

REPORT OF THE SUPREME COURT OF CYPRUS

ALTERNATIVE DISPUTE RESOLUTION IN ADMINISTRATIVE MATTERS

Introductory questions

- 1. How do you define alternative procedures? How do you distinguish them from jurisdictional procedures and arbitration procedures?**

Alternative Dispute Resolution is any method of resolving disputes other than by litigation. Alternative Dispute Resolution refers to any means of settling disputes without going into court.

- 2. Do alternative procedures such as those defined above exist in your country? If no alternative procedures exist in your country, do you plan to create such procedures? Can you articulate your current thinking in this domain?**

In Cyprus there are three main alternatives to going into court.

These are arbitration, mediation and conciliation.

Arbitration has long been used as a method of resolving disputes. According to the **Arbitration Law, Cap 4** an arbitration agreement, unless a contrary intention is expressed therein, shall be irrevocable except by leave of the

court and shall have the same effect in all respects as if it had been made an order of Court.

Mediation is an ADR method to litigation. Mediation in Cyprus is not a compulsory step prior to resorting to court. **The Law Providing for Certain Mediation Matters in Civil Disputes, Law 159(I)/2012** was enacted to implement the Directive 2008/52/EC on mediation in civil and commercial matters. It is a rather new concept in Cyprus.

Conciliation is a non-binding, very similar procedure to mediation. It is considered an 'extension' of mediation and when the parties are unable to agree, a third party can provide them with a non-binding opinion regarding the possible settlement terms. It is in fact a combination of mediation and arbitration.

I. **The goals and the scope of alternative procedures**

1. **With what objectives are these procedures deployed? What advantages and benefits are expected to result from them?**

The main advantages are that these procedures are less costly and lengthy.

A dispute submitted to arbitration may be resolved quicker and more cost-effectively than one submitted to litigation. It

involves a process much less formal than a court process and includes the appointment of a third-party to preside over a hearing between the parties.

Mediation is a low cost, flexible and confidential procedure which helps the parties to resolve their differences and work towards reaching an agreement. Another advantage of mediation is that it leads to an outcome without delay. Even if a settlement is not reached, the process facilitates the designation of the facts and issues of the dispute, thus preparing the ground for any potential court proceedings. Mediation respects the parties' previous commercial relationship and attempts to leave it intact.

2. Are alternative procedures used in your country in administrative matters? Since when? What factors contribute to their development and what is the proportion of administrative disputes that are resolved each year by such procedures?

We do not have alternative procedures in administrative cases.

However recourse to other institutions in order to resolve a dispute between an individual and the administration is possible.

- The Commissioner for Administration and Human Rights (Ombudsman) constitutes the most prevalent

institution of extra judicial control of the administration and protection of human rights. The main pivots of the mission of the Commissioner for Administration and Human Rights are to ensure legality, to promote good governance, to combat maladministration and to protect citizens' rights and human rights in general.

- The Cyprus Stock and Exchange Commission was established in accordance with section 5 of the Securities and Exchange Commission (Establishment and Responsibilities) Law of 2001 as a public legal entity. The mission of the CySEC is to exercise effective supervision to ensure investor protection and the healthy development of the securities market.

Amongst the main duties and responsibilities of the CySEC are to supervise and regulate the operation of the Cyprus Stock Exchange and of other organised markets in the Republic and the transactions carried out in these markets, to supervise and regulate the agencies under its supervision in order to ensure their compliance with the laws governing their operation and to carry out all necessary investigations in view of the exercise of its duties under the law as well as on behalf of other foreign competent Authorities.

- The Commission for Protection of Competition (henceforth CPC) has the exclusive competence for the harmonious operation of the market, within the rules of fair competition far from any anticompetitive

distortions as means to boost economic growth and social welfare.

3 Do rules restricting recourse to alternative procedures in administrative matters exist in your country? In your opinion, what are the types of litigation for which these procedures would not be appropriate?

As stated above we do not have alternative dispute procedures for administrative matters.

4. Do instruments organising the use of administrative procedures in administrative matters exist in your country? If so, are these instruments legally binding (Hard law/soft law).

See answer above.

5. If your State is a member of the European Union, how was the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters transposed into national law?

Directive 2008/52 has been implemented with Law 159(I)/2012 but only in respect of civil matters.

II The stakeholders in alternative procedures

1. What categories of natural or legal persons have recourse to alternative procedures? Can all legal person governed by public law use them?

According to the law on mediation parties to mediation can be natural persons or legal entities having legal personality recognized as such pursuant to the relevant laws of the Republic or any other relevant applicable legislation, except for the states or other organizations governed by public law in the exercise of state authority and the public international organizations; Furthermore a commercial dispute between undertakings or between undertakings and public authorities can be resolved by mediation.

2. Can the parties to an administrative dispute entrust the conducting of a mutual agreement procedure to a third party? What role is this third party called upon to fulfil?

