QUESTIONNAIRE EUFJE ANNUAL CONFERENCE 24-25 OCTOBER 2022 - CLIMATE LAW AND LITIGATION
Bulgaria

1. HOW HAS JUDICIAL DECISION-MAKING ON CLIMATE CHANGE ISSUES EVOLVED IN YOUR COUNTRY OVER THE LAST DECADE?

Climate change is globally recognized as a serious challenge to humanity. Taking into account the role of human activities, the release of carbon dioxide and other gases into the atmosphere causes the greenhouse effect, as the measurements of global atmospheric concentrations of greenhouse gases have shown significant increases, with increases in global average air temperature. The effects of changing climate conditions include temperature changes in the ocean and its oxidation, widespread melting of snow and ice slabs, extreme weather events, which in turn create risk of forest fires, landslides and floods, loss of biodiversity, arable land and water resources.

Given the global nature of the processes of climate change, the policy of Bulgaria in the area is determined by the international commitments undertaken by the country's ratification of the UN Framework Convention on Climate Change and the Kyoto Protocol on one hand and the other – by the European legislation in this area.

On 22nd of April 2016, 175 countries, including Bulgaria, signed the Paris Climate Agreement, which undoubtedly marks a historic breakthrough – after many years of negotiations, the countries came to the conclusion that the only response is the shared actions to reduce greenhouse gas emissions, setting a global goal of limiting global warming to 2 degrees Celsius and a vision for the ambitious target of 1.5 degrees.

The Ministry of Environment and Water conducts the overall state policy on climate change mitigation, assisted by the National Expert Committee on Climate Change as an advisory body. For the purpose of application and implementation of the country's commitments under international, European and national legislation on climate change, Directiorate Policy on Climate Change is structured within the Ministry.

Bulgaria actively participates in the global efforts to mitigate climate change and adapt to the changes that already have taken place. The Third National Action Plan on Climate Change is being implemented and the preparation of a national adaptation strategy is underway. Bulgaria participates successfully in the European trading scheme for greenhouse gas emissions with 127 installations throughout the country. Along with the other member states of the European Union, Bulgaria will fulfill a common goal to reduce greenhouse gas emissions with at least 40 % by 2030 with the adoption of the policy framework on climate and energy by 2030.

At the end of June 2021, Bulgaria did not support the European climate law, but voted "abstention". The main concerns of the state are related to the coal industry, on which Bulgaria is highly dependent. In this regard, the country also has one of the latest planned deadlines for ending the use of coal, compared to other Balkan countries - 2038.

Against the background of the cases with air pollution in 2021, there was more and more talk about the requirements for the operation of coal plants in our country.

Environmentalists point to these power plants as the main causes of air and water pollution and demand that stronger measures be taken. The debate is also part of the measures included in the green deal - a package of policies to achieve climate neutrality in Europe. Bulgaria should join general policies to reduce net greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels.

The Recovery and Resilience Plan adopted by the government in October called for a phase-out of coal to include steps by 2024, 2026, 2030, 2035 and 2038, specifying that these dates refer to the commitments at the EU level for 2030. 2035 is the date proposed by business organizations in our country, and 2038 is set as an indicative end date.

Since 2014, the Climate Change Mitigation Act has been in force in the Republic of Bulgaria and Promulgated, SG No. 22/11.03.2014, effective 11.03.2014, amended, SG No. 14/20.02.2015, supplemented, SG No. 17/6.03.2015, effective 6.03.2015, amended and supplemented, SG No. 41/5.06.2015, amended, SG No. 56/24.07.2015, effective 24.07.2015, SG No. 47/21.06.2016, amended and supplemented, SG No. 12/3.02.2017, amended, SG No. 58/18.07.2017, effective 18.07.2017, SG No. 85/24.10.2017, SG No. 7/19.01.2018, SG No. 15/16.02.2018, effective 16.02.2018, SG No. 25/20.03.2020, SG No. 19/5.03.2021, effective 5.03.2021.

This Act provides for the social relations with regard to:

1. the implementation of the government policy on climate change mitigation;

2. (supplemented, SG No. 25/2020) the implementation of mechanisms for fulfilment of the Republic of Bulgaria's obligations under the United Nations Framework Convention on Climate Change (ratified – SG No. 28/1995) (SG No. 68/2005) (UNFCCC) and the Kyoto Protocol to the United Nations Framework Convention on Climate Change (ratified – SG No. 68/2005) (SG No. 72/2002) (the Kyoto Protocol), and the Paris Agreement under the United Nations Framework Convention on Climate Change (ratified – SG No. 86/2016) (SG No. 2/2017), hereinafter "the Paris Agreement";

3. the functioning of the National Green Investment Scheme (NGIS);

4. the functioning of the National System of Inventories of Emissions of Harmful Substances and Greenhouse Gases in the Atmosphere;

5. the implementation of the EU Emissions Trading Scheme (EU ETS);

6. the administering of the National Registry for Greenhouse Gas Emission Allowance Trading (NRGGEAT);

7. the measures to reduce greenhouse gas emissions from liquid fuels and energy for transport;

8. (supplemented, SG No. 25/2020) fulfilling the obligations resulting from Decision No. 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140/136, 5 June 2009), hereinafter "Decision No. 406/2009/EC" and from Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from

2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No. 525/2013 (OJ L 156/26, 19 June 2018), hereinafter "Regulation (EU) 2018/842";

9. (new, SG No. 25/2020) the accounting of emissions and removals and the fulfilment of obligations in the land use, land use change and forestry sector resulting from Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No. 525/2013 and Decision No. 529/2013/EU (OJ L 156/1, 19 June 2018), hereinafter "Regulation (EU) 2018/841";

10. (renumbered from Item 9, SG No. 25/2020) the functioning of the Voluntary Emissions Reduction Scheme (VERS).

The objective of this Act is, by adopting national measures and introducing European and international mechanisms, to ensure the reduction of greenhouse gas emissions as the main element of the climate change mitigation policy and the long-term planning of measures for climate change adaptation.

CLIMATE CHANGE MITIGATION POLICY

The government policy on climate change mitigation shall be defined by the National Assembly through this Act and shall be implemented by the Council of Ministers through the secondary legislation. The Minister of Environment and Water shall be the competent authority for the overall implementation of the government policy on climate change mitigation. The Minister of Environment and Water may delegate by order the powers vested therein to other officials.

The National Expert Council on Climate Change shall be established as an advisory body with the Minister of Environment and Water; it shall consist of representatives of the Ministry of Environment and Water, the Ministry of Agriculture, Food and Forestry, the Ministry of Energy, the Ministry of Economy, the Ministry of Transport, Information Technology and Communications, the Ministry of Finance, the Ministry of Interior, the Ministry of Foreign Affairs, the Ministry of Regional Development and Public Works, the Ministry of Health, the Ministry of Education and Science, the Ministry of Labour and Social Policy, the State Agency for National Security, the Executive Environment Agency, the Bulgarian Academy of Sciences, the National Association of Municipalities and non-profit legal entities whose activities are directly related to climate change mitigation. The operation of the National Expert Council on Climate Change shall be regulated by rules approved by order of the Minister of Environment and Water.

The government policy on climate change mitigation shall be integrated with the respective sectoral and integrated policies in the fields of transport, energy, construction, agriculture and forestry, tourism, industry, regional development, health care and cultural heritage protection, education and science, finance and EU funds, labour and social policy, defence, internal and foreign affairs and shall be

implemented sectorally by the Minister of Energy, the Minister of Economy, the Minister of Regional Development and Public Works, the Minister of Transport, Information Technology and Communications, the Minister of Agriculture, Food and Forestry, the Minister of Interior, the Minister of Finance, the Minister of Foreign Affairs, the Minister of Health and the Minister of Culture in accordance with their powers granted under this Act and the relevant special legislation.

The Council of Ministers shall, on a motion by the Minister of Environment and Water, adopt ordinances for:

1. the terms and procedure for issue and review of greenhouse gas emissions permits from installations and for monitoring by operators and aircraft operators participating in EU ETS;

2. the conditions, terms and procedure for drafting and verification of reports by operators and aircraft operators and for drafting and review of applications by new entrants;

3. the terms and procedure for administration of NRGGEAT;

4. the terms and procedure for making arrangements for the national inventories of emissions of harmful substances and greenhouse gases in the atmosphere;

5. the conditions, terms and procedure for drafting and verification of reports by suppliers of liquid fuels, alternative fuels, and energy for transport.

The Minister of Environment and Water shall:

1. act as the competent EU ETS implementation authority;

2. perform the functions of national auctioneer within the meaning of Article 22 of Commission Regulation (EU) No. 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (OJ L 302/1, 18 November 2010), hereinafter "Regulation (EU) No. 1031/2010";

3. exercise control over the reporting of the national inventory of greenhouse gas emissions under UNFCCC and the Kyoto Protocol;

4. exercise control over the monitoring and reporting of other data under Regulation (EU) No. 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No. 280/2004/EC (OJ L 165/13, 18 June 2013), hereinafter "Regulation (EU) No. 525/2013";

5. review and coordinate applications made by operators and aircraft operators for free allocation of greenhouse gas emission allowances;

6. perform the verification and reporting of the levels of greenhouse gas emissions from the categories listed under Annex I to Decision No 406/2009/EC and Annex I to Regulation (EU) 2018/842;

7. oversee the development, operation and maintenance of NRGGEAT;

8. exercise other powers granted under this Act.

The Executive Director of the Executive Environment Agency (ExEA) shall:

1. issue, refuse to issue, review, update, and revoke greenhouse gas emissions permits;

2. approve, refuse to approve, review, update, or repeal the monitoring plan for annual emissions and tonne-kilometre data from aircraft operators;

3. make a conservative estimate of emissions within the meaning of Commission Regulation (EU) No. 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and the Council (OJ L 181/30, 12 July 2012), hereinafter "Regulation (EU) No. 601/2012";

4. make and report the national inventory of greenhouse gas emissions under UNFCCC and the Kyoto Protocol;

5. perform the functions of national administrator managing NRGGEAT;

6. carry out the accounting and reporting of emissions and removals in land use, land use change and forestry in accordance with Regulation (EU) 2018/841;

7. exercise other powers granted under this Act.

2. BEFORE WHICH TYPE OF COURTS IS THIS TYPE OF LITIGATION BROUGHT AND BY WHICH TYPE OF PLAINTIFFS?

LEGAL REMEDY:

I UNDER ADMINISTRATIVE LEGAL ORDER:

1) Procedure for judicial challenge of administrative acts issued by relevant administrative bodies with legally established competence in the field of limiting climate change (individual, general and normative administrative acts).

Standing – who can bring a case to court and how An administrative act may be contested before the court even if the possibility for administrative contestation of the administrative act has not been exhausted. If the person has used the possibility of administrative review and is not satisfied with the outcome, it can refer the case to the court in accordance with the rules for judicial review of administrative acts. Where the act, the tacit refusal or the tacit consent have been contested according to an administrative procedure, the time begins to run from the communication that the superior administrative authority has rendered a decision and, if the authority has not pronounced it, from the latest date on which the authority should have pronounced it. In administrative matters, two-instance court procedures are in place. A complainant has the right to appeal an administrative decision before the administrative court and then the first-instance court decision before the Supreme Administrative Court (SAC) via a cassation appeal. The grounds for cassation, specified in the APC, are defects of the first-instance decision concerning the requirements for validity, admissibility and correctness of the judicial act, respectively, namely is it invalid, inadmissible, orincorrect because of a breach of the material law, substantial breach of the court procedural rules or insufficiency. Environmental cases are handled under the common administrative procedure – i.e. there are no specific court rules applicable to environmental matters.

The Bulgarian legislation grants standing to interested persons (ENGOs and physical persons) to bring to court both measures of a general nature such as protected areas management plans and normative administrative acts – secondary legislation issued by the executive authorities. According to the Environmental Protection Act (EPA) "public" is defined as one or more natural or legal persons, and associations, organisations or groups thereof established in accordance with national legislation. EPA further defines "the public concerned" as the public who are affected or likely to be affected by, or which has an interest in, the procedures for approval of plans, programmes and development proposals, and in the decision-making process on the granting or updating of permits according to the respective environmental procedure or in the conditions set in the permits, including non-governmental organisations promoting environmental protection which are established in accordance with national legislation. To grant standing to the interested public, the court carries out an admissibility test based on two groups of criteria, namely arising from the special composition of the provision in connection with the legal definition of the EPA regarding the legal personality and legal interest of the complainant, as well as the suitability of the challenged act as a subject of appeal.

There is no stipulated deadline for the national courts to hear a case. The general rule according to the Civil Procedure Act and the APC is that the court hears and rules on the case within a reasonable time limit. The APC stipulates a limit of 1 month after the hearing at which the examination of the case is completed for the court to render a decision. Administrative acts shall be contestable within 14 days after communication thereof. A tacit refusal or tacit consent is contestable within 1 month after expiry of the time limit within which the administrative authority is obligated to pronounce the act. Within 14 days after receipt of the transcript of the appeal/protest, each of the parties may present a written response and provide evidence. The ruling on the motion of anticipatory enforcement can be challenged within 3 days after communication thereof. The minutes of a court public hearing are published on the website of the court within 14 days after the hearing. Interim measures – injunctive relief An appeal challenging an administrative decision has suspensive effect unless an anticipatory enforcement has been allowed by the administrative authority or by law.

This in practice represents automatic injunctive relief Pursuant to the APC, the deciding administrative authority can admit, with a reasoned decision, anticipatory enforcement of the act (the decision being part of the act or a special order). The reasons could be protecting the life or health of individuals, protecting particularly important state or public interests, preventing a risk of the frustration or material impediment of the enforcement of the act, or where delay in enforcement may lead to a significant or difficult to repair damage. The administrative act shall not be enforced prior to expiry of the time limits for its contestation or, where an appeal or protest has been lodged, until resolution of the dispute by the relevant authority. This rule shall not apply if all parties concerned request in writing an anticipatory enforcement of the act or if an anticipatory enforcement of the act is admitted by a law or by an order under the APC. The superior administrative authority may stay the anticipatory enforcement, allowed by order, upon the request of the contestant if this is required in the public interest or would inflict an irreparable detriment on the person concerned. In this case, the suspensive effect of the appeal will be restored.

The defence against preliminary enforcement may be provided by means of appeal in a separate legal control procedure independently from appealing the administrative act itself. The order by which the preliminary execution is admitted or refused may be appealed through the administrative body before the court within 3

days after its announcement, regardless of whether the administrative act has been appealed. It shall not stop the admitted preliminary execution, but the court may stop it till its final decision. The ruling of the court is still subject to appeal according to the APC. Otherwise, the preliminary execution may be stopped within the main procedure under the conditions of the APC, i.e. if it may cause to the appellant significant or hard-to-repair damage. The execution may be stopped only on the grounds of new circumstances. Costs of litigation The APC promotes as a principle access to justice with no financial barriers, and stipulates that no duties are collected and no costs are paid for any proceedings, except in the special cases provided for in the APC or in another law, as well as in the cases of judicial appeal against administrative acts and the bringing of a legal action under the APC.

In the Tariff for State Taxes, the tax for filing a cassation appeal against an administrative act by NGOs or individuals is very low – 10 BGN (about 5 EUR). However, the 2019 amendments to the APC significantly increased the tax for the cassation appeal from 5 BGN to 70 BGN for individuals, sole traders, state and municipal authorities and other persons with public functions or offering public services, and 370 BGN for organisations. The tax is not paid for the filing of a protest by the prosecutor or by individuals for whom it is acknowledged by the court or another authority (e.g. the chairman of the Supreme Administrative Court) that they do not possess the means to pay. When a material interest could be defined in the administrative court proceedings, the state tax is proportional and amounts to 0.8% of the material interest of (value for) the party, but not more than 1,700 BGN, and in the event that the interest in the case is above 10,000,000 BNG the tax is 4,500 BGN. Another part of the costs in judicial proceedings is the attorney's fee, the minimum for which is defined in Ordinance № 1 on the Minimum Amounts of Attorneys' Fees (e.g. for procedural representation, defence and assistance in administrative cases without a specific material interest, except for the special cases, no less than 500 BGN).

The "looser pays" principle is fully applicable. Where the court revokes the appealed administrative act or refusal to issue an administrative act, the stamp duties, court costs and fee for one lawyer, if the appellant has retained a lawyer, are reimbursed from the budget of the authority which issued the revoked act or refusal. The appellant is entitled to the same awarded costs upon dismissal of the case by reason of a withdrawal of the contested administrative act. Where the court rejects the contestation or the appellant withdraws the appeal, the party for which the administrative act is favourable is entitled to be awarded costs. The appellant shall pay all costs incurred in litigation, including the minimum fee for one lawyer, fixed according to the ordinance to the Bar Act on minimum lawyers' fees, if the other party has hired a lawyer, or, if the administrative authority has been represented by its staff legal adviser, remuneration is awarded in the amount determined by the court. Legal aid Pro bono assistance is regulated by the Legal Aid Act, which aim is to guarantee equal access to justice for all persons in criminal, civil and administrative cases before all court instances by ensuring and providing effective legal aid. Legal aid funds are provided from the state budget. Legal aid is organised by the National Legal Aid Bureau (NLAB) and by the bar association councils. The aid is provided for consultations for reaching an out-of-the court agreement before the start of the judicial proceedings or for submitting a case to the court, for drafting documents necessary for submitting a case and representation in court. The aid is provided e.g. to persons and families who are eligible for receiving social aid monthly allowances.

The legal aid system covers cases where a party to an administrative case does not possess the financial means to pay the lawyer's fee, wants to have one, and

it is in interest of justice. Legal aid is provided in cases where, based on evidence issued by the competent authorities, the court or the chairperson of the NLAB decides that the party lacks the means to pay the lawyer's fee. The court or the chairman decides on that taking into consideration the income of the person or of his/her family, his/her material assets declared, the family, health and employment status, and age. The national legal aid hotline is another means for providing legal aid to individuals under more relaxed conditions than the general rules. The hotline is administrated by the NLAB and aid is provided by lawyers listed at the NLAB.

Example: contesting an individual administrative act regarding a refusal to allocate free allowances for greenhouse gas emissions.
With Decision No. 8057 of 2.07.2021 of the Supreme Administrative Court under adm. e. No. 9681/2020, leaves in force Decision No. 244 of 26.06.2020 under Adm. No. 89/2020 of the Stara Zagora Administrative Court.

The proceedings before the Administrative Court of Stara Zagora were initiated on the complaint of "Brickel" EAD [town], reg. Art. Zagora to declare the nullity of the Letter No. 26-00-531/17.02.2016 of the Minister of Environment and Water, which denied free allocation of quotas to a new participant at the request of the company regarding the period 01.05.2010 - 05.05.2011.

By decision No. 12773/27.11.2015 of the Supreme Court of the Republic of Belarus, issued under adm. d. No. 11144/2015 according to the inventory of the same court, Decision No. 3971/08.06.2015 and additional Decision No. 5292/24.07.2015, issued under adm. e. No. 1526/15 of the inventory of the ASSG. The court ordered the administrative file to be returned to the Minister of Environment and Water, who is the competent authority for the free distribution of quotas for new participants in the European greenhouse gas emissions trading scheme pursuant to Art. 43 of the Climate Change Limitation Act to consider the request of "BRICKEL" EAD to issue free quotas for the period 01.05.2010 - 05.05.2011.

In connection with research, the application of Art. 177, para. 2 of the APC, which is the express request in the complaint, the first instance court analyzed the main problem before it, namely, to what extent it refused the Minister of Environment and Water to open a procedure for free allocation of quotas at the request of BRICKEL EAD for the period from 01.05. 2010 until 05.05.2011 contradicts the court decisions cited above that entered into force.

Justifying the application of Art. 177, para. 2 of the APC in conjunction with Art. 173, para. 2 of the APC, the court on the appeal of "BRICKEL" EAD, Galabovo declared the nullity of the Letter No. 26-00-531/17.02.2016 of the Minister of Environment and Water, which denied the distribution of 1,090. 19 free quotas for greenhouse gas emissions for the period 01.05.2010 - 05.05.2011.

PROCEDURE FOR JUDICIAL CHALLENGE OF COERCIVE ADMINISTRATIVE MEASURES

(1) The Minister of Environment and Water or officials authorised thereby in accordance with their remit shall enforce coercive administrative measures in cases of:

1. violation of the provisions of this Act, of the secondary legislation for its implementation, and of acts issued by the Minister of Environment and Water or officials authorised thereby in accordance with their remit;

2. impede the exercise of their controlling functions.

(2) With a view to preventing or terminating violations, as well as to removing the adverse effects thereof, the Minister of Environment and Water and the Executive Director of ExEA or the officials authorised thereby in accordance with their remit shall apply the following coercive administrative measures:

1. issue binding written instructions for suspending certain activities or for mandatory performance of certain actions within a given deadline;

2. request expert opinions, checks, tests of installations and facilities, parts, systems or components thereof;

3. temporarily suspend or limit the activity of operators or aircraft operators;

4. suspend the access of operators and aircraft operators to their accounts in NRGGEAT within the meaning of Article 34(3)(b) of Regulation (EU) No. 389/2013 where they have violated the obligations for accurate reporting of emissions under Article 36, Paragraphs 1 and 2 until the violation has been remedied.

(3) The coercive administrative measure shall remain in force until the grounds for imposing it have been removed.

(4) The order may be appealed by the interested parties pursuant to the Administrative Procedure Code. The appeal shall not stay the implementation of the order.

PROCEEDINGS FOR COMPENSATION

Any legal actions for compensation for detriment inflicted on individuals or legal persons by legally non-conforming acts, actions or omissions of administrative authorities and officials shall be examined according to the procedure established by this Chapter.

The provisions of the Act on the Liability for Damage Incurred by the State and the Municipalities or of the Implementation of Penal Sanctions and Detention in Custody Act shall apply to any unregulated matters regarding pecuniary liability.

Any legal actions for compensation for detriment caused by a sufficiently serious breach of European Union law shall also be examined according to the procedure established by this Chapter; the standards of non-contractual liability of the State for breach of European Union law shall apply to the pecuniary liability and the admissibility of the legal action.

Example: Decision No. 4506 of 08/06/2020 of the AdmS - Sofia under Adm. d. No. 8323/2019, left in force Decision No. 13227 of 23.12.2021 of the Supreme Administrative Court under adm. d. No. 11959/2020.

The proceedings were initiated on a claim with a legal basis, Art. 1, para. 1 of the Law on the Liability of the State and Municipalities for Damages (ZODOV), filed by [company] against the Ministry of the Environment and Waters (MOEW), for the payment of compensation for property damage caused by a canceled illegal individual administrative act - letter, ext. No. 26-00-173/08.05.2012 of the Deputy Minister of Environment and Water, with the stated cost of the claims totaling BGN 31,480,132.72, of which BGN 22,409,368.24 principal , representing direct material

damages and moratorium interest on this amount in the amount of BGN 9,070,764.48 for the period from 08.05.2012 to 27.04.2016 - the date of filing the claim as well as the legal interest for late payment for the period from the date of filing the claim – 27.04.2016 until the final payment of the amount.

The plaintiff claims that he suffered damages from an illegal administrative act: letter, ex. No. 26-00-173/08.05.2012 of the Deputy Minister of Environment and Water. The amount claimed consists of BGN 22,409,368.24 principal, representing direct material damages and moratorium interest in the amount of BGN 9,070,764.48 for the period from 05/08/2012 to 04/27/2016 - the date of filing of the claim. The direct damages are indicated as the price the plaintiff paid for greenhouse gas emission allowances, because by the above mentioned letter he was denied the allocation of 1,090,198 free greenhouse gas emission allowances from the New Entrants Reserve to the European Emissions Trading Scheme issues /E. /. The same letter was declared null and void by decision 3971/08.06.2015 under Administrative Law No. 1526/2015 of the 28th panel of the court, supplemented by decision No. 5292/24.07.2015 under the same case, left in force by final decision No. 12773/27.11.2015 under Adm. d. No. 11144/2015 of the Supreme Administrative Court (SAC), Fifth Department.

With the rendered decision, the court:

ORDERS the Ministry of Environment and Water to pay to [company], with EIK [EIK], an amount in the amount of 17 453 002, 24 /seventeen million four hundred fifty three thousand and two BGN and twenty four cents/ BGN compensation for caused , direct property damage from letter ex. No. 26-00-173/08.05.2012 of the Deputy Minister of Environment and Water

WHEREAS rejects the claim for the difference up to BGN 22,409,368.24 (twenty-two million four hundred and nine thousand three hundred sixty-eight BGN and twenty-four cents) principal;

ORDERS the Ministry of Environment and Water to pay to [company], with EIK[EIK], an amount in the amount of 7,064,311 /seven million sixty-four thousand three hundred and eleven/ BGN, representing moratorium interest on the awarded principal, for the period from 08/05/2012 to 27/04/2016

REJECTING the claim for the difference up to BGN 9,070,764.48 (nine million seventy thousand seven hundred sixty-four BGN and forty-eight cents);

ORDERS the Ministry of the Environment and Water to pay to [company], with EIK[EIK], the legal interest for delay on the payment for the period from the date of filing the claim - 27.04.2016 until the final payment of the amount.

ADMINISTRATIVE CRIMINAL LIABILITY

The written statements ascertaining administrative violations shall be drawn up by officials authorised by the Minister of Environment and Water in accordance with their remit.

The penal decrees shall be issued by the Minister of Environment and Water or officials authorised thereby.

Violations shall be ascertained, statements shall be drawn up, and penal decrees shall be issued and appealed pursuant to the Administrative Violations and Sanctions Act.

Appeal of the penal decrees, decisions, warnings and orders

The regional court shall hear the case sitting in a one-judge bench and shall deliver a judgment.

The ruling of the regional court shall be subject to cassation appeal before the respective administrative court on the grounds, provided in Criminal Procedure Code, and Chapter Twelve of Administrative Procedure Code.

Example: With Decision No. 260146 of 31.03.2021 of RS - Pernik under a. n.d. No. 77/2021 confirmed the criminal decree (NP) No. 117 of 17.12.2020 of the director of the Regional Inspectorate for the Environment and Water (RIOSV) - Sofia, by which "Toplofikatsia" AD, c Pernik, in his capacity as the "operator" of a combustion plant - TPP "Republika", from which emissions containing greenhouse gases are emitted during the production of thermal and electrical energy, possessing Greenhouse Gas Emissions Permit (GREG) No. 28-H3 /2015, issued by the executive director of the Executive Agency for the Environment and Waters (EAOS), on the basis of Art. 73 of the Climate Change Limitation Act (CLIP) in conjunction with Art. 83, para. 1 of ZANN, a property sanction in the amount of BGN 5,000 (five thousand) was imposed for failure to fulfill the obligation under Art. 34, para. 2, item 1, b. "a", preposition second by ZOIC, as follows: the company did not notify the competent authority - the executive director of the Environmental Protection Agency, about a change in the operation of the installation as a way of functioning, namely - use of 156,350 t of biomass and specifically - burning on 01.01.2019. , during the work of shifts "D" and "B", a total of 800 tons of biomass for the day, which is not permitted for use according to the issued REPG No. 28-H3/2015 and is not included in the monitoring plan, which actually the operator has implemented a change in the operation of the installation in the production of heat and electricity.

CIVIL REMEDIES:

Based on the basic principles established in the Criminal Procedure Code, our civil proceedings are built on the principle of three-instance consideration of cases by the courts. The determination of the competent court in a civil case is carried out in accordance with the rules for the different types of jurisdiction. according to the level of courts, it is determined by the rules of the so-called functional jurisdiction. The first-instance courts are the district court (RS) and the district court (OC), and the consideration of the dispute before them represents the backbone of the new procedural regulation. Their decisions are subject to an appellate (second-instance) appeal before the relevant district for the RS, respectively the appellate court (AC) for the acts of the SC. At the top of the pyramid is the Supreme Court of Cassation (SCC), which is always the third instance and before which the appellate decisions of the Supreme Court and Supreme Court are subject to appeal. The consideration of the cases by the courts of first instance is carried out by one judge, while in case of appeal of the court decision – the court of appeal and the Supreme Court of Appeals render judgment in a court composition of three judges.

The distinguishing feature of all types of court decisions is that when they enter into force, most often after the instance method of control has been exhausted, they have as their state-legal consequence the so-called force of res judicata. In addition, judgments on recognized condemnation claims also have an executive power, thanks to which the relevant interested party could obtain a writ of execution and, in the absence of voluntary performance by the debtor, proceed with enforcement through the existing public and private bailiffs . When claims with asserted posttestative rights are respected, the court decisions have a so-called constitutive effect, through which the legal change occurs by virtue of the decision - a divorce or partition is decreed.

Proceedings on collective claims, established in Chapter thirty-three of the Code of Civil Procedure.

A class action may be brought on behalf of persons who are harmed by the same infringement where, according to the nature of the infringement, the circle of the said persons cannot be defined precisely but is identifiable.

Any persons who claim that they are harmed by an infringement, or any organizations responsible for the protection of injured persons or for protection against such infringements, may bring, on behalf of all injured persons, an action against the infringer for establishment of the harmful act or omission, an action for the wrongfulness of the said act or omission, and an action for the blame.

Any persons who claim that the collective interest thereof has been harmed or is likely to be harmed by an infringement or any organization responsible for the protection of injured persons, of the harmed collective interest or for protection against such infringements, may bring, on behalf of all injured persons, an action against the infringer for cessation of the infringement, for rectification of the consequences of the infringement of the harmed collective interest, or for compensation for the damages inflicted on the said interest.

INDIVIDUAL CLAIMS

Example: Decision No. 261601 of 16.12.2021 of the SGS under No. 278/2020, confirmed by Decision No. 294 of 4.05.2022 of the SAC under No. 201/2022.

The case was initiated on a main condemnation action filed with the legal basis of Art. 240 of the Law on Obligations and Contracts /ZZD/ for the return of 28,000 European carbon emission allowances /EUA/ from the European Emissions Trading Scheme /ECTE/, due to the expiry of the contract for the loan of European allowances from 01.31.2020. and 2) a possible condemnation claim with a legal basis, Art. 57, para. 2 ZZD for the payment of the amount of 666,960 euros, representing the monetary equivalent of the same quotas, together with interest for delay calculated from the date of submission of the claim until the final payment of the amount.

