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ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
COURT OF JUSTICE OF THE EUROPEAN UNION
COUR DE JUSTICE DE L'UNION EUROPÉENNE
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EUROPOS SĄJUNGOS TEISINGUMO TEISMAS
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IL-QORTI TAL-ĠUSTIZZJA TAL-UNJONI EWROPEA
HOF VAN JUSTITIE VAN DE EUROPESE UNIE
TRYBUNAŁ SPRAWIEDLIWOŚCI UNII EUROPEJSKIEJ
TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA
CURTEA DE JUSTIȚIE A UNIUNII EUROPENE
SÚDNY DVOR EURÓPSKEJ ÚNIE
SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN TUOMIOISTUIN
EUROPEISKA UNIONENS DOMSTOL

JUDGMENT OF THE COURT (Grand Chamber)

8 March 2011 *

(Environment – Aarhus Convention – Public participation in the decision-making process and access to justice in environmental matters – Direct effect)

In Case C-240/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Najvyšší súd Slovenskej republiky (Slovakia), made by decision of 22 June 2009, received at the Court on 3 July 2009, in the proceedings

Lesoochránárske zoskupenie VLK

v

Ministerstvo životného prostredia Slovenskej republiky,

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot (Rapporteur), K. Schiemann and D. Šváby, Presidents of Chambers, A. Rosas, R. Silva de Lapuerta, U. Lõhmus, A. Ó Caoimh, M. Safjan and M. Berger, Judges,

Advocate General: E. Sharpston,

Registrar: R. Šereš, Administrator,

having regard to the written procedure and further to the hearing on 4 May 2010,

after considering the observations submitted on behalf of:

- Lesoochránárske zoskupenie VLK, by I. Rajtáková, advokátka,
- the Slovak Government, by B. Ricziová, acting as Agent,

* Language of the case: Slovak.

- the German Government, by M. Lumma and B. Klein, acting as Agents,
- the Greek Government, by G. Karipsiadis and T. Papadopoulou, acting as Agents,
- the French Government, by G. de Bergues and S. Menez, acting as Agents,
- the Polish Government, by M. Dowgielewicz, D. Krawczyk and M. Nowacki, acting as Agents,
- the Finnish Government, by J. Heliskoski and M. Pere, acting as Agents,
- the Swedish Government, by A. Falk, acting as Agent,
- the United Kingdom Government, by L. Seeboruth and J. Stratford, acting as Agents,
- the European Commission, by P. Oliver and A. Tokár, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 July 2010,
gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 9(3) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters 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 reference has been made in proceedings between Lesoochránaske zoskupenie VLK ('zoskupenie'), an association established in accordance with Slovak law whose objective is the protection of the environment, and the Ministerstvo životného prostredia Slovenskej republiky (Ministry of the Environment of the Slovak Republic) ('the Ministerstvo životného prostredia'), concerning the association's request to be a 'party' to the administrative proceedings relating to the grant of derogations to the system of protection for species such as the brown bear, access to protected countryside areas, or the use of chemical substances in such areas.

Legal context

International law

3 Article 9 of the Aarhus Convention states:

‘1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under Article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law.

In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.

Final decisions under this paragraph 1 shall be binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused under this paragraph.

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

- (a) having a sufficient interest or, alternatively,
- (b) maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition,

have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 2(5) shall be deemed sufficient for the purpose of subparagraph (a) above. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

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

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

...’

4 Article 19(4) and (5) of the Aarhus Convention states:

‘4. Any organisation referred to in Article 17 which becomes a Party to this Convention without any of its Member States being a Party shall be bound by all the obligations under this Convention. If one or more of such an organisation's Member States is a Party to this Convention, the organisation and its Member States shall decide on their respective responsibilities for the performance of their obligations under this Convention. In such cases, the organisation and the Member States shall not be entitled to exercise rights under this Convention concurrently.

5. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organisations referred to in Article 17 shall declare the extent of their competence with respect to the matters governed by this Convention. These organisations shall also inform the Depositary of any substantial modification to the extent of their competence.’

European Union (‘EU’) law

5 Article 12(1) 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) (‘the Habitats Directive’) provides:

‘Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) in their natural range, prohibiting:

(a) all forms of deliberate capture or killing of specimens of these species in the wild;

- (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;
- (c) deliberate destruction or taking of eggs from the wild;
- (d) deterioration or destruction of breeding sites or resting places.’

