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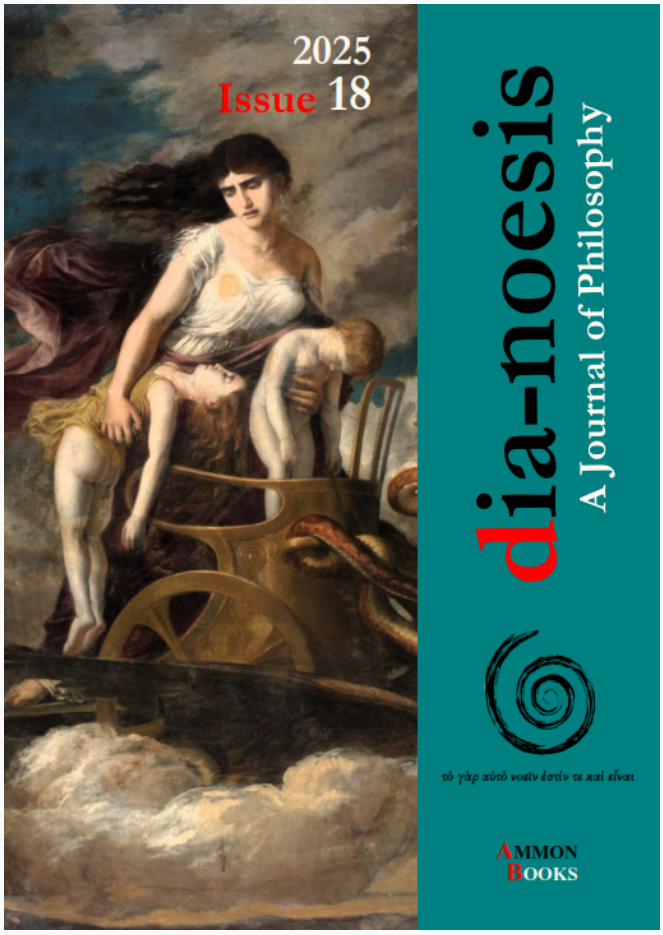

The Philosophy of Mediation Procedures in Ancient Greece

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The Philosophy of Mediation Procedures in Ancient Greece

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Abstract

This study examines the historical development of mediating mechanisms for dispute resolution in Ancient Greece, starting from ancient Greek myths and Homer's epics to the implementation of the first mediating procedures in practice. It explores not only the institutional and practical application of these methods—such as the arbitrators in Athens or inter-state arbitrations—but, above all, the philosophical background that legitimized them and made them effective. A philosophical background that is, on the one hand, similar to todays, since the constituent elements of mediation remain largely the same, but on the other hand, so different, since the criterion for selecting the person called upon to conduct the mediation process was his prestige, their character, and their position in the state, rather than their appointment under relevant legislation. Particular attention is given to the works of Demosthenes, Isaeus, and Aristotle, which reveal not only the legal and procedural aspects of early processes resembling mediation, but also their ethical background, leading us to conclude that

ancient Greek mediation procedures were based on a strong ethical philosophy whose ultimate goal was to preserve social peace and the prosperity of the city.

Keywords: *Ancient Greece, mediation processes, private and public arbitration, Demosthenes, Isaeus, Aristotle, philosophy of mediation, social cohesion*

1. Introduction

Conflict resolution is a fundamental need of every human society, and ancient Greece was no exception in this regard: The roots of mediation procedures can be found in ancient Greece under the influence of ancient Greek philosophy.[1] Beyond the official courts, such as the Heliaea of Athens, the ancient Greeks developed and made extensive use of alternative dispute resolution mechanisms, mainly arbitration and compromise ("dialagi"), which were usually applied as a preliminary stage to the first (arbitration). Although these procedures are not entirely identical to the modern concept of mediation, they incorporated its central principles: The participation of the parties, the use of a neutral third party who possesses the guarantees of impartiality, the pursuit of a mutually acceptable solution through an initial attempt at compromise, and the joint acceptance of the implementation of the decision of the parties involved. [2]

Examining the concepts of "ethos", "pathos", and "logos" as criteria for credibility, emotional intelligence, and rational solution, respectively, which must be present in the mediator, we discover that these elements already existed in ancient myths and Homer's epic poem, *The Iliad*. At the same time, the community's approval of the mediator's decision prevailed as an element of social cohesion. This philosophical and ideological background of ancient times led to arbitration in the 4th century BC as the main mediation process, which constituted a comprehensive Pan-Hellenic legal system for the administration of justice and was divided into public and private. Through the principles of the leading orators of antiquity, such as Demosthenes, Isaeus and the great philosopher

[1] Delouka–Inglessi C., *Mediation in Greece / Mediation in Europe at the cross-road of different legal cultures*, ARACNE editrice S.r., Rome, 2009, p.53. And Antontelos S. and Plessa E., *Mediation in civil and commercial* matters Sakkoulas Publications, Athens–Thessaloniki, 2014, pp. 3–5

[2] Theocharis D., *Mediation as a means of alternative dispute resolution*, Legal Library, Athens, 2015.

Aristotle, the philosophical background of out-of-court dispute resolution procedures becomes clearly apparent highlighting the deeply rooted belief that justice does not always lie in the strict application of the law but in a set of other factors: In the freedom of the parties to choose an out-of-court method of dispute resolution, in the exhaustion of their attempts at reconciliation, in the sense of justice of the community, in its principles and values, in the figure of the average conscientious citizen as the " adjudicator " (to reconcile, to dissolve)[3] and finally, the importance of the oath on the part of both the arbitrators and the parties involved, if requested - as a sacred guarantee of a fair decision on the one hand and as proof of the truth of the arguments put forward on the other. In any case, however, mediation procedures in ancient Greece were governed by the Aristotelian philosophy of the 'golden mean' (moderation) in the sense of the 'middle way' and "justice as balance", as described in *Nicomachean Ethics*[4] (*Ēthika Nikomacheia*) Because justice consists of the middle ground between injustice and excess, the just person acts as a 'mediator' between opposing parties. Mediation, therefore, is in harmony with Aristotle's ethics of balance and logic.

