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

Athens, 10-11 November 2025

Climate change-crisis / Overtourism
Questionnaire

Introduction

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

.....

Part A: Climate change-crisis

I. The regulatory framework

I.A. Supranational rules

I.A.1. Rules of international law

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

Kyoto Protocol ■

Paris Accords ■

Aarhus Convention (procedural matters) ■

Other (please specify) ■

Romania is one of the signatory countries of the United Nations Framework Convention on Climate Change, ratified by Law no. 24/1994.

Romania ratified the Doha Amendment to the Kyoto Protocol operationalizing the second commitment period by Law No. 251/2015 for the acceptance of the Doha Amendment.

➥ 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)

Co-funded by the European Union

With regard to the procedure for incorporating international rules into the legal system, Article 11 of the Constitution contains the *"general regime* " regarding treaties, stating the following:

i) Paragraph (1), which states that *„The Romanian State pledges to fulfil as such and in good faith its obligations as deriving from the treaties it is a party to* " embodies the *pacta sunt servanda* principle of international law. The legal effect of this provision, interpreted in accordance with the case-law of the Constitutional Court, is that of a superiority clause which ensures that treaties take precedence over domestic laws in the event of a conflict of rules;

ii) Paragraph (2), according to which *„Treaties ratified by Parliament, according to the law, are part of national law"*, contains an automatic incorporation clause;

iii) Paragraph (3) establishes an *ex ante* filter aimed at ensuring that incompatibilities between the Constitution and treaties to which Romania *is to* become a party are avoided, stating that "*If a treaty Romania is to become a party to comprises provisions contrary to the Constitution, its ratification shall only take place after the revision of the Constitution"*.

With regard to the legislation subsequent to the Constitution, the terms used to designate the international treaty are laid down in the Law no. 590/2003 regarding the treaties. This Act defines a treaty as a *legal act, irrespective of its name or form, which sets down in writing an agreement at state, governmental or departmental level, having the purpose of creating, modifying or extinguishing legal or other rights and obligations, governed by public international law and embodied in a single instrument or in two or more related instruments.*

Therefore, the notion of treaty referred to in the constitutional text of Art. 11 para. (2) is used *lato sensu*, designating various categories of international instruments used in international practice for the conclusion of agreements between states, referring to treaties and international acts, regardless of their name (pacts, conventions, agreements etc.), concluded on behalf of the Romanian State and ratified by Parliament.

The main provisions governing the domestic procedures to be followed at each stage of the conclusion of treaties, namely those relating to the application, amendment and termination of the validity of treaties to which Romania becomes a party, are also contained in Law no. 590/2003.

This normative act contains express provisions on the internal procedures to be followed and the competences of the authorities involved in each stage of the conclusion of treaties, namely negotiation, signing, expression of Romania's consent to become party to a treaty, entry into force of the treaties for the Romanian party.

Returning to the submitted question, according to the Constitution, the Romanian State expresses its consent to be bound by treaties following a ratification law which is published in the Official Journal and represents the source of law applicable in the domestic legal order, the dualistic concept of international and domestic relations being enshrined.

In order to transform a consensual act of public international law into a normative act of domestic law, the following conditions must be met: a) the treaty must be ratified by Parliament; b) the treaty must be ratified according to the law; c) the treaty must be lawful.

As regards the condition of ratification of the treaty by the Parliament, according to the provisions of Article 18[1] of Law no. 590/2003, ratification is a form of expression of the consent of the Romanian State to become party to a treaty and constitutes one of the stages of the procedure for the conclusion of the treaty, regulated by Chapter II of the same normative act.

Also, according to the provisions of Art. 19 para. (1) of Law no. 590/2003, state treaties and treaties at the governmental level that refer to political and military collaboration, those that make it necessary to adopt new laws or revise the laws in force, as well as those that involve a political or financial commitment, are subject to ratification by law, but only if the latter imply additional burdens at the budget level or refer to the state territory or the status of persons, the rights and freedoms of citizens or participation in international organizations, as well as those that expressly provide for ratification by the Parliament.

[1] Art. 18 of Law no. 590/2003: *"(1) The expression of consent to become party to the treaty shall be made, as the case may be, by ratification, approval, accession or acceptance. (1), the expression of consent to become party to the treaty may be effected by signature of the treaty in question.".*

In extraordinary situations, Article 19 para. (3) of the same normative act provides that a number of treaties, the regulation of which cannot be postponed, may be ratified by emergency ordinances of the Government, provided that the urgency of ratification is duly justified.
Concerning the condition of ratification according to the law, the national law contains a series of rules regarding the application of treaties, which concern the establishment of the obligation to apply and respect their provisions by all state authorities, by Romanian natural and legal persons or legal entities residing in Romania, the impossibility to supplement, amend or withdraw treaties by subsequent domestic legislation and the impossibility to invoke national law to justify the non-execution of treaties in force.
As for the condition of the lawfulness of the treaty, this relates both to the elements of the treaty (i.e. the agreement of will must be externalized, the principle of the autonomy of will of the parties must apply, the parties must be subjects of international law with international personality and *ius tractati - the* power to conclude treaties, etc.) and to its subject matter (i.e. compliance with the limits of the subject matter imposed by the international rules in the field).
In conclusion, international treaties must be subject to the ratification procedure in order to be applied in domestic law.

I.A.2. EU rules

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

- Regulation (EU) 2021/1119 of the European Parliament and of the Council of June 30, 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) nos. 401/2009 and (EU) 2018/1999 ("European Climate Act");
- Directive 2003/87/EC of the European Parliament and of the Council of October 13, 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (implemented by Government Decision no. 780/2006 establishing a scheme for greenhouse gas emission allowance trading);
- Regulation (EU) 2018/842 of the European Parliament and of the Council of May 30, 2018 on mandatory annual reductions of greenhouse gas emissions by Member States for the period 2021-2030 to contribute to climate action to meet their commitments under the Paris Agreement and amending Regulation (EU) 525/2013;
- Regulation (EU) 2018/841 of the European Parliament and of the Council on the inclusion of greenhouse gas emissions and removals from land use, land-use change and forestry activities in the 2030 climate and energy policy framework and amending Regulation 525/2013/EU and Decision 529/2013/EU;
- Regulation (EU) 2018/1999 of the European Parliament and of the Council of December 11, 2018 on the governance of the energy union and climate action, amending Regulations (EC) 663/2009 and (EC) 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) 525/2013 of the European Parliament and of the Council;
- Regulation (EU) 2015/757 of the European Parliament and of the Council of April 29, 2015 on monitoring, reporting and verification of carbon dioxide emissions from maritime transport and amending Directive 2009/16/EC;
- Regulation (EU) 2019/631 of the European Parliament and of the Council of April 17, 2019 setting CO2 emission performance standards for new passenger cars and new light commercial vehicles and repealing Regulations (EC) 443/2009 and (EU) 510/2011 (reform);
- Directive (EU) 2016/2284 of the European Parliament and of the Council of December 14, 2016 on national emission reductions of certain atmospheric pollutants, amending Directive 2003/35/EC and

repealing Directive 2001/81/EC (transposed by Law no. 293/2018 on national emission reductions of certain atmospheric pollutants);

- Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programs on the environment (transposed by Government Decision no. 1076/2004 on establishing the procedure for carrying out the environmental assessment of plans and programs);
- Directive no. 2009/73/EC of the European Parliament and of the Council of July 13, 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (transposed by Law no. 123/2012 on electricity and natural gas).

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

Yes.

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

- Closed infringement procedure (INFR(2009)2273) on climate change - defective application - lack of important information in Member States' 2009 biennial reports on their greenhouse gas emissions;
- Closed infringement procedure (INFR(2010)0181) concerning Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community;
- Closed infringement procedure (INFR(2010)0275) concerning Directive 2008/101/EC of the European Parliament and of the Council of November 19, 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community;
- Closed infringement procedure (INFR(2011)2111) concerning Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide;
- Closed infringement procedure (INFR(2012)0306) concerning Directive 2009/30/EC on fuel quality;
- Closed infringement procedure (INFR(2012)0401) on the Fuel Quality Directive 2011/63/EU;
- Closed infringement procedure (INFR(2013)0070) on Directive 2009/29/EC amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme (ETS);
- Closed infringement procedure (INFR(2015)0336) for non-communication: Directive 2014/77/ of June 10, 2014 amending Annexes I and II to Directive 98/70/EC relating to the quality of petrol and diesel fuels;
- Closed infringement procedure (INFR(2017)0273) on Council Directive (EU) 2015/652 of April 20, 2015 laying down calculation methods and reporting requirements under Directive 98/70/EC relating to the quality of petrol and diesel fuels;
- Closed infringement procedure (INFR(2019)0340) for non-communication: Directive (EU) 2018/410 amending Directive 2003/87/EC for the fourth phase of the EU ETS;
- Closed infringement procedure (INFR(2019)2191) for failure to comply with the notification obligations under Regulation (EU) No 517/2014 on fluorinated greenhouse gases;
- Closed infringement procedure (INFR(2022)2090) for Romania's failure to communicate its long-term strategy under the Energy Union Governance and Climate Action Regulation - closed procedure;

- Infringement procedure (INFR(2022)2090) for failure to transpose Directive (EU) 2023/958 on Emissions Trading Scheme (ETS) in the aviation sector - formal notice;
- Infringement procedure (INFR(2024)0127) for failure to transpose Directive (EU) 2023/959 on Emissions Trading Scheme (ETS) - first deadline for transposition by Romania - formal notice;
- Infringement procedure (INFR(2024)0201) for Romania's failure to transpose Directive (EU) 2023/959 on Emissions Trading Scheme (ETS) - second transposition deadline - formal notice.

I.B. Rules of national law

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

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

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

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

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

The right to a healthy environment is enshrined in art. 35 of the Romanian Constitution, entitled *"The Right to a Healthy Environment"*, according to which *„(1) The State recognizes the right of every person to a healthy and ecologically balanced environment. (2) The State shall provide the legislative framework for the exercise of this right. (3) Natural and legal persons have the duty to protect and improve the environment."*

The phrase *„healthy and ecologically balanced environment"* used in the above-mentioned constitutional text refers to a certain quality of the environment, and the preservation of a healthy environment means, in reality, the preservation and improvement of living conditions, the maintenance of ecological balance, the maintenance of ecosystems of which human beings are an integral part.

