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Efficiency of process

Greece, compared with other European countries, resulting from a survey of the European Commission (Justice Scoreboard 2017), shows considerable delays in the time of completion of the litigation before the competent courts of law. The Greek justice administration system, especially in the civil proceedings, was showing considerable delays, mainly, due to the great number of actions and legal remedies and aids, filed before the Civil Courts, a fact that in turn was leading to delays in delivering court judgments.

Law 4335/2015, which entered into force on 1 January 2016, brought significant amendments to the Greek Code of Civil Procedure (GCCP) in the direction of speeding up the administration of justice, yet without sacrificing the (equally worthy of protection) need for giving a correct and fair judgment. The essential changes occurred with the new Code of Civil Procedure concerning mainly the ordinary proceedings before the first instance courts, as well as the enforcement.

The most significant novelty introduced is the replacement of the (until recently, partly oral) ordinary proceedings at first instance, with more flexibility and shorter time taken in terms of written proceedings. On the basis of these new articles, ordinary proceedings are in principle written and based on the written pleadings and the filing of all evidentiary means, including up to five affidavits, while the hearing before court audience is formal, without being necessary for the litigant parties or the lawyers acting for them to attend and participate therein. The new process provides for the following stages: a) service of the action within 30 days as from filing on residents of Greece and 60 days on non-residents; b) filing of pleadings within 100 days as from filing of the action for residents and 130 days for non-residents; c) filing of replication within 15 days as from the deadline set for the filing of pleadings; and d) appointment of judges and court composition within 15 days and fixing the hearing day within 30 days after the expiry of the 15-day term. Adjournment of the hearing is allowed only once and for a significant reason (see especially articles 237, 241 GCCP). It is noted that if the court needs further clarification the court may, by a simple act, call, at a subsequent time, the witnesses that rendered affidavit for hearing. The decision of the court should be issued and published within eight (8) months of the court hearing (article 237 para. 5 and 307 para. 2 GCCP).

In the field of compulsory enforcement, two improvements have occurred: the first improvement limited the number of the legal remedies; and the second limited the time required for the completion of the actual implementation of the enforceable titles (articles 237, 241 GCCP).

It is noted that the outcome of the recent reforms is not reflected yet in any numerical data, it is expected, however, that the time for justice administration will be improved.

Integrity of process

A fundamental element of the judicial independence is its operational and organisational distinction from the other directions of the State authority. The jurisdictional operation of the State authority is exercised by the courts of law that are composed of ordinary judges who enjoy operational and personal independence (articles 26 § 3 and 87 § 1 of the Constitution).

Personal independence of judges is ensured, in the first stage, by being appointed after having successfully passed the admission competition in which they are evaluated, under guarantees of irreproachable judgment, both in terms of qualifications and merits, and after having completed the attendance at a special School of Judges. Thereafter, it is intended to ensure the personal independence of the judge by subordinating their promotions and transfers to the Supreme Judicial Council. Personal independence should be founded on the respective basic financial independence. The Constitution binds the Ministry of Finance to make sure that the remuneration of judges is proportional to their office (article 88 § 2 of the Constitution).

The second considerable institutional guarantee of the neutrality is the clear distinction of the court from the other participants of the litigation process, namely from the litigant parties, but also from the other persons involved in the procedure, such as, for instance, the witnesses.

Besides the operational and personal independence of the judges, the judicial authority is also inspected by other mechanisms such as:

(a) the review of court judgments by means of legal remedies;

(b) the challenge of judges on the grounds of mere suspicion of partiality;

(c) penal and civil liability of judges;

(d) a more active disciplinary liability of judges, either following complaints or within the framework of the inspection provided for in article 87 § 3 of the Constitution; and further

(e) the publicity of court proceedings and hearings, but mainly of the court judgments (article 93 §§ 2 and 3 of the Constitution).

Privilege and disclosure

Lawyer's privilege, as a more specific expression of the professional secret, constitutes a particularly important aspect of the lawyer's practice, with constitutional and legislative grounds, and therefore always enjoys special protection in Greek law.

