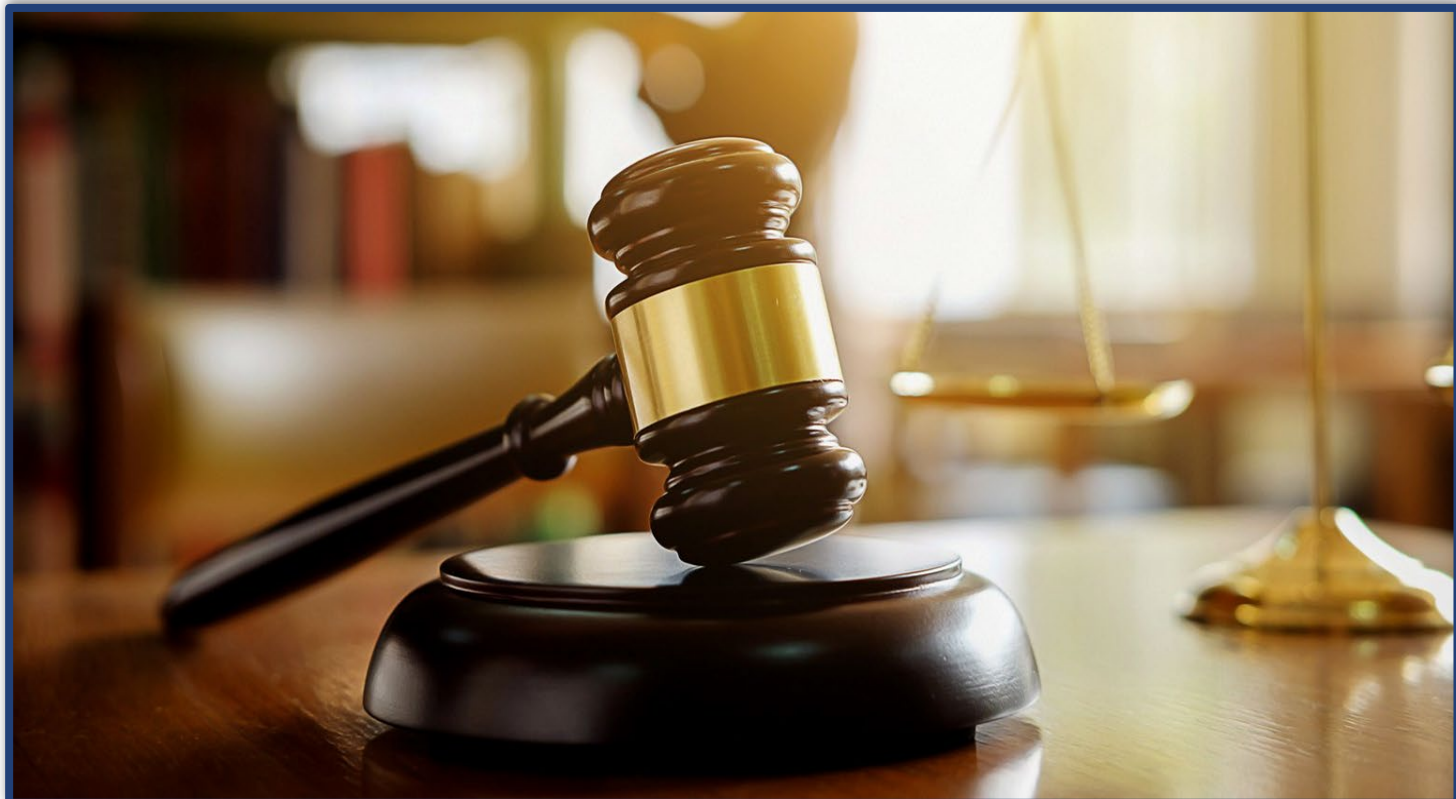


2022 JUDICIAL COLLOQUIUM ADJUDICATION OF CASES RELATED TO CLIMATE CHANGE AND AIR QUALITY

THE CASE OF BULGARIA



- ❖ Judgment of the Court (Third Chamber) of 5 April 2017 in Case C-488/15 (European Commission v. Republic of Bulgaria)
- ❖ Action brought on 21 March 2021 – European Commission v Republic of Bulgaria (Case C-174/21)



Admissibility of the challenge

Legal standing

Environmental NGOs with procedural legitimacy
de lege
Specific criteria for procedural legitimacy de
lege

- a) Requirement to work in the field of the environment
- (b) Membership requirement
- (c) Other criteria

Non-discrimination against foreign NGOs
Other associations, organizations and groups



Appeal of ambient air quality programmes/plans to reduce pollutant levels and reach established standards

Case No. C-237/07 (Janecek)

The Court of Justice of the European Union (CJEU) has held that 'where failure to comply with the measures provided for in the Directives relating to air quality and drinking water and intended to protect public health is 100 000 years old, the persons concerned must be able to invoke the mandatory rules laid down in those Directives'.

