SEMINAR ORGANISED BY THE GREEK COUNCIL OF STATE IN COLLABORATION WITH ACA-EUROPE

Athens, 10-11 November 2025

Climate change-crisis / Overtourism
Questionnaire

Introduction

In keeping with the Guiding Principle [Leitmotiv] of the Greek presidency of ACA-Europe, the first seminar, which will be held in Athens in November 2025, will focus on the role of the administrative judge when confronted with current challenges related to the climate crisis and the harmful effects of overtourism. The following questionnaire focuses on the six points outlined in the Guiding Principle. The presentation of the regulatory framework in the various countries [international law, European law and national law] and the application of this normative framework by judges in each country will enable us to address questions relating to the effectiveness and relevance of the traditional tools and methods available to judges when they are called upon to rule on disputes concerning the aforementioned challenges.

.....

Part A: Climate change-crisis

I. The regulatory framework

I.A. Supranational rules

I.A.1. Rules of international law

- What international instruments [treaties/conventions] relating to climate change are in force in your country?

Kyoto Protocol ☐

Paris Accords ☐

Aarhus Convention (procedural matters) ☐

Other (please specify) ☐

- What is the formal validity of the aforementioned rules of international law in your country's legal system? (please describe briefly the procedure for incorporating international rules into the legal system)

The incorporation of international treaties into the Austrian legal system is regulated in the Federal Constitution (Bundes-Verfassungsgesetz, B-VG). Pursuant to art. 50 para. 1 B-VG, the conclusion of political international treaties or international treaties that amend or supplement existing national provisions or of

international treaties amending the treaty foundations of the European Union is possible only with approval by the National Council. Other international treaties may be concluded by the administrative bodies appointed for this purpose without the approval of the National Council.

These international treaties are binding for Austria under international law. Austria – like other states – is free to choose the method of transformation (special/general) by which the obligations under international law are incorporated into national law:

If the National Council decides to approve a reservation of compliance, a so-called special transformation takes place (art. 50 para. 2 subpara. 4 B-VG). The resolution on a reservation of compliance contains the order to transform the content of the international treaty (either in whole or in part) into special laws, which are referred to as implementing legislation. The Kyoto Protocol and the Paris Agreement were both adopted by the National Council with a reservation of compliance within the framework of a special transformation pursuant to Art. 50 para. 2 subpara. 4 B-VG. Therefore, their provisions are not directly applicable, but were implemented into laws that are directly applicable.

If the National Council does not decide on a reservation of compliance on the occasion of the approval of the conclusion or if the body authorized to conclude the international treaty does not make a declaration on a reservation of compliance, the international treaty is generally transformed. The general transformation is carried out by the promulgation of the international treaty in the Federal Law Gazette; at the end of the day of this promulgation, the state treaty enters into force within the state and binds its addressees. No further act of transformation is required. Such a generally transformed state treaty may be directly applicable under certain conditions. The Aarhus Convention was adopted by the National Council as part of a general transformation without reservation of compliance. Its provisions are not directly applicable because they are not self-executing. In contrast, the corresponding transposition laws are directly applicable.

I.A.2. EU rules

- Which are the main EU climate change rules that have been incorporated into your national legislation?

Austria has implemented a number of important EU environmental protection directives into national law. Here are some of the most important directives and the corresponding Austrian laws:

- Environmental Impact Assessment Directive (EIA Directive): Implemented in Austria through the Environmental Impact Assessment Act (Umweltverträglichkeitsprüfungsgesetz 2000, UVP-G).
- Birds Directive and Fauna-Flora-Habitat Directive (FFH Directive): Implemented in Austria through the respective nature conservation laws of the provinces.
- Water Framework Directive: Implemented in Austria through the Water Rights Act (Wasserrechtsgesetz 1959, WRG) and other water management provisions.
- Air Quality Directives: Implemented in Austria through the Air Pollution Control Act (Immissionsschutzgesetz Luft, IG-L).
- Waste Framework Directive: Implemented in Austria through the Waste Management Act (Abfallwirtschaftsgesetz 2002, AWG).

- Aarhus Convention / Access to Environmental Information Directive: Implemented in Austria through the Environmental Information Act (Umweltinformationsgesetz, UIG) and the Aarhus Participation Act (Aarhus Beteiligungsgesetz 2018).

☐ Has your country been the subject of proceedings for failure to fulfil its obligations under EU legislation in this area?

Yes

☐ If so, please indicate what stage has been reached in the proceedings (warning letters, Commission appeals, rulings by EU courts)

Austria has been the subject of infringement proceedings on a total of 17 occasions in the policy area "Climate Action". The types of decisions range from "Formal notice Art. 258-260(3) TFEU", "Formal notice Art. 258 TFEU", "Reasoned opinion Art. 258 TFEU" to "Additional reasoned opinion Art. 268 TFEU". However, there have been no convictions for these allegations and all cases have been closed.

I.B. Rules of national law

I.B.1.1. Does your country have any principles or provisions at constitutional level:

for the protection of the environment in general ☐
for climate change ☐
for the protection of health ☐
for the protection of young people or other population groups ☐

1.B.1.2. If so, do these provisions:

Contain only substantive rules? ☐
Or do they also establish procedural guarantees? ☐

Do they make explicit reference to: solidarity between generations? ☐
the rights of future generations? ☐
vulnerable groups? ☐

Art. 1 of the Federal Constitutional Law on the Rights of Children (Bundesverfassungsgesetz über die Rechte von Kindern) explicitly refers to intergenerational justice, while art. 6 leg.cit. refers to vulnerable groups. Art. 1 of the Federal Constitutional Act on Sustainability, Animal Welfare, Comprehensive Environmental Protection, Ensuring Water and Food Supply and Research (Bundesverfassungsgesetz über die Nachhaltigkeit, den Tierschutz, den umfassenden Umweltschutz, die Sicherstellung der Wasser- und Lebensmittelversorgung und die Forschung), on the other hand, refers to future generations.

I.B.2. Has the national legislator adopted specific legal instruments to address climate change issues, apart from the legislation necessary to comply with secondary EU law?

yes ☐

no ☐

If so, please briefly mention this legislation, as well as the main content of the relevant substantive and procedural rules.

