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JUDGMENT OF THE COURT (fourth chamber)

January 11, 2024 (*)

“Reference for a preliminary ruling – Environment – Aarhus Convention – Article 9, paragraphs 3 to 5 – Access to justice – Professional civil society of lawyers – Actions aimed at contesting administrative acts – Admissibility – Conditions provided for by national law – Absence of infringement of rights and legitimate interests – Non-prohibitive cost of judicial procedures – Distribution of costs – Criteria »

In case Cÿ252/22,

REFERENCE for a preliminary ruling under Article 267 TFEU, lodged by the Curtea de Apel Târgu-Mureÿ (Court of Appeal of Târgu-Mureÿ, Romania), by decision of 16 February 2022, received at the Court on April 8, 2022, in the procedure

Societatea Civilÿ Profesionalÿ de Avocaÿi AB & CD

against

Consiliul Judeÿean Suceava,

Preÿedintele Consiliului Judeÿean Suceava,

Agenÿia pentru Protecÿia Mediului Bacÿu,

Consiliul Local al Comunei Pojorâta,

in the presence of:

QP,

THE COURT (fourth chamber),

composed of MC Lycourgos, President of the Chamber, Ms O. Spineanu–Matei, MM. AD Bonichot (rapporteur), S. Rodin and Ms. LS Rossi, judges,

general advocate: Ms. L. Medina,

Registrar: Ms. R. ÿereÿ, administrator,

having regard to the written procedure and following the hearing of May 4, 2023,

considering the observations presented:

– **for the Societatea Civilÿ Profesionalÿ de Avocaÿi AB & CD, by Ms. D. Ionescu as well as by MM. PF Plopeanu and I. Stoia, lawyer,**

– **for the Preÿedintele Consiliului** Judeÿean **Suceava and the Consiliul** Judeÿean **Suceava, by Ms Y. Beÿleagÿ and MV Stoica, lawyer,**

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– for the Irish Government, by Mrs M. Browne, Chief State Solicitor, MM. A. Joyce and Mr Tierney, as Agents, assisted by MB Foley and MD McGrath, SC, ME Burke-Murphy, BL,

– for the Polish Government, by MB Majczyna, as Agent,

– for the European Commission, by MM. G. Gattinara and M. Ioan, as agents,

having heard the Advocate General's conclusions at the hearing of July 13, 2023,

returns the present

Stop

1 The request for a preliminary ruling concerns the interpretation of Article 2(4), as well as that of Article 9, paragraphs 3 to 5, of the convention on access to information, the participation of public decision-making process and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Decision 2005/370/EC of the Council of 17 February 2005 (OJ 2005 L 124, p. 1, hereinafter the "Aarhus Convention").

2 This request was made in the context of a dispute between Societatea Civilÿ Profesionalÿ of Avocaÿi AB & CD, a professional civil society of lawyers under Romanian law (hereinafter "AB & CD"), to different public entities regarding the legality of administrative acts adopted by these latest plans for the construction of a landfill in Pojorâta (Romania), namely the plan land use of September 16, 2009 and the building permit of October 3, 2012.

The legal framework

International law

3 Article 2 of the Aarhus Convention, entitled "Definitions", provides, in paragraphs 4 and 5:

"4. The term "public" designates one or more natural or legal persons and, in accordance with the legislation or custom of the country, associations, organizations or groups made up of these people.

5. The term "affected public" means the public that is affected or likely to be affected by decisions taken in environmental matters or who has an interest to assert with regard to the decisional process ; for the purposes of this definition, non-governmental organizations who work to protect the environment and who meet the conditions that may be required under domestic law are deemed to have an interest."

4 Article 3(8) of the Aarhus Convention states:

"Each Party shall ensure that persons who exercise their rights in accordance with the provisions of this agreement shall not in any way be penalized, persecuted or subjected to vexatious measures because of their action. This provision does not cover in no way affects the power of national courts to award costs in the amount reasonable following legal proceedings. »

5 Article 9 of the Aarhus Convention, entitled "Access to justice", states in paragraph 2

at 5 :

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

(a) having sufficient interest to act or, otherwise,

b) claiming an infringement of a right, when the administrative procedure code of a party imposes such a condition,

may appeal to a judicial body and/or another independent and impartial body established by law to challenge the substantive and procedural legality of any decision, act or omission falling within the provisions of the Article 6 and, if domestic law so provides and without prejudice to paragraph 3 below, the other relevant provisions of this Convention.

What constitutes a sufficient interest and infringement of a right is determined according to the provisions of domestic law and in accordance with the objective of granting the public concerned broad access to justice under this Convention. To this end, the interest of any non-governmental organization meeting the conditions referred to in paragraph 5 of Article 2 is deemed sufficient within the meaning of point a) above. These organizations are also deemed to have rights that could be infringed within the meaning of point (b) above.