With the court decision, the defendant was sentenced to return to the plaintiff on the basis of Art. 240 ZZD, 28,000 European carbon emission allowances /EUA/ according to the loan agreement for European allowances dated 31.01.2020.

As of now, the appellate decision has not entered into force, as it has been appealed to the Supreme Court of Cassation.

PENAL CODE

Crimes against the environment

Article 352

(1) (Amended, SG No. 95/1975, SG No. 86/1991, SG No. 85/1997, SG No. 26/2004, SG No. 33/2011, effective 27.05.2011) Anyone person who pollutes or allows the pollution of soil, air, water sources, basins, ground waters and the territorial or sea waters in areas designated by an international agreement to which the Republic of Bulgaria is a party and thereby renders these waters hazardous to people or animals and plants, or makes them unfit for use for cultural and everyday, health, agricultural, and other national-economy purposes, shall be punishable by imprisonment from one to five years and a fine from BGN 5,000 to 30,000.

(2) (Amended, SG No. 26/2004) The same punishment shall also be imposed on the official who has failed in designing, constructing or operating drainage or irrigation systems to take the necessary measures for prevention of hazardous pollution of potable water supply zones, or for raising of ground water levels in residential and resort areas.

(3) (Amended, SG No. 10/1993, SG No. 33/2011, effective 27.05.2011) When the acts under Paragraph 1 or 2 have caused:

1. death or severe bodily injury to one or more individuals, the punishment shall be imprisonment from five to twenty years and a fine from BGN 10,000 to 50,000;
2. substantial damages to the environment, the punishment shall be imprisonment from two to eight years and a fine from BGN 10,000 to 50,000.

(4) (New, SG No. 95/1975, amended, SG No. 28/1982, SG No. 10/1993, SG No. 33/2011, effective 27.05.2011) When the act under Paragraph 1 or 2 results from negligence, the culpable party shall be punishable by imprisonment of up to three years and a fine from BGN 2,000 to 20,000.

Article 352a

(New, SG No. 95/1975)

(1) (Amended, SG No. 86/1991, SG No. 85/1997, amended and supplemented, SG No. 33/2011, effective 27.05.2011) Anyone who pollutes or allows the pollution by petrol products or derivatives of territorial and inland sea waters in areas designated by an international agreement to which the Republic of Bulgaria is a party shall be punished by imprisonment from one to six years and a fine from BGN 10,000 to 50,000. When the act is committed by the captain of a vessel, the court shall also rule forfeiture of entitlement under Article 37(1)(7).

(2) (Amended, SG No. 10/1993, SG No. 33/2011, effective 27.05.2011) The punishment under Paragraph 1 shall also be imposed on anyone who pollutes or allows the pollution of waters referred to in Paragraph 1 by noxious liquid

substances in bulk designated in an international agreement to which the Republic of Bulgaria is a party.

(3) (Supplemented, SG No. 28/1982, amended, SG No. 10/1993, SG No. 33/2011, effective 27.05.2011) When the act under Paragraph 1 or 2 results from negligence, the culpable party shall be punishable by imprisonment of up to three years and a fine from BGN 2,000 to 15,000.

(4) (Amended, SG No. 10/1993) The master of a ship or another vessel who fails to inform immediately the nearest port about dumping into the waters, indicated in paragraph (1), of petrol products or derivatives, or of other substances hazardous to people, animals or plants, shall be punished by a fine of up to BGN five hundred.

(5) (Supplemented, SG No. 28/1982, amended, SG No. 10/1993) The master or another commanding officer of a vessel, who fails in his obligation to enter in the vessel documents operations with substances hazardous to people, animals or plants, or who enters therein untrue information about such operations, or who refuses to present such documents to the respective officials, shall be punished by a fine from BGN one hundred to three hundred, imposed by administrative procedure.

Article 353

(1) (Amended, SG No. 95/1975, SG No. 86/1991) An official who puts or orders an enterprise or thermal power station to be put into operation before putting into operation the necessary water-treatment equipment, shall be punished by imprisonment for up to three years and a fine from BGN one hundred to three hundred.

(2) The same punishment shall be imposed on officials who fail to fulfil their obligations for construction of water-treatment equipment, as well as for securing the good condition and uninterrupted proper functioning of such equipment; as a result of which the latter has been unable to start operation, fully or in part, or has ceased to operate.

(3) (Amended, SG No. 10/1993) For acts under the preceding paragraphs committed through negligence, the punishment shall be probation or a fine from BGN one hundred to three hundred.

(4) (New, SG No. 95/1975, amended and supplemented, SG No. 28/1982, amended, SG No. 10/1993) For minor cases the punishment shall be: under paragraphs (1) and (2) - a fine from BGN one hundred to three hundred, and under paragraph (3) - a fine from BGN one hundred to three hundred imposed by administrative procedure.

Article 353a

(New, SG No. 86/1991, amended, SG No. 85/1997)

An official who, within the sphere his official duties conceals or distributes untrue information about the state of the environment and the components thereof - atmospheric air, water, soil, sea areas - causing thereby significant damages to the environment, human life and health, shall be punished by imprisonment for up to five years and a fine from BGN one hundred to one thousand.

Article 353b

(New, SG No. 62/1997, supplemented, SG No. 92/2002, amended, SG No. 33/2011, effective 27.05.2011) Anyone who manages waste unduly and thereby

poses threats to the life or health of other people or poses risks of substantial damages to the environment shall be punishable by imprisonment from one to five years and a fine from BGN 5,000 to 30,000.

(2) When the act under Paragraph 1 has caused:

1. death or severe bodily injury to one or more individuals, the punishment shall be imprisonment from five to twenty years and a fine from BGN 10,000 to 50,000;

2. substantial damages to the environment, the punishment shall be imprisonment from two to eight years and a fine from BGN 10,000 to 50,000.

(3) Anyone who violates or fails to meet his/her obligations to ensure the good working order and the proper operation of a plant or a facility for the disposal or the recovery of waste and thereby causes death or severe bodily injury to one or more individuals shall be punishable by imprisonment from five to twenty years and a fine from BGN 10,000 to 50,000. If substantial damages have been caused to the environment, the punishment shall be imprisonment from two to eight years and a fine from BGN 10,000 to 50,000.

(4) When the acts under Paragraphs 1-3 result from negligence, the culpable party shall be punishable by imprisonment of up to three years and a fine from BGN 2,000 to 15,000.

Article 353c

(New, SG No. 62/1997, amended, SG No. 33/2011, effective 27.05.2011)

(1) Anyone who manages hazardous waste unduly shall be punishable by imprisonment of up to five years and a fine from BGN 2,000 to 20,000.

(2) When the act under Paragraph 1 poses threats to the life or health of other people or poses risks of substantial damages to the environment, the punishment shall be imprisonment from one to six years and a fine from BGN 10,000 to 30,000;

(3) When the act under Paragraph 1 has caused death or severe bodily injury to one or more individuals, the punishment shall be imprisonment from ten to twenty years and a fine from BGN 15,000 to 50,000; if substantial damages have been caused to the environment, the punishment shall be imprisonment from three to ten years and a fine from BGN 20,000 to 50,000.

(4) Any official who violates or fails to meet his/her obligations related to the management of hazardous waste shall be punishable by imprisonment of up to three years.

(5) When the acts under Paragraphs 1-3 result from negligence, the culpable party shall be punishable by imprisonment of up to three years and a fine from BGN 3,000 to 20,000.

Article 353d

(New, SG No. 33/2011, effective 27.05.2011)

(1) Anyone who, in breach of the established procedures, carries waste across the border of Bulgaria, unless the act is negligible, shall be punishable by imprisonment of up to four years and a fine from BGN 2,000 to 5,000.

(2) Anyone who, in breach of international agreements to which the Republic of Bulgaria is a party, carries across the border of Bulgaria hazardous waste, toxic chemical substances, biological agents, toxins or radioactive substances shall be punishable by imprisonment from one to five years and a fine from BGN 5,000 to 20,000.

(3) When the acts under Paragraph 1 or 2 result from negligence, the culpable party shall be punishable by imprisonment of up to two years or probation.

Article 353e

(New, SG No. 33/2011, effective 27.05.2011)

(1) Anyone who stores hazardous substances or mixtures in breach of the established procedures and thereby poses threats to the life or health of other people or poses risks of substantial damages to the environment shall be punishable by imprisonment of up to four years and a fine from BGN 2,000 to 5,000.

(2) Anyone who unduly commissions or causes the commissioning of a plant or facility which requires the use of hazardous substances or mixtures for its operation and thereby poses threats to the life or health of other people or poses risks of substantial damages to the environment shall be punishable by imprisonment from one to five years and a fine from BGN 5,000 to 20,000.

(3) The punishment under Paragraph 2 shall also be imposed on anyone who unduly commissions or causes the commissioning of a plant or facility whose operations is likely to pose threats to the life or health of other people or pose risks of substantial damages to the environment.

(4) If the cases referred to in Paragraphs 2 and 3 have caused death or severe bodily injury to one or more individuals, the punishment shall be imprisonment from eight to fifteen years and a fine from BGN 10,000 to 30,000; if substantial damages have been caused to the environment, the punishment shall be imprisonment from two to eight years and a fine from BGN 15,000 to 30,000.

(5) When the acts under Paragraphs 1 - 4 result from negligence, the culpable party shall be punishable by imprisonment of up to two years or probation.

Article 353f

(New, SG No. 33/2011, effective 27.05.2011)

(1) Anyone who unduly manufactures, uses, distributes, imports or exports across the border of Bulgaria substances that deplete the ozone layer shall be punishable by imprisonment of up to four years and a fine from BGN 1,000 to 5,000.

(2) When the act under Paragraph 1 results from negligence, the culpable party shall be punishable by imprisonment of up to two years or probation.

Article 353g

(New, SG No. 26/2004, previous Article 353d, SG No. 33/2011, effective 27.05.2011)

Anyone who, in breach of a law, constructs water catchment equipment or equipment for the use of surface or groundwater shall be punished by imprisonment of up to two years and a fine from BGN five thousand to fifteen thousand.

3. WHAT ARE THE OPPORTUNITIES TO THIS TYPE OF LITIGATION IN YOUR COUNTRY?

In Bulgaria, there are no restrictions on filing disputes in connection with limiting climate change. The parties are provided with all procedural remedies.

4. WHAT ARE THE CHALLENGES TO THIS TYPE OF LITIGATION IN YOUR COUNTRY?

The challenges to this type of litigation in our country are determined by the following circumstances:

- Due to the specificity of the matter, there is a lack of sufficiently prepared experts;
- When imposing administrative coercive measures, suspending or suspending the activity of an operator, with a view to establishing pollution, the question arises of the conflicting public interest of the right to work of the workers employed in the relevant enterprise.
- The energy crisis in the region.

5. WHAT IS THE AVERAGE LENGTH OF PROCEEDINGS (INCLUDING ON APPEAL AND CASSATION)?

The average duration of court proceedings in administrative cases with a subject related to limiting climate change lasts on average (including on appeal and cassation) from one year and two months to one year and six months.

6. WHICH TYPE OF REMEDIES ARE BEING ORDERED BY THE COURTS? WHAT ARE THE ARGUMENTS FOR NOT ORDERING SUCH REMEDIES?

The choice of the appropriate legal remedy is determined by the subject matter of the dispute.

7. DO THE COURTS HAVE POWERS TO ENSURE AND FOLLOW-UP THE ENFORCEMENT OF JUDGEMENTS IN CLIMATE CASES? ARE THERE SPECIFIC DIFFICULTIES IN THIS REGARD?

The issue is closely related to the effectiveness of judicial control over administrative acts and the actual exercise of the right to a fair trial by individuals and legal entities.

In connection with the above, a working group of judges from the Supreme Administrative Court of Bulgaria developed a project "Assessment of the effectiveness of judicial control over the acts of the administration. Measures to overcome the violated right to a fair trial", Contract NoBG05SFOP001-3.005-0001/09.12.2019. The project was implemented with the financial support of the Operational Program "Good Governance", co-financed by the European Union through the European Social Fund. The data, analysis and conclusions presented in this matter are taken from the above-cited analysis of the project.

The consequences of non-execution of an effective court decision, including the inaccurate, incorrect or delayed execution, concern both the interested persons who have an interest in the execution, as well as the administrative bodies and officials from the composition of the local administration and local self-government, who are obliged to execute the court order. answer. These negative legal consequences are of a different nature – liability for pecuniary and non-pecuniary damages caused by the non-fulfillment, imposition of fines, declaration of nullity of subsequent administrative acts that contradict a court decision, liability for costs, disciplinary liability for the guilty parties officials from the composition of the administration, engaging the responsibility of the state.

In this regard, it is necessary to mention at the outset two decisions of the European Court of Human Rights in Strasbourg (ECHR, the Court), in which the found violations of Art. 6, §1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) are the result precisely of the fact that the Bulgarian authorities, and in particular the administration, have ignored the obligation of the judicial decisions of the Bulgarian courts, and this has also led to convictions in Strasbourg.

In the decision in the "Velcheva v Bulgaria" case, the Court found the existence of a final court decision from September 2005, which recognized the applicant's right to restitution of land within real limits, and which, even at the time of the consideration of the appeal by the ECtHR, still has not yet been fulfilled. In the light of the long-standing practice of the Strasbourg Court[1], this means that the guarantees for the execution of an effective judgment have been breached. The court specifically emphasized that the prolonged non-execution of a final court decision, in view of a "legitimate expectation" of obtaining property, can be problematic within the meaning of Art. 1 of Protocol No. 1.[2] The ECHR explicitly states that compliance with the principle of legal certainty, proclaimed in Art. 1 of Protocol No. 1, requires that when the courts have finally decided a dispute, their decision shall not be called into question except on substantial and compelling grounds.[3]

In the second case - "Bratanova v. Bulgaria", after the annulment in January 2009 of the silent refusal of the mayor of the Capital Municipality - Bankya district to issue a sketch or other document that would show whether construction had been carried out on the disputed property, in 2010 it was again denied the issuance of the specified document, the second refusal of which was declared null and void by a decision of the Supreme Administrative Court (SAC) from May 2012. The court decision was not implemented, which is why the SAC imposed a fine of BGN 1,000 on the mayor on the basis of Art. 304 of the Administrative Procedure Code (APC), but in the end the municipality never issued the required documents in order to continue the restitution procedure. In this case, the ECHR accepted that Art. 6, §1 also applies in similar cases, since the State and Municipal Damages Liability Act (ZODOV) is not an effective domestic remedy.

The convictions described above show the need to strengthen the measures to ensure the effectiveness of judicial control in relation to the acts of the local administration from the point of view of the timely implementation of the judicial acts that have entered into force, ruled on appeals against administrative acts of the local administration. Overcoming the reasons for non-execution of these judgments would undoubtedly have a dual effect. On the one hand, it will improve the quality of the administration's work, and on the other hand, it will increase confidence in the judicial

system, removing the factors that most undermine citizens' confidence in the stability and effectiveness of the acts enacted by it.

It should be emphasized that the final result of the study within the framework of the above-mentioned project indicates that in a significant number of cases the administration bodies took timely actions on the implementation of court decisions, and the identified problems in the case of non-implementation, including late implementation, are of a different nature .

Good practices and applicable national legislation

The main principles of good practice in enforcement of judicial decisions by administrative authorities are enshrined in Recommendation Rec(2003)16 of the Committee of Ministers of Member States on the implementation of administrative and judicial decisions in the field of administrative law, as well as in Opinion No. 13(2010) on the role of judges in enforcement of judicial decisions adopted by the Consultative Council of European Judges (CJEU).

The principles of good practice require, inter alia, an assurance by the State that:

• administrative authorities implement court decisions within a reasonable period of time;

• in the event of non-compliance by the administrative body with a court decision, an appropriate procedure should be provided to enable the implementation of this decision through an injunction or sanction;

• administrative bodies would be held accountable when they refuse or neglect to implement court decisions, and civil servants who are responsible for implementing court decisions could be held individually liable in disciplinary, civil or criminal proceedings if they fail to do so apply.

In its 2010 Opinion, the Advisory Council of European Judges emphasized that the effective enforcement of a binding judgment is a fundamental principle of the rule of law, and is essential to guaranteeing public confidence in the judicial system. Failure to comply with a court order would nullify the independence of the judiciary and the right to a fair trial. The very idea of a government body (administrative body) refusing to enforce a court decision undermines the concept of the rule of law.

The following general principles and recommendations are set out in the opinion of the CJEU:

• The enforceable decision must be fair and clear in terms of obligations and rights, in order to avoid obstacles to its effective implementation;

• The implementation should be fast and efficient, including by securing it with the necessary financial means for this purpose;

• Public authorities should implement decisions against them immediately and without forcing claimants to use enforcement proceedings;

• When it is necessary to resort to enforcement proceedings, the legislation should not prevent the exercise of civil, criminal and disciplinary liability for officials who are considered guilty of the refusal or delay in the execution of the court decision;

• There should be rules for the reimbursement of additional costs incurred as a result of refusals or delays in the execution of court decisions by the officials responsible for this, and the actions of public officials leading to delays or refusals in execution should in all cases be subject to judicial review;

• To publish regular reports on the effectiveness of enforcement, including data on delays and their causes, as well as different methods of enforcement, and a

special section should be devoted to the enforcement of court decisions against public authorities.

8. WHAT ARE THE MOST USEFUL NORMS, LEGAL PRINCIPLES OR PRACTICES AVAILABLE TO JUDGES TO ENSURE EFFECTIVE CLIMATE ACTION BY GOVERNMENTS AND BUSINESSES?

The most useful norms and legal practices to ensure effective climate action by governments are:

- The praxis of the EU court of justice in Luxembourg;
- Summary of the EC guidelines on reporting climate-related information;
- The TEG published its report on climate-related disclosures in January 2019 and invited stakeholders for feedback.

CASE LAW ON THE SUBJECT

Decision No. 8057 of 2.07.2021 of the Supreme Administrative Court under adm. d. No. 9681/2020

The proceedings are under Art. 208 et seq. of the Administrative Procedure Code /APK/ .

It was formed on a cassation appeal of the Minister of the Environment and Waters, through attorney at law. G. Dimitrova against Decision No. 244 of 26.06.2020 under Adm. No. 89/2020 of the Stara Zagora Administrative Court.

The cassation appeal sets out reasons for incorrect application of the provisions of Art. 173, para. 2 of the APC in conjunction with Art. 177, para. 2 of the APC . Claims that Decision No. 3971/08.06.2015 entered into force , supplemented by Decision No. 5292/24.07.2015 , confirmed by Decision No. 12773/27.11.2015 by adm. e. No. 11144/2015 of the Supreme Court, no mandatory instructions were given on the interpretation and application of the substantive law and related to the request of Brickell EAD, with which the Minister of the Ministry of Internal Affairs and Communications should have complied when issuing the contested act. Instructions in an effective court act were given solely and only in relation to the authority's competence to act on the company's application. The judicial acts lacked a ruling on the substance of the dispute, which is why no explicit instructions were given on the application of the substantive law. The legal conclusions of the first-instance court were in conflict with the subject of the case accepted by the courts, which, according to the plaintiff, is the validity of the letter from 2012, issued in an administrative

proceeding, initiated by an application but Brickell EAD with ex. No. 456/20.04.2011, with which a request was made "to be allocated as soon as possible, but no later than 27.04.2011, from the reserve to the NPRK C02 quotas in the amount of 595,236 t C02 for the period from m. 12. 2010, calculated on the basis of the verification report for 2010 and the allocated quotas for 2010. the period from 01.05.2010 - 05.05.2011. Requests that the judicial act be annulled, and the court of cassation ruled with a decision to reject the appeal.

The defendant "Brickel" EAD Galabovo, in its written response and in a court session through its procedural representative, presents reasons for the groundlessness of the complaint. Requests that the cassation appeal be dismissed and the challenged decision of the Administrative Court of Stara Zagora be confirmed.

The prosecutor participating in the case at the Supreme Administrative Prosecutor's Office gives a reasoned conclusion on the merits of the cassation appeal. Considers the decision of the first instance court inconsistent with the applicable procedural norms. The court of first instance incorrectly declared the nullity of letter No. 26-00-531/17.02.2016 of the Minister of the Environment and Water, which denied the distribution of 1,090.19 free allowances for greenhouse gas emissions for the period 1.5.2010 - -05.05.2011, on a complaint of "Brickel" EAD, Galabovo. The prerequisites under Art. 173, para. 2 of the APC for declaring the act null and void. The letter did not contradict the decisions of the court under adm. case No. 1526/15 of the ASSG, because there were no instructions to "Brickel" EAD, Galabovo, to distribute 1,090. 19 free quotas for greenhouse gas emissions for the period 1.5.2010 - 5.5.2011. There was no basis under Art. 177, para. 2 of the APC for declaring the nullity of the letter No. 26-00-531/17.02.2016 of the Minister of Environment and Water, which is why he considers that the cassation grounds for annulment of the decision of AC-Stara Zagora are present.

The cassation appeal was filed by a duly constituted party in the first-instance proceedings, for which the disputed decision was unfavorable and within the period under Art. 211, para. 1 of the APC , which is why it is procedurally admissible.

The proceedings in this case are under the terms of Art. 225 of the APC - on a cassation appeal against a re-declared decision of the court of first instance after an annulment decision of the cassation instance.

The proceedings before the Administrative Court of Stara Zagora were initiated on the complaint of "Brickel" EAD [town], reg. Art. Zagora to declare the nullity of the Letter No. 26-00-531/17.02.2016 of the Minister of Environment and Water, which denied free allocation of quotas to a new participant at the request of the company regarding the period 01.05.2010 - 05.05.2011 Mr.

By decision No. 12773/27.11.2015 of the Supreme Court of the Republic of Belarus, issued under adm. d. No. 11144/2015 according to the inventory of the same court, Decision No. 3971/08.06.2015 and additional Decision No. 5292/24.07.2015 , issued under adm. e. No. 1526/15 of the inventory of the ASSG. The court ordered the administrative file to be

returned to the Minister of Environment and Water, who is the competent authority for the free distribution of quotas for new participants in the European greenhouse gas emissions trading scheme pursuant to Art. 43 of the Climate Change Limitation Act to consider the request of "BRICKEL" EAD to issue free quotas for the period 01.05.2010 - 05.05.2011.

In connection with research, the application of Art. 177, para. 2 of the APC , as is the express request in the complaint, the first instance court analyzed the main problem before it, namely, to what extent it refused the Minister of Environment and Water to open a procedure for free allocation of quotas at the request of BRICKEL EAD for the period from 01.05. 2010 until 05.05.2011 contradicts the court decisions cited above that entered into force.

Justifying the application of Art. 177, para. 2 of the APC in conjunction with Art. 173, para. 2 of the APC , the court on the appeal of "BRICKEL" EAD, Galabovo, declared the nullity of Letter No. 26-00-531/17.02.2016 of the Minister of Environment and Water, which denied distribution of 1,090. 19 free quotas for greenhouse gas emissions for the period 01.05.2010 - 05.05.2011.

The Supreme Administrative Court found the plaintiff's argument in his appeal to issue the decision in case of material illegality to be groundless.

The Supreme Administrative Court in this composition finds the final conclusions of the deciding court to be completely justified regarding the nullity of the contested express refusal of the Minister of Environment and Water.

In the proceedings before the Administrative Court of Stara Zagora, it was established, and it is evident from the attached decisions of the ASSG/ during the initial examination of the case/ that on the basis of Art. 173, para. 2 of the APC , the court has announced the refusal of the deputy. the Minister of the Environment and Water, objectified in a letter ex. No. 26-00-2273/08.05.2012 as null and void due to the authority's incompetence and sent the file to the relevant competent authority with mandatory instructions on the interpretation and application of the law. The Administrative Court of Stara Zagora has correctly determined the applicable legal norm , Art. 177, para. 2 of the APC in conjunction with Art. 173, para. 2 of the APC . This is precisely the sanction for an authority that does not comply with the instructions on interpretation and application of the law, given in a judicial act, which entails a void administrative act.

The claimant's argument that the supplementary decision did not contain explicit instructions on the application of the substantive law is unfounded.

Taking into account the additional Decision No. 5292/24.07.2015 , issued under adm. d. No. 1526/15 according to the inventory of the ASSG, which supplemented Decision No. 3971/08.06.2015 , issued in the same case, the Administrative Court of Stara Zagora ascertained the express instructions given by the court that considered the dispute, after the annulment of Decision No. 6709 of 05.11.2013 , decreed under adm. e. No. 10279/2012 according to the inventory of the ASSG, which was invalidated

and returned for a new examination due to committed procedural violations. In the decisions of the ASSG, the competent authority to which the file is returned is explicitly indicated, as well as the mandatory instructions are given in the sense of Art. 173, para. 2 of the APC regarding the verification reports for 2010 and 2011 attached to the case, which, according to this court, indicate that the real emissions from "b" for the period from 05.01.2010 to 05.05.2011 are in the amount of 1,090. 198 It was also established that the quotas allocated to the company with the NRPK for 2010 were exhausted as of 01.05.2010 and the claimed quotas for the period 01.05.2010-05.05.2011 were in the amount of 1,090. 198. During the claimed period, the company was required to work but was not allocated any allowances and had to buy them on the open market. The court of first instance based its legal conclusion on the conclusion of the STE under adm. d. No. 10279/2012 according to the inventory of the ASSG, included as evidence under adm. e. No. 1526/2015 according to the inventory of the ASSG . Thus, in concrete terms, regarding the competence of the authority to rule on the company's request to grant free quotas for greenhouse emissions, the court, during the initial examination of the case, indicated who is the administrative body with the competence to rule on the request. An in-depth analysis of the legal framework was carried out, and it was estimated that the terms and conditions for allocating quotas for greenhouse gas emissions are regulated in the ZOOS . Pursuant to Art. 131 a, para. 3 ZOOS , the competent authority for implementing the scheme for trading greenhouse gas emissions quotas is the Minister of Environment and Water or an official authorized by him. According to § 28 of the Transitional and final provisions to the ZID of the ZOO (promulgated SG No. 42/2011) for new participants until 31.12.2012, quotas are allocated based on a decision on the distribution of quotas for new participants of The interdepartmental working group for coordinating the implementation of the National Plan for the allocation of quotas for greenhouse gas emissions for the period 2008-2012 and issued an order of the Minister of Environment and Water for the allocation of quotas to the relevant new participant. After the repeal of this provision with the entry into force of the Climate Change Limitation Act /2014 /, the competence to grant free quotas has again been granted to the Minister of Environment and Water pursuant to Art. 44, para. 3 ZOIC , which stipulates that the free allocation of quotas is carried out amid verification and approval by the Minister of Environment and Water of the application submitted to him by the interested new participant. Therefore, after changing the regulations governing the procedure for allocating free quotas for greenhouse gas emissions and the competence of the relevant authorities, the authority authorized to issue the same acts is the Minister of the Environment and Water, as the ASSG correctly indicated during the initial consideration of the case. It is this court of first instance, based on the conclusion of the STE presented in the case, summarized by Adm. e. No. 10279/2012 according to the inventory of the ASSG , has determined that the tons of carbon dioxide as harmful emissions released on the company's site for the period from 01.05.2010 to 05.05.2011 as a result of burning natural fuels for production of heat

energy, amount to 1,090. 198 free allowances for greenhouse gas emissions, which amount of free allowances is due to the company as duly verified by the verifying authority. In decision No. 5292/24.07.2015 to supplement Decision No. 3971/08.06.2015, it is expressly accepted that the company is owed the allocation of 1,090,198 free quotas for greenhouse gas emissions, according to the regulations applicable to the relevant period and legal actions of the competent authorities, with which agreement the company worked. It should be borne in mind that in the reasons for this act, instructions are explicitly given for the implementation of substantive legal provisions, after the court has performed an analysis of the evidence accepted in the case, which was included by the adm. e. No. 10279/2012 according to the inventory of the ASSG . It was in this case that the STE was heard and accepted, which established in an indisputable way before the court what was the number of actually spent quotas for the period indicated by the applicant, and the expertise confirmed the data from the verification report. In this sense, the court's conclusions are correct when considering the substance of the dispute, which are in accordance with the practice of the CJEU, regarding the protection of legitimate expectations, when there is an act of an administrative body that is sufficiently specific and of such a nature from an objective point of view , to create legitimate expectations in the person regarding the legal consequences of his behavior.

The judgment of the court is legitimate that there is non-compliance with the mandatory instructions on the interpretation and application of the law given in Decision No. 3971/08.06.2015 . and Additional Decision No. 5292/24.07.2015 under Adm. e. No. 1526/2015 of the ASSG, including the number of emissions for the period from 01.05.2010 to 05.05.2011 in the amount of 1,090,198 according to the verification reports for 2010 and 2011 of the verification body " Green and Fair" AD, prepared on the basis of the operator's annual reports. It can be seen from page 2 of the conclusion of the STE, attached to l. 247-249 according to adm. d. No. 10279/2012 of the ASSG , included as evidence under adm. d. No. 1526/15 of the same court, the tons of carbon dioxide as harmful emissions released on the company's site for the period from 01.05.2010 to 05.05.2011 as a result of burning natural fuels, in this case lignite coal and fuel oil for the production of heat and electricity, amount to of 1,090.198 free additional allowances for greenhouse gas emissions, which amount of free allowances is due for provision to the company, as duly verified by the verifying authority.

The present instance also shares the legal conclusion of the court of first instance regarding the lack of legal interest on the part of the applicant to return the file, given the established fact of purchasing the emissions and the submitted claim for compensation for the damages caused by the invalid refusal to grant him free quotas for 1,090. 198 C02 quotas.

In view of the above, the Supreme Administrative Court finds that the appealed decision of the Administrative Court of Stara Zagora under adm. e. No. 89/2020 was decreed in the absence of the alleged violations

in the cassation appeal, which is why, as correct and lawful, it should be left in force.

