Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

11 January 2024*

(Reference for a preliminary ruling – Environment – Aarhus Convention – Article 9(3) to (5) – Access to justice – Law firm partnership – Action seeking to challenge administrative measures – Admissibility – Conditions laid down by national law – No impairment of a right or undermining of a legitimate interest – Not prohibitively expensive judicial proceedings – Allocation of costs – Criteria)

In Case C-252/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Târgu-Mureș (Court of Appeal, Târgu-Mureș, Romania), made by decision of 16 February 2022, received at the Court on 8 April 2022, in the proceedings

Societatea Civilă Profesională de Avocați AB & CD

v

Consiliul Județean Suceava,

Președintele Consiliului Județean Suceava,

Agenția pentru Protecția Mediului Bacău,

Consiliul Local al Comunei Pojorâta,

intervener:

QP,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, O. Spineanu-Matei, J.-C. Bonichot (Rapporteur), S. Rodin and L.S. Rossi, Judges,

Advocate General: L. Medina,

Registrar: R. Șereș, Administrator,

having regard to the written procedure and further to the hearing on 4 May 2023,

* Language of the case: Romanian.

after considering the observations submitted on behalf of:

– Societatea Civilă Profesională de Avocați AB & CD, by D. Ionescu and by P.F. Plopeanu and I. Stoia, avocați,

– Președintele Consiliului Județean Suceava and Consiliul Județean Suceava, by Y. Beşleagă and V. Stoica, avocați,

– Ireland, by M. Browne, Chief State Solicitor, A. Joyce and M. Tierney, acting as Agents, and by B. Foley, Senior Council, D. McGrath, Senior Council, and E. Burke-Murphy, Barrister-at-Law,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by G. Gattinara and M. Ioan, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 July 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(4) and Article 9(3) to (5) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1) ('the Aarhus Convention').

2 The request has been made in proceedings between Societatea Civilă Profesională de Avocați AB & CD, a law firm partnership registered under Romanian law ('AB & CD') and various public bodies concerning the lawfulness of administrative measures adopted by those bodies for the construction of a landfill site in Pojorâta (Romania), namely a zoning plan of 16 September 2009 and a building permit of 3 October 2012.

Legal context

International law

3 Article 2 of the Aarhus Convention, headed 'Definitions', provides in paragraphs 4 and 5:

'4. "The public" means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organisations or groups;

5. "The public concerned" means the public affected or likely to be affected by, or having an interest in, environmental decision-making; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.'

4 Article 3(8) of the Aarhus Convention provides:

‘8. Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalised, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings.’

5 Article 9 of the Aarhus Convention, headed ‘Access to justice’, provides, in paragraphs 2 to 5:

‘2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned:

(a) having a sufficient interest or, alternatively,

(b) maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition,

have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 2(5), shall be deemed sufficient for the purpose of subparagraph (a) above. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

…

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. …

5. In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.’

Romanian law

6 Article 56 of the Legea nr. 134/2010 privind Codul de procedură civilă (Law No 134/2010 on the Code of Civil Procedure) (*Monitorul Oficial al României*, Part I, No 247 of 10 April 2015), in the version applicable to the dispute in the main proceedings ('the Code of Civil Procedure'), provides:

'1. Any person who has civil rights can be a party to the proceedings.

2. However, associations, companies or other entities without legal personality can be a party to legal proceedings, provided that they are formed in accordance with the law.

…'

7 Article 451 of the Code of Civil Procedure is worded as follows:

'1. Costs shall include stamp fees and court stamping fees, lawyers', experts' and specialists' fees designated in accordance with Article 330(3), sums payable to witnesses for travel costs and in respect of losses incurred as a result of their presence at court, transport costs and, where applicable, accommodation costs, and all other expenses necessary for the proper conduct of the proceedings.

2. The court may, even of its own motion, reduce the part of the costs corresponding to the lawyers' fees – while providing reasons for such reduction – where those costs are manifestly disproportionate to the value or complexity of the case or to the work carried out by the lawyer, having regard also to the circumstances of the case. The measure taken by the court shall have no effect on the relationship between the lawyer and his or her client.

…

4. However, costs may not be reduced in respect of the payment of stamp duty and court stamping fees or the payment of sums payable to witnesses under paragraph 1.'

