International Labour Organization

Access to labour justice: Judicial institutions and procedures in selected European countries

Overview of procedural elements for access to labour justice in judicial dispute resolution institutions

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Labour Law and Reform Unit
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Introduction

As the number of individual disputes arising from day-to-day workers' grievances or complaints continues to grow in many parts of the world[1], labour courts are important part of dispute prevention and resolution systems and play a critical role in ensuring access to justice and contributing to equity in industrial relations.

Access to labour justice cannot be understood only as the formal access to labour courts and right to have a claim examined by an impartial judge, but also as access to a fair procedural regulation, which enables real conditions of equality before the judiciary.

This report aims at examining labour courts and ordinary courts hearing labour cases and various detailed aspects of their procedures and institutional settings, seeking to identify connections between them or trends in the region which may impact on the level of access to labour justice in the countries examined.

States commonly establish different types of institutions and procedures to resolve individual and collective disputes.

In European countries labour conflicts may be resolved through different models of judicial or quasi-judicial courts/tribunals, which are empowered to hear cases and determine a binding outcome of a dispute[2]. The following countries systems were examined: Albania, Austria, Belarus, Belgium, Bulgaria, Cyprus, Czech Republic (Czechia), Denmark, Estonia, Italy, Israel, Germany, France, Finland, Greece, Hungary, Iceland, Ireland, Israel, Lithuania, Latvia, Lichtenstein, Luxembourg, Malta, the Netherlands, Montenegro, North Macedonia, Norway, Poland, Portugal, Serbia, Spain, Slovenia, Slovakia, Sweden, Switzerland, Republic of Moldova, Russia (Russian Federation), Turkey, Ukraine, United Kingdom of Great Britain & Northern Ireland.

European countries may be divided for the purpose of this report in two models: i) ordinary civil courts with jurisdiction over labour cases (with or without specialized labour sections or judges), and ii) specialized labour courts, which may or may not be under the direct administration of the Judiciary.

They may have different compositions, with the presence of professional judges or/and the active participation of lay judges appointed by employers´ and workers 'representatives to resolve labour disputes. Cases can be heard in a panel or by a single judge.

There may be also a combination of institutions when, for example, decisions taken by specialized labour courts may be appealed to ordinary higher courts.

Courts can also be competent to hear collective and individual cases. In some countries, labour courts may have full jurisdiction over all labour claims or have their jurisdiction limited to disputes regarding breaches on collective bargaining agreements, involving unionized workers, interests' disputes, or other sensitive topics, such as dismissals, transferring to ordinary courts the competence over individual claims or non-unionized workers. They may also be competent to hear cases involving public employees or social security (pensions, unemployment).

Different models may involve also different organic procedural laws and court procedural rules, depending on the existence of specific rules enacted for labour disputes, or general procedural rules, applicable to all cases falling under civil jurisdiction.

1 Ebisui, M; Cooney, S; Fenwick, C: *Resolving individual labour disputes: a comparative overview* / edited by Minawa Ebisui, Sean Cooney, Colin Fenwick; International Labour Office. - Geneva: ILO, 2016. p 19.

2 For more information in respect to literature review on labour courts, please see Colàs-Neila , E., Yélamos-Bayarri, E. *Access to Justice: A Literature Review on Labour Courts in Europe and Latin America*, ILO Working Paper 6 -Geneva: ILO, 2020. p 06.

Countries examined also present differences on the physical distribution of these courts and their availability of services to the public, which may impact on the level of access to labour justice.

To examine the multitude of characteristics of each country and compare them, pertinent national legislation and official statistics, when available, were examined considering 4 thematic areas: i) institutional structure of courts and tribunals, ii) jurisdiction, iii) procedural aspects, and iv) operational and practice.

The institutional structure evaluates how the courts are composed, if they are part of a multiple-tier system under judicial authority, how judges are appointed, what are the governmental bodies responsible for selecting them, and what are the requirements to be met to become a professional judge.

In jurisdiction, the courts hearing labour cases will be classified according to the material jurisdiction, if they can hear cases related to international jurisdiction, and if they can hear both individual and collective cases. Often there is a close affinity between interest disputes and collective disputes and between rights disputes and individual disputes, but this is not a rule.[3] For the purpose of this report, collective cases are those arising from disagreements between a group of workers usually, but not necessarily, represented by a trade union, and an employer or group of employers over existing rights or future interests.[4]

By analysing the procedural aspects, this report aims at comparing the procedures by which it is possible to present claims to the judicial or quasi-judicial dispute resolution institutions under examination, and how the procedures themselves are applied to cases[5], including with respect to formal requirements, which may affect directly or indirectly the level of access to labour justice.

Lastly, in operation and practice, the report examines the average distribution of courts and judges to hear cases (supported by official records, if available).

3 Goldman, A. "Settlement of Disputes over Interests and Rights" in Comparative Labour Law and Industrial Relations in Industrialized Market Economies, 16th edition. 2014. p. 799-800.

4 ITCLO: *Labour dispute systems: guidelines for improved performance*. International Training Centre of the International Labour Organization, 2013. p. 18.

5 Such as presentation of evidence and rules of burden of proof, participation of accredited representatives, possibility of appealing the case to higher instances, costs of procedures, possible legal aid, and legal fees.

Methodology

In order to compare models of procedural law and structure of courts in European countries, pertinent national legislation of each country was examined to collect qualitative data and produce contextual knowledge about the composition of courts hearing labour cases, context of their jurisdiction, procedures and practice of courts. Data collected was divided in several indicators conceived to enable the comparison of countries examined. Given the variety of models and processes, a cross-country quantitative comparison cannot readily be undertaken. Data provided are thus accompanied by descriptions of the specific context.

This report used updated procedural regulations, updated information provided by official channels of Ministries and courts, and available statistics from 2017 to 2021, when available.

Institutional Structure of Courts and Tribunals

Composition of Courts and Tribunals

Models of courts hearing labour cases

In more than half of the countries analysed labour cases are heard only by civil courts, meaning that in these countries labour cases do not fall under a special jurisdiction, although in many of them there are specialized branches handling these cases or specific procedures are applied. Moreover, in countries where labour courts have been established, their competence over labours cases may not be absolute, as it can be shared with civil courts depending on the nature of claim.

For the purposes of this topic, the report will divide the countries in the ones with and without established labour courts, even if their jurisdiction over labour cases is limited or if labour courts are branches of ordinary courts.[6]

In Hungary, a recent reform on the Judiciary system eliminated administrative and labour courts, and these cases are now to be heard by ordinary courts.[7] In Croatia, labour cases are heard either by the Municipal Labour Court of Zagreb, the only specialized labour court in the country, or by ordinary municipal courts at first instance in the interior of the country.[8]

In Nordic countries, such as Denmark, Finland, Iceland, Norway and Sweden, specialized labour courts and ordinary and civil courts may be competent to hear individual labour cases, but the nature of the claim and the status of the worker in respect to unionization will define where the case will be heard in first instance.[9] **(Chart 1)**

Composition of courts hearing labour cases

Labour courts and ordinary courts hearing labour cases can comprise professional judges and/or representatives of employers, workers and experts in labour markets (often called "lay judges", "labour advisers" or "representatives of people").[10]

In OECD countries, for example, the legitimacy of lay judges appears to be framed by the national industrial relations context, particularly union density, and the public trust afforded to them.[11] They can play the role of ancillary or expert judges, like in Austria[12], Belgium[13] and Cyprus[14], or play a major role in handling the case, like in Norway (although the cases are chaired by a professional judge)[15], France, Ireland and Sweden,

6 An exception to this rule is Switzerland, where due to its unique cantons' division, the existence of labour courts will depend on local regulations. For the purposes of this report, it has been considered as a country in which labour courts exist, even if not in every canton.

7 In April 2020, the independent administrative and labour courts ceased to exist in Hungary, according to amendments made to the Act on Organization and Administration. Individual labour disputes are now brought before regional civil courts, which may or may have labour specialised branches or divisions in their courts.

8 Article 34 of Civil Procedure Act.

9 This will be further explained in the section "Jurisdiction".

10 For this report, these representatives will be called "lay judges".

11 Ebisui, M; Cooney, S; Fenwick, C: *Resolving individual labour disputes: a comparative overview / edited by Minawa Ebisui, Sean Cooney, Colin Fenwick*; International Labour Office. - Geneva: ILO, 2016. p 22.

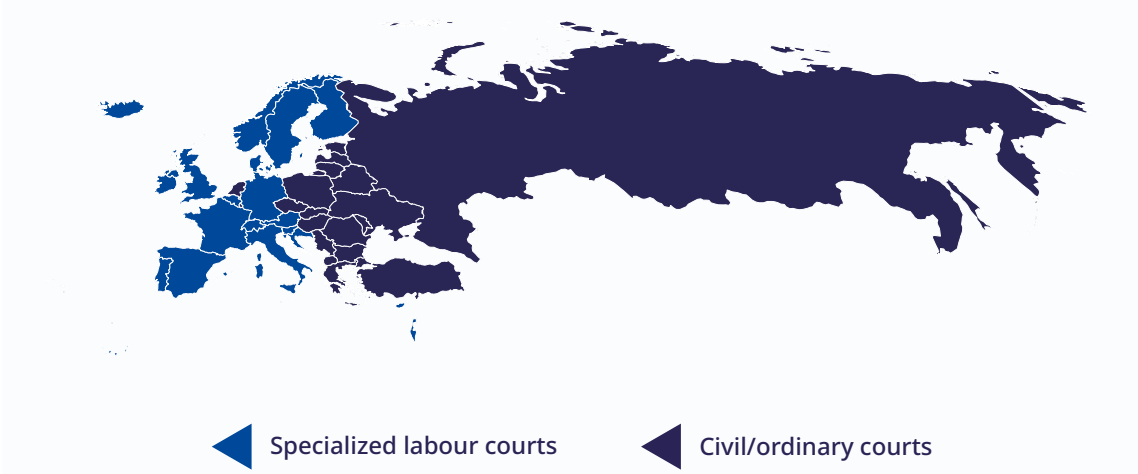
12 Article 1 (11) of Employment and Social Welfare Act.

13 Articles 81-85 of Judiciary Code.

14 Sections 2 and 3 of Termination of Employment Act.

15 Articles 37 and 38 of Labour Disputes Act of Norway.

▶ Chart 1: Judicial courts of first instance hearing labour cases



where they represent more than half of the members of the Labour Court - only 8 out 25 members are professional judges.[16]

In Iceland, the seats designated to representatives of employers and workers may be rotative, meaning that depending on the category of worker involved, the appointed members shall vacate their seats in favour to representatives nominated by the plaintiff.[17]

In France, the labour court (*Conseil de prud'hommes*) is divided into five specialised branches, depending on the workers and employers 'activities. If the members (called "labour advisers") hearing a case are tied, the court will be chaired by a professional judge appointed by the President of the Regional Court, to be responsible for the casting vote.[18]

In Ireland only lay judges appointed by social actors and by the Government are involved in deciding cases in a panel. The Court has a legal adviser.[19] **(Chart 2)**

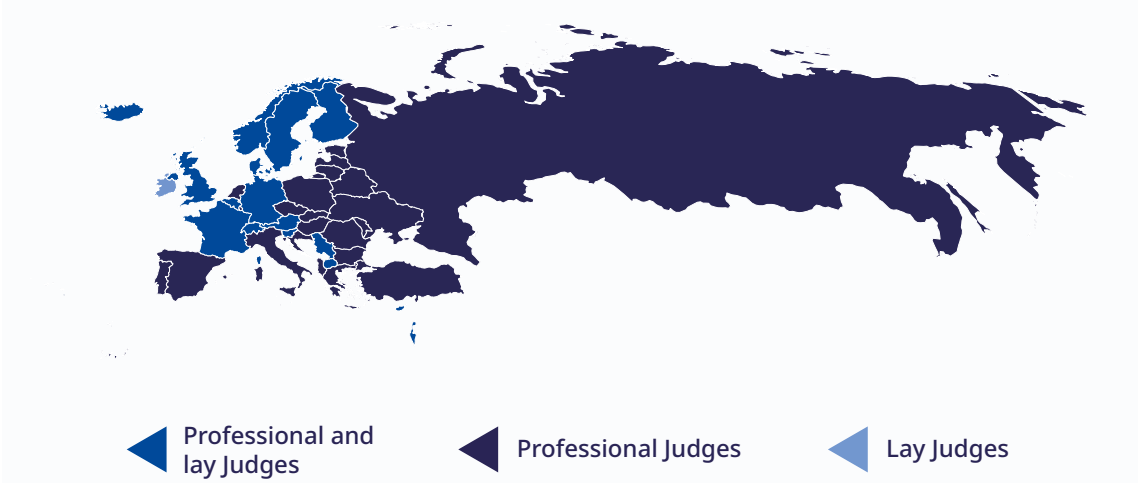
In Sweden, the labour court is composed by members representing the interests of the employers and two representing workers 'interests, professional judges and a specialist with expertise in labour market issues.[20]

In Germany, all judicial tiers specialized in labour matters (Labour Courts, Land Labour Courts and Federal Labour Court) are composed both by professional and lay judges.[21] Same happens in Israel, where labour cases are heard in first instance by Regional Labour Courts and in second instance by the National Labour Court, both in panels formed by professional and lay judges.[22]

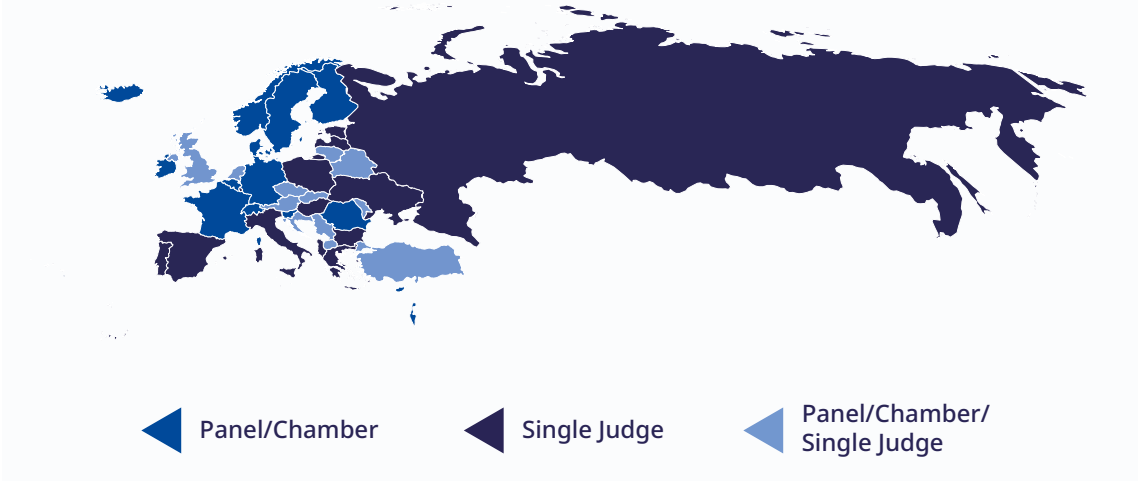
Labour cases may then be decided in first instance by a single judge[23] or by a panel of judges, which may be composed also by lay judges.

