Access to justice in environmental matters

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Access to justice at Member State level

1.1. Legal order – sources of environmental law

The Parliament is the supreme representative institution and the sole legislative authority of Romania. The Parliament is bicameral, and the 2 chambers are the Senate and the Chamber of Deputies. The Romanian Parliament adopts laws, motions, and decisions. Laws are constitutional laws (by which the Constitution is amended), organic laws and ordinary laws.

The Government, the representative of the executive power, can issue in certain conditions ordinances (emergency or simple) and decisions for the implementation of primary legislation. The ministers can issue *ministerial orders in their specialized area of competence*.

1) General introduction to the system of protection of environment and procedural rights of persons (natural, legal, NGOs) in the specific national order

The main rules and regulations in the environmental field are usually set by **laws**, as well as government **ordinances** and **decisions** (primary legislation). These forms of enactments are used for the transposition of EU Directives and Regulations, and they range from general permitting and liability rules to specific provisions on environmental matters. **Secondary legislation** for the procedural implementation of primary legislation is issued in the form of ministerial **orders** by government bodies such as the Ministry of Environment, Waters and Forests.

1.1.1. The main public authorities in environmental issues

The Ministry of Environment, Waters and Forests is the main authority in charge of national policy, which coordinates directly or indirectly through its subordinate institutions, national and local authorities. The main institutions subordinated to the Minister of Environment, Waters and Forests are:

The National Environmental Protection Agency-NEPA (Agentia Națională pentru Protecția Mediului), which is mainly in charge of implementation, with 42 subordinated county agencies.

The National Environmental Guard (Garda Națională de Mediu), which is mainly in charge of enforcement, with 42 subordinated county commissariats and two additional commissariats for Bucharest and the Danube Delta.

The National Agency for Natural Protected Areas (Agenția Națională pentru Arii Naturale Protejate) with five territorial areas.

Water resources protection matters are the responsibility of the Ministry of Environment, Waters and Forests, which coordinates **the Romanian Waters National Administration** (Administrația Natională Apele Române), which includes the headquarters (in Bucharest) and 11 River-Basin Administrations across the country (organised at river basin/hydrographical area level) and 42 Water Management Systems at county level. Research activity is performed by the National Institute for Hydrology and Water Management, which is under the coordination of the Romanian Waters National Administration.

The Ministry of Environment, Waters and Forests also governs *the forestry areas*, with the **National Forests Administration Romsilva** (Regia Națională a Pădurilor Romsilva) at the national level and a series of local Forest Districts.

The Forestry Guards (formerly Territorial Inspectorates for Hunting and Forests) are in charge of implementation and enforcement of regulations.

The Commission's 2017 Environmental Implementation Review report on Romania found that, 'there is considerable room for improvement in terms of administrative capacity, as well as concerning the implementation of environmental legislation', and that 'there is a lack of trust among political and administrative layers, resulting in weak ownership of decisions and policies'.

There are various associations active in Romania as well as in the Black Sea area that interact with the government in representing the interests of civil society, including through advocacy efforts during public consultation periods for both legislative acts and national and local strategies, plans or permitting procedures for new developments. Romania has a set of administrative regulations for access to public information and transparency of public decision-making which have allowed NGOs to ensure citizens' access to decision-making. Civil society has been mainly involved in the permitting process for projects, and EIA permitting procedures in particular, where local communities can exert pressure and on occasion have been successful in delaying the issuance of permits until all concerns have been properly addressed. These NGOs include Greenpeace CEE Romania, WWF Romania, Bankwatch Association Romania, Agent Green Association, Mare Nostrum, etc.

The Environmental Protection Law, Governmental Ordinance no 195/2005, Art. 5, stipulates that any person has the right to go to court or address the administrative authorities to protect the right to a healthy environment, without having to prove impairment of a right. The environmental NGOs also have standing in court in any environmental matter.

The treaties and international agreements are also very important in the protection of the environment. For acts of this type to have any effect on Romanian legislation, they need to be approved by the Romanian Parliament.

Overall, in Romania the environmental rights – access to information, public participation, and access to justice – are guaranteed through the Romanian Constitution and specific legislation.

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights

The Constitution regulates the right to a healthy environment as well as other connected human rights:

Right to a healthy environment, Art. 35

This article states that the state must acknowledge the right to a healthy, well-preserved, and balanced environment to every person. In order to accomplish this, the state must provide the legislative framework. Also, there is an obligation for every person (natural or legal) to improve and protect the environment.

Right to life, to physical and mental integrity, Art. 22

This article guarantees the right to life as well as the right to physical and mental integrity of persons. Also, it prohibits torture, or any kind of inhuman or degrading punishment or treatment. In the last paragraph the death penalty is abolished.

Although this article does not directly refer to the protection of the environment, "The right to life, as well as the right to physical and mental integrity of person are guaranteed", so it could not be respected without a healthy environment, as pollution can damage physical and mental health.

The right to protection of health, Art. 34

This article guarantees the protection of health. The state is bound to take measures to ensure public hygiene and health. Also, the organization of the medical care and social security system in case of sickness, accidents, maternity and recovery, control over the exercise of medical professions and paramedical activities, as well as other measures to protect physical and mental health of a person are established according to the law.

Access to justice in the national constitution, Art. 21 states that

This article guarantees that every person is entitled to bring a case before the courts for the defence of his legitimate rights, liberties, and interests. It is forbidden to restrict this right by any kind of law. It also establishes that all parties are entitled to a fair trial and a resolution of their cases within a reasonable term. Administrative special jurisdiction is optional and free of charge.

The right of International treaties on human rights, Art. 20

This article refers to the priority of the pacts and treaties regarding fundamental rights. This means that when any inconsistencies exist between the pacts and treaties on fundamental human rights that Romania is a party to, and the national law, the international regulations shall take precedence, unless the Constitution or the national laws comprise more favourable provisions. Also, the constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights with the pacts and other treaties that Romania is a party to.

The right of petition, Art. 51

This article is about the right to petition. It states that citizens have the right to address the public authorities by petitions formulated only in the name of the signatories. It also provides the right to forward petitions for legally established organizations (exclusively on the behalf of the collective body it represents). The right to petition is exempt from tax. The public authorities are obliged to answer petitions in the time limits and the conditions established by law.

The right of a person harmed by a public authority, Art. 52

This article recognizes the right of any person aggrieved in his/her legitimate rights or interests by a public authority, by means of an administrative act or by the failure of a public authority to resolve his/her application within the lawful time limit, to the acknowledgment of his/her claimed right or legitimate interest, the annulment of the act and reparation for the damage. The exact conditions for this have to be regulated by an organic law. Also, the State shall bear the patrimonial liability for any prejudice caused as a result of judicial errors. The State's liability is established by law and does not eliminate the liability of the magistrates if they exercised their mandate in ill will or gross negligence.

Under the Romanian legal system, the Constitution is the legal act at the top of the legal pyramid. All the other normative acts have to be consistent with the Constitution's provisions.

The constitutional right to environment can be invoked directly in courts. However, there are laws which further develop the environmental rights. On the other hand, sometimes the courts and the administrative bodies will not apply the Constitution alone, stating that it is a general Act that cannot be applied alone.

According to Article 11, paragraph 2 of the Constitution, treaties ratified by the Parliament become part of the national law. That means that one can rely directly on international agreements that are ratified by the Romanian Parliament.

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts

The environmental framework law in Romania is the **Emergency Governmental Ordinance (EGO) no 195/2005** regarding the protection of the environment, approved by the Parliament.

Sectoral legislation is passed through Acts issued by Parliament as well as Emergency Governmental Ordinances approved by Laws:

Emergency Governmental Ordinance no 195/2005 approved by Law no 265/2006 regarding the protection of the environment is the framework law in environmental issues,

Emergency Governmental Ordinance no 57/2007 on the regime of protected natural areas, habitat conservation natural, of wild flora and fauna, approved with modifications and additions by Law no 49/2011,

Law no 292/2018 on assessing the impact of certain public and private projects on the environment,

Governmental Decision no 1076/2004 on establishing the procedure for carrying out the environmental assessment for plans and programmes,

The Water Law no 107/1996,

Law no 104 of June 15, 2011 on ambient air quality,

Law no 211/2011 on the waste regime,

Law no 246/2020 on land use, conservation, and protection of soil,

The Forest Code – Law no 46/2008,

Law no 278/2013 on industrial emissions,

Law no 121/2019 on the assessment and management of ambient noise,

Law no 111/1996 (republished *) FR2 on the safe conduct, regulation, authorization, and control of nuclear activities,*

Order no 1798/2007 for the approval of the Procedure for issuing the environmental permit,

Law no 74/2019 on the management of potentially contaminated and contaminated sites,

Law no. 59/2016 on the control of major-accident hazards involving dangerous substances,

Law no 407/2006 hunting and protection of the hunting fund,

Emergency Governmental Ordinance no 64/2011 regarding the ecological storage of carbon dioxide, approved with modifications by Law no 114 / 2013,

Emergency Governmental Ordinance no 68/2007 approved by Law no 19/2008 regarding environmental liability with regard to the prevention and remedying of environmental damage,

Emergency Governmental Ordinance no 43/2007 on the deliberate release into the environment of genetically modified organisms, approved with modifications and additions by Law no 247/2009,

Emergency Governmental Ordinance no 202/2002 on integrated coastal zone management approved by Law no 280/2003, etc,

According to EGO no 195/2005 Art. 5, "the state recognizes to any person the right to a healthy and ecologically balanced environment and guarantees:

Access to environmental information respecting the confidentiality conditions provided by law;

The right of association in environmental organizations;

The right to be consulted in decision-making processes regarding the development of environmental policies and legislation, the regulatory acts, plans and programmes;
The right to appeal directly or through the environmental organizations to the administrative and judicial authorities regarding environmental issues, regardless of whether an injury or damage occurred;
The right to compensation for the damages suffered.
The principles guiding the implementation of EGO 195/2005, according to Art. 3, are:
The principle of integrating environmental policy into other sectoral policies;
The precautionary principle in decision-making;
The principle of preventive action;
The principle of retention of pollutants at source;
The 'polluter pays' principle;
The principle of conservation of biodiversity and natural ecosystems specific to the biographic natural framework;
Sustainable use of natural resources;
Information and public participation in decision-making and access to justice in environmental matters;
Development of international cooperation for environmental protection.
Access to information must be ensured in accordance with to the Aarhus Convention and the national legislation regarding access to information:
Law no 86/2000 - ratification of the Aarhus Convention
Law no 544/2001 - Freedom of Information Act
Governmental Decision no 878/2005 - transposition of the "Aarhus Directive" no 2003/4/EC.
Access to information and public participation in decision-making process as well as the principles of access to justice are also stated in Art. 20 of EGO 195 /2005:
The public *is informed* in the regulatory procedures of the plans, programs, and activities according to the national legislation provisions. The *consultation of the public* during the regulatory procedures is mandatory and it is carried out according to the national legislative provisions. The public's *access to justice* is ensured according to the national legislative provisions. The *environmental NGOs have standing in court* in environmental cases.
Overall, in Romania *the environmental rights – access to information, public participation, and access to justice – are guaranteed through the Romanian Constitution and specific legislation.*

4) Examples of national case-law, role of the Supreme Court in environmental cases

As examples of national cases and the role of the Supreme Court in environmental cases we can mention:

Saligny Case - File no 2937/2012

At the first instance court, the plaintiffs requested the annulment of a partial authorization for the conduct of nuclear activities. In support of the action, the applicants claimed that the contested authorization was illegally issued for the partial location of the nuclear waste dump in Saligny, Constanta County, because it was done without public consultation, which is mandatory according to the provisions of the Aarhus Convention. The plaintiffs also claimed that the public in the neighbouring states should be consulted.
The Appeal Court dismissed the action as unfounded stating that at the date of issuing the authorization for conduct of nuclear activities, the requirement for public consultation did not have to be met, as the act had only the status of an authorization of principle and so the procedure of public consultation was necessary only for obtaining the final authorization. The court also rejected the ground of illegality in violation of the provisions of the Convention regarding access to information, noting that the defendant submitted in the authorization a file for the public communication programme.
The plaintiffs filed a recourse. In the first ground of recourse, the plaintiffs showed that the public information provided by the defendant was not in conformity with the Aarhus Convention as the entire public was not consulted, not all the documentation was available in order to obtain partial authorization, the public did not have precise deadlines to become aware of documentation, there was no public announcement at national level and in neighbouring states, and there was no deadline for the public to be able to express their point of view.
The High Court of Cassation and Justice, analysing all the arguments, admitted the declared recourse and cancelled the authorization for nuclear activities issued by the defendant. The decision is final.

The lignite mine case - File no 34493/3/2013

The Tribunal was invested with a complaint, requesting the annulment of an administrative act regarding the permanent removal of 130.8 ha of forest to continue the extraction of lignite. The arguments of the plaintiff showed that in essence the environmental procedure was only partially made, and only for a related activity (the deforestation), while the main activity (exploitation of lignite over an area of 130 ha) was not evaluated at all, even though the project for the extension of a lignite mine included the cutting of the forest and all the related activities, like mining coal deposits and other related or extension activities such as using fossil fuels. It was also shown that the project was incorrectly framed in Annex 2 to GD 445/2009, while it should have been framed in the Annex no 1, point 19 because the main purpose is clearly the extension of the lignite mines and not the forest cutting. Secondly it was shown that the defendants sliced the project in order to extend a coal mine, as the environmental assessment must be carried out for the main project as well as for all the related activities; otherwise the environmental agreement violates Community legislation and practices the European Court of Justice. Also, it was shown that the environmental agreement does not provide for measures to compensate for the clearing works, although this is compulsory according to national law.
The plaintiffs showed that the urban certificate for the land subject to deforestation was missing. Other factors invoked were: the lack of analysis of the climate factor; lack of analysis of the impact on the health of the population and on the protected sites in the vicinity; lack of any adequate assessment and violation of the provisions of the Aarhus Convention.
The court, after analysing all the circumstances of the case, admitted the action brought by the applicants and annulled the environmental agreement issued by the defendant, Gorj Environmental Protection Agency.

Deforestation to build lignite mine - File no 2094/3/2012

The initial complaint filed by the plaintiffs asked for a decision to be suspended. The object of this decision was the permanent removal from the forestry circuit of 0.9604 ha in order to extend the lignite mine. The court rejected the complaint as unfounded. The court considered that the document was issued in compliance with the legal conditions but that the plaintiffs had not provided any evidence of impending material damage which would be difficult or impossible to rectify later, to justify the exceptional character of the suspension of the administrative act. The Tribunal ignored the fact that on the basis of the issuance of the contested document, not all the necessary documents provided by law were present. The court also ignored the fact that not all the documents were attached. Regarding the production of an imminent damage, the plaintiffs believe that the provisions of Law no 554/2004 should be interpreted according to the Aarhus Convention, and according to the provisions of the EU Treaty covering environment protection, a lignite mine was defined as having a major negative impact[1].

Analysing the records in the file, the Court of Appeal considered that the recourse was well-founded. Also, the court analysed the evidence submitted on the file and concluded that the announcement of the public consultation was posted at the mayor's office just 1 day before the decision was issued, making it impossible to effectively participate in the debate, thus not complying with the obligation imposed by national law and Aarhus Convention standards. The court also observed that, as the appellants correctly argued, the environmental declaration covered a much larger area than the one mentioned in Decision no 394/20/12/2011, respectively 50.89 ha compared to 0.9604 ha. Regarding the imminent damage, the court stated that the extension of the lignite mine had a negative impact on the environment. Therefore, the court found both that the condition of the case was well justified and the imminent damage was demonstrated. The court admitted the appeal and suspended the decision issued. The decision was final.
By way of example, we can name a few other important cases on the related matters:
File no 41690/3/2016, Bucharest Tribunal, stage - fund, object - suspension of execution of an administrative act, environment; and the appeal from the Court of Appeal Bucharest, same file no.
File no 10058/3/2017, Court of Appeal Bucharest, stage - recourse, object - cancellation of the building permit, environment;
File no 26233/3/2018, Court of Appeal Bucharest, stage - recourse; object - access to information, environment;
File no 2552/97/2015, Court of Appeal Alba Iulia, stage - recourse; object - annulment of an administrative act, construction, and operation of micro hydroelectric plants, environment;
File no 20092/3/2007, Bucharest Tribunal, stage - fund, object - annulment of an administrative act, construction of Basarab upper-level passage, environment;
File no 32614/3/2014, Bucharest Tribunal, stage - fund, object - annulment of an administrative act, environment;
Decision no 2937/2012, High Court of Cassation and Justice, stage - recourse, object - annulment of an authorization for the conduct of nuclear activities, environment;
File no 225/2/2019, Court of Appeal Bucharest, stage - fund, object - cancellation and suspension of administrative act, environment;
File no 495/57/2018, Court of Appeal Alba Iulia, stage - appeal in cancellation, object - annulment of an administrative act, environment;
File no 34493/3/2013, Bucharest Tribunal, stage - fund, object - annulment of an administrative act, environment; and the appeal from the Court of Appeal Bucharest, same file no.
The High Court of Cassation and Justice is the unique and supreme court in Romania, which *has the role of ensuring the interpretation and uniform application of the law* by other courts, according to its competence. The review in the interest of law is the main procedure for achieving this. Recently, the High Court of Cassation and Justice has issued a regulation concerning *the standing in court of the NGOs* acting in court against administrative decisions, stating that, *their legitimate public interest is subsequent to the private legitimate interest stated in their constitutive acts and statutes as their general scope and specific objectives.*

5) Can the parties to the administrative procedure directly rely on international environmental agreements, or can only the national and EU transposing legislation be referred to?

