Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

15 January 2013*

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

In Case C-416/10,

REQUEST for a preliminary ruling under Article 267 TFEU from the Najvyšší súd Slovenskej republiky (Slovakia), made by decision of 17 August 2010, received at the Court on 23 August 2010, in the proceedings

Jozef Križan,

Katarína Aksamitová,

Gabriela Kokošková,

Jozef Kokoška,

Martina Strezenická,

Jozef Strezenický,

Peter Šidlo,

Lenka Šidlová,

Drahoslava Šidlová,

Milan Šimovič,

Elena Šimovičová,

Stanislav Aksamit,

* Language of the case: Slovak.

Tomáš Pitoňák,

Petra Pitoňáková,

Mária Križanová,

Vladimír Mizerák,

Ľubomír Pevný,

Darina Brunovská,

Mária Fišerová,

Lenka Fišerová,

Peter Zvolenský,

Katarína Zvolenská,

Kamila Mizeráková,

Anna Konfráterová,

Milan Konfráter,

Michaela Konfráterová,

Tomáš Pavlovič,

Jozef Krivošík,

Ema Krivošíková,

Eva Pavlovičová,

Jaroslav Pavlovič,

Pavol Šipoš,

Martina Šipošová,

Jozefína Šipošová,

Zuzana Šipošová,

Ivan Čaputa,

Zuzana Čaputová,

Štefan Strapák,

Katarína Strapáková,

František Slezák,

Agnesa Slezáková,

Vincent Zimka,

Elena Zimková,

Marián Šipoš,

Mesto Pezinok

v

Slovenská inšpekcia životného prostredia,

intervener:

Ekologická skládka as,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, M. Ilešič, L. Bay Larsen (Rapporteur), J. Malenovský, Presidents of Chambers, A. Borg Barthet, J.-C. Bonichot, C. Toader, J.-J. Kasel and M. Safjan, Judges,

Advocate General: J. Kokott,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 17 January 2012,

after considering the observations submitted on behalf of:

— Jozef Križan, Katarína Aksamitová, Gabriela Kokošková, Jozef Kokoška, Martina Strezenická, Jozef Strezenický, Peter Šidlo, Lenka Šidlová, Drahoslava Šidlová, Milano Šimovič, Elena Šimovičová, Stanislav Aksamit, Tomáš Pitoňák, Petra Pitoňáková, Mária Križanová, Vladimír Mizerák, Ľubomír Pevný, Darina Brunovská, Mária Fišerová, Lenka Fišerová, Peter Zvolenský, Katarína Zvolenská, Kamila Mizeráková, Anna Konfráterová, Milano Konfráter, Michaela Konfráterová, Tomáš Pavlovič, Jozef Krivošík, Ema Krivošíková, Eva Pavlovičová, Jaroslav Pavlovič, Pavol Šipoš, Martina Šipošová, Jozefína Šipošová, Zuzana Šipošová, Ivan Čaputa, Zuzana Čaputová, Štefan Strapák, Katarína Strapáková, František Slezák, Agnesa Slezáková, Vincent Zimka, Elena Zimková, Marián Šipoš, by T. Kamenec and Z. Čaputová, advokáti,

— Mesto Pezinok, by J. Ondruš and K. Siváková, advokáti,

— Slovenská inšpekcia životného prostredia, by L. Fogaš, advokát,

— Ekologická skládka as, by P. Kováč, advokát,

— the Slovak Government, by B. Ricziová, acting as Agent,

— the Czech Government, by M. Smolek and. D. Hadroušek, acting as Agents,

— the French Government, by S. Menez, acting as Agent,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the European Commission, by P. Oliver and A. Tokár, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 April 2012,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation 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'), of Articles 191(1) and (2) TFEU and 267 TFEU, 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'), and of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26), as amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 (OJ 2006 L 33, p. 1) ('Directive 96/61').

2 This request has been made in proceedings between, on the one hand, Mr Križan and 43 other appellants, natural persons, residents of the town of Pezinok, as well as Mesto Pezinok (town of Pezinok), and, on the other, the Slovenská inšpekcia životného prostredia (Slovak Environment Inspection; 'the inšpekcia') concerning the lawfulness of decisions of the administrative authority authorising the construction and operation by Ekologická skládka as ('Ekologická skládka'), the intervener in the main proceedings, of a landfill site for waste.

Legal context

International law

3 Article 6 of the Aarhus Convention, entitled 'Public participation in decisions on specific activities', provides in paragraphs 1, 2, 4 and 6:

'1. Each party:

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

...

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, inter alia, of:

...

(d) the envisaged procedure, including, as and when this information can be provided:

...

(iv) an indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;

...

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

...

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, in particular, Article 4(4)].

...'

4 Article 9 of the Aarhus Convention, entitled 'Access to justice', provides in paragraphs 2 and 4:

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

...

(b) ... 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.

...

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

5 Annex I, section 5, to the Aarhus Convention indicates, under the activities referred to in Article 6(1)(a) thereof:

'Waste management

…

— landfills receiving more than 10 tonnes per day or with a total capacity exceeding 25 000 tonnes, excluding landfills of inert waste.'

European Union law

Directive 85/337

6 Article 1(2) of Directive 85/337 defines the concept of 'development consent' as 'the decision of the competent authority or authorities which entitles the developer to proceed with the project.'

7 Article 2 of Directive 85/337 is drafted in the following terms:

'1. Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. Those projects are defined in Article 4.

2. The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.

...'

Directive 96/61

8 Recital 23 in the preamble to Directive 96/61 states:

'... in order to inform the public of the operation of installations and their potential effect on the environment, and in order to ensure the transparency of the licensing process throughout the Community, the public must have access, before any decision is taken, to information relating to applications for permits for new installations ...'

9 Article 1 of that directive, entitled 'Purpose and scope', provides:

'The purpose of this Directive is to achieve integrated prevention and control of pollution arising from the activities listed in Annex I. It lays down measures designed to prevent or, where that is not practicable, to reduce emissions in the air, water and land from the abovementioned activities, including measures concerning waste, in order to achieve a high level of protection of the environment taken as a whole, without prejudice to Directive [85/337] and other relevant Community provisions.'

10 Article 15 of Directive 96/61, entitled 'Access to information and public participation in the permit procedure', provides:

'1. Member States shall ensure that the public concerned are given early and effective opportunities to participate in the procedure for:

— issuing a permit for new installations,

...

The procedure set out in Annex V shall apply for the purposes of such participation.

