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# ADMINISTRATIVE LEGAL REGIME OF AMBIENT AIR IN THE REPUBLIC OF BULGARIA

## DISSERTATION ABSTRACT

*for the award of educational and scientific degree "Doctor", Professional field: 3.6. Law (Administrative Law and Administrative Procedure)*

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## I. GENERAL CHARACTERISTICS OF THE THESIS

### 1.Relevance of the topic

The the topic is currently relevant due to several factors: the negative impact of air pollution on human health, material assets and the environment; the levels of air pollution in Bulgaria and the European Union ("**EU**"), which significantly exceed the recommendations of the World Health Organization ("**WHO**"); the established violations of legally binding standards for harmful substances in the air and the upcoming transposition of the revised Directive 2008/50/EC on ambient air quality and cleaner air for Europe ("**AAQD**") into the national

Air pollution is estimated to be the most significant health risk in Europe. In 2020, 96% of the urban population in the EU is exposed to levels of fine particulate matter ("**PM**") above the level defined by WHO as recommended for health. In 2021, 238,000 premature deaths are reported in EU Member States as a result of exposure to PM above recommended levels.

Bulgaria ranks first in the EU in premature deaths due to air pollution. In 2021, a high percentage of 30.85% of our country's population continues to live with excessive levels of PM2 pollution$_{10}$, and exceedances of the standards for sulphur dioxide, nitrogen dioxide and benzo(a)pyrene are consistently reported in some places in the country. In 2017 and 2021. The Court of Justice of the European Union ("**CJEU**") has found that Bulgaria is in systematic and persistent breach of the human health protection standards for the indicators $PM_{10}$ and sulphur dioxide.

The air pollutant limits that Bulgaria is in breach of are significantly higher than the WHO recommended concentrations. This fact illustrates that the health problem caused by polluted air in our country far outweighs the legal non-compliance.

Against the backdrop of the emerging need for effective management solutions in the fight against air pollution, the thesis attempts to bring to the attention of the scientific

community an analysis and assessment of the current regulatory framework and its suitability to meet the societal needs for the protection of citizens' rights against air pollution.

## 2.Subject and purpose of the study

The dissertation is a comprehensive monographic study. The object of the scientific analysis is the administrative legal relations that arise in connection with the assessment, maintenance and improvement of ambient air quality in Bulgaria.

The dissertation aims to investigate the sources of the administrative law regime of the CWA, the subjects of the legal relations that arise on the occasion of the application of these sources, the administrative acts issued in this sphere, and the control of compliance with the regulatory framework. The objective thus set is achieved through the following tasks:

– Outlining the scope of the administrative legal regime of the ambient air quality at national, European and international level and distinguishing it from other legal regimes that are part of clean air legislation.

– Determining whether our national legal framework on ambient air quality complies with applicable European and international law and case-law of the CJEU.

– Determining whether citizens and organisations are subject to the administrative law regime of ambient air quality.

– Establishing the competences of the authorities in the field of ambient air quality and assessing their distribution.

– Establishing the legal characteristic of administrative acts in the field of ambient air quality.

– Assessing whether the means of control in the field of ambient air quality are sufficient to ensure effective and correct implementation of the regulatory

framework and achievement of the air quality standards.

– Recommending improve the legal framework and enforcement.

– Laying the foundations for further legal research on the topic.

## 3.Research methodology

In order to achieve the scientific goal and the set tasks in the dissertation, the following general scientific methods of knowledge were used: observation, description, comparison, method of scientific analysis and synthesis, inductive and deductive methods.

The method of historical analysis is used, which allows to trace the development of the regulation of public relations in the field of protection of the air purity, as well as the comparative legal method, through which the common tendencies and differences of the regulation at the European level are highlighted.

## 4.Practical significance

The dissertation is an attempt at a detailed and complete scientific study of the administrative law regime of ambient air quality. The benefits for practice can be summarized as follows:

– An analysis is made of the current legal framework at national, international and European level, including the relevant case law of the CJEU and the European Court of Human Rights ("**ECtHR**"). Judgments of national courts of EU Member States are examined.

– A historical analysis of the development of national and European legislation on the subject is made.

– Specific administrative acts for the assessment and management of ambient air quality are examined.

– Case-law of national courts on relevant issues is examined.

– An analysis of legal studies in Bulgarian and English on the topic is made.

– A review has been made of documents which contain relevant facts.

