

# **E.U. Project for the Study of Conciliation, Mediation and Arbitration**

## **G R E E C E**

### **National Report**

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## **I. THE SYSTEM OF LABOUR RELATIONS (BRIEF OUTLINE OF GENERAL FEATURES)**

In the following presentation of the Greek labour relations system, there are references to the agents of labour relations (the State, the labour unions and management organisations). The institution of collective bargaining and the parallel institutions of conciliation, mediation and arbitration are also examined. These are clearly marked by their legal structure.

### **1. Agents of labour relations**

#### **a) The State**

The primary characteristic of the national system of labour relations is its legal foundation, a result of the intervenient role of the State.

In Greece, the devastation resulting from World War II and the Civil War that followed reinforced the State's intervenient role. This resulted in the creation of an oversized public sector and the state became one of the largest employers. This development constituted one of the most important vehicles for social policies.

In order to control the various sectors of the economy, the state intervened systematically in shaping labour relations. This was done either through a controlled system of collective negotiations or through various policies for wage controls in cases where it was not possible to control collective bargaining.

After the passage of Law 1876/1990 re: collective bargaining and collective agreements, greater distancing was observed on the part of the state, a fact that was reinforced by the wave of privatisations.

#### **b) The Labour Unions**

According to data from the National Statistics Service of Greece (manpower research 1995), there were 2.060.082 wage earners on a total of 3.823.810 working people. The hierarchical structure is as follows: the union locals of the rank and file are united through labour centres (trade councils) and labour federations; **at the third organisational level is the Greek General Confederation of Labour (GSEE)**. GSEE has the responsibility for signing national general collective agreements.

GSEE covers persons employed in the private sector and persons working with civil contracts in the public sector; it represents about 32% of salaried employees. This percentage indicates the trade union density.

GSEE is a member of the International Confederation of Free Trade Unions of the European Trade Union Confederation.

The third-level organisation for civil servants is ADEDY, the Confederation of Public Servants Unions.

### **c) Employers' organisations**

Employers' organisations are structured according to the professional interests they represent.

#### i) Industry

**Federation of Greek Industries (SEV).** This is the most representative organisation in the sector. SEV has responsibility for the signing of national general collective agreements. It is a member of UNICE.

#### ii) Commerce

**The General Confederation of Small Businesses and Trades of Greece (GSEVEE).** This confederation represents a wide spectrum of small enterprises in the productive sector of the economy. In Greece small and medium-sized businesses represent about 99% of the total. GSEVEE has the responsibility for signing national general collective agreements.

**The National Confederation of Commercial Associations of Greece (ESEE).** This confederation also functions in the realm of commercial activity and to some degree overlaps with GSEVEE. ESEE has responsibility for signing national general collective agreements.

## **2. The role of legislation and collective bargaining**

Greece belongs to that group of countries in which legislation plays a crucial role in regulating labour relations and collective bargaining.

For historical, political and economic reasons, the system of collective labour relations established in Greece after World War II presented significant differences from that of other European countries. Law 3239/1955, which regulated the resolution of collective labour disputes, did not make provision for the legal process of collective bargaining but focused primarily on wage control issues.

If the parties could not come to an agreement during negotiations, their dispute was referred to an amazing system of compulsory arbitration.

By common agreement, the 1955 Law was replaced by Law 1876/1990.

The new law, which permits bargaining on almost all issues arising in labour relations, has resulted in enriching the content of collective agreements. But despite the fact that collective bargaining and collective agreements play a significant role in labour relations, legislative regulation remains strong.

## **3. Strikes**

Strike activity is a customary phenomenon in the realm of labour relations. But the frequency of strikes, the degree of participation by the working people and the number of lost hours of labour are a function of policy at the particular economic conjuncture.

Strike data are collected by the local Labour Inspectorates and the Ministry of Labour, and are usually incomplete.

The overall Table (Appendix I, Table 1.1), which covers the period from 1990 to May of 1999, provides a picture of strike activity.

Table 1.1 shows the special weight of the public sector. Trade union density in this sector is very high (in some cases, it exceeds 70%), while the wave of privatisations taking place since the early 1990s fosters strike mobilisations.

The same Table shows that we have no data for the period after the first half of 1999. We would note the nationwide strike of April 2001, on the occasion of the government's effort to amend the existing social security system, which resulted in the loss of many hundreds of thousands of hours of labour. It is, however, indisputable that after the tension that culminated in the year 1990, a constant decline in strike activity has been noted, which is due among other things to unemployment (11.2% in 2000) as well as to the more general economic crisis.

## II. LABOUR CONFLICTS AND THE MEANS FOR SOLUTION

1-3. There is no legal typology of labour conflicts. In theory there is a distinction between individual and collective labour disputes, and although this distinction should not be regarded as a rigid one (*summa divisio*), it nevertheless affects the means of resolving disputes.

a) **Individual labour disputes and means envisaged for their solution.** Individual labour disputes are those arising from the provision of dependent labour or from any other cause, between a working person(s) and his (her/their) employers with respect to the provision of such labour. **These disputes are legal in nature and are primarily resolved by the competent courts**, which are the magistrate's court and the single-member first instance court (for cases in which a specified amount of money is exceeded), according to a special procedure (labour dispute procedure) foreseen by article 664 of the Civil Procedures Code (CivPC).

