Mediation: The Greek ADR Journey Through Time

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Abstract Traditionally, amicable dispute resolution methods have been recognised and often promoted by the Greek legislator. Various forms of conciliation and 'mediation' in the broad sense have been provided by the GrCCP and other special laws. In 2010, the GrMA was enacted in order to implement Directive 2008/52/EC, introducing a coherent framework for the regulation of mediation in civil and commercial matters. In the same spirit, two years later, Art. 214B was added to the GrCCP providing for judicial mediation, which is conducted exclusively by judges. Both institutions are currently applicable on a totally voluntary basis. Despite the adequacy of the existing legal framework, mediation is still treated with certain scepticism by both legal professionals and the parties. One can note, however, that since the enactment of the GrMA and Art. 214B GrCCP an increasing number of professionals appear to be interested in learning about the new institution. Given also the significant delays in the state-administered justice, one can expect that in the long term more interested parties may be drawn to mediation and other ADR forms.

1 The Existing Situation of ADR

In modern societies civil law dispute resolution is guaranteed by the rule of law and entrusted to civil courts. In this sense, the constantly increasing number of such disputes has been welcomed as a sign of democratisation and a decisive step towards

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the cultural and social emancipation of citizens (Νίκας 2012, § 59 I, p. 338). In the last decades, however, effective delivery of justice has been adversely affected by the workload of courts, the frequent abuse of procedural rights and infrastructure shortcomings. This has given rise to the development of ADR. As highlighted by the Scientific Committee of the Parliament in its report of 8 December 2010, issued on the occasion of the enactment of the GrMA,[1] ADR processes aim at a private solution, which will restructure the relationship of the parties and the issues that may have arisen between them. Such processes are based on the principle of private autonomy and the freedom of contract (Art. 5(1) of the Constitution; Art. 361 GrCC; Χριστοδούλου 2010, 288, 293; Kourtis 2013, 194).[2]

The Greek legislator has traditionally regarded conciliation as the best ADR method (Νίκας 1984, § 1 III, pp. 30 et seq.; Χαμηλοθώρης 2000, 31).[3] In popular consciousness, the worst settlement equals the best judgment. In this framework, the Greek legislator has assigned wide conciliatory tasks to judges. For instance: (a) justices of peace shall attempt to conciliate disputes falling within their competence before the hearing of the particular case; they can also conduct voluntary conciliation, upon request of the parties, in civil law cases falling outside their competence (Arts 208 and 209 GrCCP)[4]; (b) civil judges[5] are encouraged to conciliate disputes at any stage of the proceedings, according to Arts 233(2)-(4)[6] and 524(1) GrCCP; (c) Art. 667 GrCCP[7] provides for the judge's duty to attempt to

[1]Law 3898/2010 titled 'Mediation in civil and commercial matters' implemented Directive 2008/52/EC of the European Parliament and the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, OJ C 286, 17.11.2005, 1. See in particular Part A of the Explanatory Report to the GrMA.

[2]Cf. Areios Pagos (Full Bench) 16/2013; Areios Pagos (Full Bench) 26/2006; Areios Pagos 103/2012; Areios Pagos 175/2010; Areios Pagos 2103/2009; Areios Pagos 1764/2009; Areios Pagos 1740/2009; Areios Pagos 851/2009; Areios Pagos 255/2009; Areios Pagos 53/2007; Areios Pagos 139/2006; Athens Court of Appeal 6848/2008; Athens Court of Appeal 2803/2008; Athens Court of Appeal 961/2008; Piraeus Court of Appeal 457/2008; Dodekanisa Court of Appeal 10/2007; Thessaloniki Court of Appeal 305/1998, with further references.

[3]On ADR as a previous useful or even necessary formal condition for the recourse to state justice from a comparative perspective, reference may be made to G.-E. Calavros (Γρ.-Ε. Καλαβρός 2010, 166, 167).

[4]According to Art. 212(4) GrCCP, conciliation under Arts 208 et seq. GrCCP has the same effect with court settlement. Christodoulou, (Χριστοδούλου 2010, 288, 293) considers the provisions of Arts 208 and 214A GrCCP as examples of court-annexed and out-of-court mediation respectively (Μανιώτης 2012, 712; Αναστασοπούλου 2011, 1; *contra* Klamaris and Chronopoulou 2013, 587).

[5]Respectively, Art. 46(1) of the former Lawyers Code (Decree 3026/1954) provided for the lawyer's duty to attempt conciliation in cases that are considered suitable. The same provision is also included in Art. 7b of the Ethical Code of Legal Profession. The current Lawyers Code (Law 4194/2013) classifies 'mediation in order to seek compromise' among the lawyer's duties.

[6]As amended by Art. 22(3)-(4) of Law 3994/2011 (Anthimos 2012, 156–157).

[7]See also Law 1876/1990, which provides for the out-of-court resolution of certain labour law disputes by the Organisation for Mediation and Arbitration, a legal entity under private law (Χαμηλοθώρης 2000, 43; Χαμηλοθώρης 2011, 57; Περιβολάρης 2008, 15). Law 1569/1985

conciliate labour law disputes (Μακρίδου 2009, 139); (d) in the field of public law, Art. 23 of Law 2882/2001 provides for the judge's duty to attempt conciliation in cases of expropriation.[8]

Particular mention should be made of the mandatory out-of-court procedure for dispute resolution that was introduced by Art. 214A GrCCP, which was added by Law 2298/1995.[9] Without having produced the expected results, Art. 214A GrCCP has been recently amended by Law 3994/2011, providing for the optional conciliation on the parties initiative.[10] Admittedly, this amendment has significantly enlarged the importance of such conciliation (Απαλαγάκη 2012, 572) by (a) giving this a universal character; (b) inciting the judge to encourage conciliation at any stage of the proceedings (Art. 233 GrCCP); and (c) giving the minutes of such conciliation an effect similar to notarial act (Art. 293(1) GrCC P; Διαμαντόπουλος 2013, 72 et seq.). Those elements considered, authoritative representative of legal doctrine notes that "[. . .] without exaggeration, conciliatory dispute resolution could be embodied in the objectives of the civil trial [. . .]" (Νίκας 2012, § 59 I, p. 339; as to the purposes of the civil trial, see Διαμαντόπουλος 1996, § 3 II, pp. 87 et seq., notes 102 et seq.).

ADR methods have also been provided by special laws, such as Art. 15 of Law 4013/2011 on the settlement committees for commercial leases (Κατράς 2011, 193 et seq.; Κοτζαμάνη 2012, 361 et seq.) or, even earlier, Art. 11 of Law 2251/1994 on the committee for the amicable settlement of consumer disputes (Κουτσουράδης 2005, 353 et seq., 372 et seq.; Παπαϊωάννου 2005, 139 et seq.). The latter committee was one of the entities entrusted with the out-of-court conciliation process under the former wording of Art. 2 of Law 3869/2010 on over-indebted individuals (Κρητικός 2012, 302 et seq.). In this case, the failure of the out-of-court conciliation constituted a formal condition for the filing of the application of

providing for the out-of-court resolution of traffic accident disputes has been abolished by Law 1867/1989.

[8]Art. 23(5) of Law 2882/2001, which was added by Art. 131(3) of Law 3070/2012, classifies the preparation of a settlement agreement among the duties of the legal representative of the state in cases where the relevant compensation does not exceed the amount of 30.000,00 euros.

[9]The Greek legislator (conforming to Nr. R (86) 12 of 16.12.1986 Recommendation of the Committee of Ministers of the Council of Europe) introduced conciliation as a mandatory stage before the hearing. After continuing postponements due to the reactions of Bar Associations, Law 2915/2001 eventually activated the provision and replaced the term 'conciliatory dispute resolution' in Art. 214A GrCCP with the term 'out-of-court dispute resolution', on the grounds that the full acceptance of the positions of one party without any compromise cannot be excluded (Diamantopoulos 2003, § 6 I, p. 319, 320).

