CONCILIATION, MEDIATION AND ARBITRATION

National report - PORTUGAL

I. –1. The Portuguese system of industrial relations is dominated by the interplay of two historical factors, namely the inherited corporatist culture which still exists, and the growth of trade union freedom and political democracy.

The first of these is above all apparent in the law, which plays a crucial role in defining systems of organisation and collective action. There is thus a whole range of legislation encompassing all aspects of industrial relations: a Trade Unions Act (Decree-Law 215-B/75 of 30 April), an Employers' Associations Act (Decree-Law 215-C/75 of the same date), a Staff Representation in Enterprises Act (Act 46/79 of 12 September), a Collective Bargaining and Settlement of Disputes Act (Decree-Law 519-C1/79 of 29 December) and an Act on the Right to Strike (Act 65/77 of 26 August). The "long shadow" of corporatism can also been seen, for example, in contracts and agreements: sectoral agreements predominate, and their provisions conform to a "model" very similar to that existing before political changes took place.

The second factor is, of course, reflected in the content of the above-mentioned legislation, but it is especially apparent in arrangements for collective action through the way in which collective autonomy, freedom of organisation, the prominence given to the needs of democratic associations, and independence in dealings with the government and employers are a constant and everyday feature of the system.

2. There are two trade union confederations, the General Confederation of Portuguese Workers - National Trade Union Association (*Confederação Geral dos Trabalhadores Portugueses – Intersindical Nacional* (*CGTP-IN*)) and the General Union of Workers (*União Geral dos Trabalhadores* (*UGT*)); the former has close links with the Communist party, whilst the latter has socialist and social-democratic tendencies. Three main employers' associations, the Confederation of Portuguese Industry (*Confederação da Indústria Portuguesa* (*CIP*)), the Portuguese Business Confederation (*Confederação do Comércio de Portugal* (CCP)) and the Confederation of Portuguese Farmers (*Confederação dos Agricultores Portugueses* (*CAP*)), are the organisations with which the central trade union bodies have dealings, particularly on the Standing Committee on Social Concertation (*Comissão Permanente de Concertação Social – CPCS*), where the government is also represented.

The individual trade unions and employers' associations are too numerous to mention (there are more than 300 of each) and they thus have relatively small memberships, limited financial resources and a limited ability to take assertive action.

3. The system is also characterised by the predominance of the law over other forms of regulation. This is not only because of the corporatist legacy; it arises from the fact that collective bargaining faces great difficulties in that it is unproductive in terms of adapting rules to the situation on the ground and devising new solutions to new employment problems.

Collective bargaining is almost reduced to a routine annual wage review, and some collective agreements are bogged down in provisions dating from the end of the 1970s. The defensive policy adopted by the trade unions, and the state of tension between the parties involved, are at the root of this problem.

If any progress or innovation has in fact been achieved in the field of labour law, it is thanks to legislation.

II. - 1. Portuguese law describes different types of collective labour dispute[1] and means of solving these. These legislative solutions should, however, be seen in a particular context.

This question is dealt with in the legal arrangements governing collective labour agreements set out in an act passed by the Government[2] when the country was in the middle of returning to democracy, namely Decree-Law No 519-C1/79 of 29 December (the "Law").

This legislation takes a "twofold" approach: firstly, it seeks to encourage collective bargaining and arrangements for the amicable settlement of disputes, and secondly it takes a fairly strict "regulatory" stance as regards the conditions which agreements must satisfy in order to become a source of law. These conditions are concerned with legal capacity (Articles 3 and 4) and the legal form of agreements (Article 4/1), but also with issues which are negotiable (Articles 5 and 6), scope and duration (Articles 7 to 13) and the lodging and official publication procedures (Articles 24 to 26)[3]. In addition, the Law also provides for the extension of agreements in administrative terms.

On the other hand, the negotiation procedure (Articles 16 to 23) and the methods for solving disputes (Articles 30 ff.) are set out in detail, although the provisions concerned are in general not binding and instead simply outline possible courses of action. This section of the Law is directly concerned with encouraging negotiation, and creates a link between normal negotiations and procedures for dealing with disputes, a link which is based on a "contractual" concept of disputes, i.e. a dispute is always regarded as an incident on the way to negotiating an agreement.

