



Consiglio di Stato



**Seminar organized by the Council of State of Italy and ACA-
Europe**

**“Techniques for the protection of private subjects in
contrast with public authorities: actions and remedies
– liability and compliance”**

Rome, 23 May 2022

Answers to questionnaire: Ireland



**Co-funded by
the European Union**



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

“TECHNIQUES FOR THE PROTECTION OF PRIVATE SUBJECTS IN CONTRAST WITH PUBLIC AUTHORITIES: ACTIONS AND REMEDIES - LIABILITY AND COMPLIANCE”.

INTRODUCTION

The seminar will analyse the types of actions that can be brought before the administrative judge: action of annulment, action of declaration and action of condemnation. With particular reference to the latter, the seminar will focus on compensatory measures, including damages for loss of opportunity and damages as a result of delay.

The seminar also intends to examine the possibility of any and eventual special or fast-track procedure, for introductory terms and methods which pertain to certain subjects under consideration, for example, for their economic or political relevance, such as those to be found in the sphere of public contracts (see also transversal analysis).

The aim of this questionnaire and of the subsequent seminar is to provide a wider comprehension of the similarities and differences that exist among the various legal systems of the member States insofar as they apply to the situations to be dealt with by the administrative court, paying particular attention to the content and subject matter of the relative rulings.

SESSION I

LEGAL PROCEEDINGS THAT CAN BE BROUGHT BEFORE THE ADMINISTRATIVE COURT

- 1. In your legal system, which judges are competent to pronounce on disputes in which one of the parties is the public administration?**
 - An ordinary judge **X**
 - An administrative judge
 - A judge who deals with special areas **X**
 - Others



**Co-funded by
the European Union**



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

Reply of Supreme Court of Ireland:

Ireland does not have a system of specialised administrative courts or specialist administrative law judges. The public administration may be a party to a dispute before any of the five tiers of court jurisdiction in Ireland (District Court, Circuit Court, High Court, Court of Appeal and Supreme Court) and any judge is in theory competent to hear a case to which the public administration is a party.

However, the system of administrative law in Ireland is called judicial review, and it is through judicial review proceedings in the High Court that cases involving public administration typically come before the courts of Ireland at first instance. The High Court is the only court with first instance jurisdiction in judicial review cases. Any person with sufficient interest 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. Ordinary judges of the High Court are assigned to a specialist court list which deals with judicial review proceedings.

In addition to the above jurisdiction, in some areas of law, statutory appeals from certain administrative tribunals may be brought to the District Court or Circuit Court. Such cases are dealt with by ordinary judges of those jurisdictions.

It may be useful to note in the context of the Supreme Court of Ireland being the relevant member of ACA-Europe, that the Supreme Court is the final court of appeal in all areas of law and therefore deals with administrative law cases on appeal from the Court of Appeal or, in exceptional cases, the High Court when it is satisfied that a decision involves a matter of general public importance or where it is in the interests of justice, necessary that it consider the appeal.

2. Which actions can be brought before the administrative court in view of the exercise of administrative powers?

- Annulment of administrative acts X
- action of condemnation
- Other actions X

A party with sufficient interest may seek judicial review of an administrative act or omission. Remedies available are:

- **Certiorari** - an order which quashes a decision of a public body or a body exercising public functions which has been made in excess of or in abuse of its jurisdiction or where an error appears on the face of the record.



