



Press and Information

Court of Justice of the European Union

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Judgment in Case C-297/19

Naturschutzbund Deutschland – Landesverband Schleswig-Holstein e.V. v
Kreis Nordfriesland

Legal persons governed by public law may be liable for environmental damage caused by activities carried out in the public interest pursuant to a statutory assignment of tasks, such as the operation of a pumping station for the purpose of draining agricultural land

In the course of 2006 to 2009, part of the Eiderstedt peninsula, located in the western part of the *Land* of Schleswig-Holstein (Germany), was classified as a ‘protection area’ on account, inter alia, of the presence of the black tern, a protected aquatic bird. According to the management plan, the protection area in respect of that species remains for the most part managed traditionally as grassland over extensive areas. The Eiderstedt peninsula has to be drained for the purposes of habitation and agricultural use. In order to do this, Deich- und Hauptsielverband Eiderstedt, a water and soil association established in the legal form of a corporation governed by public law, operates a pumping station which drains the entire area covered by the association. Those pumping operations, which have the effect of taking the water level down, fall within its task of maintaining surface waters, which has been entrusted to it by statute as a public law obligation.

Since it took the view that, by operating that pumping station, Deich- und Hauptsielverband Eiderstedt caused environmental damage harming the black tern, an environmental protection association, Naturschutzbund Deutschland – Landesverband Schleswig-Holstein, requested measures to limit and remedy that damage from the District of Nordfriesland, a request which was rejected. The association relied in support of its request upon the German legislation adopted in order to transpose Directive 2004/35 on environmental liability.¹ That directive establishes a framework of environmental liability with a view to preventing and remedying, inter alia, environmental damage caused by occupational activities to the species and natural habitats covered, in particular, by the Habitats Directive² and the Birds Directive.³

The second indent of the third paragraph of Annex I to **Directive 2004/35** permits the Member States, however, **to provide that owners and operators are exempt from liability where the damage caused to the species and natural habitats results from ‘normal management’ of the site concerned. Germany made use of that power.**

It was in that context that the Bundesverwaltungsgericht (Federal Administrative Court, Germany), hearing a case concerning the rejection of the environmental protection association’s request, decided to ask the Court of Justice whether and in what circumstances an activity such as the operation of a pumping station for the purpose of draining agricultural land may be regarded as forming part of the ‘normal management of a site’ within the meaning of Directive 2004/35. The referring court also requested the Court to state whether such an activity may, as it is carried out in the public interest pursuant to a statutory assignment of tasks, be regarded as an ‘occupational activity’ within the meaning of Directive 2004/35.

¹ Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 143, p. 56).

² Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

³ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7).

In its judgment of 9 July 2020, the Court stated that **the concept of ‘normal management of sites’ must be understood as encompassing any measure which enables good administration or organisation of sites hosting protected species or natural habitats that is consistent, inter alia, with commonly accepted agricultural practices.**

In that regard, the Court explained that **management of a site hosting protected species and natural habitats, as referred to in the Habitats Directive and the Birds Directive, can be regarded as ‘normal’ only if it complies with the objectives and obligations laid down in those directives** and, in particular, with all the management measures adopted by the Member States on the basis of those directives, such as those contained in the habitat records and target documents referred to in the second indent of the third paragraph of Annex I to Directive 2004/35. Accordingly, the Court held that **normal management of a site may, in particular, include agricultural activities carried out on the site, including their essential complements such as irrigation and drainage and, therefore, the operation of a pumping station.**

The Court explained, in addition, that a court called upon to assess whether or not a management measure is normal may, where the management documents for the site do not contain sufficient guidance, assess those documents in the light of the objectives and obligations laid down in the Habitats Directive and the Birds Directive and with the assistance of domestic legal rules that have been adopted to transpose those directives or, failing this, are compatible with the spirit and purpose of those directives.

Furthermore, the Court noted that, as provided in the second indent of the third paragraph of Annex I to Directive 2004/35, normal management of a site may also result from a previous practice that is carried out by the owners or operators. The Court declared that that rule covers management measures which, on the date on which the damage occurs, have been carried out for a sufficiently long period of time and are generally recognised and established so that they may be regarded as usual for the site concerned, provided however that they do not call into question compliance with the objectives and obligations laid down in the Habitats Directive and the Birds Directive.

As regards the question whether an activity that a legal person governed by public law carries out in the public interest pursuant to a statutory assignment of tasks, such as the operation of a pumping station for the purpose of draining agricultural land, may constitute an ‘occupational activity’ within the meaning of Directive 2004/35, the Court confirmed that that term covers all activities carried out in an occupational context, as opposed to a purely personal or domestic context, irrespective of whether or not those activities are market-related or competitive in nature.

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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