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RECENT LEGAL ASPECTS OF JUDICIAL MEDIATION

**A Case Study with special references to
Court of First Instance of Thessaloniki**

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I hereby declare that the work submitted is mine and that where I have made use of another's work, I have attributed the source(s) according to the Regulations set in the Student's Handbook.

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Abstract

This dissertation was written as part of the LLM in Transnational and European Commercial Law, Mediation, Arbitration and Energy Law at the International Hellenic University, aiming to provide a comprehensive and thorough review of the essentials of the Judicial Mediation in Greece.

It is undisputable that conflict lies at the heart of the democratic process. The most innovative decisions are engendered by productive dialogue that explores different proposals and views with main aim the creative solutions. That is why it is more than challenging to transformation of the conflict from a destructive and adversarial battling to a creative solution of a problem.

In the framework of ensuring a balanced relationship between Mediation and Judicial Proceedings, the European Parliament adopted Directive 2008/52/EC on May 21, 2008 under its EU target for obtaining alternative ways of resolving civil and commercial disputes. Greek legislation was not unfamiliar with ways of resolving the dispute out of court or by means of lawsuits.¹ Mediation was established in Greece by the Greek Mediation Act 3898/2010 (hereafter GrMA) as an alternative way of resolving private disputes.

The GrMA 3898/2010 did not provide for judicial mediation.² Though the issue of genuine judicial mediation was the topic of discussion and concern for the Committee set up for the reform of the Greek Code of Civil Procedure (hereafter CCP) as well as the Committee that worked on the incorporation of the European Directive in Greece, the interference of judges in mediation as mediators themselves was not initially accepted, because of the fear of excluding the judges in subsequent proceeding. For that reason the Greek Mediation Act did not provide for judicial mediation.

However, article 7 of L. 4055/2012 introduced a new institution of extrajudicial settlement of private disputes, the judicial mediation, and finally Article 214B was added to CCP. This new way of solving differences is not growing "competitively" but parallel to the other alternatives. This parallel institutionalization of judicial mediation enabled citizens to achieve- without recourse to judicial proceedings- an effective resolution of their differences.

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¹ D. Theocharis, Mediation as a means of alternative dispute resolution: pursuant to article analysis and interpretation of Law 3898/2010, Law Library (2015), 42

² N.Klamaris and C. G. Chronopoulou, Mediation in Greece: A Contemporary Procedural Approach to Resolving Disputes, in K. Hopt and F. Steffek (eds), Mediation Principles and Regulation in Comparative Perspective, Oxford University Press, 589

Preface

The practice of mediation can first be traced back to a philosophical movement in the ancient Greek culture³, whose aim was to make people think about their relationships with others and consequently about themselves.⁴ The lovers of wisdom, the philosophers, practitioners of rhetoric and maieutics, were the first to apply the method of mediation. Maieutics facilitated this search. It is a belief that an individual has knowledge which is stored in his conscience and is accumulated from previous generations. Philosophers used this skill to enable a person to reach and express the best of him.⁵ This practice aimed at developing individual responsibility through the control of passions.⁶

In modern Greece the evolution of this institution is reflected to the provisions of Law 4055/2011 that introduced a simple and concise arrangement (an article of six paragraphs), which was numbered as article 214 B in the Greek Civil Procedure Code, and regarded the new institution of extrajudicial settlement of private disputes, the so called judicial mediation. The Greek legislator follows the UK and Netherlands example, which for this institution introduced less detailed regulatory approaches (as opposed to the exhaustive regulation of Austria)⁷, in order not to stifle creativity and flexibility which are both necessary for an institution that is nascent and ongoing. With this parallel institutionalized judicial mediation, individuals are allowed to resolve their disputes more efficiently and without resorting to litigation process.⁸

The delegation of mediator tasks to a judge guarantees the impartiality, neutrality and independence since the judge acting as mediator cannot undertake the role of the judge on the same case pending before him/her. This is the best way for the citizens to consolidate their confidence in non-judicial dispute resolutions and makes their use easier. Moreover mediation won't be misused as a "Trojan horse" in a litigation process since the failure of the judicial mediation process will automatically block the participation of the same judge – mediator in the judicial proceedings between the same participants. This is the provision of article 7 (1) of Directive 2008/52/EC (which is applicable by analogy to judicial mediation) that provides that

³ G. Diamantopoulos & V. Koumpli, *On Mediation Law in Greece*, RHDl 67 (2014), 361 et seq at 393

⁴ A. Gutierrez, *The Seasons of Alternative Dispute Resolution: A Study of Mediation Tactics in the Context of Ancient Greek Mythology*, *The American Journal of Mediation*, Vol. 6-2012

⁵ J. de Romilly, *The Law on Greek thought from its beginnings in Aristotle*, the asty/publishing, 1995, 122

⁶ G. Diamantopoulos & V. Koumpli, *On Mediation Law in Greece*, RHDl 67 (2014), 361 et seq at 366 footnote 23 where there is a reference to the ancient institution of "Sastis" in Crete who was a mutually respected man who peacefully resolved cases of murders or animal theft.

⁷ K. Komnios, *Introduction to mediation law*, *Dike* 2007, 31 et seq [in Greek] at 32

⁸ I. Stratsiani, Judge at Athens Court of Appeal, *Judicial mediation- under L. 4055/2012 Article 214B' CCP*, Paper for mediation presented at the seminar of the National School for Judges (2014)

in case that mediation fails “ any participation of the mediator in the course of ensuing judicial proceedings is forbidden”.⁹

At the same time, judicial mediation is expected to have as a final result, the widespread popularity and success of the other alternative dispute resolution methods, with the corresponding relief in the courts so they can deal with the cases that actually require judicial investigation and judgment.

⁹ Ch. Moma, Confidentiality of Mediation Proceedings, IHU Dissertation (2013), 19

Introduction

Even in International law the most important aim is the settlement of international disputes between states in a peaceful way.¹⁰ The globalization of the commercial, legal and political structures is maybe the most challenging evolution of our century, where the effective handling of disputes is essential and vital for our multicultural 'global village' to develop seamlessly and unimpeded.¹¹

In the last decades mediation is such a burning issue that is considered to be the appropriate invented legal method in order to face the litigation explosion,¹² while at the same time a mutual benefit/gain for both sides is achieved, known as win- win solution.¹³ It has been characterized as a democratic storming of the citadel of the law, which gives a more human face to the law and its institutions. Others see it as a dangerous dilution or even undermining justice, an unprecedented striving for speed, flexibility, and efficiency at the expense of principle and accountability.¹⁴

What is clear is that the institutionalization of ADR is an indication of ongoing fundamental changes in our legal system and our concepts of justice and law. The present dissertation focuses on judicial mediation in Greece, which is a form of institutionalized ADR, where sitting judges either proposed by the parties' initiative to direct the mediation or they themselves as judges encourage the recourse to mediation. Attention is drawn on the experience of the Court of First Instance of Thessaloniki, where the first judicial mediation took place in 2012.¹⁵

Through judicial mediation the judge has ceased to be a servant of the law. His/her mission has evolved: from the strict application of the legislation he/her now intends to achieve a flexible balance of the parties' interests. Judicial mediation introduces a new,

¹⁰ JG Starke, Introduction to International Law, Butterworths (1989 10th Edition), "[...]Custom and practice together with law making international conventions such as Hague Convention of 1899, the Pacific Settlement of International Disputes of 1907 and the United Nation's Charter of 1945, they all had as priority to facilitate the peaceful settlement of disputes between states [...]", at 513

¹¹ E. Carroll & K. Mackie, International Mediation-The Art of Business Diplomacy, Kluwer Law International (2006), 128

¹² J. Valmantonis, Some thoughts on mediation and its relationship with the judicial procedure, EII Dni (=EllinikiDikaiosyni) 54 (2013), 344 [in Greek]

¹³ R. Fisher & W. Ury, "Getting to Yes", Random House Business Books (2012), 72

¹⁴ L. Otis, E. Reiter, Mediation by Judges: A new phenomenon in the Transformation of justice, 6 Pepp. Disp. Resol. L. J. Iss. 3 (2006), 355

¹⁵ K. Fragou, Judicial mediation, in A. Kaissis (ed), Problems and aspects of mediation (Thessaloniki 2014) 15 [in Greek], International Hellenic University

participant-centered normative order that conceptualizes litigation more broadly and holistically and, thus, offers “justice” that is fuller and better adapted to the needs of parties who have a variety of conflicts.¹⁶ It is increasingly apparent that “alternative” dispute resolution is becoming part of the mainstream, part of the legal landscape which is accepted -sometimes grudgingly, sometimes enthusiastically- by litigants, lawyers, and courts alike.¹⁷

The present dissertation has **three** principal parts. The first one is an overview of the legislative environment of judicial mediation in the European Union and in Greece according to the provisions of the Greek Procedural Civil Code, with emphasis to the process of judicial mediation in Thessaloniki’s Court of First Instance. Then we examine how a judge can act as a mediator and the significant differences between Mediation and Judicial Mediation. The second part contains the unfolding mediation process and how it responds to the cases that were presented to the Court of First Instance of Thessaloniki. Finally, in the third part we conclude by suggesting some continuing challenges, together with an annex of a form of minutes of judicial mediation as lodged to the secretary of the Court of First Instance of Thessaloniki.

