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### **On Anthropology of Water: Nature, Culture and Spirits of Neoliberal State**

The paper focuses on the issue of water and neoliberal policies. Specifically, it addresses the conflict between communities and the privatization of communal property in rural areas of the Western Balkans. It should, also mentioned that, the process of building HPP in general, particularly in protected areas, has become an issue within European Union especially in the last decade (see map 1 and 2, 3). The ethnographic material focuses on Albania that leads the list of Balkan States with the privatization of more than 713 rivers and streams in order to build dams and hydropower under the label of an environmentally friendly renewable energy. In theoretical bases, the paper is part of wider project that tries to contribute on dialogue between anthropology of law, political anthropology particularly on issue of democracy, and on anthropology of environment, by being focused on consequences of legal pluralistic situation of natural sources such as water, land, minerals, forests etc<sup>1</sup>.

**Key words:** *water, law, legal pluralism, democracy, neo-liberalism*

### **Intro: Government policies, energy, market, legitimacy**

Hydropower concession policies begun to be implemented since 1997 in Albania. They have peaked in the last decade (2009-2019). The idea of economic development, based on the

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<sup>1</sup>see for example: von Benda-Beckmann, F., K. von Benda-Beckmann, and J. Spiertz. 1996. "Water Rights and Policy." In *The Role of Law in Natural Resource Management*, edited by J. Spiertz and M.G. Wiber, 77-99. Gravenhage: VUGA. von Benda-Beckmann, F., K. von Benda-Beckmann, and H.J.L. Spiertz. 1997. "Local Law and Customary Practices in the Study of Water Rights." In *Water Rights, Conflict and Policy*, edited by K. von Benda-Beckmann, H.J.L. Spiertz, R. Pradhan, F.v. Benda-Beckmann, S.S. Kadka, and K.A. Haq, 221-242. Colombo: IIMI. Boelens, R. 2014. "Cultural Politics and the Hydrosocial Cycle: Water, Power and Identity in the Andean Highlands." *Geoforum* 57: 234- 247. Boelens, R., and G. Davila, eds. 1998. *Searching for Equity: Conceptions of Justice and Equity in Peasant Irrigation*. Assen: Van Gorcum

principle of ‘rule of law’, was the legitimizing discourse materializing concession policies. To add up, economic development was intertwined while building dams on rivers with the need for renewable energy within the framework of Europeanization policies and sustainable development. the rule of law and the criterion of renewable energy, are an extension of European integration principles and processes upon which the government of Albania has framed most of its reforms since the fall of communism.

The "European spirit" lives side by side with ‘spirit of neoliberalism’ in the body of legislation regulating the concessions and their application. Two short remarks are needed here: a- one of the main principles of neo-liberalism has been the idea of free and fair competition. This principle has changed during the last decades, even formally. b-A new spirit of neo-liberalism has emerged which is based on two new techniques of "absorbing" capital from the market under the frame of ‘Public Private Partnership’ (P.P.P) under such framework emerging markets such as Albania are facing a lack of competition and an increase of oligarchic type of regulations reflected both in politics and economy. The rise of HPP firms seems to be a directly related to such changes, as long as they are competing with unmet demands, in a deregulated market with direct access to national and local politics. Often bids and economic offers to build HPP are held by the government only with one single company. The lack of transparency is systematic. Actually, it difficult to estimate the exact number of HPPs build or projected to be built in the country. According to our calculations from 2009-2019, about 714 permits are issued from the government to build small HPPs. Even though the left-wing government (2013 to the present) promised to ban the HPPs concession while in opposition, paradoxically has been the driving force to promote and intensified the PPP schema by direct contracts to private economic agents. The building of hydropower projects has multiplied over the past years of leftwing government.