...

4. [In particular, paragraph 1] shall apply subject to the restrictions laid down in Article 3(2) and (3) of [Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment (OJ 1990 L 158, p. 56)].

...'

11 Article 15a of Directive 96/61, entitled 'Access to justice', reads as follows:

'Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

...

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.

...

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

...'

12 Annex I to Directive 96/61, entitled 'Categories of industrial activities referred to in Article 1', refers, in paragraph 5.4, to '[l]andfills receiving more than 10 tonnes per day or with a total capacity exceeding 25 000 tonnes, excluding landfills of inert waste.'

13 Annex V to Directive 96/61, entitled 'Public participation in decision-making', provides, inter alia:

'1. The public shall be informed (by public notices or other appropriate means such as electronic media where available) of the following matters early in the procedure for the taking of a decision or, at the latest, as soon as the information can reasonably be provided:

...

(c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;

...

(f) an indication of the times and places where, or means by which, the relevant information will be made available;

...'

Directive 2003/4/EC

14 Recital 16 in the preamble to Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313 (OJ 2003 L 41, p. 26) is drafted in the following terms:

'The right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases. Grounds for refusal should be interpreted in a restrictive way, whereby the public interest served by disclosure should be weighed against the interest served by the refusal. The reasons for a refusal should be provided to the applicant within the time-limit laid down in this Directive.'

15 Article 4(2) and (4) of that directive provides, inter alia:

'2. Member States may provide for a request for environmental information to be refused if disclosure of the information would adversely affect:

...

(d) the confidentiality of commercial or industrial information where such confidentiality is provided for by national or Community law to protect a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy;

...

The grounds for refusal mentioned [in, inter alia, paragraph 2] shall be interpreted in a restrictive way, taking into account for the particular case the public interest served by disclosure. In every particular case, the public interest served by disclosure shall be weighed against the interest served by the refusal. ...

...

4. Environmental information held by or for public authorities which has been requested by an applicant shall be made available in part where it is possible to separate out any information falling within the scope of paragraphs 1(d) and (e) or 2 from the rest of the information requested.'

Directive 2003/35

16 Recital 5 in the preamble to Directive 2003/35 provides that European Union law should be properly aligned with the Aarhus Convention with a view to its ratification.

Slovak law

Procedural rules

17 Article 135(1) of the Code of Civil Procedure provides:

'... The court is also bound by the decisions of the Ústavný súd Slovenskej republiky [Constitutional Court of the Slovak Republic] or the European Court of Human Rights which affect fundamental rights and freedoms.'

18 Paragraph 56(6) of Law No 38/1993 Z.z. on the organisation, the rules of procedure and the status of judges of the Ustavný súd Slovenskej republiky, in the version applicable to the facts in the main proceedings, provides:

'If the Ústavný súd Slovenskej republiky annuls a decision, a measure or other valid action and refers the case, the body which, in that case, adopted the decision, took the measure or the action, is required to re-examine the case and to rule afresh. In that procedure or step, it is bound by the právny názor [judicial position] of the Ústavný súd Slovenskej republiky.'

The provisions on environmental impact assessments, urban planning rules and integrated permits

– Law No 24/2006 Z.z.

19 Paragraph 1(1) of Law No 24/2006 Z.z. on environmental impact assessments and amending several laws, in the version applicable to the facts in the main proceedings, states:

'The present law governs:

(a) the evaluation process, by professionals and by the public, of the alleged impact on the environment

...

2. of planned activities before the adoption of the decision on their location or before their authorisation under the specific legislation.

...'

20 Paragraph 37 of that law provides:

'...

6. The period of validity of the final opinion concerning an activity is three years from its issue. The final opinion shall maintain its validity if, during that period, a location procedure or a procedure for a permit for the activity is initiated under the specific legislation.

7. The validity of the final opinion concerning an activity may be extended by a renewable period of two years at the request of the applicant if he adduces written evidence that the planned activity and the conditions of the land have not undergone substantial changes, that no new circumstance connected to the material content of the assessment report of the activity has arisen and that new technologies used to proceed with the planned activity have not been developed. The decision to extend the validity of the final opinion concerning the activity reverts to the competent body.'

21 Paragraph 65(5) of that law provides:

'If the final opinion was issued before 1 February 2006 and if the procedure for the authorisation of the activity subject to the assessment was not initiated under the specific legislation, an extension to its validity must, in accordance with Paragraph 37(7), be requested from the Ministry.'

Law No 50/1976 Zb.

22 Paragraph 32 of Law No 50/1976 Zb. on urban planning, in its version applicable to the facts in the main proceedings, provides:

'Construction of a building, changes to land use and the protection of major interests in the land are possible only on the basis of an urban planning decision taking the form of a

(a) location decision;

...'

– Law No 245/2003 Z.z.

23 Paragraph 8(3) and (4) of Law No 245/2003 Z.z. on integrated pollution prevention and control and amending a number of laws, as amended by Law No 532/2005 ('Law No 245/2003'), provides:

'(3) Where there is an integrated operating permit, which at the same time requires a permit for a new building or for alterations to an existing building, the procedure shall also include an urban planning procedure, a procedure for changes prior to completion of the building and a procedure for the authorisation of improvements.

(4) The urban planning procedure, the assessment of the environmental impact of the installation and the determination of the conditions for the prevention of serious industrial accidents shall not form part of the integrated permit.'

24 Paragraph 11(2) of that law specifies:

'The application [for the integrated permit] must be accompanied by:

...

(c) the final opinion following from the environment impact assessment procedure, if required due to the operation,

…

(g) the urban planning decision, if it is a new operation or the expansion of an existing operation …'

25 Paragraph 12 of that law, entitled 'Commencement of the procedure', states:

'...

(2) After having confirmed that the application is complete and specified the group of parties involved in the procedure and the bodies concerned, the administration

...

(c) ... shall publish the application on its internet page, with the exception of the annexes which are not available in an electronic form, and, for a minimum period of 15 days, shall publish in its official list the essential information on the application lodged, the operator and the operation,

...'

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

The administrative procedure

26 On 26 June 1997, Mesto Pezinok adopted General Regulation No 2/1997 on urban planning, which provided, inter alia, for the location of a landfill site in a trench used for the extraction of earth for use in brick-making, called 'Nová jama' (new trench).

27 On the basis of an assessment report for a proposed location of a landfill site presented by Pezinské tehelne as on 16 December 1998, the Ministry of the Environment carried out an environmental impact assessment in 1999. It delivered a final opinion on 26 July 1999.

