

Notification Copy

To

CLUJ COURT OF APPEAL

Administrative and Tax Litigation Section

Your Honor,

1. The undersigned **DECLIC ASSOCIATION** and

The undersigned: -----

with registered office at S.C.A. Revnic, Cristian & Asociații in Cluj-Napoca, str. Pavel Roșca, nr. 1, ap. 7, Cluj County, Andrea Rado is the person authorized to receive any procedural documents,

with a request for an electronic writ of summons to the email addresses roxana.mandrutiu@revnic.ro, lucia.turcu@revnic.ro, and isabela.porcus@revnic.ro, pursuant to Article 156 paragraph (4) and High Court of Cassation and Justice Ruling No. 75/2022

against

1. **The Government of Romania**, with headquarters at the Victoria Palace, Piața Victoriei nr. 1, Sector 1, Bucharest, email drp@gov.ro;
2. **The Prime Minister, Mr Nicolae-Ionel Ciucă**, the Victoria Palace, Piața Victoriei nr. 1, Sector 1, Bucharest, email pm@gov.ro;
3. **The Ministry of Environment, Water and Forests**, Bvd. Libertății nr. 12, Sector 5, Bucharest, email registratura@mmediu.ro and petitii@mmediu.ro;
4. **The Minister for Environment, Water and Forests, Mr Barna Tánzos**, Bvd. Libertății nr. 12, Sector 5, Bucharest, email registratura@mmediu.ro and petitii@mmediu.ro;
5. **The Ministry of Energy**, with headquarters in Str. Academiei nr. 39 - 41, Sector 1, Bucharest, e-mail comunicare@energie.gov.ro;
6. **The Minister for Energy, Mr Virgil Daniel Popescu**, Str. Academiei nr. 39 - 41, Sector 1, Bucharest, email office.cabinet@energie.gov.ro.

Pursuant to Article 18 of Law 554/2004 on Administrative Proceedings (hereinafter referred to as Law 554) and Article 194 of the Code of Civil Procedure (hereinafter the CCP), we hereby lodge this

ADMINISTRATIVE LITIGATION ACTION

Asking you to order in the judgment which you will deliver following the adducing of evidence, that the action be upheld and, consequently, due the unjustified refusal to comply with the requests of the undersigned:

1. Order the Defendants to take all necessary measures to reduce greenhouse gases (hereinafter GHG) by 55% by 2030, and to achieve climate neutrality by 2050;
2. Order the Defendants to take all necessary measures to increase the share of renewable energy sources in final energy consumption to 45% and to increase energy efficiency by 13% by 2030;
3. Order the Defendants to adopt, within a maximum of 30 days of the date when the judgment becomes final and definitive, concrete and coherent climate change mitigation and adaptation plans, including annual carbon budgeting, with a view to achieving the targets set out in counts 1 and 2, as well as annual reporting and monitoring mechanisms on the progress towards achieving these targets;
4. Order the Defendants under sections 2, 4 and 6 to pay a fine of 20% of the gross minimum wage per day of delay, to be paid to the State budget, from the expiry of the period referred to in count 3 until the effective adoption of the measures required to achieve the targets laid down in counts 1 and 2;
5. Order the Defendants jointly and severally to pay the costs of these proceedings pursuant to Article 453 of the CCP.

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Explanatory Note: The above chapter structure is used purely for the sake of clarity, given the novelty and complexity of the legal issues at stake. The application for writ of summons must be interpreted as forming a single, inseparable document in which the various chapters supplement each other; the application for writ of summons does not consist of separate individual parts.

1. Introduction to the Legal Issues. Key Elements that Clarify what the Case is all about

- (1) We are living at a time of acute socio-ecological degradation, which we are witnessing on a daily basis. Weather patterns are changing at a rapid pace, extreme weather events are becoming more frequent and are the cause of large-scale migrations; biodiversity is lost at an alarming pace; soil, water and air pollution is rampant, and zoonotic diseases caused by inappropriate human intervention are on the rise, as the ongoing Covid 19 pandemic demonstrates. These ecological disruptions are all interlinked and are part of the exacerbation of a deeply unequal and unstable global order.
- (2) The legal issue *we are raising* is essentially about the unjustified refusal of central public authorities to take adequate and timely action on climate change mitigation and adaptation. We therefore have both the interest and the ability to challenge the measures (or rather the lack of them), the Nationally Determined Contributions (NDCs), the lack of carbon budgets and the laxity of the timeframes envisaged by the authorities in the plans adopted.
- (3) The authorities' failure to act is a serious threat to both the legitimate interest of the Declic Association and to the fundamental rights of the Plaintiffs under sections 2-6: the right to life and privacy, the right to property, the right to a decent life, the right to a healthy and sustainable environment, the right to a dignified future for the generations to come, etc.
- (4) Essentially, the Court has to answer the following questions:
 - Are the Defendants in breach of their duty of care by applying in 2023 GHG reduction targets for 2030 that are well *below the EU-wide level of 55% below 1990* levels?
 - Since the Defendants have not committed to annual carbon budgets even at the time of drafting the lawsuit, how can our country's progress towards limiting global warming to 1.5 degrees Celsius be meaningfully monitored? Similarly, how can the effectiveness of the measures proposed by the Defendants be verified in the absence of carbon budgets and annual reports on how they are spent, and mechanisms for reporting and monitoring progress towards these targets?
 - In view of that there is still no climate law, although the United Nations Framework Convention on Climate Change was adopted in 1992 and the Paris Agreement entered into force in 2016, are the measures taken by the Defendants to reduce GHG emissions sufficient prevent climate change dangerous to humanity and the environment, having regard to the discretionary power of the Defendant under section 1?
 - Whether, according to objective standards, climate change mitigation and adaptation measures (e.g. measures to increase energy efficiency and integrate renewable energy sources into the national energy grid) are sufficient and

appropriate to mitigate the effects of climate change on Romania's citizens and the environment?

- Do the measures taken by the Defendants pass the reasonableness tests as applied by the UN Committee on Economic, Social and Cultural Rights (CESCR)?
- The Court is also called upon to rule whether the measures proposed by the Defendants are compatible with the rights and freedoms guaranteed by the Romanian Constitution and the ECHR, namely: the right to life and privacy, the right to property, the right to health and to a healthy and ecologically balanced environment, the right to a future consistent with human dignity.

2. Declic Association and Others. Who Are We?

(1) We, the undersigned Declic Association, are an environmental non-governmental organization, the main objectives of which are:

- To identify local, regional, national or international problems at the level of legislation, sectoral policies, institutional framework;
- To carry out expert studies, commentaries, analyses, position papers on the problems identified with a view to resolving them;
- To contribute to the reform of the rule of law by organizing "test trials";
- To challenge in court the unlawful decisions of local and central authorities on issues relating to environmental law or human rights.

The By-Laws of the Declic Association constitute Appendix 1 to this Action.

(2) The Plaintiffs under sections 2-6 are Romanian citizens deeply concerned about the deliberate indifference of the Defendants towards our fundamental rights to a stable climate, their attitude being in clear contradiction with the Romanian Constitution, the Union legislation, the commitments undertaken by the Romanian State at European and international levels.

(3) The Defendants' unconstitutional contribution to climate change, the perpetuation of an unreliable energy system causes widespread damage to Romania's natural resources.

(4) Because the Defendants have failed to act reasonably and timely in response to the climate emergency, and have refused even at the last minute to heed our pleas to implement coherent plans, we believe that the Court, through its full administrative litigation jurisdiction, can compel the Defendants to take the necessary steps to stabilize the climate system and protect the vital natural resources on which both we and future generations depend.

3. Administrative Nature of the Dispute

3.1. Cluj Court of Appeal - Administrative Litigation Section has Jurisdiction to Rule on the Case. The Nature of the Claims Brought by the Plaintiffs before the Court.

- The jurisdiction to rule on this case is vested with the Administrative and Tax Litigation Section of the Court of Appeal, which results from Article 10(1)(1) of Law 554/2004 read in conjunction with paragraph (1) of the same article. In particular, these provisions stipulate that applications relating to administrative acts which cannot be valued in money shall be decided according to the rank of the authority, and in this case the Defendants are central public authorities.
- The territorial jurisdiction belongs to Cluj Court of Appeal, in application of Article 10 paragraph (3) of Law 554/2004, which stipulates that the Plaintiff, whether a natural person or a legal entity governed by private law, shall refer exclusively to the court having jurisdiction over their home address or registered office. In this action, the Plaintiff under section 1 is seated in Cluj-Napoca and 4 of the Plaintiffs under sections 2-6 have their home address in Cluj-Napoca. As a result, with regard to the Plaintiff who does not have their home address in Cluj-Napoca, there has been a conventional prorogation of jurisdiction substantiated on the need to deliver a unified judgment on the issues under trial. Moreover, in order to ensure the proper administration of justice, all of the Plaintiffs have established our seat and address with S.C.A. Revnic, Cristian și Asociații in Cluj-Napoca.

3.2. Unjustified Refusal to Comply with the Plaintiffs' Demands

- (1) We, the undersigned, and the Declic Association, have called upon the Defendants, central authorities, to take effective and coherent measures to achieve the targets of GHG reduction and climate change adaptation:
 - With reference to the following standards adopted by Romania at national and international level:
 - a. The safety standard;
 - b. The positive obligation on the government to address environmentally hazardous situations with the highest possible level of ambition.
 - In relation to the thresholds undertaken committed to under the Paris Agreement (1.5 degrees Celsius and 2 degrees Celsius, respectively) and the time remaining to avoid exceeding these critical thresholds.
- (2) On September 1, 2022, the Declic Association sent the Defendants a request asking them to increase the renewable energy ambition to 45% from 30.7%, in view of our country's huge potential, and to increase energy efficiency to 13%.

- (3) On September 23, 2022, we, the undersigned, also submitted to the Defendants a request to reduce GHGs by at least 55% compared to 1990 levels, and to adopt concrete plans to this end, while abiding by the principle of transparency.
- (4) Furthermore, on December 20, 2022, the Plaintiffs under sections 2-6 submitted the same requests to the competent public authorities. These were recorded under no. 2/R/21860/December 21, 2022 with the Ministry of Environment, Water and Forests, and on December 30, 2022 the Secretariat General of the Government informed us that the request registered under no. 15C/1006/p/2022 had been forwarded to the Ministry of Environment, Water and Forests and the Ministry of Energy for consideration and opinion. Subsequently, on January 9, 2023, we received an email from an advisor within the Ministry of Energy, stating that complex demands had been submitted by means of document no. 263 401 / December 28, 2022 and that the deadlines for settling them were short. However, these complex issues relating to climate change were already long known to the State authorities, as they did not arise in December 2022 when the Plaintiffs filed their requests but well before 2015 (the year when the reality was only established and the Paris Agreement was adopted).
- (5) In their replies, the Defendants merely reviewed the plans already in place, insisting that each country autonomously sets its own Nationally Determined Contributions (hereafter NDCs) but ignoring the standards by which these NDCs are set: the highest possible level of ambition and transparency.

The Plaintiff's requests and the replies received from the Defendants constitute Appendix 2 to this Action.

- (6) However, it is precisely these plans that the Plaintiffs have taken as their starting point (Integrated National Energy and Climate Plan – INECP - and National Recovery and Resilience Plan NRRP), which:
 - Are not correlated (e.g. in the NRRP the ambition for renewable energies is set to increase to 29% and in the INECP to 30.7%);
 - Do not abide by the principle of transparency, as it is impossible to monitor how the GHG reduction obligations and the increase in the share of renewable energy (including the interim targets of 25.4% in 2022, 26.9% in 2025 and 28.4% in 2028) will be met;
 - Reflects a modest level of ambition,we have called for the adoption of concrete and effective plans by the relevant authorities that are in line with the above standards.
- (7) On the other hand, climate law (of climate change law) is an integral part of environmental law. Climate change is one of the key factors that executive and legislative authorities should (but do not) take into account when adopting regulatory legislation.

- (8) The legal nature of environmental law litigation is that of objective litigation. This is because the specificity of objective litigation is that, by bringing the action before the administrative litigation court, the Plaintiffs seek to defend an objective right and a legitimate public interest, within the meaning 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 violated.
- (9) In other words, objective litigation implies a broad openness, underlined by the fact that it defends a state of lawfulness the characteristics of which are universality and impersonality.
- (10) Although Article 95 paragraph (1) of Government Emergency Ordinance 195/2005 refers to the institution of liability for environmental damage, this aspect must also be analyzed and applied by the administrative litigation court. The mere fact that reference is made to the institution of liability does not mean that the dispute will be transferred from that point on to the ordinary civil procedure. The provisions contained in a legislative act must be construed and enforced in a consistent manner, with the principles and general provisions providing a genuine guide on how to apply other provisions of that legislative act.
- (11) From this perspective, the provision of Article 8 paragraph (1) of Law 554/2004 enshrines the **full jurisdiction litigation**.
- (12) Case law¹¹ has outlined the definition of the full jurisdiction litigation, consistently stating that, where the unlawful act causes harm to the Plaintiff, the Court may order measures to restore the right or legitimate interest that has been harmed and, to this end, may even oblige the Defendant authority to carry out a specific action, i.e. to take all the measures requested by the Plaintiff, and not merely to oblige the authority to reconsider the demand submitted to it.
- (13) Consequently, in view of the fact that:
- There is an unjustified refusal to heed to the Plaintiff's demands;
 - There is an unjustified refusal to take the necessary measures to achieve the climate targets undertaken by our country;
 - The Defendants' attitude infringes the individual fundamental rights of the Plaintiffs under sections 2-6, as well as the collective rights as set out in sub-chapter 6.3., the Declic Association, acting both in the interests of present and future generations and in its own interests,

the administrative nature of the dispute submitted for trial is unequivocal.

3.3. Why the Principle of Separation of Powers is not Infringed. Relevant European Case Law.

- (1) In anticipation of the Defendants' defense, within the meaning that upholding the action would violate the principle of the separation of powers in the State (a defense raised by the government authorities and dismissed by the courts in all European countries where the climate issue has been brought before the courts), we will briefly present the arguments why such an action is not in contradiction with Article 1 paragraph (4) of Romanian Constitution but, on the contrary, it makes the most of it.
- (2) In accordance with Article 1 paragraph (4) of the Romanian Constitution *“The State shall be organized according to the principle of the separation and balance of powers - legislative, executive and judicial - within the framework of constitutional democracy.”*
- (3) It is clear from the wording of the above-mentioned legal provisions that the constitutional provision does not regulate a complete separation of the three powers of the State, and the balance between these powers must be secured. It is an essential feature of the rule of law that the actions of the administrative (and legislative) authorities can and must be reviewed by an independent judiciary.
- (4) Through the administrative litigation proceedings, we requested the Court to order the Defendants to take any measures necessary to achieve the targets set out in counts 1 and 2, raising in support of our legal action both the breach of a legal duty of care and of the (individual and collective) subjective rights guaranteed by Article 1 paragraph (3) of the Romanian Constitution.
- (5) The Plaintiffs do not seek by this action to obtain a court order ruling the adoption of particular law or the enactment of **certain** measures. Assuming that the Court upholds the Plaintiffs' application, the Defendants will have sufficient headroom to decide how to comply with the Court's judgment. In other words, the purpose of the Plaintiffs' action is not to create legislation, since the judgment in the case would not prescribe the content of the measures.
- (6) Moreover, the Constitutional Court has ruled that *“the separation of powers in the State does not imply the absence of a control mechanism between the powers of the State; on the contrary but rather the existence of a mutual control and the achievement of a balance of forces between them”* (Decision no. 44/2006, Official Gazette no. 178 of 24 February 2006; Decision no. 637/2006, Official Gazette no. 914 of 9 November 2006).
- (7) In the **European case law**, Courts dealing with similar actions have ruled as follows:

- **Civil Judgment no. 19/00135/December 20, 2019 of the Supreme Court of the Netherlands:** “...in the Dutch constitutional system, decision-making on reducing greenhouse gas emissions is a matter for the government and parliament. They have a great deal of discretion in taking the necessary political decisions in this regard. **It is for the courts to decide whether, in exercising this discretion, the government and parliament have remained within the limits of the law by which they are bound.**”
- **Judgment no. 1841/July 18, 2022 of the Queen's Bench Division Administrative Court:** “Parliament and the public, including the plaintiffs, were entitled to see a report on these matters (n.n. Under sections 13 and 14 of the Climate Change Act 2008, the Secretary of State has a duty to prepare proposals and policies to meet carbon budgets as well as a duty to report on proposals and policies to meet carbon budgets) so that they could properly understand and consider the Government's proposals and policies and their impact on reducing emissions and on socio-economic issues”.
- **Decision of the German Constitutional Court of June 24, 2021:** “It follows from the principle of proportionality that one generation should not be allowed to consume a large part of the CO₂ budget and make only a small contribution towards GHG reduction. This means transferring responsibility to future generations and seriously undermining the right to freedom.” We would like to emphasize that following the Constitutional Court decision, Germany has committed to the following GHG reduction targets: 65% compared to 1990 levels by 2030, 88% by 2040, climate neutrality by 2045 and negative emissions after 2050.
- **Decision of the Administrative Court of Paris dated October 14, 2021:** “The Prime Minister and the competent ministers are required to take all necessary measures to repair the environmental damage and prevent further damage up to the amount of the uncompensated share of greenhouse gas emissions under the first carbon budget, i.e. 15 Mt CO₂eq, subject to adjustment according to the data estimated by CITEPA on January 31, 2022. The damage must be repaired by December 31, 2022 at the latest. (...) **In the context of this case, the specific measures to repair the damage may take various forms and therefore reflect choices which left to the Government's discretion.**”

The Judgment of the Administrative Tribunal of Paris of October 14, 2021 and Judgment no. 19/2019 of the Supreme Court of the Netherlands constitute Appendix 3 to this action.

- (8) In conclusion, in the light of the above-mentioned constitutional texts and similar European case law (3 of the 4 examples belong to continental law systems), it is clear that a possible upholding of the application for writ of summons does not violate the

principle of the separation of powers in the State, as the Defendants remain entirely free to determine how to achieve the desired climate objectives.

4. Locus Standi to Sue of the Plaintiffs

4.1. Active Legal Standing

- **Active legal standing of the Declic Association**

- (1) This action seeks to sanction the Defendants' passivity in dealing with the urgent issue of climate change and its devastating effects, which are already being felt in Romania.
- (2) In our counts, we ask the Court to order the Defendants to take all necessary measures to remedy this grim reality. In other words, the purpose of our legal action is to submit these environmental issues, which can no longer be put off, to judicial review.
- (3) Article 18 of Law 554/2004 establishes the full jurisdiction litigation, by virtue of which the Court may require one of the Parties to fulfil certain obligations, which is exactly what we are asking for in the application initiating proceedings to counts 1-3. Moreover, Article 8 paragraph (2) index 2 in conjunction with Article 24 of Law 554/2004 states that the obligations imposed on the Defendant authorities may be determined under the penalty of a fine, which is what we request in count 4.
- (4) Pursuant to Article 20 paragraph (6) of Government Emergency Ordinance no. 195/2005, non-governmental organizations promoting environmental protection have the right to take legal action in environmental matters and have active legal standing in environmental protection disputes. The undersigned is an environmental organization, and the issue before the Court concerns the review of the merits and lawfulness of the application and the related obligation to take measures to mitigate the environmental impact. Consequently, the Plaintiff's active legal standing is beyond doubt.
- (5) Furthermore, since the undersigned is an environmental non-governmental organization, as evidenced by the objectives and scope of the Association, the provisions of Article 9 of the Aarhus Convention (ratified by Romania through Law 86/2000) are also applicable to us, which clearly established access to justice for environmental organizations, eliminating any doctrinal or jurisprudential controversy regarding the procedural legitimacy of these organizations when the legal action is based on environmental law provisions.

(6) The literature ¹ has highlighted the role of the Aarhus Convention as an architect in shaping access to justice in environmental matters. Thus, Article 9 of the Convention provides for broad access to justice, through judicial or administrative proceedings, in relation to any acts and omissions by private persons and public authorities in violation of provisions of national law relating to the environment. It further argues ² that *“All such access to justice procedures shall provide effective and adequate remedies and shall be fair, equitable, timely and not prohibitively expensive. (...) grants environmental associations access to justice and thus the right to act in the public interest.”*

- **Legal standing of the Plaintiffs under sections 2-6**

- (1) According to Article 35 paragraph (1) of the Romanian Constitution, which has the marginal title *Right to a Healthy Environment*, included in Chapter II *Fundamental Rights and Freedoms*, the State acknowledges the right of every person to a healthy and ecologically balanced environment. The second paragraph of the aforementioned provision also expressly states that the State has a positive obligation to ensure the legal framework for the exercise of this right.
- (2) In order to implement these constitutional provisions, the delegated legislator, by means of the emergency ordinance procedure, adopted Government Emergency Ordinance no. 195/2005, which aims to put into practice the positive obligation imposed on the State by the aforementioned constitutional rule. Therefore, Government Emergency Ordinance no. 195/2005 provides that the purpose of this legislative act is a set of legal regulations on environmental protection, an objective of major public interest, based on principles and strategic elements leading to sustainable development. One of the principles expressly highlighted in Article 3 concerns the information and public participation in decision-making, as well as access to justice in environmental matters (Article 3 section h), in particular thesis II) of Government Emergency Ordinance no. 195/2005).
- (3) Last but not least, as a concrete expression of the State's recognition of the right to a *“healthy and ecologically balanced environment”*, the Government Emergency Ordinance in question provides in Article 5 section (d) as guarantees for achieving this objective, **the right to appeal, directly** or through environmental protection organizations, to **administrative and/or judicial authorities**, as appropriate, in environmental matters, regardless of whether or not damage has been caused.

