



Strategic litigation concerning air quality in the Czech Republic

12th meeting of the Task Force
on Access to Justice

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Overview

1. Challenging the absence of air quality plans
2. Actions against 2016 air quality plans
3. Compensation cases

Challenging the absence of air quality plans

- until 2016 no air quality plans in the Czech Republic
- “encroachment lawsuit” filled against a regional administration of industrial city where the limit values of pollutants were exceeded
- lawsuit referred to the CJEU C-237/07 *Janecek* decision and art. 9/3 of AC
- procedural standing of individuals accepted
- regional court refused on merits - the claimants were not individually affected
- Supreme Administrative Court - in the perspective of the CJEU case law, the condition of “individual encroachment” fulfilled – s absence of air quality plans declared as illegal

Actions against the 2016 air quality plans

- in 2016 first air quality plans issued
- Insufficient content – no specific measures to achieve the limit values, no concrete timeframes and priorities
- lawsuits against 4 of the AQP - applicants again referred to the CJEU case law, including judgment in the C-404/13 *ClientEarth*
- procedural standing of individuals and NGOs accepted
- district court refused on merits – AQP is of general nature
- Supreme Administrative Court - mere existence of AQP does not fulfil obligations under the Air Quality Directive; the plans failed to comply with the directive by not incorporating a detailed timeframe of implementation of individual measures, their prioritization and qualified estimate of how much each measure is to contribute to diminishing air pollution.

Compensation cases

- success in previous cases alone did not improve the air quality- necessary to consider other ways which could force the public authorities to take faster and more efficient measures
- Civil lawsuits according to the Act on State Responsibility for damages caused by the illegal decisions and other unlawful official actions or omissions by the public authorities - to recover damages resulting from the absence and then poor quality of the action plans
- procedural standing of individuals accepted
- first stage and appeal court refused on merits –no specific damage caused to the applicants (living in the area with exceeded the limit values of air pollutants is “normal discomfort related life in a large modern city” (x successful Polish case)
- second round” of civil actions - applicant from the same area is ill with lung cancer

Conclusions

- effective promotion of the right to clean air needs more than challenging acts or omissions of the public authorities
- especially in the countries where the court decisions are often not fully respected by the administrative bodies, it is necessary to search for alternative avenues
- ACCC - Convention requires that “effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced”.
- suing the government for damages can be tried as one of these alternatives

Right to Clean Air



- Basic info on the project
- <https://www.right-to-clean-air.eu/en/>




Frank Bold

www.frankbold.org

