GREECE

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Introduction

The Greek legal system is a member of the family of European laws and is particularly influenced by German and French law, on which the current legal system is based. Legislation is the most important source of law in Greece. Case law and the works of legal scholars are not deemed to be sources of law, although they can have a significant impact on the legislators in enacting the law and the courts in interpreting it.

Greek courts do not possess law-making capacity and their role is primarily to interpret legislation. Although courts are therefore not bound by legal precedents, established practice in decisions of the higher courts do influence the decision-making process of the lower courts.

Establishing Jurisdiction

Types of Jurisdiction

In modern Greek law, the terms 'jurisdiction', 'competence', and *locus standi* are used to describe three different aspects of the same notion: the court's power and/or duty to hear a case. The word 'jurisdiction' either refers to the State's judicial power to hear a case in contrast with that of other courts, or refers to the tripartite division of judicial authority[1] among administrative, civil, and criminal courts. Competence pertains to the allocation of judicial power within each jurisdictional division. Finally, capacity and standing to sue corresponding to *locus standi* refer to the capacity of a person to be a party and to conduct litigation in its own name.

Both jurisdiction and competence refer to a court's capacity to adjudicate a matter, while *locus standi* refers to the parties' ability to bring a matter before a court.

As far as the third aspect of jurisdiction is concerned, the Greek Code of Civil Procedure (CCP) allows for three types of persons to be litigants in a trial, so long as they are capable of holding rights. These are eligible natural persons, eligible legal entities, and associations of persons that do not form a legal entity.

Natural persons enjoy the capacity to enter into judicial acts and thus have the capacity to conduct litigation in their own name. According to law, such persons should be above 18 years of age and should not be interdicted or mentally ill. The legal representatives of a mentally ill person may conduct litigation on his behalf.

Legal entities falling under any of the forms of entities provided for by Greek commercial and civil law or existing under the law of any other state have the capacity to conduct litigation. These entities are represented by their legal representatives.

Associations of persons that do not form a legal entity also are capable of conducting litigation. These associations are represented by the persons entrusted with their representation or with contracting

[1] According to the Constitution, art 93(1).

power.

In this context, Article 94 of the CCP stipulates that litigants are obliged to appoint an advocate (*dikigoros*) in all civil courts (with the exception of Courts of the Peace, the lowest in the judicial hierarchy of courts), in litigation for the interim protection of assets, and where absolutely necessary. In any event, the court may ask a litigant to appoint an advocate.

The subject matter competence of a court depends, as a rule, on the value of the object and the amount in controversy or the amount of the claim as it is set out in the complaint at the time proceedings are instituted, without taking into account any interest or other accessory claims. As currently determined by Decision of the Minister of Justice No. 125804/3003, demarcation between Courts of the Peace and the Single-Member Courts of First Instance is drawn at the amount of €12,000 and between the latter and the Multi-Member Court of First Instance at the amount of €80,000.

As an exception to this rule, the CCP provides for a parallel criterion, irrespective of the value of the dispute, by expanding the competence of the Court of the Peace and that of the Single-Member Court of First Instance in order to facilitate and accelerate proceedings in respect of disputes with a strong local connection (such as in cases involving farming, restrictions on property, transportation, or performance of some other services) or disputes of social interest (such as disputes involving leases, employment, insurance, and car accidents; claims of lawyers and some other professionals; as well as some types of family litigation and disputes concerning the internal operation of associations and cooperatives).

The CCP expands the competence of the Courts of the Peace to include disputes with a strong local connection and the competence of the Single-Member Court of First Instance to include disputes of social interest. As a notable exception to this rule, disputes stemming from a lease agreement are adjudicated by Courts of the Peace when the monthly rent does not exceed the amount of €450.

In contrast to the view taken by common law, the CCP's allotment of the respective courts' competence does not take into account the division of disputes in damages or violation of rights actions or actions with a property claim.

Article 3 of the Brussels Convention makes an indicative reference to a number of provisions in the national laws of the contracting parties, among them Article 40 of the CCP,[2] which has been abrogated by Sections 2 to 4 of the Convention. This stipulation is of minor importance in Greece because, pursuant to Article 26 of the Constitution, international conventions or agreements entered into and ratified by Greece override conflicting provisions of national law.

