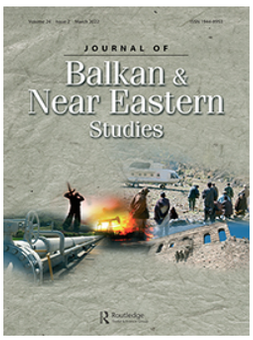

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Litigation as a Strategy for Environmental Movements Questioned: An Examination of Bergama and Artvin-Cerattepe Struggles

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ABSTRACT

Litigation is being increasingly used by environmental movements in pursuit of justice as a last resort. The environmentally harmful actions of transnational corporations in addition to the incapability of international organizations and the unresponsiveness of states to inhibit this damage are pushing citizens to courts. However, courts' ability to address environmental injustices remains dubious. This article problematizes the efficacy of litigation for environmental movements to achieve long-term justice by examining Bergama and Artvin-Cerattepe movements from Turkey, through a case-study approach and borrowing from grounded theory. It discusses the reasons why litigation may provide short-term gains for environmental movements but is of limited effectiveness for pursuing change in the long-term, such as non-implementation of court decisions, policy changes impacting the execution of judgements, insufficient sentences not offering enough deterrence for future, and power imbalances between litigants impacting the courtroom etc.

Introduction

Judiciary is playing a larger role in global governance. Around the globe, an unprecedented amount of power has shifted from representative institutions to the judiciary.[1] Since most justice demands are not embraced either by transnational corporations or by governmental and parliamentary bodies, they are being increasingly carried before the courts as a last resort. Likewise, neoliberalism has unquestionably extended the reach of the legal contracts, and the appeal of judicial action.[2] Legalization is viewed by some as binding states through law, putting their behaviour under scrutiny, and delegating authority to a neutral entity to decide through agreed rules.[3] Concerning the legalization of environmental issues, there has been a worldwide explosion of environmental lawsuits, establishment of environmental tribunals, and development of new environmental law and institutions. For instance, as can be seen in the Graph 1, the number of environmental issues carried before the European Court of Human Rights (ECtHR) has significantly increased from 2000s onward.

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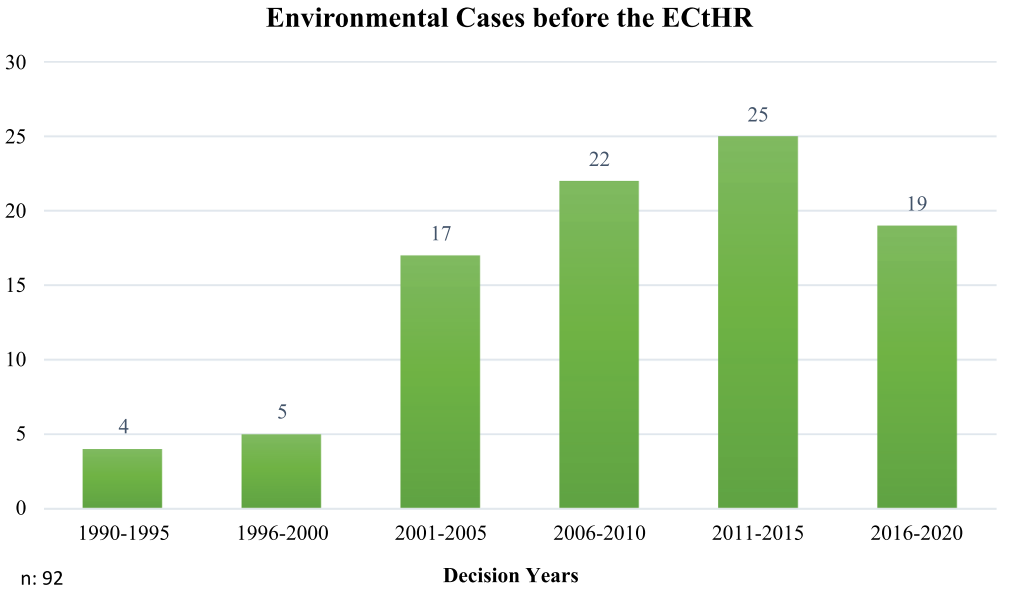

Graph 1. Environmental cases before the ECtHR. Source: Author 2020 (Environmental cases from the 'Factsheet: Environment and the European Convention on Human Rights' prepared by the ECtHR).

Graph 2. Location of Bergama and Artvin-Cerattepe. (The circle on the left shows the location of Bergama, the right one shows the location of Artvin-Cerattepe).