We conclude from the above and on the basis of Art. 225 , in connection with Art. 221, para. 2 of the APC , a three-member panel of the third department of the Supreme Administrative Court

RESOLVE:

REMAINS IN FORCE Decision No. 244 of 26.06.2020 by Adm. No. 89/2020 of the Stara Zagora Administrative Court.

The decision is final and not subject to appeal.

SPECIAL OPINION of judge AR

I do not share the decisive conclusion of the majority of the panel on the correctness of the court decision, subject to cassation review, with which, on the appeal of " Brickel" EAD - Galabovo, EIC [EIC] on the basis of Art. 173, para. 2 of the APC in conjunction with Art. 177, para. 2 of the APC declared the nullity of Letter No. 26-00-531/17.02.2016 of the Minister of the Environment and Water, by which, in relation to the applicant, the allocation of 1,090. 19 free quotas for greenhouse gas emissions for period 05/01/2010 - 05/05/2011

Letter No. 26-00-531/17.02.2016 of the Minister of the Environment and Waters is not void on the basis of Art. 177, para. 2 of the APC , because by Decision No. 3971/08.06.2015, issued under adm. d. No. 1528/2015 according to the inventory of the ASSG , with which previous letter ex. No. 26-00-1273/08.05.2012 of the deputy. of the Minister of Environment and Water was declared null and void and the case was returned for a new examination, as well as with an additional decision No. 5292/24.07.2015 . in the same case, the instructions given to the administrative body during the new examination of the file are as follows: "When re-solving the issue, the company's request should be assessed by the competent authority in compliance with the instructions for issuing an administrative act and in clarifying the actual legal relationships and in view of the evidence collected in the administrative proceedings at the request of the company."

Even before the decisions on adm. e. No. 1526/2015 according to the inventory of the ASSG / but after issuing the letter declared null ex. No. 26-00-1273/08.05.2012 / the new Law on limiting climate change /ZOIC/ /SG no. 22. dated 11.03.2014, in force from the same date/, which cancels the previous order for allocating free carbon emissions and provides for new normative criteria both for assessing the entitled persons and for the order for allocating these free emissions. In the event of a change in the legal basis after the case has been returned to the administrative body in the form of a file, the latter is obliged to comply with its powers based on the legal acts in force at the date of its new ruling, especially if the new legal regulation lacks an express norm providing for examination of the applications already submitted according to the previous order. In this sense, letter No. 26-00-531/17.02.2016 of the Minister of Environment and Water may be illegal as enacted in contradiction to the new provisions of

the ZOIC , but not null and void as enacted under the conditions of Art. 177, para. 2 of the APC , as far as the reasons for both the decisions of the ASSG and the decision of the three-member panel of the Supreme Administrative Court under adm. No. 11144/2015 are decisive and binding only with regard to the subject of the dispute resolved with them - the competence of the administrative body.

Last but not least, it should be noted that, although the court decision is rendered on the basis of Art. 173, para. 2 of the APC , neither the court of first instance nor the current cassation instance returns the case for a new ruling by the administrative body. I believe that, even if the attacked administrative act is void /which is not my opinion/, the case should in any case be returned as a file to the administrative body, insofar as the issue of granting free carbon emissions is left to the discretion of the administrative body authority - on the one hand, and on the other - the nature of the act does not allow solving the issue on its merits.

Drafted the dissenting opinion:

/A. R/

Decision No. 244 of 26.06.2020 of the AdmS - Stara Zagora by adm. d. No. 89/2020

The proceedings are in accordance with Art. 128 of the APC , formed at the request of "BRICKEL" EAD, Galabovo, EIK 123526494, represented by the executive director J. P. P., and in the court proceedings by a regularly authorized lawyer, to declare the nullity of Letter No. 26-00-531 /17.02.2016 to the Minister of the Environment and Waters, with which the free distribution of quotas for a new participant was denied at the request of the company regarding the period 01.05.2010 - 05.05.2011, for the following reasons: By decision No. 12773/27.11. 2015 of the Supreme Court of the Republic of Belarus, decreed under adm. e. No. 11144/2015 according to the inventory of the same court, Decision No. 3971/08.06.2015 and additional Decision No. 5292/24.07.2015, issued under adm. e. No. 1526/15 of the inventory of the ASSG. The court ordered the administrative file to be returned to the Minister of Environment and Water, who is the competent authority for the free distribution of quotas for new participants in the European greenhouse gas emissions trading scheme pursuant to Art. 43 of the Law on Limiting Climate Change to consider the request of "BRICKEL" EAD to issue free quotas for the period 01.05.2010-05.05.2011. The current legal regulation of the procedure is contained in Chapter Four, Section I of the Law on Limiting climate change /ZOIC/ . At the moment, the third period of ESTE is being implemented, and all rules and technical transactions for issuing quotas for greenhouse

gas emissions are valid within this third period 2013-2020, and accordingly, ZOIC does not allow the issuance of quotas for the past period. Such an action is also technically impossible, given the completely new principles for the allocation of quotas introduced with the third period of the ECT, which are fully reflected in the functionalities of the National Registry for Trading in Quotas for Greenhouse Gas Emissions. On the basis of Art. 42, para. 3 of the ZOIC , all quotas for emissions from installations, starting from 2013, are sold at auction, except for the cases under Art. 43 - 46 of the ZOIK . Among the exceptions to which the rule of Art. 42, para. 3 of the ZOIC are the installations included in the list of installations approved by the EC under para. 4 or so installations that meet the definition of a new entrant. In order for "BRICKEL" EAD to be designated as a new participant, it is necessary to carry out actions with legal effect after 30.06.2011, namely obtaining a permit for greenhouse gas emissions after that date - 30.06.2011 including for for the first time or after the installation has been shut down, as well as when the capacity is expanded by more than 10%. BRICKEL EAD was the subject of a permit for greenhouse gas emissions for the first time in 2006, when the installation was issued with the REG No. 92/2006. The prerequisite of § 36 letter "a" of the DR of ZOIK was not fulfilled . During the operation of the installation, no suspension of activity was registered in the sense of letter "b" of the same provision, not one of the prerequisites of letters "a", "b" and "d" was fulfilled - the currently valid Permit for greenhouse gas emissions is No. 92-H2-2015 was issued on 16.03.2015 and is not related to the expansion of the installation's capacity. The condition of Art. 43, para. 1, item 2 for the application of an exception to the rule of Art. 42, para. 3 of the ZOIC and opening a procedure for allocating free allowances for greenhouse gas emissions to a new participant. Based on this and following the instructions of the SAC of the Republic of Belarus, the MoEW has no legal basis to open a procedure for free allocation of quotas for a new participant at the request of BRICKEL EAD for the period from 01.05.2010 to 05.05.2011.

The request for nullity is based on the following arguments:

The appealed refusal for free allocation of CO2 quotas in the amount of 1,090,198 for the period from 01.05.2010 to 05.05.2011 is null and void on the basis of Art. 177, para. 2 of the APC as decreed in contradiction with Decision No. 3971/08.06.2015, decreed under adm. d. No. 1526/2015 according to the inventory of the ACCSG and supplemented by Decision No. 5291/24.07.2015, decreed by adm. d. No. 1526/15g according to the inventory of the ASSG, left in force by Decision No. 12773/27.11.2015g, decreed by adm. d. No. 11144/2015 of the Supreme Court of the Republic of Belarus. Reasons are set out in detail, that with the mentioned court decisions of the ASSG, instructions were given to the administrative body on the substance of the request addressed to it, which were not complied with, and instead of ruling on the company's applications from 2011, the defendant applied to them and to the past period, the requirements of the ZOIC, which are substantively legal in nature and referable to future facts and legal relationships based on them. The court is requested to declare the nullity of the letter on the basis of Art. 177,

para. 2 of the APC and alternatively as decreed on the basis of an inapplicable ZOIC and contrary to the purpose and legal principles of the administrative process - transparency, reasonableness, predictability and equality. Objected to the excessiveness of the amount of the defendant's costs and requested an award of the state fee in the case.

The defendant - the Minister of the Environment and Waters, through his legal representative, maintains the opinion that instructions on the essence of the dispute, namely the existence of the requested recognition of the right to free quotas in the specified amount and for the relevant period, were not given and cannot be bound the parties to the said judgments for these reasons. The court decisions do not contain, and with them, no judicial review was carried out for the legality of letter No. 26-00-1273/08.05.2012 of the Deputy Minister of Environment and Water with the relevant applicable material law. In these court decisions, it is only indicated that the file should be examined by the competent Minister of the Environment and Water. Detailed arguments are developed for this point of law in response to p. 303 of the case. The court is requested to reject the request for annulment of letter No. 26-00531/17.02.2016 of the Minister of Environment and Water, with an award of costs in the case.

The Administrative Court of Stara Zagora, taking into account the arguments of the parties, in accordance with the evidence and the law, finds the following established:

The request of BRICKEL EAD, Galabovo, to declare the nullity of the refusal unfavorable to it, objectified in letter No. 26-00531/17.02.2016 of the Minister of Environment and Water, as not bound by a preclusion period, is admissible, and considered in substance, it is justified. The dispute is legal and boils down to the following: Does the refusal of the Minister of Environment and Water to open a procedure for free allocation of quotas at the request of BRICKEL EAD for the period from 01.05.2010 to 05.05.2011 contradict the ones that came into force and cited above court decisions. The answer to this question requires first of all to assess the content of Art. 177, para. 2 cf. with Art. 173, para. 2 of the APC , which assessment is legal, and secondly, to determine whether the decisions of the ASSG that have entered into force have given instructions on the interpretation and application of the law. According to Art. 173, para. 2 of the APC , the court is obliged, when it declares the act null and void, due to the incompetence of the body, to send the file to the relevant competent body with mandatory instructions on the interpretation and application of the law. This immediately excludes the validity of the legal claim that it is not legally permissible to give instructions for the application of the substantive law to the facts when the nullity of the act is established due to the incompetence of the authority. On the contrary, the legislator provided for the return of the file, instead of resolving the substance of the substantive legal question by the court, solely in order not to miss a mandatory phase of the administrative process, such as the administrative production, but at the same time ensured the party against the need to lead second court proceedings to establish the existence of the substantive right claimed before the recognition authority. This is the legal construction

of the norm contained in the two provisions of Art. 177, para. 2 cf. with Art. 173, para. 2 of the APC . A legal norm is a generally valid rule of conduct consisting of a hypothesis - the required behavior, a disposition - the behavior that contradicts what is due, and a sanction - the consequences of violating the legally due behavior specified in the hypothesis. In this sense, the legal norm is not always, but often contained in more than one provision, and there is no sign of equivalence between the two concepts - in this sense are also the requirements of the ZNA for precise and clear wording of the text of the legal provisions, so that it is possible to be unambiguous extraction of the legal norms contained in them. In the specific case, the legal norm derived from the content of Art. 173, para. 2 of the APC in conjunction with Art. 177, para. 2 of the APC states: the court is obliged to return the file to the competent authority when, upon checking all grounds under Art. 146 of the APC , established the incompetence of the issuer of the act, but by giving him mandatory instructions on the interpretation and application of the law. The sanction is provided for in Art. 177 paragraph 2. from the APC - a body that does not comply with the instructions on interpretation and application of the law, issues a null and void administrative act, the nullity of which can be invoked by any interested party, especially the applicant in the administrative proceedings. Instructions on the application of the law means only and only that the court also resolves the question of the legal norms that permit the existence of the material right applied for recognition or exercise. The application of the law is a legal activity of qualifying the facts in relation to the legal norms that govern them, and the interpretation of the law is also a legal activity of clarifying the content of the legal norms, or in other words, the competent administrative authority is obliged to resolve the question of existence put before it, recognition and exercise of the material rights according to the instructions of the court, material law and especially according to the content of legal norms specified in the court decision. In order to fulfill its obligation under Art. 173, para. 2 of the APC , the court should have established the facts of the case, made a legal determination of them and interpreted the content of the legal norms applicable to them. And his obligation under Art. 173, para. 2 of the APC is a continuation of the legal principle under Art. 146 of the APC for a full ex officio verification of all grounds for the validity and legality of the administrative act, according to the evidence presented by the parties. The conclusion that follows is that the court never checks the competence of the administrative body alone, but pronounces on the reasons and on the facts and their corresponding legal norms, even when it declares the act null and void due to lack of competence. This ground of nullity only prevents his legal obligation to resolve the matter on the merits, even when it concerns a hypothesis of Art. 173, para. 1 of the APC . With the additional Decision No. 5292/24.07.2015, issued under adm. d. No. 1526/15g according to the inventory of the ASSG, the court in the reasons accepted that it should supplement Decision No. 3971/08.06.2015g, issued in the same case, not only by explicitly indicating the competent authority to which it returns the file, but also by giving the mandatory instructions in the sense of art. 173,

para. 2 of the APC - on interpretation and application of the law and they are as follows: The verification reports for 2010 and 2011 attached to the case indicate that the actual emissions from "b" for the period from 01.05.2010 to 05.05.2011 are in the amount of 1,090. 198. The quotas allocated to the company with the NRPK for 2010 were exhausted as of 01.05.2010. Therefore, the claimed quotas for the period 01.05.2010 - 05.05.2011 are in the amount of 1,090. 198. The present dispute concerns the period 01.05.2010 - 05.05. 2011, before which period the company was obliged to work, but it was not allocated any quotas and had to buy them on the free market. This period was established by the evidence in the case incl. and in the correspondingly approved verification report in the indicated amount of the actually spent and purchased quotas for that period. The procedural express refusal / 2012/ is contrary to the given instructions for the continuation of the activity, as its continuation is with the consent of the competent authority that adopts the NPRK - the Council of Ministers, which objectively creates expectations for the company regarding the legal consequences of its behavior. When re-solving the issue, the company's request should be assessed by the competent administrative authority in compliance with the instructions for issuing an administrative act and in clarifying the actual legal relationships and in view of the collected evidence. In view of these considerations, the decision should be supplemented in the sense that it is sent as a file to the Minister of Environment and Water for the issuance of an administrative act in compliance with the given instructions and in the reasons for the present decision on the interpretation and application of the law. These reasons are confirmed and supplemented by the reasons of the Supreme Court of the Republic of Belarus, in which on page 19 of 20 it is said that it is evident from the conclusion of the Court of Appeal under Adm. d. No. 10279/2012 according to the inventory of ASSG, included as evidence under adm. e. No. 1526/2015 according to the inventory of the ASSG, the decision according to which was left in force, the tons of carbon dioxide as harmful emissions released on the company's site for the period from 01.05.2010 to 05.05.2011 as a result of burning natural fuels for production of heat energy, amount to 1,090. 198 free allowances for greenhouse gas emissions, which amount of free allowances is due to the company as duly verified by the verifying authority. Therefore, and this is why the contested refusal is null and void. The court recognized the obligation to grant 1,090,198 free quotas for greenhouse gas emissions, according to the provisions applicable to the relevant period and legal actions of the competent authorities, with whose consent the company worked. The legality of the administrative act is checked at the time of its enactment, and at that moment the said court decisions are in force and have the effect within the meaning of Art. 177, para. 2 of the APC . The complainant has no legal interest in returning the file, given the established fact of purchasing the emissions and the filed claim for awarding compensation for the damages caused by the invalid refusal to grant him free quotas for 1,090.198 CO2 quotas.

The claim for expenses in the amount of BGN 50 state tax and reasonable and Ministry of Environment and Water should be condemned on the basis of Art. 143, para. 1 of the APC to pay it to "BRICKEL" EAD, Galabovo.

For the stated reasons and on the basis of Art. 173, para. 2 of the APC , the court

RESEARCH:

ANNOUNCES the nullity of Letter No. 26-00-531/17.02.2016 of the Minister of Environment and Water, which denied the allocation of 1,090. 19 free quotas for greenhouse gas emissions for the period 01.05.2010 - 05.05.2011. , on the complaint of "BRICKEL" EAD, Galabovo, EIK 123526494, represented by the Executive Director J. P. P..

ORDERS the Ministry of the Environment and Waters to pay to "BRICKEL" EAD, Galabovo, EIK 123526494, represented by the Executive Director J. P. P., the amount of BGN 50 /fifty/, representing the state fee paid in the case.

The decision is subject to appeal before the SAC of the Republic of Belarus within 14 days of its delivery to the parties.

ADMINISTRATIVE JUDGE:

Decision No. 13227 of 23.12.2021 of the Supreme

Proceedings pursuant to Art. 208 et seq. of the Administrative Procedure Code /APK/ .

It was formed based on a cassation appeal of the Ministry of the Environment and Waters /MOEW/, submitted through a legal representative, against decision No. 4506 of 08/06/2020 under Adm. e. No. 8323/2019 of the Administrative Court - Sofia city, formed after the annulment of decision No. 2182 of 30.03.2018 by adm. d. No. 4485/2016 according to the inventory of the ASSG with decision No. 11101 of 17.07.2019 by adm. d. No. 7075/2018 according to the inventory of the Court of Appeals, in the part with which it was sentenced to pay "Brickel" EAD, Galabovo, an amount in the amount of BGN 17,453,002.24, representing compensation for property damage caused by an administrative act declared null and void, as well as an amount in in the amount of BGN 7,064,311.00, representing moratorium interest on the awarded principal, for the period from 08.05.2012 to 27.04.2016, and the legal interest for late payment on the principal for the period from the date of filing the claim - 27.04. .2016 until the final payment, as well as being sentenced to pay expenses in the amount of BGN 32285.18. Complaints about its inadmissibility , as well as irregularity due to violation of substantive law and unfoundedness - cassation grounds for annulment under Art. 209, item 2 and item 3 APC . It is requested to invalidate it as invalid or set it aside as incorrect.

The defendant - "Brickel" EAD, Galabovo, through a legal representative, contests the cassation appeal in a written response and in a court hearing, presenting arguments for the admissibility and correctness of the appealed decision. He wants the cassation appeal of the Ministry of Internal Affairs and Communications to be rejected and the decision in the appealed part to be upheld.

A cassation appeal was also filed by "Brickel" EAD, Galabovo, against decision No. 4506 of 08/06/2020 under Adm. d. No. 8323/2019 of the Administrative Court - Sofia city, in the part with which the claim for the difference up to BGN 22,409,368.24 was rejected - principal and the claim for the difference up to BGN 9,070,764.48 - legal interest . Complaints are made in the appeal about the incorrectness of the decision, due to incorrect application of the substantive law and unfoundedness (cassation grounds for annulment under Art. 209, item 3 of the APC), only in its rejection part, in which the ASSG accepted that part of the plaintiff's claim in the amount of BGN 4,956,366 in relation to the principal, as well as in the part for the accessory claim for interest for the amount of BGN 2,006,453.48 was compensated in favor of the plaintiff through decisions of the KEVR. Requests that the decision be annulled in the contested part and instead, on the merits of the dispute, the cassation instance should accept that the claim is well-founded in this part as well, by ordering the defendant to pay the plaintiff the sum of BGN 4,956,366 in principal, as well as interest for delay until filing the claim in the amount of BGN 2,006,453.48.

The defendant in this appeal - the Ministry of the Environment and Water disputes its merits and presents arguments for the correctness of the appealed decision in this part.

The representative of the Supreme Administrative Prosecutor's Office presents a reasoned opinion on the merits of the cassation appeal of the Ministry of the Environment and Water and on the groundlessness of the cassation appeal of "Brickel EAD".

The current three-member panel of the Supreme Administrative Court accepts that the cassation appeals were filed by proper parties for whom the judicial act is wholly or partially unfavorable, subject to the preclusion period for this, which is why they are admissible for examination on the merits.

By decision No. 4506 of 06.08.2020 under Adm. e. No. 8323/2019 of the Administrative Court - Sofia city, the Ministry of the Environment and Water was sentenced to pay "Brickel" EAD, Galabovo a sum of BGN 17,453,002.24, representing compensation for property damage caused by an administrative act declared null and void, letter ex . No. 26-00-173/08.05.2012 of the Deputy Minister of Environment and Water, as well as an amount of BGN 7,064,311.00, representing moratorium interest on the awarded principal, for the period from 05/08/2012. until 27.04.2016 and was awarded the legal interest for late payment on the principal for the period from the date of the claim - 27.04.2016 until the final payment, as well as the Ministry of Internal Affairs and Communications was ordered to pay costs in the amount of BGN 32285.18.

From the factual side of the case, the following was established:

The appealed decision was rendered on the substance of a legal dispute, which finds its legal basis in Art. 1, para. 1 ZODOV , according to which the state and municipalities are responsible for damages caused to citizens and legal entities by illegal acts, actions or inactions of their bodies and officials during or in connection with the performance of administrative activities. The state and municipalities owe compensation for all pecuniary and non-pecuniary damages that are a direct and immediate consequence of the injury, regardless of whether they were caused by the official's fault. The provisions of the civil and labor laws apply to issues not settled in ZODOV.

The claim under Art. 1, para. 1 ZODOV is considered according to the procedure of the APC, as, according to Art. 204, para. 1 APC , a claim may be filed after the cancellation of the administrative act according to the relevant order. According to Art. 204, para. 3 APC , when the damage is caused by a void or revoked administrative act, the illegality of the act is established by the court before which the claim for compensation is filed. The procedural claim is filed in the hypothesis of Art. 204, para. 1 APK .

The decision was made in the proceedings under Art. 226, para. 1 of the APC , after the annulment of decision No. 2182 of 30.03.2018 by adm. d. No. 4485/2016 according to the inventory of the ASSG with decision No. 11101 of 17.07.2019 according to adm. e. No. 7075/2018 according to the inventory of the Supreme Court and in compliance with the instructions given by the cassation instance.

It has been established that "Brickel" EAD has filed a claim against the Ministry of the Environment and is suing for compensation for property damage suffered by an illegal administrative act: letter, ex. No. 26-00-173/08.05.2012 of the Deputy Minister of Environment and Water. An amount of BGN 22,409,368.24 principal, representing direct material damages, and an amount of BGN 9,070,764.48 representing moratorium interest for the period from 05/08/2012 to 04/27/2016 - the date of filing the claim. The direct damages are indicated as the price that the claimant paid for greenhouse gas emission allowances, due to the refusal in the above mentioned letter to grant him 1,090,198 free greenhouse gas emission allowances from the "New Entrants" Reserve to the European Emissions Trading Scheme /IS/. The claim is based on the fact that letter, ex. No. 26-00-173/08.05.2012 of the Deputy Minister of Environment and Water, was declared null and void by decision 3971/08.06.2015 under Adm. e. No. 1526/2015 of the 28th panel of the court, supplemented by decision No. 5292/24.07.2015 on the same case, left in force by final decision No. 12773/27.11.2015 on adm. No. 11144/2015 of the Supreme Administrative Court (SAC), Fifth Department.

The decision states that when giving mandatory instructions to the administrative body under Art. 173, para. 2 of the APC and based on the evidence in the case, including the verification reports for 2010 and 2011, that the actual emissions required by the applicant ("Brickel" EAD) for the period from 01.05.2010 - 05.05.2011 are in the amount of 1,090. 198 pcs. This is the period during which the company was obliged to operate without

having been allocated free allowances, and which the company was obliged to purchase on the free market in order to carry out its activities.

It was also established that in fulfillment of this court decision, a new administrative act was issued - letter, ex. No. 26-00-531/17.02.2016 of the Minister of the Environment and Waters, which is an objectified statement that the MoEW has no legal basis to open a procedure for free allocation of quotas for a new participant at the company's request for the period from 01.05 .2010 - 05/05/2011 This letter is contested as ind. Adm. act and with decision No. 244/26.06.2020 under adm. e. No. 89/2020 , was declared null and void, as the case was not returned as adm. file for re-pronouncement of adm. act in compliance with mandatory instructions of the court. The decision was left in force by decision No. 8057 of 02.07.2021 by adm. d. No. 9681/2021 of the Supreme Court .

The first-instance administrative court complied with the instructions given under decision No. 11101 of 17.07.2019 under Adm. e. No. 7075/2018 according to the inventory of the Supreme Court .

The first of these instructions refers to specifying the type of damages - suffered losses or lost profits. In this regard, the administrative court, with its order dated 30.07.2019, left the proceedings motionless and instructed the plaintiff to specify the nature of the claimed damages. The claimant complied with these directions by stating that it was seeking compensation for free carbon allowances that had been claimed but not allocated to it. It indicated that if his application with entry No. 456/20.04.2011 was respected, he would use them in his commercial activity and would not incur costs for purchasing on the free market. Therefore, it considers that it is a question of lost benefit equal to the value of the denied free quotas and representing the principal of the main claim.

Next, the cassation instance found that the question of the existence of another mechanism for compensating the funds provided by the company for the purchase of additional greenhouse gas emissions on the free market by including these costs in whole or in part in the price of electricity was insufficiently investigated. including the question of whether this constitutes a special way of compensation within the meaning of Art. 8, para. 3 ZODOV . In this regard, the first-instance court admitted two SIEs, to which questions were asked by the parties precisely in this direction. The expert gave two possible options at the discretion of the court according to two different decisions of the KEVR, and ASSG explained in detail why he chose one of them (according to table 4 on page 23 of the second SIE).

Thirdly, but of primary importance, the SAC gave instructions to examine the meaning and legal nature of letter No. 26-00-531 of 17.02.2016 of the Ministry of Internal Affairs and Communications regarding the legal dispute regarding the claim for damages and, above all, whether the same was judicially appealed and whether it has entered into force. During the re-examination, the ASSG was obliged to answer the question whether this letter represented a refusal to initiate administrative proceedings or a refusal on the substance of the request. The correct answer to this question is essential for resolving the legal dispute on the

claim from the point of view of admissibility in view of the legal interest in conducting it in pending administrative proceedings, as well as from the point of view of establishing the direct cause-and-effect relationship between the damage and the claims harm.

By order dated 30.07.2019, the administrative court stayed the proceedings and instructed the plaintiff to indicate whether he appealed this letter and, if he did, what the outcome was. In fulfillment of this obligation, the plaintiff has developed detailed arguments for the nullity of this administrative act and has requested a simultaneous ruling pursuant to Art. 204, para. 2 and para. 3 of the APC , i.e. in the course of the proceedings in the case, to declare the nullity of a letter exh. No. 26-00-531 of 17.02.2016 of the Ministry of Education and Culture. By decision No. 7319 of 02.10.2019, the ACSG accepted that with one claim the plaintiff filed two claims (one for each of the two administrative acts - letter ex. No. 26-00-1273 of 08.05.2012 and letter ex. No. 26-00-531 of 17.02.2016) and divides the proceedings on them. I leave for consideration the claim against letter ex. No. 26-00-1273 dated 08.05.2012, and the one against the second act was later instituted in a new adm. d. No. 11083/2019 according to the inventory of the ASSG , 56th Chamber. By decision of 24.01.2020 on this new adm. case, the proceedings are divided again, and the claim under Art. 1 of ZODOV for damages suffered from a letter exh. No. 26-00-531 of 17.02.2016. The request to declare the nullity of this act was separated into a new proceeding - adm. e. No. 985/2020 according to the inventory of the ASSG, according to which, by decision No. 816 of 30.01.2020, the proceedings were terminated, and the case was sent to the jurisdiction of the Administrative Court - Stara Zagora. In this regard, with decision No. 1725 of 02.03.2020, the ASSG on the basis Art. 135, para. 2 in conjunction with Art. 206, para. 2 of the APC ASSG terminates the proceedings under adm. d. No. 11083/2019 and sends the second part of the case for resolution by the Administrative Court - Stara Zagora.

As a result of the above-described procedural authorizations of the ASSG in AS - Stara Zagora, two separate proceedings were initiated:

According to adm. e. No. 89/2020 the nullity of a letter exh. No. 26-00-531 dated 17.02.2016 of the Minister of Environment and Water. By decision No. 244 of 26.06.2020 under Adm. d. No. 89/2020 of AS - Stara Zagora was declared null and void letter ex. No. 26-00-531 dated 17.02.2016 of the Minister of Environment and Water. This decision was confirmed by decision No. 8057 of 02.07.2021 under Adm. No. 9681/2020 of the Court of Appeal , Third Department.

It can be seen from the cited two decisions of the AC - Stara Zagora and VAC, letter ex. No. 26-00-531 dated 17.02.2016 was declared by force of judgment to be a null and void individual administrative act, which puts an end to the proceedings on the provision of free quotas, initiated by the plaintiff with his application ent. No. 456/20.04.2011. In the course of this administrative proceeding, the administrative body issued two acts of its own (Letter Ex. No. 26-00-1273 dated 08.05.2012 and Letter Ex. No. 26-00-531 dated 17.02.2016 d.), and both acts are currently declared null and void.

According to adm. d. No. 160/2020 of the AC - Stara Zagora, the merits of the claim for damages from the second administrative act - letter ex. No. 26-00-531 of 17.02.2016. Repeatedly in the course of the adm. e. No. 8323/2019 on various occasions, the plaintiff has stated the position that it is actually the same claim and the same amount and basis of damages suffered, and the discrepancy comes only from the fact that two administrative acts have been issued in the course of the same administrative file. There is no way for both acts to suffer separate damages of an identical amount. That is why the second proceedings under the adm. d. No. 160/2020 of the Administrative Court - Stara Zagora is inadmissible, since the plaintiff's claim is already being examined in the course of the present proceedings. It is precisely in this sense that the instructions given to the three-member composition of the Supreme Administrative Court under Adm. d. No. 7075/2018 Among these instructions, there are no ones to divide the proceedings into two separate claims, because especially with regard to the condemnation claim under Art. 1 of ZODOV is about only one and the plaintiff has always claimed it. The present proceedings are entirely prejudicial to the proceedings under adm. d. No. 160/2020 of AS - Stara Zagora , insofar as it completely absorbs its subject. The provision of Art. 126, para. 1 of the Civil Code , applicable in conjunction with Art. 144 of the APC expressly obliges the second case for the same request and on the same grounds to be dismissed ex officio. In fact, it is really about the same request, as a result of the same administrative file, and the fact that two acts were issued in the course of it cannot in any way affect the basis. The claimant claims that he was not given free allowances when he was entitled to them and demands that he be awarded their value.