The presentations focus on 'zones of conflicts' between different systems of reglementation, in sort of legal pluralism context, on water rights and environment<sup>2</sup>;

- i. it observes the state law application on the granting of concessions and the clash with local community on the meaning of private and communal property;*
- ii. it observes the clash of legal norms [on HPP, environments law, human rights, private, communal, national property..] and the meaning of sujet de droit at the Administrative Court<sup>3</sup>.*
- iii. Social product of lack of justice and environmental degradation -Ecocide.*

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<sup>2</sup> von Benda-Beckmann, F., K. von Benda-Beckmann, and J. Spiertz. 1996. "Water Rights and Policy." In *The Role of Law in Natural Resource Management*, edited by J. Spiertz and M.G. Wiber, 77-99. Gravenhage: VUGA. von Benda-Beckmann, F., K. von Benda-Beckmann, and H.J.L. Spiertz. 1997. "Local Law and Customary Practices in the Study of Water Rights." In *Water Rights, Conflict and Policy*, edited by K. von Benda-Beckmann, H.J.L. Spiertz, R. Pradhan, F.v. Benda-Beckmann, S.S. Kadka, and K.A. Haq, 221\_242. Colombo

<sup>3</sup> see for instance. **Shah, Esha. Vos, Jeroen, Velwisch, Jan Gert, Boelens, Rutgerd, Duarte-Abadia, Bibiana. 2019.** Environmental justice movements in globalising networks: a critical discussion on social resistance against large dams, *The Journal of Peasant Studies*.

The ethnographic data are derived for the Case of Zall-Gjoçaj. (see **photo. 1**). The region consists of 15 villages. According the law Zall-gjoçaj is a National Park. Regardless its special status a permit was issued to a firm for the construction of HPP on the river. Environmental activists and independent experts on environment issue rose against the implementation of such project. for them the project damages the Natural Park and its contrary to environmental protection law. Whereas for community of the area, the project, limits their access to drinking water and it damages livestock and agriculture of the area since the water of the river and streams are planned to be diverted. For them, the river and its streams are the only source for irrigation and drinkable water for the livestock. The project foresees to divert water flow from areas through metal pipes to designated areas for energy production. The representatives of the Private Company that won the project together with the representative of the state have continuously denied the objections raised on the project by local community, NGOs and environmental experts.

### **To Us You Are Invaders! You are Committing Ecocide!**

A slogan held by Zall-Gjoçaj (see map 4) residents and former residents who are living in different places during the protest read " FOR US, YOU ARE INVADERS"! Another wrote: "YOU ARE COMMINTTING ECOCIDE"! Another one "YOU ARE MAFIA OF HPP-S". ...



**Photo 1**

The community of Zall-Gjoçaj started to protest against the project since April 2019. The project had been approved since May, 2013. Delays halted its implementation until late 2018. What sparked the protested was the beginning of works from a subcontracting firm for the project.

The new deal between state institutions and the private Company under which the project started to be implemented was abusive from the local community perspective as long as their lives were about to change significantly. The new contract's scope was expanded in comparison to what had been presented to local community years ago.

Beside protesting physically, the local community through sent official letters of complaints to the public institutions, it opened an FaceBook account to publicize the wrongdoings of the project; it contacted various activists and environmental NGO's to raise awareness through videos, columns in various media, etc. A lawsuit was filed as well to the Administrative Court according to which it was asked stop the construction of HPP. The legal arguments were based on the facts that are related to environmental sensibilities and legal procedures. From the local community view point, the project violated their traditional property rights on the water based on traditions, and deprived them from accessing drinkable water especially for the inhabitants of the village Melthi.

The HPPs are being applied in abandoned areas due to the high migration of population from early 1990's. Villages were depopulated as long as people went to seek for a better life in the cities in and outside Albania. During summer, people would return occasionally to their native village to look after their houses and property. Data suggest that the market of land in this areas is very limited as long as people are not selling their properties. Even though, people are not living in those areas, they continue to be bury their relatives in the native village cemetery preserving the memory and connections with the holy shrines of the area. During summer they collect medical plants and wild berries which are being sold in cities or used consumed during winter. All community relations' to land, forest, water and pasture are regulated by costumery codes known as the "custom of the area", or Kanun of Skanderbeg (1468), or simple as Kanun. Each social group (family, womb, fraternity, village, group of villages) are subject to this unwritten law. The de-collectivization of land (1991) in these area took place following the rules of the unwritten law. The state acknowledged such process by registering individual property obtained through this way, even though the process itself was not according to the state law.

