



**Political Science
Doctoral School**

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Alternative dispute resolution in employment conflicts

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Budapest, 2008

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1. Main questions and methodology of the research

The subject of my doctoral research has grown out of the intersection of two research fields: employment relations and conflict management. What makes the combination of these two fields interesting and develops it into an academic challenge for the author is among others the fact that peaceful conflict resolution (or more precisely alternative dispute resolution - ADR) in general and on the field of employment relations, too, counts as a rather fresh phenomenon and experience in Hungary. The Hungarian Mediation and Arbitration Service (LMAS) was created in 1996, a little more than a decade ago, and can take pride in being the first such institution in the East Central European region. The present dissertation undertakes the task of analysing and comparing the alternative dispute resolution system functioning on the field of employment relations in five countries – Belgium, France, Great-Britain, Hungary and the Netherlands – treating principally the methods of negotiation, conciliation, mediation and arbitration.

The research wishes to find answer to the following important questions:

- Are there such external (social) and internal (institutional) factors that ensure the successful functioning of alternative dispute resolution in employment conflicts, and if yes, what are these factors?
- Can a typology be formed in relation to the ADR systems of the selected countries functioning on the field of employment relations?
- If such typology can indeed be defined, how should it be related to the already existing typologies of employment relations, or in other words, could we find a correlation between the two systems?

The aim of the research is principally to find an answer to the question whether there exist a model constructed on the basis of factors applied in the comparative analysis – and if yes, then what characteristics does it possess – which if not guarantees but makes it highly possible that methods of peaceful conflict (or alternative dispute) resolution can be functioning successfully, or in accordance to the terms of public policy, in an efficient and efficacious manner. By efficiency I mean that the relevant institutions generally act with a positive result in the registered disputes, while efficacy refers to them being popular with the social partners and/or with individuals and therefore are able to channel in considerable amounts of disputes so that their activity will exert a positive influence on the functioning and development of employment relations.

The main methodological tool used by the research is the comparative analysis, in relation to which I introduced new conditions. (These will be dealt with in detail in the chapter on ‘The main theses and results of the research’.) The comparative analysis consists of two parts dealt with in two chapters: a dynamic part, which treats the historical development of ADR systems in the five countries and a static part, which introduces the present situation. The comparative overview and analysis of the historical development of employment ADR systems examines the development of these systems in the selected five countries from the end of the 18th century until the end of the 20th century in three periods (1790 – 1897, 1898 – 1945 and 1946 – 1992). Here we examine among others the aspect of linear historical development, the characteristics of ADR methods, the role and the intervention of the state, the cooperative or competing characteristic of the social partners as well as the convergence-divergence tendency. We also suggest conditions along which an employment ADR typology could be formed. The comparative analysis of the present employment ADR

systems examines the relevant institutions in the given countries according to several aspects, most importantly from the aspect of the characteristics and definition of ADR methods, the legal and institutional background, the composition of the institutions and the professional training of the members.

The comparative analysis shall also contribute to the establishment of certain tendencies and classification options, moreover, to the formulation of an early-stage typology. It shall also provide an answer to the interesting question whether – as the main actors come from the field of employment relations – the new ADR typology corresponds to the already existing employment relations typologies, whether there is an overlap between them or whether the characteristics and operation ADR models is influenced by other factors than those applied traditionally for the classification of employment relations systems.

3. The contribution of the research to the existing literature and new challenges

The subject of alternative dispute resolution in employment conflicts can already be considered in itself as a rather narrow topic. The field that lies at the crossroads of employment relations and conflict resolution is even narrower if we wish to find literature that deals with the question from a comparative aspect. In this limited circle the work of De Roo and Jagtenberg (1994) certainly deserves special attention as the most complete and comprehensive volume on the field (although only implicitly comparative in most parts). Their book called '*Settling Labour disputes in Europe*' examines employment ADR systems in twelve European countries, in four cases (Belgium, France, Great Britain and the Netherlands) carrying out a very thorough and profound analysis, and also contains a chapter providing a comparison between the aforementioned four systems. A shortcoming of the book that it has a pronounced legal and institutional orientation and does not investigate in a wider social context, which could carry relevance in connection to the questions in focus. However, it can certainly be considered as a credit to de Roo's and Jagtenberg's work that it introduces a historical background and development of the institutions, alas only very partially in a comparative aspect.

Not directly or explicitly comparative of nature (although traditionally considered to be one by comparative political science and scientists; a point which is to be discussed later on in the paper, introducing a critique to comparative methodology by the author) but very useful and important literature is the series of studies on employment ADR systems in the countries of the European Union published by European Industrial Relations Organisation (EIRO). They are up-to-date and cover a wide range of countries or in other words work with a very large "n", constructing a fitting, essentially pr-comparative basis for a future explicit comparative study. The studies do not deal with the historical development of the systems and are most of all legally and institutionally focused, which approach nevertheless cannot be judged as a satisfactory basis when one intends to carry out a research of such complexity – looking not only for the facts but the whys and hidden motivations in the wider context, too – as the one at hand attempts to perform.

