



Strasbourg, 19 February 2008

CCJE/REP(2008)30
English only

Consultative Council of European Judges (CCJE)

Questionnaire for 2008 CCJE Opinion concerning the quality of
judicial decisions: reply submitted by the delegation of Ireland

Question 1

Is there a specific model to be followed in drafting judicial decisions?

Can each individual judge choose his own style of drafting his decision?

The majority of judges adopt the IRAC system, which is the acronym for Issue, Rule, Analysis, and Conclusion. This format considers the issues of the case, and then proceeds on to assess the relevant case law and legal principles. The application of precedent case law to the current case is determined and from this the court decides its conclusion. This is the general method adopted in drafting a judgment however judges' can deviate from this model on stylistic grounds. Another example of a general format is the CRAC system which some judges opt for, this is the acronym for Conclusion, Rule, Analysis, and Conclusion. This method can be successfully adopted in *ex tempore* judgments for example. As Ireland is a common law jurisdiction, the role of precedent case law and its format proves highly influential in determining current drafting of judicial decisions.

Question 2

Where the court is composed of more than one member, do judicial decisions have to be taken unanimously or a majority decision is equally effective and binding?

In a two or even more member panel, does the president or most senior judge have a second or casting vote?

In Ireland, where the court is composed of more than one member, judicial decisions do not have to be taken unanimously. However where a decision is taken unanimously then it is of a higher persuasive value and perhaps more binding as authority for later decisions. It is noteworthy that dissenting judges give a judgment and these can have persuasive effect in subsequent cases. All judges on such a panel have equal votes.

Question 3

Do judicial decisions have to deal with all points raised by the parties or their lawyers or is a synthetic or concise approach considered sufficient?

Judges must adhere to issues which were argued before the court in their judgments. There are no strict guidelines on language or format, and stylistic attributes are entirely a matter for the discretion of individual judges. However the fact that Ireland is a common law jurisdiction means that there is a large value placed on the principle of *stare decisis*. This transcends into a general ethos of an adherence to traditional stylistic methods of setting out a judgment.

Question 4

In general terms, how is a first instance judicial decision drafted? (For example, does the decision state first the factual background, followed by the evidence, its evaluation and finally the application of the legal principles to the accepted facts?)

How in general terms is an appeal /Supreme Court decision drafted? Is the appeal in your country by way of rehearing the case or not?

Generally the judgment contains a statement of the facts of the case? including a review of the evidence, a review of the legal arguments made by either side, including the case law relied upon. The decision evaluates the legal submissions by the parties. The same procedure applies to appeal courts including the Supreme Court. An appeal from the District Court (i.e. the court of lowest jurisdiction) is to the

Circuit Court and involves a re-hearing. An appeal from the Circuit Court is to the High Court and involves a re-hearing. An appeal from the High Court in civil cases is on the transcript and does not involve a re-hearing of the facts. An appeal from the Central Criminal Court, i.e. the High Court exercising criminal jurisdiction, is to the Court of Criminal Appeal. The Supreme Court is described as the 'Court of Final Appeal' by Article 34.4.1 of the Irish Constitution. It does not hear cases in the first instance but rather has jurisdiction to hear appeals from the High Court on points of law. In civil cases an appeal to the Supreme Court generally concerns issues of liability and/or quantum of damages. The Supreme Court enjoys a very wide discretion regarding legal issues in appeals on issues of liability and can order a re-trial in the High Court. In appeals concerning the level of damages awarded, the Supreme Court is limited to deciding whether the amount was within an acceptable range of damages. The Supreme Court can assess the level of damages as provided for by Article 34.4.3 of the Irish Constitution.

Question 5

Is there a difference in the way a judgment is drafted according to the subject matter (civil, criminal, administrative)?

There is no difference in the drafting of judgments according to subject matter of the case. The issues for consideration will obviously differ however the format in drafting the judgment will not deviate according to this. Judges are free to adopt their own style of writing.

Question 6

**Could you describe precisely how the decision is transmitted to the parties?
Is the judicial decision binding only on the specific litigants or does it affect the public in general?
Does your country acknowledge a difference in judicial decisions *in personam* and *in rem*?**

The judgment is read out in the court and/or if it a copy is given to the parties. The general principles of law affect the public in general however the order, which is specific to the case at hand, will only affect the parties involved. Our jurisdiction does recognise the distinction between actions taken *in personam* and *in rem*.

Question 7

How is a judicial decision enforced in your country? Does your country allow for contempt proceedings against a litigant who does not comply with a decision/order of the court?

