

Constitutional Court in Ireland

In Ireland, the court system is established by the Constitution of Ireland. The Constitutional Courts consist of a High Court and an appellate court called the Supreme Court¹. The High Court has jurisdiction to consider matters of law and fact in civil and criminal proceedings. The jurisdiction of the High Court extends to questions of constitutional importance. A decision rendered by the High Court can be appealed to the Supreme Court which is the highest judicial institution and the final court of appeal in Ireland. No other court established under the law of Ireland has jurisdiction to consider questions of constitutional significance.

Therefore, in this paper, the Constitutional Courts will mean the High Court and the Supreme Court.

Appointment of Judges

Under Article 35 of the Constitution of Ireland, judges of the High Court and the Supreme Court are appointed by the President. Under Article 13.9, the “powers and functions” of the President “**shall** be exercisable and performable by him **only** on the advice of the Government”. Therefore, the judicial appointment process is a highly political function exercised by the Executive branch of government. The writer would submit that this does not offend against the constitutional concept of the separation of powers.

Once appointed, judges are independent. Their judicial functions are governed only by the Constitution (and law deemed to be constitutional). No judge is eligible to become a member of the “Dáil Éireann or Seanad Éireann”². Once appointed, judges can only be removed from office in limited circumstances such as “stated misbehaviour or incapacity”. The removal process requires implementation of a constitutional procedure set out in Article 35.4. Essentially, it is the same procedure for the passage of a Bill through the Oireachtas³. A resolution to remove a judge must be passed by Dáil Éireann and Seanad Éireann and then delivered to the President. In these circumstances, the President is required to issue an order removing the judge from office. The Constitution specifically prohibits the reduction of a judges remuneration at Article 35.5.

The above provisions set out under Article 35 represent safeguards to protect the independents of the judiciary and preserve the constitutional concept of the Separation of Powers. The independents of the judiciary is reinforced by the mandatory constitutional oath set out at Article 34.5.1:

“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.”

Politics involved

In the United States, the President's nomination for a judicial appointment in the Supreme Court must be ratified by the Senate. These circumstances create great scope for political struggles,

1 Article 34 of the Constitution of Ireland

2 Dáil Éireann and Seanad Éireann are equivalent to the House and Senate in the US Congress

3 Oireachtas in Ireland is equivalent to the US Congress

compromises and exercise of veto powers by competing political interests. The situation in Ireland differs substantially from that of the United States. Here, the President acts on the advise of the Government (consisting of the Taoiseach⁴ and his ministers). The appointment of a judge is solely an executive power for the Taoiseach and his ministers. It does not require the approval of Dáil or Seanad Éireann. Therefore, there is less scope for political fighting or controversies in this jurisdiction.

Media coverage

An appointment of a Supreme Court judge will invariably attract substantial media attention. Appointments to the High Court will be less news worthy. The Supreme Court maintain a high profile due to their nature, status and function. The Supreme Court have a website with biographies of their current and past members: <http://www.supremecourt.ie>. High Court have published a list of judges' names at <http://www.courts.ie> with no biographical details. Obviously, controversial cases are routinely reported in the media and judges are sometimes discussed in this context. However, a great deal more media attention is focused on the Supreme Court.

Civil Society Involvement

The People elect the Government of Ireland. The Government is ultimately accountable to the People. The People are involved in the appointment of judges only to this extent.

In addition, Ireland has a body called the Judicial Appointments Advisory Board (hereafter “the Board”). The Board's panel consists of the Chief Justice of the Irish Supreme Court, the President of the High Court, President of the Circuit Court and President of the District Court. In addition, the Board's panel consists of a further two members who represent the lawyer's profession and a further two non-lawyers. Qualified persons who are non-judges and wish to be appointed to the office of judge must apply to the Board. The Board will consider all applications and then submit a list of suitably qualified persons to the Government. The functions of the Board are purely advisory and the Government is not obligated to appoint a person recommended by the Board⁵.

4 Taoiseach is equivalent the the Prime Minister in the United Kingdom and exercises Executive power under Article 28.2 of the Constitution of Ireland

5 Please see <http://www.supremecourt.ie/supremecourt/sclibrary3.nsf/0/225D8212CD9DEDE880257315005A41A5?opendocument&l=en>