

## Cross-border family mediation - Greece



### Family mediation

The expression 'family mediation' refers to a form of out-of-court settlement of family disputes (i.e. financial disputes and disputes relating to property rights between spouses, similar disputes arising out of cohabitation or the relations between parents and children, and other family disputes), in which the parties are helped to arrive jointly at a mutually acceptable settlement.

I. The institution of *mediation* (*διαμεσολάβηση*) was introduced into the Greek justice system by **Law 3898/2010** on mediation in civil and commercial matters (Government Gazette, Series I, No 211/16-10-2010), which implemented Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008.

According to Article 2 of Law 3898/2010, 'privatelaw disputes may be referred to mediation by agreement between the parties, provided the subjectmatter of the dispute is at the parties' disposal', while Article 8 of the same Law provides that: '1. The parties or their legal representatives, or in the case of legal persons their agents, shall attend the mediation with their lawyer. 2. The mediator shall be designated by the parties or by a third party of their choosing. 3. The mediation procedure shall be determined by the mediator in agreement with the parties, who may terminate it whenever they so wish. The mediation process shall be confidential and no minutes shall be kept. In the course of the mediation, the mediator may communicate with and meet each of the parties'. On completion of the process, the mediator must draw up a record of the mediation (Article 9 of Law 3898/2010), including the agreement reached, signed by the mediator, the parties and the parties' lawyers. If so requested by at least one of the parties, the mediator must also deposit the record with the registry of the court of first instance of the place, whereupon it becomes enforceable.

The mediator is remunerated at an hourly rate, for a maximum of 24 hours, which includes the time spent preparing for the mediation. The parties and the mediator may agree on a different method of remuneration. The mediator's remuneration is borne by the parties in equal shares, unless they agree otherwise. Each party bears the cost of the remuneration of their own lawyer. The amount of the hourly fee is set and reviewed by decision of the Minister for Justice, Transparency and Human Rights.

(See <http://www.diamesolavisi.gov.gr/>)

II. Additionally **Article 214B(1) of the Code of Civil Procedure**, which was inserted by Article 7 of Law 4055/2012, introduced the institution of *judicial mediation* (*δικαστική μεσολάβηση*); according to that Article, 'privatelaw disputes may also be resolved by recourse to judicial mediation. Recourse to judicial mediation is optional and may take place before an action is filed or while it is pending'. The final subparagraph of paragraph 3 of the same Article states that 'any interested party may, through a lawyer acting on their behalf, submit a written request asking that the case be referred to the judge-mediator'. The Article goes on, '4. The court in which the case is pending may at any time, depending on the case and taking into account all the circumstances, call upon the parties to resort to judicial mediation with a view to settling their dispute and, at the same time, if the parties agree, may defer the hearing of the case for a short period, but for no more than six months. 5. If the parties reach an agreement, a record of the mediation shall be drawn up. The record shall be signed by the mediator, the parties and the parties' lawyers, and the original shall be deposited with the registry of the court of first instance where the mediation took place ... Once the record of the mediation is deposited with the registry of the court of first instance, in so far as it shows that the parties have agreed that a claim exists, it shall constitute an enforceable title in accordance with Article 904(2)(c) of the Code of Civil Procedure'.

The costs of judicial mediation fall squarely within the scope of the Law on the provision of legal aid to citizens with low incomes (Law 3226/2004).

Two important provisions are the new **Article 116A of the Code of Civil Procedure**, (inserted by Article 1(2) of Law 4335/2015), which states that 'at any time during a trial and in all proceedings the court shall encourage ... the choice of mediation as a means of settling the dispute out of court', and **Article 214C of the Code of Civil Procedure**, which states that 'the court shall suggest that the parties resort to mediation if that would be appropriate in the circumstances of the case. If the court's proposal is accepted, the hearing of the case shall be deferred for a period of three months. The same shall apply if the parties themselves decide to have recourse to mediation while the action is pending'.

There is no legislation in Greece governing family mediation specifically, so the rules that apply are the general rules on mediation and judicial mediation set out above.

Couples with different nationalities — married or living together in nonmarital partnerships — result in bicultural families, and in the event of divorce or break-up of the relationship, in addition to the ordinary issues associated with family disputes (e.g. parental responsibility, custody, contact with the child, child maintenance, property issues between the spouses), an even more serious difficulty can arise in cross-border cases, that of child abduction. The rules outlined above on mediation and judicial mediation can be readily applied in such cases; they are consistent with the already applicable rules of Article 7(2)(c) of the Hague Convention of 1980 and Article 55(2)(e) of Regulation (EC) No 2201/2003 (the 'Brussels IIa' Regulation).

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Last update: 07/09/2016