



Barriers to access to justice in North Macedonia for violations of human rights in the context of air pollution

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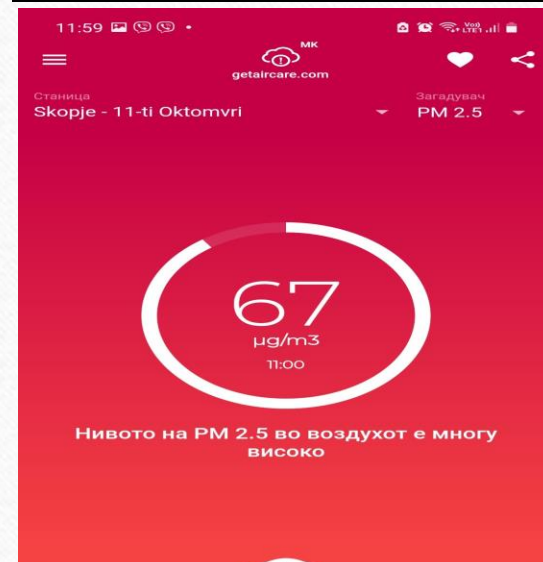
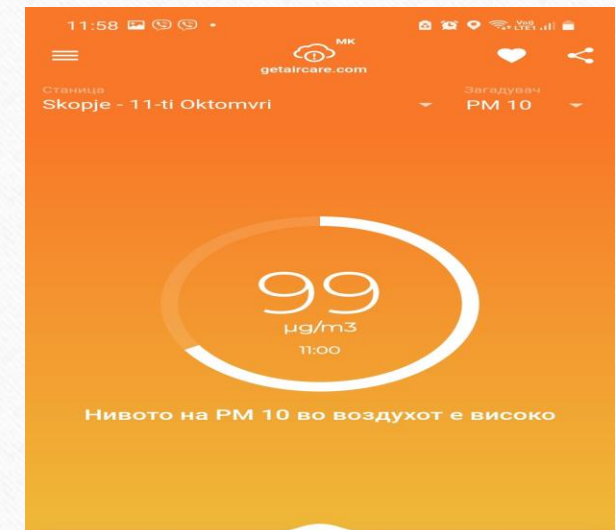
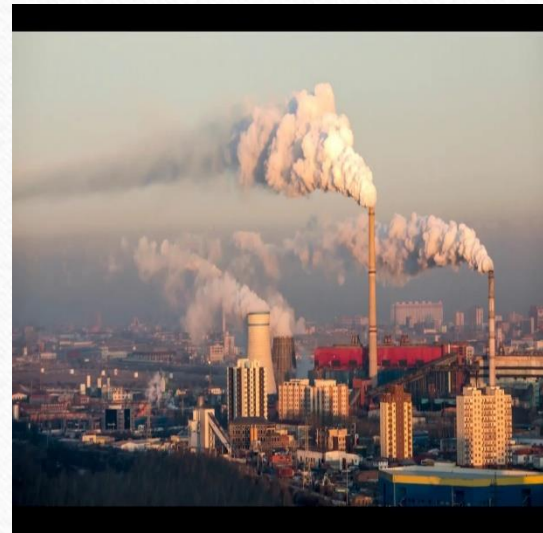
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Table 1.1 Air quality standards for the protection of health, as given in the EU Ambient Air Quality Directives

Pollutant	Averaging period	Legal nature and concentration	Comments
PM ₁₀	1 day	Limit value: 50 µg/m ³	Not to be exceeded on more than 35 days per year
	Calendar year	Limit value: 40 µg/m ³	
PM _{2.5}	Calendar year	Limit value: 25 µg/m ³	
		Exposure concentration obligation: 20 µg/m ³	Average exposure indicator (AEI) (%) in 2015 (2013-2015 average)
		National exposure reduction target: 0-20 % reduction in exposure	AEI (%) in 2020, the percentage reduction depends on the initial AEI

I. Air pollution - short facts

- The daily limit value of **PM10** is constantly exceeded **120 to 180 days per year**, which is way above the accepted norm of 35 days per year.
- The annual concentrations of PM2.5 exceed EU limit value of 25 $\mu\text{g}/\text{m}^3$ in nearly all Macedonian cities.
- the life expectancy of **30-year-old citizens** of the capital Skopje is **0.8 years shorter** due to exposure to PM2.5.
- **The industry**, together with the households and commercial units, has been identified as having the biggest impact on air quality in the country.