[...]

3. Furthermore, and without prejudice to the appeal procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that members of the public who meet any criteria provided for by its domestic law may initiate administrative or judicial proceedings for challenge the acts or omissions of individuals or public authorities that contravene the provisions of national environmental law.

4. In addition, and without prejudice to paragraph 1, the procedures referred to in paragraphs 1, 2 and 3 above must provide sufficient and effective remedies, including injunctive relief where appropriate, and must be objective , fair and rapid without their cost being prohibitive. [...]

5. To make the provisions of this Article even more effective, each Party shall ensure that the public is informed of the possibility given to it of initiating administrative or judicial appeal procedures, and consider the establishment of appropriate mechanisms assistance aimed at eliminating or reducing financial or other obstacles that hinder access to justice. »

Romanian law

6 **Article 56 of Legea nr. 134/2010 privind Codul de procedurÿ civilÿ (Law No 134/2010, establishing the Code of Civil Procedure) *(Monitorul Oficial al României,* part I, no 247 of 10 April 2015), in the version in force in the main proceedings (hereinafter the "Code of Civil Procedure"), provides:**

"1. Any person having the enjoyment of civil rights may be a party to the procedure.

However, associations, companies or other entities without legal personality may take legal action, as long as they are constituted in accordance with the law.

[...] »

7 **Article 451 of the Code of Civil Procedure is worded as follows:**

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"1. Costs include stamp duty and court stamp duty, fees of lawyers, experts and specialists appointed in accordance with Article 330(3), sums due to witnesses for travel expenses and losses incurred as a result of their presence at the trial, transport costs and, where applicable, accommodation costs, as well as any other expenses necessary for the smooth running of the procedure.

2. The court may, even ex officio, reduce, with reasons, the part of the costs corresponding to attorney's fees when these are manifestly disproportionate in relation to the value or complexity of the case or the work accomplished by the lawyer, also taking into account the circumstances of the case. The measure taken by the court has no effect on the relationship between the lawyer and his client.

[...]

4. However, no reduction in costs may be made with regard to the payment of stamp duty and the court stamp, as well as the payment of sums due to witnesses under paragraph 1."

8 Article 452 of the Code of Civil Procedure provides:

"The party requesting an order for costs must prove, under the conditions provided for by law, the existence and extent of these costs no later than the date of closure of the proceedings on the merits. »

9 Under the terms of article 453 of the code of civil procedure:

"1. The losing party shall be ordered to pay the costs of the winning party, if the latter so requests.

2. When the request has only been partially granted, the judges determine to what extent each party can be ordered to pay costs. If necessary, judges can order compensation for costs. »

10 Article 1 of the Legea contentiosului administrativ nr. 554/2004 (law on administrative litigation no. 554/2004) *(Monitorul Oficial al României,* part I, no. 1154 of December 7, 2004), in the version in force in the main proceedings (hereinafter the "law on administrative litigation administrative"), provides:

"1. Any person who considers himself wronged by a public authority in one of his rights or legitimate interests, by an administrative act or by the absence of processing of a request within the time limit provided for by law, may address the competent administrative litigation court to obtain annulment of the act, recognition of the right invoked or legitimate interest and compensation for the damage suffered. The legitimate interest can be both private and public.

2. A person injured in one of his rights or legitimate interests by an administrative act of an individual nature addressed to another subject of law may also apply to the administrative litigation court.

[...] »

11 Article 2, paragraph 1, of the law on administrative litigation states:

"For the purposes of this law, we mean:

[...]

p) private legitimate interest – the possibility of requiring a certain behavior, in consideration of the realization of a future and foreseeable, prefigured subjective right;

r) legitimate public interest – the interest which aims at the legal order and constitutional democracy, the guarantee of the fundamental rights, freedoms and duties of citizens, the satisfaction of the needs of the community, the implementation of the competence of public authorities;

s) relevant social organizations – non-governmental structures, unions, associations, foundations and others, the object of activity of which is to protect the rights of different categories of citizens or, where appropriate, the proper functioning of public administrative services;

[...] »

12 Article 8(1a) of the law on administrative litigation provides:

"Natural and legal persons under private law may only formulate heads of claim by which they invoke the defense of a legitimate public interest only on a subsidiary basis, to the extent that the attack on the legitimate public interest logically follows a violation of a subjective right or a private legitimate interest. »

13 Article 196, paragraph 3, of the Statutul profesiei de lawyer (status of the legal profession) *(Monitorul Oficial al României,* part I, no. 898 of December 3, 2011) reads as follows:

"For disputes arising from the exercise of professional activity, the professional civil society can take legal action as plaintiff or defendant, even if it does not have legal personality. »

14 Pursuant to article 20, paragraphs 5 and 6, of the Ordonanÿa de emergency a Guvernului nr. 195/2005 privind protecÿia mediului (Emergency Government Ordinance No. 195/2005 on environmental protection) *(Monitorul Oficial al României,* Part I, No. 1196 of December 30, 2005, hereinafter "OUG No. 195 /2005"):

"5. Public access to justice is provided in accordance with the legal provisions in force.

