to avoid an EIA, arguing that the planned project was not a hydropower facility, but a dam with electricity as a by-product and therefore not a project according to the Austrian EIA-Act. An argument that may seem absurd to most observers, but one that is an issue nevertheless.

The regional authority for EIA procedures, the Styrian government, issued an administrative decision, ruling the project to not require undergoing an EIA. This screening decision was surprising to most and therefore challenged by several environmental NGOs, including the UWD, WWF and ÖKOBÜRO/Justice & Environment. We argued that a dam with the capacity of producing 970 MW of electricity and a planned volume for holding water of 5.500.000 m<sup>3</sup> is of course required to undergo an EIA. Legally the question was: is this project a “hydropower plant” according to the EIA-act, or is it merely a dam with the option to produce electricity.

The federal administrative court, which ruled on the appeal, sided with us, the NGOs, and ordered the plant to undergo an EIA. The decision was clear as day: a dam this large with such a capacity obviously is a hydropower plant with all the consequences this category brings with it. The project solicitor, along with the regional authority challenged this ruling however, appealing to the Supreme Administrative Court. In May of 2017, the ruling of the federal administrative court was upheld, the verdict stood: The hydropower project Koralm needs an EIA, we are correct in our evaluation.

This ruling has additional value in the Austrian legal system, as the implementation of environmental protection rules for NGOs and citizens are quite weak outside of the EIA system. The Aarhus Convention, which gives the public concerned the right to participate in proceedings and appeal decisions is not implemented fully into national law. Especially at the time of the verdict, had the project not been declared as requiring an EIA, the public would not have been able to participate in the proceedings, nor challenge its outcomes. Now, that there is an EIA happening, the rights of the public concerned stand and they and us have to be taken into account.

*[Ruling: Austrian Supreme Administrative Court VwGH 30.3.2017, Ro 2016/07/0015]*

## All is well that ends well (Bulgaria)

My name is **Plamen Peev** and I am senior legal and policy advisor at the **BlueLink Foundation**. For more than 20 years BlueLink has been committed to supporting civil society participation, access to information and justice, and stakeholder engagement through strategic use of internet and other activities. The organization has worked on research and analysis of internet freedom, technological and social change, civil society, democracy and sustainable development, and on shaping policies that foster them. The foundation operates a virtual newsroom to publish *Evromegdan* (in Bulgarian) and *BlueLink Stories* (in English, for Central and Eastern Europe) as e-magazines for ethical journalism in public interest.



In the years 2014-2016 BlueLink worked together with the Center for Environmental Law on a project on monitoring and control of extractive and energy industry in Bulgaria. Within the project we supported with legal advices and consultations 15 cases. We were approached by a Citizens Initiative for Preservation of Velingrad municipality as an environmentally-clean region without mining. The case concerns an EIA of investment proposal for extraction and processing of tungsten (wolfram) ore near Velingrad (often dubbed as the [spa capital of the Balkans](#)).

The main concerns of the Velingrad citizens were related to the risks of deterioration of the quality of the mineral waters as a result of the implementation of the project and, thus, affecting the image of the town as a spa center. The local people feared that the air quality of the town, especially of the suburbs due to the transportation of the extracted ore. We supported the local people with advices how to participate more effectively in the public hearing regarding the EIA report, e.g. to ask for audio recording in addition to the written report, so that they could be sure that all their opinions and objections are dully reflected in the EIA report. In addition, the locals were advised to raise the issue with the lack of assessment of the impact of the transportation of the extracted ore through the residential suburban areas on the air quality in the town, as well the potential impact of the investment proposal on the quality of the underground waters and the mineral strings in Velingrad.

At the public hearing beside the objections of the local people mentioned above, the national environmental NGO Balkani Wildlife Society raised the problem with the impacts of the project on the protected areas, disturbance of the habitats and bio-corridors of the European wolf (*Canis lupus*) and of the brown bear (*Ursus arctos*), subject of protection in the Natura 2000 areas.

Following the public hearing the Director of the Regional Inspectorate of Environment and Waters (RIEW) requested the investor to amend by 29.02.2016 the EIA report and consider the impacts on the Natura 2000 areas (appropriate assessment) and on the underground waters.

