



**COLLOQUIUM ORGANISED BY THE SUPREME ADMINISTRATIVE COURT OF FINLAND**

**IN CO-OPERATION WITH ACA-EUROPE**

**HELSINKI 25–27 MAY 2025**

**DIALOGUE WITH THE EUROPEAN COURT OF HUMAN RIGHTS –  
ADVISORY OPINIONS UNDER PROTOCOL NO. 16 TO THE CONVENTION AND  
THE IMPACT OF THE COURT'S JUDGMENTS AT THE NATIONAL LEVEL**

***Questionnaire***

The Finnish presidency of ACA-Europe during 2023-25, in close co-operation with Sweden, has focused on the dialogue between the national supreme administrative jurisdictions and the European Courts, i.e., the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR). During the Finnish presidency, seminars have been organised on a variety of issues like the duty of the national courts to make a reference for a preliminary ruling to the CJEU (Stockholm, October 2023), mechanisms of counteracting conflicting rulings from the domestic courts and the CJEU and the ECtHR (Zagreb, February 2024) and the multilevel protection of fundamental and human rights in European administrative courts (Inari, May 2024).

In the upcoming Colloquium, which will be held in Helsinki 25-27 May 2025, the focus will be on the judicial dialogue between the national supreme administrative courts and the ECtHR. In this questionnaire, as well as in the Colloquium, this dialogue is approached from two different perspectives.

The first part of the questionnaire examines the procedure in which a national court can seek an opinion from the ECtHR in a case pending before it, namely the mechanism of advisory opinions under Protocol No. 16 to the European Convention on Human Rights and Fundamental Freedoms (ECHR). The aim is to find answers to such questions as: Is the mechanism of advisory opinions perceived as a useful tool? What are the experiences so far? Can we draw any lessons already at this stage? Having in mind that all the participating countries have not acceded to the advisory opinion system, the questions will be different for those States that have done this and the ones that have not.

The second part of the questionnaire will focus on the impact of the judgments of the ECtHR at the national level. While in certain fields of law the jurisprudence of the ECtHR has been well recognised and embedded in the legal orders of the Contracting States, in some other fields the case law has been more contested and even criticised. This may be the case, for example, when the ECtHR is faced with new topics and uses evolutive interpretation of the Convention and its Protocols, or when the judgments are closely linked to politically sensitive areas such as national security or issues that traditionally have belonged to the field of political deliberation. In this questionnaire, the impact of the ECtHR case law is approached from a point of view of two such distinct but similarly pressing issues, namely climate change litigation and summary return of aliens at the border.





In section A of the second part of the questionnaire, we will explore the extremely topical issue of climate change litigation. Even though the ECHR does not contain any particular provisions on climate change or environmental matters, the ECtHR has been called upon to develop its case law in those issues as the exercise of certain Convention rights may be undermined by the serious adverse effects of climate change and the existence of harm to the environment.

In section B of the second part of the questionnaire, we will explore another contemporary issue linked to immigration law. As is well known, the ECtHR has a rich jurisprudence in this field where a wide variety of questions have been assessed under different Convention articles. In this questionnaire, the intention is to focus on a very specific and highly debated topic of summary returns of aliens at the border or shortly after entry into the territory (so called push-backs)<sup>1</sup>. The attention is specifically on those situations in which persons trying to enter a particular state have been denied entry at the border or in its close proximity, be it a land or sea border, and which have been assessed by the ECtHR especially against the prohibition of the collective expulsion of aliens.

In brief, the second part of the questionnaire aims at exploring the impact the case law of the ECtHR in the above-mentioned specific fields has had at the national level, both in terms of legislation and its interpretation by national courts. By looking at the national framework we are able to get a better understanding of how the rights protected by the Convention operate in the legal and political reality of the Contracting States, as the Convention is – as often repeated by the ECtHR – a living instrument anchored to the present-day conditions. Moreover, as novel issues of interpretation linked to changing and evolving challenges are first encountered at the level of the national courts, having a closer look at the national jurisprudence can serve to predict the questions to be raised before the ECtHR. This, for its part, underlines the two-way nature of the dialogue between European and national courts.

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<sup>1</sup> For the definition and principles drawn from the current case law, see [ECHR-KS Key Theme – Summary returns of migrants and/or asylum-seekers \(“push-backs”\) and related case scenarios \(last updated 31/08/2024\)](#).





## BACKGROUND INFORMATION

Please state the formal title of your court and the name of your country.

## I THE ADVISORY OPINION MECHANISM

*In accordance with Protocol No. 16 to the ECHR, the highest national courts or tribunals may request the ECtHR to give an advisory opinion. These requests concern questions of principle relating to the interpretation or application of the rights and freedoms defined in the ECHR or its protocols. The requesting court or tribunal may seek an advisory opinion only in the context of a case pending before it. It must give reasons for its request and must provide the ECtHR with the relevant legal and factual background to the pending case. Protocol No. 16 came into force on 1 August 2018.*

1. Has your country ratified Protocol No. 16?

- Yes. Please elaborate (e.g., the ratification year, which courts can make a request).  
 No, our country has not ratified Protocol No. 16. Please continue to Question 11.

