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**Reference for a preliminary ruling from Supreme Court of the United Kingdom (United Kingdom) made on 25 May 2011 - Regina on the application of David Edwards, Lilian Pallikaropoulos v Environment Agency, First Secretary of State, Secretary of State for Environment, Food and Rural Affairs**

**(Case C-260/11)**

*Language of the case: English*

### Referring court

Supreme Court of the United Kingdom

### Parties to the main proceedings

*Applicants:* David Edwards, Lilian Pallikaropoulos

*Defendants:* Environment Agency, First Secretary of State, Secretary of State for Environment, Food and Rural Affairs

### Questions referred

How should a national court approach the question of awards of costs against a member of the public who is an unsuccessful claimant in an environmental claim, having regard to the requirements of Article 9(4) of the Aarhus Convention, as implemented by article 10a 85/337/EEC<sup>1</sup> and article 15a 96/61/EEC<sup>2</sup> ("the Directives")?

Should the question whether the cost of the litigation is or is not "prohibitively expensive" within the meaning of Article 9(4) of the Aarhus Convention as implemented by the Directives be decided on an objective basis (by reference, for example, to the ability of an "ordinary" member of the public to meet the potential liability for costs), or should it be decided on a subjective basis (by reference to the means of the particular claimant) or upon some combination of these two bases?

Or is this entirely a matter for the national law of the Member State subject only to achieving the result laid down by the Directives, namely that the proceedings in question are not "prohibitively expensive"?

In considering whether proceedings are, or are not, "prohibitively expensive", is it relevant that the claimant has not in fact been deterred from bringing or continuing with the proceedings?

Is a different approach to these issues permissible at the stage of (i) an appeal or (ii) a second appeal from that which requires to be taken at first instance?

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<sup>1</sup> - Council Directive 85/337/EEC of 27 June 1985. OJ L 175, p. 40

<sup>2</sup> - Council Directive 96/61/EC of 24 September 1996. OJ L 257, p. 26