

# The VLK Case

## Slovakia

Application of Art. 9 Para. 3 of the Aarhus Convention According to the Decision of the Court of Justice of the European Union

Legal Analysis

*Justice and Environment 2011*

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### Application of Art. 9 Para. 3 of the Aarhus Convention According to the Decision of the Court of Justice of the European Union

#### Legal Analysis

*Summary: This paper interprets of the judgment of the Court of Justice of the European Union from the 8th March 2011 in case C-240/09, where the subject was a reference for the preliminary ruling under Article 234 EC from the Supreme Court of Slovak republic in case of the petition of the Civil association Lesoochranárske zoskupenie VLK against Ministry of Environment, and its further application in the Slovak Republic.*

#### **A. description of the subject of the proceeding at the court of justice of the European Union.**

The reference for the preliminary proceeding was submitted by the Supreme Court of Slovak republic (hereinafter "Supreme Court") regarding the dispute between the civil association Lesoochranárske zoskupenie VLK ("association VLK"), an association established in accordance with the Slovak law, whose objective is the protection of the environment, and Ministry of Environment of Slovak republic ("Ministry of Environment"). The dispute concerned the request of the association VLK to be a "party" to the administrative proceeding relating to the grant of derogations to the system of protection for certain species, such as the brown bear; access to protected countryside areas; and the use of chemical substances in such areas. The reference for the preliminary proceeding was submitted in case of the interpretation of art. 9 para. 3 of the Convention on Access to Information, Public Participation in Decision-making Process and Access to Justice in Environmental Matters ("the Aarhus Convention"), which the European Community is a party to by means of Council Decision 2005/370/EC.

Among the requirements of art. 9 para. 3 of the Aarhus Convention is that the public has access to administrative proceedings to challenge acts and omissions of public authorities that violate national law relating to the environment. Association VLK is in dispute with the Ministry of Environment because the Association VLK claims that it should have the status of a "party" to the administrative proceeding, which is required to have access to administrative proceedings per the requirements of art. 9 para. 3 of the Aarhus Convention. Because there is no Slovakian legislation that ensures the rights under art. 9 para. 3 of the Aarhus Convention, it is only possible to claim the rights under this article by the granting of its direct effect.

The full text of art. 9 para. 3 of the Aarhus Convention is as follows:

#### *Article 9 para. 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.*

The aforementioned dispute was taken to the Supreme Court, which decided to stay the proceeding and refer the following questions to the Court of Justice of the European Union (hereinafter “Court of Justice”) for a preliminary ruling:

*“1. Is it possible to recognize 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 recognize 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?”*

The subsequent sections analyze two aspects of the opinion of the Court of Justice. First, the paper discusses the issue of whether the Court of Justice had jurisdiction to decide the dispute. Next, the paper discusses the judgment of the Court of Justice as it relates to two substantive decisions.

#### **A.1.1 legal opinions of the court of justice expressed in the judgment regarding its competence to decide the matter.**

Since the Aarhus Convention is, within the sense of the legal theory, a so-called mixed international treaty in relation to the European Union and single member states (majority of the member states of the European Union ratified it, as well as the European Union itself) (para. 31 of judgment), the Court of Justice first had to clarify the question whether it has competence to interpret this international treaty in a binding way, as a part of the Community law. In case it did not have it, the Court of Justice would have to stop the proceeding and the single member states would have to settle the dispute individually.

In this regard, the Court of Justice held that it has jurisdiction – or “competence” – to hear this case. With reference to another judgment of the Court of Justice (judgment C 431/05 in *Genérico* case), the Court of Justice held that the competence regarding the interpretation of the so-called “mixed contracts” shall be assessed according to the following criteria:

1. It has to be an international treaty to which both the European Union and also the single member states have acceded (para. 30 of judgment)
2. In case of such treaty it is necessary to look over whether the European Union adopted, in European Union legislation, the area which is stipulated in a concrete provision of the mixed international treaty (para. 32 of judgment)
3. If there is an issue that has not been a subject of the European Union legislation yet, it nonetheless belongs to the law of the European Union *if* this issue is regulated in agreements concluded by the European Union and its member states and refers to the area which is already regulated to large extent by the law of the European Union (para. 36 of judgment)

During the search for the answers to the mentioned questions, the Court of Justice stated that the European Community acceded to the Aarhus Convention by the Council Decision no. 2005/370/EC on conclusion of the Convention on access to information, public participation in decision-making process and access to justice in environmental matters on behalf of the European Community. The Court of Justice thus concluded that **according to settled case law, the provisions of that convention now form an integral part of the legal order of the European Union** (para. 30 of judgment).

