

# **2** State of the Irish courts and judiciary in Ireland

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This Chapter provides an overview of the state of the Irish courts and judiciary as well as its legislative and organisational reform environment, diving deeper into the Irish justice systems' case and workload trends and COVID-19 pandemic impact. Further, this Chapter provides a description of the study's methodology and limitations, as well as includes examples of relevant workload studies in OECD countries. It also outlines the structure of the Report.

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## 2.1. Introduction

Courts and other justice system agencies around the world continue to strive for increasing efficiency and effectiveness within and across their organisations to ensure access to justice for all. A well-functioning justice system is indispensable to democratic societies and to the proper functioning of markets. Judicial efficiency is closely associated with accessibility to judicial services and the certainty of judicial decisions, raising people's trust (OECD, 2018<sup>[1]</sup>). The judicial system is complex and its effectiveness comprises many facets, including efficiency, fairness, and the quality of decisions. Trial length is the indicator of judicial efficiency that tends to be most closely related to economic activity since it ensures contract enforcement, which is the basis of market transactions (Palumbo and al., 2013<sup>[2]</sup>). There are several other indicators that link efficient justice systems with better financial and economic outcomes. Secure property rights are associated with greater use of external finance; the reliability of the legal system for dispute resolution is found to increase firms' use of external financing to fund growth; and creditor rights are found to affect the terms of bank loans, such as bank lending spreads as well as loan maturities (Gin and Amaral-García, 2019<sup>[3]</sup>). The judicial system is also found to be significantly important for Foreign Direct Investment inflows.

With all these factors in sight, this report aims to identify sound avenues to enhance capacities and efficiency of Irish courts through a variety of staffing, case, court and data management tools.

Tools to estimate staffing needs are important to help courts update their judicial maps, manage workloads and improve their responsiveness to user needs and geographical locations. When caseloads rise and budgets are limited, courts usually need to provide justifications to validate their requests for increases in judicial or other staffing positions to match increasing work demands. Hence, a clear measure of workload is central, as in any other government agency, to help determine the number of judges and staff needed to resolve court cases in a timely manner, without compromising fairness and quality judgements, and to allocate resources accordingly.

At the same time, sound court performance, including effective staffing also requires that processes and operations are designed with efficiency, cost effectiveness and user-friendliness in mind. Studies have found that while overall court performance can be affected by the total amount of resources, the efficient allocation of judicial resources is even more important (Palumbo and al., 2013<sup>[2]</sup>). Countries with similar budget allocated to courts as a percentage of GDP can have very different average trial lengths. One reason is that unnecessarily complex processes require more judicial and other staff time than streamlined and well-managed operations.

Furthermore, the demands and pressures of global economic trends, demographic changes and societal expectations for different government services have also translated into demands for public services, including justice, that are more transparent, accessible and efficient to address people's and citizens' needs. Indeed, similar to other public sectors, judiciaries across the globe have experienced increasing pressure to adjust in recent years – the COVID-19 pandemic temporarily halted some of these trends, while putting spotlights on areas lagging behind (OECD, 2021<sup>[4]</sup>). Moreover, the COVID-19 pandemic pushed the need for enhanced court IT solutions to the forefront. Similar to the trends in other OECD member and partner countries (OECD, 2021<sup>[5]</sup>), in Ireland, the need to optimise operations and ensure the justice system can respond adequately to justice needs has been exacerbated by the COVID-19 pandemic, where access to justice had to be provided despite months of lockdown, mobility limitations, social distancing requirements and increasing sick leave reports. Virtual hearing options, which had been used sporadically until the pandemic started, were swiftly put in place for the courts to begin hearing the most pressing cases. While the courts had to close for the first few months of the pandemic, except for emergency matters, the judiciary and Court Service worked to develop and implement virtual hearing processes and equipment where possible to significantly increase the ability to hold such hearings.

Nonetheless, similar to many other jurisdictions, in Ireland, pending cases and criminal trials were backlogged and the filing of many new cases was halted. This led to a surge of cases in Autumn of 2021 (Courts Service, 2021<sup>[6]</sup>).

