

Case C-240/09 and C- 243/15
Access to Justice

© judge Miroslav Gavalec
Portoroz, September 2021

Time Structure of the Cases

- C-240/09
- main administrative authorisation procedure



- parallel caused administrative procedure



- C-243/15
- main administrative procedure



- parallel administrative procedure

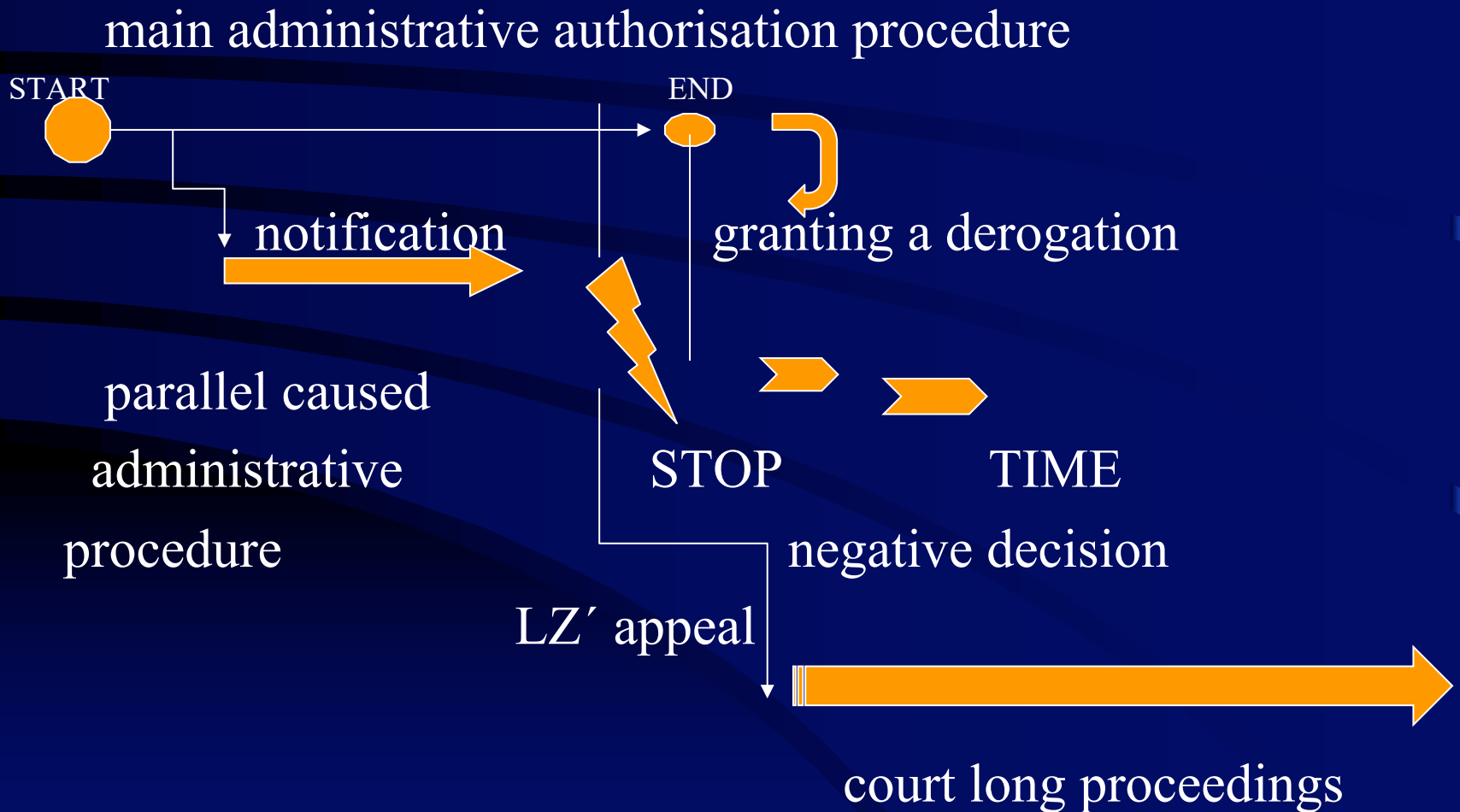


A) Slovak Brown Bear Case - locus standi

the facts
are very
known,
but ...
how
to shoot
a bear
easily?



