Greece

Athanassia Papantoniou and Yannis Kelemenis
Kelemenis & Co

Litigation

1 Court system

What is the structure of the civil court system?

The Code of Civil Procedure (CCP) provides for three types of civil courts of first instance:

- the Court of the Peace;
- the Single-Member Court of First Instance; and
- the Multi-Member Court of First Instance.

Appeals from judgments of the Single-Member Court of First Instance and of the Multi-Member Court of First Instance are tried by one of the 15 courts of appeal in Greece. The territorial competence of a court of appeal is decided by the location of the lower court whose judgment is appealed from. Appeals from judgments of the Court of the Peace are heard by the Multi-Member Court of First Instance. The Supreme Court sits in Athens and is not a regular appellate court but rather a court of cassation that can only review questions of law rather than findings of fact.

The court to which a case is allocated normally depends on its financial value and the court's territorial competence as designated by the parties' residence or place of business or by the cause of action itself. The CCP provides for three types of civil courts of first instance:

- the Court of the Peace, which tries claims up to €12,000;
- the Single-Member Court of First Instance, which tries claims between €12,000.01 and €80,000; and
- the Multi-Member Court of First Instance, which tries claims worth more than €80,000.

For certain categories of proceedings (eg, landlord and tenant claims, real estate matters, employment matters, motor accident claims, professional fees disputes, etc), exclusive jurisdiction is allocated to a particular court regardless of the case's financial value. Articles 15 (for Courts of the Peace), 16, 17 (for Single-Member Courts of First Instance) and 18 (for Multi-Member Courts of First Instance) of the CCP regulate matters of exclusive jurisdiction. Exclusive jurisdiction is often associated with special proceedings (eg, landlord and tenant claims, matrimonial matters, employment claims, professional fees disputes, motor accident claims, etc).

Today, a total of about 3,100 judges serve in the Greek civil, criminal and administrative courts.

2 Judges and juries

What is the role of the judge and the jury in civil proceedings?

The Greek civil judge is a rather passive figure. This is because of the very principles of the CCP, that is, the principle of concentration (ie, there are no pre-trial proceedings and all allegations and evidence are first submitted at trial stage) and the principle of the parties' initiative (that is, the courts do not undertake any case management of the kind known to common law jurisdictions and all procedural steps are to be taken, as a rule, by the parties rather than the court). Juries are not involved in civil proceedings.

3 Limitation issues

What are the time limits for bringing civil claims?

Different limitation periods apply to different causes of action. The Civil Code (CC) sets the general rule of a 20-year limitation period, but there are several exceptions to it. For instance, a five-year limitation period applies to commercial claims or to professional fees disputes (CC, article 250); an 18-month limitation is applied to claims of unfair competition (Statute No. 146/1914 as modified by Statute No. 3784/2009); a five-year limitation applies to tort actions (CC, article 937); a five-year limitation period applies to motor insurance claims (Statute No. 3557/2007); claims arising from a contract for national transportation by road are time-barred after six months (Commercial Code); and land possession claims are time-barred after a year (CC, article 992).

Time normally runs from the day following the day on which the cause of action arose or from the day the claimant either discovers or could with reasonable diligence have discovered that a cause of action has arisen. It stops running when the originating process has been served (not just issued), the date of service being included in calculating the period. For some causes of action (eg, commercial claims), time stops running not on the date the fixed limitation period ends but on 31 December of the year in which the expiry of the fixed period takes place.

Greek law treats time limitation as a substantive law issue. The expiry of a limitation period will not be taken by the court of its own motion and the parties may agree to suspend time limits; however, the latter is a very rare practice.

4 Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

There are no pre-action requirements such as pre-action protocols, letters of claim or pre-action notices. Before commencing proceedings, a claimant may serve a notice on the defendant setting out the claim in brief and requesting a remedy, yet this is not a formal pre-action requirement and is done on a voluntary basis.

5 Starting proceedings

How are civil proceedings commenced?

Proceedings are commenced by filing an action that sets out the names and addresses of the respective parties and often at some length, full particulars of claim, namely, the material facts that the claimant alleges and which, if proved, would establish one or more causes of action against the defendant and a 'prayer' listing the remedies sought including a statement of value where the claim is

a pecuniary one.

