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

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Climate change-crisis / Overtourism
Questionnaire

Introduction

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

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Part A: Climate change-crisis

I. The regulatory framework

I.A. Supranational rules

I.A.1. Rules of international law

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

Kyoto Protocol ☒

Paris Accords ☒

Aarhus Convention (procedural matters) ☒

Other (please specify)

The Kigali Amendment to the Montreal Protocol, The Convention on Biological Diversity (CBD).

➥ 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)

As the UK operates a dualist system, international treaties do not automatically become part of domestic law upon ratification. For a treaty/convention to have legal effect in the UK, it must be incorporated into domestic

law through the passing of an Act of Parliament. The procedure for introducing a new law in the UK is summarised here: How does a bill become a law? - UK Parliament

I.A.2. EU rules

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

- While the UK is no longer bound by EU climate change rules, it has retained most of the aims and the spirit of those rules in its national law.
- For example, prior to Brexit, the UK was bound by the EU Air Quality Directives. The UK continues to adhere to similar air quality standards as the Environment Act 2021 maintains much of the EU's framework for air quality regulation.
- The UK has incorporated many elements of the EU Renewable Energy Directive and the EU Effort Sharing Regulation in its Climate Change Act 2008 (as amended), which sets out the UK's renewable energy goals and its broader commitment to becoming net-zero by 2050.
- The European Union Emissions Trading Scheme (EU ETS) was implemented by the UK Emissions Trading Scheme (UK ETS).
- Many of the energy efficiency measures set out by the EU in its Energy Efficiency Directive were incorporated into UK law through the Energy Efficiency (Private Rented Sector) Regulations.
- The UK has also transposed the aims and principles of the EU's Industrial Emissions Directive into the Environmental Permitting (England and Wales) Regulations 2016.
- The UK's Conservation of Habitats and Species Regulations 2017 implement the EU's Habitat's Directive.

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

Yes. Prior to Brexit, the UK was subject to legal proceedings for failure to fulfil its obligations under EU legislation relating to emissions reductions, air quality standards and renewable energy targets.

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

Rulings by EU courts. For example, in a 2021 ruling, the CJEU found that the UK had "systematically and persistently" breached its obligations under the EU Air Quality Directive (Directive 2008/50/EC) regarding nitrogen dioxide (NO2) pollution: C-664/18 *Commission v UK* (4 March 2021).

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 UK does not have a written constitution, but important national objectives are reflected in ordinary legislation which may be referred to as having constitutional significance. Since much climate change related legislation binds the government in ways which render it accountable for achieving climate change objectives (in some cases so as to ensure that the UK complies with its international obligations), it can on that basis be referred to as having constitutional effect. Although the UK's national laws relating to climate change do not explicitly refer to "solidarity between generations"/ "the rights of future generations"/ "vulnerable groups", many legal frameworks and policies reflect these ideas. For example, there are important provisions and principles embedded in climate and environmental laws that address the disproportionate impact of climate change on vulnerable populations and these are increasingly integrated into the UK's climate action plans. For example, under the Climate Change Act 2008, every five years the UK government is required to undertake a Climate Change Risk Assessment to assess the risks posed by climate change to different sectors of society. This assessment acknowledges and highlights that certain vulnerable groups may be more affected by climate change than others. Another example is to be found in the government's Clean Growth Strategy, published in 2017, which outlines the UK government's approach to reducing carbon missions while promoting economic growth. This strategy specifically refers to the need for energy efficiency programs to help vulnerable groups, such as those in fuel poverty, benefit from low-carbon solutions.

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.

- The UK's net-zero commitments under the Paris Agreement are reflected in the Climate Change Act 2008 (as amended), which:
  a. Sets legally binding targets for reducing greenhouse gas emissions. The Act commits the UK government to reducing carbon emissions to net-zero by 2050, representing the first global legally binding climate change mitigation target set by a country.
  b. Provides for a system of carbon budgeting (see further information below).
  c. Established the Climate Change Committee, an independent body to provide evidence-based advice to the UK Government and Parliament on the mandatory carbon budgets.
  d. Requires the UK government to develop a National Adaptation Programme (NAP) to manage the effects of unavoidable climate change.

e. Requires the UK government to produce a UK Climate Change Risk Assessment (CCRA) every five years.

- The Environment Act 2021:
  a. Acts as the UK's framework of environmental protection and allows the UK to enshrine better environmental protection into law.
  b. Provides the government with powers to set legally binding targets, including for air quality, water, biodiversity, resource efficiency and waste reduction.
  c. Established the Office for Environmental Protection (OEP) as a watchdog to scrutinize and enforce environmental regulations.
  d. Mandates the creation of Environmental Improvement Plans, which outline how the government intends to achieve these targets.
  e. Makes biodiversity net gain mandatory for most development projects, requiring a minimum 10% gain in biodiversity.
- The Carbon Budgets - place legally binding caps on the maximum level of emissions for a period of five years. Carbon budgets are set 12 years in advance through secondary legislation under the Climate Change Act 2008. The UK's carbon budgets are being gradually reduced over time, with the aim of reaching 'net zero' carbon in 2050. There have been six carbon budgets so far (covering 2008 to 2037), and the UK will set the seventh this year.
- The Planning and Compulsory Purchase Act 2004 sets out the structure of the local planning framework for England and Wales, i.e. the system that governs where, how, and under what conditions ordinary building projects and other forms of development can take place. Section 19 of the Act places a duty on local planning authorities to ensure that, taken as whole, their local development plan contributes to the mitigation of, and adaptation to, climate change. A local development plan is prepared by a local planning authority in England or Wales to guide decisions on land use and development in its area.
- The Planning Act 2008 governs applications to construct nationally significant infrastructure projects. Given the potential for some nationally significant infrastructure projects to affect climate change, there are provisions in this Act which place duties on the government in relation to climate change:
  i) Section 5(3) requires the Secretary of State to carry out an appraisal of the sustainability of the policy set out in a National Policy Statement ("NPS").
  ii) Section 5(7) provides that an NPS must give reasons for the policy set out in the statement.
  iii) Section 5(8) states that the reasons must (in particular) include an explanation of how the policy set out in the statement takes account of Government policy relating to the mitigation of, and adaptation to, climate change.
  iv) Section 10(2) and (3) of the PA 2008 require the Secretary of State to designate national policy frameworks with the aim of contributing to the achievement of sustainable development.
- National Planning Policy Framework: this is the key policy document issued by the UK Government, which sets out the overarching planning policies for England and how they should be applied by local planning authorities and decision-makers. The NPPF is non-statutory and is not issued under any legislation. However, under common law public law principles and statute a planning decision-maker must have regard to all legally relevant considerations. The NPPF is always a material consideration in planning decisions. This means decision-makers must take it into account when making planning decisions which impact on the environment. The NPPF includes requirements such as the need for local planning authorities to take a proactive approach to mitigating and adapting to climate change.