4.2. Private Legitimate Interest

¹ The Oxford Handbook of International Environmental Law-Lavanya Rajamani editor, Oxford University Press, 2021, op. cit, pp. 359.

² *Ibid*

- **The legitimate private interest of the Declic Association combined with the public interest.**
- (1) The High Court of Cassation and Justice – the Panel for the resolution of second appeals in the interest of the law, in its Judgment no. 8/March 2, 2020, delivered in case no. 3315/1/2019, provided the following definition of the legitimate private interest: *“the legitimate private interest derives from the direct link between the administrative act subject to lawfulness review and the direct purpose and objectives of the association, according to the by-laws”*.
 - (2) As stated above, the scope and objectives of the undersigned contained in the By-Laws are to promote environmental protection, including by fostering actions before the Courts, with the aim of restoring the balance affected by the unlawful attitudes of the authorities and their failure to act.
 - (3) Consequently, the undersigned justifies a private, legitimate, born and actual interest in lodging this action in administrative litigation, which aims to oblige the Defendants, central authorities of Romania, to take concrete and effective measures to counteract the effects of climate change, given that the current indifference of the Defendants has a disastrous impact on the environment and blatantly disregards human rights, which they should guarantee to their own citizens.
 - (4) Moreover, as highlighted above, the Aarhus Convention enshrines the right of environmental associations to take legal action on behalf of the public interest ³, so that the legitimate private interest of an environmental association is linked with the need to protect and act in favor of the public interest, which would otherwise remain unheard.
- **Legitimate Interest of the Plaintiffs under Sections 2-6**
- (1) We, the Plaintiffs under sections 2-6, as citizens of Romania, are directly affected by the Defendants' inadequate policy on climate change matters.
 - (2) In this context, we would like to emphasize that the subjective rights and freedoms guaranteed by the Romanian Constitution and violated by the Defendants through the anemic measures taken in the field of climate change, go beyond the scope of fundamental rights provided for in the ECHR or the Charter of Fundamental Rights, as it results from the way in which the constitutional legislator understood to regulate Article 1 paragraph (3) of the Constitution.

³ The Oxford Handbook of International Environmental Law - Lavanya Rajamani editor, Oxford University Press, 2021, pp. 359

- (3) Despite the formal guarantee of the right to a healthy environment, established by Article 35 of the Constitution and protected by all the instruments of the State powers, the Defendants' inactions, which exacerbates the climate challenges, disregard not only this right of the undersigned but also the right to a decent life, the right to property, the right to freedom and the right to life itself. A healthy environment is the starting point for the enjoyment of the other rights, and the interdependence between them is undeniable.
- (4) Faced with such legislative and administrative framework outdated by the reality of the situation, the undersigned have considered that the lodging of this action is part of a genuine civic duty.
- (5) As a consequence, the legitimate interest of the undersigned cannot be contested, since our action is aimed at preventing the substantial impairment of our rights.

4.3. Legitimate Public Interest

- (1) This legal action by the Plaintiffs is not a classic action against an administrative act but is much more far-reaching in its implications.
- (2) The issue of climate change cannot be limited and assessed by reference to a specific region or county since its effects are felt at national, European and even global level.
- (3) As a result, although we have referred to the public interest as being in addition to the private interest of the Plaintiff Déclic Association, it is necessary to specify that the public interest is not limited to this component, since this action constitutes the expression of the interrelation between the national public interest and the obligations assumed by Romania under various Union and international instruments.
- (4) In this context, measures to effectively and efficiently address climate change need to be implemented and enforced in order to achieve the global climate objective. That is why we have lodged this action against all national decision-makers. They are the ones who must ensure the common good of all citizens and who have the power to take appropriate action in the area of climate change, a reality that cannot be denied.

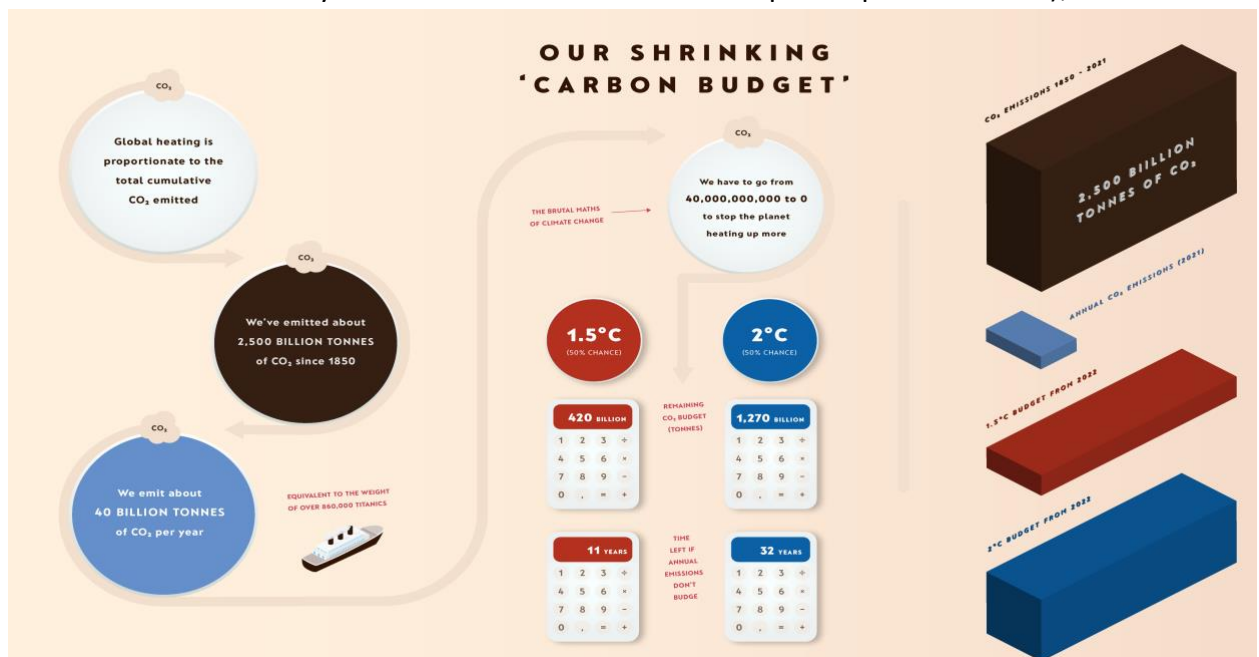
5. Facts. The Scientific Certainty of Climate Change Threat. Where We Are. Where We Are Heading

5.1. Small Dictionary of Scientific Terms and International Bodies Involved in Climate Change

In order to further examine the issues before the Honorable Court, the Plaintiffs point out that in this action we will use various technical terms used in environmental science and climate change, established at national, national and international level, such as:

- **Greenhouse gases (GHGs)** - are gases (methane, carbon dioxide, nitrous oxide, etc.) found in the Earth's atmosphere that contribute to global warming by absorbing and emitting infrared radiation from the Earth to space. These gases have a strong influence on global temperatures;
- **Global Mean Surface Temperature (GMST)** - is the average air temperature at ground level around the Earth. It is measured at different points on Earth, including in the air, at sea and on land. It is calculated by dividing the total heat received by the Earth from the Sun by the total temperature of the Earth. Over the last 100 years, GMST has increased by about 1.1 degrees Celsius due to global warming caused by GHG emissions from human activities;
- **Pre-industrial period** - is a reference period used in climate change studies to compare current climate conditions with conditions before the Industrial Revolution. The Industrial Revolution began in Europe in the late 17th century and spread across the world, marking the beginning of an era;
- **Global warming** - is the phenomenon of warming GMST on average, expressed relative to pre-industrial levels, unless otherwise specified; it can have significant impacts on the environment and people, such as increased frequency of extreme weather events such as floods and droughts, and changes in the availability of drinking water and food;
- **Neutral (net-zero) CO₂ emissions** - are achieved when the CO₂ emissions of an organization, community or country are offset by measures that absorb or remove the same amount of CO₂ from the atmosphere. These may include measures such as the development of renewable energy sources, energy efficiency, reforestation and the use of technologies that capture and store CO₂ from the atmosphere;
- **Climate sensitivity** - refers to how the Earth's climate system responds to changes in GHG levels in the atmosphere. It measures how much GMST could increase following a change in GHG levels to twice the pre-industrial levels. Climate sensitivity can vary depending on a number of factors, such as the absorption of solar radiation by the oceans and their ability to release heat to the atmosphere through evaporation, as well as the degree of cloud brightening;
- **Keeling curve** - is a graphical representation of the amount of CO₂ in the atmosphere over time. It was created by scientist Charles David Keeling and has become an important symbol in the study of climate change and understanding the role of CO₂ in this process. The Keeling curve graph shows a steady increase in the concentration of CO₂ in the atmosphere, mostly caused by greenhouse gas emissions from human activities such as fossil fuels and deforestation;
- **Sustainable development** - is a concept that refers to how societies can meet their needs today without compromising the ability of future generations to meet their needs. It focuses on economic growth and the poverty eradication in a way that is socially, economically and environmentally sustainable;

- **Nationally Determined Contributions (NDCs)** - are commitments that countries have made under the Paris Agreement on climate change to reduce GHG emissions and adapt to the effects of climate change. This Agreement, signed in 2015, aims to encourage countries to take action to limit global warming to below 2 degrees Celsius compared to pre-industrial revolution levels and, ideally, to 1.5 degrees Celsius. NDCs are plans that countries submit to meet these targets and can include measures to reduce GHG emissions from the industrial and transport sectors, develop renewable energy sources and foster energy efficiency;
- **Total carbon budget** - is the total amount of GHGs, especially carbon dioxide, that can be emitted into the atmosphere without exceeding certain global warming thresholds. This budget is expressed in units of tonnes of carbon per year (CO₂ e), and at the level of 2022, the global carbon budget was, as suggestively illustrated in the Info graphic ⁴ below:
 - 420 billion tonnes of CO₂ to limit global warming to 1.5 degrees Celsius (this budget will be consumed in 11 years if we use the same development pattern);
 - 1.270 billion tonnes of CO₂ to limit global warming to 2 degrees Celsius (this budget will be consumed in 32 years if we follow the same development path as before);



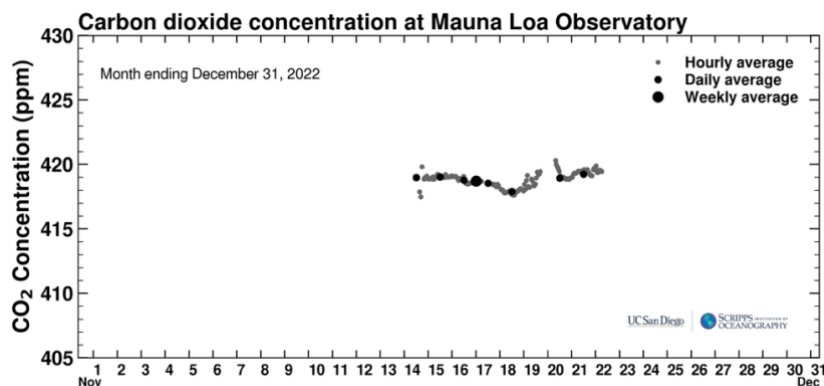
- **Climate model** - is a mathematical model used to simulate and forecast the Earth's climate. There are several different types of climate models, including global climate models (GCMs), regional climate models (RCMs) and atmospheric models. These models use complex algorithms to simulate the Earth's climate system, taking into account various factors such as atmospheric and oceanic circulation, atmospheric chemistry and Earth surface conditions;

⁴ <https://eciu.net/analysis/infographics/ipcc-science-of-climate-change>

- **Emissions gap for 2030** - is the difference between the estimated total global GHG emissions resulting from full implementation of the NDC and the total global GHG emissions resulting from the least-cost scenarios that limit global warming to 2 °C, 1.8 °C or 1.5 °C;
- **Offsets** - are projects that (theoretically) reduce or avoid GHG emissions in sectors or countries other than those in which the emitter is located and allow the emitter to reduce emissions by offsetting them through emission reduction projects elsewhere. There is a scientific consensus that offsets cannot be used as a primary tool in GHG emission reduction policy;
- **Fugitive methane emissions** - are emissions of methane (a greenhouse gas) that escape into the atmosphere through various leaks or from industrial activities such as oil and gas extraction, agriculture or landfill. These emissions contribute to climate change and are considered a major cause of concern;
- **CCS technologies** (Carbon Capture and Storage Technologies) - are methods of reducing carbon emissions by capturing them from industrial or energy sources, transporting them and storing them in safe places such as underground. CCS can be used in industries such as energy, cement production and petrochemicals. Once captured, CO₂ can be transported by pipeline or sea and stored underground in suitable geological formations such as salt deposits or sedimentary rocks;
- **The Intergovernmental Panel on Climate Change (IPCC)** - is an international intergovernmental organization that aims to assess the scientific, technical and socio-economic impacts of climate change, as well as its impacts and measures for adaptation and mitigation. The IPCC was established in 1988 by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Food and Agriculture Organization of the United Nations (FAO). The group is composed of representatives from all UN member countries and is governed by a governing board of member state representatives. The IPCC produces and publishes regular reports that summarize existing scientific research on climate change to inform policy makers and the general public;
- **World Bank** - is an international financial organization that aims to support economic development and poverty eradication in developing countries. One of the World Bank's areas of focus is climate change management. The World Bank established a Climate Change Task Force in 2010 to support countries in developing effective policies and programs to adapt to climate change and reduce greenhouse gas emissions. The World Bank provides funding for projects that help reduce GHG emissions and adapting to climate change, as well as for research and development in renewable energy and sustainable technologies;
- **COP (United Nations Climate Change Conference)** - is an annual meeting of UN member states dealing with climate change issues.
- **UNEP (United Nations Environment Programme)** - is a specialized UN agency dealing with environmental and sustainable development issues. Founded in 1972, one of UNEP's most important goals is to promote sustainable development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs.

5.2. Greenhouse Gases. A Brief History of Scientific and Legislative Developments.

- (1) The phenomenon of global warming first appeared in the press in the 1950s. In 1956, the New York Times published an article suggesting that the accumulation of greenhouse gas emissions from energy production could lead to permanent environmental change.
- (2) Similarly, in 1960, researcher Charles Keeling made carbon dioxide measurements at the Mauna Loa Observatory that established the anthropocentric contribution to the greenhouse effect and global warming.
- (3) At the time of drafting the action, according to the Keeling curve⁵, the concentration of CO₂ in the atmosphere is 419.25 ppm (and the critical threshold is 450 ppm).



*Latest CO₂ reading: 419.25 ppm

- (4) In 1963, the American National Science Foundation published an emergency report on the greenhouse effect⁶, before a report by President Lyndon B. Johnson's Science Advisory Committee established the anthropocentric contribution to the greenhouse effect and global warming.
- (5) In 1972, the first United Nations Conference on the Environment was held in Stockholm⁷, at which the participating States adopted a recommendation calling for the development of scientific work in this field.
- (6) In 1988, the Intergovernmental Panel on Climate Change (IPCC)⁸ was created, reflecting the **international community's recognition of climate change as a real problem** from at that, which has been noted in the IPCC's work since 1990: "*emissions from human activities*

⁵ <https://keelingcurve.ucsd.edu>

⁶ <https://climatebrad.medium.com/climate-hearings-af27a3886a43>

⁷ https://en.wikipedia.org/wiki/United_Nations_Conference_on_the_Human_Environment

⁸ https://en.wikipedia.org/wiki/Intergovernmental_Panel_on_Climate_Change

significantly increase atmospheric concentrations of the greenhouse gases: CO₂, methane, chlorofluorocarbon (CFC), and nitrous oxide, which will lead to further warming of the Earth's surface."

- (7) In 1992, more than 190 countries (including Romania) signed the **United Nations Framework Convention on Climate Change** (UNFCCC). This Treaty established that greenhouse gas emissions must be reduced to a level that would prevent dangerous effects. UNFCCC members also concluded that, on the basis of the available scientific evidence, an increase in global annual mean surface temperature of 2 degrees Celsius above pre-industrial levels should be considered to be dangerous anthropogenic climate change. This means that atmospheric CO₂ concentrations should remain below 450 ppm.
- (8) Parties to the UNFCCC added to this conclusion that a warming of 1.5 degrees Celsius could already exceed a dangerous threshold (meaning that the CO₂ concentration limit should not exceed 430 ppm).

UNFCCC constitutes Appendix 4 to this action

- (9) In 2001, in the PreussenElektra case (C-379/98), the Court of Justice of the European Union (CJEU) commented on the relationship between climate change, sustainable energy and the right to life in its judgment of March 13, 2001:

The use of renewable energy sources ... contributes to reducing greenhouse gas emissions, which are among the main causes of climate change that the European Community and its Member States are committed to combating ... It should be noted that this policy is also designed to protect human health and life.

We emphasize that the CJEU judgments are a **source of law**.

Excerpt from the CJEU Judgment constitutes Appendix 5 to this action

- (10) In 2006, at the request of the UK government, the Stern Review⁹ was prepared (also used by the European Commission), which concluded:

The evidence gathered in the review leads to a simple conclusion: the benefits of early and vigorous action far outweigh the economic costs of not acting.

Climate change will affect the basic elements of life for people around the world - access to water, food production, health, and the environment ... if we don't act, the overall costs and risks of climate change will be equivalent to losing at least 5% of global GDP

⁹https://webarchive.nationalarchives.gov.uk/ukgwa/20100407172811/https://www.hm-treasury.gov.uk/stern_review_report.htm

each year, now and forever. If a wider range of risks and impacts are taken into account, the estimates of damage could rise to 20% of GDP or more.

- (11) In 2013, Lord Nicholas Stern, lead author of the report and former Chief Economist of the World Bank, announced at the World Economic Forum in Davos that the extent of the damage (20% of GDP) was actually an underestimate because global warming was accelerating faster than previously thought.

The conclusions of the Report are attached as Appendix 6 to this action

- (12) In 2009, the Commission of the European Communities took up the conclusions of the Stern Review in the document entitled *White Paper - Adapting to Climate Change: Towards a European Framework for Action*, which sets out strategies in the areas of agriculture, water resources, land use and deforestation, and public health.

- (13) As regards the latter sector, it was found that

... should explore with WHO and EU agencies ways to ensure adequate surveillance and control of the health impacts of climate change, such as epidemiological surveillance, control of communicable diseases and the effects of external phenomena

The White Paper constitutes Appendix 7 to this action

- (14) In the same year, the UN Human Rights Council explicitly recognized the link between climate change and global human rights violations in Resolution 10/4, adopted in 2010 in the “Cancun Agreement” of the UNFCCC:

Climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires needs to be addressed urgently by all parties.

- (15) In 2009, the US Environmental Protection Agency (EPA) decided to classify CO₂ as an “air pollutant”, a decision that was unsuccessfully challenged by the fossil fuel industry in the US Supreme Court. According to the EPA, scientific evidence shows that greenhouse gases (especially CO₂ and methane) pose a threat to the health of present and future generations.
- (16) On December 12, 2015, the **Paris Agreement** was adopted. The Paris Agreement aims to strengthen the global response to the threat of climate change in the context of sustainable development.
- (17) The success of the Paris Agreement is explained by the fact that it is a bottom-up document, giving signatory States the freedom to set their own nationally determined GHG reduction contributions (NDCs), which are continuously updated in line with scientific progress, and monitored.

- (18) In October 2018, the IPCC prepared a Special Report on the impact of global warming by 1.5 degrees Celsius above pre-industrial levels¹⁰

Human activities are estimated to have caused approximately 1.0 °C of global warming above pre-industrial levels, with a likely range of 0.8 °C to 1.2 °C. Global warming is likely to reach 1.5 °C between 2030 and 2052 if it continues to increase at the current rate (high confidence).

- (19) The same Report states that:

Pathways reflecting these ambitions [n.n. committed to by States through the Paris Agreement] would not limit global warming to 1.5 °C, even if supplemented by very challenging increases in the scale and ambition of emission reductions after 2030 (high confidence).

- (20) Assuming that countries have actually met their commitments under the Paris Agreement (which is not the case, as the commitment is only at the declaratory level) the conclusion is that countries need to adopt much more ambitious targets, both individually and collectively to limit global warming to 1.5 degrees Celsius.

- (21) On November 28, 2019, the European Parliament issued its **Resolution on the climate and environmental emergency**, stating that it “declares the climate and environmental emergency”.

