

LEGAL STRATEGY

Overview of opportunities around the use of strategic litigation for industrial decarbonization, specifically in the steel sector in Bulgaria

I. Objectives to achieve

The technical and legal study we have prepared first within the project clarified some key technical and legal concepts necessary to develop further a legal strategy. Such a strategy could be a tool for decarbonization of industrial processes, specifically of the steel industry by exploring the potential for strategic legal actions. Even being a small step within a longer process, the strategy could serve as a starting point for building actual case management strategy in Bulgaria and contribute to the wider context of active involvement of civil society in the plans, measures and actions for climate mitigation and adaptation.

II. Legal goals and steps

We have attempted to outline in this strategy three legal avenues for action based on the procedural rights of access to information, public participation and access to justice as defined in the Aarhus Convention and national legal order. In order to do so we have identified the potential legal obstacles to exercise these rights and suggested legal responses to these obstacles. In this respect, we analysed, for example, the access to justice to challenge the integrated permit for authorizing the operations of the steel plants or to prove non-compliance with the permit conditions. Based on the concrete cases, the strategy could be adjusted with more precise legal measures testing the legal arguments of the administrative authorities and the operator or any third party as well as the reasoning of the courts adjudicating the cases.

III. Access to information

III.1. Potential legal obstacles

Regarding the access to information to the procedure of issuing integrated permit there are not any serious formal obstacles to get such an information. The Environmental Executive Agency as a competent authority (CA) maintains a public register of integrated permits (<https://registers.moew.government.bg/kr/>) with information about the number of integrated permit, the name of the operator, the site, competent authority, the permit decision or its revision, date and the media of publication and its entry into force. The CA has obligations to provide access to information during the integrated permit procedure. The CA has to send the draft integrated permit to the mayor of the relevant municipality for public disclosure for a period of 14 days.

Concerning the information about the updates in the BAT, the Minister of Environment and Water or an authorized official monitors the development of BAT, as well as the publication of new or updated conclusions on BAT and provides this information to the interested public and to the competent authority for integrated permit. The Executive Environmental Agency maintains a public register on its [website](#) of the results the emissions monitoring provided for in the integrated permits.

The obstacles to access to information could be of a technical nature since the integrated permits are complex documents with a lot of technical jargon and abbreviations. They are also lengthy documents and the users of such documents should be either experts in the field of operation of the plant or to engage such experts.

III.2. Suggested legal responses

The general public and the local NGOs in the area of operation of the steel plant or if it is of a larger size and with expected adverse environmental impacts and high level of greenhouse gases, the national NGOs should visit at least once a year the register of integrated permits to check the new information about the operation of steel plant and the new permit conditions.

The control authority should publish the report subject to compliance with the requirements for public access to environmental information no later than 4 months after the completion of the inspection. It also publishes annual report of the implementation of the activities for which the integrated permit has been issued.

The environmental activists, NGOs or any other interested person who would like to monitor the operation of and take up strategic actions against the steel plant could inquire through access to information requests further information about each on-site inspection regarding the compliance of the installation with the conditions of the permit and, if applicable, about the mandatory prescriptions for the operator, as well as administrative measures taken by the control authority, incl. the sanctions.

IV. Public participation

VI.1. Potential legal obstacles

There could be non-conformity with the requirements for public participation in the EIA and integrated permit procedures which according to Art.94(1), item 9 and Art.94 of EPA are carried out as a joint procedure. For example, the developer has to undertake consultations with the competent EIA authorities and the public concerned regarding the project (Art 95 (3) EPA). The members of the public might have not given the opportunity to submit their written opinions prior to or during the public hearings, or no later than three days after the consultation by sending them to the developer and to the EIA authority.

VI.2. Suggested legal responses

Non-conformity with the requirements for public participation in the EIA and integrated permit procedures could be a reason to challenge the integrated permit in an administrative or judicial review procedure. The general public or environmental NGOs have standing before the court and their complaints are admissible. In this respect, the Bulgarian law and the established court practice provide for a wide access to justice on environmental matters. As mentioned in the legal study, in the practice of the Supreme Administrative Court, it is established that the non-governmental organizations could be constituted as an interested party in cases concerning the integrated permit procedures and have legal standing.

Also, if the local community or NGOs submit complaints and reports about accidents and incidents related to environmental hazards or cases of non-compliance with the conditions of the integrated permit, unscheduled inspections could be carried out by the control authority.

V. Access to justice

V.1. Summary of the main non-compliances with the relevant BAT conclusions

There were no any non-compliances identified in the report of the technical expert. According to his conclusions, based on the evaluation of the documents provided for technical evaluation and the integrated permit no irregularities in the implementation of the procedure for issuing an integrated permit for "Stomana Industry", Pernik were found. The steel plant meets all the conditions defined in the integrated permit and the relevant technical assessments issued by the competent authorities in line with BAT conclusions and reference documents. Although the steel plant is in the immediate vicinity of the town of Pernik, no any unorganized emissions of harmful substances have been recorded publicly. The emission monitoring is based on measurements, and the recommendation to the plant is to strive for real-time emissions measurement so that the public can get the full picture of organized pollutant emissions.

As part of his review, the expert has recommended to "Stomana Industry", Pernik, if possible, to invest in its own photovoltaic system which will reduce its electricity costs and bring it closer to the production of green steel.

