

Access to justice in cases related to biodiversity protection

Case C-529/15 (Gert Folk)

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BMK – V/11
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Overview

- I. Case Summary
- II. Impact of the decision

I. Case Summary

The dispute

- The dispute concerned a **hydroelectric power station** on a river in Austria.
- Mr Folk had **fishing rights** at the river and claimed the operation of the station **caused environmental damage**.

The national law

- The **national law** (§ 11 Federal Environmental Liability Law) provided that
 - natural or legal persons whose rights may be breached by environmental damage
 - may request the competent administrative authorities to take action
- It clarified which rights can be relied upon (fishing rights were not mentioned)

The question referred for a preliminary ruling

- **The Supreme Administrative Court** brought the case to the CJEU by way of reference for a preliminary ruling:
 - It asked the CJEU whether Articles 12 and 13 of the Environmental Liability Directive (Directive 2004/35) 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 that Directive.

Consideration of the question referred:

- The **CJEU** observed that
 - **there are three categories of persons, which have standing to initiate procedures** referred to in Articles 12 and 13 of Directive 2004/35:
 - persons affected or likely to be affected by environmental damage (Art 12(1)(a)) or
 - persons that have a sufficient interest in environmental decision-making relating to the damage (Art 12(1)(b))
 - persons that allege the impairment of a right, where administrative procedural law of a Member State requires this as a precondition (Art 12(1)(c)).

Consideration of the questions referred:

- There is **discretion** with regard to Article **12(1)(b)** and Article **12(1)(c)**
- There is **no discretion** with regard to Article **12(1)(a)**:
 - To deprive all persons holding fishing rights of the right to initiate a review procedure, although those persons are directly affected by that damage, is incompatible with the Directive.
- **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.**

II. Impact of the decision

- The relevant national provision (§ 11 Federal Environmental Liability Law) was amended
 - to **include fishing rights** to those rights that enable to initiate review procedures
 - to **include all three categories of persons** that must be able to initiate procedures under Article 12 and 13 of Directive 2004/35

Thank you for your attention!

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