

To: Aarhus Compliance, Fiona Marshall <email address redacted>
From: Pat Swords <email address redacted>
Date: 08/12/2016 10:03PM
Cc: David Malone, Neil van Dokkum <email address redacted>
Subject: Swords v MCENR & Ors. [Judgment of Mr Justice Keane 12th August 2016]

Dear Fiona

Please find attached today's judgement in the High Court in relation to the above, which is part of Communication ACCC/C/2014/112, and is for consideration by yourself and the Compliance Committee. The matter is back in the High Court on the 7th October for mention with respect to any applications.

I have included below the listings of the Court proceedings, which document the Court appearances. In the first Judicial Review case these amounted to three days in front of Justice Kearns and in the Plenary case amounting to nearly five days in front of Justice Keane. It is also today, the first day in which the Irish Court's Service produced any written judgement on the case, exactly three years and nine months since leave was first granted on the 12th November 2012. As yourselves in the Aarhus Convention Compliance committee are already aware, not least from other ongoing Irish communications, there are huge and unacceptable expenditures required in relation to Irish High Court proceedings of this kind and nature. Indeed, I can myself now personally attest to these matters, which are a completely unacceptable affront to the most basic rights any democracy should aspire to.

I am sure yourselves will find not just the above, but also aspects of the judgement of concern with respect to the provisions of access to justice and adherence to the commitments both the EU and Ireland gave when ratifying the Convention. I would also like to point out the following also as a matter of record:

- It was repeatedly summarised in Court in March 2014 by the State's senior consul Eoghan Fitsimons, a former Attorney General, that "if the State so choose to breach its International Treaty arrangements, the citizen could complain about it, but that is all the citizen could do". In justifying this position he repeatedly made it clear that neither Article 9(3) nor Article 7 of the Convention had any direct effect in the State and were therefore of no relevance to the Court.
- The fact that Justice Keane took seventeen months to write up his judgement can no doubt be used to 'explain', as to why he ignored the extensive pleadings from my Counsel as to how the two motions, time delay and protective costs, were intrinsically linked. In taking such a public interest case, one has no entitlement to legal certainty in the successful outcome of the case, but one has to have certainty that proceedings are fair, equitable, timely and not prohibitively expensive. Until one has such surety in cost protection, one's rights to take such a case do not exist. Hence, how can such temporal limits be applicable, until such rights are also applicable.
- Furthermore, with respect to the judgement's conclusion on costs, both Court cases focused almost entirely on Article 7 of the Convention, matters related to Strategic Environmental Assessment were barely mentioned. As such then the relevant access to justice provisions emanate from Article 9(3) of the Convention, which had no relevant transposition in Irish law until a very limited format was adopted through Environment Miscellaneous Provisions Act of August 2011. No cost protection provisions existed in 2010 with respect Article 7 of the Convention and they still do not exist today, as none were ever adopted in this or any other

legislative instrument. The State's senior consul was very clear in his pleadings to the High Court that no such cost protection provisions existed in law and neither should they be granted.

- Finally, I would just like to reiterate the issue I raised at the June Compliance Committee meeting on C/112. When one as a citizen engages in such a legal case, one expects to be treated fairly and with a degree of professionalism. The State's senior consul repeatedly slandered me in Court stating that the reason why I was taking the case, was that I was financially active in biomass projects and was seeking to overturn the NREAP, so that it could be reconstituted with a greater emphasis in biomass. Nothing could be further than the truth, as had latter to be confirmed to the Court based on my grounding affidavit of November 2012. I'm an engineering consultant and have no financial engagement with biomass projects. However, with regard to this type of slander, I can draw some comfort from the fact that I was in good company, as it was repeatedly made clear to the Court that the Compliance Committee and its findings and recommendations were all nonsense.

