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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.

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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 **X**

Paris Accords **X**

Aarhus Convention (procedural matters) **X**

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)

According to Article 10 of the Czech Constitution, the promulgated international treaties, to the ratification of which the Parliament has given its consent and by which the Czech Republic is bound, are part of the

Czech legal order. Where a conflict arises between the provisions of an international treaty and domestic law, the treaty shall prevail in its application. This doctrine establishes that international treaties possess precedence of applicability, rather than hierarchical precedence.

I.A.2. EU rules

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

The Czech Republic, as an EU member state, is obligated to transpose EU directives into its national law and comply with EU regulations. Unlike some EU countries, the Czech Republic does not have a single, comprehensive framework "Climate Act" that codifies national climate targets and governance structures.

The key areas of EU climate policy and the corresponding Czech legal acts include:

- EU Emissions Trading System (EU ETS) has been implemented by Act No. 383/2012 Coll., on the Conditions for Greenhouse Gas Emission Allowance Trading. This act lays down the rules for operators, allocation of allowances, monitoring, reporting, verification, and penalties within the Czech Republic, aligning with the EU ETS Directive (currently Directive 2003/87/EC, as amended). Provisions related to monitoring emissions might also be found within the broader Act No. 201/2012 Coll., on Air Protection.
- Effort Sharing Regulation (ESR) requirements are integrated into various laws and strategic documents, in particular the abovementioned Act on Air Protection, which sets emission limits and conditions for various sources, including some relevant to ESR sectors. Furthermore, laws concerning transport (e.g., promoting low-emission vehicles), agriculture (e.g., related to manure management), waste management (e.g., Act No. 541/2020 Coll., on Waste), and building regulations (related to energy performance) all contribute to meeting ESR targets.
- Renewable Energy Directive (RED) has been implemented by Act No. 165/2012 Coll., on Supported Energy Sources, which establishes the framework for supporting electricity, heat, and biogas production from renewable sources, defines the rights and obligations of producers, and sets up support mechanisms. Amendments to the Energy Act (Act No. 458/2000 Coll.) also incorporate relevant provisions.
- Energy Efficiency Directive (EED) has been implemented by Act No. 406/2000 Coll., on Energy Management, which covers energy efficiency obligations for large enterprises, energy audits, energy performance of buildings (often in conjunction with building codes/decrees), requirements for public sector buildings, and rules for energy services (ESCOs).
- Implementation of the Land Use, Land Use Change and Forestry (LULUCF) Regulation relies on policies and measures within forestry, agriculture, and land management sectors rather than a single dedicated act. Relevant provisions can be found in Act No. 289/1995 Coll., on Forests, and agricultural and land planning legislation.

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

No.

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

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	**X**
for climate change	☐
for the protection of health	**X**
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?	**X**

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

The Czech Republic's constitutional framework provides protections for both the environment and human health, primarily through the Charter of Fundamental Rights and Basic Freedoms, which is part of the Czech constitutional order (Constitutional Act No. 2/1993 Coll.). Furthermore, Article 7 of the Constitution proclaims that the *"The state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth."*

The key provisions of the Charter include:

- Right to Health Protection (Article 31): *Everyone has the right to the protection of health.*
- Right to a Favourable Environment (Article 35): 1) *Everyone has the right to a favourable environment*, 2) *Everyone has the right to timely and complete information about the state of the environment and natural resources*, 3) *In exercising their rights, no one may endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the limits set by law.*
- Limitations on Property Rights (Article 11(3)): *Ownership entails obligations. It must not be misused to the detriment of the rights of others or contrary to legally protected general interests. Its exercise must not damage human health, nature, and the environment beyond the limits set by law.*
- Judicial protection (Article 36): 1) *Everyone may assert, through the prescribed procedure, her rights before an independent and impartial court or, in specified cases, before another body*, 2)

Unless a law provides otherwise, a person who claims that her rights were curtailed by a decision of a public administrative authority may turn to a court for review of the legality of that decision. However, judicial review of decisions affecting the fundamental rights and freedoms listed in this Charter may not be removed from the jurisdiction of courts, 3) *Everybody is entitled to compensation for damage caused her by an unlawful decision of a court, other State bodies, or public administrative authorities, or as the result of an incorrect official procedure*, 4) *Conditions therefor and detailed provisions shall be set by law.*

Article 41(1) of the Charter states that rights mentioned in certain articles, including Article 31 (health) and Article 35 (environment), can only be claimed *"within the limits of the laws implementing these provisions."* This means that while these rights are constitutionally guaranteed, their specific scope, enforcement mechanisms, and the conditions under which they can be directly invoked in court often depend on detailed legislation passed by Parliament.

