

## CLUJ COURT OF APPEAL

*Third Administrative and Fiscal Division*

### **PANEL D14**

Case file no. 114 / 33 / 2023

Hearing: **10 April 2023**

*Your Honor,*

**The first - sixth line claimants** Indicated in the contentious administrative proceedings, with address for service at Revnic, Cristian & Asociații partnership of lawyers in Cluj-Napoca, str. Pavel Roșca , nr. 1, ap. 7, Cluj County,

Through the legal representative, **Ms. Roxana Mândruțiu**, attorney-at-law and rapporteur for Romania at the Sabin Center for Climate Change Law - Columbia Law School<sup>1</sup>,

*hereby submit the following*

### **MOTIONS**

Whereby we intend to address the objections raised and request that they be dismissed as unfounded.

#### **I. Preliminaries**

March 2023 has witnessed two key climate change events, which will be presented below as they fully support our arguments:

- On **20 March 2023** the IPCC Synthesis Report (AR6) was published which concluded that<sup>2</sup>:
  - i. The pace and scale of action on climate change is insufficient to reduce its impact. **The current Nationally Determined Contributions (NDCs) will most likely lead to an increase in global mean surface temperature (GMST) above 1.5 degrees Celsius** in the 21st century. Rapid, substantial

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<sup>1</sup> <https://climate.law.columbia.edu/content/roxana-cristina-mandrutiu>

<sup>2</sup> <https://www.infoclima.ro/acasa/raportul-ipcc-nc-un-semnal-grav-de-alarm>



- and sustained reductions in greenhouse gas emissions together with adaptation measures are needed to tackle climate change.
- ii. The human-caused global warming (by burning fossil fuels, destroying nature, etc.) has led to an increase in global average temperature of about 1.1°C compared to pre-industrial times. Impacts of climate change (e.g. more heat waves, more droughts, more intense rainfall) on people, the global economy and nature have already been experienced.
  - iii. Greenhouse gas emissions need to be reduced rapidly and substantially to limit global mean surface temperature (GMST) to less than 1.5°C compared to pre-industrial times. It should also be borne in mind that any increase in global average temperature leads to more extremes.
  - iv. There is now a window of opportunity for resilient development. But it is a very short-lived one. Fortunately, there are a number of solutions for building resilience globally. Such solutions involve integrating climate change adaptation measures with actions to reduce greenhouse gas emissions.
  - v. Changes in the food sector, in power generation, in transport, in industry, in infrastructure and in land use can all reduce greenhouse gas emissions. Better understanding of the consequences of overconsumption can also help people make more informed choices.

This summary tells us that we are approaching "**irreversible**" levels of global warming with catastrophic impact and that "now or never" is the time to take drastic action to reduce greenhouse gas emissions in order to avoid a possible catastrophe.

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*The IPCC Summary Report and its translation into Romanian make up Annex 1 to these motions.*

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- On **29 March 2023**, the 77th session of the United Nations General Assembly (UNGA) adopted resolution A/77/L.58 requesting an advisory opinion of the International Court of Justice (ICJ) on the obligations of the States with regard to climate change<sup>3</sup>. This initiative was largely led by the Vanuatu government, which worked with other countries (including Romania) to prepare a draft resolution through internal negotiations and several rounds of informal consultations with the wider UN membership. For the first time, the ICJ will have to express its opinion on climate change.

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<sup>3</sup> <https://blogs.law.columbia.edu/climatechange/2023/03/29/the-icjs-advisory-opinion-on-climate-change-what-happens-now/>



- i. In the request for an advisory opinion, it is acknowledged that  
*"climate change represents an unprecedented challenge of civilizational proportions and that the well-being of present and future generations of mankind depends on our immediate and urgent response to it"*.
- ii. The UN General Assembly resolution also takes note of the scientific consensus expressed, inter alia, in the reports of the Intergovernmental Panel on Climate Change. In particular, the UN General Assembly stresses that anthropogenic greenhouse gas emissions are "the dominant cause of the global warming observed since the mid-20th century" and that human-induced climate change "has caused widespread adverse impacts and related loss and damage to nature and humans".
- iii. The resolution also stresses the importance of implementing such treaties, particularly in the light of the significant gap between current nationally determined contributions of states and the emission reductions needed to keep the global average temperature increase well below 2°C above pre-industrial levels and to continue efforts to limit the temperature increase to 1.5°C, as well as **the gap between current levels of adaptation and the levels needed** to address the adverse effects of climate change.
- iv. Therefore, in accordance with Article 96 of the Charter of the United Nations, the UN General Assembly requests the International Court of Justice (ICJ) to issue an advisory opinion on the following questions:

*"Bearing in mind, in particular, the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the Obligation of Due Diligence, the rights recognised in the Universal Declaration of Human Rights, the principle of prevention of significant damage to the environment and the obligation to protect and preserve the marine environment",*

*(a) What are the **obligations of the States** under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions for States and for present and future generations;*

*(b) What are **the legal consequences under these obligations for the States** that, through their actions and omissions, have caused significant damage to the climate system and other parts of the environment, with regard to:*

*(i) the States, including in particular small island developing States, which, because of their geographical circumstances and level of development, are*



*particularly harmed or affected by, or particularly vulnerable to, the adverse effects of climate change?*

***(ii) the peoples and individuals of present and future generations affected by the adverse effects of climate change?"***

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*The draft resolution requesting the advisory opinion of the ICJ and its translation into Romanian make up Annex 2 to these motions*

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**II. The objections raised by the Ministry of the Environment, Waters and Forests are unfounded in the light of the following arguments, evidence and legal considerations:**

**2.1. The objection regarding the lack of interest of the Declic Association has no legal support in relation to the subject matter of the contentious administrative action, the objectives of the Declic Association and the decision of the High Court of Cassation and Justice no. 8/2020.**

- (1) The defendant Ministry of the Environment, Waters and Forests claims that the undersigned has not challenged an actual administrative act. However, this is a limited view of the subject matter of contentious administrative litigation, given that Article 8(1) of Law no. 554/2004 refers both to the situation of challenging an administrative act, sentence I, and to the hypothesis of failure or unjustified refusal to resolve an application, sentence II.
- (2) In section 3 of the contentious administrative proceedings, we have shown why the refusal to implement the measures sought by us represents an unjustified refusal. We would just like to point out that we addressed requests to the defendants regarding the claims made, but in their replies, the defendants only reviewed the plans already in place, insisting that each country sets its own Nationally Determined Contributions (hereafter NDCs) autonomously, while ignoring the standards by which such NDCs are set: the highest possible level of ambition and transparency.
- (3) The undersigned is requesting that the Court orders the defendants to take all necessary measures to reduce greenhouse gas emissions by at least 55% as compared to 1990, to increase the ambition to integrate renewables into the national energy system and energy efficiency to the percentages specified in the claims in the contentious administrative action and to implement concrete, monitorable plans and appropriate reporting mechanisms.

