

Ireland – Office of the Director of Public Prosecutions (Office of the DPP).

Prosecutors' Competences Outside the Criminal Field (CPGE-BU (2004) 08 BIL).

1. Does the prosecution service of your country have any competencies outside the criminal field?

Yes, primarily regarding (1) referendum and election petitions and (2) disqualifications of directors of companies.

The primary functions of the Office of the DPP are set out in the legislation establishing the Office - the Prosecution of Offences Act, 1974; see also, e.g. *Annual Report 2002*, Dublin, 2003, chapter 2.

2. If so, what are these competencies (with regard to, for example, administrative, civil, social and commercial law and/or the functioning and management of the courts?)

*(i) Referendum and Election Petitions:*

Section 3 of the Prosecution of Offences Act, 1974 provided, *inter alia*, that the Director of Public Prosecutions ("the DPP" or "the Director") is to exercise all functions relating to election and referendum petitions previously capable of being performed by the Attorney General. In relation to referendums, this function is regulated by the Referendum Acts. Section 42 of the Referendum Act, 1994 sets out a procedure whereby the DPP may challenge the validity of a referendum on grounds of impropriety or irregularity in the manner in which it was held. It is also worth noting that any citizen who is registered to vote in a presidential election may also bring such a petition to the High Court, and that such petitions are stated in the 1994 Act to be the only means of challenging the validity of a referendum. The High Court may order the recounting of votes in a referendum petition or may order re-voting in a particular constituency on foot of such a petition.

An equivalent provision relating to elections to Dáil Éireann is contained in section 132 and the Third Schedule of the Electoral Act, 1992 (Dáil Éireann is the lower chamber of the Irish parliament).

The role of the DPP in a referendum or election petition is perhaps the most obviously non-criminal function of the DPP. However, there may be a criminal dimension to the reasons for presenting a petition to the High Court, in that electoral fraud (i.e. an offence contrary to Part XII of the Electoral Act, 1992) may be the reason for the challenge to the referendum. The basis for the Director to bring a petition in relation to a Dáil election is possibly narrower than that relating to a referendum petition; for a Dáil election, the DPP may petition "where it appears to" him or her that the election may have been affected by the commission of an electoral offence (section 1 of the Third

Schedule of the Electoral Act, 1992), whereas section 43 of the Referendum Act, 1994 refers to such electoral offences as well as to an undefined category of “mistakes or irregularities” in the conduct of the referendum. It does not state in the 1992 or 1994 Acts on what basis the DPP may form a view that an election or referendum is invalid, so the DPP would seem to enjoy a right of initiative in that regard. The DPP, however, does not have an investigative arm. When exercising his power to prosecute, he does so on the basis of an investigation carried out by another agency, usually the Garda Síochána (the police force).

The rationale for assigning this petition function to the DPP would seem to be related to the statutory independence of the Office of the DPP. The exercise of an impartial or independent judgment in the area of referendum and election matters may have been seen as a way of safeguarding the integrity of the referendum and electoral process and thereby enhancing democracy. However, the parliamentary debates on the 1974 Act throw no light on this motivation.

There are limited provisions on legal remedies in the context of an election or referendum petition. In relation to election petitions under the Electoral Act, 1992, section 17 of the Third Schedule of the Act provides that the High Court may “if it thinks proper” state a case, of its own motion or on the motion of a party to an election petition, for the Supreme Court to address a point of law arising in the course of a petition. It is notable that this recourse to the Supreme Court is not a matter of right, but is within the discretion of the High Court. The Referendum Act, 1994 contains a similar provision in relation to referendum petitions (see section 55).

As a public official exercising a statutory function, the DPP could be subject to a challenge by way of judicial review proceedings as to the performance of his functions, including his functions in relation to referendum or election petition. Judicial review proceedings generally are concerned with matters of procedure and jurisdiction in relation to public bodies; they are not concerned with the merits of a matter – except on very narrow grounds such as bad faith or irrationality. The scope of judicial review in the context of these referendum and election functions of the DPP has never been addressed by the courts.

*(ii) Disqualification of Directors:*

Under the Companies Act, 1990 (see section 160) and the Building Societies Act, 1989 (see section 64), the DPP has the function of bringing proceedings in court to have a person disqualified as a promoter, officer, auditor, receiver, liquidator or examiner of a company or as a promoter, officer, auditor, receiver or liquidator of a building society.

Disqualifications could be seen as having a quasi-punitive function and so to be closely related to the policy concerns more strongly reflected in the criminal law proper.

Conviction of the person concerned on a criminal charge is one of the grounds for bringing such an application, but there are other non-criminal grounds, for example, "unfit conduct". Under section 160 of the Companies Act, 1990, an extensive list of grounds for bringing such an applications is set out in relation to companies. For most of these grounds, any member, contributory, officer, employee, receiver, liquidator, examiner or creditor of a company may also bring an application for disqualification of one of these company officers. Some of the grounds of application are more confined in that only either the DPP or the registrar of companies may bring the application (see subsections (4)-(6) of section 160). A comparable approach is taken under section 64 of the Building Societies Act, 1989.

