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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 ×☐

Paris Accords ×☐

Aarhus Convention (procedural matters)× ☐

Other (please specify) ☐

Italy is bound by several key international instruments on climate change, including a) the UN Framework Convention on Climate Change (UNFCCC); b) the Kyoto Protocol; c) the Paris Agreement; d) the Aarhus Convention (UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters). Additionally, Italy is a member of the European Union and is bound by the European Green Deal and the European Climate Law.

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- 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)

International climate change instruments in Italy's legal system gain formal validity through a process of ratification and implementation via legislation. Specifically, treaties are incorporated into the Italian legal system by laws of ratification, which must also be consistent with the Constitution.

I.A.2. EU rules

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

Italy has incorporated several key EU climate change rules into its national legislation, including the European Climate Law, the EU Emissions Trading System (ETS), and the Effort Sharing Regulation. This has resulted in measures like the Climate Decree (Law Decree 111/2019), which focuses on strategic policies for combating climate change and improving air quality. Italy also transposed Directive (EU) 2018/410 on emissions trading into Italian law. Further, Italy has established the Italian Climate Fund and various laws related to reducing greenhouse gas emissions, including the Integrated National Energy and Climate Plan.

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

Italy has been the subject of infringement procedures for failure to comply with obligations under EU law on environment, such as Directive 1991/271/EEC and Directive 2008/50/EC.

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

The European Commission decided to refer Italy (INFR(2017)2181) to the Court of Justice of the European Union for failure to fully comply with the collection and treatment obligations set in the Urban Wastewater Treatment Directive (Directive 1991/271/EEC). The Directive aims to protect people's health and the environment by requiring that urban wastewater is collected and treated before discharge into the environment. Untreated wastewater can put human health at risk and pollute lakes, rivers, soil, and coastal and groundwater. Information received from Italy has shown widespread failures to comply with the Directive, in a total of 179 Italian agglomerations. Italy still needs to ensure that wastewater collection systems (or individual systems or other appropriate systems in justified cases) are in place in 36 agglomerations. For 130 agglomerations, Italy is still failing to correctly treat the wastewater that is collected. For agglomerations that discharge wastewater into sensitive areas, a more stringent treatment of the wastewater is required. Italy still fails to comply with this obligation in 12 agglomerations. Finally, for 165 agglomerations, Italy fails to monitor that the water discharges meet, over time, the quality conditions required. The Commission sent a letter of formal notice to Italy in June 2018, followed by a reasoned opinion in July 2019

The European Commission is sending a letter of formal notice under Article 260 TFEU to Italy (INFR(2014)2147) for continued failure to comply with the judgment of the Court of Justice of the European Union of 10 November 2020 (C-644/18). In this ruling, the Court of Justice found that Italy had breached its obligations under the Ambient Air Quality Directive (Directive 2008/50/EC). The European Green Deal, with its zero pollution ambition, calls for full implementation of the air quality standards to effectively protect human health and safeguard the natural environment. Although Italy has taken some measures since the judgment, in 2022, 24 air quality zones still reported exceedances of daily limit values and one zone reported exceedances of annual limit values. The Commission is therefore sending a letter of formal notice to Italy, which now has two months to respond and address the shortcomings raised by the Commission. In the absence of a satisfactory response, the Commission may decide to refer Italy to Court with a request to impose financial sanctions.

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	☐X

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

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

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

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 ☐ X
no ☐

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

The Italian legislator has adopted specific legal instruments beyond EU compliance, including the National Strategy for Sustainable Development and the Ecological Transition Plan. These documents outline Italy's climate change strategy and policies, though a comprehensive framework climate law is still pending. This plan is intended to contribute to a wide-ranging transformation of the economy. In this, the combination of decarbonisation, the circular economy, efficiency and the rational and fair use of natural resources represent objectives and instruments for an economy that is more respectful of people and the environment. The framework is one of integration of the national energy markets in the single market and due consideration for affordable pricing and security of supply.

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.)?

Italy has a specific action plan, the National Plan for Adaptation to Climate Change (PNACC), to address climate change. This plan, approved by the Ministry of the Environment in December 2023, implements the National Strategy for Adaptation to Climate Change (SNAC) and focuses on both national and local level climate change management. It outlines legal frameworks, analyzes climate trends in Italy, identifies potential impacts and sectoral vulnerabilities, and proposes adaptation measures.

