Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 30 June 2016[1]

Case C-243/15

Lesoochranárske zoskupenie VLK
v
Obvodný úrad Trenčín(Request for a preliminary ruling

from the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic))

(Environment — Aarhus Convention — Administrative proceedings for authorisation of a project — Application by an environmental protection association for recognition as a party to the proceedings — Conclusion of the authorisation proceedings prior to the decision on the application — Legal remedy against the decision — Effective judicial protection)

I – Introduction

1. Depending on one's point of view, the situation at issue in the main proceedings which gave rise to the present request for a preliminary ruling is reminiscent either of the law-inspired works of Franz Kafka, in particular the parable 'Vor dem Gesetz' (Before the Law), or of Don Quixote.

2. In Kafka, the man seeking justice is for no discernible reason denied access to the court and eventually dies of exhaustion. Don Quixote, on the other hand, insists on tilting at windmills instead of devoting himself to more sensible pursuits.

3. The non-governmental organisation Lesoochranárske zoskupenie VLK (Forest Protection Association VLK, 'LZ') is also endeavouring — so far without success — to obtain judicial protection before the Slovak courts. LZ was instead invited to pursue another legal remedy but this has now become time-barred. The error may lie not in the Slovak system of judicial protection but in the fact that, despite having been advised to the contrary, LZ persists in following a course of action which it has already taken once instead of changing direction while there is still time.

4. The Court is asked to clarify whether the provisions governing representative actions under the Slovak law of administrative procedure are compatible with the right to effective judicial protection under Article 47 of the Charter of Fundamental Rights. It is true that the Slovak provisions are not in principle open to objection. Their application to the situation at issue in the main proceedings, however, requires the national courts to take particular care in order to avoid Kafka's paradox, on the one hand, while at the same time not encouraging the foolishness described by Cervantes, on the other. In such circumstances, the Court can do no more than provide the national courts with guidance as to the fundamental principles applicable. It is ultimately for the national courts themselves to find a solution to the issue before them.

1 — Original language: German.

5. However, Article 47 of the Charter applies only to enforcement of the rights or freedoms guaranteed by EU law. It must therefore be examined as a preliminary matter whether an environmental association such as LZ can assert such rights or freedoms in a situation such as that at issue in the main proceedings.

6. In the case of certain public participation procedures, it is true that, as part of the European Union's implementation of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters [2] (the Aarhus Convention), a limited representative action, confined to certain authorisation procedures, has already been introduced. [3] Those provisions do not apply to the situation at issue in the main proceedings, however.

7. That said, in the light of the Aarhus Convention and the general principles governing reliance on EU law, environmental associations also have available to them, in addition to the representative action expressly provided for, the option of enforcing EU environmental law. Moreover, in the situation at issue in the main proceedings in particular, a right to that effect can even be inferred from the Aarhus Convention itself.

II – Legal context

A – *International law*

8. The starting point for the legal status of environmental associations in EU law is the Aarhus Convention. Article 1 of the Aarhus Convention sets out its objectives:

'In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.'

9. Environmental associations are addressed in the definition of 'the public' and 'the public concerned' in Article 2(4) and (5) of the Convention. These provide:

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

5. "The public concerned" means the public affected or likely to be affected by, or having an interest in, the 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.'

2 — OJ 2005 L 124, p. 4, adopted by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).

3 — Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ 2003 L 156, p. 17). See, in that regard, judgment of 12 May 2011 in Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen (C-115/09, EU:C:2011:289).

10. Article 6 of the Aarhus Convention requires public participation in decisions on specific activities. This includes certain aspects of an environmental assessment. Article 6(1) governs the scope of that procedure:

'Each Party

(a) shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in Annex I;

(b) shall, in accordance with its national law, also apply the provisions of this Article to decisions on proposed activities not listed in Annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions.'

11. Article 9 of the Aarhus Convention contains provisions governing legal remedies in environmental matters. Article 9(2) concerns procedures which have been the subject of public participation, Article 9(3) applies to all other environmental-law decisions and Article 9(4) contains specific procedural principles:

'(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.

The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

(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.

…’

B – *EU law*

1. Environmental impact assessment

12. The Aarhus Convention is transposed into EU law in part in the EIA Directive. [4]

13. Article 1(2)(d) and (e) of the EIA Directive define the concept of the public concerned:

‘(d) “public” means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

(e) “public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2). 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.’

14. Article 11 of the EIA Directive contains a provision concerning access to justice which largely corresponds to Article 9(2) of the Aarhus Convention and was also incorporated into Directive 2003/35:

‘(1) Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

(a) having a sufficient interest, or alternatively;

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

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

(2) …

(3) What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To that end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2) shall be deemed sufficient for the purpose of point (a) of paragraph 1 of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of point (b) of paragraph 1 of this Article.

(4) …’

4 — 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), as most recently amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 (OJ 2014 L 124, p. 1).

2. Nature conservation

15. The Habitats Directive [5] provides for the establishment of protection areas, known as sites of Community importance. Article 6(3) requires an *ex ante* assessment of plans or projects likely to have a significant effect on such sites:

'Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.'

16. In accordance with Article 7 of the Habitats Directive, that provision also applies to bird protection areas designated under the Birds Directive. [6]

C – *Law of the Slovak Republic*

17. Paragraph 14 of Law No 71/1967 on administrative procedure (Správny poriadok), in the version applicable to the main proceedings, provides:

'(1) Any person whose rights, legitimate interests or obligations are the subject of the administrative procedure concerned or whose rights, legitimate interests or obligations may be directly affected by the decision shall be a party to the proceedings; in addition, any person who claims that the decision may directly affect his rights, legitimate interests or obligations, save proof to the contrary, shall be a party to the proceedings.

(2) Any person granted such status by special law shall also be a party to the proceedings.'

18. Paragraph 250b(2) and (3) of the Slovak Code of Civil Procedure (Občianský súdný poriadok), in the version applicable to the main proceedings ('the OSP'), contain the following provisions that are relevant to the substance of the question referred for a preliminary ruling:

'(2) If the applicant claims not to have been notified of the administrative authority's decision, even though he had to be considered a party to the proceedings, the court shall ascertain the truthfulness of that assertion and order the administrative authority to notify the applicant of the administrative decision concerned, postponing the enforcement of that decision where necessary. The court's ruling shall be binding on the administrative authority. If, during the administrative proceedings, following enforcement of the court order to notify the administrative decision, proceedings are initiated contesting that decision, the administrative authority shall immediately inform the court.