According to Article 11, paragraph 2 of the Constitution, treaties ratified by the Parliament become part of national law. That means that **one can rely directly on the international agreements.**
Once it is ratified, the international law takes effect automatically in national law; it is part of the national law, thus giving the right for the interested parties to invoke it directly or in conjunction with other normative acts which may define the implementation framework, if that is the case, and imposing an obligation on administrative bodies or courts to take into account its provisions. According to Art. 20 para 2 of the Romanian Constitution, if there are inconsistencies between the human rights treaties to which Romania is a party and the internal legislation, the provisions of the international legislation take precedence, except where the internal provisions provide for more favourable legal norms.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

In Romania, there are 4 levels of court and three levels of jurisdiction, both in civil and criminal cases:
District Courts (188)
Tribunals (42)
Courts of Appeal (15)
High Court of Cassation and Justice.

2) Rules of jurisdiction – how is it determined if there is jurisdiction of the Court, cases of conflict between different national tribunals (in different Member States)?

In environmental litigation, sometimes the jurisdiction will be established according to civil law (for example when the litigation is about an obligation to do something[2], and when the defendant is not a public institution). The competence can also be established according to administrative law, for example when the litigation is about an administrative act.
Environmental cases are usually under the jurisdiction of the administrative courts. In this case, the competent first court is the County Tribunal if the public authority being called as defendant is at the local or county level (e.g. the County Environmental Protection Agency or the County Council) or the Court of Appeal if the public authority is at the central level (e.g. the National Environmental Protection Agency, the Ministry of Environment, etc.). The appeal in such cases will be heard by the Court of Appel if the first Court is the Tribunal, or the High Court of Cassation and Justice if the first court is the Court of Appeal.
According to administrative procedure law, there are only two grades of jurisdiction: first court and cassation appeal.
1.2.1. The general competence applicable to the environmental litigation when the defendant is not a public institution.
The jurisdiction is established by the object of the cause and its value.
District courts
The district courts do not have legal personality and are established within national counties and in Bucharest.
In civil matters, the district courts hear any applications which can be expressed in terms of money, up to and including 200,000 lei, regardless of whether the parties have the status of professionals.
District courts also hear appeals against decisions of the local public administration authorities with local jurisdiction and other institutions with such jurisdiction, in the cases provided for by the law, and any other applications which are by law within their jurisdiction.
In criminal matters, the district courts hear mainly the following cases:
In general, all types of offence, excluding those which by law are to be heard at first instance by the district courts, tribunals, the courts of appeal or the High Court of Cassation and Justice.
Regarding environmental crimes, there are some special provisions in EGO 195/2005. According to Art.98 EGO 195/2005:
Paragraph 1 “The following acts constitute crimes and are punishable by imprisonment from 3 months to one year or by a fine if they were likely to endanger the life or health of humans, animals or vegetation:

burning of stubble, reeds, shrubs, and grassy vegetation in protected areas and on lands subject to ecological restoration;
accidental pollution due to non-supervision of new works, operation of installations, technological equipment and treatment and neutralization, mentioned in the provisions of the environmental agreement and/or the integrated environmental authorization."
Paragraph 2 "The following acts constitute crimes and are punishable by imprisonment from 3 months to one year or by a fine if they were likely to endanger the life or health of humans, animals or vegetation:
pollution by the discharge, in the atmosphere or on the ground, of some wastes or dangerous substances;
the production of noise beyond the permitted limits if this seriously endangers human health;
the continuation of the activity after the suspension of the environmental agreement or of the authorization, respectively of the integrated environmental authorization;
the import and export of prohibited or restricted dangerous substances and preparations;
failure to immediately report any major accident by persons in charge of this obligation;
the production, delivery or use of chemical fertilizers, as well as any unauthorized plant protection products, for crops intended for sale;
non-compliance with the prohibitions regarding the use on agricultural lands of plant protection products or chemical fertilizers."
Paragraph 3 "The following acts constitute crimes and are punishable by imprisonment from 6 months to 3 years if they were likely to endanger the life or health of humans, animals or vegetation:
non-supervision and non-insurance of landfills and hazardous substances, as well as non-compliance with the obligation to store chemical fertilizers and plant protection products only packaged and in protected places;
the production or import for the purpose of placing on the market, as well as the use of dangerous substances and preparations without observing the provisions of the normative acts in force and the introduction on the Romanian territory of waste of any nature for the purpose of their elimination;
transport and transit of dangerous substances and preparations, in violation of the legal provisions in force;
carrying out activities with genetically modified organisms or their products, without requesting and obtaining the import/export agreement or the authorizations provided by the specific regulations;
cultivation of genetically modified higher plants for testing or commercial purposes, without the registration required by law".
Paragraph 4 "The following acts constitute crimes and are punishable by imprisonment from 1 year to 5 years if they were likely to endanger the life or health of humans, animals or vegetation:
provocation, due to non-monitoring of ionizing radiation sources, environmental contamination and/or exposure of the population to ionizing radiation, failure to promptly report the increase over the permitted limits of environmental contamination, improper application, or failure to intervene in case of nuclear accident;
unloading wastewater and waste from ships or floating platforms directly into natural waters or knowingly causing pollution by discharging or sinking into natural waters, directly or from floating ships or platforms of hazardous substances or waste."
Paragraph 5 "The following acts constitute crimes and are punishable by imprisonment from 2 to 7 years:
continuation of the activity that caused the pollution after the order to cease this activity;
failure to take measures to completely dispose of hazardous substances and preparations that have become waste;
refusal to intervene in case of accidental pollution of waters and coastal areas;
refusal to control the introduction and removal of dangerous substances and preparations or the introduction into the country of crops of microorganisms, plants and live animals of wild flora and fauna, without the consent of central public authority for environmental protection.
The attempt to commit one of these crimes is punishable under criminal law[3].
The finding and investigation of crimes are done ex-officio by the criminal investigation authorities according to their legal competence.
Regarding the competence for these crimes, there is no special provision, so they will be judged by the district court (this is the common court in criminal matters). The investigation will be conducted by the prosecutor's office which has the competence to invest the district court.
Other normative acts that include special crimes regarding the environment:
The Forrest Code (Law no 46/2008)[4]. The forest code also includes a provision regarding the competent authorities. In addition to the criminal investigation bodies, the following are competent to ascertain the facts provided for in Arts. 106, 107-109 and 110: forestry staff within the central public authority responsible for forestry and territorial structures with forestry specifics, forestry staff within the National Forests Authority (Romsilva) and its territorial structures, forestry staff within the forestry regime schools, authorized officers and non-commissioned officers of the Romanian special police.
EGO 57/2007[5] on the regime of protected natural areas, conservation of natural habitats, wild flora, and fauna,
Law no 101/2011[6] for the prevention and sanctioning of certain acts regarding environmental degradation.

Tribunals

The **42 national tribunals** have legal personality and are organized at the county level. The area of jurisdiction of each tribunal covers all district courts in the county in which the tribunal is situated.

In civil matters, the tribunals hear the following cases:

As **courts of first instance**, the tribunals hear all the applications which are not by law within the jurisdiction of other courts;
As **courts of appeal**, they hear appeals against judgments handed down by district courts at first instance;
As **courts of cassation**, they hear applications for review of judgments handed down by district courts, which, under the law, are not subject to appeal, and in any other cases expressly provided for by law.
The tribunals decide on conflicts of jurisdiction between district courts within their area of jurisdiction, and applications for review of judgments handed down by district courts in the cases provided for by law.

Courts of appeal

The Courts of appeal in Romania are headed by a President, who may be assisted by one or two Vice-Presidents.
The **15 courts of appeal** have legal personality, each court covering the jurisdiction of several tribunals (around 3).

In civil matters, the courts of appeal hear the following cases:

as **courts of first instance**, they hear applications relating to administrative and tax disputes, in accordance with the special legal provisions;
as **courts of appeal**, they hear appeals against judgments handed down by tribunals at first instance;
as **courts of cassation**, they hear applications for review of judgments handed down by tribunals on appeal or against judgments handed down at first instance by tribunals which, under the law, are not subject to appeal, and in any other cases expressly provided for by law.
As courts of appeal, they hear appeals against criminal judgments handed down by district courts and tribunals at first instance.
The courts of appeal also decide on **conflicts of jurisdiction** between tribunals or between district courts and tribunals within their area of jurisdiction, or between district courts within the jurisdiction of different tribunals in a court of appeal's area of jurisdiction.

The courts of appeal also decide on requests for the **extradition** or transfer abroad of convicted persons.

High Court of Cassation and Justice

As the highest court in Romania, it is the only judicial institution with the power to ensure uniform interpretation and application of the law by the other courts. The review in the interest of law is the main procedure for achieving this.

The High Court of Cassation and Justice has four sections, each having its own jurisdiction:

Civil Section I (civil matters);

Civil Section II (commercial matters);

Criminal Section;

Administrative and Tax Litigation Section.

The four five-judge panels, the Joint Sections, the panel on reviews in the interest of law, and the panel on clarifying certain legal matters are other sections of the supreme court, which have their own jurisdictions.

Civil Section I, Civil Section II, and the Administrative and Tax Litigation Section of the High Court of Cassation and Justice hear applications for review of judgments handed down by courts of appeal and other court decisions, as provided for by law, and applications for review of non-final judgments or judicial acts of any nature which cannot be appealed by any other means, and where the legal proceedings before a court of appeal have been interrupted.

The High Court of Cassation and Justice meets in Joint Sections for the following:

To address referrals regarding changes to the case-law of the High Court of Cassation and Justice;

To refer to the Constitutional Court in order to verify the constitutionality of laws before their promulgation.

The jurisdiction is determined according to the value of the object of the court application.

The jurisdiction is established by the value of the object stated in the principal request. The accessory value is not taken into consideration (penalties, interests etc.).

If the plaintiff files multiple requests based on different acts or facts (at the same court), the jurisdiction will be established based on the value, nature, or the object of the case. If one of the requests should be in the jurisdiction of another court, the cause will be disjointed, and the court will decline its jurisdiction in favour of the competent court.

Rules regarding the territorial jurisdiction of courts. The general rule is that the request for summons will be addressed to the court in the jurisdiction where the defendant lives at the moment when the action has been submitted to the court. The court remains competent to judge the matter even if the defendant is moving to another place. If the address of the defendant is unknown the request for summon will be addressed to the court in the circumscription of the plaintiff.

There are some rules in certain fields regarding **special competence**:

The request for legal action against an association, company, or other entity without legal personality (Art. 110 Civil Procedural Code).

Claims against the state, central or local authorities and institutions, as well as other legal persons under public law can be filed either at the court where the plaintiff lives or at the court at the defendant's headquarters. (Art. 111 Civil Procedural Code).

The parties of the litigation can file in writing or verbally (Art. 126 Civil Procedural Code)

Rules regarding the quality of the defendant/plaintiff (if he/she is a judge), Art. 127 Civil Procedural Code.

The lack of jurisdiction can be public or private. We can talk about the lack of public jurisdiction when:

The jurisdiction over the litigation is not subject to a court's jurisdiction (this exception can be invoked by parties or by the judge in any stage of the case);

There is a violation of material competence, when the trial is within the jurisdiction of another court (this exception can be invoked by parties or by the judge at the first court session, when the parties are legally summoned before the first court);

If there is a violation regarding the jurisdiction of a court, for example when a request has to be filed at a specific court (according to territorial jurisdiction) and is filed at another court.

Jurisdiction checking

At the first hearing, which the parties are legally summoned before the court and can formulate conclusions, the judge *is obliged to verify and to establish if the notified court is competent in all aspects* (general, material, and territorial).

When such an exception is invoked, the court is obliged to establish the competent court or if that is the case to establish another competent institution. If the court considers itself competent it will continue to judge the case (this decision can be attacked when the court has given the final judgement, together with the other issues in question). But if the court considers itself not competent to try the case, its decision is final and cannot be attacked. The case will be sent to the competent court or institution, as appreciated by the first court.

Cases of conflict

We are in the presence of jurisdictional conflict when:

Two or more courts declare themselves equally competent to judge the same trial;

When two or more courts have mutually declined the jurisdiction to judge in the same process or, in the case of successive refusal, if the last invested court declines in favour of one of the courts that previously declared itself incompetent.

Also, if the court dismisses the application as inadmissible because the jurisdiction over the matter belongs to another institution without jurisdictional activity or because it is not within the jurisdiction of the Romanian courts, the decision can be attacked with recourse to the superior court.

The court before which the conflict of jurisdiction has arisen will suspend ex officio the trial of the case and will forward the file of the competent court to resolve the conflict.

Resolution of the conflict of competence:

The conflict of jurisdiction arising between two courts is resolved by the court immediately superior and common to the courts in conflict.

There can be no conflict of jurisdiction with the High Court of Cassation and Justice. The decision to decline the jurisdiction or to establish the jurisdiction pronounced by the High Court of Cassation and Justice is mandatory for the referring court.

The conflict of jurisdiction arising between a court and another body with jurisdictional activity is resolved by the court hierarchically superior to the court in conflict.

The court competent to judge the conflict will decide, in the council chamber, without summoning the parties, by a final decision.

1.2.2. The jurisdiction of the courts when the defendant is a public institution

According to Law no 554/2004 (this is relevant for environmental litigation), Art. 10 states some rules regarding the competent court. So the disputes regarding administrative acts issued or concluded by local and county public authorities, as well as those regarding taxes and duties, contributions, custom debts, as well as their accessories of up to 3,000,000 lei (619,208.10 euros) will be resolved by the tribunals, and those regarding the administrative acts issued or concluded by the central public authorities, as well as those regarding taxes and duties, contributions, customs debts, as well as their accessories higher than 3,000,000 lei (619,208,10 euros), will be resolved by the courts of appeal. The cassation of a decision will be retried by the higher court, so if a

decision is given by the tribunal it will be retried by the court of appeal, and if the first decision is given by the court of appeal, it will be retried by the High Court of Cassation and Justice.
According to Art. 10, paragraph (3), the plaintiff (natural or legal person) will address the matter exclusively to a court where he/she has a domicile or where he/she has headquarters. If the plaintiff is a public authority, public institution or assimilated to them, it must address the matter exclusively to a court from the domicile or headquarters of the defendant.
The provisions concerning the conflict of jurisdiction, jurisdiction checking, and other matters covered by the civil procedural code also apply to the administrative courts as common law, if the special law does not regulate special legal norms that would have priority (*specialia generalibus derogant*).

3) Specialities as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

There are no special courts for environmental matters. Generally, these cases (which have as their object administrative acts or actions or omissions of some public institution) start in the administrative section of the Tribunal and then move to the administrative section of the Court of Appeal on appeal. If the administrative act is issued by a central authority, then the first court will be the Court of Appeal and the second will be the High Court of Cassation and Justice (Law no 554/2004).
Environmental cases are to be resolved not only in administrative sections of the courts, but also in other sections, whenever the subject of the litigation is not an administrative act or action or inaction by public authorities.
There is no possibility for forum shopping. Competences of the court are binding and clearly stated.

