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Case Summary posted by the Task Force on Access to Justice

R (on the application of Sonia Burkett) v London Borough of Hammersmith and Fulham [2004] EWCA Civ 1342

1. Key issue	Costs – The first case in which the Court of Appeal expressed concern about the high legal costs incurred by claimants in environmental litigation. The Court remarked that this may be a potent factor in deterring litigation directed towards protecting the environment from harm and, therefore, questioned the UK's compliance with the Aarhus Convention, to which it is a signatory.
2. Country/Region	UK
3. Court/body	Court of Appeal
4. Date of judgment /decision	15 th October 2004
5. Internal reference	EWCA Civ 1342, see paras 74-80
6. Articles of the Aarhus Convention	Article 9(4)
7. Key words	Prohibitive costs
8. Case summary	<p>This is the first case in which a UK Court (the Court of Appeal) considered the application of the Aarhus Convention to the law and procedure in England and Wales.</p> <p>The Court confirmed that the UK was a signatory to the Convention and that each signatory was required to have in place judicial procedures allowing members of the public to challenge acts of public authorities which contravene laws relating to the environment; and that those procedures should be "<i>fair, equitable, timely and not prohibitively expensive</i>" (Art. 9(4)).</p> <p>The Court then referred to a recent study known as the "<i>Environmental Justice Project</i>", which noted a widespread concern that the current costs regime "<i>precludes compliance with the Aarhus Convention</i>". The Court remarked that "<i>... if the figures revealed by this case were in any sense typical of the costs reasonably incurred in litigating such cases up to the highest level, very serious questions would be raised as to the possibility of ever living up to the Aarhus ideals within our present legal system. And if these costs were upheld on detailed assessment, the outcome would cast serious doubts on the cost effectiveness of the courts as a means of resolving environmental disputes.</i>"</p> <p>The Court of Appeal recommended a broader study of the issue, with the support of the relevant government departments, the professions and the Legal Services Commission. It placed particular on whether an unprotected claimant in an environmental case, if unsuccessful in a public interest challenge, may have to pay very heavy legal costs to the successful defendant, and that this may be a potent factor in deterring litigation directed towards protecting the environment from harm.</p>

9. <i>address</i>	<i>Link</i> http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/UNITED_KINGDOM/Burkett/BurkettJudgment.pdf
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