



Cúirt Uachtarach na hÉireann Supreme Court of Ireland

Protocol on Judgments

1. The purpose of this protocol is to outline the process to be followed by the Supreme Court in relation to reserved judgments. It is based on the practical experience of the Court following ten years of the operation of the reformed jurisdiction of the Supreme Court and seeks to give guidance on what can be expected when the Court reserves judgment.

Register of Reserved Judgments

2. Section 46 of the Court and Court Officers Act, 2002 (“s.46”) as amended by s.55 of the Civil Liability and Courts Act, 2004, and as implemented by the Court and Court Officers Act, 2002 (Register of Reserved Judgments) Regulations 2005 (SI 171/2005) and the Court and Court Officers Act, 2002 (Register of Reserved Judgments) (Amendment) Regulations, 2015 (SI 163/2015) (“the Regulations”) make statutory provision in respect of reserved judgments in all courts in the Irish courts system.
3. In brief terms, the provisions require the creation and maintenance of a register of reserved judgments, the listing of every reserved judgment by the President of the applicable court before the judge who reserved judgment, two months after the date on which it is reserved (unless previously delivered, and unless that date falls within a vacation period) and that judge shall fix a date for delivery which date is to be included in the register. If the judgment is not delivered on or before that date, a further date is to be fixed which in turn will be included in the register. Both the statute and the Regulations contain certain exceptions and qualifications

where, for example, the judge concerned dies, or is ill, or is involved in a reference pursuant to Art. 26 of the Constitution.

4. While these provisions give some statutory and regulatory structure in respect of the supervision of reserved judgments, they are not comprehensive. In addition, they do not distinguish between the different courts and the particular requirements of their jurisdictions. In particular, they are not well adapted to the position of a collegiate court where judgment is often assigned to an individual member of the Court, and in which account must be taken that members of such a Court may decide following receipt of a draft judgment from the assigned judge that it is necessary for them to deliver their own concurring or dissenting judgments. Furthermore, the provisions predate the amendment of the Constitution in 2013, which created the Court of Appeal, and provided for the appellate jurisdiction of the Supreme Court as it is now provided for. The practical experience of the Court in the decade since the new jurisdiction was established also suggests that the statutory provisions should be supplemented by more detailed guidance.
5. Since 2014 leave to appeal to the Supreme Court is granted from a decision of the Court of Appeal under Art. 34.5.3 of the Constitution and, exceptionally, from the High Court under Article 34.5.4. In a majority of such cases the Court grants leave because the decision involves a matter of general public importance. It follows that the issues raised will normally be both complex and difficult, and that the importance of the case will normally extend beyond the question of the decision in an individual case and will involve clarifying the law which may be applicable in many other cases and circumstances. Where the Supreme Court grants leave on the ground that it is in the interests of justice to do so, it will normally be the case that such a case will be itself complex, difficult and important in its own terms.

Internal working practice

6. When leave is granted to appeal to the Supreme Court, the Chief Justice assigns an individual judge to case manage the appeal. While the time it takes for a case to be listed for hearing following the grant of leave will usually depend on the ability of

the parties to exchange submissions and prepare the papers for the case for hearing, at present it can be expected that once leave is granted a case can be listed for hearing within six months with a grant of leave.

7. After the hearing of an appeal, the process of producing a draft judgment can be time consuming for the assigned judge but must be carried out while other cases are prepared, heard, and other judgments written. In addition to the primary responsibility of members of the Court in relation to their case work, all members of the Supreme Court have other responsibilities, including:
 - Sitting on the panels at whose meetings it is decided what cases will be admitted to appeal by the Supreme Court ('AFL's'), and which applications to that end will be refused;
 - Preparing draft Determinations on those applications for leave, and reviewing and settling draft Determinations prepared by other judges.¹
 - Chairing and membership of committees, boards and working groups;
 - communication and outreach; and
 - meetings with judiciary on other jurisdictions and other international relations work.
8. After a hearing the members of the panel meet to discuss the case in outline and consider how many judges may write a judgment. Normally one judge has been assigned in advance to write a lead judgment. Once a draft is produced by the assigned judge, there may of necessity be a further period of debate and discussion between the members of the Court on the draft involving suggestions for its alteration. It is not uncommon for two or three meetings of this kind to occur in relation to one appeal, and not unknown for as many as six such conferences to be convened to consider various draft judgments. In some cases, colleagues may deliver dissenting judgments, or separate concurrences when they are not in a position to agree with the legal analysis in some respect but agree as to the result. In any such case this process may in turn prompt further drafts and revisions by the assigned judge. Accordingly, the production of a proposed judgment, itself a complex and time-consuming task, may only be the first step towards the delivery of judgments in the case, and its resolution. In addition to this protocol, the

¹ In the last three years between 144 and 160 AFLs per annum were the subject of Determinations.

members of the Court have adopted practices in relation to the holding of conferences, circulation of judgments and finalising of drafts.

