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**ROMANIA**

**CLUJ COURT OF APPEAL**

**SECTION III ADMINISTRATIVE AND TAX LITIGATION**

**RESOLUTION**

**Public hearing dated April 10, 2023**

**Panel consisting of:**

**PRESIDING JUDGE: George Barbura-Turcu**

**COURT REGISTRAR: Alexandra Lucia Bujor**

Pending the resolution of the case in administrative and tax litigation filed by the Plaintiffs DECLIC ASSOCIATION, PENCEA-BRĂDĂȚAN ELENA ROXANA, BRĂDĂȚAN TUDOR IULIAN, NĂSTĂSACHE HOPĂRTEANU CĂTĂLINA, MIREA SILVIA, DEJEU DANIELA LUMINIȚA, against the Defendants the GOVERNMENT OF ROMANIA, the PRIME MINISTER, MR NICOLAE CIUCĂ, the MINISTRY OF ENVIRONMENT, WATERS AND FORESTS, the MINISTER OF ENVIRONMENT, WATERS AND FORESTS, MR BARNA TANCZOS, the MINISTRY OF ENERGY, the MINISTER OF ENERGY, MR VIRGIL DANIEL POPESCU, with regard to the positive obligation to act (affirmative duty).

The writ procedure is legally fulfilled.

The Plaintiffs' representative, Roxana Mândruțiu, Attorney-at-Law, appeared on the roll-call in open court, with Power of Attorney on file at page 2 (volume 4) of the case-file, the Defendants being absent.

The statement of claim was reported by the Court Registrar, who noted that the present case was at the first hearing, the substantive procedural stage.

At the same time, it is noted that the Plaintiffs have submitted to the file the *proof of payment of the stamp duty* amounting to RON 250 for each Plaintiff, according to the document on page 85.

On March 3, 2023 the Defendant the Ministry of Environment, Water and Forests submitted to the file *the statement of defense (pages 135-157 volume 3)*.

On March 6, 2023 the Defendant Barna Tanczos, as head of the Ministry of Environment, Water and Forests, submitted to the file *the statement of defense (pages 159-165 volume 3)*.

On March 13, 2023 the Plaintiff Declic Association submitted to the file *documents (pages 1-94 volume 4)*.

On April 5, 2023 the Bankwatch Romania Association submitted to the file *the ancillary petition for intervention (pages 106-112 volume 4)*.

On April 6, 2023 the Plaintiffs submitted to the file *the minutes (pages 115-135 volume 4)*.

On April 7, 2023 the Defendant the Ministry of Energy submitted to the file *the statement of defense (pages 49-51 volume 4)*.

On April 7, 2023 the Climate Litigation Network submitted *to the file written notes (pages 53-74 volume 4)*.

Pursuant to Article 223 paragraph 3 of the Code of Civil Procedure and Article 411 paragraph 2 the case was also requested to be tried in the absence of the parties to the hearing as mentioned on page 81, 157 of the file.

The Court questioned the Plaintiffs' representative if whether she was aware of the statement of defense submitted to the file by the Defendant the Ministry of Energy.

The Plaintiffs' representative states that she has noticed the statement of defense submitted to the file on the Court's website but requests a copy of the document.

The Court proceeds to listing a copy of the statement of defense on the Court's website and hands it over to the Plaintiffs' representative.

The Court notes that the Defendant the Ministry of Energy has raised the following exceptions in its statement of defense: *the plea of lack of the capacity to sue and interest of the Plaintiffs; the plea of lack of the capacity to be sued for the individuals sued (the heads of the Defendant institutions); the plea of the premature application of the fine for the heads of the Defendant institutions*, to which end questions the Plaintiffs' representative if she requests a time limit for the preparation of the defenses or whether these pleas can be raised at this hearing.

The Plaintiffs' representative states that she does not request a time limit, considering that the Court may discuss the pleas raised by the Defendant the Ministry of Energy at this hearing.

Having raised the question of composition, the Plaintiff's representative considers that this Court has general substantive and territorial jurisdiction to hear the case.

The Court, pursuant to Article 131 Code of Civil Procedure, in conjunction with the provisions of Article 96 paragraph 1 section 1 of the Code of Civil Procedure and Article 10 of Law 554/2004, finds that it has general, material and territorial jurisdiction to hear this case.