4) Level of control of judges in case of administrative appeals, concept of own motion, what are its limits? Rules on court action on its own motion

Article 18 of Law no 554/2004 regarding the administrative court procedure shows that they also have both cassation competences and some reformatory rights.
The court can:
Decide that an administrative act is annulled totally or partially;
Oblige the authority to issue a new administrative act or document or to execute a certain administrative procedure;
Decide whether the administrative procedures that were done to issue the administrative act on trial are legal or not;
Decide on the damages, if requested by the plaintiff;
Regarding an administrative contract, the court can:
Decide to annul, totally or partially;
Oblige the authority to sign the contract if the plaintiff has the right to that contract;
Impose some obligations on the parties;
Replace the consent of one party if the public interest so requires;
Decide on moral and material damages.
According to Art. 20, Law no. 554/2004 regarding the administrative appeal, in the case of admitting the appeal, the court of appeal, in cancelling the sentence, will adjudicate over the first court in the dispute. When the judgement of the first court was rendered without judging the merits or if the judgement was made in the absence of the party who was illegally summoned both in the administration of evidence and in the debate on the case, the case will be referred once to this court. If the judgement in the first instance was made in the absence of the party who was illegally summoned to administer the evidence but was legally summoned in the debate in the first court, the court of appeal, in cancelling the sentence, will re-judge the litigation in the first court.
The court could never act on its own motion in Romania. However, the courts can ask the European Court of Justice for a preliminary ruling.
The court can discuss with the parties the necessity for certain evidence to be presented in court, such as **documents, interrogations, judicial expertise, on-site research, and/or witnesses**, as well as material evidence (pictures, movies, recordings, etc.) and can order their administration even if the parties do not agree[7].
An interesting situation can be encountered when the court (against the will of the parties) establishes the need for judicial expertise. The cost for judicial expertise is usually borne by the party which requested it or by both parties, but if the court establishes the need for such an expertise when the parties disagree and the parties do not pay the cost it will not be administered.
The injunctive relief can only be granted if the plaintiff has formulated such a request.

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure ministries and/or specific state authorities

The administrative appeal in Romania is regulated by **Law no 554/2004** regarding the Procedure in the Administrative Courts. This regulation is available for all environmental cases. According to this article, before addressing the competent administrative litigation court, the person who is considered injured in his or her right or in a legitimate interest by an **administrative act** addressed to him must ask the **issuing public authority or the hierarchically superior authority**, if possible, within 30 days from the date of communication of the document, **to revoke the prejudicial act** in whole or in part, given the circumstances.
However, for justified reasons (e.g. if the party was ill, in a coma or abroad, so the communication could not be received), the injured person (addressee of the act) can file **a complaint in the case of unilateral administrative acts over the 30-day period** but no later than 6 months from the date of the administrative act or from the moment when the plaintiff was aware of the cause of annulment, but no longer than 1 year after the date of the administrative act.
However, if the said act is a normative act, the complaint can be addressed any time. According to Art. 7¹ the administrative complaint concerning the normative acts (acts of the government) can be filed regardless of any deadline.
In Romania there is no independent body that would revise the legality of the administrative acts during the administrative appeal.
In the case of actions introduced by the prefect, the People's Advocate, the Public Ministry, the National Agency of Civil Servants, or regarding the request of the persons injured by ordinances or provisions of ordinances or of the actions directed against administrative acts, which are no longer in term to be revoked, as they entered the civil circuit and have started to produce legal effects, as well as the cases from Art. 2, alin 2[8] and Art. 4[9] the administrative complaint is **not mandatory**.

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

The person whose right recognized by law or whose legitimate interest was impaired by an administrative act or who did not receive any response within the 30 days or received an unjustified refusal to their request for environmental information (Art 2 L 554/2004) may refer to the competent administrative litigation court, in order to request the cancellation in whole or in part of the act, repair the damage caused and, possibly, reparations for moral damages. Also, the person who considers himself/herself harmed in a right or legitimate interest can submit a request to the court if the authority did not resolve the addressed matter in the time specified by law or if the authority refused to carry out a certain administrative operation necessary for the exercise or protection of the person's rights or legitimate interests. The reasons invoked in the application for annulment of the act are not limited to those invoked by the prior administrative complaint.
The competent court will be:

The Tribunal when the object is a litigation regarding administrative acts emitted or concluded by the local or county public authority as well as when the complaint refers to taxes, assessments, contributions, customs fees, and accessory, up to a total of 3,000,000 lei (619,336.43 euros).
The Court of Appeal, when the object is a litigation regarding administrative acts emitted by the central public authorities as well as when the complaint refers to taxes, assessments, contributions, customs fees, and accessory, superior to the sum of 3,000,000 lei (619,336.43 euros).
The plaintiff, a natural or legal person in private law, will apply exclusively to the court from his domicile or headquarters. When the plaintiff is a public authority, public institution or assimilated to these it will apply exclusively to the court where the defendant has his domicile or headquarters
There is no reference in any law to the fact that environmental cases should be timely. Such reference exists for all administrative cases and it only applies in administrative courts. However, a case in such courts could last for more than 2 or 3 years.

3) Existence of special environmental courts, main role, competence

There are no special courts for environmental matters. Generally, these cases start in the administrative section of the Tribunal and then proceed to the administrative section of the Court of Appeal, on a cassation appeal. The third level of jurisdiction, the appeal, does not exist in this case. If the administrative act is issued by a central authority, then the first court will be the Court of Appeal and the second will be the High Court of Cassation and Justice.
Environmental cases are to be resolved not only in administrative sections of the courts, but also in other sections, whenever the object of the litigation is not an administrative act.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

If a person is not satisfied with the response of the administrative authority, the harmed person can file a complaint with the Tribunal or the Court of Appeal (based on the jurisdiction described above from Law 554/2004). The litigation will be judged in a hearing. The response to the complaint (submitted by the defendant) is mandatory and will be communicated to the plaintiff at least 15 days before the first date of trial. The decisions of the court are drafted and motivated within 30 days of the pronouncement. If the object of the complaint is a **unilateral administrative act**, the court solving the complaint can:
Cancel in whole or in part the administrative act;
Suspend the effects of the administrative act (this is possible only if, within 60 days, the plaintiff files an action for annulment of the administrative act);
Oblige the public authority to issue an administrative act;
Issue another document or perform a certain administrative operation.
In resolving the complaint, the court will also establish the material or moral damages.
When the object of the action in administrative litigation is drawn up by an administrative contract the court can:
Order its cancellation, in whole or in part;
Oblige the public authority to conclude the contract to which the applicant is entitled;
Request one of the parties to fulfil a certain obligation;
Supplement the consent of a party when the public interest requires it;
Oblige the payment of damages for the material and moral damages.
The judgment given in the first instance *may be appealed within 15 days from communication of the written decision of the court*. The appeal **suspends** enforcement and is judged in urgency. If the appeal was admitted, the court of appeal, cancelling the sentence, will re-judge the litigation. When the judgement of the first court was rendered without analysing the main arguments of the plaintiff or if the judgement was made in the absence of the party who was illegally summoned both in the administration of evidence and in the debate of the merits of the case, the case will be referred once again to the first court, to be retried. If the judgement in the first instance was made in the absence of the party who was illegally summoned to administer the evidence but was illegally summoned in the debate on the case, the court of appeal, cancelling the sentence, will re-judge the litigation merits.

5) Extraordinary ways of appeal. Rules in the environmental area. Rules for introducing preliminary references

The extraordinary remedies are:
- “The Appeal for Annulment” not aiming to retry the case, but to correct some obvious mistakes, procedural or material; (Art. 503, Civil Procedure Code)
- “The Review” (Art. 509, Civil Procedure Code). – it aims to view the case again on 12 determined situations:
if the court decided on things that were not asked for or did not decide on a requested thing or gave more than was asked;
if the object of the case does not exist anymore;
if a judge, witness or expert who took part in the trial has been definitively convicted of an offence relating to the case or if the judgment was given on the basis of a document declared false during or after the trial, when these circumstances influenced the solution pronounced by the court. If the finding of the crime can no longer be made by a criminal judgment, the reviewing court will first rule, incidentally, on the existence or non-existence of the alleged crime. In the latter case, when the application is heard, the person accused of committing the crime will be cited;
a judge has been definitively disciplined for exercising his function in bad faith or gross negligence, if these circumstances have influenced the solution pronounced in question;
after the judgment was given, evidence was found to have been withheld by the opposing party or could not be presented due to circumstances beyond the control of the parties;
the decision of a court on which the decision whose review is requested was based has been quashed, annulled or changed;
the state or other legal persons under public law, minors and those placed under judicial interdiction or those placed under guardianship have not been defended at all or have been dishonestly defended by those in charge of defending them;
there are final adverse decisions, given by courts of the same or different degrees, which violate the res judicata authority of the first judgment;
the party was prevented from appearing in court and notifying the court of this, from a circumstance beyond his will;
The European Court of Human Rights has found a violation of fundamental rights or freedoms due to a court decision, and the serious consequences of this violation continue to occur;
after the judgment became final, the Constitutional Court ruled on the exception invoked in that case, declaring unconstitutional the provision which was the subject of that exception.
- There is also a special review provided by Art. 21, Law no 554/2004, for violating the principle of the priority of European Union law, regulated in Art. 148 paragraph (2) in conjunction with Art. 20 paragraph (2) of the Constitution of Romania, republished.
There are no other special provisions regarding environmental law. The judicial procedure is regulated by the Civil Procedure Code.
The court could never act on its own motion in Romania. However, the courts can ask the European Court of Justice for a preliminary ruling.
Regarding the preliminary ruling, the legislation is not extensive. The High Court of Cassation and Justice has given some directions in this matter. The High Court of Cassation and Justice through Decision no 2167/2016 has ruled that an application to the CJEU *can only be made when in an active litigation is raised the question of the validity of interpretation or the validity of community law*. The national court will determine the relevance of Community law for the resolution of the dispute and whether a preliminary ruling is necessary. Also, the question of which may be referred by the national court concerns exclusively questions of interpretation, validity, or application of Community law, **and not matters relating to national law or elements of the case before the court**.

The answer of the Court of Justice does not take the form of a simple opinion, but of a reasoned decision or order. The receiving national court is bound by the interpretation given when resolving the dispute before it. The decision of the Court of Justice is equally binding on the other national courts invested with an identical issue (Arts 519, 520 of the Civil Procedural Code).
Concerning internal interpretation of the national legislation, the national courts, in the last jurisdiction grade, noting that a question of law, the clarification of which depends on the merits of the case, is new and the High Court of Cassation and Justice has not ruled on it and is not subject to appeal in the interest of the law being settled, can ask the High Court of Cassation and Justice to rule on this issue of law.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

There is no ADR (Alternative Dispute Resolution) in Romania accessible for the public in environmental matters.
Although this possibility is not expressly mentioned in the administrative law, the parties if interested, could resolve the litigation according to mediation law [10]. For example, a company that caused pollution could settle a case with an individual person.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?

According to Art. 1 para 3 of Law no 554/2004, the Ombudsman can challenge in court an administrative act if they received a petition from an individual or an organization. The petitioner will become the plaintiff in the case filed by the ombudsman. The petitioner rightfully acquires the status of plaintiff, to be cited as such. If the petitioner does not approve of the action filed by the Ombudsman at the first court session, the administrative litigation court cancels the request. According to the Regulation no 18/2019, Art. 31, the Ombudsman may approve the ex officio notification when they find, by any means, that the rights or freedoms of the natural persons have been violated. However, the procedure started ex officio by the Ombudsman stops at the request of the injured person in his rights and freedoms. Also, the Ombudsman is entitled to notify the Government of any illegal administrative act or fact of the central public administration and of the prefects (Art. 28, alin. 1, Law no 35/1997).
The prosecutor can challenge individual administrative acts issued with excess power by the public authorities. The person whose rights are violated must give a previous agreement to the prosecutor to submit the case to the court. This person will become the plaintiff. If the prosecutor considers that a public legitimate interest is harmed through administrative acts, they can submit a case to the competent court of justice that has jurisdiction at the domicile of the public authority that issued the act. The prefects and the National Agency of the Public Clerks can also file cases in court. The latter can file cases only if the legislation regarding the public function is violated.
There is no other special administrative body that has competence related to environmental matters. As the right to a healthy environment is a fundamental right, the competent body to deal with such complaints could also be the Ombudsman.

1.4. How can one bring a case to court?

1) Who can challenge an environmental administrative decision (relevance of the concept of concerned public and NGOs)?

The environmental administrative decision can be challenged by environmental NGOs (Art. 20 of Emergency Governmental Ordinance 195/2005 regarding environmental protection law) and any individual without having to prove a prejudice (Art. 5 of Emergency Governmental Ordinance 195/2005 regarding environmental protection law). This means in Romania that for environmental issues *actio popularis* is regulated.
According to the procedure of the administrative courts, Art. 2 letters a, r, and s of Law no 554/2004, the NGOs are considered to be “social organisations” that can challenge the administrative acts (which include environmental administrative acts) based on ”the public legitimate interest”, if the protection of the environment is an objective included in the NGO’s statutes.
The legitimate public interest is defined as the interest concerning “*the law order and the constitutional democracy, guaranteeing the rights, freedoms and fundamental duties of the citizens, satisfying the community needs, realizing the jurisdiction of the public authorities*”.
The individual, however, according to Art. 2 letters a and Art. 8 para 2, can invoke the legitimate public interest only subsequent to the private legitimate interest. However, as Emergency Governmental Ordinance 195/2005 regarding environmental protection law is a special law, Art. 5 will be applied with priority according to the *specialia generalibus derogant* principle. Therefore, in the environmental cases the right to a healthy environment can be invoked as a substantive right of each individual, even if no prejudice was suffered.
The legitimate private interest is defined as “*the possibility to claim a certain conduct, considering the realization of a future and predictable subjective right, foreshadowed*”.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

There are no different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc. There are the same general rules applicable in the entire sectoral legislation.

3) Standing rules applicable for NGOs and individuals (in administrative procedure and at judicial level, for organisations with legal personality, ad hoc groups of representatives of the public, standing for foreign NGOs, etc.).

The standing rules are the same as described in question 1.4.1

4) What are the rules for translation and interpretation if foreign parties are involved?

The Civil Procedure Code, Arts. 225 and 150 para 4 regulate the rules for interpretation and translation:
Concerning written documents in a foreign language (the only official language is Romanian): they shall be submitted in certified copy (signed for conformity on each page), accompanied by an authenticated translation carried out by an authorized translator. If there is no authorized translator for the language in which the documents in question are written, the translations made by trusted persons who know the language can be used, under the conditions of the special law[11].
Concerning the proceedings in front of the court:
When one of the parties or of the persons to be heard does not know Romanian, the court will use an authorized translator. If the parties agree, the judge or the registrar may act as translator. If the presence of an authorized translator cannot be ensured, the provisions of Art. 150 paragraph (4), apply. If one of the persons mentioned in para. (1) is mute, deaf, or deaf-mute or, for any other reason, they are not able to express themselves, communication with them will be in writing, and if they cannot read or write, an interpreter will be used (the cost will be borne by the party who requested an interpret/translator).

1.5. Evidence and experts in the procedures

1) Evaluation of evidence – are there any limits in obtaining or evaluating evidence, can the court request evidence on its own motion?

There are no special rules in environmental matters. The means of evidence that can be used in any civil litigation are:
a. Documents[12]. There can be multiple types of documents such as:
Authentic documents[13] (the authentic document is drawn up or, as the case may be, authenticated by a public authority, notary or other person invested by the state with public authority). This document constitutes full proof until it is declared false.
Under private signature[14] (this type of document simply means that it carries the signature of the parties, it is not subject to any other formality other than the exceptions provided by law. This kind of document recognized by the one to whom they are opposed or, as the case may be, considered by law to be recognized, constitutes evidence between the parties until proven otherwise.

