COURT OF JUSTICE
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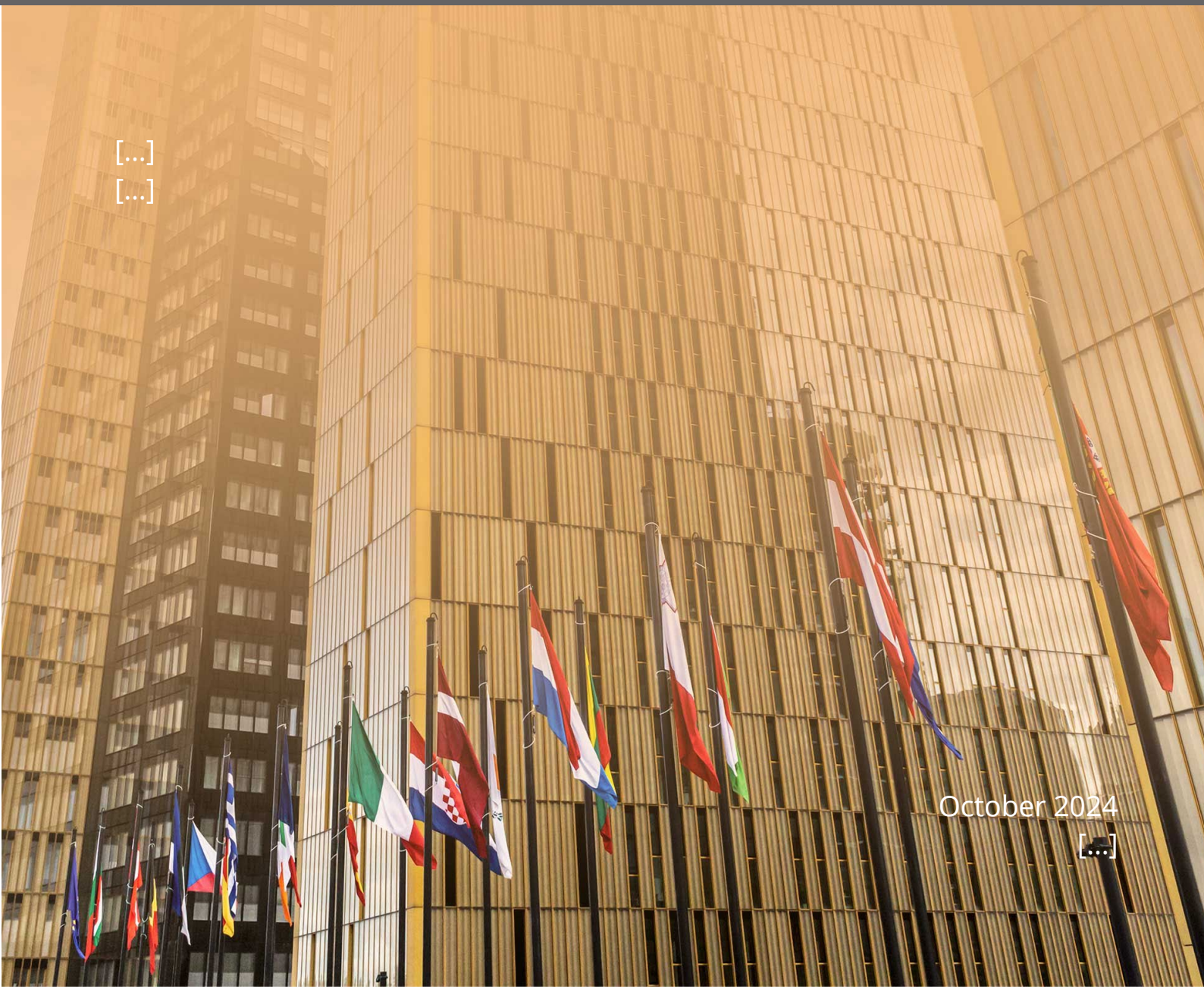
EN

RESEARCH NOTE

RESEARCH AND DOCUMENTATION DIRECTORATE

The allocation of costs in national labour law litigation



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CONTENTS

SUMMARY

INTRODUCTION

1. The Research and Documentation Directorate (DRD) has been requested to prepare a research note on the rules and practices in the EU Member States with regard to the allocation of costs in labour law litigation at national level.

2. To this end, the DRD was called upon to carry out a review of such rules and practices with a view, in particular, to identifying those that enable the costs borne by the employee to be reduced, in both the public and private sectors, thereby strengthening the guarantee arising from Article 47 of the Charter of Fundamental Rights of the European Union.

3. The legal systems of 13 Member States are referred to in this study, namely **Bulgaria, France**, **Germany**, **Greece**, **Hungary**, **Ireland**, **Italy**, **Lithuania**, the **Netherlands**, **Poland**, **Portugal**, **Romania** and **Sweden**. [1]

4. It is important at the outset to define the concept of costs for the purposes of this summary.

5. In that regard, the terms 'legal costs' or 'procedural costs' relate to the various duties, taxes and fees which contribute, in general, to the costs of the administration of justice and which are the most likely to be recoverable. Added to those costs that are directly linked to the legal procedure are the expenses incurred by the parties for the purpose of the legal proceedings, including travel and subsistence expenses, the fees charged by the lawyers instructed to represent them, and, if applicable, compensation or remuneration payable to witnesses and experts – in other words, the costs covered by the concept of 'recoverable costs' within the meaning of the respective Rules of Procedure of the Court of Justice and the General Court. In this summary, for the sake of clarity, the term 'costs' will be used in the broad sense to cover all costs incurred by the parties that are directly linked to the proceedings or which they may be liable to pay.

6. This research note comprises three parts. The first examines the division of jurisdiction between civil courts and administrative courts in labour law disputes, the second provides a very brief summary of the general rules that apply in this field, and the third and final part sets out the specific rules that apply to labour law litigation.