Venue

In principle, the CCP links the venue of a dispute to the defendant's domicile, as defined in Article 51 of the Greek Civil Code. According to substantive law, domicile is a person's main and permanent establishment, consisting of *corpus* and *animus*. When a person does not have a domicile either in Greece or abroad, venue is defined by its residence — that is a person's main (though not permanent) establishment, and when there is no main or permanent establishment, by its last domicile in Greece or, in sequence, its last residence in Greece.[3]

According to Article 2(2) of the CCP, a person's professional address may equally serve as a basis for the territorial competence of a court. Furthermore, the CCP provides for other bases of venue in cases where the defendant is a civil servant or an employee,[4] the Greek State, a legal entity,[5] an advocate, or

[2] Code of Civil Procedure, art 40, provides that persons having property or movable assets in Greece may be litigants to proceedings opened before Greek courts.
[3] Code of Civil Procedure, arts 7 *et seq*.
[4] Code of Civil Procedure, art 24.

a notary public.[6] The legislator has deviated from this system by laying down other bases of territorial jurisdiction which are specific and, in some cases, exclusive.

Exclusive jurisdiction is granted in relation to disputes arising from the internal relationships of a company and its shareholders or between the shareholders themselves, and disputes regarding the management of an entity by judicial order.

Exclusive jurisdiction also is granted in disputes related to rights *in rem* or those regarding matters of succession, proceedings opened in the course of other proceedings (such as interpleaders and actions relating to a guarantee contract), and to disputes between joinders of claimants or defendants.

Furthermore, in disputes related to a pecuniary interest, litigants may only alter a court's territorial jurisdiction by common consent.[7] When, according to law, a court has exclusive territorial jurisdiction to deal with an action, the litigant's consent regarding venue should be clearly stipulated, whereas such agreements regarding disputes that may arise in the future[8] are valid only if they are in writing and refer to a specific lawful relationship from which they will stem.

According to Article 42(2) of the CCP, a litigant's presence in proceedings opened before a court that does not have territorial jurisdiction to hear the case is deemed to be tacit consent to this court's competence.

Service of Summons or Writs

Summons and writs are served by an authorized process server appointed by the court that has jurisdiction in the place where the person to be served has his legal residence or, in case of a legal entity, its seat.[9]

If no process server is appointed at the place where the summons or writ is to be served, the service will be effected by the process server of a criminal court or by the police.[10] In cases of absolute urgency, service also may be effected by wire, should a judge so allow.

The summons or writ must be served diligently according to the order that the litigant or his advocate has put in writing on the complaint to be served.[11]

The CCP stipulates that the server may serve the complaint at any place where the addressee may be found, with the exception of a church in which a service is being held.[12]

As to the time and the days that a summons or writ may be served, the CCP provides that it may only be effected on working days, between 7 am and 7 pm, except when the judge has permitted otherwise or when the addressee does not object.

In the case of persons who lack the capacity to conduct litigation in their own name, the summons or writ is served on the addressee or his legal representative. The CCP, however, provides separately for service on persons who are absent at the time the server is serving the summons or writ — for example, in prison or hospital, aboard a merchant ship, pursuing a career in the army or carrying out their military service — and service on persons or legal entities who have their residence or seat

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[5] Code of Civil Procedure, art 25.
[6] Code of Civil Procedure, art 26.
[7] Code of Civil Procedure, art 42.
[8] Code of Civil Procedure, art 43.
[9] Code of Civil Procedure, art 122(1).
[10] Code of Civil Procedure, art 122(2).
[11] Code of Civil Procedure, art 123.
[12] Code of Civil Procedure, art 124.

abroad.[13]

In relation to the last category of persons, Article 134 of the CCP, related to service abroad, applies only in cases where the Hague Service Convention of 15 November 1965[14] or bilateral agreements on the service of summons and writs do not apply.

