

## Ireland

### An Chúirt Uachtarach na hÉireann (Irish/Gaelic)

#### The Supreme Court of Ireland

##### Date of establishment

The role of the Supreme Court is set out in the Constitution of Ireland which dates from 1937. The Courts (Establishment and Constitution) Act 1961, the Courts (Supplemental Provisions) Act 1961 and the Court of Appeal Act 2014 set out the jurisdiction and powers of the Supreme Court.

##### Address and e-mail of the court:

The Supreme Court of Ireland

Four Courts

Inns Quay

Dublin 7

Ireland

[supremecourt@courts.ie](mailto:supremecourt@courts.ie) [1]

##### Website

<http://www.supremecourt.ie/> [2]

##### Link to the national database of their case law

<http://www.supremecourt.ie/Judgments.nsf/frmSCJudgmentsByYear?OpenForm&l=en> [3]

<http://www.courts.ie/Judgments.nsf/FrmJudgmentsByCourtAll?OpenForm&Start=1&Count=35&Expand=8&Seq=1> [4]

The **Supreme Court of Ireland** is the highest court in the judicial system.

##### What does the court decide about

The Supreme Court of Ireland, established pursuant to Article 34 of the Constitution of Ireland, is the court of final appeal. Virtually the sole first instance jurisdiction of the Court is the function, under Article 26 of the Constitution, of deciding on the constitutionality of a Bill which has been referred to the Court for that purpose by the President of Ireland, prior to the Bill being signed. 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.

##### Composition

The Supreme Court is composed of the Chief Justice of Ireland, who is President of the Court, and nine ordinary Judges. In addition the President of the Court of Appeal and the President of the High Court are ex officio members of the Supreme Court. The Court usually sits with a composition of three or five Judges and, exceptionally, seven Judges. When hearing cases concerning the constitutional validity of an Act of the Oireachtas (Parliament) the Constitution requires that the Court consists of a minimum of five Judges. This constitutional requirement also applies when the Court is requested to give an opinion on the constitutional validity of a Bill adopted by the Oireachtas when referred to it by the President of Ireland under Article 26 of the Constitution. A minimum of five Judges is also required should the Court have to determine, pursuant to Article 12 of the Constitution, whether the President has become permanently incapacitated. Generally speaking, a court of three Judges sits in appeals concerning interlocutory or procedural matters or issues which can be decided within the parameters of established case law. In addition to those cases in which it is required by the Constitution, a court composed of five Judges, or exceptionally seven Judges, will sit for appeals involving questions of law of particular importance or complexity. Where an insufficient number of Judges of the Supreme Court are available the Chief Justice may request any ordinary Judge of the Court of Appeal to sit as a member of the Supreme Court for the hearing of a particular appeal.

## Jurisdiction

The Supreme Court is the court of final appeal in all constitutional law and civil law matters. It also has role in determining certain criminal law matters. The Court is the final appellate court from decisions of the Court of Appeal, and certain decisions of the High Court. It has limited original jurisdiction in the matters referred to below.

The Courts established by Article 34 of the Constitution, the Supreme Court, the Court of Appeal and the High Court, constitute the judicial organ of Government. Article 6 of the Constitution provides that all powers of Government - legislative, executive and judicial - derive from the people and goes on to state that "These powers of Government are exercisable only by or on the authority of the organs of State established by this Constitution."

The Government is the organ of State exercising the executive power of government, the two houses of parliament comprising the Oireachtas (of which the President is the titular head, in addition to his constitutional status as Head of State) exercise the legislative power of government, and the courts established by Article 34 of the Constitution exercise the judicial power of government. The judicial power of government of those courts includes the power to review the compatibility of statutes with the Constitution and to judicially review subordinate legislation, decisions or actions of the Government or State bodies with a view to determining their legality and compatibility with the Constitution, and principles deriving from the Constitution such as due process.

### 1. Appellate jurisdiction

The Supreme Court exercises an appellate jurisdiction from all decisions of the Court of Appeal subject to such exceptions as may be prescribed by law. The Supreme Court must be satisfied that the decision of the Court of Appeal involves a matter of general public importance, or in the interests of justice it is necessary that there be an appeal to the Supreme Court. The Supreme Court also has appellate jurisdiction from a decision of the High Court, if the Supreme Court is satisfied that there are exceptional circumstances warranting a direct appeal to it, and that the decision involves a matter of general public importance and/or the interests of justice. Article 34.4 of the Constitution expressly 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.

Appeals from criminal trials conducted in the High Court (and Circuit Court and Special Criminal Court) may be brought to the Court of Appeal (CA). That Court consists of ten judges including the President of the Court. The Court sits with a composition of three judges. There is no general right of appeal from the CA to the Supreme Court. However, there is by statute a limited right of appeal where a decision of the CA is certified as involving a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

In addition, section 34 of the Criminal Procedure Act 1967, as amended by section 21 of the Criminal Justice Act 2006, provides that where, on a question of law, a verdict in favour of an accused person is found by direction of the trial judge, the Attorney General or the Director of Public Prosecutions may, without prejudice to the verdict in favour of the accused, refer the question of law to the Supreme Court for determination.

