

# Access to justice in cases relating to air quality

Relevant case law of the CJEU

13<sup>th</sup> meeting of the Task Force on Access to Justice



Christoph Sobotta

Chambers of Advocate General Juliane Kokott, CJEU

**Personal view**

**No knowledge of the Court's deliberations**

# EU Ambient Air Quality Rules

- Various limit values on specific pollutants in the ambient air
  - Art. 13(1) + Annex XI of Directive 2008/50
    - Limit values of certain pollutants in the ambient air are laid down: **sulphur dioxide, PM10 (2005), lead, and carbon monoxide** [+ some instances of **PM2.5**], **nitrogen dioxide (NO<sub>2</sub> – 2010 + 5 year extension possible)** and **benzene**
  - Art. 23(1) of Directive 2008/50
    - Where ... the levels of pollutants in ambient air exceed any limit value ... Member States shall ensure that **air quality plans** are established for those zones and agglomerations in order to achieve the related limit value or target value ...
    - In the event of exceedances of those limit values for which the attainment deadline is already expired, the air quality plans shall set out appropriate measures, so that the exceedance period can be kept **as short as possible**.  
...

# Ambient Air Quality Rules In Practice

- PM10 (particles, dust) are an issue in cities where wood or lignite (brown coal) are used for heating, in particular in Bulgaria or Poland
- NO2 is an issue in cities with much automobile traffic with diesel engines, many EU 15 Member States are affected, eg. Germany, France or UK
- Compliance requires severe restrictions, but also balancing of objectives and interests >> To what extent can air quality plans be judicially controlled in this regard?

# Janecek - EU:C:2008:447



Munich, Landshuter Allee

# Janecek - EU:C:2008:447

- Breach of EU limit values for ambient air quality was not disputed (Dir 96/62 & Dir 99/30)
- Mr. Janecek sued the city, asking for the plan required by the Directives
- German Supreme Administrative Court asked CJEU whether a citizen has a right to such a plan
- German doctrine: general public interest (plans) is defended by public authorities, not individuals
- Direct Effect? Sufficiently clear and unconditional
- CJEU: persons directly concerned can invoke this obligation >> individuals have a legitimate interest in a healthy environment

# ClientEarth - EU:C:2014:2382



# ClientEarth - EU:C:2014:2382

- In 40 of 43 zones and agglomerations in the UK, one or more of the limit values for NO<sub>2</sub> were exceeded in 2010 (road traffic and domestic heating)
- ENGO ClientEarth applied in UK courts for an injunction against the UK to comply with the limit values as soon as possible and by 2015 at the latest
- High Court and Court of Appeal refuse: **political question**, Supreme Court referred to the CJEU
- Content of plans: **discretion**, but exceedance must be as short as possible
- Courts must take '**any necessary measure**, such as an order in the appropriate terms, so that the authority establishes the plan'

# ClientEarth - EU:C:2014:2382

Follow-up: UK High Court is looking deeply into the technicalities to achieve ambient air quality (congestion charge appears the preferred measure)

- High Court (Garnham J), R (ClientEarth (No.2)) v Secretary of State for the Environment, Food and Rural Affairs and others [2016] EWHC 2740 (Admin)
- High Court (Garnham J), R (ClientEarth (No.3)) v Secretary of State for the Environment, Food and Rural Affairs and others [2018] EWHC 315 (Admin)

# Craeynest

## C-723/17 (EU:C:2019:533)

- Several Inhabitants and ClientEarth challenge the placement of sampling points in Brussels, but can courts verify this?
- Under the Directive, some of the sampling points must be placed to register the highest values >> complex scientific assessment = discretion
- Direct effect? If there is discretion, at least the **limits of this discretion** must be enforced by the courts
  - Placement based on sound and up-to date scientific data?
  - Sufficient documentation of decision?

# Deutsche Umwelthilfe

## C-752/18 (EU:C:2019:1114)

### Enforcement

- German region of Bavaria refuses to ban diesel cars in cities, alternative measures do not promise a solution in the near future
- Supreme Administrative Court of the region imposed two penalty payments of 4.000 Euros each that were paid from the environmental authorities to regional ministry of finance
- Reference to the CJEU: What to do? In particular, must officials be placed in **coercive detention** until they adopt the necessary measures?

# Deutsche Umwelthilfe

## C-752/18 (EU:C:2019:1114)

### Enforcement

- MS enjoy procedural autonomy, subject to principles of equivalence and effectiveness
- If a judgment cannot be enforced the **essential content** of the right to an effective remedy is violated, in particular, if it is about health
- Preferred Solution: Interpretation in conformity (depends on internal law)
- Last resort: Disapply any internal provision that is contrary to EU law

# Deutsche Umwelthilfe

## C-752/18 (EU:C:2019:1114)

### Enforcement

BUT: Right to Liberty (Art. 6 of the EU Charter of Fundamental Rights) must not be infringed either

- Is there a sufficient **legal basis** for coercive detention in MS law? >> For MS Courts to decide!
- Proportionality of Detention? Is there a **less restrictive** measure? Eg. higher penalties paid to other recipients.

# Deutsche Umwelthilfe

## C-752/18 (EU:C:2019:1114)

### Follow-up

- Bavarian situation still open because a new plan without diesel bans was issued > compliance between 2020 and 2026
- In the neighbouring German region of Baden-Württemberg the courts ordered a one-time penalty of 25.000 Euro to be paid from the region to a medical NGO (14.5.2020, 10 S 461/20) – apparently the regional government now intends to comply
- French Council of State ordered the state to pay 10 Mio. Euros per semester until clean air is achieved (ECLI:FR:CEASS:2020:428409.20200710) – French law clearly allows this method of enforcement, though this is the highest sum ever (recipient unclear, possibly yet to be decided: plaintiff, other NGOs or independent state body)
- Italy: a special commissioner can be appointed to adopt the necessary measures

Thank you for your attention!