Documents on electronic media[15]. This type of document means that the data for a legal document is stored on an electronic device. Unless otherwise provided by law, the document that reproduces the data of an act, filed on electronic media, constitutes full proof between the parties until proven otherwise.
b. Witnesses[16]. Witness testimony can be used in all cases where the law does not provide otherwise. No legal document can be proved by witnesses if the value of its object is greater than 250 lei. However, evidence of any legal act, regardless of its value, can be made with witnesses, against a professional, if it was done by him in the exercise of his professional activity, unless the special law requires written evidence. If the law requires the written form for the validity of a legal act, it cannot be proved by witnesses. The testimony of witnesses is never admitted against or over what a document contains or what would be alleged to have been said before, during or after its preparation, even if the law does not require the written form to prove the act respectively, except in the cases provided in Art. 309, par. (4).
c. Presumptions[17]. Presumptions are the consequences that the law or the judge draws from a known fact to establish an unknown fact. There are two kinds of presumptions, legal and judicial.
d. Expertise[18]. When, in order to clarify some factual circumstances, the court considers it necessary to know the opinion of some specialists, it will appoint, at the request of the parties or ex officio, one or 3 experts. A broad analysis of expertise and experts is made in the following points.
e. Material means of proof[19]. These are material means of proving the things that by their characteristics, their appearance or the signs or traces they retain serve to establish a fact that can lead to the resolution of the process. Material means of proof also include photographs, photocopies, films, discs, sound recording tapes, as well as other such technical means, if they were not obtained by breaking the law or good practice.
f. On-site research[20]. The on-site investigation can be done, on request or ex officio, when the court considers that it is necessary to clarify the process.
g. Confession[21]. The confession or acknowledgment by one of the parties, on its own initiative or during the interrogation procedure, of a fact on which the opposing party bases its claim or, as the case may be, defence. The court may grant, upon request or ex officio, the call to the interrogation of any of the parties, regarding personal facts, which are likely to lead to the settlement of the trial.
According to Article 13, alin. (1) of Law no 554/2004 regarding the administrative court procedure, when the court receives the complaint it orders the parties to be summonsed. The public authority that issued the document will communicate along with the response to the complaint the contested act along with the full documentation behind its issuance and any other documents necessary to resolving the case. According to the same article, paragraph 2, when the plaintiff is a third party (as defined in Art. 1, paragraph 2) or when the complaint was filed by the Ombudsman or by the Public Minister, the court has to order the administrative authority to submit all documents that were considered when they issued the act whose annulment is being asked for. The plaintiff can provide any evidence to prove the allegations: **documents, interrogations, judicial expertise, on-site research, and/or witnesses, as well as other material evidence (pictures, movies, recordings, etc).**
In civil and criminal proceedings, the court has no obligation to force the defendant to provide documents. However, there is a procedural regulation that would allow the court to consider that the party who refused to show certain documents recognized the allegation of the other party, but only in civil cases. The evidence is proposed in the complaint filed by the plaintiff and in the response to the complaint by the defendant. It the parties fail to do so, the sanction that intervenes is the lapse of the right to propose evidence in court. However, according to Art. 254 of the Civil Law Procedure Code there are some exceptions (detailed below at point 1.5.2).
The court can order evidence on its own if it considers that the truth can be established, according to the active role of the court even if the parties do not agree[22]. However, this role, applicable only in civil cases, is limited by the right of the plaintiff to bring his/her own action in court. The evidence must be first allowed by the court and then actually taken to the court. There are no differences between civil procedure and administrative procedure.
However, *the civil procedure* has three jurisdictional steps: the first court, appeal, and cassation appeal. In the first court and in the first appeal any evidence can be proposed to the court, and the court will only allow the evidence that is useful for the case. In the cassation recourse, only documents can be provided as evidence. The appeal itself can only be admissible on limited motives specified in the civil procedural code.
In *the administrative procedure* there is only the first court and recourse. In the recourse only documents can be allowed as evidence, but the court can analyse the case on all aspects, to compensate the missing appeal in this procedure.
2) Can one introduce new evidence?
According to the common procedure from the Civil Procedure Code, all the evidence must be proposed by the plaintiff in the application, and by the defendant through the response of the application. However, there are some exceptions[23] such as:
The necessity for the evidence results from the modification of the application made by the plaintiff;
The necessity for the evidence results from the court research and the parties could not have foreseen its necessity;
One of the parties explains to the court that the evidence could not be presented based on some justified reasons;
The administration of the new evidence does not lead to postponement of the judgment;
There is express agreement from all parties;
3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts
When for the total understanding of some aspects, the court considers that an expert opinion is needed, 1 or 3 experts will be appointed by the judge, based on his own decision or at the request of the parties[24]. If necessary, the court will request the expert opinion to be produced by a laboratory or a specialized institute[25]. In those fields that are highly specialized, where there are no authorized experts, the court can request on its own initiative or at the request of the parties the opinion of a specialist in the relevant field. There is a centralized list of judicial experts on the web page of the Ministry of Justice where an interested person can search for a specific expert as well as searching through a list of multiple experts. The website includes names, authorization numbers, the location including the county, city, street, and number of the building as well as a phone number.
1.5.3.1. There is the expert opinion binding on judges, is there a level of discretion?
Regarding the technical conclusions of the expert, the court must consider these conclusions. However, the court can disregard the expertise if it was produced in violation of the procedural norms regarding judicial expertise or if the conclusions contradict the object of the case. Art. 264 Civil Procedure Code states that in order to establish the existence or non-existence of the facts for which the evidence was administered, the judge freely considers the evidence according to his beliefs.
1.5.3.2. Rules for experts being called upon by the court
The rule is that the expert will be called upon by the judge when the court considers that an expert opinion is needed on its own instigation or at the request of the parties. When the expert was called upon by the judge, the expert must comply with the court disposition; if not, the expert can be subject to a peremptory writ, judicial fine or payment of compensation, exception to these dispositions is made according to the Civil Law Code Art. 330 alin. (4) when the expert is a laboratory or a specialized institute.
If the parties do not come to an agreement regarding the appointment of the expert, they will be appointed by the court, by drawing lots, from the list drawn up and communicated by the local office of expertise, comprising the persons registered in its list and authorized, according to the law, to provide judicial expertise.
1.5.3.3. Rules for experts called upon by the parties

According to Art. 330 alin 5, Civil Procedural Code, the parties can name their own experts, provided that the court will allow it, in the capacity of personal advisers, if the law does not say otherwise. The experts summoned by parties like this can formulate questions and observations and, if necessary, draw up a separate report on the objectives of the expertise.

1.5.3.4. Which are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?

The decision of the court regarding the appointment of the expert will include the objectives of the expertise, the deadline for submitting the final report, the provisional fee and, if necessary, an advance for travel expenses. For this purpose, the court can establish a hearing in the council chamber, during which it will ask the expert what the estimate fee of the expertise is as well as the time needed. Based on the expert opinions and the parties' opinion the court will establish the exact amount of the fee necessary for the expertise. The fee for the services of a judicial expert is paid by the party who requested the expertise done. The proof of payment of the fee is deposited at the court registry by the party who was obligated by the decision, within 5 days of the appointment or within the term established by the court.

Any attempt by the experts to request or receive a sum greater than the fee set by the court is punished[26] under criminal law. At the motivated request[27] of the experts, revising the work done, the court will be able to increase the fees due to them, summoning the parties, but only after submitting the report, the answer to the possible objections or the additional report as the case may be.

1.6. Legal professions and possible actors, participants to the procedures

1) Role of lawyers, compulsory or not, how to contact, publicly accessible internet link to registry or website of the bar, perhaps of specialized lawyers in the environmental field

The lawyers represent the interests of a party in court. Legal counsel is not compulsory in environmental matters or in any matter except criminal cases, in accordance with the Criminal Procedure Code. In criminal cases, including environmental crimes, the accused must be assisted by a lawyer if they find themselves in one of the cases listed at Art. 90 Criminal Procedure Code[28]. There are some provisions at Art. 93, paragraph (4)[29] and (5), Criminal Procedure Code regarding the need in some situations for compulsory assistance by lawyers for the injured party, civil part, and the civilly responsible party.

In Romania there are more and more lawyers interested in defending the environment, as it ensures a kind of popularity and public recognition of the respective lawyer. This is much-needed recognition because advertising by lawyers in Romania is very restricted. The only legal means of professional publicity are listed in the statutes of the profession of lawyer (Decision 64/2011, published in the Official Monitor of Romania), in Art. 244.

In Romania, in each county and in the municipality of Bucharest, there is according to Law no 51/1995 a single Bar with legal personality. The bar is composed of all the lawyers listed in the Table of Lawyers. All the bars in Romania, constituted according to the laws regarding the profession of lawyers, are members in the National Union of Bars of Romania (U.N.B.R). At present are 41 bars, 1 from each county of the country. The National Union of Bars in Romania, along with all the bars, ensures the qualified exercise of the right to defence, jurisdiction and discipline, protection of dignity and honour of all the lawyers[30].

Regarding the publicly accessible website of the bar, each bar from each county has a web page with a section dedicated to a list of lawyers that one can contact (e.g. the Bucharest Bar). This page however does not provide information on the specialized field in which the lawyers work.

1.6.1.1. Existence or not of pro bono assistance

Pro bono assistance is not expressly provided by law but in some cases the fee for the lawyer's services can be borne by the state. Although pro bono assistance is not provided by the legislation directly, it is not forbidden either, so if a lawyer or a law firm chooses to offer pro bono assistance, it can.

Emergency Governmental Ordinance no 51/2008 regulates legal aid in **civil cases. Such cases can also be environmental cases**. Legal aid is provided according to this normative act, only for individuals who have an exceptionally low income.

1.6.1.2. If pro bono assistance does exist, what are the main elements of the procedure to receive it (perhaps links to forms, court or agency in charge, address, telephone, email, ways to contact, etc.)?

Pro bono assistance is not available. There is no legislation or any other public tools to make it available, except for the procedure provided by EGO 51/2008.

1.6.1.3. Who should be addressed by the applicant for pro bono assistance?

Pro bono assistance is not available.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

There is a centralized list of judicial experts on the web page of the Ministry of Justice from where an interested person can search for a specific expert as well as searching through a list of multiple experts. The website includes names, authorization numbers, the location including the county, city, street, and number of the building as well as a phone number.

As for the bar website, each bar has an internet page where one can search for a specific lawyer or explore the page with all the lawyers listed in each bar. The list has the contact details for each lawyer so an interested person can find one very easily. For example, if you are interested in a lawyer from Bucharest you can access and find what you are looking for.

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

Listing all the NGOs active in environmental issues from Romania would be extremely hard as there are so many, so these are only examples which are relevant:

Combating and controlling pollution:

AGENT GREEN
Association ARIN
Association Centrul Ecologic Green Area
Federation Coalitia Natura2000 Romania
Association Harta Verde România
Association SALVATI FLORA SI FAUNA DELTEI DUNARII
INSTITUTUL ROMAN PENTRU PROTECTIA MEDIULUI INCONJURATOR
Bankwatch Romania Association
Terra Mileniul III
Eco Civica Foundation

4) List of international NGOs, who are active in the Member State

A brief list of some international NGOs which are active in Romania:

Habitat for Humanity

In Romania, through the six subsidiaries, Habitat for Humanity managed to provide a decent living for 16,000 people, and another 20,000 Romanians benefited from the disaster prevention programmes.

The ICRC is an independent, neutral organization providing humanitarian protection and assistance for victims of armed conflict and other situations of violence. It acts in response to emergencies and also promotes respect for international humanitarian law and its implementation in national law. - Red cross - local website

UNICEF. This NGO works in over 190 countries and territories to save children's lives, to defend their rights, and to help them fulfil their potential, from early childhood through adolescence.

WWF - environmental NGO active especially in nature and waters area.

Greenpeace CEE Romania - environmental NGO working specially in the energy and air pollution area.

1.7. Guarantees for effective procedures

1.7.1. Procedural time limits

1) Time limit to challenge an administrative environmental decision (not judicial) by an administrative body (either superior or same level)

The administrative complaint must be filed within 30 days after the content of the administrative environmental decision was known to the interested public. The complaint can also be submitted after more than 30 days for justified reasons, but no later than 6 months after the date when the public became aware of its content (Art. 7.3 of Law no 554/2004 regarding the administrative procedural law).

There is no extraordinary appeal to an administrative body.

2) Time limit to deliver decision by an administrative organ

The administrative organ must reply to the administrative complaint in 30 days.

3) Is it possible to challenge the first level administrative decision directly before court?

In the case of actions introduced by the Prefect, the People's Advocate, the Public Ministry, the National Agency of Civil Servants, or regarding the request of the persons injured by ordinances or provisions of ordinances or of the actions directed against administrative acts that cannot be revoked as they entered the civil circuit and have started to produce legal effects (this means that the performance of a legal act/operation was made on the basis of the said administrative act and that it had some legal consequences), as well as the cases from Art. 2, alin 2[31] and Art. 4[32] the administrative complaint is **not mandatory and the case will be submitted directly to the competent court**.

4) Is there a deadline set for the national court to deliver its judgment?

There is no exact deadline set for the national court to deliver its judgment. The judges can establish at the first hearing how long the case will take and establish an approximate duration for the case trial.

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)

The action in court must be filed within 6 months after:

the reply to the administrative complaint was filed or after a reply should have been received;

the date when an unjustified refusal of the request from the public submitted to the public authority concerning their rights was received;

the date when the authority should have communicated an answer to a request of the public concerning their rights.

The action can be submitted in court after the time limit of 6 months for justified reasons but no later than 1 year after the public was informed about the content of the act, or the date when the request was submitted to the public authority.

All the evidence should be mentioned in the initial action filed to the court, or no later than the first hearing set by the court.

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?

The action in court against the administrative decision **never has an automatic suspensive effect, according to Romanian legislation**. The suspension of the effects of the administrative act must be granted by court, at the request of the plaintiff.

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?

An injunctive relief *granted by the authority that issued the administrative act*, is not regulated (it does not exist). The activity regulated by the administrative act can be suspended in certain conditions by the:

The National Environmental Guard[33] (participates in establishing the causes of pollution in environmental matters and **applies sanctions provided by law including the stoppage or suspension of activities for determined periods if the health of the population is endangered or if pollutants are found to exceed the concentrations allowed by law**) or

The Environmental Protection Agency[34] if the Guard has imposed certain measures and conditions through the regulatory environmental decisions[35] that were violated by the operator, even after granting a deadline (60 days) to comply with the provision of the regulatory act.

The interested public can submit requests and evidence and request the two institutions to suspend the activity regulated by administrative environmental decisions. The two can also be pursued in court if they unlawfully refuse to suspend the environmental administrative regulatory acts.

3) Is there a possibility to introduce a request for such a measure during the procedure and under what conditions? Possible deadline to submit this request?

Immediately after submitting the administrative complaint against the administrative act or against the unlawful refusal of the administrative competent institution, before the complaint was answered, and before the deadline for the answer to the complaint has expired, *the plaintiff can ask the court* to grant an injunctive relief, proving a justified case and an imminent prejudice[36].

An injunctive relief can only be granted by the court of justice. The request for injunctive relief can also be filed together with the action in court against the administrative act[37].

The injunctive relief cannot be requested at a later stage.

The court will grant injunctive relief if the case is justified and there is an imminent prejudice (Law no 554/2004 does not provide a list or examples for such cases; the judge will establish this). The suspension granted by the court will operate until the litigation is resolved by the first court if it was granted for a request made after the administrative complaint was filed. If the suspension is granted for a request made together with the main action, the suspension of the effects will last until the decision of the court is final (also during the cassation appeal).

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?

The effects of administrative decisions are not suspended by submitting an administrative complaint or by introducing an annulment request to the court. The only possibility to suspend the effects of the administrative decision is to be granted an injunctive relief.

5) Is the administrative decision suspended once challenged before court at the judicial phase?

The administrative decision will produce its effects even if it was challenged before the court.

However, if the injunctive relief is granted, the decision of the court is enforceable immediately and the effects of the administrative act are suspended.

6) Is there a possibility for the national tribunals to provide injunctive relief (conditional upon a financial deposit)? Is there separate appeal against this order on the injunctive relief or the financial deposit?

The judicial bail is the amount of money that must be deposited by one of the parties to the lawsuit, as security, to cover any damages that would result from taking action, at his request, against the other party, but they do not usually apply in environmental cases.

1.7.3. Costs - Legal aid - Pro bono assistance, other financial assistance mechanisms

1) How can it be calculated what costs will be involved when one intends to initiate a procedure - administrative costs, judicial costs, costs for filing a case, experts' fees, lawyers' fees, cost of appeal, etc.

The court fees are regulated by Emergency Governmental Ordinance no 80/2013 regarding the stamp court fees. For the administrative procedure, Art. 14 stipulates the following:

In the matter of administrative litigation, the applications filed by those injured in their rights by an administrative act or by the unjustified refusal of an administrative authority to resolve their request regarding a right recognized by the law are charged as follows:

the requests for the annulment of the act or, as the case may be, the recognition of the claimed right, as well as for the issuance of a certificate, a certificate, or any other document - 50 lei (10.39 euros; 1 euro = 4.81 lei); The fees will be applied for each request. For example, if we ask for the annulment of three administrative acts, the fee is 50 lei x 3 = 150 lei = 31.18 euros.

the requests with patrimonial character, by which the damages suffered by an administrative act are requested - 10% of the claimed value, but not more than 300 lei (= 62.37 euros).

Experts fees and lawyer's fees are not regulated.

The expert's fees are established by the judge. The expert can request an increase in the fee based on evidence regarding the necessary efforts for providing the scientific analysis of the case.

The lawyer's fees are established between the client and the lawyer according to the complexity of the case. The minimum fee as recommended by the National Union of Bars from Romania for an annulment of an administrative act with administrative complaint and injunction relief is 5,500 lei (1,136.36 euros).

