Colloquium of the Association of the Councils of State and the Supreme Administrative Jurisdictions of the European Union

Consequences of incompatibility with EC law of final administrative decisions and final judgments of administrative courts in the Member States

RESPONSE OF IRELAND

Glossary of terms

Judicial review: the procedure by which the legality of final decisions of an administrative body may be challenged and, where appropriate, quashed. Judicial review is a form of supervision exercised by the superior courts over the decisions of administrative bodies and lower courts, i.e. courts of limited jurisdiction, in order to ensure that the functions given to these authorities are carried out lawfully and within jurisdiction. Judicial review focuses on the decision-making process, and not on the correctness of the decision arrived at.[1]

Superior Courts: Collective name for the High Court and Supreme Court of Ireland. According to the Constitution of Ireland, the High Court has "full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal". The High Court is the only court to which an application for judicial review may be made.[2] The Supreme Court is an appellate court only; it hears appeals from decisions of the High Court.

Applicant: the party who initiates judicial review proceedings.

Respondent: the party against whom judicial review proceedings are initiated.

Note: the questionnaire frequently refers to a decision being revoked. According to normal usage, a decision may be revoked only by the body which has made it. Where a party establishes, on an application for judicial review that an administrative decision is not lawful, the court *"quashes"* the decision. It does not revoke it.

1. **Are there any procedural means under your national law which allow a final administrative decision to be revoked, if it turns out to be contrary to Community law? Please describe briefly the relevant provisions and national case-law:**
   a) do the legal provisions have general application or they relate specifically to the application of EC law?
   b) which authority (administrative body or national court) is empowered under your legal system to make use of the procedural means in question?

[1] Per Lord Brightman in *Chief Constable of the North Wales Police v. Evans* [1982] 1 W.L.R. 1155, at p. 1173

[2] Order 84, rule Rules of the Superior Courts.

A breach of Community law may form part, or all, of the grounds for judicial review of an administrative decision by the High Court (see "Judicial review" in the glossary above). The High Court will review matters such as whether fair procedures were followed, whether the decision maker had the authority to make the decision or whether it, i.e. whether it acted within jurisdiction and whether it applied the correct legal principles in making the decision. Remedies by way of judicial review are of general application. They include, but are not limited to breaches of Community law.

The Constitution of Ireland provides for a system of courts including: courts of "local and limited jurisdiction"[3] (these are the District Court and the Circuit Court); a High Court which is vested with the power to "determine all matters and questions whether of law or fact, civil or criminal"[4]; and a Supreme Court which is the court of final appeal and has appellate jurisdiction from the High Court.[5]

There is no separate system of administrative courts, although the law relating to judicial review is described as administrative law. Strictly speaking, it is judicial review of administrative action.

An application for judicial review of an administrative decision may be commenced only in the High Court.

The remedies which may be sought by an applicant in judicial review proceedings are the following:

- *Certiorari:* an order which has the effect of quashing the decision of a body exercising powers conferred by law, where the decision was made outside of or in abuse of its jurisdiction, or where an error appears on the face of the record; by such an order a court sets aside as being invalid an administrative decision.
- *Prohibition:* an order restraining such a body from acting, where it is shown that it is proceeding to act in excess of its jurisdiction.
- *Mandamus:* an order compelling a person or such a body to perform its duty according to law, where it is shown that it has declined to do so.
- *Quo Warranto:* an order obliging a person claiming to hold public office to produce proof of this (this is now extremely rare).
- *Injunction:* an order which may have the same effect as a prohibition.
- *Damages:* these may be awarded as an ancillary remedy in judicial review proceedings where: (i) the applicant makes a claim for such damages; (ii) the court is satisfied that the applicant would have been awarded damages in a civil action against the respondent. There is no automatic right to compensation for loss suffered as a result of decisions of such bodies made in excess of jurisdiction.

[3] Article 34.3.4 of the Constitution of Ireland, 1937.
[4] Article 34.3.1 of the Constitution of Ireland, 1937.
[5] Article 34.4 of the Constitution of Ireland, 1937.