[1] [...]

I. DIVISION OF JURISDICTION BETWEEN CIVIL COURTS AND ADMINISTRATIVE COURTS

7. As regards which courts have jurisdiction to hear disputes concerning individual employment relationships, generally it is the administrative courts that have jurisdiction to hear disputes concerning civil servants, while the ordinary courts have jurisdiction for disputes involving other employees. Specialised courts or specialised panels within the ordinary courts have been established in some Member States (**France**, **Germany**, **Ireland**, the **Netherlands**, **Poland**, **Portugal**, **Romania** and **Sweden**).

8. In **Ireland**, an independent statutory body, the Workplace Relations Commission ('the WRC'), was established. [2] One of the WRC's main objectives is to facilitate the resolution of labour law disputes in a timely and inexpensive manner by allowing the parties to represent themselves. However, an action may also be brought before the ordinary civil courts on the grounds of breach of contract as an alternative to bringing it before the WRC on the basis of the statutory provisions. For example, an employee who considers that he or she has been unlawfully dismissed has the choice between two types of proceedings, namely, on the one hand, proceedings before the WRC under the system provided for by statute, in particular, the Unfair Dismissals Act, 1977, [3] or, on the other hand, proceedings before the civil courts, on the basis of common law, claiming wrongful dismissal. [4]

9. In **Germany**, labour courts have exclusive jurisdiction over labour disputes, whether the dispute arises in the private or public sector, with the exception of proceedings involving civil servants, which fall within the jurisdiction of the administrative court. The labour courts operate as a separate system, made up of three instances.

10. In **Sweden**, all employees fall within the jurisdiction of the Arbetsdomstolen (Labour Court), which is a court specialising in labour law disputes and a court of final appeal in that field.

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[2] It should be noted that the Court of Justice has held that the WRC, as a body upon which the national legislature has conferred the power to ensure enforcement of the principle of non-discrimination in respect of employment and occupation, which assumed the functions of the Equality Tribunal (Ireland) as of 2015, must be regarded as a 'court or tribunal' within the meaning of Article 267 TFEU (see, to that effect, judgments of 18 March 2014, *Z.*, C-363/12, EU:C:2014:159, and of 4 December 2018, *Minister for Justice and Equality and Commissioner of An Garda Síochána*, C-378/17, EU:C:2018:979).

[3] Unfair Dismissals Act, 1977.

[4] However, the duplication of proceedings is prohibited (section 15 of the Unfair Dismissals Act, 1977). Employees must choose between initiating proceedings for damages at common law for wrongful dismissal or seeking redress under the Unfair Dismissals Act, 1977 using WRC procedures. See also judgment of the Supreme Court of Ireland of 24 April 1997, *Parsons v Iarnrod Eireann* [1997] E.L.R. 203.

11. Furthermore, in the **Netherlands**, the majority of employees, both in the private sector and in the public sector, must bring their case before the ordinary courts, with the exception of certain groups of persons in the public sector, appointed unilaterally, over which the administrative courts have jurisdiction, namely, persons holding political office, such as members of parliament, mayors and aldermen, members of the judiciary and of the public prosecutor's office and members of disciplinary councils or administrative appeal bodies, in particular judges and prosecutors, defence employees and police employees. [5]

II. THE ORDINARY LAW REGIME APPLICABLE TO COSTS

A. THE BASIC PRINCIPLE OF THE ALLOCATION OF COSTS

12. It should be noted that, in all the legal systems examined, the determination and allocation of costs are governed by similar rules, or even common rules, irrespective of the courts concerned. This is particularly the case for disputes relating to individual employment relationships. In this summary, therefore, the concept of 'employee' will be used in a broad sense, irrespective of the statutory or contractual nature of the employment relationship, without prejudice to specific details aimed solely at civil servants, where a regime derogating from the rules for employees in general as regards costs has been identified.

13. In all of the Member States examined, in so far as there is no specific rule on the allocation of costs in litigation concerning individual employment relationships, the general principle that the costs are borne by the unsuccessful party is applied. [6]

14. Nevertheless, a series of criteria left to the discretion of the court hearing the case, such as the usefulness of the court proceedings, the necessity of the costs incurred, the conduct of the parties before or during those proceedings [7] or the public interest in the case, may make it possible to

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[5] The rules for bringing labour law disputes before the civil or administrative courts are set out in more detail in the contribution on Netherlands law.

[6] Where a party is only partially successful, the costs are to be borne by the other party in proportion to the successful part of the claim, and the other party may also claim reimbursement of their costs in proportion to the unsuccessful part of the claim.

[7] It has been observed in **Ireland** that this test has been applied in relation to employment law disputes to the detriment of the employee. In *Burke* v *Adjudication Officer & Anor* [2023] IEHC 560, the employee in question, who was a lawyer by profession, was ordered to pay the costs of the WRC and those of his employer on a *'legal practitioner and client'* basis. The employee had initiated judicial review proceedings before the High Court against the WRC's decision rejecting her complaint against unfair dismissal by her former employer. The High Court emphasised its disapproval of the employee's conduct during the legal proceedings, which had forced the judge to terminate the hearing and finalise her decision based on the written submissions.

temper or even set aside the consequences of applying the general principle on the allocation of costs described above.

15. Indeed, those various criteria confer on courts wide discretion when making a determination on costs. In exercising that power, the court may be called upon to make an equitable ruling so as not to impose on a particular party an excessive burden that amounts to 'prohibitive costs'. For example, in **France**, it has been held that, where the applicant's claim has been upheld in its entirety and the applicant has been awarded substantial compensation, to order the debtor to pay the costs as well would be to undermine equity.

