International Labour Organization

Individual labour dispute resolution systems in selected Central and East European (CEE) countries

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Preface

This report provides a comparative summary overview of individual labour dispute settlement systems in selected Central and East European (CEE) countries (*Albania*; *Republika Srpska in Bosnia and Herzegovina; Bulgaria*; *Croatia*; *former Yugoslav Republic of Macedonia*; *Hungary*; *Republic of Moldova*; *Montenegro*; *Romania*; *Serbia*; *Ukraine*). The International Labour Office (ILO) commissioned studies on these countries as part of its programme of global research on individual labour dispute resolution systems. The ILO has been carrying out this research programme, in the context of its promotion of social dialogue, under the guidance of the International Labour Conference[1] and the ILO Governing Body.[2]

In the search for practical experience and knowledge, the ILO has been supporting the establishment of knowledge- and practice-sharing platforms at subregional levels by grouping countries with common interests and challenges in the areas of labour dispute resolution. With ILO support, a Network of Agencies for Peaceful Settlement of Labour Disputes was launched in 2016 among dispute resolution agencies and administrative departments charged with providing amicable settlement services in the CEE subregion. An online Community of Practice was created as part of the EU-funded Employment and Social Affairs Platform (ESAP) Project, to systematically exchange dispute resolution practices and experiences between countries in the CEE subregion. This report is one fruit of this subregional agency networking meeting, and is a reflection of the value of knowledge transfer and sharing of good practices in the subregion.

We would like to extend our sincere appreciation to all the authors of the studies which formed the basis for this report: Luljeta Krasta (Albania); Borislav Radic (Republika Srpska in Bosnia and Herzegovina); Plamenka Markowa (Bulgaria); Iris Gović Penić (Croatia); Stojan Trajanov (The former Yugoslav Republic of Macedonia); Kun Attila (Hungary); Eduard Boisteanu (Republic of Moldova); Zdenka Burzan (Montenegro); Serghei Mesaros (Romania); Senad Jasarevic (Serbia); and Nadya Zarko (Ukraine).

Our special thanks also go to the ILO editorial team for their extensive work to coordinate and monitor the studies, and develop this comparative overview report: Cristina Mihes, Minawa Ebisui, Sara Martinsson, Jasna Poček and Colin Fenwick.

This report is intended to encourage an exchange of knowledge and experiences, and is not a final document. The information herein and views expressed are the responsibility of the authors and do not represent those of the ILO. We hope that the report will be valuable for a range of interested readers.

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[1] ILO.2013a.
[2] ILO. 2013b.

Contents

1. Introduction

What constitutes "effective" or "good" mechanisms and processes for preventing and resolving labour disputes is a question that the International Labour Organization (ILO) has long been working on as part of its efforts to strengthen national labour dispute systems.[3] The ILO embarked on a global research programme on the performance of individual labour dispute resolution systems in the framework of the Plan of Action to implement the Conference conclusions of the recurrent discussion on social dialogue (the 102nd Session of the International Labour Conference in 2013).[4] Studies commissioned by the ILO covered more than 50 countries from all regions.[5] A book on selected OECD countries was published at the end of 2016.[6]

This report contains a summary overview of studies on selected countries in the Central and Eastern European (CEE) subregion: *Albania; Republika Srpska in Bosnia and Herzegovina (hereafter, Republika Srpska);*[7] *Bulgaria; Croatia; FYR of Macedonia; Hungary; Republic of Moldova; Montenegro; Romania; Serbia; Ukraine.*[8] The original reports on which this report is based were delivered by the authors, and discussed at a CEE subregional workshop in 2015 in Montenegro. Representatives from the Ministries of Labour, social partners, agencies for peaceful settlement of labour disputes and the judiciary actively participated in the discussion. The original country reports were subsequently updated with additional inputs from the members of the subregional Network of CEE Agencies for Peaceful Settlement of Labour Disputes[9] during its annual meetings in 2016-2018. This paper is therefore a reflection of the value of knowledge sharing in the subregion.

The majority of causes for individual disputes in the CEE subregion concern termination of employment, discrimination and mobbing, and non-payment of wages and benefits. However, a lack of comparable statistical data as well as cross-national differences in the existing institutions make it difficult to draw regional overall trends in the volume of individual disputes.

Nonetheless, the findings revealed major challenges to effective individual labour dispute resolution systems depending on the national context in the CEE subregion. The courts are generally overloaded. Judicial proceedings can be lengthy. A lack of specialized judges is common. Despite these shortcomings, the court of law remains the primary institution for individual labour dispute resolution in most CEE countries. Alternative dispute resolution (ADR) methods, in particular conciliation and mediation services, are increasingly offered in and outside courts across the subregion. However, use of these methods remains low in most countries, with a few exceptions. The multiplicity of different ADR processes instead hinders users' awareness of their benefits in some countries. Inconsistent and sometimes unclear legislation along with divergent case law results in limited voluntary compliance and dispute prevention by the social partners. Poor adherence to or enforcement of outcomes further compounds these challenges.

The terminology used to define the concept of "individual labour disputes" differs between the countries in the subregion. While it is not always set out by law, the concept is understood in practice

[3] Vargha; C. 2014, at p. 3.
[4] ILO. 2013a; 2013b.
[5] ILO. 2016, at p. 6.
[6] See Ebisui, M.; Cooney. S.; Fenwick, C. (eds.).2016.
[7] The study was conducted only for Republika Srpska.
[8] All country-specific information presented in this report derives from these country studies, unless otherwise indicated in footnotes. The written contribution on Croatia was submitted voluntarily to the workshop in 2015 in Montenegro.
[9] The Network of Agencies comprises: a) Ministry of Finance and Economy of Albania – Department of Labour and Social Dialogue; b) Agency for Peaceful Settlement of Labour Disputes of Republika Srpska in Bosnia and Herzegovina; c) National Institute for Conciliation and Arbitration of Bulgaria; d) Ministry of Labour and Social Policy of the FYR of Macedonia, Association of Labour Conciliators and Arbitrators of Macedonia (APARS); d) Agency for Peaceful Settlement of Labour Disputes of Montenegro; e) Ministry of Labour and Social Justice – Office for Mediation of Romania; and f) Agency for Peaceful Settlement of Labour Disputes of Serbia.

