

## **Case study on access to justice for citizens and NGOs in cases relating to air quality and on the main provisions of the Air Quality Directive (AQD)**

### **Facts of the case:**

Oilville, the capital city of Polluteland, is affected by persistent and significant air pollution issues. In particular, according to official reports:

- Levels of PM<sub>10</sub> have continuously exceeded the daily limit value (50 µg/m<sup>3</sup>, not to be exceeded more than 35 times a calendar year) since its entry into force in 2005. According to the latest data, in 2018, there have been 110 days with levels of PM<sub>10</sub> above the daily limit value.
- Levels of PM<sub>2.5</sub> have continuously exceeded the annual average limit value (25 µg/m<sup>3</sup>) since its entry into force in 2015. According to the latest data, in 2018, average annual concentrations of PM<sub>2.5</sub> were at 28µg/m<sup>3</sup>.

A report from the National Environment Agency assessed that there are different sources of PM<sub>10</sub> and PM<sub>2.5</sub> emissions in Oilville. The main source is domestic heating, but there are also significant contributions from private vehicles (especially diesel vehicles sold before 1 January 2011, i.e. Euro 4 standard or older) and the coal-fired power plant located in the close proximity to the city.

The report also assessed that in 2018 an estimate of 632 premature deaths were related to exposure to PM<sub>2.5</sub> in Oilville.

In April 2019, the competent authority adopted the document “Oilville Air Quality Plan 2020-2025”. The document outlines a list of 20 strategic interventions. The flagship measure aims at reducing emissions from domestic heating. In particular, the authorities estimate that by 2025 the number of households connected to central heating will increase by 15% compared to 2015 figures. To support the shift to cleaner heating systems, the authorities will require the central government of Polluteland to establish a plan providing adequate financial incentives for citizens to replace old boilers with new devices. Finally, public transport will be significantly improved: works for the introduction of a new metro line will commence by 2025.

According to the technical report of the Air Quality Plan, assuming that the financial incentives programme is established and that a sufficient number of citizens (50% of the residents) will move to central heating or replace their boilers, the impacts will be as follows:

- the number of days of exceedance of the PM<sub>10</sub> limit value will go down to 85 days in 2025
- compliance with the PM<sub>2.5</sub> limit value will be achieved somewhere between 2020 and 2025.

In 2023 the Air Quality Plan will be reassessed and the measures will be adjusted taking into account socio-economic conditions.

During 2018, the local environmental NGO “Clean Air for All”, in collaboration with the department of science of the Oilville University and the National Meteorological Institute, conducted a citizen science research project. In particular, they distributed 1,000 low cost air pollution sensors to Oilville residents to carry out measurements of NO<sub>2</sub> for a full year (January to December 2018). The University of Oilville and the National Meteorological Institute used

the data collected through the low cost sensors to publish a modelled map of distribution of NO<sub>2</sub> pollution in Oilville. According to the measurements and the pollution map, levels of NO<sub>2</sub> in some parts of the city are significantly higher than those recorded at the monitoring stations. In particular, in the area known as Traffic District near the circular road, levels of NO<sub>2</sub> were at 89 µg/m<sup>3</sup> (well above the limit value of 40 µg/m<sup>3</sup>). However, there is no official monitoring station in Traffic District. The highest value recorded by the official telemetric monitoring network at the Residential Hill station (33 µg/m<sup>3</sup>) is well below the limit value.

The NGO "Clean Air for All" together with an individual who lives in one of the most polluted areas of the city and suffers of asthma, decide to apply to the Oilville Administrative Court to ask the review of the air quality plan and introduction of urgent measures which will be able to improve air quality in the city in the shortest time possible. They ask the introduction of a Low Emission Zone to keep out of the city diesel vehicles without particle filters (sold before 1 January 2011 - Euro 4 standard or older). They ask the introduction of a complete ban on use of coal for domestic heating in households. They request the application of stricter emission limits in the industrial permit of the coal-fired power plant located near Oilville. Finally, they also ask for the review of the location of measuring sites (in particular, they ask the authorities to install a monitoring station in the Traffic District).

## **Questions**

### **A. Admissibility**

According to national procedural rules in Polluteland, air quality plans are internal administrative acts directed to the authority responsible for implementation. Members of the public cannot challenge internal administrative acts before national courts.

Should individuals and environmental NGOs be able to challenge in court an air quality plan, when this possibility is not provided under national law? Are there any requirements based on EU law regarding access to justice, which must be taken into account? Would the decision about admissibility be different with respect to an individual and an environmental NGO?

### **B. Merits**

1. Can a national court review the discretion of competent authorities as regards the content of air quality plans and the selection of the adequate pollution abatement measures?
2. Shall authorities be obliged to install additional monitoring stations, where there is already the minimum number of sampling points in an agglomeration, but the results of measurements carried out by citizens show that the official monitoring network does not measure the highest concentrations of pollution that are likely to occur in the area?

### **C. Remedies**

What is the role of a national court when it finds that an air quality plan does not comply with the requirements of the Air Quality Directive? Should it just annul the air quality plan or also issue an order to the competent authority? Can the court order the adoption of specific air pollution abatement measures?