[10]By virtue of Art. 19 of Law 3994/2011 (Απαλαγάκη 2011, 30 et seq.). On potential misconducts on the occasion of the possibility of conciliatory dispute resolution under Art. 214A GrCCP, see Order Nr. 1/2000 of the President of the Trikala Multi-Member Court of First Instance. The relevant statistics concerning Athens, Thessaloniki and Heraklion Courts of First Instance (2001–2006) and East Macedonia-Thrace and Thessaloniki Courts of First Instance (2001–2011) show that in practice the new institution was not welcomed (Αναστασοπούλου 2011, 3; Ηλιακόπουλος 2012, 21 et seq.).

an indebted individual (not for the hearing) for the judicial settlement of their debts (Αρβανιτάκης 2010, 1464, 1467; Κατηφόρης 2013, 9 et seq., notes 23 et seq.). After its amendment by Law 4161/2013, Art. 2 of Law 3869/2010 provides for the optional mediation before the filing of the application of an indebted individual. In case of failure of mediation, the application of an indebted individual is filed with the competent justice of peace and only after such filing can the process of out-of-court conciliation take place. Last but not least, one should mention the mechanism of the Directorates of Labour Inspection, which are entrusted – among others – with "[. . .] the mediation between employers and employees for the amicable resolution of disputes emerging during labour relationships, towards the consolidation of social peace" (Ορφανίδης 2006, 454; Χαμηλοθώρης 2000, 44, 2011, 57).[11]

Prevailing ADR method in Greece is still arbitration, which is governed by Arts 867–903 GrCCP (Κουσούλης 2004, *passim*; Άνθιμος 2010, 472).[12] Arbitral expertise (Ορφανίδης 2006, 454) as well as preliminary evidence[13] may similarly be considered as ADR processes, given their deterrent effect on the commencement of proceedings.

Mediation has been officially included in the ADR methods provided by Greek law since the enactment of the GrMA in 2010.[14]

2 The Basis for Mediation

Greece has been one of the first EU member states to implement Directive 2008/52/EC by enacting the GrMA (Κλαμαρής 2010, 473 et seq.; Βαλμαντώνης 2013, 353; Άνθιμος 2012, 278; Παντελίδου-Κουρκουβάτη 2012, 1509, who argues – exaggerating – that there have been delays in the implementation of Directive 2008/52/EC).[15] According to Art. 4 GrMA "[M]ediation means a structured

[11] Article 3(1)(a)(dd) of Presidential Decree 369/1989.

[12] International commercial arbitration is governed by Law 2735/1999. See Areios Pagos 102/2012.

[13] Civil Procedure Draft VI (1961) 182.

[14] As to the difference between mediation and compromise, see Κόμνιος 2007, 32; Χριστοδούλου 2010, 289: by contrast with compromise, which is based on the reconciliation of the conflicting positions, mediation is based on the creation of 'new value', focusing on the parties' interests and extending to the process taking place even before the conclusion of the final agreement. The institution of conciliators, as provided by Art. 123 of the old Civil Procedure of 1834, may be considered as forerunner of mediation. See Οικονομίδης and Λιβαδάς 1925, § 156, p. 255, note 1. See Αναστασοπούλου 2011, 44, with reference to the past institution of 'Sastis' (=*Σαστής*) in Crete, an elder villager who undertook to peacefully resolve 'vendettas' in case of murder or animal theft. For an overview of the history of conciliatory dispute settlement in ancient and medieval Greece as a precursor of modern mediation, see Αντωνέλος and Πλέσσα 2014, 3–10.

[15] K. Calavros (Κ. Καλαβρός 2012, § 31 III, p. 20, note 2) disapproves for systematic and methodological reasons the inclusion of mediation provisions in a separate act, outside the GrCCP. In contrast, as member of the legislative committee of the Ministry of Justice (as reconstituted by Nr. 66492/13.6.2008 Decision of the Minister of Justice), he welcomed the choice of the

process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. It does not include attempts made by the justices of peace or the courts to settle a dispute in the course of judicial proceedings according to Arts 208 et seq. and 233 GrCCP".[16] Mediation obviously differs from any other out-of-court or conciliatory dispute resolution process due to the mandatory participation of the mediator, namely a third person in relation to the parties, who is asked to conduct mediation.

According to Art. 3(1)(a) GrMA, the parties may in principle agree to have recourse to mediation before or during the pendency of a suit (mediation *ex voluntate*). The parties may also be invited by the court to do so during the pendency of a suit, as provided by Art. 3(1)(b) GrMA (mediation *ex juditio*). In this case, the recourse to mediation is registered in the record of the court.[17] Mediation may further be ordered by another EU court (Art. 3(1)(c) GrMA)[18] as well as be imposed by another provision of law (Art. 3(1)(d) GrMA, mediation *ex lege*).[19] One can note that even though Art. 3 GrMA defines when recourse to mediation is possible, it does not define what 'recourse' means and, subsequently, when the mediation process begins. Legal doctrine has dealt with this question stating that "what is

latter as regards the integration of such provisions in the GrCCP. See draft Art. 208 GrCCP, as would be amended in order to regulate mediation, in Ειδική Νομοπαρασκευαστική Επιτροπή του Υπουργείου Δικαιοσύνης για την τελική διαμόρφωση του ΚΠολΔ 2009, 168, 169, as well as the relevant Explanatory Report on p. 46, 47; *contra* Πολυζωγόπουλος 2011, 270. The Scientific Committee of the Parliament, however, highlights in its report of 8 December 2010 that "[. . .] mediation does not constitute an alternative or out-of-court justice-rendering scheme, given that the mediator is not allowed to express or impose his own views concerning the dispute, the existing rights and, ultimately, the settlement [. . .]. Therefore, its inclusion in a separate chapter of the GrCCP on the model of arbitration is not necessary".

[16] Art. 214A(4)(a) GrCCP as added by Art. 1 of Law 2298/1995 and before its amendment provided that parties attempting conciliation could be assisted, if they wished so, by a third party jointly selected (Αμανατίδης 2000, 1572).

[17] Even in this case mediation remains voluntary for the parties (Klamaris and Chronopoulou 2013, 590).

[18] K. Calavros (Κ. Καλαβρός 2012, § 31 III, p. 24, 25) strongly argues that this obviously may occur only in cross-border disputes under Art. 4(a)(bb) GrMA and constitutes a case of free circulation of – not final – court judgments within the EU without the interference of *exequatur*. He doubts, furthermore, whether such cases fall within the field of the GrMA and disagrees as to the venue of mediation: this, as in arbitration cases, shall be defined in the parties' agreement or shall result from the fact of the conduct of a mediation process in a particular venue, without being important, in both cases, whether mediation was ordered by a EU court or not.

[19] Legal doctrine (Κ. Καλαβρός 2012, § 31 III, p. 25) has heavily criticised such provision as contrary to the Greek legal order and Directive 2008/52/EC, given that Art. 5(2) provides that the latter applies "without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions, whether before or after judicial proceedings have started, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system". However, this form of mandatory recourse to mediation has not been regulated by Greek law so far (Klamaris and Chronopoulou 2013, 590).

critical is the time when the mediation procedure actually begins, i.e. the time when the parties appoint a mediator in order to start the mediation procedure to solve their dispute" (Klamaris and Chronopoulou 2013, 593). According to the current legislative framework, recourse to mediation is made on the parties' or on the court's initiative. In both cases, mediation remains a non-binding and clearly private dispute resolution scheme. State justice is neither disputed nor 'privatised', given that access to the judicial system is not excluded, on the one hand, and mediation cannot be imposed on the parties, on the other hand; the parties are still free to choose the suitable scheme for the resolution of their dispute.[20]

A judicial mediation procedure for private law disputes is provided by Art. 214B GrCCP, which was added by Art. 7(1) of Law 4055/2012 (Θάνου-Χριστοφίλου 2013, 937 et seq.; Φράγκου 2014, 15 et seq.; Παντελίδου-Κουρκουβάτη 2012, 1509, who seems to be cautious, considering judicial mediation as a distortion which may hinder the evolution of mediation in Greece). Such ADR scheme is also voluntary (Απαλαγάκη (−Μπαλογιάννη) 2013, Art. 214(B) nr. 2; Μαργαρίτης and Μαργαρίτη 2012, Art. 214B nr. 4)[21] and conducted by judges. For this reason, at every court of first instance and court of appeal of the country, one or more of the presidents or senior judges shall be appointed as full-time or part-time mediators for a term of 2 years, which may be extended for one more year.[22] Recourse to mediation may take place before filing a suit or during *lis pendens*. The parties or their attorneys shall file the relevant application in writing. During *lis pendens*, the court – when it considers it appropriate and having taken account of all circumstances of the case (e.g. nature of the dispute, evidence difficulties etc., see Νίκας 2012, § 59 V, p. 344) – may invite the parties at any stage of the proceedings to use judicial mediation. Once the parties agree, the court shall adjourn the case for a hearing on a short date, which shall not exceed six months. The procedure of judicial mediation contains separate and joint hearings and discussions among the attorneys of the parties and the mediator judge, who may offer the parties non-binding suggestions as regards the resolution of the dispute. Mediation shall be conducted in such a way as to respect confidentiality, unless the parties agree otherwise. In this respect, before the opening, all persons involved are bound in writing to observe the confidentiality of the procedure. Judicial mediation under Law 4055/2012 has met strong criticism. Legal doctrine argues against the discretion of the judge to refer a case to judicial mediation instead of himself attempting to conciliate the parties during the hearing, in accordance with Art. 233 GrCCP. The referral of the case to another judge – who may act sometimes as mediator and sometimes as judge, depending on his appointment as

[20]Part A of the Explanatory Report to the GrMA.