6. Non-governmental organizations working to protect the environment have the right to take legal action in environmental matters and have standing to act in disputes relating to environmental protection. »

The main dispute and the questions referred for a preliminary ruling

15 By an action brought before the Tribunalul Cluj (high court of Cluj, Romania), in October 2018, a professional civil society of lawyers, AB & CD, requested the annulment of various administrative acts adopted by the Romanian authorities with a view to the construction of a landfill in Pojorâta, namely the land use plan of September 16, 2009 and the building permit of October 3, 2012.

16 In support of its action, AB & CD relied, in particular, on Article 35 of the Romanian Constitution relating to the right to a healthy environment, as well as several provisions of OUG o 195/2005 and Hotÿrârea not de Guvernului nro 1076/2004 privind stabilirea procedurii de realizare a evaluÿrii de mediu pentru planuri ÿi programe (Government Decision No 1076/2004 on the establishment of the procedure for the environmental assessment of plans and programs), while the defendants argued that the landfill in question complied with all

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technical requirements arising from Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1).

17 Furthermore, the defendants raised three objections of inadmissibility.

18 On the one hand, under Romanian law, AB & CD would not have legal personality and could not take legal action, except with regard to disputes arising from the exercise of its professional activity, which would not be not the case in this case. On the other hand, failing to have invoked the lack of recognition of its subjective rights or its legitimate private interests, this professional civil society of lawyers would not have justified either its quality or its interest to act against the administrative acts in cause.

19 By judgment of February 7, 2019, the Tribunalul Cluj (High Court of Cluj) rejected the objection of inadmissibility relating to AB & CD's capacity to sue. On the other hand, it accepted the two other objections of inadmissibility on the grounds that AB & CD did not demonstrate its standing or its interest to act. Indeed, it would follow from the law on administrative litigation that an applicant can only invoke a public interest on a subsidiary basis, to the extent that the attack on this interest results from a violation of a subjective right or of a legitimate private interest. However, AB & CD, as a professional civil partnership of lawyers, would not have reported any violation of a legitimate private interest. It thus appears from the referral decision that these last two exceptions would have been examined together, AB & CD not having standing to act insofar as it did not demonstrate a legitimate private interest.

20 AB & CD brought an appeal before the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania). A cross-appeal was filed by the Consiliul Judeÿean Suceava (Suceava County Council, Romania) in order to challenge the rejection of the objection of inadmissibility based on the lack of capacity to bring legal proceedings.

21 By a judgment of the Înalta Curte de Casaÿie ÿi Justiÿie (High Court of Cassation and Justice, Romania) which granted a request from the Suceava County Council seeking to divest the Curtea de Apel Cluj (Cluj Court of Appeal), these appeals were transferred to the Curtea de Apel Târgu-Mureÿ (Court of Appeal of Târgu-Mureÿ, Romania), namely the referring court.

22 The latter notes that, in this case, it is required to apply article 20 of OUG o 195/2005. Under paragraph 5 of this article, access to justice in environmental matters is carried out in accordance with "legal provisions in force", while, under paragraph 6 of that article, a special regime applies to recourse of non-governmental organizations which work for the protection of the environment.

23 It is common ground that AB & CD does not benefit from the regime provided for these organizations and that, consequently, the admissibility of its action against the administrative acts in question and, in particular, the question of whether it has standing to act, is assessed in light of the general rules of the law on administrative litigation.

24 It follows from this law that the Romanian legislator has opted for “subjective” litigation, which implies that, initially, an applicant must assert his own interest, namely a “legitimate private interest”, as referred to in Article 2(1)(p) of that law. It is only subsequently, after having proven the existence of such a self-interest, that an applicant can also invoke a “legitimate public interest”.

25 On the other hand, under Article 20(6) of OUG No 195/2005, non-governmental environmental protection organizations are not required to demonstrate an interest

private legitimate and can therefore access justice within the framework of objective litigation.

26 All of these provisions would reflect those of Article 9(2) of the Aarhus Convention which governs access to justice for the "public concerned", namely, in accordance with Article 2(5), of this convention, "the public who is affected or who risks being affected by decisions taken in environmental matters".

27 It follows that, in order to demonstrate that it has the standing to act, AB & CD would have had to prove a legitimate private interest or the existence of a legal situation directly linked to its corporate purpose, by proving that it had been affected by the administrative acts in question.

28 The referring court has doubts as to whether, in an environmental dispute, such a requirement can be consistent with Union law and, in particular, with Article 9(3) of the Convention. from Aarhus.

