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Case Summary posted by the Task Force on Access to Justice

European Union: The European Commission vs. Ireland (European Union), C-427/07

<i>1. Key issue</i>	Review procedure and costs (art. 6, 9.2, 9.4) – The ECJ found that the EIA for a private road development damaging a coastal wetland was in compliance with EU Directive 85/337/EEC. However, on the requirement that the procedures must not be prohibitively expensive, the court found that mere judicial discretion to decline to order the unsuccessful party to pay the costs of the procedure cannot be regarded as valid implementation of the directive.
<i>2. Country/Region</i>	European Union
<i>3. Court/body</i>	European Court of Justice
<i>4. Date of judgment /decision</i>	2009-07-16
<i>5. Internal reference</i>	C-427/07 (Celex 62007J0427)
<i>6. Articles of the Aarhus Convention</i>	Art. 2, paras. 4 and 5; art. 6, para. 1(b); art. 9, paras. 2, 4 and 5
<i>7. Key words</i>	Environmental impact assessment; EIA; construction of roads; infrastructural project; public; public concerned; public participation; access to justice; review procedure; timely; costs; information.
<i>8. Case summary</i>	<p>The European Commission brought an action against Ireland for failing to fulfil certain obligations under Directives 85/337/EEC and 2003/35/EC. The Commission's application was based on two complaints: first, that a private road development damaging a coastal wetland at Commogue Marsh, County Cork, had not been subject to an environmental impact assessment (EIA); second, that Ireland had failed to adopt the necessary regulations to transpose a number of EC law provisions implementing the Aarhus Convention's requirements concerning access to justice, including a demand to inform the public about their rights in that regard.</p> <p>In relation to the first complaint, the ECJ found that the Irish legislation, by subjecting private road construction developments to EIA only if they form part of other developments coming within the scope of Directive 85/337/EEC (as amended), meant that a private road scheme progressed in isolation could avoid an EIA, even if the scheme was likely to have a significant effect on the environment. Thus, the first complaint against Ireland was upheld.</p> <p>The second complaint raised a number of issues concerning the alleged failure to transpose certain provisions, without any criticism of the quality of the transposition. To some extent, Ireland conceded that it still had to adopt and notify certain measures in relation to full transposition of the provisions in question.</p> <p>First, the ECJ stated that the failure to reproduce express definitions of "public" and "public concerned" in national legislation could not lead it to conclude that Ireland had failed to fulfil its transposition obligations. The Commission had to establish in what way the public does not have the rights which it is deemed to enjoy under the directive.</p>

The ECJ also found that the fact that Irish legislation gives rights to the public with a "substantial interest", instead of "sufficient interest" according to Directive 2003/35, does not by itself constitute a failure in transposition. On the contrary, by adopting provisions under which the right of access to justice depends directly on the applicant's interest, Ireland had transposed the requirement that the members of the public concerned should have such a right. The ECJ also noted that, due to the manner in which the Commission had delimited its action, there was no need to ascertain whether the criterion of substantial interest as applied and interpreted by the Irish courts corresponds to the sufficient interest referred to in Directive 2003/35, as that would call into question the quality of the transposition having regard, in particular, to the competence of the Member States to determine what constitutes a sufficient interest consistently with the objective which the directive pursues.

Moreover, the Court noted that legislative procedures for judicial review in relation to planning in Ireland constituted a transposition of the requirements for access to a review procedure, inasmuch as the applicant is able to challenge the substantive or procedural legality of such acts, decisions or omissions. However, because the Commission had not alleged incorrect transposition of those provisions, the ECJ was not required to examine the extent of the review actually carried out in the context of judicial review in Ireland.

The Court also dismissed the Commission's argument that the national procedure did not meet the requirement for timeliness, as the Irish courts must determine applications as "expeditiously as possible".

However, on the requirement that the procedures must not be prohibitively expensive, the ECJ found that mere judicial discretion to decline to order the unsuccessful party to pay the costs of the procedure cannot be regarded as valid implementation of the directive.

Finally, the Court found that Ireland had not fulfilled its obligation to inform the public about access to judicial review procedures as the mere availability on the internet of rules and decisions cannot be regarded as ensuring, in a sufficiently clear and precise manner, that the public concerned is in a position to be aware of its rights on access to justice in environmental matters.

9. <i>Link addresses</i>	http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c-427/07&td=ALL http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/EUROPEAN_UNION/ECvIreland427/ECvIrelandC427_07Ruling.pdf
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