16 Labour Disputes Act, Chapter 3, Sections 1-9.
17 Article 39 of Act on Trade Unions and Industrial Disputes.
18 Articles L1441-L1443 of Labour Code.
19 Section 10 of Industrial Relations Act and Workplace Relations Act 2015.
20 Please, see more in Swedish Labour Court http://www.arbetsdomstolen.se/pages/page.asp?lngID=7&lngLangID=1
21 Sections 20-27 of Labour Act.
22 Articles 1, 18 and 20 of Labour Courts Law, 1969.
23 Examples include Italy, Spain, Portugal, Luxembourg, Liechtenstein, Poland and Russia.

▶ Chart 2: Category of judges of first instance hearing labour cases



▶ Chart 3: Composition of judicial courts of first instance hearing labour cases



In some countries the nature of the claim or specific rules on procedures will be decisive to define whether the decision is to be rendered by a single judge or by a panel.[24]

Considering the group of countries examined, 70% provide mechanisms for the labour cases to be heard in a panel, even if composed only by professional judges and limited by specific rules of procedure or nature of claims. **(Chart 3)**

Selection and qualification of judges

Rules on selection and qualification of judges serve to guarantee their independence and ensure a sufficient degree of expertise and high standards in the qualification. The European Charter on the Statute for Judges provides that the selection, appointment, and recruitment of professional judges must be independent of the executive and

24 Examples include Belarus, Czech Republic, Lithuania, Montenegro, Republic of Moldova and Slovakia.

legislative branches[25], to guarantee objective and transparent criteria within the process.

The processes of selection of first instance professional judges and the qualifications required to hold the position are remarkably similar among the countries examined, but specific trends are important to be explored.

Qualification of Judges

In most of the countries, the pertinent legislation provides that candidates must hold a national citizenship. In Portugal, a citizen of a portuguese speaking State with permanent residence in Portugal may also apply for a judge position, provided that the right to exercise the functions of judge or magistrate is recognised by law and under conditions of reciprocity.[26]

Other requirements are related to education (bachelor or master's in law), age, and previous professional experience, or attendance to training programmes. Some countries also established statutory personal requirements related to reputation, credibility, and physical and mental fitness for the job.

In France, judges destinated to labour courts receive a basic training in labour law.[27] In countries like Luxembourg, Switzerland, and Liechtenstein, knowledge, or fluency of a second language spoken in the country is an additional requirement. In North Macedonia, computer literacy is also a statutory requirement examined during the selection process.[28]

In the United Kingdom, qualifications vary according to the category of judge. Appointments for first instance judges are open only to citizens (including those holding dual nationality) of the United Kingdom, the Republic of Ireland or a Commonwealth country.[29] There is no upper or lower age limit for candidates, apart from the statutory retirement age of 70. For most vacant positions, qualified legal practitioners with a minimum of seven years legal experience are eligible.[30]

Ukraine has taken important steps to reform its legislation to provide mechanisms for restructuring the the Judiciary, including the evaluation of all judges' qualifications to corroborate their competence, integrity, and professional ethics and competitive process for their appointment.[31]

In Belarus, the procedures for the appointment, tenure, and removal of judges are not quite clear in the law and have been under strong criticism in respect to guaranteeing the independence of judges.[32]

The table below summarises the main requirements and the countries that provide regulations in this respect. **(Figure 1)**

Selection of Judges

A large part of the countries examined provide objective and transparent criteria in national legislation for selecting their professional judges, either by public competition based on technical exams or through the establishment of independent Judicial Commissions, which carry out the selection procedures based on technical evaluations, even if they are not solely responsible for the final appointment of judges.

In Belgium, a combined process provides different methods for the selection of judges concurrently, all of them are based on technical examination of candidates, provided that the requirements are met and through the coordination of the High

25 European Charter on the Statute for Judges, DAJ/DOC (98) 23, Principle 1.3.

26 Article 3 of Law 2/2008.

27 École Nationale de la Magistrature. Available in https://www.enm.justice.fr/devenir-magistrat/se-reperer-dans-les-concours/se-reperer-dans-les-concours

28 Article 45 of Law on Courts.

29 Judicial Appointments Commission. Available in https://judicialappointments.gov.uk/ .

30 Section 52 of Tribunals, Courts and Enforcement Act 2007.

31 Law "On Ensuring the Right to a Fair Trial" (Law No. 192-VIII) and Law "On the Judicial System and the Status of Judges" (No. 1402-VIII).

32 See https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26423&LangID=E

▶ Figure 1: Statutory qualification requirements for professional judges

Qualification requirements						
Citizenship	**Age**	**Reputation or/and Health**	**Education (Bachelor`s degree in Law)**	**Education (Advanced degree in Law)**	**Training**	**Experience**
All countries, except Cyprus, Liechtenstein, Portugal and Malta	Czechia, Iceland, Italy, Greece, Hungary, Latvia, Norway, Slovakia, Slovenia, Turkey, Ukraine, Russia	Bulgaria, Estonia, Finland, Germany, Hungary, Italy, Greece, Iceland, North Macedonia, Republic of Moldova, Romania, Lithuania, Luxembourg, Spain, Turkey	Albania, Belgium, Croatia, Cyprus, Denmark, Hungary, Ireland, Italy, Israel, Lithuania, Netherlands, North Macedonia, Norway, Poland, Portugal, Republic of Macedonia, Montenegro, Romania, Russia, Serbia, Slovakia, Spain, Sweden, Switzerland, Turkey, Ukraine	Austria, Bulgaria, Czech Republic, Estonia, Finland, France, Greece, Iceland, Israel, Latvia, Luxembourg	Austria, Bulgaria, Croatia, Czechia, Germany, France, Hungary, Latvia, Luxembourg Sweden, United Kingdom	Albania, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, Germany, Greece, Hungary, Iceland, Ireland, Latvia, Malta, Netherlands Russia, Serbia, Sweden, Ukraine, United Kingdom

Council of Justice (Judicial Commission). The appointment process may follow: i) a judicial training program, ii) professional aptitude examination; or iii) appointment directly to a career post based on their seniority and experience in the field.[33]

In Switzerland, first instance judges are directly elected by the cantons' population[34]. In Germany, judges must pass two state examinations. The first examination concludes academic law studies, and the second concludes practical legal training.

In Denmark, judges are appointed by the monarch on the recommendation of the Minister for Justice, following a list provided by the Danish Judicial Appointments Council. A limited number of judges are recruited among teachers at the law faculties of the universities and among practising lawyers. A similar procedure takes place in Malta.[35] Few countries delegate to the Government the immediate appointment of judges, such as Ireland[36] and Belarus[37].

In Ireland, professional judges shall be formally appointed by President, through the presentation of warrants of appointment to those candidates.[38] **(Chart 4)**

Lay judges are appointed or selected mostly amongst employees and employers

33 Article 151, § 3, 4°, Constitution of Belgium and "Directives pour la formation des magistrats et des stagiaires judiciaires" (Available in https://csj.be/fr/publications/2012/directives-pour-la-formation-des-magistrats-et-des-stagiaires-judiciaires).

34 Article 15 of Federal Act on the Supreme Court.

35 Article 100 of the Constitution and Article 54 of Code of Organization and Civil Procedure.

36 Article 35.1 of the Constitution.

37 Articles 20 and 21 of Law on Judicial System and Status of Judges.

38 Articles 13.9 and 35.1 of Constitution of Ireland.

'representatives', reflecting the weight of these organizations.[39] The requirements are not always clear in the national legislations examined, depending, in many cases, on selective processes conducted by the representative organizations themselves.

In Finland, these members are not required to have a law degree, but they must have a sound knowledge of labour relations.[40] They must be between 25 and 63 years and cannot occupy positions in courts or penal institutions or serving as prosecutors, advocates, or police officers.[41] In Norway, in the labour court, they must not be members of the board of a trade union or employers' association or be permanent employees of such associations.[42]

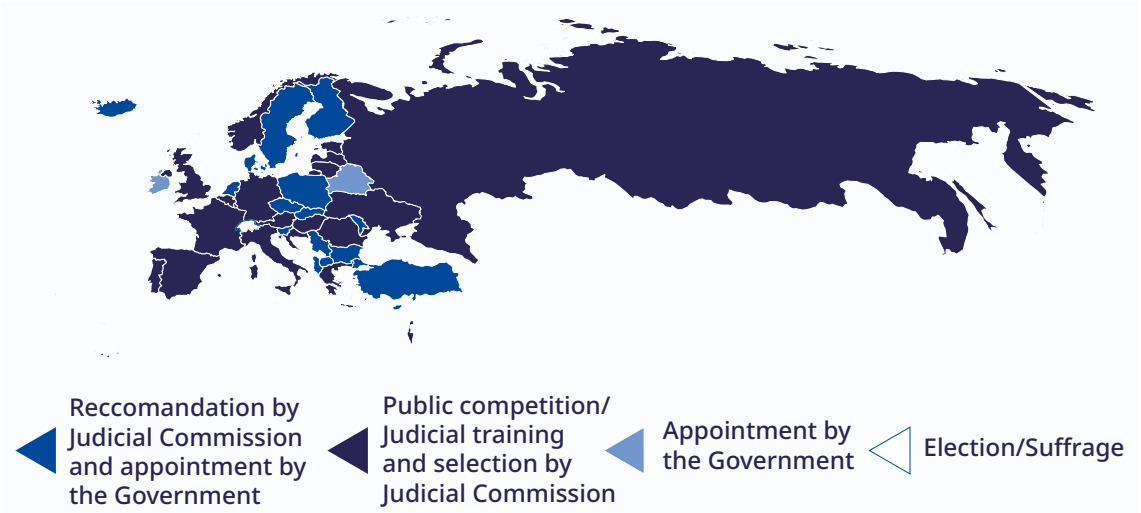
In Sweden, besides representatives of trade unions, as said, neutral persons with specialized knowledge of the labour market may also be appointed.[43] However, they tend older and educated, and are often local politicians.[44]

In Germany, for labour courts, lay judges must be over 25 years old and live or work in the judicial district of the court. In Austria, they must be over 24 years of age.

In France, an Ordinance was issued in 2016[45], abolishing direct suffrage for electing workers and employers´ representatives. Employment tribunals are now composed by representatives appointed by the Ministry of Justice and the Ministry of Labour. They are appointed jointly by the Minister of Justice and the Minister in charge of labour matters every four years on the proposal of trade unions and professional organizations.[46]

In Israel, representatives of workers and employers must be appointed by both Minister of Justice and Minister of Labour, after consultations with the respective organizations.[47] If they are part of National Labour Court, lay judges must also have experience in law, economics or relevant fields and should be members of Chamber of Advocates in Israel.[48]

▶ Chart 4: Methods of selection of professional judges



39 Colàs-Neila , E., Yélamos-Bayarri , E. p 15.
40 Section 11 of Law on Appointment of Judges.
41 Sections 2 to 6 of Labour Court Act.
42 Labour Disputes Act, Section 36 (1).
43 Ebisui, M; Cooney, S; Fenwick, C. p 22.
44 The Swedish judicial system, 2015, available in https://www.government.se/government-policy/judicial-system/
45 Order No. 2016-388 of 31 March 2016 on the appointment of the representatives of the Employment Tribunal.
46 Article L1441-2 of Labour Code.
47 Article 10 of Labour Courts Law, 1953.
48 Article 10 (1), (2), (3) of Labour Courts Law, 1953.

Jurisdiction

Material Scope

Judicial courts dealing with labour cases might also be divided in terms of material and geographical scope.

Individual labour disputes might be resolved in the same way as those available for the resolution of collective labour disputes. Collective disputes, in this case, are those between a group of workers usually, but not necessarily, represented by a trade union, and an employer or group of employers[49], over violation of an existing entitlement embodied in the law, a collective agreement, or under a contract of employment (disputes concerning rights), or future rights and obligations under the employment contract (dispute concerning interests).[50]

Courts hearing labour cases might have their jurisdiction expanded to disputes not only related to private labour relations, but also have jurisdiction over social security and benefits claims or disputes involving public employees.[51] In France[52] and Portugal[53], when public employees are employed under a private law employment contract, the Labour Court is competent to resolve the dispute. In Israel, labour courts have a very large jurisdiction, including all conflicts related to social security.[54]

In some countries, jurisdiction of labour courts is limited to disputes concerning breaches on collective bargaining agreements, involving unionized workers, interests' disputes, or other sensitive topics, such as dismissals. Ordinary courts have jurisdiction over individual claims not connected to collective bargaining agreements, disputes involving non-unionized workers, or when the worker´s representative organization is not willing to pursue the case on behalf of its member. This is the case, in particular, of Nordic countries.[55]

Labour courts in Sweden[56], Iceland[57] and Norway[58] hear only collective disputes or disputes related to breaches on collective bargaining agreements, even if the claim that generated the dispute is individual. Individual workers' claims that are not related to these breaches must go through the regular civil courts. Same happens in Finland, where labour courts are also competent to deal with disputes arising from collective agreements involving public servants.[59]

The United Kingdom, comprising England, Wales and Scotland, has a dual system in respect to competences between civil and labour courts. Individual labour disputes can be resolved by the labour courts (employment tribunals - on claims related to unfair dismissal, discrimination, unfair deductions from payments), and by ordinary courts (on claims such as breach of contract).[60] However, collective cases are not dealt by either of them.