When a judicial solution is sought to an individual labour dispute, the judges should attempt conciliation between the adversaries (article 667 CivPC) at the first hearing. Failure to make such an effort has no repercussions in law. In practice, an effort is made to reach a broad compromise between the litigants before the case is heard at the first instance, or before resorting to judicial proceedings.

Individual labour disputes **can also be subject to the process of conciliation**, which is an administrative one, but not to those of mediation and arbitration.

b) **Collective labour disputes and means envisaged for their solution.** Collective labour disputes are those arising from conflicts between employers and employees in the evolution of industrial relations. They come to light when working terms and conditions, remunerations, the company's hiring policy and other issues, labour-related and otherwise, are being discussed.

These conflicts **can be legal**, in which case they are resolved **either judicially or through the administrative procedure of conciliation**. One kind of legal conflict, that

arisen from the interpretation of the regulatory terms of a collective labour agreement, may also become object of mediation and arbitration (art. 2 par. 2.5 L. 1876/1990). Collective labour disputes may also reflect **a conflict of interests**, in which case they constitute **the pre-eminent object of mediation and arbitration**.

### **III. EXTRA – JUDICIAL MEANS FOR THE RESOLUTION OF LABOUR CONFLICTS**

In Greece, there is a system of mediation and arbitration established by law. At the same time the law provides for the possibility of instituting a mediation and arbitration system through a collective labour agreement or other collective agreement between the parties. The system provided by law operates as a supplement to the conventional system that may be enacted in collective labour agreements (CLAs). This supplementarity is absolute, in the sense that all the regulations provided by law are applied, if no relevant clauses exist to the contrary or if conventional procedures are not initiated.

#### ***1. The role of the State and social agents: (policies of abstention/policies of promotion – facilities for their creation/legal obstacles)***

For a better understanding of **the role of the Hellenic State and social agents in resolving collective labour disputes**, we should first describe briefly the legislation in effect up to 1990, in order to make clear the breakthrough that was made by the existing legislative framework.

##### A. The system previously in force (Law 3239/1955)

Up to 1990, collective labour disputes were regulated by Law 3239/55. Its provisions reflect post-war conditions in Greece, and make the state the primary regulator of industrial relations, essentially eliminating any concept of consensus in settling collective disputes.

According to Law 3239, if negotiations between management and labour broke down and a collective labour agreement (CLA) was not signed, the parties were obliged to have recourse to a system of compulsory arbitration. The compulsory factor ran through the initiation of the arbitration process, the composition of the arbitration board (tribunal) and the binding nature of the arbitration awards.

Regarding initiation of the process, it was not necessary to ensure agreement between the two sides (management and labour); the desire of just one side was sufficient and expressed by a simple application to the Ministry of Labour. The role of arbitrator was played by arbitration tribunals that were composed of one regular judge as President with a double vote, one Ministry of Labour employee (both were appointed by the Ministry of Labour), one representative of the employers and one of the workers.

Compulsory arbitration was in essence the only way of settling collective labour disputes, given that no provision was made for mediation, and the conciliation process was limited to a formal procedure whose purpose was to bring the collective dispute under compulsory arbitration.

In addition, one consequence of the referral of a collective dispute to arbitration was to prohibit continuation of the strike, or proclamation of a new one. Failure to observe this

prohibitive clause was regarded as termination of the individual labour contact, with penal repercussions for the strike leaders.

And finally, in order for the arbitration award to take on normative force, the Ministry of Labour had to issue a decision which presupposed administrative approval of the content of the arbitration awards, since the Administration had the power to amend or to refuse to approve their content if they were opposed to government policy.

These settlements caused intense social conflicts, successive and dynamic strikes, judicial interventions, denunciations and appeals to international organisations (ILO), etc. It is characteristic that during that period more than 50% of collective settlements (both collective agreements and arbitration awards) were the result of arbitration, whereas today (from 1992 to 2001) arbitration awards represent only 14.8% of the total of collective settlements (see Appendix III).

The need to replace this authoritarian regime with modern democratic legislation began to be manifested more and more intensely after the 1980s. Nevertheless, ten (10) years were required for ideas about the reform of the collective bargaining system to “mature”. The preliminary work and consultations required to draft the new law took more than a year and a half.

Finally in 1990, under a coalition government, Law 1876 was passed, which is in force up to the present day, with the unanimous consent of the three political parties, the representatives of GSEE and the three employers’ organisations (SEV, GSEVEE, ESEE).

#### B. Main features of Law 1876/1990 “re: free collective bargaining”, currently in force.

Law 1876/1990 is governed by two basic principles:

- a. the restoration of free collective bargaining and
- b. the elimination of state tutelage from arbitration.