The final decision (03.10.2017) of the Director of RIEW was not to approve the EIA report because it did not consider the existing water catchments of drinking water and the impact of the project on them. Moreover, the River Basin Directorate informed the environmental expert council who has to decide on the EIA report that in the concession area of the project new sanitary safeguard zones (1 and 2 type) for protection of the drinking water were designated (in type 1 of these zones all kind of activities are banned, and in type 2 the ban is conditional). The investor refused to amend its project and concession area taking into account the impact on the sanitary zones.

*Photo: Aerial photo of Velingrad, courtesy to Yuksel Saliev*



The investor appealed in the administrative regional court. The court upheld (17.4.2018) the decision of the administrative authority (RIEW) stating that the investor had to conform with the guidance of the RIEW to adjust its proposal in line with the sanitary-safeguard zone around the drinking water sources and its restrictions and limitations regarding the environmental protection, life and health of the population, even though that the order for designation of these zones was challenged and had not yet entered into

force. The investor appealed the court decision before the Supreme Administrative Court. The Supreme Court accepted the reasoning of the regional court and upheld its decision (13.11.2018).

Our involvement in the case was only in the first, administrative, phase of the case, we consider our involvement as important since it gave the local people additional arguments at the public hearing. Their opinion together with the arguments of the Balkan NGO about the impacts of the investment proposal on the Natura 2000 areas (e.g. habitats of the European wolf and brown bear) led to prolongation of the procedure and in the meanwhile new administrative procedure brought up the problems with the impact on the sanitary safeguard zones for drinking water which in the end were decisive for the decision of the RIEW and the first and second court instance.



## The city is ours: How citizens fought big money (Croatia)



I am Enes Ćerimagić, lawyer and Vice-president of Zelena akcija/FoE Croatia. Zelena akcija is a non-governmental, non-profit, non-partisan and voluntary association of citizens for environmental protection. We want to contribute to the improvement of environmental protection system at the local, national and global level by encouraging changes through campaigns, non-violent direct action, projects, public participation in decision-making, etc. The aim of our work is to protect the environment and nature, and encourage the development towards a low-carbon society while being guided

by the principles of social justice and systemic change.

Since 2006, the citizens of Dubrovnik have opposed the construction of a gated community style luxury golf resort on the hill Srđ just above Dubrovnik, Croatia. From the onset the project was presented as a sporting recreational center. But thanks to local opposition the true nature of the project was revealed - land grabbing for the huge real estate construction for the rich.

The project was planned to consist of one and a half golf resort, 240 villas, 408 apartments, and two hotels, all with supporting infrastructure and amenities. The activists calculated that the size of the real-estate part of the project would be equivalent to 5 694 average-sized family apartments (60m<sup>2</sup>). A true city inside The City, as Dubrovnik is often dubbed by its inhabitants.

A thousand-year-old UNESCO protected walled city of Dubrovnik would be overshadowed by a 20 times larger instant development which was planned to be built in a matter of few years. A paradigm of the type of behaviour behind climate change - millenniums of human development put at question by the actions of the past century and a half.

The project would also have deprived locals and tourists of a pristine site and excellent viewpoint, and would have required huge amounts of water and pesticides to maintain.

The people of Dubrovnik wanted to preserve the beauty of their city and its surroundings, to protect their water supply and the environment, but also to limit the impact of tourism on their livelihoods. Among the local community, the project was also tainted with suspicion of corruption. A 70 million Euros check for the infrastructure, as was only later found out, would be paid from the public funds.



Photo: Map of the golf course project, source: EIS for Srđ golf course, ECOINA d.o.o

For locals this was too much for a city that is already heavily impacted by excessive tourism and an overburdened infrastructure. In 2010, the local initiative “Srđ je naš” (“Srđ is ours”) was created, consolidating local activists with national NGOs.

A David and Goliath like battle ensued. The project was supported by all political parties, both local and national, and the mainstream media. The investor rolled out a massive support campaign for the project. Donations, sponsorships for sport clubs, study trips for journalists, advertising, you name it.

On the other side a group of enthusiastic citizens backed by independent experts in tourism and economy, architects, and NGOs. “Srđ is ours” used both democratic and legal means to put spotlight on the problems with this project. In 2013 “Srđ is ours” together with Zelena akcija organized a long due referendum on the issue. 84% of local residents who voted said they were against the plan. Politicians did not budge.