## 5.Scope and structure of the study

The dissertation has a total length of 234 pages (Times New Roman font, size 14, spacing 1.5), of which 223 pages are the actual text. It is accompanied by a reference to the literature used, containing 100 titles, of which 65 in Cyrillic and 35 in Latin. All titles are cited in the thesis. There are 479 footnotes.

The dissertation consists of an introduction, three chapters and a conclusion. Each of the chapters is divided into parts denoted by Arabic numerals. The parts are indicated by subject headings and structured in paragraphs and sub-paragraphs, also indicated by Arabic numerals. A table of contents, a list of abbreviations, and a list of references used are included.

# II. CONTENT OF THE DISSERTATION

## Introduction

The introduction justifies the relevance of the topic. The subject of study and the tasks of the research are stated. The significance of the social relations that arise in connection with the protection of the purity of ambient air is justified.

## Chapter One: Administrative law regime of ambient air quality

Ar quality is the state of the air, which is determined by the composition and ratio of the natural constituents of the atmosphere and its pollutants at a given location. The administrative law regime on air quality is part of the legal regime for the protection of the purity of ambient air. In order to outline the scope of the administrative law regime

on air quality, Chapter One discusses the general regime for the protection of the purity of ambient air and provides a brief summary of the other legal regimes within it.

**§ 1. Administrative regime of ambient air quality**

There is no uniform understanding in positive law of the limits of the right to clean air. European legislation includes the clean air directives – the AAQD and Directive 2004/107/EC relating to the levels of arsenic, cadmium, nickel and polycyclic aromatic hydrocarbons in ambient air ('**Directive 2004/107/EC**'), the legal regime of national emissions ceilings of certain air pollutants and the regulations governing individual sources of air pollution such as industry and transport. The Bulgarian Environmental Protection Act ("**EPA**") sets out broader limits of the regime for the protection of clean air, including the regulatory framework for the protection of the ozone layer and climate change law.

The administrative law regime of the air qaulity deals with specific concepts. The dissertation explores the concepts of "air", "atmosphere", "ambient air" "air pollution" and "pollutants" in their common and legal-technical sense. It confirms the broad notion of 'atmospheric air pollution' in national legislation and rejects the criticisms of some authors who call for its change.

The specifics of air pollution as an ecological phenomenon determine the characteristics of the regulatory methods adopted in this sphere of regulation of public relations. Such specificity is the trans-boundary nature of air pollution – it does not stop at national borders. Furthermore, air pollution is caused by the activities of operators of various kinds, which include both individual consumers of goods and services and industrial installations. This makes it necessary to regulate public relations that affect different types of entities. Concentrations of pollutants in the air are detected by technical measurements, and scientific studies demonstrate the impact of pollution on human health, the environment and certain assets. This makes pollution 'invisible', and

enforcement is based on technical and scientific means of measuring pollution and studying its impact. These specifics of the regulated subject determine the particularities of the legal framework and law enforcement in this sphere of government.

In order to delineate the subject of the study in the general system of the law on the protection of the purity of ambient air, the dissertation summarizes the other legal regimes for the protection of the purity of ambient air: the legal regime of national ceilings; the legal regimes of air pollution sources; the legal regime of climate change; the legal regime of ozone depletion. While regulating different environmental phenomena, these regimes are closely interrelated. The administrative law regime of the air quality sets a desired state of ambient air that presumptively does not compromise human health and environmental quality. Achieving this state is to varying degrees determined by the effectiveness of regulations on individual pollution sources and by the legal regime of national ceilings. In addition, the air quality is influenced by climate change legislation. This calls for strengthening the links between the different legal regimes so that regulations on different sources of pollution and in other areas of government that have an impact on the ambient air quality take into account the need to achieve clean air standards.

## § 2. Administrative regime of ambient air quality

This part of the thesis examines the applicable sources of law, the concept of air quality and its main elements.

The legal framework for air quality has its elements in international instruments, EU law and our national legislation. While the air quality is largely determined by local sources of pollution such as industry and transport, some pollutants are transported thousands of kilometres and affect the air quality in other countries. This raises the need for a legal framework at international and European level. At international level, air

quality is governed by the Geneva Convention on Long-range Transboundary Air Pollution, adopted under the auspices of the United Nations Economic Commission for Europe in 1979. In the EU, the legal relationships arising in relation to the assessment and management of air quality are governed by the AAQD and Directive 2004/107/EC.