- 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 PNACC is organized into five chapters, covering the legal framework, the national climate framework, climate change impacts in Italy, adaptation measures and actions, and adaptation governance. The sectors covered by the PNACC are 19: transport, energy, water resources, agriculture, forestry, marine fisheries, aquaculture, geological, hydrological and hydraulic disruption, inland and transitional water ecosystems, marine and terrestrial ecosystems, urban settlements, cultural heritage, health, tourism and socio-economic impacts. In the PNACC, measures are planned at three levels:
soft: policy, legal, social, management and financial measures that can change lifestyles and increase awareness of the potential impacts of climate change and appropriate behaviour. They fall into the categories of governance and information and are aimed at administrative, technical, institutional, and legislative strengthening.
green: nature-based measures that use the ecosystem services provided by natural environments to improve the resilience of territories.
grey: infrastructural and technological measures that make buildings, facilities, infrastructures, networks, and territories more resilient.

The PNACC takes into account all international and EU commitments to which Italy is bound.

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?

While the Italian Constitution doesn't explicitly name climate change, the 2022 amendments to Articles 9 and 41 have introduced a general obligation for the state to protect the environment and ensure sustainable development. This includes a duty to protect biodiversity and ecosystems, ultimately benefiting future generations. The amendments also emphasize that business activities should not harm people's health or the environment. Prior to this amendment, the term "environment" was expressly contemplated by the Constitution for the sole purpose of the division of powers between the state and the regions; Article 117 of the Constitution already assigned environmental protection to the exclusive jurisdiction of the state.

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

(a) preventive measures

(b) repressive measures

(c) restitution measures

Italian legislation addressing climate change encompasses a mix of preventive, repressive, and restitution measures. Preventive measures focus on reducing emissions and adapting to climate change impacts, while repressive measures aim to deter harmful actions and ensure compliance with regulations. Restitution measures, often in the form of environmental remediation or compensation for damages, are also part of the legal framework (**Preventive Measures:** emission reduction targets; renewable energy promotion; energy efficiency; nature restoration. **Repressive Measures**: environmental crimes; compliance enforcement; insurance requirements; insurance requirements**. Restitution Measures:** environmental remediation; compensation for damages; ecological transition plan).

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

In Italy, individuals have legal avenues to challenge government inaction on climate change, based on constitutional provisions and their rights under international human rights law. These avenues include filing lawsuits in Italian courts and appealing to the European Court of Human Rights, and can be used to ensure that obligations to act on climate change are met.

↳ Is the legal pursuit of this right regulated?

The legal pursuit of the right to ensure that the obligation to adopt positive measures or avoid certain actions in relation to climate change is regulated, although it is a developing area of law. The 2022 reform of the Italian Constitution, specifically Article 9, explicitly recognizes the state's duty to protect the environment and biodiversity, including in the interest of future generations. This, coupled with the recognition of fundamental rights and the right to health (Article 32), provides a basis for arguing that the state has a duty to act to protect the climate.

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

The Italian legislation on compensation for environmental damage, based mainly on the 'polluter pays' principle, provides that anyone who causes damage to the environment is required to repair the damage caused and restore the previous situation, at their own expense. Liability for environmental damage may be of a civil or criminal nature, depending on the severity and circumstances of the damage.

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

Italy has regulations addressing ecological damage caused by climate change, although it lacks a specific dedicated climate law. These regulations include the Climate Decree, Budget Laws with funding for climate action, and the Interministerial Committee for Economic Planning and Sustainable Development. Italy also implements EU directives, like the European Emissions Trading System, and has a National Adaptation Plan to address climate change impacts. Italy's environmental policy is based on the principles of sustainable development, prevention, precaution and the "polluter pays", amongst others. These EU principles are codified in Legislative Decree no. 152/2006. They apply to public and private figures as well as lawmakers.

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

yes ☐X
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 X☐
Legal entity under public law ☐
Other organisational unit ☐×

The allocation of public responsibilities in the field of climate change is subject to regulation. The Italian government, parliament, and related bodies are responsible for climate-related regulations, but regional and local governments also play an increasingly important role. The Italian Constitution was amended to include sustainable development, and the country has laws and regulations concerning environmental protection, including climate.

