Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

8 November 2016*

(Reference for a preliminary ruling — Environment — Directive 92/43/EEC — Conservation of natural habitats — Article 6(3) — Aarhus Convention — Public participation in decision-making and access to justice in environmental matters — Articles 6 and 9 — Charter of Fundamental Rights of the European Union — Article 47 — Right to effective judicial protection — Project to construct an enclosure — Protected site 'Strážovské vrchy' — Administrative authorisation procedure — Environmental organisation — Request for the status of party to the procedure — Rejection — Legal action)

In Case C-243/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic, Slovakia), made by decision of 14 April 2015, received at the Court on 27 May 2015, in the proceedings

Lesoochranárske zoskupenie VLK

v

Obvodný úrad Trenčín,

third party:

Biely potok a.s.,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, L. Bay Larsen, T. von Danwitz, J.L. da Cruz Vilaça, E. Juhász, M. Berger, A. Prechal (Rapporteur), M. Vilaras and E. Regan, Presidents of Chambers, A. Rosas, A. Borg Barthet, J. Malenovský, E. Jarašiūnas and C. Lycourgos, Judges,

Advocate General: J. Kokott,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 18 April 2016,

after considering the observations submitted on behalf of:

— Lesoochranárske zoskupenie VLK, by I. Rajtáková, advokátka,

— the Slovak Government, by B. Ricziová and M. Kianička, acting as Agents,

* Language of the case: Slovak.

— the European Commission, by A. Tokár and L. Pignataro-Nolin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 June 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 9 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 Lesoochranárske zoskupenie VLK (forest protection association VLK; 'LZ'), an environmental organisation established in accordance with Slovak law, and Obvodný úrad Trenčín (district authority of Trenčín, Slovakia) concerning that organisation's request to be accorded the status of party to the administrative procedure relating to an application for authorisation of a project to construct an enclosure for the purpose of extending a game park on a protected site.

Legal context

International law

3 Article 2 of the Aarhus Convention, headed 'Definitions', states 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, 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.'

4 Article 6 of the Aarhus Convention, headed 'Public participation in decisions on specific activities', provides:

'1. Each Party:

…

(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;

…

2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner …

…

3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.

4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.

5. Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.

6. Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with Article 4, paragraphs 3 and 4. …

…

7. Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.

…’

5 Article 9 of the Aarhus Convention, headed ‘Access to justice’, provides in paragraphs 2 to 4:

‘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, paragraph 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. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.'

EU law

6 Article 2(2) of 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 amended by Council Directive 2006/105/EC of 20 November 2006 (OJ 2006 L 363, p. 368) ('Directive 92/43') states:

'Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.'

7 Article 3(1) of Directive 92/43 provides:

'A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.

The Natura 2000 network shall include the special protection areas classified by the Member States pursuant to [Council] Directive 79/409/EEC [of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1)].'

8 Article 4 of Directive 92/43 states:

'1. On the basis of the criteria set out in Annex III (Stage 1) and relevant scientific information, each Member State shall propose a list of sites indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host. …

The list shall be transmitted to the Commission, within three years of the notification of this Directive, together with information on each site. …

2. On the basis of the criteria set out in Annex III (Stage 2) and in the framework both of each of the nine biogeographical regions referred to in Article 1(c)(iii) and of the whole of the territory referred to in Article 2(1), the Commission shall establish, in agreement with each Member State, a draft list of sites of Community importance drawn from the Member States' lists identifying those which host one or more priority natural habitat types or priority species.

…

The list of sites selected as sites of Community importance, identifying those which host one or more priority natural habitat types or priority species, shall be adopted by the Commission in accordance with the procedure laid down in Article 21.

…

4. Once a site of Community importance has been adopted in accordance with the procedure laid down in paragraph 2, the Member State concerned shall designate that site as a special area of conservation as soon as possible …

5. As soon as a site is placed on the list referred to in the third subparagraph of paragraph 2 it shall be subject to Article 6(2), (3) and (4).'

9 Article 6(3) of Directive 92/43 provides:

'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.'

