

Case C-252/22

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

8 April 2022

Referring court:

Curtea de Apel Târgu Mureş (Romania)

Date of the decision to refer:

16 February 2022

Applicant in the proceedings at first instance:

Societatea Civilă Profesională de Avocați AB & CD

Defendants in the proceedings at first instance:

Consiliul Județean Suceava

Președintele Consiliului Județean Suceava

Agenția pentru Protecția mediului Bacău

Consiliul Local al Comunei Pojorâta

Intervener:

QP

Subject matter of the main proceedings

Appeals brought by the Societatea Civilă Profesională de Avocați AB & CD (a law firm partnership), the applicant in the proceedings at first instance, and the Consiliul Județean Suceava (Suceava County Council, Romania), one of the defendants in the proceedings at first instance, against the civil judgment delivered by the Tribunalul Cluj (Regional Court, Cluj, Romania) in a case concerning an action, brought by that applicant against that defendant and against other defendants, seeking the annulment of certain administrative measures on which the construction and removal of a landfill was based.

Subject matter and legal basis of the request

On the basis of Article 267 TFEU, interpretation is sought of the second subparagraph of Article 19(1) TEU, Article 47 of the Charter and Article 9(3), (4) and (5) of the Aarhus Convention.

Questions referred for a preliminary ruling

1. Are [the first paragraph of Article 47 of the Charter], read in conjunction with [the second subparagraph of Article 19(1) TEU], and Article 2(4) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus, Denmark, on 25 June 1998, and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 [(‘the Convention’)], read in conjunction with Article 9(3) thereof, to be interpreted as meaning that the concept of ‘the public’ includes a legal entity such as a law firm partnership, which does not rely on the infringement of any right or interest specific to that entity, but rather the infringement of the rights and interests of natural persons – namely the lawyers of which that partnership is comprised – [and] can such an entity be treated as a group of natural persons acting through an association or organisation for the purposes of Article 2(4) of the Convention?

2. If the first question is answered in the affirmative, having regard [both] to the objectives of Article 9(3) of the Convention and to the objective of effective judicial protection of the rights conferred by EU law, must Article 9(3) of the 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], be interpreted as precluding a provision of national law that makes access to justice for such a law firm partnership conditional on proof of an interest of its own or on the fact that, by bringing the action, it seeks to protect a legal situation directly connected with the specific purpose for which that type of organisation (in this case, a law firm partnership) was established?

3. If the first and second questions are answered in the affirmative, or regardless of the answers to those two questions as set out above, must Article 9(3), (4) [and] 5 of the 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], be interpreted as meaning that the expression that adequate and effective remedies, including the adoption of a judicial decision, should not be ‘prohibitively expensive’, presupposes rules and/or criteria to limit the costs that may be incurred by the unsuccessful party to the proceedings, in the sense that a national court or tribunal must ensure that the requirement that the cost not be prohibitively expensive is met, taking into account [both] the interest of the person who wishes to defend his or her rights and the public interest in the protection of the environment?

Provisions of European Union law relied on

Article 4(3) and Article 19(1) TEU, as well as Article 216(1) and (2) TFEU

Charter of Fundamental Rights of the European Union: Article 47, first and second paragraphs, and Article 51

Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus Convention): recitals 5 to 8, Article 1, Article 2(4) and (5), Article 3(4) to (6) and Article 9(1) to (4) of the Convention

Provisions of national law relied on

Constituția României (Constitution of Romania), republished, Article 52(1), according to which any person who considers that one of his or her rights or legitimate interests has been infringed by a public authority, by means of an administrative measure or through a failure to deal with an application within the time limit laid down by law, is entitled to obtain recognition of the right or legitimate interest relied on, annulment of the measure and compensation for the damage

Codul civil (Civil Code), republished, Article 37 (capacity to take civil action), Article 187 (constituent elements of a legal person), Article 188 (status as a legal person), Article 189 (categories of legal persons), Article 190 (legal person governed by private law), Article 192 (applicable legal regime) and Article 193 (effects of legal personality)

Codul de procedură civilă (Code of Civil Procedure)

- Article 36 (*locus standi*):

‘The *locus standi* arises from the parties being the same persons in the disputed legal relationship before the court. Whether or not the asserted rights and obligations exist is a matter of substance.’

