



Press and Information

Court of Justice of the European Union

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Judgment in Case C-416/10

Jozef Križan and Others v Slovenská inšpekcia životného prostredia

The public must have access to an urban planning decision concerning the establishment of an installation having significant effects on the environment

Protection of trade secrets cannot be invoked to refuse that access

Under the Aarhus Convention¹, when a decision-making procedure concerning the environment is initiated, the public concerned must be able to participate in it from its beginning, that is to say, when all options are still open and effective public participation can take place. Moreover, the public must, as a rule, be able to have access, free of charge, to all information relevant to the decision-making procedure and to challenge the legality of any decision resulting from that procedure.

In 2006, the regional urban planning service of Bratislava (Slovakia) adopted an urban planning decision concerning the establishment of a waste landfill site in a trench used for the extraction of earth for use in brick-making, called 'Nová jama' (new trench). Subsequently, the Slovak environment inspectorate initiated an authorisation procedure in the course of which residents of the town of Pezinok requested publication of the urban planning decision. That body authorised the construction and operation of the landfill site without having first published the decision in question. Following an appeal brought through administrative channels, the environmental protection body at second instance confirmed that decision, after having published the urban planning decision.

The concerned parties then brought an action before the Slovak courts and the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) has requested the Court of Justice to explain the extent of the public's right to participate in procedures for the authorisation of projects having significant effects on the environment.

In its judgment delivered today, the Court notes first of all that a national procedural rule cannot call into question the discretion of national courts to submit a request to the Court of Justice for a preliminary ruling in cases where they have doubts as to the interpretation of EU law. The national court therefore retains that option – even though a national rule obliges it to follow the legal position of the Slovak Constitutional Court – and it must set aside the assessments made by that latter court if they prove to be contrary to EU law. As a supreme court, the Najvyšší súd Slovenskej republiky is even required to submit a request for a preliminary ruling to the Court of Justice.

The Court states, next, that the urban planning decision on the establishment of the landfill site at issue is one of the measures on the basis of which the final decision whether or not to authorise that installation is taken. Moreover, it includes information on the environmental impact of the project, on the conditions imposed on the developer to limit that impact, on the objections raised by the parties to the urban planning decision and on the reasons for the choices made by the competent authority to issue that decision. It thus includes relevant information on the authorisation procedure to which the public concerned must be able to have access in accordance with the

¹ Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998. That convention was approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).

Aarhus Convention and the IPPC Directive² setting out its provisions. In that context, the Court of Justice states that **the refusal to make the urban planning decision available to the public cannot be justified by invoking the protection of the confidentiality of commercial or industrial information.**

The Court of Justice also points out that the public concerned must have all of the relevant information **as from the stage of the administrative procedure at first instance**, before a first decision has been adopted, to the extent that that information is available at that stage of the procedure. However, EU law does not preclude the possibility of rectifying, during the administrative procedure at second instance, an unjustified refusal to make an urban planning decision available to the public concerned during the administrative procedure at first instance, provided that all options and solutions remain possible and that such rectification allows that public effectively to influence the outcome of the decision-making process.

Next, the Court states that the purpose of the IPPC Directive, namely to ensure pollution prevention and control, could not be attained if it were impossible to prevent an installation which may have benefited from a permit awarded in infringement of that directive from continuing to function pending a definitive decision as to the lawfulness of that permit. Consequently, the directive requires that members of the public concerned should have the right to request the adoption of interim measures designed to prevent that pollution, such as temporary suspension of the disputed permit.

Finally, the Court rules that the decision of a national court which annuls a permit granted in infringement of the abovementioned directive is not capable, in itself, of constituting an unjustified interference with the developer's right to property.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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² Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26), as amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 (OJ 2006 L 33, p. 1).