10 Article 7 of Directive 92/43 provides:

'Obligations arising under Article 6(2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4(4) of Directive [79/409] in respect of areas classified pursuant to Article 4(1) or similarly recognised under Article 4(2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under Directive [79/409], where the latter date is later.'

Slovak law

11 Paragraph 13(2) of zákon č. 543/2002 Z.z. o ochrane prírody a krajiny (Law No 543/2002 on the protection of nature and the landscape) states:

'In territories in respect of which a second level of protection is provided, a permit from the body responsible for nature conservation shall be required

…

(d) for the construction of enclosures outside municipal building areas, except for forest nurseries, orchards and vineyards.

…'

12 Paragraph 82(3) of that law provides:

'… Only the applicant shall be a party to the procedure for grant of a permit or a derogation, unless this Law provides otherwise. … An association with legal personality which has been engaged for at least one year in protecting nature and the landscape … and gives notice in writing of its participation in the procedure no later than seven days after the notification referred to in subparagraph 7 shall constitute an interested person.'

13 The amended version of that provision, which has been in force since 1 December 2011, reads as follows:

‘Only the applicant shall be a party to the procedure for grant of a permit or a derogation, unless this Law provides otherwise. … An association with legal personality which has been engaged for at least one year in protecting nature and the landscape … and which requested in advance to participate in the procedure … shall be a party to the procedure if it confirmed its interest in being a party in writing or electronically at the beginning of the administrative procedure; the statement must be submitted to the competent nature conservation authority within the period which has been laid down for that purpose by the authority in question and must be disclosed at the same time as the information relating to the initiation of the procedure as a procedure which may affect the interests of nature and natural spaces protected by this Law …’

14 Paragraph 14 of the Správny poriadok (Code of Administrative Procedure), in the version applicable to the main proceedings, provides:

‘(1) Any person whose rights, legally protected interests or obligations are the subject of the administrative procedure concerned or whose rights, legally protected interests or obligations may be directly affected by the decision shall be a party to the procedure; in addition, any person who claims that the decision may directly affect his rights, legally protected interests or obligations shall be a party to the procedure, until the contrary is proved.

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

15 In accordance with Paragraph 15a(2) of the Code of Administrative Procedure, ‘a participant’ is entitled to be informed that an administrative procedure has been initiated, to have access to files submitted by the parties to the administrative procedure, to attend hearings and on-the-spot inspections, and to produce evidence and other information on the basis of which the decision will be taken.

16 Paragraph 250b(2) and (3) of the Občiansky súdny poriadok (Code of Civil Procedure), in the version applicable to the main proceedings, provides:

‘(2) If the claimant contends that he has not been notified of the administrative authority’s decision, even though he had to be considered a party to the procedure, the court shall ascertain the truthfulness of that assertion and order the administrative authority to notify the claimant of the administrative decision concerned, postponing the enforcement of that decision where necessary. The court’s ruling shall be binding on the administrative authority. Once the claimant has been notified, the administrative authority shall send the court the case-file for the purposes of the decision on the action. If, within the framework of the administrative procedure, 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 a period of three years has not elapsed since the date of the decision of which the claimant was not notified.’

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

17 On 28 April 2004, the Slovak Republic informed the European Commission of the classification of the site Strážovské vrchy (Strážov Mountains, Slovakia), having a total area of approximately 59 000 hectares, as a special protection area pursuant to Directive 79/409, for the purpose of ensuring the conservation and reproduction of certain bird species of European interest, such as the peregrine falcon (*falco peregrinus*).

18 In addition, by Commission Decision 2008/218/EC of 25 January 2008 adopting, pursuant to Directive 92/43, a first updated list of sites of Community importance for the Alpine biogeographical region (OJ 2008 L 77, p. 106), a part of that site, having an area of approximately 29 000 hectares, was entered on the list of sites of Community importance.

19 On 18 November 2008, LZ was informed that the district authority of Trenčín had initiated an administrative procedure concerning an application submitted by Biely potok a.s. for authorisation of a project relating to the construction of an enclosure, for the purpose of extending a deer reserve, on parcels of land located in the protected site 'Strážovské vrchy'.

