

WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS

REPUBLIC OF IRELAND

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GENERAL OVERVIEW

1. Political System.

According to the Irish Constitution there is a tripartite division of power: legislative, executive and judicial. Legislative power consists of the power to make laws. This power is held by the Oireachtas, comprised of a President elected by direct vote of the people, the Seanad (upper house) and the Dail (lower house) elected by proportional representation. As an elected body, the Constitution gives the Dail the most power, while the Seanad is only in a position to disrupt or delay the passing of a Bill. Therefore, the Oireachtas has the power to enact unlimited laws except those which offend any provision of the Constitution. Since the Constitution is the superior law, a referendum must be passed to change it.

The government (cabinet) has executive power and thus is entrusted with carrying laws into effect. Judicial power, or the power to administer justice, is reserved to the courts. Judges are appointed by the President and are independent in exercising the power of their judicial functions. They can guard against any intervention from legislators or executives. Judges can only be removed from office for any stated misbehavior and only then by resolution passed by the Oireachtas and signed by the

President.

These three government bodies are not completely independent from each other. They overlap, coordinate and often have concurrent power, preventing any one branch from securing too much power.

## 2. Legal System.

The meaning of Irish law is essentially derived from the written Constitution of 1937, statute law and judicial decisions. Aside from the Irish Constitution, government legislation is the most important source of Irish law. There are 5 main legislative influences in Irish Law: the statutes of the old Irish parliament prior to 1800, the statutes of the English parliament (1719-1782) the statutes of the United Kingdom parliament (1800-1922) the statutes enacted by the Irish Free State (1922) and the enactments established by the 1937 Constitution.

The Irish legal system is adversarial and based on English common law. Although there has been an increase in the use of arbitrators, mainly for minor offenses, it has not altered the structure of the legal system in any way.

## 3. History of the Criminal Justice System.

Ireland does not have an indigenous body of law. Foreign legal systems exerted a massive influence and destroyed what was, historically, a highly developed system of Breton law. With political domination came the common law of England.

Although the establishment of the Irish Free State in 1922 led to a new Constitution, the system of law it provided for was not completely new. This Constitution did not meet the approval of all political groups, and was eventually dismantled. In 1937, a new Constitution was passed by a referendum, becoming the basic legal document in Ireland. Over the following years, it has been amended a number of times by the people and interpreted by the courts on numerous occasions.

## CRIME

### 1. Classification of Crime.

\*Legal classification. For trial purposes, the Irish Constitution distinguishes between minor offenses and others. However, no definition of

minor offenses is provided therein. For all practical purposes, the common law distinction of felonies or indictable offenses and misdemeanors or nonindictable offenses is employed.

Misdemeanors are the less serious offenses and are often referred to as summary offenses. Misdemeanor offenses include traffic violations and are tried in the lower district court without a jury. Indictable offenses are eligible for trial by jury and include murder, rape, armed robbery and kidnapping. As in Northern Ireland, the Republic classifies certain offenses as scheduled offenses, such as terrorist offenses. Scheduled offenses are tried in the Special Criminal Court.

\*Age of criminal responsibility. The age of criminal responsibility in Ireland is 7. More specifically, criminal responsibility is refutable between the ages 7 and 14. Full criminal responsibility is reached at the age of 14.

\*Drug offenses. Ireland utilizes the same drug classification system as England and Wales. Drugs are listed as class A, class B and class C according to their relative harmfulness. Production, supply, possession, possession with intent to supply, and offenses related to the importation and exportation of controlled drugs are illegal. Generally, only the possession of small quantities of cannabis (for personal use) will be treated as a summary offense.

## 2. Crime Statistics.

The following statistics were gathered from the 1992 Annual Garda Crime Report.

\*Murder. In 1992, there were 25 murders and 7 attempted murders recorded by police. (In 1992, there were 17 manslaughters. There were a total of 1,298 recorded offenses against the person with a detection rate of 77.4%. These offenses included murder, manslaughter, dangerous driving causing death, traffic fatalities and possession of a firearm with intent to endanger life.)

\*Rape. In 1992, there were 127 rapes recorded by the police. (In 1992, there were 300 reported indecent assaults on females. Yet according to the Rape Crisis Centre 1993 Annual Report, there were 452 first time contacts with the RCC in relation to a recent rape (no definition given) in 1993. This would indicate a serious under-reporting/recording to by police.)