It takes about 6 hours to go from Tirana (capital of Albania) to Zall-gjoçaj. The road is in poor conditions. Some former residents complained that due to the poor quality of the road they were not able to access their old houses for more than 10 years. Although the villages are abandoned, as we speak, only about 5% of population lives in the villages of the area. Most of the Zall-Gjocaj's communities migrated and settled in informal areas around Kamza Municipality, 10 km away from the capital. However people's relation to the villages of origin has not faded as long as they have kept their traditions even in the new settlement. Social relations between community members continue to be articulated and maintained through wedding invitation, funeral ceremonies and other family based celebrations through which people exchange visits. Moreover, people find support on each other for services and aids to access labor markets or need services in capital and/or elsewhere. Social relations are articulated through an 'imagined community' evolving around a village life that does not exist anymore. The villages of Zall-Gjocaj are empty from the human presence but the very idea of 'once a upon time' community plays a role for the articulation of relations between members in the new reality of informal settlements. Moreover, the revolution of social media has impact also the connectivity of former residents of these villages to the point that we can speak also about a 'virtual village'. The latter

proved to a useful tool particularly to amplify the protests and protect the ‘empty village’ from the HPP construction. In specific accounts held by village people folk songs, picture and videos on cultural and natural heritage of the area were displayed, articulating the need for the protection of the area.

According to customary rules, each village has its own collective property, meaning the members had equal right to the use and access to water sources among others. The Law on Public Investment following the principles of full transparency makes public hearing mandatory for state institutions, especially in cases when given projects impact community life. In the case of HPPs projects, village members that were not residing in the area, regardless the fact that they owned property to be impacted by the project, are never invited to the public hearing. The same happened also with the Zall-gjoçaj community. Some of them even claimed that such procedure did not ever happen and this was publicly denounced by the village elders in a meeting with the mayor of Kurbin Municipality. The meeting did not goes well as long as some village elders were asked to leave the room. Some village members accused municipality and governmental institutions as part of the *HPP MAFIA*.

One question deserves further attention - are the villages and other traditional communities entitled to property rights over rivers? The quick answer is no. According to state law the rivers are public property at national level. Some of them are subject to international law regimes. Looking at the history of ownership and specifically to the village as the subject of property relationship, it turns out that in almost all legal ideologies framing the logic of modern Albania law, the village as legal entity has lost grounds. Its rights are transferred to larger administrative units as the municipality, cooperatives, the state, or to smaller units such as the family, and rarely to the different individual owners. In Albania as a whole, all the common property of the village, including the property rights or rights of use, over water streams, rivers, are passed to state ownership. The history begins at the end of the XIX century when Albania was still part of the Ottoman Empire, and it persists even to this day.

The members of villages under discussion, however, do not claim property rights in the absolute sense. They only demand the right to have access and use the river. These rights are part of the local legal culture which regulated the amount of water share during the whole year; they differentiated between drinking and irrigation water; stipulated inheritance rule, construction modalities, and so on. The main principles of the traditional legal system, included principle of equality between family units, and the sense of proportion, as long as no member of the community should be excluded from the right of use.

### **At the Doors of the Law: Legal community, Court, Decision**

After having negative response to their protests and formal request to the local government and Ministry of Energy and Environment, inhabitants and former inhabitants of the Zall-gjoçaj area, supported by different environmental NGOs, civil society activists, initiated a legal process to the Administrative Court located in Tirana. The issue was discussed in 6 different sessions.

