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A further step towards institutionalization of mediation in Greece: recent developments after Law 4640/2019

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Abstract

In November 2019, the new Greek Mediation Act (MA) was enacted, replacing all former legislation and constituting now the sole legal instrument regulating mediation in Greece. The MA repeats and enhances the pre-existing legal framework, also providing for the practical application of two significant innovations that had been introduced almost two years before: a) the functioning of the Central Mediation Committee and b) the mandatory initial mediation session for a broad category of cases. Such provisions, to the extent that they contain mandatory elements and, in effect, particularize the process, signal a further step towards institutionalization of mediation. Following the current international trends, mediation in Greece is being gradually transformed from an inherently voluntary and informal process to a pure regulatory tool aiming at saving resources in the administration of justice.

Keywords

Mediation, alternative dispute resolution (ADR), institutionalization, Central Mediation Committee, mandatory mediation, Greek Mediation Act

I Introduction

Almost eight years after the enactment of Law 3898/2010,[1] which was the first piece of legislation to regulate mediation in Greece, and almost two years after the enactment of Law 4512/2018 (Articles 178 to 206),[2] which aimed at the radical reform of the mediation regime but remained essentially inapplicable, Law 4640/2019[3] (the new Mediation Act, hereafter: MA) was published on 30 November 2019 and replaced all former legislation, constituting now the sole legal instrument regulating mediation in Greece.

The MA exhaustively deals with all issues pertaining to mediation in both cross-border and domestic civil and commercial disputes. It contains detailed provisions on the regulation of the institution of mediation, the qualifications of the mediator, the code of conduct and the disciplinary law of mediators, as well as issues concerning the mediators' training accreditation.

The new MA repeats and enhances the pre-existing legal framework also providing for the practical application of two significant innovations that had been introduced almost two years before: a) the functioning of the Central Mediation Committee and b) the mandatory initial mediation session for a broad category of cases. Such provisions, to the extent that they contain mandatory elements and, in effect, particularize the process, signal a further step towards institutionalization of mediation. Following the current international trends, thus, mediation in Greece is transformed from an inherently voluntary and informal process to a pure regulatory tool aiming at saving resources in the administration of justice.

Bearing this in mind, this paper should be considered as the continuation of the one published in Volume V of the Yearbook on International Arbitration and ADR,[4] which contains a comprehensive analysis of the historical and legal underpinnings of mediation in Greece,[5] and an update of the one published in

1 Mediation in civil and commercial matters, Government Gazette A 211. The law was enacted in compliance with Directive 2008/52/EC of the European Parliament and the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, OJ L 136 of 24 May 2008, 3.

2 Provisions on the implementation of the structural reforms of the economic adjustment program and other provisions, Government Gazette A 5.

3 Mediation in civil and commercial matters – further harmonization of the Greek legislation with the provisions of Directive 2008/52/EC of the European Parliament and the Council of 21 May 2008 and other provisions, Government Gazette A 190.

4 Vassiliki Koumpli, The regulation of mediation in cross-border disputes: The model of Greece, in: Marianne Roth/Michael Geistlinger (eds.), Yearbook on International Arbitration and ADR – Volume V, Zurich & Vienna 2017, 269-284.

5 For a thorough analysis one can also refer, among others, to Georgios

Volume VI of the Yearbook on International Arbitration and ADR[6] analyzing the immediately preceding regime, which however remained essentially inapplicable, particularly, as regards the provisions concerning the introduction of mandatory elements in mediation.[7] The primary purpose of the present paper, hence, is to provide a succinct illustration of the most important provisions of the mediation regime currently in force in Greece. In this sense, it cannot avoid being descriptive to a certain degree; it offers, however, to non-Greek lawyers the opportunity to familiarize with the Greek legal framework on mediation and to comprehend the critical points of this reform.[8]

To this end, after this short introduction (I), the paper analyzes the main organizational and functional aspects of the mediation regime focusing on the competence of the Central Mediation Committee (II) and the introduction of the mandatory initial mediation session for a broad category of disputes (III), respectively, and ends with some concluding remarks of the author (IV).

II Organizational aspects of mediation

The administration of the institution of mediation is entrusted to a body firstly, the Central Mediation Committee, which was firstly introduced by virtue of the previous Law 4512/2018. Articles 10 and 11 of the MA amend the relevant provisions of the previous regime providing for the establishment (A) and the competence (B) of the Central Mediation Committee as follows:

Diamantopoulos/Vassiliki Koumpli, On mediation law in Greece, Revue hellénique de droit international, 67 (2014) 2, 361-394; Georgios Diamantopoulos/Vassiliki Koumpli, Mediation: The Greek ADR Journey Through Time, in: Carlos Esplugues/Louis Marquis (eds.), New Developments in Civil and Commercial Mediation, Switzerland 2015, 313-343.