49 ITCLO: Labour dispute systems: guidelines for improved performance. p.18.

50 ITCLO: Labour dispute systems: guidelines for improved performance. p.18.

51 Examples include Austria, Belgium Italy, Norway and Spain.

52 Article L. 1411-2 of the Labour Code.

53 Articles 6 to 12 of the General Labour Law on Public Employment.

54 Section 24 of Labour Courts Law, 1969.

55 For the purpose of this report, given the particularities of the jurisdiction of labour courts in these countries, ordinary and civil courts procedures will not be analysed.

56 Chapter 2, section 1 of the Labour Disputes Act and Sections 2, 3 and 4 of Chapter One of Code of Civil Procedure.

57 Article 38 of Act on Trade Unions and Industrial Disputes and Article 123 of Code of Civil Procedure.

58 Sections 1 and 34 of the Labour Disputes Act.

59 Section 1 Act of the Labour Court Act.

60 Employment Tribunals Act, Section 3.

In Northern Ireland, although most of the regulations regarding labour disputes are remarkably similar, Industrial Tribunals[61] hear and determine claims to do with employment matters[62], and the Fair Employment Tribunal has jurisdiction over labour cases related to complaints of discrimination on the grounds of religious belief or political opinion.[63]

In other countries, labour courts only hear disputes between individual workers and their employers, such as France, where individual disputes are resolved by the labour courts, and collective disputes are ultimately resolved by ordinary civil court (*Tribunal de Grand Instance*). However, the labour courts at first instance (*Conseils du pruď hommes*) are not competent to hear disputes attributed social security code in matters of industrial accidents and occupational diseases.[64]

In Luxembourg, there is no collective lawsuit under the law and all procedures shall be treated as an individual cases. Disputes related to collective labour law are led to conciliation procedures before the National Conciliation Office (ONC).[65] In Cyprus[66] and Russia[67], collective disputes are resolved through mediation and arbitration.[68] **(Figure 2)**

Geographical Scope

Cases involving foreign workers and enforcing foreign decisions

Courts hearing labour cases might be competent to enforce decisions rendered by foreign courts or render decisions on labour cases involving foreign workers providing services in national territory, depending on the reach of national legislation on this regard.

All countries examined have provisions in respect to enforcement of foreign decisions, mostly in their civil procedural law, likely to be applicable in the absence of specific labour procedural law. It is not very clear, however, to what extent these provisions are fully applied to foreign decisions in labour cases.

The relevant legislation consists of the Brussels Convention[69], which has been replaced by Council Regulation 1215/2012 of 12 December 2011[70], the Rome Convention, Regulation (EC) No 593/2008,[71] and, to a lesser extent, the Lugano Convention[72], which cover both parties domiciled in a State Party and, under certain circumstances, defendants domiciled outside the territory of the

61 Section 4 of the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020.

62 Including unfair dismissal, breach of contract, wages and other payments as well as discrimination on the grounds of sex, race, disability, sexual orientation, age, part time working and equal pay.

63 Section 5 of The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020.

64 Article L 1411-4 of Labour Code.

65 Article L. 163-1 of Labour Code.

66 Part I, Chapter B. 5, 6 and 7, of Industrial Relations Code.

67 Article 404 of Labour Code.

68 Other examples include Latvia and Lithuania, through the called conciliation commissions, and Estonia.

69 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters. Adopted on 27 September 1968. Available in https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:41968A0927(01)

70 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Last amended in 2015. Available in https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32012R1215

71 Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I). Available in https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A02008R0593-20080724

72 Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters. Adopted in 16 September 1988. Available in https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A41988A0592&qid=1620207107009

▶ **Figure 2: Material scope of judicial courts hearing labour cases**

Labour & Employment Relations Disputes					
Individual & Collective		**Individual**		**Collective**	
Labour Courts	**Ordinary Courts**	**Labour Courts**	**Ordinary Courts**	**Labour Courts**	**Ordinary Courts**
Austria, Croatia, Germany, Italy, Ireland, Israel, Malta, Portugal, Spain, Slovenia, Turkey	Lithuania, Latvia, Slovakia Serbia, Ukraine	Cyprus, France, Poland, Switzerland, United Kingdom & Northern Ireland	Albania, Bulgaria, Greece, Iceland, Sweden, Norway, Denmark, Estonia, Hungary, Ireland, Liechtenstein, Russia, Ukraine, Belarus, Montenegro, Republic of Moldova, Serbia, Macedonia, Netherlands, Russia, Switzerland, United Kingdom	Sweden Norway, Finland. Iceland, Denmark	France

European Community and members of the European Union.[73]

Generally, as regards jurisdiction, those special provisions allow the protected party to be sued only in the courts of his/her own domicile, but give that party a choice of jurisdiction when he/she is the claimant. Parties to an individual employment contract have, in principle, contractual autonomy to choose the applicable law and, to a more limited extent, jurisdiction.[74]

Under these regulations, judgments issued by a court in an EU jurisdiction may be enforced in another state member without any declaration of enforceability being required, which means that a judgment by a member state of the European Union and EFTA member will be recognized without any formalities. To enforce judgments issued by a court in a non-EU jurisdiction, a declaration of enforceability is required.

In Liechtenstein foreign decisions are not enforceable, unless there is a treaty concerning enforcement of foreign judgements as it is the case for Switzerland and Austria. Liechtenstein has not joined the Brussels Convention nor the Lugano Convention.

The Supreme Court of Sweden has ruled that arrest of assets or other precautionary measures can also be granted about claims that have been

73 Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and Switzerland.

74 European Judicial Network in Civil and Commercial Matters: Jurisdiction and applicable law in international disputes between the employee and the employer. Practice Guide. 2020.

tried by foreign courts if the court's decision can be enforced in Sweden.[75]

In respect to the United Kingdom, with its exit from the European Union, the British government informed the European Council that the Brussels Convention has ceased to apply to the UK and Gibraltar with the expiry of the transition period on 1 January 2021.[76] In respect to the Lugano Convention, articles 126 and 127 of the EU-UK withdrawal agreement ensures recognition and enforcement proceedings concerning UK judgments rendered before 31 December 2020 continue to be governed by the Convention.[77]

75 Supreme Court, judgment in NJA 1973 s 628, in accordance with Chapter 15 of the Swedish Code of Judicial Procedure.

76 UK Government (England & Wales, only): Cross-border civil and commercial legal cases: guidance for legal professionals. 31 December 2020. Available in https://www.gov.uk/government/publications/cross-border-civil-and-commercial-legal-cases-guidance-for-legal-professionals/cross-border-civil-and-commercial-legal-cases-guidance-for-legal-professionals

77 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community 2019/C 384 I/01. Available in https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1580206007232&uri=CELEX%3A12019W/TXT%2802%29

Procedural Aspects

Procedural Rules

Procedures adopted by courts hearing labour cases[78] may follow specific rules enacted for labour disputes, or general procedural rules, applicable to all cases falling under the jurisdiction of ordinary courts.

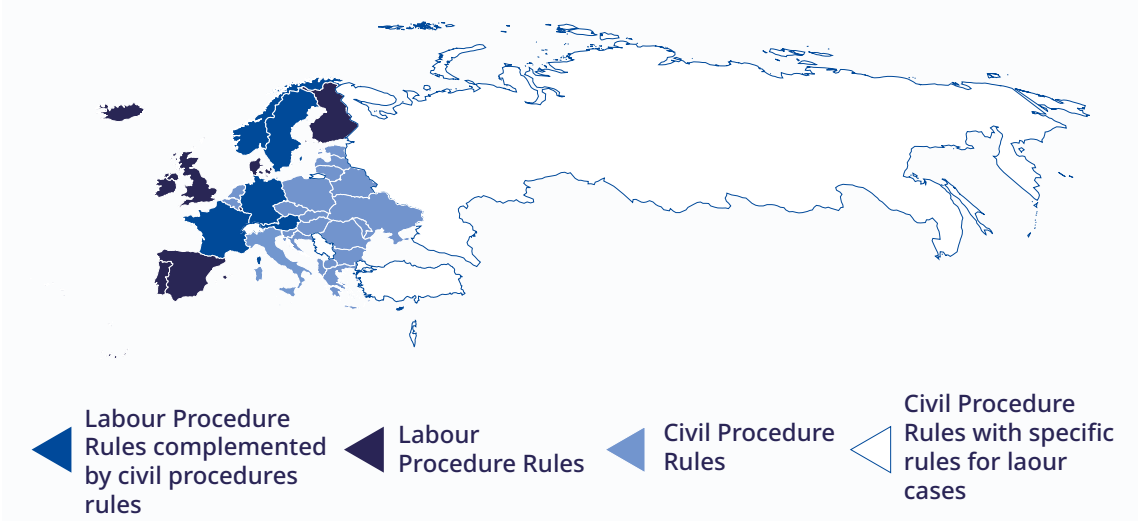
Some countries examined have special procedures intended to ensure the application of expertise in complex employment and labour legislation, particularly in first instance. These procedures intend to make the system less formal and legalistic, faster, and more accessible, to adjust an unequal power relationship between the parties to labour disputes.[79]

Other countries adopt general codes of civil procedures with adaptations to labour cases. And there were also countries in which specific labour procedures are in place but complemented by civil procedures in respect to certain provisions.

In Nordic countries, once most of the individual labour disputes not originated by breaches in collective agreements are resolved by ordinary courts, civil procedure rules are therefore applicable to these cases. However, labour courts have their own procedural rules, even if concerning disputes arising from an individual claim. **(Chart 5)**

However, regardless which rules are applied to first instance procedures of investigation and decision of the case, most of the countries rely totally or partially on general or specific civil procedures rules for enforcing decisions involving monetary claims.

Chart 5: Procedural rules applicable to labour cases



78 For this study, only specific procedures for labour cases or ordinary civil procedures applied to labour cases have been considered.

79 Ebisui, M; Cooney, S; Fenwick, C. p. 18.

Legal Aid, Court Fees & Costs

An important aspect for the right of access to justice is judicial fees. A costly procedure may prevent people from requesting the services of courts, particularly those in more precarious economic situations[80]. Exemptions from paying legal fees are common in most European countries, as well as provisions guaranteeing legal aid.

The report examined access to legal aid, payment of administrative costs (court fees) and costs with external reports and experts, and payment of legal fees.

Almost all countries examined have provisions in law granting legal aid to access the judiciary and which can be applied to labour cases. There is no legislation regulating legal aid in Poland and decisions in this respect are taken exclusively by the judges of the cases.[81]

Initial fees to present a claim do not apply in many countries, especially those in which specialized labour courts have been established. Nevertheless, in the United Kingdom, the Employment Tribunal may reject a claim if it is not accompanied by a Tribunal fee or a remission application.[82]

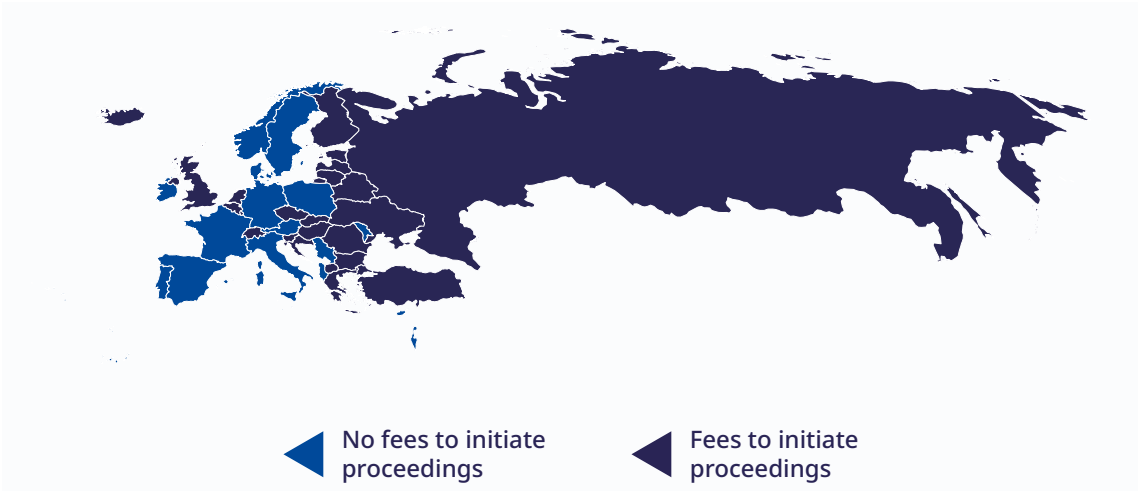
In countries in which labour disputes are dealt by ordinary courts, beneficiaries of legal aid are exempted of initial fees to present a lawsuit[83] or the amount paid may be compensated at the end of the procedures by the losing party. **(Chart 6)**

Courts fees in labour courts and ordinary courts hearing labour cases are either fully supported by the State, paid by the losing party, or shared by the parties according to the outcomes of the cases, in which case beneficiaries of legal aid are exempted of paying them.

In Iceland, Denmark, Sweden, Finland, and Norway, proceedings in labour courts are costless, but individual cases heard by ordinary courts follow the rules of civil procedures, which might imply the payment of courts fees and ordinary expenses and experts, and legal fees.

In the United Kingdom (England, Wales, Scotland & Northern Ireland), although proceedings are

▶ Chart 6. Countries with provisions concerning initial court fees



80 Colàs-Neila , E., Yélamos-Bayarri , E. p. 20.
81 Article 111-122 Code of Civil Procedures.
82 Sections 11 and 40 of Employment Tribunal Rules.
83 Examples include Sweden, Denmark, and Lithuania.

costless, parties may be charged with a costs order in case they have presented any claim or response which had no reasonable prospect of success, or acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted.[84]

In Sweden, workers granted legal aid are partially exempted of costs in ordinary courts. The court fees are generally charged to the losing party in the case when enforcement is effected, where this is possible.

In Lithuania[85] and Bulgaria[86], although court fees shall be paid by the parties, workers in cases concerning claims arising from the legal relationships of employment are legally exempted of court fees.