The first session was acquaintance with the object. The second session held included a panel of judges in front of whom the case of presented by layers. Some members of community and activists thought that , these was good news to have a panel of judges instead of one judge only

as it happened in the first session. According to them, a judge had once said that it was better to have three judges to take over the case. Community members believed that the 'hydropower mafia', would be less capable to affect three judges rather than one. All sessions were always held in the morning. Starting almost every time at 8:45 a.m. some community members coming directly from Zall-gjoçaj had to wake up at 04:00 in the morning. Each session of the Administrative Court gathered than 30 people but only no more than three representatives were allowed in the courtroom. The reception area was the court hallway. During the *waiting time*, the 'waiting zone for justice', the conversation of the members of community evolved around the state, the law, the authority of the state in past and in present, the authority of European Standards in Albania and so on<sup>4</sup>. The conversations on this space of *waiting for justice*, continued on the comparison with other countries of the World, particularly with the European Countries, and Albania. The latter was often portrayed as a country of injustice, a place where you have no chance to find justice whatever you do; a place in the bottom of all counties when it comes to the capacity to find justice; a place that people have no reason to live. Paradoxically, to the image above, the members of Zall-gjoçaj community attached another one that of naturally beauty, of a heaven on earth, a blessed place by nature and God. The narratives are filled with analogies, symbols and metaphors. Sometimes people became quite direct and straightforward.

Lawyers and participants in the courtroom after each session came out and made a statement about what happened into the court. As ethnographer I was not permitted to participate in the courtroom. Every time I asked my requests was very kindly refused by the judge.

For about three months, the court hearings were suspended due to the Covid-19 pandemic measures taken by government (March-May, 2020). Due to the pandemic, a state of emergency was declared, which stopped all legal process; suspended the right to protest in public places; suspended the right to travel outside the city and even inside the city without a specific permission given by a police. Meanwhile the company was permitted to continue its works on building the HPP. In fact, the company continues to work against the rule stipulated by the state of emergency. Even though it was denounced for its wrongdoings by different activists, the company did not stopped its activity.

The Administrative Court restart to work when the lockdown measures were soften. Only lawyers that represent parties in dispute, and under strict hygienic rules, could access the courtroom and show evidences. The trial began again at 8:45 a.m. ... The decision was, finally, taken on June the 16<sup>th</sup>. The court ruled in favor of the construction of the HPP. The local community called for a protest in front of court (see [Photo 2](#)), but the police intervened to disperse them. The pandemic situation did not allow such thing to happen for the reason of related to public security. Zall-gjoçaj community members have the right to appeal this decision to the superior level – to Administrative Court of Appeal, the only Appeal Court for administrative issue in whole Albania. This means you must wait for long time until the case be presented in front of a Court and by that time the construction of HPP would probably be over.

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<sup>4</sup> **Auyero, Javier.** 2012. Patients of the State: The Politics of Waiting, in Argentina, Duke University Press.





Photo 2

[Written : **ABDI TOCI FROM URXALL MAT- I SPENT ALL MY LIFE WITH NO RIGHTS** ], photo is taken in front of Administrative Court, after the Court had made the decision against the interests of community]

The Zall-Gjocaj community needs to think of new strategies how to continue, and what to do next. To protest or not to protest! The dilemma was to start a protest *in situ* or in front of Prime Ministry building. Some protesters were very pessimist for the outcome of another protest as long as the court ruled against them; Others thought the contrary. The protest was needed now more than ever. The debate evolved around the authority of State Court, of the State Law and the State itself. All agree that the state institutions are corrupted. The degradation of environment pushed forward by the PPP policies seem to be reflected also in the degradation of the moral legitimacy of state authority. One week later (24), a day after the state of emergency ended, Zall-gjocaj local community members organized a protest in Tirana's main boulevard. The protest started symbolically at the Independence Square, and than people talked toward Prime Minister's office, 200 meters away (see **Photo 3**). The protest was supported by the associations "Friends of Rivers", and other political and non-governmental organization. The protesters were stopped by a police cordon some 50 meters from Prime minister office.



