

# MEMORANDUM

## THE LEGAL REVIEW OF ADMINISTRATIVE DECISIONS: THE RESPECTIVE ROLE OF ADMINISTRATIVE AND CIVIL OR PENAL COURTS AND THEIR RELATIONSHIP

### 1. INTRODUCTION

These are the answers of the Irish Delegation to the questionnaire in connection with the conference in Stockholm from the 15th to the 17th June 1998.

### 2. THE FIELD OF APPLICATION OF LEGAL REVIEW

- I. Is there a legal definition of the concept of "administrative decisions" or is this concept well defined in case law?

At the outset, it is necessary to point out that Ireland is a common law country in the Anglo American tradition. As a result, it has not got a developed system of administrative law or droit administratif such as in familiar in civil law jurisdictions and there are no administrative courts as such.

The Irish Constitution is strictly based on the doctrine of the separation of powers and provides that justice may only be administered in the courts established under the Constitution. There are, however, as one would expect in

modern conditions, a wide range of bodies who are entitled to make administrative decisions, some at least of which closely resemble decisions which are normally made by the courts. The Constitution, however, in special and limited cases, allows such decisions to be taken by bodies other than courts.

There have as a result, been many decisions of the High Court and the Supreme Court - the only courts which may interpret the provisions of the Constitution - deciding whether, in particular cases, legislation which entrusts particular decisions to administrative bodies rather than the courts is constitutionally valid.

The following is the generally accepted definition of the characteristic features of a decision of a judicial nature, as distinct from a simply administrative decision:

- "(1) A dispute or controversy as to the existence of legal rights or violation of law;*
- (2) The determination or ascertainment of the rights of parties or the imposition of liabilities or the infliction of a penalty;*
- (3) The final determination (subject to appeal) of legal rights or liabilities or the imposition of penalties;*
- (4) The enforcement of those rights or liabilities or the imposition of a penalty by the court or by the executive power of the State which is called in by the court to enforce its judgment;*
- (5) The making of an order by the court which as a matter of history is an order characteristic of courts in this country. "*

Such decisions, save in special and limited cases, may only be taken by courts.

II. Are there any general legal provisions distinguishing between administrative decisions which can be the object of legal review by a court and other administrative decisions.

In theory, every administrative decision by a public body can be judicially reviewed by the courts. In practice, however, the circumstances in which the courts will intervene have been strictly limited by case law.

III. Are there non statutory but generally accepted rules concerning this distinction?

Yes.

IV. Are there any special legal provisions for the different fields of law?

No.

V. What are the main characteristics of decisions which can be the object of legal review?

As already noted, any decision by a public officer can, in theory, be the subject of judicial review.

VI. Which are the most frequent categories of administrative decisions that can (respectively) cannot be the object of legal review?

The court will only interfere with a decision by a public official where he has exceeded his functions in some way or has acted contrary to principles of natural justice or has taken into account irrelevant considerations or has misapplied the law.

VII. What are the time limits for lodging petitions for legal review?

In general, such applications must be brought within six months from the date of the decision being challenged» In the case of planning decisions - i.e. permissions to construct buildings or carry out other developments granted by local authorities - the challenge must be brought within two months.

VIII. Are there any important amendments in process or planned regarding these questions?

No.

### 3. THE SUBSTANCE OF THE LEGAL REVIEW

I. Does the legal review cover issues of law and matters of fact as well as questions of suitability?

The legal review covers issues of law only, Le. as to whether the decision was within the jurisdiction of the official or tribunal concerned or whether it contravened principles of natural justice or took into account irrelevant considerations or misapplied the law.

II. Is the extent of the review different depending on the field of law?

No.

III. The powers of the court

i. Has the court got power not only to quash an incorrect administrative decision but also to modify such decision?

No.

ii. In this respect are there different rules in the different fields of law?

No.

iii. Are the powers of a court of first instance different from the powers of a superior court?

No.

IV. Are there any important amendments in process or planned concerning the substance of legal review?

No.

#### 4. COURTS EXERCISING LEGAL REVIEW

##### I. A summary description of the court organisation.

i. What different categories of courts are there. (e.g. civil or penal courts, administrative courts, tribunals etc.)?