*The Protocol No. 16 to the ECHR was ratified by Romania in 2022, through the Law No. 173/2022 for the adoption of necessary measures for the implementation of the Protocol No. 16 to the Convention for the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted at Strasbourg on October 2, 2013 and signed by Romania at Strasbourg on October 14, 2014, published in the Official Journal, Part I, No. 560 of June 8, 2022.*

*According to Article 2 of Law No. 173/2022, the High Court of Cassation and Justice may request from the European Court of Human Rights an advisory opinion on questions of principle concerning the interpretation or application of the rights and freedoms in the Convention for the Protection of Human Rights and Fundamental Freedoms or the protocols thereto, if it considers that the advisory opinion is necessary to clarify certain aspects of the case with a view to rendering a judgment:*

*(a) in civil matters, where it is called upon to hear the case on appeal or, as the case may be, in the proceedings for a preliminary ruling on certain points of law;*

*(b) in criminal matters, when it is called upon to hear the case at first instance or as the last instance in ordinary appeal proceedings or, as the case may be, in proceedings for a preliminary ruling on certain points of law.*

*Therefore, the procedure for consultation and issuing the advisory opinion is not available to all national courts, but only to the supreme court of Romania.*

*Also, in the exercise of its powers under Article 146(d) and (k) of the Romanian Constitution, the Constitutional Court of Romania has the possibility to make such a request, on the basis of Article 3(d) and (k) of the Romanian Constitution, on the basis of Article 3(3)(c) of the Constitution. (1) of the same normative act.*

**The following nine questions are addressed to states that have ratified Protocol No. 16:**

2. Has your court or any court in your country requested an advisory opinion from the ECtHR? If yes, what was the case about?

- Yes. Please elaborate.  
 No.





At the level of the High Court of Cassation and Justice, requests for an advisory opinion have been made in numerous disputes, with only one such request being granted in a case pending before the Administrative and Tax Litigation Chamber.

We refer to **Case no. 563/33/2021 (litigation concerning the control of assets)** in which the High Court, having been entrusted with the settlement of the appeal lodged against the judgment of the first instance court, which granted the request of the Commission for the Control of Assets of the Court of Appeal of Cluj and ordered the confiscation of unjustified sums of money from the person under investigation, considered that it was necessary to issue an advisory opinion on the following questions of principle concerning the interpretation or application of the rights and freedoms of the Convention for the Protection of Human Rights and Fundamental Freedoms or the protocols thereto:

1. *Can the wealth assessment procedure conducted under Law no. 176/2010, which, according to national law, is a civil procedure, be qualified, in the light of the criteria developed by the case law of the European Court of Human Rights, in particular that of the severity of the sanction, as a criminal procedure, to which the guarantees provided for in Article 6 ECHR apply?*

2. *Can a procedure of the kind at issue in the present case, unrelated to the commission of a crime, under which, if it is found that the acquisition of certain specified assets or of a share in assets is not justified, the court will order their confiscation without being required to examine the proportionality of that measure, be a violation of Article 1 of Protocol 1 to the ECHR?*

- **in case no. 1505/59/2021** in which, in view of the fact it was also sought the annulment/ declaration of nullity of a decision of the Superior Council of Magistracy, which found the termination of the measure of suspension from office of a judge, based on Article 64 (4) of Law no. 303/2004, ordered for a period of 1 year and proposed to the President of Romania the dismissal of the judge, pursuant to Article 64 (1) letter h) of the same normative act, the High Court considered that it was necessary to issue an advisory opinion on the following questions of law:

(a) *Does Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms apply in the light of an alleged infringement of a person's right to privacy following his release from his office as a judge on account of his failure to attend an expert examination to determine the extent to which he would be unable to perform his duties properly, having suffered from a mental illness such as to prevent him from performing his duties properly?*

(b) *If the answer to the first question is in the affirmative, are the specific qualities of a law to be accessible, precise and foreseeable satisfied where the relevant legal rule does not expressly provide whether, during the period of suspension from the office of judge, it is for the competent authority to initiate the first steps by sending the judge concerned a new summons to attend the expert report, although such a summons was initially issued and the refusal of the person concerned to comply with that initial summons had the effect of the suspension from the office of judge; further, is it helpful in formulating the answer whether it is possible to infer from the spirit of the legislation an obligation on the suspended judge to show a minimum degree of diligence by communicating his willingness to take part in the expert's report, specifying (a) date(s) or time-limit for his attendance for that purpose, as a first step in the expert's report procedure?*

3. Has your court considered of its own motion in the context of a pending case whether an advisory opinion from the ECtHR could assist in resolving a particular question?

Yes.

A request was made.

No request was made. Please elaborate on the reasons for deciding not to request an advisory opinion.

No.





