

Greece

Athanasia Papantoniou



Dr. Yannis Kelemenis



Kelemenis & Co.

I. LITIGATION

1 Preliminaries

1.1 What type of legal system has your country got? Are there any rules that govern civil procedure in your country?

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 (*Bürgerliches Gesetzbuch*) of 1900. Of the variants of Civil Law (e.g. French, German, Scandinavian), 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, the last major of those dating back to 2001. 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).

1.2 How is the civil court system in your country structured? What are the various levels of appeal and are there any specialist courts?

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 Multi-Member Court of First Instance. 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.

1.3 What are the main stages in civil proceedings in your country? What is their underlying timeframe?

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; under Statute 3346/2005 the trial must be scheduled within twelve months from filing.
- Service of the action which is effected with a court bailiff serving, upon the claimant's instruction, the action on the defendant. 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.
- In the case of proceedings allocated to the Multi-Member Court of First Instance, service of a notice by the claimant extending an invitation to the defendant to meet to negotiate a pre-trial settlement. This meeting must take place between the 5th day after service of the action and the 35th day before trial.
- 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.

- Judgment which under Statute 3327/2005 must be drawn up and sealed within eight months from 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.

1.4 What is your local judiciary's approach to exclusive jurisdiction clauses?

Parties are allowed to confer territorial competence upon a particular court or courts to settle any disputes (arts 42 and 43 CCP). This may happen by a prior written agreement or tacitly if the defendant makes an appearance without challenging the jurisdiction of the court. In case it provides for derogation from the exclusive jurisdiction of the competent Greek court, this agreement to confer territorial competence must be express. When involving future disputes, an agreement conferring territorial competence must be in writing and define exactly the legal relationships to which it refers. Conferral of territorial jurisdiction is not possible in the case of non-pecuniary claims and claims relating to immovables.

According to Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, the parties may by agreement confer jurisdiction upon a court or courts of a Member State to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, provided (a) the agreement conferring jurisdiction is in writing or evidenced in writing or is in a form which accords with practices which the parties have established between themselves or in a form which accords with a usage which is widely known in trade or commerce; and (b) it is not contrary to special provisions applying to insurance matters, consumer contracts and employment contracts or to the exclusive jurisdiction of the courts pursuant to art. 23 of the Regulation (i.e. in relation to proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property or the validity of the constitution, the nullity or the dissolution of companies or the validity of entries in public registers). The Regulation applies to specific matters of a pecuniary nature and excludes revenue, customs or administrative matters, bankruptcy, winding-up, judicial arrangements, compositions and analogous proceedings, the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession, social security and arbitration. Exclusive international jurisdiction clauses may nonetheless be regarded as not valid by a Greek court if the recourse to a foreign jurisdiction is impossible and/or results in denial of justice, e.g. where the foreign courts refuse to hear the case because under their procedural rules they do not have jurisdiction or where the decision will not be recognised in Greece.

1.5 What are the costs of civil court proceedings in your country? Who bears these costs?

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% of the financial value of the claim and to 1% for filing a pleading. However, this rule is often not followed and private agreements providing for higher (or occasionally lower) fees are made.

The rule regarding costs other than fees (e.g. court expenses) is that each party has to pay its own dues and expenses. If the claim is of an executionary nature (i.e. the claimant seeks an order for the defendant to pay a certain amount of money) and not of a declaratory nature (i.e. 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 0.8% of the claim value. A side from this court duty, other court-related expenses are infinitesimal regardless of the financial value of the claim.

1.6 Are there any particular rules about funding litigation in your country? Are there any contingency/conditional fee arrangements? Are there rules on security for costs?

The client will be expected to pay for fees and disbursements. 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% of the sum recovered.

CCP provides that a party may be relieved from paying legal costs including representation fees (art. 194 CCP) 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 3226/2004 which provides for legal assistance to individuals whose annual family income is less than 2/3 of the minimum wage set out in the National Collective Labour Agreement.

CCP acknowledges (art. 169 CCP) 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 in case it is ordered to pay such costs.

The above provisions on legal aid and security for costs have failed to make any impact on Greek civil procedure and have long remained inactive.