- The Energy Act 2013 reformed the UK's electricity market and takes steps towards its decarbonisation. Section 1 places a duty of the Secretary of State to ensure that the carbon intensity of electricity generation in the UK is no greater than a maximum permitted level prescribed by the Secretary of State.
- The Energy Efficiency (Private Rented Sector) (England and Wales) Regulations – require landlords to ensure that their rental properties meet a Minimum Energy Efficiency Standard of EPC Band E, unless a valid exemption applies. This applies to all privately rented properties in England and Wales since April 1, 2020. Landlords are not required to spend more than £3,500 (including VAT) on energy efficiency improvements to meet the EPC E standard. Landlords who fail to comply with the regulations could face fines of up to £5,000.

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

yes ☒
no ☐

If so:

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

The UK's action plan to address climate change operates at a national level, with a combination of centralised government policies and strategies, while also recognising the importance of regional and local actions.

At a national level, this involves climate change legislation (for example, the Climate Change Act 2008) as well as policies (for example, the government's Clean Growth Strategy (2017)) and strategies (for example, the UK's Net Zero Strategy (2021)).

While the UK's climate strategy is predominantly set at the national level, the devolved administrations in Scotland, Wales, and Northern Ireland have significant powers to design and implement policies specific to their regions. Each devolved government has its own climate change legislation, which complements national policies but also allows for tailored actions at the regional level. For example, Scotland has implemented the Climate Change (Scotland) Act 2009 (as amended), Northern Ireland has the Climate Change Act (Northern Ireland) 2022 and Wales operates under the Environment (Wales) Act 2016.

It is recognised that local government below the national level also has a significant role to play in implementing national strategies at the community level. This is because local authorities are involved in decisions relating to urban planning, energy efficiency, waste management and transport. Local action is critical for meeting national and regional targets, and many cities, such as London, Manchester, and Bristol, have developed their own climate action plans that align with or complement national strategies.

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

↳ or whether it also contains binding rules?

The UK's action plan to address climate change contains several binding rules that ensure the government is legally committed to achieving its climate targets. These binding rules are embedded in key legislation and

frameworks that hold the government to account for reducing emissions and transitioning to a low-carbon economy. The most notable of these binding rules are found in the Climate Change Act 2008 (as amended), by which the government has legally committed the UK to achieving net zero emissions by 2050.

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?

Yes. Some examples include:

- The Climate Change Act 2008 imposes a number of positive obligations on the UK government, such as a duty to set carbon budgets every 5 years, a duty to assess the risks of climate change, a duty to prepare proposals and policies for meeting carbon budgets, a duty to prepare an annual statement of UK emissions and a duty to have regard to the need for UK domestic action on climate change.
- Section 19 of the Environment Act 2021 imposes a duty on UK government ministers, when making policy, to have due regard to the government's policy statement on environmental principles.
- Section 19 of the Planning and Compulsory Purchase Act places a duty on local planning authorities to ensure that, taken as whole, their local development plan contributes to the mitigation of, and adaptation to, climate change.
- Section 1 of the Energy Act 2013 places a duty of the Secretary of State to ensure that the carbon intensity of electricity generation in the UK is no greater than a maximum permitted level prescribed by the Secretary of State.
- Section 163 of the Energy Act 2023 made provision for the establishment of the Independent System Operator and Planner ("ISOP"), a public body which (once established) will have responsibility for planning the development of the electricity and gas transmission systems and operation of the electricity transmission system. Section 163 places a duty on the ISOP to carry out its functions to promote the net zero objectives under the CCA 2008.
- Section 202 of the Energy Act 2023 places a duty on the Gas and Electricity Markets Authority (the government regulator for electricity and natural gas markets) to protect the interests of existing and future consumers, including their interests in the achievement of the net zero objectives under the CCA 2008.
- Section 40 of the 2006 Natural Environment and Rural Communities Act (as amended) places a similar duty on public authorities (including the Secretary of State, government departments and agencies, local authorities and statutory undertakers) to have regard to the purpose of conserving biodiversity in the exercise of functions.

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

(a) preventive measures

(b) repressive measures

(c) restitution measures

These measures are first and foremost preventive in nature in order to avoid harmful climate change activities from occurring in the first place. There are also certain penalties and other regulatory responses within the regimes to address instances of non-compliance.

