Mineração, Direito penal e desastres ambientais

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Pedro & João editores

MINERAÇÃO, DIREITO PENAL E DESASTRES AMBIENTAIS

Pedro & João editores
20 anos

A presente obra foi realizada com apoio da Coordenação de Aperfeiçoamento de Pessoal de Nível Superior – Brasil (CAPES) – Processo n.0262/2021 – 88881.638971/2021-01 – Programa de Pós-Graduação em Direito da Unesp (PPGD).”

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Ana Carolina de Sá Juzo; Leonardo Simões Agapito; Matheus de Alencar e Miranda; Túlio Felippe Xavier Januário [Orgs.]

Mineração, Direito Penal e Desastres Ambientais. São Carlos: Pedro & João Editores, 2025. 511p. 16 x 23 cm.

ISBN: 978-65-265-1954-7 [Digital]

1. Mineração. 2. Crimes ambientais. 3. Desastres ambientais. 4. Crimes corporativos. I. Título.

CDD – 900

Capa: Thiago Zambelan Ribeiro da Silva e Leonardo Simões Agapito (via Canva)
Ficha Catalográfica: Hélio Márcio Pajeú – CRB - 8-8828
Diagramação: Diany Akiko Lee
Editores: Pedro Amaro de Moura Brito & João Rodrigo de Moura Brito

Pedro & João Editores
www.pedroejoaoeditores.com.br
13568-878 – São Carlos – SP
2025

Sumário

6. Victims of illegal mining: criminal law and victimological aspects – the case of Serbia

Aleksandar Stevanović[1]

Abstract

The aim of the paper is to discuss some issues related to the criminal law and victimological aspects of environmental crime, especially when it comes to illegal mining. The first part of the paper is devoted to the consideration of the concept of environmental crime since there are still certain ambiguities and different approaches not only in the literature, but also in the normative framework. Within that discussion the normative and factual (criminological) status of environmental victims was deeply analyzed in order to verify the hypothesis that environmental harms need to be analyzed beyond the limitations of criminal law. However, particular focus was put on the (il)legal mining and victimization processes produced by its activities, as well as on the process of state routinization of those harmful activities within such activities are organized, enabled and misused. After we considered the basic criminological and victimological patterns for understanding and dealing with environmental crime, we presented the ongoing case in Republic of Serbia regarding the proposed exploitation of the Jadar Valley lithium deposit by the Rio Tinto Corporation. The intention of the paper is to share Serbian experience as a contribution for further consideration of this topic at the global level as well as to discuss some basic issues regarding environmental damage caused by (il)legal mining, as well as other issues related to control mechanisms under the criminal law.

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Introductory remarks

Understanding the notion of environmental crime is highly determined by the understanding of the term "crime" which is the key concept of the criminology (Lynch, et al. 2015:1). There are many theoretical concepts regarding the attempts to define and capture the term "crime" by the criminologists. The most impactful and widely accepted concept is based on legalistic approach according to which the crime is an act proscribed by the law as a criminal offence. Those scholars who advocate that legalistic approach are pointing out the fact that such approach i.e. criminal – law definition of crime is solid ground for determine the scope and boundaries of the research subject (Ignjatović, 2023), and that as a such, criminal – law definition of crime is beneficial for scholars when it comes to the empirical researches having in mind all the statistical data given by the competent authorities. (acc. Lynch, et al. 2015:5).

However, mirroring the historical and comparative perspectives it is obvious that there are many lawful activities that producing harms and those harms are arguably the most identifiable in the field of environment and its protection as a common good. Therefore, theoretical attempts to expand the term *crime* out of the criminal-law definition were highly influenced when it comes to the process of rethinking the *crime* in terms that a number of harms are excluded from the criminal law protection zone since many activities which are causing a serious harms are not covered by criminal law norms (Hillyard, Tombs, 2007: 12).

Dissatisfied with the legalistic approach in defining crime, the concept according to which a crime is explained not as a violation of the norms of the criminal code, but as a violation of the human rights of the victim, has entered the scholar discourse and has gained considerable attention (See: Milovanovic, 2005: 82; Henry, Milovanovic, 2000: 273). According to that constitutive approach in defining crime (harm) two basic forms of crime (harm) can be identified: *harms of reduction* and *harms of repression.* The first refers

to the situation „when an offended party experiences a loss of some quality relative to their present standing" and the second one „occurs when an offended party experiences a limit or restriction preventing them from achieving a desired position or standing" (Milovanovic, 2005:83). Scholars who advocate such approach are defining crime as a denial of the others humanity (Milovanovic, 2005:83) or it could be said that victims of crime are rendered a non-person or less complete being (Henry, Milovanovic, 2000:274). Regardelss of the many scholars statements that such human rights oriented approach in crime defining is ineffective in practice, it is undeniable fact that this approach influenced the modern criminal law a lot through the redesigning of the exsisting institutes and the implemetation of the new offences. Furthermore, regarding crime definition, it seems that it is not the main question which method or approach will be employed, but to put presure on the those at legislative power to cover all the harms by the criminal law norms according to the well accpeted principle that criminal law norms serves to protect the *human being and other fundamental social values* what means to protect the environment and right to health environment which is undoubtedly an inherent part of the *fundamental social values* category.