- Article 56(1), (2) and (3) (capacity to be a party to legal proceedings):

‘(1) Any person who has civil rights may be a party to legal proceedings.

(2) However, associations, companies or other entities that do not have legal personality may be parties to legal proceedings if they are incorporated in accordance with the law.

(3) The lack of capacity to be a party to legal proceedings may be raised at any stage of the proceedings. Procedural measures taken by a person who does not have the capacity to be a party to legal proceedings shall be null and void.’

- Article 451 (amount of costs)
- Article 452 (proof of costs)
- Article 453 (allocation of costs)
- Article 483(1), (3) and (4) (subject matter and purpose of the action. Court having jurisdiction)
- points (5) and (8) of Article 488(1) (grounds of appeal)
- Article 491 (cross-appeal (*recursul incident*) and cross-appeal against a person other than the applicant in the main proceedings (*recursul provocat*)) in conjunction with Article 472 (cross-appeal (*apelul incident*))
- Article 634(1)(5) and Article 634(2) (final decisions)

Legea contenciosului administrativ nr. 554/2004 (Law No 554/2004 on administrative disputes) [(‘the Law on administrative disputes’)]

- Article 1(1) and (2):

‘(1) Any person who considers that one of his or her rights or legitimate interests has been infringed by a public authority, by means of an administrative measure or through a failure to deal with an application within the time limit laid down by law, may apply to the competent administrative court for annulment of the measure, recognition of the right or legitimate interest relied on, and compensation for the damage suffered. The legitimate interest may be either private or public.

(2) Any person whose rights or legitimate interests have been infringed by a specific administrative measure addressed to another legal person may also apply to the administrative court.’

- Article 2(1)(p), (r) and (s):

‘(1) For the purposes of this Law, the terms and expressions set out below shall have the following meanings:

(p) “legitimate private interest” shall mean the ability to expect certain conduct with regard to the fulfilment of an anticipated future and foreseeable subjective right;

(r) “legitimate public interest” shall mean an interest with regard to the legal system and constitutional democracy, the guarantee of citizens’ fundamental rights, freedoms and duties, the fulfilment of the needs of the community and the exercise of the powers of public authorities;

(s) “interested social organisations” shall mean non-governmental structures, trade unions, associations, foundations and other similar bodies, the purpose of which is to protect the rights of different categories of citizens or the proper functioning of public administrative services, as the case may be.’

- Article 8(11):

‘(11) Natural persons and legal persons governed by private law may bring an action to protect a legitimate public interest only by way of an alternative submission, where the infringement of the legitimate public interest logically stems from the infringement of the subjective right or of the legitimate private interest.’

Legea nr. 51/1995 pentru organizarea și exercitarea profesiei de avocat (Law No 51/1995 on the organisation and practice of the profession of lawyer), republished [(‘Law No 51/1995’)]

- Article 5(5):

‘The partnership shall consist of two or more permanent lawyers. In the partnership, associate lawyers or lawyers who are in salaried employment may also practice their profession. The partnership and the lawyers practising within it may not provide legal assistance to persons who have opposing interests.’

Statutul profesiei de avocat din 3 decembrie 2011 (Statute of the profession of lawyer of 3 December 2011), adopted by the Uniunea Națională a Barourilor din România (National Union of Romanian Bar Associations) (*Monitorul Oficial al României* No 898 of 3 December 2011) (‘the Statute’)

- Article 196(3):

‘(3) For disputes arising from the performance of professional activity, the partnership may take legal action as an applicant or defendant, even if it does not have legal personality.’

Ordonanța de urgență a Guvernului nr. 195/2005 privind protecția mediului (Government Emergency Order No 195/2005 on the protection of the environment) [(‘OUG No 195/2005’)]

- Article 2(56):

‘For the purposes of this Emergency Order, the terms and expressions set out below shall have the following meanings:

(56) “the public” shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups.’

- Article 3(h):

‘The principles and strategic elements underlying this Emergency Order are:

(h) information and participation of the public in decision-making, as well as access to justice in environmental matters.’

- Article 5(d):

‘The State shall acknowledge the right of every person to a “safe and ecologically balanced environment” by ensuring:

(d) the right to apply, directly or through environmental protection organisations, to the administrative and/or judicial authorities, as the case may be, in environmental matters, irrespective of whether or not damage has occurred.’

