Alternative dispute resolution
in Hungarian employment conflicts

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Alternative dispute resolution
in Hungarian employment conflicts

Abstract
In my paper I would like to deal with the issue of applying alternative dispute resolution (ADR) methods, such as conciliation, mediation and arbitration on the field of employment conflicts\(^1\) in Hungary. I find it is an important question of Hungarian public policy why – almost a decade after the establishment of the Labour Mediation and Arbitration Service (1996) – peaceful dispute resolution has been functioning so poorly in disputes arising between business interests and trade unions (collective interests) in the years of early and late consolidation following the systemic change.

I would like to introduce and analyse the application of alternative dispute resolution methods in Hungarian employment conflicts, or precisely the establishment, functioning and characteristic of the Labour Mediation and Arbitration Service with the help of public policy analysis. I will carry out the task by following the scheme: ‘agenda, formulation, adoption, implementation and evaluation’. (Anderson, 1994)

Introduction
The Hungarian Labour Mediation and Arbitration Service (LMAS) was established ten years ago. According to last years’ statistics they had 6 cases\(^2\) (all for mediation and none for arbitration), the previous year 11 cases\(^3\) (9 for mediation and 2 for arbitration) where both parties agreed to involve the service in their dispute. These numbers can evoke numerous thoughts and suggest many things, but what seems to be certain even for the first glance is that these numbers are most probably very low compared to the actual disputes arising from employment conflicts in Hungary. Our task is to follow the process that started with the idea of the necessity to create a modern institution for alternative dispute resolution in Hungary and eventually lead to the establishment of the service in 1996, and also to evaluate how efficient and effective it has been during the first decade of its operation.

In the Western European practice peaceful conflict resolution has had a long history. However, in the countries of East-Central Europe (ECE), mediation and arbitration either gained ground only following the system change or, even if it had had roots in the end of the 19\(^{th}\) and the first half of the 20\(^{th}\) century, suffered long decades of negligence until the 1990s. In the ECE region it was not until 1996 that the first labour mediation and arbitration service was established, that of Hungary. (Casale ed.,1999). The Hungarian labour code of 1992 already contained provisions for mediation and arbitration, which prescribe that before a strike is called, attempt for

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1 Although employment relations are traditionally known and called as either labour or industrial relations in the relevant literature and also in state administration, there has been a tendency during the last decade to change the expression to employment relations, indicating the changes that the field itself and the subject it focuses on have undergone during the 90s especially (see for example Dunlop and Zack, 1997 or Bamber és Lansbury, 1998). This transformation signified in the change of the terminus technicus refers a) to the decline of trade unions, b) to the transformation of employment contracts, c) to the understanding that human resource management has a place in the study of employment relations and d) to the need of following an interdisciplinary approach when examining and analysing employment relations.

2 “The service of the LMAS is not requested frequently’ in: NAPI Online (DAILY Online) March 1, 2006

3 Report on the activities of the Labour Mediation and Arbitration Service between September 2003 and September 2004 LMAS, Budapest, pp 2
reconciliation has to be made by the initiators to resolve the conflict peacefully. In 1996 however, as I mentioned earlier, a special body was established by an agreement between the government and the social partners, the Labour Mediation and Arbitration Service.

Methodology

The development of the alternative dispute resolution (ADR) system will be interpreted following the structure of public policy analysis, as I claim that the idea and institutionalisation of peaceful conflict resolution on various social fields, thus on the field of employment relations as well is a basic element of consolidated democratic systems and can, or rather should therefore be considered an important social policy; following from this understanding is that the establishment, development and functioning of ADR methods in the case of employment conflicts can logically be viewed using the levels of public policy analysis. These levels – as I have already mentioned in the abstract – are the following: a) agenda (also known as initiation), b) formulation, c) adoption, d) implementation and e) evaluation. (Anderson, 1994:37) But let us see the phases more in detail in the following table:

**Table 1**
The policy process

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<tbody>
<tr>
<td><strong>Definition</strong></td>
<td>Those problems, among many, that receive the serious attention of public officials</td>
<td>Development of pertinent and acceptable proposed courses of action for dealing with a public problem</td>
<td>Development of support for a specific proposal so that policy can be legitimised or authorized</td>
<td>Application of the policy by the government’s administrative machinery</td>
<td>Efforts by the government to determine whether the policy was effective and why or why not</td>
</tr>
<tr>
<td><strong>Common sense</strong></td>
<td>Getting the government to consider action to the problem</td>
<td>What isn’t proposed to be done about the problem</td>
<td>Getting the government to accept a particular solution to the problem</td>
<td>Applying the government’s policy to the problem</td>
<td>Did the policy work?</td>
</tr>
</tbody>
</table>


I also find that this structure is useful to follow from various - more precisely three - aspects. *First*, it provides clear-cut lines for the interpretation and the analysis of the issue through the separation of the different policy stages. *Second*, what is an equally important point is that this type of analysis combines the theoretical and the practical aspects of a certain issue. *Finally*, third but not last in its significance is that this sort of analysis ensures dynamism. It enables both the researcher and the reader to see the development of an issue in its very process, advancing from one grade to another, from appearing on the issue level to the actual impact of implementation. Many times we look at (analyse and compare) regulation, institutions and their functioning in their actual state, which can be considered a rather static examination, while by applying policy analysis we are able to see the whole process in its dynamic
form, and also understand some motivations and hidden explanations that are revealed by analysing the process from its very beginning, in the light of all the motivations and possible resistance that might have influenced its establishment and authority, as well as have an effect on its characteristics and actual functioning.

Let me note that although the elaboration of the subject related to ADR in employment relations in Hungary has displayed an increasing tendency during the last couple of years, up to now no public policy analysis has been carried out on the issue. It might very well be related to the fact that those scholars who have dealt with the question tend to be sociologists and legal scholars, who approach the field through different methods. The history around the establishment of the LMAS has been elaborated by Mária Ladó, who had been an active participant at the birth of the institution and prepared a reliable, chronologically built summary that takes into consideration the colliding interests and motivations whirling in the background. (Ladó, 1999:64-91) Her study serves as a very useful material for the elaboration of the first three policy phases (Stage 1: Policy agenda, Stage 2: Policy formulation and Stage 3: Policy adoption), and I will rely on it during my analysis as well as on documents of primary source related to the issue.

Now, let us dive into the depth of policy analysis and examine each stage one by one, from the agenda of introducing alternative dispute resolution into the dispute settlement system in relation to employment conflicts until the very establishment of the actual institution responsible to carry out the task of mediation and arbitration.

Stage 1.
Policy agenda

It was still at the beginning of the transitional period, in the early 90s that the question about the necessity of providing alternative ways to conflict resolution appeared on the decision making level in Hungary. The process started relatively early considering that we are speaking about a country where democratic change (system change) took place only a couple of years earlier, and surely at an early date if we take into account that Hungary was from far the first country in the East-Central-European region where an institution for mediation and arbitration in employment disputes was established. However, we also have to remark that implementation did not proceed rapidly following the initiation phase, as it took decision makers three years to actually establish the Labour Mediation and Arbitration Service and bring it into operation.

The initiation to introduce alternative dispute resolution in employment disputes began concretely with a project called “Social Dialog” launched by the government together with the social partners. This project did was financed by the PHARE (Pologne-Hongrie Aid a la Reconstruction Économique) and had actually a larger scale purpose than to create the possibility for peaceful conflict resolution: the time arrived when the government felt it was of high priority to bring order into the structure of employment relations in general. Institutionalising alternative dispute resolution – introducing an alternative way (notably mediation and arbitration), besides the traditional form of conflict resolution (litigation) – was one of the issues in concern. It can all the more be considered a significant initiation since peaceful conflict resolution is generally not listed among the basic elements of democratic systems and market economy; it is more an element of a developed, consolidated and mature society. The Hungarian initiative can therefore be regarded as a step of a certain weight on the road of democratic development towards consolidation, especially because the issue came to the surface at such a relatively early phase of the
transitional period. Through the establishment of an institution for applying ADR methods “rules of behaviour can be formed that are suitable to make peaceful conflict management function and that can simultaneously decrease the social costs of the development and operation of a market economy”. (Ladó, 1999:67)

As a matter of fact, applying ADR methods, or more precisely a third person in dispute settlement was not an unknown phenomenon in Hungary; important concerning the project in question was whether a specialised institution should be created and consequently an overall regulation be introduced to organise and coordinate the peaceful conflict resolution activities in employment disputes. In absence of these two – institution and regulation – alternative dispute resolution methods were operating through rather informal channels starting from the selection of the third person up to the final step of actual decision making. The lack of a formal context resulted in ADR becoming a double-edged weapon for the following reasons:

a) as there was no professional training of condition required for a third person to act in dispute settlement, the group of candidates was very far from being homogenous regarding either professional skill and commitment, therefore the chances of the parties to stumble upon a neutral and able mediator were not very high;

b) the search for a third person (mediator in most cases) and the negotiations concerning the settlement procedure proved to be a long procedure usually and the selection from the potential candidates, too, took place in an uncontrolled manner;

c) some parties possessed more information and maintained more channels, or in other words had a wider and more elaborated network around them that helped in the above processes (search for the third person, negotiations and selection) while others were less capable of making use of ADR methods in their conflicts;

Naturally, there were not only positive voices though concerning the necessity and usefulness of institutionalising ADR in employment conflicts. Let us see briefly what were the principal arguments pro and contra. I tried to structure the arguments according to special, country-related (Hungarian) and more general (internationally defined) characteristics. In the light of this separation let us see first what supporters claimed in Hungarian terms and from an international point of view and evaluation, then turn to what opponents argued for in both aspects. **Supporters** claimed that

in **Hungarian context**

- looking at the social and market conditions, in the transitional period one can clearly count on a substantial increase in collective disputes as a result of the rapid spread of collective agreements; furthermore interest disputes are no doubt suitable for alternative methods, as adjudication is used for rights disputes only (of course rights disputes are not excluded either from the potential authority of an alternative institution);

