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# "Arbitration as a means of dispute resolution is gaining popularity in Portugal"

6–8 minutos

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José Carlos Soares of SRS Legal sees an increase in arbitration, a slow down in the process of First Instance Courts and discusses how the legal frame work can improve.

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**LEADERS LEAGUE: What new dispute- resolution trends have you seen developing in Portugal over the course of the last few years?**

**José Carlos Soares:** Unfortunately, we've been witnessing an increasing difficulty in daily practice that is directly correlated with how slow the whole judicial process is. The problem is not centered necessarily on the quality of the rulings themselves, but rather the time it takes to reach them. This slowdown cannot be attributed to how lawyers work or how they manage their deadlines. It is mainly due to how inefficient the court services are, especially those of the First Instance Courts.

There must be a better organizational system and a more expeditious way of dealing with the high volume of cases each court has to handle.

I believe this problem is partially due to the pandemic and how it has impacted court services. Like the rest of the world, the courts were not prepared for the situation and did not know how to cope with the scale of it all. But the pandemic had a particularly brutal effect of delaying the judicial process as a whole.

### **What kind of complexities are you seeing in your practice this year?**

There are two dominant factors hindering our practice this year. The first, and most challenging, has to do with the prevailing financial climate, not only in Portugal, but across most of the world. Inflation has definitely had a toll on the economy and that, consequently, is reflected in our practice too.

The second factor is directly correlated with the answer to the previous question. One of our biggest difficulties is dealing with the slowness that I already mentioned and finding practical solutions to overcome its impact. This is especially complicated because for each specific case a different practical solution is required, and new challenges arise with every delay in court services. Clearly, in order to resolve this problem, the legislation that dictates how the court services operate must be reformed. But that is not all. The main change that must be enforced has to do with how the administrative services are organized, how they relate to each other and how efficiently it's done.

To tackle delays, the legislation that dictates how court services operate in Portugal must be reformed

Lawyers can only do so much to salvage each case on a day-to-day basis. Change must come from within the court offices.

**Is arbitration as a means of dispute resolution on the rise in**

## **Portugal?**

It most definitely is. Not only is the number of people embracing this alternative means of dispute resolution growing, but the number of referees and arbitration centers is also seeing exponential growth. Currently there are more than 30 arbitration centers spread across the country.

As to the legal framework, there is always the risk of a lack of impartiality and independence associated with arbitration. This happens because oftentimes the referees nominated by the parties act as though they are their direct representatives instead of conducting themselves with the required impartiality. There is also the chance that a decision reached through arbitration is appealed or overruled by the courts of law.

## **Does the legal framework need to improve?**

In my opinion, there are a few aspects in which the current legislation has room to improve. For example, the statutory system that allows arbitral awards to be reviewed is still very permissive. This is clear when we see that there are a lot of substantive grounds that fit in the general and abstract clause of the violation of international public order.

Therefore, many come to the conclusion they might as well keep the possibility of an appeal to the judicial courts.

## **What are the main differences between the former arbitration law of Portugal and the Arbitration Act under the UNCITRAL model?**

I think there are four main differences between these two models. Firstly, as per the former Arbitration Law of Portugal, any decision

should be reached by a majority of the referees and, only in the event that this is impossible, should the case be decided by the Arbitrator President alone. Now, according to the UNCITRAL model, the parties may allow the Arbitrator President to make the decision, giving more significance to their choices.

Then there is matter of the sentence deadline and how this pertains to the responsibility of referees. Under Portuguese law there is a twelve-month timeframe in which the judgement can be given. If this deadline is not met, the referees are to be held accountable. However, model law provides no guidance on this matter, meaning that, now, there is no fixed deadline for a judgement to be rendered.

There is also the matter of the time limit for requesting an annulment. According to the Arbitration Law of Portugal, the parties may request an annulment up to sixty days after receiving notification of a judgment. The UNCITRAL model has established a three-month period in which an annulment may be requested. What this essentially means is that Portuguese law works to a shorter timeframe. Lastly, there is the question of exactly what constitutes International Arbitration in the first place. Under Portuguese law, matters are classified as such when international commerce interests are at stake. Yet model law requires specific connecting factors with foreign legal systems to qualify an arbitration as international. Therefore, the Arbitration Law of Portugal adopts a far wider and more inclusive concept than the UNCITRAL model.

As Portuguese law is, in many ways, similar to the UNCITRAL model, there are no great advantages in choosing the model law to regulate an arbitration in Portugal

## **What are the advantages and disadvantages of using the UNCITRAL model in an arbitration hosted in Portugal?**

Taking into consideration that Portuguese law is, in many ways, similar to the UNCITRAL model, there will be no great advantage in choosing the model law as the one to regulate an arbitration in Portugal. Quite the opposite, in fact. There will be disadvantages resulting from the fact that the UNCITRAL model contains a more succinct regulation, while the Portuguese Law of Arbitration contains a greater regulation, albeit supplementary if the parties choose otherwise.