IRELAND'S COMMENTS ON COMMUNICANT'S RESPONSE TO QUESTIONS

Re: Communication to the Aarhus Convention Compliance Committee Concerning Compliance by Ireland Regarding the costs of Access to Justice: (ACCC/C/2014/113)

1. These observations respond to a number of assertions made in the Communicant's Reply dated 9th June to questions raised by the Committee on the 19th May 2016.

2. The Party Concerned's previous observations (at hearing and in writing) are relied upon, and a detailed Reply to each and every point made by the Communicant is not necessary.

3. Many of the Communicant's complaints are entirely new, and should be excluded from the scope of the within Communication. Those complaints relating to the Legal Services Regulation Act 2015 ("the 2015 Act"), which was not enacted at the time of making of the Communication, and is not yet commenced, cannot be relevant to the within Communication. Insofar as the Communicant seeks to complain about the manner in which the costs adjudication regime set out in the 2015 Act will operate, those complaints go beyond the hypothetical complaints previously made into pure speculation. Any complaint that the new legal costs adjudication regime will not operate as intended is entirely premature.

4. More fundamentally, the Party Concerned remains of the view that insofar as the costs adjudication mechanisms criticised by the Communicant are concerned with an individual's own legal expenses, then the criticisms of same are not relevant to the Committee's consideration for the reasons previously outlined.

1. **Please explain how the forthcoming Legal Services Regulation legislation will address the specific issues raised in the communication, especially as regards costs.**

Sections entitled "New Review System" and "Objectively Impartial Tribunal"

1. The Communicant's observations on the Review Committee established by the Legal Services Regulation Act 2015 ("the 2015 Act") [1] are speculative and are based upon unfounded and irrelevant apprehensions.

2. The Communicant alleges, without any material basis, that the impartiality and independence of the Review Committee is *prima facie* suspect. The Communicant relies on an assumption of bias which would be wholly contrary to law and for which a remedy would be available in judicial review. The Communicant simultaneously criticises the presence of lawyers on the Review Committee and the lack of expertise of the lay majority. The model set out in the 2015 Act reflects the model for professional regulation established in the State of a number of other professions (e.g. Medical Practitioners Act 2007) and has operated successfully and without any suggestion, let alone any finding, of objective bias based on the mandated composition of the relevant tribunals.

3. Part 6 of the 2015 Act sets out detailed procedures for dealing with complaints made against legal practitioners, including complaints about one's own legal representative.[2]

4. Complaints are, in the first instance, heard by a Complaints Committee, a majority of which must be lay persons (non-legal

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[1] The Communicant erroneously refers to the separate procedures in this Part collectively as the "*Fee Complaint Review Tribunal*".

[2] Section 50(1)(l) of the 2015 Act defines misconduct to include seeking a fee in respect of legal services which is "*grossly excessive*" and in considering an allegation of misconduct on this ground, the complaints body can have regard to the fact that a legal costs adjudicator has found that the costs charged were grossly excessive.

practitioners) which shall operate in divisions of 3 or 5. A majority of each division must also be lay persons.[3]

5. The Review Committee will then consider reviews requested by complainants or legal practitioners in relation to determinations of the Complaints Committee.[4]

6. The Review Committee shall be composed of 3 persons, 2 of whom shall be lay persons and one of whom shall be a legal practitioner[5]. The 2015 Act provides that the member of the Review Committee who is a legal practitioner shall: (a) in a case where the complaint relates to a solicitor, be a solicitor, and (b) in a case where the complaint relates to a barrister, be a barrister. A "layperson" is defined in s.2 subsection 3(a) and (b) of the 2015 Act as a person who at the relevant time is not a practicing solicitor or a practicing barrister, or if so, has not been a solicitor or a barrister in the period of five years immediately preceding their appointment.