## 2. Original Jurisdiction

The Supreme Court also has limited original jurisdiction under Articles 26 and 12.3.1 of the Constitution. Article 26 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. 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.

## 3. Constitutional jurisdiction

Under Article 34.4.4 of the Constitution the Supreme Court functions as a constitutional court as it is the final arbiter in interpreting the Constitution of Ireland. This is a role of particular importance in Ireland, since the Constitution expressly permits the courts to review any law, whether passed before or after enactment of the Constitution, in order to ascertain whether it is in conformity with the Constitution. While such cases must be brought in the first instance in the High Court, there is an appeal from every such decision to the Court of Appeal and ultimately to the Supreme Court. Subordinate legislation and administrative decisions may also be subject to such constitutional scrutiny.

## 4. Pronouncement of Decisions

Occasionally, a decision of the Supreme Court is given directly following the hearing of an appeal in an *ex tempore* judgment. More often, the Court reserves its judgment and delivers it at a later date. The Supreme Court is a collegiate court, always consisting of a number of Judges. The decision of the Supreme Court is that of the majority. Each Judge in a case may deliver a separate judgment whether concurring or dissenting.

## 5. Administration of Justice in Public

The Constitution provides that justice shall be administered in public in all courts in Ireland, including the Supreme Court, save in such special and limited cases as may be prescribed by law. Supreme Court sittings in the vast majority of cases are therefore open to the public, with exceptions including those cases concerning family law and particular sexual offences.

## The principals of procedure

The Supreme Court's primary role is as a constitutional court and final court of appeal.

The Courts established by Article 34 of the Constitution, i.e. the Supreme Court, the Court of Appeal and the High Court, constitute the judicial organ of government. Article 6 of the Constitution provides that all powers of Government - legislative, executive and judicial - derive from the people and goes on to state that "These powers of Government are exercisable only by or on the authority of the organs of State established by this Constitution."

The Government is the organ of State exercising the executive power of government, the two houses of parliament comprising the Oireachtas (of which the President is the titular head, in addition to his constitutional status as head of State) exercise the legislative power of government, and the courts established by Article 34 of the Constitution exercise the judicial power of government. The judicial power of government of the High Court, Court of Appeal and Supreme Court includes the power to review the compatibility of statutes with the Constitution and to judicially review subordinate legislation, decisions or actions of the Government or State bodies with a view to determining their legality and compatibility with the Constitution, and principles deriving from the Constitution such as due process. The Court also reviews, on appeal from the High Court and Court of Appeal, the decisions of other courts: the District Court, the

Circuit Court and the Special Criminal Court.

The procedural rules of the Supreme Court are outlined in the *Superior Court Rules 1986*. The Supreme Court has elaborated on fundamental principles in its case law when interpreting the Constitution and laws of Ireland. Some examples include the personal unenumerated rights of the person and the rights associated with a 'trial in due course of law'. Proceedings in the Supreme Court are conducted in the official languages of the State which are English and Irish.

Appellate jurisdiction

The Supreme Court exercises an appellate jurisdiction from certain decisions of the High Court and Court of Appeal as is prescribed by law. There is no automatic right of appeal to the Supreme Court from decisions of the High Court and Court of Appeal. Article 34.4 of the Constitution expressly 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.

Appeals from criminal trials conducted in the Circuit Court, the Special Criminal Court and the High Court may be brought to the Court of Appeal (CA). There is no general right of appeal from the CA to the Supreme Court. However, there is by statute a limited right of appeal where a decision of the CA is certified as involving a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

Rules of the Superior Court

The procedural rules by which the Supreme Court operates may be found in the *Rules of the Superior Courts* which are available here at

<http://www.courts.ie/rules.nsf/lookuppagelink/Superior%20Court%20Rules%20...> [5]

Jurisprudence of the Supreme Court

The constitutional and legal principles by which the Supreme Court operates and upholds may be found in the written judgments of the Court. These judgments exist since the Supreme Court's establishment by the Constitution of Ireland in 1937, and the former Supreme Court of Ireland which existed between 1924 and 1937.

Since the 1960s the Supreme Court has developed the doctrine of unenumerated rights or personal rights which are not mentioned in the text of the Constitution but which are deserving of protection by virtue of Article 40.3.1 of the Constitution which provides that:

'The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.'

The Supreme Court may refer questions of EU law for clarification to the Court of Justice of the European Union.

The number of justices and panels

The Supreme Court is composed of the Chief Justice of Ireland, who is President of the Court, and nine ordinary Judges. In addition the President of the Court of Appeal and the President of the High Court are *ex officio* members of the Supreme Court.

