

2022-03-15	
<i>Case Summary posted by the Task Force on Access to Justice</i>	
Country: Bulgaria, Sofia-city Clean Air Class Action	
<i>1. Key issue</i>	NGOs and residents of Sofia(Bulgaria) seek judicial remedy against excessive PM10 air pollution in the Sofia agglomeration
<i>2. Country/Region</i>	Bulgaria/Sofia
<i>3. Court/body</i>	Sofia city [civil]court [Софийски градски съд – Гражданска колегия]
<i>4. Date of judgment /decision</i>	2021-11-08
<i>5. Internal reference</i>	
<i>6. Articles of the Aarhus Convention</i>	Art.9 paragraph 3 of the Aarhus Convention
<i>7. Key words</i>	Clean air, class action, inaction, measures, remedy, substantive review
<p><i>8. Case summary</i></p> <p>In May 2017 a group of Sofia city residents and NGOs among which one ENGO filed a class-action lawsuit against the Sofia municipality alleging that excessive PM 10 air pollution in the period January 2015-May 2017 and the omission of the authority to remedy the situation amounts to a breach of the citizens' right to clean air. In addition to the request that the court establishes violation of the law, the plaintiffs requested the court to order the Sofia municipality to take action so that PM 10 pollution standards are complied with.</p> <p>The lawsuit was based on relatively recent (2007) legal provisions applicable when according to the nature of the violation the circle of those affected cannot be determined precisely, but is definable; in these circumstances the plaintiffs at a class action can act on behalf of all those who are affected, provided that the plaintiffs can prove their ability to defend the harmed interest seriously and in good faith, as well as to bear the burdens associated with the proceedings, including the costs.</p> <p>At the beginning of the proceedings the court found that the plaintiffs were not able to defend the interest of those affected, but the understanding of the facts of the higher judicial instance – the Sofia Court of Appeal – was different and in the end the class action was found admissible. The Sofia city court carried out an extensive substantive review of what was claimed to be an inaction by the Sofia municipality to remedy the PM 10 air pollution.</p> <p>In its final decision the court upheld the plaintiffs' claims and ordered the Sofia municipality to implement a series of regulatory measures and practical activities. The defendant did not appeal the court decision before the higher judicial instance and the decision entered into force in December 2021.</p> <p>The Sofia municipality was ordered in six-month period from the entry into force of the court decision to create rules, according to which under conditions laid down by the municipality, introduction of the following measures - either as a single measure or as a group of measures is provided: a) to introduce low emission zones for certain pollutants; b) to limit the use of some fuels for domestic heating; c) to limit the movement of motor vehicles.</p> <p>In addition the Sofia city court ordered the Sofia municipality within twelve months from the entry into force of the judgment to ensure the achievement of the normatively permissible levels (concentrations)</p>	

of fine dust particles 10 (PM 10) in the atmospheric air on the territory of the municipality by taking effective action for the protection of the environment and the purity of the atmospheric air in the municipality, including, but not limited to :

- introduction of incentives for the use of alternative non-polluting heating methods;
- assessment of the measures taken so far in the transport sector - whether they have led to an increase in the attractiveness of public transport. If not - why? Has the number of public transport users decreased or increased (given the established lack of data for the period from 2014 to now)? If it has decreased - what actions have led to this?
- evaluation of the possibilities for construction of multi-storey car parks in the residential and commercial areas and increase of the available buffer car parks;
- introduction of a complete and connected bicycle network, which will allow easy and safe transportation between the separate neighborhoods;
- analysis of the possibilities for creation of parks in the territories with excessive pollution and/or green walls;
- analysis of how urban planning affects air quality. Sofia Municipality should use the results of the analysis in the preparation of a new or the amendment of the existing General Spatial Plan, so as to provide a suitable microclimate that ensures the movement of air masses and the introduction of clean air masses .”

It is interesting to note that civil courts in Bulgaria appear to be the only courts which grant standing to individuals and NGOs for enforcement of the right to clean air. Administrative courts keep denying standing to individuals and ENGOS to challenge in court Air Quality Plans (AQPs) adopted according to art.23(1) of Directive 2008/50 – the last ruling of the Supreme Administrative Court confirming this jurisprudence was issued in January 2022; the administrative judges’ justification to deny standing is that the AQP is an internal administrative act which does not have external effect and does not affect the rights of individuals and ENGOS.

Another interesting aspect of the Sofia city court decision is that the judge ordered measures for protection of the damaged interest of the collective. Earlier in July 2021 The Supreme Cassation Court (SCC) in exactly the same type of case for breaching the PM 10 concentration limit values – a class action filed by group of individuals and NGOs in Plovdiv back in 2017 – found that the court is not competent to specify measures for protection of the damaged interest of the collective in Plovdiv to remedy the unlawful situation of excessive PM 10 pollution .

The first results of the outcome of the Sofia class action lawsuit are expected to occur after July 2022.

9. *Link to judgement/ decision*

https://unece.org/sites/default/files/2022-04/Bulgaria_2021_Air_quality_class_action_judgment.pdf

<https://sgs.justice.bg/bg/12543?from=08.11.2021&to=&actkindcode=5001&casenumber=6614&caseyear=2017&casetype=%D0%93%D1%80%D0%B0%D0%B6%D0%B4%D0%B0%D0%BD%D1%81%D0%BA%D0%BE>