- (4) The percentages we have indicated are the minimum percentages that can keep us on the trajectory agreed in the Paris Agreement to limit global warming to 1.5 degrees Celsius and 2 degrees Celsius respectively.
- (5) It is undisputed that the above critical thresholds also represent legal limits. Any action of the authorities that does not result in limiting global warming to below 1.5 degrees Celsius or 2 degrees Celsius is a violation of a legal obligation under Article 2(1)(a) of the Paris Agreement.
- (6) As it has been held in judicial case law, the excess of powers underlying the unjustified refusal "consists in the exercise of the public authorities' discretion in violation of the limits of their competence laid down by law or in infringement of the rights and freedoms of citizens"<sup>4</sup>. As detailed in the application, the manner in which the defendants exercised their discretion is:
- A violation of a positive obligation of the state - to ensure a higher quality of life for citizens in an ecologically balanced environment;

According to the European Court of Human Rights case law,

- in [Stoicescu v. Romania \(9718/03\)](#), the Romanian authorities were found to have a positive obligation to ensure effective respect for fundamental rights, an obligation which may involve the introduction of measures designed to ensure respect for the rights;
  - in [Pretty v. United Kingdom \(2346/02\)](#), it was held that there is a positive obligation on the States to ensure respect for human dignity and quality of life;
  - in [Amaç and Okkan v. Turkey \(54179/00\)](#), it was ruled that the authorities have a positive obligation to act and take the necessary measures where it can be satisfactorily established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to life or limb and failed to take measures which could reasonably have led to the avoidance of such a risk.
- The infringement of collective rights (the right to health, the right to a healthy and ecologically balanced environment, the right to a future in accordance with human dignity) claimed by the Declic association and the individual claimants;

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<sup>4</sup> Cluj Court of Appeal, Third Administrative and Fiscal Division, decision no. 4018/2018, final, [www.rolii.ro](http://www.rolii.ro), according to Cristina Titirișcă, Anca Stoiu and Dumitru Dobrev, *Town planning law. Judicial case law (Dreptul urbanismului. Practică Judiciară.) I. Town planning plans, permits, town planning certificates, (I. Planuri urbanistice, avize, certificate de urbanism)*, Bucharest: Hamangiu Publishing House, 2019, page 119.

- The infringement of the individual rights and freedoms (right to life, right to private and family life, right to property) of the second - sixth line claimants,

(7) Moreover, the Court of Justice of the European Union's judgment of 8 November 2022 in **Case C-873/19 (Deutsche Umwelthilfe eV)** held that<sup>5</sup> environmental NGOs can challenge virtually any act or omission that is contrary to a provision of national environmental law. At the same time, the CJEU has emphasised the broad meaning of "national environmental law provisions", indicating that a functional approach is required. The decisive issue is whether the provision in question is somehow related to the environment. Accordingly, acts and omissions which may be contrary to the provisions on, *inter alia*, town planning, environmental taxes, control of chemicals or waste, exploitation of natural resources and pollution from ships are also covered by Article 9(3) of the Aarhus Convention, irrespective of whether the provisions in question are to be found in town planning laws, tax laws or maritime laws. The Court of Justice of the European Union also noted that provisions of EU law which are directly applicable must be regarded as "national law" within the meaning of Article 9(3).

(8) The European case law has also acknowledged the interest of non-governmental organisations in advocating action on climate change, as follows:

- In **Urgenda v The Netherlands (Netherlands, 2019)**,<sup>6</sup> the Supreme Court of the Netherlands ruled that *"The protection afforded by Articles 2 and 8 of the European Court of Human Rights is not limited to individuals, but to society or the population as a whole. The latter is, for instance, the case with environmental hazards. In the case of environmental hazards that endanger an entire region, Articles 2 and 8 of the European Court of Human Rights provide protection for the inhabitants of such region."*
- In **Klimaatzaak v Belgium (Belgium, 2021)**, an NGO and thousands of claimants argued that Belgium's climate change mitigation efforts were insufficient to protect against dangerous climate change and therefore infringed their human rights.

*In this case, the plaintiffs intend to hold the Belgian public authorities responsible for the present and future negative consequences of climate*

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<sup>5</sup> <https://www.clientearth.org/projects/access-to-justice-for-a-greener-europe/updates/the-court-of-justice-confirms-environmental-ngos-can-challenge-all-violations-of-environmental-law/?fbclid=IwAR0HZVvBQxoc0W7FutOoAuca1WCjtpyR6wqi19vDzhONtQS8umTxB6rjbs0>

<sup>6</sup> *State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v Stichting Urgenda* (2019) ECLI:NL:HR:2019:2007 (official translation) (Supreme Court of the Netherlands, Civil Division).



*change on their daily lives. Therefore, each of them has a direct and personal interest in the action for liability they have brought. The fact that other Belgian citizens might also suffer damage of their own, in whole or in part comparable to that suffered by the claimants as natural persons, is not sufficient to reclassify the personal interest of each of them as a general interest.*

- In **Notre Affaire à Tous and Others v France (France, 2021)**, the Administrative Court of Paris recognised the standing of four claimant NGOs in a case concerning the French State's failure to adequately reduce greenhouse gas emissions. The Court established the standing of the claimants on the basis of the provisions of national law, granting a special status to organisations engaged in nature protection and environmental preservation.

