

# Ireland

## Replies to the questionnaire for the Seventeenth Colloquium between the Councils of State and the Supreme Administrative Judicial Bodies of the EEC

### 1. Preliminary questions on the domestic law.

Ireland does not have administrative courts in the same way as in many European countries. Ireland has only one hierarchy of courts exercising judicial power.

There are many administrative tribunals. Some may exercise a limited judicial power, but most where they decide contested issues of fact are exercising a quasi-judicial function. This difference is of no practical significance, since such decisions of administrative bodies are subject to the supervisory jurisdiction of the High Court and, on appeal to the Supreme Court.

This supervisory power is exercised upon two bases: (1) To ensure that the administrative tribunal had jurisdiction to deal with the matter and, if it did, that it stayed within its jurisdiction; or (2) To ensure that the procedures leading to the decision were fair.

The basic procedure involves an application to the High Court for liberty to seek judicial review of the decision complained of. This

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application sets out the relief sought and the grounds upon which it is being sought

The High Court judge, if the application is accepted, may allow the application to continue on all or on some only of the grounds alleged. In either case, the party or parties seeking to uphold the decision are notified. If they wish to oppose the application, they must give notice to the applicant of the grounds of their opposition. Both the application and notice of opposition are supported by affidavits.

The matter then continues in accordance with the normal procedures of the Court. If the issue is one of law, this will be argued at a final hearing. If the issue involves questions of fact, then there may be interlocutory procedures to define those issues and witnesses may give evidence on oath at a final hearing.

As the European Convention on Human Rights is not part of Irish law, it does not impact on procedures in the courts. Under Irish law, there is a guarantee of fair procedures enshrined in the Constitution. Insofar as Article 6(1) of the Convention is cited from time to time, this is done in an attempt to equate Irish fair procedures with those required by the Convention.

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Accordingly, many of the questions posed cannot be answered for this reason. In answering any of the questions posed, the High Court and the Supreme Court on appeal are equated to the administrative courts or State Council.

- 1.1 The supervisory jurisdiction of the courts as indicated applies to all public administrative decisions where fair procedures are required.
- 1.3 Decisions may be quashed or referred back to the tribunal. The Court exercising the supervisory jurisdiction will not impose its own decision.
- 1.4 The jurisdiction is exercised in both civil and criminal cases.

Main problems of a fair trial.

3. The essence of a fair trial is the need for the person charged to be informed of the nature of the charge or charges to be preferred so that the defence to those charges may be prepared. That also involves the person concerned being given adequate time to prepare such defence.
  - 3.3 This has not up to now been a problem since if any issue as to objective impartiality is thought to arise, the judge concerned

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will not sit on the case. However, in two fairly recent cases, where the judge did sit, it was held that he was wrong to do so. There has been no contested case where it was held that the judge who did sit had acted properly.

Oral procedure.

4. Where questions of fact are in issue, it is usually necessary to hear oral testimony. The failure by a lower court or tribunal to do so may well be a ground to quash its decision.

4.1 There is no legal obligation.

4.3 Yes.

4.4 Yes.

4.5 No. If the parties are entitled to their oral hearing at first instance, that is where it must be heard.

4.6 Under the Irish Constitution, proceedings must be in public save where prescribed by law.

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4.7 It can be waived provided that this is made quite clear. It is not something which happens in practice, but parties could, for example, agree to a hearing on affidavit.

Rules of evidence.

5.1 Evidence obtained illegally may not be used.

5.1.1 This is based upon judicial precedent

5.1.2 Yes.

5.2 The evidence which may be used is that adduced at the hearing and in respect of which either party may comment or challenge.

5.3 The same rule applies to experts. An expert is technically any one who has special knowledge by training or otherwise. Accordingly, the weight to be given to such testimony is a matter for the Court.

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5.4 New facts can only be raised if three conditions are fulfilled:

(1) The evidence was not available at the trial; (2) It was credible; and (3) if used at the trial it would have had a material effect.

(6) Parties to the case.

6.1 The parties can always appear or be represented.

6.2 Yes.

6.3 It is necessary to have locus standi. In practice, this would involve participation before the lower court. Where a public right is involved, the public is represented by the Attorney General.

The right to the public pronouncement of the judgment.

(7) Judgments are given in public and are available to the public if they are handed down rather than read.

Reasonable delay of definitive judgments in administrative law suits.

8.1 There is no procedure for ensuring the delivery of a judgment within a given time; nor any right to damages for such delay.

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8.2(a) A decision quashing an administrative decision may include damages to the person wronged by the decision«

(b) If status is automatically restored, then rights are also restored.

8.3 There is no norm.

8.4 Case management is being developed.

The decision of the Council of State or supreme administrative court.

9.1 The High Court has full jurisdiction.

9.2 The judges hearing the matter must remain the same.

9.3 Yes, but the nature of the tribunal affects the jurisdiction.

The more specialised the tribunal, the less likely its discretion will be overruled.