

Greece: Lost in mediation?

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In the land of plenty (austerity packages) and decennial litigation fights, a new hope seems to emerge for the first time. Mediation is in the mouths of lawyers and the minds of academics. It is also part of the MoJ's agenda since 2010. My objective is to present you the mediation landscape in Greece, and the many flaws the system has to overcome, so as to achieve wide-spread acceptance in the future.

1. The Early Stage

Back in 2006 I decided to head down to Athens and present aspects of ADR and the proposal for the mediation directive before the Hellenic Association of Proceduralists. It was the first time anybody would publicly speak about mediation in the country. Two more presentations took place the same year, this time before lawyers from two Cretan Bars. Next year the Thessaloniki Bar hosted a similar/broader event. Local lawyers showed a lot of interest and filled the room. In October an international conference was organized in Athens, hosting experts from several EU member states, both lawyers and judges. As soon as the mediation directive was published, the first legislative committee started working on the Greek transposition. A year later, the Thessaloniki Bar holds the flag of mediation in the country: More than 5 conferences were organized, with experts coming both from Europe and the US. A mediation committee worked intensively within the Bar and a Mediation Center was established. A major event took place in 2010: The Bar organized an international mediation conference with training elements, in cooperation with JAMS ADR Center. The conference was repeated at the Piraeus Bar. A perspective for joint efforts to train mediators in Greece became visible, despite the domestic legal vacuum.

2. The Present Stage

Law 3898 on mediation in civil and commercial matters was published in December 2010. Mediation is now a legal alternative to litigation, providing special prerogatives for lawyers, as will be explained shortly. A bit earlier law 3869/2010 'for the settlement of claims against persons with excessive debts' was enacted, providing also out of court dispute resolution schemes. Almost a year passes on with no further developments. Greece has other things to worry about...

Nevertheless, at the end of 2011 the MoJ fires four times: Presidential decree 123/2011 regulates the conditions and requirements for approval and operation of mediation training centers (in civil and commercial matters); A ministerial decision forms the Mediators Certification Commission, and another decision sets up the procedure for recognizing mediators accredited abroad; the second chapter (of the above decision) provides for the Code of Conduct for certified mediators. At the same time, by virtue of Article 15 law 4013/2011, special committees are established, with the sole task to work as dispute settlement boards in commercial rent review cases.

Early this year, the Thessaloniki Bar announced its deal with the local Chamber of Commerce, aiming at the establishment of the first mediation training center, pursuant to the law's provisions. Late January the bill 'on fair trial' and other matters, was submitted to the Hellenic Parliament. Article 7 proposes the introduction of court-annexed mediation. Last Monday the law was published in the Official Gazette. According to Article 7 law 4055/2012, court-annexed mediation may start operating by April the 2nd.

To sum up, we have today the following landscape:

- In domestic disputes only trained and certified lawyers are allowed to assume mediator duties (Art. 4 lit. c law 3898/2010). After the 2nd of April, senior judges or judges presiding at first instance courts will be appointed as mediators (Art. 7 law 4055/2012, introducing a new Art. 214 B in the Greek Code of Civil Procedure). No training, certification or accreditation requirements are needed for the exercise of their new duties. Their seniority has been considered sufficient pursuant to the laws explanatory report.
- In cross border disputes, any certified person can be appointed to serve as a mediator (Art. 4 lit. c, last sentence, law 3898/2010). The lawyer's monopoly is therefore expelled, simply because it would fail in the short run on the basis that it is clearly contrary with basic notions of EU law. Court annexed mediation will also be an option, starting from April the 2nd, and based on the provision mentioned in the previous point.
- Mediation advocacy is not only a party's right, but rather his/her obligation. No mediation procedure can unfold without the parties' attorneys at law, both for domestic and cross border cases (Art. 8 para. 1, law 3898/2010). The obligation to take part in mediation in the presence of the party's lawyer extends also to the newly introduced court annexed mediation scheme (Art. 7 Para. 3 law 4055/2012).
- None of the above alternatives are imposed on the parties. Support to adopt the Italian model fell in the light of the devastating failure of an earlier collaborative law model (Art. 214 A Greek Code of Civil Procedure), which provided for an out of court dispute resolution model between the parties (again in presence of their lawyers). This model is still in force; however its mandatory nature was abolished by law 3994/2011 on the rationalization and efficiency of civil proceedings. Moreover, defying mediation leads to no procedural inadmissibility, no sanctions, not even the conclusion of a rebuttable presumption.
- Court annexed mediation will be provided for free to interested parties, since no providence for stamp duty has been made in the recent law. In contrast, mediation pursuant to law 3898/2010 presupposes full cover of the mediator's fees in advance, although fee scales have not yet been set.

3. The Steps Forward

So far there is only one reported case being settled by means of mediation in Greece. It goes without saying that this situation is by no means acceptable. More measures need to be taken from the Government; more engagement from the Bar has to follow, more visibility and communication efforts should be elaborated, with the aim to attract the public. Some possible steps could go in the following direction:

- Immediate development of pivotal court annexed mediation projects. Fears that the newly introduced institution might end up on a stage of hibernation are to be taken seriously.
- More effective measures to combine a party's reluctance to participate in mediation with sanctions affecting costs. Expertise could be gained by the English and the Italian legal order, although a recent preliminary question from an Italian on the accordance of the above with EU law court is pending (Case C-492/11, Di Donna, OJ C 347 from 26.11.2011, p.16).
- Introduction of mediation law in the syllabus of the School of Magistrates: How could court-annexed mediation blossom if not even the basics are taught?
- Introduction of the subject in the law schools' syllabus. How could we believe realistically, and not on the basis of wishful thinking, that a mediation culture will develop in the next generation of lawyers, when no mediation courses are taught?
- A new approach to lawyer negotiations, a model that has been so carelessly neglected by Greek lawyers. Now that collaborative law (Art. 214 Greek Code of Civil Procedure) is not mandatory, and court annexed mediation will begin operating shortly, it is high time for lawyers to develop skills which are innate to any legal practitioner. Bars can and should contribute in this direction.