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## ***Case Summary posted by the Task Force on Access to Justice***

### **Ambient Air Quality case ( ClientEarth v The Secretary of State for the Environment, Food and Rural Affairs)**

1. Key issue	ENGO standing in a case regarding UK compliance with EC Directive on ambient air quality
2. Country/Region	UK and European Union
3. Court/body	Court of Justice of the European Union (CJEU) and UK Supreme Court
4. Date of judgment /decision	CJEU – 2014-11-19 Supreme Court – 01/05/2013 (reference for preliminary ruling) and 29/04/2015 (final judgment)
5. Internal reference	<i>CJEU</i> : C-404/13 <i>UK Supreme Court</i> : [2015] UKSC 28 On appeal from: [2012] EWCA Civ 897
6. Articles of the Aarhus Convention	Art. 2, para.5, and Art. 9, paras. 2-4
7. Key words	Air pollution, UK compliance with EC Directive on ambient air quality

#### **8. Case summary**

This case was a reference for a preliminary ruling from the CJEU from the UK Supreme Court.

#### **Background**

This case concerns the UK's compliance with Directive 2008/50/EC of the European Parliament and of the Council of 21<sup>st</sup> May 2008 on ambient air quality and cleaner air for Europe ("the Directive").

For the purpose of assessing and managing air quality in accordance with the Directive, the UK is divided into 43 zones (or agglomerations). In 40 of the zones, one or more of the limit values established by the Directive for nitrogen dioxide was exceeded in the course of 2010. In 17 of the zones (including Greater London), compliance with those limit values was expected to be achieved after 2015.

On 22<sup>nd</sup> September 2011, the UK submitted final air quality plans to the Commission. These plans included applications under Article 22 of the Directive for time extensions for 24 of the 40 zones in question and demonstrated how the limit values would be met by 1<sup>st</sup> January 2015 at the latest. On 25<sup>th</sup> June 2012, the Commission unconditionally approved 9 of the applications for time extensions, approved 3 others subject to certain conditions being fulfilled, and raised objections in respect of 12 zones.

For 16 zones in respect of which the air quality plans projected compliance with the limit values between 2015 and 2025, the UK did not make any application for a time extension under Article 22 of

the Directive and the Commission did not make any comment on those zones.

ClientEarth brought a claim in the High Court of Justice of England and Wales, seeking an order requiring the Secretary of State for the Environment, Food and Rural Affairs to revise the plans to ensure that they demonstrate how conformity with the nitrogen dioxide limit values will be achieved as soon as possible, and by 1<sup>st</sup> January 2015 at the latest, as required by Article 22 of the Directive.

The High Court dismissed the claim, holding that, even if a Member State had not complied with its obligations under Article 13 of the Directive, it is not required to apply under Article 22 of the Directive for an extension of the deadline for compliance with the limit values. The court added that, in any event, such an order would raise serious political and economic questions and involve political choices that are not within the court's jurisdiction. The Court of Appeal also dismissed ClientEarth's appeal - but granted permission for them to appeal to the Supreme Court.

The Supreme Court ("SC") held that the UK was in breach of its obligation to comply with the limit values for nitrogen dioxide under Article 13 of the Directive for the 16 zones at issue in the main proceedings. The SC also held that the case raised questions of interpretation of the Directive and therefore decided to stay the proceedings and refer the following questions to the CJEU for a preliminary ruling:

- 1. Where, under [Directive 2008/50], in a given zone or agglomeration conformity with the limit values for nitrogen dioxide was not achieved by the deadline of 1 January 2010 specified in Annex XI of the directive, is a Member State obliged pursuant to the directive and/or Article 4 TEU to seek postponement of the deadline in accordance with Article 22 of the directive?*
- 2. If so, in what circumstances (if any) may a Member State be relieved of that obligation?*
- 3. To what extent (if at all) are the obligations of a Member State which has failed to comply with Article 13 [of Directive 2008/50] affected by Article 23 (in particular its second paragraph)?*
- 4. In the event of non-compliance with Articles 13 or 22, what (if any) remedies must a national court provide as a matter of European law in order to comply with Article 30 of ... Directive [2008/50] and/or Article 4 TEU or 19 TEU?*

### **The Court's Findings**

The CJEU held that the answer to the first and second question was that in order to postpone the deadline for achieving conformity with the limit values for nitrogen dioxide specified in Annex XI of the Directive by up to five years, Member States are required to make an application for postponement and to establish an air quality plan when it is objectively apparent (having regard to existing data and notwithstanding the implementation by that Member State of appropriate pollution abatement measures) that conformity with those values cannot be achieved in a given zone by the specified deadline. The Directive does not contain any exception to the obligation flowing from Article 22(1).

The answer to the third question was that where it is apparent that conformity with the limit values for nitrogen dioxide established in the Directive cannot be achieved in a given zone of a Member State by 1<sup>st</sup> January 2010 (and that Member State has not applied for postponement of that deadline under Article 22(1) of the Directive), the fact that an air quality plan which complies with Article 23(1)(2) of the Directive has been drawn up does not, in itself, permit the view to be taken that that Member State has nevertheless met its obligations under Article 13 of the Directive.

The answer to the fourth question was that where a Member State has failed to comply with the requirements of Article 13(1)(2) of the Directive and has not applied for a postponement of the

deadline, it is for the national court having jurisdiction (should a case be brought before it) to any necessary measure, such as an order in the appropriate terms, so that the authority establishes the plan required by the Directive in accordance with the conditions laid down by the latter.

In light of the CJEU judgment, the UK Supreme Court subsequently allowed ClientEarth's appeal. Moreover, Lord Carnwath (with whom Lord Neuberger, Lord Mance, Lord Clarke and Lord Sumption agreed) held: "... in addition to the declaration already made, I would make a mandatory order requiring the Secretary of State to prepare new air quality plans under article 23(1), in accordance with a defined timetable, to end with delivery of the revised plans to the Commission not later than 31 December 2015. There should be provision for liberty to apply to the Administrative Court for variation of the timetable, or for determination of any other legal issues which may arise between the present parties in the course of preparation of the plans. The parties should seek to agree the terms of the order, or submit proposed drafts with supporting submissions within two weeks of the handing-down of this judgment".

9. *Link address*

Supreme Court judgment:

<https://www.supremecourt.uk/cases/docs/uksc-2012-0179-judgment.pdf>

[http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence\\_prj/UNITED\\_KINGDOM/AirCase/uksc-2012-0179-judgment\\_Aircase.pdf](http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/UNITED_KINGDOM/AirCase/uksc-2012-0179-judgment_Aircase.pdf)

CJEU Judgment can be found on the CJEU website (Case C-404/13; reference for a preliminary ruling):

<http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-404/13&td=ALL>

[http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence\\_prj/UNITED\\_KINGDOM/AirCase/CJEU\\_C404-13\\_Aircase.pdf](http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/UNITED_KINGDOM/AirCase/CJEU_C404-13_Aircase.pdf)