Photo: Zelena akcija

Backed by Zelena akcija the citizens' initiative also challenged the project in the Croatian courts. The courts found that the investors' location permit and environmental permit were illegal. They were in breach of the EU environmental acquis. The project was left without any permits. This was a powerful example of local resistance and people's empowerment.

But, the profits from converting cheap meadows to pricey construction plots were just too sweet a deal to be abandoned that easily. The investor pushed even harder. Under the ISDS (Investor-State Dispute Settlement) mechanism of the Croatia-Netherlands Bilateral Investment Treaty (BIT) the investor sued Croatia before a private, secret international arbitration court. The investor claims to have spent €130 million on the project, yet they want US\$500 million dollars from the Croatian state to compensate them the profits they claim they would have made had the construction gone forward. They are now trying to regain what people's power and domestic courts had refused it: exorbitant profits.

The "hint" was soon picked up by politics. Permits, identical to those declared illegal by Croatian courts, were re-issued in a matter of six weeks. Zelena akcija called this racketeering of a sovereign state. Only to be targeted by the investor and sued for libel and damages. The amount claimed by the investor, if awarded, is capable of shutting Zelena akcija down. As if this wasn't enough the investor requested a gagging order against Zelena akcija. The gagging order was aimed at silencing all and any critique we might voice against the project. If it were successful we would now not be able to write this report. As for libel and damages, we are still struggling with that one.

The Courts on the other hand did not need to struggle once we again challenged the permits. Since nothing had materially changed regarding the project or the permits the outcome was reasonably expected to be the same. But, it seems that reason and ISDS do not mix well together. The first instance courts now confirmed both the environmental and the location permits. So we are now suing in front of the higher courts, expecting... Well, we'll see.

While we are waiting our movement is growing stronger by the day. The project, now revealed for what it really is, is at a standstill. Given that it has now already been 14 years into the struggle against this monstrous land grabbing project, the last match about it might already have been played. If it were not, it will definitely not be played without us. Because, Srđ is ours!

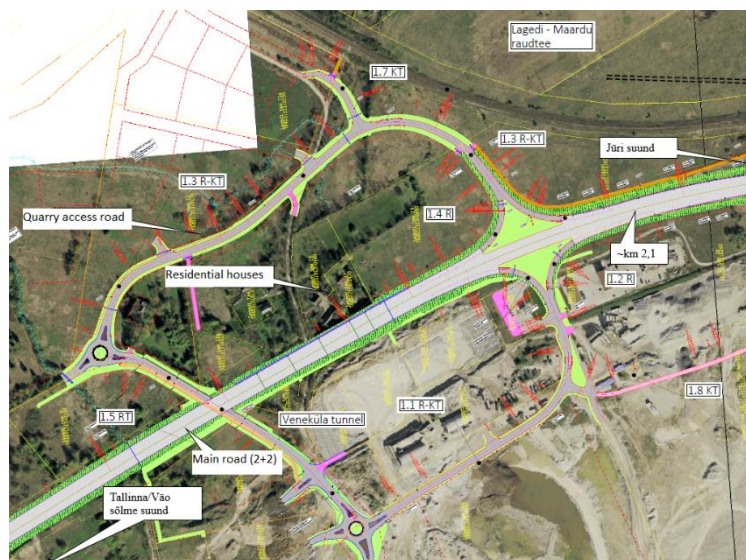
## Making significant changes to a project? - You'll need a new EIA! (Estonia)

My name is Merlyn Mannov, I am an environmental lawyer and I've been working for Estonian Environmental Law Center for the past two years. Estonian Environmental Law Center is a public-interest NGO established in 2007, where we as a team of lawyers work for better environmental legislation and its implementation in Estonia. As part of our work we have been giving legal aid to landowners, local communities, environmental NGOs and other stakeholders, interested in protecting the environment as a common good. Many of these cases have also dealt with the necessity and quality of environmental impact assessment (EIA).



In 2017, we were approached by landowners who were living next to the ring road around the capital of Estonia, Tallinn. They were very concerned about the planned reconstruction of the road, which would include turning the 1+1 lane country road into a dual carriageway.

