



# The Black Tern of Eiderstedt

NABU's ELD Case C-297/19

Dr. Raphael Weyland



# The Issue

- Eiderstedt: Special Protection Area (birds)
- Tradition: Keep water in ditches
- Around 2000: Agricultural intensification
- Further drainages (with/without permits)
- No management from agri/envi ministry
- Black tern population: Dropped to 28 pair
- Stop of breeding = environmental damage?








# The Proceeding

- Administrative Court (VG)  
Ruling 20.09.2012
- Higher Administrative Court (OVG)  
Ruling 04.02.2016
- CJEU  
Ruling 09.07.2020 (C-297/19)
- Highest Administrative Court (BVerwG)  
Ruling 25.11.2021
- Higher Administrative Court (OVG)  
No decision yet





## Some Legal + Practical Conclusions

- Definition of damage (loss of biodiversity)
- Persistence of damage (2007 vs 2016)
- Burden of proof (causal link)
- Long duration of proceedings (for proof)
- Disclaimer of long-time practise (drainage)
- What's the remedy (re-introducing black tern?)
- Not per-se non-implementation of ELD in DE
- Thus: more effective EU legislation needed
- ELD's damage/remedy approach ineffective
- 15 years later: 15 black tern breeding pair