The Court usually sits with a composition of three or five Judges and, exceptionally, seven Judges. When hearing cases concerning the constitutional validity of an Act of the Oireachtas (parliament) the Constitution requires that the Court consists of a minimum of five Judges. This constitutional requirement also applies when the Court is requested to give an opinion on the constitutional validity of a Bill adopted by the Oireachtas (parliament) when referred to it by the President of Ireland under Article 26 of the Constitution. A minimum of five Judges is also required should the Court

have to determine, pursuant to Article 12 of the Constitution, whether the President has become permanently incapacitated.

Generally speaking, a court of three Judges sits in appeals concerning interlocutory or procedural matters or issues which can be decided within the parameters of established case law. In addition to those cases in which it is required by the Constitution, a court composed of five Judges, or exceptionally seven Judges, will sit for appeals involving questions of law of particular importance or complexity. Where an insufficient number of Judges of the Supreme Court are available the Chief Justice may request any ordinary Judge of the Court of Appeal to sit as a member of the Supreme Court for the hearing of a particular appeal.

How are the justices appointed

Eligibility criteria for appointment to the Supreme Court

Under section 5 of the *Courts (Supplemental Provisions) Act 1961* the following persons are qualified for appointment to the Supreme Court:

- The President of the Court of Appeal;
- An ordinary judge of the Court of Appeal;
- The President of the High Court;
- An ordinary judge of the High Court;
- A judge of the Circuit Court who has served in that Court for no less than two years;
- A person who, at any time during the two-year period immediately before the appointment, has served as:
  - a judge or Advocate General of the European Court of Justice;
  - a judge of the European Court of Human Rights;
  - a judge of the International Court of Justice;
  - a judge of the International Criminal Court; or
  - a judge of an international tribunal within the meaning of section 2 of the *International War Crimes Tribunals Act, 1998*.

Such person must have been a practising barrister or solicitor before such appointment.

- A barrister or solicitor of not less than twelve years' standing who has practised for a continuous period of not less than two years before such appointment. (This is the statutory minimum requirement: in practice, persons appointed to judicial office are invariably lawyers of high standing with many more years of experience than this minimum requirement.)

*Appointment Procedure*

Under the applicable constitutional provisions it is the function of the Government to decide who should be appointed to the Supreme Court. The Government advises the President of Ireland of its nomination of a candidate for appointment and the President formally makes the appointment.

A person who is not already a judge, and who wishes to be considered for appointment to the Supreme Court, may apply to the Judicial Appointments Advisory Board (JAAB) requesting that he or she be recommended as suitable for

such appointment.

The JAAB is an independent Board chaired by the Chief Justice. The four Presidents of each level of jurisdiction (District Court, Circuit Court, High Court and Court of Appeal) are also members of the Board. While a majority of the members are judges, there are two representatives from the legal profession and two non-lawyers. The role of the Board is purely advisory. The JAAB considers all the applications before it in relation to that appointment and draws up a list of persons whom it considers suitably qualified for appointment. This list is forwarded to the Government. Generally speaking, the Government is confined to appointing persons (other than judges) who have been approved by the Board.

The Oireachtas (parliament) has reserved a power to the Government to appoint a person who has not applied to, and has not been considered by the JAAB. If it does so it must publish in *Iris Oifigiúil* (the Official Gazette) a notice stating that it has made such an appointment outside the JAAB procedure.

### Security of Tenure

According to Article 35.2 of the Constitution 'All judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law'. Every person appointed a judge must take the oath set out in Article 34.5.1 of the Constitution as follows:

'In the presence of Almighty God, I do solemnly and sincerely promise and declare that I will duly and faithfully and to the best of my knowledge and power execute the office of Chief Justice (or as the case may be) without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws. May God direct and sustain me.'

Under Article 35.4.1 of the Constitution no judge of the Supreme Court or the High Court may be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by *Dáil Éireann* and by *Seanad Éireann* calling for his removal.

Until October 2011, Article 35.5 holds that 'The remuneration of a judge shall not be reduced during his continuance in office'. However, following a constitutional referendum sponsored by the Executive, the people voted to insert a new Article 35.5 of the Constitution which allows reductions in the remuneration of Judges.

1° The remuneration of judges shall not be reduced during their continuance in office save in accordance with this section.

2° The remuneration of judges is subject to the imposition of taxes, levies or other charges that are imposed by law on persons generally or persons belonging to a particular class.

3° Where, before or after the enactment of this section, reductions have been or are made by law to the remuneration of persons belonging to classes of persons whose remuneration is paid out of public money and such law states that those reductions are in the public interest, provision may also be made by law to make proportionate reductions to the remuneration of judges.'

### Tenure

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

The *Courts (No. 2) Act 1997* limited the term of office of a person appointed to the post of Chief Justice after the coming into operation of the Act to a period of seven years, which may be shorter where a Chief Justice's term terminates earlier by virtue of his having reached the statutory retirement age. A former Chief Justice may continue as a member of the Court until he or she reaches the statutory retirement age.

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<http://www.courts.ie/Judgments.nsf/FrmJudgmentsByCourtAll?OpenForm&Start=1&Count=35&Expand=8&Seq=1>

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