However, the courts' capacity for addressing environmental injustices, particularly in the long-term,[4] remains questionable. There are notable cases where litigation produced a positive outcome for environmental justice.[5] Nevertheless, there are also a significant number cases where environmental movements did not obtain their desired outcomes through litigation.[6] There are many reasons behind the courts' limited effectiveness in delivering justice in the long-term, including—but not limited to- long judicial processes, problems in execution of judgements, reversion of court decisions by higher courts,

change of legislation by governments concerning the case, power imbalances between the litigants and the opponents, insufficient sentences etc … Often, although courts find human rights violations and ask for compensation, the project responsible for environmental degradation does not stop operating, like in the cases of *Cordella and Others v. Italy* (2019),[7] *Bursa Barosu Başkanlığı and Others v. Turkey* (2018),[8] *Fadeyeva v. Russia* (2005).[9] As a result, courts remain devoid of representing a strong deterrence for future incidents. This is clearly apparent in the case of the highly respected international human rights court, the ECtHR, which imposes monetary fines in cases like *Taşkın and Others v. Turkey*, but whose decisions lack strong deterrence for future environmental injustice cases. Given the civil regulation's limitations for answering social demands against transnational corporations—such as facility to change, non-inclusiveness, non-execution, non-supervision—there is a pressing need for questioning the effectiveness of litigation for providing long-term justice in environmental cases.[10]

I problematize the efficacy of the use of litigation by environmental movements in achieving justice in the long-term. I discuss the limitations of effectiveness of courts by borrowing from grounded theory and examine the legal history of two mobilizations against gold mining: the Bergama[11] and Artvin-Cerattepe[12] movements. It is argued that although litigation might provide certain benefits to environmental movements in the short-term, in the long-term, its efficacy for providing justice remains quite doubtful. In both cases, operation licences were delivered in 1994, during Tansu Çiller's True Path Party. In both movements, communities opposed the opening of the mine and the imposed alteration of their relationships with the nature. In the Bergama case, the highest court verdict to date, delivered by the ECtHR, is in favour of environmental justice, while in the Artvin-Cerattepe case, the highest court verdict to date, delivered by the Council of State, the highest administrative court in the country, represents a failure for environmental justice. In the long-term, both mines became operational.

After reviewing the literature on the use of law for generating social change, I present grounded theory and the case selection. There is no agreement about the benefits of use of litigation and legal mobilization in the literature, and the article first reviews them briefly. In the methodology section, I discuss why I borrow from grounded theory, how I choose the case studies and describe the research techniques I employed. Subsequently, after briefly introducing neoliberal transformation of mining in Turkey, I scrutinize the legal histories of the selected movements, and discuss the effectiveness of the use of law for environmental justice in the long-term.

Use of law for social change

Social movements are collective actions of relatively less powerful groups who cannot take part in formal decision-making mechanisms to voice their demands, and affect decision-making.[13] Essentially, most environmental conflicts arise due to a clash of interest between capital and the wellbeing of the local people. Local people contest the business activities as potentially threatening their lives, health, livelihood, and harmful to the environment, and demand participation in the decision-making of environmentally-harmful projects.[14] Since environmental movements tend to be relatively less-powerful vis-à-vis transnational and national investors, they need to organize themselves in the form of a collective movement to increase their bargaining power, and rely on a

repertoire of political action, as diverse as protests, demonstrations, using press and lobbying.[15] However, they often find themselves confronted by financial interests. When they find the government also opposing their goals, they carry their battles to courts, seeing it as a last resort.[16]

Neoliberal capitalism has fragmented the statehood structure and created complex jurisdictional interactions.[17] In a framework shaped by market values, law and legal institutions are playing a regulatory role that is validating the capital-oriented approach to development, based on property rights and financial markets. The scope for state action is circumscribed by the interests of the capital as well as the global trade and investment accords.[18] Both domestic and international law is limiting democratic choices over economic policy principles and locking future governments into a neoliberal framework of accumulation.[19] As a result, law is reproducing the clear imbalance between the rich and the poor.[20] Under such conditions, state institutions, including the legal ones, are becoming the instruments of the ruling elite.[21] Consequently, legal decisions tend to favour the rights of private property and profit over rights of equality and social justice.[22] In such a framework of competition, market efficiency, and privatization, capital has greater weight and representation over democratization processes.[23] As a result, law itself is created in a space which reinforces capital accumulation rather than public interest. These conditions produce limits for litigation's potential for effectiveness in providing environmental justice.

There are diverging views in the literature about litigation's democratizing and transformative potential.[24] Some scholars assert that legal mobilization—utilization of legal tools for asserting individuals' or groups' rights—can matter, whereas some others remain sceptical about this prospective.[25] According to Cichowski, in addition to protecting rights, litigation serves as a foundation of an incremental transformation and expansion in public participation. It permits actors to question existing rules and procedures, and sometimes, judicial rule making leads to the creation of new rules. Hence, it complements both electoral and protest activities in an enriching way.[26] Likewise, Bellamy and Parau state that courts can be supplements in democratic politics as an alternative venue for participation.[27] McCann demonstrates how legal mobilization can deliver significant long-term successes, such as raising legal consciousness and advancing their causes politically, even when the activists lose their cases before the courts in the short term.[28] According to Shapiro, a general confidence-weakening in technocratic governments is causing the spread of judicial power.[29] For instance, disappointment with global climate governance is encouraging the emergence of courts as new 'battlefields'.[30] In addition, the scholarship on legal mobilization studies how legal opportunity structure, social and political context, judicial attitudes and movement resources work as mechanisms that boost the use of litigation for social change.[31]