within the meaning of the ILO Examination of Grievances Recommendation, 1967 (No. 130).[10] Only in a few countries is the term "individual labour disputes" laid down in law. In *the Republic of Moldova*, individual labour disputes are described as disagreements between the worker and the employer concerning specific situations referred to in Article 354 of the Labour Code. In *Republika Srpska* and in *Serbia*, the Law on the Peaceful Settlement of Labour Disputes[11] defines the term "individual labour dispute" as a dispute between the employee and the employer with regard to the exercise of rights and obligations arising from and on the basis of work. In *Montenegro* as well, the Law on Amicable Settlement of Labour Disputes defines the term as a dispute arising in the exercise of the rights of the employee arising from and based on employment.

The terms "mediation" and "conciliation" are not always legally defined; nor is the difference between various ADR methods well understood in practice. In some countries, they are used interchangeably (e.g. Hungary), while in others the term "conciliation" is used to explicitly differentiate services provided by States from private mediation (e.g. *FYR of Macedonia*). The term "arbitration" is in some cases used to describe processes, which are essentially consensual. For example, in *Montenegro* the term "arbitration" is used for what is understood globally as conciliation/mediation: arbitration outcomes do not become binding and final unless the disputing parties agree to a solution proposed by the arbitrator. In *Republika Srpska,* there is no distinction between the terms "conciliation" and "arbitration" in practice.

The rest of the present report offers a comparative overview of the existing institutions and processes for individual labour disputes, starting in Section 2 with an overview of judicial institutions, including general and specialized courts. Section 3 examines non-judicial institutions, such as administrative agencies, labour inspectorates, and human rights and non-discrimination bodies. Section 3 then considers non-state mechanisms and procedures, and Section 4 concludes. Within each section, key performance challenges and responses to overcome them are addressed.

2. Judicial institutions

It is difficult to draw regional overall trends in the volume of individual disputes referred to courts due to a lack of data disaggregated by collective and individual disputes in some countries. Access to the courts and other dispute resolution processes in practice can be affected by various economic, social, cultural and psychological factors, such as weaknesses in workers' representation and harsh conditions in the labour market. For example in *Romania,* there was an increase in the number of individual disputes before the courts due to layoffs and wage cuts associated with the global economic and financial crisis. In *Ukraine*, the majority of cases handled by administrative courts concerned recovery of wages at the time. On the other hand, Hungary witnessed a decrease in the number of employment-related lawsuits in courts after the coming into force of the new Labour Code in 2012. The latter significantly reduced legal remedies for unfair dismissal.

2.1 Ordinary courts

Ordinary courts hear individual labour disputes in *Albania, Bulgaria, Republic of Moldova, Montenegro, Republika Srpska, Serbia and Ukraine.* In *Albania, Bulgaria, Republika Srpska* and *Serbia,* delays and excessive caseload in the courts tend to be caused by a lack of adequate institutional resources and a shortage of judges and/or specialized judges. In *Serbia* a shortage of judges may have an impact on the quality of legal proceedings. A possible risk of establishing conflicting case law is

[10] ILO Recommendation No. 130 provides that "the grounds for a grievance may be any measure or situation which concerns the relations between employer and worker or which affects or may affect the conditions of employment of one or several workers in the undertaking when that measure or situation appears contrary to provisions of an applicable collective agreement or of an individual contract of employment, to works rules, to laws or regulations or to the custom or usage of the occupation, branch of economic activity or country, regard being had to principles of good faith" (para. 3).
[11] Official Gazette of Republika Srpska, No. 91/16.

also an issue. In *Bulgari*a, although summary proceedings are applicable to certain disputes to speed up the proceedings,[12] a lack of specialized judges results in a greater likelihood that complex disputes will be postponed. The need for specialized judges trigger policy discussion on the establishment of labour courts or specialized sections as an option for reforms. In *the Republic of Moldova*, this need has been acknowledged by civil society, in particular the social partners, as an option to enable more efficient resolution of disputes. On the other hand in *Bulgaria,* the Government and the magistrates have been reluctant about this option, due to a lack of judicial tradition and limited budgetary resources.

2.2 Labour courts and specialized sections within the ordinary courts

Specialized courts are designed to be speedier, cheaper and thus more accessible than the ordinary courts.[13] In the subregion, labour courts or specialized sections within the ordinary courts exist in *Croatia*, *FYR of Macedonia, Hungary and Romania.* In *Croatia,* special court proceedings apply to labour disputes in the ordinary courts, except the Municipal Labour Court in Zagreb, where there is a specialized labour court. In *Hungary,* labour courts were established in 1972. Labour disputes are heard by the court of the first instance with the participation of two lay assessors, unless otherwise prescribed. Assessors of administrative and labour courts are primarily nominated by the representative organizations of workers and employers, then elected by the local governments. They must have no criminal record, and not be subject to any disqualification from public affairs. They must not be a member of a political party and may not engage in political activities. However, the limited role that lay judges play and associated costs have been questioned and the full independence of pre-existing labour courts has been diminished since 2013, by merging them into administrative courts.

In *Romania*, panels of the specialized labour section within the first-instance courts adjudicate labour disputes. Panel members comprise a specialized professional judge and two lay assistants, proposed by workers' and employers' organizations represented in the national Economic and Social Council (ESC), and appointed by the Ministry of Justice. Candidates should have a law degree and more than five years of experience in the judicial field. They have a consultative vote and sign the pronounced judgements.