However, the fundamental protection of the environment must be ensured regardless of Article 41 of the Constitution so that the right to a favourable environment is not emptied. In this respect, the Constitutional Court develops the concept of the essential core of this right, which has both a procedural and a substantive component (see, e.g., ruling No. Pl. ÚS 22/17).

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 **X**

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

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

yes **X**
no ☐

If so:

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

Specific plans to address climate change are adopted at the national level.

In October 2015, the Government approved the Climate Change Adaptation Strategy for the Czech Republic and in January 2017 the National Action Plan for Adaptation to Climate Change, which is its implementation document. The Action Plan contains a list of adaptation measures and tasks, including responsibilities for implementation, deadlines, identification of relevant sources of funding and estimated costs for the implementation of measures.

In March 2017, the Government approved the Czech Republic's Climate Protection Policy (CPP), which includes targets and measures to reduce greenhouse gas emissions. A mid-term evaluation of the CPP took place in 2021 and, inter alia, based on this evaluation, an update of the CPP was prepared in 2024.

- 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 planning is limited to defining policy guidelines and does not contain any binding rules.

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?

No.

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

(a) preventive measures

(b) repressive measures

(c) restitution measures

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

- Is the legal pursuit of this right regulated?

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

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

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

yes ☐

no **X**

- 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 ☐

In practice, the Ministry of Environment is responsible for the introduction of the climate-related measures. However, such competence is not recognised, *expressis verbis*, by the Competence Act (Act. No. 2/1969 Coll.) which provides in Section 19(2) that the Ministry is the central state administration body for the *"protection of natural water accumulation, protection of water resources and protection of surface and groundwater quality, air protection, nature and landscape protection, zoo operation, and protection of the agricultural land fund, for the performance of the State Geological Service, for the protection of the rock environment, including the protection of mineral resources and groundwater, for geological works and for ecological supervision of mining, for waste management and for the assessment of the effects of activities and their consequences on the environment, including those that cross national borders. It is also the central authority for hunting, fishing and forestry in national parks. It is also the central administration authority for the national environmental policy, for the labelling system for environmentally friendly products and services and for the programme promoting voluntary participation in the environmental management and audit scheme (EMAS programme)."*

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

Several state institutions, in particular the Academy of Sciences and the Nature Protection Agency, collect data or evaluate research on climate change. However, they are not responsible for such task in the legal sense and there is no specific power allocated to these bodies.

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

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

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

No.

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

There is no dedicated provision for public participation in the development of climate policies and legislation.

Nevertheless, in 2022, the Government Council for NGOs approved a Methodology for the Participation of NGOs in Advisory and Working Bodies and in the Development of State Administration Documents, subtitled How to cooperate with NGOs in the development of state administration policies? (https://vlada.gov.cz/cz/ppov/rnno/dokumenty/metodika-participace-nestatnich-neziskovych-organizaci-v-poradnich-a-pracovnich-organech-a-pri-tvorbe-dokumentu-statni-spravy-197878/#). This methodology guidance aims to increase the level and effectiveness of participation of representatives of NGOs, their umbrella organisations and networks in governance at the central level, i.e. at the level of ministries and other central administrative authorities.

Furthermore, the wider involvement of NGOs is reflected, for example, by the official involvement of the organisation *Zelený kruh* as an umbrella association of environmental organisations in the inter-ministerial consultation procedure for the preparation of new legislation, or the newly transparent delegation of NGO representatives to working bodies established for the management of European funds. The methodology works with different phases of document preparation. It requires, for example, timely publication of calls for suggestions and comments, frequent and regular communication during the drafting of the document and publication of the settlement of the comments sent. It also recommends using the opinion of NGOs to prevent identified risks and undesirable impacts. In the implementation phase, the methodology requires the document's owner to regularly inform the contributing NGOs about the results to date and the way forward, and to respond to their suggestions.