A person can be held to be in contempt of court if they do not adhere to the decision of the court. They can be fined or prosecuted should they fail to comply with an order or judgment of the court. There are various ways in which the court can ensure enforcement of a judgment. Firstly an order of *garnishee* can be issued. This applies where a person is in receipt of a regular income and has no assets by way of property; a sum of money may be subtracted towards the judgment on receipt of each pay-check. The second is a judgment mortgage where the judgment debtor owns land. The judgment mortgage involves the process of turning the judgment debt into a mortgage over the land which they own. The third method involves the appointment of a receiver which is usually employed when a business is profitable and has a good turnover. A receiver is appointed to collect rents and profits on the judgments debtor's business until the debt has been paid. The fourth method of enforcing a judgment involves an attachment and committal. Attachment is the process of sending out the gardai, the Irish police force, for the person who then

“attach” the person to court. Committal is the process of incarcerating such persons should they be found to be guilty of an offence.

Question 8

Are judicial decisions handed down/announced in open court always or can the public/journalists be excluded – if so on what grounds?

Article 34.1 of the Irish Constitution provides that;

“Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public.”

The exceptions to the publicity requirement are governed by statute. However the court does have jurisdiction to order that a particular case, or part of a case, be heard in camera where it is considered necessary to protect the constitutional rights of the accused in criminal trials. This discretion also extends to litigants or third parties in civil litigation where the court deems it necessary or to prevent the indirect circumvention of the in camera rule.

There are defined exceptions to the publicity requirement in criminal cases. For instance, the Criminal Procedure Act 1967 (as inserted by section 9 of the Criminal Justice Act 1999) which allows the District Court conducting the proceeding under this section relating to indictable offences to exclude from the court the public or any portion of the public or any particular person or persons except bona fide representatives of the press, once the court is satisfied because of the nature or circumstances of the case or otherwise in the interests of justice, that it is desirable do so. Cases involving sexual offences permit the exclusion of the public during the hearing. However the judge may permit officers of the court, persons involved in the trial or bona fide representatives of the press to remain during the hearing. Never the less the verdict and sentence must be pronounced in public. Other cases involving a breach of the Official Secrets Act 1963 or an application for Bail under the Bail Act 1997 can also operate to exclude the public from certain proceedings. In civil cases, the media can be excluded from the proceedings concerning family law matters. Whilst such exceptions to the publicity rule are provided for by statute, the court is awarded with a high level of discretion in these matters.

Question 9

To what extent do judicial decisions in your country take into account personal data protection legislation (i.e. publication of litigants’ names, other personal details etc)?

Courts (Supplemental Provisions) Act 1961 as amended by s.45 (1) of the Civil Liability and Courts Act 2004 provides that;

“Justice shall be administered otherwise than in public in any of the following cases:

- (a) applications of an urgent nature for relief by way of habeas corpus, bail, prohibition or injunction;
- (b) matrimonial causes and matters;
- (c) lunacy and minor matters;
- (d) proceedings involving the disclosure of a secret manufacturing process.”

The provisions concerning matrimonial and minor matters were amended by section 40(2)(b) of the Civil Liability and Courts Act 2004 to allow for the courts to rule that a report or decision does not contain any information which would enable the parties to the proceedings or any child to which the proceedings relate to be identified.

Similarly, other statutory provisions provide for the parties in sexual offences cases to retain anonymity as otherwise it could identify the complainants involved in such cases. It is also provided for in certain asylum cases however it is up to the general discretion of the judge.

Question 10

Are judicial decisions available to persons or authorities other than the litigants themselves? If so on what terms and prerequisites?

Decisions of the Superior Courts are published in various legal journals, with the Irish Reports being the pre-eminent publication of such decisions. Academic institutions offering law courses will house law journals and provide access to legal electronic databases. Nevertheless academic institutions, state bodies and other interested parties will often be subscribers of this service. All judgments, both reported and unreported, can be requested by any member of the public from the Central Office in Dublin, however there is a fee attached to this service.

Generally decisions of the lower courts, the District Court and the Circuit Court, are not published, however if the decisions concern a notable point of procedure or substantive issue, or if they are dealt with by the President of these courts then such judgments may be reported.

Question 11

Are judicial decisions published/ available on the internet? If so, are all decisions available or only appeal or Supreme Court cases?

