

Individuals have no right to claim violation of EU Birds and FFH Directives

The plaintiff, a local resident, brought an action against a planning approval order to allow Airbus Deutschland to manufacture the wide-body aircraft A380 at its works in Hamburg-Finkenwerder. The planning approval order permits part of the Mühlenberger Loch to be filled in order for the site to be expanded.

The Mühlenberger Loch is a tidal mudflat in the River Elbe. It was designated as a protected area in 1982 and notified to the Commission of the EU as a European Bird Protection Area according to the Directive on the Conservation of Wild Birds – Birds Directive – (Council Directive 79/409/EEC) in 1998. It was also notified to the Federal Ministry for the Environment as a potential area for protection according to the Fauna-Flora-Habitat Directive – FFH Directive (Council Directive 92/43/EEC). In 2000, the landscape protection designation was abolished for part of the area.

The plaintiff owns a piece of property on the banks of the Elbe. He brought an action to stop the extension of the airfield and the associated partial filling in of the Mühlenberger Loch on grounds that this violated the Birds and FFH Directives. The Commission issued a report on the project according to Art. 6 Para 4 FFH Directive and considered the negative impact of the project on an area designated as part of the Natura 2000 network to be justifiable on grounds of public interest. The Administrative Court upheld the claim and set the planning approval order aside. The Higher Administrative Court (OVerwG) dismissed the claim.

The plaintiff appealed against this last decision on point of law. The Federal Administrative Court (BVerwG) rejected the appeal and ruled that the Birds and FFH Directives do not confer on the individual the right to claim infringement against Art. 4 Para 4 (1) Birds Directive, Art. 7 in conjunction with Art. 6 Paras. 2-4 FFH Directive or against the basic principles protecting designated areas. The Court considers this sufficiently manifest that there can be no doubt even after taking into account the singularities of Community law, the extreme difficulty of interpretation and the possibility of divergent judicial rulings within the EU. Consequently, the matter will not be referred to ECJ according to Art. 234 EC.

The BVerwG points out that the regulations of the Birds and FFH Directives protect natural habitats and flora and fauna, including European bird species, and not the interests of humans living nearby. The Court holds that the protection of shared natural heritage is indeed a matter of special interest but that it is not a right that the individual may claim. The Birds and FFH Directives are not intended for the protection of health, unlike directives such as those for the protection of water, drinking water or ambient air quality, which ECJ has adjudged as protecting the individual.

The Court considers that the Birds and FFH Directives do not give the individual the right to the enjoyment of nature in the protected areas. The presence of humans in the environment should not endanger the protection of natural habitats and species; rather, both directives should protect the environment from humans.

The BVerwG also ruled that the member countries are required to ensure the effective protection of the individual's rights only when Community law has invested the individual with a right, which is not the case with regard to the protection of habitats. As a result, the member country is not required by Art. 10 Para 1 EC to provide the individual with the right to claim.