The Court notes that the recital for this hearing shows that the statements of defense submitted in the case file were communicated to the Plaintiffs' representative, with the exception of the statement of defense filed by the Defendant the Ministry of Energy, which was communicated to her at this hearing. The Plaintiffs' representative states that she was handed the statements of defense submitted in the file case.

*The Court calls into question the plea of lack of the capacity to sue and of interest of the Plaintiffs raised by the Defendant the Ministry of Energy, noting that the same plea was raised by the Defendant the Ministry of Environment, Water and Forests.*

The Plaintiffs' representative requests that the plea of lack of interest of the Declic Association be rejected for the reasons set out below. Although the defendant claims that the Plaintiffs have not indicated which administrative act is challenged or which specific inaction is challenged, in its opinion, according to the provisions of Article 8, second sentence of Law 554/2004 it is an unjustified refusal that is equivalent to an individual administrative act. Moreover, it states that it has invested in a legality review on an environmental issue, namely climate change law, the objective of the Declic Association being closely related to the subject matter of the legal action.

Therefore, having regard to this connection and Decision No. 8/2020 ruled by the High Court of Cassation and Justice, it requests that the plea of lack of interest of the Declic Association be rejected. At the same time, it requests to take into account the judgments rules in similar disputes regarding climate change, namely those rules by the Court of Appeal in Paris, which considered that the NGO has standing and a legitimate interest, in relation to the purpose, and at the same time the multiplicity of actions in this field.

*The Court*, after deliberation, ***will reject the plea of lack of capacity to sue and the plea of lack of interest of the Plaintiffs*** raised by the Defendant the Ministry of Energy and the Ministry of Environment, Water and Forests by way of statement of defense, noting, in essence, that in the present case an alleged unjustified refusal to settle a claim that affects the right to life, to a healthy environment is being criticized, so that Article 1 paragraph 1, Article 2 paragraph 2 of Law 554/2004 are applicable and, therefore, the Plaintiffs have the possibility to challenge this alleged unjustified refusal to settle their claim before the Administrative Court. The Court notes that this is not an objective dispute but of a subjective dispute in which the Plaintiffs ask the Court to prevent/remedy potential harmful interference with their fundamental rights. In resolving the plea, account was also taken of Article 95 paragraph 1, Article 20 paragraph 6, Article 3 section (h), Article 5 section (d) of Government Emergency Ordinance 195/2005 and Article 3 of the Statutes of the Association (page 87).

*The Court calls into question the plea of lack of the capacity to be sued* for the individuals who are the heads of public institutions, and, first of all, in relation to the provisions of Article 22 of the Code of Civil Procedure questions the Plaintiffs' representative if the action has been brought against the Ministers or the individuals holding these positions.

The Plaintiffs' representative claims that the action was filed against the Ministers and asks that the plea of lack of the capacity to be sued of the individuals who are the heads of the public institutions be rejected, as she has sued the Ministers and the institution of the Prime Minister, considering that they should stand trial together with the Government of Romania and the Ministers being sued.

She also relies on similar case law of the Paris Court of Appeal, which upheld the lawsuit and even ordered the Ministers to take action to mitigate climate change.

The Court asked the Plaintiffs' representative whether the Romanian Courts are bound to follow the decisions in France and to specify whether this judicial practice could only be considered as evidence.

The Plaintiffs' representative states that this judicial practice is for information purposes only, given that the French and Belgian judicial systems are similar systems of law, and that they constitute written evidence.

**The Court**, after deliberation, **will admit the plea of lack of capacity to be sued for the individuals who are the heads of the public institutions**, i.e. the Prime Minister, the Minister of Energy and the Minister of Environment, Water and Forests, noting, in essence, that the Ministers are the heads of the Ministries, and of the Government and represent the ministries and the Government in relation to the other public authorities, with natural persons and legal entities in the country and abroad, as well as in court, the Ministers occupy a position of public dignity, not being themselves public authorities within the meaning of Article 2 paragraph 1 section (b) of Law 554/2004. Thus, the Court notes that only the Ministries/Government and not the Ministers have the quality of issuing authorities of the alleged unjustified refusal to resolve the request, who are not prosecuted under Article 16 of Law 554/2004. At the same time, in order to admit this plea, the recitals of the Decision of the High Court of Cassation and Justice No. 2/2023 should also be taken into account, the Panel for the ruling of questions of law, in particular paragraphs 114, 118, 123, 125, 126 and 132, as regards the distinction between Article 18 paragraphs 5 and 6 of Law 554/2004 in conjunction with Article 24 of Law 554/2004.

