



Seminar organized by the Supreme Administrative Court of
the Czech Republic and ACA-Europe

Limits of judicial guarantee

Brno, 9 September 2019

Answers to questionnaire: Ireland



Seminar co-funded by the «Justice » program of the European Union



ACA-Europe Seminar on Measures to Facilitate and Restrict Access to Administrative Courts

September 9, 2019

Nejvyšší správní soud Brno
(Supreme Administrative Court Brno)

Questionnaire

Introduction:

The role of the administrative judiciary determines the conditions under which administrative courts work. These include the limits on the right of access to these courts, as well as the rules on such cases potentially progressing further within the judicial hierarchy. It is an area defined by an ongoing tension between two principles: the right to a fair trial that would speak in favour of opening the gates of judicial review, with the efficiency of judicial review pulling in exactly the other direction, namely of limiting access to administrative courts, in particular the higher ones.

The seminar to be held in Brno, the Czech Republic, on September 9, 2019 at the Supreme Administrative Court, follows the path opened by the seminars in Dublin and Berlin. It shares the objective of contributing to mutual understanding of the scope of judicial review of administrative cases. Consequently, it broadens and deepens the topic of access to the courts. The seminar therefore deals with the issue before the administrative judiciary as a whole, including the administrative courts of lower instances. It covers both formal and material measures which either facilitate or restrict access to the courts.

The seminar attempts to merge the principles of fair trial and efficiency. Based on shared knowledge of member states, it aims to describe the areas where the administrative judiciary should remain open to litigants and to analyse those where it may constrain its current role or, on the contrary, may exceed it. In other words, it examines the proportionality of restrictions on access to the administrative courts.

I. The structure of the administrative judiciary

- a. Please describe briefly the structure of the administrative judiciary, i. e. how many instances your administrative judiciary (including all specialized jurisdictions, e. g. financial or social security) consists of and the relations of superiority and subordination between them, unless this information is available and up to date at the ACA-Europe webpage, Tour of Europe file.

Ireland does not have a system of specialised administrative courts. There are five tiers of court jurisdiction in Ireland including the District Court, Circuit Court, High Court, Court of Appeal and Supreme Court.

In general, three of these court jurisdictions may be involved in an administrative law case. Any person with locus standi may challenge a public law decision which affects their rights or obligations by seeking judicial review from the High Court, which is the Court on which the Constitution of Ireland confers general unlimited jurisdiction in all areas of law, including civil law, criminal law, administrative law and constitutional law. There are also a number of statutory or non-conventional schemes of judicial review in certain areas of law, such as planning and environmental law and immigration.

An appeal from a decision of the High Court may be brought to the Court of Appeal.

If a threshold set out in the Constitution of Ireland is satisfied, an appeal from a decision of the Court of Appeal to the Supreme Court, which is the final court of appeal in all areas of law and also functions as a constitutional court. Pursuant to Article 34.5.3 of the Constitution, the Supreme Court may grant leave to appeal from the Court of Appeal where it is satisfied that:

- i. the decision involves a matter of general public importance, or
- ii. in the interests of justice, it is necessary that there be an appeal to the Supreme Court.

Article 34.5.4 of the Constitution provides for an appeal directly from the High Court to the Supreme Court, which is known as a 'leapfrog' appeal if the Supreme Court is satisfied that there are exceptional circumstances warranting a direct appeal to it - a precondition for the Supreme Court being so satisfied of the presence of either or both of the following factors:

- i. the decision involves a matter of general public importance;
- ii. the interests of justice.

In addition to the above jurisdiction of the Superior Courts in administrative law proceedings, statutory appeals from certain administrative tribunals may be brought to the District Court or Circuit Court. Such appeals require specific statutory provision.

Judicial review of the decisions of lower courts is possible even where the decision of the lower court relates to an area which would not of itself be considered to be administrative.

- b. How many administrative courts and judges are in each of the instances? Please give numbers relevant at the end of the year 2018.

(Note: if your administrative judiciary consists of two instances, use columns I. and II.; if it consists of more than three instances, please adjust the table. The same applies to all the tables used in this questionnaire.)