\*Burglary. In 1992, there were 32,149 burglaries

recorded by police. (In 1992, there were also 1,409 aggravated burglaries. There were a total of 41,736 recorded offenses against property with violence, including burglary, aggravated burglary, robbery, arson and serious malicious damage to property. There was a reported detection rate of 31.1%.)

\*Serious drug offense. In 1992, 3,494 individuals were charged under the Misuse of Drugs Act, 3,228 of whom were charged with possession. The remaining 266 were charged with other offenses under the same Act, including 107 for importation.

\*Crime regions. The lowest rate of recorded crime was in rural areas. For example, Mayo had a recorded crime rate of 7.5 per 1,000 population, Clare had a rate of 7.9 per 1,000 and Roscommon/Galway East had a rate of 8.8 per 1,000. The highest recorded crime rate was in metropolitan areas. Cork East had a crime rate of 36.4 per 1,000 population and Dublin Metropolitan had a rate of 49 per 1,000.

## VICTIMS

### 1. Groups Most Victimized by Crime.

Information not obtained.

### 2. Victims' Assistance Agencies.

There are a number of victims' assistance agencies, including the Rape Crisis Centre (RCC). The Centre operates a national help-line, although the actual centers are only located in the larger cities. Half the operating costs for the RCC are met by the government. The fact that abortion is illegal in the Republic presents additional difficulties in the care of rape victims.

There is also a Victim Support Scheme in operation, although police referral is discretionary. Again, the contact centers are limited to large cities.

### 3. Role of Victim in Prosecution and Sentencing.

Victims of assault may prepare a victim impact statement for the judge's consideration. The statement can include the harm suffered by the victim as a result of the crime.

### 4. Victims' Rights Legislation.

As a result of the 1993 Criminal Justice Bill, the judge may take into account the harm suffered by the victim of sexual and other assaults, in the form of a victim impact statement. How heavily victim-based considerations will weigh with the court remains to be seen.

The 1993 Bill also allows the court to order payment of compensation in particular cases. There is a Criminal Injury Compensation Scheme in Ireland. However, due to budgetary cutbacks, the Scheme was essentially rendered inactive some years ago.

## POLICE

### 1. Administration.

The Republic of Ireland has a national police force called the Garda Siochana. The numerous subdivisions of the national force include the Drug Squad, Crime and Security, the Technical Bureaus, Intelligence and Interpol. The force is centrally controlled from Phoenix Park, Dublin. The Commissioner, the highest ranking police officer, is appointed by the Department of Justice and remains accountable to that agency.

### 2. Resources.

\*Expenditures. In 1994, there was an estimated annual expenditure of 394 million Irish pounds on the Garda.

\*Number of police. Under the Commissioner in 1990, there were 10,911 male and 638 female police officers in the Irish police force. The highest position of a female within the force is a Superintendent. There is no information available on ethnic representation.

### 3. Technology.

\*Availability of police automobiles. Information not obtained.

\*Electronic equipment. Information not obtained.

\*Weapons. The Irish police force carry only batons on their persons. Plain clothes police officers are armed with hand guns and, in special circumstances, machine guns.

### 4. Training and Qualifications.

To qualify as an officer of the Irish police force, a candidate is required to have graduated from the final state school examination and have a passing grade in five subjects (including Irish). The candidate must be between 18 and 26 years old. Male candidates must be at least 5 feet, 9 inches tall and female candidates must be at least 5 feet, 5 inches tall.

Garda training lasts for 2 years and consists of 5 separate but integrated phases. Phase One consists of 22 weeks at Garda College. Phase Two consists of 24 weeks at a selected Garda Station normally in the Dublin Metropolitan Area, where the student accompanies a tutor Guard. Phase Three involves 12 weeks at Garda College. Phase Four involves being a probationer for 32 weeks at a selected Garda Station. Phase Five is the final 6 weeks at Garda College followed by graduation.

#### 5. Discretion.

\*Use of force. Information not obtained.

\*Stop/apprehend a suspect. The police have the power to stop or apprehend a suspect on the grounds of reasonable suspicion that they have committed an offense.

\*Decision to arrest. It is estimated that about 90% of arrests are made without a warrant.

The use of cautioning is generally confined to juvenile offenders, according to certain guidelines. These guidelines include the offender's admission to the offense and the consent of the victim. Cautioning is otherwise only used for very minor offenses, including certain traffic violations.

\*Search and seizure. The police have the general power of search and seizure based on reasonable suspicion. The power of search and seizure is also permitted under the Misuse of Drugs Act and the Anti-Terrorist Act.