20 Subsequently, LZ made enquiries of that authority, which sent it a copy of the minutes of the oral proceedings and of the preparatory documents for the decision granting the permit applied for.

21 In the light of that information, LZ requested that the administrative procedure be stayed, referring to matters which would preclude grant of a permit. It relied, in this connection, in particular on certain matters set out in the observations of the Štátna ochrana prírody — Správa CHKO (National Nature Conservation Authority — Service for Natural Protected Areas, Slovakia) which had been submitted on 3 December 2008.

22 By decision of 23 April 2009, the district authority of Trenčín rejected LZ's request to be accorded the status of party to the administrative authorisation procedure, on the ground that the applicable legislation accorded associations with legal personality such as LZ only the status of 'interested person', and not that of 'party to the procedure'.

23 The administrative appeal brought by LZ against that decision was dismissed by the Krajský úrad životného prostredia v Trenčíne (Regional Environment Authority, Trenčín, Slovakia) on the same ground by a decision of 1 June 2009, which became definitive on 10 June 2009 (those two decisions together being the 'decisions at issue in the main proceedings').

24 By a decision also dated 10 June 2009, which became definitive on 19 June 2009, the district authority of Trenčín granted the permit applied for by Biely potok.

25 On 11 June 2009, LZ brought an action against the decisions at issue in the main proceedings before the Krajský súd v Trenčíne (Regional Court, Trenčín, Slovakia), seeking to obtain the status of party to the administrative procedure on the basis, inter alia, of Article 9(3) of the Aarhus Convention.

26 That court, after staying the proceedings pending delivery by the Court of Justice of the judgment of 8 March 2011, *Lesoochranárske zoskupenie* (C-240/09, EU:C:2011:125), annulled, by decision of 23 August 2011, the decisions at issue in the main proceedings on the basis, in particular, of that judgment.

27 By decision of 26 January 2012, the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic, Slovakia) set aside the decision of 23 August 2011 of the Krajský súd v Trenčíne (Regional Court, Trenčín) and referred the case back to it.

28 The decision of 26 January 2012 stated, first, that, by virtue of the Slovak provisions of civil procedure, after an administrative procedure has been definitively concluded as to the substance, which occurred, in the present instance, following the decision of the district authority of Trenčín of 10 June 2009 granting the application for a permit, it is no longer appropriate to conduct an independent judicial review of the decision refusing the status of party to the administrative procedure given that, as the procedural rights which that status confers can be exercised only if the procedure is still pending, the person claiming that status can no longer invoke it once the procedure has been definitively concluded as to the substance.

29 Secondly, whilst, in such a situation, the judicial proceedings relating to grant of such status have to be terminated, the person concerned must be informed of the possibility of claiming the status of party to the procedure by bringing an action as an 'omitted party' under Paragraph 250b(2) of the Code of Civil Procedure, but such an action must be brought within the statutory three-year time limit prescribed in Paragraph 250b(3) of that code.

30 By decision of 12 September 2012, the Krajský súd v Trenčíne (Regional Court, Trenčín) annulled the decisions at issue in the main proceedings for a second time.

31 According to that court, the decision of the district authority of Trenčín of 10 June 2009 granting the permit was adopted prematurely since, in the course of the administrative procedure relating to the application for a permit, the legal proceedings relating to the request seeking the status of party to that administrative procedure were not yet definitively concluded. That court considered that pending their definitive conclusion the procedure concerning the application for a permit should have been stayed.

32 By decision of 28 February 2013, the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) set aside the decision of the Krajský súd v Trenčíne (Regional Court, Trenčín) of 12 September 2012, essentially on the same grounds as those of its decision of 26 January 2012.

33 By decision of 23 November 2013, the Krajský súd v Trenčíne (Regional Court, Trenčín) rejected LZ's request for grant of the status claimed by it of party to the procedure and considered that it did not have to inform LZ of the possibility of claiming the status of party to the procedure by bringing an action as an 'omitted party' under Paragraph 250b(2) of the Code of Civil Procedure as the three-year time limit in Paragraph 250b(3) of that code had expired in the meantime.