7. The Act provides that the Review Committee shall consider reviews requested and, having given both the client and the legal practitioner an opportunity to make a statement in writing to it as to why the determination of the Complaint Committee was incorrect or unjust, determine the review by: (a) confirming the determination of the Authority, (b) remitting the complaint to the Authority, with such directions as the Review Committee considers appropriate or necessary, or (c) issuing one or more than one of the directions to the legal practitioner that the Authority is authorised to issue.[6]

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[3] Section 69 of the 2015 Act.
[4] 62. (1) of the 2015 Act
[5] 62(2) of the 2015 Act
[6] S.62(5) of the 2015 Act

8. Where a Review Committee determines a review the client or the legal practitioner concerned may, within a period of 21 days of the notification of such determination or direction to him or her, apply to the High Court for an order directing the Review Committee to rescind or to vary such determination and on hearing such application the Court may make such order as it thinks fit. Where an application has been made by a legal practitioner, the Authority may apply to the High Court and the Court may dismiss the application of the legal practitioner if it is satisfied that such application has no merits and has been made purely for the purposes of delay.[7]

9. The constitution and operation of the Review Committee provides for expertise, transparency, and impartiality as *inter alia*:

   i. The 2015 Act provides that in appointing lay persons to be members of the Review Committee the Authority shall ensure that those members are persons who (a) are independent of the professional bodies, and (b) have expertise in or knowledge of (i) the provision of legal services, (ii) the maintenance of standards in a profession (including those regulated by a statutory body), (iii) the investigation and consideration of complaints relating to services, or (iv) the interests of consumers of legal services. The Communicant's assertion that the lay members of the Review Committee are likely to defer to trained lawyers due to a lack of expertise is therefore unfounded.;[8]

   ii. The 2015 Act provides that the member of the Review Committee who is a legal practitioner shall (a) in a case where

[7] S.63 of the 2015 Act

[8] 62(4) of the 2015 Act provides that a person shall be eligible to serve as a member of a Review Committee established under this section if he or she is eligible to serve as a member of the Complaints Committee established under this Part.

the complaint relates to a solicitor, be a solicitor, and (b) in a case where the complaint relates to a barrister, be a barrister;

iii. The 2015 Act provides for a review of a determination of the Review Committee to the High Court for an order directing the Review Committee to rescind or to vary such determination and on hearing such application the Court may make such order as it thinks fit. This provides for another layer of procedural scrutiny.

Section entitled "Costs of the FRCT – Costs to borne equally"

10. The Communicant asserts that the costs associated with a complaint resolved by the Authority under s. 60 of the 2015 Act are unfair for a party who is unrepresented. This is to misinterpret the informal complaints process described in s.60 of the 2015 Act.

11. The Communicant alleges that where an attempt is made to resolve a complaint by the Review Tribunal, the legal practitioner who is the subject of the complaint will be allowed to charge fees far in excess of that which the unrepresented party would incur. As section 65 (2) of the 2015 Act states that any costs incurred from that process are to be borne equally by both sides save where otherwise agreed, the Communicant has suggested that this will impose financial hardship on the unrepresented party. This either presupposes that the lawyer will be represented by another lawyer or will offset his own fee on the unrepresented party.

12. This is entirely speculative. The purpose of the complaints review process is an informal[9] one whereby in the initial stages of the complaint process the client and the legal practitioner are invited to resolve the dispute. It is not a formal adjudication which would necessarily require both parties to be represented. The equal sharing of the minimal costs at this informal stage is proper, as it facilitates access to a lawyer where required whilst avoiding the additional adjudicatory process of awards of costs.

13. It should also be borne in mind that where the legal practitioner is considered to have offered services of an inadequate standard, the Authority can direct the practitioner to pay compensation to the client.

Section entitled "Review by HC"

14. The Communicant's allegations in relation to how the High Court will exercise its review jurisdiction under the 2015 Act is also speculative. The High Court has not adjudicated or interpreted these provisions yet, and any suggestion that the Court will adopt a rigid *"25% rule"* when reviewing a decision of the Review Committee simply lacks any material basis.

15. Moreover, the Communicant's assertion that the Courts will not alter a finding made by the Taxing Master, unless an error of the order of 25% or more has been established in relation to an item under challenge, is premised on a narrow and incomplete understanding of the relevant authorities which will continue to underpin interpretation. The Courts have held that this margin of error is not rigid, nor the only factor to be

[9] Section 60 (1) of the 2015 Act provides that where the Authority determines under *section 57* that a complaint to which *section 51(1)(a)* applies is admissible, or where a complaint is remitted to it under *section 62*, it shall invite the client and the legal practitioner concerned to make efforts to resolve the matter the subject of the complaint in an informal manner.

taken into account by the Court. In *Quinn v. South Eastern Health Board* [2005] Peart J. held: *"I have some hesitations about such a pragmatic formula in the context of a costs item […] It seems to me therefore that the question of what is just or unjust in this regard must be viewed on a case to case basis, since different factors may be at play."* In *Revenue Commissioners v Wen-Plast (Research and Development) Limited [2009] IEHC 453* Hedigan J agreed with Peart J in rejecting a formulaic approach to assessment and stated that: "*Like Peart J., I do not find a mathematical or formulaic method of assessment to be attractive. I would prefer a more flexible approach predicated upon a subjective examination of the circumstances of individual cases. I also think the court should be wary of conflating "error" and "injustice*".