29 Furthermore, that court notes that, with regard to professional civil partnerships of lawyers which do not have legal personality, such as AB & CD, Article 196(3) of the statute of the profession of lawyer recognizes their right to take legal action as plaintiff or defendant for only disputes arising from the exercise of their professional activity.

30 In this case, AB & CD invoked not an infringement of its own rights, but of the public interest and the rights of its lawyers, arguing that Pojorâta's discharge had a strong impact on the latter and , potentially, on the health of people living in the region concerned as well as on tourism. In this context, the referring court seeks to ascertain whether Article 9(3) of the Aarhus Convention confers standing on AB & CD in the context of its appeal against the administrative acts in question.

31 Finally, the referring court notes that AB & CD maintains that there is a risk that prohibitive costs will be imposed on it and that Romanian law does not allow it to predict the amount that it might have to bear.

32 In that regard, Articles 451 to 453 of the Code of Civil Procedure govern, generally, the question of costs. These include, in particular, court costs and lawyers' fees. The losing party may be ordered to pay costs at the request of the winning party.
In the event that the lawyer's fees are manifestly disproportionate to the complexity of the case or the work accomplished by the lawyer, the judge seized may reduce the part of the costs corresponding to the lawyer's fees.

33 The referring court seeks to establish whether these rules of Romanian law comply with the requirement of non-prohibitive costs of legal proceedings in environmental matters, provided for in Article 9(4) of the Aarhus Convention. Furthermore, it is not certain that Articles 451 to 453 of the Code of Civil Procedure contain sufficient criteria allowing a person governed by private law to assess and anticipate the high procedural costs.

34 In these conditions, the Curtea de Apel Târgu-Mureÿ (Court of Appeal of Târgu-Mureÿ) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

"1) Article 47, first paragraph, of the Charter of Fundamental Rights of the European Union [hereinafter "the Charter"], read in conjunction with Article 19(1), second subparagraph, TEU, as well as Article 2, [paragraph] 4, read in conjunction with Article 9, paragraph 3, of the [Aarhus] Convention, must be interpreted as meaning that the notion of "public" includes a legal entity such as a professional civil partnership of lawyers, which does not invoke the infringement of a right or interest of this entity but of rights and interests

natural persons, the lawyers who constitute this form of organization of the profession, and can such an entity be assimilated, within the meaning of Article 2, [paragraph] 4, of the Aarhus Convention, to a group of natural persons acting through an association or organization?

2) If the first question is answered in the affirmative, taking into account both the objectives of Article 9(3) of the Aarhus Convention and the objective of effective judicial protection of the rights conferred by the law of Union, Article 9(3) of the Aarhus Convention and the first and second paragraphs of Article 47 of the [Charter], read in conjunction with the second subparagraph of Article 19(1) TEU , must they be interpreted in the sense that they oppose a provision of national law which conditions access to justice for such a society professional civil partnership of lawyers to the justification of an own interest or to the fact that the recourse aims to protect a legal situation directly linked to the very aim of the creation of this form of organization, in this case a professional civil partnership of lawyers?

3) In the event of an affirmative answer to the first and second questions or independently of the answers to the two previous questions, Article 9, paragraphs 3, 4 and 5, of the Aarhus Convention and Article 47, first and second paragraphs , of the [Charter], read in conjunction with the second subparagraph of Article 19(1) TEU, must be interpreted as meaning that [the requirement that there be] sufficient and effective remedies, including including injunctive relief, "without their cost being prohibitive" implies rules and/or criteria aimed at limiting the costs that may be imposed on the unsuccessful party, in the sense that the national jurisdiction guarantees compliance with the requirement relating to the absence of prohibitive costs taking into account the interest of the person seeking to defend their rights as well as the general interest linked to the protection of the environment? »

The procedure before the Court

35 The referring court asked the Court to apply the accelerated preliminary ruling procedure provided for in Article 105 of the Rules of Procedure of the Court, given that the dispute has been pending before the national courts since 3 October 2018.

36 The President of the Court, the Judge Rapporteur and the Advocate General having heard, rejected this request by decision of June 10, 2022. Indeed, the circumstance that the referring court is required to do everything possible to ensure rapid settlement of the main case cannot in itself be sufficient to justify recourse to the accelerated procedure (see, to this effect, order of the President of the Court of 31 July 2017, Mobit, Cÿ350/17 and Cÿ351 /17, EU:C:2017:626, point 6 as well as the case law cited).

On the preliminary questions

On the admissibility of the request for a preliminary ruling

37 In its written observations, the Commission stated its questions as to the clarity of the request for a preliminary ruling, due to the incomplete description, by the referring court, of the grounds relied on by AB & CD in support of its appeal and the rights it derives from Union law.

