

Fundamentals First

Upholding the rule of law and human rights protection as fundamental preconditions for critical raw materials exploitation in Serbia

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The fundamental legal and policy preconditions for the sustainable and accountable development of critical raw materials exploitation projects in Serbia are missing.

Sizeable lithium deposits in Serbia's Jadar Valley have sparked international interest. However, previous experiences with mining projects show high environmental and human rights risks, as the involved institutions cannot safeguard the public interest, ensure the protection of human rights, health, and private property of Serbian citizens, nor comply with environmental and social standards required by the European Union (EU) Critical Raw Materials Act.

The gradual degradation and erosion of institutions in Serbia has culminated in recent years. Contrary to competencies granted under the Constitution, all effective power is concentrated in the hands of the President of the Republic, who is openly issuing orders to the Prime Minister and ministers in the government, despite having no formal authority to do so. The National Parliament has lost its function and main purpose, as the laws are now predominantly adopted in a shortened and/or unified procedure, without proper debate and without a proper chance for the opposition to participate and use available mechanisms due to their misuse and the obstruction of the authorities by the ruling party.

Professional institutions and specialized agencies do not have the power to act independently. Their employees are working under immense pressure from local and national political structures, thus the decisions they adopt are of questionable legality. Additionally, public prosecutors often fail to initiate and maintain procedures against political figures and businesses close to the ruling party, even in obvious cases with high probabilities of corruption and influence on trading.

Under these circumstances, the authorities cannot be expected to render legal permits and decisions pertaining to an important project of this kind, especially considering the sensitivities regarding environmental and human rights aspects.

A citizens' initiative opposing lithium mining in the Jadar Valley, backed with 38,000 signatures, was simply lost after being submitted to Parliament. Locals and activists voicing their concerns are being labeled as traitors and face immense intimidation through the state-owned national and state-influenced private media and arbitrary police investigations.

In addition to this, the Constitutional Court has annulled the government's decree, which has temporarily suspended the project. The decision was rendered with peculiar timing, considering a revived pro-lithium campaign, giving the impression that the decision was made under pressure from the decision-makers. Moreover, right after that, the government adopted the decree, which explicitly confirms continuation of the project, which indicates coordinated actions between the government and the Constitutional Court.

All of this suggests that the government is not committed to the idea of providing proper and fair public discussion. There is reasonable doubt about the application concerning high environmental and social standards and principles, which is the government's legal responsibility. This has already been witnessed during the realization of similar projects in Serbia, for example with mining projects in the city of Bor, where the government and prosecutor have tolerated serious irregularities, such as construction and mining activities without proper permits, illegal expropriation, the committing of criminal acts concerning environmental issues, etc., with devastating consequences for citizens and the environment alike.

The argument better EU-developed projects than Chinese does not hold, as the only stakeholder obliged and entitled to provide guarantees and the fulfillment of legal obligations is the Serbian state, and the state may not make the difference, depending on the country of the investing company. If there is no legal obligation, the implementation clearly depends on the corporate culture. The willingness of EU to cooperate under the current conditions in Serbia does not speak in favor of granting them the benefit of the doubt.

Environmental governance in Serbia is weak and ineffective. The responsible authorities are not capable of ensuring the exploitation of lithium in a sustainable and accountable manner. The German Environment Agency emphasized that “if raw materials are mined to a large extent in countries with weak environmental governance, it is more likely that the Environmental Hazard Potentials are not properly managed and the likelihood for the occurrence of environmental impacts is higher.”¹

The weakness of environmental governance in Serbia is evident both on the level of the transposition of the EU environmental *acquis* and its application. Key pieces of EU environmental legislation that are specifically relevant for critical raw materials exploitation are missing. Serbian institutions did not respond to the clear obligation to transpose the Environmental Impact Assessment Directive 2011/92/EU (as amended by the Directive 2014/52/EU) by January 1, 2019.² Transposition of the Environmental Liability Directive is pending, despite the obligation to have done so by January 1, 2021.³ The opportunity was missed to establish a system of integrated pollution prevention and control in a timely and accountable manner, and many polluting facilities still operate without integrated permits.

¹ German Environment Agency, Environmental Criticality of Raw Materials - An assessment of environmental hazard potentials of raw materials from mining and recommendations for an ecological raw materials policy, Dessau-Roßlau, June 2020

² Decision of the Ministerial Council of the Energy Community D/2016/12/MC-EnC, 14 October 2016

³ Decision of the Ministerial Council of the Energy Community D/2016/14/MC-EnC, 14 October 2016

Particular challenges have been identified in the application of the best available techniques, as required by the Industrial Emissions Directive 2010/75/EU, which is not fully transposed yet.

Environmental impact assessment procedures suffer from insufficient transparency and public participation. The practice of project splitting (“salami slicing”) – aiming to avoid proper environmental impact assessments or avoiding consideration of all relevant environmental impacts – is widespread, particularly in relation to the “project of interest for the Republic of Serbia.” Engaging in construction without construction permits is pervasive, as well as the issuing of construction permits without compliance with environmental impact assessment reports. There is numerous evidence of *post-festum* issuance of construction permits and approval of environmental impact assessment reports for facilities that were already constructed illegally. Inspections and prosecutors refrain from applying adequate legal remedies, resulting in the widespread practice of impunity by polluters.