These principles are expressed in the main features of the law, as follows:

i) **Changes in the concept of the role of collective bargaining.** Whereas under Law 3239/55 collective bargaining was simply a means of settling collective disputes, under Law 1876/1990 the notion of collective dispute is downgraded, because the submission of demands by trade union organisations does not create disputes, but rather introduces the obligation to negotiate. In this way, **collective bargaining turned from a process for resolving collective disputes, as foreseen by Law 3239/55, in a process for regulating financial interests and preventing disputes.**

ii) **The right and obligation to bargain were established, and indeed “in good faith”,** i.e. bargaining with the intention of resolving the collective dispute (article 4 para 3). The obligation was imposed on the employers’ side to provide the employees with “full and accurate information” so that dialogue would be substantial (article 4 para 4).

iii) The **content** of collective bargaining was **broadened** to cover all matters affecting labour relations, including social security, but with the exception of pension issues (article 2).

iv) A **decentralised bargaining system** was created that, at the same time, had the form of successive negotiations, instead of the decentralised and hierarchically structured system established by Law 3239/55. This means that bargaining is free at every level.

v) **Sectoral and company collective agreements<sup>1</sup> were established** for the first time, (article 3) with precedence over occupational CLAs (article 10 para. 2), which had been dominant until then, born of the guild structure by which interests were hitherto organised in Greece.

vi) **An autonomous board of Mediators and Arbitrators was set up.** The Greek Mediation and Arbitration Service (OMED) was entrusted to establish and operate this board, which constituted a significant innovation in the new law.

**Note.** The law does *not* raise any legal obstacle to mediation and arbitration. As stated above (see II 1-3), it inaugurates a lawful system of mediation and arbitration to resolve disputes; this system is applicable as long as the collective labour agreement makes no provision for anything else.

**By creating the independent service OMED, which is assigned to organise mediation and arbitration, the legislator encouraged the collective autonomy of the parties in settling differences, rather than state intervention.**

## ***2. Extra – judicial means for resolving labour conflicts: general overview***

### ***A. Preliminary Remarks***

#### **1. The role of OMED in the mediation and arbitration process**

The Greek Mediation and Arbitration Service (OMED) was established by Law 1876/1990, as an independent and self-administered legal person under private law with registered office in Athens.

The very fact that the task of mediation and arbitration has been assigned to a legal person under private law instead of some public service is an indication of independence from government control. For Greece, this is a ground-breaking institution, with a high degree of autonomy.

By virtue of decision No. 3204/98 (*Epitheorissis Ergatikou Dikaïou*, vol 55/99, p. 13-15), the Council of State agreed that **the assignment by law of arbitration to the board of a Legal Person under Private Law, established by law, does not conflict with the provision of article 22 para. 2 of the Constitution of Greece.** The constitutionality of entrusting arbitration to OMED is based on the fact that the arbitrators (who represent the arbitration board), because of their qualifications, knowledge and the manner of their selection, as well as the independence they enjoy in the performance of their duties, provide the guarantee of sound and objective judgement, which is ultimately subject to judicial scrutiny.

The system established by Law 1876/1990 for settling collective disputes, which includes a number of optional features, does not conflict with the Constitution, since mediation and arbitration have been assigned to persons entrusted with the performance of this public function, who were selected in accordance with due procedures.

**The purpose of OMED is to support collective bargaining by providing independent mediation and arbitration services.**

### **Main Services**

Providing **Mediation services** to achieve collective settlements on the following issues:

- Matters related to industrial relations that can be settled by a collective labour agreement,
- Drawing up work rules,
- Determining the number of “emergency personnel” required in the event of a strike,
- Conducting “public dialogue” on issues that constitute the object of a strike,
- Settlement of working time.

Providing **Arbitration services** to achieve a collective settlement through the issuing of an Arbitration Award on the following issues:

- Matters related to labour relations that can be settled by CLA terms,
- Drawing up work rules,
- Determination of working time.

### **Other Services**

- Informing and training representatives of employers and workers on industrial relations issues,
- Publishing research on industrial relations issues,
- Publishing Codes of Practice on matters of ethics and practice in dealing with industrial relations issues,
- Conducting research on industrial relations issues on a national, sectoral or company level,
- Offering advice on industrial relations issues.

**The most significant publishing effort will be the Codification of collective labour agreements** that have been drawn up from 1975 up to the present day in the 150 most important industries and occupations in the Greek economy. The most recent Codification has just been issued (31 January 2001) together with the OMED’s ten-year operating Report.

OMED is administered by an 11-member, tripartite Board of Directors with a four-year term of office; it consists of three (3) representatives of the Greek General Confederation of Labour (GSEE), three (3) representatives of the employers’ side (SEV, GSEVEE and ESEE), three (3) representatives of the university community (professors of labour law or economics who are recommended by their respective university faculties and the Hellenic Society for Labour Law and Social Security [EDEKA]), one (1) representative from the Ministry of Labour, and one (1) scholar of recognised authority, experienced in industrial relations issues, who is selected by the other ten members at the first meeting of the Board.

The Chairman is elected by the regular Board Members. The Board is convened in a body by decision of the Minister of Labour.

The Board of Directors of OMED does not intervene in the procedure for resolving disputes, nor does it take part in mediation or arbitration. It simply has the responsibility for the internal operation of the its services, the organisation and evaluation of the work of the Mediators-Arbitrators, and the possible renewal of their term every three years.

## 2. The selection and status of mediators-arbitrators

**Mediators and arbitrators constitute a special Service and perform a public function, without being employed in the capacity of civil servants.** They are hired for a three-year renewable term and enjoy full independence in the execution of their duties, which they must perform with objectivity (article 17 para 2 L. 1876/1990; 2, 3 and 5 para 1 of the Regulation of the Status of Mediators-Arbitrators of OMED).

