

Increasing the Number of Judges in Ireland

Rebecca Halpin, Senior Parliamentary Researcher (Law)

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This L&RS Note provides a short overview of the proposed increase in the number of judges in Ireland. The Note sets out the key findings of recent reports that addressed this issue. These reports recommended a significant increase in the number of appointed judges in most court jurisdictions. This Note is published in advance of Second Stage Debate of the [Courts Bill 2023](#), which proposes to increase the number of judges in the District Court, Circuit Court, High Court and Court of Appeal.

The Courts Bill 2023

In February 2023, in light of the recommendations made by a number of reports (discussed below) and calls by relevant stakeholders, Minister for Justice, Simon Harris TD announced a proposed increase in the number of sitting judges across most jurisdictions:

“I am very pleased to announce Government approval of my proposal to appoint 24 additional judges to the courts in Ireland by the end of 2023. This decision has been recommended by the Judicial Planning Working Group, and informed by an independent review of judicial resource needs by the OECD.



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We intend to increase the number of judges in **two phases**, beginning with **24 additional judges this year** and a **further 20 judges** subject to an assessment of the impact of the initial appointments.

This will ultimately **increase the overall number of judges from 173 to 217**".¹

The [Courts Bill 2023](#) was approved by Cabinet in April 2023.² The Bill reflects the recommendation of two recently published reports that provided independent analysis of the issue:

- [Report of the Judicial Working Group \(JPWG\)](#)
- [OECD Report: Modernising Staffing and Court Management Practices in Ireland](#)

A statement released on behalf of the Chief Justice and Presidents of the Court of Appeal, High Court, Circuit Court, and District Court welcomed the publication of the reports:

The Reports provide an **independent and objective assessment of the need for a greater number of judges** in the system in the short to medium term, and recommend a model to allow future judicial resource needs to be assessed on an ongoing basis and judicial numbers adjusted by reference to objective criteria.

The Reports both provide the **first evidence-based assessment of the extent to which judicial numbers have fallen seriously short of what was and is necessary** to ensure that people and organisations can exercise their right to timely access to justice and are consistent with, and independent confirmation of, the submissions made by the Presidents of the individual courts to the Working Group.³

The Bill proposes to increase the number of sitting judges in the Court of Appeal, High Court, Circuit Court and District Court. The changes are set out in the table below.

¹ [‘Significant increase in judicial resources to improve access to justice announced by Minister Harris’](#), Merrion Street, February 2023.

² [‘Approval sought for plan to progress towards appointment of 24 more judges’](#), *Irish Times*, 5 April 2023.

³ [‘Statement on behalf of the Chief Justice and Presidents of the Court of Appeal, High Court, Circuit Court, and District Court’](#), Courts.ie, 24 February 2023

Table 1: Courts Bill 2023 - Proposed changes in number of judges

Court	Current number of judges	Proposed number of judges
Court of Appeal ⁴	15	17
High Court ⁵	42	48
Circuit Court ⁶	40	45
District Court ⁷	20	28

[Article 36](#) of the Constitution provides that the number of judges in all courts is to be regulated in accordance with law. The Bill proposes to amend the following Acts:

- Courts (Establishment and Constitution) Act 1961 (which provides for the number of judges in the Court of Appeal)
- Courts and Court Officers Act 1995 (which provides for the number of judges in the High Court)
- Courts and Court Officers Act 1995 (which provides for the number of judges in the Circuit Court)
- Courts (Supplemental Provisions) Act 1961 (which provides for the number of judges in the District Court)

The proposed increase in judicial numbers in the District and Circuit Courts is particularly welcome. The JPWG Report indicated that the total number of ordinary judges increased in the last decade by 21%, nearly double the rate of population increase of 12%, and in line with the increase in public sector numbers of 24%. This increase was **all in the Superior Courts** where numbers

⁴ Section 1A(2)(b) of the Courts (Establishment and Constitution) Act 1961 provides for the maximum number of ordinary judges of the Court of Appeal. The most recent amendment by section 1 of the Courts Act 2019 fixed this number at 15.