8 Article 452 of the Code of Civil Procedure provides:

'The party seeking an order for costs must prove, under the conditions laid down by law, the existence and extent of those costs no later than the date on which the arguments on the substance of the case are concluded.'

9 Under Article 453 of the Code of Civil Procedure:

'1. The losing party shall be ordered to pay the costs of the successful party, if the successful party so requests.

2. Where the application has been upheld only in part, the judges shall determine to what extent each of the parties may be ordered to pay the costs. Where appropriate, the judges may order that the costs be offset.'

10 Article 1 of Legea contenciosului administrativ nr. 554/2004 (Law on Administrative Proceedings No 554/2004) (*Monitorul Oficial al României*, Part I, No 1154 of 7 December 2004), in the version in force at the time of the events in the main proceedings ('the Law on Administrative Proceedings'), provides:

'1. Any person who considers that one of his or her rights has been impaired or that one of his or her legitimate interests has been undermined by a public authority, by means of an administrative measure or through a failure to deal with an application within the time limit laid down by law, may apply to the administrative court with jurisdiction for annulment of the measure, recognition of the right or legitimate interest relied on, and compensation for the damage suffered. The legitimate interest may be either private or public.

2. Any person whose rights have been impaired or legitimate interests have been undermined by an individual administrative measure addressed to another person may also apply to the administrative court.'

…'

11 Article 2(1) of the Law on Administrative Proceedings states:

'For the purposes of this Law, the terms and expressions set out below shall have the following meanings:

…

(p) "legitimate private interest" shall mean the ability to expect certain conduct with regard to the fulfilment of an anticipated future and foreseeable subjective right;

(r) "legitimate public interest" shall mean an interest with regard to the legal system and constitutional democracy, the guarantee of citizens' fundamental rights, freedoms and duties, the fulfilment of the needs of the community and the exercise of the powers of public authorities;

(s) "interested social organisations" shall mean non-governmental structures, trade unions, associations, foundations and other similar bodies, the purpose of which is to protect the rights of different categories of citizens or the proper functioning of public administrative services, as the case may be.

…'

12 Article 8(1)A of the Law on Administrative Proceedings states:

'Natural persons and legal persons governed by private law may bring an action to protect a legitimate public interest only by way of an alternative submission, where the infringement of the legitimate public interest logically stems from the infringement of a subjective right or of a legitimate private interest.'

13 Article 196(3) of the Statutul profesiei de avocat (Statute of the profession of lawyer) (*Monitorul Oficial al României*, Part I, No 898 of 3 December 2011) is worded as follows:

'For disputes arising from the performance of professional activity, the partnership may take legal action as an applicant or defendant, even if it does not have legal personality.'

14 Under Article 20(5) and (6) of the Ordonanța de urgență a Guvernului nr. 195/2005 privind protecția mediului (Emergency Government Order No 195/2005 on the protection of the environment) (*Monitorul Oficial al României*, Part I, No 1196 of 30 December 2005) ('OUG No 195/2005'):

'5. Public access to justice shall be based on the legislation in force.

6. Non-governmental organisations promoting the protection of the environment shall have the right to take legal action in environmental matters and have standing in disputes concerning the protection of the environment.'

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

15 By an action brought before the Tribunalul Cluj (Regional Court, Cluj, Romania), in October 2018, a law firm partnership, AB & CD, sought the annulment of various administrative measures adopted by the Romanian authorities for the construction of a landfill site in Pojorâta, namely the zoning plan of 16 September 2009 and the building permit of 3 October 2012.

16 In support of its action, AB & CD relied, inter alia, on Article 35 of the Romanian Constitution relating to the right to a healthy environment, as well as several provisions of OUG No 195/2005 and the Hotărârea de Guvernului nr. 1076/2004 privind stabilirea procedurii de realizare a evaluării de mediu pentru planuri și programe (Government Decision No 1076/2004 on the establishment of the procedure for the environmental assessment of plans and programmes), while the defendants claimed that the landfill site in question complied with all the technical requirements under Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1).

17 In addition, the defendants raised three pleas of inadmissibility.

18 First, under Romanian law, AB & CD does not have legal personality and cannot be a party to legal proceedings, except as regards disputes arising from the exercise of its professional activity, which is not the case in the present instance. Second, since it had not argued that its individual rights or its private legitimate interests had been impaired or undermined, that law firm partnership had failed to establish either its standing to bring proceedings or its interest in bringing proceedings against the administrative measures at issue.