The relationship that binds the mediators and arbitrators with OMED is a **contract to provide independent services. This, and the fact that they are remunerated by OMED rather than the parties in the collective dispute (i.e. employers' or union organisations), underlines their operating independence.**

The OMED Board of Directors ensures only that the Code of Ethics is observed, as well as the legal and contractual obligations of the mediators and arbitrators in general.

The Board of Directors has the authority to impose disciplinary penalties.

The regime governing mediators and arbitrators is determined by law and by the Regulation of the Status of Mediators-Arbitrators. They are hired following a public announcement of the positions and a competition. Persons selected must have the following qualifications:

- a) They must be at least 30 years of age,
- b) They must have a degree in law or economics or related studies,
- c) They must have proven experience in industrial relations,
- d) They must not be members of the boards of directors of either workers' or employers' organisations,
- e) They must be free of any disciplinary penalty imposed by their occupational, professional or trade union organisation.

Candidates are preferred who have post-graduate degrees and relevant publications particularly on industrial relations issues, and experience in the settlement of collective labour disputes, in organising corporate industrial relations, and in conducting collective bargaining (article 17 para. 2 L. 1876/1990 and 4 para 1 of the Regulation).

The law lays down a number of factors that are incompatible with the position of mediator-arbitrator. Persons cannot be selected who, in the judgement of the OMED Board of Directors, represent the interests of private enterprise, labour organisations, the public sector, or agencies in the broader public domain (article 4 para 2 of the Regulation).

The work of the mediators-arbitrators is evaluated annually by the OMED Board of Directors. The evaluation takes into consideration the case files that each one has handled, their annual reports, their degree of preparedness and response to the assignment of cases, attendance at adult education seminars and other factors.

The Board of Mediators and Arbitrators today numbers 21 members, 15 of whom have the dual capacity of Mediator-Arbitrator. The OMED's main office is located in Athens and its local antenna in Thessaliniki and are housed in self – owned premises. Mediators and Arbitrators travel to the periphery, as required, to settle disputes.

## ***B. Typology***

a) In Greece there are **three types of extra-judicial mechanisms for settling labour disputes: conciliation, mediation and arbitration**. In this system, the principle of compulsory successive resort to various mechanisms to resolve collective labour disputes peacefully does not exist, which means that the parties are not obliged to exhaust each mechanism before proceeding to the next.

b) These mechanisms are provided by Law 1876/1990, which is applicable to all persons working in a dependent labour relation under private law for any employer, enterprise, firm or service in the private or public sector of the Greek economy.

Arbitration is also foreseen by the Greek Constitution of 1975 (article 22 para 2), which states that “General working conditions shall be determined by law, supplemented by collective labour agreements contracted through free negotiations and, in case of the failure of such, by rules stipulated by arbitration.”

Law 1876 makes it possible for disputes to be settled in ways that will be suggested by the collective autonomy (the parties); in practice, however, such conventional settlements cannot be found.

c) Conciliation is of an absolutely voluntary character. Mediation includes mainly optional factors, while those of arbitration are mainly compulsory.

d) Conciliation, mediation and arbitration, as regulated by law 1876/1990, concern the people working in a relationship under private law, whether they are employed in the private sector or in agriculture, animal husbandry and related occupations, or in the public sector, in public corporate bodies or in local government organisations.

For public servants (among whom are judicial employees, employees of public corporations and municipal and prefectural local government agencies), for whom the possibility of collective bargaining was recognised recently (L. 2738/1999), if negotiations break down, provision is made for an optional mediation process but not arbitration. This process has not been applied to date .

Mediation and arbitration are also used to settle disputes arisen in local level, from either sectoral bargaining or local occupational bargaining (see Footnote 1).

In accordance with OMED data for the 1992-2001 period, the geographic distribution of cases handled by OMED was: Attica 393, Crete 220, Northern Greece 144, Peloponnese 42, Dodecanese 9, Thessaly 8, Sterea Ellada 8, Ionian Islands 6, Northern Aegean 4, Cyclades 1 and Epirus 1.

## ***C. Financing***

Financial responsibility for the conciliation process rests exclusively with the Ministry of Labour. The mediation and arbitration processes are in the charge of OMED. According to L. 1876/1990, OMED’s financial resources, i.e. revenues, **may** be derived from:

- Regular funding: 2% of the annual revenues of the Workers’ Welfare Foundation, which are derived from the contributions of employers and workers.
- Regular subsidies from the Ministry of Labour budget.
- Amounts collected from interested persons who seek OMED’s services.
- Revenue from donations, publications, events, etc.

In practice, however, the resources used in the operation and financial management of the Service, by choice of the Board of Directors, have been limited to the funds derived from the Workers' Welfare Foundation which, it should be noted, are contributed by the employers and workers. OMED's publications (e.g. the Codification of collective labour agreements) are distributed free of charge to interested parties.

### *3. Conciliation and Mediation in collective labour conflicts*

#### **3. 1. Conciliation (art. 13 Law 1876/1990)**

Conciliation is the process by which **individual** or **collective** labour disputes are settled peacefully; it aims to facilitate contact between the parties involved through the intercession of a third party, the conciliator.

Conciliation is completely voluntary in nature and operates independently of mediation and arbitration, i.e. having sought conciliation is not a prerequisite for referral to the other two. Another feature of conciliation is that it is essentially **an extension of collective bargaining with the help of a third party (an assisted collective negotiation)**. The third party who attempts to resolve the conflict **cannot propose a specific solution to the parties**. Conciliators do not enter into the substance of the dispute, but limit themselves to creating an appropriate climate for its resolution.