- (22) In less than a month, the European Green Pact was launched by the European Commission. It is a package of initiatives aimed at putting the European Union on the path to a green transition, with the ultimate goal of achieving climate neutrality by 2050. The Pact emphasizes the need for a holistic and cross-sectoral approach, with all relevant policy areas contributing to the ultimate climate goal.¹¹ The European Green Pact aims to address climate and environmental challenges with the aim of transforming the European Union “into a fair and prosperous society with a modern, competitive and resource-efficient economy”¹². The Pact also aimed to “protect, conserve and enhance the EU's natural capital, and protect the health and well-being of citizens from environmental risks and related impacts”.¹³

- (23) On February 23, 2021, Sir James Bevan, **Chief Executive of the UK Environment Agency**, said that the current impact of climate change is the worst-case scenario, which implies that “*Much higher sea levels will take out most of the world’s cities, displace millions, and make much of the rest of our land surface uninhabitable or unusable. Much more extreme weather will kill more people through drought, flooding, wildfires and heatwaves than most wars have. The net effects will collapse ecosystems, slash crop yields, take out the infrastructure that our*

¹⁰ <https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/>

¹¹ Source: <<https://www.consilium.europa.eu/ro/policies/green-deal/>>

¹² European Commission, Communication from the Commission - European Green Pact, Brussels, December 11, 2019, COM (2019)640 final, source: <<https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52019DC0640&from=EN>>

¹³ *Ibidem*

civilisation depends on, and destroy the basis of the modern economy and modern society.”

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- (24) On June 30, 2021, the “**European Climate Act**” - **Regulation No. 1119/2021** was adopted, **which is directly applicable in national law according to Article 288 TFEU**. The Regulation states in Article 4 that “*in order to reach the climate-neutrality objective set out in Article 2(1), the binding Union 2030 climate target shall be a domestic reduction of net greenhouse gas emissions (emissions after deduction of removals) by at least 55% compared to 1990 levels by 2030.*”
- (25) In July 2021, as part of the European Green Deal, the European Commission adopted the “Fit for 55” package, which set a target of reducing greenhouse gas emissions by up to 55% by 2030. To **ACHIEVE THIS, 40% of final energy consumption HAS to come from renewable sources.**
- (26) On October 30, 2021, the World Health Organization prepared a report that reached the following worrying conclusions:
- Climate change affects the social and environmental determinants of health - clean air, clean water, sufficient food and safe shelter.
 - Environmental factors kill an estimated 13 million¹⁵ people a year.
 - Between 2030 and 2050, climate change is expected to cause approximately 250,000 additional deaths per year from malnutrition, malaria, diarrhoea and heat stress alone.
 - The direct damage to health (i.e. excluding costs in health-determining sectors such as agriculture, water and sanitation) is estimated to be between USD 2 - 4 billion/year by 2030.
 - Areas with weak health infrastructure - mostly in developing countries - will be the least able to cope without assistance to prepare and respond.
 - Reducing emissions of greenhouse gas through better transport, food and energy-use choices can result in improved health, particularly through reduced air pollution.

WHO conclusions on the link between climate change and population health constitute

Appendix 8

- (27) In **May 2022**, in the context of the geopolitical imbalance and the disruption of the energy system caused on the European continent and worldwide caused by Russia's military aggression against Ukraine, the European Union has updated its ambitions with the **REPowerEU** package, which proposes that **renewable energy should account for 45% of final energy consumption**. “This would bring total renewable energy generation capacity to 1 236

¹⁴ <https://environmentagency.blog.gov.uk/2021/02/25/watching-the-wolf-why-the-climate-emergency-threatens-us-all/>

¹⁵ https://cdn.who.int/media/docs/default-source/climate-change/fast-facts-on-climate-and-health.pdf?sfvrsn=157ecd81_5

GW by 2030, compared to the 1067 GW capacity foreseen for 2030 in the “Ready for 55’ package.”¹⁶

- (28) REPowerEU will also increase renewable capacities to **510 GW for wind and 592 GW for solar**, while increasing the share of biogas and doubling the number of heat pumps (by 10 million units in the next 5 years) installed in homes. These measures are in line with the Fit for 55 measures with an increase in the energy efficiency target to 13% compared to 2020 for both primary and final energy consumption.
- (29) On **July 18, 2022**, the EU Council approved the conclusions setting out the EU's priorities within the United Nations at the 77th session of the United Nations General Assembly (September 2022 - September 2023).
- (30) Paragraph 27 of the conclusions explicitly states that we are facing a triple planetary crisis.

The [triple planetary crisis] generated by climate change, biodiversity loss and pollution is an existential threat to people and planet and must be tackled as a matter of urgency, as it threatens sustainable development, deepens existing vulnerabilities and undermines human rights and world peace. The Intergovernmental Panel on Climate Change's latest report warns of the irreversible effects of global warming, stating that climate change could soon outstrip our and nature's ability to adapt if we do not rapidly reduce emissions. The Stockholm+50 international conference called for strong political will to urgently accelerate the implementation of commitments to a healthy planet, to embark on a systemic transition, to tackle the triple crisis and to achieve the SDGs.

- (31) According to the April 2022 IPCC Report, simulated trajectories to limit warming to 1.5 °C and 2 °C require deep, rapid and sustained emission reductions, and that the interim pledges made by Parties to the Paris Agreement for 2030 are insufficient.

5.3. Summary of the Conclusions of the IPCC 2022 Report on Adaptation to Climate Change, the IPCC 2022 Report on Mitigation and the Conclusions of COP 2022

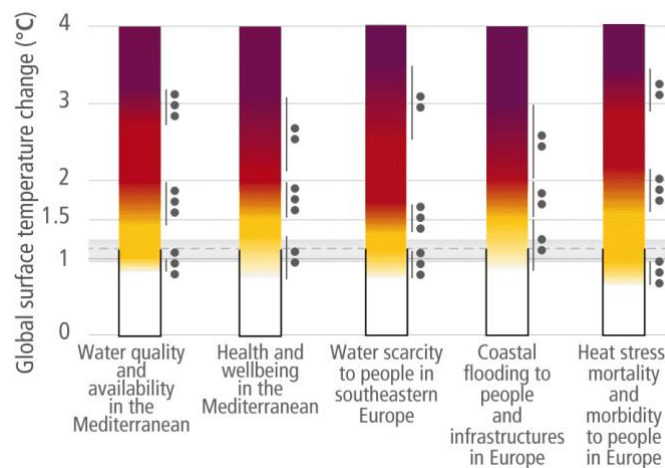
- (1) The IPCC 2022 Climate Change **Mitigation** Report for policymakers concludes that:
 - The global GHG emission pledges in the NDCs announced before COP26 (held at the end of 2021) would allow warming to exceed 1.5 °C and would also make it more difficult to limit warming below 2° C after 2030 (high confidence); as a result, the measures required need to be much more ambitious, effective and timely;
 - Beyond formal climate policy processes, **climate litigation is another important arena** where different actors are at odds and interact over how climate change should be addressed;

¹⁶ European Commission, *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - REPowerEU Plan*, Brussels, May 18, 2022, COM(2022) 230 final, source: <<https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52022DC0230&from=EN>>

- The report states that nearly 40 lawsuits have been filed against governments since 2015, challenging their efforts to mitigate or adapt to climate change. It adds **that the litigation has the potential to “affect the stringency and ambitiousness of climate governance”**. “If successful,” the report notes, “such cases can lead to an increase in a country’s overall ambition to tackle climate change.”

(2) The IPCC 2022 Report on **Adaptation** to Climate Change, prepared for policymakers, notes that:

- Climate change **has adversely affected physical health of people** globally (very high confidence) and **mental health** of people in the assessed regions (very high confidence). In all regions extreme heat events have resulted in human mortality and morbidity (very high confidence). The occurrence of climate-related food-borne and water-borne diseases has increased (very high confidence), the incidence of vector-borne diseases has increased from range expansion and/or increased reproduction of disease vectors (high confidence). Animal and human diseases, including zoonoses, are emerging in new areas (high confidence). Water and food-borne disease risks have increased regionally from climate-sensitive aquatic pathogens, including *Vibrio* spp (high confidence), and from toxic substances from harmful freshwater cyanobacteria (medium confidence). Although diarrhoeal diseases have decreased globally, higher temperatures, increased rainfall and flooding have increased the occurrence of diarrhoeal diseases, including cholera (very high confidence) and gastrointestinal infections (high confidence). The Figure below, taken from the IPCC 2022 Report, depicts the risks across Europe, relative to the GMST value:



- **Economic damages** caused by climate change **have been detected** in climate-exposed sectors, with regional impacts on agriculture, forestry, fishery, energy and tourism (high confidence);

- **Risks in physical water availability** and water-related hazards will continue to increase by the mid- to long-term. At approximately 2 degrees Celsius global warming, snowmelt water availability for irrigation is projected to decline in some snowmelt dependent river basins by up to 20%, and the global glacier mass loss of 18 -+ 13% is projected to diminish water availability for agriculture, hydropower, and human settlements in the mid- to long-term;
 - If global warming transiently exceeds 1.5 degrees Celsius, then many human and natural systems will face additional severe risks, compared to remaining below 1.5 degrees Celsius (high confidence). Depending on the magnitude and duration of overshoot some impacts will be irreversible, even if global warming is reduced (high confidence);
 - The cumulative scientific evidence is unequivocal: **any further delay** in concerted anticipatory global action on adaptation and mitigation **will miss a brief and rapidly closing window of opportunity to secure a liveable and sustainable future for all.**
- (3) The COP27 proceedings which took place late last year in Egypt were based on **UNEP's October 2022 Emissions Gap Report**, which states:
- Current policies are projected to lead to global warming of 2.8 °C in the 21st century unless further action is taken. Implementing the unconditional and conditional NDC scenarios reduces this temperature to 2.6 °C and 2.4 °C, respectively;
 - The top seven emitters (China, the **EU27**, India, Indonesia, Brazil, the Russian Federation and the United States) plus international transport accounted for 55% of global GHG emissions in 2020;
 - Globally, NDCs are woefully inadequate and the 2030 emissions gap remains high.
 - Countries at COP27 agreed on targets that reflect only modest progress in reducing emissions, despite a clear gap between current national climate plans and what is needed to limit temperature rise to 1.5 degrees Celsius. Yet the Glasgow Climate Pact, adopted at COP26, called on parties to “review and strengthen their targets for 2030” to align with the temperature goal agreed in the Paris Agreement. However, only 34 of the 194 parties submitted new or updated NDCs.



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- It was also concluded that high quality carbon credits (green certificates) cannot substitute for the actual emission reduction measures needed to reach the net zero pathway target; the Infographic below by expert John Lang is a good illustration of this:



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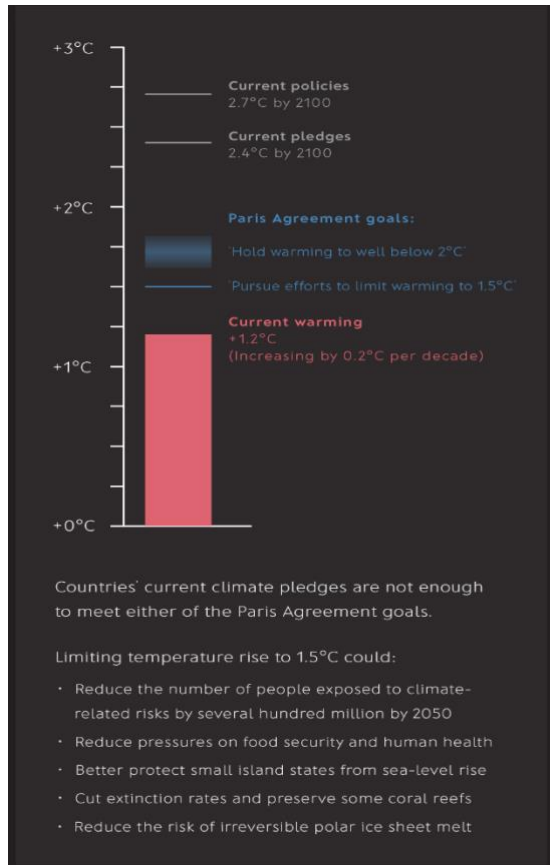
The infographic prepared by expert John Lang and the IPCC 2022 Reports (translated into Romanian) constitute Appendix 9 to this action.

¹⁷ <https://eciu.net/analysis/infographics/cop27-explainer-infographic>

¹⁸ Ibidem

5.4. Commitments of the European Union

- (1) In view of the high level of awareness of climate change and its worsening over time, the European Union has not remained at the level of the Paris Agreement targets but has taken a proactive stance and increased its ambitions to counter the effects of this existential threat.
- (2) More specifically, as mentioned above, it is the adoption of the European Climate Law, which set a target of a 55% reduction in domestic greenhouse gas emissions by 2030. This European legislation also underlines the need to ensure energy efficiency, and the principle of “do no harm” from the European Green Pact.
- (3) In the recitals of the European Climate Act, it is stated that “The Union’s and Member States’ climate action aims to protect people and the planet, welfare, prosperity, the economy, health, food systems, the integrity of eco-systems and biodiversity against the threat of climate change”.
- (4) The European legislator also calls for increased ambition and intensified climate action by the European Union and its Member States.
- (5) Another EU initiative, the “Fit for 55” package, proposes to amend the Renewable Energy Directive to set a target of achieving at least a 40% share of renewable energy by 2030. Thus, for this directive adopted in December 2018, the need to increase the renewable target has been set for July 2021 (when the Fit for 55 Package is adopted), i.e. in less than 3 years.
- (6) In May 2022, the REPowerEU plan was adopted, proposing that renewable energy accounts for 45% of final energy consumption, in response to the problematic geopolitical situation and as a way of reducing dependence on Russian gas.



(7) ¹⁹It should also be borne in mind that even these commitments (55% at EU level) need to be reviewed in the light of the COP27 conclusions, as detailed in section 5.3 of this action:

- Global warming has now reached 1.1 degrees Celsius (increasing by 0.2 degrees per decade)
- The NDCs are far too modest to meet the global warming limitation targets set out in the Paris Agreement, as shown in the accompanying Infographic.

(8) Therefore, the targets assumed by the Romanian State, which are much lower than even the EU target of 55%, must not stagnate, on the contrary, they must become much more energetic, taking into account the enormous potential of our country, especially in the renewable energy sector.

The full infographic on COP27 conclusions and recommendations constitute Appendix 10 to this action

5.5. Romania's Commitments. Insufficiency of our Country's Commitment

- (1) As regards Romania's commitments, the 2021-2030 Integrated National Energy and Climate Plan adopted in April 2020 states that Romania's greenhouse gas emissions target is a 44% reduction by 2030 compared to 2005.
- (2) The share of renewable energy sources in final consumption has increased from 24.3% to 30.7%, even though the Plan mentions that at the time of its adoption that the European Commission recommended an increase in the share of renewable energy sources to at least 34%.
- (3) In 2021, at COP26 in Glasgow, more than 100 countries joined the Global Methane Pledge, which proposes an ambitious target to reduce methane emissions by at least 30% below 2020 levels by 2030. Last year, a further 19 countries have joined the pact, which now covers half of global emissions of methane, a potent greenhouse gas produced by extraction, transport

¹⁹ Ibidem

and use of fossil fuels but also as a by-product of some agricultural and waste management practices. Romania is not a signatory to the Pledge, despite being the second largest gas producer and one of the largest oil producers in the EU.

- (4)** It is clear that Romania's commitments are modest and the Defendants' progress almost impossible to monitor, a fact confirmed by the European Commission's opening of infringement proceedings against Romania on September 29, 2022 for failure to notify its national long-term strategies under Regulation (EU) 2018/1999 on energy union governance and climate action. The Commission noted that “long-term strategies are essential to help achieve the necessary economic transformation and broader sustainable development goals, as well as to make progress towards the long-term climate goals set out in the Paris Agreement.”²⁰
- (5)** Aside from that, Romania's commitments are misguided as they focus on developing questionable forms of renewable energy, contrary to the scientific trends at international and European level.
- (6)** Further on, we will briefly analyze the solutions proposed by Romania's two major master plans - NRRP and INECP - and demonstrate why they are not reliable.
- (7)** As regards renewable energy sources, the increase in their share in the final energy consumption to 30.7% in 2030 and the potential increase to 34% through a future update of the INECP is well below the 45% level set by REPowerEU, as well as below the 40% threshold previously proposed by the “Fit for 55” package. Let's not forget that the NRRP's ambition is to increase the share of renewable energy sources by 5% by 2027, compared to the 24.3% threshold in 2019 (so even lower ambitions!).
- (8)** Another major problem is that renewable energy sources currently include woody biomass, which is used for heating in various inefficient systems.
- (9)** The investments made in the fossil fuel sector in Romania make it necessary to continue to use them on a large scale, which creates a high probability of exceeding the sustainability thresholds from a climate perspective. In addition, the allocation of funds for investments in fossil fuels, which are finite and exhaustible resources (for example, natural gas resources in Romania have been steadily declining in recent years), leads to a decrease in funds for renewable energy sources.
- (10)** As regards energy efficiency, Romania's current ambitions do not provide for a real increase in energy efficiency, which is in contradiction with the proposed increases of 9% and 13% by 2030 (compared to 2020) set by Fit for 55 and REPowerEU, respectively.
- (11)** Moreover, the National Recovery and Resilience Plan - Component C6. Energy - states that improving energy efficiency by 32.5% by 2030 (using 2007 as the reference year and not 2020,

²⁰ Source: HYPERLINK "https://ec.europa.eu/commission/presscorner/detail/RO/INF_22_5402" [Pachetul de actiuni în constatarea neîndeplinirii obligațiilor din luna septembrie: principalele decizii \(europa.eu\)](#)

- as the European institutions have done!) would be a real challenge, without detailing this conclusion and without indicating the steps that need to be taken by the Romanian authorities to address these shortcomings.
- (12)** With regard to the use of heat pumps, we recall that it is strongly supported by REPowerEU, which has set a target of doubling the number of individual heat pumps, i.e. by 10 million units in the next 5 years. The NRRP includes references to heat pumps but does not set a target. Unfortunately, it is easy to see that Romania does not have a clear policy to promote and use them on a large scale, so that the majority of the population would make the transition from wood and/or gas heating and the industrial sector would drastically cut its fossil fuel consumption.
 - (13)** Government programs have not set the objective of actually solving the problem of energy poverty (translated into the income of the population, housing conditions, etc.). Heating subsidies increase the dependency of vulnerable consumers, and rehabilitation programs are not capable (as they are not designed to be) of solving this phenomenon which is detrimental to the population.
 - (14)** All these shortcomings of the national strategy were also identified by the group of specialists consisting of Andrei David Korberg PhD²¹, Andreea Vornicu PhD²² and Sorin Cebotari PhD²³ who prepared in 2022 the report entitled “Romania's National Energy Strategy, EU Ambitions and the Climate Emergency”, which is annexed to this action. They also state that “current ambitions include the installation of 6 GW of wind and solar power in addition to current capacity by 2030, bringing Romania's total installed capacity to around 10.3 GW. Thus, compared to the Fit for 55 ambitions, Romania's installed renewables capacity would represent only 0.01% of total wind and solar for one of the largest countries in the Union.” The experts also point out that it is not clear how the INECP calculated the consumption reductions between 2020 and 2030 and that the targets set for primary and final energy consumption for 2030 are higher than the 2020 values!
 - (15)** The Energy Policy Group²⁴ (EPG) Report, released earlier this year, focuses on the potential of offshore wind energy to decarbonize Romania and proposes solutions to a number of current challenges for wind energy in the Black Sea. Offshore wind energy is a key component of the European strategy to reduce dependence on fossil fuels and decarbonize by 2050. In

²¹ He holds a PhD from the Sustainable Energy Planning Group at Aalborg University in Denmark, where he previously completed the Sustainable Cities Master's program. His work consists of modelling and analysis of renewable energy systems. He was a trainee at the European Heat Pump Association.

²² She is a researcher at the Centre for the Study of Democracy (CSD) of Babeş-Bolyai University, Cluj-Napoca, and is interested in areas such as sustainable development, official development assistance mechanisms and energy poverty. In recent years, she has also been involved in researching different dimensions of energy poverty in Central and Eastern European countries.

²³ He completed his PhD studies through a Marie Curie fellowship at the Faculty of Geography of Babeş-Bolyai University, Cluj-Napoca. His research explores how renewable energy projects can contribute to the development of rural communities. He has participated in writing country reports on the energy market for Schneider Electric, analyzing market developments in Romania, Serbia, Ukraine, Russia and Slovakia.

²⁴ Source: [Offshore wind - the enabler of Romania's decarbonisation - EPG \(enpg.ro\)](#)

this regard, the EPG Report has established that Romania needs to develop 15 GW of offshore wind energy capacity in the Black Sea, i.e. the Exclusive Economic Zone (EEZ), in order to achieve carbon neutrality by 2050 and become the country's largest source of electricity, reaching 40% of total energy in some scenarios. However, it should be borne in mind that offshore wind farms take 5 to 10 years to build, compared to the EU average of 7 years.

The Report entitled “Romania's National Energy Strategy, EU Ambitions and the Climate Emergency”, the Energy Policy Group Report, as well as the Romanian summary of the latte, constitute Appendix 11 to this action.

6. Applicable Law. Details of Legal Arguments

6.1. Defendants' Breach of the General Legal Obligation to Combat Climate Change.

6.1.1. Legal Obligation to Mitigate Climate Change and Adapt to Climate Change

(1) As resulting from the INECP which is the only national document addressing climate change, it stipulates a commitment to reduce GHG emissions by 44% below 2005 levels through the implementation of the GHG emissions trading scheme.