16. It should also be pointed out that, unlike what is provided for in respect of proceedings before the Court of Justice and the General Court (Article 145 and Article 170 of their respective Rules of Procedure), in the legal systems examined, with the exception of **Ireland**, in principle, the national courts (of their own motion or at the request of the parties) make quantified decisions as to costs, even in the absence of any dispute in that regard. In principle, the parties are not expected to reach an agreement on the amount of recoverable costs relating to the proceedings.

B. THE CONCEPT OF 'RECOVERABLE COSTS'

17. It should be noted that, in **almost all Member States**, recoverable costs are limited solely to expenses necessarily incurred by the parties for the purpose of the proceedings. The necessity of those costs is assessed on two levels, which means, in this context, ascertaining not only that the costs incurred remain reasonable, but also that the actual decision to make the commitment appears reasonable.

18. Although there is no common classification of costs regarded as recoverable, the majority of national legal systems include, within that concept, costs relating to lawyers' fees, [8] travel and subsistence expenses, costs relating to expert reports, translation costs and witness compensation.

19. It should be noted that, in some Member States, the costs covered are exhaustively listed in the relevant legislation (**France**). Thus, in order to determine the amount which will be payable as costs, the court need only add together all the costs incurred which fall within the scope of those laws. However, it must take into account the equity between, and the economic capacity of, the parties when determining the amounts.

[8] It should be noted that this study does not address the issue of the rules governing the representation, whether mandatory or not, of employees in national court proceedings. In this regard, please refer to Research Note 24/001, entitled 'Representation of parties in court proceedings'.

20. In other Member States, the list of costs is not exhaustive (**Bulgaria**, **Greece**, **Ireland**, **Lithuania**, **Poland**, **Portugal**, **Romania**) and may include any necessary expenditure actually incurred. However, costs incurred as a result of an error or an excessively high degree of due diligence on the part of the party are not reimbursed.

21. A substantial proportion of costs incurred in legal proceedings relates to legal representation. As a general rule, in all Member States except **France**, the court takes into account, in one way or another, the complexity of the case, the amount of work done by and time required by the lawyer, and the value of the claim. In **France,** by contrast, costs incurred for the purpose of representation by a lawyer are not regarded as recoverable costs. However, it is possible to have the costs covered by the opposing party on a flat-rate basis, provided that a request is made; the amount awarded is at the discretion of the court. Admittedly, this unique system is not specific to labour litigation, but it nevertheless seems likely to promote access to justice, particularly in this area, by conferring on the courts a moderating power, in addition to the exclusion, in principle, of the amounts concerned from the total recoverable costs.

22. Furthermore, in **all the Member States**, with the exception of **France**, **Romania** and partly **Sweden**, there are scales, usually adopted or approved by the respective Ministers for Justice, which limit, in different ways, recoverable costs arising from legal representation. In practice, therefore, the amount in fees that the party must actually pay to its lawyer remains higher than the amount that it can recover once it has won the case. However, such scales are not specific to labour litigation, but are applicable to lawyers' fees for legal representation in general.

III. SPECIFIC RULES FOR LABOUR LAW LITIGATION

A. SPECIFIC RULES ON THE APPORTIONMENT OF COSTS BETWEEN THE PARTIES

23. The general rule that a party who is wholly unsuccessful is ordered to pay the costs of the opposing party applies in labour litigation in all the Member States covered by this note, with the exception that in **Ireland** and the **Netherlands** it has limited application. Significant departures from the rule have also been observed in **France**, **Germany** and **Sweden**.

24. In **Ireland**, the rules on the apportionment of costs between the parties do not apply in labour law proceedings before the WRC or on appeal before the Labour Court. Thus, no order for costs may be made against the parties, but each party remains liable for its own costs, irrespective of whether it has been unsuccessful in one or more claims in the proceedings.

25. There is only one exception in that regard, namely proceedings in which the employee is successful in claiming that his or her pay is below the minimum wage, in which case the WRC and the Labour Court (Ireland) may then grant reimbursement of the employee's 'reasonable expenses' in connection with those proceedings. It should also be noted that only the reimbursement of reasonable expenses incurred by the employee can be ordered to be borne by the employer, not the other way round.

26. Furthermore in **Ireland**, as regards civil courts under ordinary law, it should be emphasised that the public interest nature of any court proceedings may, significantly, lead the court to depart from the general rule that 'costs follow the event'. An example of the rules being applied in this way was identified in the context of an application for judicial review of a WRC decision rejecting a complaint and a complaint that the WRC was unconstitutional. The Supreme Court held that, although it had found the law establishing the WRC was constitutional, the public interest nature of the proceedings and the significant success the applicant achieved in the proceedings justified awarding the applicant his full costs before both the High Court and the Supreme Court. [9]

27. In the **Netherlands**, in proceedings before the administrative courts, a natural person may be ordered to pay the costs only in the event of a manifestly unreasonable use of procedural law, that is to say, in exceptional cases of abuse of procedural law, where it was obvious to the party concerned that no positive result could be expected from the action. It follows that, as a general rule, it is possible to order the national administrative authorities to pay the costs, if applicable, of their employees, since private persons may be ordered to pay costs only in exceptional circumstances. The likelihood of civil servants being ordered to pay their employers' costs in proceedings before the administrative courts is, therefore, practically zero.

28. In **Germany**, as regards the allocation of costs, the ArbGG [10] provides for a derogation from the general rule that the unsuccessful party must pay all the costs, for cases applying the *Urteilsverfahren* (procedure concluding with a judgment) at first instance in employment disputes. Under that provision, however, the successful party is not entitled, at first instance, either to compensation for the loss of their time or to the reimbursement of their lawyer's fees. The costs associated with the involvement of a lawyer include both the lawyer's fees and the expenses and travel expenses of that lawyer. The time lost by the party includes the time spent attending the hearing itself, including travel, and the time spent on preparatory acts such as submitting

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9 Supreme Court (Ireland), *Zalewski* v *Adjudication Officer & Ors* [2021] IESC 24.

