EU Project for the Study of Conciliation, Mediation, and Arbitration

The Settlement of (Collective) Labour Disputes in the Netherlands
National Report

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Dutch labour relations

Introduction
The development of modern Dutch labour relations gained momentum after 1850 when the effects of its industrial revolution became noticeable and the Dutch government gradually gave up its role of night watchman.
First attempts to improve the miserable labour conditions of the workers were made through the intervention of the legislator. Thereafter the legislator would regularly act as the pioneer in this new, burgeoning area of law.[1]

Until the beginning of the 20th century, the role of the Dutch trade unions and the role of the courts in improving the position of the workers were of little importance.
Except for industrial safety regulations, until the Second World War the Dutch labour relations system was mainly based on contractual labour relations and social security law. Far-reaching legislative protection of the legal position of the employee (worker), particularly in the area of dismissal, was effectuated after World War II, when labour relations became strongly centralised.

Currently, Dutch (collective) labour relations are characterized as rather harmonious. Particularly, employers organizations and trade unions are inclined to adopt a strategy of

[1] A. de Roo & R. Jagtenberg, Settling Labour Disputes in Europe, Ch. 6, Kluwer Law & Taxation: Deventer/Boston, 1994.

conflict avoidance. This may clarify the absence of permanent (statutory) dispute settlement machinery.[2]

Trade Unions

From the beginning of the 20th century until World War I there was a rise in trade unionism. Many of the unions joined in federations of trade unions such as the *Nederlandsch Verbond van Vakverenigingen* (Dutch Federation of Trade Unions), which was established in 1906. From 1909 onwards workers with a religious background sought refuge with their religious equals of the Dutch Union, the *Christelijk Nederlands Vakverbond* (Federation of Christian Dutch Trade Unions) and the *Roomsch Katholiek Vakbureau* (Roman Catholic Trade Office). These religious federations of trade unions were less radical. It happened that employers were members of these organisations. The federations of the denominational trade unions broke many strikes declared by the Dutch Federation of Trade Unions between 1919 to 1940.

At present, the *FNV Bondgenoten* (Federation of Dutch Trade Unions Allies), merger of the Dutch Federation of Trade Unions and the Roman Catholic Trade Office in 1976 and the Federation of Christian Dutch Trade Unions are groups of centralised workers' organisations.

In 2001, the total labour force was 7.1 million and the number of people being a member of a trade union was on average 25%.

Employers organisations

Organisations of employers emerged only in the late 19th century and even these organisations do not completely match the present day conception of an employers organisation. At the level of trade and industry national organisations were established shortly before and after World War I, somewhat later than the rise of the trade unions. Many of these national employers organisations functioned first at regional level. One of their main purposes was to look after the technical and economic interests of their members. Due to labour problems caused by World War I, the organisations of employers became involved with the position of the workers. There was fear for the trade unions, which had increased in number and power. The employers were afraid that labour shortage caused by the war would bring about a demand for higher wages. The intervention of the government by means of protective legislation was another danger. The position of the worker appeared on the agenda of the employers' organizations. Since their supremacy was on the wane, they had a genuine desire to combine.

[2] R.W. Jagtenberg & A.J. de Roo, Mediation in the Netherlands, National Report for the XVIth Congress of the International Academy of Comparative Law, Brisbane, July/August 2002.

The *Algemene Werkgevers Vereniging* (General Employers Associaton) of 1919 can serve as an example of an employers organisation with a sincere interest in labour relations. Just as the trade unions the employers organisations compartmentalised and formed federations. In 1920 there were three federations, which due to overlaps merged in 1926 into the *Verbond van Nederlandse Werkgevers* (Federation of Dutch Employers). This federation merged again with the *Centraal Sociaal Werkgevers Verbond* (Central Social Employers Federation) in 1946 to form one of the more powerful employers federations, the *Verbond van Nederlandse Ondernemingen (VNO)* (Confederation of Dutch Enterprises). This Confederation again amalgamated with the Dutch Christian Employers Organisation in VNO-NCW on 1 March 1995. The rate of organization of the employers is high, sometimes almost 100% among large enterprises.

