KLIMATICKÁ ŽALOBA

This is the unofficial translation of the judgment of the Municipal Court in Prague of 15 June 2022 on an action brought by the Czech Climate Litigation and other applicants for protection against unlawful interference by the defendants in failing to provide adequate and necessary mitigation and adaptation measures to protect against the adverse effects of climate change. You may find the Czech original here and the press release in English here.

Citation: Judgment No. 14A 101/2021 of the Municipal Court in Prague from 15 June 2022

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The Czech Republic

JUDGMENT

On behalf of the Republic

The Municipal Court in Prague, composed of the President of the Chamber, Karla Cháberová, and the Judges Štěpán Výborný and Jan Kratochvíl in the case

Applicants:

a) **Klimatická žaloba ČR, z. s.**,

with registered office at V Šáreckém údolí 54, Prague 6

b) **Ing. J. F.**

residing in H.

c) **L. F.**

residing in H.

d) **P. Š.**

residing in P.

e) **K. A. S.**

residing in P.

f) **Municipality of Svatý Jan pod Skalou**, ID No: 005 09 825,

registered office Svatý Jan pod Skalou 6,

g) **Czech Ornithological Society - South Moravian Branch**,

ID No: 653 53 391,

registered office Lidická 25, Brno

all represented by attorney Mgr. Pavel Černý,

residing in Údolní 33, Brno

versus

Defendants:

1) **the Government of the Czech Republic**,

Registered office at the Embankment of Edvard Beneš 4, Prague 1

2) **Ministry of the Environment**,

Registered office at Vršovická 65, Prague 10

3) **Ministry of Industry and Trade**,

Na Františku 32, Staré Město

4) **Ministry of Agriculture**,

Headquarters: Těšnov 17, Prague 1

5) **Ministry of Transport**,

Headquarters: nábřeží Ludvíka Svobody 12, Prague 1

on an action for protection against unlawful interference by the defendants consisting in the failure to provide adequate and necessary mitigation and adaptation measures to protect against adverse effects of climate change

as follows:

I. The action against the Government of the Czech Republic is rejected.

II. In the action against the Government of the Czech Republic, neither party is entitled to compensation for the costs of the proceedings.

III. Interference by the Ministry of the Environment, the Ministry of Industry and Trade, the Ministry of Agriculture and the Ministry of Transport, consisting in the failure to provide specific mitigating measures leading to a 55 % reduction in greenhouse gas emissions by 2030 compared to 1990 levels is unlawful.

IV. Defendants the Ministry of the Environment, the Ministry of Industry and Trade, the Ministry of Agriculture and the Ministry of Transport are hereby enjoined from continuing to interfere with the applicants' rights by failing to set out specific mitigation measures to reduce greenhouse gas emissions by 55 % by 2030 compared to 1990 levels.

V. The action is dismissed insofar as it relates to the failure to implement sufficient adaptation measures.

VI. The Ministry of the Environment, the Ministry of Industry and Trade, the Ministry of the Ministry of Agriculture and the Ministry of Transport are ordered to compensate the applicants jointly and severally the costs of the proceedings in the amount of CZK 111 549 within one month of the final judgment to the applicants' representative, Mgr. Pavel Černý, attorney.

Reasons:

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I. Definition of the Matter [1]

1. By the present action, the applicants seek protection against the defendants' alleged continuing unlawful interference in the form of executive inaction in the field of climate protection. The interference should have commenced no later than 4 November 2017, when the Czech Republic became a party to the Paris Agreement. According to the applicants, this inaction permeates the defendants' overall approach to climate change, namely setting the objectives of the relevant strategic documents, drafting subsidy policies, proposing relevant legislation, guiding administrative practice and, in the case of the Government, managing, coordinating and controlling the activities of ministries and other central government bodies. The applicants argued that the defendants breached the obligation to take sufficient measures

to reduce greenhouse gas emissions ('mitigation measures') and the obligation to take sufficient measures to adapt the population, the economy and the environment to the effects of climate change ('adaptation measures'). As a result of the defendants' failure to act, the right to a favourable environment of all the applicants should have been infringed. In addition, the individual applicants should have been deprived of their right to life and health, their right to private and family life, their right to property, their right to engage in economic activity and their right to self-government.

II. Arguments of the parties [2-156]

A) Arguments of the applicants [2-29]

2. The applicants have brought an extensive five-part application. In the preamble, the applicants pointed out that dangerous climate change consists of a global temperature increase of more than 1.5 °C above pre-industrial levels by the end of the 21st century and can only be prevented by radically reducing greenhouse gas emissions by 2030. Every country must do its part to reduce greenhouse gas emissions. According to the applicants, this approach has been proven by national courts around the world, e.g. the judgment of the Supreme Court of the Netherlands of 20 December 2019 in the Urgenda case ("the Urgenda judgment"); the judgment of the Supreme Court of Ireland of 31 July 2020, Case No. [2020] IESC 49, in Friends of the Irish Environment v. Government of Ireland and Others; the judgment of the Administrative Court of Paris of 3. 2. 2021, Nos. 1904967, 1904968, 1904972 and 1904976/4-1, in the Affaire du siècle case; the judgment of the Supreme Court of Nepal of 25 December 2018, No. 10210, in the Shrestha v. Office of the Prime Minister and Others case; or the judgment of the Supreme Court of Colombia of 4 April 2018, in the Future Generations v. Ministry of Environment and Others case.

3. In the introduction to Part Two, the applicants described the annexes to the Application. The assessment entitled Climate Change Impacts in the Czech Republic (January 2021), by N. van Maanen, E. Theokritoff, I. Menke and C.F. Schleussner, of the research organisation Climate Analytics (hereinafter 'the Climate Analytics report'), the applicants documented the current and expected impacts of climate change in the Czech Republic. The report Expected Impacts of Climate Change in the Czech Republic (February 2021), by J. Zamouřil (hereinafter "Climate Change Impacts Report"), summarizes the findings of the Comprehensive Study of Impacts, Vulnerability and Sources of Risks Related to Climate Change in the Czech Republic. Assessment Quantifying the Impacts of the Paris Agreement for the Czech Republic (January 2021), by K. Anderson and D. Calverley, Tyndall Centre - University of Manchester ("the University's Assessment"), sets out a carbon budget for the Czech Republic, which the Claimants argue is necessary to assess whether the State's current strategies achieve the objectives of the Paris Agreement. The applicants also submitted a summary of the Global Warming Special Report of 1.5 °C (2018) issued by the Intergovernmental Panel on Climate Change ("IPCC Report"), which describes the impacts of dangerous climate change.

4. In the third part, the applicants dealt with standing in the interference action under Section 82 of the Code of Administrative Justice. The applicants considered that they had

standing to bring an action for interference because they claimed, in the same manner, that their right to a favourable environment under Article 35(1) of the Charter of Fundamental Rights and Freedoms ('the Charter') had been infringed as a result of the defendants' executive failure to act, which they specifically set out in the fourth part of the application. The applicants explained that, under Article 41(1) of the Charter, that right could only be invoked within the limits of the implementing laws. However, if there is an interference with the essential core of the right to a favourable environment, then individuals may seek protection against such interference independently of the legislative regulation of that right (Constitutional Court ruling of 20 May 2008, Case No. Pl. ÚS 1/08, Constitutional Court Resolution of 5 January 2011, Case No. II ÚS 2446/10).

5. The applicant, Klimatická žaloba ČR, z.s., ("Czech Climate Litigation") further stated that its aim is the protection of nature and the landscape, in particular the fight against climate change, and for this purpose it brings together 218 natural persons. According to the ruling of the Constitutional Court of 30 May 2014, Case No I.ÚS 59/14, associations supporting environmental protection have the right to seek review before the administrative courts of the substantive and procedural aspects of decisions, acts or inaction of administrative authorities relating to environmental protection. According to the Czech Climate Litigation, the local link of the association to the locality in question was also fulfilled, since climate change has a nationwide impact (judgment of the Supreme Administrative Court of 28 February 2020, no. 6 As 104/2019-70).

6. The applicants (b), (c), (d) and (e), who are natural persons, also alleged an interference with the right to life under Article 6 of the Charter and Article 2 of the European Convention on Human Rights ('ECHR'), the right to health under Article 31 of the Charter, and the right to private and family life under Article 10 of the Charter and Article 8 of the ECHR. The applicant (e) substantiated his deteriorated mental state by a psychological examination report of 27 January 2021, issued by a clinical psychologist and forensic expert in the field of health, PhDr. A. S.

7. Applicants (b), (c), (d) and the Czech Ornithological Society - South Moravian Branch claimed that they had been interfered with in respect of their right to property under Article 11 of the Charter and their right to carry out economic activity under Article 26 of the Charter. Applicants (b) and (c) farm 7 hectares of their own land and 3.5 hectares of rented land, and are faced with a lack of water in the landscape, which leads to a reduction in agricultural production, a reduction in the frequency and quality of mowing, damage to fruit trees, and a loss of water in wells. Claimant (d) is a member of a family farm within the meaning of Section 700 of Act No 89/2012 Coll., Civil Code ('the Civil Code'), which includes land designated for the forest function under Act No 289/1995 Coll., on Forests ('the Forest Act'), with a total area of 21.68 ha. Between 2014 and 2019, due to climate change, there has been an increase in the incidence of forest pests that cause significant damage to forests. The applicants support their claims with self-declarations and photographic documentation. The Czech Ornithological Society - South Moravia is also the owner of 0.34 ha of land intended to fulfill a forest function. In its forest, it strives for lower tree cover, a higher proportion of trees from natural regeneration, etc., but encounters the fact that the forest law and state policy in the field of

agriculture and forestry do not support this type of management. The applicants summarize that the illegal interference has reduced the economic and environmental value of the forest land.

8. The municipality of Svatý Jan pod Skalou claimed a reduction in the right to property and the right to local self-government under Article 8 of the Constitution. The municipality owns 9.2 ha of forest land. According to a statement by the mayor of the municipality dated 14 February 2021, there is a loss of drinking water in wells and springs in the municipality, drying of mature trees and their greater susceptibility to damage by forest pests, deterioration of the accessibility of hiking trails, erosion of steep slopes, frequent tree falls, loss of biodiversity and the presence of protected species of plants and animals. The municipality is unable to properly care for the all-round development of its territory and the needs of its citizens within the meaning of Section 2(2) of Act No 128/2000 Coll., on Municipalities (hereinafter referred to as 'Municipalities Act').

9. The applicants stated that the interference is ongoing and therefore the subjective or objective time-limit for bringing an interference action under Section 84 of the Code of Administrative Justice cannot expire (judgment of the Supreme Administrative Court of 26 June 2013, no. 6 Aps 1/2013-51, paragraph 22).

10. The applicants submitted that the defendants are acting in the position of administrative authorities when interfering with the applicants' rights because they exercise their powers under Act No 2/1969 Coll. on the establishment of ministries and other central state administration bodies ('the Competence Act'). The Ministry of the Environment ('MoE') is the central authority of the State administration for State ecological policy, protection of air, natural accumulation of water, agricultural land and environmental impact assessment. The Ministry of Industry and Trade ('MIT') is responsible for the exploitation of mineral resources, energy and heating, which are the main sources of greenhouse gas emissions. The Ministry of Transport ('MoT') manages transport and is responsible for the development and implementation of national transport policy. The Ministry of Agriculture ('MoA') is responsible for water management, agriculture and forest protection, i.e. environmental components of particular relevance for climate change adaptation. The Government of the Czech Republic has a coordinating and unifying function in relation to the objected interventions pursuant to Section 28(1) of the Competence Act.

11. In the fourth part of the application, the applicants set out the defendants' obligations and then set out how the defendants are failing to fulfil those obligations. The applicants first dealt with the assessment of mitigation and then adaptation measures.

Insufficient mitigation [12-19]

12. The applicants submit that the defendants' obligations derive directly from the guaranteed human rights, from Section 11 of Act No 17/1992 Coll. on the Environment ('the Environmental Act'), Articles 2, 3 and 4 of the Paris Agreement, and the preamble and Article 3 of the United Nations Framework Convention on Climate Change ('UNFCCC'). Section 11 of the Environmental Act provides that the territory must not be burdened by human activities beyond

the level of a reasonable load. According to Section 5 of the Environmental Act, a tolerable load is a load of human activity on the territory which does not cause damage to the environment beyond the level set by special regulations. Such a special regulation, according to Section 8(2) of the Environmental Act, is the Paris Agreement, to which the Czech Republic became a party on 4 November 2017. It is a self-executing international treaty under Article 10 of the Constitution. The Paris Agreement sets out in Article 2(1)(a) the objective of keeping the increase in global average temperature well below 2 °C above pre-industrial levels and efforts to ensure that the temperature increase does not exceed 1.5 °C. According to Articles 3 and 4 of the Paris Agreement, Parties have an obligation to contribute to the achievement of the Agreement's objective and to strive to peak greenhouse gas emissions as soon as possible. The defendants are also subject to the duties of prevention and precaution under Sections 13 and 9 of the Environmental Act.

13. The applicants have assessed whether the measures taken by the defendants are consistent with the national carbon budget, which represents the total amount of anthropogenic greenhouse gas emissions for the remainder of the 21st century that can be emitted into the atmosphere in the territory of the country in order to avoid exceeding the required level of global warming. The carbon budget for the Czech Republic was calculated by scientists at the University of Manchester in their assessment. The domestic carbon budget, according to pages 3 to 4 of the university's report, is 1 100 Mt CO2 from January 2018 and 800 Mt CO2 from January 2021. The scientists conclude from these figures that in order to keep warming below 2 °C, the Czech Republic would have had to start reducing greenhouse gas emissions at a rate of 8.3% per year immediately after the Paris Agreement was adopted, but this has not happened. Maintaining the carbon budget from 2021 onwards would require an 11.4% annual reduction in CO2 emissions until 2050. The later the defendants start reducing emissions, the steeper the decline will have to be. Meanwhile, under the Preamble and Article 3 of the UNFCCC, it is not decisive that the country's contribution is not significant on a global scale; the court must have jurisdiction to assess whether there is a proportionate reduction in national emissions independently of other states (United States Supreme Court, Massachusetts v. EPA, 549 U.S. 497 [2007]; Supreme Court of the Netherlands, Urgenda, at 5.7.7).

14. The State's main strategic document in the field of climate change mitigation is the Climate Protection Policy for the period 2017-2030 with a view to 2050 ("Climate Protection Policy"/“Politika ochrany klimatu” or "POK"), which was adopted by Government Resolution No. 207 of 22 March 2017 and is binding on all Defendants pursuant to Section 21 of the Competence Act. The graph on page 6 of the University's report shows that the objectives of the Climate Protection Policy are far from being compatible with the obligations under the Environmental Act and the Paris Agreement, as the projected emissions trajectory under the Climate Protection Policy will lead to a much higher absolute amount of CO2 emissions than the carbon budget for the Czech Republic allows for by the end of the century. Cumulative CO2 emissions under the Policy are approximately two and a half times higher than the carbon budget. A deviation from the required emissions curve could be accepted if the Defendants

had a concrete plan to compensate for the carbon budget overrun to date. However, no such plan exists.

15. Some of the measures contained in the Climate Protection Policy are not fit for purpose, such as the introduction of a carbon tax on entities that are not part of the emissions trading scheme (Measure 1A, p. 35), or the development of a law to reduce reliance on fossil fuels (Measure 5A, p. 36). Both of these measures are worded in such a way that all that is required for Defendants to comply with them is to submit an impact assessment of the subject legislation by a certain date. Climate protection policy does not impose an obligation to actually implement these measures. It is clear from the MoE's statement that there are no plans to introduce a carbon tax.

16. The objectives of the Climate Protection Policy are not sufficiently implemented (cf. the assessment by NGOs), they are only subsequently adopted in other conceptual documents of the state, which are therefore also not capable of reducing greenhouse gas emissions. These include in particular the National Energy and Climate Plan approved by Government Resolution No. 31 of 13 January 2020 (pp. 11-12); the National Emission Reduction Programme, as amended by Government Resolution No. 917 of 16 December 2019 (p. 69); the State Energy Concept, as amended by Government Resolution No. 362 of 18 May 2015 (p. 133). The new State Environmental Policy of the Czech Republic 2030 with a view to 2050 (approved by Government Resolution No. 1026 of 23.11.2020) envisages only a reactive approach by the Defendants to adapt national strategic documents to the future requirements of European legislation.

17. In addition to insufficient emission reduction targets in the energy sector, the State Energy Concept envisages emissions of around 70 Mt of greenhouse gases from the energy sector in 2040 and a 56 % dependence on fossil fuels. However, by this time the Czech Republic should be on its way to climate neutrality (2050) and GHG emissions should be between 10-30 Mt for the whole economy. Moreover, the National Energy Concept is not being implemented. The Report on the Implementation of the Instruments of the State Energy Concept of December 2019 shows that malus for low-efficiency condensing coal-fired electricity were not secured as soon as possible. Similarly, the MoT's measures in the transport sector are also inadequate. The National Clean Mobility Action Plan (2019 update) adopts the inadequate targets from the Climate Protection Policy.

18. The Supreme Audit Office ([Nejvyšší kontrolní úřad], NKÚ) stated in the audit conclusions of Action No. 18/22 that the audited ministries (MoE, Ministry of Finance, MoT) have not prepared effective and efficient tax measures significantly supporting the implementation of the climate and energy policy objectives; public motivation to reduce energy consumption and to switch to cleaner energy sources is low in the tax area, which is particularly evident in the transport sector; and the ministries have not proposed amendments to the existing legislation. The NKÚ pointed to the OECD's assessment of the implementation of the UN Sustainable Development Goals strategy, which shows that climate change measures are the worst rated.

19. The applicants concluded that the defendants had failed to fulfil their positive obligation to protect the applicants from the effects of excessive environmental damage (judgment of the European Court of Human Rights ('ECtHR') in Fadeyeva v Russia, Application No 55723/00; judgment of the ECtHR in López Ostra v Spain, Application No 16798/90), which arises from the applicants' constitutionally guaranteed rights, the Environmental Act and the Paris Agreement. Neither the strategy documents nor the defendants' actual actions correspond to their Defendants' obligation to prevent dangerous climate change. The applicants consider that judicial review of conceptual policy documents affecting human rights is possible (Judgment of the Berlin Administrative Court of 31 October 2019, Case No. 10 K 412/18).

Insufficient adaptation [20-28]

20. The applicants pointed out that the defendants are obliged by Article 7 of the Constitution, the protection of human rights, Section 9 of the Environmental Act and Article 7(2) of the Paris Agreement to take measures to adapt to climate change. According to Section 2 of the Environmental Act, the environment is everything that creates the natural conditions for the existence of organisms, including man, and is a prerequisite for their further development. Therefore, environmental protection should aim primarily at making the environment habitable for humans.

21. The defendants, in particular the Ministry of the Environment and the Ministry of the Agriculture, have an obligation under Section 11 of the Environmental Act to prevent the burdening of the territory beyond the level of a tolerable load, which, according to Section 8(2) of the Environmental Act, means a state in which there is no pollution of the environment by human activity beyond the level established by special regulations. For adaptation to climate change, there is no specific regulation that sets a binding limit on the values that climate change affects, e.g. limits on the minimum amount of water in different soil layers. There are only qualitative obligations to protect the various components of the environment, e.g. Sections 5 and 23a of Act No 254/2001 Coll. on water ('the Water Act'). However, the lack of a quantitative legal limit does not exclude the defendants' obligation to respond to climate change. The limits of environmental damage are fundamental rights guaranteed by the Charter and the ECHR. Although review of the existing adaptation measures is made more difficult by the lack of specific pollution limits, the inadequacy of the defendants' adaptation measures is so obvious as to leave no doubt as to the breach of the duty under section 11 of the Environmental Act.

22. The obligation to adapt under the Environmental Act and the Paris Agreement is primarily an obligation to achieve a certain result. It is for the defendants to decide what means they choose to achieve that end. The defendants have the burden of proof as to whether the duty of care has been met (ECtHR, Fadeyeva v. Russia, paragraphs 128-133; Dubetska and Others v. Ukraine, Application No. 30499/03, paragraph 155; Cordella v. Italy, paragraph 161).

23. The main strategic documents in the area of adaptation are the Strategy for Adaptation to Climate Change in the Czech Republic (2015) and the National Action Plan for Adaptation to Climate Change (2015), which was adopted to implement the Strategy and contains sector-

specific targets. The MoE, in the evaluation of the implementation of the National Action Plan for Adaptation to Climate Change from the end of 2019 (hereafter referred to as the "NAP AZK Assessment"), stated that a number of measures are not sufficiently implemented.

24. Another important document is the Concept for drought protection for the territory of the Czech Republic (2017), which is issued by the MoA. According to the report of the inter-ministerial Water-Drought Commission on the progress in the implementation of this concept, although partial measures are being implemented, there is not sufficient progress in the implementation of the strategic objectives of the concept. The second update of the national river basin plans and sub-basin plans for the period 2021-2027 is currently under preparation. For the preparation of the river basin plans, the MoE and MoA published a Preliminary Overview of Significant Water Management Issues in December 2019, identifying drought and floods as a significant water management issue in only one of the ten sub-basins.

25. The agricultural policy and the way financial support is distributed are set incorrectly by the MoA. The current set-up of agricultural support does not limit the size of fields and their structure in any way, e.g. through the amount of landscape features (woods, watercourses, wetlands) per unit area. The Ministry of Agriculture thus encourages farming on large areas at high rates of soil extraction and the cultivation of so-called first-generation biofuels, which leads to a loss of biodiversity, water contamination and loss of natural fertility. Increasing the water retention capacity of the landscape is one of the most important adaptation measures.

26. The forestry strategy of the Government and the MoA is also flawed. The cultivation of monocultures of the same age and prone to calamities still prevails. Monocultures damage forest land and cause the extinction of many animal species. Strategies of MoA do not sufficiently promote nature-friendly forestry practices, which are more suitable for climate-disrupted systems. The natural function of forests is to sequester greenhouse gases. The National Report of the Czech Republic submitted to the UNFCCC shows that in 2018, Czech forests produced 10% of all GHG emissions in the country due to extinction.

27. While Defendants officially prepare various adaptation strategies, they do not follow them. They are content with stating that the targets have not been met and then rewriting those targets in a strategy for a new period and repeating the same process. The Supreme Administrative Court rejected the postponement of the achievement of human health objectives in its judgment of 2 May 2019, No. 7 As 308/2018.

28. The defendants' unlawful interference consists not only in failing to take sufficient measures regarding the current impacts of climate change, but also in failing to prepare for future impacts. In its judgment of 28 February 2011, Case No 30 Cdo 5021/2008, the Supreme Court held that the objective capacity to infringe or at least threaten rights is sufficient for an interference with personality rights; specific consequences are not required. The aggravation of the effects of climate change is almost certain, the threat is very serious, and the defendants' real actions and official plans do not indicate that they are prepared to mitigate those effects in the future.

Statement of Claim [29]

29. The applicants seek a declaration that the defendants have violated Article 11 in conjunction with Section 5 and Section 8 of the Environmental Act, Article 2(1)(a), Article 2(2), Article 3 and Article 4(3) of the Paris Agreement and Section 21 of the Competence Act, thereby infringing the applicants' constitutionally guaranteed public subjective rights under Articles 6, 11, 31 and 35 of the Charter and Articles 2 and 8 ECHR. The applicants requested that the court order the defendants to put an end to the unlawful interference by taking necessary and proportionate measures to reduce greenhouse gas emissions and to adapt to climate change. To that end, the applicants proposed a time limit of 6 months from the date of the judgment.

B) Arguments of the defendants [30-73]

Statement of the Government [30-35]

30. The Government argued that it lacked passive standing under Section 83 in conjunction with Section 4(1)(a) of the Code of Administrative Justice. Under Article 67(1) of the Constitution, the Government is the supreme executive authority. It does not make sovereign decisions on the rights and obligations of the addressees of public administration, but politically directs the exercise of public administration. According to the Government, this conclusion is supported both by the commentary literature and by the judgment of the Municipal Court of 21 December 2012, no. 8 A 112/2012-27.

31. The Government pointed out that, in the case of an omissive interference, only such action by an administrative authority as constituted its legal obligation could be sought. That obligation must be expressly and unequivocally imposed on the defendant by law, having regard to the principle of the lawfulness of the exercise of public authority under Article 2(3) of the Constitution. However, there is no such legal basis for the adoption of the necessary and proportionate measures. Therefore, the Government did not commit an unlawful interference (judgment of the Municipal Court in Prague of 28 June 2017, No 5 A 145/2015-49).

32. Sections 2, 8 and 11 of the Environmental Act only define general principles of environmental protection, they do not oblige the government to act in a certain way. While the Charter and the ECHR enshrine a positive obligation of the state to protect human rights, they do not imply a specific form and means by which the government is to act. According to the Government, the positive obligation consists primarily in the adoption of relevant legislation. The drafting of legislation does not fall within the sphere of public administration and is not subject to review in the administrative justice system. The Paris Agreement is an international treaty under Article 10 of the Constitution, but it does not contain directly applicable provisions which take precedence over the law. Articles 2, 3 and 4 of the Paris Agreement do not imply obligations for the government to take specific measures against climate change. These are merely aspirations of the contracting states. The Paris Agreement does not confer any rights on individuals that they can directly claim, and it is not self-executing (judgment of the Supreme Administrative Court of 28 February 2007, No 3 Ads 88/2006-72).

33. The applicants generally criticise the Government for its lack of action in the field of climate protection and the adoption of adaptation measures. General executive inaction is not interference within the meaning of Section 82 of the Code of Administrative Justice. An interference constitutes a form of public administration action; it concerns a specific person, in a specific legal relationship, and has certain adverse effects on his or her rights. Moreover, the applicants have not established a causal link between the government's inaction and the interference with their rights, which is part of the objective aspect of the infringement (judgment of the Supreme Administrative Court of 14 November 2014, no. 6 As 1/2014-30). Climate change does not occur exclusively as a result of human activity, but also as a result of natural causes. Therefore, adverse changes cannot be blamed on the government alone. Nor have the applicants demonstrated that the adoption of the measures requested would lead to the elimination of climate change and its harmful effects.

34. As regards the breach of the obligation arising from the European directives, the Government submitted that, under the third paragraph of Article 288 of the Treaty on the Functioning of the European Union (TFEU), directives are binding on the Member States as regards their objectives. The form and means of achieving a particular result are, in principle, left to the discretion of the Member State. Declaring a breach of the transposition obligation is a matter exclusively for the Court of Justice of the EU (CJEU). In its judgment of 14 November 2014, No 6 As 1/2014-30, the Supreme Administrative Court held that a breach of European law may be in the nature of an unlawful interference if the manner in which it manifests itself in the applicant's sphere is defined. The applicants did not specify at all which specific climate protection measures the government should have taken.

