

# Greece

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## 1. LIABILITY

### 1.1 What are the principal sources of law and regulation relating to product liability?

Article 6 of Law 2251/1994 on 'Consumers' Protection' (Consumers' Law) implementing Directive 85/374/EEC 'on the approximation of the laws, regulations and administrative provisions of the member states concerning liability for defective products' (as amended by Directive 99/34/EC) sets the main product liability rules in Greece. Consumers' Law has been amended several times until today and latest by Law 4177/2013; extensive amendments were introduced by Law 3587/2007. Article 7 of Consumers' Law on product safety and Ministerial Decision Z3/2810/14.12.2004 (MD), which implemented Directive 2001/95/EC on 'General Product Safety', form the basic supplementary regulation on the topic.

Further, if in a specific case the general legal provisions afford the consumer greater protection than Consumers' Law, such general provisions apply, with the exception of provisions on prescription and exclusive periods (Article 14, paragraph 5 of Consumers' Law). On such basis it is accepted that the general legal regulation may apply parallel to Consumers' Law or independently. Specifically:

- Tortious liability (Articles 914 ff. and especially Articles 914, 925 and 932, in conjunction with Articles 281 and 288 of the Greek Civil Code – GCC).

Under liability in tort the claimant needs to establish the defendant's fault, which consists of either negligence or wilful misconduct (apart from the latter's unlawful act and a causal link required). However, based on the 'theory of spheres', case law reverses the burden of proof against the producer, requiring him to establish his absence of fault to be released from liability (see below under section 3.4).

- Contractual liability (Articles 513-573 of the GCC on contracts of sale incorporating Directive 1999/44/EC 'on certain aspects of the sale of consumer goods and associated guarantees').

These provisions require a direct contractual relationship between the parties while the buyer may be a consumer or not. The seller is liable for any product's defect or non-conformity with agreed qualities at the time the risk passes to the buyer. Liability is strict and the claimant does not need to prove that the seller was at fault. However, the seller is not liable where, on conclusion of the contract, the buyer was aware that the product was not in conformity with the contractual specifications or

where the lack of conformity is a result of defective materials supplied by the buyer.

- **Criminal liability**

Criminal liability may be derived by the Greek Criminal Code, the Rules Regulating the Market of Products and the Provision of Services (today, Law 4177/2013) and other special provisions (Article 13a, paragraph 2 of Consumers' Law, see also below under 7.3).

## **1.2 What is required to establish causation under the most common causes of action available?**

The claimant must establish that he would not have suffered an injury had the defendant's product not been defective and need not establish the fault or negligence of the manufacturer. The burden is then shifted to the producer who is required to establish a defence in order to be relieved from liability (see below under section 2).

## **1.3 Is strict liability available and, if so, in what circumstances?**

Yes, Greek product liability rules establish a strict liability regime; so, no fault is needed. Article 6 paragraph 1 of Consumers' Law provides that 'the producer shall be liable for any damage caused by a defect in his product'. It derives that, in order for a producer to be held liable:

- (a) the product placed on the market by the producer must be defective;
- (b) damage must occur; and
- (c) a causal link between the product's defect and the damage occurred must exist. Greek legal theory and case law follow the theory of *causa adequata* in accepting a causal link (indicatively, Supreme Court Nos 1261/1985 and 1200/1986, *NOMOS*). Under this theory, the unlawful act or omission at issue must be considered capable of causing the specific damage on the basis of the normal course of events and common practice.

## **1.4 Are guarantees or warranties as to quality implied by law?**

Consumers' Law does not provide for specific guarantees or warranties as to the quality of the product. However, Articles 513 ff. of the GCC re contracts of sale provide that a seller is obliged to deliver products in conformity with their agreed qualities and without defects (Article 534 of the GCC). In particular, the products must:

- comply with any description given by the seller or the sample or model that the seller has presented to the buyer;
- be fit for the purposes of the particular contract and same for which the goods are specifically used;
- be fit for the purposes for which goods of the same type are normally used; and
- be of the quality and performance which the buyer can reasonably expect for goods of the same type, taking into account any public statements made by the seller, the producer or its representative particularly in advertising or on labeling, except where the seller was

not aware and ought not to have been aware of the relevant statement (Article 535 of the GCC).

### **1.5 How is a product 'defect' defined?**

According to Article 6 paragraph 5 of Consumers' Law (as in force after its amendment in 2007), a product is considered defective if its expected performance does not correspond to its specifications or if it does not provide reasonably expected safety in view of all special circumstances, particularly regarding:

- its external presentation;
- its expected use thereof; and
- the time when the product was circulated in the market.

However, a product is not deemed defective solely because another better product was later circulated in the market.

The above concept of defectiveness especially related to lack of safety is supplemented and completed by Article 7 paragraph 3 of Consumers' Law and the MD (see above under 1.1 and below under 1.6).