This right belongs to the category of *„solidarity"* rights, and its meaning is quite complex, since it refers to the responsibility of the State and of all natural and legal persons to protect and preserve the environment and its resources, both for the present and for the future.

By a systematic interpretation of the constitutional texts, this obligation is correlated with the specific obligation for the holders of property rights, laid down in Art. 44 para. (7) of the Romanian Constitution, according to which *„The right of property compels to the observance of duties relating to environmental protection and ensurance of neighbourliness, as well as of other duties incumbent upon the owner, in accordance with the law or custom"*, and is also a natural continuation of the constitutional provisions on the protection of health.

By way of analogy with this right, the right to information on the state of the environment and access to justice in the event of violation of the right to a healthy environment, as well as the *„rights of future generations",* was recognized for the public, based on the idea of preserving the natural heritage for the present and for the future.

The State's obligation to ensure the restoration and protection of the environment and the maintenance of the ecological balance is also emphasized in Article 135 para. (2)(e) of the Constitution, according to which *„The State shall ensure: e) the restoration and protection of the environment and the maintenance of ecological balance",* as a sign of the particular importance which the constituent legislature has attached to preserving the quality of the environment. Therefore, even when the legislature adopts legislative measures in favor of economic interests, it is required to legislate taking into account the prevalence of environmental protection and the maintenance of ecological balance.

In addition to the right to a healthy environment regulated by Article 35 cited above, the Romanian Constitution also establishes other related rights, such as:

- *the right to life and to physical and mental integrity*, as provided for in Article 22. Even if this article does not directly refer to environmental protection, it could not be respected without a healthy environment, as pollution could lead to damage to physical and mental health;
- *the right to the protection of health*, as provided for in Article 34, according to which the State is obliged to take measures to ensure public hygiene and public health;
- *the protection of children and young people*, as provided for in Article 39, according to which children and young people shall enjoy special protection and assistance in exercising their rights;

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

Yes □
No ■

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

-

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.)?

Specific climate change plans are covered at both national[2] and regional level[3].

- 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?

Climate change plans, being strategic documents, define the guidelines for policies to be followed and do not contain 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?

According to Art. 35 para. (2) of the Romanian Constitution, the State provides the legislative framework for exercising the right to a healthy and ecologically balanced environment.

Government Emergency Ordinance (O.U.G.) no. 195/2005 on *the protection of the environment provides in art. 6 that the protection of the environment is the obligation and responsibility of the central and local public administration authorities, as well as of all natural and legal persons.*

[2] See:
Government Decision no. 1076/2021 approving the *National Integrated Energy and Climate Change Plan 2021-2030*;
Government Decision no. 1010/2024 for the approval of the *National Strategy on Adaptation to Climate Change for the period 2024-2030, with a 2050 perspective;*
Government Decision no. 1215/2023 approving *Romania's long-term strategy for reducing greenhouse gas emissions - Neutral Romania in 2050;*
Government Decision no. 1172/2022 approving the *National Strategy on Circular Economy;*
Government Decision no. 1227/2022 approving the *National Forest Strategy 2030;*
Government Decision no. 10/2023 amending and supplementing the *National Long-Term Renovation Strategy to support the renovation of the national stock of residential and non-residential buildings, both public and private, and its gradual transformation into a highly energy-efficient and decarbonized building stock by 2050, approved by Government Decision no. 1034/2020;*
Government Decision no. 59/2023 approving the *National Strategy on Environmental Education and Climate Change 2023-2030;*
Government Decision no. 249/2025 on the completion of the Annex to Government Decision no. 59/2023 for the approval of the *National Strategy on Environmental Education and Climate Change 2023-2030, which approved the Action Plan for the implementation of the National Strategy on Environmental Education and Climate Change 2023-2030;*
National Strategic Plan 2023-2027 (approved by European Commission Implementing Decision No. C (2022) 8.783 on December 07, 2022);
Romania's *National Resilience and Recovery Plan (PNRR),* whose assessment was approved by the European Commission on September 27, 2021.

[3] See:
Regional Program (RP) South-Muntenia 2021-2027;
North-East Regional Development Plan 2021-2027;
North-West Regional Development Plan 2021-2027.

Chapter X of O.U.G. no. 195/2005, with the marginal title *Protection of the atmosphere, climate change, environmental noise management, prevention and control of olfactory discomfort*, contains a series of regulations on the adoption of measures in relation to climate change.

Thus, according to art. 59 of this normative act, *„The Central Public Authority for Environmental Protection has the following attributions and responsibilities: (a) develops national policy and coordinates actions at national and local level on atmospheric protection, climate change, and the protection of the population from levels of exposure to environmental noise that may have adverse effects on human health, in accordance with specific European and international policies; (b) develops, promotes and updates the National Strategy on Atmospheric Protection and the National Action Plan on Atmospheric Protection; c) develops, promotes and, as appropriate, updates the National Program for the reduction of emissions of sulphur dioxide, nitrogen oxides and dust from large combustion plants; d) coordinates the development of the National Program for the progressive reduction of emissions of sulphur dioxide, nitrogen oxides, volatile organic compounds and ammonia; e) develops, promotes and updates the National Strategy on Climate Change, the National Action Plan on Climate Change f) ensures the integration of policies for reducing greenhouse gas emissions and adaptation to the effects of climate change into sectoral strategies; g) administers the national accounts in the European Union greenhouse gas emissions registry; h) administers the national system for estimating the level of anthropogenic greenhouse gas emissions resulting from sources or sequestration of carbon dioxide covered by the Kyoto Protocol i) coordinates the implementation of the flexible mechanisms provided for in the Kyoto Protocol to the United Nations Framework Convention on Climate Change; j) approves and promotes the National Action Plan for the reduction of noise levels; k) organizes the monitoring of air quality throughout the country; l) establishes, where appropriate, through regulatory acts, more restrictive emission limit values and the measures necessary to comply with national emission ceilings, critical loads and levels, respectively m) approve, together with the central public health authority, methodologies on the prevention and reduction of olfactory discomfort".*

Also, Law no. 331/2024 on the Forestry Code, in art. 6, g) stipulates as a principle of sustainable forest management the *strengthening of forest resilience and increasing their contribution to limiting the effects of climate change*, and in art. 81 and art. 82 are established measures in this regard.

At the same time, according to Government Decision (H.G.) no. 43/2020, the Ministry of Environment, Water and Forests is organized as a specialized body of the central public administration, with legal personality, subordinated to the Government, implementing national policy in the fields of environment, climate change, water management and forestry, with regard to all sectors and subsectors that it administers.

Thus, according to art. 5, i) of the H.G. no. 43/2020, the Ministry of Environment, Waters and Forests exercises powers related to *supporting the transition of the Romanian economy towards a green economy and circular economy, resilience to the effects of climate change, through sustainable economic growth policies with low greenhouse gas emissions and efficient use of natural resources.*

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

(a) preventive measures

(b) repressive measures

(c) restitution measures

In principle, the measures adopted are preventive measures and aim to adapt to and mitigate the impacts of climate change.

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

According to art. 5 of Government Emergency Ordinance (O.U.G.) no. 195/2005, *„The State recognizes everyone's right to a healthy and ecologically balanced environment, guaranteeing to this end: a) access to environmental information, subject to the conditions of confidentiality provided for by the legislation in force; b) the right of association in environmental protection organizations; c) the right to be consulted in the decision-making process concerning the development of environmental policy and legislation, the issuance of regulatory acts in the field, the elaboration of plans and programmes; d) the right to address, directly or through environmental protection organizations, administrative and/or judicial authorities, as appropriate, in environmental matters, regardless of whether or not damage has been caused; e) the right to compensation for the damage suffered".*

Also, according to Art. 20 para. (1) of O.U.G. no. 195/2005, the competent authority for environmental protection, together with the other central and local public administration authorities, as appropriate, shall ensure information, public participation in decisions on specific activities and access to justice, in accordance with the provisions of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on June 25, 1998, ratified by Romania by Law no. 86/2000.

Thus, individuals can seek compliance with the obligations of the state and/or other public sector bodies to take positive measures or avoid certain actions in relation to climate change by obtaining environmental information[4], joining environmental organizations, participating in decision-making on specific activities, environmental policies and legislation[5], etc., addressing administrative and/or judicial authorities, or seeking compensation for the damage suffered.

At the same time, according to art. 5 lit. ș) of Government Decision no. 43/2020, the Ministry of the Environment, Waters and Forests exercises powers to ensure transparency and public access to environmental information, consultation and participation in decision-making on its areas of activity, and according to Art. VI, of the same normative act, *„in exercising the function of informing and raising public awareness in its fields of activity: 1. ensures public information and consultation, in accordance with the legal provisions in force, in promoting normative and regulatory acts in its fields of activity, at national, European and international level; 2. makes available to the public information on environmental assessment for plans/programmes, environmental impact assessment for projects, adequate assessment for plans/programmes/projects, authorization of activities with environmental impact and environmental information; 3. makes available to the public general information and documents of public interest in its fields of activity; 4. organizes public information and awareness*

[4] Art. 1 of Government Decision no. 878/2005 on public access to environmental information: *„(1) This decision ensures the right of access to environmental information held by or for public authorities and establishes the conditions, basic terms and modalities for exercising this right. (2) Environmental information shall be progressively disseminated and made available to the public with a view to achieving the widest possible and systematic accessibility and dissemination of that information. In particular, the use of electronic technology and/or computerized telecommunications shall be promoted with a view to achieving the aim pursued".*

[5] Art. 1 of the Government Decision no. 564/2006 on the framework for public participation in the elaboration of certain plans and programs relating to the environment: *„This decision aims to implement the obligations arising from the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998, ratified by Law no. 86/2000, by establishing the framework for public participation in drawing up certain plans and programs relating to the environment".*

campaigns regarding the promotion and implementation of policies, strategies and legislation in its fields of competence, in order to raise public awareness and facilitate understanding and compliance".

➥ Is the legal pursuit of this right regulated?

The domestic legislation provides for the right of access to environmental information held by or for public authorities, through the Government Decision no. 878/2005 on public access to environmental information, as well as the right of individuals to participate in the elaboration of certain plans and programs relating to the environment, through the Government Decision no. 564/2006.