2. Historical review of the first mediation procedures in antiquity

2.1 From ancient myths to the Homeric epics

2.1a. The Myth of the Abduction of Persephone

The earliest traces of the mediation process can be found in ancient Greek mythology, particularly in the myth of Hades and Persephone—a narrative that already demonstrates distinct roles among the parties involved. Although the term *mediator* was not used in Ancient Greece, the practices of private and public arbitration reflected key elements of what we now recognize as institutionalized mediation. Within this myth, two fundamental concepts

[3] Magnisali S. A., *The Administration of Justice in Ancient Athens (5th and 4th centuries BC)* LEGAL LIBRARY publications, Athens, 2008 p. 61.

[4] Aristotle, *Nicomachean Ethics* (V 1129b), (translation/comments Lipourlis D) Zitros publications, Thessaloniki, 2006 .

emerge that continue to underpin the mediation process today: the intervention of a third party as a person who, on the one hand, will encourage the parties to resolve the dispute and, on the other hand, will contribute so that the decision will be taken without passion.

According to the philosophy of the ancient Greeks, it was possible to influence the other side in decision-making. In other words, there was a belief that one could influence others in their decision-making by strengthening the credibility of one's own side and by understanding the other. This method of influence consists of the following stages: "Ethos", "pathos", and "logos". "Ethos" can be defined as a person's moral character and credibility. "Pathos" refers mainly to a person's emotional intelligence, i.e., their ability to understand the other side and put themselves in its shoes. Finally, "logos" concerns reason and a person's talent for persuasion and presentation of ideas.[5] The elements of this philosophical approach, which originated in Ancient Greece, are applied today in practice in the institutionalized process of mediation, where the mediator's credibility is based on their intellectual and psychological background and experience, which are complemented by the necessary knowledge of the negotiation process.[6]

The myth of Hades and Persephone exemplifies the importance that the ancient Greeks placed on mediation. This is further underscored by the fact that the "negotiating table" is occupied by highly revered gods who are called upon to resolve the conflict that has arisen. The enduring presence of mediation, from ancient myths to contemporary practices of out-of-court dispute resolution,[7] demonstrates its timeless connection to human nature and its role as an expression of civilization.[8] According to the myth,

[5] Gutierez A., *The Seasons of ADR — A study of Mediation Tactics in the Context of Ancient Greek Mythology,* The American College of Civil Trial Mediators 2012, and Hurley D., *Greek Philosophy And Mediation Practice,* July 2008, https://mediate.com/greek-philosophy-and-mediation-practice/ (last visited Oct 2025).

[6] Stulberg J.B. & Love, L.P., *Between the Parties: The Neutral Third Party. Strategies for Successful Mediation. (Translation: Mary Orfanou)* 2nd Edition, Legal Library Publications, Athens, 2014.

[7] Hurley D., *Greek Philosophy And Mediation Practice,* July 2008, https://mediate.com/greek-philosophy-and-mediation-practice/ (last visited Oct 2025).

[8] Plevri A. *Mediation in civil and commercial cases.* Sakkoulas Publications, Athens – Thessaloniki, 2021.

Persephone was the daughter of Zeus and Demeter, the goddess of fertility and harvest. She was so beautiful that Pluto, the god of Hades, fell in love with her and decided to kidnap her. One day, while Persephone was picking flowers with the Oceanids nymphs, she wandered off to pick a narcissus (the green flower) when suddenly the earth split open. Then Pluto appeared with his chariot and snatched the girl into the Underworld, without anyone realizing what had happened. Demeter searched in vain for her daughter, and her grief and tears caused the earth and crops to wither. The people were starving, and the days passed without Persephone reappearing. One day, the Sun, having seen everything, took pity on Demeter and told her what had happened. Zeus, moved by the pleas of the starving people, ordered Hades to release his daughter. Unable to disobey Zeus' orders, Pluto trapped Persephone by giving her a pomegranate to eat before letting her go, knowing that if she consumed food in the Underworld, she would be bound to it and unable to leave. The daughter ate only six seeds, and when Demeter found out, she was furious. The girl ate only six seeds, and when Demeter learned of this, she flew into a rage. At this stage of the family conflict, the goddess Rhea—Titan mother of fertility, motherhood, and reproduction, and mother of the three parties involved—Zeus, Hades, and Demeter—intervened to help find a solution that would satisfy all sides. A compromise is proposed: For every seed she had eaten, Persephone would stay in Hades for one month. Finally, an agreement is reached whereby Persephone would spend half the year with her mother and the rest with Pluto. From then on, during the six months that Persephone was in Hades, Demeter mourned, and with her mourned all of nature, and during the six months that she returned to Earth, everything blossomed with her joy.[9]

Attempting to relate the myth to today's reality, we could say that the plot of the myth resembles the resolution of a family dispute, as it deals with issues such as divorce and communication, or child custody with the parent. In any case, we have the function of a) an alternative resolution of the dispute with the parties involved; b) with Rea acting as mediator, or, according to others, the

[9] Kakridi. I., *Greek Mythology, publication of Athens,* Athens, 1986.

goddess of justice, Themis,[10] known for her impartiality and neutrality. She is often depicted in statues as blind—emphasizing public justice and the ideal of objectivity—holding scales in her left hand to symbolize fairness and a sword in her right to represent the power of justice (as also depicted by Homer).[11] Moreover, in the myth, c) there is a conflict of interest; and d) there are participants. They have already expressed their intentions, and the confrontation that has arisen is a given. Resolving the problem is vital, as according to the myth, crops are being destroyed and famine among the people is implied. It should be noted that two crucial stakeholders are absent from the mediation: Persephone and humanity, whose demands must be taken into account in the final solution, as both sides have an interest in the outcome of the case.