### **1.6 Who in the supply chain has obligations or duties for defective products? What obligations or duties do they owe and to whom?**

Article 6 paragraphs 2 to 4 of Consumers' Law provide that the 'producer', who bears responsibility for the defect, is the manufacturer of a finished product or of any raw material or of any component, and any other person who presents himself as a producer by putting his name, trade mark or other distinguishing feature on the product. Moreover, any person who imports a product for sale, lease or hire or any form of distribution, within his professional commercial activity, shall be responsible as a producer. Where the producer of the product may not be identified, each supplier of the product shall be treated as its producer unless he provides the injured person with information on the identity of the producer or of the person who supplied him with the product. The same applies to the supplier of imported products when the importer's identity is unknown, even if the producer's identity is known.

Where products are imported into Greece from another EU country, the producer of the product and /or the importer within the EU may bear responsibility as above.

Further, based on Article 7 (paragraph 3) of Consumers' Law and the MD (Article 3), suppliers (including producers) are obliged to only place safe products on the market. Based on this general obligation, producers must provide consumers with the relevant information to enable them to assess the product's risks throughout the normal or reasonably foreseeable period of the product's use. Producers must also take any action needed in order to avoid these risks, as well as take any appropriate preventive and corrective action (such as a recall of the product) depending on the specific circumstances.

Greek case law accepts that a general duty of care is imposed on the producer, meaning that he should take all necessary measures to protect any

third parties that reasonably trust him/his products (the principle of trust). Thus, the producer must organise his production in such a way as to serve the general duty of care, mainly by proactively conducting the requisite checks before and during the production process and by providing adequate information to consumers. It is accepted that where that duty is violated and consumers risk sustaining damage, this conduct exceeds the limits of the producer's fair activity and destroys consumers' trust in relation to the safety expectations of the product (indicatively, Court of Thessaloniki No. 2052/1991 and Supreme Court No. 891/2013, *NOMOS*).

### **1.7 By what means can a supplier limit their liability for defective products?**

According to Article 6 paragraph 4 of Consumers' Law, where the producer of the product may not be identified, each supplier of the product shall be treated as its producer unless he provides the injured person with information on the identity of the producer or of the person who supplied him with the product. The same applies to the supplier of imported products when the importer's identity is unknown, even if the producer's identity is known.

Thus, the supplier of a defective 'anonymous product' is only released from responsibility if he informs the victim/consumer within a reasonable time of the identity of the producer or importer or of the person who supplied him with the product.

Further, the supplier of a defective product may limit his liability by taking promptly and in a timely manner any measures required in order to eliminate possible hazards from the product's use (Article 7 of Consumers' Law and the MD). Such measures can be warning notifications, instructions to consumers, invitations for servicing or repairing the product, notification recalls, etc.

### **1.8 Are there particular goods or services which have specific obligations or duties attached to them?**

Extensive sector legislation exists, including but not limited to the following products (the relevant regulation and the supervising authority are only mentioned below):

- Toys  
Common Ministerial Decision 3669/194/2011 (Government Gazette Bulletin – GGB 549/B/2011) implementing EU Directive 2009/48/EC on the Safety of Toys. The competent authority is the First Directorate of Industrial Policy of the General Secretariat of Industry, of the Ministry of Development and Competitiveness (Industry Secretariat).
- Childcare products  
Ministerial Decision Z3-818 (GGB 1395/B/2009). Competent authorities are the General Consumer's Secretariat of the Ministry of Development and Competitiveness (General Secretariat) and the local prefectures.
- Low-voltage products  
Ministerial Decisions 470/85 (GGB 183/B/1985), B.64671/608/88

(GGB 214/B/1988) and 16717/5052/23.12.1994 (GGB 992/B/1994). The competent authority is the Fourth Directorate of the Industry Secretariat.

- Power sockets and plugs  
Ministerial Decision 529/28-1-2000 (GGB 67/B/2000), as amended by Ministerial Decisions 4822/17.3.2000 (GGB 352/B/17-3-2000) and 8991/14-5-2003 (GGB 643/B/2003). The competent authority is the Fourth Directorate of the Industry Secretariat.
- Pressure products and systems  
Ministerial Decisions B10451/929/88 (GGB 370/B/1988), 12479/F17/414/91 (GGB 431/B/1991), 14165/F17.4/373/93 (GGB 673/B/1993), 20769/6285/94 (GGB 977/B/1994), 14132/618/01 (GGB 1626/B/2001), 16289/330/99 (GGB 987/B/1999) and 12436/706/2011 (GGB 2039/B/2011). The competent authority is the Third Directorate of the Industry Secretariat.
- Boilers  
Presidential Decree 335/93 (GGB 143/A/1993) as amended by Presidential Decree 56/95 (GGB 46/A/1995) and Royal Decree 277/63 (GGB 65/A/1963). The competent authority is the Third Directorate of the Industry Secretariat.
- Machines  
Presidential Decree 57/2010 (GGB 97/A/2010), as amended by Presidential Decree 81/2011 (GGB 197/A/2011), implementing Directive 2006/42/EC. The competent authority is the Third Directorate of the Industry Secretariat in collaboration with various other directorates.
- Means of personal protection  
Ministerial Decisions 4373/1205/93 (GGB 187/B/1993), 8881/94 (GGB 450/B/1994) and B.5261/190/97 (GGB 113/B/1997). The competent authority is the First Directorate of the Industry Secretariat.
- Equipment for explosive works  
Ministerial Decision B17081/2964/96 (GGB 157/B/1996). The competent authority is the Fourth Directorate of the Industry Secretariat.
- Plastic tubes  
Ministerial Decisions 14013/ 32/327/83 (GGB 597/B/1993) and 10347/ 32/176/93 (GGB 432/B/1993). The competent authority is the Second Directorate of the Industry Secretariat.
- Structural construction products  
Presidential Decree 334/94 (GGB 176/A/1994) and various Ministerial Decisions specifying the provisions of such Presidential Decree. The competent authority is the Second Directorate of the Industry Secretariat.
- Pleasure yachts  
Ministerial Decision 4841/F7B/52/97 (GGB 111/B/1997). Competent authorities are the Third Directorate of the Industry Secretariat and the Ministry of Marine and Aegean Sea.
- Elevators  
Ministerial Decisions 9.2/32803/1308/97 (GGB 815/B/1997) and

