

## SUMMARY

### (Arbitration or binding advice)

Subsequently the two judicial forms are put side by side and two points of difference are pointed out which result from the diverging legal character.

An attempt is made to find an answer to the initial question. It turns out that many of the decisions required cannot be given with the help of arbitration. In those cases only the binding advice is relevant. The cause of this may lie either in the *contents* of the decision required (four categories of decisions being given by way of example), or in the *way* or the *circumstances*, in which the verdict is effected (five cases of this are mentioned; in the latter case attention is drawn to the jurisprudence of the High Court of the Netherlands, which opposes the growing abuse of the binding advice in order to practically compel certain persons against their will to waive the verdict of a court of justice).

The fact is ascertained that there are also verdicts which can be given either in the form of arbitration or of binding advice. The institution of arbitration, however, must not be considered to hold the field, neither must it be considered as a form that is in principle to be preferred to the binding advice.

It would be incorrect to think that on the ground that arbitration *per se* is regulated by law, whereas binding advice is not, preference should be given to the former. If one examines the legal regulations as regards arbitration and compares them with the jurisprudence with reference to binding advice it appears that the principles of justice and order of procedure are not better protected in the case of arbitration than in the case of binding advice.

Parties will therefore in this common field have to be able to decide for themselves of which form they will avail themselves. It is especially in business affairs where a good understanding and mutual confidence are indispensable that for that very reason the binding advice will often be preferred as being less sweeping (as it does not simply result in a right to effect an execution).

The conclusion is drawn that on the one hand reasons of a material and a formal nature provide the binding advice with a field of its own adjacent to the field where arbitration can operate. On the other hand in the field where arbitration can operate the binding advice can play an equally important part. There parties are quite free to decide which legal form they in a certain case prefer.