➥ Is access to relevant information guaranteed? yes **X** no ☐

The legal regulation of access to information on the environment is already recognized on the constitutional level, in the Charter (see above). The Act on the Right of Access to Information on the Environment (No. 123/1998 Coll) regulates both passive and active disclosure of information about the environment, i.e. the obligation to actively disclose information and at the same time to respond to requests for information from applicants. A large quantity of environmental data is provided through the Unified Environmental Information System which operates as a formal umbrella for various information systems related to environmental issues.

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.

Czech case law on climate change is limited. So far, there has been only one strategic case similar to the Dutch *Urgenda* case or the Austrian *Vienna airport* case: *Klimatická žaloba* (named after the NGO behind the case).

In some cases, which are primarily concerned with other issues, climate change serves more as a supportive than a stand-alone argument. In administrative cases concerning renewable energy, for example, it is often argued that the renewable energy sources should be promoted in the interest of protecting the climate and the environment. The same argument is to be found in several tax cases concerning additional tax imposed on the solar energy producers or obligation to put a minimum amount of biofuels into free circulation for transport purposes. In cases concerning air pollution, obligations arising from the Kyoto Protocol and the Paris Agreement are sometimes put forward but do not have a decisive role in the particular case.

Klimatická žaloba case therefore presents a significant milestone in the Czech legal area. In four years, it has reached the Supreme Administrative Court (SAC) twice already, and the case is currently pending before the Constitutional Court.

In 2021, a group of Czech citizens filed a lawsuit against the Czech government and ministries for its failure to act on climate change and associated human rights violations. The plaintiffs include the climate action NGO Klimatická žaloba, a municipality (*Svatý Jan pod Skalou*), and four individuals. The plaintiffs alleged that the government and the ministries, by failing to adequately address climate change, were violating various rights of the plaintiffs. In June 2022, the Prague Municipal Court ruled that the government performs merely coordination of the policies and cannot be taken to the court in climate matters. Towards the individual ministries, however, the court upheld the lawsuit and ordered the ministries to urgently take necessary measures to mitigate climate change. The Court ruled that the state's failure to implement sufficient GHG mitigation measures is unlawful and that the state should refrain from further infringing on the plaintiffs' rights due to this failure. The court derived the obligation to combat climate change from the Paris Agreement and the EU Climate Law, which sets a target to reduce GHG emissions by 55% by 2030 compared to 1990 levels, as the Czech Republic currently lacks a dedicated climate act.

In February 2023, the SAC (judgement No. 9 As 116/2022-166, *Klimatická žaloba I*) confirmed that the government cannot be taken responsible for the inactivity but otherwise overturned the first-level decision and sent the case back to the lower court. The primary reason for reversing the initial decision is the collective obligation of the EU to reduce its GHG emissions by 55% by 2030, along with the ongoing legislative and political negotiations regarding the specific distribution of these obligations among Member States. In particular, the SAC found that the Municipal Court did not adequately justify its order for the 55% target by 2030. The SAC also noted that the plaintiffs must further clarify the specific areas in which the

defendants' alleged inaction violated their obligations, which directly impact the applicants' rights. The Prague Municipal Court then dismissed the case.

The plaintiffs appealed to the SAC, which confirmed its earlier opinion and dismissed the case in November 2024 (judgement No. 9 As 264/2023-128, *Klimatická žaloba II*). The SAC took into account the newly formulated requirements of the European Court of Human Rights (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*) and carried out a test of the sufficiency of mitigation procedures. It concluded it is necessary to consider not only national but also EU legislation and control mechanisms. These have been significantly refined compared to February 2023, when the SAC ruled in *Klimatická žaloba I*. In the meantime, the EU's collective commitment to reduce greenhouse gas emissions by 55% by 2030 compared to 1990 levels has been reflected both in EU secondary legislation (the so-called Fit for 55 package) and in the obligations of individual Member States, including the Czech Republic. Even taking into account the conclusions of the new human right case law, the SAC did not find in the legal order (national, EU or international) an obligation for the Czech Republic to reduce its greenhouse gas emissions by more than 80%, as requested by the applicants. It therefore agreed with the municipal court that it was not appropriate to uphold their action for interference alleging the illegality thus defined and dismissed the cassation complaint.

The plaintiffs filed a complaint to the Constitutional Court and the case is still pending.

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 **X**

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 the Czech Republic, issues related to climate change are dealt with:
- by the administrative courts, when they examine the legality of the actions or omissions of the State and other public entities;
- by the civil courts, when they examine compensation claims against the State and other public entities;
- by the civil courts (in disputes aimed at protecting the applicant against actions by individuals).