The following can be deduced from the legal provisions:

- The percentage refers to a different reference date than the one foreseen by the European Climate Law, a European Regulation directly applicable in domestic law. The EU is committed to reducing GHG emissions by 55% compared to 1990 levels; however, between 1990 and 2000, Romania had one of the highest levels of GHG emissions in Europe²⁵, due to the extensive use of fossil energy and a strong industrial sector. Clearly, a percentage compared to 2005 (when reported emissions were falling) means that Romania's obligation to reduce GHG emissions is actually much lower than the 40%;
- Romania only assumes a percentage reduction through the Emissions Trading Scheme. Such a commitment renders meaningless Romania's obligation to contribute to climate change mitigation, as green certificates cannot be considered as the first measure to mitigate climate change, issues raised at COP27. We underline that the vast majority of green certificates are used as offsets, as the issuer buys green certificates from emission reduction projects aimed at reducing GHG emissions in other sectors or in other countries, to offset its emissions;
- There is no percentage assumed by Romania resulting from all the mitigation measures that should be taken (forest conservation, reduction of fugitive methane emissions, use of

²⁵ <https://ourworldindata.org/co2/country/romania>

renewable energy, improvement of energy efficiency, use of public transport). Moreover, there is no commitment for the period after 2030.

(2) According to Article 135 paragraph (2) of the Romanian Constitution

The State must ensure (...)

- d) The exploitation of natural resources in accordance with the national interest;*
- e) Restoring and protecting the environment and maintaining ecological balance;*
- f) Creating the conditions necessary to improve the quality of life;*
- g) The implementation of regional development policies in line with the objectives of the European Union.*

And according to Article 136 paragraph (3)

The public interest wealth of the subsoil, the airspace, the waters of national interest, the beaches, the territorial sea, the natural resources of the economic zone and the continental shelf, as well as other goods established by the organic law, are the exclusive subject of public property.

(3) From a combined interpretation of the legal provisions, we conclude that the Defendants have the following constitutional obligations:

- Exploitation of national resources (water, air, soil, sea) subject to the creation of the conditions necessary to improve the quality of life and maintain the ecological balance;
- Subordination of internal policies to the objectives of the European Union.

(4) The fact that natural resources are public property does not allow the Defendants to use these assets as they please but only to satisfy the national interest, which is closely linked to the preservation of the environment and the guarantee of the quality of life of their own citizens.

The concept of **public property** implies a permanent right of the public to natural resources, in respect of which the Defendants' representatives have only been given a management mandate, on the basis of which the public trust is based.

With origins dating back to the beginnings of Roman law, i.e. from the category of property called *res communis omnium* (sea, shore, air, running water), the public trust doctrine is based on a civic and legal understanding that some natural resources remain so vital to public welfare and human survival that they cannot be transferred to private property.

Natural resources such as water, soil, wildlife, air remain **public property - that is, they are common property belonging to the population as a whole.**

Such assets take the form of a perpetual asset for future generations, and the Defendants have a duty to act as trustees in the control and management of essential natural assets²⁶.

²⁶ Nature's Trust- Environmental Law for a New Ecological Age- Cambridge University Press, 2013, op. cit, pp. 124, 126

The fact that the Defendants have strict fiduciary duties, within the meaning that public property may only be used in the interest of citizens, is reflected in the aforementioned constitutional texts.

- (5) The Defendants have violated the aforementioned **constitutional obligations**, as the measures proposed to be adopted to combat climate change, detailed in paragraph (1), will not result in achieving the objectives of limiting global warming, and exceeding the critical thresholds creates risks to the safety of citizens, the rule of law and the environment of which Defendants are aware, as reflected in the following political commitments:

- *Romania fully supports the European Union's leading efforts on climate change and is committed to contributing to a 55% reduction in EU emissions by 2030. (...) The impact of climate change knows no national borders. I call on us to join forces to protect the environment and ensure that we leave a greener and safer planet for future generations*²⁷ (High-level Segment Statement COP 26).
- *The cost of inaction on climate far outweighs the cost of action. Climate change causes economic and non-economic loss and damage worldwide* (High-level Segment Statement COP 27)

- (6) The Defendants also breached **their legal obligations under Article 4 of the Paris Agreement**, which provides that

(2) Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

*(3) Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and **reflect its highest possible ambition**, reflecting its common but differentiated responsibilities and respective capabilities, in light of different national circumstances.*

We underline that the legal obligation of the Parties to the Paris Agreement to establish and continuously update NDCs to reflect the highest possible level of ambition cannot be contested. The Paris Agreement is the first legally binding global agreement on climate change²⁸.

- (7) Moreover, the Defendants have breached a **legal obligation imposed on Member States by the European Climate Law** - to reduce GHGs by at least 55% compared to 1990 levels. We reiterate that the reference period is not complied with by the Defendants either, as the

²⁷ <https://www.presidency.ro/ro/presedinte/agenda-presedintelui/declaratia-nationala-din-cadrul-segmentului-la-nivel-inalt-al-conferintei-natiunilor-unite-privind-schimbarile-climatice-cop26>

²⁸ <https://eur-lex.europa.eu/content/paris-agreement/paris-agreement.html?locale=ro>

percentage reduction refers to 2005, when Romania's reported emissions were significantly lower, and not to 1990.

(8) Given that

- The Defendants have clear legal obligations in the field of climate change (the legal sources of these obligations are detailed above);
- IPCC reports have informed policymakers, on an annual basis, that we will not succeed in limiting global warming to even 2 degrees Celsius without a sustained increase in Member States' ambitions;
- These reports have been acknowledged by the Defendants, Romania being a Party to the Paris Agreement;
- There are policy statements in line with the IPCC reports;

but

- Romania has not declared a climate emergency (although it has been declared at EU level and in most Member States); for example, in 2019, Ireland and Belgium adopted motions declaring a climate emergency;
- The Defendants' ambitions to reduce GHGs and integrate renewable energy into the national grid are modest in relation to our country's capacity to develop such projects;
- There is no climate law;
- Annual carbon budgets have never been adopted; the national GHG emissions trading scheme cannot be considered as a form of carbon budgeting as it covers a limited category of activities and green certificates do not cover methane. Obviously, there is no centralized overview of how much carbon we can use every year, and no reporting of how much we actually use each year.
- Fossil fuel subsidies have not been fully phased out, with only one national statutory act governing green certificates (green certificates, the vast majority of which are offsets, are ineffective in mitigating climate change, as is clear from the COP27 conclusions detailed in section 5.3 of this action).

There is no doubt that the Defendants, by breaching their legal obligations, knowingly create risks to the safety and health of citizens and the environment.

(9) In assessing the Defendants' obligations to reduce GHG, please apply the filter of the following basic principles enshrined in Article 3 of Government Emergency Ordinance 195/2005:

- The **precautionary principle**, which states that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.
- The **principle of intergenerational equity** which, within the concept of sustainable development, is about meeting the needs of present generations without

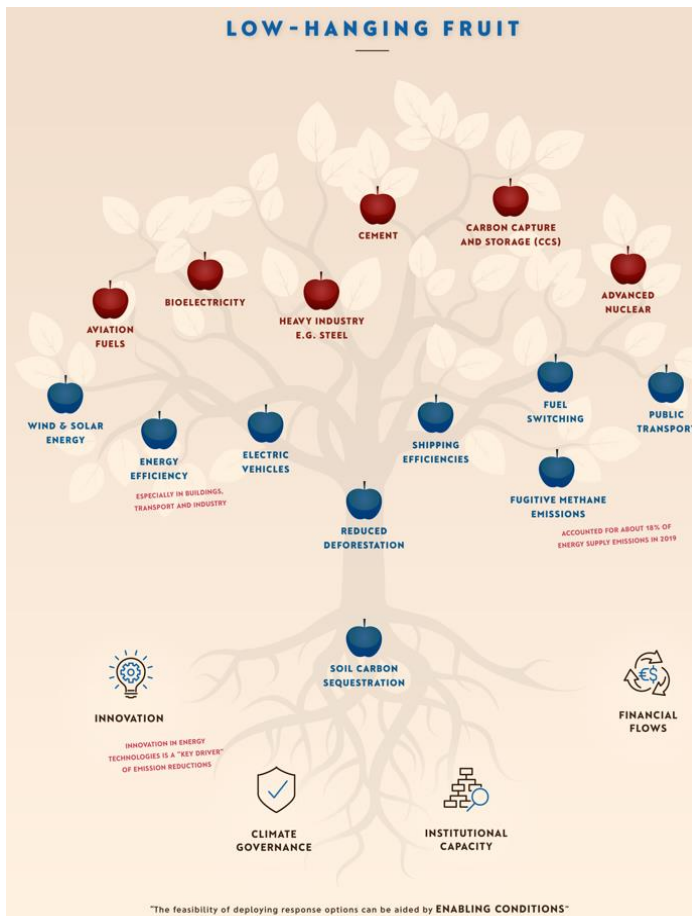
compromising the ability of future generations to meet their own needs. We ask that this principle be taken into account in this case because:

1. Requires recognition that our time on Earth is limited and that after our generation there will be other generations who have the same right as we do to enjoy a healthy environment.
2. Because intergenerational equity is not only between the current generation and a future generation of people who do not yet exist but also between today's decision-makers and the younger generation of people who will face the consequences of today's decisions.

(10) As shown in the Infographic below, prepared by John Lang²⁹, there are currently technological solutions and measures available to countries that, if properly implemented, can contribute effectively to the fight against climate change (blue fruits), such as:

- Significant reduction in deforestation;
- Sequestering carbon from the atmosphere into the soil;
- Increasing energy efficiency (buildings, transport and industry);
- Using solar and wind energy;
- Using public transport;
- Eliminating fugitive methane emissions, which account for 18% of the emissions from the electricity supply process.

²⁹ <https://eciu.net/analysis/infographics/ipcc-explainer-impacts-adaptation-vulnerability>



Key:

Blue fruit - measures are at our disposal, whether we are talking about natural carbon sinks (forests, seas) or technologies that can be implemented

Red fruit - technologies are in the experimental stage and not yet intended for large-scale commercialization

- (11) However, as we will show below, for almost all of the “blue fruit” listed, the Defendants' measures are almost non-existent.
- (12) With regard to **forest conservation and the implementation of effective measures to reduce deforestation**, in 2021, Romania signed the Glasgow Leaders' Declaration on Forests and Land Use, in which more than 100 heads of the State and government, representing countries with more than 86% of the world's forests, pledged to work together to halt land degradation by **2030**.

The Glasgow Leaders' Declaration on Forests and Land Use (2021) constitutes Appendix 12 to this action

- (13) A year later at COP27, in the face of less than optimistic scientific data on the pathway we are on, stronger commitments were made to end deforestation and halt the destruction of wetlands by 2025 at the latest, given their importance for carbon capture and sequestration and biodiversity conservation. The Infographic below is illustrative in this respect.



30

- (14) In 2020, Government Decision no. 497/2020 approved the Rules on the origin, movement and marketing of timber materials, Article 5 of which regulates the Sumal 2.0 application. The purpose for which this application was implemented was to create a *due diligence* system for identifying the provenance and traceability of wood materials/wood products. Paragraph (8) of the same law regulates Sumal 2.0 - Forest Inspector application, its stated purpose being to provide information to the general public on logging and transport of timber/wood products.
- (15) There is a long way to go from legislation to actual implementation, as the Forest Inspector is still not operational, despite of the fact that:
- The **Report of the Court of Auditors of Romania** on the management of public forests for the period 2013-2018 points out that SUMAL (SUMAL 1.0 was regulated prior to the current application) has several shortcomings, and in particular that the authority has not been able to complete the alert module for the early detection of illegal logging and placing of timber on the market. The Report also points out that the module intended to provide statistical information that would have allowed the identification of risks and high-risk areas has not been developed. The Report also states that “the volume of illegally harvested timber recorded in official records does not reflect the scale of the phenomenon. Between 2013 and 2018, the volume of illegally harvested timber reached 20 million cubic meters, which is disproportionate to the number of controls and sanctions applied;
 - In 2020, the European Commission sent Romania the **Letter of Formal Notice 2020/2033**, referring to the 2014 NFI study showing that 8.8 million cubic meters of

³⁰ <https://eciu.net/analysis?section=infographics>

timber were illegally harvested in the period 2008-2012, equivalent to 49% of the timber harvested in that period.

The letter also states that the Romanian authorities have committed to making SUMAL operational by 30 June 2020, i.e. to include a satellite imagery-based alert system.)

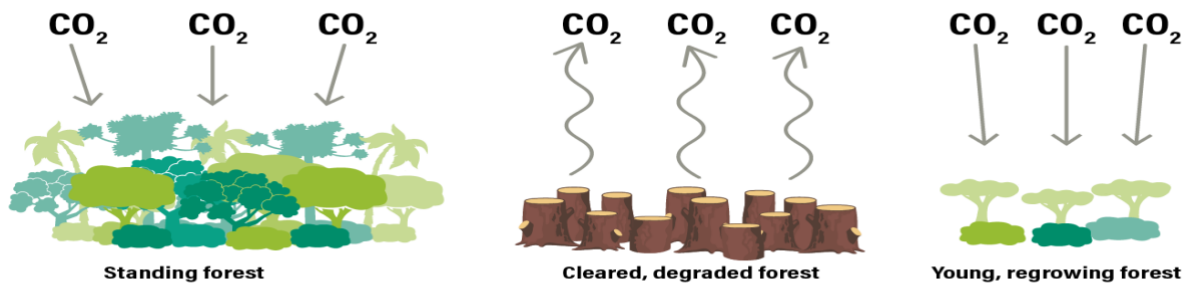
At the time of drafting this action, SUMAL 2.0. Forest Inspector does not have a satellite imagery-based alert system.

The response of the Ministry of Environment, Water and Forests on the non-implementation of SUMAL 2.0 Forest Inspector, the Report of the Court of Auditors and the Letter of Formal Notice 2020/2033 constitute Appendix 13 to this action.

- (16) It is clear that, with regard to deforestation, there is a lack of strong measures to prevent both illegal logging and to have a real statistical situation of the areas covered by forests at central level. The very foundation on which climate change measures in this area should be built is missing.
- (17) The fact that on April 7, 2022, Government Emergency Ordinance no. 35/2022 was published in the Official Gazette to approve the measures necessary to implement the national afforestation and reforestation campaign provided for in the National Recovery and Resilience Plan confirms the crucial role of forests in measures to reduce GHG.
- (18) Although Article 3 of the Ordinance provides for a forest sequestration premium of 456 EUR/ha to be granted to natural persons/legal entities/administrative units on whose land afforestation measures are carried out, the draft Ordinance for the implementation of the above-mentioned legislative text was not submitted for public debate until December 2022.
- (19) In addition to the lax deadlines that the Romanian authorities *allow themselves*, despite the fact that we are fast approaching the critical thresholds (1.5 degrees Celsius and 2 degrees Celsius), the measures are also uncoordinated with those taken by the environmental authorities for projects that promise economic growth. By way of example, we point out that for the Rovina mining project, the environmental authorities approved the Environmental Permit no. 7/2022, which provided for the deforestation of 200 ha of secular forest without carrying out a climate impact assessment study and without including concrete measures to reforest a similar area in accordance with the requirements of the SEA Directive.
- (20) In other words, unless there is a coordinated effort to protect forests, the mere possibility of afforesting a few hectares of young forest in the future will not be able to neutralize the environmental damage caused by the deforestation of secular forests which are also priority habitats.

(21) In the absence of natural carbon sinks (forests, wetlands) it is almost impossible to sequester carbon, as shown in the following Infographic.

Forests Act As Both a Source and Sink For Carbon



Source: Global Forest Watch
20.01.21

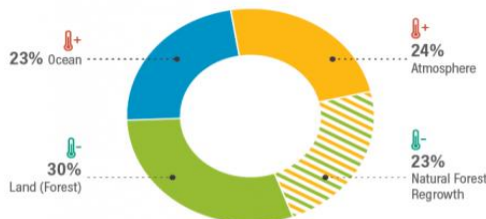


WORLD RESOURCES INSTITUTE

Forests currently absorb 30% of all CO_2 emissions. The rest end up in the ocean or atmosphere, where they fuel climate change



Natural forest regrowth could absorb another 23% of CO_2 emissions



Source: Global Carbon Project, 2000-2018 and Cook-Patten et al. 2020.



(22) As highlighted in the adjoining graph, taken from World Resources Institute³¹, forests have the capacity to store 30% of total CO_2 emissions and if young forests, the result of afforestation, were added to secular forests, we would achieve a 55% absorption of GHGs from the atmosphere.

In other words, even if we applaud the afforestation measures taken by the authorities, without proper plans and functional applications to protect secular forests, not only will we fail to sequester carbon but we will actually emit GHGs, as it is well known that deforestation is a major source of GHGs.

(23) With regard to **fugitive methane emissions**, following an investigation in 2021, CATF³² and 2Celsius identified fugitive methane emissions leaking from Romania's aging fossil-fueled gas transmission and distribution infrastructure.

(24) At present, there is no real legal obligation to reduce fugitive methane emissions under national legislation. We emphasize that methane (CH_4) is a potent greenhouse gas, second only to carbon dioxide in terms of its overall contribution to climate change. At the molecular

³¹ WRI is a global non-profit organization that works with leaders in government, business and civil society to research, design and implement practical solutions that improve people's quality of life while ensuring that nature can thrive. <https://www.wri.org/about>

³² https://cdn.catf.us/wp-content/uploads/2021/12/13024754/CATF_EUMethane_Report_Proof_12.10.21.pdf

level, methane is more potent than carbon dioxide. Methane, although it has a much shorter atmospheric lifetime, is a powerful local air pollutant, causing serious health problems.

- (25) A National Methane Reduction Plan, including specific monitoring and reporting tools, would therefore contribute both to slowing climate change and improving air quality.
- (26) We would like to point out that Romania has not taken any action in this regard, as evidenced by our country's position on the **Global Methane Commitment**.

Although one year has passed since its launch at COP26, the Global Methane Commitment has generated unprecedented momentum, with more than 150 countries having signed the GMA. However, our country is not one of the signatories.

- (27) The fact that the Defendants had to take measures to reduce methane emissions results from:
- The EU approved the AGM, resulting in an obligation to reduce methane emissions across the Union;
 - The European Commission, in its Strategy³³ to reduce methane emissions of December 14, 2020, estimated that EU policies will lead to a 29% reduction in methane emissions in the EU by 2030 compared to 1990 levels.

It is irrelevant that the documents referred to (AGM and EU Strategy) are soft law instruments. The authors of the Oslo Principles on global climate obligations argue the following:

The repeated pledges of world leaders, inside and outside the COP framework, and the urgent need to address the imminent threats they advocate may not be legal obligations in themselves but they are not meaningless either. Together with other legal grounds, they help to crystallize enforceable obligations for countries.

- (28) In this context, the data provided by Eurostat are not unimportant, according to which the energy sector in Romania was accountable for about 14% of methane emissions at European level in 2020, ranking second after Poland. In terms of fugitive emissions from the oil and gas sector, Romania ranks 4th in Europe after Germany, Italy and Poland, accounting for about 12% of emissions³⁴.
- (29) In conclusion, the Defendants' failure to adopt adequate policies to reduce methane emissions creates a clear danger to both the safety and health of Romania's citizens.

³³ <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:52020DC0663&from=EN>

³⁴ <https://2celsius.org/metan/>

- (30) With regard to Romania's **renewable energy and energy efficiency** ambitions, given that our country is bound by specific obligations under EU and international law that are insufficiently or not at all met, these will be analyzed in detail in sub-chapter 6.2.

6.1.2. Lack of Concrete, Reasonable and Monitorable Plans and Lack of Adequate Legislation on Activities that are Major Sources of Greenhouse Gases

6.1.2.1. Comparative Overview of the Existing Legislative Framework on Climate Change in the UK, Germany and Romania

- (1) The UK has enacted several statutory acts on climate change, including:
- **Climate Change Act** in 2008 - this Act set emission reduction targets for the UK and established a mechanism for reporting and monitoring progress towards these targets;
 - **Energy Act of 2008** - this Act set renewable energy production targets for the UK and introduced support mechanisms for the development of renewable energy technologies. It sets out the **government's legal obligation to set "carbon budgets"** to act as benchmarks for meeting the 2050 target;
 - **The Climate Change Act of 2018** - this Act extended the emissions reduction targets for the UK, setting a minimum 80% reduction in GHGs from 1990 levels by 2050;
 - **The Net Zero Target (2050) Act 2019** - this Act set the UK the target of achieving climate neutrality (100% GHG reduction) by 2050;
 - **In 2019, the UK Parliament passed a motion to declare a climate emergency;**
 - **In 2021, the government adopted the sixth carbon budget (2033-37)** to reduce emissions (including international aviation and shipping) **by 78% by 2035**. This is the first carbon budget that puts the UK on the path to net-zero;
 - **The Energy White Paper of 2021** - this government objective set emission reduction targets for the energy sector and proposed measures to achieve them.
- (2) Among the relevant climate legislation adopted by Germany, we recall the following:
- **Sustainable Energy Act of 2000** - this Act sets targets for reducing greenhouse gas emissions and increasing the use of renewable energy;
 - **The Energy-Climate Plan of 2010** - sets out specific targets and measures to achieve these targets;
 - **Renewable Energy Act of 2011** - this Act encourages the development of energy resources and promotes their use in the energy sector;
 - **Energy Efficiency Act of 2016** - this Act sets out measures to improve energy efficiency in buildings, transport and industry;

- **Germany's climate neutrality strategy of 2019** - which sets the following targets for achieving climate neutrality - **65% GHG reduction by 2030** and climate neutrality by 2050.
- (3) In Romania, the statutory acts in the field of climate change are the following:
- **Government Decision no. 780/2006 on the establishment of the greenhouse gas emission allowance trading scheme** - Appendix 1 provides for a limited number of activities for which green certificates are traded, methane is not included, although it is a GHG;
 - **Law 220/2008 on the establishment of the system for the promotion of energy production from renewable sources.** As updated in January 2023, Article 4 paragraph (2) of this act sets the national target level for the share of electricity from renewable energy sources in the gross final consumption of electricity at **38% by 2020**;
 - **Law 121/2014 on energy efficiency** - this law sets targets for energy savings resulting from the implementation of energy policy measures by 2020, based on the average primary energy consumption in the 3 years prior to January 1, 2013;
 - **National Climate Change Strategy 2013-2020 - Chapter IV of this Strategy states that:**
At the national level, the limitation and reduction of emissions will be achieved through the application of the EU Emissions Trading Scheme, hereinafter referred to as the EU ETS, with a European target of -21% in 2020;
 - **Integrated National Energy and Climate Change Plan 2021-2030 (INECP) of October 4, 2021** - it has the following objectives:
For the sectors covered by the EU-ETS, Romania's overall emission reduction target is around 44% by 2030 compared to 2005;
Given that the Plan was published at the end of 2021, it is clear that none of the measures proposed for 2021 have been implemented.