As an example, Austria adopted the Environmental Promotion Act (Umweltförderungsgesetz, UFG). The aim of this federal law is to protect the environment through the orderly disposal of wastewater, including industrial wastewater, and ensuring an adequate water supply, as well as by improving the ecological status of waters (water management) and the protection of the environment and human health through the efficient use of energy and resources, by increasing the share of renewable energy sources or biogenic raw materials, and by other measures to reduce burdens in the form of other greenhouse gas emissions or polluting emissions (domestic environmental promotion).
The UFG stipulates that a commission shall be set up to advise the competent Federal Minister, which shall assist him in deciding on applications for funding, the drafting of guidelines and the funding programmes. In addition, the competent Federal Minister shall be empowered by the UFG to determine the settlement body. The Federal Minister, with the involvement of the Commission and the Management Agency, establishes assessment standards for each area of support. These standards provide a guide for the assessment of submitted projects and are published in the information sheets for each area of funding.

I.B.3. Does your country have a specific action plan to address climate change?

yes ☐

no ☐

If so:

- What is the level of planning (national, regional, etc.)?

The Austrian Strategy for Adaptation to Climate Change, which consists of a strategic section with basic information (context) and an action plan with specific recommendations for policies, was adopted by the Council of Ministers (https://www.bmk.gv.at/en/topics/climate-environment/climate-protection/austrian-strategy-adaptaion.html).

- Please specify whether this planning is limited to defining policy guidelines (for example: limits on the use of fossil fuels; favouring other forms of energy; support for 'green' investments; improvement of infrastructure, buildings and vehicles - in the public or private sectors; cost sharing for the 'green' transition; special measures for vulnerable population groups; management of climate change-related crises, etc.),
- or whether it also contains binding rules?

The action plan does not contain any binding regulations, but the implementation progress of the Austrian Strategy for Adaption to Climate Change is systematically recorded and evaluated.

I.B.4. In your legal system [in the Constitution and/or in the laws] is there an explicit obligation for the State and/or other public-sector bodies to adopt positive measures or avoid certain actions in relation to climate change?

In Austria, the Climate Protection Act (Klimaschutzgesetz, KSG) was passed in 2011 in order to achieve the 2020 target as part of the EU Effort Sharing Decision. The KSG forms the national legal framework for compliance with the emission ceilings and also includes a sectoral breakdown of the applicable national climate target. There are different legal regulations for the implementation of individual policies and measures depending on the sector and legislative and administrative competence. On the basis of the KSG, an initial concrete package of measures was drawn up between the federal government and the federal states by 2018.

- If so, what is the nature of these measures?

(a) preventive measures

(b) repressive measures

(c) restitution measures

Sec. 3 para. 2 KSG stipulates that negotiations must take place to develop measures to comply with the maximum quantities in the respective sectors. Sec. 3 para. 3 KSG stipulates that the defined measures must be implemented immediately.

All of the above-mentioned types of measures have been included in the measures developed on the basis of the KSG: preventive measures (e.g. use of innovative climate-relevant heating systems in accordance with building regulations, see programme of measures from May 2015 for the years 2015 to 2018), repressive measures (ban on putting plastic carrier bags on the market, see table of measures from April 2020 for the years 2019 and 2020), reimbursement measures ("repair instead of throw away", repair bonus [see table of measures from April 2020 for the years 2019 and 2020]).

- Do individuals have any rights to ensure that this obligation is met? If so, under what conditions?

No (see also Q II.F.)

- Is the legal pursuit of this right regulated?

No

- Do individuals have any rights to ensure that private persons comply with similar obligations?

No

- Are there specific regulations for the ecological damage caused by climate change?

No

I.B.5. In your country, is the allocation of public responsibilities in the field of climate change subject to regulation?

yes ☐
no ☐

- If so, which are the authorities responsible for managing issues related to the climate crisis [protection against the effects of the crisis and/or disaster management]?

Special Ministry ☐
Legal entity under public law ☐
Other organisational unit ☐

According to sec. 1 para. 1 subpara. 11 of the Federal Ministry Act (Bundesministeriengesetz 1986, BMG) Austria has a special ministry inter alia responsible for climate and environmental protection.
Apart from that, all authorities are responsible for managing issues related to the climate crisis as long as they enforce laws that deal with climate change.

- Is there a body responsible for: the collection and processing of scientific data? yes ☐ no ☐
- conducting comparative studies and surveys? yes ☐ no ☐
- monitoring the implementation of measures and the achievement of objectives? yes ☐ no ☐
- evaluating research carried out on climate change? yes ☐ no ☐

In Austria, the above-mentioned duties are conducted by the Federal Environmental Agency (Umweltbundesamt) and GeoSphere Austria, the Federal Institute for Geology, Geophysics, Climatology and Meterology.

- If so, please describe the composition and the operating rules of the competent bodies (participation of elected representatives, scientists, guarantees of independence)?

Regarding the Federal Environmental Agency, the Federal Act on Environmental Control and the Establishment of a Federal Environmental Agency Limited Liability Company (Environmental Control Act) stipulates that the Managing Directors are to be nominated by the Federal Minister responsible for climate and environmental protection following a public invitation to tender in accordance with the Federal Act on Transparency in the Recruitment of Public-Sector Employees (Stellenbesetzungsgesetz). Further, the members of the Supervisory Board are nominated by the Federal Minister of climate and environmental protection (four members), the Federal Minister of finance (two members) and internal representation of interests of the Federal Environment Agency (two members). Moreover, the Managing Directors must be available to provide information to the National Council at all times. The employees of the Federal Environment Agency are bound by instructions.

With regard to GeoSphere Austria the GeoSphere Austria Act (GeoSphere Austria-Gesetz, GSAG) stipulates that the Managing Directors are to be nominated by the Federal Minister of Education, Science and Research

following a public invitation to tender in accordance with the Stellenbesetzungsgesetz. A written statement from the Board of Trustees must be obtained prior to appointment and dismissal. The Board of Trustees consists of ten members of whom five are to be nominated by the Federal Minister of Education, Science and Research, one by the Federal Minister of climate and environmental protection, two by the Employees Council of the Federal Institute itself, one by the Federal Ministry of Finance and one by the Liaison Office of the Federal Provinces at the Office of the Lower Austrian Provincial Government. The members of the Board of Trustees may only exercise their function for two consecutive terms of office, although re-election or reappointment for a subsequent term of office is permitted. Regarding (former) members of the Board of Directors, there is a four year cool down period before they could join the Board of Trustees if nominated by one of the aforementioned bodies. Moreover a Scientific Advisory Board that consists of nine members who are to be appointed by the Federal Minister of Education, Science and Research for three years, whereby seven members are to be appointed on the recommendation of the Directorate General and two members on the recommendation of the Universities Conference is established. Reappointments to the Scientific Advisory Board are permissible. The Board of Directors, the Board of Trustees and the Scientific Advisory Board may not include members of the federal government, state secretaries, members of a provincial government, members of the National Council, the Federal Council or any other general representative body, officials of a political party or persons who have exercised one of these functions in the last four years.

