

2020-12-18

Case Summary posted by the Task Force on Access to Justice

Bulgaria: Air Quality Plan cases, Ruling No. 13138 of 1 November 2017, Ruling No. 16049 of 20 December 2018 and Ruling No. 9614 of 21 June 2019 of the Supreme Administrative Court of Bulgaria

1. Key issue	Denial of legal standing to appeal air quality plans
2. Country/Region	Bulgaria
3. Court/body	Supreme Administrative Court
4. Date of judgment /decision	2017-11-01 and 2018-12-20
5. Internal reference	N/A
6. Articles of the Aarhus Convention	Article 9, paragraph 3 of the Aarhus Convention
7. Key words	Legal standing, access to justice, air quality plans, particulate matter

8. Case summary

Bulgaria has among the dirtiest air in Europe and is the EU country with the highest rate of premature deaths attributable to exposure to particulate matter air pollution.¹ In 2017, the Court of Justice of the European Union (CJEU) found that Bulgaria is in violation of the EU air quality legislation for failure to comply with the air quality limit values and the requirement to keep the exceedance period as short as possible (case C-488/15).

The public concerned in Bulgaria has taken action in court to challenge the administrative decision-making under the EU Directive (2008/50) on ambient air quality and cleaner air for Europe. So far, these attempts have been unsuccessful. On 1 November 2017, the Bulgarian Supreme Administrative Court (SAC) denied legal standing to residents of Sofia (capital of Bulgaria) and the Za Zemiata Access to Justice to appeal the city's air quality plan for the period 2015-2020. On 20 December 2018, the SAC reiterated this ruling by denying legal standing to the same environmental NGO and a resident of Plovdiv to appeal the AQP of Plovdiv (the second biggest city in the country). Applying the general standing rules under Bulgarian law, the SAC held that air quality plans are acts which create rights or obligations only for bodies or organizations subordinate to the body which has issued the act. The court further found that air quality plans do not affect the rights, freedoms or legitimate interests of citizens or legal entities. Accordingly, air quality plans in Bulgaria are considered by their very nature not subject to court review.

Bulgaria ratified the Convention in 2003. Under the Bulgarian Constitution (article 5, paragraph 4), international acts which are duly ratified shall have priority over national laws. In both cases, the claimants relied extensively on the Aarhus Convention and the case-law of the CJEU. However, the SAC gave no argument as to why the Convention was not taken into account or why the case-law of CJEU (Case C-237/07 *Janecek* and Case C-404/13 *ClientEarth*) was not applied.

¹ According to the European Environmental Agency reports on air quality, until 2016, Bulgaria is the highest ranking EU country with premature deaths attributable to PM_{2.5} pollution: <https://www.eea.europa.eu/publications/air-quality-in-europe-2019>

Concerning the latter issue, the SAC argued that Directive 2008/50 does not stipulate the right of individuals and ENGOs to appeal air quality plans. The SAC also rejected a request by the claimant to ask the CJEU for a preliminary ruling on the matter.

Note: The three rulings are final and no national remedies against them are available. In Bulgaria, citizens are not allowed to refer directly to the Constitutional Court. It is an obligation for all courts to apply the Constitution.

9. *Link to judgement/
decision*

Link to Ruling No. 9614 of 21 June 2019 on case 6249/2019

<http://www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/3dbf8ec7bf30fde2c2258420004250fe?OpenDocument>

Link to Ruling No. 16049 of 20 December 2018 on case 14184/2018

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/98168089268f6729c2258351003d88ff?OpenDocument>

Link to Ruling No. 13138 of 1 November 2017 on case 12064/2017

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/697d648619093c6ec22581c900594e22?OpenDocument>