## Chapter 1 : UK: Individual disputes at the workplace â€“ alternative disputes resolution | Eurofound

*In Lithuania, most individual disputes, with the exception of employment termination cases, have to be handled by an LDC. These commissions are either standing institutions in the workplace or have to be specially set up once an application has been received from an employee.*

Of interest here are the 16 countries in Table 1 that are listed as having relatively low levels of ADR activity. It is hard to discern clear patterns to explain this paucity of ADR arrangements. In some countries, especially the new Member States in central and eastern Europe, new forms of labour legislation, such as a labour court, and associated activities have either not been developed or recent initiatives have yet to take root â€" as is the case in countries such as Bulgaria, the Czech Republic, Romania and Slovenia. Alternatively, where such procedures have been initiated, there is a reluctance to use them, as observed in the case of Poland see box below. How can this be explained? Trade unions are in favour of ADR, the employers are ambivalent and the government thinks it has done enough in establishing a mediation council for use in a wide range of civil court cases. In order to bring about change, there will be a need not only for involvement of the social partners, but also for a change in the mindsets of employees and employers alike. Types of ADR in use Conciliation Seven countries have established procedures whereby a dispute is considered by a specialist third party before it comes to court. In some cases, this procedure is compulsory in the sense that the court needs to be satisfied that attempts have been made to resolve the matter before a hearing commences. In other instances, there is an expectation that the aggrieved worker will use the alternative route. By definition, these countries have a high use of judicial ADR. Three countries are selected to illustrate the way forms of compulsory arbitration operate â€" namely, Norway, Italy and the UK see box below. This also allows for the complexity of arrangements to be appreciated. Examples of compulsory arbitration In Norway, most cases must be brought before the Conciliation Board, which helps the parties achieve a simple, swift and cheap resolution of the case. In addition, there is a Dispute Resolution Board, which deals with cases particularly related to the Working Environment Act, such as working time , flexible working, and entitlements to absence. Under the Dispute Act, which regulates conciliation, the option also exists to use mediation as a further step. This takes place before a special board instituted by the relevant Provincial Labour Directorate. If the judge ascertains at the beginning of the court procedure that no attempt has been made to use conciliation, the proceedings may be suspended and the parties ordered to use the procedure. The administrative difficulty in setting up a conciliation hearing, especially in the public sector where different rules apply, can lead to lengthy delays. If the outcome is registered with the labour directorate, it is deemed valid. A recent development, introduced in , is a form of non-judicial ADR where the management and trade union can request a certification of the working relationship, presumably showing the quality of procedures for handling grievances and disciplinary matters. In the UK, each application by an individual worker to an Employment Tribunal is referred to a conciliation officer at the Advisory, Conciliation and Arbitration Service Acas. Unusually, and indeed perhaps uniquely, the conciliator will only rarely hold a hearing in an effort to resolve the matter. Generally, the conciliator seeks agreement on compensation rather than reinstatement, given that most applicants have left their employment before applying to an Employment Tribunal. Thus, ADR in the UK covers both the narrow definition of judicial ADR concerning the role of a third party and the broader definition of non-judicial ADR through the encouragement of workplace procedures. Relationship-based mediation is also increasingly being used in an effort to deal with problems of bullying, harassment and the breakdown of relationships while the aggrieved worker is still in employment. However, not all conciliation is compulsory. For example, in Hungary and Germany, conciliation is linked to court proceedings see box below. In Germany, the labour courts have exclusive jurisdiction over virtually all legal conflicts between the employer and employee arising from the employment relationship. Labour court proceedings aim to be simple, speedy and inexpensive. Every case brought before the labour court begins with a conciliation hearing heard by the chairperson acting alone. The purpose of this approach is to achieve an amicable settlement, usually a compromise between the parties, before recourse to a formal hearing. The parties may also agree to mediation at this stage. Mediation