↳ 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 ☐

Technical surveys and assessments are carried out by technical organisations, such as the Institute for Environmental Protection and Research **(** "ISPRA"), established in 2008, which provides back-up for the Ministry of Environment and Energy Security and coordinates the regional and provincial environment agencies.

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

ISPRA is a public research body, subject to the vigilance of the Ministry for Environment and Energy Security. It operates with inherent resources, equipment, and personnel, fulfilling duties inherited from the ex Agency for Environmental Protection and Technical Services. ISPRA's composition and operations are designed to ensure independence and scientific rigor.

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

ISPRA performs technical functions as well as scientific research in the environmental sector according to more than 80 environmental laws, in network with 21 local environmental agencies and provides technical and scientific support for protection policies.

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

The Italian legal system does not generally require prior consultation with a court or other independent body when adopting regulations concerning climate change. While the Italian legal system emphasizes environmental protection, including in the face of climate change, specific provisions for pre-regulatory consultations are not a standard practice. While courts can review the legality of climate change regulations, they typically do so after the regulations have been enacted, rather than before. This review often focuses on whether the regulations violate constitutional principles or are inconsistent with EU law.

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

The Italian legal system provides for public participation in the development of climate action plans and legislation. This participation takes various forms, including access to information, consultation processes, and opportunities to express opinions and provide input. Italy engages in consultation processes to update the National Energy and Climate Plan (NECP), which is a ten-year integrated document mandated by the European Union. These consultations allow for the public to provide input and feedback on the plan's development and implementation.

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

Access to environmental information is guaranteed within the Italian legal system. This right is protected by both international and national legislation, with public administrations having a duty to make such information public. The principle is enshrined in laws like Law

no. 349/1986 and the implementation of Directive 2003/4/EC through Legislative Decree no. 195/2005.
The definition of environmental information is contained in Article 2 of L.D. 195/2005, which implemented Article 2 of Directive 2003/4 without any significant change. The relevant Italian case law on the access to information without having to prove an interest generally confirms a very broad interpretation of this provision, according to which the requesting person does not have to state an interest.

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.

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)?

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 ☐

actions for damages **X**☐

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 ☐**X**

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

Italian climate litigation is characterized by a focus on state liability for environmental damage and seeks both monetary compensation and restoration of the environment, with the Constitutional basis for environmental protection serving as a crucial legal foundation.

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

Seminars on climate change, also organized by the Study and Training Office of Administrative Justice, are becoming more and more frequent.

The most recent seminar, "Climate Protection through Law", was held in February 2025 in Venice, one of the cities most affected by climate change due to tidal phenomena and the negative effects of over tourism.

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?

In the Italian legal system, judicial review of laws and regulations is primarily an ultra vires review, focusing on the legality and constitutional validity of the law. While this is the main focus, the Constitutional Court can also exercise a full jurisdictional control in specific circumstances, particularly concerning the interpretation and application of the Constitution. In addition to constitutional review, there is also judicial review of administrative acts. This review is typically performed by administrative courts of first instance and the Council of State. These courts can review administrative actions for legality and proportionality, in some case but they do not have the power to declare laws unconstitutional.
They also have a full control in areas like antitrust law, where the Council of State is expected to exercise full jurisdiction over the decisions of the Italian Competition Authority.

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?

Currently, there are no specific procedural rules unique to climate change litigation in Italian court. The "Giusta Causa" case, which asks the Supreme Court to clarify the jurisdiction of Italian courts over climate claims, could set precedents that could shape future procedures. In May 2023, 12 Italian citizens and 2 associations filed a civil lawsuit against ENI, the Ministry of Economy and Finance (MEF) and Cassa Depositi e Prestiti S.p.A. (CDP) for their significant contribution to the climate crisis, the latter two entities in their capacity as shareholders exercising a dominant influence over ENI. The plaintiffs argue that the Italian gas and oil giant has knowingly caused damage, and will continue to cause both financial and non-financial damages as a result of its business activities. ENI,

CDP and MEF have claimed that national courts in Italy have no authority or jurisdiction to hear the case and rule on climate matters. For this reason, the plaintiffs of the 'Giusta Causa' case requested the Supreme Court of Cassation to clarify if courts in Italy have the authority to rule over climate change-related legal claims.

