



Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government



9th October 2015

Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
Aarhus Convention Secretariat
United Nations Economic Commission for Europe
Palais des Nations
8-14 Avenue de la Paix
CH-1211 Geneva 10
Switzerland
Email: Aarhus.compliance@unece.org

By email

Dear Ms Marshall

Re Communication to the Aarhus Convention Compliance Committee concerning compliance by Ireland in connection with the cost of access to justice (ACCC/C/2014/113)

I refer to the above matter and to the letter I submitted on behalf of Ireland on 29th September 2015.

The purpose of this letter is to correct two errors in that letter which are contained in paragraphs 28 and 85 respectively.

First, in paragraph 28, having referred to the special statutory costs regime for environmental proceedings in section 50B(1) of the Planning and Development Act 2000 and part 2 of the Environment (Miscellaneous Provisions) Act 2011, it was commented that "*Applicants in such proceedings are also absolved from applicable court filing costs.*" In fact, under the relevant statutory provision, Article 8 of S.I. No. 492/2014 (see link below), it is only proceedings to which Part 2 of the Environment Miscellaneous Provisions Act 2011 applies that are absolved from applicable court filing costs and no such absolution exists for proceedings to which section 50B applies.

Second, in paragraph 85 the statement is incorrect that "*There has never been a determination by the courts based on provisions of section 50B(3) PDA 2000 or section 3(3) E(MP)A 2011 against a party to environmental proceedings in Ireland (applicant or otherwise).*" In fact, such a determination was made by the High Court in a judgment delivered by Kearns P on 21st January 2013 (see link below). That determination supports

the submission made by Ireland in paragraph 86 that the provisions arise to be applied only in the most extreme and unusual circumstances. In that case, after bringing Judicial Review proceedings to challenge the refusal by An Bord Pleanála, the Irish planning appeals board, of its application for planning permission to construct a waste to energy facility for hazardous and non-hazardous waste, the applicant withdrew the proceedings on the eve of the hearing. The High Court found that the applicant had made the decision not to proceed with the case some weeks before the hearing but did not inform the other parties until the last moment, allowing the legal costs of those parties to escalate unnecessarily. The court found that the applicant's conduct of the proceedings in that manner was an abuse of process and the applicant was ordered to pay the other parties' costs of the proceedings for those weeks. It is notable that the applicant against whom costs were awarded is a multi-national waste management company and that the costs were awarded in favour of, inter alia, an environmental NGO.

Ireland apologises for any inconvenience caused to the work of the Committee by the two errors mentioned above and by their correction in this letter.

Yours sincerely,



Marguerite Ryan
National Focal Point Aarhus
Assistant Principal Officer
Department of the Environment, Community and Local Government.

Hyperlinks:

S.I. 492/2014

<http://www.irishstatutebook.ie/eli/2014/si/492/made/en/pdf>

Indaver NV T/A Indaver Ireland v. An Bord Pleanála - Judgment of Kearns P delivered on 21st January 2013

<http://courts.ie/Judgments.nsf/0/4C7074E3533D03F480257B02003E4087>