6.1.2.2 Lack of Concrete, Reasonable and Monitorable Measures and Lack of Adequate Legislation on Activities that are Major Sources of Greenhouse Gases. Litmus Tests for Assessing the Defendants' GHG Emission Reduction and Climate Change Adaptation Obligations.

- (1) A mere comparative overview of climate change legislation adopted by European countries alone, as indicated above, shows that the so-called measures adopted by the authorities are completely unreasonable.
- (2) Although we are in 2023, Romania does not have a climate law, as most European countries have, to regulate:
 - The obligation for national authorities to draw up annual carbon budgets and to report at the end of the year on whether this annual budget has been met or exceeded;
 - An obligation for companies to estimate their greenhouse gases, with an obligation for authorities to publish all this data on a national website;

- The obligation for authorities to prepare an inventory of total GHGs (not just those resulting from the application of the green trading scheme) and to publish it on a national climate change website.
- (3) We would like to point out that, following a request from the undersigned, ANPM [National Environment Protection Agency (NEPA)] informed us that Romania's National GHG Emissions Inventory has only been sent to the Secretariat of the United Nations Framework Convention, with links containing a variety of data that are difficult to understand, showing a total lack of transparency. Moreover, the NEPA website, under information on the National Inventory, states that “Romania's latest National Greenhouse Gas Emissions Inventory was submitted in early 2010 and includes estimates of greenhouse gas emissions/removals by sequestration for the period 1989 – 2008”.

NEPA response and the print screen from the NEPA website constitutes Appendix 14 to this action.

- (4) A simple reading of the national legislation reveals the inconsistency and inadequacy of the measures adopted by the Defendants, as follows:
- Romania's national renewable energy target for 2020 was higher than the 2030 target (38% compared to 33%);
 - There are no targets for both reducing GHG and increasing the share of renewable energies in final energy consumption in 2050;
 - There are no effective mechanisms in place to monitor the progress of the authorities;
 - For the period 2013-2030, the Defendants’ only concrete commitment is to reduce GHGs through the application of the GHG emissions trading scheme. However, as green certificates cannot substitute GHG mitigation measures, as agreed at COP27, there is no real commitment to mitigate climate change in the period 2013-2030.
- (5) The conclusions of the Report³⁵ prepared by NET ZERO Tracker³⁶ on Romania are similar:
- Romania's plans are unclear, incomplete;
 - There are no annual reporting mechanisms;
 - No formal accountability for progress/regression in meeting climate targets is specified;
 - There are no plans for carbon removal.
- (6) **Litmus tests.** In accordance with the practice of the UN Committee on Economic, Social and Cultural Rights (CESCR), six tests³⁷ have been developed that can and should be applied by

³⁵<https://zerotracker.net/countries/romania-cou-0175>

³⁶ Net Zero Tracker is an organization that aims to increase transparency and accountability in the net zero targets promised by nations, states and regions, cities and companies.

³⁷ Litigating the Climate Emergency: How human rights, Courts, and Legal Mobilisation Can Bolster Climate Action- Rodriguez-Garavito Csar, Cambridge University Press, 2022, op. cit., pp. 177

the Courts of justice in assessing how the State is meeting its obligations to reduce GHG emissions. Below we detail the relevant tests for assessing how the Defendants meet their obligations.

- (7) **Test 1 - Have all possible measures been taken to reduce emissions?** - This test assesses whether a State has taken - or is taking - all the necessary measures to respect human rights to reduce and eliminate GHG emissions, either by introducing alternative clean energy or by reducing emission-producing activities, including preventing deforestation and ensuring afforestation. The question that remains is whether a State has taken steps to eliminate *luxury emissions*³⁸ or *convenience emissions*³⁹, allowing only those that are strictly necessary for the realization of human rights (in a manner proportionate to the impact of emissions on the rights of others) and other essential public goods and services. Another part of the feasibility test is to assess whether the NDC commitments have been met.
- (8) If we apply all the above factors to our climate change statutory framework, it is clear that we lack the adequacy of the measures taken (no functional application to prevent illegal logging, no reporting on deforestation and land use to the UNFCCC, no effective reporting tools, we are behind on NDC commitments, and transparency of progress/regression is completely lacking).
- (9) **Test 2 - Is the climate plan reasonably ambitious compared to similar States?** Similar States means States that have broadly similar levels of wealth or access to other relevant resources, such as steady wave or solar energy. A State should be given a very narrow margin of appreciation if it does not take measures achieved by most of its *peers* - States with the same geographical conditions that facilitate the use of renewable energy such as solar and wind - or in comparison with their average performance.
- (10) **Test 3 - Has there been a progressive increase in ambition and has any regression been avoided?** As far as renewable energy is concerned, the Defendants fail this test from the outset, since the targets for the integration of renewable energy were more ambitious in 2020 than in 2030. Furthermore, according to official data provided by the European Environment Agency (EEA) (detailed in sub-section 6.2.2.), Romania ranks last in Europe, together with Slovenia, in terms of the integration of renewable energy sources into the national electricity grid. According to the CESCR, there is a **presumption that any step backwards violates the ICESCR** (International Covenant on Economic, Social and Cultural Rights), with the **onus on the State to prove that it has fully used all available resources**. Moreover, such regressive measures require
- Reasonable justification;
 - Full consideration of the alternatives;

³⁸ Luxury emissions are GHG emissions produced by the luxury industry, such as the fashion industry, the jewelry industry and the luxury car industry.

³⁹ Convenience emissions are caused, for example, by the use of air conditioning or extra lighting, excessive heating or cooling of premises.

- Effective participation of affected groups in the consideration of the measures proposed;
- Independent review of measures at national level.

The same CESCR points out that a State's argument that it has limited financial resources cannot be accepted unless the State proves that it requested and was refused international assistance.

- (11) Test 4 - Does the State intend to reduce emissions in line with keeping global temperatures below 1.5 degrees Celsius?** Since limiting the temperature rise to 1.5 degrees Celsius would require a reduction in emissions in a very short timeframe (at this point, GMST has reached 1.1 degrees Celsius) and at an accelerated rate, it is clear that the Defendants do not pass this test either.

According to the CESCR, the burden of proof is on the State to demonstrate why it cannot meet this target, and the necessity and proportionality tests must be strictly applied, given the magnitude to human rights damage caused by failing to limit global warming to 1.5 degrees Celsius.

An excerpt translated into Romanian from the book *Litigating the Climate Emergency: How Human Rights, Courts, and Legal Mobilisation Can Bolster Climate Action*, published by Cambridge University Press in 2022, constitutes Appendix 15 to this action.

- (12)** In conclusion, in relation to the scientific data submitted in the case file, the incoherent legislative framework existing in this field, the lack of transparency in the decision-making process, the application of these tests show beyond doubt that the Defendants have failed to take reasonable measures to fight against climate change.

6.2. Defendants' Breach of Specific Obligations to Fight against Climate Change

6.2.1. Applying the Highest Possible Ambition Standard.

- (1)** A 2021 report⁴⁰ on the status of global climate ambitions, prepared (with funding from the EU as well) by the United Nations Development Programme (a UN organization working to eradicate the inequalities caused by poverty, inequality and climate change), states that scientific studies have shown that the world must no longer limit to the provisions of the Paris Agreement but that it is essential to significantly increase climate ambitions, even where States have made some progress. It has also been decided that mere statements by world officials promising dramatic increases in climate ambitions lose their relevance in the face of the latest scientific studies in the field.

⁴⁰ United Nations Development Programme, *Nationally Determined Contributions (NDC) - Global Outlook Report 2021 The State of Climate Ambition*, pp. 11, source:

https://climatepromise.undp.org/sites/default/files/research_report_document/State%20of%20Climate%20Ambition.pdf

- (2) The United Nations Development Programme⁴¹ has set out the essential elements for successfully meeting the Paris Agreement targets, known as Nationally Determined Contributions (NDCs), and for raising climate ambitions:
- Institutional coordination and stakeholder involvement (this is a core component)
 - Developing an implementation plan
 - Review of objectives
 - Integration of objectives
 - Developing a financing plan
 - Mobilizing financial resources
 - Adapting objectives and managing them effectively during implementation
 - Existence of a measurement, verification and reporting system
- (3) The conclusion is that every State in the world has a responsibility to contribute actively and meaningfully to addressing the impacts of climate change. Continuing to raise our climate ambitions in line with the latest scientific evidence on the impacts of climate change is particularly important in this respect.
- (4) As already highlighted in section 5.4 of this action, the European Union has not dwelled on the level set by the Paris Agreement but has continued to adapt to climate needs and increase its ambitions in recent years.
- (5) Setting climate targets, while constantly raising the level of ambition, cannot be achieved in a haphazard manner or through soporific, unsubstantiated and empty declarations but, as the United Nations Development Programme has stressed, it is important for each State to have a well-defined strategy (in terms of implementation, financing, etc.), at the heart of which lies the institutional cooperation and coordination, as well as the real involvement of stakeholders (citizens and various entities cannot be mere spectators).
- (6) However, in Romania, it is not just about the lack of alignment with the European objectives and the neglect in rising climate ambitions but also about the absence of a coherent and effective strategy, the lack of cooperation between State institutions, as well as the lack of interest in involving stakeholders (private sector, academic sector, NGOs, young people, vulnerable groups, etc.) and the commitment of the entire society in the issue of climate change.

6.2.2. Increasing the Share of Renewable Energy Sources in Final Energy Consumption to 45%

- (1) As already highlighted and detailed in section 5.5 of this action, the Romanian authorities have proposed through the INECP to increase the share of renewable energy sources to

⁴¹ *Ibidem*, pp. 20

- 30.7% by 2030 (and to 29% through the NRRP), which is well below the 45% target set by the EU-PowerEU Package.
- (2) Wood biomass is still being considered as a renewable energy source. However, the proposals to amend the Renewable Energy Directive 2001/2018, initiated in 2021 by the European Commission, criticize the excessive use of biomass derived from primary forests.
 - (3) According to the report issued by the United Nations Development Programme, mentioned in the previous section, renewable energy generation remains the preferred global option for reducing GHG emissions.⁴²
 - (4) According to a statistic published by Eurostat⁴³, the share of renewable energy in Romania for 2021 is indicated to be approximately 25% but it should be noted that this percentage was established on the basis of data reported by the Romanian authorities, which do not reflect the reality, an eloquent indicator being the continued inclusion of woody biomass in the category of renewable energy sources, which is nonsense and a clear misunderstanding of the commitments made regarding the share of renewable sources in energy.
 - (5) Building on this disregard for the global policy on renewable energy sources, we state that although the IPCC stipulates that hydropower at 1.5 degrees Celsius is no longer a stable source of energy, Romania continues to allocate a large percentage of funds to hydropower projects. Moreover, in the hydropower sector, the State authorities strongly support, through statutory acts, the continuation of hydropower projects which significantly affect RAMSAR sites (of international importance) and Natura 2000 sites (of Community importance), as was the case with the adoption of Government Emergency Ordinance no. 175/2022, which provides for the exemption from environmental impact assessment of projects which are deeply damaging to the environment.
 - (6) In this context, we would like to point out that the US has removed hydropower from the category of renewable energy sources. The European⁴⁴ and international⁴⁵ trend is to dismantle dams to protect the condition of habitats and waters as vital sources.
 - (7) According to the European Environment Agency⁴⁶, Romania and Slovenia recorded the lowest growth in the integration of renewable energy into the national energy grid - 5% over the period 2005-2021; moreover, Romania recorded a decrease of more than 2% in the use

⁴² *Ibidem*, pp. 31

⁴³ Eurostat, *Renewable energy statistics*, [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Renewable_energy_statistics#:~:text=%3A%20Eurostat%20\(nrg_ind_ren\)-,Over%20one%20fifth%20of%20energy%20used%20for%20heating%20and%20cooling,households%20contributed%20to%20this%20growth.](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Renewable_energy_statistics#:~:text=%3A%20Eurostat%20(nrg_ind_ren)-,Over%20one%20fifth%20of%20energy%20used%20for%20heating%20and%20cooling,households%20contributed%20to%20this%20growth.)

⁴⁴ "At least 239 barriers, including dams and weirs, were removed in 17 countries across Europe in 2021, in a record year for dam removals on the continent [...]" - Graeme Green, Record number of dams removed from Europe's rivers in 2021, The Guardian, May 15, 2022, source: <<https://amp.theguardian.com/cdn.ampproject.org/c/s/amp.theguardian.com/environment/2022/may/16/record-number-of-damsremoved-from-europe-rivers-in-2021-aoe>>.

⁴⁵ Source:

<https://abcnews.go.com/US/wireStory/regulators-clear-path-demolish-dams-california-river-largest-93489227>

⁴⁶ <https://www.eea.europa.eu/ims/share-of-energy-consumption-from>

of renewable energy compared to 2020, with this decrease in the use of renewable sources in the heating sector combined with a significant overall increase in non-renewable sources.

(8) As it emerges from the Report entitled “Romania's National Energy Strategy, EU Ambitions and the Climate Emergency”, from the studies conducted by the Joint Research Centre (of the European Commission) and from the Energy Policy Group Report on offshore wind energy⁴⁷, Romania benefits from the conditions for a massive introduction of renewable energy sources in final energy consumption, as follows:

- Romania has a natural potential of up to 227 GW wind power and 381 GW solar power in the worst case scenario
- The use of the Black Sea basin for offshore wind capacity has a high potential of up to 22 GW for fixed-foundation turbines and 54 GW for floating-foundation turbines. Moreover, it can become the largest source of electricity, reaching up to 40% in some scenarios developed by experts.
- District heating networks can recycle heat from industrial and geothermal sources, as well as from waste incineration. With regard to the geothermal energy, Bihor County is a good example, with the town of Beiuș using geothermal heating for more than two decades (and its inhabitants having the lowest heating bills in the country), the town of Salonta organizes a tender for the design and execution of boreholes⁴⁸, and the county seat Oradea⁴⁹ aims to achieve 14% geothermal water contribution to the heating system by 2023.

(9) The Romanian authorities should also encourage the widespread use of heat pumps, which can be both domestic and industrial. A survey⁵⁰ showed that 40% of respondents would equip their homes with heat pumps if the Romanian State set up a subsidy mechanism for this purpose.

(10) However, the subsidy problem is widespread in the renewable energy sector and is holding back the national energy development. In this respect, we recall the problem of photovoltaic panels, a Euronews report⁵¹ showing that there is no functioning program, and that most prosumers (two thirds) invest from their own resources.

The issues raised relate to the fact that

- The IT system would often be down during funding sessions,

⁴⁷ Source: [Offshore wind - the enabler of Romania's decarbonisation - EPG \(enpg.ro\)](https://enpg.ro)

⁴⁸ Source: <https://economedia.ro/un-oras-din-vestul-romaniei-va-incalzi-toate-cladirile-municipale-cu-energie-geotermala.html#.Y85obMlBzIW>

⁴⁹ Source: <https://www.agerpres.ro/administratie/2021/09/30/bihor-primaria-oradea-vrea-sa-creasca-pana-in-2023-aportul-apei-geotermale-in-sistemul-de-termoficare-de-la-5-la-14--788462>

⁵⁰ Source: <https://www.energynomics.ro/en/ariston-40-of-romanians-would-buy-heat-pumps-if-the-state-grants-subsidies/>

⁵¹ Source: HYPERLINK "https://www.euronews.ro/articole/lungul-drum-catre-independenta-energetica-doar-o-treime-dintre-prosumatorii-din-r"<https://www.euronews.ro/articole/lungul-drum-catre-independenta-energetica-doar-o-treime-dintre-prosumatorii-din-r>

- People who managed to register in the system had to wait for long periods of time for their files to be checked, and
- A large proportion of those who applied (e.g. half of the more than 20,000 applicants who applied in 2019) did not receive funding because their documents had expired (although this was due to the suspension of the Casa Verde Fotovoltaice software application).
- Problems have also arisen after the panels had been installed, with people experiencing difficulties in purchasing the bi-directional meter from electricity suppliers (stock shortage), as well as a lack of response in processing requests sent to the distributor in order to feed surplus electricity back into the grid (a photovoltaic panel installation can reduce energy bills by up to 90%).

The same source shows that by the end of October 2022 there were 30,000 prosumers in Romania, and another 20,000 panel owners were waiting to be connected to the energy system.

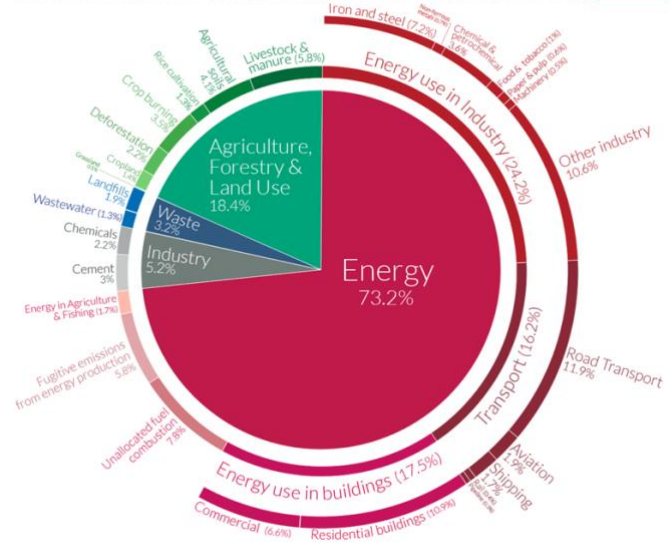
6.2.3. Increase Energy Efficiency to 13%.

- (1) As already highlighted and detailed in section 5.5 of this action, Romania has not undertaken any real ambition to increase energy efficiency, which shows a lack of interest towards the 9% and 13% growth targets set by Fit for 55 and REPowerEU, respectively by 2030 (compared to 2020).
- (2) The energy sector is the largest contributor to the increase in GHG emissions, i.e. climate change. This is illustrated by the graph below⁵², which shows that in 2016 the energy sector had a share of 73.2%.

⁵² Source: <https://ourworldindata.org/emissions-by-sector>

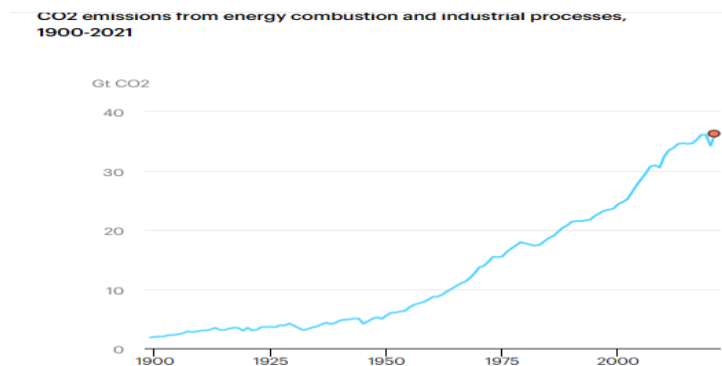
Global greenhouse gas emissions by sector

This is shown for the year 2016 – global greenhouse gas emissions were 49.4 billion tonnes CO₂eq.



OurWorldinData.org – Research and data to make progress against the world's largest problems.
Source: Climate Watch, the World Resources Institute (2020). Licensed under CC-BY by the author Hannah Ritchie (2020).

(3) And according to the International Energy Agency, worldwide CO₂ emissions from fossil fuel combustion and industrial processes reached an alarming level in 2021, as shown in the graph⁵³ below.