19 By judgment of 7 February 2019, the Tribunalul Cluj (Regional Court, Cluj) rejected the plea of inadmissibility regarding the argument that AB & CD could not be a party to legal proceedings. Nevertheless, it upheld the two other pleas of inadmissibility arguing that AB & CD had neither standing to bring proceedings nor an interest in bringing proceedings. It follows from the Law on Administrative Proceedings that an applicant may rely on a public interest only in the alternative, in so far as the undermining of that interest is the result of an impairment of a right or of an undermining of a legitimate private interest. However, AB & CD, as a law firm partnership, did

not refer to any undermining of a private legitimate interest. It is thus apparent from the order for reference that those two pleas were examined together, since AB & CD does not have standing to bring proceedings because it has not shown that it has a private legitimate interest.

20 AB & CD brought an appeal before the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania). A cross-appeal was lodged by the Consiliul Județean Suceava (Suceava County Council, Romania) challenging the rejection of the plea of inadmissibility alleging lack of capacity to bring legal proceedings.

21 By a judgment of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania) which granted an application by Suceava County Council asking it to require the Curtea de Apel Cluj (Court of Appeal, Cluj) to decline jurisdiction, those appeals were transferred to the Curtea de Apel Târgu-Mureș (Court of Appeal, Târgu-Mureș, Romania), which is the referring court.

22 The referring court notes that, in the present case, it is required to apply Article 20 of OUG No 195/2005. Under paragraph 5 of that article, access to justice in environmental matters is to be granted in accordance with the 'legislation in force', whereas, under paragraph 6 of that article, a special regime applies to actions by non-governmental organisations promoting the protection of the environment.

23 It is common ground that AB & CD does not benefit from the regime laid down for those organisations and that, consequently, the admissibility of its action against the administrative measures at issue and, in particular, the question whether it has standing to bring proceedings, must be assessed in the light of the general rules laid down in the Law on Administrative Proceedings.

24 It is clear from that law that the Romanian legislature opted for a 'subjective' dispute, which means that, initially, an applicant must assert that he or she has an interest of his or her own, namely a 'legitimate private interest', as referred to in Article 2(1)(p) of that law. It is only subsequently, after he or she has proved that he or she has his or her own interest, that an applicant may also invoke a 'legitimate public interest'.

25 By contrast, under Article 20(6) of OUG No 195/2005, non-governmental organisations for the protection of the environment are not required to demonstrate a legitimate private interest and may therefore have access to justice in an objective dispute.

26 All those provisions reflect those of Article 9(2) of the Aarhus Convention, which governs access to justice for 'the public concerned', namely, in accordance with Article 2(5) of that convention, 'the public affected or likely to be affected by … the environmental decision-making'.

27 It follows that, in order to demonstrate that it has standing to bring proceedings, AB & CD ought to have demonstrated a legitimate private interest or the existence of a legal situation directly linked to the object of the partnership, by proving that it had been affected by the administrative measures at issue.

28 The referring court has doubts as to whether, in an environmental dispute, such a requirement can be in line with EU law and, in particular, with Article 9(3) of the Aarhus Convention.

29 In addition, the referring court notes that, in the case of law firm partnerships which do not have legal personality, such as AB & CD, Article 196(3) of the Statute of the profession of lawyer grants them the right to be a party to legal proceedings as an applicant or defendant only in respect of disputes arising from the performance of professional activity.

30 In the present case, AB & CD did not rely on an impairments of its own rights, but on an undermining of the public interest and an impairment the rights of the lawyers of which it is composed, claiming that the Pojorâta landfill site had a significant impact on them and, potentially, on the health of persons living in the region concerned as well as on tourism. In that context, the referring court seeks to ascertain whether Article 9(3) of the Aarhus Convention confers on AB & CD the right to bring proceedings in the context of its action against the administrative measures at issue.

31 Lastly, the referring court notes that AB & CD submits that there is a risk that it will be ordered to pay legal costs that are prohibitively expensive and that Romanian law does not allow it to predict the amount that it might have to pay.

32 In that regard, Articles 451 to 453 of the Code of Civil Procedure govern, in general, the issue of costs. Those costs include, inter alia, court costs and lawyers' fees. The losing party may be ordered to pay the costs if they have been applied for by the successful party. Where the lawyers' fees are manifestly disproportionate to the complexity of the case or to the work carried out by the lawyer, the court before which the action has been brought may reduce the part of the costs corresponding to the lawyers' fees.