The above instructions of the SAC have been implemented in the course of the preliminary litigation. As a result, the issued judicial act corresponds to the guidelines given by the Supreme Court in the annulment decision, taking into account the newly established circumstances and the collected evidence in the case, as well as the heard economic forensic expertise.

At the first consideration of the dispute under adm. d. No. 4485/2016, the claim was rejected by the ASSG, but due to an unclear factual situation and taking into account only the first act issued in the course of the administrative file: letter ex. No. 26-00-173/08.05.2012 of the Deputy Minister of Environment and Water.

Both judicial panels of the ASSG correctly consider the grounds of decision 3971/08.06.2015 under Adm. e. No. 1526/2015 of the 28th panel of the ASSG, supplemented by decision No. 5292/24.07.2015 on the same case, left in force by final decision No. 12773/27.11.2015 on adm. No. 11144/2015 of the Supreme Administrative Court. As a result, the letter with ex. No. 26-00-1273/08.05.2012 of the Deputy Minister of the Environment and Water, on a request to allocate quotas for greenhouse gas emissions from the "New Entrants" reserve to the European Emissions Trading Scheme ("EETS") , and the case was returned as a file to the Minister of the Environment and Water, for a new ruling in compliance with the instructions given in the reasoned part of the decision, namely, when

re-solving the issue, the company's request should be assessed by the competent authority in compliance with the instructions for the issuance of an administrative act and upon clarification of the actual legal relationships and in view of the evidence collected in the administrative proceedings at the request made by the company. With the administrative act issued in implementation of this decision - letter issued No. 26-00-531/17.02.2016. of the Minister of the Environment and Waters, is an objective statement that the MoEW has no legal basis to open a procedure for the free allocation of quotas for a new participant at the request of companies for the period from 01.05.2010 to 05.05.2011. As stated above, parallel to the course of the present proceedings, this act was appealed and accordingly declared null and void.

Unlike the composition of the ASSG at the first hearing of the dispute, now the court has collected additional written evidence and has admitted and heard conclusions on two (one main and one additional) forensic economic expertise. Based on the evidence collected, the court accepted that the existence of the alleged damages was established, but not in their full amount, as part of the value of the claimed free quotas was compensated in proceedings before the Commission for Energy and Water Regulation in price setting of the company for heat and electricity in subsequent price periods. The court accepts that there is a direct and immediate causal link between the two refusals to issue free allowances and the damages suffered by the plaintiff.

The current judicial composition of the Supreme Administrative Court accepts that the appealed decision is valid, admissible and correct.

According to the complaints cited in the two cassation appeals, the present court considered the following from a legal point of view:

On the cassation appeal of the Ministry of Environment and Water.

The first reason cited is the inadmissibility of the contested legal act. According to the assessor , the plaintiff specified that it was about lost profits, and the court awarded him direct damages. It is an established fact that after filing the claim, the court asked the plaintiff to specify and specify the claimed damages by type - lost profits or suffered losses. In its application dated 01.10.2019, Brickell EAD specified that the non- receipt of free quotas, respectively their monetary equivalent, represents a missed benefit in an amount equal to the value of these quotas. The same applies to the claimed moratorium interest. According to the provision of Art. 4 of ZODOV "The state and municipalities owe compensation for all pecuniary and non-pecuniary damages that are a direct and immediate consequence of the damage,..." which unequivocally says that the court used the broader legal term "damage" when considering the claim. which includes "profit lost" and "losses incurred". With regard to the accessory claim for interest, the court has precisely formulated the type of damage, and upon careful reading of this motive, it becomes clear that the principal is also meant.

In order to render the appealed decision, the court of first instance reasonably and lawfully assumed that the factual composition of Art. 1, para. 1 of ZODOV , and in the trial case the cumulative prerequisites are present: 1. existence of an administrative act; 2. illegality of the

administrative act, established by an effective court decision; 3. existence of caused damage and its amount; 4. causal link between the illegal administrative act and the harmful result that occurred.

The merits of the claims under Art. 1 of ZODOV is determined by a cumulation of prerequisites. They are an illegal administrative act, revoked according to the relevant order and/or illegal action or inaction of an administrative body or official of the state or municipality; the act, action or inaction, were committed during or on the occasion of the implementation of an administrative activity; from the same, that damage has actually occurred and that there is a direct and immediate cause-and-effect relationship between the damage that occurred and the illegal act/action/omission. The absence of even one of the elements of the factual composition prevents the implementation of the responsibility of the state or the municipalities, as specified in Art. 1, para. 1 of the ZODOV order, which implies rejection of the claim brought on this basis.

Leading in determining the content of the concepts of "direct and immediate consequence" are the equivalence theory, according to which a fact is the cause of the result, when, if this fact were absent, the result would not have occurred, and the adequate theory, according to which these are the cause conditions that cause the result normally, typically, adequately, not exceptionally.

In practice, the understanding has been adopted that immediate damages are those that in time and place follow the unlawful result. Direct damages are those that substantiate the causal link between the illegality of the behavior of the causer and the damages. In this case, the costs of purchasing carbon emissions, making up the claimed amount of the claim, are a direct consequence of the declared null and void refusals of the administrative body to provide the company with free quotas, in accordance with the currently effective regulatory provisions on the regulation of the carbon emissions market. Thus, in this case, the pecuniary damage represents the difference between the company's pecuniary condition after the adverse impact on its pecuniary condition, which it would have had if the adverse impact of the illegal refusal to grant free allowances had not taken place. This necessitated incurring expenses for purchase and reduction of his property status, and which was subsequently only partially compensated in the order of heat and electricity price regulation by KEVR.

Legal doctrine in the field of bond law, however, does not deal with such a distinction. On the contrary, damage is always a collective concept that is subject to comparisons and separation according to different criteria. Undoubtedly, the subject of consideration in the present dispute are property damages, and their component parts are two possible: suffered loss (damnum emergens) or lost benefit (lucrum cessans). As for the division of damages into direct and indirect, this is a completely separate question and its most accurate answer is contained in the text of Art. 82 of the Civil Code , where it is stated that "the compensation covers the suffered loss and the lost benefit, insofar as they are a direct and immediate consequence of the non-performance...". Special Art. 4, para. 1 of ZODOV mandates that "the state and municipalities owe compensation for all

property and non-property damages that are a direct and immediate consequence of the damage...". Not only is there no conflict between the two provisions, but also considered in their totality it becomes clear that in this case the concept of "direct" is intended entirely in the light of the fact that in cases under ZODOV the damage must be proven as a consequence of the illegal act (or the damage) i.e. to prove in an undoubted way the cause-and-effect relationship between this act and the damages suffered. This is precisely the meaning of the used adjective "direct" and it should not be equated with the concept of loss. For the legislator, it does not matter which component of the direct damage has occurred - whether the suffered loss or the lost benefit. In view of this, the administrative court gave a lawful legal qualification to the awarded compensation for damages.

The next complaint of the assessor MOEW concerns the non-closing of the administrative file or, in particular, the dispute over the validity of a letter ex. No. 26-00-531/17.02.2016 of the Minister of Environment and Water. In the OSZ on the present cassation proceedings, held on 29.03.2021, this issue was taken into account and the case was suspended until the conclusion of the dispute under adm. d. No. 9681/2020 according to the inventory of the Court of Appeal , third department. Given the imperative provision of Art. 227 of the APC , the present panel owes a ruling on the dispute, including taking into account the already rendered decision under adm. d. No. 9681/2020 of the Supreme Court .

The court has complied with the instructions of the cassation instance under decision No. 11101 of 17.07.2019 under adm. e. No. 7075/2018 of the Supreme Court , having instructed the plaintiff to individualize the nature of the damages. Based on the given clarification, he assumed that they represent the price paid by the plaintiff for the purchase of greenhouse gas emission allowances, due to the administrative authority's refusal to grant him 1,090,198 free greenhouse gas emission allowances from the "New Entrants" Reserve to the European emissions trading scheme.

Justifiably, the court took into account the force of an awarded thing under the conditions of Art. 177, para. 2 of the APC . This is so given the fact that by decision 3971/08.06.2015 under Adm. e. No. 1526/2015 of the 28th panel of the court, supplemented by decision No. 5292/24.07.2015 on the same case, left in force by final decision No. 12773/27.11.2015 on adm. e. No. 11144/2015 of the Supreme Administrative Court (SAC), Fifth Department, the administrative body was instructed that the real emissions necessary for granting the company as free for the period from 01.05.2010 - 05.05.2011 are in the amount of 1,090. 198 pcs. This is the period during which the company was obliged to work without quotas being allocated to it, and which it was obliged to purchase on the free market in order to carry out its activities.

It was established by the court that with a subsequent letter, ex. No. 26-00-531/17.02.2016 of the Minister of Environment and Water, is an objectified statement that there is no legal basis to open a procedure for free allocation of quotas for a new participant at the request of the company for the period from 01.05.2010 - 05.05.2011. The repeated refusal of the

Minister of Environment and Water was contested by the company and with decision No. 244/26.06.2020 under Adm. e. No. 89/2020 of the Administrative Court - Stara Zagora is declared null and void. The decision was left in force by decision No. 8057 of 02.07.2021 by adm. d. No. 9681/2021 of the Supreme Court .

It should be noted that the court reasonably and lawfully took into account that the National Plan for the distribution of quotas for trading in greenhouse gas emissions (NPRK) 2008-2012 (adopted by decision No. 988/28.12. 2009 of the Council of Ministers). Installations are given a certain number of greenhouse gas emission allowances free of charge. It was established that the claimant has a comprehensive permit (CR) for the operation of the thermal plant since 2006. According to this KR (in condition 9.23) a restriction was imposed on the operation of a combustion plant for the production of thermal energy with a nominal capacity of 1020 MW within 20,000 working hours from 01.01.2008. It was established in the proceedings that the verified GHG emissions for 2009, which are in the amount of 1,452,041 tons of C02, and the verified greenhouse gas emissions for 2010, which are in the amount of 292,676 tons of C02, the thermal power plant had an operating time of 15 months. It was supposed to work until 01.04.2010, emitting greenhouse gas emissions (tons of C02), which will be paid with the allocated free quotas under the NPRK for the period 2008-2012. for 2010 and 2011 are transferred to the operator's account according to his registered number until 30.04. of the year. Thus, according to the NPRK for 2011, 680,144 quotas were provided free of charge to the company. The free quotas allocated to the thermal plant for 2010 are 680,138 units and were transferred to its account on 28.04.2010, and the allocated for 2011 in the amount of 680,144 units - on 19.03.2011.

It was established by the court that the actual amount needed to obtain free allowances from the heating plant for the period May 1, 2010 - May 5, 2011 is 1,090,198, i.e. the company incurred costs for the purchase of a total of 892,821 allowances and described in STE invoices, as it incurred total expenses for the purchase of quotas for the period 01.05.2010 - 05.05.2011 - BGN 22,409,368.24 excluding VAT. Thus, for 2010, the difference between the emission quotas according to the verification report and the allocated quotas is 612,538, of which the company purchased 595,236 worth BGN 18,626,886.81. For 2011, the difference between the quotas according to the verification report and the allocated quotas is - 392,552, and the company purchased 297,585 quotas worth BGN 3,782,481.4 excluding VAT.

The question of whether the claimed amount of free quotas for the relevant period May 1, 2010 - May 5, 2011 was owed to the company is substantiated. It is not disputed in the proceedings that the plaintiff company is an energy company with highly efficient combined production of electricity and heat (so-called cogeneration) and separate production of thermal energy in the water heating part. As such, it participates in the scheme for the free allocation of allowances for quantities of carbon dioxide emissions from production. The enterprise is included in the scheme for free allocation of greenhouse gas quotas for thermal energy under the

European Emissions Trading Scheme (ETS) according to Art. 10a of Directive 2003/87/EC and in the scheme for free allocation of greenhouse gas quotas for electricity under Art. 10c, paragraph 5 of Directive 2003/87/EC , amended by Directive 2009/29/EC. It was established in the proceedings that for the period 2008 - 2012 (under phase 2) the thermal plant was allocated free allowances for the period 2008 - 2011 for an authorized operation of 20,000 hours. They were exhausted by 30.04.2010 (quotas for 2012 were distributed later, reflected in the batch in the register dated 19.03.2013), which required the company to request additional quotas from the Ministry of Internal Affairs and Communications carbon emissions in the amount of 1,090,198 tons, verified for the period 01.05.2010 - 05.05.2011, which request was refused with the declared invalid refusals of the deputy. the Minister of Environment and Water and the Minister of Environment and Water.

As a result of the administrative body's refusal to fulfill its obligations to transfer the necessary amount of quotas to the register under Art. 10a, the company purchased quantities of carbon emissions on the free market: for 2010 (supplied until 30.04.2011) - 682,193 tons worth BGN 20,845,316 and for 2011 (supplied until 30.04.2012) - 297,585 tons worth BGN 3,782,482.

Reasonably, the administrative court took into account that according to the legal regulations in force at the time of the trial - art. 131a, para. 3 (repealed) of the ZOOS , in connection with § 28, para. 1 of the PZR of the ZID of the ZOO , pron. in SG no. 42/2011, until December 31, 2012, quotas for new participants in the greenhouse gas emissions trading scheme are allocated based on a decision on the allocation of quotas for new participants of the Interdepartmental Working Group for coordinating the implementation of the National Allocation Plan of quotas for greenhouse gas emissions for the period 2008 - 2012 and an order issued by the Minister of Environment and Water for the allocation of quotas to the relevant new participant. The Minister is also the competent administrative authority for issuing the administrative act, the nullity of which has been declared. After the repeal of this provision of the law and with the entry into force of the Law on Limiting Climate Change , effective from 11.03.2014, according to Art. 44, para. 3 of the same , the free allocation of quotas is carried out after verification and approval by the Minister of Environment and Water of the application submitted to him by the interested new participant. By virtue of this provision, the Minister of Environment and Water, and under the new ZOIC, is the competent authority for the free allocation of quotas for greenhouse gas emissions.

The administrative body did not fulfill the requirements arising from the law for providing free quotas and did not fulfill the instructions given in decision No. 3971/08.06.2015 . and additional decision No. 5292/24.07.2015 under adm. e. No. 1526/2015 of the ASSG , left in force by final decision No. 12773/27.11.2015 under adm. No. 11144/2015 of the Supreme Administrative Court, including the number of issues for the period from 01.05.2010 - 05.05.2011 in the amount of 1,090,198 tons,

according to the verification reports for 2010 and 2011 of the verification body, prepared based on the operator's annual reports.

The defendant's thesis that there are gaps in the cause-and-effect relationship between the letter from 2012 of the deputy is unfounded. the Minister of Environment and Water and the damage suffered. Such a connection also exists between the second letter ex No. 26-00-531 /17.02.2016 of the Minister of Environment and Water and the damage suffered. The same is a consequence of the two acts issued in the course of the same administrative file on the application submitted by the company / letter ex. No. 26-00-1723/2012 and letter ex. No. 26-00-531/17.02.2016 / and produce their adverse effect as a whole, but not considered individually. The delay in the re-examination of the case and the fundamental change in the regulatory framework deprive "Brickel" EAD of any possibility to receive the free allowances due to it or to be compensated in accordance with the Energy Law , by including them as an expense in subsequent price periods from KEVR.

Examining the two letters in their totality (the first ex. No. 26-00-1273 of 08.05.2012 of the Deputy Minister of Environmental Protection, declared null and void due to incompetence and the second - ex. No. 26-00-531 of 17.02.2016 ., of the Ministry of Internal Affairs and Communications also declared null and void), as an unfavorable end to the administrative proceedings for the defendant in this cassation appeal, the cause-and-effect relationship is present. If the application were granted, he would receive free quotas or their monetary equivalent, rather than purchasing them on the open market, and he would not suffer any material damage. Failure to receive them represents a foregone benefit equal to the value of these allowances. According to the assessor , there is no causal connection between the two acts declared null and void and the costs incurred by the claimant for the purchase of allowances (at least due to the chronological difference between these facts), and in this regard he points to the case law of the Supreme Court, which is however valid only for the tort. In contrast, the rules of ZODOV are different and should be taken into account when resolving the dispute. The rules of the scheme for trading greenhouse gas emission allowances as of the date of issuance of the first of the administrative acts declared null and void were developed in the texts of Art. 131a to Art. 131f of the Environmental Protection Act as amended - SG No. 46 of 2010, in force from 18.06.2010, which texts are currently repealed. According to this scheme, the request for free allowances is submitted almost simultaneously with the reporting of the verification reports for the past period, at which point any person operating an installation within the meaning of Art. 131c, para. 1 and 2 must also have available the quotas he needs according to this report. If his request for free allowances is granted, he will be able to use them in the accounting of the next accounting period or dispose of these allowances on a market basis by selling them to third parties. It was precisely this mechanism that motivated the plaintiff to consider, in his clarification, that it was more about lost profits, instead of suffered losses. In both cases, however, it is undoubtedly a question of direct damage from the defendant's refusal to

provide him with these quotas. If we accept the chronological thesis of the tax collector on this issue as true, we should assume that in both cases it is about expenses incurred at least 6 years before the second administrative act declared null and void, which deprives the canceling act of any logic decision of the Court of Appeal under adm. e. No. 9681/2020

Next, the court objectively examined in the claimed period whether there was compensation for the costs incurred for the purchase of carbon emissions through the methods of price regulation carried out by the regulatory body Commission for Energy and Water Regulation. It was objectively established by the court that only with decision No. Ц-16/28.06.2012 of KEVR , the costs incurred by the company for purchased quotas of carbon emissions, allocated during production in 2010 - 2011, purchased and handed over in 2011 and 2012 until April 30, with a total value of BGN 24,627,798, are included in the approved prices according to decision No. Ц-16/28.06.2012 of KEVR as costs for quotas worth BGN 11,130,000, but not up to the full amount of the requested quotas - 1,090,198, i.e.

The court correctly took into account the conclusions of the STE that the specific amount of reimbursement of the emission costs incurred by the company, which in practice was reimbursed to the company, was in the amount of BGN 4,959,366. This happened through the compensatory mechanism under the Law on Energy , as included costs of the company in the next regulatory period according to decision No. Ц-16/28.06.2012 of KEVR .

The court's conclusion is correct that all the decisions of KEVR, with which the heating company's prices were approved for the period from 2010 to the present moment, only part of the emissions costs incurred for purchase by the company in the period 2011 - 2012 (applicable to 2010 and 2011), were included only in decision No. Ц-16/28.06.2012 . Other costs for this period were not included in the other decisions of KEVR. In this regard, the conclusions of the first instance court are justified and lawful, that through the price regulation carried out by KEVR, the costs incurred for the purchase of carbon emissions were not compensated. This resulted in damages representing purchase costs.

In this regard, the court's conclusion is substantiated that the amount of the damage proven in the case is BGN 17,453,002.24, which is obtained by deducting the amount of BGN 4,959,366 from the claimed damage in the amount of 22 BGN 409,368.24 according to the claim, given that it was subsequently compensated in the recognized costs of the company for the purchase of carbon emissions according to decision No. Ц-16/28.06.2012 of KEVR . The fact that part of the claimed damages were compensated in a subsequent period of price regulation determines the validity of the conclusion that the refusal to grant free allowances is unlawful.

As for the claims of the assessor , that the costs of the plaintiff were compensated through the price of the electricity sold by him, the ASSG, in the absence of special knowledge on the matter, correctly relied on the two admitted and prepared in the case of SIE, the main purpose of

which is precisely this one. In the end, he correctly assumed that only in the approved prices under Decision No. C-16 of 28.06.2012 of the KEVR were explicitly approved by this regulatory body costs for emission quotas in a total amount of up to BGN 11,130,000, and this is explicitly stated conclusion and of the expert on page 16. All subsequent decisions of KEVR refer to subsequent reporting periods and cannot be taken into account for the trial period, which is 2011 - 2012. On pages 17 to 19 of the second SIE, the expert used an electronic model and came to the conclusion that through the price of electricity and heat, the total amount of compensation for this exact period is BGN 4,959,366, indicated in the table. No. 4 on page 23 of the second SIE

The thesis, developed in the text of the complaint, that the plaintiff made himself unable to produce the predicted amount of electricity and thus failed to make full use of the opportunity provided to him by Decision No. C-16 of 28.06.2012, is also unfounded. KEVR . As can be seen from all the written evidence gathered in the case, precisely in this period the plaintiff was in the process of reorganizing his production activity, as he was obliged to introduce a system for desulfurization of waste gases. He intended to start these actions earlier, but it was the decision of the Council of Ministers, which obliges him to work, albeit at a reduced volume, in order to provide heat energy for the settlements, forcing him to delay the implementation of these plans of his. Such expectations should not be attributed to him during the trial period. In his calculations, commented on in detail above, the expert took into account the actually achieved results and the actually realized compensation, which the ASSG justifiably decided to reduce from the total amount of the claimed amount.

Finally, the assessor of the Ministry of Internal Affairs and Communications claims something that is in sharp conflict with the previous paragraph. On the one hand, it is argued that the claimant must necessarily work at full speed in order to achieve the full amount of compensation, and on the other hand, the assessor expects him not to work, because there was no such obligation according to the Decision of the ICJ. At least one of the two statements could not have been expected by the assessee at the same time, but on the other hand, they are also false. In the previous preliminary proceedings, these issues were deeply and carefully investigated by the respective panels of the ASSG and the Supreme Court, in order to reach the conclusion that the claimant was entitled to free allowances.

In view of what has been stated so far, the present instance finds that the cassation appeal of the MOEW should be rejected as unfounded, and the decision in the disputed part should be left in force.

According to the cassation appeal of "Brickel" EAD.

The present judicial composition of the Supreme Administrative Court accepts that the contradiction claimed by the plaintiff between the contested decision and the written evidence collected in the case is not present. The thesis that the amount of compensation should have been determined on the basis of debit notices is unacceptable. These notices are the result of an entirely different litigation unrelated to the present one.

The principled position that, according to the mechanism for approving electricity prices, there is no way to compensate for a period that has already passed is correct, but not in the specific case. In the end, it was precisely for the period following the trial that the plaintiff set estimated costs for the purchase of emissions, using as a basis the prices during the past accounting period. To a certain extent, they were approved, and this approval led, according to the expert, to the CEE admitted and undisputed by the parties, to receiving more income, albeit in the next reporting period. All other things being equal, such compensation would not have been received, which is why the ASSG correctly deducted the amount of BGN 4,959,366 from the claim and accepted that the claim should be rejected for this part.

The partial rejection of the principal of the claim in the amount of BGN 4,959,366 causes the corresponding reduction of the claim for moratorium interest, which is why this part of the complaint cannot be respected either, given its accessory nature.

In view of the outcome of the case and on the basis of Art. 10, para. 2 ZODOV , the costs before the present instance should be awarded according to the amount of the claims in the rejected cassation appeals. On the part of the defendant, the Ministry of the Environment and Waters, an award of the costs incurred by him in the amount of BGN 73,224.66 has been claimed. The request should be granted in the amount of BGN 16,189.97, as compensation considering the material interest objectified in the rejected cassation appeals.

We conclude from the above and on the basis of Art. 221, para. 2 of the APC , the Supreme Administrative Court,

RESOLVE:

Decision No. 4506 of 06.08.2020 , issued under adm., REMAINS IN FORCE . d. No. 8323 according to the inventory for 2019 of the Administrative Court - Sofia city.

JUDGMENTS "Brickel" EAD Galabovo, EIC [EIC] to pay to the Ministry of Environment and Water the sum of BGN 16,189.97 /sixteen thousand one hundred and eighty-nine BGN and ninety-seven cents/ representing expenses in the case.

The decision is not subject to appeal.

Decision No. 4506 of 08/06/2020 of the AdmS - Sofia under Adm. e. No. 8323/2019

The proceedings are in accordance with Art. 203 – Art. 207 of the Administrative Procedure Code /APK/, in conjunction with Art. 1, para. 1 from ZODOV .

The proceedings were initiated on a claim with a legal basis, Art. 1, para. 1 of

The Law on the Liability of the State and Municipalities for Damages (ZODOV) , filed by [company] against the Ministry of the Environment and Waters (MOEW), for the payment of compensation for property damage caused by an annulled illegal individual administrative act - letter, ex. No. 26-00-173/08.05.2012 of the Deputy Minister of Environment and Water, with the stated cost of the claims totaling BGN 31,480,132.72, of which BGN 22,409,368.24 principal , representing direct material damages and moratorium interest on this amount in the amount of BGN 9,070,764.48 for the period from 08.05.2012 to 27.04.2016 - the date of filing the claim as well as the legal interest for late payment on the principal for the period from the date of filing the claim – 27.04.2016 until the final payment of the amount.

The present case was initiated after the annulment of decision No. 2182/30.03.2018 under Adm. d. No. 4485/2016 according to the inventory of the ASSG with decision No. 11101/17.07.2019 according to adm. e. No. 7075/2018 according to the inventory of the Supreme Court, with which the case was returned for a new ruling, in accordance with mandatory instructions, regarding the application of the law.

In the village of - regularly summoned, the plaintiff is represented by Adv. D., who maintains the claim, submits written notes and claims expenses for the deposit of an expert.

The defendant, through his procedural representatives, in s. z. - Adv. L. and Adv. D., disputes the claims as groundless and unproven.

The prosecutor expresses an opinion that the claim is groundless and unproven.

After discussing the arguments of the parties and the evidence accepted in the case, the court in the present composition accepts the following from a factual and legal point of view.

The claim is admissible, as filed by an actively legitimized party against a legal entity, in accordance with Art. 205 APC . The plaintiff claims that he suffered damages from an illegal administrative act: letter, ex. No. 26-00-173/08.05.2012 of the Deputy Minister of Environment and Water. The amount claimed consists of BGN 22,409,368.24 principal, representing direct material damages and moratorium interest in the amount of BGN 9,070,764.48 for the period from 05/08/2012 to 04/27/2016 - the date of filing of the claim. The direct damages are indicated as the price the plaintiff paid for greenhouse gas emission allowances, because by the above mentioned letter he was denied the allocation of 1,090,198 free greenhouse gas emission allowances from the New Entrants Reserve to the European Emissions Trading Scheme issues /E. /. The same letter was declared null and void by decision 3971/08.06.2015 under Administrative Law No. 1526/2015 of the 28th panel of the court, supplemented by decision No. 5292/24.07.2015 under the same case, left in force by final decision No. 12773/27.11.2015 under Adm. d. No. 11144/2015 of the Supreme Administrative Court (SAC), Fifth Department.

In accordance with the content of these decisions, the court announces a letter with ex. No. 26-00-1273/08.05.2012 of the Deputy Minister of the Environment and Water, on a request to allocate quotas for

greenhouse gas emissions from the reserve "New participants? to the European emissions trading scheme ("E. ?), null and void and returns the case as a file to the Minister of the Environment and Water, for a new ruling in compliance with the instructions given in the reasoned part of the decision, as in the re-resolution of the dispute, the request of the company is to be assessed by the competent authority in compliance with the instructions for the issuance of an administrative act and upon clarification of the actual legal relationships and in view of the evidence collected in the administrative proceedings at the request made by the company. With the issued additional decision No. 5292/24.07.2015 in the case, based on the applicant's request under Art. 176, para. 1 of the APC and within the period under it, for giving mandatory instructions in the operative part of the decision to which body the ASSG case is returned as a file, subject to the procedure for this provided for in para. 2 of Art. 176 of the APC and in compliance with the provisions of Art. 173, para. 2 of the APC , in connection with Art. 131a, para. 3 of the ZOO (repealed); and § 28, par. 1 of the PZR of the ZID of the ZOO , SG no. 41/2011, and after the entry into force of the Climate Change Limitation Act , effective from 11.03.2014, as the court accepted that the competent authority to which the file should be returned and to rule on the request is the Minister of environment and waters. Regarding the request to give mandatory instructions to the competent authority for the application of the law, the court in the decision, subject to the requirements of Art. 173, para. 2 of the APC and based on the evidence in the case, including the verification reports for 2010 and 2011, assumes that the actual emissions required by the applicant for the period from 01.05.2010 - 05.05.2011 are in the amount on 1, 090. 198 pcs.

This is the period during which the company was obliged to operate without quotas being allocated to it, and which, in order to carry out its activities, it was obliged to purchase them on the free market, which circumstance, according to him, was established by the evidence in the case. The content of this decision is explained in detail in decision No. /27.11.2015 under Adm. e. No. 11144/2015 of the Supreme Administrative Court (SAC), Fifth Department.

With the administrative act issued in implementation of this decision of the court - letter, ex. No. 26-00-531/17.02.2016 of the Minister of Environment and Water, is an objective statement that the Ministry of Education and Culture has no legal basis to open a procedure for free allocation of quotas for a new participant at the request of the company for the period from 01.05.2010 y. – 05.05.2011 This letter is contested as ind. Adm. act as per the same, at the moment there is a pronouncement of the Adm. Court – St. H. with decision No. 244/26.06.2020 under adm. d. No. 89/2020 /l. 315 of d. /, by which the same was declared null and void, but the case was not returned as adm. file for re-pronouncement of adm. act in compliance with mandatory instructions of the court. There is currently no information that the same has entered into force.

At the initial hearing of a claim. request for adm. e. 4485/2016 according to the inventory of the ASSG, five conclusions of forensic-

technical and forensic-economic expertise were adopted, which are fully credited in their part, which contain expert findings, as objective and competent, as by the previous composition of the court , as well as from the current composition of the court / incl. and in view of their discussion in the conclusion on the SIE in the present case/.