It should be noted that in contrast with other secrecies, such as banking secrecy, tax secrecy, secrecy of communications, etc., which have already been bent mainly for the purpose of repressing serious financial crimes and at the recommendation of the European Union, lawyer's privilege remains strong and may only be bent under very strict conditions.

In particular, a lawyer's privilege is established both in the Penal Code and the Code of Penal Procedure. More specifically, under article 371 PC, lawyers and their assistants that disclose confidential information with which they have been entrusted or which came to their knowledge by reason of their profession or capacity are punished with pecuniary penalty or imprisonment of no more than one year. In addition, under article 212 GCPP, a prohibition of examination as witnesses is imposed on the defence lawyers both in preliminary and main proceedings in connection with the information entrusted to them by their clients. The said prohibition is also ensured by the provisions of articles 261 and 262 of the Code of Penal Procedure which prohibit the seizure of documents of the persons indicated therein.

Besides these articles, lawyer's privilege is established also in article 38 of the Lawyers' Code (Law 4194/2013), while article 39 § 1 of the aforesaid Code has enhanced the protection over lawyer's privilege, providing for that "[i]t is prohibited to conduct investigation for seeking documents or other evidences or the electronic storage media thereof, as well as to seize such documents or evidences or storage media for as long as these are in the lawyer's possession for a case that is handled by the latter".

Furthermore, lawyer's privilege is guaranteed in article 400 GCCP, which prohibits the examination of the lawyer in the civil proceedings in connection with facts covered by the lawyer's privilege.

Costs

As a rule, the party that causes or undertakes a proceeding (filing of action, legal remedy, speeding up of enforcement, etc.) pays in advance the costs and dues of such proceeding. The document proving advance payment of costs and dues (court stamp duty is also included), as also the fee of the lawyer acting for the party (Lawyer's Fee Collection Receipt issued by the competent Bar Association), must be adduced to the court no later than the day of the case hearing.

However, as regards the final allocation of the legal costs, it remains completely irrelevant who has paid in advance the above costs. The essential rule of costs allocation is the principle that the losing party bears the costs. The losing party is ordered to pay the necessary costs of the entire proceedings, and thus also the costs paid in advance by the counterparty.

The Court, however, may offset all costs or any part thereof in two cases: a) in disputes between spouses or relations by blood up to the second degree; and b) in any trial where the construction of the applicable rule of law was particularly difficult. Moreover, the court, based on article 58 para. 5-a' of the Lawyers' Code, may determine by force of office the increase of the lawyer's fee, depending on the scientific work, the value of the subject matter and the kind of the case, the amount of time required, the out-of-office services, the importance of the dispute and of the particular circumstances and any kind of judicial or extrajudicial acts.

Independent of the minimum lawyer's fee provided for in the Lawyers' Code (Law 4194/2013), the fee may be freely determined by a written agreement between the lawyer and the principal or the principal's agent. In Greek law, there is no prohibition of derogation from the minimum legal fees and the contractual derogation therefrom is freely allowed. Said fees are only applicable in the event that no written agreement has been concluded between the lawyer and the principal on a different fee.

The fees include the conduct of either the entire trial or any part or specific proceedings thereof or any other legal work of any nature, both judicial and extrajudicial. The way of remuneration is freely chosen by the parties among the following methods: time-based charge system (article 58 of the Lawyers' Code); success fee contract (article 92 paras 3–5 of the Lawyers' Code); lump sum fee (articles 100–166 of the Lawyers' Code); and salaried services system (articles 63 para. 4–5, 63A, 63B, 92A, 94 of the Lawyers' Code). The provision of lawyers' services free of charge is strictly prohibited (article 82 para. 1 of the Lawyers' Code), unless such services are provided to family members or trainee lawyers or retired lawyers and concern a personal case.

