
INTERNATIONAL EXECUTION AGAINST JUDGMENT DEBTORS

GREECE

By

Athanassia Papantoniou and Ioanna Lazaridou-Elmaloglou
Kelemenis & Co.
Athens, Greece

C
O
M
M
E
N
T
A
R
Y

*Release 2010-2
Issued April 2010*

Oceana[®]
NEW YORK

OXFORD
UNIVERSITY PRESS

Oxford University Press, Inc., publishes works that further Oxford University's objective of excellence in research, scholarship, and education.

Copyright © 2010 by Oxford University Press, Inc.

Published by Oxford University Press, Inc.
198 Madison Avenue, New York, New York 10016

Oxford is a registered trade mark of Oxford University Press
Oceana is a registered trade mark of Oxford University Press, Inc.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior permission of Oxford University Press, Inc.

Library of Congress Cataloging-in-Publication Data

International execution against judgment debtors / Dennis Campbell, general editor;
Center for International Legal Studies.

p. cm.
Includes index.

ISBN 978-0-379-01253-8 (alk. paper)

1. Conflict of laws—Executions. 2. Judgments, Foreign. 3. Judicial assistance.
I. Campbell Dennis. II. Center for International Legal Studies.

K7683.I58 1999
341.7'8—dc21 98-2074
CIP

Printed in the United States of America on acid-free paper.

Note to Readers:

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is based upon sources believed to be accurate and reliable and is intended to be current as of the time it was written. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. Also, to confirm that the information has not been affected or changed by recent developments, traditional legal research techniques should be used, including checking primary sources where appropriate.

(Based on the Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.)

**You may order this or any other Oxford University Press publication
by visiting the Oxford University Press website at www.oup.com**

Table of Contents

A. INTRODUCTION	1
B. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND ORDERS OF THIRD COUNTRIES	2
i. In General	2
ii. Enforceability Requirements: Foreign Orders	3
iii. Enforceability Requirements: Foreign Court Judgments	3
iv. Jurisdiction	4
v. Filing and Content of Action	4
vi. Evidence	5
vii. Examination of the Greek Court	6
C. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND ORDERS OF EUROPEAN UNION COUNTRIES	6
i. In General	6
ii. Reasons for Denial of Recognition	7
iii. Declaration of Enforceability	9
iv. Appeals	9
D. LAWYERS' FEES, COURT COSTS, CALCULATION OF INTEREST	13
E. CASE LAW OF THE GREEK COURTS	14
i. In General	14
ii. Decision Relating to Recognition and Enforcement Procedures	14
iii. Decisions Relating to Recognition and Enforceability Obstacles	15
iv. Decisions Regarding Interim Measures	18
F. CONCLUSION	18

GREECE

Athanassia Papantoniou and Ioanna Lazaridou-Elmaloglou
Kelemenis & Co.
Athens, Greece

A. INTRODUCTION

Greek courts recognize and enforce foreign judgments and orders by means of an easy, quick, and inexpensive process set out in the Greek Code of Civil Procedure. Moreover, they have been consistently applying the Brussels Convention and Council Regulation 44/2001, which replaced it. Given that council regulations are binding and immediately enforceable in European Union (EU) member states without any legislative intervention, Council Regulation 44/2001 has introduced an autonomous system of recognition and enforcement of foreign judgments and orders which prevails over the equivalent provisions of Greek law.

Regarding foreign judgments originating from third (i.e., non-EU) countries, for which the provisions of Regulation 44/2001 do not apply, the Code of Civil Procedure introduces a simple and flexible system which is quite similar to the one of Regulation 44/2001.

The recognition and enforcement of foreign judgments and orders in Greece is subject to the following legislation:

1. Articles 905 and 323 of the Code of Civil Procedure which lay down the general rules of enforceability of foreign judgments and orders;
2. Council Regulation 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which replaced the numerous bipartite conventions between member states of the EU, as well as the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, which became Greek law with Law Number 1814/1988, as amended by Law Number 2004/1992; and

3. The bipartite conventions and agreements that Greece has signed with third countries outside the EU.¹

In addition to the bipartite conventions, international conventions are of relevance. The Code of Civil Procedure explicitly provides that, in case of conflict, their provisions prevail over national law.

B. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND ORDERS OF THIRD COUNTRIES

i. In General

Articles 904 *et seq* of the Code of Civil Procedure set out the steps for the recognition and enforcement of foreign judgments and orders. Pursuant to article 904, paragraph 2, section (f), of the Code of Civil Procedure, foreign orders which have been declared enforceable in another jurisdiction can be made enforceable deeds in Greece. Articles 905 and 906 of the Code of Civil Procedure set out the prerequisites and the procedure necessary for a foreign judgment to be enforceable under Greek law.

Article 905 provides that the competence for granting enforceability lies with the Single-Member Court of First Instance (*Monomeles Protodikeio*) of the region where the debtor resides. If the deed is a court judgment, the terms of article 323, paragraphs 2-5, of the Code of Civil Procedure must concur for the judgment to be declared enforceable. Article 323 is of broader application than articles 904 and 905 for it regulates not only the enforcement, but also the recognition by a Greek court of the *res judicata* that may result from a foreign judgment.

Under these provisions, the enforceability of a foreign order or judgment in Greece is neither subject to the existence of a convention for inter-state judicial aid or to the principle of reciprocity between Greece and the country where the order or judgment was issued nor is it subject to this country having entered into the Brussels Convention. Such an order or judgment need not be final; it only needs to be enforceable and valid according to the law of the foreign state.

¹ Greece is a party to bipartite conventions involving the recognition and enforcement of foreign judgments with former Yugoslavia, ratified by Law Number 4007/1963; Romania, ratified by Decree Number 249/1974; the former Soviet Union, ratified by Law Number 1242/1982; the former Czechoslovakia, ratified by Law Number 1323/1983; Switzerland, ratified by Law Number 729/1937; Albania, ratified by Law Number 2311/1995; Lebanon, ratified by Law Number 1099/1980; Syria, ratified by Law Number 1450/1984; Kenya, ratified by Law Number 730/1937; Mexico, ratified in 1999; Armenia, ratified by Law Number 3007/2002.

If the judgment or order becomes ineffective due to subsequent reasons such as payment, set off, or settlement, it may not be declared enforceable.

ii. Enforceability Requirements: Foreign Orders

According to article 905 of the Code of Civil Procedure, for a foreign order to be declared enforceable the following requirements must be met:

1. There must be a foreign order issued by a competent authority of a foreign state;²
2. The foreign order must be enforceable in the state where it was issued;³
3. The content of the order may not be contrary to public order;
4. The content of the order may not be contrary to moral values (e.g., a foreign order or judgment granting an unreasonable interest beyond lawful interest as prescribed by Greek law); and
5. The foreign order may not be contrary to a provision of a convention between Greece and the foreign country.

iii. Enforceability Requirements: Foreign Court Judgments

A foreign court judgment may be declared enforceable if, according to article 905, paragraph 3, of the Code of Civil Procedure, the terms of article 323, paragraphs 2–5, are met and in particular:

1. It is a court judgment issued in accordance with the legislation of the foreign country;⁴
2. The judgment deals with a particular private dispute;⁵

-
- 2 Such an order may either be a court decision or any other similar document, provided that it is binding pursuant to the laws of the foreign state, i.e., it has been issued by a person or authority that had such competence.
 - 3 The order also must be enforceable in the foreign state at the time when enforcement is sought in Greece. If its enforceability is repealed, this will result in the decision declaring enforceability being revoked or reformed (article 758 of the Code of Civil Procedure) or will give rise to the right to file a caveat against enforcement (article 943 of the Code of Civil Procedure).
 - 4 This means that it must have been drafted according to the laws of the foreign country and that the requirements of the foreign jurisdiction have been met. The “title-name” of the deed is not of essence; it is sufficient that it is considered a court judgment according to the legislation of the foreign state.
 - 5 It is irrelevant whether the foreign court sat in judgment as a civil, criminal, or administrative court, if it observed the provisions of *ex parte* or *inter partes* competence, or if it ordered *interim measures*. It is sufficient that it is an executable judgment.

3. The judgment is executable (either finally or provisionally) according to the legislation of the foreign state;
4. The decision addresses a case for which, according to the legislation of the foreign state, the courts of the country were competent;⁶
5. The unsuccessful party may not have been deprived of its right of defense and generally its right to participate in the proceedings;⁷
6. The foreign judgment may not be contrary to a domestic judgment that has been given in the same case and creates precedent between the same parties; and
7. The foreign judgment may not be contrary to Greek moral values or to public order.⁸

iv. Jurisdiction

Competence for the declaration of enforceability of a judgment lies with the Single-Member Court of First Instance of the region where the debtor resides or, if the debtor has no residence, the Single-Member Court of First Instance of Athens.