Instance	I.	II.	III.
Name	High Court	Court of Appeal	Supreme Court
Number of courts			
Number of judges			

Note: As there are no specialised administrative courts in Ireland, it is not possible to provide statistics in relation to the number of administrative courts and administrative judges. However, reference has been included in the table above to the three court instances (High Court, Court of Appeal and Supreme Court) which deal with most administrative law cases by way of judicial review proceedings so that the rest of the questions in the questionnaire can be answered. It should be noted that these courts also deal with all other areas of law, including criminal law, civil law and constitutional law.

- c. How many judges are in all jurisdictions (i. e. administrative, civil and penal) altogether? Please give numbers relevant at the end of the year 2018.

There were 160 judges in all jurisdictions across all five tiers of court jurisdiction in Ireland as of the end of 2018. 56 of these were judges of the High Court, Court of Appeal or Supreme Court.

Note: In all the subsequent sections please give answers for each of the instances of the administrative judiciary, even if it is not specifically mentioned in the question.

II. Fees and access to the court

- a. Is access to the administrative court subject to a judicial (filing) fee? Please indicate the general principle (for exceptions see questions e., f. and g.). Answer yes/no.

Instance	I.	II.	III.
Judicial fee	Yes	Yes	Yes

- b. If you answered yes, what is the amount of this fee (in euro)?

The court fees payable to the Offices of the High Court, Court of Appeal and Supreme Court (also known as ‘stamp duty’) are provided for in a statutory instrument (delegated legislation) under S.I. No. 492/2014 - Supreme Court, Court of Appeal and High Court (Fees) Order 2014 and <http://www.courts.ie/courts.ie/library3.nsf/pagecurrent/86F3E130183672A080257FB2003DD36A?opendocument&l=en>

The fee charged depends on the document being filed.

High Court: The cost of filing the documents associated with an application for leave to bring standard judicial review proceedings, which is the way in which most administrative law cases are brought in the High Court are €190 (statement of grounds) and €20 (affidavit). If the application for leave is successful, further fees will be payable for documents required to make the judicial review application, including an originating notice of motion (€190).

Court of Appeal: €250 to file an application for leave to appeal to the Court of Appeal. There are other fees payable to file certain documents such as notices of motion (€60) and affidavits (€20).

Supreme Court: €250 to file an application for leave to appeal to the Supreme Court and other fees payable to file documents such as notices of motion (€60) and affidavits (€20).

Is the amount of the fee in each of the instances flat or can it differ? If the amount can differ, under what conditions and how (e. g. when the petitioner is required to correct or eliminate faults in the petition, the fee rises)?

The fees are flat but apply in respect of each document filed.

- c. In what phase of the proceedings does the petitioner have to pay the fee (e. g. with the petition, after the proceedings commence, after the decision of the court is delivered)? What are the consequences of not fulfilling the duty to pay the fee?

The fees are payable when filing documents in the relevant court office.

- d. Are any petitioners (e. g. a public authority) or areas of disputes exempt by law from the duty to pay the fee?

Yes. Under the relevant statutory instrument, there are exceptions in a number of types of proceedings for payment of court fees (for example, family law and extradition proceedings). In respect of administrative law proceedings, exemption from court fees applies to applications for judicial review in proceedings for criminal offences, extradition proceedings and applications to the High Court under Article 40.4 of the Irish Constitution alleging that a person is being unlawfully detained.

The following persons are exempt from the requirement to pay fees:

- The Chief State Solicitor (who provides litigation and advisory services to Government Departments and Offices and to certain other State agencies);
- The Chief Prosecution Solicitor (who is the lawyer for the Director of Public Prosecutions, Ireland's public prosecutor) or local State solicitors.

e. Are non-governmental organizations exempt from the duty to pay the fee?

There is no exemption for non-governmental organisations, unless they are a party in categories of proceedings which are exempt from payment of court fees.

f. Can a petitioner be exempt from the duty to pay the fee by decision of the court? What are the conditions for the exemption?