The CJEU, with its judgment of 5 December 2006 (*Federico Cipolla vs. Rosaria Portolese* C-94/04 and *Stefano Macrino and Claudia Capoparte vs. Roberto Meloni* C-202/04), has

ruled that setting mandatory minimum fees constitutes in principle restriction on freedom of establishment and on freedom to provide services that could be justified, though, by the existence of overriding reasons relating to the public interest, insofar as such restrictions are compatible with the proportionality principle. The matter also concerned the Greek Council of State which in its judgment no. 3154/2014 adopted the version that setting a scale of minimum lawyers' fees comes within the regulatory power of the State and therefore the regulation thereof by means of a regulatory administrative act does not prejudice the Union provisions on competition and freedom to provide services.

The fees differ depending on the kind of the legal service and on the existence or not of economic subject matter in dispute (articles 73 to 82 of the Lawyers' Code). When the subject matter in dispute is pecuniary, the fee brackets are calculated cumulatively by applying progressively declining rates to the price of the economic subject matter in dispute (the rates start from 2% going down to 0.05% for economic subject matters ranging from 200,000 Euros to 25,000,001 Euros and over), for instance, for a subject matter amounting to 1,000,000 Euros the attributable fee amounts to 14,750 Euros [(200,000 * 2%) + (549,999 * 1.5%) + (250,001.00 * 1%) = 4,000 + 8,249.99 + 2,500.01]. Legal works without a specific economic subject matter are regulated by special Annexes to the Lawyers' Code and depend on the kind of the legal work, the court before which the dispute is brought and the amount of time dedicated to the case.

Litigation funding

Law 3226/2004 on the "supply of legal assistance to low-income citizens" and the GCCP contain certain arrangements which aim to address the economic poverty that does not make it possible for all people to conduct costly and time-consuming legal proceedings, ensuring in this way the principle of free access to justice (article 20 of the Constitution), the principle of procedural equality (article 4 of the Constitution, article 110 para. 1 GCCP) and the principle of the social rule of law (article 25 of the Constitution). The costs for such benefits to the most vulnerable social groups are paid from the State budget.

In particular, based on Law 3226/2004, beneficiaries are the low-income citizens of a Member State of the European Union, low-income citizens of a third State and stateless persons, if they have legally domiciled or have a habitual residence in the European Union.

Low-income citizens and legal assistance beneficiaries are those whose annual family income does not exceed two thirds of the minimum annual individual remuneration as each time set forth in the National General Collective Labor Agreement or in the law providing for the minimum fees. Legal assistance is only supplied upon application, whereto all necessary supporting documents evidencing the financial situation of the applicant, as also his domicile or residence in case of third State national, are attached. The application examination procedure is carried out by the duty President of the court, with the attendance of lawyer not being mandatory, is simple and rapid and any rejection thereof must be justified.

It is clarified that legal assistance aims at discharging the beneficiary of the proceedings costs that would incur by the latter, but has no effect on his obligation to pay the costs to the counterparty in case of defeat or set-off of costs.

Subject to certain conditions, legal assistance may also be provided to legal entities (articles 194 and 204 GCCP), namely public utilities or non-profit legal entities, associations of persons and unlimited or limited partnerships and cooperatives.

As applicable under the Law 3226/2004, the fact that the benefit of indigence has been granted does not have any effect on the obligation of that party to pay the legal costs to the counterparty in case of defeat or setoff of costs.

Interim relief

Provisory and conservative measures and generally injunction measures (articles 682–738 A GCCP) are an interim provision of judicial protection, an accessory to the main diagnostic trial, which may be either pending or is about to start soon. Such an interim provision of judicial protection aims to secure the future satisfaction of the claim to be diagnosed in the main trial.

Injunction measures are the following: granting a guarantee; registration of future mortgage; conservative seizure; sequestration and temporary adjudication of claims; preventive injunction; apposition and removal of seals; inventory and public deposit; and possessory injunction.

The court orders injunctions in case of emergency or to prevent an imminent danger and provided that the right to be safeguarded and for which the injunction measure is sought, is likely to exist. The validity of the injunctions ceases when the final judgment on the main case is given, in the event of conciliation for the main case, upon expiry of 30 days as from completion or cancellation in other way of the trial, if the judgment is revoked or reformed due to occurrence of new facts and if the main action shall not be filed within the deadline eventually set by the judgment granting the injunction.