Most of the countries which have provisions determining the payment of courts fees distribute the burden of responsibility to pay such costs according to the claims granted. This means that in cases in which there has been presentation of a counterclaims, workers might also be sentenced to pay a share of court fees in case the decision finds counterclaims justified.

In Czech Republic[87], court fees shall be paid by the parties according to the proportion of their participation in the case, unless this cannot be ascertained, in which case the costs shall be paid share alike. If there has been only a partial success in the case, the court shall divide the reimbursement of the costs in a proportionate way or even decide that all parties shall bear the court fees. **(Chart 7)**

Court fees might also include or be limited to fees to appeal.[88] In this case, legal aid beneficiaries are normally exempted to pay, even if the appeal is not successful.

In some countries in which the costs are fully supported by the State, different rules may apply in respect to costs with external reports and experts, which may be summoned to present reports on issues related to assessment of

▶ Chart 7: Responsibility for the payment of court fees

◀ To be paid to the State and shared by the parties, according to claims that have been granted. Beneficiaries of legal aid are exempted

◀ The costs are fully supported by the State

84 Section 76 of Employment Tribunal Rules.
85 Article 83 of Code of Civil Procedure.
86 Articles 71 to 84 Code of Civil Procedure.
87 Article 140 of Code of Civil Procedure.
88 Examples include Portugal, Spain, United Kingdom & Northern Ireland.

workplace to evaluate occupational health and safety conditions, medical evaluations on occupational illnesses and accidents, judicial inspections, and investigation of possible fraud in documents. **(Chart 8)**

In France[89], Croatia[90], and Estonia[91], not only parties shall be charged with these expenses, but they must also pay them in advance if they are requested to do it.

In Sweden, these costs are responsibility of the losing party. However, it is possible for the court to adjust the obligation to pay costs or to declare that each party must bear its own costs, if the court considers that the losing party had good reasons and acted in good faith.[92] **(Chart 9)**

The responsibility over payment of legal fees also follows similar rationale.

In Finland, in procedures before the labour court, a losing party can be obliged to pay the opposing party's legal costs in full or in part. When the litigants have had sufficient grounds for legal proceedings due to the ambiguity of the case concerned, they can each be ordered to carry their own legal costs.[93]

In Austria, the court is to determine the share of the expenses that the losing party must reimburse to the successful party. These expenses are based on the value of the claim and the duration and nature of the service provided. The Lawyers' Scales of Fees Act is applicable only if this has been agreed upon between lawyer and client.[94]

In Liechtenstein, the plaintiff is considered to have totally won if the claim is fully granted, and the defendant if it is fully dismissed. In case of shared

Chart 8: Responsibility for the payment of costs with external reports and experts

To be paid to the State and shared by the parties, according to claims that have been granted. Beneficiaries of legal aid are exempted

The costs are fully supported by the State

89 Articles 270 and 271 of Code of Civil Procedure.
90 Article 152 of Civil Procedures Act.
91 Section 148-162 of Code of Civil Procedure.
92 Chapter 5, Section 2 of Labour Disputes Act.
93 Section 33a of Act on Labour Court.
94 Paragraphs 40-44 of Code of Civil Procedure.

▶ Chart 9: Rules for payment of legal/attorney fees

success by both parties, each party will bear the costs of their own legal assistance.[95]

First instance procedures

First instance procedures applied for labour cases, either in labour or ordinary courts, are similar, regardless of specific procedures provided by law. However, certain trends have been observed in cross-case analysis.

Before analysing procedures in first instance, it is worth to mention that in some countries, preliminary mandatory attempt of conciliation is one of the conditions to be able to have a case heard by judicial courts.

This happens particularly in Ireland[96], Spain[97], Sweden[98], United Kingdom[99], Switzerland[100], and Turkey[101], where the preliminary proceedings of conciliation or mediation take place in different alternative dispute resolution institutions before the case is presented to the respective court.

Precautionary Measures

Prior to the presentation of a statement of claim or petition to initiate a labour lawsuit, parties can present a petition to the Court for precautionary measures. Precautionary measures are an essential procedural law institution, once they often have a direct impact on the effectiveness of the future judgment and are fundamental to secure evidence and means to enforce the decision.

In Iceland, Finland, Norway, and Ireland, labour courts procedures do not provide the explicit possibility of precautionary measures and a possible request in this respect may be decided exclusively by the court of the case. However, individual labour cases heard by ordinary courts follow civil procedures, which have provisions in this regard.

95 Sections 40 to 55 of Code of Civil Procedure.
96 Workplace Relations Act 2015 – Section 42, the Labour Court Rules, Section 1.
97 Articles 63 and 64 of Act of Labour Procedure.
98 Sections 1 and 2 of Labour Disputes Act.
99 Section 93 (2) of Employment Tribunal Rules.
100 Article 14 of Judicial Organization Act.
101 Articles 7 of Labour Courts Act.

Precautionary measures are also likely to be requested during the preliminary hearings, especially concerning securing of evidence and anticipation of effects of a final decision (such as reinstatement of workers). In some countries, information in respect precautionary measures in labour cases is not sufficient clear in the legislation examined and might be the case that they are applied according to the discretion of judiciary in specific situations.

Although there is no provision providing the possibility of precautionary measures in claims heard by the Employment Tribunal in the United Kingdom, if during a preliminary hearing the Tribunal considers that any specific allegation or argument or response has little reasonable prospect of success, an order may be issued requiring a party to pay a deposit not exceeding USD 1,355,00 (£1,000,00) as a condition of continuing to advance that allegation or argument.[102]

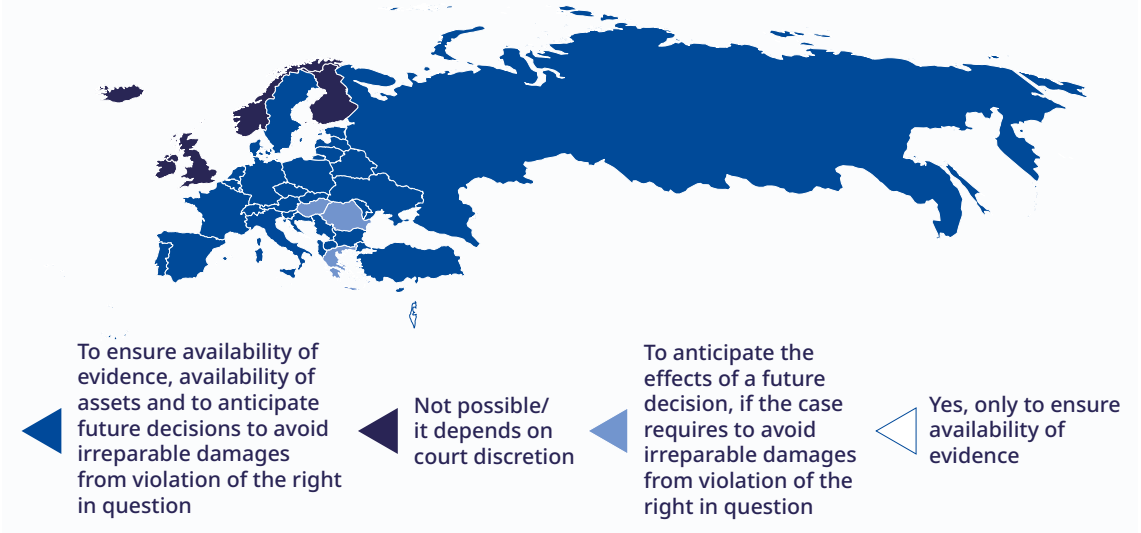
In France, if during the proceedings one of the parties refuses to present evidence that may contribute to the investigation, the professional judge may order measures to ensure the presentation of all evidence.[103]

The high workload of labour courts is a common problem in many European countries.[104] In Northern Ireland, from January 2020, workers wishing to lodge a claim with the Industrial or Fair Employment Tribunal will first have to notify the Labour Relations Agency (LRA) and discuss the option of Early Conciliation. Potential claimants are not able to proceed to tribunal without at least considering this option.[105] **(Chart 10)**

Administration of documents and evidence

The search for instruments to shorten the time taken to resolve disputes also motivates many legal reforms and the introduction of specific mechanisms to present statements of claims, documents, evidence, and pleas in electronic form. Most countries examined have regulations providing formal requirements, such as written statements of claims (or specific forms to be filed), to initiate the procedures, even though admit

Chart 10: Possibility of precautionary measures



102 Section 39 of Employment Tribunal Rules.

103 Article 11 of Code of Civil Procedure.

104 Colàs-Neila, E., Yélamos-Bayarri, E. p. 24.

105 The Industrial Tribunals and Fair Employment Tribunal (Early Conciliation: Exemptions and Rules of Procedure) Regulations (Northern Ireland), 2020.

oral petitions, particularly during hearings. Only 8[106] out 42 countries examined provide statutory possibility of oral statements of claim to initiate labour cases.

Some European countries have already adopted measures that enable digitalisation of proceedings and electronic forms of presenting documents, evidence, and petitions.[107] In the United Kingdom & Northern Ireland claims to the Employment Tribunal and to the Industrial Tribunal must be presented in specific form, but this can be done online.[108] Some countries have also established statutory provisions allowing hearings to be conducted, in whole or in part, by use of electronic communication.[109]

In almost all countries examined, electronic or physical copy of documents and pleas are allowed, and proceedings may be carried out electronically, in which case possible fraud must be raised the judges or contrary party. Only Spain and Israel do not have clear provisions on the possibility of electronic proceedings.

Nevertheless, during the Covid-19 pandemic, several courts also accelerated the use of technological solutions to ensure the continuation of services provided. These changes might also have functioned as a catalyst for further change and cutting-edge innovation in the future, providing a faster and costless procedure to parties, but the access to such technological improvements may be uneven in the region.[110]

Litigants and parties

In countries examined, the range of litigants which may be part of a labour dispute in court rarely varies. In most of countries, workers, employers, public prosecutors, trade unions, third parties indirectly involved, associations, heirs in case of death of one of the parties, and legal representatives, in case of incapacity of any of the parties, are allowed to take part in the proceedings.

This may vary in cases brought to the attention of Labour Courts in which only disputes related to collective bargaining agreements are heard. In those cases, individual workers are rarely accepted as parties, particularly without the assistance of the respective Trade Union.

In cases of individual disputes, in several countries trade unions may also intervene if they are signatories to a collective bargaining agreement applicable to the employee who initiated the dispute and if the outcome of the case may be of collective interest to the members of the trade union.[111]

If the case requires or involves sensitive matters, a Public Prosecutor may also be notified and summoned to present an opinion or to take part in the case.[112]

Representation of parties

In respect to legal representation of parties in Court, labour and ordinary courts hearing labour cases depend very much on the nature of claims to admit different types of representation. In Sweden, while in the labour court trade unions must self-represent themselves during the proceedings, in ordinary courts they may represent their members in individual labour disputes procedures for free[113]. In Finland[114],

106 Croatia, France, Iceland, Luxembourg, Poland, Norway, Romania and United Kingdom.

107 Examples include Germany and Portugal. The advent of the COVID-19 pandemic might have altered this picture due to the physical challenges that lockdowns and restrictions have imposed.

108 Examples include the UK and Estonia.

109 Section 46 Employment Tribunal Rules.

110 Report on rapid assessment survey: The response of labour dispute resolution mechanisms to the COVID-19 Pandemic. International Labour Organization – ILO, 2021, p. 16-19. Available in https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/governance/labour-law/WCMS_828628/lang--en/index.htm

111 Examples Luxembourg, Spain and Portugal.

112 Examples include Spain, Portugal.

113 Section 2, Chapter 42, Part IV, Swedish Code of Judicial Procedure.

114 Section 15 of Labour Court Act.

and Norway[115], accredited lawyers may also represent trade unions in collective proceedings in labour courts.

In individual labour disputes, most of the countries provide regulations admitting self-representation in specific cases. In Italy, if the claims represent an amount under USD 1,135 (EUR 1,100), the parties can be self-represented[116]. In Greece, parties are obliged to be assisted by an attorney and the only exception is also in respect to minor disputes[117]. The same rationale applies to Austria[118]. In Spain[119] and Portugal[120], where representation by a lawyer is mandatory in appealing phases. In Belgium[121], parties can self-represent themselves before the court. However, the court is permitted to disregard this possibility if it finds that parties cannot discuss their case properly as a result of their inexperience.[122]

In North Macedonia[123] and Luxembourg[124], parties may either defend themselves or be represented by a lawyer, their partners, and relatives in the direct line.

In Croatia, parties may be represented by a delegate of the respective trade union or federation of employers and workers[125]. Besides Sweden and Croatia, trade unions can also represent their members in Italy, Germany, France, and Spain. **(Chart 11)**

Presentation of statement of claims and responses

In general, statements of claims must include information about the parties, facts and legal grounds of claims, and evidence that will support the claims or a request to secure or produce evidence for this purpose.

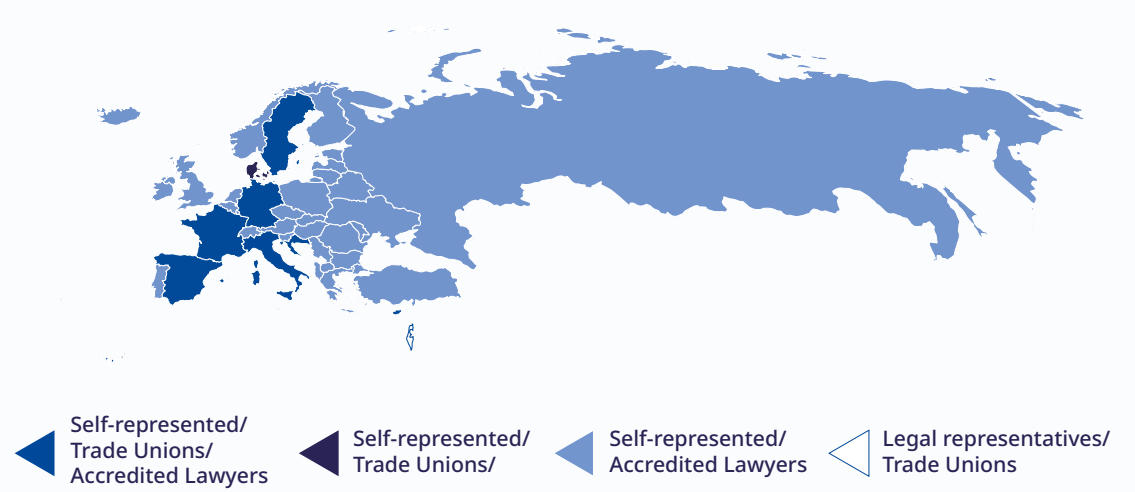
In some countries, it is possible to hold a preliminary hearing before the presentation of defence, depending on the case, to attempt a conciliation.[126]

Upon the receipt of the claim, in all countries examined, the Court, whether with a single judge or a panel, evaluates its appropriateness and adequacy to the requirements of the national procedural law. As a result, opposite parties will be served, and the litigation will be established with the receipt of a defence and/or a counterclaim. Parties can be served by the post office, via bailiffs in person[127] or by the plaintiff[128]. Defences and counterclaims may be presented at the first hearing[129], before[130] or after that.[131]

In Germany, if there is no success in the negotiation of the preliminary hearing, the panel of judges may present proposals to an agreement at the beginning of the main hearing, after examining what has been demonstrated in the proceedings that far.