As stated above ADR is not applicable in administrative disputes. In mediation in civil and commercial disputes parties instruct a third party to identify the real issues of disagreement between the parties and to negotiate with them and resolve their dispute. The mediator will propose an agreement and the parties themselves will have to agree.

Conciliation is a non-binding, very similar procedure to mediation. It is considered an 'extension' of mediation and when the parties are unable to agree, the third party can provide them with a non-binding opinion regarding the possible settlement terms. The

conciliator's opinion is presented to the parties and, if not rejected, becomes a dispute resolution agreement.

- 3. Do standards regulating the activity of these parties exist in your country (required qualifications, continuing vocational training, remuneration, deontology etc.)? Do authorities with responsibility for the supervision of compliance with these standards exist (public bodies, professional organisations, non-profit organisations -possibly operating under license, etc..)?**

Mediation

The Minister of Justice keeps a special register of mediators in which any person may be registered in the Register of Mediators, if

- a. is enrolled in the Roll of Advocates and holds an annual license of practising as an advocate in accordance with the Advocate's Law and if he is trained. A person is considered to be properly trained if he submits to the Minister of Justice, certification that he has attended a programme of training as a Mediator as well as certification of continuing his professional training.
- b. Is a member of the Cyprus Chamber of Commerce and Industry or the Cyprus Scientific and Technical Chamber, is the holder of a recognized university degree and has attended a special training programme to become a mediator of total forty (40) hours, organized by the Cyprus Chamber of Commerce and Industry, or the Cyprus Scientific and

Technical Chamber, or has attended an equivalent programme.

- c. does not hold any public post, either permanent, or temporary, or by substitution in the public service;
- d. has not been convicted of a serious criminal offence or an offence involving dishonesty or moral turpitude; and
- e. is not under a trusteeship or guardianship and he is not deprived of his legal capacity

Since mediators are members of either the Cyprus Chamber of Commerce or of the Bar Council they are subject to their code of ethics and conduct. Furthermore Mediators must abide to the European Code of Conduct for Mediators.

In Article 10 of the Mediation Law the duties of the mediator are set out:

10. -(1) During the conduct of mediation, the mediator shall perform his duties with diligence, independence and impartiality in an appropriate and effective manner, regardless of his capacity or profession in the Republic and of the way in which he has been appointed or undertook to conduct the said mediation and he is not subject to the control nor is he under the instructions of any person or authority.

(2) The mediator to whom is suggested to perform, or who has already undertaken to conduct the mediation in accordance with

the provisions of the present Law, shall be obliged in due time and before accepting his appointment, or as soon as it is clear that there is a conflict of interest or other interest, to declare in writing any conflict of interest or any incident or financial of other interest which may affect or give the impression that it affects his independence and he shall refuse his appointment or resign from being a mediator, as the case may be, unless the parties explicitly agree that he is in a position to perform the mediation.

Arbitration

Arbitrators must be impartial and independent. There are no specific

Restrictions as to who may act as an arbitrator. The parties themselves decide on suitable candidates, who may be technical experts, lawyers, judges, or other professionals. However, a potential arbitrator should disclose to their possible appointees any circumstances likely to give rise to justifiable doubts as to their impartiality or independence.

Once appointed, the arbitrator has the obligation to inform all the parties concerned of any such circumstances, unless the parties had already been informed by the arbitrator of these circumstances,

There are some professionals organization established in Cyprus with a view to promoting arbitration and mediation as alternative dispute resolution methods.

4. Can the administrative courts invite or oblige parties to litigation before them to pursue an alternative procedure?

Can the administrative court entrust a mediation mission to a third party?

Alternative procedures are not available in administrative matters.

- 5. Can the administrative court itself conduct mediation proceedings? In your opinion what are the advantages and drawbacks of a mutual agreement conducted by a judge? In what types of litigation does the direct intervention of a judge appear most appropriate?**

Not applicable.

III. The procedures of alternative procedures

- 1. Can you detail the different alternative procedures applicable in administrative matters in your country? How do the parties choose between the various alternative procedures available?**

Not applicable.

- 2. Do administrative appeals, mandatory prior to the referral to the administrative court, exist in your country? Do optional such appeals exist? How are they organized? Does the lodging of an administrative appeal modify the conditions governing the filing and review of subsequent recourse to the court? For example, can the parties present arguments,**

not produced during a prior administrative appeal before the administrative court?

There may be recourses or hierarchical appeals prior to filing a recourse in the administrative court.

Recourse may be filed in the Tax Tribunal which is the independent body with authority to review decisions of the Director of the Tax Department.

The Tenders Review Authority examines Recourses regarding public procurements.

Hierarchical recourses may be filed which ensures the citizen's right of review by a body other than the one which took the initial decision.(i.e hierarchical recourse lodged to the Council of Ministers against the decision of the planning authority)

The Supreme Court was until today, the only administrative court in the country with exclusive jurisdiction to adjudicate on any recourse filed against a decision, act or omission of any organ, authority or person exercising any executive or administrative authority on the ground that it violates the provisions of the Constitution or any law or it is in excess or in abuse of any power vested in such organ, authority or person.