Promotion of amicable settlement in court

Promoting settlement before adjudication is another common policy option for enhancing the efficiency of the courts. The Directive on Mediation in Civil and Commercial Matters forms part of the efforts of the European Union (EU) member States to establish common mediation rules. This has affected non-EU member States in the subregion to a certain degree in terms of the use of private mediation. In Albania, private mediation is reported to be increasingly used due to the unavailability of other amicable settlement options for individual disputes. In other countries, it is rarely used for labour disputes because of payable fees, with a few exceptions where private mediation is either financially supported by the Government (e.g. *FYR of Macedonia*) or offered as a pro bono service by non-governmental organizations (e.g. *Bulgaria*).

In *Bulgaria*, in accordance with the Mediation Act, mediation was introduced in 2008 for pending civil court cases. The courts can propose and encourage the use of mediation by the parties. Private mediators establish their own fee schedules, and charge intake fees (EUR 25-100 approx.) and mediation fees (EUR 25-50 approx. per hour) depending on the degree of controversy and the profiles of the parties. Such mediation is rarely used, however, as the parties need to bear mediation fees in addition to the court cost. There is another mediation programme, initiated in 2010 in some counties, including the Sofia Regional Court, which is funded by non-state donors, for example the America for

[12] Summary proceedings are applicable to disputes related to remuneration, declaration and revocation of wrongful dismissals, compensation for the period of unemployment due to the dismissal, and correction of the grounds documented in the workbook or other documents.
[13] Ebisui et al., *op. cit*.

Bulgaria Foundation. This mediation is increasingly used because the court duties are reduced by 50 per cent if the parties agree to participate in mediation. Another NGO, the Court Settlement Centre, also provides pro bono mediation services. This is conducted by volunteer mediators and judges trained in mediation techniques. Upon confirmation from the parties, a settlement agreement reached in the mediation procedure is approved by the judge and shall have the force of a court decision. The Court Settlement Centre deals with all types of legal disputes, including those related to employment. According to the Centre's statistics, one-third of the mediated cases were settled and the Centre attracted additional institutional, financial and professional support for its services. However, disaggregated data on employment-related disputes is not readily available.

In *Hungary*, a multiplicity of conciliation/mediation processes co-exist in and outside courts, although none of them limits parties' direct access to the latter. Proceedings in the labour court start with free-of-charge mandatory conciliation conducted by the judge. Settlement agreements reached through this conciliation are then approved by the judge, and have the legal effect of a judicial decision. Since 2012, free-of-charge voluntary judicial mediation has been available for civil matters. This judicial mediation is carried out by a court clerk or a judge, appointed by the President of the National Judicial Office after confirmation of completion of the specialized training for professional mediators. Judicial mediation is confidential and easily accessible on court premises. If the parties reach an agreement, the levy is reduced. Nevertheless, its use is limited. This may be explained by the fact that the process is relatively new, and lawyers' involvement in judicial mediation makes it confrontational. In addition, private fee-charging mediation, regulated by the Mediation Act, is permitted for all kinds of labour rights disputes in cases where conciliation is not stipulated in the collective agreement or other parties' agreements.

The courts in *FYR of Macedonia* are obliged at the first hearing to refer to the possibility for mediation/conciliation, in accordance with the Law on Mediation or the Law on Amicable Settlement of Labour Disputes. The Law on Mediation regulates mediation for individual disputes, while the Law on Amicable Settlement of Labour Disputes concerns free-of-charge conciliation for collective rights disputes. If the parties agree to use mediation for individual disputes, the court proceedings are suspended. This mediation is provided by fee-charging private mediators, although the Ministry of Justice periodically subsidizes mediation for promotional purposes. Mediators are those who have passed an exam on theoretical knowledge and practical skills for mediation, and are licensed by the Ministry of Justice. Conciliators are those who have undergone a specialized training on labour conciliation and have been licensed by the Ministry of Labour.

In *Romania*, under the Mediation Law of 2006, private mediation is available in both judicial and non-judicial cases, upon both parties' consent. However, the scope of mediation in individual labour dispute is significantly limited by the Labour Code, which bans the waiver of workers' statutory labour rights.

Similarly in *Montenegro, Republika Srpska and Serbia*, disputing parties can resort to private mediation before or during the court proceedings. Private mediation was introduced under the Law on Mediation in Dispute Settlement, which harmonizes regulation in this area with international and European standards.[14] Settlement agreements reached through in-court mediation have the same legal effect as court decisions.[15] However, this type of mediation is fee-charging and thus rarely used. Nor is its applicability for individual labour disputes clear.

Enforcement of court decisions and access to remedy

Weak enforcement of judicial orders or court rulings poses serious challenges to access to remedy. In some countries special or speedy procedures are available for securing speedy enforcement of

[14] See EU Directive on Mediation in Civil and Commercial Disputes

[15] See Art. 23, 26, 27 of the Law on Mediation in Dispute Settlement.

outcomes. In *Croatia*, interim measures may be applied by court order to monetary claims in order to remedy irreparable damage to the claimant. In *Hungary* the party may enforce the claim by way of an order of payment procedure, which falls within the competence of civil law notaries. In *Montenegro*, the Labour Fund exists to secure payment of outstanding claims of workers whose employment was terminated for economic reasons.

In *Republika Srpska,* court verdicts related to individual disputes are final in the first instance, if the parties give up the right to appeal, or if they miss the deadline for appeals. The finality in the second degree occurs when the court rejects the appeal and confirms the verdict. If the deadline for voluntary execution of a final court decision has elapsed, and the employer does not execute the verdict, the worker may initiate a proposal for execution. Enforcement procedures can thus be quite lengthy.

Upon ratification by the judge, settlement agreements reached through in-court mediation have the legal force of a court decision and become executory. However, they face similar enforcement challenges.