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

A failure to comply with these obligations can be challenged by way of judicial review. An individual or organisation must have sufficient interest, or "standing", in the matter to which the judicial review relates in order to bring a claim. The courts have taken a flexible approach to the "sufficient interest" test and have increasingly recognised that a wide range of public interest groups have standing to bring challenges in matters concerning their areas of interest or expertise. An application for judicial review must be made "promptly" and in any event not later than three months from the date when grounds for the application first arose.

➥ Is the legal pursuit of this right regulated?

Yes. Judicial review in the UK is regulated through a combination of legislation (eg: the Senior Courts Act 1981 and the Judicial Review and Courts Act 2022), court rules (Part 54 of the Civil Procedure Rules), and established legal principles.

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

Yes. A number of claims have been brought in the UK in recent years by individuals against company directors for failure to comply with obligations relating to climate change. Two examples are summarised in section II.A below (*ClientEarth v Shell and others* [2023] EWHC 218 (Ch) and *McGaughey and Davies v Universities Superannuation Scheme Ltd and Directors* [2023] EWCA Civ 873).

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

Yes. The Environment Act 2021 is aimed at tackling the environmental damage caused by climate change. It includes several provisions that help address ecological damage, including the requirement for the government to set legally binding biodiversity targets and to carry out environmental monitoring to assess the state of ecosystems and biodiversity. The Environment Act 2021 also permits the Secretary of State to set long-term targets by way of regulations. The Act has led to the creation of several important regulations aimed at improving the UK's environmental protection, reducing pollution and addressing the ecological damage caused by climate change. Some of these include:

- The Conservation of Habitats and Species Regulations 2017
- The Water Resources (Control of Pollution) (England) Regulations 2021
- The Biodiversity Net Gain Regulations (2022)
- The Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2022
- The Environmental Targets (England) Regulations 2023
- The Extended Producer Responsibility (EPR) Scheme for Packaging (2023)

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 ☐

- The Department for Energy Security and Net Zero (DESNZ): UK government department leading on policy for reducing emissions and responsible for ensuring secure energy and promoting action on climate change in the UK and internationally.
- The Department for Environment, Food and Rural Affairs (DEFRA): UK government department leading on domestic adaptation policy and responsible for developing the National Adaptation Programme to address the risks of climate change.
- The Climate Change Committee (CCC): an independent, non-departmental public body, formed under the Climate Change Act 2008 to advise the UK government on tackling and preparing for climate change.
- The Environment Agency: a non-departmental public body, sponsored by DEFRA, which works to create better places for people and wildlife, and supports sustainable development.
- The Office for Environmental Protection: a public body established by the Environment Act 2021 "to provide independent oversight of the government's environmental progress".

↳ 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 ☐

These tasks are primarily carried out by the organisations listed in the textbox above. Additionally, the Natural Environment Research Council is the UK's main agency for funding and managing research, training and knowledge exchange in the environmental sciences, including climate change. The UK Centre for Ecology and Hydrology also carries out climate change research and environmental monitoring to inform the government's policymaking.

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

These organisations consist of UK government departments, non-departmental public bodies and independent research institutes. The government departments are composed of civil servants, who are politically impartial and whose role is to implement government policies and provide advice to government ministers; the ministers are the political heads of, and in charge of, the departments. The non-departmental public bodies and research institutes operate with a broad and expert workforce, drawn from a range of scientific, regulatory and operational disciplines. Those working in these latter organisations are independent and do not hold decision-making power, which instead lies with the relevant ministers.

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

Government departments have decision-making power and also powers to create subordinate legislation such as regulations. Non-departmental bodies and research organisations are purely advisory.

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

In the UK, prior consultation with a court is generally not required when adopting a regulation concerning climate change. However, there are consultation procedures that must be followed before introducing certain types of regulations. These include public consultation requirements (see below) and the requirement to consult the CCC. The CCC must be consulted before the UK government sets new carbon budgets and when formulating long-term climate strategies. Independent bodies, such as the Environment Agency and environmental NGOs, are also often invited to provide feedback during consultations on regulations relating to climate change.

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

Yes. Public consultations are typically carried out for proposed laws and regulations with significant environmental, social or economic impacts. This includes regulations concerning climate change. These consultations help gather feedback from environmental groups, industry stakeholders, local authorities, experts and members of the public. For example, in 2024 the UK government held a public consultation on a draft UK Climate Change Bill and received nearly 17,000 responses from individuals and organisations across the UK.

➥ Is access to relevant information guaranteed? yes ☒ no ☐

When a consultation is launched, the relevant consultation documents are made publicly available. These documents typically provide key information on the proposed regulation, its potential impact, and the reasoning behind the proposal. If a member of the public wishes to request information that is not made available publicly, they have the option of making a request to the relevant public body under the Freedom of Information Act 2000. However, this right is subject to certain exceptions, such as national security concerns or information that is commercially sensitive. There is also an additional duty under the Environmental Information Regulations 2004 requiring public authorities that hold environmental information to make it available on request.

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.

In the UK, climate change litigation at present falls into three broad categories:

1. Cases against government
2. Cases against corporations
3. "Responsive" cases (in which challenges to positive action relating to climate change are brought).

Cases against government:

- At present, most climate change cases in the UK are challenges to government and public bodies (both local and central). These are brought by way of judicial review. A database of climate change litigation registers 89 cases of claims made in the UK against the state in relation to climate change.[1] Some recent examples include:

- **R (on the application of Friends of the Earth Ltd and others) v Heathrow Airport Ltd [2020] UKSC 52**, the Supreme Court ruled that Heathrow could apply for planning permission for its third runway and considered that the expansion of Heathrow Airport was not unlawful on climate change grounds. The Court rejected the argument that the Secretary of State had to consider the Paris Agreement when designating national policy under the Planning Act 2008. This case confirmed that climate obligations must be interpreted strictly within the framework of domestic legislation.

