



INTERNSHIP REPORT AND SUMMARY

Identification of the participant

Name: Simonetti
First name: Hadrian
Nationality: Italian
Country of exchange: Ireland

Identification of the exchange

Hosting jurisdiction/institution: Supreme Court of Ireland
City: Dublin
Country: Ireland
Dates of the exchange: 8-17 November 2022



SUMMARY

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I. Programme of the exchange

Some days before arriving in Dublin I received a detailed programme of my exchange. According to that, the Institutions_I would visit were the Supreme Court, the Court of Appeal, the High Court and the Special Criminal Court. To these, during my visit, the Labour Court was added.

The programme, through those institutions many of them located in the historical Four Court complex, in front of the river, contained several meetings with judges, in particular from the Supreme Court, to discuss cases and topics, as well as the attending of hearings and subsequent briefings.

During the exchange I met almost all the nine judges of the Supreme Court - with many of them I had lunch too - a pair of judges of Court of appeal, a judge of High Court, several judges of Criminal Court, the chief of the Labour Court.

Very important, for my understanding of the system, was also the meeting with the Registrar of the Supreme Court, who gave me a general overview for what concerns the proceedings in the Supreme Court, and the support and the explanations of the rest of the staff: executive legal manager and the research support associates.

In order to underline the hospitality I received from the Irish judges I have to add that I had the pleasure to be hosted, by one of them, to attend a symphonic music concert at the National Concert Hall.

To participate at the exchange programme, two judges from Holland and a judge from the French *Conseil d'Etat* were with me. All of us were from Supreme Courts but from judicial systems quite different. This difference increased the value of our Exchange, stimulating us toward a double comparison: between the Irish legal system and our own system and among our (non Irish) systems.

II. The hosting institution

The Supreme Court of Ireland is located within the Four Court Complex, in the centre of Dublin. The Four Court Complex has been the headquarters of the Irish Legal system since 1796. Until 2010 it housed both civil and criminal courts. In January 2010, the criminal courts of justice were opened, in a new building not so far from the Four Courts, and the Four Courts became an exclusively civil law complex. Labour court is located elsewhere too, in the south-east, near the docklands and the stadium.

The Irish legal system is based on the principle of separation of powers: the legislature, the executive and the judiciary.

The latter belongs to the common-law model and it is set up in five tiers: 1) the district court, at the smallest and local level, dealing only with limited matters; 2) the Circuit court, also with a local and limited jurisdiction; 3) the High Court, with jurisdiction in all matters, civil and criminal (criminal trials are held before a jury), including cases of Judicial Review of administrative acts; 4) the Court of Appeal, established recently, in 2014, following the approval of a referendum held in 2013, with civil and criminal divisions and jurisdiction on decisions above all from the High Court; 5) the Supreme Court, that is at the same time a court of last instance for law and criminal cases (“Corte di cassazione”) as well as a constitutional court.

As a general rule, there are a first instance and an appeal or second instance.

While the Supreme Court, the Court of Appeal and the High Court are established under the provision of article 34 of the 1937 Constitution of Ireland, the other courts are established by statute.

With regard to the Supreme Court, it is the final arbiter in interpreting the Constitution. For this purpose, it may decide on the constitutionality of a Bill which has been referred to the Court by the President of Ireland prior to the Bill being signed into law. If the Court decides that the Bill is incompatible with the Constitution, the President can refuse to sign or promulgate it as law.

In addition to the above function, and to another one consisting in the establishing whether the President of Ireland has become permanently incapacitated, the Supreme Court exercises appellate jurisdiction from decisions of Court of Appeal and, in exceptional circumstances, decisions of High Court. In both these cases it is not enough that there is an appeal to the Supreme Court, being necessary that, according to article 34 of Constitution, the decision involves a matter of general public importance or it is in the interest of justice.

Until the reform of 2014, the Supreme Court was given the appellate jurisdiction and as Court of Appeal dealt with more than 500/600 cases per year. After the reform, application to appeal against a decision from the Court of Appeal or from the High Court needs to get the “leave” from Supreme Court. The Leave may be granted following a specific procedure and unconditionally or in terms. The respondent may oppose the applicant’s application, setting out the grounds on which his opposition is based.

The average of leave granted is around 70 per year, out of 200/250 applications being made. Only a small part of those 70 cases concern administrative cases.

III. The law of Ireland

With regard to the activities I took part in during the exchange, I intend to develop one aspect of the host country’s national law that I am particularly interested in.

The aspect concerns the way the hearings are conducted before the Supreme Court and is linked with (or influenced by) the common-law model of the Irish legal system.

During the hearings before the Supreme Court it is frequent that each judge who is member of panel asks many questions to the barristers about the facts and the legal implications of the case.