\*Confessions. Before offering a confession, the accused must be read his or her rights.

#### 6. Accountability.

Complaints against the police are dealt with by the Independent Complaints Board, which consists of two lay people and one Guard.

## 1. Rights of the Accused.

\*Rights of the accused. The accused has the right to a trial by jury for all offenses, except summary offenses and cases brought before the Special Criminal Court or a Military Tribunal. Likewise, the accused has the right to legal representation.

Enshrined in the Constitution are the rights of all individuals to have access to the courts, fair procedure, habeas corpus protection, a speedy trial, the exclusion of unconstitutionally obtained evidence and protection against self-incrimination.

\*Assistance to the accused. The state must provide legal representation, under the guise of the Legal Aid Board, if the accused cannot afford representation.

## 2. Procedures.

\*Preparatory procedures for bringing a suspect to trial. Criminal cases are investigated by the police. The Director of Public Prosecution (DPP) does not investigate criminal cases.

When the accused pleads guilty in summary and indictable offenses, the case may be dealt with summarily in the District Court, with the consent of the DPP. Indictable offenses which are not triable summarily have a preliminary examination before the District Court. If there is sufficient evidence, the accused is forwarded to the Circuit Court, where s/he is tried before a jury of 12 people. There must be a majority vote of at least 10 jurors in order to determine a verdict.

The Special Criminal Court is similar to the controversial Diplock Court of Northern Ireland in which scheduled offenses are tried before 3 members of the judiciary. However, the DPP has the power to decide on a nonscheduled case being heard before the Special Criminal Court.

\*Official who conducts prosecution. The Constitution provides for the office of Attorney General, which acts as advisor to the government on matters of law and legal opinion. Since 1974, a special office, the Director of Public Prosecution, has been in charge of all prosecution within the Republic of Ireland. The office, however, has delegated the prosecution of summary offenses before the district courts to the police.

\*Alternatives to trial. For criminal cases, there is no alternative to going to trial. There is no

plea bargaining. However, the accused may plead guilty and the police have the discretion to lessen the number of charges.

\*Proportion of prosecuted cases going to trial. The majority of criminal cases go to trial.

\*Pretrial incarceration conditions. An accused may be remanded in custody awaiting trial or released on bail. However, remand in custody is mandatory for the crimes of murder, sedition or membership in an illegal organization.

\*Bail Procedure. The decision to grant bail depends on the probability of the accused evading justice, the seriousness of the charges, the nature of the evidence, the likelihood of the accused disposing of evidence and the anticipated sentence. The character and past criminal record of the accused also play a crucial role in determining whether bail will be granted. If bail is refused, the accused is remanded in custody. The High Court may hear appeals of the District Court decisions on bail applications.

\*Proportion of pretrial offenders incarcerated. Information not obtained.

## JUDICIAL SYSTEM

### 1. Administration.

The Highest court is the Supreme Court, which has the power to decide whether a Bill passed by the Oireachtas is constitutional. It has appellate jurisdiction for all decisions of the High Court, and the Court of Criminal Appeal, and can pass rulings on questions of law submitted by the Circuit Court.

The Court of Criminal Appeal handles appeals brought by persons convicted on indictments in the Circuit Court or Central Criminal Court. Its ruling is final unless the court, Attorney General or the DPP deem it a point of law of exceptional importance, after which it may be taken to the Supreme Court. When exercising its criminal jurisdiction, the High Court is known as the Central Criminal Court.

For purposes of the circuit court, the country is divided into 8 circuits. It has the same jurisdiction as the Central Criminal Court for all indictable offenses, except murder, treason, piracy and allied offenses. Finally, the lowest court is the District Court which sits at



248 venues throughout the country.

## 2. Special Courts.

The Special Criminal Court was established to deal with a list of scheduled offenses. There also exists the Family Court, which deals with separation agreements, and the Children's Court, which deals with the welfare of juvenile offenders.

## 3. Judges.

\*Number of judges. There are a total of 86 judges, 7 of whom are female.

\*Appointment and qualifications. Most judicial appointments in the Republic of Ireland are made from the ranks of Barristers with a minimum of 10 years experience. However, solicitors with 10 years experience are eligible to become District Court judges at the District Court level.

## PENALTIES AND SENTENCING

### 1. Sentencing Process.

\*Who determines the sentence? The sentence is determined by the presiding judge. There are no formal sentencing guidelines, and no formal criteria for the imposition of custodial or community-based sentences. However, the 1993 Criminal Justice Bill has permitted the DPP to apply for leniency of sentence. Sentencing particulars are also recommended by the Law Reform Commission, which is appointed by the government.