28 On 7 August 2002, Ekologická skládka presented to the competent service of Mesto Pezinok an application seeking to be granted an urban planning decision on the location of a landfill site on the Nová jama site.

29 On 27 March 2006, at the request of Pezinské tehelne as, the Ministry of the Environment extended the validity of its final opinion of 26 July 1999 until 1 February 2008.

30 By decision of 30 November 2006, in the version resulting from a decision of the Krajský stavebný úrad v Bratislave (regional urban planning service of Bratislava) of 7 May 2007, Mesto Pezinok authorised, at the request of Ekologická skládka, the establishment of a landfill site on the Nová jama site.

31 Following an application for an integrated permit lodged on 25 September 2007 by Ekologická skládka, the Slovenská inšpekcia životného prostredia, Inšpektorát životného prostredia Bratislava (Slovak environment inspection, environment inspection authority of Bratislava; 'the inšpektorát') initiated an integrated procedure on the basis of Law No 245/2003, which was the measure transposing Directive 96/61. On 17 October 2007, together with the public services for environmental protection, it published that application and set out a period of 30 days for the submission of observations by the public and the State services concerned.

32 Since the appellants in the main proceedings had invoked the incomplete nature of the application for an integrated permit submitted by Ekologická skládka, in so far as it did not contain, as an annex provided for under Paragraph 11(2)(g) of Law No 245/2003, the urban planning decision on the location of the landfill site, the inšpektorát stayed the integrated procedure on 26 November 2007 and requested notification of that decision.

33 On 27 December 2007, Ekologická skládka forwarded that decision and indicated that it considered it to be commercially confidential. On the basis of that indication, the inšpektorát did not make the document at issue available to the appellants in the main proceedings.

34 On 22 January 2008, the inšpektorát issued Ekologická skládka with an integrated permit for the construction of the installation 'Pezinok – landfill site' and for its operation.

35 The appellants in the main proceedings lodged an appeal against that decision before the inšpekcia, which is the environmental protection body at second instance. That body decided to publish the urban planning decision on the location of the landfill site in the official list from 14 March to 14 April 2008.

36 In the context of the administrative procedure at second instance, the appellants in the main proceedings relied, inter alia, on the error in law which, they submit, consisted in the integrated procedure being initiated without the urban planning decision on the location of the landfill site being available, then, after that decision had been submitted, without publication thereof, on the alleged ground that it constituted confidential commercial information.

37 By decision of 18 August 2008, the inšpekcia dismissed the appeal as unfounded.

The judicial proceedings

38 The appellants in the main proceedings brought an action against the inšpekcia's decision of 18 August 2008 before the Krajský súd Bratislava (Regional Court of Bratislava), an administrative court of first instance. By judgment of 4 December 2008, that court dismissed the action.

39 The appellants in the main proceedings lodged an appeal against that judgment before the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic).

40 By order of 6 April 2009, that court suspended the operation of the integrated permit.

41 By judgment of 28 May 2009, the same court amended the judgment of the Krajský súd Bratislava and annulled the decision of the inšpekcia of 18 August 2008 and the decision of the inšpektorát dated 22 January 2008, in essence finding that the competent authorities had failed to observe the rules governing the participation of the public concerned in the integrated procedure and had not sufficiently assessed the environmental impact of the construction of the landfill site.

42 Ekologická skládka lodged a constitutional appeal before the Ústavný súd Slovenskej republiky (Constitutional Court of the Slovak Republic) on 25 June 2009 against the order of the Najvyšší súd Slovenskej republiky of 6 April 2009 and, on 3 September 2009, a constitutional appeal against the judgment of that latter court of 28 May 2009.

43 By judgment of 27 May 2010, the Ustavný súd Slovenskej republiky held that the Najvyšší súd Slovenskej republiky had infringed Ekologická skládka's fundamental right to legal protection, recognised in Article 46(1) of the Constitution, its fundamental right to property, recognised in Article 20(1) of the Constitution, and its right to peaceful enjoyment of its property, recognised in Article 1 of the Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

44 It found, inter alia, that the Najvyšší súd Slovenskej republiky had not taken account of all the applicable principles governing the administrative procedure and that it had exceeded its powers by examining the lawfulness of the procedure and of the environmental impact assessment decision, even though the appellants had not disputed them and it lacked jurisdiction to rule on them.

45 By its judgment, the Ústavný súd Slovenskej republiky consequently annulled the contested order and set aside the judgment, referring the case back to the Najvyšší súd Slovenskej republiky so that it could give a fresh ruling.

46 The Najvyšší súd Slovenskej republiky observes that several participants in the proceedings pending before it claim that it is bound by the judgment of the Ústavný súd Slovenskej republiky of 27 May 2010. None the less, it notes that it still has doubts as to the compatibility of the contested decisions with European Union law.

47 In those circumstances, the Najvyšší súd Slovenskej republiky decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. Does [European Union] law (specifically Article 267 TFEU) require or enable the supreme court of a Member State, of its own motion, to refer a question to the [Court of Justice] for a preliminary ruling even at a stage of proceedings where the constitutional court has annulled a judgment of the supreme court based in particular on the application of the [European Union legal] framework on environmental protection and imposed the obligation to abide by the constitutional court’s legal opinions based on breaches of the procedural and substantive constitutional rights of a person involved in judicial proceedings, irrespective of the [European Union law] dimension of the case concerned, that is, where in those proceedings the constitutional court, as the court of last instance, has not concluded that there is a need to refer a question to the [Court of Justice] for a preliminary ruling and has provisionally excluded the application of the right to an acceptable environment and the protection thereof in the case concerned?

2. Is it possible to fulfil the basic objective of integrated prevention as defined, in particular, in recitals 8, 9 and 23 in the preamble to and Articles 1 and 15 of Directive [96/61], and, in general, in the [European Union legal] framework on the environment, that is, pollution prevention and control involving the public in order to achieve a high level of environmental protection as a whole, by means of a procedure where, on commencement of an integrated prevention procedure, the public concerned is not guaranteed access to all relevant documents (Article 6 in conjunction with Article 15 of Directive [96/61]), especially the decision on the location of a structure (landfill site), and where, subsequently, at first instance, the missing document is submitted by the applicant on condition that it is not disclosed to other parties to the proceedings in view of the fact that it constitutes trade secrets: can it reasonably be assumed that the location decision (in particular its statement of reasons) will significantly affect the submission of suggestions, observations or the other comments?