Mediation is growing in use, and a number of the countries developing new forms of ADR in the s have begun to use either court-based or private forms of mediation. Most mediation takes the traditional form, whereby the third party hears both sides and seeks to find an acceptable resolution before issuing a non-binding decision or recommendation, usually in writing. In some cases, the mediator reviews written submissions. A variety of methods are used to initiate mediation. Court-based mediation â€" the Netherlands and UK In the Netherlands, there are no specialised labour courts and labour law is complex, especially when distinguishing between the public and the private sectors. Individual labour disputes may be settled by mediation in two ways: The Dutch government encouraged the use of mediation in the civil courts in with the provision of legal aid. Overall, the number of mediations recorded by the Mediation Monitor rose from cases in to 3, in  However, this still represents a small proportion of the total number of cases coming before the district courts. About three quarters of the mediation initiatives are completed, presumably to the satisfaction of the applicant. Individual labour disputes constitute just over one third of the total number of mediations â€" the others encompassing family, commercial and environmental disputes. The mediators are private individuals who should conform to certain standards laid down by the Netherlands Mediation Institute NMI. In some cases, legal aid may be available. It is usual for the costs to be paid by the employer, although no statutory rules are in place concerning such payments. If the dispute is successfully resolved, the details are laid down in a special contract where the parties refrain from further litigation. Alternatively, the social partners â€" including the government â€" can establish a mediation forum or commission to provide voluntary mediation services see box below. Mediation established by law â€" Slovakia In Slovakia, mediation legislation was adopted in to reduce the burden on the civil courts. It should be noted that there is no special labour court in Slovakia. The legislation regulates the performance of mediation, its basic principles and organisation, as well as specifying the outcomes. The mediation is voluntary and has to be paid for by the parties. The mediators have to be suitably qualified and registered with the Ministry of Justice Ministerstvo Spravodlivosti Slovenskej Republiky. Once an application is made, either by the individual worker or through the trade union, the employer and the worker are required, in a written statement, to confirm their willingness to use mediation and must agree on the name of the mediator. The mediator, at the end of the hearing, proposes a solution to the dispute in writing. If this is accepted by both parties, it is binding on them and can be accepted as an out-of-court settlement by the courts. It also contributed to the fall in the average litigation time of those cases still going to court â€" that is, from  Mediation established by the social partners â€" Portugal The Portuguese government is committed to encouraging the use of ADR in order to reduce the burden on the courts, including the labour court. Initially operating in the metropolitan areas of the capital city Lisbon and Porto in northern Portugal, it was extended in to all areas of the country. The SML can deal with virtually all types of individual disputes. The scheme has some unique features. To get access to mediation, the aggrieved worker or the employer applies to the SML, which will then contact the other party and appoint a mediator from a list of suitably qualified persons on the SML list. The SML may also provide a room, although it is up to the parties to choose a location. It is also possible for a judge at the labour court to ask for the SML to intervene if the parties before the court agree. Once a mediation hearing has started, time limits on making a claim to the labour court are suspended. So far, 18 employer organisations, 29 companies and 26 trade unions have joined the SML, which is still only in the early stages. The latter country also provides an example of private mediation along relational lines adopted by some employers, especially foreign-owned multinational companies. A similar role is played by ombudsmen appointed within the company. The examples in the box below are chosen to illustrate how relational mediation operates in practice. The SSF suggested that mediation was particularly suitable for dealing with cases of workplace bullying. These are all symptomatic of breakdowns in interpersonal relationships, where relational mediation can be especially effective. The mediators are private individuals who often have their own consultancy company. They are usually paid by the employer. There is no link between the use of this type of relational mediation and the labour courts. These are usually problems which have yet to reach the stage of being, or about to become, cases for an Employment Tribunal but are internal disputes at work. This type of mediation involves the mediator helping two or more people in the dispute â€" which can be between workers or between a worker and manager â€" reach an

understanding through collaborative problem-solving. The focus is much less on the causes of the dispute and the allegations of blame than on finding future means to work together or coexist in relative harmony. A growing number of large employers, such as the major police forces, provide trained internal mediators to help resolve problems. In such cases, the mediator will be a trained manager from another location or department who is not involved in the dispute and is called in to help resolve the problem. In some instances, senior employee representatives, usually trade union based, have been trained as mediators. Where relational mediation is used, the strong preference is for the mediator to deal with the people involved directly without any intermediaries or accompanying individuals. The use of relational mediation was actively encouraged in a UK government report in  Modified relational mediation â€" Ireland In Ireland, disputes concerning discrimination or victimisation are dealt with by the Equality Tribunal , established in as a quasi judicial, independent body. Initially, equality officers conducted investigations into complaints and recommended legally enforceable remedies. In recent years, however, the tribunal has emphasised the use mediation in place of investigations. Mediation is guided by the principle of self-determination and is completely voluntary and informal and does not involve written submissions. Agreements are not published and the parties are given a cooling off period before being asked to sign an agreement. Mediation is three times quicker than the alternative of a formal investigation, on average, lasting six months as opposed to 18 months. The aim of this form of ADR is to rebuild effective working relationships. Other types of mediation and conciliation often take place after the person has left employment. The function of these types of ADR may be more concerned with establishing rights and agreeing forms of compensation than with resolving disputes to enable the employee to continue in the same job or organisation. Arbitration Arbitration is where a third party makes a binding decision on the application made by an aggrieved worker. Often, little detail is provided on arbitration in the EIRO national centre reports. This is indicative of the fact that arbitration is always used as a last resort and that much more attention is given to the earlier stages of conciliation and mediation. Even as a last resort, arbitration is not often used. In Cyprus, the Czech Republic, Italy, Luxembourg and Slovenia, the use of arbitration for individual worker disputes depends on it being written into appropriate collective agreements between employers and trade unions. For example, in Italy, one national industry-wide collective agreement contratto collettivo nazionale del settore, CCNL allows for the establishment of an Arbitration Committee to deal with particular disputes, with the arbitrators drawn from a panel of possible members. In the Czech Republic, the possible use of arbitration is a recent innovation incorporated into the Labour Code in , although the legal status of this has not yet been determined see box below for further examples.

