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Provisional text

JUDGMENT OF THE COURT (First Chamber)

1 June 2017 (*)

(Reference for a preliminary ruling — Environmental liability — Directive 2004/35/EC — Article 17 — Temporal scope of application — Operation of a hydroelectric power plant put into operation before the period for transposing that directive had expired— Article 2(1)(b) — Concept of ‘environmental damage’ — National law excluding all damage covered by an authorisation — Article 12(1) — Access to justice in environmental matters — Locus standi — Directive 2000/60/EC — Article 4(7) — Direct effect)

In Case C-529/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgerichtshof (Administrative Court, Austria), made by decision of 24 September 2015, received at the Court on 7 October 2015, in the proceedings brought by

Gert Folk,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, E. Regan, J.-C. Bonichot, A. Arabadjiev and S. Rodin (Rapporteur), Judges,

Advocate General: M. Bobek,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 19 October 2016,

after considering the observations submitted on behalf of:

- Gert Folk, by G. Folk, Rechtsanwalt,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the European Commission, by E. White and E. Manhaeve and by A.C. Becker, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 January 2017,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of 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), as amended by Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 (OJ 2009 L 140, p. 35) and Article 4(7) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1).

2 The request has been made in the context of the examination of the action brought by Mr Gert Folk against the decision of the Unabhängiger Verwaltungssenat für die Steiermark (Independent Administrative Court of Styria, Austria) rejecting an environmental application.

Legal context

European Union law

Directive 2004/35

3 Recitals 24, 25 and 30 of Directive 2004/35 are worded as follows:

‘(24) It is necessary to ensure that effective means of implementation and enforcement are available, while ensuring that the legitimate interests of the relevant operators and other interested parties are adequately safeguarded. Competent authorities should be in charge of specific tasks entailing appropriate administrative discretion, namely the duty to assess the significance of the damage and to determine which remedial measures should be taken.

(25) Persons adversely affected or likely to be adversely affected by environmental damage should be entitled to ask the competent authority to take action. Environmental protection is, however, a diffuse interest on behalf of which individuals will not always act or will not be in a position to act. Non-governmental organisations promoting

environmental protection should therefore also be given the opportunity to properly contribute to the effective implementation of this Directive.

...

(30) Damage caused before the expiry of the deadline for implementation of this Directive should not be covered by its provisions.'

4 Under Article 2(1)(b) of Directive 2004/35, 'environmental damage', for the purposes of that directive, means 'water damage, which is any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as defined in Directive 2000/60/EC, of the waters concerned, with the exception of adverse effects where Article 4(7) of that Directive applies.'

5 Article 12 of Directive 2004/35, headed 'Request for action', provides:

'1. Natural or legal persons:

(a) affected or likely to be affected by environmental damage, or

(b) having a sufficient interest in environmental decision making relating to the damage or, alternatively,

(c) alleging the impairment of a right, where administrative procedural law of a Member State requires this as a precondition,

shall be entitled to submit to the competent authority any observations relating to instances of environmental damage or an imminent threat of such damage of which they are aware and shall be entitled to request the competent authority to take action under this Directive.

What constitutes a "sufficient interest" and "impairment of a right" shall be determined by the Member States.

To this end, the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of subparagraph (b). Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (c).

2. The request for action shall be accompanied by the relevant information and data supporting the observations submitted in relation to the environmental damage in question.

3. Where the request for action and the accompanying observations show in a plausible manner that environmental damage exists, the competent authority shall consider any such observations and requests for action. In such circumstances the

competent authority shall give the relevant operator an opportunity to make his views known with respect to the request for action and the accompanying observations.

4. The competent authority shall, as soon as possible and in any case in accordance with the relevant provisions of national law, inform the persons referred to in paragraph 1, which submitted observations to the authority, of its decision to accede to or refuse the request for action and shall provide the reasons for it.

5. Member States may decide not to apply paragraphs 1 and 4 to cases of imminent threat of damage.’

6 Article 13 of Directive 2004/35, entitled ‘Review procedures’, reads as follows:

‘1. The persons referred to in Article 12(1) shall have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the competent authority under this Directive.

2. This Directive shall be without prejudice to any provisions of national law which regulate access to justice and those which require that administrative review procedures be exhausted prior to recourse to judicial proceedings.’

7 Article 17 of that directive, entitled ‘Temporal application’, states:

‘This Directive shall not apply to:

- damage caused by an emission, event or incident that took place before the date referred to in Article 19(1),
- damage caused by an emission, event or incident which takes place subsequent to the date referred to in Article 19(1) when it derives from a specific activity that took place and finished before the said date,
- damage, if more than 30 years have passed since the emission, event or incident, resulting in the damage, occurred.’

