

Irlande

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The Supreme Court of Ireland, established pursuant to Article 34 of the Constitution of Ireland, is the court of final appeal in all constitutional and civil matters. It exercises a limited jurisdiction in criminal matters in appeals from the Court of Criminal Appeal when a point of law has been certified as being one of exceptional public importance and that such an appeal is in the public interest. Virtually the sole first instance jurisdiction of the Court is the function, under Article 26 of the Constitution, of deciding on the constitutionality of a Bill which has been referred to the Court for that purpose by the President of Ireland, prior to the Bill being signed. Should the Court decide that the Bill, or any of its provisions, is incompatible with the Constitution it may not be signed or promulgated as law by the President.

Composition

The Supreme Court is composed of the Chief Justice of Ireland, who is President of the Court, and seven ordinary Judges. In addition the President of the High Court is an ex officio member of the Supreme Court. The Court usually sits with a composition of three or five Judges and, exceptionally, seven Judges. When hearing cases concerning the constitutional validity of an Act of the Oireachtas (parliament) the Constitution requires that the Court consists of a minimum of five Judges. This constitutional requirement also applies when the Court is requested to give an opinion on the constitutional validity of a Bill adopted by the Oireachtas when referred to it by the President of Ireland under Article 26 of the Constitution. A minimum of five Judges is also required should the Court have to determine, pursuant to Article 12 of the Constitution, whether the President has become permanently incapacitated. Generally speaking, a court of three Judges sits in appeals concerning interlocutory or procedural matters or issues which can be decided within the parameters of established case law. In addition to those cases in which it is required by the Constitution, a court composed of five Judges, or exceptionally seven Judges, will sit for appeals involving questions of law of particular importance or complexity. Where an insufficient number of Judges of the Supreme Court are available the Chief Justice may request any ordinary Judge of the High Court to sit as a member of the Supreme Court for the hearing of a particular appeal.

Jurisdiction

The Supreme Court fulfils two principal roles, namely that of a constitutional court and a civil court of final appeal. It is essentially the final appellate court from decisions of the High Court with limited original jurisdiction in matters referred to below.

The Courts established by Article 34 of the Constitution, the Supreme Court and the High Court, constitute the judicial organ of Government. Article 6 of the Constitution provides that all powers of Government - legislative, executive and judicial - derive from the people and goes on to state that "These powers of Government are exercisable only by or on the authority of the organs of State established by this Constitution."

The Government is the organ of State exercising the executive power of Government, the two houses of parliament comprising the Oireachtas (of which the President is the titular head, in addition to her constitutional status as head of State) exercise the legislative power of government, and the courts established by Article 34 of the Constitution exercise the judicial power of government. The judicial power of government of those courts includes the power to

review the compatibility of statutes with the Constitution and to judicially review subordinate legislation, decisions or actions of the Government or State bodies with a view to determining their legality and compatibility with the Constitution, and principles deriving from the Constitution such as due process. The Court also reviews, on appeal from the High Court, the decisions of other courts: the District Court, the Circuit Court and the Special Criminal Court.

1. Appellate jurisdiction

The Supreme Court exercises an appellate jurisdiction from all decisions of the High Court subject to such exceptions as may be prescribed by law. There is thus generally an automatic right of appeal to the Supreme Court from decisions of the High Court. A limited number of exceptions have been made by statute to this right of appeal where a certificate is required from the trial Judge certifying that the appeal involves a point of law of public importance. Article 34.4 of the Constitution expressly provides that no law may be enacted excepting from the appellate jurisdiction of the Supreme Court cases which involve questions as to the validity of any law having regard to the provisions of the Constitution.

Appeals from criminal trials conducted in the High Court (and Circuit Court) may be brought to the Court of Criminal Appeal (CCA). That Court consists of a Judge of the Supreme Court, who sits as President of the Court, and two Judges of the High Court. There is no general right of appeal from the CCA to the Supreme Court. However, there is by statute a limited right of appeal where a decision of the CCA is certified as involving a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

In addition, section 34 of the Criminal Procedure Act 1967, as amended by section 21 of the Criminal Justice Act 2006, provides that where, on a question of law, a verdict in favour of an accused person is found by direction of the trial judge, the Attorney General or the Director of Public Prosecutions may, without prejudice to the verdict in favour of the accused, refer the question of law to the Supreme Court for determination.

Cases stated

The Irish legal system also includes courts of limited jurisdiction - the District Court and the Circuit Court - organised on a local and regional basis. Under the "case stated" procedure provided for in s. 16 of the Courts of Justice Act 1947, a Circuit Judge may, when requested by either or both of the parties to a case before him or her, refer any question of law which arises in the Circuit Court for the determination of the Supreme Court. This procedure may also be availed of by the High Court when hearing an appeal from the Circuit Court under s. 38(3) of the Courts of Justice Act 1936, where the High Court Judge accedes to such request.

In the case of the District Court, where that Court has made a final determination in a case, a point of law may be referred to the High Court under s. 2 of the Summary Jurisdiction Act 1857, as amended, with an automatic right of appeal from the High Court's determination to the Supreme Court. Under s. 52 of the Courts (Supplemental Provisions) Act 1961, a point of law may be referred to the High Court while the case is still in progress before the District Court, which is referred to as a "consultative case stated". In such cases an appeal to the Supreme Court may be taken only where leave to appeal is granted by the High Court (refusal to do so is, however, subject to judicial review).

2. Original Jurisdiction

The Supreme Court also has limited original jurisdiction under Articles 26 and 12.3.1 of the Constitution. Article 26 provides for a reference to the Supreme Court by the President of Ireland, after consultation with the Council of State, of Bills of the type prescribed in that Article for a decision as to whether any such Bill or specified provision(s) thereof is repugnant to the Constitution. Article 12.3.1 of the Constitution provides that only the Supreme Court, consisting of not less than five judges, can establish whether the President of Ireland has become permanently incapacitated.

3. Constitutional jurisdiction

Under Article 34.4.4 of the Constitution the Supreme Court functions as a constitutional court as it is the final arbiter in

interpreting the Constitution of Ireland. This is a role of particular importance in Ireland, since the Constitution expressly permits the courts to review any law, whether passed before or after enactment of the Constitution, in order to ascertain whether it is in conformity with the Constitution. While such cases must be brought in the first instance in the High Court, there is an appeal from every such decision to the Supreme Court. Subordinate legislation and administrative decisions may also be subject to such constitutional scrutiny.

4. Pronouncement of Decisions

Occasionally, a decision of the Supreme Court is given directly following the hearing of an appeal in an *ex tempore* judgment. More often, the Court reserves its judgment and delivers it at a later date. The Supreme Court is a collegiate court, always consisting of a number of Judges. The decision of the Supreme Court is that of the majority. Each Judge in a case may deliver a separate judgment whether concurring or dissenting. The exception to this practice arises in the case of a decision by the Supreme Court regarding the validity of a law having regard to the provisions of the Constitution. In such cases the Constitution provides that the decision shall be pronounced by such Judge as the Court shall direct and that no other opinion on such question shall be pronounced nor shall the existence of any such other opinion be disclosed. A similar provision applies where a Bill is referred to the Supreme Court by the President under Article 26 of the Constitution.

5. Administration of Justice in Public

The Constitution provides that justice shall be administered in public in all courts in Ireland, including the Supreme Court, save in such special and limited cases as may be prescribed by law. Supreme Court sittings in the vast majority of cases are therefore open to the public, with exceptions including those cases concerning family law and particular sexual offences.

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