Mediation in EU countries

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Rather than going to court, why not solve disputes through mediation? It is a form of alternative dispute resolution (ADR) where a mediator assists the parties in reaching an agreement. The Greek government and practitioners in the justice system are attentive to the advantages of mediation.

Who to contact?

Mediation services in Greece are provided by the following bodies:

- Under Law 4640/2019 (Government Gazette, Series I, No 190, 2019), which transposes Directive 2008/52/EC, a mediator must be: (a) a higher education graduate or holder of an equivalent diploma of an institution of recognised international standing; (b) trained by a Training Provider for mediators recognised by the Central Mediation Board or holder of an accreditation degree from another Member State of the European Union; and (c) accredited by the Central Mediation Board and registered in the Registers of Mediators. A holder of a doctoral degree or an equivalent foreign degree on mediation does not need to be further trained by a Training Provider for mediators in order to be accredited, and may participate directly in the accreditation examinations. Those serving as public, municipal and judicial officials or as employees of legal entities and institutions governed by public law, and serving judicial officers or public officials, are barred from exercising the profession of mediator. Public officials and employees of legal persons governed by public law may act as accredited mediators solely in the context of and for the needs of their work.
- Candidate mediators are examined at least twice a year by the examination board, as appointed by the Central Mediation Board. The examinations include written and oral tests and also an assessment based on simulations.
- The examination board decides where, when and how the examinations will be held. Its decision is notified to the licensed training providers and posted on the website of the Ministry of Justice at least 30 days in advance.
- The Central Mediation Board prepares and maintains the Registers of Mediators, in electronic form, and these are posted on the Ministry of Justice website: (a) the General Register of Mediators, listing the accredited mediators in the entire country in strict alphabetical order; and (b) the Special Register of Mediators, listing the accredited mediators based in the district of each Court of First Instance.
- Mediators are accredited and registered in the Registers of Mediators by the Central Mediation Board following examinations. Mediators who were already accredited when Law 4640/2019 entered into force maintain their accreditation.
- The Ministry of Labour, Social Security and Welfare provides a government service which allows an employee to request an official hearing on an employment-related dispute. The procedure is conducted by the Labour Inspectorate *(Epitheorisi Ergasias)*. A specialised inspector will schedule a hearing for the employer to explain its position. This hearing is separate from any judicial procedure.
- The Consumer Ombudsman*(Sinigoros tou Katanaloti)* is an independent authority operating under the Ministry of Regional Development and Competitiveness. The Ombudsman is an extrajudicial body for the consensual resolution of consumer disputes and an advisory institution acting alongside the government to resolve problems within its remit. The Ombudsman also oversees the Amicable Dispute Resolution

Boards*(Epitropes Filikou Diakanonismou)* of the local Prefectural Councils *(Nomarchiakes Aftodioikiseis),* which may act if no parallel judicial procedure is taking place.

In which area is recourse to mediation admissible and/or most common?

The mediation procedure may cover existing or future civil and commercial disputes of a national or cross-border nature, provided that the parties concerned have the authority to settle the subject-matter of the dispute in accordance with the provisions of substantive law.

Also, the following private disputes are subject to the mediation procedure, failing which the action will not be heard: (a) disputes between the owners of floors or apartments arising from the floor ownership relationship, disputes arising from the operation of simple and complex vertical ownership, disputes between floor and vertical property managers and the owners of floors, apartments and vertical properties, as well as disputes falling within the regulatory scope of Articles 1003 to 1031 of the Civil Code; (b) disputes relating to claims for compensation of any kind for car damage, between the beneficiaries of the compensation or their successors and those liable for compensation or their successors, as well as claims under a car insurance contract, between insurance companies and policyholders or their successors, unless the damaging event caused death or bodily injury; (c) disputes relating to fees under Article 22A of the Code of Civil Procedure; (d) family disputes, except for those laid down in Article 592(1)(a), (b) and (c) of the Code of Civil Procedure; (e) disputes concerning claims for compensation by patients or their relatives against doctors which arise during the pursuit of the doctors' professional activity; (f) disputes arising from the infringement of trademarks, patents, industrial designs or models; (g) disputes arising from stock exchange contracts.

- in the field of labour law and for the resolution of consumer disputes, as described above;
- involving victims of domestic violence (Law 3500/2006);
- for certain offences as provided for in Law 3094/2010.

Are there specific rules to follow?

- Recourse to mediation for the disputes laid down in Law 4640/2019 is allowed in the following cases:

1. if the parties agree to use mediation after the dispute has arisen;
2. if the parties are called upon to have recourse to mediation and consent to it;
3. if the recourse to mediation is ordered by a judicial authority of another Member State and such recourse does not affect morality and public order;
4. if the recourse to the mediation procedure is required by law;
5. if there is a mediation clause in a written agreement between the parties.