The Court of Justice said that in the present case, the dispute of the main proceeding relates to the fact whether an environmental protection organization can be “party” to the administrative proceeding concerning derogation from a concrete provision that relates to the protection regime of species such as brown bears. **It is obvious that the dispute directly relates to the area of environment in which the European Union has**, based on art. 192 (former art. 175 of the Treaty on European Communities) of the Treaty on the Functioning of the European Union together with art. 191 para. 2 (former art. 174 para. 2) **an explicit external competence** (para. 35 of judgment). This means that the European Union is authorized to conclude agreements in the area of environment protection even when the specific questions, to which the agreements refer, are not at all or are only partially a subject of the legislation at the Community level which, as a result of this, cannot be influenced (see judgment C 459/03 in case Commission/Ireland). Given that the protected species the brown bear and conditions of its protection (as well as other facts) are subject of the regulation by the acts of the European Union, specifically by the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (hereinafter “Habitat Directive”), **there cannot be any doubts that the dispute of the main proceeding relates to the fact which is a subject of the legislation by the acts of the European Union** (para. 37 and 38 of judgment).

The Court of Justice further recognized that even at the European Union level, there **has not been a complete fulfillment of the obligations resulting from art. 9 para. 3 of the Aarhus Convention** because the European Union’s legal acts have not been adopted. Such an adoption would regulate the duties resulting from art. 9 para. 3 of the Aarhus convention in relation to the member states outwards, but only in relation to the bodies of the European Union (European Parliament and Council Regulation (EC) no. 1367/2006, 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). Still, according to the opinion of the Court of Justice, it is without any doubt **that if the European Union adopted a regulation in relation to its own bodies, and thus it**

**has an obligation to adopt similar regulation in relation to the member states in the future, it is in the European Union's interest that the interpretation of these obligations is the same in relation to its own bodies as well as the member states** (para. 42 of judgment). From this follows that the Court of Justice does not find it relevant that the European Union level has yet to adopt a legislation that regulates art. 9 para. 3 of the Aarhus Convention in relation to the member states (para. 41 of judgment).

#### **A.1.2 comments on the mentioned legal opinions of the court of justice.**

**In light of the above mentioned, the judgment of the Court of Justice indicates that, in relation to environmental protection, procedural legislation very important. While the Habitats Directive contains only substantive regulations and not procedural regulations, procedural protection of the substantive rights resulting from the Directive is provided through the Aarhus Convention.** The protection of the brown bear, as a species protected by the Habitats Directive, is ensured not only by substantive provisions of the Habitats Directive, but also through application of the procedural provisions embodied in art. 9 para. 3 of the Aarhus Convention. This is dispute the Habitats Directive containing no reference to the procedural rights that the Aarhus Convention contains. The exercise of the rights resulting from art. 9 para. 3 of the Aarhus Convention supplement the protection of the protected species, and without their use, the protection of species is incomplete.

The mentioned premise should also be applied in all similar protected matters that are covered by the Community law in areas of the environment (which means protected matters covered by similar "environmental" Directives, without containing procedural provisions). **Thus, the complete protection of each component of the environment should, besides the substantive legislation adopted at the European Union level, also encompass the procedural protections that correspond to the requirements of art. 9 para. 3 of the Aarhus Convention.**

In light of the above-mentioned opinions of the Court of Justice, in all cases when the Court of Justice adjudicates any opinion regarding the application of the regulation no. 1367/2006 in relation to the internal bodies of the European Union, **its effect should also be applied consequently on the individual member states. This should apply regardless of whether, sometime in future, the legislation regarding the application of art. 9 para. 3 of the Aarhus Convention in relation to the member states will be adopted at the European Union level.**

#### **A.2.1 legal opinions of the court of justice stated in the judgment regarding a direct effect of the art. 9 para. 3 of the Aarhus convention**

After determining that it had competence to hear the dispute, the Court of Justice dealt with the merits of the case, namely whether it is possible to recognize the direct effect of art. 9 para. 3 of the Aarhus Convention within the scope of the asked prejudicial questions?