As already explained, there is no system of administrative law as such in Ireland and no administrative courts as such. There are four courts established under the Constitution, the High Court (which is a court of unlimited original jurisdiction), the Supreme Court (which is the court of final appeal) and two courts of local and limited jurisdiction, the Circuit and District Courts. There is also provision for the establishment of special courts in specified circumstances e.g, an anti-terrorist court called the Special Criminal Court, There is a wide range of administrative tribunals and similar bodies, dealing with matters such as social welfare, tax, employment, discrimination at work, permissions for planning and development, licensing of various activities, compulsory acquisition of property for public purposes, but, these, as already explained are

not courts. It is decisions of such bodies, however, which are most frequently the subject of legal review.

ii. How many instances are there within each category?

See answer to 4 I i above.

iii. How many courts are there within each instance?

The Supreme Court and the High Court are two unified courts, consisting in each case of a number of judges. The Circuit and District Courts are courts of local and limited jurisdiction, one judge sitting for a particular area of the country.

iv. Are there different categories of courts to some extent co-ordinated regarding the organisation e.g. regarding staff or premises (only the principal features)?

These functions were historically the responsibility of the Minister for Justice but his functions in this regard have now been transferred to a new body operating independently called the Courts Services Board.

## II. The career as a judge.

- i. Is there a common career for the entire court organisation or are there in principle separate careers?

All judges are recruited from practising members of the legal profession and must have been such practising members for at least 10 years before appointment.

- ii. If there are separate careers, is it possible to appoint a judge belonging to a court of one category to a post at a court of another category and if, that is possible, does it often occur if there are separate careers etc?

It is possible for a judge to be promoted from one level to another, e.g., from the High Court to the Supreme Court or the Circuit Court to the High Court. It happens regularly with the Supreme Court, but less often with the other courts.

- iii. Can judges be recruited from other legal professions, e.g. prosecutors, lawyers and professors?

See answer to 4 II i above.

III. To what extent do laymen take part in the adjudication process?

Not at all, except in the form of the jury, which is required in every case of serious crime and in a limited number of civil cases.

IV. How is the distinction made between the fields of competence of the different courts, by general provisions or by detailed enumeration in the legislation?

The jurisdiction of the High Court, and an appeal the Supreme Court, to review such decisions is part of their inherent jurisdiction and is not conferred by legislation.

V. What are the general rules concerning the competence of the courts, Le. what kind of cases are dealt with by different categories of courts?

Only the High Court and the Supreme Court have any jurisdiction to review administrative decisions.

VI. What courts are handling the legal review of administrative decisions and may the review be carried out by more than one category of courts?

See answer to V. above.

VII. Is the development heading towards the establishment of new administrative courts or towards a widened competence for the already

existing courts or is there a trend in the opposite direction, i.e. towards the suppression of the administrative court?

There are no proposals in being to establish a system of administrative courts.

VIII Are there any important amendments in process or planned concerning the court organisation?

None that are relevant to this subject.

## 5. THE PROCEEDINGS OF THE COURTS

I. How are the proceedings initiated?

By an application to the High Court for leave from the judge to proceed.

II. Are the proceedings essentially oral or in writing?

Oral.

III. Is the court responsible for the case being sufficiently investigated?

No. The court acts on the materials put before it by the parties.

IV. What kinds of evidence are accepted?

The majority of the cases are heard on affidavit. Where there is a conflict of evidence on a relevant issue, the court may hear oral evidence.

V. Do the parties pay any fees for the court trial?

Yes.

VI. Is it possible to grant public legal aid?

Yes.

VII. Is it necessary for a party to be represented by a lawyer?

No.

VIII. Is it generally a two party process in administrative cases?

Invariably.

IX. Can parties in administrative cases be compensated for their litigation costs?

The rule normally applicable in civil litigation applies, i.e. that the unsuccessful party must pay the costs of the successful party.

X. Are there in other respects procedural rules which are applicable only in administrative cases?

No.

XI. Are there any important amendments in process or planned concerning the procedural rules mentioned in this section?

No.

## 6. THE RELATIONSHIP BETWEEN THE CIVIL OR PENAL COURTS AND THE ADMINISTRATIVE COURTS

None of the questions raised in this part are applicable in Ireland in the absence of administrative courts.

## 7. MISCELLANEOUS

There is considerable concern in Ireland that the courts are becoming, in effect, an automatic forum of appeal from administrative decisions and that the huge volume of litigation resulting is leading to delays in the hearing of cases which are more appropriately dealt with by the courts, particularly criminal cases, personal injuries cases and commercial disputes. The courts have been emphasising in recent times that, where a decision is entrusted by legislation to an administrative body, its decision should not be interfered with by the courts except where it has in some

way exceeded its jurisdiction, misapplied the law or acted contrary to principles of natural justice.