According to the first conclusion, according to the National Plan for the Distribution of Quotas for the Trading of Greenhouse Gas Emissions (NPRK) 2008-2012 (adopted by decision No. 988/28.12.2009 of the Council of Ministers), the installations have been granted a certain number of allowances free of charge quotas for greenhouse gas emissions. In total, all installations in the country received 38,380,044 allowances for 2008 free of charge, which amount is equal to the verifiable emissions from these installations for 2008. Installations for which, according to their complex work permit, there is a restriction reduced to a certain period of operation after 2008: 20,000 hours, a base emission is determined based on the verified emissions for 2008 and the time worked in that year. The plaintiff has a complex permit (CR) for the operation of T. B. since 2006 and according to this KR (in condition 9. 23) a restriction has been imposed on the operation of a combustion plant for the production of thermal energy with a nominal capacity of 1020 MW within 20,000 working hours from 01.01.2008. TPP B. for the production of thermal energy has 6 (six) boilers with a thermal capacity of 510 MW for each boiler. For 2008, it worked 8,598 hours with hourly emissions of 203.71 tons of C02 and verified emissions of 1,751,501 tons of C02. The base emission is 774 234 according to NPRK and with accurate calculations it is 774 230. As fuel for energy production /thermal and electric/ T. "B. ? uses lignite coal and fuel oil. In its reports on emitted emissions of greenhouse gases (GHG) T. "B. ? uses a lower limit of the "heat of combustion of the fuel" value. The remainder of working hours in the amount of 11,402 hours allows to emit emissions for the period 2009-2012 in the amount of 2,322,704 tons of CO2. It is said that the verified emissions of T "B. ? for the period 05/01/2010 - 05/05/2011 are 1,090,198 tons of CO2. According to the calculations according to letter No. PTE -P-27/14.06.2016 of the IAEO, the verified emissions for the same period are 964,192 tons. For the same period T. "B. ? has the opportunity to work for 2160 hours until the consumption of 20,000 hours before stopping operation of the installation. For 2160 hours T. B. emits 440,013 tons of C02 GHG. The number of allowances distributed free of charge for the period from 05/01/2010 to 05/05/2011 would hypothetically be

440 013, according to the established rules for all Bulgarian installations. The difference between the quotas allocated free of charge for 2010 and 2011, based on the NPRK, and the quotas required to fulfill the obligation, is 230,079.

According to the conclusion, the earliest date on which the claimant could have taken action to build a desulfurization plant before its specified 20,000 operating hours had expired was 01.01.2008, because from that date she was authorized to work another 20,000 working hours. T. "B. ? took action in April 2011 for the construction of a desulfurization

installation, stopping the operation of the installation. The construction (installation) of the desulfurization installation for 4 (four) boilers was completed in February 2012 In March 2012, the tests of the installed desulfurization plant were completed and on 14.03.2012 it received a work permit from the competent authorities. It has been operational since that date. Based on the verified GHG emissions for 2009, which are in the amount of 1,452,041 tons of CO2 and of the verified greenhouse gas emissions for 2010, which are in the amount of 292,676 tons of CO2, the plant had an operating time of 15 months, i.e., the plant should have operates until 01.04.2010, emitting greenhouse gas emissions (tons of C02), which will be paid for with its allocated free quotas under the NPRK for the period 2008-2012. The allocated free quotas for 2010 and 2011, respectively: 680 138 pieces and 680 144 pieces were sold out on 04/05/2010. Reply the allocated free quotas for 2010 and 2011 are transferred to the operator's account according to his registered number by 30.04. of the year. Based on the NPRK, the expert indicates that for 2011, 680,144 quotas were provided free of charge. The free quotas allocated to T. B. for 2010 in the amount of 680,138 units were transferred to her account on 28.04.2010, and the allocated for 2011 in the amount of 680,144 units - on 19.03.2011.

According to the conclusion of the re-examination, T. "B." has a limitation in the operational period of the installation of 20,000 working hours after 01.01.2008. The verified emissions of T. [company] for 2008 are in the amount of 1,751,501 tons of CO2 at 8,598 working hours. Thus, a coefficient of 203.71 quotas per working hour is obtained, which is used as a basis for the calculations in the NPRK for 2009, 2010 and 2011. The remaining working hours for the period 2009 - 2010 - 2011 are: 20,000 hours - 8,598 hours = 11,402 hours. In this case, T. "B." worked them out until the end of April 2010. According to the NPRK for the period 2009 - 2011, with an assumed average load of T. "B." / it is assumed that the plant will works evenly in 2009, 2010 and 2011 /, for which period 2,322,704 tonnes remain to be emitted, or using the number: 774,234 as the allocation base, which is: 2,322,704 / 3/, quotas are allocated for greenhouse gas emissions as follows: for 2009 – 789,199 quotas, for 2010 – 680,138 quotas and for 2011 – 680,144 quotas, or in total for the limited period of work in the amount of 20,000 hours are set 2 149,481 allowances.

The free allocated quotas for the period were used by the company until 04/30/2010, when the 20,000 working hours of the installation allowed after 01/01/2008 expired. That is, until 30.04.2010, T. [company] used up the free 2,149,481 quotas allocated to it, which refer to the set 20,000 working hours of the installation and which quotas are set and allocated with the NPRK. The number of allowances that needed to be purchased to meet the obligations for the period

01.05.2010 to 05.05.2011, should be determined taking into account the actually consumed greenhouse gas emissions for this period. The number of carbon emissions actually consumed/released for the past period is calculated and determined most accurately with the verification reports, which are subject to certification by a verification body. From

01.05.2010 to 05.05.2011, the installation worked for 8,856 hours, according to a report from the company. For 8,856 hours, she would be entitled to 1,804,056 free quotas, calculated through the coefficient in the NPRK - 203.71 quotas per working hour.

The expert indicates that the allocated free quotas are: for 2008 - 1,751,501 units; 2009 - 789,199; 2010 - 680 138 and 2011 - 680 144 pieces. The verified emissions are: for 2008 - 1,751,501 pcs.; 2009 - 1,452,041; 2010 - 1,292,676 and 2011 - 297,585, or a total of 4,793,803 verified issues for the period. All quotas purchased during the period 01.05.2010 - 05.05.2011 were used to cover the obligations to the register as a result of the permitted exploitation in this period. Therefore, the allocated free quotas were exhausted by the end of April 2010 and the shortage of quotas for 2010 and 2011 is 892,821 units, equal to 50% of the sum of the verified 2010 and verified 2011 quotas . The expert indicates that 595,236 allowances purchased by [company] under invoice No. 2552/29.04.2011 were transferred to the register until 30.04.2011 to cover the obligations for 2010. The verified emissions for 2010 were 1,292,676 tons of CO2 and the same number of quotas were returned to the register by 04/30/2011; 297,585 quotas purchased by "T.P.", "T.S.", "T.V. " and "Saga K." - Poland, were transferred to the register until 30.04.2012 to cover the obligations for 2011 year. The verified emissions for 2011 were 297,585 tons of CO2 and so many quotas were returned to the register until 04/30/2012. Thus, the earliest date at which T. "B." could take action to build desulfurization facilities was 01.01. .2008 when the plant's limited 20,000 operating hours begin to run. Since then, the research and design stages for the development of SOI / Desulfurization Plant/ begin. On 30.12.2010, a construction permit was received from the National Construction and Construction Authority, corrected by Note No. 1 of 06.07.2011 (presented in the case). At the end of April 2011, after the expiration of the period 01.05.2010 - 29.04.2011, T. "B." was stopped in order to start the physical construction of SOI. By April 2011, all stages of the exploratory and investment design and legalization were completed. The SOI was put into operation in February 2012, as can be seen from the permit presented in the case. The allocated free quotas for 2010 were received in February 2010, and those for 2011 in February 2011.

According to the conclusion of the first forensic-economic expertise in the first case, the actual emissions from T. [company] for the period May 1, 2010-May 5, 2011, are 1,090,198, t. The company has purchased a total of 892,821 quotas, as presented and invoices described in the conclusion, with the total expenses incurred for the purchase of quotas for the period 01.05.2010 - 05.05.2011 - 22,409,368.24 BGN excluding VAT. Due to the relatively small differences between the agreed prices and the closing prices on the trading days of the exchange, experts assume that the allowances were bought at market or close to market prices. Based on the total invoice value of BGN 22,409,368.00, the legal interest on this amount for the period from 08.05.2012 to 27.04.2016 is BGN 9,071,063.16. Based on the total stock market value of BGN 23,592,375.00. , the legal interest on this amount for the same period is 9,549,931. BGN 27.

It is alleged that for 2010 and 2011, the allowances allocated by NPRK were determined based on the remaining working hours until the end of 2011, based on emissions from 2008.

In total, for the period 2008 - 2011, 3,900,982 quotas were assigned, and 4,793,803 quotas were verified and transferred. For 2010, the difference between the emission quotas according to the verification report and the allocated quotas is 612,538, of which [company] purchased 595,236 worth BGN 18,626,886.81. For 2011, the difference between the quotas according to the verification report and the allocated quotas is - 392,552, and the company purchased 297,585 quotas worth BGN 3,782,481.4 without VAT.

In an additional conclusion, this expertise states that according to the verification report and the accepted conclusion on adm. case No. 10 279/2012 of the ASSG, as well as the protocol with the testimony of the expert from the court session on 17.06.2013, the actual CO2 emissions from T. [company] for the period May 1, 2010 - May 5, 2011, are in the amount of 1,090,198 tons. This corresponds to the data presented in the verification report for 2010 and 2011. The company purchased a total of 892,821 quotas from the above-mentioned counterparties, and the total costs for purchasing quotas for the period 05/01/2010 - 05/05/2011 are in the amount of 22 409 368. 24 leva without VAT. 595,236 quotas purchased by [company] under invoice No. 2552/29.04.2011 were transferred to the register until 30.04.2011 to cover the obligations for 2010. The verified emissions for 2010 were 1,292,676 tons of CO2 and the same number of quotas were returned to the register by 04/30/2011; 297585 allowances purchased by "T.P. ?, "T. S. ?, "T. V. ? and "Saga K. ? - Poland, were submitted to the register until 30.04.2012 to cover the obligations for 2011. The verified emissions for 2011 were 297,585 tons of CO and so many quotas were returned to the register by 04/30/2012.

The experts point out that from the opinion of KEVR dated 22.07.2016, it is clear that the decisions on determining the prices of combined electricity for the regulatory periods until 01.08.2013 did not include costs for acquiring quotas for greenhouse gas emissions . According to the rules of NPRK, during the second period of the European Emissions Trading Scheme 2008 - 2012, free allowances were allocated to electricity producers in their capacity as installation operators, and no costs for the acquisition of allowances were recognized in the price structure of heat and electricity for the period 2008 - 2012. In the very structure of the recognized costs for the formation of electricity prices, there is no feather for damages from the costs of acquiring quotas.

From the expert opinion on SIE adopted in this case, prepared by the Supreme Court of Appeal, which is undisputed by the parties and is fully credited by the current composition of the court, the following is established:

[company] produces electricity and heat from combined production, the main fuel used by the plant is coal and the auxiliary fuel is fuel oil. In the production process, the burning of coal and fuel oil emits carbon emissions, which must be transferred annually, by April 30 of the

following year, in the form of quotas. Companies with stationary installations that release emissions are allocated free quotas - according to Art. 10a of Directive 2003/87/EC (amended by Directive 2009/29/EC) AD by product indicator (thermal energy) and under Art. 10c of Directive 2003/87/EC on the National Investment Plan of the Republic of Bulgaria. [company] is an energy enterprise with highly efficient combined production of electricity and thermal energy (so-called cogeneration) and separate production of thermal energy in the water heating part and as such participates in the scheme for the free allocation of quotas for quantities of carbon dioxide emissions. The enterprise is included in the scheme for the free allocation of greenhouse gas quotas for thermal energy under E. (European Emissions Trading Scheme) according to Art. 10a of Directive 2003/87/EC and in the scheme for free allocation of greenhouse gas quotas for electricity under Art. 10c, paragraph 5 of Directive 2003/87/EC , amended by Directive 2009/29/EC. According to the data in the case, for the period 2008-2012 (under phase 2) of

[company] was allocated free quotas for the period 2008-2011 for authorized work of 20,000 hours, which were exhausted by 30.04.2010 (the quotas for

2012 were distributed later, reflected in the batch in the register dated 19.03.2013).

[company] submitted a request to the Ministry of Internal Affairs and Communications to be granted additional carbon emissions quotas in the amount of 1,090,198 tons, verified for the period 01.05.2010 - 05.05.2011, for which it was refused by the Ministry of Internal Affairs and Communications with a letter ex. No. 26-00-1273/08.05.2012, declared null and void by court decisions. In the meantime, in order to transfer the necessary amount of quotas to the register under Art. 10a, [company] purchased quantities: for 2010 (delivered until 30.04.2011) > 682,193 tons worth BGN 20,845,316 and for 2011 (delivered until 30.04.2012) > 297,585 worth BGN 3,782,482.

Heat energy prices are determined in accordance with Ordinance No. 5 of 23.01.2014 3 for the regulation of heat energy prices, and in the case of combined production, a single-component price or heat energy prices by types of heat carriers are approved and a preferential price is determined of electric energy, on the basis of Guidelines adopted by KEVR, and in accordance with Art. 24 of Ordinance No. 1 of 2017 on the regulation of electricity prices . For the various editions of the Ordinance on the regulation of electricity prices and the Ordinance on the regulation of thermal energy prices , Guidelines have been developed for the formation of the prices of thermal energy and electric energy from combined production when regulated by the method "N. of return on capital The application of the method "H. of return on capital? in the formation of the prices of the companies from the "Heat power sector" was adopted by decision under protocol No. 28 of 21.02.2012 of KEVR. Before 2012, the applicable method was

"Upper limit of prices?, as the last regulatory period for this method was determined by decision No. Ц-029 / 28.06.2010, with a duration of 2

years, from 01.07.2010 to 30.06.2012. With the method " N. of return on capital?, after carrying out a regulatory review, KEVR approves prices and required annual revenues for a regulatory period of not less than one year. The required annual revenue includes economically justified costs and return on capital recognized by the Commission. A subsequent regulatory review is conducted in the event of significant deviations between the approved and reported elements of required revenue.

During the regulatory period, prices may be changed4 in the presence of circumstances leading to a change in the price of the main fuel, the occurrence of which could not be foreseen when the prices were approved, and which lead to a significant change in the approved pricing elements and the financial state of the enterprise. The Commission may change the prices during the price period, in the event of a change in the prices of natural gas and/or other variable costs, which leads to the need to change the approved pricing elements. The individual value of electricity is calculated by the ratio of the income required for the production of electricity to the amount of electricity sold. The preferential price of electric energy, during the period 2012 - 2018, is the sum of the individual costs for the production of electric energy and the supplement determined by KEVR, and according to the Guidelines-NV, 2018, is > the individual value of electric energy5. The production price of thermal energy is calculated on the basis of the residual income required for production, and the income that will be received from the sale of electricity is subtracted from the total income required for production. Heat energy prices by types of heat carriers are calculated by adding heat energy transfer costs to the production price. The regulatory periods for the method "N. of return on capital" are usually 1 year in duration, with all pricing elements being estimated and no compensation between the forecasted and reported technical and economic parameters is provided. An electronic model containing references for the calculation of the pricing elements and of various technical and economic parameters, with formulas and dependencies by which the individual value of electrical energy and the prices of thermal energy are calculated for the combined production of the two products.

Based on the analyzes of the applicable regulation methods and price formation rules, where prices are confirmed at the beginning of each regulatory period and refer to a future period, the expert considers that: all pricing elements should be predictive and also refer to the period for which the prices are approved > the costs will be incurred in an upcoming regulatory period and the revenues from the prices will be received in the same upcoming regulatory period, as the Supreme Administrative Court also accepted. Costs for greenhouse gas emissions (CO2) when applying the method "N. of return on capital" For the period 01.07.2012 - 30.06.2013, KEVR has indicated that the relative costs for emissions are for the period 01.01.2013 - 30.06.2013, and they are covered for most companies by the provided free quotas for 2013, which is why costs for purchased emissions are not included in the prices.

The expert points out that according to decision No. Ц-16 / 28.06.2012, KEVR accepted the request of [company] and included in the

approved prices costs for carbon emissions worth BGN 11,130,000 > 1/2 of the claimed performed expenses for 2010 and 2011 from a total of BGN 22,260,000 for transferred quotas until 04/30/2011 and 04/30/2012, i.e. it allowed compensation of incurred expenses.

During the following regulatory periods: 07/01/2013 - 06/30/2018, the Commission for Energy and Water Regulation applied an approach of including in the prices of the heat energy companies, costs incurred for the base year for purchased carbon emissions quotas. For the period 01.07.2018 - 30.06.2019, the included costs for emissions are calculated as the allocated emissions in the calendar year 2017, which were purchased and delivered until 30.04.2018, after deducting the free quotas, are valued according to the KEVR estimated price. As of 01.07.2019, after numerous KEVR decisions annulled by the court, the Commission has adopted the approach to include in the prices of regulated companies emissions costs that are relevant for the regulatory period, i.e. from the emissions that will be set aside in production during the upcoming regulatory period, after deducting the free allowances for that period, the amount of allowances that the respective company will have to purchase is calculated and valued at an estimated price. The calculation of the costs of carbon emissions when considering only the purchased quantities of allowances for the base year (the period 2013-2017) does not take into account the planned production and the reduction of free allowances for the upcoming regulatory period, which means that the confirmed necessary revenues do not include the inherent and economically justified costs. The valuation of purchased quantities of quotas in a previous period at an expected forecast price for the upcoming period (2018) neither compensates for already incurred expenses, nor enables the recovery of economically justified expenses for the upcoming regulatory period.

The costs of carbon emissions, which are relevant for the regulatory period and are also actually payable during the regulatory period, can be forecasted, like each element of the other groups of costs, according to item 20. 11 of Chapter Two, Section I of the Guidelines – HB (in all editions during the period). This means that reporting data – verified quantities – can be used as a basis and way of forecasting, but they should be adjusted with the information on changes that is available at the time of forecasting, i.e.:

the quantities should take into account the estimated production, since emission costs are a variable cost and depend on the volume of production, and should also take into account the specific quantities of free allowances for the relevant year, which are known in advance;

the price for their purchase should be an estimated expected price for the upcoming period, since the companies will purchase the emissions in a future period.

This approach was adopted by KEVR when approving the prices of thermal energy enterprises with decision No. Ц-18/01.07.2019 and in the newly adopted decisions of KEVR after the court annulled the approach applied by KEVR in previous decisions.

After a detailed analysis of KEVR's decisions to approve prices in the "Heat power" sector from 2010 to the present moment, the expert found the following data on the included costs of carbon emission quotas in the required revenues of [company]:

Decision No. C-22 / 25.06.2009 - regulatory period 01.07.2009 - 30.06.2010

emission costs are not included, ? Decision No. Ц-029 / 28.06.2010 – regulatory period 01.07.2010 - 30.06.2011 – costs for emissions are not included; - Decision No. C-21 / 29.06.2011 - regulatory period 01.07.2011 - 30.06.2012

emission costs are not included;

Decision No. Ц-16 / 28.06.2012 – regulatory period 01.07.2012 - 30.06.2013, emission costs BGN 11,130,000, representing 1/2 of the costs claimed by [company] for 2010-2011 year, period of validity of the decision until 31.07.2013 – 13 months.

Purchased carbon emissions quotas and expenses incurred for them by T. "B.: (:

From the invoices from 2011 and 2012 attached to the case and the additional accounting documents presented to the expert for the following periods, the following purchased carbon emissions quotas during the period under consideration are calculated:

according to invoices from 2011 > BGN 20,845,345.94;

according to invoices from 2012 > BGN 3,782,481.43;

according to invoices from 2013 > BGN 30,101.01;

according to invoices from 2014 > BGN 105,071.22;

according to invoices from 2015 > BGN 5,448,551.21;

according to invoices from 2016 > BGN 3,288,651.57;

according to invoices from 2017 > BGN 2,926,968.05;

according to invoices from 2018 > BGN 7,496,370.00;

on invoices from 2019 > 11,343,926.30 BGN; TOTAL: > BGN 55,267,466.72

On the basis of the analyzes of all the decisions of KEVR, with which the prices of [company] were confirmed, for the period from 2010 to the present moment, and in accordance with what was stated in point C. I above, the expert believes that part of the expenses for emissions carried out by the company in the period 2011-2012 (relevant to 2010 and 2011) were included only in decision No. Ц-16 / 28.06.2012 and other expenses for this period were not included in a subsequent KEVR decision.

Reimbursed costs for carbon emission allowances from established electricity and heat prices. According to the documents attached to the case - invoices, contracts, accounting statements and others, [company] incurred costs for the purchase of carbon emissions quotas allocated during production in 2010-2011, purchased and transferred in 2011 and 2012 ., until April 30, for a total value > BGN 24,627,798.

Costs for quotas worth > BGN 11,130,000, representing 1/2 of the costs claimed at that time totaling BGN 22,260,000, were included in the approved prices according to decision No. C-16 / 28.06.2012 of KEVR.

The pricing elements approved by decision No. Ц-16 / 28.06.2012 are:

Required annual income > BGN 128,192 thousand

Costs for carbon emissions > BGN 11,130,000.

Estimated amounts of electrical energy > 595,344 MWh; - Estimated amounts of heat energy ГВ8 > 19,200 MWh Estimated amounts of heat energy ВП9 > 1,200 MWh.

Preferential price of electric energy (EE) > BGN 127.88/MWh. - Price of thermal energy with heat carrier DHW (TEGV) > BGN 47.62/MWh; - Price of thermal energy with heat carrier VP (TEVP) > BGN 36.05/MWh. In the case of a proportional distribution of emissions costs based on the specified parameters, in the initial analyzes without an electric model, the following is calculated: - Share of emissions costs from the necessary revenues > 8,682%;

Share of emissions costs in the price of electricity > BGN 11.10/MWh? Division

of emission costs in the price of TEGV > BGN 4.13/MWh;

Share of emissions costs in the price of TEVP > BGN 3.13/MWh

The realized quantities for the period of validity of the decision 07/01/2012 - 07/31/2013 are as follows:

Sold electrical energy > 499,895 MWh;

Sold thermal energy GW > 15,720 MWh;

Sold thermal energy VP > no data separately;

Reimbursed costs for emissions from sales of electricity and thermal energy in the period 07/01/2012 - 07/31/2013 > BGN 5,615,279 thousand.

After a detailed analysis of the electronic pricing model, the expert found that the inclusion of carbon emission costs, which are a variable cost, changes two pricing elements:

variable costs > total costs > required annual revenue

– in the expenditure part;

- variable costs > cash costs > required working capital > regulatory asset base > return – in the return on capital section.

A difference of BGN 0.01/MWh is obtained, which is due to rounding, since the model works with multiple formulas, in thousands of BGN and the ROUND function for rounding unit prices. The difference in the two heat energy prices (with heat carrier hot water and with heat carrier water steam) is the result of the included part of the variable costs (row V, col. 7 of Reference 1) based on the relative share of non- current annual revenues for heat energy (line 46, col. 6 of Reference 4) from the total necessary annual revenues for the production (line I, col. 7 of Reference 1): - including emission costs (51,604: 127,743 * 72,460) = 29,271 ? without emission costs (50,548: 116,536 * 61 ГZ0) = 26,602 ? difference > BGN 2,669 thousand, ? and the costs of emissions attributed to thermal energy are > BGN 1,021 thousand 10, which is why the difference in the production price of heat energy is BGN 0.55/MWh, and for heat carriers for TEGV 1.18 BGN/MWh, for TEVP 0.54 BGN/MWh. The above shows why the simple calculation of price differences with and without carbon costs should

not be entirely about the reimbursement of emissions costs, but other elements are involved and the difference in the return on capital is to pay the price of the additional working capital (interest) to finance the increased costs.

On the basis of the performed analyzes and calculations, the expert calculates reimbursed costs for emissions according to decision No. C-16 / 2012 as total reimbursed costs for the price period: BGN 8,517,582.

According to tasks set by the defendant: Task 1.

From the costs claimed by [company] for purchased carbon emissions quotas, allocated during production in 2010-2011, purchased and transferred in 2011 and 2012 until April 30, totaling BGN 24,627,798, included were in the approved prices according to decision No. Ц-16 / 28.06.2012 of the KEVR quota costs worth BGN 11,130,000. After a detailed analysis of the electronic model used by the KEVR in determining the prices of electricity and heat energy of the company, given in detail under point C. II, point 3. 2, taking into account the value of emission costs per unit included in the established prices, after deducting the relevant part of the difference in prices for the return of capital, reimbursed emission costs are calculated of sold amounts of electrical and thermal energy - Table No. 2 above:

- for the period of established prices 01.07.2012 - 30.06.2013: - from sold amounts of electricity > BGN 7,963,842;

- from sold amounts of thermal energy > BGN 24,366 TOTAL > BGN 7,988,208

For the period of validity of decision No. Ц-16/2012 – until 31.07.2013:

- from sold amounts of electrical energy - BGN 8,493,216;

- from sold amounts of thermal energy - BGN 24,366.

TOTAL > BGN 8,517,582. The amount of thermal energy for own consumption is not included in the calculations, as it does not represent the sale of thermal energy, but is invested in the production of other products - Reference to l. 382, volume II of a. d. No. 4485/2016 of the ASSG.

It is stated above in the analysis part that based on the applicable regulation method

"rate of return on capital?, according to the expert, part of the issuance costs incurred by the company in the period 2011-2012 (relevant to 2010 and 2011) were not included in another approval decision at prices, except in decision No. Ц-16/28.06.2012.

The expert points out that if it is accepted from a legal point of view that the amount included for emission costs in the prices according to decision No. Ц-1/20.01.2016 refers to the compensation of costs incurred during the period 2011 and 2012, relevant for 2010-2011, the additional amount recovered to [firm] from sales of electricity and heat would be the value of the price difference, after deducting the relevant part for the return of capital - Table No. 4 above: -from sold amounts of electrical energy - BGN 4,951,977; - from sold quantities of thermal energy - BGN 7,389. TOTAL - BGN 4,959,366.

It is said that the amount of thermal energy for own consumption is not included in the calculations, since it does not represent the sale of thermal energy, but is invested in the production of other products - Reference to l. 359, volume II of a. d. No. 4485/2016 of the ASSG.

According to task #2:

What part of the costs incurred by B. for the purchase of the process 1,090,198 carbon emissions quotas would the plaintiff have recovered, in the event that he had actually produced electricity and thermal energy in the volume that he declared to the KEVR in the price determination proceedings of electricity and thermal energy for the period from making the expenses to the present moment, v. l. indicates:

In the event that [company] had produced electricity and thermal energy in the quantities approved by the KEVR (not claimed, but confirmed), it would have reimbursed itself for emission costs at a value included in the relevant prices, approved by the KEVR. This conclusion does not apply to the period of validity of decision No. Ц024 / 29.07.2013, which is 5 months, and all pricing elements are on an annual basis - for a period of 1 year. If the claimant had produced and sold the quantities of electricity and heat energy approved by the KEVR, he would have recovered costs for emissions worth - BGN 10,145,495, according to table No. 5.

The process quotas of carbon emissions are only partially included in decision No. Ц-16 / 28.06.2012, which is why another part of them cannot be recovered through the prices according to subsequent decisions of KEVR, from which costs are recovered for subsequent periods.

V. l. makes a remark again, if from a legal point of view it is accepted that the amount included for expenses for emissions in the prices according to decision No. Ц-1/20.01.2016 refers to compensation of expenses incurred in the period 2011 and 2012 related to 2010 - 2011, a correct calculation of the additionally reimbursed amount of [company] cannot be made, since prices and quantities are approved on an annual basis, and decision No. Ц-1/2016. is valid for 01.08.2013 - 31.12.2013 - 5 months, during which production is not at a constant rate (with equal quantities), and there is no data on requested and confirmed quantities by month. However, on an estimated basis - as 1/12 equal part for each month of the total amount, reimbursed costs would be worth - BGN 5,002,285, indicated in Table No. 6.

Regarding the tasks set by the plaintiff: Task 1.

On the basis of the analyzes carried out and in accordance with what was stated under point V. I. from the analytical part of the expertise, under the "rate of return on capital" method, which has been applicable since 2012, prices are formed on the basis of estimated technical and economic parameters for the upcoming regulatory period. The information for a reporting period (the previous calendar year, called in Guidelines - HB "base year?) which energy companies are obliged to submit with their applications for price approval, serves as a basis for forecasting and analysis of the changes and forecast data proposed by the companies.

This also applies to the costs of carbon emissions included in the regulated prices, which are projected on the basis of the information from

the previous reporting period – the verified amounts of carbon dioxide emissions and an economically justified price of the emissions. Task 2.

After reviewing the published decisions on approval of prices on the KEVR website, described in detail in Appendix No. 1 to the expertise, it is established that there is no evidence that a decision was adopted by KEVR to change (correct) the prices of both electricity and thermal energy, for the period 01.05.2010 - 05.05.2011. The applicable decisions of KEVR are:

- decision No. Ц-22 / 25.06.2009 for regulatory period 01.07.2009 - 30.06.2010 and decision No. Ц-029 / 28.06.2010 for regulatory period 2 years - 01.07.2010 - 30.06.2012, as price correction was carried out by decision No. Ц-21/29.06.2011 for the second price year. Task 3.

From the documents attached to the case and also provided to the expert12, it is established that [company] claimed to include costs for carbon emissions for the upcoming period 07/01/2011 - 06/30/2012 in the approved prices in the amount of - 39 068 thousand BGN, as part of the declared amount of a total value of 57,803, 35 thousand BGN, including purchased missing quotas for 2010 - 18,735, 35 thousand BGN. According to the decision No. C-21 / 29.06.2011 of the State Environmental Protection Agency, costs for carbon emissions were not approved and included in the established prices of [company]. Task 4.

The expert points out that the prices for an upcoming period should include costs that will be incurred during this future period, which means that if the company's claim to include carbon emissions costs in the prices is respected, they should be proven by basis and amount and applicable for the period 01.07.2011 to 01.07.2012. In the price regulation method applicable for this period "Upper income limit?, compensation of costs for the past period is also not provided for, such as the amendments for the second price year are only with an inflation index and a coefficient for improving efficiency, according to article 4, paragraph 1, item 2, b. "a" of the Ordinance on the Regulation of Electricity Prices from 2007 and article 4, paragraph 1, item 2, b) of the Ordinance on the regulation of heat energy prices from 2004. The costs that are admissible to be compensated are explicitly stated in both regulations and other costs may be included in approved prices only by decision of KEVR, as adopted by decision No. C-16 / 28.06.2012.

