



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Response questionnaire project group Timeliness

Courts' Service Ireland

1 The Court System and Available Statistics

1.1 The Court System

The Irish justice system consists primarily of four tiers of courts; the District Court, the Circuit Court, the High Court and the Supreme Court. The District Court is the lowest court, having jurisdiction over minor civil and criminal matters. The civil jurisdiction does not exceed €6,348.69. For criminal matters the Court only hears minor offences. It only hears criminal cases where the maximum custodial sentence permitted upon conviction is 12 months or up to 2 years where a consecutive sentence is imposed. The District Court also has some jurisdiction in the family law area. Proceedings in Family Law are not heard in open court and are as informal as is practicable. The District Court also has wide powers in relation to liquor and lottery licensing.

The Circuit Court has jurisdiction in most criminal jury trials and civil matters with a jurisdiction not exceeding €38,092.14. It also hears appeals from the District Court. The Circuit and High Court have concurrent jurisdiction in the area of Family Law. The Circuit Court has jurisdiction in a wide range of family law proceedings, (judicial separation, divorce, nullity and appeals from the District Court).

The High Court has full and original jurisdiction in all matters and is the constitutional Court of first instance. In terms of its criminal jurisdiction, it sits as the Central Criminal Court and has jurisdiction over the most serious criminal trials, including those relating to murder, rape and serious sexual offences. The High Court also has jurisdiction in all civil claims in excess of €38,092.14. The commercial court is a separate division of the High Court. In addition to this, the High Court hears appeals from the Circuit Court and also gives rulings on questions of law submitted by the District Court. The case load of the Court is divided up into a number of lists, as follows:-

Section 150 applications (Insolvency)

Asylum Pre-leave list

Asylum Post-leave list

Bail

Chancery (Monday motions list)

Criminal Assets Bureau

Circuit Court Appeals

Chancery (certified)

Common law

Commercial

Competition

Common law ex partes

Extradition

Family law

Garda Compensation

Hague and Luxembourg Convention
Hepatitis C Tribunals Appeals
Jury list
Judicial Review
Master's list
Chancery (Miscellaneous)
Non jury (Miscellaneous)
Non jury (Monday list)
Non jury Certified
Cork Personal Injuries list
Dublin Personal Injuries list
Dundalk Personal Injuries list
Galway Personal Injuries list
Kilkenny Personal Injuries list
Limerick Personal Injuries list
Sligo Personal Injuries list
Waterford Personal Injuries list
Presidents list
Rulings

On the criminal side there are two additional courts. Firstly, there is a Court of Criminal Appeal. It hears appeals from the Central Criminal Court, the Circuit Court and the Special Criminal Court. The Court hears appeals against convictions and/or the sentence. There is no Court of Appeal for Civil cases.

There is also a Special Criminal Court. It was established under the Offences Against the State Act 1939. This Court is a non-jury court in which three judges sit and was established because the ordinary courts, and in particular the independent functioning of juries, was at risk of being undermined by the activities of subversive organisations. This Court has primarily dealt with cases involving Republican terrorist activities. However, in recent times its jurisdiction has been extended to deal with serious offences associated with organised gang-land crime.

The highest court, the Supreme Court, has a jurisdiction that is almost exclusively appellate - meaning that it only hears appeals from the High Court and it is the Court of final appeal in Constitutional cases. In general it does not hear evidence except in the rarest of cases, only submissions from the parties. It also hears cases stated from the Circuit Court where the opinion of the Court is sought on a point of law. It has a unique jurisdiction under Art 26 of the Constitution whereby the President of Ireland can, before signing a piece of legislation into law, refer the Bill to the Supreme Court to have its constitutionality tested. This jurisdiction is rarely used.

1.2 Statistical Information on Courts, Judges and Cases

There are 149 court venues in this jurisdiction – 18 in the capital, Dublin, and the remaining 131 throughout the rest of the country.

There are 147 full-time professional judges in Ireland; the lowest ratio per population in Europe – 3.1 judges per 100,000 people. There are no non professional judges.

There are 8 judges sitting on the Irish Supreme Court, 37 on the Irish High Court, 38 on the Circuit Court and 64 District Court Judges (there is currently one vacancy in the District Court).

In 2009, the District Court, Circuit Court and Central Criminal Court (i.e. the courts of first instance) disposed of 524,151 criminal matters. When exercising their civil jurisdictions they disposed of 152,871 matters in the same year.

