Co-funded
by the European Union

EUROPEAN UNION

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Co-funded and implemented
by the Council of Europe

COMPARATIVE ANALYSIS OF THE APPROACH TO RECOVERY OF COSTS IN CRIMINAL CASES IN COUNCIL OF EUROPE MEMBER STATES

On the basis of the expertise of Jeremy McBride, Barrister at Monckton Chambers and the Council of Europe Consultant

May 2025

This reported was produced within the framework of the joint project of the European Union and the Council of Europe "Support to the justice reform in the Republic of Moldova". Its contents are the sole responsibility of the author. Views expressed herein can in no way be taken to reflect the official opinion of the European Union or the Council of Europe.

Table of Contents

EXECUTIVE SUMMARY

This report is concerned with the recovery of costs in criminal cases in connection with the proposed revision of the present arrangements in the Republic of Moldova, focusing on all aspects of the recovery of costs, whether those incurred by the prosecution, others involved in the process of administering justice or the accused.

It first examines the Council of Europe standards applicable to such recovery, primarily those elaborated by the European Court of Human Rights in interpreting and applying the European Convention on Human Rights. The latter only deals with issues relating to the recovery of expenses incurred for interpretation and legal assistance. However, its guarantees of a fair trial and of the presumption of innocence could also be engaged where, respectively, the accused are required to meet the cost of the proceedings against them and they are unable to recover their own costs following an acquittal or the termination of the proceedings against them.

The report then provides a brief overview of the practices in Council of Europe member States disclosed in proceedings before the European Court in which the recovery of costs in criminal cases has been an issue.

Thereafter, it reviews the specific arrangements governing the approach to the recovery of costs in criminal cases in four Council of Europe member States, namely, Germany, Poland, Romania and the United Kingdom (England and Wales. It does so in order to provide as fully nuanced a picture as possible of the approach followed in these jurisdictions with their different legal traditions.

The report concludes by comparing the approach seen in these four member States, noting the variations in the approach found in each of them and any explanations for the differences that exist. The arrangements for the recovery of costs seen in all four States are, at least as regards the outcome, broadly similar. However, they vary in the level of elaboration of the requirements and the guidance as to their implementation in concrete cases. In all four member States, there is an awareness that costs may not be payable by an accused who is convicted.

Moreover, decision-making is marked in all of them by efforts to ensure procedural fairness, with rights of appeal in almost all cases. Furthermore, a key lesson from them is the importance of distinguishing between the fundamentals of recovery and those matters that might need to be subject to periodic change, notably as regards the fixing of rates for the fees and/or expenses of lawyers, experts, victims and witnesses. The latter might be better left to regulations rather than primary legislation.

In addition, some limitation on those who can directly seek recovery seems desirable, particularly where the accused is not going to be in a position to meet costs which, in principle, could properly be recovered from them. Finally, it is important to note that none of the four member States have arrangements that run counter to the requirements elaborated by the Court.

A. INTRODUCTION

1 This report is concerned with the recovery of costs in criminal cases. It has been prepared in connection with the consideration of revising the present arrangements in the Republic of Moldova.

2 While the proposed reform is concerned primarily with the recovery of the costs incurred by the prosecution, it is important to see how that compares with the recovery of costs by the accused[1] where they have been acquitted or the prosecution against them has been discontinued as that could be relevant for assessing the fairness of what is being proposed, particularly in the light of obligations under the European Convention on Human Rights ("the Convention").

3 First, it examines the Council of Europe standards applicable to such recovery, primarily those elaborated by the European Court of Human Rights ("the Court") in interpreting and applying the Convention. Secondly, it provides a brief overview of the practices in Council of Europe member States in connection with the recovery of costs in criminal cases. Finally, it sets out the approach to the recovery of costs in criminal cases in four Council of Europe member States, namely, Germany, Poland, Romania and the United Kingdom (England and Wales) and then compares the approach seen in them, noting the variations in the approach found in each of them and any explanations for the differences that exist.

4 The aim is to provide as fully nuanced a picture as possible of the approach followed in these jurisdictions with their different legal traditions. It thus focuses on all aspects of the recovery of costs in these States, whether those incurred by the prosecution, others involved in the process of administering justice or the accused.

5 The analysis of the approach in the four member States does not deal with the costs of interpretation in view of the requirements of Article 6(3)(e) of the Convention that these should not be recoverable. However, it does cover any translation costs incurred where these would not fall within the scope of that provision, such as where there is translation of documents that cannot, in the circumstances of the case, be regarded as necessary to ensure the fairness of the proceedings

6 There is an examination this analysis not only of the formal position but also, Insofar as information was available, the practice, including whether there have been any challenges in the courts to the acceptability of the arrangements and whether the experience in applying the relevant provisions has given rise to any consideration of the

[1] The term "accused" is used throughout for simplicity even though other terms may be used in the relevant provisions, except where these are specifically quoted.

need for reform. Understanding how the provisions actually work - as well as whether there are any difficulties in using them - could be useful when considering whether it would be appropriate or desirable to emulate the approach seen in these member States studied and will also allow for any pitfalls identified to be then avoided in the arrangements adopted.

7 The following issues are addressed in respect of the analysis for each of the four member State, albeit not always in this order) are:

- What are the relevant legal provisions;
- Who is entitled to recover costs (the prosecution, private prosecutors; the courts, the victim, witnesses, experts, the accused);
- From whom are the costs recoverable (e.g., public authorities, the accused);
- What are the circumstances in which cost are recoverable (conviction, discontinuance, acquittal);
- What costs are specified as recoverable (e.g., salaries, premises, office supplies and equipment, travel, fees, costs related to forensic examinations/tests, etc.);
- What relevance does the conduct of the accused have where costs are sought following discontinuance or acquittal;
- What account is taken of a situation in which some charges are not pursued or do not lead to a conviction;
- Who decides whether costs are recoverable and what process should be followed in any decision-making;
- Is any decision on recovery of costs subject to appeal;
- Is legal aid applicable to proceedings to decide on the recovery of costs;
- To what extent is the gender or personal situation (e.g., income, number of dependants, disability, health, social status and vulnerability) of the accused taken into account in any decision regarding (a) recovery, (b) the amount payable or (c) when payment should be made
- To what extent might the amount recoverable be reduced on account of failings in the trial process that do not vitiate a conviction;
- Are there any limits on the amounts recoverable;
- Are there any consequences for an accused who fails to pay costs ordered to be recovered (e.g., increase in sentence);
- Is there any time-limit on the ability to seek the recovery of costs;
- Have there been any challenges to the recovery of costs by reference to constitutional guarantees, human rights commitments (including the presumption of innocence) or standards of judicial review;
- Have the arrangements for recovery of costs been revised in the course of the last ten years or are there any proposals to do so?

8 The comparison of the approach in the four member States is organised around the following themes

- The legal provisions (covering who can recover, from whom, when this possible, consequences of non-payment);
- Factors relevant to the computation of costs (covering limits on the amount and the capacity of the accused);
- The decision-making process (covering the body, the need for a hearing, the availability of appeals and of legal aid and time-limits);
- Reflections on practice, challenges and proposals for reform.

9 The relevant legislation, in unofficial translations into English, where relevant, is set out in the Annex.

10 There do not appear to have been any academic research studies or official and non-governmental reports concerning recovery of costs, nor any statistical information in respect of it, in any of the four member States concerned but the requirements of recovery are the subject of doctrine in Romania.

11 The analysis relies upon desk-based research, supplemented by input from national experts from Germany,[2] Poland[3] and Romania[4]. It has been prepared by Jeremy McBride,[5] within the framework of joint project of the European Union and the Council of Europe "Support to the Justice Reform in the Republic of Moldova".

B. COUNCIL OF EUROPE STANDARDS

12 The applicable Council of European standards are to be found in Opinion (2012) No. 7 of the Consultative Council of European Prosecutors on the Management of the Means of Prosecution Services ("Opinion (2012)7"), the Convention and the case law of the Court and Recommendation CM/Rec(2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime ("Recommendation CM/Rec(2023)2").

[2] Karin Weingast, Senior Public Prosecutor, Federal Court of Justice and Legal Officer, Federal Ministry of Justice.
[3] Dr. Piotr Kladoczny, Lecturer, Faculty of Law and Administration of the University of Warsaw.
[4] Vladimir Grosu, Associate Professor, Moldova State University, Attorney at Law, Consultant of the Council of Europe
[5] Barrister, Monckton Chambers, London.

1. Opinion (2012)7

13 This provides, in connection with the allocation of resources, that

> special attention should be paid to the full payment and – where this is provided for in the law – a subsequent recovery of the costs borne during criminal proceedings by the different authorities. The necessary mechanisms should be set up to ensure such recovery. This aspect is of particular importance for the member States and their judicial bodies at the time of economic crises.[6]

14 However, it does not provide any detail as to the costs concerned or their calculation, let alone any possible limitations on recovery. Nor does it indicate from whom recovery should be possible.

2. The Convention

15 The Convention only deals explicitly with the issue of costs in the context of criminal cases in respect of two matters, the payment of legal assistance (in Article 6(3)(c)) and the assistance of an interpreter (Article 6(3)(e)). Thus it does not contain any provisions that address all the other forms of costs that might be incurred in the course of criminal cases (namely, those, relating to the investigation, the prosecution – not only those in respect of the prosecutors but those relating to experts, witnesses and victims – and the court(s) concerned).

16 Nonetheless, issues relating to the recovery of those forms of costs have arisen in the case law of the Court relating to other Convention provisions, with it being considered in the latter that such recovery, or the failure to order it, could potentially have implications for (a) the fairness of the proceedings, (b) the observance of the presumption of innocence , (c) the proportionality of restrictions on rights to freedom of expression and freedom of peaceful assembly and (d) certain ancillary matters concerning rights under the Convention. However, in many instances, such recovery has not been found to be problematic.

a. Article 6(3)(c)

17 The case law regarding Article 6(3)(c) is concerned with both the circumstances in which legal assistance should be paid for by the State and, more pertinent for the purposes of the present report, the circumstances in which a person tried for an offence can be required to reimburse some or all of the costs of any such assistance that has been provided.

[6] Paragraph 31.

18 As regards the existence of an obligation to reimburse the costs of legal assistance (i.e., those in respect of lawyer whether one appointed by the accused or by the court), the Court has established that such an obligation would not necessarily be incompatible with Article. This would only be so if it adversely affected the fairness of the proceedings.[7]

19 Such unfairness might be found to exist if the possibility of being ordered to bear the costs of the accused's defence in the event of them being convicted inhibited them from asking the trial court to appoint counsel for them.[8]

20 However, no unfairness has been considered to have resulted where the obligation to repay some costs arose following the conclusion of the proceedings in which the person concerned had been represented in them by lawyers appointed in a manner compatible with the requirements of Article 6 of the Convention and the amounts claimed for them are not excessive.

21 Nonetheless, the Court has left open the question whether, when such reimbursement could be sought under a national legal system, it would be compatible with Article 6(3)(c) for the State to continue to seek full or partial reimbursement of the costs of the accused's defence after they subsequently established that they lacked sufficient means to bear them. It did so in respect of the respondent State concerned because it found that in the Land where the case originated it was standard practice to grant at least a partial remission of costs where the individuals concerned was able to establish that they could not afford to pay the entire sum. Furthermore, in that connection, the Court found it admissible that the burden of proving a lack of sufficient means should be borne by the person who pleads it.[9]

22 Indeed, it has subsequently found relevant, in declining to find a violation of Article 6(3)(c), that the applicant concerned had not produced evidence which gives a full picture of his overall financial situation (assets, liabilities and income), at the time when the costs order against him became final or afterwards.[10] Moreover, in that case, it was also considered significant that there were legal provisions which shielded certain assets and classes of income from execution, with their effect being considered similar to the practice - previously seen as relevant by it – of granting at least a partial remission of costs

---

[7] *Croissant v. Germany*, no. 13611/88, 25 September 1992. This ruling was followed in *Pfister v. Germany* (dec.), no. 19512/92, 7 September 1993.
[8] This was not considered to have been the situation in *Ognyan Asenov v. Bulgaria*, no. 38157/04, 17 February 2011, at para. 44.
[9] *Croissant v. Germany*, no. 13611/88, 25 September 1992, at para. 37.
[10] *Ognyan Asenov v. Bulgaria*, no. 38157/04, 17 February 2011, at para. 47. See also, the similar findings in *Mortensen v. Denmark* (dec.), no. 24967/94, 15 May 1996 and *P.W. v. Denmark* (dec.), no. 38986/97, 15 June 1999.

where the individuals concerned was able to establish that they could not afford to pay the entire amount.[11]

23 In that case,[12] as well as in several others,[13] the Court has also placed emphasis on the fact that the amount of the costs to be reimbursed was modest.

a. Article 6(3)(e)

24 In contrast to the position regarding Article 6(3)(c), the Court has held that Article 6(3)(e) precludes the recovery of the costs of interpretation provided in criminal cases as it could not but attribute to the terms "gratuitement" and "free" in the latter provision the unqualified meaning they ordinarily have in both of its official languages, namely, that these terms denote neither a conditional remission, nor a temporary exemption, nor a suspension, but a once and for all exemption or exoneration and that this ordinary meaning was not only not contradicted by the context of the sub-paragraph but was also confirmed by the object and purpose of this provision since the right to a fair trial would itself be adversely affected by a requirement to reimburse the costs of interpretation.[14]

25 Thus, the right protected by Article 6(3)(e), for those who cannot speak or understand the language used in court, is one to receive the free assistance of an interpreter, without any possibility of them subsequently being required to pay the costs thereby incurred.

26 Moreover, the right to free assistance in this sense also extends to the translation of documents where it is established that this was necessary for a person's defence.[15]

b. Other Convention provisions

27 Although costs other than those for interpretation and legal assistance are not addressed in the Convention, the former European Commission of Human Rights ("the former Commission"), referring to the Court's case law on legal assistance has stated on several occasions that a system whereby a convicted person is in principle bound to pay the costs of the proceedings, including the fees of his court-appointed counsel, was not

[11] *Ibid.,* at para. 46. This ruling was followed in *Todorov v. Bulgaria*, no. 19552/05, 12 July 2016.
[12] *Ibid.,* at para. 47.
[13] *Orlov v. Russia*, no. 29652/04, 21 June 2011, at para. 114; *Gennadiy Medvedev v. Russia*, no. 34184/03, 24 April 2012, at para. 39 and *Chukayev v. Russia*, no. 36814/06, 5 November 2015, at para. 117. In these cases, a total or partial exception also remained possible, e.g., on account of indigence. However, in the Orlov case, there was still found to be a violation of Article 6(3)(c) as the legal assistance provided was not considered to be effective.
[14] *Luedicke, Belkacem and Koç v. Germany*, no. 6210/73, 28 November 1978.
[15] *Vizgirda v. Slovenia*, no. 59868/08, 28 August 2018, at para. 78.

incompatible with Article 6 of the Convention, provided this does not adversely affect the fairness of the proceedings.[16]

28 In the instances where this possibility was considered, no such impact on the proceedings was considered to have occurred, whether generally[17] or because the accused had been provided a proper defence, irrespective of whether he had sufficient means during the trial[18] or it not having been shown that the court-appointed counsel was unable to provide the accused with an adequate defence.[19]

29 There are also a number of cases involving prosecutions in which the facts referred to a requirement to pay the unspecified costs of the proceedings without any comment,[20] as well as three in which the costs were those of a civil party.[21]

30 There is one case involving proceedings for fraud in which the requirement to pay costs included those relating to an audit.[22]

---

[16] *Mortensen v. Denmark* (dec.), no. 24967/94, 15 May 1996; *Nordigård v. Sweden* (dec.), no. 27074/95, 4 September 1996; *P .W. v. Denmark* (dec.), no. 38986/97, 15 June 1999; and *Schrieder v. Denmark* (dec.), no. 32085/96, 6 April 2000.

[17] *Schrieder v. Denmark* (dec.), no. 32085/96, 6 April 2000.

[18] *Mortensen v. Denmark* and *P .W. v. Denmark* (dec.), no. 24967/94, 15 May 1996.

[19] *Nordigård v. Sweden* (dec.), no. 27074/95, 4 September 1996.

[20] *Sverrisson v. Iceland* (dec.), no. 13291/87, 4 December 1987; *Hatjianastasiou v. Greece* (dec.), no. 12945/87, 4 April 1990 (there is no reference to costs in the judgment of 16 December 1992); *H. v. Austria* (dec.), no. 14974/89, 10 September 1991; *Wirtschaft-Trend Zeitschriften-Verlagsges m.b.H. v. Austria* (dec.), no. 26113/95, 23 October 1997; *Kadubec v. Slovakia*, no. 27061/95, 2 September 1998; *Lauko v. Slovakia*, no. 26138/95, 2 September 1998; *J.K. v. Slovakia*, no. 29021/95, 21 March 2000; *Meyer v. Switzerland* (dec.), no. 46787/99, 13 September 2001; *Siwak v. Poland* (dec.), no. 51018/99, 1 July 2004; *Geyer v. Austria*, no. 69162/01, 7 July 2005; *Tudorache v. Romania*, no. 78048/01, 29 September 2005; *Krone Verlags GmbH & Co KG v. Austria (No. 4)*, no. 72331/01, 9 November 2006; *Hauser-Sporn v. Austria*, no. 37301/03, 7 December 2006; *Nikowitz and Verlagsgruppe News GmbH v. Austria*, no. 5266/03, 22 February 2007; *Mihaiu v. Romania*, no. 42512/02, 4 November 2008; *Georgios Papageorgiou v. Greece (No. 2)*, no. 21032/08, 15 October 2009; *Previti v. Italy* (dec.), no. 45291/06, 8 December 2009; *Plepi v. Albania and Greece* (dec.), no. 11546/05, 4 May 2010; *Rinck v. France* (dec.), no. 18774/09, 19 October 2010; *Lacadena Calero v. Spain*, no. 23002/07, 22 November 2011; *Ciesielczyk v. Poland*, no. 12484/05, 26 June 2012; *Ioannis Papageorgiou v. Greece*, no. 45847/09, 24 October 2013; *Bulatović v. Montenegro*, no. 67320/10, 22 July 2014 (there was also an order to pay "court fees"); *Perak v. Slovakia*, no. 37903/09, 1 March 2016; *Correia de Matos v. Portugal* [GC], no. 56402/12, 4 April 2018; *E.S. v. Austria*, no. 38450/12, 25 October 2018*; Witkowski v. Poland,* no. 21497/14, 13 December 2018; *Śliwczyński and Szternel v. Poland* (dec.), no. 2244/14, 29 March 2022; *Vlahov v. Croatia*, no. 31163/13, 5 May 2022; and *Cupial v. Poland*, no. 67414/11, 9 March 2023. *Nikowitz and Verlagsgruppe News GmbH v. Austria*, while in *Perak*, the subject of a private prosecution brought by the applicant had been required to pay his costs. In *Cupial*, a requirement to pay the costs of the proceedings was not considered to be linked to the finding of a violation of Article 6(1) on the basis that the courts had failed to provide adequate reasons for their decisions. There was a similar finding in *Almenara Alvarez v. Spain*, no. 16096/08, 25 October 2011, in which violation found concerned the absence of a public hearing.

[21] *Zedan v. Federal Republic of Germany* (dec.), no. 11735/85, 7 October 1987; *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, 17 January 2002 and *Perna v. Italy* [GC], no. 48898/99, 6 May 2003.

[22] *Holm-Hansen v. Denmark* (dec.), no. 43196/98, 9 November 2000

31 Moreover, there are a number of cases in which there was a reference to a requirement to pay unspecified prosecutions costs following a conviction or absolute discharge without any adverse comment relating to compliance with obligations under the Convention being made, [23] as well as some where the award for just satisfaction included such prosecution or other unspecified costs of proceedings in respect of the conviction found to be in violation of the Convention.[24]

32 The Court has accepted that the mere fact of ordering certain court costs or prosecution costs against an accused when the proceedings are terminated neither by a conviction nor by an acquittal cannot in itself amount to a violation of the presumption of innocence.[25] A similar view has been taken of a situation where the accused were left to bear all or some of their costs in criminal proceedings that were discontinued without any statement affirming their guilt but just a description of a state of suspicion against the accused concerned.[26]

33 However, there would be a violation of the presumption of innocence where the court, in making such an order, made a substantial finding of the accused's guilt in respect of offences of which they had not been lawfully convicted. This was, for example, the situation in a case where such an award of costs of the person bringing a private prosecution[27] against the accused had been made after the prosecution had become barred on account of limitation and this had been done on the basis of the court

---

[23] *E. v. United Kingdom* (dec.), no. 12114/86, 3 December 1986; *Buckley v. United Kingdom*, no. 20348/92, 25 September 1996 (in which the proceedings ended with the absolute discharge of the applicant); *Bowman v. United Kingdom* [GC], no. 24839/94, 19 February 1998; *I. J. L. v. United Kingdom*, no. 29522/95, 19 September 2000; *Howarth v. United Kingdom*, no. 38081/97, 21 September 2000; *Doubtfire v. United Kingdom* (dec.), no. 31825/96, 23 April 2002; *Fairfield v. United Kingdom* (dec.), no. 24790/04, 8 March 2005; and *Shukla v. United Kingdom* (dec.), no. 2526/07, 16 June 2007.

[24] *A.D.T. v. United Kingdom*, no. 35765/97, 31 July 2000; *Igual Coll v. Spain*, no. 37496/04, 10 March 2009; *Yalçinkaya and Others v. Turkey*, no. 25764/09, 1 October 2013; *Morice v. France* [GC], no. 29369/10, 23 April 2015; and *Özalp v. Turkey*, no. 48583/07, 18 July 2017

[25] *Minelli v. Switzerland*, no. 8660/79, 25 March 1983, at paras. 34-35 and *McHugo v. Switzerland* (dec.), no. 55705/00, 12 May 2005.

[26] *X. v. Federal Republic of Germany* (dec.), no. 9531/81, 6 October 1982; *C. v. Switzerland* (dec.), no. 9688/82, 16 December 1983 (in which the remark that the behaviour of the persons concerned prompted the opening of criminal proceedings was held not to amount to a finding of guilt); *Englert v. Germany*, no. 10282/83, 25 August 1987; *Lutz v. Germany*, no., 9912/82, 25 August 1987; *Nölkenbockhoff v. Germany*, no. 10300/83, 25 August 1987; and *B. v. Germany* (dec.), no. 19070/91, 1 July 1992 ("The Commission cannot find that the proceedings against the applicant were introduced and maintained arbitrarily nor that the German courts' calculation of the costs to be reimbursed was unlawful or that the courts have disregarded any relevant facts").

