



[2024] IEHC 692

THE HIGH COURT  
PLANNING & ENVIRONMENT

[H.JR.2022.0000458]

BETWEEN

AN TAISCE - THE NATIONAL TRUST FOR IRELAND

APPLICANT

AND

THE MINISTER FOR HOUSING, LOCAL GOVERNMENT AND HERITAGE, IRELAND AND THE  
ATTORNEY GENERAL

RESPONDENTS

AND

THE MINISTER FOR AGRICULTURE FOOD AND THE MARINE, FEIRMEOIRÍ AONTUITHE NA  
HÉIREANN IONTAOBAITHE TEORANTA AS TRUSTEE OF THE IRISH FARMERS'  
ASSOCIATION AND FRANCIE GORMAN, TOM O'CONNOR, PATRICK MURPHY, JOHN  
MURPHY AND FRANK ALLEN AS TRUSTEES OF THE IRISH CREAMERY MILK SUPPLIERS  
ASSOCIATION (BY ORDER)

NOTICE PARTIES

(No. 5)

**JUDGMENT of Humphreys J. delivered on Friday the 6th December 2024**

1. This case is the subject of an existing live reference to Luxembourg. A module regarding Strategic Environmental Assessment (**SEA**) was put off pending the CJEU judgment in *C-727/22 Friends of the Irish Environment CLG v Government of Ireland and Others*. In the end, that judgment didn't resolve the issues because the applicant's case there fell at the first hurdle (the plan in question was not a "plan" or "programme" for the purposes of the directive). The SEA module in this action was therefore reactivated, and the issue now is whether to refer the issues here also.

**Judgment history**

2. In *An Taisce v. Minister for Housing (No. 1)* [2024] IEHC 129, [2024] 3 JIC 0603 (Unreported, High Court, 6th March 2024), I decided the pleading-type objections in Module I of the proceedings, and set out a revised issue paper for Module II.

3. In *An Taisce v. Minister for Housing (No. 2)* [2024] IEHC 248, [2024] 5 JIC 0102 (Unreported, High Court, 1st May 2024), I decided the evidential-type objections in Module II of the proceedings, and set out a revised issue paper for Module III.

4. In *An Taisce v. Minister for Housing (No. 3)* [2024] IEHC 442 (Unreported, High Court, 24th July 2024), having heard Module III on the substance, other than SEA, I decided in principle to refer certain questions to the CJEU, issues relating to SEA being postponed to a later module.

5. In *An Taisce v. Minister for Housing (No. 4)* [2024] IEHC 472 (Unreported, High Court, 30th July 2024), I made the formal order for reference.

**Procedural history**

6. The procedural history is set out in the No. 2 judgment. Following that, the parties were invited to make further written submissions on the SEA issues, effectively Module IV of the proceedings, which the applicant and State did. The Irish Farmers' Association (IFA) and Irish Creamery Milk Suppliers Association (ICMSA) supported the State's submissions.

7. The matter was listed for mention on Monday 2nd December 2024 for a brief discussion with the parties in the regular Monday list, following which nobody asked for a formal oral hearing so I simply reserved judgment. So this case is a good example of something which can satisfactorily be dealt with, in substance, on the papers (a procedure that everybody agreed to). The present judgment will deal with procedural issues around the proposed further reference, and a separate judgment will order the formal reference.

**Reference to the CJEU**

8. Two questions arise on the issue paper at this stage – regarding the alleged duty to choose the most environmentally friendly option, and the alleged duty to weigh alternatives comparably. The State accepts that the second is not *acte clair*, but says the first is. As regards that, I agree with the State that the judgment of 9 March 2023, *An Bord Pleanála and Others (Site de St Teresa's Gardens)*, C-9/22, ECLI:EU:C:2023:176, suggests that directive 2001/42 does not have the effect contended for by the applicant, but it isn't so clear an answer as to preclude a reference.

9. I consider that the identified questions are ones of interpretation of EU law rather than merely application of such law, and that the answers are not *acte clair* as explained. The answers are necessary to enable the referring court to give judgment. Therefore the questions meet the criteria for reference. As a matter of discretion I consider it appropriate to refer these questions in all of the circumstances.

**Procedural directions**

**10.** Certain procedural directions are appropriate having regard inter alia to the standard terms in *Eco Advocacy CLG v. An Bord Pleanála* [2021] IEHC 265, [2021] 5 JIC 2704 (Unreported, High Court, 27th May 2021) format with some modifications set out in the order below. I also propose to set a mention date to confirm that all is in order with the reference.

**11.** It follows from the previous reference that the pre-existing consent to the publication at CJEU level of the names of the natural persons concerned must continue pending application otherwise. If I have missed something in that regard, parties need to apply before the papers are transmitted.

**Order**

**12.** For the foregoing reasons, it is ordered that:

- (i) the two identified questions be in principle referred to the CJEU under Article 267 TFEU on the basis of wording set out in a separate formal judgment for reference;
- (ii) within seven days of the present judgment, the parties be required to complete the CJEU contact sheet set out in guidance notes to Practice Direction HC126 and submit that sheet to the List Registrar copying the relevant judicial assistant;
- (iii) the document management party be then required to prepare a draft contents page of documents for the CJEU limited to those relevant to the issues referred in this module, and to agree this with the other parties or apply to the court in default of agreement;
- (iv) once the contents page is agreed, the document management party be required to prepare electronic versions for the CJEU as follows:
  - (a) all files should be in PDF format not exceeding 30 MB;
  - (b) the judgment for reference should be a single standalone PDF clearly identified as such;
  - (c) that PDF should be sent in a form (which should be final but may be unsigned) that preserves the hyperlinks and not as a scanned picture of the signed version;
  - (d) all other documents should be bundled together in a single PDF (or more than one if required to comply with the 30MB file size limit);
  - (e) the completed form of the contact details of the parties in the form attached to guidance notes to Practice Direction HC126 be included as a separate stand-alone document in PDF format;
  - (f) once prepared, the PDFs should be sent to the List Registrar by email or file sharing link, and for this purpose parties should not use password protected file transfers; and
  - (g) this process should be completed within 28 days from the date of this judgment;
- (v) once the matter is formally referred, the parties be requested to liaise to ensure that the referring court is copied with all submissions including those of member states and EU institutions, and the Advocate General's opinion, when permitted to do so by the rules of procedure of the CJEU, and to copy the referring court with relevant notifications such as regarding the date of any oral hearing, any opinion of the Advocate General, the date of delivery of the judgment and the judgment itself;
- (vi) all costs to date be reserved; and
- (vii) the matter be listed for mention on 27th January 2025.