The Court of Criminal Appeal disposed of 229 cases in 2009.

The Special Criminal Court disposed of 10 cases in the same year.

In 2009, the Supreme Court disposed of 341 matters.

1.3 Statistic Information on Processing Time

Statistics relating to the waiting times for each Court are published in the Court Service annual Report. In the latest report for the year 2009, these are to be found in Section 6 of Chapter 4. In general these statistics only measure waiting time from the time a case is listed as ready for hearing and not from the commencement of the procedure except for the District Court where time is measured from the receipt of the application to the scheduled date of hearing. The Courts Service Annual Report is publicly available and is on the Courts Service website <http://www.courts.ie/>. Chapter 4 of the Annual Report 2009 contains statistical information on the Supreme Court, Court of Criminal Appeal, High Court (including Central Criminal Court, Commercial Court, Special Criminal Court), Circuit Court and District Court divisions, as well as a breakdown of the different areas - civil matters such as personal injuries, commercial, chancery, equity, employment summary judgment, possession, debt recovery, breach of contract, judicial review, jury, abduction, murder, rape, matrimonial disputes, etc... Attached is Chapter 4 of the 2009 Courts Service Annual Report.

2 Requirements and Transparency

2.1 What statistics are provided for on a regular basis?

See Chapter 4 of the Courts Service Annual Report (attached). This can be accessed at the link provided above. Statistics contain a break down of the matters received, disposed of and withdrawn in the Supreme Court (see p.50), High Court (see p.53), Circuit Court (see p.55) and District Court (see p.56). They classify these statistics by the most common types of cases and also provide information as to waiting times from the time a case is listed for hearing to the time the matter goes to trial, except in the District Court where time is measured from the receipt of the application.

2.2 Are provided Statistics Published?

Yes, they are published in the Annual Report of the Courts Service which is available on the Courts Service website and can be accessed at the link provided above.

2.3 Is Processing of Individual Cases Transparent?

For matters disposed of by Special Summons or actions commenced by Notice of Motion in the High Court there are separate court lists in which the progress of such cases is monitored. However, for cases initiated by plenary summons in the High Court or civil bill, in the Circuit Court the progress of the case is not controlled or tracked by the Court until it is ready for and put in a list for hearing.

2.4 Are Requirements for Processing time Stipulated?

Yes, processing times are strictly governed by Court Rules – the Rules of the Superior Courts (“RSC”) govern proceedings in the High Court and Supreme Court. The Circuit Court Rules (“CCR”) govern proceedings in the Circuit Court, whilst the District Court Rules provide for proceedings taken in the District Court. These Court rules set out and govern all procedures to be adopted in every case and time limits are prescribed for completion of every procedure. In general for procedural steps which are mandatory in all cases a specific time is prescribed in the Rules for the completion these procedures. For procedures e.g. discovery of documents, which are discretionary, the time is fixed by a judge on an application in that regard.

2.5 What are the consequences of Exceeding Required/Reasonable processing time According to National Rules or Practice?

In such cases the parties are liable to complaint via a notice of motion. If there are particular problems or obstacles which are causing the delay the Court can by order give directions to any of the parties to overcome the problem or remove the obstacle. The costs of the application can be awarded against a party causing delay by culpable fault or neglect, and in extreme cases the proceedings of the defaulting party proceedings may be struck out for delay.

2.6 Can the parties and others make a complaint about the processing time?

Parties can make complaints to the Court about the failure of a party to adhere to the time limits prescribed in the Rules of Court or by order of a judge, for completing a particular procedure. Apart from the parties the Court on its own initiative can address delay even where there is no complaint by a party. It is not possible for non parties to complain about delay in a particular case. In addition, when costs are being determined factors such as delay may be taken into account by the Court.

2.7. Are user surveys on processing time carried out?

Whilst the Courts Service carries out user surveys, the questions asked are confined to matters within the remit and competence of the Courts Service. As processing times for trials are not within the control of the Service and depend on the individual judges, the Service simply tracks waiting times and reports on them to the Board every term, as well as in the annual report. However, the Courts Service does not enquire, for example, into user satisfaction with processing times as this is an area which falls outside their responsibility.