The emergence of Dutch labour law

The involvement of the legislator with the position of the Dutch workers began in the second half of the 19th century. There was particular need for legislative intervention for the improvement of the bad labour conditions of the workers since trade unions had not yet been well established. The priority of the legislator was to restrict the working hours of children. This was done through the *Van Houten Kinderen* (Van Houten Children) Act of 1874. It was a first limited step towards government intervention followed by protective measures to restrict the working hours of women and men and to combat dangerous work. It laid the foundation for an important part of the modern Dutch labour relations system, that of industrial protection.

The promulgation of the *Ongevallenwet* (Industrial Injuries Act) of 2 January 1901 marked the establishment of another important part of modern Dutch labour law, the law of social insurance.

The promulgation of the *Wet op de Arbeidsovereenkomst* (Contract of Employment Act) of 1907 strongly contributed to the individual contractual relationship between employer and employee.

In addition, this Act already acknowledged the collective agreement as a proper means to improve labour relations. Other, important side effects of the 1907 Act were that the judiciary was given jurisdiction to settle individual labour conflicts and that taking part in strikes by workers was not to be considered as termination of their contracts of employment. The next step towards further regulation of labour relations between employer(s) and workers was the enactment of the *Wet op de Collective Arbeidsovereenkomst* (Collective Agreement Act) on 24 December 1927. The introduction of this Act was the result of the increased number of collective agreements concluded. The importance of the Act was that it acknowledged the normative effect of collective agreements on the individual contracts of employment. In 1937 the machinery

for collective bargaining was completed by the *Wet op het Algemeen Verbindend en het Onverbindend Verklaren van Bepalingen van Collective Arbeidsovereenkomsten* (Act for declaring Provisions of Collective agreements to be Generally Binding or to be Void). These two acts of 1927 and 1937 consolidated the importance of collective bargaining for the determination and improvement of labour conditions without preventing the workers from striking.
Today some 900 collective labour agreements are concluded at enterprise and sectorial level.

Present Dutch labour law
Dutch labour law is not codified in a so-called labour code. Important to Dutch labour law are international sources, such as the ILO Conventions, the European Social Charter, the EEC Treaty, EEC directives and regulations, the Constitution, Acts of Parliament and delegated rules, collective agreements, works council's arrangements, the individual contract of employment, work rules and regulations within the enterprise, rules unilaterally imposed by the employer, custom and case law.[3]
The individual employment relationship is governed by elements derived from civil law and public law.
Basically, Dutch law is a composed of so-called autonomous law and heteronomous law, whereby heteronomous law, mostly statutory law, lays down a minimum level, while autonomous law, for example collective labour agreements, may create extra and supplementary rights.

Labour disputes and dispute resolution by the courts

Dutch labour law does not give a definition of labour disputes.
Outside the labour law realm, however, a distinction is made between individual and collective disputes and between rights and interests disputes.[4]
Individual disputes involve a single worker or employee, while collective disputes involve a group of workers, for example, a trade union.

The classification of labour conflict into rights and interests disputes depends on whether labour disputes result from an existing legal rule as laid down in the law or in collective agreements. If labour disputes lack such a legal basis then they are regarded as disputes over interests, which are also characterised as social or economic disputes.

[3] A. Jacobs, Labour Law & Social Security in the Netherlands, Book World Publications: Den Bosch, 1997.
[4] A. de Roo & R. Jagtenberg (1994), op.cit.