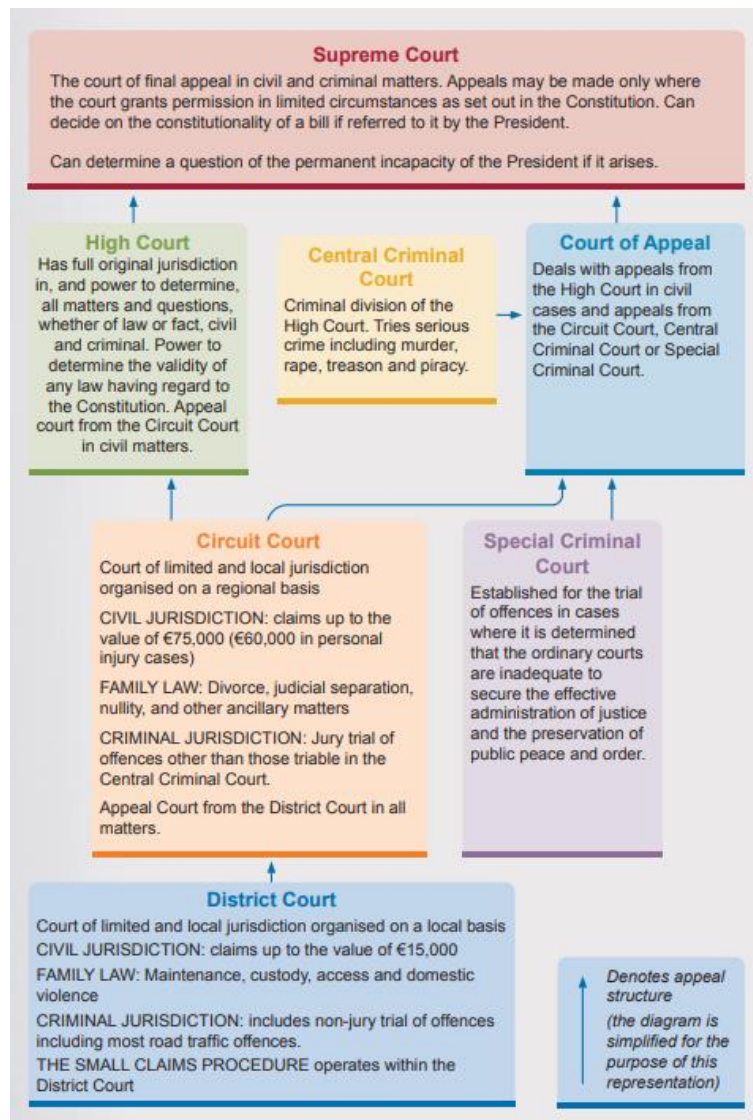
In partial response to the COVID-19 pandemic and to create short-term and long-term solutions, the newly formed Government of Ireland agreed on the *Programme for Government: Our Shared Future*. This programme outlines a broad vision and ambitious five-year agenda to better equip the government to prepare for and address the many challenges Ireland and the world face. The threat of a changing climate, increasing resource scarcity and economic challenges, more rapid societal changes, and the urgent need to prepare for an effective and just post-COVID-19 recovery shaped this agenda. Every branch of government, agency and government institution was challenged to adjust and achieve important common goals, including court reform. Recognising that “an independent, impartial, and efficient judiciary and courts system is critical to our democracy”, and recognising the need to modernise the court system to better meet the challenges of a changing world and the needs of court users, several reform areas were outlined, such as more efficient management of cases, greater timeliness and less costly proceedings. A particular focus has been placed on reforming Ireland’s family court system. To ensure that the courts are provided with the needed human resources to respond to these challenges, the Government of Ireland committed to “Establish a working group to consider the number of and type of judges required to ensure the efficient administration of justice over the next five years” (Government of Ireland, 2020<sup>[7]</sup>).

To support this working group, the Department of Justice approached the OECD to assess the state of its judicial workforce within the context of good practices successfully applied in comparable countries, and to share future trends and needs in this sector. In particular, the OECD was invited to carry out an analysis to support Ireland in ensuring that its judiciary is appropriate in size and composition so that justice services can be provided in a timely and accessible manner, supported by an effective and efficient management and administrative structure.

## 2.2. The Irish court system

Considering Ireland's population size of about 5 million inhabitants (Eurostat, 2020<sup>[8]</sup>), its court system appears relatively complex (see Figure 2.1), with five court levels and a range of specialised courts operating in approximately 103 court venues across the country (Courts Service, 2021<sup>[9]</sup>). While this court structure is not unusual, considering that currently 175 judges<sup>1</sup> (including nine judges serving on the Supreme Court, which is not part of this study<sup>2</sup>) serve a population of which almost 64% live in urban centres, it appears that judicial resources could be easily stretched. Coverage of the 25 counties outside of Dublin, especially those further away from the few urban centres, may present a special challenge. Striking the proper balance between access to justice and efficiency can also be a particular challenge across the provinces. In this context, ensuring that judicial resources are effectively assigned across all locations requires considerable flexibility and well-informed and supported judicial management structures.

Figure 2.1. The Irish court system



Source: (Courts Service, 2021<sup>[10]</sup>), *Courts Service Annual report, 2020*, p. 5, [https://www.courts.ie/acc/alfresco/b47652ff-7a00-4d1f-b36d-73857505f860/Courts\\_Service\\_Annual\\_Report\\_2020.pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/b47652ff-7a00-4d1f-b36d-73857505f860/Courts_Service_Annual_Report_2020.pdf/pdf#view=fitH).

Over the years, the judiciary in Ireland has shown great agility in covering resource demands across the country, especially in the two lower court levels, the Circuit Courts and District Courts, that are the primary courts serving provincial areas. Several judges on both the District Court and Circuit Court are “movable” or “unassigned” judges, i.e. designated to regularly travel to different provincial locations to handle cases, in addition to locally assigned judges. Other judges, mostly located in Dublin, also tend to be amenable to sit in different venues or cover for other judges when needed, where their workload allows.

The administration and management of the Irish courts is the responsibility of the Courts Service, an independent agency established in 1998 and governed by a board mostly consisting of judges. The Department of Justice is the “parent” ministry. The Courts Service has a broad range of responsibilities beyond supporting the work of judges (Box 2.1). In 2019, it had a staff of about 1 100 (Courts Service, 2020, p. 9<sup>[11]</sup>). This figure includes staff assigned to corporate services of the Courts Service such as HR, the financial unit, etc. which do not directly support the judiciary in court operations.

