

TRAINING & DEVELOPMENT PROGRAMME

Knowledge Network

Webinar Series

Zalewski v Adjudication Officer - One year on

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Constitutional Position

Article 34.1

Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public.

Article 37.1

Nothing in this Constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorised by law to exercise such functions or powers, notwithstanding that such person or body of persons is not a judge or a court appointed or established as such under this Constitution.

Zalewski v Adjudication Officer & ors [2021] IESC 24

Central issues

- Whether the process before the WRC was the administration of justice under Article 34?
- Whether this was permissible under Article 37 as the function was “limited”?
- Constitutionality of aspects of the process before the WRC.

Traditional test for “administration of justice” under Art 34

McDonald v Bord na gCon (1965)

There must exist;

- A dispute or controversy as to the existence of legal rights or a violation of the law;
- The determination or ascertainment of the rights of parties or the imposition of liabilities or the infliction of a penalty;
- The final determination (subject to appeal) of legal rights or liabilities or the imposition of penalties;
- The enforcement of those rights or liabilities or the imposition of a penalty by the court or by the executive power of the State which is called in by the court to enforce its judgment;
- The making of an order by the court which, as a matter of history, is an order characteristic of courts in this country.

Was the function “limited” within the meaning of Article 37?

Limitations identified

- Limited to employment law
- Limited on awards
- Limits on enforceability
- Subject to appeal
- Subject to judicial review

Standards to be applied in the administration of justice

O'Donnell J

Standard of justice under Article 37 cannot be lower or less demanding than the justice administered in courts under Article 34.

Aspects of WRC process subjected to scrutiny

- Proceedings held other than in public
- No provision to administer oaths or punish for false evidence
- No express provision for cross examination
- No requirement that Adjudication Officers or Labour Court members have any legal qualifications or experience
- Minister's unfettered power of revocation of appointments
- Ex parte application to the District Court

Ripple effect of *Zalewski*



Article 37(1)

Nothing in this Constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorised by law to exercise such functions and powers, notwithstanding that such person or such body of persons is not a judge or a court appointed or established as such under this Constitution.

Standards to be applied in the administration of justice

O'Donnell J

Standard of justice under Article 37 cannot be lower or less demanding than the justice administered in courts under Article 34.

“...the function being performed and the power being exercised must comply with the fundamental components of independence, impartiality, dispassionate application of the law, openness, and, above all, fairness, which are understood to be the essence of the administration of justice.”

Where Zalewski has already had an impact

- Competition (Amendment) Act
- Communications Regulation (Enforcement) Bill
- Online Safety and Media Regulation Bill
- Regulation of Lobbying (Amendment) Bill
- Central Bank (Individual Accountability Framework) Bill
- Regulation of Providers of Building Works and Building Control (Amendment) Bill
- Personal Injuries Assessment Board (Amendment) Bill

Questions?



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