

Case: "A(ir)ccountability?"

Memberland has a large metropolitan area in its centre. Chemical industries, power plants and the biggest airport of the country are situated there. The word "Diesel" has a very positive connotation among the people of Memberland. However, in the nearby City of Membertown the air quality is negatively affected by dust. In such a situation Art. 23 of Directive 2008/50 on ambient air quality provides that Member States have to draw up action plans ("air quality plans") in order to prevent that limit values of fine particles in the air, so called particulate matter (PM 10), may be exceeded. This directive was transposed into Memberland law by the National law on clean air. In 2015 the competent authority (already late) adopted an air quality plan. It established an "Environmental Protection Area (EPA)" in the City of Membertown which meant that "older vehicles were prohibited in the town centre".

In January 2020 the NGO MM ("Maintain Memberland"), an environmental NGO (ENGO) under national law with the aim to fight water, air and soil pollution, filed an application to the competent authority and claimed that the air quality plan is insufficient and must be improved. Nothing happened.

Among scientists – assessing data from the years 2016, 2017, 2018 and 2019 - there is no doubt about it that the prohibition concerning older vehicles will not significantly reduce the critical load of particulate matter (PM 10) in the City of Membertown and that the EU limit values¹ will be exceeded in the following years. In their scenarios the scientists have repeatedly confirmed that "a ban of all diesel engines" in the City of Membertown would solve the problem immediately.

In February 2020 the ENGO MM has brought an action to the Administrative Court. It refers to its "Aarhus rights" on access to justice and argues: Memberland, the defendant, is responsible for an omission. It neglects its obligations under European law to guarantee a sufficient air quality. The "Environmental Protection Area (EPA)" is considered to be a mere placebo and can neither guarantee the air quality thresholds for PM 10, particles with diameter of 10 micrometres or less, nor those for nitrogen dioxide (NO_x) caused by vehicles.

In March 2020 the Coronavirus disease 2019 (COVID-19) hit Memberland. A nationwide lockdown came into force in order to fight the spread of COVID 19. Since the lockdown the City of Membertown has recorded a 90 % drop in particulate matter (PM 10). Without rush-hour traffic the nitrogen levels also have dropped dramatically.

The plaintiff (ENGO MM) refers to the reliable data from 2016 to 2019 and warns against taking seriously the short-term development caused by the Covid 19 restrictions.

ENGO MM claims that the Court should,

oblige the defendant to provide for "a diesel ban" in its air quality plan.

The defendant (Memberland) claims that the Court should,

dismiss the action.

¹ Limit values of particulate matter (PM 10): yearly average of 40 µg/m³ and a daily average (24-hour) of 50 µg/m³ with 35 allowed exceedences per year.

Case: "A(ir)ccountability?"**Points to discuss (take EU law and your national law as points of reference):****Count the vote in your group: (Yes: No: Unclear:)****A: Admissability of the action?** **Yes: No: Unclear:**1. Administrative act ? **Yes: No: Unclear:**

Is the challenged air quality plan a “reviewable administrative act”?

2. Admissible type of action ? **Yes: No: Unclear:**Has the court the power to oblige the defendant (Memberland)
to make the air quality plan better ?“3. Standing of the ENGO under Art. 9 (3) Aarhus Convention ? **Yes: No: Unclear:****B: Is it possible for the court to gather more facts and expertise?** **Yes: No: Unclear:**1. Is it possible to question the location of the sample devices? **Yes: No: Unclear:**2. Is it possible to hear experts on air quality? **Yes: No: Unclear:****C: On the merits: Is the lawsuit well-founded?** **Yes: No: Unclear:**1. Is the Covid-situation in 2020 / 2021 relevant? **Yes: No: Unclear:**2. Is cassation of the existing air quality plan your legal solution? **Yes: No: Unclear:**3. Is there an enforceable legal obligation to improve the air quality plan? **Yes: No: Unclear:**4. May the court oblige Memberland to issue a “diesel ban”? **Yes: No: Unclear:****D: Enforcing a final judgment that imposes a “diesel ban”** **Yes: No: Unclear:**1. Has the court the power to put a public official in prison if he or she refuses
to implement the “diesel ban” that was decided by the court ? **Yes: No: Unclear:**2. Has the court the power to impose a fine on the public administration
that refuses to implement the “diesel ban”? **Yes: No: Unclear:**

I am looking forward to our discussion!