## ANALYSIS OF THE QUESTIONNAIRE:

## TRENDS IN DOMESTIC AIR POLLUTION LITIGATION



Katalin Sulyok LL.M. (Harvard), Ph.D. (ELTE)

Lecturer, ELTE Law School (Budapest)









Background to the questionnaire and the summary report



Trends in domestic air pollution litigation



Significant measures in domestic laws









- 10 questions 3 main pillars of EU law and domestic law
  - Ambient Air Quality Directive (2008/50/EC Directive) and Directive 2004/107/EC: implementation, infringement proceedings, domestic case-law, typical claimants, problems in enforcing judgments, withdrawal of air quality measures, sanctions
  - **Directive (EU) 2016/2284** on reduction of national emissions: implementation, infringement proceedings, national case-law
  - Directive 2007/46/EC, Regulation (EC) No. 715/2007 on vehicle type approval rules: treatment of illegal shutdown devices, legal measures against manufacturers in breach of type approval rules, retrofitting, powers of domestic authorities, driving bans
  - Domestic law
- Input from 16 judge members of EUFJE
- Reflects on national reports and depicts current trends in domestic air pollution laws and adjudication, available on EUFJE's website

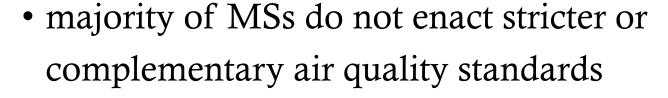
- exceedance in pollutants in the majority of States
- problems in putting the Directive into practice
  - country-specific problems (NOx, PM<sub>10</sub>, PM<sub>2,5</sub>)
  - country-specific sources of pollution (traffic, households, industry electricity generation)
  - transboundary pollution (Cyprus, Denmark, Czech Republic)
  - serious deficiency in the monitoring network (Romania, Slovakia)











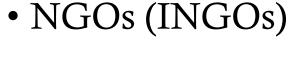
- infringement proceedings mostly relate to Directive 2008/50/EC (22 cases: 3 States: 0, 7 States: 2-3, 6 States: 1)
- Directive 2008/50/EC is the most heavily litigated also before domestic courts (12 cases)
- various legal proceedings are pending in defeat device litigation











- blind spots of NGO-driven litigation (Prague vs. Silesia, adequate funding)
- municipalities (Ostrava, Madrid)
- traders' association
- ombudsperson (Hungary)
- scientific institutions (Prague's Václav Havel Airport)
- private persons tort claims (France)







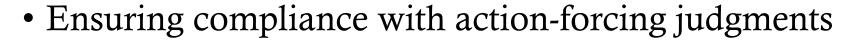


- Challenging the content of air quality plans
  - a preliminary issue: standing of NGOs despite *Janecek* (C-237/07), standing was not granted (Poland, Hungary)
  - Air quality plans were found to be insufficient (Czech Republic, France, Romania, Slovakia, UK)
- Challenging the scientific bases of air quality plans (Belgium) the role of citizen science projects
- Location of measurement points (The Netherlands, Belgium *Craeynest*)
- Legality of diesel bans (Germany)
- Lawfulness of interfering with property rights (Romania)



- Challenging individual development projects that may cause exceedance of air quality standards
  - Estonia: individuals cannot challenge a project
  - Belgium: limit values be assessed in relation to a given zone, but not to a specific development project
  - Czech law: individuals may challenge the permits though the courts set a high bar for allowing such claims to prevail
  - UK: courts heard such claims, but found a wide discretion of permitting authorities (Heathrow Airport)
  - Dutch law: statutory requirement of 'significant contribution to air pollution' (with presumption of the lack of such contribution for certain development projects)





- Romania limited toolkit for ensuring that adequate action is actually taken following a court order
- France penalty payment (EUR 10million) imposed on the State until proper execution of its judgment
- UK need for a flexible supervisory jurisdiction over claims of the plaintiff if the defendant was falling short in its compliance
- Germany diesel bans were not enacted despite the Federal Administrative Court's judgment









Unsuccessful attempts at challenging air quality measures before courts:

- Low-emission zones (Brussels, Bucharest, Madrid)
- Diesel bans (Germany, Italy)
- Limits on the use of coal for household heating purposes (Poland)





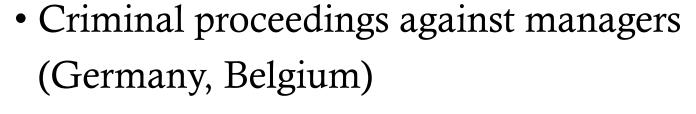




Article 9 - Member States shall determine effective, proportionate and dissuasive penalties for infringements of national provisions adopted under the Directive

- most States: both administrative and criminal
- difference as to whether legal persons and public entities can be subject to criminal sanctions
- Liability of legal persons and public entities (Belgium, Spain)
- criminal liability of individuals (Romania)
- administrative (including public entities)





- Administrative fines (Germany)
- Damage claims of buyers and consumer protection organizations (German, Spanish, Belgian courts)
- Claims of investors (Belgium)
- Contract law claims (UK)











- Constitutional right to a healthy environment (Czech Republic, France, Romania, Spain)
- Minimum distance requirements (Finland)
- Limiting idling times (Finland, UK)
- CO<sub>2</sub>-tax on vehicles running with fossil fuels (survey of the European Automobile Manufacturers Association)









- Open questions: standing of individuals, enforceability of air quality plans
- Majority of jurisdictions are willing to review the adequacy of the content of air quality plans
- Remedy depends on national procedural and substantive law, technical complexity of cases
- Problems in ensuring compliance with judgments requiring timely and effective measures to be taken
- Reach of EU law depends on access to justice rights on the domestic level
- Ambitious air quality measures are routinely taken to domestic courts
- Matrix of heterogenous actors, various normative bases and conflicting economic and legal interests



## THANK YOU FOR YOUR KIND ATTENTION

Questions and remarks are welcome at sulyok.katalin@ajk.elte.hu





