

BETWEEN:

DAVID EGAN AND SHARON BROWNE AND EMMANUEL LAVERY

Plaintiffs

-And-

MINISTER FOR HEALTH, AN TAOISEACH, AND HSE

Defendants

Book of Authorities for Role of Aarhus Convention in this court case

Full Hearing in Court. Court precedents from superior courts in Ireland and abroad and national and international laws.

1. The evidence supplied to the High Court including sworn affidavits, exhibits and books of evidence.
2. I invoke the Aarhus Convention and the fact that it is part of Irish law and European Union law in this High Court case. The Aarhus Convention confers protections for human health and those humans, animals and fauna and flora living in the lived environment. The covid19 vaccine presents a significant threat to the environment in terms of vaccine deaths, illnesses and disabilities caused to humans in the lived environment and the ingredients in the vaccines which are harmful to humans, animals and the environment and which are now well known and well established and documented. The life, health and well being of human beings, including children are an integral part of the environment. This legal case addresses a serious threat to the environment in terms of killing, injuring or disabling children who are the future of Ireland, and also adults living in the environment and creating a more dangerous environment to live in. This comes within the remit of the Aarhus Convention and also the Precautionary Principle cited and invoked in a section below.

Both the Aarhus Convention and Precautionary Principle are very relevant in this High Court case and are part of both European Union law and Irish law. European laws which include this are:

Directive 2003/4/EC on Public Access to Environmental Information

Directive 2003/35/EC on Public Participation

And Irish law which includes this in the

Environment (Miscellaneous Provisions) Act 2011

This law makes provision for using the Aarhus Convention in the courts in Ireland.

Over 60 pieces of legislation have been used to implement the Aarhus Convention in Ireland. Additional measures have since been enacted. These include:

- S.I. No. 309/2018 – European Communities (Access to Information on the Environment) (Amendment) Regulations 2018
- S.I. No. 615/2014 - European Communities (Access to Information on the Environment) (Amendment) Regulations 2014
- S.I. No. 352/2014 - European Union (Access to Review of Decisions for Certain Bodies or Organisations promoting Environmental Protection) Regulations 2014
- S.I. No. 138/2013 - European Union (Industrial Emissions) Regulations 2013
- S.I. No. 137/2013 - Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013
- S.I. No. 283/2013 - Environmental Protection Agency (Integrated Pollution Control) (Licensing) Regulations 2013
- European Union (Environmental Impact Assessment) (Integrated Pollution Prevention And Control) Regulations 2012

The Irish government has a web page dedicated to this at

<https://www.gov.ie/en/publication/b3b1a-aarhus-convention/>

The Aarhus Convention can be invoked and enforced in the Irish courts and the European Court of Justice and other European courts, and the International courts, under the Convention itself and the applicable laws in these jurisdictions.

3. The GMO Amendment to the Aarhus Convention means that there must be public participation in decisions about the deliberate release of genetically modified organisms (GMOs). The mRNA in the covid19 vaccines have been found in scientific studies to integrate into human DNA and this modifies human DNA and the mRNA also instructs human DNA to create spike proteins. This integration into human DNA and modification of human genes and human gene activity means that human beings are being genetically modified by this vaccine, and these vaccines are genetic vaccines and come within the remit of human GMO's. There was no public consultation about this and no public participation in decision making. This is an additional ground for granting an Injunction and any other remedies the High Court deems fit.

The GMO Amendment was implemented in the EU by Directive 2001/18/EC on the Deliberate Release of GMOs. This directive became law in Ireland through the Genetically Modified Organisms (Deliberate Release) Regulations 2003 (SI 500 of 2003).

The January 2000 Cartagena Protocol on Biosafety which is legally binding on Ireland and over 170 countries says, in regard to controversies over GMOs: "Lack of scientific certainty due to insufficient relevant scientific information ... shall not prevent the Party of [I]mport, in order to avoid or minimize such potential adverse effects, from taking a decision, as appropriate, with regard to the import of the living modified organism in question". Countries have the legal right to reject GMO technologies and products.

4. In Ireland the general public and local communities are deliberately prevented from public consultation and participation on environmental matters through the following :
 - (i) no full disclosure and no informed consent
 - (ii) no public consultation
 - (iii) no public participation. And no opportunity for rectification of environmental matters.
 - (iv) the threat of massive legal costs in the High Court and Supreme Court which is cynically used to illegally deprive people of their rights under the Aarhus Convention.

These are direct breaches of the Aarhus Convention and EU law and Irish law in Ireland. The threat of covid19 vaccines or more specifically genetic modification vaccines to the lived environment and to humans and animals living in it being the latest example. Court cases are required and will be required in the High Court and Supreme Court of Ireland and European courts and International courts to assert and enforce the legal rights of the Irish people under the Aarhus Convention and the Irish law and EU law which integrates the Aarhus Convention.