When it comes to the environmental crime definition, it should be stated that there are many disagreement in the academic literature on that matter,[2] even regarding criminological classification. In fact, definition of the environmental crime could be given in its narrower and broader sense. In the first case, environmental crime consists of those offenses which primarily protect environmental values such as: air, land, water and wildlife, while in the second case environmental crime encompasses those

[2] It is very difficult to reach generally accepted views on the concept of environmental crime for at least two reasons. The first one is that the results of the research will largely depend on the main purpose of that research, methodology, baseline hypotheses etc. The second one is that the interdisciplinary issues are hard to be approached, because they involve different kinds of knowledge and specific academic terminology (Di Giuseppe, 2014).

offenses that are primarily intended to protect other (economic, cultural, etc.) values, but which, in a particular situation, may serve to protect environmental values (Stevanović, 2020: 101). The example for the first mentioned definition type is one that states that the environmental crime refers to behaviors that contravene statutory provisions or criminal law norms enacted to protect the ecological and physical environment. On the other end, some authors define environmental crime more broadly, stating that environmental crime is an act committed for the purpose of securing business or personal advantage (Di Giuseppe, 2014:3) without focusing on protective object of the offence. Such a wider approach put environmental crime as a criminological concept at the crossroads of the *property*, *corporate* and *organized crime*.[3]

Starting from the aim of the property crime (to illegally obtain financial or material gain) nothing could be said against the statement that the activities that are causing environmental damage are motivated by material benefit. This statement is for instance, embodied in the *Forrest Theft* as a commonly accepted and implemented criminal offence. If the environmentally harmful activities are carried out by corporate entity, there is a thin line to separate environmental from the corporate crime. In line with this is the statement that corporate violence as a part of corporate crime in general includes acts that breaches the regulations that result with endangering environment or in general, wider definition of the corporate crime based on violation of the law and without pointing out the protective object referring to the economic system and its functioning. Furthermore, according to the criminological classification of the corporate crime in which the distinguish criterion is based around the victim, among the other, this is a type of crime that harm and damage a public goods, with particular emphasis on environmental damage (acc. Lukić, 2017:44). Finally,

[3] Not to mention that many ecological disasters could be produced in the context of war as a strategic plan to cause damage to the enemy what gives the characteristic of the violent crime to the concept of environmental crime.

when it comes to the organized crime, it is classified in the doctrine as property crime since its goal is economic, i.e. obtaining illegal profit (Stevanović, 2019:114). Researchers have examined the intersections of organized and environmental crime worldwide since organized involving in the illegal mining, excavation of the material necessary for the building construction, illegal hunting and selling the protected animals, illegal dumping of toxic waste etc. become high-reward low-risk activity.

However, one can also consider the environmental crime from the state point of view. It is important to note that states too often stimulate current and potential perpetrators of the environmental crime. In case of non-compliance with the regulations regarding environmental protection, the state is often not interested in implementation of the rules, except when environment and other civil movements put certain pressure on the state authorities and endanger its legitimacy. Economic legal entities which do not operate with high income, do not employ a large number of people and which activities are not vital for the functioning of industry are far more exposed to the sanctions for violating the environmental regulations. In other words, frequent and harsh sanctioning of "economic giants" would jeopardize their business and consequently the existence of a large number of employees in such systems, leading to a higher unemployment rate, opening up of a range of socio-economic issues and huge pressure on every government. Hence, it should be concluded that the important economic systems in the aforementioned sense have some kind of *factual immunity* as a benefit when it comes to the responsibility for violating the law (Stevanović, 2020:109). Many empirically based surveys showed that the corruption plays an important role in creating such political environment that enables corporate entities to take advantage for their lucrative goals by avoiding or even flagrantly violating relevant norms and regulations. This is what is known in the relevant literature as a *state routinization of the crimes of powerful* (Barak, 2017) and even worse stage is when the state is both organizer and facilitator of the such harmful activities.

In order to conclude the discussion around the criminological classification of the environmental crime, it has to be underlined that the main academic task is not to opt for some of the mentioned possibilities, but to take into consideration when it comes to the law-making process regarding environmental crime that it contains some of the typical features of the mentioned types of crime in order to design criminal justice system to be suitable for successful prevention of environmental crime and its consequences.