2. This is why there is an entire chapter (VIII) entitled "Collective labour disputes". There is, however, no legal definition of a collective dispute[4].

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[1] Decree-Law No 519-C1/79, which is concerned with the legal arrangements governing collective bargaining, contains a chapter entitled "Collective labour disputes". As will become apparent in this document, the expression reflects the "educative" nature of this legislation.

[2] It is perfectly compatible with the Constitution for the Government to take the initiative in introducing legislation, despite the fact that the Constitution reserves very wide-ranging legislative powers for the Portuguese Parliament. The Constitution is concerned in its Article 56 Nos 2 and 3 with the "(collective) right (of workers) to engage in collective bargaining" – or, more specifically, to negotiate collective labour agreements which are a source of law. Under these provisions, the "constitutional" legislator is restricted to "empowering" trade unions to exercise this "right", and to giving the "ordinary" legislator the task of setting out "rules on entitlement to conclude collective labour agreements and on the validity of the legal provisions concerned". This question was not considered to be the exclusive preserve of Parliament.

[3] Published in an official gazette from the Ministry of Labour (*Boletim do Trabalho e do Emprego*).

[4] Among legal scholars, the favoured approach is often to use descriptive concepts based on the collective nature of the parties (organisations, employers), the interests involved, procedures and results. See e.g. *Direito do trabalho*, 11th edition, Coimbra (1999), p. 806 ff.

The legal definition encompasses two types of dispute, namely "disputes concerning the conclusion or revision of collective agreements" (section I, Articles 30 to 40) and "disputes about the implementation of agreements" (Section II, Article 41). Although the Law does not provide any definition, these two types of dispute correspond exactly to the classic distinction between "conflicts of interest" and "legal disputes"[5] in that both are always concerned with "contractual incidents".

As regards disputes concerning the implementation of agreements, the Law seems to take a fairly restrictive approach and provides only for disputes about "interpretation" (Article 41/1). In practice, however, there is nothing to stop the mechanisms available for resolving a dispute of this kind from also being used to fill gaps or correct errors/inaccuracies in an agreement. It should be borne in mind that almost all the legal arrangements in this field provide only general guidelines.

3. This distinction has legal implications in terms of the procedures available for resolving disputes.

Accordingly, conciliation, mediation and arbitration are defined and regulated in some detail as "specific" methods for resolving disputes relating to the conclusion or revision of an agreement (hereinafter called "conflicts of interests"). Section I, which is concerned with these types of dispute, regulates these procedures (in a largely non-binding way).

In addition, the Law devises a separate mechanism for disputes on the application of agreements (hereinafter called "legal disputes"), namely the "joint committee" (*comissão paritária*) which every agreement is "required"to create (Article 41/1). This committee is made up of equal numbers of representatives of the parties to the agreement, and its unanimous decisions must be officially lodged and published as instruments "regulating" the agreement (Article 41/4).

This is the outline of what the Law proposes.

4. The settlement of conflicts of interest through recourse to the courts is ruled out absolutely. However, the Law provides for a possible administrative solution. This is a legacy of the corporatist past, traces of which still make themselves felt in our judicial culture.

Alongside conciliation, mediation and arbitration, Decree-Law 519-C1/79 allows a "labour regulation order" (*portaria de regulamentação do trabalho*) to be issued by the Minister for Labour and the minister in charge of the economic sector concerned. The use of *portarias* is thus an element in all action for solving disputes.

According to Article 36/1, a *portaria* (PRT) may be issued in three scenarios: where trade unions and employers' associations do not exist; where there is a consistent refusal to negotiate; or where actions or manoeuvrings are mainfestly detrimental to the normal course of negotiations. It is therefore typically used as a response to non-compliance with the obligation to negotiate, and is thus a sign of distrust[6].

[5] This distinction has come in for some criticism from legal scholars, who tend towards a more "unitary" concept of collective disputes. This view will, of course, have implications for the methods that can be used to resolve each dispute.

[6] Article 22 sets out a number of requirements regarding the handling of collective issues, all of them based on the concept of "negotiating in good faith".

The Law is clearly concerned about the risks involved in this type of administrative intervention, especially to the extent that it might be to the detriment of collective autonomy. The use of PRTs implies the creation by the Minister for Labour of a "technical committee" (Article 36/2), in which experts appointed by the employers and the relevant workers should participate if possible.