6 Article 16(1) of the Habitats Directive further states:

‘Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Member States may derogate from the provisions of Articles 12, 13, 14 and 15(a) and (b):

- (a) in the interest of protecting wild fauna and flora and conserving natural habitats;
- (b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property;
- (c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;
- (d) for the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants;
- (e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities.’

7 Annex IV to the Habitats Directive relating to animal and plant species of Community interest in need of strict protection, mentions, in particular, the species ‘Ursus arctos’.

8 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/EEC (OJ 2003 L 41, p. 26) states in recital 5 in the preamble thereto:

‘On 25 June 1998 the European Community signed the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (“the Aarhus Convention”). Provisions of

Community law must be consistent with that Convention with a view to its conclusion by the European Community.’

9 Article 6 of Directive 2003/4 implements Article 9(1) of the Aarhus Convention, and reproduces almost word for word its provisions.

10 Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC states in recitals 5, 9 and 11 in the preamble thereto:

‘(5) On 25 June 1998 the Community signed the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (“the Århus Convention”). Community law should be properly aligned with that Convention with a view to its ratification by the Community;

...

(9) Article 9(2) and (4) of the Århus Convention provides for access to judicial or other procedures for challenging the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of Article 6 of the Convention.

...

(11) 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], and Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control [OJ 1996 L 257, p. 26] should be amended to ensure that they are fully compatible with the provisions of the Århus Convention, in particular Article 6 and Article 9(2) and (4) thereof.’

11 Articles 3(7) and 4(4) of Directive 2003/35 introduce respectively Article 10a into Directive 85/337 and Article 15a into Directive 96/61 in order to implement Article 9(2) of the Aarhus Convention, which they reproduce in almost identical terms.

12 Decision 2005/370 states, in recitals 4 to 7 in the preamble thereto:

‘(4) Under the terms of the Aarhus Convention, a regional economic integration organisation must declare in its instrument of ratification, acceptance, approval or accession, the extent of its competence in respect of the matters governed by the Convention.

(5) The Community, in accordance with the Treaty, and in particular Article 175(1) thereof, is competent, together with its Member States, for entering into international agreements, and for implementing the obligations resulting therefrom, which contribute to the pursuit of the objectives listed in Article 174 of the Treaty.

(6) The Community and most of its Member States signed the Aarhus Convention in 1998 and since then have pursued their efforts in view of their approval of the Convention. In the meantime, relevant Community legislation is being made consistent with the Convention.

(7) The objective of the Aarhus Convention, as set forth in its Article 1 thereof, is consistent with the objectives of the Community's environmental policy, listed in Article 174 of the Treaty, pursuant to which the Community, which shares competence with its Member States, has already adopted a comprehensive set of legislation which is evolving and contributes to the achievement of the objective of the Convention, not only by its own institutions, but also by public authorities in its Member States.'

13 Article 1 of Decision 2005/370 provides:

'The UN/ECE Convention on access to information, public participation in decision-making and access to justice in environmental matters, (Aarhus Convention) is hereby approved on behalf of the Community.'

14 In its declaration of competence made pursuant to Article 19(5) of the Aarhus Convention and annexed to Decision 2005/370, the Commission stated, in particular, 'that the legal instruments in force do not cover fully the implementation of the obligations resulting from Article 9(3) of the Convention as they relate to administrative and judicial procedures to challenge acts and omissions by private persons and public authorities other than the institutions of the European Community as covered by Article 2(2)(d) of the Convention, and that, consequently, its Member States are responsible for the performance of these obligations at the time of approval of the Convention by the European Community and will remain so unless and until the Community, in the exercise of its powers under the EC Treaty, adopts provisions of Community law covering the implementation of those obligations'.

15 Articles 10 to 12 of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13) aim to ensure access to justice by non-governmental organisations with respect to administrative acts adopted by the institutions and bodies of the European Union or omissions by the latter, in accordance with Article 9(3) of the Aarhus Convention.

