



## **GEMME - INSTITUTIONAL EVENT**

**AT THE GREEK MINISTER OF JUSTICE IN ATHENS,**

**10 NOVEMBER 2023**

**FROM THE SHIELD OF ACHILLES TO FIUTAK'S CIRCLE**



**PRESENTATION OF POLY TSITSONI**

**LAWYER - ACCREDITED MEDIATOR- ARBITRATOR AT ACCI**

Your Excellency Mr Deputy Minister of Justice, Mrs Representative of Mrs President of Gemme, our Mr President of Greek section of Gemme, Mrs Brenneur, President of Honor of GEMME and Mr Vice President of GEMME Avi Schneebalg who inspired us to create the Greek section, honorable Judges and dear colleagues, I would like to thank you for the opportunity to participate to this conference that has been organized by GEMME EUROPE. I attended the first presentation of GEMME in Athens and now I am proud to participate as a founding member of its Greek section. In the very important role that GEMME conducts for the promotion of mediation, as a peaceful way of resolving some of the disputes before going to the Court, and in the interests of a more efficient administration of justice, I hope that participation of lawyers and mediators should facilitate this aim and that we shall serve as a bridge to expand these purposes, as mediators also do.

After listening to the thorough presentations of the distinguished speakers in today's discussion on the Greek heritage of mediation, I would like to give a change of direction and start from the today mediator by going backwards through the centuries of human history seeking some common ground with the ancient Greeks.

And I ask myself, as mediator, and especially as a Greek, do I have the feeling of influence, of continuity, of debt to the Greek philosophers that form part of our classical tradition?

In response, I am going to offer a few remarks "as food for thoughts" rather than a definitive answer, because I am not philosopher. I would like to speak as a mediator relying on my legal education.

So here is the question: what do we owe to Greeks, as professional mediators since the late 20th century? The first answer sounds unwelcome: nothing in particular. However, upon further reflection, we realize that ideas familiar from our practice of mediation have a philosophical pedigree that goes all the way back to classical antiquity.

Recent historical research in the ancient Greek world does not identify for us any institution or practice that may be regarded as a mediation process for an out – of – court settlement of disputes. We find some practices where the resolution of a dispute was decided by a third man recognized for his wisdom and ability and appointed by the City, as an arbitrator<sup>1</sup>. But I cannot find, any kind of mediation procedure, where the decision is taken by the two parties themselves with the aim of a facilitator, the today mediator.

Some forty years ago the distinguished French historian and anthropologist Jean-Pierre Vernant (1914–2007) in his publication, *Les origines de la pensée grecque* (1962)<sup>2</sup> stated:

*"Greek logic (Reason) was not so much a product of human dealings with things as of the relations of human beings with one another. It developed less through the techniques that apply to the world than through those that give one person a hold over others, and whose common instrument is language: the art of the politician, the rhetorician, the pedagogue. Greek reason is that reason which makes it possible to act practically, deliberately, and systematically on human beings, not to transform nature. In its limitations as in its innovations, it is a creature of the city, Polis in Greek."*

Since time is pressing, let us look at a scene in a classical Greek city "πόλις". It is a scene depicted by Homer on the famous Shield of Achilles. The overall description is the culmination of  $\Sigma$  – the 18<sup>th</sup> book of the *Iliad*. And there is even a place in it for finding a notion of mediation by our own lights<sup>3,4</sup>.

The Shield is forged by the god Hephaistos, who depicts on it images of peace and war. I take the peace, where we found mainly pleasant routines of everyday human life which our hero Achilles has given up. In the scene that I am interested in, we have a dispute between two parties conducted in public space, in front of crowded people without authority; They are negotiating the punishment of a man who has killed someone, to pay a ransom - money or to be expelled. The one affirmed that he had paid all but the other denied that he had received anything. Eventually, a decision will emerge, and the person to whom it is due will be rewarded with two talents of gold<sup>3,4</sup>.

