

2018-12-19	
<i>Case Summary posted by the Task Force on Access to Justice</i>	
Poland: air pollution litigation against the State Treasury	
<i>1. Key issue</i>	Access to justice for the public concerned to challenge air quality plans
<i>2. Country/Region</i>	Poland/Malopolska
<i>3. Court/body</i>	Regional Administrative Court in Krakow (Wojewódzki Sąd Administracyjny w Krakowie), Supreme Administrative Court (Naczelny Sąd Administracyjny), Constitutional Court (Trybunał Konstytucyjny)
<i>4. Date of judgment /decision</i>	2016-07-06 (Regional Adm. Court in Krakow), 2016-11-29 (Supreme Adm. Court)
<i>5. Internal reference</i>	II SA/Kr 573/16 (Regional Adm. Court in Krakow), II OSK 2671/16 (Supreme Adm. Court), Ts 53/17 (Constitutional Court)
<i>6. Articles of the Aarhus Convention</i>	Art. 2 (5) and 9 (3)
<i>7. Key words</i>	air pollution, air quality plan, access to justice
<i>8. Case summary</i>	<p>In March 2016 a citizen of Zakopane, a town in southern part of Polish Malopolska region, experiencing high levels of air pollution with dust particles (PM10, PM2,5) and benzo(a)pyrene, challenged the regional Air Quality Plan (AQP, implementing art. 23 of the Directive 2008/50 on ambient air quality and cleaner air for Europe) to the administrative court. The claimant argued, that the AQP was inefficient and failed to include measures ensuring that exceedance period are kept as short as possible.</p> <p>In July 2016 Regional Administrative Court in Krakow deemed the complaint inadmissible, arguing that the s/he failed to prove sufficient legal standing. According to the court, AQPs are addressed to administrative bodies, not to the individuals and as such they cannot violate their legal interest. Even if the AQP should have been inefficient or faulty, it could not violate the claimant's legal interest, as the plan as such did not cause air pollution. In this, the regional court followed suit with the traditional case-law on standing under Polish law, namely that claimants have to prove that their legal interest or right is violated by the challenged act and that this violation must be direct, specific, real and current.</p> <p>After appeal the judgment was upheld by the Supreme Administrative Court in November 2016. The claimant argued that the court should take into consideration both the Aarhus convention and the EU law and jurisprudence and interpret the national law in line with them, but the Supreme Administrative Court decided that such interpretation of the national law is impossible.</p> <p>Note: In March 2017, the claimant submitted a complaint to the Constitutional Court against the provision of law (art. 90 par. 1 of the Voivodship self-government act) that effectively forbids the citizens to challenge AQPs before a court. The case is currently pending in the Constitutional Court.</p>
<i>9. Link to judgement/ decision</i>	http://orzeczenia.nsa.gov.pl/doc/B07C330A86 http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/POLAND/Poland_2016_AQP_judgment.pdf