There is no prescribed claim form. Issuing proceedings involves the court sealing the action with its official seal, which does not by itself stop time running for limitation purposes; this stops only after the action has been served on the defendant. On the date of filing, the court allocates a trial date to the particular action, which must be within 12 months of filing (Statute No. 3346/2005).

6 Timetable

What is the typical procedure and timetable for a civil claim?

There is only one permissible method of service in Greece and this is through a court bailiff instructed by the claimant to serve the action document on the defendant. Methods such as personal service, post, document exchange or electronic methods of service (eg, by fax or e-mail) are not known to Greek civil procedure. Service of an action on a defendant residing in Greece must be effected at least 60 days before the trial hearing; if the action must be served abroad or on a defendant of unknown residence, service must be effected at least 90 days before the hearing (CCP, article 228).

Statements of case are not served in sequence between the parties (with the claimant serving the particulars of claim first, followed by a defence from the defendant and then, possibly, a reply from the claimant). Instead, both the claimant's and the defendant's pleadings are filed with the court on the same day.

7 Case management

Can the parties control the procedure and the timetable?

Parties cannot control the procedure or the timetable.

8 Evidence – documents

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Disclosure is not a pre-trial stage of civil proceedings in Greece nor is it based on the idea that lists of documents should be exchanged between the parties early on in the proceedings, and that disclosed documents will then be inspected and reproduced. Nor are there any requirements on rules on proper disclosure or disclosure of adverse documents, or on a lawyer's duty to ensure full disclosure. There are also no penalties for failure to make full or sufficient disclosure or to comply with disclosure directions. The general rule of the CCP is that all documents to which reference is made in the action or which support the factual allegations of a party must be disclosed with that party's pleadings on the day of trial or, in the case of the Multi-Member Court of First Instance, 20 days before it. Crucially, parties are free to choose the documents they wish to disclose and file them with the trial bundles. The CCP provides for an application seeking a disclosure order (articles 450(2), 451 etc), yet this is a slow and rigid procedure (only applications specifying the particular document sought in great detail are allowed) which is very rarely pursued.

9 Evidence – privilege

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Privileged documents

The concept of privilege found in common law jurisdictions is not found in Greek civil procedure. Nonetheless, the production and inspection of some classes of documents may be restrained in a manner that is reminiscent of common law privilege. For instance, documents may be protected by legal professional privilege under the rules of the Lawyers' Code and of the CCP (articles 400 to 401 and 450); or on the grounds of public policy. Rather than privilege, it is the concept of confidentiality that is better known in Greek civil procedure.

Other non-disclosure situations

According to the Lawyers' Code, lawyers have a duty of confidentiality regarding the information that the client has confided in them, even if the disclosure of such information does not harm the client; if the information given to the lawyer by the client has become known from another source; or if the client has released the lawyer from such an obligation. A lawyer in this context may be an in-house or a foreign lawyer, provided he or she acts as a lawyer and not as an employee in a non-lawyer capacity. The Lawyers' Code provides that lawyers keep the following as confidential, even after the case has been closed or the client has revoked his mandate:

- what they have learned from reviewing the documents that the client supplied them with;
- what they have learned from the examination of witnesses; and
- what they have learned from other lawyers regarding their client's case.

Under Greek law, documents that contain legal advice given by a lawyer to his client are confidential. The term 'lawyer' includes both in-house and foreign lawyers. Drafts, notes and copies that a lawyer produces while working on a case are also confidential. The same applies to any other document that a lawyer has at his disposal as a result of communications with third parties to obtain further technical advice to support his client's position.

Persons in fiduciary relationships have the right to refuse to testify in court regarding facts that they acquired in their professional capacity. This category includes lawyers, doctors, public notaries, priests and close relatives of the parties (article 400 CCP). Documents produced under these circumstances are also protected (article 450 CCP).

10 Evidence – pretrial

Do parties exchange written evidence from witnesses and experts prior to trial?

Witness statements (ie, simple statements of truth which are not sworn) are not used in Greek civil proceedings. On the contrary, affidavits (ie, sworn statements) made before a justice of peace or a notary public or a consul (in case the deponent gives the affidavit abroad) are very common. Nonetheless, affidavits are not exchanged between the parties as they are in other jurisdictions, they are made shortly before pleadings and are filed with the court so as to be incorporated into the trial bundles. Interestingly, deponents do not normally attend court nor do they testify during trial. Each party has the right to submit up to three affidavits provided a notice has been served on the party at least two working days before the affidavit is to be made. If an affidavit is to be made abroad, service must be effected at least eight calendar days in advance.

