



Irish Centre for European Law
Trinity College, Dublin



Remedies Against Public Authorities for Breach of EU Law and the ECHR

*With a focus on remedies for breach of
EU environmental law and failure to act*

Friday 13 September 2013

Royal Irish Academy, 19 Dawson Street, Dublin 2
9.45am – 4.45pm (Registration from 9am)

This conference, jointly organised by the AEAJ and ICEL, will consider the question of remedies against public authorities for breaches of EU law and the European Convention of Human Rights. Issues covered will include remedies for breach of the Charter of Fundamental Rights, the ECHR and the Aarhus Convention. There will be a particular focus on EU environmental law and the remedies available where a public authority fails to act. Attendees will be provided with a general update on remedies cases before the EU courts and the national courts, as well as having the opportunity to discuss practical issues in the context of real-life examples, with an afternoon case study.

Programme

9.00am Registration & Coffee

9.45am *Welcome*

Nathy Dunleavy
Director, Irish Centre for European Law

Morning Chairman

The Hon. Mr Justice Gerard Hogan
High Court of Ireland

Chairman's Introduction

9.50am Remedies for Breach of EU Law: Recent EU and National Cases

Dr Barry Doherty
Law Library, Dublin

10.25am State Failures To Act: Remedies Against Public Authorities Under The ECHR

The Hon. Mr Justice Bernard McCloskey
Court of Judicature of Northern Ireland

11.00am Q&A

11.10am Morning Coffee (*Refreshments provided in the Members' Room*)

11.30am Access to Justice in Environmental Matters at the National Level and the Aarhus Convention

Dr Áine Ryall
University College Cork

12.00pm Access to Justice in Environmental Matters - the EU Perspective

Adam Daniel Nagy
Directorate General for the Environment, European Commission

12.30pm Q & A

12.45-1.55pm Lunch (*Light lunch provided in the Members' Room*)

1.55pm Afternoon Chairman

The Hon. Mr Justice Frank Clarke
Supreme Court of Ireland

Chairman's Introduction

2.00pm Legal remedies against failure to act of a public authority in the light of general EU law

Judge Matthias Keller
Administrative Court of Aachen

2.30pm Legal remedies provided by EU environmental law and the Aarhus Convention against failure to act of a public authority

Judge Lauma Paegkalna
Administrative Court, Riga

Judge Werner Heermann
Administrative Court of Würzburg

3.00pm Q & A

3.10pm Afternoon Tea (*Refreshments provided in the Members' Room*)

3.30pm Case study

Illegal garage in a dwelling area - omission of a public authority to intervene in the face of complaints from a neighbour - legal remedies for the neighbour

Presentation led by Judge Werner Heermann

4.45pm Closing Remarks

The Hon. Mrs Justice Fidelma Macken
Chairman, Irish Centre for European Law

Biographical Notes

The Honourable Mr. Justice Frank Clarke was born in Walkinstown, Dublin in October, 1951. He was educated at Drimnagh Castle CBS and University College Dublin where he was awarded a B.A. in Mathematics and Economics (1972). Having completed his legal studies at King's Inns he was called to the Bar in 1973. He practised at the Bar from then until his appointment to the High Court in November 2004. He had become a senior counsel in 1985. During his time at the Bar he practised mainly in the commercial and public law fields (including constitutional law). While at the Bar Mr. Justice Clarke served for many years on the Bar Council including a term of two years (1993-1995) as its Chair. He also served as Chair of the Council of King's Inns from 1999 until 2004. He was elected as an honorary member of the Canadian Bar Association in 1994 and admitted as an honorary member of the Australian Bar Association in 2002. He has been a Bencher of the Honourable Society of the King's Inns since 1995. In the academic field Mr. Justice Clarke was a professor at King's Inns from 1978 to 1985 and has been Judge in Residence at Griffith College Dublin from 2010 to date. Mr. Justice Clarke was appointed Adjunct Professor in the Law School in Trinity College, Dublin in September 2012. Mr. Justice Clarke has been invited to speak at many international conferences, some recent examples being the Annual Conference of the International Association of Insolvency Regulators on the topic of the Irish Examinership model (September 2010); the International Bar Association Conference on the topic of the Comparative Experience of Commercial Courts in Common law and Civil law jurisdictions (October 2011); and the Hawkamah Judicial Colloquium on Reform of Corporate Insolvency Law in the Middle East North Africa Region (MENA) in Dubai in December 2011. He has served on the board of the Irish Law Reports Monthly and is the nominee to represent the Chief Justice on the Incorporated Council of Law Reporting for Ireland. While a judge of the High Court, Mr. Justice Clarke was mainly assigned to the Commercial List of the High Court although also involved as the judge presiding over the establishment of a Chancery and Non-Jury List for the first time in Cork. Mr. Justice Clarke was appointed to the Supreme Court in March 2012.