### Box 2.1. Courts Service Ireland: Mission, vision and functions

The Courts Service's mission statement is "to support the judiciary and provide excellent services to all users of the courts thereby facilitating access to justice". Its vision is "to develop a world class organisation that has as its primary objective, meeting the needs of court users", and its values are service, integrity and respect (Courts Service, 2022<sup>[12]</sup>). It publishes a three-year corporate strategic plan, as well as annual progress reports on how it is meeting these goals.

The Courts Service was created in 1998 and has four functions: 1) manage the courts; 2) support judges; 3) provide information to the public on the court system; and 4) provide users with court buildings and facilities. This includes priorities such as carrying out a ten-year modernisation programme, designing processes and systems that make courts more effective for users, and upskilling staff to support legislative compliance. To carry out its responsibilities, the Court Service works collaboratively with other partners such as the Department of Justice (Courts Service, 2021<sup>[13]</sup>).

Source: (Courts Service, 2022<sup>[12]</sup>), *About us (webpage)*, <https://www.courts.ie/about-us>; (Courts Service, 2021<sup>[13]</sup>), *Court Service Corporate Strategic Plan 2021 - 2023: Modernisation Programme for the Courts Service*, [https://www.justice.ie/en/JELR/Pages/Courts\\_Service\\_Corporate\\_Strategic\\_Plan\\_2021\\_-\\_2023](https://www.justice.ie/en/JELR/Pages/Courts_Service_Corporate_Strategic_Plan_2021_-_2023); (Courts Service, 2021<sup>[10]</sup>), *Annual Report 2020*, [https://www.courts.ie/acc/alfresco/b47652ff-7a00-4d1f-b36d-73857505f860/Courts\\_Service\\_Annual\\_Report\\_2020.pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/b47652ff-7a00-4d1f-b36d-73857505f860/Courts_Service_Annual_Report_2020.pdf/pdf#view=fitH).

Overall, investments in the modernisation of all justice system operations, especially of the courts, have been relatively slow and uneven for years due to 12 years of austerity measures and the subsequent challenges of the COVID-19 pandemic, which has impacted the operational environment of the courts. These challenges have been continuously highlighted by both Irish sources (Government of Ireland, 2020<sup>[14]</sup>) and international organisations, including the Council of Europe and the World Bank (World Bank, 2019<sup>[15]</sup>) (OECD, 2012<sup>[16]</sup>) (CEPEJ, 2020<sup>[17]</sup>). In particular, and as will be discussed throughout the report, there is scope to enhance approaches to court management and court information technology (IT) systems, including the modernisation of case management systems and greater data collection to inform case and court management. The introduction of IT solutions appears particularly difficult in some of the provinces where Internet connectivity is limited, even though the situation is evolving and has greatly improved lately<sup>3</sup>, and court infrastructure (including buildings) are in need of significant upgrading (and repairs). In the same vein, alternative options to resolve disputes, especially those that build upon IT-supported alternatives that could provide cost-effective access to justice across the entire nation, are still to be fully developed.

### 2.3. Legislative reform environment

Over the years there have been a range of substantial justice reform plans and bills, although their implementation seems to be uneven, which might have affected the creation of efficient procedural processes across the justice system and in cross-agency operations. For example, it has been reported that most of the planned or implemented reforms related to court operations are yet to integrate full legislative impact assessments, in particular impacts on the courts, including preparation requirements, and needed changes in operations, staff and other resources. Furthermore, when legislative (and other) changes are implemented in the courts there appears scope to develop accompanying assessments, including post-implementation assessments to capture lessons learned, to inform further change and reform plans, whether legislative or organisational in nature. For instance, it might be relevant to review the recently created court level, the Court of Appeal, organisationally located between the High Court and the Supreme Court. As this court was created to address high numbers and case backlog in appeal cases

in the Supreme Court, and absorbed the jurisdiction of the former Court of Criminal Appeal, there could be scope to assess its impact, including on the lower courts, and user satisfaction in order to continue the development of an efficient and effective appeals process.

More recently, Ireland took steps to develop a more comprehensive reform approach, not unlike the UK reforms spearheaded by Lord Woolf in 1996 (Bramley and Gouge, 1999<sup>[18]</sup>) that aimed at comprehensive legal changes to create more efficient procedures and effective case management solutions. The 2019 Review of the Administration of Civil Justice, or “Kelly Report”, appears to be created with the same objectives in mind. The Government’s current legal reform agenda reflects many of the recommendations included in the 2019 report, and some related changes to the legislation have passed or are pending (Government of Ireland, 2020<sup>[19]</sup>).

The Irish Government reported that similar efforts to inform a more holistic reform agenda for criminal justice system procedures and operations are underway. The reform recommendations included in the Kelly Report and in the subsequent Civil Justice Efficiency and Reform Measures adopted as a result were based on a wide-reaching and cost-effective public consultation process. Similar efforts could accompany other reform designs to capture insights from those potentially impacted by the measures, such as judiciary, legal professionals, court users, legal aid organisations and court administration staff. It would also be beneficial to support these consultations with solid data and information about potential resource implications beyond estimates.

The COVID-19 pandemic, as in many countries, accelerated legislative developments concerning the use of digital tools in the justice system. In August 2020, the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 was approved to allow some remote hearings to occur by default, and provided judges with discretion to determine when a hearing should be conducted in person to preserve litigants’ rights and with safeguards in place to ensure no unauthorised recordings would be made. The Act formally authorised courts to accept the electronic filing of proceedings, including the electronic authentication of documents, and provides a legal basis for the video appearance of persons in custody for criminal cases.