**The Court calls into question the plea of premature application of the fine for the heads of the Defendant institutions.**

The Plaintiffs' representative claims that she leaves it to the Court's discretion to rule on this plea.

**The Court**, after deliberation, **will reject the plea of premature application of the fine for the heads of the Defendant institutions**, having regard to the recitals of Decision of the High Court of Cassation and Justice No. 2/2023.

**The Court calls into question the plea of inadmissibility of count 1.**

The Plaintiffs' representative asks that the plea of inadmissibility of count 1 be rejected because there has been no breach of the principle of the separation of powers in the State. Moreover, she stated that she was not asking for certain measures to be taken so that the Court would intervene as an executive authority or for certain laws to be created so that the Court would intervene but she was asking for the necessary steps to be taken to ensure that the law is complied with, namely to comply with the climate objectives as they were set out in the Paris Agreement, namely the thresholds of 2-2.5 degrees Celsius, that are also legal thresholds. On the other hand, as far as human rights are concerned, she considers that the Court should require the authorities to justify measures that interfere with human rights. For these reasons, she considers that the principle of the separation of powers in the State is not breached but the Court may rule on the merits of the present case.

**The Court**, after deliberation, **is to deem the plea of inadmissibility of count 1** as a defense on the merits, to be reviewed as such.

With regard to the **plea of lack of the capacity to be sued in relation to count 2 of the application for writ of summons raised by the Ministry of Environment, Water and Forests**, the Court asks the Plaintiff's representative to clarify, in relation to the counts 1 and 2, who the Defendants are.

The Plaintiffs' representative considers that it cannot be held that the Ministry of the Environment should not be held liable and accountable for the second count because increasing renewable energy to 45% and increasing energy efficiency to 13% automatically leads to a reduction in greenhouse gases, since they are both mitigation and adaptation strategies, in other words, they cannot each go their separate ways. Moreover, she shows that the departments are not interconnected since the Ministry of Environment considers that it should only deal with the environment, not with sustainable development, and the Ministry of Energy only with energy and that's it. In conclusion, she considers that it is necessary to reject the plea of lack of the

capacity to be sued of count 2 raised by the Ministry of Environment, Water and Forests.

**The Court**, after deliberation, **is to join with the merits the plea of lack of the capacity to be sued in respect of count 2 raised by the Ministry of Environment, Water and Forests.**

The Court questions the Plaintiffs' representative if she is aware that there will be other motions to intervene in the present case.

The Plaintiffs' representative claims that no further applications for motions to intervene should be submitted to the file.

**The Court instructs the Plaintiffs' representative** to submit to the file, by the date of the hearing, a summary of the pleas for unlawfulness raised in the action, not exceeding 10 pages, in both electronic and pdf format.

The Plaintiffs' representative states that she will submit a summary of the action to the file.

The Court, in relation to the provisions of Article 64 paragraph 1 of the Code of Civil Procedure **shall order** that the **ancillary petitions for motions to intervene formulated in this case be served to the Parties**, and at the same time shall order the interveners **to pay the stamp of these petitions in the amount of RON 20** according to the provisions of Article 27 of Government Emergency Ordinance No. 80/2013, with the right to review in accordance with Article 39 of Government Emergency Ordinance No. 80/2013 and the right to request the facilities for the payment of the judicial stamp duty in accordance with Article 33 paragraph 2 of the Government Emergency Ordinance No. 80/2013.

**The Court calls into question the need to summon the intervener with the mention to submit to the file case the Statutes of the Association in so far as they were not attached in full to the application.**

The Plaintiffs' representative states that she agrees with this request.

With regard to the petition of the Climate Litigation Network, the Court asks the representative to indicate to what extent she considers the institution to be compatible with our law or to state whether this petition should be clarified or not as an ancillary petition.

