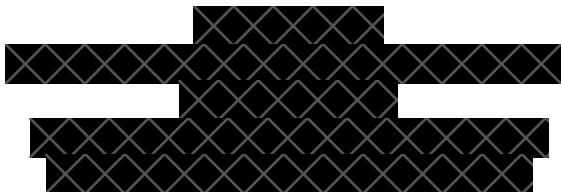


R O M Â N I A C O U R T
OF APPEAL CLUJ
ADMINISTRATIVE AND TAX LITIGATION SECTION III

File No 114/33/2023



The case pending before the Court of First Instance is an administrative and tax dispute brought by the applicants DECLIC ASSOCIATION, [REDACTED]

[REDACTED] against the defendants GOVERNMENT OF ROMANIA, PRIME MINISTER, MR NICOLAE CIUCĂ, MINISTRY OF THE ENVIRONMENT, APORES AND FORESTS, MINISTRY OF THE ENVIRONMENT, APORES AND FORESTS, MR BARNA TANCZOS, MINISTRY OF ENERGY, MINISTRY OF ENERGY, MR VIRGIL DANIEL POPESCU, concerning an obligation to act.

The summons procedure has been duly completed.

The representative of the plaintiffs, lawyer Mândruțiu Roxana, appeared on the roll call in open court, with power of attorney on file at page 2 (volume 4) of the case file, the defendants being absent.

The case was reported by the court clerk who noted that the case was at the first trial stage.

At the same time, it is noted that the applicants have submitted *proof of payment of the legal stamp duty* of 250 lei for each applicant, as set out in the document on page 85.

On 03.03.2023, the defendant Ministry of Environment, Water and Forests submitted to the file
welcome (f. 135-157 volume 3).

On 06.03.2023 the defendant Barna Tanczos, as head of the Ministry of the Environment, Water and Forests, filed a *statement of defence (f. 159-165 volume 3).*

On 13.03.2023, the applicant Declic Association filed *documents (f. 1-94 volume 4).*

On 05.04.2023, Bankwatch Romania filed an *application for intervention accessory (f. 106-112 volume 4).*

On 06.04.2023, the applicants filed *notes for the hearing (f. 115-135 volume 4).*

On 07.04.2023 the defendant Ministry of Energy filed a *statement of defence (f. 49-51 volume 4).*

On 07.04.2023 Climate Litigation Network *filed written notes (f. 53-74 volume 4).*

Pursuant to Article 223(3) of the Code of Civil Procedure. and art. 411 para. 2, the parties were requested to be heard in the absence of the parties from the hearing, as mentioned on pages 81, 157 of the file.

The Court asks the applicants' representative whether she is aware of the statement of defence submitted by the defendant Ministry of Energy.

The representative of the applicants states that she has noted the statement of defence lodged on the court's website, but requests that a copy of the document be provided.

The Court lists a copy of the statement of defence on the court's portal and hands it to the applicants' representative.

The Court notes that the defendant Ministry of Energy raised the following objections in its statement of defence: the *objection of lack of standing and interest of the applicants; the objection of lack of passive standing for the natural persons sued (the heads of the defendant institutions); the objection of the prematurity of the application of the fine for the heads of the defendant institutions*, in which sense, the Court asks the representative of the applicants whether they request a time limit for the preparation of defences or whether these objections can be raised at this time.

The plaintiffs' representative states that she does not request a time-limit, believing that the court may consider the objections raised by the defendant Ministry of Energy at this time.

Since the question of composition is at issue, the representative of the applicants submits that the present court has general jurisdiction to hear the case.

The Court, pursuant to Article 131 of the Code of Civil Procedure, in conjunction with the provisions of Article 96 para. 1 para. 1 of the Code of Civil Procedure. and Article 10 of Law No. 554/2004, finds that it has general, material and territorial jurisdiction to hear and determine the present case.

The Court notes from the summons for this hearing that the plaintiffs' representative was notified of the statements of defence lodged in the case file, with the exception of the statement of defence lodged by the defendant Ministry of Energy, which was notified to her at this hearing. The applicants' representative states that she was served with the statement of defence on the case-file. case.