(3) The court shall proceed in accordance with subparagraph 2 above only if no more than three years have elapsed since the date of the decision of which the applicant was not notified.'

5 — Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), as most recently amended by Council Directive 2013/17/EU of 13 May 2013 adapting certain directives in the field of environment, by reason of the accession of the Republic of Croatia (OJ 2013 L 158, p. 193).

6 — Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7), as most recently amended by Council Directive 2013/17/EU of 13 May 2013 adapting certain directives in the field of environment, by reason of the accession of the Republic of Croatia (OJ 2013 L 158, p. 193).

III – Facts of the case and request for a preliminary ruling

19. By communication of 18 November 2008, LZ was informed that administrative proceedings had been opened with a view to deciding whether to grant the public limited company Biely potok a.s. ('BPAS') a permit to build an enclosure outside a municipal built-up area. The project was linked to the planned extension of the enclosure in which BPAS raises red deer and, in particular, affected land forming part of a nature reserve which the Slovak Republic had included in the Natura 2000 network as a special protection area under the Birds Directive and as a site of Community importance within the meaning of the Habitats Directive.

20. LZ requested that the administrative authorisation proceedings be staid and that an answer be obtained from the competent environment ministry to the preliminary question concerning the grant of a derogation from the rules governing the safeguarding of protected species, referring in this regard to the negative effects which were mentioned in a report produced by the national nature conservation authority that manages the nature reserve, and which it considered to be serious enough for the permit to be refused.

21. In the first phase of the administrative authorisation proceedings, the competent authorities decided, first in April and then in June 2009, that LZ was not entitled to the status of party. Those decisions form the subject of the current judicial review at issue in the main proceedings. As a result, LZ brought an action before the Krajský súd v Trenčíne (Regional Court, Trenčín), relying in particular on the Aarhus Convention with a view to securing the recognition of its status as a party to the administrative authorisation proceedings.

22. Thereafter, the administrative authorisation proceedings culminated in the prompt issue of a permit to BPAS on 10 June 2009. At the same time, according to information supplied by the Supreme Court, the aforementioned contested decision not to recognise [LZ's] status as party to those proceedings became 'final'.

23. Having established that the Court of Justice of the European Union had pending before it a reference for a preliminary ruling, in Case C-240/09, which might also have a bearing on its own judgment, the Regional Court stayed the proceedings before it pending the ruling to be given on that reference. Thereafter, in the light of the judgment subsequently handed down in that case[7] and the related judgment of the Supreme Court of the Slovak Republic in a similar case, the Regional Court, by judgment of 23 August 2011, annulled the two contested decisions on grounds of an incorrect assessment of the merits and referred the case back to the administrative authorities for the continuation of the proceedings.

24. In that judgment, the Regional Court shared the view taken by LZ that the latter was entitled to judicial protection in relation to the right to protection of the environment and the right to a healthy environment. The regional court made direct reference to Article 9(3) of the Aarhus Convention, read in conjunction with Article 44(1) of the Constitution of the Slovak Republic.

25. On appeal, the Supreme Court, on 26 January 2012, set aside the Regional Court's first judgment and referred the case back to that court for further consideration, informing it of its binding interpretative guidance to the effect that the proceedings relating to participation had become devoid of purpose. A separate review of the decision not to recognise [LZ's] status as a party to the administrative proceedings was permissible only so long as those proceedings were still ongoing.

7 — Judgment of 8 March 2011 in *Lesoochranárske zoskupenie* (C-240/09, EU:C:2011:125).

26. Next, by its second judgment of 12 September 2012, the Regional Court once again annulled the decisions of the two administrative authorities not to recognise [LZ's] status as a party to the proceedings and referred the case back for further consideration. On 28 February 2013, however, the Supreme Court set aside that judgment too.

27. On that basis, the Regional Court, by a third judgment of April 2013, terminated the judicial review but did not invite LZ to submit a request for retrospective notification of the final decision to issue the permit because, since that permit was issued, the three-year time limit for bringing an action had already expired as a result of the current judicial proceedings.

28. In the appeal proceedings which have now been brought by LZ, the Supreme Court therefore refers the following question to the Court of Justice of the European Union:

Is it possible to guarantee the right to an effective remedy and to a fair trial, affirmed in Article 47 of the Charter of Fundamental Rights of the European Union, in the event of a purported breach of the right to a high level of environmental protection established under the conditions laid down by the European Union, mainly by the Habitats Directive, particularly [the right] to help obtain the public's opinion on a project which could have a significant impact on special areas of conservation falling within the European ecological 'Natura 2000' network, and the rights invoked by the appellant (as a not-for-profit association active in the protection of the environment at national level) under Article 9 of the Aarhus Convention, within the limits indicated by the Court of Justice in its judgment of 8 March 2011 in Case C-240/09, *Lesoochranárske zoskupenie*, EU:C:2011:125, where the national court terminates the judicial review proceedings in a case concerning the review of a decision refusing to grant [that association] the status of party in administrative proceedings regarding the issuing of a permit, as has happened in the present case, and invites [that association] to lodge an appeal against its having been excluded from those administrative proceedings?

29. Lesoochranárske zoskupenie VLK, the Slovak Republic and the European Commission submitted written observations and attended the hearing on 18 April 2016. Prior to the hearing, those three parties and Biely potok a.s. also submitted written answers to a number of questions put by the Court.

IV – Assessment

30. By its request for a preliminary ruling, the Supreme Court wishes to ascertain whether the procedures provided in Slovak law for enforcing the rights of an environmental association satisfy EU law, in particular the requirements associated with the right to effective judicial protection under Article 47 of the Charter of Fundamental Rights.

31. The Supreme Court rightly assumes that the fundamental rights guaranteed in the legal order of the European Union apply only in situations governed by EU law.[8] Furthermore, Article 47 of the Charter concerns only the rights and freedoms guaranteed by EU law. I shall therefore begin by examining the rights of an association under EU law (see in this regard section A below), turning only then to discuss the requirements applicable to the effective judicial protection prescribed in EU law (see section B below).

8 — See, to that effect, judgment of 26 February 2013 in *Åkerberg Fransson* (C-617/10, EU:C:2013:105, paragraph 19 and the case-law cited), and judgment of 17 December 2015 in *WebMindLicenses* (C-491/14, EU:C:2015:832, paragraph 66).