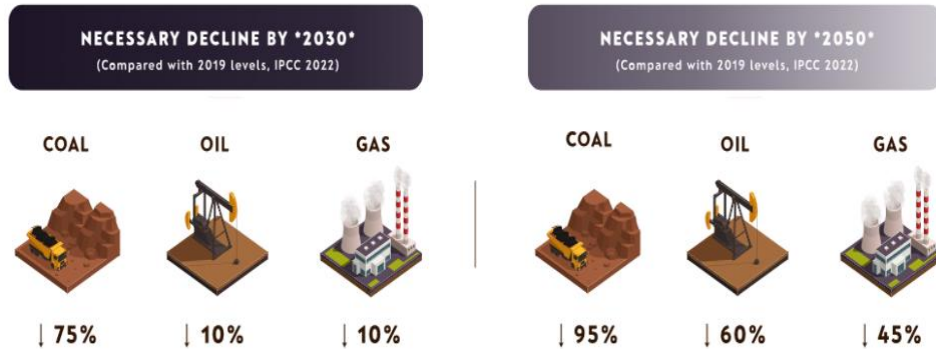
(4) However, fossil fuel projects continue in Romania, with a Report⁵⁴ by Climate Action Network (CAN) Europe and CEE Bankwatch Network showing that the NRRP provides for massive funding for fossil fuel projects. In order to make such projects appear environmentally friendly, the green hydrogen component has been included, although it is still at an early stage in Romania and its economic and technical feasibility in sectors such as heating and electricity generation has not yet been demonstrated.

⁵³ Source: <https://www.iea.org/reports/global-energy-review-co2-emissions-in-2021-2>

⁵⁴ Climate Action Network (CAN) Europe and CEE Bankwatch Network, *Reaching for a green recovery- what holds back progress in ten eu recovery and resilience plans*, source: https://bankwatch.org/wp-content/uploads/2022/02/2022_02_Reaching-for-a-green-recovery.pdf.

(5) It is necessary to take into account the targets set by the IPCC for fossil fuel reductions (so as to keep the temperature increase well below 2 °C) compared to 2019 levels, as shown in the graph below⁵⁵:

- By 2030: coal - 75%; oil - 10%; gas - 10%.
- By 2050: coal - 95%; oil - 60%; gas - 45%.



IPCC: USING 'FAR LESS FOSSIL FUEL THAN TODAY' IS 'FUNDAMENTAL' TO LIMITING FUTURE HEATING TO WELL BELOW 2°C

(6) However, given that the European Environment Agency⁵⁶ has reached the conclusion that Europe's temperature rise is faster than the global average rate and that the ground temperature will rise by up to 3.4 °C by the end of the 21st century, the targets set by the countries should be much higher.

(7) The issue of fossil fuel is not only about climate change but the level of fossil fuel use is also reflected in the market and affects people's cost of living, such as high gas bills. However, in accordance with Article 135 paragraph (2) section (F) of the Romanian Constitution, the State must ensure that the necessary conditions are created to improve the quality of life and not to significantly reduce it.

6.3. The Inaction of the Defendants has a Significant Impact on the Collective and Individual Fundamental Rights of Present and Future Generations.

6.3.1. Declic - the Voice of Civil Society - the Inaction of the Defendants Significantly Jeopardizes the Collective Rights and Freedoms of Citizens to Health Protection, a Healthy Environment and a Future in accordance with Human Dignity. The Defendants' Constitutional Obligation to Guarantee these Rights.

(1) The right to a future in accordance with human dignity, the right to health and the right to a healthy and ecologically balanced environment are considered to be collective rights because

⁵⁵ Source: <https://zerotracker.net/insights/un-hleg-net-zero-recommendations>

⁵⁶ European Environment Agency, Climate change as a threat to health and well-being in Europe: focus on heat and infectious diseases, no. 7/2022, Source: [Climate change as a threat to health and well-being in Europe: focus on heat and infectious diseases - European Environment Agency \(europa.eu\)](https://www.eea.europa.eu/en/press-releases/2022/07/climate-change-as-a-threat-to-health-and-well-being-in-europe-focus-on-heat-and-infectious-diseases)

they affect society as a whole and not just on an individual or group of individuals. They relate to the right of all citizens to live in a healthy and stable environment, with access to the services and resources necessary to achieve their human potential. These rights include the obligation of the State to ensure the protection and development of citizens' rights and freedoms, and to take measures to ensure a healthy and sustainable future for all citizens.

- (2) Pursuant to Article 1 of the Government Ordinance no. 26/2000 on associations and foundations (hereafter GO 26), associations are established to act in the interest of communities or to carry out activities of general interest, and to satisfy non-pecuniary personal interests. This legal text is by all means supplemented by Article 2 of GO 26, and it is undeniable that the Declic Association has the right to act for the protection of collective rights, for the defense of the values of society.
- (3) As it results from all the arguments set out above, the wrongful acts of the authorities, consisting in the inadequate measures taken and their inaction in certain areas are likely to have a significant impact on rights and freedoms of all citizens and residents on the territory of Romania, which we will further detail.
- (4) The right to the protection of health, the right to a healthy and ecologically balanced environment are not explicitly enshrined by the ECHR but are regulated and guaranteed by the Romanian Constitution and the Charter of Fundamental Rights of the European Union.
- (5) As it results from the wording of the constitutional legislator in Article 1 in conjunction with Title II of the Constitution, these rights are matched by the fundamental duties of Defendants to protect them, any violation/threat to the rights and freedoms giving rise to the right to an effective remedy.
- (6) **The right to a future in accordance with human dignity.** Human dignity is a matrix principle that underpins fundamental rights. Why? Because dignity means that a human being belongs to humanity, and human dignity cannot be guaranteed without sustainable development.
- (7) Sustainable development, already defined by the Plaintiffs in sub-chapter 5.1. of this action, is more than just a concept, it is a fundamental principle of environmental law, a filter through which all projects with the potential for economic growth must pass.
- (8) **At national level**, this principle is enshrined in Article 3 and Article 2, section 23 of Government Emergency Ordinance no. 195/2005, the essence of which is that economic development is conditional on the preservation of resources for future generations so as not to compromise the satisfaction of their needs.

At European level, this principle is enshrined in both the TFEU and in the Charter of Fundamental Rights of the European Union.

Internationally, it is established:

- In the Aarhus Convention which states that *every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations;*
 - in the UNFCCC which states that *The Parties should protect the climate system for the benefit of present and future generations of humankind.*
- (9) At first glance, fundamental freedoms seem to stand in the way of the priorities set for sustainable development, since the current generation
- Would be forced to slow down economic progress,
 - Does not have the right to choose the desired development option at will but only *sustainable* options that do not deplete resources completely.
- (10) In fact, sustainable development guarantees fundamental freedoms in the long term, and acts as a bridge between generations.
- (11) In the present case, as the foregoing shows, the Defendants have failed to establish a legal framework to rapidly reduce greenhouse gases and limit the increase in global temperature to 2 degrees Celsius, preferably 1.5 degrees Celsius.
- There is a consensus among IPCC scientists, accepted by the signatory States of the Paris Agreement (including Romania), that any temperature rise above these thresholds could lead to dangerous tipping points with irreversible consequences for the climate.
- (12) Scientists therefore warn that we must avoid a situation in which the additional build-up of CO₂ in the atmosphere leads to a rise in temperature that will accelerate the process of climate change to a such an extent that changes that normally take millennia will occur within a few decades.
- One event that would be triggered by such a rapid rise in temperature is, for example, the **sudden melting of permafrost**, which would release large amounts of methane into the atmosphere at an unprecedented rate. This would lead to a dramatic acceleration of climate change to which neither humans nor nature will be able to adapt. Dangerous climate change would lead to major social, economic and ecological disruptions, threatening the survival of a significant part of human and animal life.
- (13) In comparison with to the scientific evidence, the Defendants' measures are not only anemic but also impossible to monitor. This inaction of the Defendants is incompatible with the right to a future in accordance with human dignity, the right to a healthy environment and the right to a decent standard of living, as the State violates its obligation to distribute emissions equitably between generations.

(14) In fact, these constitutionally guaranteed freedoms (Articles 1, 35, 45 and 47) coincide with the Defendants' constitutional obligation under Article 135 paragraphs (d-f) to protect the natural foundations of life.

The State's obligation to maintain the ecological balance and to create the conditions necessary to improve the quality of life concerns not only the classic environmental factors such as water, air, and soil but also the climate.

The scope of the protection to which the Defendants are bound includes:

- Damage prevention
- The requirement to remedy/compensate for damage that has already occurred
- The requirement to mitigate risks
- The requirement to conserve resources sustainably.
- The prohibition of significant damage to the environment.

(15) The Defendants' commitments and the measures they intend to implement have the effect of a light breeze on the phenomenon of climate change, its development being unrestricted, leading to a clear breach of the Defendants' obligations to prevent damage and mitigate risks.

(16) The precautionary principle calls for immediate and effective action to reduce GHGs. Without effective exercise of such responsibility by the Defendants, the very substance of our fundamental freedoms is at stake.

In the absence of a legal framework to govern climate change, to allocate responsibilities and to monitor how the former are fulfilled, the Defendants are clearly jeopardizing the Plaintiffs' right to a future in accordance with human dignity.

(17) A life without a dignified future nullifies the Plaintiffs' status as human beings, because without the provision of the natural basis of life human beings are not only exposed to degrading living conditions (e.g. as a result of natural disasters) but also become mere objects of a development over which they have only limited influence or can no longer be themselves.

According to the Plaintiffs, the Defendants' statutory obligation to ensure quality of life in accordance with human dignity and in the future implies the need to limit greenhouse gas emissions so that the "1.5 °C target" can continue to be met if all States act accordingly.

(18) **The right to the protection of health** continues to be seriously undermined today, especially when vital elements such as water and air are altered but the continuation of the Defendants' current policies may completely deprive of all substance this right.

(19) General Comment No. 14⁵⁷ of the Committee on Economic, Social and Cultural Rights prepared the content of the right to health and stated that it is "*an inclusive right, extending*

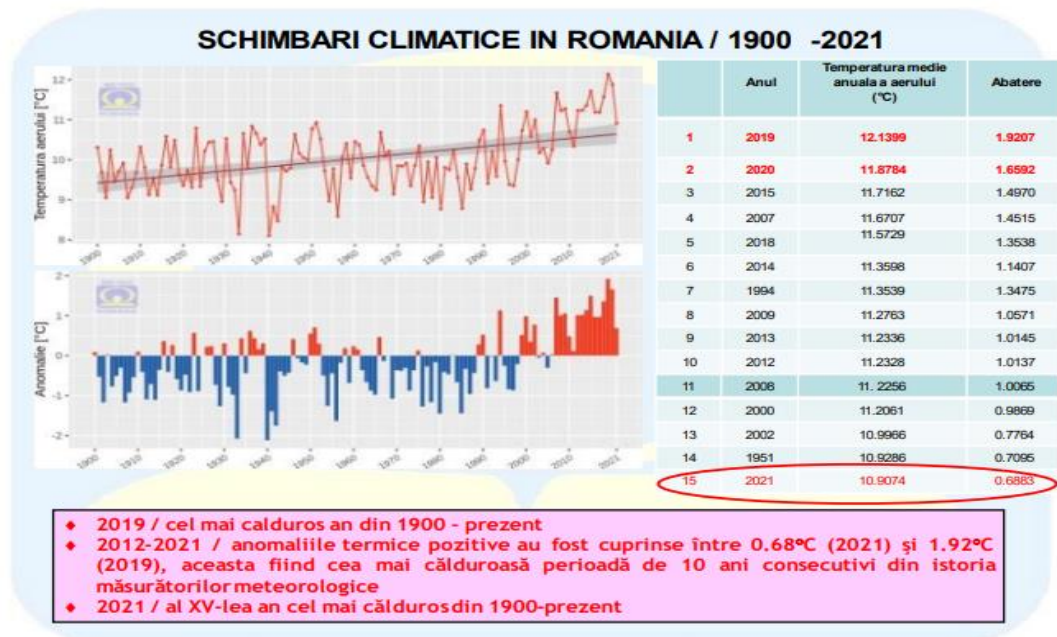
⁵⁷ <https://www.refworld.org/pdfid/4538838d0.pdf>

not only to timely and appropriate health care, but also the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, among others.”

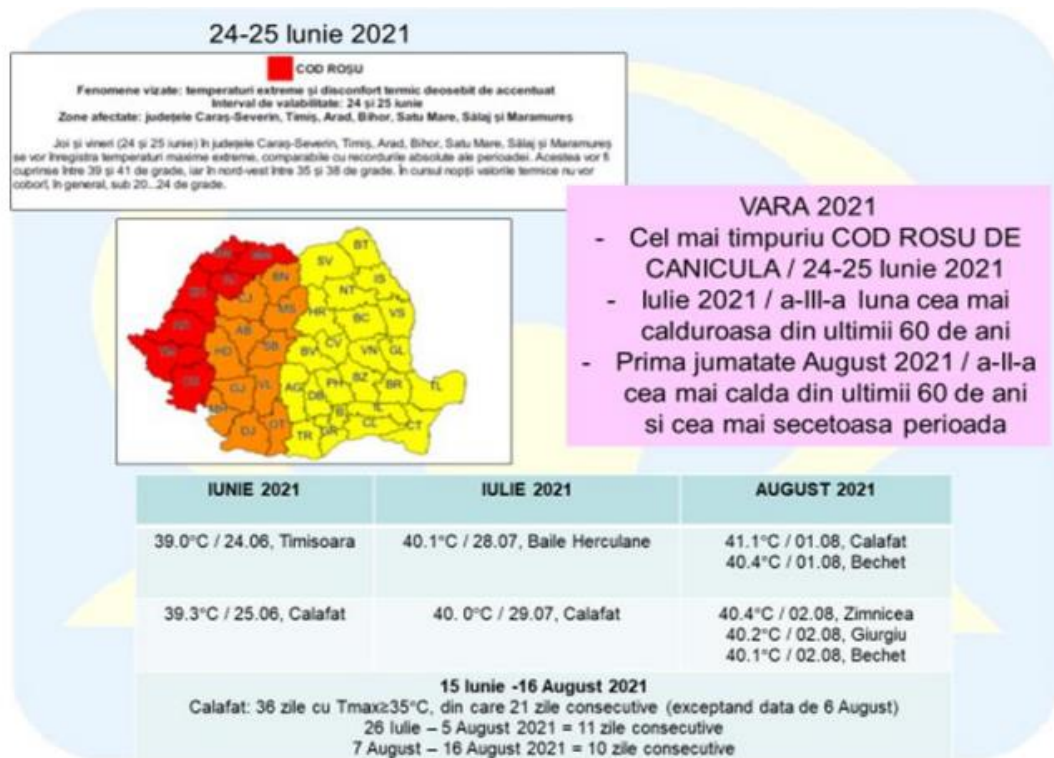
- (20) Similarly, the 1992 Rio Declaration in Principle 1 states that *“Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature”*. In this regard, the Constitutional Court has pointed out that *“according to the interpretation of the right to health given by the Committee on Economic, Social and Cultural Rights, the protection of this right implies, among other obligations, the obligation to protect the environment. The application of the precautionary principle therefore aims not only to protect the environment but also, indirectly, to prevent the damage that environmental risks may cause to health.”*
- (21) At the risk of repeating ourselves, we will briefly outline how climate change affects people's health, our arguments are based on scientific consensus:
- The National Weather Administration, in its 2015 Report *“Climate Change - From Physical Basis to Risk and Adaptation”*, concluded that *“intense and persistent heat waves have become increasingly frequent in recent decades than in the past”*⁵⁸.
 - Subsequently, in a press release issued by the National Meteorological Administration⁵⁹ in January 2022, it was stated that positive temperature anomalies ranged from 0.69 °C (2021) to 1.92 °C (2019) in the period 2012-2021, the warmest 10 consecutive years in the history of meteorological measurements, as shown in the graph (reproduced below) from the same source.

⁵⁸ National Meteorological Administration, *Climate Change - From Physical Foundations to Risks and Adaptation*, 2015, pp. 49, source: <https://www.meteoromania.ro/anm/images/clima/Schimbariclimatice2014.pdf>

⁵⁹ Ministry of Environment, Waters and Forests - National Administration of Meteorology, Press release: 2021 - continues the trend of increasing air temperature in Romania, January 7, 2022, source: <https://www.meteoromania.ro/wp-content/uploads/comunicate/comunicat-07.01.2022.pdf>

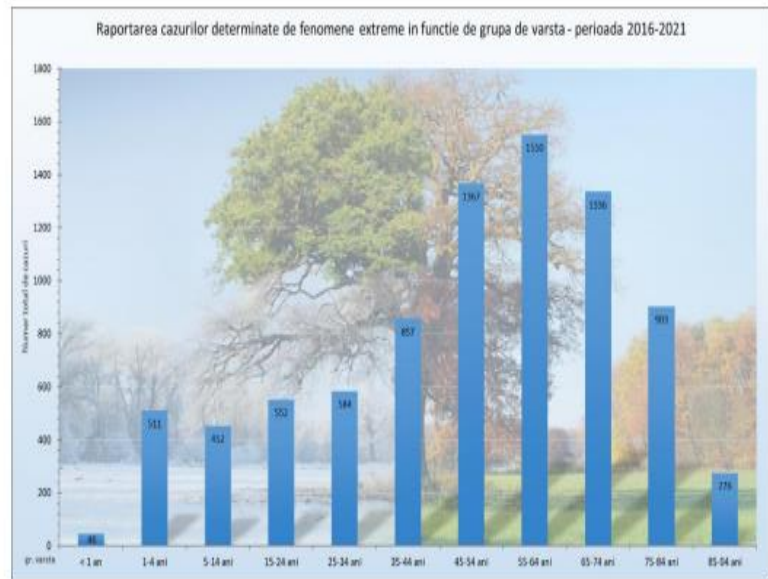
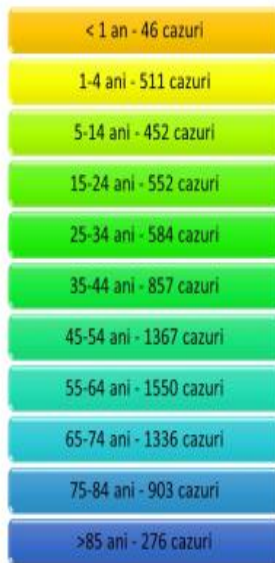


- Moreover, in the same 2022 press release, it is stated that “with regard to the rainfall regime, 2021 recorded an average amount of 705.2 l/sq m, which on average means an optimal annual regime for agriculture but from the second half of the summer and in the autumn months, the soil was very dry, with the highest water deficits recorded in the Moldova area”. In 2021, the highest number of weather warnings for hazardous phenomena was issued at the national level in the last 3 years. And in the summer of 2021, the earliest heatwave code red was issued in our country, between June 24 to 25, for 7 counties in the west of the country, as shown in the graph (reproduced below) from the same source.

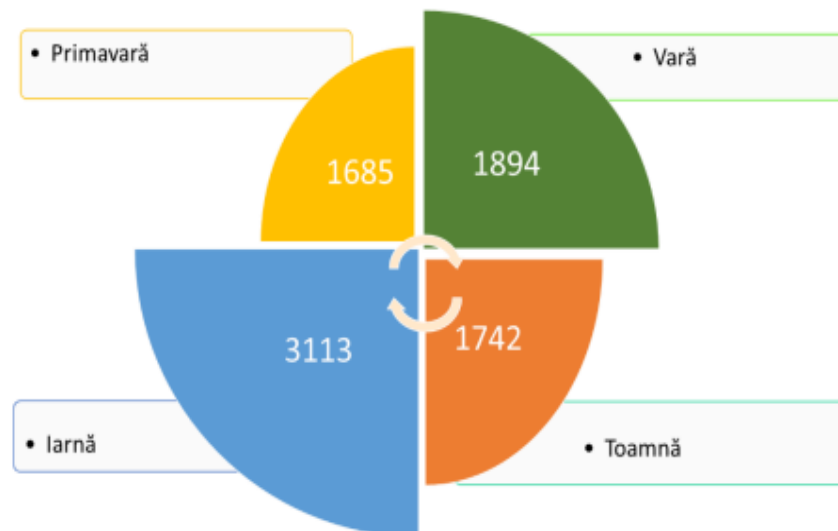


- At the Conference “Climate Change, the Human-Nature Relationship and Public Health”, organized in April 2021 by the Presidential Administration and the World Health Organization Office for Romania⁶⁰, participating experts have drawn attention to the negative impact of climate change on public health: aggravation of respiratory and cardiovascular diseases, asthma and allergies, or even deaths.
- At national level, according to Government Decision no. 83/2019, the National Electronic Environmental Register is operational and includes a module for the electronic surveillance of diseases triggered or aggravated by environmental factors modified by climate change. The data are provided by the county Public Health Directorates. Below we present the graphs of the records in the system on the distribution of cases by age (the most affected groups are those over 45 years of age), as well as the reporting of cases by time of year (most cases admitted were in the winter months, which is not surprising given that winters have been warmer in recent years, which favors the development and spread of viruses).

