

2013-06-27/JD

Case Summary posted by the Task Force on Access to Justice

European Union: C-416/10 *Jozef Križan and Others v Slovenská inšpekcia životného prostredia.*

1. <i>Key issue</i>	Effective remedies - Members of the public concerned must be able to ask the court to suspend a challenged permit during the review procedure.
2. <i>Country/Region</i>	European Union
3. <i>Court/body</i>	Court of Justice of the European Union, Grand Chamber
4. <i>Date of judgment /decision</i>	2013-01-15
5. <i>Internal reference</i>	C-416/10 (Celex 62010CJ0416)
6. <i>Articles of the Aarhus Convention</i>	Art. 2, paras. 3 and 5; Art. 4, paras. 1, 3(d) and (e); Art. 6; Art. 9, paras. 1, 2 and 4
7. <i>Key words</i>	Reference for a preliminary ruling, Directive 85/337/EEC , Directive 96/61/EC, Construction of a landfill site, Permit, Trade secrets, Effect on the validity of the decision authorising the landfill site, EIA, Effective legal remedy, Interim measures, Right to property

8. *Case summary*

This case was a referral to the CJEU for a preliminary ruling. Josef Križan and others challenged a permit for the Pezinok land fill issued according to Directive 96/61 (the IPPC Directive) by the environment inspection authority of Bratislava. They also asked for access to the urban planning decision, which the authority refused with reference to commercial confidentiality. Križan and others appealed to second administrative instance, which revealed the information about the planning decision, but upheld the permit decision. Križan and others brought action to the administrative court of Bratislava, but were dismissed. However, on appeal, the Supreme Court annulled the permit, in essence because of the failures in the public participation and EIA procedures. The land fill operator then lodged an appeal to the Constitutional Court of Slovakia, which found that the annulment of the permit was an infringement of the company's fundamental right to property according to the European Convention of Human Rights (ECHR), and therefore remitted the case back to the Supreme Court. As this court questioned that the contested decisions were compatible with the European Union law, it asked for a preliminary ruling from CJEU about the refusal of the information, the effectiveness of the judicial procedure and the protection of the property rights of the operator.

The CJUE ruled that the IPPC Directive:

- requires that the public concerned have access to an urban planning decision, such as that at issue in the main proceedings, from the beginning of the authorisation procedure,
- does not allow the competent national authorities to refuse the public concerned access to such decision by relying on the protection of the confidentiality of commercial or industrial information where such confidentiality is provided for by national or European Union, and
- does not preclude the possibility of rectifying, during the administrative procedure at second instance, an unjustified refusal to make available to the public concerned an urban planning decision, provided

that all options and solutions remain possible and that regularisation at that stage of the procedure still allows that public effectively to influence the outcome of the decision-making process.

Furthermore, the CJEU stated that Article 15a of the IPPC Directive means that members of the public concerned must be able to ask the court or competent independent and impartial body established by law to order interim measures such as temporarily to suspend the application of a permit, pending the final decision.

The CJEU finally said that a decision of a national court, taken in the context of national proceedings implementing the obligations resulting from article 15a of the IPPC Directive and from article 9, paragraphs 2 and 4, of the Aarhus Convention, which annuls a permit granted in infringement of the provisions of that directive is not capable, in itself, of constituting an unjustified interference with the developer's right to property enshrined in article 17 of the Charter of Fundamental Rights of the European Union.

<p>9. <i>Link address</i></p>	<p>http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62010CJ0416:EN:NOT</p> <p>http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/EUROPEAN_UNION/CJEU_C416-10_Krizan/EU_2013_C416_10_Krizan_judgement.PDF</p>
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