In short, while the myth of Persephone is ancient, it is indicative of the high regard in which the ancients held the importance of mediation in resolving disputes: Mediation and ultimately finding a solution to this particular conflict between the gods saved the human race.[12]

2.1b The Minoan (2600-1450 BC) and Archaic periods (800-459 BC)

Historians argue that the administration of justice by persons of standing began in Greece as early as the prehistoric period. Strabo, Diodorus, and Oecceus report that, as early as the Minoan era, there were laws and customs in Crete that were attributed to King Minos and continued to be applied long after the abolition of the monarchy. Minos is referred to in many sources as a king, judge, and lawgiver. Sometimes he judged himself, and sometimes he sent his brother Radamanthys for this purpose, as his supervisor for the administration of justice, as Homer mentions in the Odyssey.

[10] Gutierez A., *The Seasons of ADR — A study of Mediation Tactics in the Context of Ancient Greek Mythology,* The American College of Civil Trial Mediators 2012.

[11] Theodosiadis M., "The Flame and The Lyre", *Cogito - Multidisciplinary Research Journal*, 2025. 83, 89, 96-7.

[12] Gutierez A., *The Seasons of ADR — A study of Mediation Tactics in the Context of Ancient Greek Mythology,* The American College of Civil Trial Mediators 2012.

In the Archaic period, there were arbitrators and conciliators. The conciliator proposed compromise solutions to the parties, and the arbitrator (elected judge or "airetokrites") judged their case and issued a decision. Although their roles were different, based on whether or not a decision was issued, this did not seem to concern the parties, who focused on the common outcome of their actions, i.e., the resolution of their dispute. At that time, arbitration and compromise were often confused and identified with each other or differentiated only slightly, in contrast to their clear differentiation today.[13]

2.1.c Early mediation in Homer

The first indication of the use of mediatory procedure in the Greek world is found in Homer's epic poem, the *Iliad*, and in the striking and detailed description of Achilles' shield, which depicted numerous aspects of everyday life and life in general of the ancient Greeks. Between lines 18/497-508, another incident from the real life of the ancients is described, which is the subject of analysis by historians. Specifically, the depiction concerns the narration of the case of two men regarding the payment of a fine ("penalty") for a murder. One claims that he has paid the price for the crime, while the other refuses to accept it. The two men appeal to the elders of the city, who sit in a semicircle on polished stones, to resolve the dispute. In the form of a hearing, each of the two parties presents its position and its arguments. The elders reach a verdict, holding scepters in their hands. In the middle are two gold talents (ancient Greek golden coins) as a reward for the fairest judge. The crowd of citizens is also present, gathered around the elders and watching the trial, cheering for one side or the other.

The text in question is as follows: "But the people had gathered in the marketplace [a public gathering place]; there a dispute had broken out between two men over the blood of a man who had been killed; on the one hand, one of the two men presented his case to the people, claiming that he had paid for everything, while the other man denied that he had received anything. Both men

[13] https://www.diamesolavisi.gov.gr/selida/oi-istorikes-rizes-tis-diamesolavisis-stin-ellada (last visited Oct 2025).

wanted an arbitrator to decide the matter. But the people cheered both of them, supporting both sides. Immediately, the heralds restrained the people. The elders sat on polished stones within the sacred circle, holding in their hands the staffs of the loud-voiced heralds. Then, with these in their hands, they rose and successively delivered their judgment. And in the middle were two talents of gold, which would be given to whichever of them delivered the fairest judgment.

These few lines from an epic poem from 800 BC are the focus of research into the early recourse to neutral third parties for the purpose of issuing a final decision. Past research has focused on the people who held power rather than on the community itself. This research is based on the mistaken assumption that the privilege of issuing legal decisions belonged to some kind of aristocracy. Evidence of the existence of a central authority capable of issuing such decisions could be examined in the context of 'institutions' and 'procedures'. Although the passage itself clearly suggests the use of conflict resolution procedures, it is often only the conclusions drawn from the jurisdiction of the elders' judgment and the significance of the two talents that are examined.[14]

However, the central theme of the illustration on Achilles' shield is not to infer the existence of a central authority or legal methods of dispute resolution – after all, these were encountered four whole centuries later – but rather the participation of the people and the acceptance by the community of elders as arbitrators – mediators in the resolution of the dispute. After all, the emotionally charged participation of the community demonstrates its direct influence on the process.[15] Furthermore, the method of adjudication and

[14] Manley-Tannis, B. M., *Greek Arbitration: Homer to Classical Athens An Investigation into the Role of the Community in Private and Public Arbitration A thesis submitted to the Department of Classics in conformity with the requirements for the degree of Master of Arts*, Queen's University Kingston, Ontario, Canada 1998 p 22 and Wolff, H. J. "Marriage Law and Family Organisation in Ancient Athens: A Study in the Interrelation of Public and Private Law in the Greek City", Traditio. 2 1944.

