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Case summary posted by the Task Force on Access to Justice

EUROPEAN UNION, Fish Legal, Emily Shirley v Information Commissioner, United Utilities Water plc, Yorkshire Water Services Ltd, Southern Water Services Ltd, C-279/12

<i>1. Key issue</i>	Definition of a “public authority” – undertakings, such as the water companies concerned, which provide public services relating to the environment are under the control of a body or person falling within article 2(2)(a) or (b) of Directive 2003/4, and should therefore be classified as “public authorities” if they do not determine in a genuinely autonomous manner the way in which they provide those services.
<i>2. Country/Region</i>	European Union
<i>3. Court/body</i>	Court of Justice of the European Union (CJEU)
<i>4. Date of judgment /decision</i>	2013-12-19
<i>5. Internal reference</i>	<i>CJEU – First Chamber, C-279/12</i>
<i>6. Articles of the Aarhus Convention</i>	Art. 2 para. 2, Art. 4 para. 1
<i>7. Key words</i>	Access to information, scope of environmental information, concept of public authorities, water companies, EU Directive 2003/4

8. Case summary

In August 2009, Fish Legal (a non-profit-making organisation whose object is to combat pollution and other damage to the aquatic environment and to protect angling and anglers) asked two water companies, United Utilities Water plc and Yorkshire Water Services Ltd for information concerning discharges, clean-up operations and emergency overflow. The same month, Mrs. Shirley wrote to the water company, namely Southern Water Services Ltd, in order to ask for information relating to the sewerage capacity for a planning proposal in her village in the county of Kent. Both entities did not receive the requested information from the water companies concerned within the periods prescribed under regulations 5 and 7 of the Environmental Information Regulations 2004 (“the EIR 2004”) which transposes Directive 2003/4 of the European Parliament and the Council of 28 January 2003 on public access to environmental information into national law. Fish Legal and Mrs. Shirley complained to the Information Commissioner who held, in March 2010, that the water companies concerned were not public authorities for the purposes of the EIR 2004 and that he therefore could not adjudicate on their respective complaints. Fish Legal and Mrs. Shirley then appealed against the decisions against the First-tier Tribunal which dismissed the appeals on the same principal ground. They went on appealing to the Upper Tribunal (Administrative Appeals Chamber), which made a request to the CJEU for a preliminary ruling on the matter.

According to article 2(2)(a) of Directive 2003/4, a “public authority” is defined as the government or other public administration, including public advisory bodies, at national, regional or local level. Provision (b) of article 2 states that the wording “public authority” covers “any natural or legal person performing public administrative functions under national law, including specific duties, activities or services in relation to the environment”. Article 2(2)(c) of the directive adds that any natural or legal person having public responsibilities or functions, or providing public services, relating to the

environment under the control of a body or person falling within (a) or (b) is also a “public authority”.

The CJEU held that undertakings, such as the water companies concerned, which provide public services relating to the environment are under the control of a body or person falling within article 2(2)(a) or (b) of Directive 2003/4, and should therefore be classified as “public authorities” if they do not determine in a genuinely autonomous manner the way in which they provide those services. In addition, the CJEU pointed out that both Directive 2003/4 and the Aarhus Convention are designed to achieve the widest possible systematic availability and dissemination to the public of environmental information held by or for public authorities and that it is clear from article 3(1) of Directive 2003/4 that if any entity is classified as a public authority for the purpose of one of the three categories referred to in article 2(2) of that directive, it is obliged to disclose all the environmental information falling within one of the six categories set out in article 2(1) of the directive.

The CJEU concluded that the water companies were required to disclose only the environmental information which they hold in the context of the supply of the public services but not if it is not disputed that the information does not relate to the provision of such services.

Note: On 19 February 2015, the Upper Tribunal reached a decision in the case. After having carried out the test laid down by the CJEU by undertaking a comparison between the powers that have been vested in the companies in question and the powers that result from the rules of private law, the Tribunal concluded that the water companies have some special powers that were not available under the normal rules of private law. The examples of these water companies’ powers analysed by the Tribunal in the decision were sufficient to satisfy the test laid down by the CJEU. As a result, the water companies were recognized as public authorities for the purposes of the Aarhus Convention, EU Directive on Environmental Information and Environmental Information Regulation. Finally, the Upper Tribunal concluded also that the water companies provided the information requested by Fish Legal and Mrs Shirley late but no further steps were required of them.

The decision of the Upper Tribunal is available from:

<http://www.bailii.org/uk/cases/UKUT/AAC/2015/52.html>

9. *Link to judgement/decision*

<http://curia.europa.eu/juris/liste.jsf?language=en&num=C-279/12>

http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/EUROPEAN_UNION/CJEU_C279_12_FishLegal/CJEU_C279-12_Judgement.pdf