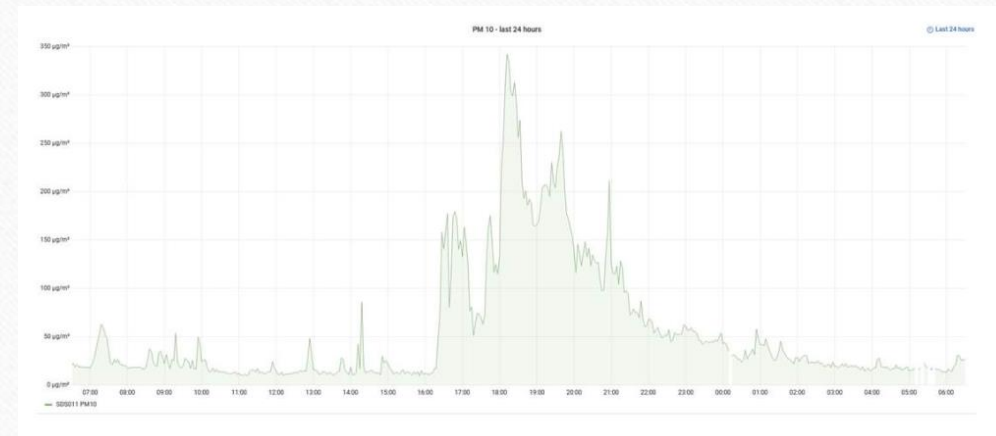


I. Air pollution- shorth facts

Skopje was the forth most polluted town in the world
(02.02.2019)

MAJOR CITY		US AQI
1	 Delhi , India	230
2	 Lahore , Pakistan	194
3	 Beijing , China	188
4	 Skopje , Macedonia	173
5	 Dhaka , Bangladesh	171
6	 Chengdu , China	171
7	 Shenyang , China	171
8	 Mumbai , India	166
9	 Kolkata , India	165
10	 Kathmandu , Nepal	159

Negotino during the night of 02.02.2022



II. B.N. and Macedonian Young Lawyers Association (MYLA) v. the Government of North Macedonia and Others



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- **Plaintiffs:** B.N., an individual, and MYLA, a non-governmental organization.
 - **Defendants:** the Government of North Macedonia, the Ministry of Environment and Physical Planning and the municipality of Skopje.
 - **Lawsuit on 18 July 2019 before Skopje Basic Court.** The lawsuit initiated **the first domestic** litigation seeking for accountability of the state and its bodies for air pollution-related human rights violations.

II. *CLAIMS*



- **Declaratory claim:** With the first claim, the plaintiffs requested that the SBC declares that within a longer period (between 2008 and 2018 in the case of PM10, and between 2013 and 2018 in the case of PM2.5), the defendants have failed to comply with their respective obligations to prevent a situation where the accepted annual ambient air PM limit values are exceeded, resulting in violation of the first plaintiff rights. The plaintiff invoked the **right to health, the right to a healthy environment, the right to privacy of personal and family life and the inviolability of the home**, without seeking compensation for damages linked with air pollution.
- **Condemnatory claim:** The SBC orders the government to take certain measures, such as to fully harmonize the national legislation with the EU Air Quality Directives, to establish an integrated system that will provide for a comprehensive, unimpeded exchange of data, and to ensure a timely submission and completeness of the data from the stationary sources of pollution to provide a comprehensive information system for ambient air quality.