(9) The defendant further claims that,

***“Thus said, the application does not specify which administrative act is being challenged or which concrete failure to act is being contested in order to be fully consistent with the purpose for which the Declic Association was founded, which is why it is requested that the court grant the objection raised”.***

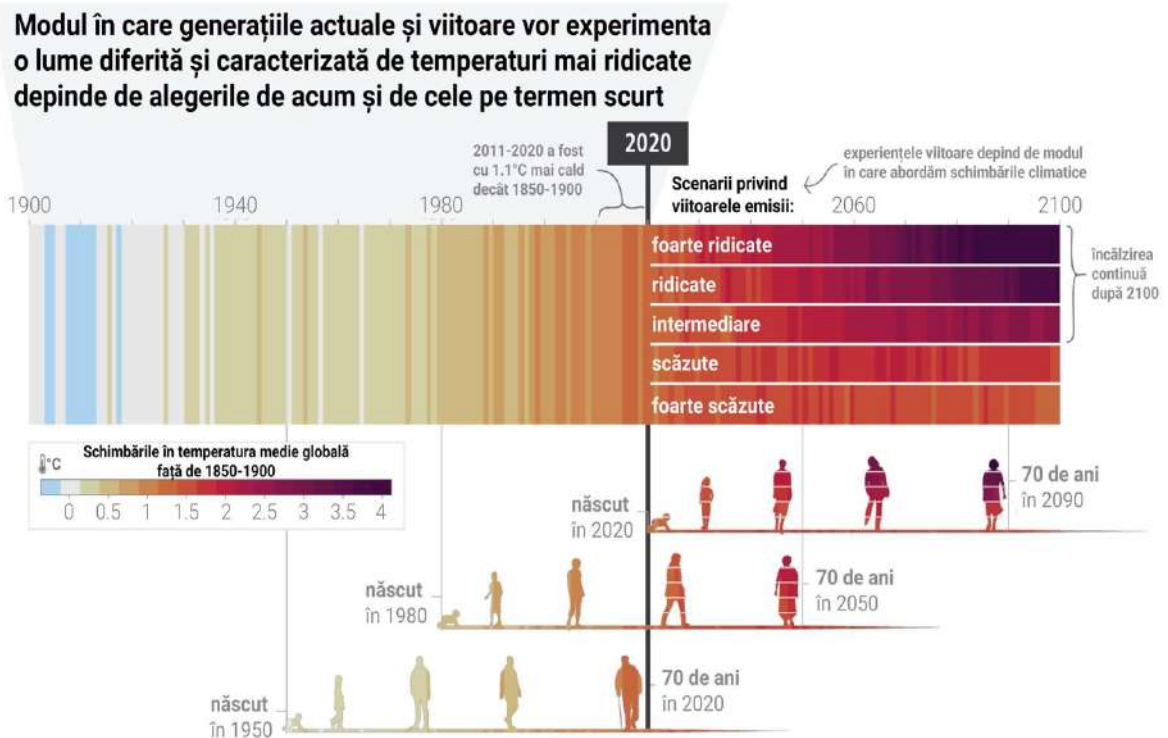
- (10) We emphasize that we are in the presence of an unjustified refusal to resolve the application, and the unjustified refusal is assimilated by Article 2 (2) of Law no. 554 to the unilateral administrative act.
- (11) The reason for this is that the defendant is not taking the necessary and reasonable measures to fulfil its legal obligations under the Paris Agreement - to limit global warming to 1.5 degrees Celsius, and implicitly to prevent the endangerment of the claimants' fundamental rights and freedoms enshrined in the Romanian Constitution and the Charter of Fundamental Rights of the European Union.
- (12) Climate change law is a branch of environmental law, as climate change is a global problem that significantly affects the environment and people's quality of life. The undersigned is an environmental organisation, all of which is detailed in section 4.2. of the procedure opened at the mentioned court.
- (13) Consequently, the private legitimate interest arises from the direct connection between the objectives and aims of the Declic association and the subject-matter of the present proceedings, which is why the objection must be dismissed as unfounded.

**2.2. The objecton of lack of standing of the second - sixth line claimants is unfounded in relation to the provisions of Article 9 of the Aarhus Convention,**

**Article 35(1) of the Constitution of Romania and Article 3(h), second sentence, of Government Emergency Ordinance no. 195/2005.**

(1) This objection is raised by the Ministry of the Environment, Waters and Forests on page 17 of the statement of defence. It should be noted that such arguments are copy-pasted from the works of some reputed authors in the field of administrative law, who commented on the old form of the Contentious Administrative Act. Moreover, the defendant Ministry of Environment, Waters and Forests concludes that in view of the age of the undersigned, we are not representative to bring such contentious proceedings: *"the claimants are between 32 and 51 years of age, so they do not represent (our note - an entire generation - our generation)"*.

The defendant's argument that we are not representative is contradicted by the chart taken from the latest Intergovernmental Panel on Climate Change (IPCC) synthesis report and translated by Infoclima<sup>7</sup> which suggestively illustrates how present and future generations will experience a different world and rising temperatures.



(2) Without repeating all the aspects detailed in section 4.1. of the application, the undersigned second - sixth line claimants have the necessary standing to bring an action of this nature, as such a right is conferred on us both by constitutional norms,

<sup>7</sup> <https://www.infoclima.ro>



secondary legislation and international treaties that Romania has ratified and incorporated into domestic law.