There is no provision in law or in the relevant statutory instrument in relation to court fees for the Court to exempt a party for the payment of court fees. However, it is possible that the costs awarded in favour of a party might include the costs of filing court documents. For example, in *Connelly v An Bord Pleanála* [2018] IESC the Court specified that the costs of the appeal awarded to the respondent should include the cost of filing the respondent's notice.

g. Under what conditions is the fee returned to the petitioner (e. g. in case of the withdrawal of the petition)? Is the fee returned in full or partially?

The only circumstances in which fees may be refunded are:

1. the document on which the fee is paid does not require a fee under the Fees Order
2. the fee paid was in excess of what was required to be paid under the Fees Order
3. a duplicate document is stamped in relation to the same case
4. there is an error on the face of a document and an amended document has been lodged with the relevant court office
5. the fee has already been paid by another party in relation to the same case

There is no provision for a refund of fees where a party withdraws proceedings (although there is provision for a party to pay the legal costs of another party where he or she has discontinued or withdrawn proceedings).

h. May a petitioner be required to pay a deposit before the proceedings commence? If you answered *yes*, please explain under what conditions.

There is no requirement to pay a deposit as the full fee applicable to each court document is payable when filed.

However, in relation to legal costs, a defendant may request the court to make an order requiring a plaintiff to provide security for its costs in the event that the plaintiff is unsuccessful where the defendant believes that the case against it is unmeritorious and that the plaintiff would be unable to meet any award of costs made in its favour.

- i. Are frivolous petitions penalized? Please explain how and under what conditions.

Yes. The Rules of the Superior Courts provides that “the Court may at any stage of the proceedings order to be struck out or amended any matter in any endorsement or pleading which may have been unnecessary or scandalous, or which may tend to prejudice, embarrass or delay the fair trial of the action; and may in such case, if it shall think fit, order the costs of the application to be paid as between solicitor and client.”

The Rules also provide that “the Court may also order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court may order the action to be stayed or dismissed, or judgement to be entered accordingly, as may be just.”

In addition to the jurisdiction set out in the Rules of Court, the High Court has an inherent jurisdiction to dismiss claims at an early stage which are bound to fail or are frivolous or vexatious.

Finally, is there any analysis (based on empirical studies or just your personal assessment) of the correlation between the amount of the fees payable within your system of administrative justice and the degree of any incentive or dissuasive effect those fees have on petitioners (in general or particular groups thereof) bringing or not bringing an action?

There is no empirical analysis suggesting that court fees have an effect on petitioners bringing or not bringing an action. However, FLAC (an independent human rights organisation in Ireland dedicated to access to justice) has noted that there is no exemption in relation to court fees irrespective of the means or lack thereof of the litigant and has suggested that there should be an exemption suggested that there should be an exemption for those on means tested social welfare payments or holding a medical card.

A group chaired by the President of the High Court is currently conducting a review the administration of civil justice in Ireland with a review to improving access to justice and reducing litigation costs.

III. Costs of proceedings

- a. Can the court adjudicate the compensation of costs of proceedings to the participant? If you answered *yes*, please explain under what conditions?

Yes. Order 99, Rule 1 of the Rules of the Superior Courts provides that the costs of the proceedings shall be in the relevant court’s discretion. However, Order 99, rule 1(3) provides that, unless otherwise ordered, costs follow the event. The general position in the Irish legal system is therefore that the losing party must pay the costs of the successful party. The courts have given guidance as to the principles that should be applied in relation to costs in complex litigation involving multiple legal issues and a number of interlocutory steps.¹ In standard judicial review proceedings, where an applicant successfully applies for leave to bring judicial

¹ Veolia Water UK plc v Fingal County Council (No. 2) [2006] IEHC 240.

review proceedings but is unsuccessful in the substantive hearing, the costs of both stages of proceedings will generally be awarded against him or her.

However, a Court has a discretion, exercisable on the facts and circumstances of the case which it is adjudicating, to depart from the general rule in special or unusual circumstances. The burden is on the party contending that costs should not follow the event to satisfy the court that there should be a departure from the general rule.