Task 5.

After a detailed analysis of KEVR's decisions to approve prices in the "Heat power" sector from 2010 to the present moment, the expert establishes the following data on the included costs of carbon emissions quotas in the required revenues of [company]:

- decision No. Ц-16 / 28.06.2012 – regulatory period 01.07.2012 - 30.06.2013, emissions costs BGN 11,130,000, representing 1/2 of the costs claimed by [company] for 2010 – 2011;

-Decision No. Ц-1 / 20.01.2016 – regulatory period 01.08.2013 - 31.12.2013, estimated costs for emissions BGN 13,498,000 (on an annual basis), applicable for a period of

5 months 01.08.2013 - 31.12.2013;

-Decision No. Ц-25 / 30.06.2015 – regulatory period 01.07.2015 - 30.06.2016, reported costs for emissions BGN 4,569,000, applicable to the period 2014, submitted to

30/04/2015;

-Decision No. C-18 / 30.06.2016 – regulatory period 01.07.2016 - 30.06.2017, reported costs for emissions BGN 4,406,000, applicable to the period 2015, submitted to

30/04/2016;

-Decision No. Ц-18 / 01.07.2017 – regulatory period 01.07.2017 - 30.06.2018, reported expenses for emissions BGN 3,154,000, applicable to the period 2016, submitted by 30.04.2017 Decision No. Ц-18 / 01.07.2017 was canceled by the court, one of the canceled items being the costs of carbon emissions;

- Decision No. C-4 / 28.02.2019 – regulatory period 01.07.2017 - 30.06.2018, estimated costs for emissions BGN 6,937,000, applicable to the period 01.07.2017 -

30/06/2018;

-Decision No. Ц-10 / 01.07.2018 – regulatory period 01.07.2018 - 30.06.2019, emission costs BGN 4,448,000, amount of quotas for the reporting year 2017, transferred to

04/30/2018, at an estimated price;

-Decision No. Ц-18 / 07/01/2019 – regulatory period 07/01/2019 - 06/30/2020, estimated emission costs BGN 19,312,000, applicable to the period 07/01/2019 - 06/30/2020.

Task 6.

From the documents attached to the case, it is established that [company] has issued debit notices to the invoices for the sale of electricity to [company] for the period 01.08.2013 - 31.12.2013, for an increase in the price of electricity, according to decision No. C-1 / 20.01.2016 of KEVR. The issued debit notices have a total value of BGN 4,973,798.92 and are listed in Table 7.

Debit notices were also issued according to Decision No. C-4 / 28.02.2019, which was adopted by KEVR after the annulment by the court of Decision No. C-18 / 01.07.2017, for the sold electricity for the period 07.01.2017 - 30.06.2018, and they have a total value of BGN 5,750,616.84, by month, indicated in Table 8.

Task 7.

During the 2010-2019 period examined by the expertise, [company] incurred expenses for the purchase of greenhouse gas emissions quotas under the following invoices with a total value of BGN 55,267,466.72.

Task 8.

When answering Task 1, Section I of this conclusion, all documents attached to the case and additionally provided to the expert were taken into account, as well as the analyzes performed regarding the applicable methods of regulation, regarding the purchase costs included in the established prices of [company] of carbon emissions quotas and the recovered costs from the sold amounts of electricity and heat energy. On

this basis, it was concluded that costs for purchased quotas of greenhouse gases, carried out in 2011 and 2012, for released emissions in 2010-2011, are included in the established necessary revenues of [company] only according to decision No. Ц -16 / 28.06.2012 in the amount of BGN 11,130,000. The reimbursed costs, according to the calculation in Table No. 2 of the analysis part, from the actually sold amounts of electricity and heat are worth:

- for the period 01.07.2012 - 30.06.2013; TOTAL > BGN 7,988,208;

- during the period of validity of the decision 07/01/2012 - 07/31/2013 TOTAL > BGN 8,517,582

From the legal side.

With the facts thus established, the court forms the following legal conclusions:

The responsibility of the state under Art. 1 ZODOV is innocent , objective responsibility for damages caused to citizens and legal entities by illegal actions or inactions of others during and on the occasion of the performance of administrative activities, which is why Art. 7, para. 1 of s. z. indicates that the claim for compensation is filed against the authorities under Art. 1, para. 1, whose illegal acts, actions and omissions caused the damage. In the provision of Art. 205 of the APC states that the claim is filed against the legal entity represented by the body, whose unlawful act, action or inaction caused the damage. Therefore, a passively legitimized defendant in claims for compensation is the legal entity with which the relevant official - the direct cause of the damage - is in employment or official legal relations. In this sense, item 6 of TR No. 3/2004 of the Supreme Court under item No. 3/2004, OSGK . In this case, such a legal entity is the Ministry of Environment and Water, which has the status of "legal entity". Therefore, claims for damages against this legal entity are directed against a proper defendant having separate legal personality.

According to the provision of Art. 1, para. 1 of ZODOV , the state and municipalities are responsible for the damages caused to citizens and legal entities by illegal acts, actions or inactions of their bodies and officials during or in connection with the performance of administrative activities. In order for the defendant's responsibility to be engaged, the plaintiff must prove the cumulative realization of the following elements of the factual composition: illegal ind. Adm. act, action or inaction of a state body and official, the existence of suffered damage; causal relationship between the illegal act and the damage as well as the amount of the same.

In the specific case, it is undisputedly established in the case that the first element of the stated factual composition is present, in view of the effective judicial act for annulment of the illegal act, which is a letter, ex. No. 26-00-173/08.05.2012 of deputy

– Minister of Environment and Water. The same letter was declared null and void by decision 3971/08.06.2015 under Adm. e. No. 1526/2015 of the 28th panel of the court, supplemented by decision No. 5292/24.07.2015 on the same case, left in force by final decision No.

12773/27.11.2015 on adm. e. No. 11144/2015 of the Supreme Administrative Court (SAC), Fifth Department.

The amount claimed by the plaintiff is BGN 22,409,368.24 principal, representing direct material damages and moratorium interest in the amount of BGN 9,070,764.48 for the period from 05/08/2012 to 04/27/2016 - the date of filing the claim. The direct damages are indicated as the price the plaintiff paid for greenhouse gas emission allowances, because by the above mentioned letter he was denied the allocation of 1,090,198 free greenhouse gas emission allowances from the New Entrants Reserve to the European Emissions Trading Scheme emissions /E. /.

In the aforementioned facts and circumstances, this court finds that the claims are partially justified. In the case, it was established from the above-mentioned conclusions of the experts on two SIEs that the company incurred an expenditure of BGN 22,409,368.24 for the purchase of GHG emissions quotas, which reduced the company's assets. These costs were incurred as a result of the refusal by letter, ex. No. 26-00-173/08.05.2012 of the Deputy Minister of Environment and Water, for the allocation of 1,090,198 free quotas for greenhouse gas emissions from the "New Entrants" Reserve to the European Emissions Trading Scheme /E /. The same letter was declared null and void by decision 3971/08.06.2015 under Administrative Law No. 1526/2015 of the 28th panel of the court, supplemented by decision No. 5292/24.07.2015 under the same case, left in force by final decision No. 12773/27.11.2015 under Adm. d. No. 11144/2015 of the Supreme Administrative Court (SAC), Fifth Department. According to the reasons set forth in additional decision No. 5292/24.07.2015 according to Administrative Order No. 11144/2015 according to the inventory of the ASSG, left in force by decision No. 12773/27.11.2015 according to Administrative Order No. 11144/2015 of the Supreme Administrative Court (SAC), undisputed the court rules on the substantive legality of the refusal. Thus, in the first decision, mandatory instructions are given to the competent authority for the application of the law, as the court in the decision, subject to the requirements of Art. 173, para. 2 of the APC and based on the evidence in the case, including the verification reports for 2010 and

2011, accepts that the actual emissions needed by the applicant for the period from 01.05.2010 - 05.05.2011 are in the amount of 1,090. 198 pcs. This is the period during which the company was obliged to operate without quotas being allocated to it, and which, in order to carry out its activities, it was obliged to purchase them on the open market, a fact which, according to him, was established by the evidence in the case . The content of this decision is explained in detail in decision No. /27.11.2015 under Adm. e. No. 11144/2015 of the Supreme Administrative Court (SAC), Fifth Department. In the same, the following considerations are presented: "According to Art. 131a, paragraph 3 (repealed); of the ZOOS, in connection with § 28, paragraph 1 of the PZR of the ZID of the ZOOS , published pv SG no. 42/2011, until December 31, 2012, quotas for new participants in the greenhouse gas emissions trading scheme are allocated based on a decision on the allocation of quotas for new

participants of the Interdepartmental Working Group for coordinating the implementation of the National Allocation Plan of quotas for greenhouse gas emissions for the period 2008 - 2012 and an order issued by the Minister of Environment and Water for the allocation of quotas to the relevant new participant, who is also the competent administrative authority for issuing the administrative act, the nullity of which was announced. After the repeal of this provision of the law and with the entry into force of the Law on Limiting Climate Change , effective from 11.03.2014, according to Art. 44, para. 3 of the same, the free allocation of quotas is carried out after verification and approval by the Minister of Environment and Water of the application submitted to him by the interested new participant. Pursuant to this provision, the Minister of Environment and Water, and under the new ZOIC, is the competent authority for the free allocation of greenhouse gas emission quotas, to which the administrative file should be sent for ruling on the request of T. "B. ?, in compliance with the mandatory instructions on the interpretation and application of the law given in decision No. 3971/08.06.2015 and additional decision No. 5292/24.07.2015 under Adm. d. No. 1526/2015 of the ASSG, including and regarding the number of emissions for the period from 01.05.2010 - 05.05.2011 in the amount of 1,090,198, according to the verification reports for 2010 and 2011 of the verification body, prepared on the basis of the operator's annual reports. As can be seen from the conclusion of the STE, applied under Adm. d. No. 10279/2012 of the ASSG, included as evidence under Adm. d. No. 1526/15 of the same court, the tons of carbon dioxide as harmful emissions released at the site of the company for the period from 01.05.2010 - 05.05.2011 as a result of burning natural fuels - in this case lignite coal and fuel oil for the production of heat and electricity, amount to 1,090,198 free additional allowances for greenhouse gas emissions, which amount of free allowances is due for provision to the company, as duly verified by the verifier organ. ? The present composition of the court finds itself bound by the reasons for this decision, which undisputedly accepted that the contested letter is materially lawful as the specified amount of free, additional quotas in the amount of 1,090,198 units are due for provision to the company, as duly verified by the verifying authority. The mandatory instructions given by the court at two instances were in practice partially implemented subsequently by decision No. Ц-16 / 28.06.2012 of KEVR. Thus, according to the conclusion of the present case, according to task No. 1, the costs incurred by [company] for purchased carbon emission allowances allocated during production in 2010-2011, purchased and transferred in 2011 and 2012 to 30 April, with a total value of BGN 24,627,798, are included in the approved prices according to decision No. Ц-16 / 28.06.2012 of KEVR as costs for quotas worth BGN 11,130,000. After a detailed analysis of the electronic model used by KEVR in determining the prices of the company's electricity and heat energy, given in detail under point C. II, point 3.2, taking into account the value of the costs of emissions per unit, included in the approved prices, after deducting the relevant part of the difference in the

prices for the return of capital, the recovered costs for emissions from sold quantities of electricity and heat energy are calculated as:

- for the period of approved prices 07/01/2012 - 06/30/2013:

- from sold amounts of electrical energy > BGN 7,963,842; - from sold amounts of thermal energy > BGN 24,366 TOTAL > BGN 7,988,208

For the period of validity of decision No. Ц-16/2012 – until 31.07.2013: - from sold amounts of electrical energy - BGN 8,493,216; - from sold amounts of thermal energy - BGN 24,366. TOTAL > BGN 8,517,582

In conclusion, the expert points out that , based on the applicable method of regulation "rate of return on capital?, part of the expenses for issues carried out by the company in the period 2011-2012 (relevant to 2010 and 2011), were not included in any other price approval decision, except in decision no

T-16/28.06.2012

It also states that if, from a legal point of view, it is accepted that the amount included for emission costs in the prices according to decision No. Ц-1/20.01.2016, refers to the compensation of costs incurred during the period 2011 and 2012, relevant for 2010-2011, the additional amount recovered to [company] from sales of electricity and heat energy would be the value of the difference in prices, after deducting the relevant part for the return of capital /Table No. 4/: -from sold amounts of electrical energy - BGN 4,951,977; - from sold quantities of thermal energy - BGN 7,389. TOTAL - BGN 4,959,366.

That is, in the conclusion, which is not contested and in this part of it, the defendant indicates a specific amount of reimbursement of the costs incurred by the company for emissions, as in the relevant mathematical calculations and economic analyzes the final amount, which in practice was reimbursed to the company is in the amount of BGN 4,959,366. The court finds that this amount is unproven as damage on the part of the plaintiff in the case and should not be awarded to him. In this way, the amount of the damage proven in the case with the relevant evidence is in the amount of BGN 17,453,002.24, which is obtained by deducting an amount in the amount of BGN 4,959,366 from the claimed damage in the amount of BGN 22,409,368. BGN 24. The latter should be awarded to the plaintiff, in the presence of the other elements of the institute of unlawful damage, which will be discussed below.

As for the defendant's claims that the plaintiff could produce electricity in a larger volume and, accordingly, recover a larger amount of the costs incurred, the court finds that this approach is not market-driven. After the company did not produce, resp. sold such quantities of electrical energy, it was obviously not possible to do so for market or other objective reasons, such as the obligation to carry out relevant repairs and construction of new desulfurization plants.

With the rulings in implementation of the above-mentioned decision of the court, administrative act - letter, ex. No. 26-00-531/17.02.2016 of the Minister of Environment and Water, is an objective statement that the Ministry of Education and Culture has no legal basis to

open a procedure for free allocation of quotas for a new participant at the request of the company for the period from 01.05.2010 y. – 05.05.2011 This letter is contested as ind. Adm. act as per the same, at the moment there is a pronouncement of the Adm. Court – St. H. with decision No. 244/26.06.2020 under adm. d. No. 89/2020 /l. 315 of d. /, by which the same was declared null and void, but the case was not returned as adm. file for re-pronouncement of adm. act in compliance with mandatory instructions of the court. There is currently no information that the same has entered into force.

Here, the instructions of the court given by decision No. 11101/17.07.2019 under Adm. d. No. 7075/2018 according to the inventory of the Supreme Court. The current composition of the court finds that this letter undoubtedly bears the marks of an individual administrative act, and the same is again negative in nature and is not pronounced in accordance with the reasons given in additional decision No. 5292/24.07.2015 under Adm. e. No. 11144/2015 according to the inventory of ASSG, and in decision No. 12773/27.11.2015 according to adm. e. No. 11144/2015 of the Supreme Administrative Court, whereby the same was left in force. It is indeed controversial whether a procedure for the free allocation of quotas for a new participant can be opened at the request of the company for the period from 01.05.2010 to 05.05.2011. The court finds that this is largely the case, because all legal procedures for this have been exhausted at the moment and there is a lack of material competence for the adm. authority for this to be done for an old period concerning 2010 and 2011.

With regard to the objection that by means of the procedure, by means of KEVR's decisions, old costs incurred for free quotas can be compensated, this procedure is an alternative method of compensation, which, however, has already been ex officio realized for part of the costs incurred by the company. Obviously, however, the effectiveness of this method is questionable, in view of the uncertainty regarding the volumes of realized revenues from electrical energy. The only effective and completely legal way is to compensate the company, according to the ZODOV, in which order the present proceedings are carried out.

Regarding a letter, ex. No. 26-00-531/17.02.2016 of the Minister of the Environment and Water, in which there is an objectified statement that the MoEW has no legal basis to open a procedure for free allocation of quotas for a new participant at the request of the company for the period from 01.05 .2010 - 05.05.2011, this act is not final for the present proceedings. With the same, in practice, proceedings for the payment of the company's expenses were once again refused, with the answer being that there is currently no such mechanism. Thus, at the present moment there is no final ind. Adm. an act with which, in essence, adm. body to rule on the request made to open a procedure for the free allocation of quotas for a new participant at the company's request for the period from 01.05.2010 - 05.05.2011. In this case, the only way to realize the rights of the company is to repair them his damages from the letter originally issued, ex. No. 26-00-173/08.05.2012 to the Deputy Minister of the Environment

and Water, by which he was denied payment of the expenses incurred for the purchase of quotas.

In view of the above, the court finds that the material damages inflicted on the company in the amount of BGN 22,409,368.24 are a direct and immediate consequence of the issued illegal ind. Adm. act - letter, ex. No. 26-00-173/08.05.2012 to the Deputy Minister of the Environment and Water, by which he was denied payment of the expenses incurred for the purchase of quotas. In the case, it was undisputedly established that this act was declared illegal both procedurally and materially, by means of the above-discussed decisions of the Supreme Administrative Court and Supreme Court. If the same had been issued, the costs incurred by the company for emission allowances would have been fully reimbursed and there would have been no legal interest in the same from the claims made in the present proceedings. The amount of the damage caused is currently reduced by the amount of BGN 4,959,366, according to the undisputed conclusion of the expert in the case, as it is actually in the amount of BGN 17,453,002.24, which has not been repaired in any way. This amount as principal should be awarded to the plaintiff as material damage actually caused to the plaintiff.

The claim brought against the defendant for the payment of moratorium interest on this amount in the amount of BGN 9,070,764.48 for the period from 08.05.2012 to 27.04.2016 - the date of filing the claim should be respected in proportion to the respected claim in relation to the principal, being reduced to the corresponding amount, namely: BGN 7,064,311. This moratorium interest represents a lost benefit for the company

/ res . No. 15525/24.11.11, III Department, VAS; 14649/03.12.2009, III Dept., State Court and No. 5329/15.04.11, State Court/, because if it had the principal amount, the company could have used the funds spent for another purpose in the commercial turnover and to make a corresponding profit. Pursuant to item 4 of the TR under item No. 3/2004 of the General Administrative Court, when the damages arise from a void adm. act, the claim for damages becomes due from the moment of its issuance, i.e. from the date 08.05.2012 to the date 27.04.2016, on which the claim for moratorium interest was filed.

The plaintiff should also be awarded the legal interest for late payment on the principal for the period from the date of filing the claim - 27.04.2016 until the final payment of the amount.

In view of the outcome of the case and on the basis of Art. 10, para. 2 ZODOV the costs should be awarded to the plaintiff, in view of the timely made request, proportionate to the respected claim, for K. in the amount of BGN 1168.50, namely: in the amount of BGN 910.06. The defendant has also made a request for reimbursement of the expenses incurred by him in proportion to the respected, resp. rejected citizen . claim, which are in the amount for both instances in the amount of BGN 150,086.66 and should be respected in proportion to the rejected claim. It is established at the first hearing of the case the total amount of the same: BGN 75,906, of which a total of BGN 2,100 – fees for experts, a total of

BGN 6. fees for transcripts and BGN 73,800 – a fee for a lawyer, including VAT, paid according to submitted invoice and payment order dated 21.11.2016. In this case, expenses were established for K. in the amount of BGN 968.50 and for the lawyer. fee – 73212, BGN 16 per invoice paid/l. 60/. In proportion to the rejected part of the claim, the defendant should be awarded costs in the amount of BGN 195.24. From this amount, the amount owed to the plaintiff in the amount of BGN 910.06 should be deducted, while the defendant should be awarded an amount for expenses in the amount of BGN 32285.18.

In view of the above, the court

RESOLVE:

ORDERS the Ministry of Environment and Water to pay to [company], with EIK [EIK], an amount in the amount of 17 453 002, 24 /seventeen million four hundred fifty three thousand and two BGN and twenty four cents/ BGN compensation for caused , direct property damage from letter ex. No. 26-00-173/08.05.2012 of the Deputy Minister of Environment and Water

WHEREAS rejects the claim for the difference up to BGN 22,409,368.24 (twenty-two million four hundred and nine thousand three hundred sixty-eight BGN and twenty-four cents) principal;

ORDERS the Ministry of Environment and Water to pay to [company], with EIK[EIK], an amount in the amount of 7,064,311 /seven million sixty-four thousand three hundred and eleven/ BGN, representing moratorium interest on the awarded principal, for the period from 08/05/2012 to 27/04/2016

REJECTING the claim for the difference up to BGN 9,070,764.48 (nine million seventy thousand seven hundred sixty-four BGN and forty-eight cents);

ORDERS the Ministry of the Environment and Water to pay to [company], with EIK[EIK], the legal interest for delay on the payment for the period from the date of filing the claim - 27.04.2016 until the final payment of the amount.

ORDERS [company], with EIK[EIK], to pay to the Ministry of Environment and Water the sum of 32285, 18 /thirty-two thousand two hundred eighty-five BGN and eighteen cents/ BGN, representing expenses in the case.

The decision is subject to a cassation challenge within 14 days of its notification to the parties, before the Supreme Administrative Court.

JUDGE:

Decision No. 261601 of 16.12.2021 of the SGS pursuant to No. 278/2020.

The proceeding was initiated by a claim of "F. " AD, EIK ********, with registered office and management address ***, Industrial Zone - West, with which against "E. " AD, EIK** ******, with registered office and address of management ***, claims have been filed as follows: with legal basis, Art. 240 of the Civil Code for the return of 28,000 EUA /European carbon emission allowances/, due to the expiration of the contract for the loan of European allowances from 01.31.2020, possibly on the basis of Art. 57, para. 2 ZZD to pay their equivalent in the amount of EUR 666,690.00, together with interest for delay calculated from the date of submission of the claim until the final payment of the amount.

The claim claims that on 30.01.2017, the parties entered into an agreement for the loan of EUA carbon emission allowances from the European Emissions Trading Scheme. In fulfillment of his obligation under the contract, the plaintiff transfers to the defendant 44,872 quotas from his account on the account of the defendant company in the Single European Register. According to the contract, the defendant should return the quotas before 31.01.2018. On 31.01.2018, an Annex was signed to extend the term until 31.01.2019. By letter ex. No. 10-01-135/26.11.2018, the defendant was invited to return the European quotas, which was not done. Instead, the defendant expresses a desire to purchase part of the quotas through its subsidiary "ES" OOD, to which 16,872 European quotas were transferred on 27.12.2018 for the sum of 415,894.80 euros. With a subsequent letter dated 13.12.2019, the defendant is invited to return the remaining 28,000 European quotas due under the loan agreement no later than 31.01.2020, which return has not been made. For the reasons set forth, it is requested that the respondent company be ordered to return the allowances, and if they are not available, to be ordered to pay their equivalent at the price of the London Stock Exchange for trading in such allowances.

With the answer, the defendant does not contest the conclusion of the loan agreement and that he is a defaulting party to the agreement. He indicates that the reason for this is the behavior of the National Revenue Agency, which froze his bank accounts. In the written defense , an argument for the nullity of the loan agreement, due to an impossible object, was raised. It is stated that the quotas are not a thing , but a service, therefore they cannot be a valid subject of a loan agreement.

Having discussed the arguments of the parties and the evidence collected in the case, the court considers the following established:

It is not a matter of dispute between the parties, and it is established from the evidence presented that on 30.01.2017 they concluded an agreement for the loan of European EUA carbon emissions quotas from the European Emissions Trading Scheme, under which "F. " JSC borrows of "E. "AD 44,872 EUA quotas, in exchange for assuming a counter-obligation for their return by 31.01.2018, along with a monthly interest of 0.010 euros per quota. The parties have agreed that the transfer of the quotas will be considered completed when they are transferred to the borrower's account specified in the contract in the Single European Register.

It is not in dispute that, in fulfillment of its obligation under the contract, the plaintiff transferred to the defendant from its account on the account of the defendant company in the Single European Registry 44,872 EUA allowances.

On 31.01.2018, an Annex was signed to extend the deadline for returning the quotas until 31.01.2019.

By letter ext. No. 10-01-135/26.11.2018, the defendant is invited to return the European quotas.

It is also not in dispute that the defendant purchased part of the quotas through its subsidiary "ES" OOD, to which 16,872 European quotas were transferred on 27.12.2018 for the sum of 415,894.80 euros.

By a letter dated 13.12.2019, the defendant is invited to return the rest due under the loan agreement of 30.01.2017, 28,000 EUA allowances, no later than 31.01.2020.

The dispute centers on the validity of the subject matter of the contract. In order to answer the question raised, the court finds it necessary to examine the legal characteristics of the subject of the contract dated 30.01.2017 - the EUA quotas and, in particular, whether they constitute a special type of service that cannot be the subject of a loan contract.

The rules regarding the trading of quotas for greenhouse gas emissions by the Bulgarian state and private legal entities are governed by a number of international acts such as: The United Nations Framework Convention on Climate Change (ratified by law - SG No. 28 of 1995) , the Kyoto Protocol to the United Nations Framework Convention on Climate Change (ratified by law - SG No. 28 of 1995), - SG No. 72 of 2002) (SG, No. 68 of 2005) (Kyoto Protocol) and the Paris Agreement to the United Nations Framework Convention on Climate Change (ratified by law - SG No. 86 of 2016) (SG, No. 2 of 2017); Directive 2003/87/EC of the European Parliament and of the Council establishing a greenhouse gas emission allowance trading scheme within the Community (OJ, L 302/1 of 18 November 2010), Regulation (EU) No 1031 /2010 of the Commission of 12 November 2010 on the schedule, management and other aspects of the auction of allowances for greenhouse gas emissions and others. The obligations of the Bulgarian state and private legal entities arising from these international acts are also summarized in the Climate Change Limitation Law (ZOCI) (Official Gazette, No. 22 of 11.03.2014, in force from 11.03.2014 d.) and the Ordinance on the order and manner of administration of the National Registry for trading in greenhouse gas emission allowances (Adopted by PMS No. 266 of 29.08.2014 , promulgated, SG No. 74 of 5.09.2014 , in force from 09/05/2014).

In item 26 of the DR of ZOIK , a legal definition of "Quota" is given, stating that it represents a right to release one ton of carbon dioxide equivalent within a certain period, which is valid only for the purposes of the ETS and can be transferred in accordance with this law , and according to item 17. "Emission" is defined as the release of greenhouse gases into the atmosphere from sources in an installation or the release from aircraft performing aviation activities, included in the list under Annex No. 2, of the specified in relation to this activity gases. The given definitions also cover

the definitions of the international acts to which Bulgaria is a party and which have been ratified and entered into force.

According to Art. 16, paragraph 2 ZOIK prescribed emission units are defined as private state property, which represent a special type of rights - object of international trade, according to Art. 17 of the Kyoto Protocol. In item 46. The DR of ZOIC is given a legal definition of "Prescribed Emission Unit (PEU)" as defined as a tradable unit of the "prescribed amount" equal to one tonne of carbon dioxide equivalent, issued in accordance with the provisions of the Annex to Decision 13 of the First Conference of the Parties to the Kyoto Protocol. And "Prescribed amount" is the total amount of greenhouse gas emissions that has been determined for the Republic of Bulgaria under the Kyoto Protocol for the period from January 1, 2008 to December 31, 2012.

In Art. 42, para. 3 ZOIC it is stated that all emission quotas from installations are sold at an auction in accordance with Art. 52, with the exception of the quotas that the state allocates free of charge. Operators of installations holding a permit for greenhouse gas emissions and aviation operators are required by April 30 each year to surrender a certain number of allowances equal to the total amount of emissions released by the installation or as a result of aviation activities in the previous year, verified in compliance with the regulation under Art. 5, item 2 or determined as a result of a conservative assessment of emissions according to Art. 70 of Regulation (EU) No. 601/2012 . (Art. 48, para. 1 ZOIK). The quotas transferred in fulfillment of the obligation under Art. 48, shall be canceled by June 30 of each year, and the canceled allowances may not be entered as surrendered for accounting of any emissions. (art. 50, paragraph 1 ZOIK).

Kyoto Protocol quotas and units exist only in electronic form, ownership of a given Kyoto Protocol quota or unit is established by their presence in the relevant lot of the EU Register where they are kept. This means that at the time of their transfer from one batch to another batch, the property, according to the Regulation, belongs to the one on whose batch the relevant quotas are located, without the need to legitimize it in any other way, as well as without what matters are the internal relations of the parties to the transfer transaction.

Therefore, the quotas represent a special type of rights, private state property, which can be traded and which, with their transfer in fulfillment of the obligation under Art. 48 ZOICs are extinguished (cancelled). Although they are a special type of rights, quotas also reveal characteristics of intangible objects that have economic value and can be the subject of legal transactions. By these legal marks, they come close to things that do not have a material nature, but are equated to those with a law, such as water, energy, gases. This requires them to be treated in the relations between private legal entities also as property, even if they are not expressly provided for as such according to the Civil Code. Private legal entities acquire them through an auction on a specially created electronic platform, and their subsequent disposal (transfer of ownership) is irrelevant for the platform administrator. One of the ways to trade them is the method

indicated by the defendant through an investment service on certain exchanges and trading platforms, when the procurement of the quotas is assigned to an investment intermediary. However, it cannot be deduced from the latter that the quotas themselves constitute a type of service, since, as indicated, they objectify in themselves the right to emit a certain emission of greenhouse gases for a certain period of time. This is their main function. The purpose for which they were created, while their financial dimension and the way they are traded are secondary characteristics that cannot change their meaning and turn them into a financial service. A conclusion in a different direction does not follow from the qualification of quotas as an intangible asset in our tax legislation, or from the taxation of emissions as a service, since this definition only concerns tax legislation and the objectives of the tax office, but does not change their nature.

