

Greece: Mediation Going Compulsory. The Sequel

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It was only on the 31st of May when I published a blog on the new Greek mediation law. Just a few months later a part II, or rather a sequel, seems necessary. As discussed in my first blog on the matter, compulsory mediation was recently enacted in Greece by the new mediation law in a number of types of cases. Reaction from bar associations and the judges union has been fierce since then. Lawyers were afraid of losing part of their already diminished work in a country under financial crisis for almost 10 years, while judges were skeptical of compulsory mediation, believing that this would undermine their role by taking court cases out of the (overburdened) Court system. Not all lawyers, not all judges of course, but at any rate, the majority of their elected representatives.

This led to a request of the bar associations of Greece to the Supreme Court (Areios Pagos) to issue an opinion on whether compulsory mediation, as enacted, would violate the right of free access to justice to all citizens. Interestingly, Areios Pagos opined by a narrow majority (21 against 17 votes) that the law does violate such a right, given that it imposes certain expenses on the parties that are considered to be excessive. Such expenses are a minimum payment to the mediator of 170€ for the first two hours of mediation and 100€ for each extra hour of mediation, failing a different agreement. This would be complemented by some amounts for the service of documents (usually around 70€ per service) and a further payment to the representing lawyers. The underlying idea is that the parties to the mediation would also undertake the expenses for the trial that would follow. With this in mind the argument goes, adding an extra "stage of proceedings" would lead to further expenses, thus reducing the financial ability of the parties to mediation to later proceed to trial. This would potentially deprive them from free access to justice.

A not particularly experienced mediator would easily rebut the above position. As a starting point, one needs to say that in most parts of the world, over 50% of mediations are successful. Definitely a compulsory mediation is less likely to be successful as the parties are not necessarily positively predisposed to mediation as is usually the case with the voluntary one, but again it can be, most probably it will be. This means that the parties to it will eventually pay less, not more for a dispute. But even those who would pay more in case of failure of mediation, would not necessarily pay the above amounts that were considered to be excessive by Areios Pagos. Actually these amounts are objectively not excessive (even for an EU country under serious financial crisis) and in any event they are indicative, as they apply only in the event that the mediator and the parties have not agreed differently. For small cases, payment would actually be even smaller, especially given the large number of accredited mediators in Greece and the few mediations that are taking place in this country. Competition would bring prices down, as was suggested by the reporting judge in the context of the Areios Pagos opinion (Judge Pipiligkas) who had the opposite view to the majority of the Supreme Court. Further, the same law provides that citizens entitled to legal aid would be freed from the obligation to pay for a compulsory mediation. Given the above, one can say that the arguments of the majority of Areios Pagos are rather weak.

However «ουδέν κακόν αμιγές καλού» (the bad is never immune to good): an ancient Greek popular saying that carries much wisdom with it. The new Minister of Justice who recently replaced the one who had the initiative for the enactment of the mediation law, a few days ago placed an amendment of the law with the Parliament, according to which the application of the provisions will be deferred until 16 September 2019. The rationale of this initiative is said to be to revisit the law by taking into account the above opinion of Areios Pagos. This can only be an opportunity, given the problematic nature of the deferred provisions, as discussed in my previous blog. As said in that blog, the choice of types of disputes that would be subject to compulsory mediation was unfortunate, since the emphasis on the relationship at stake was minimal, if any. Also a number of types of disputes with gross imbalance of powers were taken to compulsory mediation. It is suggested that if new categories of types of disputes where the relationship of the parties is critical go to compulsory mediation and if the number of such cases is not particularly big, it may well be that reactions will be less fierce. In such event, if the Supreme Court is asked again, it will most probably be more lenient. This, despite the fact that for Areios Pagos the critical matter is the one of excessive expenses. If a clear and convincing rationale for including certain types of cases were to exist and the number of such cases would not be very big, one could expect a change of focus of the players in the justice system and of Areios Pagos in particular. In this direction, one should include disputes where the relationship matters such as disputes of partners in commercial partnerships, most of the freely disposable family law cases, most succession cases, cases between or among neighbours and last but not least the so-called under law "small amount disputes" (the threshold is currently 5.000 euros but can be easily doubled). The inclusion of this last category makes sense only for educational purposes of the general public and since the stake is minimal. Indeed, engaging the court system in such small disputes is in many respects pointless.

To conclude: Compulsory mediation in Greece is on hold until 16 September 2019. The hope is that it shall not only be on hold ... for ever, and that that the mediation law shall be readjusted to include the right type of cases going to compulsory mediation. The further hope is that in the meantime the players in the justice system in Greece will use this extra time to better assess the need for compulsory mediation in a country with notoriously slow justice. This, with the caveat that mediation is not THE solution for the slow administration of justice in Greece, but it can indeed offer some assistance to speed up things. Actually, as Judge Pipiligkas of Areios Pagos said in his report, mediation is not the solution of the Greek justice system, but at the same time, it is not an anathema. Now it is for the players in the justice system to strike the right balance and take the correct initiative. To be continued (hopefully).