

Istanbul Water Tribunal

Tütün Deposu, Istanbul, March 14, 2009

CASE: Yusufeli Dam and Hydroelectric Power Plant Project in the Çoruh Valley

Plaintiffs:

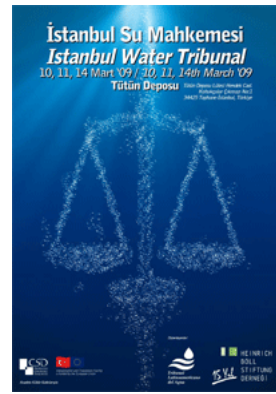
Bedrettin KALIN- ARTVİN, Turkey
Recep AKYÜREK- YUSUFELİ, Turkey

Defendants:

Ministry of Energy and Natural Resources – ANKARA, Turkey
Prime Ministry of the Republic of Turkey – ANKARA, Turkey
General Directorate of State Water Works (DSİ) – ANKARA, Turkey
Ministry of the Environment and Forests – ANKARA, Turkey

FACTS

- 1) The Turkish government undertook a planning process for a hydroelectric development program on the Çoruh River based on the feasibility reports of 1986. The project plan was finalized in 1990.
- 2) Two dams, Muratlı and Borçka, were constructed at the headwaters of the River and two other dams, Deriner and Artvin are presently under construction.
- 3) The case brought before the Tribunal concerns the Yusufeli Dam project, one of the dams originally projected for the river basin. The Council of Ministers authorized the award of a construction contract for this project in 1997.
- 4) Although construction awards were granted for the Yusufeli Dam on two occasions, the international consortia were dissolved because of financing difficulties; actual construction has still not begun. A new award was granted in 2009.
- 5) The Turkish government rejected a request by the plaintiffs for cancellation of the project in 2001 as a preliminary step prior to their filing of a lawsuit before the 10th Chamber of the Council of State demanding cancellation on three grounds: 1) the tender process did not conform to legal requirements; 2) an environmental impact assessment report was not prepared; and 3) the project offered no public benefit. In 2005, the court unanimously agreed to the arguments and decided for the cancellation of the project. The General Assembly of Administrative Cases of the Council of State reversed this court ruling. The plaintiff's appeal is still pending.



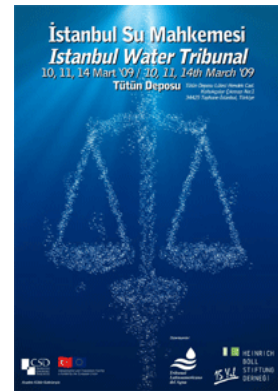
- 6) In 2000, the Yusufeli County Agricultural Feasibility Report stated that no arable land would be left in the area and it would not be possible to continue agricultural activity and animal husbandry in the area. The project affects about 17,000 people; it will flood the county seat and three of its villages and damage the remaining seventeen villages to a large extent. In the same period, the General Directorate of National Parks reported that a 459-hectare area in the Çoruh River Valley Wildlife Preservation Zone would be flooded causing serious damage in the Valley; the Zone is an important source of biodiversity with numerous endemic species of flora and fauna. This heritage has transformed the area into an important tourist destination for people enjoying nature as well as active sports; the river is classified as a world class rafting destination. Information substantiating these and other environmental impacts were confirmed in the report prepared by the Encon Environmental Consulting firm for the prospective international financial consortium organized for this project.
- 7) The Yusufeli Dam Project would flood a region that is of great cultural and historical significance to a large population of Georgians and of Turkish communities of Georgian descent. Although numerous chapels will be flooded by the project, three churches of great importance in the periodic pilgrimages of this group will become inaccessible.
- 8) The proposed relocation of the population makes no provision for the reestablishment of an economic base to generate gainful employment opportunities for the population in agriculture or other activities that would assure their livelihood. The compensation offered for the destruction of their homes and community infrastructure is insufficient to enable them to purchase the new homes proposed by the authorities or to finance the reconstruction of community infrastructure.
- 9) The financial figures offered by the authorities as the cost of the project do not include the substantial additional costs for the infrastructure needed for roads, canals, and community. When the total project costs are compared to the current value of the energy to be generated by the hydroelectric plant, a complete benefit–cost analysis demonstrates that the project is not financially viable.
- 10) There is a long history of successful judicial efforts to block administrative steps permitting gold and other mining undertakings in the River Basin. In the most recent incident the Canadian mining company Inmet (a successor to the Cominco Company) has been attempting to open a copper mining operation in Çerattepe on the Çoruh River, in the Artvin province since 2006. Local courts and municipal authorities canceled their operating license because of the lack of respect for regulations mandating the preparation of an environmental impact assessment report. As a result, the company ceased its production plans for the present.