The administrative law regime of the air quality at national level is regulated in the Environmental Protection Act, the Clean Ambient Air Act ("**CAAA**") and by-laws. Historically, since the adoption of the CAAA in 1996 and its implementing sub-legislation, the national regulatory framework has developed reactively and mainly for the purposes of transposing European legislation. With the adoption of the subordinate legislation transposing the current European legislation, there has not been a complete harmonisation of the existing legal framework. This creates conditions for uncertainties and contradictions in law enforcement. The thesis examines several possible issues to illustrate these weaknesses of the national legal framework.

The administrative law regime of the CWA includes the following elements:

1) standards for pollutants in ambient air, which set the maximum permissible concentrations of pollutants in the air;
2) an assessment of the air quality, which includes the obligations of the competent authorities to measure and/or calculate concentrations of pollutants in the air;
3) management of the air quality, which includes the authority's powers to maintain and reduce pollution against established standards for harmful substances;
4) public information obligations.

The regulatory framework provides pollutant concentration limits for pollutants in the air. Examples are the limit values for the protection of human health and the environment for $PM_{10}$, sulphur dioxide and nitrogen dioxide, the target values for

cadmium, the national targets for $PM_{2,5}$, the alert thresholds for sulphur and nitrogen dioxide and others. In legal terms, they have different legally binding force and purpose, and different legally relevant consequences occur with their achievement. The study proposes the introduction of a common concept of 'ambient air pollutant standard', which would bring together the different types of concentration limit under the current legislation. This approach is intended to facilitate law enforcement and doctrinal research on this matter.

Current air pollutant standards significantly exceed WHO recommendations for protecting human health. This leads to a discrepancy between the legally acceptable level of pollution and the scientific recommendations. The revised AAQD foresees that legally binding standards for pollutants will only align with WHO recommendations in 2030. The following parts of the study attempt to identify factors that could improve the national legal framework.

### § 3. Bulgarian legal theory

After the monograph of P. Staynov "Protection of Nature" of 1970, there is a lack of studies that analyze the legal framework for air pollution control in Bulgaria, the subjects, administrative acts and control in this sphere of government. This dissertation attempts to initiate a discussion in national doctrine on these topics.

## Chapter Two: Subjects of the administrative law regime of the air quality

The role of state authorities as subjects of the administrative and legal regime of the air quality is indisputable. The question is whether citizens and organisations are subjects that can give rise to, modify and terminate legal relations and thus influence state governance in the field of air quality. The courts in Bulgaria have held that the air

quality plans of municipalities do not affect the legal sphere of persons living or residing in the territory of the municipality. Thus, the case law denies citizens and organisations the status of subjects of the administrative law regime of the air quality. An analysis of the applicable law rejects this position and confirms that citizens and organisations are the holders of rights and subjects of the administrative regime of the air quality.

## § 1. Subjects of the administrative law regime of the air quality

Subjects of administrative law are the administrative authority, which, within the scope of its authority, unilaterally creates rights and obligations or affects the interests and subjective rights of the other party in the legal relationship – a citizen, organization or other authority. The parties to the administrative legal relationship are in an unequal relationship. These features of the subjects in administrative law are also valid for the legal relations in the administrative law regime of the air quality.

## § 2. Citizens and organisations as subjects of the administrative law regime of the air quality

In order to determine whether citizens and organisations are subjects of the administrative law regime of the air quality, the thesis examines whether they are holders of subjective rights under this regime. It asks whether positive law recognises the right to a healthy environment and the right to clean air.

According to the UN Human Rights Council's Special Rapporteur David Boyd, clean air is one of the "vital elements" in the right to a healthy environment, along with *"clean water, adequate sanitation, healthy and sustainable food, a safe climate and healthy biodiversity and ecosystems.*" In this sense, the right to a healthy environment encompasses the right of access to the different components of the environment that are relevant to the immediate needs of the human person. Such a component is clean air.

*Ergo*, the right to a healthy environment includes meaningfully the right to clean air.

The right to a healthy environment has evolved in close relation to human rights. The European Convention for the Protection of Human Rights and Fundamental Freedoms does not recognise the subjective right to a clean environment and the right to clean air. However, a significant number of decisions have taken shape in the case law of the European Court of Human Rights which find a violation of the right to life under Article 2, the right to home, private and family life under Article 8 as a result of environmental pollution and in particular as a result of air pollution. Thus, in *López Ostra v. Spain*, Application No. 16798/90, and *Pavlov and Others v. Russian Federation*, Application No. 31612/09, the Court held that air pollution violated the applicants' right to private and family life.