- b. Can the court adjudicate the compensation of costs of proceedings to the public authority? If you answered *yes*, please explain under what conditions? In particular, are there any cases/situations where by default, the costs incurred by the public authorities are not recoverable, even if the (private) petitioner was not successful (and, following the normal rule that costs follow the event, a costs order should normally be awarded in favour of the public authority)?

Yes, the Court may decide to award costs against a public authority exercising administrative functions. However, the Courts have extended immunity of judges whose decision is challenged in judicial review proceedings to bodies exercising quasi judicial functions.² However, its decision to do so will be based on its consideration of the particular factors of a case rather than the existence of a specific category of party against whom costs can be awarded.

In the leading Supreme Court decision in relation to costs, *Dunne v Minister for the Environment & Ors*, the appellant was unsuccessful at trial and on appeal on the substantive question of whether provisions of the National Monuments (Amendment) Act 2004 were incompatible with provisions of the Irish Constitution and relevant EU law. The respondent appealed an order of the High Court awarding costs to the appellant on the basis that he had identified principles that the Court should exercise its discretion in considering an application for costs by an unsuccessful plaintiff or applicant in public law litigation against a public body, namely that (1) the plaintiff was acting the public interest in a matter which involved no private personal advantage; and (2) The issues raised in the proceedings are of sufficient general public importance to warrant an order for costs being made in his favour.

However, on appeal, the Supreme Court found that:

“Undoubtedly the fact that a plaintiff is not seeking a private personal advantage and that the issues raised are of special and general public importance are factors which may be taken into account, along with all other circumstances of the case, in deciding whether there is sufficient reason to exercise a discretion to depart from the general rule that costs follow the event. However, insofar as the learned High Court Judge may have considered that the two principles to which she referred are in themselves the determining factors in a category of cases which may be described as public interest litigation, I do not find that the authorities cited support such an approach.”

² Casey v Private Security Appeals Board [2009] IEHC 457; Miley v Employment Appeals Tribunal [2016] IESC 20.

The Court held that:

The rule of law that costs normally follow the event, that the successful party to proceedings should not have to pay the costs of those proceedings which should be borne by the unsuccessful party has an obvious equitable basis. As a counterpoint to that general rule of law the Court has a discretionary jurisdiction to vary or depart from that rule of law if, in the special circumstances of a case, the interests of justice require that it should do so. There is no predetermined category of cases which fall outside the full ambit of that jurisdiction. If there were to be a specific category of cases to which the general rule of law on costs did not apply that would be a matter for legislation since it is not for the Courts to establish a cohesive code according to which costs would always be imposed on certain successful defendants for the benefit of certain unsuccessful plaintiffs.

Where a Court considers that it should exercise a discretion to depart from the normal rule as to costs it is not completely at large but must do so on a reasoned basis indicating the factors which in the circumstances of the case warrant such a departure. It would neither be possible or desirable to attempt to list or define what all those factors are. It is invariably a combination of factors which is involved. An issue such as this is decided on a case by case basis and decided cases indicate the nature of the factors which may be relevant but it is the factors or combination of factors in the context of the individual case which determine the issue.”

Examples of circumstances which have given rise to a departure from the rule that the costs follow the event have been (a) where there has been improper conduct by a party;³ (b) in ‘test cases’ where the decision might have a knock-on effect on other proceedings;⁴ (c) public interest cases or important constitutional law cases.⁵

- c. Can the court decide not to adjudicate the compensation of costs of proceedings, although the conditions described in answer to question a. are fulfilled? If you answered *yes*, please explain under what conditions?

The Court may decide to make no order as to costs which in effect means that the parties bear their own costs. Alternatively, the Court might reduce the costs payable to the successful party below the full amount which would otherwise payable by the unsuccessful party if it considers that some feature of the litigation warrants such an approach. Less commonly, the Court might make a cost order in favour of an unsuccessful applicant if, for example, there is a public interest element to a case.

³ For example, in *Mahon & ors v. Kenna & Anor* [2009] IESC 78 the appellant who was a journalist was found to have committed or approved of a deliberate act of destruction of documents to protect journalistic sources with the consequence that a tribunal of inquiry was deprived of using them as evidence.