It should be noted that a court, in judicial review proceedings, which has quashed an administrative decision, has power only to remit the subject-matter of the decision to the administrative body for reconsideration in accordance with law as pronounced by the court. The court does not have power to substitute its own decision for that of the administrative body.[6]

2. Do national provisions concerning the revocation of final administrative decision by administrative body:
a) grant discretionary powers to decide the matter; or
b) provide the obligation to revoke a decision under certain conditions?

a) Judicial review remedies, including an order of *certiorari* (i.e. the order quashing the decision of a public body) are, in principle, discretionary in nature, and will only be granted to an applicant with the requisite *locus standi,* i.e a person "who can persuade the court to exercise its discretion in his favour".[7] The Supreme Court has noted that, in addition to establishing the grounds for judicial review, the applicant must also satisfy the court that "it would be just and proper in all the circumstances" to grant the remedies sought.[8]

b) A court is not obliged by law to revoke an administrative decision, merely because certain conditions have been satisfied. The power of the court is discretionary. However, in practice, once the unlawfulness of the measure is established the courts will quash or set aside the decision. Discretionary grounds of refusal usually relate to the behaviour of the applicant, such as delay or acquiescence or prejudice to the legitimate interests of other parties, including the administration itself.

3. Does the possibility (or obligation) of revocation of final administrative decisions depend on the reason of its incompatibility with EC law? Please consider the following cases:

No. As seen above, administrative decisions may be quashed on the basis of certain grounds (normally: excess of jurisdiction; failure to observe fair procedures; abuse of power; misapplication of or mistake of law.). These grounds may include acting in a manner incompatible with Community law.

a) in the light of the ECJ's subsequent judgment, an administrative decision turned out to be incompatible with EC law or based on the misinterpretation of EC law (as in the Kühne&Heitz and Kempter case)

Irish courts have not had occasion to apply the decisions of the Court of Justice in the cases mentioned. These decisions will, on the other hand, clearly be applied by the courts, when the occasion arises.

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[6] "It is not available [to the court] to correct errors or to review decisions …"; *State (Abenglen Properties Ltd.) v. Dublin Corporation* [1984] I.R. 318, at p. 392.
[7] G. Hogan & D. Morgan, *Administrative Law in Ireland* (Round Hall, Sweet & Maxwell, 1998), p. 396.
[8] In the case of the *State (Cussen) v. Brennan* [1981] I.R. 181, at p. 195.

There is no general principle of law concerning the power of an administrative body to revoke, change or amend a decision. In cases purely concerned with claims of individuals or corporate bodies to benefits (whether under Community law or otherwise) there could be no general principle preventing a body from amending its decision in the light of new facts or a new decision. In other cases, especially where the decision-making machinery is prescribed by law and involves public consultation or hearings and affecting the rights of others or of the public, a body could not alter a decision in the absence of express power.

Furthermore, the Irish courts apply the principle of *res judiciata*. Thus, a final judgment of a court of competent jurisdiction is conclusive. A party to the action is precluded from re-litigating the matters decided in the judgment or from giving evidence to contradict it in subsequent proceedings. The object is to discourage vexatious and frivolous and time-wasting litigation.

This principle, in the form of the principle of legal certainty, is recognised by the Court of Justice in Case C-453/00 ***Kühne & Heitz NV*** (paragraph 24 of the judgment). An essential condition of that judgment is that, in accordance with the principle of national procedural autonomy, under national law, the relevant administrative body should have power to reopen its decision. Under Dutch law (applicable in that case) the power in question was subject to the requirement that the interests of third parties be not affected, a principle which would almost certainly be applied by the Irish courts.

b) the provisions of national law which provided the legal basis of a contested decision were incompatible with EC law (as in the i-21 Germany case);

Yes. Primacy of Community law is recognised by the Irish courts. This applies also in the case of administrative decisions which are incompatible with EC law. An example of this may be seen in the case of *Dublin Bus v. MIBI*[9] where ministerial regulations made in relation to insurance were held not to have correctly transposed an EC Directive into Irish law. The effect of judicial decisions on earlier administrative or judicial determinations is a complex matter, which has received detailed consideration in a number of important constitutional vases. In general, the principle of *res judicata* is applied. Even in a case, where a provision of the criminal law was declared to be incompatible with the Constitution and, thus invalid, a person serving a sentence of imprisonment following his earlier conviction pursuant to that law was held to be unable to secure his release.

c) an administrative decision infringed EC law or was issued without giving due consideration to the ECJ's case law.