1. The legislative environment of judicial mediation

1.1. The European conjuncture

The Tampere European Council of 15 and 16 October 1999 invited the Member States to create alternative extra-judicial procedures¹⁸ in order to ensure the single market, the economic and monetary union and the right to move freely throughout the Union, enjoying security and justice accessible to all.¹⁹

In 2002 the European Commission published the Green Bible on the alternative dispute resolutions²⁰, where it provides ADRs in the context of judicial proceedings, conducted by a court, and asks the Member States’ codes of civil procedure to allow for the

¹⁶ R. Fisher & W. Ury, supra footnote 13 at 12

¹⁷ G. Diamantopoulos & V. Koumpli, supra footnote 3 at 394

¹⁸ I. Iliakopoulos, The new institution of mediation in civil and commercial matters, EfAD (=EfarmogesAstikouDikaiou) 2012, 21 et seq [in Greek] at 22

¹⁹ Presidency Conclusions, Tampere European Council 15 and 16 October 1999, V.30 “The European Council invites the Council on the basis of proposals by the Commission, to establish minimum standards ensuring an adequate level of legal aid in cross - border cases throughout the Union as well as special common procedural rules for simplified and accelerated cross- border litigation on small consumer and commercial claims, as well as maintenance claims, and on uncontested claims. Alternative extra- judicial procedures should also be created by Member States”.

²⁰ COM (2002) 196

possibility of seizing a judge principally concerned with conciliation, make conciliation the compulsory phase of the procedure or explicitly encourage judges to intervene actively in the search for an agreement between the parties. These specific missions that are not necessarily among their usual functions were entrusted to judges, who had to attend now suitable training programmes.

ADRs entrusted by the court to a third party are the subject of general regulations or draft regulations in most Member States. These range from the possibility of recourse to ADRs (for example in Belgium and in France) to the encouragement (in Spain, in Italy, in Sweden and in England and Wales) and even the prior obligation to have recourse to ADRs under the law or by decision of the judge (for example in Germany, in Belgium and in **Greece** where former Article 214 of the CCP stipulated that disputes which fall within the jurisdiction of the court of first instance cannot be heard unless there has first been an attempt of conciliation).²¹

In 2004 the European Commission published²² its proposal for the Directive of mediation²³ while the European Union posted on line the European Code for Conduct of Mediators.²⁴ Directive 2008/52 / EC of the European Parliament and of the Council of 21 May 2008 on mediation in civil and commercial matters certainly triggered the intense, extensive and detailed regulatory provisions of mediation in general.²⁵ The Directive provided firstly a framework for cross-border mediation and requires from the Member States (with the exception of Denmark), to implement the necessary legislation, regulations and administrative measures until 20/5/2011.

²¹ D. Theocharis, Mediation as a means of alternative dispute resolution: pursuant to article analysis and interpretation of Law 3898/2010, Law Library (2015),84

²² K. Komnios, Introduction to mediation law, Δίκη(=Dike) 2007, 31 et seq at 31[in Greek]

²³ COM (2004) 718 final: Proposal for a Directive of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters

²⁴ NoV (=NomikoVima) 2010 (58),288 et seq, The Greek Code of Conduct for Accredited Mediators entered into force with the No. 109088 οικ./ 12-12-2011 ministerial decision issued in implementation of Article 7 § 2b of Law. 3898/2010 ("Mediation in Civil and Commercial Matters") and significantly transferred the provisions of the relevant European Code of Conduct for Mediators in the Greek legal system. However, it should be noted one major difference between the two codes, namely the fact that the European Code has no binding force (contrary is explicitly mentioned in his introduction that "this Code of Conduct lays down some principles which individual mediators can voluntarily choose to comply, under their own responsibility ") while the Greek Code is state law and therefore the compliance with this is mandatory, while the violation of it entails penalties in some exceptional cases can reach even the withdraw of the accreditation of a mediator (Article 5), ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.pdf.

²⁵ A. Anthimos, Mediation: the unripe apple of contention, EpiskED (=EpiskopisiEmporikouDikaiou) B/2012, 278 [in Greek] at 279

Many Member States²⁶, such as Greece by law 3898/2010,²⁷ responded by not only setting the cross-border mediation, but also extending the legal arrangements to purely internal disputes, as it is also permitted by the provision of the preamble No (8) of Directive 2008/52 / EC.²⁸ Regarding the institution of Judicial Mediation the Directive reads in paragraph b of Article 3 as follows: The concept “includes mediation conducted by a judge who is not responsible for any judicial proceedings concerning the dispute in question. It excludes attempts made by the court or the judge seized to settle a dispute in the course of judicial proceedings concerning the dispute in question.”

1.2. Declarations of the Council of Europe ²⁹

The Council of Europe has recognized the advantages of mediation in many cases. According to its Declarations – rather a kind of incitement- the States have the discretion to organize and regulate mediation in the most appropriate manner, whether through the public or by the private sector. They however have to follow certain basic principles, as presented in the Commission Recommendations such as Recommendation no. R (98) 1 on family matters where it is emphasized that the Mediator should be impartial, neutral, guaranteeing privacy and confidentiality with no power to impose a solution.

The 'Consultative Council of European Judges' (CCJE), which works within the Council of Europe, has declared in No. 6 (2004) Committee Opinion:³⁰ “161. The CCJE considers it possible for judges to act as mediators themselves. This allows judicial know-how to be placed at the disposal of the public. It is nevertheless essential to preserve their impartiality in particular by providing that they will perform this task in disputes other than those they are required to hear and decide. The CCJE considers that a similar measure be taken within those systems that already provide for the duty of the judge to attempt conciliation of the parties to a case”. In par. 159 the CCJE emphasises the importance of training in mediation.

²⁶ K. Makridou, Alternative dispute resolutions of private disputes in European jurisdictions - History and Prospects, Arm (=Armenopoulos) 2014, 905 et seq [in Greek] at 907

²⁷ A. Anthimos, supra footnote 24 at 283

²⁸ “...but nothing should prevent Member States from applying such provisions also to internal mediation process”.

²⁹ The Council of Europe in Recommendation No.R (98) 1 on Family Mediation recommends the governments of member states to introduce or promote family mediation ensuring that there are the appropriate mechanisms for a principled mediation to be conducted, while at the same time all states should facilitate the approval of mediated agreements by judicial authority or other competent authority in order to become enforceable according to national law.

³⁰ Consultative Council of European Judges (CCJE) Opinion No.6 (2004) on fair trial within a reasonable time and judge’s role in trials taking into account alternative means of dispute settlement.

1.3 The Greek legal framework: The provisions of the Article 214 B of the Greek Civil Procedure Code (GrCCP)

Article 214B was added to the Greek Civil Procedure Code according to paragraph 1 Article 7 of Law 4055/2012 “on fair trials and their reasonable duration” (GG A 51) and reads as follows:

“Judicial mediation”

1. Private law disputes can be resolved with recourse to judicial intervention. Recourse to judicial mediation, which is optional, can be done before the commencement of treatment or during the proceedings.
2. At each court and court of appeal one or more of their serving chairmen **court of first instance and court of appeal** or the oldest first instance judge in current year are appointed as part time or full-time mediators for two years, renewable for one more year.

*** Paragraph 2 is amended as above by Article 102 Paragraph 2, L. 4139 / 2013, Government Gazette 74 / 03.20.2013.

3. The judicial intervention includes individual and joint hearings and discussions with the parties and their attorneys with the judge mediator, **who may address the parties non-binding dispute resolution proposals to the parties**. Each party, together with his attorney or represented by an attorney acting for himself, may refer to the judicial mediator having territorial jurisdiction by submitting a request in writing.
4. The court where the case is pending, can at each stop of the trial, as appropriate and taking into account all the circumstances of the case, invite the parties to use judicial mediation to resolve their dispute and at the same time, if the parties agree to postpone the trial to an upcoming hearing, no later than six months.
5. If the parties reach an agreement the respective minutes are drawn up. The minute are signed by the mediator, the parties and their attorneys and the original is filed in the Registry of the Court of First Instance where the mediation took place.

When filling the minutes the person concerned shall submit a fee payable to the State, in the amount specified by joint decision of the Ministers of Finance and Justice, Transparency and Human Rights. After their submission at the Registry of the Court of First Instance, the minutes of mediation become enforceable, since they contain the parties' agreement on the claim, in accordance with Article 904 paragraph 2 sub c of the Code of Civil Procedure.

The mediation must be conducted in a manner that does not violate its confidentiality, unless otherwise agreed by the parties. Before starting the procedure, all participants commit themselves in writing to observe the confidentiality of the process.”

The Greek Mediation Act 3898/2010, hereafter GrMA, was titled as ‘Mediation in civil and commercial matters” and implemented Directive 2008/52/EC of the European Parliament and the Council of 21 May 2008. There was no reference to judicial mediation in that act. The only reference to the word “judge” is included in Part A of the Explanatory Report to the GrMA where it is stated that: “The judges will assume a greater social role since they will have the power to train the involved parties as to the possibility of amicable settlement of their dispute, but also to deal with those cases that actually require judicial investigation and decision”.