Most of these comprehensive reform efforts are too recent or awaiting implementation to be able to assess their impact on court operations. As a result, the Irish judicial system continues to be seen as costly (CEPEJ, 2020<sup>[20]</sup>; World Bank, 2020<sup>[21]</sup>), and many cases still take a long time to be decided by the courts, a situation only compounded by the COVID-19 pandemic.

## 2.4. Organisational reform environment

In 2019, the Courts Service Board approved the *Modernisation Programme for the Courts Service* (Courts Service, 2021<sup>[13]</sup>) as a response to a 2019 *Courts Service Organisational Capability Review* that pointed to significant gaps in court management and IT solutions (Courts Service, 2019<sup>[22]</sup>). Since the establishment of the ten-year base funding in 2020, efforts have been made to put in place the structure to support and implement the programme. However, concrete modernisation planning and judicial engagement are in the early stages.

So far, the programme has a strong focus on introducing IT solutions to modernise the courts, for example a new information and communication technology (ICT) strategy and a data strategy are being developed. It also appears to primarily focus on Court Service priorities and the needs of external users (i.e. the general public and lay litigants). In line with the OECD people-centred justice modernisation agenda, this focus is important, especially as the number of lay litigants has been increasing significantly for some time – as in many other countries. At the same time, there is scope to further assess and address the needs of other users of the judicial system (such as lawyers, police, prosecutors) to ensure that the modernisation programme responds to their needs and fully serves them. A Legal Practitioners Engagement Group has been established to work with the Courts Service on the modernisation programme, which can be a

promising initiative to engage these groups. A Judicial Engagement Group has also been set up to work through how the Courts Service would engage with judges for their input into modernisation plans. Building on this channel to gather the views of judges, there is scope and an opportunity to further strengthen consultation with judges of the different court levels.

In addition, and as further studied in Chapters 4 and 6, interviews as part of this report highlighted that as part of efforts to implement the modernisation programme there is scope to deepen understanding among various stakeholders of the full range of modern court management approaches applied in well-performing courts across OECD countries, how they can impact the efficiency of court operations, and the specific techniques that can be applied to better manage court operations and case processes, etc. This could help create effective IT solutions and an urgently needed solid case management system.

## 2.5. Case and workload trends

Annual Courts Service reports indicate rising numbers of incoming cases for a range of case types for most court levels (see Table 2.1). In four years, the number of cases on hand at the end of each year has increased along with waiting times, indicating an increase in backlog across all court levels and most case types. However, solid case data to better understand these trends and their impact on court operations and judges are lacking. Published since 2000, the annual report includes data on incoming and resolved matters, as well as more specific numbers for commercial and chancery motions and other decision points. However, how these data are collected and presented does not always reflect the in-depth work of the courts. For example, the report does not include data on how cases progress throughout all levels of courts (and the system as a whole), the scope and volume of incoming work required for each case, and how individual courts are performing. While the data collected by Courts Service appear to respond to data needs from a range of agencies, they do not fully depict the work of the courts and judges. These data limitations related to many of the core court functions have been pointed out in other studies (Government of Ireland, 2020<sup>[14]</sup>). Further details are addressed in the sections below and in Chapters 4 and 6.

**Table 2.1. Ireland court business trends 2016 to 2020, by court level – Civil business overview**

Civil business overview					
		District Court	Circuit Court	High Court	Court of Appeal
2016	Incoming	133 724	53 287	43 132	594
	Resolved	105 177	37 723	35 964	591
2017	Incoming	133 823	53 795	39 659	611
	Resolved	121 075	36 612	27 398	470
2018	Incoming	137 493	49 253	39 219	499
	Resolved	106 698	39 606	30 982	475
2019	Incoming	144 485	50 723	36 701	685
	Resolved	111 158	35 590	28 117	491
2020	Incoming	93 719	38 535	29 811	733
	Resolved	67 784	17 121	12 784	476

Source: (Courts Service, 2022<sup>[23]</sup>), *Courts Service Annual Reports, 2020 – 2017*, <https://www.courts.ie/annual-report>

**Table 2.2. Ireland court business trends 2016 to 2020, by court level – Criminal business overview**

Criminal business overview						
		District Court	Circuit Court	Special Criminal Court	Central Criminal Court (High Court)	Court of Appeal
2016	Incoming	382 325	28 387	60	1 946	1 099
	Resolved	284 678	25 344	67	734	1 109
2017	Incoming	391 207	32 787	54	1 761	1 281
	Resolved	290 567	47 716	50	2 098	1 078
2018	Incoming	391 296	33 096	51	1 202	1 266
	Resolved	296 971	60 556	74	1 941	1 472
2019	Incoming	406 480	34 616	70	1 982	1 440
	Resolved	301 506	68 069	90	1 125	1 003
2020	Incoming	382 455	29 074	136	2 911	1 405
	Resolved	194 796	27 788	31	1 433	1 719

Source: (Courts Service, 2022<sup>[23]</sup>), *Courts Service Annual Reports, 2020 – 2017*, <https://www.courts.ie/annual-report>

As in other countries, the actual workload of the courts, and especially of judges, is comprised of a range of activities within and outside the courtroom, some of which may not be apparent to the public. For example, judges and relevant court staff engage with litigants/defendants and their lawyers before any hearing to ensure all needed submissions are ready, information has been exchanged as required and schedules can be adhered to. They also prepare for hearings and develop judgements. Judges also have other responsibilities outside of case work, including serving on government committees to inform court, legal and broader justice sector reforms. They are often involved in external work that supports the continued development of the legal profession and a range of public outreach activities, such as conferences and teaching.