35. The Government therefore asked the Court to dismiss the application for being unjustified and did not request an order for a hearing.

Statement of the Ministry of Agriculture [36-41]

36. The Ministry of Agriculture (MoA) considered the claim too general. The interference did not meet the conditions of directness, being directly aimed and unlawfulness. Moreover, the wording of the application does not comply with Section 87(2) of the Code of Administrative Justice. An unenforceable court order would be incompatible with general principles of law.

37. The applicants support a number of facts with their own statements on partial issues defined by them. Such statements are not evidence, but merely a specification of the allegations of the action. Applicant (e)'s psychological effects are judged by reference to how an average person in the applicant's position would perceive the matter. The applicants also repeatedly argue for a scientific consensus without specifying its content. The MoA pointed out that the applicants refer to the findings of organisations whose credibility is questionable (e.g. the well-known Climategate affair). Until such doubts are convincingly refuted, the conclusions of these organisations should be treated with the utmost caution.

38. According to the MoA, some of the information contained in the application is outdated, e.g. the lack of an amendment to the Water Act to protect against drought mentioned on page 41 of the Application. Amendment No 544/2020 was published 23/12/2020 and had already

entered into force (except for certain provisions) at the time the application was submitted. Some of the statements in the application are very inaccurate and purposely interpreted, e.g. the statement on page 17 that 'the Forest Act and the State's forestry policy in general do not support the type of management described by the applicant'.

39. The MoA pointed out that on 11 December 2019, the European Commission published the Communication "A Green Deal for Europe" ("European Green Deal", "EGD"), which represents a key strategy for the transition to a climate neutral, sustainable and circular economy, while mentioning and addressing all the issues contained in the Application (reduction of greenhouse gas emissions in the transport and energy sectors, etc.). The EGD sets ambitious environmental and climate objectives for the EU, while respecting and protecting other environmental components. The MoA is heavily involved in the preparation and subsequent implementation of the various steps of this process. Thus, in order to succeed in their action, the applicants should allege which specific measures of the EGD have been violated by the MoA.

40. The defendant has attached to its statement of defence the water management measures, as well as an overview of the development of the tree species composition, an overview of the implementation of the National Adaptation Plan, and an overview of the support provided for forest adaptation.

41. The MoA asked the Court to dismiss the action for being unjustified and did not request a hearing.

42. Ministry of Transport Statement [42-50]

43. The Ministry of Transport (MoT) pointed out that the document called the Transport Policy of the Czech Republic for the period 2021-2027 with a view to 2050 approved by Resolution of the Government of the Czech Republic No. 259 of 8 March 2021 (hereinafter referred to as the "Transport Policy") is currently in force, which newly, on the basis of an analysis of previous measures and current national and European regulations, defines measures to mitigate the effects of climate change in the conditions of the Czech Republic in the field of transport. The adoption of this document refutes the inaction and passivity of the MoT in the area of protection against climate change and its harmful effects.

44. At the same time, the transport policy is based on European and national cross-cutting strategic documents and related concepts, in particular the EGD, the Strategic Framework Czech Republic 2030, the State Energy Concept, the State Raw Materials Policy, the State Environmental Policy, the Climate Protection Policy, the Strategy for Adaptation to Climate Change in the Conditions of the Czech Republic, and the National Programme for Reducing Emissions of the Czech Republic.

45. The transport policy envisages three successive steps: optimisation of transport services, which will be the subject of a broader state policy in accordance with the adopted Strategic Framework Czech Republic 2030; establishment of a transport system meeting the above vision on a multimodal approach based on the use of the advantages of individual

modes of transport and on interdisciplinary cooperation; and development of individual modes of transport with regard to the necessary accessibility of individual regions, transport needs and reduction of environmental impacts.

46. According to the MoT, it is important to electrify transport. The issue of alternative fuels in transport is addressed in the National Action Plan for Clean Mobility. The advantage of electromobility is also the possibility of energy recovery during braking. Overall, the replacement of internal combustion engines by battery electric vehicles reduces energy consumption to about 30 to 40%. The planned measures consist of supporting the development of a network of filling and recharging stations and charging infrastructure for alternative energy in road transport; and supporting the purchase of alternative fuel vehicles (the price difference between a conventional vehicle and an alternative fuel vehicle). The MoT has allocated a total of CZK 1.2 billion to support the construction of charging stations in the 2014-2020 period under the Operational Programme Transport, supporting the creation of approximately 2,000 charging points and 9 hydrogen filling stations. For the new period 2021-2027, this support is expected to increase to up to CZK 6 billion. The National Clean Mobility Action Plan foresees the creation of at least 19 000 charging points by 2030. Special registration plates for electric vehicles have been introduced, which in turn allows municipalities to effectively introduce a preferential parking system for this type of vehicles. An exemption from any form of charging (vignette/toll) has also been introduced for vehicles with this registration plate from 2019 as part of the amendment to the Road Act. The MoT also aims to ensure sufficient capacity to inspect vehicles with internal combustion engines for harmful emissions.

47. There is a clear Europe-wide trend on railways which will gradually lead to the disappearance of diesel traction. There will be a conversion to a single 25 kV, 50 Hz AC system, which will increase the energy efficiency of electric traction on railway lines from around 80 % to 95 %. Gradually, in combination with the progressive electrification, acutrolene vehicles will be introduced to serve the non-electrified terminals and will be dynamically recharged continuously when driving on the electrified sections or statically recharged when standing in the electrified stations. In addition, the MoD intends to complete the rail transit corridors, including railway junctions, by 2025 and to upgrade the lines on the TEN-T core network for passenger and freight transport and the lines included in the freight rail corridors according to Regulation (EU) No 913/2010 by 2030.

48. The planned measures in non-motorised transport consist mainly in completing the network of cycle paths, resolving the entry of motor vehicles on cycle paths, and establishing standards for parking spaces for bicycles and scooters. The MoT intends to take more account of pedestrian traffic in intelligent transport systems and wants to establish rules on the use of wheelchairs for citizens with reduced mobility. Another measure for the period 2021-2027 is to provide a subsidy program to support public transport infrastructure in electric traction and a subsidy program to support public transport vehicles in electric traction.

49. MoT has comprehensively summarized the anticipated mitigation measures on pages 13 to 17 of its submission and concluded that the new Transport Policy takes into account and

appropriately sets measures to meet climate goals. The measures adopted can be considered sufficient and in line with European and national legislative and non-legislative documents. Their implementation, responsibility and financing are set out in the Transport Policy and are dependent on the financial resources of the national budget and European funds.

50. The MoT agrees to decide the case without ordering a hearing and requests that the costs of the proceedings be reimbursed.

Ministry of the Environment [51-69]

51. According to the Ministry of the Environment (MoE), it is not clear from the application whether the applicants consider the defendant's unlawful interference to consist in the defendant's issuance of certain unlawful administrative acts (acts) or in the defendant's failure to issue certain administrative acts (acts), although it was legally obliged to issue them.

52. An interference action is admissible only after all remedies have been exhausted. If the interference consists in inaction, then this remedy is a measure against inaction pursuant to Section 80 of the Code of Administrative Procedure, which applies to all acts of the administrative authorities (judgment of the Supreme Administrative Court of 14 January 2016, No 9 As 244/2015-47). In the appropriate application of Section 80(3), second sentence, of the Code of Administrative Procedure in relation to all acts of public administration other than administrative decisions, the persons directly affected by the failure to issue the administrative act in question may submit such an application. The applicants have not exhausted the remedies provided for in Section 85 of the Code of Administrative Justice before bringing the action, and the action for interference is therefore inadmissible.

53. The MoE does not consider an action for interference to be an appropriate instrument for the protection of rights, since the applicants have not clearly defined what the interference was supposed to consist of and what legal provisions were supposed to have been infringed. If there is a societal will to change the overall climate policy of the State, that change must be achieved through the instruments of representative democracy in the form of a change in legislation, not through an administrative court in the form of an interference action. Administrative courts are not competent to review the policy decisions of the government or the legislative activity of the state.

54. In their application, the applicants, on the one hand, list certain national strategic and conceptual documents approved by government resolutions, and, on the other hand, state that their action is not directed directly against those strategic documents and decisions, but against the consequences to which they contribute, which in their totality are in the nature of unlawful interferences with the applicants' rights.

55. The effects of climate change are not unlawful interference. It can only be specific acts (acts) of the public administration (the defendants) which are capable of depriving the applicants of their public subjective rights. The alleged general executive inaction in the field of climate protection is not an interference because the interference must be specific. The clear identification of the interference is central to defining the subject matter of the

proceedings and the scope of judicial review. However, the applicants do not link the effects of climate change to specific actions (acts) of the defendants as public authorities.

56. The MoE considers that the review of the above-mentioned strategic documents approved by Government resolutions is not possible by the administrative courts in the Czech legal environment (judgment of the Municipal Court in Prague of 18 April 2019, no. 11 Ad 14/2018). The Government resolutions in question are not other acts of administrative authorities pursuant to Section 4(1)(a) of the Code of Administrative Justice, as the Government was not granted the power to decide on the rights and obligations of natural or legal persons when approving them.

57. Similarly, it is not for the administrative courts to review the legislative activity of the defendants and the setting of the State's financial policy (the applicants mention, for example, the setting or not setting of a carbon tax). Only decisions on the allocation of subsidies to particular persons are subject to review by the administrative courts. The actual formulation of rules for the distribution of subsidies and the allocation of funds is outside the jurisdiction of the administrative courts.

58. The applicants have not pointed to a legal obligation on the defendants to take specific measures (in general, any acts of public administration) which would directly result from binding domestic or international law and which the defendants would breach. If an administrative court is to impose an obligation on the defendant administrative authorities, which are in principle limited in their activities by their legal competence, to do or refrain from doing 'something', it is necessary that such an obligation be based on an unambiguous provision of a national or directly applicable international law. Moreover, the applicants themselves admit that there is no specific binding legislation on climate protection in the Czech legal order (with the exception of Act No 383/2012 on the conditions for trading greenhouse gas emission permits and Act No 85/2012 on the storage of carbon dioxide in natural rock structures, including the relevant EU legislation).

59. With reference to the judgment of the Municipal Court in Prague of 12.12.2014, No. 10 A 99/2014-99, the MoE stated that the situation under consideration was quite different in legal terms. The municipalities located in the national park have the right to participate in the process of approving the management plan directly on the basis of Act No. 114/1992 Coll., on Nature and Landscape Protection. The Court recognised the violation of the procedural public subjective right of the municipality to participate in the decision-making process about the form of the management plan.

60. The Constitutional Court has ruled in relation to the right to a favourable environment that it is a right with relative content (Constitutional Court ruling of 25 October 1995, Pl. ÚS 17/95). The right to a favourable environment systematically falls under Title Four of the Charter, titled Economic, Social and Cultural Rights, and does not have direct effect in relation to individuals. From the ruling of the Constitutional Court of 30 May 2017, Pl. Constitutional Court 3/15, it follows that it is only the sub-constitutional legislation that actually gives an answer to the question of what and under what conditions an individual can claim on the basis of this

fundamental right, i.e. what are the limits of this fundamental right. The MoE disagrees with the applicants' assertion that the implementing legislation within the meaning of Article 41(1) of the Charter is the Environmental Act, the UNFCCC and the Paris Agreement.

61. The Environmental Act is to be understood as a general overarching environmental regulation which sets out only the basic principles and prerequisites for the protection of the various components of the environment, not specific legal obligations in the field of climate protection. The basic principle applies, whereby not every activity that has the potential to adversely affect the state of the environment can be considered an illegal (legally punishable) activity, but in principle only activities that cause deterioration of its state through pollution or other human activities beyond the level set by specific regulations. The fact that this legal level must be clearly established by law (or by an equivalent rule of international or EU law) follows from the requirement for predictability of the law and the requirement for legality of the exercise of public administration.

62. The Paris Agreement is not self-executing, as it does not impose specific obligations on the Contracting States (judgment of the Supreme Administrative Court of 31 May 2018, no. 1 As 49/2018-62, paragraph 46). The applicants use the so-called national carbon budget to set limits on environmental damage caused by greenhouse gas emissions. This concept does not appear at all in the Paris Agreement and, in general, there is no uniform definition of it at international or national level. The Paris Agreement is based on the principle of nationally determined contributions, which can be expressed in a number of different ways, and on the principle of voluntarily setting the level of commitments. The Parties to the Paris Agreement, i.e. the States, have not agreed among themselves what each State must do if the above objective in the Paris Agreement is to be achieved. It is therefore not clear what amounts to a 'fair share' of any state's global efforts to combat climate change. In the absence of a clear legally binding share for the Czech Republic, a hypothetical failure to comply with it cannot be considered contrary to positive law and give rise to legal responsibility on the part of the national executive.

63. The European Union has agreed on different targets for individual Member States in sectors outside the emissions trading scheme (EU ETS). The applicants have not addressed the adequacy of the EU's nationally determined contribution in terms of meeting the climate objectives of the Paris Agreement.

64. The MoE pointed out that it was not clear how the trajectory for reducing CO2 emissions was determined in accordance with the Czech Climate Protection Policy, since the policy did not contain separate targets for CO2 emissions. The proposed carbon budget of 800 million tonnes of CO2 for the period from January 2021 to the end of the century would be completely exhausted in less than 8 years, taking into account the latest available level of annual CO2 emissions in the Czech Republic. The required rate of emissions reduction would undoubtedly require huge reductions in industrial production, transport, agriculture and generally most activities within the economy, with significant impacts on the rights of Czech citizens. The Czech Republic cannot set targets based on completely unrealistic assumptions and without regard to other rights, such as economic and social rights.

65. The Climate Protection Policy of the Czech Republic was prepared on the basis of cooperation between individual ministries, representatives of NGOs and industry. It was several years in the making, and commenting on the measures took place both at the level of the inter-ministerial working group on climate, which was established by the Minister of the Environment in 2015, and through an inter-ministerial comment procedure. At the same time, a standard process of strategic environmental assessment (SEA) was carried out, in which all citizens had the opportunity to participate. A public hearing was held. The MoE pointed out that the applicants quote from the NAP AZK Assessment only a negative assessment of the implementation of certain measures, but no longer mention the fact that a positive assessment is given for most of the measures and areas included.

66. As to the applicants' claim that the defendants are in breach of their obligations under Article 8 ECHR, the MoE submits that the ECtHR case law establishes the State's obligation to protect humans only against the consequences of excessive environmental damage. However, the degree of such harm is not specifically and bindingly determined by law.

67. With regard to the failure to adopt adaptation measures, the defendant points out that there is no specific legislation which sets a binding limit for any of the parameters by which climate change is manifested. The absence of specific legal limits makes it impossible to assess objectively whether current or planned adaptation measures are sufficient. Furthermore, the applicants do not specify which measures should be assessed.

68. The MoE objected to the petition claim because it considered that, in view of the duration of the interference, the applicants could only seek an injunctive or prohibitory judgment, not a declaratory judgment (judgment of the Supreme Administrative Court of 28 May 2014, no. 1 Afs 60/2014-48). In proceedings for protection against unlawful interference, an applicant cannot seek a declaratory judgment that the defendant's interference was unlawful as long as that interference or its consequences continue or are threatened to recur. If the interference has ceased, it cannot be sought that the court should prohibit the administrative authority from continuing to infringe the applicant's right and order it to restore the situation prior to the interference.

69. The MoE considered the claim V. A. as being indefinite and unenforceable. An administrative court cannot impose an indefinite obligation on the defendant to take necessary and proportionate measures which, moreover, are not based on a legal provision.

Ministry of Industry and Trade Statement [70-73]

70. The MIT stated that the Government had decided by Resolution No 260 of 8 March 2021 on the need to update the State Energy Concept, ordering that the Czech Republic's commitments, in particular those adopted at EU level, be taken into account. International commitments are therefore duly reflected in the strategic documents. The defendant's task is to monitor, not to guarantee, the implementation of all decisive measures. The Government has that power.

71. The defendant explained that it had drafted legislation introducing a penalty for low-efficiency electricity generation from coal, but it did not pass the Chamber of Deputies.

72. The MIT did not accept the claim that the National Energy and Climate Plan did not sufficiently contribute to the fulfilment of the country's climate commitments. It is not a national strategic document, but serves primarily to express the Czech Republic's contribution to the EU's climate and energy targets for 2030 and the European Commission's assessment of that contribution. For this reason, the national plan has a ten-year horizon and the subsequent plan for 2031-2040 will not be drawn up until 2028/2029. The national plans cannot be used to assess the fulfilment of long-term commitments in a convincing way. Although the European Commission has made partial recommendations to the Czech Republic, it has not stated that the Czech contribution has been insufficient.

73. In view of the above, the MIT considered that it had not unlawfully interfered directly with the applicants' rights. The defendant found the proposed petition to be unenforceable and claimed an overhead of CZK 300 according to the attorney's tariff for the statement of defence.

C) Applicants' replica [74-95]

74. The applicants submitted that the Government of the Czech Republic may act in the capacity of an administrative authority within the meaning of Section 4(1)(a) of the Code of Administrative Justice. If the Government were not an administrative authority, there would be a breach of Article 36(2) of the Charter, which guarantees judicial review of decisions concerning fundamental rights and freedoms. The Government's action in protecting the climate significantly adversely affects the applicants' fundamental rights. This conclusion was confirmed by the MIT in its submissions when it stated that the Government must intervene in the event of non-compliance with a number of measures.

75. As regards the legal nature of the defendants' practices, the applicants stated that any action taken by the administrative authorities has limits which are set by law. According to the applicants, the defendants' failure to act to protect the climate cannot, by its nature, consist of a specific act. The possibility of judicial review of unlawful interference by the competent authorities in relation to the failure to protect the climate and the correctness of an interpretation of the legislation which allows such review are also confirmed by the judgments of foreign courts in similar cases. The applicants have referred to the content of the application for details.

76. The State's positive obligations to protect the climate derive from the Charter, the ECHR, the Environmental Act, the UNFCCC and the Paris Agreement. The Applicants acknowledged that positive obligations arising from human rights do not create a requirement for specific measures to be taken by the State authorities. They are, however, obligations to achieve a particular result. It is therefore the proven consequences in the applicants' legal sphere, which are described in detail in the application (Part IV, paragraphs 2.4 and 3.3), that are decisive, not the form or means by which the State authorities are to fulfil those positive obligations.

77. The applicants have pointed out that the issue is not the specific means by which the defendants should fulfil their legal obligations under the Paris Agreement, but the defendants' apparent failure to fulfil those obligations. Therefore, the applicants are not seeking the adoption of specific measures (e.g. specific legislation, policies or decisions) by the defendants, but only an end to the unlawful interference consisting in the absence of sufficient measures to achieve the binding objective of the Paris Agreement.

78. The applicants submitted that the Environmental Act is a standard piece of legislation by which, inter alia, the defendants are bound in their activities (judgment of the Supreme Administrative Court, no. 6 As 104/2019-70, of 28 February 2020). The normative nature of those obligations cannot be undermined by referring to their generality. The Supreme Administrative Court also commented on a similar issue in judgment No 1 As 48/2017-33 of 1 June 2017, in which it stated that, although no implementing legislation had been adopted to the Environmental Act providing for the calculation of compensation for environmental damage pursuant to Section 27 of the Environmental Act, it was possible to decide on the obligation to take other measures to remedy environmental damage on the basis of the cited provision (see paragraphs 30-32 of the reasoning). Legal obligations arising directly from the Environmental Act have also been applied by administrative courts in other cases (see, for example, the judgment of the Supreme Administrative Court of 5 March 2017, no. 7 As 180/2014-28, or the judgment of the Supreme Administrative Court of 6 August 2009, no. 9 As 88/2008-301).

79. The applicants considered that they had proved the direct harm to their rights by means of a number of means of evidence (including statements, photographic documentation and expert opinions in the field of psychology, natural sciences, etc.). According to Article 131 of Act No 99/1963 Coll., Code of Civil Procedure ('OSŘ'), all means capable of proving the facts may be used as evidence.

80. The applicants considered it scientifically proven that the ongoing climate change is outside natural climate cycles and that its course is clearly influenced by man. This fact has also been confirmed by the Intergovernmental Panel on Climate Change (IPCC) in its latest report, Climate Change 2021 - The Physical Science Basis, which represents the current scientific consensus on climate change (p. 5 of the summary of the report). The quoted text on natural causes of climate change in the Government's statement is extracted from Chapter 3.1 Causes of climate change in the geological past of the Climate Change Guide and has no relevance to the description of the causes of current climate change. In contrast, Chapter 6.4 of the cited document states that humans are the predominant cause of warming.

81. The applicants added that any amount of CO2 emissions has an impact on climate change and can be attributed a very specific contribution to the increase in global temperature which can be objectively observed and also predicted. The defendants' attempt to diminish their own responsibility by referring to the obligations of other bodies of the international community is unacceptable both ethically and legally (decision of the Federal Constitutional Court of Germany in Neubauer and Others of 24 March 2021 (1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20, paragraph 2(c) of the operative part).

82. The applicants consider the proposed statement of claim to be enforceable. The formulation of the claim is based on the current state of scientific knowledge, which the applicants have substantiated in particular by expert reports from scientific institutions. At the same time, the applicants have refrained from requesting specific measures in the formulation of the claim, since the defendants' legal obligations in the field of climate protection are obligations to achieve a specific objective (result). It is therefore for the defendants to choose those means. Section 87 of the Code of Administrative Justice permits a combination of declaratory and constitutive claim, since the sentences conferring jurisdiction on the court are in a conjunctive relationship.

83. Applicants do not agree that enforcement of the petition would cause prejudice in other protected rights. It is clear from the state of knowledge that the slower the activity of individual States in the coming years, the more rapid and drastic the measures taken in the future will have to be. It is clear from the above-quoted decision of the Federal Constitutional Court (paragraph 4 of the operative part) that it is also the duty of the authorities of the State to protect the future rights and freedoms of its citizens, for example, by taking timely measures to mitigate climate change.

84. The Defendants have not explained why the obligation to take "reasonable and necessary measures to maintain the country's carbon budget of 800 Mt CO2 from January 2021 to the end of the century" is inherently impossible. In similar cases before foreign courts, similarly worded obligations have been imposed on state authorities. For example, the obligation "to take all measures to achieve the targets set by France for the reduction of greenhouse gas emissions in order to stop the deterioration of future environmental impacts" imposed on the State by the French Administrative Court in Paris in Affaire du siècle (Article 4 of the operative part); "The legislator must, no later than 31 December 2009, take all measures to reduce greenhouse gas emissions in order to ensure that the emission of greenhouse gases is reduced. December 2022 to adopt provisions for updating the reduction targets for the period from 2031, as set out in the grounds of the judgment", held the Federal Constitutional Court of Germany in Neubauer et al., cited above (para. 194); the obligation to "limit or have limited the total volume of the Netherlands' annual greenhouse gas emissions so that at the end of 2020 this volume is reduced by at least 25% compared to 1990 levels" was imposed on the State by the Dutch District Court in The Hague in Urgenda.

85. The Applicants summarise that the claim was formulated in accordance with the Defendants' obligation to achieve a particular result, namely the fulfilment of positive obligations arising from the need to protect fundamental human rights threatened by climate change, and therefore the Applicants cannot be required to be more specific about how the Defendants should proceed.

86. The Applicants have subsequently responded to each of the Defendants' individual submissions. In the applicants' view, the University's assessment is not arbitrary, as it contains a detailed description and justification of the methodology chosen, including how the ideal CO2 reduction trajectory was determined. The applicants consider that the promise to increase the relevant GHG reduction targets in line with the current ambitious EU targets when

updating the Climate Protection Policy is irrelevant because the defendants are not active in this respect.

87. The applicants have pointed out (page 39 of the application) that a number of measures under the Climate Change Adaptation Strategy for the Czech Republic (2015) and the National Action Plan for Adaptation to Climate Change (2015) are not being fully implemented by the defendants. The MoE responded to this part of the claim by stating that "such allegations are not based on truth." The applicants strongly object to this and point out that the assessment of the implementation of these strategic documents was carried out by the MoE itself, precisely with the conclusion that some important measures are not being implemented (see pages 39-40 of the application).

88. The MIT is bound by the State Energy Concept, which was adopted by a government resolution pursuant to Section 21 of the Competence Act, and cannot absolve itself of this obligation by referring to its lack of competence. The MIT claimed that the national plan of the Czech Republic has only a ten-year horizon, thereby admitting that it completely lacks a longer-term concept leading to compliance with legal obligations in the field of climate change mitigation. Consequently, the absence of a concept for the reduction of CO2 greenhouse gas emissions in the energy sector hinders effective planning and compliance with the defendants' legal obligations in practice. Not to mention the fact that the GHG reduction ambition until 2029 under the current National Plan of the Czech Republic is so low that compliance with the carbon budget as proposed in the application would be almost unthinkable after 2030.

89. The MoA noted that the agricultural sector had seen a 50% reduction in greenhouse gas emissions by 2018. According to the applicants, the Ministry ignored the fact that in recent years, due to the so-called bark beetle calamity, the balance of greenhouse gas emissions in the land use sector has completely changed, especially in the forestry sector. According to the official National Inventory of Greenhouse Gas Emissions (p. 261), compiled by the Czech Hydrometeorological Institute (hereinafter referred to as 'CHMI'), greenhouse gas emissions in the land use sector (so-called LULUCF) in 1990 totalled -5.7 Mt (negative balance - emissions absorption mainly due to forests prevailed), while in 2018 emissions in this sector were already +5.8 Mt. This negative development is indicative of the inadequacy of the defendant's measures, and reflects a failure in the area of climate change adaptation (expansion of the bark beetle calamity) and climate change mitigation (increase in emissions from the land use sector).

90. Although the MoA outwardly presents the implementation of certain measures, the actual state of adaptation to climate change does not reflect these efforts and is still unsatisfactory. Defendants' legal obligations in the area of climate protection do not consist in taking measures, but in achieving results.

91. The psychological examination report of the applicant (e), dated 27 January 2021, which is annexed to the application, clearly shows that the applicant can be regarded as an average person in terms of mental health - he has no history of psychiatric treatment and no history that would suggest an increased risk of psychological problems. The psychological

effects of climate change are therefore not a matter for a particular section of society, as the MoA tries to suggest.

92. The applicants point out that the so-called Climategate affair of 2009 referred to by MoA did not involve any preparer of the documents attached to the application; it concerned only the Climate Research Unit at the University of East Anglia and the independent investigation found no misconduct by the climatologists concerned.

