



## Reports of Cases

**Case C-260/11**

**The Queen, on the application of David Edwards**

**and**

**Lilian Pallikaropoulos**

**v**

**Environment Agency and Others**

(Request for a preliminary ruling from the Supreme Court of the United Kingdom)

(Environment — Aarhus Convention — Directive 85/337/EEC — Directive 2003/35/EC — Article 10a — Directive 96/61/EC — Article 15a — Access to justice in environmental matters — Meaning of ‘not prohibitively expensive’ judicial proceedings)

Summary — Judgment of the Court (Fourth Chamber), 11 April 2013

1. *Environment — Assessment of the effects of certain projects on the environment — Directives 85/337 and 96/61 — Right to challenge a decision to issue a permit — Requirement that proceedings should not be prohibitively expensive — Meaning*

*(Council Directive 85/337, as amended by Directive 2003/35, Art. 10a, fifth para., and Council Directive 96/61, as amended by Directive 2003/35, Art. 15a, fifth para.)*

2. *European Union law — Interpretation — Provision making no express reference to the law of the Member States — Independent and uniform interpretation*

3. *Environment — Assessment of the effects of certain projects on the environment — Directives 85/337 and 96/61 — Right to challenge a decision to issue a permit — Requirement that proceedings should not be prohibitively expensive — Assessment by the national court — Criteria*

*(Council Directive 85/337, as amended by Directive 2003/35, Art. 10a, fifth para., and Council Directive 96/61, as amended by Directive 2003/35, Art. 15a, fifth para.)*

1. The requirement, under the fifth paragraph of Article 10a of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment and the fifth paragraph of Article 15a of Directive 96/61 concerning integrated pollution prevention and control, as amended by Directive 2003/35, that judicial proceedings should not be prohibitively expensive means that the persons covered by those provisions should not be prevented from seeking, or pursuing a claim for, a review by the courts that falls within the scope of those articles by reason of the financial burden that might arise as a result, taking into account all the costs borne by the party concerned.

That requirement pertains, in environmental matters, to the observance of the right to an effective remedy enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, and to the principle of effectiveness, in accordance with which detailed procedural rules governing actions for safeguarding an individual's rights under European Union law must not make it in practice impossible or excessively difficult to exercise rights conferred by European Union law.

(see paras 33, 35, operative part)

2. See the text of the decision.

(see para. 29)

3. Where a national court is called upon to make an order for costs against a member of the public who is an unsuccessful claimant in an environmental dispute or, more generally, where it is required to state its views, at an earlier stage of the proceedings, on a possible capping of the costs for which the unsuccessful party may be liable, it must satisfy itself that the requirement that the proceedings should not be prohibitively expensive has been complied with, taking into account both the interest of the person wishing to defend his rights and the public interest in the protection of the environment.

In the context of that assessment, the national court cannot act solely on the basis of that claimant's financial situation but must also carry out an objective analysis of the amount of the costs. Thus, the cost of proceedings must neither exceed the financial resources of the person concerned nor appear, in any event, to be objectively unreasonable. It may also take into account the situation of the parties concerned, whether the claimant has a reasonable prospect of success, the importance of what is at stake for the claimant and for the protection of the environment, the complexity of the relevant law and procedure, the potentially frivolous nature of the claim at its various stages, and the existence of a national legal aid scheme or a costs protection regime.

By contrast, the fact that a claimant has not been deterred, in practice, from asserting his claim is not of itself sufficient to establish that the proceedings are not prohibitively expensive for him.

Lastly, that assessment cannot be conducted according to different criteria depending on whether it is carried out at the conclusion of first-instance proceedings, an appeal or a second appeal.

(see paras 40-48, operative part)