Seminar organized by the Supreme Court of Ireland and ACA-Europe

How our courts decide: The decision-making processes of Supreme Administrative Courts

Dublin, 25 – 26 March 2019

Answers to questionnaire: Ireland

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ACA Seminar
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of Supreme Administrative Courts
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Supreme Court of Ireland

Questionnaire

I. Introduction

1.1 The seminar will focus on the process followed by our national Supreme Administrative Courts in reaching their decisions. Each court will have its own formal rules, whether provided for in substantive law or in the internal rules or formal procedures of the court. Furthermore, each legal system will have its own culture and traditions which will inform the way in which the decision making process progresses.

1.2 The purpose of this questionnaire and the seminar which will follow is to provide a greater understanding of both the similarities and differences which exist between the decision making process in the respective Supreme Administrative Courts. It is hoped that this will provide useful information both for comparative purposes but also to give each Supreme Administrative Court a better understanding of the process which may have led to decisions of the courts of other EU member states.

1.3 The Dublin seminar on the 25th and the 26th March 2019 for which this preparatory questionnaire is being distributed is envisaged as a sister seminar to that which will be organised by our German colleagues in conjunction with the General Assembly of the 12th to the 14th May 2019 in Berlin. While there may be some small and unavoidable overlap between the issues raised it is intended that the Dublin Seminar will focus on the decision making process of the court whereas the Berlin Seminar will focus on access to the Supreme Court and its functions including, for example, the question of whether 'filters' are provided for in administrative procedural law.

1.4 Further, while this project is independent of the ACA-Europe transversal analysis project on 'The Quality of Judgments', there will be an inevitable link between certain elements of the questionnaire formulated for that project and aspects of this questionnaire.

1.5 Please note that when answering the questions in this questionnaire it is not (with the exception of the statistical questions regarding caseload under Part C) necessary to consider proceedings which lead to the making of provisional orders.

1.6 In addition, in the event that your institution undertakes legislative functions such as providing advice on proposed legislation as well as the function of adjudicating cases in the context of court litigation, it is not necessary to include information pertaining to the legislative functions when responding to the below questions.

II. Questions

A. Background questions in relation to your Supreme Administrative Court/ Council of State

1. What is the formal title of your Supreme Administrative Court/Council of State ('institution')? Please provide the name of your institution in your national language and the English translation if possible.

English: The Supreme Court of Ireland
Irish: Cúirt Uachtarach na hÉireann

2. What country/jurisdiction does your institution serve?

Ireland

3. Where is your institution based (i.e. its seat)?

Dublin, Ireland.

However, the Court has sat outside of Dublin on two occasions in recent years and will do so again in 2019.

4. Please provide a link to your institution's website (if available), including a link to the English or French version or pages of the website if available.

Supreme Court website: http://www.supremecourt.ie/
And also see website of the Courts Service:
http://www.courts.ie/Courts.ie/Library3.nsf/PageCurrent/56C3AFCB2FC93F9280257FBC00448155?opendocument&l=en

B. The Structure of your Supreme Administrative Court/Council of State

5. Please provide an outline of:

(a) The main functions of your institution (e.g. a first and last instance court, court of cassation or court of appeal);

Pursuant to Article 34.5.1 of the Constitution of Ireland, the Supreme Court of Ireland is the final court of appeal. It also exercises first instance jurisdiction in two areas. First, Article 26 of the Constitution of Ireland provides for a reference to the Supreme Court by the President of Ireland, after consultation with the Council of State, of Bills of the type prescribed in that Article for a decision as to whether any such Bill or specified provision(s) thereof is repugnant to the Constitution. Should the Court decide that the Bill, or any of its provisions, is incompatible with the Constitution it may not be signed or promulgated as law by the President. Secondly, the Supreme Court has limited original jurisdiction under Article 12.3.1 of the Constitution, which has never been exercised. Article 12.3.1 of the Constitution provides that only the Supreme Court, consisting of not less than five Judges, can establish whether the President of Ireland has become permanently incapacitated.

(b) The nature of your institution (e.g. a Supreme Administrative Court or a Supreme Court with jurisdiction in other areas of law); and

The Supreme Court of Ireland has jurisdiction in all areas of law, including all aspects of civil law, criminal law and administrative law.