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.

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)?

The Italian legal system recognizes the actio popularis, both through case law and, to a lesser extent, through specific legislation. While not explicitly enshrined as a constitutional principle, the principle is upheld in practice and can be found in specific legal areas. Specific examples of the actio popularis in action can be found in environmental cases where citizens have sued to stop development projects that could harm the environment

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]?

In Italy, a legitimate interest for bringing an application before a court, and thus for the admissibility of an appeal, is generally defined as a direct and tangible interest in the outcome of the case. This means the applicant must demonstrate that they are directly affected by the decision being appealed and that the outcome of the case will have a real impact on their rights or interests. This applies to both individuals and legal persons, with some nuances depending on the type of claim and the specific legal context. In cases relating to climate change, vulnerable groups (e.g., communities living in flood-prone areas, those reliant on specific resources) may have a legitimate interest in challenging decisions that could negatively impact their well-being and livelihoods. They would need to demonstrate a direct and tangible link between the contested decision and the harm they are experiencing or likely to experience due to climate change.

- 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 Italian courts, the degree of specification required for a party to substantiate their interest in bringing a proceeding depends on the nature of the claim and the specific context of the

case. Generally, parties need to present sufficient facts and evidence to demonstrate a legitimate legal interest in the outcome of the case, even if they are not directly named in the original claim. This interest can be derived from their legal rights, duties, or the potential impact of the case on their rights or interests.

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

In climate change cases, the standard of proof required for allegations can vary, but generally requires establishing a causal link between the defendant's actions and the harm caused, often with a "high level of probability". This can involve using local attribution studies, reports from governmental bodies, and expert scientific evidence to connect climate change impacts to specific events.

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?

Climate change disputes before courts often fall into two primary categories: human rights claims and tort law claims based on the state's insufficient climate action. These cases frequently challenge the government's efforts to meet climate targets, arguing that inaction violates fundamental rights or causes harm under general tort provisions.

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

The main hurdle is proving a legally protected right or interest that has been violated by the alleged omission of climate policies.

- 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]? **NO**
- 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]?

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?

On 26 February 2024, the Civil Tribunal of Rome has rendered its decision in the A Sud v. Italy case, also dubbed by its promoters as Giudizio Universale (Last Judgment). The case was initiated by the Italian activist organization A Sud, which together with other associations and more than 180 individual claimants sued the Italian state before the Civil Court of Rome for its alleged failure to promote adequate climate policies to respond to the climate crisis. This claim was based on the obligations deriving from the UNFCCC and the Paris Agreement, some applicable EU provisions, articles 2 and 8 of the European Convention

on Human Rights (ECHR), and some provisions of the Italian Civil Code on non-contractual liability. The Tribunal held the case inadmissible. Its main argument was that the petitioners lacked a protected right or interest to found their claim, which is why the court held itself incompetent to judge on the merits of the case. In the view of the Tribunal, the Italian legal system lacks any protected right to the correct exercise of legislative power and therefore any legal position against which the Civil Tribunal could judge the adequacy of Italian climate policies.

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.

Council of State, no. 6943 of 2024. Case concerning the installation, in the dune area of Sabaudia, in the Circeo National Park, a Special Area of Conservation of Community Importance, of precarious structures and furnishings which are functional to the creation and development of tourist activities - capable of providing services to a multiplicity of seagoers. An activity is in conformity with Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 when the conservation objectives are violated, regardless of the type of activity carried out and whether or not there are construction works. Hence the need to submit to the prior impact assessment procedure all interventions not directly related and necessary to the maintenance of a satisfactory conservation status of the species and habitats present in the site, but potentially capable of having a significant impact on it.

- 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 annulment of an administrative act generally has retroactive effect, meaning the decision is deemed invalid from its inception. This ensures that any actions taken based on the annulled decision are treated as if they never occurred. However, Italian administrative law recognizes exceptions to this rule. In certain cases, the judge can limit the retroactive effect of an annulment decision to protect legitimate interests, especially those of third parties who acted in good faith and relied on the validity of the annulled decision.

