



Reports of Cases

Case C-416/10

Jozef Križan and Others

v

Slovenská inšpekcia životného prostredia

(Request for a preliminary ruling from the Najvyšší súd Slovenskej republiky)

(Article 267 TFEU — Annulment of a judicial decision — Referral back to the court concerned — Obligation to comply with the annulment decision — Request for a preliminary ruling — Whether possible — Environment — Aarhus Convention — Directive 85/337/EEC — Directive 96/61/EC — Public participation in the decision-making process — Construction of a landfill site — Application for a permit — Trade secrets — Non-communication of a document to the public — Effect on the validity of the decision authorising the landfill site — Rectification — Assessment of the environmental impact of the project — Final opinion prior to accession of the Member State to the European Union — Application in time of Directive 85/337 — Effective legal remedy — Interim measures — Suspension of implementation — Annulment of the contested decision — Right to property — Interference)

Summary — Judgment of the Court (Grand Chamber), 15 January 2013

1. *Questions referred for a preliminary ruling — Admissibility — Conditions — Questions bearing no relation to the actual facts of the dispute or its purpose — Questions on the interpretation of provisions of EU law which do not have direct effect — Clarity of the applicable national provisions — No effect*
(Art. 267 TFEU)
2. *Questions referred for a preliminary ruling — Reference to the Court — Question raised by the national court of its own motion — Lawfulness*
(Art. 267 TFEU)
3. *Questions referred for a preliminary ruling — Reference to the Court — Obligation to make a request for a preliminary ruling — National court ruling following a referral back from the constitutional court — Obligation to resolve the dispute following the legal position expressed by the constitutional court — No effect*
(Art. 267(3) TFEU)

4. *Questions referred for a preliminary ruling — Reference to the Court — Obligation to make a request for a preliminary ruling — Possibility of bringing an action before the constitutional court against the decisions of the referring court — Action limited to the examination of an infringement of the rights and freedoms guaranteed by the national constitution or by an international agreement — No effect*

(Art. 267(3) TFEU)

5. *Environment — Integrated pollution prevention and control — Directive 96/61 — Public participation in the decision-making process — Authorisation procedure for the location of an installation — Obligation to ensure access to relevant information — Scope*

(Aarhus Convention, Art. 6; Council Directive 96/61, Art. 15 and Annex V)

6. *Environment — Integrated pollution prevention and control — Directive 96/61 — Public participation in the decision-making process — Obligation to ensure access to relevant information — Limits — Grounds which may justify a refusal to supply information relating to the environment — Location of an installation coming within the scope of the directive — Confidentiality of commercial or industrial information — Scope*

(European Parliament and Council Directive 2003/4, Art. 4(2) first para. (d), and (4); Council Directive 96/61, Art. 15(4))

7. *Environment — Integrated pollution prevention and control — Directive 96/61 — Public participation in the decision-making process — Obligation to ensure access to relevant information — Rectification of an unjustified refusal of access to that information — Conditions*

(Aarhus Convention, Art. 6; Council Directive 96/61, Art. 15 and Annex V)

8. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337 — Temporal application — Application for a permit for a project formally lodged before the expiry of the period set for transposition of the directive — Inapplicability of the directive*

(Council Directive 85/337)

9. *Environment — Integrated pollution prevention and control — Directive 96/61 — Right to challenge an authorisation decision — Possibility to ask the court or the competent national body to grant interim measures*

(Council Directive 96/61, Arts 4 and 15a)

10. *Environment — Integrated pollution prevention and control — Directive 96/61 — Annulment by the national court of a development consent decision taken in breach of the directive — Infringement of property rights — No such infringement*

(Charter of Fundamental Rights of the European Union, Art. 17; Aarhus Convention, Art. 9(2) and (4); Council Directive 96/61, Art. 15a)

1. See the text of the decision.

(see paras 53-56, 58-60)

2. See the text of the decision.

(see paras 64-66)

3. Article 267 TFEU must be interpreted as meaning that a national court, against whose decisions there is no judicial remedy under national law within the meaning of the third paragraph of that article is obliged to make, of its own motion, a request for a preliminary ruling to the Court of Justice even though it is ruling on a referral back to it after its first decision was set aside by the constitutional court of the Member State concerned and even though a national rule obliges it to resolve the dispute by following the legal opinion of that latter court.