3. Are the objectives of [Directive 85/337] met, especially in terms of the [European Union legal] framework on the environment, specifically the condition referred to in Article 2 that, before consent is given, certain projects will be assessed in the light of their environmental impact, if the original position of the Ministerstvo životného prostredia (Ministry of the Environment) issued in 1999 and terminating a past environmental impact assessment (EIA) procedure is prolonged several years later by a simple decision without a repeat EIA procedure; in other words, can it be said that a decision under [Directive 85/337], once issued, is valid indefinitely?

4. Does the requirement arising generally under Directive [96/61] (in particular the preamble and Articles 1 and 15a) for Member States to engage in the prevention and control of pollution by providing the public with fair, equitable and timely administrative or judicial proceedings in conjunction with Article 10a of Directive [85/337] and Articles 6 and 9(2) and (4) of the Aarhus Convention apply to the possibility for the public to seek the imposition of an administrative or judicial measure which is preliminary in nature in accordance with national law (for example, an order for the judicial suspension of enforcement of an integrated permit) and allows for the temporary suspension, until a final decision in the case, of the construction of an installation for which a permit has been requested?

5. Is it possible, by means of a judicial decision meeting the requirements of Directive [96/61] or Directive [85/337] or Article 9(2) and (4) of the Aarhus Convention, in the application of the public right contained therein to fair judicial protection within the meaning of Article 191(1) and (2) [TFEU], concerning European Union policy on the environment, to interfere unlawfully with an operator’s right of property in an installation as guaranteed, for example, in Article 1 of

the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, for example by revoking an applicant's valid integrated permit for a new installation in judicial proceedings?'

Consideration of the questions referred

Admissibility

48 The inšpekcia, Ekologická skládka and the Slovak Government challenge, on a variety of grounds, the admissibility of the request for a preliminary ruling or of some of the questions referred.

49 In the first place, in the view of the inšpekcia and Ekologická skládka, all of the questions referred are inadmissible because they concern situations which are entirely governed by internal rules, in particular by the acts transposing Directives 85/337 and 96/61. Ekologická skládka infers from this that those directives have no direct effect, while the inšpekcia considers that they are sufficiently clear to render the reference for a preliminary ruling unnecessary. The inšpekcia also argues that the questions referred ought to have been raised during the first stage of the proceedings brought before the Najvyšší súd Slovenskej republiky. Likewise, Ekologická skládka takes the view that those questions are superfluous in so far as the Najvyšší súd Slovenskej republiky is now bound by the position in law taken by the Ústavný súd Slovenskej republiky and that none of the parties in the main proceedings requested that the Court of Justice be seised of those questions.

50 In the second place, Ekologická skládka claims that the separation established by national law between the integrated procedure, the urban planning procedure and the environmental impact assessment procedure renders the second and third questions irrelevant to the outcome of the main proceedings. In the view of the inšpekcia, that separation justifies the contention that the third, fourth and fifth questions are inadmissible. That is because it implies that a defect arising from the urban planning decision or the environmental impact assessment has no effect on the lawfulness of the integrated permit.

51 In the third place, Ekologická skládka and the Slovak Government take the view that the fourth question is hypothetical. First, the interim measures ordered by the Najvyšší súd Slovenskej republiky in its order of 6 April 2009 are, they contend, now wholly deprived of effectiveness. Second, that question is irrelevant to the proceedings pending before the referring court since those proceedings concern the validity of the contested administrative decisions and not the delivery of new interim measures.

52 In the fourth and last place, Ekologická skládka claims that the fifth question is also hypothetical as it concerns the decision that the Najvyšší súd Slovenskej republiky will be called upon to make at the conclusion of the main proceedings. Moreover, that question is also inadmissible because it concerns the interpretation of national constitutional law.

53 In that regard, it must be borne in mind that, according to settled case-law, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of European Union law, the Court is in principle required to give a ruling (Case C-169/07 *Hartlauer* [2009] ECR I-1721, paragraph 24, and Case C-470/11 *Garkalns* [2012] ECR, paragraph 17).

54 It follows that questions relating to European Union law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (Joined Cases C-570/07 and C-571/07 *Blanco Pérez and Chao Gómez* [2010] ECR I-4629, paragraph 36, and Case C-509/10 *Geistbeck* [2012] ECR, paragraph 48).

55 However, the argument relating to the completeness of national law does not enable it to be established that the interpretation of the rules of European Union law cited by the referring court clearly bear no relation to the dispute in the main proceedings, particularly as it is not disputed that the applicable national provisions are in part measures transposing European Union acts. Therefore, that argument does not suffice to reverse the presumption of relevance referred to in the previous paragraph.

56 It must be stated that the alleged absence of direct effect of the directives at issue does not alter that analysis because the Court has jurisdiction, under Article 267 TFEU, to give preliminary rulings concerning the interpretation of acts of the institutions of the European Union, irrespective of whether they are directly applicable (Case C-373/95 *Maso and Others* [1997] ECR I-4051, paragraph 28; Case C-254/08 *Futura Immobiliare and Others* [2009] ECR I-6995, paragraph 34; and Case C-370/12 *Pringle* [2012] ECR, paragraph 89). Moreover, as regards the assumed irrelevance of the request for a preliminary ruling by reason of the clarity of the applicable rules, it must be recalled that Article 267 TFEU always allows a national court, if it considers it desirable, to refer questions of interpretation to the Court (see, to that effect, Joined Cases C-165/09 to C-167/09 *Stichting Natuur en Milieu and Others* [2011] ECR I-4599, paragraph 52 and the case-law cited).

57 The other arguments put forward by the inšpekcia and Ekologická skládka to demonstrate the inadmissibility of the request for a preliminary ruling in its entirety concern the purpose of the first question and will for that reason be addressed by the Court when it examines that question.

58 As regards the factors arising from the separation of the various proceedings under national law, it is important to note that the referring court adopts a view of the consequences which must be drawn from that separation under national law which is very different from that supported by the inšpekcia and Ekologická skládka. However, in the procedure laid down by Article 267 TFEU, the functions of the Court of Justice and those of the referring court are clearly distinct, and it falls exclusively to the latter to interpret national legislation (Case C-295/97 *Piaggio* [1999] ECR I-3735, paragraph 29, and Case C-500/06 *Corporación Dermoestética* [2008] ECR I-5785, paragraph 21). Consequently, those factors are insufficient to show that the questions raised are manifestly unconnected with the facts or subject-matter of the dispute.