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	**X**
full jurisdiction remedies for the recognition of a right	**X**
actions for damages	**X**
remedies for the protection of the applicant's personality	**X**
procedures for requesting interim measures	**X**

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 **X**

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

There is no existing practice yet. In *Klimatická žaloba* case, the plaintiffs seek protection against illegal interference before the administrative courts.

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

No.

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

➥ is exclusively an ultra vires review (review of legality)?

X or can it also be the subject of a full jurisdiction control?

➥ If so, under what conditions?

In the Czech Republic, the Constitutional Court is responsible for the judicial review of laws and regulations in order to ascertain their compatibility with the constitutional order. It therefore deals with questions of constitutionality rather than legality or full jurisdiction (in terms of questions of fact and law). If the legislation under review is unconstitutional, the Constitutional Court annuls it.

General courts can assess the legality of bylaws when deciding individual cases. If bylaws do not comply with a law or an international treaty, the courts will not apply them. If they find that the bylaws could by unconstitutional, they refer it to the Constitutional Court.

The administrative courts review measures of a general nature (a form of a regulation, including e. g. zoning plans) in special proceedings. In these proceedings the contested measure of a general nature is reviewed in terms of its legality, the procedure followed, the exhaustiveness of reasoning as well as proportionality of the measure adopted. The review includes both questions of fact and questions of law, therefore, these proceedings would be considered a review in full jurisdiction.

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 **X**

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.

- 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?

There are no specific rules of procedure developed by case-law. However, the courts have continually polished the interpretation of the key conditions of *locus standi* in environmental matters, in particular violation of rights.

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.

Anyone who may have been deprived of their rights, including NGOs and other legal entities, has a standing to bring action. In the cases under the Aarhus Convention Article 9(3) regime, the courts require a relatively close relationship of a natural person to the potential environmental harm already when assessing the

conditions for active standing to bring an action. In the case of NGOs, the courts infer the fulfilment of the individual conditions of standing mainly from the allegations of the association itself or from the statutes. In doing so, they infer a rebuttable presumption that the NGO concerns itself with all areas defined in the statutes. The courts also infer the association's commitment and relationship to the site from the facts known to the courts as a matter of course, i.e. the fact that the association in question is involved in judicial and administrative proceedings relating to environmental protection or that it has submitted comments in the proceedings for the adoption of the contested zoning plan. The relationship to the site may also be determined from the activities of the members of the association themselves. A broader remit may be based on the importance of the project in question or the importance of the interests involved. For example, an association with nation-wide activities may be affected in its substantive rights by a decision concerning a project if its operation undoubtedly extends beyond the boundaries of the administrative territory concerned or affects the whole of the country or at least a large area (see, for example, judgments of the SAC No. 3 As 13/2015-200 and No. 6 As 73/2015-40).

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)?

No.

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]?

There are no specific legal rules for the admissibility of an appeal concerning some groups of population or legal entities. As for the legal persons, see above.

- 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?

The courts infer the fulfilment of the individual conditions of standing mainly from the allegations of the association itself or from the statutes. In doing so, they infer a rebuttable presumption that the NGO concerns itself with all areas defined in the statutes. The courts also infer the association's commitment and relationship to the site from the facts known to the courts as a matter of course, i.e. the fact that the association in question is involved in judicial and administrative proceedings relating to environmental protection or that it has submitted comments in the proceedings for the adoption of the contested zoning plan. The relationship to the site may also be determined from the activities of the members of the association themselves. A broader remit may be based on the importance of the project in question or the importance of the interests involved. For example, an association with nation-wide activities may be affected in its substantive rights by a decision concerning a project if its operation undoubtedly extends beyond the boundaries of the administrative territory concerned or affects the whole of the country or at least a large area (see, for example, judgments of the SAC No. 3 As 13/2015-200 and No. 6 As 73/2015-40).

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

There is no standard of proof for the allegations made. In general, these should be relevant for the matter and sufficiently precise to raise concerns on legality of the contested act or omission of the administrative body.

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?

There have only been cases of alleged unlawful failure to take sufficient action to reduce greenhouse gas emissions in response to climate change (*Klimatická žaloba* I case and *Klimatická žaloba* II case).

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

There are no special procedural admissibility requirements for climate change legal action.