WHEREAS:

- 1) The universal acknowledgment of water in adequate quantity and quality as a fundamental human right whose full exercise must be guaranteed by the governments (UN Council on Human Rights Declaration, Observation Number 15, 2002);
- 2) Assuring the social right to water in one region must not come at the expense of the people and the environment in the area from which the water is being drawn (European Union, Water Framework Directive, 2000);
- 3) Local societies evolve on the basis of their dependence on biological resources and

the management thereof, developing adequate practices for the conservation of the biodiversity and sustainable use of its components (Convention on Biological Diversity, 1992);

- 4) The construction of the proposed Yusufeli Dam and hydroelectric plant will have serious environmental, ecological, social, economic, and cultural repercussions in the areas to be flooded that need be taken into account in the design and implementation of the project as well as in the financial evaluation of its viability;
- 5) The Turkish government has exempted the project from the legal requirement (post-1993) for the preparation of an environmental impact assessment report on the basis of a questionable interpretation of the period in which the project was initiated (1946) that is incompatible with present social realities and violates the principle of the “social state” enshrined in the Turkish Constitution (Article 2);
- 6) The exemption from the State Tenders Law as a result of a decision by the State Council allowed the project to be assigned without competitive international bidding;
- 7) No consultation processes were implemented and the affected communities’ concerns remain unattended, reflecting a lack of the Constitutional mandate to respect human rights;
- 8) The Yusufeli project will have significant impacts on the ecosystem and the hydrological cycle, eliminating the aquatic and terrestrial biodiversity as well as the livelihood of substantial numbers of people;
- 9) The regional historical, archaeological and cultural heritage will be destroyed.



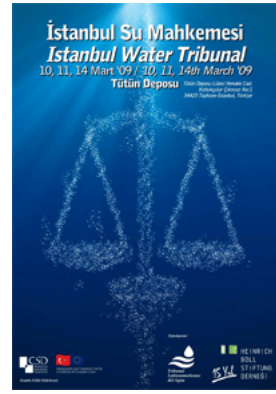
RESOLVES:

- 1) To accept the petition of the plaintiffs to call for the cancellation of the Yusufeli dam and hydroelectric plant project that will provoke environmental destruction of incalculable magnitude with substantial damage to the local population and cost to the nation;
- 2) To mandate the Turkish government to order the preparation of environmental assessment evaluations of the whole development program in the Çoruh River Basin Development, including not only the specific dam projects contemplated in the earlier agenda but also present and future initiatives for mining and other resource exploitation proposals;
- 3) To exhort the Turkish government to respect the human rights of the local population in accordance with the basic mandate of its Constitution, its laws, and the international human rights treaties that it is a party to; and to preserve the ecological and cultural treasures that are recognized as the common heritage of humanity;
- 4) To deplore the manipulation of the laws and regulations governing the tendering, contracting and implementation processes that has enabled the government to move forward with the Yusufeli Project in spite of the sustained opposition of its people that is strengthening the democratic political process in Turkey.

RECOMMENDS:

- 1) The Turkish government to support civil society efforts to elaborate an alternative development program that contributes to harnessing the considerable regional potential for wind energy as well as stimulating regional progress by implementing a diversified economic program based on the area’s biological diversity, agricultural and livestock potential, and attractiveness for ecotourism.

- 2) The Turkish government to reexamine its efforts to ensure compliance with its commitments to the international Convention on Biological Diversity and the United Nations Convention on Climate Change.
- 3) The Turkish government to withdraw its relocation proposal because it is absurd to move the population to isolated townships situated in areas carved from the steep mountain slopes surrounding the valley.
- 4) The Turkish government to honor its commitment to the United Nations Declaration on Human Rights, the United Nations Guiding Principles on Internal Displacement and to fulfill its obligations under relevant international conventions it is a party to including the European Convention of Human Rights as well as its domestic commitments to strengthen democratic institutions by opening a broad debate about the nature of a sustainable plan for the development of the Çoruh River Basin.
- 5) The national courts in Turkey to take notice of the precedents offered by the regional administrative courts in insisting on the correct application of the rule of law for development and resource exploitation programs.
- 6) The Turkish Ministry of Culture and Tourism to take steps to nominate the pilgrimage sites in the Çoruh River Valley into the World Heritage List.



In the Auditorium of Tütün Deposu located in the city of Istanbul, Turkey, after the hearings conducted before the Water Tribunal in Istanbul scheduled March 10th through March 14th, 2009 and once the declarations, evidence and notices from the parties involved were heard, the undersigned members of the jury of the Water Tribunal render the following verdict on the case of the construction of a dam for and two hydroelectric power plants in the Yusufeli Dam and Hydroelectric Power Plant Project, Turkey.