[27] In some countries (including in Germany, Poland and the United Kingdom (England and Wales)), the law authorises criminal proceedings for at least certain offences to be initiated by private individuals or organisation without the involvement of the public prosecution body, although there can be instances in which the latter can take over such proceedings.

concerned considering that the proceedings would probably have been successful in the absence of this procedural obstacle.[28]

34 Also, the Court has established that the refusal of compensation for detention on remand following an acquittal by reference to the voicing of suspicions regarding the accused's innocence violated the presumption of innocence as it is no longer admissible to rely on such suspicions once there is a final judgment in the case.[29]

35 Nonetheless, there have been instances in which the Court has required more than the expression of strong suspicions, relying on reasoning that amounted in substance to a determination of the applicant's guilt without him having been "found guilty according to law" before being prepared to conclude that the refusal of compensation following an acquittal was incompatible with the presumption of innocence.[30]

36 Moreover, the Court has not found that it was unreasonable for an applicant who had been acquitted to be:

> required to prove, on balance, the truth of his allegation that there had never been any reason to suspect him in circumstances where he was claiming damages in this regard. If the Court were to hold otherwise it would lead to the absurd consequence of obliging the domestic courts to take the applicant's assertions of wrongdoing on the part of the state at face value. If the Court were to hold otherwise it would lead to the absurd consequence of obliging the domestic courts to take the applicant's assertions of wrongdoing on the part of the state at face value. The domestic courts were satisfied that there was *prima facie* evidence upon which the State was entitled to bring the criminal proceedings against the applicant. He enjoyed the presumption of innocence and was entitled to the benefit of the doubt in criminal proceedings. His acquittal was based on the fact that the evidence of the prosecution was not sufficient to find him guilty beyond reasonable doubt. His acquittal in criminal proceedings did not mean that he was dispensed from the obligation of having to prove his claim for damages brought in civil proceedings in accordance with the applicable domestic rules regarding burden of proof.[31]

---

[28] *Minelli v. Switzerland*, no. 8660/79, 25 March 1983, at paras. 38-40. The criminal procedure code of the canton provided that: "The losing party shall bear the court costs and shall pay compensation to the other party in respect of his expenses; a departure from this rule can be made only if special circumstances so warrant." There was a similar finding by the former Commission in *I. and C. v. Switzerland* (Rep.), no. 10107/82, 4 December 1985, at para. 65. This concerned a public prosecution and the criminal procedure of the canton provided that: "costs may be imposed completely or in part upon the acquitted person if the latter caused the institution of the criminal proceedings through his reprehensible or frivolous behaviour or if he impeded the conduct of the proceedings". The Court also found such a violation in *Didu v. Romania*, no. 34814/02, 14 April 2009, where costs were imposed after an appeal on cassation was allowed against a conviction (following an acquittal at first instance) on the basis of a finding that the prosecution was time-barred.

[29] See, e.g., *Sekanina v. Austria*, no. 13126/87, 25 August 1993, para. 30; *Asan Rushiti v. Austria*, no. 28389/95, 21 March 2000, para. 31; *Lamanna v. Austria*, no. 28923/95, 10 July 2001, para. 38; *Weixelbraun v. Austria*, no. 33730/96, 20 December 2001 para. 25; and *Tendam v. Spain*, no. 25720/05, 13 July 2010, paras. 36-4..

[30] *Baars v. Netherlands*, no. 44320/98, 28 October 2003, para. 31 and *Del Latte v. Netherlands*, no. 44760/98, 9 November 2004, para, 33.

[31] *Bok v. Netherlands*, no. 45482/06, 18 January 2011, para. 45.

37 Nonetheless, the presumption of innocence is unlikely to be considered to be infringed where there is a refusal of defence costs or a requirement to meet any other costs of the proceedings following the mere discontinuance of them. This is because the rulings dealing with acquittal relied upon the finality of the judgment in the cases concerned, while there is no such finality where the relevant proceedings are merely discontinued.[32]

38 In addition, the award of costs against the accused following an acquittal will not infringe the presumption of innocence if this occurred on account of the wrongful and reproachable conduct of the person concerned without any imputation of guilt of an offence.[33]

39 In addition, there is one case in which the Court took the view that a requirement to contribute "a relatively small sum" to prosecution costs was not sufficient to render a conviction a disproportionate restriction on the right to freedom of peaceful assembly under Article 11 of the Convention.[34]

40 However, the failure to give relevant and sufficient reasons to justify ordering an applicant to pay an administrative fine and to pay the complainants' costs in proceedings for defamation led the Court to conclude that the penalty imposed on him had accordingly not met a "pressing social need" so that there had been a violation of Article 10.[35]

41 In a case concerned with an order to pay the costs of the proceedings seeking the postponement of the execution of a sentence of imprisonment, the Court found the application to it inadmissible for non-exhaustion of domestic remedies on account of the applicant – who claimed that a disability pension was his only income – not having provided detailed information on his income and not having submitted that he had asked either to pay the costs in instalments or to have them written off due to a lack of funds.[36]

42 The possibility of a substantial reduction in the legal costs has been unsuccessfully canvassed as a basis for contending that an applicant had ceased to be a victim of the

[32] Indeed, the cases such of *Englert*, *Lutz, Nölkenbockhoff* and *B*. referred to in fn. 22 were distinguished on this basis. As a result, the emphasis in *Didu v. Romania*, no. 34814/02, 14 April 2009, in following *Minelli v. Switzerland*, no. 8660/79, 25 March 1983, of the importance of making a distinction between describing a state of suspicion and a finding of guilt, with the latter being essential for any refusal of costs in the event of proceedings being discontinued, will remain.

[33] As was the situation in *McHugo v. Switzerland* (dec.), no. 55705/00, 12 May 2005, in which the criminal procedure code was that of the same canton in the case of *I. and C. v. Switzerland* .

[34] *Rai and Evans v. United Kingdom* (dec.), no. 26258/07, 17 November 2009.

[35] *Boldea v. Romania*, no. 19997/02, 15 February 2007. There was a similar finding in *Bosev v. Bulgaria*, no. 62199/19, 4 June 2024. See also *Niculescu-Dellakeza v. Romania*, no. 5393/04, 26 March 2014, in which the requirement to pay damages and the costs of proceedings in a prosecution for defamation contributed to the finding of a violation of Article10.

[36] *Mędrzycki v. Poland* (dec.), no. 31672/17, 2 July 2019, at para. 47.

right to trial within a reasonable time as the national authorities had not acknowledged either expressly or in substance the failure to observe the reasonable time requirement.[37] Nonetheless, it has indicated that a finding that the reasonable time requirement has been exceeded should result in an acquittal, a reduction of the sentence, a payment of compensation or a reduction in the costs of the proceedings.[38]

3. Recommendation CM/Rec(2023)2

43 Article 11 of Chapter II – Legal Proceedings in this Recommendation provides that:

> 1. Member States should afford victims who participate in criminal proceedings the possibility of reimbursement of expenses incurred as a result of their active participation in the proceedings. This reimbursement will occur in accordance with the victims' role in the relevant criminal justice system and should concern, at a minimum, expenses concerning actions which a victim is obliged to undertake, such as giving evidence as a witness.[39]

44 As is made clear in the Explanatory Memorandum accompanying the Recommendation, the aim of this provision is that:

> victims should not be burdened with expenses, necessitated by activities of law enforcement and criminal justice actors. This applies for instance to victims who are called upon to witness in a criminal case.

45 Although the provision clearly expects victims to be reimbursed for such expenses, the Recommendation does not indicate from whom reimbursement ought to be obtained or whether there are any limits as to the nature of the expenses concerned – referring just to "out of pocket expenses to comply with requests or requirements of law enforcement agencies and criminal justice agencies" or the amount recoverable,

4. Conclusion

46 Both the Consultative Council of European Prosecutors' Opinion (2012)7 and Recommendation CM/Rec(2023)2 recognise that there should be the possibility of recovering costs by, respectively, the authorities and victims. However, neither elaborate on the process for obtaining recovery nor as regards the person or body from whom recovery ought to be sought. Nonetheless, both reflect a clear European consensus that

[37] *Wejrup v. Denmark* (dec.), no. 49126/99, 7 March 2002.
[38] *Werz v. Switzerland*, no. 22015/05, 17 December 2005, at para. 45.
[39] Paragraph 2 is concerned with the return to victims of recoverable property which is seized in the course of criminal proceedings.

the ability to recover the costs incurred in the conduct of criminal proceedings is, in principal, a legitimate objective.

47 The legitimacy of that objective is not put into question by the Convention or the case law of the Court. However, their focus is on the limits of any recovery that can be obtained from the accused.

48 In the first place, the case law of the Court makes it clear that recovery of costs from an accused relating to interpretation in the proceedings concerned is never compatible with Article 6(3)(e) of the Convention.

49 On the other hand, the Court does not consider that, notwithstanding Article 6(3)(c) of the Convention, recovery of costs in respect of the provision of legal assistance after the conclusion of the proceedings is, in principle, inadmissible. However, account must be taken of the potential impact of such recovery on the fairness of those proceedings, as well as the ability to pay the amount involved.

50 The issue of fairness could also be seen as relevant by the Court where costs other than those for interpretation or legal assistance.

51 Moreover, the Court is of the view that a refusal to allow recovery of costs by an accused could, in some circumstances, infringe the presumption of innocence.

52 In addition, the imposition on an accused of a requirement to pay the costs of the proceedings could be a factor leading to the conclusion of the Court that a conviction amounted to a violation of certain other rights under the Convention.

53 Finally, the reduction in the amount payable by an accused could be a factor in remedying a violation of the right to be tried within a reasonable time.

C. OVERVIEW OF PRACTICES

54 It is clear from the case law of the Court, that a good number of Council of Europe member States[40] have rules and approaches to the recovery of costs – in terms of these being sought both from the person who has been the subject of a prosecution and by that person her or himself – which have given to some extent rise to concerns about their application in particular instances being compatible with the requirements of the

[40] Namely, Austria, Croatia, Denmark, France, Iceland, Italy, Montenegro, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Switzerland and the United Kingdom.

Convention. This does not, of course, preclude the existence of similar or different such rules and approaches in other member States, the application of which has not yet been challenged before the Court.

55 Apart from the question of whether there can be any recovery from an accused of the costs of interpretation and of legal assistance, for which member States should comply with the requirements in the Convention that have been elaborated by the Court, there is, or has been, recovery of costs seen in cases before it by member States in respect of prosecution costs and, more generally, court costs but without giving any details as to what those costs entailed, except in one instance where they related to the gathering of certain evidence (namely, an audit of business activities).

56 In at least some instances, an obligation on an accused to pay prosecution and/or court costs was subject to the possibility of being able to pay them in instalments or even having them written off on account of her/his impecuniosity. Reductions in the amount payable have also occurred where aspects of the proceedings concerned were marked by a violation of elements of the right to a fair trial without vitiating the conviction itself.

57 Also, in some instances, there has been a recovery of costs where the prosecution was brought by an individual rather than by a public prosecutor or other public body. In addition, it has been the case that an accused was not always able to recover her or his costs where there had been either a discontinuance of the proceedings or s/he had been acquitted.

58 Only in a few of the cases can the particular text of the relevant legislative provisions be found.[41] Moreover, it is not necessarily the case that the texts cited by the Court are still the ones in force. Unfortunately, there does not appear to be either any national or comparative studies of the practice of recovering costs accessible online. Furthermore, an online search only found the legal framework regarding the recovery of costs in respect of a part of one member States, namely, that for England and Wales in the United Kingdom.[42] Nonetheless, it is unlikely that the position is radically different in member States from that seen in the cases before the Court, even if the actual details are lacking.

59 A fully nuanced picture of the approach followed in the different jurisdictions within the Council of Europe can, however, only be derived from examining in more detail the

---

[41] Namely, in *Bok v. Netherlands*, no. 45482/06, 18 January 2011;*Englert v. Germany*, no. 10282/83, 25 August 1987; *Lutz v. Germany*, no., 9912/82, 25 August 1987; *Mędrzycki v. Poland* (dec.), no. 31672/17, 2 July 2019; *Minelli v. Switzerland*, no. 8660/79, 25 March 1983 ; *Nölkenbockhoff v. Germany*, no. 10300/83, 25 August 1987; *Sekanina v. Austria*, no. 13126/87, 25 August 1993; and *Zedan v. Federal Republic of Germany* (dec.), no. 11735/85, 7 October 1987.

[42] Available at https://www.cps.gov.uk/legal-guidance/costs.

approach of four of the member States that have featured in proceedings before the European Court. For this purpose, the following analysis of the four chosen - Germany, Poland, Romania, and the United Kingdom (England and Wales) – can be regarded as providing both a detailed and reasonably representative picture of the position in continent's different legal traditions.

D. GERMANY

1. *General considerations*

60 The recovery of costs is primarily regulated by the Code of Criminal Procedure (Strafprozeßordnung – StPO) and the Judicial Remuneration and Compensation Act, (Gesetz über die Vergütung von Sachverständigen, Dolmetscherinnen, Dolmetschern, Übersetzerinnen und Übersetzern sowie die Entschädigung von ehrenamtlichen Richterinnen, ehrenamtlichen Richtern, Zeuginnen, Zeugen und Dritten (Justizvergütungs- und -entschädigungsgesetz – JVEG) but also relevant are certain provisions in the Code of Civil Procedure.

61 The relevant provisions in Code of Criminal Procedure were last revised in 2015 by the Victims' Rights Reform Act (BGBl. I p. 2525), leading to the stipulation in the last sentence of Section 465 (2) that the accused can be exempted from some or all of the costs of an assigned psychosocial assistant if the obligation to bear them would be inequitable. No further revisions are planned.

62 Costs can be recovered by the parties to the proceedings, i.e., the accused,[43] the Treasury (which is otherwise responsible for the expenses of the prosecution, including the compensation of experts and witnesses and the costs of appointing a translator or interpreter for the accused.), a private prosecutor, a private accessory prosecutor (i.e., victims and their relatives in certain circumstances)[44], a person asserting rights in

[43] This includes, for present purposes, a legal entity or association on which a regulatory fine is imposed; Section 472b of the Code of Criminal Procedure.

[44] Section 395 of the Code of Criminal Procedure provides that: "1) Whoever is aggrieved by an unlawful act under 1. sections 174 to 182 and sections 184i to 184k of the Criminal Code,2. sections 211 and 212 of the Criminal Code, if it is an attempted act, 3. sections 221, 223 to 226a and 340 of the Criminal Code, 4. sections 232 to 238, section 239 (3), sections 239a and 239b and section 240 (4) of the Criminal Code, 5. section 4 of the Act on Civil Law Protection against Violent Acts and Stalking (*Gewaltschutzgesetz*), 6. section 142 of the Patent Act, section 25 of the Utility Models Act, section 10 of the Semi-Conductor Protection Act, section 39 of the Plant Variety Protection Act, sections 143 to 144 of the Trade Mark Act, sections 51 and 65 of the Design Act, sections 106 to 108b of the Copyright Act, section 33 of the Act on the Copyright of Works of Fine Art and Photography, section 16 of the Act against Unfair Competition and section 23 of the Act on the Protection of Trade Secrets may join a public prosecution or an

adhesion proceedings,[45] involved third parties, a person who is the object of a confiscation order but is not the accused, a party to the confiscation aspect of the proceedings as an accessory party and a person who has become a party to the confiscation aspect of the proceedings as an accessory party.

63 Costs can be recovered from the accused, the Treasury, persons making reckless or intentionally untrue reports, persons withdrawing the request to prosecute and private prosecutors.

2. Recovery from the accused

64 The general position of the bearing of costs by the accused, is governed by Section 465 of the Code of Criminal Procedure. Thus, pursuant to this provision, the accused will – subject to exceptions considered below - bear the costs of the proceedings insofar as they were caused by the proceedings for an offence of which they have been convicted or for which a measure of reform and prevention has been ordered against them (including where they have been given a warning with sentence reserved or the court has dispensed with imposing a penalty).

65 Co-accused are, pursuant to Section 466 of the Code of Criminal Procedure, jointly and severally liable for the expenses where they have been sentenced or in respect of whom a measure of reform and prevention has been ordered for the same offence. However, this does not apply to the costs arising from the services of appointed defence counsel or of an interpreter and to the costs for enforcement, provisional placement or remand detention, and to expenses arising from investigations directed exclusively against one of the co-accused.

---

application in preventive detention proceedings as private accessory prosecutor. (2) The same right is vested in persons 1. whose children, parents, siblings, spouse or life partner were killed through an unlawful act or 2. who, through an application for a court decision (section 172), have initiated the preferment of public charges. (3) Whoever is aggrieved by another unlawful act, in particular one under sections 185 to 189, section 229, section 244 (1) no. 3 and (4), sections 249 to 255 and section 316a of the Criminal Code, may join the public prosecution as private accessory prosecutor if, for specific reasons, in particular on account of the serious consequences of the act, this is deemed necessary to safeguard their interests. (4) Joinder is admissible at any stage of the proceedings. It may also be effected, after judgment has been given, for the purpose of seeking an appellate remedy after judgment. (5) If prosecution is limited pursuant to section 154a, this does not affect the right to join the public prosecution as private accessory prosecutor. If the private accessory prosecutor is admitted to the proceedings, a limitation pursuant to section 154a (1) or (2) does not apply insofar as it concerns the private accessory prosecution.

[45] Section 403 of the Code of Criminal Procedure provides that: “The aggrieved person or his or her heir may, in the criminal proceedings, bring a property claim against the accused arising out of the offence if the claim falls under the jurisdiction of the ordinary courts and is not yet pending before another court, in proceedings before the local court irrespective of the value of the matter in dispute. Other persons who have asserted such a claim have the same right”.

66 In addition, there are a number of provisions in which other costs can be recovered from the accused.

67 Firstly, pursuant to Section 464c of the Code of Criminal Procedure, the expenditure incurred in respect of an interpreter or translator has been called in for accused who do not speak German or who is hearing or speech impaired will be charged to them insofar as they have unnecessarily given rise to such expenditure by culpable omission or culpably in some other way.

68 Secondly, pursuant to Section 471 (1) of the Code of Criminal Procedure, a convicted person in proceedings conducted by private prosecution is also required to reimburse the private prosecutor for the necessary expenses incurred. However, there is also provision for apportionment of the costs of the proceedings and the parties' necessary expenses or for charging such costs to one of the parties where only part of the private prosecutor's application was granted, the proceedings were terminated on account of negligibility or counter-charges were preferred.

69 Thirdly, pursuant to Sections 472 of the Code of Criminal Procedure, the accused can be required to bear the necessary expenses of a private accessory prosecutor[46] if they are sentenced for an offence affecting that private accessory prosecutor. Moreover, those expenses may also be charged, in full or in part, to the accused if the court terminates the proceedings pursuant to a provision permitting this at its discretion, insofar as this equitable for special reasons.[47]

70 Fourthly, pursuant to Section 472a of the Code of Criminal Procedure, the accused can be required to bear both the special costs incurred in adhesion proceedings where an application to bring the property claim was granted and the applicant's necessary expenses.[48]

71 Fifthly, the accused can, pursuant to Section 472b of the Code of Criminal Procedure, be required to bear the necessary expenses of involved third parties where an order has

[46] A private accessory prosecutor is the term used for certain injured persons who are able to participate in the proceedings. Those persons will be victims of certain offences (including sexual abuse of children, rape, sexual assault and human trafficking) and of other offences having particularly serious consequences, as well as the relatives of such victims who are deceased. Having the right to private accessory prosecution entitles the victim to inspect the file without showing a legitimate interest, as well as a range of other rights connected to the conduct of the proceedings; see Private accessory prosecution.

[47] These provision also apply to (a) the necessary expenses which have arisen for a person entitled to join proceedings as a private accessory procedure in the exercise of rights under Section 406h and (b) the private prosecutor's necessary expenses if the public prosecution has assumed the prosecution.

[48] "Special costs" within the meaning of Section 472a refer to the special (i.e. also excludable) additional costs and expenses of the adhesion proceedings incurred as a result of the part of the claim that has been awarded.

been made for confiscation, destruction or rendering unusable of an object or the elimination of a situation which is illegal and it would be equitable to do so.

72 Sixthly, pursuant to Section 473a of the Code of Criminal Procedure, any accused who have applied for a ruling in a separate decision on the lawfulness of an investigation measure or its enforcement can be required to bear the costs and the parties' necessary expenses where the measure or its enforcement is not held to be unlawful.[49]

3. Recovery by the accused

73 Sections 467, 467a and 468 of the Code of Criminal Procedure govern the extent to which the accused can recover their costs and expenses from the Treasury in the event of their acquittal or the non-opening or termination of criminal proceedings against them.

74 Thus, pursuant to Sections 467 and 467a of the Code of Criminal Procedure, the accused's necessary expenses (as well as the Treasury expenditure) will normally be borne by the Treasury if the accused are acquitted, the opening of the proceedings against them is refused, the proceedings are terminated or the public prosecution office withdraws the public charges and terminates the proceedings.[50]

75 However, this is subject to several exceptions.

76 Firstly, the accused's necessary expenses will not be charged to the Treasury to the extent these were caused by their culpable default. Moreover, in such circumstances the costs of the proceedings will be charged to them.

77 Secondly, the accused's necessary expenses will not be charged to the Treasury if they caused the preferment of public charges by making a report in which they pretended to have committed the offence with which they were charged. In addition, the court may dispense with charging these expenses to the Treasury if (a) the accused caused the preferment of public charges by falsely incriminating themselves with regard to material points or in contradiction to their later statement or by concealing material exonerating circumstances despite having made a statement in response to the accusation or (b) they were not sentenced for an offence only on account of a procedural impediment.

---

[49] This obligation will apply to any applicant for such a ruling and not just the accused. Moreover, if the measure or its enforcement are held to be unlawful, the Treasury has to bear the costs and the parties' necessary expenses.

[50] Where the public prosecution office withdraws the public charges and terminates the proceedings, the necessary expenses may also be charged, pursuant to Section 467a(2) to parties to confiscation proceedings, accessory parties in criminal proceedings and a legal entity or association.

78 Thirdly, the court may dispense with charging the accused's necessary expenses to the Treasury if the proceedings have been terminated pursuant to a provision permitting this at the court's discretion.

79 Finally, the accused's necessary expenses will not be charged to the Treasury where the proceedings are terminated with final effect after previous provisional termination.

80 Moreover, pursuant to Section 468, in the case of mutual exchange of insults – i.e., in cases involving the response on the spot to an insult (any attack on the honour of another by proclaiming one's own disregard or disrespect) – the court may, at its discretion, order the accused (whether one or both of those exchanging insults) to pay all or part of the court's expenses or refrain from doing so altogether. In such cases, the accused must bear their own expenses,[51].

81 In addition, there is provision for the recovery of the necessary expenses of the accused in the event of a person making a reckless or intentionally untrue report, the withdrawal of a request to prosecute, there is an acquittal or the termination of proceedings in a private prosecution.

82 Thus, Section 469(1) of the Code of Criminal Procedure provides for the charging of the accused's necessary expenses to the person who caused proceedings, even if conducted out of court, by an intentional or reckless false report of an offence.

83 Similarly, pursuant to Section 470 of the Code of Criminal Procedure, where proceedings are terminated owing to the withdrawal of the request to prosecute, the necessary expenses of the accused must be borne by the person filing the request.

84 Furthermore, pursuant to Section 471(2)-(4) of the Code of Criminal Procedure, a private prosecutor must bear the necessary expenses of the accused where the charges against them are dismissed, the accused is acquitted or the proceedings are terminated.[52] There are no equivalent exceptions to recovery by the accused in the case of private prosecutions as to those set out in paragraphs 76-79 above with respect to public prosecutions.

[51] Section 199 of the German Criminal Code provides that: "If an insult is immediately reciprocated the court may order a discharge for one or both of the offenders".
[52] Pursuant to Section 471(4), several private prosecutors are jointly and severally liable.