8 Under Article 19(1) of that directive:

‘Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 April 2007. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.’

Directive 2000/60

9 Article 4(7) of Directive 2000/60, entitled, ‘Environmental objectives’, provides:

‘Member States will not be in breach of this Directive when:

- failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or
- to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities

and all the following conditions are met:

- (a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;
- (b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;
- (c) reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and
- (d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.’

Austrian law

10 The Bundes-Umwelthaftungsgesetz (Federal Law on Environmental Liability, ‘B-UHG’), adopted in order to transpose Directive 2004/35, provides, in Paragraph 4, entitled, ‘Definitions’:

11 ‘The following definitions shall apply to the present Law:

12 ‘Environmental damage’ shall mean:

13 any significant damage to water, that is to say, any damage that has a significant adverse effect on the ecological, chemical or quantitative status or ecological potential, as defined in the 1959 Wasserrechtsgesetz [1959 Law on matters relating to water, ‘WRG’),

of the waters concerned ... and that is not covered by an authorisation granted pursuant to the [WRG] ... and

14 ...’

15 Paragraph 11 of the B-UHG, entitled, ‘Complaint regarding environmental damage’ reads as follows:

‘(1) Natural or legal persons whose rights may be breached by environmental damage that has occurred may, by way of written complaint, request the district administrative authorities responsible for the area in which the alleged environmental damage has occurred to take action pursuant to Paragraphs 6 and 7(2) ...

(2) For the purposes of the first sentence of subparagraph (1), rights include ...

...

2. in relation to water: existing rights within the meaning of Paragraph 12(2) of the [WRG] ...

...’

16 Paragraph 18 of the B-UHG, headed ‘Transitional provisions’, provides:

17 ‘The present Federal Law does not apply

18 1. to damage caused by an emission, event or incident that occurred before the present Federal Law came into force,

19 2. to damage caused by an emission, event or incident which occurs subsequent to the entry into force of the present Federal Law in so far as such emission, event or incident is attributable to an activity that was unquestionably brought to an end before the present Federal Law entered into force, and

20 ...’

The dispute in the main proceedings and the questions referred for a preliminary ruling

21 Wasserkraftanlagen Mürzzuschlag GmbH operates a hydroelectric power station on the river Mürz, in Austria, with an outlet area of 1 455 m. Mr Folk has fishing rights for that river along a stretch approximately 12 km long, downstream of the power station.

22 The operation of that hydroelectric power station was authorised by decision of the Landeshauptmann von Steiermark (Governor of Styria) of 20 August 1998. The power

station started to operate in 2002, that is, on a date prior to the entry into force of Directive 2004/35.

23 According to the applicant in the main proceedings, the operation of the hydroelectric power station has caused significant environmental damage, which has disrupted the natural reproduction of fish and has caused fish to die along extended stretches of the river Mürz. As a result of short-term, but significant, variations in the water level areas which are usually under water are drying up very quickly, so that small and young fish are trapped in the outlet areas separated from the river current without being able to follow it. Those repeated fluctuations affect a relatively long stretch of the river and are caused, first, by the absence of a bypass-channel at the power station and second, the power station's mode of operation.

24 The application relating to that environmental damage made by the applicant in the main proceedings, based on Article 11 of the B-UHG, was dismissed by the decision of 15 May 2012 of the Independent Administrative Chamber for the Land of Styria.

25 That Chamber found, in essence, that the operation of the hydroelectric power station at issue in the main proceedings had been authorised by a decision complying with the law governing matters relating to water, dated 20 August 1998, which also prescribed reservoir volumes. The damage alleged by Mr Folk was therefore covered by that decision, pursuant to Paragraph 4(1)(a) of the B-UHG. Consequently, that damage is not to be categorised as environmental damage within the meaning of that provision.

26 Mr Folk brought an action against the decision of the Independent Administrative Chamber for the Land of Styria, of 15 May 2012, before the Verwaltungsgerichtshof (Administrative Court, Austria), in which he argued that the B-UHG was incompatible with Directive 2004/35 as its application meant that every authorisation granted under the law governing matters relating to water could lead to the exclusion of environmental damage.

27 In those circumstances the Verwaltungsgericht (Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does Directive 2004/35 apply also to damage which, although it arises after the date specified in Article 19(1) of that directive, nonetheless results from the operation of a facility (a hydroelectric power station) authorised and brought into operation prior to that date and is covered by an authorisation granted under the law governing matters relating to water?’