[21]Legal doctrine in Greece consistently argues that ADR cannot be provided as mandatory since this would be contrary to Art. 20 of the Constitution (Απαλαγάκη 2012, 573) and Art. 6(1) ECHR (K. Καλαβρός 2012, § 31 III, p. 25), which guarantee the right of free access to justice.

[22]As amended by Art. 102(2) of Law 4139/2013 (Απαλαγάκη (−Μπαλογιάννη) 2013, Art. 214(B) nr. 2; Μαργαρίτης and Μαργαρίτη 2012, Art. 214B nr. 4).

full-time or part-time mediator – cannot be easily justified (Απαλαγάκη 2012, 573; Απαλαγάκη (–Μπαλογιάννη) 2013, Art. 214B, nr. 9; cf. Ηλιακόπουλος 2012, 28 et seq., on the occasion of the relevant discussion in the field of German law).[23] It is further noted in this respect that such mixed role of the judge may give rise to constitutional law concerns, given that the referral of the case to judicial mediation during *lis pendens* may put into question the principle of natural judge (Art. 8 of the Constitution; Art. 108 GrCCP), undermine personal and functional guarantees concerning the administration of justice and lead to delays.[24] It has been also argued, nevertheless, that such initiative actually constitutes an aspect of active management of the case by the court (case management). The judge becomes a manager who directs each case to the appropriate procedure, applying the innovative concept of the 'Multi-Door Courthouse'.[25]

Art. 2 GrMA, in conformity with Arts 1 and 867 GrCCP concerning arbitration cases, provides that "private law disputes can be referred to mediation upon agreement of the parties, provided that the latter have the right to dispose of the relative rights and obligations".[26] Family law disputes (e.g. matrimonial disputes and disputes concerning the relationships between parents and children; see Κόμνιος 2007, 49; Μαργαρίτης and Μαργαρίτη 2012, Art. 867 nr. 2.)[27] as well as rights concerning the protection of personality (e.g. religious conscience and worship)[28] cannot, thus, be referred to mediation (or arbitration). According to the

[23] Anthimos (Άνθιμος 2012, 284) highlights the contrast between Art. 214B GrCCP and Law 3898/2010 (as well as Directive 2008/52/EC) and argues that the provisions of Law 3898/2010 regarding training and accreditation should be applicable to judges, too.

[24] See Χριστοδούλου 2010, 291, noting that *ex juditio* court mediation falls outside the field of Directive 2008/52/EC. As to the question of the appropriateness of the judge acting as mediator, given the concurrence of conciliatory and decisive competences in the same person in case of failure of a mediation attempt (Ορφανίδης 2006, 458).

[25] This innovative concept is attributed to Prof. Frank Sander: Sander, Varieties of Dispute Processing, 70 F.R.D.111 (1976); see Βαλμαντώνης 2013, 356, who exposes his experience as Judge at the Athens Court of First Instance (Department of Obligations), having the chance to implement Art. 214B GrCCP twice in the judicial year 2011–2012. Cf. Ηλιακόπουλος 2012, 29, 30.

[26] Cf. Patra Court of Appeal 1263/2006.

[27] ADR may find its application to matrimonial disputes in case of consensual divorce (Καραμπατζός 2006, 525, 526, note 125, with references). Although the preamble of the Directive states as examples of rights and obligations on which the parties are not free to decide themselves rights and obligations that 'are frequent in family law and employment law', neither the Greek statutory text nor its Explanatory Report state any matters of family and labour law which are not at the parties' disposal. As pointed out (Kourtis 2013, 195, with further references at note 7), it is a matter on which Greek legal doctrine and courts will be called to give their interpretation in the future.

[28] Cf. Athens Court of Appeal 4535/1998. According to the Explanatory Report to the GrMA (Art. 2), the latter does not apply to revenue, customs or administrative matters or to the liability of the state for acts or omissions in the exercise of state authority (*acta jure imperii*). See also Ταμπάκης 2012, 548; Άνθιμος 2010, 475; *contra* Γρ.-Ε. Καλαβρός 2010, 165, 166. As to the exclusion of mediation (as well as arbitration) in case of provisional remedies, see Χριστοδούλου 2010,

right view, such right of disposal is wider than the relevant right to compromise (Κουσούλης 2004, Art. 867, p. 8; *contra* Κ. Καλαβρός 2012, § 31 III, p. 25; cf. Σαρίδου 2012, 281).[29] It should be noted, however, that this condition is not provided as regards judicial mediation under Art. 214B(1) GrCCP, probably due to legislative oversight, rather than conscious choice.

It should be highlighted that at the moment only in the field of over-indebted individuals does mediation in the strict sense, as it is established by the GrMA, explicitly apply by reference of Art. 2 of Law 3869/2010 as amended by Law 4161/2013. Of course, mediation in the strict sense is expected to apply to other areas, too.[30] Nonetheless, 'mediation' processes in the broad sense have also been provided by special rules concerning particular fields and institutions. Such is the case of (a) Art. 102 of the Greek Bankruptcy Code (Law 3588/2007), as recently amended by Law 4013/2011[31]; (b) Presidential Decree 190/2006 on the insurance mediation[32]; (c) the Hellenic Ombudsman for Banking-Investment Services, a private, non-profit entity, initially set up in 1998 by virtue of decision of the Hellenic Bank Association, which deals with disputes arising from the provision of banking and investment services (Καράκωστας 2004, 454 et seq.; Μπώλος 2004, 1130 et seq.; Αλικάκος 2005, 1682; Χαμηλοθώρης 2007, 217, 218); (d) in the field of public law, Art. 1(1) of Law 2477/1997, as amended by Art. 1(1) of Law 3094/2003, on the Greek Ombudsman, an independent administrative authority conducting a form of mediation between citizens and government departments or public services in the wide sense in cases where personal rights or legal interests of the citizens may have been violated; (e) in the field of criminal law, Art. 11 of Law 3500/2006 providing for the criminal mediation in case of crimes involving domestic violence; (f) similarly in the field of criminal law, Art. 308B of the Greek Criminal Code, which was added by Law 3904/2010, providing for the criminal conciliation (Μυλωνόπουλος 2011, 53 et seq.; Ηλιακόπουλος 2012, 27). So far

292 (with the exception, however, of disputes merely heard according to provisional remedies proceedings, e.g. in the case of Art. 988 GrCCP).

[29]Cf. Minutes of the Committee for the Review of the CCP 1967, 357, 358; Koussoulis (Κουσούλης 2004) notes that disputes arising from the exercise of formative rights for which there is a right of disposal, but not a right to compromise, can be subjected to arbitration (and, thus, mediation).

[30]E.g., in the areas of sports law, medical responsibility, intellectual property rights, specific family law matters, hotel business etc. (see, respectively, Μαναράκης 2012, 417 et seq.; Παντελίδου-Κουρκουβάτη 2014, 95 et seq.; Θόδου 2014, 121 et seq.; Πούλιος 2014, 129 et seq.; Τζορμπατζόγλου 2014, 143 et seq.).

[31]The mediation procedure under Article 102 of the Greek Bankruptcy Code aims at facilitating the conclusion of an agreement between the debtor and the creditors for the rehabilitation of the enterprises facing existing or predictable financial difficulty at a pre-bankruptcy stage (Μανιώτης 2012, 712).

[32]Art. 2(3) of Legislative Decree 190/2006 provides that 'insurance mediation' means any activity of presentation, proposal, provision of preparatory work for the conclusion of insurance contracts or assistance during the enforcement of such contracts.

there are no official statistics available as regards mediation under the GrMA. With regard to judicial mediation under Art. 214B GrCCP (in force since 2 April 2012 as to Courts of First Instance and 20 Mars 2013 as to Courts of Appeal), 9 out of 16 cases have been settled in the Athens Court of First Instance, while 4 out of 7 cases have been settled in the Thessaloniki Court of First Instance.[33]

3 The Agreement to Mediate

Art. 2(b) GrMA stipulates that "the agreement to submit a dispute to mediation is evidenced by virtue of a written document or the court records in case of Art. 3(2) and is governed by the provisions of substantive contract law". By contrast with arbitration agreements, where Arts 868 and 869 GrCCP provide for the written form as a condition for the validity of such agreements, in mediation the written form has only the role of documentary evidence, with no particular form being required for the validity of the agreement to mediate.[34] As noted in the Explanatory Report to the GrMA, this provision contributes to the legal certainty as regards the agreement to mediate as well as to the protection of the parties, who may be obliged to attend the mediation process and to participate in good faith.[35]

According to the general principles of Greek civil law, such agreement is valid, unless its content is contrary to prohibitive provisions of law or good morals (Arts 174 and 178 GrCC). However, apart from the substantive law effects, the said agreement has also procedural law effects, given that it is designed – in case of success – to prevent recourse to civil justice. It is argued that the mere fact that provisions of substantive contractual law regulate such contracts does not necessarily transform them into substantive law contracts, since their fundamental element is not the resolution of substantive claims, but the submission of a dispute to another procedure, along with the simultaneous relinquishment of the state judicial procedure. They can, consequently, be considered as procedural law agreements governed by substantive law only as regards their validity (Klamaris and Chronopoulou 2013, 597, 591, 592; *contra* K. Καλαβρός 2012, § 31 III, p. 26; Anthimos 2012, 159; Αγγούρα 2014, 23 et seq., who are clearly in favour of the substantive nature of such agreement).[36] In other words, the argumentation

[33]By the President of the Athens Court of First Instance Mrs I. Stratsiani and the President of the Thessaloniki Court of First Instance Mrs Aik. Fragkou.