6 Vassiliki Koumpli, A further step towards institutionalization of mediation in Greece: Recent developments after Law 4512/2018, in: Marianne Roth/Michael Geistlinger (eds.), Yearbook on International Arbitration and ADR – Volume VI, Zurich & Vienna 2019, 267-276.

7 An assessment of the pre-existing mediation regime in Greek language can be found in Athanassios Georgiadis et al. (eds), Mandatory mediation and emerging issues, Etaireia Nomikon Voreiou Ellados 74, Athens and Thessaloniki 2018; Haris Meidanis, Legislative adventures of mediation, Synigoros, 125 (2018), 30-32; Panayiotis Yiannopoulos, The attempt of extrajudicial dispute settlement through mediation as a condition for the admissibility of the hearing under Law 4512/2018, Athens and Thessaloniki 2018.

8 An assessment of the new mediation regime in the Greek language can be found in Panayiotis Yiannopoulos, Mediation and civil trial: A contribution to the interpretation of Law 4640/2019, Athens and Thessaloniki 2020. For a short comment thereon in the English language, see Vassiliki Koumpli, Greece: Institutionalizing Mediation Through Mandatory Initial Mediation Session (Law 4640/2019), Kluwer Mediation Blog, 20 January 2020, available at http://mediationblog.kluwerarbitration.com/2020/01/20/greece-institutionalizing-mediation-through-mandatory-initial-mediation-session-law-4640-2019/ (10 November 2020).

A The establishment of the Central Mediation Committee

The Central Mediation Committee consists of thirteen members, appointed by the Minister of Justice: a) two judges or prosecutors of civil and criminal justice; b) two university professors experienced in mediation, coming from more than one educational institution, but at least one from a law school; c) two representatives of the plenary of the Bar Associations of the country; d) two representatives of the Ministry of Justice; e) two mediators representing professional agencies; and f) three mediators following a call for interest.[9] For each full member of the Central Mediation Committee a substitute shall be appointed under the same procedure.

The most senior of the judiciary serves as chairman of the Central Mediation Committee. The term of office of the chairman and the members of the Committee shall be three years and may be renewed once. The members of the committee shall be prohibited from maintaining any cooperation with the mediators training bodies.

The importance that the legislator gives to the Central Mediation Committee is depicted in the fact that it is composed of persons of recognized standing equipped with guarantees of independence in the performance of their duties.

B The competence of the Central Mediation Committee

The Central Mediation Committee is a body with wide competences to deal with any matter concerning the implementation of the institution of mediation in Greece.

Its main duties are as follows: a) it is responsible for keeping the mediators register and for collecting the mediators' annual progress reports; b) it is responsible for the compliance of mediators with the obligations arising from the MA and for the implementation of the disciplinary law and the imposition of disciplinary sanctions; c) it is responsible for all matters concerning the mediators training bodies; d) it is responsible for conducting the written and oral examinations of the mediation accreditation candidates. On the first ten days of December each year, the Central Mediation Committee submits to the Ministry of Justice, an annual report on the monitoring of the implementation of the institution of mediation, accompanied by proposals for its improvement.

Moreover, if no agreement can be reached between the parties on the person of the mediator who shall conduct the mandatory initial mediation session, the Central Mediation Committee shall appoint the mediator upon request of the claiming party. The appointment is made in order of priority based on the serial number in a special registry among those mediators

9 Under the previous regime of Law 4512/2018, the Central Mediation Committee consisted of a) five judges or prosecutors of civil and criminal justice; b) two university professors experienced in mediation, coming from more than one educational institution, but at least one from a law school; c) two representatives of the plenary of the Bar Associations of the country; d) three representatives of the Ministry of Justice, Transparency and Human Rights; e) one mediator representing professional agencies; and f) two mediators following a call for interest.

residing in the district of the court that has local jurisdiction to hear the dispute.[10] It is to be noted that such provision only applies as regards the mandatory initial mediation session, where the perpetual disagreement of the parties as to the person of the mediator can cause significant delays in the resolution of the dispute. By contrast with the previous regime it does no longer apply to the appointment of the mediator in case of voluntary mediation. Indeed, such appointment in the latter case would be incompatible with the voluntary character of mediation. In the event that the parties are unable to agree on the choice of one of the approximately three thousand accredited mediators, one can hardly expect that such parties will be able to negotiate in good faith and resolve their dispute by reaching an agreement.[11]

Obviously, the role of the Central Mediation Committee is of utmost importance and decisive for the management of institutional issues of mediation across the country.