Article 34.4.5 of the Constitution provides that no law may be enacted excepting from the appellate jurisdiction of the Supreme Court cases which involve questions as to the validity of any law having regard to the provisions of the Constitution. As a result, the Supreme Court functions as a constitutional court as it is the final arbiter in interpreting the Constitution of Ireland.

(c) Its place within the overall court structure in your country/jurisdiction.

The Supreme Court is the apex court of fie court tiers:the District Court, Circuit Court, High Court, Court of Appeal and Supreme Court.

It hears appeals:

(a) from decisions of the Court of Appeal where the Supreme Court 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) and:

(b) from decisions of the High Court 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 (Article 34.5.4 of the Constitution).

C. Caseload

6. How many judges[1] serve on your institution?

At present, eight judges of the Supreme Court hear cases in the Court, including the Chief Justice and seven ordinary judges of the Court.

In addition, the President of the Court of Appeal and President of the High Court are *ex officio* judges of the Supreme Court.

Legislation provides for ten judges of the Supreme Court (the Chief Justice and nine ordinary judges) but there are currently two vacancies on the Court.

[1] Please include figures concerning judges only and not the number of Advocates General (which will be dealt with under question 11) or judicial assistants/clerks/researchers (which will be dealt with under question 13.

7. How many cases[2] are brought to your institution per year on average?

It may be considered most relevant for the purposes of the questionnaire to consider figures for 2017, the year for which the most recent figures are available. This is because the figures for the two preceding years were unusual, given the introduction of the new jurisdiction of the Supreme Court and the figures prior to that reflect the previous jurisdiction of the Court. Even in considering the most recent figures, it must be borne in mind that the Court has, in recent years been dealing with legacy appeals from its previous jurisdiction and an increasing number of applications for leave to appeal (which did not previously exist) so it is at present difficulty to provide a 'typical' number of cases per year.

The total number of incoming cases (including applications for leave to appeal) in 2017 was **234.**

8. How many cases does your institution dispose of[3] per year on average?

Again, it may be considered that figures for 2017 may provide the realistic reflection of the current position. In 2017, **275 c**ases, including applications for leave, were disposed of.

These included 160 applications for leave to appeal, 80 legacy appeals from the previous jurisdiction of the Court and 35 appeals under the new jurisdiction of the Court.

[2] In this question 'cases' means the average number of incoming cases per year, whether litigious (in which the judge(s) decides a dispute) or non-litigious (where a case in which there is no dispute is brought before the Supreme Administrative Court) and in all categories of cases if your Supreme Administrative Court does not deal solely with administrative law cases (for example, civil and commercial law, criminal law etc). It refers to both cases decided in writing and by oral hearing. It includes applications submitted to a Supreme Administrative Court before any filtering process is undertaken if such a mechanism exists.

[3] Please indicate the average number of cases that come to an end in your Supreme Administrative Court each year either through a judgment or any other decision that ends the procedure, whether it has been considered in writing or by oral hearing.

D. Internal organisation of the Supreme Administrative Court

9. Does your institution have chambers/divisions?

The Supreme Court of Ireland does not have chambers. Prior to the establishment of the Court of Appeal in 2014, the Supreme Court often sat in two divisions panels at the same time to hear different cases. However, since the implementation of the new jurisdiction of the Supreme Court in 2014, the Court has rarely sat in more than one division. The Supreme Court has never sat as a panel of less than five members to hear a case under its new jurisdiction, and therefore it generally sits as a Court of five with the possibility of a panel of three judges to consider interlocutory or minor matters (or occasionally cases left over from the old jurisdiction of the Court or cases which are referred to as 'Article 64 returns'[4]).

10. If yes, provide the following details:

a. How many chambers/divisions?

On the rare occasion that the Court sits as more them one panel, it does so as two divisions.

b. How many judges serve in each chamber/division?

In general, when the Court sometimes sits as two divisions, five judges sit on one panel and it is then possible for a panel of three judges to sit on a second panel to hear minor or interlocutory matters or Article 64 returns.

c. The nature of particular areas of specialisation in your Supreme Administrative Court by chamber or otherwise (if any) (e.g. commercial division, environmental division etc.).

[4] Article 64 was a transitory provision of the Constitution of Ireland which came into effect on the establishment of the Court of Appeal empowered the Chief Justice, if satisfied that it was in the interests of justice and the4 effective determination of appeals to do so, and with the concurrence of the other judges of the Supreme Court, to give a directing providing that specified appeals be heard and determined by the Court of Appeal. However, a subsequent backlog of appeals in the Court of Appeal resulted in the return of a number of such appeals to the Supreme Court, where they were heard by the Supreme Court in panels, with judges of the Court of Appeal sitting as judges of the Supreme Court on some of such Article 64 returns.