II. Argumentation and objections



Argumentation of the plaintiffs

- Defendants have failed to discharge their obligations to maintain the level values of the PM concentrations, including in relation to the industry.
- Positioned the case within the stream of environmental litigation relying on international treaties, such as the Aarhus Convention, the CJEU and ECtHR jurisprudence and reports of the UN human rights bodies.
- Evidence:
- Reports and expert studies
- Lack of environmental inspection of certain stationary sources, absence of a cadaster of pollutants
- Lack of emission data on ambient air quality from individual stationary sources.

Objections of the defendants

- Lack of active standing on the part of MYLA.
- Lack of competence *ratione materiae*, indicating that the first claim is a confirmation of facts, which is forbidden in line with the Law on Civil Procedure (LCC). LCC, art 177, para 1 reads: 'In the lawsuit, the plaintiff may seek the court only to determine the existence, or the non-existence of a right or legal relationship or truth, or the falseness of a document.'
- Defendants have undertaken all respective obligations, submitting evidence mostly from 2018 onwards, and proposing that the SBC rejects the lawsuit as inadmissible or unfounded.

II. The decision of the SBC



- **Inadmissible:** The SBC rejected the lawsuit as inadmissible due to the following reasons. The SBC agreed with the defendants that the first claim required confirmation of facts, forbidden in the LCC. The SBC also found that it is **not competent** to impose measures on the executive branch, as required by the second claim. The SBC stated that the plaintiffs **could have directed the lawsuit directly against the economic operators, or that they could have initiated an administrative or a constitutional procedure.**
- **International law:** The SBC interpreted relevant international law extensively. In the view of the court, art 9 of the Aarhus Convention allows access to justice **only** for breaches of the right to access of public information or the right to public participation, but not for challenging acts and omissions by public authorities which contravene provisions of its national law relating to the environment. Furthermore, referring to *European Commission v Republic of Poland* (Case C-336/16), the SBC stated that the EU jurisprudence is **irrelevant** as North Macedonia is not an EU member state. Also, the SBC ruled that it is bound by the final rulings of the ECtHR brought only against North Macedonia as a party to the proceedings, but not by the remaining ECtHR jurisprudence.

II. The decision of the Skopje Appeal Court (SAC)



- **Plaintiffs: Reopen the procedure.** The plaintiffs challenged the judicial interpretation of national and international law.
- Invocation of art 9 para 3 of the Aarhus Convention and the CJEU and ECtHR jurisprudence.
- **Defendants:** Proposed to the SAC to reject the appeal as unfounded.
- **SAC:** In a short decision, the SAC confirmed the SBC ruling fully. However, **as an exception**, it granted the parties to submit a revision, which is an extraordinary remedy, to the SCNM. The ASC found that this remedy would allow the highest court to decide upon a legal issue, i.e., whether the plaintiffs had the right to submit the lawsuit to the SBC, which is important in order to ensure a consistent implementation of the law and unification of judicial practice.

II. Supreme Court of North Macedonia



- **Plaintiffs:** filed revisions with the SCNM, arguing that the plaintiffs have a right to submit the lawsuit to the SBC, the only forum with jurisdiction to decide upon civil rights and obligations. A rejection of the lawsuit would have a disproportionate effect on the plaintiffs' access to justice.
- **The government and the ministry** submitted a reply asking the court to reject the revisions as unfounded.
- On 14 June 2022, **the SCNM** ruled that the revisions are unfounded as the Appeal Court failed to refer to cases that indicate disharmonized judicial practice. Basically, the SCNM stated that due to the failure of the second-instance court, the highest court cannot adjudicate whether the plaintiffs have a right to access to the civil court for both or one of the claims.

III. Outcome

Implications of the SBC decision

1. At present, the Macedonian civil courts cannot adjudicate whether state bodies, but also even business entities have violated their respective obligations, which has in turn led to air pollution-related human rights violations.
2. Exemplifies how international law is interpreted by national courts.
3. Conveys that the judiciary is not mandated to compel the executive to act.
4. Because of procedural barriers, victims are prevented to publicly present relevant evidence on human rights violations.
5. Represents a paradigmatic example of the necessity for adopting a regulatory framework that will accommodate the new developments on accountability of state and non-state actors in cases involving human rights violations.

Thank you for your attention!

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