When the Government's COVID-19 related measures struck, the Irish courts, similar to courts in many other countries, had to halt most operations for some time, and certain case types could not be heard for even longer. Not only were pending cases postponed further, but potential litigants were also delayed in filing cases. As a result, the Irish judiciary had to prepare for a significant deluge of cases to be heard at the start of the new court year in October 2021.

As such, competing claims for judicial time, court backlog and an increasing number of cases to hear present significant challenges for judicial (and other staff) resources in the short and long term.

The Courts Service annual report outlined some of the current short-term challenges the courts face (Courts Service, 2021<sup>[10]</sup>):

- High volumes of low-complexity cases and a lack of out-of-court resolutions take up precious court time.
- The requirement for physical attendance for most court cases and services slows down proceedings.
- The lack of accessible information frustrates users and delays case progress.
- The lack of active case progression management means that proceedings can drag on for extended periods.



- The complex and divergent stakeholder landscape makes delivering change across the court system a major challenge.

Court Service and external stakeholders concluded that:

- User experience is poor due to costly, complex, and often delayed services, cases and processes.
- Current ICT application architecture is not fit for purpose, putting day-to-day court business at risk, limiting access to data, and reducing governance and management effectiveness.
- Operations are dated, complex and inefficient.

At the same time, the report paid limited attention to resource requirements in the justice system, which are also core to the effective functioning of the system, including judicial and support staff resources and capacities. While the number of judges at the Court of Appeal was increased by 5 in 2019, and the number of judges at the High Court level was increased from 40 to 45 in October 2021<sup>4</sup>, the number of available judicial positions has not changed for the Circuit Courts or District Courts in more than eight years (Courts Service, 2021<sub>[10]</sub>).

## 2.6. The impact of the COVID-19 pandemic on Irish courts

When the COVID-19 pandemic struck, it caught most justice institutions around the world off-guard. Courts in Ireland, like other government and most private sector operations, were significantly slowed down in the initial weeks of the outbreak. However, Irish courts were able to adapt quickly to the pandemic. The Courts Service identified alternative hearing room options, provided suitable IT solutions for online hearings for appropriate cases and, together with judges and other essential partners, created workable remote hearing solutions. At the same time, the COVID-19 crisis prompted several innovations and lessons learnt that provide valuable insights into what is possible in Ireland. The introduction of remote hearings, electronic filings, online licence applications and process simplification show significant potential to enhance efficiency and upgrade the use of technology across the justice sector, if stabilised and maintained. The business of the courts was and continues to be heavily impacted by the crisis, which highlights the importance of learning lessons to build back a better and more accessible justice system. This report considers these lessons from Ireland and around the world throughout.

The many restrictions governments placed upon citizens to manage the health outcomes of the pandemic prompted the CEPEJ to issue a declaration on the lessons learned and challenges faced by the judiciaries across the EU, reminding member states that any measures put in place should remain in line with the standards of the Council of Europe (see Box 2.2).

### Box 2.2. CEPEJ Declaration: Lessons Learnt and Challenges Faced by the Judiciary During and After the COVID-19 Pandemic

The main lessons and issues addressed in the CEPEJ declaration focus on the following:

- Any measures put in place in courts and other justice sector agencies that reduce access to the courts to protect the health of all have to be proportionate. The public service of justice must be maintained as much as possible, including providing access to justice by alternative means.
- Greater consultation and co-ordination with all justice professionals are important to ensure a good level of access to justice. All measures have to be explained clearly to all concerned, regularly evaluated and adapted as circumstances change.
- Priority should be given to cases which concern vulnerable groups.
- Well-functioning case management systems and statistical data collection concerning the functioning of the courts are essential. Court presidents, judges and authorities responsible for court management have to monitor and manage cases. This includes triage of cases and possible prioritisation and redistribution of cases based on objective and fair criteria.
- The high numbers of adjournments of hearings and significantly increased backlogs require human resources and budgetary support to help courts put in place a plan to absorb delays. Allowing for a better and flexible allocation of resources as close to local reality as possible during and after the crisis is instrumental.
- There is significant need to not just expand IT solutions but to ensure that these protect fundamental rights and principles of a fair trial. Their impact on justice delivery should be evaluated regularly, and remedial measures taken when necessary.
- Training is fundamental for the effective management of a health crisis in the future. Judicial training should adapt to the emerging needs, including the use of IT.
- A transformation strategy for judiciaries should be developed to capitalise on the benefits of newly implemented solutions.

Source: (CEPEJ, 2020<sup>[24]</sup>), *CEPEJ Declaration: Lessons Learnt and Challenges Faced by the Judiciary During and After the COVID-19 Pandemic*, <https://rm.coe.int/declaration-en/16809ea1e2>.

The Irish courts handled considerably less business than usual in 2020. The 2020 Annual Report issued by the Courts Service in July 2021 showed that the overall numbers of new civil matters entered decreased by almost 30% compared to 2019, with a similar drop in civil matters resolved, varying by case type. New criminal matters overall decreased by only 6.5%. Looking at these numbers more closely, it becomes clear that the high numbers of simple traffic and other less complex matters drive this result. Not surprisingly, the number of criminal cases resolved dropped as jury trials were not held for several months (Courts Service, 2021<sup>[10]</sup>).