16. The Court of Appeal has very recently held that although a 25% margin rule has the attraction of simplicity, the requirements of assessing whether the error amounts to an injustice, requires a more flexible approach based upon an examination of all the circumstances of each case. The Court of Appeal also rejected the suggestion the Court could only intervene where an injustice was *"clear and manifest"*.[10] The Court observed that to do so would be to "*ignore the express language of the statutory section. Section 27(3) provides that the High Court may review a decision where it is satisfied that the Taxing Master has erred. It does not provide that it may only review a decision where the Taxing Master has made a "serious" or "significant" error. Likewise, s. 27(3) provides that the High Court may review the decision if the Taxing Master has erred in such a manner that the decision is "unjust". It does not provide that the injustice must be "clear and manifest". The question of what is unjust depends on all the circumstances of the case. The section is drafted in a simple and straightforward manner and there is no reason, in my view, to add words to it.*"

[10] *Sheehan v Corr* [2016] IECA 168, at paras 75 and 76.

Sections entitled "HC usually remits" and "Full Jurisdictional Review"

17. The Communicant makes no specific allegation to which to respond. The Communicant confuses the ECHR right to fair procedures with the appellate jurisdiction under the Act, which is (contrary to the Communicant's contention) full.

Sections entitled "Review – Prohibitively Expensive"

18. The Communicant's contentions in this section are not only speculative, they are entirely irrelevant to the work of the Committee. The Communicant makes (incorrect) arguments in respect of the bearing of costs of other parties under the (uncommenced) Act which simply would not arise under Ireland's Special Costs Provisions for environmental proceedings.

19. The Communicant's references to jurisdictional "*gerrymandering*" is similarly unfounded. The High Court, unlike the District or Circuit Court, is a court of full and original jurisdiction[11], thus making it an entirely appropriate body for to entrust further review of the activities of statutory bodies. Further, the maximum monetary jurisdiction of the High Court is unlimited and unrestricted, unlike in the District and Circuit Courts. The allegation that the selection of the High Court to exercise a statutory review jurisdiction was designed to deter litigation is baseless.[12]

Sections entitled "A few other observations of the LRSA"

[11] Article 34.3.1 of the Irish Constitution.

[12] The High Court exercise a review jurisdiction over a large and diverse range of statutory bodies. Illustrative examples include appeals from the Professional Conduct Committee of the Society of Chartered Surveyors, under the Building Control Act 2007, from the Medical Council and from An Bord Pleanála (Irish Planning Board).

20. In respect of own costs, the Communicant fails to understand the effect of the costs arrangements under the Act, which have been extensively set out by the Party Concerned on previous occasions and which it is not proposed to rehearse here. An estimate of likely fees is required to be provided under the section 151 of the Act. Acceptance of this estimate is an agreement which must be taken into account by the Legal Costs Adjudicator.

Sections entitled "Conclusion"

21. The Communicant fails to identify any Aarhus-specific concern either in respect of the Act or which is founded in his original Communication.

22. Nothing precludes parties to a legal costs dispute, including a dispute between a lawyer and his/her client, contesting that dispute in court. However, Ireland provides for a taxing system so that such an alternative is not necessary.

23. The Party Concerned denies and does not otherwise respond to the unfounded and simply inaccurate allegations about the Convention compatibility of the processes provided for under the Act.

Questions 2, 3, 4, 5 and 6

24. The Party Concerned has addressed these issues in its own Reply to the Committee.

7. **Please explain how the burden of proof is distributed between the parties within the costs adjudication procedure both before the Taxing Master and the Law Society**.