59 With regard to the admissibility of the fourth question, it is apparent from the decision making the reference that the Najvyšší súd Slovenskej republiky adopted new interim measures designed to suspend the effect of the decisions at issue in the main proceedings. Moreover, Ekologická skládka states in its written observations that it considered it useful to bring an action challenging those measures. In those circumstances, it does not appear that the fourth question can be regarded as hypothetical.

60 Finally, so far as the admissibility of the fifth question is concerned, it is not in dispute that the Ústavný súd Slovenskej republiky held that the Najvyšší súd Slovenskej republiky had infringed Ekologická skládka's right to property by its judgment of 28 May 2009, which found that the integrated permit had been granted under circumstances incompatible with European Union law. In so far as the referring court continues to have doubts as to the compatibility with European law of the

decisions contested in the case in the main proceedings, the fifth question is not purely hypothetical. Moreover, it is apparent from the wording of that question that it does not concern the interpretation of national constitutional law.

61 The questions submitted by the referring court must accordingly be declared admissible.

The first question

62 By its first question, the referring court asks, in essence, whether Article 267 TFEU must be interpreted as meaning that a national court may, of its own motion, refer a question to the Court of Justice for a preliminary ruling even though it rules following a referral back after the constitutional court of the Member State concerned has annulled its first decision and although a national rule obliges it to resolve the dispute by following the legal opinion of that latter court. It also asks whether Article 267 TFEU must be interpreted as obliging that same national court to refer a case to the Court of Justice although its decisions may form the subject, before a constitutional court, of an action limited to examining whether there has been an infringement of the rights and freedoms guaranteed by the national Constitution or by an international agreement.

63 Firstly, it must be noted that, by its first question, the Najvyšší súd Slovenskej republiky also wishes to know whether European Union law allows it to disapply a national rule which prohibits it from raising a ground alleging infringement of that law which was not relied on by the parties to the main proceedings. However, it is apparent from the decision making the reference that that question concerns only Directive 85/337 and that it is consequently necessary to rule on that matter only if it appears, in the light of the response given to the third question, that that directive is applicable in the dispute in the main proceedings.

64 As regards the other aspects of the first question referred, it is settled case-law that Article 267 TFEU gives national courts the widest discretion in referring matters to the Court if they consider that a case pending before them raises questions involving interpretation of provisions of European Union law, or consideration of their validity, which are necessary for the resolution of the case (Case C-348/89 *Mecanarte* [1991] ECR I-3277, paragraph 44, and Case C-173/09 *Elchinov* [2010] ECR I-8889, paragraph 26).

65 Article 267 TFEU therefore confers on national courts the power and, in certain circumstances, an obligation to make a reference to the Court once the national court forms the view, either of its own motion or at the request of the parties, that the substance of the dispute involves a question which falls within the scope of the first paragraph of that article (Case C-261/95 *Palmisani* [1997] ECR I-4025, paragraph 20, and Case C-104/10 *Kelly* [2011] ECR I-6813, paragraph 61). That is the reason why the fact that the parties to the main proceedings did not raise a point of European Union law before the referring court does not preclude the latter from bringing the matter before the Court of Justice (Case 126/80 *Salonia* [1981] ECR 1563, paragraph 7, and Case C-251/11 *Huet* [2012] ECR, paragraph 23).

66 A reference for a preliminary ruling is based on a dialogue between one court and another, the initiation of which depends entirely on the national court's assessment as to whether that reference is appropriate and necessary (Case C-210/06 *Cartesio* [2008] ECR I-9641, paragraph 91, and Case C-137/08 *VB Pénzügyi Lízing* [2010] ECR I-10847, paragraph 29).

67 Moreover, the existence of a national procedural rule cannot call into question the discretion of national courts to make a reference to the Court of Justice for a preliminary ruling where they have doubts, as in the case in the main proceedings, as to the interpretation of European Union law (*Elchinov*, paragraph 25, and Case C-396/09 *Interedil* [2011] ECR I-9915, paragraph 35).

68 A rule of national law, pursuant to which legal rulings of a higher court bind another national court, cannot take away from the latter court the discretion to refer to the Court of Justice questions of interpretation of the points of European Union law concerned by such legal rulings. That court must be free, if it considers that a higher court's legal ruling could lead it to deliver a judgment contrary to European Union law, to refer to the Court of Justice questions which concern it (Case C-378/08 *ERG and Others* [2010] ECR I-1919, paragraph 32; and *Elchinov*, paragraph 27).

69 At this stage, it must be noted that the national court, having exercised the discretion conferred on it by Article 267 TFEU, is bound, for the purposes of the decision to be given in the main proceedings, by the interpretation of the provisions at issue given by the Court of Justice and must, if necessary, disregard the rulings of the higher court if it considers, in the light of that interpretation, that they are not consistent with European Union law (*Elchinov*, paragraph 30).

70 The principles set out in the previous paragraphs apply in the same way to the referring court with regard to the legal position expressed, in the present case in the main proceedings, by the constitutional court of the Member State concerned in so far as it follows from well-established case-law that rules of national law, even of a constitutional order, cannot be allowed to undermine the unity and effectiveness of European Union law (Case 11/70 *Internationale Handelsgesellschaft* [1970] ECR 1125, paragraph 3, and Case C-409/06 *Winner Wetten* [2010] ECR I-8015, paragraph 61). Moreover, the Court of Justice has already established that those principles apply to relations between a constitutional court and all other national courts (Joined Cases C-188/10 and C-189/10 *Melki and Abdeli* [2010] ECR I-5667, paragraphs 41 to 45).

71 The national rule which obliges the Najvyšší súd Slovenskej republiky to follow the legal position of the Ústavný súd Slovenskej republiky cannot therefore prevent the referring court from submitting a request for a preliminary ruling to the Court of Justice at any point in the proceedings which it judges appropriate, and to set aside, if necessary, the assessments made by the Ústavný súd Slovenskej republiky which might prove to be contrary to European Union law.

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

73 In the light of the foregoing, the answer to the first question is that Article 267 TFEU must be interpreted as meaning that a national court, such as the referring court, is obliged to make, of its own motion, a request for a preliminary ruling to the Court of Justice even though it is ruling on a referral back to it after its first decision was set aside by the constitutional court of the Member State concerned and even though a national rule obliges it to resolve the dispute by following the legal opinion of that latter court.