Slovak law

- 16 Pursuant to Article 82(3) of Law No 543/2002 on the protection of nature and the countryside, as amended, (zákon č. 543/2002 Z.z. o ochrane prírody a krajiny), which applies to the dispute in the main proceedings, an association having legal personality is to be regarded as a ‘participant’ in administrative proceedings, within the meaning of that provision, if, for at least one year, it has had the object of protecting nature and the countryside, and it has given written notice of its participation in those proceedings within the period prescribed in that article. The status of ‘participant’ confers on it the right to be informed of all pending administrative proceedings relating to the protection of nature and the countryside.
- 17 In accordance with Article 15a(2) of the Code of Administrative Procedure (Správny poriadok), ‘a participant’ is entitled to be informed that administrative proceedings have been initiated, to have access to files submitted by the parties to the administrative proceedings, 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.
- 18 Under Article 250(2) of the Code of Civil Procedure (Občiansky súdny poriadok) any natural or legal person who/which claims that his/its rights, as a party to the administrative proceedings, have been prejudiced by the decision taken or by the procedure followed by the administrative authority is to have the status of an applicant. Any natural or legal person not appearing at the administrative proceedings and whose presence, as a party to the proceedings has been requested, may also be an applicant.
- 19 According to Article 250(m) of the Code of Civil Procedure, persons having the status of parties to the proceedings are those who were parties to the administrative proceedings and the administrative body whose decision is to be reviewed.

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

- 20 The zoskupenie was informed of the initiation of a number of administrative proceedings brought by various hunting associations or other persons concerning the grant of derogations to the system of protection for species such as the brown bear, access to protected countryside areas or the use of chemical substances in such areas.
- 21 The zoskupenie therefore applied to the Ministerstvo životného prostredia to be a ‘party’ to the administrative proceedings concerning the grant of those derogations or authorisations and relied on the Aarhus Convention for that purpose. The Ministerstvo životného prostredia rejected that request and the administrative appeal subsequently brought by the zoskupenie against that rejection.

- 22 The zoskupenie then brought a contentious appeal against the two decisions, arguing in particular that the provisions in Article 9(3) of the Aarhus Convention had direct effect.
- 23 In those circumstances, the Najvyšší súd Slovenskej republiky decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:
- ‘1. Is it possible to recognise Article 9 and in particular Article 9(3) of the Aarhus Convention of 25 June 1998, given that the principal objective pursued by that international treaty is to change the classic definition of *locus standi* by according the status of a party to proceedings to the public, or the public concerned, as having the direct effect of an international treaty (“self-executing effect”) in a situation where the European Union acceded to that international treaty on 17 February 2005 but to date has not adopted Community legislation in order to transpose the treaty concerned into Community law?
 2. Is it possible to recognise Article 9 and in particular Article 9(3) of the Aarhus Convention, which has become a part of Community law, as having the direct applicability or direct effect of Community law within the meaning of the settled case-law of the Court of Justice?
 3. If the answer to the first or the second question is in the affirmative, is it then possible to interpret Article 9(3) of the Aarhus Convention, given the principal objective pursued by that international treaty, as meaning that it is necessary also to include within the concept “act of a public authority” an act consisting in the delivery of decisions, that is to say, that the right of public access to judicial hearings intrinsically also includes the right to challenge the decision of an administrative body, the unlawfulness of which lies in its effect on the environment?’
- 24 By order of the President of the Court of 23 October 2009, the referring court’s request that the accelerated procedure provided for in the first paragraph of Article 104a of the Rules of Procedure be applied to the present case was rejected.

Consideration of the questions referred

Admissibility

- 25 The Polish and United Kingdom Governments submit that the questions are admissible only in so far as they concern the provisions of Article 9(3) of the Aarhus Convention, and are inadmissible for the remainder on the ground that the interpretation of EU law requested bears no relation to the actual facts of the main action or its purpose.

- 26 In answer to those arguments, it is sufficient to note that the questions referred relate essentially only to Article 9(3) of the Aarhus Convention, and do not concern the other subparagraphs of that article.
- 27 In those circumstances, there are no grounds for the Court to rule that the questions referred are partially inadmissible because they concern provisions other than those in Article 9(3) of the Aarhus Convention.