Co-funded by
the European Union



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

- **Prohibition** - which is an order to restrain a public body which has power to impose liability or affect the rights of individuals from acting in a manner which would be in excess of jurisdiction;
 - **Mandamus** - which is an order compelling the performance of a legal duty of a public nature;
 - A **declaration** of relevant legal rights;
 - **Injunction**, either prohibitory or mandatory
 - **Damages**.
- 3. From which sources can actions be proposed brought before the administrative court?**
- Law **X**
 - Public authority regulations
 - Guidelines
 - Supreme Court rulings
 - Other **X**

Ireland has a common law legal system and judicial review represents the evolution of the historic common law remedies or prerogative writs of certiorari, prohibition and mandamus, which developed over the centuries through court decisions. A number of legislative schemes of judicial review with specialised measures have also been introduced in certain areas, such as planning and immigration law. The Superior Courts (High Court, Court of Appeal and Supreme Court) have used provisions of the Constitution as a basis to supervise the actions public administration, for example, from articles guaranteeing procedural fairness, and separation of powers. of The source of procedures for judicial review is the Rules of the Superior Courts, which are the procedural rules that govern court proceedings (see Order 84 of the Superior Court Rules: <https://www.courts.ie/rules/judicial-review-and-orders-affecting-personal-liberty>)

- 4. Which administrative decisions can be challenged?**
- Administrative acts which have a specific recipient
 - General acts and regulations
 - Acts inherent to the procedure
 - Political acts

All acts of public bodies or bodies which exercise statutory powers are amenable to judicial review. Certain private bodies which exercise public powers may also be amenable to judicial review. Acts are not classified by reference to their legal origin or character. Even an Act of the Oireachtas (Parliament) may be declared invalid by the High Court and, on appeal by the Court of Appeal or Supreme Court.



Co-funded by
the European Union



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

5. On the grounds of which defects can the annulment of an administrative act be requested?

- Breaches of the law **X**
- Breaches of competence **X**
- Technicalities and procedural defects **X**
- Breaches of general principles **X**
- Other **X**

Judicial review is concerned with the manner in which a decision has been made, so the grounds generally involve an argument that a decision maker has acted beyond the limits of its powers, or that a decision involved a lack of fairness or rationality.

6. Can the judge partially annul the challenged administrative act?

- Yes **X**
- No

If your reply is yes, please elaborate.

In the case of a finding by the Courts that a portion of a statute is unconstitutional, the Supreme Court has found that if, following the removal of the unconstitutional part:

“... the remainder may be held to stand independently and legally operable as representing the will of the legislature [effect will be given to it]. But if what remains is so inextricably bound up with the part held invalid that the remainder cannot survive independently, or if the remainder would not represent the legislative intent, the remaining part will not be severed and given constitutional validity ... If, therefore, the Court were to sever part of a statutory provision as unconstitutional and seek to give validity to what is left so as to produce an effect at variance with legislative policy, the Court would be invading a domain exclusive to the legislature and thus exceeding the Court's competency.”¹

Decisions of the Irish courts have also found that this applies to part of an administrative decision, in circumstances when much of the decision has been found to be ultra vires (in excess of legal power).²

¹ Maher v. Attorney General (Fitzgerald C.J.) [1973] I.R. 140.

² Desmond v Glackin (No. 2) [1993] 3 I.R. 67; Mallon v Minister for Agriculture and Food [1996] 1 I.R. 517.



Co-funded by
the European Union



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

7. Can the judge substitute the Administration by modifying the content of the administrative act?

- Yes
- No X

8. When the judge annuls the challenged act, can he dictate provisions which the P.A. must abide by in the review proceedings of the subject-matter of the litigation?

- Yes
- No X

If your reply is affirmative, please elaborate.

9. When do the effects of the jurisdictional annulment of an administrative act become applicable?

- From the date of the adoption of the act (*ex tunc*) X
- From the date on which the judgement becomes final (*ex nunc*)
- Other X

In general, the administrative act is void *ab initio* which means that it has no legal consequences from its inception.

10. Can the judge modulate the effects over time of the ruling of annulment of an administrative act?

- Yes
- No X
- Other X

In general, no, a Court does not monitor the effects of a ruling over time. However, in at least one case, the Supreme Court has made a finding of unconstitutionality in respect of legislation, but adjourned making the formal order. This occurred in the Supreme Court decision of *NVH v Minister for Justice and Equality* [2017] IESC 35, in which the Supreme Court found that a legislative provision which prohibited an applicant for refugee status for seeking employment was contrary to the constitutional right to seek employment, but did not make a formal order to that effect for a period of six months to facilitate the enactment of new legislation.

