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Greece: Mediation Going Compulsory. For Good Or For Bad?

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It cannot be suggested that mediation in Greece has been a success, yet. It cannot be said that it has been a failure either. The fact of the matter is that few cases have been to mediation to date in this country, hence in practice it is an unfamiliar process for citizens and companies. However, the number of mediators in Greece is already quite high (approximately 2000 trained and certified mediators).

For these reasons mainly, there has been a gradually increasing discussion in the last three to four years in the Greek mediation community as to whether mediation should become compulsory, at least for some types of cases. Which cases these should be has not been clear enough. But, at least, the name of the game has been: “Make mediation (partially) compulsory”.

For a number of years, established politicians have been rather reluctant to grant compulsory status to mediation. In fact, a few years ago, at the beginning of the financial crisis, a law about “judicial mediation” run by judges was enacted. This is primarily due to the fear of most established politicians about forms of “private justice”. This is, for most of them, a dangerous species as it lacks the seal of the State for such an important function. The fact that Greece is notoriously slow in the administration of justice did not seem to matter more than the need to make sure that dispute resolution would remain in the hands of judges, even in its more informal forms, like mediation.

Interestingly, the current government of the “radical left” (with a spice of an ultra-right ally) recently enacted compulsory mediation in some types of disputes (law 4512/2018 arts. 178-206). From a political point of view, this looks puzzling. Mediation is thought to be a kind of “private justice” in the country and it being boosted by such a type of government is not a natural thing to happen. But it did happen.

The problem is that it happened in the least convincing way. The law is rather bad from a drafting point of view. Further, it establishes compulsory mediation in diverse cases like car accidents, stock exchange cases, intellectual property disputes and overdue payments to lawyers, where one struggles to see the common rationale of rendering all of them compulsory. In addition, the relationship of the parties is literally non-existent in most of these cases while, in many of them, there exists a gross imbalance of powers of the parties. It is also hard to see why all of them fall under the same label. On the other hand, cases like flat owners residing in the same block, family matters and, under a certain reading, cases of medical liability seem to be acceptable types of compulsory mediation, as provided by the new law. But still, no one understands why succession cases, other cases between neighbours, disputes between partners and other cases where the

relationship matters were excluded.

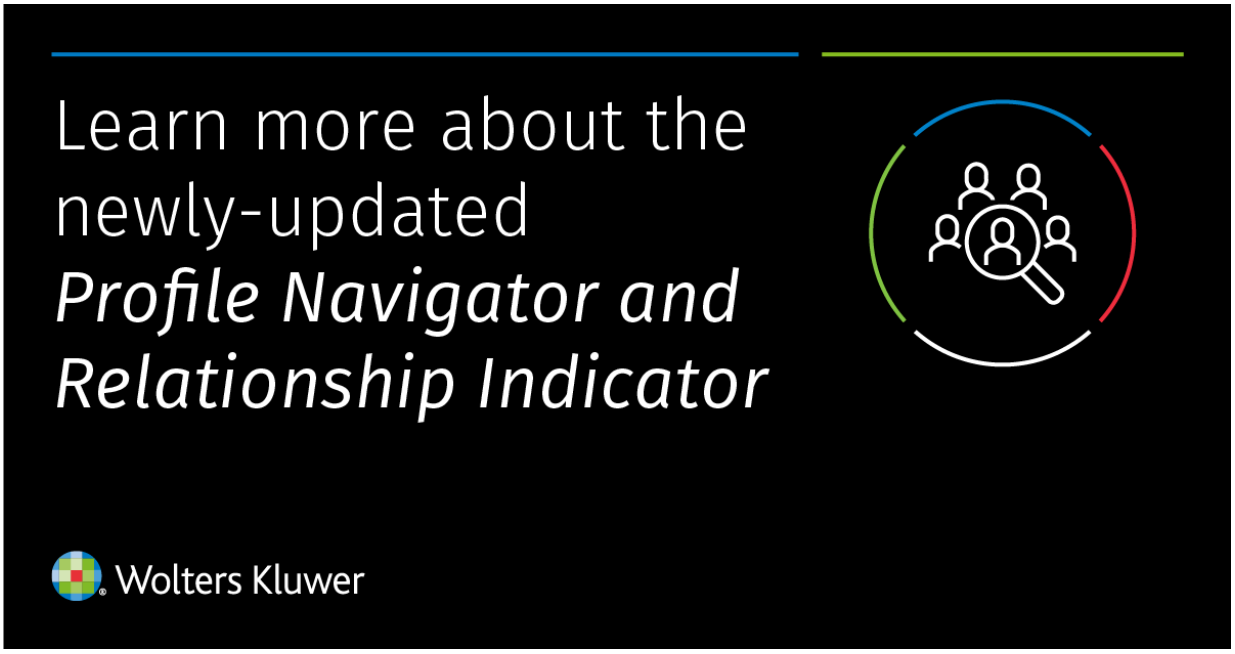
My view is that the answer lies in the lack of understanding of the deeper importance of mediation and to it being regarded only as a tool for reducing court cases. The role of lobbying by interest groups should not go unnoticed either. This is apparent in the last minute changes to the law, where types of disputes were included in or excluded from the final draft.

Among the drafting deficiencies of the new law is that it allows the initiating party to choose unilaterally the mediator for the compulsory mediations. This is done to ensure that the need for trying to mediate the compulsorily mediated cases would be satisfied, but it is really an unfortunate mechanism to ensure it.

A further fault is that the law has established a “Central Committee of Mediation”! This “Central Committee” is regulating the mediation market, which may be an acceptable thing to happen, but at the same time it appoints mediators in the event that the parties cannot agree on the mediator for their dispute. Obviously, this has been decided in order to meet the procedural needs of the “compulsory mediation”. In reality, it is all about safeguarding the procedure of a “compulsory to fail mediation”. Few people would expect that in the event that the parties disagree on the choice of mediator, they would eventually end up shaking hands after succeeding in the actual mediation.

On the whole, while the political jargon that was used to back the new law was impressive, it is really doubtful if the law will bear fruits, at least the ones a mediator would expect to see. Calls for amendment have already started to appear. The idea of trying to go compulsory may be interesting. But this requires determined mediators and a kind of adjustment of mediation to the Greek way. Traditional pre-modern mediation to settle communal disputes has been present in Greece for centuries. It is about time to see how to transform such mediation to the mediation of our era, which is rather a post-modern creature.

The law has been baptised as “emblematic” by the Ministry of Justice. God knows what the meaning of the word will end up to be after a few years from now. At least, one can only hope and work for the best!



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