4. Recovery from others

85 Apart from the accused, the Treasury can recover the cost of proceedings from:

(a) persons making reckless or intentionally untrue reports;[53]
(b) the person withdrawing the request to prosecute;[54]
(c) a private prosecutor where the charges against the accused are dismissed, the accused is acquitted or the proceedings terminated;[55]
(d) persons making a claim in adhesion proceedings;[56]
(e) certain involved third persons;[57] and
(f) persons who applied for a separate ruling on the lawfulness of an investigation measure or its enforcement in event of these not being held to be unlawful[58].

5. Definition of costs

86 Section 464a of the Code of Criminal Procedure defines, in a fairly open-ended manner, both the costs of the proceedings and the necessary expenses of a party for the purpose of their recovery.

87 Thus, costs of proceedings are defined as including:

> fees and Treasury expenditure. They also include the costs of preparing public charges and the costs of enforcing a legal consequence of the offence. The costs of an application to reopen proceedings concluded by final judgment also include the costs of preparing the reopening of proceedings (sections 364a and 364b) insofar as they are caused by an application by the convicted person.[59]

88 As such, it covers all the expenses incurred in clarifying the accused's involvement in the crime and to apprehend them, including the costs incurred by the police (e.g. costs of blood alcohol determination and telephone monitoring with interpreter costs), the expenses incurred by the remuneration of court-appointed representatives and the expenses of public defenders. However, neither the salaries of the judges and police

[53] Section 469.
[54] Section 470.
[55] Section 471(2) and (3).
[56] Section 472a (2).
[57] Section 472b); persons other than the accused involved in proceedings in which an order is made for confiscation, reservation of confiscation, destruction or rendering unusable of an object or elimination of a situation which is illegal and legal entities or associations on whom a regulatory fine is imposed,
[58] Section 473a
[59] Section 464a.

officers involved in the proceedings nor those of the public prosecutors who prepare the indictments are included.

89 The necessary expenses of a party, a term which includes the accused and others involved in the proceedings other than the prosecution and the court, include:

> 1. compensation for inevitable loss of time pursuant to the provisions applicable to the compensation of witnesses and
> 2. fees and expenses of a lawyer insofar as they are to be reimbursed pursuant to section 91 (2) of the Code of Civil Procedure.

90 The determination and subsequent assessment as to who is to bear the costs and necessary expenses and the amount for which one party must reimburse another party is, pursuant respectively to Sections 464 and 464b of Code of Criminal Procedure, a matter solely for the court giving judgment or concluding the proceedings, with the amount being assessed upon application by a party, i.e., the application of the party concerned is submitted and decided on when the judgment is handed down or the proceedings are otherwise ended. The issue of a time limit for seeking recovery does not, therefore arise.

91 For the latter purpose, pursuant to Section 464d of the Code of Criminal Procedure, Treasury expenditure and the necessary expenses of the parties may be apportioned in fractions.

6. Limitations on recovery

92 In determining the amount of the costs of proceedings to be borne by the accused, it should be borne in mind that, since Section 465(1) of the Code of Criminal Procedure stipulates that the accused only have to bear the costs to the extent incurred in the proceedings for offences for which they were convicted or for which a disciplinary measure is ordered against them, there will be no requirement in respect of the charges that did not lead to either outcome.

93 Furthermore, Section 465(2) provides that:

> If specific expenses have been caused by investigations conducted to clarify certain incriminating or exonerating circumstances and if the outcome of such investigations was in the defendant's favour, the court charges the expenses, in part or in full, to the Treasury if it would be inequitable to charge them to the defendant. This in particular applies if the defendant is not convicted for individual severable parts of an offence or is not convicted of one or more of a number of violations of the law. Sentences 1 and 2 apply accordingly to the defendant's necessary expenses. The court may order that an increase in court fees in cases where a psychosocial assistant has been appointed be waived, in part or in full, if it would be inequitable to charge such fees to the defendant

94 Moreover, pursuant to Section 465(3), a convicted person's estate is not liable for the costs where that person dies before the judgment enters into force.

95 In general, apart from Section 465(2), there are no limits on the costs to be borne by an accused.

96 However, certain provisions also subject the determination of the amount recoverable to considerations of equitable treatment. It is possible that the gender or personal situation (e.g., income, number of dependants, disability, health, social status and vulnerability) of the accused could be a factor in this regard but there is no specific reference to this. Similarly, although there is no explicit provision for any amount recoverable to be reduced on account of failings in the trial process that do not vitiate a conviction, it is not impossible that this would be relevant in determining whether a requirement to pay was or was not equitable.

97 Thus, although following a withdrawal of the request to prosecute there is the possibility under Section 470 of the Code of Criminal Procedure to charge the costs of proceedings and necessary expenses to persons involved insofar as they declared their willingness to pay to the Treasury, they can be charged to the Treasury if it would be inequitable to charge them.

98 Also, pursuant to Section 472 of the Code of Criminal Procedure, the necessary expenses incurred by the private accessory prosecutor for psychosocial assistance in court proceedings may be charged to the accused only up to the amount by which the court fees would be increased if the psychosocial assistant were to be appointed. Charges for necessary expenses may be waived, in full or in part, if it would be inequitable to charge these expenses to the accused. Moreover, as already noted, if the court terminates the proceedings pursuant to a provision permitting this at the court's discretion, it may charge the necessary expenses of the private accessory prosecutor, in full or in part, to the indicted accused insofar as this is equitable for special reasons.

99 Similarly, the court has a discretion under Section 472a of the Code of Criminal Procedure to decide who is to bear its expenses and the necessary expenses incurred by the parties where it dispenses with a decision on an application for adhesion proceedings, part of the applicant's claim is not awarded or the application is withdrawn. However, under this provision, the court expenditure can also be charged to the Treasury if it would be inequitable for this to be charged to the parties.

100 Furthermore, pursuant to Section 472b of the Code of Criminal Procedure, the necessary expenses of another person involved in the making of an order for confiscation,

reservation of confiscation, destruction or rendering unusable of an object or elimination of a situation which is illegal may only be charged to the accused if this is equitable.

101 In principle, the ability of the accused to pay costs and expenses is not taken into account in the court decision on the obligation to pay them. However, this may be taken into account at a later date when the costs are enforced by the costs officer. Thus, in order to avoid useless enforcement actions, the costs officer may refrain from assessing costs if the permanent inability of the convicted person to pay costs is obvious or the convicted person is permanently staying in a place where recovery is unlikely to be successful. The costs officer is usually a civil servant in the higher or intermediate judicial service or a comparable employee. The district auditor is responsible for supervising the costs assessment. If an application for the reduction of costs is not granted, it is to be treated as a special appeal against the costs assessment of the costs officer, which is decided by the court.

7. Judicial control, legal aid and enforcement

102 Subject to two exceptions, decisions concerning the recovery of costs can be appealed.

103 Thus, Section 464(3) of the Code of Criminal Procedure provides for such a possibility following the court's decision regarding costs and necessary expenses. However, decisions on the charging of necessary expenses where the public prosecution office withdraws the public charges or terminates the proceedings are, pursuant to Section 467a(3) of the Code of Criminal Procedure, not contestable. This equally is the position under Section 469(3) as regards the charging of expenses to a person making reckless or intentionally untrue reports

104 There is no specific provision concerning the availability of legal aid in proceedings to determine the recovery of costs and expenses but, as these are an element in the criminal proceedings as a whole, the parties who are entitled to legal aid (including the accused) will have the benefit of it where there is such a determination.

105 Apart from the requirement under Section 464b of the Code of Criminal Procedure to pay interest, there are no consequences for an accused who fails to pay costs ordered to be recovered (e.g., increase in sentence). Under this provision, the court can declare that interest is to be paid on the assessed costs and expenses with effect from the time of an application for its assessment. The enforcement of costs is governed by the provisions of the Code of Civil Procedure so that the enforcement measures that are otherwise possible (in particular seizure) will be applicable. Moreover, as soon as a

judgment imposing a penalty has been issued, an asset freeze can be imposed to secure the state's claims due to the anticipated costs of the criminal proceedings.

106 There are also specific provisions in Section 473 of the Code of Criminal Procedure governing the costs of withdrawn or unsuccessful appellate remedies and of costs for the restoration of status quo ante.

107 Thus, the person whose appellate remedy has been withdrawn or has been unsuccessful will bear the costs of filing it. If that is the accused, they will also have to bear the necessary expenses incurred by the private accessory prosecutor or the person entitled to join the proceedings in that capacity. On the other hand, the accused's necessary expenses will be charged to such prosecutors if only they have filed or pursued the appellate remedy.

108 Moreover, the accused's necessary expenses will be charged to the Treasury if the public prosecution office files the appellate remedy to their detriment or if the remedy was filed for accused's benefit and was successful. Furthermore, the necessary expenses of a party who has limited the appellate remedy to certain points of complaint that are successful are to be charged to the Treasury. Also, if the appellate remedy is partly successful, the court is required to reduce the fees and charge the costs, in part or in full, to the Treasury if it would be inequitable to charge such costs to the parties and this also applies accordingly to the parties' necessary expenses. All these provisions are also applicable to the costs and necessary expenses arising on account of an application to reopen proceedings concluded by final judgment or for subsequent proceedings.

109 Finally, the costs for restoration of the status quo ante are borne by the applicant, unless they were caused by an unfounded objection by the opponent.

110 The obligation to pay costs follows the principle of causation as a guiding principle. According to this principle, the obligation of convicted persons to bear the costs of proceedings is based on the consideration that they have triggered the criminal prosecution against them through their at least objectively unlawful violation of a criminal offense, thereby causing procedural costs. According to the German Federal Constitutional Court, this is unobjectionable under constitutional law.[60]

[60] See Federal Constitutional Court, decision of January 19, 1965 - 2 BvL 8/62.

E. POLAND

1. *General considerations*

111 The issue is mostly regulated in the Code of Criminal Procedure (*Kodeks postępowania karnego*) in its part XIV entitled *Costs of the proceedings* (Articles 616-645) and the Act on Fees in Criminal Cases (*Ustawa o opłatach w postępowaniu karnym*). Also of relevance are the ordinances on bearing the unpaid costs of legal aid provided by a lawyer *ex officio* by the State Treasury (*rozporządzenie Ministra Sprawiedliwości w sprawie ponoszenia przez Skarb Państwa albo jednostki samorządu terytorialnego kosztów nieopłaconej pomocy prawnej udzielonej przez adwokata z urzędu).*

112 The Code of Criminal Procedure includes some form of the recovery of costs for the prosecution, including auxiliary and private prosecution, the courts, witnesses, experts and the accused – with varying rules as to what can be reimbursed, when and how much.

113 While proceedings are pending, a number of costs can be recovered from the State Treasury; for example the costs covered by the witnesses, interpreters and experts. However, in the final judgment the court should determine who shall bear the costs (for example, the accused), in which part and to what extent so that then the State Treasury might recover some or all of what it initially paid.

114 The most criticised aspect of the current system of recovery of costs have concerned the low level of the rates payable to court-appointed lawyers. These were found unconstitutional by the Constitutional Tribunal and the rates were amended with the introduction of a new ordinance in 2024.

2. *Recovery from the accused*

115 As a rule, if the accused are found guilty, they would be ordered to pay court costs to the State Treasury and the auxiliary prosecutor. In some cases, the costs would be covered by the State Treasury.

116 Costs awarded in the final judgement would be generally awarded against the accused if they are found guilty and sentenced – from the accused to the State Treasury and auxiliary prosecutor - from the accused to the private prosecutor and the State Treasury; *mutatis mutandis* this rule applies in the case of conditional discontinuation of proceedings. However, if the accused are found guilty, but not of all charges, costs will

only be recoverable by the State Treasury/private prosecutor from the accused in the part they were found guilty whereas the accused can recover those costs (including fees paid to lawyers) from the State Treasury/private prosecutor in the part they were found not guilty. Moreover, if the accused is found not guilty in all respects, their costs are recoverable from the State Treasury/private prosecutor.

117 In private prosecution proceedings, if the accused and the private prosecutor reconcile before the commencement of the trial, costs already covered by the prosecutor should be reimbursed in full, and if the reconciliation happens after the commencement of the trial – in half. The accused and the private prosecutor cover their own costs, unless stated otherwise in the settlement.

118 In some cases, the accused covers the costs in full or in half despite discontinuation of the proceedings or the acquittal – for example if the accused went into hiding and delayed the proceedings so long that they would reach the statute of limitations or if they directed the proceedings against themselves.[61] However, the general rule that the accused can recover their costs in the event of termination will apply where they are not responsible for a delay that has led to discontinuance on account of the limitation period being exceeded.[62]

119 Costs awarded to the witnesses, interpreters and experts are recoverable from the State Treasury before the final judgement – and later reimbursed from the accused, if they are found guilty.

3. Definition of costs

120 The costs recoverable for the witness: travel and accommodation, if necessary; income lost due to appearance at the summons of the court of pre-trial proceedings authority; includes reimbursement for the person accompanying the witness, if the witness was unable to appear unaccompanied.[63]

121 Costs recoverable by the expert witness: salary for their work, reimbursement of costs necessary to provide an opinion; if the opinion is unreliable or false, the salary and costs may be deducted or not reimbursed at all.[64]

[61] Article 632a of the Code of Criminal Procedure.
[62] I.e., pursuant to Article 632 of the Code of Criminal Procedure.
[63] Articles 618a-618e of the Code of Criminal Procedure.
[64] Articles 618f-618i of the Code of Criminal Procedure.

122 Costs recoverable by the State Treasury (if the accused shall pay upon sentencing): expenses specified in Article 618 of the Code of Criminal Procedure, including dues of witnesses and interpreters, costs of mediation proceedings, transportation of the accused and witnesses, travel costs of judges and prosecutors due to the proceedings, storage of seized items, costs of psychiatric evaluation of the accused, legal aid unpaid by the parties.

123 Costs recoverable by the accused (if the State Treasury shall pay upon acquittal): fees specified in the Act on Fees in Criminal Proceedings and reasonable expenses, including appointment of one defence attorney.[65]

124 Attorneys providing legal aid at the court's request are entitled to a salary pursuant to the ordinances governing the rates payable to lawyers provided *ex officio* by the State Treasury.

125 Legal aid provided by a court-appointed lawyer is listed in Article 618 § 1 of the Code of Criminal Procedure among expenses of the State Treasury, which means that the State Treasury can be awarded recovery of the costs from the accused upon finding them guilty.

126 In most cases, costs are limited in the Code of Criminal Procedure – see Articles 618-618k of the Code of Criminal Procedure.

4. Limitations on recovery

127 The accused upon acquittal is – as a rule – not obliged to pay court costs, regardless of the reason of acquittal (apart from the aforementioned exceptions).

128 However, the accused upon acquittal/discontinuation of proceedings can be ordered to pay the costs of the proceedings in whole or in part if:

- they directed the suspicion of committing a criminal act against themselves;
- their concealment contributed to the discontinuation of proceedings due to reaching the statute of limitation;
- the proceedings were discontinued pursuant to Article 11 § 1 of the Code of Criminal Procedure (proceedings in case of a crime punishable by imprisonment for up to 5 years may be discontinued if imposing a sentence on the accused would

[65] Article 632 in connection with Article 616 of the Code of Criminal Procedure.

be manifestly inexpedient due to the nature and severity of the sentence imposed for another crimes, if the interests of the victim do not oppose it).

129 According to Article 624 of the Code of Criminal Procedure, the accused or an auxiliary prosecutor can be exempted from the obligation to cover the court costs (in whole or in part) if it would be too burdensome due to their family or financial situation, as well as if it is not considered fair.

130 In public prosecution cases, if the accused has not been convicted of all the crimes charged, the expenses of the prosecution in the part that acquits or discontinues the proceedings shall be borne by the State Treasury.

131 In private prosecution cases, if the punishment is waived due to the reciprocity of harm or defiant behaviour of the private prosecutor, as well as taking into account the number and type of charges from which the accused was acquitted, the court may charge the accused with the prosecution's costs only partially.

132 According to Article 624 § 1 of the Code of Criminal Procedure, the court can exempt the accused from paying the court costs to the State Treasury if there are grounds for recognising such payment as too burdensome in the view of their family situation, property, income, as well as when equitable considerations justify it. Proceedings concerning the costs are a part of the trial. Therefore, if the accused or an auxiliary prosecutor is represented by a court-appointed lawyer, it includes also the decision on the recovery of costs.

5. Judicial control and enforcement

133 The costs are a matter ruled upon in the final judgment or decision (if the case is discontinued pre-trial). However, any costs that are temporarily attributed to the State Treasury but which might be subsequently recovered from the accused (such as the salary for an expert or travel costs for a witness) are decided upon in the course of the proceedings.

134 The judgement on the costs may be subject to appeal (Article 626 § 3, Article 626a of the Code of Criminal Procedure).

135 Payment of any costs recoverable from the accused can be secured through civil enforcement proceedings. However, there are no other consequences for an accused who fails to pay the costs which have been ordered to be recovered from them.

136 The right to seek the recovery of costs is time-barred with the statute of limitations set at three years from the day they should be paid.

F. ROMANIA

1. General considerations

137 The recovery of judicial expenses is primarily regulated by Articles 272-276 of the Code of Criminal Procedure.[66] At the same time, the legal norms have been consistently developed through interpretations by the Constitutional Court and the High Court of Cassation and Justice of Romania.

138 The rules of the Code of Criminal Procedure on judicial expenses have been amended by Law no. 255 of July 19, 2013 and Emergency Ordinance no. 18 of May 18, 2016, which brought important changes in terms of the distribution of costs between the parties and the defendant's obligation to pay costs in case of conviction.

2. Definition of costs

139 Article 272 of the Code of Criminal Procedure defines judicial expenses as:

> expenses necessary for the performance of procedural acts, the administration of evidence, the preservation of material means of proof, lawyers' fees, and any other expenses incurred in the conduct of criminal proceedings

which shall be covered by the sums advanced by the state or paid by the parties.

140 This rule gives a non-exhaustive list of the types of expenses that may be incurred in a criminal case, while specifying that these sums are advanced by the State or paid by the parties in the criminal case. In the case of the advancement of expenses by the State, the respective amounts shall be included separately, as the case may be, in the income and expenditure budget of the Ministry of Justice, the Public Prosecutor's Office and other relevant ministries.

141 The Constitutional Court has held that the expression "judicial expenses advanced by the State" means all sums of money spent during the criminal proceedings from the

[66] Adopted in 2010.

state budget, respectively from the sums of money allocated for this purpose, pursuant to Article 272.2 of the Code of Criminal Procedure, from the budget of the Ministry of Justice, the Public Prosecutor's Office or other relevant ministries, in order to bear expenses incurred during the proceedings.[67]

142 In its turn, the High Court of Cassation and Justice has also specified that:

> With regard to the judicial expenses advanced by the State, by way of example, it is noted that in determining them, the expenses incurred by the judicial body in summoning by postal services, telephone, telex or fax the parties in the proceedings, witnesses, experts, interpreters and other persons, paper, printouts and other materials that make up the criminal case files, etc. Para. (1) art.272 Criminal Procedure Code regulates as legal expenses the sums of money necessary for the performance of procedural acts, the administration of evidence, the preservation of material evidence, lawyers' fees, as well as any other expenses incurred in the course of the criminal proceedings.[68]

143 Furthermore, doctrine has been clarified that the judicial expenses advanced by the State in order to carry out the procedural activity are called “procedural expenses”, and the expenses advanced by the parties or the main parties in the lawsuit are called “court expenses”.

144 Article 273 of the Code of Criminal Procedure clarifies the judicial expenses that can be claimed by witnesses, experts and interpreters. Thus, such persons are, when summoned by the criminal investigation body or by the court, entitled to reimbursement of transportation, maintenance, accommodation and other necessary expenses incurred by their summons. It follows from this that the law provides for the recovery of expenses incurred both at the pre-trial stage and at the stage of trial.

145 Furthermore, witnesses, experts and interpreters who are employees are entitled to income from their place of work during the period of absence from work caused by the summons to the criminal prosecution body or the court, and if they are not employees but have earned income from work, they are entitled to receive compensation.[69] Moreover, experts and interpreters are entitled to remuneration for the performance of their duties, in the cases and under the conditions provided for by law.[70]

[67] Decision of the Constitutional Court nr. 117/2020, para.15.

[68] Decision of the High Court of Cassation and Justice nr.211/A/2021 from September 14, 2021, criminal section.

[69] Article 273.2 and 3.

[70] Article 273.4.

146 The foregoing payments are to be made on the basis of the orders taken by the body that ordered the summons and before which they appeared, from the specially allocated fund of legal expenses.[71]

3. Recovery from the accused

147 The particular situations regarding the payment of the judicial expenses advanced by the State in case of waiver of prosecution, conviction, postponement of punishment or waiver of punishment are regulated by Article 274 of the Code of Criminal Procedure. In all these cases, the accused is obliged to pay the judicial expenses advanced by the State other than those of public defence lawyers and interpreters appointed by the judicial bodies, which are to be borne by the State.

148 As the Constitutional Court and doctrine have underlined, the judicial expenses of a prosecution and trial are imputable to the accused convicted of committing the offence, the legal basis being their criminal fault (*culpa*), since, without the commission of the offence, such costs would not have been incurred. [72]

149 Whenever there are more than one accused, the prosecutor or the court should decide the share of the judicial expenses attributable to (i.e., caused by) each of them.[73] Doctrine and case law have emphasised that it is unlawful to order any of the accused to pay the totality of the costs since the obligation regarding payment is personal, arising from the fact that the violation of the criminal law has caused criminal proceedings to be initiated and sums of money to be allocated from the state budget for its conduct.[74] In all these cases, the judicial expenses advanced by the State shall also be borne by any civilly liable party to the extent that it is jointly and severally liable with the accused to pay compensation for the damage caused. [75]

150 Criminal procedural legislation allows the recovery of judicial expenses from both adult and minor defendants, with some exceptions or particularities. Thus, for example, the High Court of Cassation and Justice has ordered a minor to pay the judicial expenses (lawyer's fees) advanced by the State.[76] Moreover, there have been a series of decisions

[71] Article 273.5.
[72] See Decisions of the Constitutional Court nr. 639 from October 17, 2017 and nr. 117/2020 from March 10, 2020, as well as Grigore Gr. Theodoroiu, Ioan-Pail Chiș, *Tratat de drept processual penal*, ed.4-a, ed. Hamangiu, p.597-598.
[73] Article 274.2 of the Code of Criminal Procedure.
[74] see Ion Neagu, Mircea Damaschin, Tratat de procedură penală, ed. UJ, 2020, p.791.
[75] Article 86 of the Code of Criminal Procedure provides that: "The person who, according to the civil law, has the legal or contractual obligation to repair in whole or in part, alone or jointly and severally, the damage caused by the offense and who is called to answer in the trial is a party to the criminal proceedings and is called civilly liable party."
[76] Decision No. 211/A/2021 of September 14, 2021.

in which the High Court of Cassation and Justice has ordered minor accused - in respect of whom an educational measure under Article 115 of the Criminal Code had been taken - to pay the judicial expenses advanced by the State, alone or jointly and severally with the civilly liable party.[77].

151 However, Article 505[2] of the Code of Criminal Procedure provides that the expenses generated by audio-video recordings, which would normally have fallen on the accused, shall always be borne by the State where they are minors. This rule is a transposition into national law of a European Union Directive[78] which obliges Member States to bear such costs in criminal proceedings regardless of their outcome.