11. Can the act of ordering payments for damages be proposed autonomously or must it always be proposed together with other kinds of actions?



Co-funded by
the European Union



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

- Yes **X**
- No
- Only in certain cases

If your reply is yes, please elaborate

Previously it was necessary to institute separate plenary proceedings to seek damages. However, the Rules of the Superior Courts in 1986 introduced a process under which a court may grant damages in addition to, or in lieu, of the judicial review remedies of certiorari or prohibition or a declaration or an injunction. Order 84, rule 25(1) provides that a court may do so if the applicant for judicial review has “included in the statement in support of his application for leave under ... a claim for damages arising for any matter to which the application relates”, and “the Court is satisfied that, if the claim had been made in a civil action against any respondent or respondents begun by the applicant at the time of making this application, he would have been awarded damages.” It is also possible to bring a separate cause of action solely for damages.

12. In the light of what kind of behaviour is the compensatory action for damages feasible when dealing with a Public Administration?

- Implementation of an illegal and detrimental administrative act
- Non-observance of the deadline of the procedure
- Lesion of good faith and trust
- Resultant behaviour of the public administration
- **Other X**

Please elaborate

The Supreme Court has found that a finding that an administrative act is invalid does not of itself give rise to a cause of action in damages.³ An administrative act found to be invalid will result in a cause of action in damages when:

- (a) it also amounts to a recognised tort, such as false imprisonment or negligence;
- (b) where it was motivated by malice or where the public authority knew that it did not have the power which it purported to exercise, i.e. the tort of misfeasance of public office;
- (c) where there has been a breach in statutory duty;
- (d) where the act infringes a personal constitutional right or constitutes a breach of legitimate expectation;

³ *Cromane Seafoods Ltd v Minister for Agriculture, Fisheries and Food* [2016] IESC 6, [2017] 1 I.R. 119; *Glencar Exploration plc v Mayo County Council* [2002] 1 I.R. 84 (Fennelly J at 148–150)



Co-funded by
the European Union



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

(e) in circumstances where the State is found to be liable in damages for an infringement caused by the erroneous application of EU law⁴ in accordance with *Francovich and Bonifaci v Italy* (Cases C-6/90 and C-9/90) EU:C:1991:428.

13. Which are the different kinds of reimbursable damages?

- Material damage **X**
- Non-material damage **X**
- Loss of opportunity **X**

14. Does the omission of lodging an action of annulment result in elision or reduction of the compensatory damages?

- Yes
- No
- Other **X**

The language of Order 84 of the Rules of the Superior Courts suggests that the remedy of damages is an ancillary remedy to the judicial review remedies, which suggests that applying for one of the other remedies is necessary to a consideration of damages.

In order to award compensatory damages, is proof of the responsibility of the public administration required? If your reply is affirmative, which party is obliged to provide said proof?

- Yes – the party with burden of proof is the applicant. **X**
- No

15. Can the judge convert *ex officio* one action into another?

- Yes **X**
- No

If the reply is yes, please elaborate

Order 84, rule 27 (5) provides:

⁴ The Supreme Court judgment of *Ogieriakhi v Minister for Justice and Equality & Ors* [2017] IESC 52 set out the criteria for applying the element of the test as to what constitutes a sufficiently serious infringement.



Co-funded by
the European Union



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

“Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in a civil action against any respondent or respondents begun by plenary summons by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had been begun by plenary summons.”

16. Is there a time-limit for the proposition of the compensatory action?

- Yes **X**
- No

If the reply is yes, please elaborate

A person seeking leave to apply for judicial review must do so within three months from the date when grounds for the application first arose.⁵ Therefore, although no specific time limit is stated in the procedural rules in relation to a claim for damages in the context of judicial review proceedings, as a person must specify the cause of action in damages at the leave stage, it is effectively a three month time limit.