Since Art. (2) of Law no. 173/2022 regulates this possibility, the high court analyzed, ex officio, the need to refer the matter to the ECHR for an advisory opinion in case no. 1505/59/2021, mentioned in question no. 2.

4. Has a party to the proceedings asked your court to request an advisory opinion from the ECtHR?

- Yes. Please elaborate whether the party's request was accepted or rejected and if rejected, did you give reasons for the refusal.
- No.

At the level of the Administrative and Tax Litigation Chamber of the High Court of Cassation and Justice, there have been several disputes in which the parties have requested that the court hearing the appeals request an advisory opinion from the European Court of Human Rights. Only one such request was granted (in the case referred to in question 2), the other requests were rejected on the grounds that the admissibility conditions set by Art. 2 para. (1) of Law no. 173/2002, since there were no matters creating difficulties in the interpretation of a legal provision. As mentioned in questions 2 and 3, another request for an advisory opinion was made (case no. 1505/59/2021), but the need for the referral was considered by the court of its own motion and not at the request of one of the litigants.

5. If your court decided to request an advisory opinion, did you give your view on the question(s) posed? If not, for what reasons?

- Yes. Please elaborate.
- No. Please elaborate.
- Not applicable because our court has not requested an advisory opinion.

By the ruling of November 6, 2023, delivered in case no. 563/33/2021, deciding to request an advisory opinion from the European Court of Human Right, the court justified the need to request an advisory opinion by reference to the two questions of principle raised, concluding that the *procedure for the control of assets under national law does not leave any margin of discretion for the national court to apply the principle of proportionality, the sanction of confiscation operating automatically as a consequence of the failure to prove the lawfulness of the origin of the money or property, so that the High Court has doubts as to whether the procedure complies with the standards of the Convention.*

6. If an advisory opinion was requested and delivered, was it useful when resolving the case?

- Yes. Please elaborate.
- No. Please elaborate.
- Not applicable because our court has not requested an advisory opinion.

As stated in question 2, the request for an advisory opinion was rejected by the European Court of Human Rights.

7. Was the advisory opinion cited in the decision of your court? Did your court enter into a dialogue with the advisory opinion or did you simply state its findings?





- Yes, the advisory opinion was cited in the decision of our court. Please elaborate.
- No, the advisory opinion was not cited in the decision of our court. Please elaborate.
- Not applicable because our court has not requested an advisory opinion.

No, because the request for an advisory opinion was rejected by the ECHR.

8. If an advisory opinion was requested and delivered, did the advisory opinion have any wider impact on the national legal order?

- Yes. Please elaborate.
- No.
- Not applicable because our court has not requested an advisory opinion.

Because the requested advisory opinion was not issued.

9. Have advisory opinions requested by other courts (in your country or abroad) had an impact on the national legal order?

- Yes. Please elaborate.
- No.

10. The ECtHR is under a duty to give reasons for refusing a request for an advisory opinion. Has such reasoning been useful for your court when deciding whether to request an advisory opinion or when deciding how to formulate it?

- Yes. Please elaborate.
- No.

In the analysis of the proposal to request the European Court of Human Rights to give an advisory opinion, the relevant legal provisions and the practice of the ECHR concerning this procedure were considered.

**The following five questions are addressed to states that have not ratified Protocol No. 16:**

11. Is it known whether ratification is forthcoming?

- Yes. Please elaborate.
- No, we do not know whether ratification is forthcoming.

12. If it is known that ratification is not forthcoming, do you know the reason(s) for this?

- Yes. Please elaborate.
- No, we do not know the reasons for this.





- Not applicable in the light of the answer to Question 11.

13. After the entry into force of Protocol No. 16 in 2018, has your court dealt with a case in which it might have been useful to be able to request an advisory opinion? If so, what was the nature of the question(s)?

- Yes. Please elaborate.  
 No.

14. Does your court make use of advisory opinions requested by courts abroad as sources of case law?

- Yes. Please elaborate.  
 No.

15. Have advisory opinions requested by courts abroad had an impact on your national legal order?

- Yes. Please elaborate.  
 No.

## II THE IMPACT OF THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS ON THE NATIONAL LEVEL

### A. CLIMATE CHANGE LITIGATION<sup>2</sup>

*The intersection between climate change and human rights law can be regarded as an important theme for future climate litigation. On 9 April 2024, the Grand Chamber of the ECtHR issued three separate rulings on cases relating to climate change. In the case of [Verein KlimaSeniorinnen Schweiz and Others v. Switzerland \[GC\], 2024](#), the ECtHR found violations of Article 8 and Article 6.1 of the ECHR. Nonetheless, two other cases – *Duarte Agostinho and Others v. Portugal* and *32 Others and Carême v. France* – were declared inadmissible. These cases illustrate the challenging issues for national courts in relation to climate change, e.g. with regard to holding governments accountable for inadequate national climate policies through the perspective of human rights, admissibility criteria, interpretation of locus standi and national courts' competence to scrutinize political decision-makers' decisions and inaction.*

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<sup>2</sup> The phrase "climate change litigation" usually refers to cases that raise material issues of law or fact relating to climate change mitigation, adaptation or the science of climate change. Such cases are brought before a range of administrative, judicial and other adjudicatory bodies. For more details, see <https://climate.law.columbia.edu/content/climate-change-litigation> and <https://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review>.





