

Kluwer Mediation Blog

Greece: Mediation Going Compulsory: And They Lived Happily Ever After?

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The fairytale of mediation in Greece starts in 2008. Back then, a group of forward thinkers (or disillusioned persons, depending on the angle of the view) took the first class on mediation in Greece (organised by CIArb) and a little later, they received the CIArb accreditation. A few more persons of the same mindset took the second round of CIArb training in Greece and others followed similar CEDR or other institutions' classes abroad. This way a first corpus of (prospective) mediators was formed in this country.

It was “prospective” because very little was happening regarding mediation. The EU Mediation Directive was implemented in Greece (for the first time in 2010 – law 3898/2010) but this did not tell much. “Fortunetellers” would insist that mediation would never work in Greece and “witches” would fly around on the sticks screaming that Greeks are not “made” for mediation, since they are too litigious and aggressive...

Very little was happening in mediation practice but, for some hard to grasp reason, more and more people (especially lawyers) were being trained in mediation by Greek institutions that were formed in the meantime, in what one would call the big boom of mediation... education.

Putting the cart in front of the horse is not something unusual of course, and was indeed done in the case of mediation. So, some ten years after the training of the very first group of mediators, some 2500 mediators were trained and accredited, waiting for the big boom of actual mediations, this time. Yet, little was happening to this end. The “fortunetellers” and the “witches” were proven right.

And suddenly the previous (left with an ultra-right companion) government decided to make mediation compulsory (law 4512/2018) in an effort to convince people of its merits and assist in its development (see my [earlier blog](#)) but it proved that the powers of the “witches” were so strong that the “fortunetellers” were found to be true in their predictions... Lawyers and judges (not all of them of course, but their representatives at least), reacted so fiercely to the “deprivation of the right of access to Justice” and the “privatisation of Justice” respectively, that the new law was declared unconstitutional for imposing excessive expenses and its entry into force was adjourned for reconsideration (see my [earlier blog](#)).

Last July, a new (centre-right) government was elected. The boosting of mediation was included among its many plans and declarations. The same “fortunetellers” and “witches” were certain that

nothing would happen (once again) and mediation would still not work in this country. The same reactions started to emerge, but this time things were different. A new law passed (4640/2019) that replaced the previous one. From a drafting point, the new law is convincing and is generally a step forward. If I can spot a problematic point in this new law it is that the drafters have insisted on a very broad compulsoriness of mediation. This means that an initial first attempt to mediate will have to be followed in most civil and commercial cases over 30000 euros value (as of 15.3.2020) and in most family law ones, namely the ones that refer to private rights that can be freely disposed of (since 15.1.2020). The drafters have not tried to pinpoint the type of cases that would better suit compulsory mediation as one would expect (see my [earlier blog](#)) but wanted to make sure that as many cases as possible will go to a compulsory first mediation meeting, in order to reduce the bulk of court cases. The risk with this legislative choice is that it is more than likely that an unnecessarily big number of mediations will fail and if the statistics of success are not good, the fortunetellers” and the “witches” will again be proven right.

On the other hand, the positive aspect of the current status is that it looks like we have passed the “[tipping point](#)” regarding public awareness, and the (more positive) stance of many lawyers. This is to be attributed both to the (failed) attempt of the previous government that raised the matter in the first place and of the new one that “magically” managed to circumvent the reactions on the “deprivation of the right of access to Justice” and the “privatisation of Justice” that were common ground two years ago, such points not being a serious issue any more. As a practicing lawyer and mediator, I can only refer to my own experience: Until 2018 very few if anyone had heard of mediation. Two years later most people have heard of it and a good number understand what it is all about, and – surprise – some have already experienced it and – further surprise – some say that “it is not that bad” and “actually it works!”.

Although the arguments heard two years ago have now become fainter, this time “witches” are flying on new sticks: It is not that so much that mediation is not for Greeks (although it still is an argument), but with this law... “well... lots of procedural law questions will arise and the whole thing will be a mess”. The “proceduralisation” of law, namely the enormous emphasis on procedure at the expense of substance is not a novelty in Greece and most probably in other parts of the globe. In reality, it is a well-known sport practised for many years and has succeeded in short-circuiting the effectiveness of the judicial system in the past and now it could well jump into mediation. Linking procedural law with mediation makes some sense of course, to the extent that mediation meets the judicial system at the enforcement stage and to a lesser extent at the stage prior to the commencement of mediation, but as is well-known, mediation is not regulated by procedural law (see on this point with respect to the new law [Greece Institutionalizing Mediation Through Mandatory Initial Mediation Session](#)). The actual mediation process has very little to do with procedural law, save for the preservation of some procedural law principles, such as fair treatment, confidentiality, impartiality and the like. But the “witches” insist: Wait and see...

The above has been the fairytale of mediation in Greece to the moment. Resistance to change is still there, just as has been the case elsewhere. New arguments are being developed against mediation (especially against compulsory mediation) but one can sense a different air... All the ingredients for success are there: Public awareness, lots of trained and rather determined mediators, a new law and ... lots of pending cases. Further, it is sensed that we have passed the tipping point. Only time will tell if this will be the end of our fairytale, in which case one could simply add: “And they lived happily ever after”...

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

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