

## Project-newsletter #4 / 05.02.2019

### Recent air quality litigation

In July 2018, the Administrative Court of Stuttgart sentenced the state government of Baden-Württemberg to include driving bans for Euro 5 diesel cars in the air quality plan and to eliminate the blanket exemption for all residents. In November 2018, the same court dismissed the two complaints of the state against the enforcement orders where upon finally the state accepted the court decision. Therefore, driving restrictions for diesel cars Euro 4 and older entered into force as from 1 January 2019. These driving restrictions will be expanded to Euro 5 diesel cars from 1 January 2020 latest, if the NO<sub>2</sub>-load will not be below the limit value of 40µg/m<sup>3</sup> in annual mean in 2019. The zonal driving ban covers the entire Stuttgart city area.

The state government of North Rhine-Westphalia had published its new air quality plan for Düsseldorf on 21 August 2018. Although there is a Supreme Court ruling on the Düsseldorf case, the new plan does not contain any diesel driving bans, does not forecast compliance with limit values until five years from now and is therefore clearly unlawful. In order to ensure compliance with applicable limit values as soon as possible, Deutsche Umwelthilfe (DUH) has initiated both, an enforcement action and a new administrative procedure to contest the new air quality plan.

Concerning DUH's lawsuit in Munich, the Bavarian State Government's complaint was rejected in the enforcement proceedings. The Bavarian Administrative Court has now announced that the European Court of Justice will clarify the legality and necessity of coercive detention against the Prime Minister and other Bavarian politicians. In the case of questions relating to the rule of law, the European Court of Justice will decide in an accelerated expedited procedure, which is expected to lead to a decision in the first half of 2019.

On 6 September 2018, the Administrative Court in Wiesbaden heard our complaint against the State of Hesse for 'Clean Air' in Frankfurt am Main and decided that comprehensive zonal diesel driving bans must be implemented in Frankfurt. According to the ruling, the State of Hesse is obliged to update the air quality plan for Frankfurt until 1 February 2019 in such a way that it includes all measures to ensure that the limit value for nitrogen dioxide is complied with as quickly as possible.

On 9 October 2018, the Administrative Court of Berlin heard our complaint for 'Clean Air' in Berlin. The court has ruled that diesel-driving bans for vehicles up to Euro 5/V emission standard are unavoidable in order to comply with the nitrogen dioxide limits as quickly as possible. These must be included in the air quality plan and implemented by 31 March 2019. These driving bans are unavoidable on eight different roads; on several other streets further measures like speed reductions must be implemented to fall below the limit value. An underestimation of the modelling of 10%, which has been proven, but not yet taken into account, must be included, making further measures necessary.

On 24 October 2018, the Administrative Court in Mainz also heard our complaint for "Clean Air" in the state capital of Rhineland-Palatinate. The court has decided that the city must update the air quality plan for Mainz by 1 April 2019 at the latest. This plan must include all measures to ensure that the limit value for nitrogen dioxide concentration is safely complied with on average in 2019.

The lawsuits regarding the air quality plans of the cities Cologne and Bonn were negotiated on 8 November 2018 at the Cologne Administrative Court, where DUH was able to obtain the ninth and tenth positive judgements in succession. On behalf of the City of Cologne, the court ruled that the state government must include a diesel-driving ban within the existing environmental zone in the air quality plan by 1 April 2019. For the city of Bonn, which has lower limit value exceedances for the diesel exhaust gas NO<sub>2</sub> than Cologne, the defendant state of North Rhine-Westphalia must impose diesel-driving bans on all roads affected by limit value exceedances, in particular on the much-polluted Reuterstraße.



Just one week later, the Administrative Court of Gelsenkirchen decided on the complaints for 'Clean Air' in the cities of Essen and Gelsenkirchen and granted both complaints. For the city of Essen, the court ruled that the state government must include a diesel-driving ban for 18 city districts including the city center in the air quality plan. For the first time in Germany, a court ordered a ban of diesel-powered vehicles on a federal motorway (A40). For the city of Gelsenkirchen, which has lower limit value exceedances for NO<sub>2</sub> than Essen, state of North Rhine-Westphalia must establish a diesel-driving ban on the particularly polluted street Kurt-Schumacher-Straße.