(2) Does Directive 2004/35, in particular Articles 12 and 13 thereof, stand in the way of a national provision which precludes persons holding fishing rights from initiating a review procedure within the meaning of Article 13 of that directive in relation to environmental damage as defined in Article 2(1)(b) of the directive?’

(3) Does Directive 2004/35, in particular Article 2(1)(b) thereof, preclude a national provision which excludes damage that has a significant adverse effect on the ecological, chemical or quantitative status or ecological potential of the water in question from the notion of “environmental damage”, in the case where that damage is covered by an authorisation granted under a national legislative provision?

(4) If Question 3 is answered in the affirmative:

In cases where, in the granting of an authorisation under provisions of national law, no assessment has been made of the criteria laid down by Article 4(7) of Directive 2000/60 (or of the national measures implementing it), is, for the purpose of determining whether environmental damage within the meaning of Article 2(1)(b) of Directive 2004/35 has arisen, Article 4(7) of Directive 2000/60 to be applied directly, and is it necessary to determine whether the criteria laid down by that provision are satisfied?

Consideration of the questions referred

28 The first, third and fourth questions must be answered before answering the second question, the examination of which requires that Directive 2004/35 be applicable and that there is environmental damage covered by that directive.

The first question

29 By its first question the referring court asks, in essence, whether Article 17 of Directive 2004/35 is to be interpreted as meaning that it applies *ratione temporis* to environmental damage occurring after 30 April 2007, but which was caused by the operation of a facility authorised in accordance with the law governing matters relating to water and put into operation before that date.

30 The Court has already held that it follows from the first and second indents of Article 17 of Directive 2004/35, read in conjunction with recital 30 thereto, that the directive applies to damage caused by an emission, event or incident which took place on or after 30 April 2007, where the damage derives from activities which took place on or after that date or from activities which took place before that date, but were not brought to completion before that date (see judgment of 4 March 2015, *Fipa Group and Others*, C-534/13, EU:C:2015:140, paragraph 44).

31 It is clear from the documents before the Court that, in the case in the main proceedings, the hydroelectric power plant was authorised and put into service before 2007. It is also common ground that, after 30 April 2007, its operation caused major fluctuations in the water level of the river Mürz, leading to excess fish mortality. Those repetitive fluctuations must be categorised as emissions, events or incidents which occurred after 30 April 2007, the date on which the Member States had to transpose Directive 2004/35.

32 Furthermore, as the Advocate General stated in point 26 of his Opinion, the fact that the alleged damage began before 30 April 2007 and results from the operation of a power plant which was authorised before that date is irrelevant.

33 Consequently, the answer to the first question is that Article 17 of Directive 2004/35 must be interpreted as meaning that, subject to investigations which are for the national court, that directive applies *ratione temporis* to the environmental damage that occurred after 30 April 2007 but which was caused by the operation of a facility authorised in accordance with the law governing matters relating to water and put into operation before that date.

The third question

34 By its third question, which it is appropriate to examine in the second place, the referring court asks, in essence, whether Directive 2004/35, and in particular Article 2(1)(b) thereof, must be interpreted as precluding a provision of national law which excludes that damage which has a significant adverse effect on the ecological, chemical or quantitative status or ecological potential of the water in question be categorised as ‘environmental damage’ in the case where such damage is covered by an authorisation granted under that law.

35 The national court is of the view that it follows from the provisions of national law that damage resulting from an activity authorised in accordance with the WRG is not to be classified as environmental damage within the meaning of that directive. It asks whether those provisions comply with Article 2(1)(b) of that directive, the wording of which refers to Article 4(7) of Directive 2000/60.

36 Article 2(1)(b) of Directive 2004/35 does not provide, in the case of damage covered by an authorisation, for a general exception such that the latter does not come within the concept of ‘environmental damage’. That provision solely provides for a derogation concerning the adverse effects to which Article 4(7) of Directive 2000/60 applies.

37 The latter provision provides that Member States will not be in breach of that directive when failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater. Likewise, no breach can be found to have been committed by the Member States when failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities.

38 The application of that derogation presupposes that the conditions laid down in Article 4(7)(a) to (d) of that directive are satisfied (see, to that effect, judgments of 11 September 2012, *Nomarchiaki Aftodioikisi Aitoloakarnanias and Others*, C-43/10,

EU:C:2012:560, paragraph 67, and 4 May 2016, *Commission v Austria*, C-346/14, EU:C:2016:322, paragraph 65 and 66).

