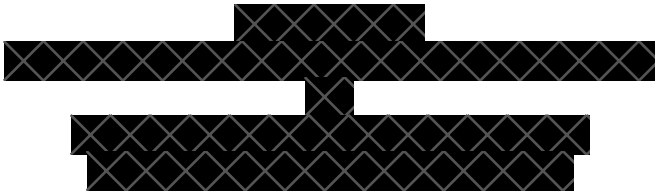
R O M Â N I A

COURT 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] 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 applicants, lawyer Mândruțiu Roxana, appeared at the roll-call in open court, with power of attorney on file at page 2 (volume 4) of the case-file, the other parties being absent.

The case was reported by the Registrar of the Court who noted that the case was at the second trial stage.

On 19.04.2023, the applicants filed a summary of the pleas of illegality (f. 84-89 *vol.5*).

On 25.04.2023 Climate Litigation Network filed a *response to the e-mail sent by the court (f. 91-113 vol. 5).*

On 04.05.2023, the applicants filed *documents (f. 124-131 vol.5).*

On 05.05.2023, the intervener 2Celsius Association filed *proof of payment of the 20 lei stamp duty (f. 133 vol.) and the association's articles of association (f. 134-138 vol. 5).*

On 16.05.2023, the intervener Bankwatch Romania Association filed *documents (f. 169-199 vol. 5) and proof of payment of the judicial stamp duty of 20 lei (f. 199 verso vol. 5).*

On 16.05.2023, the applicants filed *documents (f. 1-11 vol. 6).*

On 17.05.2023 the defendant Barna Tanczos as head of the Ministry of Environment, Water and Forests submitted *written notes* to the file *(f. 12).*

On 17.05.2023, the defendant Ministry of the Environment, Water and Forests submitted to the file *welcome (f. 14-26 vol. 6).*

On 22.05.2023, the applicants filed *notes for* the *hearing (f. 73-74 vol. 6).*

On 22.05.2023, the intervener Bankwatch Romania Association filed the *association's statute (f. 95-101 vol. 6).*

The Court calls into question the legal nature of Climate Litigation Network, namely the clarification of the application filed by it as an application for ancillary intervention...

The plaintiffs' representative considers that the application filed by Climate Litigation Network is not an application for ancillary relief, but merely a legal opinion. If it were an application for ancillary relief, it should have been filed and subsequently dismissed on the ground of untimeliness.

The Court, after deliberation, *will clarify the application filed by Climate Litigation Network as an application for ancillary intervention,* holding that the notion of *amicus curiae* is not compatible with

the system of law laid down by the Code of Civil Procedure, the institution closest to it being the institution of an application for ancillary intervention, and therefore, with all the objection raised by Climate Litigation Network in the pleadings on file at folio 93 of vol. 4 of the case-file, it will classify it as an application for ancillary intervention, and, correlatively, it will call into question the plea of illegality of its stamp.

The representative of the applicants submits that since the application was not stamped, the plea of unlawful stamping must be upheld.

The Court, after deliberation, *upholds the plea of illegality and will strike out Climate Litigation Network's application for ancillary relief.*

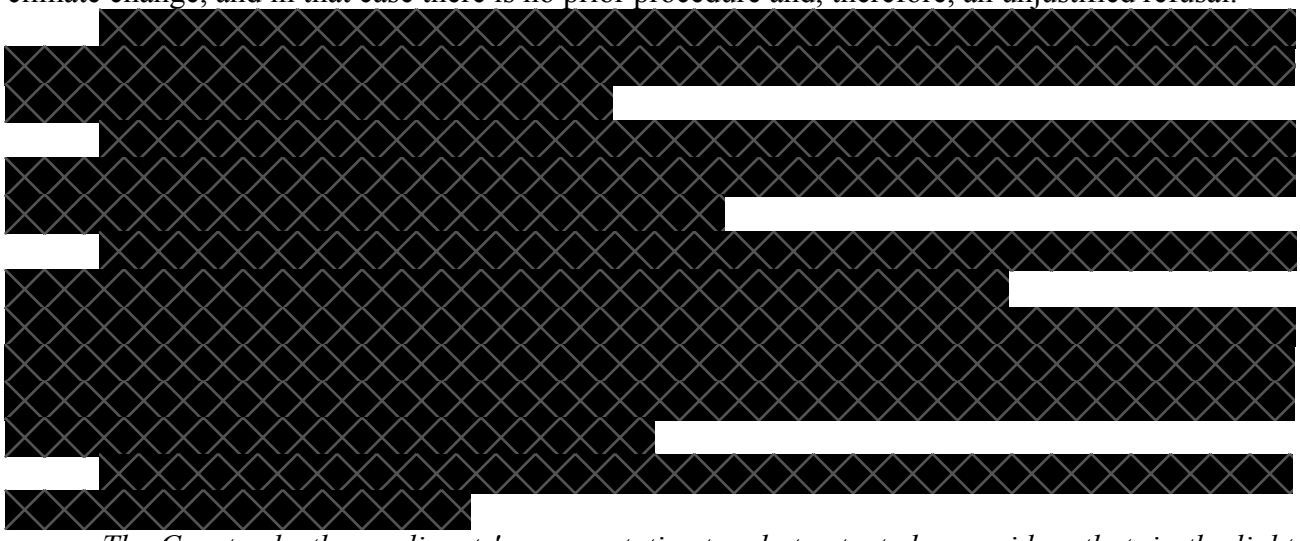
The court is considering the applications for leave to intervene made by the Bankwatch Romania Association and the 2Celsius Association.