15085/593/03 (GGB 1186/B/03). Competent authorities are the following Directorates of the Industry Secretariat: the Third Directorate and the Supporting Directorate for Industry.

- Bio-extinguishers  
Presidential Decree 205/01 (GGB 160/A/2001). The competent authority is the National Organization for Medicines (EOF).
- Air fresheners  
Ministerial Decision Y1/1880/01 (GGB 1018/B/2001). The competent authority is EOF.
- Anti-smoking products  
Ministerial Decision Y3d/515/94 (GGB 137/B/1994). The competent authority is EOF.
- Cosmetics  
Ministerial Decision 3a/132979 (GGB 352/B/2005), which implemented Cosmetics Directive 76/768/EEC and various other Ministerial Decisions issued subsequently to specify its provisions. The competent authority is EOF.
- Chemicals  
Ministerial Decisions Y1b/7723/94 (GGB 961/B/1994), 378/94 (GGB 705/B/1994), which implemented Directive 67/548/EEC and 265/02 (GGB 1214/B/2002), which implemented Directives 1999/45/EC and 2001/60/EC. Competent authorities are EOF and State's General Chemical Laboratory of the Ministry of Finance.
- Vehicles and parts for vehicles  
Various legislative documents. The competent authority is the Ministry of Transportation and Networks.

## 2. DEFENCES

### 2.1 What are the possible defences to a product liability claim?

Under Article 6 paragraphs 8 and 9 of Consumers' Law, the producer may be relieved from liability if he proves that:

- (a) he did not place the product on the market;
- (b) at the time that the product was placed on the market the defect did not exist;
- (c) he did not manufacture the product for the purposes of having it distributed and he did not distribute it in the course of his business;
- (d) the defect is due to compliance with mandatory regulations applicable; or
- (e) at the time the product was placed on the market, the applicable scientific and technical knowledge did not recognise the existence of the defect (the *state of the art* defence).

The producer of a component is relieved if he proves that the defect is attributable to the design of the product in which the component has been fitted or to the instructions given by the product manufacturer; in such a case, the product manufacturer is considered to be the producer.

With regard to the reduction of producer's liability, Consumers' Law (Article 6, paragraph 11) provides this is possible when, having regard to all

the circumstances, the damage is caused by a defect in the product and by the fault of the injured person or any person for whom the injured person is responsible. So, any possible third parties' co-liability does not affect the producer's liability.

Regarding general regulation the GCC provides that sellers may reduce or repeal their liability by demonstrating that the buyer contributed, in whole or in part, to the damage or to the extent of the damage or failed to mitigate the damage (Article 300).

## **2.2 Is there a limit on the time in which proceedings may be brought (limitations and repose)?**

Yes. There are time limits set by law, within which claims must be brought, otherwise they are considered to be time-barred.

(i) For strict liability, according to Article 6 paragraph 13 of Consumers' Law, a three-year limitation period applies, while the right to initiate proceedings against the producer is extinguished upon the expiry of a 10-year period from the date that the producer put the product into circulation.

Consumers' Law (Article 6, paragraph 13) sets as the starting point from which the three-year limitation runs the time when the plaintiff 'became aware or should have become aware of the damage, the defect and the identity of the producer'. The knowledge of the defect includes the circumstances from which it results that the use of the product does not meet the consumer's safety expectations. Furthermore the consumer needs to be in a position to know that the damage is the result of the specific defect of the product so that he may prove their causal link (see also above under 1.3).

For collective lawsuits, see below under section 4.

(ii) For a claim in tort, a general five-year prescription period applies (Article 937 of the GCC) starting from the time the injured person becomes aware of the damage and the responsible person. In any case, the claim may not be raised after 20 years have elapsed from the date of the tortious act. If the tortious act is also punishable under criminal law and a longer limitation period applies, this longer time limit is also extended to the claim for damages.