The answer given under paragraph 3(a) applies. Administrative decisions should take relevant provisions of EC law into consideration, because of the principle of primacy (see above). Where it is demonstrated to an administrative body that it has failed to take account of a provision of Community law, it should, in principle, be prepared to revise its decision, but subject, so far as relevant, to the principle of legal certainty and

[9] (Unreported, Circuit Court, 29th October 1999).

the rights and interests of others. In the case of *Humphrey v. Minister for Environment* the High Court examined whether a ministerial decision to award taxi licenses which did not adequately protect the rights of persons from other EU member states who wished to apply for taxi licenses was compatible with EC law, but made no final determination on that question.[10]

4. In order to revoke a final administrative decision which is contrary to Community law, is it a precondition that a party (a person concerned):
a) contests (challenges) the decision in the course of the administrative procedure?
b) appeals against the decision to the court? Is it sufficient to appeal to the national court of the first (lower) instance or is it necessary to exhaust all means of judicial review?
c) makes use of any other available legal means provided under national law? What kind of means (ombudsman, etc.)?

There are no pre-conditions on the quashing of a final administrative decision which is contrary to Community law, apart from those which generally apply in proceedings under judicial review.

a) Generally speaking, it is not a strict pre-condition that a party must contest a decision in the course of the administrative procedure in order to have the right to apply for judicial review of the decision. Nonetheless, a party may be precluded (estopped) from challenging a decision, where he has induced the body to act on a particular understanding of the law, particularly if he advances a contrary understanding before the court. The applicant will have to establish that he has a "sufficient interest" in the matter to which the application relates.[11] Nevertheless, the Supreme Court has indicated that the courts will adopt a flexible approach, based on the facts of each individual case.[12] It should be noted that this requirement has been changed to "substantial interest" by statute for certain areas, such as in planning law (i.e. the law governing land use, including the granting of permission for building upon or development of land).[13]

b) The question of whether an applicant must first exhaust all means of appeal open to him before availing of the judicial review procedure may be relevant. In the case of the *State (Abenglen Properties Ltd.) v. Dublin Corporation*[14] the Supreme Court refused to allow an application to quash a decision granting permission to develop land because the applicant had not availed of the administrative appeals mechanism provided. However, O'Higgins C.J. made it clear that the court would continue to examine all the circumstances of a case to determine whether judicial review would be granted. In the cases of *Nevin v. Crowley*[15] and *Stefan v. Minister for Justice*[16] the Supreme Court allowed

[10] [2001] 1 I.L.R.M. 241.
[11] Order 84, rule 20(4) of the Rules of the Superior Courts, 1986.
[12] See the judgment of Walsh J. in *State (Lynch) v. Cooney* [1982] I.R. 337.
[13] Planning and Development Act 2000, s. 50(4)(b).
[14] [1984] I.R. 381.
[15] [2001] 1 I.R. 113.
[16] [2001] 4 I.R. 203.

judicial review despite the existence of an appeals mechanism which had not been used by the applicants. In the latter case Denham J., of the Supreme Court, held that the appeal process was not adequate to cure the defects in the original hearing, stating that: "The applicant is entitled to a primary decision in accordance with fair procedures and an appeal from that decision. *A fair appeal does not cure an unfair hearing*".[17] Thus, it would appear that alternative remedies do not bar judicial review, if the adoption of the initial decision was vitiated by unfair procedures.

c) See (b.) above.

5. As far as the admissibility of revocation of final administrative decisions contrary to Community law is concerned, does it matter whether a party (a person concerned) raises the question of the infringement of Community law in the course of administrative procedure or the proceedings before the national court? (this issue has been raised in the Kempter case).