In view of the above, it is necessary to conclude that a loan relationship validly arises and exists between the parties, by virtue of the loan agreement concluded between them dated 30.01.2017, according to which the defendant, as a borrower, undertakes to return to the plaintiff, as a lender, 44,872 EUA quotas (equal number and type of European quotas). The concluded loan agreement is for consumption, since the prescribed emission units (quotas) as a special type of rights and non-material items are consumed with their use (Art. 50, Para. 1 ZOIK). In the case of a loan for consumption, the ownership of consumable items is transferred by reaching an agreement between the parties and handing over the items by separating them from the kind, which results in the concentration of the performance of the lender, and the borrower's obligation can be fulfilled by handing over items of the same kind , quality and quantity, and the concentration of the borrower's performance also occurs with the separation of things from the genus. In this case, the quotas were transferred to the defendant, and the transfer was also reflected in the latter's lot in the Single European Register, i.e. the ownership of them was also transferred. There is no dispute that when the claim was filed, the obligation of the defendant company to return quotas of the same type and quantity pursuant to the contract expired.

Fulfilling the obligation to return the EUA allowances is the responsibility of the defendant. It is not disputed that part of the obligation to return European quotas is transformed, by agreement of the parties, into an obligation to pay their equivalent, which obligation was fulfilled by the defendant through its subsidiary "E.S." OOD, which on 27.12.2018 has paid the plaintiff the sum of 415,894.80 euros, equivalent to 16,872 European quotas. The defendant does not claim or prove a way to repay the obligation to return the remaining 28,000 EUA allowances. The fact that his accounts have been frozen by the NRA cannot be considered as a valid/excusable reason for the non-performance. In view of the above, the claim for actual performance has been proved on grounds and amount and should be respected.

Just for the sake of completeness of the statement, it should be pointed out that in the present proceedings the fact cannot be investigated and established, whether the defendant has EUA quotas with which to fulfill

his obligation, since even if he does not have any available on his account in the Unified European register, in view of the fact that the quotas are replaceable (specified by gender) and not individually determined ones (the latter do not have such a quality), the return of the quotas is a matter concerning the way of execution of the court decision, and does not lead to grounds for rejecting the claim for actual enforcement (there is no obstacle for the defendant to purchase quotas of the same type from a third party or at an auction, which he will return to the borrower in the course of possible enforcement).

Given the respect of the main claim, the procedural condition under which the possible claim for payment of the equivalence of the EUA quotas was submitted for joint examination was not fulfilled, therefore it was not considered by the court.

On expenses.

In view of the outcome of the dispute, only the plaintiff is entitled to costs. The latter proves the making of such in the total amount of BGN 81,698.42, of which BGN 52,178.42 is state tax and BGN 29,520.00 is attorney's fees.

For these reasons, the court

RESOLVE:

ORDERS "E. " AD, EIK ********, with headquarters and management address *** to return to "F. " AD, EIK ********, with headquarters and address at Administration ***, Industrial Zone - West, on the basis of Art. 240 ZZD 28,000 European carbon emission allowances /EUA/ according to the agreement for the loan of European allowances dated 31.01.2020.

JUDGMENTS "E. " AD, EIK ********, to pay "F. " AD, EIK ******** on the basis of Art. 78, para. 1 GPC the sum of BGN 81,698.42 – production costs.

The decision can be appealed to the Sofia Court of Appeal within two weeks from the delivery of the transcript.

JUDGE:

Decision No. 294 of 05/04/2022 of the SAC pursuant to Case No. 201/2022.

The proceedings are in accordance with Art. 258 – 273 of the Civil Code .

It was formed based on an appeal from 12.01.2022 of the defendant " Enecod " JSC against the decision of

16.12.2021 pursuant to Order No. 278/2020 of the Sofia City Court, Chamber VI-7, whereby:

/ the defendant is sentenced to return to the plaintiff "Fazerless" AD 28,000 European quotas for carbon emissions /EUA/, due under the

contract for the loan of European quotas from 01.31.2017; / the defendant was sentenced to pay the plaintiff the sum of BGN 81,698.42 – court costs.

The appeal claims that the decision is inadmissible because it was based on an inadmissible claim for the actual return of European carbon emission allowances. The claim was inadmissible, as it concerned a dispute that could not be resolved on its merits, as there was no legally established procedure for the execution of such a judgment, which caused a lack of legal interest in the claim. It is argued that the court erred in holding that the claim was well founded. It is stated that the procedural contract of 31.01.2017 is null and void, since the legislation did not allow dispositional actions with the quotas in the form of a loan, but only through purchase and sale. It is also claimed that, according to the tax legislation, quotas are treated as a service - the supply of intangible assets.

In view of the above, the appellant asks the appellate court to cancel the appealed decision and reject the claim, as well as to award him the incurred costs.

The appellant "Fazerless" JSC - the plaintiff in the claim - through its legal representative contests the complaint. Claims costs.

The Sofia Court of Appeal, having evaluated the evidence collected in the case in its opinion and in accordance with Art. 12 of the Code of Criminal Procedure in connection with the defects of the contested judicial act cited in the complaints and the objections of the appellee , finds the following established:

The court of first instance was referred by "Fazerless" AD with a claim dated 02/07/2020, submitted by mail on 02/05/2020, against " Enecod " AD.

In the claim, it is claimed that on 30.01.2017, the parties entered into an agreement for the loan of European carbon emission allowances /EUA/ from the European Emissions Trading Scheme /ECTE/. In fulfillment of his obligation under the contract, on 23.02.2017, the plaintiff transferred to the defendant 44,872 quotas from his account under the account of the defendant company in the Single European Register. The defendant should have returned the quotas on or before 31.01.2018, but with an annex dated 31.01.2018, this term was extended until 31.01.2019. By letter with ex. No. 10-01-135/26.11.2018, the defendant was invited to return 16,872 quotas, which was not done. Instead, the defendant expressed a desire to purchase the same quotas through its subsidiary " Enecod Skopje" OOD, to which 16,872 quotas were transferred on 27.12.2018 for a price of 415,894.80 euros. With a subsequent letter dated 13.12.2019, the defendant was invited to return the remaining 28,000 quotas due under the loan agreement no later than 31.01.2020, which return was not made. Therefore, it is claimed that the defendant should be sentenced: 1) to return 28,000 European allowances to the plaintiff, or 2) in the alternative and if the allowances are missing – to pay the plaintiff the sum of 666,960 euros, representing their monetary equivalent at the prices of the European climate stock exchange of the London Stock Exchange at the time of its closing on 31.01.2020.

In the case, a contract for the loan of European quotas dated 30.01.2017, concluded between the plaintiff "Fazerless" AD and the defendant " Enecod " AD, is presented. According to the same, the claimant-lender lends the defendant-borrower 44,872 European EUA allowances from ESTE, for which the borrower owes a monthly interest of EUR 0.010 per allowance, payable within 1 month from the date of actual receipt of the allowances on the account of borrower in the Single European Register. It has been agreed that the transfer of the quotas will be considered completed when they are transferred to the borrower's account specified in the contract in the Single European Register. According to Art. 1, para. 3 the return of quotas from the borrower to the lender should be carried out on or before 31.01.2018 on the account of the lender, based on a request for transfer, with the borrower immediately notifying the lender when the request for transfer is submitted to the relevant register. According to Art. 3 if the borrower does not refund the amount of allowances received, the following options apply: 1) the borrower transfers back to the account of the lender a number of European allowances equal to the number and type of allowances he received on his account from the lender, together with a penalty in the amount of 2 % of the European quotas, but no later than 2 working days from the occurrence of the default, the value of the penalty being calculated based on the closing price of the London stock exchange on the day of the occurrence of the default on an annual basis; 2) in case of non-fulfillment of item 2, the borrower owes interest of 0.2% for each day of delay in delivery on the total amount of quotas; and 3) the lender may terminate the transaction by notifying the borrower in writing, in which case the borrower should reimburse the missing amount of quotas up to their full amount at the lender's expense and pay compensation under item 1 and item 2. According to Art. 4, para. 1 if one of the parties is prevented from fulfilling one or more of its obligations under this contract due to an event beyond its control - force majeure, it shall be released from these obligations to the extent that it is prevented from fulfilling them, provided that it notifies the other party by telephone about the force majeure event as soon as it becomes aware of it and again in writing as soon as possible. According to Art. 4, para. 2 is not considered to be a force majeure if the transfer of allowances cannot be carried out due to the following reasons: 1) there are not enough European allowances in the account of the lender, 2) there are not enough allowances in the account of the borrower, and 3) the impossibility to a transfer is made due to a failure to create an account in the Registry of the State of the Lender or Borrower. According to Art. 6, the contract enters into force from the date of its signing and expires on 31.01.2018, with the term being automatically extended for the same term, if neither party notifies the other in writing of its termination within 30 days before its expiration. It is also provided that the contract can be terminated by mutual agreement or unilaterally, by each of the parties, with one month's notice to be sent by e-mail or to an address by courier with a return receipt.

It is evident from the extract from the claimant's lot in the Single European Register for European carbon emission allowances that on

24.02.2017 the claimant transferred a total of 44,872 European allowances to the defendant's lot.

With an annex dated 30.01.2018, the parties have extended the period for returning the quotas until 31.01.2019.

By letter with ex. No. 10-01-135/26.11.2018, the plaintiff invited the defendant to return part of the borrowed quotas – 16,872 European quotas.

Also presented is a contract dated 27.12.2018 for carrying out a spot transaction with EUA, with which the seller "Fazerless" AD undertook to sell to " Enecod Skopje" OOD 16,872 European allowances with a unit price of 24.65 euros or a total of 415 894, 80 euros, payable by 31/01/2019. It has been agreed that the transfer of quotas will take place immediately after the amount has been transferred to the seller's bank account. Invoice No. 8/28.12.2018 was issued by the plaintiff for the transaction.

With a tripartite agreement dated 27.12.2018, concluded between the plaintiff, the defendant and " Enecod

Skopje" OOD, it has been agreed that the claimant does not owe delivery of the quotas to the account of the buyer " Enecod Skopje" OOD, and the entire amount due will be deducted from the amount under Article 1, Paragraph 1 of the contract dated 30.01.2017, concluded between the plaintiff and the defendant. It is agreed, and, that as a result the contract dated 30.01.2017 is amended, as its subject matter remains 28,000 quotas.

By letter with ex. No. 10-01-165/13.12.2019 and letter with ex. No. 10-01-08/28.01.2020 the plaintiff invited the defendant to return the remaining 28,000 European quotas due no later than

31.01.2020

Invoices No. 36849/29.11.2019, No. 36897/31.12.2019 and No. 36936/31.01.2020 are also presented.

Mr.; 2 pcs. e-mail letters; balance sheet and income statement of the claimant; extract from the website of the European Climate Exchange at the London Stock Exchange at

31.01.2020; decision of 19.07.2019 by adm. d. No. 3270/2019 of the ASSG; decision of 13.11.2019

d. by adm. d. No. 9360/2019 of the ASSG; 2 pcs. arrest notices of the NRA; authorizations for urgent payments from 30.07.2019, 30.08.2019, 30.09.2019 and 8.11.2019 of the NRA; accounting statements from the defendant's accounting.

Other evidence is not committed.

The complaint was submitted within the period under Art. 259, para. 1 of the Civil Code and is admissible. Considered on its merits, it is unfounded.

I. On the subject matter of the case and the admissibility of the appealed decision

The subject of the case are: 1) a main condemnation claim for the return of 28,000 European carbon emission allowances /EUA/ from the European Emissions Trading Scheme /ECTE/, and 2) a possible

condemnation claim for the payment of the sum of 666,960 euros, representing the monetary equality of the same quotas.

The defendant maintains that the main claim is inadmissible, as there was no legally established procedure for the execution of such a judgment, which caused a lack of legal interest in the claim.

The Court of Appeal did not share this opinion.

The possibility of filing a condemnation claim stems from the general provision of Art. 124, para. 1 of the Civil Code , according to which anyone can file a claim to restore his right when it has been violated. Unlike the declaratory action, for which a legal interest is required, in the condemnation action this interest is assumed by the nature of the protected right itself, which should be an unfulfilled demandable possessory right, i.e. one that requires performance / performance / by the person responsible. In the general case, whenever the plaintiff claims to be the bearer of a similar possessory right against the defendant, there is also a legal interest and legal standing for filing and responding to a condemnation claim. As an exception, a condemnation claim can also be filed in defense of someone else's possessory right - in cases of procedural substitution /eg. according to Art. 134 ZZD /. Irrelevant to the admissibility of a condemnation action is the circumstance whether the eventual condemnation decision could be enforced through the means of enforcement. The latter is a problem of the enforcement process, not the claims process. If the possibility of execution of the decision would be decisive for the admissibility of the claim process, then this would also make claims for monetary sums inadmissible if the debtor does not have sequestrable property, which is clearly absurd. At the same time, the assessment of enforcement can only be made at a future time - when the decision is presented for enforcement before the enforcement body, and not at the significantly earlier time of consideration of the claim dispute. The claim process can give protection to any violated possessory material right, regardless of the ways and possibility of execution of the future judgment.

At the same time, the procedural right of claim is determined by the protected material right. In principle, if the substantive law regulates a substantive right, the procedural law should provide for the procedural form for the protection of the same. In the matter of bond relations, the main material right of every creditor is his right to demand real performance in the event of non-performance by the debtor - Art. 79, para. 1 ZZD . The creditor has a similar right of real performance for any subject of the performance, the protection of which material possessory right the creditor can exercise through a condemnation action. In this case, the plaintiff filed a condemnation claim for the actual performance of an obligation arising from a contract concluded with the defendant, which, for the reasons stated, is completely admissible.

Just for the sake of completeness, it should be noted that the executive process has provided for methods for the forced execution of judgments for any obligations - monetary or non-monetary / Title II and Title III of Part 5 of the Code of Civil Procedure /. The procedural claim under the main claim is non-monetary, as it is a matter of specific

assessment by the enforcement authority which of the enforcement methods provided for in Title III of Part 5 of the Code of Criminal Procedure would be applicable for its enforcement. According to the present court panel /without its opinion being binding on this issue/ the method under Art. 526 of the Code of Civil Procedure regarding the fulfillment of an obligation for substitutable action, insofar as the actions of procuring process carbon allowances can be performed not only by the debtor, i.e. the obligation is not intuitu personae .

Therefore, the main condemnation action for actual performance is admissible.

II. On the correctness of the appealed decision

There is no dispute between the parties, and this is established by the evidence that: 1) on 30.01.2017, the procedural agreement, named by them "for the loan of European quotas", was concluded between them, with which the plaintiff undertook to provided the defendant with 44,872 EUA EUA carbon allowances from ESTE against an obligation for the defendant to pay a monthly interest of 0.010 euros per allowance, and to return the allowances to the plaintiff by 31.01.2018, which was extended to 31.01 .2019 with an annex dated 30.01.2018; 2) the quotas were transferred on 24.02.2017 from the plaintiff's account to the defendant's account in the Single European Register for European carbon emissions quotas; 3) the obligation to return part of these quotas was settled by the sales contract signed on 27.12.2018 between the plaintiff and " Enekod Skopje" OOD and a tripartite agreement concluded between the plaintiff, the defendant and " Enekod Skopje" OOD, with which it was agreed that 16,872 quotas are sold by the claimant to " Enecod Skopje" OOD, and they are deducted from the amount owed by the defendant under the contract of 01.30.2017, which remains in force for the remaining 28,000 quotas; 4) by letter with ex. No. 10-01-165/13.12.2019 and letter with ex. No. 10-01-08/28.01.2020, the plaintiff invited the defendant to return the remaining 28,000 European quotas due no later than 31.01.2020, which was not fulfilled.

The main disputed issue in the case is the validity of the trial contract dated 30.01.2017, which the defendant maintains is null and void. In this regard, the appellate court found an inconsistency in the defendant's behavior, leading to suspicions of bad faith, since the defendant himself concluded the trial contract, absorbed the carbon quotas transferred to him, and subsequently concluded the tripartite agreement of 27.12.2018 to amend the the contract, and at no time until the filing of the case did he assert the invalidity of the contract. Such an objection was not stated in the answer under Art. 131 of the Civil Code /in which the validity of the contract and the non-performance due to the seizure of the bank accounts by the National Revenue Agency are not challenged, but only in the written defense before the first instance and subsequently in the appeal. However, to the extent that the court is also obliged ex officio to monitor the validity of the transaction, if this is relevant to the decision of the case, and if the invalidity derives directly from the transaction or from the evidence collected in the case / thus TR No. 1/27.04.2022 of the Supreme Court - OSGTC/, then this objection is subject to consideration, as it is based

precisely on the content of the trial contract. On this disputed issue, the Court of Appeal finds the following:

According to the defendant, the trial contract dated 30.01.2017 is null and void, since, according to him, the carbon quotas cannot be the subject of a loan contract, but can only be transferred by purchase and sale. Assessing the merits of this objection requires a brief analysis of the relevant legislation.

It refers to a specific instrument of the common policy of the European Union to combat climate change, in particular - to limit greenhouse gas emissions in order to reduce climate change as a result of human activity, and especially global warming. It was introduced in fulfillment of obligations arising from international treaties concluded within the framework of the United Nations, to which the EU is also a party - the United Nations Framework Convention on Climate Change of 1992, the Kyoto Protocol of 1997, amended in

Doha in 2012 and the Paris Agreement of 2015 to the same convention . According to Art. 2 of the Framework Convention, its ultimate goal and related legal acts is to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

The specific goal of the Kyoto Protocol is to reduce anthropogenic emissions of greenhouse gases listed in Annex A / carbon dioxide, methane, nitrous oxide, hydrofluorocarbons , perfluorocarbons , sulfur hexafluoride / by at least 5% below 1990 levels in the period 2008-2012 d. In Art. 3, para. 1 and annex B introduced a differentiated approach to the obligations of different countries, making a division between developed and developing countries, assuming that developed countries are responsible for the current high levels of greenhouse gases in the atmosphere, resulting from more than 150 years of industrial activity. Therefore, the protocol demands more from developed nations than from less developed nations. This is reflected in the decision to impose carbon limits only on developed countries that commit to reducing their hydrocarbon emissions by an average of 5.2% by 2012, which would represent about 29% of global greenhouse gas emissions. Each country has a different target to achieve by 2012 – e.g. for the member countries of the European Union, emissions are set to be reduced by 8%, for the USA – by 7%, for Canada by 6%, etc. For developing countries, there are obligations to invest in projects aimed at reducing emissions, and for the implementation of such projects they receive "carbon credits" /quotas/, which they can sell to developed countries. The 2012 Doha Amendment sets new emission reduction targets for the second treaty period (2013-2020), namely a reduction of total emissions of such gases by at least 18% below 1990 levels. The Protocol establishes a specific mechanism that determines for each country the permissible amount of greenhouse gas emissions that its economy can release during each of the two contract periods. As a measure of the assumed quantitative obligations, the protocol introduces the concept of "unit of emissions", equal to one ton of carbon dioxide equivalent, providing for the possibility that these units are tradable and transferable between

economic entities within the framework of domestic and international trade - Art. 6 and Art. 17.

Pursuant to Art. 3 of the protocol, the European Union and Iceland have notified that for the second period (2013-2020) they will jointly fulfill their obligations for the amount of emissions. With a declaration in accordance with Art. 24, para. 3 of the Kyoto Protocol, the European Union has declared that its quantitative obligation to reduce emissions for the same period will be fulfilled by actions of the EU and its Member States within their respective competences, for which legally binding acts adopted are already in force according to Art. 191 and Art. 192 TFEU .

The Kyoto Protocol was replaced by the 2015 Paris Agreement, which aims to hold the rise in the global average temperature to well below 2 °C above pre- industrial levels and to make further efforts to limit the rise in temperature up to 1.5 °C above the levels of the pre -industrial period, which will lead to a significant reduction in the risks and impacts of climate change / Art. 2/. The Paris Agreement also creates a framework for monitoring and open reporting on each country's climate goals. In addition, the agreement also provides a way for developed nations to assist developing countries in their efforts to adapt to climate control. The main idea is to strengthen the ability of developing countries to cope with the impacts of climate change. The European Union has also joined the Paris Agreement.

3. In fulfillment of the above international legal commitments, a number of supranational regulations have been adopted within the EU, as part of the Union policy in the field of environment. The normative basis for this derives from the founding treaties. Thus in Art. 191 TFEU stipulates that the objectives pursued in this area are preservation, protection and improvement of the quality of the environment; protection of people's health; reasonable and rational use of natural resources; promotion, at international level, of measures to address regional or global environmental problems, and in particular the fight against climate change. To achieve these goals in Art. 192 of the TFEU also provides for a corresponding legislative competence, on the basis of which extensive secondary legislation has been adopted, incl. in the field of regulation of greenhouse gas emissions. At the same time, the EU has set itself goals that even go beyond the mentioned international legal commitments. Thus, in its conclusions of 23-24 October 2014 on the 2030 climate and energy policy framework, the European Council endorsed a binding target of at least a 40% reduction in domestic greenhouse gas emissions by 2030 of the entire EU economy compared to 1990 levels, which should be achieved collectively by the EU with the greatest possible cost efficiency, to which all economic sectors should contribute and all Member States should participate in these efforts, finding balance between considerations of justice and solidarity.

A main instrument in the EU's policy to combat climate change is the system introduced in 2005 and constantly improved /until 2018 called "scheme"/ for trading emissions /EU ETS or ETS/. It is the world's largest cap-and-trade system for greenhouse gas emissions. Total emissions from high-emitting industrial sectors and aviation activities are subject to a limit

or cap that declines over time. The cap limits the emissions of more than 11,000 energy-intensive installations in the EU, which account for approximately half of greenhouse gas emissions. These installations receive emission allowances for free or buy them at auctions, and can also trade allowances if necessary. Each quota corresponds to the right to emit the equivalent of one ton of carbon dioxide. Each year, installations must return a certain number of allowances equal to the amount of carbon dioxide equivalent emitted. At the European level, the environmental objective of the EU ETS is not only to reduce emissions in line with the cap, but also to put a price on carbon and give a financial value to each tonne of greenhouse gases saved. The price is determined by the quota market. This encourages installations to implement the best cost-effective measures to reduce emissions, as well as to invest in low-carbon technologies, especially in cases where allowance prices are high.

In fulfillment of the obligation under Art. 17 of the Kyoto Protocol, European legislation regulating emissions trading within the EU was also adopted, the main acts of which are the following:

/ Directive 2003/87/EC of the European Parliament and of the Council establishing a greenhouse gas emission allowance trading scheme within the Community and amending

Council Directive 96/61/EC ; subsequently, the name of the same was changed with

directive (EU) 2018/410 , in force from 04/08/2018, on "establishing a system for trading greenhouse gas emission allowances within the Union and amending Directive 96/61/EC of the Council;

Regulation (EU) No. 1031/2010 of 12.11.2010 on the schedule, management and other aspects of the auction of greenhouse gas emission allowances;

/ Decision (EU) 2015/1814 of the European Parliament and of the Council of 6.10.2015 on the creation and operation of a market stability reserve for the Union greenhouse gas emissions trading scheme and amending Directive 2003/87/ EC ; / Decision 2011/278/EU of the Commission establishing EU-wide transitional rules for the harmonized free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC ;

/ Delegated Regulation (EU) 2019/331 of the Commission of 19.12.2018 to determine transitional rules valid for the entire Union for the harmonized free allocation of emission allowances in accordance with Article 10a of Directive 2003/87/EC ;

/ Delegated Decision (EU) 2019/708 of the Commission of 15.02.2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council regarding the determination of the sectors and sub-sectors considered to be exposed to carbon leakage risk, for the period 2021-2030;

/ Regulation (EU) No. 389/2013 of the Commission of 2.05.2013 on the establishment of an EU Register pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decisions No. 280/2004/EC and No. 406/2009/ EC of the European Parliament and of the

Council and repealing Commission Regulations (EU) No. 920/2010 and (EU) No. 1193/2011 ;

/ Delegated Regulation (EU) 2019/1122 of the Commission of 12.03.2019 to supplement Directive 2003/87/EC of the European Parliament and of the Council regarding the functioning of the EU Registry;

/ Regulation (EU) No. 525/2013 of the European Parliament and of the Council of 21.05.2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information related to climate change, at national level and at the level of the Union and repeal of Decision No. 280/2004/EC ;

/ Regulation (EU) 2018/842 of the European Parliament and of the Council of 30.05.2018 on the mandatory annual reductions of greenhouse gas emissions for the Member States in the period 2021 - 2030, contributing to climate action in implementation of the obligations undertaken under the Paris Agreement and to amend Regulation (EU) No. 525/2013 ;

/ Decision 2010/634/EU of the Commission specifying the amount of allowances in the European Union that should be issued for 2013 under the European Emissions Trading Scheme;

/ Decision 2013/162/EU of the Commission of 26.03.2013 to determine the annual allocated amounts of emissions for the Member States for the period from 2013 to 2020 according to Decision No. 406/2009/EC of the European Parliament and of the Council

/ Commission Decision 2013/448/EU on national implementing measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC.

4. Based on the above international and European legal framework was adopted in 2014

and Bulgarian legislation on the subject - the Climate Change Limitation Act /ZOIK/ , in force from 11.03.2014, and the Ordinance on the order and manner of administration of the National Registry for Trading in Quotas for Greenhouse Gas Emissions /NRTKEPG/ , in force from 09/05/2014.

In summary, the legal regime on greenhouse gas emissions provides for the following:

/ by virtue of the Kyoto Protocol and the Paris Agreement, limits have been established for each contracting state for the respective periods /annual and multi-year/ for the volumes of anthropogenic greenhouse gases released into the atmosphere by certain economic activities under Annex A to the protocol, which each party has bound to achieve with a downward trend; / the quantitative measure of greenhouse gas emissions within a certain period is

"ton of carbon dioxide equivalent", which is equal to one emission unit under the Kyoto Protocol, called in EU law - "quota", which also means the right to release a similar amount and which right is transferable / art. 3, letter "a" of the Directive

2003/87/EC , § 1, item 26 of the DR of ZOIK /; / EU member states have agreed to jointly fulfill their commitments to reduce anthropogenic

greenhouse gas emissions, for which purpose a system /originally called the "scheme" until the 2018 amendment / of emission allowance trading has been created within the EU , i.e. a single European market for quotas to stimulate the reduction of greenhouse gas emissions in an economical and cost-effective way / Art. 1 of the Directive

2003/87/EC /; / the European emissions trading system /ETS/ is applied to certain economic activities - to aviation activities and to activities from stationary installations included in Annex I to Directive 2003/87/EC /resp. Art. 30 ZOIK and Annex No. 1 and 2 of the same/, which can only be carried out on the basis of permits for greenhouse gas emissions obtained from the competent authority of the relevant country; / individuals and legal entities from the EU member states, as well as individuals and legal entities from third countries, with which the EU has concluded agreements on mutual recognition of quotas between the ETS and other emissions trading schemes, can participate in the ESTE greenhouse gases; the total volume of emissions from stationary installations under Annex I to Directive 2003/87/EC for the entire EU is limited, and by decision 2010/634/EU of the Commission it was established at 2,084,301,856 quotas for 2013, which in accordance with Art. 9 and Art. 9a of Directive 2003/87/EC should decrease for each subsequent year in a linear progression with a coefficient of 1.74%, and from 2021 onwards the linear coefficient is 2.2%; / the quotas issued from 1.01.2013 onwards are valid indefinitely; quotas issued from 1.01.2021 onwards contain an indication indicating in which 10-year period, starting from

1.01.2021, were issued and are valid for issues from the first year of this period onwards / Art. 13 of Directive 2003/87/EC /; / the total amount of quotas in the EU from 2019 onwards are distributed as follows: 1) part of the quotas are included in the market stability reserve created by Decision (EU) 2015/1814 of the European Parliament and of the Council; 2) 2% of the quotas for the period 2021 - 2030 are sold through an auction, and the proceeds go to a fund for improving energy efficiency and modernizing the energy systems of some member states (" Modernization Fund") - Art. 10, para. 1 and Art. 10 years from Directive 2003/87/EC ; 3) the remaining quotas are distributed among the member states; / from 2021 onwards, the share of allowances subject to auctioning is set at 57

% – allocated to the states and allocated to the Modernization Fund / art. 10, para. 1 of Directive 2003/87/EC ; / the total amount of quotas for the period 2013 – 2020 is distributed among the EU member states by decision 2013/162/EU of the Commission; / in relation to the quotas allocated for each country, two main methods of distribution between the individual operators of activities have been established: 1) free distribution - for part of the quotas, and 2) distribution by auction - for all other quotas; / the free distribution of quotas has a limited field of application and in a limited volume for installations which: 1) are included in a list of installations approved by the European Commission / art. 43, para. 1, item 1 ZOIK /, which is applicable to: 1. 1) industries and sub-industries exposed to the risk of carbon emissions displacement, defined in Delegated Decision (EU) 2019/708 of the Commission / art. 43a ZOIK /; 1. 2) the heat

transmission networks, as well as the thermal power plants with highly efficient combined production of electricity and heat according to the Energy Act for economically justified demand in terms of the production of heat energy or energy for cooling, which amount decreases by the indicated linear coefficient for the years after 2013; 1. 3) production of electrical energy - for the period up to 2013 - 2019 for installations that began operation by 31.12.2008 or in the process of investment on the same date, and for the period from 2021 - 2030 - for all installations for production of electrical energy, the volume of which does not exceed more than 40 percent of the quotas allocated to the Republic of Bulgaria for the same period; and 2) meet the definition of a new entrant, for which a reserve for new entrants is reserved - in the amount of 5% of the total amount of allowances for the EU until 31.12.2020, and for the period after that - the amount of free allowances not allocated until 2020 quotas together with 200 million quotas from the market stability reserve according to Decision (EU) 2015/1814 / art. 43, para. 1, item 2 and art. 44, para. 1 ZOIK/; / the remaining allocated quotas for each member state are sold by the respective state through auctions that are organized and carried out on a common EU auction platform, determined in accordance with Commission Regulation (EU) No. 1031/2010 of 12.11.2010 regarding the schedule , the management and other aspects of the auction of allowances for greenhouse gas emissions; / for the Republic of Bulgaria auction seller within the meaning of art. 22 of Regulation (EU) No. 1031/2010 is the Minister of the Environment and Water, who may assign part of his functions to the executive director of the Executive Agency for the Environment OS

/ Art. 54 of the ZOIK /; / only persons under Art. 18, para. 1 of Regulation (EU)

No. 1031/2010 / Art. 53, para. 1 ZOIK/; / quotas acquired through auctions can subsequently be transferred freely and on a secondary exchange or over-the-counter market between persons within the EU or between persons from the EU and persons in third countries where these quotas are recognized / art. 12 of Directive 2003/87/EC /; / all quotas issued after 1.01.2012 are entered in a centralized electronic register of the EU, maintained by a Central Administrator designated by the European Commission, and part of which are the national sections of lots managed by the Member States, in which all distributions, transactions, return and cancellation of quotas / art. 19, para. 1 of Directive 2003/87/EC /; / the EU register is kept in accordance with Regulation (EU) No. 389/2013 , which as of 01.01.2021

has been replaced by Delegated Regulation (EU) 2019/1122 of the Commission, but Regulation (EU) No. 389/2013 continues to apply until 1.01.2026 in relation to all necessary operations in connection with the trading period 2013 - 2020 d., the second period of obligations under the Kyoto Protocol and the period of fulfillment of obligations according to

the definition in Article 3, paragraph 30 of the same regulation /1.01.2013 - 31.12.2020 /; / part of this register is also the Bulgarian National Register for Trading in Greenhouse Gas Emissions Quotas (NRTKEPG), the executive director of the Executive Agency for the

Environment being the competent authority for the administration of the register and a national administrator within the meaning of Regulation (EU) no. 389/2013 / Art. 59 ZOIK/; quotas exist only in electronic form, and ownership of them is established by their presence in the relevant lot in the CE register.