It is of no significance whether the person against whom execution has been ordered is Greek or foreign. The court decides based on the provisions of so-called voluntary competence (*ex parte*), which is characterized by speed and flexibility.

v. Filing and Content of Action

The parties that, pursuant to the judgment or order, are entitled to commence the enforcement proceedings in Greece, as well as their creditors who, in any case, may exercise their rights by instituting the so-called oblique action⁹ are entitled to do so by filing an application. Service of the application is not required, even if it involves a counter party. No time limit exists for the filing of such application, and tardiness is not considered abusive.

6 The elements that constitute the international competence of the foreign state must be present at the time the application for enforcement is heard.

7 This means that in case it is requested that a judgment given in default of appearance of one party be declared enforceable, the court must examine the validity of the summons pursuant to the legislation of the foreign state or the validity of service of the summons or of the claim to the defendant. A decision will not be declared enforceable if the defendant proves that he was not served the claim document or any notice that would have enabled him to participate in the proceedings.

8 The meaning of public order is set out in article 33 of the Code of Civil Procedure and relates to the protection of state or social interests of a fundamental nature.

9 Code of Civil Procedure, article 72.

The application is forwarded by the secretariat to the allocation judge who determines the day of trial. The application must contain a precise description of the case, a particular request, a clear description of the facts supporting the request, the legal basis for its filing and the facts on which the competence/jurisdiction of the court is based. The application also must explain how the order or judgment was given and the reasons that contribute to its enforceability, and indicate that it is enforceable under the laws of the foreign country and under the terms and conditions of article 905 of the Code of Civil Procedure.

The application must request the enforcement of the foreign judgment in Greece or the recognition of its *res judicata*. The application also must contain a detailed analysis of the facts that make the recognition and enforcement of the judgment necessary as well as the facts on which the local competence/jurisdiction of the court is based. The action need not be filed against a defending party. If he did not participate in the hearing, the party affected by the recognition may file an action, pursuant to articles 583–590 of the Code of Civil Procedure.

vi. Evidence

The applicant must, using all acceptable means (including witnesses), prove that the judgment or the order was given pursuant to the legislative provisions of the foreign country and that the judgment or order is enforceable in the country where it was given.

The applicant can prove the enforceability of the foreign order or judgment by furnishing either an official certification of the competent foreign authority that the order is enforceable or a certification (which is in practice noted at the footer of the judgment or order) of the secretary of the foreign court that the decision is final and irrevocable. When the application is heard, the applicant must file his pleadings and the following documents:

1. The foreign judgment with a certified translation;¹⁰ and
2. Any other document that proves the enforceability of the order or judgment according to the foreign law.

In divorce cases, a certificate or note on the judgment itself saying that it is final according to the law of the foreign country must be provided. Material allegations can be raised at any stage of the trial, even when the application is heard on appeal.

¹⁰ If the judgment is not filed with the court, the court may order such filing.

vii. Examination of the Greek Court

The judge will examine the foreign order or judgment and identify the persons who are competent for enforcement as well as the extent of the claim. The court has no power to decide if the foreign judge applied the law of his country or the Greek or international law correctly. In particular, in deciding on enforceability of a foreign judgment, the Greek judge must take into consideration the following:

1. The extent to which the foreign decision created *res judicata* in the country where it was issued (based on the law of the foreign judge);
2. The extent to which the court that issued the judgment was competent according to Greek rules on competence;
3. The extent to which the defeated party was not deprived of his rights of defense during the procedure;
4. The extent to which the foreign judgment is not contrary to a domestic judgment which has been issued in the same case and creates precedent between the same parties; and
5. The extent to which the foreign judgment is not contrary to public order or moral values in Greece.

If the application is accepted, the secretary of the court supplies an executory engrossment on which the type of enforcement and the enforcement rules follow as if it were a domestic deed. The competent person for the issue of the enforcement instrument is the judge of the Single-Member Court of First Instance who declared it enforceable pursuant to articles 904 and 905 of the Code of Civil Procedure.

C. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND ORDERS OF EUROPEAN UNION COUNTRIES

i. In General

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 Council Regulation 44/2001, which replaced the Brussels Convention. Although the structure of the Convention has in broad lines been preserved, Regulation 44/2001 significantly simplified the procedures for recognition, and reformed the grounds for refusal of recognition or enforcement of a foreign decision.