⁵ Section 9(1) of the Courts and Court Officers Act 1995 provides for the maximum number of ordinary judges of the High Court. The most recent amendment by section 8 of the Civil Law (Miscellaneous Provisions) Act 2021 fixed this number at 42.

⁶ Section 10 of the Courts and Court Officers Act 1995 provides for the maximum number of ordinary judges of the Circuit Court. The most recent amendment by Section 98 of the Assisted Decision-Making (Capacity) (Amendment) Act 2022 fixed this number at 40.

⁷ The Sixth Schedule of the Courts (Supplemental Provisions) Act 1961 provides where, at the time of the appointment of a person to be a judge of the District Court, there are a fixed number of judges of the District Court not permanently assigned to particular districts, the Government shall assign that person permanently to a particular district. The most recent amendment by section 5 of the Courts and Court Officers (Amendment) Act 2007 fixed this number at 20.

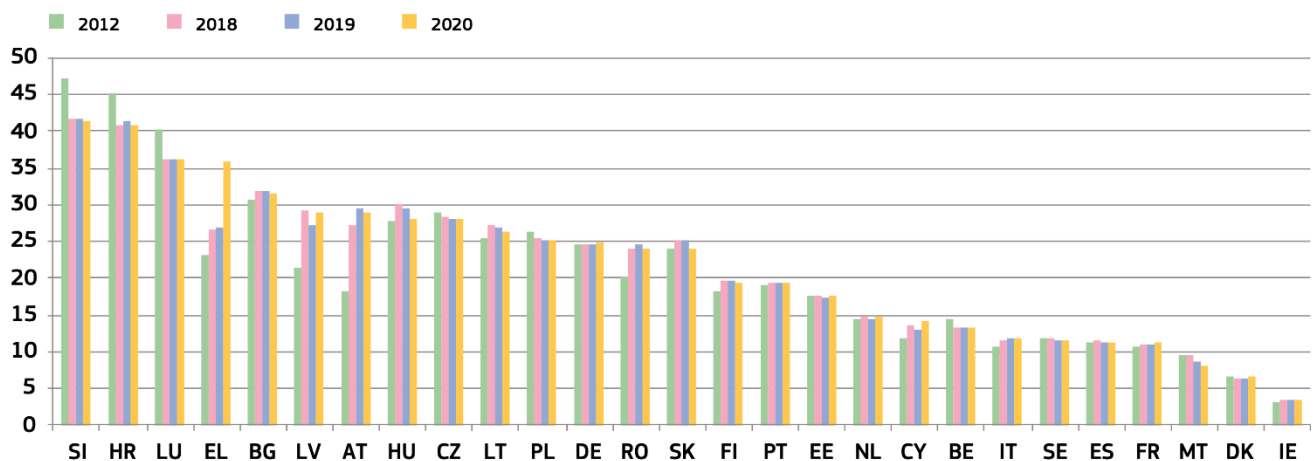
increased by 76% and there was **no increase in District and Circuit Court judge numbers in the last decade.**⁸

Reports

EU Justice Scoreboard

The EU Justice Scoreboard presents an annual overview of indicators on the efficiency, quality and independence of justice systems. Its purpose is to assist Member States to improve the effectiveness of their national justice systems by providing objective and reliable data on a range of issues. The [EU Justice Scoreboard 2022](#)⁹ shows that, for the last decade, Ireland has had **the lowest number of judges per capita in the EU.**

Number of judges, 2012-2020¹⁰ (per 100 000 inhabitants)



Source: [EU Justice Scoreboard 2022](#)

⁸ 'Report of the Judicial Planning Working Group', Department of Justice, December 2022, p 55.

⁹ European Commission, [EU Justice Scoreboard](#).

¹⁰ This category consists of judges working full-time, under the CEPEJ methodology. It does not include the Rechtspfleger/court clerks that exist in some Member States. AT: Data on administrative justice is introduced in the data since 2016. EL: Since 2016, data on number of professional judges includes all the ranks for criminal and political justice as well as administrative judges. IT: The regional audit commissions, local tax commissions and military courts are not taken into consideration. Administrative justice has been taken into account since 2018.

