

2011-07-20

## ***Case Summary posted by the Task Force on Access to Justice***

### **NABU and others v die Stadt Kappeln 1 KN 12/08**

<i>1. Key issue</i>	NGO standing (art. 2.5, 9.2) – The Administrative Appeals Court of Schleswig granted an environmental NGO standing to appeal a zoning plan, stating that EU Directive 2003/35/EC was directly applicable instead of German law.
<i>2. Country/Region</i>	Germany
<i>3. Court/body</i>	Administrative Appeals Court of Schleswig (Oberwaltungsgericht Schleswig)
<i>4. Date of judgment /decision</i>	12 March 2009
<i>5. Internal reference</i>	Zur Gemeinschaftsrechtswidrigkeit des Umweltrechtsbehelfsgesetzes (UmwRG), OVG Schleswig, 1 KN 12/08
<i>6. Articles of the Aarhus Convention</i>	Art. 9, para. 2; Art. 9, para. 5
<i>7. Key words</i>	Admissibility, Access to Justice, Remedies, National Implementation
<i>8. Case summary</i>	<p>Upon request of environmental associations, the Administrative Appeals Court of Schleswig rejected the zoning plan of the local government of Kappeln which was designed to change an ancient naval base to a leisure centre.</p> <p>The Court stated that the appeal of the environmental associations was admissible. It recognized the importance of the scope of the right of action of registered environmental associations. The Court found that the right of an environmental association to file the appeal was based on Art. 2, para. 1 of the Act on Environmental Appeal (<i>Umwelt-Rechtsbehelfsgesetz-UmwRG</i>), which transposes Directive 2003/35/EC into national law. The Directive implements article 9, paragraph 2 of the Aarhus Convention and guarantees access to justice in environmental matters, even if there is no violation of the association's direct interests.</p> <p>Nevertheless the Court found that although Art. 2, para. 1 of UmwRG provides for access to justice, it is inconsistent with Directive 2003/35/EC. The Court noted that the wording of article 9, paragraph 2, of the Aarhus Convention, as also stipulated in Directive 2003/35/EC, should not limit the test applied by the Court following the provisions of German law on the existence of alleged violations (i.e. violations of individual rights). Instead, courts should use this provision in combination with the relevant German laws to define the legality of an action regarding public interest considerations in a comprehensive manner. The Court hence stated that the Directive 2003/35/EC was directly applicable instead of Art. 2, para. 1 of UmwRG, thus allowing the NGOs to appeal the local plan. On judging on the merits of the case, the Court found that the construction of the leisure centre could cause large damage to a nearby bird sanctuary and that the local government erred in balancing the interests of the natural scenery.</p>
<i>9. Link address</i>	<a href="http://www.naturschutzrecht.eu/wp-content/uploads/2009/12/00051-08-">http://www.naturschutzrecht.eu/wp-content/uploads/2009/12/00051-08-</a>

	Urteil-des-OVG-Schleswig-Holstein-v.-12.3.2009.pdf
--	--