**Questionnaire**

**Independence of judges and lawyers**

**Ireland’s Response**

**January 2019**

1. **Please provide detailed information on the constitutional, legislative and regulatory provisions on the exercise of the right to freedom of expression, the right to freedom of association, the right to peaceful assembly and the political rights of judges and prosecutors. Do these provisions expressly cover the exercise of these rights online, for instance through digital technologies such as the Internet and social media?**

Underpinning the prosecutorial function in Ireland is the principle of independence as set out in section 2(5) of the Prosecution of Offences Act 1974, (available at [www.irishstatutebook.ie](http://www.irishstatutebook.ie)). This statutory and functional independence reinforces the impartiality of prosecutorial decisions in Ireland and freedom from outside influence whether political or from special interests. The Act sets out at section 2 (7) the procedure for the appointment of the Director of Public Prosecutions including a high level statutory board made up of the Chief Justice, Presidents of the Law Society of Ireland and the Council of the Bar of Ireland, Secretary to the Government and the Attorney General. Section 7 (9) (b) sets out the narrow basis for removal and the process to be followed including an investigation by the same statutory board.

Section 6 of the Prosecution of Offences Act 1974 prohibits certain communications with the Director of Public Prosecutions and the Director’s officers in relation to criminal proceedings. The effect of section 6 was extended by section 2 of the Criminal Justice Act 1993 and by sections 21 and 29 of the Criminal Procedure Act 2010. Section 6 (2) (a) of the 1974 Act as amended provides that the following persons are permitted by law to write to the Office of the Director of Public Prosecutions: a victim of a crime; a family member of a victim of a crime; an accused person; a family member of an accused person; or a lawyer, doctor or social worker acting on behalf of a client. The effect of section 6 (1) (a) of the 1974 Act means that it is against the law for anyone else to contact the Office of the Director of Public Prosecutions for the purpose of influencing the making of certain prosecution decisions. If a communication is deemed to be unlawful, the Director and the Director’s officers are required by section 6 (1) (b) of the 1974 Act not to entertain the communication further. Section 2 of the Criminal Justice Act 1993 and section 21 of the Criminal Procedure Act 2010 (also available on <http://www.irishstaututebook.ie>) apply similar restrictions in relation to cases of unduly lenient sentence reviews and appeals against acquittal.

**2. Please provide information on cases where judges and prosecutors in your country were subject to legal or disciplinary proceedings for an alleged breach of their obligations and duties in the exercise of their fundamental freedoms, both offline and online. Please provide information on cases where judges or prosecutors have been subject to threats, pressure, interference or reprisal in connection with, or as a result to, the exercise of their fundamental freedoms.**

The Judicial Council Bill is currently progressing through the Houses of the Oireachtas (the National Parliament)[[1]](#footnote-1) and its enactment is regarded as a matter of priority for the Government. The purpose of the Bill is to establish a Judicial Council, the functions of which include promoting and maintaining excellence in the exercise by judges of their judicial functions and high standards of conduct among judges. The Bill also provides for a Judicial Conduct Committee which will be tasked with considering complaints concerning the conduct of a judge and, in an appropriate case, referring complaints for resolution by informal means or undertaking an investigation in accordance with the provisions of the Bill. That Committee will also have a role in preparing guidelines concerning judicial conduct and ethics.

The Courts of Justice (District Court) Act, 1946 section 21 states:

“Whenever the Minister requests the Chief Justice to appoint a Judge to—

1. investigate the condition of health, either physical or mental, of a Justice, or
2. to inquire into the conduct (whether in the execution of his office or otherwise) of a Justice, either generally or on a particular occasion,

and, in either case, with particular reference to such matters as may be mentioned in the request, the following provisions shall have effect, that is to say—

1. the Chief Justice shall appoint either a Judge of the Supreme Court or, with the consent of the President of the High Court, a Judge of the High Court to conduct the investigation or inquiry;
2. the Judge so appointed may conduct the investigation or inquiry in such manner as he thinks proper, whether by examination of witnesses or otherwise, and in particular may conduct any proceedings in camera, and for this purpose shall have all such powers, rights and privileges as are vested in a Judge of the High Court on the occasion of an action;
3. upon conclusion of the investigation or inquiry, the said Judge shall report the result thereof to the Minister.”

Removal of members of the judiciary is set down in the Constitution under Article 35 which allows for the removal of judges of the superior courts. Article 35.4.1 of the Constitution states: “A judge of the Supreme Court, the Court of Appeal, or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his removal.”

No judge has been impeached in the history of the Irish State.