Generally, an applicant in judicial review is entitled to rely on all, or any, grounds he deems necessary. However, where an applicant was aware of a right, prior to the taking of an administrative decision, but did not seek to rely on it, an argument may be made that the applicant "waived" his right to rely on that argument in subsequent proceedings. See 3(a) above. In the case of *Corrigan v. Irish Land Commission*[18] it was held that the applicant had waived his right to object to a possible breach of fair procedures as, on the day of the hearing, the applicant had known of the existence of the issue, but had failed to raise an argument in relation to it.[19] However, again, the circumstances of each case will determine whether a possible waiver might defeat a claim in judicial review. As such, a claim relating to EC law, which was not made in the initial proceedings, may, depending on the circumstances, be allowed to form the basis of subsequent judicial review proceedings, because of the discretionary nature of the court's powers.

6. Does pursuant to national law the national court reviewing the legality of administrative decisions take into consideration the provisions of Community law:
a) on request of the parties only?
b) on its own motion (*ex officio)*?

The High Court, in dealing with an application for judicial review, will examine the grounds for review put forward by an applicant. The applicant must produce a statements of the grounds relied upon, when seeking the initial order granting leave to apply for judicial review. The order then made lays down the parameters for the ensuing litigation. The court will generally make a decision based on the issues raised by the parties. However, a Court may raise a point concerning EC law *ex officio*, particularly where a breach of EC law is patent. Because of the historic adversarial approach of the Irish courts, this is rare. A court's power to raise issues of its own motion is traditionally confined to questions of public policy (such as an attempt to

[17] Emphasis added.
[18] [1977] I.R. 317.
[19] [1977] I.R. 317, at p. 325.

enforce an immoral contract or questions of its own jurisdiction). See, for example, *Humphrey v. Minister for the Environment and Local Government*.[20]

7. Are the powers described in Question 6 treated differently, if the case is examined by the court against whose judgments there is no judicial remedy under national law?

The Supreme Court is the court of final instance in Ireland. The Supreme Court hears all appeals that are a matter of public importance or may hear an appeal on a point of law from the High Court. The Supreme Court has the power "to draw inferences of fact and to give any judgment and make any order which ought to have been made and to make such further or other order as the case may require".[21] There is nothing to suggest that the Supreme Court would be more, or less, willing to introduce, of its own motion, an argument relating to EC law than would the High Court. However, that Court, because of its exclusively appellate character, will not normally allow a matter to be raised which was not raised in the High Court. Thus any matter to be so raised would have to be of a fundamental character.

8. When an administrative decision, which has become final as a result of a judgment of a national court, turned out to be contrary to EC law, is it appropriate:
a) to revoke the administrative decision (as in the Kühne case); or
b) to reopen the judicial proceedings?

a) When an order is made by the court, on judicial review, to quash a decision, the matter is remitted to the administrative body to be reconsidered. The administrative body must then make a new decision, within the confines of the law as stated by the court in the initial judicial review proceedings. Therefore, it would be a matter for the administrative body to revoke the decision, in light of the ECJ judgment, and not the court. See paragraph 3(a) above. That decision could subsequently be the subject of judicial review proceedings.

b) As stated above (*see reponse to Q.3(a)*), in Irish law generally, the principle of *res judicata* applies, which means that a decision formulated by a court is final and may not be re-opened. Accordingly, a court will not, of its own motion, re-open proceedings.

9. The ECJ's judgment in the Kapferer case concerned matters of civil law. Do you think that the position of the ECJ (paragraph 24 of the Kapferer judgment) is also applicable to the judgments of national courts?

Yes. At paragraph 20 of its judgment, the Court of Justice fully recognises: *"the importance, both for the Community legal order and national legal systems, of the principle of res judicata."* Importantly, it adds, at paragraph 23 that the decision in *Kühne & Heitz* is predicated on the existence, in the national legal order, that an administrative *"should be empowered under national law to reopen that decision…"*

[20] [2001] 1 I.L.R.M. 241.
[21] Order 58, rule 8 of the Rules of the Superior Courts, 1986; rules governing procedure in the Irish superior courts.

