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<b><i>Case Summary posted by the Task Force on Access to Justice</i></b>	
<b>Country: Silesia air quality case</b>	
<i>1. Key issue</i>	Standing to challenge air quality plans in Poland
<i>2. Country/Region</i>	Poland
<i>3. Court/body</i>	Supreme Administrative Court
<i>4. Date of judgment /decision</i>	2018-01-23
<i>5. Internal reference</i>	<i>II OSK 3218/17</i>
<i>6. Articles of the Aarhus Convention</i>	Art. 2(5) and 9(3)
<i>7. Key words</i>	Air quality plans, legal interest, standing, challenge, appeal, pollution
<i>8. Case summary</i>	
<p>According to the WHO 2016 Report, Poland has some of the worst air quality in Europe, with 33 of the continent's 50 most polluted cities.<sup>1</sup> The European Environment Agency estimates that in 2015 alone an equivalent of 44,500 premature deaths in Poland were linked to exposure to air pollution.<sup>2</sup> The complainant in this case lives in southern Poland, in one of the most polluted cities in Europe. The city is located in the region of Silesia, which, due to its poor air quality, has continually been the subject of subsequent air quality programs. Over the years, these programs have successively postponed the attainment of legal norms. The current air quality program for Silesia, adopted at the beginning of 2018, states that all air quality norms will still not be attained by 2029 (i.e. at the end of the term for which the air quality program is designed).</p> <p>For this reason, the complainant (supported by ClientEarth) decided to challenge the very substance of the air quality program. As air quality protection programs are acts of local law, the success of any challenge directed against them rests, for procedural reasons, on the standing of the party bringing the challenge. Under Polish law, in the case of air quality programs, this means that the complainant must show that the air quality program at the moment of its adoption violates (and does not merely relate to) the complainant's legal interests, i.e. infringes on a right or imposes an obligation.</p> <p>The challenge was brought by the individual in April 2017. ClientEarth entered the case as a participant during the first instance proceedings before the Regional Administrative Court in Gliwice.</p> <p>In September 2017, the Regional Administrative Court rendered a judgment whereby it dismissed the challenge, stating that the complainant failed to prove a violation of their legal interest.</p> <p>This judgment was appealed against by both the complainant and ClientEarth, acting separately. As the first instance judgment dealt solely with the issue of standing, so the appeals were limited to the consideration of this issue. Additionally, however, since the ENGO argued that this judgment (which is</p>	

<sup>1</sup> WHO data and statistics <http://www.euro.who.int/en/health-topics/environment-and-health/air-quality/data-and-statistics>

<sup>2</sup> European Environment Agency "Air quality in Europe - 2018 report", Table 10.1, p. 64, Last accessed on 17 January 2019, <https://www.eea.europa.eu/publications/air-quality-in-europe-2018>

in-line with previous Polish jurisprudence) violates EU law – most notably article 23 of the Directive on Ambient Air Quality and Cleaner Air for Europe (2008/50/EC) – ClientEarth asked the Supreme Administrative Court to refer the matter to the Court of Justice of the European Union in order to determine whether national law should consider that an individual’s legal interest is violated when the air quality program’s substance is called into question.

In January 2018, the Supreme Administrative Court dismissed both challenges, confirming the first instance court’s judgment that: (i) the air quality program imposes no obligations and grants no rights to any individual, (ii) no legal interest has been violated by its adoption, (iii) a pro-EU interpretation of the Polish provisions governing the legal interest in this matter would be *contra legem* and is, therefore, not permissible, (iv) a preliminary question to the CJEU is not necessary, because there is no basis for such an interpretation of Article 23(1) of the Air Quality Directive that would lead to an interpretation *contra legem* of the relevant Polish provision (Article 90(1) of the Act on the Voivodship Self-Government).

**Note:** As neither ClientEarth nor the individual complainant has any recourse left in the Polish legal system, the ENGO decided to submit a complaint to the Aarhus Convention Compliance Committee alleging a systemic violation of the Aarhus Convention. This case is currently being considered by the Committee (C/2016/151).

9. Link to judgement/  
decision

<http://orzeczenia.nsa.gov.pl/doc/6B336B4AF3>

[http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence\\_prj/POLAND/Poland\\_2018\\_Silesia\\_air\\_quality\\_judgment.pdf](http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/POLAND/Poland_2018_Silesia_air_quality_judgment.pdf)