Friends of the Irish Environment Case C-470/19

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Text

(Reference for a preliminary ruling – Aarhus Convention – Directive 2003/4/EC – Right of access to environmental information held by public authorities – Article 2, point 2 – Notion of 'public authority' – Bodies or institutions when acting in a judicial or legislative capacity – Information in the file of closed court proceedings)

JUDGMENT OF THE COURT (First Chamber)

15 April 2021 * Language of the case: English.

In Case C#470/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 21 May 2019, received at the Court on 17 June 2019, in the proceedings

Friends of the Irish Environment Ltd

v

Commissioner for Environmental Information,

intervening party:

Courts Service of Ireland,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber (Rapporteur), R. Silva de Lapuerta, Vice-President of the Court, and M. Ilešič, acting as Judges of the First Chamber, M. Safjan and N. Jääskinen, Judges,

Advocate General: M. Bobek,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 16 September 2020,

after considering the observations submitted on behalf of:

– Friends of the Irish Environment Ltd, by J. Kenny, Barrister-at-Law, O. Clarke and A. Jackson, Solicitors, and J. Healy, Senior Counsel,

– the Commissioner for Environmental Information, by F. Valentine, Barrister-at-Law, E. Egan, Senior Counsel, and R. Minch, Solicitor,

– the Courts Service of Ireland, by C. Donnelly, Barrister-at-Law, B. Murray and M. Collins, Senior Counsel, and M. Costelloe and H. Gibbons, Solicitors,

– Ireland, by M. Browne, G. Hodge and A. Joyce, acting as Agents, and by A. Carroll, Barrister-at-Law, and C. Toland, Senior Counsel,

– the Polish Government, by B. Majczyna and D. Krawczyk, acting as Agents,

– the European Commission, by G. Gattinara and C. Cunniffe, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 December 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2, point 2, of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2003 L 41, p. 26).

2 The request has been made in proceedings between Friends of the Irish Environment Ltd and the Commissioner for Environmental Information (Ireland) concerning access to the file of the court proceedings in a closed case.

Legal context

International law

3 The Convention on Access to Information , Public Participation in Decision-making and Access to Justice in Environmental Matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1 ; 'the Aarhus Convention'), states, in Article 2(2):

'"Public authority" means:

(a) Government at national, regional and other level;

(b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;

(c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above;

…

This definition does not include bodies or institutions acting in a judicial or legislative capacity.'

4 Article 4(1) of the Aarhus Convention provides that, subject to certain reservations, each party to that Convention must ensure that public authorities make available to the public, within the framework of national legislation, environmental information requested of them.

5 Article 4(4) of the Convention states:

'A request for environmental information may be refused if the disclosure would adversely affect:

…

(c) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;

…

The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.'

European Union law

6 Recitals 1, 5, 11 and 16 of Directive 2003/4 state:

'(1) Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.

…

(5) … Provisions of Community law must be consistent with [the Aarhus] Convention with a view to its conclusion by the European Community.

…

(11) To take account of the principle in Article 6 of the Treaty, that environmental protection requirements should be integrated into the definition and implementation of Community policies and activities, the definition of public authorities should be expanded so as to encompass government or other public administration at national, regional or local level whether or not they have specific responsibilities for the environment. The definition should likewise be expanded to include other persons or bodies performing public administrative functions in relation to the environment under national law, as well as other persons or bodies acting under their control and having public responsibilities or functions in relation to the environment.

…

(16) The right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases. Grounds for refusal should be interpreted in a restrictive way, whereby the public interest served by disclosure should be weighed against the interest served by the refusal. …'

7 Under Article 1 of that directive:

'The objectives of this directive are:

(a) to guarantee the right of access to environmental information held by or for public authorities and to set out the basic terms and conditions of, and practical arrangements for, its exercise; and

(b) to ensure that, as a matter of course, environmental information is progressively made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination to the public of environmental information. To this end the use, in particular, of computer telecommunication and/or electronic technology, where available, shall be promoted.'