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

As previously stated, according to the provisions of art. 5 letter d) of the Government Ordinance no. 195/2005, *„The State recognizes the right of every person to a healthy and ecologically balanced environment, guaranteeing to this end: d) the right to address, directly or through environmental protection organizations, administrative and/or judicial authorities, as appropriate, in environmental matters, regardless of whether or not damage has been caused".*

Also, according to the provisions of Art. 20 para. (2) of the same normative act, *„Informing the public during the procedures for the development of plans, programs, projects and activities shall be carried out in accordance with the specific legislation in force".*

By way of example, we point out that according to the provisions of Art. 3 para. (1) of the Procedure for Issuing the Integrated Environmental Authorization of 17.03.2003, approved by Order of the Minister of Agriculture, Forestry, Water and Environment no. 818/2003, *„The conditions and procedure for issuing the integrated environmental authorization shall ensure the information and participation of the public and all authorities involved in accordance with the legislation in force",* and according to the provisions of Art. 38, d) and e), *„The competent authority for environmental protection shall have the following duties and responsibilities: d) provide the necessary framework for free access to information and public participation in the procedure for issuing the integrated environmental permit, in order to ensure that any application for a permit for a new installation or for a substantial change to an existing installation is accessible to the public for the expression of opinions, prior to the decision of the competent authority; e) make available to the public the results of the monitoring of emissions into the environment and the compliance with the permit conditions laid down and held by the competent authority".*

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

In Romania, there are no specific regulations for environmental damage caused by climate change, but compensation has been granted to people affected by such damage, the general regulatory framework of environmental liability, based on the *„polluter pays"* principle, in order to prevent and repair environmental damage being achieved through Government Ordinance no. 68/2007.
In addition, although there are no specific regulations for environmental damage caused by climate change, by Government Emergency Ordinance no. 120/2024 on the establishment of a state aid scheme in the form of a grant to agricultural producers for agricultural crops affected by the pedological drought between September 2023 and August 2024, compensation was granted to agricultural producers who cultivated areas with agricultural crops that were calamitously affected by the pedological drought in agriculture.

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

Yes ■
No □

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

Special Ministry ■
Legal entity under public law ■
Other organisational unit □

According to art. 59 of the Government Emergency Ordinance no. 195/2005, *„(1) The Central Public Authority for Environmental Protection has the following attributions and responsibilities:* ***(a) develops national policy and coordinate actions at national and local level on atmospheric protection, climate change,*** *and the protection of the population from levels of exposure to environmental noise that may have negative effects on human health, in accordance with specific European and international policies****;*** ***(b) develops, promotes and updates the National Strategy on Atmospheric Protection and the National Action Plan on Atmospheric Protection; c) develops, promote and, where appropriate, updates the National Program for the reduction of emissions of sulphur dioxide, nitrogen oxides and dust from large combustion plants;*** *d) coordinates the development of the National Program for the progressive reduction of emissions of sulphur dioxide, nitrogen oxides, volatile organic compounds and ammonia;* ***e) develops, promotes and updates the National Strategy on Climate Change, the National Action Plan on Climate Change; f) ensures the integration of policies for the reduction of greenhouse gas emissions and adaptation to the effects of climate change in sectoral strategies; (g) administers the national accounts in the European Union greenhouse gas emissions registry; (h) administers the national system for estimating the level of anthropogenic greenhouse gas emissions by sources and removals by sequestration of carbon dioxide covered by the Kyoto Protocol; (i) coordinates the implementation of the flexible mechanisms under the Kyoto Protocol to the United Nations Framework Convention on Climate Change*** *j) approves and promotes the National Action Plan for the reduction of noise levels; k) organizes air quality monitoring activity at the level of the whole country; l) establishes, where appropriate, through regulatory acts, more restrictive emission limit values and the measures necessary to comply with national emission ceilings, critical loads and levels, respectively m) approves, together with the central public authority for health, methodologies on the prevention and reduction of olfactory discomfort. (2) The duties and responsibilities of the central public authority for environmental protection referred to in para. (1) g) and h) shall be realized through the National Agency for Environmental Protection".*

It should be noted that, according to art. 1 para. (3) of Government Decision no. 43/2020, *(3) The Ministry of the Environment, Waters and Forests realizes the policy at national level in the areas of environmental protection, green economy, biodiversity, protected natural areas, climate change, circular economy and waste management, water management, construction safety and hydro-technical, forestry and hunting, with regard to all the sectors and sub-sectors that it administers, elaborates the strategy and specific regulations for the development and harmonization of these activities within the framework of the general policy of the Government, ensures and coordinates the implementation of the Government's strategy in the areas of its competence, fulfilling the role of state authority, synthesis, coordination, regulation, monitoring, inspection and control in these areas."*

- 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 □

- By Government Decision no. 253/2015 the national institutes for research and development in the field of environmental protection, ecology and sustainable development were established, Romanian legal entities under public law, which operate under the coordination of the National Authority for Scientific Research and Innovation (ANCSI).

According to Art. 2 para. (1) of Annex no. 1A of H.G. no. 253/2015, the National Institute for Research and Development for Environmental Protection Bucharest aims to **carry out scientific research and technological development in the field of environmental protection, including advanced research on sustainable development and environmental protection, conducting studies on global change, in particular climate change and its impact on the environment.**

The following organizations are also responsible for conducting studies on environmental protection or climate change, namely, The National Institute for Marine Research and Development "Grigore Antipa" and the National Institute for Marine Research and Development "Danube Delta", respectively, depending on the specific object of activity of these public law units.

- By Government Decision no. 563/2022, the Interministerial Committee on Climate Change was set up which, according to art. 3, has the tasks of analysing, monitoring and evaluating the degree of fulfilment of the measures to be taken by the authorities and institutions responsible for implementing the policies set out in the Integrated National Plan for Energy and Climate Change, with the objective of fulfilling the commitments undertaken by Romania, in terms of our country's contribution to the achievement of the European targets set in the field of energy and climate (c), analysing, monitoring and evaluating the degree of achievement of the objectives of the National Long-Term Strategy on the reduction of greenhouse gas emissions and proposing solutions for achieving these objectives, including intermediate targets (d).
- Pursuant to the provisions of Art. 1 para. (1) of Government Decision no. 188/2025 on the organization and functioning of the National Authority for Research, *„The National Authority for Research, hereinafter referred to as ANC, is the specialized body of the central public administration, with legal personality, subordinated to the Ministry of Education and Research, through which it carries out its tasks in the field of research, development and innovation"*, and according to the provisions of art. 3 of the same normative act, *„The ANC has the role of synthesis and coordination in the implementation of the National Strategy for Research, Innovation and Smart Specialization 2022-2027, approved by Government Decision no. 933/2022, as well as the Government Program in the field of scientific research, technological development and innovation"*.

Therefore, according to Art. 6, c) of Government Decision no. 188/2025, the National Authority for Research has the function of *elaboration, coordination, control and evaluation of the realization of policies in the field of research, development and innovation*, having, according to Art. 7 of the same normative act, attributions in terms of the foundation, elaboration, implementation, monitoring, **evaluation and periodic updating of policies and strategies in the field of scientific research,**

technological development and innovation, respectively monitoring and evaluating the research, development and innovation units, in accordance with the legislation in force.

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

- National Research and Development Institute for Environmental Protection, Bucharest

According to art. 7 of Annex no. 1A of the Government Decision no. 253/2015, *„The management of the national institute is ensured by: a) the Administration Board; b) the management committee; c) the general director",* and, according to art. 8, *"The orientation and coordination of the technical and scientific activity of the national institute are ensured by the scientific council".*

Also, according to art. 10 of the same normative act, *„ (1) The Administration Board is composed of 7 members, Romanian citizens, appointed by order of the head of the state authority for research and development, for a 4-year term of office, once renewable. (2) The Administration Board shall necessarily include: a) the general director of the national institute, who shall be the chairman of the Board of Directors; b) the chairman of the scientific council of the national institute; c) a representative of the State Authority for Research and Development; d) a representative of the Ministry of Public Finance; e) a representative of the Ministry of Labor, Family, Social Protection and the Elderly. (3) The other members of the Administration Board shall be specialists in the specific field of activity of the national institute, appointed by order issued by the Head of the State Authority for Research and Development. (4) The category of specialists may also include representatives of the Ministry specialized in the specific field of activity of the national institute (...)".*

At the same time, according to art. 14 para. (1) of Annex no. 1A of the Government Decision no. 253/2015, *„The Administration Board shall meet, as a rule, once a month or whenever the interests of the national institute so require, at the convocation of the President or at the request of one third of the number of members of the Administration Board",* according to art. 15 *„(1) The Administration Board shall carry out its activity in the presence of at least two thirds of its members. If this condition is not met, the meeting of the Administrative Board may be rescheduled within a maximum of 15 days with the same agenda. (2) Decisions of the Administration Board shall be taken by a majority of the votes of the members present, but not less than half plus one of the total number of members",* and according to art. 17 *„For the purpose of taking decisions on complex issues, the Administration Board may involve advisors and consultants from different sectors of activity in its analytical work. Their work shall be remunerated in accordance with the legal provisions".*

According to art. 21 of Annex no. 1A of the Government Decision no. 253/2015, *„The operational management of the national institute is ensured by a management committee, composed of the general director and the heads of the main departments of the organizational structure of the national institute", and* according to art. 23, *„The management committee meets weekly and whenever the interests of the national institute require it".*

Also, according to art. 25 of Annex no. 1A of Government Decision no. 253/2015, *„(1) The day-to-day activity of the national institute is managed by the general director, appointed for a period of 4 years, based on the results of the selection competition organized according to the methodology developed by the State Authority for Research and Development and approved by Government Decision. Upon expiration of this term, depending on the performance achieved, the appointment of the general director may be extended for a period of up to 4 years. (2) The appointment and dismissal of the general director shall be made by order of the head of the State Authority for Research and Development. (3) The general*

director appointed under para. (1) shall conclude a management contract with the Head of the State Research and Development Authority. (4) The evaluation of the performance of the general director's duties and obligations, established by the management contract, shall be carried out on the basis of a procedure approved by order of the Head of the State Research and Development Authority."