115 Article 44 Labour Disputes Act.
116 Article 82 of Code of Civil Procedure.
117 Chapter XIII, Sections 466-472 of Code of Civil Procedure.
118 Paragraphs 27-30 of Code of Civil Procedure.
119 Articles 18-21 of Act of Labour Procedure.
120 Articles 32, 40, 42 and 58 of Code of Civil Procedure.
121 Articles 440 and 728(1) of the Judicial Code.
122 Article 758 of Judicial Code.
123 Article 81 of Law on Litigation Procedure.
124 Article 192 and 196 of Code of Civil Procedure.
125 Article 34a Civil Procedures Act.
126 Examples include Germany, Poland and Spain.
127 Example of Bulgaria.
128 Example of Iceland.
129 Examples include Spain, Sweden, Slovenia, Ukraine, Russian Federation and Denmark.
130 Examples include France, Czechia, Lithuania, Latvia and Croatia.
131 Examples include Portugal and Italy.

▶ **Chart 11: Representation in Court**



In general, amendments to the complaint may be authorised if agreed by the defendant and plurality of claims against the same defendant are allowed in all countries examined. Parties may also exchange pleas.

Matters that are not controversial might be judged immediately[132]. In Poland, if parties do not appear at the hearings, the court may announce default judgement.[133]

Not only defences, but counterclaims are also allowed in most of the countries.

Evidence and arguments phase

After received pleas from parties, documents, and requests to assist with the presentation of further evidence, courts may schedule a preliminary hearing aiming at trying a conciliation between parties and solve most of issues related to continuation of proceedings. This preliminary hearing may also delimit the facts and legal grounds of the claims and decide on matters related to evidence that needs the assistance of the court. As said before, in some countries this hearing will also serve to receive defence or counterclaims.

In France, the labour court (*Conseil de prud'hommes*) will first try to reconcile the parties through the Conciliation and Guidance Board (CGB), composed by two representatives for employers and employees ´organisations).[134] If the conciliation is not reached, or lay judges did not reach a consensus on the matter if it is a simple case, the case is adjudicated before the entire panel (lay and professional judges).[135]

In Russia, before preliminary hearing is scheduled and after accepting the statement of claim, the judge shall issue a ruling on the preparation of the case for judicial proceedings and point out the actions which are to be performed by the parties and other persons taking part in the case.[136]

132 Examples include Spain, Germany, Poland, United Kingdom.
133 Articles 355-359 of Code of Civil Procedures.
134 Article L. 1411-1 of Labour Code.
135 Article L. 1454-17 of Labour Code.
136 Article 150 of Code of Civil Procedure.

Burden of Proof

Preliminary hearing may also decide on burden of proof. Burden of proof in European countries in respect to labour cases follow different rules from country to country, but normally take into consideration the possibility and opportunity of parties to present evidence.

In Italy, the plaintiff is asked to prove the facts underlying the claim, while the defendant is responsible for proving the non-truthfulness of these facts or their unsuitability to constitute a valid basis for the plaintiff's claim or to prove the existence of other facts capable of modifying or extinguishing the rights of the plaintiff.[137]

In Portugal, the doubt about the reality of a fact and the distribution of the burden of proof are resolved against the party from whom the fact benefits.[138]

In Ireland, in cases of employment equality, fair dismissals and cases involving discrimination based on sex, the burden of proof can be shifted to the employer.[139] In the United Kingdom, the jurisprudence has recently shifted the burden of proof from the worker to the employer in cases involving discrimination and harassment in case the plaintiff manages to present a solid case.[140] Same happens in Spain, in cases involving violations of fundamental rights to work.[141]

In Belgium, each party must submit evidence of the facts that it alleges, and it is then for the opposing party to rebut the probative value of these facts, where this is possible and permitted.[142]

▶ **Chart 12: Rules on distribution of burden of proof**

137 Article 2697, (2), of the Italian Civil Code.

138 Articles 5º and 414 of Code of Civil Procedure.

139 Section 85A (1) of the Employment Equality Act transposes the provisions of Article 3(1) of Directive 97/80 on the Burden of Proof in cases of Discrimination Based on Sex into Irish Law.

140 Supreme Court case nº UKSC 2019/0068 (Please, see https://www.supremecourt.uk/cases/uksc-2019-0068.html)

141 Sentencia Social Tribunal Supremo, Sala de lo Social, Sección 1, Rec 3781/2011 de 13 de Noviembre de 2012/ Sentencia Social Tribunal Supremo, Sala de lo Social, Sección 1, Rec 2370/2011 de 25 de Junio de 2012.

142 Article 870 of the Judicial Code: *'actori incumbit probatio'.*

In Denmark, burden of proof always rests with the plaintiff, however, it can be shifted in case claims or arguments presented by the defendant attract the opportunity to produce the evidence.[143]

In Israel, pertinent legislation establishes that burden of proof will be defined by the court, according to the claims and state of the proceedings.[144] **(Chart 12)**

Admissibility and presentation of evidence

In respect to admissibility of evidence, all countries examined provide rules conditioned to deadlines for presentation of evidence and lawfulness of different types of evidence presented. However, they may differ in respect to the need of accord of parties.

Regardless the documentation enclosed with the initial statement of claim and defence and counterclaims presented, parties may request, in general, hearing of parties and witnesses, elaboration of technical reports by experts, judicial inspections and presentation of public and private documents in the possession of a third party.

In the United Kingdom, for instance, the Employment Tribunal is not bound by any procedural rules relating to the admissibility of evidence in proceedings before the courts and may itself determine or produce evidence so far as appropriate in order to clarify the issues.[145] Same happens in Labour Courts in Israel, where judge´s have discretion on production of evidence and burden of proof.[146]

In Germany, labour procedures may be divided in "Urteil" procedures and "Beschluss" procedures[147]. The main difference is that in "Urteil" procedures, it is the responsibility of the parties to provide the court with the necessary information and evidence needed to make a decision, while in "Beschluss" procedures, it is largely the responsibility of the court to establish the facts of the case.[148]

In Denmark, courts are generally free to assess evidence. This implies that the court has the right to assess the value of evidence (including e.g. public documents, deeds) submitted without regard to statutory provisions.[149]

During initial and evidence phases, some countries provided the express possibility of presentation of recourses against interlocutory decisions in respect to evidence.[150] **(Chart 13)**

Parties might be obliged to appear at the hearings in person. Exceptions include the UK[151], where representation is allowed. In all countries examined, parties and witnesses may be heard by the judge or panel and may be cross-examined.

Postponements of hearings are allowed in all countries, provided that reasonable justifications are presented.

Judgement phase

Concluded evidence phase, parties may have the opportunity to present final considerations orally or in writing, depending on the discretion of the presiding court.

143 Administration of Justice Act § 344(1) and Section II.G.(a)(iii).

144 Section 32 of Labour Courts Law, 1967.

145 Section 41 of Employment Tribunal Rules.

146 Section 32 of the Labour Courts Law.

147 Section 54 and 55 of Labour Courts Act.

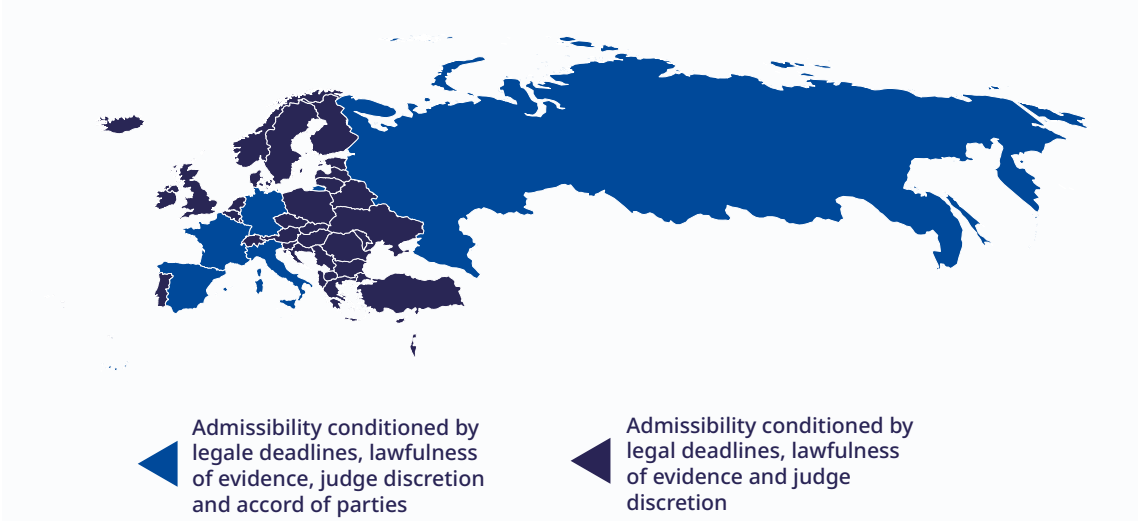
148 Labour Court "Urteil" procedures are used in disputes between employees and employers arising from the employment relationship, including those dealing with the existence or non-existence of a contract of employment, negotiations on entering an employment contract and its continuing effects, inadmissible action in the employment relationship and employment papers. The "Beschluss" procedure, on the other hand, is used for disputes arising from the Works Constitution Act (such as the existence and scope of works council participation rights and the employer's responsibility to meet the expenses of works council activities).

149 Administration of Justice Act § 344(1) and Section II.G.(a)(iii)

150 Examples include Austria, Italy, Spain, France, Portugal, Slovenia, Albania, Serbia, Republic of Moldova, and Belarus.

151 Article 42 of Employment Tribunal Rules.

Chart 13: Rules on Admissibility of Evidence



The court will render a judgement, by a single judge or in majority, in case of a panel of judges. Judgement may be rendered in total or partially at the end of the main hearing or within a reasonable deadline after that, when parties shall be notified.

Decisions may comprise merit decisions to decide on inexistence of a right, a credit or relationship. They can also be condemnatory, constitutive of a right, and executive, either of a sum or an obligation to fil.

Recourses and appeals against final decisions might attack all aspects of the merits (facts and legal grounds) or might be limited only to points of law and specific grounds provided by the law. Most of the countries provide possibility of fully appealing against first instance decisions.

The overview below provides a short description of common procedural measures and acts that might be adopted during first instance procedures in courts hearing labour cases in Europe. Important to bear in mind that they may occur in different ways depending on the type of procedure applied to the labour lawsuit.[152] Also, the order in which they happen can change from country to country, and, sometimes, depending on the dynamics of the case itself and under the discretion of some courts.[153]

That said, main steps in first instance may consider: presentation of the statement of claim, reception and acceptance of the statement of claim, notification of opposite parties, preliminary hearings to attempt conciliation, collection and production of evidence, main hearings (when also evidence can be collected, such as witnesses and parties' testimonials), judgement and notification of the decision, and amendments to the final decision in specific circumstances under first instance jurisdiction.

Preliminary measures or injunctions, although in many cases serve to guarantee or secure presentation of evidence in advance, may happen in a separate proceeding before or during the main case, on provisional basis. They may also be requested in different instances and the way

152 In some countries, depending on the amount involved, if claims are monetary, or according to the nature of the claim, the proceedings may follow a faster or detailed (ordinary) procedures, which may affect the occurrence of certain acts. For the purpose of this report, only ordinary procedures were considered.

153 Different stages of hearings or exchange of arguments may follow the principle of orality, which may change the order of acts or length of proceedings.

▶ Figure 3: General overview of first instances phases

General overview of first instances phases
Presentation of statement of claim: Statements of claims can be presented in oral and written forms, normally directly at the Registrar of Courts. In some countries, this procedure can also be carried out in electronic forms or online. Parties may have to pay initial fees.
Parties : Workers, employers, public prosecutors, trade unions, third parties indirectly involved, associations, heirs in case of death of one of the parties, and legal representatives, in case of incapacity of any of the parties, may take part in the proceedings.
Representation: Parties may be self-represented, represented by accredited lawyers or authorized representatives (such as Trade Unions or Employers and Employees 'Organizations).
Admissibility of the claim and responses: The judge/panel examines the statement of claim and decides whether to accept it, reject it, or summon the plaintiff to adequate it. In case of acceptance, the defendant will be notified and can present a defence or/and counterclaim.
Initial evaluation of the cases and delimitation of facts and legal grounds: After received pleas from parties, documents, and requests to assist with the presentation of further evidence, the Court may: i) decide on a preliminary hearing to attempt conciliation between parties, ii) delimit the facts and legal grounds of the claims, iii) distribute the burden of proof, and iv) determine admissibility of evidence and production of evidence from third persons.
Evidence: Preparation of case. Procedures in respect to summoning of experts and witnesses are likely to take place during this phase. Parties may present technical questions to experts appointed by the Court or indicate their own experts´ assistants. Determination of judicial inspections may take place. Authenticity or validity of evidence may be argued in written pleas.
Hearing of the case (main hearing): Parties summoned to attend the hearing might only be absent in specific cases. The absence without justification might cause the disregard of the party´s arguments related to facts. New attempt of conciliation. Evidence produced is examined. Parties and witnesses, including experts, may be heard.
Final arguments and judgement: Concluded evidence examination, parties may present their final arguments. The Court may retire itself to discuss the case (in case of panel) and render the decision on the merits, in which case parties are notified immediately. Decisions may also be rendered after the hearing, within a deadline, and parties notified.
Clarification of decision and granting of appeal: The Court usually can, upon request of parties or on its own discretion, clarify obscure, vague, or contradictory points of the decision, as well as obvious formal mistakes. The decision might also establish the possibility of appeal, if allowed by the law. Appeals might be presented by the interested parties at first instance or directly to higher instances.

they are operationalized differ from country to country. For these reasons, they will not be part of the following steps. **(Figure 3)**

Recourses to higher instances

The examined systems may accept more than one type of recourse against decisions rendered during the proceedings. There have been observed recourses against final decisions which may attack merits, points of law or seek annulment of decisions, and against interlocutory decisions which may influence the final judgement, such as decisions granting precautionary measures, as well as accepting or denying requests related to admissibility of statements of claims, defences, and other pleas.