38 In this regard, it should be recalled that the questions relating to the interpretation of Union law posed by the national court in the regulatory and factual framework which it defines under its own

responsibility, and the accuracy of which is not for the Court to verify, benefit from a presumption of relevance. The Court's rejection of a request made by a national court is only possible if it clearly appears that the requested interpretation of Union law has no connection with the reality or purpose of the dispute. dispute in the main proceedings, when the problem is hypothetical in nature or when the Court does not have the factual and legal elements necessary to respond usefully to the questions put to it (judgment of May 25, 2023, WertInvest Hotelbetrieb, Cÿ 575/21, EU:C:2023:425, point 30 as well as the case law cited).

39 By its questions, the referring court asks the Court for an interpretation of the Aarhus Convention and seeks to know, in particular, whether AB & CD can rely on the right of appeal guaranteed in Article 9(3) of this agreement.

40 Under this provision, "each Party shall ensure that members of the public who meet any criteria provided for by its domestic law may initiate administrative or judicial proceedings to challenge the acts or omissions of individuals or public authorities going to contrary to the provisions of national environmental law.

41 As noted by the Advocate General in points 32 to 34 of her conclusions, it is apparent from the request for a preliminary ruling that the dispute in the main proceedings involves a review of the legality of administrative acts in the light of the obligations which , in the field of waste landfill, arise from Directive 1999/31. It follows that this dispute concerns compliance with "national environmental law", referred to in Article 9(3) of the Aarhus Convention, and falls within the material scope of this provision [see , to that effect, judgment of 8 November 2022, Deutsche Umwelthilfe (Approval of motor vehicles), Cÿ873/19, EU:C:2022:857, paragraphs 50, 56 and 58].

42 Consequently, this request for a preliminary ruling is admissible.

On the second question

43 By its second question, which must be examined first, the referring court asks, in essence, whether Article 9(3) of the Aarhus Convention must be interpreted as meaning that it opposes national regulations under which a legal entity, other than a non-governmental environmental protection organization, is only granted standing to act against an administrative act of which it is not the recipient when it asserts the disregard of a legitimate private interest or an interest linked to a legal situation directly related to its corporate purpose.

44 As a preliminary point, it should be noted that it is apparent from the request for a preliminary ruling that, under Articles 1, 2 and 8 of the law on administrative disputes, an injured person, whether a natural or legal person governed by private law or a social organization, must assert disregard for their own interest, namely a legitimate private interest. With regard specifically to a professional civil partnership of lawyers without legal personality, such as AB & CD, the referring court also refers to Article 196(3) of the statute of the legal profession, under from which such a company can only take legal action to protect interests linked to a legal situation directly related to its corporate purpose, namely the exercise of professional activity. In essence, such own interests may be invoked in particular by persons who are affected or risk being affected by an administrative act.

45 Furthermore, private legitimate interests must be distinguished from public legitimate interests. The latter can only be invoked by an applicant if he can demonstrate, primarily, a legitimate private interest.

46 In environmental matters, an exception to the latter rule is provided for in Article 20(6) of OUG No 195/2005, for non-governmental organizations working to protect the environment. This provision allows them to invoke, primarily, a legitimate public interest without them being required to prove a legitimate private interest.

47 In this case, it is common ground that the professional civil society of lawyers AB & CD, the applicant in the main proceedings, cannot be assimilated to such an environmental protection organization and that, consequently, under national law, she is part of the category of applicants who only have standing to act when they can demonstrate a legitimate private interest.

48 In this regard, it is also apparent from the request for a preliminary ruling that, in the context of its action against the administrative acts at issue in the main proceedings, namely the land use plan of 16 September 2009 and the building permit for October 3, 2012, AB & CD has not invoked an infringement of its own rights and, in particular, that it has not justified either a legitimate private interest or an interest linked to a legal situation directly related with its social purpose. It follows that she does not have standing to bring proceedings before the referring court. The written observations submitted to the Court as well as the pleadings heard during the hearing on May 4, 2023 confirmed that neither this professional civil society of lawyers nor the group of people who compose it present any concrete link with the project concerned by the administrative acts at issue in the main proceedings and that this group of people had not demonstr

49 It is in this context that it is appropriate to place the second question by which the referring court seeks to determine whether Article 9(3) of the Aarhus Convention must be interpreted as meaning that it opposes a provision of national law conditioning the admissibility of the appeal to the justification of a legitimate private interest and the application of which would result, in this case, in the inadmissibility of the appeal brought by AB & CD.

50 It should be recalled, first of all, that it follows from that provision and in particular from the fact that, under its terms, the appeals referred to therein may be subject to 'criteria', that Member States may, in the exercise of the discretion left to them in this regard, lay down rules of procedural law relating to the conditions which must be met to exercise such appeals [judgment of November 8, 2022, Deutsche Umwelthilfe (Reception of motor vehicles), Cÿ873/19, EU:C:2022:857, paragraph 63 and case law cited].