Questions are asked having regard to a “Statement of Case”, a document issued by the Court to the parties, before the hearing, pursuant to Statutory Practice Direction. As it is there written, the Statement of case is not intended to convey even a preliminary view on the part of the Court on the merits of the appeal but is rather designed to establish such common ground as may appear from the papers.

The questions may be several and very accurate and detailed, also when the dispute between the litigants is over. It seems to me that this happens because, according to the common-law model, the Supreme Court cannot say the principle of law without looking carefully at the concrete case. For example, in a Judicial Review case I attended, before the Supreme Court on the 15th of November, where the main topic was about fair procedures during employment disciplinary proceedings, though the parties had settled the dispute, nonetheless, the hearing was going ahead and the panel had kept to ask them many questions.

This approach seems to me to request a bigger effort from barristers, having to be ready to explain a lot of aspects of the dispute. In one of the hearings I attend, I remembered the difficulties of a barrister who kept on asking assistance to the solicitor sitting behind him.

IV. The comparative law aspect in my exchange

As Ireland is not a civil law legal system but a common law one, I should say that differences are bigger than similarities. Considering many aspects regarding organisation and judicial practice, including the fact that judges are appointed among barristers with a certain grade of experience, the fact that is allowed the dissenting opinion (as I was able to see in the judgment *Costello v. Ireland* before the Supreme Court on 11 November 2022), there is a remarkable distance from my country where the judges are civil servants passing an examination at the beginning of their career.

This is the same distance one can find for what regards the two figures barrister-solicitor, in Ireland, where only the latter deals and keeps in touch with the client, and the lawyer in Italy where we do not have a similar distinction.

However, if we consider the European context, the influence of EU and EHRC law, the process of convergence among legal systems, similarities are stronger for what concerns the law.

With specific regard to my field, administrative law, Ireland does not have a special judge who has jurisdiction in administrative cases, as it happens in France or in Italy. However, they have a specialisation in terms of procedure – the Judicial Review – and a series of criteria or standards of review – as fairness, reasonableness, proportion – not so far from what in Italy we call “*figure sintomatiche dell’eccesso di potere*”.

V. The European aspect of my exchange

As I outlined above, the influences of the EU and of the ECHR are evident but not always uncontroversial.

On the 11th of November the Supreme court, by a 4-3, majority ~~has judge~~ decided that, without amendment of the Arbitration Acts, CETA (Comprehensive Economic Trade Agreement), a multilateral treaty between Canada, the EU and EU member states, is

incompatible with the Irish Constitution for what concerns the establishment of a tribunal to interpret the treaty, considering that, under article 34 of Constitution, justice has to be administered by courts. A 6-1 majority held that certain amendments to the Arbitration Act 2010 would permit ratification without breaching the Constitution.

The plaintiff, Mr Patrick Costello, was a Green Party TD who opposed the ratification of CETA. The High Court determined that there was no constitutional bar to the ratification of the agreement because the investor tribunals did not form part of, or had direct effect in, the domestic legal system. Instead, it was reasoned that the tribunals only operated at the level of international law and the decisions had no effect in Irish law.

Mr Costello was granted a leapfrog appeal to the Supreme Court, where six issues were identified that required a determination. These issues included: 1) whether ratification of CETA was necessary for membership of the EU; 2) whether CETA was a breach of Article 15.2 of the Constitution; 3) whether the CETA Tribunal amounted to a parallel jurisdiction or a subtraction of the domestic courts' jurisdiction contrary to Article 34 of the Constitution.

Further, the court was required to decide 4) whether the automatic enforcement of a CETA award constituted a breach of Article 34; 5) the effect of the interpretative role of the CETA's Joint Committee and whether this was a breach of Article 15.2; and 6) whether an amendment of the *Arbitration Act 2010* to alter the automatic enforcement of awards affected the position on ratification of CETA.

In the opposite direction, it may be interesting to consider that, after Brexit, Ireland is the only common law's country remained in the UE. The question could be if this presence will be able to balance the presences of France and Germany, especially in the functioning of the European Court of Justice and in its case-law jurisprudence.

VI. “Good Practice” within the host jurisdiction

I found many characteristics of litigation within the host country that should be exported to my country, starting from the “Statement of Case”, that could help to organise better the discussion of cases within my Court.

VII. The benefits of the exchange

The benefits of my Exchange – I hope - can be in different directions. A better knowledge of another legal system, is certainly the first benefit. But, in my opinion, much more important is the help that this better knowledge of another system, can give to me in ~~the~~ my daily work, opening my mind to other experiences. I have to be grateful to my hosts, for a series of explanations they gave to me, about the functioning of the Irish legal system, and for the programme they prepared, well balanced between first and second instance, judge's and lawyer's point of views.

For all these reasons, my experience in Ireland was very interesting and I have to thank the ACA Europe.



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VIII. Suggestions

I wouldn't know how to improve the Exchange Programme, having touched so many aspects and topics. My only regret is to not have had more time.



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