- 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 courts have not ruled on cross-border interest in climate disputes. However, in several environmental cases, the courts have confirmed the rights of individuals and NGOs from foreign countries to participate in decision-making and access Czech courts. In addition, the courts confirmed public concerned may rely on direct applicability of EU law in the cross-border context. In particular, in judgement No. 10 As 36/2021-77, the SAC ruled that where national legislation does not allow for participation of the public concerned in the decision-making process, or where it contains restrictive rules which do not allow such participation to be timely and effective within the meaning of Article 6(4) of the EIA Directive, the representatives of the public concerned must in principle be allowed to participate directly on the basis of the EU law.

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?

In *Klimatická žaloba I* case, the SAC refused it is the role of the judiciary to estimate the positive obligation of the state in climate protection that corresponds to the impact of the climate change to the rights of the plaintiffs if there is no precise obligation enacted in legislation: *"It would be contrary to the restraint of the judiciary if the administrative courts were to enter now into the political and legislative processes still underway at EU level with categorical conclusions on what the individualised commitment of the Czech Republic should look like".*

The balancing of contradictory interests has not yet been performed in climate cases. Regarding assessments of an essentially technical nature the judge is obliged to appoint an expert (see part II.E.2).

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.

The Czech courts have not dealt with balancing of interests in climate cases yet.

Nevertheless, the administrative courts regularly review balancing of various public and private interests. Most significantly, the review of the measures of general nature (such as the land use planning documents) consists of several steps including considerations on the proportionality of the interference of the regulation to the rights of individuals.

The courts are also often called to consider the conditions of derogatory regimes in nature protection pursuant to the national law and the Habitats Directive which require the existence of overriding public interest. For example, the SAC concluded that the operation of wind turbines in the specific case must give way to the protection of ravens because they represent a public interest and the occurrence of birds in the area in question is limited to occasional overflights, so that their collision with the construction, where they would be killed or injured, is possible rather theoretically (judgement No. 2 As 207/2016-46).

- 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?

To some extent, the SAC decides, in special proceedings, on the annulment of public service regulations and on the annulment of measures of a general nature (in the second instance). In these proceedings, if the SAC finds that there is for example a conflict with the law or an excess of powers, it may annul the public service regulation or measure of a general nature on a date to be determined in its judgment.

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.

In general, the judges can only consider facts that do not require expertise without the assistance of an expert. Otherwise, they are obliged to ask the public authority for a professional opinion. If such a procedure is not sufficient for the complexity of the question under consideration, or if there is a doubt as to the correctness of the expert's opinion, the court shall appoint an expert.

The SAC ruled about the expert's opinion: "*If the court, in proceedings for the annulment of a measure of a general nature or a part thereof, evaluates a technical question on the basis of a "layman's view", even though the defendant relied on technical grounds, this conclusion of the court is unreviewable within the meaning of § 103(1)(d) of the Act no. 150/2002 Coll., the Code of Administrative Justice*" (judgment No. 10 As 470/2021-39))

- 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]?

There are no in-house experts or expert judges at the Czech administrative courts, and the scientific experts are not sitting with judges during the deliberation. During the hearing, the judges and, with the presiding

judge's permission, the parties and persons participating in the proceedings may put questions to the parties, or witnesses and experts, or invite them to give their opinions on the matter.

The parties may also present opinions of the party-appointed experts. However, these are merely considered as any other relevant documents and not expert opinions in a strict sense since the expert has not been appointed by the court. If there is a discrepancy between multiple expert opinions, the court may appoint an expert and ask for a review report. The expert may provide their opinion exclusively on facts of the case, not legal questions.

The need to engage in the examination of expert questions is limited to a certain extent by the concept of administrative justice, which serves to protect subjective public rights, while substantive disputes are "*fundamentally settled in administrative proceedings and using the appropriate administrative process instrumentation*." (resolution of the extended senate of the SAC No. 1 Ao 2/2010-116).

If the incorrectness of the administrative findings of the administrative authority is not obvious, it is for the applicant to submit relevant arguments by which to contest those conclusions.

The scope of the judicial review in a particular case is therefore determined by the arguments presented by the complaint which also applies to the process of handling the evidence, although the review is not restricted to certain questions of fact or law only. Moreover, the administrative justice is conceived restraint, so that the demands for administrative acts are not overly excessive.

