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UNITED NATIONS

ECONOMIC COMMISSION
FOR EUROPE

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Palais des Nations, Room 429-4
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Ref: ACCC/C/2014/113

19 May 2016

Ms. Aoife Joyce
Environment Policy and Awareness
Department of the Environment, Community and Local Government
Ireland

Mr. Kieran Fitzpatrick
Anbally
Cummer
Co. Galway
Ireland

Dear Ms. Joyce and Mr. Fitzpatrick,

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)

During the discussion of the above communications at its fifty-first meeting (Geneva, 15-18 December 2015), the Compliance Committee indicated that it would send further questions for the response of both the communicant and the Party concerned. Please now find enclosed the questions prepared by the Committee for your attention.

The Committee would be very grateful to receive your responses to the enclosed questions on or before **Thursday, 9 June 2016**. Please send your response to aarhus.compliance@unece.org, copying the other party. The other party will then have until **Thursday, 16 June 2016** to provide the Committee with any comments it wishes to make on your response. The Committee will consider the responses and comments received by the above deadlines when deliberating upon its draft findings at its upcoming fifty-third meeting (Geneva, 21-24 June 2016).

Please do not hesitate to contact the secretariat if you require any further information.

Yours sincerely,

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

Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee

Cc: Permanent Mission of the Republic of Ireland to the United Nations Office and other international organizations in Geneva

Enc: Questions from the Committee

Questions from the Committee

To both the Party concerned and the communicant:

1. Please explain how the forthcoming Legal Services Regulation legislation will address the specific issues raised in the communication, especially as regards costs.
2. If the courts may reject Special Costs Protection (SCP) for the reason that there is not an environmental issue or for the reason that the claim is frivolous and vexatious, does the Court announce that before considering the claim on its merits?
3. Besides SCP, are there any other mechanisms established under Irish law to assist members of the public regarding the financial implications of seeking access to justice in environmental matters? Please describe any such mechanisms and explain the extent to which they are in practice used by the public.
4. Please provide case law demonstrating how the Irish courts interpret and apply the concept of “frivolous and vexatious” proceedings. Please also provide any relevant academic commentary on this issue, if such exists.
5. What are the cases of “exceptional public importance” under Irish law for which unsuccessful applicants may be awarded costs?
6. Please clarify whether it is possible under Irish law to be represented before the courts by an environmental NGO or by a person who is not a solicitor or a barrister.
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.
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?

To the communicant:

9. Please describe in more detail the asymmetry you mentioned during the hearing of the communication with regard to appealing decisions of the Law Society.

To the Party concerned:

10. Please provide the Committee with relevant case law showing the application in practice of Section 50(B) of the Planning and Development Act 2000 (as amended) and Part 2 of the Environment (Miscellaneous Provisions) Act 2011.
 11. Please clarify the precise scope of section 50B of the Planning and Development Act 2000 (as amended), i.e. to what category of cases does it apply specifically?
 12. Please clarify whether it is the case that the issue of SCP under section 50B of the Planning and Development Act 2000 (as amended) is determined only after the case has been heard by the court. Is there any provision under section 50B for the applicant seeking judicial review to obtain confirmation from the court, in advance, before the case proceeds, that SCP applies to their particular case?
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