It is not permissible for a plaintiff to circumvent time limits in Order 84 by issuing plenary proceedings which attract longer time limits.⁶

17. Can the judge rule that the Administration implement an administrative act? If your reply is affirmative, what are the prerequisites for implementation?

- Yes **X**
- No

One of the remedies available in judicial review proceedings is an order of mandamus which compels the performance of a legal duty of a public nature.

SESSION II – SPECIAL PROCEDURES

1. Does your administration have provisions for special procedures

⁵ Order 84, rule 21(1) of the Rules of the Superior Court Rules.

⁶ *Shell E & P Ireland Ltd. v. McGrath* [2013] IESC 1, [2013] 1 I.R. 147; *Express Bus Limited v National Transport Authority* [2018] IECA 236.



Co-funded by
the European Union



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

- Yes **X**
- No

If the reply is yes, please elaborate

The Oireachtas (legislature) has provided for a specific judicial review procedure in certain areas. The most frequently encountered areas of law governed by such special procedures are planning and environmental law and immigration law.

What do the specialities consist of?

- Ways of introducing the appeal **X**
- Procedural time-limits **X**
- Jurisdiction of the court
- Other **X**

The requirements of each of the specialist statutory regimes and procedural rules varies. However, the following are some of the features of the specialist regimes.

- *Shorter time limits:* The time limits for bringing judicial review proceedings under the special procedures are shorter than in conventional judicial review proceedings. For example, [Section 50\(6\) and \(7\) of the Planning and Development Act 2000](#) as inserted by s.13 of the Planning and Development (Strategic Infrastructure) Act 2006, which applies to a decision of a planning authority or An Bord Pleanála,⁵⁵⁷ lays down an eight week time period, commencing on the date of the decision or the date of doing the act in question
- *Application on notice:*
- *Exclusive procedure:*

2. The special rites are established:

- According to subject (for example, tenders, procedures of expropriation, independent administration authorities) **X**
- According to actions
- Both of the above

3. Does your system provide for appeals against the silence of the Administration at the request for an administrative provision presented by a private individual?

- Yes
- No



Co-funded by
the European Union



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

If the reply is yes, please elaborate

4. Do the Administrations comply spontaneously with the decisions of the administrative courts?

- Yes, always
- No, never
- In the majority of cases, in any case more than in 50% of cases **X**
- Hardly ever, in any case less than in 50% of cases

5. In your legal system, is there a special procedure for ensuring the integral execution of the sentence?

- Yes **X**
- No

If the reply is yes, please elaborate

The decisions of the courts in Ireland are executed through orders of the court which are the operative rulings of the court and reflect the outcome decisions. Non compliance of administrative actors with an order of the Supreme Court is unusual.

A number of different enforcement mechanisms are available, including a garnishee order and an order of attachment and committal directing the person who is resisting the pre-existing court order to prison. Generally speaking, the execution of orders is governed by the Rules of Court and by national laws, in the form of the Enforcement of Court Orders Acts 1926 – 2009. Different enforcement mechanisms apply depending on the form of court proceedings.

It is a criminal offence to wilfully disobey an order of court. Monetary fines or prison sentences may be imposed in such situations. These measures can, in principle, apply also to public authorities should they not follow orders of the court.

6. Are the judge's decisions which are not of the last resort immediately enforceable?

- Yes **X**
- No

If the reply is yes, please elaborate



**Co-funded by
the European Union**



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

Yes, a judgment and order comes into effect notwithstanding that they may be appealed unless the court uses its discretion to grant a 'stay'. An appeal does not automatically give rise to a stay, unless a court so orders.

7. Following the annulment of a decision characterized by discretionary power, the interested party is forced to challenge each of the ulterior negative decisions which have been deemed illegitimate by dint of defects which are different to those identified by the judge or, in alternative, are there certain mechanisms of “reduction” of the aforesaid discretionary power which ensure the definition of the litigation once and for all?