## Chapter 2 : Individual & Executive Disputes

*An ideologically divided Supreme Court ruled Monday that companies may require workers to settle employment disputes through individual arbitration rather than joining to press their complaints, a.*

This information is made available as a service to the public but has not been edited by the European Foundation for the Improvement of Living and Working Conditions. The content is the responsibility of the authors. Alternative dispute resolution is well established through the provision of individual conciliation by Acas. There is a requirement for conciliation to be offered when an individual makes a claim to an Employment Tribunal in a wide range of jurisdictions. The success rate is high and seen in the rate of settlements and in the number of cases where the application is withdrawn. The purpose of conciliation is primarily to avoid the matter going to court. Another initiative has been to promote the use of mediation in the workplace in cases which are not capable of judicial determination. Background It is thought that the number of employees registering a complaint about their treatment at work is growing, but we need more evidence of this. The central question to be covered by this CAR is how these complaints are dealt with outside, and usually before, an application to a labour court or tribunal but which still provide the aggrieved worker with some avenue of redress, or a least a means for having the complaint heard. ADR may be an alternative to litigation through the courts or it can also be a consensual approach to the resolution of individual conflicts in the workplace used by the courts or an agent appointed by the court. ADR has a number of variants. It is usual for an independent person to be involved as a third party. This can sometimes be someone from inside the employing company or organisation but more usually involves someone from outside who is an independent person. The main types of ADR are as follows: Here the third party who acts only as a facilitator by maintaining the two way flow of information between the conflicting parties and encouraging a rapprochement between their antagonistic positions. This is where the third party listens to each side, usually in person, but it can be done by phone, and seeks to find an acceptable solution, which can be compensation or alternatively, measures taken in the workplace. The conciliator does not make a judgement nor suggest a solution but works with the applicant and the employer to find an acceptable outcome. In some countries the law requires that before the matter can be heard in a labour court or tribunal the applicant must use the services of a conciliator. This is where an impartial third party, the mediator, helps two or more people in dispute to attempt to reach an agreement. Mediation is based on the principle of collaborative problem-solving with the focus on the future and rebuilding relationships, rather then apportioning blame. Sometimes a mediator may suggest a possible solution to the conflict, as they do in collective labour disputes. Another type of mediation is where the mediator guides the parties toward finding their own solution by getting them to explore different and new ways of thinking and acting. This approach has its origins in family mediation, and; Arbitration: This is where the third party hears the case presented by each person and makes a ruling on the outcome; Other ADR innovations: This can sometimes be used in disciplinary cases. The following questions should enable us to construct a comprehensive picture of practice and trends in ADR across the EU member states. We are essentially looking for evidence and explanation of the uptake of ADR, and details of how it operates. A Recent trends 1. What traditional or established methods are used in your country to seek to resolve individual disputes e. What ADR methods are now used as alternative or additional means to resolve individual conflicts? Please give a brief description of the legal mechanisms before reporting on the use of the various forms of ADR used. Please explain if ADR is voluntary or compulsory. Please distinguish between conciliation, mediation, arbitration and any other types of ADR. In general terms applications must be lodged within three months of the act complained of taking place, e. In some instances, such as discrimination cases, there are no service requirements before an individual can apply to an ET. In other cases the worker must have been employed in the firm for a certain period to be entitled to protection e. Around three quarters of employers are legally represented. This has increased the number of cases submitted to the ETs especially in the area of equal pay and has overwhelmed the Tribunal system. Tribunal judges are empowered to hear some technical cases on their own. A significant feature of the UK system of individual dispute resolution is a