The first and second questions

- 28 By its first two questions, which it is appropriate to examine together, the referring court asks essentially whether individuals, and in particular environmental protection associations, where they wish to challenge a decision to derogate from a system of environmental protection, such as that put in place by the Habitats Directive for a species mentioned in Annex IV thereto, may derive a right to bring proceedings under EU law, having regard, in particular, to the provisions of Article 9(3) of the Aarhus Convention on direct effect, to which its questions relate.
- 29 A preliminary point to be made is that Article 300(7) EC provides that ‘[a]greements concluded under the conditions set out in this Article shall be binding on the institutions of the Community and on Member States’.
- 30 The Aarhus Convention was signed by the Community and subsequently approved by Decision 2005/370. Therefore, according to settled case-law, the provisions of that convention now form an integral part of the legal order of the European Union (see, by analogy, Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 36, and Case C-459/03 *Commission v Ireland* [2006] ECR I-4635, paragraph 82). Within the framework of that legal order the Court therefore has jurisdiction to give preliminary rulings concerning the interpretation of such an agreement (see, inter alia, Case 181/73 *Haegeman* [1974] ECR 449, paragraphs 4 to 6, and Case 12/86 *Demirel* [1987] ECR 3719, paragraph 7).
- 31 Since the Aarhus Convention was concluded by the Community and all the Member States on the basis of joint competence, it follows that where a case is brought before the Court in accordance with the provisions of the EC Treaty, in particular Article 234 EC thereof, the Court has jurisdiction to define the obligations which the Community has assumed and those which remain the sole responsibility of the Member States in order to interpret the Aarhus Convention (see, by analogy, Joined Cases C-300/98 and C-392/98 *Dior and Others* [2000] ECR I-11307, paragraph 33, and Case C-431/05 *Merck Genéricos – Produtos Farmacêuticos* [2007] ECR I-7001, paragraph 33).
- 32 Next, it must be determined whether, in the field covered by Article 9(3) of the Aarhus Convention, the European Union has exercised its powers and adopted provisions to implement the obligations which derive from it. If that were not the case, the obligations deriving from Article 9(3) of the Aarhus Convention would

continue to be covered by the national law of the Member States. In those circumstances, it would be for the courts of those Member States to determine, on the basis of national law, whether individuals could rely directly on the rules of that international agreement relevant to that field or whether the courts must apply those rules of their own motion. In that case, EU law does not require or forbid the legal order of a Member State to accord to individuals the right to rely directly on a rule laid down in the Aarhus Convention or to oblige the courts to apply that rule of their own motion (see, by analogy, *Dior and Others*, paragraph 48 and *Merck Genéricos – Produtos Farmacêuticos*, paragraph 34).

- 33 However, if it were to be held that the European Union has exercised its powers and adopted provisions in the field covered by Article 9(3) of the Aarhus Convention, EU law would apply and it would be for the Court of Justice to determine whether the provision of the international agreement in question has direct effect.
- 34 Therefore, it is appropriate to examine whether, in the particular field into which Article 9(3) of the Aarhus Convention falls, the European Union has exercised its powers and adopted provisions to implement obligations deriving from it (see, by analogy, *Merck Genéricos – Produtos Farmacêuticos*, paragraph 39).
- 35 In that connection, it must be observed first of all, that, in the field of environmental protection, the European Union has explicit external competence pursuant to Article 175 EC, read in conjunction with Article 174(2) EC (see, *Commission v Ireland*, paragraphs 94 and 95).
- 36 Furthermore, the Court has held that a specific issue which has not yet been the subject of EU legislation is part of EU law, where that issue is regulated in agreements concluded by the European Union and the Member State and it concerns a field in large measure covered by it (see, by analogy, Case C-239/03 *Commission v France* [2004] ECR I-9325, paragraphs 29 to 31).
- 37 In the present case, the dispute in the main proceedings concerns whether an environmental protection association may be a ‘party’ to administrative proceedings concerning, in particular, the grant of derogations to the system of protection for species such as the brown bear. That species is mentioned in Annex IV(a) to the Habitats Directive, so that, under Article 12 thereof, it is subject to a system of strict protection from which derogations may be granted only under the conditions laid down in Article 16 of that directive.
- 38 It follows that the dispute in the main proceedings falls within the scope of EU law.
- 39 It is true that, in its declaration of competence made in accordance with Article 19(5) of the Aarhus Convention and annexed to Decision 2005/370, the Community stated, in particular, that ‘the legal instruments in force do not cover fully the implementation of the obligations resulting from Article 9(3) of the

Convention as they relate to administrative and judicial procedures to challenge acts and omissions by private persons and public authorities other than the institutions of the European Community as covered by Article 2(2)(d) of the Convention, and that, consequently, its Member States are responsible for the performance of these obligations at the time of approval of the Convention by the European Community and will remain so unless and until the Community, in the exercise of its powers under the EC Treaty, adopts provisions of Community law covering the implementation of those obligations’.