Ascertaining the Applicable Law

In determining the law applicable to a specific case, the judge will seek the forum closet to the elements of the case before him, and he should apply that forum's law. This may not be easy, especially where the case's connecting factors may tie it to several forums, thus leading to a conflict of applicable laws. When, *prima facie*, a case is only associated with the judge's forum, Greek law will be applied. In contrast, when the relevant elements are connected to more than one country, the Greek judge will apply the rules stipulated in Articles 4 to 33 of the Civil Code under the heading 'Private International Law' and identify the applicable law, which may be the law of a foreign country.

In fact, Greek courts are quite receptive to the application of foreign law and, in accordance with Article 337 of the CCP, take it into account *ex officio* and without proof. This does not preclude an order for or offer of proof in aid of discovering the foreign law's content. Furthermore, according to Article 559 of the CCP, for purposes of judicial review in cassation by the Supreme Court, an error as to foreign law is treated the same way as an error of domestic law.

Trial

Commencing the Action

A civil action (*agogi*) — regardless of its procedural classification as an action for performance *(katapsifistiki agogi*),[15] or an action for declaratory judgment *(anagnoristiki agogi*),[16] or an action for judicial modification of legal relationships (*diaplastiki agogi*)[17] — is commenced on the plaintiff's initiative by filing the relevant legal document, the complaint, and by serving the defendant a copy of the action.

The complaint must be filed with the clerk of the competent court,[18] who sets a date and time for the hearing of the case and registers it in the docket.

The defendant is served a copy of the action containing the place, date, and time set for the hearing.[19] When service is effected, proceedings are considered commenced and the litigation pending.[20]

Service must be made at least 60 days before the hearing.[21] If the defendant is domiciled abroad, service must be made at least 90 days before the hearing,[22] notwithstanding the provisions of the Brussels Convention.

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[13] Code of Civil Procedure, arts 131, 132, 133, and 134, respectively.
[14] The Convention on the Service Abroad of Judicial or Extrajudicial Documents in Civil or Commercial Matters.
[15] Code of Civil Procedure, art 69.
[16] Code of Civil Procedure, art 70.
[17] Code of Civil Procedure, art 71.
[18] A court that has subject matter, territorial, and functional competence.
[19] Code of Civil Procedure, art 215.
[20] Code of Civil Procedure, art 221.
[21] Code of Civil Procedure 228. In some proceedings, the judge may allow a shorter period of time for the service to take place.
[22] Code of Civil Procedure, art 228.

As the introductory legal document of the action, the complaint should mention:

- The court before which the case is brought and the elements in support of its competence;
- The full name and address of the litigants as well as of their proxies and, in case of legal entities, their title and the place of their seat;
- A complete account of the events on which the action is founded, that, according to law, justify its filing by the plaintiff against the defendant;
- The subject matter of the action, stated in a clear, precise, and succinct manner;
- A precise request for judicial relief, including the exact amount sought, if the claim is of a pecuniary nature; and
- The date and the signature of the plaintiff's advocate or of the plaintiff (in cases where the presence of an advocate is not compulsory).[23]

Effects of the Action

The commencement of proceedings is effected on the date the action is served on the defendant and has both procedural and substantive effects.

On the procedural level, the plaintiff cannot extend or modify his action in the future, unless he withdraws the pending document of action and files a new one.[24] Exceptionally, he can include claims accessory to the main subject matter and/or a substitute instead of his original claim, or seek a declaratory judgment instead of one for performance. The pending litigation *(lis pendens, ekremodikia*) prevents any other court from being seized and hearing the same action.[25]

On the substantive level, the service of the action on the defendant interrupts the running of the period of limitation (*paragrafi*), and interest accrues on all monetary claims on an action for performance.[26]

There are further procedural principles that are relevant to the scope of an action's trial: the court may not award the plaintiff anything not requested nor go beyond the request or claim submitted, nor does the court have authority to consider facts not submitted or proven by a party;[27] all further procedural steps rely on the initiative of the parties, while the court cannot, in principle, move on its own initiative;[28] and the court is deemed to know the law, even a foreign law (*jura novit curia*). If, however, the court is not familiar with the relevant provisions of the applicable foreign law, it can order the parties to submit evidence of that law or gather official sources of information (such as through the Institute of International and Foreign Law) or even unofficial sources of information to the same effect.[29]

The plaintiff is not allowed to modify the basis of his action. He may, however, complete, correct, and clarify it until the first hearing of the case (in practice, through written pleadings).