- (3) The undersigned second - sixth line claimants point out that under Article 35(1) of the Romanian Constitution, the Romanian State has recognized the right of every person to a healthy and ecologically balanced environment. At the same time, in paragraph. (3) of the same Article, **natural** and legal **persons have a duty** to protect and improve the environment.
- (4) From the logical interpretation of this article one understands that any natural person has a duty to protect the environment, including through legal proceedings, as long as the State, through its own actions and failures to act, jeopardises their right to enjoy a healthy and ecologically balanced environment. The same conclusion is also expressed by the Constitutional Court of Romania, which pointed out that *"the right to a healthy environment is a complex fundamental right which entails obligations both for the State, in terms of ensuring the protection of a healthy and ecologically balanced environment, and for natural and legal persons, in terms of protecting and improving the environment"*<sup>8</sup>.
- (5) We would further point out that, in concrete terms, the Romanian State, in its role as guarantor of the right to a healthy and ecologically balanced environment, has regulated, as a matter of principle, the right of access to justice in environmental matters [Article 3(h) second sentence of Government Emergency Ordinance no. 195/2005], and as a matter of direct application, the right of any person *"to apply directly to the judicial authorities in environmental matters, regardless of whether or not damage has been caused"* in art. 5(d) of Government Emergency Ordinance no. 195/2005. It is important to note that following the amendment of this law by Law no. 265/2006, natural persons are entitled to apply to the courts, regardless of whether or not environmental damage has occurred.
- (6) On this point, however, we cannot agree with the defendant's view that " Article. 5 (d) of the Governmental Emergency Ordinance no. 195/2005 is paralysed by the applicability of the legal conditions for bringing an action in contentious administrative proceedings", because the provisions of the Governmental Emergency Ordinance no. 195/2005 have a special character compared to the regulations of Law no. 554/2004 regarding the standing of individuals in climate change actions.
- (7) The constitutional and legislative understanding of the standing of any person, and therefore also of natural persons, is part of the general international understanding of the right of access to justice in environmental matters, as regulated in Article 9 of the Aarhus Convention (ratified by Romania through Law no. 86/2000): *"where a party provides such an appeal before a court of law, it shall ensure that such a*

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<sup>8</sup> The Constitutional Court of Romania, Decision no. 492/2022 (decision of admissibility), paragraph 66.

person also has access to a procedure on the merits established by law that is free of charge or not too expensive in the event of reconsideration of the application by a public authority or review by an independent and impartial body other than a court of law”.

- (8) With regard to similar legal systems, in [Klimaatzaak \(Belgium, 2021\)](#)<sup>9</sup>, the Brussels Court of First Instance ruled that members of the public must be given access to administrative or judicial procedures to challenge acts and omissions by public authorities which are in breach of the provisions of national environmental law. The Court's rationale in this respect was largely based on Article 9(3) of the Aarhus Convention.

In particular, the Court gave a broad interpretation of the spectrum of rules that may be covered by Article 9(3) of the Aarhus Convention:

*"the reference to national environmental law does not have the limited field of application given to it by the CBR [Brussels-Capital Region], but rather concerns the whole range of regulations relating to the environment, including international and European regulations which have been received into the domestic order and which, pursuant to such reception, have become part of the law applicable in Belgium."*

- (9) Consequently, because of the existence of these international, constitutional and legislative provisions, taking into account the identity between the persons of the undersigned second - sixth line claimants and the holder of the right claimed, the objection of standing raised by the Ministry of the Environment, Waters and Forests must be dismissed as unfounded.

### **2.3. The objection of lack interest of the second-sixth line claimants must be rejected in the light of the following arguments, evidence and legal provisions**

#### **A. Private legitimate interest of the second - sixth line claimants.**

- (1) The defendant argues that the claimants' action takes the form of a popular action, prohibited by the contentious administrative law.
- (2) Leaving aside the fact that both popular action and objective litigation are distinct concepts, whereby objective litigation is detailed in section B on the public interest, it will be shown that the undersigned invoke
- both the infringement of individual fundamental rights and the immediate risk of substantial harm to our rights and freedoms in the future as a consequence of the defendant's breach of positive obligations;

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<sup>9</sup> *VZW Klimaatzaak v Kingdom of Belgium & Others* [2021] Belgium, Court of First Instance of Brussels (unofficial translation).

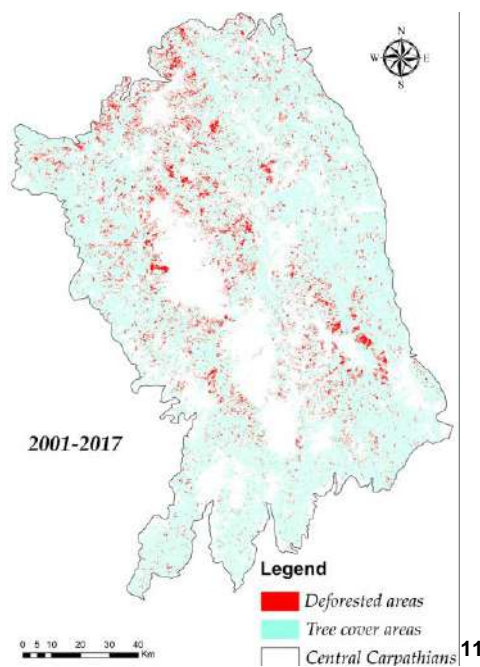


- and the infringement of collective rights, where the legitimate private interest is outweighed by the public interest.
- (3) The fundamental rights to life, health, liberty, human dignity, privacy and family life are substantially connected to and determined by the environment and the ecosystem. Without a healthy environment, the second and sixth line claimants and sentient beings in general will not be able to survive, let alone protect such rights for future generations. Nor can the existence of the family, society and the rule of law be guaranteed without a balanced ecological environment. Increasing environmental degradation poses a serious threat to life and other fundamental rights.
  - (4) Ecosystems are exposed to extremes that prevent them from sustaining themselves, leading to a depletion of natural resources. We are facing
    - (i) Increasing difficulties in obtaining the indispensable livelihoods of the world's population
    - (ii) Pollution and changes in the environment due to irrational colonisation of forests, expansion of urban, agricultural, industrial and extractive frontiers leading to increased deforestation.
  - (5) The undersigned second - sixth line claimants have justified in section 4.2. of the application the private legitimate interest in relation to the infringement of subjective rights and freedoms guaranteed by the Romanian Constitution, the Charter of Fundamental Rights of the European Union, both primary legislation enshrining also **the fundamental right to a healthy environment**, a right that is not found in the European Convention on Human Rights.
  - (6) The Constitutional Court of Colombia<sup>10</sup> has defined the right to a healthy environment (a fundamental right also guaranteed by the Romanian Constitution) as having a triple dimension since: it is a principle that radiates throughout the legal order and represents the State's responsibility to protect the nation's natural wealth; it is **a constitutional right (fundamental and collective)**; and it is **an obligation for the authorities, society and individuals**, since it implies duties of qualified protection. Moreover, the Constitution regards "environmental sanitation" as a public service and a fundamental purpose of the state's activity.
  - (7) The individual and collective fundamental rights of the claimants are endangered because of the relationship between a healthy environment and supra-legal prerogatives such as life, health or human dignity.