N/A

d. Do judges move between chambers/divisions? If yes, how is such movement determined?

N/A

e. Is it possible for a judge to be assigned to more than one Chamber at a time?

N/A

f. Are there different levels of chambers, for example, an 'ordinary chamber' and Constitutional Review Chamber?

N/A

g. How many judges are usually assigned to consider and decide an average case?

Five judges are usually assigned to consider an average case since the implementation of the new jurisdiction of the Court.

h. Does the number of judges assigned to decide cases vary?

Yes. Subject to the reservation in respect of cases heard under the old jurisdiction of the Supreme Court, interlocutory matters or Article 64 returns referred to above which are often considered by a panel of three judges, the decision of the number of judges that should hear an appeal under the new jurisdiction is whether the Supreme Court should consist of five or seven judges.

If yes:

(i) Based on what rules or factors?

In considering whether the Court should consist of five or seven judges, the issues involved in the appeal, including their general and legal importance, are taken into consideration. While it is not unusual for the Supreme Court to sit as a Court of seven members, this is the exception and the Court generally sits as a Court of five.

(ii) Who decides how many judges are assigned to consider and decide a particular case?

The Chief Justice assigns cases to judges of the Court and decides how many judges are to consider and decide a particular case.

The Chief Justice is currently considering the possibility that a small group comprising judges of the Court be established which would have a role in respect of determining the assignment of cases to panels of the Court. The proposal would involve the election by ordinary judges of the Supreme Court of two persons to form a group with the Chief Justice to determine the panel for each case. As is currently the position, the Chief Justice would prepare a proposed list, which would be submitted to the group before being finalised.

i. Is there a procedure for certain cases to be elevated to a grand chamber or plenary session?

No such procedure exists.

If yes, how is this decided and how many judges decide?

N/A

j. Are judges assigned certain additional roles (e.g., rapporteur, case manager, other specific responsibilities etc.) relating to a particular case?
If yes, specify the additional roles and explain how these roles are assigned.

When the Supreme Court grants leave to appeal, the Chief Justice assigns a 'case management' judge who is responsible for ensuring that the case is prepared for oral

hearing in accordance with the Superior Court Rules and Practice Direction of the Court. The case management judge will almost always be a member of the panel which will be assigned to hear the case. Informally, an individual judge is normally assigned to having a primary role in preparing a judgment in the case which will record all necessary matters such as the facts and procedural history of the case. Frequently, such judge will also have been the case management judge. It would be anticipated that this judge would write the judgment, or the majority judgment of the Court, provided that the views of that judge were agreed by all or a majority of the members of the Court. That procedure is, of course, without prejudice to the entitlement of any other judge to also write a separate concurring or dissenting judgment. Even where that judge turns out to be in a minority it is frequently the case that many of the formal matters required to be recorded in a judgment or judgments of the Court will be set out in that judgment, even though it is a minority judgment.

For example, in the decision of the Supreme Court in The Law Society of Ireland v. The Motor Insurers' Bureau of Ireland [2017] IESC 31 (accessible at http://www.courts.ie/Judgments.nsf/WebJudgmentsByYearAll/72AD2544AC5284A18025812B00387B64?opendocument), was decided by a majority of five judges out of a Court of seven. Although the judgment of Clarke J. was a minority judgment, the principal majority judgment of the Court delivered by O'Donnell J. adopted the facts and issues of the case as set out in the judgment of Clarke J, while not agreeing with the conclusions.

k. How significant is the role of the Chief Judge or President of the court in determining:

(i) The assignment of cases to chambers or panels of judges;

The assignment of cases to panels of judges is a function of the Chief Justice as President of the Supreme Court, although under the proposed reforms referred to in question 10(ii) above, it is possible that this task would be assigned to the newly established group.

As a matter of law, the administration of the Court, which includes the assignment of cases, is a function of the Chief Justice. However, it is proposed that, as a matter of practice, the Chief Justice would act on the views of the group.

(ii) The number of judges assigned to consider and decide a particular case;

The number of judges assigned to consider and decide a particular case is decided by the Chief Justice. This is also a matter which may be assigned to the proposed new group.