- **Friends of the Earth v United Kingdom Export Finance [2023] EWCA Civ 14**: Friends of the Earth sought Judicial Review over the decision of the UK government to finance a natural gas project in Mozambique, which the NGO considered was not consistent with the Paris Agreement, even though the project was not on UK soil. In this case, the District Court Judges were split and so the case was referred to the Court of Appeal, where it was dismissed. The Supreme Court refused permission for a further appeal. Despite the loss, Friends of the Earth were pleased that the UK government ultimately introduced a new policy to stop investing in international fossil fuel projects with public funds.

- **R (on the application of ClientEarth) v Financial Conduct Authority [2023] EWHC 3301 (Admin):** environmental law charity ClientEarth was unsuccessful in its request for judicial review of the UK's financial services regulator, the Financial Conduct Authority (FCA), in response to the recent IPO of Ithaca Energy Plc (Ithaca), an oil and gas producer with interests in the North Sea. The application was initially refused on the papers, but ClientEarth exercised their right to an oral hearing where the application was again refused. The Judge decided the case was unarguable on all grounds, ruling that the FCA had acted in accordance with its obligations (by accepting Ithaca's IPO), which did not amount to part of the UK's environmental legislation, and confirming that it is not the FCA's purpose to protect or otherwise regulate the environment.

- **Frack Free Balcombe Residents Association v. Secretary of State for Levelling Up, Housing and Communities [2023] EWHC 2548 (Admin)**: this case concerned the grant of planning permission for exploration and assessment of hydrocarbons at a site in Balcombe, West Sussex. The decision was made by a planning inspector on behalf of the Secretary of State. The claimant was a residents association opposed to the proposed development. In October 2023, the High Court gave judgment, dismissing the claim. The claimant was given permission to appeal this decision to the Court of Appeal, whose judgment is awaited.

[1] These can be found here: https://climatecasechart.com/search-non-us/?fwp_non_us_case_category=suits-against-governments&fwp_non_us_jurisdiction=united-kingdom.

- **R (Friends of the Earth Ltd) v Secretary of State for Energy Security and Net Zero ("SSESNZ"); ClientEarth v SSESNZ; Good Law Project v SSESNZ [2024] EWHC 995 (Admin):** this case concerned a tri-partite challenge by Friends of the Earth, Good Law Project and ClientEarth to the government's Carbon Budget Delivery Plan (CBDP). The CBDP sets out the economy-wide package of proposals and policies which the Government believes will meet the delivery of future Carbon Budgets. The CCC found that the plans would cut less than a fifth of emissions necessary to reduce emissions to the required levels by 2033 (at the beginning of the sixth Carbon Budget). The Claimants argued that the CBDP breached the Climate Change Act 2008, as it was based on a number of assumptions that were irrational, most notably in assuming that all the listed proposals and policies in the CBDP would be delivered in full. On 3 May 2024, the High Court found in favour of the Claimants on 4 of the 5 grounds pursued, concluding that the Secretary of State did not have the information necessary to find that the proposed policies would be delivered as stated in full.

- **R(Friends of the Earth Ltd, Mr Kevin Jordan and Mr Doug Paulley v. Secretary of State for Environment, Rood and Rural Affairs [2024] EWHC 2707 (Admin):** Friends of the Earth supported two members of the public in filing a lawsuit against the UK government over its climate adaptation plan. Kevin Jordan, facing coastal erosion risks to his home in Norfolk on the East coast, and Doug Paulley, who is vulnerable to extreme heat due to medical conditions, sought recognition from the court that the current plan is not fit for purpose and must be improved. On 25 October 2024, the High Court dismissed the appeal, ruling that the government's climate adaption plan is lawful.

- **R (Finch) v Surrey County Council [2024] UKSC 20** : this case was brought against Surrey County Council following its decision to permit the expansion of an onshore oil well. The case hinged on the alleged "failure" of the council to assess the environmental impact of the downstream greenhouse gas emissions from the oil extracted from the site, rather than just the greenhouse gas emissions from the site's "construction, production, decommissioning and subsequent restoration", as part of the Environmental Impact Assessment, which is a major component of a planning application in the UK. The claim was unsuccessful before the High Court and the Court of Appeal. However, it was successful in the UK Supreme Court, which held that planning authorities must consider the downstream greenhouse gas emissions from oil and gas projects when assessing their environmental impact, not just emissions at the site itself. The judgment substantially broadened the scope of environmental assessments for fossil fuel projects and reinforced the legal duty to assess climate impacts at the permitting stage.

<u>Cases against corporations:</u>

- **ClientEarth v Shell and others [2023] EWHC 218 (Ch)***:* ClientEarth brought a derivative claim against the members of the Board of Shell for a failure to implement policies that would enable it to meet the goals of its own energy transition strategy (i.e. its net zero commitment). The High Court dismissed ClientEarth's claim, rejecting the existence of extra "incidental" duties on Shell's directors and stating that ClientEarth did not have a *prima facie* case to bring the claim. The Court of Appeal refused ClientEarth permission to appeal the High Court's judgment.

- **McGaughey and Davies v Universities Superannuation Scheme Ltd and Directors [2023] EWCA Civ 873**: members of the University Superannuation Scheme – one of the largest pensions schemes in the UK – sought to hold the directors of the corporate trustee to account on the basis that their investments in fossil fuels were at odds with their commitment to be Net Zero by 2050. The claim failed at first instance: "*as there was no prima facie case of loss in relation to this claim it falls at the first hurdle*" and the claimants appealed. The appeal also failed, with the Court of

Appeal holding that *"the derivative procedural mechanism is not intended to enable the would be claimants to avoid other procedural hurdles*".