[34]As to arbitration, see instead of others Areios Pagos 1737/2009; Larissa Court of Appeal 338/2012; Athens Court of Appeal 1105/2009; as to mediation, see among others Χριστοδούλου 2010, 295; Kourtis 2013, 203: "the written form is not a condition of validity of the agreement to mediate. However, it is considered that the role that the writing requirement plays in ensuring that the parties actually agreed on mediation cannot be overlooked.".

[35]Explanatory Report to the GrMA (Art. 2).

[36]For an analysis of the doctrines concerning the legal nature of the mediation agreement (as a *sui generis* substantive law agreement or purely procedural law agreement), see Κόμνιος 2007,

concerning the twofold legal nature of judicial settlement may equally be applied to the case of mediation (Νίκας 1984, § 2, p. 36 et seq., particularly at p. 82 et seq.).

All disputes arising from a particular legal relationship between the parties – regarding either their rights and obligations or the interpretation of the terms of the specific contract as well as its validity and its termination – can be subjected to mediation.[37] In the same spirit, claims of both parties arising from relationships, actions or omissions can equally be subject to mediation.[38]

The agreement to mediate can be concluded either separately or jointly, in the same document with the main contract (as mediation clause). Even in the latter case, however, it constitutes a separate agreement, distinguished from the main contract, and is independent and autonomous, without being affected by this. This autonomy of the mediation agreement as regards the main contract normally entails its validity even after the termination of the main contract.[39]

The principle of freedom of the parties in mediation presupposes, under Art. 2(a) GrMA, that they have full knowledge of the merits and the legal dimension of their dispute in order to agree on its referral to this process.[40] This does not exclude the contractual provision of referral to mediation of future disputes arising in the framework of a specific legal relationship,[41] provided that such agreement is also repeated after the dispute has arisen.[42]

Even in the latter case, however, such mediation clause cannot prevent recourse to state justice once the said dispute arises, as provided by Arts 8(a) and 20(1) of the Constitution and Art. 6 ECHR. As noted in the Explanatory Report to the GrMA, the mediation clause does not entail procedural effects as those arising in case of an arbitration clause (Klamaris and Chronopoulou 2013, 592, 594; Kourtis 2013, 204; in the same direction Ορφανίδης 2006, 459, as regards mediation clauses included in regulations of apartment blocks; *contra* Ηλιακόπουλος 2012, 25; as to an intermediate position see Anthimos 2012, 159, who argues that "there is some room for debate in this area" regarding Art. 3(1) GrMA). In this framework, the agreement to mediate constitutes a ground for a genuine dilatory objection under substantive law, which refers to the legality of the claim and not to the admissibility

36, 37. See also Χριστοδούλου 2010, 298, stating that the contract between the mediator and his client has rather the nature of a mixed contract, combining elements of more contractual types under the GrCC.

[37] Cf. Areios Pagos 506/2010; Athens Court of Appeal 6020/2011, as to arbitration agreements.

[38] Athens Court of Appeal 6020/2011.

[39] Athens Court of Appeal 6020/2011; see also Athens Court of Appeal 1105/2009, with further references with regard to arbitration agreements.

[40] Art. 2 stipulates, among others, that the parties agree to use mediation even after the dispute has arisen, in accordance with Art. 2(a) of Directive 2008/52/EC.

[41] The written agreement to mediate future disputes shall refer to specific legal relationship, in the framework of which the said disputes will arise, without, however, being necessary to define specific disputes; Cf. Athens Court of Appeal 6020/2011 (regarding arbitration).

[42] Explanatory Report to the GrMA (Art. 3).

of the filing of the lawsuit or the hearing (under Art. 263 GrCCP; Χριστοδούλου 2010, 294; Άνθιμος 2010, 477; Ηλιακόπουλος 2012, 25; Γραβιάς 2012, 248).[43] Adopting this position, the legislation is in conformity with the case law of Greek courts. For example, in 1971 Areios Pagos (confirming past case law[44]) refused to recognise procedural effect to 'mediation' (in the broad sense) or conciliation clauses on the ground that access to justice can be prevented only in the case where a third person, empowered by a relevant agreement of the parties, makes a legally binding decision on the case, as happens in arbitration.[45]

The breach of the mediation agreement may give rise to the contractual obligation of the parties to attempt to settle the dispute.[46] In any case, the agreement on recourse to mediation after the commencement of the trial does not constitute contractual waiver of the document of the claim under Art. 294 GrCCP (Κόμνιος 2007, 41), given that in this case the court is obliged to suspend the hearing (Art. 3(2)(b) GrMA; cf. Art. 214B GrCCP).

In order to protect and ensure the validity of the parties' claims, the compatibility between procedural and substantive rules regarding limitation and prescription periods is required, so that the parties will not be discouraged from referring to mediation due to the risk of extinction of such claims. In this respect, Art. 11 GrMA stipulates that the recourse to mediation interrupts the statute of limitations and the prescription period for as long as the mediation procedure lasts. Without prejudice of Arts 261 et seq. GrCC, limitation and prescription period that has been interrupted, restarts once the report of failure is drafted or a party serves the statement abandoning the mediation to the other party and the mediator or the procedure is in any other way terminated (Γρ.-Ε. Καλαβρός 2010, 181 et seq.; Klamaris and Chronopoulou 2013, 594,).[47]

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[43] According to Klamaris and Chronopoulou 2013, 594: "the beginning of a mediation procedure blocks the opening/continuation of a trial before state courts". Komnios (Κόμνιος 2007, 41) argued (*de lege ferenda*) that the valid referral of a dispute to mediation and the timely presentation of the relevant procedural objection should create lack of jurisdiction of civil courts under the resolutive condition of (a) the validity of the mediation agreement and (b) the failure of mediation, which will then reset the jurisdiction of civil courts *ipso jure*; in this direction Ορφανίδης 2006, 459, 460 (*de lege ferenda*); see also Kourtis 2013, 204, note 56. As to the mediation clause for future disputes as Standard Form Contract under Art. 2 of Law 2251/1994, see in detail Χριστοδούλου 2010, 294, 295.

[44] Areios Pagos 473/1955.

[45] Areios Pagos 620/1971; in the same direction, among many others, Areios Pagos 32/2009; Three-Member Athens Court of First Instance 2377/1987; Single-Member Athens Court of First Instance 6172/1975.

[46] Legal doctrine further argues that where a party to a dispute does not perform her obligation to attempt to settle the dispute, the other party has a defensive right of substantive law, which has a temporary effect leading to the suspension of her own performance (Χριστοδούλου 2010, 293, 294; Kourtis 2013, 204).

[47] Klamaris and Chronopoulou notε that "[t]he reference to Arts 261 et seq. of the Greek Civil Code and the provision of Art. 11 of the GrMA cannot be considered as successful. They create specific interpretative difficulties, which could suspend and influence both the success of mediation

4 The Mediator

Art. 4(c) GrMA defines the mediator as "a third person in relation to the parties, who is asked to conduct mediation in an effective, competent and impartial way, regardless of the way in which that third person has been appointed or requested to conduct the mediation".

Initially, it was provided that in domestic disputes mediators should be attorneys accredited pursuant to Art. 7 GrMA. After the amendment of the GrMA by para. IE.2 of the first Article of Law 4254/2014, it is provided that also in domestic disputes the parties are allowed to appoint any person accredited according to the GrMA,[48] as has been provided with regard to cross-border disputes. Under Art. 8(2) GrMA, the mediator may be appointed by the parties or by a third party of their choice.

As already mentioned, in case of judicial mediation under Art. 214B GrCCP, mediators are judges of the court of first instance or the court of appeal, provided that they have not been involved in the particular dispute (Μανιώτης 2012, 711).

