Kluwer Mediation Blog

Greece: Institutionalizing Mediation Through Mandatory Initial Mediation Session (Law 4640/2019)

Vassiliki Koumpli (Resolve Mediators & ADR Experts) · Monday, January 20th, 2020

Introductory Remarks

Nine years after the enactment of Law 3898/2010, which was the first piece of legislation to regulate mediation in Greece in compliance with Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters, and almost one year and a half after its replacement by Articles 178-206 of Law 4512/2018, Law 4640/2019 was published on 30 November 2019 abolishing all previous legislation and constituting now the sole legal instrument regulating mediation in Greece. Law 4640/2019 essentially repeats and enhances the pre-existing legal framework concerning the requirement of a mandatory initial mediation session for a broad category of cases, which was suspended until the promulgation of the new law.

The Greek Mandatory Mediation Scheme

In principle, all 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. Only exceptionally is submission to a mandatory initial mediation session introduced for the following civil and commercial disputes: 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 30.000,00– and the Multi-Member Court of First Instance (concerning lawsuits filed as of 15 March 2020); c) disputes arising from contracts which contain a valid mediation clause (concerning lawsuits filed as of 30 November 2019).

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. 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.

CJEU preliminary reference rulings in the *Alassini*[1] and *Menini*[2] 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 all 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 the general interest, was considered proportionate to the restriction imposed on fundamental rights. 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.

The exclusion of small claims 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 case law of the CJEU.

The Institutionalization of Mediation in the Greek Legal Order

With the practical application of Law 4640/2019, 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). For this reason, it could be argued that many of such 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, the mandatory initial mediation session –together with the lawyer's duty to inform his client in writing about the mediation option– constitute a condition for the admissibility of the hearing of the case before court. 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. 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.

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

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 the 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 100,00 to EUR 500,00) taking into account the overall behaviour of the party and the reasons for their non-attendance at the mediation session.

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.

Concluding Remarks

The new law 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 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 could be considered as a temporary expedient to encourage wider use of mediation in general so that it eventually becomes a "complementary" dispute resolution means. It remains to be seen whether it 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 if it will be regarded as a mere procedural formality.

References[+]

This entry was posted on Monday, January 20th, 2020 at 1:22 pm and is filed under Dispute Resolution, Europe, Greece, Legislation, Mandatory mediation, National Mediation Laws, Regulation
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.