(iii) The assignment of certain additional roles to judges (see (f) above);

The assignment of certain additional roles to judges is a matter for the Chief Justice. This is also a matter which may be assigned to the proposed new group.

(iv) Any other matters you consider relevant in this context. For example, are there any other special panels, General Assemblies or bodies of judges to which cases are assigned.

11. Does the position of Advocate General exist in your legal system? If yes, please indicate:

(i) The number of Advocates General or equivalent members of your institution;

(ii) The function of the Advocate General in the context of your institution; and

(ii) The extent to which the Advocate General participates in proceedings before your institution.

The position of Advocate General in the form of a legal advisor to the Court does not exist in Ireland.

However, as is the case in some other countries with a common law legal tradition, Ireland does have an Attorney General, which is a constitutionally established senior legal officer with the function of advising the Government on matters of law and legal opinion. The Attorney General cannot in any way be considered an advisor to the Court. However, the Attorney General is considered to have a role in the protection of the public interest and has, as such, an entitlement to be involved in certain types of cases and is requested by the Court to become involved in others. The purpose of such involvement is to obtain independent submissions, directed by the public interest, on questions which may be considered of importance.

E. Research and Administrative Assistance

12. What level of research and/or administrative assistance is available to your institution?

A small number of Judicial Assistants provide research assistance to judges of the Supreme Court. Judicial Assistants are typically recent law graduates and are recruited for a period of three years. Some of the Judicial Assistants assigned to judges of the Supreme Court are 'office based' and carry out legal research only. Other Judicial Assistants attend court hearings with the judge to whom they are assigned and, in addition to research, undertake work of a non-legal, practical nature which was traditionally carried out by court ushers.[5]

[5] Until 2011, each judge has an usher, who was a permanent civil servant, often former member of the Defence Forces or An Garda Síochána. The role of ushers included keeping order in court, practical management of Judges' chambers and papers and driving where required. An alternative model of providing judicial support was agreed between the judiciary and the Department of Public Expenditure and Reform which involved a move away from salaried established public servants to recruitment on a fixed term basis of law graduate tasked with the role of an usher, but with additional roles relating to legal research for a judge.

Although some judges of the Supreme Court continue to have an usher, such a model was replaced in 2011 so that judges appointed since then are assigned a Judicial Assistant who provides both research and practical assistance.

The Supreme Court Office, under the management of the Registrar of the Supreme Court, provides administrative support to the court. All documentation necessary for the processing of appeals is lodged in the Supreme Court Office.

A number of secretaries provide administrative secretarial support to Supreme Court judges.

In addition to a judicial assistant, the Chief Justice receives legal and administrative support in relation to matters arising out of his particular functions as Chief Justice from a Senior Executive Legal Office and Executive Legal Officer.

13. How many officials provide legal research support to your institution?

Ten.[6] However, a number of such officials also provide administrative and other practical support. Broadly speaking, seven Judicial Assistants are office based and primarily provide legal research support. Three Judicial Assistants attend court hearings in addition to providing legal research support.

14. Do officials which provide legal research assistance to your institution also provide administrative assistance?

Some judicial assistants also provide administrative assistance to the judge to whom they are assigned but whether they do so depends on the needs and preferences of the judge.

15. Are research and administrative supports pooled (i.e. shared between judges) or assigned individually to judges or is there both a pool and some researchers assigned to individual judges? Please explain.

Research and administrative support staff are assigned individually to judges.

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[6] This does not include the executive legal support provided to the Chief Justice.

16. If research and administrative support is assigned individually to judges, is there also a research and documentation or equivalent department which provides additional pooled research support?

A Judicial Researchers Office, which is currently comprised of 12 researchers, provides pooled research support to all levels of court jurisdiction, but in practice provides pooled research support primarily to judges of lower court jurisdictions, such as judges of the District Court, who do not have directly assigned judicial assistants.

17. To what extent, if at all, do assistants/*référendaires* provide support to judges in your institution as regards specifically:

Note: The support provided by Judicial Assistants to judges of the Supreme Court varies depending on the particular working relationship and requirements of individual judges, and therefore the below answers reflect the general position only.

(a) Preparation of pre-hearing documents, such as a memorandum to assist the judge prior to the hearing of a case;

Yes, it is common for judicial assistants to prepare pre-hearing memoranda.