34 The referring court, to which LZ appealed against that decision of 23 November 2013, considers that, in the light of the judgment of 8 March 2011, *Lesoochranárske zoskupenie* (C-240/09, EU:C:2011:125), the question essentially arises whether, in a situation such as that at issue in the main proceedings which concerns rights that individuals derive from EU law, in particular from Article 6(3) of Directive 92/43, the fundamental right to effective judicial protection enshrined in Article 47 of the Charter and the objective of ensuring a high level of environmental protection which both that directive and Article 9 of the Aarhus Convention pursue have been observed.

35 The referring court considers in this regard that the view could be taken that national procedural law must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, the administrative procedure relating to grant of a permit cannot be continued or, consequently, definitively concluded until such time as a definitive judicial decision relating to the request to be accorded the status of party to those administrative proceedings has been adopted.

36 In such a situation, continuing the administrative procedure relating to the application for a permit would be liable to be contrary to the adversarial principle inasmuch as only the applicant for the permit is a party to that procedure and it is possible that, without the participation in it of environmental organisations such as LZ, arguments supporting protection of the environment will neither be put forward nor taken into account, so that the fundamental objective of such a procedure, namely that of ensuring a high level of environmental protection, will not be achieved.

37 Conversely, the view could also be taken that continuing the administrative procedure relating to the application for a permit, even where the legal proceedings relating to a request to be granted the status of party to the procedure is pending, enables that application for a permit to be dealt with particularly quickly. If that administrative procedure were not capable of being continued without a definitive ruling having been given on legal actions relating to the grant of such status, the applicant for the permit could complain of unfair treatment to the administrative authorities.

38 In those circumstances, the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is it possible to guarantee the right to an effective remedy and to a fair trial, affirmed in Article 47 of the Charter, 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 Directive 92/43 (particularly [of 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 right 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, *Lesoochranárske zoskupenie* (Case C-240/09, 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 an administrative procedure 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 that administrative procedure?'

Consideration of the question referred

39 By its question, the referring court asks, in essence, whether Article 47 of the Charter, read in conjunction with Article 9 of the Aarhus Convention, must be interpreted as precluding, in a situation such as that at issue in the main proceedings, an interpretation of rules of national procedural law to the effect that an action against a decision refusing an environmental organisation the status of party to an administrative procedure for authorisation of a project that is to be carried out on a site protected pursuant to Directive 92/43 does not necessarily have to be examined during the course of that procedure, which may be definitively concluded before a definitive judicial decision on possession of the status of party is adopted, and is automatically dismissed as soon as that project is authorised, thereby requiring that organisation to bring an action of another type in order to obtain that status and to secure judicial review of compliance by the competent national authorities with their obligations stemming from Article 6(3) of that directive.

40 In the main proceedings, LZ, an environmental organisation, is claiming by means of a legal action the status of party to an administrative authorisation procedure in order to be able to rely, in legal proceedings, on rights derived from EU law in the environmental field, since it takes the view that the decision authorising the project in question, which is to be carried out on a site protected pursuant to Directive 92/43 as a special protection area or site of Community importance, was adopted in breach of the national authorities' obligations under Article 6(3) of that directive.

41 It is apparent from the documents before the Court that, under the rules of applicable national procedural law, an environmental organisation such as LZ can contest through the courts a decision which may be contrary to Article 6(3) of Directive 92/43, in particular in an action against the subsequent decision granting authorisation, only if it has first been formally accorded the status of party to the procedure concerned, in this instance the procedure for authorisation of a project that is to be carried out on a protected site.

42 It should be noted first of all that, under Article 6(3) of Directive 92/43, an appropriate assessment of the implications of a plan or project for the site concerned implies that, prior to its approval, all aspects of that plan or project which can, by themselves or in conjunction with other plans or projects, affect the site's conservation objectives must be identified in the light of the best scientific knowledge in the field. The competent national authorities are to authorise an activity on the protected site only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no

reasonable scientific doubt remains as to the absence of such an effect (see to that effect, in particular, judgments of 24 November 2011, *Commission* v *Spain*, C-404/09, EU:C:2011:768, paragraph 99, and of 14 January 2016, *Grüne Liga Sachsen and Others*, C-399/14, EU:C:2016:10, paragraphs 49 and 50).

