



GREEK LAW DIGEST

The Ultimate Legal Guide to Investing in Greece

Kelemenis & Co.

PROCEDURE BEFORE CIVIL COURTS



NOMIKI BIBLIOTHIKI



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GREEK LAW DIGEST

■ JUDICIAL SYSTEM



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PROCEDURE BEFORE CIVIL COURTS

Dr. Yannis Kelemenis

Managing Partner at **Kelemenis & Co.**

What is the type of legal system that Greece has?

The Greek legal system belongs to the Civil Law tradition which is prevalent in continental Europe and has evolved from Roman Law and Justinian's Corpus Juris Civilis and codes such as the Napoleonic Code Civil of 1804 and the German civil code. Of the variants of Civil Law, German civil law is the one that has most affected the Greek legal system.

Civil Procedure in Greece is regulated by the Code of Civil Procedure (CCP) [Kodikas Politikis Dikonomias] which was enacted in 1968. Since then CCP has undergone various revisions. CCP relies heavily on the principle of the parties' initiative (i.e. courts do not exercise 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); and on the principle of concentration (i.e. there are no pre-trial proceedings and all allegations and evidence are first submitted at the trial stage).

How is the Greek civil court system structured?

CCP provides for three types of civil courts of first instance:

- The Court of the Peace (Eirinodikeio).
- The Single-Member Court of First Instance (Monomeles Protodikeio).
- The Multi-Member Court of First Instance (Polymeles Protodikeio).

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 fifteen Courts of Appeal (Efeteio) existing 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 Single-Member Court of First Instance; of the Single-Member Court of First Instance by the Single-Member Court of Appeal; and of the Multi-Member Court of First Instance by the Multi-Member Court of Appeal. The Supreme Court (Areios Pagos) sits in Athens and is not a regular appellate court but rather a court of cassation which can only review questions of law rather than findings of fact.

There are no specialist civil courts in Greece. As a matter of their internal organisation, Greek civil courts are divided in panels/units to which cases are allocated depending on their nature (e.g. commercial disputes, intellectual property, matrimonial matters, employment claims etc.). Such organisation, however, does not necessarily mean that judges sitting on a particular panel specialise in the area of law with which the panel deals.

What are the main stages in ordinary civil proceedings in Greece?

The main stages in civil proceedings are the following:

- Filing an action (agogi) with the competent court of first instance. Such filing does not involve the issuing of a prescribed claim form but rather the filing of a document that sets out, often at some length, full particulars of claim (i.e. 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). On the date of filing, the court allocates a trial date to the particular action.
- Service of the action which is effected with a court bailiff serving, upon the claimant's instruction, the action on the defendant. Normally, service must be effected at least 60 days before the trial in case of defendants residing in Greece and 90 days in the case of defendants residing abroad or being of an unknown residence.
- Service of a notice by any person who wishes to be given affidavits by witnesses that it intends to do so at a certain place, date and time before either a Justice of the Peace or a notary public.
- Filing of pleadings and documentary evidence. For cases tried by the Court of the Peace, by the Single-Member Court of First Instance and by the Court of Appeal, pleadings, documents and supporting evidence such as witnesses' statements and experts' reports must be filed on the date of the trial. For cases tried by the Multi-Member Court of First Instance this must be done 20 full calendar days before the trial. For cases tried by the Supreme Court, such filing must be made 20 days before the hearing.
- Trial, the duration of which is short and completed within the same working day that it commenced.
- Filing of supplementary pleadings by which each party responds to the pleadings and evidence of the other party or parties. For cases tried by the Court of the Peace, by the Single-Member Court of First Instance, by the Court of Appeal and by the Supreme Court, such pleadings must be filed by the third day following the trial. For cases tried by the Multi-Member Court of First Instance, there are two sets of supplementary pleadings: the first is filed 15 days before the trial whilst the second is filed 8 working days after the trial and only comments on the testimonies of witnesses examined during the trial.
- Possibly an appeal which must be filed within 30 days from the service of the judgment by one party on another or within three years from the day the judgment was drawn up and sealed by the court but not served on the other party.
- Enforcement of judgment.

How are civil proceedings commenced in Greece?

Proceedings are commenced by filing an action (agogi) which sets out the names and addresses of the respective parties and, often at some length, full particulars of claim, i.e. 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 for money. Contrary to common law proceedings, the claimant must specify from the outset the amount sought and cannot state a range of the amounts sought or that the amount will be stated with the progress of the proceedings. There is no prescribed claim form in Greek civil proceedings. Issuing involves the court sealing the action with its official seal which does not alone stop time running for limitation purposes; this is done only after the action has been served on the defendant.

Are there any pre-action interim remedies available?