Photo 3

Thirteen protesters were arrested which were released after some hours. However all of them are charged with violating legal rules in pandemic times.

### In place of conclusions

This research is a work in progress. Therefore, in place of conclusions, I would suggest to give a look on the maps<sup>5</sup>, attached to this paper in Appendix, where you can see how dams are halting the flow of the rivers and with them the flow of life in the name of profit. And I as mentioned briefly in paper, side by side with degradation of environment, is also happening the degradation of the dreams and hopes on democracy and state authority in local terms. However, I would like to stop here, due to leave this discussion open.

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<sup>5</sup>Maps 1, 2, 3 are taken from **Schwarz**, Ulrich (lead author). 2019 Hydropower Pressure on European Rivers, Report Fluvius WWF, Eurnatur.



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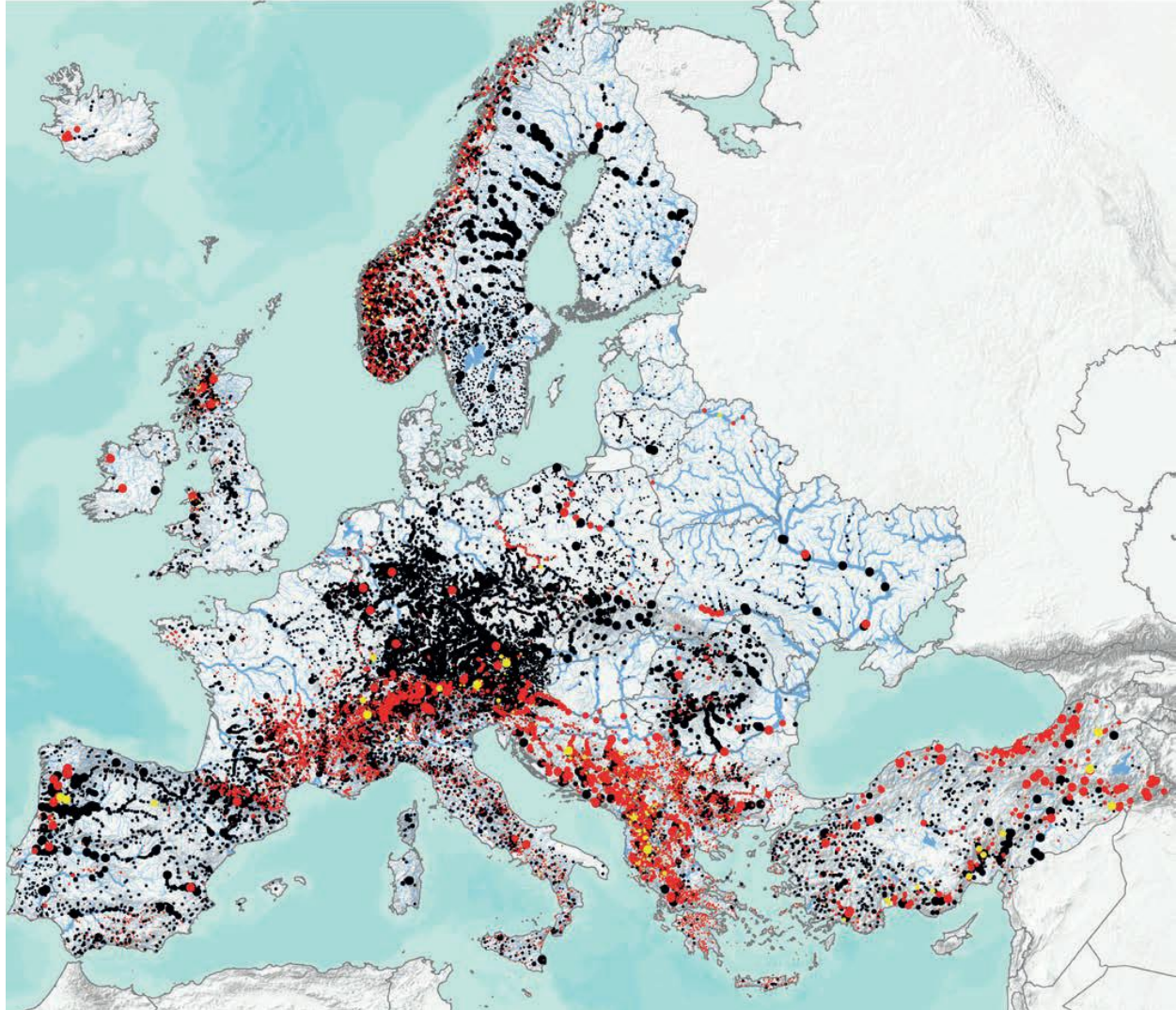
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## APPENDIX