93. The adoption of the Transport Policy of the Czech Republic for the period 2021-2027 with a view to 2050 not only confirms the alleged inaction of the MoT, but also demonstrates that the MoT also plans not to act in the next strategic period. The Transport Policy (p. 88) sets out an estimate of CO2 emissions for the implementation of its measures which is not consistent with the Defendants' legal obligations to reduce GHG emissions (see Part IV, paragraphs 2.1 and 2.2 of the Application). Indeed, the emissions scenario only envisages a 32 % reduction in GHG emissions by 2050 compared to 2019. This means that the MoT envisages maintaining more than two thirds of current GHG emissions from transport until 2050. As explained by the applicants in their application (see Part IV, point 2.2), in order to avoid dangerous climate change, climate neutrality, i.e. a zero GHG emissions balance, must be achieved by 2050.

94. Similar to the MoA, the MoT's submission offers a long list of measures that are supposedly designed to protect the climate in the transport sector. However, the applicants point out that none of these measures quantifies its impact on GHG emission reductions or other expected climate protection benefits. Meanwhile, actual greenhouse gas emissions from the transport sector in the Czech Republic have been stagnating (see pages 32-33 of the application) or increasing slightly in recent years. It is therefore apparent that, although the MoT presents a list of measures, their effects are not actually visible.

95. In the list of measures implemented, the MoT presents some actions whose connection to climate protection is at least questionable, such as reducing light pollution, limiting noise or controlling emissions of harmful substances (other than CO2) from motor vehicles. Some measures may even lead directly to an increase in CO2 emissions in the Czech Republic, e.g. increasing air traffic capacity.

D) The court's first invitation to the defendants to submit their observations [96-119]

96. On 17 February 2022, the Municipal Court sent to the defendants the applicants' replica and the application documents for their comments, and asked them to state the reasons for their disagreement and to identify studies and reports proving otherwise.

Opinion of the Ministry of the Environment [97-112]

97. On 21.3.2022, the Court received the MoE's statement of defence, in which the defendant referred first of all to its initial statement of defence. The MoE submitted a statement from the Economic and Environmental Section setting out all the defendant's activities in the

field of financing environmental projects. According to the defendant, the applicants' allegation that the measures are not sufficiently financed is therefore not true.

98. The MoE pointed out that the administrative court's decision must have a clear basis in the legal provisions regulating the specific activities of the individual defendants as administrative authorities. The Environmental Act does not impose any specific obligation to protect the climate. Neither does the Paris Agreement create a legal obligation, since it does not contain specific obligations on the part of the States; it is based on the principle of the voluntary determination of the level of obligations. Thus, according to the defendant, it cannot be successfully argued that the objective of keeping the global temperature increase below 1.5 ˚C (or below 2 ˚C) must be regarded as a legally binding maximum level of tolerable pressure on the territory within the meaning of section 11 of the Environmental Act. If the binding share of the Czech Republic is not clearly established in law, its hypothetical non-compliance cannot be regarded as contrary to positive law and the legal liability of the national executive authorities cannot be inferred from it.

99. According to the MoE, the Paris Agreement cannot be confused with the IPCC reports, which provide governments with the best available scientific information and recommendations for their decision-making. Furthermore, the Paris Agreement does not recognise the concept of a carbon budget and there is no uniform definition of a carbon budget at international and national level.

100. On the issue of the obligations of administrative authorities in climate protection, the Defendant sent the Czech Government's Agent's Statement before the ECtHR on Complaint No. 39371/20 - Duarte Agostinho and Others v. Portugal and 32 other States (including the Czech Republic), which contains a detailed description of the Czech Republic's international obligations under the Paris Agreement in the field of climate change and a selection of relevant case law in Czech environmental law (pp. 11-22). According to the defendant, all of the case law cited herein demonstrates that the climate interference action is unjustified.

101. The defendant has also provided an overview and analysis of the judgments of foreign courts in climate actions, on which the applicants base, inter alia, the grounds of the present action. With regard to the judgments of foreign courts, the defendant states that the conclusions of those courts cannot be adopted without further reference to the decision on the interference action, in view of the specific features of domestic legislation (in particular, the statutory conditions for granting the merits of an interference action under Section 82 et seq. of the Code of Administrative Justice). According to the Ministry of the Environment, a fundamental difference is the fact that in the cases under review the foreign courts relied on specific national climate legislation (German Climate Law, French Grenelle 1 and 2, etc.), which the Czech legal system does not contain. In other cases, the constitutionality of national legislation was assessed by the Constitutional Court, which has the power to assess the compatibility of national legislation with international law obligations or constitutional provisions.

102. The defendant pointed out that it reports on the fulfilment of its obligations in the so-called biennial reports. So far, the latest 4th biennial report of 2019 is available on the website of the MoE (https://www.mzp.cz/cz/oficialni_dokumenty_o_zmene_klimatu). The MoE is currently preparing the 5th Biennial Report, which it will submit to the UNFCCC Secretariat by the end of 2022 at the latest. At the same time, it is preparing the 8th National Communication to the UNFCCC by the same date. This document is prepared every 4 years and the latest 7th National Communication is also available at the link above.

103. The MoE noted that the EU 2020 targets and commitments are set out in the Climate and Energy Package (https://www.mzp.cz/cz/klimaticko_energeticky_balicek_2020) and the 2030 targets and commitments are set out in the 2030 Energy and Climate Policy Framework (https://www.mzp.cz/cz/klimaticko_energeticky_ramec_2030). The Czech Republic has no problem in meeting its EU 2020 commitments, with the exception of not meeting or delaying the target under Article 7 of the Energy Efficiency Directive. Total GHG emissions in the Czech Republic (excluding LULUCF) decreased by 38% between 1990 and 2019 and by 43% according to preliminary data for 2020. This would also mean that the national target for 2020 set by the Czech Climate Protection Policy has been met. This is expressed as a reduction of 32 Mt CO2 eq. between 2005 and 2020 and the actual reduction achieved is approximately 35.8 Mt CO2 eq.

104. However, the 2030 commitments are now expected to be increased following the "Fit for 55" package and additional policies and measures will be required to achieve them, as well as to achieve the EU's 2050 climate neutrality target.

105. Under the EU ETS, it is proposed to increase the EU reduction target for 2030 from 43% to 61% compared to 2005, and in the non-EU ETS sectors, it is proposed to increase the Czech Republic's target from 14% to 26%. The creation of an emissions trading scheme for the road transport and buildings sectors is also an important new instrument. Scenarios for achieving the Czech Republic's "Fit for 55" and climate neutrality targets are currently under preparation, including an assessment of the socio-economic impacts. The results of the modelling should be available in mid-2022 and will be subsequently used in the preparation of the update of the Climate Protection Policy of the Czech Republic, which, in accordance with the Programme Statement, should be discussed by the Government in 2023 together with the update of the State Energy Concept.

106. The defendant referred to the Assessment of the Climate Protection Policy in the Czech Republic (https://www.mzp.cz/cz/politika_ochrany_klimatu_2017, hereinafter 'the POK Assessment') and the Assessment of the NAP AZK (https://www.mzp.cz/cz/adaptace_na_zmenu_klimatu).

107. The defendant also commented on the university's assessment. The carbon budget was set only for carbon dioxide, whereas all relevant climate targets are set for total greenhouse gas emissions expressed in CO2 equivalent. Emissions of other greenhouse gases are not mentioned in the assessment, nor does it include CO2 emissions and sinks from land use, land use change and forestry (LULUCF), which also have a significant impact on the overall

carbon balance. The assessment does not show how the trajectory for reducing CO2 emissions has been determined in accordance with the Czech Climate Protection Policy, as this does not contain separate targets for CO2 emissions. The prosecution and the submitted assessment do not take into account the important fact that EU Member States have made a joint commitment to reduce emissions under the Paris Agreement.

108. In the opinion of the MoE, the applicants derive the specific obligation of the defendant to be established by the court's proposed judgment (maintaining the Czech Republic's carbon budget at 800 Mt CO2 from January 2021 until the end of the century) not from a directly applicable rule of international law or a rule of national law, but solely from the outcome and recommendations of scientific studies.

109. With regard to the Climate Analytics report, the defendant states that it is a research report in the nature of a research report, which primarily summarises the existing scientific knowledge in the field. While the research report summarises and to some extent analyses the available research, it is not itself a scientific paper published in an impacted scientific journal (it has not undergone a rigorous formalised peer review process by the wider scientific community), nor is it an official opinion of a scientific research institution or government authority. It is in no way an expert opinion. The defendant points out that scientific recommendations are not legally binding on it.

110. The defendant argued that the submitted research report contains different mitigation scenarios for the Czech Republic, which should also be consistent with the 1.5 and 2°C targets. The required emission trajectory in this report is much more linear, which is more in line with the scenarios of the Czech Climate Protection Policy and the way the EU sets climate targets.

111. The defendant has emphasised, even more obviously in the case of adaptation to climate change, that there is no specific legislation that sets a binding limit for any of the parameters by which climate change manifests itself, as indeed the applicants themselves admit on page 38 of the application. Moreover, the defendant is active in the field of climate change adaptation. The adaptation measures by which the Czech Republic is responding to European and global policy in this area are described in the overarching national strategic documents on adaptation to climate change: the Strategy for Adaptation to Climate Change in the Czech Republic and the National Action Plan for Adaptation to Climate Change, the first update of which was approved by the Government in September 2021.

112. The Action Plan contains 108 adaptation measures broken down into specific tasks, which are assigned to the relevant ministries, and specifies deadlines for implementation, sources of financing, expected costs until 2025, etc. A number of adaptation measures and tasks are linked to the issue of landscape features and green infrastructure. More detailed information on the adoption of adaptation measures in the Czech Republic is contained in the NAP AZK Assessment (CENIA and MoE, 2019).

Opinion of the MoT [113]

113. The MoT stated that in the Transport Policy of the Czech Republic, the development of the transport sector is assumed in the conclusion of the Implementation Part (pages 95 and 96) in the variant without the implementation of measures (page 95) and with the variant of implementation of the measures set in the Transport Policy of the Czech Republic (page 96). The calculation of carbon dioxide emissions is presented here only in terms of production from transport without taking into account measures from the energy sector. Zero emissions could be achieved if the measures set for the other sectors (especially in the area of changing the energy mix) were included. The measures set out in the new Transport Policy of the Czech Republic cannot be 100% effective or must always be complemented by measures at European level in relation to the EGD. These European measures and legislative adjustments are currently under preparation. Their adoption is expected in the timeframe up to 2024. It is therefore not true that the applicants' claim that the ambitions of the new Transport Policy of the Czech Republic are completely inadequate in this respect.

Opinion of the MoA [114-117]

114. The Ministry of Agriculture considered that the applicants' reply did not contain any reason to depart from the facts set out in its statement of defence. In particular, the applicants continue to fail to allege any clearly defined infringement of the specific legal provisions allegedly committed by the defendants, which renders their action practically unanswerable. Nor can that obligation be discharged by reference to the fact that in other jurisdictions similar actions have been upheld in some cases.

115. The assessment of the impact of climate change from the point of view of the average person is a rule firmly established in the case-law of domestic and European courts. This practice has proved useful in cases where it is necessary to assess certain psychological or intrinsic impacts for the purposes of legal conclusions. Thus, in general, it is not enough to prove how one particular individual perceives a matter, but it is necessary to look at how the so-called average person perceives the situation. It is therefore for the applicants to prove that the climatic affliction they allege is experienced by the average person, or in this case the relevant part of society as a whole, or that society as a whole is in a similar position in relation to global climatic phenomena. Such necessary allegations are not contained in the application or in the reply.

116. In relation to the reports submitted by the applicants, the Ministry stated that the authors of the two reports are not identified in detail and it is not possible to determine from the copies submitted whether these are their personal views or those of the institutions in which they work. Judging by the overall standard of the two documents, they have not been properly edited or opposed. In view of the fact that the texts are texts expressing views on complex technical issues on which it is not possible to comment in detail, the third defendant suggests that the Court should appoint an expert or an expert institute to assess the texts.

117. The defendant has attached to its submissions a table of support for forest adaptation to climate change (2010-2021), an assessment of the implementation of the economic

measures of the National Adaptation Plan for Climate Change for the forestry sector, and a document concerning the accuracy of the data on reported greenhouse gas emissions.

Opinion of the MIT [118-119]

118. The defendant stated that, as a member of the EU, the Czech Republic had signed up to the Paris Agreement with the other Member States to reduce greenhouse gas emissions by 40 % by 2030 compared to 1990, or 55 % according to Regulation 2021/1119/EU. The Czech Republic's national energy and climate plan was effectively surpassed by this regulation and fulfilled its purpose.

119. The MIT, like the MoE, stated that the Parties to the Paris Agreement have not yet determined what each of them must do to meet the Agreement's targets. It is unclear what constitutes the country's "fair share" of global efforts to combat climate change.

E) The court's second invitation to the defendants to submit their observations [120-151]

120. The Municipal Court instructed the Defendants on 19 April 2022 about the application of a different legal rule. According to the court, the dispute between the parties to the proceedings was whether the defendants were carrying out activities aimed at reducing greenhouse gas emissions by at least 55% below 1990 levels by 2030, pursuant to Article 4(2), second sentence, of the Paris Agreement. The court informed the defendants that the obligation to take adaptation measures arises from Article 5(1) and (4) of Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 ('the ECL' or 'the European Climate Law'), which sets out the European Climate Legal Framework.

121. At the same time, the Municipal Court invited the Defendants to tell whether they had already taken any specific additional mitigation measures to achieve the Paris Agreement target in response to Chart 17 set out on page 34 of the POK Assessment, or whether, beyond the standard measures set out on page 6 et seq. of the MoE's expert report on the applicants' replica, they had a specific plan as to what measures they would take. The Court also asked the defendants to provide evidence of the success of the ongoing implementation of the individual adaptation measures listed in Annex 1 to the National Action Plan for Adaptation to Climate Change for the period 2021-2025, which falls within their jurisdiction.

Opinion of the MoA [122-126]

122. The MoA stated that mitigation and adaptation measures are mainly contained in the document Strategy of the Ministry of Agriculture of the Czech Republic with a view to 2030, including indicators of their effectiveness. An assessment of how the individual objectives and measures have been implemented is currently being prepared, and this assessment will be made available on the defendant's website as the Report on the Implementation of the Strategy of the Ministry of Agriculture for the period 2017-2020, following discussion by the management meeting.

123. The Ministry of Agriculture annually prepares so-called position reports on the implementation of adaptation measures contained in the Concept of Drought Protection for the Territory of the Czech Republic, which was approved by the Government by its Resolution No. 528 of 24 July 2017. These reports are available on the websites of the MoA and the MoE, or were prepared in cooperation between these two ministries in the Interministerial Commission on Water and Drought, as comprehensive information on the implementation of the aforementioned Concept.

124. Another document that can be used to document the activities leading to the mitigation of the effects of climate change is the Information on the progress of the implementation of programmes to mitigate the effects of drought and water scarcity in the Czech Republic under the responsibility of the Ministry of Agriculture in 2019-2021, which was submitted to the Government of the Czech Republic and builds on the previous information from the period 2016-2018 (submitted to the Government in 2018.) In these programmes, measures are implemented in agriculture, forestry and water management, which contribute to the stabilization of water conditions and carbon sequestration.

125. In the area of forestry and related activities, the MoA referred to a set of working documents on the individual objectives of the National Action Plan for Adaptation to Climate Change, which it attached to its opinion.

126. According to the MoA, the individual tasks for the Ministry of Agriculture have been met, are being met or are still ahead of schedule. In the area of agricultural commodities, the MoA drew attention to the overview of ongoing measures annexed to its opinion, whereby the relevant tasks are being implemented on an ongoing basis and their implementation is a long-term process that will rely on timely information and open communication with all parties concerned.

Opinion of the Ministry of the Environment [127-144]

127. In its statement of 19 May 2022, the MoE stated that based on the latest emission inventory for 2020, sent to the European Commission and the UNFCCC in April 2022, the Czech Republic's emissions in 2020 have already decreased by 43% compared to 1990. This decrease is already very close to the 45.1% estimate of the scenario with existing measures (WEM) for 2030.

128. The defendant pointed out that some of the measures from the scenario with additional measures (hereinafter 'WAM') have already been implemented to date. For example, the general programming document of the Modernisation Fund, which was only approved at the beginning of 2021, but the subsidy support is now fully implemented and a number of calls for proposals have been made under the various programmes of the Modernisation Fund. The defendant estimates that if all these programmes are successfully implemented, the Modernisation Fund could reduce the Czech Republic's emissions by up to 18 million tonnes of CO2eq. per year in 2030. It is thus clear that the impact of just this one mitigation measure accounts for the vast majority of the difference in emission reductions between the WEM and WAM scenarios. In the new projections now being prepared by the defendant, this estimated

reduction will already be included in the WEM scenario, which should in itself be sufficient to meet the 2030 objective of the Czech Climate Protection Policy.

129. The projections on which the POK assessment was based (September 2021) also did not yet include the National Recovery Plan, which was only approved in September 2021. Yet 42% of the National Recovery Plan allocation is for climate measures, such as investments in renewable energy, upgrading district heating networks, replacing coal boilers and improving the energy efficiency of residential and public buildings, nature conservation and water management measures, and investments in sustainable mobility. It is legitimate to expect that the contribution of this measure to the reduction of emissions in the Czech Republic will also be significant, as the defendant is currently working intensively on the concrete quantification of the contribution of this measure for the purposes of the new national projections to be submitted for the Czech Republic in March 2023.

130. The defendant further added that extensive modelling of the impacts of the "Fit for 55" package in the Czech Republic is currently underway, the results of which should be available in the second half of 2022. This modelling should provide the defendant with, inter alia, insights into what the specific impact of the individual provisions of the European legislative package will be on the Czech Republic's GHG emissions from each sector. This will also enable the Czech Republic to base its search for appropriate additional measures in sectors where the anticipated effect of the new EU legislation will not be sufficient. Only the results of this modelling will lead to the choice of specific instruments and measures to be included in the update of the Climate Protection Policy in the Czech Republic, which will be discussed by the Government by the end of 2023.

131. In the wake of the ongoing Russia-Ukraine conflict, measures have already been taken in the Czech Republic to exclude support for natural gas under subsidy programmes such as the New Green Savings Scheme, which should also contribute to faster development of renewable energy sources and reduction of greenhouse gas emissions. The Government Programme Statement also includes a specific commitment to contribute to the installation of new photovoltaic installations on at least 100 000 rooftops by 2025.

132. The MoE agrees with the Municipal Court's conclusion that the obligation to undertake activities to reduce GHG emissions by at least 55% by 2030 stems from Article 4(2), second sentence, of the Paris Agreement and obligates States to exercise due diligence in mitigation, not to achieve the required reductions.

133. The defendant described the court's conclusion that the recommendations for updating the Climate Protection Policy (ibid., p. 79) did not meet the requirements that Article 4(14) of the Paris Agreement imposes on mitigation measures as misleading and irrelevant to the assessment of the subject matter of the proceedings. Page 79 of the recommendations for updating the Climate Protection Policy does not list (nor does it aim to list) and set out in detail the various mitigation measures. It is only a guide, a recommendation on how to approach the development of a future update of the POK. Only a new update of the POK planned for 2023 can, on the basis of up-to-date analytical evidence (e.g. the above-mentioned modelling of the

impacts of the "Fit for 55" package, the results of which are expected in mid-2022), set out the individual mitigation measures formulated in accordance with the requirements of the Paris Agreement, the requirement of European regulations and the general standards set for the development of strategies.

134. Government Resolution No. 207 required the defendant to prepare an update of the POK no later than 31 December 2023. The defendant therefore informed the court that it could not submit an updated list of planned mitigation measures as of 19 May 2022. The defendant recalled that in its previous two submissions it had provided the court with an extensive list of specific measures taken to mitigate climate change. The defendant, as a central administrative authority, is guided in its activities, inter alia, by Government resolutions, including the time limits laid down therein, but Government resolutions cannot constitute conceptually unlawful interference within the meaning of Section 82 of the Code of Administrative Justice.

135. The MoE agrees with the Court's conclusion that the obligation to comply with a certain national carbon budget does not derive from any source of domestic or international law. As of the date of the filing of the application and to date, no binding deadline for any compliance has passed to the defendant's detriment that is mandated by domestic law, international treaty, European regulations or applicable government resolutions. The defendant noted that this conclusion should lead to the dismissal of the application, since the plaintiffs explicitly refer in the application to the unlawful interference with their public subjective rights as "the failure to take necessary and proportionate measures to reduce greenhouse gas emissions in the Czech Republic, leading to the maintenance of the Czech Republic's carbon budget of 800 Mt CO2 from January 2021 until the end of the century". The Administrative Court is bound by the scope and object of the application as defined by the applicants.

136. The defendant drew attention to the judgment of the Municipal Court in Prague of 4 May 2022, No. 3 A 13/2022-37, which dismissed an interference action brought by a registered association seeking a declaration that the Ministry of the Environment had been inactive in failing to take sufficient measures to reduce greenhouse gas emissions and eliminate microplastics in the territory of the Czech Republic, in violation of international obligations and obligations arising from the constitutional order of the Czech Republic. In recital 22 of the reasoning of the judgment, the Court upheld the objection that, if the applicant seeks protection against a ongoing interference (the alleged inaction is ongoing), it is necessary to insist on the exhaustion of the remedies in the administrative proceedings, within the meaning of Section 85 of the Code of Administrative Justice. The defendant is convinced that many of the conclusions of that judgment can be applied to the present case.

137. As regards the adaptation measures, the defendant submits as follows. First, the defendant agreed with the Municipal Court that the Czech Republic is also obliged to adopt adaptation measures, since that obligation arises from Article 5(1) and (4) of the ECL.

138. The defendant stressed that Article 5 of the ECL only obliges the Czech Republic to adopt a national adaptation strategy and plan (which the Czech Republic has complied with), but the regulation does not provide for any specific form, content or model catalogue of

adaptation measures. To date, the Commission has not even approved the binding guidance under Article 5(5) of the ECL.

139. According to the defendant, only the assessment of the implementation of the previous action plan (NAP AZK 2017-2020) is currently available. To date, taking into account the details of the formulation of the specific objectives of the updated National Adaptation Strategy (NAS), it can be concluded that all objectives are being met on an ongoing basis. A more detailed assessment of the fulfilment of the strategic objective and specific objectives of the NAS is not available at this time - after all, the strategy was approved in September 2021 and it is not established in the Czech Republic (or elsewhere in the world) that monitoring of the fulfilment of the objectives of the national strategies takes place so frequently that an assessment of fulfilment is available within the first year of approval. The implementation of the Action Plan will be evaluated only in 2024 and 2029 and the result will be reported to the Government of the Czech Republic through the Report on the Adaptation of the Czech Republic to Climate Change at five-year intervals starting in March 2025. In accordance with Government Resolution No 785 of 13 September 2021, a draft 2nd update of the Action Plan, for the period 2026-2030, will be submitted to the Government by 30 November 2025.

140. The defendant is convinced that it is not currently committing any unlawful omission in relation to adaptation to climate change that could be characterised as an unlawful interference with the applicants' public subjective rights, because:

- it is committed to ensuring continued progress on climate change adaptation by emphasising strategic work. The main strategic document is the updated National Adaptation Strategy, which was approved by the Government of the Czech Republic in 2015 (i.e. 6 years before the adoption of the ECL) and updated in September 2021. The topic of adaptation to climate change is also written into the strategic documents of all ministries in the Czech Republic,

- It is also ensuring sustainable progress through long-term support for activities relevant to adaptation in the Czech Republic, both financially through targeted subsidy support for investment-based adaptation measures, support for the acquisition of adaptation strategy documents at local level, support for research, and support for awareness-raising through NGO subsidies, as well as through separate awareness-raising events,

- Continues to announce subsidy calls - e.g. OPŽP, national subsidy programmes (NPŽP, NZU, etc.), support to NNO, calls for the Covenant of Mayors for Climate,

- ensures communication with municipalities of the Czech Republic, e.g. through the webinar of the Union of Towns and Municipalities of the Czech Republic,

- The Czech Republic has an adopted national adaptation strategy and plan, and these documents are based on thorough analyses of climate change and vulnerability, and assessments of progress and indicators in this area, undeniably based on the best available and most up-to-date scientific knowledge. More than 170 experts from public, scientific and non-profit institutions contributed to the update of both documents. The materials are mainly based on expert documents prepared by the Ministry of the Environment (CHMI and CENIA)

with the support of the Academy of Sciences of the Czech Republic (especially CZECHGLOBE, Institute of Global Change Research of the CAS) and a number of other research organisations. The key analytical bases for the update of the Action Plan were: Update of the 2015 Comprehensive Study of Impacts, Vulnerability and Sources of Climate Change-related Risks in the Czech Republic (team led by the CHMI, 2019); NAP AZK Assessment (CENIA and Department 150, 2019); Vulnerability Assessment of the Czech Republic to Climate Change as of 2017 (CENIA, 2019)

- it has taken into account the exceptional vulnerability of the relevant sectors in its national strategy (see the above-mentioned background documents and broad cooperation) and has undoubtedly promoted solutions close to nature and ecosystem-based adaptation measures (see in particular the purpose and basic principles of the strategy - chap. 3.1, the vision of adaptation in the Czech Republic - chap. 3.2, the formulation of the specific objectives of the strategy - chap. 3.4, the framework for adaptation measures - see Annex 1 to the statement of defence)

- initiated a regular update of its national adaptation strategy in autumn 2021, when the first update of the adaptation strategy and action plan was approved by the Government of the Czech Republic,

- reports on the implementation of EU climate regulations. In accordance with Article 19(1) of Regulation (EU) 2018/1999, the first report on national climate change adaptation plans and strategies was submitted on 15 March 2021, indicating the measures implemented and planned to facilitate adaptation to climate change in accordance with the reporting requirements agreed under the UNFCCC and the Paris Agreement. Further reporting in this area will take place again by 15 March 2023.

- The proper implementation of EU Regulation No 2018/1999 is also demonstrated by the fact that no infringement proceedings for violation of the Treaty within the meaning of Article 258 TFEU have been initiated against the Czech Republic in relation to this article of the Regulation.

141. The Ministry of the Environment has commented on the implementation of specific objectives 1 and 3 under the NAP, as they fall within its remit. With regard to adaptation measures requiring a change in the legislation in force, the defendant stated that whether a piece of legislation of a specific wording and by a specific date is adopted always depends on the course of the legislative process. Specific legislative changes cannot be sought by means of an interference action.