PRTs have the same effect as a collective agreement, and are also published in the *Boletim do Trabalho e do Emprego (BTE)* (Articles 39 and 40). However, collective autonomy takes precedence: if an agreement has been successfully negotiated in a field covered by a PRT, it will take priority over the latter in relation to the employers and workers represented in the negotiations (Article 38).

It should be added that it has become extremely rare for PRTs to be issued. There are two or three published every year, in each case in response to the first scenario provided for, i.e. the absence of parties which could engage in proper collective bargaining.

Conclusion: according to the Law, conflicts of interests may be resolved by traditional means derived more or less from the concept of collective autonomy (conciliation, mediation, arbitration) or, in some specific situations, though administrative channels.

5. As regards "legal disputes", we have seen that the Law provides for a separate ("autonomous")[7] solution, the "joint committee"[8] established by a collective agreement whose content is under discussion. This is a contractual means of ensuring that the collective will and the respective interests underlying the agreement remain "activated" throughout the period during which the agreement has legal effect.

Legal disputes can also be resolved through recourse to the courts[9]. Law No 3/99 of 13 January (concerning the organisation and workings of the courts) acknowledges the responsibility of the labour courts[10] for ruling on questions relating to the "annulment and interpretation of non-administrative[11] collective regulatory instruments in the employment field" (Article 85).

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[7] "Autonomous" in the sense of deriving from collective autonomy (since it is a contractual creation) and in the sense of a means of expressing the collective will and interests which must be set out when resolving a dispute.

[8] This mechanism and its workings date back to the corporatist period. The 1933 Constitution (the fundamental law of the corporatist State) in its early form still provided for only one, judicial, way of resolving disputes concerning the implementation of agreements. In 1960, a law (Decree-Law 43 179 of 23 September 1960) provided for "corporate committees" to be created pursuant to agreements in order to interpret and supplement these, and to take decisions on technical problems concerning their application; these committees were made up of representatives of the contracting parties and chaired by a civil servant from the employment authorities. After the period of political unrest (1974-1975), a new law (Decree-Law 164-A/76 of 28 February) provided for the creation, by means of collective agreements, of "joint committees" responsible for questions of interpretation and filling loopholes in the law. A few months later, a new law (Decree-Law 887/76 of 29 December) did away with the committees' being responsible for filling legal gaps, a step which ultimately meant that new solutions were to be found through "collective negotiations" of a kind.

[9] Disputes concerning the application of agreements can of course be ruled on by the courts in litigation involving individuals, but the solutions found are applicable only to the individual cases concerned.

[10] These courts are "specialised tribunals" forming part of the civil judicial structure. They do not exist throughout the entire country, although they are to be found in more than 200 *comarcas* (judicial districts). In the other districts, employment-related matters are dealt with by courts with general jurisdiction.

[11] Not including PRTs and extension orders (*portarias de extensão*) for the agreements in force.

In addition, under the Labour Procedures Code (CPT) (Decree-Law 480/99 of 9 November), the trade unions and employers' associations are deemed to be parties entitled to take legal action concerning the collective rights and interests they embody (Article 5/1). Furthermore, trade unions may lodge legal actions in place of workers with the authorisation of the latter, especially if a "general infringement of individual rights of the same nature" is involved (Article 5/2-c)[12]. This is what happens in typical cases of disputes on the application of agreements.

III – 1. The State's role in collective labour disputes is less important now than a reading of legislative documents would suggest. Since the 1980s, the State has gradually given up the very visible presence it had maintained throughout the post-revolutionary period as a result of the corporatist interventionism and the attempts to impose political control on social forces[13] which emerged after 25 April 1974.

State policy regarding collective disputes could thus be described as a hands-off approach. Nevertheless, Portuguese society is fairly vulnerable: the "systems" (transport, supplies, health, etc.) underlying community life are very sensitive to upheavals which may result from social conflicts. There are few alternative solutions available. The "marginal" nature of the country, which is even more pronounced in the case of the Azores and Madeira, adds to this vulnerability.

The public authorities are thus forced to assume two types of role in disputes which may threaten the continued provision of services of general interest, namely that of facilitating negotiated settlements through intervention by State conciliation services and, if negotiations fail and a work stoppage occurs, imposing[14] a minimum level of work performance in order to ensure that basic needs are met.