A – *The rights of environmental associations under EU law*

32. The Supreme Court considers EU law to be applicable because the situation at issue in the main proceedings concerns the obligations incumbent on the Member State under the Habitats Directive. It also mentions the Aarhus Convention.

33. At first sight, the action in the main proceedings appears to be concerned with participation in the proceedings for the authorisation of an enclosure within a protection area. However, participation in those proceedings is not expressly and directly governed by EU law, but is, on the contrary, a concept of Slovak law. That concept nonetheless includes elements which may be guaranteed by EU law. The effective judicial protection guaranteed by EU law may become significant in relation to such aspects.

34. The obvious question of whether EU law gives the public the right to participate in authorisation proceedings, on the other hand, requires no further consideration. After all, it is apparent from the request for a preliminary ruling that LZ was informed of the authorisation proceedings and had the opportunity to express its views. It was therefore granted a minimum standard of participatory rights.

35. In reality, LZ's primary concern is not the opportunity to express its views on the project but the right to be able to challenge the project's authorisation before the courts. It is clear from the parties' submissions that, under Slovak law, recognition as a party to the proceedings is a condition of the right to challenge the decision concluding those proceedings (Paragraph 53 of the Slovak Code of Administrative Procedure and Paragraph 250b(2) of the Slovak Code of Civil Procedure).

36. Environmental associations do in fact have rights of action under EU law. On the one hand, such rights may be inferred directly from EU law, in this case Article 6(3) of the Habitats Directive (see section 1 below). On the other hand, Article 9(2) and Article 6 of the Aarhus Convention make express provision for certain rights of action in connection with public participation procedures (see section 2 below).

1. Article 6(3) of the Habitats Directive

37. A right of action follows directly from Article 6(3) of the Habitats Directive.

38. It is true that Slovakia and BPAS raise the objection in this connection that the application of that provision no longer forms part of the subject matter of the main proceedings since a final decision has already been taken in this regard. In their submission, there is therefore no need for the Court to reach any findings with respect to Article 6(3) of the Habitats Directive.

39. At the hearing, however, it remained unclear, despite various questions on the subject, whether the decision in question was one which could be challenged separately or was simply a statement of opinion made in the course of the authorisation proceedings. In its request for a preliminary ruling, moreover, the Supreme Court clearly assumes that the application of the Habitats Directive very much still forms part of the subject matter of the main proceedings. For the purposes of the present preliminary ruling proceedings, therefore, we must proceed on the basis of that assumption.

40. Article 6(3) of the Habitats Directive provides that any plan or project likely to have a significant effect on a special area of conservation within the meaning of the Habitats Directive or a special protection area within the meaning of the Birds Directive, either individually or in combination with other plans or projects, are subject to an appropriate assessment of its implications for the site in view of that site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site, the competent national authorities are to agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

41. There is nothing in the Habitats Directive to indicate that Article 6(3) creates a right for an environmental association to bring an action for infringement of that provision. In this connection, I have taken the view that *individuals* may rely on that provision only in so far as *national law* provides them with means of obtaining redress against measures which infringe those provisions. [9]

42. It would, however, be incompatible with the binding effect which Article 288 TFEU ascribes to a directive to exclude, in principle, the possibility of the obligation imposed by that directive being relied on by the persons concerned. [10] At the very least natural or legal persons directly concerned by an infringement of provisions of a directive must therefore be able to require the competent authorities to comply with the obligations in question, if necessary by bringing the matter before the competent courts. [11]

43. The Court has also already held that Article 6(3) of the Habitats Directive is directly applicable in so far as that provision does not allow national authorities to authorise an activity in the face of uncertainty as to the absence of adverse effects for the site concerned. [12] This is particularly true where such effects are found to be present. In both cases, authorisation may be granted, on no more than an exceptional basis, where the conditions set out in Article 6(4) of the Habitats Directive are satisfied. [13]

44. The question is, however, whether LZ is directly affected by any infringement of Article 6(3) of the Habitats Directive.

45. The only persons directly affected in any event are those who claim that there has been a direct infringement of their own *rights*. There is, however, no indication that that is the case here.

46. The Court has nonetheless already recognised — and in relation to LZ and the Habitats Directive no less — that environmental protection organisations must be able to challenge before a court an administrative decision which may be contrary to EU environmental law. [14]

47. The fact that the Court emphasises that natural *or* legal persons are entitled to take action where there is a risk that limit values designed to protect public health may be exceeded points in the same direction. [15] While natural persons may be directly concerned if their own health is affected, the same cannot be said of legal persons.

48. Legal persons such as environmental associations, for example, may nonetheless be affected by an infringement of rules designed to protect public health in so far as their interest in the protection of public health is recognised in law. While the present case is not concerned with the protection of public health, there is even clearer evidence of the legal recognition of the interests which associations have in environmental protection. From the point of view of EU law, the second sentence of Article 1(2)(e) of the EIA Directive and, to an even greater extent, Article 2(5) of the Aarhus Convention makes provision for recognising the interests of certain organisations promoting

9 — Opinion in *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:60, points 138 to 144).

10 — Judgments of 7 September 2004 in *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraph 66), and of 25 July 2008 in *Janecek* (C-237/07, EU:C:2008:447, paragraph 37 and the case-law cited).

11 — See, to this effect, judgments of 25 July 2008 in *Janecek* (C-237/07, EU:C:2008:447, paragraph 39), and of 26 May 2011 in *Stichting Natuur en Milieu and Others* (C-165/09 to C-167/09, EU:C:2011:348, paragraph 100).

12 — Judgment of 7 September 2004 in *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraphs 68 and 69).

13 — See judgment of 7 September 2004 in *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraph 60).

14 — Judgment of 8 March 2011 in *Lesoochranárske zoskupenie* (C-240/09, EU:C:2011:125, paragraph 51).

15 — Judgment of 25 July 2008 in *Janecek* (C-237/07, EU:C:2008:447, paragraphs 38 and 39).

environmental protection. Member States are to recognise organisations promoting environmental protection and meeting any requirements under national law. In this regard 'wide access to justice' and the practical effectiveness of representative actions provided for in the EIA Directive are to be ensured. [16]

49. Since the interest which those associations have in environmental protection is therefore recognised in law, they are concerned by an infringement of directly applicable provisions of EU environmental law to an extent sufficient to enable them to rely on those provisions before the national courts. This is particularly true where they claim that Article 6(3) of the Habitats Directive has been infringed.