On the other hand, there are scholars who are sceptical about the use of litigation for social change.[32] The association of law with neutrality and rule-determinacy are key legitimizing symbols of law.[33] Thus, law provides a buffer zone to accomplish results that would not be possible in a political arena.[34] In addition, although courts protect liberal individual rights, they fall short of strengthening the norms of reciprocity and solidarity that underpin redistribution.[35] Moreover, due to the adversarial character of litigation making the court confrontational, courts are not cooperative entities. Thus, they are not well-equipped to create an atmosphere of compromise and promote reciprocity and

cooperation. Furthermore, judicial cases offer no guarantee that litigants will be representative of the broader problematic context in which the case is situated. Hence, the larger political and structural problem cannot be addressed through courts.[36] Therefore, courts cannot tackle broader problems, such as exclusion from decision-making or global environmental inequalities. In addition, the judiciary approaches the matter case by case basis, hindering the possibility of more integrated and long-term solutions.[37] Besides, even if a legal case is successful, a complex social problem is reduced to the issue of compensation. However, compensation offers little help after livelihoods are destroyed. Also, monetary may give short-term relief but often they do not stop environmentally destructive projects entirely. Essentially, such decisions do not represent deterrent cases for companies wishing to invest in environmentally destructive projects. In addition, scholars highlight several barriers working against social movements in bringing a claim to the court. These include financial disincentives, lack of legal literacy, distrust of legal processes, intimidation and the difficulty of presenting a direct link between an industrial process and an environmental or social harm before a court.[38] Similarly, Galanter states that litigation always favours the wealthy and the powerful.[39] It creates limits for possibilities of using the court system for redistributive justice. In addition, Rajagopal adds that the key actors in the enactment and enforcement of law, such as the judges and the legislators usually belong to the richer classes of the society and in general do not participate in similar struggles themselves, even though they might sympathize with the activists' goals. This can bias their world views, and ultimately the judgements, against the activists' targets.[40]

Although there are contesting positions about the use of courts for social change in the literature, certainly, legal battles remain a major tool for resistance for environmental movements. The struggles have longer lifelines than a judgment. Neither the success nor the permanency of a local environmental movement only depends on a court verdict,[41] meaning that although a final verdict produces a negative outcome for environmental justice, the process of litigation itself might have some benefits for the movement. These include enrolling up new members, bringing activists together at a new resistance platform, scaling down or up certain projects, making the resistance more visible, familiarizing judges with ecological questions, and in some cases, scaring off investors. Also, environmental expert reports about the cases serve as memories for future generations.[42]

Nevertheless, there are also various limitations faced by environmental movements trying to obtain justice through courts. For instance, verdicts that are in favour of environmental justice might not be implemented or they can be reverted by higher courts. The courts might provide insufficient remedies. Litigation process might last too long rendering a compensation meaningless. Financial compensation might not be able to avert environmental and social harm. The governments might change legislation following judgements that were victorious for environmental justice causing new environmental risks for the same area. Also, in general, power imbalances exist between powerful international companies with strong financial capabilities and the litigants trying to avert development projects. There might also be problems about literacy and social intimidation among the litigants from the rural side.

Methodology

I borrow from grounded theory, an inductive methodology, which emphasizes the interdependence of the theory and the data.[43] This is because the limitations faced by movements searching for justice through courts are case-dependent, meaning that different legal cases and circumstances reveal distinctive restrictions. Grounded theory is an inherently flexible method which grounds the theory in actual data. The theory emerges from the data and re-reviewed by the author. Hence, I construct the theory of the limits of the use of litigation by environmental movements in achieving justice from the data obtained from the case studies.

A case study approach sheds light on a larger pool of similar cases through the in-depth analysis of a single case.[44] I picked two environmental movements as cases by using the most different case selection method for identifying various limitations of litigation in delivering justice to environmental cases. In this method, there should be a myriad of differences between the cases but one variable in common, which leads to the same outcome between the cases. Bergama and Artvin-Cerattepe cases have a myriad of differences: Two environmental cases, one where the highest court verdict to date was in favour of environmental justice (Bergama), and another where the highest court verdict to date was contradictory (Artvin-Cerattepe), are selected. In addition, one of the cases was carried before an international court (Bergama), while the other case only concerns domestic litigation. Hence, the article can consider the limitations of both domestic and international law in delivering environmental justice. In addition, although both cases are in one country, one is in the West and the other is in the North-East. Bergama is in the city of İzmir whereas Cerattepe is in the city of Artvin, and in between these two cities there are around 1,642 km (Graph 2). Also, they possess different characteristics: While Bergama is a populous ancient town with fertile lands lying in the plain of a river, Artvin-Cerattepe is a mountainous region with unique biodiversity. In both cases, though, the outcome is the same: The mine has become operational. Therefore, both cases represent limitations for the use of law for environmental justice. Certainly, enlarging the number of case studies would increase the validity of the results, and examination of two case studies from the same country remains as a limitation for the article.

As for research techniques, I employed qualitative research methods, including content analysis of legal documents as well as 18 semi-structured interviews in total for both cases. I conducted field interviews with various stakeholders (Annex I), such as legal representatives of both movements, movement participants, professors from Artvin Çoruh University, former mayors of Bergama, and former employees of Eurogold. For conducting interviews, I visited the city of İzmir, the town of Bergama, the city of Artvin, and the region of Cerattepe multiple times between 2014 and 2017.[45] As for the legal documents, I analysed primary legal documents of the cases (Annex II), such as various judgements, petitions and environmental impact assessments (EIAs) through content analysis.