The Court challenges the plea of lack of locus standi and lack of interest of the applicants' complaint raised by the defendant Ministry of Energy, noting that the same plea was also raised by the defendant Ministry of the Environment, Water and Forests.

The representative of the applicants requests the rejection of the plea of lack of interest of the Declic Association for the following reasons. Although the defendant submits that the applicants have not indicated which administrative act is being challenged or which specific action is being challenged, in its view, under the provisions of Article 8(2) of Law No 554/2004 it is an unjustified refusal which is treated as an individual administrative act. Moreover, it states that it has invested in a legality review on an environmental issue, namely climate change law, the objective of the Declic Association being closely linked to the subject-matter of the legal action.

Therefore, in view of this connection and of Decision No 8/2020 of the Court of Cassation and Justice of the European Communities, it is requested that the plea of lack of interest of the Declic Association be rejected. At the same time, it requests that account be taken of the judgments handed down in similar cases concerning climate change, namely those handed down by the Paris Court of Appeal, which found that the NGO has standing and a legitimate interest, in relation to its purpose, and also the multitude of actions in this area.

The Court, after deliberation, will reject the objection of lack of standing and the objection of lack of interest of the applicants raised by the defendant Ministry of Energy and the Ministry of Environment, Water and Forests in the statement of defence, holding, in essence, that in the present case there is an alleged unjustified refusal to deal with an application which has implications for the right to life, to a healthy environment, so that Article 1 para. 1, art. 2 para. 2 of Law 554/2004 and, therefore, the plaintiffs have the possibility to challenge this alleged unjustified refusal to resolve their claim before the administrative court. The Court holds that we are not in the presence of an objective dispute, but of a subjective dispute, by means of which the applicants request the court to prevent/remove potential harmful interference with their fundamental rights. In resolving the objection, account was also taken of Article 95 para. 1, Art. 20 para. 6, art. 3 lit. h, art. 5 lit. d of GEO 195/2005 and art. 3 of the association's statute (f.87).

The Court questions the plea of lack of locus standi of the natural persons who are heads of public institutions, and first of all, in the light of Article 22 of the Code of Civil Procedure, asks the representative of the applicants whether the action was brought against the ministers or the natural persons occupying those positions.

The representative of the plaintiffs claims that the action was brought against the ministers and requests the rejection of the plea of lack of locus standi of the natural persons who are the heads of public institutions, since she has sued the ministers and the institution of the Prime Minister, taking the view that they must be joined in the proceedings by the Romanian Government and the

ministries sued.

It also invokes similar case law of the Paris Court of Appeal which has upheld the action and obliged ministers to take climate change mitigation measures.

The Court asks the applicants' representative whether the Romanian courts are obliged to comply with the French decisions and whether this judicial practice can be considered only as evidence.

The representative of the plaintiffs states that this judicial practice is for information purposes given that the French and Belgian judicial systems are similar legal systems, representing evidence in evidence.

The Court, after deliberation, **will admit the exception of the lack of passive legal standing of the natural persons who are the heads of the public institutions**, namely the Prime Minister, the Minister of Energy and the Minister of Environment, Water and Forests, holding, in essence, that the Ministers are heads of the Ministries, respectively of the Government and represent the Ministries and the Government in relation to other public authorities, to natural and legal persons in the country and abroad, as well as in court, the Ministers occupy a position of public dignity, not being themselves public authorities in the sense of Article 2 para. 1 lit. b of Law no. 554/2004. Thus, the Court holds that only the ministries/government and not the ministers, who are not prosecuted under Article 16 of Law No 554/2004, are the authorities which issued the alleged unjustified refusal to deal with the application. At the same time, in order to admit this exception, the considerations of the decision of the Court of Cassation of Justice no. 2/2023, the Complex for the resolution of questions of law, in particular paragraphs 114, 118, 123, 125, 126 and 132, should also be taken into account, as regards the distinction between Art. 18 para. 5 and 6 of Law No 554/2004 in relation to Article 24 of Law No 554/2004.

The Court questions the plea that the fine imposed on the heads of the defendant institutions is premature.

