

2012-02-06

Case Summary posted by the Task Force on Access to Justice	
EUROPEAN UNION: LZ VLK vs. Ministry of Environment (preliminary ruling), C-240/09 Lesoochranárske zoskupenie	
1. Key issue	The requirements for public participation in environmental decisions.
2. Country/Region	Slovakia (Slovak republic)
3. Court/body	Court of Justice of the European Union (Grand Chambre)
4. Date of judgment /decision	2011-03-08
5. Internal reference	C-240/09 (Celex 62009J0240)
6. Articles of the Aarhus Convention	Art. 3 para. 1; art. 6 para. 1; art. 9 para. 3
7. Key words	Public; public concerned; public participation; access to justice.
8. Case summary	<p>This reference for a preliminary ruling from the Supreme Court of the Slovak Republic concerns the effect of Article 9(3) of the Aarhus Convention; in particular, whether that article has “self-executing effect” within an EU Member State’s legal order. The case raises important issues regarding the allocation of jurisdiction to interpret provisions of mixed agreements as between the national courts of the Member States and the Court of Justice of the European Union (CJEU). The background is that EU in its declaration of competence at the signing of the Aarhus Convention stated that the Member States are responsible for the performance of the obligations according to Article 9(3) and will remain so unless and until the Community adopts provisions of Community law covering the implementation of those obligations’.</p> <p>The applicant before the national court, Lesoochranárske zoskupenie VLK (‘LZ’), is an environmental NGO. LZ requested the Ministry of the Environment of the Slovak Republic to become a party in the administrative decision-making procedure concerning the grant of derogations to the system protecting species (brown bear) and areas which are protected by EU Habitats Directive (93/43/EEC). The Ministry rejected this request and LZ appealed to the Supreme Court, which stayed the proceedings and referred a number of questions to the Court of Justice of the European Union (CJEU) for preliminary ruling.</p> <p>The CJEU pointed out that the Aarhus Convention is signed and approved by the Community and that, according to settled case-law, the provisions of the convention form an integral part of its legal order. The Court therefore has jurisdiction to give preliminary rulings concerning the interpretation of that agreement, and, accordingly, to define the obligations which the Community has assumed and those which remain the sole responsibility of the Member States.</p> <p>The CJEU furthered on to decide 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 is the case, EU law would apply and it would be for the Court to determine whether the provision of the international agreement in question has direct effect. When deciding this, the Court first observed 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 [<i>Note: Today Articles 192 and 191.2 of the Treaty on the Functioning of the European Union (TFEU)</i>]. Furthermore, also in a situation when a specific issue not yet has been the subject of EU legislation, it is part of EU law, where that issue is regulated in a mixed agreement and it concerns a field in large measure covered by it. In the present case, the dispute concerned 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</p>

bear, which is mentioned in Annex IV(a) to the Habitats Directive. The Court therefore concluded that the dispute fell within the scope of EU law, despite the fact that Community in the declaration of competence stated that it is the responsibility of the Member States to perform the obligations in Article 9(3) to the Aarhus Convention. Here, the Court emphasized that 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. Therefore, the Court decided that it had 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.

The Court then went on to say that a provision in an agreement concluded by EU 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 to the adoption of any subsequent measure. In this connection, it must be held that the provisions of Article 9(3) of the Aarhus Convention do not contain any such 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 to the adoption of a subsequent measure. It must however be observed that those provisions, although drafted in broad terms, are intended to ensure effective environmental protection. 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. On that basis, as is apparent from well-established case-law of the CJEU, 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). According to the Court, it would therefore, if the effective protection of EU environmental law should not to be undermined, be inconceivable that Article 9(3) of the Aarhus Convention could be interpreted in such a way as to make it in practice impossible or excessively difficult to exercise rights conferred by EU law.

The Court concluded by stating 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. 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 LZ, to challenge before a court a decision taken following administrative proceedings liable to be contrary to EU environmental law.

Note: After the judgment of the CJEU, the Supreme Court of the Slovak Republic quashed the decision of the Ministry of the Environment, granted VLK standing – and thus revising its previous case law – and remitted the case back to the Ministry for further deliberations,

see <http://www.justiceandenvironment.org/files/file/2011%20ECJ%20SK.pdf>

9. Link address	http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c-240/09&td=ALL http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009CJ0240:EN:NOT http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/EUROPEAN_UNION/ECJ_C240-09_LZ_WLK/EU_ECJ_C240-09_LZ_WLK.pdf
-----------------	---