(b) Undertaking legal research to assist a judge to make a decision in a case;

Yes, Judicial Assistants frequently undertake legal research to assist a judge to make a decision in a case. However, it is worth noting as the Irish legal system is adversarial in nature, it is generally for the parties to alert the Court of any legal authorities on which he or she wishes to rely.

(c) Discussing aspects of a case with a judge orally or in writing;

It is less common, though not impermissible or unheard of, for judicial assistants discuss aspects of a case with a judge orally or in writing.

(d) Consideration and evaluation of the relevant law;

It is common for Judicial Assistants to set out the relevant law for the judge but less so to evaluate it.

(e) Undertaking comparative law analysis;

Judicial Assistants frequently carry out comparative law analysis.

(f) Drafting sections of judgments;

Judicial assistants may be asked to draft non dispositive parts of judgments.

(g) Putting forward a suggested or preliminary decision for judge(s) to consider;

It is not common for Judicial Assistants to put forward a preliminary decision for a judge to consider.

(h) Any other element that you consider is relevant in this context.

F. Oral hearings

18. Is there an oral hearing in all cases?

Yes. In general, if the Supreme Court grants leave to appeal in a case and the case proceeds to hearing, there is always an oral hearing.

An exception to this is the process of the determination by the Court of applications for leave to appeal. Such applications are considered by judges based on documents submitted by the appellant and the respondent otherwise than in public and without an oral hearing in the majority of cases.

19. If there is not an oral hearing in all cases:

(a) What percentage of cases typically involves an oral hearing?
(b) On what basis (formal rules or informal determinations) is it determined which cases will have an oral hearing?
(c) Can parties to a case request an oral hearing? If yes, what is the significance or consequence of such a request?

N/A

20. Does deliberation take place between the judges before the oral hearing? If so, is this the practice in all cases or in some cases?

A pre-hearing meeting takes places between the judges immediately before the oral hearing (and occasionally before that) in almost all appeals under the new jurisdiction of the Supreme Court. This meeting is an opportunity to identify and narrow down the key issues which need to be explored in the oral hearing and having regard to the written procedure.

21. Are time limits imposed on parties making oral submissions before your institution?

It is now almost always the case that time limits are determined in consultation with the parties in the course of the case management process.

22. Are parties permitted to address the Court for an uninterrupted period of time? If so, for how long?

It is frequently the case that parties are afforded a short initial period (typically approximately 15 minutes) at the beginning of their oral submissions to speak without interruption. Outside of that short period, the Court is very active in interventions which increases the importance of the uninterrupted period.

23. Is discussion in the oral hearing confined to matters set out in the statements or written submissions of the parties or may it involve broader legal discussion between the lawyers/a party and the Court?

Any matters properly arising, having regard to the proceedings prior to the case being admitted to the Supreme Court and the grounds on which leave to appeal have been granted, may be raised by the Court in the course of the hearing even if not specifically referred to in the written submissions.

24. Are parties permitted to file further written submissions following an oral hearing?

There is no rule permitting parties to file further written submissions following an oral hearing. However, occasionally, the Court requests the parties to file further submissions in relation to a particular issue following an oral hearing.

25. Is it possible for a judge to be excluded from proceedings based on a legal opinion expressed during an oral hearing giving rise to the perception of bias?

As far as can be ascertained, there has not been a situation in which a judge of the Supreme Court has been excluded from proceedings based on a legal opinion expressed during an oral hearing giving rise to the perception of bias. The question is one of pre-judgement and therefore it is considered that a judge should not express a concluded view until all parties have had the opportunity to make their submissions. However, it must be emphasised that the fact that a judge may express scepticism about a particular submission, this inviting counsel to explain the proposition is nonetheless valid, would not be considered to amount to a premature judgment. Thus, the expression of a preliminary or tentative view would not give rise to any difficulties but the intervention of a judge at the oral hearing in a manner which suggested that the judge did not have an open mind and was not open to persuasion might cause difficulties.

Principles in relation to the circumstances in which a judge should recuse himself/herself are have been developed in case law of the Superior Courts. It is the practice of judges to recuse themselves in any cases in which there are grounds on which a reasonable person might have a concern that, due to issues involved, he or she would not get an independent hearing.