11 Evidence – trial

How is evidence presented at trial? Do witnesses and experts give oral evidence?

The general rule is that, at trial, witnesses of fact give oral evidence and are cross-examined.

A witness of fact may give oral evidence or choose to submit only written evidence. The general rule is that, at trial, each party should have at least one witness of fact giving oral evidence. All witnesses giving oral evidence are cross-examined. If a witness of fact is reluctant to attend trial, the party wishing to make the witness attend the trial may serve a summons notice, yet the sanctions of not attending are so minor (article 398 CCP) that the witness is, in the end, not compelled to attend. It should be noted that under Greek rules of civil procedure the parties to an action (or in the case of legal persons, their legal representatives) may only exceptionally be examined if the facts of the case have not been proved by the evidence submitted to the court. In that case a party is examined like

any other witness but it is not required to give evidence under oath, unless the court so directs.

An expert may be appointed by the court to give an opinion as to the circumstances of the cause of action only if the court rules that the matter calls for expertise knowledge (article 368 CCP). Experts are appointed from a particular register kept in court (articles 371 to 372 CCP). The court may, at its own discretion, select any other appropriate persons, public officers or private individuals. The number of experts appointed also depends on the discretionary power of the judge (article 368).

In contrast to experts who are appointed by the court, technical advisers are appointed by the parties. If the court decides to resort to expert reports, each party is allowed to appoint a technical advisor, who is mainly entrusted to help the parties to express his opinion upon the technical matters investigated by the court-appointed experts (article 392 CCP).

12 Interim remedies

What interim remedies are available?

A claimant may, in urgent circumstances, apply for an interim remedy (eg, the defendant's alleged wrongdoing may cause the claimant irreparable continuing damage before trial). Such applications are normally made to the Single-Member Court of First Instance in accordance with the special procedures set out in article 683ff of the CCP. They are normally made on notice, even though an application without notice (ex parte) may exceptionally be allowed. The injunctions sought can be wide ranging, that is, from freezing and prohibitory injunctions to interim payments and disclosure orders. They can also be available in support of foreign proceedings. Provisional orders may be granted on the same day as a matter of great urgency, yet this happens rarely. Even more rarely can provisional orders be granted ex parte. By and large, despite their increasing popularity – primarily because of the very slow administration of Greek justice – interim remedies are granted parsimoniously by Greek courts. Their range is very wide and the court is free to shape them as deemed most appropriate. The most popular of these remedies include freezing injunctions, mandatory injunctions, prohibitory injunctions and interim payments. When such injunctions are granted before the commencement of proceedings, the court normally instructs that an action should be filed within the next month or so, or else the injunction will automatically be discontinued.

13 Remedies

What substantive remedies are available?

The remedies available at the full trial stage are:

- specific performance or damages; the latter are of compensatory nature only and may include loss of profits;
- recognition (declaration) of the existence or non-existence of a legal relationship; and
- creation, transformation or rescission of a legal relationship, which results from the 'constitutive actions' (eg, an action for divorce or for rescission of a contract on grounds of duress).

Punitive damages of the kind existing in common law jurisdictions are not available in Greece. What may be awarded, however, are 'moral damages', that is, the reparation in money for psychological, non-pecuniary harm suffered as a consequence of an unlawful act. Such damages, however, are of a compensatory rather than a punitive nature and do not correspond to the punitive damages awarded in common law jurisdictions.

Interest is payable on all money judgments at least from the day the action commenced and possibly from the day of the accrual of the course of action. The rate to be applied is not decided by the court but is set by statute.

14 Enforcement

What means of enforcement are available?

Greek law provides for several methods of execution primarily based on the nature of the creditor's claim. Each of these methods is activated by various means depending on the peculiarities of a particular enforcement. The various means of enforcement and the rules applicable to them are set out in articles 904 to 1054 of the CCP. In enforcing pecuniary awards, the CCP provides for three alternatives, attachment being the most common. There are four types of attachment:

- attachment of moveables in the possession of the debtor (articles 953 to 958);
- garnishment, which extends to chattels of a debtor that are not in his possession but in the possession of a third party (articles 982 to 991);
- attachment of land, which also covers attachment of ships and aircraft (articles 992 to 997); and
- attachment of the debtor's special assets, such as intellectual property rights (articles 1022 to 1033).

