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Synthèse / Summary / Kurzfassung / резюме

L'IRLANDE / IRELAND / IRLAND / ИРЛАНДИЯ

The Supreme Court of Ireland
Chúirt Uachtarach na hÉireann

Anglais / English / Englisch / английский

XVith Congress of the Conference of European Constitutional Courts in 2014

Cooperation of Constitutional Courts in Europe – Current Situation and Perspectives Questionnaire for the national reports

SUMMARY REPLY OF IRELAND

The Supreme Court is Ireland's highest constitutional court. The Supreme Court regularly considers European law when hearing appeal cases and drafting written judgments. It is constitutionally obliged to consider and follow EU law following an amendment to Article 29 of the Constitution of Ireland which facilitated the country's membership of the E.E.C. in 1973. Ireland incorporated the European Convention in domestic law when it enacted the *European Convention on Human Rights Act 2003*. In any proceedings, the High Court, or the Supreme Court when exercising its appellate jurisdiction, may, make a declaration of incompatibility that a statutory provision or rule of law is incompatible with the State's obligations under the Convention provisions.

The European Convention on Human Rights, the Charter of Fundamental Rights of the European Union, and other instruments of international law at European level for example Council Regulation (EC) No 2201/2003 or the Brussels II (*bis*) Regulation, as well as other instruments of international law such as United Nations Convention on the Rights of the Child are cited by the Court in its judgments.

The jurisprudence of the Supreme Court is influenced by the CJEU and the ECtHR. In practice, this jurisprudence is raised and argued by lawyers for both parties in an appeal case before the Court, and the Judges may refer to the jurisprudence independently during oral argument and in their written judgments.

Traditionally at least one Judge of the Court has experience of the European Courts as either a Judge or a practitioner. In 2013/2014 the Supreme Court's membership includes a former Judge of the European Court of Justice, while another Judge is a former Advocate General of that Court. Many other Judges appeared before the European Courts as practising lawyers.

The Court has regularly referred to CJEU jurisprudence since 1973. The first case decided by the ECtHR was the Irish case, *Lawless v Ireland (No.1)* (1960) A/1, (1979-1980) 1 EHRR 1, and the Supreme Court has a long tradition of referring to the jurisprudence of the Court, since Ireland was one of the first signatories of the Convention in 1950.

The Supreme Court must follow EU law jurisprudence. The Supreme Court takes judicial notice of the case law of the ECtHR, and may refer to it in its jurisprudence

where appropriate. The case law of the ECtHR certainly has an impact on the Court's jurisprudence and may be persuasive.

The Supreme Court is bound by the decisions of the CJEU. The lower courts of Ireland which include the High Court, the Circuit Court, and the District Court are also bound by the CJEU, and are bound by the decisions of the Supreme Court. Judicial notice is taken of the ECtHR in all Courts.

The Supreme Court often refers to decisions of European and non-European constitutional courts in all fields of law. Ireland is a common law country and the Court regularly refers to decisions of courts in the United Kingdom and English speaking jurisdictions such as Australia, and New Zealand, the United States and Canada. It also refers to cases from other national courts including the Federal Constitutional Court of Germany (Bundesverfassungsgericht).

The jurisprudence of the Supreme Court has been cited by other constitutional courts such as courts of the United Kingdom including the House of Lords (now the Supreme Court), the Judicial Committee of the Privy Council (which is the final court of appeal for many current and former Commonwealth countries, as well as the UK's overseas territories, crown dependencies, and military sovereign base areas) whose members are Justices of the UK Supreme Court, the High Court of Australia, the South African Constitutional Court and the Supreme Court of New Zealand.

Membership of European and international organisations for the judiciary such as the CECC enhances cooperation through conferences, meetings and exchange of information. The constitutional courts and the European courts are engaged in a dialogue with each other as they interpret and apply European law. The EU incorporates many of the values of the Convention by virtue of the constitutional traditions of Member States, all of which have incorporated the Convention into domestic law. Where differences arise, the Supreme Court has a constitutional obligation to follow the jurisprudence of the CJEU since EU law is incorporated in Irish law at a constitutional level. The Convention is incorporated by an Act of the Oireachtas (the Parliament of Ireland) which the Supreme Court must take judicial notice of.

*Note that case law of the Supreme Court of Ireland can be accessed on the website of the Courts Service of Ireland at www.courts.ie.