European Commission – Rule of Law Report (Ireland)

The Rule of Law Report is a report prepared by the European Commission that examines developments across the Member States, both challenges and positive developments, in four key areas for the rule of law: the justice system, the anti-corruption framework, media pluralism and other institutional issues related to checks and balances.¹¹ The European Commission's 2021 [Rule of Law Report \(Ireland\)](#)¹² was critical of the low number of judges in Ireland.

The number of judges remains low and the resources available for the training of judges appear limited. **The number of judges per inhabitant remains the lowest in the EU**, which could also **affect the efficiency of the Irish justice system**. While the Government has committed to review the numbers and types of judges needed to ensure the efficient administration of justice over the next five years, more immediate measures might address concerns also raised by stakeholders.

The **budget per capita** for the justice system has consistently increased in the last years and is among the highest in the EU,¹³ while the budget as a percentage of GDP has stagnated and remained below EU average.

The 2022 Report reiterated these criticisms, though it also welcomed the increase in the number High Court judges that took place in 2021.¹⁴

European Commission for the Efficiency of Justice (CEPEJ) Report

The European Commission for the Efficiency of Justice (CEPEJ) was established in 2004 and has undertaken a regular process of evaluating judicial systems of the Council of Europe's member states. Its Working Group on the evaluation of judicial systems is in charge of the management of this process.

In its evaluation of European judicial systems published in October 2022,¹⁵ CEPEJ indicated that **Ireland has 3.3** professional judges per 100,000 inhabitants. Most of the 46 Council of Europe Member States have **between 10 and 30** professional judges per 100,000 inhabitants while the **European average is 17.6**.

The map below shows the number of judges per 100,000 people.

¹¹ '[European Commission Rule of Law Report 2022](#)', L&RS Note, 23 November 2022.

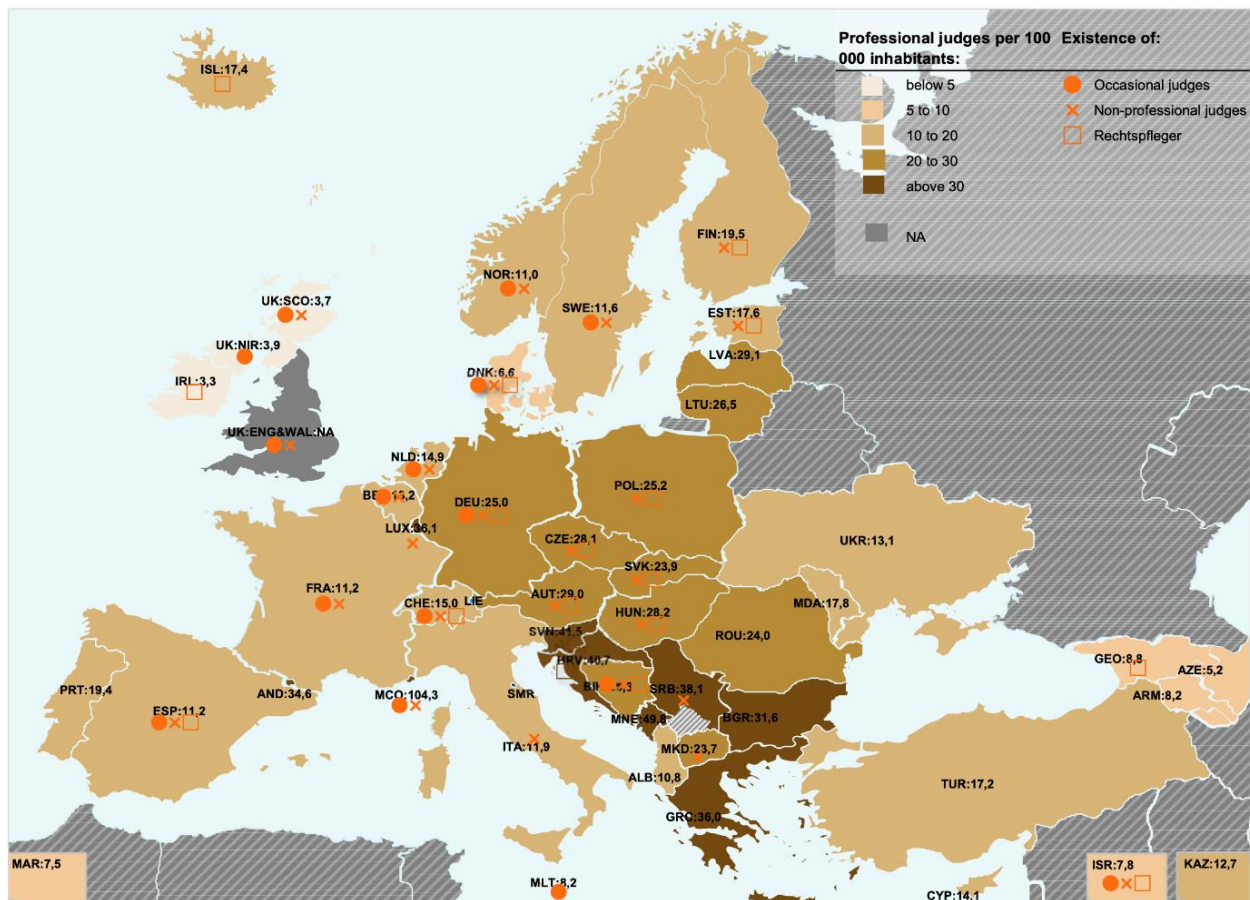
¹² The 2021 Rule of Law Report, including its 27 country chapters, presents positive and negative developments across the Member States in four key areas for the rule of law: the justice system, the anti-corruption framework, media pluralism and other institutional issues related to checks and balances.