Map 1.

Distribution of recorded hydropower plants in Europe

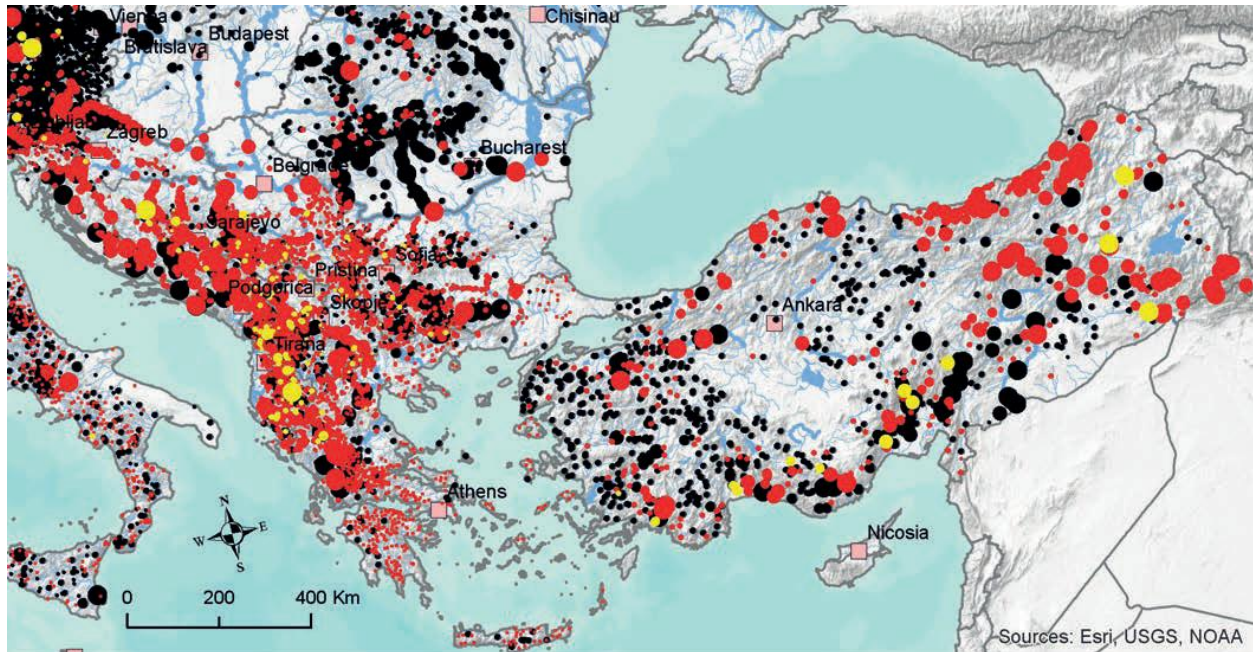


- Existing
- under construction
- Planned

## Map 2

### Balkan and Eastern Mediterranean region

Countries included: Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Greece, Kosovo, Macedonia, Montenegro, Serbia, Slovenia, Turkey



### Existing dam

Under construction

Planned dam

Installed megawatts (MW)

