

Environmental Claims - Ireland

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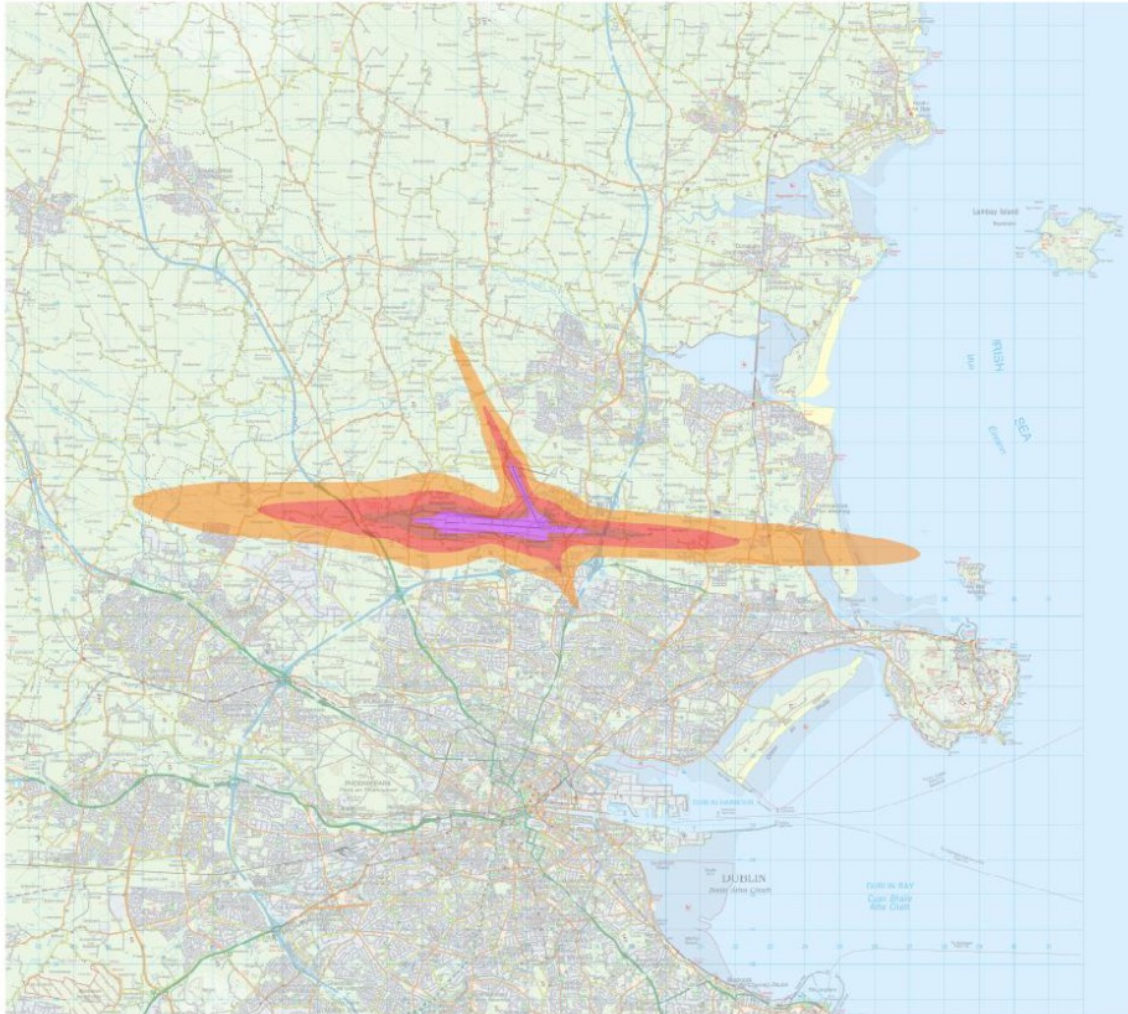
FPLOGUE SOLICITORS



Intro

- Fred Logue, PhD, MIEMA, CEnv
- Managing Partner of FP Logue LLP, solicitors
- >100 planning Judicial Reviews
- >10 CJEU cases
- >5 Aarhus Convention Compliance Committee communications
- Act primarily for individuals, associations and NGOs in Ireland and EU.

Dublin Airport



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LEGEND:

- Noise Contours,
- 50 to 54 dB Lnight
 - 55 to 59 dB Lnight
 - 60 to 64 dB Lnight
 - Greater than or equal to 65 dB Lnight

REVISIONS

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Dublin Airport
Strategic Noise Mapping 2016

Airborne Aircraft Noise Contours
Annual L_{night}

DRAWN: DR

CHECKED: NW

DATE: June 2017

SCALE: 1:150000@A4

FIGURE No:

A11036/02

Noise Action Plan for Dublin Airport, 2019-2023

<https://www.fingal.ie/sites/default/files/2019-04/NAP%20Final.pdf>



3.3 Aircraft noise

Recommendations

For average noise exposure, the GDG **strongly** recommends reducing noise levels produced by aircraft below **45 dB** L_{den} , as aircraft noise above this level is associated with adverse health effects.

For night noise exposure, the GDG **strongly** recommends reducing noise levels produced by aircraft during night time below **40 dB** L_{night} , as aircraft noise above this level is associated with adverse effects on sleep.

To reduce health effects, the GDG strongly recommends that policy-makers implement suitable measures to reduce noise exposure from aircraft in the population exposed to levels above the guideline values for average and night noise exposure. For specific interventions the GDG recommends implementing suitable changes in infrastructure.