¹³ See European Commission, [EU Justice Scoreboard](#), 2021, p 26. '[Republic has lowest budget for judicial system in Europe, report finds](#)', *Irish Times*, 23 October, 2020.

¹⁴ '[2022 Rule of Law Report - Country Chapter on the rule of law situation in Ireland](#)', Luxembourg, 13.7.2022 SWD(2022) 507 final

¹⁵ European judicial systems CEPEJ Evaluation Report (Part 1) 2022 Evaluation cycle (2020 data): <https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279>

Number of professional judges per 100,000 inhabitants, 2020



Source: [CEPEJ Report](#)¹⁶

Organisation for Economic Co-operation and Development (OECD) Report

The Government requested that the OECD undertake an independent research project to conduct a comparative analysis of the number of judges in other OECD countries. The primary aim of the study was to assess the number of judicial positions needed in light of the existing annual workload and current procedures, case-management techniques and technologies.

The OECD identified a range of possible additional numbers of judges per court jurisdiction. It suggested that the likely number needed was between certain points within that range: this range was between 36 and 108 extra judges.

¹⁶ OECD (2023), [Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System](#), OECD Publishing, Paris, p 46

Overall, the results of the assessment show that, currently, **more positions are needed at every court level**. The study identifies a **need for an average minimum increase required of around 26.2%**. This need may be exacerbated by the impact of upcoming legislative changes, such as the creation of new family law courts.¹⁷

Report of the Judicial Planning Working Group (JPWG)

The Judicial Planning Working Group was established by the then Minister for Justice, Helen McEntee TD in 2021 to carry out the first in-depth assessment of medium to long term judicial requirements.¹⁸ The Group is comprised of senior public servants. The JPWG was set up in line with commitments in the Programme for Government and Justice Action Plan 2021 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".¹⁹

The [JPWG Report](#) makes more than 50 recommendations for change in court and judicial work practices, including five-day weeks across all jurisdictions, longer courtroom sittings, shorter vacations, better case management and the urgent introduction of a modern IT system.

The Government accepted the JPWG recommendation that 24 additional judges be appointed this year, with a potential 20 further appointments linked to assessment of the impact of the 24 appointments and progress made in implementing change.