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 the Italian legal system, judges use a combination of legal principles and expert opinions when dealing with disputes involving technical and scientific judgments. They rely on a formal process of evidence presentation, including expert testimonies and reports, and apply legal norms relevant to the specific field in question.
Council of State no. 4990 of 2019. The Council of State ruled the possibility for the administrative judge to directly ascertain the disputed facts and scrutinize the decision making process carried out by the public authority. However, the Council of State ruled that the judge (although on the outcome of "intrinsic" scrutiny) cannot always be entitled to substitute its own assessment of the facts to that of the public authority, when it comes to a complex evaluation on a questionable technical problem.

- 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]?

The judge has specific tools required to exercise the above mentioned control effectively and efficiently, such as appointment of experts, clarification from public bodies.

II.E.3. In the judicial review, how is the diversity and complexity of the factors contributing to the phenomenon of climate change 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 □ X 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 so-called 'Last Judgment' (in Italian Giudizio Universale) – i.e., the claim against the Italian Government supported by more than 200 activists – marked the beginning of climate change litigation in Italy. The Italian case Giudizio Universale - already mentioned in the reply to question II.E. - has finally been decided by the Court of first instance of Rome. In its judgment of 06.03.2024, the Court declared the claim as 'inadmissible', due to an absolute lack of jurisdiction of the court. Indeed, according to the Court ruling, the questions posed by the claimants – seeking to ascertain the responsibility of the State and to compel it to adopt all necessary initiatives to reduce national artificial co2-eq emissions by 92% by 2030 compared to 1990 levels, or to adopt another, higher or lower, measure to be determined during the proceedings – were clearly expressive of the function of 'political direction', consisting in determining the fundamental lines of development of the State's policy on the delicate and complex issue of climate change. Therefore, the Court ruled that the claimants' assertions were not justiciable by any Italian civil courts, at all. As for the subordinate request of the claimants – aimed at obtaining a modification of the Italian National Integrated Energy and Climate Plan (NECP) due to the failure to comply with the objectives set by the European legislator in the Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action – according to the Court opinion, this was a matter that could be challenged before the administrative courts, dealing with issues attributable to the exercise of public power.

- 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 Italian legal system, determining causality in ecological damage cases, particularly in the context of environmental law and the European Convention on Human Rights, requires demonstrating a clear and direct link between a specific event or action and the resulting environmental harm. This involves assessing the factual connection between the alleged

cause and the observed effect, considering both the chain of causation and the potential for other contributing factors.

Is monetary compensation recognised regarding compensation for non-material damage caused by ecological damage? yes □X

no □

Italian law recognizes monetary compensation for non-material damage caused by ecological damage. This is particularly true when the damage involves infringement of personal or constitutionally protected rights. While specific provisions exist, like Article 2059 of the Civil Code, jurisprudence also allows for compensation in cases where personal values are endangered

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

The "polluter pays" principle can be used to hold companies accountable for their emissions.

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 judicial protection in climate change cases are handled by assessing the need for immediate action to prevent irreparable harm, considering the urgency of the situation and the likelihood of success in the main case. Courts examine the plausibility of the claim, the potential harm, and the need for urgent measures, often focusing on the violation of human rights and the potential for irreversible environmental damage.

➥ Please mention the measures that the judge may order.

A judge can order various interim measures in cases related to climate change, aiming to protect human rights and prevent irreparable harm while the main case is pending. These include measures like preventing new harmful activities, securing assets, and ensuring necessary investigations.

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

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 an "enforcement action" which can be lodged within ten years starting from the "res iudicata". The administrative authority is compelled to enforce the judgements and therefore rectify the flawed administrative act in compliance with the reasons of the judgement of the Court. If the administrative body does not comply with the judgement, the claimant can lodge an "enforcement action" before the competent administrative Court, to

begin an "enforcement trial" (in Italian: "giudizio di ottemperanza") for the execution of the judgement, in which the judge operates with the powers of a "substantive" jurisdiction. In the enforcement trial the judge has the power not only to order the administration to comply within a deadline, but also to substitute the administrative body (and adopt or rectify an administrative decision) or to appoint an auxiliary of his (the "commissario ad acta"), who shall act in compliance with the judicial instructions and in place of the administration, taking any measure required to enforce the judgement. In the Italian judiciary praxis the second option (i.e., the appointment of an auxiliary) is more common than the first one (i.e., the direct substitution of the judge to the administration). It must be noted that the enforcement action can be lodged in relation to any judgement (rendered by a civil or an administrative Court) which ascertains that an administrative decision is flawed or which directly annuls an administrative decision

➥ 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?