Conciliation will be analysed below in part IV.1A.

#### **3. 2. Mediation (Art. 15 L. 1876/1990)**

##### **A) Notion and character**

Mediation is the conduct of collective bargaining with the assistance of a Mediator; its purpose is to assist the signing of a Collective Labour Agreement (CLA) or to reach some other agreement between the parties. **The task of the mediator is not restricted, as it is in the case of conciliation, to creating the proper climate for dialogue, but has a more active part to play.** Examining the arguments on each side, the mediator tries to assess how well grounded they are and can judge the direction in which the dispute may be resolved, formulating specific proposals.

**The mediation process has the greatest weight in the Greek system for solving labour disputes peacefully, since its success calls off the arbitration process.**

The social partners can determine by themselves the terms of appeal and the entire process of mediation and arbitration leading to a CLA. Mediation-arbitration under Law 1876 is of a supplementary nature with respect to the collective autonomy, i.e. the collective will of the parties takes precedence. Nevertheless, in practice no contractual regulation has yet been recorded of either the means or process of appeal, **with the result that the system provided by law is in force exclusively.**

##### **B) Where applicable**

Mediation concerns **only collective labour disputes**. The object of mediation can be:

- Any issue that can be regulated by a CLA (article 2 L. 1876/1990. article 8 L. 2224/1994 and article 5 L. 2874/2000) [see Part III.1.Biii].
- The determination of the number of emergency staff in the event of a strike (article 2 L. 2224/1994)
- Conduct of public dialogue on matters that constitute the object of a strike (article 3 L. 2224/1994).

### C) Procedure

**a) Intervening Body:** OMED (see above Part III.2.A1 and III.2.A2)

**b) The initiation of the process** depends on the desire of the parties. The Mediation process has **two stages**, the preliminary proceedings and the main process.

The **Preliminary Proceedings** begin with submission of an application to the OMED Secretariat to provide mediation services and are completed when the Mediator assumes his duties.

The **Main Process** begins when the Mediator takes up his duties. It is completed when there is no more need for the Mediator's coordination of collective bargaining, i.e.:

- When the application for Mediation is withdrawn
- When either employers or workers refuse to take part in Mediation
- When a CLA is signed
- When the Mediator exercises his right to submit a Proposal.

**c) Analysis of the Process:** Formally, the process begins with the submission of a relevant application in which the particulars of the parties and their representatives are set out, as well as the demands, the reasons justifying them, or the reasons which make them impossible to satisfy, any alternative proposals and counter-proposals, as well as any other information that will facilitate the negotiations.

**The application is addressed to OMED.** The **right to seek mediation** is held by the most representative labour union organisation in the sector of the CLA or other agreement sought, and one or more employers' organisations or the individual employer in the same sector.

The Greek system provides that mediation-arbitration can be requested **either by common agreement of the two parties or unilaterally by one party**. The application by one party does not oblige the other to take part in the process. But the refusal of one side to participate in the mediation process gives the other side the right to seek arbitration unilaterally.

**The choice of mediator.** The parties have the right to select a mediator freely from the list of OMED Mediators (article 6 para 1 of the Regulation of the Status of Mediators and Arbitrators). The selection is made by means of a written agreement between the parties,

which sets out the manner in which the decision was made (article 76 para 1a of the Regulation).

If the parties cannot come to an agreement with regard to the person of the mediator, which is usually the case, the law stipulates that lots be drawn (article 15 para 3 L. 1876). During the drawing of lots, each side has the right not to accept the person whose name is drawn, in which case the draw is repeated. The right of non-acceptance (veto) can be exercised just once by each side.

The draw for the mediator and his deputy takes place within 48 hours of the time the application was submitted to OMED. The refusal of one party to be present at the appointed time for the selection of the mediator does not necessarily mean a refusal of mediation. After the mediator is designated, a report is drawn up with respect to the undertaking of the mediation.

The mediator has the authority to conduct discussions and research, and to collect the necessary data in order to resolve the dispute. In particular the mediator calls the parties to the discussion table, holds separate hearings with each party, questions people, seeks expert opinions or conducts any other investigation relative to the working conditions or the financial status of the enterprise (article 15 para 4 L. 1876).

During the mediation process, the employer and every competent service are obliged to provide data to the mediator and to assist his task. The mediator must observe confidentiality with regard to all information he is given during the performance of his duties (article 5 para 3 sub-par d of the Regulations for mediators). The mediator must complete the process within the time limit set by the law, unless the parties agree to extend the process.

**The mediator has the right (not the obligation) to submit a proposal of his own if the parties do not reach an agreement within 20 calendar days** (article 15 para 6a, Law 1876). The 20-day time limit begins when the mediator assumes his duties. The proposal must be complete, i.e. it must cover the entire collective dispute. Given that this proposal tends to take the place of the parties' wishes, it should be more oriented to the demands and desires of the parties. The law does not require the proposal to be substantiated, although arguments are required under the Regulation of the Status of Mediators-Arbitrators.