43 Article 6(3) of Directive 92/43 thus plays a part in attainment of the objective pursued by measures taken pursuant to that directive — which, as set out in Article 2(2) thereof, consists in maintaining or restoring, at favourable conservation status, natural habitats and species of wild fauna and flora of interest for the European Union — and of the directive's more general objective, which is to ensure a high level of environmental protection as regards the sites protected pursuant to the directive.

44 It would be incompatible with the binding effect attributed to a directive by Article 288 TFEU to exclude, in principle, the possibility that the obligations which it imposes may be relied on by those concerned. The effectiveness of Directive 92/43 and its aim, which is recalled in the previous paragraph of the present judgment, require that individuals be able to rely on it in legal proceedings, and that the national courts be able to take that directive into consideration as an element of EU law in order, inter alia, to review whether a national authority which has granted an authorisation relating to a plan or project has complied with its obligations under Article 6(3) of the directive, recalled in paragraph 42 of the present judgment, and has thus kept within the limits of the discretion granted to the competent national authorities by that provision (see, to that effect, judgment of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging*, C-127/02, EU:C:2004:482, paragraphs 66 and 69).

45 In addition, Article 6(3) of Directive 92/43 provides that the competent national authorities, before agreeing to a plan or project as referred to in that provision, must, if appropriate, obtain the opinion of the general public. That provision must be read in conjunction with Article 6(1)(b) of the Aarhus Convention, an instrument which forms an integral part of the EU legal order.

46 Article 6(1)(b) of the Aarhus Convention states that the provisions of Article 6 of the convention concerning public participation in decisions on specific activities are to apply to decisions on proposed activities not listed in Annex I to the convention which may have a significant effect on the environment. Article 6 of the convention, as is clear from Article 6(3), (4) and (7), confers on the public, in particular, the right to participate 'effectively during the environmental decision-making' by submitting, 'in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity'. There must be 'early public participation, when all options are open and effective public participation can take place'.

47 In the main proceedings, LZ, which, it is not in dispute, fulfils the conditions specified in Article 2(5) of the Aarhus Convention for falling within the concept of 'the public concerned' within the meaning of that provision, is also covered by the wider concept of 'public' for the purposes of Article 6 of the convention. In addition, whilst, as the Advocate General has also noted in point 65 of her Opinion, the project of constructing an enclosure on a protected site, at issue in the main proceedings, is not among the activities listed in Annex I to the Aarhus Convention, the fact that the competent national authorities decided to initiate an authorisation procedure for that project pursuant to Article 6(3) of Directive 92/43 permits, however, the inference that those authorities considered it necessary to assess the significance of the project's effect on the environment, within the meaning of Article 6(1)(b) of the Aarhus Convention.

48 It is true that the latter provision states that the application of Article 6 of the Aarhus Convention is governed by the domestic law of the contracting party concerned. However, that statement must be understood as relating solely to the manner in which the public participation specified by Article 6 is carried out, and does not call into question the right to participate which an environmental organisation such as LZ derives from that article.

49 It follows that an environmental organisation which, like LZ, meets the conditions specified in Article 2(5) of the Aarhus Convention derives from Article 6(3) of Directive 92/43, read in conjunction with Article 6(1)(b) of that convention, a right to participate, within the meaning specified in paragraph 46 of the present judgment, in a procedure for the adoption of a decision relating to an application for authorisation of a plan or project likely to have a significant effect on the environment in so far as, within the framework of that procedure, one of the decisions envisaged in Article 6(3) of the directive is to be adopted.