Conciliation Efforts

When the action is lodged before the Multi-Member Court of First Instance, an invitation for conciliation is addressed to the other party (or parties) by the claimant, setting the date for a conciliation meeting. The scheduled date for this meeting should fall between the fifth day after the action is served and the thirty-fifth day before the hearing date set by the court; the venue is usually the claimant's office or the bar.

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[23] Code of Civil Procedure, arts 118 and 216.
[24] Code of Civil Procedure, arts 223 and 224.
[25] Code of Civil Procedure, art 222.
[26] Code of Civil Procedure, art 221; Civil Code, arts 261 and 346.
[27] Code of Civil Procedure, art 106.
[28] Code of Civil Procedure, art 108.
[29] Code of Civil Procedure, art 337.

During the conciliation meeting, parties present with or represented by their lawyers examine the merits of their case, without being constrained by substantive law rules. Minutes of the meeting are signed and handed over to the court. If the parties reach a settlement, the court ratifies it in the form of a decision. If no settlement is reached, the court hears the case and issues its decision.

Not withstanding the conciliation procedure, the defendant, having lawfully been notified of the coming hearing, need not reply in writing before that date to the plaintiff's action and will most probably wait until the first hearing of the case in order to develop his factual and legal stance in his pleadings.

Hearings and Pleadings

The hearing of the action in open court begins with the reading of the names of the parties from the docket by the president of the Multi-Member Court or the judge of the Single-Member Court.

The advocates of the parties appear in court and present their oral pleadings, usually very briefly, making reference to their written pleadings.

Whenever appearing physically is not mandatory, the parties' advocates also are allowed, as a matter of convenience, to file in advance a written statement of appearance in lieu of oral pleadings, thus avoiding an appearance during the hearing.[30]

During the hearing, the clerk writes down the minutes, which are signed by himself and the president or the judge of the Single-Member Court and constitute a full proof of their contents.[31]

The court may adjourn the case once during the hearing if one of the parties requests an adjournment for a convincing reason.[32] The case also may be adjourned if the outcome of another trial, either civil or criminal, is a prerequisite for the outcome of the one under hearing.[33]

All means of attack and defense should be presented during the first hearing of the case, in each party's pleadings;[34] otherwise, they are rejected *ex officio*, with the exception of attacks and defenses that arise at a later stage and whose belated presentation is excusable.[35]

Reply

Each party must respond clearly and unambiguously, generally or specifically, to the contentions, allegations, and arguments of his opponent. If the truthfulness of an allegation has not been contested, it is within the discretion of the court, after evaluating all the arguments of the parties, to determine whether there is an admission or a denial of the allegation.[36]

At the risk of being declared inadmissible, the pleadings (*protaseis*) of the parties should be submitted to the bench no later than on the date of the hearing in case of proceedings taking place at the Single-Member Court of First Instance (ordinary and special proceedings) or at the Court of the Peace. Pleadings before the Multi-Member Court of First Instance should be filed at the Court's secretariat not later than 20 days before the hearing of the case.

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[30] Code of Civil Procedure, art 242.
[31] Code of Civil Procedure, arts 258 and 259.
[32] Code of Civil Procedure, art 239.
[33] Code of Civil Procedure, arts 249 and 250.
[34] Code of Civil Procedure, art 237.
[35] Code of Civil Procedure, art 269.
[36] Code of Civil Procedure, art 261.

In proceedings for the interim protection of assets, the judge appoints a day for the submission of the pleadings by the parties, which is usually the third day following the hearing date.

Types of Answers

At the first hearing of the case, the defendant will submit his answer regarding the admissibility of the complaint or his remarks on the merits. The omission of any of the required elements of the content of a complaint[37] renders the action inadmissible.

With respect to the merits of the action, the defendant may follow two lines of defense, either denying the factual background of the complaint (*arnissi*) or invoking additional facts that form the basis of a right that either impedes the formation of the claim invoked by the plaintiff's right or its exercise, or abrogates it (affirmative defense, *enstasis*).