51 As regards, next, the extent of that power of appreciation, the Court held that, under the very terms of Article 9(3) of the Aarhus Convention, the criteria which Member States may provided for in their domestic law relate to the determination of the circle of holders of a right of appeal, and not to that of the subject of the appeal insofar as it concerns the violation of provisions of national environmental law [see , to that effect, judgment of 8 November 2022, Deutsche Umwelthilfe (Reception of motor vehicles), Cÿ873/19, EU:C:2022:857, paragraph 64].

52 Furthermore, in the system established by the Aarhus Convention, Article 9(2) of that convention provides for a right of appeal against acts covered by Article 6 thereof for the benefit of a circle restricted number of people, namely the members of the “concerned” public referred to in Article 2(5) of that convention.

53 Article 9(3) of the Aarhus Convention has a broader scope in that it covers a broader category of acts and decisions and is addressed to members of the "public" in general. On the other hand, this provision grants greater discretion to Member States when they set the criteria for determining, among all members of the public, the effective holders of the right of appeal that it provides (see, in this sense, stop

of 14 January 2021, Stichting Varkens in Nood and Others, Cÿ826/18, EU:C:2021:7, points 36, 37 and 62).

54 However, as is apparent from the case-law of the Court, the right of appeal provided for in Article 9(3) of the Aarhus Convention would be void of any useful effect if, by the imposition of such criteria , certain categories of "members of the public" were denied any right of appeal (judgment of 14 January 2021, Stichting Varkens in Nood and others, Cÿ826/18, EU:C:2021:7, paragraph 50 as well as the case law cited) .

55 Finally, it should also be noted, as the Advocate General did in point 61 of her conclusions, that it appears from the document published by the Economic Commission for Europe of the United Nations, entitled " The Aarhus Convention, application guide »
(Second Edition, 2014), that the parties to this convention "are not required to establish a system of popular action (actio popularis) so that anyone can challenge any decision, act or omission concerning the environment".

56 In this case, as noted in paragraphs 44 to 46 of this judgment, in application of the provisions of the law on administrative litigation, the applicants, other than the environmental protection associations, do not have standing to act against an administrative act of which they are not the recipients only if they can demonstrate a "legitimate private interest" of their own, which is particularly the case when they are affected or risk being affected by such an act.

57 In this regard, it must be noted, first of all, that this condition provided for by Romanian law makes it possible to determine the actual holders of the right of appeal enshrined in Article 9(3) of the Aarhus Convention , without limiting the subject of the appeal.

58 Secondly, it does not appear that, pursuant to that condition, certain "categories" of members of the public are denied any right of appeal. On the contrary, the need to prove a legitimate private interest only results in the inadmissibility of appeals from people who have no concrete link with the administrative act they wish to attack. Thus, the Romanian legislator avoided creating popular action, without unduly restricting access to justice.

59 In the latter regard, it should be recalled that the Court ruled, with regard to Article 11 of Directive 2011/92/EU of the European Parliament and of the Council, of 13 December 2011, concerning the impact assessment of certain public and private environmental projects (OJ 2012, L 26, p. 1), which implements Article 9(2) of the Aarhus Convention, that it is open to the national legislator to limit the rights whose violation may be invoked by an individual in order to be able to bring legal recourse in application of this article 11 to subjective rights only, that is to say individual rights (see, in this sense, judgment of May 28 2020, Land Nordrhein-Westfalen, Cÿ535/18, EU:C:2020:391, paragraph 57 and case law cited).

60 Those considerations apply, a fortiori, as regards the implementation of Article 9(3) of the Aarhus Convention. As noted in paragraph 53 of this judgment, this provision grants a greater power of appreciation to the Member States when they establish the criteria for determining the effective holders of the right of appeal which it provides than when they implement Article 9(2) of this convention.

61 Third and last, the condition relating to the justification of a legitimate private interest does not apply to environmental protection associations recognized by Romanian law.
They are able to defend the public interest without having to certify that they have been affected individually.

62 In these conditions, it must be noted, subject to the verifications incumbent on the

referring court, that it appears that meets the requirements established in paragraphs 50 to 55 of this judgment a condition which makes the standing of the applicants, other than environmental protection associations, subject to an administrative act of which they do not are not the recipient with the justification of a private legitimate interest.

63 Having regard to all the foregoing considerations, the answer to the second question must be that Article 9(3) of the Aarhus Convention must be interpreted as meaning that it does not preclude a national regulation under which a legal entity, other than a non-governmental environmental protection organization, is only granted standing to act against an administrative act of which it is not the recipient when it claim disregard for a legitimate private interest or an interest linked to a legal situation directly related to its corporate purpose.