The subjective right to a healthy environment and the right to clean air are not recognised in a binding international instrument, nor in primary or secondary EU law. However, the international legal order and European law recognise environmental rights of a procedural nature which determine the content of the right to clean air.

In our national legal order, the Constitution of 1991 proclaims the right of citizens to a *"healthy and favourable environment in accordance with established standards and regulations"* (Article 55). In their jurisprudence, national courts have invoked this provision to affirm the application of the statutory rights of access to environmental information and access to justice to certain administrative acts of environmental management. The case law thus fails to recognise the scope of the right to a healthy environment under Article 55 of the Constitution beyond the environmental rights expressly articulated in statute.

The dissertation concludes that the right to clean air as content overlaps with the explicitly granted independent environmental rights, which are predominantly procedural in nature. At the international level, the Convention on Access to

Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the "**Aarhus Convention**") provides members of the public with the right to access environmental information, the right to participate in decision-making, and the right of access to justice in environmental matters. In the context of the administrative regime of the air quality, these rights can be understood as access to information on the air quality, the right to participate in decision-making on the management of the air quality, and the right of access to a court in respect of the assessment and management of the air quality.

Only the first pillar of the Aarhus Convention, which sets out the conditions for access to environmental information, has been fully transposed into our national legislation. The national legal framework does not provide conditions for the exercise of the right to participate in decision-making on the management of air quality and access to justice in relation to air quality assessment and management acts. This raises obstacles to the exercise in practice of the rights of those entitled.

The right to clean air has been further developed in the case-law of the CJEU. In a series of judgments, the ECJ has recognised the right of affected individuals and environmental NGOs to have access to justice in relation to air quality plans (*Commission v Germany,* C-59/89; *Janecek*, C-237/07; *ClientEarth*, C-404/13). When standards for the protection of human health are exceeded, Member States are obliged to draw up plan that include adequate measures to achieve the standards for harmful substances. The CJEU has held that *'(...) where the exceedance of a pollution standard is likely to endanger human health, the persons concerned must be able to rely on binding rules in order to be able to exercise their rights' (Commission v Germany,* C-59/89, para. 19).

Access to justice is a procedural right which does not in itself guarantee the achievement of a certain quality of environment. The right to a healthy environment, and

hence the right to clean air, can only be fulfilled in substance through substantive requirements such as air pollutant standards. In this sense, the AAQD that the air quality plans shall include *'appropriate measures so that the period of exceedance is as short as possible'* (Art. 23, par. 1, para. 2 AAQD). Broad access to justice, combined with clear requirements as to the content of the contested act and a link to the attainment of air pollutant standards, could ensure effective enforcement of the right to clean air.

In *Craeynest and Others (*C-723/17), the CJEU declared the right of access to a court in respect of acts which determine the location of sampling points. The administrative law regime of the air quality requires that these stations be located in the areas where the highest levels of pollutants are likely to occur. Violation of this requirement can lead to incorrect assessment of the air quality and underestimation of pollution, including "hiding" exceedances of air pollutant standards. For this reason, the CJEU stated that *'the very achievement of the objective of Directive 2008/50 would be impeded if the sampling points ... were not located in accordance with the criteria laid down by that directive'* (*Craeynest and Others*, C-723/17, paragraphs 47-49).

In 2022, the CJEU adopted a position that the provisions of the AAQD do not confer a right to compensation on private parties following breaches of human health standards under the principle of State liability for damages (*Ministre de la Transition écologique and Premier ministre,* C-61/21). The CJEU thus confirmed that such claims should be dealt with under national law. The Revised AAQD proposes a solution along these lines by providing for a special procedure for the treatment of such claims. Practice will show whether this legal framework will ease the procedure for proving air pollution damage and whether it will become an effective compliance mechanism.

The procedural rights of access to information on air quality, the right to participate in decision-making on air quality, and the right of access to justice over air quality assessment and management acts are a means of exercising the substantive right to clean

air enshrined in Bulgaria's Constitution of 1991. Currently, the courts in Bulgaria refuse to grant access to justice against air quality plans. This factual situation is a violation of applicable law. It does not detract from the fact that members of the public are holders of the right to clean air to the extent recognized by the sources of law, and are therefore subjects of the administrative law regime of air quality.

### § 3. Bodies with competence in the administrative law regime of the air quality

State authorities with powers in the administrative law regime of the air quality are subject to the law. They issue state acts that provide for measures to combat air pollution. Authorities with competence in the administrative regime of the air quality are those of the central executive and those with territorial competence.