Let us see now what are the concrete virtues of the present dissertation and how it can contribute to today's relevant literature.

- Terminology reform: the dissertation introduces the Hungarian version of the term 'employment relations' and also attempts to outline a definition to it in the light of the

existing mixture of terminology including ‘labour relations’ and ‘industrial relations’ and ‘employment relations’. This latter task has namely not been accomplished by international literature yet, although the term ‘‘employment relations’ has been present for almost a decade now.

- Theoretical assessment: the dissertation provides a comprehensive overview on ADR methods and their characteristics. The chapter wishes to enrich the relevant Hungarian literature from several aspects: *first*, it does not concentrate only on one method but gives a complex picture of the main types of conflict resolution and the most important ADR methods, also analysing them with regard to their relation with each other as well as assessing the most popular critiques established in relation to ADR methods; *second*, it makes recommendations to reform Hungarian terminology concerning the terms ‘cooperative’ versus ‘competent’ conflict resolution, and *finally*, it provides an in depth analysis about the known critiques related to ADR.
- Methodology: the dissertation formulates the critique of comparative political science and of works applying this method from a certain aspect and makes recommendations for a new structure of comparative analysis. The suggested methodological reform enhances not only a more explicitly comparative form or structure but as a result of structural changes a more explicitly comparative content as well. The dissertation itself naturally applies the reformed structure and makes efforts to accomplish a more developed (not pre-comparative) comparative analysis.
- Dynamic and static comparative analysis: the dissertation on the one hand carries out a comparative analysis of historical developments of employment ADR systems in the selected five countries (dynamic analysis) and on the other hand also performs a comparative analysis of the present systems (static analysis). The combination of the two types of analysis allows for a complex investigation including external (social) and internal (institutional) aspects as well, which could be considered as a plus for the existing literature usually focused only on internal aspects and not in a comparative context. Therefore, the contribution is further developed by the fact that here five countries are being examined and compared along the above factors, simultaneously outlining common and diverse characteristics and tendencies (convergence-divergence).
- Typology formation: an important result of the research is the formulation of an early stage typology (classification) based on the employment ADR systems of the selected countries, determining the most important characteristics of each type. This also helps to unravel and explain the difficulties and ambiguities experienced in the Hungarian ADR system and concretely by the Hungarian Labour Mediation and Arbitration Service.

4. The most important theses and results of the research

4.1 Terminology and definition

In my dissertation I emphasise the importance of introducing the Hungarian equivalent of the relatively new term ‘employment relations’, which is becoming more and more widely used and popular since the 1990s. I discuss and compare the terms ‘industrial relations’, ‘labour relations’ and ‘employment relation’, while also trying to determine the differences between the old and the new terminology. This task is carried out on the basis of the relevant literature, which is however far from providing a clear or homogenous definition of the new terminus technicus. Sometimes the term is only used but not defined, some other times we find tendencies that describe the necessity of the change of terminology. I highlight the definitions of Bamber and Lansbury in their book on ‘International & Comparative Employment Relations’ (1998) as well as Ed Rose’s concept of the term in his work called ‘Employment relations’ (2004) because in my opinion these stand the closest to an appropriate definition. Bamber and Lansbury claim that the traditional institutional approach of industrial relations is not sufficient, all aspects of employment should be subjects to examination. In their view employment relations is a much broader term than industrial or labour relations, its structure pointing beyond the traditional collective structure too. Moreover, they stress the importance of an interdisciplinary approach. Bamber and Lansbury finally conclude that employment relations are a merge of traditional industrial relations and human resource management. Rose also holds the opinion that the concept and structure of employment relations extend beyond the traditional frame of industrial relations. In his view the most significant difference can be detected in the fact that besides collective relations individual and non-represented interests and rights have gradually come to the front, while trade unions have internationally experienced a decline in their membership and a change of their role. He believes that the changing structure requires new research approach and analytical aspects, which is in clear parallel with the argumentation of Bamber and Lansbury.

In the light of the above definitions we can observe two simultaneous processes. First, a gradual shift from the traditional, dominantly collective structure towards a structure with more individual elements, diverse and often non-represented employment forms. Second, we can also detect a change concerning the research foci and methods of the field, which attempts to follow the practical shift and create a new theoretical framework. It seems though that the exact definition of employment relations will have a chance to be formulated once the new pattern becomes clearer and the new structure more distinct, or in other words when the paradigm shift occurs. That the field of study is in effect subject to change has also been confirmed by two ex-presidents of the International Industrial Relations Association (IIRA). John Niland pronounced in his presidential speech in 1994 that we do not over-dramatise the situation when we are brooding over the question whether the field of industrial relations will survive the 20th century.¹ His colleague, Thomas Kochan expressed a very similar view four years later when he opined that industrial relation (IR) is in a deep crisis.² It is quite true: the classical field of study of IR flourishing in the 60s indeed finds itself today in a crisis. This shall not mean however that the field of study investigating the world of labour should be in a