There are two electronic databases which make judgments of the Superior Courts; i.e. judgments of the High Court, the Court of Criminal Appeal and the Supreme Court, available in their original form. The official courts website, www.courts.ie, makes these judgments available to the general public without an attendant fee. There is the disadvantage that the cases available are only those of the last five years. The second electronic database is www.justis.ie and this offers all reported judgments of the Superior Courts. This database hosts electronic copies of the official Irish Reports, in addition to providing access to decisions of other jurisdictions. However, access to www.justis.ie entails a subscription fee and thus is not as easily accessible to the general public.

Part II: Evaluation of the judicial decision

Question 12

Is a system of evaluation of quality of justice in force in your country?

There is no system of evaluation of the quality of justice in Ireland. Cases from lower courts may be subjected to the scrutiny of judicial review by the higher courts but even if a decision is quashed, it is then remitted to the lower court to be decided once again. It must be noted that a decision of the High Court or the Supreme Court may not be judicially reviewed and are therefore not subject to the same scrutiny as the lower courts. There is no statutory scheme or set body ensuring an evaluation of the quality of justice.

Question 13

Does this evaluation include/envisage the evaluation of the quality of judicial decisions?

The process of judicial review does not envisage or encompass an evaluation of the quality of judicial decisions. A judge is afforded discretion in his or her decisions and courts judicially reviewing such a decision do not tend to interfere with such discretion. The question of the quality of the judgment is not a question that arises upon judicial review.

Question 14

If your country does evaluate the quality of judicial decisions by means of a specific system, could you specify the latter:

- **Legal basis:**
- **Identification of the agencies that are responsible for the process:**
- **Parameters that are evaluated:**
- **Methods by which each parameter is evaluated:**

The legal basis for judicial review is based on the premise that a decision may be biased or that fair procedures were not afforded as is warranted by the Constitution. The agencies responsible for evaluating the quality of a judicial decision are the higher courts i.e. the High Court and the Supreme Court. The bodies that may be judicially reviewed include the lower courts, decisions of administrative bodies and quasi-judicial bodies. There are not set parameters that are evaluated. The court looks at the decision itself to see if it should be quashed but does not make any judgment on the findings of fact by the body or lower court and does not interfere with the discretion of the judge or decision maker. There are no specific methods of evaluating the decision.

Question 15

What are the advantages and disadvantages discussed in your country as far as the evaluation of quality of justice is concerned?

- **Advantages**
- **Disadvantages**

The advantages of judicial review in this country are that it is fair and objective. Furthermore it takes account of the fact that it did not hear all the arguments or the original case and applies only to specific decisions.

The disadvantages are that it is costly and a lengthy process with long periods of delay because of the amount of judicial review cases listed. The area encompasses a large amount of asylum law meaning there are huge amounts of case to be heard with a significant backlog. The main disadvantage is that the parameters are not set out in statute and it is not a means of controlling or evaluating the quality of judicial decisions.

Question 16

In the opinion of the judiciary in your State, which factor could help to improve the quality of decisions?

Increased assistance in the provision of legal back up such as legal researchers would be of assistance. Because of the adversarial nature of the proceedings in which the judge adjudicates on different submissions as to the interpretation of the law, the ability and legal knowledge of the lawyers is of paramount importance

A factor that might help to improve the quality of decisions is the setting up of an independent objective body to evaluate such decisions. This body could also assist judges with their judgments and provide assistance with problems incurred while forming them. However judicial discretion in style and presentation is very important and such discretion should not be undermined by that body.

Question 17

Is a system of evaluation of quality of each of the following in force in your State:

- **Professional performance of police?**
- **Professional performance of public prosecution services?**
- **Professional performance of lawyers?**
- **Enforcement of judgments?**
- **Efficiency of ministry of justice services in general?**
- **Quality of legislation?**

- a) Professional Performance of Police: No. There is no *per se* system of evaluation of the performance of all police in the state but there is an ombudsman to deal with complaints and queries in relation to duties of police. This is somewhat of a check in place but a complaint must be made in order for the performance to be evaluated.
- b) Professional Performance of Public Prosecution Services: No.
- c) Professional Performance of Lawyers: No. There are regulatory bodies for the legal profession in Ireland. The Law Society regulates solicitors and the Bar Council regulates barristers. The performance of such professionals is not evaluated but they are subject to the rules of their profession. Members of the public may complain to such bodies who would then evaluate the performance but it is not assessed of itself without such complaint.
- d) Enforcement of Judgments: No.
- e) Efficacy of Ministry of Justice Services in General: No.
- f) Quality of Legislation: No. There is a Law Reform Commission which may propose changes to the legislation and legislation may be challenged under the Constitution. The Attorney General may request for legislation to be looked at by the Law Reform Commission but in general, the quality of legislation is not subject to scrutiny by any specific body.