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4 I emphasise ‘third person’ thus suggesting a distinction between ADR methods and having a third person participating in the settlement process. I include ‘negotiation’ among ADR methods (in accordance with e.g. Palmer and Roberts, 1998) where there is no third person present and the decision lies exclusively in the hands of the parties. In my point of view it is an important distinction because the majority of relevant studies limit ADR methods to mediation and arbitration. However, I argue that even if negotiation seems a simple and self-evident bilateral way of settlement, it has an art, requires a skill from both parties in order to reach a successful outcome, and what is more important, negotiation constitutes the basis for conciliation and mediation. Therefore I believe that these methods should be treated not separately but in an organic unity.
• looking at the labour courts, it is apparent that there is far too much workload in relation to the given workforce which results in the protraction of judicial proceedings to such extent that it threatens with the irrelevance of the decision in the then actual setting;

• following from the above feature is that the experience of protracting disputes might result in the appearance of a so called “self-help” phenomenon where the parties avoid the road to adjudication and employment-related issues become open conflicts, threatening with escalation, which is clearly not in the interest of either social partner or the decision makers (government);

in **international** context
• the methods of alternative dispute resolution generally create a better understanding and a stronger willingness to make and keep a compromise between the parties than in the case of litigation, thus fostering a more stable relationship and generating a more open and flexible approach concerning the possible treatment of future conflicts;

• it is also a general understanding that the alternative ways of dispute resolution in the majority of the cases bring about a much faster decision and allow for substantially lower costs regarding the procedure than in litigation.

**Opponents** on the other hand claimed that

in **Hungarian** context
• the raison d’être of a such an institution if questionable as the number of employment disputes simply did not reach such a high level that the alternative ways of settlement should be regulated and institutionalised; the existing informal practices are just sufficient to cover the demand;

in **international** context
• establishing a specialised institution would probably create just another highly bureaucratic construction which might actually drown in its own “formality”, in other words in its over-formalised and over-regulated existence, meaning that the values of having a third person to facilitate the dispute settlement process between two parties in conflict such as the time and cost advantage as well as the relative simplicity and transparency of the procedure could easily be influenced in a negative sense.

**Stage 2.**
**Policy formulation**

In March 2003 in the frame of the already mentioned PHARE project tenders were invited by the Fact-finding Committee (created for the development of social dialog) concerning the establishment of an institution authorised and responsible for providing services for the peaceful settlement of employment disputes. Approximately a hundred experts were invited to participate in the tender of whom only seven actually came up with written propositions; four of the propositions were accepted but finally one of them failed to be elaborated. (Ladó, 1999:68) The three propositions and later elaborated concepts came from different backgrounds: one from
the Ministry of Labour and two from scientific institutions (university and research institute). It is also interesting to note that the authors working in the scientific institutions have their academic qualifications from different fields: sociology and law. The diversity of backgrounds will clearly contribute to the interpretation and understanding of the concepts, as we will see later in the chapter. It is also worth to mention the substantial difference of the presented studies concerning their volume: they range between 30 and 105 pages. After this short introduction let us see and examine the three concepts in detail. I prepared a comparative table that contains the main aspects of the institution, its authority and services together with the proposed solutions by the authors.

### Table 2

**Concepts for establishing the institution**

<table>
<thead>
<tr>
<th>Authors of the concepts</th>
<th>Ministry</th>
<th>University (authors are lawyers)</th>
<th>Research institute (author is sociologist)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Aspects of the concepts</strong></td>
<td>Interest disputes only</td>
<td>Interest disputes only</td>
<td>Interest disputes and collective rights disputes</td>
</tr>
<tr>
<td>Authority: types of disputes</td>
<td>Conciliation, mediation, arbitration</td>
<td>Conciliation, mediation, arbitration</td>
<td>Conciliation, mediation, arbitration</td>
</tr>
<tr>
<td>Authority: ADR methods</td>
<td>Larger than dispute settlement</td>
<td>Larger than dispute settlement</td>
<td>Larger than dispute settlement</td>
</tr>
<tr>
<td>Authority: additional activities</td>
<td>Tripartism</td>
<td>Partially tripartite, partially private</td>
<td>Tripartism</td>
</tr>
<tr>
<td>Guiding principle of establishment</td>
<td>Independent operation, impartiality based on tripartism</td>
<td>Independent operation, impartiality based on tripartism</td>
<td>Independent operation, impartiality based on tripartism</td>
</tr>
<tr>
<td>Independence of operation and impartiality</td>
<td>Tripartite council and two groups of experts (full time and listed)</td>
<td>Public administration and private experts</td>
<td>Tripartite council, president and two groups of experts (full time and listed)</td>
</tr>
<tr>
<td>Direction and organisation of the institution (structure)</td>
<td>Public</td>
<td>Public and private</td>
<td>Public</td>
</tr>
<tr>
<td>Finance</td>
<td>Not free but below price level</td>
<td>Not free, market-related</td>
<td>Free</td>
</tr>
<tr>
<td>Fees of services</td>
<td>Full-time and listed conciliators, mediators, arbitrators</td>
<td>Listed conciliators, mediators, arbitrators</td>
<td>Full-time conciliators and listed conciliators, mediators, arbitrators</td>
</tr>
<tr>
<td>Members providing dispute settlement procedures</td>
<td>Source: author’s own comparison</td>
<td></td>
<td></td>
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5 Proposal from the ministry (András Fésüs): 30 pages; proposal from the university (György Kiss and Gyula László): 71 pages, proposal from the research institute (András Tóth): 105 pages.
Now let us compare the three concepts more in detail along the aspects listed in the above table:

a) We find a substantial difference already at the first aspect concerning the **authority** or **competence** of the institution in type of disputes. First let us clarify what is meant under interest and rights disputes (a common division of employment disputes). For the task of presenting definitions let me borrow the explication of de Roo and Jagtenberg (1994:21-22), who – both of them legal scholars – give a very precise summary (at least as far as European definitions are concerned):

“Classification of labour conflict into rights and interest disputes depends on whether labour disputes result from an existing legal rule as laid down in the law or in collective agreements. If labour disputes lack such a legal basis then they are regarded as disputes over interests, which are also characterised as social or economic disputes. (…) Disputes over rights, also typified as grievance or legal disputes, are involved with the application or interpretation of rights as laid down in the law, individual contracts of employment, and/or collective bargaining agreements.”

As we have seen, only one of the concepts suggests that the authority of the institution should be extended to rights disputes as well. (It might not be by accident that it is not the lawyers’ concept, nor that of the ministry’s representative that would entitle the institution to act in other than interest disputes.) In my understanding this proposal signifies indeed a broader and more complex, as well as a more courageous and more radical approach. Broad and complex is the approach in the meaning that it reflects on longer term: it has been mentioned earlier among the pro arguments concerning the establishment of the institution that a large amount of collective interest disputes were to be expected in the middle of the 90s or – as Ágh calls it – in the period of “early consolidation”⁶. However, what had not been mentioned but I think irresponsible to leave out of the scope of attention is that in the not so far future there were a large amount of disputes to be expected regarding the interpretation of the relatively new collective agreements. It seems all the more realistic and logical to presume since we are talking of actors for whom collective agreements and what they represent are not well known and long used means and therefore their interpretation can easily be met with difficulties from either side. What bears importance from our point of view is that according to the Hungarian definition disputes concerning the interpretation of collective agreements belong to rights disputes. (Unlike to the American definition where disputes concerning the interpretation of collective agreements are considered interest disputes.) In the light of this definition it is clearer though why the question of the authority of the institution concerning the type of disputes can be significant to such a high extent. In my opinion not to look that much further in the future, its possible developments and demands means a rather narrow and simple approach, but maybe a deliberately limited one. (We will discuss this suggestion later in the chapter.) In brief, the exclusion of rights disputes might in the long run, as a matter of fact already on the middle run, lead to a situation where there will

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physically be not enough cases (disputes) for the service to handle as they would mostly concern issues arising from the (mis)interpretation and the deliberate violation of the collective agreement. This could actually create a legitimational vacuum around the institution. (And this is exactly what has happened partly to the service. I say partly because certainly the limitation of authority is not the only reason why the service finds itself in a vacuum, performing far below its actual potential and capacity regarding those fields as well that fall under its authority.)

Furthermore, radical and courageous is the proposal in the sense that on one hand it would provide the institution with a larger authority from the very beginning and on the other hand it is being aware of the fact that according to the Hungarian regulation it is a constitutional right (basic right) to resort to court proceedings (Act 57, Paragraph 1), which means implicitly that any decision – notably an arbitrary decision – that is brought about by the institution can actually be altered by adjudication. In other words, if the parties decide not to accept the decision of the arbitrator, they can turn to the Court of Labour for resolution, which fact also means that the application of an arbitrator could extend and slow down the settlement process. Thus, the enlargement of the circle of authority presented clearly a dilemma for the three parties involved in the creation of a mediation and arbitration service. However, I would argue that this is not a realistic danger (not to accept the decision of the arbitrator and file the dispute to court), since the two parties actually have an agreement signed where they declare that in case of dispute if they mutually agree to resort to arbitration, the decision of the arbitrator will be binding for both of them. The important momentum is that parties make use of arbitration on a voluntary basis and so will informally accept, or in other words make a silent agreement between them that they will treat the decision of the arbitrator binding not only in theory but in practice as well and will respect it to such extent as to prevent them from making use of their basic right to adjudication and a decision that could overrule that of the arbitrator.