8 Article 2, point 2, of that directive is worded as follows:

'For the purposes of this directive:

…

(2) "Public authority" shall mean:

(a) government or other public administration, including public advisory bodies, at national, regional or local level;

(b) any natural or legal person performing public administrative functions under national law, including specific duties, activities or services in relation to the environment; and

(c) any natural or legal person having public responsibilities or functions, or providing public services, relating to the environment under the control of a body or person falling within (a) or (b).

Member States may provide that this definition shall not include bodies or institutions when acting in a judicial or legislative capacity. If their constitutional provisions at the date of adoption of this directive make no provision for a review procedure within the meaning of Article 6, Member States may exclude those bodies or institutions from that definition.'

9 Article 3(1) of that directive provides:

'Member States shall ensure that public authorities are required, in accordance with the provisions of this directive, to make available environmental information held by or for them to any applicant at his request and without his having to state an interest.'

10 Following Article 4(1) of Directive 2003/4 , which allows Member States to provide for a request for environmental information to be refused in certain situations, Article 4(2) of the directive also offers Member States that possibility in the following terms:

'Member States may provide for a request for environmental information to be refused if disclosure of the information would adversely affect:

…

(c) the course of justice, the ability of any person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;

…

The grounds for refusal mentioned in paragraphs 1 and 2 shall be interpreted in a restrictive way, taking into account for the particular case the public interest served by disclosure. In every particular case, the public interest served by disclosure shall be weighed against the interest served by the refusal. Member States may not, by virtue of paragraph 2(a), (d), (f), (g) and (h), provide for a request to be refused where the request relates to information on emissions into the environment.

…'

11 Article 6 of Directive 2003/4 , entitled 'Access to justice', requires Member States to ensure that any applicant for environmental information who considers that his request for information has been ignored, wrongfully refused, inadequately answered or otherwise not dealt with in accordance with the provisions of the directive can seek administrative or judicial review of the acts or omissions of the public authority concerned.

Irish law

12 The European Communities (Access to Information on the Environment) Regulations 2007-2018 ('the Irish national rules') transpose Directive 2003/4 into Irish law.

13 In essence, Regulation 3(1) of the Irish national rules transposes Article 2, point 2, of that directive.

14 Under Regulation 3(2) of the Irish national rules, bodies 'acting in a judicial or legislative capacity' are excluded from the definition of public authorities.

The dispute in the main proceedings and the question referred for a preliminary ruling

15 On 25 February 2016, the High Court (Ireland) delivered its judgment in the case of X & Y v. An Bord Pleanála , against which no appeal was lodged. That case concerned a challenge to a building permit issued for the construction of wind turbines in County Cork (Ireland).

16 On 9 July 2016, Friends of the Irish Environment wrote to the Central Office of the High Court (Ireland), the management of which is entrusted to a clerk appointed by the Courts Service of Ireland ('the Courts Service'), to request copies of the pleadings, affidavits, documents and written observations lodged by all the parties and the final orders in that case. That request was made under the Aarhus Convention and Directive 2003/4 , which was transposed into national law by the Irish national rules.

17 By decision of 13 July 2016, the Courts Service rejected the request made by the applicant in the main proceedings. That decision was based, in particular, on the fact that the Irish national rules did not cover either legal proceedings or documents produced in such proceedings.

18 On 18 July 2016, the applicant requested that the Courts Service review its decision. Having received no reply, on 15 September 2016 it brought an action before the Commissioner for Environmental Information.

19 On 19 June 2017, the Commissioner for Environmental Information wrote to the applicant in the main proceedings, stating that a decision had already been delivered in a similar case, Case CEI/15/0008 An Taisce & The Courts Service . While pointing out that each case is examined on the merits, it asked the applicant in the main proceedings to inform it of any reasons which would justify a different decision as regards its application for access to the judicial file in the case of X & Y v. An Bord Pleanála .

20 In its reply of 26 July 2017, the applicant in the main proceedings stated that it wished to adopt the grounds put forward in its action and those put forward by An Taisce in the first case.

21 By decision of 31 July 2017, the Commissioner for Environmental Information dismissed that action. It took the view that the Courts Service held the cases requested in the exercise of judicial powers on behalf of the judicial authority. It also held that the Courts Service, when exercising such powers, was not a 'public authority' within the meaning of Article 3(1) of the Irish national rules.