Article 33 of the Regulation maintained the system of automatic recognition of decisions within the EU; a member state, such as Greece, where recognition is requested accepts the *ipso facto* consequences of the foreign judgment in its territory without any special procedure being required, as if the judgment were given by its own courts. Furthermore, the same procedure cannot be initiated in any other member state.

Crucially, the Greek courts do not review on the merits on recognition proceedings and do not go into the substance of the case. They only examine whether the prerequisites indicated in Regulation 44/2001 have been observed.

The Greek court hearing the case must limit itself to a routine examination of the application and the required documentation¹¹ and is not under an obligation to examine grounds of refusal of recognition. The examination of such grounds is shifted to the second stage of the procedure, i.e., when the decision is challenged by the party opposing to recognition. In any case, the court may stay proceedings if an ordinary appeal against the judgment has been lodged in the country where it was given.¹²

If the outcome of the proceedings in a court of a member state depends on the determination of an incidental question of recognition, the Regulation provides, as the Brussels Convention did previously,¹³ that that court will have jurisdiction over that question.¹⁴

ii. Reasons for Denial of Recognition

The grounds on which a judgment may not be recognized by a Greek court are determined in articles 34 and 35 of the Regulation. The same grounds for refusal apply for the denial of declaration for enforcement.¹⁵ More specifically,

11 Regulation 44/2001, article 53, paragraph 1.

12 Regulation 44/2001, article 37.

13 Pipsou, "Amendments of the Brussels Convention regarding the Recognition and Enforcement of Judgments by Council Regulation 44/2001", *Armenopoulos*, volume 12 (2001), at pp. 1683–1705; Karagounis, "Council Regulation EC 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters Which Replaces the Brussels Convention of 27 September 1968", *DEE*, volume 3 (2001), at pp. 333 and 334.

14 Regulation 44/2001, article 33, paragraph 3.

15 Regulation 44/2001, article 41.

a judgment issued by the court of an EU member state will not be recognized by Greek courts:

1. If such recognition is manifestly contrary to Greek public policy;¹⁶
2. If the defendant was deprived of his right of defense in the country where the judgment was given;¹⁷ and
3. If the judgment is irreconcilable either with a judgment given in a dispute between the same parties in Greece or with an earlier judgment given in another member state or in a third state involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the member state addressed.¹⁸

This last provision aims at preserving the prevalence of the domestic judgment in comparison to the judgment for which recognition or enforcement is sought, irrespective of the time of issue. On the contrary, if the judgment was given by a court of another member state or of a third state, the criterion of time priority applies.

16 The provision relating to public policy can be found in most national laws and bipartite agreements. The Regulation maintained it; yet, this provision must be so interpreted that recognition is denied on such ground only in extreme circumstances. Given that a foreign judgment may not be reviewed in respect of its substance, contradiction to public policy will exist only when recognition or enforcement is contrary to the laws of Greece in a way that it infringes the country's fundamental rights and principles. Such a fundamental right is primarily the right of defense protected by the European Convention of Human Rights which cannot be sacrificed for the sake of simplified procedures for the recognition or enforcement in EU member states.

17 Article 34, paragraph 2, of the Regulation aims at safeguarding the right of defense of the defendant if the judgment was given in default of appearance. According to this provision, a judgment will not be recognized if the defendant was not served with the document which commenced the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defense. As in the Brussels Convention, the Regulation only indicates the documents commencing the proceedings, thereby confining the protection of the defendant's right of defense to the outset of litigation. Crucially, the validity of service is not sufficient to justify recognition or enforcement if the way the service took place did not safeguard the defendant's right of defense. The court of the country where recognition is sought is once again responsible for examining whether the service was lawful. It also will examine whether the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so. Should this happen, the judgment will be recognized, which is what the Greek law provides, as well, in article 323, paragraph 3, of the Code of Civil Procedure.

18 Regulation 44/2001, article 34, paragraphs 3 and 4.

iii. Declaration of Enforceability

a. *Competent Court and Procedure*

The competence of 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 is exclusive and cannot be extended. The application must have at least the minimum content stipulated in the Regulation, i.e., invocation of the judgment's enforceability in the state where it was given and, when the judgment was given in default of appearance, proof that the defendant was served with the document which commenced the proceedings.

