

Welcome!



Dr Matthias Keller, Aachen

Bridge over troubled water ...



1.

Is the action for annulment
brought by the NGO admissible?



Standing (locus standi) ?!

ENGO
must be recognized
and dedicated to environmental protection.

(details differ from MS to MS)



2.

Will the action for annulment
be successful?



Violation against Art 6.3 Habitats Directive?

Problem:

The mechanism of Art. 6.3 Habitats Directive
is not directly applicable.

At the the time of the approval („second year“)
there was not yet a designated SCI/SAC. („sith/seventh year“).

Under the case law of the Court of Justice
there is no such thing as a „potential SCI“ because of the
legal importance of the selection process by the Commission.



Requirements of Art. 6.2 Habitats Directive?

The essence of Art 6.2:

Member States must take appropriate steps to avoid **habitat deterioration** and the **disturbance of species** for which the site has been designated.

You may add: “**at all time**”.

That is what is missing here.



Quid iuris?

The Court of Justice

by a judgement of 14 January 2016 (Case C-399/14)
(„Grüne Liga Sachsen“ = „Waldschlösschenbrücke“)

was asked to and gave guidance.



Guidance:

CJEU C-399/14 „Grüne Liga Sachsen“ (I)

“Article 6(2) Habitats Directive

must be interpreted as meaning that a plan or project

not directly connected with or necessary to the
management of a site, ...



Guidance:

CJEU C-399/14 „Grüne Liga Sachsen“ (II)

... and authorised, following a study that did not meet the requirements of Article 6(3) of that directive,

before the site in question was included in the list of SCIs

**must be the subject
of a subsequent review, ...**



Guidance:

CJEU C-399/14 „Grüne Liga Sachsen“ (III)

... by the competent authorities,

of its implications for that site

if that review constitutes the only appropriate step for avoiding that the **implementation of the plan** or project referred to results in **deterioration or disturbance** that could be significant in view of the objectives of that directive. ...



Guidance:

CJEU C-399/14 „Grüne Liga Sachsen“ (IV)

It is for the referring court to verify whether those conditions are met.”



More Guidance:

CJEU C-399/14 „Grüne Liga Sachsen“ (V)

- “Article 6(2) of the Habitats Directive must be interpreted as meaning that if, in circumstances such as those in the main proceedings, a subsequent review of the implications for the site concerned of a plan or project which began to be put in hand after that site was included in the list of SCIs proves necessary, that review must be carried out **in accordance with the requirements of Article 6(3) of that directive.**”
- Such a review must take into account all factors existing at the date of that inclusion and **all implications** arising or likely to arise following the partial or total implementation of the plan or project on the site in question after that date as well.



Guidance:

CJEU C-399/14 „Grüne Liga Sachsen“ (VII)

(...) the requirements of a **check** made in the context of such a review may **not be amended** on account of the fact that the planning decision approving that plan or project was **immediately enforceable**, that an application for interim measures had been dismissed and that that dismissal decision was **no longer open to appeal. ...**

(in short: negative interim procedures do not count)



Guidance:

CJEU C-399/14 „Grüne Liga Sachsen“ (VIII)

- Article 6(4) of the Habitats Directive must be interpreted as meaning that the requirements of the check made in the context of the review of alternative solutions may not be amended on account of the fact that the plan or project has already been implemented.”

(in short: “fait accompli does not count”)



Result?

The national judge has to make it work:

- Art. 6.2 Habitats Directive prohibits deterioration ...
- Here, this results in an obligation to conduct a subsequent Appropriate Assessment (AA).
- Only after the subsequent AA under the „Art 6.3 standard“ there is a possibility to put forward imperative reasons of public interest (IROPI).

The approval is to be (partly) annulled
or declared als (partly) illegal !



Is a provisional ruling by the Court (interim relief) possible?

Requirements:

- An application for judicial interim relief must be filed.
- The main case must be - prima facie - **well-founded** (fumus boni juris)
- **Urgency:** Will a (positive) judgment come too late? (periculum in mora)

Here:

It all depends on the time the court will probably need to decide the case in the main proceedings.



What kind of judicial interim order?

An example for your inspiration:

The Court orders as an interim measure :

„The authority is obliged to order
a speed limit of 30 km/h on the bridge
in order to prevent harm from protected species.
(e.g.: lesser horseshoe bat).“



3.

What could be a possible request for a preliminary ruling to the Court of Justice?



Preparation:

RECOMMENDATIONS

to national courts and tribunals in relation to
the initiation of preliminary ruling proceedings

2012/C 338/01



Possible question could be a procedural one

- If your power as an administrative judge is restricted to cassation the effectivity of judicial protection might be compromised. Things go on and on without approval or AA
(the famous „cascade of cassation“)

Possible question:

- Is the principle of effectivity of judicial protection under EU Law to be interpreted in a way that it precludes national laws that confine the power of the administrative judge to annul the contested decision.



Thank you
for your kind attention!