Barry Doherty is a barrister in Dublin specialising in EU and administrative law. Before commencing practice at the Irish Bar, he spent ten years working in the European Commission Legal Service and several years as senior legal adviser to the Irish telecommunications regulator.

Nathy Dunleavy is a graduate of Trinity College, Dublin, a practising barrister and Director of the Irish Centre for European Law. He is also a Visiting Research Fellow at the Law School in Trinity College. He was admitted to the New York Bar in 2001 and practised in a number of areas of commercial law in New York and London with the pre-eminent international banking and finance firm, Sullivan & Cromwell LLP. He was called to the Bar of Ireland in 2007 and the Bar of England and Wales in the same year. He has published widely on matters of EU law and is author of *Competition Law: A Practitioner's Guide* (Bloomsbury, 2010). His areas of practice include Administrative Law, Commercial, Company Law, Competition, EU Law and Public Procurement.

Judge Werner Heermann studied jurisprudence in Würzburg and Freiburg and took his doctorate at the University of Würzburg. He began his judicial career in 1975 and, after working for a number of years in the civil service at the Landratsamt Würzburg and in training young lawyers in the area of public law, he resumed his position as an administrative law judge in 1986. From 1990 to 1992 he was a judge in Thüringen. He was the Presiding judge in Würzburg from 1993 to 2004 and Vice-President of the Administrative Court of Würzburg from 2005 to 2010. Judge Heermann was Vice-President of the Association of European Administrative Judges (AEAJ) from 2006 to 2012 and has been chair of the AEAJ working group on environmental law since 2006. Throughout his career in both the civil service and the judiciary, Judge Heermann has specialised in land use, city planning law and environmental law.

The Honourable Mr. Justice Gerard Hogan was made a judge of the High Court in 2010. He was previously a Senior Counsel at the Irish Bar and was a lecturer and fellow of Trinity College, Dublin. He is co-author of *Administrative Law in Ireland* and co-author of *Kelly: The Irish Constitution*. His work on the *Origins of the Irish Constitution 1928-41* was published by the Royal Irish Academy in 2012.

Judge Matthias Keller graduated in law from the University of Würzburg in 1989 and was appointed a Judge at the Administrative Law Court in Aachen in 1992. He completed his doctorate in Administrative Law at Würzburg University in 1997. He was appointed the Presiding Judge of the Administrative Court of Aachen in 2004. From 1999 to 2003 Judge Keller was Lecturer in the Robert-Schuman-Project of the European Commission (“Improving the Awareness of Community Law for the Legal Professions”) at Aachen University. He has acted as a Member of the Cologne Examination Board for the Graduation of Students in Public Law, Judge-Mediator in Administrative Disputes (2006) and as an expert on European and Administrative Law in specific eastern countries. Judge Keller has given seminars on the EU-Phare-Program and Twinning-Programs in Hungary (Budapest, Supreme Court), Latvia (Riga), Estonia (Tallinn, Chancellor of Justice), Romania (Bucharest, Ministry of Justice) and Bulgaria (Sofia, Supreme Court). He has also acted as Chairman of Forum ad Mosam (Association of Judges from Belgium, the Netherlands and Germany). Judge Keller has been a national expert within the OECD’s SIGMA projects on drafting laws on Administrative Disputes (2008 in Albania and 2010 in Serbia), a fact-finding mission to Montenegro (2010) and a mission to Morocco (2011). He is co-author of *EU-Recht in der Praxis* (2012). Judge Keller is a fellow of the European Law Institute (ELI).