10. What is your interpretation of the above mentioned judgments of the ECJ (Kühne, i-21 Germany):

a) the ECJ accepts the principle of procedural autonomy of the Member States; or

b) it means the imposition of an obligation on the Member States to introduce, if necessary, procedural means to ascertain that the principle of full effectiveness of EC law is respected?

It would appear, from the above-mentioned decisions, *Kühne* and *i-21 Germany*, that the ECJ does accept the principle of procedural autonomy of the member states. As the Court noted in *i-21 Germany* it is settled case-law that "in the absence of relevant Community rules, the detailed procedural rules designed to ensure the protection of the rights which individuals acquire under Community law are a matter for the domestic legal order of each Member State…", subject to the principles of equivalence and effectiveness.[22] The key concept here would appear to be the precondition that national procedural rules allow a national court to reconsider a decision where such decision is contrary to EC law.

The ECJ's decision in *Kühne* places an obligation on administrative bodies to reopen final administrative decisions only where four conditions are fulfilled, perhaps the most important being that "under national law" the national court "has the power to reopen that decision". In the case of *i-21 Germany*, decided subsequent to *Kühne*, the ECJ affirmed that Community law "does not require that administrative bodies be placed under an obligation, in principle, to reopen an administrative decision which has become final upon expiry of the reasonable time-limits for legal remedies or by exhaustion of those remedies",[23] save for cases in which the four *Kühne* conditions have been fulfilled.[24] Accordingly, it is possible that where the four *Kühne* conditions do not pertain to a given national case, the national court's decision in that case will stand, even where it appears to be contrary to EC law.

The wording used by the ECJ in each case suggests respect for the procedural autonomy of the Member States: for example, in *i-21 Germany* the Court concluded that the relevant Community law provisions placed an obligation on the national court in question to ascertain whether legislation which is clearly incompatible with Community law constitutes "manifest unlawfulness" within the meaning of the national law concerned and that, where this is so, "*it is for the national court to draw the necessary conclusions under its national law* with regard to the withdrawal of those assessments."[25]

11. Does your national law in the discussed field comply with the principles of equivalence and effectiveness, as interpreted by the ECJ (see e.g.: case i-21 Germany, paragraph 57)? Please state your opinion.

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[22] Para. 57.
[23] Para. 51.
[24] Para. 52.
[25] Para. 73 (emphasis added).

The Irish courts will take into account the principles of equivalence and effectiveness when deciding judicial review cases which contain an EC law element. This was seen in the recent case of *Veolia Water Consortium Ltd. v. Fingal Co. Council*[26] which concerned the relevant time limits in judicial review proceedings. The applicants argued that time began to run when an affected person became aware of the action, rather than when the action occurred (as is the case with time limits in judicial review proceedings). The judge, Clarke J., disagreed and stated that the "time begins to run when the events giving rise to the grounds upon which the challenge is intended to be brought occur". Clarke J. was of the opinion that the Irish provision adequately met the requirements of Community law for the provision of an effective remedy. He noted that, in considering whether to extend time limits, the court should consider whether a refusal to extend time could be said establish a breach of the principle of effectiveness.

The time limits imposed for judicial review in certain areas have been the subject of criticism. An example of this can be seen in relation to the review of decisions relating to land use (planning and development). It has been argued that the Irish courts have failed to exercise scrutiny over expert planning bodies such as would be required in light of certain EC law provisions. For example, in the case *Browne v. An Bord Pleanála*[27] the High Court refused to review a decision by the planning authority relating to whether it had given adequate consideration to an Environmental Impact Assessment (EIA) carried out. Therefore, it was argued that the Court had left the task of determining whether the information in the EIA was sufficient entirely to the discretion of the planning authority. In *McNamara v. Kildare County Council and Dublin County Council*[28] the High Court refused to consider whether the strict two-month time limit for bringing judicial review proceedings was adequate for the enforcement of the Directive.

12. When the case under consideration concerns the revocation of a final administrative decision, is it necessary to interpret your national law in compliance with Community law?