The Court of Justice already adjudicated in the past (see judgment C-265/03 in Simutenkov case) that the provision of an agreement concluded by the European Union and its member states with third parties is considered to be a provision with direct effect *if* the wording, scope and nature of this agreement contain clear and precise obligations, the fulfillment or effects of which do not depend on the adoption of a subsequent act. In this regard, the Court of Justice clearly states that **art. 9 para. 3 of the Aarhus Convention does 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”* (para. 44 and 45 of judgment). Thus the Aarhus Convention is not a provision with direct effect.

However, Court of Justice did not end its interpretation of art. 9 para. 3 of the Aarhus Convention with this finding. The Court of Justice went on to state that despite the general wording of this art. 9, para. 3, **its aim is to enable an effective protection of environment.** The Court of Justice elaborated with the following:

*“In the absence of EU rules governing the matter, it is for the national 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.”* (para. 46 and 47 of judgment)

In this case, the Court of Justice concluded that **the effective protection of the rights resulting from the Habitats Directive requires that the procedural rights resulting from art. 9 para. 3 of the Aarhus Convention are secured.** The conditions that ensure such procedural protections **must be comparable with the procedural conditions for petitions of a similar nature that are already stipulated and applied in the member state.** Interpretation of art. 9 para. 3 of the Aarhus Convention thus should not result in situations when **the judicial protection of the rights, or legally protected interests,** resulting from the Community law (in this case the rights resulting from the Habitats Directive), **would be unduly hampered or practically impossible** (para. 49 of judgment).

From these premises, the Court of Justice concluded that an interpretation of the national legislation must comply to the largest possible extent with the aims set out in art. 9 para. 3 of the Aarhus Convention in order to ensure the effective judicial protection of the species protected by the Community law (Habitats Directive). Hence the national court, according to the mentioned conditions, must interpret and apply national procedural norms (conditions stipulated in the national law which are necessary to be fulfilled in order to file a court petition) in a way which will ensure that the **organization of such a nature as the association VLK can challenge before a court a decision, adopted during the administrative proceeding, which could be in breach of the European Union law in the area of environment** (in concrete case the decision on permission to shoot the brown bear) (para. 50 and 51 of judgment).

With regards to the mentioned legal opinions, the Court of Justice finally issued the following ruling:

*“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 organization, 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.”*

#### **A.2.2            comments to the mentioned legal opinions of the court of justice.**

Despite the fact that the Court of Justice concluded that the art. 9 para. 3 of the Aarhus Convention is not directly applicable, it defined **how and with what purpose the national courts should interpret provisions of the national procedural law**. From the wording of the ruling – *“to interpret, to the fullest extent possible, the procedural rules relating to the conditions ... to enable an environmental protection organization, such as the Lesoochránárske zoskupenie VLK, to challenge before a court a decision taken following administrative proceedings...”* – it is obvious that, should the national interpretation procedures allow it, the national courts must procedural law in such a way that ensures the achievement of the objective stated in the ruling of the Court of Justice.

Moreover the judgment of the Court of Justice also defined **what criteria** the interpretation has to fulfill, and what should be achieved by such interpretation. National conditions, which ensure the access to the court according to the provision of art. 9 para. 3 of the Aarhus Convention, **shall not be “less favorable than the procedural conditions regarding the similar petitions of the domestic nature (principle of equivalence) and shall not practically enable or unduly impede the exercise of the rights which are recognized by the Union legal order (principle of efficiency).”**

Furthermore, it is beyond any doubt that these criteria concern not only the possible interpretation of the application of art. 9 para. 3 of the Aarhus Convention by the national courts, but also **adopted legislation on the access to the court according to art. 9 para. 3 of the Aarhus Convention** (provided that the relevant legislation will be adopted in the member states based on this judgment). If the state decides for the legislative regulation of the “domestic conditions” (e.g. to provide for the uniform application of the rights resulting from art. 9 para. 3 of the Aarhus Convention by the national authorities), it is sequent that also in this case mentioned criteria have to be fulfilled.

#### **B.                    approach of the Supreme Court following the court of justice decision.**

After the issuance of the Court of Justice judgment, the Supreme Court continued in its original proceeding. The Supreme Court also stayed several other proceedings with the same core legal issue due to the proceeding at the Court of Justice. Therefore the Supreme Court issued several new judgments that reflect the Court of Justice decision. In all cases, **the judgment of the Court of Justice was followed in a way that the challenged decision of the Ministry of Environment on exclusion of the association VLK from the relevant administrative proceeding was cancelled and returned to the Ministry of Environment for a new proceeding and decision.** In these new proceedings, the Ministry of Environment is similarly bound by the legal opinion of the Supreme Court. **These judgments of the Supreme court contravene established jurisprudence of the Supreme court**, which – as the court of the last instance – previously sustained decisions of administrative authorities denying

standing of environmental organizations (such as the association VLK) in administrative proceedings.