1.4 The constitutional and international legal foundations for the institutionalization of judicial mediation in Greece.

According to article 20 §1 of the Greek Constitution : “1. Every person shall be entitled to receive legal protection by the courts and may plead before them his views concerning his rights or interests, as specified by law”. The article does not have any provisions for the procedure in which the hearing will take place. During the mediation hearings the judge does not offer any judicial diagnosis, but rather he tries to conciliate the parties through methods of approaching the parties and bridging the gap. According to article 6 § 1 of the European Convention on Human Rights³¹, a provision with extra legal validity in the Greek legal system, it is outlined that “[...] everyone is entitled to a fair and **public hearing** within a reasonable time by an independent and impartial tribunal established by law [...]”, and according to which the court or the judicature conduct its procedures fairly and publicly.³²

There are some important differences between the classical court proceedings and the judicial mediation proceedings since the requirements of publicity, the right to proof and

³¹ http://www.echr.coe.int/Documents/Convention_ENG.pdf[Right to a fair trial: 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

³² P. Pararas, Constitution and European Convention on Human Rights, Sakkoulas (2001), 407

the obligation of reasoning the decisions are not met in judicial mediation.³³ The national legislator could abolish the institution anytime³⁴ it deems that appropriate, without infringing either the Greek Constitution or the European Convention on Human Rights.³⁵

For those who oppose to the compatibility of judicial mediation with the right of access to justice, under the provisions of the ECHR, it should be noted that even if the law demanded obligatorily the recourse to judicial mediation before the recourse to courts, the final agreement is at the sole discretion of the parties.³⁶ Moreover it has been convincingly reported as inconsequent and oxymoron to invoke the "access to justice" as a reason to avoid compulsory mediation, at the same time that the courts are crowded with cases thus failing to operate properly. In addition subjecting the parties to judicial mediation, even unintentionally, is itself a form of access to an alternative means of resolving and settling disputes, inherent in the concept of access to justice as stated in Article 1 of the Directive.³⁷

The European Court of Justice³⁸ has already ruled positively for the legality of such legal provisions of compulsory mediation, underlying that the fundamental rights of European citizens such as the right for access to justice may be restricted on condition that the latter meet objectives of general interest and these restrictions are proportionate³⁹.

³³ G. Valmantonis, Some thoughts on mediation and its relationship with the judicial procedure, *EllDni* (=EllinikiDikaiosyni) 54 (2013), 344 et seq [in Greek] at 348

³⁴ Ch. Apalagaki, General introductory remarks on the structure of the cognizance proceedings following further amendments of the Gr. CCP by virtue of Law 4055/2012, *EfAD* (=EfarmogesAstikouDikaiou) 2012, 571 et seq [in Greek] at 573

³⁵ I. Iliakopoulos, The new institution of mediation in civil and commercial matters, *EfAD* (=Efarmoges AstikouDikaiou) 2012, 21 et seq [in Greek] at 21

³⁶ D. Theocharis, The recently established provisions of the CCP for mediation and out of court dispute settlements, *Synigoros* 111/2015, 46 et seq [in Greek] at 48

³⁷ D. Theocharis, International Promotion Models of Mediation Practice and the Greek Selection, *Arm* (=Armenopoulos) 2015, 171 et seq [in Greek] at 175

³⁸ Case C-317/08 *Rosalba Alassini v Telecom Italia SpA* (2010/C 134/04) par 42-44

³⁹ D. Theocharis, The recently established provisions of the CCP for mediation and out of court dispute settlements, *Synigoros* 111/2015, 48 [in Greek]

2. The Judicial Mediation Procedure in Greece

Despite the presence of a judge, judicial mediation as a process is characteristically different from litigation. The stages of judicial mediation session begin with the recognition of a conflict, continue through the prospect of compromise through consent during the negotiation process and end up with a possible settlement concluded in the Minutes of Judicial Mediation.⁴⁰

2.1 The Conflict.

In the beginning was the Conflict.⁴¹ Conflict is what brings people to the courts or to mediation. The recognition that a conflict exists is very important but even more important is the desire to understand the conflict as a complex manifestation of human relationships for both its origin and its solution, meaning that for a conflict to be successfully resolved it is of outmost importance to deeply understand the values, the assumptions, the emotions, the interests and the needs of the persons involved.⁴²

According to Roger Fisher, William Ury and Bruce Patton the elimination of conflict should not be the first priority since conflict is necessarily part of our life that can lead to changes, progress and prosperity. As the above authors underline “The challenge is not to eliminate conflict but to transform it”.⁴³ The conflict must be dealt as the core of the democratic procedure during which different opinions are heard and come together on the same table in order to bear the final ideal solution of a problem. There is no “superficial consensus”, only belief in the principles of democracy⁴⁴ that will finally train people to demand their participation in decisions that affect them, rejecting the concept of decisions dictated to them by a third unrelated with their case person.⁴⁵

⁴⁰ K. Christodoulou, Directive 2008/52 on mediation on civil law disputes, NoV (NomikoVima) 2010, 287 et seq [in Greek] at 289

⁴¹ M. Tzinopoulou, Mediation in general – an alternative resolution process of a case in the courts of lower Saxony, Germany, Sci. Yearbook DSTH 2007, 169 et seq [in Greek] at 170

⁴² R. Mnookin, *BargainingwiththeDevil*, Simon&Schuster Parebacks (2010), 28

⁴³ R. Fisher & W. Ury, *GettingtoYes*, RandomHouseBusinessBooks (2012), Preface xi

⁴⁴ R. Fisher & W. Ury, *supra* footnote 43 at 17

⁴⁵ R. Fisher & W. Ury, *supra* footnote 43, introduction xxv

2.2 The prospect of compromise through consent

Mediation rests on a contractual or transactional foundation, as the mediator and the parties have the authority to negotiate and reach an agreement, not because the law grants this authority on a constitutional or a statutory basis, **but because the parties themselves recognise the validity of the process and the final decision they reach.**⁴⁶

Their consensus to bring their conflict to mediation rather than to adjudication, having at the same time full control of the process, makes the parties be the architects of the social order in which they will live. Consent-based normativity can harmoniously coexist with state-based normativity. Judicial Mediation is balanced somewhere between authoritative state and consent-based normative ordering, since it combines the will of the parties and the presence of a judge within the courthouse (though not in courtroom).⁴⁷

Given the above, the parties may recourse to the Judicial Mediation to resolve their dispute by agreement with the help of a judge who is appointed to the territorially competent Court. In Mediation, on the other hand, the parties jointly select the Mediator from the public list of accredited mediators kept by the Ministry of Justice, Transparency and Human Rights, as well as the place and time of the hearing sessions.

The judge mediator has to communicate to the parties the fact that he/she is there for them, neither to impose a decision nor to dictate an opinion about the merits of the case but rather facilitate them to their communication, since this is the essence of mediation⁴⁸ - rather conversational than adversarial.⁴⁹ This is the stage where the consent of the parties is gained in order for the following individual sessions to be conducted in good faith reinforced by the real sense of strict confidentiality.⁵⁰

⁴⁶ K. Christodoulou, Directive 2008/52 on mediation on civil law disputes, NoV (NomikoVima) 2010, 287 et seq [in Greek] at 287, see also A. Gutierrez, The Seasons of Alternative Dispute Resolution: A Study of Mediation Tactics in the Context of Ancient Greek Mythology, *The American Journal of Mediation*, Vol. 6-2012A

⁴⁷ J. Valmantonis, Some thoughts on mediation and its relationship with the judicial procedure, *EllDni (=EllinikiDikaiosyni)* 54 (2013), 344 et seq [in Greek] at 356

⁴⁸ As it was also emphasized by the President of the Court of First Instance of Thessaloniki & Judicial Mediator Ms. Spyridonidou (interviewed by the author on 22/12/2016)

⁴⁹ L. Otis & E. Reiter, *Mediation by Judges: A new phenomenon in the Transformation of justice*, 6 *Pepp. Disp. Resol. L. J. Iss. 3* (2006), 363

⁵⁰ Note in passing that not every matter can be appropriately or effectively mediated. On a public level there are legal boundaries that pose limits to the availability of judicial mediation. In Greece, Judicial Mediation is available for most civil, family and commercial matters, but administrative and criminal cases are not covered.

2.3 The negotiation process

In this stage the mediation session starts in order to bring the parties on the same table with the presence of the mediator.⁵¹ During the opening statement of the judicial mediator the parties need to be assured that he/she acts exclusively as a mediator and that the party is the active participant having his chance to be heard by a judge mediator in his precious moment of exhibiting his palette of human emotions. The judicial mediator acts as a catalyst in order to facilitate the negotiations in an atmosphere of trust and understanding.⁵²

Judicial mediation, like classic mediation, requires to focus on the notorious “active and constructive listening” techniques which aim at providing process control and keeping the conversation going.⁵³ The goal is the settlement rather than the victory, so the judicial mediator’s job in the opening is to preserve the gap between adjudication and mediation in way of underlying the rigid classification characteristics of litigation and keeping them out of mediation.

The judge mediator must have the reflexes to demonstrate the difference between the interests and the positions set by the parties. A “position” is what the lawyer says in the pleadings while an “interest” is what really people want and need.⁵⁴ An effective mediation must succeed both substantively going deep in the essence of the difference (the facts and the law) and procedurally taking place in a fair and civil manner, providing to the parties the feeling that they have been heard well.

2.2 The Settlement

It is undeniable that not all the cases can be settled. There are some rare cases where there is a huge distance between the parties diametrically different thesis or the case is on the cutting edge of the law or it is for the public interest that a trial takes place. But the safest way to explore the limits is to give effort a chance, in good faith.