In my understanding, nevertheless, I would suggest that the two other propositions and the final version elaborated and accepted on a tripartite level concerning the establishment and the operation of the mediation and arbitration service did not exclude the right to act in rights disputes drawing only on the fear of a possibly stalling and slowed down settlement process (in case the parties decide to disregard the arbitrator’s decision and turn to court) but grew out from a more principled approach. By suggesting this I mean that they were partially influenced in their decision by the pre-concept and traditional understanding of rights disputes having to be settled exclusively by courts, as they are and can be the only ones skilled and responsible for this task. Supporting this suggestion is the fact that during the second year of the tripartite negotiations in 1995 the Ministry of Labour presented a concept where they argued for the service to be authorised to act exclusively in interest disputes with regard primarily to the arguments formulated by labour lawyers and judicial actors in general, claiming that dealing with rights disputes belong to judicial institutions and professionals.

b) Our next aspect in order to compare the three proposals covers the ADR methods that the service should be entitled to perform. Here we do not seem to find differences among the proposals since all of them suggest the parallel existence of

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7 See the Proposition for the ministerial meeting to executive approval: Proposal to the establishment of the service responsible for conciliation and mediation.
conciliation, mediation and arbitration. What would be interesting to take a closer look at, however, are the terms ‘conciliation’ and ‘mediation’. Although the proposals mention them separately, in Fésüs’ study they are referred to in a combined way suggesting no clear demarcation between the content and form of the two terms. We have to add though that at that time, that is at the time (1993) when the Fact Finding Committee invited proposals for the establishment of an institution responsible for the peaceful setting of labour disputes, the Labour Code did not contained yet the possibility – and in fact the obligation – of applying conciliation during the settlement process of labour rights disputes. (see Paragraph 5, Clause 199 in the Labour Code) However, following the introduction of compulsory conciliation in labour rights disputes conciliation and mediation have clearly become both separated terms and methods, leaving conciliation to be applied exclusively in case of rights disputes and reserving mediation for interest disputes. In fact this is a rather unusual separation compared to the American practice where the two terms have become during the decade of formation of alternative dispute resolution practically interchangeable. In the western European practice the two terms signify methods and procedures that show much similarity with each other but are nevertheless treated as separate settlement methods in the majority of the systems. However, a separation that is characteristic to the Hungarian system – the allocation of conciliation to rights disputes and the reservation of mediation for interest disputes – is not found elsewhere, therefore can be considered a rather unique arrangement. An interesting detail is that Tóth in his proposal stresses the priority of conciliation as compared to the two other settlement methods (mediation and arbitration). He emphasises the high-degree of informality of the previous method where the parties possess the relatively highest degree of freedom to shape the process of negotiation and can exert the largest influence on the actual outcome of the dispute. Curiously enough, as we have seen, conciliation finally ended up to be applied only in rights disputes and simultaneously was excluded from the settlement methods performed by the mediation and arbitration service.

c) The following aspect deals with those additional activities that the service should be entitled to perform besides its basic task of dispute settlement. Fésüs was of the opinion that the service should also perform preventive mediation including the preparation of parties for the negotiation process and the teaching of negotiation techniques. Kiss and László also supported the preventive mission of the service and compared to the two other proposals suggested a larger and more complex circle of activities. Among these services we find supplying of data, teaching of negotiation techniques, professional consultation, the maintenance of the parties’ relations and that of the reached agreements. They also suggested that the service should provide preliminary legal control on collective agreements in order to avoid possible misunderstandings and misinterpretations in the future and thus to avoid future disputes arising from the aforementioned causes. Finally, coming to the third proposal, Tóth argues that the service should be entitled to provide professional consultation and promote the peaceful management of relations between the social partners, as well as the establishment of appropriate collective agreements and their successful maintenance.

In the light of the above propositions concerning the additional activities of the service besides its main task of providing alternatives to litigation in the form of ADR methods we have seen that all the three authors stressed the importance of
preventive activities, although at different stages of the evolution of disputes. While on the one hand Kiss and László as well as Tóth supports the introduction of preventive activities which could help avoiding the possible formation of future conflicts and disputes, Fésüs opts for preventive actions to be provided when dispute is already presented, preparing the parties to adopt a co-operative approach in order to promote a successful outcome. Although both activities can be labelled preventive, I would call attention to the significance between prevention at the stage when dispute has not been formulated yet – but a high risk exists that it will emerge – and at the stage when dispute is there already and prevention will refer to the parties’ actual attitude concerning the negotiation process. I would simultaneously suggest a distinction of terminology as well, where the previous version could be called “proactive prevention”, while the latter we could refer to as “active prevention”.

d) As for the guiding principle of the establishment of the service, we find a noteworthy difference among the three proposals, or more precisely one of them is outstanding with its proposition of a mixed – public and private – founding principle and structure. Fésüs and Tóth clearly imagine the institution established on a tripartite basis, while Kiss and László in their concept outline a complex institution including private ownership and management as well. They suggest a background where on one side the public principle is embodied by an institution established by the social partners and operating on a tripartite basis, while on the other side the private principle is assured by several institutions created either by the social partners (one or both of them), or independently from them and which would operate on a purely commercial basis. This idea of mixed principles and a complex structure can be viewed as a bold initiation but concerning the situation of the time I do not believe it had a realistic basis. First, there were no established and regularly functioning private institutions or organisations on the field of alternative dispute resolution, which the concept could have been built on, and this lack of a private structure parallel to the fact that the public institution itself was just about to be brought to life created a high risk factor for the implementation of a complex structure. Second, the private institutions – as the concept itself suggested as well – would have operated on a fully commercial basis, which consequently meant the services provided by them were not free of charge, and not even below price level, as proposed by Fésüs otherwise, but in direct connection to market conditions. However, services not free of charge would naturally exert an influence on the circle of potential users, meaning the risk is presented that not every potential client could have an access to these services. The question rises therefore whether the principle of the establishment of the service is compatible with the practical selection of future clients.

e) Our next aspect treats the issue of the operation of the service, or more precisely its planned degree of independence in its operation and its impartiality. Regarding the point of independence, as we have seen in Table 2, there was an disagreement among the proposals as all opted for a service with independent operation. Fésüs and Tóth both maintain that the institution should follow the principle of tripartism in its establishment, management and functioning but at the same time it should not remain dependent on any other tripartite institutions. Kiss and László observe the question of independence from another angle because in their designed network they combined the tripartite structure with private
institutions, which again are independent bodies, not authorised by other institutions in their operation.

And here, analysing the question of independence we find the key to impartiality. All proposals regard independence as the main token of impartiality. The difference among the approaches can be found, as we have seen above, in connection to the guarantees of this independence. Fésüs and Tóth see the tripartite organisational structure and the tripartite decision making process as the guarantee of independent (and consequently impartial) operation, while Kiss and László hold that in their concept the token of independence (and hence of impartiality) could be found in the complex and multifold network system. (Ladó, 1999:72)

f) Our next aspect concerns the direction and the organisational structure of the institution. Kiss and László present again a rather exceptional structural arrangement that is a consequence of the service’s founding principle as a “mixed” (public and private) institution, resulting therefore a complexity (mixed direction) on the level of management as well. In the author’s view the public institution would “play second fiddle” concerning the main mission of providing procedures for peaceful dispute settlement; while this latter duty would be accomplished by the private bodies, the competence of the public institution would be limited to provide the parties in dispute with the list of conciliators, mediators and arbitrators. The public body would therefore require a considerably smaller administration than its private “colleague” as it would play only a complimentary role in the actual dispute settlement activity of the service.

The two other concepts, unlike that of Kiss and László, show close similarity on this domain as well – that of Fésüs and Tóth, just like in the previous aspect. In both cases a tripartite council would be responsible for the direction of the service, while the actual tasks would be performed by full time and listed experts (conciliators, mediators and arbitrators). However, if we look at the two proposals more in details, we can trace remarkable differences too. According to Fésüs it is extremely important that there be a team of full time experts who can be mobilised quickly and react on the spot in case of demand. Parallel to this group would function the listed experts, from whom the parties could choose the person according to preference to act as a third person in the dispute settlement process. Conciliators and mediators would be organised separately from arbitrators, and consequently separate tripartite councils would stand at the top of each section. In Tóth’s proposal we find the same distinction between full time and listed experts but their distribution and function vary from that introduced by the previous concept. Tóth outlines a structure where there are only one or two full time experts – notably conciliators –, and a president submitted to the tripartite council, while the rest of the experts – conciliators, mediators and arbitrators – would be available from a list.

Remarkably, both authors make a differentiation between the types of ADR methods, or more precisely between the groups of experts performing conciliation, mediation and arbitration. Fésüs stresses a distinction between conciliators and mediators on the one hand and arbitrators on the other, while Tóth accentuating the importance of the role of conciliation (and we have already mentioned his preference towards conciliation compared to the other methods for its highest informality and flexibility), allows only conciliators to be full members, while
mediators and arbitrators, together with other conciliators, are to be found as listed members.

g) As far as the financing of the service is concerned, the concepts vary again following the same pattern that we have seen in the case of several aspects discussed above. According to Kiss and László’s proposal both the central budget and private financial sources are involved in the financial management of the service, which is the result of the much-discussed complex institutional system. The operation of the public body would be assured by state budget while the private body, which actually performs conciliation, mediation and arbitration would operate on a purely commercial basis. The two other concepts again differ significantly from their previous fellow-proposal in the aspect that they do not build on private sources; they display common features with each other but we also find an important difference between Fésüs’ and Tóth’s proposals. They both suggest that the operation of the service be financially maintained by state budget, but while Tóth sees it as the only source, Fésüs argues that exclusive state financing should be present in the formative phase of the service, and later tripartite financing should be considered. He also emphasises that tripartite actors do not have to bear burdens evenly distributed; the proportions of financial contribution provided by the three sides, the state and the social partners can be subject to mutual agreement.

h) As for the subject on the fees of services interestingly enough all three proposals differ; from this aspect Fésüs’ and Tóth’s concept show no similarities as it has been the case at several other aspects discussed earlier. Fésüs opts for a solution where services are not free but would be provided nevertheless for fees that are below price level, in order to increase the competence of the institution. The concept of Kiss and László, as we have seen before, results clearly – as the actual services of conciliation, mediation and arbitration would be provided by market-based private institutions – in creating fees that correspond to market price. Finally, Tóth argues that dispute settlement services should be provided for free, allowing an access for every potential demand and client.

i) Our last aspect refers to the members of the service who actually provide conciliation, mediation and arbitration and thus perform the main task of the institution. We already cast a look at these groups of experts while examining the organisational aspect of the service but let us see again more precisely what structure the three authors describe in their proposals. Whereas Fésüs and Tóth include full-time members as well (besides the listed conciliators, mediators and arbitrators), Kiss and László are of the opinion that listed experts are sufficient for the operation of the alternative dispute settlement mission. Fésüs and Tóth believe it is of high importance that there be full-time members in the service – we could call it an “express team” – who can act rapidly in case of urgent demand. However, Tóth would have only one or two full-time members and then only conciliators, as he holds that conciliation should be a preferred method compared to mediation and arbitration because it is the least formal among them and in relative terms it ensures the greatest freedom and independence for the parties in their efforts to search an outcome acceptable and respectable for both of them. Fésüs, unlike Tóth, would create a full-time expert group consisting not only of conciliators but of mediators and arbitrators as well. Remarkably, he actually
votes for the establishment of two full-time groups: one of conciliators/mediators (he in fact does not make a clear differentiation between conciliation and mediation in his proposal and treats the two methods inseparably from each other) and one of arbitrators.

