

## MEDIATION: DISPUTE MEDITATION & MEDICATION

### The Modern Outlook & the Tendency for Mediation

Mediation's earlier designation as **Alternative** Dispute Resolution (**ADR**) has tended in recent years to be revised as **Appropriate** Dispute Resolution but also as **The** Dispute Resolution.

A realistic assessment of the practices and benefits of mediation, compared to the "traditional" dispute resolution methods (litigation & arbitration) tends to an increasingly widely acknowledged perception of its value.

Furthermore, it appears realistic to think that -eventually- litigation (mainly) but even (why not?) arbitration, will become forms of Alternative Dispute Resolution, with mediation seen as a play on the words: "**Mediation = Dispute Meditation & Medication**".

### The Legal Framework in Brief

Law 4640/2019 (**Law 4640**) is the third attempt to introduce the institution in Greece. This was preceded, first by Law 3898/2010, which transposed into the domestic law Directive 2008/52/EC "on certain aspects of mediation issues in civil and commercial matters", and then by Law 4512/2018, which in the end remained inactive due to unconstitutionality (Supreme Court Administrative Plenary Decision 34/2018).

The detailed grid of the provisions of Law 4640 also introduces a Compulsory Initial Mediation Session (in Greek, **YAS**) for specific disputes, with triple entry into force as of 30.11.2019, 15.1.2020 and 1.7.2020 depending on the category of dispute (Law 4640, Articles 6, 7 & 44). As the trend towards ADR – "mediation" becomes more global, its reflection can be seen in Articles 209 – 214C of the Greek Code of Civil Procedure, particularly in Articles **214C** - proposal of the court to the parties to appeal to mediation, and **214B** - judicial mediation (where even though Law 4640 does not apply, still recourse to judicial mediation will not exempt the parties from the required YAS – Law 4640, Articles 1 & 6, par. 3).

Also worthy to refer to: a) the ADR Directive 2013/11/EU and the related ODR Regulation 524/2013 with respect to consumer disputes, which have been transposed by Joint Ministerial Decision 70330oik (OJ B /1421/9.7.2015); b) ADR entities of various forms (ranging from the Consumer Ombudsman to the Committee for the Notification of Copyright and Related Rights Infringement on the Internet (in Greek, EDPPI), the Police-Port Ombudsman, etc.); as well as c) the mediation provision included in the recent trade marks law (Law 4679/2020, Article 31) as an alternative for the resolution of proceedings pending before the Trademark Administrative Committee.

Finally, the **Singapore Mediation Convention** is an important tool for the further strengthening of the institution. Signed on 7.8.2019 by 46 states (52 as of May 2020, while 4 states have ratified it), it will enter into force on 12.9.2020 [Note: already the case] and, following the successful model of the New York Arbitration Convention, is expected to facilitate the need for the recognition and enforcement of mediation agreements where voluntary compliance fails.

## What, in your opinion, are the main benefits of the institution of mediation?

The main benefits offered by mediation are its **voluntary nature** (with the exception being the compulsory requirements of Law 4640/2019, however only where the YAS is concerned), flexibility (the process is shaped by the parties), **speed, small cost, confidentiality** (in the context of law and order), the possibility of **creative solutions**, the **control of the outcome** by the parties, the **achievement of only mutually acceptable agreements** and -mostly- the **maintenance and/or improvement of the relationship between the parties**.

If mediation fails, there is always the **option of litigation /arbitration**, but even in such a case mediation will have managed to contribute to a **realistic assessment of the goals pursued by the parties**. After all, the parties often, after a more mature consideration, may make a **fresh start**.

## On the occasion of the Covid-19 pandemic, the use of technology has come into the spotlight. What is your view on e-mediation?

The Covid-19 pandemic replaced the simultaneous physical presence of the parties and accelerated and strengthened all electronic communication, including the mediation process. Law 4640/2019 contains a relevant provision on teleconferencing (Article 5, par. 3), enabling the parties to use any appropriate means.

Characteristically, International Mediation Organizations were prompt on the one hand to create special platforms (CEDR & CIArb Pandemic Service, SIMC Covid -19 Protocol, etc.), and on the other hand to promote electronic mediation under a special framework (CEDR Online Mediation, EODID etc.).

Remote Mediation raises particular technical issues to be resolved, mainly issues of infrastructure, internet connection and security/confidentiality, which require both the mediator to be specially prepared and the participants to become familiar with its use. In addition, it requires adaptation of, and special attention to, a series of issues related to the overall communication of the parties (surrounding space, limited appearance, "body language", facial expressions, etc.).

**Dimitris Emvalomenos, LL.M., BGP Managing Partner, Accredited Mediator of the Greek Ministry of Justice & the Centre of Effective Dispute Resolution (CEDR) in London ([d.emvalomenos@bahagram.com](mailto:d.emvalomenos@bahagram.com))**

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Additional information at:  
**+30 210 3318170**  
**[law-firm@bahagram.com](mailto:law-firm@bahagram.com)**



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