

# Article

## Mediation in Greece: The ‘Formal’ and Various ‘Informal’ Types, Off- and Online

The Architecture of Mediation in Greece – Shifting towards a Culture That Values Consensus-Building

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### 1 Introduction – Distinction

Mediation in civil and commercial cases, which has been specifically established in Greece by virtue of EU legislation, is a dispute resolution procedure, which is defined by the EU legislator in the basic regulatory framework, leaving individual issues to the discretion of the Member States.

For the purposes of this article, we could call this specifically regulated mediation ‘formal’ since it contains what the Greek legislator has chosen to ascribe to it as legally and politically correct based on the EU regulation.

However, forms of unregulated mediation have been in existence for centuries and probably since the earliest days of mankind, as the mediating efforts of a ‘third party’ towards the ‘extra-judicial’ resolution of all kinds of misunderstandings and disagreements, among other things, are part of human nature. Such disputes are bound to have always arisen and will continue to arise from or in connection with all kinds of relationships such as family relationships, relationships between neighbours, friends, classmates, professionals and gen-

erally from any kind of transaction involving goods and services.

This spontaneous third-party mediation, in all its forms and within the social context and its various manifestations, is certainly not aimed at regulating rights but rather at effectively resolving disputes and restoring relations. An example is ho‘oponono, an ancient Hawaiian practice of dispute settlement and reconciliation.<sup>1</sup>

A legislated application of this social phenomenon is the various mechanisms established for out-of-court dispute resolution under various names such as ‘ombudsmen’, ‘mediators’, ‘committees’, etc. For the same reason mentioned above, we could call these various regulated mechanisms ‘informal’ mediation.

### 2 Formal Mediation – In General

Formal mediation in Greece is currently governed by Law no. 4640/2019 (‘Law 4640’), which is the result of the third statutory regulation attempt.<sup>2</sup>

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1 See Bodin L., Lamboy N.B. & Graciet J. (2016). *The Book of Ho‘oponono : The Hawaiian Practice of Forgiveness and Healing*. Rochester Vermont: Destiny Books.  
2 Following a) Law 3898/2010, which incorporated Directive 2008/52/EC ‘on certain aspects of mediation in civil and commercial matters’ and b) Law 4512/2018, which never entered into force due to unconstitutionality (Supreme Court Administrative Plenum Decision 34/2018).

Of particular significance is the reference to formal mediation as an alternative way of resolving disputes under various laws/codes, which is a rising trend, such as:

- a. The laws on limited liability companies/societe anonymes,<sup>3</sup> corporate transformations,<sup>4</sup> trademarks<sup>5</sup> and heavily indebted individuals.<sup>6</sup>
- b. The Code of Civil Procedure (CCP) with its very important guiding articles (which hopefully will be implemented):
  - i. on the duty of the court *‘to encourage at every stage of the proceedings and in every proceeding the conciliatory resolution of the dispute, the choice of mediation ...’*,<sup>7</sup> which is greatly symbolic in that it comes after the fundamental (but sadly ‘forgotten’) article on the duty of the parties to every proceeding to act in good faith, to observe good morals, not to obstruct/extend the proceedings, to be honest and diligent<sup>8</sup> and
  - ii. on reinforcement of the same judicial duty with a stronger language *‘The court shall suggest to the parties that they resort to mediation proceedings if appropriate ...’*.<sup>9</sup> This provision was amended by Law 4640, which places particular emphasis on the role that courts can play in encouraging parties to resort to mediation.<sup>10</sup>
- c. The Lawyers’ Code explicitly includes mediation as part of a lawyer’s work *‘... in the pursuit of a conciliatory solution, within the framework of the law or a commonly accepted procedure ...’*, including by communicating *‘... with the principal’s debtor ...’*<sup>11</sup>
- d. Regulation (EU) 2019/1150<sup>12</sup> which established a permanent mediation mechanism between online mediation service providers – platforms and business users (P2B), even encouraging providers and their associations to set up mediation organisations under its provisions (unless they use existing ones).