The Fact Finding Committee completed its final version mainly on the basis of the three concepts discussed in detail in the previous part of the chapter, which was however also influenced by the Committee’s own interpretation and preferences. The responsibility to formulate the Committee’s final, uniform proposal lied actually on the president of the Committee personally, while the accepted version for implementation (discussed in the following stage) was the product of a protracted tripartite process.

Table 3
*Fact Finding Committee: Final proposal*

<table>
<thead>
<tr>
<th>Aspects of the concepts</th>
<th>Fact Finding Committee: Final proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authority: types of disputes</td>
<td>Interest and collective rights disputes</td>
</tr>
<tr>
<td>Authority: ADR methods</td>
<td>Conciliation, mediation, arbitration</td>
</tr>
<tr>
<td>Authority: additional activities</td>
<td>At the beginning phase only dispute settlement and gradual broadening of activities later on</td>
</tr>
<tr>
<td>Guiding principle of establishment</td>
<td>Tripartism (established by the Interest Reconciliation Council)</td>
</tr>
<tr>
<td>Independence of operation</td>
<td>Independent</td>
</tr>
<tr>
<td>Direction and organisation of the institution (structure)</td>
<td>Supervisory body: national interest reconciliation institution; full-time and listed members</td>
</tr>
<tr>
<td>Finance</td>
<td>Public financing at the beginning, later tripartite financing</td>
</tr>
<tr>
<td>Fees of services</td>
<td>Free</td>
</tr>
<tr>
<td>Members providing dispute settlement procedures</td>
<td>Full-time and listed conciliators, mediators and arbitrators</td>
</tr>
</tbody>
</table>

**Stage 3. Policy adoption**

Under ‘Policy formulation’ we have compared and analysed the three concepts that presented the basis of the final proposal for the establishment of an institution that would create an alternative to adjudication through providing peaceful dispute settlement methods such as conciliation, mediation and arbitration. In the followings let us have a closer look on the final proposal and simultaneously on the version accepted for implementation, which latter had been the result of a protracted tripartite negotiation process. Ladó claims there is no need to make comparisons between the final proposal compiled by the Fact-Finding Committee and the final version for
implementation agreed upon and accepted by the social partners and the government. She argues that the important factor is not how much has been eventually accepted and implemented from the final proposal of the committee, or put in another way how much the proposal had been “distorted” during the negotiation process but the fact that the establishment of the institution had been the result of mutual compromises and therefore both the social partners and the government can see it as their own creation. (Ladó, 1999:90) In my opinion Ladó is certainly right in ideological terms, by which I mean that naturally the mere fact of coming to terms in tripartite context about the establishment of the service is of great value and should be appreciated in itself as a considerable achievement. However, I believe that from the researcher’s point of view it does have some significance a) what final proposal had been created by the Fact Finding Committee mainly based on the three concepts discussed above (Fésüs, Kiss and László, Tóth) and b) how this final proposal relates to the concept finally agreed upon for implementation by all three sides involved (government, employers and employees).

In the following table the aspects of the two aforementioned concepts are summarised and compared:

<table>
<thead>
<tr>
<th>Aspects of the concepts</th>
<th>Fact Finding Committee: Final proposal</th>
<th>Tripartite negotiation process: Accepted version for implementation</th>
</tr>
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<tbody>
<tr>
<td>Authority: types of disputes</td>
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<td>At the beginning phase only dispute settlement and gradual broadening of activities later on</td>
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</tr>
</tbody>
</table>
Let us first have a closer look at the major differences concerning the most important features of the two proposals and then highlight the most crucial stages of the tripartite negotiations and the confronting – compromising interests present on the side of the government (the Ministry of Labour), the employers and the employees.

Before we enter into comparative and procedural details, let me add a short remark on obligatory bilateral conciliation between the parties. The Committee’s proposal emphasised the importance of direct negotiation between the parties in conflict before they turn to the service for assistance in the form of mediation or arbitration, that is before agreeing upon the inclusion of a third person into (the settlement of) their dispute. It could be an element worthy of respect but as a matter of fact, there is nothing original in stressing direct negotiation, as it is included in the Hungarian Labour Law, moreover, it was an obligatory step to take for the parties having a dispute prior to adjudication. (Article 5, Paragraph 199) Similarly to this obligation, according to the proposal the parties could not make use of the participation of a third person in their dispute as long as they have not completed the obligatory “effort” of direct negotiation. This approach implies that independent bilateral negotiation should enjoy an all-time-preference to third party intervention. (The aforementioned paragraph was invalidated in 1999 by Law LVI, Act 38, Paragraph 1.)

Let us see now at which aspects we can find differences between the two concepts (between the final proposal of the Fact Finding Committee and the proposal accepted for implementation), and simultaneously have a glimpse at the crucial stages of the tripartite negotiations that eventually led to the adoption of the final proposal implementing the LMAS in June 1996.

a) As far as the major differences between the features of the two concepts are concerned, we can see in the above table that they all are linked to the question of authority. The Committee’s proposal supported that the service be entitled to act not only in interest disputes but in rights disputes, more precisely in collective rights disputes as well, while the proposal for implementation opted exclusively for interest disputes. This is a significant difference, which was resulted by a very careful and somewhat unconfident approach from the employers’ and the ministry’s side, also influenced by the opinion of legal scholars, lawyers and judges.

b) We can also observe that the Committee’s proposal talks about three different forms of third party intervention, namely conciliation, mediation and arbitration, where conciliation remains, however, without a clear differentiation from mediation. Nevertheless, the finally accepted concept for implementation contains only two forms of peaceful dispute resolution, that of mediation and arbitration. This seems as a logical enough simplification, all the more, because conciliation was finally referred to rights disputes, and thus separated from the two other methods.

c) The issue of additional activities – besides the actual mission of providing mediation and arbitration – also reveals differences between the two concepts, where

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8 Conciliation and mediation in the Western European tradition are considered closely related methods but still usually differentiated by giving mediators the right to give opinion and suggest options for settlement, while conciliators act more like facilitators, their responsibility being limited to create an appropriate atmosphere for the peaceful settlement and provide the scenario and technicalities for the parties during the process. In the Hungarian labour law the distinction is also present, but in a rather special way separating and referring the two methods to different kinds of employment disputes: mediation is referred to interest disputes, while conciliation is referred to rights disputes in employment conflicts.
interestingly the version for implementation provides already from the beginning a larger scope than the Committee’s proposal. However, here we talk of activities – such as providing technical assistance and information as well as promoting and popularising mediation and arbitration – that are of much less importance than the core question regarding the types of disputes in which the institution is entitled to carry out alternative dispute resolution. In my understanding this was an issue where the ministry and the employers tended to be generous without having to sacrifice crucial interests.

In the above three points I have highlighted some of the tensions and contradicting interests of the tripartite actors. The road that eventually led to the final version for implementation was a long and rough one, which took two years to walk along. The first stage of the tripartite negotiations took place in July 1994, where the employers’ representatives demonstratively did not present themselves, while the other side (employee) expressed its firm support for the establishment of an institution that would provide alternative dispute resolution in employment conflicts. During the following months the Ministry of Labour worked out its proposal (October 1994), which – only a couple of pages long and clearly not elaborated and detailed enough to serves as a basis for a discussion on the merits - proved to be a drawback as it went back to the very question whether there was truly a need for such an institution, and if yes, then it should be established by a government decree and not on a tripartite basis. However, in their revised proposal (April 1995), they consented that the institution be established by a government decree based on a tripartite agreement. In the meantime the employers’ side was still not convinced about the necessity of the setting up of the service and expressed its doubts, while the employees’ representatives – on the contrary – again argued in favour of a service with relatively large authority and urged its establishment.

During the following months several experts were invited to elaborate the Ministry’s proposal in details. The new version suggested that the institution should be entitled to act only in interest disputes and have mediation as the main profile while arbitration would be a less important feature. In July 1995 – one year after the first round of tripartite negotiations – the aforementioned proposal was discussed and for the first time the employers expressed their consent concerning the establishment of the service. However, they also expressed their preference for a service whose operation is not independent but based on tripartite grounds. The employees’ side that was already disturbed by the limited authority (interest disputes) of the service, this seemed naturally too much of a compromise. As an outcome of the negotiation, a tripartite committee was established on mutual consent, which was trusted to work out proposals regarding the questions still in debate. The committee interestingly enough came forward with three different plans, which exerted a stalling effect on the course of negotiations.