33 The referring court seeks to establish whether those rules of Romanian law are consistent with the requirement, laid down in Article 9(4) of the Aarhus Convention, that judicial proceedings in environmental matters must not be prohibitively expensive. Furthermore, that court states that it is not certain that Articles 451 to 453 of the Code of Civil Procedure contain sufficient criteria to enable a person governed by private law to assess and predict the high costs of litigation.

34 In those circumstances, the Curtea de Apel Târgu-Mureș (Court of Appeal, Târgu-Mureş) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Are [the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union ("the Charter")], read in conjunction with [the second subparagraph of Article 19(1) TEU], and Article 2(4) of the [Aarhus Convention], read in conjunction with Article 9(3) thereof, to be interpreted as meaning that the concept of "the public" includes a legal entity such as a law firm partnership, which does not rely on the infringement of any right or interest specific to that entity, but rather the infringement of the rights and interests of natural persons – namely the lawyers of which that partnership is comprised – [and] can such an entity be treated as a group of natural persons acting through an association or organisation for the purposes of Article 2(4) of the [Aarhus Convention]?

(2) If the first question is answered in the affirmative, having regard [both] to the objectives of Article 9(3) of the [Aarhus Convention] and to the objective of effective judicial protection of the rights conferred by EU law, must Article 9(3) of the [Aarhus Convention] and [the first and second paragraphs of Article 47 of the Charter], read in conjunction with [the second subparagraph of Article 19(1) TEU], be interpreted as precluding a provision of national law that makes access to justice for such a law firm partnership conditional on proof

of an interest of its own or on the fact that, by bringing the action, it seeks to protect a legal situation directly connected with the specific purpose for which that type of organisation (in this case, a law firm partnership) was established?

(3) If the first and second questions are answered in the affirmative, or regardless of the answers to those two questions as set out above, must Article 9(3), (4) [and] [(5)] of the [Aarhus Convention] and [the first and second paragraphs of Article 47 of the Charter], read in conjunction with [the second subparagraph of Article 19(1) TEU], be interpreted as meaning that the expression that adequate and effective remedies, including the adoption of a judicial decision, should not be "prohibitively expensive", presupposes rules and/or criteria to limit the costs that may be incurred by the unsuccessful party to the proceedings, in the sense that a national court or tribunal must ensure that the requirement that the cost not be prohibitively expensive is met, taking into account [both] the interest of the person who wishes to defend his or her rights and the public interest in the protection of the environment?'

Procedure before the Court

35 The referring court asked the Court to apply the accelerated preliminary ruling procedure provided for in Article 105 of the Rules of Procedure of the Court of Justice, given that the dispute has been pending before the national courts since 3 October 2018.

36 The President of the Court, after hearing the Judge-Rapporteur and the Advocate General, refused that request by decision of 10 June 2022. The fact that the referring court is required to do everything possible to ensure that the case in the main proceedings is resolved swiftly is not in itself sufficient to justify the use of the expedited procedure (see, to that effect, order of the President of the Court of 31 July 2017, *Mobit and Autolinee Toscane*, C-350/17 and C-351/17, EU:C:2017:626, paragraph 6 and the case-law cited).

Consideration of the questions referred

Admissibility of the request for a preliminary ruling

37 In its written observations, the Commission set out its doubts as to the clarity of the request for a preliminary ruling, on account of the incomplete description, by the referring court, of the pleas in law relied on by AB & CD in support of its action and the rights which it derives from EU law.

38 In that regard, it should be observed that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 25 May 2023, *WertInvest Hotelbetrieb*, C-575/21, EU:C:2023:425, paragraph 30 and the case-law cited).

39 By its questions, the referring court asks the Court of Justice to interpret the Aarhus Convention and seeks to ascertain, in particular, whether AB & CD may rely on the right to challenge acts and omissions guaranteed in Article 9(3) of that convention.

40 Under that provision 'each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment'.

41 As the Advocate General stated in points 32 to 34 of her Opinion, it is clear from the request for a preliminary ruling that the main proceedings entail a review of whether the administrative measures are lawful in the light of the obligations in the area of the landfill of waste under Directive 1999/31. It follows that those proceedings concern compliance with the 'national law relating to the environment', as referred to in Article 9(3) of the Aarhus Convention, and relate to the substantive scope of that provision (see, to that effect, judgment of 8 November 2022, *Deutsche Umwelthilfe (Approval of motor vehicles)*, C-873/19, EU:C:2022:857, paragraphs 50, 56 and 58).