The reconstruction project was initiated in 2009, when a preliminary project was drafted; environmental impact assessment for that project was also carried out at the time. In 2013, however, the project was substantially changed. Among the changes, the location and length of the access road connecting the ring road and one of the biggest limestone quarries in Estonia (Väo) was changed. According to the revised project, the limestone quarry, which was across the road from the concerned landowners, would be connected to the main road by an access road that completely encircled their residence. The initial project, on the other hand, would've had an access road to quarry that passed the concerned landowner's house from one side only and further away.



Map: Updated project materials

Several other changes were also made to the initial project, whose impacts had been assessed. Despite these significant changes, no new EIA was carried out nor the previous EIA report updated before the permit for reconstruction was issued in 2017.

We established that such behaviour was illegal. According to both EIA Directive and the national transposing laws, EIA must be carried out for the project for which a permit is applied for, and this has to be done before a permit is issued. The results of the EIA must be taken into account when issuing the permit. Based on the above, it is quite logical and evident, that the EIA must be up-to-date at the time a permit is issued. If there are significant changes to the project before the permit is issued, the EIA must be updated or a new EIA carried out. As this was not done in this case, it was clearly in breach of Art 8a (6) of the EIA Directive.

To help the local landowners and draw attention to the illegality of the process, EELC provided legal assistance and represented the landowners in the administrative courts. The court of 1st instance ruled in favour of the landowners, acknowledging the wrongdoing by competent authority (Road Administration). Parallel to the dispute taking place in courts, the Road Administration approached the landowners with an offer to buy their land. As the price negotiations were not concluded before the term for appeal, the Road Authority turned to the Appeal Court.

During the appeal court procedure, the landowners and Road Authority reached an agreement to sell the land with their residence to the State. The appellate court reached a verdict nonetheless, confirming that significantly altering the project after an EIA was completed and before issuing the permit, without an assessment of the impact of changes made, was illegal.



*Photo: Archive of the Tallinn Administrative Court*

The February 2019 ruling from the appellate court is an important precedent in that it clearly sets out that if there are significant changes to a project after an EIA is completed but before a permit is issued, a new EIA must be carried out (or the old one updated accordingly). This is especially relevant for large infrastructure projects, where project design is often done in stages (first a more abstract pre-design, followed by more technical and detailed project designs). Therefore, the case, hopefully, clarifies to all authorities that in future, changes to such projects should in any case be subject to assessment of environmental impacts.

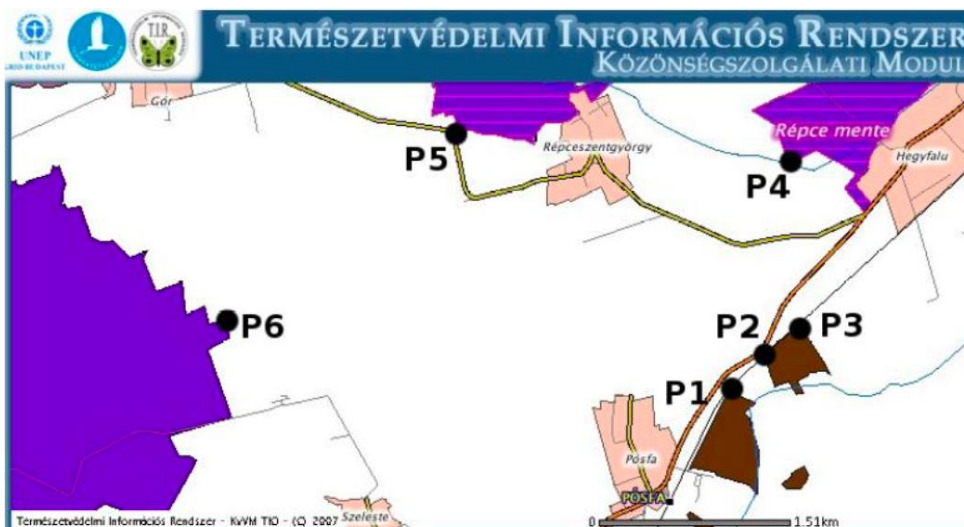
## Even renewable energy projects can significantly impact the environment (Hungary)



My name is Agnes Gabriella Gajdics, I am working as an attorney-at-law in Budapest, Hungary for Environmental Management and Law Association (EMLA, [www.emla.hu](http://www.emla.hu)) for almost ten years. EMLA is a non-profit Hungarian NGO active in environmental law and environmental management on national, European and international levels. One of the main activities of EMLA is providing public interest environmental legal advice and litigation for natural persons, environmental NGOs and local municipalities in environmental cases, including screening and environmental impact assessment proceedings or other procedures granting development consent for projects having significant impacts on the environment.