Every vacant position must be publicly advertised by the Commercial Director General. The advertising period shall be at least three weeks. In the case of vacancies for scientific positions, agreement must be reached with the Scientific Director General before the position is filled. The employees of GeoSphere Austria are bound by instructions.

- What is the nature of power allocated to these bodies (purely advisory power, decision-making power)?

The Federal Environmental Agency and GeoSphere Austria have purely advisory powers and conduct research.

- Is prior consultation with a court or other independent bodies provided for when adopting a regulation concerning climate change?

According to sec. 23b of the Federal Act of 4 July 1975 on the Rules of Procedure of the National Council (Geschäftsordnungsgesetz 1975) a public review, in which independent institutions can also participate, takes place as part of the submission of government bills to the National Council.

- Is there a provision for public participation in the development of climate action plans or legislation? If so, what form of participation (consultation, other)?

According to sec. 23b Geschäftsordnungsgesetz 1975 a public review, in which the entire public can participate, takes place as part of the submission of government bills to the National Council.

- Is access to relevant information guaranteed? yes ☐ no ☐

Access to the relevant information is guaranteed by the Federal Act of 15 May 1987 on the Duty of the Federal Administration to Provide Information and an Amendment to the Federal Ministries Act 1986 (Auskunftspflichtgesetz), the Federal law on access to information on the environment

(Umweltinformationsgesetz, UIG) and starting from 1 September 2025 the Federal law on access to information (Informationsfreiheitsgesetz).

II. The application of the regulatory framework by the judge

II.A. Have any disputes been brought before the courts in your country that involve, directly or indirectly (as a result of the claims, allegations and arguments of the parties to the dispute), issues related to climate change?

If so:

-Please mention the main categories of cases in which issues related to climate change arise:

(a) cases related to energy sources (conventional/renewable),

(b) cases related to the improvement of infrastructure (buildings/vehicles),

(c) cases related to environmental impact assessment during project authorisation.

- Please mention the important cases brought before the courts in your country and the judgments handed down.

Due to the large number of cases, this question can only be answered regarding the Supreme Administrative Court. Most proceedings before the Supreme Administrative Court that address climate change are cases regarding environmental impact assessment (EIA) procedures (answer c), which are required for certain projects that may have significant environmental effects. Many of the EIA procedures concern the operation or construction of energy facilities or infrastructure projects (answers a and b).

The Supreme Administrative Court has dealt with several important cases involving issues related to climate change:

In a case concerning the authorization of the construction and operation of a third runway at the Vienna International Airport, the Supreme Administrative Court highlighted that, in accordance with EU legislation, one of the main relevant aspects of the EIA is the project's impact on the climate. The Supreme Administrative Court stated that the importance of climate protection had been further strengthened with the amendment of the Directive 2011/92/EU with the Directive 2014/52/EU, which explicitly mentions "climate change". This clarification makes it clear that climate must be understood comprehensively, encompassing not only the effects on the local climate (microclimate) but also all aspects related to climate change (global dimension). However, the Supreme Administrative Court concluded that it falls short to deny an airport the permission to build a (further) runway with reference to the advancing global climate change if the overall greenhouse gas emissions from air traffic remain unchanged. As climate protection is therefore not an obstacle to the approval of the third runway, the Supreme Administrative Court dismissed the appeals as unfounded and confirmed the approval of the construction of the third runway (see judgment of 6 March 2019, Ro 2018/03/0031).

In various cases, the Supreme Administrative Court has emphasized the long-term public interest in increasing the share of electricity generated from renewable energy sources and ensuring the supply of affordable, high-quality energy to the population and the economy, as well as in the positive effects on climate protection (see e.g. regarding a EIA procedure concerning the construction and operation of 20 wind energy plants judgment of 23 August 2023, Ro 2022/04/0003).

Another important case concerned the removal of a motorway section (including the "Lobautunnel") from the annex of the Federal Roads Act 1971, that was envisaged by the Federal Minister responsible for climate protection at the time. Lower Austria requested to terminate the Strategic Assessment initiated for this

purpose. This request was rejected on the grounds that Lower Austria did not have the status of a party in the proceedings. The Supreme Administrative Court upheld this view and dismissed the appeal. In its decision, the Supreme Administrative Court also argued that art. 9 sec. 3 of the Aarhus Convention does not indicate that court access must be granted for such a preliminary legislative assessment process (see judgment from 11 September 2024, Ra 2024/06/0087).

II.B. Organisation of the judicial system: Does the system of dual jurisdiction (civil courts for private disputes, administrative courts for administrative disputes) apply in your country?

yes ☐

no ☐

- If so, are issues related to climate change dealt with:

-mainly by the administrative courts, when they examine the legality of the actions or omissions of the State and other public entities;

-mainly by the administrative courts, when they examine compensation claims against the State and other public entities;

-mainly by the civil courts (in disputes aimed at protecting the applicant against actions by individuals)?

In Austria, different courts deal with cases related to climate change:

The first instance administrative courts decide, among other matters, on complaints against decisions issued by administrative authorities. They frequently deal with climate change-related issues, particularly in the context of EIA procedures but can e.g. also be called upon to review decisions on environmental complaints according to sec. 11 of the Federal Environmental Liability Act (Bundes-Umwelthaftungsgesetz, B-UHG) (for further details on the possibility to file an environmental complaint see Q II. F).

Decisions of the first instance administrative courts can subsequently be challenged before the Supreme Administrative Court, if the decision depends on a legal question of fundamental importance.

The Constitutional Court is competent to rule on the question whether a fundamental or constitutionally guaranteed right has been infringed. Therefore, cases concerning the violation of such rights (e.g. the ECHR) in relation to climate change are brought before the Constitutional Court.