The involvement of mediators may be based – usually – on a contract between them and the parties, on a public law instrument (judgment) or even *de facto*, without any existing relationship with the parties (Χριστοδούλου 2010, 297, noting that the agreement to mediate may relate the mediator with only one of the parties). The GrMA refers to only one mediator (singular) and never to mediators. Nor is the term co-mediation found anywhere in the relevant provisions. It cannot be ruled out, however, since no explicit exclusion is made (Klamaris and Chronopoulou 2013, 598). Mediators are not obliged to accept their appointment (Art. 8(4) GrMA); if they accept it, however, they have to act in compliance with the powers and duties given to them by the parties. Before accepting their appointment, mediators must verify that they have the appropriate expertise and premises to conduct mediation and, upon request, they must disclose information concerning their knowledge and experience to the parties (Art. 1.2. of the Code of Conduct).

The law does not provide for the possibility of expelling or discharging the mediator. Maybe a forthcoming ministerial decision will regulate the issue (Klamaris and Chronopoulou 2013, 598; Kourtis 2013, 206, aptly points out that "the mediator must immediately declare any possible conflict of interest, because a late disclosure

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as an institution as well as its acceptance as an alternative dispute resolution mechanism". As to the interpretative difficulties of Art. 11 of the GrMA, see also Polyzogopoulos 2013, 1758. As to the issue whether the interruption applies both to claims of parties involved in the mediation process (*inter partes*) and those of third parties (*erga omnes*), see in detail Χριστοδούλου 2010, 303; Anthimos 2012, 156, both arguing that the interruption due to the recourse to mediation has an *erga omnes* effect.

[48]The requirement that lawyers can act as mediators only after their accreditation has, according to Klamaris and Chronopoulou 2013, 602, a suspensive effect, since lawyers shall not suggest mediation to their clients on their own initiative. As to the complaints about the monopoly of lawyers in the domestic mediation arena (Anthimos 2012, 160, with references at notes 38 et seq.).

might jeopardise the mediation. Articles 52 et seq. CCP which set out the reasons and procedures for the exception of a judge from the panel hearing of a case could be applied *mutatis mutandis*").

Art. 5 GrMA provides that mediators training institutions shall be civil non-profit organisations founded by at least one bar association and at least one chamber, and working after being licensed under Art. 7 GrMA. Particular issues concerning such organisations (e.g. licensing process, conditions of operation, programme and content of the training, professional qualities of trainers, sanctions etc.) are regulated by Presidential Decree 123/2011.

Furthermore, Art. 6 GrMA provides for the establishment of the Mediators Certification Commission under the auspices of the Ministry of Justice, Transparency and Human Rights, which is entrusted with the certification of mediators, the supervision of training organisations, the supervision of mediators as regards their compliance with the Code of Conduct and the proposal to the Minister of Justice, Transparency and Human Rights as regards the imposition of sanctions to training organisations.[49]

According to Art. 7 GrMA, the Department of Advocates and Bailiffs of the General Directorate of Administration of Justice of the Ministry of Justice, Transparency and Human Rights is entrusted with the accreditation of mediators, the issuance of the relative administrative acts, the drafting of records containing the names of accredited mediators and licensed training organisations, and their distribution to the courts (Γιαννοπούλου 2014, 79 and seq.).

In the event that a mediator violates the Code of Conduct, the Minister of Justice, Transparency and Human Rights has the power, with the consent of the Mediators Accreditation Commission, to revoke the accreditation temporarily or permanently according to the severity of the violation or the repeated behaviour of the mediator (Art. 5 Code of Conduct).

Art. 4(c) GrMA reiterates part of the wording of Art. 3(b) of Directive 2008/52/EC, stating that the mediator shall conduct in an effective, impartial (Κολτσάκη 2014, 79 and seq.) and competent way. Under Art. 8(4) GrMA, mediators are not obliged to accept their appointment.[50] They are only liable for fraud, by contrast with arbitrators, who are also liable for gross negligence (Art. 881 GrCCP).

Art. 9 GrMA provides for the duty of the mediator to draw up a mediation agreement record containing: (a) the mediator's full name; (b) the location and time of mediation proceedings; (c) the names of the participants; (d) the agreement to

[49]In this respect, the Minister of Justice, Transparency and Human Rights has issued two ministerial decisions dealing with the regulations of operation of the relevant bodies: Ministerial Decision Nr. 34801 οικ./24.4.2012 and Ministerial Decision Nr. 34802 οικ./24.4.2012 (cf. Ρίζος 2011, 245 et seq.; Χριστοδούλου 2010, 300, as regards e.g. the legal nature of codes of ethics, their effect on third parties, the extent of the right of self-regulation of the said organisations, etc.).

[50]Mediators can, however, terminate the process in case they notice any violation of criminal law provisions or the Code of Conduct (Σκορδάκη 2012, 188).

mediate upon which the mediation procedure was based; (e) the agreement reached in the mediation or the failure of the mediation and the cause of the dispute.

After the end of the mediation proceedings, the minutes are signed by the mediator, the parties and their attorneys. Upon request of at least one of the parties, the original document of the agreement can be submitted by the mediator to the Court of First Instance of the jurisdiction where the mediation took place.[51]

By virtue of Art. 7 GrMA, Ministerial Decision Nr. 109088 οικ./12.12.2011 of the Minister of Justice, Transparency and Human Rights on the accreditation requirements for foreign mediators (see Σκορδάκη 2012, 184, 185, as regards the criticism against the exclusion of recognition of accreditation titles acquired outside EU, such as in the USA),[52] as well as the Code of Conduct which accredited mediators shall respect, have already been issued.

The mediator is obliged under the Code of Conduct to ensure that prior to the beginning of the mediation the parties have understood and expressly agreed on the terms and conditions of the agreement to mediate, including any provisions relating to obligations of confidentiality of the mediator and the parties (Art. 3.1. Code of Conduct).

Obviously, the Greek legislator took significant measures in order to ensure the quality of mediation as provided in Art. 4 of Directive 2008/52/EC. It has been argued, however, that complexity, bureaucracy and difficulties in the implementation of the existing legal framework unfortunately contribute to the maintenance of the limited interest in ADR methods in Greece (K. Καλαβρός 2012, § 31 III, p. 23, argued in favour of the establishment of strict criteria as regards the option of lawyers-mediators).

5 The Process of Mediation

Mediation procedure is basically governed by Art. 8 GrMA in a spirit of flexibility, given that the relative details are to a large extent determined by the mediator after consultation with the parties. The parties are free to agree with the mediator on the manner in which the mediation is to be conducted either by reference to a set of rules or otherwise (Art. 3.1. Code of Conduct). The lack of formality should not, however, be considered as introducing an out-of-law process. Mediation is not over and above the law. On the contrary, fundamental procedural achievements, such as the equality of the parties, the independence and impartiality of mediators etc., are necessary

[51] Decision Nr. 85485 οικ./18.9.2012 of the Ministers of Finance and Justice, Transparency and Human Rights, issued by virtue of Art. 9 GrMA, set the relevant fee at the amount of 100,00 euros.

[52] Cf. Athens Administrative Court of Appeal 1777/2009; Athens Administrative Court of Appeal 608/2008.

in order to ensure its success (Μανιώτης 2012, 716, argues that the regulatory framework of mediation must not be determined exclusively by the parties).[53]

An important element of the mediation procedure is its confidential character. As stipulated in Art. 10 GrMA, mediation shall be conducted in such a way as to respect confidentiality, unless the parties agree otherwise. The parties may bind themselves in writing to maintain confidentiality as to the contents of any agreement reached between them, unless the disclosure of its content is necessary for the enforcement of such agreement.

None of the persons involved in the mediation procedure (e.g. mediators, parties, their attorneys etc.) shall be heard as witness in the future (they are exempted according to Art. 400 GrCCP).[54] Nor shall they be compelled to disclose information concerning the mediation procedure in subsequent court or arbitration proceedings, unless it is imposed by public policy rules and in particular when it is required in order to ensure the protection of children or to prevent harm to the physical or psychological integrity of a person.

As regards judicial mediation (Art. 214B(6) GrCCP), it is also expressly provided that all persons involved bind themselves in writing to maintain confidentiality. The procedure shall be similarly conducted in such a way as to respect confidentiality, unless the parties agree otherwise.

Despite the objective of the flexibility, as stated above, mediation procedure is also regulated by framework provisions. In this respect, Art. 8(1) GrMA provides that the parties shall attend the mediation procedure accompanied by authorized attorneys.[55] By virtue of Art. 8(2) GrMA the mediator shall be appointed by the parties or a third person of their choice.[56] It is subsequently stated that the parties are free to terminate the mediation procedure whenever they wish.[57] Art. 8(3)(b)

[53] Explanatory Report to the GrMA (Art. 8).