142. With regard to the implementation of specific objective 1.5 (measures to reduce water and wind erosion of agricultural land), the defendant stated that the so-called Erosion Protection Decree - Decree No 240/2021 Coll. - had been adopted, on the protection of agricultural soil against erosion (§ 2(a), § 5(2) regulates erosion monitoring, thus fulfilling adaptation measure 1.5.10), and an amendment to the Act on the Protection of Agricultural Soil Fund is being prepared (submission to the Government according to the Government's Legislative Work Plan by 10/2022), which strengthens soil protection against erosion. The

main purpose of the amendment to the Agricultural Land Use Fund Act [Act No. 334/1992 Coll, on the protection of the Agricultural Land Use Fund] is to strengthen the ecological function of soil (measure 1.5.12). According to the proposal, landscape elements are to be part of the Land Use Fund, so there will be no need to withdraw land for them. According to the forthcoming amendment, landscape features will be considered part of agricultural land within the meaning of the Government Regulation on the determination of details of land use records according to land use relations on agricultural land. A reduction in the amount of organic matter will also be considered to be damaging the physical, chemical or biological properties of agricultural land (adaptation measure 1.6.1). According to the amendment, soil enrichment with organic fertilisers can be imposed as a remedial measure. The amendment to the Agricultural Land Use Fund Act considers landscape features on agricultural land to be part of the agricultural land, with landscape features including groups of trees, tree plantations and solitary trees. At the same time, the amendment extends the possibility of using agricultural land as a tree plantation (measure 1.11.3).

143. With regard to specific objective 3, the defendant stated that, with effect from 1 February 2021, the following was adopted "the 'dry title' of Act 254/2001 Coll., the Water Act, i.e. the new Title X entitled 'Management of drought and water scarcity'. The main principle of the new legislation is to legislate for operational management in times of drought and water scarcity. The basic tool for drought and water scarcity management is the so-called drought and water scarcity management plans (hereinafter referred to as "drought plans"), which are prepared by regional authorities at the level of all regions and jointly by the MoE and the MoA at the level of the entire Czech Republic.

144. The drought plans identify, in particular, what the water requirements and sources of water are in a particular area and how a person managing water will feel the limitations of general or special management. The amended law further defines a new emergency "water shortage condition" as a temporary condition with potential impacts on basic human needs, economic activity and the environment where, as a result of drought, water use demands exceed available water resources and it is necessary to restrict water management and implement other measures. For the duration of the water scarcity situation, drought and water scarcity management committees will be convened and, on the basis of drought plans, will be able to apply certain measures, such as restricting or prohibiting water use, ordering the operation of a back-up water source or imposing emergency manipulation of a water body beyond the approved water management rules.

Opinion of the MoT [145-147]

145. MoT referred to Table 8 on pages 35-38 of the POK Assessment, which shows that the measures in the Transportation sector are being met or are being met on an ongoing basis. Only one measure (4E - Shifting part of the freight transport capacity from road to rail) is partially implemented with the recommendation to follow up the new Intermodal Transport Directive and the Transport Policy of the Czech Republic for the period 2021-2027 with a view to 2050 in the update. The defendant also referred to pages 47-49 of the POK Assessment, which shows how the measures have been or are being implemented.

146. The defendant pointed out that it is not the responsible or co-responsible authority for specific objectives 1 to 3 of the in the NAP AZK. The defendant added that it is the responsible authority for methodological and organisational measure 4_16.3 "Take into account the effects of climate change in the design of transport buildings and structures".

147. In the remainder of its opinion, the MoT discussed the activities in reducing the emission burden from transport, which are set out, for example, in the material on the evaluation of the implementation of the National Programme for the Reduction of Emissions of the Czech Republic (as amended by the Update of the National Programme for the Reduction of Emissions of the Czech Republic 2019) of December 2021 (pp. 143-157). According to the defendant, the measures in question were continuously implemented.

Opinion of the MIT [148-151]

148. The MIT indicated the amount of support for water saving measures (EUR 48 499 610) and for the circular economy (EUR 40 263 828), which comes from the National Recovery Plan and from the Operational Programme Technology and Applications for Competitiveness ("OP TAK").

149. On 5 May 2022, the first call "Water Saving in Industry" was announced, targeting sustainable water management. In addition, the MIT is preparing a support programme under OP TAK aimed at water saving in enterprises. This programme will be made available in the second half of 2022 and will only target infrastructure with no direct impact on production. In 2020, the research project "More economical use of water in industry and energy in the Czech Republic" was carried out, the output of which was, among other things, a methodology for assessing water use at the enterprise level.

150. For the 2021-2027 subsidy period, specific objective 5.2 Support for the transition to a resource-efficient circular economy was approved. The MIT expects to announce the first calls under OP TAK at the end of the first quarter of 2022. Point 2.7 of the National Recovery Plan targets support to small, medium and also large enterprises.

151. The Respondent agreed with the conclusions of the Municipal Court regarding the absence of a binding carbon budget; the obligation under the EU NDC; and the binding nature of the European Climate Law.

F) Hearing [152-156]

152. On 15 June 2022, a hearing was held in the case before the court, at which both the applicants and the defendants maintained their arguments from their written submissions.

153. Representative of the applicants summarized the essential points of the interference action and requested that the documents entitled Pre-Action Notice on the grounds of non-compliance with the Czech Republic's climate change commitments and threat to the rights and legitimate interests of citizens ("Pre-Action Notice") and the Vulnerability Assessment of the Czech Republic in relation to climate change ("Vulnerability Assessment") be placed on file. The court granted the request. Representative of the applicants submitted to the court two

alternatives to Claim V of the Petition Claim. The first alternative required the defendants to achieve climate neutrality together with a cap on the maximum amount of absolute CO2 emissions (800 Mt until climate neutrality is achieved on the territory of the Czech Republic), while the second alternative was based on the obligation to reduce CO2 emissions by 84% by 2030 and to achieve carbon neutrality by 2050. In both alternatives, the adaptation claim was supplemented by a requirement to achieve sustained progress.

154. Representative of the MoE enumerated the legal conditions for the merits of an interference claim, challenging in particular the directness of the interference with the claimants' rights, the causal link between the alleged failure to act and the effects on the claimants' legal sphere, and the unlawfulness of the interference. The representative of the MoE stated that, in view of the current international situation, it was uncertain whether the regulations of the 'Fit for 55' package would be adopted and stated that an assessment of the impact of that climate package was necessary for the drafting of the new POK. The other defendants joined in this statement.

155. At the hearing, the Municipal Court took the following documentary evidence (the facts proved were described by the Court in the reasoning of the judgment with reference to a specific page of documentary evidence):

- The effects of climate change in the Czech Republic

- Expected impacts of climate change in the Czech Republic

- Quantification of the impacts of the Paris Agreement on the Czech Republic

- Nationally Determined Contribution (EU NDC)

- Global Warming of 1.5 °C (chapter 2)

- COP26, draft 1/CMA.3

- Assessment of the Climate Protection Policy

- General Programme Document of the Modernisation Fund

- OECD Czech Republic

- Evaluation of the implementation of the National Action Plan for Adaptation to Climate Change

- Position paper on progress in the implementation of the Drought Protection Concept for the territory of the Czech Republic for 2019

- National Greenhouse Gas Inventory Report of the Czech Republic

- Support for adaptation of forests to climate change (2010-2021)

- Documentation from the interim monitoring of the implementation of adaptation measures in forestry

- CHMI website (basic information on climate change)

- Sixth Assessment Report, WGII, chapter 1 and 13

- Sixth Assessment Report, WGIII, chapter 13

- Expected impacts of climate change

- Czech Republic emissions tables based on data compiled by the European Environment Agency

- Climate Neutral Czech Republic - Pathways to decarbonising the economy (McKinsey & Company analysis)

- National inventory of anthropogenic greenhouse gas emissions for the Czech Republic

- Preliminary overview of significant water management problems identified in the international part of the Elbe, Oder and Danube river basins

156. The Municipal Court rejected the other requests for evidence. The reasons are set out below at the end of the chapters on mitigation and adaptation.

III. Assessment of the application [157-331]

A) Admissibility [157-191]

157. The Municipal Court proceeded in assessing the admissibility of the interference action from the sequence defined by the judgment of the Extended Chamber of the Supreme Administrative Court of 21 November 2017, No 7 As 155/2015-160, paragraphs 61 to 66. Therefore, the Municipal Court did not deviate from the conclusions of the Extended Chamber. The Court first considered whether the applicants had standing to bring the action for interference [158-166]; whether the defendants were in the position of an administrative authority at the time of the alleged interference [167-178]; it then ascertained whether the applicants had exhausted other legal remedies or reliefs [179-185]; and, finally, it examined whether the action for interference had been brought in time [186-191].

Standing of the applicants [158-166]

158. In order to establish active legal standing under Section 82 of the Code of Administrative Justice, it is sufficient for the applicant to allege a direct infringement of his rights by an unlawful interference by an administrative authority which is not a decision and which was directed directly against him or as a result of which he was directly affected.

159. The applicants alleged that the defendants had failed to comply with their obligation to take necessary and proportionate measures to protect the climate arising from the Charter, the Environmental Act, the ECHR, the Paris Agreement and the UNFCCC, thereby interfering with the applicants' right to a favourable environment, their right to property, their right to protection of private and family life, their right to life and health, their right to engage in economic activity, and their right to self-government. The applicants have described the interference in detail on pages 22 to 46 of the Application.

160. The Municipal Court first assessed whether the claims were sufficiently specific for review in the administrative courts. On page 21 of the Application, the applicants alleged general executive inaction on the part of the defendants in the form of inadequate target-setting of strategic documents, failure to coordinate the activities of ministries, failure to propose relevant legislation, etc. However, it is apparent from the overall thrust of the application (pages 46 to 48 of the application) and from the petition claim that the applicants require the defendants to adopt necessary and appropriate mitigation and adaptation measures in the field of climate protection in accordance with the international obligations of the Czech Republic. The Court takes into account that international law obliges action (e.g. Article 4(2), second sentence, of the Paris Agreement), not the use of certain means, and the Czech Republic has not adopted a climate law that would specify the State's obligations in this area, as does, for example, Act No 201/2012 Coll, on air protection, setting immission and emission limits. In such a case, the applicants were not in a position to define the interference other than by referring to the alleged inadequacy of existing measures providing protection against climate change and its consequences. The Court therefore considers that the content of the application is sufficiently precise.

161. The Municipal Court then considered the conceivability of the alleged interference. According to the judgment of the Extended Chamber of the Supreme Administrative Court cited above (paragraph 63), an inconceivable interference is a situation in which *"it is obvious and beyond doubt that the conduct described in the application cannot, by reason of its nature, the nature of its author or other circumstances, constitute an "interference" within the meaning of the legislative wording in Section 84 Code of Administrative Justice (note of the Municipal Court: meant wording of Section 82 Code of Administrative Justice), even if the applicant's allegations were true [...]. It must be emphasised, however, that an action may be rejected on that ground only if the impossibility of the conduct alleged in the action being an unlawful interference is manifest and unquestionable."* The Court assessed the conceivability of the interference in light of the alleged nature of the interference, the rights of the applicants, the legal form of the applicants, and with respect to the actor of the interference.

162. The applicants characterized the interference as an inaction consisting of the defendants' failure to comply with their international obligations in the field of mitigation and adaptation to climate change. Judicial protection against such interference cannot be excluded in advance, because "*the object and purpose of judicial protection against unlawful act by a public administration is to provide the individual with an effective remedy, in principle regardless of the form in which the public administration acts."* (Resolution of the Extended Chamber of the Supreme Administrative Court of 16 November 2010, No 7 Aps 3/2008-98,

paragraph 15). However, the unlawful inaction must be capable of depriving the applicants of their rights (ibid., paragraph 20).

163. The right to life, health, private and family life, the right to exercise economic activity, the right to property and the right to self-government may be interfered with by inaction in the protection of the environment (the case-law of the ECtHR is based on this principle, e.g. the judgment of the ECtHR of 22 May 2003 in Kyrtatos v. Germany, Application No. 41666/98, paragraph 52). Similarly, the interference with the right to a favourable environment under Article 35(1) of the Charter alleged by all the applicants is also conceivable. Although this right can be invoked under Article 41(1) of the Charter only within the limits of the law, and the Climate Law has not yet been adopted, the Constitutional Court (judgment of 26 January 2021, Pl. ÚS 22/17, paragraph 89) defined the essence of the right to a favourable environment, which is independent of statutory implementation, as an obligation on the part of the State to protect against interference with the environment if the interference reaches such a level as to make it impossible to realise the basic needs of human life. The purpose of the right to a favourable environment is to ensure an environment of such quality that a person can live in it with dignity. Failure to implement mitigation and adaptation measures may interfere with this purpose, as these measures are necessary to protect human life and health from the adverse effects of climate change.

164. Applicant Czech Climate Litigation, z. s. is an association. The legal order grants associations the right to seek in proceedings before administrative courts not only the protection of their procedural rights but also the substantive rights of their members, in particular the right to a favourable environment. The condition is the association's material and local relationship to the subject matter of the proceedings (Supreme Administrative Court judgment of 28 February 2020, no. 6 As 104/2019-70, paragraph 18). The material relationship is determined, inter alia, by the purpose of the association and its factual fulfilment. The applicant association comprises 218 natural persons and was established on 26 July 2019 for the purpose of protecting the climate of the Czech Republic (see the website www.klimazaloba.cz, and the extract from the Association Register). The association sent a pre-action notice to the defendants and subsequently filed a climate action. The association's factual relationship to the subject matter of the lawsuit is undisputed. It is sufficient for the local relationship to be established if the object of protection which is the subject of the proceedings is of national importance (ibid., paragraph 18). Climate change affects the entire territory of the Czech Republic, and the association therefore has standing to bring an interference action, which is the main reason for its formation.

165. The same conclusion also applies in the case of the applicant, the Czech Ornithological Society - South Moravian Branch. It is a branch association of the Czech Ornithological Society, whose main purpose is the protection of nature and the landscape and the environment, in particular research and protection of wild birds and their environment, as well as ecological education and education of children and adults. There is no dispute in the court proceedings that the branch society fulfils its mission.

166. The municipality of Svatý Jan pod Skalou also has an active standing to bring the interference action. Climate change is capable of affecting the legitimate interests of citizens living in its territory. The basic duty of a municipality under Section 2(2) of the Municipalities Act is to take care of the overall development of its territory and the needs of its citizens, and to protect the public interest. It is therefore desirable that a municipality should be able to take care of the rights of its citizens to a favourable environment in the same way as an environmental association (accordingly, the Constitutional Court's ruling of 13 October 2015, Case No. IV ÚS 3572/14, paragraph 43).

Standing of the defendants [167-178]

167. With regard to the Government's objection, the Municipal Court examined whether it could have been an administrative authority in the alleged interference, since the Administrative Court provides protection under Section 4(1)(c) in conjunction with Section 82 of the Code of Administrative Justice only against unlawful interference by administrative authorities.

168. The Supreme Administrative Court defined an administrative authority in its judgment of 21 May 2008, no. 4 Ans 9/2007-197, as follows: *"Section 4(1)(a) of the Code of Administrative Justice introduces the legislative wording "administrative authority". This means an executive authority, a body of a local self-government unit, as well as a natural or legal person or other authority, if they have been entrusted with the decision-making on the rights and obligations of natural and legal persons in the field of public administration. This legislative wording refers not only to the jurisdiction of the administrative courts under this point of the provision, but also to the jurisdiction under the other points, i.e. points (b), (c) and (d), i.e. also to the inaction of an 'administrative authority' or unlawful interference attributable to it. The legal definition contains three elements: first, it is an executive authority or another of the types of authority listed in the definition. Secondly, that authority decides on the rights and obligations of natural and legal persons. Thirdly, this decision-making takes place in the field of public administration."* The Supreme Administrative Court clarified this conclusion in its judgment of 21 September 2021, No. 3 Ads 190/2019-47, paragraph 17: *"The Supreme Administrative Court is aware that in its previous decision-making it has held that the conceptual characteristic of an administrative authority is precisely the decision-making on the rights and obligations of persons. However, as it explained in its judgment of 9 October 2019, no. 8 Ads 301/2018-45, it has always done so only in the case of an action against a decision of an administrative authority or an action for protection against inaction in the issuing of a decision (see, e.g., the judgment of the Supreme Administrative Court of 19 August 2010, No. 2 As 52/2010-59, No. 2133/2010 Coll. of the Supreme Administrative Court). Therefore, if the actions are not actions against decisions or for protection against inaction in the adoption of a decision, the term 'administrative authority' must be interpreted to mean such an authority or person referred to in Article 4(1)(a) of the Code of Administrative Justice in so far as they exercise powers in the field of public administration."*

169. According to Article 67(1) of the Constitution, the Government is the supreme organ of executive power. The first condition is satisfied.

170. The Municipal Court is convinced that the second condition must be interpreted for the purposes of the interference action in accordance with the above-quoted conclusion of the Supreme Administrative Court that the administrative authority is an authority or person under section 4(1)(a) of the Code of Administrative Justice exercising powers in the field of public administration. The term competence means that it is a public administration (exercise of public authority). Public administration in the material sense is the set of state activities that are not legislative, judicial or governmental (judgment of the Supreme Administrative Court, no. 2 As 24/2010-53).

171. The main role of the government lies in the political management of public administration. For this purpose, the government adopts resolutions which are internal regulations (SLÁDEČEK, Vladimír. Obecné správní právo. 4. aktualizované vydání. Praha: Wolters Kluwer, 2019, pp. 269, 271 and 78). Exceptionally, the government may act as an administrative body and its resolutions may have the nature of an individual administrative act and its inaction may constitute an unlawful interference (Supreme Administrative Court judgment of 25 February 2021, no. 10 As 391/2020-65, paragraphs 9 to 14).

172. In the present case, the applicants alleged executive inaction by the defendants, which, in the case of the Government, consisted in a lack of coordination between the ministries in dealing with the climate crisis pursuant to Section 28(1) of the Competence Act and in the approval of insufficiently ambitious strategic and conceptual documents (p. 21 of the application). In doing so, the Government acts as the holder of governmental power, which it exercised internally by the Government through the adoption of Government resolutions which are binding on the ministries pursuant to Section 21 of the Competence Act. The exercise of governmental power does not interfere in a superordinate manner with the rights and obligations of the applicants and does not directly affect them (idem, judgment of the Municipal Court in Prague of 21 December 2012, no. 8 A 112/2012-27). Therefore, it is not the case that the absence or inadequacy of that procedure may directly deprive the applicants of their public subjective rights (accordingly, judgment of the Supreme Administrative Court of 21 September 2021, no. 3 Ads 190/2019-47, paragraph 16).

173. The Government, in exercising its management function, does not act in the field of public administration. It is not an administrative authority whose activities could be subject to judicial review under Section 4(1)(c) in conjunction with Section 82 of the Code of Administrative Justice.

174. The literature is consistent in its conclusion that "the approval of various conceptual materials, referred to as policies and programmes, which set out development priorities in various areas of public life, e.g. spatial development policy, national policy on research, development and innovation, rural development programme, etc., falls within the competence of the government. (KOPECKÝ, Martin. Administrative law. General part. 1st edition. Prague: C. H. Beck, 2019, p. 78).

175. The Municipal Court summarises that the Government obviously could not act as an administrative authority under Section 4(1)(a) of the Code of Administrative Justice in the

alleged interference, because its (in)action was not directed towards the recipients of the public administration's action, but exclusively within the public administration (see similarly the judgment of the Supreme Administrative Court of 25 April 2017, no. 8 As 103/2016-90, paragraph 18). The Municipal Court therefore rejected the interference claim under Section 46(1)(a) of the Code of Administrative Justice in so far as it objected to the government.

176. The applicants were not deprived of their right of access to the administrative courts by the court's action, since the Government was not the sole defendant. The defendant ministries, unlike the Government, meet the definition of an administrative authority as set out above: they are an executive authority (a central government body under the Competence Act) and their public administration rests on the exclusive adoption of mitigation and adaptation measures under the Paris Agreement and the ECHR, which, inter alia, are aimed at protecting the rights of non-subordinate actors from the effects of climate change.

177. While it is true that the applicants have not specified which specific measures the ministries were required to take, this is not such a vague statement of the subject-matter of the action as to manifestly and unquestionably preclude judicial review under Section 4(1)(c) of the Code of Administrative Justice on the ground that it is impossible to ascertain whether the defendants acted as an administrative authority or that they may have acted unlawfully in relation to the applicants. The applicants were not in a position to identify specific measures because they alleged a breach of an obligation under the Paris Agreement to achieve a particular result, not an obligation to take precisely defined measures. The Municipal Court took into account the fact that the present action was the first of its kind in the Czech Republic and that the available foreign decisions show that administrative courts have dealt with climate actions in similar cases. Moreover, the ministries did not dispute their passive standing.

178. The Municipal Court concluded that the alleged executive inaction was neither a decision under Article 65(1) of the Code of Administrative Justice nor an inaction within the meaning of Article 79(1) of the Code of Administrative Justice consisting in the failure to issue a decision or certificate on the merits. The applicants have chosen the correct type of action and have identified the interference with sufficient specificity to enable it to be assessed in terms of its legality and its impact on the applicants' rights. However, the Government did not act as an administrative authority in the alleged inaction and could not therefore be subject to an action.

Exhaustion of other legal remedies [179-185]

179. In its statement of defence, the MoE argued that the applicants had not exhausted all legal remedies under Section 85 of the Code of Administrative Justice, namely measures against inaction under Section 80 of the Code of Administrative Procedure, before bringing the action for interference.

180. The obligation to exhaust the legal remedies was addressed by the Extended Chamber of the Supreme Administrative Court in its judgment of 5 December 2017, no. 1 Afs 58/2017-42, paragraphs 34 and 46: *"Judicial protection is subsidiary only where the public administration has effective means to protect the rights of persons who claim that their public*

subjective rights have been infringed by the action or inaction of the public administration. This has a purpose. The public administration can make a decision on the merits, it can remove the interference with rights before any judicial review. It is therefore a statutory construction designed to ensure that illegalities are dealt with by the competent authorities at the place and time where they occur in the first place. The latter, on the basis of the arguments put forward in the remedies provided by law, will themselves recognise the previous illegality and use their own procedural tools to remedy it. [...] It is not important how the law has named this or that remedy, but how it has comprehensively regulated it, in particular in terms of ensuring the protection of the substantive or procedural rights of a particular person, including subsequent judicial protection."

181. If the interference consists in inaction, then the plaintiff must, in principle, before filing an interference action, use the measure against inaction pursuant to Section 80 of the Code of Administrative Procedure (idem.KÜHN, Zdeněk, KOCOUREK, Tomáš et al. Soudní řád správní. Komentář. Praha: Wolters Kluwer, 2019, commentary to § 85, paragraph 5). The Court holds that the applicants did not have such a duty, in view of the particularities of the case under consideration.

182. It follows from the above-mentioned judgment of the Extended Chamber of the Supreme Administrative Court that the supportive role of judicial protection is not an end in itself, but respects the principle of separation of powers under Article 2(1) of the Constitution. On the other hand, in view of the right of access to the administrative courts under Article 36(2) of the Charter, it is not permissible to require the applicant to exhaust ineffective legal remedies. The main criterion of effectiveness lies in ensuring the protection of the substantive or procedural rights of a particular person.

183. The scope of the interference action goes beyond the institution of measures against inaction under Section 80 of the Code of Administrative Procedure: it is directed against the violation of five human rights by five defendants, and implies that only by the joint action of the defendants can a remedy be obtained for a continuing unlawful state. Although the protection against failure to act under Section 6(1) of the Code of Administrative Procedure relates to delays in any procedures and acts of the administrative authorities under the Code of Administrative Procedure, the applicants do not seek specific measures, but the achievement of a result. For the assessment of the effectiveness of the measure against inaction, it is also essential that the law does not clearly indicate whether the filing of a request for the application of a measure against inaction initiates an administrative procedure pursuant to Section 44(1) of the Code of Administrative Procedure, in which the administrative authority is bound by the petition claim, or whether it is left to the discretion of the administrative authority as to how it will proceed (see FIALA, Zdeněk, FRUMAROVÁ, Kateřina et al. Správní řád. Praktický komentář. Praha: Wolters Kluwer, 2020, commentary to § 80).

184. If the claimants had to use the protection against inaction, then they would have to apply to each defendant individually for the application of the measure against inaction. Such a procedure would lead to an uncertain outcome. Nor do the defendants specify in any way how the procedure under Section 80 of the Code of Administrative Procedure would protect

the applicants' rights. Given the nature and extent of the alleged interference, the Court does not consider that the applicants could obtain an effective remedy through that procedure. The Municipal Court therefore does not consider that the applicants' protection against inaction is an effective means of protecting their rights which they would have to exhaust before bringing an action for interference within the meaning of Section 85 of the Code of Administrative Justice.

185. The Municipal Court also took into account that the applicants submitted at the hearing a pre-action notice dated 8 December 2020 addressed to the Prime Minister, the Minister for the Environment, the Minister for Industry and Trade and the Minister for Agriculture. The applicants demanded that the addressees of the notice publicly acknowledge within 30 calendar days that the existing strategic documents do not comply with the Czech Republic's commitments under the Paris Agreement and do not aim at achieving EU climate neutrality by 2050. The applicants demanded that the addressees of the notice take without delay the necessary remedial measures, which they set out in the notice. It is clear from the applicants' conduct that they did not apply to the Administrative Court without further delay, but only after the defendants had failed to comply with their pre-action notice. The subsidiary role of judicial review was therefore respected.

Time limit for bringing an interference action [186-191]

186. Under Section 84(1) of the Code of Administrative Justice, the action must be brought within two months of the date on which the applicant became aware of the unlawful interference. At the latest, the action may be brought within two years from the time when the interference occurred.

187. The applicants submitted that the unlawful interference was of an ongoing nature and that, therefore, the time-limits for bringing an action for interference could not have expired.

188. The Supreme Administrative Court dealt with this issue in its judgment of 26 June 2013, No 6 Aps 1/2013-51, paragraph 22: *"The Supreme Administrative Court therefore summarises that Section 84(1) of the Code of Administrative Justice must be interpreted as meaning that the time limit for bringing an action for protection against interference by an administrative authority, neither the subjective time limit (two months) nor the objective time limit (two years), may expire while the interference is ongoing. In other words, an action against an interference which is ongoing at the time the action is brought cannot, by its very nature, be out of time."* An ongoing interference is an interference which is still occurring; it is not a one-off act by an administrative authority whose effects are ongoing (ibid., paragraphs 12 and 13).

