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# Alternative dispute resolution in labour law in Hungary: theory and practice

*Aliz Fabian*

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**Abstract**

This study is based on the own empirical research conducted by the author between August – October 2024 by recording semi-structured interviews having the title 'Alternatív vitarendezés a munkajogban, különös tekintettel a Munkaügyi Tanácsadó és Vitarendező Szolgálat munkásságára', (Alternative dispute resolution in labour law – particularly focusing on the work of the Labour Advisory and Dispute Resolution Service). In this study, the following 6 (six) subtopics / questions will be analysed based on the experience of the professionals in comparison with the theory: (1) what disputes arose in the field of labour law, (2) which dispute resolution methods the professionals (and the parties) are familiar with, (3) what is the opinion of the interviewees regarding the resolution of labour disputes, (4) how can they determine the definition of alternative dispute resolution, (5) what alternative dispute resolution procedures, in which type of disputes the Service applied for the parties, (6) and finally what attitudes have the interviewees experienced from the parties during the proceedings?

## I. Introduction

> Good morning. I am currently employed as a marketing assistant by a large company in Budapest. I feel being overwhelmed with work since I start working at 7:30 AM and I only finish after 5:30 PM. Based on my employment agreement, which was concluded on 17 September 2023 I am working in a general working schedule (Monday to Friday in daily 8 hours), however I spend my whole life at the office without any compensation for the performed overtime work. As a specialised attorney-at-law, can you see any possible solution for this situation?[1]

[*] Aliz Fábián is a Ph.D. student at ELTE Eötvös Loránd University, Budapest, Hungary, Faculty of Law, Doctoral School of Law, Department of Labour Law and Social Law. ORCID-number: 0009-0004-9720-9472

[1] A fictitious example of the issues that can arise during advisory services provided by a lawyer, based on the author's own experience as a junior associate working in a law firm.

As general ethical principal resolved by the Hungarian Bar Association, practising attorney-at-laws shall seek to resolve the client's dispute by the most cost-effective way and shall, at the appropriate stage of the proceedings, propose the achievement of a settlement between the parties or any other alternative dispute resolution methods.[2] However, we assume that based on this requirement, there are several possible opportunities available for the parties for submitting their case with any competent body, either service provider or authority for resolving their disputes in an alternative way in Hungary, but practically, as a first step the employee is only entitled to personally initiate any informal negotiation with the employer regarding the remuneration of the overtime work and his/her working time scheduled by the employer. This legal opportunity arises from the Act I of 2012 on the Labour Code (Labour Code) in Hungary, since the Labour Code stipulates that '[the parties] shall be required to cooperate with one another'.[3]
The culture of alternative dispute resolution in Hungary is far behind compared to the USA – especially in the field of individual labour, where the following arbitration clause for example can settle the procedural issues in the abovementioned case:

> 'In the event Employer and Employee are unable to resolve their differences through informal negotiations, Employer and Employee agree to submit to binding arbitration the following disputes: 1. [a]ny and all disputes concerning wages and benefits, and 2. [a]ny and all disputes concerning the termination of this employment relationship'.[4]

The aim of this study can be divided into three main pillars: (i) analysis of the generally available methods of dispute resolution according to Hungarian labour law, (ii) comparison of such procedures in practice based on the experience of interviewees regarding their own empirical research in the field of collective bargaining disputes, (iii) providing insight into the opportunities of the development of the procedure and the institution of alternative dispute resolution in Hungary considering the psychological and social needs of the Hungarian society.

[2] Az ügyvédi hivatás etikai szabályairól és elvárásairól szóló 6/2018. (III. 26.) MÜK Szabályzat (Code of Conduct of the Hungarian Bar Association on the Ethical Rules and Expectations of the Lawyers 6/2018 (III. 26.) art 3.7.1.
[3] Labour Code s 6 para (2).
[4] Michael L. Moffitt, Andrea Kupfer Schneider, *Dispute resolution: examples & explanations* (Aspen Publishers 2008, New York) 173.


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## II. The Empirical Research

### 1. The Methodology of the Empirical Research

The author recorded 8 (eight) semi-structured interviews as a qualitative research method from 29 August 2024 to 1 October 2024 to gain deeper insight into the practice of alternative dispute resolution in the field of labour law in Hungary, primarily with the assistance of the experience of professionals (lawyers, mediators, arbitrators, university professors), who worked in the two operational periods between November 2016 – June 2019 and July 2019 – December 2021 of the '*Munkaügyi Tanácsadó és Vitarendező Szolgálat*' (Labour Advisory and Dispute Resolution Service or Service or LADRS).[5] The interviewees were selected based on region, their availability and with focusing on lawyer colleagues teaching at the labour law departments of university law faculties in Hungary since the professional basis of the regions the Service operated were organized consciously around these departments with the result/aim that the interviewee's experience should cover the whole territory of Hungary, except for *Észak-Alföld régió* (region of Northern Great Plain), therefore such experience could be channeled into the empirical research.[6] The interviewees were all involved in the work of the Service either as a member of the given region(s) who acted before the parties as an advisor, conciliator, mediator, arbitrator and/or as a regional/national coordinator who managed the everyday activity of the given region, therefore the research provided an opportunity for collecting knowledge from a multi-perspective approach about the activity of the Service.[7] The fact that *Nyugat-Dunántúl* (Western Transdanubian) region was over-represented in the research, given that three interviewees were active in this region, may have influenced the research results, however considering the economic impact and the practice of collective bargaining of this region, the author's opinion is that it was essential to analyse this region more deeply.