III Functional aspects of mediation

The parties can submit their dispute to mediation at any stage before or even after their recourse to the court. As a general rule a dispute can be submitted to mediation only if the parties wish so. The MA exceptionally provides that, with regard to particular disputes, a mandatory initial mediation session is required constituting a formal condition for the admissibility of the hearing of court proceedings. In both cases, however, the parties remain in the mediation process only if they wish so and their dispute is similarly resolved only if they wish so, i.e. by written agreement.

A The innovation: voluntary mediation and mandatory initial mediation session

1 Voluntary mediation

Civil and commercial law disputes can be voluntarily submitted to mediation as long as the parties have the authority to dispose of the subject of the dispute, namely, where the law does not require a court judgment for its resolution.[12] Such disputes are: disputes between employees and employers, corporate and commercial disputes, maritime disputes, banking disputes, property disputes, car accident disputes, leasing disputes as well as disputes arising from the execution of technical works, contracts, etc.

There may be one or more mediator(s) appointed by the parties' mutual consent. The procedural details of the conduct of the mediation shall be determined by the mediator in agreement with the parties. Of course, the parties may, in any case, opt for the application of more specific rules laid

10 MA, Art. 7 (1).
11 Cf. also Haris Meidanis, Legislative adventures of mediation, Synigoros, 125 (2018), 31.
12 MA, Art. 3 (1).

down by mediation centres.[13]

The MA stresses the importance of the principle of impartiality of the mediator and the principles of good faith and honesty that shall govern the actions of the parties during the mediation. It also underlines the confidential nature of the mediation process.[14] Before the process is initiated, all participants shall agree in writing whether the process shall be confidential or not. The parties may also agree to observe confidentiality as regards the content of the agreement that they may reach unless the disclosure of its content is necessary for its execution or is required for reasons of public policy. The parties are required to attend the mediation accompanied by their lawyers (with the exception of consumer disputes and small claims).[15] If the physical presence of both parties and the mediator cannot be achieved at the same place and time, the mediation session may be carried out by a teleconferencing system accessible by all parties.[16]

The mediator(s), the parties, their lawyers and those involved in any way in the mediation process shall not be considered as witnesses and discussions, proposals and any statements made by the parties in the mediation process as well as the mediator's views shall not constitute evidence before courts or in arbitration proceedings, except where justified on grounds of public policy, the protection of minors or physical integrity and mental health of a person or where a criminal offence has been committed.[17]

2 Mandatory initial mediation session

a The MA provisions

Submission to a mandatory initial session with the mediator was for the first time introduced for specific disputes enumerated in Law 4512/2018.[18] The relevant provisions, however, remained inapplicable until the replacement of the former law by the MA currently in force. The requirement of an initial mediation session is fulfilled if all parties appear before the mediator, even if they agree not to proceed to mediation.[19]

13 MA, Art. 5.
14 MA, Art. 5, 13, 14, and 16.
15 MA, Art. 5 (1).
16 MA, Art. 5 (3).
17 MA, Art. 5 (6).
18 According to Law 4512/2018, disputes submitted to a mandatory initial mediation session were: a) disputes between landlords, between the administrators of condominium and landlords, and disputes concerning neighbouring properties; b) disputes relating to compensation claims resulting from road traffic accidents, as well as claims arising from motor insurance contracts, unless the harmful event resulted in death or personal injury; c) disputes concerning professional fees; d) family law disputes (care of child, maintenance, participation in acquisitions etc.); e) disputes arising from medical malpractice; f) disputes concerning trademarks, patents and industrial designs; and g) disputes concerning stock exchange contracts. Trials solely on enforcement and interim measures are excluded from mandatory mediation.
19 MA, Art. 2 (5), Art. 6 and 7. This means that the parties are only obliged to attend

Disputes submitted to a mandatory initial mediation session are: a) family disputes (concerning lawsuits filed as of 15 January 2020); b) disputes under the standard civil procedure falling within the jurisdiction of the Single-Member Court of First Instance – when the value of the subject-matter of the dispute exceeds the amount of EUR 30,000 and the Multi-Member Court of First Instance (concerning lawsuits filed as of 1 July 2020); c) disputes arising from contracts which contain a valid mediation clause (concerning lawsuits filed as of 30 November 2019).[20] Disputes where the state or public entities are parties are excluded from mandatory mediation.[21] The selection of these categories of disputes – which admittedly may have little in common and their submission to mediation is not essentially justified – clearly shows that, at least at the current moment, mediation is primarily used as a tool to reduce court workload, taking also account of the value of the subject matter of the dispute, so that small claims are not excessively burdened with procedural requirements eventually prohibiting access to justice.

