



Integrity Counsel and mediation: boundaries and challenges

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New reality...

- Mediation
- Integrity

... in the operation of the public sector



Mediation (I)

- The use of the term "mediation" relates to a different form of administrative intervention, an alternative form of problem management following reports or complaints against the public sector, which may concern either the body as a whole or a civil officer in particular.
- Mediation procedure is also found in the European Union in the form of the European Ombudsman:
"an independent and impartial body that holds the EU's institutions and agencies to account, and promotes good administration. The Ombudsman helps people, businesses, and organisations facing problems with the EU's administration by investigating complaints about maladministration by EU institutions and bodies, as well as by proactively looking into broader systemic issues. "
- Public sector mediation operates in the same framework.



Mediation (II)

Essential elements for a mediation institution to function effectively and efficiently, protecting both the complainant or the aggrieved party and the public interest:

- Confidentiality
- Impartiality
- Neutrality
- Transparency
- Specialized knowledge
- Experience
- Prestige



Mediation (III)

... is one of the methods of peaceful resolution of disputes and conflicts

The peaceful resolution of disputes and/or conflicts

- is the antithesis of state judicial power
- is a feature of many primitive societies (see Homer's Iliad P. 496 ff.) and
- is based on the concept of tolerance and consensual approach (e.g. Taoism)

mediation as a consequence of theoretical approaches began to be put into practice as a mediation movement in the early 1970s, when a significant number of American citizens volunteered their services at local mediation centres (in communities and neighborhoods), dissatisfied also by a legal system that did not meet the needs of people from lower social strata, with low incomes and different ethnic origins.



Mediation (IV)

- is based on the model of conciliation justice (justice négociée)
- activates the institutions of proximity justice (justice de proximité)
- is a basic manifestation of conciliatory justice

... a properly trained professional, acceptable by all parties thanks to his or her supposed impartiality and neutrality, helps them to negotiate and reach a mutually acceptable solution to their dispute.

Catalytic mediation (settlement mediation / problem-solving mediation)

... leads to a solution/settlement of the problem in question, i.e. acts as a catalyst for this settlement.



Mediation (V)

... depending on the role of the mediator

Directive mediation

The mediator makes - exceptionally! - proposals (non-binding) to resolve the dispute.

Facilitative mediation

The mediator simply frames the contours and terms of the dispute, thus facilitating the resolution of the dispute.

Evaluative mediation

Evaluate the judicial aspects of the dispute and point out the weak points of the arguments of both parties

(Courakis and Spyropoulos, 2017)



Mediation (VI)

transformative mediation

an attempt is made, with the "tool" of promoting "empathy" (caring for the other), to identify, with the help of the mediator, the needs, interests, values and attitudes of each of the two parties, so that the two parties can then be strengthened in their relations with each other and ultimately "reshape" for the better their view of each other.

(Folger and Bush, 1994)



Mediation (VII)

Advantages of mediation

- reduced costs
- speed (célérité de procédure)
- active participation of the parties
- efficiency thanks to better information for the parties
- creation of a climate of consensus
- avoiding stigmatisation of the offender
- more effective satisfaction of the aggrieved party
- decongestion of the courts - "de-litigation"



Integrity

"Public integrity is about aligning and complying with shared ethical values, principles and rules to safeguard the public interest and prioritise it over private interests in the public sector" (OECD)

- fight against corruption
- fight against maladministration
- safeguarding the public interest
- strengthening fundamental values



Institutions for mediation and integrity in public administration

- the Ombudsman
- the Ombudsman of Municipality Citizens
- the Regional Ombudsman
- the Integrity Counsel (the most recent institution)

Each institution has its own role in approaching and managing public problems, outside the framework of parliamentary, judicial and administrative control.