⁴ For example, *T.F. v Ireland & Ors* (Supreme Court, Unreported, 27th July 1995) involving the constitutionality of provisions of the Judicial Separation and Family Law Reform Act 1989 which had potential implications for thousands of cases.

⁵ For example, *Fleming v Ireland* (assisted suicide case); *Roche v Roche* [2006] IESC 10; (constitutional status of human embryos) *Curtin v Clerk of Dail Eireann & Ors* [2006] IESC 27 (the potential removal of a judge from office); *O’Shiel v Minister for Education* [1999] 2 IR 32 (duty of the State under the constitution to provide for free primary education).

- d. Are there any specific areas of administrative law where different rules to those discussed in this section apply? What areas are those and how and why do the rules applicable therein differ?

Yes. Specific rules apply in environmental law cases. Section 50B(2) of the Planning and Development Act 2000 (as amended) provides that in proceedings to which s. 50B applies, each party (including a notice party) will bear its own costs. Section 50B applies to judicial review proceedings in relation to decisions, acts or omissions pursuant to a law giving effect to the Environmental Impact Assessment Directive (85/337/EEC) the Strategic Environmental Assessment (Directive 2001/42EC), Integrated Pollution Prevention Control Directive (2008/1/EC) or paragraph 3 or 4 of Article 6 of the Habitats Directive.

However, s. 50(2A) provides that the costs of proceedings, or a portion of such costs, as are appropriate, may be awarded to the applicant to the extent that the applicant succeeds in obtaining relief and any of those costs shall be borne by the respondent or notice party, or both of them, to the extent that the actions or omissions of the respondent or notice party, or both of them, contributed to the applicant obtaining relief.

Section 50(3) sets out the following limited circumstances in which a court may award costs against a party:

- (a) because the court considers that a claim or counterclaim by the party is frivolous or vexatious;
- (b) because of the manner in which the party has conducted the proceedings; or
- (c) where the party is in contempt of court.

Section 50B(2) does not affect a court's entitlement to award costs in favour of a party in a matter of exceptional public importance and where in the special circumstances of the case it is in the interests of justice to do so.⁶

The consequence of s. 50B of the 2000 Act is that a respondent or notice party will in the majority of cases to which the section applies have to bear their own costs unless the limited circumstances are met. The rationale for the introduction of s. 50B of the 2000 Act in 2011 was the requirements in Aarhus Convention and Public Participation Directive that so as to provide wider access to justice in environmental law cases, interested parties must have access to a review procedure before a court or other impartial body to challenge the substantive and procedural legality of any decision, act or omission relating to certain environmental matters which is not prohibitively expensive. In *Commission v Ireland* [Case C-427/07] the transposition of the Public Participation Directive was challenged by the European Commission which argues that the requirement that the review procedure not be prohibitively expensive had not been adequately transposed into Irish law as there was no limit on the costs that an unsuccessful applicant could be required to pay. The Court of Justice found that, notwithstanding the discretion of a trial judge not to make an order for costs against an unsuccessful applicant, there had been a failure of transposition as this was merely a discretionary practice and was not certain.

⁶ Section 50B(4).

Similar rules apply to certain other environmental cases under Part 2 of the Environment (Miscellaneous Provisions) Act 2011. Section 7 of the 2011 Act provides for a procedure where a person can apply to a court, prior to taking proceedings, to determine if these rules apply in the case, and thereby enabling the applicant to reconsider the proceedings and the associated costs risk if the Court finds that the rules do not apply.

Very exceptionally a court may make a ‘protective costs order’ which is an order made at an early stage of proceedings which relieves a party on a prospective basis of any liability to pay the other parties costs, but this is extremely rare.

- e. How does the court determine the amount of the costs of legal representation as a part of compensation of costs? Is it defined by a tariff (in that case describe the principal method of calculation), or is it based on a price stipulated between an attorney and his client (in that case describe also whether there is any limitation)?