- Yes – elaborate
- No

SESSION III – PRECAUTIONARY MEASURES

1. Does the proposition of an appeal automatically suspend the effectiveness of the administrative act?

- Yes
- No **X**

2. In your legal system, are precautionary measures provided for?

- Yes **X**
- No

The term ‘precautionary measures’ is not used in the Irish legal system and it is understood that this term is taking to mean the enactment of a measure on a precautionary basis in the course of legal proceedings.

In Ireland, it is open to a party to legal proceedings to apply to court for injunctive relief. Such relief originates from the courts equitable jurisdiction and is not provided for in statute. The form of injunctive relief analogous to precautionary measures, as understood, takes the form of interlocutory injunction. An interlocutory injunction is an order of the court granted either at trial or prior to trial in which the court makes an order preventing a party from carrying out an act or ordering a party to carry out a specified act.



**Co-funded by
the European Union**



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

An interlocutory injunction is one that granted prior to the trial of the action either until trial of the action itself or until a further order of the court in the meantime. The aim of such an injunction is to preserve the *status quo* existing between the parties until the trial of the issues in dispute can take place.

3. What kinds of decisions can the judge apply as a precautionary measure?

- The suspension of the challenged act;
- (if the subject of the challenge is the refusal of an application) a positive measure which provisionally anticipates the effects of the administrative act being contested;
- The order to the administration to re-examine the application on the strength of indications contextually provided by the judge;
- Whatever measure necessary to satisfy, in each case, the precautionary requests presented by both parties

Irish reply

It is important to stress that the aim of interlocutory relief, if granted, is to preserve the *status quo* existing between the parties until the trial of the issues in dispute can take place. The determination of the interlocutory stage of proceedings does not amount to a final determination of the matter in issue.

As regards to the scenarios outlined above, whilst interlocutory relief, as a preventive measure, could apply to each scenario, the granting of injunctive relief is equitable in nature and as such the court retains an equitable jurisdiction not to grant such relief, even if the criteria set out in caselaw is met.

4. What are the conditions for the acceptance of a precautionary request?

- The probable validity of the action **X**
- The probable validity of the action together with a serious prejudice **X**
- The prevalence of public or private interest, based on the results of the equilibrium/assessment **X**
- The required prerequisites of trial law to accord precautionary measures vary according to the different types of litigation **X**
- Other prerequisites (please specify)



Co-funded by
the European Union



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

Irish reply

Both Rules of Court⁷ and jurisprudence have set out the conditions for which interlocutory injunctive relief can be granted.

The test for determining whether relief should be granted effectively poses a series of three questions which the court must ask in whether such relief should be granted.⁸ First, the court must be satisfied that the applicant has demonstrated that there is a serious question to be tried. If this first question is answered in the affirmative the court will go on to consider the adequacy of damages. If the applicant were to succeed at trial, would damages be adequately compensate that party for the loss suffered. If so, then the application for injunctive relief ought to be refused. However, if the respondent (i.e. the party opposing the application for injunctive relief) were to succeed at trial, the question to be asked is would the undertaking of damages given by the applicant adequately compensate the respondent for any loss incurred by him as a result of the injunction being granted. If so, then injunctive relief ought to be granted. Finally, where either or both parties raise a doubt of substance as to the adequacy of damages then the court will endeavor to determine where the balance of convenience lies. In essence, this means preserving the status quo which existed before the application for injunctive relief was made. effectively poses a series of three questions which the court must ask in whether such relief should be granted.