V.2. Short description of the potential legal responses

Concerning access to justice, in the practice of the Supreme Administrative Court, it is established that the non-governmental organizations could be constituted as an interested party in cases concerning the integrated permit procedures and have legal standing in line with the international and national law. The national provisions specify that such a standing is relevant in the procedures for approving plans, programs, investment proposals and in

making decisions on the issuance or updating of permits in accordance with this law or the conditions in the permit.

As mentioned above, the local community or NGOs could initiate a monitoring procedure to ensure proper implementation of IED permit conditions by the steel plant. They could submit complaints and reports about accidents and incidents related to environmental hazards or cases of non-compliance with the conditions of the integrated permit, and the control authority could carry out unscheduled inspections.

The competent authority for integrated permits reviews and updates the permit when causing pollution from the installation, which is so significant that it is necessary to revise the existing emission limits in the permit or to include new emission limits.

In any case of failure to fulfil the requirements of the integrated permit that resulted in pollution and damages to or in exposure to risk of people, animals and plants that the members of public or the NGOs consider as a criminal offence they could send the information to the prosecutor's office.

In any case of pollution caused by the installations of the steel plant, they could submit a complaint to the Ombudsman's office outlining the rights that have been affected and the description of the problem and any specific request.

In case of air pollution that is caused by the plant, the members of the public and the NGOs could file a class action lawsuit against the municipality and possible also against the operator.

As discussed in another publication¹ in order to go ahead with such a lawsuit some conditions should be in place:

1. To allow such a claim to proceed, the class representatives must demonstrate that they can bear the burden of the case, including the costs.
2. The parties must also prove that they are reliable representatives of the collective interest.
3. At least one of the representatives of the collective must be a non-governmental organization for public benefit, which in its statutes has as its subject the conduct of collective claims or the protection of victims in the event of the relevant violation.
4. Another important thing is to raise funding, as the costs are high and there is responsibility in case of loss.
5. Another very important thing is to have organized publicity, e.g. Facebook page, website and a good PR team. This allows for well-organized communication with the

¹ BlueLink. 2024. Our climate rights. Which laws allow us to defend them and are we ready as a society for this? https://www.bluelink.net/files/attachments/nashite_klimaticzni_prava_rabotna_versiya_na_doklada.pdf

public, which is extremely important because the other party may try to compromise you.

V.3. Comparison of efficiency of possible legal actions, legal and other barriers, risks

Types of legal actions	Potential outcomes	Costs	Timeline	Possibility for immediate action
Actions leading to administrative control of the steel plant	On-site inspections, sanctions, temporary closedown of the plant	No costs or very small costs for mail or courier	From two weeks up to one month for the authority to answer the request	Yes
Public participation	The comments of the public and NGOs taken into account or if not, possible challenging of the permit and possibly its repeal	No costs or very small costs for mail, courier or transportation to the place of the public hearing	During the permit procedure	At the time of the permit procedure
Access to justice	Repealing of the permit, getting access to documents not publicly available	<p>Access to information from the public sector is provided for reuse free of charge or after payment of a fee, which cannot exceed the material costs of reproducing and providing the information as well as for the anonymization of personal data and measures, taken to protect a manufacturing or trade secret.</p> <p>In the administrative court cases the tax for filing an appeal against an administrative act by NGOs or individuals is 10 BGN (about 5 EUR). The tax for the cassation appeal from 5 BGN to 70 BGN for individuals, sole traders, state and municipal authorities and other persons with public functions or offering public services, and 370 BGN for organisations.</p> <p>If the court allows expertise and assigns experts appointed at the request of the parties or ex officio, it determines an initial deposit, as well as the proportions to be paid by each party.</p> <p>Also, if losing the case, the losing party should bear the costs of</p>	The average duration of the court proceedings at the Supreme court one instance for 2023, has been 107 days.	Depending on the outcome of the case

		the other party, e.g. the lawyer's fee but the court could reduce it if it is excessive.		
--	--	--	--	--

V.4. Conclusion, recommended legal action(s)

In general, all the procedural rights – on access to information, on public participation in the EIA procedure and integrated permit issuance, and on access to justice in the integrated permit procedure or other relevant procedure are available to the public and the environmental NGOs. However, it requires special research and additional financial and expert resources to validate or amend the conclusion of the technical expert that, the steel plant meets all the conditions defined by the reference documents and conclusions for the best available techniques.

The legal steps that could be taken to ensure a better environmental performance of the steel plant „Stomana Industry“, Pernik depend on the available legal remedies in Bulgaria concerning granting, refusal, modification, updating or revocation of an integrated permit and the legal remedies available under the administrative, criminal and civil law against the facility in the event of non-compliance with the permit. They also depend on the level of motivation and active involvement of the civil society represented by the members of the public, local community or NGOs.

We explained above in this strategy all legal avenues for action based on the procedural and substantive rights could lead to concrete results that will improve the environmental performance of the steel industry and lead to its decarbonization. Some of the actions depend on the willingness and capacity of civil society, others should be tested in the court room to prove their effectiveness. In any case, there is a role to play for all parties - for the operator, for the administration and the civil society, so that the harmful impacts of the steel plants on the climate is reduced and the industry will become carbon-neutral in near future.

Contact information:

authors: Plamen Peev
 organization: *Justice & Environment*
 e-mail: info@justiceandenvironment.org
 URL: www.justiceandenvironment.org