189. In the present case, the alleged interference consisted of the defendants' failure to act in adopting the climate measures, and that failure was ongoing at the time the action was brought (21 April 2021) because the defendants had not taken the measures requested by the applicants by that date. This was not a one-off failure to act with lasting consequences, but an ongoing failure to act. In the event of a continuing failure to act, the time-limits for bringing an action for interference could not have expired.

190. The Supreme Administrative Court came to the same conclusion in the judgment cited above, paragraph 9: *"The Supreme Administrative Court emphasises that it is clear from the definition of the alleged interference just given that the interference alleged here is a continuous, i.e. ongoing, interference at the time of the bringing of the action. Neither the inaction in the form of failure to protect the right of the complainant and its residents to a favourable environment and the relevant public interests, nor the failure to implement (lack of proper implementation) Community law, constitute one-off acts, but a certain continuous state of affairs lasting for a longer period of time."*

191. The Municipal Court found that the conditions for the interference action had been met and proceeded to a substantive review.

B) Merits [192-331]

192. Pursuant to Section 82 of the Code of Administrative Justice, anyone who claims that he or she has been directly prejudiced in their rights by unlawful interference, instruction or enforcement (hereinafter "interference") from an administrative authority, other than a decision, which was directed directly against him or her or as a result of which he or she was directly affected, may bring an action before the court for protection against it or for a declaration that the interference was unlawful.

193. Pursuant to Section 87(1) of the Code of Administrative Justice, the court shall decide on the basis of the facts ascertained up to the day of its decision; if the court decides only whether the interference was unlawful, it shall base its decision on the facts and the legal situation existing at the time of the interference.

194. According to the settled case-law of the Supreme Administrative Court (cf. e.g. the judgment of the Supreme Administrative Court of 14 September 2017, no. 1 Afs 217/2017-34, and the case-law cited therein), it is appropriate to grant protection in the procedural regime under Section 82 et seq. of the Code of Administrative Justice if all the conditions set out in that provision are jointly fulfilled. The claimant must have been directly (condition 1) deprived of his rights (condition 2) by an unlawful (condition 3) interference , instruction or enforcement ('interference' in the broader sense) of an administrative authority which is not a decision (condition 4) and which was directly aimed against him or as a result of which he was directly affected (condition 5).

195. In the present case, it is disputed between the parties whether all five conditions under Section 82 of the Code of Administrative Justice are met. The Court has assessed both the evidence submitted by the parties and the other evidence within the meaning of Section 52(1) of the Code of Administrative Justice which has emerged from the proceedings so far, e.g. IPCC assessment reports, data from the European Commission's website, information from the European Environment Agency's website, etc. The Municipal Court took such evidence in order to assess the credibility of the evidence proposed by the parties, and therefore did not violate the principle of equality of arms (Resolution of the Constitutional Court of 3 June 2010, Case No III.ÚS 1336/10-1).

196. The Municipal Court first examined whether the defendants had violated the applicants' right to a favourable environment under Article 35(1) of the Charter.

First condition [197-200]

197. According to the first condition, the applicant must have been directly deprived of his rights by the interference. The Code of Administrative Justice does not allow an action for interference to protect the rights of third parties (actio popularis). This means that an action cannot be brought successfully against an intervention by which someone other than the applicant has been deprived of his rights. All of the applicants argued that they had been deprived of their right to a favourable environment by the failure to adopt adequate mitigation and adaptation measures because of the melting of glaciers, the rise in the level of the world's oceans, the mass extinction of species, the lack of arable land and the migration of populations. Those effects, although adverse, do not in themselves directly affect the applicants' legal sphere. The plea in law in that regard is directed at the protection of the environment (climate) itself, i.e. the protection of the public interest in favourable conditions for life on earth, and goes beyond the institution of an action for interference.

198. In addition, the Applicants referred to the threat of water shortages at the local level; the increase in average temperature and the associated health impacts; and the increased frequency of fires, droughts and floods. The Court considers the interference with the right to a favourable environment thus defined to be direct, since it is no longer the global effects of climate change that are at issue, but their local adverse manifestations. The fact that the interference concerns the rights of a relatively indeterminate set of other persons (the population of the Czech Republic) does not in itself preclude direct impairment of the rights of the applicants, who belong to that group. The same applies in the case of the dispersal of a gathering by a police officer, if that action is not directly directed against a particular participant in the gathering. The Berlin Administrative Court followed a similar line of reasoning, stating in its judgment of 31 October 2019, Case No. 10 K 412/18, paragraph 73: "The mere fact that the effects of climate change affect a very large number of people does not rule out individual interest from the outset." The adverse effects of climate change in the Czech Republic and Europe (described specifically below) are so significant that the applicants are directly affected by them.

199. Directness of the interference is not precluded by the fact that the applicants are, in a strict sense, directly deprived of their rights by the adverse effects of climate change, not by the defendants' allegedly unlawful failure to act to protect the climate. A contrary interpretation would constitute an excessive legal formalism making climate litigation impossible. It is clear from the Czech Hydrometeorological Institute (CHMI) website (under the "Climate Change - Background Information" tab) and Chapter 1 of Part Two of the IPCC's Sixth Assessment Report that climate change is largely caused by human activity. This conclusion is also confirmed by the Parties to the Paris Agreement, including the Czech Republic, which, inter alia, have adopted the following measures 1) the need for an effective and progressive response to the urgent threat of climate change based on the best available science; 2) the fact that climate change is a shared problem of humanity; 3) the fact that keeping the global

average temperature increase well below 2 °C above pre-industrial levels and striving to keep the temperature increase below 1.5 °C above pre-industrial levels would significantly reduce the risks and impacts of climate change (Preamble and Art. 2(1)(a) of the Paris Agreement). The link between climate change and human (in)action is so compelling and close that, when considering the directness of interference, the two are an inseparable whole.

200. The first condition is therefore fulfilled.

Second condition [201-225]

201. Under the second condition, the interference must prejudice the applicant in his rights. That step consists in establishing whether the defendants' failure to act interfered with the applicants' public subjective right to a favourable environment. Without that condition being fulfilled, the assessment of the unlawfulness of the interference would be meaningless. If the right is not impaired (or affected), it cannot be infringed. The Court therefore first established the scope of the right to a favourable environment and then considered whether it had been interfered with.

202. The protection of the environment is regulated at the constitutional level in Article 7 of the Constitution and Article 35(1) of the Charter. In Article 7 of the Constitution, the constitutive power has enshrined the State's obligation to ensure the prudent use of natural resources and the protection of natural resources. On the basis of the assumption of a rational legislator, Article 35(1) of the Charter is not a mere analogy of Article 7 of the Constitution, but grants an enforceable public subjective right to a favourable environment (idem TOMOSZKOVÁ, Veronika, TOMOSZEK, Maxim, VOMÁČKA, Vojtěch. In HUSSEINI, Faisal, BARTOŇ, Michal, KOKEŠ, Marian, KOPA, Martin et al. Listina základních práv a svobod. Komentář. 1st edition (1st update). Prague: C. C. H. Beck, 2021. Commentary to the Art. 35, par. 45) The same conclusion follows from the text of the Charter, which in Article 35(1) provides that everyone has the right to a favourable environment.

203. According to Article 41(1) of the Charter, the right to a favourable environment may be invoked only within the limits of the laws implementing it. However, this does not mean that the scope of the right to favourable environment is determined entirely by statutory law. The social rights contained in the Charter are not without normative content; they provide protection even against the majority decision of the legislature. For this reason, Art. 41(1) of the Charter must be interpreted as a command for deferential judicial review of claims arising from social rights made by statutory legislation, not as a statutory definition of the scope of the right.

204. The scope of the right under Article 35(1) of the Charter is determined by the content of the phrase "favourable environment." The case law of the Constitutional Court dealing with the substantive right to a favourable environment is not extensive. The Constitutional Court, first of all, in its ruling of 25 October 1995, Case No. Pl. ÚS 17/95, stated: *"Similarly, the Constitutional Court did not find that the alleged violation of the fundamental right under Article 35(1) and (2) of the Charter of Fundamental Rights and Freedoms, i.e. the right of everyone to a favourable environment and to timely and complete information on its condition, had*

occurred. Under Article 41(1) of the Charter, those rights can be invoked only within the limits of the laws implementing those provisions. In this connection, the Constitutional Court states that the right to a favourable environment is undoubtedly a right with a relative content and must be interpreted in many respects and always in the light of the specific case."

205. The Constitutional Court elaborated on the above stated approach in the ruling of 17 July 2019, Case No. Pl. ÚS 44/18, paragraph 48: *"The core of the right to a favourable environment under Article 35(1) of the Charter is, in particular, the possibility for everyone to claim, in the manner prescribed by law, the protection of the natural environmental conditions of his or her existence and sustainable development, with which corresponds the positive obligation of the State to guard the inherited natural wealth, to take care of the prudent use of natural resources and to protect natural wealth (preamble and Article 7 of the Constitution). The positive obligation of the State thus consists, inter alia, in protecting against interference with the environment to such an extent as to prevent the realisation of the basic needs of human life."*

206. The Constitutional Court confirmed the conclusions of its existing case law in its recent ruling of 26 January 2021, case no. ÚS 22/17, paragraph 89: *"In the first step of the rationality test, the Constitutional Court first dealt with the definition of the essential content of this right. In the alternative, it proceeded from Section 2 of Act No. 17/1992 Coll., on the Environment, as amended (hereinafter referred to as the "Environmental Act"), according to which the environment is "everything that creates the natural conditions for the existence of organisms, including humans, and is a prerequisite for their further development. Its components are in particular air, water, rocks, soil, organisms, ecosystems and energy'. The essential content of this right itself has been defined so far mainly by legal doctrine, which sees its substantive component (existing alongside the right to obtain information about the environment) as "the obligation of the state to ensure that no component of the environment is interfered with to such an extent as to make it impossible to fulfil the basic needs of human life. The state must therefore set such limits on pollution ... that individuals can satisfy their basic needs of life to the extent necessary to maintain their health" (Tomoszková, V., Tomoszek, M. In Müllerová, H. a kol. Právo na příznivé životní prostředí: Nové interpretační přístupy. Praha: Ústav státu a práva AV ČR, 2016, p. 140). In accordance with the above and in the light of the ruling of 17 July 2019, Pl. ÚS 44/18 of 17 July 2019, the obligation of the state to protect against interference with the environment if the interference reaches such a level that it prevents the realisation of the basic needs of human life can be considered as the essence of the right to a favourable environment under Article 35(1) of the Charter."*

207. In defining the term "environment", the Municipal Court followed the previous case law of the Constitutional Court. Although constitutional law cannot be interpreted by simple law, there is no reasonable basis for distinguishing between the content of the constitutional and statutory definitions of the environment. Indeed, neither does the Constitutional Court. According to Section 2 of the Environmental Act, the environment means everything that creates natural conditions for the existence of organisms, including humans, and is a prerequisite for their further development. Its components are in particular air, water, rocks, soil, organisms, ecosystems and energy. This is an open-ended list. The Court considers it indisputable that climatic conditions are also a prerequisite for the existence of organisms and

their further development. The climate is part of the environment and must therefore be favourable.

208. The adjective 'favourable' denotes an anthropocentric conception of the fundamental right to a favourable environment. Article 35(1) of the Charter protects the environment in terms of its usefulness to man. This approach was confirmed by the Supreme Administrative Court in its judgment of 13 October 2010, No 6 Ao 5/2010-43, paragraph 34: *"The Supreme Administrative Court is aware of the considerable variety of possible forms of interference with the right to the environment; typically, it could be, for example, air, water or soil pollution which would have an undeniable (adverse) impact on the environment even in an area outside the source of that pollution. However, the environmental impact in the case under consideration is very specific; the presence of freshwater pearl mussel in the upper reaches of the Vltava River does not directly affect the quality of life of the appellant ad b) and it is difficult to imagine the actual impact of the reduction of the freshwater pearl mussel population in the section in question on her life."*

209. The right to a favourable environment is divided into "core" and "periphery". The core ensures that no component of the environment is interfered with to an extent that precludes the fulfilment of the basic needs of life (TOMOSZKOVÁ, Veronika, TOMOSZEK, Maxim, VOMÁČKA, Vojtěch. In HUSSEINI, Faisal, BARTOŇ, Michal, KOKEŠ, Marian, KOPA, Martin a kol. Listina základních práv a svobod. Komentář. 1st edition (1st update). Prague: C. Commentary on Article 35, point 64). Intervention in this part concerns the very meaning and purpose of this fundamental right under Article 4(4) of the Charter (Constitutional Court ruling of 24 April 2012, Case No. Pl. ÚS 54/10, paragraph 59) and is subject to a proportionality test carried out taking into account the principle of sustainable development under Section 6 of the Environmental Act (idem.TOMOSZKOVÁ, Veronika, TOMOSZEK, Maxim. In MÜLLEROVÁ, Hana et al. Právo na příznivé životní prostředí: Nové interpretační přístupy. Praha: Ústav státu a práva AV ČR, 2016,, 2016, p. 126). In light of the ECtHR case law, which protects the environment through the rights guaranteed by the ECHR, the guarantee of an environment that does not interfere with other human rights also belongs to the essential content of this right. However, at this point the Court considered the existence of an interference exclusively with the right to a favourable environment.

210. The case law does not explain what is meant by the basic needs of life. The anthropocentric conception of human rights implies that these are needs whose satisfaction is necessary for a dignified and healthy human life, e.g. breathing clean air, drinking safe water, eating safe food, sleeping undisturbed, not being exposed to the harmful effects of noise and vibrations, etc. (ibid., p. 139). The Municipal Court is convinced that living in sustainable climatic conditions also falls within the scope of the basic needs of human life, as they are a prerequisite for the undisturbed exercise of other human rights, such as the right to life, health, property rights, the right to engage in economic activity, etc.

211. The Municipal Court adds that the right to a favourable environment does not only protect against the prevention of the satisfaction of the basic needs of life. In accordance with the precautionary principle, persons have the right to be concerned about the quality of their

environment and do not have to wait until the climatic conditions are so unfavourable that they do not allow the fulfilment of their basic needs of life. Therefore, the right to a favourable environment is also violated if there is a restriction on the fulfilment of the basic needs of life; there need not be a restraint of such needs.

212. The preservation of the quality of the environment, which does not restrict other, non-basic, needs of human life (e.g. the interest in preserving the existing landscape), determines the limit of the right to a favourable environment, and the assessment of interference in this area is subject to the rationality test.

213. The right to a favourable environment can therefore be defined for the purposes of these proceedings as the right to live in climatic conditions (the term 'environment') which allow the unhindered exercise of the needs of human life (the term 'favourable').

214. The Municipal Court then considered whether the applicants' right to a favourable environment had been interfered with. The interference with any part of a public subjective right (core or periphery) is sufficient to satisfy the second condition of interference under Section 82 of the Code of Administrative Justice.

215. The applicants set out the deprivation of rights in Part III, paragraph 2, and Part IV, paragraphs 2.4 and 3.3, of the Application. The violation consisted of local water shortages; an increase in average temperature and the associated health effects (infectious diseases, allergies and premature deaths); and more frequent droughts, fires and floods.

216. The Court finds that the factual circumstances described by the applicants on pages 6 to 8 of the Application and supported by the Climate Analytics report and the Climate Change Impact Report are in principle consistent with the conclusions published on the website of the Czech Hydro-meteorological Institute (https://www.chmi. cz/historicka- data/pocasi/zmena-klimatu/zakladni-informace#) and in Chapter 13 of Part Two of the IPCC's Sixth Assessment Report entitled Climate Change 2022: Impacts, Adaptation, and Vulnerability ('Part Two of the IPCC Sixth Assessment Report', available at https://www.ipcc.ch/report/ar6/wg2/), which focuses on climate change in Europe, in particular in terms of its impacts. The IPCC aims to provide countries with scientific data on climate change. Assessment reports play an important role in international climate negotiations. For these reasons, the IPCC's findings are of high value in the field of climate protection.

217. The CHMI states that climate change is caused, among other things, by human activity in the form of the release of greenhouse gases, aerosols and other pollutants into the atmosphere. The Expected impacts of climate change in the Czech Republic (outlook to 2030), published on the website of the CHMI, shows that *"trends in climatological characteristics and the increased occurrence of extreme weather events are already having an impact on changes in the water regime, agriculture and forestry, and are partly affecting the health of the population. Even in the short term, we can expect a further increase in particularly negative impacts on individual components of the natural environment, and relatively new impacts on the energy sector, recreational opportunities and tourism, as well as on the general well-being of the population, especially in larger agglomerations, must also be taken into account."*

According to the CHMI, the water regime will be most affected by climate change, but *"the exact assessment of the direct consequences of climate change on changes in the water regime is still burdened with uncertainties, as the actual situation is a significant regional variable."* The CHMI added that climate change is manifesting itself in human health through heat stress, possibly from poorer air quality, and the spread of Lyme disease.

218. Chapter 1 of Part Two of the IPCC's Sixth Assessment Report (p. 3) states that the human influence on climate conditions is unquestionable and its impacts have become more pronounced and far-reaching since the Fifth Assessment Report. The IPCC referred to the natural science assessment produced by the first working group in 2021, which concluded that the magnitude of the current changes in the climate system and its components is unprecedented compared to developments in past centuries and even millennia; global surface temperatures will increase under all emissions scenarios at least through mid-century; global warming of 1.5 and 2°C will occur during the 21st century. 2.5 and 2.5 degrees Celsius will be exceeded unless CO2 and other greenhouse gas emissions are substantially reduced in the coming decades.

219. Paragraphs 13.6.1.5.2 and 13.7.1.1 of Part II of the IPCC Sixth Assessment Report confirm that there has been an increase in the number and duration of heat waves between 1998 and 2015 compared to 1980 and 1997. Indoor overheating and reduced outdoor thermal comfort will lead to a large proportion of the European population experiencing an increased risk of heat stress. The risk of heat stress, including increased mortality and discomfort, depends on socio-economic development. Approximately 74% of Europeans live in urban areas where the effects of heat waves are exacerbated by the microclimate created by buildings and infrastructure, the so-called urban heat island, and air pollution. Although the increase in temperature is likely to adversely affect vulnerable populations (elderly, children, pregnant women, etc.) women, marginalised people, people suffering from cardiovascular diseases, diabetes, respiratory problems, etc.), there will be a simultaneous increase in resilience to heat. In paragraph 13.7.1.7, the IPCC pointed out that young people in Europe may be experiencing anxiety associated with climate change, but it is not clear how widespread and severe this mental state is.

220. Paragraph 13.7.1.3 states that climate change goes hand in hand with an increase in infectious diseases, in the Czech Republic in particular Lyme disease transmitted by ticks that move to higher altitudes. The IPCC considers (paragraph 13.7.1.6) that climate change will affect dietary richness, nutrition and access to food. The degree of adverse effects depends on income levels, livelihoods and nutritional requirements, meaning that low-income people and people from vulnerable groups will be most affected. Although climate change has global consequences, it does not affect everyone on the planet equally. It follows from the above that the degree of adverse effects depends, among other things, on the place of residence (urban/rural, lowland/highland) and personal characteristics (age, gender, health status, financial security, etc.).

221. The above can be summarised as meaning that human emissions of greenhouse gases adversely affect climatic conditions. Anthropogenic climate change has significant adverse

effects on the environment, which is gradually changing in all its components. At the same time, the adverse environmental impacts are such that they are directly reflected in the deterioration of human living conditions. These include, for example, temperature fluctuations causing heat stress, the spread of infectious diseases, reduced diversity and access to food, etc.

222. The Municipal Court examined whether the general impact of those consequences did not preclude direct interference with the applicants' right to a favourable environment. The purpose of administrative justice, as expressed in Article 2 of the Code of Administrative Justice, is to provide protection for public subjective rights. That requirement also includes the obligation to take into account the nature of the public subjective right at issue. A fundamental right under Article 35(1) of the Charter may be interfered with in many different ways (cf. judgment of the Supreme Administrative Court of 13 October 2010, No 6 Ao 5/2010-43, paragraph 34). It is essential for judicial protection in the case of adverse climate change that the changes do not so far exceed the legal sphere of the applicants as to constitute an action in the public interest.

223. The applicants have alleged and justified, by reference to expert reports, an interference with the right to a favourable environment. The so far undetermined (relative) content of this right cannot be a burden to them. The applicants cannot be required, for example, to state specifically the days on which the temperature in their place of residence was so high as to reduce their comfort, or how much their diet changed and in relation to what. This would be an excessive requirement which would in effect preclude the exercise of that fundamental right. The meaning and purpose of the right to a favourable environment is to ensure that people have an environment that enables them to live in dignity and health. The far-reaching effects of climate change described above interfere substantially with this objective. It is not merely a global impact without direct relevance to the applicants; the findings contained in Chapter 13 of Part Two of the IPCC Sixth Report relate to specific climatic conditions in Europe. Residence, age, sex, health, etc. only determine the extent of the interference. The finding of a change for the worse is sufficient to establish an interference; in view of the precautionary principle under Section 13 of the Environmental Act, it is not decisive that the most serious effects of climate change have not yet occurred.

224. The Municipal Court notes that the Dutch Supreme Court considered the matter similarly in Urgenda, paragraph 5.3.2 (Municipal Court translation): *"The obligation to take appropriate measures under Articles 2 and 8 ECHR also includes the obligation of the State to take precautionary measures to avert the danger, even if the occurrence of a disturbance is uncertain."*

225. The Municipal Court summarises that the applicants are holders of the right to a favourable environment (the association protects the rights of its members, the municipality the rights of its citizens). Global warming caused by the emission of greenhouse gases adversely affects the climatic conditions necessary for human life, thereby interfering with the right to a favourable environment guaranteed by Article 35(1) of the Charter. The second condition is therefore fulfilled.

Third condition [226-321]

226. According to Section 82 of the Code of Administrative Justice, the interference must be unlawful. According to the applicants, the interference consisted in the defendants' failure to act in pursuit of their climate protection objectives. The failure to act is unlawful if two conditions are met: the defendants had a legal duty to act and failed to fulfil that duty. The Municipal Court therefore examined what the defendants should have done and then assessed whether they had complied with their obligations. The court first assessed compliance with the mitigation measures [227-283] and then the adaptation measures [284-321].

Mitigation measures [227-283]

227. The applicants have invoked the mitigation obligations of the defendants primarily under Articles 2, 3 and 4 of the Paris Agreement. The applicants also referred to the State's positive obligations to protect the environment under the ECHR (pages 12 to 14 of the application). According to the applicants, there is a real and serious risk of interference with rights as a result of climate change, and the defendants are aware of that risk and yet have failed to act with due diligence. The standard of care, according to the applicants, is co-created by scientific consensus, international climate law and judicial decisions (e.g. the Urgenda judgment). Using the University's expertise (pp. 24 et seq. of the Application), the applicants have demonstrated a specific obligation for the Czech Republic not to exhaust its carbon budget of 800 Mt CO2 from January 2021 until the end of the century.

228. According to Section 2(1) of the Code of Administrative Procedure, an administrative authority shall act in accordance with the laws, other legal provisions and international treaties forming part of the legal order. The Municipal Court assessed the alleged violation of the applicants' right to a favourable environment under Article 35(1) of the Charter. The obligations imposed on the defendants under that right may be specified in other legislation. For the purposes of these proceedings, the provisions of the Paris Agreement serve as the source of the defendants' obligations. The Municipal Court considered whether the Paris Agreement imposes an obligation on the Czech Republic, the performance of which is reviewable.

229. The Paris Agreement forms part of the domestic legal order under Article 10 of the Constitution because it is promulgated as Communication No. 64/2017 Coll., Parliament has consented to its ratification and the Czech Republic is bound by it.

230. The defendants argued that the Paris Agreement is not self-executing, referring to the judgment of the Supreme Administrative Court of 31 July 2018, no. 1 As 49/2018-62, paragraph 46. The Municipal Court notes that this judgment does not categorically conclude that the Paris Agreement can never be directly applied by a court. The Supreme Administrative Court merely stated that the Paris Agreement does not create a right to build a small hydropower plant. Such a right clearly does not arise from the Paris Agreement. Finally, the Municipal Court did not apply the Paris Agreement as the source of the applicants' subjective right, which is Article 35(1) of the Charter. In the present case, the Paris Agreement constitutes an interpretative tool for determining the scope of the obligation arising for the defendants

under the right to a favourable environment. For that purpose, it is necessary that the obligations imposed on the defendants in the Paris Agreement be sufficiently definite and unconditional. In other words, the provisions of the international treaty applied to the defendants must be self-executing.

231. A provision of an international treaty is self-executing if it is so definite that it can be applied without implementing legislation, such as a domestic climate law. Thus, the provision of an international treaty must be sufficiently clear and complete to enable a rule to be inferred from it which can directly regulate the conduct of the subjects of the law. It is therefore a matter of assessing the degree of certainty of the norm contained in the international treaty in a given specific context (for more details see MIKEŠ, Petr. Aplikace mezinárodního práva v právním řádu ČR pohledem teorie a praxe. Wolters Kluwer, 2012, p. 139). In this case, the question is whether the Paris Agreement implies for the state, i.e. for the defendant state authorities, a sufficiently definite obligation within the meaning of Section 2(1) of the Code of Administrative Justice, the fulfillment of which could be reviewed by the court.

232. According to Article 2(1)(a) of the Paris Agreement, the objective of that international treaty is to keep the increase in the global average temperature well below the 2 °C limit compared with pre-industrial levels and to strive to keep the temperature increase below the 1.5 °C limit compared with pre-industrial levels. Under Article 4(1) of the Paris Agreement, in order to achieve the long-term temperature objective set out in Article 2, the Parties shall aim to peak global greenhouse gas emissions as soon as possible and thereafter, to the best available science, reduce emissions rapidly to achieve a balance between anthropogenic emissions from sources and greenhouse gas reductions through sinks in the second half of this century.

233. The Paris Agreement does not directly define the country's carbon budget, but the international community's ultimate goal of averting dangerous climate change. Temperatures that must not be exceeded by the end of the century are insufficient on their own for judicial review because it is not clear prima facie from them what contribution any given state is making. The defendants' obligation must be more specifically defined for the purposes of these proceedings.

234. Applicants have documented a national carbon budget using the University's Assessment (800 Mt CO2 from January 2021 to the end of the century). The Municipal Court examined whether the defendants' obligations under section 2(1) of the Code of Administrative Procedure could be established in this way. In doing so, the Municipal Court drew on the judgment of the Dutch Supreme Court in the case Urgenda. The Urgenda judgment is inspiring because it addresses the question of the legal sources of the State's climate protection obligations.