42 Consequently, the present request for a preliminary ruling is admissible.

The second question

43 By its second question, which it is appropriate to examine first, the referring court asks, in essence, whether Article 9(3) of the Aarhus Convention must be interpreted as precluding national legislation under which a legal entity, other than a non-governmental organisation for the protection of the environment, is recognised as having standing to bring proceedings against an administrative measure of which it is not the addressee only where it claims that there has been a failure to observe a legitimate private interest or an interest connected to a legal situation which is directly related to the object of that entity.

44 As a preliminary point, it should be noted that it is apparent from the request for a preliminary ruling that, under Articles 1, 2 and 8 of the Law on Administrative Proceedings, an injured party, whether a natural person or a legal person governed by private law or a social organisation, must claim that his, her or its own interest, namely a legitimate private interest, has not been observed. As regards specifically a law firm partnership without legal personality, such as AB & CD, the referring court also refers to Article 196(3) of the Statute of the profession of lawyer, under which such a partnership may be a party to legal proceedings only in order to protect interests connected to a legal situation which is directly related to its object, namely the exercise of a professional activity. In essence, such interests may be invoked, inter alia, by persons who are affected or may be affected by an administrative measure.

45 In addition, legitimate private interests must be distinguished from legitimate public interests. The latter may be relied on by an applicant only if he, she or it can show, primarily, a legitimate private interest.

46 In environmental matters, an exception to the latter rule is laid down in Article 20(6) of OUG No 195/2005 for non-governmental organisations promoting environmental protection. That provision allows them to rely, primarily, on a legitimate public interest without being required to demonstrate a legitimate private interest.

47 In the present case, the parties agree that the law firm partnership AB & CD, the applicant in the main proceedings, cannot be treated as such an environmental protection organisation and that, consequently, under national law, it falls within the category of applicants who have standing to bring proceedings only where they establish a legitimate private interest.

48 In that regard, it is also clear from the request for a preliminary ruling that, in the context of its action against the administrative measures at issue in the main proceedings, namely the zoning plan of 16 September 2009 and the building permit of 3 October 2012, AB & CD did not argue that its own rights had been impaired, and, in particular, it failed to establish that it had either a legitimate private interest or an interest connected to a legal situation which is directly related to the partnership's object. It follows that it does not have standing to bring proceedings before the referring court. The written observations submitted to the Court and the oral arguments presented at the hearing on 4 May 2023 confirmed that neither that law firm partnership nor the group of persons of which it is composed have a specific connection to the project concerned by the administrative measures at issue in the main proceedings and that that group of persons had not demonstrated a legitimate private interest.

49 That is the context for the second question, by which the referring court seeks to determine whether Article 9(3) of the Aarhus Convention must be interpreted as precluding a provision of national law which makes the admissibility of the action conditional on the establishment of a legitimate private interest and the application of which would mean, in the present case, that the action brought by AB & CD is inadmissible.

50 First of all, it follows from that provision – and in particular from the fact that, in accordance with the wording thereof, the review procedures referred to therein may be made subject to certain 'criteria' being met – that Member States may, in the context of the discretion they have in that regard, establish procedural rules setting out conditions that must be satisfied in order to be able to pursue such review procedures (judgment of 8 November 2022, *Deutsche Umwelthilfe (Approval of motor vehicles)*, C-873/19, EU:C:2022:857, paragraph 63 and the case-law cited).

51 As regards, next, the extent of that discretion, the Court has held that, according to the actual wording of Article 9(3) of the Aarhus Convention, the criteria that Member States can lay down in their national law relate to the determination of those persons entitled to bring an action, not to the determination of the subject matter of the action in so far as the latter concerns infringement of provisions of national environmental law (see, to that effect, judgment of 8 November 2022, *Deutsche Umwelthilfe (Approval of motor vehicles)*, C-873/19, EU:C:2022:857, paragraph 64).

52 In addition, under the system established by the Aarhus Convention, Article 9(2) of that convention provides for a right to bring an action against measures falling within the scope of Article 6 thereof in favour of a limited group of persons, namely members of the public 'concerned', as referred to in Article 2(5) of that convention.