16. Are there specific rules concerning standing of individuals in the climate change litigation context before your court?

- Yes. Please elaborate.  
 No.

In Romania, there are no special rules specifically regulating the legal standing of individuals to bring climate change litigation. However, the general legal standing of individuals before the courts is governed by the Civil Procedure Code and this also applies to climate change litigation.

Also, according to the provisions of Art. 2 lit. a) and Art. 8 para. (2) of Law No 554/2004, the plaintiff, a natural person, may invoke the legitimate public interest only in subsidiary to the legitimate private interest.

However, since O.U.G (Government Emergency Ordinance) No 195/2005 on the protection of the environment is the special law on the matter, Article 5 of that legislative act is to be applied in priority in accordance with the principle of *specialia generalibus derogant*, so that the **right to a healthy environment may be relied on as a substantive right of every person, even if no damage has been suffered.**

However, the plaintiff, whether a natural person or a legal person governed by private law, other than a non-governmental organization promoting environmental protection, must be acting in defence of a legitimate right or legitimate interest of its own and not of a third person.

In its judgment in Case C-252/22, the Court of Justice of the European Union, following a reference for a preliminary ruling by the Târgu Mureş Court of Appeal, rules that: "*Article 9 para.(3) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed at Aarhus on June 25, 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005, must be interpreted as not precluding national legislation under which a legal entity other than a non-governmental organization for the protection of the environment, is not recognized to have active legal standing to bring an action challenging an administrative act addressed to it only where it relies on the infringement of a legitimate private interest or an interest relating to a legal situation directly linked to the subject-matter of its activities.*"

17. Are there specific rules concerning standing of associations in the climate change litigation context before your court?

- Yes. Please elaborate.  
 No.

In Romania, there are no special rules specifically regulating the legal standing of associations with regard to the promotion of climate change litigation.

However, as stated in the previous question, the exercise of the right to address administrative authorities and/or courts in environmental matters is carried out in accordance with the regulations laid down in Government Ordinance No 195/2005 on environmental protection in relation to Government Decision No 878/2005 on public access to environmental information, which recognizes the active legal standing of the public, namely any natural and legal persons and **non-governmental organizations promoting environmental protection**, regardless of whether or not damage has been caused. Therefore, in environmental matters, Art. 20 para. (6) of O.U.G. no. 195/2005 explicitly recognizes the right of access to justice of non-governmental organizations promoting environmental protection, stating that they have active procedural standing in disputes concerning environmental protection.

As a general rule, in accordance with the provisions of Article 2 points a), r) and s) of Law no. 554/2004, non-governmental organizations are considered "interested social bodies" which may challenge administrative





acts under certain conditions. By Decision No 8/2020 of the High Court of Cassation and Justice – the Panel for Appeal in the Interest of the Law, it was established on a binding basis that *"In order to exercise the legality review of administrative acts at the request of associations, as interested social bodies, the invocation of a legitimate public interest must be subsidiary to the invocation of a legitimate private interest, the latter arising from the direct link between the administrative act subject to the legality review and the direct purpose and objectives of the association, according to the statute"*. The **legitimate public interest** is defined as the interest relating to *"the order of law and constitutional democracy, the guarantee of the fundamental rights, freedoms and duties of citizens, the satisfaction of the needs of the community, the realization of the jurisdiction of public authorities"*

As stated above in the answer to the previous question, we refer to the CJEU's decision in Case C-252/22, according to which Article 9(3) of the Aarhus Convention "must be interpreted as not precluding national legislation under which a legal entity, other than a non-governmental organization for the protection of the environment, is not recognized as having legal standing to challenge an administrative act not addressed to it unless it invokes the infringement of a legitimate private interest or an interest relating to a legal situation directly linked to the subject-matter of its activities."

18. Have there been any climate related cases before your court during recent years in which Article 8 (right to respect for private and family life) of the ECHR has played a role? Please elaborate and/or provide examples.

- Yes.
- Article 8 has been only a part of the argumentation.
  - Article 8 has formed an essential part of the court's reasoning.
- No.

In Romania, there is not yet an extensive track record of cases strictly related to climate change in which Article 8 of the European Convention on Human Rights (ECHR) has been invoked in relation to environmental and climate-related violations.

We can, however, point to one relevant ECHR case, namely the 2009 case of *Tătar v. Romania*, which examined the impact of pollution caused by a mining operation on the health and environment of the inhabitants of Baia Mare, with the ECHR emphasizing the positive obligations of the state to ensure adequate protection of health and privacy in the context of environmental protection (**Articles 2 and 8** of the ECHR). Although not directly related to climate change, this case opened up the discussion on how states could be responsible for protecting citizens from major environmental harm, which may include the effects of climate change in the future.