- Article 20(1), (5) and (6):

‘(1) The competent authority for the protection of the environment, together with other central and local government authorities, shall ensure, as appropriate, information, public participation in decisions regarding specific activities, and access to justice, in accordance with the provisions of [the Aarhus Convention], ratified by Law No 86/2000.

(5) Public access to justice shall be based on the legislation in force.

(6) Non-governmental organisations promoting the protection of the environment shall have the right to take legal action in environmental matters and shall be entitled to take action in disputes concerning the protection of the environment.’

Legea nr. 86 din 10 mai 2000 privind ratificarea Convenției privind accesul la informație, participarea publicului la luarea deciziei și accesul la justiție în probleme de mediu, semnată la Aarhus la 25 iunie 1998 (Law No 86 of 10 May 2000 ratifying 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)

Succinct presentation of the facts and procedure in the main proceedings

- 1 By its application, the applicant in the proceedings at first instance brought an action before the Tribunalul Cluj (Regional Court, Cluj) [(‘the Tribunalul’)] against the Consiliul Local al Comunei Pojorâta (Pojorâta Municipal Council, Suceava County, Romania), the Consiliul Județean Suceava (Suceava County Council), the Președintele Consiliului Județean Suceava (President of Suceava County Council) and the Agenția pentru Protecția Mediului Bacău (Environmental Protection Agency, Bacău, Romania), all of whom are legal persons governed by public law, seeking (i) the annulment of the decision of Pojorâta Municipal Council of 16 September 2009 approving the zoning plan relating to the Pojorâta

landfill ('the landfill'), (ii) the annulment, in part, of Planning Permit No 39 of 3 October 2012, issued by the President of Suceava County Council, solely in relation to the approval of construction works regarding the landfill, the beneficiary of which is Suceava County Council, and (iii) the demolition of the landfill, constructed on the basis of Planning Permit No 39 of 3 October 2012.

- 2 The applicant in the proceedings at first instance, a law firm partnership, submitted that the subjective reasons underlying the administrative and legal procedures consisted of the 'significant impact' that the landfill had had on the three lawyers of which that partnership is comprised, namely 'our strong sense of dismay, astonishment, anger and indignation at the materialisation of this project'. The partnership also put forward several factual and legal arguments as to the unlawfulness of the contested administrative measures.
- 3 The defendants contended, on the substance, that waste management is a major environmental issue in Romania and that Suceava County is facing a crisis with regard to the disposal of waste in landfills. Furthermore, they argued that the landfill was constructed in compliance with all the technical requirements laid down in national and EU legislation, including Directive 1999/31/EC on the landfill of waste.
- 4 Central to the request for a preliminary ruling are the objections which were raised by the defendants at first instance, namely (i) the applicant in the proceedings at first instance lacks capacity to be a party to legal proceedings and (ii) the applicant in the proceedings at first instance lacks both *locus standi* and interest in bringing legal proceedings.
- 5 In support of the first objection, the defendants argued that, in accordance with Article 5(d) of OUG No 195/2005, actions based on the right to a safe environment may be brought either by natural persons or by non-governmental organisations whose purpose is the protection of the environment. However, the applicant in the proceedings at first instance, a law firm partnership, has no legal personality and has never had as its object the protection of the environment. Although the Code of Civil Procedure allows legal action to be taken by companies or other entities without legal personality, Article 196(3) of the Statute does not permit this except in relation to disputes arising from the performance of professional activity, which is not the case here.
- 6 In support of the second objection, the defendants argued that the applicant in the proceedings at first instance did not rely on a subjective right or legitimate private interest that had been infringed by the administrative measures in respect of which annulment was sought.
- 7 In examining the objections raised, the Tribunalul dismissed the objection raised with regard to the applicant in the proceedings at first instance concerning its lack of capacity to be a party to legal proceedings. That court considered, first, that, since Article 5 of Law No 51/1995 recognises the applicant in the proceedings at

first instance as a professional entity, allowing it to conclude various legal acts in its own name, as well as to have access to its own funds in order to practice law, this would confer on it legal capacity and the capacity to bring proceedings in accordance with the purpose for which it was established. It would also fulfil the requirements laid down in Articles 187 and 188 of the Civil Code to be regarded as having legal personality; in other words, an independent organisation with its own funds, having a specific legal and moral purpose consistent with the public interest.