Recourses may also vary from country to country. However, for the purposes of this report, proceedings in second instance will be considered in respect to recourses which attack the merits of the

case and do not skip instances[154], even if the name of the respective recourse is not appeal.[155]

Most of the countries provide possibility to re-examination of labour cases. Exceptions include Sweden, Iceland, and Finland, where the possibilities of appealing against labour court decisions are extremely limited or non-existent. In Norway, Labour Court's judgments are final and very few exceptions are made to present a recourse against them. In case in which right to appeal is granted, the recourse goes directly to the Supreme Court´s appeal committee. However, the decisions on individual labour cases in ordinary courts in these countries follow general civil procedures which provide for multiple judicial tiers.

In Sweden, although there is no provision granting possibility of appeal against labour courts decisions, Labour Courts in first instance may function as appeal courts against decisions ruled by the district courts concerning individual labour conflicts.[156] Against the decision of the Labour Court acting as Court of Appeal, no recourse can be lodged.

In the United Kingdom & Northern Ireland, parties may apply to the same tribunal to ask it to review its decision. If the grounds for review are established, the tribunal shall proceed to review its decision and may on such review, affirm, modify, or revoke that decision and, if necessary, decide for a new hearing.[157] Appeals, however, are only allowed on a point of law.[158]

In Germany, the unsuccessful party (both parties could be partially unsuccessful) can lodge a recourse against first-instance Labour Court's judgment with the relevant second instance appealing court (Land Labour Court), provided that the lower court has granted leave to appeal, or the value of the cause exceeds 600 Euros. Cases involving collective agreements shall be accepted regardless the amount involved.

In Ireland, cases involving employment rights are appealable only on a point of law to the High Court.[159] In Russia, appeals are allowed after leave is granted and if the sum involved amounts to at least 1,000,000 roubles.[160]

In Israel, the right to present a recourse must be granted when the decision is rendered or by the National Labour Court itself.[161]

The presentation of recourses against decisions on the merits of the case may have court fees or, in cases of decisions determining payment of sums in monetary claims, demand a deposit of an amount which may be converted in payment in case the decision stands.[162]

The respective recourse might be presented to the same Court that rendered the decision or directly to the next instance. If presented to the Court the rendered the decision, its admissibility will be assessed in first instance. In case the continuation of the recourse is denied, recourses against this decision may also be lodged.[163]

Regardless of in which court the recourse is lodged, the opposite parties must be notified by the Court to present a response or to join it with a counter-recourse, in case there is interest. If received by the first instance, proceedings must be sent to immediate Higher Instance.

154 In very specific cases, it is possible to present special recourses on point of law directly to Supreme or Superior Courts in Portugal (article 678 of the Code of Civil Procedure) and Luxembourg (Articles 616 and 617 of Code of Civil Procedures).

155 For instance, in Poland this type of recourse is called recourse of revision (article 369 Code of Civil Procedure), and in Spain is called *recurso de suplicación* (articles 193-196 of Act of Labour Procedure). For the purposes of this report, this type of recourse will be called "recourse".

156 Chapter 50, Sections 1 and 2, and Chapter 52, Section 1 of the Code of Judicial Procedure.

157 Rule 34 (3) of the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005.

158 Employment Appeal Tribunal Rules, Section 3.

159 The Labour Court Rules Sections 72-73 and Order 84C of the Rules of the Superior Courts.

160 Section II, articles 131-200 of Code of Civil Procedure. Around USD 13,500,00.

161 Section 26 of Labour Courts Law.

162 Examples include Austria, United Kingdom & Northern Ireland, and Spain.

163 Examples include Poland (recourse of complaint).

The higher instance[164] may be a specialised labour court of appeal[165], an ordinary Court of Appeal with a chamber to hear labour cases[166], or an ordinary Court of Appeal which hear labour cases in civil chambers, even when labour cases have been heard in first instance by a specialized labour court.[167] **(Figure 4)**

Recourses may also have limitation in respect to the matters they can address. In France, the recourse must bring to the Court of Appeal (*Cour d´Appel*) only those points of the judgement that it impugns expressly or tacitly and those subordinate to them, except for cases seeking annulment of previous decision or if the object is indivisible.[168] Parties may only present new evidence under very specific cases.

In Italy, recourses may only be judged within the limits of points addressed and new means of proof are admissible only if the three judges of the chamber, even ex officio, deem them indispensable for deciding the cause and schedule a hearing in which new evidence shall be examined.[169]

In Ireland, recourses are only admitted if discussing a point of law.[170]

▶ Figure 4. Overview of main steps of presentation of recourses and appeals against final decisions of first instance

Overview of main steps of presentation of recourses and appeals against final decisions of first instance
Presentation of recourse and responses: The notice of recourse and its reasons might be presented before the Court which rendered the appealed decision or directly to the Registrar of the higher instance where the recourse shall be heard. In either case, the opposite party shall be summoned to present a response to the recourse or/and a joint recourse.
Distribution of the recourse in higher instance: The procedures of recourse are directed to a panel or chamber of the respective Court of Appeal/Higher Court, in which it will be assigned to a judge Rapporteur, who will make report about the case to be examined by the Panel.
3. Re-examination of the case: Parties may have the opportunity to present their arguments in written form before the trial. New evidence or evidence rejected by the previous instance may or may not be admitted, depending on its relevance. Parties may be summoned to a hearing, in which the case will be examined.
4. Hearing and Judgement: The hearing begins with the judge's rapporteur briefly presenting the status of the case. The Court examines the first-instance judgment within the limits of the grounds specified in the recourse. During the hearing, parties may be heard, as well as new evidence may be examined. The Court decides about the merits of the recourse in a panel and the decision is rendered according to the majority. Decisions may comprise: i) reform of the previous decision; ii) annulment of the decision and replacement with a new one; iii) annulment of the decision and determination of a new trial in first instance.

164 Or immediate higher instance competent to hear the recourse.

165 Examples include United Kingdom & Northern Ireland, Norway (against decisions of ordinary district courts in individual labour disputes), and Germany (Land Labour Courts).

166 Examples include Spain (Sala de Social de los Tribunales de Justicia), France (Chambre Sociale de la Cour D´Appel), Portugal (Câmara Social dos Tribunais de Relação), and Slovenia.

167 The cases of Malta and Ireland.

168 Articles 544 and 545 of Code of Civil Procedure.

169 Article 437 of Code of Civil Procedure.

170 Articles 72-73 of the Labour Court Rules and Order 84C of the Rules of the Superior Courts.

Supreme Court Phase

In many countries[171], a Supreme or Superior Court is the highest instance in the judiciary to hear recourses in labour related cases, including many in respect for constitutional matters. In most of the times, labour cases do not go that far due to the limitations to further discuss evidence and facts.

On the other hand, in most of the countries in which a Constitutional Court has been established, recourses of cassation or recourses against decisions rendered in labour cases are not under the jurisdiction of such Court[172], which has the sole purpose of evaluate whether laws, ordinances and decrees violate articles of Constitutions. They may also have jurisdiction over questions concerning members of the Houses of Representatives and on any other case concerning government authorities.[173]

However, Constitutional Courts in Europe, when hearing labour cases, may play an important role in the interpretation of labour rights in constitutional terms, particularly in respect to direct requests made by individuals to such Courts.

In Italy, the Court of Cassation (the equivalent to a Supreme Court of Justice - *Corte Suprema di Cassazione*) is also the responsible for resolution of conflicts involving constitutional matters.[174] Same case of France, where the Court of Cassation (*Cour de Cassation*) has a specialised chamber in social matters which hears recourses in labour cases.[175]

Possibility to present recourses to Supreme Courts are also more scarce and more strict requirements shall be met. In most cases, only matters on point of law can be re-examined at this stage.

In Germany, leave to present recourse must be granted if a legal issue relevant to the decision of the case is of fundamental legal significance or if the judgment deviates from a judgment given by the Federal Court of Justice, the Joint Senate of the Supreme Federal Court or the Federal Labour Court. If the Federal Labour Court (*Bundesarbeitsgericht*) has not yet issued a judgment on a specific legal issue, leave to present a recourse must be granted where the Land Labour Court's judgment deviates from a decision of another Senate of this Land Labour Court or from a decision of another Land Labour Court.

Proceedings at the Supreme Court, Superior Courts or Cassation Courts are remarkably similar, particularly concerning the designation of a Judge-Rapporteur, possibility of holding a hearing and the judgement in a panel. Some formalities, however, differ from country to country.

In Slovenia[176] and Croatia[177], the recourse shall be decided by the court without hearing of the parties. In Ukraine, the Judge-Rapporteur holds the power to decide to assign a main hearing for trial or dismiss the recourse for lack of valid grounds without consulting the rest of the panel.[178]

In Moldova, at the request of the party that presented the recourse, the Supreme Court can order the suspension of the enforcement of the decision attached to the recourse if the interested party has filed bail.[179]

In France, trials are held, and the most senior trial judge addresses the court in the voting and is followed in descending order of seniority by each trial judge. In Finland, it is the contrary, the vote shall be taken in the reverse order of seniority, with the least senior member expressing

171 Examples include Italy, Germany, France, Spain, Austria, Estonia, Romania, Switzerland, Serbia, Republic of Moldova, United Kingdom, and Russia.

172 Exceptions include Portugal (Organization, Functioning and Process of the Constitutional Court - Law 28/82 of 15 November 1982 - Articles 70 to 85) and the United Kingdom.

173 Examples include Belarus, Belgium, Bulgaria, Croatia, Estonia, Malta, Latvia, Lithuania, Poland, and Slovenia.

174 Article 111 of Italian Constitution.

175 Please, see *Cour de Cassation* https://www.courdecassation.fr/institution_1/presentation_2845/competences_chambres_33511.html

176 Articles 367-391 of Code of Civil Procedures.

177 Articles 236 - 243d of Code of Civil Procedures.

178 Articles 323 – 353 of Code of Civil Procedures.

179 Articles 431 et. Seq. of Code of Civil Procedure.

▶ **Figure 5. Overview of main steps of presentation of recourses to Superior instances**

Overview of main steps of presentation of recourses to Superior instances
Presentation of recourse and responses: The notice of recourse and its reasons might be presented before the Court which rendered the appealed decision or directly to the Registrar of the Supreme Court where the recourse shall be heard. In either case, the opposite party shall be summoned to present a response to the recourse. Incidental or joint recourses are rarely allowed.
Distribution of the recourse in higher instance: The procedures of recourse are directed to a panel or chamber of the respective Supreme Court, in which it will be assigned to a judge Rapporteur, who will make report about the case to be examined by the Panel.
Examination of reasons of the recourse: Parties may have the opportunity to present their arguments in written form before the trial. New evidence or evidence rejected by the previous instance is generally rejected, except when in support of the allegations related to violation of specific point of the allegations of the recourse. Parties may be summoned to a hearing, in which the case will be examined. A judge-rapporteur is required to prepare a report and a memorandum together with one or more draft judgments. A bench, with 3 or more judges and public prosecutor will analyse the case. Parties may be summoned to appear in the trial hearing.
Judgement: Decision may i) Adopt a resolution to dismiss the recourse and leave the decision unchanged; ii) Adopt a resolution on full or partial cancellation of the decision and refer the case for new proceedings to trial or appeal; iii) Adopt a resolution to abolish the decision and keep in force a judicial court of first instance that was standing before; iv) abolish judicial decisions and to close the proceedings in the case or leave the application without consideration; v) Reverse and adopt a new decision or change the decision.

an opinion first and the most senior member last.

In Spain[180], due to the importance of issues usually taken to the Supreme Court, public prosecutors also participate in the case, providing legal opinions. **(Figure 5)**

Enforcement phase

Final decisions might be enforceable immediately according to express statutory provisions. Examples include Italy[181], France[182], Spain (only on the matters that have not been subject to a recourse)[183], and Austria[184]. In Poland [185], temporary execution is allowed, except when, even with security deposit or assets to guarantee it, irreparable damage may result from the execution of the judgment.

In Spain, judgments in social security matters[186] or judgments in dismissal cases[187] also allow temporary enforcement.

In most of the countries examined, enforcement proceedings are either regulated by specific legislation[188] or by the general civil procedures.[189]

In all countries examined, legislation provide for the possibility of seizure of assets in case of enforcement in respect to monetary claims. In countries in which labour courts hold competencies over collective claims or related to collective

180 Articles 473-476 of Law of Civil Prosecution.
181 Article 283 of Code of Civil Procedure.
182 Article 489 and 514 of Code of Civil Procedure.
183 Article 242 of Act of Labour Procedure and 524 of Law of Civil Prosecution.
184 Enforcement Act, Federal Law Gazette No. 53/1991, as amended by Federal Law Gazette I No. 33/2013.
185 Articles 341 to 344 of Code of Civil Procedure.
186 Articles 294-206 of Social Jurisdiction Act.
187 Articles 278-296 of Social Jurisdiction Act.
188 Examples include Portugal, Sweden, Austria, Estonia, Belgium.
189 Examples include Italy, Germany, France, and Poland.

bargaining agreements, this authorization has not been observed once there are no provisions in respect to enforcement due to the nature of decisions.