50. Article 9(3) of the Aarhus Convention also requires that environmental associations be recognised as being directly affected by an infringement of Article 6(3) of the Habitats Directive. Although that provision is not directly applicable, [17] a national court which is faced with a potential infringement of the Habitats Directive must, in order to ensure effective judicial protection in the fields covered by EU environmental law, interpret its national law in a way which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) of the Aarhus Convention. [18] These are aiming to ensure effective environmental protection. [19] Since the Aarhus Convention is an integral part of EU law, the Court is under the same obligation.

51. Recognition of the right of environmental associations to enforce the directly applicable provisions of EU environmental law, that is to say, in particular, Article 6(3) of the Habitats Directive, contributes towards the objective of effective implementation of environmental law.

52. Moreover, such a conclusion is not alien to EU law, since recognised environmental associations may rely on Article 6 of the Habitats Directive in the context of actions under Article 11 of the EIA Directive or Article 9(2) of the Aarhus Convention, too. [20]

53. It must therefore be concluded that environmental associations which are recognised under the second sentence of Article 1(2)(e) of the EIA Directive must be able to bring actions before the courts against infringements of Article 6(3) of the Habitats Directive.

2. The Aarhus Convention

54. What is more, in the situation at issue in the main proceedings, the right to bring an action may also be based directly on the Aarhus Convention.

55. In accordance with Article 9(2) of the Aarhus Convention, the Contracting States must ensure that members of the public concerned have access to a review procedure before a court of law to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6. The authorisation for an enclosure which gave rise to the situation at issue in the main proceedings might be subject to Article 6(1)(b).

16 — Judgment of 15 October 2009 in *Djurgården-Lilla Värtans Miljöskyddsförening* (C-263/08, ECR, EU:C:2009:631, paragraph 45).

17 — Judgments of 8 March 2011 in *Lesoochranárske zoskupenie* (C-240/09, EU:C:2011:125, paragraph 45); 13 January 2015 in *Council and Others* v *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht* (C-401/12 P to C-403/12 P, EU:C:2015:4, paragraph 55); and *Council and Commission* v *Stichting Natuur en Milieu and Pesticide Action Network Europe* (C-404/12 P and C-405/12 P, EU:C:2015:5, paragraph 47).

18 — Judgment of 8 March 2011 in *Lesoochranárske zoskupenie* (C-240/09, EU:C:2011:125, paragraph 50).

19 — Judgment of 8 March 2011 in *Lesoochranárske zoskupenie* (C-240/09, EU:C:2011:125, paragraph 46).

20 — Judgment of 12 May 2011 in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289, paragraph 49).

a) The legal effects of the Aarhus Convention

56. The Aarhus Convention was signed by the then European Community and subsequently approved by Decision 2005/370. According to settled case-law, therefore, the provisions of that Convention now form an integral part of the legal order of the European Union, pursuant to Article 216(2) TFEU. [21]

57. Although the Aarhus Convention was concluded by the Community and all the Member States on the basis of joint competence, it is nonetheless true that, where a case is brought before the Court in accordance with Article 267 TFEU, it has jurisdiction to define the obligations which the European Union has assumed and those which remain the sole responsibility of the Member States in order (for that purpose) to interpret the Aarhus Convention. [22] If it reaches the conclusion that the provision in question is one of the obligations assumed by the European Union, then it has jurisdiction to interpret that provision too.

58. Article 6 of the Aarhus Convention makes the authorisation of certain activities subject to public participation and an assessment of their environmental effects. Article 9(2) governs the right to bring an action in that regard. Since most of those provisions were transposed by the EIA Directive, the spheres to which they relate fall largely within the scope of EU law. The Court therefore has unlimited jurisdiction to interpret Article 6 and Article 9(2) of that Convention. [23]

59. Those provisions may establish rights and freedoms guaranteed by EU law within the meaning of Article 47 of the Charter either directly or by determining the content of provisions of secondary EU law or the law of the Member States. There is nothing to indicate that the latter alternative is the case in the situation at issue in the main proceedings. It follows that Article 6 and Article 9(2) of the Aarhus Convention are capable of falling within the scope of Article 47 of the Charter only if they are directly applicable to an association such as LZ in the main proceedings.

60. Provisions in an agreement concluded by the European Union and its Member States with non-member countries are directly applicable when, regard being had to their wording and to the purpose and nature of the agreement, or its 'nature and broad logic', they contain clear and precise obligations which are not subject, in their implementation or effects, to the adoption of any subsequent measure. [24]

61. The first point to be made in this regard is that, unlike in the case of WTO law for example, [25] it is clear from Article 1 of the Aarhus Convention that that Convention is, by virtue of its nature and purpose, intended to create rights for individuals and associations in the field of environmental protection. It was that very objective, or the lack of it, which the Court highlighted when examining the nature and broad logic of the Convention on the Law of the Sea in the judgment in *Intertanko*. [26]

21 — Judgment of 8 March 2011 in *Lesoochranárske zoskupenie* (C-240/09, EU:C:2011:125, paragraph 30 and the case-law cited).

22 — Judgment of 8 March 2011 in *Lesoochranárske zoskupenie* (C-240/09, EU:C:2011:125, paragraph 31 and the case-law cited).

23 — See judgments of 19 March 2002 in *Commission* v *Ireland* (C-13/00, EU:C:2002:184, paragraph 20); 7 October 2004 in *Commission* v *France*, (C-239/03, EU:C:2004:598, paragraphs 29 to 31); 8 March 2011 in *Lesoochranárske zoskupenie* (C-240/09, EU:C:2011:125, paragraph 36); and of 4 September 2014 in *Commission* v *Council* (C-114/12, EU:C:2014:2151, paragraph 102).

24 — Judgment of 8 March 2011 in *Lesoochranárske zoskupenie* (C-240/09, EU:C:2011:125, paragraph 44 and the case-law cited).

25 — See judgments of 12 December 1972 in *International Fruit Company and Others* (21/72 to 24/72, EU:C:1972:115); 1 March 2005 in *Van Parys* (C-377/02, EU:C:2005:121, paragraphs 39 and 42 et seq.); and of 16 July 2015 in *Commission* v *Rusal Armenal* (C-21/14 P, EU:C:2015:494, paragraphs 38 and 39).