Regarding this case, analyzing the case law of the High Court, we point to [Decision No. 977 of February 17, 2021 issued by the Administrative and Tax Litigation Chamber in case No. 1673/59/2016](#) (Romanian language), rendered in a dispute concerning the order to declassify the Petroleum Agreement for exploration - development - exploitation in the EX - 6 Curtici perimeter, approved by GD (Government Decision) No. 1185/2012, in which part of the appellant-plaintiff's argument was based on the violation of Art. 8 of the ECHR, namely *The first court's decision violates Art. 8 and Art. 10 of the ECHR, and from the secrecy of the respondents, who refuse to disclose to the public this oil agreement, it can be concluded that the state authorities have the same behavior as the one they had in relation to the use of cyanide and other toxic substances by the company F. S.A. Baia Mare in the technological process of gold extraction and which led to the condemnation of Romania at the ECHR in the case Tătar v. Romania of 27.01.2009.*





19. Have there been any climate related cases before your court during recent years in which Article 6.1 (right to a fair trial/access to court) of the ECHR has played a role? Please elaborate and/or provide examples.

- Yes.  
 No.

Although it has not yet been resolved, the Administrative and Tax Litigation Chamber of the High Court of Cassation and Justice is currently dealing with case no. 2683/1/2023 (climate dispute), at the appeal stage, the subject-matter of the application is to *order the defendant authorities to take all necessary measures to reduce greenhouse gases (GES) by 55% by 2030, to achieve climate neutrality by 2050, to take all necessary measures to increase the share of renewables in final energy consumption to 45% and to increase energy efficiency by 13% by 2030, as well as to order them to adopt, within 30 days of the judgment becoming final, concrete and coherent climate change mitigation and adaptation plans, including annual carbon budgets, to achieve the targets set in the previous petitions, as well as annual reporting and monitoring mechanisms to track progress towards these targets.*

In this case, Article 6 para. (1) of the ECHR is relevant, in which sense we quote from the recitals of the judgment of the Court of First Instance, according to which the *Court, without minimizing the importance of respecting and guaranteeing the right to a healthy living environment, considers that in relation to Art. 9 para. 2, Art. 22 para. 6 Code of Civil Procedure, having regard to the manner in which the pleas in the action are formulated (ordering the defendants to take all necessary measures, i.e. to adopt concrete and coherent plans), having regard to the arguments set out in the action (section 3.3 pg. 9, pts. 4,5, section 4 pg. 12, pt. 2), it considers that to uphold the action, given that the operative part of the judgment does not identify, because it cannot do so, which measures are necessary and which are the concrete and coherent plans to achieve the climate objectives, would entail the delivery of a judgment that cannot be enforced, which would constitute a breach of Art. 6 of the European Convention on Human Rights, with reference to the case-law of the European Court of Human Rights in which it has been held that the right to apply to a court would be illusory if the domestic legal order of a contracting state allowed a final and binding judgment to be ineffective to the detriment of a party (Imobiliara Saffi v. Italy - 1999, paragraph 63; Dorneanu v. Romania - 2007, paragraph 32).*

20. Have there been climate related cases before your court during recent years in which there has been a link to the rights of future generations? Please elaborate and/or provide examples.

- Yes.  
 No.

In Romania, the concept of the **rights of future generations** and the impact of climate change on them is relatively new and has not yet been fully integrated into national jurisprudence. Thus, the High Court of Cassation and Justice has not identified any litigation in which the court **has analyzed the notion of "future generations"**

However, the rights of "future generations" are protected by the National Strategy for Sustainable Development 2030<sup>3</sup>. Through this strategy, Romania establishes its national framework to support the 2030

<sup>3</sup> Romania, as a member state of the United Nations (UN) and the European Union (EU), has expressed its adherence to the 17 Sustainable Development Goals (SDGs) of the 2030 Agenda, adopted by UN General Assembly Resolution A/RES/70/1, during the UN Summit on Sustainable Development in September 2015. The EU Council Conclusions, adopted on June 20, 2017, "A sustainable future for Europe: the EU response to the 2030 Agenda for Sustainable





Agenda and the implementation of the set of 17 Sustainable Development Goals. The Strategy supports Romania's development on three main pillars: economic, social and environmental. In order for sustainable development to succeed in Romania, and therefore Agenda 2030, together with the commitments of the European Union, this strategy is built around the citizen and the needs of future generations. It should be noted that the Strategy is not adopted in the form of a normative / legislative act, which regulates the actual regulation and establishes rights and obligations, but a declaration of intent, whose objectives can be achieved depending on the efforts to be made during the reference period. In these circumstances, the Strategy may constitute a source of inspiration for a judge faced with such a legal problem in order to define the concept in question, without, however, necessarily imposing itself by its wording. In addition, O.U.G. No 195/2005 on the protection of the environment refers to the need to conserve natural resources and protect the environment in order to ensure living conditions for future generations. Therefore, we can say that there is a legislative framework that can be a starting point for initiating court cases arguing the need for long-term climate protection measures.