[15] Monro D. B. *Iliad, by Homer,* fourth edition 2 vols., Clarendon Press, Oxford, 1903 p. 350 and Manley-Tannis, B. M., *Greek Arbitration: Homer to Classical Athens an Investigation into the Role of the Community in Private and Public Arbitration A thesis submitted to the Department of Classics in conformity with the requirements for the degree of Master of Arts,* Queen's University Kingston, Ontario, Canada 1998 p 24.

final verdict was dependent on the approval of the participants as to what they perceived as a "fair judgment". The decisions of the Elders were therefore not absolute, but in order to be considered fair, they had to be legitimized by the people.

The process takes place in the "agora," a gathering place for all citizens, while the reward of two gold talents represents, as mentioned above, the reward for the fairest proposed solution according to the opinion of the citizens. The arbitrator, mediator, and judge/adjudicator are all the same person. There is no dividing line because the aim is not to follow a legal path or procedure, but to meet the objective need to resolve the dispute in a manner acceptable to the community.

Achilles' shield depicts a way of resolving conflicts that is very different from today's, which is logical given that the needs and circumstances were very different. In any case, the inextricably linked role of the community in resolving disputes is evident, as, whatever the name given to the person judging, their judgment ultimately rests with that of the crowd. Not only are the roles of the arbitrator, mediator, and judge indistinguishable, but so is the procedure itself. Similarly, the nature of the cases was also indistinguishable, as each one was not subject to a specific procedure. The nature of mediation-arbitration and the manner of adjudication depended on the community's need for justice and the specific needs of the disputing parties. In a society consisting of institutionalized legal rules, the mechanisms for enforcing them are found in the "state". Archaic Greek society, however, rejected such institutions. Nevertheless, two social constructs were created by the community: The use of customs and oaths. These social institutions imposed the role of a neutral third party in mediation/arbitration/adjudication. [16]

[16] Manley-Tannis, B. M., *Greek Arbitration: Homer to Classical Athens An Investigation into the Role of the Community in Private and Public Arbitration A thesis submitted to the Department of Classics in conformity with the requirements for the degree of Master of Arts*, Queen's University Kingston, Ontario, Canada, 1998.

2.2 Classical period (459-323 BC): Mediation procedures in practice: private and public arbitration

2.2 a. The practice of using therapists as an exchange of proposals on the dispute that arose

A common and straightforward procedural practice in classical antiquity was the use of "therapontes", i.e., servants who conveyed proposals: This involved the discreet transfer, by a third party, of proposals and counter-proposals between the parties to a dispute who were negotiating a solution. The objective purpose of this procedure was to avoid publicizing their dispute, which would damage their social image and common interests by bringing them into the public eye, given that court hearings were public.[17] However, we have very little information about this process, both in terms of the details of how it worked and the results it produced.

2.2 b Arbitration: A comprehensive mediation process

Arbitration in the 4th century BC was a comprehensive legal system for the administration of justice. It was divided into public and private arbitration and was a pan-Hellenic institution. Private arbitration, as found and applied in classical Athens through recourse to the institution of the "airetokrites," i.e., voluntary recourse to an arbitrator chosen by the parties and the subsequent binding nature of the decision (called "dieta")[18] And the possibility

[17] Triantari, S. *From Conflict to Mediation. Mediation as a Strategy and Policy of Communication.* Stamoulis Ant. publications, Thessaloniki, 2018. Cf. Triantari, S., "From Coaching to Mentor Leader: Profile and Skills of the Mentor Leader in Human Resources Management", *Dia-noesis*, 15, 2024, pp. 103-22, https://doi.org/10.12681/dia.38176.

[18] Arbitrators usually decided according to leniency and not according to the rules of positive law, as confirmed by Aristotle: "For the arbitrator sees what is lenient, but the judge sees the law. And for this reason, an arbitrator was found, so that leniency might prevail." (Aristotle, *Rhetoric* I, 1347b,20). "for what is lenient seems to be just, and what is lenient is what is just according to the written law..." Aristotle, *Rhetoric* I, 1347a,25), Kalavros K., *Law* of *Arbitration I. Internal Arbitration, Issue A,* Sakkoulas Publications, Athens – Thessaloniki, 2011, p. 82.

of invoking the decision as a treaty (agreement) between the parties due to the acceptance of the judgment is similar to the elements of mediation in the Western world today. It should be noted that the characteristics of the institution were speed, confidentiality, and specialization (when the arbitrator was an expert), i.e., elements that are also applicable in today's mediation procedures. An additional common feature of the so-called "Airetokrats" (who, incidentally, could be Athenian citizens, metics, or foreigners), i.e., arbitrators appointed by private individuals, with modern mediators, was that, unlike the public arbitrator who issues a decision after considering the evidence, the private arbitrator could propose solutions.

Public arbitration required the existence of arbitrators chosen by lot, who were also called "elected arbitrators" ('diaitetai airetoi') or "lot-chosen arbitrators" (diaitetai klērōtoi').[19] They had to be Athenian citizens and were selected from a special list posted each year.

Athenian citizens who had not been deprived of their political rights, upon reaching the final year of their military service age—i.e., at sixty years old—were required by law to serve for one year as public arbitrators.[20] This obligation did not apply if, during that period, they held a public office or were absent from Athens for justified reasons, such as serving on a mission or as ambassadors. Arbitrators were compensated at the rate of one drachma per litigant for each day of service. If the proceedings were postponed, necessitating additional days, they received an extra drachma for each additional day.

In public (as in private) arbitration, the primary objective was to reach an agreement ('diallagē'/settlement) and, in case of failure, a decision is issued (called "dieta" as in private arbitration). In any case, it is particularly interesting to note that:

a) Both forms of arbitration consisted of two stages. The first concerned the attempt to reconcile the parties (diallattein, dialyein), and the second concerned the resolution of the dispute if the first

[19] Demosthenes, *Against Aphobus*, 58; *Demosthenes Against Afobus*, Kaktos, Athens, 1995.