The Ombudsman

- ❑ Established by Law 2477/1997
- ❑ art. 1 Law 3094/2003: "*...in **mediation** between citizens and public services..., for the protection of citizens' rights, the fight against maladministration and the observance of legality...*".
- ❑ It acts on complaints - petitions and ex officio
- ❑ As part of its control, it may search for information, documents, conduct autopsies, etc. in order to gather the necessary data. Its findings are of course communicated to the administration, but they are not binding or punitive.
- ❑ Authority and importance of its action
- ❑ As an intermediate form of control, it does not intervene in public administration and operation in the traditional audit and sanctioning way.



Ombudsman of Municipality Citizens / Regional Ombudsman

- It was established by Law no. 3852/2010 ("Kallikrates") - (see. and the reintroduction of Article 77 of the law. 3852/2010 with para. 1 of article 7 of 4623/2019)
- Intermediary institution between citizens and the municipality or region in order to address cases of maladministration and corruption
- Acts on complaints - reports (prerequisite is legitimate interest) - not ex officio



Integrity Counsel (I)

It was established by Law no. 4795/2021 (Articles 23 to 30)

Similar institutions in European countries, EU and Council of Europe



Integrity Counsel (II)

The Integrity Counsel



Corruption

Harassment

Distinctions

Moral
Dilemmas

Irregularities

is a confidential point of contact for the institution's employees to search for:

- ✓ Support
- ✓ Information
- ✓ advice on ethics and integrity issues in their workplace



Integrity Counsel (III)

- The Integrity Counsel is developed in the Greek system as an institution for civil servants, when they

"in the performance of their duties, they are confronted with incidents of corruption, abuse of power, serious anti-social behaviour, even sexual harassment and general violations of integrity by their colleagues or superiors. However, fear of stigmatisation or retaliation discourages them from reporting them.

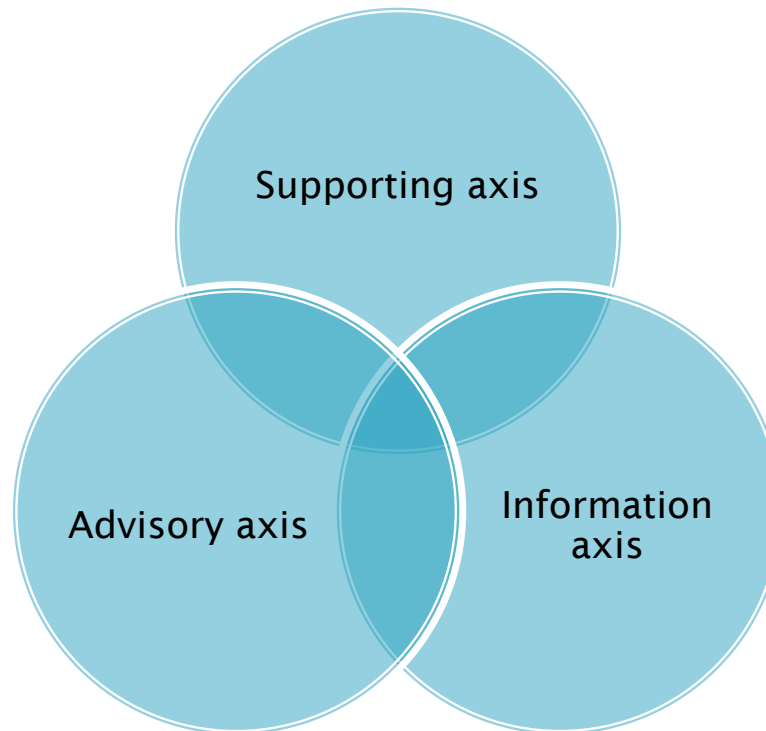
(so in the explanatory memorandum of the law 4795/2021 "Internal Control System of the Public Sector, Integrity Counsel in the Public Administration and other provisions for the public administration and local government", p. 50).

- Substantial difference between an Integrity Adviser and the aforementioned institutions:

no contact with the citizen but with civil servants

Integrity Counsel (IV)

Responsibilities in 3 functional axes (Article 24 of Law 4187/2014)



Integrity Counsel (V)

His role...