¹ Niland, 1994:463

process of disappearing, far from it. It is in the process of transformation. This is exactly why I deem it a good parallel to refer to the beginning of IR, the early investigating and exploring years of the field which period had been characterised by the research of ‘all employment relations’.³ This wider definition was gradually replaced during the 60s by the classical terminology of ‘industrial relations’ based on the union – management axis. This approach and structure began to wobble in the course of the 80s, making it evident by the 90s that the theory somehow got far from the practice and does not correspond to reality as it has done before. This is the crisis Niland and Kochan were referring to. Only one must not stop here. And recent literature has shown that IR did not come to a standstill and begun to lament over its own ruins but has started to search its way, just like it had done in the first decade following the first world war. The more and more often it is referred to as ‘employment relations’ and it expresses a demand for the inclusion and investigation of ‘all employment relations’. At that time it took almost forty years for the first comprehensive, coherent classifying and comparative works to be born. Taking it as a guiding principle, we can start our “count down” starting from the 80s, which leaves us a bit more than a decade more to cut our way through the thick of the forest. It is the task and the responsibility of scholars and researchers devoted to the field to find the analytical focus that will help to explain the newly formulating structure and to provide a theoretical model that corresponds to reality.

In my view it would be advisable for the Hungarian literature and its authors to keep up with the new trends – both with regard to the practical and the theoretical shifts – and adopt a equivalent for the new terminology. I suggest the introduction of the term ‘foglalkoztatási kapcsolatok’ into the field – a direct translation of ‘employment relations’, which has been indicated as labour relations (‘munkaügyi kapcsolatok’) for the last couple of decades in the Hungarian practice – for two reasons:

- a) First, in order to find the equivalent for the new internationally used terminology that has been present in the relevant literature for at least a decade now;
- b) Second, in order to take into account and to integrate the practical and theoretical change and tendencies into the public thinking and the professional literature.

Throughout my dissertation, I am using the newly introduced Hungarian terminology ‘foglalkoztatási kapcsolatok’, as well as the terms ‘foglalkoztatási konfliktusok’ (‘employment conflicts’) and ‘foglalkoztatási viták’ (‘employment disputes’).

4.2 Methodology

According to Verba even single country studies can be considered comparative, if one can trace in them characteristics of implicit comparison with other countries or if they show close relation with theories built on comparison. Sartori shares Verba’s opinion in considering a study comparative without it carrying out actual comparison – that is in the case of single country studies – if it is embedded in a comparative context. He nevertheless calls attention to the fact that if someone is being implicitly (unconsciously)

² Kaufman, 2004:621

³ The term ‘all employment relations’ had been often applied in the 50s to describe the subject of the field. We can consider it as the first term describing the field of study of the later IR.

comparative, although it will probably make her/him a better scholar, we shall not wash away the difference between implicit and explicit comparison and automatically make a comparatist of the author. As we can see, the case of single country studies is theoretically not clearly settled, although according to practice it constitutes part of comparative political science.

I myself would like to argue with this sometimes openly expressed, sometimes unspoken and only implied consensus. Moreover, in my belief not only single country studies are of questionable comparative quality but also those works that examine several – more than one – countries under the veil of comparative analysis but neglect any true comparison, satisfying themselves with producing a series of country studies listed one after the other. In my opinion these implicitly or unconsciously comparative studies should not be part of comparative political science, although clearly they form a very important basis for real, explicit comparison. As a matter of fact, no comparative analysis could be born without these pre-comparative studies, their existence is crucial. Only this fact in my view does not entitle them to be included as an organic part into comparative political science. I would suggest granting them the label ‘pre-comparative’, thus distinguishing them from comparative works. I believe that literature claiming the ‘comparative’ title should either follow another structure (different from country studies) or leave considerably more room for the comparative analysis besides the pre-comparative part. I would like to stress once again, to avoid misunderstandings, that there is huge need for country studies, for the elaboration of the historical development of systems, explaining their functioning and characteristics; as I already claimed, they are indispensably important conditions or starting points for comparative analysis – only cannot substitute it. Coming back to the question on what could then be called comparative methodology, let us see requirements regarding both form (structure) and content. In my understanding we can speak of a comparative political study, if at least one the following conditions is fulfilled.

- The structure of the study does not follow the scheme where country names stand as titles of the chapters and the analysis takes place separately within each chapter (in the form of country studies); instead, chapters are being structured according to analytical aspects and the analysis of the selected countries/systems takes place under these aspects. As far as the form is concerned, we are certainly coming closer to the comparative approach, and regarding the content, clearly as a result of the restructuring as well, we receive an explicit comparison, possibly providing us with so far hidden connections and insights. This method can be applied successfully especially at analyses of a static nature, projected on a short period.
- In contrast to the above construction, structuring the analysis on a chronological basis and treating the characteristics of the given countries under logically selected time intervals can be successfully applied principally in the case of analyses of a dynamic nature, projected on a longer period. This can result basically in a comparison divided into historical periods, although the characteristics of the given studies under each period appear in the form of country studies. The examination of each period is followed by an explicit comparative

analysis which provides the possibility to observe the developments in parallel within the given intervals as well as in the entire historical period examined.