⁵¹ K. Fragou, Judicial mediation, in A. Kaissis (ed), Problems and aspects of mediation (Thessaloniki 2014) 15 et seq [in Greek] at 16, International Hellenic University

⁵² V. Thanou – Christofilou, Judicial mediation (Art. 214B CCP), EILDni [=EllinikiDikaioyni] 2013, 939 et seq [in Greek] at 939

⁵³ C. Bugring-Uhle & L. Kirchhoff & G. Scherer, Arbitration and Mediation in International Business, Kluwer Law International (2nd Edition-2006), 190

⁵⁴ S. Miller, Judicial Mediation Two Judges Philosophies, Litigation Vol 38 (2012),35

As hinted above usually during a conflict the parties confuse their positions with their interests. Interests are the substantial and crucial needs that are underneath the tip of the iceberg while the positions are the tip of the iceberg itself; they are the obvious but not the real reason of the conflict⁵⁵. Ideally conducted negotiations separate those blurred concepts and lead to a settlement that will end the conflict. From this point on the attorneys come in the foreground and draft the agreement. After the agreement is drawn up it must be reviewed in consultation with the parties so as to ensure that it accurately reflects their consent and that it resolves the conflict the way they decided. Then the decision can then be confirmed as a settlement by the court that seals the Minute of Judicial Mediation.⁵⁶

There are limits that are set to the legal system of a state. The judges' main task is to decide on claims on the grounds of compensations. They cannot redefine a relationship between the parties. Only the parties can do that. Only through effective mediation can a judge mediator have the privilege to help people transform their relationships and move forward.

3. The process of Judicial Mediation in Thessaloniki's Court of First Instance.

In Greece the recourse to Judicial Mediation is voluntary⁵⁷, so that every person may resort to the territorially competent⁵⁸ judicial mediator, submitting a written request either before a lawsuit or during the stage of *lispensens*. Therefore litigation does not infringe the recourse to judicial mediation as stated in par. 4 Article 214B of the Greek Procedural Civil Code.⁵⁹

After the amendment of Article 214B CCP according to art.102 par.2 L. 4139/2013, in every district court and court of appeal one or more of the serving chairmen of the Court of First Instance and the Court of Appeal or one of the first instance judges or judges of the

⁵⁵ R. Mnookin, *Bargaining with the Devil*, Simon & Schuster Parebacks (2010), 28

⁵⁶ S. Miller, *Judicial Mediation Two Judges Philosophies*, *Litigation* Vol 38 (2012), 34

⁵⁷ K. Christodoulou, *supra* footnote 46 at 292

⁵⁸ The territorial jurisdiction of the judge - mediator is determined by the provisions of the GrCCP on jurisdiction and therefore the competent mediator judge is the one who has been designated as such to the Court, which would also be competent Court to resolve the dispute.

⁵⁹ "The court where the case is pending, can at each stop of the trial, as appropriate and taking into account all the circumstances of the case, invite the parties to use judicial mediation to resolve their dispute and at the same time, if the parties agree to postpone the trial of the case in a brief hearing and no more than six months".

court of appeals are appointed as part-time or full-time mediators, for two years, renewable for one more year.⁶⁰

Without any similar precedent, the Court of Thessaloniki was invited to directly organize the operation of the Judicial Mediation Office, since the law stipulated the immediate implementation. Thus, the Court of Thessaloniki, judicial mediation office is open from May 2012. A Chairman of the Court of First Instance as judicial mediator performs tasks alongside his other duties.⁶¹

3.1 The procedure

The established procedure at judicial mediation is the following⁶²: First of all the party informs the judge verbally on its case. This is deemed necessary in order to check if the case is “mediatable”, if the parties have the legal authority to dispose their case, etc. Then the party/ parties can submit his/their request where he/they summarize his/their case. The original text of the recourse to judicial mediation is filed at the Court Registry Office with a specific reference number and is kept in the records of the Court. Then, the Secretary of the Court draws up a Report which is registered in the report book for judicial mediation. The folder submitted must necessarily include contact details of “other party” as well as its phone number.⁶³

Then the judicial mediator contacts the other party by telephone and sets date and time of meeting, usually within a week. The judicial mediator determines the place and time of the hearings and the secretary usually informs, by telephone, the opposite party of the applicant for judicial mediation.

On the appointed day the 'defendant' party in the presence of its attorney is informed on the procedure and the provided possibilities. In practice the first separate hearing takes place between the judge mediator and the applicant and its attorney. Right after that session a separate hearing between the judicial mediator and the applicant's opposite party and its attorney takes place. After all their proposals have been exhausted and the non-

⁶⁰ K. Fragou, Judicial mediation, in A. Kaissis (ed), Problems and aspects of mediation (Thessaloniki 2014) 15 et seq [in Greek]at 17

⁶¹ K. Fragou, supra footnote 60, at 17

⁶² V. Thanou – Christofilou, Judicial mediation (Art. 214B CCP), EIIDni (=EllinikiDikaiosyni) 2013, 939 et seq [in Greek] at 940

⁶³ I. Stratsiani, Judge at Athens Court of Appeal, Judicial mediation- under L. 4055/2012 Article 214B' CCP, Paper for mediation presented at the seminar of the National School for Judges (2014)

binding recommendations have been addressed by the judicial mediator to each of the parties during the separate hearings, it is the time for joint hearings. The exact number of those sessions is not determined or limited.⁶⁴

During the sessions no minutes or any kind of records are taken, the process is totally confidential and therefore the judicial mediator does not disclose to the parties the views and opinions that they entrusted him. The whole process is generally conducted in a manner which respects confidentiality.⁶⁵ The preservation of confidentiality is ensured by the participants in writing before the initiation of the process, according to article 214B par.6 and well emphasized by President and judicial mediator of the Court of First Instance of Thessaloniki Ms Spyridonidou.⁶⁶

According to article 214B par. 3 CCP, the judicial mediator may address the parties only non-binding dispute resolution proposals⁶⁷, since he/she does not act any judicial functions *stricto sensu*, he/she does not seek judicial resolution of the dispute since in this particular case he has no judiciary authority of issuing a decision, but simply helps the parties to reach an agreement. This is the reason why judicial mediation is said to allow citizens to resolve their disputes more efficiently, without resorting to the litigation process. If a mutually acceptable solution is achieved, the attorneys of the parties prepare the Minute of Judicial Mediation. The Minute is signed by the parties, their attorneys and the judicial mediator. The original of the Minutes is lodged with the Court Registry, along with a fee of EUR 20.⁶⁸

In this procedure the absence of detailed settings impose the analogous application⁶⁹ of the provisions of L. 3898/2010 for Mediation and the consequently recourse to Judicial Mediation such as : a) interruption and limitation period for bringing claims,⁷⁰ b) compliance with the procedural rules that provide adequate guarantees of confidentiality of the

⁶⁴ K. Fragou, Judicial mediation, in A. Kaissis (ed), Problems and aspects of mediation (Thessaloniki 2014) 15 et seq [in Greek]at 18

⁶⁵ I. Stratsiani, Judicial mediation under L. 4055/2012 Article 214B' CCP, Paper for mediation presented at the seminar of the National School for Judges (2014)

⁶⁶ As it was also emphasized by the President of the Court of First Instance of Thessaloniki & Judicial Mediator Ms Spyridonidou (interviewed by the author on 22/12/2016)

⁶⁷ K. Fragou, *supra* footnote 64 at 18

⁶⁸ Ministerial Decision 43047/2012, O.G.B' 2830/2012 (Nomos 582740)

⁶⁹ M. Andriakopoulou & P. Loukakou, Mediation of L. 3898/2010to private disputes, *Synigoros*, 109/2015, 44 et seq [in Greek] at 44

⁷⁰ K. Polyzogopoulos, The legal consequences of the application of the compromise intervention of the Magistrate in conformity to Art. 214 CCP, *EllDni (=EllinikiDikaiosyni) 2/2016 (57)*, 394 [in Greek] at 394

information and c) agreement reached between the parties is enforceable, by analogy with the provision of Article 904 par. 2 c. of Code of Civil Procedure⁷¹.

3.2 The enforceability of agreements resulting from judicial mediation

In regard to the enforceability of agreements resulting from mediation (according to Article 6 of the Directive) all member states provide for the enforceability of mediation agreements as prescribed by the Directive.⁷²

According to the **Report** from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2008/52/EC, **published in 26.08.2016**, some countries do not explicitly require the consent of all parties to the dispute for a request for the enforceability of the mediation agreement. In Greece and Slovakia an enforceability request can be made **by one of the parties** without explicit consent from the others⁷³.

Since 01/01/2016 Article 293 of the GrCCP, as amended by Law 4335/2015, reads as follows: "Completion and termination of the trial, Article 293 par. 1. The parties may compromise at any stand of the proceedings, provided that this compromise is compatible to the conditions of substantive law. This compromise is made by a statement before the court or judge reporter or notary and entails ipso jure abolition of trial. Such a settlement, which is contained in the minutes of paragraph 3 of Article 214A and paragraph 5 of Article 214B, covers the form of a notarial document, provided for by the substantive law, and can be used as an instrument to record or eliminate mortgage."⁷⁴

The above provision was the same in general with the one recorded in art. 10 Law 4055/2012 entitled as Minute of Mediation- Enforcement Order of a mortgage where the minutes recording an agreement after a judicial mediation substitute a notarial document

⁷¹ G. Diamantopoulos & V. Koumpli, On Mediation Law in Greece, RHDl 67 (2014), 385 [in Greek]

⁷² The Scientific Committee of the Parliament highlights in its report of 8 December 2010 that "[...] the minute of mediation is filed and validated by the Secretariat of the competent court of First Instance. It is possible that the legislature intended only to give enforceability to the agreement of the parties and not to substitute public deed [...] In order to avoid misinterpretation it might be appropriate to clarify the issue".

