Other relevant rules on appeals, remedies and access to justice in environmental matters

There are no rules in relation to what is termed “administrative passivity”. There is no mechanism by which the Courts (or any other administrative body) can of their own motion impose penalties on State parties that frustrate access to justice or fail to take the necessary steps to facilitate access to justice. The only way for that to occur is for individual litigants to bring an action that alleges a failure to vindicate access to justice rights. These types of action are relatively commonplace – i.e. that notice of a potential development was not provided or that submissions were not considered as part of litigation impugning the validity of a grant of a licence or development consent.

However, this type of litigation tends to focus on the failure to provide access to justice in particular instances or as regards particular cases and not in relation to systemic failures to vindicate access to justice requests. That means that access to justice points are used tactically by litigants seeking to quash the development consent or licence, but without any mechanism to guard against administrative passivity on a national or macro scale. There is no other State watchdog or body with a remit to ensure that access to justice measures are enacted and applied.

While there are no specific rules or penalties which the Courts can impose for breaches of the principle of access to justice, the High Court can, in an action for judicial review, grant damages in addition to, or in lieu of, certiorari or prohibition, or a declaration or an injunction (Order 84 r.24, Rules of the Superior Courts). The courts also have coercive powers to attach and commit for breaches of court orders.

Non-compliance with a court judgment amounts to civil contempt of court. This can result in the party in default being open to punitive sanctions for being in contempt. The court can commit the party to prison for an indefinite, as opposed to a definite (as occurs in criminal contempt of court), period, which will end when the person agrees to comply with the court order/judgment. It is worth noting that public bodies are subject to liability for civil wrong in the same way as private companies and individuals and are also responsible for the acts and omissions of their employees and agents under principles of vicarious liability. To the extent that a public body deliberately breached a court judgment, it is possible that persons such as its CEOs, directors, board members (depending on how that particular body is constituted), could be held liable for contempt of court. Where a public body is a company, the procedure in s.53 of the Companies Act 2014 could potentially be used to enforce a judgment against the company and its officers – remedies include sequestration and attachment (i.e. bringing the directors/officers before the High Court to answer their contempt).

The purpose of imprisonment in civil contempt is not punitive but rather coercive. However, in practice the boundary between civil and criminal contempt has become blurred in the Irish courts. Currently, the law appears to provide the broadest possible range of sanctions for civil contempt. These stretch from punitive sanctions imposed on the basis of the public interest (as set out in *Laois County Council v. Hanrahan,* SC No. 411 of 2013) to unlimited powers of coercive imprisonment.

Hogan, Morgan and Daly comment in *Administrative Law* (5th Ed., 2019) that “in principle, a Minister can be found guilty of contempt of court, although there is (to our knowledge) no recorded instance of this having occurred.”

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