Civil courts, which decide in private law matters, occasionally deal with issues related to climate change as well. For example, in several cases concerning a tenant´s request to his landlord for permission to install an outdoor air conditioning unit, the Supreme Court ruled that the climate change does not meet the requirement for the permission to be "customary in the respective environment" (see e.g. judgment of 3. September 2024, 5 Ob137/24v).

II.B.1. In your country, does the legislation provide for a specific remedy for cases relating to the climate crisis? If so:

- Which courts have jurisdiction to hear such cases?

- What is the composition of these courts?

- What are the main features of the relevant remedies?

II.B.2. If the answer to the previous question is no [: if your legal system does not provide for a special remedy]:

- Among the remedies generally provided for, which remedies deal mainly with disputes involving issues related to the climate crisis?

actions for annulment against acts or omissions of the State and other public entities	☐
full jurisdiction remedies for the recognition of a right	☐
actions for damages	☐
remedies for the protection of the applicant's personality	☐
procedures for requesting interim measures	☐

II.B.3. If your legal system does not provide for a special remedy, are disputes relating to the climate crisis examined:

- by specialised divisions of the courts and/or according to a special procedure yes ☐ no ☐

II.B.4. According to existing practice, what is the main legal remedy for disputes relating to climate change?

In Austria, several legal remedies for disputes relating to climate change exist (see also Q II.B.). The most important legal remedies include: Complaint with the first instance administrative courts/Appeal with the Supreme Administrative Court: In general, if an administrative authority has issued a decision, a complaint can be filed before a first instance administrative court, thus also in matters relating to climate change (such as EIA procedures or "environmental complaints" according to sec. 11 B-UHG). Subsequently, decisions of the first instance administrative courts may be challenged before the Supreme Administrative Court, if the decision depends on a legal question of fundamental importance. Complaint with the Constitutional Court: Individuals who feel that their rights were infringed by a ruling of a first instance administrative court may file a complaint with the Constitutional Court. The individual concerned has to claim either the violation of a constitutionally guaranteed right by the contested decision and/or the violation of his/her personal rights by the application of an unconstitutional law or an unlawful regulation (art. 144 B-VG).

"Individual Application" with the Constitutional Court: The Constitutional Court also pronounces on the (un)constitutionality of legal provisions or the (un)lawfulness of provisions. An individual can claim that his/her rights have been directly violated, if the law has taken effect for the individual concerned in the absence of a court decision or an administrative decision (art. 139 and 140 B-VG).

II.B.5. In your country, are there seminars or other organised training courses for judges, specifically aimed at issues related to climate change?

Regarding the administrative courts, training courses for justices are offered at the Austrian Academy of Administrative Jurisdiction, which regularly include special seminars on issues related to climate change (e.g. in 2025 special courses on the Aarhus Convention and the turnaround in the energy policy in administrative court procedures are part of the programme).

II.C. In your legal system, does the judicial review of laws and regulations:

- ☐ is exclusively an ultra vires review (review of legality)?
- ☐ or can it also be the subject of a full jurisdiction control?
- ☐ If so, under what conditions?

The competence of judicial review of laws and regulations lies exclusively with the Constitutional Court, who pronounces on the (un)constitutionality of laws respectively on the (un)lawfulness) of regulations (art. 139 and 140 B-VG).

The Constitutional Court starts a judicial review proceeding e.g. at the request of a court: If a court has doubts as to whether a law or regulation to be applied in a case pending with that court is unconstitutional/unlawful, it is obliged to apply to the Constitutional Court for the repeal of that law/regulation.

The judicial review of laws and regulations is subject of a full jurisdiction control.

II.D. Access to justice and admissibility of appeals:

- ☐ Does your legislation provide for specific rules of procedure for disputes relating to climate change? yes ☐ no ☐

If so:

- ☐ which special rules of procedure apply?
- ☐ Please indicate the reasons which, according to the legislator, justify the differentiation from the generally applicable rules of procedure.

In the area of climate and environmental law, specific rules regarding the legal capacity to bring an action apply:

Following the European Court of Justice's judgment from 20 December 2017, C-664/15, *Protect*, a number of Austrian statutory laws were adapted. Many statutory (federal and provincial) laws now grant environmental organisations party status and rights of challenge.

- If the legislation does not provide for specific rules of procedure, please mention any special rules of procedure developed by case-law in your country?

If special rules of procedure developed by case-law exist:

- what are the conditions of admissibility according to case-law rules (legal capacity, legitimate interest in bringing an application before the court, conditions of admissibility linked to the nature of the contested acts or omissions, time limit for lodging an appeal, etc.)
- Please indicate the reasons which, according to the case-law, justify the differentiation from the generally applicable rules of procedure.

Following the European Court of Justice's jurisdiction, the Supreme Administrative Court has ruled in its leading judgment from 20 December 2019, Ro 2018/10/0010, that the party status of recognised environmental organisations can arise directly from the Aarhus Convention.

The legislator also reacted and adapted many statutory laws (see above): For example, according to sec. 19 UVP-G, recognised environmental organisations, municipalities, citizens' initiatives or the Ombudsman for Environmental Protection – to name only a few – are entitled to appeal against decisions of administrative authorities or first instance administrative courts under the condition that they invoke compliance with environmental protection laws.

Subsequently, in its judgment from 28 March 2022, Ra 2020/10/0101, the Supreme Administrative Court ruled that a recognised environmental organisation's right to bring an action for infringement of EU environmental law cannot be restricted due to a lack of legal interest. Rather, a recognised environmental organization is entitled to object to infringements of EU environmental law irrespective of the question of violation of subjective rights. In this regard, the legal standing of recognised environmental organisations assessing the compliance with EU environmental legislation differs from that of other so-called "formal" parties whose legitimacy to lodge an appeal also is not dependent on the violation of subjective rights, but whose appeal can be dismissed due to a lack of legal interest.

More recently, in its judgment from 13 June 2023, Ra 2021/10/0162, the Supreme Administrative Court ruled that recognised environmental organisations not only have a right to request the adoption of a regulation to implement EU environmental law, but are also entitled to request the review or annulation of such a regulation before administrative authorities and courts.

II.D.1. More specifically, with regard to legitimate interest in bringing an application before the court:

- Does your legal system recognize the actio popularis (as a constitutional principle or rule, by legislation or case-law)?