53 Article 9(3) of the Aarhus Convention is broader in scope in that it covers a wider category of measures and decisions and is addressed to members of the 'public' in general. On the other hand, that provision confers a greater discretion on the Member States when they lay down the criteria for determining, among all members of the public, who actually has the right to bring the action provided for in that provision (see, to that effect, judgment of 14 January 2021, *Stichting Varkens in Nood and Others*, C-826/18, EU:C:2021:7, paragraphs 36, 37 and 62).

54 However, as is apparent from the case-law of the Court, the right to bring proceedings set out in Article 9(3) of the Aarhus Convention would be deprived of all useful effect if, by imposing those conditions, certain categories of 'members of the public' were to be denied of any right to bring proceedings (judgment of 14 January 2021, *Stichting Varkens in Nood and Others*, C-826/18, EU:C:2021:7, paragraph 50 and the case-law cited).

55 Lastly, it should also be noted, as the Advocate General observed in point 61 of her Opinion, that it is apparent from the document published by the United Nations Economic Commission for Europe, titled 'The Aarhus Convention: An Implementation Guide' (Second edition, 2014), that the parties to that convention 'are not obliged to establish a system of popular action (*actio popularis*) in their national laws with the effect that anyone can challenge any decision, act or omission relating to the environment'.

56 In the present case, as has been pointed out in paragraphs 44 to 46 of the present judgment, pursuant to the provisions of the Law on Administrative Proceedings, the applicants, other than environmental protection associations, have standing to bring proceedings against an administrative measure of which they are not the addressees only if they show that they have a 'legitimate private interest' of their own, which is the case, inter alia, where they are affected or may be affected by such a measure.

57 In that regard, it should be noted, in the first place, that that condition laid down in Romanian law makes it possible to determine who actually has the right to bring the action provided for in Article 9(3) of the Aarhus Convention, without limiting the subject matter of the action.

58 In the second place, it does not appear that, in applying that condition, certain 'categories' of members of the public are denied any right to bring an action. On the contrary, the need to establish a legitimate private interest means only that actions brought by persons who have no specific connection to the administrative measure that they wish to challenge are inadmissible. Thus, the Romanian legislature avoided giving rise to a popular action, without unduly restricting access to justice.

59 In the latter regard, it should be recalled that the Court has held, in the context of Article 11 of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1), which implements Article 9(2) of the Aarhus Convention, that it is open to the national legislature to restrict the rights that, when they are not observed, may be relied on by an individual in order to be able to bring judicial proceedings under Article 11 solely to subjective rights, that is to say, individual rights (see, to that effect, judgment of 28 May 2020, *Land Nordrhein-Westfalen*, C-535/18, EU:C:2020:391, paragraph 57 and the case-law cited).

60 Those considerations apply a fortiori as regards the implementation of Article 9(3) of the Aarhus Convention. As has been pointed out in paragraph 53 of the present judgment, that provision confers greater discretion on the Member States when they lay down the criteria for determining who actually has the right to bring an action as provided for therein than when they implement Article 9(2) of that convention.

61 In the third and last place, the condition relating to the justification of a legitimate private interest does not apply to environmental protection associations recognised by Romanian law. They are in a position to defend the public interest without having to demonstrate that they have been individually affected.

62 In those circumstances, it must be held, subject to the checks to be carried out by the referring court, that it appears that the requirements laid down in paragraphs 50 to 55 of the present judgment are satisfied by a condition which makes the standing of applicants, other than environmental protection associations, to bring proceedings against an administrative measure of which they are not the addressee subject to those applicants establishing that they have a legitimate private interest.

63 In the light of the findings above, the answer to the second question is that Article 9(3) of the Aarhus Convention must be interpreted as not precluding national legislation under which a legal entity, other than a non-governmental organisation for the protection of the environment, is recognised as having standing to bring proceedings against an administrative measure of which it is not the addressee only where it claims that there has been a failure to observe a legitimate private interest or an interest connected to a legal situation which is directly related to the object of that entity.

The first question

64 In the present case, as is apparent from paragraph 47 of the present judgment, the parties agree that, in the context of the action against the administrative measures at issue in the main proceedings, AB & CD must, in order to demonstrate its standing to bring proceedings, establish an interest connected to a legal situation which is directly related to its object or, as a group of persons comprising that partnership, a legitimate private interest.