The Plaintiffs' representative alleges that the petition made by the Climate Litigation Network should be considered as a legal opinion, rather than an ancillary petition for motion to intervene.

**The Court is to reply, in Romanian, to the email address of the Climate Litigation Network** from which the request was sent to the Court, i.e. [filippo.fantozzi@urgenda.nl](mailto:filippo.fantozzi@urgenda.nl) in order to comply with the provisions of Article 150 paragraph 4, Article 292 paragraph 5 and Article 148 of the Code of Civil Procedure, given that the official language of the dispute is the Romanian language, in which sense: to submit to the file case, at the latest by the deadline for the hearing, a notarized translation of the document sent to the Court which should be accompanied by a certified copy of the document filed in the foreign language, signed in original or in digital form; to state whether it intends to make an ancillary application for a motion to intervene in accordance with the provisions of Article 63 et seq. of the Code of Civil Procedure, and if the answer is in the affirmative, to stamp accordingly with the amount of RON 20, with the right to review and public legal aid in accordance with the provisions of Article 39 and Article 33 of the Government Emergency Ordinance No. 80/2013. At the same time, it is requested to submit the Statutes of the Association in accordance with Article 150 paragraph 4, Article 292 paragraph 5 of the Code of Civil Procedure.

#### THE COURT

After deliberation:

**Rejects the plea of lack of the capacity to sue and the plea of lack of interest of the Plaintiffs** raised by the Defendant the Ministry of Energy and the Ministry of Environment, Water and Forests by way of statement of defense, for the reasons mentioned in the introductory part of the judgment.

**Admits the plea of lack of the capacity to be sued for the individuals who are the heads of public institutions**, for the reasons mentioned in the introductory part of the judgment.

**Rejects the plea of premature application of the fine for the heads of the Defendant institutions**, having regard to the recitals of Decision No. 2/2023 of the High Court of Cassation and Justice.

Classifies **the plea of inadmissibility of count 1** as a defense on the merits, to be considered as such.

**Instructs the Plaintiffs' representative** to submit to the file, by the date of the hearing, a summary of the pleas for unlawfulness raised in the action, not exceeding 10 pages, in both electronic and pdf format.

Serves the ancillary petitions for motions to intervene submitted in this case to the Parties in order to resolve the ancillary petitions for motions to intervene, and at the same time, their stamp in the amount of RON 20 in accordance with the provisions of Article 27 of Government Emergency Ordinance No. 80/2013, with the right to review in accordance with Article 39 of the



Government Emergency Ordinance No. 80/2013 and the right to request the facilities for the payment of the judicial stamp duty in accordance with Article 33 paragraph 2 of the Government Emergency Ordinance No. 80/2013.

**Summons the intervener with the mention to submit to the file the Statutes of the Association in so far as they were not attached in full to the application.**

The Court **replies, in Romanian, to the email address of the Climate Litigation Network** from which the application was sent to the Court with the mention to reply to the applications mentioned by the Court in the introductory part of the judgment.

For these reasons, it will grant a new hearing, meaning that:

## RULES

Adjourns the judgment of the case until **May 22, 2023, at 1.30 p.m., room 38** when:

**Instructs the Plaintiffs' representative** to submit to the file, by the date of the hearing, a summary of the pleas for unlawfulness raised in the action, not exceeding 10 pages, in both electronic and pdf format.

**Serves the ancillary petitions for motions to intervene submitted in this case to the Parties** in order to resolve the ancillary petitions for motions to intervene, **and at the same time, their stamp in the amount of RON 20** in accordance with the provisions of Article 27 of Government Emergency Ordinance No. 80/2013, with the right to review in accordance with Article 39 of Government Emergency Ordinance No. 80/2013 and the right to request the facilities for the payment of the judicial stamp duty in accordance with Article 33 paragraph 2 of the Government Emergency Ordinance No. 80/2013.