The Council of Ministers has a standard-setting function in the field of air quality, exercising the legislative initiative in the drafting of primary standards on clean air. The 2018 amendments to the CAAA conferred on the Council of Ministers the power to approve the National Plan for the Improvement of the Air Quality. This has created a mechanism to coordinate local policies on improving air quality and to adopt national ones that have uniform application on the ground, including legislative initiatives.

The Minister for the Environment and Water, together with the Minister for Health, shall adopt by-laws setting out the standards for harmful substances in the air, the procedure for carrying out an assessment of the air quality and for achieving the standards for harmful substances. Although not explicitly spelled out, the applicable regulations lead to the conclusion that the Minister of Environment and Water determines the location of the sampling points for assessing air quality. Insofar as the legal framework does not confer the power to determine the location of the monitoring sites on another authority, it must be concluded that the Minister is empowered.

An amendment at the end of 2018 to the CAAA gave the Minister powers over the

management of the air quality. The Minister prepares a national plan on air quality which is submitted to the Council of Ministers for approval. This gives the Minister an entirely new function in relation to the management of air quality. The Minister now becomes the 'driver' of government policy in the management of air quality and the attainment of air pollutant standards, and must develop national policies in this area of management.

The main function of the Environment Executive Agency in relation to the air quality is to administer the National Environmental Monitoring System, which includes the air quality monitoring system. The power of the Executive Director of the Environment Executive Agency to issue permits for the operation of industrial installations, which regulate the conditions for air emissions, is of direct relevance to the air quality and the attainment of air pollutant standards.

The link between the achievement of the objectives of the administrative law regime of the air quality and the conditions for the operation of industrial installations was confirmed by the ECJ in the judgment in *Sdruzhenie "Za Zemyata – dostap do pravosadie" and Others*, C-375/21. The CJEU held that where a standard of harmful substances is exceeded in the area of influence of an industrial installation, when setting the conditions for its operation the competent authority must take into account pollution abatement measures under the relevant air quality plan. This judgment of the CJEU clearly outlines the relationship between the administrative regime of the air quality and the regime of integrated pollution prevention and control, the implementation of which is primarily the responsibility of the Executive Environment Agency.

At present, the administrative law regime on air quality in Bulgaria does not provide for mechanisms to ensure the link between the measures in municipal air quality plans and permits for the operation of industrial installations. This calls for a change in the national legal framework to provide for coordination between the two regimes in

order to ensure compliance with the objectives of the legislation and protection of human health and the environment.

At the local level, powers in the field of air quality are vested in the mayor of a municipality, the municipal council and the director of the Regional Inspectorate for Environment and Water ("**RIEW**").

The mayor of the municipality prepares a draft air quality plan. The municipal air quality plans are the main administrative act in our national legislation for management of air quality. Although not explicitly stated by the legislation, it can be concluded that the mayor has a similar duty to develop a short-term action plan.

Amendments to the CAAA in early 2019 call into question the mayor's authority to stop and restrict manufacturing activities whose air emissions pose a risk to human health. The logic of the statutory regime on the air quality compels the conclusion that the mayor has this authority. The mayor is responsible for the implementation of municipal air quality plans, and with the amendments to the CAAA from the beginning of 2019, the reduction of pollution levels within the municipality is attached to his personal administrative responsibility. Accordingly, the CAAA should also confer proportionate powers on the mayors for the management of air quality in accordance with their duties and responsibilities.

The municipal council is the body that determines the measures to combat pollution – the municipal air quality plans and low emission zones. By analogy, the municipal council should also adopt an operational action plan to be implemented when there is a risk of exceedances of pollutant standards.

The Director of the Regional Inspectorate of Environmental Protection has many powers in the management of the air quality. He is involved in the preparation of the municipal air quality plan and short-term action plans and exercises control over sources of air pollution. He oversees the implementation of the air quality plans and implements

the mayor's administrative responsibility in case of violation of his obligations to adopt and implement municipal air quality plans.

The Council for the Assessment and Management of Air Quality plays an active role in the preparation and implementation of municipal air quality plans. An analysis of the functions assigned to the council shows that it is not an administrative body, but has an advisory and expert role to assist the mayor of a municipality in the preparation of the air quality plans. The regulatory framework on the structure and powers of this council reveals many weaknesses. The dissertation proposes normative changes that would have a positive role in achieving the objectives of the administrative law regime of the air quality.