Neoliberal transformation of mining in Turkey

Turkey has experienced vast changes due to neoliberal capitalism since the 1980s. The neoliberal development model, pursued after the 1980 military coup, has caused an unrelenting drive for more capital accumulation and growth-based policies regardless of their social and ecological costs. Neoliberal policies, such as mass privatizations, commercialization, deregulation, and financialization, has drastically augmented the pressure put on nature.[46] Subsequently, environmental degradation in Turkey, caused by both overuse of natural resources and the disposal of waste beyond the assimilative capacity of the ecosystem, has been rapidly worsening.[47]

Mining industry was also transformed during this period. A new form of neoliberal developmentalism with an unprecedented extractivist push has emerged.[48] The relationship between state and the capital has reconfigured the spatial and material frontiers of extractivism. This rapid change propelled robust social and environmental conflicts against mining, energy and hydro-power companies.[49] Highly effective environmental movements were organized in several different places. Examples include those in Fındıklı (Rize), Ünye (Ordu), and Ida Mountains (Balıkesir and Çanakkale), Ilısu (Mardin) some of which have been triumphant in stopping the projects through legal mobilization.[50] The Bergama and Artvin-Cerattepe movements are among these examples which emerged in Turkey's aforementioned shifting political economy context.

Case I: Bergama movement

Bergama is a town, located in Western Turkey, in the north of İzmir city centre, nearby the Aegean Sea (Graph II). It is known for its fertile agricultural lands and the Pergamon ancient city. The multinational company Eurogold obtained mining exploration licences in Bergama in the late 1980s. Initially, the residents welcomed this due to hopes for well-paid jobs and rewarding land sales. Nevertheless, during the drilling process, chemical compound leakages into the water supply and damages from explosions raised suspicion among peasants. These initial fears progressively evolved into a vocal and visible movement due to health and environmental risks posed by the mine. This was particularly because the company wanted to use cyanide leaching, a method of gold recovery which creates highly toxic and dangerous discharges. Sefa Taşkın, the former mayor of Bergama and one of the chief leaders of the movement describes the early days as follows:

> When they first came to our town, the company representatives were behaving as if they were going to bring civilization. They attempted to convince us about the safety of cyanide. However, we were not convinced and started collecting information about it through our own network. We consulted different scientists and collected documents from various international non-governmental organizations, such as Mine Watch in the U.K. The more information we obtained the more doubtful we became.[51]

By the mid-1990s, the movement was organizing several high-profile demonstrations and acts of civil disobedience. They were the first prominent example of its kind in Turkey. Initially, however, rather than opposing, the activists aimed to convince the state about the dangers posed by the mine. Taşkın explains the initial interaction with the state as follows:

> Firstly, positive things were happening too. For instance, the government even took our opinion about the creation and acceptance of the first EIA Regulation of the country. The government was also a bit puzzled about how to behave.[52]

However, the government did not side with the movement at the end. The company obtained the operation licences in 1994. The legal struggle of the Bergama case started right after that because the activists 'wanted to corner the state and the company on every front' says Senih Özay, chief lawyer of the movement.[53] A group of voluntary environmental lawyers carried the issue before the court on behalf of 652 plaintiffs from the surrounding villages of the mine. Initially, in 1996, the Administrative Court rejected the activists' request to terminate the permit. The activists appealed this decision. In 1997, the Council of State, with a cutting-edge judgment, reversed the lower court's decision. Basing its judgment on the right to life and the right to live in a clean and balanced environment, it ruled that the operating licence of the company was not in accordance with the general public interest.[54] This judgment provided strong motivation to the movement, since it strengthened the peasants' belief that they were fighting for 'righteous' causes. 'After this judgment, we believed that the law was on our side and we began feeling much stronger' says Senih Özay.[55] In October 1997, the licence of the company was annulled in compliance with this judgment. However, the legal victory was short-lived. Instead of shutting the mine, the government decided to re-evaluate the permits. In addition, the company repackaged the mine as a 'green' development project by adding a chemical detoxification system.

Consequently, the case was brought before the ECtHR in 1998 for the first time. In 1999, the company applied to the relevant ministries for a new permit. Upon this request, The Prime Minister of Turkey asked the Scientific and Technical Research Council of Turkey (TÜBİTAK) to commission an expert report about the mine. In its report, TÜBİTAK argued that it would be impossible to operate the mine without cyanide, and that the use of cyanide did not pose significant environmental risks in developed countries such as the U.S. and Australia. It also added that the detoxification technology further minimized the risks.[56]

These conclusions were criticized by several professional associations and academics. Nevertheless, trial operations began in 2001. This marked the beginning of a lengthy legal process between the activists, the company, the Administrative Tribunal, and the Council of State that lasted throughout the 2000s. These were also the years when the rumours about alleged German interference in the case to damage Turkey's competitive edge in the gold mining sector through German environmental foundations were spreading.[57] This caused the discussion of the issue at the National Security Council as a national security topic.