Besides attachment, the CCP provides for a type of receivership, known as obligatory administration of a debtor's immoveables or business as a going concern (articles 1034 to 1046) and for temporary detainment.

The power of a Greek court to impose sanctions relates to contempt of court for any disturbance or failure to comply with an order or direction during a hearing (CCP, article 207 provides for a fine ranging from €29 to €290 and for a 24-hour detention) or with deliberate flouting or commencing a cause of action which is not reasonable (CCP, article 205 provides for a fine ranging from €150 to €880).

15 Public access

Are court hearings held in public? Are court documents available to the public?

Court proceedings in Greece are generally held in public unless such publicity would be detrimental to public order or moral values, in which case they may be treated, either on the court's own initiative or at the request of a litigant, as confidential under articles 113 to 114 of the CCP. Court documents are treated as public documents and are normally available to the public. In practice, however, a legal interest and legal representation may have to be evidenced before the court secretariat allows access to them.

16 Costs

Does the court have power to order costs?

The assessment of costs by the courts is unsophisticated and not subject to an order that is separate from the final judgment. The general rule is that the unsuccessful party will be ordered to pay the costs of the successful party (CCP, article 176); yet Greek courts usually order the unsuccessful party to pay a nominal amount which is a small fraction of the actual costs incurred by the successful party. Of late, there is a trend in commercial disputes to calculate costs on the basis of 2 per cent of the court's award or, in the case a claim is defeated, of the claim's financial value.

The CCP acknowledges (article 169) that there are circumstances where a defendant who has been sued feels that given the strength of the defence there is a good chance of defeating the claim but is worried that, in the event of winning, the claimant would be unable to meet any order for costs made at trial. It thus provides that a defendant may apply to the court for security for legal costs if there is an obvious risk of non-payment by the claimant if it is ordered to pay such costs. Given the comparatively low cost of civil litigation in Greece, this provision has long remained inactive.

17 Funding arrangements

Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Civil proceedings in Greece are usually not a costly matter. As set out in the Lawyers' Code, a lawyer's fee for filing an action or an appeal amounts to 2 per cent of the financial value of the claim and to 1 per cent for filing a pleading. However, this rule is often not followed and private agreements providing for higher (or occasionally lower) fees are made. The traditional method is for the client to pay legal fees at an agreed lump sum rather than at an hourly rate. As an alternative to such traditional retainer, a conditional fee arrangement may be agreed, yet such an arrangement should be no more than 20 per cent of the amount recovered.

The client will be expected to pay for fees and disbursements. If the claim is of an executionary nature (ie, the claimant seeks an order for the defendant to pay a certain amount of money) and not of a declaratory nature (ie, the claimant seeks the judicial declaration of the existence of the relevant claim or of a certain legal relationship), the claimant must pay a court duty amounting to approximately 0.7 per cent of the claim value. Aside from this court duty, other court-related expenses are infinitesimal regardless of the financial value of the claim.

The CCP provides that a party may be relieved from paying legal costs including representation fees (article 194) if its financial resources are within the prescribed income and capital limits (means test) and there are reasonable grounds for taking, defending or being a party to the proceedings (merits test). Legal aid has been better spelt out in Statute No. 3226/2004, which provides for legal assistance to individuals whose annual family income is less than two-thirds of the minimum wage set out in the National Collective Labour Agreement.

The general rule is that the unsuccessful party will be ordered to pay the costs of the successful party (CCP, article 176); yet Greek courts usually order the unsuccessful party to pay a nominal amount which is a small fraction of the actual costs incurred by the successful party. Of late, there is a trend in large commercial disputes to calculate costs on the basis of 2 per cent of the court's award or, in the case a claim is defeated, of the claim's financial value.

18 Insurance

Is insurance available to cover all or part of a party's legal costs?

Insurance is available for litigation costs pursuant to the provisions of Legislative Decree No. 400/1970 on private insurance. Under an insurance contract, the insurer may undertake any future litigation expenses of the insured either through court proceedings or an out-of-court settlement. Said decree provides that the insurance policy must ensure that the insured is entitled to choose his legal representative freely.