- 8 By contrast, the Tribunalul upheld the second objection, finding, after analysing the concepts of ‘person whose rights or legitimate interests have been infringed’ and ‘public interest’, that the public interest may be relied on only by way of an alternative submission, where the infringement of the legitimate public interest logically stems from the infringement of the subjective right or of the legitimate private interest. Thus, although the national legislation provides for access to justice in environmental matters, in this context a distinction must be made between non-governmental organisations active in the field of environmental protection and other persons.
- 9 Given that EU environmental law does not establish a general right to a safe and healthy environment for all, and considering the definition of ‘the public concerned’ contained in the Convention, the Tribunalul noted that neither Article 9(2) of the Aarhus Convention nor EU secondary legislation grants members of the public unconditional access to justice, since those provisions allow the contracting parties and EU Member States to impose certain conditions, which precludes a general *locus standi* in environmental matters.
- 10 According to the Tribunalul, the applicant in the proceedings at first instance, which brought its action relying on an objective dispute – in other words, it sought to protect a public interest – failed to prove the infringement of a right or legitimate interest and therefore has no *locus standi*.
- 11 Both the applicant in the proceedings at first instance and Suceava County Council challenged that decision before the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania) [(‘the Curtea de Apel Cluj’)].
- 12 In its appeal, the applicant in the proceedings at first instance argued that the decision on the objection regarding the lack of *locus standi* and lack of interest had been given in breach of, or by misapplying, rules of substantive law. First, the dispute is not a conventional administrative dispute, but concerns environmental protection, which is subject to special rules whereby access to justice is granted to everyone and can be justified by invoking the public interest, without it being necessary to invoke a legitimate private interest. Second, by stating that it brought its action as a member of the public for the purposes of Article 9(3) of the Convention, the applicant in the proceedings at first instance submitted that the [Tribunalul] erred in basing its decision to dismiss the action on the provisions of Article 9(2) of the Convention.

- 13 In its appeal, Suceava County Council challenged the dismissal of the objection regarding the lack of capacity to be a party to legal proceedings on the ground that the [Tribunalul] had infringed procedural rules, thereby rendering that decision null and void. In its view, the capacity of the applicant in the proceedings at first instance to be a party to legal proceedings is specific, whereas only natural persons have the right to a safe environment and the right to the protection of health.
- 14 The Curtea de Apel Cluj dismissed the appeal brought by Suceava County Council and upheld the appeal brought by the applicant in the proceedings at first instance, setting aside the judgment under appeal and referring the case back to the Tribunalul.
- 15 During the appeal proceedings, Suceava County Council lodged an application with the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania) for the transfer of the case, which was granted. The case was then transferred to the referring court, the Curtea de Apel Târgu Mureș (Court of Appeal, Târgu Mureș, Romania) [(‘the referring court’)]. The judgment of the Curtea de Apel Cluj was automatically set aside as a result of the acceptance of the transfer application and the referring court continued the proceedings in order to rule on the two appeals.

The essential arguments of the parties in the main proceedings

- 16 Both the applicant in the proceedings at first instance and Suceava County Council have asked the referring court to submit a request for a preliminary ruling to the Court of Justice.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 17 The referring court observes that according to the general rule contained in the Law on administrative disputes, the national legislature opted for the idea of a subjective dispute – in other words, the ‘person whose rights or legitimate interests have been infringed’ relies on an interest of his or her own, which the legislature refers to as a ‘legitimate private interest’.
- 18 In the field of environmental protection, the national legislation transposing the Convention provides for the possibility of access to justice as an expression of the fundamental right of every person to a safe and ecologically balanced environment.
- 19 On the one hand, the national legislature recognises the possibility of an objective dispute that can be relied on as an expression of the right of access to justice. However, the category of persons who can primarily and directly rely on a legitimate public interest is limited to non-governmental organisations promoting

the protection of the environment which, in that capacity, are not required to demonstrate a legitimate private interest.