The second question

74 By its second question, the referring court asks, in essence, whether Directive 96/61 must be interpreted as requiring that the public should have access, from the beginning of the authorisation procedure for a landfill site, to an urban planning decision on the location of that installation. It is also uncertain whether the refusal to disclose that decision may be justified by reliance on commercial

confidentiality which protects the information contained in that decision, or, failing that, rectified by access to that decision offered to the public concerned during the administrative procedure at second instance.

75 First of all, it must be noted that it follows from the decision making the reference that the location at issue in the main proceedings is a landfill site receiving more than 10 tonnes of waste per day or with a total capacity exceeding 25 000 tonnes of waste. Therefore, it falls within the scope of Directive 96/61, as this results from Article 1, read in conjunction with point 5.4 of Annex I, thereof.

76 Article 15 of that directive provides for the participation of the public concerned in the procedure for the issuing of permits for new installations and specifies that that participation is to occur under the conditions set out in Annex V to that directive. That annex requires that the public be informed, in particular, of details of the competent authorities from which relevant information can be obtained and an indication of the date and place where that information will be made available to the public.

77 Those rules on public participation must be interpreted in the light of, and having regard to, the provisions of the Aarhus Convention, with which, as follows from recital 5 in the preamble to Directive 2003/35, which amended in part Directive 96/61, European Union law should be 'properly aligned' (Case C-115/09 *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* [2011] ECR I-3673, paragraph 41). However, Article 6(6) of that convention states that the public concerned must be able to have access to all information relevant to the decision-making relating to the authorisation of activities referred to in Annex I to that convention, including in particular landfill sites receiving more than 10 tonnes of waste per day or with a total capacity exceeding 25 000 tonnes of waste.

78 Therefore, the public concerned by the authorisation procedure under Directive 96/61 must, in principle, have access to all information relevant to that procedure.

79 It follows from the decision making the reference and from the file submitted to the Court of Justice that the urban planning decision on the location of the installation at issue in the main proceedings constitutes one of the measures on the basis of which the final decision whether or not to authorise that installation will be taken and that it is to include information on the environmental impact of the project, on the conditions imposed on the operator to limit that impact, on the objections raised by the parties to the urban planning decision and on the reasons for the choices made by the competent authority to issue that urban planning decision. Moreover, the applicable national rules require that that decision be attached to the application for a permit addressed to the competent authority. It follows that that urban planning decision must be considered to include relevant information within the meaning of Annex V to Directive 96/61 and that the public concerned must therefore, in principle, be able to have access to it during the authorisation procedure for that installation.

80 None the less, it follows from Article 15(4) of Directive 96/61 that the participation of the public concerned may be limited by the restrictions laid down in Article 3(2) and (3) of Directive 90/313. At the time of the events in the main proceedings, Directive 90/313 had, however, been repealed and replaced by Directive 2003/4. In the light of the correlation table annexed to that directive, the obligation to align European Union legislation with the Aarhus Convention and the redrafting of Article 15 of Directive 96/61 made during its subsequent codification by Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (OJ 2008 L 24, p. 8), it must be held that Article 15(4) of Directive 96/61 must be construed as referring to the restrictions under Article 4(1), (2) and (4) of Directive 2003/4.

81 Under point (d) of the first subparagraph of Article 4(2) of Directive 2003/4, Member States may provide for a request for information to be refused if disclosure of the information would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided for by national or European Union law to protect a legitimate economic interest.

82 However, taking account of, inter alia, the importance of the location of one or another of the activities referred to in Directive 96/61 and as results from paragraph 79 of this judgment, that cannot be the case with regard to a decision by which a public authority authorises, having regard to the applicable urban planning rules, the location of an installation which falls within the scope of that directive.

83 Even if it were not excluded that, exceptionally, certain elements included in the grounds for an urban planning decision may contain confidential commercial or industrial information, it is not in dispute in the present case that the protection of the confidentiality of such information was used, in breach of Article 4(4) of Directive 2003/4, to refuse the public concerned any access, even partial, to the urban planning decision concerning the location of the installation at issue in the main proceedings.

84 It follows that the refusal to make available to the public concerned the urban planning decision concerning the location of the installation at issue in the main proceedings during the administrative procedure at first instance was not justified by the exception set out in Article 15(4) of Directive 96/61. It is for that reason necessary for the referring court to know whether the access to that decision given to the public concerned during the administrative procedure at second instance is sufficient to rectify the procedural flaw vitiating the administrative procedure at first instance and consequently rule out any breach of Article 15 of Directive 96/61.

85 In the absence of rules laid down in this field by European Union law, the detailed procedural rules designed to ensure the protection of the rights which individuals acquire under European Union law are a matter for the legal order of each Member State, provided, however, that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the European Union legal order (principle of effectiveness) (Case C-312/93 *Peterbroeck* [1995] ECR I-4599, paragraph 12, and Case C-378/10 *VALE Építési* [2012] ECR, paragraph 48 and the case-law cited).

86 So far as concerns the principle of equivalence, this requires that all the rules applicable to actions apply without distinction to actions based on infringement of European Union law and those based on infringement of national law (see, inter alia, Case C-591/10 *Littlewoods Retail and Others* [2012] ECR, paragraph 31, and Case C-249/11 *Byankov* [2012] ECR, paragraph 70). It is therefore for the national court to determine whether national law allows procedural flaws of a comparable internal nature to be rectified during the administrative procedure at second instance.

87 As regards the principle of effectiveness, while European Union law cannot preclude the applicable national rules from allowing, in certain cases, the regularisation of operations or measures which are unlawful in the light of European Union law, such a possibility is subject to the condition that it does not offer the persons concerned the opportunity to circumvent the European Union rules or to dispense with applying them, and that it should remain the exception (Case C-215/06 *Commission* v *Ireland* [2008] ECR I-4911, paragraph 57).

88 In that regard, it is important to note that Article 15 of Directive 96/61 requires the Member States to ensure that the public concerned are given early and effective opportunities to participate in the procedure for issuing a permit. That provision must be interpreted in the light of recital 23 in the preamble to that directive, according to which the public must have access, before any decision is taken, to information relating to applications for permits for new installations, and of Article 6 of the Aarhus Convention, which provides, first, for early public participation, that is to say, when all options are open and effective public participation can take place, and, second, for access to relevant information to be provided as soon as it becomes available. It follows that the public concerned must have all of the relevant information from the stage of the administrative procedure at first instance, before a first decision has been adopted, to the extent that that information is available on the date of that stage of the procedure.