- The court before which a private dispute is pending which may be subject to mediation may, at any stage of the proceedings, as appropriate, taking into account in its sole discretion all the circumstances of the case, summon the parties to use the mediation procedure to resolve the dispute. If the parties agree, the relevant written agreement is included in the minutes of the court. In this case, the court must postpone the hearing of the case to a trial date after the lapse of three months and not more than six months, not taking into account court recesses. The consequence is the same in the other cases of recourse to mediation while proceedings for the trial of the case are pending. If the parties or one of them appears before the court through an attorney, the power of attorney also covers the agreement on subjecting the dispute to mediation.

- Subjecting a dispute under private law to the process of mediation does not preclude taking an interim measure for that dispute, in accordance with the provisions of the Code of Civil Procedure. The judge ordering the interim measure may, under Article 693(1) of the Code of Civil Procedure, set out a period of not less than three months for filing the action for the main case.

- The Prosecutor of the Court of First Instance *(Eisangeleas Protodikon)*, in the context of his/her responsibilities, in accordance with Article 25(4)(a) of Law 1756/1988 (Government Gazette, Series I, No 35, 1988), is entitled to recommend that the parties use the mediation procedure, where possible.

- The parties' agreement to use the mediation procedure is governed by the provisions of substantive contract law and must describe the subject matter of such procedure.

- The parties appear in the mediation procedure together with their legal representative, except in consumer disputes and minor disputes, where the personal appearance of the parties is allowed. A third party may also participate in the procedure, if this is deemed necessary, in agreement with the parties and the mediator.

- A mediator is appointed by the parties or a third party chosen by all the parties, including the mediation centres. There is one mediator, unless the parties agree in writing that there will be more than one.

- The time, place and other procedural details of the mediation are determined by the mediator in agreement with the parties. If it is not possible for both parties and the mediator to be physically present at the same place and time, the mediation may be conducted by teleconferencing through a computer or another teleconferencing system to which the other parties to the dispute have access.

- The mediators may, in performing their duties, communicate with each of the parties and meet with them either separately or jointly. A mediator may not pass on information obtained during a meeting with one party to the other without the consent of the party who provided the information.

- The mediation procedure is in principle confidential, no records are kept, and it must be conducted in a way that does not breach its confidentiality, unless the parties agree otherwise. Before the procedure starts, all parties involved must agree in writing to keep the mediation procedure confidential. The same obligation also applies to any third party involved in the procedure. If they so wish, the parties can undertake in writing to maintain the confidentiality of the content of the agreement which they may reach during mediation, unless its notification is necessary for the implementation of the agreement, in accordance with Article 8(4), or is necessary for reasons of public order.

- If the dispute is brought before the courts or becomes subject to arbitration, the mediator, the parties, their legal representatives and those who have participated in any way in the mediation procedure will not be examined as witnesses and are prevented from presenting information arising from the mediation procedure or relating to it, and specifically from referring to the discussions, statements and proposals of the parties, as well as to the views of the mediator, unless this is required for reasons of public order, mainly to ensure the protection of minors or to avoid any risk of damage to the physical integrity or mental health of a person.

- When performing their duties, mediators are subject to civil liability only for wilful misconduct.

The practical application of alternative dispute resolution (ADR)

The only ADR mechanism which can be considered operative in Greece is arbitration:

Under Articles 99 ff. of the Greek Bankruptcy Code, a mediator may be appointed to a conciliation procedure upon request by a natural or legal person to the bankruptcy court *(ptocheftiko dikastirio)*.

The bankruptcy court determines the validity of the request and may appoint a mediator from a list of experts. The mediator’s role is to use all appropriate means to achieve an agreement between the debtor and a (legally defined) majority of the creditors, in order to ensure the survival of the debtor’s business.

A mediator may ask a credit or financial institution for any information regarding the debtor’s economic activity which could be useful for the success of the mediation process.

If no agreement can be achieved, the mediator immediately informs the president of the court, who initiates proceedings before the bankruptcy court. The mediator's role ends here.

Information and training

The Central Mediation Board is responsible for dealing with any issue related to the implementation of the institution of mediation.

The Central Mediation Board may, at its discretion, set up sub-boards for the speedy resolution and examination of issues arising from the application of Law 4640/2019. The above sub-boards are composed of members of the Central Mediation Board; there is no bar to being a member of more than one sub-board. These sub-boards are explicitly authorised by the Central Mediation Board to finalise the matters they undertake, unless Law

4640/2019 specifically stipulates that the Plenary Session of the Central Mediation Board is responsible for finalising them.