The institute of *amicus curiae* has been used in the Czech justice only in a very few cases, but recently, the Constitutional Court dealing with *Klimatická žaloba II* case requested several academic institutions to submit their *amicus curiae*. However, only one university responded in time (Masaryk University).

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 SAC evaluates the matter comprehensively as well as the factors separately in a legal point of view. However, the SAC does not directly evaluate the scientific causes of climate change, it focuses on ensuring that relevant laws, international obligations, and environmental protections are well interpreted and applied in the particular case.

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 X**
- 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?

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

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

In the Czech Republic there have been no cases to date involving the civil liability of the State for damage attributed by applicants to climate change. This also applies to material or non-material ecological damage attributed to climate change, as well as the 'polluter pays' principle mentioned in the following questions.

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

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

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?

In the *Klimatická žaloba I* and *Klimatická žaloba II* cases, the applicants did not submit requests for provisional judicial protection. Consequently, the Czech administrative courts have not yet considered these requests.

➥ Please mention the measures that the judge may order.

The applicants can request a preliminary order or a suspensive effect to be granted to the administrative decision so that it is not enforceable.

The court may, on request, grant suspensive effect to the action provided that the enforcement or other legal consequences of the decision would cause the applicant disproportionately greater harm than that which may be caused to other persons by the grant of suspensive effect and if this would not be contrary to an important public interest.

The court may issue a preliminary order if there is a need to temporarily adjust the circumstances of the parties due to imminent serious harm. The court has a wide discretion in determining the order. It may order the parties to undertake specific actions, abstain from certain conduct, or endure particular circumstances. For the same reasons, the court may also impose such an obligation on a third party if it can fairly be required to do so.

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

As previously stated, there have been no judicial decisions in the Czech Republic on this subject.

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?

There is no such procedure under Czech law. However, should the court decision become enforceable and the respondent fail to comply, the applicant may apply for an enforcement order.

➥ 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 existing case-law on this subject in the Czech Republic.

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?

In the *Klimatická žaloba II* case, it was explicitly stated that, in addition to EU collective obligations arising from the Paris Agreement, there are two positive obligations of the State and its administrative bodies.

Firstly, it is the obligation to respond to national specifics in the field of adaptation to climate change (these specifics are, of course, different in different EU countries, especially with regard to their different climatic conditions) and in the field of climate change mitigation (for example, due to specific national transgressions and deficits, such as, in the case of the Czech Republic, the continued production of electricity from coal).

Secondly, the obligation to make every effort to reduce greenhouse gas emissions beyond the obligations under EU law, depending on objective national possibilities, was mentioned.

These obligations are not formulated in terms of specific steps to be taken by state administrative bodies, but they are explicitly mentioned as two obligations of the state stemming from Art. 8 as explained in the ECtHR case *Verein KlimaSeniorinnen Schweiz*.

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

No, there has not yet been a court decision on this subject in the Czech Republic.

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

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]?

Yes, in both *Klimatická žaloba I* and *II* cases the Czech courts referred to

- decisions of other European national courts (e. g. Dutch and German);
- decisions of the Court of Justice of the European Union;
- decisions of the ECtHR.

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

  X or as an obligation under international law?

-

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

The *Klimatická žaloba I* and *II* cases were both concerned with harmonising the rules. In the case of *Klimatická žaloba II*, it is particularly noteworthy that the judgment was prepared following the ECtHR ruling in the *Verein KlimaSeniorinnen Schweiz*, which resulted in a subtle change to the SAC's previous position, as expressed in *Klimatická žaloba I*.

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

The courts of the Czech Republic consider the Paris Agreement to be a legally binding instrument. The Agreement was signed, ratified and published in the official Collection of International Treaties of the Czech Republic, and as such fulfils the constitutional requirements to be binding. The SAC in the case *Klimatická žaloba I* expressly mentioned that there are certain procedural obligations stemming from the Paris Agreement.

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]

Yes, the SAC in the *Klimatická žaloba II* case followed the ECtHR decision in *Verein KlimaSeniorinnen Schweiz* and applied the test created by the ECtHR in that decision. However, the SAC also mentioned some differences that it took into account. Firstly, the SAC applied the ECtHR conclusions with regard to the specifics of the Czech Republic and the situation of the present complainants. It took into account the broader judicial protection afforded by Czech law, without having to assess which complainants are covered by the protection under the ECHR and the new ECtHR conclusions. Secondly, the SAC took into account that, unlike Switzerland, the Czech Republic is a member state of the European Union. The Czech Republic's membership in the EU and the resulting joint efforts of the Member States and the EU as a whole are crucial in the fight against climate change.