requirement for most cases, having been submitted to the Tribunals Service using an ET1 form, to be referred to the Advisory, Conciliation and Arbitration Service Acas. Here a trained individual conciliator IC in the relevant region seeks to obtain a resolution of the matter without the need for it to be heard by the ET. However, the parties are under no obligation to enter into the conciliation process if they do not wish to. The IC is required to seek reengagement or reinstatement of an applicant, if relevant, but this is rarely achieved. ICs may also act in pre-claim conciliation PCC cases where both parties wish. Acas is an independent body but funded in the main by government. It is governed by a Council composed of individuals of high standing from employers, the trade unions and independents. The distinction between conciliation and mediation is hard to draw in practice in this type of ADR. The conciliator will use their skills to determine whether to use evaluative, facilitative, or transformative intervention. The conciliator has no powers of decision making. Alarmed at the very marked rise in the number of applications to the Tribunals, and thus the cost to the public purse, successive governments have sought to limit or control the process and influence how Acas provides individual conciliation. One such was the development of an individual arbitration scheme operated by Acas as an affordable alternative to an employment tribunal hearing. This is where an arbitrator hears the case and makes a legally binding decision. In practice it is virtually moribund dealing with less than 10 cases a year. An attempt was made in to introduce time limits on certain Acas conciliation cases and more importantly to impose a 3 step procedure that employers and employees were required to use in their organisation to deal with cases of discipline and grievance. Failure to do so could lead to a finding of unfair dismissal against the employer or for the employee being prevented from making a claim to an ET. The aim was to improve and speed up the process of dispute hearing inside organisations long before the issue came to an ET. In particular the 3 step procedure emphasised the importance of written communication concerning the handling of a disciplinary or grievance issue. The assumption was that this would give clarity and aid quick resolution in the employing organisation. In practice, as revealed by the Gibbons report of , this had the perverse effect of making settlements more difficult since the parties knew that their correspondence and written reports would be admissible in an ET hearing. The number of ET applications rose rather than fell in subsequent years and resolution rates declined. However, the legal requirement to operate disciplinary and grievance procedures to a minimum standard, including a final internal appeal step, can be seen as a type of ADR potentially reducing the number of cases going to an ET and Acas. The 3 step procedure was abolished in  In its place Acas was asked to revise its Code of practice on discipline and grievance to give practical advice on how to handle these topics. A Code of practice has quasi legal authority since ETs are required have regard to the advice therein in determining whether the company or the applicant met the procedural standards set out in dealing with the issue. Two very recent initiatives concern the use of mediation as a new form of ADR. It is too early to say how far they will be used and with what level of success. These are usually problems which have not got to the stage of being or becoming cases for an ET but are internal disputes. Some large firms and organisations, such as the major police forces, also provide trained internal mediators to help resolve problems. This was actively encouraged in the Gibbons Report. A further initiative has been taken by Acas in , based on a pilot study in 3 regions, to provide an enhanced PCC service. Acas runs a telephone help line, which has recently been extended in opening hours and in staffing. This gets just under 1 million calls a year. Over the last five years, i. The total number of cases received by Acas for conciliation is shown in table one below. Gross number of cases referred to individual conciliation from employment tribunals, by year, excluding local authority equal pay cases.

## Chapter 3 : Individual disputes at the workplace: Alternative disputes resolution | Eurofound

*This work discusses the individual contract of employment at a time of significant changes in the judicial case law. Revealing that labor courts and arbitrators still favor employers' rights to freely discharge employees, Brodie focuses on the themes that remain constant, including judicial.*

## Chapter 4 : American Arbitration Association

# DOWNLOAD PDF INDIVIDUAL EMPLOYMENT DISPUTES

*Industrial Dispute is "any dispute of difference between employers and employers or between employers and workmen; or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person." a) There should.*

## Chapter 5 : The Resolution of Individual Employment Rights Disputes - Workplace Solutions

*We represent a wide array of individuals including executives, managers, physicians, academics, athletic coaches and other professionals involved in complex employment disputes. These disputes may be resolved through informal negotiations, confidential arbitrations, litigation, and anything in between.*

## Chapter 6 : Individual disputes | Acas

*Generally speaking, employment disputes are divided into two categories: individual and collective disputes. As the term implies, individual disputes are those involving a single worker whereas collective.*