10 Paragraph 12a of the Arbeitsgerichtsgesetz (Law on labour courts; 'the ArbGG') of 2 July 1979 (BGBl. I, p. 853, 1036), as amended by Paragraph 9 of the Law of 15 July 2024 (BGBl. 2024 I, No 237).

the claim, finding a lawyer, and so forth. The ArbGG also precludes the reimbursement of loss of wages or loss of earnings. [11]

29. Furthermore, it is not only the reimbursement of the costs of the proceedings on the basis of procedural rules *stricto sensu* that is precluded, but also any reimbursement of preliminary or extrajudicial costs, whether on a contractual or tortious basis. [12] However, all extrajudicial costs which are not expressly mentioned in the context of the derogation, especially the travel and subsistence expenses of the successful party, remain reimbursable. [13]

30. According to the case-law, the aim is in fact to reduce, as far as possible, the cost of first instance proceedings before the Arbeitsgericht (Labour Court, Germany), in order to protect employees who are, as a general rule, in a weaker position. [14] The objective is to prevent employees, who typically have access to fewer economic resources than the other parties to the dispute, from giving up on asserting their rights before the labour courts. However, for reasons of parity, this also applies to the employer or to any other party who loses their case before the Arbeitsgericht. [15] Thus, even if that rule is rooted in considerations of protecting the weaker party, it does not pave the way for the labour court to allocate costs solely on the basis of social equity. [16]

31. The Bundesverfassungsgericht (Federal Constitutional Court, Germany) has, moreover, expressly approved this provision in so far as it is justified by the protection of the employee, the socially weaker party. The fact that the non-reimbursement rule may, in certain circumstances, have negative implications for employees does not alter that analysis, because this rule makes the risk associated with costs more manageable, since each party before the Arbeitsgericht (Labour Court, Germany) is well aware from the outset that, in terms of extra-judicial costs, it will have to bear only what it has itself spent,

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11 Bundesarbeitsgericht (Federal Labour Court, Germany), decision of 17 August 2015, 10 AZB 27/15, *Neue Zeitschrift für Arbeitsrecht (NZA)* 2015, p. 1150, and judgment of 25 September 2018, 8 AZR 26/18, *Neue Zeitschrift für Arbeitsrecht (NZA)* 2019, 121, No 42.

12 Bundesarbeitsgericht (Federal Labour Court, Germany), judgments of 25 September 2018, 8 AZR 70/18, BeckRS 2018, 34213, and 25 September 2018, 8 AZR 26/18, *Neue Zeitschrift für Arbeitsrecht (NZA)* 2019, p. 121.

13 Bundesarbeitsgericht (Federal Labour Court, Germany), decision of 17 August 2015, 10 AZB 27/15, *Neue Zeitschrift für Arbeitsrecht (NZA)* 2015, p. 1150.

14 Bundesarbeitsgericht (Federal Labour Court, Germany), see footnote 12.

15 Bundesarbeitsgericht (Federal Labour Court, Germany), see footnote 12.

16 Bundesarbeitsgericht (Federal Labour Court, Germany), see footnote 12. In fact, the draft law which led to the first ArbGG in 1926 provided for the option of the labour court allocating costs at first instance on the basis of social equity. This provision was not included in the final law.

subject to the travel and subsistence costs of the winning party, which remain reimbursable. [17]

32. As regards the *Beschlussverfahren*, that is, litigation relating to collective labour law, the case-law considers that, even in the absence of an express rule in that regard, lawyers' fees are not reimbursed to the successful party. The Bundesarbeitsgericht (Federal Labour Court, Germany) justifies that exception to the general rule by the fact that, in disputes relating to collective labour law, the concepts of 'successful' and 'unsuccessful' do not necessarily have the same meaning as in individual employment law litigation. [18]

33. Furthermore, in **Sweden**, specifically in employment law disputes, each party may be ordered to bear its own costs if the party who has lost the case had a reason which justified the proceedings. This exception applies as long as the case has been considered on its merits, irrespective of whether it is the employer or employee on the losing side, and it covers, inter alia, cases where a party is a workers' or employers' organisation, whose objective in bringing proceedings is often to obtain a ruling in principle.

34. There are a number of examples in the case-law where the employee lost the case in its entirety, but did not have to pay the employer's costs.

35. In one case, a trade union had brought an action on behalf of one of its members in relation to a reclassification decision taken by the employer. The Arbetsdomstolen (Labour Court, Sweden) dismissed the action brought by that organisation. When it came to the allocation of costs, that court noted that the trade union, as the unsuccessful party, had to pay the employer's costs and that, furthermore, there was no reason to apply the provision according to which each party may be ordered to bear its own costs if the party that lost the case had a reason justifying the proceedings. However, the Arbetsdomstolen took the view that certain other factors were relevant to the allocation of costs, since the employer had made unsubstantiated allegations of deficiencies in the employee's professional activities and had thus caused the trade union association unnecessary costs. Consequently, the employer had to reimburse those costs to the trade union by deducting them from the costs which the trade union should have paid, but for which it was not ordered to pay. However, the court found that no precise costs could be calculated and an estimate had to be made. The Arbetsdomstolen therefore held that each party should bear its own costs.

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17 Bundesverfassungsgericht (Federal Constitutional Court, Germany), decisions of 20 July 1971, 1 BvR 231/69, *Neue Juristische Wochenschrift (NJW)* 1971, p. 2302, and 31 January 2008, 1 BvR 1806/02, *Neue Zeitschrift für Sozialrecht (NZS)* 2008, p. 588.

18 Bundesarbeitsgericht (Federal Labour Court, Germany), decision of 20 April 1999, 1 ABR 13/98, *Neue Zeitschrift für Arbeitsrecht (NZA)* 1999, p. 1235.