26 — Judgment of 3 June 2008 in *The International Association of Independent Tanker Owners and Others* (C-308/06, EU:C:2008:312, paragraphs 64 and 65). See also Kokott, J., 'International Law — A Neglected "Integral" Part of the EU Legal Order?' in: *De Rome à Lisbonne: les juridictions de l'Union européenne à la croisée des chemins — Mélanges en l'honneur de Paolo Mengozzi*, Bruylant, Brussels 2013, pp. 61, 76 et seq.

62. Moreover, the Court has already held that Article 11 of the EIA Directive is directly applicable in relation to the rights of environmental associations. [27] The same must also be true of Article 9(2) of the Convention, since that provision is the same in all significant respects as Article 11 of the EIA Directive.

63. It therefore remains to be examined whether Article 6(1)(b) of the Aarhus Convention also contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure. [28]

b) Article 6(1)(b) of the Aarhus Convention

64. Article 6(1)(b) of the Aarhus Convention provides that the Contracting Parties must, in accordance with their national law, apply the provisions of that article concerning public participation to decisions on proposed activities not listed in Annex I which may have a significant effect on the environment. To that end, they must determine whether such a proposed activity is subject to Article 6.

65. Annex I to the Convention relates to Article 6(1)(a), which makes authorisation of the activities listed in that annex subject to mandatory public participation. However, the enclosure of certain plots of land for the purposes of extending a game reserve is not mentioned in that annex.

66. The fact that Article 6(1)(b) of the Aarhus Convention refers to national law and to the determination by the Contracting Parties of whether Article 6 is applicable could mean that public participation as provided for in Article 6(1)(b) may take place exclusively in accordance with the law of the Contracting Parties. That interpretation might also be supported by the Aarhus Convention Compliance Committee. [29] In that event, the direct applicability of that provision would be ruled out.

67. On closer examination, however, the wording of Article 6(1)(b) of the Convention does not warrant the conclusion that the application of that provision presupposes transposition by the European Union or the Member States.

68. The authentic French version of the second sentence of Article 6(1)(b) of the Convention expressly states that the Contracting Parties are to determine *in every case* whether the activity in question is subject to the requirement of public participation. [30] The equally authentic English- [31] and Russian- [32] language versions at least imply the same thing. While they do not expressly require a case-by-case examination, they both provide that it must be determined whether a particular proposed activity is subject to Article 6.

69. The second sentence of Article 6(1)(b) of the Convention is therefore unconditional, at least in so far as the Parties must in principle decide in each case whether a particular activity is subject to the requirement of public participation under Article 6. It is not a matter for their discretion whether or not they carry out such an examination.

27 — Judgment of 12 May 2011 in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289, paragraph 57).

28 — See judgment of 8 March 2011 in *Lesoochranárske zoskupenie* (C-240/09, EU:C:2011:125, paragraph 44 and the case-law cited).

29 — Findings and recommendations of 24 September 2010, Cultra Residents' Association/United Kingdom (ACCC/C/2008/27, paragraphs 44 and 45). On the Compliance Committee, see my Opinion in *Edwards* (C-260/11, EU:C:2012:645, point 8).

30 — 'Les parties déterminent dans chaque cas si l'activité proposée tombe sous le coup de ces dispositions'.

31 — 'To this end, Parties shall determine whether such a proposed activity is subject to these provisions'.

32 — 'С этой целью Стороны определяют, охватывается ли такой планируемый вид деятельности этими положениями'.

70. The direct applicability of that obligation is also not precluded by the fact that the first sentence of Article 6(1)(b) requires each Contracting Party to apply Article 6 of the Convention 'in accordance with its national law'. In particular, that reference cannot be understood as meaning that national law must make provision for case-by-case examinations. For, in that event, the second sentence of Article 6(1)(b) would be superfluous.

71. On the contrary, since it forms part of EU law, Article 6 of the Convention is necessarily already part and parcel of the law of the Member States and in principle, therefore, constitutes a sufficient legal basis for the examination as to whether public participation is necessary.

72. It follows that the reference to national law means first and foremost that recourse must be had to national law where matters are not prescribed with adequate precision in Article 6 of the Convention. In particular, an examination of the need for public participation presupposes that the activity in question is actually the subject of an authorisation procedure in the course of which that question can be examined in the first place. The stipulation of an authorisation procedure limits the activities to which Article 6 is even potentially applicable and makes it possible to determine the authority that must examine the need for public participation.

73. That condition is satisfied in the situation at issue in the main proceedings, since the enclosure in question requires a permit. It would seem that a minimum degree of public participation at the very least is provided for, since LZ was informed of the authorisation and had the opportunity to express its views.

74. The obligation to examine the need for public participation comes with a corresponding right to such an examination, since it is clear from Article 1 of the Aarhus Convention that that Convention is intended to create such rights. Where such a right exists, however, the person on whom it is conferred must by extension be able to enforce it before the courts.

75. Furthermore, the group of persons on whom such rights are conferred is also defined with sufficient clarity by the Aarhus Convention in conjunction with the provisions transposing it in the EIA Directive and the corresponding national laws. After all, Article 6 of the Convention is intended to ensure the participation of 'the public concerned', which is defined in Article 2(5) of the Convention as including non-governmental organisations promoting environmental protection and meeting any requirements under national law. The Member States must recognise such organisations when transposing the EIA Directive, ensuring 'wide access to justice' and not undermining the practical effectiveness of the provisions governing representative actions.[33] If LZ falls within that group, it must by extension be able to enforce its right to have the application of Article 6 of the Convention examined.[34]

76. So far as concerns the criteria applicable to a decision as to whether or not to apply Article 6 of the Convention, regard must be had to the purpose of that decision. The English and Russian versions of the second sentence of Article 6(1)(b), in any event, indicate that that decision is expressly intended to give effect to the first sentence of that provision, that is to say, to apply Article 6 also to decisions on proposed activities not listed in Annex I which may have a significant effect on the environment. Although the French version does not make express reference to that objective, the fact remains that not even that language version supports the inference of any other purpose which the decision on the application of Article 6 might serve.

33 — See judgment of 15 October 2009 in *Djurgården-Lilla Värtans Miljöskyddsförening* (C-263/08, EU:C:2009:631, paragraph 45).

34 — See, with regard to the EIA Directive, judgment of 30 April 2009 in *Mellor* (C-75/08, EU:C:2009:279, paragraph 58).