21. Have there been any climate or other environmentally related cases before your court during recent years in which your court's competence to scrutinize political decision-makers' decision or inaction has been dealt with?

Article 1 para. (4) of the Romanian Constitution provides that the State is organized according to *the principle of separation and balance of powers - legislative, executive and judicial - within the framework of constitutional democracy*. The rule of law ensures the supremacy of the Constitution, the correlation of laws and all normative acts with it, and the existence of a system of separation of public powers, which must act within the limits of the law, i.e. within the limits of a law expressing the general will. Romania is therefore a democratic state in which, according to the Constitution, power is shared on the basis of the principle of separation and balance of powers in the state. Thus, executive power is exercised by the Government and the President, legislative power belongs to the Parliament and judicial power belongs to several courts. None of the three powers can arrogate and exercise prerogatives that belong to another power, as they are independent from each other and are on an equal footing, not subordinate, and have the possibility and duty to supervise each other's exercise of power and to act to penalize abuses. The role of the judiciary is to interpret and apply the laws in the name of the Romanian State, and the solutions that the court may pronounce in environmental law disputes are limited to those provided for by Article 18 of Law No 554/2004 on administrative litigation. It should also be pointed out that the judiciary does not exercise any control over the legislature, which is vested in Parliament. However, given also the principle of the balance of powers, the administrative litigation court exercises the control of legality over the typical and assimilated administrative acts of the Romanian Government, including those of a normative nature by which the execution of legislative acts is organized, namely Parliament's laws, Government ordinances or Government emergency ordinances. Thus, when the Government of Romania unjustifiably refuses to adopt a decision on environmental matters, in order to ensure the organization of the execution of a law of the Parliament and, more specifically, of a law by which the Government would be obliged by the Parliament to proceed in a certain direction in the development of the secondary regulatory framework, the administrative litigation court may, at the request of the interested party, issue a judgment by which the executive power is obliged to adopt, in the environmental field, the respective regulation imposed by the primary legislative act. Therefore, the courts in Romania have specific limits as regards the review of decisions or inaction of political decision-makers, since the functioning of the powers of the state is based on the principle of separation of

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*Development" is the political document endorsed by the EU Member States on the implementation of the 2030 Agenda for Sustainable Development.*





powers in the state, enshrined in Art. 1 para. 4 of the Romanian Constitution. As a general rule, the administrative litigation regulated by Law no. 554/2004 is a litigation for annulment (in the sense that the court, finding the unlawfulness of the act of authority, may order its annulment) and of full jurisdiction, the court being able to annul the unlawful act, to oblige the administrative body to certain administrative measures and to award damages, if these are claimed by the plaintiff. Thus, although the courts have the role of reviewing the legality of administrative decisions and, in certain cases, can compel authorities to fulfill certain legal obligations, they have significant limits in terms of influencing public policy or strategic decisions, such as those in the area of climate change.

In conclusion, courts in Romania can review and sanction decisions or inaction by public authorities in cases where there is a clear violation of the law. They cannot, however, impose new public policies or strategic directions on the government or parliament regarding climate change or other environmental policies.

22. Have there been cases before your court during recent years in which the court has examined whether the competent national authorities, be it at legislative, executive or judicial level, have met relevant requirements pursuant to the domestic climate framework?

From the analysis of the jurisprudence of the High Court we cannot state that in recent years there have been cases in which the court has examined whether the competent national authorities, whether at legislative, executive or judicial level, have fulfilled the conditions imposed by the domestic climate regulatory framework. We can, however, point, by way of example, to a few Decisions of the High Court of Cassation and Justice in which environmental issues have been analyzed.

Thus, we point to [Decision No. 2937 of 13 June 2012](#) of the High Court of Cassation and Justice, handed down in Case No. 6620/2/2010, in which the high court, in a case brought by a non-governmental organization, upheld the appeal, dismissed the decision of the court of first (*Constanța Court of Appeal*) and annulled the authorization to carry out nuclear activity. In reaching this decision, the high court found that the procedure for public participation in the adoption of decisions relating to the activity proposed for authorization procedure had not been complied with, in accordance with the regulations laid down in Art. 6 para. (1) point (a) of the Aarhus Convention.