152 In the case of an acquittal, the accused can still be liable for the judicial expenses advanced by the State if they have been ordered to pay compensation.[79]

153 Otherwise, if the accused is found not guilty but judicial expenses have nevertheless been incurred during the criminal prosecution, preliminary chamber and trial proceedings, the judicial authorities are at procedural fault, and the State bears the costs.

154 In the event of discontinuance of the criminal proceedings, the judicial expenses advanced by the State are still borne by the accused, if there is a ground for "non-punishment".

155 The grounds for non-punishment are those circumstances that only exclude the application of a punishment in the case of the commission of an offence, not the criminal nature of the offence under investigation or for which the offender was sent for trial. They are: desist (voluntary and definitive renunciation of the perpetrator to continue committing the criminal act) or prevention of the production of the result[80] (found in the regulation of the institution of attempt); non-disclosure of the crime committed by a family member[81]; favouring the perpetrator by a family member[82]; non-disclosure of the

[77] Criminal decisions no. 150/RC/2016 rendered in Case no. 1.417/1/2016; no. 51/RC/2016 rendered in Case no. 849/1/2016; no. 96/RC/2016 rendered in Case no. 576/1/2016; no. 259/RC/2016 rendered in Case no. 1.615/1/2016; no. 24/RC/2017 rendered in Case no. 3.753/1/2016; no. 148/RC/2017 rendered in Case no. 3. 671/1/2016; and Decision No. 9 of June 19, 2018 on the ruling in principle on the question of law: "whether in application of the provisions of Article 274 of the Code of Criminal Procedure the accused minor in respect of whom an educational measure provided for by Article 115 of the Criminal Code has been taken may be ordered to pay the legal costs advanced by the State".

[78] Directive (EU) 2016/800 from 11 May 2016 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

[79] Article 275.1 of the Code of Criminal Procedure.

[80] Article34 of the Criminal Code.

[81] Paragraph 3 of Article.270 of the Criminal Code.

[82] Paragraph3 of Article 269 of the Criminal Code.

crime[83]; withdrawal of false testimony before a decision has been rendered in the case[84]; injury to the *fetus* during pregnancy by the pregnant woman[85]; interruption of the course of pregnancy by the pregnant woman[86], etc.[87]

156 In the event of amnesty, prescription (limitation), withdrawal of the preliminary complaint, the existence of a cause of non-punishability or non-imputability, the accused may request the continuation of the criminal proceedings in order to prove their innocence and benefit from a decision of acquittal. In such cases, the costs advanced by the State will be borne by the accused where the case has been dismissed pursuant to the provisions of Article 16.1(a)-(c) of the Code of Criminal Procedure or discontinuance of the criminal proceedings.[88]

157 The payment of judicial expenses incurred by the subjects/participants to the proceedings and by the parties shall be borne by the person found guilty of criminal or procedural fault, and the obligation to pay these costs depends on the manner in which the civil side of the case was resolved.

158 In the event of conviction, waiver of the prosecution or postponement in enforcing the punishment, the accused shall be obliged to pay the injured party (i.e., the civil party to whom the action has been admitted) their judicial expenses.[89]

159 When the civil claim is admitted only in part, the court may compel the accused to pay all or a part of the judicial expenses.[90]

4. Recovery from others

160 In the case of an acquittal the judicial expenses advanced by the State are to be borne by either the injured person[91] or by the civil party whose civil claim has been dismissed in total, to the extent that such parties are found to be at fault in the proceedings.[92] In order to establish a procedural fault there is no requirement of bad faith

---

[83] Paragraph 3 of Article 266 of the Criminal Code.
[84] Paragraph 3 of Article 273 of the Criminal Code.
[85] Paragraph 7 of Article 202 of the Criminal Code.
[86] Paragraph 7 of Article 201 of the Criminal Code.
[87] See Alexandru-Valentin PETREA, Cauzele de nepedepsire în dreptul penal roman.
[88] Article 275.1(3) of the Code of Criminal Procedure.
[89] Article 276.1 of the Code of Criminal Procedure.
[90] Article 276.2 of the Code of Criminal Procedure.
[91] “The person who has suffered physical, material or moral injury as a result of the criminal act is called the injured party”, i.e., the victim in the proceedings concerned; Article 79 of the Code of Criminal Procedure.
[92] Article 275.1 of the Code of Criminal Procedure.

in the judicial activity; a person is at procedural fault if, although perhaps in good faith, he or she has brought an unfounded civil claim or has brought an appeal or filed an application which caused judicial expenses and which has been rejected.[93]

161 However, if, at the time the injured person lodged the complaint, the acts complained of constituted crimes, the subsequent decriminalization, which occurred as a result of the will of the legislator and the consequent acquittal of the accused, do not entail the procedural fault of the injured person in determining the judicial expenses advanced by the State.[94]

162 In the event of discontinuance of the criminal proceedings, the judicial expenses advanced by the state are borne by (a) the injured person in case of withdrawal of the preliminary complaint or if the preliminary complaint is time-barred and (b)the party provided for in the mediation agreement if criminal mediation has intervened.

163 As already noted, in the event of amnesty, prescription (limitation), withdrawal of the preliminary complaint, the existence of a cause of non-punishability or non-imputability, the accused may request the continuation of the criminal proceedings in order to prove their innocence and benefit from a decision of acquittal. In such cases where injured parties have withdrawn the prior complaints or the cases have been dismissed pursuant to the provisions of Article 16.1(a)-(c) of the Code of Criminal Procedure or the acquittal of the accused, the costs advanced by the State will be borne by the injured persons insofar as they are found to be at fault in the proceedings.[95]

164 Doctrine and case law has emphasised that, whereas the accused's liability for judicial expenses is based on their criminal fault, the liability of injured parties for costs is based on their procedural fault.

5. Recovery by the accused

165 The High Court of Cassation and Justice has ruled that, starting from the solution of principle enshrined in the provisions of Article 276.5 of the Code of Criminal Procedure, it cannot be inferred that - when criminal proceedings are initiated *ex officio* and not at the request of the injured party - the accused who is prosecuted and finally acquitted must bear the costs alone. Rather, the acquittal pronounced at the end of the judicial investigation has the effect of the loss of the proceedings by the person who initiated

[93] Grigore Gr. Theodoroiu, Ioan-Pail Chiș, *Tratat de drept processual penal*, ed.4-a, ed. Hamangiu, p.597-598.
[94] See Ion Neagu, Mircea Damaschin, *Tratat de procedură penală*, p. 792.
[95] Article 275.1(3) of the Code of Criminal Procedure.

them; i.e., it is the State, in its capacity as manager and organizer of judicial activity as a whole and, more specifically, of the prosecution, investigation and bringing to justice of those who commit offences, which must bear the consequences of the loss of the criminal proceedings brought, consisting in the expenses incurred by the person against whom it has sought criminal liability and who has been finally acquitted.[96]

166 Furthermore, in the case of an acquittal, the injured person or the civil party shall be obliged to pay the accused and, as the case may be, the civilly liable party, the judicial expenses incurred by them, to the extent that they were caused by the injured person or the civil party.[97].

167 Where several parties or injured persons are obliged to bear the judicial expenses, the court shall decide the share of the judicial expenses due from each party.

6. Limitations on recovery

168 The court has the right to reduce the amount of judicial expenses recoverable which it considers manifestly unreasonable. However, the law does not set any fixed minimum limits up to which the costs claimed may be reduced. In such cases, the court applies the rules of civil procedure, taking into account the age, the material situation of the person, the complexity and circumstances of the case and other factors.

169 Thus, High Court of Cassation and Justice has stated that:

> According to Art. 451 para. (2) of the Code of Civil Procedure, the court may, even of its own motion, reduce the portion of the judicial expenses representing the lawyer's fees, stating the reasons, when it is clearly disproportionate in relation to the value or complexity of the case or the work carried out by the lawyer, taking into account the circumstances of the case. The measure taken by the court shall have no effect on the relationship between the lawyer and his client. With regard to the above-mentioned legal provisions... it has been held that it is therefore an assessment based on the analysis of factual aspects, not on an interpretation of the legal rule .... In the case at hand, it is found that the proof of payment of the lawyer's fees, in the amount of RON 5,950, was made by invoice series x no. x/30.09.2020 issued on account of the legal assistance contract Series x/2019, expenses to be reduced by half, pursuant to art. 451 para. (2) C. proc. civ. Thus, the High Court considers that the amount of money requested by way of judicial expenses is excessive in relation to the complexity of the case, ... The case before the High Court did not require a high degree of complexity, given the decision to discontinue the criminal proceedings in respect of the defendants.
> By reference both to the criteria set out in Art. 451 para. (2) of the Code of Civil Procedure, as well as to the specific circumstances of the case set out above, the court of judicial review must set a fee

[96] High Court of Cassation and Justice, section I civil, decision nr. 849 from 13 April 2022; cited after Medeanu Tiberiu, Obligarea statului la restituirea cheltuielilor de judecată în cazul erorilor judiciare, Pandectele Romane 3 din 2023
[97] Article 276(5) of the Code of Criminal Procedure.

appropriate to the complexity of the case. Therefore, in the light of the specific circumstances of the case set out above, the High Court considers that an amount of RON 2,975 as judicial expenses incurred by the defendant (lawyer's fees), to be borne by the civil party, is sufficient .... The court is free, in application of the provisions of Art. 272 - 276 of the Criminal Procedure Code and, of course, on the basis of the documents attesting to the payment of such expenses, to assess the extent of such expenses and the manner in which they should be borne by the parties to the criminal proceedings. In the pending case, the trial phase, which also includes the preliminary chamber phase, is similar in terms of complexity to the prosecution phase, so that the amount of RON 3,159.55 in judicial expenses advanced by the State (which also includes the amount of RON 159.55 in judicial expenses advanced by the State during the prosecution phase), to which the civil party was obliged to pay, is unjustifiably high in relation to the procedures for summoning the parties or hearing them or any other costs incurred in the conduct of the criminal proceedings. For these reasons, the High Court, on the basis of Art.275 para. (1) p. 2 lit. b) sentence II of the Code of Criminal Procedure, will compel the minor B. (through legal representative C.) to pay the amount of 659,55 RON judicial expenses advanced by the State... [98]

170 Also, the Constitutional Court, having been seized with the issue of the lack of clarity, precision and predictability of the rule in Article 274 of the Code of Criminal Procedure Code in terms of the lack of regulation in the legislation of the ways in which the prosecution authorities determine the amount of legal costs advanced by the State, to be paid by the defendant, namely the methods and criteria for establishing the amounts in question and the manner of their distribution, ruled that:

.. the criminal procedure provisions set out in art. 272-274 of the Code of Criminal Procedure clearly establish who are the parties obliged to pay judicial expenses, as well as an algorithm for determining the judicial expenses they are to bear. ... the phrase 'judicial expenses advanced by the State' in art. 274 of the Code of Criminal Procedure is clear, precise and foreseeable, ... the determination of the amount of judicial expenses advanced by the State to be borne by the defendant is the responsibility of the prosecuting authority or the court hearing the case in which the costs were incurred. The judicial bodies are required to rule of their own motion on the judicial expenses advanced by the State. ... the public prosecutor must dispose on the judicial expenses in the order for dismissal, in the order to discontinue the prosecution and in the indictment. … the trial court and the appeal court, shall, in its judgment deciding on the criminal side of the case, also decide on the judicial expenses. The court is not bound by the amount of judicial expenses and the method of apportioning them disposed in the indictment. On the contrary, it is free, in application of the provisions of art. 272 to 276 of the Code of Criminal Procedure and, of course, on the basis of the documents attesting to the incurring of those costs, to assess the extent of those costs and the manner in which they should be borne by the parties to the criminal proceedings. Moreover, unlike the public prosecutor, who, when issuing the indictment, only dispose on the judicial expenses incurred during the prosecution, the court must take into account the judicial expenses incurred during the entire criminal proceedings, up to the moment of the judgment on merits. ... against the judgment rendered under art. 396 of the Code of Criminal Procedure, any of the persons referred to in art. 409 of the Code of Criminal Procedure, including the defendant who is dissatisfied with the amount of the judicial expenses advanced by the State and established against him, may appeal on the matter under consideration, thus the judicial expenses ordered under art. 398 of the Code of Criminal Procedure may be recalculated by the court of judicial review. ... the provisions of art. 274 of the Code of Criminal Procedure, interpreted systematically in

[98] Decision of the High Court of Cassation and Justice no. 211/A/2021 of September 14, 2021, Criminal Section.

> the context of the provisions of art. 272-276 of the Code of Criminal Procedure relating to judicial expenses, ensure all the guarantees specific to the rule of law and meet the quality requirements of the law.[99]

171 In another case in which it was argued that it was not possible to determine the amount of judicial expenses imposed by the prosecutor, the Constitutional Court ruled that*:*

> the amount of such costs is attested by supporting documents or is determined numerically on the basis of legal criteria, such as the orders and methodological rules for determining the fees due to experts or interpreters. [100]

172 Thus, on several occasions the Constitutional Court has concluded that the legal provisions regulating the payment of legal costs do not violate human rights and the Romanian Constitution.

7. Judicial control, legal aid and enforcement

173 According to Article 398 of the Code of Criminal Procedure, the court, having decided on the merits of the criminal case by judgment, must also rule on the judicial expenses - a judgment that is subject to appeal.

174 In the case law, it has been held that an order for the accused to pay the judicial expenses advanced by the State in case of considering the legality and merits of the pre-trial detention during the trial phase shall be made by the judgment on the merits of the case, but not by the court decision deciding on the pre-trial detention.[101]

175 According to Article 275.2 of the Code of Criminal Procedure, in the event of an appeal, appeal in cassation or the filing of a challenge or any other application, the judicial expenses shall be borne by the person whose appeal was rejected or who withdrawn the appeal, appeal in cassation, challenge or application. At the same time, if the accused has appealed against the conviction and the appeal has been admitted, they cannot be ordered to pay the costs advanced by the State, since they cannot be considered to be at fault in the proceedings.

176 If the case is returned to the prosecutor's office in the preliminary-chamber proceedings, the judicial expenses shall be borne by the State.

---

[99] Decision No. 117 of March 10, 2020.
[100] Decision of the Constitutional Court no. 254 of April 23, 2019 on the exception of unconstitutionality of the provisions of Article 275 CPP.
[101] Ion Neagu, Mircea Damaschin, *Tratat de procedura penala*. P. 791-792

177 In all other cases, the judicial expenses advanced by the State remain at its expense, including the expenses for the payment of interpreters appointed by the judicial bodies, according to the law, remain at the state's expense.[102]

178 There are no specific provisions on the granting of legal aid by the State (including legal assistance by a lawyer) in the cases where the question of reimbursement of judicial expenses is decided, the general provisions on legal aid being applicable. Under the latter, legal aid is granted in the situation when persons cannot meet the costs of a trial without jeopardizing their livelihood or that of their family, either if a special law provides for the right to legal aid (in civil matters - minority, disability, etc.), or if the persons will not be able to defend themselves or if legal assistance is mandatory (in criminal matters - the suspect or defendant is a minor or is detained or arrested or is in a detention centre; the suspect or defendant is subject to the security measure of medical confinement, etc.).

179 Failure to pay judicial expenses may not result in a harsher sentence or other negative criminal consequences for the convicted person.

G. UNITED KINGDOM (ENGLAND AND WALES)

1. General considerations

180 The issue is regulated primarily by primary legislation (the Prosecution of Offences Act 1985 as amended and the Senior Courts Act 1981), regulations (the Costs in Criminal Cases (General) Regulations 1986 and the Costs in Criminal Cases (Legal Costs) (Exceptions) Regulations 2014, as amended), a practice direction from the courts (Practice Direction (Costs in Criminal Proceedings) 2015), guidance issued by the Crown Prosecution Service (Costs, Costs – Annex 1 and Costs - Annex 3a) and some case law,[103] with the most relevant provisions set out in the Annex.

181 Costs can be recovered by the parties, i.e., the Crown Prosecution Service, private prosecutors and the accused.

182 The expenses of witnesses, interpreters and doctors making a medical examination other than for evidence relating to the alleged offence in the proceedings

[102] Article 275.3 of the Code of Criminal Procedure.
[103] This not generally cited for simplicity's sake but is reflected in the description given.

may, pursuant to section 19(3) of the Prosecution of Offences Act 1985, be met from central (i.e., public) funds under regulations made for that purpose.

183 There has been one challenge to the regime governing recovery of costs by reference to human rights commitments. This related to the removal of the ability in 2012 of acquitted accused who have privately funded their litigation to recover their legal costs (fees, charges and expert witness costs) from central funds, leaving only the regime set out under sections 16 and 16A of the Prosecution of Offences Act 1985. In R*(Henderson) v. Secretary of State for Justice*, [2015] EWCA 130 (Admin) this change was held not to be incompatible with the fair trial guarantee in Article 6 of the European Convention on Human Rights. Individual decisions have also been challenged by reference to standards of judicial review, which has resulted in clarification of the scope of the legislative provisions involved.

184 The essence of the arrangements for recovery of costs have not been revised in the course of the last ten years, although there have been some minor adjustments to specific provisions. There are no official proposals to make substantive changes but there have been calls to limit the recovery of legal expenses by private prosecutors to the legal aid rates in force at the time.

2. Definition of costs

185 The costs that are recoverable by the Crown Prosecution Service are only those which are directly incurred by it for the preparation and presentation of the case. It cannot, therefore, benefit from the award and the latter cannot be used as an indirect penalty (even if the accused had put the prosecutor to avoidable expense).

186 An exception to the limitation on directly incurred costs will be those of another agency which the Crown Prosecution Service is going to reimburse and their inclusion within the scope of prosecution costs will be regarded as just and reasonable, such as where the item could just as well have been commissioned by the prosecution and was highly material for its case. In general, therefore, the costs of the investigation must be met by the police. Also, where prisoner witnesses are transported from abroad, the Crown Prosecution Service is responsible for the cost of travel for the prisoners and their escorts and the subsistence of the escorts.

187 There is no precise calculation for the precise cost of a case on account of the administrative burden that this would entail. However, the Crown Prosecution Service has guideline rates derived from an assessment of average staff preparation costs,

including advocacy and time spent by its paralegal officers/assistants (see *Costs – Annex 1* in the Annex).

188 The guidelines relate to what it will seek but the decision is a matter for the court concerned. The amounts in the guidelines vary according to the court involved in the proceedings and the stage in the proceedings (i.e., when guilt was established, sentencing occurred and appeals were dismissed). These figures are for a single accused and would be increased by 20% for each additional accused. In addition, an increased amount would be applied for where the case prosecuted was complex and involved complicated legal issues or extended preparation.

189 Also, where calculable, witness costs/expert fees, advocate fees[104] and other specific disbursements would also be added.

3. Recovery from the accused

190 Prosecution costs can be recovered from the accused, pursuant to section 19 of the Prosecution of Offences Act 1985, following their conviction, an unsuccessful appeal or for breach of a court order. They can also be recovered, pursuant to section 19B, from third parties on account of their serious misconduct that affects the conduct of the proceedings (e.g., disclosure of information that prejudices the jury and occasions the need for a retrial).

191 The court can order the accused to pay such costs as it thinks is "just and reasonable", meaning that an order should be made only where the accused has the means to pay, with account being taken of any other financial order made (e.g., for compensation). In this connection, account will be taken of the time that would be required to make the payment involved. It can be longer than a year but the period required should not impose an undue burden, with regard being had to the nature of the offence and the accused.

192 A decision to order recovery of prosecution costs should only be made after giving the accused a fair opportunity to adduce any relevant financial information and to make appropriate submissions.

[104] Although the Crown Prosecution Service has its own lawyers, cases are often presented in court by private lawyers. The amounts that will be paid are governed by the Graduated Fee Scheme F Manual of Guidance.

193 The application by the Crown Prosecution Service will be made before submissions to the court with respect to mitigation for sentencing purposes, in which the full background of the accused may only then come to light.

194 However, the Crown Prosecution Service considers that an application should not even be made if this would be unmeritorious or impractical. In this connection, its guidance requires consideration of situations of which the Crown Prosecution Service is aware, such as the financial circumstances of an accused being dire, a long sentence being likely to be imposed or recovery being likely to cause undue hardship.

195 The background of the accused will be known to the court following the mitigation submissions and certainly it is for the accused to provide the court with details of their financial position. All this information can then be taken into account when determining the costs application. Where no information is provided with respect to the accused's financial position, the court can draw reasonable inferences as to means from all the circumstances of the case.

4. Limitations on recovery

196 Any costs awarded should not be grossly disproportionate to any fine imposed.

197 In addition, the courts will regard payment of compensation and then of the fine as higher priorities than prosecution costs where the accused has limited means.

198 Where there are several accused, the total costs should be divided between them. Where some can pay and others cannot, those who can do so should only be expected to pay their share.

199 The accused should not be required to pay all of the prosecution costs where they have not been convicted on all charges. However, no mathematical formula is used for the purpose of reducing what is sought.

200 There will also be allowance made for failings in the trial process that have necessitated fresh proceedings to be brought in the case so that the accused is only likely to be required to pay the costs of the proceedings in which they are convicted.

201 Under section 18(4) of the Prosecution of Offenders Act 1985, no costs should be ordered where a fine of five pounds or less has been imposed unless in the particular circumstances of the case the court believes it right to do so. Moreover, in the case of persons under the age of 17, costs awarded cannot be greater than any fine imposed but

a parent or guardian can be required to pay them (section 55 of the Children and Young Persons Act 1933).

202 Private prosecutors may be able, pursuant to section 19 of the Prosecution of Offences Act 1985, to recover their costs of prosecution of serious (i.e., indictable) crimes but this will be from public funds and not the accused. They can recover such amount as the court considers reasonably sufficient to compensate them for any expenses incurred in the proceedings.

203 Any costs of investigation are not recoverable by them and an award may not be made if there was a failure to engage with public investigation and prosecution bodies, the legal fees incurred were seen as unnecessary or excessive and there was seen to be misconduct on the part of the prosecution.

5. Recovery by the accused

204 Accused who are not tried for an offence for which they have been indicted or sent for trial or who are acquitted (whether entirely or in respect of certain charges and whether at first instance or on appeal) can, pursuant to section 16 of the Prosecution of Offences Act, recover their defence costs out of central funds.

205 The court concerned should, in the circumstances just noted, make a defence costs order. Such an order should be for the payment of such amount as the court considers reasonably sufficient to compensate them for any expenses properly incurred by them in the proceedings. However, there can be a reduction in full amount that would be due where the court considers that there are circumstances making this inappropriate. Where the accused is acquitted on appeal, the order should include the costs that could have been ordered if they had been acquitted at the trial. There is no possibility of recovering loss of earnings as the costs recoverable must be directly related to the proceedings themselves.

206 The amounts that are payable, even if the accused had different arrangements with their lawyers, are fixed by regulations. These differ according to the court concerned, the lawyers involved and the steps taken (preparation, consultations, advocacy, attendance at court, travelling and waiting), letter writing and telephone calls and mileage).

207 The Criminal Cases Unit is responsible for assessing claims paid out of central funds and its decisions are subject to appeal to a costs judge; see *Claims paid out of central funds*.

208 An accused’s costs order should normally be made unless there are positive reasons for not doing so (e.g., where the accused’s own conduct has brought suspicion on themselves and has misled the prosecution into thinking that the case against them was stronger than it was). Where the accused has been acquitted on some counts but convicted on others the court may make an order that only part of the costs be paid.