The case was carried before the ECtHR several times: *Taşkın and Others v. Turkey (2004), Öçkan and Others v. Turkey (2006), Lemke v. Turkey (2007), Genç and Demirgan v. Turkey (2017)*. In all four judgements, the court based its decisions on article 6.1 (right to fair trial) and article 8 (right to respect for private and family life) of the European Convention on Human Rights (ECHR).[58] Concerning article 8, the court argued that the article applies to severe environmental pollution that affects individuals' well-being and prevent them from enjoying their homes in such a way that affects their private and family life. Evaluating this article from a procedural perspective, it was stated that the

decision-making process of the project should have taken into account views of different parties within the procedural safeguards available. Concerning article 6.1, the court held that domestic procedural requirements were not followed within the required time limits. Due to violation of articles 8 and 6.1, the court obliged Turkey to pay 3,000 Euros to each applicant for non-pecuniary damage.

The ECtHR did not explicitly order the closure of the mine. Instead, it stated the violation of due to the operation of the mine. Even after the judgment, the mine operated. Consequently, a debate over the interpretation of the judgment started in the country. Some argued that, since the judgement referred to the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters even though Turkey was not a part of this Convention, the ECtHR judgment was a legally progressive and environmentally protective one. In addition, some legal experts contented that the judgment should be interpreted in light of the fact that the ECtHR does not dictate how to implement its judgements, but only states the existence of the violation of certain rights.[59] According to others, though, the case illustrates that the ECtHR, the highest court for human rights violations in Europe, could not order the closure of a mine but only could rule for monetary compensation. On this line, the movement's chief lawyer Özay adds that he did not find the remedies of the ECtHR 'enough' even though the activists won.[60] Hence, although the judgment represented a success for environmental justice, monetary compensation offered only partial support after livelihoods and the environment are damaged.

Case II: Artvin-Cerattepe movement

Artvin is a city in the North-eastern Turkey, bordering Georgia (see Graph II). As of 2019, Artvin had a population around 170,000. The population increase rate was negative and around %40 of the population lived in rural areas.[61] Around half of the population works in agriculture while ecological tourism is also gradually becoming a substantial economic activity. The city is part of the Caucasus ecoregion, one of the most biologically rich zones in the world. The area contains the largest old and natural forest zone in Eurasia and includes with around 1,400 different plant taxa.[62]

Field explorations for mine reserves in the area were initiated by the General Directorate of Mineral Research and Exploration (MTA) in 1986. Although no economically significant source was initially detected, a close relative of an engineer working at MTA obtained the exploration licences. Later, he sold them to the Canadian company Cominco, which also obtained the operation licence in 1994.

During the initial exploration process, local water was contaminated by heavy metals and hazardous chemicals, leading to the death of several cows. Later, the samples taken from the cows were lost, raising suspicion among local people. As a response, Cominco organized an information panel for locals. Nevertheless, after this session, local people got even more worried and established the Green Artvin Association in 1995 for opposing the mine.

The Artvin-Cerattepe movement against gold and copper mining became one of the strongest grassroots movements of Turkey, with a history of more than 20 years.[63] The movement deployed various methods for resistance, including awareness raising, peaceful demonstration, dialogue with politicians, organization of conferences and concerts,

petition preparation and a legal struggle. Numerous local groups, such as the Artvin Bar Association, Artvin-Çoruh University, the Governorship Office, local Chamber of Commerce, and local branches of trade unions supported the Green Artvin Association. The mine's threat to local spaces, communities, and local identities has brought people together from different social strata. Nur Neşe Karahan, the chief representative of the movement, endorses this outcome: 'We have people from all political parties, and this strengthens our movement significantly'.[64] Bedrettin Kalın, the main lawyer of the movement, also supports this claim: 'Our movement is political since it is human-centred and positioned against the interests of capital, but it is above traditional party-politics'.[65]

In the late 1990s, politicians from various parties together with the Green Artvin Association visited the Minister of the Environment for preventing mining in the region. Subsequently, the government changed its stance. Kalın explains the reason of this change:

> The composition of the group with different party representatives surprised the Minister. Generally, mining activities are supported by one party and opposed by others. This was not the case in Artvin. This convinced the Minister, and we did not need to start a legal process before the mid-2000s.[66]

The strong spirit of collectiveness convinced Cominco to leave the region in 2002. Nevertheless, it transferred the permit to another company, İnmet Mining. Therefore, the movement initiated a legal process in 2005. This was followed by significant legal achievements.