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<sup>10</sup> The Constitutional Court. Judgment C-449 of 2015, repeated in Judgment C-389 of 2016, source [http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2018/20180405\\_11001-22-03-000-2018-00319-00\\_decision-2.pdf](http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2018/20180405_11001-22-03-000-2018-00319-00_decision-2.pdf)

- (8) In the following it will be demonstrated that the undersigned are both victims and potential victims in the sense of the ECHR case law.
- (9) We are now being denied the rights claimed in the procedure opened as follows:
- a. **The current issue of deforestation in Transylvania (see figure below) and in the Corbeanca area, the lack of concrete measures undertaken by the defendants to address this situation (e.g. the Romanian Government gives assurances in its statement of defence that the Sumal 2.0.-Inspector of the Forest application will be operational in 2024) breaches the claimants' rights to health and life, as well as the right to a healthy environment.**



There is no doubt that there is a causal relationship between the climate crisis caused by the progressive reduction of forest cover, the expansion of the agricultural and urban frontier, mining and illegal logging, since the uncontrolled degradation of forests (real natural reservoirs for greenhouse gases) directly affects the right to a dignified life, to health, to water and to food of second - sixth line claimants.

Cătălina Năstasache - Hopârteanu, a claimant in these proceedings, confesses:

*"...the logging started in the Corbeanca area. According to the data of the locals, published on the Facebook group of the community (Corbeanca social community), they are going to cut down:*

<sup>11</sup> <https://www.mdpi.com/1999-4907/10/4/308>



- *Chopping down of a chunk of the Tamași forest in the area towards Paradisul Verde, for real estate development purposes.*
- *Chopping down a massive section of the Petrești forest to make way for the ring road, plus chopping down a small section of the same forest for real estate development purposes.*
- *Chopping down a large section of the Tamași forest in the area next to Mega Image 2 for the purpose of real estate development.*

*Part of the Petrești forest has already been chopped down to make way for a new neighbourhood."*

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*The printscreen of the data published by the locals regarding the forest clearings, from the Corbeanca community facebook page makes up Annex 3.*

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- b. Increasing heat waves, forest fires, droughts and floods are threatening our right to water, to a decent living, to health, and even to life, and the causal relationship cannot be disputed.**

**Roxana Pencea-Brădățan**, a claimant in these proceedings, states that:

*I was born in Ramnicu Valcea 40 years ago and I have seen how our city has been increasingly affected by climate change. One of the most notable effects is the lack of snow in winter and rain in summer. The winter where we were used to having snow on the streets and on the hills has turned into a time when heavy rains and warm weather have taken over. According to the New York Times, in Râmnicu Vâlcea, there were two days a year with temperatures of 32 degrees Celsius in 1982, the year I was born. Today the number of hot days has increased to nine, and by the time I'm 80, that number will average 21 days a year. This change has not only affected my habit of enjoying the snow, but has also had a negative impact on the environment. The main source of water for Râmnicu Vâlcea and the surrounding areas is the Olt River. Without snow in the mountains, the river has a low flow and the prolonged drought and high temperatures are worsening this situation. Non-irrigated gardens suffer from lack of water and the potential for crop loss is quite high. Even my parents' vegetable garden still survives only because we water it every 3-4 days from the city's drinking water supply. But this also means higher costs and more intensive use of the public water supply system. In the very dry summers, the water company has asked people in town to stop watering their gardens and ration water for basic needs. At the time of this writing, Europe is again heading for a drought comparable to the summer of 2022, and the rains in the coming weeks will be crucial in determining the impact of the exceptionally warm and dry winter that has just ended. These are the findings of the European Commission's Joint Research Centre (JRC). Among the areas listed in the report is southern Romania, including my home town.*

**Silvia Mirea**, also a claimant in these proceedings, shares with us that:

*"... I am Ana's sister, a bronchial asthma patient. In recent years, I have witnessed the devastating effects that climate change has had on our health. Ana has lived with the condition since she was a young child, and her symptoms include restricted airflow in her airways and asthma attacks. Fluctuating temperatures are one of the factors that can trigger intense*



*attacks, making her vulnerable to any sudden change in temperature or extreme weather conditions. This has led to many difficulties for Ana, as she has to be very mindful of the area she walks in and make sure she always has her inhaler, which is vital to her survival, to hand. Every trip out of town or to another climate requires careful planning and special preparation.*

*On the other hand, I have also developed bronchitis in recent years, which is aggravated by air pollution, exposure to noxious fumes and irritating vapours, even though I am not a smoker. My breathing becomes wheezy, I feel lacking in energy and tired. This has negatively affected my quality of life and makes me feel vulnerable to climate change and air pollution, and I wonder what will happen in the near future."*

### **Cătălina Năstăsache-Hopârteanu reveals that:**

*"Climate change has also affected our holidays - the only time we should be relaxing. In 2021, we went to Greece, to the island of Evia, with our friends and children. On the morning we were to return home, we felt a burning heat. I woke up thinking someone had turned on a hair dryer in front of me, that's how hot the air was at 7am. We tried to go to the beach with the kids, but the sand was burning even though the sun had just risen and the waves of hot air were getting stronger. So we left early for the airport. But a few miles from the airport we were stuck on the highway. The first vegetation fire had broken out because of the heat. Helicopters with water balloons were flying over the cars stuck on the highway, trying to put out the fires. We were scared to death, especially as we were in the car with very young children. Then, when we got home, we saw on the news how much of the island had burned and we realised we would have been in even greater danger had we not accidentally left on the day the fires broke out."*

### **Tudor Brădățan, a claimant, states that:**

*I am concerned about climate change in Cluj Napoca and the risks it entails. Excess moisture is one of such risks, and in recent years we have seen a significant increase in rainfall in western Romania, Transylvania. According to data presented by the National Institute of Hydrology and Water Management in Transylvania, annual rainfall has increased by about 20% in the last 10 years. I feel the excess moisture in two ways.*