Following the conclusion of proceedings, the solicitor representing a party who has obtained an order for costs will provide the party against whom an order for costs has been made with a ‘Bill of costs.’ If the costs cannot be agreed, the party is entitled to have them assessed by an officer known as a Taxing Master in a process known as ‘taxation’. A court may also order that costs be taxed. The statutory office of Taxing Master is attached to the High Court and his or her function is to provide an independent and impartial process of assessment of legal costs which endeavours to achieve a balance between the costs involved and the services rendered.

The process involves a taxation hearing attended by the parties. Generally, the party wishing to tax the case opens the case and is legally represented. Each party is entitled to be present and heard and the Taxing Master examines each item on the Bill of Costs. Either or both parties may make submissions in relation to disputed items. The Taxing Master considers the submissions and any supporting documentation and assesses the fees having regard to the nature of the case and the extent of the work in addition to factors such as the complexity and magnitude. The Taxing Master either delivers an oral ex tempore ruling immediately after the hearing or reserves his or her decision and delivers a written ruling at a later date. The Taxing Master will then allow what he or she considers to be fair and reasonable costs. There is an appeal procedure whereby the Taxing Master may reconsider the amount of the costs allowed where a party objects. The Taxing Master notes on the original Bill of Costs the amounts allowed, disallowed or deductions as applicable and issues a Certificate of Taxation. A person who is dissatisfied with the allowances may apply to the court for an order to review the taxation.

Representation

- f. Does a party have to be represented by a legal professional? Answer yes/no.

Instance	I.	II.	III.
Representation of petitioner	No	No	No

Representation of opposing party	No	No	No
----------------------------------	----	----	----

- g. Does your legal order provide free legal aid for participants (e. g. representation appointed at the request of a participant)?

In respect of criminal law cases, the Criminal Justice (Legal Aid) Act 1962 provides for a system of state assisted criminal legal aid applicable to all serious criminal cases.

A more limited form of legal aid exists in respect of civil cases. A state body known as the Legal Aid Board provides, within its resources legal; aid and advice in civil cases to persons who satisfy eligibility criteria set out in the Civil Legal Aid Act 1995.

The Supreme Court has, since its jurisdiction changed in 2014 on the establishment of the Court of Appeal so that it now only considers cases for which it has granted leave to appeal on the fulfillment of the constitutional threshold referred to in section I, assigned legal representation in a small number of cases in accordance with an agreement between the Supreme Court, the Council of The Bar of Ireland (representative bodies for barristers) and the Law Society of Ireland (representative body for solicitors). Under this scheme, a solicitor and barrister may be nominated by the Chief Justice from a panel of practitioners who have agreed to accept instructions in cases where leave to appeal is granted to an unrepresented party. The practitioners undertake that task without payment but they may. In appropriate cases, seek an order for their costs.

- h. What are the forms and conditions of free legal aid? Please explain for all instances.

In respect of criminal legal aid, the Criminal Justice (Legal Aid) Act 1962 provides that legal aid must be granted where an application is made by a defendant and it appears to a judge of the District Court (or relevant trial court) that (a) the means of the defendant are insufficient to enable him or her to obtain legal aid from his or her own resources; and (b) by reason of ‘the serious nature of the offence or of exceptional circumstances, it is essential in the interests of justice that the person should have legal aid in the preparation and conduct’ of his or her defence and any necessary appeal against conviction. The granting of legal aid is therefore within the discretion of the trial judge. Generally, where a person risks receiving a sentence of imprisonment, he or she must be informed of his or her right to legal aid and must be granted legal representation.⁷

With regard to civil legal aid, the Civil Legal Aid Act 1995 sets out a ‘merits’ test and a ‘means’ test. A legal aid certificate must be granted if, in the opinion of the Legal Aid Board:

- (a) The applicant satisfies financial eligibility criteria specified in s. 29 of the 1995 Act which sets out a means tests based on the level of disposable income of an applicant;

⁷ The State (Healy) v Donoghue [1976] IR 325.

- (b) The applicant has as a matter of law reasonable grounds for instituting, defending, defending or being a party to the proceedings for which legal aid is sought;
- (c) The applicant is ‘reasonably likely to be successful in the proceedings’;
- (d) The proceedings for which legal aid is sought are the most satisfactory means of achieving the result sought by the applicant; and
- (e) Having regard to all the circumstances (including the probable cost the Board, measured against the likely benefit to the applicant), it is reasonable to grant the application.