In 2012, an environmental NGO asked EMLA for legal advocacy in their case where the developer planned to build a windfarm of 16 turbines near to villages of Szeleste, Hegyfalu, G6r and R6pceszentgy6rgy in Vas county, in North West Hungary. In the northern neighbourhood of the project's location, there is a Natura 2000 site ('R6pce-mente' HUFH20010) which is the habitat of e.g. Great Capricorn Beetle, Steppe Polecat, Eurasian Beaver, Western Barbastelle, Fire-bellied Toad. If built, the turbines were ca. 250 metres from special areas of conservation and 800 metres from dwellings of the above-mentioned villages.

Site of the planned project:



Natura 2000 sites indicated in purple, and the planned location of turbines marked by Points 'P', source of the map: <http://www.termeszetvedelem.hu/termeszetvedelmi-adatbazisok>

The most important environmental factors concerned by the project were damages to the landscape, nuisance of the nature protected species/habitats and noise emission and vibration of the turbines. The preliminary assessment documentation was submitted by the developer in 2010 and it explained that although the planned location of the turbines is close to Natura 2000 sites and residential areas, these would not be affected. The environmental authority of the first and the second instances agreed with the developer and stated in the final administrative resolution that the project will not have significant effects on the environment, and it can be commenced after obtaining the construction permit, i.e. without an EIA.

The petition for judicial review of the environmental authority was filed in 2012. In our claim, we argued that the habitats of the protected species and the expected noise and vibration of the turbines were not considered appropriately in the preliminary assessment documentation. The opinions of experts in nature conservation and in noise protection confirmed our standpoint on that the screening documentation was incomplete and defective, i.e. based on that document the authority was not able to evaluate the significance of the likely impacts. The experts also underlined that the affected area is positively valuable in nature and landscape protection respect even if it is out of the territorial scope of the national and Community protected zone.

The court agreed with our opinion and stated that the project would have significant impacts on the environment, therefore, the decisions of the environmental authority were repealed. The court highlighted that the preliminary assessment was insufficient regarding assessment of noise and vibration effects furthermore changes in landscape. The judgement of the court was delivered in February 2014 and it ordered the environmental authority to take into consideration the factors highlighted by the expert opinions in the repeated screening procedure.



*Hegyfalu and its vicinity, photo by Tóth Géza, [www.tothgeza.hu](http://www.tothgeza.hu)*

The new screening procedure started in 2015 and not only the developer stated in the screening documentation but also the environmental authority maintained it in its decision that the project would not have any significant impact on the environment. We appealed the authority's resolution again as it violated the general rules of administrative procedures as well as the national provisions requiring an EIA for the projects likely having significant impacts on the environment.

When a resolution of the administrative court orders a new administrative proceeding to be conducted, the authorities are obliged to adhere to the reasoning of the court's decision as well. In spite of the court's decision, the environmental authorities (first and second instance either) ignored our arguments on noise emission and vibration disturbing the neighbouring nature conservation sites and residential areas, and decided again that the project would not have significant impacts.

Our action was brought to the administrative court in 2016 and, in the court procedure, a judicial expert of noise emission clearly declared that the noise will be significant in relation to the inhabitants of the settlements of the area concerned. The judge based his resolution on this expert's opinion and ordered to carry out a full EIA for the project.

The authority and the developer challenged the court's judgement in the extraordinary remedial proceeding of the Curia which body also agreed with our argumentation and stated that the project's impacts on the environment have to be identified and assessed in an EIA proceeding.

It has to be noted, that before 2016, the Hungarian law did not provide any provisions regarding the minimum distance between wind turbines and built-up areas. However, in 2016 a series of new regulations entered into force which banned to build wind turbines in a 12.000 metres radius around populated areas. This new provision shall apply in the proceedings commenced or repeated after its entry into force, therefore, the realization of the project is not possible, as the turbines would had been located within this distance from the mentioned settlements.