Key recommendations of the Report relating to the number of judges

The Report indicated that:

A **significant number of additional judges** will be needed over the next five years if access to justice is to be provided in a timely manner and existing backlogs and excessive waiting times addressed. The Working Group recommends that a phased approach be taken to addressing judicial resourcing. It recommends that **44 additional judges be appointed between now and end-2024 in two phases**, Phase 1 as soon as practicable and Phase 2, subject to satisfactory review, before the end of 2024. Additional numbers in further phases should be determined by a review in 2025 of judicial needs up to 2028.²⁰

Phases 1 and 2 are broken down as follows:

¹⁷ Ibid., 14

¹⁸ [‘Radical overhaul of judiciary announced as report recommends up to 108 extra judges’](#), *Irish Times*, 25 February.

¹⁹ [Courts Service - Dáil Éireann Debate](#), Tuesday - 11 October 2022

²⁰ [‘Report of the Judicial Planning Working Group’](#), Department of Justice, December 2022, p 81

Table 2: Additional Judicial appointments recommended by the JPWG

Court	Current number of judges	Phase 1	Phase 2	Future
District Court	64	8	6	78
Circuit Court	38	8	6	52
High Court	45	6	6	57
Court of Appeal	16	2	2	20
Supreme Court	10	0	0	0
Total	173	24	20	217

A phased approach was favoured by the Working Group:

The Working Group recognises that there are major operational constraints on the scale and pace at which additional judges can be added, given accommodation and support staff requirements within the Courts system, combined with the level of existing resources in the wider justice system. The view of the Working Group is that additional numbers need to be phased in gradually on a planned basis with the Courts Service.²¹

As noted above, Minister Simon Harris, when announcing the proposed reforms, indicated that the approach to be taken was in line with these proposals:

“We intend to increase the number of judges in **two phases**, beginning with **24 additional judges this year** and a **further 20 judges** subject to an assessment of the impact of the initial appointments.

“This will ultimately **increase the overall number of judges from 173 to 217**”.²²

²¹ ‘[Report of the Judicial Planning Working Group](#)’, Department of Justice, December 2022, p 71

²² ‘[Significant increase in judicial resources to improve access to justice announced by Minister Harris](#)’, Merrion Street.

Calls for reform

The lack of judges in Ireland has been the subject of significant criticism,²³ and it has been suggested that “the single biggest thing that the Oireachtas could do to improve the quality of justice in Ireland is to legislate to provide for additional judicial posts”.²⁴

The current President of the High Court, Mr Justice David Barniville, has called for an increase in the number of High Court judges to address the volume of cases being dealt with by the court.²⁵ He indicated that the High Court would need at least 20 additional judges. Additionally, in December 2022, Mr Justice Barniville noted that “the Circuit Court faces a crisis unless it gets additional judges to deal with an expected increase in personal injury actions”.²⁶

The former President of the High Court, Ms. Justice Mary Irvine, has on a number of occasions called on the Government to appoint additional judges. When the number of judges of the High Court was increased by 5 in 2021, Ms Justice Irvine said that this increase was insufficient, and that the High Court needed “at least 17 new judges”. She indicated that the additional 5 judges were “already accounted for” and described the current situation as “desperate”.²⁷ It was noted that the lack of judges was contributing significantly to delays.²⁸ The then Minister for Justice, Heather Humphreys TD, defended the decision to appoint 5 judges on the basis that each additional judge “costs €370,000-a-year when salary, allowances and support staff are taken into account”.²⁹

Minister of State for European Affairs, Thomas Byrne TD subsequently indicated that the government is taking EU criticism of the low number of Irish judges “very, very seriously”.³⁰

²³ See e.g. [‘The Irish Times view on court resources: running out of judges’](#), Irish Times, 04 October 4 2021

²⁴ Richard Humphreys, “Enhancing Our Justice System”, *Studies: An Irish Quarterly Review*, Vol. 107, No. 425 (Spring 2018), pp. 52-56; [‘High Court judge calls on Oireachtas to legislate for more judges’](#), Irish Times, 13 August 2017.

²⁵ [‘David Barniville: ‘It’s good to have life around the courts, to have people come in and watch justice working’](#)”, Irish Times, 24 September 2022

²⁶ [‘Senior judge warns of looming crisis in Circuit Court amid anticipated surge in personal injury cases’](#), Independent, December 16 2022.