⁷³ Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters, Brussels, 26.8.2016, COM(2016) 542 final

⁷⁴ A. Anthimos, Modifications in the chapter on recognition and enforcement, Arm. (=Armenopoulos) 2013, 2089 [in Greek], where the writer expresses his concern if the lodging of the prototype of the Minute to the Court Registry is equal to approval by the court. The amended Article 293 par. 1 provides an undisputed positive answer.

and can be used as an instrument for recording or eliminating mortgage. This provision was accepted enthusiastically⁷⁵ since it was for long period of time a recommendation of the Greek legal theory⁷⁶.

The minutes of a judicial mediation settlement fall within the scope of the above mentioned Article 293⁷⁷ which means that once it is filed by the clerk of the court it becomes enforceable under Article 904 par.2 (c) of the CCP.⁷⁸

4. Can a judge really act as a mediator?

It is axiomatic that mediation skills are not fully learned only by being taught. Practicing is the main way to evolve those skills⁷⁹ by improving mediation techniques through mediation theory, negotiation principles & ethical guidelines. Excluding or preferring legal trained mediators is an arbitrary presumption that cannot lead to safe predictions. Legal training is not sufficient and at the same time is not an anathema or hindrance for a successful mediation. Lawyers and judges as professional group are not effective mediators by position but they have to incarnate their role from the beginning establishing an atmosphere of ambiance and trust, actively listening and reacting accordingly, going under the tip of the iceberg.⁸⁰

Undoubtedly the participants may consider the judges either unable to let aside their traditional judging role (to take off their robes) or, on the contrary, very well suited for the role of mediator because of the fact that they are vested state power and the specific skills

⁷⁵ Ch.Apalagaki, General introductory remarks on the structure of the cognizance proceedings following further amendments of the Gr. CCP by virtue of Law 4055/2012, EfAD (=EfarmogesAstikou Dikaiou) 2012, 571 et seq [in Greek] at 573

⁷⁶ K. Komnios, Introduction to mediation law, Dike 2007, 31 et seq [in Greek] at 51

⁷⁷ According to the State Audit Council/Department of Preventive Control Expenditure Section I ACT 271/2013 “[...] Enforcement is established as an equal form of judicial protection (Supreme Court [AreiosPagos] 20/2001 Plenary Session) and as a necessary independent procedural extension of the substantive right, and not as an exclusive extension of a particular diagnostic procedure. [...] It is totally indifferent the foundation on which is based this transition (judicial or arbitral decision or on the basis of the other enforcement orders referred to in Article 904 CCP [...] When a beneficiary's existing claims against the State or against local authorities are based on enforceable order referred to in Article 904 [...] the Court of Auditors is required, the moment that it finds the truth of this, to make an endorsement of the money orders [...] The court settlement constitutes a functional substitute of the judgment and creates res judicata”.

⁷⁸ G. Diamantopoulos & V. Koumpli, On Mediation Law in Greece, RHDl 67 (2014), 386

⁷⁹ As it was also emphasized by the President of the Court of First Instance of Thessaloniki & Judicial Mediator Ms Spyridonidou (interviewed by the author on 22/12/2016)

⁸⁰ H. F. Smith, Critical Components for Mediation Training, in A.W. Rovine, Contemporary Issues in International Arbitration & Mediation, (MartinusNijhoff Publishers, (2007), 265

which they are supposed to have acquired through training and experience. To this direction the Greek legislator sensed that the institution of mediation with third parties as mediators, with professional titles and capacities other than a judge would impinge on the Greek's litigant distrust and disbelief, posing a risk to the implementation of the judicial mediator institution.⁸¹ But then even he (the Greek Legislator) was convinced that mediation skills are not a privilege of a particular professional team, and thus he changed the law accordingly.⁸²

Judicial mediator's power is enriched also by impartiality and independence with added characteristics of moral authority. The exercise of this moral authority is very refined since the judicial mediator has to give precedence to the consent of the parties instead of manipulating their consent towards a particular solution here and now.⁸³

It is acknowledged that judicial mediation requires judges to reform their traditional adjudicative role as is the custom and act more as a conciliator, using methods such as the Socratic maieutic method, instead of providing an oracle imposing the law to the disputants.⁸⁴ The judicial mediator should facilitate this dynamic approach of closing the communicational triangle through constructive active listening and finally gets the parties to engage with each other in a conversational approach rather than an adversarial one, since the final goal is the settlement and not the victory.⁸⁵

"Mediation can provide a cost-effective and quick extra judicial resolution of disputes in civil and commercial matters through a process tailored to the needs of the parties. Agreements resulting from mediation are more likely to be complied with voluntarily".⁸⁶ The judicial mediator must always have in mind that the participants need not only to

⁸¹ I. Iliakopoulos, The new institution of mediation in civil and commercial matters, - EfAD (=Efarmoges Astikou Dikaiou) 2012, 21 et seq [in Greek] at 30

⁸² According to Article 4c L. 3898/2010: "The Mediator must be a lawyer accredited as a mediator in accordance to Article 7. In the case of cross-border differences within the meaning of case (a) of the present Article, the Parties may designate an accredited mediator who has no attorney status." *** The above article was replaced as following: c) "As a mediator is meant to be a third party compared with the litigants, accredited as intermediary as defined in Article 7, that is required to take mediation in an effective and impartial manner, regardless of how he was appointed or requested to conduct the mediation. " with subparagraph IE.2 of the first Article of L. 4254 / 2014, Government Gazette 85 / 04.07.2014.

⁸³ K. P. Berger, Private Dispute Resolution in International Business, Kluwer Law International (2006),233, where it is stressed that the mediator is and must act as a catalyst of creativity, moving the parties from the "win/lose" to "win/win" mentality

⁸⁴ L. Otis & E. Reiter, Mediation by Judges: A new phenomenon in the Transformation of justice, 6 Pepp. Disp. Resol. L. J. Iss. 3 (2006)

⁸⁵ D. Titsias, Reflections on the Value of Mediation with reference to judicial mediation, Dikografia (=Dikografia) (2014), 645 et seq [in Greek] at 648

⁸⁶ Directive 2008/52/EC(6)

resolve their dispute but also to carry their relationship forward in an amicable and sustainable relationship.⁸⁷

As Judge D. A. Polster of the Northern District of Ohio said: “[...] I discovered that people listen to us not because we are smarter, [...] but there is something about wearing the robe that creates an aura of credibility”. Although in Greece the judges in the first and second instance civil courts are not wearing the same outfit, the sense of their institutional authority and credibility⁸⁸ along with the fact that judges dedicate time and energy to talking to the parties face to face, sitting next to them in full privacy, is very positive for the judicial mediator challenge: to drive the conflict through holistic resolution processes.⁸⁹

In Greece according to the Explanatory Report of Law 4055/2012, that introduced Judicial Mediation, it is an axiom that “The assignment of the mediator’s tasks to a judge guarantees neutrality, independence and impartiality that must be ensured by a mediation system. This way the citizens strengthen their confidence in non-judicial dispute resolution and ease their recourse to them, ultimately resulting in the broadest possible success of these ways and the corresponding relief of the courts to deal with those cases that actually require judicial investigation and decision making”.⁹⁰

A well trained judicial mediator is ready to uphold the integrity of the adversarial system, especially in cases at the appellate level, and more particularly when the review process of a first instance decision by a fellow judicial mediator protects the public perception of judicial process by keeping the review process “in house”, provided that the integrated system of judicial mediation for cases already being litigated ensures that neither adjudication process nor mediation undermines one another.⁹¹

Emphasis must be given to the fact that training is necessary for all the parties involved, though it is often said that “[...] mediation is not a skill one can fully learn by being ‘taught’.

⁸⁷ V. Triantafyllidou, *Alternative Dispute Resolution in the Hydrocarbon Sector*, IHU Dissertation (2013), 24

⁸⁸ G. Diamantopoulos & V. Koumpli, *Concerning Mediation Law in Greece*, RHDl 67 (2014), 361 et seq at 394

⁸⁹ S. Miller, *Judicial Mediation Two Judges Philosophies*, *Litigation* Vol 38, 2012, 31

⁹⁰ Explanatory Report to the Law 4055/2011, Part B Article 7

⁹¹ L. Otis & E. Reiter, *Mediation by Judges: A new phenomenon in the transformation of justice*, 6 *Pepp. Disp. Resol. L. J. Iss. 3* (2006), 16

[...]Even then it is as much art as skill, and is a role for which some are simply not, and never will be, well suited”.⁹²

5. Significant differences between Mediation and Judicial Mediation⁹³

Judicial Mediation has been a subject of concern for the Committee set up for the reform of the Greek CCP as well as for the Committee that worked on the transposition of the European Directive into Greek law. Those Committees often raised questions on whether a judge should act as a mediator. The main counterclaim of this dual role of a judge was that the interference of judges in mediation procedures would raise issues of exclusion of judges in subsequent proceeding. For that reason the Greek Mediation Law didn't provide for judicial mediation, in the first place.⁹⁴ The situation reversed with the provisions of Law 4055/2011 which introduced a simple and concise arrangement, which was numbered as article 214 B in the Greek Civil Procedure Code, and referred to the new institution of the so-called judicial mediation.