"Responsive" cases:

- In recent years, there have been numerous protests by environmental action groups across the UK, such as Extinction Rebellion Just Stop Oil and Insulate Britain. Multiple claims have been brought in the UK against such climate protestors to reduce disruption caused by their protests. Some examples include:
- **National Highways Ltd v Persons Unknown and others [2023] EWCA Civ 182**: the Court of Appeal overturned a High Court Judge's decision to refuse summary judgment in claims for final injunctions where the defendants had failed to engage in the litigation. National Highways brought their claim against unnamed individuals following a spate of protests by Insulate Britain protesters (who want to see Britain's social housing properly insulated by 2025) with aims to restrict flow of traffic on and around the M25. National Highways sought summary judgment and final injunctions on the basis of trespass and nuisance. In April 2024, the injunction (which was originally in place for 12 months) was for a second time renewed for a further year, aimed at preventing climate protestors from stopping traffic on the M25.
- **Transport for London v Persons Unknown and others [2023] EWHC 1038 (KB)**: in a further case against the Insulate Britain group, Transport for London brought a claim, this time under the Highways Act 1980, to protect the rights of the public to the "use and enjoyment" of the highways. Transport for London was successful, and Morris J found the defendants' acts had constituted trespass and both private and public nuisance.
- **Shell UK Ltd v Persons Unknown [2023] EWHC 1229 (KB)**: Shell's UK entity brought this case against "Persons Unknown" seeking to restrict protesting at their petrol stations. They were successful and subsequently an order was produced, restricting anyone "*in connection with protest campaigns*" from "*disrupting the sale or supply of fuel*" at Shell petrol stations in England and Wales.

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

yes ☐
no ☒

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

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

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

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

In the UK, administrative courts and civil courts are not entirely separate. Disputes against private individuals relating to climate change are normally heard in either the County Court or High Court (part of the civil court system). Administrative disputes (i.e. challenges to decisions made by public entities) are heard in a specialist court within the civil court system (the Administrative Court).

II.B.1. In your country, does the legislation provide for a specific remedy for cases relating to the climate crisis? – **No**. If so:

- Which courts have jurisdiction to hear such cases?

N/A

- What is the composition of these courts?

N/A

- What are the main features of the relevant remedies?

N/A

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?

Declarations or quashing orders.

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

Yes. Training courses for judges in the UK are organised by organisations such as the British Institute of International and Comparative Law.

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 UK, it is not possible to bring a claim for judicial review of laws (primary legislation) as the UK operates under the doctrine of parliamentary sovereignty, which means that Parliament is the highest law-making authority and its acts cannot be struck down by courts (although courts in the UK can issue a declaration of incompatibility under section 4 of the Human Rights Act if primary legislation is found to be incompatible with a Convention right under the European Convention on Human Rights). On the other hand, regulations (secondary legislation) can be subject to judicial review. In such a case, the judicial review process is limited to a review of legality (which in relevant cases includes a review of proportionality).

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.

N/A

- 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?

N/A

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.

N/A

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

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

No. The concept of *actio poularis* is not recognised in the UK.

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]?

An individual or organisation must have sufficient interest, or "standing", in the matter to which the judicial review relates in order to be bring a judicial review claim or be involved in it (section 31(3) of the Senior Courts Act 1981).

This means that individuals/organisations who are directly impacted by a specific decision/action will generally have standing to bring a legal challenge in the courts. For example, in *R(Friends of the Earth Ltd, Mr Kevin Jordan and Mr Doug Paulley v. Secretary of State for Environment, Rood and Rural Affairs* [2024] EWHC 2707 (Admin), two of the claimants were individuals directly impacted by the effects of climate change (one whose house was at risk from coastal erosion and the other who was vulnerable to extreme heat due to medical conditions).

The UK courts have interpreted the requirement for "sufficient interest" broadly and flexibly, to encompass both personal standing and "representative standing", where the claimant group represents some section of society of public interest. Although the courts in the UK have avoided defining exactly what amounts to a sufficient interest, the general trend over recent years has been toward a liberalisation of this requirement, with the courts increasingly unwilling to dismiss a meritorious application for lack of standing. Pressure groups will generally be treated as having sufficient standing to bring a claim, providing there is no individual or other group with standing who has done so. For example, environmental charities such as *Friends of the Earth* and *ClientEarth* have been found to have standing to challenge government decisions or policies relating to climate change on numerous occasions (eg: *R (Friends of the Earth Ltd and Anr) v Heathrow Airport Ltd* [2020] UKSC 52).

- 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?

This is not rigidly defined and will depend on the nature of the claim. Claimants will need to show that they have a specific, substantial interest in the issue, distinct from the general public. While the claimant does not need to be personally harmed in the traditional sense, they must show a clear and identifiable link between themselves (or their organisation) and the decision or action they are challenging.

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

The civil standard of proof typically applies to such allegations (ie. the balance of probabilities).

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?

The main categories of climate change cases are judicial review claims, human rights claims and actions in tort (for example, negligence/nuisance claims).

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

In the UK, taking legal action against omissions by public authorities in climate change disputes (such as a failure to implement climate policies, assess environmental impacts, or meet statutory obligations) follows the rules of judicial review. To bring a claim for judicial review in the UK, the omission in question must be an omission of a public body. An individual or organisation must have sufficient interest, or "standing", in the matter in order to be bring a judicial review claim. The applicant would need to seek permission to apply for judicial review. In order for permission to be granted, they would need to demonstrate an arguable case that the public body was under a legal duty to do something which the public body failed to do.

- 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]?