22 The applicant in the main proceedings challenged that decision before the High Court, claiming, in essence, that the derogation for bodies or institutions 'acting in the exercise of judicial powers', provided for in Article 2, point 2, of Directive 2003/4 and implemented in Article 3(2) of the Irish national rules, does not cover the files in closed cases.

23 Harbouring doubts as to the interpretation of Article 2, point 2, of Directive 2003/4 , the High Court decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Is control of access to court records relating to proceedings in which final judgment has been delivered, the period for an appeal has expired and no appeal or further application is pending, but further applications in particular circumstances are possible, an exercise of "judicial capacity" within the meaning of [Article 2, point 2,] of [Directive 2003/4]?'

Consideration of the question referred

24 By its question, the referring court asks, in essence, whether the first sentence of the second subparagraph of Article 2, point 2, of Directive 2003/4 must be interpreted as meaning that the option which it allows Member States not to regard as 'public authorities', within the meaning of that directive, 'bodies or institutions acting in a judicial capacity' may be exercised only in so far as information contained in files relating to pending court proceedings is concerned, to the exclusion of closed proceedings.

25 In that regard, it is appropriate to note that it is necessary, above all, to determine whether courts and natural or legal persons under their control constitute 'public authorities' within the meaning of Article 2, point 2, of Directive 2003/4 and, accordingly, fall within the scope of that directive.

26 As a preliminary point, it must be recalled that, by becoming a party to the Aarhus Convention, the European Union undertook to ensure, within the scope of EU law, a general principle of access to environmental information

held by public authorities (judgment of 14 February 2012, Flachglas Torgau , C#204/09, EU:C:2012:71 , paragraph 30 and the case-law cited).

27 By adopting Directive 2003/4 , the EU legislature intended to ensure the compatibility of EU law with that Convention in view of its conclusion by the Community by providing for a general scheme to ensure that any natural or legal person in a Member State has a right of access to environmental information held by or on behalf of the public authorities, without that person having to show an interest (judgment of 14 February 2012, Flachglas Torgau , C#204/09, EU:C:2012:71 , paragraph 31 and the case-law cited).

28 It must also be pointed out that the right of access guaranteed by Directive 2003/4 applies only to the extent that the information requested satisfies the requirements for public access laid down by that directive, which presupposes, inter alia, that the information is 'environmental information' within the meaning of Article 2, point 1, of the directive, a matter which is for the referring court to determine as regards the main proceedings (judgment of 14 February 2012, Flachglas Torgau , C#204/09, EU:C:2012:71 , paragraph 32).

29 Furthermore, it must be borne in mind that, in accordance with settled case-law, the need for the uniform application of EU law and the principle of equality require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, which must take into account the context of that provision and the purpose of the legislation in question (judgment of 20 January 2021, Land Baden-Württemberg (Internal communications) , C#619/19, EU:C:2021:35 , paragraph 34).

30 Those preliminary observations made, it must be noted that, under the definition set out in points (a) and (b) of the first subparagraph of Article 2, point 2, of Directive 2003/4 , 'public authorities' subject, as such, to the obligation to give access to the public to environmental information held by them, are bodies and institutions under the aegis of the 'government or other public administration, including public advisory bodies, at national, regional or local level', and any natural or legal person performing, under national law, 'public administrative functions …, including specific duties, activities or services in relation to the environment'. Under point (c) of the first subparagraph of Article 2, point 2, of that directive, 'public authorities' are also natural or legal persons 'having public responsibilities or functions, or providing public services, relating to the environment under the control of a body or person falling within (a) or (b)'.

31 The purpose of the first sentence of the second subparagraph of Article 2, point 2, of Directive 2003/4 is to enable the Member States, in particular, to lay down rules appropriate to ensure the proper conduct of court proceedings by giving them the option of excluding from the scope of that directive bodies or institutions coming within the definition of 'public authority' set out in the first subparagraph of Article 2, point 2, of that directive when acting 'in the exercise of judicial powers'.