In paragraph 3 of the new Article 241 B of the Civil Procedural Code: “the judge may suggest non-binding dispute resolution proposals to the parties”. This process where the Judge proposes solutions is close to the so-called “evaluative mediation” or rather to compromise with the well-known term “conciliation”^{95/96}. On the other hand, the Mediator acting as a catalyst⁹⁷ during his intervention, he is trying to facilitate negotiations between the parties. Mediation leaves the power of decision, almost entirely, to the parties and the

⁹² Hon. Fern Smith, *Critical Components for Mediation Training*, at A.W. Rovine (ed), *Contemporary Issues in International Arbitration & Mediation*, MartinusNijhoff Publishers (2007), 265

⁹³ D. Maniotis, *Concerning the determination of the freedom of private will in ADR, EPoID (=EpiteorisiPolitikisDikonomias) 2012, 711 et seq [in Greek]*, *The Greek Law 3898/2010* does not provide for judicial mediation but Art. 3(2) allow the court before which the disputes are pending to invite the parties to use mediation at every stage of the trial, based on the situation and the merits of each dispute. If the parties agree, the court adjourns the hearing for at least three but not more than six months. Obviously this procedure does not constitute what is understood as judicial mediation in other legal systems.

⁹⁴ N. Klamaris, C. Chronopoulou, *Mediation in Greece: A Contemporary Procedural Approach to Resolving Disputes*, Edited by K. Hopt & F. Steffek, Oxford University Press, 589

⁹⁵ UNCITRAL Model Law on International Commercial Conciliation (2002)

⁹⁶ I. Stratsiani, *Judge at Athens Court of Appeal, Judicial mediation- under L. 4055/2012 Article 214B' CCP, (2014)*, Paper for mediation presented at the seminar of the National School for Judges, 2014, The judge in that case does not decide about the fairness of the case, but he can present possible parameters that will matter to the Court. It is the person that intervenes and mediates between the parties in order to resolve their dispute and conclude to an arrangement or an agreement. Mediator is in that sense the one who intervenes for reconciliation.

⁹⁷ D. Titsias, *Mediation: integration into the operation of civil judge and to the purposes of civil proceedings, EllDni (=EllinikiDikaiosyni) 3/2015 (56), 644 et seq [in Greek]* at 645

mediator tries to “elicit” from them a mutually acceptable solution.

Unlike the English version of the word, where there is only one term of MEDIATION, when the rich Greek language uses the term of “Judicial Mediation” (Δικαστική Μεσολάβηση) emphasizes the difference from the term “Mediation” (Διαμεσολάβηση). Judicial Mediation, as applied in Greece, would be conceptually closer to the translation of the foreigner term of “Conciliation”.

Another difference is that the recourse to mediation requires the prior agreement of both parties, and a joint decision on the choice of the Mediator. On the other hand, in Judicial Mediation, if one party wishes to, he can apply for judicial mediation on his own initiative, requesting him to invite the other party to take part in the process.

Finally, the Mediation is a formal process that follows specific stages, almost strictly prescribed⁹⁸, in which the mediator must have as knowledge and be specially trained. While during the judicial mediation, a judge, although it is very important to know the methodology, move more freely and tries to individualize the problem and to investigate how to approach each case⁹⁹.

PART II

6. Judicial Mediation Proceedings in the Court of First Instance of Thessaloniki – Case Study

There is a great variety of cases referred to Judicial Mediation: labor, lease, co-owners of property, participation in acquisitions, family law cases.

From the 21/06/2012 until recently (01/09/2016) 18 cases were mediated in the Court of First Instance of Thessaloniki. Half of them, i.e. 9 cases, have successfully closed with Minutes of Judicial Mediation. The starting point was on 29/10/2012, when the second case was allocated to Judicial Mediation before the Court of First Instance of Thessaloniki.

⁹⁸ K. Christodoulou, Directive 2008/52 on mediation on civil law disputes, NoV (Nomiko Vima) 2010, 287 et seq [in Greek] at 290

⁹⁹ D. Maniotis, On the determination of the freedom of private will in ADR, EPoID (=Epitehorisi Politikis Dikonomias) 2012, 711 et seq [in Greek] at 713

6.1 The First Case

The first application was submitted on 21/06/2012, relating to a lease difference and particularly an application for rent reduction, between a private person and a public entity (a municipality). That difference was very interesting because the parties involved were from the one hand a private person and, on the other hand, a public entity. Unfortunately, during the common meeting of both parties and the judicial mediator, it was concluded that: "In the present case the opponent parties have not agreed to abandon their adversary positions in order to reach the conclusion of a settlement agreement".

In this particular case the judicial mediator opted for the criterion of state power¹⁰⁰ whereby in order to characterize a difference of public or private law it must be examined whether the public body in this legal relationship enjoys a more privileged position than the private contractor. If the state, the public entities or the private entities belonging to the state do not make use of their public power and equate their activity with that of the individuals, then the parties are considered to be – theoretically- equal.

The emerging differences and their private law disputes are under the jurisdiction of the civil courts as for example is the case for concluding or modifying a lease contract. According of the **Special Report** adopted pursuant to Article 75 par. 3 of the Greek Constitution concerning the financial results of the draft law entitled "Mediation in civil and commercial matters": "V. The State Budget and Public Entities budget and local government units of first and second degree and other entities of the broad sense of the public sector: This Special Report provides that "In the cases of any expenses incurred relating to the payment of the compensation of the Mediator, partly attributable to each of the parties, and the payment to the lawyer, if one of these bodies is one of the parties that resorts to the mediation process. (Article 12 paragraph 3), the above expenditure shall be covered by credit provided within the state budget and the budgets of other entities as appropriate".

According to the Minutes of the 37th General Assembly /12/11/2013 of the VII Department of the State Audit Council the scrutiny of the legality of the expenditure that is based on the minutes of judicial mediation, that has become enforceable (214 B CCP,) is only related to the conjunction of legal and factual conditions for the preparation and enforceability of them, that is to say the compliance with the conditions prescribed by law as to standard, external elements and it does not extend to the essential, internal elements,

¹⁰⁰ K. Christodoulou, supra footnote 96, at 292

such as whether the claim that is incorporated in the payment document had lawfully been the subject of judicial mediation.¹⁰¹

Therefore it can be safely concluded that if the condition of private law dispute is cumulatively fulfilled along with the other conditions set by law, the judicial mediation is permissible, even if a party to the dispute is a public body, as long as it does not exercise public authority.¹⁰²

Therefore we conclude that the Greek legislature made use of the possibility offered by the Directive, in order to apply this beyond the mediation of cross-border and domestic commercial and civil disputes. As mentioned above the interpretation of the law leads to the conclusion that the public entities can make use of mediation in specific cases provided that they do not exercise public power. Yet in order to have legal certainty it is recommended to introduce an explicit regulation that would expressly provide for the above, without the need for interpretation.

6.2 The Second Case

The second case that was allocated to judicial mediation came after court proceedings (law suit) before the Court of First Instance of Thessaloniki in the regular procedure in order to request the voluntary distribution of property between individuals. In that dispute a settlement was finally reached and the relevant minutes of judicial mediation were drafted on 10/09/2012, which was also **the first (1) minutes of judicial mediation** of the Court of First Instance of Thessaloniki. As a consequence the judicial proceedings concerning the law suit were terminated and there was no need for the court to adjudicate.

6.3 The Third Case

The third consecutive recourse to judicial intervention also took place in 2012. It was a claim requesting the recognition of the spouse's contribution to the other party's property (the husband's) and her participation in the acquisitions. It was a private law dispute which first appeared to lead to a successful judicial mediation with the parties finally reaching an agreement. In view of the possibility of reaching a settlement agreement, the case was

¹⁰¹ See also the Legal Report Processing of Law of 3898/2010, on p. 6, where it is noted that in the above private disputes and differences involve the cases where the state and the State Entities do not exercise public authority.

¹⁰² D. Theocharis, Mediation as a means of alternative dispute resolution: pursuant to article analysis and interpretation of Law 3898/2010, Law Library, 2015, 367

adjourned and a new joint meeting of the Parties was scheduled after twenty days as the Christmas and New Year Eve holidays were ahead.

However, the parties have revised their views during the Christmas holidays and eventually in the day of the newly scheduled meeting their lawyers came to report that there was no possibility to abandon their adversarial positions in order for their statements of the willingness to coincide and finally reach an agreement. The interval period of time that elapsed after the postponement was not a capable consultant for reaching an agreement. The above case is the only one where a postponement and a resumption of the meeting in due time was requested.

6.4. The Fourth Case

The fourth on the row request to judicial intervention was related to a labor dispute already pending before the Court of Thessaloniki, against a public entity and in particular against a hospital. The authorized lawyers of the parties failed to abandon their adversarial positions in order for their parties' willingness to coincide and finally reach an agreement by signing the minutes of judicial mediation.

In first place it seems that since there is an imbalance in power and the one side has a stronger bargaining position it is a reality that is hard to change. But even then negotiations can protect the other side from making an agreement that he should avoid and focus on negotiating on the merits under auspices of a judicial mediator.

6.5 The Fifth Case

The 5th consecutive case concerning an alimony claim between a parent and his child had also a positive outcome. The action was pending before the Court of First Instance of Thessaloniki and the hearing had been scheduled only one month after the date fixed for the joint meeting on judicial mediation.