The resolution of labour disputes over rights may be dealt with by the regular courts. Labour disputes over rights in the private sector may be brought before the court, that is the *Sector Kanton* (Cantonal Sector of the District Court). Unlike in many other European countries, there is no specialised labour court in the Netherlands.[5]

The *Kantonrechter* (Cantonal judge) has a special civil jurisdiction extending to small claims, and disputes arising from employment contracts and collective labour agreements. The decisions of the *Kantonrechter* are subject to appeal to the *Arrondissementsrechtbank* (District court) and appeal in cassation to the *Hoge Raad* (Supreme Court).

Individual labour disputes over rights in the public sector fall under the jurisdiction of the *Arrondissementsrechtbank – Sectie Bestuursrecht* (District court – Administrative Law section)

Summarising, labour dispute handling agencies in the Netherlands include the regular courts as well as out-of-court institutions, mainly of an *ad hoc* nature or established on a contractual basis.

Extra-judicial means for the resolution of (labour) disputes

Historical examples of alternative modes of dispute resolution go back for many centuries. An interesting, well documented mediation practice was that of the 16th century *Leidse Vredemakers* (Leyden Peacemakers).[6] Voltaire familiarised his French readers with this institution and the lawmakers of the French revolution era re-introduced the peacemakers as *Bureaux de Paix*, and subsequently *Juges de Paix* in France *and* the Netherlands; a fascinating example of a legal transplant. As from the introduction of *Juges de Paix* (in Dutch: *Vrederechters*, and later *Kantonrechters*) it was not uncommon to find judges acting as mediators in the courtroom. This in-court mediation used to be practised in family disputes, particularly divorce cases, often with the aim to save the marriage. In the Netherlands and various other jurisdictions on the European continent, the codes of civil procedure dictated a judicial attempt at mediating a case, often prior to a full hearing in court. Such 'preliminary conciliations' however, were abolished almost everywhere in Europe in the 1950s and 1960s.

Mediation also used to be practised outside the courts. Industrial relations and labour disputes constitute an illustrative area here. First traces of labour dispute settlement

[5] C.J. Loonstra, De kantonrechter als arbeidsrechter, Kluwer: Deventer, 2000.
[6] C.M.G. ten Raa, De oorsprong van de kantonrechter, Kluwer: Deventer, 1970.

outside the courts appeared in the second half of the 19th century, originally as private initiatives. In this newly emerging area of law, conciliation, mediation and arbitration, for some time, even became the regular modes of dispute resolution with, however, varying degrees of success. Success appeared to correlate positively with the voluntary character of these 19th century institutions. As soon as their proceedings became compulsory, their success was on the wane.

Historical background; the private sector: collective disputes
Industrial production and trade unionism began in the second half of the 19th century. Towards the end of that century the government - concerned about the incidence of strikes - launched a statutory system of joint committees, the *Kamers van Arbeid* (Labour Chambers).[7] The *Kamers* were conceived of as statutory 'meeting places', introduced to impart a *habitus* of working together on employers and workers.[8]

When the *Kamers* were found to be irresolute, civil servant *Rijksbemiddelaars* (Government Mediators) were introduced in 1923.[9] As mediators, they operated alone. The government wanted functionaries who could intervene quickly and decidedly in the event of collective disputes. The institution was, however, not integrated into the emerging bilateral bargaining schemes of employers and unions. The *Rijksbemiddelaar* himself took the initiative to intervene in disputes most of the time, although municipal authorities often made a request thereto.

The institution was rendered inoperative during World War II. Ever since, the Netherlands have done without permanent statutory machinery for the settlement of collective disputes. During the reconstruction period of the 1950s, collective bargaining was brought under tight government control. The incidence of industrial action was extremely low. The first crack in this harmonious system appeared around 1960, when employers decided to involve the *courts*, to obtain an injunction against employees on strike and their organising unions. The courts, however, recognised that under particular circumstances, strikes could be regarded as lawful. During the 1970s and 1980s, the right to strike was positively confirmed by the courts except where certain rules of procedure were ignored or manifest disproportion existed between the aim and the social consequences of a strike.[10]

Following a period of increasing antagonistic industrial relations during the high growth period of 1960-1975, and renewed government intervention aimed at controlling wage

[7] *Wet op de Kamers van Arbeid* (Chambers of Labour Act) of 1897.
[8] A. de Roo and R. Jagtenberg (1994), Settling Labour Disputes in Europe, Deventer/Boston: Kluwer Law and Taxation Publishers.
[9] *Arbeidsgeschillenwet* (Labour Disputes Act) of 1923.
[10] Art. 6, s. 4 of the European Social Charter.

levels to curtail inflation, employers and unions united in the 1980s, in a shared demand for autonomy *vis a vis* the government.