Finally the three versions were transformed into two separated proposals: one agreed upon by the employers and another signed mutually by the government and the employees. The first one preferred a service within the frame of the National Conciliation Council, while the second emphasized the importance of independence. Another significant aspect where the two plans had different interests in mind concerned the appointment of mediators/arbitrators, more precisely whether the partners in dispute should have a right in choosing the person preferred from the list or whether it should be the task of the director of the service to appoint a mediator/arbitrator. At the end none of the two plans actually won over the other one
entirely, as elements were incorporated from both of them in a consensual proposal, which in truth was meant to serve as the rules of operation and procedures of the institution. This proposal was finally presented to the National Conciliation Council in February 1996 and approved, together with the procedures concerning the appointment of the director and the secretary of the service, as well as the selection of mediators/arbitrators who shall be entered on the official list. In June 1996 the tripartite negotiations came to an end, when the list was approved by all the three sides. On July 1, 1996, the Labour Mediation and Arbitration Service officially began its operation.

Stage 4.
Policy implementation

The Service was not created by a law, but by an agreement on the National Conciliation Council’s (NCC) February 16, 1996 meeting, therefore the LMAS’ legal status was still unsettled. The Service started its operation under the jurisdiction of the Ministry of Labour; however, the NCC agreement allowed it to operate as a fully independent institution.

The LMAS began to perform its services according to the approved Rules of Operation and Procedures.\(^9\) This chapter offers a survey on the

1. mission
2. principles and values
3. activity
4. organisational structure
5. finance
6. register of the mediators/arbitrators
7. general rules for starting the procedure of mediation or arbitration
8. duties of the mediator/arbitrator
9. preparing and training mediators/arbitrators
10. promotion of the public image of the Service (PR)

1. Mission

In order to promote the maintenance of social peace at the work place, sectoral and at intersectoral levels it shall participate in the effective settlement of interest disputes at the work places and in the resolution of conflicts as swiftly as possible; it should help develop the culture of industrial relations.

- It contributes to settling collective labour disputes (disputes of interest) at the request of the parties in dispute. The service to be provided may be mediation or arbitration;
- In the event of labour disputes the Service will offer the arbitrator or mediator that best matches the needs of the parties, has the best qualifications, and is the most experienced;

\(^9\) Approved on the 16 February, 1996 meeting of the National Conciliation Council.
• If so required by the parties, the Service will render technical assistance, and provide information concerning issues of industrial relations in the hope of preventing labour disputes;

• The LMAS will promote, and popularise mediation and arbitration to help these new services strike root in Hungary.\textsuperscript{10}

2. Fundamental principles and values:

a) The utilisation of the Service is voluntary and depends on the free will of the disagreeing parties, except for the specific cases regulated in section 197. of the Labour Code. The guiding principle of the Service is that an external, neutral, independent party can efficiently and successfully participate in the settlement of the interest controversy between two other parties.

b) The Service with its activities contributes to the currently available methods for the settlement of labour disputes. The constitutional right to turn to a Trial Court is not violated by introducing the institution of arbitration.

c) The mission of the Service: to help to make nationally accepted and widespread the forms of mediation and arbitration as new activities. This in practice mainly means that in case of labour controversies the most suitable, prepared and trained mediator or arbitrator is offered who best suits the needs of the parties.

d) The mediators/arbitrators are independent, they do not take sides and they are not representatives of the parties. During their procedures they cannot receive orders and they are bound to keep in full secret all information they got access to during the performance of their activities, even after the finishing of the procedure.

e) In the formation of the organisation and the operation of the Service - both at the time of its establishment and its continuous functioning - flexibility and cost-effectiveness are the determining principles.

f) Social control over the operation of the Service is exercised through the National Conciliation Council (NCC), but without limiting the autonomy of the Service during its operational activity.

3. Activity

The activity of the Service: participating in the resolution of labour controversies, which can be in the form of mediation or arbitration. The Service can function as an institution for arbitration in a limited field only, i.e., in the cases specified in section 197. of the Labour Code (in these cases the Labour Code ordains a mandatory arbitration procedure), or, on the basis of a mutual agreement by the involved parties, according to section 196. of the Labour Code\textsuperscript{11}. Upon request, the Service provides professional advice in questions related to industrial relations, in order to prevent conflicts. The Service does not provide legal counseling. It arranges for the

\begin{footnotesize}
\textsuperscript{10} See the official website of LMAS: http://www.fmm.gov.hu/main.php?folderID=3879&articleID=2312&ctag=articlelist&iid=1

\textsuperscript{11} 1992/XXII Law
\end{footnotesize}
preparation, education and further training of the persons listed in the register.

4. Organisational structure

I. The Relationship of the Service with the National Conciliation Council.

1.) The Service functions in an autonomous way, as described in points 2-4. It is not an independent legal entity.

2.) The director and the secretary of the Service is appointed by the Minister of Labour on the basis of the consensual recommendation of the plenary session of the National Conciliation Council, according to the 1992/XXIII. Law on the legal status of civil servants.

3.) The members and secretaries of the National Conciliation Council cannot intervene in the operational work of the Service (i.e., the arrangement of mediation/arbitration, the selection, the procedure and the actual mediation/arbitration). The secretaries of the National Conciliation Council cannot give orders to any of the members of the Service. The Service gives a yearly account of its work to the National Conciliation Council, which provides an opportunity for the plenary session to evaluate the activity of the Service, and, when it is found necessary, the session can make a proposal - which is reached by consensus - for changes in personnel, or for the modification of the Rules of Operation and Procedures. The director of the Service is responsible for the planning and the spending of the budget of the Service in line with the regulations of the State Budget Office (ÁHT). Any member of the National Conciliation Council can present and initiative for the State Audit Office (ÁSZ) to inspect the observation of financial regulations.

4.) The Service uses for its activities the information and communication system of the National Conciliation Council, after the necessary authorisations for access have been determined. The creation of the technical conditions for establishing contacts will be supported by PHARE from the already accepted starting budget, with the consent of the social partners.

II. Personal conditions

1.) In the operation of the Service, the tasks of organisation, co-ordination, documentation, education, (internal and external) contacting and reporting are performed by two persons in full-time position: a) the director of the service and b) the Secretary and Office manager of the Service.

2.) The director of the Service is appointed and dismissed by the Minister of Labour on the basis of the consensual recommendation of the plenary session of the National Conciliation Council, according to the regulations of the Law on the legal status of civil servants. The appointment is for an indefinite period, and it is equal to the ranking “Head of Main Department” in the categorisation of civil servants. The rights of the employee are held by the Minister of Labour. The consent of the authorised representatives of the social partners is needed to determine the salary of the Director,
to distinguish him/her with premiums or awards or to initiate a procedure of inspection against him/her.

The most important responsibilities of the Director:

a) represents the Service;
b) maintains contacts with the mediators and arbitrators who are listed in the register;
c) maintains contacts with similar domestic and foreign institutions and persons;
d) organises the occasional and the regular training of the mediators and the arbitrators;
e) mediates or performs the tasks of an arbitrator upon request;
f) monitors the development of industrial relations, and offers the help of the Service to settle the controversy;
g) co-ordinates and leads the work of the Service;
h) ensures that the general public receives regular information on the work of the Service;
i) in a delegated range of authority, the director holds the rights of the employer over the employees of the Service;
j) gives a report on the functioning of the service and makes proposals for justified changes on a yearly basis, but also upon the request of the National Conciliation Council or as an individual initiative;
k) the Director is responsible for the planning and the spending of the yearly budget of the Service;
l) oversees the observance of the economic, administrational and documentational obligations that are specified in the Rules of Operation and Procedures.

3.) The secretary of the Service is appointed and dismissed by the Minister of Labour to the consensual advice of the National Conciliation Council. The most important responsibilities of the Secretary:

a) performs the tasks set by the director;
b) organises and co-ordinates the work of the mediators/arbitrators, and provides them with information;
c) performs the tasks related to the Service File, collects and processes the information related to the work of the Service;
d) participates in the counselling activity of the Service;
e) maintains contacts with the press, organises for the publicity of the Service;
f) the secretary can take part in mediation and arbitration, provided that s/he gets listed in the register.

5. Finance
1. Expenses

1.) The Service satisfies social needs and performs a state responsibility. The services which fall within the range of its activities are free of charge, except for the service of arbitration.

The government makes a proposal for the method of covering the expenses necessary for the functioning of the Service. The budget of the Service is included in the Budget
of the Hungarian Republic in the Chapter of the Ministry of Labour, under the title of the Secretariat of the National Conciliation Council as a chapter-defined special scheduled allocation, with the consensus of the National Conciliation Council.

2.) The book-keeping and accounting jobs are done, for proper fee, by the appropriate organisational divisions of the Ministry of Labour.

II. The fundamental principles and regulations for the payment of the mediator/arbitrator.

1.) The mediator/arbitrator receives:
   a) fee for the accomplished work;
   b) defrayal after the incurred and verified expenses.

2.) The fee is paid:
   a) by the Service, in the case of mediation;
   b) by the employer according to §198/3. of the Labour Code, provided that there is no other agreement between the parties.

3.) The defrayal is paid by the dissenting parties in the case of mediation, and by the employers in the case of arbitration (according to the Labour Code regulation cited under 2/b).

4.) When invited to work as a mediator/arbitrator, the director and the secretary of the service cannot receive any fee.

5.) The fee of the mediator is determined on a general basis, regardless of the circumstances or the nature of the conflict. The fee can be paid for the actual time period of the service, but only for a maximum of 8 days, including the preparation of the summary as well. In order to decrease the losses that are arise due to the conflict, and in order to establish and also to strengthen the social prestige of the mediator/arbitrator, the fees in the first year are determined as follows:

The basic fee due for mediation services is HUF 20,000\(^\text{12}\). This daily fee applies to the first two days of mediation (HUF 40,000.-), and 80% of this amount is due, also on a daily basis, for the next two days (2 x 16,000 = HUF 32,000.-), and 60% of the basic fee is due every day for the last four days (4x12,000 = HUF 48,000.). Thus, the mediator receives a gross amount of HUF 120,000., provided that his/her services last for 8 days.
(Naturally, the parties can also ask for the continued services of the mediator/arbitrator after the 8th day, but in this case it is their responsibility to meet the fee.)

6. Register of the Mediators/Arbitrators

I. The compilation of the register

1.) The activities of the Service are performed by the mediators and arbitrators who are listed in the register.