2. With the exception of legal disputes (for which the judicial means are available to resolve them) the procedures for settling collective labour disputes are all extra-judicial in nature.

From the legal point of view, conciliation, mediation and arbitration are presented as specific means of dealing with conflicts of interests, although there is nothing to stop them being used in legal disputes. Experience has also shown that the distinction between the two types of dispute is not always obvious in many situations, where questions of implementation and new claims overlap and get mixed up.

Conciliation, mediation and arbitration are also provided for and regulated by law and almost never by means of collective agreements. The fact that the will of the parties plays an important role here – a role which the law itself lays down – makes these arrangements essentially voluntary[15] in nature. The only exceptions are *ex officio*

[12] This is known as "collectivisation of individual disputes" whereby, up until the CPT was amended in 1999, action by the courts was possible only in relation to individuals.

[13] For example, by means of (government) legislation of a single trade union federation (the *CGTP-Intersindical*) – Decree-Law 215-A/75 of 30 April.

[14] Portuguese legislation provides for civil requisitioning of persons or goods in order to "ensure the normal functioning of essential public services or of sectors vital to the national economy" (Decree-Law 637/74 of 20 November). Decisions to requisition are taken by the Council of Ministers. This step is quite often taken during strikes, particularly in the transport sector.

[15] The voluntary nature of these procedures is twofold: the use of conciliation, mediation and arbitration usually depends on the goodwill of the parties, and this will play a key role when laying down procedural rules (see Articles 30/1, 33/1 and 34/1 of Decree-Law 519-C1/79).

intervention by public conciliation services (Article 17/2 of Decree-Law 219/93 of 16 June) and compulsory arbitration (Article 35 of Decree-Law 519-C1/79). We will return to this below.

3. The financing of out-of-court settlements of collective labour disputes is a wide-open question.

State conciliation services are available free of charge, with the costs involved being met though the budget provided for these services. The body concerned is a public institute, the *Instituto de Desenvolvimento e Inspecção das Condições de Trabalho*[16] (IDICT), which is attached to the Minister for Labour and combines a number of employment administration functions, including inspections. It includes a Directorate for Industrial Relations Services (Article 17 of Decree-Law 219/93, mentioned above), which is responsible for intervening, either *ex officio* or on request, in labour disputes.

The problem of funding arbitration services remains unsolved, especially as regards compulsory arbitration. Prior to 1974, the legal principle of sharing arbitration costs was established even though compulsory arbitration was mainly involved. The law does not at present offer any response to this, and probably works on the assumption that costs will be shared.

The financial weakness of the social partners, especially the trade unions, is one of the reasons why voluntary arbitration is so rare. Moreover, compulsory arbitration came up against a refusal by the parties concerned to meet the costs and the Government did not wish to push things too far in this field. The problem of finances is still one of the reasons why the arrangements for dealing with disputes do not work effectively.

IV – 1. Before looking more closely at the procedures for settling disputes, starting with conciliation and mediation, it should first of all be mentioned that the Law makes a distinction between the two, although they merge together in practice.

The activities of the conciliators from the IDICT – because in practice they are always asked to intervene[17] – are not subject to any binding framework. Their efforts most often start off as conciliatory and gradually move towards mediation.

Under the Law, however, the initiative for conciliation can be taken by one of the parties alone (Article 31/1)[18], whereas mediation requires the consent of both parties (Article 33/1).

In the more distant past (the 1970s), there were some very rare examples of mediation by experts from outside the public conciliation services.

The nature of the employer (public or private sector) has no bearing on the action taken. In addition, conciliation services make no distinctions based on the legal status of the interested parties[19].

[16] Institute for the Improvement and Inspection of Working Conditions.
[17] For at least two reasons: their expertise, and the fact that their intervention does not give rise to expenses for the parties involved.
[18] If a proposal to negotiate receives no response, or where the other party is given a week within which to respond.
[19] The public conciliation services do not intervene in disputes involving the civil service.

2. Conciliation/mediation[20] by the IDICT is handled by career civil servants whose sole job is to develop industrial relations in every sector of activity[21]. Each of them is in charge of a number of sectors. The parties to disputes therefore cannot choose their conciliator; the person appointed is the civil servant with responsibility for a particular field. A conciliator will of course be replaced if one or both of the parties object.