G. Written submissions of parties

26. What is the usual length and level of detail of written submissions of parties provided to your institution? Please indicate the approximate number of pages (1.5 line spacing) of a 'typical' written submission

0 – 5 pages	☐
5-10 pages	☐
10-20 pages	☐
20-30 pages	X
30-40 pages	☐
40-50 pages	☐
50+ pages	☐

Note: The length of written submissions can vary significantly depending on the appeal in question. However, 20-30 pages is the most common length under the new jurisdiction.

20. Is there a maximum length for written submissions filed by parties in a case? If yes, please provide details.

According to a Practice Direction of the Court, 'SC16-Conduct of Proceedings before the Supreme Court', written submissions must be no more than 10,000 words in total and the word count to be noted on the submissions document. This can be extended with the permission of the case management judge. It is unusual to extend the limit but not unheard of.

H. Consideration of the case

21. Can your institution raise points of law of its own motion (i.e. ex officio) or is it limited to the points raised by the parties to the case?

Judges are not generally entitled to raise legal issues of their own motion in circumstances where the issue in question has not been raised by the parties. However, there are exceptions to this. Where the Court is required to construe either the Constitution or a statute or determine the common law the Court is engaged in an objective task which cannot be limited by the points raised by the parties. In that context it is important to distinguish between an issue which may be held not to arise in the case at all (for example a point under the statute of limitations which was not raised by the defendant in the trial court) and a question which is properly before the Court (such as the interpretation of a particular statutory scheme even though the precise angle on its interpretation may not have been fully explored by the parties).

In *Callaghan v. An Bord Pleanála and ors* [2017] IESC 60, a question arose as to whether the appellant had in his written submissions gone beyond the scope of the appeal permitted by the Supreme Court when it granted leave to appeal. An oral hearing took place before a three judge panel to determine the proper scope of the appeal in advance of the substantive hearing. The issue which it was submitted went beyond the scope of the grant of leave was an issue of European law, in particular an argument which arose in the High Court concerning the transposition of the Environmental Impact Assessment Directive into Irish law. The Chief Justice delivered an interlocutory judgment on the scope of appeal, concluding as follows:

> "5.1 For the reasons set out in this judgment I have come to the view that the proper approach of the Court to determining the scope of an appeal subsequent to the 33rd Amendment is to confine an appellant to issues which can fairly be said to arise within the scope of the appeal as identified in the determination of this Court granting leave to appeal. However, I also propose that the Court should not, in so confining an appeal, adopt an overly technical or narrow approach but rather should consider whether, on a fair basis, it can be said that the arguments sought to be relied on come within the broad scope of the leave granted.
>
> 5.2 In addition, I have come to the conclusion that, where the potential construction of a statute or legislative measures is at issue in proceedings, this Court should not ignore arguments which might impact on the proper objective construction of the measures concerned which derive either from the principle of constitutional construction or from the requirement of conforming interpretation as a matter of European Union law."

In such circumstances, the appellant was permitted to rely on any European law arguments which might be relevant to the proper construction of the statutory framework under the

domestic law at issue in the proceedings provided that those arguments were directed towards a construction of that statutory framework in the manner advanced by him in the courts below.

22. How is discussion, deliberation and decision-making structured in your institution?

The normal practice is that the Supreme Court which has heard a case meets for a conference (meeting) after the oral hearing, Occasionally, the conference is postponed to another date if the time and the commitments of the Court do not permit the holding of a conference immediately afterwards. The practice is that the most junior judge indicates his or her views first, with the other judges then providing their views in order of seniority. What happens thereafter depends on what emerges after that initial discussion.

23. Does your institution deliberate in a number of different languages? If so, please provide some detail. For example, does your institution have more than one official language?

Ireland has two official languages – English and Irish. However, in practice almost all cases are heard in English and deliberations are conducted in English.

24. Are there rules, processes, or conventions about how discussions and votes take place? If yes, specify the relevant rules etc.

Given that, strictly speaking, the "vote" of the Court takes place by the delivery in open Court of the judgment of each member of the Court, there is no formal procedure for the taking of a vote as such. The discussions are merely a means of ascertaining the extent of any consensus and ensuring that there is no unnecessary duplication of work in the preparation of judgments which do not add to the overall views of the Court.

25. How are preferences for particular outcomes communicated between the judges?

The preferences of the judges are initially communicated at conference. Any further views are thereafter typically communicated by email unless a second or subsequent conference is arranged.

26. Where there is an oral hearing, to what extent does the oral hearing (as opposed to written submissions) influence the court's discussion, deliberation and decision-making?