This is not, I repeat not, the only possible understanding of what Homer original actually says. As Walter Leaf<sup>5</sup> – considered as the greatest Homeric scholar at the turn of 20th century, - said, 'the trial-scene is one of the most difficult and puzzling passages in Homer'. I will not go any further in our discussion today.

I have chosen this scene because in my opinion we can find elements that pertain to modern mediation. First of all, it is a scene concerning the functioning of the City in peacetime where the resolve of citizens' disputes and Justice have an important role. With respect of ideals of equality, almost democratically we might say, allowing different opinions to be heard with freedom of choice and last but not least there is even a reward, a fee. In other words, moving on to modern mediation, one of its purposes is also the resolution of problems in a democratic environment with free choice in order to achieve peaceful social cohesion, and the mediator receives remuneration as a professional.

Further on and placed to the period of ancient classical Greek philosophy with the 3 greats, Socrates, Plato and Aristotle, we find common principles with the contemporary form of mediation, i.e. the rationally accessible truth through reason (λόγος) with a specific method, verbally through questioning, exchange of views,

positional debate, voluntary participation of both sides debating, equal democratic process, not imposed by an institutionally appointed body of Magistrates.

Of course, we must keep in mind that the classical dialectic «διαλεκτική» has a different procedure than the modern mediation procedure, it was strictly technical, you either attack or defend a specific, particular thesis: either to force its falsehood on your interlocutor or to uphold its truth under rigorous, logical questioning, with only “yes” and “no” as answers, (the famous βραχυλογία – in short) and if you practice it seriously, you exchange roles and defend the thesis you are attacked or attack what you defended.

Here there is the difference, let’s say between ancient Greek dialectic and modern mediation. We do not defend a specific, particular thesis but we mediate in hope to hit on a good idea, an attractive suggestion, a clever compromise, and hope and pray that *they* (the opposite parties) see the light.

In his *Protagoras*<sup>6</sup>, Plato offers a vivid description of the dialectical encounter between Socrates and Protagoras, the doyen of the Sophists. This encounter takes place in front of an audience. After the initial formalities and pleasantries — as it happens when we receive clients in our premises — the discussion focuses on the issue of the teachability of excellence (ἀρετή).

We thus have two interlocutors, an audience to their contest, and a dialectical question to be debated. The rules of debate, to which both participants undertake to submit themselves *willingly*, are briefly stated by Socrates himself: the questioner will ask questions capable of being answered by a simple “yes” or “no”; the respondent will answer accordingly, thus keeping his replies as brief and to the point as possible.

Soon enough the sophist feels hardly pressed under this kind of questioning by Socrates and eventually breaks the rules. Socrates refuses to continue after this abandonment of the technic in short and gets up to depart. Upon the intervention of the audience, Socrates is convinced to stay and continue the discussion (a scene often played out in mediation – here we have the human element and the management of the emotions) For our purposes, the intervention of one of the audience, Hippias, is important, because he requests and advises Protagoras and Socrates to be reconciled, to allow the group to act as mediators and bring them together in a compromise, to take both a middle course and appoint an arbitrator to preserve a moderate length in the speeches of both of them<sup>7</sup>. For, it may be read as an embryonic form of mediation.

What I have in mind, is the voluntary agreement of the two parties to reach a compromise, by a person who would be invested with powers only for the conduct of the discussion. The two parties will continue to engage in the discussion with

their own weapons and tactics, and the «mediator » will ensure only what we would today call “*ἰσωνομία*”, that is equal amount of time for each of the two sides to set out their arguments. Of course, for the ancient Greek philosophy, all questions and answers are posed by the two interlocutors, whereas in mediation, as practiced today, all important questions are supplied by the mediator. Still the overall technique may be extremely useful for us.