⁶⁰ Source: <https://www.presidency.ro/ro/presa/clima-si-sustenabilitate/conferinta-schimbarile-climatic-relatia-om-natura-si-sanatatea-publica>



Raportarea cazurilor în funcție de perioada anului

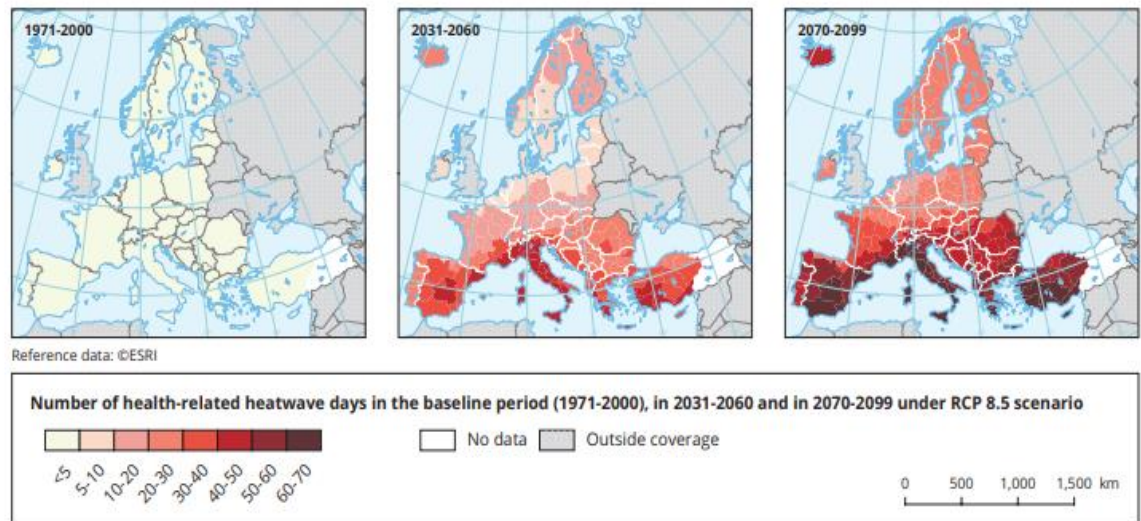


- The World Health Organisation, in a recent Report on the situation in Europe⁶¹, stated that although vulnerability to heat varies geographically, there are certain factors that increase the risk of dying from exposure to extreme heat: age (the elderly and children are particularly vulnerable), cardiovascular disease, respiratory disease, mental illness, diabetes, pregnancy, and exposure of workers to environmental conditions. Excessive heat also causes various bacteria to proliferate in the environment, causing severe digestive disorders. Tourists coming from cooler are exposed to high health risks if they are not in good physical condition and do not acclimatize as quickly as possible. Similarly, migrant workers and refugees are at increased risk, as they often suffer from malnutrition, lack adequate living conditions and have limited (or no) access to healthcare. Last but not least, people on low incomes have no material means to adapt to the heat waves. In urban areas there is a heat island effect, caused by the urban structure and the materials used, which trap heat and alter the microclimate.
- According to a report published by the European Environment Agency⁶² at the end of 2022, Europe is warming faster than the global average. By the end of the 21st century, it is projected to rise by up to 3.4 °C under a low greenhouse gas emission scenario and by up to 8.5 °C under a high emission scenario. It will also increase the duration of periods of extreme heat and excessive humidity, which are harmful to human health. The same report includes a graph⁶³ (see below) showing the increase in heat wave periods in Europe from 1971 to 2099 in the context of high greenhouse gas emissions - a heat wave is defined as at least 2 consecutive days of extreme temperatures in June, July, and August. This graph shows the worrying trend of heat waves across Europe, including Romania.

⁶¹ World Health Organization - Regional Office for Europe, *Heat and health in the WHO European Region: updated evidence for effective prevention*, 2021, p. 98-106, source: <https://apps.who.int/iris/bitstream/handle/10665/339462/9789289055406-eng.pdf>

⁶² European Environment Agency, *Climate change as a threat to health and well-being in Europe: focus on heat and infectious diseases*, no. 7/2022, Source: [Climate change as a threat to health and well-being in Europe: focus on heat and infectious diseases - European Environment Agency \(europa.eu\)](https://climate-adapt.eea.europa.eu/en/metadata/indicators/health-heatwave-high-temperature-and-humidity-1971-2099#details)

⁶³ <https://climate-adapt.eea.europa.eu/en/metadata/indicators/health-heatwave-high-temperature-and-humidity-1971-2099#details>, apud European Environment Agency, *Climate change as a threat to health and well-being in Europe: focus on heat and infectious diseases*, op. cit., pp. 17.

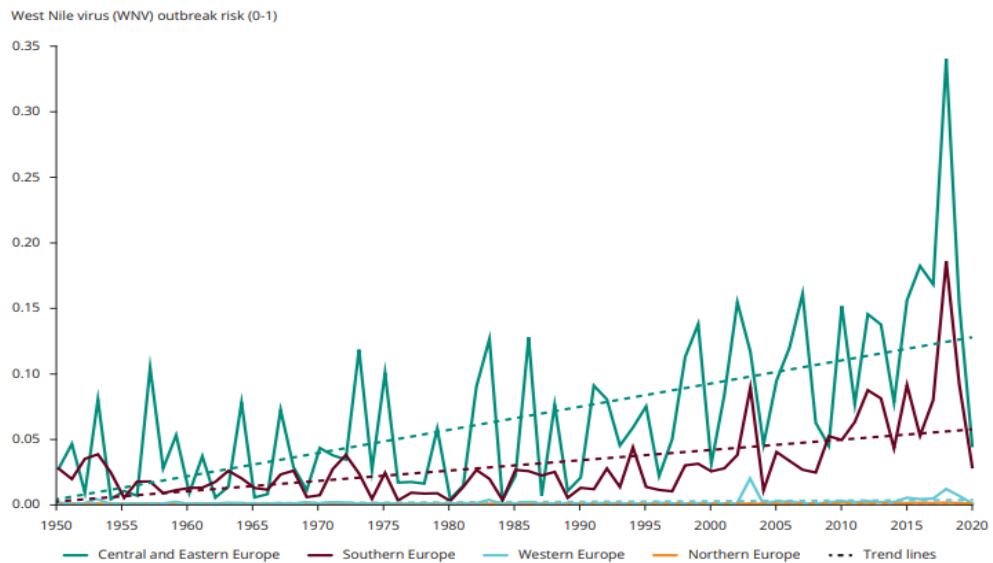


- The European Centre for Disease Prevention and Control⁶⁴, in an analysis of the phenomenon of climate change in Europe, has highlighted that the impact of climate change on public health is manifested in an increase in the number of hospitalizations and deaths from heat waves, the number of hypothermia caused by snow storms, the number of injuries and deaths from flooding, and changes in vector-borne disease transmission, such as Hantavirus (rodent-borne), West Nile virus (mosquito-borne), tick-borne encephalitis, Lyme disease (also tick-borne), Malaria and Dengue fever (both mosquito-borne). The Centre also warns that these negative effects of climate change on public health will continue to increase in the future as environmental conditions worsen. In practice, as temperatures and humidity rise, these vectors will continue to spread to areas where they did not previously have access. In the specific case of West Nile virus, the carrier mosquitoes find the warmer temperatures favorable for prolonging their breeding periods and surviving the (milder) winter. Rising temperatures also shorten the time it takes for the virus to incubate and spread. In the above-mentioned European Environment Agency material, a graph⁶⁵ (presented below) shows the increase in the probability of West Nile outbreaks in Europe between 1951 and 2020, with the highest risk in Central and Eastern Europe, i.e. in the region that includes Romania.

⁶⁴ European Centre for Disease Prevention and Control, *Climate change in Europe Public health area*, source: <https://www.ecdc.europa.eu/en/climate-change/climate-change-europe>

⁶⁵ van Daalen K.R., et al., 2022, 'The 2022 Europe report of the Lancet Countdown on health and climate change: towards a climate resilient future', *Lancet Public Health* 2022, ([https://doi.org/10.1016/S2468-2667\(22\)00197-9](https://doi.org/10.1016/S2468-2667(22)00197-9)), *apud* European Environment Agency, *Climate change as a threat to health and well-being in Europe: focus on heat and infectious diseases*, *op. Cit.*, pp. 47.

Figure 4.5 Change in the estimated WNV outbreak risk between 1951 and 2020 in the EEA member and cooperating countries and the UK, grouped by European region



- (22) In conclusion, the lack of firm, concrete and coordinated climate change policies, despite the fact that the Defendants are aware of the danger posed by climate change, is limited to indirect intent, which is the form of culpability by which the Defendants disregard their legal obligations and harm our right to health.
- (23) As regards the **right to a healthy environment**, this is closely linked to the right to health (discussed above), both collective rights being guaranteed both at constitutional and at EU level (TFEU, Charter of Fundamental Rights of the European Union, RED Directive, etc.).
- (24) Although not enshrined in the European Convention on Human Rights, the ECtHR has consistently held in its case law that this collective right is protected by Article 8 of the ECHR (detailed in sub-chapter 6.3.3.), which guarantees the right to family life and property:
- **“Guerra and Others v. Italy” judgment (1998)** - the ECtHR found that the Italian authorities had violated the Plaintiff’s right to family life by allowing industrial activity that polluted the environment and affected their health; the same were held in the “Oya Ataman v. Turkey” judgment (2007), the “Kolyadenko and Others v. Ukraine” judgment (2010), the “Ivanova v. Bulgaria” judgment (2015).

6.3.2 Violation of the Right to Life Enshrined in Article 2 of the ECHR, Article 2 of the EU Charter of Fundamental Rights and Article 22 of the Romanian Constitution

- (1) Bellow we will show, in light of the level of the scientific evidence available, that climate change affects the right to life in its very essence, through factors such as:
- **Heat waves:** can lead to dehydration, fatigue and respiratory problems, which can increase the risk of mortality in vulnerable people such as the elderly and people with chronic illnesses; the world’s largest study⁶⁶ on global climate-related mortality links 5

⁶⁶ <https://www.monash.edu/medicine/news/latest/2021-articles/worlds-largest-study-of-global-climate-related-mortality-links-5-million-deaths-a-year-to-abnormal-temperatures>

million deaths per year to abnormal temperatures. The study's authors also show that Europe has the highest excess heat-related deaths per 100,000 people.

- **Floods:** can cause direct deaths from drowning or other accidents, and indirect deaths from infections or other health problems.
- **Forest fires:** can release smoke and fine particles into the air, which can cause respiratory and heart problems and, in extreme cases, death. One notable example is the 2018 California wildfire, which killed more than 80 people.
- **Changes in food availability:** climate change can affect food production, which can lead to reduced food availability, resulting in malnutrition and death. A study⁶⁷ published in The Lancet in 2016 estimated that the impact of climate change on global food production could lead to more than 500,000 deaths by 2050. Adopting climate stabilization pathways would reduce the number of deaths from climate change by 29-71%.

(2) Consequently, the causal link between climate change and the impairment of the right to life cannot be denied, as there is a whole body of scientific literature backed up by legislative commitments to substantiate it:

- The Stern Review on the impacts of climate change, commissioned by the UK government in 2006, noted that, according to the World Health Organisation, climate change has caused more than 150,000 deaths every year since 1970;
- The World Humanitarian Forum prepared the “Human Impacts Report: Climate Change, 2009”⁶⁸, and its findings indicated at that time climate change was causing more than 300,000 deaths every year;
- The UN Human Rights Council, in Resolution 10/4, 2009⁶⁹, noted that: “climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights, including, inter alia, the right to life”;
- According to the Human Rights Committee's comment 36 on article 6 ICCPR: *Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. Obligations of States parties under international environmental law should thus inform the contents of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.*

⁶⁷ [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(15\)01156-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(15)01156-3/fulltext)

⁶⁸ <https://gsdrc.org/document-library/human-impact-report-climate-change-the-anatomy-of-a-silent-crisis/>

⁶⁹ https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_4.pdf

- In 2011, the World Bank and the International Energy Agency (IEA) concluded⁷⁰ that, based on the available scientific evidence and in the absence of concrete policies, the global average temperature could rise by as much as 4 or 5 degrees Celsius above pre-industrial levels by the end of this century. The consequences of such a rise in temperature would be potentially catastrophic for human civilization, not least because at such temperatures, 70% of animal and plant life would be threatened with extinction. The projected rise in global average temperature therefore puts all human, animal and plant life on this planet at great risk.
 - The European Environment Agency Report “Climate Change, Impacts and Vulnerability in Europe 2012”⁷¹ argued that heat waves are expected to occur more frequently and for longer periods of time. In addition, for every 1 degree rise in temperature in a region, the number of deaths to heat stress in that region will increase, with the elderly and the socially disadvantaged being most affected. These predictions were later confirmed in a 2016 Report by the same European institution, which noted that heat waves were the extreme weather phenomenon with the highest mortality rate between 1991 and 2015. In Europe alone, tens of thousands of people have lost their lives prematurely for this reason.
 - On February 24, 2021, the European Commission adopted the new “European Strategy on Adaptation to Climate Change”, which sets out its long-term vision for managing the effects of climate change. It aims to increase adaptive capacity within the Union and worldwide, and to reduce the impact of climate change in line with the Paris Agreement. The official document states: “The world has just concluded the hottest decade on record during which the title for the ‘hottest year’ was beaten eight times [...]. The deadliest natural disaster of 2019 worldwide was the European heatwave, with 2,500 deaths”;
 - All documents already listed in paragraph 18 of sub-chapter 6.3.1. of this action.
- (3)** With regard to the relationship between climate change, sustainable energy and the right to life, the Court of Justice of the European Union has also ruled in Case C-379/98 Preussen Elektra, the Luxembourg Court's findings are presented in sub-chapter 5.2. section 9. It is precisely because of the relationship between climate policy and the protection of the right to life, which is one of the fundamental rights of every human being, that the Court ruled that:
- Climate policy could restrict the rights arising from the free market, one of EU’s founding principles.
 - Climate policy serves a more important purpose than the free market because of the importance of protecting the right to life and well-being.
- (4)** We have already demonstrated in paragraphs 6.1. and 6.2. of this action that the measures adopted by the Defendants to mitigate and adapt to climate change are inadequate,

⁷⁰ <https://iea.blob.core.windows.net/assets/cc401107-a401-40cb-b6ce-c9832bb88d85/WorldEnergyOutlook2011.pdf>

⁷¹ <https://www.eea.europa.eu/publications/climate-impacts-and-vulnerability-2012>

unreasonable and impossible to monitor. The Defendants' approach in this matter, which is at best a step backwards, underlines the danger to the Plaintiffs' fundamental right to life, protected both at constitutional level (Article 22 and Article 20) and at European (Article 2 ECHR and Article 2 CFREU) and international level (Article 3 of the International Convention on Human Rights, Article 6 paragraph (1) of the ICPRR).

(5) The ECtHR has also ruled that States have a positive obligation to take all necessary measures to fight against climate change, otherwise they violate the fundamental right to life of their citizens, as follows:

- **Tătar v. Romania** (January 27, 2009 - paragraph 112-113), *Storck v. Germany* (June 16, 2005 - paragraph 150) and *Öneryildiz v. Turkey* (November 30, 2004, paragraph 109) cases, including the State's obligation to take preventive measures and to inform/warn of potential hazardous situations; the fulfilment of this obligation is of particular importance, as it is often the only effective and efficient way to ensure the protection of the right to life;
- *Di Sarno v. Italy* (January 10, 2012 - paragraph 109), *Budayeva v. Russia* (March 20, 2008 - paragraphs 158-159) and *Lopez-Ostra v. Spain* (December 9, 1994 - paragraph 52) cases, from which it results that the obligation exists irrespective of whether the damage has already had its effects, or whether the time when a breach would occur is unforeseeable; the positive obligation of the State to take measures to protect the right to life of any person under its jurisdiction covers "any activity, public or otherwise, in which the right to life may be at stake" (*Budayeva* case). Therefore, the State's positive obligation also exists when hazardous emissions originate from non-State activities, such as industrial enterprises and by fellow citizens (*Lopez-Ostra* case);
- *Dees v Hungary* case (November 9, 2010 – paragraph 23), according to which attempts by the State to reduce the intensity of a breach are NOT sufficient in order to fulfil the positive obligation; the measures must have the desired effect. Therefore, proving that attempts have been made to reduce infringements is NOT sufficient either. Actions need to deliver results.

(6) In conclusion,

- For this protection to be effective and NOT merely declaratory, breaches of the right to life must be prevented. This is why the European Court of Human Rights applies the precautionary principle described above in cases concerning violations of Article 2 ECHR. The purpose for which the right to life has been established is not only to be able to establish that a violation has taken place after it has become a fact. On the contrary, the obligation to enforce is intended to prevent violations in the first place, which is a logical and natural consequence of the fact that the loss of human life is irreversible.
- A situation of unlawful and continuing endangerment for which the State is responsible almost automatically leads to a violation of Articles 2 and 8 of the

Convention (referred to *below*). The criteria of these articles must therefore be applied in assessing the unlawfulness of the danger and the inconvenience caused to the persons concerned. The absence of any possibility to hold the State accountable for the level of CO₂ emissions would result in the absence of an effective remedy for the violation of the Plaintiffs' rights under Article 2 and Article 8 of the Convention (reviewed *below*). This, in turn, would constitute a violation of Article 13 of the Convention, which guarantees the existence of an effective remedy.

The fact that the State influences the level of national CO₂ emissions means that the State can also be held accountable and liable for this level of emissions. Competence and the use of influence create accountability and responsibility.

- Once the damage caused by dangerous climate change materializes, it will be virtually impossible to obtain compensation from States and large commercial emitters of greenhouse gases. There is therefore clear need to prevent further accumulations and to reduce emission effectively promptly in order to ensure respect for the right to life.

6.3.3 Violation of the Right to Private and Family Life (Article 26 of the Romanian Constitution, Article 8 of the ECHR, Article 7 of the EU Charter of Fundamental Rights) and of the Right to Property (Article 1 of Protocol 1 to the ECHR)

- (1) In the light of the arguments set out in the previous section, we will further on present additional grounds relating to the violation of the right to privacy and the right to property.
- (2) According to the Report prepared for the 2019 UN General Assembly by Prof. Philip Alston, the organization's special rapporteur, in 2017 alone, 18.8 million people became refugees from disasters in 135 countries, almost double the number of war refugees. Since 2000, disaster-related deaths in poor countries have been seven times higher than in rich countries. The conclusion that emerges is that the more vulnerable the population affected, the more severe the human rights violations caused by climate change.

Report prepared for the 2019 UN General Assembly by Prof. Philip Alston constitutes Appendix 16 to this action

- (3) Although we have, as far as possible, dealt with the violation of each fundamental right separately, we cannot overlook the fact that they either overlap or get worse over time, due to the passivity of the authorities.
- (4) It is worth mentioning in this context the **Report prepared by the World Bank for the Government of Romania**⁷² which noted, in essence, that:

⁷²<https://documents1.worldbank.org/curated/en/296921468298795648/pdf/955960ROMANIAN0391419B0A110romanian.pdf>

“The livelihoods of many rural people are expected to be increasingly affected by projected changes in climate conditions. The risk of impact is not evenly distributed. There are regional differences in the potential for adverse impacts such as drought and heavy rainfall, as well as differences in the vulnerability, resilience and adaptive capacity of rural actors and rural communities to climate change. These differences are further accentuated by the strong polarity in farm size and structure and characterizes the RDA sector in Romania [Research Development and Agriculture]. Probably one of the most affected groups of producers is likely to be subsistence farmers in the highlands, particularly in the south and south-east of Romania” (page 31 of the Report).

The official document also mentions the main vulnerabilities to climate change that have been identified in our country in various sectors of activity in connection to **water use**. The essential nature of this natural element for life and health is a well-known fact that does not need to be proven. As a vital element of everyday life, any degree of damage to it has particularly important consequences, and depending on the severity of the damage caused, the impact may be felt more strongly by a greater number of people. Thus, the hazards identified are as follows:

- Water supply will be affected as warmer and shorter winters will lead to reduced seasonal snowpack and early and rapid snowmelt, causing shortages in the summer months.
- Hotter and drier summers will also cause a deterioration in the quality of water resources, effectively reducing water supply.
- Water supply will also be affected by lower groundwater levels in the summer months due to reduced surface flows.
- Higher summer temperatures will lead to more evaporation and transpiration, and therefore higher water demand in agriculture, at the same time as water supply become scarcer. Domestic water demand and supply will undergo the same effect (but to a lesser extent).
- Wastewater treatment will be affected more frequently by flooding, both from rainwater infiltration into sewer systems, and from direct flooding of treatment plants.
- The flora and fauna of aquatic ecosystems (rivers and lakes), as well as those dependent on rainfall and river flows (such as wetlands), will suffer from reduced summer water flows and increased frequency of floods and droughts.
- High summer temperatures leading to water quality degradation (through reduced dissolved oxygen levels, eutrophication and excessive algal blooms), will also affect the environment.
- Changes in aquifer levels will also affect the water balance of the marshes, which are supported by groundwater during the low flow season.
- Summer hydropower generation will be affected in dry years. Hydropower plants will also face the increasing threat of intense flooding, and operations will need to provide an adequate flood cushion in reservoirs” (pages 27 - 28 of the Report)

- (5) With regard to floods, according to the “Guide on Adaptation to the Effects of Climate Change” prepared by the Romanian Government, the increase in the level of risk associated with climate change leads to the following effects:
- i. In water supply systems:
 - Influence on the level of quality;
 - Increased incidence of illness;
 - Unforeseen operating costs.
 - ii. In sewage/treatment systems:
 - Flooding;
 - Accumulation of fermentation gases in the pipes;
 - The influence of short, high intensity rainfall” (page 21 of the Guide)
- (6) Therefore, just as climate change affects water use, its impact on property rights, the right to a decent life but also on private and family life, will be felt negatively in different ways and to different degrees, depending on the extent of the consequences caused.
- (7) As regards the right to privacy, the relatively broad wording of Article 8 of the Convention has allowed the European Court of Human Rights to apply this provision in a wide variety of situations. Article 8 ECHR contains both positive and negative obligations. Article 8 of the Convention imposes a positive obligation on the State to protect citizens from the effects of environmental pollution, even in cases where such pollution is not life-threatening (**López Ostra v. Spain** case). Violations occur in cases of serious pollution which affects the well-being of individuals to such an extent that it is no longer possible to exercise effectively the right to private and family life.
- (8) The following ECtHR judgments are relevant to the topics discussed in this sub-chapter:
- **Fadayeva v. Russia case (ECtHR, June 9, 2005)**, according to which it is relevant whether or not a person has the possibility to avoid the damage, for example by moving to another, more environmentally friendly area. Where relocation is NOT possible, the State has a greater obligation to protect the individual's rights. In this case, Russia argued that there had been no violation of Article 8 of the Convention, as the individuals concerned had moved to the industrial zone voluntarily and could leave the zone if they so wished. The Court disagreed with this position on the grounds that, in the absence of no relevant information about the dangers involved, Fadayeva could not be blamed for moving into the polluted area. The most important aspect of this case lies in the Court's subsequent reasoning, in which it explains that the person concerned must have a real choice as to whether to accept or prevent damage to her health caused by industrial activities. In Fadayeva case, the Court held that the Plaintiff did not have such a real freedom of choice because of the unavailability of alternative social housing in the area and the fact that she did not have the personal financial means to move to private accommodation further away from the source of pollution. In other words, Fadayeva had no choice but to endure the pollution of the industrial area. For these reasons, the Court ruled that Russia had violated

Article 8 of the ECHR and that Russia was under the active obligation to protect the Plaintiff from the harmful effects of the pollution.