[20] Aristotle, *Athenian Constitution*, 53, 4-7, trans. Papadis, D. Zitros publications, Athens, 2009. Only those who were absent on a mission (embassy, delegation, etc.) at that time were exempt from this obligation.

stage failed[21] (elements similar to the philosophy of modern mediation)[22]

b) The arbitrator's task was to lead the two parties to a settlement and, if authorized, to issue a decision himself. In the case of a private arbitrator, the authorization came from the opposing parties and was granted in advance.[23] This was verbal or written for the handling of the case, the issuance of the decision, and compliance with its operative part ('emménein')- a feature of modern mediation as well - while in public arbitration, the authorization was granted by the city

[21] MacDowell, D.M. "The Law of Athens in Classical Times, Papadima Publications", Athens 1996, pp. 321-324, & Andriolo N., *"Dieteti," Proceedings of the XI International Congress of Greek and Latin Epigraphy I,* Rome, 1997, Rome 1999, pp. 167-176, & Velissaropoulos J.-Karakostas j., "L'arbitrage dans la Grèce antique, période archaïque et classique", *Revue de l'arbitrage* 46, Paris 2000, pp 3-26, & Roebuck, D. "Best to reconcile. Mediation and arbitration in the ancient Greek world", *Arbitration,* 66, 2000, 2 pp. 75-287, Roebuck, D, *Ancient Greek Arbitration,* Holo Books, The Arbitration Press, Oxford 2001, Stefanopoulos S., *Greek Institutions,* Libanis publications, Athens, 2004 pp. 533-535, Harter-Uibopuu, K., "Ancient Greek Approaches Towards Alternative Dispute Settlement. Arbitration and Mediation in Private and Public Law", *Willamette Journal of International Law and Dispute Resolution*, 2002, pp. 47-69, Karabelias, E., "L'arbitrage prive dans l'Athenes classique", *Symposion*, 1995, pp. 135-149 (reprinted in Recueils de la societe Jean Bodin 63, *L'assistance dans la resolution des conflits*, pp. 9-35), Dekazou – Stefanopoulou F., F. "Permissive. Private arbitration in Menander," *Annual of the Centre for Research into the History of Greek Law,* Academy of Athens 40, 2007, pp. 29- Gemet, I. *"L'institution des arbitres publiques a Athenes,"* REG, Paris 1939, p. 389), Gemet, I. *Droit et societe dans la Grece ancienne,* Sirey, Paris 1955, pp. 103-119. Just M., "Le role des diaitetai dans Isee 12, 11," *RIDA* 15,1968, pp. 107-118

[22] 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, Official Journal L 136, ff. Member States were required to transpose the Mediation Directive into their legal systems by 21 May 2011 in conjunction with Greek Laws No. 4640/2019 and Law 4512/2018, which provide for an initial mandatory meeting before the start of dispute resolution as a first stage for the mediation process, and only after failure are the parties referred to the courts & Giannopoulos, P. *Mediation and Civil Procedure (Contribution to the interpretation of Law 4640/2019)* Sakkoulas publications Thessaloniki, 2020.

[23] Dekazou – Stefanopoulou F., F. "Permissive. Private arbitration in Menander*", Yearbook of the Centre for Research into the History of Greek Law, Academy of Athens* 40, 2007 42-43.

c) The decision of the arbitrators ("dieta") had to be accepted by both parties to have the force of res judicata and be enforceable, as in modern mediation. [24]

The introduction of the arbitration process aimed to relieve the court of Heliaia from the accumulation of a large number of cases, especially during periods of heavy caseloads when there appeared to be an excessive workload. In this way, the time-consuming, complex, and costly administration of justice by the established court of Heliaia was bypassed, to the benefit of both the litigants and the court. The analogy with the rationale behind the establishment of contemporary mediation, as laid down in its preamble, is clear.[25]

The arbitrator's decision, if accepted, became final. The arbitrator was obliged to record his decision in the archives of the Forty Judges. In public arbitration, there existed the possibility of appealing against this decision before the Heliaia court (the philosophy behind issuing and registering a decision is similar to current Greek mediation law, but appealing against a decision issued in public arbitration is similar to statutory arbitration and not to the institution of mediation, since in the latter no appeal is provided).[26]

As for the conduct of arbitrators, it had to be fair and lawful, i.e., neutral (or "evaluatively neutral" and "objective" as Max Weber would say).[27] In the event of suspicion of bias on the part of the referee, strict control was provided before the public prosecutor. [28]

In addition to private and public arbitration, there was also interstate arbitration between the city-states of ancient Greece, an institution that was particularly important in relations between two

[24] Greek legislation, with Laws, 4640/2019 and 4512/2018, accurately describes the validity of the mediation decision, which is enforceable without the right of appeal, in contrast to arbitration and court decisions, where this right remains. Giannopoulos, P. *Mediation and Civil Proceedings (Contribution to the interpretation of Law 4640.2019)* Sakkoulas Publications, Thessaloniki, 2020.

[25] Directive 2008/52/EC of the European Parliament and of the Council Plevri, A. *Mediation in civil and commercial matters.* Sakkoulas Publications, Athens–Thessaloniki, 2021 p. 18 ff.

[26] Greek Law No. 4640/2019 (Government Gazette No. 190/30-11-2019)

[27] Weber, M. *The Methodology of the Social Sciences*, Papazisis Publications, Athens, 1991.