In general, the Austrian legal system does not recognize the actio popularis.

However, in the area of climate and environmental law, certain legal institutions grant individuals the opportunity to become involved in proceedings regardless their individual affectation.

For example sec. 4 of the UIG usually grants everyone a subjective public right to free access to environmental data, without making this right dependent on a legal claim or legal interest.

How is the legitimate interest in bringing an application before the court, as a condition for the admissibility of an appeal, defined:

- in relation to certain groups or categories of the population [minors, the elderly or other vulnerable groups more exposed to the effects of climate change];
- in relation to legal persons [public law legal entities, private law entities: associations, etc]?

Regarding the Supreme Administrative Court, decisions of first instance administrative courts may be challenged by individuals (natural and legal persons) who claim that their subjective rights have been violated by the decision (= party appeal). However, the legitimate interest in bringing an application before the Supreme Administrative Court is not specified (neither for certain groups or categories of the population nor for legal persons), but must be decided on a case-by-case basis.

- Concerning the allegations made by the parties to substantiate their interest in bringing proceedings in the disputes in question, what degree of specification is required?

In the case of a party appeal, it is sufficient for the individual to allege that their rights have been infringed if the accuracy of the allegation is at least possible.

- What standards of proof are required for the allegations made?

See above

II.D.2. Nature of the contested acts or omissions:

- What are the categories of cases brought before the courts in disputes concerning climate change?

See Q II.A.

- What are the admissibility requirements for taking legal action against omissions in disputes concerning climate change?

The Constitutional Court is only competent to decide on the constitutionality of laws that have already been passed. Consequently, there is no general possibility to take legal action against legislative omission. However, if the legislature remains only partially inactive, a review by the Constitutional Court is – under certain circumstances – possible.

If an administrative authority or a first instance administrative court does not issue a decision (in due time), this omission can be challenged before a first instance administrative court respectively the Supreme Administrative Court:

If an administrative authority fails to give a timely decision within the legally stipulated period of time (usually six months), any party claiming to be entitled to assert the duty to decide may lodge a complaint on the ground of a breach of the duty to reach a decision with the defaulting administrative authority (see art. 132

para. 3 B-VG), which may issue the decision within three months of the complaint being lodged. If the defaulting administrative authority issues the decision within this period, the complaint proceedings must be discontinued. If the defaulting administrative authority does not issue the decision within this period, it is obliged to hand over the complaint to the first instance administrative court together with the files of the administrative proceedings. After expiry of the grace period, the responsibility for deciding on the administrative matter is ex lege transferred to the first instance administrative court.

The situation is different if a first instance administrative court is in default: If a first instance administrative court does not decide within its decision deadline (which is generally six months) an application for setting a deadline can be filed with the Supreme Administrative Court (art. 133 para. 1 lit. 2 B-VG). Upon application, the Supreme Administrative Court may order the first instance administrative court to decide within a time limit set by the Supreme Administrative Court. However, the Supreme Administrative Court itself shall not decide on the case, not even after the first instance administrative court fails to issue a decision within the set time limit.

Furthermore, pursuant to sec. 8 UIG, if a requested environmental information is not (fully) provided, the authority responsible for providing the information is obliged to issue a decision (which can, subsequently, be challenged before the first instance administrative courts) without undue delay and no later than two months from the date of the request for the information.

- Have the courts in your country been asked to examine questions of cross-border interest [parties to the dispute resident or headquartered in another country, acts or omissions with environmental impacts in another country]?
- If so, how were these disputes handled [limitation of liability only for actions or omissions within the borders of the State or recognition of liability also for actions outside the borders]?

The Supreme Administrative Court has dealt with cross-border interests especially during EIA procedures.

The UVP-G contains special provisions regarding projects with transboundary environmental impact. According to sec. 10 leg. cit., the administrative authority has certain obligations when a project might have significant effects on the environment in another country or if another country that could be affected by the project's impact submits a request to that effect. These include the obligation of the administrative authority to notify this country of the project as early as possible as well as the possibility of the country to participate in the EIA procedure. On the basis of the documents provided for by the country and the results of an environmental impact expertise or a summary evaluation, consultations shall be held, if necessary, on potential transboundary effects and any measures necessary to avoid or reduce adverse transboundary effects on the environment.

II.E. Nature, extent and intensity of judicial review:

- In matters of climate change, how does the judge consider the delimitation of jurisdictional control in relation to:

  -the political choices made by the legislator or the administration?

  -the balancing of contradictory interests?

  -assessments of an essentially technical nature?

No specific rules apply in matters of climate change.

II.E.1. On the balancing of conflicting interests, please give examples from the case-law in your country when the conflict concerns:

-environmental protection, and in particular protection against the effects of climate change, on the one hand;

-the protection of private assets and interests, on the other hand.

See e.g. judgment of 6 March 2019, Ro 2018/03/0031 (Q II.A.).

- Can the judge limit the temporal effects of an annulment decision [example: limitation of the retroactive effects of an annulment decision] based on the balancing of conflicting interests?
- If so, under what conditions?

The Supreme Administrative Court does not have the competence to limit the "ex-tunc effect" of its annulment decisions. If the Supreme Administrative Court finds for the applicant, it annuls the contested decision and remands it to the first instance administrative court, which issued it. According to sec. 42 para 3. of the Supreme Administrative Court Act 1985 (Verwaltungsgerichtshofgesetz 1985, VwGG) the annulment of the contested decision returns the legal matter to the state in which it was before the annulled decision had been issued (ex-tunc effect). Subsequently, the first instance administrative court has to decide again, but is bound to apply the legal interpretation of the Supreme Administrative Court. It may be highlighted that some laws, including in environmental law matters, nevertheless contain deviating provision (see e.g. sec. 42 UVP-G: If the approval of a project by a decision of the Federal Administrative Court is annulled by the Supreme Administrative Court, the operation of the project may still be continued until the new decision of the Federal Administrative Court becomes effective, but not longer than for one year, in accordance with the annulled approval in the version of the first decision of the Federal Administrative Court. This shall not apply to cases where the Supreme Administrative Court has granted suspensive effect to the appeal.)

II.E.2. Technical and scientific judgments:

- Please give examples from case-law concerning the criteria and methods used by judges to rule on disputes involving technical and scientific judgments.

There are no special criteria and methods applied by the justices of the Supreme Administrative Court when dealing with technical and scientific judgments.