In business areas where the courts were able to hear cases remotely quickly, the impact was less stark, with even some positive trends. For example, at the High Court, incoming judicial review cases decreased by just 4%, and there was a 6.5% increase in such matters being resolved. The High Court's judicial review list had continued remotely throughout most of the pandemic. The bankruptcy list started to be heard remotely in 2021, and early indications are that applications returned to normal levels in 2021 (Courts Service, 2021<sup>[10]</sup>).

Jury trials had to be halted for a long time, and long trials could not be scheduled as the number of individuals that had to be accommodated was significantly higher than court buildings and other locations could manage under social distancing rules.

Most of the more time-consuming cases at all court levels could not be heard, and the current court lists indicate a significant backlog of cases already submitted and waiting to be heard in many case categories. It remains to be seen if all of these will continue to move to full hearings as expected. The longer waiting times may prompt some to settle or enter a plea who may not have done so before. It is also unclear if the Courts Service has taken steps to contact parties in these cases to identify if the case is likely to continue as entered.

In addition, it remains to be seen if and when the expected deluge of cases not filed due to government moratoria or held back by litigants will come to the courts. Early indications from some US courts seem to show a slower re-start, with many parties still not ready to experience a day in court. This would mirror experiences in other government and private sectors, with many people remaining cautious about entering the public domain in all its facets again.

Incoming court business in 2021 picked up again, coming close to pre-pandemic rates in some areas, but not in others, especially not more serious and complex cases. Backlogs have grown as the courts' abilities to respond were still challenged by social distancing restrictions, as well as higher sick rates and quarantine requirements among judges, registrars, litigants and others essential for hearings.

The development and implementation of these responses has had a significant impact on judicial and court staff resources, although related data have not been collected. Like in other countries, the measures put in place enabled Irish courts to continue some but not all court business, and case backlogs have especially grown in jury trials and more complex cases. The Chief Justice and Court Presidents have communicated to the government the urgent need for more positions. The government has responded with the creation of a Judicial Resource Working Group and the request for this study, as well as the approval of five additional judicial positions for the High Court. In Autumn 2021, joint submissions of all Court Presidents further detailed the significant delay situations and need for a more comprehensive approach to judicial staffing. In 2022, decisions about alternative options to bring in temporary judges and to adjust permanent judicial staffing levels more strategically across all court levels remain to be addressed.

The Courts Service provided detailed data on the volume of virtual hearings overall; however, data to track workload and backlog developments during the pandemic are limited. Court Presidents had monthly updates on the number of cases listed awaiting hearings, and could see that hearing schedules got pushed back for not just months but years in several case categories. They were also informed about increasing numbers of defendants in pre-trial detention awaiting trials. Additional detailed data and trend projections to inform and support alternative response options and emergency staff allocations were not available, but would be a useful moving forward.

At the end of January 2022, the Chief Justice of Ireland, jointly with all Court Presidents, announced the intention to resume in-person sessions in phases. While COVID-19 continued to render unprecedented numbers of judges, court staff, other justice sector officials, parties and their representatives unable to attend in person, the resumption of in-person cases was slated to be arranged as resources permitted on a location-by-location basis across the country (Courts Service, 2022<sup>[25]</sup>). In addition, the judiciary issued the request to legal practitioners to assist the court in its effort to provide more timely justice by:

- Agreeing in advance to as many issues and as much evidence as possible to shorten hearings and avoid witnesses attending court unnecessarily.
- Engaging in consultations related to upcoming proceedings before a hearing date is assigned to a case using virtual or audio solutions, or locations where social distancing could be better accommodated than at the courts.
- Aiming for at least hybrid hearings when witnesses should be heard.

The Courts Service established a team of frontline staff from across the courts to agree on and continue to review the measures to be applied in every courtroom as health restrictions were eased and increased numbers of cases were heard in person. Other premises, such as hotels and a club, were used to

accommodate some hearings. Of the court buildings outside of Dublin, 12 were deemed suitable to hold jury trials while observing social distancing rules (Keena, 2020<sup>[26]</sup>). Court Presidents communicated regularly, frequently involving Courts Service management.

## 2.7. Study methodology highlights

This study builds on a decade of OECD research concerning the benefits of relying on evidence-based approaches to establish efficient, people-centred and accessible justice systems (OECD, 2021<sup>[4]</sup>). The use of data to measure existing justice needs, map the available justice services and match them can result in an optimal allocation of resources and targeted investments that improve access to justice for the population. In this context, the weighted workload methodology relies on data to ascertain the judicial workload needs and establish judge numbers required accordingly and has been used successfully around the world to calculate judicial staffing needs. This study, conducted in Ireland from mid-June 2021 to February 2022, represents the first application of the weighted workload methodology in Irish courts (and conducted fully online due to the COVID-19 related restrictions).

In addition to the weighted workload method, the study has relied on the standard OECD research methods, including mission interviews, desk research, country peer review and policy analysis against good practice principles and international standards to provide additional recommendations concerning cross-cutting efficiency options, case, court and data management techniques and ways forward on digital transformation and simplification in the justice system. At the request of the Irish authorities, the scope of the study was largely focused on staffing needs and the functioning of the courts and the judiciary more broadly, given that the civil justice system has recently undergone a full review resulting in the Kelly report, with an extensive range of valuable recommendations concerning efficiency and accessibility, and due to the fact that an additional review of the criminal justice system is ongoing.