The following sections address the decisions of the two senates of the Supreme Court. While the two senates interpret the Court of Justice judgment differently, their various arguments support the same verdict.

#### **B.1 main arguments of the verdict of the fifth senate of the Supreme Court no. 5Sžp/41/2009 from 12 April 2011.**

The Supreme Court first recognized that exemptions to kill the brown bear – a protected species – **concerns the fundamental rights of the individuals associated in the association VLK, such as the right to judicial protection together with the right to a favorable environment.** According to the opinion of the Supreme Court, only by recognizing these rights of the association VLK is it possible to fulfill the requirement of the Court of Justice, whose ruling purported to *“enable an environmental protection organization, such as the Lesoochranské zoskupenie, to challenge before a court a decision taken following administrative proceedings liable to be contrary to European Union environmental law”*.

As the Supreme Court stated, only the “party to the administrative proceeding” can, according to the Slovak legal order, file a petition at the court to revise the legality of a decision and procedure of an administrative body, and so it **the term “party to the proceeding” must be defined to determine who can execute these rights.** In the Supreme Court opinion, the basic criterion for assessing participation in administrative proceedings is the impacts of the procedure of the state power body (court or body of public administration) or its decision on fundamental rights, **which are ensured by the constitution or through an international treaty to an individual, regardless of the procedural status of this person in the proceeding.**

According to the Supreme Court, it is beyond any doubt that the individuals **in the association VLK are associated for the purpose of exercising their right to a favorable environment, and it is also obvious from the preamble of the Aarhus Convention that each of the parties to the Convention has the obligation to protect and enhance the environment and also to ensure access to justice in environmental matters to the citizens.** These issues must also be respected in the administrative proceedings concerning the environment, and the Supreme Court cannot prevent individuals in the association VLK from exercising of their constitutional rights.

Furthermore, according to the Supreme Court opinion, the mentioned international obligations of the Slovak republic regarding the constitutionally accepted insurances of the right of the public to environment *“in the end have such impact that they **interfere in the classic concept of the active legitimacy of the individuals in the proceeding in front of the administrative bodies by the recognition of the status of a party to the proceeding also to the public, resp. in some cases only to the public engaged in the environment protection.**”*

The Supreme court also stated that for the fulfillment of the mentioned rights, **the existing indirect forms of legal protection are not sufficient** – including the procedural submission at the prosecution of the Slovak Republic or Public defender of the rights – these only can

indirectly lead to the initiation of judicial proceeding (e.g. prosecutor's petition in case of non-compliance with the protest), which is insufficient to fulfill the objectives of art. 9 para. 3 of the Aarhus Convention. Likewise **the procedural position of the association VLK as a participating person**, according to the provision of art. 82 para. 3 of the Act no. 543/2002 on the protection of the nature and country, **is not sufficient** because this procedural position does not allow the association VLK access to the courts.

Based on these considerations, the Supreme Court cancelled the decision of the Ministry of Environment that had excluded the association VLK from the proceeding on granting an exemption that would allow the killing of brown bears. Thus the Supreme Court makes clear that the Ministry of Environment should have recognized the right of the association VLK to be a party to the proceeding.

## **B.2 main arguments of the verdict of the third senate OF THE Supreme court NO. 3Sžp/30/2009 from 2 June 2011.**

Based on the Court of Justice judgment, this panel of the Supreme Court came to the need to use the "euro conform" interpretation, which this panel explains as follows:

*"...it obviously shows that the euro conform interpretation has precedence over the interpretation based on the legal normativism. It relativizes the wording of the national legal norm so that it gives it in a given case a broader content and by an extensive interpretation of the term participating person in art. 82 para. 3 of the Act no 543/2002 broadens it up to the level of fiction, resp. irrebuttable presumption."*

And so despite the fact that the law does not allow the "participating person" – a procedural position which, according to the practice of the Slovak administrative bodies, belongs to organizations that protect the environment in proceeding concerning the environment protection – a right to file a petition at the court to seek revision of the legality of the decision issued in administrative proceeding, this panel of the Supreme court determines that the "euro conform" interpretation fills in this "gap" in procedural protections:

