

Access to justice barriers in clean air cases: Bulgaria

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National cases

Facts:

- ✓ Exceedance of limit values for PM and SO₂ in Bulgaria
- ✓ Violation of the EU air quality legislation (CJEU case C-488/15).
- ✓ The Supreme Administrative Court rulings that AQPs may not be appealed by individuals and NGOs due to lack of legal standing (AQP Sofia in 2017 and AQP Plovdiv in 2018).
- ✓ Grounds for denial of legal standing: (i) national criteria for legal standing is not satisfied (the AQPs do not affect the rights, freedoms or legitimate interests of the claimants); (ii) APQs are “internal acts” – i.e. acts which create rights or obligations for bodies or organizations subordinate to the body which has issued the act.

Weaknesses of national rulings

Aarhus Convention	<ul style="list-style-type: none">✓ Article 9(3) <i>each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment</i>✓ Article 5, Paragraph 4 of the Constitution of Bulgaria: international acts which are duly ratified shall have priority over national laws.
Case-law of the CJEU	<ul style="list-style-type: none">✓ <i>“natural or legal persons directly concerned by the limit values being exceeded [...] <u>must</u> be in a position to require the competent authorities, if necessary by bringing an action before the courts having jurisdiction, to establish an air quality plan.” (Case C-237/07 <i>Janecek</i> and case C-404/13 <i>ClientEarth</i>)</i>✓ <i>“It is for the competent national authorities and courts to interpret national law, as far as possible, in a way that is compatible with the purpose of that directive. Where such an interpretation is not possible, they must disapply the rules of national law which are incompatible with the directive concerned.” (case C-404/13 <i>ClientEarth</i>)</i>
National laws	<ul style="list-style-type: none">✓ National criteria for legal standing: individual/entity may objects acts of the administration when their rights, freedoms or legitimate interests are affected or there is risk of being affected✓ Court practice – ownership rights; addresses of the act✓ Right to healthy and favourable environment – Article 55 of the Constitution

Ways forward

Impact of SAC`s rulings

- No formal precedent system
- “Informal” impact

Ways forward:

1. Legislative amendment

- Legal standing on environmental cases is recognized when specifically stipulated in law
- Proposal to amend the Clean Ambient Air Act

2. EU/International tribunal

A photograph of a bright blue sky filled with soft, wispy white clouds. The clouds are scattered across the frame, with some appearing as thin, horizontal streaks and others as more rounded, billowy shapes. The overall tone is serene and clear.

Thank you!