



Press and Information

Court of Justice of the European Union
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Judgment in Case C-420/11
Jutta Leth v Austria, Land Niederösterreich

The fact that an assessment of the environmental impact of a project has not been carried out, in breach of EU law, does not in principle, by itself, render the State liable for purely pecuniary damage

However, the State may be so liable if the national court finds, in particular, that there is a direct causal link between the fact that no assessment was carried out and the damage sustained, such as the decrease in the value of a property as a result of the extension of an airport

Since the accession of Austria to the EU in 1995, Vienna airport has been developed and enlarged several times, without any prior assessment of the environmental effects of those projects. At the time when those projects were carried out, Ms Leth was already living in a house, which she owns, situated within the security zone of that airport. She brought an action against the Austrian State and *Land* Niederösterreich (the State of Lower Austria) before the Austrian courts, in which she sought payment of €120,000 as compensation for the decrease in the value of her house, resulting from, in particular, aircraft noise. She also seeks a declaration that the Austrian State and *Land* Niederösterreich will be liable for any future damage. She bases those claims on, inter alia, a breach of Directive 85/337¹, which requires that an assessment be carried out as to the environmental impact of public or private projects that are liable to have a major effect in that regard.

The Oberster Gerichtshof (Austrian Supreme Court), which has been called upon to resolve this dispute at final instance, seeks to establish whether the duty of the competent national authorities to carry out an environmental impact assessment is intended to protect the individuals concerned against purely pecuniary damage caused by a project in respect of which such an assessment has not been carried out.

According to the judgment delivered by the Court of Justice today, in so far as the Directive requires an environmental impact assessment of a project, such as the development or extension of an airport, that assessment must – if the project affects the use of a property – identify, describe and assess the direct and indirect effects of noise on human beings. Nonetheless, as the assessment does not include the effects which the project has on the value of material assets, it does not extend to the value of the property concerned.

However, pecuniary damage, in so far as it is the **direct economic consequence** of the environmental impact of the project in question, is covered by the objective of protection pursued by the Directive.

Accordingly, in circumstances where exposure to the noise resulting from a project has significant effects on an individual – in that a house affected by that noise is rendered less capable of fulfilling its function and the individual's environment, quality of life and, potentially, health are affected – a decrease in the pecuniary value of that house may be a direct economic consequence of such effects on the environment, this being a matter to be examined on a case-by-case basis.

¹ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) and by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 (OJ 2003 L 156, p. 17).

However, in addition to the conditions that the rule of EU law infringed must be intended to confer rights on the individuals adversely affected, as established in the present case, and that the breach of that rule must be sufficiently serious, the existence of a direct causal link between that breach and the loss or damage sustained is an indispensable condition of the right to compensation, the existence of that link being a matter for the national courts to ascertain, in accordance with the guidelines laid down by the Court.

The Court notes in that respect that, although the Directive prescribes an environmental impact assessment of public or private projects, it does not, however, lay down the substantive rules concerning the balancing of the environmental effects with other factors. Likewise, it does not prohibit the carrying-out of projects which are liable to have negative effects on the environment.

Consequently, the fact that an assessment of the environmental impact of a project was not carried out, in breach of the Directive, does not in principle, by itself, confer on an individual a right to compensation for purely pecuniary damage caused by the decrease in the value of his property as a result of the environmental effects of that project. That finding follows from EU law and is without prejudice to rules of national law which are less restrictive as regards State liability.

It is, however, for the national court to determine whether the requirements of EU law applicable to the right to compensation, including the existence of a direct causal link between the breach alleged and the damage sustained, have been satisfied.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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