

An Outline of Civil Litigation in Greece

Introduction

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).

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

- (a) The Court of the Peace (*Eirinodikeio*) which tries claims up to € 12,000.00.
- (b) The Single-Member Court of First Instance (*Monomeles Protodikeio*) which tries claims between € 12,000.01 and € 80,000.00.
- (c) The Multi-Member Court of First Instance (*Polymeles Protodikeio*) which tries claims worth more than € 80,000.00.

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 organization, 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.

Main Stages in Civil Litigation

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.

Before Commencing Proceedings

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.

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.

Commencing Proceedings

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.

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.

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.

Duties & Powers of the Court

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. 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).

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 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.

Conferral of Jurisdiction

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.

Pleadings

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.

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, 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. New evidence or new factual allegations are not allowed to be introduced with the supplementary pleadings.

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).

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. 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.

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.

Evidence

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. 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).

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.

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, 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.

Joinder & Consolidation

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 judgments, 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). 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.

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. 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.

Judgments

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;
- Orders of payment in connection with commercial papers (e.g. checks, bills of exchange), unpaid invoices, revolving credit facilities, rents etc.

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.

CCP does not provide either for summary judgments or for default judgments 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).

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 as happened according to a provision which applies, without discrimination, to the citizens of the state of the judging court;
- (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.

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.

Legal 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. Aside from this court duty, other court-related expenses are infinitesimal regardless of the financial value of the claim.

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.

Athanassia Papantoniou
Partner
Kelemenis & Co.
21 Kolonaki Square
106 73 Athens
Greece
Tel. +30 210 3612800
Fax.: + 30 210 3612820
E-mail: enquiries@kelemenis.com
Website: <http://www.kelemenis.com>