[54] However, the objection of witness exemption under Art. 403 GrCCP loses its significance since the court may take into account evidence not fulfilling legal requirements (Κόμνιος 2007, 34; Νικολόπουλος 2011, § 16 V, p. 260 et seq., 265 et seq.; Παϊσίδου 2008, 464). The issue has not been dealt with by Γρ.-Ε. Καλαβρός 2010, 178 et seq.; Αναστασοπούλου 2011, 43; Anthimos 2012, 159. See also Ρίζος 2011, 48 on the comparison between the mediator and the technical advisor.

[55] This provision has been criticised by Σκορδάκη 2012, 186, who notes that it is difficult to justify such obligation, given also its absence even in arbitration proceedings; she admits, however, that attorneys may contribute to reaching and drafting an enforceable agreement (in this direction, see also Ρίζος 2009, 42 43; Παντελίδου-Κουρκουβάτη 2012, 1511). No specific obligation is provided for the lawyers of the parties as regards the conduct of mediation (see among others Klamaris and Chronopoulou 2013, 590).

[56] The mediator may be chosen on the basis of the records under Art. 7 GrMA in case of domestic mediation, or from foreign mediation institutions in case of cross-border disputes.

[57] Given that the parties shall have full control over the result of the mediation (i.e. reaching of an agreement), while the mediator shall have full control over the procedure, Skordaki (Σκορδάκη 2012, 187) argues that the "termination of the mediation procedure by the parties" shall be interpreted as a declaration that they are not willing to reach an agreement and, so, the mediator shall terminate the procedure without delay.

GrMA stipulates that no minutes or records are kept.[58] The mediator can, moreover, communicate and meet in private each party. Similar provisions are introduced by Art. 214B(3)(a) GrCCP as regards judicial mediation.

Neither the GrMA nor Art. 214A GrCCP provide directly for the duration of the mediation procedure. This could be determined by provisions concerning the court procedure. In this respect, Art. 3(1)-(2) GrMA stipulates that the recourse to mediation results in a temporary stay of court proceedings up to the termination of the mediation, which cannot exceed the period of 6 months. Similar provision can be found in Art. 214B(4) GrCCP concerning judicial mediation.

One should note that the main mediation procedure may finish even within 1 or 2 days, reaching an agreement or not (Παντελίδου-Κουρκουβάτη 2012, 1513). In this direction, Art. 12(1) GrMA provides that the mediator is remunerated on an hourly basis and for a period of time not exceeding 24 h, including the time necessary for preparation for the mediation procedure.[59]

6 Failure of Mediation and Its Consequences

As already stated, Art. 8(3) GrMA provides that the parties can finish the mediation procedure at any time they wish, meaning that they can declare their will not to reach an agreement and, thus, the mediator himself proceeds immediately to the termination of the procedure. GrMA does not contain specific provisions in case of an unsuccessful mediation. The last paragraph of Art. 9 GrMA only stipulates that in case of unsuccessful mediation the mediator shall draw up and sigh the minutes alone. He shall not, however, mention the cause of such failure and the party responsible for it (Klamaris and Chronopoulou 2013, 596).

Even though the GrMA does not explicitly enumerate the consequences following an unsuccessful mediation, its spirit makes it clear that at least on some occasions there shall be consequences of a substantive or procedural nature. For instance, the prescription period that was interrupted shall be renewed. If the mediation was ordered by the court, the latter continues the proceedings after summons by any of the interested parties. If the parties refer to mediation before the commencement of the court proceedings, they can file a lawsuit concerning their claim (Klamaris and Chronopoulou 2013, 596). Contrary to the initial proposal,[60]

[58] Skordaki (Σκορδάκη 2012, 187, 188) notes that this ensures the confidentiality of the procedure as well as the rapport between the mediator and the parties.

[59] Anthimos (2012, 161) argues, however, that "mediation ... seems to be a pretty luxurious means of dispute resolution for small claims and cases falling under the subject matter jurisdiction of the Justices of Peace".

[60] See draft Art. 208(2) GrCCP, as is to be amended in order to include regulation on mediation issues, in Ειδική Νομοπαρασκευαστική Επιτροπή του Υπουργείου Δικαιοσύνης για την τελική διαμόρφωση του ΚΠολΔ 2009, 168, where is noted that in case of unsuccessful

neither the GrMA nor Art. 214B GrCCP eventually prohibit a second attempt to mediate in case of failure; in this sense no judicial review procedures are provided in such case, since mediation may only result either in a conciliatory settlement or in failure (Ηλιακόπουλος 2012, 32; Τίτσιας 2012, 318).[61]

According to an apposite remark (Παντελίδου-Κουρκουβάτη 2012, 1511), both the mediation process and the final outcome often allow the parties to express their negative emotions and the tension that they may feel due to the bad development of their entrepreneurial, private, family or other relationships. This mere fact, even in case of failure,[62] may lead both parties to mature in a short period of time, to reassess the advantages and disadvantages of their positions, to re-evaluate the goodwill of the other party and the suggestions made during the mediation and to discuss their case and the available options in the presence or their attorneys, even in the absence of the mediator, coming to an agreement. It is stated, in the same framework, that sometimes, 1 or 2 months after the first unsuccessful mediation, the procedure is repeated on the parties' initiative and in the presence of the mediator, eventually resolving the dispute by signing the final agreement.

7 Success of Mediation and Its Consequences

As stated in Art. 9 GrMA, after the successful conclusion of the mediation procedure the mediator, the parties and their attorneys sign the minutes, that is the proceedings record. Upon request of at least one of the parties,[63] the mediator submits the original document of the minutes to the court of first instance of the jurisdiction where the mediation took place.[64]

The Explanatory Report to the GrMA highlights that the mediation procedure, from its very beginning, during its course and until its – successful or not – termination, constitutes a consensual and voluntary process. In this respect, given the nature and the purpose of mediation one may think that mediation agreements are probably more suitable for voluntary execution, so that the maintenance of an amicable and workable relationship between the parties is ensured to the benefit of their individual and professional as well as the social interest. It has been considered necessary, however, that certain conditions for the enforcement of such agreements

mediation, a second attempt between the same parties is not allowed (see also Άνθιμος 2010, 489).

[61] Part A of the Explanatory Report to the GrMA.

[62] See Part A of the Explanatory Report to the GrMA, stating that even in case of failure, the parties will have obtain the benefit of having at least discussed and tried to understand each other's positions.

[63] However, Art. 6(1) of Directive 2008/52/EC requires both parties' consent even in this case.

[64] In case of either a mediation under the GrMA or a mediation under Art. 214B GrCCP, the interested party pays the fee of 100,00 euros.

shall be established, so that recourse to mediation is further encouraged and the involved parties rely on a predictable legal framework.[65]

By virtue of Art. 9(3) GrMA, since their filing to the clerk of the one-member court of first instance the minutes recording a mediation agreement concerning a claim subject to enforcement constitute an enforceable title under Art. 904(2) GrCCP, which contains a list of instruments that may constitute enforceable titles, including the minutes of court proceedings embodying conciliation.

As clearly stated, in order to be enforceable, the mediation agreement shall concern a claim capable of being materialised through enforcement proceedings (Klamaris and Chronopoulou 2013, 595).[66] This means that an obligation to provision, action or omission shall be assumed or imposed through such agreement (cf. among others Νίκας 2010, § 18 II, p. 367, 368; Areios Pagos (Full Bench) 2092/1986). Without doubt, the Greek legislator has expressed himself in a narrower way than he wanted so that the view under which the said provision does not apply to formative rights (as is, for instance, the case of distribution of immovable property), cannot be welcome (K. Καλαβρός 2012, § 31 III, p. 28). Therefore, the creation, the alteration or even the abrogation of real rights can take place by virtue of the minutes recording a mediation agreement (Διαμαντόπουλος 2013). The Explanatory Report to the said Article of the GrMA supports this view, stating that this provision ensures the immediate execution of the mediation agreement with no further recourse to other legal proceedings and without neglecting the voluntary nature of the whole process; the inscription of the executory formula is made according to Art. 918(2)(b) GrCCP, namely by the judge of the one-member court of first instance.

On the occasion of the comparison between the legal provisions concerning the minutes recording the conciliatory dispute resolution under Art. 214A GrCCP and the minutes recording a mediation agreement under Art. 9 GrMA, it has been argued that the former equal to judicial settlement as regards their effects, resulting in the quashing of the proceedings (under the wording of Art. 214A(3)(d) GrCCP), while the latter do not carry this quality (K. Καλαβρός 2012, § 31 III, p. 28, 29). This view cannot be welcomed if one considers that this difference in the wording accrues from the essential distinguishing feature of the two cases. The minutes recording the conciliatory dispute resolution under Art. 214A GrCCP always involve commencement of the court proceedings, whereas the minutes recording a mediation agreement do not involve such commencement of the court proceedings. In this sense, the minutes recording a mediation agreement clearly fall within the scope of the out-of-court settlement under Art. 293(2) GrCCP (Κόμνιος

[65]Explanatory Report to the GrMA (Art. 9). G.-E. Calavros (Γρ.-Ε. Καλαβρός 2010, 163) considers the provision that the enforcement of conciliation agreements depends on the parties will as an ‘intentionally weak point’.