#### **d) Completion of the Procedure**

There are two possibilities:

##### *1. An Agreement is reached*

- This means that a collective agreement has to be signed

##### *2. Failure to reach an agreement*

- a) Exercise of the Mediator's right to submit a Proposal. This Proposal is not binding for the parties.
- i. Presentation of the Proposal to OMED
  - ii. OMED notifies parties of the Proposal
  - iii. Parties declare their approval (within 5 days)

Four issues are possible:

- if approval by both parties  $\Rightarrow$  signing of a collective agreement
- if approval by trade union only  $\Rightarrow$  employers' right to seek Arbitration (in all types of collective bargaining)
- if approval by the employer or trade union side only  $\Rightarrow$  right to seek Arbitration (for collective bargaining at the enterprise level)
- if rejection by both parties  $\Rightarrow$  either joint appeal for Arbitration, or no appeal and the case remains unresolved.

- b) The Mediator does not submit a Proposal  $\Rightarrow$  either joint appeal for Arbitration or no appeal and the case remains unresolved.

With the completion of the process, the mediator is obliged to submit the full case file to OMED together with a detailed report of its evolution.

#### **4. Arbitration (art. 16 L. 1876/1990)**

##### **A. Notion and Character**

Arbitration is the process for settling labour disputes by decision of an Arbitrator (Arbitration Award), if the parties have not been able to reach agreement on a CLA.

**What differentiates it from the other forms is the compulsory nature of the decision that will resolve the conflict.**

**Arbitration in the Greek system takes on the form of both voluntary and mild compulsory arbitration, while it is characterised more by compulsory than by optional elements.**

##### **B. Where applicable**

It is applicable only to **collective labour disputes**. The object of arbitration can be any issue that may be regulated in a CLA (article 2 L. 1876/1990 and article 5 of L. 2874/2000)

##### **C. Procedure**

###### **1. Ways to seek arbitration**

There is one optional and three compulsory ways to seek arbitration, as follows:

a) **Appeal for arbitration by joint agreement of the parties (article 16 L. 1876/1990) [voluntary arbitration]** at any point in the bargaining process or during mediation, but also when a proposal has been issued by the Mediator and rejected by one or both parties. Referral to arbitration can also be foreseen in relevant clauses in collective labour agreements which should also set out the conditions for seeking arbitration, the election of the arbitrator, the procedure before the arbitrator, etc. In this case, the contractual regulation of the arbitration terms takes precedence over the legal one. In practice however such contractual regulations cannot be found.

#### b) **Unilateral appeal for arbitration**

Three instances are cited in which a unilateral appeal for arbitration can be made which also **constitute forms of compulsory arbitration**:

- 1) By either side (employers or employees), if the other side refuses mediation
- 2) In respect of collective disputes that have to do with drafting general national, sectoral or occupational CLAs, it is possible for a unilateral appeal to be made by the trade union organisations alone, if they have agreed to the Mediator's proposal and the employers' side has rejected it.
- 3) Regarding CLAs at the enterprise level, unilateral appeal for arbitration is possible by either party (employers or workers) if it accepts the mediator's proposal that is rejected by the other side.

**Referral to arbitration does not suspend the right to strike on the part of the working people (there is no peace obligation). The employer does not have the right to lock out.**

The most representative trade union organisation of the working people in the sector of the collective regulation sought **has the right to request arbitration**, as do one or more employers' organisations or an individual employer in the same sector.

**2. The initiation of the process** is equivalent to the beginning of the mediation procedure.

The arbitrator is selected in the same way as the mediator (see above) by means of an agreement between the parties or, in the event of a disagreement, by drawing a name from the special list of mediators-arbitrators (to save time we refer to the description of the procedure for selecting a mediator). Priority is attached to the conventional regulation of the manner in which the arbitrator is selected (article 14 para 2 Law 1876). If there is no regulation of the issue in the CLA, then the provisions of the law are applied (see above re: mediation).

The arbitrator must assume his duties at the latest within five (5) days from the report of his selection and undertaking of duties. Failure to meet this deadline does not affect the validity of the award, but may entail disciplinary repercussions for the arbitrator.

**The mediation process also holds, *mutatis mutandis*, for the arbitration procedure.** The arbitrator has all the same rights as the mediator, e.g. to call the parties for a separate hearing, to seek expert opinions, to question persons etc.

**The arbitrator is not bound by the proposal of the mediator.**

**3. The mediation process is completed** with the issuing of the arbitration award. It is however possible that, during the arbitration process, the parties may reach an agreement, i.e. on a CLA, cancelling the arbitration award. Reaching an agreement is the best conclusion.

#### **D. The Arbitration Award**

The Arbitration award is issued within ten (10) days of the arbitrator's undertaking of his duties if preceded by mediation, or within 30 days if not preceded by mediation. The above time limits may be extended upon agreement by the parties.

**The arbitrator's award is fully equivalent to a CLA** (article 16 para 3 L. 1876). According to Council of State case law (CS 3204/98), if an OMED arbitrator's award is challenged, **it is not considered an act of the administrative authority, which could be appealed at the Council of State level, but rather an act under private law, which is subject to the jurisdiction of the civil courts. The courts can only verify the legality of the arbitration awards, the observance of the proper procedure, or any possible overreaching by the arbitrator of his authority, without entering into their substantial correctness.**

The law does not require the arbitration award to be substantiated. But this obligation is imposed finally by the Regulation of the Status of Mediators-Arbitrators.

