

## SUMMARY

### (Arbitration or binding advice)

The question is put whether each judicial institution has its own field, so that where either institution is made use of, the other cannot or may not be adopted.

After having pointed out that in colloquial speech there is no clear distinction (the word *arbitrage* being fairly often used for „binding advice“) and the Code of Civil Procedure simply defines *arbitrage* as „a verdict by arbiters“, attention is first called to each institution separately.

As regards arbitration it is remarked that from the legal point of view this is a question of administration of justice by private persons (as over against administration of justice by a judge) and that the Code of Civil Procedure contains several regulations restricting or regulating the possibilities of application of this private administration of justice; the most important of these regulations are mentioned. Finally it is remarked that the verdict of arbiters can not be executed without more ado, but that the possibility to do so can be very simply obtained, for it is possible to obtain an order of the court without the latter being entitled to investigate the correctness of the verdict given by arbiters.

As regards binding advice it is argued that this is not administration of justice but that it falls under the law of contracts, attention being drawn to the fact the institution per se is not legally regulated and that therefore only the general regulations of the law of contracts are applicable. There is a question of binding advice when parties have stipulated in their contract a third party (or one of them) shall further define the contents of the contract in question if it should turn out that the contents agreed upon are incomplete or obscure.

It is true that the two judicial forms can approach each other very closely in their field of action, but the difference in juridical origin remains and has its consequences. Some observations are made on the name of the institution, its origin, its occurrence in the legislation of the Netherlands and its further development and finally it is pointed out that owing to the jurisprudence of the High Court of the Netherlands the court can only with great restrictions subject the verdict of the binding adviser to a further test.

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