*Firstly, increased humidity favours the growth of mould and other pathogens, including in your own home. Over time I have noticed a predisposition to allergic rhinitis that I did not have as a child. Secondly, the excess humidity favours the development of invasive plants, i.e. those weeds that gradually occupy more and more vacant, uncultivated areas around Cluj. Ambrosia grows more rapidly in hot and humid conditions. Especially in July-September, when the pollen level in the air increases, allergic reactions such as sneezing, itchy nose and eyes and watery eyes occur.*

### **Finally, the claimant Luminița Dejeu, tells us that:**

*Climate change affects both me and my family in a multitude of ways. For one thing, summers in the city are increasingly unbearable because of the heatwave, and high temperatures affect our sleep. I feel tired and irritated, and this negatively affects our physical and mental health.*

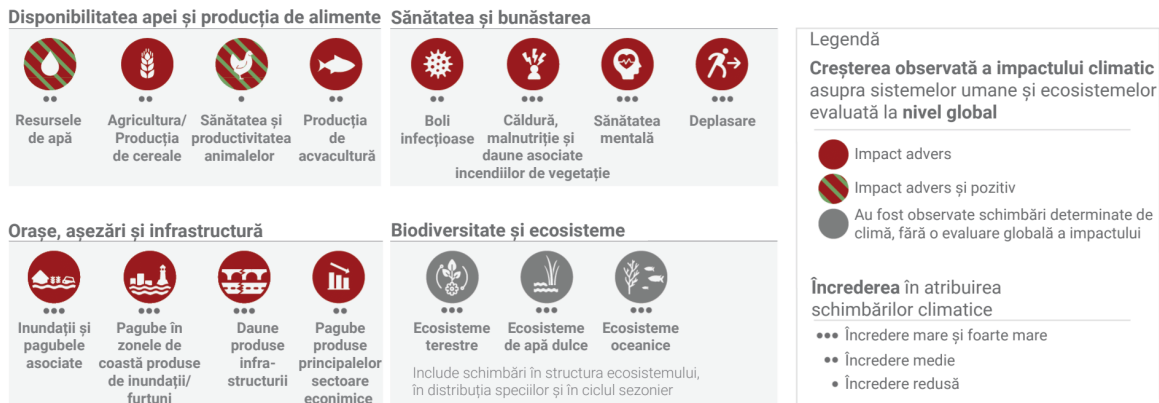
*In addition, because of the rising temperatures, we have to seriously consider installing air conditioning in the house, which is very expensive and affects the family budget. This is also true for the elderly in my family, who are finding it increasingly difficult to cope with the large fluctuations in temperature, and this is putting their health and even their lives at risk.*

All these issues to which the claimants are pointing are confirmed both by the scientific studies specific to Eastern Europe, to which we have referred in the application, and by the latest Intergovernmental Panel on Climate Change (IPCC) Synthesis Report, the charts below taken from the report and translated by Infoclima<sup>12</sup> being suggestive in this respect.

### Impactul este determinat de schimbările în condiții climatice fizice multiple care sunt din ce în ce mai mult atribuite influenței umane



### Impactul schimbărilor climatice



c. The modest ambitions on renewable energy and energy efficiency, the cumbersome procedure for integrating renewable energy into the national energy system, affect the right of the undersigned to a decent living, the right to privacy and implicitly the right to property.

(10) We repeat that in addition to the actual infringement of our rights, there is an immediate and substantial risk of future harm to the rights of the undersigned.

<sup>12</sup> <https://www.infoclima.ro>

- (11) Questions have been raised in the literature<sup>13</sup> about this criterion - the imminence requirement - leading to the conclusion that imminence actually refers to the **reality** of the risk. Where there is no scientific certainty that the risk can be avoided, then there is an “immediate risk”, although it will materialise in the long term. This is a practical application of the precautionary principle, the principle governing environmental law.
- (12) The Inter-American Court of Human Rights also ruled on this issue in its Advisory Opinion no. OC-23/17:

*the general obligation to ensure the rights to life and to personal integrity means that States must act diligently to prevent harm to these rights (supra para. 118). Also, when interpreting the Convention, as requested in this case, the Court must always seek the “best perspective” for the protection of the individual (supra para. 41). Therefore, the Court understands that States must act in keeping with the precautionary principle in order to protect the rights to life and to personal integrity in cases where there are plausible indications that an activity could result in severe and irreversible damage to the environment, even in the absence of scientific certainty. Consequently, States must act with due caution to prevent possible damage. Thus, in the context of the protection of the rights to life and to personal integrity, the Court considers that States must act in keeping with the precautionary principle. Therefore, even in the absence of scientific certainty, they must take “effective” measures to prevent severe or irreversible damage.*

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*The excerpt from the Advisory Opinion no. OC-23/17 issued by the Inter-American Court of Human Rights requested by the State of Colombia and the translation into Romanian make up Annex 4.*

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- (13) The international case law has acknowledged the interest of natural persons to promote action on climate change, as follows:
- In *Klimatická žaloba ČR v Czech Republic (Czech Republic, 2022)*, the Prague Municipal Court found that “*local adverse manifestations*” of climate change, such as water shortages or health impacts, can be regarded as a

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<sup>13</sup> See J.M. Emaus, “*Subsidiariteit, preventie en voorzorg. Een verklaring van het arrest in de Klimaatzaak aan de hand van drie fundamentele beginselen in het recht onder het EVRM*” [Subsidiarity, prevention and precaution. An explanation of the judgment in the climate case based on three fundamental European Court of Human Rights principles], AV&S 2019/11 (volume 2), page 60 et seq.