Recently in *Merck Sharp & Dohme Corp v Clonmel Healthcare Ltd* [2019] IESC 65, the Supreme indicated that the “underlying theme of the decision [in *Campus Oil*] was to reassert the flexibility of the remedy and the essential function of an interlocutory injunction in finding a just solution pending the hearing of the action”.⁹ The Court was of the view that the test should not “be approached as though it were the laying down of strict mechanical rules for the control of future cases”.¹⁰

The Supreme Court suggested the following steps which might be followed in considering interlocutory injunctions:¹¹

⁷ Order 50, Rules of the Superior Courts

⁸ The principles for the granting of such relief were first set out in the English case of *American Cyanamid Co. v. Ethicon Ltd* [1975] AC 396 which were subsequently approved in Ireland in the case of *Campus Oil Ltd v. Minister for Industry and Energy (No 2)* [1983] IR 88. *Campus Oil* was affirmed by the Supreme Court of Ireland in *The Campus Oil* test was affirmed by the Irish Supreme Court in more recent times in *Okunade v Minister for Justice* [2012] IESC 49.

⁹ *Merck Sharp & Dohme Corp v Clonmel Healthcare Ltd* [2019] IESC 65, O’Donnell J. at para 33.

¹⁰ *Ibid.*

¹¹ *Ibid* at para 64.



Co-funded by
the European Union



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

- (1) First, the court should consider whether, if the plaintiff succeeded at the trial, a permanent injunction might be granted. If not, then it is extremely unlikely that an interlocutory injunction seeking the same relief upon ending the trial could be granted;
- (2) The court should then consider if it has been established that there is a fair question to be tried, which may also involve a consideration of whether the case will probably go to trial. In many cases, the straightforward application of the American Cyanamid and Campus Oil approach will yield the correct outcome. However, the qualification of that approach should be kept in mind. Even then, if the claim is of a nature that could be tried, the court, in considering the balance of convenience or balance of justice, should do so with an awareness that cases may not go to trial, and that the presence or absence of an injunction may be a significant tactical benefit;
- (3) If there is a fair issue to be tried (and it probably will be tried), the court should consider how best the matter should be arranged pending the trial, which involves a consideration of the balance of convenience and the balance of justice;
- (4) The most important element in that balance is, in most cases, the question of adequacy of damages;
- (5) In commercial cases where breach of contract is claimed, courts should be robustly sceptical of a claim that damages are not an adequate remedy;
- (6) Nevertheless, difficulty in assessing damages may be a factor which can be taken account of and lead to the grant of an interlocutory injunction, particularly where the difficulty in calculation and assessment makes it more likely that any damages awarded will not be a precise and perfect remedy. In such cases, it may be just and convenient to grant an interlocutory injunction, even though damages are an available remedy at trial.
- (7) While the adequacy of damages is the most important component of any assessment of the balance of convenience or balance of justice, a number of other factors may come into play and may properly be considered and weighed in the balance in considering how matters are to be held most fairly pending a trial, and recognising the possibility that there may be no trial;
- (8) While a structured approach facilitates analysis and, if necessary, review, any application should be approached with a recognition of the essential flexibility of the remedy and the fundamental objective in seeking to minimise injustice, in circumstances where the legal rights of the parties have yet to be determined.”

Can the judge force the petitioner to pay bail?



**Co-funded by
the European Union**



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

- Yes
- No
- If yes, in which cases?

The term 'bail', in the context of the questionnaire, is taken to mean security for costs. In the Irish legal system, the general rule is that costs follows the event, which means that the unsuccessful party pays the other party's legal costs. Where there is a concern that a party may not be financially in a position to do so, one party may look for a court order requiring the other to provide security to meet the legal costs.

At first instance a defendant may seek an order for security for costs against a plaintiff.

Regarding security for costs on appeal Order 86 rule 9 of the Rules of the Superior Courts provides that the Court of Appeal can under special circumstances make an order for security for the costs of any appeal. The onus is on the applicant to prove that special circumstances exist. In *Used Car Importers of Ireland Limited v Minister for Finance, Revenue Commissioners* [2017] IECA 327 the Court of Appeal set out when an order for security for costs should be granted on appeal and what the level of such costs should be.

5. Are precautionary measures generic?

- Yes
- No – are there some subjects in which precautionary measures are not admitted? Which?

In the Irish legal system, precautionary measures do have general applications insofar as they can be applied to all types of litigation.