[66]K. Calavros’ reservations (K. Καλαβρός 2012, § 31 III, p. 29) that the wording of Art. 9 GrMA could result in the misunderstanding that parties’ agreements simply recognising claims are enforceable too, are considered exaggerating.

2007, 51; cf., however, Klamaris and Chronopoulou 2013, 595, who talk about 'simple agreement').[67] One should accept, however, that once filed with the clerk of the court of first instance and, thus, explicitly become enforceable under Art. 904(2)(c) GrCCP (and not under Art. 904(2)(g) GrCCP), the minutes recording a mediation agreement equal to judicial settlement, resulting, thus, in the quashing of the proceedings that may have already commenced, as well as to the form of notarial act, being, thus, able to be used as title to be registered, when the mediation concerns the creating, transfer, alteration or abrogation of real rights on immovable property. Both the wording and the spirit of the Greek legislator moves towards this direction, if one also considers that such provision for the quashing of the proceedings under Art. 214A(3)(d) GrCCP is not even included in Art. 214B GrCCP on judicial mediation, although Art. 293(1)(b) explicitly equates judicial mediation with judicial settlement; consequently, judicial mediation certainly implies the quashing of the proceedings. The opposite approach, i.e. that the quashing of the proceedings is only possible when the minutes recording a mediation agreement are included in the minutes of the proceedings under Art. 293(1) GrCCP so that a judicial settlement subsequently takes place (K. Καλαβρός 2012§ 31 III, p. 29; Κόμνιος 2007, 51; Τζινοπούλου 2007, 174; Ηλιακόπουλος 2012, 31), is regarded as purely formalistic – particularly if one considers that the latter usually happens when the mediation did not take place according to the institutional framework set out by the GrMA.[68] In other words, an invalidly conducted mediation would be considered as equal to a validly conducted mediation.

8 Costs of Mediation

Pursuant to Art. 12(1) GrMA, the mediators' remuneration is to be calculated on an hourly basis. Under the same provision, the occupation of mediators cannot exceed 24 h, including preparation time. The parties and the mediator, however, can agree otherwise as regards the mediator's remuneration method (Klamaris and Chronopoulou 2013, 592; Kourtis 2013, 213, noting that the parties and the mediator may agree to apply a mode of mediator's remuneration different from the one based on an hourly rate; See also Χριστοδούλου 2010, 51, who argues that when the mediator is an attorney lawyers fees regulations should apply; such approach cannot be easily justified, however). By virtue of Art. 9(2) GrMA, the mediator's

[67] Cf. ultimately Areios Pagos (Full Bench) 4/1990; Areios Pagos (Full Bench) 2092/1986; Areios Pagos 1540/2003; Patra Court of Appeal 148/2002, with further references.

[68] For instance, because the mediator is not accredited according to the GrMA. In such cases, the minutes recording the mediation agreement can become enforceable (a) when they are incorporated in a notarial act; (b) after the issuance of an order of payment when the agreement concerns the recognition of a money claim; (c) when they are incorporated in the minutes recording court proceedings embodying the settlement of the parties under Art. 293(1) GrCCP (see also Χριστοδούλου 2010, 306 et seq.; Σκορδάκη 2012, 192).

remuneration shall be borne by the parties in equal shares, unless otherwise agreed by them. The parties shall also bear the fees of their attorneys. Art. 12(3) GrMA provides that the particular determination and adjudication of the hourly based mediator's remuneration shall be made by the Minister of Justice.[69]

It is to be noted that there is no particular provision as regards the mediator's remuneration in case of judicial mediation under Art. 214B GrCCP (Άνθιμος 2012, 283).

It is to be also reminded that, apart from the mediator's remuneration, in both cases of mediation (GrMA and Art. 214B GrCCP), when the mediator submits the original document of the minutes to the court of first instance of the jurisdiction where the mediation took place, the interested party shall pay a relevant fee, as stipulated in Art. 9 GrMA.[70]

Neither the GrMA nor other special legislation contains provisions dealing with legal aid for the mediation process in particular.

Legal aid in civil and commercial matters is governed by the provisions of Arts 194 et seq. GrCCP on the 'benefit of poverty' and Law 3226/2004, which was promulgated to implement Directive 2002/8/EC.[71] It introduced a complete system of legal aid for civil and commercial matters covering both internal disputes as well as disputes with cross-border implications when the parties are citizens of a Member State of the European Union or have their domicile or residence in a Member State. After its enactment, the application of the provisions of Arts 194 et seq. GrCCP in case of civil and commercial disputes has been limited to legal entities as well as to individuals who are not citizens of a Member State of the European Union and have their domicile or residence outside the European Union (Yessiou-Faltsi 2011, 206).

It has been argued that such provisions can hardly apply to legal aid for the mediation process covering its costs as well as the remuneration of attorneys and mediators.[72] However, given that according to Art. 196(1) GrCCP and Art. 8(1) of

[69]By virtue of Decision Nr. 1460/ οικ./27.1.2012 of the Minister of Justice, Transparency and Human Rights, the mediator's hourly based remuneration has been determined at the amount of 100,00 euros.

[70]Decision Nr. 85485 οικ./18.9.2012 of the Ministers of Finance and Justice, Transparency and Human Rights has set the relevant fee at the amount of 100,00 euros. *Supra* notes 76 and 94.

[71]Directive 2002/8/EC of the Council of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating legal aid for such disputes, EE L 26, 31.1.2003, 41.

[72]Cf. Recitals (11) and (21) and Art. 10 of Directive 2002/8/EC. See also Άνθιμος 2010, 480–481; Anthimos 2012, 154; Άνθιμος 2014, 46. The latter also refers to Art. 10(c) of Law 3226/2004, which provides that "in case of cross-border disputes legal aid may also consist in the appointment of a legal adviser to assist with the settlement of the dispute before the commencement of a court proceeding", arguing that this provision could be understood as covering the attorney's remuneration in case of mediation, but it cannot not be considered as covering the mediator's remuneration and other costs of mediation.

Law 3226/2004 legal aid can also be granted for actions not associated with "trial",[73] one could conclude that under the existing legal framework legal aid can cover all the costs of mediation, including the remuneration of attorneys and mediators. Of course, legal aid can be granted under the provisions of Arts 194 et seq. GrCCP and Law 3226/2004 for the enforcement of authentic instruments embodying a mediation agreement.

9 Cross-Border Mediation

9.1 Notion and Main Features

The notion of 'cross-border mediation' in the Greek legal order shall be deducted by the provision of Art. 4(a) GrMA, which defines the term 'cross-border dispute'. Almost repeating the wording of Art. 2 of Directive 2008/52/EC, Art. 4(a) GrMA provides that a cross-border dispute shall be one in which at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party on the date on which: (a) the parties agree to use mediation after the dispute has arisen; (b) mediation is ordered by a court of a Member State; (c) an obligation to use mediation arises under national law; or (d) an invitation is made to the parties by the court before which an action is already brought. The said provision further states that a cross-border dispute shall also be one in which judicial proceedings or arbitration following mediation between the parties are initiated in a Member State other than that in which the parties were domiciled or habitually resident on the date on which the circumstances mentioned above under (a)-(c) occurred. So far the GrMA constitutes the only regulatory framework concerning cross-border mediation. This does not mean, however, that a mediation process cannot take place when one of the parties is, for instance, domiciled outside the EU. Such process may of course be defined as 'cross-border mediation'; however, this case is not regulated by Greek law and none of the provisions of the GrMA shall apply.[74]

The provisions of the GrMA apply to both internal and cross-border mediation within the EU, which are, thus, regulated in a uniform way. The only exception to such rule of uniform or 'monistic' regulation was introduced by the provision of Art. 4 GrMA, which required that particularly in domestic disputes mediators should be only attorneys accredited according to the GrMA, while in cross-border disputes parties are allowed to appoint any person accredited according to the GrMA. Such differentiation was seemingly unjustified and could give rise to constitutional law concerns on grounds of infringement of the principle of equality (Art. 4 of the

[73] An analysis of the said provision of the GrCCP can be found in Κεραμεύς, Κονδύλης and Νίκας (−Ορφανίδης) 2000, Art. 196.

[74] By contrast with international arbitration, which is governed by Law 2735/1999.