- Does the judge have the specific tools required to exercise the above mentioned control effectively and efficiently [assistance from specialised scientists, appointment of experts, amicus curiae]?

n.a.

II.E.3. In the judicial review, how is the diversity and complexity of the factors contributing to the phenomenon of climate change evaluated?

The Supreme Administrative Court assesses each case individually. There are no special provisions on how the different factors contributing to climate change have to be evaluated.

II.F. Civil liability of the State

- With regard to compensation claims, has your country's case-law considered disputes involving the civil liability of the State for damage attributed by applicants to climate change? yes ☐ no ☐
- If so: to address the relevant issues, does the judge simply apply the standard provisions and methods, for example with regard to proof of damage, causal links or methods of compensation for damage,
- or does he apply specific rules?

The liability of the state is constitutionally guaranteed: Pursuant to art. 23 B-VG, state authorities and other public legal entities are liable for damage that persons acting as their organs in the execution of the law have culpably caused through unlawful behaviour. Further details regarding this general rule can be found in the Public Liability Act (Amtshaftungsgesetz, AHG).

In addition to the provisions of the AHG, there are specific regulations on state liability in the area of environmental law that extend or specify the provisions of the AHG. These include the B -UHG as well as environmental liability acts for each of the nine Austrian provinces (Landes-Umwelthaftungsgesetze).

- What is the content of the specific rules and their legal basis?

The B-UHG and the environmental liability acts for the provinces implement the provisions of the Environmental Liability Directive. While the B-UHG covers damages to soil and water, damages to biodiversity and soil damages caused by certain activities fall within the regulatory scope of the provinces. It was only through these legal remedies that liability provisions for causing soil damage and biodiversity damage were introduced in Austria.

In contrast to the AHG, the liability system of the B-UHG is applicable regardless of fault. The B-UHG also contains provisions that oblige administrative authorities to take action in regards to climate protection. For example, an authority that must assume that there is an imminent risk of environmental damage is obliged to impose measures ex officio to prevent damage in accordance with sec. 5 B-UHG. In particular, the B-UHG has introduced the environmental complaint in its sec. 11, which allows certain natural or legal persons whose rights may be violated by the occurrence of environmental damage to request the competent administrative authority to take action (by ordering remedial measures).

The liability systems of the environmental liability acts of the provinces essentially correspond to those of the B-UHG.

- With regard to ecological damage, how are questions of causality dealt with?

The B-UHG and the environmental liability acts of the provinces only cover ecological damages caused by professional activities of operators. However, actions of private individuals are not covered. An operator is a natural or legal person who carries out one of the professional activities listed in annex I of the B-UHG (e.g. in relation to waste management measures or water abstraction).

According to sec. 9 B-UHG, the administrative authority of the district, where remedial or preventive measures should have been taken, determines which operator has caused the damage or an imminent threat of damage, how significant the damage is and what remedial measures are necessary. To this end, the competent administrative authority is authorized to demand the operator to conduct his own assessment and to provide all necessary information and data.

Any operator causing a significant damage or an imminent threat of damage to a protected good in the course of carrying out listed hazardous activities must inform the authorities in the event of an incident and take the necessary preventative or remedial measures, regardless of fault.

- Is monetary compensation recognised regarding compensation for non-material damage caused by ecological damage? yes ☐ no ☐

In Austria, non-material damage is compensated only if explicitly provided for by law. Neither the AHG nor the B-UHG (or the environmental liability acts of the provinces) provide for the compensation of non-material damage).

- Does the 'polluter pays' principle apply to disputes concerning climate change?

The liability system of the B-UHG and the environmental liability acts of the provinces is based on the "polluter pays" principle: An operator causing relevant ecological damage should pay all the associated costs. Therefore, the polluter must not only pay the costs of prevention and remediation, but also the costs of administration.

II.G. Provisional judicial protection [interim measures]

- How are requests for provisional judicial protection in climate change cases handled? What parameters are taken into account by the courts?

Requests for provisional protection in climate change cases are based on legal instruments that are available irrespective of whether a case is related to climate change:

Decisions of the first instance administrative courts become formally legally binding as soon as they are issued and are therefore immediately enforceable. The enforceability of the decisions can be suspended only upon application (sec. 30 VwGG); such an application can only be filed if the decision itself is contested before the Supreme Administrative Court. The suspension of the challenged act ensures that the applicant does not suffer any adverse consequences from the contested decision for the duration of the proceeding before the Supreme Administrative Court.

Without being provided for in the VwGG, according to the case law of the Supreme Administrative Court(see e.g. decision from 29 January 2015, Ro 2014/07/0028), the appellant may - on the basis of directly applicable Union law - request other provisional measures, with the effect that the appellant is provisionally granted a legal position, the granting of which was refused by the challenged decision on the basis of a national legal provision (possibly in conflict with European Union law).

If the Supreme Administrative Court sets aside a decision of a first instance administrative court, the case returns to the state it was in before the decision was issued (see sec. 42 para. 3 VwGG). The VwGG provides no legal basis to postpone the effects of an annulment by the Supreme Administrative Court.

Provisional judicial protection may also be provided through preliminary injunctions: The preliminary injunction as laid out in sec. 8 of the Administrative Enforcement Act (Verwaltungsvollstreckungsgesetz 1991, VVG) is a general instrument of risk prevention that counteracts the risk that a party with an obligation to comply does not do so. A preliminary injunction may be ordered if a party's obligation to comply is certain or at least probable and there is a risk that the obligated party will evade the fulfilment of its obligation and frustrate or jeopardise its enforcement by disposing of their assets, by making agreements with third parties

or by taking other measures. In environmental law, there are also a large number of instruments for averting imminent danger, including the preliminary injunction pursuant to sec. 122 of the WRG.

- Please mention the measures that the judge may order.

Neither the VVG nor the WRG define which measures can be considered as preliminary injunctions. As a general rule, only measures that are necessary and unavoidable to secure the fulfillment of the obligation may be ordered by means of a preliminary injunction. This judgment is at the discretion of the authority and can be challenged before a first instance administrative court and subsequently the Supreme Administrative Court.

