

Summary of Communication of K. Fitzpatrick re *Aarhus* and Ireland 5th June 2014

I complain that Ireland is not committed to its Aarhus Convention undertakings to insure that persons in Ireland can have access to justice in environmental matters without either incurring prohibitively expensive legal costs, or a significant threat of same.

I have divided my communication into 3 sections:

1. Ireland, while recognising the oppressive nature of the *English Rule* (the loser pays all costs) as a contributory cause of prohibitive legal costs in Ireland, has failed to implement an effective procedure to make its “special costs procedure” meaningful. It has created a “catch 22” which is fatal to the operation of its so called “solution” and failed to remedy this “catch 22” despite effective constructive judicial notice of its existence being given to it. It has also attached unnecessary conditionality to the procedure which undermines the reduction of the threat of financial ruin, which the procedure purports to give effect to.
2. Ireland has failed to take other effective measures to reduce legal costs for persons seeking to take judicial review of environmental matters. It continues to allow rules to operate, in relation to the contractual obligations of a litigant to pay legal costs to her own lawyer, to operate in a totally unfair manner, violating “equality under law” requirements and other fundamental and human rights. Ireland effectively penalises litigants who seek to challenge their own lawyers’ fees (incurred in environmental judicial review actions), by imposing a stamp duty in a totally unfair manner in certain circumstances. It encourages lawyers to overcharge their clients, by allowing an overcharge margin [without an effective penalty] of 18.66% currently, which it proposes to reduce to 17.6% under its legal reform proposals.
3. Ireland continues to allow a cloak of secrecy to operate in relation to legal costs, by failing to publish outcomes of legal costs adjudications (a very small number of cases excepted) thus violating democratic norms, human rights and obligations for transparency under the Aarhus convention. Even under its proposed reforms of the legal system, it proposes several measures which violate democratic norms and human rights.

I allege Ireland violates Article 3(2)-[failure to encourage its officials to inform persons regarding access to justice], Article 3(3)-[failure to take necessary legislative changes, failure to provide a transparent framework, indirectly violating the requirement to take “other” measures (publishing all legal costs adjudications)], Article 3(8)- [each party... shall not be penalized .. for their involvement] and Article 9(4)- [failure to remedy prohibitively high legal costs and directly violating the requirement that “Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.” by failing generally to publish outcomes of legal costs adjudications relating to judicial review of environment related legal actions.

END OF SUMMARY