One of the most important discussion regarding environmental crime was set around the protective object of the environmental crime norms (offences). During its development the criminology tends to be anthropocentric in its approach (Brisman, South, 2017: 338) what means that, when it comes to the environmental crime, all the consideration was around the protection of human beings as a main purpose. In line with this is the jurisprudence of the European Court of Human Rights (ECHR) since that judicial body in some prominent decisions (for example Öneryıldız v. Turkey - *Application no. 48939/99*)[4] expanded the meaning of the right to life towards the concept of the right to life with a certain quality such as health environment for instance. That approach was uphold when the Court stated that the positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life. Furthermore, the Court underlined that this positive obligation indisputably applies in the particular context of dangerous activities, where, in addition, special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human

[4] Relying on Articles 2, 8 and 13 of the Convention and on Article 1 of Protocol No. 1, the applicants submitted that the national authorities were responsible for the deaths of their close relatives and for the destruction of their property as a result of a methane explosion on 28 April 1993 at the municipal rubbish tip in Ümraniye (Istanbul).

lives and that they must govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks.[5]

However, the perspective of green criminology as a relatively new criminological concept is oriented towards the criminal act and other harms against non-human species (Brisman, South, 2017:338). Furthermore, environmental crime is defined by its impact on the natural environment as it is concluded at the 27th OSCE Economic and Environmental Forum.[6] Such starting point is absolutely in line with the green criminology doctrine that put victimization of nonhumans in the foreground while the traditional criminology was relying on the human perspective (Lynch, Stretesky, 2014: 5). However, a comprehensive approach according to which environmental crime norms concurrently protect both human and non-human species and ecosystem as it is, appears to be the most suitable one. From the biological point of view, it is a very hard task (almost impossible) to draw a line between protection of human and non-human species. Take for example a huge environmental incident that occurred in mine located in uninhabited region thousands of miles away to the first settlements. Due to the fact that the *matter* cycles within the ecosystem, there is no any doubt that the negative consequences will affect the humans regardless the remote effect. Nevertheless, insisting on human – beings oriented approach is useful when it comes to the establishing the rules to determine the responsibility for harm and obligation to undertake necessary activities to prevent the harm what is done through the principle of positive obligation of the state in the judicial practice of the ECHR.[7]

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[5] See v. Turkey para. 89-90.

[6] 27th OSCE Economic and Environmental Forum held in Prague on 12th September 2019.

[7] See v. Turkey para. 89-90.

From the abovementioned discussion at least two important issues derive regarding the victims of environmental crime: I. The legal status of the victims; II. Quality and quantity of criminal norms i.e. offences of the environmental crime group.

I. The legal status of the victims

In the large part of the criminal laws under European - continental legal tradition, the term "victim" is equalized to the term "injured party" who is a person whose personal or property right has been violated or jeopardised by a criminal offence. Since the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power from 1985. the term was made to be more comprehensive in terms that according to the Declaration the term victim means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power. Furthermore, a person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. However, regardless of mentioned widening of the term, what is important is that it is obvious at the first glance that there is no victim or injured party if there is no criminal offence what further implies that scope of criminal law protection or other rights that could be used by the victims in the process could not be enjoyed i.e. they are not entitled to access to the mechanisms of justice and to prompt redress. In other words, the vast majority of environmental victims will never be recognized as victims in a legal context (Jarell, Ozymy, 2016: 249).

II. Quality and quantity of criminal norms i.e. offences of the environmental crime group

In general, the process of making so called environmental criminal law, particularly its special part is a process that depends on the quality of the norm and its scope. In the vast majority of the criminal codes in Europe there is the significant gap, i.e. the area not covered by norms, between the domain protected by criminal law and that safeguarded by misdemeanors. On one end, the criminal codes prohibits and considers as criminal offenses those environmentally harmful activities/omissions where the harmful consequence occurs *on a large scale or over a great area*, while on the other end, which refers to misdemeanor punishment for so-called environmental offenses, there is mainly a prohibition of typically non-consequential actions/ omissions that are predominantly administrative in nature. It is reasonable to question the potential penal response to those consequential offenses where the consequence does not occur on a large scale or over a great area, considering that equal, if not more intense, environmental damage can be caused successively by continuous activity and its consequence, when viewed individually, does not occur on a large scale or over a great area. It seems necessary, in this regard, to consider as misdemeanors those offenses (true environmental ones) where it is not required that the negative consequence is realized with greater intensity and in a larger scope, thereby "filling" the existing gap in the protection of the environment through misdemeanor law while adhering to the *ultima ratio* principle regarding the function and scope of the response of criminal law. Minor harmful consequences would, in this case, remain outside the scope of penal response, in accordance with the rules on offenses of minor significance (Stevanović, Stanković, 2023:1427). Such a fluid normative setting of the offence (o*n a large scale or over a great area*) was often misused for the sake of dismissing a criminal complaint for instance when the competent body under the state influence determines that the negative

consequence does not meet the requirement of *large scale or over a great area.*

1. Environmental victimization – general remarks

Within this chapter, the most important issues to be discussed are *who are the victims of environmental crime, why they get victimized and how, as well as what are the main features of the green victimization*?