[5] Recording semi-structure interviews with the duration of cca. 30-60 minutes with broadly, open-ended questions are more applicable methods for exploring in depth the participants' perspectives, experiences and perceptions than e.g. collecting surveys. See Krisztina Németh, 'Az interjú' [The interview] in András Jakab, Miklós Sebők (eds), *Empirikus jogi kutatások* [*Empirical legal research studies*] (Osiris, MTA Társadalomtudományi Kutatóközpont 2020, Budapest) 383–408.

[6] See in more details on regions and the register Attila Kun, 'Tájékoztató a Munkaügyi Tanácsadó és Vitarendező Szolgálat (MTVSZ) első (2016-2019) és második (2019-2021) működési periódusáról' [Information on the first (2016-2019) and second (2019-2021) operational periods of the Labour Advisory and Dispute Resolution Service] (2019) 2019/3 *Munkajog* 65–69.

[7] Two interviewees were acting as members and also as coordinators, while one interviewee was acting in two separate regions.


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## 2. The Relevant Part of the Empirical Research

The questions of the semi-structured interviews were divided into three major parts (i) general questions in relation to dispute resolution (both in a classical and in an alternative way) in labour law, (ii) specified questions in relation to the operation of the Labour Advisory and Dispute Resolution Service and (iii) questions regarding the necessity and opportunities of the future development of the institutions of alternative dispute resolutions in Hungary. In this study, the following 6 (six) subtopics / questions will be analysed based on the experience of the professionals in comparison with the theory: (1) what disputes arose in the field of labour law, (2) which dispute resolution methods the professionals (and the parties) are familiar with, (3) what is the opinion of the interviewees regarding the resolution of labour disputes, (4) how can they determine the definition of alternative dispute resolution, (5) what alternative dispute resolution procedures, in which type of disputes the Service applied for the parties, (6) and finally what attitudes have the interviewees experienced from the parties during the proceedings?[8]

# III. Dispute Resolution in Labour Law

## 1. Labour Dispute

Firstly, to understand the fragmentation of the procedures available for the parties to resolve their disputes, the definition of disputes and the types of labour disputes shall be analysed. György Kiss defined the conceptual criteria of a dispute as (i) there is (potentially) a relationship between the parties in dispute, (ii) the positions of the parties differ on a given issue and (iii) the parties mutually let the differences of their position known to the other party (reaction and response).[9] In a labour dispute, the dispute arises from the employment relationship concluded between the employee and the employer and its sub-types can be categorized as follows: a) in terms of the subject matter, (i) individual and (ii) collective disputes, and b) in terms of the subject matter, (i) legal disputes and (ii) interest disputes.[10]

[8] Mostly the abovementioned questions were asked directly or the interviewee explained it himself/herself, while reflecting on other question considering the flexibility of the semi-structured interview.
[9] György Kiss, *Munkajog* [*Labour Law*] (Osiris 2000, Budapest) 259.
[10] Ibid, 259.; Zoltán Bankó, Gyula Berke, György Kiss, Gergely László Szőke, *Nagykommentár a munka törvénykönyvéről szóló 2012. évi I. törvényhez* [*Commentary to Act I of 2012 on the Labour Code*] (E-law library, Wolters Kluwer 2023, Budapest) 836.; Krisztina Rúzs Molnár, *A mediáció az alternatív vitamegoldás*


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According to the general interpretation, in individual legal disputes, as in the example at the introduction part of this study, one employee individually has a dispute with the employer regarding the rights and obligations of the party arising from the employment relationship, the performance of which may be enforced in a labour dispute before state courts as follows: '[e]mployees and employers may pursue their claims arising from the employment relationship or out of this Act, and trade unions and works councils may pursue their claims arising out of this Act or a collective agreement or a works agreement by judicial process'.[11] The second part of this provision refers to collective legal disputes where for example a trade union or a works council tries to enforce the rights of all employees of the relevant employers based on the given collective bargaining agreement.
In comparison with legal disputes, disputes of interests mean any conflicts, in connection with the employment relationship between the parties in questions, which have not been regulated legally yet since '[c]ollective labour disputes are always economic disputes, otherwise known as an interest dispute, which precedes in time an issue the regulation of an issue, the establishment of the applicable rules'.[12] Negotiations on payment and working conditions can be, for example, an interest dispute at both individual and collective level. Considering that within these disputes, neither party breaches its obligations arising from the employment agreement or collective bargaining agreement, decision in interest disputes *per definitionem* could not fall within the scope of the jurisdiction of the court.[13] What procedures are available for the parties in these cases?

