

Access to Justice in Air Quality Cases before the European Court of Human Rights

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“Victim” = person, non-governmental organisation or group of individuals affected by harm to his/her/its human rights Article 34 ECHR

LEGAL STANDING

DIRECT VICTIM = affected directly

INDIRECT VICTIM = affected potentially; having a *valid* and *personal* interest in seeing the situation brought to an end; having to modify his/her conduct or risking being directly affected by the legislation

“POTENTIAL VICTIM” = where substantial grounds have been shown for believing that the person [if deported] would face a real risk of being subjected to [ill-treatment in the destination country]

= person exposed to a serious specific and imminent danger

Balmer-Schafroth e.a v. Switzerland [GC], 1997 ; Athanassoglou and Others v. Switzerland [GC], 2000

RIGHT NOT TO BE EXPOSED TO SEVERE POLLUTION

Severe environmental pollution may affect individuals' well-being and prevent them from enjoying their **homes** in such a way as to affect their **private and family life** adversely, without, however, seriously endangering their health.

López Ostra v. Spain, 1994 - Article 8 ECHR



A legal entity (NGO) cannot rely on this right as it is inherently attributable to natural persons only

Greenpeace e. V. and Others v. Germany (dec.), 2009

RIGHT TO A FAIR TRIAL (ACCESS TO A COURT + EXECUTION OF FAVOURABLE JUDICIAL DECISION)



There must be a genuine and serious dispute regarding a “right” that can be said to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play.

Article 6 ECHR: Bursa Barosu Başkanlığı and Others v. Turkey, 2018 - non-enforcement of judgments
Collectif Stop Melox and Mox v. France, 2007 - “civil right” to enable the public to be informed and to participate in the decision-making process
L’Erablière A.S.B.L. v. Belgium, 2009 - access to a court to challenge a local landfill

Legal standing is only granted to legal or natural persons that were parties to the procedure complained of - either in person or, *exceptionally* through an NGO

Bursa Barosu Başkanlığı and Others v. Turkey, 2018

Gorraiz Lizarraga and Others v. Spain, 2004

AIR QUALITY CASES BEFORE THE ECtHR

1. AIR POLLUTION FROM INDUSTRY OR TRAFFIC

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ACTUAL - ONGOING

Plants: López Ostra v. Spain, 1994; Fadeyeva v. Russia, 2005; Giacomelli v. Italy, 2006; Băcilă v. Romania, 2010; Jugheli and Others v. Georgia, 2017; Cordella and Others v. Italy, 2019

Small-scale private activities: Lam and Others v. UK (dec.), 2001; Furlepa v. Poland (dec.), 2008

Car traffic: Martin Ward v. UK (dec.), 2004; Greenpeace e. V. and Others v. Germany (dec.), 2009; Daniil Gounardis v. Greece (dec.), 1998 ; Štefanec v. the Czech Republic, 2006

RISK - FUTURE

Industry: Guerra and Others v. Italy, 1998; Tătar v. Romania, 2009

2. GENERAL AIR QUALITY

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Kuczma v. Poland, no. 36351/18 - new application

CHALLENGING LEGAL ISSUES

1. Extending legal standing to persons acting through an NGO for environmental protection irrespective of the 'local connection'?
2. Allowing an NGO for environmental protection to pursue before the ECtHR an application based on the human rights of alleged victims who are not in a position to assert on their own, adequately, or in time, their individual rights?
3. Public interest litigation by an NGO for environmental protection - if recognised under national law as a means of defending the interests of the alleged victims - would exonerate the alleged victims from bringing their own domestic proceedings, if that litigation corresponded to their individual situation and specific complaints?
4. Where an enforceable right to a healthy environment is recognised in national law, physical or legal persons who sought judicial review of policy or operating decisions concerning the environment could, in principle, be entitled to rely on the right to have access to a court. The same could hold true where a right to bring a public-interest court action in an environmental matter, is recognised in national law?
5. Examining access to an administrative court complaints under Article 8, not Article 6 - to overcome the obstacle where such action is not recognised in domestic law?