25. As stated in the Party Concerned's Reply to the Committee, the standard of proof in the taxation of costs is the balance of probabilities.[13]

26. Contrary to the Communicant's assertion, the onus is on the party claiming costs to demonstrate to the satisfaction of the Taxing Master that such costs as were incurred were proper and reasonable in all the circumstances.[14]

27. It is incorrect to suggest that that the paying party is obliged to demonstrate at the taxation that the drawn bill of costs is excessive or should be reduced.[15]

28. As regards an application for the adjudication of legal costs under the Legal Services Regulation Act 2015, guidelines will be published

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[13] Flynn, James & Halpin, Tony *Taxation of Costs* (1999) p. 286. "*[H]owever the Taxing Master is guided by his experience as to when this onus has been discharged and he is not controlled by the strict limits imposed, for example by the onus of proof in criminal courts but, rather, is guided by the evidence presented and after hearing both sides is satisfied on the balance of probabilities that the cost are proper and reasonable they are allowable cost having regard to the nature of the matter".*

[14] It is well-established that the onus is on the claiming party to demonstrate to the satisfaction of the Taxing Master that such costs as are incurred are proper and reasonable in all the circumstances2 (see e.g. *Dunne v Fox* [1999] 1 IR 283; *Minister for Finance v Goodman* [1999] 3 IR 333). *See also* Paul McGarry "Taxation (Adjudication) of Costs: The role of the Superior Courts", at 3.4".

[15]*See* para 3.6 of Paul McGarry SC "Taxation (Adjudication) of Costs: The Role of the Superior Courts", where the author writes that "*One issue that crops up repeatedly on review applications is the suggestion that the paying party is obliged to demonstrate at the taxation that the drawn bill of costs is excessive or should be reduced. This is plainly not so, having regard to these authorities. This might be contrasted with the more nuanced argument that it is not open to a party to introduce arguments before the reviewing Court that were not made at the taxation.*"

setting out the procedure to be adopted by the Legal Costs Adjudicator.[16]

29. The Communicant incorrectly asserts that no penalty exists for lawyers who make false representations before the Legal Costs Adjudicator. Such behaviour would constitute misconduct by a legal practitioner as defined in section 50 of the 2015 Act.[17]

8. **Is it your view that the issue of costs between a client and their own solicitor/barrister is within the scope of article 9, paragraph 4 of the Convention?**

30. Nothing in the Convention requires Ireland to interfere with the private costs arrangements of litigants and their lawyers in those review procedures or otherwise.

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[16] Section 142 of the 2015 Act.

[17] 50. (1) provides that: For the purposes of this Act, an act or omission of a legal practitioner may be considered as constituting misconduct where the act or omission— (a) involves fraud or dishonesty, (b) is connected with the provision by the legal practitioner of legal services, which were, to a substantial degree, of an inadequate standard, (c) where occurring otherwise than in connection with the provision of legal services, would justify a finding that the legal practitioner concerned is not a fit and proper person to engage in the provision of legal services, (d) consists of an offence under this Act, (e) in the case of a solicitor, consists of a breach of the Solicitors Acts 1954 to 2015 or any regulations made under those Acts, (f) in the case of a solicitor, consists of an offence under the Solicitors Acts 1954 to 2015, (g) in the case of a barrister, is likely to bring the barristers' profession into disrepute, (h) in the case of a solicitor, is likely to bring the solicitors' profession into disrepute, (i) in the case of a legal practitioner who is a managing legal practitioner of a multidisciplinary practice, consists of a failure by him or her to comply with his or her obligations under this Act as a managing legal practitioner (within the meaning of Part 8), (j) consists of the commission of an arrestable offence, (k) consists of the commission of a crime or offence outside the State which, if committed within the State, would be an arrestable offence, (l) consists of seeking an amount of costs in respect of the provision of legal services, that is grossly excessive, (m) consists of a breach of this Act or regulations made under it, or (n) consists of a contravention of section 215(1).

31. At Article 3.8 the Aarhus Convention expressly recognises the right of national courts to award reasonable costs.[18] The Aarhus Convention clearly envisages both resolution of environmental disputes by courts and the retention (at least by the applicant's opponents) of lawyers. Article 9.4 only requires that such costs not be prohibitive. Article 9.5 makes it manifestly clear that the parties must consider mechanisms to remove or reduce financial barriers to justice, but also makes it clear that this is an ongoing requirement. Consequently, Article 9.4 was not intended to mandate the provision of legal aid in environmental cases, nor can it be interpreted as doing so.