36. In another case, a trade union had brought an action against several employers concerning alleged infringements of the provisions of a collective agreement. The Arbetsdomstolen (Labour Court, Sweden) delivered an interlocutory ruling in the case. The trade union subsequently withdrew its action. The court stated that the withdrawal by that organisation meant that the case should, therefore, be removed from the register rather than closed by a judgment which, in view of the outcome of the interlocutory action, could have come to a different conclusion than the dismissal of the action brought by the trade union. However, the Arbetsdomstolen held that it had to be considered that the parties in the present case had to have a common interest in obtaining an authoritative decision on the meaning of the collective agreement, however that might be. It found that there were, therefore, special circumstances which justified each party bearing its own costs.

37. In addition, it should be noted that in **France**, the court has, in any event, a discretionary power which allows it to apportion the costs. Indeed, even if the employee is wholly unsuccessful in his or her claims, the court may decide to order another party to pay some or all of the costs, including, exceptionally, the successful party, stating the reasons for its decision. [19] In exercising its discretion, the court may rely on the concept of 'equity' in order not to place too high costs on a single party. For example, it has been held that, where the applicant's claim has been upheld in its entirety and the applicant has been awarded substantial compensation, to also order the debtor to pay the costs would be to undermine equity. Furthermore, specifically in relation to the public sector, while the principle remains, according to the Code of Administrative Justice, that costs are to be borne by the unsuccessful party, that code also provides that if the particular circumstances of the case so justify, the costs are to be 'borne by another party or shared between the parties', a provision which has been applied by the courts in favour of the unsuccessful party, the employee. [20]

38. In **Bulgaria**, where the employee is unsuccessful in the proceedings, the employer is entitled to be allocated the costs, including the costs relating to the remuneration of the legal adviser. The case-law has been inconsistent regarding whether, in cases where the administrative court dismissed the action or where the employee withdrew his or her action, the latter was required to pay the fees of a legal adviser where the administrative authority was represented by such a legal adviser during the judicial proceedings. An

[19] See judgment of the Cour de cassation, Chambre Sociale (Court of Cassation, Social Division, France) of 22 March 1983, No 81-40.513, published in the *Bulletin*.

[20] See, for example, in relation to costs charged to the State, the judgment of the cour administrative d'appel de Nancy (Administrative Court of Appeal, Nancy, France) of 6 June 2024, No 21NC02358, not published in *Recueil Lebon*.

interpretative judgment of the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria) [21] has made it possible to unify that case-law. Indeed, it specified that if the employee is unsuccessful in the case, he or she must pay for the remuneration of the legal adviser when the administrative authority is represented by the latter.

39. Similarly in **Italy**, if an employee has been entirely unsuccessful in his or her claims, the Corte Costituzionale (Constitutional Court) has emphasised that having the status of employee in proceedings relating to the rights and obligations arising from the employment relationship does not, in itself, constitute a sufficient reason, even for the purpose of removing economic and social barriers to judicial protection, to depart from the general principle of procedural equality as regards the obligation of the entirely unsuccessful party to reimburse costs. However, it is still possible for the court to find that there are other circumstances which would allow the costs to be shared.

B. SPECIFIC RULES FOR DETERMINING COSTS

1. RECOVERABLE COSTS

40. Certain labour law proceedings are exempt from recoverable costs. That is the case for proceedings relating to collective labour law in which there are no procedural costs and the reimbursement of lawyers' fees is precluded (**Germany**), [22] for proceedings at first instance where the successful party is not entitled either to compensation for loss of time or the reimbursement of lawyers' fees (**Germany**), for proceedings before the WRC and the Labour Court where the employee is liable only for his or her own costs and will not be required to pay the other party's costs (**Ireland**), and for proceedings before the administrative courts except in exceptional cases of abuse of procedural law (the **Netherlands**).

41. In many Member States, the initial fees charged for bringing legal proceedings, such as stamp duty, do not apply in cases concerning complaints arising from employment relationships (**Bulgaria**, **France**, **Lithuania**, **Romania**, and to some extent **Greece**, **Italy**, **Poland** and **Sweden**).

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[21] Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), interpretative judgment of 13 May 2010, No 3.

[22] However, it should be noted that, in the case of disputes between, on the one hand, the employer and, on the other, the works council or its members, the employer must bear the costs occasioned by the work of the works council, including, in principle, the costs of a lawyer (Bundesarbeitsgericht (Federal Labour Court, Germany), decision of 19 April 1989, 7 ABR 6/88, *Neue Zeitschrift für Arbeitsrecht (NZA)* 1990, p. 233).

42. Those costs are either borne in full by the respective State, paid by the unsuccessful party, or shared by the parties on the basis of the outcome of the case, in which case beneficiaries of legal aid are exempt.

43. Nevertheless, even if that is the case, the court may have the right to require an employee who abuses his or her right to legal defence, namely an employee who brings an action before the court without good cause or acts in an abusive manner, to pay stamp duty (**Lithuania**).

44. Furthermore, in **Poland**, at first instance, the stamp duty payable by the employee is borne by the public purse on a provisional basis. When the court delivers its final judgment, it may order the employee to pay this duty only in exceptional cases. However, at other instances, if the value in dispute exceeds a certain amount (namely 50 000 Polish zlotys or approximately EUR 11 650), the employee must pay stamp duty.

45. Similarly, in **Greece**, certain types of action, such as claims for compensation for an accident at work or claims with a value of certain amounts which vary depending on whether the action is brought by an employee governed by private or public law, are also exempt from stamp duty.

46. In **Italy**, employees are exempt from paying those duties where their annual income is under a certain amount. For those whose annual income exceeds that amount, the initial fees due according to the value of the claim are reduced by a half.

47. In **Portugal**, employees in employment law disputes, represented by the Office of State Counsel or by the legal services of a trade union, are exempt from stamp duty if, at the time when the action is brought, their gross annual income does not exceed a certain limit.

