

EVOLUTION OF THE IRISH COURTS AND THEIR CONSTITUTIONAL BASIS

Origins of Courts System : the 1922 Constitution

The courts system in Ireland has its origins in the 1922 Constitution for the Irish Free State (Saorstát Eireann). That Constitution provided for the setting up of new courts to replace those which had evolved under the British administration.

New courts were established in 1924 under the Courts of Justice Act, 1924 which established the legal basis for a Court system.

The 1937 Constitution : The Establishment of the Modern Courts:

On 1st July 1937 the people of Ireland enacted a new Constitution, 'Bunreacht na hÉireann'.

The present courts were set up by the Courts (Establishment and Constitution) Act 1961, pursuant to Article 34 of this Constitution.

Articles 34 to 37 deal with the administration of justice in general:

- Article 34.1 states that 'Justice shall be administered in Courts established by law'.
- The Constitution outlines the structure of the court system... (see the following page)
- Judges are completely independent in the performance of their functions.
- Article 38 states that 'No person shall be tried on any criminal charge save in the due course of law'. Because the severity of punishment for criminal behaviour is greater, so too is the standard of protection for accused persons.
- There is a distinction drawn between 'Minor' and 'Serious' offences:
 - Minor offences are tried in courts of summary jurisdiction
 - A person accused of a more serious offence cannot be tried without a jury.
- The Constitution also provides for the establishment of 'Special Courts' to secure the effective administration of justice where the ordinary courts would be unable to do so.
- According to Art 34.1, justice shall be administered in public 'save in such special and limited cases as may be prescribed by law'.

The public are welcome to enter all courts except those displaying the 'in camera' sign which means that the case is being heard in private not open to the general public.

THE STRUCTURE OF THE COURTS

Article 34 of the Constitution outlines the structure of the court system as comprising:

- A court of final appeal, the Supreme Court, *and*
- Courts of first instance, to include;
 - a High Court with full jurisdiction in all criminal and civil matters; *and*
 - courts of limited jurisdiction - the Circuit Court and the District Court - organised on a regional basis.
- Where the existing courts are not adequate to secure the effective administration of justice, 'Special Courts' may be established.

There is also a Court of Criminal Appeal

Please see 'Attachment 1' for a chart illustrating the structure of the Irish Courts system.

JUDGES

Appointment, Removal and Remuneration of Judges:

Appointment: By the President, acting on the binding advice of the Government.

There are eligibility requirements for each office. It is interesting to note, as far as barristers or solicitors are concerned, that they can become eligible for appointment as a Judge to;

- the Supreme or High Court if they have not less than 12 years' standing, and have practised for a continuous period of not less than 2 years before such appointment.
- the Circuit Court if they have not less than 10 years' standing

Removal: The procedure for removing a Judge of the Supreme or High Court from office is specified in the Constitution. By law the same mechanism applies to Judges of the lower courts. A Judge may only be removed from office for "*stated misbehaviour or incapacity*" and if a joint resolution is adopted by both houses of the Oireachtas (the Irish parliament). After such a resolution is approved the Judge is dismissed by the President. This is a very high standard and allows for Judges' complete independence in the performance of their functions.

Remuneration: To further ensure complete independence, the remuneration of a Judge may not be diminished while they remain in office.

Number of Judges:

There are currently 147 Judges in total. This is by law the maximum number allowed.

The specific allocation of Judges to each court is as follows:

- Supreme Court = 8 (9)
- High Court = 37 (39)
- Circuit Court = 38 (39)
- District Court = 64

The second figure, in brackets, is the total number of judges that are *actually* members of each court. You will note that these add up to a total of 151. This is explained by the fact that a number of judges hold office in more than one court (for example, the President of the High Court is a judge specifically appointed to the High Court but is also, by virtue of his office, an additional Judge of the Supreme Court).

Retirement Age:

Under the Courts and Court Officers Act 1995, the retirement age of Supreme Court, High Court and Circuit Court Judges was reduced from 72 years to 70 years. However, Judges appointed prior to the coming into operation of that Act may continue in office until aged 72.

District Court Judges may currently retire at age 65, but this is extendable to 70 on a year-by-year basis should the Judge wish to continue. A decision on this is made by a 3 person panel.

Gender Distribution and Equality:

Currently, about 23% of sitting Judges are female.