5. EU legislation provides that member states are to provide the public with the right to participate in environmental decision making and that procedures governing environmental matters should not be unduly prohibitive in terms of cost (Article 10a of EC Directive 85/337, incorporating international obligations under the UNECE Aarhus Convention).The European Court of Justice found that the failure of Ireland to put in place costs rules in relation to environmental review procedures was in violation of EU legislation and it was not enough that the Irish courts have discretion to not apply the usual costs rule (Commission -v-Ireland C-427/07)
6. The rights enshrined in the Convention are complemented by Article 3(8) of the Aarhus Convention, which states: 'Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their

involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings.’

Source: Aarhus Convention (n 9) art 3(8).

This gives us the legal right to seek remedies in the superior courts in Ireland and the remedy we seek is an Injunction.

7. The relevant provision of the Aarhus Convention is not limited to climate issues only, they are applicable to environmental activism in areas other than the climate crisis. This includes the lived environment, the lived environment encompasses the environment where humans live and animals live and fauna and flora live, and the threats to such lived environments from toxins, poisons, climate destroyers, and pollutants, including those which can be injected into humans and cause injuries, serious illnesses, disabilities and premature deaths.

Source: Aarhus Convention and ACCC case number: ACCC/C/2014/102 Belarus

8. The Aarhus Convention can be enforced in the Irish courts and European Court of Justice and the International courts, under the applicable laws in these jurisdictions. The Aarhus Convention Compliance Committee (ACCC) oversees the enforcement of the Aarhus Convention internationally and are charged with ensuring continuing compliance with the Aarhus Convention. They have some enforcement powers via the Meeting of the Parties (MOP) which take place regularly. The fact that the Aarhus Convention is part of European Union law, Irish law and international law has facilitated, supported and ensured compliance with the Aarhus Convention in most countries worldwide. To reinforce this, the parties to the Aarhus Convention have recently decided to strengthen Article 3(8) of the Convention by establishing a ‘Rapid Response Mechanism’ for the protection of environmental defenders.

Source: UNECE ‘Decision VII/9 on a Rapid Response Mechanism to Deal with Cases Related to Article 3 (8) of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters’ UN Doc ECE/MP.PP/2021/CRP.8 (18–20 October 2021)

https://unece.org/sites/default/files/2021-11/ECE.MP_PP_2021_RRM_CRP.8_3.pdf (MOP Decision on the Rapid Response Mechanism).

9. Court Precedents

The court precedent set in *LB and Others v College van burgemeester en wethouders van de gemeente Echt-Susteren* argued before the European Court of Justice means under the Aarhus Convention the public have a right to participate in decision making and a right of access to justice.

Deutsche Umwelthilfe eV v Bundesrepublik Deutschland, the European Court of Justice ruled that the Aarhus Convention extends the standing of environmental associations to bring actions against EU type approvals for products if and to the extent that they violate environmental regulations

The precedent set in *Stichting Landgoed Steenberg and Others v. the Netherlands* (February 2021) in the European Court of Human Rights means under the Aarhus Convention the public have a right to be informed. And this was also the case in *Association Burestop 55 and Others v. France* (July 2021), argued before the European Court of Human Rights.

In the precedent of *An Taisce v ABP & Others* [2021] IEHC 422, Justice Humphreys states at para 34: *“one should not unduly blame individual litigants for problems that are more properly down to the system overall. That applies with particular force where an applicant is exercising Aarhus rights, as here. It may be helpful to point out that art. 3(8) of the Aarhus convention renders unlawful, in international and EU law terms, the victimisation of an applicant for availing of rights of environmental participation and challenge. It logically follows that it would be equally unlawful, in such a sense, to counsel, procure or incite such victimisation, or to attempt to do so”*

In *Merriman v Fingal County Council*, the High Court (Barrett J) made reference to a number of international conventions, including the Aarhus Convention and the European Convention on Human Rights, in identifying an unenumerated ‘right to an environment consistent with human dignity and the well-being of citizens at large’.

The Irish Supreme Court in *Heather Hill Management Company CLG v an Bord Pleanála* (2022) referenced the Aarhus Convention in its ruling and has ruled that litigants challenging planning permissions on environmental grounds are entitled to use the provisions of the Aarhus Convention. Environmental grounds encompass the lived environment in which human beings live including vaccines injected into them and where this poses environmental risk in terms of a significant and higher risk of death, illness or disability to those living in the environment in addition to damage to the environment from the ingredients in these vaccines.