### 3 Formal Mediation – Special Forms

Noteworthy is the legislative introduction of specific forms of formal mediation, already known in practice, relatively soon after the entry into force of Law 4640. In particular:

#### 3.1 Financial Mediation

The provisions of the new bankruptcy code (seem to) provide for the possibility of mediation under Law 4640

3 Art. 3(2), Law 4548/2018.

4 Art. 5(2), Law 4601/2019.

5 Art. 31, Law 4679/2020.

6 Art. 4.o, Law 3869/2010 – ‘Katseli Act’, as in force following the enactment of Law 4745/2020.

7 Art. 116A CCP.

8 Art. 116 CCP.

9 Art. 214C CCP.

10 Arts. 4(2) and 33, Law 4640.

11 Art. 36(1), Law 4194/2013, as in force.

12 Arts. 12-13.

at the out-of-court debt settlement stage between a debtor and financial institutions in the context of insolvency prevention procedures prior to the declaration of bankruptcy.<sup>13</sup> Depending on the debtor, the mediator may be a) any accredited mediator under Law 4640, where the debtor is a natural person or a legal person<sup>14</sup> or b) an intermediary specially trained in financial mediation, for a debtor that is a legal person.<sup>15</sup>

#### 3.2 Family Mediation

The recent reform of family law specifically introduced mediation in accordance with Law 4640 to regulate the exercise of parental responsibility a) in any case where the parents are unable to exercise it jointly or b) where it is exercised contrary to the child’s best interests. Recourse to mediation may be made i) by either of the parents (except in cases of domestic violence) or ii) by court decision appointing a mediator from a special register of family mediators to be established and maintained by the Central Mediation Committee (CMC).<sup>16</sup>

#### 3.3 Cadastral Mediation

The recent Law 4821/2021 entitled ‘Modernization of the Hellenic Cadastre, new digital services and strengthening of digital governance, and other provisions’ introduced mediation in accordance with Law 4640 in disputes involving a) the recognition of a right challengeable as a result of an inaccurate first entry and b) the correction, in whole or in part, of such entry. Specifically, i) before the hearing of a relevant claim and under penalty of inadmissibility of the hearing, there is a requirement for a Mandatory Initial Mediation Session (MIMS) in the presence of a cadastral mediator selected from a special register, which will be established and maintained (in electronic form) at the CMC; ii) if an agreement is reached, the mediator’s report shall be entered in the cadastral record and the inaccurate cadastral entry shall be corrected and iii) provision is made for special documents which shall be attached to the report.<sup>17</sup>

### 4 Formal Mediation – MIMS

Of particular note is the innovation introduced by Law 4640 on a MIMS on specific disputes, with entry into force on 30 November 2019, 15 January 2020 and 1 July 2020, as the case may be.<sup>18</sup> Obviously, there are arguments for and against MIMS. In any case, we believe that MIMS can and should perform an educational role, changing the culture of the parties and their legal repre-

13 Arts. 5-30 and in particular Art. 15, Law 4378/2020.

14 Classified as a very small entity according to Law 4308/2014.

15 Classified as a small, medium or large entity according to Law 4308/2014.

16 Arts. 1514, Civil Code and 8, 15, 21 & 30, Law 4800/2021, effective from 16 September 2021.

17 Art. 8 of Law 4821 amending Art. 6(2)(c) of Law 2664/1998, and Art. 53, para. 1 of Law 4821 providing for the special mediators’ register.

18 Arts. 6, 7 & 44, Law 4640, as in force.

sentatives in favour of mediation/out-of-court dispute resolution in general.

The risk is that MIMS may be deprived of substance and become just a procedural formality consisting in the mere issuance of a report for judicial use, only to lift the inadmissibility of the hearing.<sup>19</sup> This risk is present (albeit on a limited scale) in the way MIMS has been implemented to this date.

In addition, the restrictive legislative selection of the disputes that are subject to MIMS appears odd, particularly with respect to the minimum threshold of EUR 30,000 for cases subject to ordinary proceedings before the One-Member First Instance Court,<sup>20</sup> considering that, quite on the contrary, it is disputes involving smaller amounts that are more suitable for formal mediation in terms of cost (including time) / benefit. It would be advisable for the Greek legislator to review the disputes that are subject to MIMS in a future amendment of Law 4640.

## 5 Informal Mediation – Forms

Mediation as an institution of out-of-court dispute resolution beyond and besides Law 4640, even if not always explicitly called ‘mediation’, has not only been established for years in Greece but, more importantly, is constantly and diversely expanding. Forms of such regulated informal mediation are in particular:

- a. the alternative procedural mechanisms for the resolution of private disputes under the CCP, namely the possibility of conciliatory intervention by the competent magistrate,<sup>21</sup> the judicial ratification of an out-of-court settlement agreement<sup>22</sup> and judicial mediation.<sup>23</sup>
- b. various ‘committees’, ‘mediators’ and ‘ombudsmen’, for example:
  - the committees for the amicable settlement of consumer disputes (as they are now called) established at the headquarters of the Regional Units and Districts;<sup>24</sup>
  - the Hellenic Consumers’ Ombudsman;<sup>25</sup>
  - the Greek Ombudsman (in Greek, the Citizen Ombudsman);<sup>26</sup>
  - the Hellenic Financial Ombudsman – Non-profit Alternative Dispute Resolution Organisation (HFO ADRO, formerly HOBIS), member of the European Financial Dispute Resolution Network (FIN-NET) for cross-border disputes;

19 Arts. 6 & 7, Law 4640.

20 Art. 6(1)(b), Law 4640.

21 Arts. 209-214 CCP.

22 Art. 214A CCP.

23 Art. 214B CCP.

24 Art. 11, Law 2251/1994.

25 Law 3297/2004, as in force, supervising the European Consumer Centre of Greece.

26 Law 2477/1997, as in force.

- the mediation of the Mediation and Arbitration Organisation (O.M.E.D.) in collective labour disputes;<sup>27</sup>
  - the Labour Inspectorate (S.E.P.E.) for the settlement of individual labour disputes, which recently established an Independent Department specifically for the monitoring of incidents of violence and harassment at work, and established extensive cooperation between the Labour Inspectorate and the Greek Ombudsman;<sup>28</sup>
  - the mechanism of the Internet Copyright Infringements Committee (in Greek, ‘EDPPI’, part of the Hellenic Copyright Organization (HCO)) for the resolution of disputes arising from online infringements of intellectual property rights and related rights;<sup>29</sup>
  - the out-of-court settlement of disputes with Distributors of Insurance Products<sup>30</sup> and
  - the Committee for the Extrajudicial Resolution of Tax Disputes.<sup>31</sup>
  - also under discussion is the introduction of a Police and Ports Ombudsman.<sup>32</sup>
- c. the 2013 EU legislation on alternative dispute resolution (ADR) and online dispute resolution (ODR) for consumer disputes, which came as a result of the rapid growth of e-commerce and the need for quick and inexpensive resolution of low-value, often cross-border, consumer disputes, and more specifically:
- i. Directive 2013/11/EU on alternative dispute resolution for consumer disputes (‘ADR Directive’) and
  - ii. Regulation (EU) 524/2013 on online dispute resolution for consumer disputes (‘ODR Regulation’).<sup>33</sup>

## 6 Informal Mediation – Criminal Cases

Greek criminal law provisions as well are attempting to take advantage of the benefits of looking at things from another perspective, outside the trial process, when dealing with specific criminal offences as a means of

27 Arts. 14-15, Law 1876/1990, as in force, but no longer sanctioned for refusal to mediate after the enactment of Law 4635/2019.

28 Art. 3, Law 3996/2011 and -especially- Arts. 12, 16-18, Law 4808/2021.

29 Art. 66E, Law 2121/1993, as in force.

30 Art. 11, Law 4583/2018, which transposed Directive 2016/97/EU.

31 Ministerial Decision 127519 EX 2020, OJ B/4939/9.11.2020.

32 Arts. 4 & 5, Draft Law on ‘Public Open-Air Assemblies’.

33 Which were incorporated – supplemented by Joint Ministerial Decision 70330oik (OJ B/ 1421/9.7.2015). This JMD is applicable subject to the provisions of Law 4640 (Art. 3(2)), sets as competent authority the General Directorate for Consumer Protection and Market Supervision, where the special ADR entities register is kept, and as ODR contact point the Hellenic Consumers’ Ombudsman/European Consumer Centre of Greece (Arts. 5 & 13).

settling cases more effectively and quickly. These provisions provide specifically for:

- a. criminal mediation under Articles 11-13, Law 3500/2006 on intra-family violence (as in force), which was introduced in compliance with Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (Art. 10) and provides for the intervention of the prosecutor that is responsible for introducing criminal proceedings in cases of relevant misdemeanours with the main purposes of restoring family peace and rehabilitating the offender (& Art. 14 on civil effects),
- b. plea bargaining and in particular i) plea bargaining for certain offences under Articles 301 & 302 of the Code of Criminal Procedure (CCrP) and ii) plea bargaining in cases of crimes prosecuted ex officio, with certain exceptions.<sup>34</sup>

## 7 Informal Mediation – Administrative Cases

Greek administrative justice could not remain immune to the serious problems associated with judicial dispute resolution, with most prominent among them the long delays. Moreover, Council of Europe Recommendation Rec (2001) 9 of 5 September 2001 directly and strongly identified the issue, urging Member States to introduce alternative means of resolving administrative disputes, in particular for claims relating to a sum of money, including mediation. Such existing alternative means are in particular:

- a. various administrative appeals to be exercised on a case-by-case basis (appeal for remedy, hierarchical, special administrative and other applications) as well as petitions<sup>35</sup> and in particular the mandatory application, which is a requirement for the admissibility of the legal remedy,<sup>36</sup> which could provide an essential alternative if it had not degenerated into a mere formality, as the practice shows;
- b. appeals to the Authority for the Examination of Preliminary Objections against acts of the contracting authorities in the award of public contracts;<sup>37</sup>
- c. appeals against the decisions of the Asylum Service;<sup>38</sup>
- d. the procedure for the intra-judicial conciliatory settlement of disputes concerning claims arising from the performance of public contracts under the jurisdiction of administrative courts of appeal;<sup>39</sup>

34 Under Art. 303 CCrP, which result in no sanctions for the accused if unsuccessful (respectively see para. 5 of Arts. 301/302 and para. 3 of Art. 303, subject to the special regulations, conditions and cases laid down in the above provisions and the related provisions of Art. 304 CCrP, but also their limited application to date).

35 Arts. 24-27 of the Code of Administrative Procedure.

36 E.g. in tax disputes – Art. 63 of the Code of Fiscal Procedure.

37 Art. 360 et seq., Law 4412/2016.

38 Art. 4 et seq., Law 4375/2016, as in force.

39 Art. 126B of the Code of Administrative Procedure.

- e. the procedure for the out-of-court recognition of claims or conciliatory settlement of disputes between natural/legal persons and the State, through the Legal Council of the State, which delivers its opinion on the matter upon receiving a request submitted online,<sup>40</sup> subject to the more specific regulations, conditions and cases set out in the above and other related provisions.

## 8 Online Mediation

### 8.1 Online Formal Mediation

Law 4640 contains a specific provision for mediation via videoconference,<sup>41</sup> with the parties being given the option to use any means that is appropriate for this purpose.

Moreover, we consider that one of the positive aspects of the months-long pandemic is the forced search for an outlet for out-of-court dispute resolution, given the prolonged judicial lockdown in general or with respect to most of the court functions.

Thus, with the valuable assistance of technology, the value and usefulness of online communication have become apparent, which can now replace, without substantial problems, any inability/unwillingness of all parties to be physically present in the same place. The possibility of holding online formal mediation ‘anytime’ as opposed to the impossibility of online litigation has accelerated a process of cultural shift towards out-of-court dispute resolution and in particular towards formal mediation.

We believe that this shift is ‘here to stay’ in view of the uncertainty that the pandemic will continue to cause for a long time in terms of how safe physical contact is, as well as the practical convenience of online formal mediation.

In addition, formal mediation bodies (including the Athens Mediation and Arbitration Organization – EODID) have been able to effectively contribute to increasing the parties’ (and their legal representatives’) confidence in the institution’s capabilities even under the exceptional circumstances of the pandemic, by conducting online sessions seamlessly. It should be noted that among the particular issues raised by online formal mediation are an appropriate and trouble-free internet connection, security and confidentiality, which require a reliable platform provider.

### 8.2 Online Informal Mediation

The ODR Regulation mentioned above,<sup>42</sup> which was introduced to facilitate the out-of-court resolution of disputes – especially those arising from cross-border online transactions at EU level and was supplemented by

40 Art. 43(2), Law 4607/2019 & Ministerial Decision (Oik) 272/2019, OJ B/2763/3.7.2019.

41 Art. 5(3) Law 4640.

42 See 5 – Informal mediation – Forms, under c.

JMD 70330oik, created a European ODR platform and a special register of ADR entities in each Member State, which in Greece includes the Hellenic Consumers' Ombudsman and HFO ADRO.

## 9 The Future

If we may make an assessment, it is that mediation, as a particular way of resolving disputes out of court, whether within or without the scope of Law 4640, will become increasingly necessary, providing quick and practical solutions where otherwise there are none. The main causes can be cited as the impasses of litigation, fundamentally its lengthy and costly nature, the uncertainty of the advancement of any judicial process, the lack of trust and the absence of modern technological court infrastructure in this age of 'speed' and widespread use of the 'click' in a plethora of our activities, impasses that have been exacerbated (but clearly not caused) and made more apparent by the pandemic lockdown. Among the positives of the pandemic, the shift towards the culture of mediation, especially online mediation, even if only slight, is a step in the right direction on the road to its evolution from an alternative to the first choice.