50 Next, it should be recalled that, according to settled case-law, under the principle of sincere cooperation laid down in Article 4(3) TEU it is for the courts of the Member States to ensure judicial protection of a person's rights under EU law. In addition, Article 19(1) TEU requires Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law (judgment of 19 November 2014, *ClientEarth*, C-404/13, EU:C:2014:2382, paragraph 52). In the case of administrative decisions adopted within the framework of Article 6(3) of Directive 92/43, that obligation also stems from Article 47 of the Charter.

51 The scope of Article 47 of the Charter, in so far as the action of the Member States is concerned, is defined in Article 51(1) thereof, according to which the provisions of the Charter are addressed to the Member States when they are implementing EU law. That provision confirms the Court's settled case-law, which states that the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law, but not outside such situations (see, in particular, judgment of 30 June 2016, *Toma and Biroul Executorului Judecătoresc Horațiu-Vasile Cruduleci*, C-205/15, EU:C:2016:499, paragraph 23 and the case-law cited).

52 Where a Member State lays down rules of procedural law applicable to actions concerning exercise of the rights which an environmental organisation derives from Article 6(3) of Directive 92/43, read in conjunction with Article 6(1)(b) of the Aarhus Convention, in order for decisions of the competent national authorities to be reviewed in the light of their obligations under those provisions, that Member State is implementing obligations stemming from those provisions and must therefore be regarded as implementing EU law, for the purposes of Article 51(1) of the Charter.

53 Accordingly, the Court has jurisdiction to answer the request for a preliminary ruling inasmuch as it relates to Article 47 of the Charter.

54 The right to an effective remedy and to a fair hearing set out in Article 47 of the Charter includes, in particular, the right to an effective remedy before a tribunal.

55 As regards that right to an effective remedy, it should be noted that Article 9(2) of the Aarhus Convention grants access to a review procedure to environmental organisations that meet the conditions referred to in Article 2(5) of that convention — which LZ does — in so far as the review is of a decision which falls within the scope of Article 9(2).

56 Decisions adopted by the competent national authorities within the framework of Article 6(3) of Directive 92/43, whether they concern a request to participate in the authorisation procedure, the assessment of the need for an environmental assessment of the implications of a plan or project for a protected site, or the appropriateness of the conclusions drawn from such an assessment as regards the risks of that plan or project for the integrity of the site, and whether they are autonomous or integrated in a decision granting authorisation, are decisions which fall within the scope of Article 9(2) of the Aarhus Convention.

57 As the Advocate General has noted, in essence, in point 80 of her Opinion, decisions adopted by the national authorities which fall within the scope of Article 6(3) of Directive 92/43 and do not relate to an activity listed in Annex I to the Aarhus Convention are envisaged in Article 6(1)(b) of that

convention and therefore fall within the scope of Article 9(2) thereof in so far as they involve assessment by the competent authorities, before any authorisation of an activity, as to whether that activity, in the circumstances of the case, is likely to have a significant effect on the environment.

58 It is apparent from Article 9(2) of the Aarhus Convention that that provision limits the discretion available to the Member States when determining the detailed rules for the legal actions which it envisages inasmuch as that provision has the objective of granting 'wide access to justice' to the public concerned, which includes environmental organisations meeting the conditions laid down in Article 2(5) of the convention (see, by analogy, in respect of Article 10a of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40) as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 (OJ 2003 L 156, p. 17) ('Directive 85/337'), which reproduces Article 9(2) of the Aarhus Convention in almost identical terms, judgment of 16 April 2015, *Gruber*, C-570/13, EU:C:2015:231, paragraph 39).

59 Consequently, those organisations must necessarily be able to rely in legal proceedings on the rules of national law implementing EU environmental law and the rules of EU environmental law having direct effect (see, by analogy, in respect of Article 10a of Directive 85/337, judgment of 15 October 2015, *Commission* v *Germany*, C-137/14, EU:C:2015:683, paragraph 92).

60 The rights on which such a non-governmental organisation must be able to rely in an action covered by Article 9(2) of the Aarhus Convention include the rules of national law flowing from Article 6 of Directive 92/43 (see by analogy, in respect of Article 10a of Directive 85/337, judgment of 12 May 2011, *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen*, C-115/09, EU:C:2011:289, paragraphs 49 and 58).