Measures that may be considered include, for example, a prohibition on sale or confiscation of objects. With regard to sec. 122 WRG, the Constitutional Court has stated that even an expropriation ordered by preliminary injunction is not an "impossible application" of this provision (see judgments from 2 December 1975, B 41/74 and B 42/74). The Supreme Administrative Court, on the other hand, has ruled that maintenance of a water utilisation facility ordered as a preliminary injunction is only possible if a necessary water utilisation right exists. The interim injunction may not be issued in the absence of a permit under water law (see judgment from 11 December 1990, 89/07/0185).

- How does the judge consider the ecological damage alleged by the parties?

With regard to a preliminary injunction pursuant to sec. 122 WRG, the Supreme Administrative Court has stated that the requirement of imminent danger is met if there is a "situation that requires immediate official intervention by the authorities to avert an existing or probable danger to one of the protected legal interests" (see e.g. judgment from 23 January 2008, 2007/07/0060). Whether the defence against the danger is so urgent that immediate intervention by the administrative authority is required, must be assessed by experts (see judgment from 17 January 1989, 88/07/0117).

II.H. Regarding the enforcement of a court decision:

- Is there a procedure for checking whether the legislator and/or the administration have adopted the necessary measures to comply with a court decision?

According to sec. 1 para. 1 subpara. 3 VVG, the execution of the decisions issued by first instance administrative courts (with the exception of the Federal Fiscal Court) is carried out in accordance with the VVG and generally falls within the responsibility of the district administration authorities. Decisions by the Supreme Administrative Court can only be enforced if the Supreme Administrative Court has ruled on the merits of the case. In this case, the Supreme Administrative Court names the court or administrative authority responsible for the execution of the decision (sec. 63 para. 2 VwGG).

The enforcement authority issues an order specifying what is to be enforced and in what manner on the basis of an enforceable decision or judgment by a first instance administrative court. The measures of enforcement are determined by the nature of the existing obligation. An obligation to pay is enforced by seizure and realisation of assets, other obligations are enforced by either substitute measures if they can be substituted or the imposition of compulsory penalties (payment or imprisonment) if they cannot be substituted or if there is an obligation to act or to abstain from an act. The most severe measure of enforcement is the use of direct coercion. This order can be contested before a first instance administrative court and subsequently the Supreme Administrative Court.

- In case-law, what are the most striking examples of the methods used to monitor the enforcement of judgments in disputes relating to acts or omissions linked to climate change?

There is no relevant case law by the Supreme Administrative Court.

III.A. In your country:

- Are there any court decisions that have explicitly recognised the obligation of the State [and/or other public entities] to take positive measures to address climate change?

No, there are no such decisions by the Supreme Administrative Court. However, in a judgment regarding the construction of the third runway at Vienna Airport, the Supreme Administrative Court stressed that climate protection is one of the relevant issues to be considered in an EIA (see Q II.A. and judgment from 6 March 2019, Ro 2018/03/0031).

- Are there any court decisions recognising a right to ensure compliance with this obligation?

No

- If a relevant case-law rule has been formulated, on what legal basis?

There is no relevant case law by the Supreme Administrative Court.

III.B. If the courts in your country have already considered issues relating to climate change:

- Do the relevant decisions refer to existing practice in another legal system, for example to the case-law of national judges in other countries or to the case-law of judges in supranational bodies:

  -dialogue between the national courts of different countries

  -dialogue between the courts of your country and the European Union judge

  -dialogue between the courts in your country and the ECtHR

  -dialogue between the courts in your country and the bodies of other international organisations [for example the UN]?

The Supreme Administrative Court regularly refers to the case law of the ECtHR or the ECJ in its decisions. For example, regarding climate change, the Supreme Administrative Court adhered to ECJ's case law from 20 December 2017, C-664/15, *Protect*, and ruled that party status (and thus the possibility of an appeal to the Supreme Administrative Court) for environmental organisations can arise directly from the Aarhus Convention (see Q II.D. and judgment from 20 December 2019, Ro 2018/10/0010, concerning the felling of trees in a protected forest in the outer zone of a national park).

III.C. In your country's case-law, is the obligation to act against climate change considered mainly:

- as an obligation based on national law
- or as an obligation under international law?

The Supreme Administrative Court examines the violation of simple statutory provisions (as opposed to constitutional laws) by the contested decision. The obligation to act against climate change is anchored in national laws (sometimes implementing EU directives) as well as international laws.

- Within the case-law, can we find decisions aimed at harmonising the rules of international law, European law and national law?

The Constitutional Court examines whether a simple law aligns with the Federal constitution (B-VG), constitutional laws and the ECHR (that holds constitutional status in Austria). When examining if a decision by a first instance administrative court has violated simple statutory laws, the Supreme Administrative Court considers international law, European law and national law.

Due to the primacy of EU law, laws that contradict EU law are superseded by EU law and not applied neither by the courts nor the administrative authorities within the scope of application of EU law. National laws are interpreted in such a way that they are consistent with international law that is binding for Austria.

- In your country, have any court decisions considered the Paris Agreement to be a legally binding instrument?

There is no case law by the Supreme Administrative Court stating whether the Paris Agreement is considered to be legally binding or not.

III.D. Does the approach of the courts in your country align with the approach of the ECtHR in *Verein Klimaseniorinnen Schweiz v. Switzerland*? [please mention any differences]

In Austria, only the Constitutional Court is competent to rule on the question whether a fundamental or constitutionally guaranteed right has been infringed, while the Supreme Administrative Court only has final jurisdiction regarding infringements of rights under simple law. There have been no climate change related cases before the Supreme Administrative Court in which a legal question of fundamental importance in relation to art. 8 of the ECHR

The possibility for individuals (potentially) affected by climate change, as well as environmental organisations to bring an action before the Constitutional Court on the grounds of inadequate climate protection legislation is narrowly limited. Direct applications submitted (before *Verein Klimaseniorinnen Schweiz v. Switzerland*) under art. 139 and 140 B-VG as well as appeals against a first instance administrative court's decision submitted under art. 144 B-VG – generally referred to as "climate actions" – have so far been unsuccessful in the cases brought before the Constitutional Court (regarding tax benefits for aviation see judgments from 30 September 2020, G 144/2020, and from 17 June 2023, G 106/2022; regarding the Climate Protection Law (Klimaschutzgesetz) see judgments from 27 June 2023, G 123/2023, from 18 June 2024, G 2274/2023, and from 27 June 2023, G 139/2021; regarding the ban on sales of fossil fuels see judgment from 27 June 2023, R 1517/2022).