In the court hearing for 'Clean Air' in Darmstadt, DUH and Verkehrsclub Deutschland (VCD) reached a settlement agreement with the Land of Hesse. According to this agreement, diesel bans and lane reductions on H $\ddot{u}$ gelstraÙe and HeinrichstraÙe will come into force on 1 June 2019. Measures taken by the City of Darmstadt to promote public transport and cycling are also a binding part of the agreement.

In other cities with significant exceedances of the applicable annual mean limit value for nitrogen dioxide, legal actions have been filed against the responsible authorities. Deutsche Umwelthilfe has filed six further lawsuits; one against the air quality plan for Freiburg on 12 November 2018, four further actions with the M $\ddot{u}$ nster Higher Administrative Court on 10 December 2018, concerning the air quality plans for Bielefeld, Hagen, Oberhausen and Wuppertal and another lawsuit against the air quality plan of Bavarian city Wurzburg in the beginning of 2019. The graphic on the right shows all 35 cities in which DUH is taking legal action against NO<sub>2</sub> air pollution above the legal limit values. Information about new legal actions throughout Europe can be found on [www.right-to-clean-air.eu](http://www.right-to-clean-air.eu)



## Frank Bold lawsuit in Ostrava region

On 5 November 2018, a lawsuit against the Ministry of the Environment (MoE) on liability for health damages of an inhabitant and death of her husband from lung cancer was filed. The plaintiff seeks damages for lung cancer, which she has managed to cure, but her husband has succumbed to the illness in October 2018. The cause of the disease is seen in the long-term excessive concentration of air pollutants at their place of residence in Ostrava-Radvanice and in the fact that the MoE failed to provide effective measures to decrease the pollution to legal limit values.

The action is based on statements of doctors and epidemiologists, as well as on the judgments of the European Court of Human Rights in two similar cases, where the court ruled in favor of the plaintiff. Radvanice and Bartovice show the highest concentration of carcinogenic benzo(a)pyrene and one of the highest concentrations of fine dust particles in the Czech Republic. Since 2005, the MoE has had a legal obligation to take effective measures against this pollution. Both the Ministry of the Environment and the Moravian-Silesian Region have adopted a number of strategic documents, aiming to improve the state of the air. Nevertheless, the pollution has not been reduced to a legal level.

## Verification of the compulsory imprisonment by the European Court of justice

In the enforcement proceedings of Deutsche Umwelthilfe against the Bavarian State Government, the Bavarian Administrative Court announced in a letter, dated 17 August 2018, that it would refer the question of compulsory detention against officials of a German federal state to the European Court of Justice (ECJ). The highest Bavarian administrative court concludes that the coercive detention of officials "alone seems promising" after all previous attempts to threaten and impose periodic penalty payments have not led to a legally compliant conduct of the state government. From the point of view of the DUH, it is scandalous and extremely questionable that the question had to arise at all in the proceedings as to whether political elected representatives in Germany must be persuaded to comply with a legally binding judgement by means of threatened coercive detention.

Nevertheless, a referral to the European Court of Justice is not necessary, as compulsory detention is already permissible under national law. If this were not the case, it would amount to an admittance that national law contains only insufficient tools to fulfil one of the most important promises of the Basic Law: an effective constitutional state.

The DUH firmly expects that the ECJ will confirm the admissibility of coercive detention as a last resort for the enforcement of judicial decisions in cases of violations of European law. As early as 2014, the ECJ ruled in a procedure for air pollution control in Great Britain that the courts must take 'every possible measure' to enforce compliance with the limit values for the diesel exhaust gas nitrogen dioxide.

## Citizen Science measurements in Europe

On 1 March 2019, Deutsche Umwelthilfe (DUH) will launch its third nationwide citizen science campaign "Abgasalarm". Following the successful first two series of measurements in February and June 2018, the nitrogen dioxide (NO<sub>2</sub>) values in the air we breathe are now to be determined again at several hundred sensitive locations for a four weeks period, using so-called passive samplers. In March, the contamination of the breathing air with the diesel exhaust gas nitrogen dioxide (NO<sub>2</sub>) will be measured at the immediate location of kindergartens, schools, doctors' surgeries, hospitals, nursing homes and homes for the elderly. The measurements are intended to show how heavily polluted the air we breathe is, precisely in areas where particularly vulnerable people, like children, sick people and people with health problems need to be present. The results of previous measurements at 47 sensitive spots in Berlin in July 2018 showed the high air pollution concentration and the necessity to gain more data about the air that is inhaled by those particularly vulnerable citizens. The highest exposure was determined at 57.4 µg NO<sub>2</sub>/m<sup>3</sup> in front of a pediatrician. This measurement showed an average of 41.8 µg NO<sub>2</sub>/m<sup>3</sup>, which shows an exposure above the applicable limit value throughout the city.