The Honourable Mrs. Justice Fidelma Macken was educated at Trinity College, and at King’s Inns in Dublin, and holds an LL.M. from London School of Economics. In 2002 an Honorary Doctorate was conferred upon her by Trinity College Dublin to mark her contribution to the law. She was called to the Bar of Ireland in 1973, and subsequently to the Bar of England and Wales. She worked as legal counsel in a firm of patent and trade mark agents from 1973 to 1979. From 1979 to 1998 she practised as a barrister, becoming a Senior Counsel in 1995, and specialised in commercial and chancery work, intellectual property, environmental and administrative law, as well as in European Union and Irish constitutional law. Mrs. Justice Macken was appointed a Judge of the High Court in 1998, and in 1999 became the first woman appointed a judge of the European Court of Justice (ECJ), Luxembourg, becoming the president of the third and sixth chambers, and where she served until October 2004. She was during that time, the judge rapporteur in many seminal cases, covering a wide area of EU law. From 2004 to 2005 she again served as a judge of the High Court in Ireland,

and was appointed to the Supreme Court in May 2005, where she served until her retirement in 2012. Mrs. Justice Macken is a Bencher of the Honorable Society of King's Inns and an Honorary Bencher of Middle Temple, London. She was the first Averil Deverell Lecturer in Law at Trinity College Dublin, and has been a guest lecturer at many universities including King's College London, University College London, the University of Pittsburgh and at Georgetown University Law School. She has been a Global Hauser Fellow at New York University and has been elected one of the 50 most influential people in the world, in the field of intellectual property. She is Chair of the Irish Centre for European Law, based at Trinity College, Dublin. Mrs. Justice Macken joined Brick Court Chambers in London in 2013.

The Honourable Mr. Justice Bernard McCloskey is a judge of the High Court in Northern Ireland. With effect from 1 October 2013, he will be President of the UK Upper Tribunal, Asylum and Immigration Chamber. He was chairman of the Northern Ireland Law Commission from 2009 to 2012 and was the Northern Ireland Judge of the United Kingdom Upper Tier Tribunal. He is Deputy Chairman of the Boundary Commission of Northern Ireland. Mr Justice McCloskey is Judge in Residence at Queen's University, Belfast, a member of the Association of European Administrative Judges, a member of the Commonwealth Magistrates' and Judges' Association and a member of the Franco-British Lawyers' Society. He has delivered over 200 judgments in the High Court, Court of Appeal and UK Upper Tier Tribunal spanning a broad range of fields. Mr Justice McCloskey is author of *The Human Rights Act 1998: Recurring Themes and Principles* and of various other papers in the fields of human rights law, EU law, public law, extradition law, immigration law, procurement law, planning and environmental law and procedural law. He is author of publications in *The Commonwealth Law Journal*, *The Commonwealth Law Bulletin*, *The European Human Rights Review*, *The Bracton Law Journal* and in *Servicing The Legal System [N.I.] "Judicial Voices"* series.

Adam Daniel Nagy is a Hungarian lawyer working for the European Commission as a legal-policy officer since 2007 in charge of Aarhus topics, in particular access to justice and public participation. He is a qualified lawyer, who specialized in EU and environmental law at the Deák Ferenc Institute, Pázmány Péter University in Budapest and the IEE, Université Libre in Brussels.

Judge Lauma Paeglkalna was appointed a Judge of the Administrative Court in Riga, Latvia in 2008. She previously worked in the Legal Department of Latvia's Ministry of Finance and from 2001 to 2008 engaged in legal consulting at a private bank in the areas of tax law, construction, planning and environmental law. Judge Paeglkalna is a law graduate of the University of Latvia.

Dr Áine Ryall is a senior lecturer at the Faculty of Law of University College Cork, where she teaches tort law, environmental law and EU law. A qualified barrister, her areas of specialisation include: implementation and enforcement of EU law, EIA law and practice, access to justice and the Aarhus Convention. In February 2013, she was appointed to the Advisory Committee of the Environmental Protection Agency for a three year term. She also served as a member of the Environmental Protection Agency Review Group which reported to the Minister for the Environment, Community and Local Government in May 2011. She has published widely on environmental law and her book *Effective Judicial Protection and the Environmental Impact Assessment Directive* was published by Hart Publishing, Oxford in 2009.