Let me add that the structure presented under the second condition, or more precisely the criteria related to form and content assessed by the second condition – leaving room for country studies as well – is advised to be applied especially in those cases where the selected countries or aspects have not yet been elaborated to a greater extent. Here there is clearly more room and need for the so called pre-comparative studies or country studies. Fields with a longer past that have been extensively written about and elaborated by scholars probably make less demand on the inclusion of such pre-comparative parts because most of the information is already to be found in the relevant literature. In this latter case the application of the criteria assessed by the first condition seems a more appropriate and fruitful approach where the study is structured according to certain aspects relevant to the comparison, the analysis takes place under these aspects and not under the selected countries' or systems' names.

4.3 Typology and reform suggestions

4.3.1 What is a successful model like?

The “practical” part of the dissertation is constructed of two complex comparative analyses: a dynamic analysis comprising more than two decades' development and a static analysis introducing and comparing the present state. Based on the conclusions of these two analyses I will try to respond to the questions raised at the beginning of the research and also construct an initial typology of employment ADR systems, which can serve as a basis for a future research encompassing a larger number of countries. If we recall the questions, we have to find answer to the following based on our findings throughout the analyses:

- Are there such external (social) and internal (institutional) factors that ensure the successful functioning of alternative dispute resolution in employment conflicts, and if yes, what are these factors?
- Can a typology be formed in relation to the ADR systems of the selected countries functioning on the field of employment relations?
- If such typology can indeed be defined, how should it be related to the already existing typologies of employment relations, or in other words, could we find a correlation between the two systems?

There seems no doubt about the fact that the systems, their historical development and present characteristics, such as their mechanisms, actors and methods analysed and compared in the comparative chapters constituting the backbone of the research are rather many-coloured. In each country we find institutions whose functioning has proved popular and successful⁴ for shorter or longer periods during the examined time interval (starting from the end of the 18th century until today) and who constitute now part of

⁴ By successful or effective meaning we mean the combined, parallel presence of efficiency and efficacy. These are factors whose numerical estimation is an extremely difficult task, many times impossible because of the lack of precise data. In those cases where we can find case statistics, the estimation is easier, although sometimes the data sets are incomparable because they are incompatible with each other, thanks to the differences of the systems and the different aspects of data. Thus, frequently we have no choice than to rely on scholars' and experts' evaluations on the functioning of the institution. The present study relies on the following sources: a)

the present ADR system.⁵ However, as mentioned earlier, the institutional characteristics are divergent to such extent that it would be impossible to define one single model that – independent from the external factors – could ensure the successful functioning. The most we can claim is that there exist certain internal (institutional) elements that have proved to be indispensable from the view of successful functioning.

Internal factors:

- *An adequate sphere of authority meeting the given demand*

The importance of this factor can be observed practically in the case of each country if we think back of the early, 19th century institutions which were entitled to act in rights disputes only whereas the demand of the employment market moved clearly to the direction of increasing collective disputes.

- *Geographic coverage*

We have witnessed a sudden rise of efficacy (social impact) in the case of the most institutions after they had become available and accessible in every part of the country.

- *Permanent (not ad hoc) functioning*

Effective functioning could possibly be assured in most cases when dispute resolution had been carried out by permanent and not ad hoc institutions.

Besides the above factors we can observe further internal characteristics that several examined institutions possess promoting the successful operation, although they cannot be considered to be so generally valid and indispensable as the aforementioned ones.

- The dominant ADR method is conciliation
- Arbitration is applied only following an unsuccessful conciliation procedure.
- Complementing the actual dispute resolving activity the institutions play an important role on other relevant field of employment relations, such as in advising, the drawing up of contracts and training.

After having looked over the internal factors, let us cast a glance at the external, social factors too, concerning their potential role in making the methods of alternative dispute resolution successful in employment conflicts. The question is again whether – similarly to the internal features discussed above – there exist external conditions that are essential and indispensable for the effective functioning of ADR institutions.

External factors:

We can establish that both the dynamic (historical development) and the static (present state) analyses outline tendencies along which the countries and systems subject to closer examination can be structured and classified. Based on the comparative analysis evolving around the historical development of

data available directly from the institutions themselves, b) EIRO studies on collective and individual dispute resolution in employment conflicts (2004 and 2006) and c) the book of De Roo and Jagtenberg (1994) on ‘Settling Labour Disputes in Europe’.

