JUDICIAL PROTECTION OF THE RIGHT TO CLEAN AIR: THE ROLE OF THE ADMINISTRATIVE JUDICIARY IN THE REPUBLIC OF NORTH MACEDONIA

Abstract

It takes no exceptional effort to elaborate why the right to (breathe) clean air should be considered one of the fundamental human rights. The right to clean air affects the enjoyment of many human rights, especially the right to life and the right to health. In his report A/HRC/4055 from 2019 the Special Rapporteur of the United Nations highlighted that states have various obligations vis-à-vis this human right; both substantive and procedural. One of them is the obligation to develop and enforce air quality actions plans, i.e. plans in which states identify the most important and effective measures that can be implemented to improve air quality, particularly for vulnerable populations.

The legislation of the Republic of North Macedonia, that is the Law on Ambient Air Quality (herein after: Air Law), provides a basis for such a plan. In fact, the Air Law goes a step further. It stipulates that the central government shall adopt a five-year National Plan for Protection of the Quality of the Ambient Air as well as short term action plans. The municipalities (units of local self-government), on the other hand, should also adopt their own five-year air quality plans.

However, the analysis illustrates that the last National Plan for Protection of the Quality of the Ambient Air has been adopted for the period between 2013 and 2018. A more recent one has not been adopted by the central government. The situation is even more devastating when speaking of the municipalities. Almost none of the 80 municipalities have adopted the five-year air quality plans, even though the Air Law obliges them to do so.

Having that said, the essential question in this article is the following: is there a legal remedy Macedonian citizens can use to force the central government and the municipalities to adopt the respective (air quality) plans? The primary hypothesis, in that regard, is that the only legal remedy of that kind is the lawsuit for an administrative dispute before the Administrative Court. The hypothesis is based on several arguments. Firstly, Article 2 of the Law on Administrative Disputes provides that the administrative judiciary provides legal protection against individual legal acts and actions of the public authorities. The adoption of the air quality plans, regardless whether by the central government or the municipalities, can be considered an administrative action.

Namely, this is an obligation prescribed by law, and it is an obligation of the administrative authorities. The omission to fulfill this obligation should be a subject of a judicial revision.

Secondly, there is no other competent judicial authority, besides the Administrative Court, which can decide on such issues. The civil courts can adjudicate only in cases when the citizens can claim specific damages. The criminal courts can decide on the criminal actions, nevertheless it would be difficult to argue that the omission to adopt an air quality plan is a crime. Even if that is the case, the criminal court cannot coerce the central government/the municipalities to adopt such plans. The Constitutional Court can only decide on the constitutionality of the laws and other general legal acts, but not on the omission of the administrative authorities to fulfill their legal obligations.

Thirdly, one can draw analogy with the recent case-law in European countries (Belgium, Spain, France etc.), where the administrative courts have admitted cases against actions or omissions by the authorities related with their obligations from the air quality legislation.

These issues will be covered in details in the article.