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ACPNS Legal Case Notes Series: 2022-133 Dublin 8 Residents Association v An Bord Pleanála & Ors.

[Working Paper]

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ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Dublin 8 Residents Association v An Bord Pleanála & Ors [2022] IEHC 482

High Court, Humphreys J, 16 August 2022

Whether an unincorporated association had standing to seek a judicial review of a planning decision with consideration of European Union directive provisions.

Key words: Unincorporated Association, Ireland, Standing, SLAPP, Aarhus Convention 1998, EU Charter of Fundamental Rights, EU Directive 2011/92/EU

1. Dublin 8 Residents Association (the Association) is an unincorporated association representing residents in the Dublin 8 area who are concerned about planning permission for the redevelopment of the former Player Wills factory.
2. Previously the Association was known as “Players Please”, later using the current name of the Association, and opening a credit union account and a Facebook page.
3. The Association sought judicial review of the planning approval of the development by An Bord Pleanála (the Board).
4. In these preliminary proceedings, the Board argued that the Association was an unincorporated association and therefore lacked standing and capacity to bring the proceedings.
5. Further, concerns were raised that the funding arrangements for the litigation were suggestive of maintenance and champerty. The Association characterised this as a SLAPP (Strategic Litigation against Public Participation).
6. European Union (EU) law in the Charter of Fundamental Rights [Article 47](#) provides for a right to an effective remedy and to a fair trial.
7. The Irish domestic law, the [Planning and Development Act 2000](#), provides for judicial review of planning decisions on certain conditions, such as an objecting organisation pursuing those objectives for 12 months preceding the judicial application.

8. The Court noted that (at [22]-[23]):

In addition it is a general rule of the Irish common law system, not set out in statute, that apart from any exceptional category recognised by law or provided for expressly, only natural and legal persons may sue and be sued. In the context of a case such as the present, that effectively means that unless EU law was to have the effect that this applicant can maintain the proceedings, then it would not be entitled to do so because it is an unincorporated body that does not benefit from any purely domestic exception to the general law.

Also relevant is the rule in Irish caselaw that an NGO that meets the test for standing conferred by art. 1(2)(e) of the directive is thereby conferred with capacity to seek a judicial remedy. This is not set out in statute but was an interpretation adopted by the Supreme Court in *Sandymount & Merrion Residents Association v. An Bord Pleanála* [2013] IESC 51, [2013] 2 I.R. 578. No such rule has been recognised by the Irish courts in respect of bodies that qualify under article 11(1)(a) of the EIA directive.

9. The Court noted that seven questions of European law arose that should be referred to the Court of Justice of the EU as the doctrine of *Acte clair* did not apply in these circumstances.¹

10. The Court found that Article 47, and other directives and conventions, do not draw a distinction between standing and capacity, and the clear intention is that a body that meets the test arising from the directive should be entitled to bring proceedings. Whether the domestic law of a particular member state categorises that entitlement as a question of standing or capacity or both is irrelevant. Allowing a member state to erect obstacles in national law to the bringing of proceedings by a body that otherwise qualifies would undermine the effective and uniform application of the [relevant EU directive](#).

11. The Court also considered that an organisation that meets the test for standing conferred by the EU directive is conferred with the capacity to seek a judicial remedy.

12. Further, where an organisation has, in law or in fact, been allowed to participate in the administrative phase of a procedure, the right to an effective remedy in the context of the directive precludes a rule of domestic procedure that would prohibit such a body from taking judicial proceedings.

13. The Court found that the domestic law that required formation for a time period that was longer than the statutory period for the determination of the application for development consent, where an unincorporated NGO formed in response to a particular application would normally never qualify for the purposes of the legislation implementing Article 47, did not satisfy the principles of equivalence and effectiveness.

14. The Court found that the right to an effective remedy meant that the Court should exercise discretion to substitute an applicant in whatever way vindicated the right to an effective remedy. This would allow the substitution of an

¹ *Acte clair* is a doctrine of European Union law, which states that if a judgment or rule of law is clear enough, then a member state has no duty to refer a question for preliminary ruling to the Court of Justice of the European Union.

individual applicant or applicants who are members of the unincorporated association to give full effect to the right of access to an effective judicial remedy, such that the substitution could not be precluded by the rule of domestic law regarding the limitation of time.

15. The Court referred the questions to the Court of Justice of the EU.

IMPLICATIONS



Australian law is similar to that in Ireland in that only natural and legal persons may sue and be sued. An unincorporated association is not a separate legal entity from its members and is simply a group of people who have agreed to come together to pursue a common purpose. An unincorporated association cannot enter into contracts in its own name, own land, employ people, or sue or be sued. The members of the unincorporated association do these things on behalf of the association. The members may each have individual legal liability for the association's debts and defaults, something which can lead to legal risk for those members.

VIEW THE CASE



This case may be viewed at <https://www.bailii.org/ie/cases/IEHC/2022/2022IEHC482.html>

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