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?

To date, the Czech courts have not referred questions to the CJEU or the ECtHR for a preliminary ruling on matters directly or indirectly related to climate change.

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 **X**

➥ 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 ☐

As of now, the Czech Republic has not taken part in any specific collective initiative at the EU level aimed at establishing a regulatory framework that directly addresses the adverse effects of overtourism. While the Czech Republic participates in broader discussions on sustainable tourism within the EU and engages in relevant working groups and strategic frameworks—such as the EU Tourism Transition Pathway—there is no publicly available record of the Czech Republic spearheading or co-sponsoring EU legislation or binding measures specifically targeting the phenomenon of overtourism.

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'?

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

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

➥ 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]?

Non-binding instruments such as those listed above often serve as important policy frameworks or inspiration for national or regional legislation. For example:

- The Global Code of Ethics for Tourism has informed national tourism strategies, including those of the Czech Republic, which emphasise sustainability and local impact minimisation in the Strategy for the Development of Tourism in the Czech Republic 2021+.
- Similarly, the EU Transition Pathway for Tourism (2022), although not binding, is being referenced in regional and national planning documents to guide recovery and development efforts in the tourism sector.

While not legally enforceable, these texts provide normative guidance that can shape the content of future binding EU or domestic regulation aimed at countering overtourism and promoting more sustainable models of tourism development.

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?

In the Czech Republic, while there is no explicit constitutional reference to overtourism, several constitutional principles and rights may serve as a legal foundation for addressing its adverse impacts, particularly in the context of environmental protection, public administration, and fundamental rights. In addition to the provisions mentioned in the first part of the questionnaire, Article 8(2) of the Constitution provides for the self-governing authority of municipalities and regions, which allows local governments to regulate local matters, including tourism, within the scope of the law. However, the right to self-government is not absolute and the exercise of this right can only be provided within the limits and in the manner prescribed by law (as set out in Article 2(3). This limitation underscores the importance of legal certainty and may constrain arbitrary restrictions on tourism.

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

yes ☐

no **X**

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

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

yes ☐

no **X**

↳ 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?

☐

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

In the Czech Republic, there are currently no legal regulations that specifically address 'hypertourism' as a distinct issue. However, tourism management in general falls under the responsibility of the Ministry for Regional Development, which coordinates tourism policy at the national level. Local and regional governments (municipalities and regions) also play a significant role in regulating and supporting tourism within their territories. These bodies have the authority to approve and implement development plans related to tourism and to support local tourism businesses. Decision-making powers related to spatial planning and environmental protection, which can impact tourism management, are governed by Building Act.

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

yes ☐
no **X**

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 **X**

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

yes ☐
no ☐

In the Czech Republic, issues directly labelled as 'hypertourism' have not yet been the subject of litigation. However, certain legal disputes have addressed the adverse effects of excessive tourism, particularly in popular tourist destinations. For example, in case No. 73 A 1/2022 the applicant, as a business owner in the tourism sector, objected to the change in the zoning plan of the municipality of *Dolní Vestonice*. As a result of the change, it was not possible to build new structures intended for short-term recreation in designated areas. The measure was a consequence of tourism impacts on the quality of life of the municipality's residents. The Regional Court in Brno dismissed the application. It stated that the adopted changes are entirely legitimate and sufficiently elaborated and justified. The reasons that led the municipality to develop and approve the change to the zoning plan include the requirements of permanently residing citizens in the municipality for peaceful living on one hand, and on the other hand stands the ownership right of the applicant as the owner of land in the municipality and her right to develop business activities. However, if tourism in the municipality reached an unbearable limit according to citizens' opinion, it is logical that the municipal council had to respond adequately to such a situation, whereas restricting the construction of additional accommodation capacities in populated areas in the municipality appears to be a proportionate solution both for permanent residents and for preserving tourism in the municipality and maintaining opportunities for business activities.

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

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? ☐

The administrative courts have so far dealt with overtourism cases only marginally in a handful of cases. The litigations in these cases concerned the control of the legality of administrative acts.

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 is no case law concerning the issue.

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 **X**

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 **X**

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