77. As the Court has already held in connection with the EIA Directive [35] and the SEA Directive, [36] which contain very similar provisions, that objective circumscribes the exercise of the discretion which the Contracting Parties enjoy under Article 6(1)(b) of the Convention. If proposed activities are likely to have significant effects on the environment, the decision taken by the Contracting Parties must therefore be to apply Article 6. Given that the purpose of the Contracting Parties' decision is circumscribed in this way, the obligation to arrange for public participation in cases where there may be significant environmental effects is also directly applicable. [37]

78. The Convention contains no definition of what 'significant environmental effects' are. In principle, therefore, the Member States have some discretion in this regard. The Habitats Directive, however, specifies the requirements governing the significance of environmental effects in the field of European nature conservation. Thus, an assessment of the environmental effects of certain projects may be triggered by the risk of adverse effects on strictly protected species. [38] An assessment under the EIA Directive must also look at the effects of projects on the conservation objectives connected with protected sites. [39] It must therefore be assumed that adverse effects on the conservation objectives connected with European protection areas are in principle to be regarded as significant for the purposes of Article 6(1)(b) of the Convention. As a rule, therefore, the possibility that proposed activities may have such effects creates an obligation to apply Article 6 of the Aarhus Convention.

79. Although that interpretation is certainly not set out in the Aarhus Convention implementation guide, that document too states that the possibility of significant environmental effects triggers the obligation to decide whether Article 6 is to be applied. According to the implementation guide, that decision may be based on a case-by-case examination or on thresholds or criteria. It also mentions the possibility of enforcing the obligation to make arrangements for public participation under Article 6 through the courts. [40]

80. Accordingly, Article 6(1)(b) of the Aarhus Convention confers on recognised environmental associations a right to require the authorities competent under national law to examine on a case-by-case basis whether proposed activities may have significant effects on the environment and whether they are therefore to be subject to Article 6.

c) Limits of the public participation obligation

81. The potentially unlimited scope of Article 6(1)(b) of the Aarhus Convention could, however, militate against the solution set out above. It could after all be assumed that Article 6(1)(b) of the Convention covers any conceivable activity and therefore requires comprehensive supervision.

35 — See for example judgments of 24 October 1996 in *Kraaijeveld and Others* (C-72/95, EU:C:1996:404, paragraphs 50 and 61), and of 21 March 2013 in *Salzburger Flughafen* (C-244/12, EU:C:2013:203, paragraphs 29 and 41 to 43).

36 — Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30; SEA stands for Strategic Environmental Assessment). See also judgments of 22 September 2011 in *Valčiukienė and Others* (C-295/10, EU:C:2011:608, paragraph 46, and of 10 September 2015 in *Dimos Kropias Attikis* (C-473/14, EU:C:2015:582, paragraphs 46 and 47).

37 — On the EIA Directive, see for example judgment of 21 March 2013 in *Salzburger Flughafen* (C-244/12, EU:C:2013:203, paragraphs 41 and 42).

38 — On the conservation of species, see judgment of 11 January 2007 in *Commission* v *Ireland* (C-183/05, EU:C:2007:14, paragraphs 34 to 37), and my Opinion in *Mellor* (C-75/08, EU:C:2009:32, point 54).

39 — Judgment of 24 November 2011 in *Commission* v *Spain* (C-404/09, EU:C:2011:768, paragraphs 84 to 92).

40 — Ebbesson/Gaugitsch/Miklau/Jendrośka/Stec/Marshall, *The Aarhus Convention: An Implementation Guide*, 2nd edition, 2014, p. 132.

82. The Court's case-law on the relevant provisions of the EIA Directive and the SEA Directive,[41] on the other hand, is concerned only with specific cases, that is to say the types of project listed in Annex II to the EIA Directive[42] and the adoption of plans and programmes whose adoption is governed by national legislative or regulatory provisions determining the authorities competent for adopting them and the procedure for preparing them.[43] In both cases, the national legislature therefore determined in advance which activities would be subject to an environmental assessment.

83. However, the scope of Article 6(1)(b) of the Convention, too, is limited at least in so far as the public participation arrangements must be in accordance with national law. As I have already said, this means that the activity in question must be the subject of an authorisation procedure in the course of which the need for public participation can be examined and any such participation can take place.[44] Whether or not the relevant legislature provides for such an authorisation procedure also depends as a rule on the anticipated effects of the activities concerned.

84. The residual 'risk' of public participation is consistent with the Convention's objective of making activities that may have a significant effect on the environment subject to Article 6. The public participation procedure may, after all, help to prevent or at least minimise the adverse environmental effects of such activities.

d) Interim conclusion

85. Consequently, Article 6(1)(b) of the Aarhus Convention therefore confers on recognised environmental associations a right to require the authorities competent under national law to assess on a case-by-case basis whether proposed activities may have a significant effect on the environment and whether Article 6 is therefore applicable to those activities. Where that is the case, and the fact that the site affected in the situation at issue in the main proceedings is a European protection area indicates that it is the case here, a decision on [the permissibility of] that activity may be challenged under Article 9(2). Where, on the other hand, the competent authorities refuse to arrange for public participation, it is at least possible to challenge the decision refusing to make such arrangements before the courts.

3. The view taken by the Commission

86. Finally, I should say only for the sake of completeness that the Commission's view that Article 6(3) of the Habitats Directive transposes Article 6(1)(b) of the Aarhus Convention and therefore establishes an obligation to make arrangements for public participation is unconvincing.

87. It is true that Article 6(3) of the Habitats Directive mentions the possibility of public participation in connection with the assessment to be carried out under that provision. According to that provision, however, arrangements for public participation are to be made only *if appropriate*. An obligation to make arrangements for public participation must therefore arise from other provisions, such as the EIA Directive, the SEA Directive or Article 6(1)(b) of the Convention itself.

41 — See point 77 above.

42 — See to this effect the order of 10 July 2008 in *Aiello and Others* (C-156/07, EU:C:2008:398, paragraph 34).

43 — Judgment of 22 March 2012 in *Inter-Environnement Bruxelles and Others* (C-567/10, EU:C:2012:159, paragraphs 28 to 31). See, to even more restrictive effect, my Opinion in that case (EU:C:2011:755, points 14 to 30). See also the criticism of the United Kingdom Supreme Court in *HS2 Action Alliance Ltd, R (on the application of)* v *The Secretary of State for Transport & Anor* [2014] UKSC 3, paragraphs 175 to 189.

44 — See point 72 above.