Historical background; the private sector: individual disputes

From the 19th century onwards, the regular courts, notably the *Kantongerechten* (Cantonal Sectors of the District Courts)) have exercised jurisdiction in individual employment disputes. Between 1897 and 1907 some *Kamers van Arbeid* also heard disputes of an individual nature, but they refrained from hearing such cases once the individual employment contract became explicitly regulated by law in the Civil Code. The law initially required the mere observance of particular terms of notice for a one-sided termination to be lawful.

In World War II, a system of granting dismissal permits was introduced as a means to control the labour market. After the war, this system of *Arbeidsbureaus* (Labour Bureaux; from 1 January 2002 they are referred to as *Centra voor Inkomen & Werk* (Centres for Income & Work)), acting simultaneously as Employment Exchanges and quasi-courts reviewing proposed dismissals, was retained, based on the *Buitengewoon Besluit Arbeidsverhoudingen* (Special Decree on Labour Relations) of 1945. The *ex ante* review of dismissals by the *Centra voor Inkomen & Werk* gained a different significance, as an instrument to review the fairness of dismissals. Criteria for review were laid down in quasi-legislation emanating from the Department of Employment.

Parallel to - and independent from - the *Centra voor Inkomen & Werk*, the courts have retained jurisdiction to review dismissals *ex post*. This dual system can lead to complicated situations. For instance, once an *Centum voor Inkomen & Werk* has granted a dismissal permit, it is still possible for an employee to apply to the court, claiming that the dismissal has been manifestly unfair. Conversely, an employer who has not been granted a dismissal permit, can still apply to the court and ask the judge to rescind (dissolve) the employment contract in view of a particularly pressing cause. Such a cause would include a change of circumstances, as a consequence of which an employer could not be reasonably expected to continue his legal relationship with an employee.

Historical background: employer/works council disputes

In 1950, works councils were introduced in the Netherlands to advance industrial democracy at the enterprise level. In 1971, *Bedrijfscommissies* (Company Committees), which are joint committees organised at sectorial level (branch of industry) were entrusted the task to intervene in disputes arising between works council and enterprise management. Initially, their task was to decide disputes over enterprise policy - leaving rights disputes to be decided by the courts. As from 1990, the *Bedrijfscommissies* have to be resorted to for a mediation effort in all disputes between the management and the

works council.[11] Only where mediation fails are parties allowed by law to pursue their dispute before the courts. If the *Bedrijfscommissies* fail in mediating the dispute at hand, they must issue an advisory opinion, which is not binding, neither for the parties nor for the courts.

Historical background: the public sector

Central, local, and functional government authorities have become increasingly important as employers. As civil servants, government employees used to have a relatively secure yet marked subordinate position. From the 1970s onwards, the position of civil servants has gradually been moving closer to that of employees in the private sector. The right to strike, for instance, has been confirmed for many - though not all - categories of civil servants. Public sector unions were granted increasing powers to negotiate terms of employment with the government authorities.

In 1984, the *Advies- en Arbitrage Commissie* (*AAC*) was established to assist the government authorities and civil servant unions in their new role as negotiators.[12]

In between the public and private sector, the *gepremieerde en gesubsidieerde sector* (*G&G*) (subsidised) has come to play an important role in Dutch society. Employees in this sector (including health services and public transport) do not have a civil servant status, yet their salaries are primarily financed through government subsidies. The government therefore, dictates wage ceilings in the G&G sector.

