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A legislative initiative that merits attention: Mandatory mediation in Greece in trademark, patent and industrial designs infringement disputes

Kat friend [Dr. Marina Perraki](#) summarizes the interesting legislative initiative in Greece to make mediation mandatory with respect to a wide spectrum of IP disputes.

The discussion about mandatory mediation in Greece has been crystallized in the form of a legislative initiative affecting industrial property disputes. Mediation is a process based on the voluntary initiative of the parties. This is reflected in the EU legal framework and, in particular, in recital 13 of the Preamble to [Directive 2008/52/EC](#) on certain aspects of mediation in civil and commercial matters. Mediation stipulated in the said Directive--

"... should be a voluntary process in the sense that the parties are themselves in charge of the process and may organise it as they wish and terminate it at any time. However, it should be possible under national law for the courts to set time-limits for a mediation process. Moreover, the courts should be able to draw the parties' attention to the possibility of mediation whenever this is appropriate".

CJEU has confirmed that the voluntary nature of mediation does not lie in the freedom of parties to choose whether or not to use that process but in the fact that the parties are "in charge of the process", may "organize it as they wish" and "terminate it at any time" ([C 75/16, ruling of 14 June 2017, par 50](#)).

The Greek legislator has recently decided to introduce compulsory mediation in certain kinds of disputes. This covers also cross-border disputes, namely those where at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party. As explained in the preamble to the Greek provisions, CJEU preliminary reference rulings in [cases C 317-320/2008](#) (ruling of 18.3.2010 par. 54-57 and 61-63), and [C 75/16](#) served as the basis for providing compatibility of the compulsory mediation provisions with the Greek constitution and the individual rights of the parties. As per the preamble, the new legislative provisions are thought not to prevent or overly restrict the constitutional right of effective recourse to justice. The ability of the parties to leave the mediation process at any time and to seek judicial recourse, the limited costs related to the mandatory mediation, the suspension of prescription periods of the rights pending the mediation process, and the provision of a short period within which mediation shall be concluded, confirm such compatibility.

The right of recourse to justice is affected by the introduction of mandatory mediation, however this restriction was considered by the legislator as permitted ([C 317-320/2010, par. 52-65](#)). The aim sought by the provisions, namely quicker and less expensive settlement of disputes and a lightening of the burden of the judicial system, to the benefit of general interest, was considered proportionate to the restriction imposed on individual rights. This is also in view of the CJEU finding that an optional out-of-court settlement procedure "is not as efficient" to achieve such objectives as is a mandatory one ([C 317-320/2010, par. 65](#)).

By virtue of articles 178-206 of law 4512/2018, which was published on 17.1.2018, disputes concerning infringement of trademarks, patents and industrial designs, initiated before a civil court, shall be subject to mandatory mediation as a condition for the admissibility of the legal proceedings. Hearing of the case shall be invalid if the mandatory mediation process stipulated in the law has not been followed. Trials solely on enforcement and interim measures are excluded from mandatory mediation.

The effective date for the entering into force of the above provisions is 17.10.2018. From that date, plaintiff's counsel shall be required, with a penalty of invalidity of the court hearing: a) to inform his client in writing about the mandatory mediation via a written instrument to be signed by both the party and the attorney-at-law and submitted to the court; and b) to submit a request for a mediator to conduct the mediation, selected from a list of mediators available on the Greek Ministry of Justice web site. Such mediator shall then invite the other party(ies) to attend the mediation, which shall take place within 15 days from the date of the invitation. The mediator shall arrange with the parties the place and date of the mediation. Actual mediation shall not exceed a total of 24 hours unless otherwise agreed by the parties. The mediation shall be completed within 30 days after the end of the 15 - day period mentioned above. This may be extended upon mutual agreement of the parties for 30 more days.

What is important, mainly for foreign entities, is that physical presence is not required and the mediation can be conducted via a computer or other teleconference medium, to which the parties have access. Such teleconference may be conducted at the premises of another accredited in any EU member state mediator located in the country where the foreign party has its seat or residence. The parties shall attend the mediation proceedings together with their attorneys-at-law.



The parties may decide at the first mediation session that they do not wish to engage further in the mediation process. This shall suffice for purposes of the validity of the court hearing which shall follow. On the other hand, if the parties reach agreement as a result of the mediation, the protocol of such, together with the settlement agreement, may then be submitted by any of the parties to the court secretariat for certification. Upon such certification, the protocol and agreement serve as the basis for initiating enforcement proceedings. Should the parties not reach agreement, the protocol of the failed mediation session shall be submitted before the court by each of the parties.

If a party, who has been invited by email, fax or registered mail, fails to attend the mediation session, the mediator will draft the appropriate protocol and the other party shall submit it to the court. The court may then, in addition to its ruling on the merits, impose a monetary penalty against the party that failed to appear, ranging from 120 to 300 euros and a further penalty of up to 0.2% of the claim of the dispute, taking into account the overall behavior of this party with respect to his non-appearance in the mediation session. Interim measures are not precluded during the pendency of the mediation proceedings.

Procedural brevity and the possibility of conducting a mediation proceeding remotely are elements that are intended to facilitate the applicability of the above provisions. As well, the impact of the new law can be expected to raise awareness of alternative dispute resolution. Mediation was already introduced in Greek law in 2010 by virtue of [law 3898/2010](#), implementing [directive 2008/52/EC](#), however it had limited application and few cases were referred to mediation. This is obviously what led the Greek legislator to introduce compulsory mediation in certain kinds of IP disputes.

Still, whether compulsory mediation will ultimately lead to a reduction in the number of cases reaching the hearing phase, together with a corresponding increase in the number of cases resolved extra-judicially, remains to be seen. This largely will depend on whether the parties and their attorneys shall see the proceeding as an opportunity to reach mutually acceptable solutions out of court, or merely as a compulsory formality to be adhered to prior to the court hearing.

Posted by Neil Wilkof at 02:46:02
Labels: Greece, IP disputes, mandatory mediation, teleconference option

