

I have no specific comment to make on the Committee's draft findings in relation to the European Community - other than to welcome their findings in relation to locus standi in general and to hope that the European courts afford them due consideration. In relation to the case taken by WWF-UK, we particularly welcome the following statement in the draft findings:

" ... the Committee considers with regret that the EU Courts, despite the entry into force of the Convention, did not account for the fact that the Convention had entered into force and whether that should make a difference in its interpretation and application of TEC article 234".

On another note (C33), the Committee may be interested to see the press notices below.

#### Environment: Commission takes UK to court over excessive cost of challenging decisions

The European Commission is taking the UK to the EU Court of Justice over the high cost of challenges of decisions on the environment. Under EU law, the possibility of challenging decisions affecting the environment should be fair, equitable, timely and not prohibitively expensive. The Commission is concerned that the potentially high cost of losing legal actions is preventing NGOs and individuals in the UK from bringing cases in the first place. On the recommendation of Environment Commissioner Janez Potocnik, the Commission is therefore referring the case to the EU Court of Justice.

#### High costs preventing legal challenges

Under European law, citizens have a right to know about the impact of industrial pollution, and about the potential impact projects may have on the environment, and a right to challenge such decisions. [Directive 2003/35/EC](#) on public participation in the drawing up of plans relating to the environment explicitly states that such challenges must not be prohibitively expensive. The Commission is concerned that in the United Kingdom legal proceedings can prove too costly, and that the potential financial consequences of losing such challenges prevents NGOs and individuals from bringing cases against public bodies.

In the United Kingdom, "protective costs orders" can be granted to limit the amount a public authority can recover from a challenger at the end of the case. But the Commission is concerned about the lack of clear rules for granting such orders, and at their discretionary and unpredictable nature, which is not in line with the requirements of the Directive. Although such orders are now granted more frequently than in the past, it is still the norm in UK litigation for the losing party to pay the winning party's costs.

The Commission is also concerned that under UK law applicants for interim measures and injunctions suspending work on projects have to provide a "cross undertaking in damages", promising to pay damages if the injunction turns out to be unfounded. This puts applications for such orders beyond the reach of most applicants, although such orders can be essential to protect sites from environmental damage whilst litigation is ongoing.

In reply to previous letters from the Commission (see [IP/10/312](#)), UK authorities had agreed to amend their legislation, and new draft rules have been discussed with the Commission on numerous occasions. But as a year has passed since the reasoned opinion was sent and no legislative provisions are in place, the case is being referred to the Court.

#### Access to environmental information

Several pieces of environmental legislation, including the [Environmental Impact Assessment \(EIA\) Directive](#) and the [integrated pollution prevention and control \(IPPC\) Directive](#), aim to boost public awareness of environmental matters in Member States and ensure increased transparency. The measures – which are also necessary under the Aarhus Convention on Access to Justice, which has also been signed by the UK – have been transposed to UK legislation, but the current financial obstacles have led the Commission to conclude that the laws covering this area of the Directive have not been fully transposed and are not being properly applied in practice.

Our press release:

### **EUROPEAN COMMISSION REFERS UK TO EUROPEAN COURT OVER ACCESS TO ENVIRONMENTAL JUSTICE**

#### *PRESS RELEASE - FOR IMMEDIATE RELEASE*

The Coalition for Access to Justice for the Environment (**CAJE**) [1] has today welcomed the European Commission's decision to refer the UK Government to the European Court of Justice for failing to provide affordable access to justice in environmental cases, as required under EU law.

The referral is in response to a complaint lodged by CAJE in 2005 about the high costs of legal action taken to protect the environment [2]. The Commission's decision will intensify the pressure on the Government to address the prohibitively high costs of taking legal action in environmental cases in the wake of controversial domestic reforms on civil litigation funding.

Environmental groups have long argued that current court rules make access to justice unaffordable for people and groups who want to use the law to protect the environment [3]. Current rules mean that environmental campaigners who take their case to the Courts can expect to be ordered to pay tens of thousands of pounds to the other side - usually the Government - if they lose.

The European Commission's own research [4] has shown that the UK has one of the worst cost regimes for access to justice in environmental matters, and that the current costs rules represent a "significant obstacle to access to justice in the United Kingdom".

The Commission's move comes just as the Government is responding to a year-long review on civil litigation funding conducted by Lord Justice Jackson, which recommended changes to the legal system in England and Wales to improve access to justice in environmental protection cases [5]. The Jackson Report recommends that claimants in all judicial review cases should not normally be at risk of having to pay the other side's costs [6].

A committee of the United Nations also recently held the UK to be in breach of its international obligations to ensure that access to justice in environmental matters is "not prohibitively expensive." [7].

Carol Day, solicitor at WWF-UK said: "The UK has refused to tackle the problem of costs in the face of an overwhelming body of evidence. The Commission's decision to refer the UK to the European Courts puts the Government under the spotlight to change the costs rules so that people and environmental organisations can go to court to protect the environment."

Debbie Tripley, Chief Executive of the Environmental Law Foundation, an organisation that advises communities on environmental issues, said: "E.L.F. research makes absolutely clear that environmental justice is too expensive in this country. More than a third of our clients cite cost as a barrier to bringing a case to a successful conclusion."

Friends of the Earth's Head of Legal Gita Parihar said:

"Legal costs for environmental cases have been short-changing British people. The environment we all depend on is our most precious resource – everyone has the right to try and protect it."

"The Government must make challenges more affordable so that ordinary people have access to justice in environmental cases."

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