*"...by an extensive euro conform interpretation up to the level of irrebuttable **presumption recognize to the plaintiff, as a participating person, the same extent of the rights as he would have in the position of the party to the proceeding. Party to the proceeding according to the art. 14 para. 1 of the Act on administrative procedure is a person who is a bearer of the legal right, legally protected interest or obligation (which results from the substantive regulation) and an administrative body is authorized to decide about such right, legally protected interest or obligation.** National body of law application always has to try for the euro conform interpretation of the national law (interpretation in accordance with the community law). National court can through the euro conform interpretation fill in the gaps in the national legal system. Despite the fact that the Court of Justice of the European Union stated that art. 9 para. 3 of the Aarhus Convention does not have a direct effect in the law of the European Union, it was necessary by an extensive interpretation to broaden the above mentioned definition of the party to the administrative proceeding and to **recognize the same extent of the rights, as a party to the proceeding has, to other persons (especially the right to file a petition intended to the insurances of rights protection) with an objective to ensure and effective protection of environment.**"*

The Supreme Court further stated in the decision that *“the Court of Justice clearly stated, besides the direct effect of the Aarhus Convention, that in given case there is a question of the interpretation of the national procedural regulations which must be interpreted so that the realization of the substantive law of the European Union is ensured...”* In this case, the substantive law of the European Union in question is the directive on natural habitats. Thus the Supreme Court regarded as inevitable to use so-called “euro conform interpretation” and fills in the gaps in the national legal system. The Court of Justice recognized that the complete protection of the environment must include both the substantive legislation (directive on the natural habitats) and also the right to access to the court according to art. 9 para. 3 of the Aarhus Convention (for the purpose of the protection of interests resulting from the directive on the natural habitats), and while this issue is not reflected in the national act which transposes the directive on the natural habitats (act on the protection of the nature and country), **this panel of the Supreme court considered it inevitable to fill in this gap and to recognize the rights of the participating person in such cases which belong only to the party to the proceeding, especially the right to access to the court.**

With these considerations, this panel of the Supreme Court likewise cancelled the decision of the Ministry of Environment to exclude the association VLK from the proceeding on the permission to grant an exemption to allow the killing of brown bears. This Supreme Court panel’s decision implies that the Ministry of Environment should have recognized the right of association VLK to be a party to the proceeding.

### **C. conclusions derived from the decisions of the court of justice and the Supreme Court applicable for the Slovak republic.**

Several conclusions can be drawn from the fact how the two panels of the Supreme Court applied and interpreted the Court of Justice judgment.

Association VLK, as environmental protection organization, **was granted rights that belong to the party to the administrative proceeding for the proceedings. Such rights were granted in order to allow association VLK to challenge the administrative decision at court.** Only the position of the party to the administrative proceedings enables, under the current national legislation, a party to file a petition at the court. **The purpose of the recognition of the right is the fulfillment of the objective of art. 9 para. 3 of the Aarhus Convention – namely, the effective protection of environment.**

**Other than recognizing the rights which belong to the party to administrative proceeding, there is no other legally relevant way, in the conditions of the Slovak Republic, which would effectively fulfill the objective of art. 9 para. 3 of the Aarhus Convention,** because no other legal remedy currently allows challenges of administrative authority decisions directly to the court. Only by recognizing these administrative proceedings rights can the requirement of the Court of Justice be fulfilled that **such petitions shall not be less favorable as the procedural conditions regarding the similar petitions of the domestic nature and shall not practically make impossible or unduly difficult to exercise the rights.**

In light of art. 14 para. 1 of the Act on administrative procedure, the party to the proceeding is *“also a person whose right, legally protected interests or obligations can be directly aggrieved by the decision.”* With regards to the above mentioned conclusions of the Court of

Justice and the Supreme Court – that an environmental protection organization is a kind of subject established to contribute to the objective of art. 9 para. 3 of the Aarhus Convention (to effective protection of environment) – it is obvious that proceeding, in which it is decided about the interventions to the environment, **can directly affect rights** of such organization (if wording of the decision of the fifth senate of the Supreme court from 12 April 2011 is applied, than this is the way how individuals, associated in an environmental protection organization, implement their constitutional right to favorable environment, thus each intervention to the environment potentially directly effects their right), or **can directly affect a legally protected interest** and protection of environment in light of the objective of art. 9 para. 3 of the Aarhus Convention. According to that legal theory, environmental civil associations may in the administrative proceedings cite their collective interests in the protection of the nature and landscape.