It is the experience of the members of the Court that the oral hearing plays an important role. It is not unusual for the final result after the oral hearing to differ from the views which a majority might have held prior to the oral hearing. In addition, even where the result does not change, the intensive dialogue between the Court and counsel very frequently leads to an evolution in the argument which thus influences the reasoning of the judgment, even if not altering the outcome.

27. Are there any other procedural rules or conventions that you believe impact significantly on the way in which cases are considered?

I. The decision of the institution

28. Is the decision delivered on behalf of the institution or is it open to each individual judge assigned to the particular case to deliver a separate judgment?

As in other common law jurisdictions, it is open to each judge of the Supreme Court on a panel which is hearing a particular case to deliver a separate judgment. A majority may form among several concurring judgments, and there may be one or more dissenting judgments. The decision of the Supreme Court is that of the majority. There have been occasions on which a 'collective judgment' of the Court has been delivered.

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An exception to the position that each judge may deliver his or her own judgment is provided for in Article 26 of the Constitution of Ireland under which the President of Ireland may refer a legislative Bill to the Supreme Court before signing it into law for a decision as to its constitutionality. In such cases, the decision of the Supreme Court is pronounced by a single judge and no other assenting or dissenting opinion, or the fact of the existence of any such opinion, is pronounced.

29. If the decision is delivered on behalf of the institution, does one judge write for the institution? If not, please explain how the judgment of the court is written for your institution. Are there formal rules or informal practice governing this?

N/A

30. How is the court's ruling/reasoning recorded?

The court's ruling/reasoning is recorded in a written judgment and order. In most cases, the court reserves its judgment and delivers it at a later date in what is referred to as a 'reserved judgment'.

Occasionally, a decision of the Supreme Court is delivered orally in open court directly following the hearing of an appeal, or sometimes one or two days after the appeal, in what is known as an *ex tempore* judgment. Such judgments are recorded by a Digital Audio Recording system and a transcript of such recording can be produced if necessary. Such ex tempore judgments were more common in the pre Court of Appeal regime and are largely now confined to either the dwindling number of cases left over from the previous jurisdiction of the Court (known as the 'legacy' cases), the Article 64 returns or interlocutory matters. Given that appeals under the new jurisdiction of the Court involve matters of general public importance, it would be considered highly unusual for the Court to deliver an *ex tempore* judgment. That being said, if the urgency of the situation requires it, the Court may indicate the result immediately after the oral hearing but indicate that its reasons for coming to that view will be delivered in written judgments in the ordinary way at a later stage.

31. Is there a distinction in your Supreme institution between the Judgment (i.e. reasons) and the Order (i.e. the operative ruling of the court)?

Yes. Judgments are written by judges of the Court and a written order, which is the operative ruling of the court is then prepared by the Registrar.

32. Are there any other distinctions of this nature in the decisions delivered by your institution?

In respect of applications for leave to appeal to the Supreme Court, the decision of the Court for granting or refusing the application, including the reasons for so doing, are recorded in a document known as a 'determination'. Determinations are distinct documents from judgments.

J. Timeframes for the decision-making process

33. How long, on average, between consideration of a case by your institution and the making of a decision? Please indicate the approximate length of time between the introduction of the case into the system of the Supreme Administrative Court (rather than the time when the case first comes before a judge for consideration) and the final resolution of the case through, for example, the pronouncement of the final decision.

As the Supreme Court of Ireland has a two stage process, which may end after the first stage if leave to appeal has been refused, there are two potential averages:

1. From the filing of an application for leave to determination of the application for leave to appeal the average is approximately 21 weeks.
2. From the filing of the application for leave to appeal to the determination of the full appeal where leave to appeal has been granted is approximately 82 weeks.

It must be cautioned that the above figures are averages which extremes on the spectrum and are not the mean. The figure for the length of time between filing an application for leave to appeal and determination of the application for leave to appeal in 2017 was 18 weeks. In addition, it is hoped that the relevant times may be materially shortened by the improved procedures about to be implemented, as referred to under question 39 below.