[28] Magnisali S. A., *The Administration of Justice in Ancient Athens (5th and 4th centuries BC),* NOMIKI BIBLIOTHIKI publications, Athens, 2008.

cities.[29] Greek city-states used to conclude agreements ("symbola") on issues concerning the judicial protection of their citizens, but from the 3rd century BC onwards, the phenomenon of inviting arbitrators/judges from other cities to process pending cases appears. Similarly, in the case of disputes between two cities or between a city and a third party, arbitrators or judges from a third city would take over.[30]

There has been debate among historians as to whether the institution of arbitration preceded state justice in classical Greek antiquity and whether institutionalized justice originated from arbitration. The theory that arbitration was a precursor to state justice has been disputed. The view that arbitration and state justice coexisted has been correctly upheld. They were two different forms of dispute resolution with many points in common, but they always remained two parallel processes.[31]

3. Mediation through the ancient Greek philosophers: the philosophical background of mediation procedures in ancient Athens

a) Demosthenes

Through the work of the ancient orator Demosthenes (384 BC - 322 BC), "Demosthenes against Meidias" (348 BC), key elements of the character and philosophy of arbitration as a mediating process of his time are depicted.

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[29] Gaudemet, J., *"Arbitration in territorial disputes between cities in Greco-Roman antiquity. The principle of status quo and uti possidetis,"* Recueils de la société Jean Bodin (Assistance in conflict resolution), 1996, pp. 37-46.

[30] More than 250 honorary inscriptions have been found referring to foreign judges who helped in similar cases, such as the resolution of the Thessalian city of Fallana for the judges who came from the also Thessalian Metropolis of Magnisali S. A., *The Administration of Justice in Ancient Athens (5th and 4th centuries BC)* LEGAL LIBRARY publications, Athens. 2008 The arbitration for the claim of territory between Milos and Kimolos was judged by *arbitrators from Argos around 338 BC. (Pfohl, G. Griechische Inschriften als Zeugnisse des privaten und öffentliche Leben,* Munich 1966, no. 105, pp. 113-115. Another inscription from 300 BC informs us of the decision of the judges of Cnidus in favour of Kalymnos in a dispute it had with the city of Kos. (Robert, L*. Les juges étrangers dans la cité grecque, Athens* 1974, pp. 765-82.

[31] Troianos S.- Velissaropoulou I., *History of Law,* Hellenic Publications, Athens 2002, p. 58.

Demosthenes' dispute with Meidius, although based on the attack and insult that the great orator received from Meidius at the Great Dionysia, where he participated as a sponsor in 348 BC, was personal in nature and originated from a long-standing rivalry. At the age of just twenty, Demosthenes had taken legal action against the trustees of his father's estate (Aphobus of Therippides and Demophon). He accused them of mismanagement and squandering his paternal inheritance, suing them for usurpation and dissipation of his paternal inheritance. However, due to the attack and interference of Meidias and following a proposal by the latter's brother, Thrasylochus, Demosthenes was obliged, because of this dispute and despite his difficult financial situation, to undertake a trierarchy (in ancient Athens a public obligation of wealthy citizens to fund and maintain a warship for one year) as a necessary condition for the preservation of his inheritance rights. The above events took place between 364 and 362 BC.[32]

In this work, Demosthenes refers to the extrajudicial settlement of disputes, referring to the arbitration of Straton, who dealt with his case, but mainly – and this is particularly interesting – to the characteristics that should define him as a neutral third party. Straton is thus portrayed as a " 'chrēstos' " citizen,[33] That is, as the exemplary model of a conscientious citizen, in contrast to Meidias, who is portrayed as a man with an arrogant attitude and a tendency to flaunt his wealth. Straton is also a "penēs anēr kai apragmōn all' ou ponēros' (a poor man and quiet, but not wicked). The word "penes" here appears as a synonym for pride (in the healthy sense of the term) for honest working people, in contrast to the lazy and dissolute rich.[34] . And, of course, the mediator/arbitrator who undertakes to resolve a dispute, in addition to examining the evidence, must include in his legal reasoning the

[32] Xanthaki-Karamanou G. *Demosthenes "Against Meidius". Introduction, translation, interpretative* notes. Academy of Athens - Centre for the Publication of Works by Greek Authors, Athens 1989.

[33] Stratonas is thus portrayed as a "good" citizen (21.83) Xanthaki-Karamanou G., *Demosthenes "Against Meidius". Introduction, translation, interpretative* notes. Academy of Athens - Centre for the Publication of Works by Greek Authors Athens 1989.

[34] Dover, K. J. *Greek popular morality in the time of Plato and Aristotle*, Hackett Publishing, 1994.

community's sense of justice, its principles, and values.[35] And nowadays, judgment based on good morals and the common sense of justice still exists, although it is limited due to the existing complex and detailed legislative landscape. However, in Anglo-Saxon law, the significance of these concepts is more pronounced.

Straton's neutrality and respect for the law lead to a verdict in favor of Demosthenes and, at the same time, to the wrath of Meidius.[36]

In his speech against Meidias, Demosthenes, which in principle concerns arbitration of a public nature, refers to a law called "the law of arbitrators", which refers to private arbitration. The law was as follows: "If some people have a dispute with each other concerning private agreements and want to choose any arbitrator, they should be allowed to choose the one they want as arbitrator.[37] ..." Similarly, Demosthenes in his work Against Afobus (Against Afobus, 29.1-5) states that citizens could choose an "arbitrator by common consent", i.e., an arbitrator of their mutual acceptance, to avoid the complexity of legal proceedings.