**Summons the intervener with the mention to submit to the file the Statutes of the Association in so far as they were not attached in full to the application.**

**Replies, in Romanian, to the email address of the Climate Litigation Network** from which the request was sent to the Court, i.e. filippo.fantozzi@urgenda.nl, in order to comply with the provisions of Article 150 paragraph 4, Article 292 paragraph 5 and Article 148 of the Code of Civil Procedure, given that the official language of the dispute is the Romanian language, in which sense: to submit to the file case, at the latest by the deadline for the hearing, a notarized translation of the document sent to the Court which should be accompanied by a certified copy of the document filed in the foreign language, signed in original or in digital form; to state whether it intends to make an ancillary application for a motion to intervene in accordance with the provisions of Article 63 et seq. of the Code of Civil Procedure, and if the answer is in the affirmative, to stamp accordingly with the amount of RON 20, with the right to review and public legal aid in accordance with the provisions of Article 39 and Article 33 of the Government Emergency Ordinance No. 80/2013. At the same time, it is requested to submit the Statutes of the Association in accordance with Article 150 paragraph 4, Article 292 paragraph 5 of the Code of Civil Procedure.

Delivered in the public sitting dated April 10, 2023.

**JUDGE,  
George Barbura-Turcu**

**COURT REGISTRAR,  
Alexandra Lucia Bujor**

A.B. April 11, 2023

## **Hearing: May 22, 2023, 1:30 p.m., room 38.**

### INTERVENER

1. NR **BANKWATCH ROMANIA ASSOCIATION** - Bucharest, Sector 1, SPLAIUL INDEPENDENȚEI, nr. 1, bl. 16, sc. 1, ap. 6

*Note: WE REQUEST YOU TO PAY THE JUDICIAL STAMP DUTY IN THE AMOUNT OF RON 20 RELATED TO THE APPLICATION FOR THE MOTION TO INTERVENE LODGED AND TO SUBMIT TO THE FILE CASE THE PROOF OF ITS PAYMENT. WE REQUEST YOU TO SUBMIT TO THE FILE, IN ITS ENTIRETY, TO THE EXTENT THAT THEY HAVE NOT BEEN FILED, THE STATUTES OF THE ASSOCIATION. To view some of the documents in the file, go to [www.curteadeapelcluj.ro](http://www.curteadeapelcluj.ro) and use the password: \*\*\*\*\*. You are bound by the requirement not to disclose the password to others.*

2. NR **2CELSIUS ASSOCIATION** - CUGIR, AL. SAHIA, nr. 18, sc. C, ap. 5, ALBA County

*Note: WE REQUEST YOU TO PAY THE JUDICIAL STAMP DUTY IN THE AMOUNT OF RON 20 RELATED TO THE APPLICATION FOR THE MOTION TO INTERVENE LODGED AND TO SUBMIT TO THE FILE CASE THE PROOF OF ITS PAYMENT. WE REQUEST YOU TO SUBMIT TO THE FILE, IN ITS ENTIRETY, TO THE EXTENT THAT THEY HAVE NOT BEEN FILED, THE STATUTES OF THE ASSOCIATION. To view some of the documents in the file, go to [www.curteadeapelcluj.ro](http://www.curteadeapelcluj.ro) and use the password: \*\*\*\*\*. You are bound by the requirement not to disclose the password to others.*

### PLAINTIFF

3. NR **DECLIC ASSOCIATION** - CLUJ-NAPOCA, AT SCA REVNIC, CRISTIAN ȘI ASOCIAȚII - STRADA PAVEL ROȘCA, NR. 1, AP. 7, CLUJ County

*Note: WITH THE SERVING OF THE APPLICATIONS FOR MOTION TO INTERVENE. To view some of the documents in the file, go to [www.curteadeapelcluj.ro](http://www.curteadeapelcluj.ro) and use the password: \* \* \* \* \*. You are bound by the requirement not to disclose the password to others.*

4. NR **PENCEA-BRĂDĂȚAN ELENA ROXANA** - CLUJ-NAPOCA, AT SCA REVNIC, CRISTIAN ȘI ASOCIAȚII - STRADA PAVEL ROȘCA, NR. 1, AP. 7, CLUJ County

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5. NR **BRĂDĂȚAN TUDOR IULIAN** - CLUJ-NAPOCA, AT SCA REVNIC, CRISTIAN ȘI ASOCIAȚII - STRADA PAVEL ROȘCA, NR. 1, AP. 7, CLUJ County