⁵ In Hungary no earlier institution has been revived following the system transition.

the five ADR systems we can point out certain external features that bear clear significance in the successful functioning of ADR mechanisms. Such features are:

- 1) the positive, cooperative approach and relation of the social partners
- 2) the supportive, integrating attitude of the state

In those places where the above conditions are fulfilled, the peaceful resolution of collective disputes institutionalised early on and was able to become efficient and effective. Let us see now these external conditions summed up in a table in the case of each country:

Table I
External conditions influencing the effectiveness of ADR mechanisms in collective employment disputes

Country	Relation of social partners	Attitude of the state
Great-Britain	Co-operation from the beginning, initiatives from the ground up	Support and integration of the existing, voluntary mechanisms
Netherlands	Low-level co-operation, hostile relations, competition, few initiatives from the ground up	Negligence and non-integration of the few existing, voluntary mechanisms
Belgium	Intensifying co-operation, initiatives from the ground up	Support and integration of the existing, voluntary mechanisms
France	Low-level co-operation, hostile relations, competition, few initiatives from the ground up	Negligence and non-integration of the few existing, voluntary mechanisms
Hungary	Low-level co-operation, hostile relations, competition, few initiatives from the ground up	Negligence and non-integration of the few existing, voluntary mechanisms ⁶

Source: the author.

As we have seen during the earlier analyses, not every system (institutions and mechanisms) was able to function successfully during the last two decades. It appeared from the historical overview as well as from the analysis of the definitions related to the traditional classification of employment disputes that differentiating between and dealing separately with the different types of disputes makes practical sense only along the collective-individual axe because the axe of interest and rights disputes possesses a much lower, *voir* inessential practical reality. That is why I chose to make a differentiation between those systems that contain permanent institutions on the field of collective and/or individual dispute resolution and those who do not. It is also of high importance to remark that in those systems where permanent institutions and actors have become firmly established, they function mostly successfully. Those institutions and actors namely who did not reach popularity and in whose environment the above external conditions were not fulfilled, have died away on the long road of development. Where the relations between the social partners were competing, hostile and the state did not embrace voluntary mechanisms, the institutions could not gain foothold and were functioning only temporarily, never achieving real popularity. Consequently, we can claim that in the examined and compared Western-European countries where an ADR institution has become solidified by the end of the 20th century, this latter has been and is still functioning mostly successfully. Hungary is the great exception among the five countries because although here we find a permanent service for the peaceful resolution of employment disputes, its operation cannot be considered altogether successful.

Table 2
Permanent ADR institutions

Countries	Permanent institution for the resolution of collective disputes	Permanent institution for the resolution of individual disputes
Great-Britain	yes	yes
Netherlands	no	yes
Belgium	yes	yes*
France	no	yes
Hungary	yes	no

* Only in those individual disputes that endanger collective relations.

Source: the author.

As we can see, while in Great Britain and Belgium there exist a permanent ADR institution for both collective and individual disputes (in the Belgian case however the authority of the *Comités Paritaires* is limited in individual disputes to those that could possibly influence collective relations as well), in France and the Netherlands we find permanent institution only on the field of individual disputes. In the British and the Belgian models the resolution of collective and individual disputes is embraced by the same institution, their authority covers both types of employment disputes. In the French and the Holland system, however, no permanent institution operates in collective disputes as earlier initiatives have failed throughout the 20th century. However, on the field of individual disputes we can find permanent institutions, even if they are quite different in their history, origin and functioning. The Hungarian system in institutional terms resembles rather the British-Belgian couple, since here we can clearly find a permanent service entitled to act in the resolution of collective disputes but its functioning – as we have already mentioned – cannot be considered effective on the basis of its now more than 10-year-operation.

4.3.2 Typology

If we compare the table on permanent institutions and the table on the external conditions influencing the effectiveness of ADR mechanisms in collective employment disputes, the parallel between the grouping or classifying options offered by the two tables seems apparent. This means that (with the necessary exception of the Hungarian example where the historical development could not be treated functionally together with the Western European countries) we can observe a direct correlation between the already discussed external conditions – relation of the social partners and attitude of the state – and the ADR models operating in the given countries, that is the existence and features of institutions with respect to their authority of acting in individual and/or collective disputes. Summing up the argumentation, we can conclude that Great-Britain and Belgium form one type of employment ADR system, while France and the Netherlands constitute another type of system. The first is characterised by strong ADR mechanisms in collective disputes, whereas the second is dominated by ADR methods applied in individual disputes. All this – as we have seen – seems to be in close correlation with the characteristics of the external factors, that is whether the social partners cooperate or compete and whether the state has played an integrating, supporting role in the development of the relevant institutions. In the light of the above argumentation and

⁶ In Hungary instead of existing and relatively successfully functioning institutions and mechanisms we can only speak of earlier experiences, since at the establishment of the ADR service (LMAS) there have not been such institutions and mechanisms present.

based on the correlations discussed above, we receive the following formula, or in other words we can set up the following typology. (The integration of the Hungarian model raises difficulties, because according to the criteria of the typology it can be classified as belonging to the group constituted by Great-Britain and Belgium, but we find no correlation between the institutional and the social (external) factors. Similarly, the ineffective operation of the LMAS can be traced back to the traditionally competing, non-cooperative attitude both on the level of the state and on that of the interest representation organisations.