3. Non-judicial institutions

3.1 Administrative agencies and units that provide mediation, conciliation and/or arbitration

There are state-funded agencies that provide free-of-charge mediation/conciliation and/or arbitration services to resolve individual labour disputes in *Republika Srpska* (the Agency for Peaceful Settlement of Labour Disputes);[16] *Montenegro* (the Agency for Peaceful Settlement of Labour Disputes);[17] and *Serbia (*the Agency for Peaceful Settlement of Labour Disputes).[18] All three Agencies are overseen by tripartite boards and report to the tripartite Economic and Social Council.

Their services are speedier than courts. Generally the settlement processes should be completed within 30 days. No legal representation is necessary. Agencies' conciliators/arbitrators are specialized in labour law and capable of offering speedy settlement. Their contribution to the reduction of the number of court cases is noteworthy.

In *Montenegro*, the Agency, established in 2010, handles all types of individual labour disputes either before or during the judicial procedures. Cases appropriate for the Agency's arbitration (i.e. conciliation in practice) are referred by the courts, following both parties' consent for the use of its services. In 2013, 17% of the cases under court proceedings were referred to the Agency by the courts. However, the volume of cases before the Agency has recently dropped due to fiercer competition among services provided by the Agency, private mediators and lawyers. This triggered policy discussion on the feasibility of making the Agency's conciliation mandatory. A first step in this direction is the new law on public service, coming into force on 1 July 2018, which requires compulsory recourse to the Agency's conciliation for all labour disputes involving civil servants.

In *Republika Srpska,* the Agency was established in 2010. It offers conciliation and voluntary arbitration services for disputes related to termination of employment, selection and recruitment, non-payment of wages and other benefits, severance pay and other compensation upon termination of employment. In 2014, the Agency resolved 800 individual disputes, resulting in approximately 40% fewer cases received by the courts. In 2015, the volume of individual disputes referred to the Agency was 2.5 times more than in 2014. Following the coming into force of the new Labour Code in 2016, which introduced compulsory conciliation by the Agency before recourse to court for all types of

[16] Official website: www.radnispor.net [accessed June 2018].
[17] Official website: www.amrrs.gov.me [accessed June 2018].
[18] Official website: www.ramrrs.gov.rs [accessed June 2018].
In other countries, the State provides settlement services only for collective labour disputes: *Albania* (Public Employment Service and Public Offices of Reconciliation), *Bulgaria (*National Institute for Conciliation and Arbitration), *Hungary* (Labour Conciliation and Arbitration Service) and *Romania* (Ministry of Labour and Social Justice – Office for Mediation).

labour disputes,[19] the Agency received four times more cases than the courts. However, ambiguities and a lack of consistency in legal provisions regarding mandatory recourse to the Agency caused controversy around the implementation of the new Labour Law. The Supreme Court adopted a Decision stating that the worker shall not be obliged to file a motion for amicable labour dispute resolution with the Agency prior to filing a lawsuit with the court. As controversies regarding the implementation of this Labour Code persist, the Agency envisages the establishment of a tripartite working group to propose amendments to the Labour Law so as to enhance the legal predictability of the Agency's services.

In *Serbia*, the Agency was established in 2004, and offer voluntary conciliation and arbitration for individual disputes. Its jurisdiction covers termination of employment, payment of minimum wages, commuting costs, charges for meals at work, jubilee awards, and mobbing and discrimination. Despite an increase in the number of disputes referred to the Agency, 30 times more cases were brought to the courts than to the Agency in 2016. This may be due to the voluntary nature of their services. However, the Agency's services are more frequently used and proved to be effective for mobbing and harassment disputes. Eighty per cent of the cases brought to the Agency in 2010 concerned mobbing. For the period 2010 to 2014, the Agency settled five times more mobbing cases than in all courts in Serbia. The Agency is keen to promote the use of conciliation/mediation for such disputes, as it functions well to maintain continuing work relations between the parties.

These Agencies are also active in prevention and outreach services. In *Serbia*, the Agency's newly launched free telephone services contribute to raising awareness about mobbing and bullying. In *Montenegro,* the Agency's advisory services via telephone or email on how to settle disputes internally are increasingly used. It is also active in promoting the benefits of peaceful settlement of labour disputes and awareness raising on internal dispute prevention and management. The Agency in *Republika Srpska* also provides advice and guidance on applicable regulations and the legality of individual acts.

In the *FYR of Macedonia*, only voluntary arbitration for cases over non-payment of wages and dismissal-related individual labour disputes is made available free of charge by the State. The existing mechanism and the roster of arbitrators are administered by a unit in the Ministry of Labour and Social Protection. Cases referred to arbitration are uploaded by the selected/appointed arbitrator into the Case Management Information System with the Ministry, while the process is monitored by the administrator until the final settlement. In the *FYR of Macedonia* only free-of-charge voluntary arbitration is provided for cases over non-payment of wages and dismissals.

In *Albania, Bulgaria, Hungary and Romania,* the State does not provide extra-judicial mediation/conciliation or arbitration services for individual labour disputes.

Enforcement of court decisions and access to remedy

A lack of adherence to and weak enforcement of settlement agreements reached through conciliation/mediation is common in some countries. In *Romania*, mediation agreements are binding, as long as they respect legality, and can be subject to the authentication of a public notary or the court's endorsement. In *Hungary,* enforcement of settlement agreements is a challenge as these do not have the same immediate effect as court orders.

Arbitration decisions have binding effects on the parties. In the *FYR of Macedonia*, arbitrators' decisions are final and enforceable on the date of submission to the parties unless the decision specifies otherwise. In *Serbia* and *Republika Srpska,* arbitrators' decisions are binding and enforceable as court decisions. In *Serbia,* arbitrators' decisions can only be challenged in court in ancillary proceedings. The right to appeal against arbitrators' decisions is a fundamental one, recognized by

[19] Official Gazette of Republika Srpska, No. 01/16.

the Constitution of the Republic of Serbia. In a 2016 decision, the Constitutional Court ruled that the absence of the right to appeal was unconstitutional, on the grounds that the arbitrator did not act in the name of the State and the two parties had freely agreed to accept the decision of the arbitrator as final.