235. In Urgenda, the Dutch Supreme Court interpreted the obligations arising from the right to life under Article 2 and the right to private and family life under Article 8 ECHR, and held in paragraphs 5.6.2, 5.7.9 and 5.8 that these provisions oblige the High Contracting Parties to the ECHR to adopt climate measures arising from international law (ECtHR judgment of 12

November 2008, Demir and Baykara v. Turkey, Application no. 34503/97, paragraphs 85 and 86) and generally accepted scientific standards (ECtHR judgment of 30 November 2004, Öneryildiz v. Turkey, Application No. 48939/99, paragraphs 59, 71, 90 and 93). The Municipal Court agrees with this conclusion; the ECHR cannot be interpreted independently of other sources of international law (cf. ECtHR judgment of 12 September 2012, Nada v. Switzerland, Application no. 10593/08, paragraph 169). However, it is only an affirmative answer to the question whether the Czech Republic is obliged to take proportionate measures to protect the climate; it does not indicate what the specific measures are (idem, Urgenda, paragraph 6.1).

236. The standard of protection of public subjective rights under Article 36(2) of the Charter must not be lower than that required by Article 13 ECHR. The right to effective judicial protection also entails the court's obligation to examine whether there is a sufficient objective legal basis for determining the State's specific obligations (Urgenda judgment, paragraph 6.4; accordingly, ECtHR judgment of 31 October 2019, Ulemek v. Croatia, Application no. 21613/16, paragraph 71, and paragraphs 180 and 185 therein). However, where the State's obligations arise from non-legally binding documents (soft law), the court must proceed cautiously; the State's specific obligation must be conclusively established (Urgenda judgment, paragraph 6.6), i.e. there must be no reasonable doubt about it. The State cannot be accused of failing to fulfil an obligation which it was not in a position to ascertain.

237. In Urgenda, the Dutch Supreme Court found binding, in view of the broad consensus in the international community, the IPCC's requirement under the 2007 Fourth Assessment Report (specifically, under Table 13.7 of the Third Working Group Report) to reduce greenhouse gas emissions by 25 to 40 per cent by 2020 compared to 1990 levels for UNFCCC Annex I countries. The Supreme Court noted that the UNFCCC and the Paris Agreement are based on the individual responsibility of Member States, and therefore the Netherlands was obliged to reduce its greenhouse gas emissions within the above-defined range by 2020 (Urgenda judgment, paragraph 7.3.2).

238. On pages 2 and 3 of the University Assessment it is stated that the global carbon budget is 900 Gt CO2. The authors of the Assessment drew on Table 2.2 in Chapter 2 of the 2018 IPCC Report, which provided a global carbon budget for, inter alia, 1.5 and 2°C warming relative to pre-industrial times, including the probability with which not exceeding it would achieve the intended target. The authors took as their starting point the 50:50 chance of a warming of 1.7 °C according to Table 2.2, as in their view it best corresponds to the treaty commitment under Article 2(1)(a) of the Paris Agreement. The authors of the assessment considered two years of emissions (2018 and 2019) and determined a global carbon budget starting in 2020 of 656 Gt CO2. The authors then divided this budget between developed and developing countries, so that developed countries accounted for 136 Gt CO2. The authors then determined the EU's carbon budget based on the EU's share of greenhouse gas emissions in developed countries (20%), i.e. approximately 30 Gt CO2. They used the same method to calculate the national carbon budget: the Czech Republic's emissions in 2014-2018 were just over 105 Mt CO2, equivalent to 3.44% of the EU's 2018 emissions. According to the authors, the national carbon budget as of January 2021 was around 800 Mt CO2 (3.5% of 30 Gt CO2).

239. The Municipal Court agrees that a global carbon budget of 900 GtCO2 since January 2018 is consistent with the Paris Agreement commitment. Compliance with this budget will likely result in 50% probability of a 1.7°C temperature increase from pre-industrial times; 2°C will not be exceeded with a 67% probability and 1.5°C with a 33% probability. Moreover, the global carbon budget was drawn from the IPCC report, which contains credible scientific information.

240. The summary of the IPCC report (p. 107) shows that the carbon budget by 2100 is relatively uncertain (the median of the IPCC standard) because some unpredictable events (e.g. permafrost melting) are capable of further reducing the budget. A certain degree of uncertainty is inherent in climate protection and cannot be eliminated by the precautionary principle. However, one cannot ignore the fact that the subsequent steps in the calculation of the national carbon budget in the University Assessment are based primarily on a document called Anderson et al. and not on the IPCC report. The process described on pages 3 and 4 of the university assessment contains too many variables, e.g. the 2018 and 2019 budget reductions, how the budget is allocated to developed countries, EU emissions for 2018, recalculation using so-called grandfathering instead of GDP, etc. This is not a convincing consensus in the international community or a scientific consensus establishing a concrete commitment by the Czech Republic. Therefore, the national carbon budget calculated by this procedure does not constitute a binding value for the defendants within the meaning of Article 2(1) of the Code of Administrative Procedure.

241. Furthermore, the Municipal Court found that the IPCC Fifth and Sixth Assessment Reports (in particular, the report of the Third Working Group on mitigation) did not provide a specific carbon budget for the Czech Republic, through the lens of which the fulfilment of the defendants' legal obligations could be assessed. Nor do these reports imply an obligation for a specific percentage reduction in greenhouse gas emissions by individual states by 2030. Section 13.2.2 of Chapter 13 of the Third Working Group Report states that a carbon budget may be set in the form of Nationally Determined Contributions to the Paris Agreement target ("NDCs" or Nationally Determined Contributions). However, this is not the case for the Czech Republic, whose contribution is determined through the European Union's NDC, namely the percentage reduction in emissions by 2030.

242. The Municipal Court summarizes that the national carbon budget derived by the authors of the University's Assessment from the global carbon budget does not represent a specific commitment of the Czech Republic under the Paris Agreement because it is not based on a general consensus of the international community or on credible science, but on the opinion of the authors of the Assessment.

243. However, this consideration does not exhaust the administrative court's obligation to find the applicable law. The applicants were not required to identify the specific legal standard violated. The Court knows the law and it is therefore sufficient that the applicants have described with sufficient specificity what they consider to be an unlawful interference (violation of Article 2(1)(a) of the Paris Agreement as a result of the defendants' failure to adopt sufficient

mitigation measures). For this reason, the Municipal Court examined whether the objectives of the Paris Agreement are specified in any way other than by means of a carbon budget.

244. Article 4(2) of the Paris Agreement imposes an obligation on each Party to prepare, communicate and maintain other nationally determined contributions that it wishes to achieve. Parties shall implement national mitigation measures to achieve the targets of these contributions (Article 4(2), second sentence). The joint fulfilment of Nationally Determined Contributions (NDCs) is a fundamental pillar of the Paris Agreement, as it conditions the achievement of the objective set out in Article 4(1) of the Paris Agreement of peaking global greenhouse gas emissions as soon as possible, and then reducing emissions expeditiously in accordance with the best available science, in order to achieve a balance between anthropogenic emissions from sources and greenhouse gas reductions through sinks in the second half of this century, on the basis of equity and in the context of sustainable development and efforts to eradicate poverty.

245. Parties to the Paris Agreement are required to send NDCs to the UNFCCC Secretariat every five years (2020, 2025, etc.). The UNFCCC register, available on the website https://unfccc.int/NDCREG, shows that the Czech Republic's contribution to the Paris Agreement targets is set out in the first updated NDC of the European Union of 18 December 2020 (hereinafter 'EU NDC'). Article II, paragraph 27 of the EU NDC states that the EU and its Member States, acting collectively, commit to reduce greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels. According to page 8 of Annex 1 of the EU NDC, this target is binding for the EU as a whole and its Member States, including the Czech Republic.

246. The Municipal Court examined whether the second sentence of Article 4(2) of the Paris Agreement created an obligation for the defendants to comply with the NDCs. In doing so, the court relied on the English version, since it is one of the languages in which the Paris Agreement was originally drafted, within the meaning of Article 33(1) and (2) of the Vienna Convention on the Law of Treaties (Decree No 15/1988 Coll.) (Article 29 of the Paris Agreement): 'Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.'

247. According to article 31, paragraphs 1 and 2 (a), of the Vienna Convention on the Law of Treaties, an international treaty must be interpreted in good faith, in accordance with the ordinary meaning given to expressions in the treaty in their overall context, and also taking into account the object and purpose of the treaty; the overall context means, inter alia, any agreement relating to the treaty which has been made between all the parties in connection with the conclusion of the treaty. The methodology of interpretation of an international treaty follows, in principle, the sequence of national methods of interpretation. Interpretation begins with linguistic interpretation ('ordinary meaning'), continues with systematic interpretation ('in context'), and concludes by taking into account the teleology of the treaty ('object and purpose of the treaty').

248. Based on these methods of interpretation, the Municipal Court concludes that the second sentence of Article 4(2) of the Paris Agreement imposes an obligation to implement

mitigation measures aimed at achieving the objective of the NDCs. It is apparent from a linguistic interpretation that this is not a mere recommendation, since the Parties used the verb "shall" in that provision to denote an obligation, not the recommending "should". Although the verb "pursue" is not synonymous with implementation (BODANSKY, Daniel. The Legal Character of the Paris Agreement. RECIEL, No. 25 (2), vol. 2016, p. 146), it does not mean without further qualification that the Parties are not obliged to implement the measures. From the point of view of systematics, it is necessary to take into account the earlier international treaty, the framework of which the Paris Agreement is based on. According to the preamble and Article 2(1) of the Paris Agreement, such a treaty is the UNFCCC, which sets the basic framework for climate protection at the international level. Article 4(1)(b) of the UNFCCC establishes an obligation for Parties to implement mitigation measures set out in national programmes ('All Parties shall implement national programmes containing measures to mitigate climate change.'). For countries listed in Annex I to the UNFCCC (including the former Czechoslovakia), this obligation is further specified in Article 4(2)(a) of the UNFCCC ("Each of these Parties shall take corresponding measures on the mitigation of climate change"). The agreements of the Parties to the Paris Agreement (e.g. the Glasgow Climate Pact, which was the outcome of the Conference of the Parties to the UNFCCC held in Glasgow, the so-called COP26, specifically Part 1/CMA.3, paragraph IV, No. 26) do not provide a reasonable basis for departing from this standard.

249. Achieving the purpose of Article 2(1)(a) of the Paris Agreement (averting dangerous climate change) requires Parties to have an obligation to direct their mitigation efforts towards that goal. UNFCCC Article 4(1)(b) and Article 4(2)(a) and (b) contain obligations similar to Article 4(2) of the Paris Agreement, but with the important difference that it does not link them to the NDC objective. It is the Paris Agreement's emphasis on NDCs, which is evident from the second sentence of Article 4(2) and Article 4(17), that implements the obligations under the UNFCCC.

250. The Municipal Court summarizes that the second sentence of Article 4(2) of the Paris Agreement requires a Party to ensure that its mitigation measures are directed towards achieving the NDC objective. This requirement implies an obligation to take mitigation measures. The obligation to take mitigation measures with the aim of achieving a reduction of at least 55% in greenhouse gas emissions by 2030 compared to 1990 levels is sufficiently specific to be directly applicable and reviewable by the Court.

251. The EU is a party to the Paris Agreement and has set emission reduction levels for all its Member States in the EU NDC. The fact that the EU NDC does not include individual contributions by EU Member States within the meaning of Article 4(16) of the Paris Agreement cannot exclude the responsibility of those States under Article 4(18) of the Paris Agreement. A contrary interpretation negates the object and purpose of the Paris Agreement, which is based on the responsibility of the individual Member States of a regional economic integration organisation and the joint responsibility of those States with that organisation (similarly, Urgenda, paragraph 7.3.2). Since the Czech Republic has not provided the UNFCCC Secretariat with its own NDC, it would be sufficient to exclude its responsibility for the EU to specify, on behalf of its Member States, a common emission reduction target without a specific

national target. The Municipal Court notes that the Czech Republic does not participate in the Paris Agreement regime only indirectly through its membership of the EU, but also independently. Effective monitoring of compliance with the Paris Agreement requires that the parties to the Agreement have certain contributions. For this reason, the reduction contribution under the EU NDC must be interpreted as individual, not just EU-wide. Finally, this interpretation is also held by the Czech Republic, which states on pages 33 and 34 of the POK Assessment, which was approved by the Government in October 2021: *"The European target for 2030, which is also the Nationally Determined Contribution (NDC) for the purposes of implementing the Paris Agreement, provides for a 55% reduction in net emissions (i.e. including the LULUCF sector) relative to 1990 emission levels. According to the WEM scenario, the Czech Republic's emissions including LULUCF should decrease by 45.1% by 2030 and by 57.0% for the WAM scenario (both relative to 1990). Thus, the Czech Republic would only meet the Paris Agreement target in the scenario with additional measures (Figure 17)."*

252. This conclusion is not altered by the adoption at EU level on 30 June 2021, as part of the Green Deal for Europe, of Regulation (EU) 2021/1119 of the European Parliament and of the Council ("European Climate Law", "ECL"), which provides the legal framework for the contribution of the EU as a whole to the objectives of the Paris Agreement (point 8 of the preamble to the ECL).

253. The ECL sets out in Article 1 a binding target of achieving climate neutrality in the Union by 2050 in order to meet the long-term temperature objective set out in Article 2(1)(a) of the Paris Agreement and establishes a framework for making progress towards the global adaptation goal set out in Article 7 of the Paris Agreement. Climate neutrality is defined in Article 2(1) of the ECL as requiring Union-wide greenhouse gas emissions and removals, which are regulated by Union law, to be balanced in the Union by 2050 at the latest, bringing emissions to net zero by that date, after which the Union will aim to achieve negative emissions, i.e. more removals than emissions. To this end, according to Article 2(2) of the ECL, the competent Union authorities and the Member States shall take the necessary measures at Union and Member State level respectively to enable the joint achievement of the climate neutrality objective set out in paragraph 1, taking into account the importance of promoting fairness and solidarity between Member States and cost-effectiveness in achieving this objective.

254. According to Article 4(1) of the ECL, EU Member States shall work towards climate neutrality by meeting the binding interim climate target for the EU as a whole for 2030, namely a net domestic reduction of net greenhouse gas emissions (emissions after deduction of removals) of at least 55% by 2030 compared to 1990 levels. According to the second paragraph of Article 4 of the ECL, the competent authorities of the Union and the Member States shall give priority to rapid and predictable emission reductions in achieving this target, while promoting their removal through natural sinks. In order to ensure that by 2030 sufficient mitigation efforts are made, the contribution of net removals to the Union's 2030 climate change target is limited for the purposes of this Regulation to 225 million tonnes of CO2 equivalent. In order to increase the Union's carbon sink in line with the objective of achieving

climate neutrality by 2050, the Union shall aim to achieve a higher net carbon sink by 2030 (third paragraph of Article 4 of the ECL).

255. The EU's new target of reducing greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels will be progressively embodied in three main sources of EU secondary climate law (see the European Commission website: https://ec.europa.eu/clima/eu-action/european-green-deal_en), which impose certain obligations on individual Member States. In particular, the amendment of the Emission Trading Scheme (the so-called EU ETS, regulated by Directive 2003/87/EC of the European Parliament and of the Council, hereinafter referred to as the "ETS Directive" and at national level by Act No. 383/2012 Coll, on the terms and conditions of greenhouse gas emission allowance trading); Regulation (EU) 2018/842 of the European Parliament and of the Council, which sets national targets for the reduction of greenhouse gas emissions by 2030 ("Regulation 2018/842"); and Regulation (EU) 2018/841 of the European Parliament and of the Council, which requires Member States to achieve a balance between greenhouse gas emissions and removals due to land use, land use change and forestry ("Regulation 2018/841").

256. The Municipal Court notes that, although the targets set out in the Regulations are specific (e.g. the obligation of the Czech Republic under Article 4(1) of Regulation 2018/842 to achieve a reduction of its greenhouse gas emissions of at least 14 % by 2030 compared to 2005, which is further specified for individual years in Commission Decision (EU) 2020/2126 of 16 December 2020), they are consistent with the EU's earlier general commitment to reduce greenhouse gas emissions by 40 % by 2030 compared to 1990. However, this commitment has been superseded by the ECL. The fact that the 55% reduction by 2030 compared to 1990 levels has not yet been translated by the Union into specific national targets (through the amendment of secondary legislation by the 'Fit for 55' package) does not exclude the legal regime of the Paris Agreement. Climate protection at EU level is not without prejudice to protection under the Paris Agreement; the two instruments work side by side and may overlap.

257. The EU may impose partial reduction obligations on Member States based on GDP; what matters for the EU is that it achieves the Paris Agreement targets as a whole. However, even the possible future setting of lower individual reduction targets for individual EU Member States compared to the EU NDCs (see Annex to the proposal for a Regulation of the European Parliament and of the Council amending Regulation 2018/842, according to which the Czech Republic is to reduce its GHG emissions by 26% by 2030 compared to 2005 levels) does not preclude a more ambitious commitment by the Czech Republic under the Paris Agreement (id. Urgenda, paragraph 7.3.3, second subparagraph), since the Czech Republic is itself a party to the Paris Agreement. If the objectives contained in EU secondary law differ from those of the Parties to the Paris Agreement, be they Parties that are also EU members, then a higher standard of protection applies when assessing their responsibility. The climate is an irreplaceable asset on which not only the fate of mankind but also of life on this planet depends and which is entitled to the highest possible level of protection (the principle of the highest value).

258. For the sake of completeness, the Court adds that, at the national level, the applicants relied on the provisions of the Environmental Act, which, in Section 5, permits the burdening of land by human activities which do not cause damage to the environment. According to Section 8(2) of the Environmental Act, damage is defined as deterioration of the environment by pollution or other human activity in excess of the level laid down by special regulations. The legislator did not specify international and European obligations in the special climate law, so there is no choice but to rely on the obligations laid down in the Paris Agreement. The provisions of the Environmental Act serve primarily for the interpretation of the law, as they establish general principles of environmental protection, e.g. the principles of prevention and precaution under Sections 9 and 13 of the Environmental Act.

259. The Municipal Court summarises its reasoning as follows. The Paris Agreement is part of the Czech legal order under Article 10 of the Constitution and its purpose under Article 2(1)(a) is to maintain the increase in the average global temperature well below the 2 °C threshold compared to pre-industrial revolution levels and to strive to keep the temperature increase below the 1.5 °C threshold compared to pre-industrial revolution levels. The fulfilment of this purpose is only judicially reviewable if it is further defined in the form of an obligation on the State. This is the purpose of the NDCs sent by Parties to the UNFCCC Secretariat. According to Article 4(2), second sentence, of the Paris Agreement, the Czech Republic is obliged to implement national mitigation measures aimed at achieving the NDCs. EU Member States have a single EU NDC which aims to reduce greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels; [EU NDC] does not state any partial national targets. The Czech Republic is a party to the Paris Agreement and its commitments are set through the EU in terms of Article 4(16) and (18) of the Paris Agreement. This is both an individual obligation and an obligation for the EU as a whole. The EU can set and monitor the differentiated partial contributions of its Member States (e.g. through GDP) in order to fulfil its own obligation as a Party to the Paris Agreement. However, this does not change the individual responsibility of each Party to the Paris Agreement, which cannot be downplayed with reference to their participation in a regional economic integration organisation. The principle of best value, which is a fundamental prerequisite for environmental protection, is matched by the dual control of climate commitments at the level of the Paris Agreement and at the level of EU law. Individual emission targets at both levels may or may not overlap.

260.The Municipal Court therefore examined whether the Czech Republic was properly complying with its obligation under Article 4(2), sentence of the Paris Agreement in conjunction with the EU NDCs, i.e. whether it implements national mitigation measures leading to a reduction of greenhouse gas emissions of at least 55 % by 2030 compared to the year 1990. This commitment is a so-called 'progressive' commitment according to human rights theory arising from the right under Article 35(1) of the Charter (cf, I. ÚS 2637/17, paragraph 46), because it does not directly impose an immediate obligation to fulfil the reduction target (commitment to a result), but to due diligence in taking mitigation measures that will lead to the achievement of that objective in the future. Although it might appear at first sight that a review of compliance with a progressive commitment represents a lower standard of protection than a review of a commitment to a result, this is not the case. In view of the precautionary

principle under Section 13 of the Environmental Act, one cannot expect to review the implementation of the Paris Agreement until 2030 and allow damage of climate that is difficult to repair, caused by Defendants' possible inaction in earlier years. This is a prerequisite for effective judicial review of environmental protection.

261. A commitment to achieve a particular goal in the future is implemented through the obligation to work towards that goal. That direction must be as deliberate, specific and aimed as clearly as possible at fulfilling the progressive obligation. A progressive commitment thus implies an immediate commitment to the existence of policies that actually lead to the achievement of the future goal. The Committee on Economic, Social and Cultural Rights, which has had extensive experience in interpreting and applying progressive obligations in the International Covenant on Economic, Social and Cultural Rights, emphasizes that the obligation to take steps to achieve a specific goal in the future is an immediate obligation (General Comment No. 3: The Nature of States Parties' Obligations, 14 December 1990, document E/1991/23, paras. 2 and 9). The Paris Agreement also enshrines a progressive commitment defined in this way. According to the second sentence of Article 4(2) of the Paris Agreement, States are obliged to implement national mitigation measures in order to achieve the targets set out in their contributions. This obligation to implement mitigation measures is an immediate obligation.

262. The Municipal Court notes that the duty of due diligence consists of taking reasonable steps to reduce GHG emissions under the EU NDC. Reasonableness in the present case is further defined by the rules of environmental justice expressed in Article 4(13) and (14) of the Paris Agreement. The preparation of mitigation measures should ("should") be transparent, precise and complete, and the planned measures should be implemented in this spirit. The same requirement for the quality of the measures is stated on page 79 of the September 2021 POK Assessment. The purpose of mitigation measures is to avert dangerous climate change. The IPCC assessment reports show that dangerous change is not just an abstract concept but a real danger. According to the precautionary principle under Section 13 of the Environmental Act, the adoption of mitigation measures cannot be postponed. This means that measures should also be timely.

263. According to Section 87(1) of the Code of Administrative Justice, the administrative court assesses the legality of the ongoing interference on the date of its decision. According to Article 4(2), second sentence, of the Paris Agreement, the Czech Republic is obliged to take steps, within its possibilities, to achieve the required emission target, which will only be met in the future. The necessary steps consist in the establishment of programmes and procedures which actually pursue the achievement of the target in question. The creation of programmes and procedures constitutes an immediate commitment which the State must fulfil the moment the commitment arises. Applicants have identically defined the scope of judicial review at page 47 of the Application. The applicants have acknowledged that it is not the achievement of the objective that is to be examined, but the planning of the action to achieve it.

264. The Municipal Court first examined whether a 55% reduction by 2030 relative to 1990 was even achievable for the Czech Republic, and then assessed whether the defendants had a sufficiently definite and realistic plan of specific mitigation measures to achieve that goal as of the date of the court's decision. The Court notes that it could not use the results of the periodic assessment of the implementation of the Paris Agreement under Article 14 (The Global Stocktake) in its review, as the Conference of the Parties will not conduct its first global assessment until 2023. The crucial document governing mitigation measures, to which the MoE referred in its submissions, is the POK Assessment.

265. The results of the assessment of the individual measures of the POK as of the end of 2020 show that almost three quarters of the total number of measures (71%) have already been implemented or were being implemented on an ongoing basis (see Figure 18 on page 59 of the POK Assessment). Problems in implementation were noted for a total of 12 measures, of which 2 were not implemented/not started and 10 were partially implemented/under preparation. The most significant implementation weaknesses were found in the cross-cutting policies and measures (over 30% not implemented or only partially implemented), and in the energy sector, where more than a third (40%) of the total number of measures were only partially implemented or not implemented at all.

266. According to the POK Assessment, the proportion of measures implemented increases with their priority (see Figure 20 on page 60 of the POK Assessment,). While for the high priority, 83.3 % of measures have already been implemented or have been implemented on an ongoing basis of the total number of measures, for the low priority measures the proportion of implemented measures reached only 60%. No high priority measure was assessed as not implemented.

267. Chapter 6 of the POK Assessment contains recommendations for updating the Policy, which provides suggestions for addressing the most significant mitigation gaps, e.g. to take into account the objectives of the "Fit for 55" legislation and the Czech Republic's climate neutrality by 2050 in the design of new targets; to extend CO2 taxation to other sectors and emissions outside the EU ETS, through an extension of the ETS, eventually to revise the Energy Taxation Directive in the wake of the "Fit for 55" package; fundamentally rethink current approaches to forest composition, respecting the natural species composition of forests when restoring them, ensuring accelerated forest regeneration and restoring CO2 storage, etc. This means that the ongoing bark beetle calamity will also have an impact on the emissions balance, as it leads to large-scale deforestation. This is gradually turning Czech forests into significant sources of greenhouse gas emissions instead of carbon sinks. Managing the bark beetle calamity, or ensuring an increase in the total volume of living biomass in the affected forests, is therefore essential to meet the 2030 target (pages 77 and 78 of the POK Assessment).

268. Figure 17 on page 34 of the POK Assessment shows that the Czech Republic needs to take additional measures to achieve the Paris Agreement targets by 2030; existing measures are only expected to lead to a 45.1 % by 2030. Specifically, the MoE states, *"Based on the assessment of the achievement of the POK targets, prepared according to the current*

emission inventory, GHG emission scenarios and economic developments and sub-sectoral factors, the POK target can be expected to be met by 2020. To meet the 2030 target, it will be necessary to maintain the effectiveness of existing measures and adopt additional GHG reduction measures." According to Figure 17, the EU NDC target corresponds to a reduction of emissions in the Czech Republic to about 86,000 kt CO2 eq. in 2030 (according to the European Environment Agency the Czech Republic emitted 198 848 kt CO2 eq. in 1990, available at <https://www.eea.europa.eu/data- and-maps/data/data-viewers/greenhouse-gases-viewer>). According to McKinsey & Company's analysis Climate Neutral Czech Republic - Pathways to Decarbonising the Economy ("Klimaticky neutrální Česko – Cesty k dekarbonizaci ekonomiky"), to achieve the current EU climate policy targets, the Czech Republic would need to step up the pace of GHG emission reductions by 3.2 Mt per year in 2018-2030 (or 4.4 Mt per year in 2031-2050). According to this analysis, achieving this target in the Czech Republic would require additional investments of CZK 500 billion, i.e. about 1% of GDP by 2030 (POK Assessment, p. 77).

