

THE RUBICON OF JUSTICE IN GREECE: A 10 YEAR “ROAD-TRIP” TO MEDIATION

*OLGA N. TSIPTSE**

11-30-2019: A new legislation referring to mediation, as an Alternative Dispute Resolution (ADR) in Greece is a fact: the recent Law 4640/2019. Almost ten years after the first appearance of this institution¹ in Greece, and almost two years after a previous legislative effort² that was never put in force, this new endeavor towards mediation takes place in a fragile and intense environment. The reason for this situation is that mediation, that was a voluntary ADR until now, now in Greece is granted as a mandatory institution for some disputes and cases. The reactions to that transformation, in the field of justice, were very strong. From one day of fully darkness, mediation faced limelight and everyone began discussing the privatization of justice and how mediation is not compliant with the Greek culture. What happened from the first day until now and why all this reaction against mediation are questions that can only be answered with deep knowledge of the history of mediation in Greece.

I. HISTORICAL REFERENCE

After EU Directive 2008/52/EC was issued, the next step was for Member States of the EU to harmonize their laws and comply with the Directive. Greece was one of the last countries that adopted the Directive, through the enactment of National Law

* LL.M Lawyer of Supreme Court of Greece, Accr. Mediator of Ministry of Justice (civil, commercial, family, banking & ODR) GDPR - DPO exp.

Founding Member & Chair of EADPP GREECE'S BRANCH & member of Certification Committee

¹ The Greek law that Mediation first appeared in Greece, was 3898/2010, when EU Directive 2008/52/EC finally was harmonized.

² Greek Mediation Law was amended for the first time in 2018, through the Law 4512/2018, when for the first time Mediation was mandatory for some cases (like family cases, tort, medical mistakes, car accidents, financial disputes etc. This Law, and its Article 182 in particular, was twice suspended (for the September 2019 and for the November 2019), because of the reactions towards the above provision, both of the Lawyers and of the Judges in all over Greece.

3898/2010. In the beginning, a very small part of the legal population began voluntary institution of amicable dispute resolution. The three first years passed without having any evolution in the practical adoption of mediation and in making mediation popular. Still, every claimant wanted to sit before a physical judge and to give him/her the authorization to solve his/ her dispute either in favor or against the claimant. No one had heard and informed, up to that point, any other way of resolving disputes.

After these first years, some lawyers, and only lawyers during that time³, started to get trained and certified by the Greek Ministry of Justice. With the passage of time, in Greece, only a few mediations (almost all of them successful) took place. But still, an enormous percentage of The Greek population ignored this institution or any other ADR, as negotiation, conciliation, etc. Only Arbitration seemed to gain ground, and this assumption only in the business environment.⁴

Although a very useful institution, mediation was left unexploited for years, while at the same time the courtrooms all over Greece were full. Justice became non-functional because of the long time procedures⁵ and the high costs needed. This discouraged any claimant to begin court proceedings. Quite common was the conclusion that interfering with justice in Greece lead to deadlocks. It is no symptomatic that foreign investors don't choose Greece to make their investments. In addition to the taxation, complicated company law and extensive graphiocracy, the major problem is the delay of dispute resolution and the entire justice system. It was high time for a big change, of culture first, to be fulfilled. And it happened.

³ the Law 3898/2010 didn't allow other professionals but lawyers to become certified and accredited mediators. This changed in the year 2013 with new provisions, and today anyone who has graduated any Higher Educational Institution can become a Mediator.

⁴ in the field of energy, constructions, international commercial disputes etc.

⁵ a simple case, e.g. tort law or family, needs 3-5 years in Greece to be resolved finally.

Suspensions, Appeal, Strikes etc cause an enormous delay against the finally settlement of any dispute. And still, even if there is a Court Decision may not be enforced against the part who loses and in the end of the day, all seems to be in vain.

II. THE NEWEST LEGISLATIONS ABOUT MEDIATION

The Greek legislature, having in mind all the obstacles that were against the evolution and practice of mediation, wanted to go a step beyond: it copied the Italian Model and decided to pass from fully Voluntary to partially mandatory mediation, for certain cases, such as family cases, tort, medical mistakes, disputes among neighbours, and car accidents that didn't lead to death or injuries of bodies. The legislature knew, in 2018, that any amount of ADR was more than previously required, for overlapping the problematic in the field of justice, not to mention how mediation was required, as the most friendly and popular method of any other ADR. Greek justice, in the last years, has not achieved its goals. The problems of justice, together with the economic situation and crisis that Greece has faced in the ten last years, and together with the high taxation, pushed anyone who wanted to create any investment or any business away from Greece. And this limited Greece's competitive advantage, if there was still any.

The first amendment of mediation's Greek Law was implied in January of 2018, with the Law 4512/2018, which tried to copy the Italian Model, with the remedy not only to copy the text of the law but also the Italian reactions of lawyers and judges.