## 2. The Service: Demarcation Difficulties in the Practice

The legal framework of the Service was determined at the legislative level of a government decree, which declared that the minister is obliged to establish an

*rendszerében, különös tekintettel munkajogi szerepére* [*Mediation in the alternative dispute resolution system, especially to its role in labour law*] (PhD thesis, Szegedi Tudományegyetem Állam-és Jogtudományi Kar Doktori Iskola 2005, Szeged) 9–13.

[11] Labour Code s 285 para (1). Official translation of the Labour Code.

[12] Tamás Gyulavári, '*A Munkaügyi Tanácsadó és Vitarendező Szolgálat működése*' [*The operation of the Labour Advisory and Dispute Resolution Service*] (GINOP-5.3.3-15 project, Budapest, January 2021) < https://www.munkaugyivitarendezes.hu/Download/A_Munkaugyi_Tanacsado_es_Vitarendezo_Szolgalat_mukodese.pdf?v=2 > accessed 8 January 2025, 6. Translated by the author.

[13] Labour Code s 285 para (1).; See wage negotiation in detail Erzsébet Berki, Katalin Dudás, '*A munka díjazása, javadalmazás, jóléti intézkedések – Kollektív munkaügyi viták és az alternatív vitarendezés lehetőségei a bértárgyalások során*' [*Remuneration of the work, welfare measures – Collective labour disputes and ADR during the wage negotiation in collective bargaining*] (GINOP-5.3.3-15 project, Budapest, June 2020) < https://www.munkaugyivitarendezes.hu/Download/A_munka_dijazasa_javadalmazas_joleti_intezkedesek.pdf?v=2 > accessed 8 January 2025.


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independent alternative dispute resolution system in the whole country for resolving collective interest disputes and in case of *békéltetés* (conciliation) for collective legal disputes and the minister is obliged to operate labour advisory and dispute resolution service.[14] Due to financial reasons, the Service was divided into two parts organisationally: in less developed regions, i.e. all regions except of *Közép-Magyarország* (Central-Hungary) the Service was funded by the European Union with the assistance of GINOP-5.3.3.-15 and GINOP-5.3.3-18 project in cooperation with the consortium partners of the Ministry of Innovation and Technology (including its legal predecessors and successors), while the Ministry was responsible for the operation and financing of the Service in Central-Hungary. However, the procedural rules of the Labour Advisory and Dispute Resolution Service declared clearly that the Service had only competence regarding collective interest disputes except for conciliation. Allow me to provide exact examples for the demarcation difficulties based on the interviews.[15]

### a. Collective or individual

In spite of that the Procedural Rules and Code of Conduct of the Service determined that a party to the proceedings before the Service exclusively may include the employer, the employer's representative body, the operator of the employer and on the other hand the works council, the trade union and the trade union federation, before conducting the empirical research my pre-assumption was that also some individual requests were submitted to the Service, considering that the general tendency number of collective bargaining agreements are decreasing and collective bargaining coverage of employees is only 18 % in Hungary, therefore somehow individual requests may have appeared during the

[14] 320/2014. (XII. 13.) Korm. rendelet az állami foglalkoztatási szerv, a munkavédelmi és munkaügyi hatóság kijelöléséről, valamint e szervek hatósági és más feladatainak ellátásáról (Government Decree 320/2014 (XII. 13.) on the designation of the public employment service, the labour safety and labour authority and on the performance of the official and other tasks of these bodies) s 4 para (2) items e)-f). The responsible Ministry e.g. was in 2019 Ministry of Innovation and Technology.

[15] A Munkaügyi Tanácsadó és Vitarendező Szolgálat Szervezeti, Eljárási és Magatartási Kódexe (Procedural Rules and Code of Conduct of the Service) pt III s 7 paras (1)-(3) <https://www.munkaugyivitarendezes.hu/download/mtvsz_kodex.pdf> accessed 5 January 2025.


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operation of the Service.[16] The following responses were highlighted by the interviewees[17]:

> 'We as labour lawyers know the division, i.e. individual and collective, but [...] not everyone thinks in this dogmatic term. There were many times [...] that if the question concerned more people, it could be asked as a collective question, although it could be that it only concerned multiple individuals separately, but it was not related to the right of the trade unions or the works council [...] so this kind of collectivity that we managed standed on the opposite to the employer' (Interviewee No. 1)
> 'We could not accept these, [...] only even if [...] a trade union embraced these issues and said, well, this is not an individual issue, but there is a problem affecting hundreds or thousands of employees. So, if it could be transformed into something that was not an individual problem, but something that affected the working community.' (Interviewee No. 2)
> 'I do not remember this. I cannot say with 100 % certainty but if there was, it was certainly not characteristic.' (Interviewee No. 3)
> 'More employees turn to LADRS with problems on an ad hoc basis, but there is no a trade union etc., then they could not seek the assistance of LADRS. So employers, trade unions and work councils could take their case to the LADRS' (Interviewee No. 4)
> 'Yes, a demand for that may have arisen, but [...] under the [Procedural Rules and Code of Conduct of the Service], these cases could not even be started.' (Interviewee No. 6)
> 'Thanks to God, not. In my opinion that there would have been a tendency in our region, but I made it clear at the beginning of my tour with the market players that we were not solving anyone's individual case. If there is a case of a nature that affects a group of employees, i.e. four, five, ten people at least, then it can be admitted because it is then, not individual.' (Interviewee No. 7)
> '[The] Labour Advisory and Dispute Resolution Service was similar as former [Labour Mediation and Arbitration Service], exclusively was intended to resolve collective disputes [...], so it could not advise on individual labour disputes, this was excluded by the Procedural Rules and Code of Conduct, which lead to many difficulties since there were a lot of requests, where it

[16] Ibid, pt II s 1 para 1 items a-f, see more details on the current situation of the collective bargaining agreements in Hungary Tamás Gyulavári, Gábor Kártyás (eds) '*Shadow report on the regulation of collective agreements in Hungary proposals for the Hungarian action plan under EU Directive*' 2022/2041 (Friedrich Ebert Stiftung, Budapest, June 2024) < https://library.fes.de/pdf-files/bueros/budapest/21505.pdf> accessed 8 January 2025.
[17] Translated by the author.


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> was not the typical collective labour dispute but individual employee's grievances or more employees, but it was not defined as collective labour dispute under the classical approach. [...] the Service tried to assist in many times, even when such cases were submitted, so to provide it with, if it was possible, even a little bit [...], a collective dimension, to interpret this as a collective dispute.' (Interviewee No. 8)
> 'No, [...] who have taken their cases to us were all trade unions or employers.' (Interviewee No. 5)

The responses of the interviewees confirm the relativization of the differences between the collective and individual labour disputes since it is visible that the Service interpreted collective labour disputes in a broadly way (in favour of the applicants) by referencing that it affected more employees or it had a collective dimension to be able to act, if possible, on the basis of the application form submitted with them. On the other hand, it is clearly visible that the legal or interest dispute concerning a purely individual employee could not be brought before the Service since the individual employee did not have the right to file a request successfully with the Service, therefore the strict provisions regarding the persons of applicants protected the Service from the total relativization of the difference. In comparison with the Service, the '*Munkaügyi Közvetítői és Döntőbírói Szolgálat*' (Labour Mediation and Arbitration Service), which operated between 1996 and 2015 in Hungary also did not have competence to proceed in individual labour disputes, however that institution at least could informally inform the applicant about the competent court/authority for the given case.[18]

### b. Legal or interest

Considering that the type of the collective dispute (legal dispute or dispute of interest) fundamentally determines the opportunities of the parties for available procedures, my pre-assumption was that the Service accepted primarily the submission of disputes of interests, and legal disputes mostly were submitted to the competent court. On the contrary, instead of using clear demarcation criteria,

[18] See the experience regarding the operation of the Labour Mediation and Arbitration Service in detail Rézler Gyula Mediációs Intézet. *Kutatási beszámoló; A Munkaügyi Közvetítői és Döntőbírói Szolgálat tevékenységének társadalmi hasznossága* [*Research report; The social utility of the Labour Mediation and Arbitration Service*] (Foglalkoztatási és Szociális Hivatal Budapest, 2008) 67.


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the interviewees' experience show a blurring of the boundaries. Allow me to provide the following examples[19]:

> 'There was a proposal from the HR-department inside the company that the information sheets published by the trade union posted on the public whiteboard shall be endorsed by the HR-department in advance. This is the traditional form of censorship and I confronted them, as dispute of interest, however the interest dispute existed between the parties, which can be resolved with a simple sentence that you cannot do that, it is unlawful what the HR-department was asking for. [...] it was basically an interest dispute [...] because the parties did not realise that the law regulates this. So it is always an interesting question, what is a dispute of interest? Since if an interest dispute is resolved and, say, results in a collective bargaining agreement, then from that day on it is no longer a dispute of interest.' (Interviewee No. 7)
>
> '[A] question arose regarding the working hours which was regulated in the collective bargaining agreement, therefore it would be difficult to categorize it into the category of dispute of interest, but rather as a legal dispute. But in my opinion, in such disputes, when it was related to a collective bargaining agreement, since there was a collective indicator, it was possible to proceed regardless of the fact that dogmatically it was not an interest dispute' (Interviewee No. 1)

These experience support the phenomenon of the relativisation of the legal dispute versus dispute of interest distinction in labour law. One reason for this tendency – based on György Kiss – is that even if a legal issue shall be decided by the competent body, these disputes cannot be separated from the economic and social status of the given employer and of the given employees and also their future, therefore interest-based positions of the parties will be raised automatically. On the other hand, while until the conclusion of the collective bargaining agreement, the dispute reflects on the future conditions of the employment, when the collective bargaining agreement was concluded between the parties, any breach of the *status quo* lead to a collective legal dispute, even if a day ago the labour dispute would have been purely categorized as a dispute of

[19] Translated by the author.