Many surveys on environmental victimization have showed that economically poor (deprived) and politically powerless individual and collectivity are dramatically more exposed to the environmentally harmful consequences. This is for example the case of many black communities and their residential areas in Unites States, when it comes to the all types of health-threatening toxins or industrial pollution (Bullard, 1990). So far, it is well accepted statement in the doctrine based on many empirical researches that individuals and groups with a low incomes are more likely to be exposed to environmental risks and harms (Mohai, Bryant 1992; Stretesky, Lynch 1999). Moreover, those resident in poorer countries, or in poorer communities where environmental degradation is viewed as necessary for the national interest and where have found themselves lacking official channels and mechanisms for redressing (Hall, 2016:2014) what contributes to the further inequality in distribution of environmental victimization in political and geographical terms.

Previously mentioned unequal distribution of victimization among the world's population could be seen both on the national/regional and international level. The countries of Western Europe and US were able to encounter human-corporate caused ecological disasters before other countries since in this geo-political area the technological-production process and economic concept that generate negative environmental consequences was first established. Thus, new and clean/green technologies are being introduced in that part of the world, while old "heavy" industries (mining, energy, shipbuilding, metallurgy, heavy, chemical, textile

and other industries) were moving to underdeveloped parts of the world. The governments of many developing and underdeveloped countries are very interested in attracting foreign investors who as a rule, come with their environmentally harmful technologies what is than presented to the public by governments as a significant economic success and unique developing opportunity (Stevanović, 2020: 108).

Those who work in the specific "heavy" industries are at the first line of the negative effects and are the most vulnerable category of the victims according to empirical data. Corporate and government interests exploit both environmental resources and human laboyr (Ruggiero, South, 2013). Hence, the consideration on environmental victimization must includes the safety of the workers within its scope.

Issues regarding environmental harm and victimization present complex practical challenges as they concern intrinsically multi-disciplinary fields (Natali, 2024:561), particularly when it comes to the environmental crime causes. Howevere, mirroring the fact that the most harmful consequences are caused by the corporate entities, the dominant environmental harms causes are orbiting around market-economic factors in terms that with avoiding environmental regulations that implies large financial outlay, such entities are taking enormous market and financial advantage. Furthermore, the statement that the environmental regulation is kind of balancing between economics and healthy environment (Lampkin, Wyatt, 2020:502) in order to provide economic growth which is the corner stone of the capitalistic society while taking care of environment protection, should be accepted as a baseline of environmental policy consideration.

Here is also the issue regarding the (non)existence of the natural resources[8] at the certain place what should we define as a geographical factor for producing great amount of environmental

[8] Materials or substances that occur in nature and can be used for economic gain (New Oxford Dictionary 2007).

harms. Economic model of profit-seeking twinned with significant technological innovation and an increasing human population made Earth ecosystem to be dramatically affected by human influence in the recent decades (Limpkin, Wyatt, 2020:501) with two remarkable features. Firstly, innovations in technology field lead to the far reaching possibilities in natural resources exploitation and secondly, natural resources are getting less and less approachable while the demand for them is increasing. For mentioned reasons, it is a common place in the relevant literature and academic discourse to emphasize the role of the "resource curse" phenomenon which refers to the fact that resource-rich countries on average experience less development than do countries without those resources i.e. resource-rich countries perform poorly economically (van Solinge, 2014:500; Kolstad, Søreide 2009: 214). The explained phenomenon is particularly present in the context of developing and underdeveloped countries without political power at the global arena and with rooted corruptive practice.

Environmental crime consequences usually affect a large number of people who are difficult to be individualized. As a rule, it is very difficult to recognize what, how and to what extent the environmental harm occurred. From a criminal (procedure) law point of view, causal links are very difficult to be determined due to complexity of the structure of harms and their consequences. Powerful corporations and authorities that control media contribute to minimization or completely denying of caused negative effect both on humans and non-humans (environment) (Ignjatović, 2023:53) what makes the problem of understanding and determining the causal links even more difficult. Affecting public opinion through the media and similar platforms on that way contributes to the creating of penal policy when it comes to the sanctions imposed on environment crime offences in terms of decreasing punitiveness.[9]

[9] For more details see Braithwaite, 1985:4.

Furthermore, the victim is often not aware of the perpetrator and on the other hand, perpetrator is not aware of the victims, does not know them and what kind/intensity of harm he caused to them. Such impersonal character of the environmental crime is a huge obstacle for criminal justice system to impose corrective mechanisms on perpetrator. Since that environmental harms occur gradually and very often out of sight, it could be defined, as it was done in the literature, as a 'slow violence' (Nixon, 2011:2; Natali, 2024: 563). Such remote consequences that as a rule occur when it comes to the environmental harms are shaping the legal concept of environmental crime, especially the normative conceptualization of the environmental victim in terms that according to the very principle of criminal law, one cannot be criminally responsible for produced harm (or for victimized) on someone who does not exist at the time of conducting harmful act. Having in mind that in many cases of environmental disasters such as *Chernobyl case,* harmful and negative consequences were reported even a few decades after the explosion, the environmental victim needs to be treated beyond the criminal law well-established doctrine.

However, the above mentioned are the main reason why environmental crime is sometimes in discourse said to be a *victimless crime* even though the consequences are quite present and could easily dramatize public concerns when certain level of victimization is achieved.