In practice, the Legal Aid Board has only limited resources and civil legal aid is primarily granted in family law areas of civil dispute.

Is there any connection between exemption from the duty to pay the judicial fee and the right to free legal aid?

No.

IV. Exclusions and immunities

(Note: If you answer yes to any question in this section, please provide details.)

- a. Are there any mandatory steps after the public authority delivers its final decision and prior to filing a petition to an administrative court (e. g. mediation)?

As mentioned above, there are no specialised administrative courts in Ireland. There is a statutory requirement on legal practitioners to advise clients of the option to mediate, but this applies to civil litigation in general rather than administrative law cases.

- b. Are there any final administrative acts of a public authority which are not reviewable at all?

Any act emanating from a public body or a body exercising statutory powers or lower court than the High Court may be judicially reviewed by the High Court which, pursuant to the Constitution, has full original jurisdiction in all areas of law, including the power even to declare invalid an Act of the Oireachtas (Parliament). Judicial review does not apply in respect of private law decisions.

However, there are a number of areas in which the Legislature has considered that there are some areas in which there is particular need for certainty in relation to decisions of public bodies and has therefore prescribed a more restrictive form of judicial review. For example, shorter time limits are prescribed for bringing applications for leave to seek judicial review in planning and immigration law decisions.

In addition, a number of statutory judicial review schemes concerning planning and immigration law provide that no appeal lies to the Court of Appeal from a determination of the High Court on an application for leave save with the leave of the High Court which shall only

be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal shall be taken.

- c. Is there any particular public authority whose administrative acts are not subject to judicial review (e. g. acts of a head of state)?

The Head of State, the President is exempt but the President of Ireland has no administrative powers.

- d. Are there any final acts of a public authority which are reviewable by a (state or other) authority other than the administrative court?

There are no administrative courts in Ireland and only the High Court has the power to exercise judicial review at first instance. However, certain statutes provide for an internal administrative appeal from one administrative level to another, such as planning and development, immigration and asylum and employment law disputes. Certain statutes also sometimes provide for an appeal to a court of lower jurisdiction than the High Court.

- e. Are there any cases which are reviewed by the administrative courts other than review of administrative acts of a public authority (e. g. review of elections, dissolution of a political party)?

There are no administrative courts in Ireland but, as indicated above, the High Court, Courts of Appeal and Supreme Court have jurisdiction in all areas of law. This includes considering petitions brought in relation to elections or referenda in addition to the constitutional validity of legislation.

V. Selection by lower and higher jurisdictions

a. Do the administrative courts have power to select cases? Answer yes/no.

Instance	I.	II.	III.
Power to select cases	No but see note below regarding requirement that leave be granted to bring judicial review proceedings.	No	Yes

Please note that the above answer relates to the High Court, Court of Appeal and Supreme Court.

b. If you answered *yes*, under what conditions can they select cases? Are there any objective criteria stated in the legislation/case law of the court or is the selection a matter of full discretion?

As indicated in section I, the Supreme Court selects the cases which it hears through an application for leave to appeal process from decisions of the Court of Appeal or, in exceptional cases, directly from the High Court. The threshold to be met for leave to be granted are set out in the Constitution as stated in section I above.

In respect of administrative law proceedings, an applicant wishing to bring judicial review proceedings in the High Court must first apply to the High Court for leave to do so. The judge of the High Court hearing the application for leave will determine whether the case is sufficiently stateable for leave to be granted. In *G v Director of Public Prosecutions* [1994] 1 IR 374, the Supreme Court set out the following factors which must be established by an applicant for leave to be granted:

- (a) That he has a sufficient interest in the matter to which the application relates;
- (b) That the facts averred in the affidavit would be sufficient, if proved to support a stateable ground for the form of relief sought by judicial review;
- (c) That on those facts an arguable case in law can be made that the applicant is entitled to the relief which he seeks;
- (d) That the application has been made [within three months from the date when grounds for the application first arose unless the court is satisfied that there is good and sufficient reason for extending the period and the circumstances that resulted in

the failure to make the application within the time were either outside the control of the applicant or could not reasonably have been anticipated by him];

(c) That the only effective remedy, on the facts established by the applicant, which the applicant could obtain would be an order by way of judicial review or, if there be an alternative remedy, that the application by way of judicial review is, on all the facts of the case, a more appropriate method of procedure.