A similar decision was issued by the Constitutional Court of Romania in 2015, which stated that the legal obligation (at the time) to undergo mediation before filing a lawsuit in court delayed access to justice unnecessarily.

Status and profile of conciliators, mediators and arbitrators

Some studies feature the status and profile of conciliators, mediators and arbitrators, although the information covered is not exhaustive. Common requirements for conciliators/mediators include no record of criminal offence/sanctions, educational background (university degree) and certain years of work experience in labour relations and social dialogue (e.g. *FYR of Macedonia, Montenegro, Republika Srpska, Romania*). In *Republika Srpska* and *Serbia*, arbitrators must pass a bar exam, and in *Serbia* professional experience as a lawyer is also required. In the *FYR of Macedonia*, candidates must hold a certificate issued by the Government on the completion of training for conciliators and arbitrators. Completion of training is also required in *Montenegro* and *Romania*. In addition to selection procedures, the agencies in *Montenegro, Republika Srpska* and *Serbia* are charged with keeping a directory of their conciliators/mediators and arbitrators, as well as providing training for them. They also handle complaints and disqualification procedures for acting conciliators and arbitrators.

Tripartite frameworks are often used for selection and appointment procedures. In *Republika Srpska*, appointment procedures involve a public tender based on the decision of the tripartite Economic and Social Council. Competitions are announced and implemented through special procedures by a jury appointed by the Council. However, conciliators and arbitrators are not employees of the Agency. Compensation and rewards for their work are paid based on the work performed and costs of the dispute. In the *FYR of Macedonia*, a tripartite commission established by the national Social and Economic Council proposes candidates to the Ministry of Labour, which is charged with issuing and revoking licences for conciliators and arbitrators. In *Serbia*, arbitrators are elected through a special procedure by a tripartite committee, and then appointed by the Agency.

Conciliators and arbitrators are not permanent staff of these Agencies examined above.

3.2 Labour inspectorates

The primary mission of the labour inspectorate is to ensure compliance with labour laws, through preventative measures, inspection visits/control and, where necessary, enforcement action. It does, however, play an important complementary role in supporting dispute resolution systems.

In *Hungary* and *Bulgaria*, the labour inspectorate has a role in evaluating the nature of work and determining the existence of an employment relationship, which helps facilitate workers' access to dispute resolution institutions. In *Hungary,* both courts and inspectorates have the power to legally evaluate the nature of work and redesignate sham civil law relationships as standard employment relationships. In *Bulgaria*, new competencies were given to the labour inspectorate to deal with disguised employment relationships in 1995. The existence of an employment relationship can be declared by a decree/prescription issued by the labour inspectorate, although in practice it is generally determined by the court.

Targeted and outreach services in some countries in the subregion help prevent disputes. In *Albania*, targeted inspections often focus on the hotel and restaurant sector, which is highly labour-intensive during the tourist season. In *Hungary*, labour inspection plans may target specific employers, areas or sectors with specific goals. In the *FYR of Macedonia*, inspectors may in the course of inspection visits

invite certain employers to participate in educational activities. In *Romania* also, targeted campaigns by inspectors are common.

Labour inspectorates also interact with and cooperate with dispute resolution institutions in various ways in the subregion. For example in *Republika Srpska,* the Agency collaborates with the labour inspectorate through exchange of information, joint meetings and training, handling specific requirements. Facts established by inspectors may be used in the process of resolving labour disputes at the Agency or in the court proceedings. Similarly facts that are identified in the course of the Agency's procedures may be used in the court or by the inspectors. In *the Republic of Moldova,* inspectors' reports may be used as evidence in the civil courts. In *Montenegro,* the Agency, the labour inspectorate and/or the courts cooperate in the process of gathering evidence and facts related to a labour dispute. The labour inspectorate and the Agency ensure cross-referral of claims/disputes. In practice, it is common for labour inspectors to refer cases from employees whose employment was terminated more than 30 days previously. In *Serbia*, the labour inspectorate may use its powers to suspend the execution of wrongful termination of an employment until a valid decision has been passed in the courts. For example, in Novi Sad, the second largest city in Serbia, labour inspectors each year suspend around 50 terminations of employment contracts temporarily until the court has reached a decision. The estimated figure for Serbia as a whole is 500.

3.3 Discrimination and human rights bodies

There are also discrimination and/or human rights bodies in all countries examined: *Albania* (People's Advocate; [20] Commissioner for Protection from Discrimination [21]); *Bosnia and Herzegovina* (Ombudsman for Human Rights in the State of Bosnia and Herzegovina[22]); *Bulgaria* (Commission for Protection against Discrimination; [23] Ombudsman of Bulgaria [24]); *Hungary* (Equal Treatment Authority; [25] Commissioner for Fundamental Rights and his/her Office [26]); *FYR of Macedonia* (Commission for Protection against Discrimination; Ombudsman); *Republic of Moldova* (Council for Prevention and Elimination of Discrimination and Ensuring Equality[27]); *Montenegro* (Protector of Human Rights and Freedoms of Montenegro [28]); *Romania* (National Council for Combating Discrimination;[29] Romanian Ombudsman[30]); *Serbia* (Commissioner for the Protection of Equality[31]; Protector of Citizens – Ombudsman[32]); and *Ukraine* (Ukrainian Parliament Commissioner for Human Rights – Ombudsman).