There are currently 2 female Judges appointed to the Supreme Court, the highest judicial office in Ireland. At its highest, 33% (or 3 of 9) of Supreme Court Judges were women.

At present, it is calculated that roughly 50% of all law students at university are female. This leads to the conclusion that the representation of women in the legal professions, and, by extension, the judiciary, will continue to increase in the future.

JUDICIAL RESEARCH ASSISTANTS:

Judges are assisted in their work by Judicial Research Assistants. In 1993, this scheme was introduced, with the function of the new positions being to aid the Irish Judiciary in “legal research generally and the difficult task of preparing their judgments”.

The Judicial Research Assistants are typically bright young law graduates, with a minimum of a 2:1 (second class honours, grade 1) and a very strong overall knowledge of Irish Law.

There are 6 Judicial Research Assistants in total: 4 in the Four Courts, and 2 in the Criminal Courts of Justice.

JUDICIAL STUDIES INSTITUTE:

This body is designed to train, educate and enhance the judiciary.

Composition:

The Institute is currently composed of 8 Judges and 1 secretary. The Chief Justice (currently Mr. John L. Murray) is the Chairperson, whilst the Presidents of the High, Circuit and District Courts are also members. The remaining 4 positions are occupied by a second Judge from each of the four courts.

These 8 persons constitute the board of the Institute, and they are not remunerated for their work.

Future Development:

There is currently a ‘Judicial Council Bill’ before the Oireachtas – if it passes, it is hoped that the Judicial Studies Institute will receive greater resources, and be able to establish its own premises and increase its personnel.

At present, the majority of its work is done through the arrangement of working lunches or dinners at the Four Courts, where members of various courts can gather and discuss matters, or via the Judicial Studies Institute Journal.

It is envisaged that the Institute will expand to comprise discipline, ethics, and the organisation of a disciplinary committee. Currently, removal is the only method of censuring a Judge, and this is only available in exceptional cases. The hope is to provide a means of holding Judges accountable for their performance and behaviour and also, by doing so, to afford them additional protection.

SOLICITORS AND BARRISTERS

Solicitors:

The profession is represented and regulated by the Law Society of Ireland.

Becoming a Solicitor: This is not dependent on possession of a legal degree. To qualify as a solicitor in Ireland, one must complete the following route of examinations, in-firm training, and professional courses conducted at Blackhall Place:

- Pass the Preliminary Examination or receive an exemption from it
- Pass the Final Examination - First Part (FE-1)
- Secure a training contract
- Attend the Professional Practice Course (PPC) I and pass the course examinations
- Spend a period of 11 months as a trainee solicitor in the training solicitor's office
- Attend the PPC II and pass the course examinations
- Serve the remainder of the two year term of apprenticeship, following completion of the PPC II.

Barristers:

The profession is represented and regulated by the Bar Council of Ireland.

Becoming a Barrister: There is a distinction between 'Specially qualified applicants' (Qualified lawyers from outside Ireland and Irish solicitors who wish to practise at the Bar in Ireland) and all other applicants

For all ordinary candidates there are 3 stages which must be completed to qualify as a barrister:

1. *Academic stage* → One must pass an approved law degree or the King's Inns Diploma in Legal Studies.
2. *Vocational stage* → Students must undertake the one-year full-time Degree of Barrister-at-Law at King's Inns. You can only be admitted to this degree course after you have completed the academic stage and passed an entrance examination.
3. *Apprenticeship stage* → Once you have passed the Degree of Barrister-at-Law you will be 'called to the Bar'.

Entering practice: After completing these stages, the applicant will be admitted to practice by the Chief Justice of Ireland and will be eligible to become a member of the Law Library.

The first year of practice must be spent as a pupil (also known as a one-year 'pupillage') with an approved Dublin-based practitioner. The pupil must complete a course of Continuing Professional Development (CPD) during this year. Undertakings must also be given in respect of certain areas of practice. They must also have professional indemnity insurance.

During the year of pupillage (also known as "devilling") the pupil or devil must carry out their master's instructions and learn about the nature of professional practice. During this year, the pupil is not paid.

After this, they must apply to the Bar Council to become a member of the Law Library on or before the end of June of the year in which they intend to begin their practice.