Case No. C-404/13 (ClientEarth)

Paragraph 56 'It follows that natural or legal persons directly affected by the exceedance of limit values after 1 January 2010 must be able to require national authorities, by looking before the competent courts, where appropriate, for the drawing up of an air quality plan in accordance with the second subparagraph of Article 23(1) of Directive 2008/50, member state has failed to comply with the requirements of the second subparagraph of Article 13(1) of that Directive.'

Case No. C-723/17 (Crayenest)

Paragraph 54 'In that regard, it is clear from the case-law of the Court that, in the absence of rules in EU law, it is for the domestic legal order of each Member State to designate the courts having jurisdiction and to lay down the procedural rules for judicial proceedings designed to ensure the protection of the rights which individuals derive from an act of EU law; directive 2008/50'.

Appeal of ambient air quality programmes/plans to reduce pollutant levels and reach established standards

Order No 13138 of 01.11.2017, given under Adm. Case No 12064/2017 of the SAC, Fourth Division

Order No 16049 of 20.12.2018, given under Adm. Case No 14184/2018 of the SAC, Fifth Division

Order No 552 of 24.01.2022, given under Adm. Case No 334/2022 of the SAC, Sixth Division

- for the most part, the program is analytical and, as such, does not contain a will statement affecting or endangering the rights of the challengers;
- in the part of the proposed measures to improve ambient air quality, the program shall be an inter-agency act pursuant to Article 10(2, para. 2, item 3 of the APC;
- in this case, there is no evidence or allegations made by the applicants that any or some of the measures concern them;

Reference for a preliminary ruling

Article 19(3)(b) of the Treaty on European Union and Article 267 of the Treaty on the Functioning of the European Union

Case C-375/21: Reference for a preliminary ruling from the Supreme Administrative Court (Bulgaria) on 17 June 2021 — Land Access to Justice Association, The Green Tank — Non-profit civil association — Hellenic Republic, NS / Executive Director of the Executive Environment Agency, Maritsa East 2 TPP EAD



Reference for a preliminary ruling

Article 19(3)(b) of the Treaty on European Union and Article 267 of the Treaty on the Functioning of the European Union

1.) Is Article 4(3) TEU, read in conjunction with Article 18 of Directive 2010/75/EU and Articles 13 and 23 of Directive 2008/50/EC, to be interpreted as meaning that, when considering a request for a derogation under Article 15(4) of Directive 2010/75/EU, the competent authority must assess whether the granting of the derogation may jeopardise compliance with the environmental quality standards, taking into account all the relevant scientific data on pollution, including the measures under the relevant air quality programme in a given zone or agglomeration pursuant to Article 23 of Directive 2008/50/EC?

2.) Is Article 4(3) TEU, read in conjunction with Article 18 of Directive 2010/75/EU and Articles 13 and 23 of Directive 2008/50/EC, to be interpreted as meaning that, when considering a request for a derogation within the meaning of Article 15(4) of Directive 2010/75/EU, the competent authority must refrain from setting less stringent emission limit values for air pollutants from an installation in so far as such a derogation would be contrary to the measures laid down in the relevant air quality programme adopted in the given zone or agglomeration pursuant to Article 23 of Directive 2008/50/EC and could jeopardise achieving the objective of keeping the period of exceedance of the air quality standards as short as possible?

Reference for a preliminary ruling

Article 19(3)(b) of the Treaty on European Union and Article 267 of the Treaty on the Functioning of the European Union

3.) Is Article 4(3) TEU, read in conjunction with Article 18 of Directive 2010/75/EU and Article 13 of Directive 2008/50/EC, to be interpreted as meaning that, when considering a request for a derogation under Article 15(4) of Directive 2010/75/EU, the competent authority must assess whether, taking into account all the relevant scientific data on pollution, including the cumulative effect together with other sources of the pollutant concerned, the setting of less stringent emission limit values for air pollutants from an installation would contribute to the exceedance of the relevant emission limit values set in a given zone or agglomeration in accordance with Article 13 of Directive 2008/50/EC, and, if so, whether it must refrain from granting a derogation which would jeopardise the attainment of the environmental quality standards?

Procedure for challenging coercive administrative measures imposed in the event of:

- ❖ accidents caused by acts or omissions of operators of sites and territories ;
the occurrence of an imminent danger of pollution or damage to the environment or damage to the health or property of persons;
prevention or cessation of administrative violations under the Clean Air Act, the regulations under Art. 9, para. 1, Art. 9a, para. 1, Art. 9b, Art. 9c, para. 1, Art. 9d, para. 1, Art. 11a, para. 1 and Art. 17, para. 1 and 2 of the Ambient Air Purity Act and Regulation (EC)No 1005/2009 and Regulation (EU)No 517/2014.

Chapter Eleventh of the Code of Administrative Procedure

Proceedings for damages caused to citizens or legal persons by unlawful acts, acts or omissions of administrative authorities and officials ;

The procedure laid down in this chapter also deals with actions for damages caused by a sufficiently serious breach of European Union law, applying to property liability and the admissibility of the claim the standards of non-contractual liability of the State for infringement of European Union law.