Furthermore, the applicant must state an address for service of process in Greece or, if the law of the member state in which enforcement is sought does not provide for the furnishing of such an address in Greece, the applicant must appoint a representative *ad litem*.

b. *Documentation and Issue and Service of Judgment*

To simplify the procedure, the Regulation reduces the documents that must be submitted to the Greek court. According to article 53, a party seeking recognition or applying for a declaration of enforceability shall produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity, together with a relevant certificate of the competent authority of the member state in which the judgment was given.

If such a certificate is not produced, the court may specify a time for its production or accept an equivalent document. If the Greek court declares the judgment enforceable under article 41 of the Regulation, the decision on the application for a declaration of enforceability must be served at the address of the representative.¹⁹

iv. Appeals

a. *Appeals Pursuant to the Council Regulation*

According to article 43, paragraph 1, of the Regulation, the decision on the application for a declaration of enforceability may be appealed against by either party.²⁰ The deadline for lodging an appeal is determined in article 43,

19 The Code of Civil Procedure, article 122, paragraph 2, deals with services undertaken by the court, and articles 124 *et seq* relate to the procedure under which service will take place).

20 Nikas, "The Lodgment of an Appeal Pursuant to Article 36 of the Brussels Convention against the Decision That Declared the Foreign Judgment Enforceable", *Armenopoulos*, volume 11 (1996), at pp. 1408–1412; Anthimos, "Grounds for an Appeal Based on Article 36 of the Brussels Convention against the Recognition and Enforcement of Foreign Judgments", *Armenopoulos*, volume 8 (1999), at pp. 1145–1149.

paragraph 5, and varies, depending on the place of residence of the party against whom it is lodged.

The time of appeal runs from the date of service of the decision that granted enforceability, irrespective of whether a further service of the enforceable judgment took place. If the party against whom enforceability is sought did not enter an appearance, article 26, paragraphs 2–4, of the Regulation is applicable even if the party is not domiciled in a member state. In line with the Regulation, the Greek court may stay the appellate proceedings even if the appeal has been lodged by the person against whom enforcement is sought, if it cannot be confirmed that the party which did not enter an appearance was in a position to receive the document commencing the proceedings in time to arrange for his defense.

The declaration of enforceability is revoked or overruled only if one of the reasons mentioned in articles 34 and 35 of the Regulation concur. It is self-evident that the lack of the standard prerequisites for the declaration of enforceability also may constitute grounds for appeal. Furthermore, a decision may be appealed if it does not fall within the scope of application of the Regulation but not on the basis of facts that emerged after the judgment was given such as debt redemption, which is examined at the stage of enforcement according to the provisions of the Code of Civil Procedure.

This party may challenge the procedure and its validity under articles 34 and 35 of the Regulation by lodging an appeal within one month of service of the decision. The appeal must be lodged with the Court of Appeal (*Efeteio*) and the procedure of *inter partes* is followed. The lawful lodgment of an appeal is concluded with its filing with the secretary of the competent Court of Appeal within a period of one or two months from the service of the judgment that ordered enforcement, depending on whether the party lodging the appeal resides in Greece or in another member state.

When trying the appeal, the court does not act as a second instance but rather as a first instance court. The appeal does not have a presented form, but must at least set out that it is addressed to the Court of Appeal, the details of the parties and their representatives, the object of the appeal, the date and the signature of the appellant and of his attorney, and the grounds for appeal. New grounds may be added with a new document filed with the secretary of the court to which the appeal is pending.

Within the time limits of article 43, paragraph 5, of the Regulation, if an appeal is lodged, a judgment cannot be declared provisionally enforceable. During this period, the creditor can only be protected by way of interim measures imposed on the property of the debtor. The power to proceed to any

such protective measures is carried with the declaration of enforceability that the creditor can use directly to obtain any appropriate interim measure available in Greece.

The Regulation enhanced the protection of the appellant by providing that, when a judgment must be recognized in accordance with the Regulation, nothing may prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the member state requested without a declaration of enforceability being required. Pursuant to the above, if a decision on the merits of a dispute exists, the applicant may file for provisional measures with a Greek court before the declaration of enforceability of the judgment.²¹

b. Appeals Pursuant to the Code of Civil Procedure

Judgments given under the so-called voluntary competence (*ex parte*) proceedings are challenged through an appeal. The appeal document is filed with the secretary of the court that gave the judgment. An appeal can be lodged once and only if the judgment under dispute has not been explicitly or tacitly accepted. The appellant must prove his lawful interest. Competence for the hearing of the appeal lies with the Court of Appeal. The parties to the case are those entitled to lodge an appeal even if they won. More specifically, the parties to the trial include:

1. The party that filed the petition for the enforcement of the foreign judgment;
2. The persons against whom enforcement was sought, provided that they participated in the first instance hearing;²²
3. The persons who filed an intervention, even if they did not attend the hearing;
4. The persons who were joined into the proceedings as a result of an interpleader;
5. The persons who filed a third-party caveat against the first instance judgment;

²¹ Tzifra, *Interim Measures* (4th ed., 1985); Chamilothis *et al.* (eds.), *Interim Measures*, volumes I and II, (2003).