209 Where it appears to any judge sitting in proceedings for which legal aid has been granted, that work may have been unreasonably done (e.g., if the represented person's case may have been conducted unreasonably so as to incur unjustifiable expense, or costs may have been wasted by failure to conduct the proceedings with reasonable competence or expedition), the Judge may make observations to that effect for the attention of the legal aid authority. The judge should specify as precisely as possible the item, or items, which the determining officer should consider or investigate on the determination of the costs payable pursuant to the representation order, which may lead to the disallowance of certain fees and expenses.

210 Under section 19 of the Prosecution of Offence Act 1985, a court may make an order against any party for costs arising from an unnecessary or improper act or omission by that party (i.e., the accused or the prosecutor). This could include situations where the trial was held up because the defence were unreasonably unable to proceed or had failed to give any prior warning to the other party. Quite separately, a wasted courts order may be made under section 19A of the Prosecution of Offences Act 1985 against a lawyer in the proceedings (whether the prosecutor or the accused’s lawyer). “Wasted costs” are costs incurred by a party (which includes a legally aided party) as a result of any improper, unreasonable or negligent act or omission on the part of any representative or his employee, or which, in the light of any such act or omission occurring after they were incurred, the court considers it unreasonable to expect that party to pay.

6. Judicial control, legal aid and enforcement

211 The decision as to whether prosecution costs are recoverable is by the court dealing with the prosecution or, following a conviction, any appeal. Under section 18 of the Prosecution of Offences Act 1985, the court has a discretion to make an order for the recovery of prosecution costs, i.e., where it considers this to be just and reasonable.

212 Where a private prosecutor obtains a costs order from the court, it is determined by the Criminal Cases Unit, whose assessment is subject to appeal to a costs judge; see Claims paid out of central funds.

213 All decisions on recovery of costs are subject to appeal.

214 There is no specific provision concerning the availability of legal aid in proceedings to determine the recovery of costs and expenses but, as these are an element in the criminal proceedings as a whole, the parties who are entitled to legal aid (including the accused) will have the benefit of it where there is such a determination.

215 Orders to pay costs are recoverable as a civil debt. There are no consequences (e.g., increase in sentence) for an accused who fails to pay costs ordered to be recovered.

H. COMPARISONS REGARDING THE APPROACHES FOLLOWED

216 The arrangements for the recovery of costs seen in all four member States, are at least as regards the outcome, broadly similar. However, those for Romania are the least elaborate, especially as regards recovery by the accused.

217 Although the frameworks in Germany and Poland are somewhat more detailed than that in Romania, they are simpler than that of the United Kingdom (England and Wales) given the relatively limited legal provisions in the first two and the extensive provisions (formal and informal) seen in the last. The differences are very much a reflection of the different legal traditions involved.

218 Certainly, the elaboration provided in the guidance and other documents seen in the United Kingdom (England and Wales), together with the case law noted in it, often gives a better sense of what is recoverable. Moreover, although these guidance and other documents, although directed to prosecutors and the courts, are publicly accessible so there should not be much scope for misunderstandings as to what will be required.

219 Apart from the costs of legal assistance, the costs that might be recoverable will in all four countries include the remuneration of experts and their travel costs as well as those of witnesses. Germany, Poland and Romania also define costs as covering some form of remuneration for witnesses. Costs in Romania will extend to the performance of procedural acts, the preservation of evidence and the management of seized property, Germany also allows treats costs as including forensic costs from the investigation but, in the United Kingdom (England and Wales) these are only recoverable where they were or could have been commissioned by the prosecution as opposed to the police. Poland includes the costs of storing seized items and the psychiatric evaluation of the accused. Only the United Kingdom (England and Wales) makes any provision for the recovery of the cost of the time of prosecutors, although this is according to a set scale rather than the amount incurred in particular cases.

220 In terms of those who can recover costs directly, the United Kingdom (England and Wales) is strictly limited to this being possible for the prosecutors (public or private) and the accused whereas Poland and Romania are slightly more extensive in that regard and Germany very much so (although awards in respect of claims for the costs of public prosecutors go to the Treasury in both cases). As regards experts and witnesses in Germany, Poland and Romania, their costs and expenses are included in those of the prosecution or the State and they are not involved in making claims against the accused.

221 Unlike Romania, the other three member States recognise a role for private prosecution but in none of them does this seem to be a particularly significant feature of the criminal justice system. However, the United Kingdom (England and Wales) differs from Germany and Poland in that private prosecutors cannot recover their costs from the accused but will obtain this through a payment out of public funds.

222 The range of persons against whom claims can be made is widest in Germany, reflecting the different actors in proceedings before it. It is unusual in allowing claims against persons who make false claims but the United Kingdom (England and Wales) is unique in allowing claims against those who cause delay or prejudice to the proceedings despite not being parties to them.

223 There is some variation in the approach as to the claims that can be made against the accused.

224 Thus, in Germany, Romania and the United Kingdom (England and Wales), this is not limited to cases where the accused is convicted, covering other orders against them in the three member States. Moreover, in Germany, Poland and Romania such awards can also be made in situations where the accused might be regarded as bringing about the prosecution, whereas in United Kingdom (England and Wales) that can lead to a reduction in the defence costs that can be recovered.

225 The United Kingdom (England and Wales) is unique in being very specific as to the levels of costs that might be sought on behalf of the prosecution but also in limiting the amount that is payable for an accused's legal representation.

226 In all four member States, there is an awareness that costs may not be payable by an accused who is convicted. However, the United Kingdom (England and Wales) is unusual in factoring to this into a decision even to seek recovery of costs and also giving priority to securing payment of compensation to victims and of fines over any recovery of costs.

227 Also, in all four member States, the decision-making with respect to the recovery of costs is judicial and there is a right of appeal in all of them, subject to some limited exceptions in Germany. The issue of time-limits for seeking recovery is not relevant in any of them other than Poland and legal aid is likely to be available in all four member States, at least for those who have it in the proceedings in respect of which cost recovery is involved.

228 It is only in Germany and Romania that there has been any substantive change in recent years with respect to the recovery of costs and that was not a major matter in the case of Germany.

229 There have been human rights or constitutional challenges in Poland, Romania and the United Kingdom (England and Wales), with only the first being successful and leading to a change in the quantum but not the principle of paying the fees of an accused's legal representatives.

230 There are undoubtedly strengths and weaknesses of the approaches seen in all four member States. Nonetheless, the main lines followed are very similar and the key elements of them would provide a sound basis for introducing reforms in the Republic of Moldova.

231 Nevertheless, there may well be some advantage in having an arrangement that is fairly detailed so that the scope for uncertainty as to what is recoverable and from whom this can be obtained is avoided.

232 At the same time, it seems important to distinguish between the fundamentals of recovery and matters that might need to be subject to periodic change, notably as regards the fixing of rates for the fees and/or expenses of lawyers, experts, victims and witnesses. The latter might be better left to regulations rather than primary legislation.

233 Moreover, some limitation on those who can directly seek recovery seems desirable, particularly where the accused is not going to be in a position to meet costs which, in principle, could properly be recovered from them. In such cases, the State bearing the burden of meeting the costs incurred by other parties to the proceedings would be appropriate given its overall responsibility for the functioning of the justice system.

234 Finally, it is important to note that none of the four member States have arrangements that run counter to the requirements elaborated by the Court and it is crucial that any arrangements that might be adopted by the Republic of Moldova are – both in theory and practice – also consistent with those requirements. In this connection, it will be important to ensure that the accused is not denied recovery where this would

infringe the presumption of innocence or the arrangements adopted are such that they cannot be assured a fair trial.

ANNEX: RELEVANT PROVISIONS

GERMANY

Code of Criminal Procedure

Section 464
Decision on costs and expenses; immediate complaint

(1) Every judgment, every summary penalty order and every decision terminating an investigation must indicate the person who is to bear the costs of the proceedings.
(2) The decision as to who is to bear the necessary expenses is given by the court in the judgment or in the order concluding the proceedings.
(3) An immediate complaint is admissible against the decision regarding costs and necessary expenses; it is not admissible if the main decision referred to in subsection (1) cannot be contested by the complainant. The court hearing the complaint is bound by the findings of fact on which the decision is based. If an immediate complaint, in addition to an appeal on fact and law or an appeal on law, is lodged against the judgment insofar as it relates to the decision on costs and necessary expenses, the court hearing the appeal on law or the court hearing the appeal on facts and law is also competent to give the decision on the immediate complaint whilst considering the appeal on facts or law.

Section 464a
Costs of proceedings; necessary expenses

(1) Costs of the proceedings include fees and Treasury expenditure. They also include the costs of preparing public charges and the costs of enforcing a legal consequence of the offence. The costs of an application to reopen proceedings concluded by final judgment also include the costs of preparing the reopening of proceedings (sections 364a and 364b) insofar as they are caused by an application by the convicted person.
(2) 'Necessary expenses' of a party also include
1. compensation for inevitable loss of time pursuant to the provisions applicable to the compensation of witnesses and
2. fees and expenses of a lawyer insofar as they are to be reimbursed pursuant to section 91 (2) of the Code of Civil Procedure.

Section 464b
Assessment of costs

The amount of the costs and expenses for which one party must reimburse another party is assessed, upon application by a party, by the court of first instance. Upon application, the court declares that interest is to be paid on the assessed costs and expenses with effect from the time of the application for assessment. The provisions of the Code of Civil Procedure apply accordingly to the rate of interest, the proceedings and the enforcement of the decision. In derogation from section 311 (2), the period for the submission of an immediate complaint is two weeks. The order assessing costs need not make reference to the private accessory prosecutor’s full address.

Section 464c

Costs of appointing translator or interpreter for indicted accused

If an interpreter or translator has been called in for an indicted accused who does not speak German or who is hearing or speech impaired, the expenditure incurred thereby is charged to the indicted accused insofar as he or she has unnecessarily given rise to such expenditure by culpable omission or culpably in some other way; this must be expressly stated, except in the case under section 467 (2).

Section 464d

Distribution of expenses

Treasury expenditure and necessary expenses of the parties may be apportioned in fractions.

Section 465

Convicted persons’ obligation to pay costs

(1) Defendants bear the costs of the proceedings insofar as they were caused by the proceedings for an offence of which they have been convicted or for which a measure of reform and prevention has been ordered against them. For the purposes of this provision, a conviction is also deemed to have been pronounced if a defendant has been given a warning with sentence reserved or the court has dispensed with imposing a penalty.

(2) If specific expenses have been caused by investigations conducted to clarify certain incriminating or exonerating circumstances and if the outcome of such investigations was in the defendant’s favour, the court charges the expenses, in part or in full, to the Treasury if it would be inequitable to charge them to the defendant. This in particular applies if the defendant is not convicted for individual severable parts of an offence or is not convicted of one or more of a number of violations of the law. Sentences 1 and 2 apply accordingly to the defendant’s necessary expenses. The court may order that an increase in court fees in cases where a psychosocial assistant has been appointed be waived, in part or in full, if it would be inequitable to charge such fees to the defendant.

(3) If a convicted person dies before the judgment enters into force, that person’s estate is not liable for the costs.

Section 466

Co-convicted persons’ liability for expenses as joint and several debtors

Co-defendants who have been sentenced or in respect of whom a measure of reform and prevention has been ordered for the same offence are jointly and severally liable for the expenses. This rule does not apply to the costs arising from the services of appointed defence counsel or of an interpreter and to the costs for enforcement, provisional placement or remand detention, and to expenses arising from investigations directed exclusively against one co-defendant.

Section 467
Costs and necessary expenses on acquittal, non-opening and termination

(1) If the indicted accused is acquitted, if the opening of the main proceedings against the indicted accused is refused or if the proceedings against the indicted accused are terminated, Treasury expenditure and the indicted accused's necessary expenses are borne by the Treasury.

(2) The costs of the proceedings caused by the indicted accused's culpable default are charged to him or her. To that extent, the expenses which the indicted accused has caused are not charged to the Treasury.

(3) The indicted accused's necessary expenses are not charged to the Treasury if the indicted accused caused the preferment of public charges by making a report in which he or she pretended to have committed the offence with which he or she was charged. The court may dispense with charging the indicted accused's necessary expenses to the Treasury if

1. he or she caused the preferment of public charges by falsely incriminating himself or herself with regard to material points or in contradiction to his or her later statement or by concealing material exonerating circumstances despite having made a statement in response to the accusation or
2. he or she is not sentenced for an offence only on account of a procedural impediment.

(4) If the court terminates the proceedings pursuant to a provision which permits this at the court's discretion, it may dispense with charging the indicted accused's necessary expenses to the Treasury.

(5) The indicted accused's necessary expenses are not charged to the Treasury if the proceedings are terminated with final effect after previous provisional termination (section 153a).

Section 467a
Treasury expenses on termination following withdrawal of charges

(1) If the public prosecution office withdraws the public charges and terminates the proceedings, the court where the public charges were preferred charges to the Treasury the necessary expenses incurred by the indicted accused upon application by the public prosecution office or by the indicted accused. Section 467 (2) to (5) applies analogously.

(2) In the cases under subsection (1) sentence 1, the court may charge the necessary expenses incurred by another person involved (section 424 (1), section 438 (1), section 439 and section 444 (1) sentence 1) to the Treasury or to another party upon application by the public prosecution office or by the person involved.

(3) The decision pursuant to subsections (1) and (2) is not contestable.

Section 468

Costs following ruling of non-liability for punishment

In the case of a mutual exchange of insults, charging the costs to one or both defendants is not precluded by one or both of them being declared not liable to punishment.

Section 469

Costs charged to person making reckless or intentionally untrue report

(1) If proceedings, even if they are conducted out of court, were caused by the intentional or reckless false report of an offence, then after hearing the person who reported the offence, the court charges the costs of the proceedings and the accused's necessary expenses to that person. The court may charge the necessary expenses of another person involved (section 424 (1), section 438 (1), section 439 and section 444 (1) sentence 1) to the person who reported the offence.

(2) If no court has yet been seized of the case, then upon application by the public prosecution office, the decision is given by the court which would have been competent to open the main proceedings.

(3) The decision pursuant to subsections (1) and (2) is not contestable.

Section 470

Costs of withdrawing request to prosecute

If the proceedings are terminated owing to the withdrawal of the request upon which they were contingent, the person filing the request must bear the costs and the necessary expenses of the accused and of another person involved (section 424 (1), section 438 (1), section 439 and section 444 (1) sentence 1). They may be charged to the defendant or to a person involved as far as that person has declared the willingness to pay such costs, or to the Treasury if it would be inequitable to charge these costs to the parties.

Section 471

Costs of private prosecution

(1) The convicted person in proceedings conducted by private prosecution is also required to reimburse the private prosecutor for necessary expenses incurred.

(2) If the charges against the accused are dismissed or if the accused is acquitted or the proceedings terminated, the costs of the proceedings and the accused's necessary expenses are charged to the private prosecutor.

(3) The court may appropriately apportion the costs of the proceedings and the parties' necessary expenses or may, according to its duty-bound discretion, charge such costs to one of the parties if

1. it granted only a part of the private prosecutor's applications;
2. it terminated the proceedings pursuant to section 383 (2) (section 390 (5)) on account of negligibility;
3. countercharges were preferred.

(4) Several private prosecutors are jointly and severally liable. The same applies in respect of the liability of several accused for the private prosecutor's necessary expenses.

Section 472

Necessary expenses of private accessory prosecutor

(1) A private accessory prosecutor's necessary expenses are to be charged to the defendant if he or she is sentenced for an offence affecting the private accessory prosecutor. The necessary expenses incurred by the private accessory prosecutor for psychosocial assistance in court proceedings may be charged to the defendant only up to the amount by which the court fees would be increased if the psychosocial assistant were to be appointed. Charges for necessary expenses may be waived, in full or in part, if it would be inequitable to charge these expenses to the defendant.

(2) If the court terminates the proceedings pursuant to a provision permitting this at the court's discretion, it may charge the necessary expenses referred to in subsection (1), in full or in part, to the indicted accused insofar as this is equitable for special reasons. If the court finally terminates the proceedings (section 153a) after previous provisional termination, subsection (1) applies accordingly.

(3) Subsections (1) and (2) apply accordingly to the necessary expenses which have arisen for a person entitled to join proceedings as a private accessory prosecutor in the exercise of the rights under section 406h. The same applies to a private prosecutor's necessary expenses if the public prosecution office has assumed the prosecution pursuant to section 377 (2).

(4) Section 471 (4) sentence 2 applies accordingly.

Section 472a

Costs and necessary expenses of adhesion proceedings

(1) If an application for the award of a claim arising from the offence is granted, the defendant must also bear the special costs incurred thereby and the necessary expenses of the applicant within the meaning of sections 403 and 404.

(2) If the court dispenses with a decision on the application for adhesion proceedings, part of the applicant's claim is not awarded or the applicant withdraws the application, the court decides, at its duty-bound discretion, who is to bear the expenses incurred by the court and the necessary expenses arising to the parties. Court expenditure may be charged to the Treasury if it would be inequitable to charge such expenditure to the parties.

Section 472b

Costs and necessary expenses of involved third parties

(1) If an order is made for confiscation, reservation of confiscation, destruction or rendering unusable of an object or elimination of a situation which is illegal, the special costs arising from the involvement of another person may be charged to such person. That person's necessary expenses may, if this is equitable, be charged to the defendant and, in independent proceedings, also to another person involved.

(2) If a regulatory fine is imposed on a legal entity or an association, the legal entity or association must bear the costs of the proceedings pursuant to sections 465 and 466.
(3) If an order for one of the incidental legal consequences pursuant to subsection (1) sentence 1 or imposition of a regulatory fine imposed on a legal entity or an association is dispensed with, the ensuing necessary expenses of other persons involved may be charged to the Treasury or to another party.

Section 473

Costs of withdrawn or unsuccessful appellate remedies; costs of restitution of status quo ante

(1) The costs of an appellate remedy which has been withdrawn or which proved to be unsuccessful are to be borne by the person who filed such appellate remedy. If the appellate remedy filed by the accused has proved to be unsuccessful or has been withdrawn, the necessary expenses incurred by the private accessory prosecutor or the person entitled to join the proceedings as a private accessory prosecutor in exercising the rights under section 406h are to be charged to the accused. If, in the case under sentence 1, only the private accessory prosecutor has filed or pursued the appellate remedy, the accused's necessary expenses are to be charged to him or her. Section 472a (2) applies accordingly to the costs of the appeal and the necessary expenses of the parties if an immediate complaint under section 406a (1) sentence 1 which was admissible when raised has become inadmissible on account of a decision concluding proceedings before a particular instance.
(2) If, in the case under subsection (1), the public prosecution office files the appellate remedy to the detriment of the accused or of another person involved (section 424 (1), section 439 and section 444 (1) sentence 1), his or her necessary expenses are to be charged to the Treasury. The same applies if the appellate remedy filed by the public prosecution office for the benefit of the accused or of a person involved proves to be successful.
(3) If the accused or any other party has limited the appellate remedy to certain points of complaint and such appellate remedy is successful, the party's necessary expenses are to be charged to the Treasury.
(4) If the appellate remedy is partly successful, the court is required to reduce the fees and charge the costs, in part or in full, to the Treasury if it would be inequitable to charge such costs to the parties. This applies accordingly to the parties' necessary expenses.
(5) An appellate remedy is deemed unsuccessful if an order pursuant to section 69 (1) or section 69b (1) of the Criminal Code is not upheld solely on account of its conditions no longer being met owing to the length of a provisional disqualification from driving (section 111a (1)) or of a measure to confiscate, secure or seize the driving licence (section 69a (6) of the Criminal Code).
(6) Subsections (1) to (4) apply accordingly to the costs and necessary expenses arising on account of an application

1. to reopen proceedings concluded by final judgment or
2. for subsequent proceedings (section 433).

(7) The costs for restoration of the status quo ante are borne by the applicant, unless they were caused by an unfounded objection by the opponent.

Section 473a
Costs and necessary expenses of separate decision on lawfulness of investigation measure
If, upon the application of the person concerned, the court is required to rule in a separate decision on the lawfulness of an investigation measure or its enforcement, it at the same time decides who is to bear the costs and the parties' necessary expenses. These are to be borne by the Treasury insofar as the measure or its enforcement is held to be unlawful, in all other cases by the applicant. Section 304 (3) and section 464 (3) sentence 1 apply accordingly.

Judicial Remuneration and Compensation Act

Section 3
Remuneration of experts, interpreters and translators

§ 8 Principle of remuneration
(1) Experts, interpreters and translators shall receive as remuneration
1st a fee for their services (§§ 9 to 11),
2nd reimbursement of travel expenses (§ 5),
3. Compensation for expenses (§ 6) and
4th Reimbursement for other and special expenses (§§ 7 and 12).
(2) If the fee is to be calculated on an hourly basis, it shall be paid for each hour of the time required, including necessary travel and waiting times. The last hour already started shall be counted in full if it was required for more than 30 minutes to provide the service; otherwise the fee shall be half the amount for a full hour.
(3) Where services or expenses for which remuneration is required relate to the simultaneous handling of several matters, the remuneration shall be apportioned according to the number of matters.
(4) Experts, interpreters and translators who have their habitual residence abroad may, at the discretion of the competent national court, be granted a higher remuneration than that provided for in paragraph 1, taking into account their personal circumstances, in particular their regular income from employment.

§ 8a Loss or limitation of the right to remuneration
(1) The right to remuneration shall lapse if the entitled party fails to notify the authority promptly of circumstances which justify the rejection of the claim by a party, unless the omission is not attributable to the entitled party.
(2) The entitled party shall receive remuneration only to the extent that his performance can be used as intended, if he

1st has violated the obligation under Section 407a Paragraphs 1 to 4 Sentence 1 of the Code of Civil Procedure, unless he is not responsible for the violation;

2nd has provided a defective service and does not remedy the defects within a reasonable period of time set by the body calling in the service; the granting of a period of time for remedying the defects is not necessary if the service has fundamental defects or if it is obvious that the defects cannot be remedied;

3. in the course of providing the service, has created, through gross negligence or intent, reasons that entitle a party to refuse the service due to concerns about bias; or

4th has not fully performed his service despite the imposition of a further fine.

To the extent that the court takes the service into account, it is deemed to be usable. No compensation will be paid for the elimination of defects pursuant to sentence 1 number 2.

(3) If the remuneration claimed is significantly disproportionate to the value of the subject matter of the dispute and the entitled party has not pointed this out in good time in accordance with section 407a paragraph 4 sentence 2 of the Code of Civil Procedure, the court shall, after hearing the parties, determine at its reasonable discretion a remuneration which is in reasonable proportion to the value of the subject matter of the dispute.

(4) If the remuneration significantly exceeds the advance payment on expenses requested and the entitled party has not drawn attention to this fact in due time in accordance with section 407a paragraph 4 sentence 2 of the Code of Civil Procedure, he shall receive remuneration only in the amount of the advance payment on expenses.

(5) Paragraphs 3 and 4 shall not apply if the entitled party is not responsible for the breach of his duty to provide information.

§ 9 Fees for experts and interpreters

(1) The expert's fee shall be calculated in accordance with Annex 1. The allocation of the service to a subject area shall be determined by the decision to engage the expert.