Though Greek new law had provisions for mandatory mediation, this obligation was only for the first, the initial meeting / session between the mediator selected and the parties with their lawyers. This means, that the parties of any dispute were obliged to sit together, only for the initial session, where a mediator could introduce him or herself and the mediator's duties, inform the parties about the Institution and the procedure and have a light conversation with the parties and/or their lawyers. After this first session, the parties could deny the following procedure and could prefer continuing the dispute in court.

Both lawyers and judges started immediately demonstrating that the new law was contra the Greek Constitution and should be canceled before enactment. The key reasons for such a reaction, seemed to be the following:

First, the limitation (through the initial session) of the claimants and defendants to stand before their natural judge and be judged due to substantial and procedural Greek law, as the Greek constitutional right was declared.

And second, the creation of financial burden for the actors of any dispute, in times, when liquidity is lost, after all these years of financial crisis.

Of course, many other justifications were raised by lawyers and judges for the denial of putting mediation in their professional life.

Many Bars declared that they would strike against the new law and protested with all the means they had. All this negative attention, that had a long duration, led to the suspension of the law, for the first time, until September of 2019. The suspension came also, after a decision of the Supreme Court of Greece, that declared almost the same justification as the one demonstrated by lawyers, who stood against ADR and especially against mediation, using that mandatory and mediation are not synonyms.

Despite the above suspension of the law, the river started to flow and was not be able to be stopped. Lawyers started to learn more about the institution, many professionals started to be trained and certified as mediators, people started having knowledge about mediation and started experimenting with mediation, at least in the first steps before concluding to the court. Many organizations started to create mediation centers as the SMEs Chamber in Thessaloniki (North Greece) or the Banking Omundsmen and the Association of Greek Banks that had trained limited number of mediators for dealing with financial disputes etc. Opened, an organisation that joined, for the sake of mediation, all chambers, most commercial associations and some bar associations in Greece, has promoted this institution to the maximum. And many other actions took place, for any kind of promotion and advertisement of mediation, such as the exhibition in the Thessaloniki's International Fair for the first time in September 2019 etc.

After the elections in Greece on 7th July 2019 and the change of the political system, the new Government showed a willingness to promote more mediation, in a manner that was considered to be the best for all sides. For that reason, the Supreme Court of Greece gave the green light for the enactment of the last and final law:

- The initiation of mediation was suspended once last time, for a duration of 2 months,

- The new Government issued the final law that has already been in action⁶

⁶ Law 4640/2019 that put in action on 30th of November 2019

- Some fields of the previous law have been changed in the below manner: there was a limitation of the cases that had to perform a mandatory mediation (these are only family cases and tort law), because the passage from one judicial system and culture to a preference for mediation should be done softly. The final law also implied the obligation that the lawyers should inform their clients about the mediation and prove this information in written, with the major penalty being that case will be lost for typical reasons and before the case will be examined on the merits.

III. ARTICLE 6 LAW 4640/2019

Mediation is an alternative way to resolve disputes without standing before courts. A third-party neutral, the mediator, who is commonly approved by the parties, usually facilitates the parties in civil or commercial or other disputes. In Greece, mediation is for some cases mandatory, not as a complete procedure, but as a preliminary, initial session that has to be fulfilled because the claimant will lose the case without it being examined on the merits of his / her claim.

The other obligations are, that this initial mandatory session for the cases that is applied and implied, must take place twenty days after mediator is appointed, with an extension of time up to thirty days maximum. Of course, this session is completely confidential and all the principles of mediation are in action. No minutes are kept. The parties have to decide after this first session if they want to continue mediating, or stop the proceedings and stand before the courts or decide at a future point to come back to mediation proceedings and continue if the case will be mature for that.

In Greece, all parties have to take part in the proceedings with their lawyer. For legal entities, the legal authorization can be fulfilled. If one party comes to the mandatory first session and the other does not, the court that will examine the case afterwards may impose to the absent party penalties and fees from 100 to 500 euros. Apart from the mandatory initial session of mediation, that was implied for certain cases, as is already written, the voluntary submission of mediation is applied, for any case that the parties have the authority to dispose (cases who are “mediatable”).

IV. WHY IS IT SO IMPORTANT TO CHANGE CULTURE?

The modern trends have implied that, since we live in a globalized environment, individuals and businesses move quickly. There are high expectations to have disputes resolved to the point, in a minimum amount of time. Greece is a country who tries to follow up the evolution, has to be transformed into a competitive place, giving the inception and the motivation to any entity who wants to deliver and to provide deed in this territory. In Europe these are considered as best practices and that is why other countries have a competitive advantage with Greece in the field of investments and workouts that can help the economy to expand.

It is high time for Greece to take the big step, to cure a dramatic situation. With this choice there are many other consequences that will positively occur: lawyers that nowadays have lost their glare and have become obsolete, through the proceedings of mediation, will provide such a substantial assistance that will be obvious to their clients.

Lawyers' participation will upgrade their contribution and clients' trust towards them will be restored and recover.