- c. Is the power to select cases restricted to certain fields of law? Please give details.

No.

- d. Does the court have power to select cases that fall under administrative criminal law? If it does, are the conditions for selection the same as in others fields of law? Please give details.

The requirement to obtain leave to bring judicial review proceedings in the High Court applies to criminal as well as civil proceedings.

The filtering mechanism regarding the bringing of cases to the Supreme Court applies in all types of cases, including cases which originated by way of judicial review proceedings in criminal law cases.

- e. Please specify who selects the cases to be heard and how. Is there a special judicial panel or case selection procedure for that purpose? Is that procedure only a matter for the higher jurisdiction that will ultimately hear the case, or do the lower courts also somehow participate in that selection?

In applications for leave to bring judicial review proceedings, a judge of the High Court sitting alone hears such applications by way of oral hearing.

In respect of applications for leave to appeal to the Supreme Court, a panel of three members of the Supreme Court considers such applications. Such applications are generally considered in private, although the reasons for the decision to grant or refuse leave are published.

- f. If the court decides to select/not to select a case, is it obliged to notify a petitioner? If it is, does it deliver a formal decision (e. g. rejects the petition) or does it notify a petitioner by an “informal” letter?

When the Supreme Court refuses an application for leave to appeal, it issues a written determination, which is published online.

When the High Court refuses an application for leave to bring judicial review proceedings, it delivers a ruling, which is generally ex tempore (immediately after the application is made in court) and a formal court order.

- g. Is the court obliged to give reasons when it decides not to select a case?

Yes.

- h. If a lower court decides not to select its own case, is the decision reviewable by a higher court? Please give details.

Where leave to apply for judicial review sought on an ex parte basis is refused by the High Court, an appeal may be brought to the Court of Appeal.

- i. Does a lower court have power to select cases of a higher court? If it does, is its selection reviewable by a higher court? Please give details.

No, with the exception noted under question IV under which certain statutory judicial review provisions concerning planning and immigration law provide that no appeal lies to the Court of Appeal from a determination of the High Court on an application for leave save with the leave of the High Court which shall only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal shall be taken. However, it is open to the Supreme Court to grant leave to appeal to the Supreme Court directly from the High Court in such instances.

- j. Does a judge determine the order of the cases to decide?

In the Supreme Court, the hearing dates for cases for which leave to appeal are granted are decided by the Chief Justice, who is President of the Court in conjunction with the Registrar.

In respect of judicial review proceedings in the High Court, there is a specific time and day of the week on which a party can make an application to a High Court judge for a date for hearing.

It is always open to a judge to hear cases in a different order to that which they are listed.

VI. Other measures

- a. Does your legal order have other measures which simplify or restrict access to the courts? Please explain.

Leave to bring judicial review proceedings may be refused where judicial review would be an inappropriate remedy in comparison with an ordinary appeal.

In addition, leave will not be granted unless the court considers that the applicant has a sufficient interest in the matter to which the application relates.

There are also time limits within which applications to bring an application for judicial review. Generally, an application for leave to apply for leave to apply for judicial review must be brought within three months from the date on which the application first arose, although it is possible to apply for an extension of time.

VII. Statistics

- a. Please give exact numbers of case load and number of cases decided for the years 2016, 2017 and 2018 in each of the instances of the administrative judiciary (including all specialized jurisdictions, e. g. financial or social security).

Instance	I.	II.	III.
Case load 2016			
Cases decided 2016			
Case load 2017			
Cases decided 2017			
Case load 2018			
Cases decided 2018			

As there are no administrative courts, it is not possible to provide these statistics. However, it may be relevant to note that in 2017, the High Court 961 judicial review proceedings were initiated. 382 were resolved by the Court while 173 were resolved out of court.