

Parties to the main proceedings

Applicants: Edel Grace, Peter Sweetman

Defendant: An Bord Pleanála

Question referred

Where

- a) a protected site has as its essential purpose the provision of habitat for a specified species
- b) the nature of the habitat which is beneficial for that species means that the part of the site which is beneficial will necessarily alter over time, and
- c) as part of a proposed development a management plan for the site as a whole (including changes to the management of parts of the site not directly affected by the development itself) is to be put in place which is designed to ensure that, at any given time, the amount of the site suitable as habitat as aforesaid is not reduced and indeed may be enhanced; but
- d) some of the site will, for the lifetime of the development project, be excluded from having the potential to provide appropriate habitat,

can such measures as are described in (c) properly be regarded as mitigatory?

**Reference for a preliminary ruling from the Supreme Court (Ireland) made on 3 April 2017 —
Volkmar Klohn v An Bord Pleanála**

(Case C-167/17)

(2017/C 178/14)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicant: Volkmar Klohn

Defendant: An Bord Pleanála

Question referred

1. Can the 'not prohibitively expensive' provisions of Art. 10a of the Public Participation Directive potentially have any application in a case such as the instant case where the development consent challenged in the proceedings was granted prior to the latest date for transposition of that directive and where the proceedings challenging the relevant development consent were also commenced prior to that date? If so have the 'not prohibitively expensive' provisions of the Public Participation Directive potential application to all costs incurred in the proceedings or only to costs incurred after the latest date for transposition?
2. Is a national court which enjoys a discretion concerning the award of costs against an unsuccessful party, in the absence of any specific measure having been adopted by the member state in question for the purposes of transposing Art. 10a of the Public Participation Directive, obliged, when considering an order for costs in proceedings to which that provision applies, to ensure that any order made does not render the proceedings 'prohibitively expensive' either because the relevant provisions are directly effective or because the court of the member state concerned is required to interpret its national procedural law in a manner, to the fullest extent possible, which fulfils the objectives of Article 10a?
3. Where an order for costs is unqualified and would, by virtue of the absence of any appeal, be regarded as final and conclusive as a matter of national law, does Union law require that either
 - a) a Taxing Master charged in accordance with national law with the task of quantifying the amount of costs reasonably incurred by the successful party; or

- b) a court asked to review a decision of such a Taxing Master nonetheless have an obligation to depart from otherwise applicable measures of national law and determine the amount of costs to be awarded in such a way as ensures that the costs so awarded do not render the proceedings prohibitively expensive?

**Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 6 April 2017 — X,
other party: Belastingdienst/Toeslagen**

(Case C-175/17)

(2017/C 178/15)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: X

Defendant: Belastingdienst/Toeslagen

Questions referred

1. Must Article 13 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98; 'the Return Directive'), read in conjunction with Articles 4, 18, 19(2) and 47 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that under EU law, if national law makes provision to that effect, in proceedings challenging a decision which includes a return decision within the meaning of Article 3(4) of Directive 2008/115/EC, the legal remedy of an appeal has automatic suspensory effect where the third-country national claims that enforcement of the return decision would result in a serious risk of infringement of the principle of non-refoulement? In other words, in such a case, should the expulsion of the third-country national concerned be suspended during the period for lodging an appeal, or, if an appeal has been lodged, until a decision has been delivered on that appeal, without the third-country national concerned being required to submit a separate request to that effect?
 2. Must Article 39 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13; 'the Procedures Directive'), read in conjunction with Articles 4, 18, 19(2) and 47 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that, under EU law, if national law makes provision to that effect, in proceedings relating to the rejection of an application for asylum within the meaning of Article 2 of Directive 2005/85/EC, the legal remedy of an appeal has automatic suspensory effect? In other words, in such a case, should the expulsion of the asylum-seeker concerned be suspended during the period for lodging an appeal, or, if an appeal has been lodged, until a decision has been delivered on that appeal, without the asylum-seeker concerned being required to submit a separate request to that effect?
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