



Intervention:

Speaker: Attracta Uí Bhroin

Timing: Thursday, 29 October,

Sub-element 8 Promotion of the Convention's principles in the international trade negotiations

Speaker: Attracta Uí Bhroin

Agenda Item: Part III Wednesday, 28 October, 3 –5.30 p.m

3. Substantive issues

(a) Access to justice

Item III. The role of public interest litigation in environmental matters (3.40-5.20 p.m.) –

Chair, Honourable Delegates,

I am privileged to be making this further intervention for the EEB, as one of its Vice Presidents, and also for European EcoForum.

While strategic litigation is motivated to address systemic issues, and drive major changes and improvements for the wider public good, regrettably we are seeing in places that - rather than stimulating a progressive approach to environmental policy and legislation - we see a negative backlash and a regression flow from it. Challenges are treated in some cases like an affront to what seems to be a desire for, and expectation of, an inviolate autonomy, rather than a fundamental and essential component of our rule of law, and the need to be able to hold public authorities to account in a democracy. The progression envisaged under the Aarhus Convention and the better expression of rights and obligations across environmental decisions is not only being compromised, but has become itself a target.

I wish to touch on three examples which I am saddened to say we are seeing in Ireland in response to strategic litigation, and I hope we can engage constructively to address.

The first example is of a specific legislative response to recent litigation in Climate Case Ireland & the experience of climate litigation elsewhere. In bringing forward a new climate bill we see clearly a dysfunctional response, with a systematic effort in the legislative drafting to make it un-justiciable, or very difficult to challenge. No such end is ever possible of course, and the lack of clarity and issue is more likely to stimulate litigation and add complexity to it, rather than evade it. A more sensible approach would instead to have endeavoured to reduce the risk of challenge by providing for robust

legislation in which the public can feel confident that these crucial matters are being addressed and the necessary check and balances, specifications and accountabilities etc. are provided for.

The second is in an over-arching reaction to regress on access to justice overall. Having come through a period where our existing access to justice legislation has been clarified by the courts, it is now even objectively speaking, very counter-productive to stir the pot once more and unleash a Pandora's box of trouble and invariable litigation which will flow with the truly draconian proposals which were flagged in a heads of bill previously. It will do no service to anyone. The uncertainty which will flow from this is the last thing business, economies and our society as a whole need following the impacts of the Covid-pandemic, and the need to build back better.

The third example is to highlight a most alarming development to erode the entire fabric of environmental democracy by erecting barriers at every level to exclude and disenfranchise the public from involvement in environmental decision making at every instance. In Forestry in Ireland we are seeing cost and other practical barriers being erected to withhold decisions from the public. If you can't access the decision, and/or are being frustrated in doing so, that is in my view the most egregious fundamental barrier in terms of access to justice.

But even more insidious is the systematic effort to push the public out of the entire decision-making system. In the last weeks a veritable paywall has been erected with the stroke of pen in secondary legislation. There are charges to see the application documents, to comment on them, to see the decision if you didn't comment, and to appeal the decision. If you are excluded from knowing what is proposed and from participation, not only does it become more difficult to be able to understand the need for, and to be able to access justice, but your very appetite and appreciation of what is at stake is being deliberately obscured. It is a trespass against every pillar of the convention. *The accessibility of environmental information and proactive dissemination obligations are offended in terms of the intersection of those obligations with the public participation elements of Article 6. The public participation is compromised, and access to justice is made hostage to the whole travesty of the other pillars.*

We must all seek to halt such ill-conceived directions of travel in our law making.

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