In 2008, the Administrative Tribunal revoked the mining licence.[67] Followingly, the company carried the issue to the Council of State. A chief legal victory for the environmental movement came in 2009 when licence was nullified with the following arguments:

> The areas with the mining licence are within the national park and touristic areas, the mining operation would not provide any substantial benefit to the country's economy, the unique natural beauties and the creatures would be harmed, Artvin is essentially on an area where the risk of landslide is high, there are active landslide areas, many scientific reports can be found asserting this risk, the mining activities in the area would also have adverse effects on the flora and fauna, . . . the licensing was carried out in an illegal way . . . [68]

Nevertheless, this victory was reverted in 2011. Ministry of Energy and Natural Resources decided to contract out 1,343 new mining sites within the scope of the new mining law which was modified in 2010. Artvin-Cerattepe mining site was among these 1,343 mining sites. In the tender organized in February 2012, Özaltın Company obtained the licences. It later transferred the operation rights to Etibakır Company, which was part of Cengiz Holding. This sparked both the grassroots protests and the legal process once again. In the same year, two different lawsuits were filed. The first one contended that the tender must be annulled. The second maintained that the licence of the company was delivered unlawfully, since the company did not have an EIA report. Although initially both lawsuits were dismissed, in November 2012, the Rize Administrative Tribunal granted a motion for stay of execution for both lawsuits. Nevertheless, the company managed to obtain an EIA report in the meantime, making the lawsuit devoid of essence.[69]

Amidst intensifying protests, the company decided to undertake only copper mining, and transport the copper extracted by a cable car for leaving the nature intact. However, since copper and gold exist together in their natural settings, the activists remained sceptic if the company would limit its activities only to copper extraction.[70]

In September 2013, another lawsuit was filed against the company. In 2014, the Tribunal annulled the company's EIA report.[71] This judgment was particularly stressing that the place for the mining site was incorrectly designated.[72] However, as a response, the company appealed to the Council of State again. Nevertheless, even before a decision was formed by the Council of State, using public notice no. 2009/7, the company applied for and obtained another EIA report in a short period. The public notice no. 2009/7 facilitates mining companies' attainment of a new EIA report following a court verdict that annulled their existing reports. Through this public notice, companies can obtain a new EIA report only by introducing a few changes to their previous EIA reports and get it approved by the ministries directly. This shortens the usual EIA report obtainment procedures. In essence, the legal code is designed for accelerating, expediating and facilitating capital accumulation and profit making. Likewise, Kalın describes this public notice as 'immoral, unjust and against law'.[73] Hence, public notice no. 2009/7 caused the legal process of Artvin-Cerattepe movement to become a legal vicious circle by rendering judgements about annulation of EIA reports ineffective.

Following the company`s new EIA report, the protestors filled another lawsuit in 2015 with 751 plaintiffs and 63 lawyers.[74] In 2016 summer, the Council of State formed a judgment about the previous lawsuit.[75] Although the Council of State decided to invalidate the company's EIA report, since the judgment concerned the former trial, the decision did not put an end to the legal struggle. In September 2016, the Administrative Tribunal held a trial about the latter case, filled by more than 700 plaintiffs. It permitted the operation of the mine.[76] Consequently, the plaintiffs carried the issue to the Council of State again. In 2017, contrary to its previous position, the Council of State did not annul the EIA report of the company, arguing that the mining operations would be in accordance with the legislation. Subsequently, mining company started its operations in Cerattepe.

In 2016, the applicants carried the case before the Constitutional Court of Turkey, arguing that their right to life, right to respect for private and family life, right to fair trial, right to information, right not to be tortured, and right to clean environment was violated. In the petition, they also argued that it was unlawful to implement public notice 2009/7 in Artvin-Cerattepe case because a judgment cannot be altered with a public notice according to the hierarchy of norms, and the article 138 of the Constitution of the Republic of Turkey,[77] which guarantees that legislative and executive organs respect and execute judicial decisions.[78] The case is still pending as of 2021 March. In the meanwhile, Nur Neşe Karahan was blamed by a Turkish TV channel for broadcasting in a Kurdistan Workers' Party (PKK)[79]-related media, being educated by German environmental foundations, and harming the copper exports of Turkey. After exhausting initial domestic remedies,[80] she carried the issue to the Constitutional Court of Turkey in 2016, arguing that her right to protect and improve one's corporeal and spiritual existence via hate speeches was violated. In 2019, the court found the case inadmissible due to non-exhaustion of all domestic remedies. But it also added that the indictments about the

activists cannot count as hate speeches that 'spread, provoke, encourage or legitimize forms of hatred based on intolerance'.[81] This incident not only puts the delivery of justice through courts into question for the environment but also for the environmentalists.

Assessment of Legal Histories of Two Movements

In the Bergama case, despite four ECtHR judgements ruling that there had been human rights violations and a legal history with significant victories, the legal struggle did not prevent the mining operations. This illustrates how the non-implementation of court verdicts and insufficient sentences delivered by international courts—such as monetary fines—are major limitations to rendering justice by courts. Deficient execution of judgements and insufficient fines in the case did not vitrine enough deterrence to prevent companies from investing in similar mining projects in the future, such as Uşak-Eşme[82] and Ida Mountains[83] etc . . . The ECtHR could not provide a long-term and integrated solution either. Offering monetary compensation presented little help after livelihoods are destroyed. Also, although mine operations impacted a large number of people in Bergama, only those who were litigants could obtain this compensation.

The fluctuating legal history of the Artvin-Cerattepe movement with major legal gains demonstrates how through policy and legislation changes, the government can play a decisive role in the ultimate outcome of an environmental justice case. Although the movement won legal victories, its legal process has degenerated into a vicious circle owing to changes in mining law in 2010 and the 2009/7 public notice.