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interest.[20] Therefore, it is visible that the strict distinction which was developed by theory, was hardly applicable in practice.[21]

## 3. Available Procedures

In order to overview the opportunities of the parties in case of their labour disputes, the following subchapter starts analysing the dispute resolution system of the Labour Code, in comparison with the procedures which were available before the establishment of the Service, also reflecting on the interviewees' experience.

### a. Litigation as a classical approach

Let's imagine a situation where the conflict between the employer and the employee in the example case given at the beginning of this study escalated and the employer terminated the employment relationship of the employee on the ground of the incompatibility of the employee's conduct with the employment relationship. In this case, the employee shall submit his/her claim regarding the wrongful termination of the employment relationship with the competent court within 30 (thirty) days of becoming aware of the employer's act. However, the provision of the Labour Code declares that based on the collective bargaining agreement parties can agree on conciliation before bringing their action before the state court or the agreement between the parties (i.e. employment agreement or a separate agreement), but the 30 day's deadline for the initiation of legal proceedings in front of the relevant state court is still applicable to this case, therefore the conciliation theoretically shall proceed in a way, that allows the infringed party bringing the action to submit his/her claim with the state court within sufficient time if the conciliation was unsuccessful.[22] In spite of this short deadline for the filing of the claim for initiating litigation proceedings in front of

[20] György Kiss, 'Az alternatív vitamegoldás feltételei és lehetőségei a munkaügyi konfliktusok feloldásában' [The conditions and possibilities of the ADR in resolving labour conflicts] in Pál Péter Tóth, Eszter Bartha, András Krémer, Tibor Valuch (ed) *Rézler Gyula szellemi öröksége* [*Gyula Rézler's intellectual heritage*] (Kronosz Kiadó Pécs, 2021, 243–260) 250–251. Translated by the author.

[21] Attila Kun, 'A Munkaügyi Tanácsadó és Vitarendező Szolgálat (MTVSZ) múltja, jelene és jövője' [The past, present and future of the Service ] in Pál Péter Tóth, Eszter Bartha, András Krémer, Tibor Valuch (ed) *Rézler Gyula szellemi öröksége* [*Gyula Rézler's intellectual heritage*] (Kronosz Kiadó Pécs, 2021, 261–277) 262.

[22] Labour Code s 287 para (1) item b), s 288.; Bankó, Berke, Kiss, Szőke (2023) 849. Furthermore, how many employment agreements have practitioners seen so far where the parties have reached agreed regarding the proceeding of a conciliation? (note by the author).


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state courts, it cannot ensure the quick and efficient dispute resolution for the parties due to the following reasons:

> '[T]here are 30 days for the court to decide whether to admit the action and provide it to the other party, and the other party has 45 days to submit its defense. This means that 2 and a half months have passed without the court having thought about whether to schedule a court hearing, it may order further written preliminary proceedings, it may schedule also a court hearing, but when it schedules the court hearing, it will schedule it for 2 months forward, ideally. So half a year goes by without the problem being unsolved.'[23]

Furthermore, the rules of the Civil Procedure Act provide the first official opportunity for the parties to reach an agreement in the case at the initiation hearing of the labour law dispute since the court hearing shall begin by law with a consultation between the parties, however considering the length of the civil procedure already passed, can the parties really be expected to agree at this point?[24]

### b. Alternative dispute resolution procedures in the Labour Code

Near the conciliation mentioned above, other alternative dispute resolution methods, i.e. conciliation committee and arbitration are also declared in the Labour Code in case of collective labour disputes, exclusively in dispute of interest cases.[25] The conciliation committee can be set up by the employer and the works council or the trade union and the establishment of this committee is absolutely voluntary, therefore the decision on the conciliation committee is only obligatory for the parties if the parties abide themselves by this committee. In addition, arbitration is also a voluntary opportunity for the parties except for two cases when the arbitration is obligatory, for example regarding the dispute of the bearing of the costs of the works council incurred in connection with the election and operation of the works council by the employer.

[23] Explained by Interviewee No. 3. Translated by the author. See provisions in detail Act CXXX of 2016 on the Code of Civil Procedure (Code of Civil Procedure) s 110 para (1), s 179 paras (1)–(2), s 187–188.
[24] Code of Civil Procedure s 520.
[25] Each type of procedure is explained in more detail later. Labour Code s 291–293.; Bankó, Berke, Kiss, Szőke (2023) 852, 854.