Both possibilities – a directly affected right or a directly affected legally protected interest – can be interpreted in a way to meet the purpose adjudicated by the ruling of the Court of Justice (having also fulfilled the conditions of admissible euro conform interpretation, which shall not contravene the clear wording of the law – see decisions of the Court of Justice no 14/83 in Von Colson case, or decision C-397/01 to C-403/01 in Pfeiffer case). The first of the possible interpretations indicates that in the administrative proceedings regarding the environment **rights of the party to the proceedings**, which can also be an organization for the protection of environment, **rights are being affected** (and the core subject of these proceeding is deciding on the right to a favorable environment, in accordance with the art. 44 of the Constitution of the Slovak republic, as a constitutional right that belongs to the individuals associated in the environmental protection organization, as it was stated by the fifth senate of the Supreme court in its decision from 12 April 2011). Another interpretation indicates that these proceedings concern a **legally protected interest, which is the environment itself**, and protection of which is vested, under the objective of art. 9 para. 3 of the Aarhus Convention, to the organization for the protection of environment. **Regardless which interpretation is applied, environmental protection organization, such as the association VLK, fulfill the conditions for the recognition of the position of the party to the proceeding under the art. 14 para. 1 of the Act on administrative procedure.**

Since amendment of the Nature Protection Act, effective 1 May 2010, modified participation provision (provision art. 82 para. 3 second sentence of the Nature Protection Act) in proceedings according to this Act (the third senate of the Supreme court in its judgment from 2 June 2011 addressed this amendment) – which state that a “Party to the proceedings as stipulated by this act is any natural or legal person, which has such position guaranteed by the special legal provision“ (such as the Administrative Proceeding Act and its general definition of the party to the proceeding as mentioned above) – **it is beyond any doubt that the mentioned interpretation of the term “party to the proceeding” is, under the conditions of the Slovak Republic, applicable for the fulfillment of the obligation resulting from the decisions of the Court of Justice.** According to the Court of Justice, it is necessary to use such interpretation *“in order to enable an environmental protection organization, 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.”*

To conclude, it is necessary to mention that the legal opinion of the Court of Justice and its requirements stated in the judgment are binding not only for the national courts (see relevant part of this analysis on relevant judgments of the Court of Justice), but also for other national authorities to which the judgment of the Court of Justice refers to. For example, the judgment applies to state authorities which issue administrative decisions concerning intervention to the components of the environment protected by the Community law. These state authorities are also obliged to follow the mentioned judgment of the Court of Justice and apply it in their practice in accordance with its requirements (as well as the requirements of the Supreme Court).

#### **D. Summary.**

This paper interprets of the judgment of the Court of Justice of the European Union from the 8th March 2011 in case C-240/09, where the subject was a reference for the preliminary ruling under Article 234 EC from the Supreme Court of Slovak republic in case of the petition of the Civil association Lesoochránárske zoskupenie VLK against Ministry of Environment, and its further application in the Slovak Republic.

Court of Justice held that it has jurisdiction to hear this case. It stated that the European Community acceded to the Aarhus convention and thus it concluded that **according to settled case law, the provisions of that convention now form an integral part of the legal order of the European Union. If the European Union adopted a regulation in relation to its own bodies, and thus it has an obligation to adopt similar regulation in relation to the member states in the future, it is in the European Union's interest that the interpretation of these obligations is the same in relation to its own bodies as well as the member states**

After this, Court of Justice clearly states that **art. 9 para. 3 of the Aarhus Convention does not contain any clear and precise obligation capable of directly regulating the legal position of individuals and** thus the Aarhus Convention is not a provision with direct effect. However, for the referring court is 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 organization, 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.”.*

Moreover, the Court of Justice concluded that **the effective protection of the rights resulting from the Habitats Directive requires that the procedural rights resulting from art. 9 para. 3 of the Aarhus Convention are secured.**

Based on the Court of Justice decision, Supreme Court continued in the original proceeding. Association VLK, as environmental protection organization, **was granted rights that belong to the party to the administrative proceeding for the proceedings. Such rights were granted in order to allow association VLK to challenge the administrative decision at court.** Only the position of the party to the administrative proceedings enables, under the current national legislation, a party to file a petition at the court. **The purpose of the recognition of the right is the fulfillment of the objective of art. 9 para. 3 of the Aarhus Convention – namely, the effective protection of environment.**

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