Current situation: the 'Polder' model

The drive to curb public expenditure, to increase competitiveness and the ensuing call for privatisation and more flexibility hit the Netherlands in the early 1980s, against the universal backdrop of a changing employment market (shift towards services, highly skilled work and individualism).

As from the mid 1980s, employers associations and trade unions in the Netherlands increasingly demonstrated a businesslike attitude and a willingness to reach agreement. It has been observed that this co-operative mood and practice of mutual consultation (the so-called Polder model) has greatly contributed to restore the competitiveness of Dutch industry.

In this climate, the social partners thus far felt no need to (re-)introduce a permanent agency for settling employment disputes. It may be significant that a Bill, which aimed to introduce commissions of inquiry to assist in solving collective disputes - a Bill which had been around since the late 1960s -, was finally and definitely rejected in 1985 by the trade

[11] J.C.M. van Horne, In het voorportaal van de rechter, SDU: Den Haag, 1997.

[12] M.J.W.M. Akkermans, Gelijk hebben en gelijk krijgen, AAC: Den Haag, 1994.

union and industry representatives in the *Sociaal Economische Raad* (Social Economic Council).
It has been argued, notably by representatives of the social partners at central level, and by some academics, that the Netherlands do not need a settlement agency as the incidence of strikes is already extremely low.

Yet, strikes did occur, also during the last two decades. An interesting development was the increasingly broad social impact of strikes, particularly those organised from within the *G&G* sector, but this also applies for the private sector.

As the interests of the general public are thus affected, some other academics have again started to advocate permanent mediation agencies. These protagonists argue that it is in the interest of all to have the largest possible array of fire extinguishing agents available in case a large-scale fire (strike) breaks out. The unions in particular have thus far been reluctant to concur with this vision, as they fear that institutionalised mediation will adversely affect their ability to show `muscle'.

Mediators, however, do appear from time to time in Dutch collective disputes. Occasionally, their intervention is written into dispute settlement clauses in collective labour agreements. It is estimated that of the current 900 collective labour agreements, concluded at enterprise and sectorial level, 25% provide for dispute resolution clauses.

A great variety of procedures has been set up. In some procedures, reference of the dispute (usually to a joint committee) takes place on a voluntary basis, sometimes reference is compulsory. The technique most frequently stipulated seems to be arbitration, not mediation. It has been observed, however, that these contractual arbitration/mediation agencies are not very active in practice.

More frequently, ad hoc mediators are appointed by the parties, particularly in the event of strikes with a major social impact. These ad hoc mediators are often well known public figures, such as politicians. Often, such mediations take place against the background of court injunctions. Occasionally, the judge seized to decide on the lawfulness of a strike to direct the negotiation process, as has happened in the KLM pilots dispute.

Individual employment disputes tend to centre on dismissals. During the last three decades, there have been several efforts to draft an entirely new law on dismissals. These efforts were aborted. Currently, however, there is a new revised law on dismissals with improved statutory protection for 'flex-workers'. Despite heated discussions, the dual system of dismissal review has been retained.

Employer decisions to terminate employment are virtually always challenged by the employee, if only for such an employee to qualify for an unemployment benefit under the *Werkloosheidswet* (Unemployment Act). The agency administering the payment of such benefits may (partly) refuse to pay out, if the termination of employment has been 'imputable' to the behaviour of the employee. This applies to the dismissal permit procedure as well as to procedure before the regular courts.
It has been calculated that in some 75% of these cases, the employer and employee more or less agreed that termination would be inevitable, and that some compensation should be paid. For the employer, resorting to the courts is advantageous as this category of disputes is normally handled very swiftly. The advantage for the employee is that through the compensation he may be able to top up his unemployment benefit to the level of his previous full salary.