2. Victims of illegal mining

Mining is the process of extracting economically valuable and nonrenewable geological matter, that cannot be produced and obtained on the other way, from the Earth's crust, to benefit society *(acc. Zabyelina, 2023).* However, even though this definition is valid starting point in epistemological sense, it is also optimistic and industrially oriented, since the processes of mining are rather threatening than beneficial to society and such statement is

empirically based since the large part of the mining process is contravening the relevant provisions on environment protection. Indeed, it is paradox that the green way in industry i.e. transition to green energy could inflicts serious harm on humans and nonhumans (environment)[10] since the growing demand of minable materials forces the players on the heavy industry market to look for more very often without paying attention on sustainability and victimization of the others. In other words, the fight against carbon pollution opened up equally important issues regarding harms caused by (over)mining.

Within the illegal mining we consider those activities conducted by the corporate entities on large scale that contravene norms which regulate the mining industry. The contribution of individual or small actors that use manual tools and non-mechanized techniques for mining makes so called a*rtisanal and small-scale mining category (Zabyelina, 2023) and also has harmful potential for environment particularly when it is totally out of the formal control. However, there are such communities where the forms of subsistence mining is inherent part of the political, economical and cultural identity of that communities what is the case when it comes to the galamseyers in Ghana or barequeadors in Colombia where such small-scale mining form is defined by the law (Zabyelina, 2023). Taking into account the severity of the norms violation and harmful consequences there are many proposals in doctrine to draw distinction between the illegal mining and small-scale mining by conceptualizing it as an informal mining (Zabyelina, 2023). Regardless of the fact that activities within the small-scale mining are also criminalized on comparative level if the relevant norms and procedures are not followed, making such distinction on both normative and theoretical level is important from the epistemological point of view since there are different criminological patterns that are applicable when it comes to the illegal and informal mining in terms of the way we defined it.*

[10] As stated by the International Energy Agency, a typical electric car requires six times the mineral inputs of a conventional car.

General remarks on environmental crime and victimization given in previous chapters are fully applicable when it comes to the illegal mining with at least two specific features.

Firstly, the workers in mining industry are far more vulnerable than the others when it comes to the occupational harms, injuries and illness i.e. in terms of their safety. In the relevant literature mining is known as a high-risk activity with high accident rates and according to Mine Safety and Health Administration of the Unites States Labor Department digging coal and other useful minerals out of the earth has been considered one of the world's most dangerous occupations. Data regarding the toll of death in mining industry are worrying. According to one profound comparative research on that issue, around 60,000 miners (coal mining industry) in Britain lost their lives in mine accidents during the previous century, while around 100,000 miners died in United States (Braithwaite, 1985:1). Adding on these figures typical occupational disease will makes the numbers even worse. Even though the official data on comparative level show significant reductions in rates of mining accidents death cases during the 21st century, mining is still one of the most risky industrial activity. Additionally, it is recorded on comparative level that workers in the mining industry are facing precarious conditions when performing their work.

Secondly, the process of mining is almost unparalleled in the heavy industry for the fact that it means intentional destruction i.e. sacrifice of the certain local ecosystem and communities around the mines what forcing the local people to either change the way of living and producing or to leave their places. This is particularly the case when it comes to the deep-seated materials which are mineable only by using underground mining techniques known for its aggressive nature in terms of environment (land) destruction. By its very nature mining process is harmful for the ecosystem under the mining influence and social behavior and environment interaction while the negative consequences are easily visible and experienceable. When decision on exploring and

establishing mine in certain place and area was made, it means that comprehensive changes regarding local communities way of living must take place. In the most cases, living nearby mine zone is impossible for the various reasons. In other words, decision making process regarding government authorization issued to the companies to enter in mining business, must be accompanied with the democratic procedures of including interested parties that can be affected by the mining into the process, with the process of freely and transparently sharing of the relevant information coming from the interested parties, i.e. both from the advocates and opponents of mining and from the experts in mining industry field who must be left to analyze every single project and its impact on environment without putting pressure on them and using other means of influencing practice. At first place, government and local authorities should refrain from imposing decisions without due respect of the principle of free information flow (public debate) and from imposing decisions that are not in accordance with the best practice and recommended rules within mining industry. If it is not the case, there is sufficient ground for suspect that process of *state routinization of the crimes of powerful* is ongoing what makes things even more complex since the lack of trust in the authorities is leading to the non-institutional and anarchic problem solving mechanisms and methods.

3. *Rio Tinto* in Serbia – case analysis

Criminological and victimological patterns for understanding and dealing with environmental crime that we discussed and described in the previous chapters are fully applicable and are a good source for understanding the case of the Republic of Serbia and *Rio Tinto Corporation* regarding the mining project planned to occupy the territory of the Jadar Valley near the town of Loznica.[11]

[11] Location of the proposed "Jadar" project is only 15 kilometers far from the down of Loznica.