B – *Effective judicial protection*

88. The Supreme Court wishes to ascertain whether it is compatible with the requirements of effective judicial protection for judicial proceedings concerning the recognition of an environmental association as a party to administrative proceedings to be terminated after the latter proceedings have been concluded and for the environmental association to be invited to bring a further action in that regard.

1. The remedies available in Slovak law

89. According to the information supplied by the Supreme Court, there are two complementary remedies available under Slovak law.

90. The first remedy may be directed against a procedural decision refusing to grant the applicant the status of party to the proceedings. If that action is successful, the applicant may take part in the further proceedings and is entitled to challenge any substantive decision given on conclusion of those proceedings. If, however, the administrative proceedings in question culminate in a decision before that action is adjudicated upon, that action does not proceed to judgment. For, in that event, the judicial proceedings have become devoid of purpose because the rights associated with the status of party to the [administrative] proceedings can no longer be exercised. This is the current outcome of the judicial proceedings in the situation at issue in the main proceedings.

91. In those circumstances, the second remedy, provided for in Paragraph 250b(2) of the Slovak Code of Civil Procedure, may be employed. Under that provision, a person who was not a party to administrative proceedings which have been concluded may bring an action for notification of the final administrative decision. The success of that action presupposes that the applicant should have been a party to the proceedings. If the action is successful, the administrative decision must be notified to the applicant, who can then bring an appeal against it. That, in principle, is the route which LZ should have taken in the situation at issue in the main proceedings.

92. In accordance with Paragraph 250b(3) of the Slovak Code of Civil Procedure, however, the second remedy is subject to a mandatory time limit of three years as from the adoption of the administrative decision. In the situation at issue in the main proceedings, that time limit has already expired.

2. The criteria applicable under EU law

93. Since EU law, both in Article 6(3) of the Habitats Directive and in Article 6(1)(b) and Article 9(2) of the Aarhus Convention, confers on recognised environmental associations a right to seek a judicial review of decisions that may have a significant adverse effect on the special areas of conservation under the Habitats Directive or the special protection areas under the Birds Directive, the enforcement of that right is subject to the fundamental rights provided for in EU law.

94. Of particular interest in this regard is Article 47(1) of the Charter of Fundamental Rights, referred to by the Supreme Court. This provides that everyone whose rights or freedoms guaranteed by EU law have been violated has the right to an effective remedy before a tribunal. That provision reaffirms the principle of effective judicial protection, which is a general principle of EU law stemming from the constitutional traditions common to the Member States and enshrined in Articles 6 and 13 ECHR. [45]

45 — Judgments of 13 March 2007 in *Unibet* (C-432/05, EU:C:2007:163, paragraph 37); 3 September 2008 in *Kadi and Al Barakaat International Foundation* v *Council and Commission* (C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 335); and 17 March 2011 in *AJD Tuna* (C-221/09, EU:C:2011:153, paragraph 45).

95. Account must also be taken of Article 9(4) of the Aarhus Convention.[46] This provides that the procedures referred to in Article 9(2) and (3) in particular are to provide adequate and effective remedies. Those procedures are to be fair, equitable, timely and not prohibitively expensive.

96. Article 9(4) of the Convention is clearly applicable where the right of action is based on Article 6(1)(b) in conjunction with Article 9(2). However, the right of action based on Article 6(3) of the Habitats Directive also falls within the scope of Article 9(4) of the Convention, since the second right of action serves to transpose the more general but not directly applicable right of action provided for in Article 9(3) of the Convention.

97. That said, in the absence of EU rules governing the matter, it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing actions for safeguarding rights derived from EU law, in this case the Aarhus Convention and the Habitats Directive, since the Member States are responsible for ensuring that those rights are effectively protected in each case.[47]

98. It must be borne in mind in this regard that the detailed procedural rules governing actions for safeguarding rights under EU law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not make it in practice impossible or excessively difficult to exercise rights conferred by EU law (principle of effectiveness).[48]

99. There is nothing to indicate that the principle of equivalence has been infringed in the present case. The submissions that follow will therefore focus primarily on the principle of effectiveness, in so far as this gives effect to Article 47 of the Charter, and, if appropriate, the specific expression given to the latter by Article 9(4) of the Aarhus Convention.

3. The guarantee of effective judicial protection in the situation at issue in the main proceedings

100. In order to examine whether effective judicial protection has been ensured in the situation at issue in the main proceedings, I shall look first at the forms of legal protection available in principle in Slovak law, then at the three-year mandatory time limit and, finally, at the practical application of those provisions.

a) The forms of judicial protection available

101. It must be examined first whether the forms of judicial protection available in Slovak law make the exercise of the rights conferred by the EU legal order impossible or excessively difficult in practice.

102. In Slovak law, access to judicial protection is effected in two stages and, it would be fair to say, not infrequently involves as many as three sets of court proceedings. First, the persons concerned must secure recognition as parties, to which end they may have to bring one or even two actions. Only then can they challenge the substance of the administrative decision in question.

103. Although that system appears complicated at first sight, it cannot automatically be said to be ineffective or to make judicial protection excessively difficult. On the contrary, the points of law connected with each stage of the procedure would usually have to be addressed even if the process were completed within a single set of legal proceedings.

46 — Judgment of 11 April 2013 in *Edwards and Pallikaropoulos* (C-260/11, EU:C:2013:221, paragraph 33).

47 — Judgment of 8 March 2011 in *Lesoochranárske zoskupenie* (C-240/09, EU:C:2011:125, paragraph 47).

48 — Judgments of 8 March 2011 in *Lesoochranárske zoskupenie* (C-240/09, EU:C:2011:125, paragraph 48); 16 April 2015 in *Gruber* (C-570/13, EU:C:2015:231, paragraph 37); and 6 October 2015 in *East Sussex County Council* (C-71/14, EU:C:2015:656).

104. As Article 9(4) of the Aarhus Convention also makes clear, however, that judicial protection regime must not extend the proceedings unreasonably or be prohibitively expensive. The Court has given a ruling to much the same effect, on the basis of the principle of effectiveness, in the case of a judicial protection regime which was split into two claims that had to be brought at the same time. [49] It is for the national courts to examine whether such risks exist in practice.