The methodology applied to the judicial workload study followed the well-tested approaches used in the United States (Box 2.3) and other countries (Box 2.4) and was tailored to the current situation of the Irish courts. The model generally calculates judicial time and position needs based on each court's total annual workload, and requires three core data elements:

1. Case filings, or the number of new cases of each type opened each year.
2. Case weights, which represent the average amount of judge time required to handle cases of each type over the life of the case.
3. The "judge year value", or the average amount of time a judge has available for case-related work in one year.

To calculate case weights, the average time needed for all case action types per case must be collected and calculated from the time study data. Second, the total annual case-related workload is calculated by multiplying the annual filings for each case type by the corresponding case weight, then summing the workload across all case types. The time judges need to handle all non-case related work (e.g. other administrative tasks, co-ordination meetings, community outreach, work-related travel time) is then added. Finally, each court's workload is then divided by the judge year value to determine the total number of full-time equivalent judicial positions needed to handle the entire workload.

This study represents the first application of the weighted workload methodology in Irish courts. To adjust this model to the Irish court system, significant preparation steps had to be completed before detailed data collection instruments could be designed. It was decided that all court levels would participate except the Supreme Court, as its jurisdiction and role differ from other courts. With respect to the specialised courts, judges suggested to exclude the Drug Treatment Court as it has a unique focus, limited caseload and is adequately staffed. A Judicial Liaison Group made up of one judge from each of the participating court levels and two representatives from the Courts Service was formed to ensure that the study design,

implementation, analysis and resulting recommendations were fully reflective of court operations and their environment. The Group provided valuable support by advising the OECD team on existing case-types and their weight, distributing judicial time study sheets and training judges in their court levels to complete them, vetting the results through the Delphi method and providing comments to the core recommendations of this report (see Annex A).

### **Box 2.3. United States' experience with workload studies**

Weighted workload studies were first conducted and implemented in the United States over 30 years ago, both at the state and federal level. Today they are the standard methodology used to assess position requirements for judges and court staff, as well as for prosecutors and public defenders at the federal level and in at least 30 US states (National Center for State Courts, 2022<sup>[27]</sup>). Workload studies can now also be used to predict the resource implications of proposed legislation and internal efficiency innovations.

The methodology applied in early workload studies included mostly time sheet data collection in combination with a Delphi estimation and vetting process. These studies can only measure current workloads, however, so any established weights require adjustments over the years as legislation, especially procedural laws, change, and as internal efficiency processes, including availability of support staff and automation, are introduced. As courts do not operate in a vacuum, changes in how private attorneys, prosecutors and public defenders work also impact the ability of courts to process cases. Other external changes, such as an increase in the police force or creation of special police and prosecution units, can also significantly impact the number and complexity of criminal cases coming to the courts.

As a result, US courts learned that established case weights must be adjusted over time. Today the Federal Courts and the courts in several states, such as Florida, California and Michigan, conduct studies to update their case weights every five to ten years (Florida Courts, 2016<sup>[28]</sup>; Judicial Council of California, 2003<sup>[29]</sup>). Over time, as case weights were adjusted by US courts, the methodologies applied were further refined. Based on the courts' prior experiences conducting these studies, timesheets were adapted and overall improvements were made to the data collection processes used to inform court management decisions. This reduced the need for more extensive Delphi estimations. As automated case management systems became more sophisticated, data could be readily developed to feed into workload studies and reduce the number of elements collected via timesheets. This included gathering more information about the caseload, past and current, the age of pending cases, etc. through more detailed case categories, as well as better data processing. For courts supported by good court management systems, it is now almost standard to collect data on the number of and reasons for postponements, length of trials and other court events, as well as information about factors that impact the time needed, such as translation, multiple witnesses and defendants, self-representing litigants, and child witnesses. More recently, as more processes are supported by technology, studies have been exploring using time logs of video-supported court events other than trials, such as arrangement, bail and sentencing hearings, as well as computer log-in times to capture the length of time needed to develop court documents, including judgements.

These developments have significantly reduced the need for judges – and others – to fill out timesheets, and limited the need to fill data gaps via Delphi estimates. However, what remains important is the need for a representative and experienced group of judges to inform data collection and vet the results. It would be useful to ensure some interpretation and reflect the whole story, i.e. all the elements and details that comprise a judge's work.

Sources: (National Center for State Courts, 2022<sup>[27]</sup>), (Florida Courts, 2016<sup>[28]</sup>; Judicial Council of California, 2003<sup>[29]</sup>)

Workload assessment is a resource measurement methodology that weights cases to capture the varying complexity and corresponding need for individual attention. Its basic premise is that all cases are not equal. By weighting cases, a more accurate assessment can be made of the amount of time judges require, in and out of the courtroom, to handle their cases. In addition, workload studies collect information about the time judges are spending on non-case related work, such as administrative work, community outreach and committee assignments (National Center for State Courts, 2008<sup>[30]</sup>). Workload studies have the added advantage of providing standardised assessments of time needed among regions that vary in geography, population and caseload composition, if sufficient data are available. Box 2.4 provides further details concerning how weighted workload studies have been applied in Canada and the Netherlands.