Due to the principle of the primacy of EC law, it is always necessary to interpret national law in compliance with relevant principles of EC law. A good example is supplied by the judgment of Keane J. in *Murphy v. Bord Telecom Éireann*. In that case, the applicants challenged a provision of the Anti Discrimination (Pay) Act 1974 on the grounds that it was being applied in a matter contrary to EC law. The Act provided that male and female employees should be given equal pay for "like work".[29] The applicants argued that they performed work of greater value than that performed by their male colleagues, but were actually paid less, as the work they performed was not regarded as "like work". Keane J. initially ruled that the 1974 Act did not provide a remedy in this situation, but the ECJ, following a preliminary reference, disagreed. Keane J. applied the judgment of the ECJ saying that "where such conflict exists, national law must yield supremacy to community law … where such a conflict arises, the national law is, accordingly, inapplicable".[30]

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[26] 2007 1 I.L.R.M. 216.
[27] [1989] I.L.R.M. 865.
[28] [1996] 2 I.L.R.M. 339.
[29] Anti Discrimination (Pay) Act 1974, s. 2, 3.
[30] [1989] I.L.R.M. 53, at p. 59.

In the area of human rights, however, tension can exist between the application of EC law and national law where it affects constitutional provisions that are the expression of deeply held national societal mores and values. The most notable example of this has been the sensitive issue of abortion. For example, in the case *Society for the Protection of Unborn Children in Ireland Ltd. v. Grogan*,[31] concerning the right to provide information on abortion, which could impact on the free movement of services, Walsh J. in the Supreme Court stated that "any answer to the reference from the Court of Justice will have to be considered in the light of our own constitutional provisions".[32]

Moreover,
a) does such an interpretation have any influence on the scope of discretion of administrative bodies (the problem was discussed in the case i-21 Germany)?
b) are there any examples of the interpretation of national law in compliance with EC law to be found in the practice of national courts?

a) Yes, the discretion of administrative bodies may be limited by Community law.

b) A clear example of this principle was enunciated by the Supreme Court in *Nathan v. Bailey Gibson Ltd.*[33] Hamilton C.J. observed that: "… national or domestic courts in interpreting a provision of national law designed to implement the provisions of a directive, should interpret their national law in the light of the wording and the purpose of the Directive in order to achieve the result envisaged by the Directive."[34]

13. Do the provisions of national law prescribe any time limit for submitting a motion to revoke a final administrative decision or reopen the judicial proceedings when the contested decision or the judgment is contrary to Community law? Do you think that the fourth prerequisite for the revocation of final administrative decisions set in the Kühne case - that the person concerned files a complaint to a administrative body immediately after becoming aware of the judgment of the ECJ - should have general application? (this issue has been raised in the Kempter case.)

Order 84, rule 21(1) of the Rules of the Superior Courts, 1986 prescribes the time limits for conventional judicial review. It provides that a judicial review application shall be made promptly and, in any event, within 3 months from the date when the grounds for the application first arose, or 6 months, where an order of *certiorari* is sought, unless the court considers there are good reasons for extending this period. Statute has imposed shorter time periods for challenging certain decisions; for example, in immigration, where the time period is 14 days, and in planning and development law, where the time limit is 8 weeks. The three and six month time periods set out are outer limits and applicants may be barred from taking an action within these time limits where they have not acted 'promptly'. The time limits can be

[31] [1989] I.R. 753.
[32] [1989] I.R. 753, at pp. 768, 769.
[33] [1998] 2 I.R. 162.
[34] [1998] 2 I.R. 162, at p. 174.

extended, in exceptional circumstances, ("for good and sufficient reason") as judicial review is a discretionary remedy.

For the benefit of legal certainty, it may be suggested that the fourth criterion set out in the *Kühne* case should be given general application. However, it is submitted that there should be a discretion to extend this time limit where the requirements of justice so provide. The time limits for application for the remedy of judicial review are not absolute. Courts regularly extend the time for application, where the applicant can demonstrate "good and sufficient reason" for the failure to apply within time.