Of even greater significance is for us the desire expressed by Hippias for a *via media*. The sophist, Hippias asks for the appointment of an impartial mediator given that he considers both parties in the dispute, equal and capable to face the dispute. What better mark of affinity between these thoughts and the intention of any one of us who practice the art of mediation.

Regarding modern mediation method as it is structured in specific stages with specific rules and principles we could reasonably suggest that is in line with the Greek philosophy in the principles I mentioned above.

Thus, in the **Fiutak Mediation Circle**<sup>8</sup> which is a model for the mediation process created by Thomas Fiutak, Academic and mediator practicing in USA. This model is taught in Europe particularly in France. We can observe on this, some of the ideas and thoughts of our ancestors.

In few words, in the Circle of Fiutak we have 4 phases.

**Preliminary Phase:** In this stage we have the opening speech of the mediator, the introduction to mediation, the objectives and the fundamental rules, the engagement of the parties in the confidential character of the mediation.

**In the phase 1 we pose the ‘What’**, The mediator invites the parties to expose their history and together they establish the facts, identify the problem and what we call “we agree that we disagree”.

**In the phase 2 we pose the ‘Why’**. This stage is considered as the most important, mediator must develop his/her skills so the parties explore their hidden needs and they move from their positions to interest and finally we have the mutual recognition for an agreement.

**In the phase 3 we pose the ‘How’** This is the negotiation stage. We have a brainstorming of exploring ideas to find options for common solutions.

**In the last phase 4 we pose the ‘How in practice’** In this stage we elaborate and formulate the final solution that serves both parties to formulate their agreement signed by the mediator and the parties. It is submitted to the judicial authorities if there is a pending litigation before the Courts.

In this model of the classic modern mediation, we can find with a free interpretation based on my previous references to the ancient texts, some principles and tactics used by Greek classical philosophy and especially the value of seeing

and analyzing an issue through the prism of the human element and the deeper search to find the truth of their thesis and their needs.

And so I conclude my remarks and I answer the original question. The modern mediator is guided by philosophical principles of well-being through the peaceful reconciliation of human needs for a harmonious social coexistence, principles that are very much influenced by the Greek philosophical thinking and the search for ethics and virtue that started in ancient Greece. Here we should keep in mind that it is not allowed to have a mediation if there is a penal case.

A question and an answer that is becoming tragically necessary in our modern world still torn apart by conflict and war.

**THANK YOU**

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## NOTES AND BIBLIOGRAPHY

1. In the 7th century the institution of Aesymnites appears, similar to the role of an Arbitrator, a ruler with absolute political and judicial powers, who was elected by the people in cases of unrest in the City. Pittacus from Mytilene was a well-known Aesymnitis.

2. Jean-Pierre Vernant, *The Origins of Greek Thought* (Cornell University Press, Ithaca, NY 1982) p. 232. Greek translation by Σταμάτης Στανίτσας, *Ἡ καταγωγή τῆς ἐλληνικῆς σκέψης* (Δίπτυχο, Ἀθήνα 1966) σελ. 112. (This was the first volume of the short-lived Δίπτυχο series «Φιλοσοφία-Ἐπιστήμη-Γράμματα».).

3. In the original Greek, the part of the text that interests us runs as follows :

λαοὶ δ' εἰν ἀγορῇ ἔσαν ἀθρόοι · ἐνθα δὲ νεῖκος  
ὠρώρει, δύο δ' ἄνδρες ἐνείκεον εἵνεκα ποινήs  
ἀνδρὸς ἀποφθιμένου · ὁ μὲν εὐχέτο πάντ' ἀποδοῦναι  
δῆμῳ πιφαύσκων, ὁ δ' ἀναίνετο μηδὲν ἐλέσθαι · 500  
ἄμφω δ' ἰέσθην ἐπὶ ἱστορίῳ πειρᾶρ ἐλέσθαι.  
λαοὶ δ' ἀμφοτέροισιν ἐπήπυον ἀμφὶς ἀρωγοί ·  
κῆρυκες δ' ἄρα λαὸν ἐρήτυον · οἱ δὲ γέροντες  
εἶατ' ἐπὶ ξεστοῖσι λίθοις ἱερῶ ἐνὶ κύκλῳ,  
σκῆπτρα δὲ κηρύκων ἐν χέρσ' ἔχον ἠεροφώνων · 505  
τοῖσιν ἔπειτ' ἦϊσσον, ἀμοιβηδὶς δὲ δίκασον.  
κεῖτο δ' ἄρ' ἐπ' ἐν μέσσοισι δύω χρυσοῖο τάλαντα,  
τῷ δόμεν ὃς μετὰ τοῖσι δίκην ἰθύντατα εἶποι.