\*Is there a special sentencing hearing?  
Information not obtained.

\*Which persons have input into the sentencing process? Psychiatrists and social workers, such as probation officers, have input into sentencing at the discretion of the judge.

### 2. Types of Penalties.

\*Range of penalties. Imprisonment is available as a punishment in a wide variety of cases. The sentence can either be immediate, ranging from 1 day to life, or suspended. Also available are a number of noncustodial sentences, such as fines, which represent the most common penalty. Fines are typically used for summary offenses.

Probation orders and related penalties, such as community service, calling upon the resources of the probation service, are also used. Finally, the court may award an absolute or conditional discharge.

While there are no minimum sentences, there are maximum sentences. For example, incest with a victim under 15 years old has a maximum penalty of life imprisonment.

\*Death penalty. For all practical purposes, the death penalty has been abolished in Ireland, even though it is still on the statute books for capital murder.

## PRISON

### 1. Description.

\*Number of prisons and type. There are a total of 12 penal institutions. There is one maximum security prison, which is usually used for terrorist offenders, and two high security prisons, one of which is used particularly for sex-offenders. There are also two adult committal prisons, both of which have female sections, two open adult centers, one semi-open adult prison, and four institutions of varying categories that deal with juvenile offenders.

\*Number of prison beds. In total, the prison system has a capacity for 2,214 inmates.

\*Number of annual admissions. In 1992 there were 19,000 admissions to prisons.

\*Average daily population/number of prisoners. The average daily prison population is 2,120.

\*Actual or estimated proportions of inmates incarcerated. The percentage of inmates incarcerated are according to the 1992 Annual Prison Report:

Drug crimes	19%
Violent crimes	13%
Property crimes	Information not available
Other crimes (only includes terrorist offenses)	0.4%

### 2. Administration.

\*Administration. Information not obtained

\*Number of prison guards. According to the 1992 Annual Prison Report, there were 2,377 prison officers in employment.

\*Training and qualifications. There is a national prison service. In order to qualify for appointment, one must have passed the state school final examination.

\*Expenditure on prison system. In 1994, the estimated annual expenditure on prisons was 81.96 million Irish pounds.

### 3. Prison Conditions.

\*Remissions. There is automatic remission for good behavior after prisoners have served a quarter of their sentence. In theory, all prisoners are entitled to automatic remission.

\*Work/education. While all institutions have educational and/or vocational programs, financial constraints do not allow the demand for these programs to be met. Group therapy is available, most notably for sex offenders and for inmates who have abused alcohol.

\*Amenities/privileges. Remand prisoners have a right to unlimited visits, while sentenced prisoners may have visitors once a week. Weekend leave is also very common. However, in the case of murderers and sex-offenders, the leave must be incorporated into a formal pre-release program.

### EXTRADITION AND TREATIES

\* Extradition. The Republic of Ireland has multilateral Extradition treaties under the European Extradition Convention of 1957. The Convention was signed by 12 countries: Austria, Belgium, Denmark, France, Germany, Greece, Italy, Luxembourg, Netherlands, Norway, Sweden, Turkey, and Switzerland. The Republic also has bilateral extradition agreements with the United States and Australia.

\*Exchange and transfer of prisoners. Information not obtained.

\*Specified conditions. Arrangements between the United Kingdom and Ireland are based on reciprocal legislation providing for the simple endorsement of arrest warrants issued in each other's territory, according to the Irish Extradition

(Backing of Warrants) Act of 1965. The 1975 Criminal Jurisdiction Act had allowed persons accused of offenses in Northern Ireland to be arrested and tried in the Republic of Ireland. However, this Act resulted in many people claiming status as a political refugee. In 1991, a subsequent act was introduced to close this loophole.

Relevant extradition guidelines are also set under the European Convention on the Suppression of Terrorism Act of 1977, which explicitly excludes from the political offenses exception to the Act, the crimes of aircraft hijacking, in addition to offenses involving the use of bombs, grenades, rockets, automatic firearms or letter bombs and parcel bombs.

#### SOURCES

- The 1992 Annual Prison Report. Government Publications, Dublin.
- The 1992 Garda Siochana Crime Report. Government Publications, Dublin.
- Estimate on Government Expenditure 1994. Government Publications, Dublin.
- Rape Crisis Centre Annual Report, 1993.