- 20 On the other hand, anyone has the right to apply, directly or through environmental protection organisations, to the administrative and/or judicial authorities, as the case may be, in environmental matters, irrespective of whether or not damage has occurred. In such a situation, access to justice for the public, other than non-governmental organisations promoting the protection of the environment, is to take place in accordance with the legislation in force. In that respect, the Law on administrative disputes, to which Article 20(5) of OUG No 195/2005 refers, presupposes that a legitimate private interest, and therefore a subjective dispute, is primarily justified. Only after asserting a legitimate private interest may the person relying thereon – other than organisations promoting the protection of the environment – also rely, by way of an alternative submission, on a legitimate public interest.
- 21 According to the arguments of the court ruling on the merits, the applicant in the proceedings at first instance cannot rely primarily on a legitimate public interest without it being necessary to rely on a legitimate private interest. More specifically, the applicant in the proceedings at first instance does not fall within the category of ‘the public concerned’ for the purposes of Article 9(2) of the Convention.
- 22 Since the Tribunalul, in upholding the objection regarding the lack of *locus standi* and lack of interest, based its arguments on the provisions of Article 9(2) of the Convention, the referring court notes the distinction made by the Court of Justice in its case-law – more specifically in the judgment of 14 January 2021, *Stichting Varkens in Nood and Others* (C-826/18, EU:C:2021:7, paragraphs 44 to 49) – between the respective regimes of access to justice provided for by Article 9(2) and Article 9(3) of the Convention.
- 23 The referring court further observes that, before the Tribunalul and the [Curtea de Apel Cluj], the Societatea Civilă Profesională de Avocați AB & CD claimed that it had brought the action both in its own name and on behalf of the three lawyers of which it is comprised.
- 24 In that context, it is necessary to refer the first question in connection with the concepts of ‘the public’ and ‘the public concerned’ defined in Article 2(4) and (5) of the Convention.
- 25 In the event of an affirmative answer by the Court of Justice to one of the aspects of the first question (the first being whether the applicant in the proceedings at first instance may be recognised as ‘the public’ for the purposes of Article 2(4) and Article 9(3) of the Convention, and the second being whether the applicant in the proceedings at first instance may rely on the rights and interests of the lawyers, that is, the natural persons of which it is comprised), the referring court asks the second question, namely whether EU law must be interpreted as

precluding a provision of national law that makes access to justice for a law firm partnership conditional on proof of an interest of its own or on the fact that, by bringing the action, it seeks to protect a legal situation directly connected with the specific purpose for which that partnership was established.

- 26 The third question referred for a preliminary ruling concerns the costs of proceedings relating to environmental protection.
- 27 The applicant in the proceedings at first instance has indicated at all stages of the proceedings that the national legislation does not ensure reasonable foreseeability as to the certainty of the obligation to bear the costs and the total cost of the proceedings. It maintains that it wished to exercise its right of access to justice under Article 9(3) of the Convention, without knowing or being able to predict the maximum amount of the costs that it might be ordered to bear.
- 28 Suceava County Council allegedly paid the lawyers retained in the present case fees totalling around 276 000 Romanian Lei (approximately EUR 50 000).
- 29 In that respect, the referring court observes, on the one hand, that Articles 451 to 453 of the Code of Civil Procedure provide a detailed breakdown of the costs of the proceedings (court costs due to the State, lawyers' fees, consultants' fees, amounts due to witnesses, and so on), the party who may be ordered to pay the costs (the unsuccessful party, at the request of the successful party), and the various criteria that the court may use to reduce, on a reasoned basis, the lawyers' fees (where those fees are clearly disproportionate to the value or complexity of the case or to the work done by the lawyer, given the circumstances of the case).
- 30 On the other hand, Article 9(4) of the Convention requires that the procedures referred to in paragraphs 1 to 3 thereof must provide adequate and effective remedies, which must be 'fair, equitable, timely and *not prohibitively expensive*'.
- 31 The referring court questions whether the abovementioned provisions of national law contain sufficient criteria to assess the significant costs of disputes arising from non-compliance with environmental protection laws – costs which may have a prohibitive effect inasmuch as they may dissuade a person governed by private law from taking action in the matter – and whether, in that context, specific rules and criteria must be taken into account.
- 32 Recalling the case-law of the Court of Justice regarding Article 11(4) of Directive 2011/92/EU, the judgment of 15 March 2018, *North East Pylon Pressure Campaign and Sheehy* (C-470/16, EU:C:2018:185, paragraph 44 and point 2 of the operative part), the referring court also considers it necessary to establish whether that case-law is applicable to Article 9(4) of the Convention.
- 33 The referring court asks the Court of Justice to give a ruling pursuant to Article 105 of [its] Rules of Procedure, on the grounds that the dispute has been pending before the national courts since 3 October 2018.