

Mandatory Mediation Questioned - Greece

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We recently reported on the introduction in Greece of mandatory mediation in trademark infringement disputes in this blog [here](#). The respective legal provisions of law 4512/2018 shall start to apply as of 17 October 2018. On 28.6.2018, the Greek Supreme Court's administrative plenary panel issued an opinion holding that the mandatory mediation introduced by this law is contrary to the Greek Constitution and the European Convention on Human Rights. It opined that these provisions result in an obstruction of access to justice. The opinion was issued with a marginal majority of 21-18.

The opinion has not been published, information is derived solely from press coverage. According to that, the costs for the mandatory mediation were considered by the administrative plenary to be too high and in this way citizens' access to justice obstructed. It is noted that these costs were set at 170 euros, minimum, covering 2 hours of mediation, in case there is no other fee arrangement. No maximum was set.

Furthermore, the administrative plenary found that the mandatory presence of a lawyer at a mediation also increases the costs and obstructs access to justice. The law provides for mandatory participation of lawyers at a mediation (which is not common in other countries) in an attempt to involve them more actively and reconcile lawyers with the institution of mediation so that they do not see it as a threat to their business.

The plenary opinion does not bind the courts or the State and the law is not

annulled. The only way to “annul” a legal provision (in the sense of finding it contrary to constitution and refraining from applying it) is through a court decision. This was not the case here. The opinion was issued in the context of an administrative procedure where the plenary opines on issues of general interest to lawyers if a bar association so requests. In this case, the Athens Bar Association with the collaboration of all bar associations in Greece filed a question to the plenary, stating that in its opinion the provisions are contrary to the constitution.

It is noted that the Athens Bar Association operates a mediators’ school which has trained along with other bar associations thousands of mediators. The law provides that mediation training is made exclusively by bar associations in cooperation with chambers of commerce.

That said, the administrative plenary opinion may well set the pace for the future. It is likely to have an impact if the mandatory mediation is put at stake in a judicial proceeding. The way the system works in Greece allows any court of any instance to find a provision as contrary to constitution and refrain from applying it. A first instance court might rule in one way and a second instance court in another. Until the matter is resolved by the Special Supreme Court, competent in case of contradictory findings of the Supreme Court, the issue will be in a limbo. However, due to the infamous back log of Greek courts (that lead to the initiative of the legislator to introduce mandatory mediation), before any case makes it to the final instance before the Supreme Court, many years will pass.

On the side - the Greek law 4512/2008 also provides for non-mandatory mediation. This was not subject to the plenary opinion and has, as such, not been queried.