6. Can a precautionary request be introduced autonomously before the presentation of the main trial proceedings (*ante causam*)?

- Yes
- No

It is open to a party to apply for pre-trial interlocutory injunctive relief before the presentation of the main trial proceedings. As previously stated, interlocutory injunctive relief is a form of relief that maintains the status quo pending the outcome of the trial.



Co-funded by
the European Union



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

7. In the event of cautionary request *ante causam*, does the precautionary decision of the judge lose effectiveness?

- Yes, in the event that the interested party does not initiate main trial proceedings within the mandatory time-limit **X**
- No, its effectiveness remains intact even if the main trial proceedings have not been initiated within the mandatory time-limit or even if the time-limit has expired

Where an interlocutory order is made *ante causam*, the form of order may specify the conditions upon which the injunctive relief has been granted. It is open to the respondent to make an application to court to have the injunctive relief lifted where it considers that the continuation of the order is prejudicial to its position.

8. When dealing with the precautionary request, does your legal system provide for specific procedure?

- Yes (give details of the main characteristics with regard to : trial deadlines, type of decision, motivational burden, ways for establishing debate) **X**
- No

The term 'specific procedure' is understood to mean the manner in which a precautionary request is made. In the Irish legal system, provisions have been made for injunctive relief to be made available at any time. Applications for interlocutory injunctive relief to be made outside of court sittings, for example at weekends.

9. Is the precautionary decision taken unilaterally or collegiately?

- Unilaterally; **X**
- Collegiately;
- Collegiately, but in the event of extreme urgency, the precautionary decision can be taken temporarily by means of a simple unilateral decree;

An application for injunctive relief is heard in a court of first instance, presided over by a sole judge.

10. During the discussion of the precautionary request, can the judge directly define the judgement on the merit?

- Yes (explain in which conditions) **X**
- No



Co-funded by
the European Union



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

During the discussion of the precautionary request, the presiding Judge may grant the injunctive relief sought as set out in the applicant's Notice of Motion. However, it is open to the Judge to vary or define the parameters of the injunctive relief being sought, having regard to the submissions of both parties.

11. Can precautionary measures be challenged before the Supreme Court /Council of State?

- Yes
- Yes, but only if they pass a test of eligibility **X**
- No

Whilst it is possible for such precautionary measures to be challenged before the Supreme Court, the measure would need to be of a type that the constitutional threshold of a case being one of general public importance or in the interests of justice would need to be satisfied before the Supreme Court could consider the matter.

12. Can the Supreme Administrative Court / Council of State, as a precautionary measure, suspend the judgements on the merit of a judge of a lower level?

- Yes **X**
- No

The appellate jurisdiction of the Supreme Court of Ireland is confined to considering appeals that meet the constitutional threshold of being matters that are of general public importance or that it would be in the interests of justice that the appeal be heard by that Court. Accordingly, the Supreme Court can only overturn a judgment of a court below where that judgment has been the subject of a successful application for leave to appeal to the Supreme Court.

13. On average, how many precautionary decisions are taken every year by the Supreme Court/ Council of State in comparison to the overall number of decisions taken?

As outlined in the reply to question 14, the Supreme Court's appellate jurisdiction is such that applications is confined to determining appeals where the prescribed constitutional threshold has been satisfied. It is open to a party against whom interlocutory relief has been granted to seek to appeal that decision. Where such relief is granted in the Circuit Court, an appeal may lie to the High Court. In addition, where such relief is granted in the High Court, an appeal may lie to the



**Co-funded by
the European Union**



Consiglio di Stato



Italian Presidency of ACA-Europe 2021-2023
Présidence italienne de l'ACA-Europe 2021-2023
Presidenza italiana dell' ACA-Europe 2021-2023

Court of Appeal. Accordingly, the likelihood of the Supreme Court being required to consider the granting of interlocutory relief is next to non-existent.



Co-funded by
the European Union