Table 3
ADR typology in employment disputes

Types of ADR systems	Countries
ADR dominant in collective disputes	Great-Britain Belgium Hungary
ADR dominant in individual disputes	France The Netherlands

Source: the author.

Typologies are generally simplifying the practical situation by nature, the present one being no exception. However, in the light of the results produced by the research, this seems the most adequate and suitable way of classifying the employment ADR systems of the examined countries. We can naturally detect differences both among the British, Belgian, Hungarian and the French, Dutch models, the systems are not identical but on the basis of the conditions and criteria deemed most important we certainly receive the above pattern. Differences in the case of the ADR being dominant in collective employment disputes relate for example to the circle of authority in the resolution of individual disputes, where we find the widest authority in Great-Britain and the narrowest in Hungary. Moreover, in Great-Britain the cooperation and the mutual initiatives of the social partners look back to a considerably longer history than in the Belgian case, and also the supportive and integrating attitude of the state has been more pronounced. Similarly, differences can be found between the French and the Dutch models as well, since while in France the *Conseils de Prud'hommes* (Conciliation Committees) has a two-hundred-year-old tradition and are composed of representatives of the social partners, in the Netherlands the Centres for Work and Income employ public servants and did not grow out as a result of the organic development in the employment relations but were created during the second world war in a more artificial way based on foreign pressure and pattern and finally became integrated into the Dutch system. All the more, the French model is organizationally much more complex an institution than its Dutch counterpart because it is structured into sections not only from a geographical but also from a sectoral aspect. Taking into consideration the essence of the systems and the basis of the typology, the two pairs of countries nevertheless fall under the two aforementioned categories.

The Hungarian system – as we have pointed out earlier – technically belongs to the category where ADR is dominant in collective employment disputes because it possesses a respective permanent institution entitled to act in collective disputes but none in individual disputes. However, the further relevant institutional characteristics of the model – and we have seen it in relation to the table dealing with the external conditions of a successful model – are not conform with the external conditions, as it happens in the

case of the Western-European countries. In the following part we shall examine what contradictions and tensions the Hungarian model contains and what the possible explanations can be behind.

4.3.3 The ambivalence of the Hungarian model and reform proposals

The most apparent contradiction in the case of the Hungarian system is that while its external conditions would predestine the establishment of a model where ADR is dominant in individual disputes (similarly to the French and the Dutch case), based on its institutional arrangements following the system change it is classified according to the typology as a system where ADR is dominant in collective disputes (see the British and the Belgian case). In other words, at institutional level the system established is characterized by the resolution of collective disputes that has been functioning in an environment characterized by social partners with low cooperation and poor initiatives completed by a traditionally non-integrative state attitude – an environment which historically proved non-favourable for such an institutional arrangement. In the French and the Dutch system where the social environment boasts of features similar to those prevailing in Hungary, initiatives destined to operate ADR in collective employment disputes have failed by turns, their services never attaining high popularity and success. The modern French and Dutch models – formulated by reforms in the second half of the 20th century – do not contain permanent institutional or procedural elements in relation to the peaceful resolution of collective employment disputes; on the other hand they both have a strong ADR system at disposal concerning individual employment disputes. Taking into account the anomaly of the Hungarian model discussed above we can not register surprise in front of the ineffective functioning. Realistically we could not have expected any other result based on the outcome of the historical experiences and analysis, since the necessary external factors have not been present. The situation is made even more precarious by the fact that no ADR procedures have been established on the field of individual employment disputes in the frame of the reforms introduced by the system transition. One explaining factor is that the development of alternative dispute resolution had been broken and hindered so often and so profoundly during the 20th century that it made practically impossible a natural way of development, and resulted in an accelerated, from some aspects artificial reorganization of the field during the democratic consolidation. However, the negotiation procedure that eventually led to the establishment of the LMAS and to some extent the negotiating partners are responsible for not having taken into account certain historical traditions and practices, and here I refer to the arbitration committees on company level that had appeared back in the 60s as part of the economic reforms. If we wish to increase the popularity of the service and improve its efficacy, we should (have) integrated and incorporated several mechanisms and procedures that had been able to operate relatively successfully earlier on and which could have been transferred in a modern, democratic form, also saving some aspects of historical continuity. Clearly these institutions, mechanisms and procedures cannot and would not function with the same content as they had decades earlier but in a democratized form they might have been resuscitated in the beginning of the 90s. However, all in all, the conditions given by the social environment and concretely the characteristics of the employment relations in Hungary do not provide the best base for a model with strong ‘collective ADR’. This tendency does not mean however that the alternative resolution of collective disputes should not

be promoted at all and efforts would all be in vain, since much could be done – as we have seen – through the consideration of historical heritage and geographical coverage for example. However, we shall keep it in mind that it will most probably not result in dramatically positive results in the given environment; these potential efforts could most probably help in bringing forth the best possibilities such an environment could produce but prospectively never attaining results close to that of the British or the Belgian model.