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Considering that the statutory declaration of these methods primarily influence the corner of these institutions, it shall be highlighted that the practical implementation of these provisions may be problematic, which was confirmed also by the interviewees as follows[26]:

> '[S]ince Hungarian law does not force the institutions of collective labour law [...] most provisions are *lex imperfecta*, so the investor is willing to do these in Germany, but here he/she is not be solicitous to operate a works council so well or to be in a good relationship with the trade union. [...] consequently the resolution of disputes also fumbles its way' (Interviewee No. 6)
> 'In my opinion the Labour Code is wrong at this point. Declaring any rights stipulating that there is a mandatory arbitration for the works council but since the works council has no assets, how can it enforce its rights?' (Interviewee No. 7)
> '[T]here should be a legal framework that makes this either very attractive for the parties with some kind of rule, or quasi-mandatory.' (Interviewee No. 1)

To better understand the weaknesses of this system and the significance of the Service, allow me to provide the following example: as mentioned earlier, if there is a dispute between the employer and the works council the costs shall be borne by the employer incurred in connection with the election and operation of the works council, mandatory arbitration is required. Where can they submit their initial form for the procedure, how can they appoint an arbitrator if neither established institution nor the list of arbitrators can be identified in Hungary.

### c. Alternative dispute resolution procedures before the Service

The parties were entitled to initiate the procedure from a wide range of procedures to suit their needs, including the following: (1) counselling, (2) conciliation, (3) mediation, (4) conciliation committee, (5) arbitration.[27] The Service started the given procedure at the joint request of the parties except for the counselling where the procedure could be initiated also by one party. It was highlighted by one interviewee that '[t]he aim was that [...] the Service would not assume the role of the state court, i.e. not act in a legal issue'.[28]

[26] Translated by the author.
[27] Procedural Rules and Code of Conduct of the Service pt III s 1.
[28] Interviewee No. 1, translated by the author.


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During counselling, the appointed member of the Service provided advice to the questions arose in the collective labour relations to prevent and settle the collective dispute of interests peacefully.[29] Therefore, for example, the Service assisted within the framework of counselling in (1) identifying the dispute resolution procedure most suited to the parties' objectives in relation to the labour dispute, (2) providing an opinion on the dispute resolution procedure concluded or to be established in a collective bargaining agreement, a works agreement or a compromise agreement, and (3) advising to the direct negotiation with the other party or (4) determining of the objective facts of the given case. The significance of counselling showed the statistic that during the operation of the Service, both in the first (from November 2016 to June 2019) and second (from July 2019 to December 2021) period, in the majority of the cases proceeded based on the procedural rules of counselling, for example, in 131 cases from the total 150 in the first period and in 105 cases from the total 115 in the second period.[30] The interviewees reported similar experience regarding the division of the types of procedures, furthermore they mentioned multiple advantages of this procedure, which may explain the popularity of the counselling as follows[31]:

> '[C]ounselling, which is a relatively informal form and not binding, is certainly the first step, then mediation and I do not think there was much arbitration, so when the parties would have submitted quasi binding' (Interviewee No. 1)
> 'Maybe that is why it has gone in this direction, that it is mainly counselling, since as long as they are not aware of the rights, in my opinion it is difficult [...] to mediate if one party is not aware of how far the legal framework can be extended, even in a collective bargaining agreement' (Interviewee No. 5)
> '[F]or the improvement of the alternative dispute resolution, it need to be educated first and educating works quite well through counselling' (Interviewee No. 7)
> 'Counselling, it was almost exclusively counselling. Otherwise I think it almost did not matter what the procedure was called or what form of procedures we have inserted it based on the [Procedural Rules and Code of Conduct of

[29] Procedural Rules and Code of Conduct of the Service, pt III s 2 para (1).
[30] Attila Kun, 'Merre tovább? Alternatív vitarendezés a kollektív munkajogban – A Munkaügyi Tanácsadó és Vitarendező Szolgálat (MTVSZ) második (2019–2021) működési ciklusa és perspektívái' ['How should we move forward?' ADR in collective labour law, the second (2019-2021) operational period of the Labour Advisory and Dispute Resolution Service and its perspectives] (2022) 2022/1 *Munkajog* 61–67, 62. These case numbers refer to the total case numbers of the Service in the strict sense, regarding only the reference-regions without Central-Hungary.
[31] Translated by the author.