19 Class action

May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Class action are not well known to Greek court procedure. Greek legislation provides that consumers' associations may represent consumers before national courts, bodies and institutes that are directly or indirectly involved in consumer protection or enforcement procedures, as well as activities that affect consumers' interests (Statute No. 2251/1994). In particular, a consumers' association that counts at least 500 active members and is registered with the Registrar of Consumers' Associations has the right to bring a class action.

20 Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

As a rule, only final judgments can be considered on appeal while non-final judgments (eg, interlocutory orders) can only be put on appeal together with the final judgment. Appeals to judgments of the Single-Member Court of First Instance and of the Multi-Member Court of First Instance are tried by one of the 15 courts of appeal. The territorial competence of a court of appeal is decided by the location of the lower court whose judgment is appealed. Appeals to judgments of the Court of the Peace are heard by the Multi-Member Court of First Instance. An appellant must file an appeal notice in which he should set out the grounds on which it is alleged the court went wrong. Grounds for an appeal may relate both to questions of fact, including the evaluation of evidence, and to questions of law (both substantive and procedural). Filing of an appeal notice must be made within 30 days after the final judgment of the lower court was served on the appellant, or within 60 days in the cases of appellants who live abroad or are of an unknown residence. If the judgment has not been served, an appeal notice must be filed within three years from the day the judgment that is appealed was sealed. Once an appeal notice has been filed it must be served on respondents who reside in Greece at least 60 days before the scheduled hearing of the appeal. Service must be effected at least 90 days before the scheduled hearing of the appeal in the case of respondents who live abroad or are of an unknown residence. Commencing an appeal usually has the automatic effect of staying execution on the judgment. Fresh evidence is allowed provided it has emerged after the trial or could not have been obtained with reasonable diligence for use at the time of trial.

21 Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

The procedure for the recognition and enforcement in Greece of judgments and orders issued in an EU member state is governed by the provisions of Regulation (EC) No. 44/2001, which replaced the Brussels Convention. Although the structure of the Convention has in broad lines been preserved, Regulation EC) No. 44/2001 significantly simplified the procedures for recognition and reformed the grounds for refusal of recognition or enforcement of a foreign judgment or order. The competent court for the declaration of enforceability is the Single-Member Court of First Instance of the place of domicile of the party against whom enforcement is sought or of the place of enforcement. The application for the declaration of enforceability must have at least the minimum content stipulated in the Regulation.

In all other cases, without prejudice to the provisions of multilateral or bilateral treaties and conventions, a foreign judgment can be declared enforceable by a judgment of the Single-Member First Instance Court under articles 904 et seq and 323 of the CCP, provided that:

- the foreign judgment is enforceable under the legislation of the state where it has been issued and is not contrary to moral values or public order in Greece;
- the unsuccessful party has not been deprived of its right of defence, except where this has happened according to a provision which applies, without discrimination, to the citizens of the state of the judging court; and
- the foreign judgment is not contrary to a domestic judgment that has been issued in the same case and creates precedent between the same parties.

22 Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

According to Regulation (EC) No. 1206/2001 on cooperation between the courts of the member states in the taking of evidence in civil or commercial matters, Greek courts may have to respond to a relevant request made by a court of another member state before which court proceedings are pending. The Regulation further introduces a new procedure, pursuant to which a court may take evidence directly in another member state by submitting a request to that state's competent authority. Direct taking of evidence may only take place if it can be performed on a voluntary basis without the need for coercive measures. The taking of evidence shall be performed by a member of the judicial personnel or by a person who will be designated in accordance with the law of the member state of the requesting court.

In the case of non-EU countries, Statute No. 3287/2004, which ratified the Hague Convention of 1970 on the taking of evidence abroad in civil and commercial matters, provides that a judicial authority of a contracting state may, in accordance with the provisions of the law of that state, request, by means of a letter of request, that the competent authority of another contracting state take evidence from a witness.

If none of the above procedures are applicable, article 6 of the CCP provides that evidence may be taken by Greek courts following a request submitted by foreign authorities.

Arbitration

23 UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

Rules governing domestic arbitration are set out in the CCP (articles 867 to 903). International commercial arbitration is governed by Statute No. 2735/1999, which transposed the UNCITRAL rules into national law. Its scope covers all commercial disputes and all disputes of an economic nature. The provisions of Statute No. 2735/1999 are applicable when the venue of the arbitration is in Greece.