3 Reduction of Caseload and Facilitating Court Procedures

3.1 Which means of reduction of caseload are used?

Settlement

A proportion of cases initiated each year will not require a court hearing – many are compromised or settled before they are due to be heard in the different courts. Settlements are quite common even on the day the case is due to be heard – a so-called settlement at the “door of the court”. In the High Court in 2009, 5,656 cases were settled while 27, 465 cases were issued. In the Circuit Court 4,237 were settled while 44,266 cases were issued.

Alternative Dispute Resolution (ADR),

Alternative Dispute Resolution including mediation is provided for in legislation in Ireland across a broad range of areas including personal injuries actions (s. 15 of the Civil Liability and Courts Act 2004), employment law disputes (s. 78 of the Employment Equality Act 1998) and family and child law proceedings (s. 6 and 7 of the Family Law (Divorce) Act 1995). It is also provided for in the procedural rules of court, for example, commercial disputes (Rule 6(b) (xiii) of Rules of Superior Courts (Commercial Proceedings) 2004. In commercial disputes, the judge is empowered to adjourn the proceedings for up to 28 days to facilitate an ADR process, while in personal injuries actions, the court can direct the parties to attend a mediation conference on an application by one of the parties. In family and child law proceedings, legal representatives are under an obligation to explain ADR processes to their clients and certify to the Court that they have carried this out.

The Rules of the Superior Courts in Ireland have recently been changed to provide for broader access to mediation and conciliation and these rules come into operation on the 16th November, 2010. From that date, as provided for in S.I. No. 502 of 2010, the Court may, on the application of any of the parties or of its own motion, invite the parties in any proceedings to use an ADR process to settle or determine the proceedings or issue, or where the parties consent, refer the proceedings or issue to such process, and the Court may, for the purposes of such invitation or reference, invite the parties to attend such information session on the use of mediation, as the Court may specify. For the purposes of the rule, the Court can adjourn the proceedings to enable this process to be completed.

3.2 Are any special easy procedures available?

Proceedings in the Commercial Court

S.I. No. 2 of 2004 constituting Order 63A of the Rules of the Superior Courts, which came into effect on January 12, 2004, established the Commercial Court as a new division of the High Court. The Court was formally launched on October 18, 2004, following a period of nine months during which it had operated on a pilot basis.

Rules 14 and 15 of Order 63A make provision in appropriate cases for judicial case management of commercial proceedings, in the form of a case management conference. The case management conference is chaired and regulated by a judge. The general purpose of such conferences as set in Rule 14(7) is “to ensure that proceedings are prepared for trial in a manner which is just, expeditious and likely to minimise the costs of proceedings...” Every case, whether already the subject of case management or not, has a pre-trial conference at which the judge establishes what steps remain to be taken in preparation for the trial.

Another new power conferred on the Commercial Court judge is that on application to the court, or by his own motion, he may adjourn the conciliation or arbitration. The court cannot compel the parties to engage in alternative dispute resolution but an unjustified failure to give it due consideration may have costs implications.

The Rules in relation to the Commercial Court are designed to provide commercial entities with speedy access to a cost-effective and efficient system of dispute resolution. They also give recognition to the increasingly important role the alternative dispute resolution plays in relation to the resolution of commercial disputes

Personal Injuries Actions

The Civil Liability and Courts Act 2004 introduced profound and far-reaching changes in relation to the conduct of personal injuries litigation.

Section 15 of the Act of 2004 enables a court in a personal injuries action, upon the request of any party to the proceedings, to direct the parties to attend a mediation conference with a view to attempting to settle the proceedings. If such a direction is given, the chairperson of the mediation conference shall be a person agreed by the parties or, if no agreement is reached, a person appointed by the court who is either a practising barrister or practising solicitor of not less than five years standing, or is a person nominated by a body prescribed by the Minister for Justice, Equality and Law Reform. Section 16 provides that a party who fails to comply with the court’s direction may at the conclusion of the proceedings be penalised in costs.

Section 18 of the Act provides, where the court considers it appropriate, for a pre-trial hearing to determine what matters are in dispute. Section 18(3) identifies those who have authority to preside over such hearings. In High Court cases the person shall be nominated as directed by the President of the High Court. Likewise, in Circuit Court cases the person shall be nominated as directed by the President of the Circuit Court. In District Court cases a judge of the District Court only may preside.

Child abduction cases are heard in the High Court and that Court is required to give directions on cases, at the earliest opportunity, to ensure an expeditious hearing. The Rules of Court detail strict time limits in respect of child abduction cases and any applications must be brought by way of special summons. In the context of cases which involve the Brussels II bis Regulation, the High Court is required to deliver judgment no later than six weeks after the application is lodged, except where exceptional circumstances make this impossible. The High Court applies strict case management in respect of these cases, from when the application has been issued until the hearing date.