In this case, the dispute was subject to the family law and the parties, under the auspices and the contribution of the judicial mediator, managed to reach an agreement and compromise on the payment of the child's alimony. Thus, they finally signed the minutes of the judicial mediation.

6.6. The Sixth Case

The sixth case that was introduced for judicial mediation in 2013 was also a family law case involving particular acquisitions during the marriage, while an action for the same

matter was pending before the Court of First Instance of Thessaloniki. The particular characteristic of this case was that the parties had already reached an agreement before the scheduled meeting date for judicial intervention and they came to the judicial mediator in order to finalize their agreement.

6.7. The Seventh Case.

On the same day as the above mentioned, another successful judicial mediation took place which was concluded by signing the judicial mediation minutes, while proceedings were pending before the Court of First Instance of Thessaloniki. By signing the judicial mediation minutes the one party acknowledged the claim of the other party, they both agreed on the exact amount of this claim and they regulated the payment of the debt.

6.8. The Eighth case

This eighth case that was allocated to judicial mediation had also a successful end. It concerned the custody arrangement, the alimony of the child and the communication between the parents and the child. The couple was divorced according to the competent court decision. With the present minutes of judicial mediation the parties decided to partly change the court's decision as far as the matters of custody arrangement, the alimony of the child and their communication.

6.9 The Ninth case.

The consecutive case was also a family law matter and more particularly, it was about granting parental responsibility solely to the one parent after mutual agreement of the parents and former spouses. The parties chose to resolve their case by direct recourse to judicial mediation, since there was no *lis pendens* between them.

6.10 The Tenth case

The following 10th consecutive case involved claims of four (4) individuals against a banking institution. A lawsuit was already pending before the Court of First Instance of Thessaloniki. The attorney of the bank was reserved to inform the judicial mediator by telephone, since the bank had already informed the defendants with an out-of-court statement that the bank did not wish any judicial mediation.

This case is still pending before the court, since the hearing is settled to take place on January 2017.

6.11 The Eleventh case

The 11th consecutive case concerned the conflict between two private legal entities, i.e. claims requesting a compensation for damage, profit loss and moral damage, of a general unlimited partnership distribution company of milk products versus a limited liability company of dairy products. The claims were pending before the Court of First Instance of Thessaloniki after the relevant action. However, none of the parties appeared at the scheduled hearing date before the judicial mediator.

The Court of First Instance rejected the lawsuit, and the appeal is still pending.

6.12 The Twelfth case

The year 2015 began with recourse to judicial mediation, filed by an individual against a credit institution, while a lawsuit was pending against the said bank before the First Instance of Thessaloniki.

The main demand of the lawsuit, that was also included in the recourse to judicial mediation, was the recognition of the absence of two (2) contracts of secured housing loans on Swiss francs mortgage, or the nullity of the above contracts due to unfairness of their conditions. However **none of the parties appeared** in the joint meeting thus resulting in the cancellation of the hearing. The case is still pending before the Court since the hearing is scheduled to take place on February 2017.

6.13 The Thirteenth case

The 13th consecutive case concerned the judicial intervention in cases of leasing disputes, while an action was pending before the First Instance Court of Thessaloniki on leasing disputes. The applicant for judicial mediation was the defendant in the above pending action, which is novel for the hitherto recourse to judicial mediation in Court of Thessaloniki. However, the case was canceled because none of the parties appeared to the scheduled meeting.

The process in front of the First Instance Court of Thessaloniki was also aborted.

6.14 The Fourteenth case

The first judicial mediation case for judicial year 2015 ended successfully and the consequent minutes signed by the parties. This was a family law dispute and in particular, it concerned the financial and property issues that had arisen in view of the agreed divorce by mutual consent of the parties.

The parties had already pre-arranged in private contracts the relevant issues such as their future divorce by mutual consent - as yet no such request had been submitted to the competent court - the use of the family house exclusively from one of the spouses together with their children, the voluntary removal of the other spouse from the family house, the grant of the children's custody to their mother, the arrangement of the communication between the father and the children and finally the amount of the monthly payable alimony paid by the father.

Subsequently judicial mediation settled the later financial and property issues and in particular: **a)** the reciprocal waiver of any mutual alimony claim, **b)** transfer of the company shares by the one spouse to a person indicated by the other spouse, **c)** cash payment of a certain agreed amount of money by one spouse to the other spouse as **(1)** a recognition of its contribution to the family company of the other spouse and **(2)** to the overall increase of its wealth throughout the duration of the marriage and their marital cohabitation. Provided the full payment of the amounts specified in the minutes of judicial mediation, the party acknowledges that it has fully satisfied its claims for its participation in their acquisitions and to the overall increase of the assets of the other party, and therefore it waives explicitly, finally, unconditionally and irrevocably any relevant future claim.

6.15 The Fifteenth case

The next 15th case of judicial mediation was also successful. The parties were both applicants for the judicial mediation procedure, they were present together with their attorneys during the joint meeting and they jointly signed the relevant minutes of judicial mediation. The novelty in this case is that after the joint application of their request to mediation, and since they had already reached an agreement on the settlement of their dispute, they had only one joint meeting together with the judicial mediator.

The one of the parties had already resorted to the competent Labor Inspectorate. This labor dispute was pending before the competent institution, while the parties reached an agreement.

6.16 The Sixteenth case

The year 2015 continued to be a very positive year for the progress of judicial mediation in the Court of First Instance of Thessaloniki. The 16th judicial mediation case was a case of family law - one of the eight (8) family law cases filed in judicial mediation before the Court of First Instance of Thessaloniki.

The present 16th case had also a successful outcome, with the minutes of judicial mediation being signed by both parties. The parties were both applicants to this judicial mediation procedure and they were present together with their attorneys and they jointly signed the relevant minute of judicial mediation. It particularly concerned the financial and property issues that had arisen in view of the pending divorce upon mutual consent application in front of the competent court.

The parties had already pre-arranged in private contracts the relevant issues such as the use of the family house exclusively from one of the spouses together with their children, the voluntary removal of the other spouse from the family house, the grant of the children custody to the one parent, the arrangement of the communication between the other parent and the children and finally the monthly alimony for the children, payable by the father.

Therefore, as part of the negotiations concerning the dissolution of their marriage upon mutual consent, the parties waived their rights and their applications of remedies brought against each other before the procedure of judicial mediation and they decided to regulate consensually their financial and property issues.

It is worth mentioning that the parties agreed in only one joint meeting before the judicial mediator, as a private agreement had already been preceded for the regulation of the other aspects of their marriage except the property.

Subsequently, the judicial mediation helped in settling the rest financial and property issues and more particularly, a) the one party undertakes to transfer to the other party the ownership of the private passenger vehicles as well as the rights from an insurance contract and finally to pay a certain amount of money as satisfaction to its claim for its participation to the increase of the assets and the overall wealth throughout their marriage and their marital life, b) the rest of the assets agreed to remain in the ownership of the other contracting party, c) they expressly, unconditionally and irrevocably waived any future claim of the assets acquired during their marriage, d) they both waived any claim for alimony and e) the party's consent to the total elimination of the mortgage recorded on land of the other party's property. Following, they explicitly, finally, unconditionally and irrevocably waived any future claim.

6.17 The Seventeenth case.

The 17th consecutive case was also family law case. The parties had already brought several pending actions before the competent Court concerning the regulation of the alimony of the child, the custody of the child, the communication between the parents and the child, an application for divorce, an application on the provisional grant of the custody and alimony of the child, the necessary procedures for the final grant of the child's custody, and the naming of the child.

The one of the spouses had resorted to judicial mediation with an application before the First Instance Courts of Thessaloniki on the above family issue. However this application did not have the success of the previous family law cases and on the date of the scheduled meeting with the judicial mediator, the parties stated that it was not possible to reach a compromise and therefore they did not draft the relevant minutes.

6.18 The Eighteenth case

Finally, in September 2016 the 18th case of recourse to judicial mediation took place concerning the resolution of a society of things in common and the distribution of its property. The relevant action was pending before the competent court. This action is the second request concerning a voluntary joint distribution of assets between the parties. However, in this case it was found that it was not possible to reach a compromise and thus no minutes were drafted.

These data and the fact that new applications enrich the archive of the Court of First Instance of Thessaloniki create optimism for the future of the institution.

PART III

7. Concluding remarks

The traditional state-controlled justice system has as its main purpose to balance the parties' opposing interests by means of judicial decisions. The trial polarizes the parties in shaping their roles as plaintiff and defendant, appellant and respondent, around their opposition as the main source of their dispute. This is the main disadvantage of the contradictory justice, since the judicial determination does not take into consideration the real causes and the broader conflict that lie behind the legal dispute. Moreover, the judge can ignore those parameters of the wider conflict together with the psychologically traumatic experience associated with long judicial conflicts, since the law expects from him to handle the dispute as it is set out by the parties.

On the other hand, judicial mediation responding to the weaknesses of the classical model, addresses a flexible and party centered mode of dispute resolution. The judge mediator does not decide and does not impose a resolution of his own volition. Those characteristics are absent during the compromise intervention of the court, and this is the reason why it is improper for mediation to be referred as "an alternative way to dispense justice" or "alternative justice".¹⁰³

From the efficiency point of view judicial mediation restrains the stress and the psychological pressure and helps the parties to reach a mutually negotiated and accepted solution to their legal conflict and, at the same time to maintain social harmony through a balanced and a friendly satisfaction of the parties.¹⁰⁴

In our modern western society, the canon remains the state monopoly of court-based resolutions (adversarial system), based on a narrow conceptualization of the notion of "dispute" and the notion of its "resolution". But in reality the vast majority of conflicts in everyday life are resolved without recourse to courts and far from state institutions. State institutions just happened to be the most obvious and recognizable of dispute resolution mechanisms.

