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Case Summary posted by the Task Force on Access to Justice

European Union: Lesoochranárske zoskupenie VLK v Obvodný úrad Trenčín (preliminary ruling); C-243/15

1. <i>Key issue</i>	Standing for the public concerned – An administrative authorisation procedure for a project likely to have a significant effect on the environment may not be concluded if an ENGO's request to be Party to the proceedings is pending.
2. <i>Country/Region</i>	Slovakia (Slovak Republic)
3. <i>Court/body</i>	Court of Justice of the European Union (Grand Chamber)
4. <i>Date of judgment /decision</i>	2016-11-08
5. <i>Internal reference</i>	C-243/15
6. <i>Articles of the Aarhus Convention</i>	art. 2, para. 5; art. 6, incl. para. 1 (b); art. 9, paras. 2, 3 and 4
7. <i>Key words</i>	Access to justice, legal standing, locus standi, standing for NGO, public concerned, Directive 92/43, interested person, party to the procedure, administrative authorisation procedure, act of public authority, activities not listed in annex I

8. *Case summary*

The environmental NGO Lesoochranárske zoskupenie VLK ('LZ') requested to be accorded the status of a party to the administrative authorisation procedure relating to a project to construct an enclosure on parts of land located on a protected site. The district authority refused the request, arguing that the applicable legislation accorded LZ only the status of an "interested person", but not that of a "party to the procedure". The administrative appeal brought by LZ against that decision was dismissed by the Regional Environment Authority on the same grounds. The district authority subsequently granted authorisation for the project in question. LZ then brought an action against the decisions at issue before the Regional Court, seeking to obtain the status of a party to the administrative procedure on the basis, inter alia, of article 9, para. 3, of the Aarhus Convention. Following the decision of the Court of Justice in C-240/09, both that Court as well as later the Supreme Court annulled the decision to refuse LZ's request. After yet another refusal of the requested status by the Regional Court, LZ appealed to the Supreme Court, which referred the case for a preliminary ruling to the Court of Justice.

The referring court's question essentially was whether art. 47 of the Charter, read in conjunction with art. 9 of the Aarhus Convention, must be interpreted to the effect that the action concerning LZ's request does not necessarily have to be examined during the course of the authorisation procedure, and is automatically dismissed as soon as that project is authorised. This would consequently require that organisation to bring an action of another type in order to obtain that status.

In its preliminary ruling, the Court of Justice first stated that in any case, according to Directive 92/43, the competent authorities need to conduct an appropriate impact assessment before authorising the plan or project, making sure that it will not adversely affect the integrity of that site. In addition, the Court found that an environmental organisation like LZ, which meets the conditions specified in art. 2, para. 5, of the Aarhus Convention, derives a right to participate in a procedure for the adoption of a decision

relating to the authorisation of a plan, which is likely to have a significant effect on the environment. Likewise, LZ enjoys the right to a review procedure covered by art. 9, para. 2, of the Convention.

The Court furthermore found that the extent to which LZ could participate in the authorisation procedure in its capacity as an “interested person” is not equivalent to the participation possibilities it would have had as “a party to the proceedings”. Had it been granted the latter status, LZ would have been able to bring forward arguments relating to the risks of adverse effects of the project, which would have to be taken into account by the authorities before authorising and executing the project. It is possible that, without the participation in the procedure of an environmental NGO like LZ, arguments supporting protection of the environment will neither be put forward nor taken into account, so that the fundamental objective of the EU Directive transposing the Convention into EU Law will not be achieved.

The Court of Justice concluded that as long as there is no definitive judicial decision on possession of the status of party, the authorisation procedure may not be concluded but the request for the status needs to be examined during the course of that procedure.

*9. Link to judgement/
decision*

Link to judgment for this case:

<http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-243/15&td=ALL>

In English and Slovak languages:

http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/EUROPEAN_UNION/CJEU_C243_15_LZ_WLK_II/CJEU_C243-15_LZ_WLK_II_EN_SK.pdf

Link to summary and judgment for case C-240/09:

https://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/EUROPEAN_UNION/ECJ_C240-09_LZ_WLK/Summary_EU_ECJ_C240-09_LZ_WLK.pdf