3.3 What simplifications of ordinary procedures are applied?

In the High Court and the Supreme Court, case management is at the discretion of the judge. Through the application of case management in particular cases, i.e. cases which have the potential to take a long time at trial, these cases can be considerably shortened by case management, in which it can be ascertained by the judge what the real issues in contention are and the trial can be confined and tailored to those issues. Telephone conferences (judge to judge) take place mainly in context of family law proceedings, in particular, those relating to the Hague Convention.

3.4 Give examples of practices used within ordinary procedures to speed up ordinary procedures

In some cases, e.g. Judicial Review [Public Law/Administrative law cases] where the facts usually are not in dispute, these cases are dealt with on affidavit evidence rather than oral testimony. All interlocutory proceedings are similarly disposed of by way of affidavit evidence. In the High Court and Supreme Court there is a requirement that legal argument is presented initially by written

submission which must be furnished to the Court and exchanged with the other parties within prescribed time limits. Oral submissions can also be made at the hearing.

4 Increase of Capacity and Improvement of Processing

4.1 Do you try and limit processing time by an increase of courts or increase of reallocation of judges or cases?

Initiatives by the Judiciary to reduce waiting times are supported by the Courts Service. These related to all court jurisdictions and include the High Court, where the judge responsible for the Dublin personal injuries list “called over” the oldest cases in the list, i.e. cases set down for trial up to two and a half years previously. The judge allocated three days in October 2009 for this exercise at the conclusion of which 1,400 cases were removed from the list out of a total of 5000 approx. Courts often use “call overs” to ensure that cases are progressed through the system as speedily as possible and that settled cases are not left in the court list. The legal representatives of the parties are required to attend court to confirm that their case remains “live” and inform the court if they are ready to proceed. Any case in which the parties fail to appear can be struck out and can only be re-entered by order of the court. In the High Court from time to time additional judges are assigned by the President of the Court to lists where arrears are accumulating. In the recent past in the High Court a serious backlog in the non jury list was cleared by sending cases to venues outside Dublin to overcome a shortage of Court rooms in Dublin.

The Circuit Court waiting times are reduced by the President assigning additional judges to deal with criminal and civil cases in parts of the country where backlogs are starting to arise. In the District Court special sittings are held in every district and county from time to time to deal with arrears.

Criminal Case Management System

A new combined criminal court office has been established to service the Criminal Courts of Justice in Dublin. This is an integrated system to administer cases in the Circuit Court, Central Criminal Court, Special Criminal Court and the Court of Criminal Appeal in advance of the extension of the Criminal Case Management System to all jurisdictions. Hitherto each Court had an entirely separate system of administration.

Civil Case Management System

The standardisation of processes relating to civil and family law cases in all jurisdictions is an important precursor to the introduction of a civil case management system. Work on this project will be completed in 2010 and planning for the new management system, which will be built in modules, is ongoing. Analysis and design work commenced in early 2010 to coincide with the outcome of the standardisation of processes project and the implementation of any TASC-related recommendations relevant to the new system.

Under the case progression scheme county registrars have a key role in overseeing preparation of family law cases for trial in the Circuit Court, generally monitoring the progress of a case pre-trial, and making final arrangements for the trial. Family law case progression is fully operational in all Circuit Courts.

The decision to allocate more Judges to e.g. the Asylum list on a given day / week) or to reallocate Judges from one kind of list to another is not one the Courts Service has the power to make. These are matters within the exclusive jurisdiction of the Presidents of the respective Courts. The decision to increase the number of judges is one for the Government and requires primary legislation, for example the Court and Court Officers (Amendment) Act 2007.

4.2 Do you try to limit processing time by taking on assistance from deputy judges, trainee judges, or juridical assistants?

Ireland does not have any deputy judges, or trainee judges. However, all judges can avail of assistance from Judicial Research Assistants. See Answer to 4.4 below.

4.3 Do you try to limit processing time by facilitating processing of cases?

In general judges in Ireland are not specialised. The small number of judges combined with the broad range of cases and the geographical spread of the population militates against specialisation. In the High Court in recent times the trend is towards some specialisation particularly in the Commercial Court. The speed with which a matter is heard is at the discretion of the judge. Courts can apply case management to ensure that case as originally pleaded is narrowed to the actual issues on which there is real contention. This in turn will lead to the evidence and legal submissions being confined to those issues.