Thus, it seems that if we wish to increase the popularity of the Hungarian model and increase its efficacy, we will have to move away from a dominantly collective towards a dominantly individual ADR system, based on the understanding that the social environment and the existing external features in general make a favourable background for this latter model. Theoretically, this could be achieved in two ways:

- a) through the enlargement of the authority of the LMAS, or
- b) through the establishment of a separate institution for resolving individual employment disputes.

Although the French and the Dutch model resemble the second alternative, taking into account the Hungarian circumstances, the first proposal at present seems clearly more accomplishable, easier and more convenient to implement than the first version. First, in the frame of the LMAS experts have been assembled who have participated in ADR trainings, are skilled and have expertise on the field. Second, the Service has been struggling for several years now to expand its circle of authority. Third, the institution, its activity and methods have become known during the last decade among the actors of employment relations, albeit at a relatively low level. The dilemma presented is what concrete steps would promote the shift and generate an effective functioning as well as a more considerable social impact.

If we consider the internal factors behind the successful operation of ADR, we can observe several shortcomings. Although the Service is of a permanent nature, neither the condition of geographic coverage, nor that of the demand-related authority is fulfilled. Concerning this latter deficiency, the necessity of the integration of individual disputes is supported by reports of other ADR institutions (e.g. the annual reports of the ACAS), according to which the number and the weight of individual employment disputes has been growing gradually during the past decade as a result of the transforming employment relations. Similarly important is to mention that dispute resolution at company level has also come more into prominence recently (let us reflect on the tendencies discussed at the introduction of the present British and French system), which could be a guiding principle at the potential reformation of the Hungarian model. This aspect is also strengthened by the tradition of arbitrary committees functioning at company level, to be traced back to the 60s, as mentioned earlier. Summing up the above argumentation, reforms concerning the present Hungarian ADR system in employment relations could be initiated in two fields:

- a) reactivation of the tradition of arbitrary committees at company level in a democratic form
- b) reforming the LMAS:
 - including the resolution of individual disputes into the sphere of authority (principally in relation to dismissals, since in accordance to the Western-European tendencies the lion part of individual disputes originates in these cases);
 - realizing geographical coverage (change the Budapest-centred feature);

- determining a fix amount concerned in the dispute below which the parties are bound to reach settlement through alternative methods (in view of the French model, aiming at reducing the burden of the courts and at the same time rationalizing the cost management);
- putting more emphasis on the organization of company trainings and the advisory activity;
- introducing the participation of LMAS at the conclusion of collective agreement, in the spirit of preventive conflict management.

Besides the above proposals, labour courts could also be involved in ADR procedures. As a result of this, alternative ways of dispute resolution would become integrated among the responsibilities of the labour courts. The Dutch model could serve as example, although naturally the problem of the already mentioned dualism – the parallel existence of independent, separately functioning courts and specialized institutions practising ADR procedures that have no relation with each other whatsoever and might at times even contradict each others' judgement – will have to be avoided. However, this idea touches not only upon the reform of the ADR system but on the courts as well, therefore it requires a profound and detailed analysis and further development of the theory. Besides, in such a case the attitude and approach of lawyers to ADR is far from being a negligible factor, as we have seen in the theoretical part of the dissertation, precisely in the chapter on alternative dispute resolution. During the long negotiations that led eventually to the establishment of the LMAS, lawyers showed a rather negative and unfavourable attitude concerning the application of alternative methods in rights disputes, and this approach of course does not promote potential reforms. As it has been mentioned several times already with regard to the typology, the social ground in Hungary seems promising most of all from the aspect of the establishment of a permanent ADR system based on individual dispute resolution. With this in mind, it would be practical to consider and examine those models in the first place that are characterised by similar external factors.

4.3.4 The relation of ADR typology to typologies in employment relations

If we recall the typology of Slomp and that of Due, the most apparent difference we can observe when comparing them with the employment ADR typology is that the latter is not based on a geographical or regional classification. With Belgium and the Netherlands belonging to opposite types in the two aforementioned classifications, it would be indeed very difficult to imply such a parallel. Moreover, perhaps one of the most striking differences between the ADR typology and the typologies on employment relations is the classification of these two countries. In the light of this deviation, it seems that the ADR models are not in direct relation with factors such as the degree and the level of state intervention (see Due typology) or the character of the bargain between the social partners (see Slomp typology). This conclusion, however, coincides with the results of the analyses covering the historical development and functioning of ADR systems. Comparing the British and the Belgian systems for instance – which fall into the same ADR category otherwise – we have found that while in the previous system the state is a rather remote actor, in the later model the state intervenes to a much larger extent in the shaping and operation of employment relation as well as in the resolution of employment disputes. The aspect where the role of the state receives

importance in the development of employment ADR systems is not the extent of intervention (quantity) but much more the degree of integrating the demands of the social partners and mechanisms created on lower levels as social initiations into the system (quality). Examining the typology constructed by Crouch – neo-corporatist versus liberal model –, although we find that Belgium and the Netherlands belong to different categories, we can also observe that France and Great-Britain are placed in the same category, which again contradicts our ADR typology. Still, the Crouch classification stands closer to the present typology from the aspect that categories are not established on a regional basis but along certain characteristics relevant in employment relations. When comparing ADR typology with the legal classification (Prugberger) – which, in harmony with the Slomp and Due typologies has a regionally divided character – we can observe that they hardly correspond with each other. The latter places namely France, Belgium and the Netherlands in the same category, clearly in disharmony with the ADR typology.