48. In **Sweden**, the travel and subsistence expenses of a party who is a natural person, who has been summoned to the hearing, may be reimbursed from public funds where the Arbetsdomstolen (Labour Court) considers it necessary in the light of the economic situation of the person concerned.

49. It should also be noted that there are special rules on jurisdiction in **Bulgaria** and **Romania**, which may have an impact on the employee's travel costs.

50. Indeed, in **Bulgaria**, a special territorial jurisdiction has been established for labour law disputes, under which an employee may bring an action against his or her employer in the courts for the place where he or she habitually carries out his or her work.

51. In **Hungary** and **Romania**, labour law disputes fall within the remit of the court in whose jurisdiction the applicant has their domicile, residence or place

of work or, as the case may be, registered office. The same rule applies in **Romania**, under the Administrative Code, [23] to disputes concerning civil servants, in particular as regards applicants who are civil servants, but not, however, as regards applicants who are public authorities, to whom the general rules apply (jurisdiction of the courts in the defendant's domicile).

2. COSTS RELATING TO LEGAL REPRESENTATION

52. While, in the majority of cases, the costs relating to representation by a lawyer are determined in accordance with the general rules, specific rules were identified in several Member States.

53. In **Lithuania**, when awarding such costs to a public administration entity, although the rules of procedure do not limit the possibility for such an entity to be represented by a lawyer, in order to decide on the allocation and the amount of representation costs due to that entity, the court must carry out an overall assessment in order to determine whether, in light of the internal administrative capacity of the entity concerned and the nature of the case, it was indeed necessary to have recourse to the services of a lawyer. In determining the nature of the case, account must be taken, inter alia, of the novelty of the legal issue raised in the case, the scope and complexity of the case, the fact that the outcome of the case is likely to have a wider impact than only the legal relationships at issue in the case, the public interest, and so forth. None of those criteria is decisive in determining the question of the allocation of representation costs to a public administration entity. The court must assess all those criteria. Furthermore, the case-law of the administrative courts also recognises that the costs of representation in administrative proceedings incurred by a public administration entity may be reimbursed, but only in cases where the participation of the lawyer was necessary for the proper defence of the interests of the State (or the municipality). [24]

54. In the **Netherlands**, according to case-law, an employee who provides legal assistance to his or her employer is not regarded as a 'third party', irrespective of whether he or she is a lawyer, and, consequently, the costs arising from that are not costs that are eligible for reimbursement as costs for professional legal assistance provided by a third party. [25]

55. Furthermore, the employee does not always have to be represented by a lawyer. For example, in **Ireland**, the employee may be represented before the

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[23] Codul administrativ (Administrative Code).

[24] Lietuvos vyriausiojo administracinio teismo praktikos, taikant Administracinių bylų teisenos įstatymo normas, apibendrinimas (Overview of the case-law of the Supreme Administrative Court of Lithuania on the application of the Law on administrative procedure), *Bulletin* No 23, p. 723.

[25] See Hoge Raad (Supreme Court, the Netherlands), judgment of 13 September 2019, ECLI:NL:HR:2019:1319, paragraph 2.4.1.

WRC by any person accepted by the adjudication officer. In other Member States, self-representation or representation by a trade union organisation or any other association offering legal assistance to employees is also possible before certain courts (**Bulgaria**, **Hungary**, the **Netherlands**, **Poland**, **Portugal**, **Sweden**). [26]

56. As regards, more specifically, the amount of the costs of representation by a lawyer, in the case-law in **Romania**, it has been held that requiring the unsuccessful employee to pay excessively high lawyers' fees, simply because he or she has challenged the dismissal decision and referred the act and measure taken by the employer to the court for review, would lead to a limitation of the employee's rights, which is contrary to the principles of the Labour Code. [27] The possibility of challenging the dismissal decision in court is a right the Labour Code confers on the employee and the employee cannot be forced to waive it. However, demanding excessively high lawyers' fees tends precisely to encourage employees to give up their right to challenge in court the measures taken by the employer. It has also been held that the lawyers' fees requested by the employer as costs were disproportionate to the circumstances of the case, namely nine cases with similar subject matter in which the defence was provided by the same lawyer. Those fees were therefore automatically reduced. [28]

57. In **France**, it is in the court's discretion to determine the amount to be paid in respect of 'non-recoverable' costs, the application of which in case-law can be seen in relation to employment law disputes in favour of the employee. [29]

3. TAKING INTO ACCOUNT THE EMPLOYEE'S ABILITY TO PAY

58. In **Germany**, in general, the law aims to protect employees from incurring excessive costs as a result of bringing legal proceedings. Thus, procedural costs are calculated on the basis of the value of the claim, with an upper limit, for the purposes of calculating those costs, of three times the value of the employee's gross remuneration. This limitation is intended to guarantee employees' right of access to justice, taking into account the fact that there is not only an impediment to effective legal protection where the risk associated with costs exceeds a party's economic capacity, but also where that risk is

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[26] Non-exhaustive overview. See, in that regard, Research Note 24/001, 'Representation of parties in court proceedings'.

[27] Codul muncii (Labour Code), adopted by Legea nr. 53/2003 (Law No 53/2003) of 24 January 2003 and republished pursuant to Legea nr. 40/2011 (Law No 40/2011) (*Monitorul Oficial al României*, Part I, No 225 of 31 March 2011), as amended.

[28] Tribunalul Dolj secţia conflicte de muncă şi asigurări sociale (Regional Court, Dolj, Labour and Social Security Division, Romania), judgment of 9 January 2020, No 10/2020 (RJ 2d8792g7, https://www.rejust.ro/juris/2d8792g7).

[29] See judgment of the cour d'appel de Riom, Chambre sociale (Court of Appeal, Riom, Social Division, France) of 20 February 2024, No 21/02025.

disproportionate to the result sought by the legal action, with the result that recourse to the courts no longer appears to be a valid option.