### **Box 2.4. Workload studies in Canada and the Netherlands**

#### **Canada**

In Canada, several similar workload studies have been undertaken (National Center for State Courts, 2008<sup>[30]</sup>). Judicial workload assessment studies were also part of a comprehensive study about how criminal matters are handled in Canada's criminal courts. As a result, new workload and case indicators have been introduced to address court performance and backlogs, including the lack of judicial resources. The indicators look at the number of open cases and how this interacts with the constitutional requirement that cases be tried in a reasonable time. Completion rates are also used to develop an understanding of case processing time from first appearance to sentencing. This is compared with data on overall court work from the Integrated Criminal Court Survey Workload Time Series, which helps gain an understanding of how much work courts must do to complete the same number of decisions as the previous year (i.e. number of court appearances, active days per decision), as well as the backlog index (Statistics Canada, 2020<sup>[31]</sup>).

#### **The Netherlands**

A self-reporting approach was used in the Netherlands, where judges self-reported their work time by work sampling and time estimates. With work sampling, employees reported their activities at random time points to determine the amount of time spent on various activities. This was trialed in 2017 using a smartphone app, and an external consultancy was hired to manage the data over a week-long period per participant. Each participant was assigned to a designated research week that matched their average schedule and received training documents on how to use the app and log activities throughout that time. At the end of the trial, time was allocated to case and non-case related activities, and case types were assigned an aggregated weight to determine their proportion of FTE. This was supplemented by time estimates, where expert focus groups reviewed the work-sampling statistics and compared them with their own experiences to work backwards from the aggregated weight to identify six to eight case types. Between the two methods, an average could be used to reflect national and local court data (CEPEJ, 2020, pp. 31-33<sup>[17]</sup>).<sup>5</sup>

Over the course of several months, the OECD, in communication with all members of the workload study liaison group and other judges from all court levels, addressed a range of data availability and reliability matters, and studied existing processes and case management techniques, staffing and operational challenges to inform this study and the resulting recommendations. Further interviews with relevant stakeholders, including registrars, representatives of the DPP, the legal aid community and barristers, provided further qualitative information and insights into the staffing and operational situation at all court levels.

### **2.7.1. Methodology caveats**

The study methodology faced some limitations in the Irish context. Firstly, court schedules and the very tight timeline for completing the study meant that the time study data collection was limited to the shortest time period possible that would still reflect a representative workload. Typically, workload studies are conducted over four to six weeks; however, for this study a three-week timeframe was used. While this is feasible, it is only reliable if the study period is representative of the annual workload, which the courts confirmed it was.

A second caveat relates to the available data concerning cases filed, which is one of the key datasets required to calculate annual workload. A lack of common, clear data definitions and data collection standards across the courts, Courts Service and the DPP presented a challenge to ascertain the accurate number of cases filed. While the data gathering process typically takes four to eight weeks to complete in other studies, the lack of an integrated case management system for each court level presented significant challenges and extended this timeline to several months.

An additional challenge was related to the current approach to data collection by the Courts Service, and particularly that much of the collected data do not reflect or match the actual workload of the courts and judges. While the OECD detected some of these challenges at the outset of the study and inquired if other data collection options, such as sample case file reviews, could be possible, it was not deemed possible at the time by the Courts Service in view of their lack of resources.

Another aspect to note is that cases settled out-of-court following their filing (which is a usual practice) are not registered, and therefore are included in the total numbers of cases filed. Other countries have started collecting data regarding settlements to achieve a more accurate number of the cases filed that will need to be handled by judges. The limited detail in some datasets resulted in a greater need to rely on Delphi-style estimations, which were at the same time more challenging for judges to carry out.

Finally, the COVID-19 pandemic context may have affected the results of the study. Some residue case filings belated due to COVID-19 and handling the pandemic's impact may have taken place affecting the final result. Further details on the methodology, including its limitations, are provided in Annex A.

In order to conduct further workload studies in the future with closer accuracy, Ireland would benefit from developing more relevant and reliable data collection mechanisms to support the ongoing efforts to develop new case management applications, as outlined in Chapter 6.

## **2.8. Report structure**

This report firstly brings together the cross-cutting key recommendations for the improvement of performance of the Irish judicial staffing and court performance from throughout the report in an Assessment and Recommendations section. It then offers an introductory overview of the Irish court system, the legislative reform environment and caseload trends, including the impacts from the COVID-19 pandemic, and a section outlining the methodology (Chapter 2); it then illustrates the calculations and results of the weighted workload study for each court level (Chapter 3). Next, the report analyses ways to modernise and improve performance of procedures based on the specificities of each court level (Chapter 4), and into drivers to improve strategic management of judicial human resources (Chapter 5). Finally, it studies options to improve efficiency of court, case and data management in the Irish justice system (Chapter 6). Comparisons on the basis of the selected peer OECD countries are offered on a topical basis, throughout the report. A more extensive explanation of the study methodology, including case weights and FTE calculation data, can be found in the Annexes.

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## Notes

- <sup>1</sup> There are 174 judges in Ireland serving as of 30 August 2022.
- <sup>2</sup> The applicable law permits up to ten appointments of judges to the Supreme Court, but only nine are currently in office.
- <sup>3</sup> See Ireland's National Broadband Map that provides live updates on connectivity, accessible here: <https://www.gov.ie/en/publication/5634d-national-broadband-plan-map/#interactive-map>
- <sup>4</sup> A sixth additional judge was appointed to the High Court in February 2022.
- <sup>5</sup> Further practices in Austria, Denmark, Estonia, Germany and Romania are outlined in pp. 18-31 of the CEPEJ report.



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