Environmental Justice in Ireland: Problems & Prospects

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Environmental Justice

Access to an <u>effective remedy</u>

to <u>enforce</u> environmental law & environmental rights and obligations

Aarhus Convention

Aarhus Convention & EU environmental law

International & EU law standards

How does Ireland measure up?

An effective remedy?

Aarhus Convention - Article 9

Sets down <u>minimum standards</u> for access to justice in environmental matters

Aarhus - Article 9

Standing rules
- especially role of ENGOs

Aim is to deliver
"<u>wide access to justice</u>"

Standard of (judicial) review

"Adequate & effective" remedies

Interim (injunctive) relief
– where appropriate

"Timely" remedies

Costs - "<u>not prohibitively expensive</u>"

Aarhus - Role of the Courts?

Courts in the spot light

Judicial experience & expertise in environmental matters?

Evolution/trends in the case law?

Aarhus – High Expectations

A powerful legal tool to challenge/stop controversial projects?

More "access" to the courts

Stronger role for the courts

Aarhus/EU law – Irish response

Initially – extremely minimalist response

Tardy & piecemeal legislative reaction

Judicial implementation

Sweetman v An Bord Pleanála [2007] IEHC 153

Aarhus/EU law – Irish response

The costs conundrum

C-427/07 *Commission v Ireland* (July 2009)

Role of <u>judicial discretion</u> as to costs liability

Aarhus/EU law – Irish response

Special costs rule in certain environmental cases

      PDA – section 50B

      PDA – section 50B (revised)

      EMP Act 2011 – Pt 2

(Minimal consultation and discussion)

Aarhus/EU law – Irish response

Costs issues remain problematic

Obvious gaps in scope of special costs rule

Uncertainty → further litigation on costs issues

Aarhus/EU law – state of play

Costs are still "prohibitively expensive" where an individual or ENGO lacks resources to engage a lawyer to represent them

Extremely limited civil legal aid system

Still a very significant role for judicial discretion as to costs liability → unpredictability

Aarhus/EU law – state of play

The rise of the lay litigant

Impact of Case C-260/11 *Edwards,* April 2013?

"Wide access to justice" – ensure that the public plays <u>an active role</u> in environmental protection

Aarhus/EU law – state of play

Beyond the costs conundrum:

Standard of review

If *O'Keeffe* principles are not Aarhus-complaint, then what standard of review is acceptable?

Aarhus/EU law – state of play

Interim/injunctive relief → undertaking in damages (potentially prohibitive)

Availability of court judgments online

Information about Aarhus rights

Aarhus/EU law – state of play

Some developments in Court of Justice of EU case law:

Case C-240/09 *LZ,* March 2011

Case C-416/10 *Križan,* January 2013

Case C-420/11 *Leth,* March 2013

Ireland - implementation in the spotlight

European Commission enforcement activity

Aarhus Convention Compliance Committee (18 September 2013 → ???)

Irish courts – judicial implementation efforts are ongoing

Future Directions?

Time to move beyond piecemeal policies & reactive legislative interventions

A strategic reform agenda – set access to environmental justice in context

Future Directions?

A new vision of environmental governance in Ireland

Robust policies and strong environmental leadership

Raise profile of environmental protection issues

Future Directions?

Innovative ways of providing a 'voice' for the environment + credible <u>environmental oversight</u>

Access to justice:

How best to fund environmental litigation in the <u>public interest</u>?

Role of <u>technical expertise</u> to assist the courts in environmental cases?

What lies ahead?

Mapping the Future of Environmental Justice

A moving target

Will we see a significant increase in environmental litigation?

What is environmental litigation seeking to achieve?

Are there other means of achieving these ends?

Research Project

Mapping the Future of Environmental Justice

Faculty of Law, UCC

Identify key issues &

consider potential means of improving access to environmental justice in Ireland

IRISH RESEARCH COUNCIL
An Chomhairle um Thaighde in Éirinn

Mapping the Future of Environmental Justice Project

International Round-table discussion (February 2013)

Working paper – in preparation

Research visit to Sweden – focus on specialist environmental courts (April 2013)

Website – to follow

environmentaljustice.ie

Twitter – @EnvJusticeUCC