

RAPPORT NATIONAL DE LA DELEGATION IRLANDAISE

NATIONAL REPORT OF THE IRISH DELEGATION

THE RIGHT TO BE HEARD BEFORE ADMINISTRATIVE TRIBUNALS AND JUDGES

(1) THE SOURCE OF THE RIGHT TO BE HEARD

The right is derived under Irish law

- (a) partly from the principles of the common law relating to "natural justice" which were carried over by the Constitution when it was enacted by the people in 1937;
- (b) partly from the provisions of the Constitution itself which, as judicially interpreted, require administrative procedures established under the Constitution to be performed in accordance with what is called "constitutional justice," which concept in turn may in certain circumstances embrace the right to be heard, and
- (c) partly from statute law which in some instances expressly confers the right upon a person affected by an administrative decision.

The judicial decisions establishing the right to be heard as an essential feature of natural justice are of long-standing. The judicial decisions establishing the concept of "constitutional justice" date from 1964.

(2) THE SCOPE OF THE RIGHT TO BE HEARD

(a) There is no specific statutory provision conferring the right to be heard generally. There are many statutory provisions in specific and special cases which confer such a right. Examples may be found in the legislative codes relating to social welfare, compulsory acquisition of land, planning, unfair dismissals, payments for redundancy and compensation for

criminal injuries.

(b) The law will imply an obligation to grant a hearing to a person likely to be affected by an administrative decision where the person making the decision is exercising a function or power of a judicial nature. Under the Irish Constitution, limited functions and powers of a judicial nature may be conferred on administrative bodies. Where they enjoy such powers, the principles of natural justice and constitutional justice will confer a right to be heard on a person who will be affected by their decision.

In the case of administrative decisions which are not of a judicial nature, the law will imply an obligation to grant a hearing to a person likely to be affected by the decision where the person making the decision is required to act judicially. In deciding whether the person is required so to act, the court will take into consideration inter alia the three matters set out in paragraph 2 (b).

(c)(i) Dismissal Cases

Generally speaking, where the dismissal takes the form of the removal of a person from an office, the rules of natural justice and constitutional justice will apply and the person will be entitled to be heard. Where the dismissal takes the form of the termination of a contract of employment, there is no right as such to be heard. In such cases, a dismissed employee was at common law afforded a remedy only where the dismissal constituted a breach of the contract of employment. Since 1977, the Unfair Dismissals Act has given all employees in the private sector the right to be heard by a

Rights Commissioner or an Employment Appeals Tribunal.

(ii) Disciplinary Cases

Bodies such as trades unions, other voluntary organisations, professional bodies, university institutions, etc. exercising functions of a disciplinary nature are normally required to act in accordance with natural justice in discharging such functions and, accordingly, to confer on the affected person a right to be heard.

(iii) Revocation or renewal of a licence or permit

The right of the person to be heard will depend on the nature of the licence or permit. If, for example, the revocation of the licence would deprive a person of his livelihood he would normally be entitled to be heard.

(iv) Granting of a licence or permit

The same considerations apply as in (iii) above.

(v) The expulsion of aliens

The Executive has power to order the deportation of aliens. Where they are ordinarily resident in the State for five years, they must be given three months' notice of deportation. Special provisions for nationals of other E.E.C. countries are contained in the European Communities (Aliens) Regulations 1972. While no express right to be heard in objection is conferred by the relevant legislation, (except in the case of E.E.C. aliens) it is thought that such a right probably exists. The point has not been judicially decided.

(d) The right may exist in cases where the administrative decision is a discretionary one, provided the discretion is required to be exercised judicially. Whether it must be so

exercised depends inter alia on the considerations referred to at paragraph 2(b).

(e) While it may be that particular circumstances, such as security requirements, may exceptionally excuse a failure to afford a hearing to the person affected, it is thought that no such cases have so far arisen. The same applies to the disclosure of prejudicial information.

(3) THE NATURE OF THE RIGHT TO BE HEARD

(a) The form of notice, length of notice and contents of notice to be given to a person likely to be affected by an administrative decision will depend entirely, in the absence of express statutory provision, on what the interests of constitutional justice and natural justice appear to require in the particular case.