Chapter Fifteenth of the Code of Administrative Procedure

Protection against unfounded actions and omissions of the administration :

Anyone with a legal interest may request termination of actions carried out by an administrative authority or official which are not based on an administrative act or on the law.

WHAT YOU CAN DO

USE NONTOXIC CLEANING SUPPLIES.
STOP SMOKING.
KEEP YOUR CAR PROPERLY MAINTAINED TO AVOID EMISSIONS.
CONSERVE WATER.
USE BIODEGRADABLE MATERIALS INSTEAD OF PLASTIC.
EAT LESS MEAT.
Never use open fires to dispose of waste.
SHARE A RIDE.
PLANT TREES.
instead of A/C, put on a sweater;
instead of heat, take it off.

GET RID OF YOUR LAWN.
BUY SUSTAINABLE, LOCALLY-PRODUCED FOODS AND GOODS
reduce, reuse, and recycle.
Educate yourself and others.
REDUCE JUNK MAIL.
DRINK TAP WATER.
COMPOST GARDEN TRIMMINGS & KITCHEN SCRAPS.
DO YOUR RESEARCH.
DON'T SUPPORT POLLUTING COMPANIES.
HANG-DRY YOUR LAUNDRY.
"NO" to GMOs.

Excessive costs ordered against environmental NGO

The European Court of Human Rights (ECtHR) 386 (2021)
14.12.2021

the case of National Movement
“Ekoglasnost” v Bulgaria (appeal
No 31678/17)



REMEDIES UNDER CIVIL LAW:

Decision No 84 of 24.02.2015 of the District Court of Smolyan

Decision No 26 of 22.02.2017 of the Appeal Court of Veliko Tarnovo

Order No 28 of 22.01.2018 of the Supreme Cassation Court

Decision No 60155/22.07.2021 of the Supreme Cassation Court



REMEDIES UNDER CIVIL LAW:

For the above reasons, the Supreme Cassation Court

DECIDED:

REVERSES the judgment of the Court of Appeal of Veliko Tarnovo in case no. no 239/16 of 22.02.17 and instead rules:

In the collective action under Article 379, paragraph 3 of the Civil Procedure Code, brought by the plaintiffs : the Association for European Integration and Human Rights Foundation, K. V. B., M. T. E., E. N. N. and L. I. F. and the following joined persons, **ORDER** the defendants Municipality of Plovdiv and the Regional Environmental Protection Agency - Plovdiv to cease the inaction consisting in ineffective measures and actions to protect the quality of the air in Plovdiv, admitted in the period 2007 -2011, for which a systematic exceedance of the levels of PM10 in the city has been established, and to take effective action to protect the environment and the purity of the ambient air in Plovdiv, by ensuring that the legally permissible levels /concentrations/ of fine particulate matter 10 /PPH 10/ in the ambient air of the city are reached within twelve months from the entry into force of the court decision.

Decision No 266455 of 8.11.2021 of the Sofia City SCC e. No 6614/2017
So motivated, SOFIA CITY COURT, 20th Chamber,
DECIDED:

RECOGNIZES as established in the collective action under Art. 379, para. 2 of the Civil Procedure Court that in the period from 01.01.2015 to 29.05.2017, SOFIA MUNICIPALITY:

1/ has allowed systematic exceedance of the average permissible quantity of PM10 in the municipality, the by which it has violated Art. 13, par. 1. V. section "B" of the Annex to Directive 2008 /50;

2/ has not adopted an up-to-date ambient air quality management programme (violation of Article 23(1) of Directive 2008 /50);

3/ has not fulfilled its obligation to adopt the measures under Art. 28a IAV and has not fulfilled its obligation under Art. 30 The Clean Air Act should develop an operational action plan setting out the measures to be taken to reduce the risk of emissions to ambient air exceeding established emission standards and to limit the duration of such phenomena (infringement of Article 24(1) and (2) of Directive 2008 /50); which contributed to the exceedance of Particulate Matter emissions;

4/ has not fully fulfilled and with due care its obligation to inform the public about the quality of the ambient air, by which it has violated Art. 26, par. 1(b) 'A' of Directive 2008 /50;

Decision No 266455 of 8.11.2021 of the Sofia City SCC e. No 6614/2017
So motivated, SOFIA CITY COURT, 20th Chamber,
DECIDED:

DISMISSES the claim to establish that between 01.01.2015 and 29.05.2017, the defendant is:

- 1/ admitted systematic exceedance of pm_{2.5} in the municipality and thus violated Art. 16, par. 1, vr. section "D" of Annex XIV to Directive 2008/50 EC;**
- 2/ violated Art. 24, par. 1 and 2 of Directive 2008/50 by acting as regards the possibility of requesting stricter emission limit values from stationary sources.**





**Thank you for your
attention!**

Sibila Simeonova PhD