It is noted that the injunction order, aiming to prevent the occurrence of irreparable or hardly reversible situations, does not lead to full satisfaction of the right to be safeguarded (article 692 IV GCCP), is subject to revocation or reform (articles 696–698, 702 II 2 GCCP) and has a temporary validity, without affecting the main trial (article 695 GCCP).

Prior to a court judgment granting an injunction, the court may issue an interim order (article 691 II GCCP) in cases of an emergency or imminent danger. Thus, an interim order operates as a guarantee that ensures the content of the injunction judgment.

Enforcement of judgments

Enforcement in Greece may be affected only by way of an enforceable title, as set forth in articles 904 and 905 GCCP. Enforceable titles are the final judgments, as well as the judgments of any Greek court of law that have been declared provisory enforceable, foreign judgments, records of conciliation, etc.

The provisions on the recognition and enforceability of foreign judgments coming from a third State (outside the EU) are set forth in the GCCP (articles 905 in conjunction with article 323).

In particular, article 323 of the GCCP provides for the requirements for the recognition of a foreign judgment by a Greek court. It is strictly required that the foreign judgment be, pursuant to the law of the place of issuance, of such procedural maturity so as to have the force of *res judicata* and not to be contrary to the public order. According to the GCCP (article 321), force of *res judicata* have the final court judgments, namely those that cannot be contested by ordinary legal remedies.

On the other hand, in case of a judgment from a Member State of the European Union, the Regulations of the European Parliament and of the Council No. 1215/2012 "on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters", No.

2201/2003 "concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility", as well as Regulation No. 1896/2006 creating a European order for payment procedure are applicable.

Under the Regulations, the recognition of every foreign judgment is allowed regardless of the procedural maturity and provided that it is enforceable. The recognition of foreign judgments, when it is governed by the Regulations, is affected by operation of law. This means that in order for a foreign judgment to be recognised in Greece, it is not necessary to follow a specific procedure but on the contrary it may be invoked against any and all persons (including the State) in any contracting Member State producing the legal effects thereof, as if given in that State. The Regulations use the term recognition "by operation of law" of the foreign judgment. The reasons for which a foreign judgment may not be recognised by a Member State are exhaustively indicated in the Regulations, namely: if such recognition is manifestly contrary to public policy; if the defendant was not served with the document which instituted the proceedings where the judgment was given in default of appearance; if the judgment is irreconcilable with a judgment given between the same parties in Greece; or if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties.

Cross-border litigation

Judicial cooperation in civil matters includes improvement and simplification of the cross-border service or notification of judicial and extrajudicial documents, of the cooperation in the taking of evidence and of the recognition and enforcement of judgments in civil and commercial matters.

In this case, the Ministry of Justice, Transparency and Human Rights acts as the Central Authority for the cooperation with the counterpart authorities of other countries, for the purpose of exchanging information in the field of civil law (substantive and procedural), and also for facilitating the introduction and conduct of court or administrative proceedings. Further, it operates as the mediating authority for the provision of legal assistance by the judicial authorities of the State to the counterpart authorities of the contracting States and vice-versa, examination of witnesses, experts, transmission and service of documents, etc. Greece has acceded to International and European Treaties on the cross-border cooperation between the countries.

In particular, the Hague Convention (1965), which was ratified with the Law 1334/1983 and entered into effect as of 18 September 1983, is in force for the States (outside the EU) having acceded thereto. Greece has expressed a reservation only about article 10 concerning service by post. Service or notification in Greece is allowed only if the documents are compiled or translated in Greek language and have been duly apostilled (Hague Convention of 5 October 1961).