2) Cost of injunctive relief/interim measure, is a deposit necessary?

The injunctive relief fee is provided by Art. 27 of Emergency Governmental Ordinance no 80/2013 regarding stamp court fees: *Any other actions or requests that cannot be assessed in money, except for those exempted from the payment of the stamp duty according to the law, are charged at 20 lei (4.12 euros).*

3) Is there legal aid available for natural persons?

Emergency Governmental Ordinance no 51/2008 regulates legal aid in ***civil cases****.* ***Such cases can also be environmental cases****. Legal aid is provided according to this normative act, only for individuals who have an exceptionally low income.*

In order provide access to justice to every person addressing a matter to a court of justice, even to those who do not have the financial resources to pay the judicial fee, Emergency Governmental Ordinance no 51/2008 provides access for those who need it to public judicial aid, which is basically a form of assistance provided by the government with the purpose of ensuring the right to a fair trial and a guarantee of equal access to justice. This assistance can be obtained in litigation regarding civil, commercial, administrative, work a public insurance cases as well as any other cases, except criminal ones. Public judicial aid may be requested, under the conditions of this emergency ordinance, by any natural person who cannot meet the costs of a trial or those involved in obtaining legal consultations in order to defend a legitimate right or interest in justice without endangering his or his family's maintenance. Public judicial aid can be granted.

The total value of the judicial aid, in any form, cannot exceed during a period of one year, the equivalent of 10 minimum salaries.

Beneficiaries of public judicial aid according to Art 8. of Emergency Governmental Ordinance no 51/2008 are persons whose net monthly average income per family member, in the last two months prior to the application formulation, is below **300 lei (62.06 euros)**. In this case, the amounts that constitute judicial public aid are fully advanced by the state. If the average monthly net income per family member, in the last two months prior to the application formulation, is below the **600 lei (124.13 euros)**, the amounts of money that constitute judicial public aid are advanced by the state in a proportion of 50%. Judicial public aid may be granted by the judge in other situations, in proportion to the needs of the applicant, if the certain or estimated costs of the trial are likely to limit his effective access to justice, including where there are differences in the cost of living between the Member State in which they have habitual residence and that of Romania.

According to the present emergency ordinance, the public judicial aid is granted, independent of the material state of the applicant, if the right to legal aid or the right to free legal assistance is provided by special law, as a protective measure, taking into account special situations, such as minority, disability, a certain status, etc. In this case, the public judicial aid is granted without the need to meet the criteria set out in Art. 8, but only for the defence or recognition of certain rights or interest arising or related to the special situation that justified the recognition, by law, of the right to judicial assistance or to free legal assistance.

4) Is there legal aid available for associations, legal persons, NGOs with legal personality and without legal personality? If yes, how to request legal aid? Is there pro bono assistance?

There is legal aid available for associations, legal persons, NGOs with legal personality and without legal personality. Legal aid for associations, legal persons, NGOs with legal personality is provided by Emergency Governmental Ordinance no 80/2013 regarding stamp court fees, Art. 42. para. 2:

The court grants to legal persons, upon request, facilities in the form of reductions, staggering or postponement of the payment of stamp fees due for actions and requests introduced in the courts, in the following situations:

The first scenario is when the amount of the tax represents more than 10% of the average net income for the last 3 months of activity.

Secondly, legal aid can be provided if full payment of the tax is not possible because the legal person is in the process of liquidation or dissolution or its assets are frozen by law.

Exceptionally, the court may grant to the legal persons reductions, staggering or postponement of payment of the stamp duty, in other cases where they consider, based on the data regarding the economic-financial situation of the legal person, that the stamp duty payment, in the amount due, it would be likely to significantly affect the current activity of the legal entity.

The reduction of the stamp duty may be granted separately or together with the payment scheduling or postponement.

In some cases, the judge might look at the NGO's expenses and decide not to grant the financial facilities if they consider some of the expenses voluntary (amounts of money (or work) invested by the owner of a thing to satisfy his personal pleasure).

For experts' fees the law does not provide the possibility for the legal persons to obtain legal aid.

Also, for legal persons there is no pro bono service organized.

5) Are there other financial mechanisms available to provide financial assistance?

No other financial mechanisms are available.

6) Does the 'loser party pays' principle apply? How is it applied by courts, are there exceptions?

The 'loser pays' principle applies, according to Art. 453 of the Civil Procedure Code. The parties must submit to the court the evidence concerning the expenses caused by the litigation by the time when the debates are finished (invoices, receipts, etc.) and the judge will determine the amount that is reasonable for the party that lost the case to pay, in a proportionate to the part of the claims admitted. There are no criteria to define the reasonable amount. This issue is arbitrary according to the understanding of the judge.

If the defendant recognizes at the first hearing the plaintiff's claim, the 'loser pays' principle would not apply.
The party that wins can also claim the expenses through a separate trial according to the civil code provisions combined with Art. 453 of the Civil Procedure Code.

7) Can the court provide an exemption from procedural costs, duties, filing fees, taxation of costs, etc.? Any other national characteristics linked to this topic?

The court cannot grant any exceptions form the payment as provided by the law.
However, EGO 80/2013 regarding the legal stamp duty, provides for certain exceptions to the obligation to pay the legal stamp duty for: actions and applications, including those for the exercise of ordinary and extraordinary remedies, relating to pensions and other social allowances, etc, but the only one that might apply in environmental cases is the one provided by Art. 29 letter j, concerning the granting civil damages for alleged violations of the rights provided in Arts. 2 and 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by Romania through Law no 30/1994, if the violation may be related to environmental issues in the meaning of ECHR practice.

1.7.4. Access to information on access to justice - provisions related to Directive 2003/4/EC

1) Where are the national rules on environmental access to justice available? Internet link to be provided. Are there other forms of structured dissemination?

The national rules on environmental access to justice are not available in a special section on a web page. The information can only be found in the legislation.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?

Information on access to justice can be obtained from lawyers or specialized NGOs. In Romania in the justice system there are no procedures defined for environmental issues. Therefore, other than the fact that the competent court and the legal deadline for submitting the complaint is mentioned at the end of the administrative acts, there is no other information that can be obtained from any websites or public administration.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

There is no active dissemination concerning access to justice regarding plans and programmes, etc. In the final part of the environmental regulatory acts, the legal remedies are provided (the time limit and competent authority/court).

4) Is it compulsory to provide access to justice information in the administrative decision and in the judgment?

All administrative decisions and judgments provide information on the necessary rules that must be followed to exercise the right of access to justice in that specific case: the competent court of justice, the applicable law, and the deadline.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?

Translation and interpretation are provided according to Art. 150 paragraph 4 and Art. 225 of the Civil Procedure Code:
Concerning written documents in a foreign language (the only official language is Romanian): they shall be submitted in certified copy (signed for conformity on each page), accompanied by an authenticated translation carried out by an authorized translator. If there is no authorized translator for the language in which the documents in question are written, the translations made by trusted persons who know the language can be used, under the conditions of the special law[38]. Special law no 178/1997 establishes a list of interpreters and translators to be used in the judicial system. Only authorized persons included in this list can be appointed. To become an authorized translator or interpreter, one must fulfil the conditions prescribed by Art 3 of the above-mentioned law:
to be a Romanian citizen, or a citizen of the EU, the EEA or Switzerland,
to be certified by the Ministry of Culture as a translator for the specialty of legal sciences, from Romanian into the foreign language for which he requests the authorization and from the foreign language into Romanian
is medically fit;
has no criminal record.
Concerning the proceedings in front of the court:
When one of the parties or of the persons to be heard does not know Romanian, the court will use an authorized translator. If the parties agree, the judge or the registrar may act as translator. If the presence of an authorized translator cannot be ensured, the provisions of Art. 150 paragraph (4) apply. In case one of the persons mentioned in par. (1) is mute, deaf, or deaf-mute or, for any other reason, they are not able to express themselves, communication with them will be in writing, and if they cannot read or write, an interpreter will be used. The interpreter will be paid for by the party who requested the interpreter, and the amount can be provided by the other party according to the 'loser pays' principle.

1.8. Special procedural rules

1.8.1. Environmental Impact Assessment (EIA) - provisions related to Directive 2003/35/EC

Country-specific EIA rules related to access to justice

The environmental impact assessment for private or public projects is regulated by Law no 292/2018.
Regarding access to justice, this Law (no 292/2018, Art. 21, para (1)) refers to the provisions of the administrative law (Law no 554/2004).
Disputes regarding administrative acts:
issued or concluded by **local and county public authorities**, as well as those regarding taxes and duties, contributions, custom debts, as well as their accessories of up to 500,000 lei (102,939 euros) will be resolved by the **tribunals**,
issued or concluded by the **central public authorities**, as well as those regarding taxes and duties, contributions, customs debts, as well as their accessories higher than 500,000 lei (102,939 euros), will be resolved by the **courts of appeal**.
The cassation of a decision will be retried by the higher court, so if a decision is given by the tribunal it will be retried by the court of appeal, and if the first decision is given by the court of appeal, it will be retried by the High Court of Cassation and Justice.

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

The rules on access to justice for the screening decision ("decizia de încadrare") are the same as the general rules for all administrative acts. The screening decision is an administrative act that can be challenged in court.
In Romania *actio popularis* ensures standing in court for any person.
NGOs (Art. 20 of Emergency Governmental Ordinance no 195/2005 regarding the environmental protection law) and any individual without having to prove a prejudice (Art. 5 of EMERGENCY Governmental Ordinance 195/2005 regarding the environmental protection law).
According to the procedure of the administrative courts, Art. 2 letters a, r, and s of Law no 554/2004, the NGOs are considered to be "social organisations" that can challenge the administrative acts, (which include environmental administrative acts) based on "the public legitimate interest", if the protection of the environment is an objective included in the NGO's statutes.
The legitimate public interest is defined as the interest concerning "*the law order and the constitutional democracy, guaranteeing the rights, freedoms and fundamental duties of the citizens, satisfying the community needs, realizing the jurisdiction of the public authorities*";
The individual, however, according to Art. 2 letters a and Art. 8 para 2, can invoke the legitimate public interest only subsequent to the private legitimate interest.

This is the general provision; however, Art 5 of EGO 195/2005 derogates from the general provision, establishing for any person the right to address, directly or through environmental protection organizations, the administrative and/or judicial authorities, in the matter of environmental issues whether or not the damage has occurred.
The legitimate private interest is defined as "*the possibility to claim a certain conduct, considering the realization of a future and predictable subjective right, foreshadowed*".

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)

The scoping decision is not an administrative act in Romania; therefore, it cannot be challenged in any way by the interested and affected public.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

The scoping decision cannot be challenged at all. There is no access to justice against the scoping decision.
The development consent is a separate administrative act from the EIA permit, issued by the local/county public administration depending on the location and type of the decision: building permit, agreement on the use of land for intensive agricultural purposes, agreement of the head of the specialized territorial structure of the central public authority responsible for forestry, for projects on afforestation of lands on which there was no previous forest vegetation, the act issued by the competent authority in the field of forestry according to the provisions of Art. 40 of Law no. 46/2008 (the Forestry Code, republished), with subsequent amendments and additions, to achieve the objectives of deforestation in order to change the purpose of the land).
The screening decision as well as the EIA permit can be challenged in court according to the general procedure regulated for all administrative acts:
The administrative complaint must be filed within 30 days after the content of the administrative environmental decision was known to the interested public.
The complaint can also be submitted after more than 30 days for justified reasons, but no later than 6 months after the date when the public became aware of its content (Art 7.3 of Law no 554/2004 regarding the administrative procedural law).
According to Law no 554/2004, Art 10 contains some rules regarding the competent court.
Disputes regarding administrative acts:
issued or concluded by local and county public authorities, as well as those regarding taxes and duties, contributions, custom debts, as well as their accessories of up to 500,.000 lei (102,939 euros) will be solved by the tribunals,
issued or concluded by the central public authorities, as well as those regarding taxes and duties, contributions, customs debts, as well as their accessories higher than 500,000 lei (102,939 euros), will be solved by the courts of appeal.
The cassation of a decision will be retried by the higher court, so if a decision is given by the tribunal it will be retried by the court of appeal, and if the first decision is given by the court of appeal, it will be retried by the High Court of Cassation and Justice.
However, the EIA Law no 292/2018 stipulates in Art. 22 that the administrative complaint must be filed within 30 days after the authority published the decision. This could lead to a different interpretation of the moment when the period for submitting the administrative complaint started. According to some opinions, the 30 days needed for submitting an administrative complaint will start when the public authority has published online the final decision concerning environmental issues. In some cases, the authorities do not publish the final decisions, and in this case Art. 7.3 of Law no 554/2004 will be applicable – the 30 days will be counted from the day when the written administrative decision was communicated.
A similar provision is contained by Law no 50/1991 regarding the building permits which represent all the projects included in Annex 1, development consent.
The administrative authority must reply to the administrative complaint in 30 days.
For the administrative acts that have entered the civil circuit and produced legal effects (i.e. the performance of a legal act/operation was made on the basis of the said administrative act), as well for the refusal of the administrative authorities to respect or execute certain rights, the administrative complaint is not necessary (Art. 7 para 5 of Law no 554/2004).
The action in court must be filed within 6 months after:
the reply to the administrative complaint was received or after a reply should have been received;
the date when an unjustified refusal of the request from the public submitted to the public authority concerning their rights was received;
the date when the authority should have communicated an answer to a request of the public concerning their rights.
The action can be submitted in court after the time limit of 6 months for justified reasons but no later than 1 year after the public was informed about the content of the act, or the date when the request was submitted to the public authority.
All the evidence should be mentioned in the initial action filed to the court, or no later than the first hearing set by the court.

4) Can one challenge the final authorisation? Under what conditions if one is an individual, an NGO, a foreign NGO?

The final authorization can be challenged under the same conditions provided by Law no 554/2004, stipulated for any administrative act.

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?

The courts can verify the procedural aspects of the EIA decision as well as the substantive legality and the scientific accuracy of the environmental impact statement, appointing experts to analyse the scientific data provided by the beneficiary of the project during the EIA procedure.
The courts cannot initiate a review of any administrative decision on their own motion.

6) At what stage are decisions, acts or omissions challengeable?

There are no specific rules provided in the EIA Law no 292/2018. The general rules for challenging an administrative act will apply also for the screening decision and the EIA permit.

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

According to Art. 7 of Law no 554/2004, the administrative complaint must be submitted to the competent administrative authority before acting in court against an administrative act, with the exceptions provided by Art. 7 para 5 (the refusal to grant a right of the plaintiff, or for administrative acts that entered the civil circuit and produced legal effects (i.e. the performance of a legal act/operation was produced on the basis of the said administrative act).

8) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 12?

Standing is not conditional upon participation in the public consultation phase.

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

Measures specifically for fair and equitable trial are not provided by the EIA Law. The general measures in civil and administrative matters apply:
According to Art. 8 Civil Procedure Code, in a civil matter the parties are guaranteed the exercise of their procedural rights equally and without discrimination.
The right of equality in civil procedure is a fundamental right, being an application of a fundamental right from the Constitution (Art. 16, alin. (1), the principle of equality in face of the law and public authorities, and Art. 124, alin. (2) which states that the justice is unique, impartial, and equal for everyone, and a guarantee to an equitable process.

According to Art. 7, alin (1) of Law no 304/2004 regarding judicial organization, all people are equal in the face of the law, without privileges and without discrimination, and according to the same article, alin (2), justice is available equally for everyone, without discrimination on the basis of race, nationality, ethnic origin, language, religion, sex, sexual orientation, opinion, political affiliation, wealth, origin, or social condition or any other discriminatory criteria. Also, under Art. 2 of the same Law (304/2004) justice dispensed by judges in the name of the law is unique, impartial, and equal for all.
The equality of parties in a civil matter means that the parties have the right to be judged by the same organs of judicial power according to the same procedural rules, benefiting from the same procedural rights in the specific litigation that is subject to judging, which basically means that in an identical situation, parties cannot be treated differently.
The existence of specialized instances or specific different procedural rights in some matters is not contrary to this principle, because those specific courts resolve all the litigation that falls under the courts' specialization, without any discrimination, and the special procedural rules will be applied to any party that is part of a litigation subject to the respective derogatory rules. The difference in the treatment of parties could become discriminatory only if a distinction was introduced in analogous or comparable situations, without these being based on a reasonable and objective justification.
The jurisprudence of the European Court of Human Rights enshrines the principle of equality of arms, which means equal treatment of the parties throughout the proceedings before a court, without one of them being favoured over the other.
Thus, the procedural documents for which the law imposes the obligation of communication are communicated to all parties. It would violate the principle of equality of arms, for example, when the court only communicated to one of the defendants the request for a trial. The same principle would be violated if, in evidence or in opposing the same allegations, the court approved the evidence of witnesses for one of the parties, but rejected it for the opposing party, although it proposed the trial in compliance with the terms and other requirements established by the law.
Law no 554/2004, Art. 13 para 2, stipulates that if the plaintiff is a third party (meaning the affected and interested public), the court must request the authority that issued the administrative act to urgently submit to the court the administrative act that was challenged in court as well as the documentation prepared for issuing the administrative act and any other papers (reports, studies, etc) needed for solving the cause.

