Happy birthday *Mediation*,

may you continue growing old and strong

Mediation turns five on November 30, as many as the years of Law 4640/2019, it now "leaves kindergarten behind and becomes a big kid".

BAHAS, GRAMATIDIS
& PARTNERS LLP

Dimitris Emvalomenos

29/11/2024

It seems that “third time’s a charm”, this being the third effort (since 2010) for Mediation to "survive", and Mediation not only "made it" in the midst of Covid-19, but it was discussed and commented on intensely and legislated on sufficiently, taking its "first steps".

Is it a "wonder child", a "brat" or "just one of the same"?

Has it facilitated the resolution of civil and commercial disputes, or has it made it more difficult, in particular considering the introduction of the information form (Article 3(2); unless otherwise stated, all references are to Law 4640/2019), the mandatory initial mediation session (MIMS) (Articles 6 and 7) and the implementation in practice of the suspension of procedural time limits (Article 9)?

Most "came across" it by force, because of the information form and the MIMS, some out of curiosity and inquisitiveness, as they "considered" it for the first time, and then there were even those who expressed sincere interest. Some were astonished at its childish audacity in talking about trying to speedily resolve disputes out of court, ignoring old and familiar, albeit time-consuming, procedural processes. Others were given pause for thought because of it, wondering if it was worth it after all. Fewer were those who "adopted" it and became its "family", believed in it, thinking that it had a future, "took it by the hand, took it for a walk, talked to it" and witnessed its maturity despite its young age.

Now in its infancy, Mediation will continue to learn, as it appears able to "pick up quickly". Indeed, with the appropriate changes in its timetable (hopefully), both for kindergarten this year and for elementary school from next year, its friends hope that Mediation will make excellent progress and get good grades, building on all its growth to date, and as for its "non-friends" they may have the opportunity to re-evaluate it and see its positive prospects, overall.

How has the institution worked in these five years?

Has it facilitated the resolution of civil and commercial disputes, or has it made it more difficult, in particular considering the introduction of the information form (Article 3(2); unless otherwise stated, all references are to Law 4640/2019), the mandatory initial mediation session (MIMS) (Articles 6 and 7) and the implementation in practice of the suspension of procedural time limits (Article 9)?

Has it offered the parties to such disputes an alternative and an opportunity for out-of-court resolution, or has it complicated their procedural situation by adding procedural burdens with additional procedures and inadmissibilities (Articles 3(2), 6(1) and 7(4))?

Has the enforceable nature of the Mediation Memorandum (Article 8) had a positive effect?

What is the contribution of the courts? Have they viewed Mediation more as a procedural process, following a formalistic approach and favouring cases of inadmissibility, or rather as an opportunity for the parties to settle their dispute out of court, adopting a broader perspective? Have they ignored Mediation, or have they urged the parties to mediate, as they ought to do, after weighing up all the circumstances of each case (Article 4(2) and Articles 116A and 214C of the Code of Civil Procedure)?

Has the procedure for the selection of a mediator by the Central Mediation Commission (CMC) (Article 7(1)) run successfully in practice? Have the opinions of the CMC (Article 11) contributed to the lifting of doubts?

How have lawyers received and implemented Mediation? As yet another procedural requirement, contenting themselves with the formality of signing off the information form and the MIMS Memorandum where applicable (Articles 3(2), 6 and 7), or meaningfully, as an opportunity to provide information to the parties, for them to consider an out-of-court solution by seeking at least some mutual understanding at the MIMS stage (where applicable)? Did they consider Mediation to be financially unattractive (Article 5(1))?

How have mediators dealt with Mediation? Have they viewed MIMS simply as a procedure for charging the minimum fee (Article 18(2)), in the shortest possible time, or as an opportunity to enlighten the parties to explore an honest out-of-court resolution of their dispute?

Mediation is needed as an alternative in dispute resolution, not only because of the delays in the administration of justice, but also because it provides a "different" perspective, namely ESG culture

Do the parties wish to mediate, generally and voluntarily?

The answers to the above questions may be ambiguous, depending on how they are viewed.

Mediation is needed as an alternative in dispute resolution, not only because of the delays in the administration of justice, but also because it provides a "different" perspective, namely ESG culture.

The spread of Mediation, as a form of out-of-court resolution, is ultimately a one-way street to relieve the congestion in the courts, but also an occasion for "training" the parties and lawyers in consensual solutions.

Despite the legislative problems and some statutory failures, Mediation has “taken off" well and, with appropriate changes, it can truly find its "running pace".

We now have the experience of five years of implementation of Mediation and the opportunity to make appropriate corrections, along with the need to train all those involved (parties, lawyers and judges) on the institution and to introduce financial incentives.

Changes

The main changes in the law that are proposed are:

- The replacement of all procedural inadmissibilities by financial penalties alone.
- Expansion of the MIMS to as many cases as possible, from "1 Euro" up.
- The exclusion from the MIMS requirement of parties whose whereabouts are unknown.
- Faster and more flexible procedure for appointing a mediator through the CMC.
- The extension of procedural consequences to parties intervening in the proceedings.
- The introduction of substantial tax/financial incentives for parties and lawyers in favour of MIMS/Mediation, based on international experience, such as VAT and Digital Transaction Due exemption, reduction of the tax rate on the mandatory lawyers’ fee notes, successful outcome bonuses.

Dimitris Emvalomenos, LL.M. (QMUL), Accredited Mediator of the Greek Ministry of Justice & the Centre of Effective Dispute Resolution (CEDR), London, UK, Dep. Managing Partner at Bahas, Gramatidis & Partners LLP (BGP), Athens, Greece.

d.emvalomenos@bahagram.com
(+30) 2103318170
www.bahagram.com