269. According to the Municipal Court, meeting the Paris Agreement commitment by 2030 is possible under current conditions, but requires the adoption of additional measures. The MoE is aware of the weaknesses of the current Climate Protection Policy, as well as the country's commitment to reduce emissions by 55% by 2030 compared to 1990 levels, and intends to take the lessons learned from past practice into account in the update of the Climate Protection Policy (POK), which is to be discussed by the Government by the end of 2023. Although the implementation of the Climate Protection Policy can be assessed rather positively, as for all thematic sectoral and cross-cutting areas, except for monitoring, the share of the number of measures met and continuously implemented exceeds 50% (cf. Figure 19 on page 59 of the POK Assessment), it is not a flawless implementation. The Court found the greatest shortcomings in the cross-cutting policies and measures, and in the area of energy, where more than a third of the total number of measures were only partially implemented or not implemented at all. Chart 19 shows other areas with a not insignificant number of measures only partially implemented or in preparation. Namely, the sectors of implementation, monitoring and evaluation (over 65%); final energy consumption (40%); and international climate protection and development cooperation (over 30%) Agriculture and forestry appear to be doing well (only about 18% of measures are partially implemented or under preparation, and the rest are being implemented on an ongoing basis), but the final recommendation suggests the need to fundamentally rethink current approaches to forest species composition and to respect the natural species composition of forests in reforestation.

270. In particular, the Court notes that the MoE stated on pages 33 and 34 of the POK Assessment: "Thus, the Czech Republic would only meet the Paris Agreement target under the scenario with additional measures." Thus, according to the defendant itself, the existing measures are not sufficient to achieve the objective of the Paris Agreement. The same conclusion follows from the national inventory of anthropogenic greenhouse gas emissions for the Czech Republic carried out pursuant to Regulation 2018/1999 on the management of the Energy Union and climate action and published in 2021 (available on the European Environment Agency website <https://www.eea.europa.eu/data- and-maps/data/greenhouse-

gas-emission-projections-for-8>). According to the inventory, without additional measures, the Czech Republic would have 107 441.9 kt CO2eq in 2030, not including the LULUCF sector (land use, land use change and forestry), which is projected by the MoE to develop unfavourably (p. 34 of the POK Assessment). Not to mention that, according to the POK Assessment, 29 % of the existing measures were partially or not implemented or not implemented at all.

271. The Municipal Court examined whether the individual Defendants were preparing transparent, specific and complete mitigation measures to address the deficiencies identified in the September 2021 POK Assessment.

272. The MoE advised that extensive modeling of the impacts of the "Fit for 55" package is currently underway, and specific measures will then be selected to update the POK in light of the outcome. According to the Municipal Court, this is not a proper fulfilment of the obligation under Article 4(2), second sentence, of the Paris Agreement.

273. The 'Fit for 55' package adopted under the ECL serves to ensure that the EU as a whole meets its commitment under the Paris Agreement. In doing so, it is based on the common but differentiated responsibilities of the Member States within the meaning of Article 2(2) of the Paris Agreement. For example, under the forthcoming amendment, the Czech Republic is to reduce its greenhouse gas emissions by 26% by 2030 compared to 2005 levels. This contribution represents the Czech Republic's share in meeting the EU climate target. However, as the Municipal Court explained above, the Czech Republic is not only bound by the Paris Agreement through its membership of the EU, but also independently. The fact that the Czech Republic's commitment is set by the EU NDC does not change its individual character. The Czech Republic has committed to a 55% reduction in GHG emissions by 2030 compared to 1990 levels.

274. Defendants are therefore obliged to model new mitigation measures not only on the impacts of the Fit for 55 package, but also directly on the EU NDC. The same conclusion follows from the first recommendation set out on page 79 of the POK Assessment.

275. On 18 December 2020, the UNFCCC Secretariat received an update of the first EU NDC. As of that date, Defendants are aware of the Czech Republic's climate commitment under the Paris Agreement. Three quarters of a year later, in September 2021, Defendants were made aware of the deficiencies of the mitigation measures contained in the POK through the POK Assessment.

276. The Paris Agreement does not directly set a timeframe for the adoption of mitigation measures towards the EU NDC target, but that does not mean that the obligation is open-ended. As the Court has stated above, the obligation to have a sufficiently specific and realistic plan of concrete mitigation measures that will lead to the achievement of a given result (a 55 % reduction in greenhouse gas emissions by 2030 compared to 1990 levels) is an immediate obligation; the defendants were required to comply with it by 18 December 2020 at the latest.

277. A central principle of international environmental law is the precautionary principle, which is described at the national level in Section 13 of the Environmental Act. The purpose of the precautionary principle is to prevent irreversible or serious damage to the environment, which climate change undoubtedly is. The earlier adequate mitigation measures are designed and implemented, the more likely the EU NDC objective will be met. It is a duty to act in a timely manner. In the present case, this means that the timeframe for assessing the impacts of the 'Fit for 55' package towards meeting the EU's common objective cannot stand in the way of adopting more stringent measures to achieve the Czech Republic's stand-alone objective in the EU NDC.

278. Defendants have not provided any legitimate reason why the update of the POK is not scheduled until 2023, or why the outcome of the impact assessment of the "Fit for 55" package is necessary for the Czech Republic to meet its individual commitment under the Paris Agreement. Although Government Resolution No. 207 of 22 March 2017 obliges the MoE to prepare an update of the POK by 31 December 2023, this is the latest possible date. First of all, the MoE must act in accordance with the progressive nature of the commitment under Article 4(2), second sentence, of the Paris Agreement and without undue delay develop specific and complete mitigation measures to achieve the EU NDC target. It is not only the MoE but also the other Defendants who are in delay in fulfilling this obligation, since the coordinated, integrated and significantly cross-ministerial approach in the preparation and implementation of the POK conditions its subsequent effectiveness (idem, p. 79 of the POK Assessment). The shortcomings identified in the POK Assessment concern areas under different ministerial responsibilities according to the Competence Act, e.g. forest management, water management and soil protection (MoA), energy (MIT), environmental protection (MoE), transport (MoT). All of these ministries are responsible for areas related to the emission of greenhouse gases into the air or their reduction. An injunction against the continued violation of the applicants' rights cannot be directed against only one defendant, but against all defendants. Only in that way will the applicants be granted effective legal protection.

279. The failure to mitigate is not refuted by the MoE's reference to the Modernization Fund's General Programming Document ("OPD"), which, if fully implemented, could lead to a reduction of 18 million tonnes of CO2 equivalent in 2030. It is not clear from the MoE's submission to the Court's second request what calculation the defendant used to conclude that the projected reductions cover the difference between the emissions reductions under the WEM and WAM scenarios; it does not indicate the likelihood of achieving the cited reductions; and page 34 of the OPD states that the emissions reductions of 18,054,217 tonnes of CO2 in 2030 are only indicative and that the benefits of the funds expended will depend on the level of support and the setting of programme measures. It is therefore not a specific and complete mitigation measure, but a general framework for the implementation of mitigation measures. The Court agrees that the allocation of 42 % of climate finance under the National Recovery Plan can help to meet the objective of the POK, but, as in the case of the OPD, the level of benefit remained only in the realm of the assertion. The MoE itself stated in its submission that it is currently working on quantifying the contribution of this measure.

280. All Defendants are in violation of the Paris Agreement because they have not yet collectively prepared a concrete mitigation plan (including its content, timeframe for implementation, and expected contribution) to bridge the gap in emissions reductions between the WEM (45.1% emissions decrease) and WAM (57% emissions decrease) scenarios under p. 34 of the POK Assessment. At the time of the court decision, it is not clear how specifically the Czech Republic intends to achieve its commitment. The Municipal Court is aware that the revision of the POK is a political issue, as it is subject to government approval. However, the defendants' obligation under the Paris Agreement is not affected (Article 2(1) of the Code of Administrative Procedure).

281. The Municipal Court summarises that the Defendants should have established a plan for achieving the Paris Agreement's (EU NDC) 2030 target without undue delay and in accordance with the requirements imposed on mitigation measures by Article 4(14) of the Paris Agreement (transparency, specificity, completeness) following the entry into force of the Paris Agreement for the Czech Republic and the update of the first EU NDC. The updated EU NDC was adopted by the UNFCCC Secretariat on 18 December 2020, the Defendants have no reasonable reason to wait until 2023 to develop and then implement the measures. The Court is obliged to decide on the basis of the facts at the date of its decision. The fact remains that, to date, Defendants have no concrete plan to achieve a 55% reduction in GHG emissions by 2030 compared to 1990.

282. This conclusion is not inconsistent with the earlier opinion of the Municipal Court expressed in its judgment of 4 May 2022, Case No. 3 A 13/2022-37, as this is a factually different case. The alleged interference consisted in the defendant's insistence on wearing respirators and carrying out testing, which was intended to interfere with the applicant's right to a favourable environment. The interference was a finished interference and the applicant sought a declaration that it was unlawful. In the present climate action, the question is whether the defendants' action is persuasively directed towards compliance with the mitigation and adaptation obligations under the Paris Agreement and EU law. The subject-matter of the proceedings is an ongoing interference.

283. The Municipal Court has not carried out the following evidence concerning mitigation of climate change:

- The statement of the Economic and Environmental Section of the Ministry of the Environment. The statement should have demonstrated the expenditure of funds on mitigation. The fact that mitigation measures are funded was not disputed between the parties. With regard to the legal framework defined by the Court, it was relevant whether the defendants had a plan of specific and complete additional mitigation measures (WAM) convincingly aimed at achieving the EU NDC objective.

- Supreme Audit Office (NKÚ) Audit Findings from Audit Action No. 18/22. Identical reason.

- "Climate Change 2021 - The Physical Science Basis." The document addresses the causes of climate change. In the light of other evidence, there is no doubt that human activity is the central cause of climate change. The evidence is therefore redundant.

- Czech Republic's 4th Biennial Report (2019). The decisive facts have been demonstrated by the POK Assessment. The Court did not admit the report for redundancy.

- 7th National Communication of the Czech Republic (2017). The court did not carry out the report because, given the time of its preparation, it was not able to give a convincing picture of the situation at the time of the court's decision.

Adaptation measures [284-321]

284. The applicants argued that the defendants were obliged to take necessary and proportionate adaptation measures pursuant to Article 9 of the Environmental Act, Articles 6 and 31 of the Charter, Articles 2 and 8 ECHR, and Article 7(2) of the Paris Agreement. The applicants admit that, in the case of adaptation, there is no specific legal provision setting a binding limit for any of the values by which climate change is manifested, e.g. the minimum amount of water in different soil layers, temperature limits for heat islands of human settlements, etc. Some of the phenomena that need to be adapted to cannot even be expressed in terms of a quantity, such as an increase in the frequency of extreme weather events. The applicants take the view that the diverse nature of the effects of climate change is not an obstacle to the legal obligation to adapt. The ultimate limit to environmental damage is the fundamental rights guaranteed by the Charter. Although it is difficult to assess the sufficiency of adaptation measures, in certain cases it is clear that the measures taken are insufficient.

285. The Municipal Court followed the same approach as in the mitigation measures case: it first looked for the content of the obligation to adapt to climate change and then examined whether the defendants had complied with their obligation.

286. Adaptation measures are addressed in Article 7 of the Paris Agreement. In Article 7(1), the Parties set a global adaptation goal, including increasing adaptive capacity, building resilience and reducing vulnerability to climate change in order to contribute to sustainable development and to ensure an adequate adaptation response in the context of the temperature target set out in Article 2. Pursuant to Article 7(5), the Parties recognize that adaptation measures should follow a country-driven, gender-sensitive, participatory and fully transparent approach that also takes into account vulnerable groups, communities and ecosystems, and should draw on the best available science and, where appropriate, traditional knowledge, indigenous knowledge and local knowledge systems, with a view to integrating adaptation into relevant socio-economic and environmental policies and measures, as appropriate.

287. Although Article 7(9) of the Paris Agreement states that each Party shall engage in adaptation planning processes and in the implementation of measures as appropriate, this is not a matter of discretion in the case of the Czech Republic. Indeed, the obligation to adapt is regulated at EU level by Article 5 of the ECL, which in paragraph 1 imposes an obligation on the relevant Union institutions and Member States ("shall ensure") to ensure continued progress in enhancing adaptive capacity, building resilience and reducing vulnerability to climate change in accordance with Article 7 of the Paris Agreement. This obligation is further

elaborated in Article 5(4) of the ECL: Member States shall adopt and implement, taking into account the Union's strategy for adaptation to climate change referred to in paragraph 2 of this Article, a national adaptation strategy and plan based on a thorough analysis of climate change and vulnerability and an assessment of progress and indicators in this area, drawing on the best available and most up-to-date scientific knowledge. According to the second sentence of Article 5(4) of the ECL, Member States shall take into account the extreme vulnerability of the relevant sectors, including agriculture, water and food systems, as well as food security, in their national strategy and promote nature-based solutions and ecosystem-based adaptation measures.

288. The Municipal Court summarizes that the Defendants are obligated under the first sentence of Article 5(4) of the ECL to adopt and implement adaptation measures, not to achieve specific targets within a certain timeframe. The obligation to adopt adaptation measures is satisfied by adopting measures which are based on a thorough analysis of climate change and vulnerability to climate change and an assessment of progress and indicators in this area, while taking into account the exceptional vulnerability of the sectors concerned. The Administrative Court is permitted to examine whether the defendants have complied with these limits in their action. However, the choice of specific adaptation measures is a matter for the administrative discretion of the defendants, who are competent, and it is not for the administrative court to intervene in that area, having regard to the principle of the separation of powers (Article 78(1) of the Code of Administrative Justice). The principle of restrained judicial review allows the defendants to respond flexibly to the constantly evolving effects of climate change. The obligation to implement adaptation measures ensures that the measures are actually put into practice. However, the implementation obligation is not breached by the failure to implement any adaptation measure, but only when the lack of implementation hinders the enhancement of adaptive capacity, the strengthening of resilience and the reduction of vulnerability to climate change within the meaning of Article 7(1) of the Paris Agreement and Article 5(1) of the ECL respectively.

289. The Municipal Court considers the defendants' obligation thus defined to be sufficiently definite. It follows from the complex nature of the adaptation measures that their parameters cannot be set out more specifically. The implementation of the adaptation measures cannot be excluded from judicial review, since they contribute significantly to the achievement of sustainable development within the meaning of Section 1 and Section 6 of the Environmental Act, i.e. climate-resilient development. It is for the administrative court to assess whether existing (or planned) measures meet the requirements of the Paris Agreement and the ECL, or whether effective climate protection can only be achieved by ensuring proper adaptation and mitigation.

290. The applicants first of all pointed out that, according to the NAP AZK [National Action Plan on Climate Change Adaptation] Assessment, which implements the Climate Change Adaptation Strategy in the Czech Republic, a number of measures are not being sufficiently implemented, e.g. forests do not have sufficient adaptive capacity (p. 9); agricultural management is not sustainable (p. 14); tasks aimed at protecting boglands and wetlands are not being implemented (p. 24), and many others.

291. Although the Municipal Court did not have access to an assessment of the fulfilment of the adaptation targets under Article 14 of the Paris Agreement, which will not be carried out until 2023, it drew on the extensive assessment of adaptation at the national level in the form of an assessment of the NAP AZK of the Czech Republic carried out by the MoE and CENIA company in 2019, based on information obtained from the interim assessment of the NAP AZK, which was carried out in several stages across 2018 and 2019. The Court did not rely on the Climate Change Vulnerability Assessment of the Czech Republic as of 2017. This document was not able to demonstrate the vulnerability of each area at the time of the court's decision because it was prepared from data as of 2017. The NAP AZK Assessment contains a more up-to-date vulnerability assessment.

292. The NAP AZK Assessment is divided by environmental components (sectors) and also by manifestations of climate change. The 'management summary' on page 5 shows that of the 350 tasks of the NAP AZK, 70% are assessed as being on track or met, 19% as partially met, 10% as not met and 1% as overdue. By contrast, 21 % of the specific objectives are met or progressively met and 79 % are partially met. The most successful sectors are: emergencies (80 %); education, training and awareness (75 %); forestry (74 %). The remainder are: agriculture (71 %); landscape and water management (67 %); urbanised landscape (58 %); and biodiversity and ecosystem services (55 %). The Municipal Court identified gaps and addressed their importance in terms of the effectiveness of adaptation measures.

293. The MoE first assessed the forestry sector in terms of two specific objectives: promoting the natural adaptive capacity of forests, including their resilience to climate change (SC1); and protecting and restoring the natural water regime in forests (SC2). The defendant considered that both objectives were partially met. There were gaps in the implementation of SC 1. The largest of these can be identified in the measure to achieve game numbers sufficient to maintain the natural regeneration of a wide range of tree species, which has so far been assessed as not being met. Measures related to prioritising and ensuring natural regeneration of forests, increasing ecological stability and resilience of forest stands, including identification of risk areas for prioritising adaptation measures, as well as promoting responsible forest management, were assessed as partially implemented. The proportion of tasks fulfilled and partially fulfilled is shown on pages 8 and 9 of the NAP AZK Assessment, which also indicates that the natural adaptive capacity of forests is insufficient, particularly in the context of climate change. In terms of the implementation of the individual tasks, more progress has been recorded under SC2, which are assessed as being continuously implemented. Reserves can be identified within SC2 in the revision of the existing system of forest land drainage using natural and nature-based practices, where a consensus inter-ministerial view on the solution of the implementation of measures needs to be reached.

294. The MoE stated that the forestry sector is among the most vulnerable to all manifestations of climate change, adding that this sector also significantly affects the potential impacts of climate change in other sectors and areas due to its landscape and hydrological function. The defendant assessed the sector's adaptive capacity negatively, mainly because of the inappropriate composition of tree species, with a predominance of spruce monocultures,

which are poorly able to withstand drought and other disturbances, particularly insect pests, as shown by the ongoing bark beetle calamity (pp. 9 and 10 of the NAP AZK Assessment).

295. According to the MoE, the sector's capacity to adapt to climate change can be improved primarily by increasing the proportion of more drought-resistant tree species, but also by applying understorey and selective farming methods that do not create clearings, which will make it possible to achieve the target status (ibid.).

296. A similar assessment was carried out by the MoE in the area of soil degradation (page 12 of the NAP AZK Assessment), whereby it found reserves in the implementation of measures aimed at stopping soil degradation, in particular the reduction of water and wind erosion of agricultural land, which was caused, inter alia, by the delay in the preparation and implementation of the Erosion Protection Decree. According to the MoE, the impact of inadequately implemented drainage facilities on accelerated water runoff from the landscape has not yet been mitigated (p. 13 of the NAP AZK Assessment). On p. 14 of the NAP AZK Assessment, the defendant states that it has not yet been possible to identify the areas of arable land in floodplains subject to flooding during high flows, to establish appropriate farming practices and to encourage farmers in floodplains to apply appropriate farming practices. According to the MoE, current agricultural management is not sustainable.

297. There were significant reserves in terms of increasing the ecological stabilisation functions and permeability of the landscape (p. 24 of the NAP AZK Assessment): tasks aimed at protecting boglands and wetlands were not implemented. The MoE also identified shortcomings in the area of preventive protection of water resources (ensuring purposeful forestry in water resource protection zones and the creation of more detailed management plans for the Protected areas of natural water accumulation - CHOPAV) and the inclusion of adaptation measures in water supply and sanitation development plans. In addition, the defendant pointed out that the greatest gaps in the area of education, training and awareness were evident in the area of landscape water management and water management, where training and methodological guidance to water authorities on promoting adaptation and revitalisation was not provided, and public awareness of the natural features of the landscape and natural resources in relation to adaptation to climate change was being promoted through the support of small-scale projects (p. 40 of the NAP AZK Assessment).

298. On health and hygiene, the MoE stated on page 36 of the NAP AZK Assessment that it had failed to ensure monitoring of the occurrence of health-causing infectious transmitters (insects) in the new hatcheries and to provide sufficient health infrastructure for emergencies related to epidemics or situations requiring increased intake of medicines and medical devices.

299. The industry and energy sector did not exhibit major deficiencies. According to the NAP AZK Assessment (page 32), 92 % of the tasks were fulfilled or continuously fulfilled, 4 % were partially fulfilled and the rest were not fulfilled. In connection with the development of a new adaptation strategy or action plan, the NAP AZK Assessment recommends implementing measures both on the energy consumption side (in particular increasing energy efficiency and energy savings, which would lead, among other things, to a reduction in energy demand) and

on the energy production side (greater diversification and decentralisation of energy sources, development of smart grids that would react in real time to disturbances, e.g. by changing the topology of the network and preventing their spread).

300. The transport sector contains one specific objective in the form of ensuring flexibility and reliability of the transport sector with regard to the effects of climate change, ensuring operation after extreme weather events. Strategically, climate change impacts in the transport sector are sufficiently taken into account, but inter-ministerial cooperation on planting and selecting trees at appropriate distances along roads and railways has not been achieved.

301. The above shows that most of the measures have been met or are being implemented on an ongoing basis. However, there are also measures that are partially implemented or not implemented at all. In the opinion of the Municipal Court, the serious shortcomings are, in particular, the reduced adaptive capacity of forests, which are largely composed of monocultures of trees; the increasing risk of wind and water erosion of agricultural soil; inadequate drainage facilities causing accelerated water runoff from the landscape; and failure to establish appropriate management practices and to motivate floodplain farmers to use appropriate management practices. Agriculture, together with forestry and water management, is the most vulnerable sector to the effects of climate change. These areas are very closely interlinked and have a significant impact on other sectors. According to the NAP AZK Assessment, the Municipal Court considers that in 2019, the forestry and water management and agriculture sectors showed deficiencies that have a significant impact on the level of resilience to climate change. It is questionable whether this situation persists as of the date of the administrative court's decision.

302. The Municipal Court therefore considered whether the defendants had complied with their obligation under Article 5(4) of the ECL at the time of the Court's decision. In doing so, the Court focused exclusively on the actions of the MoE and the MoA, since the applicants had alleged errors in the adaptation process in the areas of soil, forest and water protection (pages 40 to 44 of the Application), which were allegedly committed by the Ministries of the Environment and Agriculture (Claims I and IV of the Petition Claim). The Court first examined the fulfilment of the obligation to adopt an adaptation plan and then the fulfilment of the obligation to implement that plan.

303. The Defendants submitted the updated NAP AZK for the period 2021-2025 to the Government for approval and the Government approved it by Resolution No. 785 of 13 September 2021. The updated NAP AZK defines on p. 4 the following specific objectives: Ensuring ecological stability and provision of ecosystem services in agricultural landscapes (SC1), forests (SC2), with an emphasis on limiting land degradation and land grabbing and strengthening the natural water regime; Ensuring ecological stability and provision of ecosystem services of aquatic and water-related ecosystems, with an emphasis on strengthening the natural water regime of the landscape and taking into account the provision of the needs of human society and sustainable water use (SC3); Significantly enhancing the resilience of human settlements, including their public and green infrastructure, with an emphasis on protecting human health (SC4); and achieving a highly effective early warning

system and a responsible reaction of the population (SC5). Annex 1 of the updated NAP AZK proposes individual measures for SC1 to SC5.

304. The Municipal Court considers the adoption of the updated NAP AZK for the period 2021-2025 in September 2021 to be in fulfilment of the Defendants' obligation to adopt an adaptation plan under Article 5(4) of the ECL, because the proposed adaptation measures respond in particular to the adverse effects of climate change in the forestry, water, and agriculture sectors; the material was developed in broad inter-ministerial cooperation involving the scientific institutions and NGOs listed on the cover page of the NAP AZK; and drew on expert analytical material (e.g., the 2015 update of the Komplexní studie dopadů, zranitelnosti a zdrojů rizik souvisejících se změnou klimatu v ČR, CHMI, 2019; the Assessment of the NAP AZK, CENIA and MoE, 2019). The proposed adaptation measures aim at increasing adaptive capacity within the meaning of Article 7(1) of the Paris Agreement and Article 5(1) of the ECL.

305. The Municipal Court also addressed the fulfilment of the obligation to implement adaptation measures. To that end, the Court invited the defendants to submit the performance of the adaptation measures to date, in particular those falling under SC1 to SC3 of the NAP AZK. The court received extensive submissions from the MoE and MoA for consideration. For the sake of clarity, the applicant's objections to the implementation of the adaptation measures can be grouped under the following main headings: failure to adopt the necessary legislation and to provide sufficient protection against the effects of drought; reduced adaptive capacity of forests; and unsustainable agricultural management (e.g. soil degradation, increased damage to agricultural production, reduced water absorption in the landscape, redistribution of financial support without regard to the size of fields and their structure).

306. With regard to drought, the Applicants referred to the Management Summary of the Position Report on the Progress in the Implementation of the Drought Protection Concept for the Territory of the Czech Republic for 2019 (prepared by the inter-ministerial commission WATER-DROUGHT), which states (p. 2): *"It can be noted that partial activities for improvement in the area of drought impact management are underway in all the proposed measures, and their description and costs are presented in this report. At the same time, however, there is insufficient progress in meeting the strategic objectives of the Concept. The implementation of soft complementary measures is mainly successful, while progress on technical measures is minimal. The main reason for this is missing or restrictive legislation, which has so far failed to be amended, and which does not sufficiently enable the implementation of the Concept, thus posing a serious threat to the achievement of its vision and objectives."*

307. On February 1, 2021, Amendment No. 544/2020 to the Water Act came into force, which introduced Title X, called Drought and Water Scarcity Management. The new regulation defines the concepts of drought and water scarcity and includes tools for managing this condition (establishing a drought and water scarcity management plan, taking measures based on this plan). On 1 July 2021, Erosion Protection Decree No 240/2021 came into force, which regulates the method of assessing the erosion risk (through an erosion prevention calculator) and establishes a plan of measures to reduce the erosion risk, including a list of

individual measures. In its statement, the MoE stated that it is preparing an amendment to Act No. 334/1992 Coll, on the protection of the Agricultural Land Use Fund (inter-ministerial comment procedure May 2022, to be submitted to the Government in October 2022): according to the proposal, landscape elements are to be part of the Land Use Fund ("ZPF"), there will be no need to withdraw land for them; the deterioration of the physical, chemical or biological properties of agricultural land will also include the reduction of the amount of organic matter (as a corrective measure, it will be possible to impose soil enrichment with organic fertilisers); agricultural land can be used as a plantation of trees.

308. The Municipal Court finds that the adaptive capacity to combat drought and water scarcity has increased as a result of the adoption of the new legislation compared to the previous situation, in accordance with Article 7(1) of the Paris Agreement and Article 5(1) of the ECL. The Court recalls that no source of law obliges the achievement of an outcome in adaptation, such as the avoidance of all the consequences of drought or water scarcity. The lack of legislation was assessed as the main cause preventing the achievement of the strategic objectives of the concept and the defendants have made progress in this area, therefore they are not inactive in implementing adaptation measures to combat drought at the time of the court's decision.