The repercussions of the ECtHRs approach in *Verein Klimaseniorinnen Schweiz v. Switzerland* in the case law of Austrian courts are not yet foreseeable.

III.E. Have the courts in your country referred questions to the CJEU or the ECtHR for a preliminary ruling on matters directly or indirectly related to climate change?

The Supreme Administrative Court has referred several questions to the CJEU for preliminary rulings. It has e.g. submitted a request for a preliminary ruling regarding the determination of the obligations to carry out an EIA (see decision from 19 April 2012, 2009/03/0040), the legal protection for environmental organisations in proceedings regarding water law (see decision from 26 November 2015, Ra 2015/07/0055), the scope of application of the Environmental Liability Directive and the concept of environmental damage (see decision

from 24 September 2015, 2012/07/0134) and questions on the assessment of the status of fish fauna in waters according to the Water Framework Directive (see decision from 20 October 2022, Ro 2020/07/0004).

Part II: Overtourism

I. The regulatory framework [the rules of law]

I.A. Have the negative effects of the excessive development of tourist activity been adressed by the legislator and the courts of your country, following concerns discussed in the public debate?

yes ☐

no ☐

☐ If so, what are the problems envisaged in the legislation and case-law on this subject?

saturation capacity of urban and non-urban space ☐

deterioration of living conditions in urban areas (increase in housing prices, lack of properties to rent especially for younger generations and/or families with low and medium incomes - particularly in city centres, on islands and in other tourist destinations, deterioration of traffic conditions, insufficient infrastructure, increase in energy consumption, etc.) ☐

overexploitation of natural resources (increased density due to the construction of hotels and other buildings for tourism in extra-urban areas, intensification of land use - particularly in coastal areas and the islands, insufficient infrastructure in small villages, effects on protected landscapes and/or on historical sites and/or archaeological sites and monuments) ☐

other problems ☐

I.B. Has your country taken an initiative/participated in a collective initiative for the establishment, within the EU, of a regulatory framework to address the adverse effects of 'hypertourism'?

No

If so, what is the content of the proposed measures?

I.C. Are there any relevant principles and guidelines at international level?

No

☐ If so, have they been recorded:

-in binding texts?

-in non-binding texts?

- Could non-binding texts serve as a basis for regulations [please give examples]?

I.D. In your country, are there any constitutional principles or provisions that can serve as a basis for dealing with issues related to overtourism?

No

I.E.1. Has the national legislator established a regulatory framework specifically designed to address the problems resulting from excessive tourist activity?

yes ☐

no ☐

- If so, please summarise the legislation adopted and the main content of the relevant regulations (for example preventive and/or repressive measures, other provisions)

Legislation in the relevant areas (such as building regulations and nature conservation regulations) in Austria fall in the competence of the provinces; therefore, different standards exist in each provinces. For example building regulations in Vienna: In residential zones according to the Land use and development plan, the commercial rental of short-term accommodation is not permitted without an exemption permit pursuant to sec. 7a of the Vienna Building Code (Bauordnung für Wien - BO für Wien). Similar provision were recently (beginning 1 July 2024) put into effect for rentals outside residential zones: Here, too, the landlord now requires an exemption permit for short-term rental being limited to a maximum of five years (sec. 129 para. 1a BO für Wien). The following requirements must be met: The rental must not be located in a residential zone or allotment garden, and no housing subsidies must have been used for the construction of the building. Furthermore, the majority of the apartments in the affected building must still be used for residential purposes. In order for an exemption to be granted, the consent of all (co-)owners of the building must also be proven. This does not apply to temporary short-term rentals not exceeding 90 days per calendar year (so-called "home sharing"). In this case, the landlord (host) is obliged to pay a local tax and cannot permanently give up his residence at the address. He does, however, not need to obtain an exemption permit. The mere offering of a rental on the Internet in violation of building regulations (and not just the actual rental) is punishable as an administrative offense (sec. 119 para. 6a BO für Wien). Another example are regulations in nature conservation laws, such as in Salzburg: Pursuant to sec. 27 Nature Conservation Act of Salzburg (Salzburger Naturschutzgesetz 1999), the provincial government can designate quiet zones in grassland by decree in which tourist activities – among other things – are prohibited "for the protection of nature".

I.E.2. Does your country have a special action plan to address the problems resulting from excessive tourist activity?

yes ☐

no ☐

- If so, does this plan establish guidelines for the policies to be followed or does it also contain binding rules?

- What is the level of planning [national, regional, etc.] ?

I.E.3. In your country, are there any regulations concerning:

-the allocation of responsibilities for the management of 'hypertourism'? ☐

-other provisions concerning the organisation of the competent authorities?

No ☐

- What are the responsibilities assigned to the various bodies (advisory, decision-making)?

- Are there any provisions for public participation in the adoption of action plans or laws?

yes ☐

no ☐

II. The application of the regulatory framework by the judge

II.A. Have issues related to 'hypertourism' been the subject of litigation in your country?

yes ☐

no ☐

- If so, what points were raised in the arguments of the parties to the dispute?

yes ☐

no ☐

Hypertourism has not yet been a primary topic in proceedings before the Supreme Administrative Court.

- Please summarise the landmark cases heard by the courts in your country and the decisions handed down.

See above.

II.B. According to legal practice, what is currently the main channel through which the relevant disputes are brought before the courts?

-litigations concerning control of the legality of administrative acts or omissions? ☐

-litigations concerning compensation for damage caused by acts or omissions of the administration? ☐

-other categories of litigations? ☐

II.C. Please cite any court decisions:

-that have expressly recognised the obligation of the State and/or other public entities to take positive measures in order to address the phenomenon of 'hypertourism'? ☐

-that have recognised a right of individuals to ensure compliance with this obligation? ☐

☐ Have case-law rules been formulated in this regard? If so, on what legal basis?

There have not been such decisions by the Supreme Administrative Court.

II.D. Do issues linked to overtourism:

-mainly concern the administrative courts, when they monitor the actions of the State and public entities,

or do they mainly concern the civil courts called upon to judge appeals against the actions of individuals?

administrative courts ☐

civil courts ☐

both ☐

II.E. Can examples be found in your country's legislation and case-law that highlight the relationship between climate change and overtourism?

yes ☐

no ☐

☐ If so, please present the main content of the relevant legislation or court decisions.