Last but not least, according to art. 27 of the same normative act, *„(1) The scientific council is composed of at least 5 members, representing the main departments of the national institute that carry out research and development activities. (2) The scientific council is composed of researchers with outstanding achievements in the field, employees of the national institute, elected for 4 years by secret ballot by the higher education staff of the national institute. (3) The general director and the scientific director of the National Institute shall be ex-officio members of the scientific council. (4) The scientific council shall be governed by a chairman and a vice-chairman, elected by secret ballot by the members of the scientific council. (5) The scientific council shall be organized and function in accordance with its own rules approved by the Administration Board".*

- Interministerial Committee on Climate Change

According to Art. 1 paras. (2) - (4) of Government Decision no. 563/2022 for the establishment, organization and functioning of the Interministerial Committee on Climate Change, *„(2) The Committee shall be chaired by the Prime Minister of Romania, as its President. In situations where the Prime Minister is unable to attend the meetings of the Committee, the Committee shall be chaired by the Head of the Chancellery of the Prime Minister, as Vice-President. (3) The Committee shall have three Vice-presidents, the Head of the Prime Minister's Chancellery, the dignitary in charge of the Climate and Sustainability Department of the Presidential Administration and the Minister of Environment, Water and Forests. (4) The Committee shall be composed of representatives of public institutions in Romania that develop and implement policies with an impact in the field of combating climate change, at the level of Minister or designated Secretary of State, Presidential advisors or State advisors from the Presidential Administration, respectively representatives at the level of head of the institutions, according to the Annex which forms an integral part of this Decision",* and, according to art. 2 para. (1), *the Committee may order the formation of thematic working groups at technical level to support its work. The working groups shall be comprised of experts from the institutions listed in the Annex or other experts from the entities referred to in paragraph. (3). The meetings of the working groups shall be chaired at the level of the Secretary of State or the coordinator of the department within the public institution responsible for the subject under discussion.*

Also, according to Article 5 of the same normative act, *„(1) The Committee shall meet in monthly sessions and whenever necessary, at the initiative of the Committee's President or one of its Vice-Presidents. (2) The agenda of each meeting of the Committee shall be drawn up by the Technical Secretariat on the basis of proposals formulated and submitted by its members and approved by the Committee's management. (3) In the exercise of its functions, the Committee shall prepare reports and analyses and submit them to the Government, for information.".*

- National Research Authority

According to Art. 9 para. (1) of Government Decision no. 188/2025, *„The National Research Authority shall be led by a President with the rank of Secretary of State, assisted by two Vice Presidents with the rank of Undersecretary of State, appointed by decision of the Prime Minister, at the proposal of the Minister of Education and Research", and according to Art. 10 para. (1) and para. (2), „(1) The President of the National Research Authority shall have the following main duties: a) to ensure the operational management of the Authority; b) to represent the Authority in its relations with third parties*

and to sign the acts binding it to them, under the conditions provided by the law; c) to conclude individual employment contracts, to sign the decisions of employment of civil servants and to order measures regarding their amendment, execution, suspension and termination, in compliance with the legislation in force. (2) The President of the National Research Authority shall issue decisions and instructions in the exercise of their powers, in accordance with the law.".

Also, according to Art. 13 of the same normative act, *„(1) For the exercise of its duties, the National Research Authority shall be supported by the advisory bodies set out in Annex no. 2*[6] *, as well as by other advisory bodies for research, development and innovation that are established and operate in accordance with the provisions of Government Ordinance no. 57/2002, approved with amendments and additions by Law no. 324/2003, with subsequent amendments and additions. (2) The powers and composition of the consultative bodies referred to in para. (1) shall be approved by order of the Minister of Education and Research".*

Among the national research and development institutes that operate under the coordination of the National Research Authority are the National Research and Development Institute for Environmental Protection in Bucharest, the National Marine Research and Development Institute „Grigore Antipa", and the National Research and Development Institute "Danube Delta".

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

Depending on the purpose, objectives and powers of these bodies, they have either *advisory powers,* such as the National Research and Development Institute for Environmental Protection Bucharest[7] and the Interministerial Committee on Climate Change, or *decision-making powers*, such as the National Research Authority[8].

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

Although no special provisions regarding the climate change crisis have been identified, Law no. 52/2003 lays down the minimum procedural rules applicable to ensure decision-making transparency within the central and local public administration authorities, elected or appointed, as well as other public institutions that use public financial resources, in the relations established between them and the citizens and their legally constituted associations.

[6] Romanian Committee for Research Infrastructures, Coordination Committee for Intelligent Specialization, National Council for Technology Transfer and Innovation, National Council for Scientific Research, National Advisory College for Research-Development and Innovation, National Council for Ethics in Scientific Research, Technological Development and Innovation.

[7] According to the provisions of art. 2 of Government Decision no. 253/2015, the National Institute of Research and Development for Environmental Protection Bucharest aims to carry out scientific research and technological development in the field of environmental and national protection, participate in the elaboration of development strategies in the specific field, carry out research and development activities for the realization of the objectives included in the national research strategy, establish bases of scientific and technological competence, expertise, human resources development and scientific and technical documentation.

[8] According to art. 6, c) of the Government Decision no. 188/2025, the National Authority for Research fulfills the function of elaboration, coordination, control and evaluation of the implementation of policies in the field of research-development and innovation.

Thus, according to the provisions of Art. 7 para. (1) of this normative act, *„Within the framework of the procedures for the elaboration of draft normative acts, the public administration authority is obliged to publish a notice of this action on its own website, to display it at its own premises, in a publicly accessible space, and to transmit it to the central or local media, as appropriate. The public administration authority shall transmit the draft normative acts to all persons who have submitted a request to receive this information"*, according to para. (6), *„Interested persons or organizations submitting in writing proposals, suggestions or opinions on the draft normative act subject to public debate shall specify the article or articles of the draft normative act to which they refer, indicating the date of sending and the sender's contact details"*, and according to para. (9), *„The public authority concerned shall be required to decide to organize a meeting at which the draft normative act is publicly debated, if this has been requested in writing by a legally constituted association or another public authority".*

- 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 framework for public participation in the elaboration, modification or revision of the plans and programs referred to in the normative acts set out in the annex was established by the Government Decision no. 564/2006.[9]
According to Art. 4 para. (1) of this normative act, *„The public shall participate effectively and at an early stage, having the opportunity to inform the public and to submit comments, questions or opinions before a decision is taken, while the options regarding the preparation of a plan or program or the modification or review of a plan or program are still open"*, and according to Art. 8 para. (1), *„The arrangements for public participation shall include at least the possibility for the public to submit comments and the organization of a public debate".*
Moreover, according to Art. 9 para. (1) of the Government Decision no. 564/2006, *„In the decision-making process, the competent authority shall consider the comments and opinions expressed by the public and take into account the results of the public participation in the preparation, modification or review of the plans and programs referred to in the normative acts referred to in the annex"*, para. (3) providing for the possibility to challenge the decision to adopt/approve or reject the plan or program or to amend or revise a plan or program.
Also, according to art. 5, ș) of Government Decision no. 43/2020, the Ministry of the Environment, Waters and Forests exercises powers relating to ensuring transparency and public access to environmental information, consultation and participation in decision-making in its areas of activity, and according to Art. 6, point VI, of the same normative act, *„in exercising the function of informing and raising public awareness in its fields of activity: 1. ensures public information and consultation, in accordance with the legal provisions in force, in promoting normative and regulatory acts in its fields of activity, at national, European and international level; 2. makes available to the public information on environmental assessment for plans/programmes, environmental impact assessment for projects, adequate assessment for plans/programmes/projects, authorization of activities with environmental*

[9] Art. 43 and Art. 52 of Law no. 104/2011 on ambient air quality, as amended;
Art. 37 para. (2), art. 39 para. (1) and art. 46 of Law no. 211/2011 on the waste regime, republished, as subsequently amended and supplemented;
Art. 23 of Law no. 249/2015 on the management of packaging and packaging waste, as amended and supplemented;
Art. 11 para. (1) of Law No. 293/2018 on the reduction of national emissions of certain air pollutants;
Art. 6 para. (1) of the Annex to Government Decision no. 964/2000 on the approval of the Action Plan for the protection of waters against nitrate pollution from agricultural sources, as subsequently amended and supplemented;
Article 5 of Government Decision no. 1.132/2008 on the batteries and accumulators and waste batteries and accumulators, as subsequently amended and supplemented.

impact and environmental information; 3. makes available to the public general information and documents of public interest in its fields of activity; 4. organizes information and public awareness campaigns regarding the promotion and implementation of policies, strategies and legislation in its fields of competence, in order to raise public awareness and facilitate public understanding and compliance".
Last but not least, by Order of the Minister of Water, Forests and Environmental Protection no. 1325/2000, in order to establish, facilitate and stimulate a permanent dialogue between the authorities and representatives of the public on environmental plans, programs, policies and legislation, a working group was set up consisting of representatives of the Ministry of Water, Forests and Environmental Protection, within the Directorate of Strategy, Policy and Legislation, the General Directorate for Ecological Monitoring and Control, the Directorate for Guidance, Implementation, Authorization, the Directorate for Information and the Directorate for Programmes, Projects and International Relations, on the one hand, and representatives delegated by non-governmental organizations for environmental protection or other related fields, established according to the law, on the other hand.

➥ Is access to relevant information guaranteed? Yes ■ No □

According to Article 31 of the Constitution of Romania, *„(1) A person's right of access to any information of public interest shall not be restricted. (2) The public authorities, according to their competence, shall be bound to provide correct information to the citizens in public affairs and matters of personal interest. (3) The right to information shall not be prejudicial to the measures of protection of young people or national security. (4) Public and private media shall be bound to provide correct information to the public opinion. (5) Public radio and television services shall be autonomous. They must guarantee any important social and political group the exercise of the right to broadcasting time. The organization of these services and the parliamentary control over their activity shall be regulated by an organic law."*

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.

Beforehand, it should be noted that no judgments handed down by the non-criminal chambers of the High Court of Cassation and Justice directly addressing the issue of climate change have been identified.