These bodies handle individual labour disputes as part of their broader mandate. Services offered are divergent, ranging from monitoring the implementation of anti-discrimination legislation (e.g. *Serbia)*; conducting investigations (e.g. *Ukraine; Albania; Hungary*); issuing recommendations/opinions (e.g. *Albania; Serbia; Bulgaria; Romania*); awareness raising and training activities (e.g. *Bulgaria*); advisory assistance (e.g. *Montenegro*); mediation (e.g. *Romania; Bulgaria*); monitoring and inspection measures (e.g. *Ukraine*) and offering representation in court (e.g. *Albania*).[33]

[20] Official website: http://www.avokatipopullit.gov.al/en [accessed June 2018].
[21] Official website: http://www.kmd.al/index.php [accessed June 2018].
[22] Official website: http://ombudsmen.gov.ba/Default.aspx?id=0&lang=EN [accessed June 2018].
[23] Official website: http://www.kzd-nondiscrimination.com/layout/ [accessed June 2018].
[24] Official website: http://www.ombudsman.bg/index.php [accessed June 2018].
[25] Official website: http://www.egyenlobanasmod.hu/index.php?lang=en [accessed June 2018].
[26] Official website: https://www.ajbh.hu/en/web/ajbh-en/ [accessed June 2018].
[27] Official website: https://www.egalitate.md/index.php?l=en [accessed June 2018].
[28] Official website: http://www.ombudsman.co.me/ [accessed June 2018].
[29] Official website: http://www.cncd.org.ro/ [accessed June 2018].
[30] Official website: http://www.avp.ro/ [accessed June 2018].
[31] Official website: http://ravnopravnost.gov.rs/en/ [accessed June 2018].
[32] Official website: http://www.ombudsman.org.rs/ [accessed June 2018].
[33] The Law No. 10 221 on Protection from Discrimination in Albania is available in English at: http://www.osce.org/albania/42378?download=true [accessed June 2018].

These bodies may handle individual labour disputes in the subregion, but the proportion of the latter out of the total volume of cases lodged with these bodies remains low (e.g. *Montenegro, Ukraine, Serbia, Republika Srpska*), except in *Hungary,* where employment-related disputes were among those most frequently handled by the Equal Treatment Authority. Common employment discrimination disputes include those over age, motherhood (pregnancy), health conditions and minorities.

Most of these bodies issue non-legally binding recommendations (e.g. *Bulgaria;*[34] *FYR of Macedonia; Montenegro; Romania; Serbia; Albania; Bosnia and Herzegovina*), while in only a few countries they are empowered to issue legally binding decisions (e.g. *Bulgaria; Hungary; Romania*). In *FYR of Macedonia*, the Commission for Protection against Discrimination may recommend measures to be taken in order to bring the infringement to an end. The offending party is obliged to take action within 30 days, and if he/she fails to do so, the Commission may refer the case to the competent body.

In *Bulgaria*, the Commission for Protection against Discrimination may impose sanctions and enforce administrative compulsory measures. In *Serbia*, the Commissioner for the Protection of Equality may issue a warning if the offending party fails to comply with its recommendation. If he/she has not taken any measures following the warning, the Commissioner shall notify the public of the discrimination case. If this fails, the Commissioner may initiate court proceedings.

In *Hungary*, the Equal Treatment Authority is charged with investigations, fact finding, issuing orders and decisions, making cases public, and imposing fines from HUF 50,000 to HUF 6 million (USD 200-24,000). The Authority may also decide that procedural costs must be covered by the offended party. The Authority is not, however, empowered to establish financial compensation or reinstatement. Only the courts have such powers. NGOs have voiced concern that compensation applied by the courts is not dissuasive enough.

Discrimination and/or human rights bodies are active in prevention and outreach services. They offer promotional activities targeting potential victims. In *Serbia*, the Protector of Citizens plays a role in preventing violations of human rights, through negotiations and advice, with a view to improving the work of administrative authorities and protection of human rights and freedoms. In *Montenegro,* the Protector of Human Rights and Freedoms offers advisory assistance to claimants, though with a small number of requests for such assistance. In *Bulgaria*, the Commission for Protection against Discrimination primarily engages in promotional activities including training and awareness raising, information and communication activities, and research projects. The Commission offers annual training for legal practitioners to provide them with the skills and knowledge to apply anti-discrimination legislation.

4. Non-state mechanisms and procedures

4.1 Bipartite grievance procedures in the workplace

There is no solid pattern of how grievance procedures function at the workplace level in the subregion. Workplace-level procedures to resolve individual labour disputes exist in some countries, but these do not always seem to function well, or are rarely used. However, their role and contribution to voluntary settlement of disputes require further research. Nevertheless, there are some country-specific examples which emerged from the studies.

In *Republika Srpska,* a worker who believes that the employer violated any of the rights prescribed by laws, general acts or employment contracts may submit a written request to the employer with the aim of securing the exercise of that right (Article 200 in the Labour Law). The request should be submitted within 30 days from the date of learning of the violation of the right, and within three months from the date of violation. The employer, upon receipt of a request, must reach a decision

[34] The Ombudsman of Bulgaria may issue recommendations.

about the request of the worker within 30 days from filing. If the employer remains silent or rejects the worker's request, or where the worker is not satisfied with the decision of the employer, the worker has rights to further procedures including recourse to the courts.

Similar internal procedures also exist in *Montenegro*. If the worker believes that his/her right arising from the employment relationship has been violated, he/she is entitled to file a claim to the employer. The employer shall decide on the employee's request within 15 days of its being filed. The decision of the employer shall be final, unless otherwise prescribed by the law, and delivered to the employee in writing with an explanation and note on legal remedy within eight days of the deadline for decision-making.

In *FYR of Macedonia*, workers first need to exhaust internal procedures set forth in the Labour Code before recourse to the courts with respect to the protection of rights at the workplace. According to this procedure, if a worker deems that the employer does not provide him/her with his/her working rights or violates any of the rights arising from employment relations, then the worker has the right to submit a written request to the employer to remove the violation. The employer's answer to the worker's request does not finalize this internal procedure. If the worker deems that his/her right has been violated with a written decision by the employer, he/she has the right within eight days from receiving the decision to ask the employer to remove the violation. If the employer fails to fulfil its obligations within eight days of the receipt of the written request, or fails to remove the violation, the worker may go to the court within 15 days.

