

THE HIGH COURT

[RECORD NO. 2019/169JR]

BETWEEN

FRIENDS OF THE IRISH ENVIRONMENT CLG

APPLICANT

-AND-

THE LEGAL AID BOARD

RESPONDENT

JUDGMENT of Ms. Justice Hyland delivered 9 July 2020

1. In the within proceedings, the Applicant seeks various reliefs challenging a decision of the Respondent that it was not entitled to apply for legal aid since it is a company limited by guarantee and legal persons are excluded from the ambit of the Civil Legal Aid Act 1995 (the "1995 Act"). The Applicant had previously sought legal aid in the context of *Friends of the Irish Environment CLG v. Government of Ireland* [2020] IEHC 225, where it had alleged various breaches of EU environmental law by the Respondent.
2. In its written submissions, and in oral submissions made during the hearing of 30 June and 1 July, the Applicant submitted that legal aid is available under the Act to "persons", that the Interpretation Act 2005 identifies people as covering both natural and legal persons, and that there is no contrary intention in the 1995 Act excluding legal persons from the scope of the Act. The Respondent submitted that an interpretation of the 1995 Act disclosed a contrary intention, in that the Act was only intended to apply to natural persons.
3. One of the arguments raised by the Applicant was that, to the extent possible, the 1995 Act should be interpreted in conformity with the Aarhus Convention, specifically Article 9(4) which requires, inter alia, that remedies should not be prohibitively expensive. Reliance was placed upon the part of the judgment of the CJEU in Case C-470/16, *North East Pylon Pressure Campaign Ltd.*, where the Court held that, where the application of national environmental law is at issue, it is for the national court to give an interpretation of national procedural law which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) and (4) of the Aarhus Convention, so that judicial procedures are not prohibitively expensive.
4. It was argued by the Applicant that access by legal persons, such as the Applicant, to civil legal aid is consistent with the objective of ensuring that judicial procedures are not prohibitively expensive. In response, the Respondent argued that Article 9 of the Aarhus Convention has no bearing on the proper construction of the 1995 Act given that (a) the Aarhus Convention is not directly effective and (b) Ireland has enacted special costs rules for environmental litigation to give effect to the requirements of Article 9 of the Aarhus Convention, being found in Section 50B of the Planning and Development Act 2000, as amended, and Part 2 of the Environment (Miscellaneous) Provisions Act 2011, as amended. The point was also made by the Respondent that the State had not been joined as a party to the proceedings, and that the adequacy of the special costs rules or any

other measures to ensure judicial procedures are not prohibitively expensive was not a matter within the knowledge of the Respondent.

5. To resolve the aspect of the case relating to the application of the Aarhus Convention, it might become necessary to determine whether section 50B and Part 2 or other measures fulfil the requirements of the Aarhus Convention. This is a matter upon which it appears appropriate to obtain the views of Ireland and the Attorney General. Accordingly, I am of the view that it is appropriate that the Attorney General be put on notice of the proceedings, so that he may appear and become a party in respect of the following question:

Is there an obligation under EU law upon the High Court to interpret the 1995 Act so that the references to "person" therein include legal persons, in order to achieve the objective laid down in Article 9(4) of the Aarhus Convention, namely that the judicial procedures referred to in Article 9 should not be prohibitively expensive?

6. Using procedures analogous to those in Order 60 of the RSC, I therefore direct that the party having carriage of the proceedings, being the Applicant, shall serve notice upon the Attorney General, which notice shall consist of (a) a copy of the pleadings (b) a copy of the legal submissions (c) a copy of the books of authority (d) a copy of this ruling. Such notice shall be served no later than close of business on 10 July 2020.
7. It is proposed that the Attorney General deliver written submissions and affidavits (if any) no later than 23 July 2020, that submissions in reply (if any) be delivered by the Applicant and Respondent by 29 July 2020 and that a hearing take place (subject to court availability) on 30 July 2020.
8. The parties, or the Attorney General, have liberty to apply in respect of those dates.