Alternative ways and modes of dispute resolutions may intensify the ideological disagreements regarding concepts of justice by means of opposition and interdependence,

¹⁰³ Information Note of the Draft Law "For certain aspects of mediation in civil and commercial matters in the context of accession in national law of Directive 2008/52/EC".

¹⁰⁴ Supra footnote 103

democratic legitimation and popular backing. The use of alternative forms of dispute resolution that are aptly described as privatized procedures, presupposes an agreement between the parties and a certain procedure. The free will of the parties is subordinated to the general principles of probity in the transaction contact and it is recognized as a common the value of our European civilization.¹⁰⁵

In the today's ever developing societies that constantly reshape and reinvent themselves, the balanced coexistence of the court system and the alternative dispute resolutions mechanisms in the administration of justice is the future challenge. Particularly, in Greece, the legislative introduction of mediation and judicial mediation is not sufficient. Greek society that has learned to trust the administration of justice to the Court will be convinced for the great benefits of mediation through the same way, i.e. through the judicial mediators. The judges hold in their hands the key of success of this very institution.¹⁰⁶

Judicial mediation preaches and heralds a new participant-centered normative order, "one that conceptualizes litigation more broadly and holistically and thus offers justice that is fuller and better adapted to the needs of parties with a variety of conflicts".¹⁰⁷ Furthermore, it will gradually lead us away from the logic of individualism and egocentricity prevailing in the society and closer to sociability and to an approach of communication and reconciliation - values that are served by mediation - and will be applied as a fundamental principle of humans as social beings.^{108/109}

The pedagogical function of the Judicial Mediation should no longer be overlooked and both judges and lawyers have a significant role to play to that direction. As Ms V. Thanou – Christofilou, Supreme Court Judge and Chairman of Judges and Prosecutors said: "[...] we must understand that the mediation institutions create a new advanced socio-legal

¹⁰⁵ D. Maniotis, On the determination of the freedom of private will in ADR, Epold (=Epitheorisi Politikis Dikonomias) 2012, 711 et seq [in Greek] at 717

¹⁰⁶ K. Makridou, Alternative dispute resolutions of private disputes in European jurisdictions - History and Prospects, Arm (=Armenopoulos) 2014, 905 et seq [in Greek] at 916

¹⁰⁷ Louise Otis, Eric H. Reiter, Mediation by Judges: A New Phenomenon in the Transformation of Justice, 6 Pepp. Disp. Resol. L. J. Iss.3 (2006), 353

¹⁰⁸ D. Titsias, Mediation: integration into the operation of civil judge and to the purposes of civil proceedings, EllDni (=Elliniki Dikaiosyni) 3/2015 (56), 644 et seq [in Greek] at 676

¹⁰⁹ D. Titsias, Reflections on the Value of Mediation with reference to judicial mediation, Dikografia (=Dikografia) (2014), 641 et seq [in Greek] at 648

culture, for the realization of which a changing of attitudes is required as well as a changing of the approach of the ways of resolving private disputes".¹¹⁰

The Court of First Instance of Thessaloniki together with its Judicial Mediators strongly supports this effort. A proof of that are the successful mediations that are continuing to take place creating an ambiance of optimism for the future of the institution of Judicial Mediation.

After the Judicial Mediation model matures it will be profitable to expand its scope to embrace a broader range of disputes beyond the civil commercial and family matters such as in criminal cases and administrative law.

¹¹⁰ V. Thanou – Christofilou, Judicial mediation (Art. 214B CCP), EILDni (=EllinikiDikaiosyni) 2013, 937 et seq [in Greek] at 939

ANNEX

NUMBER OF MINUTES..... / /201..

MINUTES JUDICIAL MEDIATION

(Pursuant to article 214 B CCP)

Today /201.., day at in....., and in the office of the judicial mediator, Mr./ Ms., President of the Court of First Instance of....., located in the 2nd floor of the Courthouse of....., the applicants, on one hand: 1)....., son of....., resident in, legally represented at these minutes by his attorney-at-law,(..... Bar of Association Reg. No....., Lawyer of....., Accredited Mediator of the Ministry of Justice, Transparency and Human Rights), with whom he presents himself, and on the other hand, 2) the Municipality of, legally represented by the Mayor,, son of....., resident in....., presenting himself with his attorney-at-law,(..... Bar of Association Reg. No. ...), **who met** in accordance with the provisions of Article 214 B CCP towards judicial mediation of the dispute contained in the Action for Compensation filed onunder the general file number lodged at the First Instance Court ofwith the Legal Document Filing no, with the hearing set on, **before the Judicial mediator ofFirst Instance Court**, agreed and jointly accepted the following:

The applicants brought the joint application of with filing number to judicial mediation before the Judicial Mediator of First Instance Court, the content of which is worded as follows:

APPLICATION FOR MEDIATION

BEFORE THE MEDIATOR JUDGE OF THE FIRST INSTANCE COURT OF CHALKIDIKI

(Pursuant to Article 214 B CCP)

- 1), resident of..... and
- 2) The **Municipality** of legally represented by the Mayor, resident in

Mr/Madam President,

With this joint application we request the judicial mediation procedure under Article 214 B of the Code of Civil Procedure for the peaceful settlement of the dispute regarding the final settlement of the Action for Compensation filed onunder the general file number and lodged at (place) First Instance Court with the Legal Document Filing No., with the hearing set on.....

Because according to the rule laid down in Art. 214 B CCP (Art. 7 par. 1 L. 4055/2012) the new institution of the extrajudicial settlement of private disputes, the judicial mediation, was introduced. The enactment of judicial mediation allows citizens to achieve shorter and “more civilized”, and thus more effective settlement of their disputes, without resorting to the litigation process. At the same time, the assignment of the mediator’s duties to a judge guarantees impartiality, neutrality and independence that should be ensured, inter alia, in a mediation system.

Because this application is deemed legitimate, true and well founded, according to Article 214 B CPC, and our dispute is open to compromise.

Because our application is according to 214B CCP, legitimate and true.

FOR THOSE REASONS

WE REQUEST

That you accept our application and therefore you introduce the above-described dispute into the process of judicial mediation, provided that it is private and open to compromise in view of the uncertainty of the outcome of litigation, setting the place and time of meetings to resolve it.

Place, Date

Appointed Lawyers

1.

2.

Following, we note the phone numbers of the appointed attorneys of the parties:

1), whose attorney is (.....Bar of Association Reg. No....., Lawyer of....., Accredited Mediator of the Ministry of Justice, Transparency and Human Rights), GR, place of residence, Tel. / Fax: Mob:, Email: and

2) The Municipality, legally represented by the Mayor, whose attorney is..... (..... Bar of Association Reg. No.....), Lawyer of....., Tel.:, Mob:,

We are at your disposal for any legal document needed.

Place/Date

Appointed attorneys

Because according to the rule laid down in Art. 214 B CCP (Art. 7 par. 1 L. 4055/2012) the new institution of the extrajudicial settlement of private disputes, the judicial mediation, was introduced. The enactment of judicial mediation allows citizens to achieve shorter and “more civilized”, and thus more effective settlement of their disputes, without resorting to the litigation process. At the same time, the assignment of the mediator’s duties to a judge guarantees impartiality, neutrality and independence that should be ensured, inter alia, in a mediation system.

Because this application is legitimate according to Article 214B CCP and the dispute of the parties is open to compromise, and since the legal procedure has been followed as provided for by Article 214B CCP and the parties presented their views in individual meetings with the Judicial Mediator, then, in common and in presence of the Judicial Mediator the parties reached a compromise and **agreed on the following:**

SETTLEMENT AGREEMENT

Today /201., in. on one hand: 1), son of, resident in, ..., legally represented at these minutes by his attorney-at-law, (.....), and on the other hand, 2), legally represented by the Mayor, resident in, presenting himself with his attorney-at-law (..... Bar of Association Reg. No. ...), Lawyer of..., who met in accordance with the provisions of Article 214 B CCP towards judicial mediation of the dispute following their joint Application for Judicial Mediation, **agreed and jointly accepted the following:**

Because the second party, the Municipality of, legally represented by the Mayor, has never contested the facts as described in the above action of the first party, **they proceed** with these minutes of compromise to the final settlement of the payment due by the second party, the Municipality of, as a compensation for using the property described in the aforementioned action and owned by the first party, as follows:

It is hereby agreed that the second party, the Municipality of, legally represented by the Mayor, son of, shall pay to the first party,, son of, by way of compensation, the amount of, which corresponds to less than half of the original claim of the first party as specified in the above action.

Because **both parties declare** that with this agreement everything stated in the above outstanding action has been settled definitely and in a legal and beneficial manner and there is **no further claim** on either side regarding the payment of the agreed compensation, namely the amount ofEuros (€.....) and that both parties **waive** their right to take legal action against each other in the future for claims regarding their dispute as described in the above action.

After the parties have agreed on the above, the present minutes are drawn up and signed as follows. **The Public Treasury fee no.has been paid.**

THE JUDICIAL MEDIATOR

THE PARTIES

THE APPOINTED ATTORNEYS

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