10) How is the notion of "timely" implemented by the national legislation?

The EIA law provides no special regulations for the time limits on the judicial procedures.
There are provisions of the Civil Procedure Code, but they are recommendations and are not binding for the courts:
an injunctive relief in a civil court must be tried urgently. The decision should be delivered in 24 hours and the written decision should be given within 48 hours after the decision was pronounced.
in the administrative court, the injunctive relief must be tried urgently. Art 14 of Law no 554/2004 establishes an urgent procedure for injunction, derogating from the general procedural regulations in the civil procedure that require longer for the case to receive a hearing in court.
The Civil Procedure Code provides further regulations that are also applicable for the administrative courts: after the judicial research is over (there is no deadline stipulated but at the first hearing the court and the parties will estimate the deadline for reaching a decision), the delivering of the decision can be delayed for up to 15 days, several times[39]. There is no regulation regarding how many times the court can postpone delivery of the decision. The written decision should be communicated to the parties within 30 days. In duly justified cases, this deadline can be extended twice by 30 days each time[40]. Judges can be sanctioned in a disciplinary manner for exceeding this term. However, in practice communicating the written decision usually takes more than 30 days and sometimes more than 90 days.

11) Is injunctive relief available? If yes, what are the procedural requirements in order to be eligible for this? Are there special rules applicable to this sector apart from the general national provisions?

The EIA Law has no specific provision concerning injunctive relief. The same procedure as described at point 1.7.2., applies.

1.8.2. Integrated Pollution Prevention and Control (IPPC)/Industrial Emissions Directive (IED) - provisions related to Directive 2003/35/EC

1) Country-specific IPPC/IED rules related to access to justice

The IED Directive was transposed in Romania by Law 278/2013 regarding industrial emissions.

2) Standing rules, at what stages can one challenge decisions (if one is an NGO, a foreign NGO, a citizen)? Is the final decision challengeable?

The same regulation prescribed by Law no 554/2004 is also applicable for the IED permit (see chapter 1.4.3).

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned).

The IED procedure has no screening decision, therefore there are no regulations relating to this procedure.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)

The IED procedure has no scoping decision, therefore there are no regulations relating to this procedure.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?

The decision that can be challenged according to Law no 278/2013 is the IED permit, called *the integrated environmental authorization*. The screening and the scoping phases are not regulated. The provisions of the law concerning the administrative appeal and the judicial review described at point 1.7.1. apply also for the integrated environmental authorization.
According to Arta. 24 and 25 of Law no 278/2013, *the issuance, update and review* of the integrated of environmental authorization are subject to the public participation procedure and also of the access to justice procedure.

6) Can the public challenge the final authorisation?

According to Art. 25 of Law no 278/2013, the environmental integrated permit can be challenged in court according to the rules stipulated by Law no 554 /2004 regarding the administrative procedural law.

7) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion? Is it possible to challenge decisions, acts or omissions?

According to Art. 25 of Law no 278/2013 and also according to Law no 554/2004 regarding the administrative procedural law, the court will review the substance as well as the procedural steps in the decisions, acts or the omissions that are object of the public consultation procedure. The courts cannot act on their own motion.

8) At what stage are these challengeable?

The integrated environmental authorization can be challenged after it was issued, according to the provisions of Law no 554/2004 described at point 1.7.

9) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

The provisions of Art. 7 of Law no 554/2004, described above, also apply to the integrated environmental permit. The administrative complaint is mandatory in the same procedure and with the same exceptions already described.

10) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 12?

There is no condition in the legislation so in order to have standing before the national courts it is not necessary to participate in the public consultation phase of the administrative procedure.

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
There are no special provisions in this regard in Law no 278/2013.
12) How is the notion of "timely" implemented by the national legislation?
There are no special provisions in this regard in Law no 278/2013.
13) Is injunctive relief available? If yes, what are the procedural requirements in order to be eligible for this? Are there special rules applicable to this sector apart from the general national provisions?
The same provisions concerning injunctive relief, regulated by Art. 14 and 15 of Law no 554/2004, are applicable.
14) Is information on access to justice provided to the public in a structured and accessible manner?
According to Art. 25 para 3 of Law no 278/2013, the integrated environmental authorization must mention the administrative and judicial remedies provided by law.
1.8.3. Environmental liability
Country-specific legal rules relating to the application of the Environmental Liability Directive 2004/35/EC, Articles 12 and 13
In Romania, the ELD Directive is transposed by Emergency Governmental Ordinance no 68/2007 approved by Law no 19/2008, and subsequently amended several times: Emergency Governmental Ordinance no 15/2009; Emergency Governmental Ordinance no 64/2011; Law no 249/2013; Law no 187/2012; Law no 165/2016.
1) Which requirements need to be fulfilled for natural or legal persons (including environmental NGOs) to have the decision taken on environmental remediation by the competent authority reviewed by a court or another independent and impartial body in accordance with Article 13(1) ELD?
Emergency Governmental Ordinance no 68/2007 does not provide for any special rules or procedures concerning access to justice. The same procedures as provided by Law no 554/2004 are applicable. Standing in all environmental cases is governed by Art. 5 and 20 of EGO 195/2005.
According to the procedure of the administrative courts, Art. 2 letters a, r, and s of Law no 554/2004, the NGOs are considered to be "social organisations" that can challenge the administrative acts, (which include environmental administrative acts) based on "the public legitimate interest", if, the protection of the environment is an objective included into the NGO's statutes.
The legitimate public interest is defined as the interest concerning "*the law order and the constitutional democracy, guaranteeing the rights, freedoms and fundamental duties of the citizens, satisfying the community needs, realizing the jurisdiction of the public authorities*";
The individual, however, according to Art. 2 letter a and Art. 8 para 2, can invoke the legitimate public interest only subsequent to the private legitimate interest.
This is the general provision, however, Art. 5 of EGO 195/2005 derogates from the general provision, establishing for any person the right to address, directly or through environmental protection organizations, the administrative and/or judicial authorities, in the matter of environmental issues whether or not the damage has occurred. Art. 20 of EGO 195/2005 regulates the standing of the environmental NGOs in environmental matters.
2) In what deadline does one need to introduce appeals?
Emergency Governmental Ordinance 68/2007 does not establish any special deadlines for appeal is such matters. All the deadlines provided by Law no 554 /2004 are applicable (15 days from the communication date[41]).
3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?
According to Art. 21 of Emergency Governmental Ordinance no 68/2007, the request for action is accompanied by the relevant information and data supporting the observations submitted.
4) Are there specific requirements regarding 'plausibility' for showing that environmental damage occurred, and if yes, which ones?
According to Art. 22 para 1 of Emergency Governmental Ordinance no 68/2007, in order to be analysed, the request for action must show, in a plausible way, that there is environmental damage. There are no further clarifications on this issue.
5) Is a certain manner required and/or time limits set, and if yes, which ones, as regards the notification of the decision by the competent authority to the entitled natural or legal persons (including the entitled environmental NGOs)?
Within 5 days after the request for action was received, the competent authority, if the request for action is provides plausible information that there is environmental damage, will ask the operator in writing for an opinion concerning the allegations of the public. The operator must answer within 5 days.
Art. 23 of Emergency Governmental Ordinance no 68/2007 provides a 15-day deadline for the competent authority to deliver an answer to the action request sent by the public, including the NGOs. The 15 days are counted from the day when the competent authority submitted the request to the operator.
6) Does the MS apply an extension of the entitlement to request action by competent authority from damage to the environment in cases of imminent threat of such damage?
In case of an imminent threat to the environment, according to Art 11 and 12 of Emergency Governmental Ordinance 68/2007, the competent authority may ask the operator to provide all necessary information, take preventive measure, and give instructions in this regard. The competent authority may take the necessary preventive measures if the operator has failed to fulfil his obligations under 10 (to inform and take the necessary preventive measures) if the operator could not be identified or if the operator is not obliged to bear the costs according to the emergency ordinance.
The public or NGOs who submitted requests for action or observations regarding imminent damage to the environment will be answered only after the necessary measures according to the ordinance have been taken.
7) Which are the competent authorities designated by the MS?
The competent authorities are the county environmental protection agencies. The National Environmental Protection Agency is also to be consulted to establish the necessary reparatory measures and, also for the assessment of the significant nature of the prejudice.
The competent authority for identifying the environmental damage or an imminent threat or such damage, as well as for identifying the responsible operator, is the National Environmental Guard, through the county police stations.
8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?
Art. 25 of Emergency Governmental Ordinance 68/2007 does not provide any special regulation in this regard, referring this matter to Law 554/2004 regarding the administrative procedural law. Therefore, Art. 7 of this law applies:
Against a refusal of the authority to take measures, or, if no answer is received in 30 days, the administrative complaint is not mandatory.
Against a decision issued by the authority, the administrative complaint is compulsory if the decision has not entered the civil circuit and has not produced its effects (entering the civil circuit means that the performance of a legal act/operation was made on the basis of the said administrative act; i.e. that it had some legal consequences).
1.8.4. Cross-border rules of procedures in environmental cases
1) Rules on involving other countries? At which stage of the procedure is there a possibility to challenge environmental decisions?
The rules regarding access to justice are provided for any individual or NGOs, regardless of their residence or citizenship.
2) Notion of public concerned?

The public concerned is any individual or NGOs. The right to a healthy and balanced environment is a fundamental right according to the Romanian Constitution Art. 35. Therefore, any person or environmental NGO is entitled to use the right of access to justice for the protection of the environment. The definition of the "public" is provided by Art 2 point 56 of Emergency Governmental Ordinance no 195/2005 regarding the protection of the environment: *one or more natural or legal persons and, in accordance with national law or practice, their associations, organizations or groups.*

3) Do NGOs of the affected country have standing? When and to what court should they submit their appeals? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

The same regulations as described in chapter 1.7. for national NGOs are also valid for NGOs from other countries.

The NGOs from other countries have standing in the same conditions as national NGOs. The court is the same as if the NGO were national (the jurisdiction of courts was largely detailed in chapter 1.2.2, 1.2.3).

An important decision in this matter was given by the **High Court of Cassation and Justice, Decision no 8/2020**. This court established that in the unitary interpretation and application of the provisions of Art. 1 para. (1), Art. 2 para. (1) lit. a), r) and s) and Art. 8 para. (11) and (12) of the Law on administrative litigation no 554/2004 that, in order to carry out a legality check on administrative acts at the request of associations, as interested social bodies, the invocation of the legitimate public interest must be subsidiary to the invocation of a legitimate private interest, the **latter arising from the direct link between the administrative act subject to legality directly and the objectives of the association, according to its statutes.**

This decision gives the possibility for every NGO that has an objective (established in its statutes) in the same field as the said administrative act to contest the administrative act. (in our case, the protection of the environment).

The environmental administrative decision can be challenged by environmental NGOs (Art. 20 of Emergency Governmental Ordinance 195/2005 regarding the environmental protection law).

According to the procedure of the administrative courts, Art 2 letters a, r, and s of Law no 554/2004, the NGOs are considered to be "social organisations" that can challenge the administrative acts, (these include environmental administrative acts) based on "the public legitimate interest", if the protection of the environment is an objective included in the NGO's statutes.

The administrative complaint must be filed within 30 days after the content of the administrative environmental decision was known to the interested public. The complaint can also be submitted after more than 30 days for justified reasons, but no later than 6 months after the date when the public became aware of its content (Art. 7.3 of Law no 554/2004 regarding the administrative procedural law).

As stated above, pro bono assistance is not expressly regulated by law but can be obtained if a lawyer or law firm agrees to it. Also, legal aid is offered in the same conditions as for national NGOs.

4) Do individuals of the affected country have standing? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

The same regulations as described in chapter 1.7 for individuals are applicable.

In environmental matters any individual has standing without having to prove a prejudice (Art. 5 of Emergency Governmental Ordinance 195/2005 regarding the environmental protection law). The rules are the same as the one described previously. Legal aid may be granted if the person has a low income[42], and pro bono assistance can be obtained.

5) At what stage is the information provided to the public concerned (including the above parties)?

The public concerned from other countries are notified according to the Espoo Convention, which has been ratified by Romania through Law no 22/2001 and also according to the national legislation.

Art. 26 of Law no 278/2013[43] provides that the public from the neighbouring countries must be informed at the same time as the national public. The same rule is also established by Art. 17 para 1 of Law 292/2018[44]. However, the procedure for communicating the information goes through the competent authorities from the neighbouring state and not directly to the affected public.

Art. 35 of Emergency Governmental Ordinance no 68/2007[45] provides that the national competent authority will inform the corresponding environmental competent authority. If the prejudice has already been produced, the national competent environmental authority will inform the competent authority from the neighbouring country within 24 hours. There are no provisions concerning the obligation to directly inform the public from the neighbouring countries that might be affected.

6) What are the timeframes for public involvement including access to justice?

The timeframes are similar to the ones established for the national public.

7) How is information on access to justice provided to the parties?

The information concerning access to justice is mentioned at the end of the administrative act, where information regarding the time frame, the applicable provision of law and the competent court is given.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?

There are no special rules in this regard. The same general provision described at points 1.4.4 and 1.7.4.5 are applicable.

9) Any other relevant rules?

No other relevant rules were identified.

[1]Directive EIA 85/337/CEE transposed in Romania through GD 445/2009.

[2] For a better understanding of this situation we can give the example where a phone carrier, after the expiration of the contract, refused to remove the equipment installed on the roof of a building. This was clearly an environmental problem, because of the radiation emitted by the antennas. In this case the competence was taken from civil law.

[3] If the execution of the crime has been stopped or because the execution was poorly conceived and the result of the crime did not happen, the author of the crime is still responsible and will be subject to an investigation. The punishment in this case will be cut in half, so if for a crime the imprisonment is 2 years to 4 years, in case of an attempted crime the punishment will be imprisonment from 1 year to 2 years.

[4] Art. 106 et seq.