Specific provision for appeal from the above proceedings is not included in the statutes, however, the normal appeal procedures to a higher court would apply.

*(iii) Other:*

The Office of the DPP is generally not otherwise involved in non-criminal aspects of the administration of justice.

For example, the Courts Service, the administrative body for the Irish Courts, has recently established a comprehensive review by a committee - the Working Group on the Jurisdiction of the Courts - of the jurisdiction of the different courts in Ireland, under the chairmanship of a judge of the Supreme Court assisted by representatives of the different interests in the system of justice. The first module of the Working Group on the Jurisdiction of the Courts dealt with criminal law, and for the purposes of that module, the Office of the DPP was represented on the Group by a senior official within the Office (the Chief Prosecution Solicitor). However, for the second module of the Working Group's review, dealing with civil law jurisdictional matters, the Office of the DPP will not be represented (for further information, see the Web site of the Working Group:

< <http://www.courts.ie/WGJC.nsf/LookupPageLink/index?OpenDocument> >).

Occasionally, where an administrative project or scheme is underway that affects the operation of the justice system in general, the Office of the DPP may be involved in non-criminal matters (or matters that have implications equally for criminal and non-criminal law and procedure) to the extent that it may be represented on the committee or group overseeing the work. For example, the Office of the DPP is represented on the Working Group on the Computerisation of the Supreme Court, which operates under the auspices of the Courts Services also and which is tasked with enabling greater use of information technology in the processing of cases and trials by the Supreme Court.

3. Please give an indication (statistics, if available) of the effective use of these competencies and the workload they entail for the prosecution service as a whole.

The functions of the DPP in relation to referendum and election petitions (see (i) in answer to the previous question) have never been invoked to date. The DPP has been made a notice party in election and referendum petitions brought by private individuals. The workload involved in dealing with such occasional cases is small

Statistics on the portion of resources of the Office of the DPP used in bringing proceedings for disqualifying certain corporate officials (see (ii) in previous answer) are not readily available, but again the workload is small.

The amount of time and resources spent on activities referred to in (iii) in answer to the previous question is not extensive in terms of the overall work of the Office. Usually, a particular officer from the Office is assigned to sit on external Working Groups or Committees.

4. Does your country envisage any reform in the above-mentioned competencies of the public prosecutor?

In 1998, the *Report of the Public Prosecution Study Group* was published. This Public Prosecution Study Group was appointed by the Government to examine the overall functioning of the prosecution authority in Ireland with a view to assessing the need for reform. It was chaired by a former Secretary to the Government and comprised other senior officials also. The matter of election and referendum petitions and of disqualification of directors being within the remit of the DPP was not considered.

At a statutory level at least, there appears to have been a consistent policy of assigning functions to the DPP concerning referendum and election petitions (see, e.g. the Electoral Act, 1992 and the Referendum Act, 1994). This, however, may simply amount to updating the statutory assignment in the Prosecution of Offences Act, 1974 of such functions to the DPP, rather than that there has been any consistent consideration of the policy of assigning such functions to the Director.

The Office of the DPP itself has asked the Attorney General to consider whether it would be more appropriate to have the above-described functions in relation to referendum and election petitions transferred to another body, given the lack of an immediate connection between these functions and the criminal law and prosecutorial function. In its *Strategy Statement 2001-2003*, Dublin, 2001, the Office stated:

3.3. It is not altogether clear what was the reason for transferring these functions to the Director in 1974. The matter does not appear to have been referred to in the Dáil debates at the time. It may be that it was considered that the Director was an appropriate person to exercise these functions because the basis for bringing election

and referendum petitions would in many cases involve an allegation of criminality. If so, this reasoning is not, in the Director's opinion, well founded, as the Director could have to take up a position on an election petition which could compromise a subsequent criminal prosecution. However, it is also possible that the reason for the transfer of this particular function was a desire to have such petitions defended by a non-political person, in view of the possibility that any serving Attorney General could be seen as partisan in relation to an election or a referendum, and that it was in fact intended to confer the Attorney General's former functions on the Director whether or not the petition related to criminality – including, for example, the responsibility to apply to and assist the court on legal issues relating to elections and referendums which might arise in areas unrelated to criminal law.

3.4 Following his review of the matter the Director has come to the conclusion that this function sits uneasily with his primary functions in relation to criminal matters, and has the potential to embroil him in political controversy, compromise his independence, leave him open to allegations of being partisan and involve his office in conflicts of interest. In addition, there are numerous inconsistencies, anomalies and obscurities in the law. This function could appropriately be transferred to some body other than the Director. If the Director were to be left with any role in this area at all, at the least it would require to be more precisely delineated but the Director's preferred option is that legislation should be introduced to transfer this function to a more appropriate person or agency.