The range in the amount of compensation used to vary widely, depending on the particular court district. Since 1 January 1997, however, uniform guidelines designed by the *Kantonrechters* for calculation of compensation amounts apply. These guidelines have resulted in a considerable degree of predictability.

In government circles, this practise before the *Kantongerechten* gave rise to some concern. It was feared that collective funds (unemployment benefits) were actually mis-used, as in reality, 'mutual agreement' between employer and employee frequently seemed to exist. The cabinet slightly altered the Unemployment Benefits Act in order to reinforce the burden on employer and employee to demonstrate that the termination of employment was indeed contested. In day-to-day practice, this amendment has merely resulted in the parties now frequently being present in court to attend a (normally very) short session of a formal nature, where the judge seeks to confirm that the termination is indeed 'contested'.
In view of this qualification requirement for unemployment benefits, mediation is rarely resorted to in individual employment disputes.

At the *Centra voor Inkomen & Werk*, dismissal officers occasionally try to mediate particularly where it is felt that a permit should not really be given. It has been calculated that such mediation efforts take place in 2 to 3% of all permit applications pending. As mediation is not publicised as an activity of dismissal officers, this practice has been termed 'crypto-mediation'.[13]

It has been demonstrated that the *Bedrijfscommissies* are, on the whole, not very active as mediators: only 20 to 30% of all *Commissies* handles two or more mediations per year.

[13] A. de Roo & R. Jagtenberg (1994), op.cit.

It has also been uncovered that expectations of parties *vis a vis* the *commissies* were diffuse, while the members of the *Bedrijfscommissies* felt not sufficiently skilled to handle mediations. A recent plea to make reference to the *Commissies* entirely voluntary may be followed up.

In the public sector, the *AAC* has been quite active, primarily rendering advisory opinions. The former president of the *AAC* has indicated that the advisory practice borders to what he terms the 'advisory arbitration' practice of the *AAC*: the Commission, when seized to arbitrate a dispute, will often indicate to the parties, prior to handing down an award, how such an award may come to look like, then leaving it to the parties to negotiate a bilateral settlement.
Occasionally, the *AAC* has resorted to final offer arbitration (the defence industry workshops case), to provisional arbitration/second chance negotiation, and - less frequent still - to mediation, or med-arb really (in the air traffic controllers case).

Assessment of extra-judicial means for the resolution of labour disputes

At present, labour disputes constitute the second major practice area for private mediators in the Netherlands. Possibly this is because labour disputes, like for example family disputes, are often centered on long-standing human relationships. As in family disputes, the stakes are high for the parties involved, particularly for employees.
Labour disputes may be much more varied in structure than family disputes. Such disputes may arise between an individual employee and a colleague or direct supervisor, or between a trade union and an employer, or between a trade union and an employers association. Interest groups are important in this area. As indicated, the historical institution of *Rijksbemiddelaar* arguably failed, as it was not developed jointly with the interest groups representing both sides of industry.

At the risk of oversimplifying, it can be said that labour relations in the Netherlands were increasingly collectivised and also supervised (by the government) until the early 1980s. Supervision was borne out by governmental wage policy and a system of *ex ante* dismissal authorisation, collectivisation materialised in generally binding industry-wide collective agreements, and also in an extensive social security legislation, providing a huge safety-net for those unemployed for reasons of redundancy or health (disability insurance).
The upshot for labour disputes was twofold. First, for many years, individual disputes in particular were camouflaged. The disability insurance system proved to be an especially attractive way out, both for employers and employees. Second, gradually employers

associations and unions began to develop an aversion to government intervention, or indeed intervention by any third party.