32. Neither the Aarhus Convention nor any authority from the Court of Justice of the European Union (**"the CJEU")** mandate that legal aid be available to impecunious applicants as part of the requirement that access to justice should not be prohibitively expensive.[19]

33. The Communicant misunderstands the thrust of CJEU case law by suggesting the scope of the Convention extends to the regulation of own costs incurred in private contractual relations between an individual and a legal practitioner. The CJEU have not held that the Convention requires a member state to interfere with the private costs arrangements of litigants and their lawyers in those review procedures or otherwise. The CJEU has held that Member States have a wide discretion in the methods they employ to ensure effective judicial protection without excessive cost in the field of environmental law.[20]

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[18]In United Kingdom ACCC/C/2008/33, ECE/MP.PP/C.1/2010/6/Add.3, December 2010, para 129 the Committee considered that the United Kingdom *"costs follow the event rule", contained in CPR rule 44.3 (2), is not inherently objectionable under the Convention, although the compatibility of this rule with the Convention depends on the outcome in each specific case and the existence of a clear rule that prevents prohibitively expensive procedures."*

[19] *R. (Edwards) v Environment Agency* (No. 2) (Case 260/11) [2013] 1 WLR 2914.

[20] In Case C-530/11 *Commission v United Kingdom* the Court held that the requirement that proceedings not be **prohibitively expensive** does (i) not prevent the national

Ireland has opted to discharge this obligation through significant changes to its legal system and, in particular, its legal cost rules, rather than through regulation of own costs incurred in contractual relations between an individual and legal practitioner. This choice is entirely legitimate and compatible with the case law of the CJEU.

34. Contrary to the Communicant's assertions, the ACCC has not determined that own lawyer costs fall within the scope of the Convention. The Communicant's citation of previous Committee decisions is misplaced.[21]

35. For example, the Communicant refers to decision ACCC/C/2009/36 in which the Arhus Convention Compliance Committee "recognised that requiring a litigant to employ two lawyers could unnecessarily add to

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courts from making an order for costs in judicial proceedings provided that they are reasonable in amount and that the costs borne by the party concerned taken as a whole are not prohibitive, and (ii) where a court makes an order for costs against a member of the public who is an unsuccessful claimant in an environmental dispute… it must, however, satisfy itself that the requirement that proceedings not be **prohibitively expensive** has been complied with, taking into account both the interest of the person wishing to defend his rights and the public interest in the protection of the environment. The Court observed that as regards the relevant assessment criteria, it is for the Member States, when they transpose a directive, to ensure that it is fully effective and they retain a broad discretion as to the choice of methods. It follows that, as regards the methods likely to achieve the objective of ensuring effective judicial protection without excessive cost in the field of environmental law, account must be taken of all the relevant provisions of national law and, in particular, of a national legal aid scheme as well as of a costs protection regime such as that applied in the United Kingdom.

[21] For example, in *Spain ACCC/C/2009/36, ECE/MP.PP/C.1/2010/4/Add.2, 08 February 2011, para.67* the Committee did not imply that own lawyer costs fell within the scope of the Convention. The decision of the Committee was addressed to a specific Spanish *requirement* that a litigant engage two lawyers: "*Spanish citizens…have to pay the fees for two lawyers after the first instance, and also the fees for the two lawyers of the winning party in the event that they lose their case (loser pays principle). The Committee observes that the Spanish system of compulsory dual representation may potentially entail prohibitive expenses for the public. However, the Committee does not have detailed information on how high the costs of the dual representation may be, while it recognizes that such costs may vary in the different regions of the country. The Committee therefore stresses that maintaining a system that would lead to prohibitive expenses would amount to noncompliance with article 9, paragraph 4, of the Convention*".

the expense of the litigation"[22]. Where a party seeks judicial review on appeal in Spain, it was at the time of that complaint required to be dually represented under Spanish law. The Committee recognised that the Spanish system of compulsory dual representation may potentially entail prohibitive expenses for the public. There is no such requirement for dual representation in Irish law before any Court. As already mentioned, there is no requirement for any legal representation for a person seeking to bring an environmental case.