²⁷ [‘The Pandemic President’](#), *The Parchment*, Summer 2021

²⁸ [‘Frustration mounts over court delays as more judges sought’](#), Irish Times, November 11, 2021; [‘Judicial appointments to be rushed through after High Court President announced cancellation of murder and rape trials’](#), Independent, 01 October 2021.

²⁹ [‘Humphreys cites €370k cost of a judge as she rejects court president’s criticism’](#), Independent, 13 July 2021

³⁰ [‘Government taking EU criticism over number of judges ‘very seriously’](#)”, Irish Legal News, September 2021

The Law Society³¹ and Bar Council have also voiced support for the proposed increase in the number of judges. Sara Phelan SC, chair of the Bar Council, has noted in response to the Courts Bill:

“The proposed appointment of additional judges across almost all jurisdictions announced by government today is very welcome, as is the recommendation for increased Master and Registrar appointments. [...] The effectiveness of that expansion to meet future demand will be defined by the resourcing around them.”³²

The publication of the Report of the Judicial Planning Working Group together with the Report of the OECD, and subsequent Government commitment to enact their proposed reforms, was welcomed in a statement on behalf of the Chief Justice and Presidents of the Court of Appeal, High Court, Circuit Court, and District Court.³³

Delay

The issue of delay has been an ongoing problem in the Irish Courts. The JPWG’s report indicated that an increase in the number of sitting judges was required primarily to address “existing backlogs and excessive waiting times”,³⁴ with particular emphasis on the “significant backlog in criminal cases which has been exacerbated by the impact of the Covid pandemic”.³⁵ 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,³⁶ and the issue was noted repeatedly by Mr. Justice Irvine.³⁷ Other areas have been impacted by delay including personal injuries cases,³⁸ a variety of civil matters, and cases relating to domestic violence.³⁹

³¹ [‘Law Society welcomes increase in judge numbers’](#), *Law Society Gazette*, 24 February 2023.

³² [‘Report of the Judicial Planning Working Group provides much needed focus on resourcing’](#), Council of the Bar of Ireland, 24 February 2023.

³³ [‘Statement on behalf of the Chief Justice and Presidents of the Court of Appeal, High Court, Circuit Court, and District Court’](#), Courts.ie, 24 February 2023

³⁴ [‘Report of the Judicial Planning Working Group’](#), Department of Justice, December 2022, p 81.

³⁵ *Ibid*, p 67.

³⁶ OECD (2023), [Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System](#), OECD Publishing, Paris, p 35

³⁷ [‘Frustration mounts over court delays as more judges sought’](#), *Irish Times*, November 11, 2021; [‘Judicial appointments to be rushed through after High Court President announced cancellation of murder and rape trials’](#), *Independent*, 01 October 2021.

³⁸ [‘Senior judge warns of looming crisis in Circuit Court amid anticipated surge in personal injury cases’](#), *Independent*, December 16 2022.

³⁹ “Recent data from the Courts Service shows District Court waiting times for family-law domestic violence applicants vary widely across the country. Domestic violence victims are having to wait up to four months for the courts to hear their safety applications.” [‘Domestic violence victims waiting up to four months for courts to hear safety applications’](#), *Irish Examiner*, 15 February 2023.

The European Court of Human Rights has repeatedly found that Ireland was in violation of their obligations under Articles 6 and 13 of the European Convention on Human Rights. Article 6 guarantees that hearings must be provided “within a reasonable time” and Article 13 provides for the right to an effective remedy, which is fundamentally undermined where there is inordinate delay in the criminal process.⁴⁰ Between 2002 and 2018, the European Court of Human Rights decided approximately nine cases brought against Ireland regarding the adequacy of the remedies for court delays. In each case, the Court ruled that Irish law does not provide effective remedies in respect of court delays, meaning that Ireland is in violation of its obligations under Article 13.

In 2010, the ECtHR delivered its definitive ruling on the adequacy of the remedies for delay under Irish law. In [McFarlane v Ireland](#),⁴¹ the State argued that effective remedies for court delays were provided for. A person who had experienced undue delay could take action for damages for breach of constitutional rights and for damages under section 3(2) of the *European Convention on Human Rights Act 2003*. It is also possible to apply for an order for prohibition or an early hearing date in a criminal trial. The ECtHR held that none of these remedies could be considered to discharge the State’s obligations under Article 13.