## The over-sized footprint of small hydropower plants (Slovakia)



My name is Imrich Vozar, and I've been working for VIA IURIS ([www.viaiuris.sk](http://www.viaiuris.sk)) as a lawyer for the past 11 years. VIA IURIS is a public-interest NGO from Slovakia which was established in 1993 as Centre for Environmental Public Advocacy - CEPA and has transformed into VIA IURIS in 2006. The most important cases, in which the lawyers of VIA IURIS assisted, include the landfill in Pezinok, the cases of the highway construction, gold mining in Podpolanie, assistance to Greenpeace Slovakia in the case of construction of the 3rd and 4th block of the nuclear power plant in Mochovce, numerous cases of access to information, several lawsuits related to construction of waste incinerators, small hydroelectric power plants and activities in protected natural areas.

On the basis of the national document "Conception of utilization of hydro-energy potential of watercourses in 2030" there is a long-term pressure on the construction of small hydroelectric power plants on the Slovak rivers in a massive way (at a minimum spacing of approx. 5 - 6 km). This pressure has been protested for a long time by the public involved in the „For Living Rivers“ initiative ([www.ziverieky.sk](http://www.ziverieky.sk)), which actively points out the disadvantages associated with such construction and its members actively participate in the relevant permitting procedures. It is one of the largest manifestations of environmental activism in Slovakia, where local people, nature conservationists, fishermen, local governments, hunters as well as professional nature conservationists have been brought together to prevent the devastation of Slovak rivers.

In the long term, VIA IURIS provides legal support to this initiative and/or its members, both in consultation and in individual cases. The most important cases in this matter which also suggest the necessity and quality of environmental impact assessment (EIA) are e.g.:

### 1. CONSTRUCTION OF SMALL HYDROELECTRIC POWER PLANT ILIAŠ

In this case, we represented multiple river protection associations („Rieka“, „Slatinka“ and „Za dôstojnú Radvu?“). The planned small hydroelectric power plant is not in accordance with the valid land-use plan of the city of Banská Bystrica and the construction is to be carried out without the EIA process, which we disputed on court. Last year, the Regional Court in Banská Bystrica annulled the decision of the District Office in Banská Bystrica according to which the construction of the small hydroelectric power plant Iliáš was not necessary to be assessed in terms of its environmental impact. The court annulled the decision of the Office for its illegality. (see also [here](#)).

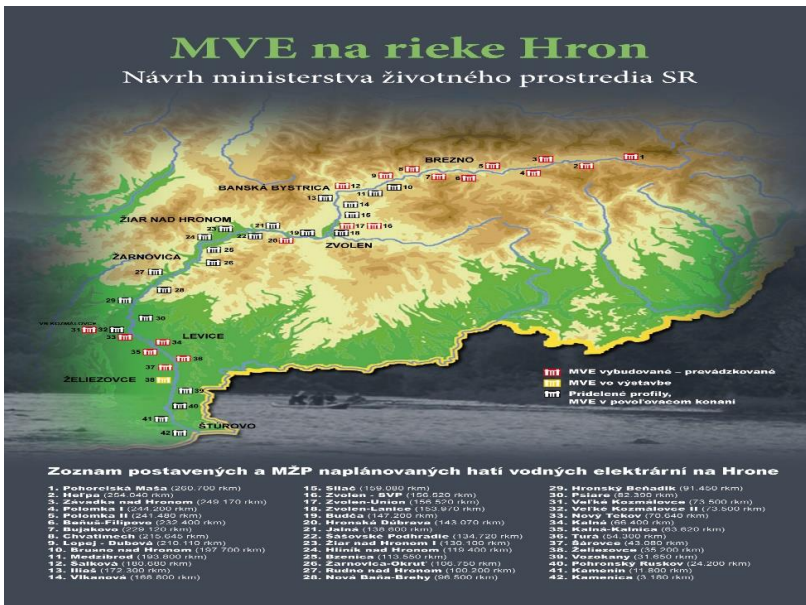
However, the District Office again issued a decision with the same statement as we once objected in the action brought on the Regional Court in Banská Bystrica in July in 2018.

At the hearing in September 2019 we succeeded again and the court revoked the decision as unlawful again while one of the reasons was insufficient evaluation of the cumulative effects associated with the proposed small hydroelectric power plant.