Intervention by the IDICT's conciliation services is usually backed up by assessors appointed by the ministry responsible for the field of activity concerned (Article 31/2).

3. The Law (Article 31) does not lay down any time-limit for requesting conciliation; this may be done at any time by mutual agreement of the parties, or by one of the parties alone under certain circumstances already referred to (Article 31/1).

Conciliation may also be carried out *ex officio* on the basis of Article 17 of the Act establishing the IDICT (Decree-Law 219/93 mentioned above), according to which the conciliation services are responsible for "averting, monitoring and intervening in labour disputes in order to resolve them and reach an amicable settlement".

4. The rules on conciliation procedure are very simple; the parties involved, including the conciliator, are given wide scope for self-regulation.

Where conciliation takes place with the agreement of the parties, or on the initiative of one of the parties alone on the basis of Article 31/1, the procedure must begin within two weeks following the request for conciliation (Article 32)[22]. The law requires that priority be given to "clarifying the issues" to be discussed (Article 31/3). The conciliator's work may involve putting forward proposals to the parties (Article 31/2). And that is all. The course of a conciliation procedure is guided by the conciliator and depends on the receptiveness of the parties.

During conciliation, there are no rules obliging the parties to refrain from industrial action. Neither the law[23] nor other sources of obligations require even a temporary "peace" to be declared. Conciliation is not the same as cooling-off. Nevertheless, a request for conciliation is still a sign of willingness to reach a settlement and reflects a fairly "peaceful" stage in a dispute. Normally, a decision to take strike action and the calling of a strike take place only after conciliation has failed.

5. If conciliation is successful, there will be an agreement on the issues discussed. In the situation provided for under legislation, i.e. that of a "contractual" dispute, the agreement concluded does not have any independent legal effect in relation to the collective

[20] These two procedures are being dealt with together for the reasons already mentioned. However, as will be seen later, the law makes a very clear distinction between conciliation and mediation.

[21] Article 17/2 of Decree-Law 219/93 states *quite clearly:* the department to which they belong must "enhance knowledge of the social work environment ..., structural, technological or economic factors which may affect working conditions" and maintain "ongoing relations with employers and workers and their respective associations and organisations".

[22] If the involvement of conciliators derives from the Act establishing the IDICT (Article 17 of Decree-Law 219/93), the timing of any intervention is totally discretionary. The only criterion is how effective intervention will be.

[23] The Act on the Right to Strike (Act No 65/77 of 26 August) specifically prohibits the renunciation of the right to strike (Article 1/3), whilst the Constitution takes a restrictive approach as regards general law and its provisions on the legality of strikes (Article 57/2 and 3). These provisions mean that the prevailing opinion is that any form of "compulsory" waiver of the right to strike (under legislation or by agreement) is legally inadmissible.

agreement under consideration. Conciliation seems to be a very simple means of clarifying certain contractual arrangements[24]. Quite often, it merely serves to "thaw" relations between parties to negotiations, which can then continue after a conciliation agreement has been concluded.

Given that a "conciliation order" is not a collective labour provision[25], it does not have to be lodged with the courts or published officially. Its legal force and effect is exactly the same as that of any protocol of agreement, or the conclusions recorded in the minutes of normal negotiations.

The other possible situation should also be considered, however, namely that of conciliation in a conflict of interests which is "out of context" or "non-contractual", i.e. not provided for as part of a negotiation procedure under a collective agreement. If successful, conciliation may lead to partial modification of a collective agreement (which brings us back to the observations above) or may be reflected in some other forms of compromise[26], which must be recognised as valid in themselves and as possibly having the implications of agreements under civil law but not the same legal effect as a collective labour agreement.

6. We have seen that, in practice, it is very difficult with industrial relations to distinguish between conciliation and mediation procedures when looking at the activities of official conciliators. Although the law makes a clear distinction between the two concepts, this distinction is based on a non-existent premise, namely that of "independent" mediation outside the public conciliation services (IDICT), subject to the choice of an *ad hoc* mediator by agreement between the parties.

