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From: Brendan Heneghan [REDACTED]
Sent: Monday, September 5, 2022 6:39 PM
To: ECE-Aarhus-Compliance <aarhus.compliance@un.org>
Subject: Communication reference PRE/ACCC/C/2022/193

Committee's 76th Meeting, Geneva 13-16 September 2022

This is my submission as to why my above referenced communication should be held to be preliminarily admissible, having regard to paragraphs 19 to 21 of Decision I/7 (Review of Compliance).

While it is always possible to initiate court action in Ireland on pretty well any matter, I do not believe that a court action by way of judicial review related to the decision of National Transport Authority to seek permission for their Clongriffin Scheme constitutes an "available domestic remedy" of which you are required to take account. If I were to take court action i the remedy of judicial review is usually invoked in relation to a body exercising a "judicial type function" where rights are at stake and the body is legally required to act fairly and to consider all relevant factors. This is not manifestly the case with the body and the decision I challenge ii the courts would routinely review decisions of the Irish planning board after they have been made and would possibly rule that any challenge to the decision that I am impugning should be made in such a review iii as my challenge at this stage relates solely to the application of the Aarhus principles, a court would likely want to defer to the views of the Aarhus governing body, as it tends to do for example for matters concerning EU institutions; however there is so far as I am aware no referral mechanism. It would also be my position that the above would entail high cost.

I was in the past a solicitor and partner in a large Irish law firm and my above submission is based on my own general familiarity with legal process and informal discussions with a number of legal colleagues.

Further the decision I challenge is part of a process for 16 bus corridors which commenced as long ago as 2018. While the planning application for the Clongriffin case to which I refer is supposedly due for decision by 5 October 2022, there seems to be no reality to this date based on a perusal of relevant dates for recently decided applications. I believe therefore that the availability of any remedy can properly be said to be "unreasonably prolonged".

I would submit that the application for permission for the Clongriffin Scheme is a "decision" within the meaning of Article 6 of the Convention. Many many options were available to National Transport Authority before they settled on the detail of what they, a public authority, were going to apply for; in the end they decided to look for permission for the specific plan submitted.

I would finally submit that this is an ideal opportunity for the Committee to clarify how decision making on important issues during public health emergencies should be conducted. In this case Stage 2 happened as the crisis was developing and Stage 3 was at a point well after your Kazakhstan Advice of 1 July 2020 was promulgated and at a time of significant problems in Ireland.

Brendan Heneghan

Sent from my iPad