**3. Please provide information on whether, and to what extent, the exercise of the fundamental freedoms referred to above has been regulated in codes of judicial ethics or professional conduct developed by professional associations of judges and prosecutors in your country. Do these codes expressly include provisions concerning the exercise of these rights through the use of digital technologies?**

Prosecutors are regulated by a number of codes of professional conduct. The exercise of the fundamental freedoms referred to, through digital technology or otherwise, is not expressly referenced in the different Codes but there are requirements, in the exercise of the duties of a prosecutor, of integrity, impartiality, professional confidentiality and avoidance of any conflict or appearance of same.

The Guidelines for Prosecutors published by the Office of the Director of Public Prosecutions at www.dppireland.ie includes a Code of Ethics setting out standards of professional responsibility and essential duties of prosecutors with regard to independence, responsibility, integrity, and competence. The main aim of this Code of Ethics is to promote and enhance those standards and principles recognised as necessary for the proper and independent prosecution of offences. The Code of Ethics sets out the standards of conduct and practice expected of prosecutors working for, or on behalf of, the Director of Public Prosecutions. It is intended to supplement rather than to replace applicable professional codes governing the conduct of lawyers and civil and public servants.

Where prosecutors are subject to the discipline of the General Council of the Bar of Ireland or of the Law Society of Ireland they are also obliged to act in accordance with the standards set by their respective professional body. The Law Society Conduct Guide is available at <http://www.lawsociety.ie> and the Code of Conduct of the Bar of Ireland is available at <https://www.lawlibrary.ie/Home.aspx>

Prosecutors are subject to the requirements of Irish and EU data protection law and the data protection statement of the Office of the Director of Public Prosecutions is available on <http://www.dppirleand.ie>. The Office of the Director of Public Prosecutions has ongoing internal guidelines on media policy in particular on the duty of prosecutors to respect the private and confidential nature of the material held on victims, accused persons and others and the statutory limitations on the reporting of court proceedings and circumstances in which accused persons and victims can be entitled to anonymity.

Prosecutors in the Office of the Director of Public Prosecutions are also subject to most of the Civil Service codes, controls, procedures and regulations. The Civil Service Code of Standards and Behaviour (published by the Standards in Public Office Commission at <https://www.sipo.ie>) sets out the main principles which govern the behaviour of staff in the Civil Service. Prosecutors who are members of the Civil Service are obliged to act in accordance with that Code subject always to the statutory guarantee of the independence of the Director of Public Prosecutions and bearing in mind the status of officers of the Director as civil servants of the State rather than the Government.

**4. What kind of restrictions (constitutional, legal or regulatory) can be found in your legal system to the exercise of these freedoms? What is the rationale for these restrictions? Do these restrictions apply both offline and online? And if not, are there particular restrictions on the exercise of these rights through the use of digital technologies?**

Please see answer to Question 3. In the absence of specific provisions on the freedoms relating to prosecutors, the above codes can be referenced again, as in general, apart from exercising their duties with integrity and avoiding conflict as set out in the various codes of ethics, prosecutors are subject to the same freedoms and associated restrictions as other citizens, online and otherwise.

**5. Please elaborate on the nature of restrictions specifically applicable to the exercise of fundamental freedoms by judges and prosecutors. In particular:**

* Are these restrictions dependent on the position and matters over which the particular judge/prosecutor has jurisdiction?
* Should the venue or capacity in which these opinions are given be taken into account (for instance, whether or not they were exercising or could be understood to be exercising their official duties)?
* Should the purpose of such opinions or demonstrations be taken into account?
* To what extent, if at all, is the context- such as democratic crisis, a breakdown of constitutional order or a reform of the judicial system- relevant when evaluating the applicability of these restrictions?

See answer to Question 4

**6. Please provide information on the scope or interpretation that has been given to these restrictions by national courts, national judicial councils, prosecutorial councils or equivalent independent authorities with general responsibilities for disciplinary proceedings against judges and, where applicable, prosecutors. Please provide specific examples of these instances.**

See answer to Question 4

**7. Please provide information on initiatives undertaken by professional associations of judges and, where relevant, prosecutors, to raise their awareness of the risks associated with the exercise of their rights online, particularly on social media.**

Since November 2018, only “bona fide” journalists and lawyers are permitted to report, message or tweet live from court cases. The Hon Mr. Justice Frank Clarke, Chief Justice of Ireland has stated that the direction applies to all courts and is aimed at ensuring a fair trial.

Please see for reference: Practice Direction SC18-Use of cameras and electronic devices in court <http://www.courts.ie/Courts.ie/Library3.nsf/pagecurrent/31177D386FC544E98025834A003A8E25?opendocument>

1. The Irish National Parliament is called the Oireachtas and comprises the President and two Houses: a House of Representatives called Dáil Éireann and a Senate called Seanad Éireann. [↑](#footnote-ref-1)