*direct interference with the claimants' rights. Furthermore, the court held that although such effects impact on a large group of people, this does not preclude direct interference with the rights of an individual claimant (...) the interference with the right to a favourable environment under Article 35(1) of the Charter invoked by all the claimants is also conceivable. Although this right can be invoked under Article 41(1) of the Charter only within the limits of the law, and the Climate Act has not yet been adopted, the Constitutional Court (judgment of 26 January 2021, Pl. ÚS 22/17, item 89) has defined the essence of the right to a favourable environment, which is independent of the implementation of the law, as an obligation of the state to protect against interference with the environment where such interference reaches a level that makes it impossible to meet the basic needs of human life. The purpose of the right to a favourable environment is to ensure an environment of such quality that a person can live in it with dignity. Failure to implement mitigation and adaptation measures may interfere with this aim, as such measures are necessary to protect human life and health from the negative effects of climate change.*

- In ***Juliana v United States (United States, 2020)***<sup>14</sup> the Court of Appeals for the Ninth Circuit had to consider whether the individual claimants could bring an application targeting the US federal government's insufficient efforts to reduce greenhouse gas emissions. The Court has concluded that the widespread nature of the impacts of climate change does not preclude recognition of their legitimate interest.

**(14)** In conclusion, there is no doubt that the undersigned have justified their legitimate private interest in bringing this lawsuit.

## **B. The public interest of the second - sixth line claimants**

- (15)** As we pointed out in section 3.2, item 8 of the application, the legal nature of the environmental dispute is that of an objective litigation. Specific to objective litigation is that claimants seek to defend an objective right or a legitimate public interest, in the sense of ascertaining whether rights which constitute the content of a legal situation of a general and impersonal nature have been infringed and whether a general state of legality has been infringed.
- (16)** From the conjunction of Article 35(3) of the Romanian Constitution with the Article 5(d) of the Government Emergency Ordinance no. 195/2005, it is unequivocal not only that the claimants have the right to bring proceedings before the administrative court to defend their right to a healthy and balanced environment, regardless of

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<sup>14</sup> *Juliana v United States* [2020] Court of Appeal for the Ninth Circuit No. 18-36082 SC No 6:15-cv-01517-AA.



whether or not damage has been caused, but **that they even have a duty to do so.**

- (17) From this perspective, the restrictive provision enshrined in Article 8(1<sup>1</sup>) of Law no. 554/2004 must be viewed in a qualified manner in the situation where the protection of the right to a healthy environment is claimed in the dispute, the special law, for the reasons mentioned above, introduces an important derogation in this regard. Therefore, the defendant's assertion that in a dispute based on environmental law, it is necessary to prove that the claimants must have a direct right or interest likely to be infringed by the contested administrative act is unfounded, this being also the orientation of the Court of Appeal of Cluj, which in civil decision no. 1195/2019 held that

*independently of the infringement of a certain type of subjective right and independently of whether any damage is caused, in which sense it can be said that the administrative dispute brought under Article 5(b) of the Government Emergency Ordinance no. 195/2005 is also an apparently objective dispute although it is not directly brought by a certain public authority provided for as such by law. (...) In other words, objective litigation implies a broad openness, highlighted by the fact that it defends a situation of legality, whose characteristics are generality and impersonality.*

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*The Civil Decision no. 1195/2019 makes up Annex 5.*

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- (18) Moreover, the undersigned have shown that we are potential victims, in the sense recognized by the European Court of Human Rights, as confirmed by the statement made by the Minister of Environment, Waters and Forests on its Facebook page:

*"The UN climate change experts' report explicitly states that common political will is needed to rewrite the pessimistic scenario that the IPCC Working Group experts rightly warn us about. We must therefore look to the future because even scientists recognise that there is still hope. But **we must act now in order to avoid climate catastrophe.**"*

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*The printscreen from the Facebook page of Mr. Tanczos Barna makes up Annex 6.*

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- (19) Consequently, the legitimate public interest which outweighs the legitimate private interest is also proven and sufficiently substantiated in the present case.

## 2.4. The objection of inadmissibility in respect of claim 1 must be rejected. The request submitted to the court does not lead to an infringement of the principle of the separation of powers in the State

- (1) In section 3.3. of the procedure opened before the mentioned court, we have set out in detail the arguments for rejecting the objection of inadmissibility of claim 1, since the court's analysis of the legal issues before it does not lead to an infringement of the principle of the separation of powers. Therefore, in this section, we will refer to legal arguments and case law that were not resented in the application.
- (2) The application claims that the defendants have breached both positive obligations and human rights.
- (3) From a human rights perspective, the defendant's theory of breach of the separation of powers in the State has no legal basis either.
- (4) Human rights play a crucial role in the constitutional democracies. Such a role is connected to their very origin in a right to justification. They represent a language of criticism that protects citizens from unjustifiably oppressive social and political circumstances. As a consequence, those who exercise public power in a way that restricts rights must provide citizens with legitimate reasons. And this is where the role of the judge comes in - he or she must, in accordance with legal standards, compel policy-makers to justify their choices in the light of their impact on human rights. In a constitutional democracy, the government, when asked in court to justify its actions, is legally and formally required to do so<sup>15</sup>.
- (5) In the **Urgenda** case, the State failed to provide adequate justification. And for this reason he was ordered to develop a different policy, one that would respect the absolute minimum to prevent dangerous climate change. The function of the judiciary is precisely that: to demand justification for policies that interfere with human rights. He therefore considers that, on a general level, the arguments he has presented on the merits of the case remain valid.
- (6) We reiterate that we request that the defendants be ordered to enter within the limits of the law, i.e. to adopt measures (the margin of appreciation regarding the types of measures belongs to them) compatible with the climate objectives assumed by Article 2(1)(a) of the Paris Agreement: limiting global warming to 1.5 degrees Celsius and 2 degrees Celsius respectively.
- (7) In the judgment delivered on 26 May 2021 in **Milieudefensie et. al. V. Royal Dutch Shell PLC** (RDS) , the District Court of The Hague<sup>16</sup> ruled that the assessment of the obligation to reduce greenhouse gas emissions is primarily a matter for the court:

<sup>15</sup> <https://verfassungsblog.de/separation-of-powers-in-climate-cases/>

<sup>16</sup> <https://en.milieudefensie.nl/news/verdict-climate-case-milieudefensie-shell-26-may-2021-1.pdf>

*The court does not follow RDS' argument that the claims of Milieudéfensie et al. require decisions which go beyond the lawmaking function of the court. The court must decide on the claims of Milieudéfensie et al. Assessing whether or not RDS has the alleged legal obligation and deciding on the claims based thereon is pre-eminently a task of the court."*

- (8) As already exemplified by other case law (section 3.3. item 7 of the application), national courts, dealing with similar cases, have decided that neither the complexity of the subject of climate change nor the fact that it is subject to a political decision-making process makes public authorities immune from judicial review in the area of climate change action.
- (9) Consequently, the objection raised is manifestly unfounded and you are therefore requested to dismiss it.