(iii) Claims based on contractual liability re defects or lack of agreed qualities of goods sold, deriving from Articles 534 to 558 of the GCC, are statute barred after the lapse of two years for movables and five years for immovable property. Such period commences from the date on which the product was delivered to the buyer even if the buyer discovered the defect or the lack of agreed quality later, unless a special guaranteed period was agreed. Further detailed regulation applies (Articles 554-558 of the GCC).

## **3. LITIGATION OF PRODUCT LIABILITY DISPUTES**

As a general note for this section, our answers below are mainly based on the provisions of the Greek Code of Civil Procedure (GCCP), as in force.

However, a major reform of the GCCP is expected later this year according to information currently available. Although a draft bill on the GCCP's changes

has been recently made public for consultation purposes (consultation was concluded on 28 March 2014), its final text cannot be known at the moment.

### **3.1 In which courts are product liability proceedings brought?**

Private law disputes, including product liability claims, are tried exclusively by civil courts and by one or three judges, depending on the amount of the dispute. As a rule, justices of the peace are competent to examine claims up to €20,000, one-member first instance courts, claims between €20,000 and €250,000, and three-member first instance courts, claims exceeding €250,000 (Articles 14 and 18 of the GCCP).

Special regulation exists on collective claims (see below under section 4).

Criminal and/or administrative proceedings may also be initiated for product liability claims (Articles 13a & 13b of Consumers' Law), however their subject matter is not the compensation of the claimant and they are not dealt with herein.

### **3.2 How are proceedings commenced?**

Proceedings are initiated by the plaintiff consumer filing a lawsuit with the competent court. As a minimum the lawsuit must set out the names and addresses of the respective parties and the particulars of the claim (ie, the material facts and remedies requested) and determine the value and the geographical limits of the dispute (esp. Articles 216 and 221 ff. of the GCCP).

### **3.3 Are disputed issues decided by a judge or a jury?**

All civil trials, like the ones for product liability claims, are conducted only by judges.

### **3.4 Who has the burden of proof and to what standard?**

The plaintiff consumer has to prove the defect, the damage and their causal link; proof of the defendant's fault is not needed (see above under 1.3).

Where a plaintiff sues in tort, as a rule he must also prove the defendant's fault. However, case law holds that such burden of proof is reversed if the plaintiff would otherwise be unable to prove the defendant's culpable conduct. This is accepted when the fact to be proven lies in the exclusive sphere of the defendant's influence and the plaintiff is unable to gain access thereto in order to meet his burden of proof duty; in such a case the defendant is required to prove that he was not responsible for the occurrence of the injurious fact. The reversal is applied under the case law primarily for consumers' claims (indicatively, Supreme Court Nos 1505/2008 and 891/2013, *NOMOS*; see above under 1.1).

### **3.5 How is evidence given in proceedings and are witnesses cross-examined?**

All evidence, ie, exhibits /documents supporting the position of each party are filed together with the pleadings. In cases where the lawsuit is brought before the justice of the peace or one-member court of first instance, the



pleadings are filed on the date of the hearing. Additionally, each party may file a rebuttal denying the allegations set forth in the opponent's pleadings by 12pm of the third working day following the hearing (esp. Article 238 of the GCCP).

When the lawsuit is initiated before the three-member court of first instance the pleadings and counter-pleadings must be respectively filed at least 20 and 15 calendar days prior to the hearing date. Additional pleadings may be filed by 12pm of the eighth working day following the hearing and may only be related to allegations raised during the same (Article 237 of the GCCP).

All document exhibits filed with the court must be in Greek, either originally or translated into Greek.

At the hearing, each party may (not obligatory, but it is a common practice and it is considered very important evidence for the court) examine one witness before the court, who is then cross-examined by the opponent (Articles 270 and 393 ff. of the GCCP). Such witness should be someone actually involved with the case, knowing the facts, be firm in his/her position and not 'afraid' of facing the cross-examination.

The witnesses' court examination does not last long, as a rule, and is around 1.5 to three hours as an average, but this is only indicative time since the length of such proceedings very much depends on the complexity of the case and court's discretion to allow witnesses to elaborate on the facts. It is also related to any interpreter's involvement, if so needed where the witness does not speak Greek. Firstly, the plaintiff's witness is examined by the judge(s), then the plaintiff's counsel asks questions and then the witness is cross-examined by the defendant; the defendant's witness follows in turn. The court is not a passive recipient of information and has the discretion to question witnesses and appoint experts to provide evidence. The court may, however, only consider the claims brought before it and may not adjudicate more or other than as claimed by the parties.

Witnesses may, instead of giving oral evidence before the court, testify under oath before a notary public, a justice of the peace or a Greek consular authority outside Greece by way of an affidavit, which may then be presented to the court as evidence. The opponent must be summoned to such depositions prior to two working days or eight full days, if they are given within or outside Greece respectively (Article 270 of the GCCP) and is entitled to obtain a copy of the same after they are given. Restrictions apply to the number of sworn statements.