Administrative Procedure + Court Proceedings



Questions Referred for a PR

- our first experience with CJEU
- our approach
 - Is it possible to recognise Art.9 [(in particular Art.9(3)] of AaC ... pursued by that international treaty ...is to change the classic definition of *locus standi* by according the status of a party to proceedings to the public, or the public concerned, as having the direct effect of an international treaty (“self-executing effect”) in a situation ... ?
 - main emphasis on
 - international law interpretation
 - self-executing principle

Reformulation

- point 28 of the CJEU judgment
- CJEU reformulated the text
 - By its first two questions, ..., the referring court asks essentially whether individuals, and in particular environmental protection associations, where they wish to challenge a decision to derogate from a system of environmental protection, such as that put in place by the Habitats Directive ..., may derive a right to bring proceedings under EU law, having regard, in particular, to the provisions of Article 9(3) of the AaC on direct effect, to which its questions relate.

(In) Admissibility

- only some remarks
 - „questions are inadmissible on the ground that the interpretation of EU law requested bears no relation to the actual facts of the main action or its purpose“

Clear or Misty Answer?

- first part

- AaC does not have direct effect on the EU law

- second part

- interpretive guideline



How to Interpret It?

- to the fullest extent possible,
- in order to bring administrative or judicial proceedings in accordance with
 - the objectives of Article 9 (3) of that Convention and
 - the objective of effective judicial protection of rights conferred by European Union law,
- in order to enable the organising of environmental protection organisation,
 - to challenge before a court a decision taken following administrative proceedings
 - which can be contrary to EU environmental law.