59. Again in **Germany**, an employee who has been successful against his or her employer will not be required to pay stamp duty on account of the employer's economic inability to pay that duty.

60. In **Ireland**, although the WRC and the Labour Court cannot order an apportionment of legal costs between the parties, they may nevertheless grant reimbursement of the 'reasonable expenses' of an employee who lodged a complaint with them, if they find that the income of that employee is below the minimum wage.

61. In **Portugal**, when determining the amount of costs to be borne by the parties, their ability to pay must be taken into account. Therefore, where the employee is in a difficult financial situation, that may influence the court's decision on the amount he or she should pay.

62. By contrast, in **Italy**, being an employee in proceedings relating to the rights and obligations arising from the employment relationship is not, of itself, sufficient reason, even for the purposes of removing economic and social barriers to judicial protection, for departing from the general principle of procedural equality as regards the obligation of the entirely unsuccessful party to reimburse the costs of the proceedings. Indeed, in employment law disputes, the weak position of the employee justifies favourable rules at a different level from that of the regulation of the costs of the litigation, which was made less rigid by the judgment of the Corte Costituzionale (Constitutional Court) declaring Article 92(2) of the Code of Civil Procedure [30] to be unconstitutional in that it does not provide that the court may apportion the costs between the parties, in part or in full, even if there are other serious and exceptional reasons similar to those expressly provided for in that paragraph. [31]

4. SPECIFIC RULES ON LEGAL AID

63. It should be noted that, in almost all the legal systems examined, there are no specific rules, for labour disputes, concerning the granting of legal aid to employees.

64. However, employees who are entitled to legal aid may be exempt from certain procedural costs, such as, inter alia, advanced payment for

[30] Codice di procedura civile (Code of Civil Procedure).

[31] Corte Costituzionale (Constitutional Court, Italy), judgment No 77 of 18 April 2018.

summoning witnesses or experts (**Bulgaria**, **Hungary**, **Lithuania**, **Portugal**, **Romania**).

65. A specific form of aid is available to employees in **Hungary**. Thus, the employee may receive legal aid if the amount of compensation for absence resulting from the employment relationship which is the subject of the dispute does not exceed the limit laid down by the relevant legislation, which is set at twice the national average gross monthly salary of the penultimate year preceding the lodging of the application.

66. So far as is relevant, it should be noted that, in **Germany**, prior to a reform in 2013, there were, for the benefit of the parties before the labour courts, provisions derogating from the general scheme under which legal aid could be granted if the proposed proceedings or legal defence had sufficient prospects of success. Indeed, a party who was unable to pay the costs without risking their ability to support themselves and their family and who was not represented by a member of a trade union or an employers' association could, by decision of the president of the panel of judges of the labour court, be awarded a lawyer under the legal aid scheme, without there being an assessment of the litigant's prospects of success in the action. [32]

C. OTHER SPECIAL RULES AVOIDING OR ALLEVIATING COSTS

67. It should be noted that there are also other national rules and practices either of general applicability or specific to disputes concerning individual employment relationships, which, although not intended primarily to reduce the costs incurred by the parties to the proceedings, may nevertheless contribute to that outcome.

68. These rules and practices are set out below in a non-exhaustive manner. [33]

1. MEDIATION, CONCILIATION AND PARTICIPATORY PROCEDURE

69. Various dispute resolution procedures, such as mediation or conciliation, which exist in the Member States, can help to avoid the costs of legal proceedings.

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[32] According to the explanatory memorandum to that reform, the protection of the weaker party would be sufficiently guaranteed by the ordinary scheme. The concept of a 'sufficient prospect of success' is interpreted broadly by the case-law, with the result that parity between the parties, irrespective of their financial means, is guaranteed. Furthermore, it is for the labour court, in the context of its general duty to inform the parties throughout the proceedings, to draw the weaker party's attention to the fact that the action that that party has brought does not have sufficient prospects of success.

[33] It should be clarified in this regard that the assistance provided to employees through trade unions, associations or foundations, provided for in several of the legal systems analysed, is not taken into account for the purposes of this summary.

70. In several Member States, these procedures are of general application, without specifically targeting labour law disputes or making any special arrangements for them. In some cases (**Hungary, Italy, Lithuania** and **Poland**), an impact on costs can be observed.

71. Indeed, in **Hungary**, it is open to the parties to enter judicial mediation, both outside the scope of the litigation and in the context of an employment law case pending before a civil or administrative court. If the parties reach an agreement during litigation, they are entitled to a reduction in the procedural fee; the percentage reduced is determined according to the stage of the main proceedings at which they reach agreement.

72. In that regard, in **Italy**, if the court upholds the application to an extent not exceeding the amount of any proposal for conciliation, it will order the party which unjustifiably refused that proposal to pay the costs incurred after the proposal. In making that order, the court may preclude recovery of the costs incurred by the successful party if it considers that they are excessive or superfluous.

73. Furthermore, in the event of mediation in **Lithuania**, the court may depart from the rules on the allocation of costs.

74. Similarly, in **Poland**, irrespective of the outcome of the case, the court may order a party or intervener to reimburse the costs caused by that party's negligent or manifestly inappropriate conduct. This applies, inter alia, to the costs incurred as a result of a manifestly unjustified refusal of mediation.

75. Furthermore, in **France**, in disputes relating to an employment relationship governed by private law, the civil court hearing a dispute may order either conciliation or mediation between the parties. In industrial disputes, this conciliation phase is mandatory and, in addition, voluntary mediation and participatory procedures have been available for all industrial tribunal disputes since 2016. Unlike conciliation or mediation, where there is a third party (a conciliator or mediator) who leads the parties to reach an agreement, the participatory procedure enables the parties, who must be assisted by their respective lawyers, to reach such an agreement. In the public sector, a mandatory prior mediation procedure has been put in place for some civil service disputes.