Yes. It has become increasingly common in recent years for English courts to be asked to adjudicate environmental claims in respect of acts committed abroad by foreign-domiciled entities that have allegedly given rise to harm against people overseas. The jurisdictional link with England in these types of cases is generally based on the allegation that an English parent or affiliate of the foreign corporate is liable for the activities abroad by reference to general tort principles, and so there is a real issue to be tried against the English entity. For example, in the case of *Lungowe and others v Vedanta Resources PLC and another* [2016] EWHC 975 (TCC), where more than 1,800 Zambian citizens issued claims in negligence and breach of statutory duty against a Zambian mine operator and its English parent company, alleging water contamination from the Nchanga Copper Mine. The UK court found that the claim against the English company was arguable. While it remains to be seen whether such claims against English parent companies will succeed on their merits, recent authority demonstrates that, at the very least, the English courts will not readily allow jurisdictional arguments to bar their adjudication of claims involving alleged environmental harm by overseas subsidiaries of UK parent companies.

See also *Okpabi v Royal Dutch Shell* [2021] UKSC 3 where the Supreme Court clarified the circumstances under which a UK-based parent company may owe a duty of care for the actions of its foreign subsidiary in relation to environmental damage. The Court found that the fact that the Shell Group was organised along "Businesses" and "Functions" lines rather than corporate structure was relevant to establishing whether it was arguable that a duty of care was assumed by Royal Dutch Shell (RDS). With reference to the claimants' pleaded case, witness evidence and the corporate documentation, which was deemed irrelevant by the High Court, the Supreme Court found the claim gave rise to a real issue to be tried, namely the "extent to which delegated authority of RDS was involved and exercised in relation to decisions made by [Shell Petroleum Development Company of Nigeria Limited]", which would need to be resolved at trial following disclosure of RDS' internal corporate documentation.

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

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

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

  -the balancing of contradictory interests?

  -assessments of an essentially technical nature?

In the UK, the doctrine of the separation of powers requires that the principal institutions of the state – the executive, legislature and judiciary - should be clearly divided and independent of each other. As such, judges are cautious not to intrude on areas of political judgment in relation to climate change, normally holding that these are matters for the government and parliament. When judges are asked to review decisions relating to climate change, their focus will be on whether the government has complied with its legal obligations under domestic law. When the matter is primarily a matter of political judgment, such as deciding the best way to implement a specific policy, judges will not interfere unless the decision is shown to be irrational, unreasonable, or in breach of statutory duties.

One example of the courts affording the government a broad margin of discretion in this way is *R (Christopher Packham) v Secretary of State for Transport and Others* [2020] EWCA Civ 1004. In that case, the Court of Appeal upheld the refusal of permission to apply for judicial review of the government's decision to proceed with a large-scale rail project. The claimant argued that the government had failed properly to consider the environmental impacts of the scheme. The Court decided that the decision was "macro-political" in nature and declined to interfere, as the government was not under any legal duty to carry out any further environmental assessment.

However, judges do intervene when they find that the government has breached a legal obligation (see, for example, *R ((1) Friends of the Earth Limited (2) ClientEarth (3) Good Law Project and Joanna Wheatley) v Secretary of State for Business, Energy and Industrial Strategy* [2022] EWHC 1841 (Admin)). In all such cases, judges will carefully balance conflicting interests (environmental/economic/international) with the ultimate aim of ensuring that domestic legal obligations are complied with.

In many climate change cases, the UK judiciary shows a degree of deference to experts (scientists, economists, and policymakers) who assess the impacts of climate change and the best strategies for mitigation and adaptation. Courts generally recognise that climate science is complex and that policy responses often require expert judgment.

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.

One such example is the case of *R (on the application of Friends of the Earth Ltd and others) v Heathrow Airport Ltd* [2020] UKSC 52, which concerned plans by Heathrow Airport Ltd to develop a third runway. Two environmental charities challenged the lawfulness of the UK Government's policy in support of the expansion of Heathrow Airport on several grounds, including that it failed to take account of the emissions targets in the Paris Agreement. The UK Supreme Court unanimously dismissed the challenge on all grounds and held that the policy was lawful. This decision involved a careful balancing of environmental interests and the economic interest in the expansion of Heathrow Airport. It was relevant that the challenge was brought at

an early stage in the development of the project and that there was scope at later stages for there to be challenges based on any alleged failure to take account of those emissions targets.

- 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?

Yes. Under section 29A of the Judicial Review and Courts Act 2022 (JRCA 2022), a judge has the power to make a suspended quashing order or a prospective quashing order:

i) Suspended quashing orders (SQO): provide that the quashing/annulment does not take effect until a date specified in the order (section 29A(1)(a)). The act or decision in issue will be upheld until the quashing takes effect and treated "as if" its validity and force had been unimpaired by the relevant defect. This does not limit any retrospective effect of the quashing order once the quashing takes effect.

ii) Prospective quashing orders (PQO): remove or limit any retrospective effect of the quashing/annulment (section 29A(1)(b)). The action/decision is declared unlawful from a particular point in time and without invalidating any prior actions.

Quashing orders that engage these provisions may be made subject to conditions, and the JRCA 2022 includes a list of factors that the court must have regard to in deciding whether to make an SQO or PQO. These include the nature and circumstances of the relevant defect, any resulting detriment to good administration and the interests or expectations of persons who would benefit from the quashing, and "any other matter that appears to the court to be relevant" (section 29A(8)).

II.E.2. Technical and scientific judgments:

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

In the UK, judges often rely on evidence from experts when dealing with disputes involving technical and scientific judgments. In the context of climate change disputes, this evidence will often by provided by independent bodies such as the CCC.

However, expert evidence is generally not permitted in judicial review claims, which make up the majority of climate change cases. In such cases, where the issues raised relate to manifest error of unfairness, expert evidence will not generally be admissible or relevant because of the limited nature of the review conducted by the court.