However, **Decision no. 4293**[10] **of 02.10.2024** and **Decision no. 3541**[11] **of 27.06.2023** of the High Court of Cassation and Justice, Administrative and Tax Litigation Chamber, which indirectly address the issue of climate change, were identified as being included in category *(a) cases related to energy sources (conventional/renewable).*

Also, **Decision no. 3787**[12] **of 24.11.2017** of the High Court of Cassation and Justice, Administrative and Tax Litigation Chamber, was identified, which also indirectly deals with climate change, being included in category *(c) cases related to environmental impact assessment during project authorization.*

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

Yes ■
No □

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

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

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

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

First of all, it should be noted that in the Romanian court system there are no specialized courts to judge disputes arising from administrative acts.
Law no. 554/2004 on administrative litigation defines the administrative litigation courts as the Administrative and Tax Litigation Chamber of the High Court of Cassation and Justice, the administrative and tax litigation chambers of the courts of appeal and the administrative and tax tribunals.
According to Law no. 304/2022 on judicial organization, within the Courts of Appeal and Tribunals there are specialized sections or panels for administrative and tax litigation cases, depending on the complexity and number of cases.
Climate change issues also generally fall into the category of administrative and tax litigation.
Returning to the question above, we would like to note that environmental law disputes are mainly within the jurisdiction of the administrative courts insofar as the subject matter of the proceedings concerns typical or similar administrative acts relating to the matter in question. According to art. 18 of Government Ordinance no. 195/2005, disputes arising from the issuance, revision, suspension or annulment of regulatory acts (classification stage decision, environmental permit, environmental permit, environmental agreement, environmental authorization, integrated environmental authorization, authorization for greenhouse gas emissions, authorization for activities with genetically modified organisms) are settled by the competent administrative courts.
However, the above-mentioned categories of lawsuits do not exhaust the scope of possible disputes, so that in the other cases the court with substantive jurisdiction is determined according to the relevant provisions of the Code of Civil Procedure (e.g. when the dispute is related to an obligation to do something and when the defendant is not a public authority or in the case of actions for tort actions), in which case the civil courts would have jurisdiction to settle the case.

[10] Judgment currently in the process of publication on the website of the High Court of Cassation and Justice, www.iccj.ro
[11] Judgment published on the website of the High Court of Cassation and Justice, www.iccj.ro
[12] Judgment published on the website of the High Court of Cassation and Justice, www.iccj.ro

Moreover, it should be noted that according to the provisions of Article 8 para. (1) of Law no. 554/2004, *„A person aggrieved by a right recognized by law or by a legitimate interest by a unilateral administrative act, dissatisfied with the response received to the prior complaint or who has not received any response within the time limit provided for in Article 2 para. (1) h), may refer the matter to the competent administrative court in order to request the annulment in whole or in part of the act, compensation for the damage caused and, possibly, compensation for moral damages. A person who considers that their legitimate right or interest has been adversely affected by a failure to act within the time limit or unjustified refusal to act on a request, or by a refusal to carry out a certain administrative operation necessary for the exercise or protection of a legitimate right or interest, may also apply to the administrative court. The grounds for annulment shall not be limited to those raised in the prior complaint".*
So, in relation to these considerations, climate change related issues are 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 or legal persons.

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?

The Romanian legal system does not provide a special remedy for climate crisis-related disputes.

➥ What is the composition of these courts?

-

➥ What are the main features of the relevant remedies?

-

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

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

actions for annulment against acts or omissions of the State and other public entities ■

full jurisdiction remedies for the recognition of a right ■

actions for damages ■

remedies for the protection of the applicant's personality □

procedures for requesting interim measures ■

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

↳ by specialised divisions of the courts and/or according to a special procedure

Yes □
No ■

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

Based on the information provided in the answer to question II.A, in relation to the identified rulings, which indirectly address climate change, the following remarks are necessary:

- by Decision no. 4293 of 01.10.2024, the appeal lodged by the applicant was upheld and the judgment under appeal was quashed and, on retrial, inter alia, the amount of the penalty imposed on the applicant was reduced to 20.000.000 RON.

In order to deliver this judgment, the supreme court found that, in view of the specific nature of the applicant's activity, which fell within the scope of the provisions of Government Decision no. 780/2006 on the establishment of the scheme for greenhouse gas emission allowance trading, the applicant was under an obligation to surrender a number of greenhouse gas emission allowances, an obligation with regard to which the applicant failed to comply within the legal time-limit laid down by the same legislative act.

In those circumstances, the competent body (i.e. the Environmental Fund Administration), pursuant to the provisions of Article 28 para. (1) of Government Decision no. 780/2006, established and imposed a penalty for failure to surrender the greenhouse gas emission certificates, which was contested by the applicant.

The High Court of Cassation and Justice held that *„the obligation to surrender greenhouse gas emission allowances is an annual legal obligation, governed by the provisions of Article 18 para. (2) of Government Decision no. 780/2006, that obligation being laid down by law subject to the imposition of a penalty of 100 EUR for each ton of CO2 emitted for which allowances have not been surrendered, both the obligation and the penalty being clear, foreseeable rules which are not difficult to interpret and apply.*

Consequently, for the purposes of compliance, the persons liable for the obligation to surrender are required to provide in their own budgets the funds necessary to meet that obligation, the source of those funds being irrelevant. At the same time, in order to comply with the obligation, the legislature has, in addition to the period of permanent monitoring of gas emissions during the calendar year, made available to those debtors an additional period of four months during which they have the possibility of securing the funds necessary to surrender the allowances.

The allegedly unforeseeable event, relied on by the appellant in support of the fortuitous event, consists in the lack of available funds resulting from the failure by the third party Termoficare Constanța SRL to meet its remaining payment obligations.

However, the lack of available funds necessary to pay certain legal obligations does not constitute an unforeseeable situation which could not have been prevented by the appellant-plaintiff, given that, when it started its own economic activity, it was aware of the existence of those legal obligations and was

therefore required, when drawing up its budgets, to ensure all the necessary funds, or to calibrate its activity in order to ensure the necessary funds (...)".

Therefore, in answer to the submitted question, the legal remedy for delay in fulfilling the obligation to surrender greenhouse gas emission allowances consists in the imposition of a fine set in relation to the quantity of carbon dioxide for which the allowances have not been surrendered.

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 seminars or other training courses organized for judges specifically addressing climate change issues were identified.

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 Romanian legal system, the judicial review of laws and regulations refers to the mechanisms through which the courts can verify the conformity of normative acts with the Constitution (in the case of laws or normative acts of general character) or with national and international legislation (in the case of other regulations), being, in principle, a legality review.

a. The constitutionality review is carried out by the Constitutional Court of Romania. The competence of the Constitutional Court is defined in Article 146 of the Constitution, as revised in 2003, the provisions of which are developed by Law no. 47/1992 on the organization and functioning of the Constitutional Court, republished.

The Constitutional Court's review of the constitutionality of laws may be both a priori and a posteriori. From an analysis of the constitutional and statutory texts relating to the jurisdiction of the Constitutional Court and its case-law, **it is clear that this public judicial authority exercises a review of legality and not of expediency.** The Constitutional Court rules only on questions of law, so that in deciding the cases referred to it under Article 146 of the Constitution, it must limit itself to verifying the constitutionality of the legal provisions whose unconstitutionality has been raised before it.

b. The judicial review of the administrative acts (both the administrative act itself and the assimilated administrative act), which is carried out by the courts of law, according to Law no. 554/2004 on administrative litigation.

The administrative act that may be subject to administrative litigation is represented, according to Art. 2 para. (1), c) and c[1]) of Law no. 554/2004, both unilateral administrative acts of an individual or normative nature, and bilateral or multilateral administrative acts, such as administrative contracts, which concern the development of a public property, the execution of works of public interest, the provision of public services, public procurement.

c. The review carried out by public authorities vested by the law with jurisdictional powers.

Thus, according to Art. 2 para. (1)(d) of Law no. 554/2004, an administrative-jurisdictional act is an act issued by an administrative authority vested, by organic law, with the powers of special administrative jurisdiction. Special administrative jurisdiction is, according to Article 2 para. (1), e) of Law no. 554/2004, the activity carried out by an administrative authority which has, according to the special organic law on the matter, the competence to resolve a conflict concerning an administrative act, following a procedure based on the principles of adversarial procedure, ensuring the right to defense and independence of the administrative-jurisdictional activity.

In its case law[13], the High Court of Cassation and Justice has stated that administrative jurisdiction is the activity of settling, with the power of legal truth, by a state body independent of the parties to the dispute, legal conflicts which have been assigned to them by the law, an activity which is finalized by a jurisdictional act, against which remedies are provided. The jurisdictional administrative act is issued by an independent administrative authority vested with powers of administrative 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 ■

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?

Article 1 para. (4) of the Romanian Constitution provide that the State shall be organized based on the principle of the separation and balance of powers - legislative, executive, and judicial - within the framework of constitutional democracy. The rule of law ensures the supremacy of the Constitution, the correlation of laws and all normative acts with it, the existence of the regime of separation of public powers, which must act within the limits of the law, i.e. within the limits of a law expressing the general will.
Therefore, Romania is a democratic state in which, according to the Constitution, power is shared on the basis of the principle of separation and balance of powers in the state. Thus, the executive power is exercised by the Government and the President, the legislative power belongs to the Parliament and the judicial power belongs to several courts.
None of the three powers can arrogate to itself and exercise prerogatives that belong to another power, as they are independent of each other and are on an equal footing, not subordinate, and have the possibility and duty to supervise each other's exercise of power and to act to sanction abuses.

[13] See dec. HCCJ no. 1447/2010, Administrative and Tax Litigation Chamber, published on the court's website - www.iccj.ro

The role of the judiciary is to interpret and apply the laws in the name of the Romanian State, and the applicable procedure is the one regulated by the legislator in relation to the particularity of each dispute, there being no possibility for the courts to develop special procedural rules.

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 Romanian legal system does not recognize *actio popularis*, as a constitutional principle or rule, by legislation or case law.

However, it should be noted that, in certain areas, the legislator has recognized the right of non-governmental organizations to take legal action, being recognized their active legal standing.

Therefore, by way of example, we recall Art. 20 para. (6) of O.U.G. no 195/2005, *„Non-governmental organizations promoting environmental protection have the right to take legal action in environmental matters, having active procedural standing in disputes concerning environmental protection.*"

However, by Decision No 8/2020 of the High Court of Cassation and Justice, the panel competent to hear the appeal in the interest of the law has established with binding force that *„In order to exercise the legality review of administrative acts at the request of associations, as interested social bodies, the invocation of a legitimate public interest must be subsidiary to the invocation of a legitimate private interest, the latter arising from the direct link between the administrative act subject to the legality review and the direct purpose and objectives of the association, according to the statute." The legitimate public interest is defined as the interest relating to „the rule of law and constitutional democracy, the safeguarding of the fundamental rights, freedoms and duties of citizens, the satisfaction of the needs of the community, the realization of the jurisdiction of public authorities."*

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]?

Previously, the Law no. 554/2004 defines the private legitimate interest as the *possibility to claim a certain conduct, in consideration of the realization of a future and foreseeable, foreshadowed subjective right, and the public legitimate interest as the interest that concerns the order of law and constitutional democracy, the guarantee of the fundamental rights, freedoms and duties of citizens, the satisfaction of community needs, the realization of the competence of public authorities*.

