

2. Outline on the availability of judicial relief under the legal system of Ireland

There are two options available in Ireland concerning (i) the direct effect of Article 93(3), (ii) the enforcement of negative Commission decisions (actions instituted by Member States, by the beneficiary, by competitors), (iii) the implementation of positive Commission decisions. These are judicial review and tort proceedings.

2.1 Judicial Review

A decision by the Irish State in relation to State aid may be challenged by way of judicial review in the High Court, where the State has failed to observe the direct effect of Article 93(3) (the standstill provision), or has failed to enforce a Commission decision. A party initiating a challenge by way of judicial review would rely on the ground that the State had breached Community law.

The current judicial review procedure, which was introduced in 1986, is governed by Order 84 of the Rules of the Superior Courts¹. Under this comprehensive procedure, the remedies discussed below are interchangeable (Order 84, rule 19).

2.1.1 *Certiorari, prohibition, mandamus - Order 84, rule 18 (1)*

Where a public body has reached a decision in excess of jurisdiction (eg. where the State has granted aid without adhering to Article 93(3)), *certiorari* is the appropriate remedy, while *prohibition* is used to restrain a public body from acting in excess of its jurisdiction (eg. where the State intends to grant aid in contravention of a Commission decision not to allow such aid). The purpose of *mandamus* is to oblige a public body to carry out a duty imposed on it where the public body has failed to act (eg. where the State has failed to follow a Commission decision to recover aid).

2.1.2 *Declaration, injunction - Order 84, rule 18 (2)*

An applicant can seek a *declaration*, which is essentially a judicial statement clarifying the rights or legal position of the parties to an action, or an *injunction*. An *injunction* is a court order requiring a party to do or refrain from doing a certain act.

2.1.3 *Procedure*

The first step is to seek leave to apply for judicial review in accordance with Order 84, rule 20. This is done by an *ex parte* motion (i.e. a court application without notice to the other party) grounded upon a notice in Form No.13 in Appendix T of the Rules of the

¹ See appendix A

Superior Courts and an affidavit, which is a sworn statement confirming the facts relied on. In order to initiate the judicial review procedure, the applicant must be able to show that it has a sufficient interest in the matter to which the application relates². In the case of State aid the range of applicants is probably limited to beneficiaries of State aid or competitors but there is no Irish case law on this point. The court may grant interim relief (eg. an interim injunction), under Order 84, rule 20 (7), where leave to apply for judicial review has been granted.

Application for leave to apply for judicial review must be made promptly and in any event within three months from the date when grounds for the application first arose, or six months where the relief sought is *certiorari*, unless the Court considers that there is good reason for extending the period within which the application shall be made³.

Once leave to apply for judicial review has been granted, the application for judicial review is made by originating notice of motion in accordance with Order 84, rule 22 unless the court directs that it shall be made by plenary summons.

The court may award damages, pursuant to Order 84, rule 24, if

- (a) the applicant has included a claim for damages in the statement in support of his application for leave and
- (b) the Court is satisfied that, if the claim had been made in a civil action against the respondent, the applicant would have been awarded damages

2.2 Tort

The alternative route is to bring a tort action (i.e. an action in respect of a civil wrong) against the State for the loss and damage caused by the State's decision.

It was stated by Carroll J. in Tate v Minister for Social Welfare⁴ that

"the word 'tort' is sufficiently wide to cover breaches of obligations of the State under Community law. There is nothing strange in describing the State's failure to fulfil its obligations under the Treaty as a tort."

Thus, it would appear that the State's failure to observe the direct effect of Article 93(3) or to enforce a Commission decision can be categorised as a tort because the State has breached its obligations under Community law.

2 Order 84, rule 20(4)

3 Order 84, rule 21

4 [1995] 1 I.R. 418

2.2.1 Procedure

The High Court, Circuit Court and District Court all have originating jurisdiction in tort cases. The High Court has a general monetary jurisdiction irrespective of amount. The Circuit Court has jurisdiction to deal with claims up to a maximum of £ 30,000 while the District Court has jurisdiction to deal with claims up to a maximum of £ 5,000.

Proceedings are commenced in the High Court by Plenary Summons, in the Circuit court by Civil Bill and in the District Court by Civil Summons.

In appropriate cases interim relief (eg. an interim injunction) may be claimed in interlocutory proceedings prior to the trial.

Under S.11(2)(a) of the Statute of Limitations Act 1957 there is a time limit of six years, from the date of accrual of the cause of action, within which proceedings must be initiated.

3. Irish cases concerning the application of Articles 92 and/or 93

None