On the first question

64 In the present case, as is apparent from paragraph 47 of this judgment, it is common ground that, in the context of the appeal against the administrative acts at issue in the main proceedings, AB & CD must, in order to demonstrate its standing to act, justify an interest linked to a legal situation directly related to its corporate purpose or, like the group of people who make up this company, a private legitimate in

65 As noted in paragraph 48 of this judgment, it appears from the request for a preliminary ruling that, in the context of this appeal, neither AB & CD nor the group of people who compose it have provided evidence of a private legitimate interest and AB & CD has not demonstrated an interest linked to a legal situation directly related to its corporate purpose.

66 It follows that, having regard to the answer given to the second question, it is no longer necessary to answer the first question by which the referring court seeks to establish whether AB & CD falls within the concept of "public ", namely the circle of persons referred to in Article 2(4) of the Aarhus Convention who may, subject to compliance with the conditions established by the Member States, claim the right of appeal guaranteed in Article 9 , paragraph 3, of this convention.

On the third question

67 By its third question, the referring court asks, in essence, whether Article 9(4) and (5) of the Aarhus Convention, read in the light of Article 47 of the Charter, must be interpreted in this way. sense that, in order to guarantee compliance with the requirement relating to the absence of prohibitive costs of judicial procedures, the judge called upon to rule on the order to pay the costs of a party who has lost, in a dispute relating to environment, must take into account the interest of this party and the general interest linked to the protection of the environment.

68 As a preliminary point, it should be recalled that it has been established, in paragraph 41 of this judgment, that the dispute in the main proceedings concerns, in substance, compliance with national environmental law, referred to in Article 9 , paragraph 3, of the Aarhus Convention, and therefore falls within the material scope of that provision.

69 Furthermore, the Court has already held that paragraph 4 of this article, which specifies the characteristics that appeals must have, and in particular that of not being prohibitively expensive, expressly applies to the appeal referred to in paragraph 3 of the same article (judgment of 15 March 2018, North East Pylon Pressure Campaign and Sheehy, Cÿ470/16, EU:C:2018:185, paragraph 48).

70 Consequently, the requirement that certain judicial procedures are not prohibitively expensive provided for by the Aarhus Convention must be regarded as applying to a procedure such as that at issue in the main proceedings, in that it tends to be contested, relying on national law

environment, a land use plan and a building permit (see, by analogy, judgment of 15 March 2018, North East Pylon Pressure Campaign and Sheehy, Cÿ470/16, EU:C:2018:185, point 49).

71 It should be noted that such a requirement applies regardless of the outcome of the main dispute, even if the action of the applicant in the main proceedings is rejected as inadmissible due to lack of standing or lack of standing. an interest in acting. Indeed, the fact remains that, as recalled in paragraph 68 of this judgment, the dispute in the main proceedings falls within the material scope of Article 9(3) of the Aarhus Convention .

72 On the merits, it should be remembered that the requirement relating to the absence of prohibitive costs of legal proceedings in environmental matters in no way prohibits national courts from imposing costs on an applicant. This is explicitly stated in Article 3(8) of the Aarhus Convention, which states that the power of national courts to award costs, in a reasonable amount, in the outcome is not affected. of legal proceedings (see, to this effect, judgment of 15 March 2018, North East Pylon Pressure Campaign and Sheehy, Cÿ470/16, EU:C:2018:185, paragraph 60 as well as the case law cited).

73 It should also be recalled that the requirement that the costs of a trial not be prohibitive concerns all the financial costs incurred by participation in the legal procedure and that, consequently, the prohibitive nature must be assess globally, taking into account all the costs borne by the party concerned (see, by analogy, judgment of 11 April 2013, Edwards and Pallikaropoulos, Cÿ260/11, EU:C:2013:221, paragraphs 27 and 28 as well as cited case law).

74 In this context, it is appropriate to take into account both the interests of the person who wishes to defend their rights and the general interest linked to the protection of the environment. Therefore, this assessment cannot be made solely in relation to the economic situation of the person concerned, but must also be based on an objective analysis of the amount of costs, all the more so since individuals and associations are naturally called upon to play an active role in defending the environment. Thus, the cost of a procedure must neither exceed the financial capacities of the interested party nor appear, in any event, to be objectively unreasonable (see, by analogy, judgment of April 11, 2013, Edwards and Pallikaropoulos, Cÿ 260/11, EU:C:2013:221, points 39 and 40).

75 Furthermore, the judge may take into account the situation of the parties involved, the reasonable chances of success of the applicant, the seriousness of the issue for the applicant as well as for the protection of the environment, the complexity of the applicable law and procedure as well as the possibly reckless nature of the appeal at its various stages (see, by analogy, judgment of 11 April 2013, Edwards and Pallikaropoulos, Cÿ260/11, EU:C:2013:221, paragraph 42 as well as cited case law).