34. Is there a specific mandatory timeframe for deciding all cases? If yes, please provide details.

There is no specific timeframe for deciding all cases. However, section 46 of the Courts and Courts Officers Act 2002 as amended by section 55 of the Civil Liability and Courts Act 2004, provides that if judgment is not delivered before the expiration of 2 months from the date on which the Court delivers a reserved judgment (explained in question 30 above) following the hearing of a case, the President of the Court shall, as soon as may be after the expiration and the expiration of each subsequent period of 2 months (if judgment is not delivered) list the proceedings or cause them to be listed before the judge who reserved judgment. This provision applies to all tiers of court in respect of reserved judgments only

and not to *ex tempore* judgments, which are quite common in courts of first instance and, to an extent, the Court of Appeal.

Further, the procedural rules of the Supreme Court provide that all applications, appeals and other matters before the Supreme Court shall be prepared for hearing or determination in a manner which is just, expeditious and likely to minimise the costs of the proceedings.

35. Are there specific mandatory timeframes for particular categories of cases? If yes, please provide details of the categories of cases and the relevant timeframes.

With regard to legislative Bills referred to the Supreme Court for consideration of their constitutionality, referred to in question 5 above, Article 26.2.1 of the Constitution requires the Supreme Court to pronounce its decision on such question in open court as soon as may be, and in any case not later than sixty days after the date of such reference.

36. If there are no mandatory timeframes for deciding cases, is there a certain amount of time that it is considered appropriate for the decision-making process to take? If yes, please provide details.

The Chief Justice, in conjunction with the Registrar of the Supreme Court, keeps a record of all cases in which an oral hearing has been conducted but judgment has not yet been delivered. There is no hard and fast rule on the length of time that is considered appropriate for the amount of time required depends on the complexity of the case and the extent to which there may be consensus on the Court.

37. If there are mandatory timeframes applicable to the decision-making process in your institution, is it ever difficult for the court to abide by these timeframes? If yes, what are the main reasons for this?

The 60-day time limit in respect of references under Article 26 of the Constitution is considered to have posed difficulties in the past as, by definition, such cases are important and are likely to affect the jurisprudence of the Court in the future. In addition, the entire process of Article 26 reference, from the initial reference by the President of Ireland to the

delivery of the final judgment of the Supreme Court must be completed within the specified timeframe.

38. If there are no mandatory timeframes for deciding cases, but by convention or practice, there is a certain amount of time that is considered appropriate for the decision-making process to take, is it ever difficult for the court to abide by this timeframe? If yes, what are the main reasons for this?

N/A

K. Developments over time

39. Have the processes you have outlined in the preceding answers been subject to any significant changes in the last five years?

As indicated above, significant changes to the jurisdiction and procedures of the Supreme Court were introduced with the establishment of the Court of Appeal, including the amended to the procedural Rules and Practice Direction of the Court.[7]

In 2018, a Committee of the Supreme Court was established by the Chief Justice to undertake a review of the procedures of the Court based on the experience to date of the Court and of legal practitioners of the procedural rules and Practice Direction introduced upon the establishment of the Court of Appeal. The aim of the review is to fine tune the procedures and it is expected that the revised procedural rules and Practice Direction will be implemented in early 2019.

An additional project which will affect the process of the Court will be the introduction in early 2019 of a system of online filing of applications for leave to appeal to the Supreme Court. It is hoped that this process will be expanded to other courts in the future.

40. If yes, have these changes had an effect on the way cases are considered and decided?

In respect of the changes to procedures associated with the establishment of the Court of Appeal, it is considered that by confining the Supreme Court to dealing with a relatively modest number of important cases, the Supreme Court is now free to give the necessary time to those cases which are of importance and have the potential to affect the jurisprudence which applies in many other cases.

[7] Order 58, Superior Court Rules, accessible at http://www.courts.ie/rules.nsf/8652fb610b0b37a980256db700399507/aab93d875e7532ff80256d2b0046b3f1?OpenDocument; Supreme Court Practice Direction SC-16-Conduct of Proceedings in the Supreme Court, available at http://www.courts.ie/courts.ie/library3.nsf/16c93c36d3635d5180256e3f003a4580/471c0c64afff9550802581220038eca5?OpenDocument

41. Do these changes constitute an improvement in your view? If yes, please provide details.

Yes, for the reasons specified in question 40. As noted in question 39, a review of procedures has recently taken place, but generally the recent developments are perceived to have been positive.

I. Further comments or observations

42. Is there anything about your institution and/or its particular decision-making processes that you believe is not captured in the questions above, or any contextual information that you believe would aid our understanding of the decision-making processes in your court?

Thank you for completing this questionnaire.