²² The party against whom enforcement is sought becomes a party and may lodge an appeal even if he was not summoned by an order of the judge. If they were not parties or if they were not summoned, they may not lodge an appeal but they may file a third-party caveat.

6. The successors and the heirs of all the above parties irrespective of whether they personally participated in the hearing of the first instance decision; and
7. Third parties who did not take part in the hearing may not lodge an appeal even if they have lawful interest or they suffer from a measure that will be taken, unless they were summoned by an order of the judge.²³

The appeal document includes the facts of the case and refers to the first instance decision, the grounds of the appeal, and the request for annulment of the first instance judgment. When the hearing takes place, the appellant submits the appeal document, the first instance judgment, the documentation that was submitted to the first instance court, and any other evidence that came up before the appeal is heard.

The appeal is lodged within thirty days if the appellant resides in Greece or within sixty days if he resides abroad or is of unknown residence. This deadline starts when the decision is served. If the decision was not served, the deadline is three years and starts from the date the decision was entered.

The appeal may be grounded on legal errors of the first instance judgment, wrong assessment of the facts or evidence, lack of competence or wrong composition of the court. When a case is heard on appeal, new claims may be raised and new evidence may be adduced. New pleas that may ground an appeal are those based on facts that took place at the time the case was heard in first instance, were not put forward on time by the party and were thus not taken into consideration by the court, as well as pleas that were made in first instance but were dismissed by the court on formal grounds as time-barred or inconclusive. The appellate court can give a judgment which is more unfavorable for the defendant than the first instance judgment or apply a new and more unfavorable law.

The decisions of voluntary competence (*ex parte*) are directly enforceable and the deadline for the appeal as well as its lodgment does not suspend their validity and enforceability unless the law provides differently. Nonetheless, the first instance court may, on its own initiative, order that the enforceability or validity of the judgment be suspended until it becomes final.²⁴

If an appeal is lodged, the court that gave the judgment or, in multi-member courts, the chairman, may, on his own initiative, order suspension following

²³ These persons may file a third-party caveat.

²⁴ Code of Civil Procedure, article 763, paragraph 3.

an application of one of the parties to the first instance hearing until a final judgment has been given.²⁵ A suspension may be ordered in one of the following ways:

1. After the appeal has been lodged, with a special petition to the judge who gave it or, in cases of multi-member courts, with a petition to the chairman of the court;
2. After the appeal has been lodged, with a petition to the chairman of the second instance court; and
3. When the appeal is heard, with an oral request to the appellate court during the hearing of the case.

The granting of suspension presupposes a danger of irrecoverable damage from the direct effect of the legal consequences of the decision and the anticipation that the judgment on the appeal will be favorable to the appellant. The petition for suspension is filed either independently or as a part of the principal hearing by the appellant or any other party to the hearing. Such petitions are heard in accordance with the procedure of voluntary competence, although it is, in reality, an interim measure. If the petition for suspension of enforcement is introduced with the procedure of *interim measures*, it is rejected as unacceptable.

The judgment of the appellate court can only be challenged before the Supreme Court (*Areios Pagos*), which cannot go into the facts of the case as it only reviews questions of law.

D. LAWYERS' FEES, COURT COSTS, CALCULATION OF INTEREST

Article 173 of the Code of Civil Procedure, concerning the payment in advance of court costs, is applicable in voluntary competence hearings. The rule regarding costs is that the party who was defeated or who is responsible for its initiation must pay them. Article 746 of the Code of Civil Procedure determines the manner in which court costs are imposed in voluntary competence procedures.

In cases where a petition or an intervention is filed, the costs are imposed on each party, unless the intervention was compulsory following an order of the court or an interpleader. The costs for an adjournment or for a procedural action are imposed on the party that requested the adjournment. As concerns the setting off of court costs the court may set off all costs or part of them only

²⁵ Code of Civil Procedure, article 763, paragraph 3.

when it comes to disputes between spouses or relatives by blood up to the second degree or when the interpretation of the applicable provision was extremely difficult. The decision of the court that adjudicates costs is an enforceable judgment whereas its repeal or reform does not affect the part regarding court costs.