One example is *The Queen on the Application of Neil Richard Spurrier v The Secretary of State for Transport v Heathrow Airport Limited, Heathrow Hub Limited, Gatwick Airport Limited, Arora Holdings Limited* [2019] EWHC 1070 (Admin), 2019 WL 01921369, concerning the lawfulness of the expansion of Heathrow Airport. In this case, the High Court was presented with and considered an enormous amount of evidence before reaching its decision, some of this from experts. In its judgment, the court emphasised that it is not the role of a court in judicial review proceedings to resolve any conflict of expert opinion. Its role is to assess whether there was a sufficient evidential basis for the public authority for its assessment and resulting decision to be regarded as reasonable and lawful: a point also explained by the Supreme Court in *In re Noeleen McAleenon's Application for Judicial Review* [2024] UKSC 31. The *Spurrier* case also reaffirmed that courts should accord an enhanced margin of appreciation to decisions involving or based upon "scientific, technical and predictive assessments" by those with appropriate expertise. The degree of that margin will of course

depend on the circumstances: but, where a decision is highly dependent upon the assessment of a wide variety of complex technical matters by those who are expert in such matters and/or who are assigned to the task of assessment (ultimately by Parliament), the margin of appreciation will be substantial.

- 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]?

Yes, if expert evidence is required, experts can be instructed to give or prepare expert evidence for the purpose of proceedings. Expert evidence is evidence as to matters of a technical or scientific nature and generally includes an expert's opinion. The expert witness's primary duty is to help the court, and this duty overrides any duty that experts may have to those instructing or paying them.

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

In judicial review cases in the UK, courts do not directly evaluate the factors contributing to climate change themselves, but they assess whether public bodies have lawfully and rationally considered those complexities in their decision-making. The courts' role is not to weigh the environmental science or make policy judgments, but to ensure procedural legality, reasonableness, and compliance with statutory duties.

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?

N/A

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

N/A

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

N/A

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

N/A

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

Yes. This environmental principle is enshrined in section 17(5)(e) of the Environment Act 2021.

II.G. Provisional judicial protection [interim measures]

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

In the UK, requests for provisional judicial protection in climate change cases are handled under general civil procedure rules, as there is no special legal regime for climate litigation. When deciding on provisional judicial protection in climate-related cases, UK courts typically take into account the likelihood of success on the merits of the case, the potential for irreparable harm if interim relief is not granted and any harm to the defendant or third parties if interim relief is granted.

- Please mention the measures that the judge may order.

Interim injunction/stay of execution/preservation order/disclosure order.

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

In judicial review cases, judges will consider material presented by the parties in respect of ecological damage (eg: scientific studies/expert reports/environmental impact assessments, etc) in order to decide if that material was adequately addressed by the decision-maker. The judges themselves do not make scientific findings about ecological damage but instead use any evidence presented to evaluate whether the relevant authority considered the ecological risks properly, followed their statutory duties and acted lawfully.

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?

No. In general, there is no formal monitoring or follow-up mechanism in the UK where the court checks to see whether the administration/legislator has complied with a court's decision. This normally relies on good faith compliance by public authorities, along with political accountability and the possibility of further legal action. However, in the judgment of the High Court in *R (ECPAT UK) v Kent CC, SSHD* [2023] EWHC 2199 (Admin), the judge did acknowledge the possibility of the courts being more willing to take an active role in monitoring compliance with court orders in complex cases. In that case, the judge commented that "*if the court does not retain some further role, there is a serious danger that the parties will revert to positions of each blaming the other and that these positions will lead, again, to an impasse*.". However, this type of ongoing monitoring is likely to remain exceptional.

- 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?

We are not aware of any examples of UK courts monitoring the enforcement of judgments in disputes relating to climate change.

III.A. In your country:

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

Yes. For example, in *R (Finch on behalf of the Weald Action Group) v Surrey County Council* [2024] UKSC 20, the UK Supreme Court recognised the obligation on local councils to take account of downstream greenhouse gas emissions when granting planning permission for a project concerning the extraction of oil.

Another example is *R ((1) Friends of the Earth Limited (2) ClientEarth (3) Good Law Project and Joanna Wheatley v Secretary of State for Business, Energy and Industrial Strategy* [2022] EWHC 1841 (Admin), in which the High Court recognised the duty of the Secretary of State for Business to adopt policies to meet the Government's carbon budget and provide detailed explanation of how these policies will enable the carbon budgets to be met.

Cases like these confirm that the State has a positive duty to act – not just avoid harm – under the UK's domestic climate legislation.

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

In the UK, there is no explicit, free-standing legal right for individuals or organisations to ensure State compliance with climate-related obligations. However, as already discussed, UK courts have indirectly recognised that certain people/organisations have the standing and legal means to challenge failures of compliance with climate duties through the process of judicial review.

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

Please see comments in relation to "legitimate interest"/standing under section **I.B.4.** above.

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]?

This is not common. However, in *R (Friends of the Earth) v Secretary of State for Environment, Food and Rural Affairs* [2024] EWHC 2707 the High Court of England and Wales did consider the judgment of the recent ECtHR case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* in detail.

This case concerned the legality of the Secretary of State's third National Adaptation Programme (NAP3), which sets out how it intends to respond to the climate risks identified under the Climate Change Act 2008. The claimants challenged the NAP3 on four grounds, two of which relied on the ECtHR's decision in *Verein KlimaSeniorinnen*. The Court rejected all four grounds. In relation to *Verein KlimaSeniorinnen*, the Court held that the UK's statutory adaptation framework under the Climate Change Act 2008 was materially different from the Swiss framework criticised in *Verein KlimaSeniorinnen* and that it satisfied the UK's positive obligations under the ECHR. The Court emphasised that, while the *Verein KlimaSeniorinnen* judgment imposed a narrow margin of appreciation in relation to mitigation targets, the margin was broader for adaptation.

