

Environmental protection organisations are entitled to demand ambient air quality maintenance plan

Today, the Federal Administrative Court ruled that recognised environmental protection organisations are entitled to demand compliance with the law on ambient air quality maintenance plans before a court.

The ambient air quality maintenance plan of the city of D. entails various traffic related measures, e.g. bans on driving through the city and night-time bans for trucks, aiming at reducing the pollutant concentration for particulate matter and nitrogen oxide. According to the prognosis the immission thresholds for NO₂ will not be complied with on the three busiest roads in the city of D. in the foreseeable future. On the action brought by the environmental protection organisation the Administrative Court placed the federal state under the obligation to amend its ambient air quality maintenance plan to provide for the necessary measures to meet the immission thresholds for NO₂ as soon as possible; the implementation of a low-emission zone (*Umweltzone*) being one of these potential measures. With its leapfrog appeal (*Sprungrevision*) the federal state claimed, that the environmental protection organisation had no standing to bring proceedings and, therefore, the action was already inadmissible.

The Federal Administrative Court dismissed the leapfrog appeal lodged by the federal state and upheld the judgment of the Administrative Court regarding the result. According to the case-law of the Court of Justice of the European Union on the Aarhus Convention EU law requires for environmental protection organisations to be able to bring an action before the courts in order to guarantee the effective enforcement of EU environmental law. German law can be interpreted in a way as to entitle an environmental protection organisation that was recognised in accordance with section 3 of the Act on Supplementary Provisions on Appeals in Environmental Matters (*UmwRG, Umwelt-Rechtsbehelfsgesetz*) to demand compliance with the law on ambient air quality enacted to implement an EU directive in proceedings before a court. Based on the findings of fact of the Administrative Court by which the Federal Administrative Court was bound, the ruling did not give rise to any objection with regard to the substance.

Judgment of 5 September 2013 - BVerwG 7 C 21.12