As stated in the answer to the previous question, by Decision No 8/2020 of the High Court of Cassation and Justice, the Panel competent to hear the appeal in the interest of the law has established that *„In order to exercise the legality review of administrative acts at the request of associations, as interested social bodies, the invocation of a legitimate public interest must be subsidiary to the invocation of a legitimate private interest, the latter arising from the direct link between the administrative act subject to the legality review and the direct purpose and objectives of the association, according to the statute"*.

In environmental matters, Art. 20 para. (6) of O.U.G. no 195/2005 explicitly recognizes the right of access to justice of non-governmental organizations promoting environmental protection, stating that they have active procedural standing in disputes concerning environmental protection.

With regard to natural persons and other legal persons governed by private law, according to Art. 2, a) and Art. 8 para. (2) of Law No 554/2004, such an applicant may invoke the legitimate public interest only in subsidiary to the legitimate private interest.

However, since O.U.G. no. 195/2005 on environmental protection is the special law on the matter, Article 5 of this normative act will be applied as a priority according to the principle *specialia generalibus derogant*, so that the right to a healthy environment can be invoked as a substantive right of every person, even if no harm has been suffered. However, the applicant, whether a natural person or a legal person governed by private law, other than a non-governmental organization promoting environmental protection, must be acting in defence of a legitimate right or legitimate interest of his own and not of a third person.

Therefore, although legitimate interest is not defined in relation to certain groups or categories of the population, in the field of environmental protection, the right of individuals to act in defence of a legitimate right or interest is recognized.

- 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?

As indicated in the answer to the previous question, in the field of environmental protection, the right of individuals to act in defense of a right or legitimate interest of their own is recognized, in which sense we consider that the justification of the interest must be highly precise.

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

The general framework on evidence in civil proceedings is Book II. Litigation, Title I. Procedure before the court, Chapter II. Judgment, Subsection 3. Evidence in the Code of Civil Procedure.

According to the provisions of Article 249 of the Code of Civil Procedure, *„The one who makes a claim in the course of the trial must prove it, except in cases specifically provided by law"*, and according to Article 250 of the same normative act, *"Proof of a legal act or a fact may be established by means of documents, witnesses, presumptions, the confession of one of the parties, made on their own initiative or obtained on cross-examination, by expert examination, by material means of proof, by on-site investigation or by any other means provided by law"*.

Also, according to the provisions of Art. 255 para. (1) of the Code of Civil Procedure, *"The evidence must be admissible under the law and must lead to the resolution of the case."*

There are no special rules in Romanian law on the rules of evidence in environmental or, more specifically, climate change litigation, and the general rules on evidence set out in the Code of Civil Procedure will apply.

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?

Based on the statements contained in the answer to question II.A, in relation to the identified rulings, which indirectly address climate change, the following comments are necessary:

- The case settled by Decision No 4293 of 01.10.2024 relates to the applicant's appeal against the decision rejecting the preliminary appeal and against the tax assessment decision imposing a penalty on the applicant for failure to comply with the obligation to surrender greenhouse gas emission allowances;
- The case settled by Decision no. 3541 of 27.06.2023 concerns the annulment of a Government Decision approving measures for the realization of security stocks of the National Electric Power System with regard to lignite fuel;
- The case settled by Decision no. 3787 of 24.11.2017 concerns the annulment of a Government Decision on the approval of the Petroleum Concession Agreement for exploration - development - exploitation in the EX - 18 Vama Veche;

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

There are no special admissibility requirements for bringing actions against omissions in climate change litigation.

As we indicated in answer to the previous questions, bringing an action in environmental litigation requires the party to invoke a legitimate private interest.

- 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]?

No judgments of the non-criminal chambers of the High Court of Cassation and Justice have been identified concerning acts or omissions with an environmental impact in matters of transboundary concern.

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?

Preliminarily, as indicated above, the role of the judiciary is to interpret and apply the laws on behalf of the Romanian State, so that judicial review cannot concern the political choices made by the legislator.

However, regulatory acts issued by public authorities, which are acts of an administrative nature, may be subject to judicial review.

With regard to the issue of delimitation of judicial review in relation to the balancing of conflicting interests, although it does not concern the issue of climate change, we consider relevant **Decision No 977[14] of 17.02.2021** of the High Court of Cassation and Justice, Administrative and Tax Disputes Chamber, which found that *„the first instance correctly held that, although Law no. 544/2001 does not require proof of interest in filing a request for access to information of public interest, since in such a case the interest is presumed and need not be proven, the present dispute is not generated by the violation of the provisions contained in Law no. 544/2001, but is a dispute generated by ANRM's refusal to declassify an petroleum agreement, a refusal based on the provisions of Law no. 182/2002.*

Indeed, the legal basis of the present action is not represented by the provisions of Law no. 544/2001, but by the provisions of the law on administrative litigation, which requires the applicant to prove the right or legitimate interest infringed by the attitude of the defendant authority, in accordance with the provisions of Art. 1, para. (1), Article 2 para. (1), a) of this Law. The simple invocation of the right of access to information of public interest is not sufficient to prove an interest in bringing an action before the administrative court claiming the refusal to declassify the petroleum agreement."

Thus, the applicant's request for declassification of the Petroleum Agreement for exploration - development - exploitation in the EX - 6 Curtici, concluded between the defendant ANRM, as grantor, and S.C. B. And C. together with S.C. D. S.R.L., as concessionaires, approved by Government Decision no. 1185/2012, published in the Official Journal of Romania, Part I, no. 838 of 12.12.2012, was rejected.

With regard to the relationship between judicial review and essentially technical assessments, it should be noted that according to the provisions of Art. 330 paras. (1) - (3) of the Code of Civil Procedure, *„(1) When, for the clarification of certain factual circumstances, the court finds it necessary to obtain the opinion of specialists, it shall appoint, at the request of the parties or of its own motion, one or 3 experts. The deadline will be set in such a way that the expert's report will be submitted to the court in accordance with the provisions of Article 336. (2) When necessary, the court shall request the expertise of a specialized laboratory or institute. (3) In strictly specialized fields, in which there are no authorized experts, the judge may, ex officio or at the request of either party, request the opinion of one or more personalities or specialists in the field concerned."*

It should be noted that the purpose of the expert's report cannot be to clarify a question of law, namely the application of technical regulations in the field, which the judge must know and apply to the dispute, depending on its subject matter.

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.

[14] Judgment published on the website of the High Court of Cassation and Justice, www.iccj.ro

As indicated in the answer to question II.A., no judgments of the non-criminal chambers of the High Court of Cassation and Justice dealing with the issue of protection against the effects of climate change have been identified.

However, we consider that **Decision no. 977[15] of 17.02.2021** rendered by the High Court of Cassation and Justice, Administrative and Tax Litigation Chamber, which dismissed the appeal filed by the applicant, is relevant, and the judgment of the first instance, which rejected the applicant's request for declassification of the Petroleum Agreement for exploration - development - exploitation in the EX - 6 Curtici, approved by Government Decision no. 1185/2012, with the exception of the value of the works included in the minimum works program, is maintained.

In rendering this judgment, with regard to the balancing of conflicting interests, the supreme court held that *„according to the Statute on file, the appellant's purpose is to maintain and build a natural, healthy and clean environment, protect nature, prevent and hinder by all lawful means the pollution of soil, water and air (art.7), and to achieve this purpose the association has set itself the objectives set out in art. 8, including the promotion of environment-friendly policies and the support of civil society in environmental protection activities, carrying out the activities listed in art. 9 of the Statute in order to achieve these objectives, including those set out in k), related to the initiation of legal proceedings for environmental protection and pollution control or the intervention of such proceedings under the conditions of law.*

In light of these provisions of the Articles of Statute, the trial court correctly held that the applicant can be categorized as <interested social organizations>, defined by Art. 2 para. (1), s) of Law No 554/2004 as <non-governmental structures, trade unions, associations, foundations and the like, whose object of activity is the protection of the rights of different categories of citizens or, where appropriate, the proper functioning of public administrative services>, it being apparent from its articles of association that the object of its activity is the protection of the right to a healthy environment of its members, but the mere fact that it is an <interested governmental body> is not sufficient to prove that the condition of interest in bringing the action is met.

Moreover, the mere allegation of the need to protect a public interest is not sufficient to justify the interest in bringing the present action, since Article 8 para. (1)[1] of Law no. 554/2004 establishes that "Natural persons and legal persons governed by private law may bring a claim alleging the defense of a legitimate public interest only in the alternative, to the extent that the harm to the legitimate public interest logically follows from the infringement of a subjective right or legitimate private interest".

The High Court of Cassation and Justice found that, in light of the provisions of Article 8 para. (1)[1] of Law No 554/2004 and those laid down in Decision No 8/2020[16] handed down in an appeal in the interest of the law, the appellant does not justify an interest in bringing the action by which it seeks an order that the defendant declassify the petroleum agreement.

Also, by **Decision no. 1191 of 01.03.2022** issued by the High Court of Cassation and Justice, Administrative and Tax Litigation Chamber, the appeals filed by the defendant Ministry of Environment, Water and Forests and the interveners were rejected, and the judgment of the first instance, which suspended the execution of

[15] Judgment published on the website of the High Court of Cassation and Justice, www.iccj.ro.
[16] By Decision no. 8/2020 of the High Court of Cassation and Justice, the Panel competent to judge the appeal in the interest of the law has established with binding character that *"In order to exercise the legality review of administrative acts at the request of social organizations, as interested social bodies, the invocation of a legitimate public interest must be subsidiary to the invocation of a legitimate private interest, the latter arising from the direct link between the administrative act subject to the legality review and the direct purpose and objectives of the association, according to the statute".*

Order no. 1460 of 24.08.2021 of the Minister of Environment, Water and Forests, on the approval of the harvest quotas for certain species of birds allowed for hunting, was upheld.