- **Di Sarno v Italy case (Judgment of January 10, 2012):** the fact that a situation which may violate the rights of an individual also affects a whole country or region does not prevent the European Court from finding a violation in an individual case. The complaint to the Court concerned the domestic waste crisis which had been affecting the city of Naples and its surrounding areas for years. The Italian State opposed the finding of an infringement. It argued that the complaint was based on an “*actio popularis*” in which the Plaintiffs clearly had no individual interest. The Italian State accused the Plaintiffs of attempting to change the Italian law by bringing such a collective action before the Court. The Court acknowledged that the Plaintiffs' complaint concerned a situation affecting a whole region. Nevertheless, the Court found that there was sufficient evidence to conclude that the Plaintiffs had been concerned and affected by the domestic waste crisis due to the accumulation of domestic waste in the streets and fires of a serious nature requiring frequent intervention by the fire brigade. As there was sufficient evidence that the Plaintiffs were directly affected with regard to their health and physical integrity, the Court held that Article 8 ECHR was applicable to this situation and that the Italian State's defense on this ground could therefore not succeed.
- **Okay v. Turkey case (Judgment of July 12, 2005):** in cases where there is a threat to public health over a very wide area, where the harm to individuals may vary, the Court has stated that there is an individual interest. In this case, the Plaintiffs lived 250 km from three old coal-fired power stations, which were the source of large amount of pollution. Turkey argued that, because of this distance, the Plaintiffs could not be exposed to a specific and imminent danger to their health. The Court relied on an expert report that was also used in the national proceedings, which confirmed the existence of a threat to public health in the area around the 2,350 km of power plants. This meant that the Plaintiffs were also affected by this health hazard. The Court stated (in paragraph 66): “this distance covers the area in which the Plaintiffs live and jeopardizes their right to the protection of their physical integrity, despite the fact that the risk to which they are exposed is not as serious, specific and imminent as that to which people living in the immediate vicinity of the power plants are exposed”.
- **Tashkin v. Turkey case (Judgment of November 10, 2004):** where there is a known and therefore foreseeable risk to general health, this constitutes sufficient grounds for the protection under Article 8 of the Convention, even if the danger will not materialize until decades later. The case concerned the pollution caused by a local gold mine. Turkey argued that Article 8 of the ECHR was not applicable in this case, on the grounds that the specific hazard which was the subject of the Plaintiff’s complaint would not materialize for some 20-50 years. For this reason, the danger was hypothetical, not serious or imminent, which meant that human rights protection was not justified. The Court did not accept this argument, on the grounds that this would be detrimental to the effective application of

Article 8 of the Convention. The Court found that, for the protection of Article 8 to apply, it is sufficient that there is a clear link between the dangerous effects of the activity, on the one hand, and the likelihood that the Plaintiff will be exposed to those effects, on the other (paragraph 113): “Article 8 applies in the case of serious environmental pollution which is likely to affect the well-being of persons and prevent them from enjoying their dwellings to such an extent as to interfere with their private and family life without, however, seriously endangering their health The same applies where the harmful effects of an activity to which the persons concerned are likely to be exposed have been identified in an environmental impact assessment procedure so as to establish a sufficiently close relationship with private and family life within the meaning of Article 8 of the Convention. Otherwise, the State's positive obligation to take reasonable and appropriate measures to protect the Plaintiff's rights under Article 8(1) would be frustrated.” The fact that, in the Tashkin case, the danger would only have materialized decades later was therefore not a sufficient argument to deny the protection under Article 8 ECHR.

- (9) Article 8 ECHR also provides for a positive obligation (similar to Article 2 ECHR) **to inform citizens of environmental risks** in order to protect their private and family life. A sufficient level of information would only be achieved if society shows a significant change in behavior with regard to the use of energy and other emission-producing resources.
- (10) This is all the more relevant today, given that 13 years ago, UNFCCC Member States concluded in the 2010 Cancun Agreement - mentioned *above* - that tackling climate change would require nothing less than a paradigm shift in society:
- “The Conference of the Parties recognizes that tackling climate change requires a paradigm shift towards building a low-carbon society...”*
- (11) Neither the Romanian Government, through its competent bodies, nor society as a whole, has shown any signs of a paradigm shift during all this time. Therefore, it can only be concluded that the Defendants have so far failed to fulfil their obligation to inform and warn of the climate change dangers, which constitutes a violation of Article 8 of the ECHR.
- (12) Due to their delayed effects, the dangers associated with climate change will also only be felt decades after the event. In this respect, the aforementioned cases clearly establish the link between the dangerous effects of industrial activities on the one hand, and the fact that people will only be exposed to these dangers at some point in the future. It can therefore be established that the Defendants' failure to take measures to assume responsibility for protecting their citizens from dangerous climate change results, or at least will result at some future point, in the violation of the Plaintiffs' right to privacy.
- (13) As regards the property aspect of the violation of fundamental rights that we address in this section, i.e. **the violation of the right to private property**, this results from the significant restriction on exercising this right resulting from changes in the climate system. Rising temperatures, droughts, wildfires or floods prevent people from exercising their property rights in a several ways: the total impossibility or great difficulty of cultivating agricultural

land for their own use and that of their family members; drastically restricting the times when it is safe to be outdoors in one's own backyard or garden; a great deal of thermal discomfort for people who are NOT in a position (for financial or planning reasons) to install air conditioning in their homes. Natural disasters caused by climate change sometimes led to the loss of the family home, and where larger areas are affected, in the migration of the affected population.

- (14) Obviously, all the restrictions on the right of ownership referred to above may equally affect the exercise of this right in the case of temporary dwellings such as holiday homes or apartments in tourist locations. In the event of an intention to sell a property, the seller may be surprised to find that the market value of the property has fallen significantly for reasons relating solely to climatic disturbances, in violation of the fundamental right to property.
- (15) In conclusion, the lack of clear and effective measures to prevent and fight against the effects of climate change on the territory of Romania results in the infringement of the Plaintiffs' private property rights.

7. Burden of Proof. Evidence

7.1. Burden of Proof

- (1) We, the undersigned, have referred to the text and enclosed several official documents and scientific reports to support of our arguments, although the precautionary principle laid down in Article 3 of Government Emergency Ordinance no. 195/2005 and Article 3 of the UNFCCC would have entitled us to remain passive. **The precautionary principle, as enshrined in the UNFCCC, reverses the burden of proof:** it is not society's burden to prove that the measures taken by the authorities in the field of climate change constitute a violation of their constitutional and Union obligations, such as to significantly affect the collective and individual rights of Romanian citizens. On the contrary, the burden of proof is on the Defendants who must prove that the measures adopted pass the tests of reasonableness and can be monitored.
- (2) In other words, the precautionary principle leads to a paradigm shift: the rational approach of “check the facts and then act” is reversed to “act and only then check the facts”.
- (3) As we have shown in sub-chapter 6.1.2.2. **it is the Defendants who must prove that:**
 - The assumed percentages (overall for GHG, and specifically for renewable energy sources and energy efficiency) are sufficient to limit global warming to 1.5 degrees Celsius and 2 degrees Celsius, respectively;
 - The aforementioned assumed percentages are not in breach of Romania's commitments, i.e. they are in line with the NDCs;
 - The NDC proposes a clear plan to phase out all forms of emissions from its territory;
 - Failure to meet the climate targets (if it has occurred) is not the fault to the Defendants since they have used all the resources available (solar, wind, in relation to the

geographical conditions of our country), in other words, they must prove the break in the causal chain;

- Progress/regression on climate change can be easily monitored.

7.2. Evidence

(1) Notwithstanding the foregoing paragraph, **we respectfully request Your Honor to allow the following requests for evidence:**

- a) The documentary evidence** which is the subject matter of the APPENDICES to this action;
- b) Pursuant to Article 293 CCP**, we ask that the Defendants be ordered to make available:
 - The national GHG emission inventories for the period 2016-2022, both centralized and broken down by type of emissions (CO₂, CH₄, nitrous oxide, SO₂) and by type of activities (including illegal deforestation);
 - 2015 NDCs and 2020 NDCs.

Proof of evidence: breach of the general and specific positive obligations set out in paragraphs 6.1., 6.2. and 6.3. with regard to limiting the GMST to 1.5 degrees Celsius and 2 degrees Celsius, respectively.

- To order the Defendants to provide the document sent by the European Commission on the recommendation to increase the renewable energy target for 2030 to at least 34%, and all the documentation and calculations on the basis of which the 30.7% target was set by the NESCAP. Moreover, to order the Defendants to submit the reports that have been sent to the institutions and bodies at the European Union level on the share of renewable energy in Romania over the last 3 years.

Proof of evidence: disregard of the European Commission's recommendation, but also of the 45% target set by REPowerEU, as well as incorrect reporting to the EU.

- To order the Defendants to provide a list of hydropower projects currently earmarked for investment, as well as the projects proposed for investment in the coming years, with documented evidence of each project's energy capacity.

Proof of evidence: the continued funding of hydropower projects that are harmful to the environment and have no significant energy capacity.

- To order the Defendants to provide documents in support of the concrete strategy for the use of heat pumps for domestic and industrial purpose and the related investments.

Proof of evidence: lack of a strategy for the using heat pumps and lack of interest in investing in this sector.

- To order the Defendants to provide data on energy produced by onshore wind farms for the last 3 years, as well as the strategy for using them and investment in offshore wind farms (Black Sea).

Proof of evidence: lack of interest in wind energy capacity.

- To order the Defendants to provide data on Romanian population's energy poverty situation for the last 3 years, its causes, and proposals to improve/eradicate the phenomenon.

Proof of evidence: lack of a strategy on energy poverty.

- To order the Defendant Ministry of Energy to provide the projections for the use of green hydrogen to generate electricity, as well as the proposed measures to “develop the entire green hydrogen value chain (production, storage, transport and use of hydrogen)”, the wording of the NRRP.

Proof of evidence: although NRRP identifies the Ministry of Energy as responsible for reforming the National Hydrogen Strategy, these ambitions are purely declarative, with no intention of being put into practice.

- To ask the Romanian Government to submit all NFI studies on illegal logging to the case file.

c) Pursuant to Article 297 CPC, we hereby request

- **To ask the Court of Auditors of Romania to submit to the case file the documentation concerning the Report of the Court of Auditors of Romania on the management of public forests in the period 2013-2018; the documentation is relevant in relation to the Report's conclusion regarding the massive percentage of illegal deforestation.**

Proof of evidence for section b) thesis XVII and section c): the total amount of wood (from both illegal and legal logging) is required to calculate the total GHG. As of May 17, 2022, according to the Climate Equity Reference Calculator⁷³, Romania has not submitted emissions from deforestation and land use.

- To ask the Ministry of European Investment and Projects to submit to the case file the documents and scientific data on the basis of which it has proposed the use of natural gas in combination with green hydrogen in the NRRP.

Proof of evidence: the references to green hydrogen are purely derisory, with no scientific basis.

d) The opinion of a Specialized Institute according to Article 330 paragraph (3) CCP

- i) We ask the Court to request the CCCA (Center for Climate Crime Analysis) to prepare an expert opinion, within the scope of its competence, on the **percentage of illegal GHG emissions** (i.e. illegal deforestation⁷⁴, projects with environmental impacts without environmental assessment or with inadequate environmental assessments).

⁷³ <https://calculator.climateequityreference.org/#>

⁷⁴ A CCAC case study concluded that recent policy changes and a slowdown in enforcement actions have led to a significant increase in the rate of deforestation in Brazil. In fact, the Brazilian organization MapBiomas found that around 90 percent of current deforestation in the Amazon is unauthorized and therefore illegal.

CCCA (Center for Climate Crime Analysis)⁷⁵ - is a non-profit organization founded by prosecutors and investigators to support and expand climate action worldwide. The analyses of this organization are made available to Courts, State and non-State actors, and the organization abides by the national legislation of the applicant in preparing the report.

The Steering Committee of the CCCA consists of:

1. Reinhold Gallmetzer (President), Prosecutor at the International Criminal Court;
2. Eric Iverson (Secretary/Treasurer), prosecuting attorney at the International Criminal Court and former US military prosecutor;
3. Alex Whiting, Chief of Investigations at the Kosovo Special Prosecutor's Office, former Prosecution and Investigations Coordinator at the International Criminal Court and US federal prosecutor.

The CCCA also reviewed the illegal logging in the Amazon rainforest.

e) **Any other evidence** deemed necessary during the debates.

8. Conclusions

- (1) In order to counter climate change, all GHG emissions must be halted before 2050. Consumption habits must change over the next 27 years; a revolution in transport and energy production is needed. The CO₂ concentration **must not exceed 350 ppm**, scientists warn⁷⁶. The current level is 419 ppm according to the Keeling curve and 420 ppm according to the NASA Observatory⁷⁷, and is increasing by 2-3 ppm per year, with the critical thresholds (those *tipping points*) being 430 ppm (1.5 degrees Celsius) and 450 ppm (2 degrees Celsius). If we do not change this figure quickly and get below 350 ppm this century, we risk triggering tipping points and irreversible effects that could put climate change truly beyond our control.
- (2) With regard to the general legal obligation to combat the effects of climate change, the Defendants' ambitions are contrary to the legal obligations assumed by the Paris Agreement, the European Climate Law and the Romanian Constitution since:
 - The modest percentage of 44% refers to a different baseline year (2005) than the one assumed by the EU (1990), while in the period 1990-2000, Romania had one of the highest levels of greenhouse gas emissions in Europe⁷⁸, due to the extensive use of fossil energy and strong industry, and in 2005 emissions were declining, the percentage assumed in relation to 1990 emissions is significantly lower than 44;

⁷⁵ <https://climatecrimeanalysis.org/who-we-are/>

⁷⁶ <https://e360.vale.edu/features/how-the-world-passed-a-carbon-threshold-400ppm-and-why-it-matters>

⁷⁷ <https://climate.nasa.gov>

⁷⁸ <https://ourworldindata.org/co2/country/romania>

- Romania assumes a percentage reduction only by applying the emissions trading scheme;
 - Romania assumes no percentage calculated on all types of emissions (legal and illegal);
 - There is no commitment for the period after 2030;
 - They do not pass the reasonableness tests (the Defendants have not taken all possible measures to reduce emissions, there has been no progressive increase in ambition, on the contrary, there has been a regression, the measures taken do not lead to limiting global warming to 1.5 degrees Celsius. The latest scientific data⁷⁹ show that in order to limit global warming to 1.5 degrees Celsius, **the Defendants would have to assume a 79-83% reduction by 2030**).
- (4) As regards the energy sector, which is the main GHG emitter, national ambitions are virtually non-existent, although clear targets have been set at EU level for growth by 2030 (compared to 2020) of 9% and 13% respectively, set by Fit for 55 and REPowerEU.
- a. Furthermore, the targets set by the Defendants do not meet the standard of the highest possible climate ambition, in view of Romania's geographical conditions, which are favorable to offshore and onshore wind and solar energy.
 - b. Investment programs in the solar energy sector are ineffective (of for installing photovoltaic panels, thus hindering potential prosumers who would contribute to the national energy system) and non-existent in terms of equipping households and industry with heat pumps, the latter being only briefly mentioned in national plans.
 - c. Moreover, the national strategy does not aim to effectively address the problem of energy poverty (as translated by population income, housing conditions, etc.). On the contrary, bills are rising and quality of life is falling.
- (5) In terms of renewable energy, our country continues to focus on biomass and hydropower projects, although the EU strategy emphasizes a shift away from primary wood biomass and the dismantling of dams, all to protect the environment, biodiversity and thus improve human living conditions.
- a. Fossil fuel projects and investments are also underway, purporting to introduce green hydrogen, for which there is still no concrete data on feasibility.
 - b. As regards the share of renewable energy sources in final energy consumption, the INECP foresees an increase to 30.7% by 2030 (and to 29% through the NRRP), which is well below the 45% target set by the EU's PowerEU package. Again, this is a failure to meet the highest possible climate ambition standard.

⁷⁹ <https://climateanalytics.org/media/romania.pdf>

- c. There is a tendency to report data that do not reflect the reality on the ground, in order to create the impression of national progress, without pursuing adaptation and raising climate ambitions in line with updated scientific data and strategies adopted in particular at EU level.
- d. As regards the share of renewable energy sources in final energy consumption, the INECP foresees an increase to 30.7% by 2030 (and to 29% through the NRRP), which is well below the 45% target set by the EU's PowerEU package. Again, this is a failure to meet the highest possible climate ambition standard.

There is a tendency to report data that do not reflect the reality on the ground, in order to create the impression of national progress, without pursuing adaptation and raising climate ambitions in line with updated scientific data and strategies adopted in particular at EU level.

- (6) Because of climate chaos, an entire generation - our generation - is being asked not what it wants to become but what it *needs to* become. We can't put all the responsibility on the shoulders of the next generation, which is why we have fostered this initiative.
- (7) In light of the foregoing, the anemic measures taken by the Defendants to combat climate change which by
 - The lack of clarity of plans, the lax deadlines proposed for implementation,
 - The lack of formal accountability,do nothing more than jeopardize the safety of their own citizens and the fundamental rights to which we are all entitled.
- (8) In general, we do not need new technologies to solve the vast majority of climate problems, as shown in the Blue Fruit Infographic and the UN Sustainable Development Goals but rather the **immediate application** of solutions already at our disposal.

Accordingly, we ask the Court to order the Defendants to take all necessary measures to achieve the climate targets.

We request the case be heard even if we are not present at the hearing pursuant to Article 411 paragraph (1) section 2 of the CCP.

We hereby enclose:

- Power of Attorney;
- Judicial stamp duty of RON 250;
- Appendix No. 1 – By-Laws of Declic Association;
- Appendix No. 2 – Plaintiff’s requests and Defendants’ replies;
- Appendix No. 3 - Judgment of the Administrative Court of Paris of October 14, 2021 and Judgment no. 19/2019 of the Supreme Court of the Netherlands - translated into Romanian;
- Appendix No. 4 - United Nations Framework Convention on Climate Change (UNFCCC);
- Appendix No. 5 - Excerpt from the CJEU PreussenElektra Judgment (C-379/98);
- Appendix No. 6 - Conclusions of the Stern Report - including translation into Romanian;
- Appendix No. 7 – “White Paper - Adapting to Climate Change: Towards a European Framework for Action”, adopted by the Commission of the European Communities - Romanian version;
- Appendix No. 8 - World Health Organization findings on the link between climate change and public health;
- Appendix No. 9 - Infographic by expert John Lang and IPCC 2022 Reports - including the Romanian translations of the reports;
- Appendix No. 10 - Infographics by expert John Lang on COP27 conclusions and recommendations;
- Appendix No. 11 - Report entitled “Romania’s National Energy Strategy, EU Ambitions and the Climate Emergency”, the Energy Policy Group Report, as well as the Romanian summary of the latter;
- Appendix No. 12 - Glasgow Leaders’ Declaration on Forests and Land Use (2021)
- Appendix No. 13 - Response of the Ministry of Environment, Water and Forests on the non-implementation of SUMAL 2.0 Forest Inspector, Report of the Court of Auditors and Letter of Formal Notice 2020/2033;
- Appendix No. 14 - Response from the National Environmental Protection Agency (NEPA) and print screen from the NEPA website;
- Appendix No. 15 - Excerpt from the book “Litigating the Climate Emergency: How Human Rights, Courts, and Legal Mobilisation Can Bolster Climate Action”, published by Cambridge University in 2022 - translated into Romanian;
- Appendix No. 16 - Report prepared for the 2019 UN General Assembly by Prof. Philip Alston.

Please note that the copy for the Court is accompanied by a CD containing the graphs referred to in Appendices 9 and 10.

Moreover, for environmental reasons, the copies to be served to the Defendants are accompanied by a CD containing all the appendices to the action.

PLAINTIFFS UNDER SECTIONS 1-6,

By Attorney-at-Law Roxana Mândruțiu

Attorney-at-Law Lucia Turcu

Attorney-at-Law Isabela Porcius