Greece is a party to several international conventions dealing with civil procedural matters, both multilateral and bilateral. Greece is a party to the two Geneva Conventions on Arbitration of 1923 and 1927, and the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, but not to the European Convention on Commercial Arbitration of 1961. The Geneva Convention of 1927 and the New York Convention of 1958 are quite frequently applied by Greek courts. Article 906 of the CCP regulates the enforcement of foreign arbitral awards.

24 Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

The law of arbitration in Greece upholds party autonomy, minimises interference in the arbitration process and sets arbitrator's remuneration levels. The parties are given considerable flexibility regarding their choice of arbitrators. The arbitration agreement must be in writing and signed by the parties to be legally binding. Signature may be substituted by the exchange of signed letters, telegraphs or signed facsimiles. If the agreement is not in writing, it is only enforceable if the parties appear before the arbitrators and participate in the arbitral process voluntarily, without contesting the validity of the arbitral proceedings (CCP, article 869).

25 Choice of arbitrator

If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Greek law sets no strict restrictions on the number, identity or selection of the arbitrators. All such matters can be freely agreed between the parties, although it is strongly advised to make express provision in the arbitration agreement.

There are, however, some widely used exceptions in both contract and commercial law, which also apply to the choice of arbitrators. Thus, an arbitrator cannot be someone who, for instance, has been deprived of political rights or has limited or no capability to enter into contracts (CCP, article 871(2)).

If arbitrators are not appointed in time, the first instance court in the jurisdiction in which the arbitration will take place, will make the appointments.

26 Arbitral procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

There are no such special requirements.

27 Court intervention

On what grounds can the court intervene during an arbitration?

The Greek courts will not intervene and will only support and supervise the procedure on peripheral matters. For example:

- they will appoint an arbitrator where the parties in dispute have not done so in the arbitration agreement (CCP, article 878);
- provided the relevant petition has been submitted to the proper court, they will release an appointed arbitrator from his or her duties if the arbitrator refuses to undertake them for serious reasons (CCP, article 880);
- provided the relevant application has been submitted to the proper court, they will remove an arbitrator from his position if he or she has an interest in the outcome of the arbitration (CCP, article 52(1)(c)) or has acted in such a biased and impartial way so as to cause distrust and suspicion between the parties (CCP, article 52(1)(f));
- if long delays occur, they have the power to grant an extension for the arbitration to be completed (CCP, article 884); and
- they may require the parties to present evidence before the arbitral tribunal (CCP, articles 888 and 889).

28 Interim relief

Do arbitrators have powers to grant interim relief?

Arbitrators are not entitled to grant such relief nor can they revoke or modify provisional remedies granted by ordinary courts (CCP, article 889).

29 Award

When and in what form must the award be delivered?

Unless the submission provides otherwise, the arbitrators and the 'presiding' arbitrator deliberate in common and deliver their decision by majority vote. Whenever a majority opinion cannot be attained, the opinion of the 'presiding' arbitrator prevails (CCP, article 891). The award must be in writing and must contain full reasoning (CCP, article 892). If otherwise agreed, the arbitrator is obliged to file the original award before the Single-Member Court (CCP, article 893).

Update and trends

A new reform of the CCP has been under consideration since June 2009. However, the final draft of the new Statute has not yet been approved.

30 Appeal

On what grounds can an award be appealed to the court?

Under Greek law, arbitration decisions cannot be appealed in the local courts. If expressly provided for in the arbitration agreement, it is possible to make an appeal before another arbitration tribunal (CCP, article 895(2)).

Greek law provides for an arbitral decision to be annulled if a petition is filed by either party within three months of the issue of the arbitral decision (CCP, article 897). The hearing takes place in the Court of Appeal in the jurisdiction where the arbitration decision was issued. Reasons for annulment include:

- an invalid arbitration agreement;
- the arbitral decision was issued after the arbitration agreement ceased to be in force or was against public policy or good morals;
- the arbitrator was not legally appointed or had requested to be exempted from the process due to serious reasons;
- the arbitrator has abused the powers vested in him by law or by the parties;
- violations of the principles of the equality of the parties or of defence, of the rules governing the delivery of the award and of the existence of grounds for the reopening of the decision; and
- the award itself is unintelligible or contains inconsistent provisions.