2 Before Commencing Proceedings

2.1 Are there any pre-action procedures in place in your jurisdiction? What is their scope?

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.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

Different limitation periods apply to different causes of action. The

Greek Civil Code (CC) sets the general rule of a 20-year limitation period, yet there are several exceptions to it. For instance, a 5-year limitation applies to commercial claims or to professional fees disputes (art. 250 CC); a 6-month limitation is applied to claims of unfair competition (Statute 146/1914); a 5-year limitation applies to torts (art. 937 CC); a 5-year limitation period applies to motor insurance claims (Statute 3557/2007); claims arising from a contract for national transportation by road are time-barred after six months (art. 107 Commercial Code); land possession claims are time-barred after a year (art. 992 CC).

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 (e.g. commercial claims), time stops running not on the date the fixed limitation period ends but on the 31st of 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.

3 Commencing Proceeding

3.1 How are civil proceedings commenced (issued and served) in your country? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your country?

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. Once filed and served, the action may no longer be amended.

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 (e.g. 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 (art. 228 CCP). In the case of a defendant of an unknown residence, a summary of the action must also be advertised in two daily newspapers (art. 135 CCP). Inside the country, service is deemed to have been made on the date the court bailiff served the action on the defendant. In the defendant's absence from his residence, service may also be effected by affixing a copy of the action to the door of the defendant's house and posting a registered letter to him containing another copy. The general rule is that service must be in accordance with the law of the country where the defendant is to be served. Service among EU member states may be effected through the

Service Regulation [Council Regulation (EC) No 1348/2000], or through the government or the judicial authorities of the defendant's country or through local agents to effect service according to local law. An action that is to be served on a defendant residing abroad must be served on the Public Prosecutor together with its translation in a language that the defendant can understand in case he cannot read Greek. The Public Prosecutor shall then send the action to the Ministry of Foreign Affairs for further processing. Service is deemed to have been made once the action has been served on the Public Prosecutor (art. 136 CCP). There is no need to request permission to serve proceedings when the defendant resides in a non-EU country.

3.2 Are any pre-action interim remedies available in your country? How do you apply for them? What are the main criteria for obtaining these?

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.

3.3 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.

3.4 Can the pleadings be amended? If so, are there any restrictions?

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.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

In drafting his pleadings, the defendant is not subject to strict pleading rules. In the main, he must indicate which of the claimant's allegations are admitted and which are denied; reasons

for the denial and any alternative version of events; exceptions that prevent the court from reaching a decision on the merits (e.g. lack of jurisdiction, set-off etc.); evidence supporting his allegations and defeating those of the claimant.

If the defendant has a cause of action against the claimant, this can be raised either by bringing separate proceedings or by way of a counterclaim in the existing action (arts 34, 268 CCP).

4.2 What is the time limit within which the statement of defence 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 defence 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 (see question 1.3).

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on liability by bringing an action against a third party?

By filing and serving an interpleader (art. 88 CCP), a defendant may request from someone who is not a party to an action as originally constituted to intervene. This is standard practice in cases where the defendant can pass on liability to a third party acting as a so-called 'procedural guarantor' (e.g. an insurer). In such cases it is obviously in the interests of such third party to become a party to the existing action as it might eventually be bound to pay damages awarded to the claimant.

4.5 What happens if the defendant does not defend the claim?

CCP does not provide 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 will need to prove the claim to the satisfaction of the court (arts 270 and 271 CCP).

4.6 Can the defendant dispute the court's jurisdiction?

A defendant can object to a court having jurisdiction over an action (art. 263 CCP) and include this in his pleadings. If no objection is raised during trial, lack of jurisdiction cannot be later made a ground of appeal.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

CCP sets out the rules governing joinder of actions and parties (arts 74 to 78), interventions (arts 79 to 85) and interpleaders (arts 86 to 90). In the case of a so-called discretionary joinder, it is for the claimant or, in the case of a joint right or related claims, the

claimants to decide whether to sue defendants in a single claim. In the case of joint rights (as opposed to several) which should not be tried separately so as to avoid contradictory judgements, a joinder can be mandatory and all persons jointly entitled to a remedy or jointly liable to a cause of action must be parties.

Someone who is not a party to an action as originally constituted may opt to intervene in case it has a legal interest to do so either in support of a party (art. 80 CCP) or as a full party that acts independently of the claimant(s) or the defendant(s) and seeks the protection of its own right(s) that are being threatened by the existing action (art. 79 CCP). Such interventions may often be the result of an interpleader by any of the parties to the existing action (arts 86 et seq. CCP)

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

CCP (art. 246) gives the court the power, either of its own motion or upon an application of a party, to consolidate proceedings by ordering two or more separate claims to be tried together. Such an order requires that the proceedings are pending before the same court and their consolidation would accelerate proceedings, avoid contradictory judgments and reduce costs.