In the issuing of their decision, neither the arbitrator nor the mediator can propose or decide to award benefits that are in excess of the parties' demands as they evolved during the process (the principle of *ne ultra petita*).

The arbitration award is submitted to the competent local Labour Inspectorate. **The law (article 16 para. 3 L. 1876) stipulates that it is valid retroactively from the day after the submission of the application for mediation.**<sup>2</sup> At this point there is some doubt about the limits of the arbitrator's power and about whether he would be able to determine retroactivity beyond this point, up to, e.g. the expiry or termination of the previous collective labour agreement.

The Supreme Court (AP 223/2001 (*Epitheorissis Ergatikou Dikaiou*, vol 57/2001, p. 714 ff.) interpreted the relevant legislative provision (article 16 para 3 L. 1876) not according to the letter, but according to its spirit and purpose. Thus the Court judged that the purpose of the legislative limitation of retroactivity to the day after submission of the application for mediation was to settle the issue, as long as the parties had not defined it otherwise. **But if the parties (employers and employees) agreed jointly on something different, the arbitration award in this case could exceed the limitation of article 16 para 3 of Law 1876/1990 and refer to the agreed longer point of time, e.g. the date of expiry of the previous CLA or its termination by one of the parties.**

#### IV. ASSESSMENT OF EXTRA-JUDICIAL MEANS FOR SOLVING LABOUR CONFLICTS

The mechanisms for the extra-judicial resolution of labour conflicts are as pointed out above: 1) conciliation, 2) mediation and 3) arbitration.

##### 1. Conciliation

Provision is made for this process in article 13 of Law 1876/1990. It consists of the intercession of a third party, who helps the conflicting parties to resolve their differences peacefully.

The object of conciliation is any dispute caused in a labour relation, i.e. both individual and collective labour disputes, which may not necessarily constitute an object of collective bargaining.

Conciliation can be individual or collective when the dispute concerns more than one person.

An employee of the Ministry of Labour is designated Conciliator and the conciliation can be conducted at either the central (i.e. at the Ministry of Labour) or regional level (in local Labour Inspectorates).

An application for conciliation can be submitted by the competent trade union organisation, the interested employer individually or the interested working person.

**During the conciliation process, resort to strike is permitted, as it is permitted during both the mediation and arbitration processes.**

If the parties reach an agreement, a relevant protocol is drawn up and signed. But this document does not have legal effect. **That is, it creates no more than a commitment binding in honour, although it may be taken into account by the court.** In this case however, and particularly with respect to a collective dispute, if the conditions are present for arriving at a collective agreement, and nothing to the contrary is contained in the protocol, then the collective labour agreement (CLA) is signed.

The effectiveness of the conciliation process is controversial. But since we have no overall processed data, generalisations are out of the question.

In Table 2 (Appendix II) we present data regarding the conciliations that took place at the Ministry of Labour during the 1997-2001 period. The Table shows the following: the disproportion between individual (61) and (422) collective conciliations (12,62% and 87.38% respectively) and a relatively satisfactory success rate.

##### 2. Mediation

As has already been pointed out, mediation operates within the framework of the Greek Mediation and Arbitration Service (OMED) independently of the state.

During the period **1992-2001, there were 1117 cases referred to OMED** from all over the country for help in arriving at a CLA. **The degree of success in achieving collective labour agreements at this stage was 46%.**

With respect to company collective agreements, the rate of successful conclusion for the same period of time was 82%. Specifically, of a total of 283 cases, 230 were brought to a successful conclusion.

We would also note that during the 1992-2001 period, 574 collective labour agreements were signed through OMED. Of these, 512 were signed at the mediation stage and 62 went to arbitration (i.e. before the issuing of an arbitration award). **The above figures represent 21.4% of the total number of CLAs (2763) that were signed nationwide during the same period.**

*i) Emergency staff during strikes*

After Law 2224/1994 went into force, OMED handled 93 mediation cases whose object was to determine the number of emergency staff during strikes, 43 of which ended successfully and an agreement protocol was signed between the parties (46% success).

*ii) Public dialogue on matters related to the object of a strike*

Between 1994 and 2001 (L. 2224/1994), OMED handled 80 cases regarding public dialogue. Of them 39 ended positively, and the strike was either terminated or not held (49% success rate) (Appendix III – Table 3).

### 3. Arbitration

During the period in question (1992-2001), OMED handled 535 cases of arbitration on which 464 arbitration awards were issued, 62 collective labour agreements were signed (see above), in five cases arbitration awards were issued with collective agreements being signed simultaneously, and in three the process was discontinued at the request of the parties.

Taking into account the above data, it can be seen **that arbitration awards represented 41% of the applications for mediation services under Law 1876/1990 handled by OMED.**

**And finally, the total number of arbitration awards that were issued through OMED (464) represented just 14.8% of the total of collective settlements (collective agreements and arbitration awards), i.e. 3139 settlements that took place during the period 1992-2001 on a nationwide basis.**

If one considers the above data and certain supplementary facts, the following can be concluded:

- a) In the great majority of cases, the social partners came to an agreement between themselves and did not resort to third parties to resolve their differences and arrive at a collective labour agreement (CLA). Consequently, the role of OMED is of a purely supplementary nature. It is important to point out that national CLAs are never referred to the mediation and arbitration process.
- b) In the overwhelming majority of cases, OMED is brought into the process by worker's organisations that operate in sectors or occupations with a low trade union density and with no bargaining tradition, or in sectors or occupations in

which the State is involved, with the exception, at least for the present, of the state-controlled banks and public utilities.