(2) If the service is to be provided in a subject area that is not listed in Annex 1, it shall be remunerated at an hourly rate at the discretion of the court, taking into account the hourly rates generally agreed out of court and outside the authorities for services of this type, but which may not exceed the highest hourly rate in Annex 1. If the service is to be provided in several subject areas, or if a medical or psychological report concerns several subjects and different hourly rates are assigned to these subject areas or subjects, the fee for the entire required time shall be calculated uniformly according to the highest of these hourly rates. If the calculation of the fee according to sentence 2 would lead to an unfair result in view of the focus of the service, the hourly rate shall be determined at the discretion of the court.

(3) Section 4 shall apply accordingly to the determination of the hourly rate pursuant to paragraph 2, with the proviso that an appeal against the determination is admissible even if the value of the subject matter of the appeal does not exceed EUR 200. An appeal is only admissible as long as the claim to remuneration has not yet been asserted.

(4) The expert's fee for examining whether there is a reason to open insolvency proceedings and what prospects there are for the debtor's business to continue shall be EUR 120 per hour. If the expert is also the provisional insolvency administrator or the provisional trustee, his fee shall be EUR 95 per hour.
(5) The interpreter's fee shall be EUR 85 per hour. In the event of cancellation of an appointment to which he was invited, the interpreter shall receive compensation for loss of performance if

1st the annulment was not caused by a personal reason,
2nd he was notified of the cancellation until the day of the hearing or on one of the two preceding days and
3. he certifies the amount of income he has lost as a result of the cancellation of the appointment.

Compensation for loss of performance will be granted up to an amount corresponding to the fee for two hours.
(6) If the expert or interpreter provides his or her services between 11 p.m. and 6 a.m. or on Sundays or public holidays, the fee shall be increased by 20 percent if the contracting authority determines that it is necessary to provide the service at that time. Section 8 paragraph 2 sentence 2 shall apply accordingly.

§ 10 Fees for special services
(1) If an expert or an expert witness provides services specified in Annex 2, the fee or compensation shall be determined in accordance with this Annex. Section 9 paragraph 6 shall apply, with the proviso that the expert's fee or the expert witness's compensation shall be increased by 20 percent if at least 80 percent of the service is provided between 11 p.m. and 6 a.m. or on Sundays or public holidays.
(2) For services of the type specified in Section O of the fee schedule for medical services (annex to the fee schedule for doctors), the fee shall be calculated in accordance with this fee schedule at 1.3 times the fee rate. Section 4 paragraph 2 sentence 1, paragraph 2a sentence 1, paragraphs 3 and 4 sentence 1 and Section 10 of the fee schedule for doctors shall apply accordingly; otherwise Sections 7 and 12 shall remain unaffected.
(3) Where additional time is required to provide a service under paragraph 1 or paragraph 2, the fee for each hour of additional time shall be EUR 80.

§ 11 Fees for translators
(1) The fee for a translation is EUR 1.80 for every 55 characters of the written text, if the text is made available to the translator in an editable electronic form (basic fee). Otherwise, the fee is EUR 1.95 for every 55 characters (increased fee). If the translation is particularly difficult due to the special circumstances of the individual case, in particular due to the frequent use of technical terms, the difficulty of reading the text, a particular urgency or because the translation is a foreign language that is rarely used in the Federal Republic of Germany, the basic fee is EUR 1.95 and the increased fee is EUR 2.10.

(2) The number of characters shall be determined based on the text in the target language. However, if Latin characters are used only in the source language, the number of characters in the text in the source language shall be decisive. If counting the characters would involve disproportionate effort, the number shall be determined based on the number of lines, taking into account the average number of characters per line.
(3) If several texts are to be translated, the fee shall be determined separately for each text. For one or more translations for the same order, the fee shall be at least EUR 20.
(4) The translator shall receive a fee like an interpreter if

1st the translator's service consists in checking documents or telecommunications recordings for specific content without the translator having to produce a written translation, or

2nd the translator's service consists in producing a verbatim transcript of a telecommunications recording.

§ 12 Reimbursement for special expenses

(1) Unless otherwise provided for in this Act, the remuneration pursuant to Sections 9 to 11 shall also cover the usual overhead costs and the expenditure normally associated with the preparation of the expert opinion or translation. However, the following shall be reimbursed separately:

1st the necessary special costs incurred in preparing and providing the expert opinion or translation, including the necessary expenses for assistants, as well as the materials and tools used for an examination;

2nd EUR 2 for each photograph required for the preparation and submission of the report and, if the photographs are not part of the written report (Section 7(2)), EUR 0.50 for the second and each subsequent copy or printout of a photograph;

3. for the preparation of the written report, EUR 0.90 per 1,000 characters or part of it, or EUR 1.50 in cases where the expert receives a fee in accordance with Annex 1 Part 2 or Annex 2; if the number of characters is not known, it must be estimated;

4th the value added tax on the remuneration, unless this remains uncollected pursuant to Section 19 Paragraph 1 of the Value Added Tax Act;

5th the expenses for postal and telecommunications services; experts and translators may demand a flat rate of 20 percent of the fee instead of the actual expenses, but not more than 15 euros.

(2) A portion of the overheads attributable to the assistants (paragraph 1, sentence 2, no. 1) shall be compensated by a surcharge of 15 percent on the amount to be reimbursed as necessary expenditure for the assistants, unless the involvement of the assistants has resulted in no or only insignificantly increased overheads.

§ 13 Special Remuneration

(1) If the parties or participants have agreed to a specific fee or a fee that differs from the statutory provisions, the expert, interpreter or translator shall only be called upon and paid

this fee if a sufficient amount for the entire fee has been paid to the State Treasury. If the prosecuting authority has made a corresponding declaration in proceedings under the Administrative Offences Act, no advance payment is required even if the prosecuting authority is not exempt from paying the costs. In proceedings in which court costs are not charged under any circumstances, it is sufficient if an amount has been paid to cover the additional costs, for which the parties or participants are liable in accordance with paragraph 6.

(2) A declaration by just one party or participant or a declaration by the criminal prosecution authority or the prosecuting authority shall suffice provided that it relates to the hourly rate pursuant to Section 9 or, in the case of written translations, to a fee for every 55 characters or part thereof pursuant to Section 11 and the court consents. Consent shall only be granted if it does not exceed twice the fee permitted under Section 9 or Section 11. Before consenting, the court shall hear the other party or participants. Consent and refusal of consent are final.

(3) A person who has been granted legal aid or procedural aid may only make a declaration under paragraph 1 which relates to the hourly rate under Section 9 or, in the case of written translations, to a fee for every 55 characters or part thereof under Section 11. If he would be obliged to pay the fee in advance without taking legal aid or procedural aid into account, he must pay to the state treasury a sufficient amount for the additional fee to be expected in comparison with the statutory provision or the agreed fee (Section 14); Section 122 paragraph 1 no. 1 letter a of the Code of Civil Procedure does not apply in this respect. The amount is set by a final decision. At the same time, the court determines the hourly rate to which the expert's services are to be assigned without taking into account the statements of the parties or participants or the amount to be paid for 55 characters in this case for a translation.

(4) If an agreement pursuant to paragraphs 1 and 3 is necessary for the purpose of pursuing legal action and the person who has been granted legal aid or procedural costs is unable to pay the amount required pursuant to the second sentence of paragraph 3, payment is not required if the court approves his declaration. Approval should only be granted if the fee does not exceed twice the amount permitted under Section 9 or Section 11. Approval and refusal of approval are final.

(5) In model proceedings under the Capital Investors Model Proceedings Act, remuneration is to be granted regardless of whether a sufficient amount has been paid to the state treasury. In the case of paragraph 2, a declaration by one party to the model proceedings is sufficient. Paragraphs 3 and 4 do not apply. The hearing of the other parties to the model proceedings can be replaced by publicly announcing the amount of remuneration for which the court's approval is to be granted. Public announcement is effected by entry in the model proceedings register under Section 5 of the Capital Investors Model Proceedings Act. At least four weeks must elapse between the public announcement and the decision on approval.

(6) If, according to the cost law provisions, no party or participant owes the remuneration, the parties or participants who have made a declaration in accordance with paragraph 1 or

paragraph 3 are jointly and severally liable for the additional costs incurred as a result, internally on a per capita basis. For the criminal prosecution or prosecution authority, the body to which the authority belongs is liable if the body is not exempt from paying the costs. The share attributable to a party or participant is not taken into account if the court has approved the declaration in accordance with paragraph 4. The expert, interpreter or translator must submit a calculation of the statutory remuneration.
(7) (deleted)

§ 14 Agreement on remuneration

With experts, interpreters and translators who are called upon more frequently, the highest state authority, or in the case of federal courts and authorities, the highest federal authority, or a body designated by them, may enter into an agreement on the remuneration to be granted, the amount of which may not exceed the remuneration provided for under this Act.

Section 5
Compensation of witnesses and third parties

§ 19 Principle of Compensation

(1) Witnesses shall receive as compensation
1st reimbursement of travel expenses (§ 5),
2nd compensation for expenses (§ 6),
3. reimbursement for other expenses (§ 7),
4th compensation for loss of time (§ 20),
5th Compensation for disadvantages in household management (§ 21) and
6th Compensation for loss of earnings (§ 22).
This also applies if the question of evidence is answered in writing.
(2) If the compensation is calculated on an hourly basis, it shall be paid for the entire duration of the call. This includes necessary travel and waiting times as well as the time during which the witness was unable to carry out his professional activities as a result of the call. Compensation shall be paid for no more than ten hours per day. The last hour already begun shall be counted in full if the call lasts more than 30 minutes in total; otherwise the compensation shall be half the amount for the full hour.
(3) To the extent that the compensation is due to the simultaneous assessment of different matters, it shall be distributed among those matters in proportion to the compensation which would have been due had it been assessed separately.
(4) Witnesses who have their habitual residence abroad may, at the discretion of the court, be granted compensation higher than that specified in the first sentence of paragraph 1, taking into account their personal circumstances, in particular their regular income from employment.

§ 20 Compensation for Lost Time

The compensation for lost time shall be EUR 4 per hour, provided that no compensation is to be granted for loss of earnings or disadvantages in managing the household, unless the witness has evidently suffered no disadvantage as a result of his or her involvement.

§ 21 Compensation for Disadvantages in Household Management

Witnesses who run their own household for several people receive compensation for disadvantages in household management of 17 euros per hour if they are not employed or if they work part-time and are called upon outside of their agreed regular daily working hours. Witnesses who receive income replacement are treated the same as employed witnesses. Compensation for part-time employees is granted for a maximum of ten hours per day, less the number of hours that corresponds to the agreed regular daily working hours. Compensation is not granted if the costs of necessary representation are reimbursed.

§ 22 Compensation for loss of earnings

Witnesses who suffer a loss of earnings receive compensation based on their regular gross earnings, including social security contributions paid by the employer, and not exceeding 25 euros per hour. Prisoners who do not suffer a loss of earnings from a private employment relationship receive compensation in the amount of the lost allowance from the prison authorities.

§ 23 Compensation of Third Parties

(1) To the extent that those who provide or participate in telecommunications services (telecommunications undertakings) implement orders for the surveillance of telecommunications or provide information for which special compensation is provided for in Annex 3 to this Act, the compensation shall be calculated exclusively in accordance with that Annex.

(2) Third parties who, pursuant to a court order pursuant to Section 142 (1) sentence 1 or Section 144 (1) of the Code of Civil Procedure or pursuant to Section 17 (1) or (2) of the Capital Investors Model Proceedings Act, submit documents, other documents or other objects or allow their inspection, as well as third parties who, pursuant to a request for evidentiary purposes by the criminal prosecution or prosecution authority,

1st hand over items (Section 95, Paragraph 1, Section 98a of the Code of Criminal Procedure) or avoid the obligation to hand over items by handing them over to the prosecution or prosecution authorities, or

2nd provide information in cases other than those referred to in paragraph 1,

are compensated in the same way as witnesses. If the third party uses an employee or another person, the expenses incurred (Section 7) will be reimbursed within the framework of Section 22; Section 19, paragraphs 2 and 3 apply accordingly. Sentences 1 and 2 also apply in cases of official investigations pursuant to Section 26 of the Law on Procedure in Family

Matters and in Matters of Voluntary Jurisdiction, provided that the third party is not obliged to hand over the material or provide information by virtue of a statutory provision.

(3) The necessary use of a private data processing system for the purposes of dragnet searches shall be compensated if the total investment for the hardware and software used in the individual case exceeds EUR 10,000. The compensation shall be

1st for an investment sum of more than EUR 10 000 to EUR 25 000, EUR 5 for each hour of use; the total period of use is rounded up to the nearest full hour;

2nd for other data processing systems

a) in addition to the compensation pursuant to paragraph 2, for each hour of use of the facility in the development of a special application program required for the individual case, 10 euros and

b) for the remaining period of use, including the personnel expenditure required for this purpose, one ten-millionth of the investment sum per second for the time during which the central unit is occupied (CPU second), up to a maximum of EUR 0.30 per CPU second.

The investment amount and the CPU time used must be made credible.

(4) A third-party electronic data processing system shall be deemed to be the same as the data processing system used by the data processor if the directly attributable costs (Section 7) incurred as a result of the provision of information cannot be determined with certainty.

POLAND

Code of Criminal Procedure

Art. 616.

§ 1. The costs of proceedings include:

1) court costs; 2) justified expenses of the parties, including those related to the appointment of one defense attorney or attorney in the case.

§ 2. Court costs include: 1) fees; 2) expenses incurred by the State Treasury from the moment of initiation of the proceedings.

Art. 617. The types and amounts of fees and the principles and procedure for their assessment shall be specified by a separate act.

Art. 618.

§ 1. State Treasury expenses include, in particular, payments made for: 1) service of summonses and other documents; 2) travel of judges, prosecutors and other persons due to proceedings activities; 3) bringing and transporting the accused, witnesses and experts; 4) inspections, tests undertaken in the course of the proceedings and shipments and storage of seized items, as well as their sale; 5) announcements in the press, radio and television; 6) execution of the judgment, including the securing of threatened financial penalties, if such penalties have been imposed, excluding the costs of maintenance in a prison and the costs of stay in medical facilities for psychiatric observation; 7) amounts due to witnesses and translators; 8) costs of mediation proceedings; 9) amounts due to experts or institutions appointed to issue an opinion or a certificate, including the costs of issuing a certificate by a court physician; 9a) costs of psychiatric observation of the accused, excluding amounts due to expert psychiatrists; 9b) costs of compulsory administration; 10) fees provided for providing information from the register of convicted persons; 11) unpaid legal assistance provided ex officio by advocates or legal advisers not paid for by the parties; 12) the court probation officer's lump sum for conducting a community interview referred to in art. 214 § 1; 12a) the family assistant's lump sum for participating in a session or hearing referred to in art. 76a § 1; 13) the performance of international agreements to which the Republic of Poland is a party and proceedings conducted on the basis of Part XIII, also if the order referred to in art. 303 has not been issued.

§ 2. If the amounts and principles for determining the amounts due specified in § 1 are not regulated by separate provisions, the Minister of Justice, in agreement with the minister responsible for public finances, shall specify, by way of a regulation, the amounts and the method of their calculation, taking into account the actual cost of performing a given activity.

§ 3. In the absence of the provisions referred to in § 2, the amounts awarded by the court, prosecutor or other body conducting the proceedings shall determine the amount of a given expense.

Art. 618a.

§ 1. A witness is entitled to reimbursement of travel costs – from his place of residence to the place of performance of procedural activities at the request of the court or the body conducting preparatory proceedings – in the amount of the actually incurred rational and purposeful costs of travel by his own car or other appropriate means of transport.

§ 2. The upper limit of the amounts due, referred to in § 1, is the amount of costs due to an employee employed in a state or local government budgetary unit for a business trip within the country.

§ 3. According to the same principles, a witness is entitled to reimbursement of accommodation and subsistence costs at the place of performance of procedural activities.

§ 4. The witness should duly prove the amount of costs referred to in § 1 and 3.

Art. 618b.

§ 1. A witness is entitled to reimbursement of earnings or income lost due to appearing at the request of the court or the body conducting the preparatory proceedings.

§ 2. Remuneration for lost earnings or income for each day of participation in the proceedings is granted to the witness in the amount of his average daily earnings or income. In the case of a witness in an employment relationship, the average daily lost earnings are calculated according to the principles applicable to determining the cash equivalent due to an employee for leave.

§ 3. The upper limit of the amounts due referred to in § 2 is the equivalent of 4.6% of the base amount for persons holding managerial positions in the state, the amount of which, determined according to separate principles, is specified in the budget act. In the event that the announcement of the budget act takes place after 1 January of the year to which the

budget act applies, the basis for calculating the amounts due for the period from 1 January to the date of announcement of the budget act is the base amount in force in December of the previous year.
§ 4. The witness should duly prove the loss of earnings or income referred to in § 1 and their amount. Art. 618c. § 1. The right to demand the amounts specified in Art. 618a and Art. 618b shall be available to a person summoned as a witness if they appear, even if they were not heard.
§ 2. If a person entitled to receive the amounts specified in Art. 618a and Art. 618b is summoned as a witness in several cases on the same day, they shall be granted these amounts only once.
§ 3. A witness who appeared without being summoned by the court or the body conducting the preparatory proceedings may be granted the amounts specified in Art. 618a and Art. 618b only if they have been heard. Art. 618d. The provisions of Art. 618a–618c shall apply accordingly to a person accompanying a witness if the witness was unable to appear at the summons of the court or the body conducting the preparatory proceedings without the care of that person. Art. 618e. The provisions of Art. 618a–618c shall not apply to a witness employed by a public authority if he or she was called to testify in connection with such employment. In such a case, the witness shall be entitled to payments on the principles specified in the provisions regulating the amount and conditions for determining payments due to an employee employed by a state or local government budgetary unit for a business trip within the country.
Art. 618f.
§ 1. An expert and specialist who is not an officer of the procedural authorities appointed by the court or the body conducting preparatory proceedings are entitled to remuneration for the work performed and reimbursement of expenses incurred by them to the extent to which they directly concerned a specific opinion and were necessary for its issuance.
§ 2. The amount of remuneration for the work performed by an expert and specialist who is not an officer of the procedural authorities is determined taking into account the required qualifications, the time and workload required to issue the opinion, and the amount of expenses referred to in § 1 – on the basis of the submitted invoice.
§ 3. The remuneration of experts is calculated according to the hourly rate of remuneration or according to a flat-rate tariff specified for individual categories of experts due to the field in which they are specialists. The basis for calculating the hourly rate of remuneration and the flat-rate tariff is a fraction of the base amount for persons holding managerial state positions, the amount of which is specified by the budget act.
§ 4. The remuneration of an expert and specialist who is not an officer of procedural bodies, who are taxpayers obliged to settle the value added tax, shall be increased by the amount of the value added tax, determined in accordance with the rate of this tax in force on the day of the ruling on this remuneration.
§ 4a. If the opinion is false, the remuneration and reimbursement of any costs incurred by the expert related to its preparation or submission shall not be due. § 4b. If the opinion is

unreliable or was prepared or submitted with a significant unjustified delay, the remuneration shall be reduced accordingly; it is also possible to waive the award of remuneration or reimbursement of any costs incurred by the expert related to its preparation or submission.

§ 5. The Minister of Justice shall determine, by regulation, the rates of remuneration of experts for the work performed and the flat-rate tariffs referred to in § 3, taking into account the workload and qualifications of the expert and the level of remuneration received by employees performing similar professions, the degree of complexity of the problem that is the subject of the opinion and the conditions in which the opinion was prepared, as well as the method of documenting the expenses necessary to issue the opinion.

Art. 618fa.

§ 1. In exceptional cases, the procedural body may decide to pay the expert before the opinion is prepared, on a one-off basis or in instalments, a specified amount of money as part of the remuneration, if this is justified by the particular time-consuming nature of the activities necessary to issue the opinion or other special circumstances.

§ 2. An appeal may not be lodged against the decision on the payment as part of the remuneration.

§ 3. The expert is obliged to return the amount paid to him to the extent to which it exceeds the amount of remuneration finally awarded to him, and in the cases specified in Art. 618f § 4a and 4b, the expert is obliged to return the entire amount paid to him if he is not entitled to remuneration or the award of remuneration is waived.

Art. 618g. Art. 618a shall apply accordingly to an expert, translator and specialist who is not an officer of the procedural authorities appointed by the court or the body conducting preparatory proceedings. This also applies to the situation when the court or the body conducting preparatory proceedings did not use the services of such an expert, translator or specialist.

Art. 618h.

§ 1. An expert, translator and specialist who is not an officer of the procedural authorities summoned by the court or the body conducting preparatory proceedings, in the event of not using their services, is entitled to reimbursement of lost earnings or income.

§ 2. Remuneration for lost earnings or income shall be granted to an expert, translator and specialist who is not an officer of the procedural authorities, taking into account their qualifications and time used in connection with the summons. The provisions of Art. 618b § 3 and 4 shall apply accordingly.

Art. 618i. If an expert, translator or specialist who is not an officer of the procedural authorities is summoned by an authorized body in several cases on the same day, they shall be entitled to reimbursement of travel, accommodation, subsistence costs at the place where the proceedings are conducted, lost earnings or income due to appearing at the body’s summons, only once.

Art. 618ia.