From 1980 onwards, the landscape of labour relations is changing drastically, against the backdrop of globalisation, privatisation and de-unionisation. Government interventionism gave way to employers associations and unions working together in a business-like, consensus oriented manner. This practice of mutual consultation - the *Polder model* - is said to have contributed strongly to a restoration of Dutch economic competitiveness. In this context, initially no need was felt by employers and unions to institutionalise mediation. Recently, however, employers and unions have come to change their minds about the usefulness of mediation, particularly in individual labour disputes. For employers, the tightened employment market provides an incentive to negotiate with employees. For unions, financial limitations provide an impetus to consider mediation as an alternative for union supported court proceedings. And the rising costs of the national disability insurance scheme now stimulates employers *and* employees to attempt solving underlying disputes first, before resorting to the insurance scheme.

Organisations and specific models

There is not, as yet, an organisation catering for modern mediation services for labour disputes in all sectors of the economy. Collective disputes in the private sector are occasionally mediated by ad hoc *bemiddelaars*, traditional mediators, usually politicians or (labour law) professors, who may be selected on the basis of their authority.

For collective disputes in the public sector, the situation is different since 1984, when the *Advies- en Arbitrage Commissie AAC* (Advice and Arbitration Commission), was established, to assist civil servant unions and government employers in solving disputes over terms of employment in the public sector. The word mediation is not featured in the name AAC; former AAC Chairman Professor Albeda interestingly regarded mediation as 'a form of advice'.

By the end of 2000, the public sector social partners established the *Nederlands Instituut Conflictmanagement Overheid en Arbeid NICOA* (Conflictmanagement Institute for Government and Employment). NICOA maintains a register of *bemiddelaars* and mediators, who can be engaged by public sector employers and employees through NICOA's ADR-desk.

Mediators must be NMI-certified. The *Nederlands Mediation Instituut (NMI)* (Netherlands Mediation Institute) was formally established as a foundation, with the main purpose of informing the people at large about mediation and stimulating and furthering the practise and quality of mediation. NMI maintains a register of accredited NMI-mediators and liaises with other institutions and government departments.

Both the *bemiddelaars* and the mediators must have special expertise in public sector employment relations. NICOA will develop its own Rules of Professional Conduct, which will be inspired by the NMI Rules, but slightly broadened so as to encompass '*bemiddelaars*-non-mediators' as well. NICOA intends to handle requests for mediation in both collective and individual employment disputes, within the public sector.

Individual labour disputes in the private sector were hardly mediated until recently, although some 'crypto-mediation' could be observed in the practice of *ex ante* dismissal authorisation. Staff members of the *Centrum voor Inkomen & Werk*, who are in charge of authorisation, occasionally seek to mediate when handling a request for a dismissal permit, although this practice is not publicised.
Since a few years, modern mediation services are offered by private foundations, law firms or management consultants. The largest player currently is the *Mediation Centre* in the city of Breda.
An important forum where experts in mediation and labour relations regularly meet is the *NMI groep Arbeidsverhoudingen*, the Labour Relations discussion group within the NMI. Here, lawyers, psychologists, union leaders, personnel officers and management consultants, all certified NMI mediators, meet every six weeks to discuss recent developments in the area.

Specific models do not, as yet, exist for labour disputes. As indicated, NICOA is preparing Rules of Conduct. In the absence of specific models, the NMI Mediation Rules will remain of overriding importance. Meanwhile, the power imbalance between individual employees and their employer is a reason for concern. The problem may be reinforced if the employer pays the mediator's fee, or when the mediator has a prospect of conducting multiple mediations for one employer.

At a European level, specific Models are lacking too, although mention should be made of a major stock-taking of national labour mediation practices by the European Commission in 1993.[14] Also noteworthy is the duty undertaken by the Contracting Parties to the European Social Charter, '[...] to promote the establishment and use of appropriate machinery for conciliation [...] for the settlement of labour disputes'. If one reads a progressive undertaking in this Treaty provision, then the Dutch government may be said to act in violation of the Social Charter.

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[14] A. Kerr (1993), The Resolution of Industrial Disputes, Dublin; A. Jacobs, The Resolution of Industrial Disputes The Use and Development of Conciliation and Mediation Procedures, Dublin, 1993;R. Blanpain (1972), Prevention and Settlement of Collective Labour Disputes in the EEC Countries, in: Industrial Relations Journal. This research was undertaken on the instigation of the EEC.