Although, the diesel exhaust gases, which have adverse health effects for small children, are concentrated near the ground, this has not yet been taken into account in official measurements. For this reason, DUH will measure the contamination of the air with nitrogen dioxide (NO<sub>2</sub>) at neuralgic locations also at the breathing level of children (1 meter above the ground). All citizens, especially those who are suffering from high traffic volumes and dirty air, are invited to participate in the measurement campaign as well as to submit proposals for new measurement locations by 17 February 2019 under following link: [www.duh.de/abgasalarm](http://www.duh.de/abgasalarm).

In 2019 and 2020, the citizen science campaign goes international. Our aim is to support NGOs and citizen initiatives in other European countries to uncover NO<sub>2</sub>-concentrations, which are harmful to health. In addition, we want to create an internet platform to exchange knowledge and experiences. A first measurement campaign is carried out in the Czech Republic in March 2019. If you are interested in more information or a cooperation with DUH in this issue, please contact Hanna Rhein [rhein@duh.de](mailto:rhein@duh.de).

## Important events on legal actions within the LIFE project Right to Clean Air

In cooperation with the Clean Air Action Group Hungary (Levegő Munkacsoport), a further Capacity Building Workshop on European legal actions on air quality took place in Budapest on 26 November 2018. Representatives from different Hungarian political Institutions and non-governmental organizations participated in the workshop. With a special regard on transportation and its importance for Hungarian air quality, the participants discussed measures to achieve a better air quality successfully. Therefore, the current state was presented, followed by proposals on how to take legal actions towards better air quality in Hungary as well as European wide. Two days later, on 28. November 2018, the Clean Air Action Group and ClientEarth took legal action against the authorities of Hungary's capital Budapest over illegal and harmful levels of air pollution in the city. If you are interested in a cooperation with DUH to organize a Capacity Building Workshop on legal actions for clean air, please contact Robin Kulpa [kulpa@duh.de](mailto:kulpa@duh.de).

During an internal Board meeting in December 2018, important arguments on the current situation of the project and the environmental non-governmental organizations in Germany and Czech Republic were discussed. The participants agreed on a closer cooperation regarding the media work and information exchange between the two partner organizations Deutsche Umwelthilfe and Frank Bold, to increase the public awareness on air pollution and illegal threshold value exceedances and to rise the public support for legal action to enforce the European right to clean air. A further theme was the current discussion about health impacts and the public debate on the correctness of legal threshold values. All participants agreed that better information about the state of research and better communication of the findings are of great importance in order to increase public understanding and to receive better air quality.

In January 2019, the international RESPIRAMI conference on air pollution and health took place in Milan. Researchers from all parts of the world and from a huge range of scientific institutions presented their new findings and evidences about health impacts of air pollution. Especially new evidences on the impact of particulate matters (PM<sub>2.5</sub>) and ultrafine particles (PM<sub>0.1</sub>) were presented to an international audience. Afterwards, a legal workshop for non-governmental organizations engaged in clean air actions, mainly from Italy, but also from Spain, Austria and Germany, was held in cooperation between the Deutsche Umwelthilfe and Cittadini per l'Aria. Details of different litigations all over Europe were exchanged and further possibilities for particular cases were discussed.

## Translation of the judgement of the highest German administrative court

On 27 February 2018, the Federal Administrative Court (BVerwG) in Leipzig issued a decision in principle. The complaint concerns the revisions of the legal cases in Düsseldorf and Stuttgart, which now found a final clarification in front of the highest German court for administrative issues. The judges confirmed the legal opinion of DUH that diesel traffic bans are possible already today, while respecting the principle of commensurability. The English translations of the two judgments are now available for [download here](#).

## You can't stop breathing – short film on air pollution

Air pollution is not the problem of some isolated hotspots or particular group of persons. Recent data shows that we face a problem that covers entire cities, including smaller ones and suburbs. We produced a short clip to raise the awareness of the fact, that everyone is affected. Have a look here: <https://www.youtube.com/watch?v=PtNzqIGOGhU>



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