## 2. CONSTRUCTION OF A SMALL HYDROELECTRIC POWER PLANT HRONSKÝ BEŇADIK

We helped a group of local citizens, along with the river protection associations („Rieka“ and „Slatinka“) to challenge the environmental impact assessment process of the planned hydroelectric power plant in our court, which we are convinced, did not comply with applicable law. The cumulative impacts of several planned hydroelectric power plant stations on the watercourse were not sufficiently evaluated, the requirement for a variant solution of the intention was fulfilled only formally.

The power plant will also adversely affect the Natura 2000 protected area "[Flow of middle part of river Hron](#)", what was not taken into account in the process at all.



Map: Small HPP on Hron river - proposal of the Ministry of the Environment of Slovak Republic, source: Archive of Initiative: „ For Living Rivers and Clean Water“

In February 2019 Regional Court in Banská Bystrica decided on the matter, annulled the contested decision and returned it to the new proceedings. The court acknowledged our arguments and annulled the decision to issue the final opinion as unlawful. The reasons were e.g. that the Regional environmental state authority did not take into account the process of extending the Natura 2000 network, where one of the new protected areas which might be included in the Natura 2000 network to protect part of the Hron River, is in the immediate proximity of the proposed small hydroelectric power plant.

In the next proceeding, it will be the duty of the administrative authority to reassess the impact of the proposed small hydropower plant on the environment, according to EIA Act and issue a decision in the matter again. More information you can find [here](#).

## Life-time extensions require consideration of impacts as well (Slovenia)

My name is **Senka Šifkovič Vrbica** and I'm environmental lawyer at Legal-informational centre for NGOs, Slovenia. Our centre is a 20-year old NGO with status in public interest for environmental protection, providing legal support in human rights and environmental protection matters. In the area of environmental protection, nature conservation and spatial planning we provide free legal counselling (e-advice) for everyone on our webpage Environmental defenders, where we also publish all relevant info about regulation, procedures and legal remedies. PIC has initiated some administrative and court procedures, connected mostly with climate changes, energy and wolf's protection. We follow legislation and try to influence for systematic changes at early stages.



In cooperation with other environmental NGOs we were following the “silent” decision for extension of nuclear power plan operation for next 20 years. In Slovenia we have one nuclear power plant Krško, initially planned to operate for 40 years, which would end in 2023. At the time of construction there were no environmental impact assessments as we know them today, there was only a kind of »operating permit«. The main concern was and is safety operation of the plant. The competent authority for control is Slovenian Nuclear Safety Administration.

As we followed the situation, the nuclear power plant in 2012 announced on their webpage that operation is prolonged for 20 years, after the Slovenian Nuclear Safety Administration issued two decisions related to some technical changes in original 1983 technical documentation. This was done without any public announcement, public participation and environmental impact assessment. At that time in Slovenian Environmental Protection Act there was no screening procedure included. A suitable article, regulating the screening procedure, was included in 2013 into the Environmental Protection Act with Slovenian Agency for Environment as competent authority.

After it became clear that neither nuclear power plant nor Slovenian Nuclear Safety Administration will not initiate the screening EIA procedure, in 2016 we prepared a request for the Slovenian Agency to execute an ex officio environmental impact assessment screening procedure and establish that there are significant impacts of extension and EIA should be carried out. The request was signed by four NGOs with status in public interest for environmental protection. The Agency started the procedure and decided that there is no need for EIA. Against this decision we filed the complaint and the Ministry for environment and spatial planning as second instance authority annulled the decision of the Agency with opinion that EIA should be carried out. We were very pleased to get this decision, but only for short time, because the nuclear power plant start the procedure against this decision at Administrative court.



*Photo: The Ministry of Defence of Slovenia*

Administrative court found that actual situation doesn't provide reliable basis for decision that an EIA should be carried out and brought the case back to second instance authority for a renewed procedure. In new procedure the Ministry for environment and spatial planning rejected our complaint and confirmed the decision of the Slovenian Agency for Environment.

Regarding this decision, we were instructed to go to Administrative court against first instance decision of Slovenian Agency for Environment. So, we filed the suit at the Administrative court against negative EIA screening decision. The latest ESPOO and ACCC decisions were very supportive for argumentation. A court decision is still to be expected in near future.

The EIA screening procedure is very important and the amendments of EIA Directive from 2014 put even more stress on this part of EIA. Executing the right to initiate screening procedure and use legal remedies against negative screening decision from the NGOs side is one of the key elements in environmental protection.