32 Finally, the second sentence of the second subparagraph of Article 2, point 2, of Directive 2003/4 provides that Member States may exclude those bodies or institutions from the definition of 'public authorities' set out in the first subparagraph of Article 2, point 2, if, at the date of adoption of that directive, their constitutional provisions did not provide for a review procedure within the meaning of Article 6 of that directive. The second sentence of the second subparagraph of Article 2, point 2, of Directive 2003/4 , which is intended to govern the specific case of certain national authorities whose decisions could not be reviewed in accordance with the requirements of that directive at the date of its adoption, has neither the purpose nor the effect of limiting the Member States' power to exclude from the scope of that directive bodies or institutions acting in a legislative or judicial capacity, which is, moreover, provided for in the Aarhus Convention itself without restriction (see, to that effect, judgment of 14 February 2012, Flachglas Torgau , C#204/09, EU:C:2012:71 , paragraphs 45 to 48).

33 It follows from Article 2, point 2, of Directive 2003/4 , taken as a whole, that the option available to Member States to exclude from the notion of 'public authority' bodies or institutions acting in a legislative or judicial capacity, provided for in the first sentence of the second subparagraph of Article 2, point 2, of that directive, which must be interpreted in a functional manner (see, by analogy, judgment of 14 February 2012, Flachglas Torgau , C#204/09, EU:C:2012:71 , paragraph 49), can affect only bodies or institutions which correspond to the institutional definition of the notion of 'public authority' set out in the first subparagraph of Article 2, point 2, of that directive. Satisfaction of that definition is an essential prerequisite for the exercise of the power to derogate provided for in the first

sentence of the second subparagraph of Article 2, point 2, of Directive 2003/4 .

34 It is clear from both the Aarhus Convention itself and Directive 2003/4 , the purpose of which is to implement that Convention in EU law, that, by referring to 'public authorities', their authors intended to designate not judicial authorities, in particular courts, but, as the Court has previously held, only administrative authorities since, within States, it is they which are normally required, in the exercise of their functions, to hold environmental information (see, to that effect, judgment of 14 February 2012, Flachglas Torgau , C#204/09, EU:C:2012:71 , paragraph 40).

35 Indeed, the courts are clearly not part of the government or the other public administrations referred to in point (a) of the first subparagraph of Article 2, point 2, of Directive 2003/4 . Nor can they be assimilated to natural or legal persons performing 'public administrative functions …, including specific duties, activities or services in relation to the environment' referred to in point (b) of the first subparagraph of Article 2, point 2, of that directive, which designates the bodies or institutions which, although not forming part of the government or other public administrations referred to in that first provision, perform executive functions related to the environment or assist in the performance of those functions. Point (c) of the first subparagraph of Article 2, point 2, of that directive concerns only persons or bodies acting under the control of one of the bodies or institutions referred to in points (a) and (b) of the first subparagraph of Article 2, point 2, thereof and having public responsibilities or functions relating to the environment, so that it cannot include either courts or, a fortiori, natural or legal persons under their control.

36 That interpretation is supported by the objective pursued by the EU legislature in adopting Directive 2003/4 , read in the light of the Aarhus Convention. As is clear from recital 1 and Article 1 of that directive, the purpose of the directive is to promote increased public access to environmental information and more effective participation by the public in environmental decision-making, with the aim of making better decisions and applying them more effectively and, ultimately, promoting a better environment.

37 Thus, while the implementation of that objective means that the administrative authorities must give public access to environmental information in their possession, in order to give an account of the decisions they take in that field and to connect citizens with the adoption of those decisions, the same is not true of pleadings and other documents adduced in court proceedings on environmental matters, since the EU legislature did not intend to promote public information in judicial matters and public involvement in decision-making in that area.

38 By adopting Directive 2003/4 , the EU legislature took account of the diversity of the existing rules in the Member States concerning public access to information in court files, as attested to by the first sentence of the second subparagraph of Article 2, point 2, and Article 4(2)(c) of that directive, which give Member States, first, the option of excluding from the scope of the directive bodies and institutions corresponding to the definition of 'public authority' which, such as certain independent administrative authorities, may occasionally be called upon to act in the exercise of judicial powers without themselves having the nature of a court (see, by analogy, with regard to a minister required to exercise legislative powers without personally forming part of the legislative, judgment of 14 February 2012, Flachglas Torgau , C#204/09, EU:C:2012:71 , paragraph 49), and, second, the option of derogating from the principle of public access to environmental information held by 'public authorities' when the disclosure could adversely affect 'the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature'.