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> the Service] since [...] they brought a question before the organisation and we provided a written advisory opinion.' (Interviewee No. 3)
> 'We provided an independent opinion, and in fact the parties gave us feedback that it was so useful that they were able to incorporate it into the negotiations and avoid escalating the dispute, whether it was a strike or a legal dispute before the court.' (Interviewee No. 8)

Despite its top position in the statistics – in comparison with the other procedures before the Service, especially with mediation – the counselling had also disadvantages which may even hinder further development of the parties, i.e. to gain deeper insight of using alternative dispute resolutions. Mediation was an opportunity for the parties when an independent third party as a mediator assisted in trying to reach an agreement between the parties for resolving their collective interest dispute in a way that the mediator also drafted and presented its own proposal for the resolution of the case during the mediation session.[32] In comparison with conciliation, the mediator could be involved more actively in the case since during conciliation the conciliator was not entitled to draft its own proposal, otherwise the procedural rules of conciliation were also applicable for mediation, therefore the acting third party, for example, attempted to bring the parties to a closer position, assisted in interpreting the problem, formulating the possible arguments, counter-arguments and priorities of the parties, enhancing the effective communication between the parties etc.[33] Even though the number of mediation was relatively low during the operation of the Service, i.e. only 13 cases were initiated in the first operational period and 7 cases in the second operational period of the Service,[34] the positive experience of the interviewees confirmed the need for this procedure as follows:[35]

> '[F]rom my own procedures, I can't really say anything that would have been specifically alternative dispute resolution. In my opinion, by the way, [...] in the LADRS it was the counselling that was emphasised. If I remember correctly there was probably only one mediation that I did not assist in, but that one I know of at all.' (Interviewee No. 4)
> 'According to my experience, the few mediations I have been involved in, we have always managed to reach an agreement. It is much easier for the

[32] Procedural Rules and Code of Conduct of the Service, pt III s 4 paras (1)–(2).
[33] Ibid, pt III s 3. Generally, the stages of the mediation process depend primarily on the procedural regulation of the court or of the organisation, the parties, the matter of the dispute, the style of the mediator (e.g. 'facilitative, evaluative or transformative approach'). See in detail Moffitt, Schneider (2008) 52-58.
[34] Kun (2022) 62.
[35] Translated by the author.


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initiating party to reach an agreement with the assistance of the Service in an hour and a half session than it is for them to just ask for advisory opinion and then to see if they can take advantage of the result of that advisory opinion against the employer. Then it is much more questionable.' (Interviewee No. 2)

'[The] parties have been managed to sit down at a table and then they have been managed to facilitate reaching an agreement based on their own perceived interests, they are more likely to observe it than if, say, the bailiff is banging on the door [...] This looks like if they have agreed that yes, they want this since they have achieved it.' (Interviewee No. 6)

In case of conciliation committee and arbitration, the statistic shows dramatically low utilization of these procedures since arbitration was only initiated once during the whole operation period of the Service, while the conciliation committee could assist for the parties on five occasions in the first operation period and four times in the second operation period of the Service.[36] Arbitration provides an opportunity for the parties for resolving their collective interest dispute in which the arbitrator concludes the dispute with his/her award which is binding for the parties.[37] However, based on the procedural rules of arbitration before the Service, this type of arbitration is in fact considered a hybrid process since the aim of the first phase of the procedure is reaching an agreement between the parties, moreover by the request of the parties, the arbitrator is not entitled to prepare its own award regarding the case, but shall choose one of the final offers prepared by the parties.[38] Similarly, neither the conciliation committee had the aim for passing a resolution individually without involving the interests of the parties, but the committee members jointly with the chairman are responsible for drafting proposals for solutions (alternatives) to be resolved on. The resolution of the conciliation committee is only binding on the parties if they have submitted to the proceedings.[39] Despite of this flexibility, employers and trade unions, works councils were not in a hurry to participate in these procedures, the possible reasons of this tendency based on the experience of the interviewees can be summarized as follows:[40]

[36] Kun (2022) 62.
[37] Procedural Rules and Code of Conduct of the Service, pt III s 6 para (1).
[38] Ibid, pt III s 6 paras (2)–(4).
[39] Ibid, pt III s 6 paras (1), (3)–(4).
[40] Translated by the author.


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> '[I]t really requires a very serious commitment on the part of the parties, so that not only does everyone agree to the possibility of an external party, but we also accept what he or she will resolve the case with a binding decision' (Interviewee No. 2)
> 'But, if we look behind the numbers, here in general, the rates of the employers, the representation organisations in the Hungarian labour market, don't make it very realistic to expect us to be – I do not know –swamping into the conciliation committees, mediations, arbitrations.' (Interviewee No. 4)
> '[I]n my opinion this has not broken the walls that these legal institutions, i.e. mediation, arbitration to become widespread at least in our region, but also nationally as far as I know' (Interviewee No. 5)

## 4. Beyond the Case Numbers, what is ADR?

Alternative dispute resolution (ADR) as general refers to the different methods people 'can resolve disputes [with] in a broader framework than the traditional litigation process'.[41] On the other hand, the Commentary to Act I of 2012 on the Labour Code defines ADR as 'a general term which includes dispute resolution methods that can be used in addition to, or instead of, court proceedings'.[42] These definitions determine ADR in an open way, with contrast with litigation/court proceedings as a significant criterion, but nevertheless the author's assumption was that ADR may be defined in different ways by different ADR practitioners, and it is worthwhile to examine the concept of ADR also empirically. The interviewees were asked a specific open question: how could you define ADR? The relevance of this question is confirmed by more interviewees as follows:[43]

> '[T]he biggest problem with alternative dispute resolution is that there are so many options, so the problem is that there are too many, so there is a court-based mediation, there is a fully market-based, there could be a state-provided, so there is currently a kind of confusion in people's minds as to what it means: individual, collective dispute, mediation or counselling, conciliation.' (Interviewee No. 8)

[41] Jacqueline M. Nolan-Haley, *Alternative dispute resolution in a nutshell*. (5th edn West Academic Publishing 2021, St. Paul, MN) 275.
[42] Commentary to Act I of 2012 on the Labour Code (2023) 852.
[43] Translated by the author.


