

# **REPORT FROM IRELAND**

Presented by

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## Introduction

1. As has been pointed out on several occasions in the past in papers submitted by the delegation of Ireland to other meetings of this group, there is no separate administrative law system in Ireland in the sense in which it exists in civil law countries. Likewise, there is no structure of administrative courts and the number of administrative tribunals is quite small.

As has also been pointed out in previous papers of the delegation of Ireland, most of the remedies against abuses of administrative law or mistakes made in the course of administration are sought in the ordinary courts. Such remedies may take the form of applications for orders of certiorari, mandamus, prohibition or declaratory orders or injunctions. However, in a number of instances the statute which confers such administrative decision making power provides specifically for appeals on points of law or, sometimes, on points of law and of fact being brought to the High Court. In such cases it is not necessary to have recourse to the remedies of the type already mentioned such as certiorari etc. Examples of where the statutes conferring the administrative power provides specifically for appeals on points of law to the High Court are the Social Welfare Act 1952, the Redundancy Payments Acts 1967 and 1971, the Central Bank Act 1971, the Anti-Discrimination (Pay) Act 1974, the Employment Equality Act 1977. Examples of where the right of appeal may include both questions of law and fact may be found in the Employment Agency Act 1971 which provides for a right of appeal to the High Court against the Minister's decision to revoke or refuse to grant a licence to run an employment agency, and the Dangerous Substances Act 1972 which provides for full appeals against a decision of the Minister for Labour refusing the issue of licences for the keeping or sale or purchase of various dangerous substances. In such a case if the court directs the Minister to grant a licence the court may specify the conditions, if any, to be attached to such licence.

Speaking generally, it is not the function of the ordinary courts to entertain appeals from decisions of administrative bodies. However, it is the business of the courts to ensure that administrative actions and decisions are taken in accordance with law. It is recognised that the aggrieved citizen who contests in legality of an administrative decision must have access to litigate his claim. It has been held that access to the High Court is one of the unspecified personal rights guaranteed by the Constitution. It is for the courts to say whether or not some particular activity has been in accordance with law and for the courts to say, in effect, what will or will not be tolerated by the law.

Thus in many court decisions it has been demonstrated that the intervention of the courts for the protection of the citizen can be invoked over a very wide field of what might be called administrative law. To take but a few examples: limits have been placed on administrative discretion; a judicial power to compel disclosure of administrative files has been established; and the right to a fair hearing has been vindicated in several different contexts. Experience has shown that the ordinary substantive law is developed by the courts to keep pace with the intricacies of the administrative law and to cope with future requirements. A fault of the system could be said to be the multiplicity of procedures which are available, some of which are highly technical and often mutually exclusive. Consequently it has been recommended by the Law Reform Commission that a single comprehensive procedure is required which would enable the aggrieved citizen to bring his case - whatever its nature - before the courts. It would then be for the judge to decree the form of relief, including where appropriate an order for the payment of damages, which seems best adapted to the particular case.

2(a) In the context of the subject matter of this colloquium there is no particular definition of »legal interest«. It may be discerned in a negative way by saying that it is the interest of a person who is in a real sense interested in the administrative order made. For example, a person who is aggrieved, that is one whose legal interests are affected either directly or indirectly by some administrative order, would come within the definition. Thus, for example, a resident of a city who is paying municipal tax might move to obtain an order annulling the allowance by the city auditor of certain unlawful expenditures made by the city council. In such a case it would not matter that he shared his grievance with others as naturally every other person who is liable to pay a city tax would be equally aggrieved. In a general way it might be said that any person whose rights were interfered with or who had obligations imposed on them directly or indirectly by reason of the administrative action or order in question would have a legal interest. Originally it was thought that if it was simply a generalised interest shared by everyone it would not be sufficient to give a *locus standi* but that view has been increasingly modified by case law and court orders have been made in favour of what might formerly have been regarded as »strangers«.

(b) The term »personal interest« would be understood in the same sense as legal interest except that it would apply to an individual as distinct perhaps from a corporation. Generally speaking, a collective interest is not recognised save in so far as in fact it represents the aggregation of a number of particular interests. However, »class actions« may be instituted in the sense that where there are numerous persons having the same interest one or more of those persons may sue for the benefit of all persons so interested. »Actio popularis« could be defined as being an action brought by somebody whose only *locus standi* was that he was a member of the general public but who might not be directly or indirectly affected in any way by the administrative action complained of. In the field of administrative law no such action would be recognised although, within certain limitations, it would be recognised in the area of constitutional litigation.

(c) There is no particular statutory definition of »environment« but indirectly it is equated with »amenity« by the Planning Act 1963. This provides that what is called an »amenity order« may be made in respect of any area of land

which »by reason of its outstanding natural beauty, its special recreational value, or a need for nature conservation, is worthy of such a designation». Thus, for example, orders may be made for the preservation of hedges, of trees or groups of trees, or to preserve from extinction or otherwise protect any flora or fauna or part of an area where the flora or fauna are of a special amenity value or special interest. Such an order may prohibit the taking, killing or destroying of such flora or fauna.

