

The Proposed
Environmental Court
and its Implications for the
Irish Planning System

Rory Mulcahy SC
Friday, 10 December 2020
Irish Planning Institute

What is environmental law?

National laws relating to the environment are neither limited to the information or public participation rights guaranteed by the Convention, nor to legislation where the environment is mentioned in the title or heading. Rather, the decisive issue is if **the provision in question somehow relates to the environment**. Thus, also acts and omissions that may contravene provisions on, among other things, **city planning, environmental taxes, control of chemicals or wastes, exploitation of natural resources and pollution from ships** ... regardless of whether the provisions in question are found in planning laws, taxation laws or maritime laws.

*The Aarhus Convention,
An Implementation Guide*

Prings and Prings
*Environmental
Courts and
Tribunals, A Guide
for Policy Makers*
(United Nations Economic
Program 2016)

“

Environmental Courts and Tribunals range from fully developed, independent judicial branch bodies with highly trained staffs and large budgets all the way to simple, underfunded village ECs that handle environmental cases one day a month with rotating judges.

”

Advantages of specialist courts

Increased **expertise**

Improved **access**

Greater **efficiency**

Options for an Environmental Court

Standalone Court

Division of existing Court subject to **separate provisions of law**

Division of existing Court subject to **separate rules of Court and procedures**

A specialist
planning Court is
not a new idea

*Framework for Action on Infrastructure
Development, including Public Private
Partnership*

Department of an Taoiseach, 2000

Public Consultation on Access to Justice
2014

**Program for
Government –
*Our Shared Future***

We will:

Review and reform the judicial review process so that such reforms come into effect upon the establishment of the **Environmental and Planning Law Court**, while always adhering to our EU law obligations under the **Aarhus Convention**.

**Program for
Government –
*Our Shared Future***

It is evident that in areas such as planning law there is a **need for greater specialism** to enable the more efficient management of cases. The costs associated with the Irish legal system, as well as the time involved in cases, are more expensive and take longer than in peer countries and **we will address that.**

Establish a new Planning and Environmental Law Court managed by specialist judges and on the same basis of the existing **Commercial Court model.**

Review of the Administration of Civil Justice Report

“

The recommendations likely to have greatest impact in achieving the matters identified in the Review Group’s terms of reference, in my view, are those dealing with discovery, judicial review and litigation costs.

”

Mr Justice Peter Kelly, 30 October 2020

Review of the Administration of Civil Justice Report

Recommendations for reform of judicial review include:

Substantial **grounds**

Substantial **interest**

Must seek **rectification**

Wasted **costs orders**

**Aarhus
Convention
on Access to
Information,
Public
Participation in
Decision-making
and Access to
Justice in
Environmental
Matters**

Recitals

Recognizing that, in the field of the environment, **improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns**

Concerned that **effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced**

Aarhus Convention Article 9(2)

Each Party shall... ensure that members of the public concerned...

(a) Having a sufficient interest... have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6

Aarhus Convention Article 9(3)

... each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment

Aarhus Convention Article 9(4)

... the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive

Irish Independent
11 May 2018

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**Athenry loses out on Apple's €850m centre
'over three-year delay'**

Investors see planning regime as
'bureaucratic black hole'

”



Legislative interventions

Planning and Development (Strategic
Infrastructure) Act **2006**

Planning (Housing) and Residential
Tenancies Act **2016**

Planning and Development Bill **2019** – Heads
of Bill

Judicial interventions

Strategic Infrastructure Development List in
the High Court, created February 2018

**Commercial Planning and Strategic
Infrastructure Development List** since
October 2020

Case load

An Bord Pleanála Annual Report (2019)

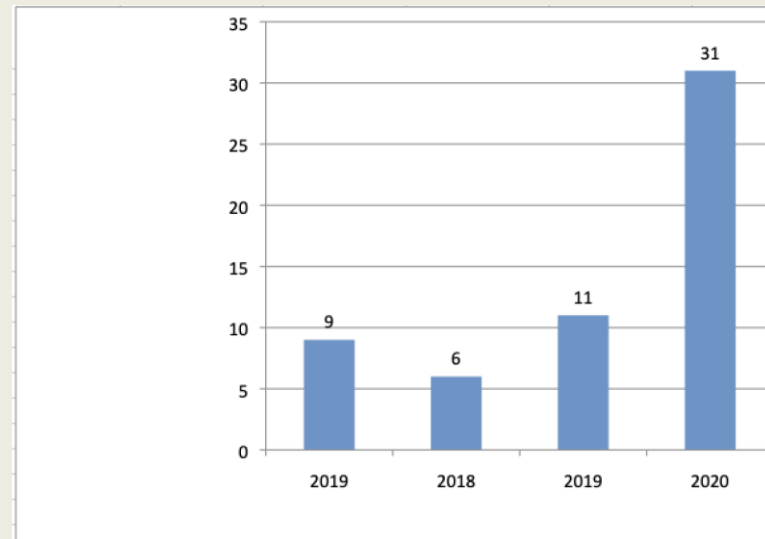
55 cases commenced

2020

87 cases and counting

Judicial reviews

Judgments in cases involving An Bord Pleanála



Approximate numbers

Thank you

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Title of slide

- Content of slide