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?

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?

We are not aware of any examples of decisions aimed at harmonising international and domestic laws on climate change. Although UK courts can and do refer to international laws, unless these have been incorporated into domestic legislation, they are of limited assistance in this context.

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

No. In fact, in *R (Friends of the Earth Ltd & Anr) v Heathrow Airport Ltd* [2020] UKSC 52, the UK Supreme Court rejected an argument that the Government had to consider the Paris Agreement when designating national policy. This case confirmed that in the UK, climate obligations must be interpreted strictly within the framework of domestic legislation. This reflects the dualist nature of the UK's constitution.

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]

It remains to be seen how the UK courts will take account of the ECtHR's approach in *Verein Klimaseniorinnen Schweiz v. Switzerland*. All human-rights based claims relating to climate change have been unsuccessful in the UK to date. The main difference lies in the courts' differing approaches to standing up to this point. On existing domestic authority in the UK, an association like *Verein Klimaseniorinnen Schweiz,* which the ECtHR found to have standing "despite the fact it cannot itself claim to be the victim of a violation of the Convention", would probably not meet the "victim test" under section 7 of the Human Rights Act 1998; however, the domestic courts are likely to accept guidance from the ECtHR's approach on this question. The UK courts' approach to this issue up to this point can be seen in the case of *Plan B Earth & Others v The Prime Minister & Others* [2021] EWHC 3469, in which the court dismissed that Plan B was a "victim" under the Human Rights Act 1998.

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?

No.

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	☐

There is no overarching, single piece of national legislation in the UK aimed at addressing overtourism. This is primarily dealt with via a multi-pronged strategy that combines policies and local initiatives to mitigate the negative effects of overtourism. Some examples include:

- Local authorities using planning restrictions to limit the number of holiday homes/hotels in their local area.
- Certain cities (eg Edinburgh) are discussing introducing a tourist tax. The Visitor Levy (Scotland) Act became a law in Scotland in September 2024. This piece of legislation allows councils in Scotland to tax paid, overnight accommodation.
- Scotland has also introduced a licensing scheme for the short-term rental market (ie. Holiday accommodation/ Airbnb-style rentals). The scheme is mandatory for all short-term let accommodation across Scotland and requires anyone operating a short-term let property to obtain a licence from their local council.
- The UK Government has a sustainable tourism framework that emphasizes minimizing environmental impact. This consists of collection of initiatives, policies and strategies.

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?

N/A

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]?

While the UK has not enacted specific national laws solely addressing overtourism, it is a member of various international organisations that guide sustainable tourism practices. For example, the UK has been a member

of UNESCO since 1997 and was one of the 20 founding member countries that signed the Convention of the OECD in 1960. Some of the sustainable tourism guidelines originating from these organisations have been recorded in non-binding texts, which could influence policymaking in the UK. However, we are not aware of any regulations based on these texts to date.

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

In the UK, certain powers are devolved to local and regional governments. This enables local councils and devolved governments to create and enforce their own tailored policies to manage tourism in their areas (eg tourist taxes/visitor caps, etc).

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)

N/A

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?

N/A

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

Although there is no centralised, national plan to address the problems resulting from excessive tourism activity in the UK, certain local areas of the UK have introduced initiatives to mitigate the effects of overtourism. For example, the area of Kent has a 'Sustainable Tourism Action Plan', which lays out 16 key action areas and aims to help protect and enhance community, climate and nature for the long term value – not only of the local tourism industry – but also of the planet.

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

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

-other provisions concerning the organisation of the competent authorities? ☐

No. There are no regulations dealing specifically with the allocation of responsibilities for the management of hypertourism. Such responsibilities are distributed across multiple levels of government.

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

On a national level, the Department for Digital, Culture, Media and Sport is responsible for national tourism strategy. Devolution means that Scotland, Wales and Northern Ireland are given significant autonomy in

relation to tourism management and strategy. At a local level, local authorities are responsible for managing tourism pressures in their local areas (through visitor management, planning decisions, etc), although there is no obligation for local councils to manage "hypertourism" specifically.

➥ 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 ☐

While there have not been any cases in UK courts that have explicitly referred to the concept of 'hypertourism', there have been several cases challenging the approval of new tourism developments, in which claimants argue that the new development will harm the environment/the local community.

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

There have not been any "landmark cases" in the UK relating to hypertourism. However, some examples of the type of litigation that has arisen from the development of the tourism industry in the UK include:

- ***R. (on the application of Austin) v Wiltshire Council*** **[2017] EWHC 38 (Admin):** a local resident brought a challenge against Wiltshire Council's decision to grant planning permission for the development of a holiday lodges and associated development in a country park. The High Court dismissed the judicial review claim, finding that the grant of planning permission had been lawful.
- ***R. (on the application of Corbett) v Cornwall Council*** **[2020] EWCA Civ 508:** the Court of Appeal found that a local planning authority had been entitled to grant planning permission for the extension of a caravan park within a designated area of great landscape value. The Court concluded that although the proposal conflicted with policies in the local development plan aimed at protecting areas of great landscape value, it complied with policies aimed at supporting sustainable tourism, and the local authority was entitled to conclude that it accorded with the development plan as a whole.

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

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

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

-other categories of litigations? ☐

II.C. Please cite any court decisions:

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

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

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

To date, no cases in the UK have expressly referred to the phenomenon of 'hypertourism'.

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 ☒ - the system of dual jurisdiction does not operate in the UK.

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.

N/A

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