61 Thus, such an organisation must be able to challenge, in such an action, not only a decision not to carry out an appropriate assessment of the implications for the site of the plan or project in question but also, as the case may be, the assessment carried out inasmuch as it is alleged to be vitiated by defects (see by analogy, in respect of Article 10a of Directive 85/337, judgment of 7 November 2013, *Gemeinde Altrip and Others*, C-72/12, EU:C:2013:712, paragraph 37).

62 It should be noted, furthermore, that Article 9(4) of the Aarhus Convention requires the procedures referred to in Article 9(2) thereof to provide 'adequate and effective' remedies.

63 Therefore, in order to answer the question asked by the referring court, it must be examined whether Article 47 of the Charter, read in conjunction with Article 9(2) and (4) of the Aarhus Convention, precludes, in a situation such as that at issue in the main proceedings, an interpretation of the rules of national procedural law from which it follows that a legal action brought by an environmental organisation which meets the conditions laid down in Article 2(5) of that convention against a decision refusing it the status of party to an administrative procedure for authorisation of a project that is to be carried out on a site protected pursuant to Directive 92/43 does not necessarily have to be examined during the course of that procedure, which may be definitively concluded before a definitive judicial decision on possession of the status of party is adopted, and is automatically dismissed as soon as that project is authorised, thereby requiring that organisation to bring an action of another type in order to obtain that status and to secure judicial review of compliance by the competent national authorities with their obligations stemming from Article 6(3) of that directive.

64 Although that examination is, admittedly, in principle a matter for the referring court alone, the fact remains that the Court of Justice has jurisdiction to deduce from the provisions of EU law the criteria that the referring court may or must apply within the framework of EU law. Nor is there anything preventing a national court from asking the Court of Justice to rule on the application of those provisions in the case in point, provided, however, that the national court carries out the finding and

assessment of the facts necessary for that purpose in the light of all the material in the file before it (see, to that effect, judgment of 3 December 2015, *Banif Plus Bank*, C-312/14, EU:C:2015:794, paragraphs 51 and 52).

65 That having been said, it should be pointed out that, 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 which individuals derive from EU law, the Member States being responsible for ensuring that those rights are effectively protected in each case and, in particular, for ensuring compliance with the right to an effective remedy and to a fair hearing enshrined in Article 47 of the Charter (see, to that effect, judgments of 8 March 2011, *Lesoochranárske zoskupenie*, C-240/09, EU:C:2011:125, paragraph 47, and of 15 September 2016, *Star Storage and Others*, C-439/14 and C-488/14, EU:C:2016:688, paragraph 46).

66 Article 6(3) of Directive 92/43 establishes a procedure, involving prior examination, that is founded on a stringent authorisation criterion which, incorporating the precautionary principle, makes it possible to prevent in an effective manner adverse effects on the integrity of protected sites due to the plans or projects envisaged, since that criterion obliges the competent national authorities to refuse authorisation for a plan or project where doubts remain as to the absence of adverse effects of those plans or projects on the integrity of such sites (see to that effect, in particular, judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging*, C-127/02, EU:C:2004:482, paragraphs 57 and 58, and of 14 January 2016, *Grüne Liga Sachsen and Others*, C-399/14, EU:C:2016:10, paragraph 48).

67 However, in the main proceedings, whilst it is not in dispute that LZ was able to participate to a certain extent in the authorisation procedure in its capacity as an 'interested person', that participation enabling it, in particular, to put forward, in the light of observations submitted by an environmental authority, arguments designed to demonstrate that the project at issue in the main proceedings is such as to affect the integrity of a protected site, that status is not equivalent to the status of 'party to the proceedings' .

68 In those circumstances, the interpretation of national procedural law, contested by LZ, to the effect that an action against an administrative decision refusing the status of party to an administrative procedure does not necessarily have to be examined during the course of that procedure and is automatically dismissed as soon as the permit applied for is granted, does not enable an organisation such as LZ to be ensured effective judicial protection of the various specific rights inherent in the right of public participation, within the meaning of Article 6 of the Aarhus Convention, as specified in paragraph 46 of the present judgment.