Actions for annulling arbitral awards are heard by the court of appeal where the award was rendered following the proceeding of labour disputes (CCP, article 898). A review in cassation is permissible. The hearing of the cassation before the Supreme Court must take place within three months of a party having taken further steps before this court. A party cannot waive his right to bring an action for annulling an arbitral award before it has been rendered (CCP, article 900).

31 Enforcement

What procedures exist for enforcement of foreign and domestic awards?

According to article 903 of the CCP, foreign arbitral decisions or awards will be enforceable under Greek law if:

- the arbitration agreement on which the decision is based is valid;
- there is no appeal pending either before a court or tribunal;
- the defeated party was not deprived of its right to defend itself during the hearing;
- there is no conflicting or contrary decision rendered by the Greek courts; and
- the arbitral decision is compatible with public policy.

Domestic arbitral awards are immediately enforceable (CCP, article 904). The enforcement can only be commenced on the basis of a certified copy of the enforcement order (precept), which is given by the presiding judge of the court that issued the relevant judgment (CCP, articles 904 and 918). Once this order has been served, no other enforcement actions can be brought before three working days have passed (CCP, article 926).

32 Costs

Can a successful party recover its costs?

The arbitral award determines which party (usually the losing party) is liable to pay the costs and fees of the arbitration. However, the arbitral award can determine that both parties are liable for the payment of the arbitration costs (CCP, article 882(5)).

Alternative dispute resolution

33 Types of ADR

What types of ADR process are commonly used? Is a particular ADR process popular?

Litigation in Greece is the predominant method for resolving disputes. ADR procedures, such as arbitration, mediation and out-of-court settlements, although in their infancy, are becoming more popular, particularly in disputes relating to construction, insurance and trade. Nonetheless, mediation and conciliation are very rarely used. Arbitration has been gaining significant ground. Arbitration proceedings are set out in articles 867 to 903 of the CCP. The parties are given great flexibility in their choice of arbitrators. To be legally binding the arbitration agreement must be in writing and signed by the parties. If the agreement is not in writing, it is only enforceable if the parties appear before the arbitrator(s) and participate in the arbitral process voluntarily and without contesting the validity of the arbitral proceedings (article 869 CCP).

34 Requirements for ADR

Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Since 2001 an attempt to make a pre-trial settlement has become a prerequisite before a large commercial dispute allocated to the

Kelemenis & Co.
Attorneys at Law

Yannis Kelemenis

5 Tsakalof Street
10673 Athens
Greece

Tel: +30 210 361 2800
Fax: +30 210 361 2820
enquiries@kelemenis.com
www.kelemenis.com

Multi-Member Court of First Instance can be heard (article 214A CCP). To this end, the claimant must serve a notice extending an invitation to the defendant to meet to negotiate such pre-trial settlement. The meeting must take place between the fifth day after service of the action and the 35th day before trial; unlike similar procedures in other countries, a judge is not involved. Despite the expectations it had initially raised, this institutionalised attempt at a pre-trial settlement has hardly produced any pre-trial settlements. Other than this pre-trial settlement, ADR does not form part of court procedures and courts cannot compel its use.

Miscellaneous

35 Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Greek law makes no distinction between lawyers who may or may not appear before a court (eg, of the kind found in England and Wales between solicitors and barristers). There is one kind of advocate known as a 'lawyer' (*dikigoros*) and subject to the rules of the Lawyers' Code of 1954. A lawyer's capacity to appear before a court is determined by the degree of the court before which he or she is appointed. Appointment depends on years of experience and practice and is of three types (articles 35 and 54 of the Lawyers' Code): appointment before the first-instance courts (ie, the Court of the Peace, the Single-Member Court of First Instance and the Multi-Member Court of First Instance) takes place upon a lawyer's admission to one of the Bar Associations of the country (such associations being allocated to different geographical areas). A lawyer may apply for admission to one of the 15 courts of appeal after having completed four years of practice as a lawyer before first-instance courts. Following admission to the court of appeal, another minimum of either five years of practice before the court of appeal or, alternatively, two years of practice before the court of appeal and a total of 12 years of practice, is required before an application for admission to the Supreme Court can be made.