89 As for the question whether the principle of effectiveness precludes rectification of the procedure at second instance by making available to the public relevant documents which were not accessible during the administrative procedure at first instance, it is apparent from the information provided by the referring court that, under the applicable national legislation, the administrative body at second instance has the power to amend the administrative decision at first instance. However, it is for the referring court to determine whether, first, in the context of the administrative procedure at second instance, all options and solutions remain possible for the purposes of Article 15(1) of Directive 96/61, interpreted in the light of Article 6(4) of the Aarhus Convention, and, second, regularisation at that stage of the procedure by making available to the public concerned relevant documents still allows that public effectively to influence the outcome of the decision-making process.

90 Consequently, the principle of effectiveness does not preclude the possibility of rectifying, during the administrative procedure at second instance, an unjustified refusal to make available to the public concerned the urban planning decision at issue in the main proceedings during the administrative procedure at first instance, provided that all options and solutions remain possible and that rectification at that stage of the procedure still allows that public effectively to influence the outcome of the decision-making process, this being a matter for the national court to determine.

91 Therefore, the answer to the second question is that Directive 96/61 must be interpreted as meaning that it:

— requires that the public concerned have access to an urban planning decision, such as that at issue in the main proceedings, from the beginning of the authorisation procedure for the installation concerned,

— does not allow the competent national authorities to refuse the public concerned access to such a decision by relying on the protection of the confidentiality of commercial or industrial information where such confidentiality is provided for by national or European Union law to protect a legitimate economic interest, and

— does not preclude the possibility of rectifying, during the administrative procedure at second instance, an unjustified refusal to make available to the public concerned an urban planning decision, such as that at issue in the main proceedings, during the administrative procedure at first instance, provided that all options and solutions remain possible and that rectification at that stage of the procedure still allows that public effectively to influence the outcome of the decision-making process, this being a matter for the national court to determine.

The third question

92 By its third question, the referring court asks, in essence, whether Directive 85/337 must be interpreted as precluding the validity of an opinion on the assessment of the environmental impact of a project from being validly extended for several years after its adoption and whether, in such a case, it requires that a new assessment of the environmental impact of that project be undertaken.

93 In that regard, the inšpekcia and the Slovak and Czech Governments maintain that Directive 85/337 is not applicable, *ratione temporis*, to the situation described by the referring court.

94 According to settled case-law, the principle that projects likely to have significant effects on the environment must be subject to an environmental assessment does not apply where the application for authorisation for a project was formally lodged before the expiry of the period set for transposition of Directive 85/337 (Case C-431/92 *Commission* v *Germany* [1995] ECR I-2189, paragraphs 29 and 32, and Case C-81/96 *Gedeputeerde Staten van Noord-Holland* [1998] ECR I-3923, paragraph 23).

95 That directive is primarily designed to cover large-scale projects which will most often require a long time to complete. It would therefore not be appropriate for the relevant procedures, which are already complex at national level, to be made even more cumbersome and time-consuming by the specific requirements imposed by that directive and for situations already established to be affected by it (*Gedeputeerde Staten van Noord-Holland*, paragraph 24).

96 In the present case, it is apparent from the documents before the Court that the operator's steps to obtain the permit to complete the landfill project at issue in the main proceedings started on 16 December 1998 with the lodging of an application for an environmental impact assessment in respect of that project. However, it follows from Article 2 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33) that Directive 85/337 had to be implemented by the Slovak Republic with effect from the date of that Member State's accession to the European Union, namely 1 May 2004.

97 Nevertheless, it must be noted that the grant by the Slovak administration of the permit to complete the landfill site at issue in the main proceedings required three consecutive procedures, each of which led to the adoption of a decision.

98 The operator's applications concerning the first two procedures were made on 16 December 1998 and on 7 August 2002, that is to say, before the expiry of the period set for the transposition of Directive 85/337. By contrast, the application for the integrated permit was submitted on 25 September 2007, which is after the expiry of that period. Therefore, it is necessary to determine whether the submission of the first two applications may be regarded as marking the formal initiation of the authorisation procedure within the meaning of the case-law referred to in paragraph 94 of this judgment.

99 In that regard, it is important first of all to state that the applications submitted during the first two stages of the procedure are not to be confused with mere informal contacts which are not capable of demonstrating the formal opening of the authorisation procedure (see, to that effect, Case C-431/92 *Commission* v *Germany*, paragraph 32).

100 Next, it must be pointed out that the environmental impact assessment completed in 1999 was carried out in order to enable completion of the landfill project which was the subject of the integrated permit. The subsequent steps taken in the procedure, and in particular, the issue of the construction permit, are based on that assessment. As the Advocate General has noted in point 115 of her Opinion, the fact that, under Slovak law, environmental impact is assessed separately from the actual authorisation procedure cannot extend the scope in time of Directive 85/337.

101 Likewise, it is apparent from the considerations set out in paragraph 79 of this judgment that the urban planning decision on the location of the landfill site at issue in the main proceedings constitutes an indispensable stage for the operator to be authorised to carry out the landfill project at issue. That decision, moreover, imposes a number of conditions with which the operator must comply when carrying out his project.

102 However, when examining a comparable procedure, the Court of Justice has taken the view that the date which should be used as a reference to determine whether the application in time of a directive imposing an environmental impact assessment was the date on which the project was formally submitted because the various phases of examination of a project are so closely connected that they represent a complex operation (Case C-209/04 *Commission* v *Austria* [2006] ECR I-2755, paragraph 58).

103 Finally, it is apparent from settled case-law that an authorisation within the meaning of Directive 85/337 may be formed by the combination of several distinct decisions when the national procedure which allows the developer to be authorised to start works to complete his project includes several consecutive steps (see, to that effect, Case C-201/02 *Wells* [2004] ECR I-723, paragraph 52, and Case C-508/03 *Commission* v *United Kingdom* [2006] ECR I-3969, paragraph 102). It follows that, in that situation, the date on which the application for a permit for a project was formally lodged must be fixed as the day on which the developer submitted an application seeking to initiate the first stage of the procedure.

104 It follows from the foregoing considerations that the application for a permit for the landfill project at issue in the main proceedings was formally lodged before the date of the expiry of the period set for transposition of Directive 85/337. Consequently, the obligations arising from that directive do not apply to that project and therefore it is not necessary to answer the third question.