Bulgarian legislation provides for a high degree of decentralisation in the management of the air quality. The reason for this can be sought at two levels. Local authorities know the specifics of pollution, local natural features and are therefore best placed to make management decisions. Secondly, they are closest to the population, which, on the one hand, suffers the negative consequences of excess pollution and, on the other, implements pollution reduction measures. Decentralisation in the fight against air pollution can be interpreted as a strengthening of local self-government in this area. Local self-government in the field of air pollution would be further strengthened if the above-mentioned acts are adopted under conditions that ensure timely and effective public participation in decision-making.

## Chapter Three: Administrative acts and control in the field of air quality

### § 1. Administrative acts in the field of air quality

Administrative acts (decisions) are the main manifestation of executive activity. Of practical importance for the application of the administrative law regime of the air quality is the division of acts into individual, general and normative acts depending on the specificity of the persons concerned, as well as their division into acts with external and internal effect.

The application of individual administrative acts in the field of air quality is relatively limited. Individual administrative acts are the decisions which restrict the activities of industrial installations upon significant risk to human health and the environment. These acts have individually identified addressees – the operators of the industrial activities concerned.

Many of the decisions for the assessment and management of air quality have the characteristics of general administrative acts. These are the decisions for determining the location of the sampling, the air quality plans and the short-term action plans. The reason for this is rooted in the specific object in respect of which the legal relations in this sphere of state management arise – ambient air. Petko Stainov points out that the air in the atmosphere is a necessary environment for the existence of man, flora and fauna. Outdoor air is common to all people who are in a certain territory. Because of this commonality of the object of regulation, some of the decisions for assessment and management of the air quality do not specify the rights and obligations of individual citizens and organizations. These acts have an impact on an unspecified range of persons – all persons who breathe air of a certain quality in a given territory.

These acts have a one-time effect. The air quality plans have effect until the

standards for a given pollutant have been reached and the short-term action plans – until the risk of exceeding the standards for pollutants has passed.

An analysis of the regulatory framework supports the view that the location of the sampling points is determined by a specific administrative decision, which has the characteristics of a measure of general nature. The CJEU confirmed that national authorities act '*within their discretion*' when determining on the location of sampling points (*Craeynest and Others*, C-723/17, para. 44). In this situation, the authority will have to consider which decision is more efficient, useful and economically justified in terms of the national and public interest. The reasons why one of several possible lawful solutions has been chosen should be set out in the reasons for the act. In addition, the right of the persons concerned to challenge the choice of the location of the sampling points before a court could be fully guaranteed by an administrative decision setting out the facts and scientific evidence on the basis of which the authority made its decision.

The regulations that set the standards for harmful substances in the air, the assessment and management regime of the air quality and the acts for the introduction of low emission zones are subordinate by-laws. Through the former, the administrative and legislative regime of the air quality is developed at the sub-legislative level. The second sets out rules for the operation of low emission zones and may contain rules to limit pollution from traffic or domestic heating.

The dividing line between acts subject to judicial review and internal acts is the action outside the administration, towards citizens and organisations. This thesis maintains that citizens and organisations are the holders of the right to clean air to the extent recognised by current sources of law. In view of this conclusion, the dissertation takes the position that decisions for selection of the location of sampling points, air quality plans, short-term action plans and low emission zones are acts of external effect. Those acts have a direct bearing on the air quality in a locality and therefore affect the

legal sphere of persons living or residing in that locality. On that basis, those acts cannot be treated as 'internal administrative workings' and must be subject to the appropriate procedure for issuing and challenging them in court.

The current national legislation does not provide for specific rules on public participation in the preparation of the national and municipal air quality plans and the operational action plans. The application of the procedure for issuing general administrative acts under the Administrative Procedure Code does not fully ensure compliance with the conditions for public participation under the Aarhus Convention and EU law.

Contrary to the position of the national courts, air quality plans are external in nature and affect a wide range of persons who bear the consequences of polluted air. An analysis of the applicable legal framework and CJEU case-law shows that, for the most part the decisions for assessment and management of the air quality are measures of general nature, with low emission zones being introduced on a long-term basis by means of municipal council by-laws. In order to safeguard the rights of the persons concerned and the proper implementation of the administrative regime of the air quality, the legal framework should be supplemented by providing for conditions for public participation in the process of drawing up the act and for its timely publication.