4. Since the beginning of last century, the standard and deservedly widely used translations of Greek and Latin classics are those in the so-called Loeb Classical Library. Here is the Loeb version of the *Iliad*.

But the folk were gathered in the place of assembly;  
for there a strife had arisen,  
and two men were striving about the blood-price of a man slain ;  
the one avowed that he had paid all, declaring his cause to the  
people, but the other refused to accept aught ;  
and each was fain to win the issue on the word of a daysman (mediator)  
Moreover, the folk were cheering both, shewing favour to this side  
and to that.  
And heralds held back the folk, and the elders were sitting upon  
polished stones in the sacred circle, holding in their hands the  
staves of the loud-voiced heralds. Therewith then would they  
spring up and give judgment, each in turn.  
And in the midst lay two talents of gold, to be given to him whoso  
among them should utter the most righteous judgment

5. Walter Leaf (1852–1927)

6. Kalliopi Papamanoli, I have been fortunate to have access before publication to the work on *Protagoras*, with text, translation, and commentaries by Kalliopi Papamanoli, which has assisted my understanding of Plato's "Protagoras", Estia editions, Athens 2023

7. Here is the second and crucial half of it, in the translation by W.K.C. Guthrie:  
And so my request and my advice to you, Protagoras and Socrates, is to be reconciled, allowing us to act as mediators and bring you <sup>[338]</sup> together in a

compromise. Socrates should not insist on the strict forms of discussion, carried on through the briefest of exchanges, if it is unwelcome to Protagoras, but should give way and slacken the reins of his discourse, so that it may wear for us a more dignified and elegant air, and Protagoras should refrain from shaking out every reef and running before the wind, launching out on a sea of words till he is out of sight of land. Let both take a middle course. Do this, take my advice, and appoint an arbitrator, referee, or president to preserve a moderate length in the speeches of both of you. This counsel won general consent and a round of applause.

8. Thomas Fiutak, USA, academic, mediator, founded the Center for Conflict Management and Mediation, at the University of Minnesota Minneapolis in the USA. He proposes the well-known Circle of Fiutak.

9. Here is the model of Fiutak taught by "Centre de Mediation et arbitrage de Paris" <https://www.cmap.fr/>

**Polyxeni (Poly) Tsitsoni** is a lawyer at the High Court of Greece, an accredited mediator by the Ministry of Justice listed as mediator for civil, commercial, family and real estate – cadaster mediation, a certified mediator and trainer by KEDIP and listed mediator at EODDID and ACCI (Athens Chamber of Commerce and Industry). Since 2013, she has been trained in mediation and arbitration, in Greece (KEDIP, Law Library, ADR Center) and abroad (CMAP and ICC, ODR ADR International, EUIPO European Intellectual Property Office, Mediators Beyond Borders). She practices civil and commercial law and also ADR for out of courts legal solutions. He is a member of greek and international legal scientific associations and a jury member for the annual International Francophone Mediation Competition at the Paris Mediation and Arbitration Center (CMAP) from 2015 until today. He was a member of 2 special legislative Committees (Ministry of Justice) regarding the application of EU Directive about mediation. She writes articles in International and Greek magazines and is a Speaker at mediation and arbitration conferences and training seminars.