14. What is the relationship (if any) under your national law and practice between the procedure for revocation of final administrative decisions and/or reopening of the court's proceedings analysed above, on the one hand, and the proceedings concerning the state liability for damages in case of the infringement of Community law, on the other hand (cases: C-46/93 and C-48/93 Brasserie, [1996] ECR I-1029 and C-224/01 Köbler, [2003] ECR I-10239)?

Especially:

a) are there any formal links between the two types of proceedings?

b) which national court is empowered to decide on state liability cases (above all, is it an administrative court)?

c) what are the main factors influencing the choice of the person concerned between the two abovementioned types of proceedings? (e.g.: time limit, costs, burden of proof)?

d) can the two types of proceedings be undertaken concurrently?

Proceedings commenced by way of judicial review may be the subject of a claim for damages by one of the parties.[35] In such an instance, the court may award damages where: 1) the court is satisfied that if a claim had been made in a civil action, the applicant would have been awarded damages; 2) the applicant has made a statement setting out particulars of the damage claimed.[36] This would appear to apply equally to proceedings on judicial review where a measure is being challenged as contrary to EC law

The Irish courts have recognised the principle of state liability for damages arising directly from EC law. In *Tate v. Minister for Social Welfare*[37], where provisions of the equality directive had not been properly transposed into Irish law, it was held that this came within the term "tort" (roughly equivalent to "delict" in civil law jurisdictions) and that, therefore, the statutory limitation period of 6 years applied to claims for damages. In *Emerald Meats Ltd. v. Minister for Agriculture*,[38] which concerned a breach of a duty imposed on a Minister which was held to be "in effect" a breach of a statutory duty, damages were imposed according to the *Francovich* principles.

An action for damages for breach by the State of its obligations under EC law is normally brought by means of a plenary action, i.e. a distinct procedure from that of judicial review of administrative proceedings.

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[35] Prior to 1986, it was not possible to be awarded damages for public law proceedings.
[36] Order 84, rule 24 of the Rules of the Superior Courts, 1986.
[37] [1995] 1 I.R. 418.
[38] [1997] 2 I.L.R.M. 275.

a) There are no formal links between the two types of proceedings. However, as seen above, in order to succeed with a claim for damages during judicial review proceedings, the court must assess whether the claim would have succeeded in a civil action.

b) There is no separate system of administrative courts in Ireland. As seen above, cases relating to the state's liability for damages for breach of EC law have been treated as akin to a "tort". This would mean that the appropriate court in which to commence proceedings is determined by the monetary value of the damages claimed.

(i) c) Where a claim involves an allegation of invalidity of an administrative decision, proceedings must be by way of judicial review, though ancillary relief by way of a claim for damages may be joined in the application. Actions for damages based on the principle of state liability will be brought by way of plenary proceedings.

An advantage of judicial review is that is widely viewed as a remedy which gives quicker access to the courts. It is perhaps for this reason that there are more judicial reviews taken per head of population in Ireland than anywhere else in Europe.

d) As noted above, an action for judicial review of an administrative action may include a claim for damages, which will be assessed on the basis of its likelihood to succeed in a civil action.

15. Please provide any other information concerning national law and its application (above all, the examples of relevant national administrative decisions or court's judgments) which could in your opinion be interesting for the discussed subject matter and it was not covered by the questionnaire.

In Ireland, European Community law was incorporated into domestic law by amendment to the Constitution and by statute, to facilitate the State's accession to the European Communities. Article 29.10° of the Constitution provides that:

> "No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State which are necessitated by the obligations of membership of the European Union or of the Communities, or prevents laws enacted, acts done or measures adopted by the European Union or by the Communities or by institutions thereof, or by bodies competent under the Treaties establishing the Communities, from having the force of law in the State."

This provision confers a notably complete exemption from judicial scrutiny on any legal measures adopted at either national or Community (and now Union) level in implementation of the Treaties. The dualist approach to the effect of international treaties, incorporated in Article 29 of the Constitution, had the effect that accession of Ireland to membership of the Communities could not have taken place without the adoption of such a far-reaching provision. It might be interesting to discuss whether similar protections arise in other EU Member States and the possible implications of

such protections regarding the influence of EC law on national administrative procedures.