Indeed, one of the most controversial eco-political issue in Serbia is the proposed exploitation of the Jadar Valley lithium deposit by the *Rio Tinto Corporation*, a multinational mining corporation which has been exploring mineral deposits in Serbia for over 15 years (Đorđević, et al, 2024) also known for its dark history of conducting mining operations regarding harmful impact on environment and humans.[12] Jadar Valley is located in the western part of the Serbia, known for fertile land and agricultural production and populated with more than 100,000 people and 20,000 of them are living at the epicenter of the proposed project in surrounding villages (acc. Đorđević, et al, 2024). Subsequently, the experts from a different topic-relevant fields got involved and publicly presented all the dangers and negative consequences for the entire region the mentioned project become crucial political issue. In general, leading experts from the different related fields found that questionable technology solutions of *jadarite* processing could have more than harmful potential for the environment and local community. In one of the most influential scientific paper regarding the "Jadar" project published in the journal *Scientific Reports* it was stated:

> *"The preliminary estimated spatial coverage of the Jadar project is between 2031 and 2431 ha, with 533 ha of land expected to be destroyed during the initial phase of the project implementation. Of the land to be destroyed, 203 ha are forests, and 317 ha is arable land. Ore excavation and groundwater pumping or leakage would result in the subsidence of almost 850 ha of land. The establishment of landfills in the immediate coastal zone of Jadar and Korenita Rivers, the extremely torrential local watercourses, would create a constant threat of contamination to downstream sections, endangering the water supply for about 2.5 million people.*
> *The planned tailings landfills, occupying the area of 20 ha and with increase of waste of 360,000 t/yr, as well as industrial waste landfill with an area of 167 hectares with increase of waste of 1.4 Mt/yr, loaded with hazardous substances such as boron, arsenic, etc. that would dispose on a 1.5–2 mm thick foil intended to protect groundwater reserves from toxic substance leakage. Also, the tailings landfills would be settled next to Korenita and Jadar rivers, which are prone to heavy flooding of the surrounding areas.*

[12] See more in: (Lasslett, 2014).

The planned "Jadar" project is expected to cause significant habitat destruction and fragmentation, resulting in severe negative impacts on the living world, including several hundred plant and animal species. Among these species, 145 have protected and strictly protected status. The project would also threaten the isolated eastern enclave of T. scorodonia, a sub-Atlantic species located more than 600 km away from the nearest western population.."(Đorđević, et al, 2024).

Regarding the technique of exploiting lithium, the easiest way and also with the less negative influence on environment is to exploiting it from brines. So far, the lithium mines are located in deserts and uninhabited areas while constructing lithium mine in populated area has been considered only in two cases, Serbia and Portugal (Đorđević, et al, 2024) where Portuguese Prime Minister *António Costa* resigned over a corruption probe in connection with lithium mining concessions in the north of the country.[13]

Going back to the very beginning of the project it has to be said that more than a two decades ago, *Rio Tinto Corporation* has founded a subsidiary in Serbia named *Rio Sava exploration* in order to undertake preparatory operations for the project. After a few years, the Ministry of Mining and Energy has issued the first permission for the exploration of evaporites in the Jadar Valley. Big step forward has happened in 2006. when the International Mineralogical Association (IMA) officially recognized jadarite as a new mineral after the river Jadar.

After ten years of doing exploration activities basically in shadow, another big move for the purpose of project occurred in 2015. The Parliament of the Republic of Serbia passed amendments to the Law on Mining and Geological Research with introducing a specific novelty that the state government can expropriate the property of private individuals for the benefit of the holder of research, i.e. for the exploitation purpose.[14] Furthermore, amended

[13]https://www.politico.eu/article/portugal-antonio-costa-lithium-scandal-spells-trouble-for-brussels-critical-minerals-hunt/ accessed 27.09.2024.

[14] The same provision exists in the laws of Mining in Congo and Mongolia (Đorđević, et al, 2024).

Law placed lithium on the list of mineral resources of strategic importance for the state.

During July 2017. legally non-binding memorandum of understanding was signed between the Republic of Serbia *and Rio Tinto Corporation* while public concern about the project and its negative influences were getting more and more louder. Many ecological organizations, representatives of local community, oppositional political parties stand together in order to prevent the further developing of the "Jadar" project. Even Serbian Academy of Sciences and Arts (SANU) got involved in the debate and organized a two-day event - *Project Jadar - what is known*? The two-day meeting was concluded with the statement that the implementation of the "Jadar" project would lead to massive devastation of the area, permanent change of the character of the landscape, degradation of biodiversity, soil, forests, surface and underground water, displacement of the local population, cessation of sustainable and profitable agricultural activities and establishing a scenario of permanent risk to the health of the residents of nearby villages and the town of Loznica.

Massive protest against the project began after the adoption of Spatial Plan of the Area of Special Purpose for the Realization of the Project of Exploitation and Processing of Jadarite Minerals "Jadar" which was the last legal step towards the mine opening. Additionally, the decree on mentioned Spatial Plan was adopted without proper and needed public discussion what raised the suspension that the government and its officials are corrupted in order to enable the project.