105. Should such risks exist, it would be for the referring court, to the extent of its discretion under national law, to interpret and apply national law in conformity with the requirements of EU law and, where such an interpretation is not possible, to disapply any provision of domestic law that would be contrary to those requirements. [50] To that extent, the question arises whether the three-year time limit is really intended to prevent the second action if, within that period, the same issues have already been extensively debated in the context of the first action and no legitimate expectation could therefore arise in that respect. The Slovak courts could also, in the interests of the efficient conduct of proceedings, consider redefining the first action in terms of the second action of their own motion once the administrative proceedings have been concluded. Whether one of those options would be available under national law is, however, a matter which only the Slovak courts can determine.

106. Article 47 of the Charter of Fundamental Rights and Article 9(4) of the Aarhus Convention do not therefore preclude a system of judicial protection, in the form described in points 89 to 91, the application of which does not prolong the proceedings unreasonably and is not prohibitively expensive.

b) The three-year mandatory time limit

107. The laying down of reasonable mandatory time limits for bringing proceedings in the interests of legal certainty such as to protect both the individual and the administrative authority is compatible with EU law. After all, such time limits are not capable of making it in practice impossible or excessively difficult to exercise the rights conferred by EU law. [51]

108. If, as in the situation at issue in the main proceedings, the persons concerned were or should have been aware of the administrative decision in question, a three-year time limit is very generous.

109. A different view may have to be taken where the persons concerned did not know about the administrative decision before that time limit expired. However, the Court does not have to give a ruling on this question in the present case.

110. Article 47 of the Charter of Fundamental Rights and Article 9(4) of the Aarhus Convention do not therefore preclude a three-year mandatory time limit for bringing an action against an administrative decision that was known to the persons concerned.

c) The conduct of the main proceedings

111. The question is, however, whether the application of the mandatory time limit is justified in the main proceedings.

49 — See judgment of 15 April 2008 in *Impact* (C-268/06, EU:C:2008:223, paragraph 51).

50 — See judgments of 11 January 2007 in *ITC* (C-208/05, EU:C:2007:16, paragraph 70), and of 8 May 2013 in *Marinov* (C-142/12, EU:C:2013:292, paragraph 39).

51 — Judgments of 16 December 1976 in *Rewe-Zentralfinanz and Rewe-Zentral* (33/76, EU:C:1976:188, paragraph 5); 17 November 1998 in *Aprile* (C-228/96, EU:C:1998:544, paragraph 19); 30 June 2011 in *Meilicke and Others* (C-262/09, EU:C:2011:438, paragraph 56); and 29 October 2015 in *BBVA* (C-8/14, EU:C:2015:731, paragraph 28).

112. The Slovak Republic and LZ are in dispute as to whether the second action, the action for notification of the administrative decision to a person who was excluded from the administrative proceedings in question,[52] can be brought after an administrative authority has already expressly refused to recognise the person concerned as a party to the administrative proceedings.

113. In similar cases relating to Article 6(1) ECHR, the ECtHR takes the view that any doubts as to the effectiveness of a remedy must be resolved by that remedy actually being pursued.[53]

114. What is more, it is clear from the request for a preliminary ruling that, in the main proceedings, the Supreme Court had already indicated in a decision of 26 January 2012, that is to say several months before the time limit applicable to the second action had expired, that there was no need to adjudicate on the first action and that the only remedy henceforth available was the second action.[54]

115. This means that LZ was aware of the legal position in good time before the mandatory time limit expired and, according to the information available to the Court, could have brought the second action.

116. On the other hand, the Supreme Court states in the request for a preliminary ruling that the administrative decision refusing to recognise LZ as a party to the administrative proceedings became *final* when the decision authorising the enclosure project was adopted.[55] If the finality of the former decision included the substance of that decision, which is to say the finding that there was no need for LZ to be a party to the proceedings, then LZ would be right in its submission that the former decision, by extension, rules out any prospect of the second action being successful and makes it impossible in practice for it to assert its rights. After all, such success would be subject to the condition that LZ should in fact have been a party to the proceedings.

117. It would also be impossible in practice for LZ to exercise its rights if the first legal proceedings, being still pending, had prevented the second action from being validly brought or if the three-year mandatory time limit had not been interrupted by the second set of proceedings and a decision on LZ's legal status was not therefore to be expected.

118. Moreover, regardless of the foregoing questions, which the national courts alone can definitively resolve, there are indications that the assertion of LZ's rights was made excessively difficult. After all, it would also appear from what the Supreme Court says about the declaration as to there being no need to adjudicate on LZ's first action that, initially, there were so many questions still outstanding that neither the Supreme Court itself nor the Regional Court made a declaration to that effect. On the contrary, the Regional Court did not find that there was no need for that action to proceed to judgment until April 2013, after the Supreme Court had given a second ruling in that matter, that is to say a year after the mandatory time limit applicable to the second action had expired. In the interim, however, the Regional Court had upheld LZ's action for a second time.

119. This is a strong indication that, even after the Supreme Court's first decision, LZ still had reason to assume that its first action would be successful. In those circumstances, to require that LZ should nonetheless bring a second action even at that early stage, as a precautionary measure, would be justified only if the Regional Court's second decision upholding LZ's action were vitiated by manifest serious errors of law.

52 — See point 91 above.

53 — Judgment of the ECtHR of 23 May 2016 in *Avotiņš v. Latvia* (application No 17502/07, § 122, with further references).

54 — Paragraph 25 of the request for a preliminary ruling.

55 — Paragraph 23 of the request for a preliminary ruling.

120. Ultimately, however, this is an issue that can be resolved only by the national courts, which must take into account not only Slovak law but also all of the practicalities of the case, that is to say in particular the additional costs, delays and other procedural disadvantages which LZ has suffered as a result of the case having been conducted in this way.

121. It must therefore be concluded that, in the circumstances of the main proceedings, Article 47 of the Charter of Fundamental Rights and Article 9(4) of the Aarhus Convention do not preclude an environmental association from being invited to bring a second action provided that that action does not make it impossible in practice or excessively difficult to exercise the rights conferred on it by the EU legal order.

V – Conclusion

122. I therefore propose that the Court should rule as follows:

Article 47 of the Charter of Fundamental Rights of the European Union and Article 9(4) of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, which was signed on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005, do not preclude

— a system of judicial protection, in the form described in points 89 to 91, the application of which does not prolong the proceedings unreasonably or give rise to excessive costs,

— a mandatory time limit of three years for bringing a judicial appeal against an administrative decision known to the parties concerned,

— in the circumstances of the main proceedings, an environmental association from being invited to bring a second action, provided that this does not make it in practice impossible or excessively difficult for that association to exercise the rights conferred by the EU legal order.