

BETWEEN:

DAVID EGAN AND SHARON BROWNE AND EMMANUEL LAVERY

Plaintiffs

-And-

MINISTER FOR HEALTH, AN TAOISEACH, AND HSE

Defendants

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## **Book of Authorities for Role of Aarhus Convention and the Precautionary Principle in this court case**

**Additional Legal Grounds for Protective Costs Order. 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. On the Substantive issue of a Protective Costs Order for this court case, I cite the Aarhus Convention which bans prohibitive costs and has been used in Irish courts and European courts to apply for and grant Protective Cost Orders in respect of threats to the 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, and is another valid ground for granting a Protective Costs Order.

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 Protective Costs Orders.

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 enforced in the Irish courts and European Court of Justice and the International courts, under the applicable laws in these jurisdictions. These European laws and Irish law make provision for protective costs orders so as to allow litigants to bring cases to court.

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 a protective costs order.

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 is valid grounds to give us a Protective Costs Order.

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](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 Steenberghe 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 a special protective costs order (PCO) for all of their grounds of challenge. 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.

### **13. The Precautionary Principle**

We invoke the Precautionary Principle in our High Court case, as our case deals with threats to human health from covid19 vaccine injuries, illnesses, disabilities and deaths and the lack of full and valid informed consent for these vaccines. And we have presented a large amount of evidence of this to the High Court.

The Precautionary Principle is detailed in Article 191 of the Treaty on the Functioning of the European Union and is law and is legally binding in Ireland and throughout the European Union.

The European Union's official web site defines the Precautionary Principle as follows:

‘The precautionary principle is an approach to risk management, where, if it is possible that a given policy or action might cause harm to the public or the environment and if there is still no scientific agreement on the issue, the policy or action in question should not be carried out. However, the policy or action may be reviewed when more scientific information becomes available. The principle is set out in Article 191 of the Treaty on the Functioning of the European Union (TFEU).’

The Precautionary Principle is part of the original European Community Treaty. According to Article 130r(1) of the European Community Treaty, Community policy on the environment is to pursue the objective inter alia of protecting human health. Article 130r(2) provides that that policy is to aim at a high level of protection and is to be based in particular on the principles that preventive action should be taken and that environmental protection requirements must be integrated into the definition and implementation of other Community policies.

The Precautionary Principle is part of Article 174 of the European Community Treaty

‘Article 174

Section 1. Community policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health

Section 2. Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source’

And in Article 152 of the of the European Community Treaty

‘Section 1. A high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities.

Community action, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to human health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education.

The Community shall complement the Member States' action in reducing drugs-related health damage, including information and prevention.’

The European Commission in an official Press Release about the Precautionary Principle in the year 2000 stated that the Precautionary Principle applies to substances and risks which have “potentially dangerous effects on the environment, human, animal or plant health” . Now this certainly applies in our High Court case.

Source: Commission of the European Communities. 2 February 2000,

[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_00\\_96](https://ec.europa.eu/commission/presscorner/detail/en/IP_00_96)

The court precedent of Pfizer vs Council of the European Union, Case number T-13/99, judged on 11<sup>th</sup> September 2002 in the European Court of Justice is relevant and the court applied the Precautionary Principle against Pfizer so as to protect human health. According to the European Court judgment:



“in case of scientific uncertainty as to the existence of a risk to human health, the EC institutions as well as the Member States may invoke the precautionary principle in order to adopt protective measures, in spite of the fact that a proper risk assessment showing conclusive scientific evidence cannot be conducted.”

This case in 2002 involved antibiotic resistance in animals which could be transmitted to humans. Today we have covid19 vaccines which have proved to be ineffective after 4 months due to viral mutations and new resistant strains and in addition to this these same vaccines present a danger to human health. The precedent set in the European Court of Justice in the case of Pfizer vs Council of the European Union is highly relevant to our court case.

The court precedent of United Kingdom vs EU Commission heard in the European Court of Justice in May 1998 also applied the Precautionary Principle and stated

“Where there is uncertainty as to the existence or extent of risks to human health, the institutions may take protective measures without having to wait until the reality and seriousness of those risks become fully apparent.”

A similar judgment applying the Precautionary Principle to protect human health was made in The Queen v Minister of Agriculture and others in the European Court in May 1998.

The European Court of Justice applied the Precautionary Principle in the famous BSE case in 1996. BSE was deadly to humans and measures had to be put in place to stop it and contain it.

The court precedent of Kingdom of Sweden v Commission of the European Communities heard in the European Court of Justice in 2007, used the Precautionary Principle to ban Paraquat in the European Union. In the court precedent of Gowan Comércio Internacional e Serviços Lda v Ministero della Salute, in 2010 the European Court of Justice used the Precautionary Principle to ban a substance which could be dangerous to health.

In the court precedent of Alpharma Inc. v Council of the European Union heard in the European Court of Justice in 2002, the Precautionary Principle to protect human health was applied by the court. And in the court precedent of Artegoda GmbH v Commission of the European Communities, the European Court forcefully applied the Precautionary Principle to safeguard human health. The precedent of Monsanto vs Italy in 2003 was decided on the Precautionary Principle. The precedent set in Industrias Químicas del Vallés, SA v Commission of the European Communities in 2005 in the European court was significant in that it applied the Precautionary Principle to protect human health and stated that the protection of human health took precedence over economic interests.