In the European Union, applicable enactment is the Regulation No. 1393/2007 (except Denmark) on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), by establishing a simple and short service procedure, as also Regulation No. 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

In the case of countries not having acceded to any bilateral or multilateral treaty or to which the aforesaid Regulation No. 1393/2007 is not applicable, the service is effected pursuant to article 134 GCCP, and the document to be served is consigned to the Prosecutor to the competent court. The Prosecutor must forward such document, without culpable delay, to

the recipient of the service, through the Ministry of Foreign Affairs. Moreover, pursuant to article 137 GCCP, the service abroad may be affected in compliance with the formalities of the foreign law by the organs provided for therein.

International arbitration

Greece transposed early in the national legal order the Geneva Protocol (1923) on an arbitration clause that was ratified with the L.D 4/1926, and also the Geneva Convention (1927) on the enforcement of foreign arbitration awards that was ratified with the Law 5013/1931. These legislative instruments were abolished by L.D 4220/1961 that ratified the New York Convention (1958) on the recognition and enforcement of foreign arbitration awards.

Moreover, Greece, with the Emergency Law 608/1968, has ratified the Washington Convention (1965) on the settlement of investment disputes. As generally known, this Convention provides that arbitration proceedings are to be conducted (International Centre for Settlements of Investment Disputes – ICSID) on "investment disputes".

By means of Law 2735/1999, Greece has adopted the UNCITRAL model law on international commercial arbitration. Insofar as any of the requirements of Law 2735/1999 is fulfilled, the arbitration is international and commercial. On the contrary, if all elements of the arbitration are identified in one legal order and in particular in the Greek legal order, the arbitration is internal and articles 867 *et seq.* GCCP are applied thereto. In order for an arbitration clause to be effective, it must be laid down in writing.

The differences between the provisions in these two legislative instruments (GCCP & Law 2735/1999) are not many in number and mostly are of minor importance. Still, the difference existing in the fees of arbitrators for conducting internal and international commercial arbitration is remarkable. More specifically, pursuant to article 882 GCCP, in the internal arbitration fixed amounts are determined as a fee for the arbitrators, while, pursuant to article 32 para. 4 of Law 2735/1999, the arbitrator may freely determine the amount of the arbitration cost that includes of course his own fee.

Another significant difference concerns the injunction measures. In particular, article 889 GCCP explicitly provides that in internal arbitration, the arbitration court does not have the power to order injunction measures. On the contrary, article 17 of Law 2735/1999 clearly provides that the arbitration court may order injunction measures, unless otherwise agreed by the parties, and actually the said measures may even be foreign, namely outside the Greek legal order, suffice it not contrary to the public policy thereof. Certainly, both in internal and international commercial arbitration, it is not excluded that injunctions may be requested from the State court even if the dispute is subject to arbitration (article 889 para. 2 GCCP and article 9 of Law 2735/1999, respectively).

Mediation and ADR

ADR

Within the context of Alternative Dispute Resolution (ADR), as already known, four major categories are identified: (a) Negotiation; (b) Mediation; (c) Conciliation; and (d) Arbitration of which mention has been made above.

The European Union objectives, with which also Greece is in line, is to obtain alternative ways of resolving disputes (ADR) with the aim to facilitate and improve access to Justice.

The wider concept of Alternative Dispute Resolution forms includes the provisions of the

GCCP that are intended to facilitate the court settlement or the amicable settlement of the dispute with the court intervention, but also the provisions governing the arbitration. Respectively, ADR include also the "extrajudicial" Mediation in civil and commercial matters, which has been instituted with the Law 3898/2010 that transposed into Greek law the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters of cross-border disputes. Many Member States, among them also Greece, have regulated not only the cross-border mediation but have extended the legal regulations to mere internal disputes.

The ADR process is not a novelty for the Greek Judge, since in the Law of the civil procedure there are plenty of provisions that in one way or another provide for a reconciliating intermediating intervention of the Judge. In particular:

(a) The category of negotiation also includes the attempt to resolve the dispute pursuant to article 214A GCCP, namely the extrajudicial amicable settlement of the dispute. In the extrajudicial amicable settlement of the dispute, the parties may compromise after the occurrence of pendency until the giving of final judgment and without having a hearing of the trial, by signing a private deed of settlement that may also be ratified by the court, if the parties wish to do so.