Another decision to be mentioned is [Decision No. 1448 of 10 March 2022](#) of the High Court of Cassation and Justice, delivered in Case No. 223/2/2019, in which the High Court upholds the decision of the lower court in the case also brought by a non-governmental organization claiming non-compliance with the provisions of Art. 7 in conjunction with Art. 6 of the Aarhus Convention, with Art. 8 of the same Convention, as well as failure to comply with the precautionary principle in decision-making and with the obligation of the Member States of the European Union to issue environmental regulatory acts only if all the necessary scientific evidence has been provided. Analyzing those criticisms in the light of the evidence adduced in the case, the High Court held that *the classification decision is based on the principles of continuity, functional effectiveness and the conservation and enhancement of biodiversity, compliance with which does not necessarily require (... ) the carrying out of field visits, the analysis of the provisions of the plans in conjunction with the proposed plan, provided that, by implementing the provisions of the plan, no physical changes are made and no non-renewable natural resources are exploited in the protected natural area, but only natural regeneration works are carried out using the main species corresponding to the natural type of forest.*

We also refer to *case no. 2683/1/2023* (climate litigation), mentioned in point 19 of this questionnaire, which, although not yet settled, is currently before the Administrative and Tax Litigation Chamber of the High Court of Cassation and Justice, at the appeal stage, the subject of the action being *to order the defendant authorities to take all necessary measures to reduce greenhouse gases (GES) by 55% by 2030, and to achieve climate neutrality by 2050, to take all necessary measures to increase the share of renewables in final energy consumption to 45% and to increase energy efficiency by 13% by 2030, and to order them to adopt, within 30 days of the judgment becoming final, concrete and coherent climate change mitigation and adaptation plans,*





including annual carbon budgets, to achieve the objectives set out in the previous petitions, as well as annual reporting and monitoring mechanisms to report and monitor progress towards those objectives.

It should also be mentioned that in several large cities in Romania, including Bucharest, Brasov and Iasi, integrated air quality plans have been challenged in court by various NGOs and citizens. PICA Plans are documents drawn up by local authorities to control and reduce emissions of air pollutants. In the case of Bucharest, the court in charge of settling the dispute, the Bucharest Tribunal, found that the plan did not comply with the legal requirements as it did not contain adequate and enforceable measures to combat pollution. The local authorities were thus obliged to revise the plans and implement stricter measures.

23. Has the *Klimaseniorinnen Schweiz v. Switzerland* case had an impact in your country? For instance, have new cases been brought to your court after that case? Please elaborate.

The case of *Klimaseniorinnen Schweiz v. Switzerland*, being a recent case, with the Court's judgment delivered on April 9, 2024, has not yet had a direct impact in Romania.

24. Can you identify any major differences between the legal questions raised by climate change, on one hand, and environmental matters, on the other hand, addressed so far in your court? Please elaborate and/or provide examples.

We can state that there are differences between the legal issues raised by climate change and the environmental issues addressed so far in the Romanian courts, both in terms of the specifics of these issues and the approach of the courts.

- Climate change involves legal issues related to greenhouse gas emissions, global warming, and the need to implement long-term and large-scale measures to reduce the impact of human activities on the climate. Legal actions in this area tend to address issues such as the ineffectiveness of public policies in reducing emissions, compliance with international commitments (e.g. the Paris Agreement), and the protection of fundamental rights threatened by climate change. As far as the national legislation in Romania on climate change is concerned, we can say that it is still under development, the specific legal framework on climate change being, at this stage, rather limited and abstract, which makes it difficult to resolve climate change related disputes.
- Environmental problems addressed so far in Romanian courts usually focus on local and immediate impacts on health and quality of life, such as air and water pollution, illegal deforestation, and waste management. These cases aim to correct or prevent direct negative impacts on the environment and human health and tend to be smaller scale actions targeting concrete projects (e.g. a polluting factory, illegal logging in a specific region). In terms of the legal framework, environmental issues benefit from clearer and more established regulation in Romanian legislation. The existence of detailed national regulations (e.g. O.U.G. no. 195/2005 on environmental protection) facilitates the resolution of such cases in court, as there are direct rules to check compliance and impose corrective measures. For example, in cases of illegal pollution or deforestation, national legislation provides for clear sanctions as well as remedial measures.

## **B. SUMMARY RETURNS OF ALIENS AT THE BORDER OR SHORTLY AFTER ENTRY INTO THE TERRITORY ("PUSH-BACKS")**

*In this questionnaire, the focus is particularly on the cases that have been assessed by the ECtHR primarily under Article 4 of Protocol No. 4 to the ECHR. Consequently, the focal question has been whether there has been a violation of the prohibition of the collective expulsion of aliens. The ECtHR cases in point are, in particular, [N.D. and N.T. v. Spain \[GC\], 2020](#), and [Shahzad v. Hungary, 2021](#). In addition, the existence of a*





sufficient remedy, in particular whether individuals were afforded an effective possibility of submitting arguments against their removal, has been assessed under Article 13 in conjunction with Article 4 of Protocol No. 4 for example in [Khlaifia and Others v. Italy \[GC\], 2016](#). In [Hirsi Jamaa and Others v. Italy \[GC\], 2012](#), the extraterritorial scope of Article 4 of Protocol No. 4 was confirmed with respect to State's action on the high seas aiming at preventing migrants from reaching the borders of the State or even to push them back to another State. Furthermore, there are several cases pending at the ECtHR, and three cases concerning alleged summary returns of individuals to Belarus from neighbouring states have been grouped to be heard together on 12 February 2025 by the Grand Chamber.