A need to supplement the legislative provisions regarding the register

9. The Court is very mindful of the importance of delivery of judgments in as speedy a fashion as possible and makes every effort to do so. However, the nature of the task in a collegiate appellate court, and the history of delivery of judgments in the last two decades, and indeed before, show that it is unrealistic to expect that a judgment of significance could be produced and delivered within a two-calendar month period from the date of hearing other than in urgent cases. The practice in international comparator courts is to the same effect. In straightforward cases a court would normally expect to produce routine judgments in a period between three and six months from the date of hearing. Some complex cases, or cases which prompt considerable discussion, debate and disagreement, will, of necessity, take longer. Other events such as urgent appeals which require to be determined, illnesses or personal circumstances affecting members of the Court may lead to a longer period between the hearing date and the date of delivery of the judgment.
10. The Court recognises the important objective of providing a decision as soon as is possible, and the desirability of providing maximum clarity about the process in a way that is consistent with the obligations of confidentiality which attach to the Court's discussions.
11. Accordingly, the Court will maintain compliance with the statutory provisions as a statutory framework but will supplement it with procedures directed towards promoting efficiency of delivery of judgments, and in any event, the provision of information to interested parties and the public.
12. Therefore, the Court has adopted the following protocol:

- (i) In each case where a judgment is outstanding for more than two months (as calculated in accordance with s.46 as implemented by the statutory instruments) the case will be listed at the direction of the Chief Justice before the presiding judge of the panel which heard the case and the presiding judge will inform the parties of the progress of the judgment process, and fix a date for judgment if possible, and where not possible, will make a realistic estimate of the date for delivery;
- (ii) In addition to the foregoing, all judgments outstanding will be listed before the Chief Justice before the end of each legal term;
- (iii) Where a judgment is outstanding for more than six calendar months the Chief Justice will consult with the presiding judge, and will normally not assign any further judgment to the judge concerned in order to facilitate completion of the outstanding judgment;
- (iv) Where a judgment is outstanding for more than nine calendar months the Chief Justice will give consideration to not listing the judge concerned for a hearing of any cases and/or take steps to otherwise reduce the work obligations of the judge until judgment is delivered;
- (v) Where a judge is appointed to the Supreme Court from another court, the Chief Justice will liaise with the President of that court and the judge concerned to ascertain whether there are judgments outstanding in that court and will take that matter into consideration in the listing of the judge concerned and the assignment of judgments in the Supreme Court;
- (vi) It is, however, necessary to provide for some latitude in the operation of this protocol as delay in concluding a case may not be caused by the provision of a draft of the primary judgment, but rather the process of discussion, disagreement, dissent or preparation of concurring judgments by other members of the Court. There may be other considerations to indicate that it is not necessary to take particular steps to facilitate completion of the judgment and its delivery.

Parties request to prioritise judgment

13. While the listing of cases both before the presiding judge and before the Chief Justice provides an opportunity for parties to attend and inform the Court of any considerations or developments making the delivery of a judgment more urgent, parties are also requested to communicate with the Registrar of the Supreme Court at supremecourt@courts.ie in cases where there may be considerations which may require judgment to be prioritised. Any such communication will be brought to the attention of the Chief Justice, and where the Chief Justice is not the presiding judge, such presiding judge.

Annual report statistics

14. In addition, in order to promote transparency, the Annual Report of the Supreme Court will provide statistical analysis of the following matters:
 - (i) The average time between the making of an application for leave to appeal and the grant , or refusal of leave;
 - (ii) The average time between grant of leave and hearing;
 - (iii) The average time between hearing and delivery of judgment.
15. Efficiency in production of judgments is an important metric in assessing the Court's work. It is not however the only one. The constitutional threshold for an appeal to the Supreme Court, namely that the appeal involves a point of general public importance, will normally mean that the point is difficult in itself, but also may have significant consequences in society. The doctrine of precedent plays an important role in a common law system and the position of the Supreme Court as the final court of appeal in the Irish system means that it is important that a judgment has received full and thorough consideration by the panel , not just having regard to the outcome of the case , difficult though that often is , but more particularly in relation to the terms in which the judgment is expressed. It is central to the Court's function that it seeks to produce reasoned judgments of high quality and does so as efficiently as possible consistent with that overriding objective. This protocol will apply to appeals heard after the 7th of October 2024.

It may be reviewed and amended in the light of the experience of the Supreme Court and interested parties.