\(12\) 1 euro = app. 265 HUF, therefore the basic daily fee amounts to app. 75 euro.
2.) The procedural rules for the selection of the mediators/arbitrators are the following:

a.) The National Conciliation Council issues a call for applications which includes the conditions that have to be met in order to get into the register.

b.) The National Conciliation Council establishes a tripartite committee (hereinafter: the Committee) to evaluate the applications. The organisations in the National Conciliation Council can delegate 1 person each, while the government can delegate maximum 5 persons to the Committee. The work of the Committee is made complete by a psychologist who functions as an adviser. Experts will help prepare the members of the Committee delegated by the National Conciliation Council. The Committee decides after interviewing the applicant. In order to enter an applicant into the register, a consensual decision is needed in which the three parties have on vote each.

c.) The person who is listed in the register gives a statement in writing whether there is any profession, sector or region s/he would like to prefer or avoid.

3.) The mediators and the arbitrators who get into the register are also separately put into a record file which is kept as a basic document in a separate dossier called Service File.

4.) The director of the Service makes a more detailed notice of reference about the registered persons on the basis of the CVs submitted along with the applications. This notice describes the professional experiences of the mediator/arbitrator, and it is provided for the disagreeing parties in order for them to make their selection procedure easier. This notice of reference has to be kept in the mediator/arbitrator Service File.

5.) In order to update and enlarge the register, the National Conciliation Council announces a call for applications once a year or when need be. The appointment of the registered persons is for a definite period: 3 years in case of the first appointment, 5 years in case of an extension.

6.) A computerised databank has to be created on the basis of the record files, fully observing the protection of personal rights. The databank contains the information about successful and unsuccessful mediation and arbitration, the related documentation and the agreements executed between the parties. The Service File, which contains the above listed documents, has to be treated as a highly confidential material.

II. Deletion from the register.

The mediator/arbitrator has to be deleted from the register if and when:

a) the mediator/arbitrator requests so
b) the mediator/arbitrator passes away
c) the mediator/arbitrator is in violation of the accepted ethical and procedural conditions and the rules set forth in the Declaration
III. Factors that question impartiality.

The selected mediator/arbitrator - after being informed about the case, but before being commissioned for the work with the client - has to inform the director of the service about the reasons which may question the neutrality and impartiality of the mediator/arbitrator in the given situation. Such a reason may be if the mediator/arbitrator is an immediate relative of any of the disputing parties, or had employment relation with them before, etc.

The director of the Service informs the parties about factors that question impartiality.

7. General rules for starting the procedure of mediation or arbitration

I. Starting of the mediation

a) Following the above described procedure, the dissenting parties may ask the Service to offer (to commission) a professional mediator/arbitrator in order to settle their conflict.

b) The director of the Service has the responsibility to monitor the current events in industrial relations, and whenever s/he receives knowledge (by way of a report or any other source of information) of a potential conflict, or of an already existing labour conflict, s/he has an obligation to offer the assistance of the Service for the dissenting parties to settle their conflict. The dissenting parties have no obligation to accept the proposition for the settlement of the problem offered by the Service. If the offer is declined by the parties, the Service makes a record of the reason for cancelling the offer.

c) The director of the Service has to give an answer in merito to the dissenting parties within 48 hours after the receipt of the request.

The director of the Service has the following responsibilities in selecting the mediator:

a) After examining the contents of the request, the director decides whether the Service has the competence and the jurisdiction over the case, i.e., whether the Service can offer a mediator/arbitrator to settle the conflict.

b) If the director concludes that the case is not a dispute of interests, and it is not the arbitration procedure as described in the Labour Code that applies since the case is a dispute in law, s/he has to inform them of this and draw their attention to the application of a procedure by the Labour Court, and to their obligation to have a preliminary internal negotiation for conciliation.

c) If the director of the Service concludes that the Service has the authority to participate in the settlement of the problem, s/he makes steps according to point B/.

II. The fundamental principle in the selection of the mediators/arbitrators

1) The disagreeing employers and employees jointly choose a mediator or an arbitrator from the published list.
Following this, they have to request the director of the Service in writing to commission the person who has been consensually chosen for the task. In this case, the director of the Service does not substantially participate in the selection procedure, and s/he has only administrative responsibilities.

In some cases the dissenting parties may specify several persons; if they also indicate an order of preference, this has to be observed by the director of the Service.

2) If the parties have no concrete idea about the person of the mediator/arbitrator, in the first step the director of the Service has to offer them the full list and the information packet. Only when the parties cannot choose can the Service recommend mediators/arbitrators, according to the order of procedure.

3) The dissenting parties have their own ideas about the person of the mediator/arbitrator, but these ideas differ.

In this case the procedure - except for III/3. and 7. - is the same as when the parties have no concrete idea or a preference for one person, that is, the Service uses the list made by the parties instead of its own register, and helps the dissenting parties to select the person of the mediator/arbitrator by using the methods described below, or - when necessary - by recommending new person(s) as well.

III. The procedural responsibilities of the Service in the case of II/2. and 3.

1) It must determine what professions, branches, sectors and regions are involved in the industrial dispute concerned.

2) The parties in dispute must be requested for information on the substance, extension, and nature of the conflict as well as about in what extent the dispute has already been settled during direct negotiations. Besides, the potential expectations of the parties concerning the mediator/arbitrator should be heard, and they should be asked for the number of names required for proposal. (5 names can be proposed at most.)

3) In the following the manager of the Service - taking the expectations and proposals formulated in point 2. as well as the nature of the dispute into account - first chooses 3 persons from the list of the alphabetically ordered names of mediators/arbitrators, then adds two more also from the list but taking the former mediations into account as well.

4) The persons that have been chosen must be requested (sending notice via telephone or telegram) to appear at a defined date at the Secretariat of the Service where they would be provided information on the nature of the interest dispute and the depth of the conflict. In the case of rural residents it suffices to provide them information by telephone or fax on the conflict in the settlement of which they will take part as far as they decide so.

5) Next, the persons selected decide whether they undertake the tasks of mediation/arbitration.
6) As far as someone resigns the invitation, the manager of the Service chooses a further person in his/her place. The newly invited persons must also be provided information on the interest dispute that has developed.

7) The list formulated accordingly and containing 5 names at most must be handed over to the employees and employers in dispute. As far as there cannot be as many persons found - to undertake the task - as have been requested to be proposed by the parties, in two days the persons on the list, even if they account for less than 5, must be proposed to the parties. The manager of the Service may give further information on the persons proposed if required by the parties.

8) There are several methods of choice that may be proposed to the parties in dispute, e.g.:

a) In the framework of a collective discussion the employees as well as the employers cross out 2-2 names respectively, thus leaving the name of the person on the list who is accepted as mediator/arbitrator by both parties. If one or two of the names that have been crossed out are identical, and there will be two or three names remaining on the list accordingly, the deletion of further names must be requested until there will be only one name on the list. If all the names happen to be crossed out, this procedure should be considered ineffective.

b) Both the employers and the employees organise the names of persons on the list in an order of sympathy (counted from 1 to 5) and choose the mediator/arbitrator accordingly (by adding up the numbers given to each name and determining the smallest sum).

c) The methods indicated in point a. and b. can also be combined e.g. by way of the parties' crossing out the persons unacceptable for them and putting the remaining names on the list in order according to the procedure described in point b.

d) The parties cross out the names by turns (after having determined the party that starts the crossout by way of drawing lots) and the last name remaining on the list will be the person chosen.

e) The person of mediator/arbitrator is determined by a draw.

8. The duties of the mediator/arbitrator

I. The mission of the mediator/arbitrator

The fundamental purpose of the operation of the mediator/arbitrator is to reinstate the confidence of the parties in dispute in each other, to resolve the conflict situation, to save or restore the peace of the given workplace, and to enhance the culture of industrial relations. Accordingly, he/she should not give value judgements of the proposals that have emerged or take sides with a solution that he/she considers appropriate.

II. The general tasks of the mediator/arbitrator
1) To study the written documents having prepared so far.

2) To agree with the parties in the basic rules of procedure and to take stock of the expectations of the parties.

3) To enter into distinct discussion with each party in dispute.

4) For next to sum up the facts for himself/herself, to outline the state of affairs and to determine his/her own duties in the interest of attaining the purpose specified.

5) “Commuting” between the two parties, to maintain the connection and communication between the parties in dispute.

6) To raise the problematic issues one by one, to help interpret the problem, to formulate the possible counter-arguments and priorities of the partner and to strive to dissolve misunderstandings due to the incorrect negotiation and communication practices.

7) As far as he/she sees any chances for a turnover by means of new approaches or proposals, to initiate the continuance of direct negotiations.

8) Based on the experiences gained in the course of negotiations, to direct the attention of the leaders of each negotiation group to the potential obstacles of an effective negotiation (e.g. the composition of the negotiation groups, the mistaken negotiation techniques, etc.) and, if needed, to propose further methods in the interest of more successful discussions, etc.

9) To take care to make the parties feel they are treated as equal partners. Therefore to pay identical attention to and to spend identical energy and time on both parties.

10) It is not the mediator/arbitrator but the parties that must appear in public. The mediator/arbitrator can provide the media with information on the actual affair on special request or commission by both parties. However, even in such a case he/she cannot provide information either on the attitude of the parties in the course of the mediation process, nor on the main points of the negotiations, nor on issues in relation to which any of the parties claim for secrecy.

11) To take part in the direct negotiations, to sit as president if invited, and to help maintain the dialogue until an agreement would be reached. If invited, to participate in formulating the document of agreement.

III. Mediation specific tasks

1.) The mediator is obliged to take active part in solving the conflict. In the interest of this he should work out a proposal - with the involvement of experts, if deemed necessary - which would be offered for discussion to both the employers and the employees.
2.) The parties in dispute are obliged to consider the proposals worked out by the mediator but they are not obliged to accept these proposals. The parties are free to decide to accept or reject the proposals.