5.3 Do you have split trials/bifurcation of proceedings?

CCP (arts 247 and 78) provides that the court may, either of its own motion or upon an application of a party, order the bifurcation of proceedings.

6 Duties & Powers of the Courts

6.1 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 €12,000.00.
- The Single-Member Court of First Instance (*Monomeles Protodikeio*) which tries claims between €12,000.01 and €80,000.00.
- The Multi-Member Court of First Instance (*Polymeles Protodikeio*) which tries claims worth more than €80,000.00.

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. Arts 15 (for Courts of the Peace), 16 and 17 (for Single-Member Courts of First Instance) and 18 (for Multi-Member Courts of First Instance) regulate matters of exclusive jurisdiction. Exclusive jurisdiction is often associated with special proceedings (e.g. landlord and tenant claims, matrimonial matters, employment claims, professional fees disputes, motor accident claims etc.).

6.2 Do the courts in your country have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

Unlike the heavily managed environment of litigation in other jurisdictions, active case management and interim proceedings are an unknown matter to civil proceedings in Greece. This is due partly to the very set-up of Greek civil procedure (see section 1) and partly to the limited resources of Greek courts. In the absence of interim proceedings, there are no interim applications that the parties can make unless such applications seek an interim injunction. Such applications for an interim injunction are normally made to the Single-Member Court of First Instance and may be made on notice or without it (*ex parte*). The injunctions sought can be wide ranging, i.e. from freezing and prohibitory injunctions to interim payments and disclosure orders.

6.3 What sanctions are the courts in your country empowered to impose on a party that disobeys the court's orders or directions?

In the absence of interim proceedings, court directions and orders resulting from case management and interim applications, 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 (art. 207 CCP that 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 (art. 205 CCP that provides for a fine ranging from €150 to €880).

6.4 Do the courts in your country have the power to strike out part of a statement of case? If so, in what circumstances?

Statements of case of the kind found, for instance, in common law jurisdictions such as England and Wales, are not known to civil proceedings in Greece. Thus, instead of documents such as the claim form, the particulars of claim, the defence, the reply to the defence, interrogatories and requests for further information, all that is required of civil proceedings in Greece before the case reaches trial is the filing and service of an action (*agogi*). Striking out on application by a party or on the court's initiative during the pre-trial stage is not envisaged in CCP. In case a cause of action or a defence is not reasonable or scurrilous or ill-founded or indicates an abuse of process, the action will be denied with the judgment entered in the aftermath of trial.

6.5 Can the civil courts in your country enter summary judgment?

Summary judgments are not available in civil proceedings in Greece.

6.6 Do the courts in your country have any powers to discontinue or stay the proceedings? If so, in what circumstances?

CCP (arts 293 et seq.) allows a claimant to discontinue an action or a claim without the consent of the defendant in case the action has not reached trial. In case it has, he shall need the defendant's consent. If an action rather than a claim has been discontinued, the claimant is allowed to commence proceedings again arising out of the same or substantially the same facts without the court's permission. Discontinuance is effected by the claimant filing a notice of discontinuance with the court and serving copies on all

other parties. Proceedings may also be discontinued in case the defendant admits the claim (art. 298 CCP). Contrary to discontinuance which brings proceedings to an end, it is common that a claimant opts to abandon some particular remedy against a defendant while proceeding on the rest.

In certain circumstances (e.g. death of a party or counsel, bankruptcy, preliminary rulings, criminal proceedings) Greek courts have power to stay trial proceedings either of their own motion or on the application of a party (e.g. arts 249, 250, 286 et seq.). Stay of proceedings, however, is not as common in Greece as it is in jurisdictions whose courts have case management functions and actively seek to make the parties agree on terms of settlement (i.e. stay for settlement).

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in your country? Are there any classes of documents that do not require disclosure?

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 (see questions 1.3 and 4.2). 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 very rarely pursued.

7.2 What are the rules on privilege in civil proceedings in your country?

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 CCP (arts 400 - 401 and 450); or on the grounds of public policy. Rather than privilege, it is the concept of confidentiality that is better known to Greek civil procedure.

7.3 What are the rules in your country with respect to disclosure by third parties?

Although rare, disclosure by a third party is possible under CCP (art. 451).