In law, the concept of mediation involves the attempt to bring about a voluntary resolution of a collective dispute through the innovative proposals of a third party, whereby there is no direct contact between the parties involved. The mediator is thus the only person with whom the parties have contact, and this is why mediators must treat confidentially all information which comes to their knowledge, unless such information is already known to both parties.

7. Article 33 of Decree-Law 519-C1/79 describes a sequence of actions (both compulsory and optional), punctuated by certain deadlines, starting with the selection of the mediator, and then moving on to the submission of the mediator's proposal, and finishing with simultaneous notification of all parties involved about whether mediation has been successful or not. The provisions of No 6 of this Article are clear: the mediator may contact "each of the parties separately" as much as is needed with a view to bringing about an agreement. The short deadlines laid down[27] (20 days for drawing up the proposal, 10 days for the parties to respond, 5 days for "two-way" notification of the outcome) create the impression that this procedure is designed as a very focused, incisive and rapid set of steps. However, the statutory time-limits together amount to more than one month, which is probably excessive in the case of most disputes.

[24] This was not the case under the corporatist regime: Decree-Law 49 212 of 28 August 1969 provided for "conciliation orders" as an independent binding legal instrument.

[25] Under Article 2/1 of Decree-Law 519-C1/79, collective labour provisions consist of collective agreements, arbitration decisions and affiliation agreements.

[26] Such as the non-closure of a canteen, the annulment of certain disciplinary measures, conceding financial support for certain initiatives benefiting the workforce, or the provision of information to the "workers' committee".

[27] Always subject to modification by the parties: the usefulness of the procedures is considered more important that strict adherence to deadlines.

8. All that has been said about the legal effects of the outcome of conciliation procedures applies equally to mediation. This too is seen as a procedure by which the content of a collective agreement can be clarified. The agreement reached is not usually a legal instrument in its own right; it will acquire this status only in the event of a dispute "out of context", as has already been mentioned above, and under precisely the same conditions as a "conciliation order". In law, mediation is intended as a kind of conciliation without contact between the parties.

V. – 1. Decree-Law 519-C1/79 is also concerned with arbitration. This may take two forms: voluntary arbitration or compulsory arbitration.

Recourse to arbitration usually requires the mutual consent of the parties (Article 35) by means of either an "arbitration bond" entered into with regard to a specific ongoing dispute, or an "arbitration clause" contained in an earlier collective agreement.

The Minister for Labour can in all events decide on arbitration if conciliation and mediation fail and the parties do nothing to initiate voluntary arbitration (Article 35/1) within a given deadline (two months). Such a decision is taken only at the request of one of the parties, or on the recommendation of the Economic and Social Council (Article 35/2)[28].

Compulsory arbitration is subject to the appointment of arbitrators. The parties are not normally disposed to cooperate as necessary because the procedure is being imposed on them. The Law (Article 35/4 f.) lays down a specific procedure to make up for this failure by the parties to appoint arbitrators, but the mechanism is so complex and impractical that compulsory arbitration has not been made use of. The (still unresolved) problem of funding has also helped to bring about this situation.

2. Under statutory arrangements which, like the others, are not mandatory, arbitration is undertaken by three arbitrators; each party appoints one arbitrator, and the two arbitrators chosen then select a third.

The choice of the three arbitrators is subject to their acting independently (Article 34/3), which suggests that legislators regarded the role of the "parties' arbitrators" as having nothing to do with the idea of their representing the interests of the party which appointed them. The reality is different, however: even if arbitrators may not have any legal connection with the party appointing them, they are in practice acting as a proxy for that party[29]. This means that it is the third arbitrator who is responsible for finding a settlement.

3. The Law does not set out any procedural arrangements for arbitration. The procedural rules and time-limits to be observed are laid down by the parties, or by the arbitrators themselves, at the start of arbitration process.

[28] In the case of an enterprise in the public sector, i.e. run by the government, recourse to compulsory arbitration must be based on a recommendation from the Economic and Social Council (Article 35/3).

[29] This state of affairs led to an attempt to amend legal provisions governing arbitration in the course of the preparatory work on Decree-Law 519-C1/79: the draft provided for a single arbitrator and two assessors appointed by the parties. The idea did not meet with any success.