Since they jointly chose the above arbitrator, they must respect their agreement to resort to the mediator as a neutral third party and not appeal the decision that will be issued, so that it becomes final.[38] This is a process whose philosophy is similar to the modern

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[35] Mc Dowel, D.M, *Demosthenes Against Meidiaw*, Oxford Clarendon press, 1990 & Manley-Tannis R., *Greek Arbitration: Homer to Classical Athens An Investigation into the Role of the Community in Private and Public Arbitration: thesis submitted to the Department of Classics in conformity with the requirements for the degree of Master of Arts* Queen's University Kingston, Ontario, Canada 1998 p. 95.

[36] Mc Dowel, D.M, *Demosthenes Against Meidiaw*, Oxford Clarendon press, 1990; Demosthenes. 21.83-97.

[37] Since they could choose an arbitrator (diaititi elesthai) meaning that the arbitration was private. Talamanca M., *"La legge di Dem., 'Or. 21, 94' e l'appellabilita delle pronunce dell'arbitro privato in diritto attico"*, BIDR 17, 1975, pp. 93-159. Similarly, Demosthenes mentions this in his work against Aphobus (Against Aphobus, 29.1-5) Demosthenes, *Against Afobus*, 58; *Demosthenes.* Against *Afobus*, Kaktos, Athens 1995

[38] Demosthenes (21), *Against Meidius*, 94: LAW. [*If any dispute among themselves concerning their own contracts and wish to choose an arbitrator, let them choose whomever they wish [as arbitrator], but when they have agreed upon a common choice, they shall abide by the decisions of the arbitrator, and shall not transfer these cases to another court, but the decisions of the arbitrator shall be final.* Xanthaki-Karamanou G. *Demosthenes "Against Meidius".*

mediation process, where the mediation decision is approved by the mediator and the opposing parties and becomes final automatically (i.e., without allowing for appeal), and differs from institutionalized arbitration, in which an appeal against the arbitrator's decision is permitted.

An element of the arbitration/mediation process is the oath, as a further element of impartiality of the third party who undertakes to settle the dispute. Demosthenes refers to the cases of Afobus.[39] Who resorted to private arbitration and persuaded Demosthenes to accept Arkhenos Drakonidis and Phanos as arbitrators/mediators. However, when he realized that the arbitrators would rule against him, he removed himself from the arbitration process. In another case, when Callippus challenged Apollodorus to arbitration, the proceedings were deemed unlawful because the appointed arbitrator did not take the oath required by law. [40]

b) Isaeus

Isaeus, one of the great orators of ancient Greece, who lived during the period 420-350 BC and worked as a logographer and teacher of rhetoric, provides us with interesting information about private arbitration. In his speech 'On the Estate of Menecles', he refers to the agreement between the disputing parties to resolve their dispute, which could be granted either in writing or orally and was entrusted to one or more arbitrators of their choice, who had to possess the quality of impartiality. Subsequently, in his work 'On the Estate of Dikaiogenes', he informs us that there were two stages of arbitration/mediation: First, an attempt at reconciliation (conciliation) and then, if this attempt was unsuccessful, they

Introduction, translation, interpretative notes. Academy of Athens - Centre for the Publication of Works by Greek Authors, Athens 1989.

[39] *Against Aphovus*, 29.58: *Coming to the chosen arbitrator. Demosthenes, Against Aphovus*, Kaktos, Athens 1995.

[40] Golden M., *" Demosthenes and the age of majority at Athens"* Phoenix 33 1979 pp 25-38 & & Manley-Tannis R., *Greek Arbitration: Homer to Classical Athens An Investigation into the Role of the Community in Private and Public Arbitration: thesis submitted to the Department of Classics in conformity with the requirements for the degree of Master of Arts* Queen's University Kingston, Ontario, Canada &, Hansen, M.H, The *Athenian* Democracy in the age of Demosthenes. Structure, Principles and ideology. Trans. J.A. Crook. Oxford, Basil, Blackwell 1990.

proceeded to resolve the dispute and the arbitrator/mediator issued his decision, after first taking an oath. [41] However, the important element in this process was the moral commitment of the opposing sides to respect the decision that would be issued. The arbitrator, after hearing both sides, acted with relative freedom. "Only if the litigants allow us to decide in the interest of all," said the arbitrators in Isaiah's "'On the Estate of Menecles'," "will we proceed with the arbitration." The reference to the expression "interest of all" proves that there was prior consent of the parties and that the arbitrator applied the law with the interests of the parties in mind, as is the case in modern mediation. The arbitrator was sworn to resolve the dispute based on the laws and their correct interpretation ('ta dikaia diagnōnai').[42]

c) Aristotle

Contemporary man can find information distinguishing the technique of mediation and the role of the mediator in the most comprehensive manual of rhetoric, namely Aristotle's Rhetoric. Closest to mediation is the consultative speech, where the orator, through his argumentation, highlights the moral quality of his character, gains the trust of the audience, and activates their psychology. The art of rhetoric provides modern mediation with techniques which, according to the great and timeless philosopher Aristotle, are based on logic (i.e., the rational way of resolving differences) and persuasion (i.e., the psychological process of acceptance by both parties of the outcome of the mediation process). The modern mediator essentially borrows from the orators of antiquity those abilities and communication skills that will enable him to help the conflicting parties communicate and resolve their differences. The concept of the 'middle way' and 'justice as balance' ("golden") described by Aristotle in Nicomachean Ethics (V 1129b),[43] reflects the philosophical basis of mediation. Aristotle believes that justice consists of the middle ground between injustice

[41] Magnisali S. A., *The Administration of Justice in Ancient Athens (5th and* 4th centuries BC), NOMIKI BIBLIOTHIKI, Athens 2008, p. 70. *On the Estate of Dikaiogenes*, 31-33 id. 32,

[42] Isaeus (2), *On the Estate of Menecles*, 30.