[5] Art. 52

[6] Art. 2-8

[7] Civil Procedure Code, Art. 254, para (5)

[8] Art. 7, law 554/2004

[9] "in the case of unjustified refusal to resolve a claim regarding a legitimate right or interest or, as the case may be, the failure to respond to the applicant within the legal term"

[10] "when the legality of an administrative individual act, disregarding the emission date is invoked as an exception ex officio or by request of a party in a trial before the court"

[11] Law no 178/1997 regarding the licensing and payment of interpreters, Governmental Ordinance 51/2008 regarding legal aid in civil matters
[12] Civil Procedure Code, Art. 265 et seq.
[13] Civil Procedure Code, Art. 269 et seq.
[14] Civil Procedure Code, Art. 272 et seq.
[15] Civil Procedure Code, Art. 282 et seq.
[16] Civil Procedure Code, Art. 309 et seq.
[17] Civil Procedure Code, Art. 327 et seq.
[18] Civil Procedure Code, Art. 330 et seq.
[19] Civil Procedure Code, Art. 341 et seq.
[20] Civil Procedure Code, Art. 345 et seq.
[21] Civil Procedure Code, Art. 348 et seq.
[22] Civil Procedure Code, Art. 254, paragraph 5
[23] Civil Procedure Code, Art. 254, paragraph 2
[24] Civil Procedure Code, Art. 330, paragraph 1.
[25] Civil Procedure Code, Art. 330, paragraph 2.
[26] Civil Procedure Code, Art. 339, paragraph 1.
[27] Civil Procedure Code, Art. 339, paragraph 2.
[28] Art. 90 of the Criminal Procedure Code: ”The legal aid is compulsory: when the suspect or defendant is a minor, hospitalized in a detention centre or in an educational centre, when they are detained or arrested, even in another case, when the security measure of medical hospitalization has been ordered against him, even in another case , as well as in other cases provided by law; if the judicial body considers that the suspect or defendant could not defend himself; during the trial in cases where the law provides for the crime of life imprisonment or imprisonment for more than 5 years”.
[29] Art. 93 para 4 and 5 of the Criminal Procedure Code: “(4) Legal assistance is mandatory when the injured person or the civil party is a person lacking capacity or with limited capacity; (5) When the judicial body considers that for some reason the injured party, civil party or civilly responsible party could not make one defence, has taken steps to appoint a lawyer”.
[30] Law no 51/1995, Art.10, paragraph 1,
[31] “in the case of unjustified refusal to resolve a claim regarding a legitimate right or interest or, as the case may be, the failure to respond to the applicant within the legal term”
[32] “when the legality of an administrative individual act, disregarding the emission date is invoked as an exception ex officio or by request of a party in a trial before the court”
[33] Governmental Decision no 1005/2013, Art 13 alin 2-point A letter d, regarding the organization and functioning of the National Environmental Guard.
[34] Emergency Governmental Ordinance no 195/2005, Art. 17 para 3 regarding the protection of the environment.
[35] Such as EIA permit, integrated environmental authorisation, SEA permit.
[36] Law no 554/2004 regarding the trial procedure in the administrative courts, Art. 14.
[37] Law no 554/2004 regarding the trial procedure in the administrative courts, Art. 15.
[38] Law no 178/1997 regarding the licensing and payment of interpreters, Governmental Ordinance 51/2008 regarding legal aid in civil matters
[39] Art. 396 of the Civil Procedural Code
[40] Art. 426 para 5 of the Civil Procedural Code
[41] Art. 20, Law no 554/2004
[42] Section 1.7.3.3
[43] Regarding industrial emissions
[44] This law regulates the impact of some public and private projects on the environment
[45] Regarding environmental liability with provisions regarding also the prevention and remedy of environmental damage

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Access to justice falling outside of the scope of EIA, IPPC/IED, access to information and ELD

1.1. Decisions, acts or omissions concerning specific activities falling within the scope of EU environmental legislation outside the scope of the EIA and IED Directives

At the national level, other specific activities that are not regulated by the EIA and IED directive, are regulated:

EGO 57, from 20 June 2007, regulates the regime of protected natural areas, the conservation of natural habitats and of flora and fauna, transposing Directive 79/409/CEE (the Birds Directive) and the Directive 92/43/CEE (the Habitats Directive);
Water Protection Act no 107/1996, amended several times;
EGO 195/2005 regarding the environmental protection;
EGO 43/2007, regarding the placement of genetically modified organisms on the market;
EGO 202/2002, regarding integrated management of the coastal zone;
Law no 104/2011, regarding the quality of the ambient air;
Law no 211/2011, republished, regarding the waste regime;
The Forest Code, Law no 46/2008, republished in Official Monitor no 611, August 2015;
Law no 121/2019, regarding the evaluation and management of ambient noise;
Law no 59/2016 regarding the control over the major accident hazards in which are involved dangerous substances transposing the Seveso Directive.
etc.

1) Which are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain: a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission and its content (in particular, the conditions to be fulfilled and any time-limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The applicable national statutory rules on standing for both individuals and NGOs are the same rules from administrative Law no 554/2005 as described above under questions 1.4.1 etc. Access to national courts is effective in Romania. The case law of the European Court of Justice will always have priority and will enjoy a presumption of genuine interpretation of EU law.

2) Which is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

There are no special provisions regarding this matter so the general rules will apply. They are described at point 1.3.1 and 1.3.2.

The person whose right recognized by law or whose legitimate interest is impaired through a unilateral administrative act, who is dissatisfied with the response received to the previous complaint or who did not receive any response within the time limit[1] (30 days) may refer to the competent administrative litigation court, in order to request the cancellation in whole or in part of the act, repair the damage caused and, possibly, claim reparations for moral damages. Also, persons who consider themselves harmed in a right or a legitimate interest if the authority did not resolve the addressed matter in the time specified by law or if the authority refused to carry out a certain administrative operation necessary for the exercise or protection of the person's rights or legitimate interests can submit a request to the court. The reasons invoked in the application for annulment of the act are not limited to those invoked by the prior administrative complaint.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

The administrative review regulated by Art. 7 of Law no 554/2004 is mandatory. It must be done prior to recourse to a judicial review. Before addressing the competent administrative litigation court, the person who is considered injured in his or her right or in a legitimate interest in an **individual administrative act** addressed to him must ask the **issuing public authority or the hierarchically superior authority**, if it exists.

However, exceptions can be made in the case of actions introduced by the prefect, the People's Advocate, the Public Ministry, the National Agency of Civil Servants, or regarding the request of the persons injured by ordinances or provisions of ordinances or of the actions directed against administrative acts that cannot be revoked as they entered the civil circuit, have produced legal effects, as well as the cases from Art. 2, alin 2 of Law 554/2004 (in the case of unjustified refusal to resolve a claim regarding a legitimate right or interest or, as the case may be, the failure to respond to the applicant within the legal term) and Art. 4 (when the legality of an administrative individual act (disregarding the emission date) is invoked as an exception ex officio or by request of a party in a trial before the court) the administrative complaint is not mandatory. A more detailed analysis can be seen at points 1.3.1 and 1.7.1.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

In Romania participation in the public consultation phase is not a condition to have standing before the courts.

5) Are there some grounds/arguments precluded from the judicial review phase?

If a person is not satisfied with the response of the administrative authority, or the authority did not give a response to the complaint in the time periods provided by law as well as in the case of a refusal (detailed in Art. 7 of Law no 554/2004, the harmed person can file a complaint at the Tribunal or the Court of Appeal (based on the jurisdiction described in Art. 10 of Law no 554/2004). The litigation will be judged in public hearing. The response to the complaint (submitted by the defendant) is mandatory and will be communicated to the plaintiff at least 15 days before the first date of trial. The decisions of the court are drafted and motivated within 30 days of the pronouncement. If the object of the complaint is a unilateral administrative act, the court solving the complaint can:

cancel in whole or in part the administrative act

oblige the public authority to issue an administrative act

issue another document or perform a certain administrative operation

In resolving the complaint, the court will also establish the material or moral damages.

When the object of the action in administrative litigation is drawn up by an administrative contract the court can:

order its cancellation, in whole or in part;

oblige the public authority to conclude the contract to which the applicant is entitled;

request one of the parties to fulfil a certain obligation;

supplement the consent of a party when the public interest requires it;

oblige the payment of damages for the material and moral damages.

The judgement given in the first instance may be appealed within 15 days from communication. The appeal suspends enforcement and is judged in urgency. If the appeal was admitted, the court of appeal, cancelling the sentence, will re-judge the litigation. When the judgement of the first court was rendered without judging the main arguments or if the judgement was made in the absence of the party who was illegally summoned both in the administration of evidence and in the debate on the case, the case will be referred once to the first court. If the judgement in the first instance was made in the absence of the party who was illegally summoned to administer the evidence but was legally summoned in the debate on the case, the court of appeal, cancelling the sentence, will re-judge the litigation. According to Art. 25 of Law no 278/2013 and also according to Law no 554/2004 regarding the administrative procedural law, the court will review the substance as well as the procedural steps in the decisions, acts or omissions that are the object of the public consultation procedure.

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

There are no special rules in this matter, so the general rules will apply.

According to Art. 8 Civil Procedure Code, in a civil matter the parties are guaranteed the exercise of their procedural rights equally and without discrimination. The right of equality in civil procedure is a fundamental right, being an application of a fundamental right from the Constitution (Art. 16, alin. (1), the principle of equality before the law and public authorities, and Art. 124, alin. (2) which states that the justice is unique, impartial, and equal for everyone, and a guarantee of an equitable process.

According to Art. 7, alin (1) of Law no 304/2004 regarding judicial organization, all people are equal in the face of the law, without privileges and without discrimination, and according to the same article, alin (2), justice is being available equally for everyone, without discrimination on the basis of race, nationality, ethnic origin, language, religion, sex, sexual orientation, opinion, political affiliation, wealth, origin, or social condition or any other discriminatory criteria. Also, Art. 2 of the same Law (304/2004) states that justice dispensed by judges in the name of the law is unique, impartial, and equal for all.

The equality of parties in a civil matter means that the parties have the right to be judged by the same organs of judicial power according to the same procedural rules, benefiting from the same procedural rights in the specific litigation that is subject to judging, which basically means that in an identical situation, parties cannot be treated differently.

The existence of specialized instances or specific different procedural rights in some matters is not contrary to this principle, because those specific courts resolve all the litigation that falls under the courts' specialization, without any discrimination, and the special procedural rules will be applied to any party that is part of a litigation subject to the respective derogatory rules. The difference in the treatment of parties could become discriminatory only if a distinction was introduced in analogous or comparable situations, without these being based on a reasonable and objective justification.

The jurisprudence of the European Court of Human Rights enshrines the principle of equality of arms , which means equal treatment of the parties throughout the proceedings before a court, without one of them being favoured over the other. Also, Art. 6 of the European Convention on Human Rights guarantees the right to a fair trial; according to paragraph 1 “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice”. Paragraph 2 of the same article states that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. In paragraph 3 of Art. 6 ECHR, there are some minimum rights that must be respected regarding a person charged with a criminal offence.
Thus, the procedural documents for which the law imposes the obligation of communication are communicated to all parties. It would have violated the principle of equality of arms, for example, when the court would only communicate to one of the defendants the request for a trial. The same principle would be disregarded if, in evidence or, as the case may be, in combating the same thesis, the court would approve the evidence with witnesses only to one of the parties but rejecting it for the opposing party.
Of course, even if not expressly stipulated, the principle of equality of arms is an implicit principle of criminal law. In the criminal case, irrespective of the parties to the case, they address the same judicial organs explicitly established in accordance with the same procedural rules provided by the Criminal Procedure Code or by special laws. The establishment of a personal jurisdiction or of abbreviated procedures in case of acknowledgment of guilt is not incompatible with the principle of equality.

7) How is the notion of “timely” implemented by the national legislation?

There are no special provisions regarding this matter. The general rules that will apply are from the Civil Procedure Code, but they are recommendations and not binding on the courts:
an injunctive relief in a civil court must be tried urgently. The decision should be delivered in 24 hours and the written decision should be given within 48 hours after the decision was pronounced.
in the administrative court, the injunctive relief must be tried urgently. Art 14 of Law no 554/2004 establishes an urgent procedure for injunction, derogating from the general procedural regulations in the civil procedure that require longer for the case to receive a hearing in court.
The Civil Procedure Code provides further regulations that are also applicable for the administrative courts: after the judicial research is over, the delivery of the decision can be delayed for up to 15 days, several times. There is no regulation regarding how many times the court can postpone the delivery of the decision. The written decision should be communicated to the parties within 30 days. In duly justified cases, this deadline can be extended twice by 30 days each time. Several judges have been sanctioned for exceeding this term. However, in practice, communicating the written decision usually takes more than 30 days and even more than 90 days.

8) There is injunctive relief available? If yes, which are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no special rules regarding injunctive relief. The main rule is that there is no suspensive effect in any circumstances. In all cases the court must be asked for injunctive relief. The effects of the act will be suspended only if the injunctive relief is admitted by the court. The appeal against the decision of the court to grant the injunctive relief will not suspend the execution of this decision.
In expropriation procedures the administrative decision is immediately executed. The right of property is transferred from the private owner to the state through a unilateral administrative act immediately after the money offered by the expropriator has been deposited into a bank account (the private owner can receive the money only if he/she is not taking legal action against the expropriator asking for more money). An injunctive relief with the object of suspending this transfer is inadmissible according to the Expropriation Law no 255/2010.
Other administrative acts also produce effects regardless of an annulment action in court. The only suspensive effect is provided by the injunctive relief.
Injunctive relief is possible both in administrative procedure and the Civil Procedure Code.
In administrative procedures the injunctive relief concerns only suspension of the effects of an administrative unilateral act.
In civil proceedings the court can grant an injunctive relief to ensure the protection of a right, to prevent an imminent damage, and to remove the obstacles to execution of a court order. The injunction is given only in urgent matters and only for a limited period.
According to Article 14 of Law no 554/2004 regarding the administrative court procedure, you can ask for injunctive relief immediately after submitting the administrative complaint to the public authority that issued the act, before submitting to the court the request for the annulment of the act.
According to Article 15 of Law no 554/2004 regarding the administrative court procedure, injunctive relief can be also introduced together with the annulment request or through a separate request that can be filed until the first instance court has reached a decision regarding the annulment of the act.
To be granted, you must prove that the case is well justified and that without the injunctive relief an imminent damage would be suffered.
In civil procedure the injunctive relief is granted in urgent cases and for a limited period, as described above.

9) Which are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?

There are no special rules in this matter. The general rules will apply.
The cost categories are:
The fee of the court
The fee of the lawyer
The fee of the judicial expert
The costs of the other party according to loser pays principle
The courts’ fees are regulated by Emergency Governmental Ordinance no 80/2013.
*The fee for **administrative** court* it varies between approximately 10.35 euros (50 lei) and 62 euros (300 lei). At this moment in Romania 1 euro equals 4.84 lei.
*The fees for **civil** court* are established according to the value of the case. There are several criteria given by certain values established by law.
if the value of the case is under 103 euros (500 lei), the court fee is 8% but no less than 4 euros (20 lei)
if the value of the case is between 103.72 euros (501 lei) and 1035 euros (5,000 lei), the fee of the court is 8.28 euros (40 lei) plus 7% for the amount above 103 euros (500 lei);
if it falls between 1,035 euros (5,000 lei) and 5,175.05 euros (25,000 lei), the fee of the court is 73.49 euros (355 lei) plus 5% for the amount above 1,035 euros (5,000 lei);
if it falls between 5,175.45 euros (25,001 lei) and 10,350.48 euros (50,000 lei), the fee of the court is 280 euros (1,355 lei) plus 3% for the amount above 5,174.94 euros (25,000 lei)

if it falls between 10,350.08 euros (50,001 lei) and 51,757.57 euros (250,000 lei) the fee of the court is 435.80 euros (2,105 lei) plus 2% for the amount higher than 10,348.68 euros (50,000 lei)
higher than 5,174.34 euros (250,000 lei) – 1,263.66 euros (6,105 lei) plus 1% for the amount higher than 51,746.94 euros (250,000 lei)
The fee for ***appeal*** *as second grade of jurisdiction* is half of the fee at the first court but not less than 4.14 euros (20 lei):
The fee for the recourse as third grade of jurisdiction the fee is 20.70 euros (100 lei) for the cassation motives regulated in Art. 488 para 1 points 1 – 7 of the new Civil Procedure Code. If the motives relating to the application of the substantive law in cases that can be valued in money, the fee of the court is 50% of the amount paid in the first court but no less than 20.70 euros (100 lei). For the cases that cannot be valued in money the fee of the court is 20.70 euros (100 lei).
If the appeal is filed against a decision of the court concerning:
suspension of the trial proceedings, the fee is 4.14 euros (20 lei)
annulment of the trial because the fee of the court was not paid, or other cases when the case was not trialled, the fee of the court is 10.35 euros (50 lei).
There is no criterion for estimating a fee of the expert or lawyer. A fee for an expert was about 2,000 euros (9,673.61 lei) and a fee for a lawyer not working for an environmental NGO was at least 1,000 euros (4,836.81 lei).
Very few lawyers work in NGOs, so access to lawyers is very difficult.
The fee to apply for **injunctive relief** in civil court is 4.14 euros (20 lei), if has no monetary value. If it does, the fee is 11 euros if the value is established at under 413.97 euros (2,000 lei) and 41.40 euros (200 lei) if the value established is higher than 413.97 euros (2,000 lei). There is no deposit needed.
The injunctive relief in administrative court is not mentioned, therefore it should apply Art. 27 which refers to any other cases that cannot be valued in monetary terms. For such cases, the fee of the court is 4.14 euros (20 lei).
The 'loser pays' principle applies every time the other party asks for the costs that they had to bear during the trial. If the other party does not ask for such costs then the principle will not apply. The court could also compensate the expenses if only a part of your request was admitted, and the rest rejected. In this case, the court could reimburse the expenses, so that either party will pay the remaining part, or nothing if the entire sum would compensate. There is no special regulation concerning the way the judge should allocate the costs. The judge could determine according to his own individual understanding whether the costs as requested by the party are equitable or not. However, the judge is not able to allow the costs to be higher than the amounts that are proved with fiscal receipts.
There are some exceptions from the judicial fee according to Art. 29 of Emergency Governmental Ordinance number 80/2013, but none of them refers to environmental cases
Also, Art. 30 states that the actions and applications are excepted from the judicial fee, including the legal remedies formulated, according to the law, by the Senate, the Chamber of Deputies, the Presidency of Romania, the Government of Romania, the Constitutional Court, the Court of Accounts, the Legislative Council, the People's Advocate, the Public Ministry and the Ministry of Public Finance, regardless of their object, as well as those formulated by other public institutions, regardless of their procedural quality, when they have as their object public revenues.
In order to provide access to justice to every person addressing a matter to a court of justice, even to those who do not have the financial resources to pay the judicial fee, **EGO nr. 51/2008 provides access for those who need it to a public judicial aid**, which is basically a form of assistance provided by the government, with the purpose of ensuring the right to a fair trial and a guarantee of equal access to justice. This assistance can be obtained in litigation regarding civil, commercial, administrative, work a public insurance cases as well as any other cases, except the criminal ones. Public judicial aid may be requested, under the conditions of this emergency ordinance, by any **individual** who cannot meet the costs of a trial or those involved in obtaining legal consultations in order to defend a legitimate right or interest in justice without endangering his or his family's maintenance.
The public judicial help was broadly described in sections 1.6.1.1 and 1.7.3.3, so in order not to overload this section, we will simply indicate the chapter where it was largely analysed.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[2]