**§ 2. Control in the management of the air quality**

Although the applicable standards for harmful substances in the air allow for significantly higher pollution levels than the WHO recommendations for the protection of human health, in Bulgaria and in the EU systematic violations of these standards continue to be reported. The European Commission notes that EU citizens are exposed to *"widespread and persistent excess concentrations"* of PM, nitrogen dioxide, benzoaporene and ozone. In Bulgaria, a high percentage of 30.85% of the population lives with excessive levels of PM pollution$_{10}$ , and exceedances of the standards for

sulphur dioxide, nitrogen dioxide and benzo(a)pyrene are consistently reported at individual locations in the country

The main means of ensuring legality in state governance is control. The theory distinguishes three main functions of control: ascertaining (clarification of the factual situation); evaluating (comparison of the factual situation with the set objectives and evaluation of the controlled activity), and resulting (taking measures for impact).

Following an exercise of control and an infringement detected, the competent authorities may take sanction measures. The CAAA provides for administrative liability for a mayor of a municipality who fails to fulfil his/her obligations to develop and implement municipal air quality plans. These types of administrative offences are intended to ensure the proper implementation of the administrative law regime on air quality and their implementation is a consequence of the control exercised.

The main objective of the administrative regime of the air quality is to protect human health and the environment. To this end, air pollutant standards have been adopted to prevent or limit harmful effects on the health of the population and the environment. Although they do not guarantee the necessary protection of human health and the environment as recommended by the WHO, the air pollutant standards are the measure of protection which the current law adopts and makes binding. For this reason, this dissertation focuses on the means of control that aim to comply with the standards. Such means can be distinguished at EU level, at international level and under national law.

Over the last decades, Bulgaria has reported systematic and persistent exceedances of standards for some widespread pollutants. This was the reason for the European Commission to launch infringement procedures against our country. In two of these proceedings, the CJEU found that Bulgaria was in breach of the country-wide standards for particulate matter$_{10}$ (*Commission v Bulgaria*, C-488/15) and the standards for sulphur

dioxide in the area of the town of Skopje. The European Commission has also issued an opinion on the EU's sulphur dioxide standard in Bulgaria (*Commission v Bulgaria,* C-730/2019). In 2021, the European Commission brought an action against Bulgaria to impose a financial penalty for non-compliance with the CJEU's decision in the case C-488/15 concerning Bulgaria's violation of the $PM_{10}$ limit values. In 2023, the CJEU dismissed the Commission's action as inadmissible due to procedural irregularities (*Commission v Bulgaria,* C-174/21.) Despite the ongoing exceedances of the $PM_{10}$ limit values in many cities, the Commission has not taken any new action against Bulgaria to date.

The possibility for members of the public to address communications to the Aarhus Convention Compliance Committee could be considered as a means of monitoring Bulgaria's commitments under the administrative law regime of the air quality at the international level. The findings and recommendations of this Committee that find a violation of the Aarhus Convention are subject to a compliance mechanism.

Practice shows that the application of the means of control at European and international level can take a long time and have a limited effect. Recognition of breaches of the administrative regime of the air quality by the EU institutions and the Aarhus Convention Compliance Committee, however, can be a strong lever for the application of the means of civil control. Citizen control is a means of securing legality in government on its own merits.

Bulgarian law does not explicitly confer the power to achieve and comply with the air pollutant standards on a specific authority. On the basis of an analysis of the powers in the field of the air quality, the national courts have held that in the territory of a municipality the mayor and the municipal council are obliged to ensure the attainment of air pollutant standards. In view of these specificities, the thesis examines three groups of means of control in the field of air quality: (i) control against legislative subordinate regulations and against administrative non-normative acts; (ii) control against the

implementation of administrative acts in the field of air quality; and (iii) administrative criminal liability in the field of air quality.

The dissertation concludes that the only effective control mechanism that can ensure the legality of both regulatory and non-regulatory acts in the field of air quality is judicial review. However, the obstacles to access to justice for those affected effectively close the way to this means of review.

The lack of effective means of control is a major reason why the competent authorities fail to fulfil their legal obligations, preventing a reliable assessment of the air quality and the adoption of ambitious and effective measures to combat air pollution. Access to justice for citizens and their organisations would play a key role in the enforcement processes of clean air legislation. Citizens are not just victims of failed management decisions. By exercising their rights, they create a strong instrument for controlling the acts of the administration. As seen in the experience of many EU countries, the judiciary can be a driving force in the implementation of Community law, obliging institutions to adopt effective decisions, even if they are unpopular and costly. In this sense, the refusal of national courts to allow those affected by excess air pollution into the courtroom is both a denial of justice and a limitation of the means of controlling the acts of the administration. The revised AAQD includes provisions for access to justice in clean air matters, which will force the Bulgarian legislature to address these issues legislatively in the years to come. There remains the question of the culture of "gridlock" in state government on environmental issues that is perpetuated by the courts.