7.4 What is the court's role in disclosure in civil proceedings in your country?

In the absence of any interim proceedings, the court does not provide any disclosure directions. The court's only involvement

may arise in the exceptional occasion that disclosure is ordered following an application pursuant to arts 450 et seq.

7.5 Are there any restrictions on the use of documents obtained by disclosure in your country?

There are no such restrictions.

8 Evidence

8.1 What are the basic rules of evidence in your country?

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).

8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

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.

An expert witness may be appointed by the court to give opinion in the circumstances of the cause of action only if the court rules that the matter calls for expertise knowledge and a party requests such an appointment (art. 368 CCP). In practice, however, the parties appoint their own experts (arts 391 and 392 CCP) known as 'technical advisors'. It is common occurrence that the parties will adduce conflicting expert evidence.

8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

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 (art. 398 CCP) that the witness is, in the end, not compelled to attend.

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, 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. In case an affidavit is to be made abroad, service must be effected at least eight calendar days in advance.

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

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.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

Judgments of Greek civil courts (arts 300 et seq.) are divided into the following types:

- final judgments;
- non-final judgments that decide on incidental or preliminary matters including references to the European Court of Justice for a preliminary ruling on a particular question of law;
- injunctions; and
- orders of payment in connection with commercial papers (e.g. checks, bills of exchange), unpaid invoices, revolving credit facilities, rents etc.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

Greek courts have the power and are indeed under an obligation to make rulings on damages (provided the action seeks such a relief), interest and legal costs in the judgment. Interest is payable on all money judgments at least from the day the action commenced and possibly from the day the cause of action arose. The rate to be applied is not decided by the court but is set by statute. Regarding legal costs, their assessment 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 (art. 176 CCP); 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% of the court's award or, in the case a claim is defeated, of the claim's financial value.

9.3 How can a domestic/foreign judgment be enforced?

Final judgments (i.e. those which have been considered on appeal and those which have not been appealed within the prescribed time limits) as well as first instance judgments which have been issued as provisionally enforceable, can be immediately enforced. 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 (arts 904 and 918 CCP). Once this order has been served, no other enforcement actions can be brought until three working days have passed (art. 926 CCP).

If a foreign judgment comes from a court of an EU member state where the Brussels Convention (EC 44/2001) applies, the

enforcement of the foreign judgment in Greece is governed by the relevant provisions of the Brussels Convention (arts 32 to 37 and 72). In all other cases, without prejudice to the provisions of multilateral and/or bilateral treaties and conventions, a foreign judgment can be declared enforceable by a judgment of the Single-Member First Instance Court, provided that:

- (a) 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;
- (b) 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
- (c) 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.

9.4 What are the rules of appeal against a judgment of a civil court of your country?

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 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.

II. DISPUTE RESOLUTION

1 Preliminaries

- 1.1 What methods of dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Tribunals/Ombudsman? (Please provide a quick overview of each available method.)

Arbitration has been enjoying increasing popularity in Greece, particularly in the business world. In connection with other dispute resolution mechanisms, however, very little progress has been made. In the field of mediation, the arrival of the Ombudsman (Sinigoros tou Politi) has been of some note. It was founded in 1998 and monitors acts and omissions and material actions of

governmental departments and public authorities. Over the past few years, the Ombudsman has become a respectable mediator between the public administration and the residents of the country. Additionally, the mediation of the so-called Inspectorate of Employment between employers and dismissed employees before the commencement of proceedings has been occasionally fruitful.

1.2 What are the laws or rules governing the different methods of dispute resolution?

CCP sets out the rules governing domestic arbitration (arts 867 - 903). International commercial arbitration is governed by Statute 2735/1999 which transposed the UNCITRAL rules into national law. Its scope covers any commercial dispute or a dispute of an economic nature. The provisions of Statute 2735/1999 are applicable when the place 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 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. Art. 906 of CCP regulates the enforcement of foreign arbitral awards. Disputes that are automatically referred to arbitration are those referring to the protection of foreign investments pursuant to Legislative Decree 2687/1953.

The operations of the Greek Ombudsman are regulated by Statute 3094/2003.

1.3 Are there any areas of law in your jurisdiction that cannot use arbitration/mediation/tribunals/Ombudsman as a means of dispute resolution?

Nearly all private disputes may be resolved by arbitration; exceptions include matrimonial cases and employment disputes as well as applications for interim measures.