36. Similarly, in United Kingdom ACCC/C/2008/33, CE/MP.PP/C.1/2010/6/Add.3, December 2010, para. 132 the comments of the Committee specifically addressed the issue of reciprocal cost caps on the amount a successful litigant could recover. The Committee noted the limiting effect of reciprocal cost caps which in practice entail that:

> *"when their lawyers are not willing to act pro bono" successful claimants are entitled to recover only solicitor's fees and fees for one junior counsel "that are no more than modest". The Committee in this respect finds that it is essential that, where costs are concerned, the equality of arms between parties to a case should be secured, entailing that claimants should in practice not have to rely on pro bono or junior legal counsel."*

37. In the judicial review proceedings the subject of that communication, the respondent was granted a full costs order against the applicant which amounted to £39,454. In Ireland, an unsuccessful Applicant typically would not have to pay the legal costs of the successful side *at all*, which as already mentioned in Ireland's reply, goes beyond the requirement that costs in environmental matters not be prohibitively expensive.

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[22] See p. 18 of 21 of the Communicant's 'Reply to Questions (9) Raised by the Committee on 19th May 2016.

38. The passages cited by the Communicant cannot feasibly ground a suggestion that the Convention requires Ireland to interfere with the private costs arrangements of litigants and their lawyers in those review procedures or otherwise. Indeed, the Aarhus Convention Implementation Guide expressly notes that the Convention does not define the means for keeping costs at an acceptable level. Instead, the Convention sets an obligation of result, which allows the parties "*great discretion*" in how to proceed provided the objective of the Convention is secured. Ireland has opted to discharge this obligation through significant changes to its legal system and, in particular, its legal cost rules.[23]

39. The significant changes to Ireland's legal system mean that an applicant will very rarely be obliged to pay the costs of a respondent, even if the applicant is unsuccessful. On the other hand, by application of the normal costs rules, the applicant is generally entitled to his or her costs if successful. Furthermore, in cases of exceptional public importance, an unsuccessful applicant may be awarded his or her costs.

40. Therefore, in relation to the Communicant's reference to the need to secure equality of arms, Ireland respectfully submits that in respect of certain environmental matters, there is, in fact, an asymmetry in favour of the litigant. There is a complete disparity of treatment between applicants and respondents in respect of certain environmental matters. Respondents will normally never obtain their costs if they win - whereas applicants can litigate in the knowledge that they will normally obtain their costs if they win. If they lose they are (bar rare

[23] Ebbesson, Gaugitsch, Jendroska, Stec, and Marshall, "*The Aarhus Convention: An Implementation Guide*", 2nd Edition, 2014, at Page 203.

circumstances due to their own conduct) protected from the making of a cost award against them.

41. Moreover, unlike many legal systems, the Irish courts permit individuals to represent themselves, thus eliminating own costs altogether. Accordingly, in environmental proceedings in Ireland, own costs need never be 'prohibitive' in terms of access to justice. Nothing in the Aarhus Convention requires that litigants within the Contracting Parties be allowed to represent themselves in the Courts as a way of reducing costs for litigants. This goes beyond the requirements of the Aarhus Convention. The choice by litigants to retain lawyers at their own cost cannot be said to constitute a prohibitive cost under Article 9(4).

42. The Communicant concludes that it is necessary for the assessment of own lawyer's fees to be encapsulated within Article 9(4) in order to address an ill which there is no evidence to suggest exists. There is simply no evidential basis for the Communicant's purported concern that any alleged deficiency in the system for assessment of own lawyer's fees (which alleged deficiencies, especially in light of changes made by the 2015 Act, Ireland does not accept) has ever limited access to justice or, in particular, access to a review procedure before a competent court.

43. To remedy the alleged limitations on access caused by these purported deficiencies (of which the Communicant has offered no evidence), he proposes that Article 9(4) must be interpreted to require signatory states to interfere in contractual relations between their citizens and, in effect, to provide legal aid, where required, in environmental cases. It is contended by Ireland that such a significant interference in the sovereign decisions of States regarding the allocation of resources would have been expressed in very clear terms if such was intended by

the signatories to the Convention. Absent such a clearly expressed intention, Ireland contends that the steps that it has taken to ensure access to justice in environmental cases more than meet the requirements of Article 9(4) of the Convention.

Conclusions

44. For all the above reasons, and those previously given, Ireland invites the Compliance Committee to find the within Communication is manifestly inadmissible and does not disclose any substantive breach of the Aarhus Convention.