As can be seen from the above, a "quota" is a right to emit into the atmosphere one tonne of carbon dioxide equivalent within a certain period, which is valid only for the purposes of the ETS and can be transferred in accordance with the normative rules of the ETS. The primary holder of this right is the European Union, which can transfer it /allocate/ to an individual member state. At the same time, both the EU and the Member States can transfer this right to individual economic entities operating in the EU - both through free distribution and through auctioning under certain rules. Subsequently, economic entities can trade allowances on the secondary market. It should be borne in mind that although Directive 2003/87/EC was adopted in 2003, its initial version did not envisage a centralized issuance and allocation of quotas by the EU itself – the right to primary allocation of quotas belonged to the individual member states, each of which independently decided on the total amount of quotas that it will allocate during the two periods /1.01.2005 - 31.12.2007 and 1.01.2008 - 31.12.2012 /, for which purpose it should have developed

National Distribution Plan / Art. 10 and Art. 11 in the then edition/. In its current form, the ESTE has been applied since 01/01/2013, since the primary allocator of the quotas is the EU itself.

For this reason, in the appealed decision of the SGS, the quotas are incorrectly equated with the "prescribed emission units", which in Art. 16, paragraph 2 ZOICs are declared private state property of the Bulgarian state, representing a special type of rights - object of international trade, according to Art. 17 of the Kyoto Protocol. As can be seen from § 1, items 46 and 47 of the DR of ZOIK, the prescribed emission units are those issued in favor of the state for the period 1.01.2008 - 31.12.2012. The rules of section II of chapter 3 are applicable to them. from ZOIC and they can be subject to international trade, country of which is the Bulgarian state. Trade is carried out through the sale and exchange of PEE according to the procedure provided for in Art. 19 ZOIC , which is finalized with a contract signed by the Minister of Finance, the Minister of Environment and Water and the Minister of Energy and, respectively, by the authorized representatives of the acquiring country. Under the Kyoto Protocol, there are different types of emission units - PEE (AAU), Emission Reduced Units (ERU), Certified Emission Reduction Units (CER), Absorbed Emission Units (RMU), Long-term Certified Emission Reduction Units (lCER), Temporary Certified Emission Units reduced emissions (tCER), etc. The ETS quotas are an analogue within the EU of the units under the Kyoto Protocol, issued for the period after 1.01.2013 and their initial holder is the EU, and for their legal regime and trade, other rules are applicable - those of the EU and per head 4 of the ZOIK .

The ESTE quota is defined as a "vulnerable, intangible instrument tradable on the market" in Art. 40, para. 1 of Regulation (EU) No. 389/2013

and Art. 36, para. 1 of Delegated Regulation (EU) 2019/1122 . It is clarified that the intangible nature of quotas means that entry in the EU Register constitutes prima facie and sufficient proof of ownership of a given quota, as well as any other matter for which this regulation indicates or allows its entry in the EU Register / art. 40, para. 2 of Regulation (EU) No. 389/2013 and Art. 36, para. 2 of Delegated Regulation (EU) 2019/1122 /. The vulnerability of quotas means that any obligations for compensation or restitution that may arise under national law in respect of a given quota apply only to the quota in kind / Art. 40, para. 3 of Regulation (EU) No. 389/2013 and Art. 36, para. 3 of Delegated Regulation (EU) 2019/1122 /.

Therefore, it is undisputed that ETS quotas are transferable rights that are initially and originally acquired by the EU, but are subsequently transferred to Member States and economic operators. European legislation introduces a strict procedure by which quotas acquired by the EU and member states can be transferred to economic operators - free of charge or for a fee, and the latter can only be done through a regulated auction and sale .

However, contrary to what the defendant maintains, there are no restrictions on the means of transferring quotas in the so-called secondary market of quotas - that between the economic operators themselves. This secondary market can be both exchange and over-the-counter - through direct negotiation of any kind between individual private legal entities. This unequivocally follows from the express provision of Art. 12, para. 1 of Directive 2003/87/EC , according to which Member States ensure the possibility of transferring quotas between: a) persons within the EU; and b) EU persons and persons in third countries where such allowances are recognized under the procedure referred to in Article 25, without other restrictions than those contained or adopted in accordance with this Directive. The means of transfer are governed by the national law of each member state. In Bulgarian law, there is no limitation of these methods with regard to quotas - such a limitation is not provided for in the special ZOIK or any other normative act. That is why all the methods of universal and private legal succession regulated in Bulgarian law are admissible. In particular, in the case of private succession, all transferable transactions are permissible . The defendant's contention that quotas can only be the subject of a contract of sale, but not of other translational contracts, is untenable. It is not clear what socially significant result such a restriction would pursue, but more importantly, the normative support for the same does not exist. No argument to this effect can be derived from the regulations for the EU Registry or the National Registry for Trading in Allowances. The purpose of these regulations is to regulate recordkeeping procedures for allowance transactions, not to limit the types of allowable secondary market transfer transactions for these transactions.

Therefore, the main thesis of the defendant regarding the invalidity of the trial contract dated 01.30.2017 , due to the fact that it does not constitute a purchase and sale contract, is untenable. As for his second objection /related to the first/ - that the quotas cannot be the subject of a loan contract, the same is valid, but this does not cause the contract to be

null and void. According to Bulgarian law, the subject of a loan can be money or things - art. 240 and Art. 243 of the Civil Code . However, this does not mean that if the provision of a certain other asset is stipulated against an obligation to return an asset of the same type, this points to the inadmissibility of the contract. The contract is admissible according to the general freedom of negotiation / Art. 9 ZZD /, but it does not have the character of a loan contract, but is an unnamed contract. The conclusion of such a contract does not contradict the mandatory norms of the law and good morals, as it does not in any way harm the public interest, which is why it is valid. For this reason, the procedural agreement dated 30.01.2017, by its legal nature, is not a loan agreement within the meaning of Art. 240 ZZD , and an unnamed contract is valid , with which the plaintiff undertook to transfer a certain amount of quotas to the defendant, and the defendant undertook to

return the same amount within a specified period and pay a specified remuneration to the plaintiff. The name of the contract given by the parties represents a legal qualification that does not determine its legal nature and does not bind the court. Therefore, the contract is not void, which is why the defendant's objection is unfounded.

In this situation, the main claim for actual fulfillment of the defendant's obligation to return the process quantity of quotas appears to be well-founded. It is irrelevant to the merits of this claim whether similar quotas are available on the defendant's lot. It is correct that the SGS accepted that the quotas are fungible generically determined assets, not individually determined, therefore there is no objective or legal impossibility for such assets to be acquired by the defendant in the general order and returned to the plaintiff.

Given the respect of the main claim, the possible claim for payment of the monetary equivalent of the quotas should not be considered.

Due to the coincidence of the final conclusions of the appellate court with those of the first-instance court regarding the brought claim, the appeal should be dismissed as unfounded, and the decision appealed against should be confirmed.

III. On expenses

In this outcome of the dispute, only the claimant has the right to costs. The same has made a claim and proved such in the amount of BGN 29,520 - for the paid lawyer's fee with VAT for the appeal proceedings under the presented contract for legal protection and assistance dated 02/07/2022.

The defendant has raised an objection that the remuneration so agreed is excessive, which is groundless. Regarding the material interest of the case /amounting to BGN 1,304,460.30 - the BGN equivalent of the stated value in euros of the trial quotas - 666,960 euros/ the amount of the remuneration, calculated on the basis Art. 7, para. 2, item 6 of Ordinance No. 1/2004 on the minimum amounts of attorneys' fees , amounts to BGN 24,574.61 without VAT or BGN 29,489.53 with VAT. The agreed remuneration in the amount of BGN 29,520 including VAT slightly exceeds

the minimum amount, which is why it is not subject to reduction. Thus motivated, the Sofia Court of Appeal,

RESOLVE:

CONFIRMS the decision of 16.12.2021 under Case No. 278/2020 of the Sofia City Court, Chamber VI-7.

" Enecod " AD with EIC - 203638768, with registered office and management address - Sofia, Vitosha district, 10 "Vihren" street, floor 3, to pay "Fazerless" AD with EIC - 828013698, with headquarters and address of management - town of Silistra, p. k. 7500, Industrial Zone West, on the main Art. 78, para. 1 of the Code of Civil Procedure , the amount of BGN 29,520 – costs for the proceedings before the SAC.

The decision is subject to appeal before the Supreme Court of Cassation under the terms of Art. 280 of the Civil Code within 1 month from its delivery to the parties.

Chairman: _____

Members:

_____

Decision No. 260146 of 31.03.2021 of RS - Pernik under a. n.d. No. 77/2021

The proceedings are in accordance with Art. 59 - 63 of ZANN .

It was formed on the complaint of "Toplofikatsia-Pernik"-AD, represented by the Executive Director against criminal decree No. 117/17.12.2020, issued by the Director of RIOS Sofia, with which on the basis of Art. 73 of the Climate Change Limitation Act for administrative violation under Art. 34, para. 2, item 1 b. "a" item 2 of the cited normative act imposed a "property penalty" in the amount of BGN 5,000, for the fact that on 01.01.2019 during an inspection it was found that he had not notified the competent authority - the Executive Director of the Environmental Executive Agency for a change in the operation of the installation, namely a change in its way of functioning.

The complainant "Toplofikatsia-Pernik"-AD, represented by the Executive Director, appealed the penal decree within the statutory period. In the complaint filed against him, arguments are put forward that the same is incorrect and illegal and as such should be completely canceled. In a court session, a regularly summoned person does not appear. The company is represented by yu. k. Slavchov, who proposes that the penal decree issued by the Director of RIOS Sofia be completely annulled as incorrect and illegal.

under appeal - RIOSV - city Pernik, regularly called upon to send as a representative St. Ju. k. Dragomirova, who claims that the penal decree issued by the Director of RIOS Sofia is correct and lawful and as such should be fully confirmed. The procedural representative of the appealed party presents detailed reasons in support of what is stated in the circumstantial part of the act for establishing an administrative violation and of the criminal decree. Requests an award of legal fees.

The Pernik District Court, taking into account the written and oral evidence collected in the case and the arguments of the parties pursuant to Art. 14 and Art. 18 of the Code of Civil Procedure finds the following established:

The complaint was filed within the statutory period under Art. 59, para. 2 of the ZANN by a duly legally legitimized person with a legal interest. It is admissible. Examined in substance, it appears unfounded.

On the factual side:

To "Toplofikatsia Pernik" AD for the operation of TPP "Republika" as the operator of a combustion plant, from which emissions containing greenhouse gases are released during the production of heat and electricity, a permit was issued by the Executive Director of the Executive Agency for the Environment for emissions of greenhouse gases No. 28-H3/2015. The same is attached to l. 26-30 of the administrative criminal file. In this permit and in the monitoring plan drawn up for it, brown coal, natural gas and briquettes were specified as gas flow leading to greenhouse gas emissions as fuels, raw materials and auxiliary materials.

By letter int. No. 12-00-43/03.04.2020, the Executive Agency for the Environment has notified RISW-Pernik that "Toplofikatsia Pernik" AD has submitted a verified annual report for 2019. In the same, according to the content of the mentioned letter, "Toplofikatsia Pernik" AD mentioned the burning of biomass, which is not authorized for use, according to the content of the mentioned permission. It is not included in the monitoring plan. On April 9, 2020, based on what was communicated in the letter, an on-site inspection was carried out at the operator's headquarters. During this inspection, the use of 156,350 tons of biomass was confirmed. Constitutive Protocol No. 99/09.04.2020 of RIOSV-Pernik was drawn up for what was established during the inspection, attached to p. 17-18 of the administrative criminal file. It was established in the course of the on-site inspection that on 01.01.2019, in the diary of the " Coal Supply" workshop, it was reflected in the work of shift "G" and shift "B" the burning of 800 tons of biomass. The competent authority - Environmental Executive Agency - was not notified about the burning of this amount of biomass.

In connection with the findings on 26.06.2020, S. G. A. - "chief expert" in the "KKFOS" department of RIOS Sofia, authorized by Order No. RD-296/21.05.2018 of the Minister of Environment and Water to compile of acts for the establishment of administrative violations in the presence of the witness for the establishment of the violation Svetoslava Todorova Georgieva drew up for "Toplofikatsia-Pernik" AD an act for the establishment of an administrative violation No. 66/2020, in which he described in textual and numerical terms a violation of the provision of party of the aforementioned legal entity of Art. 34, para. 2, item 1 b. "a" item 2 of the Law on Limiting Climate Change .

is signed by the deed maker and the deed witness. It was presented and signed by the Executive Director of "Toplofikatsia-Pernik" AD on 26.06.2020. When drawing up the act, no objections to the findings were reflected.

Such were deposited with entry No. 8302/30.06.2020 before the administratively punishing authority. They state claims that the composition of the administrative violation described in the act of establishment was not carried out, since no change was made in the operation of the installation through the use of an unauthorized type of fuel.

On the basis of the drawn up act, the Director of RIOSV Sofia has issued a criminal decree No. 117/17.12.2020, with which, on the basis of Art. 73 of the Climate Change Limitation Act for administrative violation under Art. 34, para. 2, item 1 b. "a" item 2 of the cited normative act imposed a "property sanction" in the amount of BGN 5,000 /five thousand BGN/ In the circumstantial part of the same, convincing reasons are presented for what the administratively punishing authority accepted as undisputedly established. The collected evidence is discussed.

On the evidence:

The above factual situation is established by the attached administrative criminal file and the oral and written evidence collected during the judicial investigation. The written evidence that the court accepted, applied and valued as such in the case are as follows: act of establishing an administrative violation No. 66/2020, criminal decree No. 117/17.12.2020, issued by the director of RIOSV-Sofia, Orders on the competence of the filer and the administratively punishing authority, Constitutive Protocol No. 99/09.04.2020, Decision No. 28-H3-AO/2015, Permit for Greenhouse Gas Emissions No. 28-H3/2015, together with the attached plan for monitoring, verified annual report for 2019, objection by act. In the course of the judicial investigation, an interrogation was conducted in the capacity of a witness of the person who drew up the act . St. A.'s testimony is clear, complete, and uncontradictory regarding what was established during the inspection. The Court credits this testimony in full. At the respected request of the procedural representative of the appealed party, in the course of the judicial investigation, Svetoslava Todorova Georgieva was admitted to and conducted an interrogation. She is a witness to the establishment of the violation and according to the act of establishment of an administrative violation. Her testimony is uncontroversial regarding what was established during the on-site inspection, the review of the available documents and the final conclusions of the examiners, objectified in the drawn up act for establishing an administrative violation. The court also credits this testimony.

With the fact thus established, from the legal side the court found the following to be established:

During the official inspection of the act for establishing an administrative violation and of the criminal decree issued on its basis, the court did not find any significant violations of the procedural rules, infringing the procedural rights of the offender. Both the act of establishing an administrative violation and the criminal decree were issued by competent authorities for this - "chief expert" in the "KKFOS" sector of the RISW of Pernik and the Director of the RISW of Pernik. Sofia. There are no grounds for annulment of the criminal decree on procedural grounds.

Essentially:

The culpably violated provision of Art. 34, para. 2, item 1 b. "a" pr. 2 of the Climate Change Limitation Act / applicable revision SG 15/16.02.2018 / introduces the obligation of the operator of an installation holding a permit for greenhouse gas emissions to notify the competent authority - Executive Director of an Executive Agency by environment for each case of a planned or actual change in the operation of the installation, incl. the characteristics and/or functioning of the same.. "Toplofikatsia-Pernik"-AD as of the date of establishment of the violation 01.01.2019 held the status of "installation operator" according to item 43 b. "a" of the additional provisions of the ZOO and item 38 of the DR of the ZOIC . The same for the operation of TPP "Republika" has a permit for emissions of greenhouse gases No. 28-H3/2015, issued by the Executive Director of the Environmental Executive Agency. According to the content of the permit and its monitoring plan, lignite, coal, natural gas and briquettes are indicated as a gas stream leading to greenhouse gas emissions, as fuels, raw materials and auxiliary materials. It was undoubtedly established that in the submitted annual verified report for 2019, the company reported the burning of biomass in fixed quantities, which was not authorized for use and was not included in the monitoring plan. Undoubtedly, the burning of wood pulp during the production of heat and electrical energy was established again by checking the work shift "G" reflected in the diary of the " Coal Supply " workshop. In this way, a conclusion is reached about a real change in the operation of the installation, incl. in the functioning of the same. It is indisputable that "Toplofikatsia Pernik" JSC did not notify the Executive Director of the Environmental Executive Agency about this. The court finds that the composition of an administrative violation under Art. 34, para. 2, item 1 b. "a" item 2 of the Law on Limiting Climate Change .

According to the amount of the penalty:

The administratively punishing authority correctly applied the administratively penal provision. The court finds that in view of the degree of public danger of the violation and in view of the significance of the public relations that it affects, the penalty for the latter is determined correctly and lawfully in the average amount provided for the administrative offense committed. In the understanding of the court, determined according to this way, through which the objectives of the punishment referred to in Art. 12 of the ZANN , namely to warn and re-educate the offender to comply with the established legal order and has an educational and warning effect on other citizens.

On costs:

In a court session, the procedural representative of the appealed party made a request for the award of legal fees, in accordance with his right under Art. 63, para. 3 of ZANN . In view of the outcome of the case, RIOSV Sofia should be awarded legal fees based on the provision of Art. 37 of the Law on legal aid and assessment of the type and amount of the activity performed, in accordance with the Ordinance on the payment of legal aid. When determining the remuneration of the entitled party, the court took into account the fact that the case does not represent factual

and legal complexity. The same was considered in a court session. The above motivates the court to award a fee in the minimum amount, namely BGN 80.

In view of the above and in the same sense on the basis of Art. 63, para. 1 of the ZANN court:

RESEARCH:

CONFIRMS criminal decree No. 117/17.12.2020, issued by the Director of RIOS Sofia against "Toplofikatsia Pernik" JSC EIC: 113012360 with registered office and address of management: town of Pernik, district " Moshino ", whereby on the basis of Art. 73 of the Climate Change Limitation Act for administrative violation under Art. 34, para. 2, item 1 b. "a" item 2 of the cited normative act imposed a "property penalty" in the amount of BGN 5,000, for the fact that on 01.01.2019, during an inspection in the city of Sofia, it was found that he had not notified the competent body - the Executive Director of the Environmental Executive Agency for a change in the operation of the installation, namely a change in its way of functioning.

JUDGMENT "Toplofikatsia Pernik" AD EIC: 113012360 with registered office and management address: town of Pernik, district " Moshino " to pay RIOSV Sofia a legal consular fee in the amount of BGN 80.

The decision is subject to a cassation appeal on the grounds referred to in the Code of Criminal Procedure and in accordance with Chapter 12 of the Administrative Procedure Code before the Administrative Court - city. Pernik within 14 days of its communication to the parties.

JUDGE:

Decision No. 106 of 07/09/2021 of the AdmS - Pernik under k. a. n.d. No. 101/2021

The proceedings are in accordance with Art. 208 et seq. of the Administrative Procedure Code (APC), in connection with Art. 63, para. 1, ex. 2 of the Law on Administrative Offenses and Penalties (ZANN) .

It was formed on a cassation appeal of "***" AD, EIK ***, with headquarters and address of management: city of Pernik, district ***, represented by the executive director Y. P. K., against court decision no. 260146 of 31.03.2021, decreed under AND No. 77 on the inventory for 2021 of the District Court - Pernik.

The appealed court act confirmed the criminal decree (NP) No. 117 of 17.12.2020 of the Director of the Regional Environmental and Water Inspection (RIOSV) - Sofia, whereby "***" JSC, town of Pernik, in his capacity as an "operator" of a combustion plant - TPP "Republika", from

which emissions containing greenhouse gases are released during the production of thermal and electrical energy, possessing Greenhouse Gas Emissions Permit (GREG) No. 28-H3/2015. , issued by the executive director of the Executive Agency for the Environment and Waters (EAOS), on the basis of Art. 73 of the Climate Change Limitation Act (CLIP) in conjunction with Art. 83, para. 1 of the ZANN , a property sanction in the amount of BGN 5,000 (five thousand) was imposed for non-fulfillment of the obligation under Art. 34, para. 2, item 1, b. "a", pred . second from ZOIK .

In the cassation appeal, it is claimed that the decision of the district court was issued in violation of the substantive law and the procedural rules. The court is requested to set aside the decision of the district court and to order another order to set aside the penal decree issued.

In the held court session , the assessor , regularly summoned as a representative, sends a yuk . S.S.. Sustains the appeal and pleads to annul the decision of the district court and to order something else to annul the issued criminal decree.

In the held court session, the defendant in the cassation appeal RIOSV-Sofia, regularly summoned, did not send a representative.

At the held court session, the representative of the Pernik District Prosecutor's Office found the cassation appeal unfounded. It proposes that the decision of the district court be left in force as correct and lawful.

Administrative Court - Pernik, by checking the procedural prerequisites for admissibility under Art. 215 of the APC and after, on the basis of Art. 218 of the APC discussed the arguments presented in the cassation appeal and verified ex officio the validity, admissibility and compliance of the appealed decision with the applicable law, found the following:

The cassation appeal was filed within the period under Art. 211, para. 1 of the APC , by a person under Art. 210, para. 1 of the APC – a party in the proceedings before the district court, for whom the decision is unfavorable, against an appealable judicial act, which is why it is procedurally admissible for consideration.

After a cassation review has been carried out within the limits of Art. 218, para. 2 of the APC , the present cassation panel finds that the decision of the district court is valid and admissible, as it was issued by a competent court in the form provided by law, on an admissible appeal.

With NP No. 117 of 17.12.2020, the Director of RIOSV - Sofia, on the basis of Art. 73 of the ZOIK in conjunction with Art. 83, para. 1 of ZANN , has imposed on "***" JSC, town of Pernik, in its capacity as "operator" of a combustion plant - TPP "Republika", from which emissions containing greenhouse gases are emitted during the production of heat and electricity , possessing REPG No. 28-NZ/2015, issued by the executive director of the IAEO, a property sanction in the amount of 5,000 (five thousand) BGN, for the fact that on 01.01.2019, in violation of the requirement of Art. 34, para. 2, item 1, b. "a", pred . secondly, from the ZOIC , the company did not notify the competent authority - the executive director of the Environmental Protection Agency, about a change in the operation of the installation as a

way of functioning, namely - use of 156,350 t of biomass and specifically - burning on 01.01.2019, during the operation of shift "D" and "B", a total for the day of 800 t of biomass, which is not permitted for use according to the issued REG No. 28-H3/2015 and is not included in the monitoring plan, with which the operator actually made a change in the operation of the installation in the production of heat and electricity. The violation was detected during a documentary inspection carried out by experts of RIOSV - Sofia on site at the headquarters in connection with letter ent. No. 12-00-43/03.04.2020 of the Environmental Protection Agency, with which letter RIOSV - Pernik were notified of the verified annual report for 2019 submitted by "***" JSC, in which the burning of biomass, which was not is permitted for use in the issued REPG No. 28-H3/2015 and is not included in the monitoring plan, and the company has not taken any actions to revise the REPG.

The criminal decree was appealed before the Regional Court - Pernik, which confirmed it with decision No. 260146 of 31.03.2021, issued under AND No. 77 of the court inventory for 2021.

In order to decide this result, the district court, after collecting, evaluating and analyzing the evidence, and having taken into account the arguments of the appellant, accepted as undisputedly established on the factual side the fact reflected in the document drawn up for the procedural violation and the issued criminal decree.

Based on the established facts, the decision-making first-instance panel accepted from a legal point of view that no significant procedural violations were committed in the conducted administrative criminal proceedings, the act and the NP were issued by competent authorities, there are no grounds for canceling the NP on procedural grounds, and the substantive law was applied correctly by the punishing authority, which committed the liability of the assessee accordingly to the facts established on the basis of Art. 73 of the ZOIK in conjunction with Art. 83, para. 1 of ZANN , for failure to fulfill the obligation under Art. 34, para. 2, item 1, b. "a", pred . second from ZOIK .

The amount of the imposed pecuniary sanction, in relation to the average foreseen one, was assessed by the deciding first-instance panel to be consistent with the degree of public danger of the violation and with the significance of the public relations that it affects, and determined in this way, according to the district court, it serves the purposes of the penalty referred to in art. 12 of ZANN .

The decision is incorrect.

According to the provision of Art. 218, para. 1 of the APC , in connection with Art. 63, para. 1 of the ZANN , the cassation court discusses only the vices of the decision specified in the cassation appeal, and monitors the correct application of the substantive law ex officio pursuant to Art. 218, para. 2 , proposal 2 of the APC .

By application of the substantive law:

During the ex officio examination of the correct application of the substantive law carried out outside of the arguments in the cassation appeal, the court found that with the factual situation established correctly

and corresponding to the evidence and accordingly applied to the substantive law established on the facts, the district court reached an incorrect conclusion that the procedural criminal decree was issued by a competent authority, insofar as the evidence presented and included in the case in this regard does not support such a conclusion.

According to Art. 83, para. 2 of the ZOIK, the criminal decrees under para. 1 (for which AUAN for administrative violations of ZOIC are drawn up) are issued by the Minister of Environment and Water or by officials authorized by him.

The procedural criminal decree was issued by the director of RIOSV - Sofia.

administrative and criminal liability of the assessee is engaged on the basis of Art. Art. 73 of the ZOIK in conjunction with Art. 83, para. 1 of ZANN , for failure to fulfill the obligation under Art. 34, para. 2, item 1, b. "a", pred . second from ZOIK .

In the case, as evidence of the material competence of the official who issued the NP, order No. RD-589 of 13.08.2015 of the Minister of Environment and Water, issued on the basis of Art. 47, para. 2 of ZANN and Art. 83, para. 2 of ZOIK . It is evident from the same that the director of RIOSV-Sofia is authorized to issue penal decrees under Art. 76, para. 1 and para. 2 of the ZOIK for administrative violations under Art. 48, para. 1 of ZOIK .

In the covers of the first-instance case, there is no evidence from which it can be seen that at the time of the issuance of the procedural criminal decree, the director of the RIOSV - Sofia was duly authorized to issue the NP for administrative violations under Art. 34, para. 2 in conjunction with Art. 73 of the ZOIK , as is the process. The submitted order No. RD-589 of 13.08.2015 of the Minister of Environment and Water, which is referred to by the issuer of the penal decree, does not authorize him to issue penal decrees under Art. 73 of the ZOIK . Therefore, the decreed act of administrative criminal justice was issued by a body that does not have material competence. The established is a significant violation and constitutes an independent ground for annulment of the criminal decree.

The district court, which made an unfounded conclusion on the evidence in the case about the competence of the publisher of the NP and confirmed the same, issued an act in violation of the procedural rules (regarding the evaluation of the evidence) and in the incorrect application of the substantive law.

In view of the above, regardless of the fact that the present panel finds the arguments developed in the cassation appeal of "***" JSC, town of Pernik to be groundless - for incorrect application of the law by the district court, there is an independent basis for annulment of the decision under Art. 348, para. 1, item 1 of the Civil Code in conjunction with Art. 63, para. 1, ex. secondly from ZANN , as in this connection and on the basis of Art. 222, para. 1 of the APC in conjunction with Art. 63, para. 1 of the ZANN , the criminal decree will be annulled.

Motivated by the above and based on Art. 221, para. 2 , proposal second of the APC in accordance with Art. 348, para. 1, item 1 of the Civil Code in conjunction with Art. 63, para. 1, ex. second by ZANN and art. 222, para. 1 of the APC in conjunction with Art. 63, para. 1 of ZANN , cassation panel of the Administrative Court - Pernik

RESOLVE:

AVOIDS decision No. 260146 of 31.03.2021 in its entirety, issued under AND No. 77 on the inventory for 2021 of the Regional Court - Pernik, AS INSTEAD OF IT:

AVOIDS criminal decree No. 117 of 17.12.2020 of the director of the Regional Inspection for the Environment and Waters-Sofia, by which "***" JSC, town of Pernik, on the basis of Art. 73 of the Climate Change Limitation Act (CLIP) in conjunction with Art. 83, para. 1 of the ZANN , a property sanction in the amount of BGN 5,000 (five thousand) was imposed for an administrative violation under Art. 34, para. 2, item 1, b. "a", pred . second from ZOIK .

The decision is final and not subject to appeal or protest.

CHAIRPERSON: /p/

MEMBERS: /p/

/p/