The applicant's representative requests that the applications for leave to intervene be granted in the light of Article 51(1)(b) of Regulation No 40/94. 1 and 3 of the Code of Civil Procedure, considering that there is a legitimate private interest, as evidenced by the direct link between the title of the legal action and the purpose and objectives of the associations, as interpreted in the statutes. Thus, the CJEU's judgment of 8 November 2022 also held that NGOs have a privileged status and can challenge any act or task of the authorities which contravenes national law.

Second, it is submitted that the two applications support the applicants' defence, which is why the applications for leave to intervene are admissible in principle.

The Court, after deliberation, in the light of the provisions of Articles 63 and 66 of the Code of Civil Procedure, is to grant in principle the applications for ancillary intervention made by the Bankwatch Romania Association and the 2Celsius Association, having regard also to the statutes of the two associations on pages 70 of Volume 4 and 113 of Volume 4, noting that they have been stamped. Moreover, the Court finds that the interveners have a legitimate interest in relation to the status of the two NGOs, that there is a sufficient connection between the main application and the third party's application, that the application is made in time and contains the elements required by Article 148(2) of the EC Treaty. 1 of the Code of Civil Procedure.

The applicants' representative submits that the defendant Ministry of the Environment has pleaded the inadmissibility of plea 3, to the effect that in the leniency procedure the applicants did not request the adoption of concrete plans for adaptation to climate change, only for mitigation of climate change, and in that case there is no prior procedure and, therefore, an unjustified refusal.



The Court asks the applicants' representative to what extent she considers that, in the light of the way in which the petitions were formulated, and also having regard to paragraphs 4 and 5 section 3.3, p. 10, section 4 paragraph 2, p. 12 of the application, in the event that the action is upheld, to state whether the operative part of the judgment would not be capable of identifying the measures to be taken to achieve the objectives set out in the application within the time-limit laid down, so as to entail the possibility of a judgment which would be unenforceable, which would constitute a breach of Article 7(1)(b) of Regulation No 1049/2001? 6 of the ECHR, with reference to the case-law of the ECHR in which it has been held that the right of appeal to a court would be illusory

if the internal legal order of a Contracting State would allow a final and binding judgment to be ineffective to the detriment of a party, i.e. Imobiliara Saffi v. Italy, paragraph 63, Dorneanu v. Romania, paragraph 32. This is not contrary to Article 3(h) of GEO No 195/2005 but is mainly a matter of the way in which the applicants intended to invest the court, namely the principle of availability.

In the light of the foregoing, the Court therefore gives the floor to the applicants' representative on these matters, on the merits and on the objection of inadmissibility of claim 3.

The applicant's representative requests that the action be allowed in its present form, with costs, in accordance with the evidence on file, and considers that the action is well founded on the following grounds.

First, it argues that the current measures are incompatible with any commitments as assumed in the Paris Model Agreement, i.e. the current plans and measures are not capable of limiting the temperature to 1.5 degrees Celsius and 2 degrees Celsius respectively. All these aspects, including the scientific reports which it has submitted to the case file, namely the IPPC report of 2022 and the IPPC synthesis report of 2023, from which it emerges that in the scenario that Romania would be compatible with limiting global warming to 1.5 degrees Celsius, represents a reduction in emissions of 79-82%, as regards renewable energy it would be 80-83%.