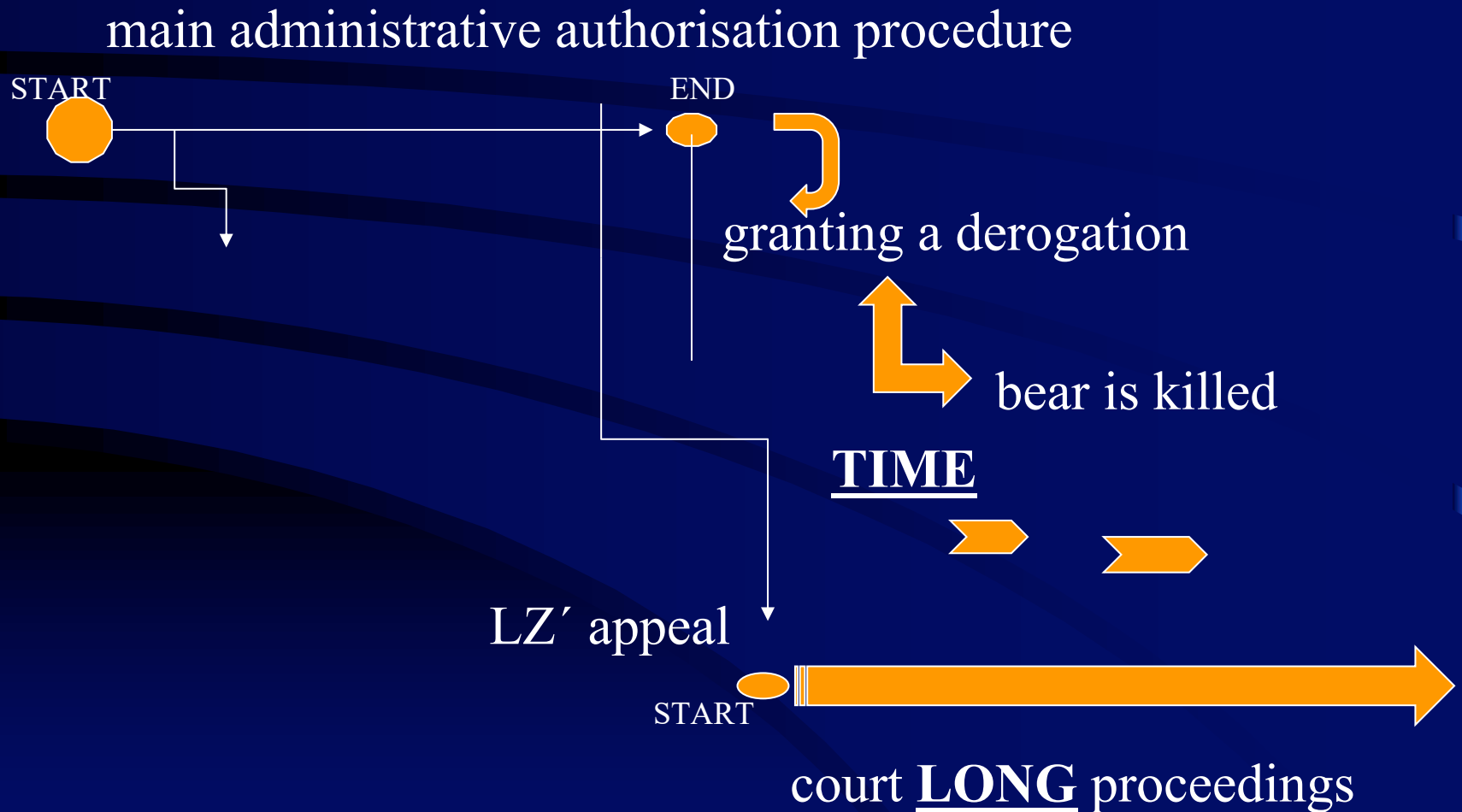
International Law Interpretation

- Vienna Convention on the Law of Treaties
 - (May 1969)
- Art. 31 (1), General Rule of Interpretation
 - *A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*

Slovak Judgment

- case No. 1 Sžp /2010
 - „Although it is also undoubtedly that the legal principles are categorised in formal legal sources (normative standards according R. Dworkin, in: Model of Rules I., 1967) and they are formulated in very abstract manner (e.g. in general but without stipulation to specific rule of conduct),“
 - „According another representative of legal philosophy (Robert Alexy) every legal norm presents or legal rule or legal principle. The principles are orders towards an optimalization which shall be maximally met in the scope of legal and factual possibilities of the State“

Return to Brown Bear



Interpretive Position

- the invalidity of granting derogations to the protection of certain species (e.g. killing a brown bear) caused by the expiration of time for which those granting derogations were limited which resulted in removing the procedural obstacle as the derogations expired and therefore they did not exist anymore
- hence an administrative authority will have to cease the derogation proceedings regardless of the procedural stage

B) Deer case (C-243/15)

Time Problem

slow judicial review contra

swift

administrative

procedure,

.... but

NATURA 2000



Facts

- the LZ Association for the 2nd time
 - to enlarge a game reserve for deer
 - building-up a fence
 - barrier
 - free movement of small carnivores
 - e.g. lynx, wolf or fox
 - applicability of AaC
 - only a construction of fence??
 - a project which could have a significant impact on environment??



Door is Closed!

- judicial ping-pong
 - regional court accepted CJ's case-law
 - Supreme Court- No!
- long lasting judicial overview
 - more than 2 years
- BUT a little bit change
 - new chamber



to Participate effectively

- Art. 6 (1b) AaC
 - activities not listed in Annex I ...
 - which may (!!) have a significant effect on the environment
- Art. 6 AaC
 - public
 - the right to participate ‘effectively during the environmental decision-making’



How to Apply Art. 47?

- status
 - interested person?
 - to put forward some arguments contra the project at issue in the main administrative procedure
 - BUT absence in the court proceedings
 - party to the proceedings?
 - full standings
 - without any procedural limitation

Thank you for attention and have a
nice day