309. The Municipal Court also dealt with the applicants' objection that drought and flooding are mentioned in only one river basin mentioned in the document Preliminary overview of significant water management problems identified in the part of the international Elbe/Oder/Danube river basin district in the territory of the Czech Republic (*"Předběžný přehled významných problémů nakládání s vodami zjištěných v části mezinárodní oblasti povodí Labe/Odry/Dunaje na území České republiky"*), and therefore they cannot be expected to be effectively remedied by new river basin plans.

310. The applicants' claim does not correspond to the facts, since the most recent Preliminary Elbe, Oder and Danube River Basin Survey shows that in the part of the international Elbe, Oder and Danube river basin district (paragraph 6.1.1) on the territory of the Czech Republic for surface water bodies, three significant impacts of human activity (significant water management problems) have been identified, including drought and potential water scarcity. In addition, data on drought and water scarcity for some particular sub-basins are discussed in Chapter 6.2.3 for surface water and Chapter 6.3.2 for groundwater. It is true that flood risk is not taken into account for each sub-basin, but this in itself does not constitute an error. The applicants do not claim that all sub-basins are affected by flooding to the same extent and the defendants have not taken this into account. The conclusions on flood risk in the Upper and Middle Elbe sub-basins (Chapter 6.1.2 of the Preliminary Elbe River Basin Survey, paragraph 5 for surface water and paragraph 4 for groundwater); Upper Oder (Chapter 6.1.2 of the preliminary overview for the Oder river basin district, paragraph 2 for surface water); the Lusatian Neisse (Chapter 6.1.3 of the preliminary overview for the Oder river basin district, paragraph 5 for surface water, paragraph 3 for groundwater); the Morava and the tributaries of the Váh and the sub-basins of the Dyje (Chapter 6.1.2 of the Preliminary overview for the Danube river basin district, paragraph 5 for

surface water, point 3 for groundwater); the sub-basins of the other tributaries of the Danube (ibid., chapter 6.1.3, paragraph 4 for surface water) are sufficient.

311. The Court proceeded to examine the adaptation of forests in the context of Specific Objective 2 [SC2] of the NAP AZK. The MoA documented the ongoing implementation of many measures and tasks in 2022, of which the Municipal Court notes the following for illustrative purposes:

- Measure o2_2, Task 2_2.2: to develop and put into practice a system of awareness, education and incentives (including financial) for forest owners to make wider use of non-pastoral management practices (implemented on an ongoing basis);

- Measure o2_3, Task 2_3.1: to support natural forest regeneration in non-state forests with respect to the target tree species composition, except for genetically unsuitable stands + amend NV No 30/2014 Coll;

- Measure o2_4, Task 2_4.1: support forest owners to improve the condition of forest ecosystems in their restoration after a bark beetle calamity, including support for natural rejuvenation and the use of preparatory tree species (ongoing);

- Measure o2_4, Task 2_4.3: financially motivate non-state forest owners to increase the share of amelioration and strengthening trees ("MZD") in the securing of young forest stands (ongoing);

- measure o2_4, task 2_4.5: in threatened habitats, methodically and financially support the conversion and rebuilding of spruce stands, including younger age classes (ongoing);

- measure o2_4, task 2_4.7: elaboration of a risk analysis of the use of geographically non-native tree species and possibilities for implementing the results in forest management (ongoing);

- measure o2_4, task 2_4.9: on the part of the founders, to formulate an assignment for the entities managing state-owned forests that reflects the adopted adaptation measures and sets stricter conditions for forest management compared to other forest owners, with an emphasis on society-wide demand for the fulfilment of public interests and on the quality of the environment (ongoing);

- measure o2_4, task 2_4.11: stimulate forest owners to create diverse species compositions consisting of more than two sufficiently represented tree species (in addition to MZD, other species such as larch, pine, successional trees, etc.), implemented on an ongoing basis;

- Measure o2_5, Task 2_5.1: identify areas at risk of forest soil acidification and nutrient degradation, moisture deficiency, eutrophication and erosion (ongoing);

- measure o2_5, task 2_5.5: assess the influence of tree composition, structure and health of forest stands on forest microclimate, temperature regime and water cycle in the landscape (partially implemented);

- Measure o2_6, Task 2_6.3: methodically and financially motivate owners to comply with good practice principles. In the case of state forests, ensure compliance with good practice by means of the founder's assignment (ongoing);

- measure o2_7, task 2_7.1: focus on the conservation and strengthening of genetic resources of native spruce ecotypes, especially from lower elevations (ongoing);

- measure o2_7, task 2_7.2: focus on the identification, mapping and multiplication of beech, ash and other tree ecotypes from dryland habitats (ongoing);

- Measure o2_7, Task 2_7.3: prepare conditions for wider forestry application of hitherto minor thermophilous oak species occurring in the Czech Republic (ongoing);

- measure o2_8, task 2_8.1: to increase biodiversity and ecological stability of forest ecosystems while maintaining the production function by leaving forest harvest residues to regenerate in forest stands, leaving trees to survive and the volume of dead wood determined by the proportion of the implemented management interventions (implemented on an ongoing basis);

- measure o2_9, task 2_9.1: strengthen monitoring of the main damaging elements in drought-prone stands, especially spruce, oak, beech and pine (ongoing);

- measure o2_9, target 2_9.4: ensure adequate public education and awareness of end-users of planting material and plantations of forest and ornamental trees. To this end, streamline cooperation between the MoA and the MoE, the government authorities concerned, research and operations in the field of biotic pest risk management (ongoing);

- Measure o2_13, Task 2_13.1: revise the existing forest land drainage system to restore the natural water regime. Use natural and nature-friendly practices. Maintain technical drainage only in exceptional cases where restoring the natural water regime would cause irreversible damage to the associated infrastructure (to be implemented on an ongoing basis);

- measure o2_14, target 2_14.1: motivate forest owners to protect wetlands and natural watercourses, to increase water retention in forests and to slow down water runoff. Encourage the restoration and creation of wetlands and pools, revitalisation and renaturation of watercourses and boglands, restoration and construction of small water reservoirs, polders and bunds (ongoing);

- Measure o2_15, Task 2_15.1: Methodologically guide and financially motivate forest owners to minimise the risk of damage to forest land in relation to subsequent erosion and disturbance of the water regime during logging and timber harvesting (ongoing)

312. The Municipal Court finds this evidence persuasive because it contains a specification of the measures and tasks, identifies the contact persons, an evaluation of the performance as of 2022, and in particular a plan for performance, a description of the performance to date, as well as the decisive facts (if any) impeding the performance of the task. Although some of the tasks are indicated as deserving more generous funding, the list of tasks shows that they

are being implemented on an ongoing basis and respond to the major forestry deficiencies identified in the NAP AZK Assessment, e.g. forest species composition, forest pests, support for forest owners, etc. The adaptive capacity of the forestry sector is gradually increasing.

313. The MoA has also submitted a document "Support for adaptation of forests to climate change" (*"Podpora adaptace lesů na klimatickou změnu"*), which describes the financing of adaptation measures in forestry in 2020-2021. CZK 774 million in 2020 to CZK 1 405 million in 2010. This is despite a 39% reduction in the overall budget (from CZK 8 964 million to CZK 5 503 million between 2020 and 2021). This increase is reflected in higher financial support for specific forestry adaptation tasks between 2020 and 2021, except for task 2_3. 1 (to motivate forest owners to protect and restore wetlands and natural watercourses and to support wetland restoration, restoration and construction of small water reservoirs, retention basins, dams, polders, revitalisation and renaturation of watercourses in forests), which saw a decrease in support from 90.2 to 79.3 million CZK. CZK; task 30_1.4 (ensure long-term sustainability of the financing of the Aerial Firefighting Service), which showed a reduction from CZK 8 million to CZK 7.6 million. CZK; and task 1_10.1 (development of established functional systems for collection, recording and control of forest reproductive material in the Czech Republic), where the Rural Development Programme section saw a reduction from CZK 9.5 million to CZK 7.7 million in 2020-2021.

314. By contrast, page 5 of the Report on the Impacts of Climate Change states, with reference to Chapter 4.1.2.1 of the Comprehensive study of impacts, vulnerability and sources of risks related to climate change in the Czech Republic, that the amount of CZK 1.15 billion made available for direct bark beetle control is far from meeting the needs.

315. The Municipal Court recalls that the MoA's obligation under Article 5(1) of the ECL is not breached by the lack of implementation of certain, albeit essential, measures. The obligation to implement adaptation measures is fulfilled if, in their totality, they increase adaptive capacity, strengthen resilience and reduce vulnerability to climate change. The evidence discussed above shows this favourable effect. Neither the Paris Agreement nor the ECL require that the effects of the bark beetle calamity be eliminated by the date of the Court's decision. It is significant that the MoA is increasing the adaptive capacity of forestry.

316. The Court next addressed the applicants' objection to the unsustainability of agriculture. In particular, the measures and objectives under specific objective 1 [SC1] of the NAP AZK serve to strengthen the sustainability of agricultural management. In particular, the following measures can be mentioned:

- measure o1_3: implementation of comprehensive land management with a view to increasing the retention capacity and ecological stability of the landscape (tasks under the responsibility of the MoA);

- measure o1_4: research into mitigating and preventing the potential impacts of climate change on the agricultural sector (tasks under the responsibility of the MoA);

- measure o1_5: measures to reduce water and wind erosion of agricultural land (tasks under the responsibility of the MoA and the MoE);

- measure o1_6: maintaining and increasing the water-holding capacity of soil (task under the responsibility of the MoA);

- measure o1_7: stable support and promotion of organic farming with emphasis on non-productive and adaptive functions (tasks under MoA);

- measure o1_11: support for management systems and landscape management contributing to increasing resilience to climate change (tasks under the responsibility of the MoA and MoE);

- Measure o1_13: Ensuring the economic sustainability of agricultural management in the landscape and its productive function (tasks under the responsibility of the MoA)

317. In 2019, according to the NAP AZK Assessment, the measures in the agricultural sector were implemented at a rate of 71 %. The defendants (the MoE and, in particular, the MoA) submitted to the court a list of adaptation measures pursuing specific objective 1 and argued that these measures were being implemented on an ongoing basis (see pp. 8 to 15 of the MoE's information on point II of the Municipal Court's second summons; pp. 5 and 6 of the MoA's Opinion to the Municipal Court's second Invitation). The Municipal Court concludes that the truth of the defendants' allegations cannot be verified in view of the lack of evidence, and the NAP AZK Assessment cannot be relied upon as of the date of the court's decision, as it was prepared in 2019.

318. However, it is clear from the court file that the defendants are not, as the applicants allege, inactive by merely adopting new adaptation plans which are not implemented. The MoE stated on page 5 of its information on Count II of the Municipal Court's Second invitation: *"In order to effectively coordinate and optimise the partial activities necessary for the implementation of the NAP AZK, the MoE, as the national adaptation coordinator, is voluntarily initiating the monitoring of the implementation, which, however, goes completely beyond the legal obligations of the MoE or the requirements arising from national and European legislation or the Paris Agreement in the field of adaptation to climate change. Partial outputs from this purely operational monitoring of implementation are not intended for the public. This initial working investigation is currently underway (spring 2022) and has not yet been completed, let alone evaluated; information processing is currently (as of the date of submission of this document) underway. It is planned to be repeated in spring 2023. A broader assessment of the implementation of the NAP AZK tasks, for which more detailed input is expected, will not take place until 2024 in advance of the planned update of the NAP AZK for 2025-2030."* According to the MoA's submission (p. 2) to the court's second invitation, *"Another documentary evidence that can be used to document the activities leading to mitigation of the effects of climate change is the "Information on the progress of implementation of programmes to reduce the effects of drought and water scarcity in the Czech Republic under the responsibility of the Ministry of Agriculture in 2019-2021" (the material will be provided to the court immediately after its final approval), which was submitted to the Government of the Czech Republic and builds on the previous information from 2016-2018 (submitted to the*

Government in 2018.) These programs implement measures in agriculture, forestry and water management that contribute to stabilizing water conditions and sequestering carbon dioxide."

319. The above mentioned means that the Defendants continuously monitor and evaluate the implementation of adaptation measures. Their activities are aimed at ensuring that the adaptation measures do not merely remain on paper, but at identifying and remedying any shortcomings in the implementation of the 2021 NAP AZK. Although the defendants have failed to demonstrate the validity of their claims as they have done, for example, in the forestry sector, it cannot be conclusively concluded that they are in default of their obligation to adapt agricultural management. The Court notes that the applicants have not identified the specific measures in agriculture which they consider have not been complied with and have not explained why that particular deficiency has had a decisive impact on the adaptive capacity of agriculture. Therefore, the judicial review could not have been more specific.

320. The Municipal Court summarises that the obligation to adapt is provided for in Article 7(1) of the Paris Agreement and Article 5(1) of the ECL. The obligation to adapt consists in increasing adaptive capacity, not in achieving specific targets by a certain date. This obligation is specified in Article 5(4) of the ECL in that Defendants must adopt and implement a national adaptation strategy and plan based on thorough analyses of climate change and vulnerability and an assessment of progress and indicators in this area, and should be based on the best available and most up-to-date scientific knowledge. Defendants adopted a new NAP AZK in 2021 that addresses the deficiencies identified in the evaluation of the earlier NAP AZK and is based on expert submissions. Defendants have thus fulfilled their obligation to adopt an adaptation plan of the required quality. The Court notes from the documents submitted that new legislation has been adopted (amendment of the Water Act, adoption of the Erosion Protection Decree) and an amendment to the Agricultural Land Use Fund Act is currently being prepared; the preliminary survey for the Elbe, Oder and Danube river basins takes account of drought and water scarcity as a significant impact of human activity and also indicates flood risk in some sub-basins; Adaptation measures in the forestry sector are continuously implemented and financial support to this sector has increased between 2020 and 2021; the MoE and MoA are currently preparing an assessment of the implementation of adaptation measures in agriculture. These facts show that the Defendants are making progress in the area of climate change adaptation, with some measures being implemented with varying degrees of success. It is not true that the defendants adopted the NAP AZK, which they subsequently assessed as inadequate, and then adopted a new NAP AZK without implementing the adaptation measures.

321. The Municipal Court has not examined this evidence concerning adaptation to climate change:

- A comprehensive study of the impacts, vulnerability and sources of risk associated with climate change in the country. The Applicants used this study to demonstrate that taking adaptation measures is more economically advantageous than inaction. This fact was not at issue in the court proceedings.

- Report on the implementation of the Ministry of Agriculture's strategy for the period 2017-2020. The court was unable to carry this evidence because it was not provided by the Ministry of Agriculture.

- Information on the progress of the implementation of programmes to reduce the consequences of drought and water scarcity in the Czech Republic under the Ministry of Agriculture in 2019-2021. Id.

Fourth condition [322-323]

322 The applicants must have been directly deprived of their rights by unlawful interference (or interference, instruction or enforcement) which is not a decision. The Defendants are guilty of unlawful interference because, contrary to Article 4(2), second sentence, of the Paris Agreement, they have not yet adopted a sufficiently specific mitigation plan aimed at meeting the objective expressed in the EU NDC. This is an interference in the form of unlawful inaction by the defendants; it is not an administrative decision.

323. The fourth condition is fulfilled.

Fifth condition [324-327]

324. The Municipal Court observes that the first and fifth conditions for interference are intertwined, as both require that the interference be direct. The wording of Section 82 of the Code of Administrative Justice, in the part *"the interference was directly directed against him or her or as a result of which he or she were directly affected"*, was interpreted by the Municipal Court as requiring a causal link between the interference and the infringement of the applicants' rights. A cause of an effect is a fact without which the effect would not have occurred at all, or would have occurred but in a different way from that in which the cause in question was involved.

325. In the present case, climate change would also occur if the defendants acted to mitigate and adapt to climate change. However, if the defendants had properly fulfilled their obligations, climate change would have been milder and averting dangerous climate change under Article 2(1)(a) of the Paris Agreement would have been more likely. This conclusion follows from the non-negligible impact of human activity on climate change. Defendants' failure to act is therefore a partial cause of the current adverse impacts of climate change. The Municipal Court notes that the individual responsibility of the States Parties to the Paris Agreement cannot be excluded by reference to the level of emission contributions of other States. Such an approach would make effective legal protection impossible where the State in question is not a significant emitter of greenhouse gases on a global scale and would be inconsistent with the principle of common but differentiated responsibility of the Parties under Article 2(2) of the Paris Agreement.

326. Foreign courts have taken the same view. In Urgenda, paragraph 5.7.7, the Dutch Supreme Court stated (Municipal Court translation): *"Partly in view of the serious consequences of dangerous climate change [...] the objection that a State does not have to*

assume responsibility because other countries do not fulfil their partial obligations cannot be accepted. Nor is it a defence to argue that one's own country's contribution to global greenhouse gas emissions is very small and that the reduction of emissions from one's own territory is of little significance on a global scale. Accepting these objections would mean that a country could easily avoid its share of responsibility by pointing to other countries or to its own negligible share. However, if this argument is ruled out, then each country can effectively be held accountable for its share of emissions and the chances of all countries actually contributing will be greatest, in accordance with the principles set out in the UNFCCC's preamble [...]." Similar reasons were also given by the Berlin Administrative Court in its judgment of 31 October 2019, Case No. 10 K 412/18, paragraph 74 (Municipal Court translation): *"The percentage by which the 2020 climate protection target is exceeded represents a relatively small part of the annual emissions. However, States share a common but differentiated responsibility for mitigating climate change (see Article 2(2) of the Paris Agreement). A State Party cannot avoid its own responsibility by referring to the greenhouse gas emissions of other States. Individual legal protection in the field of climate protection is conceivable only if there is no excessive requirement of a causal link between the failure to take national climate protection measures and the impact on the protected legal status of the persons concerned."*

327. The defendants' failure to act deprived the applicants of their right to a favourable environment, even though other causes were also involved in that consequence.

Summary of the Assessment [328-331]

328. In the climate action proceedings, it was established that the defendant ministries unlawfully interfered with the applicants' right to a favourable environment under Article 35(1) of the Charter because, contrary to the second sentence of Article 4(2) of the Paris Agreement, they did not have a specific plan for the mitigation measures required to achieve a 55 % reduction in greenhouse gas emissions by 2030 compared to 1990 levels.

329. The Defendants have not breached their obligation to adopt and implement adaptation measures under Article 5(4) of the ECL. The Defendants adopted the NAP AZK reflecting the previously identified adaptation gaps, based on scientific knowledge, and involving a range of actors both within and outside the public sector. The Municipal Court did not find the shortcomings alleged by the plaintiffs in the implementation of measures in the areas of forestry, drought and water protection, and agriculture.

330. The Municipal Court did not examine whether the applicants were also prejudiced in their right to property, their right to private and family life, their right to life and health, their right to carry out economic activity and their right to self-government as a result of the defendants' failure to act. The legal position of the applicants would not be affected by any finding of a violation of those rights, since it is the specific definition of the violation, and not the number of rights affected, which is decisive for the remedy of a continuing interference under Article 87(2) of the Code of Administrative Justice.

331. For this reason, the court did not admit evidence of a clinical psychologist's report on applicant (e)'s climate grievance dated January 27, 2021; land registry abstracts; documentation of climate change impacts on plaintiffs (b) and (c)'s land and on applicant (d)'s family business, including photographic documentation; and a statement by applicant (f)'s mayor dated February 14, 2021, including photographic documentation.

IV. Conclusion and compensation of costs [332-341]

332. The Municipal Court rejected in the Operative Part I. the action against the Government of the Czech Republic for lack of passive standing and decided on the costs of the proceedings in this part in its Operative Part II.

333. For the reasons set out above, the Municipal Court found the action in the area of the adoption of mitigation measures to be justified and therefore, in its Operative Part III, declared the interference in question to be unlawful. By its Operative Part IV, the Court pursuant Section 87(2) of the Code of Administrative Justice, it prohibited the defendants from continuing the infringement of the applicants' rights. The conclusion on the impossibility of issuing a declaratory ruling and a constitutive ruling side by side (judgment of the Supreme Administrative Court of 28 May 2014, no. 1 Afs 60/2014-48, paragraph 21) was overcome by the judgment of the Extended Chamber of the Supreme Administrative Court of 26 March 2021, no. 6 As 108/2019-39, paragraph 108).

334. The Court formulated the constitutive ruling with sufficient certainty to ensure that the defendants would no longer be inactive and would take the legally prescribed actions on the required content (Order of the Extended Chamber of the Supreme Administrative Court of 16 November 2010, no. 7 Aps 3/2008-98, last sentence of paragraph 27). In the case of climate change mitigation, such an act is the adoption of a mitigation plan that is sufficiently specific within the meaning of Article 4(2) and (14) of the Paris Agreement and is aimed at meeting the EU NDC target and the ongoing implementation of that plan. In the Court's view, it is an act which corresponds in substance to the applicants' request (paragraph V of the Petition Claim) for the adoption of necessary and proportionate measures. The choice of specific mitigation measures leading to a 55 % reduction in greenhouse gas emissions by 2030 compared to 1990 is itself within the defendants' discretion. The Court could not, in view of the principle of separation of powers, order the defendants to develop specific mitigation measures.

335. Although the wording of operative parts III and IV does not replicate the petition claim and its alternatives, it is not an excess of the claim. The administrative court is bound by the substance of the petition claim (the definition of the measure), not by its literal wording. The administrative court cannot dismiss an action for interference simply because the applicant has not expressed his claim in a legally flawless manner if it is clear what he is seeking to achieve. This means that the court may formulate the operative part of the judgment differently from the wording of the application, but it must remain within the limits of Article 87(2) of the Code of Administrative Justice and examine the substance of the interference. According to the applicants, the substance of the interference was that the emission reductions to date did

not correspond to the commitment under the Paris Agreement or that the defendants did not plan their activities so as to achieve the objective of the Paris Agreement (p. 47 of the Application). The Municipal Court found that the defendants did not, at the date of the judgment, have a specific mitigation plan to reduce greenhouse gas emissions from 55 % by 2030 compared to 1990 levels. The operative parts of the judgment are consistent with such defined unlawful inaction. The Municipal Court also ruled that the Ministry of the Agriculture had failed to act unlawfully, even though the applicants had not requested it in the area of mitigation (paragraph IV of the Petition Claim), since redress is possible only if a supra-ministerial approach is followed.

336. The Municipal Court did not order the defendants to restore the situation before the interference, because the definition of that condition is not possible. The enforceability of the judgment is not thereby impaired.

337. The court dismissed, in its Operative Part V., the action in so far as it was directed against the lack of adaptation to climate change allegedly committed by the Ministries of the Environment and Agriculture.

338. The Court decided on the costs of the proceedings in accordance with Article 60(1) of the Code of Administrative Justice, according to which, save as otherwise provided for in this Act, a party who has been entirely successful in the proceedings shall be entitled to reimburse the costs of the proceedings before the court which it has reasonably incurred against the unsuccessful party. If they were only partially successful, the court shall award them the right to reimbursement of a proportionate part of the costs.

339. Applicants were partially successful in this case. The action brought against the Government of the Czech Republic had to be rejected, and in the area of adaptation measures against climate change it was dismissed. In determining the amount of the costs, the Court therefore concluded that the action had been half successful and therefore awarded the applicants one half of the costs in respect of the amount of the non-contractual lawyer's fees. The costs of the proceedings based on this assessment are as follows:

1. court fees in the amount of CZK 56 000 calculated for each of the seven applicants as CZK 2 000 for each defendant Ministry, i.e. 7 x 4 x 2 000.

2. The non-contractual remuneration of the applicants' counsel for five acts of legal service: receipt and preparation of representation pursuant to Section 11(1)(a) of Ordinance No 177/1996, Advocates' Tariff ('AT'), filing of the application pursuant to Section 11(1)(d) AT, filing of the reply pursuant to Section 11(1)(d) AT and attendance at the hearing before the court for each two hours commenced pursuant to Section 11(1)(g) AT. These were joint acts in the representation of two or more persons, and therefore, pursuant to Section 12(4) AT, the advocate is entitled to an extra-contractual fee for each person so represented, reduced by 20 %, i.e. CZK 2 480 per act of legal service. The total fee would amount to CZK 86 800 (7 x 5 x 2 480), the pro rata part of one half amounts to CZK 43 400.

3. an overhead allowance pursuant to Section 13(4) AT of CZK 1 500 (5 x 300). For joint acts when representing several persons, the lawyer is entitled to only one lump sum reimbursement of expenses for each act (see Resolution of 30 September 2014, Case No. 25 Cdo 1610/2014).

4. Compensation for the time missed by the legal counsel for the journey from Brno to Prague and back pursuant to Section 14(1)(a) and (3) AT for 12 half-hours, i.e. in the total amount of CZK 1 200 (100 x 12), the pro rata part amounting to one half amounts to CZK 600.

5. The applicants' representative is a VAT payer, so that the compensation also includes VAT at the rate of 21 % on the extra-contractual remuneration, the overhead allowance and the compensation for time lost, totalling CZK 9 555.

6. Train fare for the applicants' representative from Brno to Prague and back in the amount of CZK 494 (documented by an eTicket).

340. The Municipal Court did not follow Section 12(3) AT and did not determine the tariff value as the sum of the tariff values of the connected cases. These were not four separate motions that the court consolidated for joint consideration. In terms of content, it was a single application against four defendants.

341. The final amount of costs is therefore CZK 111 549.

Advice of remedies:

A cassation appeal may be submitted against this decision within two weeks from the date of its delivery. The appeal must be submitted in two (more) copies to the Supreme Administrative Court, with its seat at Moravské náměstí 6, Brno. The Supreme Administrative Court shall decide on the cassation complaint.

The time limit for submitting a cassation complaint ends on the expiry of the date which coincides with the date which determined the beginning of the time limit (the date of delivery of the decision). If the last day of the period falls on a Saturday, Sunday or public holiday, the last day of the period shall be the next working day. The time-limit for lodging an appeal may not be excused.

A cassation complaint may be submitted only on the grounds set out in Article 103(1) of the Code of Civil Procedure and, in addition to the general requirements of a submission, it must contain an indication of the decision against which it is directed, to what extent and on what grounds the complainant challenges it and the date on which the decision was notified to him.

In the appeal proceedings, the applicant must be represented by an attorney; this does not apply if the applicant, his employee or a member acting for him or representing him has a university degree in law required by special laws for the practice of the profession of attorney.

The Supreme Administrative Court shall collect the court fee for the appeal. The variable symbol for payment of the court fee to the account of the Supreme Administrative Court can be obtained on its website: www.nssoud.cz.

Prague, 15 June 2022

JUDr. Karla Cháberová President of the Chamber