2 Dispute Resolution Institutions

2.1 What are the major dispute resolution institutions in your jurisdiction?

The following are some of the major arbitration institutions in Greece:

- The Institute for Mediation and Arbitration which operates under the auspices of the Ministry of Employment.
- The National Office of the International Chamber of Commerce (ICC).
- The Departments of Arbitration of the Athens and the Piraeus Chambers of Commerce and Industry.
- The Association for Maritime Arbitration of Piraeus.
- The Maritime Chamber.
- The Chamber of Engineers.
- The Permanent Arbitral Tribunal of the Athens Bar Association.
- The Permanent Arbitral Tribunal of the Thessaloniki Bar Association.
- The Permanent Arbitral Tribunal of the Greek Regulatory Authority for Energy.

2.2 Do any of the mentioned dispute resolution mechanisms provide binding and enforceable solutions?

Arbitral decisions are binding and enforceable. Unless otherwise provided, arbitral awards cannot be appealed (art. 895 CCP) but may be annulled if certain strict requirements are met (art. 897 CCP).

3 Trends & Developments

3.1 Are there any trends in the use of the different dispute resolution methods?

There are no any noticeable trends other than the steady growth in the use of arbitration proceedings.



Athanassia Papantoniou

Kelemenis & Co.
21 Kolonaki Square
106 73 Athens
Greece

Tel: +30 210 3612 800
Fax: +30 210 3612 820
Email: ap@kelemenis.com
URL: www.kelemenis.com

Ms Papantoniou is a graduate of the Law School of the University of Athens. She is partner of the firm and focuses on litigation, an area in which she has developed a strong and varied background over the years. Earlier in her career, she focused on insurance litigation but gradually moved on to a wider range of corporate and commercial litigation work (i.e. shareholder and partnership disputes, distribution and agency agreements, employment). Before joining Kelemenis & Co. she worked with the Athens Olympic Broadcasting company (AOB), the radio & TV services coordinator of the 2004 Athens Olympic Games. Ms. Papantoniou is authorised to appear before the Athens and Piraeus Courts of Appeal. She is fluent in English and German.

3.2 Please provide, in no more than 300 words, a summary of any current issues or proceedings affecting the use of those dispute resolution methods in your country?

The administration of litigation proceedings is so time-consuming that arbitration is increasingly perceived as the only reasonable choice for commercial disputes.



Dr. Yannis Kelemenis

Kelemenis & Co.
21 Kolonaki Square
106 73 Athens
Greece

Tel: +30 210 3612 800
Fax: +30 210 3612 820
Email: yk@kelemenis.com
URL: www.kelemenis.com

Dr Kelemenis is the managing partner of Kelemenis & Co. He obtained his LL.B from the University of Athens and his M.Phil and D.Phil degrees from Oxford University where he studied as a Rhodes Scholar. His track record includes several complex and high-profile litigation cases. Recently he has represented the Athens branch of an American University in relation to a series of civil and criminal claims exceeding EUR 6.5 million; a British University in a civil action commenced by Greek scientists for copyright damages; a mega-yachts owning company in defeating crew claims amounting to EUR 1.2 million; the Greek subsidiary of a German telecom company in an unfair competition action against Greek competitor; shareholders of a Greek trading company against UK shareholder over a management control dispute. He is a member of the Athens Law Society, of the American Bar Association and of the International Bar Association. Dr Kelemenis is authorised to appear before the Supreme Court of Greece.

Kelemenis & Co.

Athens, Greece

Attorneys at Law

Founded by Dr. Yannis Kelemenis, an Oxford graduate and Rhodes Scholar, Kelemenis & Co. is an Athens-based law firm providing quality legal services in the key corporate and commercial areas. It advises a varied client base that includes corporations, governments, large institutions and high-net-worth individuals. The firm draws upon specialised lawyers with excellent academic qualifications from world-class universities (e.g. Oxford, Cambridge, Harvard).

The firm has a fully-fledged litigation department with a convincing track record. The litigation department advises on all contentious aspects of corporate and financial transactions and assists clients with pragmatic and strategic decision-making. It often maintains an aggressive approach to litigation pushing successfully for provisional measures and injunctions. The firm represents clients before all types of Greek courts and tribunals and can cover all types of commercial disputes, including contractual disputes, shareholder litigation, partnership disputes, maritime and international trade, banking and finance, insurance litigation and employment.