Also the European Court has found that in the domain of human health, the existence of solid evidence which, while not resolving scientific uncertainty may reasonably raise doubts as to the safety of a substance justifies, in principle, [the refusal to include that substance...]. The precautionary principle is designed to prevent potential risks. Court cases listed below

- T-141/00, para 192
- C-236/01, para 113;
- T-392/02, para 129;
- T-326/07, para 166;
- T-334/07, para 180;

In other European Court cases, it was clear that such an assessment of the risk could reveal that scientific uncertainty persists as regards the existence or extent of real risks to human health. In such circumstances, it must be accepted that a Member State may, in accordance with the precautionary principle, take protective measures without having to wait until the reality and seriousness of those risks are fully demonstrate. Cases include:

- Commission of the European Communities vs Kingdom of the Netherlands, case C-41/02, para 52;
- Queisser Pharma GmbH & Co. KG v Bundesrepublik Deutschland case C-282/15, para 60;
- Solgar Vitamin's France and Others v Ministre de l'Économie, des Finances et de l'Emploi and Others. case C-446/08, para 67;
- European Commission v French Republic. Case C-333/08, para 91.

In other European Court cases, where it proves to be impossible to determine with certainty the existence or extent of the alleged risk because of the insufficiency, inconclusiveness or imprecision of the results of studies conducted, but the likelihood of real harm to public health persists should the risk materialise, the precautionary principle justifies the adoption of restrictive measures. Listing of European Court cases below and paragraphs referencing the precautionary principle.

- C-343/09, para 61;
- C-77/09, para 76;
- T-429/13, para 119;
- C-192/01, para 52;
- C-95/01, para 48;
- C-41/02, para 54;
- C-333/08, para 93;
- C-446/08, para 70;
- T-31/07, para 142;
- C-269/13P, para 58;

C-157/14, para 82;  
T-817/14, para 51;  
C-477/14, para 47;  
C-78/16, para 47;  
C-78/16, para 47;  
C-282/15, para 57;  
T-584/13, para 68;  
C-151/17, para 38;  
C-489/17, para 58;  
T-108/17, para 282.

The European Court of Justice has been consistent over the last 30 years in applying and enforcing the Precautionary Principle in court cases. European Court applied and will continue to apply the Precautionary Principle in its judgments in cases where there is some scientific evidence or scientific uncertainty or conflicting scientific findings or risks or where scientific research is likely to find dangers to human health. It is very precautionary and protective in its approach and judgments where there is a significant danger or potential danger to the lived environment and to human health.

The superior courts in Ireland and other European countries and the European Courts have applied and enforced the Precautionary Principle in cases where was an existing danger or possible danger to the health and/or lives of the general public. The evidence we have provided to the High Court clearly show significant dangers from the covid19 vaccines.

The Precautionary Principle aims at ensuring a high level of environmental protection through preventative decision-taking in the case of risk. However, in practice, the scope of this principle is far wider and also covers consumer policy, and European Union (EU) legislation concerning food and human, animal and plant health. Human health is at risk in this High Court case.

The Precautionary Principle has a positive impact at international level, to ensure an appropriate level of environmental protection and health protection in international negotiations and treaties. It has been recognised by various international agreements, notably in the Sanitary and Phytosanitary Agreement (SPS) concluded in the framework of the World Trade Organisation (WTO). These WTO agreements are legally binding and affect Ireland and other European Union countries.

In 2022 and into 2023 in response to reports about rare blood clots and other illnesses seen in people vaccinated with the Astra-Zeneca COVID-19 vaccine, over 20 nations have suspended the use of this vaccine, quoting the "precautionary principle". This vaccine causes the human body to mass produce

spike proteins which have been found to be toxic and dangerous to humans, yet the Pfizer and Moderna vaccines also do this and are not banned. To be consistent on an international level, all covid19 vaccines should be banned under the Precautionary Principle.

- 14.** The EU Directive titled '2001/95 EC - product safety' uses the Precautionary Principle to ensure product safety in all EU countries including Ireland and that countries and people have a legal duty to report products which are deemed to be unsafe to the relevant authorities. Member states have a legal duty to suspend or ban products which have been found to be unsafe. This EU Directive and its use of the Precautionary Principle applies in our High Court case.
- 15.** The Precautionary Principle is of supreme importance in our High Court case when one factors in that informed consent for the covid19 vaccines was obtained by non disclosure, false pretences, fraudulent misrepresentation, deception and fraud, and this is documented in our evidence and in our Book of Authorities for Fraud. And this fraud placed many peoples lives in danger, and this has led to a high number of vaccine injuries, illnesses, disabilities and deaths and to the big rise in excess mortality in late 2021, all of 2022 and into 2023 in highly vaccinated countries, which has been reported in the mainstream press and media in many countries.

This High Court and indeed all courts must in the interests of justice and the Precautionary Principle and the Public Interest and Common Good immediately ban covid19 vaccinations.