Regardless the type of procedural law regulating enforcement, proceedings are similar, but may vary in respect to which court or person is the responsible for carrying out the enforcement proceedings. In most of the countries, the court which issued the decision in first instance is competent to move forward with its execution.[190]

In Ireland, an application shall be made to a judge of the District Court in which the employer concerned ordinarily resides or carries on any profession, business, or occupation.[191]

In Israel, enforcement of labour courts decisions is carried out by a registrar. The creditor has the right to ask for different types of enforcement, such as seizure of assets, if there is valid grounds to suspect that the debtor will not comply with the decision. [192]

Enforcement may be initiated upon a request of the interested party.[193] The competent court will, upon the request and with the presentation of proof of the last decision standing, as well as of indication of means to promote the execution against the debtor (such as indication of assets, properties, addresses, etc), issue an enforcement order (often called writ of execution). In addition, in general, enforcement proceedings are carried out by bailiffs.

In France, enforcement phase initiates after exhausted all means of appeal, except for summary procedure cases in which temporary enforcement of last decision is possible.[194]

In Portugal, whenever the amount owed is illiquid, the executor must specify the amounts to be included in the executive application with a net request, including penalties and sanctions applied.[195]

Debtors may present measures to contest the execution, but most of them are only accepted if specific requirements are met. In Italy, decision on the opposition during the enforceable phase in first instance may only be appealed by recourse of cassation.[196]

If no opposition is presented and the debtor does not comply with the obligation voluntarily, enforcement measures may be taken, such as seizure of assets and restriction of rights. In Belgium, the debtor may lodge a statement of opposition to the payment order, thus contesting its legal validity. There is no statutory time limit for this, but the opposition does not have suspensive effect. Grounds for opposition may include procedural defects and a request for a period of grace.[197]

In the United Kingdom, the enforcement of decisions rendered Employment Tribunal should be initiate by the worker in direct contact with the employer, who should pay voluntarily. This is because the tribunals do not have the power or responsibility to enforce their own judgments. The creditor may enforce the decision in 2 different ways: i) High Court Enforcement Officers Fast Track Scheme or Country court bailiffs, by which the debtor files a form e pays a small fee[198] to authorize the government to put in place administrative measures to enforce the decision; ii) Going to court through a County Court Enforcement Agent (CCEA) to seize assets and money from debtor or from third parties which may have debts with the debtor.[199]

190 Exceptions include Germany and Croatia.
191 Section 22 of the Act of 1981.
192 Please, see more in https://www.gov.il/en/departments/guides/execution_entitled_guide
193 No information in respect to ex officio enforcement has been found.
194 Articles 489 and 514 et. seq. of Code of Civil Procedure.
195 Articles 90-91 of Labour Procedures Code.
196 Article 111 of Italian Constitution.
197 Fifth part of Judiciary Code (Articles 1499 et seq).
198 Which can be charged back from the debtor when the enforcement is effected.
199 See more details in https://www.gov.uk/employment-tribunals

In Spain, in case the debtor does not present sufficient assets to cover the amount involved, the court can order information from public register to map and find possible assets to guarantee the payment.[200]

In France, a grace period may also be granted only by a decision intended to put off the enforcement (of a judgement) and the period granted must be reasoned. The grace period, however, does not prevent the enforcement of protective measures.[201]

In terms of assets which can be arrested, most of the countries have express provisions in this regard, authorizing seizure of movable and immovable assets to enable the payment of monetary claims.

In Austria, earned income, pension benefits and statutory remuneration, which serve to compensate for temporary unemployment or a reduction in earning capacity, can also be seized on a limited basis which allows the debtor's maintenance obligations.[202] In the Netherlands, the creditor can choose the assets on which the seizure will be imposed. **(Figure 6)**

Possibility of conciliation and mediation during judicial proceedings

In all countries examined, courts may refer cases to conciliation and mediation at any time. Ratification of the Court is mandatory in case agreements are reached during the proceedings in course in all countries.

If conciliation or mediation is successful during the enforcement phase, agreements may not comprise waiving of claims granted by the final decision, unless the enforcement is temporary, and the case is pending trial of a recourse. **(Chart 14)**

Procedural phases

Depending on the judicial tiers established in a country and the possibilities of review of final decisions set forth in the procedural law, the number of procedural phases may drastically vary from country to country. Most of the countries examined have normally 4 procedural phases: i) first instance; ii) second instance (appeal); iii) third instance (Supreme Court); and iv) enforcement phase.

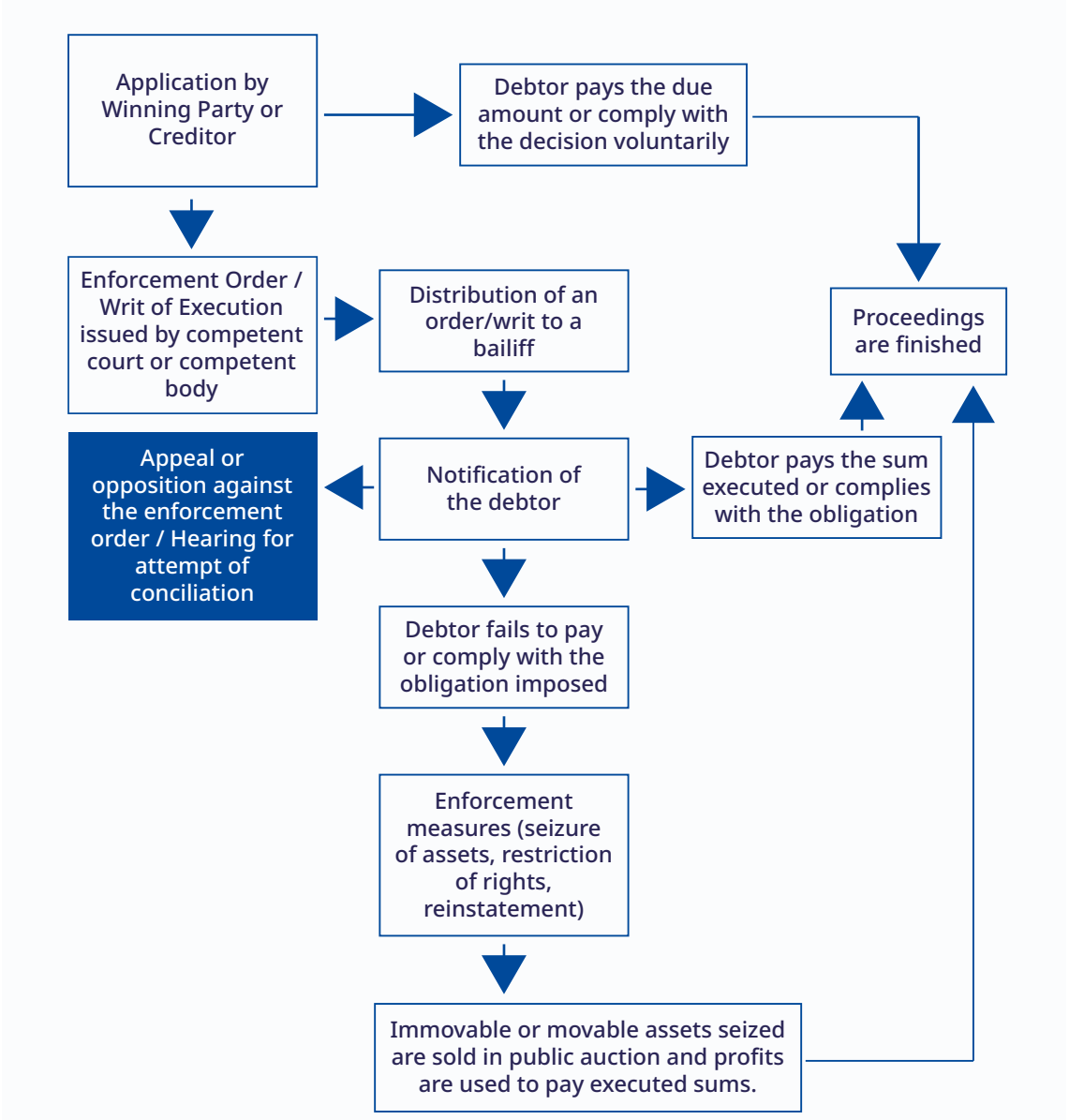
However, due to limitation of presentation of appeals in some countries or the existence of Constitutional Courts which allow the possibility of discussing the constitutionality of decisions directly, this may vary.

In most of the countries examined, it is possible to present motions for clarification, recourses against interlocutory and final decisions, and recourse of cassation, revision, or review to the respective Supreme Court.

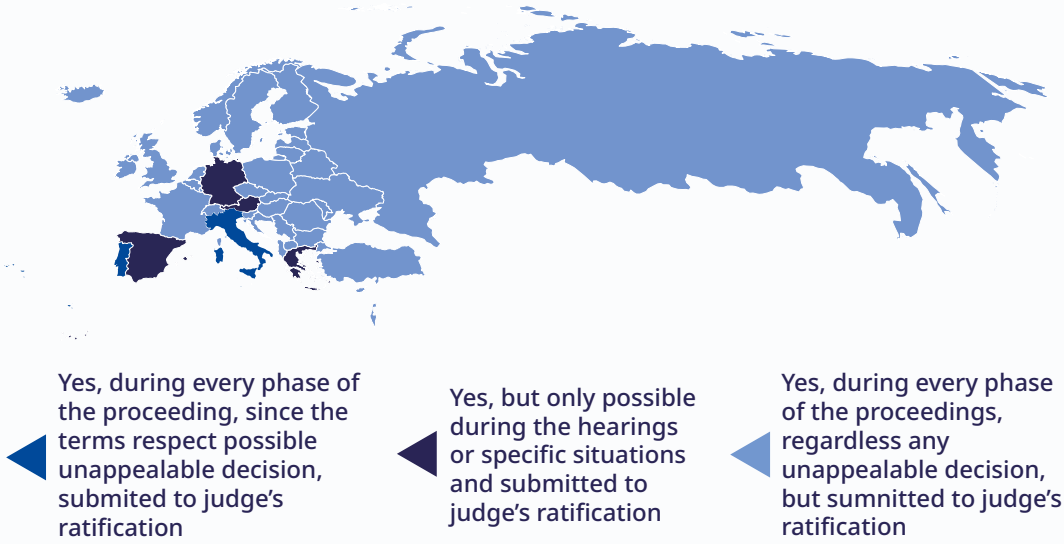
In Switzerland, it is possible to present a recourse of appeal, an objection against an interlocutory decision, a recourse of review against final decisions, interim decisions, and decisions on interim measures of first instance that are not subject to appeal, recourse to the Supreme Court on point of law, and recourse of explanation or rectification.[203] **(Chart 15)**

200 Article 240 of Act on Labour Procedures.
201 Articles 510-513 of Code of Civil Procedure.
202 Enforcement Act, Sections 40-44.
203 Articles 319, 328 and 334 of Code of Civil Procedure.

▶ **Figure 6: Common steps in procedures for enforcement of decisions**

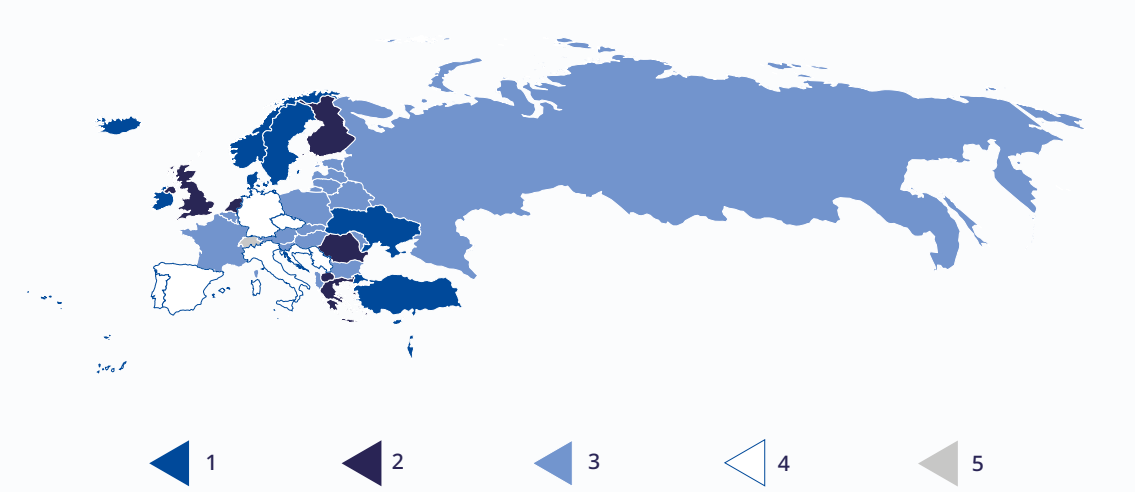


▶ Chart 14: Conciliation and mediation of labour cases during the judicial proceedings



▶ Chart 15: Number of procedural phases

▶ Chart 16: Possible recourses to present in a labour procedure.



In Belarus, besides the private complaints (on interlocutory decisions) and recourses of appeal against final decisions (private protests), the procedural law also provides for a supervisory complaint, aiming at reviewing court decisions that have entered into legal force, except for the decisions of the Plenum of the Supreme Court.[204] **(Chart 16)**

In Portugal, recourses may either be ordinary or extraordinary, with ordinary aiming at attack the merits and point of law and extraordinary for uniformity of jurisprudence and review.[205] In Serbia[206], Croatia[207] and Czech Republic[208], there are also specific provisions to present a motion for retrial.

Average duration of procedures

There is little official information or few statistics on average duration of procedures in European courts hearing labour cases.