(b) The same considerations apply as in (a) above to the giving of information. Generally speaking, however, where the administrative body is required to act judicially, the affected person will be entitled to see such portions of the official file as relate to his case, unless there are security grounds for withholding it.

(c) The nature of the hearing to which a person likely to be affected by an administrative decision is entitled will depend in the first instance on any statutory provision. If there is no statutory provision for an oral hearing, the person may still be entitled to an oral hearing if the requirements of natural justice and constitutional justice in the particular case appear to demand it. Not infrequently, the administrative body is given a discretion as to whether it will hold an oral hearing or not.

A person will not necessarily be entitled to legal representation at such an oral hearing: again, much will depend on whether the requirements of natural justice and constitutional justice appear to necessitate such representation. The same applies to the right to call witnesses and cross-examine witnesses: provided they observe the requirements of natural justice and constitutional justice, such bodies are given a reasonable latitude as to the manner in which they conduct particular enquiries. If, however, one side is permitted to call witnesses or cross-examine witnesses, it will usually follow that a similar facility must be afforded to the other side.

(d) Generally speaking, where the procedure provides for the holding of a preliminary public enquiry, the parties, whether they are the State, a local or public authority, or a private citizen, are expected to make their respective cases at the hearing. If any further representations are made to the administrative body charged with making the decision, it will normally be a breach of natural justice; and constitutional justice not to transmit the representations to the other affected parties and afford them an opportunity of making such further representations in relation to them as they consider appropriate.

(4) THE REMEDIES FOR A DENIAL OF THE RIGHT TO BE HEARD

(a) The law on the matter has not been finally settled in Ireland, but it is thought that the denial of the right to be heard would render the impugned decision void and not merely voidable. If this is correct, it would follow that the decision has no legal force (save for appeal purposes) prior to an order annulling it.

(b) The traditional and most commonly invoked remedy for the denial of a right to be heard is an order of certiorari. i.e. an order of the Superior Courts (the High Court and the Supreme Court) quashing or annulling the impugned decision. In addition, the aggrieved person may have a right to damages. Thus, the wrongful removal of a person from an office entitling him to remuneration, will normally entitle him to the appropriate damages for the loss of that remuneration. The aggrieved person may also be entitled to relief by way of an injunction, e.g. to restrain the body making the decision from purporting to act on foot of it.

(c) Generally speaking, there is no time limit for the institution of such proceedings. However, in specific cases, e.g. planning decisions and compulsory purchase acquisitions, the statute requires the proceedings to be brought within a specified time, usually two months from the date of the decision. Apart altogether from any limitation imposed by statute, a person who delays unduly in the bringing of proceedings may be held to have abandoned his rights.

(d) The Court may in its discretion refuse to grant relief even though a denial of the right to a hearing has been established where the conduct of the person has been such as to disentitle him to the relief sought, e.g. where he is shown not to be acting in good faith.

(e) Where the administration has denied the affected person the right to a hearing, they will not be able successfully to plead that if a hearing had been held the decision would have been the same. Nor will they be able successfully to plead that the injured person failed to appeal to a higher administrative body as provided by law.

(f) Where the application to review an administrative decision taken in breach of an obligation to grant a hearing is brought by the person who was entitled to such a hearing, his right to bring the application is clear and no question of locus standi arises. It is thought, however, that a person who was not affected by such a denial would not be entitled to bring such an application, since he would appear to lack the necessary locus standi.

5. THE RIGHT TO BE HEARD IN THE CONTEXT OF AN APPLICATION TO REVIEW AN ADMINISTRATIVE DECISION

(a) The applicant has the right in proceedings in a court with jurisdiction to review an administrative decision to obtain, prior to the hearing, the documents on the official file of the organ of the administration concerned with the impugned decision. This is done by the process of discovery. The organ of the administration may, however, claim that certain documents are privileged and, in particular, this claim may succeed where the public interest requires the non-disclosure of certain documents.

(b) No procedures exist under which third parties; who may wish to support or challenge the validity of an impugned decision may take part in such proceedings.