The mediators

A distinction needs to be made between the traditional *bemiddelaars* (mediators), the crypto-mediators from the *Centrum voor Inkomen & Werk*, and the modern mediators who are NMI-certified. Traditional mediators tend to be politicians or professors with a background in economics, sociology or law. The *Centrum voor Inkomen & Werk* officials usually have a professional training in personnel management. In the major cities, a number of such officials will hold a law degree. These officials may draw upon their expertise of the labour market when conducting mediations. The *Centrum voor Inkomen & Werk* is, after all, reponsible for collecting information about, and acting as an intermediary on, the labour market.

Data from practice and experiments

According to the NMI surveys, 206 out of the 345 mediations registered since 1999 have resulted in a settlement agreement. This implies a settlement rate of almost 60%. These figures apply to modern mediation. With regard to crypto-mediation it has been recorded that in about 3% of all permit applications pending, mediation efforts take place. These mediations then result in a settlement rate of 90% approximately.

Over the last 10 years, traditional mediators acting in major collective disputes have only managed to appease parties in a minority of cases. It should be noted however, that in these cases the mass media tend to be present, creating an outside pressure which may complicate mediation work. Some mediators have carefully avoided the public eye, and may quietly have created the right conditions for a solution, for which the audience at large credits the parties.

Extra-judicial means for the resolution of disputes across the community; some considerations

Is there any reason for the European Union to be concerned about the appearance of European (collective) disputes? Is there a substantial number of disputes exceeding the territorial competence of national conciliation-mediation agencies? Here, the observation should be made that labour relations systems coincide with markets and less with legal traditions. The process of economic European integration is, however, not yet completed. Wage levels and conditions of employment are not yet harmonised, depending on the degree of industrial development in the particular countries. Labour markets are not yet integrated despite the free movement of workers. In this situation, which is essentially a period of transition, labour disputes are considered still essentially to be confined within national boundaries due to the fact that one of the parties, the unions, represent workers in a particular country.

It is exactly because of the lack of similar wage levels that workers in different countries have diverging interests. National unions are still competitors. The other party, however, the employers in the private sector, do often operate internationally already. The parameters of such national disputes are already international. Differences in wage levels are decisive for international competitiveness. Pay claims by trade unions in countries with high wages levels may therefore be dismissed or manufacturing capacity may be relocated to cheap labour countries. Genuine international (European) collective labour disputes are likely to arise soon once wage levels throughout the Union have approximated. If a sufficiently uniform wage level is achieved throughout the European regional market, the conditions for substantial European collective bargaining will be present. It is however for the (near) future to see whether this will develop and result in collective European agreements. If it does, a need may arise for a European mediation agency based on two characteristics.

Such an agency should be a permanent institution with a twofold task. First it should assist the social partners at the European level whenever negotiations concerning European collective agreements are deadlocked. Second, the same agency should assist the social partners at the European level in advising and helping their members at the municipal level settling disputes over municipal agreements which have as their purpose the implementation of standards agreed at Community level, regardless of whether these standards are laid down in an EC directive or in a European collective agreement.

The resolution of labour disputes is a responsible task which calls for professionals. That is the reason why it should also have a conventional basis since it is expected that Community bargaining will be complementary to municipal bargaining. The relatonship between Community and municipal bargaining is delicate and therefore municipal social partners will ask for a clearly and narrowly defined competence.

In this respect the Belgian *Paritaire Comités* (Joint Committees) and the British ACAS may possibly serve as approved models since they are based on subsidiarity and voluntariness. Both institutions encourage parties to settle disputes themselves first through agrees procedures. The third party is only called upon if the parties have not been successful in settling their dispute.
Today, voluntary conciliation, mediation and arbitration have become prevalent. This has been different in the past.