Lden (pop.)	2006	2011	2016	2018	2019 (EIAR)
45-49.9				531949	579989
50-54.9				149294	140049
55-59.9	2800	11900	18500	30766	27818
60-64.9	200	300	1500	4449	5994
65-69.9	100	200	300	226	254
70-74.9	0	0	0	25	31
>=75	0	0	0	0	0

Lden

- From 2006 -> 2019, population exposed to **>= 55 dB Lden** increased from 3100 -> 12400 -> 20300 -> 35476-> 34097
- WHO recommended safe Lden limit is **45 dB**.
- Therefore, there were **754,135** people exposed to adverse effects of aircraft daytime noise in 2019 according to the WHO.

L_{night} (pop.)	2006	2011	2016	2018	2019 (EIAR)
40-44.9				251965	285605
45-49.9				43176	45469
50-54.9	0	1200	6200	11563	12305
55-59.9	0	200	400	697	1423
60-64.9	0	0	0	46	97
>=65	0	0	0	10	13

L_{night}

- From 2006 -> 2019, population exposed to **>= 50 dB L_{night}** increased from 0 -> 1400 -> 6600 -> 12316 -> 13838
- WHO recommended safe L_{night} limit is **40 dB**.
- Therefore, there were at least **344,912** people exposed to adverse effects of aircraft night-time noise in 2019 according to the WHO.



Public Domain

<https://picryl.com/media/guillaume-courtois-david-and-goliath-google-art-project-5a3085>

Aarhus Convention – Personal Scope

- Recognizing that every person has the right to live in an environment adequate to his or her health and well-being, and the duty both individually and in association with others, to protect and improve the environment for the benefit of present and future generations
- “The Public” means one or more natural or legal persons and in accordance with national law or practice, their associations, organisations or groups
- Appropriate recognition of and support to organisations, groups and association promoting environmental protection and ensure national legal system is consistent with this obligation

Aarhus Convention – Access to Justice

- Members of the public, where they meet the criteria, if any, laid down in national law, have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment
- Adequate and effective remedies, including injunctive relief, which are fair, equitable, timely and not prohibitively expensive
- Appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice

Rights and Duties

- Legal protection under the Aarhus Convention goes further than effective legal protection under Article 47 of the Charter of Fundamental Rights. Article 47 expressly relates to the protection of individual rights.
- Legal protection in environmental matters, on the other hand, generally serves not only the individual interests of claimants, but also, or even exclusively, the public.
- The Convention has this two-fold interest in view.
- Recognition of the public interest in environmental protection is especially important since there may be many cases where the legally protected interests of particular individuals are not affected or are affected only peripherally. However, the environment cannot defend itself before a court, but needs to be represented, for example by active citizens or non-governmental organisations.
- The two-fold interest in environmental protection precludes risks in terms of prohibitive costs from being prevented only having regard to the capacity to pay of those who seek to enforce environmental law. They cannot be expected to bear the full risk in terms of costs of judicial proceedings up to the limit of their own capacity to pay if the proceedings are also, or even exclusively, in the public interest.

Opinion of AG Kokott, *Edwards*, Case C-260/11, EU:C:2012:645, para 36 - 43

Associations, Organisation, Groups

- The discretion to impose criteria under national law cannot exclude entire categories of “members of the public” to bring judicial or administrative proceedings (including associations, organisations and groups)

See Opinion of AG Medina in *Societatea Civilă Profesională de Avocați AB & CD*, Case C-252/22, EU:C:2023:592

Costs Protection

- Art 9(3) of Aarhus Convention doesn't distinguish between private law and public law causes of action
- Article 9(4) provides an overarching requirement for NPE costs for all litigation

Environmental Claims in Ireland

- Negligence – breach of duty causing loss
- Nuisance – neighbour's interference with use and enjoyment of your property
- Breach of Statutory Duty
- Fundamental Rights
 - Bodily Integrity
 - Private and Family Life
 - Inviolability of the dwelling

Group Litigation in Ireland

- Unincorporated associations generally don't have capacity to litigate in their own name
- Group litigation is effectively impossible
 - Test Cases – costs and risk cannot be shared
 - Representative actions cannot be used for tort
 - Everyone has to make an individual claim

Costs

- Loser pays principle introduces massive financial risk for plaintiff
- Actions for damages expressly excluded from special costs rules for environmental litigation
- Litigation funding is generally unlawful
- ATE insurance not generally available or used
- Legal aid is unobtainable for environmental claims
- For a big claim costs can easily exceed €200,000 or more – resourced defendants can and do use system to increase costs for plaintiffs
- Court fees of €200 for each claim

Aarhus Issues

- Exclusion of class actions for environmental claims probably not in compliance with AC
- Exclusion of private claims for damages from costs protection already ruled by ACCC to be non-compliant (cases C/85 and C/86 – UK)
 - The committee finds that by failing to ensure that private nuisance within the scope of Art 9(3) and for which there is no fully adequate alternative procedure are not prohibitively expensive are not prohibitively expensive, the Party concerned fails to comply with Art 9(4)
- Lack of effective legal aid or any other assistance mechanism such as litigation funding, class action etc is also probably not compliant with Art 9(3) to (5)
- Further development of interaction between Art 9(3) to (5) and Art 47 Charter of Fundamental Rights to be expected in this area