Proceedings usually begin with the parties setting out their respective positions, normally in writing. These viewpoints and the justification for them are analysed and considered by the arbitrators in a series of meetings, the number of which may vary. It is quite often the case that the third arbitrator acts as "conciliator" between the other two. The arbitrators may be assisted in their work by experts and have access to any relevant data and information from all departments of State.

4. Arbitration is a decision-making[30] mechanism. The arbitrators' decision is adopted by a majority vote (Article 34/5), which means that the views of the third arbitrator are particularly important. The decision must be set out in writing and give reasons for the conclusions reached.

Article 23 of Law 31/86 of 29 August[31], which applies pursuant to Article 34/5 of Decree-Law 519-C1/79, sets out the "mandatory information" which an arbitration decision must contain (namely the identity of the parties, references to the arbitration agreement, the subject of the dispute, the identity of the arbitrators, the place of arbitration and the date of the decision, the signatures of the arbitrators, the names of arbitrators who refused to sign and how the costs of arbitration are to be apportioned).

The arbitration ruling must be equitable. It must be seen to be the "right" solution which the parties were unable to reach by themselves.

The decision may not, however, limit or abolish "rights or guarantees enshrined in previous collective agreements" (Article 34/6). The arbitrators' ruling is thus subject to a major proviso: it may not "unbalance" the collective interests involved and must from the outset not impinge on certain advantages "enjoyed" by the workers.

Furthermore, arbitration rulings fall within the scope of the restrictive rules on issues likely to be negotiated in the context of collective agreements (Article 6 of Decree-Law 519-C1/79).

5. Unlike "conciliation orders" and agreements reached through mediation, arbitration rulings are independent collective labour provisions (Article 2/1).

These rulings therefore have to be officially lodged and published (Articles 24 and 26) in the same way as a collective agreement. They are also subject to the provisions on the duration of the agreement and the persons covered by it (Articles 10 and 11), and to the conditions governing notice of termination of collective agreements (Article 16/2). Arbitration decisions are thus a source of labour law.

VI. - In overall terms, these means of solving collective labour disputes have not been used a great deal over the last few years.

We have already stressed that, where the law "takes its course" (i.e. excluding instances where the State's official conciliation services intervene), mediation is not used. It involves the appointment of a third party which the parties must allow to take charge of the dispute to a certain extent. The fact that mediators draw up and present possible solutions which appear feasible to them (i.e. which are reconcilable with the interests of the parties and are likely to lead to an adequate settlement) may be felt to be a source of pressure on the parties involved, especially if public opinion plays a role. The trade

[30] For the reasons indicated, the decision concerned may be of a "quasi-contractual" nature.
[31] Act on arbitration agreements, which applies to all arbitration procedures.

unions and employers' associations do not like the idea of being "pushed" into playing their game according to other people's rules. A further point is that mediation has to be paid for (or at least the mediator's fees) and the organisations involved are generally in a weak position financially.

The underlying situation is exactly the same as regards arbitration. The most recent case – involving *TAP Air Portugal* pilots – was brought to a close in 1999. Compulsory arbitration has not got off the ground because of problems with appointing arbitrators and also with financing the procedures. Following the fairly frequent recourse to arbitration throughout the 1970s, it was hardly being used any more by the second half of the 1980s[32]. There have been, on average, perhaps one or two cases of arbitration a year.

It is only conciliation, under the aegis of the IDICT, which is really being used and showing results. Between the third quarter of 2000 and the third quarter of 2001 (i.e. one and a quarter years), 130 conciliation procedures were completed, 73 of which were totally successful, 6 achieved a partial settlement and 51 failed to bring about an agreement. Over the same period, 555 sets of collective negotiations led to agreements on review arrangements, particularly with respect to wages[33]. In 2000, statistics from the Ministry of Labour recorded 288 strikes accounting for 40 500 lost working days. These figures show, at least, that there is no direct relationship between the number of collective agreements, the frequency of disputes and the use of conciliation.

Nevertheless, the fact that intervention by official conciliators is free of charge, the fact that conciliation does not involve any risk of losing control of a dispute, and the way in which this conciliation enables the two parties to "commit" the public authorities to seeking a favourable climate for resolving disputes, are all possible reasons for the relative success of this method of dealing with collective labour disputes.

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[32] At the same time, administrative rules (publication of PRTs) became very rare.
[33] All these arrangements contain provisions on remuneration, and half of them are also concerned with other issues.