39 Article 6 of Directive 2003/4 concerns only access to justice for citizens wishing to assert the rights which they derive from the provisions of that directive, guaranteeing them in particular the possibility of challenging any decisions to refuse them access to environmental information.

40 It follows from the foregoing that, in the absence of any express reference to that effect in Directive 2003/4 , courts and natural or legal persons under their control are not 'public authorities' within the meaning of the first subparagraph of Article 2, point 2, of that directive. They do not therefore fall within the scope of that directive and, accordingly, are not subject to the obligation laid down in the directive to provide public access to environmental information in their possession. In those circumstances, it is for the Member States alone to provide, where appropriate, for a right of public access to information contained in court files and to determine the manner in which it may be exercised.

41 Consequently, contrary to the arguments presented before the Court, there is no need either to consider whether the review of access to court files constitutes the exercise of judicial powers, within the meaning of the first sentence of the second subparagraph of Article 2, point 2, of Directive 2003/4 , or to draw a distinction on the basis of whether the files containing the information requested relate to pending or closed proceedings or to proceedings which are likely to be reopened.

42 In that regard, the approach taken by the Court in the judgment of 14 February 2012, Flachglas Torgau (C#204/09, EU:C:2012:71 , paragraphs 54 to 58), cannot lead, by analogy, to a different conclusion since at issue in the case which gave rise to that judgment was access to information held by a 'public authority', within the meaning of the first subparagraph of Article 2, point 2, of Directive 2003/4 . Nor is that the case of the approach taken by the Court in the judgments of 21 September 2010, Sweden and Others v Commission (C#514/07 P, C#528/07 P, C#532/07 P, EU:C:2010:541), and of 18 July 2017, Commission v Breyer (C#213/15 P, EU:C:2017:563), which concerned public access to documents relating to proceedings before the EU Courts, such access being governed by provisions of EU law, the content of which differs materially from those of which the interpretation is at issue in the present proceedings.

43 In the present case, it is apparent from the order for reference that the dispute in the main proceedings concerns a request for access by a non-governmental organisation, Friends of the Irish Environment, to the environmental information contained in the court file relating to closed proceedings, that file being, at the time of that request, held by the Courts Service. According to the observations which it submitted to the Court, that body is responsible for storing, archiving and managing court files, on behalf of and under the supervision of the court concerned. It is therefore for the referring court to ascertain, in the light of the clarifications provided in paragraphs 30 to 40 of the present judgment, whether that body must be regarded as a 'public authority', within the meaning of the first subparagraph of Article 2, point 2, of Directive 2003/4 , in which case access to environmental information contained in the files in its possession would fall within the scope of that directive, or whether, because it has close links with the Irish courts, under the supervision of which it is placed, the view must be taken that it constitutes, like those courts, a judicial authority, which would, on the contrary, remove it from the scope of that directive.

44 In the light of the foregoing, the answer to the question referred is that Article 2, point 2, of Directive 2003/4 must be interpreted as meaning that it does not govern access to environmental information contained in court files, where neither the courts nor the bodies or institutions under their control, which thus have close links with those courts, constitute 'public authorities' within the meaning of that provision and therefore do not fall within the scope of that directive.

Costs

45 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 2, point 2, of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC must be interpreted as meaning that it does not govern access to environmental information contained in court files, where neither the courts nor the bodies or institutions under their control, which thus have close links with those courts, constitute 'public authorities' within the meaning of that provision and therefore do not fall within the scope of that directive.

Bonichot Silva de Lapuerta Ileši#

Safjan Jääskinen

Delivered in open court in Luxembourg on 15 April 2021.

A. Calot Escobar

Registrar

J.-C. Bonichot

President of the First Chamber

High Court (Irlande) - Ireland

Commentary

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