[43] Aristotle, *Nicomachean Ethics* (V 1129b), (translation/comments Lipourlis D) Zitros, Thessaloniki, 2006.

and excess; the just person acts as a "middleman" between the opposing parties. Mediation, therefore, is in harmony with Aristotle's ethics of balance and reason.

For Aristotle, the arbitral/mediation process could deviate from the strict letter of the law, and arbitrators were entitled and obliged to judge with equity. For this reason, Aristotle himself emphasized the value of out-of-court dispute resolution, urging the ancient Athenians to prefer to have their disputes resolved by a neutral third party rather than by the courts, because the arbitrator 'sees the matter with equity' ('to epieikes horāi', *Rhetoric*, 1374b19).[44] Aristotle also refers to private arbitrators. The meaning of "equity" here is not the meaning of the word itself, but the meaning of the principles of justice and the common sense of justice of the collective conscience of citizens. This allowed him to resolve the dispute in accordance with the spirit of the law and not the strict letter of the law. About the oath taken by judges, in his work 'Athenian Constitution', Aristotle clarifies that public arbitrators took their oath at the time of issuing their decision and not before. In contrast to the judges of the Heliaia court, who took their oath before assuming their duties, public arbitrators took their oath at the most critical and serious moment of the proceedings: Before pronouncing their decision. The oath thus constituted a religious guarantee of the validity of the decision. Aristotle, in the "Rhetoric," makes special reference to the oath of the litigants. The oath was preceded by the procedure of "challenge", i.e., asking each party if they wished to take the oath ("Do you wish to take the oath?"). In judicial proceedings, a litigant's refusal to take an oath had only a psychological effect on the judges' final decision. However, before the arbitrators, such a refusal was equated with an admission that influenced the arbitrator's decision in favor of the opposing party. If a party accepted the challenge to swear an oath, its claims were mandatorily accepted and the arbitrator treated the oath as confirmation of the truth of those claims.[45]

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[44] Aristotle, *Rhetoric* (1374b 19) translation/comments Lipourlis, Zitros, Thessaloniki, 2002. Cf. Valenzuela, P. (2022). "Fredrickson on Flourishing through Positive Emotions and Aristotle's Eudaimonia", *Conatus - Journal of Philosophy*, *7*(2), 37–61. https://doi.org/10.12681/cjp.25202.

[45] Aristotle, *Rhetoric* (1374b 19) translation/comments Lipourlis, Zitros, Thessaloniki, 2002, Means of proof (1375 a) were laws, "treaties" (documents), "testimonies", "torture" (testimony of slaves) and oaths.

Aristotle's observations in the *Rhetoric* on the use of evidence in both public and private arbitration are particularly noteworthy. It seems that the evidentiary process evolved from the archaic period to the time of Aristotle, the classical period. The arbitrator of the 4th century BC was now free to assess evidence, testimonies, documents, and interpret the laws. The influence of archaic justice is evident in two types of evidence. The first concerned the oath of slaves and the second the testimony of slaves. In fact, the arbitrator did not have the right to freely evaluate these two pieces of evidence because they retained their indisputable probative value, in the same way as they did in the archaic administration of justice.

4. Conclusions

In his monumental work "Legitimation through Procedure," published in 1969, Niklas Luhmann challenged the prevailing perception-prejudice that the legitimizing factor of decisions (taken by courts, parliament, the administration, and any other competent body) is their true, fair, and therefore correct content. Based on the findings of systems theory, Luhmann concluded that the element that legitimizes decisions is, in the final analysis, the inherent structures of the process itself.[46]

Research into mediation procedures in Ancient Greece has shown that the roots of this judicial function began with a deeper social and philosophical background, much broader than the narrow concept of legal proceedings. The institutions of public and private arbitrators in Athens – the latter being very similar to today's mediators – as well as inter-state arbitration, were practical expressions of a broader philosophical concept: That justice is inextricably linked with equity ('epieikeia'), as defined by Aristotle – that is, the ability to interpret the law according to its spirit and not its narrow grammatical wording. The power of the arbitrator/mediator did not derive primarily from state authority, but from his "ethos" and impartiality, his honesty and social

[46] Luhmann, N. *Legitimation through Procedure.* (Translation: Konstantinos Vathiotis). Critique. Athens 1999. Cf. Evangelou, P. A., and G. K. Broni, "Influence and Preservation: Utilisation of Human Resources Protecting Tangible Cultural Heritage, Supported by the Ministry of Culture in Greece", *Dia-noesis*, 17:1, 2025, pp. 375-99, https://doi.org/10.12681/dia.41719.

acceptance. This dependence on moral and social legitimacy as a means of restoring disrupted relationships underlines the deeply human-centered approach of ancient Greek philosophy to conflict. The concern regarding the rational or irrational understanding of justice by the individuals involved in it, as posed by John Rawls in his landmark work, *A Theory of Justice*,[47] did not apply in Ancient Greece, because the sense of individual justice largely coincided with the communal sense of justice that prevailed in the city-state. "Mediation" in ancient Greece was not simply an alternative form of resolving legal disputes, but a fundamental mechanism for regulating harmonious social coexistence based on the recognition that cooperation and mutual consent are the basis for the city's happiness. The "awareness of the good" in the consciousness of citizens, as G.W.F. Hegel would say, is identical to the good of the city. Therefore, the study of ancient Greek practices provides timeless lessons for contemporary Mediation, emphasizing that the effectiveness of the process depends on the moral quality of the neutral third party and the willingness of the parties to recognize that peace is superior to strict legal victory.

[47] Rawls, J., *Theory of Justice,* POLIS, Athens, 2006 p. 180.

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