3. Many of the provisions which exist in law outside the planning laws and which have among their objects the preservation of wildlife in one form or another rely for their protective character upon the criminal law. Offences are created which are prosecuted as criminal offences for the doing of various things contrary to the laws which are there for the preservation of wildlife such as game, birds, fish and trees, rare plants and flowers. In Ireland a criminal prosecution may be instituted by any private person as well as by the appropriate state or public authorities.

However, on what might be called the more positive side of the law the principal provisions are to be found in the Planning Acts 1963 and 1976.

Originally the Minister concerned with these matters was the Minister for Local Government but in recent years the title of that Minister has been changed to be that of the «Minister for the Environment». He is, of course, not exclusively concerned with the environment as he also remains the Minister responsible for the local government.

The preamble to the Planning Act 1963 declares it to be »an Act to make provision, in the interests of the common good, for the proper planning and development of cities, towns and other areas, whether urban or rural (including the preservation and improvement of the amenities there)». It was originally intended that the Minister should exercise a general and overall supervision of planning policy but in practice this was and is left to the local planning authority for each area. The planning authority is the local city council or county council. Such planning authority has the duty to make development plans and to lay down and administer its own planning policy. At one time the Minister was the appeal tribunal in the case of all appeals against the decisions of the local planning authorities. He was required to determine these on their merits as if each application had come before him for determination in the first instance. However, by the Planning Act 1976, a new planning board was established which in fact is an appeal board. The Minister retains certain limited powers in relation to development plans and the making of regulations but the substantive power has passed to the board. This board took office in 1977 and it is a body corporate with perpetual succession and consists of a chairman and not less than four or more than ten ordinary members. The chairman must be a judge of the High Court or a person who has formerly been a judge of the Supreme Court or of the High Court. The ordinary members are appointed by the Minister for the Environment and the board itself elects a deputy chairman. Serving officials of the Department of the Environment may be appointed to be serving officers of the board. The chief functions of this board are to hear and determine appeals against planning decisions. It also has certain other functions which it is not necessary to go into for the purpose of this report and which are, generally speaking, subsidiary to its main function of hearing and determining appeals against planning decisions. In the legislation it is provided that where any question of law arises in a planning appeal, an appeal on that point will lie to the High Court against the decision of the Planning Board provided it is taken within three months. The board itself may also refer the question of law for decision to the High Court. In fact since the board was set up it has never referred a question of law for decision to the High Court. When a person applies for planning permission and is refused he will normally take an appeal to the Planning Board if he wishes to pursue the matter. Very often, however, even when the planning permission is granted by the planning authority in the first instance it may be granted subject to certain conditions and in such a case the applicant may appeal against one or more of those conditions. Third party appeals may also be brought by interested persons against the decision of a planning authority granting planning permission and such appeals are usually taken on the ground that the proposed development would interfere with the amenities enjoyed by the residents of the locality. The notice of appeal, whether by letter or otherwise, is usually expected to set out the grounds of the appeal. Where an appeal is taken against a refusal to grant permission, usually the only persons interested are the applicant and the planning authority but from time to time where a third party has an interest in the matter he may wish to be heard in support of the refusal decision by the planning authority. Where a planning permission has been granted then an appeal may be taken by a third party and in such cases therefore there are at least three parties in the appeal, namely the original applicant, the third party appellant and the planning authority. Indeed there may be many third parties who object in some cases and they will be heard as appellants. An appeal may take the form of an oral hearing or be simply one based upon documents. Usually if a party desires an oral hearing he will ask for it beforehand but even without asking for it, when the appeal comes on he may then ask for it at any time before the appeal is actually decided. An oral hearing has considerable advantage for third party objectors as it gives them an opportunity to cross-examine the applicant. The Planning Board has the discretion to grant or refuse an oral hearing but one of the reserved functions of the Minister for the Environment is that he can direct the board to hold an oral hearing.

The planning law recognised the right of certain bodies to be consulted both in respect of the drawing up of a development plan and in certain cases where an application is made for planning permission. Three bodies are recognised as having a particular right to be consulted in cases where the environment or amenities are concerned, namely An Taisce (the Irish National Trust), Bord Fáilte (the Irish Tourist Board), and the National Monuments Advisory Council. These organisations are expected to be vigilant. Planning authorities are expected to consult one or more of these three organisations when a planning application is received which involves the demolition of a building which may be considered to be of national importance, or which involves the development of an amenity or tourist area, or which involves development in close proximity to historic buildings or national monuments. A

planning authority does not, of course, abdicate its primary responsibility to decide the application but it is expected to seek the view of each of the organisations concerned if the application may be thought to concern it. These organisations have frequently taken appeals when in disagreement with the decision of the planning authority.

The planning legislation also permits recourse by the planning authority to the ordinary courts to get an injunction to restrain somebody acting in breach of the Planning Acts. It can also in certain instances be a criminal offence, prosecuted as such in the courts of criminal jurisdiction, to act in breach of the Planning Acts.

