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Top court adviser says individuals can sue EU governments over dirty air

A top EU court adviser has said that individuals should be able to demand compensation from EU governments over harm they suffer as a result of illegal air pollution.

The opinion, by Advocate General Kokott, was issued to guide an ongoing court case in France, in which a citizen is asking for €21m in compensation for damage to his health caused by air pollution.

Kokott's opinion confirms that people have an individual right to clean air and can claim damages based on that, if certain tests have been met.

She also highlights the particular impact of illegally dirty air on structurally underprivileged communities.

Environmental lawyers have hailed this latest step towards protecting the right to healthy air for people across the EU.



ClientEarth lawyer Irmina Kotiuk said: 'Advocate General Kokott has reiterated that air quality has profound links with fundamental rights – and when those rights are infringed, people have the right to take their government to task and demand compensation for harm they suffer.'

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'Individuals have the right to breathe clean and healthy air and there are specific EU laws designed to guarantee this. But across the bloc, governments are failing people, with lifelong impacts, and shocking rates of premature deaths. This legal confirmation that there are routes to hold those in power to account is a major breakthrough in the fight for clean and healthy air.'

The EU is in the process of updating the Ambient Air Quality Directive (AAQD) – its key air pollution law. ClientEarth's lawyers say that the revised law should include a clear legal framework to clarify how people can hold their governments accountable for damage wrought on their lives by illegal air pollution.

Irmina Kotiuk said: 'People everywhere in the EU are suffering the cumulative harm of constant exposure to air pollution. We need to move past an era where this is somehow considered acceptable. Legal mechanisms to hold those in charge accountable are major part of the route forward.'

Irmina Kotiuk, Senior Lawyer and Fundamental Rights Specialist in the clean air programme at environmental law charity ClientEarth, explains how human rights law can be used to fight for clean air.

There is by now overwhelming scientific evidence showing that air pollution has disastrous impacts on people's lives. Yet courts are only just beginning to recognise the link between one's health and the levels of air pollution in their environment. The concepts of right to life and right to health are well-established human rights concepts and we are gearing up to see them applied more and more to air pollution.

The courts' slow recognition of the impacts of air pollution on people

The damages caused by air pollution to people's health is, by this point, unequivocal. Air pollution affects the health and quality of life of people across the world on a daily basis. World Health Organization (WHO) experts decided that the new evidence on the adverse effects of air pollution demanded a response – and as a result made their guidelines more stringent in September 2021.

Let us not forget that protecting people's health is not only essential for wellbeing, but it also has tangible economic benefits. [Analysis](#) carried out by the Confederation of British Industry concluded that work absences related to poor air are costing Britain about £600m annually.

While the evidence base on air pollution impacts is strong, judges have been slow to catch up. Two recent cases are changing this – by bringing the dangers of air pollution beyond statistics to an acutely personal level.

In 2020, a court in France quashed an expulsion order against a Bangladeshi immigrant living in France because his country of origin has very high levels of air pollution that would be detrimental to his asthma. The court recognised the link between the man's asthma and air pollution in Bangladesh. It acknowledged that his asthma would be aggravated there and, combined with the standard of healthcare in Bangladesh, that would significantly increase his risk of death.

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UK readers will also be familiar with the case of Ella Adoo-Kissi-Debrah, who lost her life to a fatal asthma attack in 2013. Thanks to her mother's tenacity, [a London coroner recognised in 2020](#) that the 9-year-old had died of "asthma contributed to by exposure to excessive air pollution". The coroner's unambiguous finding about Ella is a legal first in recognising the role air pollution has played in an individual's death.

While these cases do not technically set precedents, the possibility of making the link between excessive air pollution and health or life protection in a court of law now seems like less of a leap.

And on top of that, the possibility of including human rights arguments can help air pollution victims build even stronger cases.

Engaging human rights in air pollution cases

One-third of the world's countries do not have any legally-binding standards on air pollution. Even where such laws exist, standards often misalign with what top scientists at the WHO recommend. And alarmingly, when such laws are in place, some governments like the UK Government are openly flouting those rules.

That's why ClientEarth, on top of continuing our work to make sure that national governments respect their own laws on air pollution, is also exploring ways to make sure that people live in an environment where healthy air is the norm.

As a human rights lawyer, I approach the air pollution issue from the perspective of fundamental rights. The health damage and risks to life posed by air pollution naturally extend to the questions of protecting the right to life and the right to health, which are well-established concepts within the human rights legal framework.

Courtesy: Air Quality News