### **3.6 Are the parties able to rely on expert opinion evidence and, if so, are there any special rules or procedures for expert opinion evidence?**

According to Articles 368-392 of the GCCP, a court may appoint one or more experts where specialised knowledge of scientific and technical matters is required. The experts are entitled to obtain information from the case file in order to formulate their opinion. Court-appointed experts are required to submit their report within the time frame indicated by the court and the hearing of the case is postponed by the court until the expert reports

requested have been submitted. However, the expert's opinion is not binding on the court, which, based on its own assessment of the case, may issue a deviating judgment.

Parties may also use experts either as witnesses (see above under 3.5) or produce, as evidence, technical reports prepared by them. The GCCP does not place any restriction on the number of expert reports that may be submitted to the court by a party. In practice, party-appointed expert reports do not have the same evidentiary value as the evidence presented by court-appointed experts.

**3.7 Is pre-trial discovery permitted? If so, in what circumstances? If not, what other mechanisms, if any, are available for obtaining evidence from a party or a third party?**

Courts are not allowed to try preliminary issues in separate proceedings before the main hearing and no pre-trial discovery exists. Where the court considers that specific knowledge is required in relation to scientific and technical issues or regarding the application of foreign law under rules of private international law, it may issue an interim order to obtain an expert opinion or legal advice on the relevant foreign law provisions respectively.

With regard to obtaining evidence, each party may, through the pleadings filed within the existing litigation or by way of a separate application to the court, seek the court's order for disclosure of documents in the possession of the counterparty or a third party, which may be used as evidence, except where there is a serious reason justifying non-disclosure (Articles 450 ff. of the GCCP and 901-903 of the GCC).

**3.8 Is there liability for spoliation of evidence/a remedy for destruction of or failure to preserve evidence?**

Generally, yes. There are no specific provisions for product liability disputes. Litigants must follow the general principles of good faith, *bonos mores*, honest and not misleading conduct, disclosing to the other party the documents he invokes except from a serious reason (esp. Articles 116 and 450 of the GCCP). However, a litigant may only submit to the court evidence that supports his case.

Injunction proceedings are available to preserve evidence and especially the product (see below under 3.9).

**3.9 Is interlocutory or interim relief available prior to the full trial of a proceeding?**

Yes, it is. According to Article 682 of the GCCP, interim measures may be ordered in case of urgency or necessity to prevent imminent danger and for the purpose of securing or preserving a right or of regulating a situation.

Full proof of the facts surrounding the case is not required for a court to order interim measures. The mere belief of the court in the possibility that the above conditions are met would suffice for the interim measures to be ordered. In any case, the court is not bound by the measure requested and it may order what measure it regards as appropriate per its discretion (Articles 690 & 692

of the GCCP). Injunctive measures may vary and they can be the granting of a guarantee, the pre-notation of mortgage, the temporary regulation of a situation or award of a claim, the temporary seizure of an asset, etc.

Further, upon the filing of an injunction petition and until the hearing of the same and the issue of the court decision, which in 'busy' courts like that in Athens it may in practice even take six months or so, the temporary order of a judge may be issued, again depending on the judge's discretion (Article 691 of the GCCP).

As a rule, if an injunctive measure is ordered before the filing of the lawsuit under the ordinary proceedings, the petitioner must file the lawsuit within 30 days from the injunctions decision (Article 693 of the GCCP).

Lastly, an exceptional procedure for the preservation of evidence is provided for by Articles 348 to 351 of the GCCP. In short: during the ordinary proceedings after the filing of a lawsuit and prior to its hearing date, as long as there is a risk that specific means of evidence will be later lost or its use will become more difficult or if the determination of the present condition of an object or project is material for the purpose of the case, an early evidential procedure may be requested by the court in relation to a particular topic even prior to the opening of the trial.

### **3.10 Can the winning party recover its costs?**

The loser-pays rule applies. Court expenses are 'only the court and out-of-court expenses that were necessary for the trial' and in particular are:

- (a) stamp duties;
- (b) judicial revenue stamp duty;
- (c) counsels' minimum fees set by the Greek Lawyers' Code;
- (d) witnesses' and experts' expenses; and
- (e) the successful party's travelling expenses in order for him to attend the hearing.

However, the expenses that the successful party recovers are, as per the general practice, substantially lower than his actual expenses, whereas the court very often offsets the expenses between the litigants on the basis of complex legal issues involved in the litigation (Article 173 ff. of the GCCP).

### **3.11 What avenues of appeal are available?**

In ordinary proceedings, every definite judgment issued by a first instance court may be contested before a designated second instance court. An appeal can be filed not only by the defeated party, but also by the successful party whose allegations were partially accepted by the court. Further, a cassation before the Supreme Court may be filed against appellate courts' decisions for questions of law only.