Furthermore, in both movements, the length of the legal struggles with more than 20 years stands as a further restriction. Long judicial processes not only postpone the delivery of justice but also disrupt the momentum of the environmental movement, which may lack resources to persist through a long legal process. This is certainly one of the major reasons why the Bergama movement has waned and negatively impacted the energy of the resistance in Artvin-Cerattepe.

Moreover, the extreme power imbalances between the opposing sides in environmental justice cases significantly constrain the capacity of the courts to guarantee equality before the law. Likewise, in both cases, one side was composed of voluntary activists, locals and peasants, represented by volunteer lawyers. The other side were powerful companies, defended by well-trained and well-paid lawyers. This financial and market power has certainly a political and social influence outside of the courtroom. This influence certainly impacts the inside of the courtroom too and restrains the capacity of courts to provide justice on a fair basis. Moreover, such companies generally have the power to influence the media with a view to manipulating public opinion. Likewise, in both cases, the villagers were accused of being German spies trying to negatively impact the gold and copper industry in Turkey. Although such allegations were rejected by the activists, they had a big impact on public opinion and played a role in the weakening of the rightful causes of the movements.

Also, in both cases, structural factors arising from political economic conditions, which are external to the litigation process, constrained the courts' effective delivery of justice. Firstly, within a society like Turkey, which values commodification as 'common sense' and pursues its development through extractivism and large energy projects, market principles become the ultimate justifications behind 'good judgements'. The

principles of capitalism, such as profit maximization, market enhancement and extension of capital accumulation, stand as major justifiers for the socio-political decisions of the day. Companies are legitimized as the only driver for development in society, while environmental movements are mostly portrayed as opposing projects which would provide income and development to the nation at large. In such a framework, governments generally align with the companies. For the Bergama case, the activists also did not see this trend to alter.[84] Similarly, in the Artvin-Cerattepe case, the change of legislation in 2010, and the 2009/7 public notice clearly illustrate how the market principle of capital accumulation was promoted over justice provision through the courts.

Furthermore, environmental rights have developed recently compared to other human rights, and there is still a lack of consensus about their compatibility with economic policies. This lack of consensus and the rather fragile public perspicacity of environmental rights is one of the reasons why they have not been successfully implemented to date. Consequently, in both cases, although environmental rights were operationalized by the litigants, their implementation remained incomplete and recognition of their violation by the courts was not eventually enough to prevent mining operations.

Conclusion

Neoliberalism has extended the reach of legal contracts and the appeal of judicial action under the guise of the 'rule of law' being a saviour. When their demands are neither heard by transnational corporations nor by governmental or parliamentary bodies, people seek justice before the courts as a last resort. Nonetheless, using the courts has not been an entirely good strategy for environmental movements. This article problematized the efficacy of the use of courts by environmental movements.

Legal mobilization remains one of the main tools for environmental struggles. Globally, there are several cases where litigation has delivered justice to environmental movements in the short-term. Also, regardless of the outcome of a verdict, the process of litigation itself might have certain advantages for a struggle. However, these achievements do not signify that litigation is a solution for environmental movements in the long-term.

This article studied the reasons behind the limited efficacy of litigation by borrowing from grounded theory. It examined the legal history of Bergama and Artvin-Cerattepe struggles. Despite significant legal gains, in the long-term, both mines have been operationalized.

Both environmental movements are striking resistances, with a legal struggle of more than 20 years. The legal history of the Bergama movement illustrates how problems in the implementation of legal decisions and insufficient sanctions handed down by international courts can cause environmental injustices, while the Artvin-Cerattepe movement's legal history showcases how the government's change of legislation influenced the ultimate outcome of an environmental project. In both cases, the protracted length of the legal processes and power imbalances between the sides considerably constrained the effective delivery of justice through the courts.

Importantly, although initially judgment by the Council of State in Bergama scared-off other gold-mining investors, the non-implementation of this decision in the long-term and the only monetary fines imposition by the ECtHR further encouraged the investors

to pressure for mining projects, like Uşak-Eşme mine. In other words, falling short of achieving environmental justice in the long-term despite positive judgements for the activists in the Bergama case further stimulated similar investments in the country. The primarily environmental brutal legal 'loss' in the case of Bergama in fact represents a rapid spread of neoliberal market economy in Turkey. Even an international human rights court like the ECtHR could not effectively reduce the injustices occurring in this process.

Moreover, in both cases, structural reasons external to the litigation process inhibited delivery of environmental justice by the courts. In the long term, we see capital accumulation and short-term profit-making being prioritized over environmental protection and democratic demands. Despite some legal gains by both movements, mining operations were operationalized in the end, proving how market principles have become the ultimate champion within the current political and economic climate. Environmental rights remained a hollow hope.[85]

In conclusion, due to robust limitations to the effective delivery of environmental justice through courts, similar injustices are repeated, and environmentally destructive projects continue. The question of whether the ineffectiveness of the law in providing environmental justice in the long-term can encourage the movements to inquiry how to transform the law itself remains for future studies.

