

Annex A

The constitution and the courts

Article 34 of *Bunreacht na hÉireann* (the Irish Constitution) provides that "Justice shall be administered in courts established by law by judges appointed in the manner provided in this Constitution and... shall be administered in public".

Article 37.1 provides that "...limited functions and powers of a judicial nature, in matters other than criminal matters, [may be exercised] by any person or body of persons duly authorised by law... notwithstanding that such person or such body of persons is not a judge or a court..."

Article 34.3.2 provides that "...the jurisdiction of the High Court shall extend to the question of the validity of any law having regard to the provision of this Constitution..". Lower courts with limited jurisdiction defined by statute do not have jurisdiction to adjudicate on the constitutionality of laws. Nonetheless, all courts, including the lower courts are obliged to enforce the Constitution.

Article 26 of the Constitution provides for *ex ante* adjudication on the constitutionality of bills referred to the Supreme Court by the President. This is a rare occurrence and there have been fifteen references since the coming into force of the Constitution in 1937.

The Treaties governing the European Communities and Acts adopted by the institutions are part of the domestic law of the State (European Communities Act 1972). Regulations are made by Ministers to give effect to this and they have statutory effect. EC Regulations apply directly and automatically without the need for domestic legislation. The courts are therefore obliged to implement European law and, in accordance with European law, all courts or tribunals may refer a question to the European Court of Justice under the Treaty to give a preliminary ruling on the validity and interpretation of an Act of a European institution.

The European Convention on Human Rights Act 2003 provides that "Interpreting and applying any statutory provision or rule of law, a court shall, insofar as possible, subject to the rules of law relating to such interpretation and application, do so in a manner compatible with the State's obligations under the Convention provisions." The High and Supreme Courts "...may... on application to it... by a party or of its own motion, and where no other legal remedy is adequate and available, make a declaration that a statutory provision or rule of law is incompatible with the State's obligations under the Convention provisions." Such a declaration, however, does not "...affect the validity, continued operation or enforcement of the statutory provisions or rule of law in respect of which it is made individuals bring cases to the ECHR."

The Constitution provides at Article 34.2 for a Supreme Court which is a Court of Final Appeal. Courts of First Instance includes the High Court and also courts of local and limited jurisdiction with the right of appeal as determined by law. Appeal in these circumstances can be a full appeal *de novo* on all matters of law or fact. In some contexts the *Oireachtas* provides for a statutory right of appeal from a decision from an administrative body. The right of appeal is usually confined to an appeal on a point of law, although this need not necessarily be the case.

In addition, the High Court (and the Supreme Court on appeal) possesses an inherent jurisdiction to supervise the activities of inferior courts, tribunals and other public authorities. This power may be exercised in circumstances where the inferior body has exceeded its jurisdiction. The High Court is not concerned with the merits, but rather with the legality of the decision under review. This is known as judicial review.



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