65 As has been pointed out in paragraph 48 of the present judgment, it is apparent from the request for a preliminary ruling that, in the context of that action, neither AB & CD nor the group of persons comprising that partnership have established a legitimate private interest and that AB & CD has not established an interest connected to a legal situation which is directly related to its object.

66 It follows that, in the light of the answer given to the second question, it is no longer necessary to answer the first question, by which the referring court seeks to establish whether AB & CD comes within the concept of 'public', namely the group of persons referred to in Article 2(4) of the Aarhus Convention, which may, subject to compliance with the conditions laid down by the Member States, claim the right to bring an action guaranteed in Article 9(3) of that convention.

The third question

67 By its third question, the referring court asks, in essence, whether Article 9(4) and (5) of the Aarhus Convention, read in the light of Article 47 of the Charter, must be interpreted as meaning that, in order to ensure compliance with the requirement that judicial proceedings not be prohibitively expensive, a court called upon to make an order for costs against an unsuccessful party in an environmental dispute must take into account that party's interest and the public interest in the protection of the environment.

68 As a preliminary point, it should be recalled that it has been established, in paragraph 41 of the present judgment, that the dispute in the main proceedings concerns, as regards the substance, compliance with national environmental law, referred to in Article 9(3) of the Aarhus Convention, and therefore falls within the material scope of that provision.

69 Furthermore, the Court has held previously that paragraph 4 of that article, which specifies the characteristics that those procedures must have, in particular that they should not be prohibitively expensive, applies expressly to the procedure referred to in paragraph 3 of that article (judgment of 15 March 2018, *North East Pylon Pressure Campaign and Sheehy*, C-470/16, EU:C:2018:185, paragraph 48).

70 Consequently, the requirement that certain judicial procedures not be prohibitively expensive laid down in the Aarhus Convention must be regarded as applying to a procedure such as that at issue in the main proceedings, in that it is intended to contest, on the basis of national environmental law, a zoning plan and a building permit (judgment of 15 March 2018, *North East Pylon Pressure Campaign and Sheehy*, C-470/16, EU:C:2018:185, paragraph 49).

71 It should be noted that such a requirement applies irrespective of the outcome of the main proceedings, even if the action brought by the applicant in the main proceedings is dismissed as inadmissible due to a lack of standing to bring proceedings or an interest in bringing proceedings. The fact remains that, as noted in paragraph 68 of the present judgment, the dispute in the main proceedings falls within the material scope of Article 9(3) of the Aarhus Convention.

72 As to the substance, the requirement that judicial proceedings in environmental matters must not be prohibitively expensive in no way prevents national courts from ordering an applicant to pay costs. That follows expressly from Article 3(8) of the Aarhus Convention, which states that the powers of national courts to award reasonable costs in judicial proceedings are not to be affected (see, to that effect, judgment of 15 March 2018, *North East Pylon Pressure Campaign and Sheehy*, C-470/16, EU:C:2018:185, paragraph 60 and the case-law cited).

73 Additionally, the requirement that litigation should not be prohibitively expensive concerns all the costs arising from participation in the judicial proceedings, and the prohibitive nature of costs must therefore be assessed as a whole, taking into account all the costs borne by the party concerned (see, by analogy, judgment of 11 April 2013, *Edwards and Pallikaropoulos*, C-260/11, EU:C:2013:221, paragraphs 27 and 28 and the case-law cited).

74 In that context, account must be taken of both the interest of the person wishing to defend his or her rights and the public interest in the protection of the environment. Consequently, that assessment cannot be carried out solely on the basis of the financial situation of the person concerned but must also be based on an objective analysis of the amount of the costs, particularly since members of the public and associations are naturally required to play an active role in defending the environment. Thus, the cost of proceedings must neither exceed the financial resources of the person concerned nor appear, in any event, to be objectively unreasonable (see, by analogy, judgment of 11 April 2013, *Edwards and Pallikaropoulos*, C-260/11, EU:C:2013:221, paragraphs 39 and 40).

75 The court may also take into account the situation of the parties concerned, whether the applicant has a reasonable prospect of success, the importance of what is at stake for the applicant and for the protection of the environment, the complexity of the relevant law and procedure and the potentially frivolous nature of the claim at its various stages (see, by analogy, judgment of 11 April 2013, *Edwards and Pallikaropoulos*, C-260/11, EU:C:2013:221, paragraph 42 and the case-law cited).