Interest under Greek law 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. Yet, this is an arrangement that is not necessarily relevant to the judgment deciding the recognition and enforceability of a foreign judgment or order for calculation of interest is a matter for the foreign judgment to indicate.

As set out in the Lawyers' Code, a lawyer's fee for filing an action or an appeal amounts to two per cent of the financial value of the claim and one 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.

E. CASE LAW OF THE GREEK COURTS

i. In General

Greek courts have been very active in recognizing and enforcing foreign orders and judgments. This has been the result of the free movement of persons, goods, and services within the EU and of the increased immigration which has resulted in foreigners constantly obtaining assets in Greece.

The following are recent judgments that have adjudicated on the recognition and enforcement of foreign judgments and have set the tune on the approach Greek courts take to such cases.

ii. Decision Relating to Recognition and Enforcement Procedures

The Thessaloniki Court of Appeal, Case Number 1159/2001, held:

When declaring the enforceability of a foreign order or judgment the court may not alter the content of the order or judgment nor may it interpret or rectify it or broaden or narrow its content or enforceability, unless the limits of its enforceability pursuant to the law of the country where it was given are contrary to [Greek] public order. Also, the court does not have the authority to go into the merits of the case and to try again nor can it examine the faults of the foreign court as to the valuation of facts or to the application of the law.

The Piraeus Court of Appeal, in Case Number 606/1997, held:

The party seeking execution must submit every document proving that the judgment is enforceable and has been served to the adverse party pursuant to the provisions of the law of the country where it was given.

The Athens Court of Appeal, in Case Number 4738/1993, held:

The petition is filed with the Single- Member Court of First Instance. The local competence is defined by the residence of the person against whom execution is sought. The petition is filed pursuant to the provisions of the law of the country where execution is sought and is heard in Greece according to the provisions of articles 740–781 of the Code of Civil Procedure. The court decides immediately without the person against whom execution is sought having, at this stage of the procedure, the right to submit observations.

iii. Decisions Relating to Recognition and Enforceability Obstacles

The Supreme Court, in Case Number 11/2009, held:

The issue of a judgment by a foreign arbitral court is contrary to Greek public order if one of the appointed arbitrators does not participate in the arbitration procedure. This is not the case if the absent arbitrator has been summoned but did not cooperate or obstructed the arbitral procedure without serious cause.

The Supreme Court, in Case Number 7/2009, ruled:

Article 34, clause 2, of Council Regulation 44/2001 differs from article 27, clause 2, of the Brussels Convention in two ways. Firstly, according to Council Regulation 44/2001, the Greek court may recognize and enforce a foreign judgment, if after having examined the facts of the case *in concreto*, it decides that the irregularities of service have not deprived the defendant from his right of defense. Secondly, according to Council Regulation 44/2001, the recognition and enforcement of a foreign judgment depends on whether the defendant may file a caveat against this judgment due to irregularities of service. In the latter case, the court shall not recognize and enforce the judgment.

The Supreme Court, in Case Number 1522/2007, declared:

The court must not recognize and enforce the foreign judgment when the defeated party was deprived from his right of defense. Such deprivation takes place when the defeated party stood trial in absence because it was either not summoned at all or was not summoned properly, i.e., in a way that ensures the right of defense and does not violate article 110 of the Code of Civil Procedure according to which nobody may stand trial without being heard.

The Supreme Court, in Case Number 1835/2007, stated:

The criterion for the definition of moral values is the perception of ethics that a sensible, moral, and prudent person has.

The Supreme Court, in Case Number 1066/2007), declared:

The fact that the foreign arbitral judgment includes both enforceable and non-enforceable provisions is not contrary to Greek public order. Under Greek law, the enforceable provisions shall be declared as such.

The Supreme Court, in Case Number 1255/2006, said:

The fact that a foreign judgment has been issued pursuant to a foreign statute or provision that does not exist in Greek legislation or contradicts a Greek provision, does not result in the foreign judgment being considered contrary to Greek public order.

The Supreme Court, in Case Number 1829/2006, declared:

A decision of a foreign court that imposes court costs on the defeated party is not contrary to [Greek] public order and may be declared enforceable in Greece as the country has similar provisions (articles 173 and subsequent of the Code of Civil Procedure and articles 100 and subsequent of the Lawyers' Code) determining fees. Nonetheless, the conviction of the defendant to pay to the applicant excessive court costs and, in particular, costs that are manifestly disproportionate to the object value of the trial is unacceptable by the Greek public order.