IV. Arbitration specific tasks

The arbitrator, as authorised by the Labour Code (Mt), outlines the state of affairs and as far as he/she can be considered clearly competent in the debated item - after studying the documents and hearing the parties, experts, and witnesses if requested by those in dispute - makes a final decision. At the same time the decision of the arbitrator - in the case of obligatory arbitration - is qualified as a collective agreement, thus giving way to a legal labour dispute accordingly.

The guaranteed rules of procedure of arbitration:

a) the arbitrative negotiation - unless requested otherwise by the parties - is public,
b) the arbitrator announces his decision made after the negotiation in public, even if the parties had previously requested for a hearing in camera,
c) during the arbitration process each party may entrust a representative with enforcing their interests.

V. The administrative duties of the mediator/arbitrator

1.) The mediator/arbitrator is obliged to present a short written summary on his treatment of the conflict to the manager of the Service - taking into account the aspects as follows:

a) the definition of profession, branch and the actual spot,
b) whether it was a workplace, a branch, a sectorial or a regional conflict c) the essence of the labour disputed)
c) the participants of the conflict
d) whether there could be damages proved (displaying the method of calculation),
e) how many days the labour dispute took and what time the mediation/arbitration took from this.
f) how the labour dispute ended,
g) what costs (of the mediator/arbitrator) incurred in relation to the mediation/arbitration.

Beyond these, every document created during the working process must be attached to the summary, unless they infringe the personality rights and economical interests of either parties.

2.) The documents prepared by the mediator/arbitrator must be archived in the Service Files which is protected and administered by the Service, complying with the regulations concerning confidential documents. Documents gathered this way can be made public only with the consent of those affected. Researchers may obtain such documents according to the current law relating to archives regulating the research of confidential documents.

3.) Mediation as well as reconciliation may either be:
- successful, resulting in agreements or
- unsuccessful, without agreements

a) In the first case the mediator - apart from his/her administrative duties towards the Service - has no further responsibilities.

b) In the latter case the conflict may be expected to deepen (strike, demonstration, go-slow, etc.), therefore the manager of the Service - after hearing the mediator having co-operated in settling the dispute, studying the available documents, and asking the parties in dispute - should make a proposal for further negotiations or, if it is claimed by those concerned, should offer the co-operation of the Service again. A repeated co-operation of the Service is not free of charge, so all costs of the mediation, including the fee of the mediator, are debited to the parties.

9. Preparing and training mediators/arbitrators
1. The mediators and arbitrators nominated on the list participate in a 5-day base course in the starting year of the Service. The participants of the base course get a certificate. There are foreign and Hungarian experts taking part in the organisation and the arrangement of the training.

2. After the foundation course there must be continuation courses organised on one or two occasions every year, each course lasting one-three days. The purpose of these continuation courses would be
   a) to refresh the knowledge of mediators and arbitrators attained in the framework of the base course and to provide them with further knowledge.
   b) to have them analyse the conflicts passed of in the former period and to have them learn and judge the experiences of mediation and arbitration.

10. Promotion of the public image of the Service (PR)
1. The Service can fulfill its role and perform its function only if its purpose, tasks, operation, rules of procedure, as well as the methods of applying to it and the possibilities to get access to it becomes known to the majority of the employers and employees of the country. In order to achieve this, the media, the professional public, universities, chambers and, naturally, the members of the NCC must be continually informed about the materials that have been prepared by experts and the conceptions of realisation. The rules of operation and procedure that have been prepared must be sent to the media.

2. Following the next respective meetings of the NCC, the documents accepted by the Service must be made public in the framework of a media conference, further to sending it to all interest representations of employers and employees alike, National Conciliation Council member or not.

3. After establishing the Service, a PR company must be commissioned to shape the image of the Service and make recommendations respecting the substance of publications ensuring a unified appearance, as well as the method of maintaining a continuous connection between the Service and the public.
We have now seen in details in what form the resolution approved by the Interest Reconciliation Council to establish the institution providing alternative ways of dispute resolution in employment conflicts was implemented, what were the main rules and procedures according to which the service started its operation. In the following part we shall see with what results they have been functioning and fulfilling their mission during the past ten years.

Stage 5. Policy evaluation

In his first report to the National Conciliation Council, the director of the LMAS evaluated the first years’ experience of the Service. He claimed that in his opinion “on February 16, 1997 the National Conciliation Council passed one the most significant resolutions in its history regarding Hungarian industrial relations, by establishing the Labour Mediation and Arbitration Service”\textsuperscript{13}. He also emphasised that the resolution was important from many aspects:

a) primarily because institutionalized conflict management does not have a long standing tradition in Hungary,

b) secondly because not an already functioning Western model has been adapted, but rather a very unique Hungarian solution – following years of preparatory work containing many compromises – was created, and

c) thirdly because in Central Europe Hungary was the first to establish and operate such an institution.

The first year’s experience, however, showed a relatively low activity, clearly not out of the LMAS’ own will but because of the low number of requests that arrived to the Service. They explained the phenomenon with the following reasons\textsuperscript{14}:

a) **The Service is not well known.** It is almost certain, that the majority of those who turned to us were not informed of the LMAS’ establishment through the Hungarian Gazette but rather from some other source e.g. TV, radio, newspaper, various lectures, briefings, trade journals etc. The Service was not able to enhance awareness of the organization and better introduce the activities.

b) **Few collective disputes are made public.** The Service collected articles from national newspapers and magazines, which reported on strike threats, strikes and other disputes between employers and employees in the period following July 1, 1996. Based on the articles, most of the conflicts - due to the effects of strike threats (in the initial phase of placing pressure) and publicity - never got as far as demonstration or walk out. There were 9 strike threats in the country and 5 warning and general strikes, of these one was only a two hour warning strike.

\textsuperscript{13} Report to the National Conciliation Council on the period of July 1, 1996 - July 1, 1997 LMAS, Budapest, pp 1 (prepared by Kálmán Gulyás, director of the LMAS) Based on point I/B/2.1 of the Labour Mediation and Arbitration Services' operation and procedure regulations, the Director shall report once annually -furthermore, upon the Conciliation Council’s request or its own initiative - to the Plenary Session on the Services’ operation and shall make recommendations on the justified amendments.

\textsuperscript{14} Report to the National Conciliation Council on the period of July 1, 1996 - July 1, 1997 LMAS, Budapest, pp 2
c) **There are only few workplace or sector level collective agreements.** In Hungary, industrial relations in the workplace have low standards, there is practically no employee interest representation at small and medium sized companies, the unions in certain fields/professions have almost completely ceased. Naturally there are no collective agreements at these places of employment and cannot be, because as per the regulations in effect only the union can conclude such contracts with the employer. Interest disputes are difficult to manifest at these places of employment, because the employer does not have a partner with whom it can develop and operate collective industrial relations.

d) The **employer does not always appreciate the participation of a third party** in the dispute with the employee, because it fears that the mediator may obtain information which, if leaked, might violate the company’s business interests and undermine its position during negotiations. If a conflict does occur within the workplace, naturally they first try to resolve the problem “internally”. If this is not successful, then the trade or sector unions are brought in on the employee side. It is important for the unions to be involved and successfully resolve the conflicts, because it means their prestige increases among the members. Only if they are incapable of resolving the interest dispute, can an external independent party brought in, who e.g.- if they know that the Service exists - may also be one of our members.

According to the LMAS report of 2003-2004 the Service has recently been focusing more and more on professional consulting.\(^{15}\) They found that such a service is very much in demand, both on the labour union and the employer side. This tendency – the **increased interest and need for advisory activity and professional consultation** – cannot be considered a singular phenomenon, as other conciliation, mediation and arbitration services have apparently experiencing similar signs, e.g. in Great Britain, Belgium and the Netherlands.\(^ {16}\) Simultaneously, this is not the only tendency that has presented itself in employment conflicts during the last decade. Due to the transformation of the employment relations that has been taking place in the 90s and are still in motion, the **number of individual rights disputes also shows substantial increase.** In Hungary, where modern labour market and modern employment relations have not had a long history, it is probably even more pronouncedly so.

Here, with the issue of rights disputes, we arrive at a crucial point in the practice of alternative dispute resolution in employment conflicts. As we have seen in the chapter on policy adoption, at its establishment the LMAS was entitled to act in interest disputes only, but the 2002/LV Law ‘On mediation’ brought certain changes concerning the authority of the service. Although the aforementioned law deals principally with civil disputes, according to the general interpretation of lawyers it includes labour disputes as well.\(^ {17}\) Thus, mediation in collective rights disputes could

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\(^{15}\) [Report on the activities of the Labour Mediation and Arbitration Service September 2003 - September 2004 LMAS, Budapest, pp 2](#)


\(^{17}\) There was a debate among lawyers whether the law should be interpreted in a way which includes or excludes labour disputes from the field described by the law. It says namely that those fields that are regulated by separate law(s), the law ‘On Mediation’ is not valid. As it happens, the field of labour disputes are regulated by a separate law; however, the Labour Law (1992) in its section on rights disputes allows conciliation as alternative dispute resolution method and not mediation. Therefore, a
become part of the activity of the LMAS. It is all the more important because as a result, the unique Hungarian pattern of separating conciliation and mediation – as it has already been mentioned – by referring conciliation to rights disputes and mediation to interest disputes has been shattered. However, this change has not resulted in an increase in the number of requests towards the LMAS. The past couple of years proved that the number of cases dealt with by the service remain very low, especially compared to those of the labour courts. Let us see some data concerning the activities of the service and the labour courts as well.