§ 1. A family assistant shall be entitled to a flat-rate fee for participation in the session or hearing referred to in Art. 76a § 1.
§ 2. The Minister of Justice, in consultation with the minister responsible for public finances, shall specify, by way of a regulation, the amount of the flat-rate fee for participation in the session or hearing referred to in Art. 76a § 1, taking into account the expected average costs of the appearance and participation of the family assistant in the session or hearing. Art. 618j. Amounts due to a party in connection with its participation in the proceedings shall be granted in the amount provided for witnesses.
Art. 618k.
§ 1. The amounts due referred to in Article 618a, Article 618b, Article 618d and Articles 618f–618h shall be granted upon application.
§ 2. An application for the granting of the amounts due referred to in § 1 shall be submitted orally to the minutes or in writing, within a deadline of 3 days from the date of completion of the action with the participation of the person entitled to these amounts due, and in the case of the person referred to in Article 618d – with the participation of the witness whom he accompanied.
§ 3. A claim for the repayment of the amounts due referred to in § 1 shall be subject to a limitation period of 3 years from the date on which the claim arose.
§ 4. A witness, a person accompanying them, an expert, a translator and a specialist who is not an officer of the procedural authorities should be informed of the right and method of filing an application for reimbursement of the amount due and of the consequences of failing to meet the deadline specified in § 2.
Art. 618l.
§ 1. The amounts due to a witness, a person accompanying them, an expert, a translator and a specialist who is not an officer of the procedural authorities are determined and awarded by the court or the body conducting the preparatory proceedings.
§ 2. The amount due awarded must be paid immediately. If this is not possible, the amount due shall be transferred by postal order or bank transfer without charging the authorized person with postage or transfer costs.
Art. 619.
§ 1. Unless the law provides otherwise, all expenses shall be provisionally allocated by the State Treasury.
§ 2. The costs of the mediation proceedings shall be borne by the State Treasury.
§ 3. The State Treasury shall also cover the costs related to the participation of an interpreter in the proceedings to the extent necessary to ensure the accused's right to defence.
Art. 620. Expenses related to the appointment of a defense attorney or attorney shall be paid by the party that appointed them.
Art. 621.
§ 1. A private prosecutor shall file with the indictment or with a statement on joining the proceedings or sustaining the charge from which the prosecutor has withdrawn, proof of

payment to the court of a flat-rate fee equivalent to the expenses. This flat-rate fee does not include the costs indicated in Art. 618 § 1 items 5 and 11.
§ 2. The Minister of Justice, in agreement with the minister responsible for public finances, shall specify, by regulation, the amount of the flat-rate fee equivalent to the expenses, taking into account the average costs of the proceedings and the principle of access to court.
Art. 622. In proceedings at the private prosecution, in the event of reconciliation of the parties before the commencement of the judicial proceedings, conditional discontinuation of the proceedings, discontinuation of the proceedings due to the insanity of the perpetrator or insignificant social harmfulness of the act or due to the fact that the alleged act contains features of a crime prosecuted ex officio, a change in the mode of prosecution due to the prosecutor joining the proceedings initiated by the private prosecutor and the conclusion of these proceedings in the public complaint mode - the president of the court or the court registrar shall order the reimbursement of the lump-sum expenses paid by the private prosecutor in full, and in half - in the event of reconciliation of the parties after the commencement of the judicial proceedings.
Chapter 69 Exemption from court costs
Art. 623. The court or court registrar shall exempt a person in whole or in part from paying the costs to be paid when filing a procedural document if he/she has demonstrated that due to his/her family and property situation and the amount of income, paying them would be too burdensome.
Art. 624.
§ 1. The court may exempt the accused or the auxiliary prosecutor in whole or in part from paying court costs to the State Treasury if there are grounds to believe that paying them would be too burdensome for them due to their family and property situation and the amount of income, as well as when considerations of equity support this.
§ 2. The provision of § 1 shall apply accordingly to a private prosecutor in the event of examining the case without observing the requirements specified in Art. 621 § 1.
Art. 625. In the event of conviction or conditional discontinuance of proceedings against a soldier performing basic military service, court costs due to the State Treasury shall not be charged from him.
Chapter 70 Awarding costs of proceedings
Art. 626.
§ 1. In the ruling concluding the proceedings in the case, the court shall determine who, in what part and to what extent shall bear the costs of the proceedings.
§ 2. If the ruling referred to in § 1 does not contain a decision on the costs, as well as when it is necessary to additionally determine their amount or to decide on the costs of enforcement proceedings, the ruling in this matter shall be issued by the court of first instance, the court of appeal, and in the scope of additional determination of the amount of costs, also by the court registrar of the competent court.

§ 3. An appeal may be lodged against a ruling on costs if no appeal has been filed. In the event that an appeal and an appeal are filed, the appeal shall be examined by the appellate court together with the appeal.

Art. 626a. An appeal against a decision of a public prosecutor or other body conducting preparatory proceedings on costs shall be lodged, as appropriate, with the public prosecutor superior to the public prosecutor who issued the decision, or with the public prosecutor competent to supervise preparatory proceedings conducted by another body. If the public prosecutor does not grant the appeal, he shall refer it to the court.

Art. 627. The court shall award the court costs to the State Treasury from a person convicted in cases attributable to a public prosecutor and the expenses to the subsidiary prosecutor.

Art. 628. The court shall award the court costs to the State Treasury from a person convicted in cases attributable to a private prosecutor: 1) the private prosecutor; 2) the State Treasury for the expenses determined pursuant to Art. 618, from the payment of which the prosecutor was exempted or in the event of the case being examined without their payment.

Art. 629. The provisions of Art. 627 and 628 shall apply accordingly in the event of conditional discontinuance of proceedings, and in cases attributable to private prosecution – also in the event of discontinuance of proceedings on the basis of Art. 17 § 1 item 3.

Art. 630. In cases attributable to public prosecution, if the accused has not been convicted of all the offences charged against him, the costs related to the prosecution in the part acquitting or discontinuing the proceedings shall be borne by the State Treasury.

Art. 631. In cases attributable to private prosecution, in the event of refraining from imposing a penalty due to reciprocity of wrongs or provocative conduct of the private prosecutor, as well as taking into account the number and type of charges of which the accused has been acquitted, the court may charge the accused with the costs of the proceedings incurred by the prosecutor only in part.

Art. 632. Unless otherwise provided by law, in the event of an acquittal of the accused or the discontinuation of the proceedings, the costs of the proceedings shall be borne by: 1) in cases brought by a private prosecution – the private prosecutor, and in the event of reconciliation of the parties – the prosecutor and the accused to the extent they have incurred, unless the parties have regulated this otherwise in the settlement concluded; 2) in cases brought by a public prosecutor – the State Treasury, with the exception of amounts due for the participation of an advocate or legal adviser as a representative of the injured party, an auxiliary prosecutor or another person.

Art. 632a.

§ 1. In exceptional cases, in the event of discontinuation of the proceedings, the court may rule that the costs of the proceedings shall be borne in whole or in part by the accused, and in cases brought by a private prosecution by the accused or the State Treasury.

§ 2. In the event of the acquittal of the accused or the discontinuation of the proceedings, the court shall rule that the costs of the proceedings shall be borne in whole or in part by the accused, if: 1) the accused has directed against himself a suspicion of committing a prohibited act; 2) the fact that the accused remained in hiding contributed to the expiry of

the statute of limitations for the act he was charged with; 3) the proceedings against the accused have been discontinued pursuant to Article 11 § 1.
§ 3. In the event of discontinuation of the proceedings due to the withdrawal of the motion for prosecution after the commencement of the judicial proceedings, the court may rule that the costs of the proceedings shall be borne in whole or in part by the accused. Article 632b. If in cases referred to in Article 632 item 2, the reasons for discontinuation arose during the proceedings, the court may order the State Treasury to reimburse the amount due for the appointment of one attorney.
Art. 633. The costs of proceedings attributable to several defendants or private or subsidiary prosecutors, as well as to defendants and prosecutors, shall be awarded by the court from each of them according to the principles of equity, taking into account in particular the costs related to the case of each of them.
Art. 634. Unless the provisions of the Act provide otherwise, the provisions on the costs of proceedings before the court of first instance shall apply accordingly to the costs of proceedings for appeal proceedings against judgments concluding the proceedings in the case. Art. 635. Regardless of who filed the appeal, if the judgment of conviction or the decision on conditional discontinuance of proceedings is changed to the detriment of the accused, the costs of proceedings for appeal proceedings shall be determined according to general principles.
Art. 636.
§ 1. In cases attributable to a public prosecution, in the event of dismissal of an appeal filed exclusively by the accused or an auxiliary prosecutor, the costs of the appeal proceedings shall be borne in accordance with general principles by the person who filed the appeal, and if the appeal is filed exclusively by the public prosecutor – the costs of the appeal proceedings shall be borne by the State Treasury.
§ 2. In the event of dismissal of appeals filed by at least two authorized entities, Art. 633 shall apply accordingly.
§ 3. The provisions of § 1 and 2 shall apply accordingly in cases attributable to a private prosecution.
Art. 637.
§ 1. The provisions of Art. 635 and 636 shall apply accordingly in the event of an appeal being left unexamined due to its withdrawal or for the reasons indicated in Art. 430.
§ 2. In the event of withdrawal of a motion for prosecution, the costs of the proceedings may be charged to the person who withdrew the motion.
Art. 637a. The provisions on the costs of appeal proceedings shall apply accordingly to the costs of cassation proceedings, unless the act provides otherwise.
Art. 638. Expenses incurred by the court in connection with the examination of a cassation appeal filed by entities listed in Art. 521 or with the reopening of proceedings ex officio shall be borne by the State Treasury.

Art. 639. The provisions on the costs of proceedings shall apply accordingly in cases for the reopening of proceedings. In the event that the motion is dismissed or left unheard, the obligation to cover the costs shall rest with the person who filed the motion.
Art. 640.
§ 1. The provisions relating to the costs of proceedings in cases attributable to a private prosecution shall apply accordingly in cases attributable to a public prosecution in which the indictment was filed by an auxiliary prosecutor.
§ 2. The court may not order the auxiliary prosecutor to reimburse the expenses referred to in Art. 618 in an amount exceeding the amount of the lump-sum equivalent of expenses determined pursuant to Art. 621 § 2.
Art. 641. The right to collect awarded court costs shall be subject to a limitation period of 3 years from the date on which they should have been paid.
Chapter 71 (containing art. 642–645 – repealed)

Act on Fees in Criminal Cases
Art. 1. In criminal cases, fees are paid to the State Treasury.
Art. 2.
1. A person convicted in the first instance is obligated to pay a fee in the event of being sentenced to a penalty of imprisonment: 1) up to 3 months – PLN 60; 2) up to 6 months – PLN 120; 3) up to 1 year – PLN 180; 4) up to 2 years – PLN 300; 5) up to 5 years – PLN 400; 6) up to 15 years – PLN 600; 7) over 15 years – PLN 1,000.
2. The provisions of par. 1 items 1–4 shall apply accordingly in the event of being sentenced to a penalty of restriction of liberty.
Art. 3.
1. A person sentenced in the first instance to a fine is obliged to pay a fee of 10%, but not less than PLN 30, and in the event of a fine being imposed in addition to a penalty of imprisonment – in the amount of 20% of the amount of the fine imposed.
2. In the event of a fine being imposed on the basis of Art. 71 § 1 of the Penal Code, a person sentenced in the first instance is obliged to pay a fee of 10% of the amount of the fine imposed on him, but not less than PLN 30.
Art. 4. (repealed)
Art. 5. In the event that the court refrained from imposing a penalty, refrained from imposing a penalty and limited itself to imposing a penal measure or instead of a penalty applied on the basis of Art. 10 § 4 of the Penal Code educational or corrective measure, the accused is obliged to pay a fee of PLN 30.
Art. 6. In the event of a joint penalty, the fee is imposed on this penalty. If the joint penalty was imposed in a joint judgment, a separate fee is not charged for this penalty.
Art. 7. In the event of conditional discontinuance of proceedings, the accused is obliged to pay a fee of PLN 60 to PLN 100.
Art. 8. In the event of dismissal of an appeal filed in favour of the accused, returned against the decision on guilt or the basic penalty, the court shall impose a fee for the appeal

proceedings in the amount due for the first instance, and the fee is imposed on the penalty against which the accused's appeal was directed.

Art. 9. No fee is charged in the event of dismissal of an appeal filed solely by the public prosecutor or of dismissal of a cassation appeal.

Art. 10.

1. In the event of a reduction or increase in the basic penalty, a change in its type or a conviction only by an appellate court, this court shall impose a single fee for both instances according to the penalty imposed by it.

2. The provisions of par. 1 and Art. 8 shall apply accordingly in the event of a change in one of the appealed basic penalties.

Art. 11. If the accused's appeal is not directed against the decision on guilt or the basic penalty, in the event of its dismissal, the court shall impose a fee of PLN 30 for the appeal proceedings.

Art. 12. The provisions of Art. 8–11 shall apply accordingly in the event of filing an appeal against a decision on conditional discontinuance of proceedings.

Art. 13.

1. In cases of public prosecution in which the auxiliary prosecutor has become the exclusive prosecutor, and in cases of private prosecution, in the event of the acquittal of the accused, the court shall impose on the auxiliary prosecutor or private prosecutor a fee of PLN 60 to PLN 240, however, if the accused has not been acquitted of all the acts charged - the court may, taking into account the number and type of charges of which the accused was acquitted, impose a lower fee or refrain from imposing it. The fee shall not be imposed if the acquittal occurred for the reasons listed in Art. 31 § 1 of the Penal Code.

2. In the event that an appeal filed by an auxiliary prosecutor or private prosecutor is dismissed, the court shall impose a fee for the appeal proceedings of PLN 60 to PLN 240.

Art. 14. State and social institutions acting as auxiliary prosecutors or private prosecutors shall not incur fees.

Art. 15.

1. In criminal cases, fees are paid for the following applications and requests: 1) for an application for postponement of the execution of a penalty of imprisonment or restriction of liberty – PLN 80; 2) for an application for granting a break in serving the penalty of imprisonment or arrest – PLN 60; 3) for an application for conditional early release – PLN 45; 4) for an application for release from serving the remaining sentence of restriction of liberty or a penal measure – PLN 45; 5) for a repeated application for payment by instalments of the fine covered by the application – 2% of the amount of the fine covered by the application, but not less than PLN 25; 6) for an application for conditional suspension of the execution of a deferred penalty of imprisonment – PLN 100; 7) for an application for conditional release from serving the remaining sentence of imprisonment pursuant to Art. 155 § 1 of the Executive Penal Code – PLN 100; 8) for an application to expunge a conviction – PLN 45; 9) for a renewed request for clemency – PLN 45; 10) for an application to reopen the proceedings – PLN 150.

2. The fees specified in par. 1 shall be paid when filing the application or request. Proof of payment of the fee to the court cashier shall be attached to the application or request. In the event of reopening the proceedings, the application fee in this matter is refundable. 3. The body of executive proceedings and the commander of a military unit are not obliged to pay the fees specified in par. 1.

Art. 16.

1. The amount of the fee due shall be determined by the court in the ruling concluding the proceedings.

2. If in the ruling referred to in par. 1, the fee was not specified or its amount was incorrectly determined, the ruling in this matter shall be issued by the court of appeal or the court of first instance; in the event that the fee was not specified, the ruling may also be issued by the court registrar.

3. The provisions of par. 1 and 2 shall apply accordingly in the event of considering the application or request without paying the fee.

Art. 17.

1. The provisions on exemption from costs of criminal proceedings shall apply accordingly to the exemption from fees.

2. The exemption from fees shall be confirmed by the court in the ruling concluding the proceedings.

3. Exemption from fees referred to in Art. 15 shall be made in a decision issued before considering the application or request.

4. The provisions of Art. 16 shall apply accordingly.

5. No fee shall be charged in the event of conditional discontinuance of proceedings or conviction of a soldier performing basic military service; this also applies to a person fulfilling the obligation to perform military service as a substitute.

Art. 18. An appeal may be lodged against the ruling on fees if no appeal has been filed.

Art. 19.

1. For certificates and other documents issued upon application on the basis of files, a clerical fee of PLN 6 for each page is charged to the applicant.

2. The fee specified in par. 1 is paid upon filing the application or request. Proof of payment of the fee to the court cashier shall be attached to the application or request.

Art. 20.

1. The right to collect awarded fees shall be subject to a limitation period of 3 years from the date on which they should have been paid.

2. The right of the party to demand reimbursement of the fee shall be subject to a limitation period of 3 years from the date on which this right arose.

Art. 21. The provisions of the Act shall also apply in proceedings: 1) concerning a fiscal offence or fiscal misdemeanour; 2) for a petty offence, whereby: a) the fee imposed in the event of a sentence of arrest or restriction of liberty is PLN 30, b) the fee for the application to reopen the proceedings is specified separately in the provisions on proceedings in petty offence cases; 3) concerning soldiers, excluding soldiers performing compulsory military service, whereby the fee in the event of a sentence of military arrest or restriction of liberty may not be lower than PLN 60.

ROMANIA

Code of Criminal Procedure

Article 272 - Recovery of judicial expenses

(1) Expenses necessary for the performance of procedural acts, the taking of evidence, the preservation of material evidence, the management and, where appropriate, the recovery of property seized during the criminal proceedings, lawyers' fees and any other expenses incurred in the course of the criminal proceedings shall be covered by the sums advanced by the State or paid by the parties.
(2) The judicial expenses referred to in paragraph (1), advanced by the State, shall be included separately, as the case may be, in the income and expenditure budget of the Ministry of Justice, the Public Prosecutor's Office and other relevant ministries.

Article 273 - Sums due to the witness, expert and interpreter
(1) Witness, expert and interpreter summoned by the prosecuting authority or the court shall be entitled to reimbursement of transportation, subsistence, accommodation and other necessary expenses incurred in connection with their summons.
(2) Witness, expert and interpreter who are employees shall be entitled to income from their place of work for the duration of their absence from work due to their summons to appear before the prosecution authority or the court.
(3) A witness who is not an employee but has earned income shall be entitled to receive compensation.
(4) The expert and the interpreter shall be entitled to remuneration for the performance of the given task, in the cases and under the conditions provided for by law.
(5) The sums granted under paragraph. (1), (3) and (4) shall be paid on the basis of the orders made by the body which ordered the summons and before which the witness, expert or interpreter appeared, from the specially allocated judicial expenses fund.

Article 274 - Payment of costs advanced by the State in the event of waiver of prosecution, conviction, postponement enforcing the punishment or waiver of punishment
(1) In the event of waiver of prosecution, conviction, postponement enforcing the punishment or waiver of punishment, the suspect or, as the case may be, the accused shall be obliged to pay the judicial expenses advanced by the State, except for the costs of court-appointed lawyers and interpreters appointed by the judicial authorities, which shall be borne by the State.

(2) Where there are several suspects or, as the case may be, accused persons, the prosecutor or, as the case may be, the court shall decide on the share of the judicial expenses to be borne by each of them. In determining that share, account shall be taken, in respect of each suspect or, as the case may be, accused persons, of the extent to which he has caused the judicial expenses.

(3) The civilly liable party, in so far as it is jointly and severally liable with the accused to pay compensation for the damage, shall also be jointly and severally liable with the accused for the judicial expenses advanced by the State.

Article 275 - Payment of expenses advanced by the State in other cases

(1) judicial expenses advanced by the State shall be paid as follows:

1. in case of acquittal, by:

(a) the injured party, insofar as he is found to be at fault in the proceedings;

(b) the civil party whose civil claims have been rejected in their entirety, in so far as they are found to be at fault in the proceedings;

(c) the accused who has been ordered to pay compensation;

2. in the event of discontinuance of criminal proceedings, by:

(a) the accused, if there is a ground for non-punishment;

(b) the injured party, in the event of withdrawal of the preliminary complaint or if the preliminary complaint was lodged out of time;

(c) the party provided for in the mediation agreement, if criminal mediation has taken place;

(d) the accused and the injured person, in the event of reconciliation.

3. if the accused requests the continuation of the criminal proceedings, the judicial expenses shall be borne by:

(a) the injured person, where the injured person has withdrawn the prior complaint or the case has been dismissed pursuant to the provisions of Article 16 para. (1)(a)-(c) or acquittal of the accused, in so far as he is found to be at fault in the proceedings;

(b) the accused, where the case is dismissed on grounds other than those provided for in Article 16 para. (1) lit. a)-c) or discontinuance of the criminal proceedings;

4. if the case is returned to the prosecutor's office in the preliminary chamber proceedings, the judicial expenses shall be borne by the State.

(2) In the case of an appeal, cassation appeal or challenge or any other application, the judicial expenses shall be borne by the person who has been refused or has withdrawn the appeal, cassation appeal, challenge or application.

(3) In all other cases, the judicial expenses advanced by the State shall be borne by the State.

(4) Where several parties or injured parties are obliged to bear the judicial expenses, the court shall decide the share of the judicial expenses due from each of them.

(5) The provisions of para. (1) items 1 and 2 and paragraphs (2) to (4) shall apply accordingly in the event of a decision to discontinue criminal proceedings in the course of criminal prosecution and in the event of the rejection of a complaint lodged against acts and measures ordered by the criminal prosecution authorities.

(6) The costs of court-appointed lawyers and interpreters appointed by judicial bodies, according to the law, shall be borne by the State.
(7) In the case of appeals lodged by the prison administration in the cases provided for by Law no. 254/2013 on the enforcement sentences and measures of deprivation of liberty ordered by judicial bodies during the criminal trial, with subsequent amendments and additions, the judicial expenses shall be borne by the state.

Article 276 - Payment of judicial expenses by the parties
(1) In the event of conviction, waiver of prosecution, waiver of punishment or postponement enforcing the punishment, the accused shall be obliged to pay the injured party and the civil party to whom the civil action has been admitted the judicial expenses incurred by them.
(2) Where the civil action is upheld in part only, the court may order the accused to pay all or part of the judicial expenses.
(3) In the event of waiver of the civil claims, as well as in the event of settlement, mediation or admission of the civil claims, the court shall order the expenses as agreed by the parties.
(4) In the situations referred to in paragraphs. (1) and (2), where there is more than one defendant or where there is also a civilly liable party, the provisions of Article 274 para. (2) and (3) shall apply.
(5) In the event of acquittal, the injured person or the civil party shall be obliged to pay the accused and, where appropriate, the party civilly liable the legal costs incurred by them, to the extent that they were caused by the injured person or the civil party.
(6) In other cases, the court shall determine the obligation of restitution in accordance with civil law.

Article 398 - Judicial expenses
The court shall rule on the merits by a judgement also on the judicial expenses, in accordance with Articles 272-276.

Article 505^2 – Judicial expenses
When the suspect or the accused is a minor, the expenses arising from the audio-visual recordings, which would have been chargeable to him under Article 274 or 275, shall be borne by the State.

UNITED KINGDOM (ENGLAND AND WALES)

Prosecution of Offences Act 1985
16 Defence costs.
(1)Where—
(a)an information laid before a justice of the peace for any area, charging any person with an offence, is not proceeded with;

(b) [repealed]
(c)a magistrates' court dealing summarily with an offence dismisses the information;
that court or, in a case falling within paragraph (a) above, a magistrates' court for that area, may make an order in favour of the accused for a payment to be made out of central funds in respect of his costs (a "defendant's costs order ").
(2)Where—
(a)any person is not tried for an offence for which he has been indicted or sent for trial; or
(aa) notice of transfer is given under a relevant transfer provision but a person in relation to whose case it is given is not tried on a charge to which it relates; or
(b)any person is tried on indictment and acquitted on any count in the indictment;
the Crown Court may make a defendant's costs order in favour of the accused.
(3)Where a person convicted of an offence by a magistrates' court appeals to the Crown Court under section 108 of the Magistrates' Courts Act 1980 (right of appeal against conviction or sentence) and, in consequence of the decision on appeal—
(a)his conviction is set aside; or
(b)a less severe punishment is awarded;
the Crown Court may make a defendant's costs order in favour of the accused.
(4)Where the Court of Appeal—
(a)allows an appeal under Part I of the Criminal Appeal Act 1968 against—
(i)conviction;
(ii)a verdict of not guilty by reason of insanity; or
(iii)a finding under the Criminal Procedure (Insanity) Act 1964 that the appellant is under a disability, or that he did the act or made the omission charged against him;
(aa)directs under section 8(1B) of the Criminal Appeal Act 1968 the entry of a judgment and verdict of acquittal;
(b)on an appeal under that Part against conviction—
(i)substitutes a verdict of guilty of another offence;
(ii)in a case where a special verdict has been found, orders a different conclusion on the effect of that verdict to be recorded; or
(iii)is of the opinion that the case falls within paragraph (a) or (b) of section 6(1) of that Act (cases where the court substitutes a finding of insanity or unfitness to plead);
(c)on an appeal under that Part against sentence, exercises its powers under section 11(3) of that Act (powers where the court considers that the appellant should be sentenced differently for an offence for which he was dealt with by the court below);
or
(d)allows, to any extent, an appeal under section 16A of that Act (appeal against order made in cases of insanity or unfitness to plead);
the court may make a defendant's costs order in favour of the accused.
(4A)The court may also make a defendant's costs order in favour of the accused on an appeal under section 9(11) of the Criminal Justice Act 1987 (appeals against orders or rulings at

preparatory hearings) or section 35(1) of the Criminal Procedure and Investigations Act 1996 or under Part 9 of the Criminal Justice Act 2003.