0.1-<1

1-<10 MW

10-50 MW

50-100 MW

>100 MW

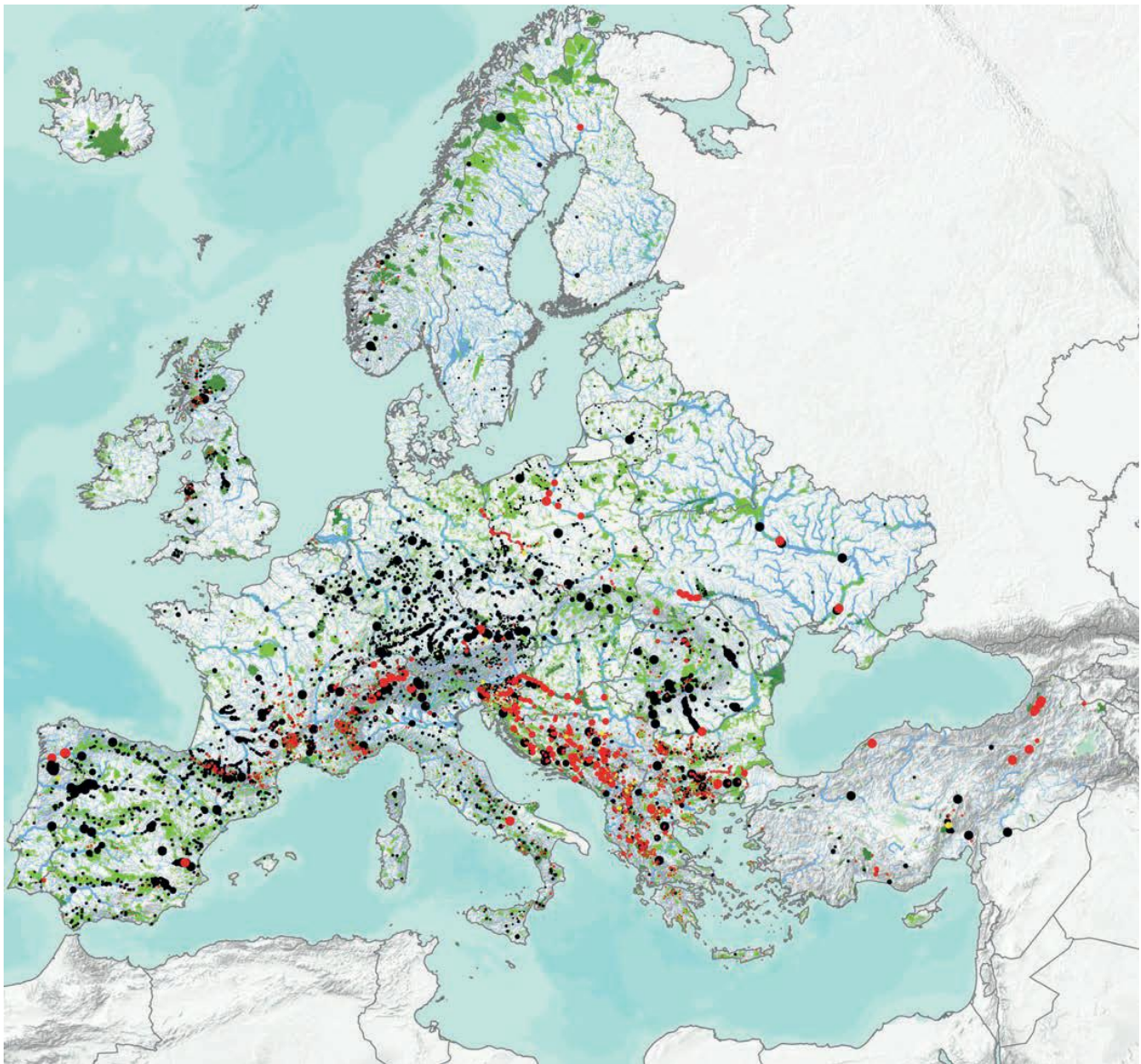
Rivers

State boundaries

30 |



**Map 3**



**Hydropower plants  
in Europe in protected areas. The  
protected areas have been categorised  
as follows:**

**Category 1: National parks, Ramsar  
sites, World Heritage sites, biosphere  
reserves**

**Category 2: Natura 2000, Emerald  
areas for Eastern Europe, nature  
reserves**

**Category 3: Landscape protection**

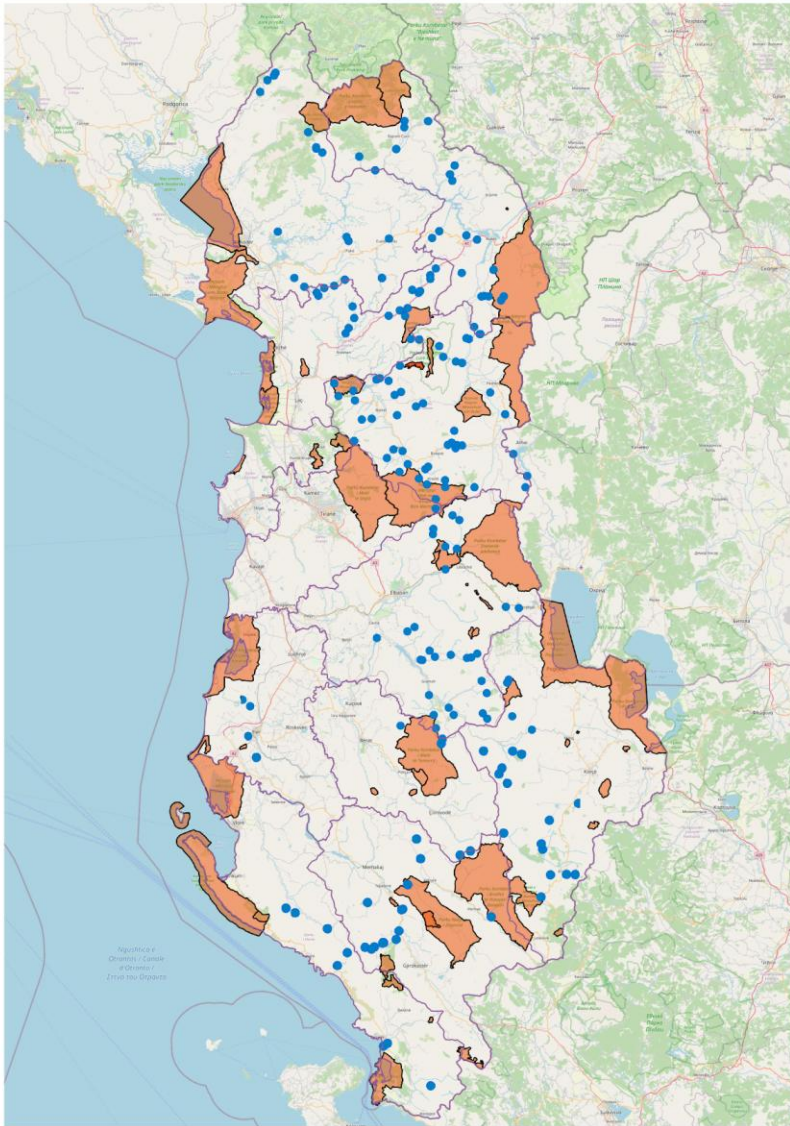


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#### Map 4

Map of Albania on HPP Under constructions and areas under protection

- HPP Under constructions
- Areas under protections, national parks
- Zall-gjoçaj - area of ethnographic case



## Map 5

Map of water-related Conflict, prepared expert sponsored by Office of European Union in Tirana, in 2017. Since the case of Zall-gjoçaj, starts in 2019, is not part of this map. Also are other cases which has to be added here, regarding the new conflicts taking place already on issue of HPP construction with community consensus.

