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Climate Law & Litigation in Ireland

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On 31 July 2020, a seven-judge Supreme Court delivered judgment in Friends of the Irish Environment CLG v Government of Ireland [2020] IESC 49. The unanimous ruling, in what has come to be known as Climate Case Ireland, was that Ireland's National Mitigation Plan was unlawful and must be quashed.

The Court reached this conclusion on narrow grounds. Essentially, it found that the plan did not comply with the Climate Action and Low Carbon Development Act 2015. This legislation establishes 'the national transition objective'. It requires Ireland to transition to 'a low carbon, climate resilient and environmentally sustainable economy' by the end of the year 2050.

The Government is required to 'specify' in the plan the policy measures required to achieve the national transition objective. In determining the level of detail that must be provided in the plan, the Court drew on the public participation and transparency obligations which underpin the statutory scheme. It ruled that a compliant plan must enable a reasonable and interested member of the public to know how the Government intends to meet the national transition objective and to determine whether the policy measures presented are realistic.

The Court also considered that when assessing the plan it was appropriate to give 'significant weight' to the views expressed by the Climate Change Advisory Council, an independent body established under the 2015 Act. In its Annual Review 2018, the Council had concluded that Ireland was 'completely off course' to meet its climate obligations.

Having considered the content of the plan, the Supreme Court concluded that it fell '*a long way short*' of what the 2015 Act required. The plan, as formulated, did not enable a reasonable and interested observer to discern how current Government policy intends to achieve the national transition objective. Too much was left to further study or investigation. Significant parts of the policies presented were 'excessively

vague or aspirational'. The plan would therefore be quashed for failing to comply with its statutory mandate.

It is notable that, relying on the separation of powers, the Government had argued that the substance of the plan was not justiciable on the basis that it involved the adoption of policy. The Supreme Court disagreed. Whether the plan met the specificity requirements set down in the 2015 Act was 'clearly justiciable'. As Chief Justice Frank Clarke put it: 'What might once have been policy has become law by virtue of the enactment of the 2015 Act'.

While the outcome of the case turned on the requirements of the 2015 Act, there are two other aspects of the judgment that merit mention.

Standing
First, the Supreme Court concluded that Friends of the Irish Environment (FIE), being a corporate entity, did not have standing to invoke personal rights under the Constitution of Ireland (including the right to life and the right to bodily integrity) or under the European Convention on Human Rights (specifically the rights guaranteed under Article 2 and Article 8).

A constitutional right to a healthy environment?
Second, in November 2017, in a different case that had also been brought by FIE, the High Court had recognised an 'unenumerated' right to an environment consistent with the human dignity and well-being of citizens. FIE's challenge to the National Mitigation Plan provided the Supreme Court with its first opportunity to consider this newly asserted right. The Court took the view that 'a right to a healthy environment' cannot be derived from the Constitution. The basis for this conclusion was that the asserted right is either 'superfluous' (if it does not extend beyond the right to life and the right to bodily integrity), or it is 'excessively vague and ill-defined' (if it does extend beyond those rights).

The Supreme Court was careful to acknowledge, however, that there may well be cases, which are environmental in nature, where constitutional rights and obligations may be engaged. For example, if FIE had established standing in this particular case, then the Court would have been required to consider the circumstances in which climate change measures, or the lack of such measures, might be said to interfere with the right to life or the right to bodily integrity. It remains to be seen how this aspect of the Irish jurisprudence will evolve into the future.

Overall, the Supreme Court's ruling provided a welcome fillip for climate action. It confirmed that the Government must present specific policy measures with a real and sufficient level of detail. Any attempt to 'kick to touch' by relying on vague or aspirational policies will not pass muster.

New climate legislation
In the meantime, things have moved on significantly at the political level. On 23 March 2021, the Government published the Climate Action and Low Carbon Development (Amendment) Bill 2021. The Press Release issued on publication of the Bill states the Government's intention to enshrine in law an interim target to reach a 51% reduction in emissions by the end of the decade and to achieve 'net-zero' emissions no later than 2050.

The proposed amendments to the 2015 Act set out in the Bill are significant. They include a new 'national climate objective' which requires the State to 'pursue and achieve' by the end of 2050 'the transition to a climate resilient, biodiversity rich, environmentally sustainable and climate neutral economy'. A strengthened Climate Change Advisory Council will have the role of preparing a series of five-year carbon budgets. The Bill provides for the preparation of an annual update of the *Climate Action Plan 2019*. Work is already underway to develop the 2021 Plan, including an elaborate public consultation

process.

While certain elements of the Bill require further work to ensure legal certainty and enforceability, there is no doubt that it represents a very significant advance towards strengthening climate governance in Ireland.

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