## Conclusion

The Constitution of the Republic of Bulgaria of 1991 proclaims the right to a healthy and favourable environment. As one of the components of the environment, the

ability to breathe clean air is a derivative of this right.

Current mandatory standards allow levels of pollution that significantly exceed WHO recommendations for protecting human health. European legislation provides for mandatory standards to be brought into line with the recommendations by 2030, but backslides from the ambition by providing for options to delay compliance until 2035 or 2040.

Bulgaria is the country with the dirtiest air in the EU. The high cost of pollution has a financial cost in terms of health and social services, but also a moral cost, which we pay with our poor health and personal limitations. However, Bulgaria shows little ambition in the battle against dirty air. The regulatory framework is inconsistent and opens up opportunities for errors in enforcement. It is a practice that the main instrument for reducing pollution, municipal air quality plans, are adopted formally without reflecting a real management vision.

To a large extent, these shortcomings can be overcome through regulatory changes. In view of the forthcoming transposition of the European legislation, the Bulgarian legislator will have the opportunity to amend the overall concept of this sphere of state governance by including effective mechanisms for the protection of the rights of the public. Reliable and timely information on air quality is key both in prevention and in the battle against dirty air. Timely provision of up-to-date pollution information in a proactive manner will enhance the culture of personal prevention in the community and assist municipal authorities to develop flexible and effective pollution prevention policies.

Public participation in environmental decision-making is a prerequisite for improving the quality of the final act and its implementation. Broad access to justice provides protection for citizens, but also strong mechanisms for monitoring compliance with legislation. It is access to justice for affected individuals that has been the driving force behind European legislation on air quality and has forced the competent authorities

in many countries to take effective action to combat pollution.

The proposals set out above require a rethink of the national legal framework and the governance approach applied so far. The need to improve urban air quality as quickly as possible should not be seen as an imposed bureaucracy or a procedural requirement. Clean air is a basic human need and a right recognised by our Constitution, and its achievement must be prioritised accordingly in the governance of our country.

## III. MORE SIGNIFICANT CONTRIBUTIONS IN THE DISSERTATION WORK

1) It is proposed to introduce a common concept of "standard of harmful substances in ambient air", which would unite the different types of maximum permissible concentrations under the current legislation. This approach is intended to facilitate law enforcement and doctrinal research on this matter.

2) The national legal framework for air quality is found to create scope for uncertainties in enforcement. In view of the forthcoming transposition of the revised AAQD, it is *de lege ferenda* recommended to consolidate the current regulatory framework into a single regulation reflecting European legislation, with citizens' rights and other legal relations subject to permanent regulation being regulated in the CAAA.

3) Interpretation of ambiguities in the national legal framework regarding the powers of the Minister of Environment and Water, the mayor of a municipality and the municipal council in relation to the assessment and management of the air quality.

4) The legal characteristics of the administrative acts for the assessment and management of the air quality are assessed. The conclusion is drawn that the acts on the selection of the location of the sampling points, the air quality plans and the operational action plans are general administrative acts.

5) It is confirmed that the choice of the location of the sampling points should be made by adopting a general administrative act.

6) It is established that the procedure for the adoption of general administrative procedures under the Administrative procedure Code does not meet the standards for public participation under the Aarhus Convention and EU law. This calls for the adoption of additions to the national legal order to ensure conditions for public participation in the adoption of the air quality plans and short-term action plans in accordance with the standards of the Aarhus Convention and EU law.

7) It is concluded that the only effective control mechanism that can ensure the legality of both regulatory and non-regulatory acts in the field of air quality is judicial control. In view of the current obstacles to access to justice in the field of air quality, recommendations for regulatory changes are made.

## IV. SCIENTIFIC PUBLICATIONS RELATED TO THE TOPIC OF DISSERTATION WORK


1. What administrative acts are the air quality programmes? - De Jure, 2019, № 2.
2. What has the judgment in Case C-375/21 of the Court of Justice of the European Union changed in the permitting procedures for industrial installations?, De Jure, 2024, No. 1.
3. Who has the say on measures to reduce air pollution? - Legal Review, 2018, № 01, pp. 90-102.