Informative

Provide information to agency staff on integrity issues.

Participate in the development of internal policies and tools to enhance integrity and transparency.

Supportive

Providing advice on ethical and moral issues.

Receiving confidential or non-confidential reports from employees of the institution on incidents of breaches of integrity or corruption.

Advisory

Work with the management and departments of the organisation to promote integrity policies in all areas.

Prepare an annual report on the effectiveness of the organisation's integrity policies and procedures.

Source: 
ΕΘΝΙΚΗ ΑΡΧΗ ΔΙΑΦΑΝΕΙΑΣ





Integrity Counsel (VI)

Supporting axis (Article 24 §1 of Law 4795/2021)

α) Provides individualised advice on ethical and integrity issues faced by the staff member in the performance of his/her official duties, including issues such as sexual harassment, discrimination, intimidation, moral harassment and conflict of interest.

b) Receives reports from the institution's employees on incidents of breaches of integrity or corruption and mediate, so that the institution's bodies or external bodies competent to investigate them can take action.

c) Monitors the process of the investigation of the report and informs the reporting official .



Integrity Counsel (VII)

In the context of its mission and role

"the Integrity Counsel may also perform the role of the internal reporting and reporting monitoring channel under Chap. II of Directive (EE) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons reporting breaches of Union law".

As indicated in the explanatory memorandum of the Law. 4795/2021 "Internal Audit System of the Public Sector, Integrity Counsel in the Public Administration and other provisions on public administration and local government"



Integrity Counsel (VIII)

Information axis (Art. 24 §2 of Law 4795/2021)

a) Provides information to the staff of the organisation on ethics and integrity issues, as well as on the operation, responsibilities and mission of the Integrity Counsel.

b) Designs and coordinates training and capacity building activities for the employees of the body and the employees of the supervised bodies in cooperation with the relevant organizational unit which is responsible for training issues, as well as with external training service providers, such as the National Centre for Public Administration and Self-Government.

c) Participates in the formulation of internal policies and the development of tools to enhance integrity and transparency, such as Codes of Ethics and Conduct, Conflict of Interest Management Regulations, Fraud and Corruption Protocols.

Integrity Counsel (IX)

Advisory axis (Article 24 §3 of Law 4795/2021)

a) Informs and cooperates with the management of the organization, the Internal Audit Unit and the organizational unit responsible for administrative support and human resources, for the development and implementation of integrity policies and standards within the organisation.

b) Formulates recommendations for improving the prevention, deterrence and detection mechanisms to the head of the organisation when it identifies incidents of integrity breaches.

c) Prepares an Annual Report and submit it to the head of the entity and the National Transparency Authority on the effectiveness of the integrity policies and procedures used by the entity, the work performed and the progress of the cases handled.



Integrity Counsel and mediation – De lege ferenda (I)

Competence of the Integrity Counsel

mediation (Art. 24 § 1 b' of Law 4795/2021)

Three axes - challenges for the establishment of a mediation framework...

- ✓ ... Taking into account the 'points of friction' with the de lege lata legal order
- ✓ Protection of the rights of the aggrieved party - its central role in the procedure
- ✓ Restoration of the injured party and the public interest



Integrity Counsel and mediation – De lege ferenda (II)

- Provide incentives to the Integrity Counsel (e.g. responsibility bonus)
- Ensure objectivity and impartiality (staffing of the independent office not by employees of the institution - etc.) 23 § 3 and a. 82 § 1 v. 4795/2021)
- Extension of confidentiality and discretion to the staff of the Integrity Counsel's independent office
- Provision of a specific mediation procedure with a role for the Integrity Counsel - mediator, in accordance with a predefined mediation model

Network of Integrity Advisors (Article 30 of Law 4795/2021):

bottom-up approach to improve the effectiveness of the institution



**Thank you for
your attention!**



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