The protest included roads and high-way blocking and was getting stronger and bigger with the time. During the time of active protest the petition opposing mine got around 290,000 signatures. Moreover, the opponents of the Jadar project submitted a petition with over 38,000 signatures in accordance with the Law on the Referendum and the People's Initiative, in order to stop the

exploration and mining of lithium within the "Jadar" project.[15] [16]Not only that the National Assembly. i.e. its competent body did not verify within 30 days of submission of people's initiative the list of signatories and that the Speaker of the Assembly failed to act in accordance with the relevant provisions and inform the initiative board that the initiative is considered officially launched (or not), but unique situation in parliament democracy practice has happened. Namely, the National Assembly lost the initiative and all the signatures and this is not just the allegation since the Speaker of the Assembly inform the public two years later that the competent body of the Assembly will conduct investigation on lost signatures.[17] However, so far, there is no official statement regarding the lost initiative and signatures what further raises the suspicion that the state officials are corrupted by the Company in order to enable the project whatever the cost is.

Since the election for the National Assembly was about to be held and taking into account that the government support was declining, after a period of riots, the President of the Republic, as a dominant and authoritarian political figure, out of his presidential competence, announced that the government will issue decree in order to annul the Spatial plan and at the same time presented the idea of referendum as a best way to decide upon "Jadar" project.

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[15] https://balkangreenenergynews.com/constitutional-court-of-serbia-rules-in-favor-of-rio-tintos-lithium-project/ accessed 27.09.2024.

[16] According to the Law on the Referendum and the People's Initiative of the Republic of Serbia by a people's initiative, citizens propose the adoption, amendment, or repeal of the Constitution, laws, other regulations and general acts within the competence of the National Assembly, and/or of the statute, other regulations and general acts within the competence of the Assembly of the Autonomous Province and local self-government units, and submit other proposals in accordance with the Constitution and the law, and/or the statute of the autonomous province and local self-government unit.

[16]https://n1info.rs/vesti/ana-brnabic-se-bavi-pitanjem-38-000-potpisa-atmosfera-pet-puta-gora-nego-pre-ubistva-djindjica/, accessed 27.09.2024.

[17] https://n1info.rs/vesti/ana-brnabic-se-bavi-pitanjem-38-000-potpisa-atmosfera-pet-puta-gora-nego-pre-ubistva-djindjica/, accessed 27.09.2024.

The prime minister at that time commented on the government decision stating that "Rio Tinto absolutely didn't provide enough information to the people in Jadar, Rađevina, in local places and local villages. It also didn't provide enough information to the Government of the Republic of Serbia."[18]

The "Jadar" project has been on hold for around two years when the Constitutional Court of the Republic of Serbia declared unconstitutional and unlawful a government decree from 2022 that annulled the local Spatial plan for Rio Tinto's project.[19] [20] The whole decision-making process was under the shadow until the representatives of environmental organizations made public information that a Constitutional Court session was scheduled for July 11, 2022. and that it is to be expected for Constitutional Court to rules in favor of the *Rio Tinto Corporation* and its project. The public concern soon proved to be justified since the Constitutional Court declared unconstitutional and unlawful a government decree on July 11, 2022[21]emphasizing the fact that the Government exceeded its authority in issuing questionable decree that annulled the local Spatial plan for Rio Tinto's project. Moreover, decision was made even without initiating an obligatory procedure i.e without giving a chance to enacter (the Government) of the act which constitutionality/legality was challenged, to replay and present its argumentation to prove constitutionality/legality of the

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[18] https://balkangreenenergynews.com/constitutional-court-of-serbia-rules-in-favor-of-rio-tintos-lithium-project/ accessed 27.09.2024.

[19] https://ustavni.sud.rs/sednice-suda/saopstenja-sa-sednice-suda/saopstenje-sa-9-sednice-ustavnog-suda-odrzane

[20] Case IU0-39/2022.

[21] There was the only one separate concurring opinion made by judge prof. *M. Škulić* who stated: „I especially emphasize that, in my opinion, it would have been much better if the Constitutional Court, by refraining from making a determinative decision, in way that instead of engaging in this sort of summary procedure, had made a decision on the initiation of the procedure, allowed the legal 'fate' of the disputed Government decree to be resolved in a different way, which I believe would be much better than the strict formal marking of that decree as unconstitutional and illegal."

act. However, the Constitutional Court was silent on that matter but what is known is that allegedly *Rio Tinto Corporation* in the cooperation with the Government, initiate the procedure before the Constitutional Court for assessing the constitutionality/legality of the Spatial plan cancelation act in order to get high level of legitimacy from the Constitutional Court authority to continue with the project. Moreover, as it was stated in the separate concurring opinion made by judge prof. *M. Škulić*, the Constitutional Court decision on constitutionality/legality of the Spatial plan cancelation act was not even necessary because the Government could simply revoke its decree by issuing another one according to the well-established legal principle *lex posteriori derogat lex priori* or could just put its decree that annulled the local Spatial plan for Rio Tinto's project out of legal force.