In any case, the Central Mediation Board must comprise four sub-boards, with a two-year term of office and the following responsibilities:

1. «the Board for the Register of Mediators», which is responsible for keeping the Registers of Mediators, for any relevant matter or issuance of an act concerning the Registers kept and for the collection of the annual Reports of Activities;
2. «the Ethics and Disciplinary Control Board», which is responsible for mediators' compliance with the obligations arising from Law 4640/2019, for applying disciplinary law and imposing disciplinary penalties;
3. «the Board for the Inspection of Training Providers», which is responsible for any matter concerning the Training Bodies for Mediators;
4. «the Examination Board», which is responsible for holding written and oral examinations and grading the mediators examined for the purpose of accreditation.

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A. A legal person governed by private law, which may be established by:

1. one bar association or jointly by more than one bar association,
2. one or more bar associations in partnership with scientific, educational or professional bodies or chambers.

In cases (a) and (b) a partnership is possible with a reputable, internationally recognised foreign training provider with experience in providing mediation training and, more generally, in alternative methods of dispute resolution or in conducting mediation.

B. The Centre for Education and Lifelong Learning (KEDIVIM) of a Higher Education Institution, which has a relevant curriculum and its operation is governed exclusively by the current provisions on the operation of Higher Education Institutions, provided that all the conditions of Law 4640/2019 are met regarding the qualifications of the trainers for training on the subject of mediation and the minimum number of trainers and trainees.

C. A natural person or legal entity established in accordance with current Greek law or the law of a Member State, whose main purpose is the provision of training on mediation and other alternative ways of resolving disputes.

What is the cost of mediation?

1. The remuneration of the mediator is freely set by means of a written agreement between the mediator and the parties.
2. If there is no written agreement, the remuneration of the mediator is set as follows: (a) in cases where mediation is mandatory, the party seeking mediation pays the mediator in advance the amount of EUR 50.00 as a fee for the mandatory initial session. This amount is borne by the parties equally. If the dispute is brought before a court, the party to the dispute who did not appear in the mediation procedure, even though they were legally summoned for this purpose, or who did not pay the amount due to the mediator for the mandatory initial hearing, will be ordered under Articles 176 ff. of the Code of Civil Procedure to pay in full the amount paid for the mandatory initial session by the party seeking mediation. This amount is considered as court costs regardless of the outcome of the trial; (b) for each hour of mediation after the mandatory initial hearing, the minimum fee is set at EUR 80.00 and is borne equally by the parties. The mediator must provide parties with full information on how he or she is remunerated.

Is it possible to enforce a mediated agreement ?

After mediation, a mediation record is signed by the mediator, the parties and their legal representatives. If mediation fails, the mediation record may be signed by the mediator alone. Either party may submit the record of the agreement at any time to the registry of the court having subject-matter and territorial jurisdiction and in which the trial of the case is pending or is to be introduced. After the mediation record is deposited with the court, an action for the same dispute is inadmissible in so far as its subject matter is covered by the agreement between the parties, and any pending trial will be terminated.

Once deposited with the registry of the competent court, the mediation record constitutes an enforcement order as provided for in Article 904(2)(c) of the Code of Civil Procedure if the agreement may be subject to enforcement. The official copy is issued free of charge by the judge or the president of the competent court.

If the agreement contained in the mediation record also contains provisions relating to legal acts which by law are subject to a notarial act, notarial acts will be necessary, as appropriate. In this case, the regulations governing the preparation of such notarial documents and their transcription apply.

Upon being deposited with the registry of the competent court, the mediation record may be used as a legal document to register or delete a mortgage, in accordance with Article 293(1)(c) of the Code of Civil Procedure.

The written notification of the mediator to the parties for holding the mandatory initial hearing or the agreement on voluntary recourse to the mediation procedure of Article 5 suspends the time-barring and the limitation period for claims and rights, if such periods have already started in accordance with the provisions of substantive law, as well as the procedural deadlines set out in Articles 237 and 238 of the Code of Civil Procedure, for as long as the mediation procedure lasts.

Without prejudice to the provisions of Articles 261, 262 and 263 of the Civil Code, the suspended time-barring and limitation period for claims and rights under substantive law resumes on the day following the drafting of the record of failure to reach an agreement, or on the day after a declaration of withdrawal of one party from the mediation procedure is served on the other party and on the mediator, or on the day after the mediation procedure has been completed or terminated in any way.

Related links

Athens Bar Association

Ministry of Labour & Social Affairs

Consumer Ombudsman

Ministry of Justice

Hellenic Centre for Mediation and Arbitration

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