In case of the above enumerated disputes, the mediator shall be appointed by mutual consent of the parties or the claimant shall submit a request for recourse to mediation to an accredited mediator included in the register of the Ministry of Justice. If the respondent does not agree on the person of the mediator, the latter is appointed by the Central Mediation Committee.[22] The mediator shall notify the other party (or parties) of the request and arrange the date and place of the initial mediation session. This session takes place no later than twenty days from the day following the claimant's request to the mediator, extended up to thirty days when any of the parties resides abroad. The requirement of the initial mediation session is fulfilled if the parties appear before the mediator, even if they agree not to proceed to mediation. In such case, the minutes of the session are drawn by the mediator and shall be filed with the submissions of the parties before the court, constituting a condition for the admissibility of the hearing of the case. If the parties eventually agree to proceed to mediation, they draw the agreement to mediate and shall complete the mediation within forty days, unless they agree on a later date.[23]

As regards the mediation process and the principles governing it once the parties agree to submit their dispute to mediation, the general provisions of the MA are, of course, applicable, as described above in relation to the voluntary mediation.

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the initial session with the mediator; they are not obliged, however, to even begin the mediation, i.e. to sign the agreement of submission of their dispute to mediation.

20 MA, Art. 6 (1) and Art. 44, as amended.

21 MA, Art. 6 (2).

22 See supra at II.B.

23 MA, Art. 7.

b The justification

As the Preamble to Article 6 of the MA explains, the Court of Justice of the European Union (CJEU) preliminary reference rulings in the *Alassini*[24] and *Menini*[25] cases served as the basis for providing compatibility of the mandatory initial mediation session provisions with the protection of the fundamental right of the parties to have effective recourse to justice. The ability of the parties to leave the mediation process at any time and to seek judicial recourse, the limited costs related to the mandatory initial mediation session, the provision of a short period within which mediation shall be concluded as well as the suspension of prescription periods of the rights pending the mediation process confirm such compatibility. The right of recourse to justice might be affected by the introduction of mandatory mediation; the restriction in question, however, was considered by the Greek legislator as permitted, since the aim sought by the relevant provisions, namely the speedier and less expensive settlement of disputes and the lightening of the burden of the judicial system, to the benefit of general interests, was considered proportionate to the restriction imposed on fundamental rights.[26]

Arguably, a particular feature of the mandatory mediation regime in Greece providing that the parties are required to attend the mediation process with their respective lawyers gives rise to costs together with the additional mediator's fees and may constitute a barrier to the access to justice.[27] The exclusion of consumer disputes from the scope of the requirement of a mandatory initial mediation session as well as the exclusion of both consumer disputes and small claims from the scope of the requirement to attend with a lawyer currently appear to speak for the compatibility of the Greek mediation regime with the relevant case law of the CJEU.

24 CJEU, *Rosalba Alassini v. Telecom Italia SpA*, *Filomena Califano v. Wind SpA*, *Lucia Anna Giorgia Iacono v. Telecom Italia SpA*, and *Multiservice Srl v. Telecom Italia SpA*, judgment of 18 March 2010, joined cases C-317/08, C-319/08 and C-320/08.

25 CJEU, *Livio Menini and Maria Antonia Rampanelli v. Banco Popolare – Società Cooperativa*, judgment of 14 June 2017, C-75/016.

26 As the CJEU has confirmed in *Menini*, the voluntary nature of mediation does not lie in the freedom of the parties to choose whether or not to use that process but in the fact that the parties are "in charge of the process", may "organize it as they wish" and "terminate it at any time" (see CJEU, *Livio Menini and Maria Antonia Rampanelli v. Banco Popolare – Società Cooperativa*, judgment of 14 June 2017, C-75/016, para. 50). Besides, in view of the CJEU in *Alassini*, an optional out-of-court settlement procedure is not as efficient to achieve such objectives as is a mandatory one (see CJEU, *Rosalba Alassini v. Telecom Italia SpA*, *Filomena Califano v. Wind SpA*, *Lucia Anna Giorgia Iacono v. Telecom Italia SpA*, and *Multiservice Srl v. Telecom Italia SpA*, C-320/08, judgment of 18 March 2010, joined cases C-317/08, C-319/08 and C-320/08, para. 65).

27 See in this respect Panayiotis Yiannopoulos, The attempt of extrajudicial dispute settlement through mediation as a condition for the admissibility of the hearing under Law 4512/2018, Athens/Thessaloniki 2018, 27-30.