4. Save for the Planning Appeal Board there is really no body of that nature in existence in the administrative sphere which hears complaints against administrative decisions. Outside the sphere of the environment etc. there are various administrative forms of appeal whose procedures must be fair according to the norms of the ordinary law. But they are usually forms of appeal which take place inside the Ministry concerned and which in effect amount to an appeal from one functionary to a higher functionary and in some cases to the Minister concerned. As has been pointed out earlier in paragraph 1 there are instances where an appeal can be brought to the ordinary courts under the terms of the law concerned. In cases where there is not a statutory right of appeal to the courts laid down in the law concerned, as already mentioned, the ordinary courts can be invoked if it can be shown that the administrative act in question was not in accordance with law. Generally speaking, it will not be possible to review any findings of fact unless it can be shown that the findings of fact in question are such as could reasonably have been arrived at on the evidence. That itself is a question of law.

The Planning Appeal Board may also be designated as an appeal tribunal for other matters, e.g. the refusal to grant a licence for discharges to sewers under the Local Government (Water Pollution) Act, 1977.

(a) Save as already mentioned, there are no administrative instances for trying complaints.

(b) Ordinarily only the person directly affected can lodge a complaint.

(c) No administrative superior authority is ex officio entitled to try any case or hear any appeal. The power to do so must be expressly conferred by statute.

5. The matters already set out in paragraph 1 explain who may bring appeals to the ordinary courts and also explain the procedures which may be adopted. Generally speaking, they amount to procedures either to compel an administrative authority to do what it is bound in law to do or alternatively to annul something it has done when it is shown that what it has done is contrary to law.

(a) Anybody who is a person aggrieved in the sense already explained in paragraph 1 is entitled to exercise this right of taking the administrative decision to the ordinary courts.

(b) Associations, unions and groups have a right to take such steps for the protection of the environment or the amenity etc. provided they are persons or groups (for example having their offices in the particular area) who will be affected by the decision taken. However, only the three groups already expressly referred to in paragraph 3 can maintain such an appeal by reason of its *raison d'être*. Save for those three particular groups recognised by the law, other groups are in exactly the same position as any other third parties.

(c) The only such right acknowledged is that already mentioned in reference to the three groups named in paragraph 3.

6. It is not possible to bring any actions before the ordinary courts dealing with the environment and similar matters unless the party concerned can show that what he is complaining of adversely affects his own property rights either by injuring his property or injuring his enjoyment of his property in such a way as to amount to a nuisance. It is not inconceivable that at some future stage somebody may successfully bring an action in the area of constitutional law complaining that he is suffering some injustice by being made the victim of, for example, a far greater pollution etc. than are his fellow citizens. Such an action, if it were successful, would really fall to be dealt with under the constitutional provisions regarding equality under the law and protection from injustice or injury. The answer given to this question does not, of course, seek to exclude what has already been mentioned, namely the possibility of third parties going to court by virtue of the express provisions of the Planning Acts or instituting criminal proceedings against persons who have committed criminal offences by reason of their failure to obey the laws which exist for the protection of the environment, wildlife, etc.

7. The answer to this question is necessarily very subjective. Some judges are very much in favour of extending the scope of judicial activity while others tend to be reluctant to extend the scope of judicial activity into new fields and prefer to leave the matter to legislation. In practice the judges in Ireland have shown themselves to be quite strict in enforcing the Planning Acts in both the letter and the spirit and to take such steps as are open to them to prevent the spirit of the Acts being defeated by pure technicalities.

8. While the judicial role in the protection of the environment at present lies mainly in the field of criminal law the most effective judicial role is exercised in the sphere of private law in civil proceedings brought by a person injured in his person or in his property. However, this form of judicial intervention is limited to those whose personal

property rights are so affected - and in the case of personal injury that means injury to the body or mind. While such judicial interventions are very effective where applicable they are only indirect methods of protecting the environment. However, their main effectiveness lies in the fact that it is the courts which determine the standards of what is injurious and what is tolerable. These standards are likely to become stringent with growing public awareness of the danger to the environment. However, neither judicial action nor legislative action appear until there is a public awareness of the problems involved. The necessity for stricter environmental control has become very apparent in recent years. The previous public inertia in this field has now ceased. The public is already reacting strongly to threats to the environment. In the judicial sphere a greater connection between the law suit and social action will evolve. But this judicial activity must be sought and encouraged in the ordinary courts in the absence of an administrative court system. This will be a challenge to the ingenuity of lawyers to create the opportunity for judicial law making by more imaginative use of existing legal remedies. The traditional nuisance actions by or against the owners of land will probably be overtaken by actions for personal injuries such as civil actions for lung cancer etc against polluters of the air, actions for personal discomfort against the creators of noise or smells, or actions for stomach disorders or other illnesses against those who pollute the soil or water. But above all the constitutional guarantees to defend and to vindicate the personal rights of the citizen, which are directly applicable, may provide the most flexible and fruitful basis for such developments.