This jurisdiction will now be transferred to the newly established administrative court which will start functioning from the 1st of January 2016.

The jurisdiction of the new administrative court is limited to the review of the legality of the act and cannot go into the merits of the decision under review and substitute the decision of the administrative organ with its own decision. This however does not apply in asylum cases and tax cases where the court can review not only the legality but the correctness of the decision.

Article 146.3 of the Constitution provides that recourse must be filed within 75 days from the date of the publication of the act or decision or, if not published and in the case of an omission, from the day when it comes to the knowledge of the applicant. If there is doubt or uncertainty as to the commencement of the period, such doubt has to be resolved in favor of the applicant.

The provisions of Article 146.3 are mandatory and should be given effect in all cases. However the period of limitation does not run where the person is prevented in filing a recourse by reasons of *force majeure*.

If the Law, in each case, does not provide for the possibility of hierarchical recourse then any appeal addressed to an administrative organ for reconsideration of its decision does not suspend or interrupt the running of the 75 days. However recourse may be filled against the latter decision.

The administrative court, with the exception of international protection cases, will only examine the legality of the case based on the arguments and documents presented to the administrative authority.

3. What are the general principles regulating alternative procedures adversarial principles, impartiality, rules of confidentiality, time limits etc...)? How much autonomy do parties have with regard to the organisation of the deployment of an alternative procedure?

The parties in arbitration proceedings agree as to the process that it will be used. Arbitration is a procedurally flexible process and it is up to the parties to agree on the procedure to be followed and on the applicable rules of law in relation to the substance of the dispute. Failing such an agreement between the parties, the above decision is left to the arbitrator. The Arbitration Law does not provide for confidentiality of proceedings. It is up to the parties to determine whether they wish their proceedings to be confidential or public. Since arbitrations are private proceedings, members of the public may be excluded by the arbitrators.

Mediation is a confidential procedure (article 18 of mediation Law) It is a less formal method of ADR whereby the parties voluntarily refer their dispute to an independent third party who will discuss the issues with both sides and help them to discuss and negotiate areas of conflict and identify and settle certain issues. According to Article 16 of the Mediation Law prior to the commencement of the mediation, the parties and in consultation with the mediator agree

on the manner in which the mediation is to be conducted, its duration, the obligation of confidentiality of the process, the mode of remuneration of the mediator and the terms of his payment, any other expenses of the process and any other matter they deem necessary.

The process in conciliation is very similar to mediation.

4. Does the initiation of an alternative procedure allow the suspension or interruption or periods of limitation? And of time limits for judicial appeals?

No.

5. Can the court intervene, even partially, during the course of an alternative procedure? If so, in what way?

According to Article 8 of the Arbitration Law, Cap 4 where a party applies to the court for leave to revoke the agreement or for an injunction to restrain the arbitrator or any other party from proceeding with the arbitration, on the ground that the arbitrator so named or designated is not or may not be impartial, or it involves a question whether any party has been guilty of fraud the court has power to order that the agreement shall cease to have effect and has power to give leave to revoke any arbitration agreement made thereunder.

The Court, may, when called upon, to remove an arbitrator or set aside an award or register an award.

Article 20(1) provides that where an arbitrator or umpire has misconducted himself or the proceedings, the Court may remove him.

(2) Where an arbitrator or umpire has misconducted himself or the proceedings, or an arbitration or award has been improperly procured, the Court may set the award aside.

In mediation proceedings the Court may, in proprio motu, or, at the request of any of the parties, interrupt the mediation procedure before the end of the time-limit. This Court decision is not subject to an appeal.

IV. The efficacy of alternative procedures

- 1. Do you consider that alternative procedures are faster and/or less costly than court procedures? Can you provide a quantitative comparison?**

Alternative procedures are less costly and disputes are resolved faster.

- 2. What is the proportion of administrative disputes that are definitively resolved by alternative procedures? What are the factors in success, or failure?**

As stated above there are no alternative dispute resolution in administrative matters.

3. What is the legal standing of an agreement reached by means of an alternative procedure? Can such an agreement referred to the administrative court for approval?

An arbitral award is binding, irrevocable therefore, unless it contains a provision or a court order is issued to the contrary, is enforceable.

An agreed settlement following a mediation process would need to be expressed as an agreement between the parties

or be sanctioned by the court in order to be binding and enforceable.

In Conciliation the third party can offer a non-binding opinion which may lead to a settlement.

4. What instrument and procedures are available to the parties in the case of a violation of the agreement reached by means of an alternative procedure, potentially approved by the administrative court?

As stated we do not have ADR for administrative matters.

5. Do you consider it necessary to further develop alternative procedures in your country? Why? In what form.

The alternative procedures used provide an adequate method of resolving disputes out of court. However there is always need for development, if problems arise.