## **4. CLASS ACTIONS/REPRESENTATIVE PROCEEDINGS**

### **4.1 Is there a mechanism for class actions or representative proceedings, or coordinated proceedings for product liability claims? If so, what are the basic mechanics?**

Class action proceedings do not exist in Greece, but there are provisions

regarding collective actions (Article 10, paragraphs 16 ff. of Consumers' Law). A collective action is distinguished from an action where more claimants connected to each other with a specific object of the trial are represented before the court by one or more of their co-claimants (Articles 480 ff. of the GCC and 74 ff. of the GCCP). Collective actions may only be filed by consumers' associations under special regulation. Specifically, consumer associations, which have more than 500 active members and have been registered prior to one year, may bring an action to protect the general interests of consumers. Such an action may also be brought if the unlawful conduct harmed the interests of at least 30 consumers.

By such an action, a consumer's association may claim:

- (a) the cessation of the supplier's unlawful conduct;
- (b) monetary compensation for moral harm;
- (c) the issue of injunctive measures to secure consumers demands for cessation of the unlawful conduct or monetary satisfaction until an enforceable court decision is issued, including the temporary seizure of defective products; and
- (d) an acknowledgment of the right to restore the damage sustained by consumers due to the unlawful conduct in question.

Collective actions are brought before the multi-member first instance court where the defendant resides or has its seat within six months of the last unlawful behaviour challenged, unless a declaratory judgment is sought, in which case the general five-year prescription period for torts applies.

The court's decision issued has a (very special under Greek law) *erga omnes* effect binding non-litigants as well. However, the *res judicata* effect of the decision accepting (even partially) a lawsuit for a declaratory judgment recognising the damages suffered by consumers due to the unlawful behaviour challenged, works in favour of any consumer damaged, even if he did not participate in the specific trial. As a result, any such damaged consumer may notify his claim to the producer once the decision at issue becomes irrevocable and, after the lapse of 30 days without consumer's compensation or any other settlement of the dispute, file a petition before the competent court asking for a judicial order to be issued against the producer, provided the claim is proven and liquidated and the general requirements are met. Also, other consumers' rights are not affected by the collective pursuance of a claim as above and the rejection of a collective lawsuit does not preclude individual proceedings.

It is noted that collective lawsuits are not commonly brought in relation to product liability disputes, although they are frequent in relation to abusive general terms and conditions, especially in credit financial and insurance agreements.

## 5. LITIGATION FUNDING

### 5.1 Is litigation funding by third parties permissible in your country? If so, is it common?

Third-party litigation funding has not been practised much in Greece. Private funding is not known, although not expressly prohibited by law.

Articles 194 to 204 of the GCCP regulate public litigation funding providing for legal aid to any person who is unable to fund the cost of the trial without endangering his maintenance and that of his family, under conditions and special proceedings that the petitioner must follow. In addition, Law 3226/2004 on the provision of legal aid to low income citizens, implementing Directive 2003/8/EC, enables low-income individuals to obtain legal aid in connection with civil, commercial and criminal law cases (Article 3 of Law 3226/2004).

## **5.2 Are contingency fee or 'no win no fee' arrangements permissible?**

Yes, such agreements and other conditional arrangements on lawyers' fees are allowed between clients and lawyers per the Lawyers' Code, under the basic restrictions that:

- (a) they are made in writing; and
- (b) the maximum fee percentage agreed may not exceed 20% of the case's value or 30%, if more than one lawyers are involved.

Further regulation on such arrangements and the collection of the fees is provided by the law (Article 60 of the recently amended Lawyers' Code – Law 4194/2013).

## **6. REMEDIES**

### **6.1 What remedies are available to a party who successfully pursues a product liability claim?**

Monetary compensation is available to the victim successfully pursuing a civil claim (see below under 6.2). Criminal or administrative proceedings possibly pursued (see below under 7.3) do not have a monetary benefit to the victim.

For the remedies that may be pursued by a collective action and same related to collective proceedings, see above under 4.1.

### **6.2 How are damages calculated/are there limitations on available damages?**

According to Article 6 paragraphs 6 and 7 of the Consumers' Law, the types of recoverable damages are:

- (a) damages caused by death or by personal injury to anyone; and
- (b) damage or destruction caused due to the defective product to any consumer's asset other than the defective product itself, including the right to use environmental goods, and provided that:
  - (i) the damage exceeds €500; and
  - (ii) the product was ordinarily intended for and actually used by the injured person for his own private use or consumption.

Furthermore, compensation for moral harm or mental distress may also be claimed (in the latter case by the family of the deceased victim).

Additionally, under tortious liability (basically, Articles 914 ff. in conjunction with Articles 297-299 of the GCC) the aggrieved party may claim full compensatory damages including lost profit as well as moral

damages. In the case of personal injury, which includes bodily and health injury, compensation includes, apart from hospitalisation, expenses and damages already incurred, anything the aggrieved party will be deprived of in the future or will further sustain as a result of increased expenses.

Lastly, contractual liability provisions (Articles 534 to 558 of the GCC and especially Articles 540 and 543 of the GCC) provide that the buyer is entitled to request:

- (a) at no additional charge, the repair of a defective product or its replacement with another; or
- (b) a reduction in the purchase price; or
- (c) rescission of the contract or/and over and above his previous rights; or
- (d) compensation, under conditions.