- 40 However, it cannot be inferred that the dispute in the main proceedings does not fall within the scope of EU law because, as stated in paragraph 36 of this judgment, a specific issue which has not yet been subject to EU legislation may fall within the scope of EU law if it relates to a field covered in large measure by it.
- 41 In that connection, it is irrelevant that Regulation No 1367/2006, which is intended to implement the provisions of Article 9(3) of the Aarhus Convention, only concerns the institutions of the European Union and cannot be regarded as the adoption by the European Union of provisions implementing the obligations which derive from Article 9(3) of the Aarhus Convention with respect to national administrative or judicial proceedings.
- 42 Where a provision can apply both to situations falling within the scope of national law and to situations falling within the scope of EU law, it is clearly in the interest of the latter that, in order to forestall future differences of interpretation, that provision should be interpreted uniformly, whatever the circumstances in which it is to apply (see, in particular, Case C-130/95 *Giloy* [1997] ECR I-4291, paragraph 28, and Case C-53/96 *Hermès* [1998] ECR I-3603, paragraph 32).
- 43 It follows that the Court has jurisdiction to interpret the provisions of Article 9(3) of the Aarhus Convention and, in particular, to give a ruling on whether or not they have direct effect.
- 44 In that connection, a provision in an agreement concluded by the European Union with a non-member country must be regarded as being directly applicable when, regard being had to its wording and to the purpose and nature of the agreement, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure (see, in particular, Case C-265/03 *Simutenkov* [2005] ECR I-2579, paragraph 21, and Case C-372/06 *Asda Stores* [2007] ECR I-11223, paragraph 82).
- 45 It must be held that the provisions of Article 9(3) of the Aarhus Convention do not contain any clear and precise obligation capable of directly regulating the legal position of individuals. Since only members of the public who meet the criteria, if any, laid down by national law are entitled to exercise the rights provided for in

Article 9(3), that provision is subject, in its implementation or effects, to the adoption of a subsequent measure.

- 46 However, it must be observed that those provisions, although drafted in broad terms, are intended to ensure effective environmental protection.
- 47 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, in this case the Habitats Directive, since the Member States are responsible for ensuring that those rights are effectively protected in each case (see, in particular, Case C-268/06 *Impact* [2008] ECR I-2483, paragraphs 44 and 45).
- 48 On that basis, as is apparent from well-established case-law, the detailed procedural rules governing actions for safeguarding an individual's rights under EU law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not make it in practice impossible or excessively difficult to exercise rights conferred by EU law (principle of effectiveness) (*Impact*, paragraph 46 and the case-law cited).
- 49 Therefore, if the effective protection of EU environmental law is not to be undermined, it is inconceivable that Article 9(3) of the Aarhus Convention be interpreted in such a way as to make it in practice impossible or excessively difficult to exercise rights conferred by EU law.
- 50 It follows that, in so far as concerns a species protected by EU law, and in particular the Habitats Directive, it is for the national court, in order to ensure effective judicial protection in the fields covered by EU environmental law, to interpret its national law in a way which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) of the Aarhus Convention.
- 51 Therefore, it is for the referring court to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the objectives of Article 9(3) of the Aarhus Convention and the objective of effective judicial protection of the rights conferred by EU law, so as to enable an environmental protection organisation, such as the zoskupenie, to challenge before a court a decision taken following administrative proceedings liable to be contrary to EU environmental law (see, to that effect, Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 44, and *Impact*, paragraph 54).
- 52 In those circumstances, the answer to the first and second questions referred is that Article 9(3) of the Aarhus Convention does not have direct effect in EU law. It is, however, for the referring court to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the objectives of Article 9(3) of that convention and the objective of effective judicial protection of the

rights conferred by EU law, in order to enable an environmental protection organisation, such as the zoskupenie, to challenge before a court a decision taken following administrative proceedings liable to be contrary to EU environmental law.

The third question

- 53 In the light of the reply given to the first and second questions, it is not necessary to reply to the third question.

Costs

- 54 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:

Article 9(3) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 does not have direct effect in European Union law. It is, however, for the referring court to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the objectives of Article 9(3) of that convention and the objective of effective judicial protection of the rights conferred by European Union law, in order to enable an environmental protection organisation, such as the Lesoochránárske zoskupenie, to challenge before a court a decision taken following administrative proceedings liable to be contrary to European Union environmental law.

[Signatures]