The government and responsible administration have not invested sufficient efforts to comply with ratified international treaties, such as the Treaty Establishing the Energy Community. The implementation of binding provisions of the Large Combustion Plants Directive is not ensured, and emissions of sulfur dioxide from thermal power plants are six times higher compared to limits defined by the National Emission Reduction Plan. The closure of thermal power plants operated in *opt-out* regimes has been required as of December 31, 2023, but these facilities are still in operation.

The environmental impact assessment scoping request submitted by Rio Tinto in 2021 had substantial shortcomings. Among others, the deficiencies were related to *the splitting of the project*. The scoping request did not cover the water supply system, which is an integral part of the project; *the lack of a complete and finalized spatial planning framework* – the Ministry of Construction launched the procedure for amendments of the spatial planning framework, and the strategic environmental impact assessment and scoping request were not to be submitted before the planning framework was completed; *incompleteness of the scoping request* – the state of the environment and environmental impacts of ore processing are not presented in accordance with legal requirements; *incomplete examination of alternatives*. Nevertheless, the Ministry issued an approval for the scoping request, but it was later annulled by the government as a second instance.

The Rio Tinto company has been trying for more than two years to obtain approval for an exploitation field, even though it did not provide the necessary documentation for the request. The company has not made a decision on determining the scope and content of the environmental impact assessment study, which was cancelled in January 2022. The Ministry of Mining and Energy has not stopped the procedure for issuing the permit for lithium exploitation, but over the course of two years, without giving justified reasons, has extended the deadline for the company to complete the documentation 18 times.

The so-called environmental impact assessment studies recently published by the company Rio Sava Exploration Ltd. may not be considered as documents for evidence-based discussion. The company labeled these documents with a disclaimer that no expressed or implied statement or warranty is made regarding the content of this draft, including, but not limited to, its accuracy, adequacy, timeliness, completeness, and/or reliability. Quite the opposite, the environmental impact assessment should be established based on accurate, adequate, and reliable data.

Key requirements of the EU Critical Raw Materials Act (CRMA) cannot be applied in Serbia

According to the CRMA, projects in third countries should comply with the same level of social and environmental sustainability standards as those in the EU. In order to ensure the sustainability of increased critical raw material production, CRMA emphasizes that new critical raw material projects should be planned and implemented sustainably, covering all aspects of sustainability highlighted in the EU Principles for Sustainable Raw Materials (2021). Such principles are not currently applicable in Serbia. The government and public administration in Serbia are not able to ensure the monitoring, prevention, and minimization of adverse environmental and social impacts through its regulatory framework and administrative practices. Quite the contrary, high risks of corruption, the lack of an independent judiciary, a widespread practice of impunity by polluters, growing pressure upon civil society organizations, and the media represent barriers to transparent, accountable, and participative decision-making and implementation of projects with adverse environmental and social effects in a sustainable manner.

Conclusions and recommendations

The state of democracy and the rule of law in Serbia result in a lack of trust between the government and citizens and the absence of a mutual understanding about fundamental developmental priorities. The lack of inclusive dialogue and responses to citizens' concerns about projects and activities with adverse environmental and social impacts results in citizens' protests and the endangerment of freedom of assembly and expression. Neglecting the lack of rule of law may result in a further deterioration of democracy, the strengthening of anti-democratic governance, growing social unrest, and the endangerment of human rights and rights to health and a sustainable environment. Prioritization of the lithium mining project may even slow down and halt energy transition and decarbonization efforts in Serbia, for instance when lithium access for the EU is perceived as political bargaining, and in return coal-fired power plants that are long overdue to be closed continue to operate. Advancing with the lithium mining project, without rule of law guarantees or robust environmental protection standards, may significantly reduce public support for the EU accession process in the Republic of Serbia.

RECOMMENDATIONS

The Serbian government bears the main responsibility to mitigate the following challenges

- Prior to any further discussion on the potential lithium mining project, it is key to **establish a legal framework and sound practice of respect for rule of law principles**. It is necessary to ensure, and establish through practice, that relevant environmental and human rights standards are applied, and that legal remedies are effective and accessible.
- **The protection of human rights and fundamental freedoms must be ensured for affected communities, activists, and those actors who oppose the project**. Zero tolerance for oppression, intimidation, and unduly applied force by police against opponents of the project must be guaranteed without delay.
- An open and **democratic framework for a comprehensive discussion and public debate on the project's feasibility has to be established**. The media space should be equally accessible to both pro and con stakeholders, allowing them to present their arguments without stigmatization from other parties.

The EU must maintain its credibility by proactively promoting binding regulations vis-à-vis the Serbian government and addressing existing shortcomings.

- It is necessary to **establish binding supply chain regulations based on human rights and environmental protection standards between the EU and third countries**. Supply chain rules must not be established upon *bona fides* assumptions but on concrete legal provisions that prevent the import of raw materials from countries where human rights and environmental standards are endangered.
- **International partners, EU representatives, and investors must stand up for a participatory, transparent processes. Civil society and independent regulators must be involved in environmental impact assessments from the outset**, especially for project plans with potentially negative environmental and social impacts.
- The reports and findings developed through independent oversight should be taken into account and reflected in the relevant EU reports, policy documents, and its outcomes.