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Unlocking the Power of Mediation in The Republic of Cyprus

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Cyprus Legal System – A Unique Legal System

‘Cyprus belongs to a small group of legal systems that were once part of the common law world, but have moved somewhat away from that legal family, since independence in 1960. (...) Cyprus is still more of a common law jurisdiction than not.’

Source: Nikitas E. Hatzimihail, ‘Cyprus as a Mixed Legal System’ (2013) 6 (1) J. Civ. L. Stud. (2013) 38, 95

Poor ADR Culture and Judicial Backlog

- **ADR was/is underdeveloped.**
- **Judges often end/ed up acting as *de facto* conciliators in an attempt to resolve disputes.**
- **Valuable court time was/is wasted doing work that could more appropriately be undertaken by an ADR professional.**

Evaluation of the Justice System in Cyprus: Empirical Research Findings (Civil Procedure Unit, University of Nicosia, Hippasus 2021), pp. 122-123

- **Sample:** 228 practicing Advocates, including Advocates working for the Law Office of the Republic
- **82.5%** believe an ADR culture can be developed if regulations encourage parties to move towards that direction
- **71.5%** consider that compulsory ADR processes should have existed, at least for some disputes before the start of the court process
- **79.4%** believe that the wide use of mediation would be beneficial if the system encouraged the parties to move to that direction
- **86.4%** would encourage their clients to use ADR processes instead of pursue litigation if a satisfactory ADR system existed

Operation of the Judicial System

- Achieving greater efficiency of the judicial system was/is a serious challenge.
- Length of court proceedings was/is among the longest in the EU, and the level of backlogs in litigious civil and commercial cases is among the highest.
- There were/are serious deficiencies as regards the quality of the judicial system:
 - in the availability and use of information communication technologies; **(iJustice online system fully in force - 1 February 2022)**
 - in the use of ADR methods; **(New Civil Procedure Rules approved by the Supreme Court on 19 May 2021)**
 - in relation to standards on timing for case management or other performance measures.

Source: FUNCTIONAL REVIEW OF THE COURTS SYSTEM OF CYPRUS, Technical Assistance Project 2017/2018 IPA, Ireland, Supported by the Structural Reform Support Service (SRSS) of the European Commission (March 2018), p. 1.

Alternative Dispute Resolution for Consumer Disputes Law of 2017 (L.85(I)/2017)

- **Directive 2013/11/EU was only recently correctly transposed into the national legal order.**
- **Challenges:**
 - **Not all sectors or claims are covered.**
 - **Traders are not interested to engage in ADR - not made compulsory.**
 - **Lack of consumer culture.**

Certain Aspects of Mediation in Civil Disputes Law of 2012 (L.159(I)/2012)

- **Enacted on 16 November 2012 transposing Directive 2008/52/EC.**
- **Non-compulsory facilitative mediation model.**
 - **The parties choose a mediator (section 14(1)). The parties agree, in consultation with the mediator, the way of conducting the procedure, its duration, the obligation of confidentiality of the process, the remuneration of the mediator and the terms of payment and any other matter deemed necessary (section 16).**
- **The Law also provides for the enforceability of the compromise agreement by the Court (section 32).**
- **Note public consultation by the Ministry of Justice and Public Order in late 2018.**

Main Consultation Proposals

- **Reform still pending.**
- **Mediation to be made compulsory for all claims up to 10,000 euros (new and pending cases). Mediation referral to be made right after the Defendant files a notice of appearance to court. In all remaining cases, a trained Registrar to always inform parties about the possibility of mediation.**
 - **Also for compulsory mediation to be introduced in two specialised courts, the Industrial Disputes Tribunal and the Rent Control Tribunal.**
- **Financial sanctions to parties refusing to engage in mediation as well as financial motives for example returning court fees in the Civil Procedure Rules.**
- **Appeals to be automatically referred to mediation (!).**
- **To create a Central Mediation Entity under the supervision of the Ministry of Justice and Public Order responsible for quality assurance of mediation training and services, accreditation and disciplinary matters.**
- **Practising lawyer requirement is removed - rather a university degree plus 3 years of professional experience would be required to register as a Mediator after training as one.**
- **ADR methods to be included in the Cyprus Bar Exams.**

Registration of Mediators - Law 159(I)/2012

- **High number of registered mediators in the Republic of Cyprus.**
- **2 separate Registers:**
 - **(1) the Register of Mediators where the mediation in question concerns a commercial dispute (400+ mediators); and**
 - **(2) the Register of Mediators where the mediation in question concerns a civil dispute, other than commercial (200+ mediators - only Advocates).**

Compulsory mediation?

- Mediation should not be made compulsory *in my view* in light of lack of ADR culture in Cyprus but should **first** be strengthened through a number of legal and regulatory reforms, education and specialised training and expert promotional campaigns.

Strengthening Mediation

- How?
- Common law transplants vs Civil (Continental) law transplants.
- Education and specialised training
 - Requirement for Cyprus Universities to embed ADR methods into their undergraduate law degree programmes (theoretical and practical training)
 - insert practical ADR training, specifically negotiation skills in the exams of The Cyprus Legal Council - according to May LJ in *Aird & Aird v Prime Meridian Ltd* [2006] BLR 105 at 5, mediation is 'a form of neutrally assisted negotiation'
 - mediation needs to be embedded in the country's educational system through curriculum development and related activities (train the teachers to train the children as young as 6 years old)
- Promotional campaign(s) by The Ministry of Justice and Public Order and The Cyprus Bar Association in collaboration with the Cyprus Association of Mediators on TV and social media via informative short videos.

= ADR culture.

Reforming the legal and regulatory framework

- **Ensure L.159(I)/2012:**
 - **is aligned with new CPR (Part 35 Settlement Offer; 45.63-45.68)**
 - **strengthened to include other forms of mediation such as evaluative mediation - starts as facilitative mediation but the mediator will go further, provided that he is asked by both parties, and actually evaluate the legal merits giving an opinion on the likely outcome - legal professionals to act as mediators**

Singapore Convention

- **The Republic of Cyprus should ratify the Singapore Convention on Mediation which entered into force on 12 September 2020 - currently numbers 9 Parties.**
- **The Singapore Convention is a uniform and efficient framework applicable to international settlement agreements resulting from mediation, concluded by parties to resolve a commercial dispute.**
- **The goal is to facilitate international trade and commerce by enabling disputing parties to easily enforce and invoke settlement agreements across borders.**

ADR Clauses

- **An ADR clause allows the contracting parties to agree that if a dispute arises, they will use an alternative form of dispute resolution (such as mediation) as a step prior to, or at least alongside, court action or binding arbitration.**
- **An effective ADR clause will usually save time and costs, as well as potentially preserve valuable commercial relationships; leaves parties in control and provides parties with a simpler way of resolving a dispute prior to court or arbitration proceedings, but also significantly offers parties a constructive way of proceeding beyond stalled or ineffective negotiations.**

Med-arb

- **Med-arb is a hybrid, two-stage alternative dispute resolution (ADR) process.**
- **It usually involves the parties agreeing to grant a mediator power to convert automatically to being an arbitrator, and to make a legally binding arbitral award, if the mediation fails to result in a settlement of the relevant dispute.**
- **The arbitration phase of the process will be legally binding, and the arbitrator's award will be enforceable like an award rendered in standard arbitration proceedings, which is usually advantageous.**

Thank you