The borderline between denials and affirmative defenses, although clearly drawn in theory, is not easily distinguishable in practice, as denials are most commonly followed by additional supporting facts, thus resembling affirmative defenses. The distinction, however, is crucial for the debate on the question of who bears the burden of proof of the respective allegations.

Amendments and Supplemental Pleadings

The parties have a final opportunity to reply to their opponents' allegations by submitting their supplemental pleadings by noon on the third day following the first hearing of the case, when the case is heard before the Single Member Court of First Instance and the Court of the Peace, and 15 days before the hearing date in cases presented before the Multi-Member Court of First Instance.

Joinder of Claims and Parties

Articles 74 and 76 of the CCP provide for two kinds of joinder of claims by several plaintiffs or defendants. Article 74 deals with the joinder of plaintiffs or defendants in cases where several persons share the right or duty in dispute or in cases where joined parties put forward or face claims based on similar causes of action (permissive joinder of claims, *apli omodikia*).

Article 76 deals with the joinder of plaintiffs or defendants in cases where several persons are required to bring or to defend a particular action or where no inconsistent judgments should be rendered among them (compulsory joinder of plaintiffs or defendants, *anagastiki omodikia*).

The permissive joinder provided for in Article 74 serves the task of diminishing the expenses of several proceedings by the respective parties and creates a loose bond among them, where each person in the joinder is acting independently of the others and his acts or omissions do not benefit or harm the rest of the group.[38]

In the compulsory joinder provided for in Article 76, several persons form a group in order to pursue their common interest or to defend their common obligation through a single complaint, while in the permissive joinder, several complaints are contained in one action. The law differentiates the two by stipulating that in a compulsory joinder the acts or omissions of each person have an impact on the others, thus requiring the presence of only one person or representative of the joinder for the trial to proceed.

Counterclaims

The defendant may oppose the plaintiff's complaint by filing a counter-complaint (counterclaim), thus

[37] Discussed in 'Commencing the Action', above.
[38] Code of Civil Procedure, art 75.

opening proceedings parallel to the main trial. A counter-complaint, which could be described as an offensive means of defense, is based on a denial or an affirmative defense and is accompanied by a claim against the plaintiff, requesting the rejection of the complaint.

According to Article 268 of the CCP, after the service of the complaint and before the date of the hearing of the case, the defendant may file a separate complaint at the secretariat of the court where the complaint was filed. The proper filing of the counter-complaint is dependent on its timely service eight days before the first hearing of the case. This remains a separate complaint, although the law allows for the submission of a counter-complaint with the pleading in response to the complaint, provided that both are served to the other party eight days before the first hearing.

Cross-Claims

The Civil Code stipulates that reciprocal claims between two persons will be extinguished by operation of set-off to the extent to which they cover each other.[39] Furthermore, in regard to a contentious claim, set-off can be relied on if the counterclaim can be established forthwith at any stage of the proceedings or in the course of enforcement.[40] The relevant contentions may be submitted by the defendant in his pleadings at the pending proceedings or in the course of separate proceedings opened by a counter-complaint.

Third-Party Claims

Very often, third parties, although not litigants in pending proceedings, are individually affected by the case's outcome. In order for these parties to participate in the ongoing proceedings, or at least to have an opportunity to question the judgment rendered, the CCP permits their intervention (*paremvasi*) on their own motion or on an impleader (*prosepiklisi*) by the interested party and regulates the appeal of the rendered judgment. The intervention of a third party is regulated in Articles 79 to 85 of the CCP.

Pursuant to the Articles 79 to 85 of the CCP, the intervention of a third party may take two forms.

First, the third-party intervention may be exercised when the party who is external to the proceedings has a direct legal interest in the success of one of the litigants. In this case, the CCP refers to an 'additional intervention' (*prostheti paremvasi*), which may take place at any stage of the proceedings until the issuance of judgment by the Supreme Court of Civil and Criminal Judicature (*Areios Pagos*).

Second, the third-party intervention may be the act of a person who claims for himself, wholly or partially, the subject matter of the dispute. In this case, the CCP refers to a 'main intervention' (*kyria paremvasi*), which may take place at any stage of the proceedings before the first-instance court or the appellate court (*efetio*).