Relevant Court Lists

SWORDS -V- DEPARTMENT OF COMMUNICATIONS ENERGY AND NATURAL 2012/920 JR

Date	List	Position	Result	Note
12/11/2012	JUDICIAL REVIEW / EX PARTE	0007	Order	
15/01/2013	JUDICIAL REVIEW / FOR MENTION	0011	TRA	
12/03/2013	JUDICIAL REVIEW / FOR MENTION	0003	Transferred	13/3
12/03/2013	JUDICIAL REVIEW / FOR MENTION	0001	TRA	FH13/3
11/04/2013	JUDICIAL REVIEW / FOR HEARING	0003	Transferred	
11/04/2013	JUDICIAL REVIEW / FOR HEARING	0004	TRA	
12/04/2013	ADV MR JUSTICE KEARNS	0009	Adjourned - no details available	
12/04/2013	ADV MR JUSTICE KEARNS	0010	Adjourned - no details available	
15/04/2013	ADV MR JUSTICE KEARNS	0009	Adjourned - no details available	FM
15/04/2013	ADV MR JUSTICE KEARNS	0010	Adjourned - no details available	FM
16/04/2013	ADV MR JUSTICE KEARNS	0006	Order	FH1D
16/04/2013	ADV MR JUSTICE KEARNS	0007	Strike Out	

SWORDS -V- MINISTER FOR COMMUNICATIONS ENERGY AND NATURAL & ORS 2013/4122 P

Date	List	Position	Result	Note
04/06/2013	NON JURY / FOR MENTION	0012	Adjourned - no details available	
18/06/2013	NON JURY / FOR MENTION	0002	Adjourned - no details available	
16/07/2013	NON JURY / FOR MENTION	0004	Adjourned	
08/10/2013	NON JURY / FOR MENTION	0009	Adjourned - no details available	
31/10/2013	NON JURY / FOR MENTION	0000	Adjourned	
19/11/2013	NON JURY / FOR MENTION	0004	NOD	
07/04/2014	Chancery Court 5 / Motions	0058	TRA	
06/05/2014	Chancery Court 5 / Motions	0091	Adjourned - no details available	12/5
06/05/2014	Chancery Court 5 / For mention	0008	Adjourned - no details available	
	Chancery 5 Uncertified	0617	XX	
04/06/2014	Chancery Court 5 / For mention	0005	TRA	
04/06/2014	Chancery Court 5 / Motions	0009	TRA	
15/07/2014	Chancery Court 5 / For mention	0000	Adjourned - no details available	
06/11/2014	Chancery Court 5 / FOR HEARING	0020	Adjourned - no details available	11/11
03/03/2015	Chancery Court 5 / FOR HEARING	0015	TRA	
03/03/2015	ADV MR JUSTICE KEANE	0028	Adjourned - no details available	day 1
04/03/2015	ADV MR JUSTICE KEANE	0037	Adjourned - no details available	
03/03/2015	Chancery Court 5 / Motions	0000	TRA	
03/03/2015	ADV MR JUSTICE KEANE	0029	Adjourned - no details available	
04/03/2015	ADV MR JUSTICE KEANE	0038	Adjourned - no details available	
05/03/2015	ADV MR JUSTICE KEANE	0036	Adjourned - no details available	nb
05/03/2015	ADV MR JUSTICE KEANE	0037	Adjourned - no details available	

06/03/2015	ADV MR JUSTICE KEANE	0070	Adjourned - no details available	
06/03/2015	ADV MR JUSTICE KEANE	0071	Adjourned - no details available	
12/03/2015	ADV MR JUSTICE KEANE	0031	XX	
12/03/2015	ADV MR JUSTICE KEANE	0032	RES	
	RESERVED JUDGMENT / MR JUSTICE KEANE	0115	XX	
13/05/2015	ADV MR JUSTICE KEANE	0034	Adjourned - no details available	S.46.3
29/07/2015	ADV MR JUSTICE KEANE	0037	Adjourned - no details available	S46.4
13/10/2015	ADV MR JUSTICE KEANE	0028	Adjourned - no details available	JT
16/12/2015	ADV MR JUSTICE KEANE	0032	Adjourned - no details available	JT
17/06/2016	ADV MR JUSTICE KEANE	0041	Adjourned - no details available	JMT
12/08/2016	ADV MR JUSTICE KEANE	0002	XX	JUDGMT

Regards

Pat