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?

Council of State no. 3945 of 2024. Case concerning the failure of the Region of Lazio to comply with its obligation to adopt measures to prevent the deterioration of natural habitats in Lake Vico, a Special Area of Conservation of European Interest.
The Council of State, reviewing the decision of the first instance, upheld the appeal of the Italian League for the Protection of Birds. In the ruling Council of State confirmed that the "appropriate measures" referred to in paragraph 6.2 of the Directive, although largely discretionary, must be "effective", they must pursue and achieve a "result" in order to prevent the deterioration of SCI/SAC sites. Moreover, the Council of State recognised the full availability of the remedy of execution, opening up scenarios still to be explored as to the ability of the administrative judge, through the Commissioner ad acta, to intervene in a discretionary sphere such as that of the most appropriate concrete choice among the possible ones in order to achieve the final result provided for by a law for the protection of the environment and the climate.

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

See previous answer

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

In Italy, a key legal basis for addressing climate change in case law is the link between climate change and the protection of human rights, as recognized by the European Court of Human Rights (ECtHR). Specifically, the ECtHR's Verein KlimaSeniorinnen Schweiz and Others v. Switzerland judgment established that states have a duty to protect human rights from the effects of climate change, which provides a strong foundation for climate litigation in Italy. Additionally, the Italian Constitution, particularly the 2022 amendment to Article 9, which explicitly mentions the protection of the environment and biodiversity, also contributes to the 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]?

See previous answer

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 legal basis for climate change case law in Italy rests on the intersection of human rights, environmental protection, and international obligations. The ECtHR judgment, the Italian Constitution, and international agreements like the Paris Agreement provide a solid foundation for addressing climate change through the legal system.

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

No

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

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]

Judgment released by the European Court of Human Rights (ECtHR) on 9 April 2024, in the *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* case will influence climate litigation in Europe and can influence the the appeal in *A Sud v. Italy*:

The existence of a link between climate change and human rights and the two-tier margin of appreciation doctrine inaugurated by the ECtHR make the inadmissibility of the claim in the *A Sud v. Italy* decision highly questionable.

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?

We have no documentation relating to requests for a preliminary ruling on the specific climate change issues. The most frequent cases concern environmental law. Significant in this regard is the judgment of the Court of Justice of the European Union (Grand Chamber) of 9 March 2010 in Joined Cases C-379/08 and C-380/08 concerning the requests for a preliminary ruling made to the Court by the Tribunale amministrativo

regionale della Sicilia (Regional Administrative Court, Sicily) by decisions of 5 and 9 June 2008.

By the two main questions, the Tribunale amministrativo regionale della Sicilia asks, in essence, whether Articles 7 and 11(4) of Directive 2004/35, in conjunction with Annex II to the directive, permit the competent authority to impose on its own initiative a substantial change in measures for remedying environmental damage which were chosen at the conclusion of a procedure carried out on a consultative basis with the operators concerned and which have been implemented or begun to be put into effect, without that authority having carried out any assessment, before imposing those measures, of the costs and advantages of the changes contemplated from an economic, environmental or health point of view.

The Court (Grand Chamber) whilst ruling that the relevant EC law must be interpreted as permitting the competent authority to alter substantially measures for remedying environmental damage - which were chosen at the conclusion of a procedure carried out on a consultative basis with the operators concerned and which have already been implemented or begun to be put into effect - states that authority is required to:

- give the operators on whom such measures are imposed the opportunity to be heard, except where the urgency of the environmental situation requires immediate action;
- invite the persons on whose land those measures are to be carried out to submit their observations and to take them into account; and
- take account of the criteria set out in Section 1.3.1. of Annex II to Directive 2004/35 and state in its decision the grounds on which its choice is based, and, where appropriate, the grounds which justify the fact that there was no need for a detailed examination in the light of those criteria or that it was not possible to carry out such an examination due, for example, to the urgency of the environmental situation.