Official information has been obtained from the Council of Europe[209], National Institute of Statistics in Italy[210], Judiciary of Spain[211], the Judicial Authority of Israel[212], and Labour Court of Sweden.[213]

204 Articles 259 to 353 and 399 to 435 of Code of Civil Procedure.

205 Article 214 and 215 of Civil Procedure Code.

206 Article 422 of Civil Procedure Code.

207 Article 421 of Code of Civil Procedure.

208 Section 228 of Code of Civil Procedure.

209 The 2019 Eu Justice Scoreboard, CEPEJ, European Commission https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2019_en.pdf

210 National Institute of Statistics (Instituto Nazionale di Statistica). Available in https://www.istat.it/it/giustizia-e-sicurezza?-dati

211 Judicial Power (Poder Judicial). Available in http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Actividad-de-los-organos-judiciales/Estimacion-de-los-tiempos-medios-de-los-asuntos-terminados/

212 Judicial Authority of Israel. Available in https://www.gov.il/en/departments/the_judicial_authority/govil-landing-page/

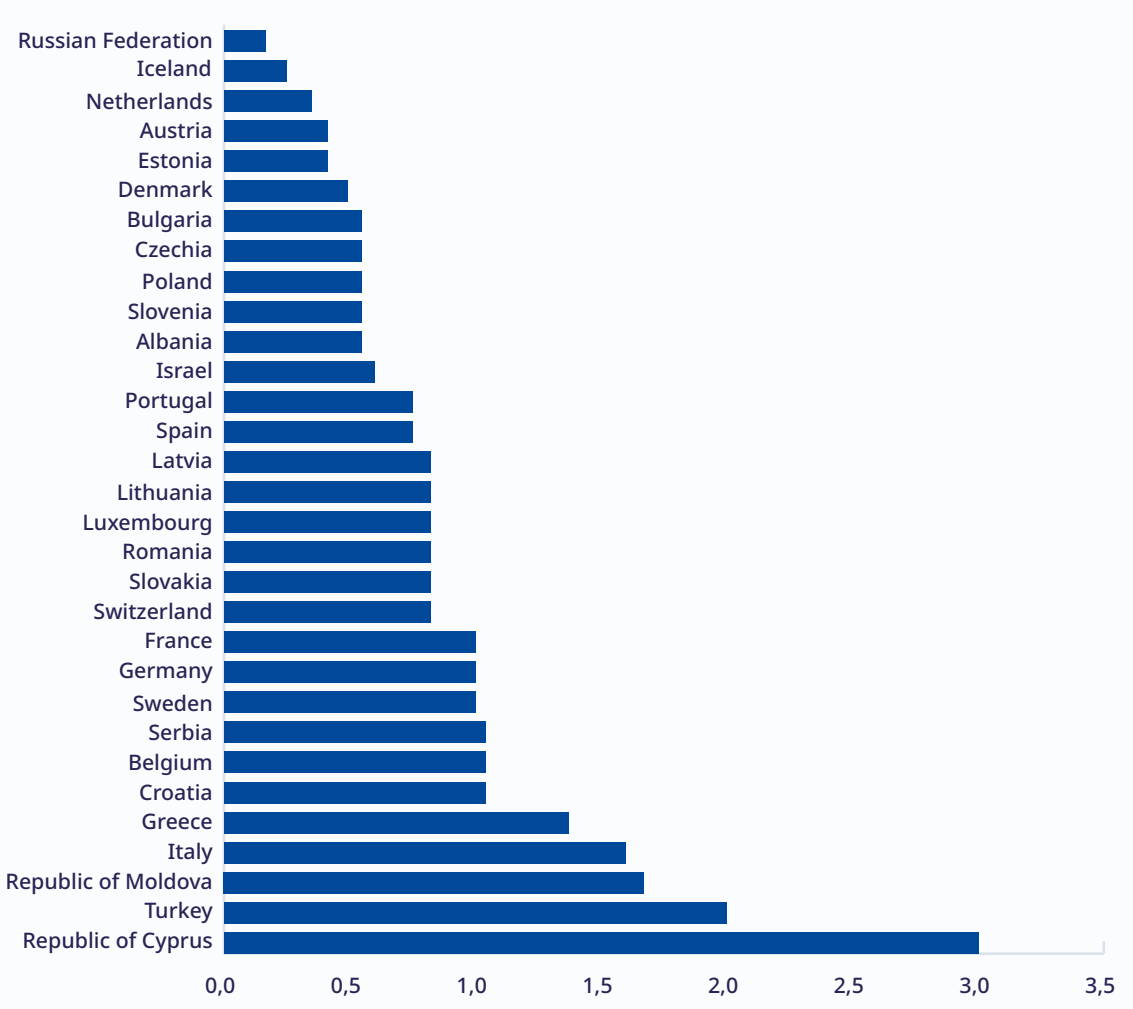
213 Labour Court (Arbetsdomstolen). Available in http://www.arbetsdomstolen.se/pages/page.asp?lngID=7&lngLangID=1

In most of the countries examined, each phase of the proceedings has an average duration between 6 months and 1 year, which means that most of the countries conclude their labour cases within 3 to 5 years, provided that there have been recourses to all available instances. Official information has not been found in respect to Belarus, Finland, Hungary, Ireland, Liechtenstein, Malta, North Macedonia, Norway, Ukraine, and United Kingdom.

The information below provides average duration of proceedings in first instance, once the duration of phases may vary within the same country due to different proceedings applied. The average length of proceedings is very much influenced by the possibilities of presenting different recourses. As seen before, recourses are not limited to attack the merits, facts and evidence of first instance decisions. **(Chart 17)**

In most of the countries examined, each phase of the proceedings has an average duration between 6 months and 1 year, which means that most of the countries conclude their labour cases within 3 to 5 years, provided that there have been recourses to all available instances. Official information has not been found in respect to Belarus, Finland, Hungary, Ireland, Liechtenstein, Malta, North Macedonia, Norway, Ukraine, and United Kingdom.

▶ Chart 17: Average duration of proceedings in first instance



Operation & Practice

Average distribution of courts

It is not particularly easy to find statistics on distribution of courts to hear labour cases within the examined countries. This information does not seem to be available or updated in several countries' official websites. Moreover, in many countries labour cases are heard by ordinary courts or by branches inside these courts, making the mapping of this information way more complex.

In Sweden, there is only one Labour Court located in Stockholm. Same case of Denmark, Ireland, Finland, Malta, Iceland and Norway.

There are currently four Industrial Tribunals in Cyprus. In Slovenia, there are four labour and social courts at first instance and 1 appellate court for labour and social matters.

In Germany, there is a total of 111 Labour Courts. Some of them hold court sessions in rural areas to alleviate travelling for the citizens[214].

In Hungary, there were 20 administrative and labour courts located on the seat of regional courts. However, with the reforms recently enacted in the procedural law, these courts and their judges have been absorbed by ordinary courts (regional courts).[215]

In Croatia, although most of the labour cases are heard by ordinary courts, there is currently one specialised municipal labour court in Zagreb.[216]

In Italy, labour courts function as a special branch of ordinary courts and there is no segregation of this information able to identify them. According to the Ministry of Labour of France, there are 210 labour courts (*Conseils du prud´ homme*) within the country.[217] In Spain, there are 176 labour courts (Salas del Social) available now, according to the last report on statistics of the Judiciary. [218]

In the United Kingdom, 34 employment tribunals are spread throughout England, Wales, and Scotland[219]. In Northern Ireland just one labour court is available, and it is located in Belfast.[220]

Professional Judges per 100.000 people

Similar difficulties are found in respect to statistics on the availability of judges to hear labour cases. Most of labour courts in Europe do not provide information on how many judges are available per 100,000 habitants only for labour cases. Moreover, many labour courts make use of lay judges or labour advisers who are part of panels to judge labour cases and the number of professional judges available may not reflect this reality.

It is important to highlight that in countries in which labour courts are specialized branches of ordinary courts, it is not possible to disaggregate this information.

214 Federal Labour Courts (Das Bundesarbeitsgericht). Available in https://www.bundesarbeitsgericht.de/englisch/englische_version.pdf

215 Act CLXI of 2011, Section 21.

216 Article 34 of Civil Procedure Act.

217 Please, see https://travail-emploi.gouv.fr/actualites/l-actualite-du-ministere/article/dossier-prud-hommes-le-conseil-des-prud-hommes

218 General Council of the Judiciary, Situation of the demarcation and the judicial plant (Consejo General del Poder Judicial, Situación de la demarcación y la planta judicial). January 2020. p.16. Please see https://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Estructura-judicial-y-recursos-humanos--en-la-administracion-de-justicia/Planta-judicial-y-plantillas-organicas/Planta-judicial/

219 Please see https://www.gov.uk/guidance/employment-tribunal-offices-and-venues

220 Please see https://www.employmenttribunalsni.co.uk/

However, statistics were found for almost every country in respect to professional judges in general, due to a recent study conducted by the Council of Europe[221], which includes professional judges hearing labour cases.

In Nordic countries, where individual cases are also heard by ordinary courts, the information provided is in respect to ordinary courts. Labour courts have very specific composition including representatives of employers and workers and no statistics were found in respect to distribution and availability of these judges per 100,000 people. In Sweden, labour court has 25 members. Same situation in Denmark, where labour court has 49 members. Icelandic labour court shall consist of 5 members. In Finland, 14 members comprising professional and lay judges compose the court. In Norway, labour court is formed by seven judges, being two of the court's permanent professional judges, one judge summoned from among the deputies for the professional judges, and four judges appointed by social partners.

Information about judges per 100,000 people in labour courts in Ireland, Malta, Slovenia and France have not been found. No statistics about any type of judges have been found for Liechtenstein and Belarus.

Official statistics about labour professional judges have been found about labour courts in Germany[222], Spain[223], and Belgium.[224]

The graph below shows the average number of professional judges that would be possibly available to hear individual labour cases, considering the specific situations described above. **(Chart 18)**

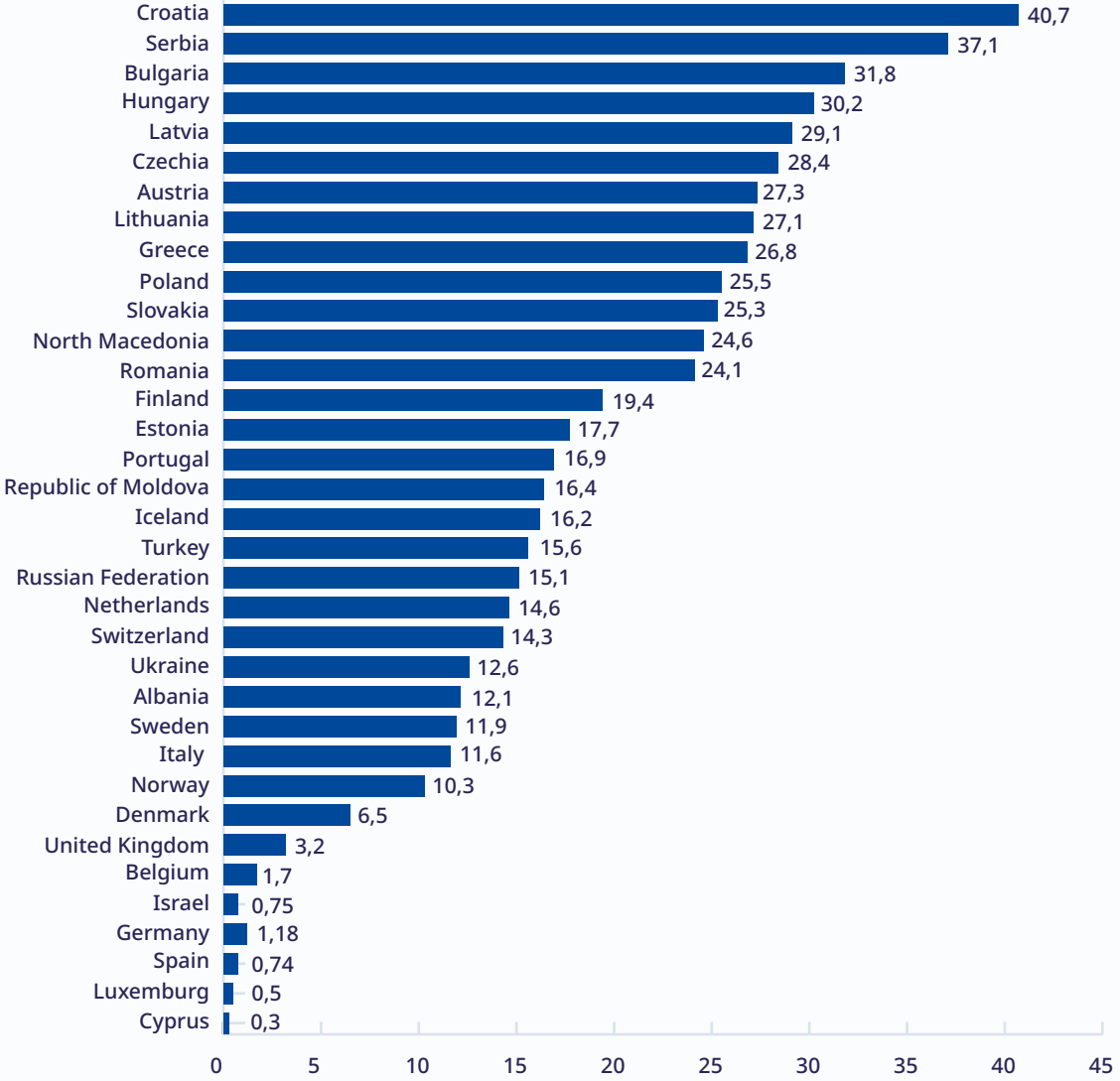
221 European Judicial Systems, efficiency and quality of justice. CEPEJ STUDIES 2018-2020 cycle, Council of Europe. Available in https://www.coe.int/en/web/cepej/cepej-work/evaluation-of-judicial-systems

222 Federal Statistical Office 2014 "Gerichte und Personal", last updated in 2014.

223 Judicial Power (Poder Judicial). Available in http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Estructura-judicial-y-recursos-humanos--en-la-administracion-de-justicia/Numero-y-caracteristicas-de-jueces-y-magistrados-de-carrera/

224 Justice in numbers (Justice en chiffres), 2013-2017. Available in https://justice.belgium.be/fr/statistiques/justice_en_chiffres

▶ **Chart 18: Judges hearing labour cases per 100.000* people**



** Information on population, when necessary, was retrieved from ILOSTAT database, available in https://ilostat.ilo.org/topics/population-and-labour-force/.*

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