76. Workers' unions and workers' representatives, as well as employers' organisations, employers' representatives or an individual employer, have the right in **Greece** to request the services of a conciliator from the Organismos Mesolavisis kai Diaitisias (Organisation for Mediation and Arbitration) in order to reach an agreement on any matter where the law provides for consultation between the employers and the employees or on a disagreement or dispute

between them on the basis of an individual employment contract of collective interest.

77. In **Ireland**, lawyers have an obligation to advise their client to consider mediation prior to initiating proceedings and to provide information about its benefits. A court may, on its own initiative and having regard to the circumstances of the case, invite the parties to consider mediation in order to settle the dispute.

78. In the **Netherlands**, the judge can assist the parties to find an amicable solution by giving them a provisional opinion at a hearing and offering them the opportunity to negotiate outside the court room.

79. In some Member States, those procedures also have special characteristics with respect to labour law.

80. In **Lithuania**, in the case of labour law disputes, the employee can refer the matter in question to one of the standing committees for work-related disputes established at regional level. Those committees, composed of three members, including a representative of a trade union organisation, a representative of an employers' organisation and the chairman appointed by the Valstybinė darbo inspekcija (State Labour Inspectorate), issue decisions free of charge. **Greece** has a very similar legal institute, where employees have the right to refer the matter to the Soma Epitheorisis Ergasias (Labour Inspectorate), which is responsible for monitoring the application of labour law rules and the settlement of disputes between employers and employees in this field (including amicable settlement). The proceedings before that body are expeditious and are not conditional on the payment of costs. In that context, neither in **Greece** nor in **Lithuania** can anyone be ordered to pay the costs of the proceedings. If a party is not satisfied by the decision taken at the end of the proceedings, it can always take the matter to a court.

2. SPECIAL RULES OF PROCEDURE

a) EXPEDITED PROCESSING OF CASES

81. Disputes relating to employment law in **Romania** are handled under an urgent procedure and there is a single remedy, namely an appeal, which can be lodged against decisions handed down at first instance. An expedited procedure is also applicable in **Bulgaria** for some of these disputes, namely those involving payment of remuneration due to the employee, the annulment of a dismissal, reinstatement in previous employment, payment of compensation for the period during which the employee remained unemployed as a result of the unlawful dismissal, and rectification of the reason for dismissal recorded in the employment record book or any other document.

b) BURDEN OF PROOF

82. In **Romania**, the burden of proof in labour law litigation lies with the employer, who is also required to submit evidence in its defence before the date of the first hearing.

c) ENFORCEMENT OF COURT DECISIONS

83. In **Poland**, by virtue of a specific rule for labour law litigation, when ruling on the amount due to an employee in employment law cases, the court, of its own motion, makes the judgment immediately enforceable for a portion not exceeding the employee's full monthly salary.

CONCLUSION

84. In all of the legal systems examined, the allocation of costs and the determination of recoverable costs in the context of litigation concerning individual employment relationships are governed, for the most part, by the same rules as those applicable to litigation in other areas and, thus, by the rules of ordinary law. The latter are also similar in substance, irrespective of the type of courts called upon to hear the dispute under consideration, and, in particular, of the legal regime applicable to the employment relationship at issue (statutory or contractual, private law or public law).

85. As regards the allocation of costs, it is common ground in all the legal systems that the costs are to be borne by the unsuccessful party, where applicable, in so far as the party concerned has been unsuccessful in its claims.

86. In litigation concerning individual employment relationships, specific rules have been identified, which provide for derogation from that principle by exempting from the burden of recoverable costs either the employee alone or any party to the proceedings, irrespective of whether they are the employee or employer.

87. The regime most favourable to the employee appears to be that provided for in the **Netherlands** in proceedings before the administrative courts (though the procedure applies only to certain categories of public sector employees), where a natural person may be ordered to pay the costs only in exceptional circumstances, such as in the event of an abuse of rights, and in **Ireland**, before the WRC and the Labour Court, where an order for costs against the parties is, in principle, precluded, unless the employer is involved in an exceptional case. Those two situations seem to stand out by giving only employees the benefit of an exemption from costs.

88. Significant departures from the basic rule have been identified in **Germany**, where, before the labour courts at first instance, the parties may only be

ordered to pay certain categories of costs, and, in particular, may not pay the lawyers' fees of the opposing party.

89. Furthermore, the application of the basic rule may be limited to certain categories of costs (see, to that effect, exclusion of representation costs in **France**) or an order to pay costs may be made subject to the submission of a specific application to that effect.

90. All the legal systems analysed make it possible to temper the effects of the application of the basic principle by giving wide discretion to the court called upon to rule on the order for costs, in particular with regard to the necessity of the costs incurred, but also in accordance with other criteria relating to the usefulness of the proceedings, the public interest in the case or the conduct of the parties before or during the proceedings. However, those criteria are not specifically intended to offer protection to the employee, although it has been possible to identify a number of examples in the case-law of their application in favour of the employee, including on account of his or her status as an employee. Furthermore, in **France** the court has very wide discretion when deciding on the allocation of costs and may therefore be called upon to make an equitable ruling so as not to impose an excessive burden on a particular party.

91. Although the discretion thus conferred on the court called upon to rule on costs is not specific to disputes concerning individual employment relationships, the possibility of taking into account the conduct of the parties during, or even prior to, the proceedings, as provided for by various national legal systems examined, seems be of particular interest in the context of the aforementioned litigation, particularly as regards the potential consequences of a failed attempt at mediation or conciliation.

92. As an extension of the foregoing considerations, it should be noted, finally, in the light of the legal systems analysed, that, in addition to the rules governing costs, a number of specific rules in relation to labour law litigation are of such a nature as to alleviate, directly or indirectly, the burden of any costs falling on the employee. Those rules include exemptions for some or all of the legal costs, specific criteria on territorial jurisdiction and various rules on the burden of proof and the enforcement of decisions.

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