The SEA Directive 2001/42/EC was transposed into national law by Government Decision (GD) no 1076/2004. This decision establishes the procedure for carrying out the environmental assessment, applied for the purpose of issuing the environmental opinion necessary for the adoption of plans and programmes that could have significant effects on the environment. The decision also defines the role of the competent authority for environmental protection, the requirements of the stakeholders and the public participation procedure.
The screening decision as well as the SEA permit can be challenged in court according to the general procedure regulated for all administrative acts:
The administrative complaint must be filed within 30 days after the content of the administrative environmental decision was known to the interested public.
The complaint can also be submitted after more than 30 days for justified reasons, but no later than 6 months after the date when the public became aware of its content (Art. 7 of Law no 554/2004 regarding the administrative procedural law).
According to Law no. 554/2004, Art. 10 contains the rules regarding the competent court.
So disputes regarding administrative acts:
issued or concluded by local and county public authorities, as well as those regarding taxes and duties, contributions, custom debts, as well as their accessories of up to 500,000 lei (102,939 euros) will be resolved by the **tribunals**, and
issued or concluded by the central public authorities, as well as those regarding taxes and duties, contributions, customs debts, as well as their accessories higher than 500,000 lei will be resolved by the **courts of appeal.**
The cassation of a decision will be retried by the higher court, so if a decision is given by the tribunal it will be retried by the court of appeal, and if the first decision is given by the court of appeal, it will be retried by the High Court of Cassation and Justice.
According to the provisions of GD 1076/2004, the potential significant effects on the environment that may occur through the implementation of the plan or programme must be identified, described and evaluated.
The environmental assessment is carried out during the preparation of the plan or programme and is completed before its adoption or its submission in the legislative procedure. This procedure has 3 stages[2]:[3]
the screening phase of the plan/programme in the environmental assessment procedure;
the scoping phase of the project plan/programme and the writing of the environmental report;
and the stage of analysis of the quality of the report and the decision-making.
These stages provide for the completion of several steps, including the consultation of the public and of the authorities interested in the effects of the implementation of the plans/programmes, taking into account the environmental report and the results of these consultations in the decision-making process and the insurance informing about the decision taken.
Environmental assessment is a procedure that involves not only drawing up the environmental report, but also a consultation process, in which both the public and the authorities with responsibilities in the field of environmental protection can express their opinions and suggestions.

This definition clearly establishes that the consultation process is an inseparable part of the evaluation. In addition, the results of the consultation must be considered in the decision-making process. This underscores the importance of consultation in the process of environmental assessment.

1) Which are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act, or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The applicable national statutory rules on standing for both individuals and NGOs are the same as described above under questions 1.4.1 etc.

According to the procedure of the administrative courts, Art. 2 letters a, r, and s of Law no 554/2004, the NGOs are considered to be "social organisations" which can challenge the administrative acts, (these include environmental administrative acts) based on "the public legitimate interest", if the protection of the environment is an objective included into the NGO's statutes.

The legitimate public interest is defined as the interest concerning "*the law order and the constitutional democracy, guaranteeing the rights, freedoms and fundamental duties of the citizens, satisfying the community needs, realizing the jurisdiction of the public authorities*".

The individual, however, according to Art. 2 letter a and Art. 8 para 2, can invoke the legitimate public interest only subsequent to the private legitimate interest.

This is the general provision; however, Art. 5 of EGO 195/2005 derogates from the general provision, establishing for any person the right to address, directly or through environmental protection organizations, the administrative and/or judicial authorities, in the matter of environmental issues whether or not the damage has occurred.

An important decision in this matter was given by the **High Court of Cassation and Justice, decision no. 8/2020**. This court established that in the uniform interpretation and application of the provisions of Art. 1 para. (1), Art. 2 para. (1) lit. a), r) and s) and Art. 8 para. (11) and (12) of the Law on administrative litigation no 554/2004 that in order to carry out a legality check on administrative acts at the request of associations, as interested social bodies, the invocation of the legitimate public interest must be subsidiary to the invocation of a legitimate private interest, the **latter arising from the direct link between the administrative act subject to legality directly and the objectives of the association, according to its statutes.**

This decision gives the possibility for every NGO that has an objective (established in its statutes) in the field of the litigation to act against the said administrative act that has an impact in the field where the NGO acts.

The screening decision as well as the SEA permit can be challenged in court according to the general procedure (law no. 554/2004) as they are considered administrative acts.

Through the judgment given in Case 314/85, Photo Frost, the Court of Justice reiterated the principle according to which it is solely competent to rule on validity of the acts of the EU institutions, according to the necessity of uniform application of the European law, a requirement that is particularly strong when questioned the validity of an EU act. Thereby, the case law of the European Court of Justice will always have priority and will enjoy a presumption of genuine interpretation of EU law[4].

2) Which is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

There are no special provisions regarding this matter so the general rules will apply. They are described at points 1.3.1 and 1.3.2.

3) Before filing a court action, there is a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There is a requirement of exhaustion of administrative review procedures prior to recourse to judicial review. General administrative rules from Law no. 554 /2004 apply, as described above at points 2.1.3, 1.3.1 and 1.8.3.8.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

In Romania participation in the public consultation phase is not a condition to have standing before the courts.

5) Is injunctive relief available? If yes, what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Concerning the transposition of SEA there are no special rules on this. General administrative rules apply. See above answers to questions 1.7.2 and 2.1.8.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

The costs that can arise from bringing such a challenge on access to justice in this area are described in EGO no 80/2013. These were detailed at points 1.7.3 and 2.1.9.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[5]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act, or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The applicable national statutory rules on standing for both individuals and NGOs are the same rules from the administrative Law no 554/2005 as described above under questions 1.4.1 etc.

In Romania, there is no exhaustive list containing all the plans and programmes that can be challenged or not. This can be established based on the specific content of the plan. If the plan or programme does not fall under SEA, it will fall under Law no 52/2003 on decision-making transparency in public administration regarding the public consultation procedure, and other sectoral legislation. Such administrative acts can be challenged according to the general dispositions from Law no 554/2004.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

There are no special provisions regarding this matter so the general rules will apply. They are described at point 1.3.1 and 1.3.2.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There is a requirement of exhaustion of administrative review procedures prior to recourse to judicial review. General administrative rules from Law no. 554 /2004 apply, as described above at points 2.1.3, 1.3.1 and 1.8.3.8.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

In Romania participation in the public consultation phase is not a condition to have standing before the courts.

5) Is injunctive relief available? If yes, what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no special provisions. General administrative rules apply. See above answers to questions 1.7.2 and 2.1.8.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

The costs that can arise from bringing such a challenge on access to justice in this area are described in EGO no 80/2013. These were detailed at points 1.7.3 and 2.1.9.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[6]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the content of the plan (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The SEA Directive 2001/42/EC was transposed into national law by Government Decision no 1076/2004. The plans and programmes that are *specifically required by EU law to be prepared* are adopted through Laws issued by the Parliament, or normative administrative acts such as Governmental Decisions or Ministerial Orders, depending on the importance of the plans/programmes. The Laws issued by the Parliament cannot be contested in court, however, they can be attacked on constitutionality issues by the parties to a judicial case based on the law, by the Ombudsman, or by the political parties from the Parliament after adoption or by the President of the Republic pending promulgation.

The Governmental Ordinance can be contested in court according to Law no 554/2004 Art. 9 only together with a claim of unconstitutionality.

The other normative administrative acts can be contested in court according to the dispositions of Law no 554/2004.

The applicable national statutory rules on standing for both individuals and NGOs are the same from the administrative Law no 554/2005 as described above under questions 1.4.1 etc.

2) Does the form in which the plan or programme is adopted make a difference in terms of legal standing (see also Section 2.5 below)?

There are no different *locus standi* conditions if the plan or programme is adopted by legislation, by an individual resolution of a legislative body, or by a single act of an administrative body etc. The general rules from Law no 554/2004 apply.

3) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

There are no special provisions regarding this matter so the general rules will apply. They are described at points 1.3.1 and 1.3.2.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There is a requirement of exhaustion of administrative review procedures prior to recourse to judicial review. General administrative rules from Law no. 554 /2004 apply, as described above at points 2.1.3, 1.3.1 and 1.8.3.8.

5) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

In Romania participation in the public consultation phase is not a condition to have standing before the courts.

6) Are there some grounds/arguments precluded from the judicial review phase?

There are no special provisions regarding this matter. The answer is the same as at point 2.1.5.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

There are no special rules in this matter, so the general rules will apply. They are described at point 2.1.6.

8) How is the notion of "timely" implemented by the national legislation?

There are no special provisions regarding this matter. The general rules that will apply are from the procedural civil code. They are described at point 2.1.7.

9) Is injunctive relief available? If yes, what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no special provisions. General administrative rules apply. See above answers to questions 1.7.2 and 2.1.8.

10) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

The costs that can arise from bringing such a challenge on access to justice in this area are described in EGO no 80/2013. These were detailed at points 1.7.3 and 2.1.9.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[7]

The European legislation can be transposed into national law through different normative acts:

Ministerial Orders (they can be contested according to the dispositions of Law no 554/2004 described in points 1.4, 1.8.1)

Government Decisions (they can be contested according to the dispositions of Law no 554/2004 described in points 1.4, 1.8.1)

Emergency Government Ordinances (they can be contested according to Art. 9 of Law no. 554/2004). The person injured in a right or in a legitimate interest by ordinances or provisions of ordinances may bring an action in the administrative court, accompanied by the exception of unconstitutionality, if the main object is not the finding of unconstitutionality of the ordinance or provision of ordinance.

Laws (they can be contested for an exception of unconstitutionality only by the court or commercial arbitration tribunal before which the exception of unconstitutionality was invoked (by the parties) or directly by the People's Advocate. The parties cannot directly address the matter of unconstitutionality to the Romanian Court of Constitutionality. The Constitutional Court also decides on the constitutionality of the laws, before their promulgation, at the notification of the President of Romania, of one of the presidents of the two Chambers, of the Government, of the High Court of Cassation and Justice, of the People's Advocate, of at least 50 deputies or of at least 25 senators, as well as, ex officio, on initiatives to revise the Constitution.

For example, the adoption of the Natura 2000 sites is made for SCIs through Orders of the Environment Minister and the SPAs through Governmental Decision.

Any administrative decision or act implementing EU environmental legislation would be an administrative act, challengeable in court, except for Laws issued by the Parliament.

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act, or omission of the national regulatory act (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The applicable national statutory rules on standing for both individuals and NGOs are the same as in the administrative Law no 554/2005 as described above under question 1.4.1 etc.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

There are no special provisions regarding this matter so the general rules will apply. They are described at points 1.3.1 and 1.3.2.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There is a requirement of exhaustion of administrative review procedures prior to recourse to judicial review. General administrative rules from Law n. 554 /2004 apply, as described above at points 2.1.3, 1.3.1 and 1.8.3.8.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

In Romania participation in the public consultation phase is not a condition to have standing before the courts.

5) Is injunctive relief available? If yes, what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no special provisions. General administrative rules apply. See above answers to questions 1.7.2 and 2.1.8.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

The cost that can arise from bringing such a challenge on access to justice in this area are described in EGO no 80/2013. These were detailed at points 1.7.3 and 2.1.9.

7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how [8]?

The national courts can ask the European Court of Justice for a preliminary ruling.

Regarding the preliminary ruling, our legislation is not very extensive. The High Court of Cassation and Justice has given some directions in this matter. For example, the High Court of Cassation and Justice through Decision no 2167/2016 has ruled that an application to the CJEU can only be made when in an active litigation the question of the validity of interpretation or the validity of community law is raised. The national court will determine the relevance of Community law for the resolution of the dispute and whether a preliminary ruling is necessary. Also, the question of what may be referred by the national court concerns exclusively questions of interpretation, validity or application of Community law, and not matters relating to national law or particular elements of the case before the court. The answer of the Court of Justice does not take the form of a simple opinion, but of a reasoned decision or order. The receiving national court is bound by the interpretation given when resolving the dispute before it. The decision of the Court of Justice is equally binding on the other national courts invested with an identical issue.

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[1] Law no 554/2004, Art. 2, para. (1) let. H

[2] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.

[3] GD 1076/2004, Art. 3, paragraph 2

[4] Priority of the EU legal order over national law, Razvan Horatiu Radu.

[5] See findings under ACCC/C/2010/54 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of the Aarhus Convention.

[6] These fall within the scope of both Article 7 and Article 9(3) of the Aarhus Convention. See also relevant case-law of the Court of Justice of the European Union such as Case C-237/97, Janecek and cases such as Boxus and Solvay C-128/09-C-131/09 and C-182/10, as referred to under the Commission Notice C/2017/2616 on access to justice in environmental matters.

[7] Such acts come within the scope of Article 8 and Article 9(3) of the Aarhus Convention. An example of such an act concerns the decision of the national administration that featured in Case C-281/16, *Vereniging Hoekschewaards Landschap*, ECLI:EU:C:2017:774.

[8] For an example of such a preliminary reference see Case C-281/16, *Vereniging Hoekschewaards Landschap*, ECLI:EU:C:2017:774.

Other relevant rules on appeals, remedies and access to justice in environmental matters

Regarding the enforcement of the rulings issued by the administrative court:

According to Art. 24 paragraph 1, if, following the admission of the action, the public authority is obliged to:

conclude, replace, or modify the administrative document,

issue another document or

perform certain administrative operations.

The execution of the definitive decision of the court *will be performed within the time limit stipulated in it*, and in the absence of such a term, within no more than 30 days from the date that the decision became final.

However, if the debtor does not voluntary execute his obligation in the term mentioned in the decision of the court or within 30 days after the ruling was issued, *it shall be carried out by forced execution*[1] (according to the provisions provided by Law no 554/2004). The creditor must make a new request to the first court that tried the case (the execution court) and ask for enforcement of the court decision. The court can impose on the head of the public authority or to the obliged person (debtor) a fine of 20% of the gross minimum wage per household for each day of the delay. This sum will be paid into the state budget, and the plaintiff will be entitled to receive penalties[2]. This means that the plaintiff can ask for an amount of money to be paid daily until the debtor will execute the decision of the court.

If within 3 months[3] from the date of communication of the decision to apply the fine and to award the penalties, the debtor, in a culpable way, still does not execute the obligation stipulated in the enforceable title, at the request of the creditor, the court will fix the amount owed to the state by the debtor and the penalties awarded to the creditor. At the same time, by the same decision, the court will determine[4], the damages that the debtor owes to the creditor for not performing the obligation in due time.

In the absence[5] of the request of the creditor within 3 months after the decision to apply penalties, the civil execution section of the execution court will request from the public authority information regarding the execution of the obligation according to the decision of the court, and if the obligation has not been fully executed, the executing court will determine the final amount that is owed to the state through judgment given with the summons to the parties. The decisions given according to Art. 24, paragraph (3) and (4) are subject to recourse within 5 days from communication[6]. The head of the public authority can act against those guilty of not executing the decision, according to the common law[7]. If the guilty are public servants or officials, the special regulations apply.

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[1] Law no 554/2004, Art. 24, paragraph 2
[2] Art. 906 Civil Procedural Code
[3] Law no 554/2004, Art. 24, paragraph 4
[4] If in the enforceable title it has not been established what amount is to be paid as an equivalent of the value of the good in case of the impossibility of surrendering it or, as the case may be, the equivalent of the damages due in case of non-performance of the obligation "*to do*" what the personal fact of the debtor implies, the executing court, at the request of the creditor, will establish this amount by decision given with the summon of the parties. In all cases, at the request of the creditor, the court will also consider the damages caused by the non-fulfilment of the obligation, before it becomes impossible to execute.
[5] Law no 554/2004, Art. 24, paragraph 5
[6] Law no 554/2004, Art. 24, paragraph 3
[7] Law no 554/2004, Art. 26

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