In *Romania* also, it is mandatory to exhaust internal procedures before recourse to the courts. Employees must submit a request to the employer, in writing, to remove the violation of rights arising from the employment relationship as a preliminary step before the courts. However, workers may always directly notify the Labour Inspectorate about violations of workers' rights.

In *Ukraine*, enterprises, organizations and institutions with more than 14 employees are legally mandated to establish a Labour Disputes Commission (LDC). LDCs function as a mandatory, free-of-charge, pre-trial instance that deals with most categories of labour disputes, except cases that fall within the exclusive competence of the courts, such as those related to reinstatement and discrimination on the basis of pregnancy. Trade unions have the right to address the commission on behalf of the worker, if he/she is a member. Decisions taken by LDCs can be appealed to the court by either of the parties within ten days. There are no up-to-date statistics on whether this legal requirement to establish LDCs is being implemented, or whether they are effective. Employees working in entities with fewer than 15 employees may turn directly to the court with their claims.

Similar bipartite dispute resolution commissions that had existed in other countries in the subregion were mostly abolished (e.g. *Bulgaria, Republic of Moldova, Hungary).* In *Bulgaria*, the abolition of labour dispute committees within enterprises with the participation of an equal number of employers and union representatives has reduced internal capacity for handlng grievances and increased court caseloads. In *the Republic of Moldova,* labour dispute mediation commissions regulated under the Law on Individual Labour Dispute Resolution (repealed) were operational and functioned well to voluntarily prevent and resolve disputes before being formalized. However, such commissions were abolished in 2003. In *Hungary*, after mandatory company-level grievance boards were abolished in 1992, workplace-level grievance procedures have become uncommon. Only some multinational companies operating in the country use their group ADR methods to engage an independent attorney.

For harassment and mobbing cases, distinct procedures exist in some countries. In *Serbia*, workplace mediation for disputes involving mobbing was introduced in 2010, together with rules of conduct for both employer and employees as a new method of preventing and protecting against mobbing at work. However, this is very rarely used. The majority of such disputes are instead settled by the Agency or in courts. Courts are preferred by many employees because principles of urgency apply to these cases, and the burden of proof is on the employer. The use of voluntary arbitration is also possible, subject

to both parties' consent. Arbitration awards are considered final and binding. Appeal against an arbitration award rendered at the workplace level is not regulated and there is no uniform attitude among experts about whether the Law on Arbitration includes conditions for appeals, may be applied to labour disputes. However, there is very little awareness of arbitration at workplace level, and it has not been used in practice.

In *Montenegro* also, internal mediation is possible for harassment and mobbing disputes according to the Law for Protection against Harassment at Work. Workers may submit a written request to a mediator for initiation of proceedings for their protection against mobbing, and/or to the employer if the mediator is not designated. If mediation succeeds, a written agreement is concluded between the parties. If it fails, parties may proceed to settlement procedures before the Agency or a competent court. However, how this internal mediation functions has not been assessed.

4.2 Role of trade unions and collective bargaining

Due to declining trade union density and a lack of presence of strong employers' organizations, the role of trade unions in preventing and resolving individual labour disputes is marginal in the subregion. However, there are some noteworthy examples that emerged from the studies of how unions support the prevention and resolution of disputes.

Trade unions are often legally entitled to provide their members with legal advice or legal representation during court procedures. For example in *Romania,* trade unions are entitled to assist their members in dealing with employers in order to identify solutions to resolve disputes. In order to support this approach, the Ministry of Labour and Social Justice established a number of programmes on increasing the capacity of the social partners to resolve individual labour disputes.

Unions may contribute to promoting compliance with labour law, thereby preventing disputes. For example in *Ukraine*, under a special system to secure compliance with labour law set up in 2012, trade unions are mandated to exercise public control over compliance with labour legislation together with representatives of the Labour Inspectorate, the State Prosecutor, and the Ombudsman on Human Rights. They play a significant role in preventing disputes. In the first six months of 2014, trade union labour inspectors conducted 8,356 inspections and reported 23,118 violations of the labour legislation, which affected almost 700,000 workers. In the event that an employer would not comply with the recommendation of the trade union labour inspector, the file would be submitted to the authorized state bodies. In 2014, trade union inspectors identified 44,642 violations of labour legislation, of which 13,986 cases were corrected. Trade union inspections had an impact on roughly 30% of the reported violations of labour laws. In *Romania*, unions also cooperate with the labour inspectorate to defend their members' rights.

Collective agreements may include provisions regarding settlement of labour disputes. However, collective bargaining remains immature and the role of collective agreements in grievance settlement is very marginal in most countries in the subregion. In *FYR of Macedonia*, collective agreements also include provisions on dispute resolution, which define in greater detail the protection by trade unions of an employee's rights arising from employment. In *Hungary*, conciliation may be stipulated in a collective agreement and used for both collective and individual disputes according to Section 288 of the Labour Code. However, obligatory pre-court conciliation or arbitration for individual rights disputes by way of a collective agreement would be unlawful. In practice, conciliation is very rarely mentioned in agreements. In *Croatia*, collective agreements may regulate arbitration procedures, composition of the arbitration panel and other relevant arbitration issues. However, whether it is used or how it functions requires further research. In *Romania*, both collective agreements and individual employment contracts may contain provisions regarding internal dispute settlement procedures, as a preceding step before recourse to the courts. However, there is no consistent practice in this regard.

5. Conclusions

The studies summarized in this paper demonstrate emerging changes over the years to individual labour dispute resolution systems, primarily driven by challenges to expedient access to justice. Ordinary courts are characterized by case overloads, delays, lengthy procedures and a shortage of specialized judges. Alternative dispute resolution (ADR) methods are thus emerging, but they remain underused or are yet to develop in most countries. The role of collective bargaining and bipartite grievance processes in voluntarily preventing and resolving disputes appears marginal.