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 □X

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 □X

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.) □X

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 □

The issue of overtourism has been a significant topic of discussion, leading to various measures being implemented, including restrictions on short-term rentals, bans on certain tourist activities, and regulations to manage tourist flows.

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?

Italy has implemented measures: a) to regulate short-term rentals like Airbnb, requiring licenses and registration to better manage their impact on neighborhoods and address concerns about displacement of residents; b) to reduce environmental impact and protect natural resources (i.e., limited access with reservations to the Path of Love in Cinque Terre) ; c) to introduce bans on loud speakers to reduce noise pollution and disruption from tourists (i.e., ban on key boxes used by short-term rental owners in Florence); d) to reduce congestion through traffic management plan, encouraging public transportation, walking, and cycling (i.e., new rolling rules in the Amalfi Coast); e) to protect the cultural heritage (i.e., restrictions on cruise ship access to Venice).

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]?

A very important guideline is the Research "Overtourism: impact and possible policy responses", made by European Parliament and addressed to the complex phenomenon of overtourism in the EU.
By focusing on a set of case studies, the study reports on overtourism indicators, discusses management approaches implemented within different destinations and assesses policy responses. It concludes that a common set of indicators cannot be defined because of the complex causes and effects of overtourism. Avoiding overtourism requires custom-made policies in cooperation between destinations' stakeholders and policymakers.

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?

Italian constitutional principles can provide a basis for addressing overtourism. Specifically, provisions related to the protection of the environment (Art. 9), the right to housing (Art. 42), and the preservation of cultural heritage (Art. 9) are relevant. Additionally, the principle of sustainable development (Art. 41) can be used to justify regulations aimed at balancing economic growth with environmental and social considerations. Italian constitutional principles provide a strong foundation for addressing the multifaceted challenges of overtourism by prioritizing environmental protection, housing rights, cultural heritage preservation, and sustainable development. Regulations aimed at managing tourism in a responsible and sustainable manner can be justified under these

principles, ensuring that the benefits of tourism are shared by both residents and visitors while minimizing negative impacts.

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)

The Italian Tourism Code, established by Legislative Decree 79/2011, has as its main objective the promotion and protection of the tourism market. The Italian Tourism Code, while not specifically aimed at combating overtourism, can provide the tools for a more sustainable management of tourism by regulating the influx of tourists and encouraging tourism practices that are more respectful of the environment and local culture.

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

yes ☐X

no ☐

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

Italy has been actively implementing various action plans and measures to address the challenges posed by overtourism, including limitations on tourist numbers, entry fees, and stricter regulations on accommodation. These efforts are primarily focused on preserving the cultural and environmental integrity of popular destinations like Rome, Venice, Florence, and Sardinia, while also improving the quality of the tourist experience.
Additionally, the National Risk Assessment, part of the Civil Protection Code, addresses risks related to increased population density, which includes tourism.

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

Tourism planning operates at multiple levels, with the central government setting overall policy and promoting Italian tourism internationally, while regions have considerable autonomy in planning and implementing specific tourism initiatives. This decentralization can sometimes lead to inconsistencies in planning and implementation across different regions.

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?

☐

While there is not a single piece of legislation specifically addressing "hypertourism," there are regulations and policies that distribute responsibilities for managing tourism, including measures to mitigate its potential negative impacts. These regulations involve national, regional, and municipal authorities.

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

The Ministry of Tourism sets general policies and regulations for tourism development and promotion. They also establish the framework for national tourism legislation, such as the Tourism Code, which governs tourist packages and services.
Regional authorities play a crucial role in implementing national policies, setting specific regional tourism strategies, and managing tourism-related activities within their jurisdiction. They are responsible for promoting tourism, regulating standards, and ensuring the quality of tourist accommodations.
Municipalities, particularly in high-tourism areas, are responsible for managing the local impact of tourism, including regulating tourist accommodation (e.g., hotels, B&Bs, holiday rentals) and implementing measures to address overcrowding and potential negative effects. They may also implement measures like tourist taxes to fund infrastructure and services.