- c) The institution of mediation operates very satisfactorily and constitutes a special form of social dialogue.

Despite the fact that reliable conclusions cannot be drawn from the existing data regarding conciliation, it nevertheless constitutes a mechanism that helps the interested parties find a solution and avoid referring the matter to the courts.

## **V. EXTRA-JUDICIAL MEANS FOR SOLVING LABOUR CONFLICTS ACROSS THE COMMUNITY**

### **1. Have extra-judicial means been used to solve collective conflicts derived from the application of community legislation?**

First of all it should be pointed out that in the Greek system it is not customary for Community directives to be transposed through collective labour agreements, so that collective conflicts to be created in that way.

Nevertheless, it is not easy to answer this question since European Union law as national legislation inevitably creates situations that could lead to conflicts. Generally speaking, and taking into account data from applications for conciliation, mediation or arbitration, it is certain that EU law is involved (e.g. equal pay, working time limits, collective dismissals, transfer of undertakings, informing and consulting with workers' representatives, rules for protection against sexual harassment etc.)

Consequently the conflicts arising from the application of Community legislation on the collective level can be resolved through the institutions which have already been cited (conciliation, mediation and arbitration) and which, we repeat, are extra-judicial.

### **2. The future promotion, across Community law, of extra-judicial means for resolving collective labour conflicts**

The promotion of a common model, through Community legislation, for resolving collective labour disputes by extra-judicial means presents certain problems, among which we would note the following: a) relative difficulty synthesising the various systems, which bear the unmistakable stamp of their "national" particularities, b) the difficulty of these systems to achieve full autonomy from judicial control, in the sense that the national courts have not been prepared to accept this loss of jurisdiction and consequently, it is possible that upon the filing of a parallel application, they will cancel the procedure, c) the divergence of views between employers, workers and society, etc.

Within a just state, collective conflicts must indisputably be resolved, and fairly rapidly as well; but it is also indisputable that galloping juridicisation in all spheres of social and financial life effectively invalidates the regulatory function of the law, which has become a field of constant legal and other conflicts.

The proposal for a hypothetical model should be made after certain concepts related to the already existing and functioning system have been clarified.

In principle, we can assume that CLAs are the most appropriate manner of settling such issues. That is, collective agreements should make provision for procedures to resolve collective labour disputes. At the same time, however, there should be a special Board of experienced conciliators, mediators and arbitrators.

Our view is that this Board or Boards should be absolutely independent of Government, which will undertake only to fund it. Taking into account the experience of Southern Europe, we believe that it is necessary for mediation to be promoted, more so than conciliation, with arbitration as a last resort only.

If we assume that there is an obligation to negotiate, if such an obligation can be imposed through EU legislation, then any party to the conflict will be able to resort unilaterally to the procedures available for resolving collective disputes. The acceptance of the absolutely voluntary recourse, i.e. the consent of the other party, will invalidate any system, especially at a period when union density is declining.

It is generally recognised that the mediator's proposal is not binding in nature, and consequently if it is not accepted, the next stage for resolving the difference is arbitration.

In this case, the following questions arise: a) whether or not the arbitration award is compulsory in character and b) its challenge before the courts.

With regard to the first issue, if the decision is only binding in honour and without exceptions, the dispute will not be resolved, but will become further complicated. Therefore, the arbitration award should be binding in nature, a situation which is in agreement with the legal traditions of continental Europe.

With regard to the second issue, we believe that it is not particularly difficult to settle.

But we should point out that the arbitrator has to resolve not only conflicts of interest, but also legal conflicts.

The trend in arbitration is voluntary, as specified in international agreements, in the sense that arbitration is sought through the common consent of the parties. The voluntary aspect refers also to the processes that have been instituted by the parties. In terms of the binding nature of the arbitration award, there do not appear to be serious objections.

On a European level, the employers' position is in favour of voluntary arbitration, while the position of the trade union organisations varies. An issue is however raised when the parties have not made contractual provision for such processes. We believe that in this case there cannot and should not be a vacuum and that the national or European legislation should remain supplementary. The Greek case provides such an example.

In conclusion, there are difficulties entailed in the proposal for a European model of extra-judicial resolution of collective labour disputes. Of course the most appropriate way is for the parties themselves to make provision for such mechanisms as they consider appropriate, and only in the event of their failure, should the law intervene, proposing mild forms of arbitration and avoiding arbitration courts. But in any event, the conciliators, mediators and arbitrators should not be public servants and their services should be provided free of charge, with the State assuming the cost of remunerating them. And finally, it is clear that the persons performing this function should have experience and knowledge of labour issues.

## Endnotes

<sup>1</sup> There are today five types of collective labour agreements:

**National general**, which affect all the working people in Greece.

**Sectoral**, which affect the people working in similar or allied industries in a certain town or region or throughout the country.

**Company**, which affect the people working in one company or firm.

**Occupational**, may affect the people in a particular occupation or allied trades all over the country (**national occupational**), or in a particular town or region (**local occupational**).

<sup>2</sup> On the contrary, the CLA enters into force the day after it is submitted, although the contracting parties can give it retroactive force until the day the previous CLA expired or terminated.

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