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8. The case was brought before the ECtHR by Bursa Bar Association and the Association for the Protection of Nature and the Environment against Cargill who established a starch factory on farmland in Bursa. The Court found a violation of article 6.1 (right to a fair hearing) of ECHR. The operation of the company continues.
9. The applicant living in a major steel-producing centre in Vologda Region complained that operation of a steel-plant, close to her home, endangered her health and wellbeing. The Court found a violation of article 8 of ECHR in 2005. However, in 2007, the case was supervised by the Committee of Ministers, and the Memorandum prepared to assist this Committee found no sufficient information to conclude that the application no longer suffered from the consequences of the violation found.
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85. Although some might associate the non-delivery of environmental justice though courts in Turkey to the Justice and Development Party (AKP) government, state-society-market relations in Turkey never functioned in favour of the society. The non-implementation of judgements in the Bergama case before 2002 when the AKP government first came to power

also showcases this. Yet, spread and deepening of neoliberal economy in Turkey—an economic vision also supported by the AKP—and insufficient environmental justice provision by courts overlaps too.

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Her articles appeared in *Environmental Politics, International Environmental Agreements: Politics, Law and Economics, Cambridge Review of International Affairs, Southeast European and Black Sea Studies, Alternatif Politika, Mimarlık, Mediterranean Politics, Journal of Human Rights and the Environment, Journal of Chinese Political Science, and Europe-Asia Studies*. She co-authored a book in Turkish called '*Çevre ve İktisat Politikası Gibi Bir Şey*' (Something Like Environmental and Economic Policy). Her research interests cover global environmental politics and political economy of developing countries, particularly Turkey, India and Greece and. She is fluent in Turkish, English, French and learning Greek.

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Annex I: List of Interviews

1) Rıfat Serdaroğlu, 2016, Former Mayor of Bergama, Former Minister of Health, İzmir
2) Sefa Taşkın, 2014, Former Mayor of Bergama, İzmir
3) Hasan Gökvardar, 2016, Former Public Relations Manager of Eurogold, İzmir
4) Erol Engel, 2016, Head of a Local Environmental Non-Governmental Organization, İzmir
5) Senih Özay, 2016, Chief Lawyer of Bergama Movement, İzmir
6) Arif Ali Cangı, 2016 and 2017, Lawyer of Bergama Movement, İzmir
7) A foreign trade consultant, Bergama Movement Activist, İzmir
8) A lawyer, 2015, Bergama Movement Activist, İzmir
9) A taxi driver, 2014, Bergama Movement Activist, İzmir
10) Nur Neşe Karahan, 2016, Head of the Artvin-Cerattepe Movement, Artvin
11) Assist. Prof. Bülent Turgut, 2016, Professor at Artvin-Çoruh University, Artvin
12) Assist. Prof. Mehmet Özalp, 2016, Professor at Artvin-Çoruh University, Artvin
13) Assoc. Prof. Sinan Güner, 2016, Professor at Artvin-Çoruh University, Artvin

14) Assist. Prof. Hasan Eryılmaz, 2016, Professor at Artvin-Çoruh University, Artvin
15) Bedrettin Kalın, 2016, Chief Lawyer of Artvin-Cerattepe Movement, Artvin
16) A lecturer at Artvin-Çoruh University, 2016, Artvin-Cerattepe Movement Activist, Artvin
17) A lecturer at Artvin-Çoruh University, 2016, Artvin-Cerattepe Movement Activist, Artvin
18) An Artvin-Cerattepe Movement Activist, 2016, Artvin

Annex II: List of Reviewed Legal Documents

International Courts

Bursa Barosu Başkanlığı and Others v. Turkey, [2018] no. 25,680/05 (European Court of Human Rights).

Fadeyeva v. Russia, [2005] no. 55,723/00 (European Court of Human Rights).

Genç and Demirgan v. Turkey, [2017] no. 34,327/06 (European Court of Human Rights).

Cordella and Others v. Italy, [2019] no. 54,414/13 and 54,264/15 (European Court of Human Rights).

Lemke v. Turkey, [2007] no. 17,381/02 (European Court of Human Rights).

Öçkan and Others v. Turkey, [2006] no. 46,771/99 (European Court of Human Rights).

Taşkın and Others v. Turkey, [2004] no. 46,117/99 (European Court of Human Rights).

Domestic Courts

Petition to the Constitutional Court of Turkey, 2016, Green Artvin Association.

Petition to the Rize Administrative Tribunal for the judgment of 20 September 2016, Application Number: 2015/470.

Rize Administrative Tribunal, 23 September 2008, Application Number: 2007/53, Decision Number: 2008/708.

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Rize Administrative Tribunal, 20 September 2016, Application Number: 2015/470, Decision Number: 2016/485.

The Republic of Turkey Constitutional Court, 2nd Section, 17 April 2019, Application Number: 2016/79,283.

The Republic of Turkey Council of State, 6th Division, 13 May 1997, Application Number: 1996/5477, Decision Number: 1997/636-878.

The Republic of Turkey Council of State, 2009, Application Number: 2008/10,827, Decision Number: 2009/4430.

The Republic of Turkey Council of State, 2009, Application Number: 2008/10,828, Decision Number: 2009/4431.

The Republic of Turkey Council of State, 2016, Application Number: 2015/2215, Decision Number: 2016/3328.