76 As for the consequences which the national judge must draw from this interpretation of Article 9(4) of the Aarhus Convention, in a dispute such as that in the main proceedings, it should be recalled that this provision does not contain any unconditional and sufficiently precise obligation capable of directly governing the legal situation of individuals and that it is, therefore, devoid of direct effect (see, in this sense, judgment of March 15, 2018, North East Pylon Pressure Campaign and Sheehy, Cÿ470/16, EU:C:2018:185, points 52 and 53 as well as th

77 The same is true of Article 9(5) of that convention in that it provides that the parties to that convention shall consider the establishment of appropriate assistance mechanisms aimed at eliminating or reducing financial obstacles or others which hinder access to justice (see, in this re

sense, judgment of 28 July 2016, Ordre des barreaux francophone et germanophone et al, Cÿ543/14, EU:C:2016:605, paragraph 55).

78 However, it should be observed that these provisions, although devoid of direct effect, are intended to ensure effective protection of the environment (judgment of 15 March 2018, North East Pylon Pressure Campaign and Sheehy, Cÿ470/16, EU:C:2018:185, paragraph 53).

79 Furthermore, the requirement of "non-prohibitive cost" contributes, in the environmental field, to respect for the right to an effective remedy, enshrined in Article 47 of the Charter, as well as the principle of effectiveness according to which the procedural arrangements for remedies intended to ensure the protection of the rights that individuals derive from Union law must not make practically impossible or excessively difficult the exercise of the rights conferred by the legal order of the Union (judgment of the 11 April 2013, Edwards and Pallikaropoulos, Cÿ260/11, EU:C:2013:221, paragraph 33 as well as the case law cited).

80 Having regard to the limited information contained in the request for a preliminary ruling, the Court cannot determine to what extent Articles 451 to 453 of the Code of Civil Procedure, which govern, in general, the question of costs under Romanian law and which appear to apply to the dispute in the main proceedings, enable the referring court to make an overall assessment of the costs incurred by the party concerned and to take into account, when deciding on costs, the criteria referred to in points 74 and 75 of the this judgment. It appears, moreover, that this court can only reduce part of the costs, namely those corresponding to lawyers' fees.

81 As noted, in substance, by the Advocate General, in points 75 and 76 of her conclusions, taking into account the broad discretion available to Member States when implementing Article 9 , paragraph 4, of the Aarhus Convention, the absence of detailed determination of costs in environmental disputes by national regulations cannot be considered, in itself, to be incompatible with the non-prohibitive cost rule. It is, however, for the referring court to verify to what extent the existing mechanisms in Romanian law comply with the requirements arising from Article 9(4).

82 In this context, it should also be recalled that, in order to ensure effective judicial protection when, as in the present case, the application of national environmental law is at issue, the referring court is required to give domestic procedural law an interpretation which, as far as possible, is consistent with the objective set out in Article 9(4) of the Aarhus Convention, so that the cost of judicial proceedings is not is not prohibitive (see, to this effect, judgments of 8 March 2011, Lesoochranárske zoskupenie, Cÿ240/09, EU:C:2011:125, paragraph 50, as well as of 15 March 2018, North East Pylon Pressure Campaign and Sheehy , Cÿ470/16, EU:C:2018:185, paragraph 57).

83 Having regard to all of the foregoing considerations, the answer to the third question should be that Article 9(4) and (5) of the Aarhus Convention, read in the light of Article 47 of the Charter , must be interpreted in the sense that, in order to guarantee compliance with the requirement relating to the absence of prohibitive costs of judicial procedures, the judge called upon to rule on the award of costs to a party who has been unsuccessful, in an environmental dispute, must take into account all the circumstances of the case, including the interest of that party and the general interest linked to the protection of the environment.

On the costs

84 The procedure taking on, with regard to the parties to the main proceedings, the character of an incident raised before

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the referring court, it is for that court to decide on costs. Costs incurred for submitting observations to the Court, other than those of the said parties, cannot be reimbursed.

For these reasons, the Court (Fourth Chamber) rules:

1) Article 9(3) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved in name of the European Community by Council Decision 2005/370/EC of 17 February 2005,

must be interpreted in the sense that:

it does not oppose a national regulation under which a legal entity, other than a non-governmental environmental protection organization, is not granted standing to act against an administrative act of which it is not the recipient only when it asserts the disregard of a legitimate private interest or an interest linked to a legal situation directly related to its corporate purpose.

2) Article 9, paragraphs 4 and 5, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union,

must be interpreted in the sense that:

in order to guarantee compliance with the requirement relating to the absence of prohibitive costs of judicial procedures, the judge called upon to rule on the order to pay the costs of a party who has succumbed, in an environmental dispute, must take into account all the circumstances of the case, including the interest of that party and the general interest linked to the protection of the environment.

Signatures

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* **Language of proceedings: Romanian.**