**2.5. The objection of partial inadmissibility of claim 3, in terms of ordering the defendant to implement climate change adaptation plans, is manifestly unfounded, and you are therefore requested to dismiss it.**

- (1) The defendant contends that  
**The objection to the inadmissibility of claim 3 in relation to the claimants' request to adopt concrete and coherent plans with regard to the component 'adaptation' to climate change, in order to achieve the objectives assumed under claims 1 and 2, is based on the lack of a request from the claimants on this matter and, implicitly, on the absence of an unjustified refusal to resolve the claim."**
- (2) In other words, the defendant argues that there is an unjustified refusal only with regard to the claimants' request for the adoption of coherent plans and monitoring mechanisms with regard to climate change mitigation. Instead, there would be no request for climate change adaptation plans, which is why this claim would be partly inadmissible.
- (3) Obviously what the defendant is arguing is nonsense, since it is clear from the entire reasoning of the claims in the leniency procedure that we are referring to both the lack of mitigation measures and the lack of adaptation to climate change. Adaptation strategies also include the promotion of renewable energy production and the development of strategies to increase energy efficiency.
- (4) The only usefulness of this argument put forward in defence by the defendant is that it can be equated with an acknowledgement of an unjustified refusal.

## 2.6. The objection of lack of standing of the *natural persons* against whom proceedings are brought has no legal basis and must therefore be dismissed

(1) The defendant Ministry of the Environment, Waters and Forests relies on this objection, arguing that the natural persons being sued, at the moment the Ministers of the Ministries against whom proceedings have been brought, namely Ministers Tanczos Barna, Nicoale-Ionel Ciucă and Virgil Popescu, are not directly responsible for the “deficiency of the authority” specialising in the environment. However, the undersigned takes into account that such “liability” does exist and is applicable because:

- **the defendant Minister of the Environment, Waters and Forests**, pursuant to Article 56(1)(c) of the Administrative Code, “*develops and implements the Ministry's own strategy, integrated into the Government's economic and social development strategy, as well as policies and strategies in the Ministry's areas of activity*”, in accordance with Article 13(1) of Government Decision no; 43/2020, is responsible for the leadership of the Ministry of the Environment, Waters and Forests;
- **the defendant Minister of Energy**, according to Article 56(1)(c) of the Administrative Code, “*develops and implements the Ministry's own strategy, integrated into the Government's economic and social development strategy, as well as policies and strategies in the Ministry's areas of activity*”, and, according to Article 10(1) of Government Decision no. 316/2021, ensures the leadership of the Ministry of Energy;
- **the defendant Prime Minister of Romania**, according to the provisions of Article 107(1) of the Constitution of Romania, “*heads the Government and coordinates the work of its members*”; furthermore, according to Article 1(2) of Government Decision no. 563/2022 for the establishment, organisation and functioning of the Interministerial Committee on Climate Change, the defendant heads the Committee which, according to Article 3(a), “*analyses and recommends solutions in order to ensure that the policies in the sectors having an impact on climate change, proposed by the relevant ministries, are in line with the commitments made at national level to the European Union, the United Nations and other international organisations to which Romania is a party, and monitors the progress made by Romanian institutions in implementing them*”.

- (2) In the same spirit, in a similar system of law, in **Notre Affaire à Tous v France, the Administrative Court of Paris, 2021**, in the judgment delivered on 14 October 2021, it was ordered

*In the circumstances of this case, it is appropriate to order the Prime Minister and the competent ministers to take all necessary sectoral measures to offset the damage up to the uncompensated share of greenhouse gas emissions under the first carbon budget, i.e. 15 Mt CO<sub>2</sub>eq, and subject to adjustment according to the estimated CITEPA data known on 31 January 2022, allowing for a mechanism to monitor greenhouse gas emissions.*

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*An excerpt from the Judgment of the Administrative Court of Paris delivered on 14 October 2021 translated into Romanian makes up Annex 7.*

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- (3) For these reasons, you are respectfully requested to dismiss the defendant's objection as unfounded.
- (4) At the end of this analysis, we would like to conclude with the strong message delivered by the Colombian Supreme Court in **Future Generations v Colombia, Supreme Court of Colombia, 2018**<sup>17</sup>:

*The greatest challenge facing contemporary constitutionalism in environmental matters is to effectively safeguard and protect nature, cultures and the forms of life associated with them, and biodiversity, not merely because of the material, genetic or productive utility they may represent for human beings, but because, as a living entity made up of multiple other forms of life and cultural representations, they are subject to individualised rights, making them a new imperative for full protection and respect by states and societies. To summarise, only an attitude of profound respect and humility towards nature, its members and their culture can make a fair and equitable relationship with them possible, leaving aside any concept that is limited to the purely utilitarian, economic or scientific.*

*Indeed, nature and the environment are a transversal element of the Colombian constitutional order. Its significance lies, of course, in the attention paid to the human beings who inhabit it and the need for a healthy environment in order to lead a dignified life in conditions of well-being, but also in the relationship with the other living organisms with which the planet is shared, understood as existences worth protecting in their own right. It is about being aware of the interdependence that binds us to all living things on Earth; that is,*

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<sup>17</sup> <http://climatecasechart.com/non-us-case/future-generation-v-ministry-environment-others/>



*recognizing them as integral parts of the global ecosystem - the biosphere - and not on the basis of normative categories of dominance, mere exploitation or utility. (...) Fortunately, at the international level (as seen in section 5.11), a new legal approach called biocultural rights has developed, whose central premise is the profound unity and interdependence between nature and the human species and which results in a new socio-legal understanding in which nature and the environment must be taken seriously."*

For all the foregoing grounds, you are requested to dismiss the objections as unfounded.

Respectfully,

**The DECLIC Association,**

Through Ms. Roxana Mândruțiu, Attorney-at-law.