3 Lawyers' duty to inform

Also for the first time, it is required that, prior to bringing the case to court, lawyers inform their clients in writing about the mediation option as a dispute resolution mechanism as well as whether their dispute is subject to the rule of the mandatory initial mediation session. The form of the informative document has been drawn up by the Central Mediation Committee and shall be completed and signed by the party and his lawyer. Eventually, it shall be filed with the lawsuit or at the hearing before court, also constituting a condition for the admissibility of the hearing of the case.[28]

B The embodiment: mediation as part of the civil procedural system

With the practical application of the MA, mediation is eventually institutionalized and embodied in the civil procedural system. As a matter of fact, many of its provisions introduce new regulations and significant amendments to the Greek Code of Civil Procedure (CCP).[29] For this reason, it could be argued that many of the MA provisions should be included in the CCP, and not in a separate piece of legislation. The following can be considered as the most crucial stipulations among them in this respect:

First, as already analyzed, the mandatory initial mediation session[30] as well as the lawyer's duty to inform his client in writing about the mediation option[31] constitute a condition for the admissibility of the hearing of the case before courts. In the event of a successful outcome of the mediation, the respective minutes have to be signed by the mediator, the parties and their lawyers and a certified copy has to be submitted before the secretariat of the competent court in order to become an enforceable exequatur.[32] In case of mandatory mediation proceedings, if the mediation is unsuccessful, the parties are entitled to refer the case to court submitting thereto simultaneously the minutes proving the attempt and failure of the mediation for the admissibility of the hearing of the case.[33]

Second, the summons to the mandatory mediation proceedings and the agreement to mediate in case of voluntary mediation suspend the statute of limitations, all deadlines regarding the exercise of the claims and rights in question, as well as the procedural deadlines, during the mediation process. All deadlines[34] continue counting again after the drafting of the minutes proving the failure of the mediation or the withdrawal statement from the mediation

28 MA, Art. 3 (2), as amended. Such obligation was initially introduced by Law 4512/2018 but never applied.
29 Presidential Decree 503/1985, Government Gazette A 182.
30 MA, Art. 2 (5), Art. 6 and 7.
31 MA, Art. 3 (2).
32 MA, Art. 8. This provision applies to both voluntary and mandatory mediation proceedings.
33 MA, Art. 6 (1).
34 As per Articles 261, 262, and 263 of the Civil Code (Presidential Decree 456/1984, Government Gazette A 164).

proceedings by any of the parties to the other party and the mediator or from the completion or annulment in any way of the mediation proceedings.[35]

Third, if a party, who has been invited, fails to attend the mandatory initial mediation session, the mediator will draft the relevant minutes and the other party shall submit it to court. The court may then, in addition to its ruling on the merits, impose fines to litigants who were summoned in mediation proceedings but opted not to attend (ranging from EUR 100 to EUR 500) taking into account the overall behavior of the party and the reasons for their non-attendance at the mandatory initial mediation session.[36]

Fourth, the implementation of mediation proceedings in private disputes does not exclude the filing of an application for interim measures (injunctions) for the same case where "imminent danger" or "urgency" elements exist, in accordance with the CCP.[37]

IV Conclusion

The new Greek MA takes a further step towards institutionalization of mediation and its embodiment in the civil procedural system. Mediation is no longer a purely informal and autonomous process, but it constitutes a part of the legal order and an important regulatory tool. The establishment of the Central Mediation Committee as a public body competent to deal with all issues pertaining to the institution of mediation aims to achieve its uniform management in the whole country. The mandatory initial mediation session makes mediation a prerequisite for the hearing of the case bringing it even closer to the legal system. At the same time, this middle way introduced by the newly enacted scheme bridges the gap between mandatory and voluntary mediation in an attempt not to excessively obstruct the parties' right to access to justice.

And indeed, even if one accepts that mandatory elements in mediation may erode aspects of voluntariness and autonomy, there is no doubt that such elements can be a useful tool to encourage mediation on a wider scale. In this respect, the Greek quasi-compulsory scheme can be considered as a temporary expedient to encourage wider use of mediation in general so that it eventually becomes a "complementary" dispute resolution means.[38]

It remains to be seen whether the new Greek mediation scheme will fulfil its goal, i.e. reduce court workload and save resources in the administration of justice by being seen by the parties and their lawyers as an opportunity to effectively resolve their disputes out of court, or it will be regarded as a mere procedural formality.

35 MA, Art. 9.
36 MA, Art. 7 (6).
37 MA, Art. 4 (3).
38 Dropping out the word "alternative" of the famous ADR term.