10. ACCC cases and Precedents

The EU government and Irish government were parties to the setting up of the Aarhus Convention Compliance Committee (ACCC) within the UN. This ACCC oversees compliance with the Aarhus Convention internationally. We will cite some legal precedents set by the Aarhus Convention Compliance Committee (ACCC).

In the ACCC case titled ‘ACCC/C/2008/27’ which dealt with an environmental case from the UK, the ACCC found that the costs awarded by the British court were prohibitively expensive and amounted to a breach of the Aarhus Convention.

Source: ACCC ‘Findings and Recommendations with Regard to Communication ACCC/C/2008/27 Concerning Compliance by the United Kingdom of Great Britain and Northern Ireland’ UN Doc

ECE/MP.PP/C.1/2010/6/Add.2 (24 September 2010) (ACCC/C/2008/27 UK);

and <https://unece.org/DAM/env/pp/compliance/C2008-27/Findings/C27DraftFindings.pdf>

In Spain, an environmental activist claimed that Spanish authorities violated provisions of the Aarhus Convention when dealing with requests for environmental information. Additionally, the communicant held that Article 3(8) AC had been violated, as their members were insulted publicly in mass media by the mayor of the city concerned. The ACCC upheld the complaint and found the Spanish authorities guilty.

Source: ACCC 'Findings and Recommendations with Regard to Communication ACCC/C/2009/36 Concerning Compliance by Spain' UN Doc ECE/MP.PP/C.1/2010/4/Add.2 (18 June 2010) (ACCC/C/2009/36 Spain).

In the ACCC case titled 'ACCC/C/2013/98 Lithuania', the ACCC upheld the right of activists to information meetings and to protest against power cables which could be hazardous to human health and the environment.

In the ACCC case involving Belarus and the building of a nuclear power plant which could be hazardous to the environment and human health, and case number: ACCC/C/2014/102 Belarus, the ACCC established four cumulative conditions for establishing a breach of Article 3(8) of the Aarhus Convention

(i) *Members of the public have exercised their rights in conformity with the AC (environmental defenders).*

The ACCC adopts a wide approach towards 'environmental defenders' under the AC. First, all situations covered by Articles 3 to 9 AC can be qualified as situations in which rights under the Convention are exercised. Second, the ACCC points out that the application of Article 3(8) AC is not limited to cases in which the aforementioned provisions are applicable. This opens up the application of Article 3(8) AC to environmental matters in general, as will be discussed in detail below. In the various cases it had to deal with, the ACCC qualified these actions to fall under the scope of Article 3(8) AC: submitting a petition against a proposed activity falling under Article 6 AC ; organizing and participating in a public street action ('Chernobyl Way 2013'), even if it is not directly connected to a proposed activity ; and providing legal assistance to a person exercising their rights under the Convention.

(ii) *These members of the public have been penalized, persecuted or harassed (harmful act).* Taking into account the ordinary meaning of the wording of Article 3(8) AC as well as the Convention's objective and purpose, the Committee argues for a broad understanding of these terms in general but also points out the importance of a case-by-case assessment, allowing the concerned State to justify the measures taken in light of considerations of proportionality and non-discrimination. Importantly, the Committee also highlights that measures taken by private actors may amount to penalization, persecution or harassment, if the respective State did not take measures to prevent such actions from happening.

- (iii) Causation:** Article 3(8) AC is violated if members of the public are penalized, persecuted or harassed because they exercised rights in conformity with the AC. Citing case law of the ECtHR related to Article 14 ECHR, the Committee finds that the communicant only has to establish ‘a prima facie case’ that a harmful act did take place, and the burden of proof to show that these actions are not linked to the exercise of rights lies with the State concerned.
- (iv) Lack of redress:** A violation of Article 3(8) AC can be prevented by the party concerned by providing full redress for the actions, for instance, by providing financial compensation.

These judgments and recommendations of the ACCC directly impact our High Court case, as we are addressing threats to the lived environment which involve activities causing serious illnesses, disabilities and premature deaths.

- 11.** EU legislation provides that member states are to provide the public with the right to participate in environmental decision making and that procedures governing environmental matters should not be unduly prohibitive in terms of cost (Article 10a of EC Directive 85/337, incorporating international obligations under the UNECE Aarhus Convention). The ECJ found that the failure of Ireland to put in place costs rules in relation to environmental review procedures was in violation of EU legislation and it was not enough that the Irish courts have discretion to not apply the usual costs rule – *Commission -v-Ireland C-427/07*
- 12.** The lived environment which is protected by the Aarhus Convention is one which directly affects everyone, including judges, barristers, lawyers, plaintiffs, defendants, litigants, court personnel, etc. and directly impacts the Public Interest and the Common Good. The Aarhus Convention is there to defend the lives of everyone in the lived environment.