### **6.3 Are punitive or exemplary damages available and in what circumstances?**

In Greece the duty to compensate has no penal character. The notion of sanctions is not a feature of civil law because this is geared towards the injured party and not the tortfeasor. The damages actually suffered represent the limit of and correspond to the compensation awarded because otherwise compensation would result in an unjustified enrichment of the injured party.

However, especially in collective claims (see above under 4.1) the way the amount for moral harm awarded is calculated and invested for purposes of promoting the policies for consumers' protection as well as the effect of the relevant decision (Article 10, paragraphs 16b, 20 and 22 of the Consumers' Law) brings it closer to a pecuniary sentence, a so-called 'civil sanction' imposed on the producer.

### **6.4 Is liability joint and several/how does apportionment of liability work, including where a partially responsible entity is not a party to the proceeding?**

If two or more persons are responsible for the same damage, these persons are jointly and severally liable as against the consumer and have a right of recourse against each other on the basis of their contribution to the damage (Article 6, paragraph 10 of Consumers' Law). Likewise, Article 926 of the GCC provides that where several persons contributed to the damage suffered or are responsible for the same damage, then their liability is joint and several.

Practically speaking, the plaintiff (consumer) may bring an action against all persons he considers that have contributed to his damage suing them jointly and severally, obtaining satisfaction from one or more responsible persons depending on the decision issued. The co-defendant which ultimately pays the plaintiff's damages awarded is entitled to subrogate against the other co-defendants, requesting their contribution to the compensation. Such claims may be brought in the same or in subsequent proceedings, provided that they are not time-barred per each particular case.

A partially responsible entity being not a party to the proceedings

initiated by a plaintiff may become a litigant of the same if it is invited by any of the defendants to participate therein (Article 86 ff. of the GCCP).

## **7. ROLE OF REGULATORS**

### **7.1 Please explain the role, responsibilities and powers of the regulators in your country which have jurisdiction over product liability issues.**

The General Secretariat is the central regulator. It consists of three departments:

- (a) Consumer's Policy;
- (b) Consumer's Protection; and
- (c) Technical Control.

Each has specified duties. The main responsibilities of the General Secretariat are (Presidential Decree 197/1997, as in force):

- development of consumer policy;
- harmonisation of the Greek legislation in line with the European Community Law in issues of consumer protection;
- monitoring of legislation at national level and abroad with regard to consumer protection;
- exercising the powers set out under Consumers' Law concerning the consumer organisations and the National Consumer Council;
- consumer information & education;
- constant updating of the website ([www.efpolis.gr](http://www.efpolis.gr)) which provides information to consumers on basic issues (consumer protection legislation, product safety, consumer organisations);
- handling of consumers' complaints with regard to the infringements of regulations in force aiming at consumer protection;
- imposition of administrative sanctions to those who infringe the legislation in force for consumer protection;
- offering advice and assistance to consumers;
- implementation and enforcement of the General Product Safety legislation;
- operation of RAPEX (Rapid Exchange Information System).
- surveillance on the conditions of circulation of products;
- supervision of the controls, surveillance and sampling performed by the local administration authorities and offer of guidelines and instructions required.

As mentioned above under 1.8, apart from the General Secretariat and depending on the particular product, other authorities may be competent.

### **7.2 Are there any mandatory reporting requirements related to product safety issues?**

Should producers (considered broadly, any supplier) become aware that any of their products presents dangers to consumers, they must notify the General Secretariat, immediately and without delay, and any other competent authority depending on the type of the product at issue, for the prevention of any danger or hazard to consumers. The notification is

made in a form provided by the competent authority and has to include information to identify the product, a complete description of the defect and the risk involved with the usage of the product, information to locate the product in the market, description of the actions already taken by the producer and the actions that can be taken by consumers to prevent any further risk.

The reporting as above to the competent authority does not release a producer from his obligation to take any appropriate measure in a timely manner and to properly inform consumers on a safety matter.

If the product has been marketed outside Greece as well, the procedure under the RAPEX notification system may be followed. The system allows the fast, almost simultaneous, transfer of information on dangerous products within the EU. Respective procedures apply especially to food and medicines.

The notified authorities may request additional information, the submission to them of relevant documents/data or measures to be taken by the producer and can set a deadline, within which the action requested must be implemented. Also, the authorities have to be kept informed by the producer of the results of any ongoing research in order to be updated and monitor the case.

### **7.3 Do the regulators have the power to:**

- (i) ban certain goods or services?**
- (ii) require a supplier to recall a product?**
- (iii) prescribe standards in respect of certain goods or services and require that the goods or services meet those standards?**
- (iv) require production of information without court process?**

**If so, broadly explain the circumstances in which the regulator can exercise the power and any penalties that apply if a supplier fails to comply.**

Yes, the regulator has broad powers to safeguard that unsafe products do not remain in the market. Mandatory standards for certain products may be prescribed by ministerial decisions together with monitoring proceedings that such standards are met.