39 Admittedly, Member States are required to refuse authorisation for projects which can result in deterioration of the status of the body of water concerned unless the view is taken that those projects are covered by the derogation of Article 4(7) of Directive 2000/60 (see, to that effect, judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraph 50).

40 That provision does not solely concern projects subject to authorisation. It applies to all situations of deterioration of bodies of water, whether due to a facility or not, and provides for cases where, faced with such deterioration, Member States are nevertheless exempted from taking action. It follows that that provision does not affect the concept of environmental damage itself.

41 Such findings apply in particular in the case in the main proceedings, in which the authorisation to operate the facility at issue predates Directive 2000/60 and its grant was therefore not, at that time, subject to observance of the four cumulative criteria of Article 4(7)(a) to (d) of that directive. Furthermore, it is clear from the file before the Court that fluctuations in the level of the watercourses, to which excess fish mortality is attributable, would result from the normal operation of the authorised facility.

42 It follows from the foregoing considerations that the answer to the third question is that Directive 2004/35, and in particular Article 2(1)(b) thereof, must be interpreted as precluding a provision of national law which excludes, generally and automatically, that damage which has a significant adverse effect on the ecological, chemical or quantitative status or ecological potential of the water in question be categorised as ‘environmental damage’, due to the mere fact that it is covered by an authorisation granted under that law.

The fourth question

43 By its fourth question, which should be examined in the third place, the referring court asks, in essence, whether, in the event that an authorisation has been granted pursuant to national provisions without an examination whether the conditions laid down in Article 4(7) of Directive 2000/60 have been complied with, that court must itself verify whether the conditions laid down in that article are satisfied in order to determine whether environmental damage within the meaning of Article 2(1)(b) of Directive 2004/35 has arisen.

44 It should be borne in mind that, when a project is liable to have adverse effects on water, consent may be given to it if the conditions set out in Article 4(7)(a) to (d) of that directive are satisfied (see, to that effect, judgment of 4 May 2016, *Commission v Austria*, C-346/14, EU:C:2016:322, paragraph 65).

45 In order to determine whether a project has been authorised without infringing Directive 2000/60, a court may review whether the authority which issued the authorisation complied with the conditions laid down in Article 4(7)(a) to (d) of that directive, by determining, first, whether all practicable steps were taken to mitigate the adverse impact of the activities on the status of the body of water concerned; second, whether the reasons behind those activities were specifically set out and explained; third, whether those activities serve an overriding general interest and/or the benefits to the environment and society linked to the achievement of the objectives set out in Article 4(1) are outweighed by the benefits to human health, the maintenance of human safety or the sustainable development resulting from those activities; and, fourth, whether the beneficial objectives pursued by that project cannot, for reasons of technical feasibility or disproportionate cost, be achieved by other means which are a significantly better environmental option (see, to that effect, judgment of 11 September 2012, *Nomarchiaki Aftodioikisi Aitoloakarnanias and Others*, C-43/10, EU:C:2012:560, paragraph 67).

46 However, if, as in the situation in the case in the main proceedings, the competent national authority issued the authorisation without an examination whether the conditions laid down in Article 4(7)(a) to (d) of Directive 2000/60 have been complied with, the national court is not obliged to examine by itself the observance of the conditions laid down in that article and may confine itself to finding that the contested measure is unlawful.

47 Without prejudice to a possible judicial review, the national authorities which are competent to authorise a project are required to review whether the conditions set out in Article 4(7)(a) to (d) of Directive 2000/60 are satisfied before granting such an authorisation. In contrast, EU law in no way obliges the national courts to take the place of the competent authority by itself examining those conditions when that authority has granted the authorisation without having carried out that examination.

48 It follows from the foregoing considerations that the answer to the fourth question is that in the event that an authorisation has been granted pursuant to national provisions without an examination whether the conditions laid down in Article 4(7)(a) to (d) of Directive 2000/60 have been complied with, a national court is not required to itself verify whether the conditions laid down in that article are satisfied in order to determine whether environmental damage within the meaning of Article 2(1)(b) of Directive 2004/35 has arisen.

The second question

49 By its second question, which it is appropriate to examine in the last place, the referring court asks whether Articles 12 and 13 of Directive 2004/35 are to be interpreted as precluding a provision of national law, such as that at issue in the case in the main proceedings, which does not entitle persons holding fishing rights to initiate a review procedure in relation to environmental damage within the meaning of Article 2(1)(b) of that directive.