The representative of the applicants submits that she leaves it to the discretion of the court to rule on that objection.

The Court, after deliberation, **will reject the plea of prematurity of the imposition of the fine on the heads of the defendant institutions**, having regard to the considerations of the decision of the Court of First Instance No 2/2023.

The Court challenges the inadmissibility of the first plea.

The applicant's representative requests that the objection of inadmissibility of the first plea be rejected, since there is in no way a breach of the principle of the separation of powers in the State. Moreover, she stated that she was not asking for certain measures to be taken so that the court would intervene as an executive authority or for certain laws to be created so that the court would intervene, but she was asking for the necessary measures to be taken in order to comply with the law, that is to say, to comply with the climate objectives as set out in the Paris Agreement, [REDACTED]

[REDACTED] On the other hand, with regard to human rights, it considers that the court should require the authorities to justify measures that interfere with human rights. For those reasons, it considers that the principle of the separation of powers in the State is not infringed, but that the court may rule on the merits of the present case.

The Court, after deliberation, **is to qualify the objection to the inadmissibility of the first plea** as a defence on the merits, to be considered as such.

With regard to the *plea of lack of locus standi in relation to petition 2 of the application for a writ of summons raised by the Ministry of the Environment, Water and Forests*, the Court asks the applicant's representative to clarify, in relation to petitions 1 and 2, who the defendants are.

The plaintiffs' representative considers that it cannot be held that the Ministry of the Environment should not be held liable or should not answer on petition No 2, because increasing renewable energy to 45% and increasing energy efficiency to 13% automatically leads to greenhouse gas reductions, as they are both mitigation and adaptation strategies, in other words, they cannot each go their separate ways. Furthermore, it points out that the departments are not interconnected since the Ministry of the Environment considers that it should only deal with the environment and not with sustainable development and the Ministry of Energy only with energy and that's it. In conclusion, it considers that the plea of passive procedural status of the 2nd plaintiff raised by the Ministry of the Environment, Water and Forests should be rejected.

The Court, after deliberation, **is to join to the merits the plea of lack of locus standi in respect of the second plea raised by the Ministry of the Environment, Water and Forests.**

The Court asks the applicants' representative whether she is aware that there will be further applications for ancillary relief in this case.

The applicants' representative submits that no further applications for ancillary relief should be filed.

The Court, orders the representative of the applicants to submit to the Court, before the date of the hearing to be granted, a summary of the pleas of illegality raised in the action, not exceeding 10 pages, in both electronic and pdf format.

The representative of the applicants submits that she will file a summary of the action for damages.

The Court, having regard to the provisions of Article 64 para. 1 of the Code of Civil Procedure **will order the communication of the applications for accessory intervention in the present case to the parties,** and at the same time will order the interveners to **pay the stamp duty on these applications in the amount of 20 lei** in accordance with the provisions of Article 27 of GEO no. 80/2013, with the right of review in accordance with Article 39 of GEO no. 80/2013 and the right to request facilities for the payment of court fees in accordance with Article 33 para. 2 of GEO No 80/2013.

The Court questions the need to serve a summons on the intervener with a request that it file the application, in so far as it was not annexed in its entirety to the application, the statutes of the association.

The representative of the complainants argues that she agrees with this.

As regards the request made by the Climate Litigation Network, the Court asks the representative to what extent she considers the institution to be compatible with our law or to clarify whether or not this request should be clarified as an ancillary claim.

The plaintiffs' representative submits that the request made by the Climate Litigation Network should be considered as a legal opinion rather than a request for ancillary intervention.