The existence of a national procedural rule cannot call into question the discretion of national courts to make a request to the Court of Justice for a preliminary ruling where they have doubts as to the interpretation of EU law. A rule of national law, pursuant to which legal rulings of a higher court bind another national court, cannot take away from the latter court the discretion to refer to the Court of Justice questions of interpretation of the points of EU law concerned by such legal rulings. That court must be free, if it considers that a higher court's legal ruling could lead it to deliver a judgment contrary to EU law, to refer to the Court of Justice questions which concern it.

(see paras 67, 68, 73, operative part 1)

4. The possibility of bringing, before the constitutional court of the Member State concerned, an action against the decisions of a national court, limited to an examination of a potential infringement of the rights and freedoms guaranteed by the national constitution or by an international agreement, cannot allow the view to be taken that that national court cannot be classified as a court against whose decisions there is no judicial remedy under national law within the meaning of the third paragraph of Article 267 TFEU. Therefore, such a court is required to make a request for a preliminary ruling to the Court of Justice when it finds that the substance of the dispute concerns a question to be resolved which comes within the scope of the first paragraph of Article 267 TFEU.

(see para. 72)

5. Directive 96/61 concerning integrated pollution prevention and control, as amended by Regulation No 166/2006, must be interpreted as requiring that the public concerned have access to an urban planning decision where that decision, from the beginning of the authorisation procedure for the installation concerned, includes relevant information within the meaning of Annex V to the directive.

(see paras 79, 91, operative part 2)

6. Directive 96/61 concerning integrated pollution prevention and control, as amended by Regulation No 166/2006, must be interpreted as meaning that it does not allow the competent national authorities to refuse the public concerned any access, even partial, to a decision by which a public authority authorises, having regard to the applicable urban planning rules, the location of an installation which falls within the scope of that directive, by relying on the protection of the confidentiality of commercial or industrial information where such confidentiality is provided for by national or EU law to protect a legitimate economic interest, taking account of, *inter alia*, the importance of the location of one or another of the activities referred to in Directive 96/61.

Even if certain elements included in the grounds for an urban planning decision may contain confidential commercial or industrial information, the protection of the confidentiality of such information cannot be used, in breach of Article 4(4) of Directive 2003/4 on public access to environmental information, to refuse the public concerned any access, even partial, to the urban planning decision concerning the location of the installation at issue in the main proceedings.

(see paras 82, 83, 91, operative part 2)

7. Directive 96/61 concerning integrated pollution prevention and control, as amended by Regulation No 166/2006, interpreted in the light of the principles of effectiveness and equivalence and Article 6 of the Convention of access to information, public participation in decision-making and access to justice in environmental matters (the Aarhus Convention), does not preclude the possibility of rectifying, during the administrative procedure at second instance, an unjustified refusal to make available to the public concerned an urban planning decision, where it is considered to include relevant information within the meaning of Annex V to the directive during the administrative procedure at first instance, provided that, first, national law allows procedural flaws of a comparable internal nature to be rectified during the administrative procedure at second instance, and second, all options and solutions remain possible and that rectification at that stage of the procedure still allows that public effectively to influence the outcome of the decision-making process.

(see paras 79, 86-91, operative part 2)

8. The principle that projects likely to have significant effects on the environment must be subject to an environmental assessment does not apply where the application for authorisation for a project was formally lodged before the expiry of the period set for transposition of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment.

In a situation where the national procedure which allows the developer to be authorised to start works to complete his project includes several consecutive steps and where the authorisation within the meaning of Directive 85/337 is therefore formed by the combination of several distinct decisions, the date on which the application for a permit for a project was formally lodged must be fixed as the day on which the developer submitted an application seeking to initiate the first stage of the procedure.

(see paras 94, 103)

9. Article 15a of Directive 96/61 concerning integrated pollution prevention and control must be interpreted as meaning that members of the public concerned must be able, in the context of the action provided for by that provision, to ask the court or competent independent and impartial body established by law to order interim measures such as temporarily to suspend the application of a permit, within the meaning of Article 4 of that directive, pending the final decision.

(see para. 110, operative part 3)

10. A decision of a national court, taken in the context of national proceedings implementing the obligations resulting from Article 15a of Directive 96/61 concerning integrated pollution prevention and control and from Article 9(2) and (4) of the Aarhus Convention, which annuls a permit granted in infringement of the provisions of that directive is not capable, in itself, of constituting an unjustified interference with the developer's right to property enshrined in Article 17 of the Charter of Fundamental Rights of the European Union.

(see para. 116, operative part 4)