The judgment stated that *"a distinction must be drawn between the public having an interest in environmental decisions (this category includes the complaints lodged against the regulatory acts upheld by the appellant) and the public affected or likely to be affected, which is specific to environmental litigation"*, namely that *"the first instance set out the legal reasoning, finding that the requirement of imminent harm was satisfied, starting from the need to preserve biodiversity and preserve the ecological balance, that need tending to limit the harvesting quotas in relation to the estimated number of populations and species subject to hunting, and applied the precautionary principle to the possible negative effects of the hunting quotas, established on insufficiently substantiated grounds".*

The High Court also held that *"the damage cannot be limited, in this situation, to a patrimonial value, as long as Article 35 of the Romanian Constitution (and Article 5 of OUG 195/2005) regulates the right to a healthy and balanced ecological environment, and this right corresponds to the duty to protect and improve the environment; or this duty falls primarily to the appellant.*

From that fundamental-law perspective, the first instance correctly held that the precautionary principle was applicable, that principle being crystallized and integrated by Article 191 TFEU, together with the polluter pays principle and the precautionary principle, in order to guarantee a high level of environmental protection by taking administrative decisions in the event of risks (...)However, by applying this principle in the matter of the suspension of the order approving the harvest quotas for the bird populations indicated in Order 1460/2021, the first instance did no more than to emphasize the potentially harmful consequences of harvesting quotas established on insufficiently substantiated bases, and this may constitute a prejudice within the meaning of Article 14 of the LCA, in conjunction with Article 2 para. (1), ș) LCA."

- 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?

According to Article 14 para. (1) of the Law no. 554/2004 on administrative litigation, *"In well-justified cases and in order to prevent imminent damage, after the public authority that issued the act or the hierarchically superior authority has been notified, under the conditions provided for in Article 7, or within a maximum of 30 days from becoming aware of the content of the act that can no longer be revoked, the injured party may request the competent court to order the suspension of the execution of the unilateral administrative act until the court has ruled on the merits. If the injured party fails to bring an action for annulment of the act within a maximum of 60 days from the lodging of the action for suspension and if the substance of the application for suspension has not been decided, the court hearing the application for suspension shall find that the action for suspension has not been decided and shall dismiss the application for suspension as devoid of interest. If the suspension has been ordered, it shall cease ipso jure and without any formality", and according to Article 15 para. (1) of the same normative act, "The suspension of the execution of the unilateral administrative act may be requested by the applicant, for the reasons set out in Article 14, also by means of an application addressed to the court competent to annul, in whole or in part, the contested act. In this case, the court may order the suspension of the contested administrative act until the final resolution of the case. The application for suspension may be filed together with the main action or in a separate action within a maximum of 60 days after the main action has been brought".*

Thus, the legislator has regulated the possibility of suspending the administrative act as a guarantee to ensure its legality in its issuance and execution, which intervenes only in exceptional situations, when the following

essential conditions are met: *the existence of a well-justified case, prevention of imminent damage, the lodging of a prior complaint*. In certain situations, these conditions may be supplemented, as in the case of the obligation to lodge a security deposit, as provided for in the Code of Fiscal Procedure.

The conditions of a well-justified case and the prevention of imminent damage must be analyzed according to the concrete circumstances of each case, being left to the discretion of the judge, who can only carry out a summary analysis of the appearance of right, based on the factual and legal circumstances presented by the interested party, with **due regard for a reasonable balance between the public interest that the public authority is obliged to fulfill and the subjective rights or legitimate private interests that may be affected.**

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.

Decision No. 3787 of November 24, 2017 of the High Court of Cassation and Justice, Administrative and Tax Litigation Chamber, held that *"in the present appeal, the appellant briefly resumed the criticism regarding the use of hydraulic fracturing technology in the shale gas exploitation activity, which could lead to the violation of the human right to life and to a healthy environment. As the first instance correctly held, neither the contested government decision nor the petroleum agreement (in the form in the case-file) refers to the method invoked by the applicant or to any other method of exploitation to be used.*

Thus, the Petroleum Agreement does not stipulate that its subject-matter would be < shale gas>, nor that the technology to be used in the event of the discovery of commercially exploitable resources is to be < hydraulic fracturing>, all the clauses of the Petroleum Agreement being formulated in accordance with the standard model Petroleum Agreement published on the website of the defendant ANRM, an aspect not disputed by the appellant-claimant or the intervener.

The Court of Appeal found that, from a scientific point of view, there is a controversy concerning the method of hydraulic fracturing, the case file containing both documents supporting the applicant's claims and scientific studies and opinions supporting the defendants' claims.

As a result, the Court of First Instance correctly held that the criticisms regarding the risks of this method cannot constitute grounds for the unlawfulness of the contested administrative acts, all the more so as the contested administrative act does not provide for the use of this technology.

In its judgment, the first instance found the appellant's complaint to be unfounded, correctly considering that the appellant continues to have effective environmental legislation, which includes regulations designed to ensure that the environmental risks associated with the exploitation of hydrocarbons are avoided or at least reduced, irrespective of the method of exploitation used.

The Court of Appeal rightly held that, although all these risks of potential damage to the environment and public health, which are related to the legality of the Petroleum Agreement or the Government Decision approving the Petroleum Agreement, cannot be excluded and could be associated with the stages of exploration and exploitation activities, the mere allegation of the occurrence of this risk cannot, however, also determine the illegality of the administrative act, but the legality of its implementation must be verified in terms of the exact compliance with the legal authorization regime for each operation (. ..)."

By **Decision No. 915 of 16.02.2022**, the High Court of Cassation and Justice, Administrative and Tax Litigation Chamber found that *"the first court does not argue and does not respond in practice to the substantive criticism of the applicant which, after arguing that the presentation memorandum contains*

numerous shortcomings in terms of protected natural areas, conservation of natural habitats of wild flora and fauna, which it lists, argues that the classification decision makes no mention of the species that may be endangered by this project and for which the impact assessment report should contain a detailed analysis.

The court does not analyze the content of the contested administrative act from this perspective, noting in general that the project crosses the natural area of community interest ROSCI0063 Defileul Jiului and may directly or indirectly affect feeding, breeding, nesting areas, the movement of species from one part to another, significant damage to natural habitats, therefore the act takes into account these natural habitats of fauna and potential impact.

However, that analysis does not respond to the specific criticisms set out in the claim and does not carry out a substantive verification of the manner in which those aspects were analyzed, by reference to the rules governing the manner in which those types of environmental analysis are assessed."

- 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]?

As indicated above, according to Art. 330 paras. (1) - (3) of the Code of Civil Procedure, *"(1) When the court deems it necessary to obtain the opinion of specialists in order to clarify certain factual circumstances, it shall appoint, at the request of the parties or ex officio, one or three experts. The deadline will be set so that the expert's report will be submitted to the court in accordance with the provisions of Article 336. (2) When necessary, the court will request the expertise of a specialized laboratory or institute. (3) In strictly specialized fields, in which there are no authorized experts, the judge may, ex officio or at the request of either party, request the opinion of one or more personalities or specialists in the field concerned."*

Therefore, the possibility is regulated for the judge to seek the opinion of experts or specialists in the field, in order to clarify factual circumstances relevant to the resolution of the dispute.

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

It should be noted that no judgments of the non-criminal chambers of the High Court of Cassation and Justice assessing the diversity and complexity of the factors contributing to climate change have been identified.

II.F. Civil liability of the State

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

-

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

-

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

It should be noted that no judgments of the non-criminal chambers of the High Court of Cassation and Justice have been identified in relation to environmental damage.

➥ Is monetary compensation recognised regarding compensation for non-material damage caused by ecological damage? Yes ■ No □

Prior to that, the legal basis of civil liability for environmental damage is O.U.G. no. 195/2005 on environmental protection, with subsequent amendments and additions, which in the provisions of Article 95[17], raises to the rank of principle the objective nature of civil legal liability. The regime of liability for environmental damage established by the framework law on environmental protection, but also by the O.U.G. no. 68/2007 and other normative acts, is a special regime, governed by public and private legal rules. Thus, environmental liability is of a mixed legal nature, distinct from classical civil liability or administrative liability, being a preventive and remedial liability.

Returning to the question raised, according to Article 5, e) of O.U.G. No 195/2005, the State recognizes the right of every person to a healthy and balanced ecological environment, guaranteeing to this end *the right to compensation for the damage suffered.*

In the case of environmental damage caused to natural persons, the law explicitly refers to the rules of ordinary law on the matter (art. 3 para. (4) of the O.U.G. no. 68/2007(5)), while in the case of purely environmental damage (which consists in damage to the natural environment), the law refers to the special regulations of O.U.G. no. 68/2007 (art. 95 of O.U.G. no. 195/2005).

At the same time, according to Art. 1349 para. (1) and para. (2) of the Civil Code, *"(1) It is the duty of every person to observe the rules of conduct which the law or the custom of the place imposes and not to prejudice, by his actions or inactions, the rights or legitimate interests of other persons. (2) The person who, having discernment, violates this duty shall be liable for any damage caused and shall be obliged to make full reparation for it."* and according to Art. 1357 para. (1) of the same normative act, *"The person who causes another person damage by an unlawful act committed culpably is obliged to make reparation",* being recognized the right to compensation for both material and non-material damage.

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

The *polluter pays principle* is regulated in O.U.G. 195/2005, being one of the principles underlying this normative act.

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?

As indicated above, no non-criminal decisions of the non-criminal chambers of the High Court of Cassation and Justice have been identified in climate change cases.

[17] Art. 95 of O.U.G. no. 195/2005: *„(1) Liability for damage to the environment is objective, independent of fault. In the case of multiple perpetrators, liability is joint and several. (2) Exceptionally, liability may also be subjective for damage caused to protected species and natural habitats, in accordance with specific regulations. (3) The prevention and repair of environmental damage shall be carried out in accordance with the provisions of this Emergency Ordinance and specific regulations."*

In general, applications for interim judicial protection are governed by the provisions of Art. 14 para. (1) of Law No 554/2004 on Administrative Litigation, according to which *"In well-justified cases and in order to prevent imminent damages, after the public authority that issued the act or the hierarchically superior authority has been notified in accordance with the provisions of Article 7, or within 30 days after the injured party has become aware of the content of the act that can no longer be revoked, the injured party may apply to the competent court for the suspension of the execution of the unilateral administrative act until the first instance has ruled. If the injured party does not bring an action for annulment of the act within a maximum of 60 days of the lodging of the action for suspension and if the substance of the application for suspension has not been settled, the court hearing the application for suspension shall find that this is the case and shall dismiss the application for suspension as devoid of interest. If the suspension has been ordered, it shall cease automatically and without any formality".*

Thus, in order to take provisional measures related to administrative acts issued, the cumulative fulfillment of the conditions set out in Article 14 para. (1) of Law no. 554/2004, indicated above.

