

In recent years, Romania has witnessed a concerning rise in cases of environmental degradation and violations of nature protection laws. This trend has significant implications not only for the country's natural heritage but also for the rule of law. Additionally, it poses challenges for environmental organisations and citizens that advocate for nature conservation. **The long-contested small hydropower plant on the Taia river is a prominent case in point.**

Located in the Șureanu Mountains within a protected Natura 2000 site, the hydro plant on the Taia river has been opposed by environmentalists ever since plans for the project first emerged in 2008. In May 2023, environmentalists were targeted with a strategic lawsuit against public participation (SLAPP), a tactic used to intimidate and silence environmental organisations and citizens that advocate for the protection of key ecosystems.

But before we delve into the protracted legal wranglings surrounding this project, it should be noted that the contribution of the Taia hydropower project to Romania's energy generation is negligible. **With an installed capacity of 3.78 megawatts (MW), the plant provides a mere 0.018 per cent of Romania's annual electricity production at best,** even without considering how climate change and the absence of water in the river would affect this.

Indeed, replacing the plant with around 1,700 individual 5-kilowatt (kW) photovoltaic installations would not only promote environmental protection but would also increase energy and economic resilience at the household level.

A history of regression

The saga dates back to 2008 when Italian investor SC Hidro Clear SRL was granted 400 square metres of land to build a small hydropower plant on the Taia river. Plans for the operation of the plant involved diverting water from two sources, the Valea Popii and Aușelu rivers, into a 7.5-kilometre underground pipeline.

Subsequently, Hunedoara Environmental Protection Agency (APM Hunedora) conducted a screening process to evaluate the potential environmental impact of the project. Their screening decision, issued in 2009, determined that the project did not require an environmental impact assessment or an appropriate assessment. However, this decision contradicted key EU directives, including the Water Framework Directive, which requires Member States to protect, restore and prevent the deterioration of water bodies, as well as the Environmental Impact Assessment, Birds, and Habitats Directives.

In October 2009, the municipality of Petrila signed a public-private partnership agreement with SC Hidro Clear, even though the protected area of Grădiștea Muncelului-Cioclovina, which is partially situated within the location of the plant, had been officially designated a

Natura 2000 site eight months prior.

As highlighted by Călin Dejeu, a leading campaigner on the case and a member of the International Union for Conservation of Nature (IUCN), in his numerous open letters to state institutions and frequent interventions in the media, a priority habitat located upstream of the Taia gorge was illegally deforested in 2013. But it was only in 2015 that Hunedoara Environmental Protection Agency issued the environmental permit for the construction of the project. The hydropower plant was eventually built and began operating illegally until 2017 when the Hunedoara Tribunal declared the environmental permit and screening decision null and void. However, this blatant violation of the rule of law is not an isolated incident.

In 2015, the European Commission initiated legal action against Romania – in the form of an infringement procedure – for its failure to comply with EU legislation on water and biodiversity protection. The procedure specifically concerned the construction of 17 small hydropower plants, mostly on rivers in environmentally sensitive areas of the Făgăraș Mountains. Despite an exhaustive ex-post analysis of all 17 projects, legal proceedings are still ongoing.

Legal challenge upheld, but not for long

In 2016, Bankwatch Romania mounted a legal challenge against the screening decision and environmental permit. At the Hunedoara Tribunal, the court of first instance, both administrative acts were annulled. This ruling was later confirmed as final by the Alba Iulia Court of Appeal in 2018. As part of the final decision, the court also ordered the restoration of the Taia river and the affected area to its original state. However, neither of these orders have been implemented to date. Following the court's decision, operations at the plant ceased, allowing the Taia river to flow freely once again.

However, to the amazement of all who had worked tirelessly on the case, in March 2022 the Hunedoara Environmental Protection Agency initiated a re-permitting process for the small hydropower plant, in clear violation of res judicata and in total disregard of the 2018 final court decision. In August of the same year, they unlawfully re-issued an environmental permit for the project. In response, Romanian environmental protection organisations Bankwatch Romania and Agent Green formally contested the move. Supported by a campaign led by Romanian civil society organisation Declic aimed at protecting the Natura 2000 site and the Taia river, the case was brought to court.

In May 2023, the Bucharest Tribunal had already reached a decision. During proceedings, the promoters of the Taia hydropower project, represented by one of Romania's largest law firms, submitted thousands of pages of environmental assessments. Significantly, these

assessments were conducted outside the proper legal permitting procedure for the plant and during a period when the plant had halted operations (between 2019 and 2021). Additionally, the assessments were carried out in a manner that excluded inclusive and participatory input from interested stakeholders and members of the public, contravening the principles of the Aarhus Convention and the EU's Environmental Impact Assessment Directive.

The project promoters disingenuously claimed that the European Commission had prioritised the ex-post evaluation of the project in order to expedite its ongoing infringement procedure. In reality, however, EU practice involves assessing post-project impacts with the aim of identifying actions that need to be taken to remedy or compensate for any unforeseen impacts in the absence of an ex-ante assessment. This does not imply obtaining all the necessary permits and authorisations to restart the project.

Only a few months into the trial, in a baffling about-turn, the judge decided to reject the requests of non-governmental organisations to suspend and revoke the environmental permit, thus completely reversing the 2018 ruling. The judge also approved the promoters' legal fees in the exact amount requested of RON 179 517 (around EUR 36 000), disregarding the indicative fee grids applicable in court.

The court's reasoning, drafted unusually quickly within less than two weeks, cited the value of the investment as a justification for approving the defence's legal fees. Quite apart from the excessive reimbursement, the value of the investment has no relevance to the volume of work carried out by the promoters' legal team. This decision is significant, as it not only places environmental non-profit organisations in Romania at a significant financial disadvantage, but also limits their ability to compete and carry out their work.

Implications of the SLAPP for non-governmental organisations and the environment

This is unlikely to be the last time we see the back of this case, given that Bankwatch Romania and Agent Green are among the most active environmental organisations in Romania when it comes to defending the environment in court. But this latest twist is quite the escalation if we consider the broader context of the illiberal legislative package recently tabled by the Romanian government aimed at intimidating civil society and preventing them from asserting their rights in court, including substantial financial costs of up to EUR 10 000 for challenging administrative acts. We should also recall that at the end of 2021 non-governmental organisations were cynically scapegoated when they were summoned to appear before a parliamentary committee of inquiry into the causes of the recent substantial increases in energy prices. We can only assume, therefore, that in the case of the

hydropower plant on the Taia river, environmental organisations have been dealt a SLAPP in the face.

Despite the gravity of these legal violations and the blatant disregard shown towards nature and the well-being of this generation and those to come, environmental activists, citizens and the experts who stand by them will not be intimidated. They will continue to document the plight of the Taia river, along with the protected natural areas of which it is a part, as well as the other rivers and natural sites under threat in [Romania](#). And they will continue to bring these issues to the attention of the [European Commission](#) and all European institutions that have the power to protect them. This emerging anti-democratic and anti-European cross-party trend in Romania must be stopped.

Source: Bankwatch