The fourth question

105 By its fourth question, the referring court asks, in essence, whether Articles 1 and 15a of Directive 96/61, read in conjunction with Articles 6 and 9 of the Aarhus Convention, must be interpreted as meaning that members of the public concerned must be able, in the context of an action under Article 15a of that directive, to ask the court or the competent independent and impartial body established by law to order interim measures of a nature temporarily to suspend the application of a permit within the meaning of Article 4 of that directive pending the final decision.

106 By virtue of their procedural autonomy, the Member States have discretion in implementing Article 9 of the Aarhus Convention and Article 15a of Directive 96/61, subject to compliance with the principles of equivalence and effectiveness. It is for them, in particular, to determine, in so far as the abovementioned provisions are complied with, which court of law or which independent and impartial body established by law is to have jurisdiction in respect of the review procedure referred to in those provisions and what procedural rules are applicable (see, by analogy, Joined Cases C-128/09 to C-131/09, C-134/09 and C-135/09 *Boxus and Others* [2011] ECR I-9711, paragraph 52).

107 Moreover, it is apparent from settled-case law that a national court seised of a dispute governed by European Union law must be in a position to grant interim relief in order to ensure the full effectiveness of the judgment to be given on the existence of the rights claimed under European Union law (Case C-213/89 *Factortame and Others* [1990] ECR I-2433, paragraph 21, and Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 67).

108 It must be added that the right to bring an action provided for by Article 15a of Directive 96/61 must be interpreted in the light of the purpose of that directive. The Court has already held that that purpose, as laid down in Article 1 of the directive, is to achieve integrated prevention and control of pollution by putting in place measures designed to prevent or reduce emissions of the activities listed in Annex I into the air, water and land in order to achieve a high level of protection of the environment (Case C-473/07 *Association nationale pour la protection des eaux et rivières and OABA* [2009] ECR I-319, paragraph 25, and Case C-585/10 *Møller* [2011] ECR I-13407, paragraph 29).

109 However, exercise of the right to bring an action provided for by Article 15a of Directive 96/61 would not make possible effective prevention of that pollution if it were impossible to prevent an installation which may have benefited from a permit awarded in infringement of that directive from continuing to function pending a definitive decision on the lawfulness of that permit. It follows that the guarantee of effectiveness of the right to bring an action provided for in that Article 15a requires that the members of the public concerned should have the right to ask the court or competent independent and impartial body to order interim measures such as to prevent that pollution, including, where necessary, by the temporary suspension of the disputed permit.

110 In the light of the foregoing, the answer to the fourth question is that Article 15a of Directive 96/61 must be interpreted as meaning that members of the public concerned must be able, in the context of the action provided for by that provision, to ask the court or competent independent and impartial body established by law to order interim measures such as temporarily to suspend the application of a permit, within the meaning of Article 4 of that directive, pending the final decision.

The fifth question

111 By its fifth question, the referring court asks, in essence, whether a decision of a national court, taken in the context of national proceedings implementing the obligations resulting from Article 15a of Directive 96/61 and from Article 9(2) and (4) of the Aarhus Convention, which annuls a permit granted in infringement of the provisions of that directive, is capable of constituting an unjustified interference with the developer's right to property enshrined in Article 17 of the Charter of Fundamental Rights of the European Union.

112 As the Advocate General has noted in points 182 to 184 of her Opinion, the conditions set by Directive 96/61 restrict use of the right to property on land affected by an installation coming within the scope of that directive.

113 However, the right to property is not an absolute right and must be viewed in relation to its social function. Consequently, its exercise may be restricted, provided that those restrictions in fact correspond to objectives of general interest and do not constitute, in relation to the aim pursued, disproportionate and intolerable interference, impairing the very substance of the right guaranteed (Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation* v *Council and Commission* [2008] ECR I-6351, paragraph 355, and Joined Cases C-379/08 and C-380/08 *ERG and Others* [2010] ECR I-2007, paragraph 80).

114 As regards the objectives of general interest referred to above, established case-law shows that protection of the environment is one of those objectives and is therefore capable of justifying a restriction on the use of the right to property (see Case 240/83 *ADBHU* [1985] ECR 531, paragraph 13; Case 302/86 *Commission* v *Denmark* [1988] ECR 4607, paragraph 8; Case C-213/96 *Outokumpu* [1998] ECR I-1777, paragraph 32; and *ERG and Others*, paragraph 81).

115 As regards the proportionality of the infringement of the right of property at issue, where such an infringement may be established, it is sufficient to state that Directive 96/61 operates a balance between the requirements of that right and the requirements linked to protection of the environment.

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

Costs

117 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Article 267 TFEU must be interpreted as meaning that a national court, such as the referring court, is obliged to make, of its own motion, a request for a preliminary ruling to the Court of Justice of the European Union even though it is ruling on a referral back to it after its first decision was set aside by the constitutional court of the Member State concerned and even though a national rule obliges it to resolve the dispute by following the legal opinion of that latter court.**

2. **Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, as amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006, must be interpreted as meaning that it:**

   — **requires that the public concerned have access to an urban planning decision, such as that at issue in the main proceedings, from the beginning of the authorisation procedure for the installation concerned,**

   — **does not allow the competent national authorities to refuse the public concerned access to such a decision by relying on the protection of the confidentiality of commercial or industrial information where such confidentiality is provided for by national or European Union law to protect a legitimate economic interest, and**

   — **does not preclude the possibility of rectifying, during the administrative procedure at second instance, an unjustified refusal to make available to the public concerned an urban planning decision, such as that at issue in the main proceedings, during the administrative procedure at first instance, provided that all options and solutions remain possible and that regularisation at that stage of the procedure still allows that public effectively to influence the outcome of the decision-making process, this being a matter for the national court to determine.**

3. **Article 15a of Directive 96/61, as amended by Regulation No 166/2006, must be interpreted as meaning that members of the public concerned must be able, in the context of the action provided for by that provision, to ask the court or competent independent and impartial body established by law to order interim measures such as temporarily to suspend the application of a permit, within the meaning of Article 4 of that directive, pending the final decision.**

4. **A decision of a national court, taken in the context of national proceedings implementing the obligations resulting from Article 15a of Directive 96/61, as amended by Regulation No 166/2006, and from 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, which annuls a permit granted in infringement of the provisions of that directive is not capable, in itself, of constituting an unjustified interference with the developer's right to property enshrined in Article 17 of the Charter of Fundamental Rights of the European Union.**

[Signatures]