At the same time, according to Article 997 para. (1) of the Code of Civil Procedure, *"The court, having established that the applicant has an appearance of right, may order provisional measures in urgent cases, for the preservation of a right that would be prejudiced by delay, for the prevention of imminent damage that cannot be repaired, and for the removal of obstacles that may arise during an enforcement".*

In order to be ordered provisional measures, pursuant to art. 997 of the Code of Civil Procedure, the following specific conditions must be cumulatively met: *the appearance of law, urgency, provisional nature of the measures taken, non-judgment on the merits.*

➥ Please mention the measures that the judge may order.

According to Art. 14 and Art. 15 of Law no. 554/2004, the judge may order the suspension of the execution of the contested act.

Also, according to the provisions of Article 997 of the Code of Civil Procedure, the court may order interim measures to preserve a right that would be prejudiced by delay, to prevent imminent and irreparable damage, and to remove obstacles that may arise during enforcement.

The legislator has not expressly regulated the measures that the judge can order, but by way of example, he can order the cessation of works that may affect the environment.

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

Based on the provisions of Article 1357 of the Civil Code, in order to repair the damage, regardless of whether it is environmental damage or damage of another nature, the court must analyze whether the damage results from the violation of a subjective right or a legitimate interest, whether it is certain, both in terms of its existence, actual or future, and the concrete possibilities of assessment, whether it is direct, personal and not yet repaired.

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

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

According to Art. 24 para. (1) and para. (2) of Law no. 554/2004, *"(1) If, following the admission of the action, the public authority is obliged to conclude, replace or amend the administrative act, to issue another document or to carry out certain administrative operations, the enforcement of the final judgment shall be*

voluntarily carried out within the term provided in the judgment, and in the absence of such term, within 30 days from the date of the final judgment. (2) If the debtor does not execute his obligation voluntarily, it is carried out by enforcement, following the procedure provided for by this law.", the enforcement court may impose on the legal entity, public authority or institution, as the case may be, a fine of 20% of the gross minimum wage per day of delay, which is paid into the state budget, and the plaintiff may be granted penalties under Article 906[18] of the Code of Civil Procedure.

According to para. (5) of Article 24 of Law no. 554/2004, *"(5) In the absence of the creditor's request, after the time limit referred to in para. (4), the civil enforcement department of the enforcement court shall request from the public authority reports on the execution of the obligation contained in the enforceable title and, if the obligation has not been fully executed, the enforcement court shall fix the final amount to be owed to the State by a judgment issued after the parties have been summoned.".*

Thus, the liability governed by the provisions of Article 24 of Law no. 554/2004 functions as a means of coercion to obtain enforcement of the judgment, as a guarantee of the realization of the right by the subjects to whom such an obligation is incumbent.

As the obligations referred to in this text are obligations of public authorities, they cannot be enforced by other persons, nor is it possible to ask the court to authorize the creditor to enforce the obligation in place of the public authority, as is the case under ordinary law.

- 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?

Monitoring compliance with court decisions is mainly the responsibility of the enforcement courts and other competent institutions, and the High Court of Cassation and Justice - in the field of administrative litigation, not being an enforcement court, does not have a direct mechanism for monitoring compliance with court decisions by administrative authorities.

Therefore, no judgments of the non-criminal chambers of the High Court of Cassation and Justice on the enforcement of judgments in disputes concerning acts or omissions related to climate change were identified.

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?

We note that no judgments of the non-criminal chambers of the High Court of Cassation and Justice have been identified explicitly recognizing the obligation of the State and/or other public entities to take positive measures to address climate change.

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

As indicated above, no judgments of the non-criminal chambers of the High Court of Cassation and Justice have been identified explicitly recognizing the obligation of the State and/or other public entities to take positive measures to address climate change and, by implication, the right to ensure compliance with this obligation.

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

[18] Art. 906 para. (1) Code of Civil Procedure: "If within 10 days from the communication of the judgment authorizing enforcement, the debtor fails to perform the obligation to do business or not to do, which cannot be performed by another person, he may be compelled to perform it, by the application of penalties, by the enforcement court."

On the basis of Articles 514 - 518 and Articles 519 - 521 of the Code of Civil Procedure, the High Court of Cassation and Justice has handed down rulings on the uniform interpretation and application of the law, in order to ensure a uniform judicial practice in environmental matters[19].

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

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

  -dialogue between the national courts of different countries

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

  -dialogue between the courts in your country and the ECtHR

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

The judgments identified, which indirectly address climate change issues, do not refer to existing practice in another legal system.

However, the binding case-law of the Court of Justice of the European Union has been applied in the judgments indicated in the answer to question II.A[20].

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?

In the identified judgments, which indirectly address climate change issues, the obligation to take action against climate change is mainly considered as an obligation based on national law.

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

It should be noted that no judgments handed down by the non-criminal chambers of the High Court of Cassation and Justice aimed at harmonizing the rules of international, european or national law in environmental litigation have been identified.

However, by **Decision No 1961[21] of 04.04.2024** of the High Court of Cassation and Justice, Administrative and Tax Litigation Chamber, it was found that the court of first instance *„It also took into account the letter of formal notice of February 12, 2020 issued under Article 258 TFEU in which the Commission "calls on Romania to properly implement the EU Timber Regulation (EUTR), which prohibits timber companies from producing*

[19] See Decision No. 36 of 23.11.2015 of the High Court of Cassation and Justice, the Panel for Preliminary Ruling on Questions of Law;
See Decision No 24 of 14.11.2011 of the High Court of Cassation and Justice, the Panel for Appeal in the Interest of the Law;

[20] In its Decision no. 4293 of 02.10.2024, the High Court of Cassation and Justice questioned, ex officio, the application of the binding case-law of the Court of Justice of the European Union and, in particular, the recitals of the judgment delivered in Case C-148/14, reference for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Germany), on the interpretation of Art. 16 (3) and para. (4) of Directive 2003/87/EC of the European Parliament and of the Council of 13.10.2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, as amended by Directive 2004/101/EC of the European Parliament and of the Council of 27.10.2004.

[21] Judgment published on the website of the High Court of Cassation and Justice, www.iccj.ro.

and placing on the EU market products made from illegally harvested logs. In the case of Romania, national authorities have not been able to effectively check operators and apply appropriate sanctions. Inconsistencies in national legislation do not allow the Romanian authorities to verify large quantities of illegally harvested timber. In addition, the Commission found that the Romanian authorities are managing forests, including by authorizing logging, without first assessing the impact on protected habitats, as required by the Habitats Directive and the Strategic Environmental Assessment Directive. There are also shortcomings in public access to environmental information in forest management plans. The Commission also found that some protected forest habitats have disappeared from Natura 2000 protected sites, in breach of the Habitats and Birds Directives. The Commission has therefore decided today to send Romania a letter of formal notice, giving it one month to take the necessary measures to remedy the shortcomings identified by the Commission. Failing this, the Commission may decide to send a reasoned opinion to the Romanian authorities.".

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

We note that no judgments handed down by the non-criminal chambers of the High Court of Cassation and Justice have been identified in the content of 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]

No judgments of the non-criminal chambers of the High Court of Cassation and Justice invoking the ECHR judgment in *Verein Klimaseniorinnen Schweiz v. Switzerland* have been identified.

However, the precedent set at the ECHR obliges national courts to verify compliance with the right to effective protection by state authorities against the serious adverse effects of climate change on life, health, well-being and quality of life.

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?

National courts have referred questions to the CJEU for preliminary rulings on issues indirectly related to climate change.

By way of example, Case C-179/20 Fondul Proprietatea, reference for a preliminary ruling on the interpretation of Article 107 para. (1) and Art. 108 para. (3) TFEU, and Article 15 para. (4) of Directive 2009/72/EC[22] of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009, L 211, p. 55).

This request was made in a dispute between Fondul Proprietatea SA, on the one hand, and the Romanian Government, SC Complexul Energetic Hunedoara SA, SC Complexul Energetic Oltenia SA, and the National Company for the Transmission of Electricity "Transelectrica" SA, on the other hand, in relation to a request for annulment of a Romanian Government decision on the adoption of measures for the security of electricity supply.

No requests for advisory opinions on issues directly or indirectly related to climate change were identified.

[22] Recital (5) of Directive 2009/72 read as follows: *„A secure supply of electricity is of vital importance for the development of European society, the implementation of a sustainable climate change policy, and the fostering of competitiveness within the internal market. To that end, cross-border interconnections should be further developed in*

Part II: Overtourism

I. The regulatory framework [the rules of law]

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

Yes ☐
No ■

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

saturation capacity of urban and non-urban space ☐

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

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

other problems ☐

-

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

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

We have no information on Romania's initiative/participation in a collective initiative to establish a regulatory framework within the EU to address the negative effects of "hypertourism".

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]?

order to secure the supply of all energy sources at the most competitive prices to consumers and industry within the Community."

Starting from the two questions raised, *first of all*, it should be emphasized that the Romanian legislation does not regulate the situation of excessive tourism.

Secondly, in theory, non-binding texts could serve as a basis for regulation, without having direct legal force. An example of this is the National Strategy for Tourism Development for 2025-2035, approved by H.G. no. 1193/2024, according to which excessive tourism is a factor to be taken into account in the planning process.[23]

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?

We consider that, under certain conditions (i.e.overexploitation of natural resources), the constitutional provisions of Art. 35, which enshrine the right to a healthy environment, can be the basis for addressing the problems related to excessive 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 ■

↳ 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 ■

↳ 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?

☐

As we indicated earlier, that the situation of overtourism is not regulated in the national legislation, there is no regulation on the allocation of responsibilities for managing *hypertourism* or the organization of competent authorities on this issue.

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

[23] See pct. V of the National Strategy for Tourism Development 2025 – 2035.

As we indicated earlier, the situation of excessive tourism is not regulated in national legislation, and the responsibilities of the various bodies with regard to this problem are not regulated.

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

Yes ■
No □

II. The application of the regulatory framework by the judge

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

Yes □
No ■

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

Yes □
No □

-

↳ 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? □

No judgments of the non-criminal chambers of the High Court of Cassation and Justice in matters related to *hypertourism* were identified.

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?

No judgments of the non-criminal chambers of the High Court of Cassation and Justice expressly recognizing the obligation of the State and/or other public entities to take positive measures to address the phenomenon of *hypertourism*, or the right of individuals to ensure compliance with this obligation, have been identified.

II.D. Do issues linked to overtourism:

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

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

administrative courts ☐

civil courts ☐

both ☐

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

Yes ☐

No ■

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

-