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> '[T]hat is why it's still the case today, if we visit one employer where it works some form of labour representation, we would get responses that they do not know what mediation is.' (Interviewee No. 2)

Particular definitions provided by the interviewees shall be highlighted as follows:[44]

> 'Everything is alternative not falling within the scope of the juridical way. So, which avoids the judicial way of the state, that is which actually precedes these court proceedings. In my opinion, this is the cornerstone in a broad sense. The alternative adjective is meant to indicate that these conflicts should not be resolved in court.' (Interviewee No. 1)
> 'Whatever procedure is involved, the main point is that it does not proceed before a government agency, well it is based on the voluntary decision of the parties. Those are probably the two most important elements for me.' (Interviewee No. 2)
> 'Any dispute resolution method, which settles the disputes of the members of society without recourse to the institutionalised justice system, can be considered as an alternative dispute resolution' (Interviewee No. 3)
> 'Any dispute resolution which is not litigation, therefore this does not proceed before the court and there is a third, external party involved [...] the parties actively and otherwise, let us say constructively, engage in resolving their dispute in a manner otherwise satisfactory to them or, let us say, in a manner acceptable to them.' (Interviewee No. 4)
> 'If we say that its included within the name then alternative dispute resolution practically is a tool which [...] the parties can choose for the conclusion of their dispute in a quick and efficient way.' (Interviewee No. 5)
> '[A]ll forms of dispute resolution which would mean a dispute resolution without judicial and state coercion, where essentially the resolution of the dispute arises from the will of the parties and not from an external constraint.' (Interviewee No. 6)
> 'In my opinion alternative dispute resolution is the dispute regarding the economic and social interests of the employee which does not have an effect on the individual, but has an effect on the community. This is how I would define a collective labour dispute and the procedures for resolving collective labour would be defined as alternative dispute resolution' (Interviewee No. 7)

[44] Translated by the author.


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> 'There are many forms of alternative dispute resolution, therefore I would certainly see further to mediation and arbitration [...] and I would say keywords such as non-judiciary, support of an independent expert, but with a kind of state authority' (Interviewee No. 8)

It is visible that the definitions can be divided into two groups: on one hand the cornerstone of the definitions is that the dispute resolution happened out of the court; therefore, it is essentially, by definition, have connection with the litigation process. However, how can we assess the situation when a court mediator assists in our case who was acting as a judge in another case half an hour before?[45] Can the parties expect to conclude an agreement in the court building in a relaxed atmosphere? On the other hand, other definitions the interviewees focus on the main advantages of ADR (efficiency, involving a third party) which foreshadows that it is not primarily the system of organisation, but the results that can be achieved through a procedure that make it a genuine ADR procedure.

## IV. Conclusion

It is confirmed also by the interviews that the theory and the practice are currently far apart from each other in the field of alternative dispute resolution at the field of labour law in Hungary. One of the interviewees stated that: '[T]he theoretical principals are fixed for how it should work, but since there are no evolved practical rules and no established practice, the parties are forced to cooperate and are therefore condemned to the fact that if one party is not cooperative, then simply whatever rules shall be applicable will not work. And there have been cases where cooperation has been promoted by the activities of the Service. In my opinion this is the biggest gain that such Service can make in this sphere.'[46]
The author's opinion is that it is difficult to expect the parties to actively use ADR tools if they do not even know what ADR is and there is no specific institution to which they can submit their claim. The Service played therefore such an important rule that the parties could have introduced themselves with the world of the ADR. The interviews also revealed that people are now ready to bring their case before consumer protection or financial conciliation bodies, for example, from 1 January 2024, the consumer protection concilitiation bodies are entitled to bring a decision on the merits regarding the case without a declaration of submission in the case

[45] Based on Interviewee No. 2, this is the classical neither fish, nor flesh category.
[46] Interviewee No 3. Translated by the author.


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if the case value is below 200 000 HUF.[47] Can we imagine similar concilitiation procedure in the field of labour law? To answer this question, in addition to the experience of the Service's members, we also need to draw on the experience of employees and employers to create a real ADR institution that works for the benefit of society.

[47] Interviewee No 6. <https://bekeltetes.hu/tartalom/21/menu/8>, accessed 9 January 2025.


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