Also, products that present or may present serious dangers to the safety and health of consumers when used in conditions that are normal or predictable may be recalled or withdrawn, as a precaution, by the competent authority. The procedure, the terms and conditions for the recall, withdrawal or disposal under terms, destruction and any other relevant topic, are regulated by ministerial decisions. Such decisions must be challenged by the producer involved before the Minister of Development before judicial proceedings are followed (Article 7, paragraphs 6 and 12 of Consumers' Law).

Further, subject to the stipulations of the Criminal Code, the Rules Regulating the Market of Products and the Provision of Services (today, Law 4177/2013) and other special provisions, the following administrative sanctions may be imposed against a producer (and generally, any supplier) by a ministerial decision, taken either *ex officio* or after a complaint is filed:



- a recommendation for compliance within a specified deadline as well as an order to stop the infringement and refrain from it in the future;
- a fine in the range between €1,500 and €1 million; this maximum amount of the fine may be doubled if more than three fines are imposed on a producer; or/and
- if more than three fines are imposed on a producer, the temporary closure of his business may be ordered for a period ranging from three months to one year.

Other administrative fines ranging from €500 to €50,000 are provided for against a producer who fails to respond in a timely way to a consumer's complaint filed with the General Secretariat. All the above fines may be adjusted by ministerial decisions.

The competent minister has the authority, considering the nature and gravity of the violation, as well as its general repercussions on the consuming public, to publicise, through the press or any other means available, the sanctions imposed and the restraining measures taken with regard to the circulation of a product in the market (Article 13a, paragraphs 1-5 of Consumers' Law).

## **8. VOLUNTARY CONDUCT**

### **8.1 Are there regulations pertaining to the voluntary conduct of a product repair or recall by a supplier?**

There are no specific provisions pertaining to the voluntary conduct of a product repair or recall or other corrective action by a producer or a distributor or a supplier.

A product's supplier (generally viewed and including the producer) must take any measure and corrective action appropriate to eliminate the possible hazard from that product's use, as soon as he knows of any defect. Such defect would constitute a breach of supplier's general obligation to only place safe products on the market (Article 7 of Consumers' Law and the MD). The needed measures may vary and can include warning notifications, instructions to consumers, invitations for servicing or updating of the product in order to become safe or notifications recalling the product. Within that general frame a product's recall must regarded the last action taken in the event that no other measure would eliminate the danger. As said (above under 7.3) a product's recall may be also mandated by the competent authority.

Regarding the repair of a product, the GCC includes it within the buyer's various options for a defective product and, if exercised, the supplier is obliged to comply with the same within a reasonable time and without buyer's material inconvenience (Article 540 ff. of the GCC).

## **9. EMERGING ISSUES AND LAW REFORM**

### **9.1 Are there important developing and emerging issues or trends in product liability law in your country?**

- Consumers' Law continues to be amended relatively often. In 2013, changes to it regarded, among others, the sanctions that

may be imposed for non-compliance with its provisions and a new categorisation of complaints filed under it (Articles 13a & 13b).

Earlier, in 2012, the right to bring collective actions granted to other EU member states' entities authorised for must be noted (Article 10, paragraph 30). So, a trend towards enforcing consumers' rights and imposing increased sanctions may be noted.

- Another trend is towards increased settlement alternatives for the avoidance of litigation. Within that frame, in 2012 Consumers' Law was supplemented regarding entities that pursue alternative consumer dispute resolution (new Article 11a of Consumers' Law implementing the EU Commission's Recommendations Nos 98/257/EC and 2001/310/EC). This trend is broader in Greek law. So, recent changes to the GCCP, were introduced to facilitate settlement against the litigation of disputes (Articles 214A, 214B & 233, apart from older provisions of 208-214 of the GCCP). Within the same frame, Law 3898/2010 implemented Directive 2008/52/EC 'on certain aspects of mediation in civil and commercial matters'. However thus far, application of the above 'mediation' settlement provisions remains very limited.
- Consumer awareness must be considered rather low. Although a few consumer organisations have become more active in the recent years, their activities have been rather limited – focusing on challenging abusive general terms and conditions.
- Regarding Greek authorities, they have been especially active in using the RAPEX procedure. Based on official data from the past six years, the General Secretariat made annually an average of approximately 109 notifications (2013: 61, 2012: 82, 2011: 69, 2010: 159, 2009: 153, 2008: 129).

Also, during the past few years, market controls regarding unsafe products have intensified. For example, in 2011, 211 fines of a total amount of €5,390,500 were imposed and in 2012 1,506 fines of a total amount of €1,195,600 were imposed. There are currently no available data for 2013.

## **9.2 Please describe any proposed important law reform in the area of product liability in your country.**

Nothing is ongoing today.

## **10. REGULATORY WEBSITES/INFORMATION**

### **10.1 Please identify any useful regulatory references relating to product liability law in your country, for example, a product safety/consumer law website maintained by the main regulator.**

General Consumer's Secretariat of the Ministry of Development and Competitiveness: email: [info@efpolis.gr](mailto:info@efpolis.gr); website: [www.efpolis.gr](http://www.efpolis.gr).

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