

**Reference for a preliminary ruling from High Court (Ireland) made on 22 August 2016 — North East Pylon Pressure Campaigning Limited, Maura Sheehy v An Bord Pleanála, The Minister for Communications Energy and Natural Resources, Ireland, Attorney General**

(Case C-470/16)

(2016/C 428/09)

*Language of the case: English*

**Referring court**

High Court (Ireland)

**Parties to the main proceedings**

*Applicants:* North East Pylon Pressure Campaigning Limited, Maura Sheehy

*Defendants:* An Bord Pleanála, The Minister for Communications Energy and Natural Resources, Ireland, Attorney General

**Questions referred**

- i. in the context of a national legal system where the legislature has not expressly and definitively stated at what stage of the process a decision is to be challenged and where this falls for judicial determination in the context of each specific application on a case-by-case basis in accordance with common law rules, whether the entitlement under art. 11(4) of Directive 2011/92/EU<sup>(1)</sup> to a ‘not prohibitively expensive’ procedure applies to the process before a national court whereby it is determined as to whether the particular application in question has been brought at the correct stage;
- ii. whether the requirement that a procedure be ‘not prohibitively expensive’ pursuant to art. 11(4) of Directive 2011/92/EU applies to all elements of a judicial procedure by which the legality (in national or EU law) of a decision, act or omission subject to the public participation provisions of the directive are challenged, or merely to the EU law elements of such a challenge (or in particular, merely to the elements of the challenge related to issues regarding the public participation provisions of the directive);
- iii. whether the phrase ‘decisions, acts or omissions’ in art. 11(1) of Directive 2011/92/EU includes administrative decisions in the course of determining an application for development consent, whether or not such administrative decisions irreversibly and finally determine the legal rights of the parties;
- iv. whether a national court, in order to ensure effective judicial protection in the fields covered by EU environmental law, should interpret its national law in a way which, to the fullest extent possible, is consistent with the objectives laid down in art. 9(3) of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus on 25th June, 1998 (a) in a procedure challenging the validity of a development consent process involving a project of common interest that has been designated under Regulation No. 347/2013<sup>(2)</sup> of the European Parliament and of the Council of 17th April, 2013 on guidelines for trans-European energy infrastructure, and/or (b) in a procedure challenging the validity of a development consent process where the development affects a European site designated under Council Directive 92/43/EEC of 21st May, 1992 on the conservation of natural habitats and of wild fauna and flora;
- v. whether, if the answer to question (iv)(a) and/or (b) is in the affirmative, the stipulation that applicants must ‘meet the criteria, if any, laid down in its national law’ precludes the Convention being regarded as directly effective, in circumstances where the applicants have not failed to meet any criteria in national law for making an application and/or are clearly entitled to make the application (a) in a procedure challenging the validity of a development consent process involving a project of common interest that has been designated under Regulation No. 347/2013 of the European Parliament and of the Council of 17th April, 2013 on guidelines for trans-European energy infrastructure, and/or (b) in a procedure challenging the validity of a development consent process where the development affects a European site designated under Council Directive 92/43/EEC of 21st May, 1992 on the conservation of natural habitats and of wild fauna and flora;

- vi. whether it is open to a member state to provide in legislation for exceptions to the rule that environmental proceedings should not be prohibitively expensive, where no such exception is provided for in Directive 2011/92/EU or the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus on 25th June, 1998; and
- vii. in particular, whether a requirement in national law for a causative link between the alleged unlawful act or decision and damage to the environment as a condition for the application of national legislation giving effect to art. 9(4) of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus on 25th June, 1998 to ensure that environmental proceedings are not prohibitively expensive is compatible with the Convention.

<sup>(1)</sup> Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment

OJ L 26, p. 1

<sup>(2)</sup> Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009

OJ L 115, p. 39

---

**Request for a preliminary ruling from the Protodikeio Rethymnis (Greece) lodged on 17 August 2016 — Criminal proceedings against K.**

(Case C-475/16)

(2016/C 428/10)

*Language of the case: Greek*

**Referring court**

Protodikeio Rethymnis (Monomeles Plimmeleiodikeio, Rethymnis)

**Party to the main proceedings**

K.

**Questions referred**

1. Pursuant to Articles 19 TEU and 263, 266 and 267 TFEU and the principle of sincere cooperation (Article 4(3) TEU) under which Member States and their competent authorities are obliged to take all general and specific measures to remedy an infringement of EU law, as well as to comply with the judgments of the Court of Justice of the European Union, in particular concerning the validity of *erga omnes* acts of EU institutions, are Member States required to repeal or amend accordingly a legislative measure incorporating a directive which has been annulled by the Court of Justice of the European Union on the grounds that it is contrary to the provisions of the Treaties and the Charter, in order to ensure the implementation of the judgment of the Court of Justice, and thus to address and prevent any future infringement of the Treaties and the Charter?
2. With reference to the previous question, can Article 266 TFEU (formerly Article 233 EC) be interpreted in such a way that the concept of 'institution or body' also includes (on a broad or analogous interpretation) the Member State which has incorporated a directive into its national law that was annulled because it is contrary to the Treaties and the Charter or, in such a case, is it possible that Article 260(1) TFEU be applied by analogy?
3. If the answer to the above is essentially affirmative, i.e. if there is an obligation on Member States to take all general and specific measures to remedy the infringement of EU primary law by repealing or amending accordingly the legislative measure incorporating a directive which has been annulled by the Court of Justice of the European Union, because it is contrary to the Charter or the Treaties, does this obligation extend to national courts, i.e. are they obliged not to apply the legislative measure incorporating the annulled directive, in this case, Directive 2006/24/EC<sup>(1)</sup> (at least in part) that is contrary to the Charter or the Treaties, and therefore not to take into account evidence obtained under the latter (the directive and a national measure of transposition)?