The difference between the two forms of intervention may be further explained. If the trial in civil courts is a tripartite affair involving the plaintiff, the defendant, and the judge, then in the permissive form of intervention, the tripartite nature of the trial is not altered; the intervening party is subsidiary to either the plaintiff or the defendant. On the other hand, intervention under Article 80 of the CCP enlarges the subjective limits of the trial, thus rendering it multi-party affair; the intervening person is a new party, his interest being independent of that of the primary litigants.[41]

A third party may intervene on a litigant's impleader or on his own motion. Again, a litigant's impleader may take the form of a forced impleader or that of an announcement (*anakinosi dikis*).

The term 'forced impleader', in this text is used to describe the relevant written pleading of the litigant

[39] Civil Code, art 440.
[40] Civil Code, art 442.
[41] C. Beis, *Civil Procedure* (Athens, Sakoulas, 1985).

that, according to the CCP, has the minimum contents required for a complaint (action), which is filed at the court's secretariat and notified to the person who is to intervene. The law provides for three instances where a forced impleader may be employed: first, when the notifying person is a party to a compulsory joinder;[42] second, when the defendant in the main proceedings is in possession of the chattel or the immovable asset that is the subject matter of the dispute or when he holds the relevant right in the name of someone else;[43] and third, when the notified party is liable for any debt, money, goods, or chattels in respect of which he is or expects to be sued by any of the parties to the main proceedings. The notified person in this case is free to intervene in the main proceedings; however, if defeated, he will be bound by the rendered judgment, which may be enforced against him as well.

In contrast, the announcement of the pending proceedings to a third person, although similar in nature to the forced impleader, does not have the same consequences: it does not create the obligation for the court to issue a separate decision (whereas the court has such an obligation in the case of a forced impleader), and the notified person will not be directly bound by the rendered judgment, but only to the degree that he will not be able to file an appeal as a third person individually and directly concerned by it.

Appeal by a Third Person

Articles 586 *et seq* of the CCP regulate the submission of an appeal by a third person (*tritanakopi*) that is personally affected by a judgment rendered by the court and that did not have the opportunity to participate in the proceedings for a revision of the judgment.

This special appeal is filed at the court that rendered the decision or at the higher court where proceedings for its appeal are pending.

Evidence

Nature and Purpose of Evidence

Each party must prove the facts it invokes and that are necessary for the support of his claim or counterclaim and for the rejection of those of his opponent. The controversial facts constitute the matters of evidence (*apodeixi*) that the court must establish.

Unless otherwise expressly provided for by the law, the court evaluates the evidence at its absolute discretion. The judgment should always mention the reasons that led the judge to his decision.[44]

In specific cases expressly provided for by law, the court may not attain full conviction through evidence, but may be satisfied enough with the evidence to form an opinion only with probability. In these cases, the judge may take into consideration any kind of evidence that he deems appropriate.[45]

In cases before the courts of first instance, the parties must produce all their means of proof until the first hearing.[46]

Only the facts relevant to the outcome of the trial and contested by one party are subject to proof.[47] Facts that are so widely and commonly known that there can be no reasonable doubt of their truth (such as historical events or geographical information) and proven facts known to the court from other cases may not be the subject matter of proof. The same rule applies to teachings of common

[42] Code of Civil Procedure, art 86.
[43] Code of Civil Procedure, art 87.
[44] Code of Civil Procedure, art 340.
[45] Code of Civil Procedure, art 347.
[46] Code of Civil Procedure, art 270.
[47] Code of Civil Procedure, art 335.

experience.[48]

Kinds of Evidence

Pursuant to Article 339 of the CCP, there are seven means of proof: confession (*omologia*),[49] autopsy,[50] an expert's report (*pragmatognomosini*),[51] documents (*engrafa*),[52] examination of parties (*exetasi ton diadikon*),[53] witness testimony (*martyres*),[54] and juridical presumptions (*dikastika tekmiria*).[55]

In practice, witnesses and documents are the most widely used means of proof invoked before Greek courts. Written proof is preferable and, in many cases, necessary. Testimony is admitted as an affirmative defense, though a rather broad one, if the possession of documentary evidence is morally problematic (eg, in transactions between spouses) or practically impossible, or when the originals of existing document are proven to be lost or destroyed, or in most commercial transactions, or in all transactions where the value does not exceed the sum of €5,900.[56]

The law distinguishes between documents created by public servants and other specially authorized officials (including public notaries) during the exercise of their competencies (*dimosia engrafa*) and instruments drawn privately (*idiotika engrafa*).