The [Court Proceedings \(Delays\) Bill 2023](#), published in February 2023, provides for the right of persons who are party to proceedings to seek compensation or a declaration if proceedings are not concluded within a reasonable time.

Detailed figures on the current court wait times across jurisdictions are available in the [Courts Service Annual Report: 2021](#) and in the Working Group Report.

Difficulty in comparing the number of judges working in different legal systems

The [OECD Report](#) acknowledged that direct comparisons of judicial numbers in different countries could be difficult for a range of reasons, including differences in procedural rules, judicial culture, case management techniques, measurement methods and other elements that impact the number of judges required to address a certain workload.⁴²

Additionally, the role of a judge in court proceedings in a civil law system tends to be different from that of a judge in a common law system. Judges in common law countries generally sit alone, not as a multi-judge bench. The United Kingdom, who shares the same system as Ireland, also has a very low number of judges as a percentage of population.

⁴⁰ The right to a fair trial is also provided for by [Article 38](#) of Bunreacht na hÉireann.

⁴¹ [McFarlane v Ireland](#) (Application no. 31333/06, European Court of Human Rights, 10 September 2010).

⁴² OECD (2023), [Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System](#), OECD Publishing, Paris, p 45

Further, justice systems that have a comparatively large number of judges are not necessarily more efficient. A 2022 article⁴³ compared data on the judiciary from six countries: Serbia, Croatia, Slovenia, France, Austria and Norway. The analysis was based on data collected within the 2020 Evaluation cycle (2018 data) of CEPEJ and World Justice Report Rule of Law Index for 2018. The paper concluded that judicial efficiency does not increase with an increase in the number of judges in a jurisdiction. However, the systems that performed the most efficiently still had a significantly higher number of professional judges per 100,000 inhabitants than Ireland.⁴⁴

Finally, increasing the number of judges “is not the answer to all workload challenges”,⁴⁵ and must take place along side broader reforms of the justice system, as proposed by the reports above.

Judicial functions

Judicial tasks involve not only handling cases, but also, depending on the court level and case type, reading file materials to prepare for the hearing, conducting legal research, deliberating and writing a judgement. Furthermore, in Ireland, many of the judges at the District and Circuit level are regularly assigned to hear cases in different provincial locations and require travel time. High Court judges also often sit outside of Dublin, in particular to hear personal injury actions and criminal trials in several venues, as well as non-jury actions in Cork.

In addition, depending on their role, judges may have some or significant management responsibilities, including efficiently managing their own caseload and fulfilling a range of administrative and management tasks. In Ireland, judges at all court levels have a range of special assignments beyond hearing court cases, such as providing judicial oversight to investigative surveillance activities and serving on different judicial and government committees. Judges’ roles on committees range from providing judicial input to legislative reforms to co-ordinating with other justice and government agencies. Data reported by the Courts Service illustrate that judicial participation in committees has increased over time, and may rise further as the Judicial Council becomes fully operational.⁴⁶

⁴³ Bojan Spaic & Mila Dordevic, 'Less Is More? On the Number of Judges and Judicial Efficiency' (2022) 13 Union UL Sch Rev 421

⁴⁴ See also Fabri, M., 2017. [Methodological issues in the comparative analysis of the number of judges, administrative personnel, and court performance collected by the Commission for the Efficiency of Justice of the Council of Europe](#). *Oñati Socio-Legal Series*, 7(4), 616–639.

⁴⁵ OECD (2023), [Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System](#), OECD Publishing, Paris, p 57.

⁴⁶ OECD (2023), [Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System](#), OECD Publishing, Paris, p 47.

Contact:

Houses of the Oireachtas
Leinster House
Kildare Street
Dublin 2
D02 XR20

www.oireachtas.ie

Tel: +353 (0)1 6183000

Twitter: @OireachtasNews

Library & Research Service

Tel: +353 (0)1 6184701

Email: library.and.research@oireachtas.ie