The Supreme Court, in Case Number 1666/2006), ruled:

Whether a foreign judgment is contrary to Greek public order must be examined at the time of its recognition and enforcement in Greece whereas the time that the judgment was issued by the foreign court is irrelevant.

The Supreme Court, in Case Number 1321/2004, ruled:

Irreconcilable judgments are not only those that are contrary to each other but also those whose legal consequences preclude each other. Such consequences do not arise from decisions which reject the case on grounds of non concurrence of the procedural requirements mentioned in the document that commences the proceedings (e.g., whether the lawsuit is adequately defined). Given the above, a decision of the domestic court that rejected a lawsuit as vague is not considered irreconcilable with the judgment of the foreign court that adjudicated on the lawfulness and essence of the right.

The Supreme Court, in Case Number 17/1999, held:

Although under Greek law compensation is of purely restitutionary nature, the award of an additional amount on the debtor as a penalty is

not forbidden in general, unless it is unreasonable and disproportionate. As a result, the enforcement of a judgment of a foreign court that imposes a financial penalty, in addition to the actual damage, should be rebutted if, in a particular case, it is unreasonable.

The Athens Court of Appeal, in Case Number 817/2009, stated:

If a lawsuit has not been served to the defeated party, the issued judgment shall not be recognized and enforced by Greek courts even if, according to the law of the foreign state where the judgment was issued, the service of lawsuits is not mandatory.

The Athens Court of Appeal, in Case Number 3886/2006, held:

When passing the *interim measures* judgment, the judge of the domestic court speculated the amount of the claim of the adverse party without going into whether the claim existed or estimating the amount of the debt. On the contrary, the decision of the foreign court ascertained the existence of the claim and adjudicated the amount requested thus providing the adverse party with an enforceable judgment. The two decisions are not irreconcilable or contradictory as to their content or to their results and the lawful consequences of one do not exclude the consequences of the other but are compatible as one ensures the enforceability which results from the other.

The Piraeus Court of Appeal, in Case Number 336/2005, ruled:

The defendant who did not reside abroad at the time when the hearing took place and his residence in Greece was known did not receive notice pursuant to the provisions of the Hague Convention and, as a result, stood trial in default of appearance and was deprived of his right of defense and generally of his right to participate in the proceedings. Since the defendant was deprived of this right, as a result of a breach of article 323, paragraph 3, of the Code of Civil Procedure, the petition that declared the foreign decision enforceable is rejected.

The Piraeus Court of Appeal, in Case Number 110/2004, held:

An interim measures judgment of a British court forbidding the commencement or continuation of legal proceedings against the defendant before the Multi-Member Court of First Instance of Piraeus was found contrary to Greek public order.

The Single-Member Court of First Instance of Athens, in Case Number 2092/2005, held:

The foreign decision accompanied by its translation in Greek has been served on the defendant through the Ministry of Justice which is the competent receiving authority in Greece pursuant to the provisions of Council Regulation 44/2001. At the footer of the service report, an order

was given to the defendant to satisfy the claims within two days of service. The defendant has been notified on time and was not deprived of his right of defense.

The Single-Member Court of First Instance of Drama, in Case Number 251/2000, declared:

The enforcement of a judgment that was given following a hearing that took place according to the procedure of unknown residence, whereas the defendant was of known residence and the claimant was aware of it, is contrary to moral values.

iv. Decisions Regarding Interim Measures

The Supreme Court, in Case Number 109/2001, held:

To grant interim *measures* pursuant to article 39 of the Brussels Convention no additional judgment is required apart from the one that declared enforceability. The choice of the particular measure that will be ordered in the particular case will be determined according to the procedural rules of the country where enforcement is sought.

F. CONCLUSION

Greek courts have overall been consistent with recognizing and enforcing foreign judgments and orders and with applying the Brussels Convention and Council Regulation 44/2001. This is not surprising given that the procedures set out in Council Regulation 44/2001 are in tune with the rules of the Code of Civil Procedure regarding the recognition and enforcement of foreign judgments and orders.

Indeed, foreign judgments and orders that need to be recognized and executed in Greece are not subject either to procedures or to practices that clash with the EU *acquis communautaire* or raise national impediments that are against supranational arrangements.