50 According to the referring court, Paragraph 11(1) of the B-UHG provides that natural or legal persons whose rights may be breached by environmental damage may request the competent administrative authorities to take action so as to put an end to that damage. The second subparagraph of Paragraph 11(2) of the B-UHG states, with regard to water, that ‘existing rights within the meaning of Paragraph 12(2) of the WRG’ may be relied on, without mentioning fishing rights. The referring court maintains that a literal interpretation of those provisions prevents persons holding fishing rights from initiating an environmental review procedure in respect of damage relating to their fishing rights.

51 The Austrian Government maintains that the fact that persons holding fishing rights are not expressly referred to in Paragraph 12(2) of the WRG, to which Article 11(1) of the B-UHG refers, falls under the discretion which it exercises under Articles 12 and 13 of Directive 2004/35.

52 It must be stated, in that regard, that Article 12 of that directive determines the categories of legal or natural persons who are entitled to submit observations on environmental damage. Those three categories are persons affected or likely to be affected by environmental damage, or having a sufficient interest in environmental decision-making relating to the damage, or alleging the impairment of a right, where administrative procedural law of a Member State requires this as a precondition.

53 As the Advocate General stated in point 72 of his Opinion, the wording of Article 12(1) of Directive 2004/35 enumerates three categories of natural or legal persons which, alternatively and independently considered, have standing. It establishes three distinct categories of persons which may initiate the procedures referred to in Articles 12 and 13 of that directive.

54 The full and correct transposition of this directive requires that those three categories of persons may submit observations on environmental damage, that they have the option to request that the competent authority take measures under that directive, and, accordingly, that they may initiate a procedure before a court or tribunal or any other competent public body, in accordance with Articles 12 and 13 of that directive.

55 Although the Member States have discretion to determine what constitutes a ‘sufficient interest’, a concept provided for in Article 12(1)(b) of Directive 2004/35, or ‘impairment of a right’, a concept laid down in Article 12(1)(c) of that directive, they do not have such discretion as regards the right to a review procedure for those persons affected or likely to be affected by environmental damage, as follows from Article 12(1) (a) of that directive.

56 With regard to the wording of Article 12 of Directive 2004/35, it appears that persons holding fishing rights are able to come within the three categories defined in Article 12(1) of that directive. It is clear from the file before the Court that they cannot, under national law, initiate a review procedure within the meaning of Article 13 of that directive, concerning environmental damage within the meaning of Article 2(1)(b) of that directive. Accordingly, by excluding the benefit of a right to a review procedure from all

persons holding fishing rights, national legislation deprives a very large number of individuals who may come within one of the three categories defined in Article 12 of Directive 2004/35 of that right to a review procedure.

57 An interpretation of national law which would deprive all persons holding fishing rights of the right to initiate a review procedure following environmental damage resulting in an increase in the mortality of fish, although those persons are directly affected by that damage, does not respect the scope of Articles 12 and 13 and is thus incompatible with that directive.

58 Having regard to the foregoing considerations, the answer to the second question is that Article 12 and 13 of Directive 2004/35 must be interpreted as precluding a provision of national law, such as that at issue in the case in the main proceedings, which does not entitle persons holding fishing rights to initiate a review procedure in relation to environmental damage within the meaning of Article 2(1)(b) of that directive.

Costs

59 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. Article 17 of 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, as amended by Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009, must be interpreted as meaning that, subject to investigations which are for the national court, that directive applies *ratione temporis* to the environmental damage that occurred after 30 April 2007 but which was caused by the operation of a facility authorised in accordance with the law governing matters relating to water and put into operation before that date.
2. Directive 2004/35, as amended by Directive 2009/31, and in particular Article 2(1)(b) thereof, must be interpreted as precluding a provision of national law which excludes, generally and automatically, that damage which has a significant adverse effect on the ecological, chemical or quantitative status or ecological potential of the water in question be categorised as ‘environmental damage’, due to the mere fact that it is covered by an authorisation granted under that law.
3. In the event that an authorisation has been granted pursuant to national provisions without an examination whether the conditions laid down in Article 4(7)(a) to (d) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy have been complied with, a national court is not required to itself verify whether the conditions laid

down in that article are satisfied in order to determine whether environmental damage within the meaning of Article 2(1)(b) of Directive 2004/35, as amended by Directive 2009/31, has arisen.

4. Article 12 and 13 of Directive 2004/35, as amended by Directive 2009/31, must be interpreted as precluding a provision of national law, such as that at issue in the case in the main proceedings, which does not entitle persons holding fishing rights to initiate a review procedure in relation to environmental damage within the meaning of Article 2(1)(b) of that directive

[Signatures]

* Language of the case: German.