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6. NR **NĂSTĂSACHE HOPÂRTEANU CĂTĂLINA** - CLUJ-NAPOCA, AT SCA REVNIC, CRISTIAN ȘI ASOCIAȚII - STRADA PAVEL ROȘCA, NR. 1, AP. 7, CLUJ County

*Note: WITH THE SERVING OF THE APPLICATIONS FOR MOTION TO INTERVENE. To view some of the documents in the file, go to [www.curteadeapelcluj.ro](http://www.curteadeapelcluj.ro) and use the password: \* \* \* \* \*. You are bound by the requirement not to disclose the password to others.*

7. NR **MIREA SILVIA** - CLUJ-NAPOCA, AT SCA REVNIC, CRISTIAN ȘI ASOCIAȚII - STRADA PAVEL ROȘCA, NR. 1, AP. 7, CLUJ County

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8. NR **DEJEU DANIELA LUMINIȚA** - CLUJ-NAPOCA, AT SCA REVNIC, CRISTIAN ȘI ASOCIAȚII - STRADA PAVEL ROȘCA, NR. 1, AP. 7, CLUJ County

*Note: WITH THE SERVING OF THE APPLICATIONS FOR MOTION TO INTERVENE. To view some of the documents in the file, go to [www.curteadeapelcluj.ro](http://www.curteadeapelcluj.ro) and use the password: \* \* \* \* \*. You are bound by the requirement not to disclose the password to others.*

### DEFENDANT

9. NR **THE GOVERNMENT OF ROMANIA** - Bucharest, Sector 1, PIAȚA VICTORIEI - PALATUL VICTORIA, nr. 1

*Note: WITH THE SERVING OF THE APPLICATIONS FOR MOTION TO INTERVENE. To view some of the documents in the file, go to [www.curteadeapelcluj.ro](http://www.curteadeapelcluj.ro) and use the password: \* \* \* \* \*. You are bound by the requirement not to disclose the password to others.*

10. NR **THE PRIME MINISTER, MR NICOLAE CIUCĂ** - Bucharest, Sector 1, PIAȚA VICTORIEI - PALATUL VICTORIA, nr. 1

*Note: WITH THE SERVING OF THE APPLICATIONS FOR MOTION TO INTERVENE. To view some of the documents in the file, go to [www.curteadeapelcluj.ro](http://www.curteadeapelcluj.ro) and use the password: \* \* \* \* \*. You are bound by the requirement not to disclose the password to others.*

11. NR **MINISTRY OF ENVIRONMENT, WATERS AND FORESTS** - Bucharest, sector 5, BD. LIBERTĂȚII, nr. 12

*Note: WITH THE SERVING OF THE APPLICATIONS FOR MOTION TO INTERVENE. To view some of the documents in the file, go to [www.curteadeapelcluj.ro](http://www.curteadeapelcluj.ro) and use the password: \* \* \* \* \* \* \* \* \* \*. You are bound by the requirement not to disclose the password to others.*

12. NR **MINISTER OF ENVIRONMENT, WATERS AND FORESTS, MR BARNA TANCZOS** - Bucharest, sector 5, BD. LIBERTĂȚII, nr. 12

*Note: WITH THE SERVING OF THE APPLICATIONS FOR MOTION TO INTERVENE. To view some of the documents in the file, go to [www.curteadeapelcluj.ro](http://www.curteadeapelcluj.ro) and use the password: \* \* \* \* \* \* \* \* \* \*. You are bound by the requirement not to disclose the password to others.*

13. NR **MINISTRY OF ENERGY** - Bucharest, Sector 1, ACADEMIEI, nr. 39-41

*Note: WITH THE SERVING OF THE APPLICATIONS FOR MOTION TO INTERVENE. To view some of the documents in the file, go to [www.curteadeapelcluj.ro](http://www.curteadeapelcluj.ro) and use the password: \* \* \* \* \* \* \* \* \* \*. You are bound by the requirement not to disclose the password to others.*

14. NR **MINISTER OF ENERGY, MR VIRGIL DANIEL POPESCU** - Bucharest, sector 1, ACADEMIEI, nr. 39-41

*Note: WITH THE SERVING OF THE APPLICATIONS FOR MOTION TO INTERVENE.*