

Input for Aarhus event, February 15, 2021

For many years, DUH has successfully pursued lawsuits for compliance with the ambient air pollutant concentration limits prescribed in the Clean Air Directive (2008/50). It has been shown that the right to sue for environmental associations leads to real improvements: In the cities in which we have filed lawsuits, air pollution has recently decreased twice as much as in other cities. In the course of the proceedings, it has thereby been able to contribute decisively to the (positive) clarification of the question that not only affected persons, but also environmental associations entitled to file lawsuits can conduct proceedings of this kind. The right of action is based on Article 9 (3) of the Aarhus Convention.

The German legislator then amended the national law. Until the amendment, this law did not provide for a right of action for proceedings under Article 9 (3) of the Aarhus Convention. With the amendment of the law, these rights of action were to be created. Within the legislative process, however, the Federal Ministry of Transport directly approached the responsible Federal Ministry of the Environment with the request that type approvals for cars should, if possible, not fall within the scope of the law. The law was therefore limited in such a way that all approvals for products that violate environmental protection regulations cannot be complained about.

The question now arises as to whether access to the courts should also be granted when it comes to unlawful administrative acts approving certain products, especially cars. In this regard, DUH is suing before the Administrative Court of Schleswig (3 A 118/18) against a decision of the Federal Motor Transport Authority declaring to Volkswagen that temperature-controlled defeat devices contained in the engines of the vehicles should continue to be legal.

The VG Schleswig has referred relevant questions to the ECJ for a preliminary ruling (Case C 873/19). Since the German law does not provide the right to sue, the question arises whether a right to sue can be derived directly from Union law and whether national law may have to remain inapplicable for its implementation. This applies in particular if the health of people could be endangered without effective legal protection. This is probably the case here, as the use of defeat devices is associated with increased pollutant emissions from diesel cars in real-world operation, which in turn have a negative impact on air quality. A decision by the ECJ is expected in the first half of 2021.

Dorothee Saar on behalf of Deutsche Umwelthilfe

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