69 It is apparent from the documents before the Court that the status of 'party to the procedure', had it been granted to LZ, would have enabled LZ to participate more actively in the decision-making process by setting out in greater detail and more appositely its arguments relating to the risks of adverse effects of the project envisaged on the integrity of the protected site, arguments which would indeed have had to be taken into account by the competent authorities before that project was authorised and executed.

70 In this context, the referring court has, moreover, observed that, since only the applicant for the permit is automatically a party to the procedure, it is possible that, without the participation in the administrative procedure of an environmental organisation such as LZ as a party to the procedure, arguments supporting protection of the environment will be neither put forward nor taken into account, so that the fundamental objective of the procedure envisaged in Article 6(3) of Directive 92/43, namely that of ensuring a high level of environmental protection, will not be achieved.

71 Furthermore, it should be noted that the status of 'interested person' which LZ was accorded in the main proceedings is insufficient for it to put forward, in an action, its arguments intended to contest the legality of the decision granting authorisation, since it is necessary to have the status of 'party to the procedure' in order to be able to bring such an action.

72 Accordingly, it must be found that the interpretation of national procedural law, contested by LZ, to the effect that the bringing of an action against an administrative decision refusing the status of party to an authorisation procedure does not preclude that procedure from being definitively concluded and that that action is dismissed, automatically and in any event, as soon as the permit concerned is granted, is not, in the light of the objective of ensuring wide access to justice as regards actions against environmental decisions, such as to secure effective judicial protection of the rights which an environmental organisation derives from Article 6(3) of Directive 92/43, read in conjunction with Article 6(1)(b) of the Aarhus Convention, designed to prevent specific adverse effects on the integrity of the sites protected pursuant to that directive.

73 In the light of the foregoing, the answer to the question referred is that, inasmuch as Article 47 of the Charter, read in conjunction with Article 9(2) and (4) of the Aarhus Convention, enshrines the right to effective judicial protection, in conditions ensuring wide access to justice, of the rights which an environmental organisation meeting the conditions laid down in Article 2(5) of that convention derives from EU law, in this instance from Article 6(3) of Directive 92/43, read in conjunction with Article 6(1)(b) of that convention, it must be interpreted as precluding, in a situation such as that at issue in the main proceedings, an interpretation of rules of national procedural law to the effect that an action against a decision refusing such an organisation the status of party to an administrative procedure for authorisation of a project that is to be carried out on a site protected pursuant to that directive does not necessarily have to be examined during the course of that procedure, which may be definitively concluded before a definitive judicial decision on possession of the status of party is adopted, and is automatically dismissed as soon as that project is authorised, thereby requiring that organisation to bring an action of another type in order to obtain that status and to secure judicial review of compliance by the competent national authorities with their obligations stemming from Article 6(3) of that directive.

Costs

74 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Grand Chamber) hereby rules:

Inasmuch as Article 47 of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 9(2) and (4) 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, enshrines the right to effective judicial protection, in conditions ensuring wide access to justice, of the rights which an environmental organisation meeting the conditions laid down in Article 2(5) of that convention derives from EU law, in this instance from Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended by Council Directive 2006/105/EC of 20 November 2006, read in conjunction with Article 6(1)(b) of that convention, it must be interpreted as precluding, in a situation such as that at issue in the main proceedings, an interpretation of rules of national procedural law to the effect that an action against a decision refusing such an organisation the status of party to an administrative procedure for authorisation of a project that is to be carried out on a site protected pursuant to Directive

92/43 as amended by Directive 2006/105 does not necessarily have to be examined during the course of that procedure, which may be definitively concluded before a definitive judicial decision on possession of the status of party is adopted, and is automatically dismissed as soon as that project is authorised, thereby requiring that organisation to bring an action of another type in order to obtain that status and to secure judicial review of compliance by the competent national authorities with their obligations stemming from Article 6(3) of that directive.

[Signatures]