    It is worth noting that the mandatory attempt of dispute resolution between the parties that was provided for in article 214A GCCP before being amended by article 19 of Law 3994/2011, did not yield any results. The rate of the settlements achieved by means of this procedure was extremely low (1–2% of the total cases), even zero in certain court districts.

(b) In the second ADR category, namely in Court Mediation (article 214B GCCP) as also in Mediation, besides the litigant parties and the lawyers acting for the parties, also a neutral third Mediator Judge participates in the procedure, who assists the parties to negotiate, proposes solutions and eases the stress so that parties may arrive by themselves at an agreement for the resolution of their dispute and at a mutually accepted and viable solution.

(c) The third ADR category includes Conciliation, which means the procedure in which a neutral third party usually of high-prestige *ex officio* attempts to recommend to the parties his own solution in order to resolve the dispute or obtain a settlement (articles 209–214 GCCP). In Greece, the reconciliating intervention is made by the competent Justice of the Peace.

(d) Conclusively, the fourth category includes the institute of arbitration, which has been addressed above.

Court Mediation & Mediation

The two institutes of (a) Court Mediation (article 214B GCCP), and (b) Extrajudicial Mediation (Law 3898/2010) present several similarities in total, especially those set forth in articles 9 (substantial effects), 10 (secrecy) and 11 (enforceability of the agreement).

The two enactments present some differences too: in the GCCP, the mediation is carried out by a third party having the capacity of a judge, who proposes solutions and addresses to the parties non-binding proposals for the resolution of the dispute at his will. On the contrary, in the private mediation provided for in Law 3898/2010, the mediator is not a judge and acts exclusively as a catalyst between the interested parties while the authority to make decisions rests exclusively with the interested parties.

Further, the recourse to the private mediation required, according to the initial regulation, that the relevant agreement between both parties come first before their mutual decision on

the appointment of the mediator. On the contrary, as regards court mediation, it is enough that one party wishes to have recourse to it, and then, addressed to the judge, the said party files the petition, and the judge invites the counterparty to take part in the procedure.

Private mediation is a formal procedure that follows specific stages, almost always strictly prescribed. The mediator must master these stages and be specially trained on them. In the court mediation, the judge mediator acts having more freedom and tries to individualise the problem and investigate himself, along with the interested parties, the way in which he shall approach the case at issue.

Already, pursuant to article 182 of Law 4512/2018 that entered in force on 17 January 2018, the optional recourse to mediation became *mandatory*, before having recourse to the competent court in civil and commercial matters (disputes arising from infringement of trade marks, patents, industrial designs or models).

It is remarked that the aforesaid article 182 of Law 4512/2018 that provides for the mandatory reference of private disputes to the mediation procedure, was found unconstitutional by Judgment No. 34/2018 of the Supreme Court in a plenary session, since according to the judgment the constitutionally safeguarded core of the right of access to justice is offended because of the high cost that the private mediation requires from the average citizen and in fact in the midst of the economic crisis.

Regulatory investigations

In Greece, Independent Administrative Authorities consist of national collective state bodies with autonomous administrative infrastructure and budget, the members of which enjoy personal and operational independence, and have as a role the dominant monitoring of sensitive fields of the political, economic and social life by exercising regulatory, consultative, arbitration and auditing competences.

The most important independent administrative authorities are: the Competition Commission, which in collaboration with the competition authorities of other countries examines the operation of commercial enterprises, distribution networks, the regulations regarding commercial prices, monopolies, issues regarding free establishment of businesses, etc.; the Regulatory Authority for Energy (which cooperates closely with the Competition Commission to address breaches of the Competition Law) for electricity and natural gas, having as main competence to monitor the domestic energy market in all its sectors; the National Council for Radio and Television, which controls the contents of radio and television broadcasts to safeguard the observance of the equal-time rule for news broadcast and ensure the quality level of programmes; and the Data Protection Authority, which monitors also the application and observance of the new Data Protection Regulation No. 676/2016 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

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