The Court is to reply, in Romanian, to the e-mail address of the Climate Litigation Network from which the request was sent to the Court, namely filippo.fantozzi@urgenda.nl, in order to comply with the provisions of Article 150(2) of the EC Treaty. 4, art. 292 par. 5 and Article 148 of the Code of Civil Procedure, given that the official language of the dispute is Romanian, in which sense: to submit a certified translation of the document sent to the court, at the latest by the deadline for the hearing, and the document sent to the court must be accompanied by a certified copy of the document submitted in the foreign language; to sign the original or a digital copy of the document sent; to state whether it intends to make an application for ancillary intervention in accordance with the provisions of Article 150 of the Code of Civil Procedure; to state whether it intends to make an application for ancillary intervention in accordance with the provisions of Article 292 of the Code of Civil Procedure; to state whether it intends to make an application for ancillary intervention in accordance with the provisions of Article 292 of the Code of Civil Procedure. 63 et seq. of the Code of Civil Procedure, and if the answer is in the affirmative, to stamp accordingly with the sum of 20 lei, with the right to review and public legal aid under the provisions of Art. 39 and Art. 33 of GEO no. 80/2013. It is also requested to submit the articles of association in accordance with Art. 150 para. 4, art. 292 par. 5 C.p.c.

CURTEA

After deliberation:

Dismisses the plea of lack of locus standi and the plea of lack of interest of the applicants raised by the defendant Ministry of Energy and the Ministry of the Environment, Water and Forests in their defence, for the reasons set out in the introductory part of the judgment.

The **plea of lack of locus standi of natural persons who are heads of public institutions is upheld for** the reasons stated in the introductory part of the order.

Dismisses the plea that the fine imposed on the heads of the defendant institutions is premature, having regard to the considerations of Decision No 2/2023 of the Court of Justice of the European Communities.

The plea of inadmissibility of ground 1 is a defence on the merits and must be considered

as such.

Order the applicant's representative to submit to the Court, by the date of the hearing to be granted, a summary of the pleas of illegality raised in the action, not exceeding 10 pages, in both electronic and pdf format.

Communicate the applications for ancillary intervention made in this case with the parties with a view to the resolution of the applications for ancillary intervention, as well as their stamping in the amount of 20 lei in accordance with the provisions of Article 27 of GEO No 80/2013 with the right of review in accordance with Article 39 of

GEO No 80/2013 and the right to request facilities for the payment of stamp duty under Article 33 para. 2 of GEO 80/2013.

Summons the intervener to submit, in so far as the application has not been **fully** appended, ***the statutes of the association***.

The Court shall **reply, in Romanian, to the e-mail address of Climate Litigation Network** from which the request was sent to the Court with the mention to reply to the requests mentioned by the Court in the introductory part of the judgment.

For these reasons, it will grant a new trial, in which sense:

DISPLAY

Adjourns the case to **22 May 2023 at 1.30 p.m., Room 38**, until when:

Order the applicant's representative to submit to the Court, by the date of the hearing to be granted, a summary of the pleas of illegality raised in the action, not exceeding 10 pages, in both electronic and pdf format.

Communicate the applications for ancillary intervention filed in this case with the parties in order to settle the applications for ancillary intervention, ***as well as their stamp duty in the amount of 20 lei*** according to the provisions of Article 27 of GEO No 80/2013 with the right of review according to Article 39 of GEO No 80/2013 and the right to request facilities for the payment of the judicial stamp duty according to Article 33 para. 2 of GEO No 80/2013.

Summons the intervener to submit, in so far as the application has not been **fully** appended, ***the statutes of the association***.

Reply, in Romanian, to the e-mail address of Climate Litigation Network from which the request was sent to the court, i.e. [REDACTED] in order to comply with Article 150 para. 4, Art. 292 para. 5 and art. 148 of the Code of Civil Procedure, given that the official language in dispute is Romanian, in which sense: to submit to the file, at the latest by the time of the judgment, a certified translation and the document sent to the court to be accompanied by a certified copy of the document submitted in the foreign language, to sign the original or digital copy of the document sent; to state whether it intends to make an application for ancillary intervention in accordance with the provisions of art. 63 et seq. of the Code of Civil Procedure, and if the answer is in the affirmative, to stamp accordingly with the sum of 20 lei, with the right to review and public legal aid under the provisions of Art. 39 and Art. 33 of GEO no. 80/2013. It is also requested to submit the articles of association in accordance with Art. 150 para. 4, art. 292 par. 5 C.p.c.

Delivered in open court on 10 April 2023.

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Note: WITH COMMUNICATION OF INTERVENTION REQUESTS.