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European Court to hear Supreme Court's Edwards costs reference**DATE:** 07 Sep 2012

On Thursday 13 September the Court of Justice of the European Union (Fourth Chamber) will hear oral argument in the reference made by the Supreme Court in R. (on the application of Edwards & another) v Environment Agency [2010] UKSC 57; [2011] 1 W.L.R. 79.

The case involves consideration of whether in relation to costs in cases covered by the EIA and IPPC Directives (and implementing in part Article 9 of the Aarhus Convention) the assessment of whether litigation is or is not "prohibitively expensive" to 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 the two bases?

The questions referred by the Supreme Court are these:

- "1. 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 and article 15a 96/61/EEC ('the Directives')?
2. 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?
3. 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'?
4. 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?
5. 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?"

The Commission has intervened in support of the Appellant. Denmark, Greece and Ireland have intervened in support of the United Kingdom.

James Maurici is appearing on behalf of the United Kingdom Government at the hearing.

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