

2018-01-29

Case Summary posted by the Task Force on Access to Justice

European Union: C-529/15 Gert Folk

1. Key issues	Standing – Those affected or likely to be affected by environmental damage must have access to justice to challenge such damage; this includes those with use rights that have been affected (such as fishing rights for a body of water that has been damaged); this also means that those affected/likely to be affected cannot be denied access to justice in this context on the grounds that they cannot sufficiently argue having a sufficient interest or impairment of a right under national law
2. Country/Region	European Union
3. Court/body	Court of Justice of the European Union, Second Chamber
4. Date of judgment /decision	2017-06-01
5. Internal reference	C-529/15 (Celex 62015CJ0529; ECLI:EU:C:2017:419)
6. Articles of the Aarhus Convention	Art. 2 paras. 4 and 5; art. 9, paras. 2 and 3
7. Key words	Reference for a preliminary ruling, Environmental Liability, Directive 2004/35/EC (i.e. articles 12 and 13), Operation of a hydroelectric plant, , Access to Justice, Standing, Fishing Rights, Concept of “environmental damage”

8. Case summary

This case was a referral to the CJEU for a preliminary ruling. The dispute in the main proceedings concerned a hydroelectric power station on a river in a suit under article 11 of the Austrian B-UHG, which transposes the Environmental Liability Directive (Directive 2004/35/EC).. The claimant had fishing rights along a stretch of the river downstream of this power station. The claimant alleged the operation of the station had disrupted the natural reproduction of fish and thereby caused environmental damage These claims were dismissed by an administrative review body of the second instance. The claimant then sought review by the Supreme Administrative Court (Verwaltungsgerichtshof). This court in turn brought the case to the CJEU by way of a reference for a preliminary ruling.

In the relevant part, the referring court asked whether Directive 2004/35, in particular articles 12 and 13 thereof, stand in the way of a national provision which precludes persons holding fishing rights from initiating a review procedure in the meaning of article 13 in relation to environmental damage as defined in article 2 (1) (b) of that Directive.

In answer to this question, the CJEU observed that the full and correct transposition of this Directive, in particular its Article 12, requires that there are three categories of persons which may submit observations on environmental damage, may request that the competent authority take measures, and may initiate a procedure before a court or tribunal or any other competent public body in accordance with articles 12 and 13 of the Directive. Member States may have discretion in determining what constitutes a sufficient interest per article 12 (1) (b) or impairment of a right per article 12(c), but they

have no such discretion as to the right to a review procedure for those affected or likely to be affected by environmental damage, as follows from article 12 (1) (a).

Applying this, the CJEU found that an interpretation of national law which would deprive all persons holding fishing rights of the right to initiate a review procedure following environmental damage, although those persons are directly affected by that damage, does not respect the scope of articles 12 and 13 and is thus incompatible with that Directive.

Accordingly, articles 12 and 13 of the Directive must be interpreted as precluding a national provision of law which does not entitle persons holding fishing rights to initiate a review procedure in relation to environmental damage within the meaning of article 2 (1) (b) of that Directive.

Note: Finally, it can be noted that the CJEU decision does not explicitly refer to the Convention or any of its provisions in reaching its conclusions about this particular Directive. However, AG Bobek's Opinion for this case says that articles 12 and 13 of the Directive are modelled after the Aarhus Convention, specifically art. 9, paras. 2 and 3, respectively. These provisions in turn also include by reference the definitions of "the public" (article 2, para. 4) and "the public concerned" (article 2, para. 5). Thus, AG Bobek's analysis therefore examines the Directive in light of these provisions of the Convention and various sources interpreting these.

9. Link address	http://curia.europa.eu/juris/document/document.jsf?text=&docid=191243&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=324447 http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/EUROPEAN_UNION/CJEU_C529_15_GertFolk/CJEU_C529_15_GertFolk_judgment.pdf
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