Triggered by economic deterioration and job precariousness, individual labour disputes have outnumbered collective ones. One reason for this trend, among possible others, is the continued "de-collectivization" of the employment relationship, indicated by the decreasing coverage of collective bargaining across the subregion.

Civil law systems are characteristic to all CEE countries, which explains the pre-eminence of judicial resolution of individual rights disputes sanctioned by labour laws. Confronted with overburdened courts, all governments have devised policy solutions to decongest the judiciary. Generally, these have translated into one or a combination of the following: a) specialized labour courts/sections or fast - track judicial procedures; b) in-court mediation offered or required; c) extra-judicial settlement made available through voluntary conciliation/mediation or arbitration; d) compulsory conciliation/mediation required as a legal pre-condition to filing a lawsuit; e) court litigation discouraged through reduction of available legal remedies.

When it comes to the type of labour dispute for which extra-judicial settlement is offered free of charge by the State, most CEE Governments have opted for collective disputes (without distinction between interest and rights ones), arising in relation to collective bargaining and its outcomes. All EU member States in the sample fall under this group, which also includes *Albania* and the *FYR of Macedonia* (in the latter case, only voluntary arbitration is offered by the State in the event of wage non-payment and dismissal-related disputes).

Free-of-charge conciliation and arbitration in both collective and individual labour disputes are provided by state-funded agencies in *Republika Srpska*, *Montenegro, Serbia* and *Ukraine*. Available data indicates that their use is on the rise and has reduced court burdens. Promotional and awareness-raising services towards greater use of ADR methods in individual labour disputes are common. However, due to a prevailing culture in which a court decision is trusted more than a settlement agreement, the number of litigations in court continues to exceed by far the number of individual disputes handled by the agencies. This trend has recently been reversed in *Republika Srpska*, after the introduction of a legal requirement for compulsory conciliation with the Agency prior to court. The same approach is being contemplated in *Montenegro* and *Serbia*.

An analysis in the subregion of the context in which conciliation/mediation or arbitration of individual labour disputes works, and why, exhibits certain commonalities, distinct from other regions.

First, subregional trends suggest that there are broadly two favoured policy options towards speedier settlement of individual disputes through adjudication or arbitration: a) the establishment of specialized labour courts/procedures with specialized judges; or b) the promotion of (compulsory) extra-judicial conciliation/mediation accompanied by voluntary arbitration. Greater use of arbitration over simple or small claims, is being considered as a future policy option.

Second, in some legislations, the term "arbitration" defines a process where until the very end the disputing parties have full control over the settlement solution eventually proposed by the arbitrator. If they agree, the arbitrator endorses the settlement agreement through a decision which becomes final and executory. In the event of disagreement, the process is declared unsuccessful by the

arbitrator and the proposal has the value of his/her legal opinion, which might be further used in court and considered by the judge. Currently, an arbitral decision can be appealed on limited grounds.

Third, a widespread practice of weak enforcement of settlement agreements risks deepening the distrust in the effectiveness of ADR methods. Various legal solutions aim to address this issue, including ratification of the settlement agreement by the notary or the judge, and the executory title provided by the law. However, existing poor executory mechanisms make implementation difficult.

Fourth, the multiplicity of public and private conciliation and mediation processes offered by different institutions/providers hinders users' understanding about the processes and their effectiveness and benefits. Extra-judicial free conciliation/mediation and arbitration offered by publicly funded agencies work well to settle individual disputes outside courts. Fee-charging private mediation is rarely used in individual labour disputes; neither does it contribute to equal access to justice for employers and workers. The effectiveness of mandatory in-court conciliation is unclear, whereas availability or use of free-of-charge judicial mediation is limited. In order to increase the effective use of ADR, greater consistency and simplicity may be considered.

Fifth, although foreseen by some legislations in the regulatory remit of the social partners, bipartite settings/procedures for prevention and resolution of individual disputes in the workplace are currently missing in practice. Former enterprise bipartite reconciliation committees, composed of representatives of the employer and the (only) trade union, were abolished across the subregion as they were seen as reminiscent of the Communist regimes, and unfit for the new realities in the workplace (for instance, low unionization rate in the private sector). However, there are examples of company policies in the subregion (e.g. some multinationals) which provide for internal procedures for handling grievances, mostly unilaterally adopted by the employer.

It appears there is a need to strengthen the role that ADR institutions can play in empowering employers and workers and their organizations to voluntarily prevent and resolve disputes, through providing advisory, education and information services.

Lastly, a lack of disaggregated statistical data and case management systems makes it difficult to analyse the benefits of available processes offered by different institutions, as well as to identify necessary reforms.

Examples of comparative law and practice identified in this paper may offer a useful reference due to certain commonalities in political, cultural and socio-economic contexts in the subregion, despite the obvious differences across the countries. A significant evolution of alternative mechanisms for amicable settlement and positive results in providing faster settlement of individual labour disputes in some countries suggest a high potential and scope for action to tackle court overloads and the slow access to justice in the CEE.

Bibliography

Ebisui, M.; Cooney. S.; Fenwick, C. (eds.).2016. *Resolving individual labour disputes: A comparative overview* (Geneva, ILO).

ILO.2013a. *Social dialogue: Recurrent discussion under the ILO Declaration on Social Justice for a Fair Globalization*, Report VI, International Labour Conference, 102nd Session, 2013 (Geneva).

—. 2013b. *Follow-up to the discussion on social dialogue at the 102nd Session of the International Labour Conference (2013): Plan of action*, Governing Body, 319th Session, GB.319/POL/3 (Rev.1) (Geneva).

Vargha; C. 2015. "Reflections on ILO experience: How can the effectiveness of dispute resolution systems be assessed?", in *Best Practices in Resolving Disputes in International Organizations,*

Conference Proceedings, ILO, Geneva, 15-16 September 2014 (Geneva, ILO). Available at: https://www.coe.int/T/AdministrativeTribunal/Source/ILO_ConferenceProceedings.pdf [accessed June 2018].