The Interaction Between Solicitors and Barristers:

Solicitors offers a range of legal services such as buying and selling a house, drawing up a will, advising on setting up a business, and so forth. They provide the initial advice if you are sued by somebody or think you have a case against somebody else. This is why a client will go to a solicitor first. If the solicitor thinks the client needs specialised advice or an expert advocate to represent them in Court, the solicitor will recommend and retain a suitable barrister.

Barristers specialise in representing you in court (advocacy), giving more detailed advice on the case and also advising you on more difficult areas where you (and possibly your solicitor) need more detailed advice.

The solicitor retains (or "instructs") the barrister on your behalf and furnishes him or her with a summary of the facts and the relevant documents. The barrister may give your solicitor written advice (an "opinion") on your case or on the legal issues arising. The solicitor and barrister both handle your case but do different aspects of the job. The solicitor takes your instructions, organises the witnesses, assists them in preparing their statements of their evidence, assembles the documents, corresponds with the solicitor on the other side, keeps any funds you give him in a separate account and so forth. The barrister gives the specialised advice on your case, how it should be handled, drafts the documents used in court to outline your case (the "pleadings"), drafts the written submissions to the court when this is required and argues the case for you in court. Thus the barrister and the solicitor work together, each doing a different but complementary aspect of the job of advising and representing you.

THE ATTORNEY GENERAL:

The Attorney General is the legal adviser to the Government and is therefore the chief law officer of the State.

The Office of the Attorney General is made up of a number of different offices:

- The Attorney General's Office, containing the Advisory Counsel to the Attorney General
- The Office of Parliamentary Counsel to the Government, comprising the Parliamentary Counsel who draft legislation and have responsibilities in the area of statute law revision
- The Chief State Solicitor's Office (CSSO), containing the solicitors representing the Attorney General and the State

Characteristics:

Advises government, but completely independent. If asked by the government to resign, the Attorney General can refuse. In this case, the Taoiseach [the Irish Prime Minister] will have to go to the President and make a case for the Attorney General's removal.

This autonomy was referred to in the case of A.G. v. X → '*the Constitution imposes duties upon him, which he must fulfil independently*'

Functions, Powers and Duties:

- Government's Legal Advisor: Advises on the constitutional and legal issues which arise prior to or at Government meetings, including whether proposed legislation complies with the provisions of the Constitution, acts and treaties of the European Union or other international treaties to which Ireland has acceded. The Attorney General also advises as to whether the State can ratify international treaties and conventions.
- Represents the State in Legal Proceedings involving the State:
- Enforcer of Public Rights: The Attorney General is representative of the public in all legal proceedings for the enforcement of law and the assertion or protection of public rights.
- Role as Guardian of the Constitution
- The Relator Action : Where a party has no *locus standi* (legal standing) to take an action, they can request the AG to join the action. If he does, he has sufficient standing to cloth the case in it. The significant widening of the concept of standing has meant that this has function is now rarely utilised.
- Role under Extradition Acts → The Attorney General has a function in deciding whether warrants under the Extradition Acts 1965 to 2001 should be endorsed or not and to advise in extradition cases. Has previously refused to endorse warrants when there was genuine concern as to whether the individual would get a fair trial.

- Article 26 Procedure – If the President refers a Bill to the SC to test its constitutionality, the AG is responsible for *defending* the Bill’s constitutionality.
- Formerly responsible for criminal prosecutions
 - But now responsibility for the prosecution of indictable criminal offences is mostly in the hands of the Director of Public Prosecutions (DPP). However, the Attorney General retains certain prosecution functions; e.g. under the Fisheries (Amendment) Act 1978.

THE DIRECTOR OF PUBLIC PROSECUTIONS:

The Constitution of Ireland provides that crimes and offences are to be prosecuted in the name of the People. The Prosecution of Offences Act, 1974, established the office of Director of Public Prosecutions (DPP) as an independent office.

Function / Role:

To decide whether or not to charge people for committing crimes.

The DPP makes decisions independently of all other bodies and institutions, including both the Government and the Garda Síochána, and decisions are taken free from political or other influence.

Once any prosecution begins, the DPP is responsible for the prosecution case.

Does the DPP Prosecute All Criminal Offences?

The DPP prosecutes all serious crimes and sometimes less serious crimes. The Gardai (the Irish police force) may prosecute some of the less serious offences. However, they still do so in the name of the DPP, and the DPP has the right to tell the Gardai how to deal with the case.