Public documents constitute conclusive proof and may be contested only in case of suspected falsification (*plastografia*). Instruments drawn by foreign public authorities have the same evidentiary value. Documents drawn in a foreign language must be accompanied by an official translation into Greek.

Privately drawn instruments have a lesser probative effect, as the facts they contain are considered as established by the party producing the instrument. A challenge for falsification is always possible.

For the purposes of civil procedure, professional books and records kept by merchants, advocates, notaries, physicians, and chemists, as well as photographs, films, recordings, and any mechanical reproduction in general are considered to be privately drawn documents. Mechanical recordings such as photographs and tapes can only be produced and invoked if taken with the consent of the person against whom they are going to be used, unless the recorded event took place in public.

Copies and photocopies of documents, provided they are authenticated by duly authorized persons, may be used as evidence, with certain exceptions.

Obtaining Information Prior to Trial

Pursuant to Article 348 of the CCP, on the application of either party, the court may order the taking of evidence prior to the commencement of the trial in three circumstances:

First, the court may order the taking of evidence before trial in cases where there is imminent danger of loss or destruction of a means of proof. For example, in cases where witness testimony is deemed to be necessary for the outcome of the litigation, the court may order the examination of the witness prior to trial if the attendance of the witness at the hearing is impossible for some compelling reason (such

[48] Code of Civil Procedure, art 336.
[49] Code of Civil Procedure, arts 352–354.
[50] Code of Civil Procedure, arts 355–267.
[51] Code of Civil Procedure, arts 368–392.
[52] Code of Civil Procedure, arts 432–465.
[53] Code of Civil Procedure, arts 415–420.
[54] Code of Civil Procedure, arts 393–414.
[55] Code of Civil Procedure, art 395.
[56] Code of Civil Procedure, arts 393 and 394.

as absence or illness).

Second, the court may order the taking of evidence before trial when it is deemed necessary that an object should be examined in its present state. For example, in an action arising out of the breach of a sales contract due to the deterioration of goods, the court, in order to assess the damage, may order the examination of the deteriorated goods prior to trial when the goods in question need to be examined in their present state.

Finally, the court may order the taking of evidence before trial when the parties so agree.

This exceptional procedure of taking evidence facilitates the collection of evidence especially in those cases where the controversial facts would otherwise be difficult to establish.

The application for provisional measures for the taking of evidence should first be submitted to the court which is competent to deal with the dispute in question. However, when the 'danger' is obvious, the application may be brought before any court which is deemed appropriate to decide on it immediately. The application should clearly stipulate the facts to be proved, the means of proof to be used, and the reason justifying the taking of evidence prior to trial.

As a rule, it is left to the discretion of the court to decide on the application and to order provisional measures for the taking of evidence. This may only be done if the requirements set forth by law[57] are satisfied. Thus, the taking of evidence prior to trial is ordered by a formal decision of the court, containing the subject matter of the evidence, the allowed means of proof, and the place and time of evidence taking. If hearsay evidence is to be taken pursuant to this procedure, it should be confined solely to those facts specifically mentioned by the party in his application.

Evidence taken before trial will be used at the hearing of the case and evaluated by the court in any way it deems proper.

Interim Protection of Assets Pending Trial

Generally speaking, the remedy sought by the plaintiff in an action brought before a civil court is a final judgment against the defendant, ordering the compensation or the relief claimed by the plaintiff. Greek law does, however, provide a range of provisional remedies (*asfalistika metra*), which have come to enjoy increasing practical importance in Greece. In terms of practical significance, provisional remedies protect the plaintiff's substantive right against the defendant until the case is decided on its merits.