Table 5
Labour Mediation and Arbitration Service
Hungary, 1996-2003

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</tr>
</thead>
<tbody>
<tr>
<td>LMAS to social partners</td>
<td>2</td>
<td>16</td>
<td>15</td>
<td>9</td>
<td>1</td>
<td>6</td>
<td>5</td>
<td>10</td>
<td>64</td>
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<tr>
<td>Trade union to LMAS</td>
<td>1</td>
<td>10</td>
<td>13</td>
<td>8</td>
<td>5</td>
<td>2</td>
<td>7</td>
<td>10</td>
<td>56</td>
</tr>
<tr>
<td>Work council to LMAS</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>Civil servant council to LMAS</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Group of employees to LMAS</td>
<td>0</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>2</td>
<td>16</td>
</tr>
<tr>
<td>Employee, individual to LMAS</td>
<td>4</td>
<td>7</td>
<td>12</td>
<td>6</td>
<td>2</td>
<td>9</td>
<td>5</td>
<td>19</td>
<td>64</td>
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<tr>
<td>Employer to LMAS</td>
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<td>3</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>4</td>
<td>16</td>
</tr>
<tr>
<td>Employer and trade union together to LMAS</td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>6</td>
<td>4</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>20</td>
</tr>
</tbody>
</table>

Summary*                                                     | 11    | 42    | 50    | 33    | 19    | 26    | 21    | 47    | 249 |

Participants in the collective dispute

| Employer and trade union                                    | 5     | 25    | 24    | 25    | 12    | 13    | 12    | 21    | 137 |
| Employer and work council                                   | 1     | 0     | 0     | 1     | 4     | 1     | 1     | 1     | 9   |
| Employer and civil servant council                          | 0     | 0     | 1     | 0     | 0     | 0     | 0     | 0     | 1   |
| Employer and group of employees                             | 0     | 9     | 2     | 1     | 1     | 2     | 2     | 2     | 19  |

Summary                                                      | 6     | 34    | 27    | 27    | 17    | 16    | 15    | 24    | 166 |

Type of service

| Assistance                                                 | 4     | 28    | 19    | 13    | 5     | 9     | 6     | 14    | 98  |
| Transfer to the competent authority                        | 5     | 6     | 16    | 5     | 2     | 9     | 3     | 20    | 66  |
| Conciliation before litigation                             | 0     | 0     | 1     | 0     | 1     | 0     | 1     | 0     | 3   |
| Advising                                                   | 0     | 2     | 6     | 2     | 5     | 3     | 3     | 5     | 26  |
| Mediation                                                  | 2     | 10    | 9     | 11    | 6     | 5     | 9     | 8     | 60  |
| Arbitration                                                | 0     | 0     | 1     | 0     | 2     | 1     | 0     | 1     | 5   |

Note: For the year 2004 and 2005 no detailed statistics exist until now. Only the summary of mediation and arbitration are known (they have been referred to earlier). 2004: Mediation 9 and Arbitration 2, 2005: Mediation:6 and Arbitration: 0.

consensus prevails now that in the light of the law ‘On Mediation’ mediation becomes also a possible way to settle labour rights disputes.
The LMAS report of 2003-2004 claims that “the number of labour conflicts resulting in dispute and becoming known is not particularly high” in Hungary\textsuperscript{18}, but I believe that it might be true only in relation to collective disputes. If we consider several statistics of the labour courts\textsuperscript{19}, it seems obvious that the number of disputes registered by the courts is very high. In 2001 for example the number of cases registered by the labour courts throughout the country amounts to 26,099 and this is a fairly average number. Below we can see a more detailed table showing the “load” of the Labour Court of Budapest.

\begin{table}[h]
\centering
\caption{Cases registered at the Labour Court of Budapest, 1997-2001}
\begin{tabular}{|l|c|}
\hline
\textbf{Number of disputes} & \\
\hline
1997 & 2831 \\
1998 & 2759 \\
1999 & 3153 \\
2000 & 4872 \\
2001 & 6045 \\
\hline
\end{tabular}
\end{table}

\textit{Source: Labour Court of Budapest}

* In 2000 the revisions on administrative and social security decisions were transferred to under the authority of labour courts.

It is a well known fact for the larger part of the society that labour courts in Hungary are far too overburdened compared to their capacity.\textsuperscript{20} At the Labour Court of Budapest the average number of cases between 1997 and 1999 transferred to one judge moved around 160-180, while in 2000 this number was already 247, and in 2001 went up to 332. If we consider that a reasonable charge on a judge would be to maintain a hundred cases - simultaneously - on a yearly basis, the above numbers prove that they are unrealistically overburdened. The following table gives a hint on the average length of the proceedings:

\textsuperscript{18} Report on the activities of the Labour Mediation and Arbitration Service September 2003 - September 2004 LMAS, Budapest, pp 2

\textsuperscript{19} The traditional way of settling labour disputes in Hungary is carried out by special courts, the Labour Courts. They are regionally divided and function in each county. Even on the highest level of jurisdiction we can find a special body for labour rights disputes, namely the Chamber of Labour, which is placed at the Supreme Court.

\textsuperscript{20} Yearbook of the Labour Court of Budapest, 1999, 2000….2005
On the other hand, contrary to the stalling proceedings at the courts, disputes referred to the LMAS tend to reach a resolution in no longer time than a couple of weeks. The mediatory and arbitrary activity of the service has been successful up to a 90 percent.\textsuperscript{21} This no doubt means that the LMAS operates efficiently; the crucial question relates to its efficacy, or in other words, to its actual effect and influence on employment conflicts, employment relations and the culture of peaceful conflict resolution in the society in general. We have seen that the service has managed to channel in only very few disputes during its ten-year-existence. Even if they act mostly successfully, their work will not exert a considerable effect on the aforementioned fields.

Let us summarise what can be the main tendencies and factors that are responsible for the \textit{relative inefficacy of the Service}.\textsuperscript{22}

\begin{itemize}
  \item[a)] The Service and the methods of alternative dispute resolution are still not well known.
  \item[b)] There exists a relatively low degree of confidence towards the methods of alternative dispute resolution in the society as opposed to adjudication. The social partners are not open to the intervention of a third party.
  \item[c)] The “social maturity” of the participants in conflict is relatively low: instead of a self-assured and confident approach the passive and aggressive dominates many times.\textsuperscript{23}
  \item[d)] Few collective disputes are made public, where both parties are ready to undertake the conflict.
  \item[e)] The Service is excluded from providing mediation and arbitration in individual rights disputes, which is a severe limitation, as there has been an increase
\end{itemize}

\begin{table}
\centering
\begin{tabular}{|l|c|c|c|c|c|c|}
\hline
\textbf{Cases listed according to the length of proceedings} & \textbf{Number of disputes} & \textbf{Less than 1 month} & \textbf{1-3 months} & \textbf{3-6 months} & \textbf{6-12 months} & \textbf{Over 1 year} & \textbf{Over 2 years} \\
\hline
\textbf{Finished in 2001} & Total & 4203 & 265 & 634 & 1070 & 1285 & 733 & 216 \\
\hline
\textbf{Remained in process in 2001} & Total & 5097 & 412 & 627 & 1237 & 1597 & 918 & 306 \\
\hline
\end{tabular}
\caption{Length of proceedings}
\end{table}

\footnotesize
\textit{Source: Labour Court of Budapest}

\textsuperscript{21} “The service of the LMAS is not requested frequently” in: NAPI Online (DAILY Online) March 1, 2006
\textsuperscript{22} Some of the factors are found in he following article: Kovács, G. (2005) ‘Labour Mediation and Arbitration Service – in a changing role’ in: Political Yearbook of Hungary, 2005, Budapest
\textsuperscript{23} Marosán, Gy. (2002) Introductory remarks on „First Conference of Central and Eastern European Labour Mediators and Arbitrators” Conference paper, Budapest
f) Employment relations function at a low standard. There are less and less active interest organisations and their operation is often limited.

g) Often there is no long term interdependence between the social partners, which is an inevitable condition for mediation.\footnote{Krémer, A. (1999) Position and interest based negotiation in: \textit{Arbitration} (ed.) Tóth, P.P. Budapest: Püski, pp. 51}

h) Employer dominance is determining; the more powerful partner does not foster negotiations and peaceful, long term and mutually satisfactory agreements.

i) Even if a trade union requests the help of the Service, it usually urges the intervention of the government, especially in the case of large public companies.

As we can see, there are several factors that already created a problem at the very beginning of the operation of the Service (see page 29-30) and have not ceased to function as hindering elements in the development of alternative dispute resolution in employment relations.

\textbf{Concluding thoughts}

The question is how and in what directions could or should the LMAS develop in the future? I believe it would be practical to differentiate between short-term and long-term goals and tasks in order to enhance the efficacy of the Service; there are tasks whose implementation might rapidly exert positive effect on employment relations, while others can in all probability bring result only after years of serious and consequent efforts.

\textbf{Short-term tasks:}

a) put an emphasis on preventive mediation and advisory activity,

b) organise a more professional marketing activity,

c) introduce a new type of service by providing “fact-finding”, which – being the introductory phase of both mediation and arbitration – could in itself as normalize relations; experience has shown that in many cases the softer method of objective fact finding as the first steps of the mediation and arbitration process result in avoiding adjudication,

\textbf{Long-term tasks:}

a) organise more courses and training in small and medium-size enterprises in order to develop the culture of peaceful conflict resolution; it is all the more important because a considerable part of the disputes registered by the labour courts come from SMEs\footnote{There are no case statistics at the labour courts that show the breakdown by the size of the company, but several representatives of the labour courts claim that there is a high percent of SMEs among the registered disputes.},

b) lobbying for the establishment of the legal background and the practical conditions for the active presence and participation of the Service at the preparation and conclusion of collective agreements; this would very likely help in reducing the number of disputes that arise from misunderstandings and misinterpretations of collective agreements that often lack the special knowledge and expertise.


Kiss, Gy.-László, Gy. (1993) Concept of the institution for the resolution of labour disputes Phare project, Pécs (available at LMAS)


Ministry of Labour: Proposal for the establishment of a mediation, conciliation and arbitration service (1994) Budapest (available at LMAS)

Ministry of Labour: Proposal for the establishment of a mediation, conciliation and arbitration service (1995) Budapest (available at LMAS)
‘The service of the LMAS is not requested frequently’ in: NAPI Online (DAILY Online) March 1, 2006


Tóth, A. (1993) Concept of the institution for the resolution of labour disputes Phare project, Budapest (available at LMAS)