4.4 Do you try to limit processing time by giving secretary or juridical assistance to individual judges?

Judicial fellows provide support to individual High Court Judges and are assigned by the President of the High Court to particular areas of court business. There are currently 10 Judicial Fellows. They support judges in the areas of asylum, commercial, competition, chancery and judicial review. Judicial fellows are legal professionals, barristers and solicitors. They provide assistance with the drafting of written decisions by their assigned judges, attend court and provide draft summaries of the relevant facts, law and submissions in a particular case. Judicial fellows were appointed to help High Court judges meet the pressurised time frames to which they are subject. Section 46(3) of the Courts and Court Officers Act 2002, as amended by s.55 of the Civil Liability and Courts Act 2004, provides that:-

“if judgment in the proceedings concerned is not delivered before the expiration of 2 months from the date on which it is reserved, the President of the Court shall, as soon as may be after—(a) the said expiration, and (b) the expiration of each subsequent period of 2 months (if judgment is not delivered first), list the proceedings or cause them to be listed before the judge who reserved judgment therein and shall give notice in writing to the parties to the proceedings of each date on which the proceedings are listed.”

This two-month limit is not binding and if judgment has not been delivered within this period, the case is listed before a judge, who must fix a date for judgment. However, similar to the two-month limit, this requirement is not binding.

In the High Court and the Supreme Court, case management is at the discretion of the judge. Telephone conferences (judge to judge) take place mainly in context of family law proceedings, in particular, those relating to the Hague Convention.

Judicial researchers provide assistance to judges of all jurisdictions and conduct research, prepare memoranda, compile and expand the range of bench books for all jurisdictions, create an annual digest of reported and unreported judgments for District Court Judges and proof read and prepare judgments for the judges. Whilst the majority of the work of a judicial researcher will also come from the High Court, [54%] a large volume of work is also performed for Supreme, Court judges [16%] Circuit Judges [4%] and District Judges 26%. The Judicial Researchers Office comprises six researchers who are either legal practitioners or academics.

4.5 Do you try to improve court proceedings or increase the capacity of courts by any scientific, experimental or technical project?

As part of an ongoing project it is intended that all court rooms will be equipped with digital sound recording equipment. In addition to this, we have a number of high tech courtrooms that allow for the admission of video-link evidence, especially where experts and witnesses are located outside of the jurisdiction. The advanced technology in these rooms also permits the display of digital and video evidence to all parties to the case, including where necessary, jury members.

Since 2004, the commercial business of the High Court is conducted in the Commercial Court. The Commercial Court functions as an E-court and has all necessary electronic facilities to effectively dispose of commercial matters. Consequently, all papers (e.g. legal submissions, affidavits, exhibits or

any inter partes documents) can be emailed to the Central Office of High Court if such is the wish of the parties in order to keep the presiding Commercial List Judge informed of such documents as they are lodged. However, in spite of this development, the parties are still required to lodge hard copy booklets of motion papers and trial papers in the list room. The use of video link and audio recognition software was central to this initiative and such technologies were installed in the main Commercial court building, as well as in other commercial courtrooms in the Four Courts (the home to the Irish civil courts). From time to time, Commercial Court proceedings are electronically recorded, with electronic transcripts appearing on LCD screens in the courtroom. Thus Judges, Counsel and litigants are provided with immediate access to a written record of proceedings.

The Irish Criminal Courts of Justice complex, which opened in January 2010, has 22 Court rooms all equipped with facilities necessary for the administration of criminal justice. This new courthouse now deals with all criminal cases in Dublin. The District Court, Circuit Court, Central Criminal Court Special Court and Court of Criminal Appeal sit all there. The building is designed to provide segregated routes through the building for judges, jurors, prisoners and vulnerable witnesses. Digital Audio Recording is available which records all oral testimony and can to be reviewed by a judge or jury at a later stage in the proceedings. In addition, evidence display technology to exhibit CCTV footage and video-recorded police interviews is available and widely used at criminal trials. Video link technology allows for the evidence of vulnerable witnesses to be given in court, and the building has extensive video conferencing facilities.

5 Other Initiatives

5.1 Have you other initiatives concerning timeliness been undertaken or are they contemplated?

No.