76 As regards the inferences that the national court must draw from that interpretation of Article 9(4) of the Aarhus Convention, in a dispute such as the one in the main proceedings, it must be borne in mind that that provision does not contain any unconditional and sufficiently precise obligation capable of directly regulating the legal position of individuals and that, consequently, it does not have direct effect (see, to that effect, judgment of 15 March 2018, *North East Pylon Pressure Campaign and Sheehy*, C-470/16, EU:C:2018:185, paragraphs 52 and 53 and the case-law cited).

77 The same is true of Article 9(5) of that convention in so far as it provides that the parties to that convention are to consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice (see, to that effect, judgment of 28 July 2016, *Ordre des barreaux francophones et germanophone and Others*, C-543/14, EU:C:2016:605, paragraph 55).

78 However, it must be noted that those provisions, although they do not have direct effect, are intended to ensure effective environmental protection (judgment of 15 March 2018, *North East Pylon Pressure Campaign and Sheehy*, C-470/16, EU:C:2018:185, paragraph 53).

79 In addition, the requirement that the cost should be 'not prohibitively expensive' pertains, in environmental matters, to the observance of the right to an effective remedy enshrined in Article 47 of the Charter, and to the principle of effectiveness, in accordance with which detailed procedural rules governing actions for safeguarding an individual's rights under EU law must not make it in practice impossible or excessively difficult to exercise rights conferred by EU law (judgment of 11 April 2013, *Edwards and Pallikaropoulos*, C-260/11, EU:C:2013:221, paragraph 33 and the case-law cited).

80 In the light of the limited information contained in the request for a preliminary ruling, the Court cannot determine to what extent Articles 451 to 453 of the Code of Civil Procedure, which govern, in general, the question of costs in Romanian law and which appear to apply to the dispute in the main proceedings, allow the referring court to carry out an overall assessment of the costs borne by the party concerned and to take account, in its decision on costs, of the criteria referred to in paragraphs 74 and 75 of the present judgment. It also appears that that court may reduce only part of the costs, namely those corresponding to lawyers' fees.

81 As the Advocate General observed, in essence, in points 75 and 76 of her Opinion, given the broad discretion Member States enjoy when implementing Article 9(4) of the Aarhus Convention, the absence of a detailed determination of costs in environmental litigation by national legislation cannot be considered as such as incompatible with the rule that costs must not be prohibitively expensive. It is, however, for the referring court to verify to what extent the mechanisms existing in Romanian law comply with the requirements arising from that Article 9(4).

82 In that context, it should also be noted that, in order to ensure effective judicial protection where, as in the present case, the application of national environmental law is at issue, the referring court is obliged to give an interpretation of national procedural law which, to the fullest extent possible, is consistent with the objective laid down in Article 9(4) of the Aarhus Convention, so that judicial procedures are not prohibitively expensive (see, to that effect, judgments of 8 March 2011, *Lesoochranárske zoskupenie*, C-240/09, EU:C:2011:125, paragraph 50, and of 15 March 2018, *North East Pylon Pressure Campaign and Sheehy*, C-470/16, EU:C:2018:185, paragraph 57).

83 In the light of all the findings above, the answer to the third question is that Article 9(4) and (5) of the Aarhus Convention, read in the light of Article 47 of the Charter, must be interpreted as meaning that, in order to ensure compliance with the requirement that judicial proceedings not be prohibitively expensive, a court called upon to make an order for costs against an unsuccessful party in an environmental dispute must take into account all the circumstances of the case, including that party's interest and the public interest in the protection of the environment.

Costs

84 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 (Fourth Chamber) hereby rules:

1. **Article 9(3) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005,**

   must be interpreted as not precluding national legislation under which a legal entity, other than a non-governmental organisation for the protection of the environment, is recognised as having standing to bring proceedings against an administrative measure of which it is not the addressee only where it claims that there has been a failure to observe a legitimate private interest or an interest connected to a legal situation which is directly related to the object of that entity.

2. **Article 9(4) and (5) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union,**

   must be interpreted as meaning that, in order to ensure compliance with the requirement that judicial proceedings not be prohibitively expensive, a court called upon to make an order for costs against an unsuccessful party in an environmental dispute must take into account all the circumstances of the case, including that party's interest and the public interest in the protection of the environment.

[Signatures]