Before assessing the conclusions, in the light of the above survey I would like to stress once more that the ADR typology set up by the dissertation (and let us now take the Western European countries as a basis) is based on the analysis of four countries, the tendencies described and the classification suggested is to be considered as guidelines for a wider final typology based on a wider survey. As far as conclusions are concerned, we can claim that neither typologies on employment relations show overlap with the employment ADR typology. This can lead us directly to the supposition that the factors influencing the development and the operation of alternative systems are different from those used by employment relations typologies, or, in other words, the aspects determining employment relations systems cannot be considered significant in describing employment ADR models. As we have seen, the elements of primary importance in the present case are the co-operative or competitive, adversary nature of the relation between social partners as well as the integrating or excluding attitude of the state vis à vis popular, lower level initiations. It is interesting to notice that the element concerning the co-operative as opposed to the competitive, adversary nature of the relation between social partners reveals explicit similarity with the two determining approach of conflict resolution already introduced in the chapter on alternative dispute resolution. We have also seen what drawbacks can follow from a competitive, adversary approach. This serves as another explanatory factor for why, in an environment lacking co-operative behaviour on the side of social partners and the state, no ADR model on the field of collective disputes could become consolidated and operate successfully for a longer period.

Summarizing the above arguments, we can conclude that the typology of ADR systems on the field of employment relations corresponds to a much larger extent to characteristics along which conflict resolution typologies are formulated than to those aspects along which employment relations classifications are determined. However, we have also observed that besides the characteristics of conflict resolution – as the tables have displayed – employment ADR typologies are also influenced by aspects of employment relations that diverge from the traditional classifying criteria.

4.3.5 How can the research be further developed?

In my view, the research can be developed into two directions:

- a) On the one hand it seems a rather natural way to continue the research by expanding it through the inclusion of all countries of the European Union. This would make the formulation of a complete employment ADR typology possible, which could be a valuable contribution to the scientific literature.
- b) On the other hand, we could open the way towards the application of alternative dispute resolution on other fields than employment relations and examine how ADR methods are functioning. With the help of similar analyses we can shed light on the potential correlations between the effectiveness of the ADR systems functioning on different fields. The results would also indicate what could be the possible chances and what aspects should be taken into account during the public policy planning in case a country wishes to introduce alternative disputes resolution on a new domain. Naturally, these analyses can also be carried out on a comparative basis among European countries. The development of the research into this direction and the following results would hold significance for and contribute especially to the literature on conflict resolution.

5. Appendix

Slomp's typology
European employment relations

Models	Countries
British	Great Britain and to some extent Ireland
Northern-European	Austria, Germany, Belgium, Netherlands, Scandinavian countries and to some extent Switzerland
Southern-European	France and the Mediterranean countries

Source: Slomp, Hans (1990) **Labour Relations in Europe: A History of Issues and Developments** Westport: Greenwood Press
Author's table on the basis of Slomp's typology.

Due's typology
European employment relations

Models	Countries
British-Irish	Great Britain, Ireland
Northern	Sweden, Denmark
German	Belgium, Netherlands, France, Germany, Italy, Greece

Source: Due, J-Madsen, J. S.-Jensen, C. S. (1991) *The Social Dimension: Convergence or Diversification of IR in the Single European Market?* in: **Industrial Relations Journal**, 22(2)
Author's table on the basis of Due's typology.

Crouch's typology
European employment relations

Models	Countries
Neo-corporatist	Austria, Denmark, Finland, Norway, Sweden, Netherlands, Switzerland, Germany
Liberal (pluralist)	Belgium, France, Ireland, Italy, United Kingdom

Source: Crouch, C. (1993) **Industrial Relations and European State Traditions** Oxford: Clarendon, pp 14

Prugberger's typology
European labour law

Models (legal systems)	Countries
German	Germany, Austria, Switzerland
Francophone with German influence	Netherlands, Belgium, Luxembourg, France
Latin	Italy, Spain, Portugal
Scandinavian and Anglo-Saxon	Denmark, Sweden, Finland, Norway, United Kingdom, Ireland

Source: Prugberger, T. (2006) **European and Hungarian Comparative Labour Law** Budapest: Complex, pp 601-607
Author's table on the basis of Prugberger's typology.

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