Regarding the percentages requested by the plaintiffs, contrary to the defendants' claims that they are collective percentages assumed at EU level, in his view they represent a fair share that Romania must assume in order to stay on the 1.5 degrees Celsius trajectory. Otherwise, there is also CJEU case law and scientific reports on which there is scientific and political consensus, which show that the fundamental rights of citizens will be affected.

Second, it states that the failure to take certain measures also constitutes a breach of the positive obligations of the State laid down in Article 155 of the Romanian Constitution. It also considers that the measures are incompatible with the fundamental rights laid down in the Romanian Constitution and the European Convention on Human Rights, namely: the right to health, the right to a healthy environment, which are collective rights, the Declic Association being, in its opinion, a spokesman for future generations and acting within and for individual rights by taking concrete measures.

Moreover, it argues that the evidence submitted by the defendants, namely the National Gas Inventory submitted to the United Nations, shows that there is a total lack of transparency, as the inventory submitted by the defendants is in English and there is no translation of this inventory into Romanian, and the citizens of the country who should be involved in this whole decision-making process are not aware of the official documents that are submitted to the United Nations and that concern all citizens.

At the same time, it points out that the percentage is very modest and is based on a different reference date, namely 44 % compared to 2005, since 1989, after the fall of the communist regime, there was a restructuring of the Romanian economy and emissions fell by themselves and not as a result of an effort by the public authorities and the defendants to reduce greenhouse gas emissions.

Furthermore, he claims to have pointed out that the Ember report, the one submitted with the meeting notes, shows that without an effort by the countries of the Eastern bloc of the European Union, the target of 42.5-45% renewable integration will not be achieved.

The Court asks the representative of the applicants, in relation to this issue, to specify to what extent she considers that, if the situation described in the application were to arise, i.e. if all the ceilings were to be met, if the States neighbouring Romania did not fulfil their obligations, in her opinion, it would still be possible to discuss Romania's compliance with its obligations in the manner described by the applicant in the action.

The claimants' representative argues that it is true that there is independence and collective effort, but at the same time there is also individual responsibility because otherwise each state would say that it will not fulfil its obligations because neighbouring states do not fulfil their obligations.

The Court, in view of this contention, asks the applicants' representative whether this would be a matter for a measure to be ordered by a national court or by an EU court.

The representative of the applicants considers that, in the present case, in Romania, this measure should be ordered by a national court.

With regard to renewables, it argues that it has requested that the ambition be increased to 45% and, with regard to this requested percentage, the defendant Ministry of the Environment disclaims its passivity and the fact that it has nothing to do with the energy system and argues that it is a collective percentage and Romania can only be bound by the determined national quota which is set by the discretionary power of the State. But, in his opinion, even this discretionary right of the state represents an excess of power in a situation where fundamental rights and freedoms are being violated, as long as our country is far from the 1.5 - 2 degrees Celsius trajectory, clearly violating fundamental rights, and this reality cannot be contested.

As can be seen from the report submitted to the file, it states very clearly that Romania has the capacity to have at least 63% of renewable energy by 2030 or, as it has shown in the application and in the summary of pleas of illegality, it considers that our country not only has a very low percentage of renewable energy, but it is also misdirected towards hydropower, and water is very valuable. In this regard, he appreciates that hydropower, at some point, will no longer be considered a constant source of energy because water is becoming a scarcer commodity. Therefore, in his opinion, hydropower projects are obsolete and at the same time efforts are again focused on woody biomass and green hydrogen in combination with gas and not on solar and wind energy.

As regards the plea of inadmissibility, it considers that it should be qualified as a substantive defence and, in the alternative, dismissed in view of the fact that the applicant has requested, in the leniency proceedings, both an increase in renewable emissions and a reduction in greenhouse gas emissions, and that the renewable part represents both a climate change mitigation strategy and an adaptation strategy.

The Court will treat the plea of inadmissibility as a substantive defence to be considered as such and will stay the case.

On 25.05.2023 the defendant Ministry of Energy submitted *written notes* to the file.

CURTEA

In need of time to deliberate and to give the parties an opportunity to submit written submissions, the judgment is adjourned under Article 396(2) of the EC Treaty. 2 of the Code of Civil Procedure:

DISPLAY

Adjourns the case to **6 June 2023** by making the decision a v a i l a b l e to the parties through the court registry under Article 396(2) of the EC Treaty. 2 of the Code of Civil Procedure.

Delivered in open court on 22 May 2023.

[redacted]

Adjournment of the judgment until 6 June 2023

[redacted]