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

yes □X
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 □X
no □

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

yes □X
no □

The main arguments are:
- the balance between the economic benefits of tourism (increased revenue, job creation) and the negative consequences of overcrowding, rising costs of living, and environmental degradation;
- the cultural impact of over tourism that can dilute the authentic character of a place and negatively affect the lives of residents;
- the measures for curbing over tourism and for preventing the depopulation in historic city centres.

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

Constitutional Court no. 94/2024. Experience has shown that the proliferation of short-term leases and the consequent increase in tourist flows can lead to the urban transformation of entire districts and centres, with significant repercussions on the management of local public services, the regulation of which falls within the competence of the regional legislator. It follows that it is within the competence of the regional legislator to intervene in the intended use of buildings, in accordance with the principles laid down by the national legislator in Article 23 ter of Presidential Decree no. 380 of 6 June 2001". The intended use of the building determines the urban load, linked to the need for facilities and public spaces, and affects the orderly planning of the territory.
Administrative Court of Bolzano no. 281/ 2024. Case concerning the refusal of authorisation for the activity of 'renting flats for holidays' in application of provincial law n. 10/2022, which imposes a restriction on private rental for tourist in order to protect the habitat of the resident

population and to achieve a quantitative development of tourist activities compatible with the available resources.
Dismissing the appeal the judge states that the limitation was compatible
- with European law, which allows restrictive property measures, if they are not applied in a discriminatory manner, for the maintenance of a stable resident population and an autonomous economic activity other than tourism (EUCJ 1 June 1999 C-302/97; EUCJ 7 September 2022 C-391/20)
- with Article 41 of the Constitution, which sets limits to the principle of freedom of private economic initiative, which may not be exercised in conflict with social utility or in such a way as to damage health and the environment.

Administrative Court of Emilia Romagna, no. 308/2025
Case concerning refusal to grant planning permission for houses and apartments for short-term rental for tourist use.
The judge considered the choice, made by Municipal building regulations, to require a minimum surface area for housing units intended for tourist accommodation in the historic city reasonable in relation to the goal of placing on the market small housing units for categories that would otherwise be excluded from living there (such as singles, students and non-resident workers). The presence of a permanent resident population with needs other than tourists is also valued as a factor that allows for the continuity of craft activities and personal services, avoiding the proliferation only of restaurants, cafés or shops selling only products for tourists.

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?	X □
-litigations concerning compensation for damage caused by acts or omissions of the administration?	X □
-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'?	X□
-that have recognised a right of individuals to ensure compliance with this obligation?	X□

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

Council of State ruling n. 3258/2025. Case concerning the approval by the Municipality of Pisa of projects for the restoration of paths along the city walls, challenged by the owners of a neighbouring property. The Court annulled the act because the administration had not properly balanced the conflicting interests by failing to adopt measures to prevent overlooking and to assess the impact on tranquillity and privacy.

The Council of State highlighted the phenomenon of so-called "over tourism", subject of growing interest on the part of national and international institutions (UNWTO - United Nations World Tourism Organisation and Association of the Councils of State and Supreme Administrative Jurisdictions of the EU).
Dealing with the endemic and physiological phenomenon of over tourism requires a new type of balancing of interests. Three new profiles come to the fore: a) the preservation of the tourist resource; b) the protection of citizens and businesses located in areas subject to tourist attraction; c) the macro impact on the territory (e.g. housing emergencies resulting from the predominant use of property for short-term rentals to tourists).
This balancing of interests must lead to the analysis and adoption of new administrative and regulatory instruments.

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 ☐X

no ☐

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

Council of State, no. 6943 of 2024. Case concerning the installation, in the dune area of Sabaudia, in the Circeo National Park, a Special Area of Conservation of Community Importance, of precarious structures and furnishings which are functional to the creation and development of tourist activities - capable of providing services to a multiplicity of sea-goers. An activity is in conformity with Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 when the conservation objectives are violated, regardless of the type of activity carried out and whether or not there are construction works. Hence the need to submit to the prior impact assessment procedure all interventions not directly related and necessary to the maintenance of a satisfactory conservation status of the species and habitats present in the site, but potentially capable of having a significant impact on it.