Constitution).[75] As already mentioned, after the amendment of the GrMA by para. IE.2 of the first Article of Law 4254/2014, it is provided that also in domestic disputes the parties are allowed to appoint any person accredited according to the GrMA, as provided with regard to cross-border disputes.

Ultimately, particular mention should be made of certain conflict of laws issues that may arise concerning cross-border mediation. This is the case of the law applicable to contracts that are related to the mediation procedure, such as: (a) the agreement to mediate; (b) the agreement between the mediator and the parties; and (c) the agreement settling the dispute between the parties (cf. in this respect Alexander 2013, 170–171). In case of a cross-border mediation the law applicable to the relevant contracts – particularly in case of an agreement under (a) or (b) – shall be governed by the Rome I Regulation.[76] As to agreements that escape the ambit of Rome I Regulation[77] – which might be the case of an agreement under (c) – the old provision of Art. 25 GrCC is still applicable (for an overview see Vrellis 2009, 81 et seq.).

9.2 Recognition and Enforcement of Foreign Mediation Settlements

In spite of the voluntary character of the mediation process, there is currently no doubt that this comprises the freedom to resolve a specific dispute by a binding and enforceable agreement (Hopt and Steffek 2013, 3 et seq., at 45 et seq.). This is of particular importance at the level of cross-border mediation, where the effectiveness of a given enforcement regime for foreign mediation settlements may be a decisive factor for the success of the institution of mediation itself.

In this respect, foreign mediation agreements that have been made enforceable in a Member State of the European Union shall be recognised and declared enforceable in Greece as follows[78]: (a) by virtue of Arts 57 and 58 of the Brussels I Regulation,[79]

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[75] As to the relevant debate, see instead of others Anthimos 2012, 160, with further references. It is needless to mention that in case of a cross-border mediation outside the scope of the GrMA no particular requirements seem to apply as regards the qualities and the accreditation of the mediator.

[76] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations, EE L 177, 4.7.2008, 6, in force since 17 December 2009.

[77] As defined in Art. 1 of the Rome I Regulation.

[78] See Directive 2008/52/EC, Recitals (20) and (21).

[79] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, EE L 12, 16.1.2001, 1. From 10 January 2015 Regulation (EC) No 44/2001 has been replaced by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, 1 (Brussels I bis). Since this date, Articles 58 and 59 of Brussels I bis Regulation are applicable.

which apply to authentic documents and court settlements respectively in civil and commercial matters; (b) by virtue of Art. 46 of the Brussels II Regulation,[80] which applies particularly to authentic instruments and agreements in matrimonial matters and matters of parental responsibility; (c) by virtue of Art. 48 of Regulation EC No 4/2009,[81] which applies particularly to authentic instruments and court settlements relating to maintenance obligations; (d) by virtue of Arts 59–61 of Regulation EU No 650/2012,[82] which applies particularly to authentic instruments in matters of succession; (e) by virtue of Regulation EC No 805/2004,[83] which provides for the issuance of a European Enforcement Order in case of uncontested claims. In the latter case, in fact, a foreign mediation agreement may be recognised and enforced even when it would be inadmissible if reached in Greece, given that Greek courts shall not be able to invoke the public order clause to prevent enforcement in such cases (Κόμνιος 2007, 51, 52; Γρ.-Ε. Καλαβρός 2010, 176 et seq.; Άνθιμος 2010, 480; Anthimos 2012, 152).[84] Mediation agreements reached within the European Union, which have not been recorded in an authentic instrument and are not enforceable in a Member State, can be made enforceable according to Art. 904 GrCCP, namely: (a) by being incorporated in a notarial act; (b) after the issuance of an order of payment when the agreement concerns the recognition of a money claim; (c) when they are incorporated in the minutes recording court proceedings embodying the settlement of the parties under Art. 293(1) GrCCP.

Foreign mediation agreements reached outside the European Union, which are registered as an authentic instrument and are enforceable according to the law of the country of origin, shall become enforceable in Greece in accordance with the provisions of Art. 57 of the Lugano Convention of 2007[85] (with regard to Norway, Switzerland and Iceland) or any existing bilateral treaties, otherwise in accordance with Art. 905 para. 2 GrCCP, provided that they are not contrary to good morals and the Greek public order. If such agreements have not been recorded in an authentic instrument, they can be made enforceable according to Art. 904 GrCCP, as mentioned above, i.e. (a) by being incorporated in a notarial act; (b) after

[80] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, EE L 338, 23.12.2003, 1.

[81] Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, EE L 7, 10.1.2009, 1.

[82] Council Regulation (EU) No 650/2012 of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, EE L 201, 27.7.2012, 107.

[83] Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, EE L 143, 30.4.2004, 15.

[84] The public order clause can be invoked in the case of the Brussels I Regulation, Brussels II Regulation etc.

[85] Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30.10.2007, EE L 339, 21.12.2007, 1.

the issuance of an order of payment when the agreement concerns the recognition of a money claim; (c) when they are incorporated in the minutes recording court proceedings embodying the settlement of the parties under Art. 293(1) GrCCP (see also Kourtis 2014, 198).

10 E-Justice

The application of (e)justice instruments to the mediation process is currently provided by Directive 2013/11/EU,[86] which shall be transposed to Greek law by 9 July 2015, and Regulation (EU) No 524/2013,[87] which is applicable from 9 January 2016. Both legal instruments provide for the establishment of online dispute resolution mechanisms for consumer disputes (Κόμνιος 2013, 419 et seq.; Κόμνιος 2014, 31 et seq.).

The GrMA does not regulate the application of e-justice instruments to the mediation process. At the same time, the application of such instruments cannot be excluded, given also the absence of any provision explicitly requiring the physical presence of the parties at specific stages of the process (Klamaris and Chronopoulou 2013, 599).[88] The use of online technology may facilitate the mediator and the parties when direct meetings are not possible due to geographic distance or other barriers. Therefore, it could be an advantage in case of certain cross-border mediation processes or even when the value of the dispute does not justify the costs of physical presence (Μακρής 2009, 157 et seq., *passim*).

11 Concluding Remarks

Mediation is, above all, a philosophical concept known to almost all civilisations. Without doubt, nevertheless, its promotion nowadays is based on a certain political choice about the governance of the state, aiming at important economies on the budget concerning the function of justice and, of course, taking account of the cost of the latter for the whole society. This trend necessarily implies a new interpretation and understanding of the principle of access to justice, as provided by Art. 20 of the

[86] Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) 2006/2004 and Directive 2009/22/EC, OJ L 165, 18.06.2013, 63.

[87] Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) 2006/2004 and Directive 2009/22/EC, OJ L 165, 18.06.2013, 1.

[88] See Directive 2008/52/EC, Recital (6). Even though Art. 8(1) GrMA stipulates that "the parties attend the process with an attorney", should not be interpreted as requiring the physical presence of the parties or their attorneys, but rather the participation of the attorney in the process.

Constitution and Art. 6 of the European Convention on Human Rights. Towards this direction, it is explicitly stated in the Recital (5) of Directive 2008/52/EC that the "objective of ensuring better access to justice should encompass access to judicial as well as extrajudicial dispute resolution methods", which should be offered and organised by the state. Such methods should be considered as 'complementary' and not 'alternative' dispute resolution methods.

With the exception of arbitration, ADR methods have been treated with certain scepticism in Greece for a number of reasons, such as the fear before the unknown or even the famous Mediterranean mentality (Polyzogopoulos 2013, 1759). As happened in many other jurisdictions, the majority of lawyers in Greece still regard ADRs as ways of '*A*ccelerated *D*ecrease of *R*evenue'. Given, moreover, the relatively low court costs, interested parties have not been prevented from referring to court proceedings even when the possibilities of winning the case are limited (Makridou 2010, 127).

The promotion of mediation in Greece depends on the awareness of its advantages as an innovative tailor-made process which allows the parties to discover the core of their conflict and reach solutions that only satisfy their interests, but could not be obtained in a court room. A curriculum reform in law schools seems to be necessary in this respect. Furthermore, the quality of the mediators' training as well as the compliance with high ethical standards will definitely play an important role. Admittedly, a first step towards a positive familiarisation with mediation processes is being made through judicial mediation due to the institutional authority and reliability of judges in the minds of the parties in Greece. This is a great advantage, which, at least at the moment, outweighs disadvantages such as the burdening – or the failure of disburdening – of courts and the lack of mediation training requirements as regards judges-mediators. Despite the limited application of the existing legal framework, one can note that since the enactment of the GrMA and Art. 214B GrCCP an increasing number of professionals appear to be interested in learning about the new institution. Given also the significant delays in the state-administered justice, one can expect that in the long term more interested parties may be drawn to mediation and other ADR forms.

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