Apparently, it was introduction into the second phase of the "Jadar" project issue in which the polarization between the regime and its representatives and the opponents of the Jadar project reached the highest level. Many protestors and project opponents were subjected to the illegal detention and harassment not just by the police but also by the agents of intelligence agency. Profound and prominent scientist and professors who spoke out against the exploitation of the Jadar Valley lithium deposit addressing the negative impact on environment and humans, were identified as state enemies i.e. media under the Government control were presenting the list of the profound project opponents every day in prime time defaming them. Many prominent names were put under pressure to stand for the "Jadar" project which was getting higher and higher. For example, the entire management of the Belgrade University Faculty of Electrical Engineering (ETF) resigned due to pressure over lithium mining issue to make official statement regarding the "Jadar" project. Moreover, the mayor of Loznica, the town near the location of the proposed "Jadar" project, has also recently resigned for the family and personal health reason without further explanations. In such atmosphere, the parliament opposition jointly proposed amendments to the Law on Mining

and Geological Explorations that would ban the exploration, mining and processing of lithium and boron ores but the proposal was rejected with 127 votes against and 84 in favor, what is the reflection of the political power in National Assembly i.e. the last election held in the period when the Government decree for annulling Spatial plan was still in legal force. However, the regime did not responded on many argumentation against the project made by the proposer of the amendments centered around negative impact on environment and humans and also focused on the fact that the project would not be cost effective for the Serbia.

It has to be said that the Government is also under certain pressure since the European Commission has encouraged mining projects within Europe[22] in order to keep up with China and US electric vehicles industry which is defined as an important segment in the decarbonization and green transition process within a broader push for electrification across industries. However, modern technologies that are in line with the transition to a green energy are heavily reliant on lithium-ion and other batteries that require cobalt, copper, nickel, graphite, manganese, and other metals and mineral (Đorđević, et al, 2024) what makes the lithium so valuable at the market.

At the moment, the situation in Serbia regarding "Jadar" project is still far from the normal point. The new protests are about to be organize and the discourse is getting more and more aggressive. In fact, the thing is that the project did not received the so called *social license to operate* what means that the local community acceptance of extraction project is missing (Ivanović, et al, 2023). Additionally, mentioned perfidious moves made by the Government will not help in getting trust in the project and institutions in general what is of a great importance having in mind that numerous studies have showed that a lack of trust within the

[22] https://n1info.rs/english/news/ecs-pisonero-rio-tinto-jadar-project-can-be-good-economic-chance-for-serbia/ accessed 27.09.2024.

local community is a significant factor contributing to resistance against mining activities (Ivanović, et al, 2023).

4. Conclusion

Despite the fact that the economic growth is the cornerstone of the contemporary capitalistic society, protection of the environment as a common good must be at the top of the state interests. This is why the environmental protection policy is meant to be a kind of balancing between economics and healthy environment. Regardless of the accepted criminological crime classification, environmental crime as a concept contains some of the typical features of the property, corporate, organized and state crime. Indeed, the process of state routinization of the environmentally harmful activities supposed to be the most important in understanding the criminological background. At least, it is up to the state and its legislative power to define what the crime within its jurisdiction is. This is also the way to explain the paradox regarding the situation that according to many criminal codes, *small-scale illegal (informal) mining activities are proscribed as crimes while the operations and activities of environment corporate predators that generate huge scale of destruction are warmly welcomed by the state officials.*

Many hypothesis could be made and many conclusion might be drawn from the presented case of the Republic of Serbia and *Rio Tinto Corporation* and all of them would fit in the basic pattern of producing harms to the environment and humans. However, case analysis, historical and comparative perspective in environment crime (harm) concept research is helpful since new generations have an advantage over those from the beginning of industrial development, relying on decades-old ways of combating environmental crime, empirical knowledge of what it means and what it really looks like and what are the consequences of major environmental disasters for instance. Conflicts between local communities and the mineral extraction industry are not a new age

trend. Moreover, the harmful consequences on nature and humans, produced by the mining operations are intentional and planned. In other words, conducting exploration, mining and processing of lithium or other mineral implies the certain local ecosystem and communities around the mines to be sacrificed what forcing the local people to either change the way of living and producing or to leave their places. For those reason, in order to meet social validity requirements, the debate on potential opening of mine in certain place, decision making process regarding government authorization issued to the companies to enter in mining business, must be accompanied with the democratic procedures of including interested parties that can be affected by the mining into the process, with the process of freely and transparently sharing of the relevant information coming from the interested parties, i.e. both from the advocates and opponents of mining and from the experts in mining industry field who must be left to analyze every single project and its impact on environment without putting pressure on them and using other means of influencing practice. At first place, government and local authorities should refrain from imposing decisions without due respect of the principle of free information flow (public debate) and from imposing decisions that are not in accordance with the best practice and recommended rules within mining industry. If it is not the case, there is sufficient ground for suspect that process of *state routinization of the crimes of powerful* is ongoing.

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