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ЕВРОПЕЙСКАЯ ЭКОНОМИЧЕСКАЯ
КОМИССИЯ

UNITED NATIONS

ECONOMIC COMMISSION
FOR EUROPE

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Palais des Nations, Room 429-2
CH-1211 GENEVA 10

Ref: Pre-admissibility

21 November 2014

Kieran Fitzpatrick
Anbally,
Cummer,
Co.Galway,
Republic of Ireland

Dear Mr Fitzpatrick,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Ireland in connection with the cost of access to justice

At its forty-sixth meeting (Geneva, 22-25 September 2014), the Aarhus Convention Compliance Committee considered the preliminary admissibility of the above communication as re-submitted by you on 24 September 2014. The communication alleged non-compliance with article 3, paragraphs 1, 2 and 8 and article 9, paragraph 4 of the Convention in connection with court costs. The Committee agreed to defer its preliminary determination of admissibility to its forty-seventh meeting in order to ask you to further substantiate your allegations.

Please find attached a set of questions prepared by the Committee for your attention. We would be very grateful to receive your response to the attached questions before **Thursday, 18 December 2014**, in order that they may be considered by the Committee at its forty-seventh meeting (Geneva, 16-19 December 2014).

Please do not hesitate to contact the secretariat if you have any questions.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'F Marshall', written in a cursive style.

Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee

Enc: Questions for the communicant

Questions to the communicant

Questions regarding Part 1 of the communication

1. Please provide a concise explanation, including references to all applicable legislation and relevant case law, as to how costs for court proceedings within the scope of the Aarhus Convention are determined in Ireland. In this regard, section 3 of the Environment (Miscellaneous Provisions) Act 2011 states that the costs of proceedings are to be borne by each party in “proceedings to which this section applies”. Which types of proceedings does this section apply to (please also provide the relevant legislative or case law references where its scope of application is described)?
2. Please provide evidence from case law decided since Ireland’s ratification of the Aarhus Convention to demonstrate that “prohibitively expensive” legal costs remain a systemic issue.
3. Please provide examples of case law decided since Ireland’s ratification of the Aarhus Convention demonstrating how sections 3 (2), (3) and (4) of the Environment (Miscellaneous Provisions) Act are being applied in practice, and in particular, any case law that demonstrates that these provisions are being applied in a manner that you consider to be inconsistent with the Aarhus Convention. Please explain with reference to the provisions of the Convention, in which way these sections of the Environment (Miscellaneous Provisions) Act are being applied in a manner inconsistent to the Convention.
4. Please provide a more detailed description of the “catch 22” of the special costs procedure. Does the applicant have to bring a declaration that its proceedings are within the scope of section 3 (1) of the Environment (Miscellaneous Provisions) Act? Which way does the burden of proof fall, i.e. does the applicant have to prove that its application is within section 3(1), or does the respondent have to prove it does not? Which costs rules apply to these ancillary proceedings?

Questions regarding Part 2 of the communication

5. Please provide any applicable regulations or professional guidelines setting out the criteria upon which the Law Society adjudicates what constitutes an unreasonable legal fee.
6. Please provide any applicable legislation/regulations that regulate the taxation process.
7. Please provide relevant examples dating since Ireland ratified the Aarhus Convention of
 - a. any complaints to the Law Society;
 - b. applications to the taxing master;regarding legal fees for court proceedings within the scope of the Aarhus Convention, that you consider did not satisfactorily result in non-prohibitive costs.

Question regarding Part 3 of the communication

8. In your revised communication you refer to both the “Legal Services Regulation Bill” and the “Legal Services Regulation Act”. Has the Bill now been adopted by Parliament, and if so, on what date was it adopted and on what date did it enter into effect? Please provide the Committee with the relevant provisions of the Act as adopted that you consider do not meet the standards of the Convention, together with an accompanying explanation of why you consider each of those provisions does not.
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