



## **INTERNSHIP REPORT AND SUMMARY**

### **Identification of the participant**

Name: Külpmann, Prof. Dr.  
First name: Christoph  
Nationality: German  
Country of exchange: Ireland

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Hosting jurisdiction/institution: Supreme Court of Ireland  
City: Dublin  
Country: Republic of Ireland  
Dates of the exchange: 13th - 17th of November 2023

## **SUMMARY**

I visited the Supreme Court of the Republic of Ireland for a week. It was an interesting and fruitful experience and I am thankful to ACA to offer this opportunity. I was able to visit the High Court, the Court of Appeal, the Supreme Court and the Criminal Courts. Especially, I attended oral hearings in cases dealing with planning and environmental law and in cases of constitutional law. The oral hearing on a Judicial Appointment Commission Bill 2022 was a particular highlight of my visit, as the underlying constitutional proceeding – a reference of the President of the Republic of Ireland to the Supreme Court – is very rare. Furthermore, I had several personal talks to members of the Irish Judiciary on a great variety of topics. At the very end, I attended the National conference of the Irish Judiciary in Dublin Castle, hosted by the Chief Justice.



## I. Programme of the exchange

The programme was organised by the staff of the Chief Justice of the Supreme Court. I had discussions with several judges of the Supreme Court, the Court of Appeal and the High Court. Some of the discussions dealt with general questions of Irish law and society, e. g. the importance of the Irish language in the legal system, the workflow at the Supreme Court and the structure of the criminal courts.

I spent a lot of time in oral hearings before the Supreme Court and the High Court. The High Court is the court of first instance in cases of planning and environmental law. The cases dealt with access to environmental information following the Aarhus Convention and with the planning permit for a major building, which was challenged by applicants, who deemed the building to be too large in size and altering a view from a protected building. The Supreme Court dealt with constitutional questions, after the President of Ireland had refused to sign a bill regarding judicial appointment and had referred these questions for a determination on its constitutionality to the Supreme Court, evoking the (seldomly used) Art. 26 of the Irish Constitution.

At the last day I visited the National conference of the Irish judiciary which dealt with question on artificial intelligence.

## II. The hosting institution

The Supreme Court is the highest Court in Irish judiciary; there are ten Supreme Court Judges, including the Chief Justice. They are supported by personal assistants, mainly young lawyers who gain first experiences; there is also a staff at the Chief Justice' Office who support the Court as a whole.

The Supreme Court deals with all areas of law, this includes criminal and civil cases and administrative cases. Furthermore, it is the constitutional court of Ireland. Its position in the legal system has significantly changed following a reform in 2014. Due to this reform the Court of Appeal was erected, serving as general appellate court for more or less all appeals to decisions of the High Court. The Supreme Court has appellate jurisdiction (Art. 34.5 of the Irish Constitution) where it is satisfied that the decision in question involves a matter of general public importance, or it is in the interests of justice that there is an appeal to the Supreme Court. It is up to the parties to show this general public interest; therefore, they have to file an application for leave to appeal. The number of cases overall is 170 to 240, a full judicial review takes place in about a third of these cases.

## III. The law of the host country

A major topic in the discussions was the constitutionality of a bill on judicial appointments. Judges in Ireland are appointed by the President; according to Art. 13.9 of the Irish Constitution the government advises the President. According to the existing law,

an independent body - the Judicial Appointment Commission - sets up a list of seven suitable candidates; the government may advise the President to choose a person from this list (and it normally does it this way), but the government is always entitled to choose someone else. In a new bill, the government's role is weakened, as the Commission puts up a list of just three persons and the government is only entitled to choose one of these candidates. If the government is entitled to reject the whole list and start the process all over again, remained unclear. One major topic in the oral hearing was if the Parliament (the Dáil) has infringed the legal capacity of the government and hence violated the separation of power as laid down in the Constitution. All these question were of extreme importance to me as there have been major discussion on the appointment of judges in Germany, esp. to the question if the positions of the Minister of Justice or the Parliament were to strong namely regarding the appointments of Supreme Court Justices. E. g., at the "Deutschen Juristentag" in Bonn in 2022 somewhat similar questions were raised.

#### **IV. The comparative law aspect in your exchange**

A striking main difference in the judicial practice seemed to me the culture of oral hearings before the courts. Of course, there are judicial hearings in Germany as well, but they take considerably less time. As all the written material has been read, German judges are not inclined to hear all the arguments of the parties again in the court room. They focus on certain major questions, which will be in the centre of the decision or where uncertainties in questions of law or facts remained. The oral hearings I visited in Ireland have been – to my impression – quite long and dealt in great detail with the legal arguments and the details of the written submission.

#### **V. The European aspect of your exchange**

As the German Federal Administrative Court does, the Irish judiciary deals with European Law to a great extent. I will give examples:

- In an oral hearing of a case at the High Court, the Court dealt with the question whether applications for access to environmental information are sufficient, if the applicant uses a pseudonym and provides an e-mail-address, but does not reveal his postal address or his real name. The question arose whether the Member State, e.g. Ireland, may put up the obligation to provide a postal address or if such an obligation may be an infringement of the EU-directive governing access to environmental information. In the oral hearing the judge at the High Court deliberated if he should refer the question to the ECJ. As far as I know, similar question has been discussed in Germany, but we have no court ruling regarding the matter.
- During my stay the Supreme Court dealt with a bill to reform the system of judicial appointments in Ireland. The bill in question wants to constitute an independent

body which will propose three candidates to the government if there is a vacancy at the court. The Supreme Court has to decide whether this reform is constitutional. But the court also has to take into account, if there is European Law – be it hard law or soft law – that governs these questions, as the appointment of judges always raises the question of independence and therefore questions regarding the rule of law in the EU.

- In an oral hearing before the High Court the barrister of the government relied on a ruling of the ECJ, concerning the question if a plea can be inadmissible in an environmental matter if it was not brought forward before a procedural deadline or has only been superficially stated. The question is of major importance also for German administrative court as the national law is offering only ten weeks to argue a case in environmental matters.

## VI. “Good Practice” within the host jurisdiction

Albeit there are certain obligations in German law how appeals should be written and substantiated, the parties and their lawyers have considerable freedom, how they argue in the case. Sometimes, the courts have to deal with quite long and poorly structured legal documents. To my impression, the Irish judiciary puts stronger obligations upon the parties, as they have to use certain forms, e.g. when filing an appeal, or as they have to put forward certain structured "books" on the case as the core book or the book of authorities.

The practice of oral hearings also showed a good practice. The presiding judge at the High Court held an oral hearing in a video conference ("remote session"). He was allowed to stay in his office, as the general public was entitled to follow the proceedings by watching the stream on the internet. This practice seems to me better than the German systems, where remote hearings are possible, but have to take place in public court room to ensure public access to the hearing. Currently, the Federal Minister of Justice in Germany plans changes in the Code of Civil Procedure, which would allow a practice similar to the Irish Practice.

## VII. The benefits of the exchange

My stay in Dublin has been an interesting and fruitful visit to an EU-Member state. First, I have to underline the great hospitality of the Irish Judges and their staff. All of them have been extremely friendly and helpful. Thanks to all of them!

Although there are remarkable differences between our different judicial systems, the similarities prevail. This holds true especially with regard to EU-law and the implementation into the national law and the question, when to ask the ECJ on a preliminary ruling. Furthermore, the Irish constitution raises some questions, which might also occur in German law. Finally, I got the impression how the planning law in Ireland has to cope with questions regarding ecological facts and the great depth in which these questions are dealt with.



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## VIII. Suggestions

As my stay was a complete success, there is no need for improvement. It was already perfect.



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