25. Is there specific national legislation applicable to returns of aliens at the border within the meaning of the ECtHR case law above? In particular, are there any specific national provisions intended to cover situations where entry is attempted by aliens *en masse* and/or where migratory flows are deemed to result from actions of a third country with the aim of destabilising the receiving state (“instrumentalised migration”)<sup>4</sup>? Please briefly explain the main points of the national provisions.

At the national level, the conditions regarding the entry of aliens on Romanian territory are regulated by the provisions of O.U.G. no. 94/2002, which, in art. 6 para. (1), provides that *Aliens who fulfill the following conditions may be allowed to enter the territory of Romania: a) possess a valid document for crossing the state border, which is accepted by the Romanian State; b) possess a visa or residence permit granted under the conditions of this Emergency Ordinance or, as the case may be, possess any authorization that grants the holder the right to transit or stay on the territory of Romania on the basis of the normative acts of the European Union, binding and applicable to Romania, unless otherwise established by international agreements; c) present, under the conditions of this Emergency Ordinance, documents justifying the purpose and conditions of their stay and proving that they have adequate means of subsistence during their stay and for their return to their country of origin or transit to another state where they are certain to be allowed entry; d) they provide guarantees that they will be allowed to enter the territory of the State of destination or that they will leave the territory of Romania, in the case of aliens in transit; e) no alerts are entered in the National Computerized System of alerts in their name for the purpose of refusing entry into the territory of the Romanian State; g) no alerts are entered in the Schengen Information System in their name for the purpose of refusing entry; h) they do not pose a threat to national defense and security, public order and public health. Moreover, Art. 8 of the same normative act provides for the situations in which aliens are not allowed to enter the territory of the Romanian State, namely when a) they do not fulfill the conditions set out in Art. 6 para. (1); b) they are reported by international organizations to which Romania is a part of, as well as by institutions specialized in combating terrorism that they finance, prepare, support in any way or commit terrorist acts; c) there are indications that they are part of organized criminal groups of transnational character or that they support in any way the activity of these groups; d) there are serious grounds to believe that they have committed or participated in the perpetration of crimes against peace and humanity or war crimes or crimes against humanity, provided for in international conventions to which Romania is a part of. (2) Border police officers may also refuse to allow the entry of aliens on the territory of the Romanian state in the following situations: a) they have intentionally committed, on the Romanian territory or abroad, offenses for which they have been given a custodial sentence of more than 3 years; b) they have smuggled or attempted to smuggle other foreigners into Romania; b1) have previously violated, in an unjustified manner, the declared purpose for obtaining a visa or, as the case may be, for entering Romania, have violated the customs regime or have*

<sup>4</sup> The term “instrumentalised migration” is used, *inter alia*, in Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147.





*crossed or attempted to cross the Romanian state border illegally; c) suffer from diseases that may seriously endanger public health, established by order of the Minister of Public Health.*

Therefore, there are no specific national legal provisions designed to cover situations in which aliens attempt to enter Romania en masse, the only conditions analyzed by the competent authorities being those provided for by these legal provisions, which, however, do not refer to migratory flows.

26. Does your court have jurisdiction in the field of immigration law? If so, has your court dealt with cases involving alleged summary returns of aliens? In particular, have there been cases where the notion of collective expulsion as defined in Article 4 of Protocol No. 4 has been invoked and/or applied? If yes, please briefly explain the main points of the national jurisprudence.

The return of aliens shall be ordered by a return decision which, on the grounds of Article 85 of O.U.G. no. 194/2002, may be appealed within 10 days from the date on which it is communicated to the Court of Appeal within whose territorial jurisdiction is located the structure of the General Inspectorate for Immigration that issued the return decision, the decision of the court being definitive. In the case of a return decision concerning an alien declared undesirable or at risk of evading the voluntary compliance with the obligation to return, who has been taken into public custody, the court of appeal within whose territorial jurisdiction the accommodation centre is situated has jurisdiction to hear the appeal.

Therefore, the High Court has no jurisdiction to settle disputes concerning the appeal against return decisions concerning aliens, as the judgment of the Court of Appeal analysing the legality of these administrative acts is definitive.

27. Has the case law of the ECtHR in the field of summary returns of aliens and specifically the Court's interpretation of the scope of Article 4 of Protocol No. 4 had an impact on the content of the national legislation and/or on its interpretation by the national courts? If yes, please briefly explain the main developments.

We cannot say that the interpretation of the European Court of Human Rights on the scope of Article 4 of Protocol No. 4 has had an impact on the content of the national legislation, as the provisions concerning the return of aliens have not changed significantly.

28. Have any cases been brought against your state in the ECtHR alleging that there has been a violation of Article 4 of Protocol No. 4 (alone or in conjunction with Article 13 of the ECHR) in the field of immigration law? If yes, please briefly explain the main features of these cases.

No cases have been brought against Romania before the European Court of Human Rights alleging a violation of Article 4 of Protocol No. 4 to the ECHR.