(5)Where—

(a)any proceedings in a criminal cause or matter are determined before a Divisional Court of the Queen's Bench Division;

(b)the Supreme Court determines an appeal, or application for leave to appeal, from such a Divisional Court in a criminal cause or matter;

(c)the Court of Appeal determines an application for leave to appeal to the Supreme Court under Part II of the Criminal Appeal Act 1968; or

(d)the Supreme Court determines an appeal, or application for leave to appeal, under Part II of that Act;

the court may make a defendant's costs order in favour of the accused.

(6)A defendant's costs order shall, subject to the following provisions of this section, be for the payment out of central funds, to the person in whose favour the order is made, of such amount as the court considers reasonably sufficient to compensate him for any expenses properly incurred by him in the proceedings.

(6A)Where the court considers that there are circumstances that make it inappropriate for the accused to recover the full amount mentioned in subsection (6), a defendant's costs order must be for the payment out of central funds of such lesser amount as the court considers just and reasonable.

(6B)Subsections (6) and (6A) have effect subject to—

(a)section 16A, and

(b)regulations under section 20(1A)(d).

(6C)When making a defendant's costs order, the court must fix the amount to be paid out of central funds in the order if it considers it appropriate to do so and—

(a)the accused agrees the amount, or

(b)subsection (6A) applies.

(6D)Where the court does not fix the amount to be paid out of central funds in the order—

(a)it must describe in the order any reduction required under subsection (6A), and

(b)the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.

(10)Subsection (6) above shall have effect, in relation to any case falling within subsection (1)(a) or (2)(a) above, as if for the words "in the proceedings " there were substituted the words "in or about the defence ".

(11)Where a person ordered to be retried is acquitted at his retrial, the costs which may be ordered to be paid out of central funds under this section shall include—

(a)any costs which, at the original trial, could have been ordered to be so paid under this section if he had been acquitted; and

(b)if no order was made under this section in respect of his expenses on appeal, any sums for the payment of which such an order could have been made.

(12) In subsection (2)(aa) "relevant transfer provision " means—

(a)section 4 of the Criminal Justice Act 1987, or
(b)section 53 of the Criminal Justice Act 1991.

16A Legal costs

(1)A defendant's costs order may not require the payment out of central funds of an amount that includes an amount in respect of the accused's legal costs, subject to the following provisions of this section.
(2)Subsection (1) does not apply where condition A, B , C or D**]** is met.
(3)Condition A is that the accused is an individual and the order is made under—
(a)section 16(1),
(b)section 16(3), or
(c)section 16(4)(a)(ii) or (iii) or (d).
(4)Condition B is that the accused is an individual and the legal costs were incurred in proceedings in a court below which were—
(a)proceedings in a magistrates' court, or
(b)proceedings on an appeal to the Crown Court under section 108 of the Magistrates' Courts Act 1980 (right of appeal against conviction or sentence).
(5)Condition C is that the legal costs were incurred in proceedings in the Supreme Court.
(5A)Condition D is that—
(a)the accused is an individual,
(b)the order is made under section 16(2),
(c)the legal costs were incurred in relevant Crown Court proceedings, and
(d)the Director of Legal Aid Casework has made a determination of financial ineligibility in relation to the accused and those proceedings
(and condition D continues to be met if the determination is withdrawn).
(6)The Lord Chancellor may by regulations make provision about exceptions from the prohibition in subsection (1), including—
(a)provision amending this section by adding, modifying or removing an exception, and
(b)provision for an exception to arise where a determination has been made by a person specified in the regulations.
(7)Regulations under subsection (6) may not remove or limit the exception provided by condition C.
(8)Where a court makes a defendant's costs order requiring the payment out of central funds of an amount that includes an amount in respect of legal costs, the order must include a statement to that effect.
(9)Where, in a defendant's costs order, a court fixes an amount to be paid out of central funds that includes an amount in respect of legal costs incurred in proceedings in a court other than the Supreme Court, the latter amount must not exceed an amount specified by regulations made by the Lord Chancellor.
(10)In this section—

"legal costs" means fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs;

"advocacy services" means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;

"expert witness costs" means amounts payable in respect of the services of an expert witness, including amounts payable in connection with attendance by the witness at court or elsewhere;

"litigation services" means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to proceedings, or contemplated proceedings, to provide.**]**

(11)In subsection (5A)—

"determination of financial ineligibility", in relation to an individual and proceedings, means a determination under section 21 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 that the individual's financial resources are such that the individual is not eligible for representation under section 16 of that Act for the purposes of the proceedings;

"Director of Legal Aid Casework" means the civil servant designated under section 4(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

"relevant Crown Court proceedings" means any of the following—

(a) proceedings in the Crown Court in respect of an offence for which the accused has been sent by a magistrates' court to the Crown Court for trial;

(b) proceedings in the Crown Court relating to an offence in respect of which a bill of indictment has been preferred by virtue of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933;

(c) proceedings in the Crown Court following an order by the Court of Appeal or the Supreme Court for a retrial.

17 Prosecution costs.

(1)Subject to subsections (2) and (2A)**]** below, the court may—

(a)in any proceedings in respect of an indictable offence; and

(b)in any proceedings before a Divisional Court of the Queen's Bench Division or the Supreme Court**]** in respect of a summary offence;

order the payment out of central funds of such amount as the court considers reasonably sufficient to compensate the prosecutor for any expenses properly incurred by him in the proceedings.

(2)No order under this section may be made in favour of—

(a)a public authority; or

(b)a person acting—

(i)on behalf of a public authority; or

(ii)in his capacity as an official appointed by such an authority.

(2A)Where the court considers that there are circumstances that make it inappropriate for the prosecution to recover the full amount mentioned in subsection (1), an order under this section must be for the payment out of central funds of such lesser amount as the court considers just and reasonable.
(2B)When making an order under this section, the court must fix the amount to be paid out of central funds in the order if it considers it appropriate to do so and—
(a)the prosecutor agrees the amount, or
(b)subsection (2A) applies.
(2C)Where the court does not fix the amount to be paid out of central funds in the order—
(a)it must describe in the order any reduction required under subsection (2A), and
(b)the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.
. . .
(5)Where the conduct of proceedings to which subsection (1) above applies is taken over by the Crown Prosecution Service, that subsection shall have effect as if it referred to the prosecutor who had the conduct of the proceedings before the intervention of the Service and to expenses incurred by him up to the time of intervention.
(6)In this section "public authority " means—
(a)a police force within the meaning of section 3 of this Act;
(b)the Crown Prosecution Service or any other government department;
(c)a local authority or other authority or body constituted for purposes of—
(i)the public service or of local government; or
(ii)carrying on under national ownership any industry or undertaking or part of an industry or undertaking; or
(d)any other authority or body whose members are appointed by Her Majesty or by any Minister of the Crown or government department or whose revenues consist wholly or mainly of money provided by Parliament.

Award of costs against accused

18 Award of costs against accused.

(1)Where—
(a)any person is convicted of an offence before a magistrates' court;
(b)the Crown Court dismisses an appeal against such a conviction or against the sentence imposed on that conviction; or
(c)any person is convicted of an offence before the Crown Court;
the court may make such order as to the costs to be paid by the accused to the prosecutor as it considers just and reasonable.
(2)Where the Court of Appeal dismisses—
(a)an appeal or application for leave to appeal under Part I of the Criminal Appeal Act 1968; or

(b)an application by the accused for leave to appeal to the Supreme Court under Part II of that Act;
it may make such order as to the costs to be paid by the accused, to such person as may be named in the order, as it considers just and reasonable or
(c)an appeal or application for leave to appeal under section 9(11) of the Criminal Justice Act 1987;
or
(d)an appeal or application for leave to appeal under section 35(1) of the Criminal Procedure and Investigations Act 1996.**]**
(2A)Where the Court of Appeal reverses or varies a ruling on an appeal under Part 9 of the Criminal Justice Act 2003, it may make such order as to the costs to be paid by the accused, to such person as may be named in the order, as it considers just and reasonable.**]**
(3)The amount to be paid by the accused in pursuance of an order under this section shall be specified in the order.
(4)Where any person is convicted of an offence before a magistrates' court and—
(a)under the conviction the court orders payment of any sum as a fine, penalty, forfeiture or compensation; and
(b)the sum so ordered to be paid does not exceed £5;
the court shall not order the accused to pay any costs under this section unless in the particular circumstances of the case it considers it right to do so.
(5)Where any person under the age of eighteen is convicted of an offence before a magistrates' court, the amount of any costs ordered to be paid by the accused under this section shall not exceed the amount of any fine imposed on him.
(6)Costs ordered to be paid under subsection (2) or (2A) above may include the reasonable cost of any transcript of a record of proceedings made in accordance with rules of court made for the purposes of section 32 of the Act of 1968.

19 Provision for orders as to costs in other circumstances.
(1)The Lord Chancellor may by regulations make provision empowering magistrates' courts, the Crown Court and the Court of Appeal, in any case where the court is satisfied that one party to criminal proceedings has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, to make an order as to the payment of those costs.
(2)Regulations made under subsection (1) above may, in particular—
(a)allow the making of such an order at any time during the proceedings;
(b)make provision as to the account to be taken, in making such an order, of any other order as to costs . . . which has been made in respect of the proceedings or of whether, for the purposes of the proceedings, representation has been provided under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;
(c)make provision as to the account to be taken of any such order in the making of any other order as to costs in respect of the proceedings; and

(d)contain provisions similar to those in section 18(4) and (5) of this Act.
(3)The Lord Chancellor may by regulations make provision for the payment out of central funds, in such circumstances and in relation to such criminal proceedings as may be specified, of such sums as appear to the court to be reasonably necessary—
(a)to compensate any witness in the proceedings, and any other person who in the opinion of the court necessarily attends for the purpose of the proceedings otherwise than to give evidence,**]** for the expense, trouble or loss of time properly incurred in or incidental to his attendance;
(b)to cover the proper expenses of an interpreter who is required because of the accused's lack of English;
(c)to compensate a duly qualified medical practitioner who—
(i)makes a report otherwise than in writing for the purpose of section 11 of the Powers of Criminal Courts (Sentencing) Act 2000**]** (remand for medical examination); or
(ii)makes a written report to a court in pursuance of a request within subsection (3B) below;
for the expenses properly incurred in or incidental to his reporting to the court.
(d)to cover the proper fee or costs of a person appointed by the Crown Court under section 4A of the Criminal Procedure (Insanity) Act 1964 to put the case for the defence.
(e)to cover the proper fee or costs of a legal representative appointed under section 38(4) of the Youth Justice and Criminal Evidence Act 1999 (defence representation for purposes of cross-examination) and any expenses properly incurred in providing such a person with evidence or other material in connection with his appointment.
(3ZA)In relation to a sum that may be required by a court other than the Supreme Court to be paid out of central funds under regulations under subsection (3)—
(a)the requirement under that subsection for the sum to be such sum as the court considers reasonably necessary to cover or compensate for expenses, fees, costs, trouble or losses is subject to regulations made under section 20(1A)(d), and
(b)regulations under subsection (3) may make provision accordingly.
(3A)In subsection (3)(a) above "attendance " means attendance at the court or elsewhere.**]**
(3B)A request is within this subsection if—
(a)it is a request to a registered medical practitioner to make a written or oral report on the medical condition of an offender or defendant; and
(b)it is made by a court—
(i)for the purpose of determining whether or not to include a mental health treatment requirement in a community order or youth rehabilitation order**]** or make an order under section 37 of the Mental Health Act 1983 (hospital orders and guardianship orders) or otherwise for the purpose of determining the most suitable method of dealing with an offender; or
(ii)in exercise of the powers conferred by section 11 of the Powers of Criminal Courts (Sentencing) Act 2000 (remand of a defendant for medical examination).**]**
(3C)For the purposes of subsection (3B)(b)(i)—
"community order" has the meaning given by section 200 of the Sentencing Code;**]**

"mental health treatment requirement" means—

(a) in relation to a community order, a mental health treatment requirement within the meaning given by paragraph 16 of Schedule 9 to the Sentencing Code], and

(b) in relation to a youth rehabilitation order, a mental health treatment requirement within the meaning given by paragraph 28 of Schedule 6 to that Code

"youth rehabilitation order" has the meaning given by section 173 of the Sentencing Code.

(3D)Regulations under subsection (3) may make provision generally or only in relation to particular descriptions of persons, expenses, fees, costs, trouble or losses.

(4)The Court of Appeal may order the payment out of central funds of such sums as appear to it to be reasonably sufficient to compensate an appellant who is not in custody and who appears before it on, or in connection with, his appeal under Part I of the Criminal Appeal Act 1968.

(4A)Subsection (4) has effect subject to regulations under section 20(1A)(d).

(4B)An order under subsection (4) may not require the payment out of central funds of a sum that includes a sum in respect of legal costs (as defined in section 16A), except where regulations made by the Lord Chancellor provide otherwise.

(4C)Regulations under subsection (4B) may, in particular, include—

(a)provision for an exception to arise where a determination has been made by a person specified in the regulations,

(b)provision requiring the court, when it orders the payment of a sum that includes a sum in respect of legal costs, to include a statement to that effect in the order, and

(c)provision that the court may not order the payment of a sum in respect of legal costs exceeding an amount specified in the regulations.

(5)The Lord Chancellor may by regulations provide that any provision made by or under this Part which would not otherwise apply in relation to any category of proceedings in which an offender is before a magistrates' court or the Crown Court shall apply in relation to proceedings of that category, subject to any specified modifications.

19A Costs against legal representatives etc.

(1)In any criminal proceedings—

(a)the Court of Appeal;

(b)the Crown Court; or

(c)a magistrates' court,

may disallow, or (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with regulations.

(2)Regulations shall provide that a legal or other representative against whom action is taken by a magistrates' court under subsection (1) may appeal to the Crown Court and that a legal or other representative against whom action is taken by the Crown Court under subsection (1) may appeal to the Court of Appeal.

(3)In this section—

“legal or other representative ”, in relation to any proceedings, means a person who is exercising a right of audience, or a right to conduct litigation, on behalf of any party to the proceedings;

“regulations ” means regulations made by the Lord Chancellor; and

“wasted costs ” means any costs incurred by a party—

(a) as a result of any improper, unreasonable, or negligent act or omission on the part of any representative or any employee of a representative; or

(b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.**]**

19B Provision for award of costs against third parties

(1)The Lord Chancellor may by regulations make provision empowering magistrates' courts, the Crown Court and the Court of Appeal to make a third party costs order if the condition in subsection (3) is satisfied.

(2)A “third party costs order” is an order as to the payment of costs incurred by a party to criminal proceedings by a person who is not a party to those proceedings (“the third party”).

(3)The condition is that—

(a)there has been serious misconduct (whether or not constituting a contempt of court) by the third party, and

(b)the court considers it appropriate, having regard to that misconduct, to make a third party costs order against him.

(4)Regulations made under this section may, in particular—

(a)specify types of misconduct in respect of which a third party costs order may not be made;

(b)allow the making of a third party costs order at any time;

(c)make provision for any other order as to costs which has been made in respect of the proceedings to be varied on, or taken account of in, the making of a third party costs order;

(d)make provision for account to be taken of any third party costs order in the making of any other order as to costs in respect of the proceedings.

(5)Regulations made under this section in relation to magistrates' courts must provide that the third party may appeal to the Crown Court against a third party costs order made by a magistrates' court.

(6)Regulations made under this section in relation to the Crown Court must provide that the third party may appeal to the Court of Appeal against a third party costs order made by the Crown Court.

20 Regulations.

(1)The Lord Chancellor may make regulations for carrying this Part into effect ...

(1A)The Lord Chancellor may by regulations—

(a)make provision as to the amounts that may be ordered to be paid out of central funds in pursuance of a costs order, whether by specifying rates or scales or by making other provision as to the calculation of the amounts,

(b)make provision as to the circumstances in which and conditions under which such amounts may be paid or ordered to be paid,

(c)make provision requiring amounts required to be paid out of central funds by a costs order to be calculated having regard to regulations under paragraphs (a) and (b),

(d)make provision requiring amounts required to be paid to a person out of central funds by a relevant costs order to be calculated in accordance with such regulations (whether or not that results in the fixing of an amount that the court considers reasonably sufficient or necessary to compensate the person), and

(e)make provision as to the review of determinations of amounts required to be paid out of central funds by costs orders.

(1B)In subsection (1A)(d) "relevant costs order" means a costs order other than—

(a)an order made by any court under section 17, and

(b)so much of a costs order made by the Supreme Court as relates to expenses, fees, costs, trouble or losses incurred in proceedings in that court.

(1C)Regulations under subsection (1A) may, in particular—

(a)make different provision in relation to amounts to be paid in respect of different expenses, fees, costs, trouble and losses,

(b)make different provision in relation to different costs orders and different areas, and

(c)make different provision in relation to the fixing of an amount in a costs order and the fixing of an amount by means of a determination.

(2)The Lord Chancellor may by regulations make provision for the recovery of sums paid by the Lord Chancellor under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or out of central funds in accordance with a costs order in cases where—

(a)a costs order has been made against a person; and

(b)the person in whose favour the order was made is a legally assisted person or a person in whose favour a defendant's costs order or, as the case may be, an order under section 17 of this Act has been made.

(3)Regulations made under subsection (1A) above may provide that provision as to the calculation of amounts**]** payable out of central funds under a costs order (whether in the form of rates or scales or other provision)**]** shall be determined by the Lord Chancellor with the consent of the Treasury.

(4)Regulations made under subsection (2) above may, in particular—

(a)require the person mentioned in paragraph (a) of that subsection to pay sums due under the costs order in accordance with directions given by the Lord Chancellor (either generally or in respect of the particular case); and

(b)enable the Lord Chancellor to enforce those directions in cases to which they apply.

(5) . . .

(6)Any regulations under this Part may contain such incidental, supplemental and transitional provisions as the Lord Chancellor considers appropriate.
(7)Before making any regulations under section 19(1), 19A or 19B of this Act which affect the procedure of any court, the Lord Chancellor shall so far as is reasonably practicable consult any rule committee by whom, or on whose advice, rules of procedure for the court may be made or whose concurrence is required to any such rules.
(8)In this section "costs order " means—
(a)an order made under or by virtue of this Part for payment to be made—
(i)out of central funds; or
(ii)by any person ; or
(b)an order made in a criminal case by the Supreme Court for the payment of costs by a party to proceedings.

21 Interpretation, etc.

(1)In this Part—

"accused " and "appellant ", in a case where section 44A of the Criminal Appeal Act 1968 (death of convicted person) applies, include the person approved under that section;

"defendant's costs order " has the meaning given in section 16 of this Act;

"legally assisted person ", in relation to any proceedings, means a person for whom advice, assistance or representation is provided under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

"proceedings " includes—

(a)proceedings in any court below; and
(b)in relation to the determination of an appeal by any court, any application made to that court for leave to bring the appeal; and

"witness " means any person properly attending to give evidence, whether or not he gives evidence or is called at the instance of one of the parties or of the court, but does not include a person attending as a witness to character only unless the court has certified that the interests of justice required his attendance.
(2)Except as provided by or under this Part no costs shall be allowed on the hearing or determination of, or of any proceedings preliminary or incidental to, an appeal to the Court of Appeal under Part I of the Criminal Appeal Act 1968.
(3)Subject to rules of court made under section 53(1) of the Senior Courts Act 1981 (power by rules to distribute business of Court of Appeal between its civil and criminal divisions), the jurisdiction of the Court of Appeal under this Part, or under regulations made under this Part, shall be exercised by the criminal division of that Court; and references in this Part to the Court of Appeal shall be construed as references to that division.
(4)For the purposes of sections 16, 16A and 17 of this Act, the costs of any party to proceedings shall be taken to include the expense of compensating any witness for the expenses, trouble or loss of time properly incurred in or incidental to his attendance.

(4A)Where one party to any proceedings is a legally assisted person then—

(a)for the purposes of sections 16, 16A and 17 of this Act, his costs shall be taken not to include the cost of advice, assistance or representation provided to the person under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012; and

(b)for the purposes of sections 18, to 19B of this Act, his costs shall be taken to include the cost of such advice, assistance or representation;

(5)Where, in any proceedings in a criminal cause or matter or in either of the cases mentioned in subsection (6) below, an interpreter is required because of the accused's lack of English, the expenses properly incurred on his employment shall not be treated as costs of any party to the proceedings.

(6)The cases are—

(a)where an information charging the accused with an offence is laid before a justice of the peace . . but not proceeded with and the expenses are incurred on the employment of the interpreter for the proceedings on the information; and

(b)where the accused is sent for trial but not tried and the expenses are incurred on the employment of the interpreter for the proceedings in the Crown Court.

Crown Prosecution Service Legal Guidance

Costs - Annex 1

Updated 30 April 2024

1. CPS policy is to apply for costs against convicted defendants or unsuccessful appellants under s18 of the Prosecution of Offences 1985, unless the circumstances of a specific case mean that such an application would lack merit or an order for costs would be impractical. The award of costs and value of any order is at the discretion of the judiciary.
2. The application for prosecution costs must relate solely to costs directly incurred by the CPS in the preparation and presentation of the case. The CPS cannot benefit from the award, nor can it be used as an indirect penalty.
3. The CPS does not time-record activity on cases and cannot calculate a precise cost for each case. It would be too great an administrative burden to do so. The guideline rates are therefore derived from an assessment of average staff preparation costs, including advocacy in magistrates' courts and time spent in the Crown Court by paralegal officers/assistants. This approach was approved by the Court of Appeal in the case of R v Dickinson 2010 EWCA Crim 2143; 2011 1 Cr App R (S) 93.
4. The guideline rates provide a benchmark to estimate the costs incurred for a range of court proceedings.

Magistrates' Court

Early Guilty Plea	£85
Late Guilty Plea / Cracked Trial	£400
Trial	£650

Crown Court

Following Early Guilty Plea in the magistrates' court (includes magistrates' courts cost)	
Committal for Sentence	£150
Appeal Against Sentence	£150
Following magistrates' court trial: (includes magistrates' courts cost)	
Committal for Sentence	£705
Appeal Against Sentence	£705
Appeal Against Conviction	£1,300
Cases on Indictment:	

Guilty Plea at Plea and Trial Preparation Hearing (PTPH)	£1,000
Late Guilty Plea / Cracked Trial	£1,630
Trial	£4,380

5. The rates are indicative of single defendant cases only and the figure should therefore be increased by 20% for each additional defendant. It may also be appropriate to increase the amount applied for where the case prosecuted was complex cases, involving complicated legal issues or extended preparation. Where calculable, witness costs/expert fees, advocate fees and other specific disbursements should also be added.

Costs – Annex 3a

Expert Witnesses -Scales of Guidance
Current rates: Effective from 15 September 2008
Expert Witnesses:
1. Consultant Medical Practitioner, Psychiatrist, Pathologist
Preparation (per hour) - £70 - £100
Attendance at court (full day) - £346 - £500
2. Fire Expert (assessor) Explosives Expert
Preparation (per hour) - £50 - £75
Attendance at court (full day) - £255 - £365
3. Forensic Scientist, Surveyor, Accountant, Medical Practitioner, Architect, Document Examiner, Meteorologist, Engineer, Veterinary Surgeon
Preparation (per hour) - £47 - £100
Attendance at court (full day) - £226 - £490
4. Fingerprint
Preparation (per hour) - £32 - £52
Attendance at court (full day) - £153 - £256
Others:
5. Interpreter
See separate guidance for current rates for face-to-face interpreters.