Before commencing proceedings, a claimant may in urgent circumstances apply for a pre-action interim remedy (e.g. the defendant's alleged wrongdoing may cause the claimant irreparable continuing damage before trial) in the very same manner as he could later apply for an interim injunction pending trial. Such applications are normally made to the Single-Member Court of First Instance in accordance with the special procedures set out in arts 683 et seq. of CCP. Provisional orders may be granted ex parte ahead of an interim remedy as a matter of great urgency, yet it is very rare that applications are allowed without notice. 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.

What are the main elements of the claimant's pleadings?

The claimant's pleadings elaborate on (a) the factual allegations and the material facts set out in the originating action; (b) on the evidence that is being submitted together with the pleadings; and (c) on the legal rules to be applied. Once filed the pleadings cannot be amended. Some further allegations and evidence may be submitted with the supplementary pleadings as a response to the pleadings of the other party or parties to the action (see question 1.3). New evidence or new factual allegations are not allowed to be introduced with the supplementary pleadings.

What is the time limit within which the statement of defense has to be served?

Greek civil proceedings do not have the stages encountered in common law jurisdictions, e.g. statements of case served in sequence between the parties, with the claimant serving particulars of claim first, followed by a defense from the defendant and then possibly a reply from the claimant. As with the claimant's pleadings, the pleadings of the defendant are not served but filed with the court. They are due to be filed on the same day as those of the claimant's.

What happens if the defendant does not defend the claim?

Under a recent amendment of CCP (Statute 3994/2011), CCP provides for a default judgment in case a defendant fails to defend the action (i.e. fails to attend trial). If the defendant is absent, the trial will proceed in the absence of the defendant, provided proper service of the proceedings was made on him, and the claimant's allegation will be accepted as true (arts 270 and 271 CCP).

Is there any particular case allocation system before the civil courts in your country? How are cases allocated?

A case allocation system of the kind found primarily in common law jurisdictions is unknown to civil proceedings in Greece. 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. CCP provides for three types of civil courts of first instance:

- The Court of the Peace (Eirinodikeio) which tries claims up to €20,000.00.
- The Single-Member Court of First Instance (Monomeles Protodikeio) which tries claims between €20,000.01 and €120,000.00.
- The Multi-Member Court of First Instance (Polymeles Protodikeio) which tries claims worth more than €120,000.00.

For certain categories of proceedings (e.g. 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), 6 and 17 (for Single-Member Courts of First Instance) and 18 (for Multi-Member Courts of First Instance) regulate matters of exclusive jurisdiction.

What are the rules of disclosure, if any, in Greek civil proceedings?

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. Nor are there any penalties for failure to make full or sufficient disclosure or to comply with disclosure directions. The general rule of CCP is that all documents to which reference is made in the action (agogi) 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. CCP provides for an application seeking a disclosure order (art. 450 (2), 451 et seq.), yet this is a slow and rigid procedure (only applications specifying the particular document sought in great detail are allowed) which is rarely pursued.

What is the court's role in the parties' provision of evidence in civil proceedings?

The court's role in the parties' provision of evidence is passive primarily because of the very principle of civil procedure in Greece which requires that evidence should be provided at the initiative and diligence of the parties to an action.

What are the basic rules of evidence?

The general rule is that evidence must focus on material facts that are crucial to the action's outcome (art. 335 CCP). There are no strict rules on the admissibility of evidence, the overriding principle being that the judge is free to decide on the merits of the evidence (art. 340 CCP). All in all, there are seven broad classes of evidence: admittance of the claim; inspection; expert evidence; documentary evidence; parties' testimonies; witness statements; and presumptions (arts 339 and 352 et seq. CCP). Interestingly, under Greek rules of civil procedure the parties to an action may only be exceptionally 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. Moreover, unlike the common law principle against hearsay, the Greek law of evidence is more tolerant of hearsay. By and large, documentary evidence and witness testimonies are the predominant sources of evidence. On the contrary, it is very unusual that a court will resort to inspection of, for instance, land and chattels.

Witness statements (i.e. simple statements of truth which are not sworn) are not used in Greek civil proceedings. On the contrary, affidavits (i.e. 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 and they are made shortly before pleadings and 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 full working days before the deposition.

What are the rules of appeal against a judgment of a Greek civil court?

It is comparatively rare for judgments of Greek civil courts not to be appealed by the unsuccessful party. This is partly because appeals can be brought as of right and do not require prior permission and partly because of the comparatively modest cost of civil proceedings in Greece. As a rule, only final judgments can be considered on appeal whilst non-final judgments (e.g. interlocutory orders) can only be put on appeal together with the final judgment. An appellant must file an appeal notice in which he should set out the grounds on which it is alleged that the decision is erroneous. 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 90 days in the case the appellant lives abroad or is of 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 respondent(s) 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 the respondent(s) live(s) abroad or are of unknown residence. Commencing an appeal 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.

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