Cases Where Interim Measures Apply

Under Article 682 of the CCP, the court may, on an application by either party, grant provisional relief for every claim under the condition of an urgent need or in order to evade an imminent danger. Provisional remedies are generally available if two requirements are met: the case is urgent and an underlying substantive right for seeking provisional protection exists.

As a rule, provisional relief may be granted for all kinds of substantive rights, property matters, and contract or tort cases. Thus, in an action for damages, the court may order the provisional attachment of the debtor's property in order to secure the future enforcement of an eventually affirmative judgment. Similarly, in cases of unfair competition, the affected party may obtain an order against his competitor to block the distribution of the product in question in the market.

Whether provisional relief should be granted is a matter for the court's discretion. The governing principle is that the court should first establish that both the requirements for provisional remedies as

[57] Code of Civil Procedure, arts 348 and 349.

set out by law are met. Both requirements need only be shown as probable.

Jurisdiction

The court, in the exercise of its civil jurisdiction, may order provisional remedies either before the principal action is brought or during the pendency of any action before it.

Generally, provisional remedies are administered by the Single-Member Court of First Instance. However, according to the rules of subject matter jurisdiction, should the principal action be brought before the Court of the Peace, the provisional remedies are ordered by that court. In exceptional cases, where the principal action is pending before the Multi-Member Court of First Instance, provisional remedies are administered by that court.

Proceedings

The action claiming provisional relief should be commenced by an application filed with the secretariat of the competent court and follows the ordinary course to judgment. Before the Court of the Peace, the application also can be filed orally before the secretary of the court. Finally, in cases where provisional relief is sought during the pendency of the trial, the application can be filed before the court together with any pleadings.

The application should contain an unambiguous specification of the provisional relief requested, the existence of the underlying substantive right requiring provisional protection, and the existence of an imminent danger or an urgent case giving rise to the need for commencement of provisional relief proceedings. Failure to allege sufficient facts to support the claim will lead to dismissal of the application.

On the plaintiff's initiative, the defendant will then be served at his home or place of business with a copy of the application, which also will contain the date and time fixed for the hearing. Service must be made a certain number of days before the first hearing, as the judge may order. In very urgent cases, provisional remedies may even be granted *ex parte*.[58]

Much of the value of the provisional remedies, and the whole of their interest from the procedural viewpoint, is that they protect the plaintiff's substantive rights against the defendant until the case has been finally decided by the judgment in the action. Thus, Article 691(2) of the CCP empowers the judge to immediately issue a provisional order on the filing of the application, which should remain in force until the decision of the court on the provisional relief is rendered.

The taking of evidence should always take place at the first hearing on the motion for provisional relief. In addition, the court may, on its own initiative, collect all the evidence required to establish its decision. The factual allegations of the parties need only be assumed as substantiated *prima facie*. The decision of the court is usually rendered within a couple of weeks after the hearing.

As will be discussed later in this subsection, the decision has a provisional effect and does not affect the court's final judgment on the principal action.

The decision rendered specifies the provisional remedy to be enforced as well as the substantive right seeking provisional protection. Whether the court should grant the kind of provisional relief requested by the plaintiff is a matter for its discretion, the governing principle being that the court has the discretionary power to order the kind of provisional relief that it thinks would be an adequate remedy for the plaintiff. In any case, the relief granted should not be excessively burdensome for the defendant.

[58] Code of Civil Procedure, art 687(1).

Notably, the scope of provisional remedies is solely confined to the provisional protection of the plaintiff's right and not to the satisfaction of it.

Pursuant to Article 693 of the CCP, the granting of a provisional remedy may be combined with an order specifying a time limit of up to 30 days, within which the plaintiff should bring the principal action before the competent court. In case of non-compliance, the provisional remedy expires as of right.

Normally, decisions ordering provisional remedies or dismissing the application for them are not appealable. However, on application of the party who has not been duly summoned to the hearing, the court may revoke or modify the decision rendered.

Moreover, the court before which the main litigation is pending always has the power to modify or revoke the provisional remedy that has been ordered. Revocation becomes mandatory whenever the judgment on the principal action becomes *res judicata*.[59]

If the plaintiff's principal action fails, he is obliged by law to pay reasonable compensation to the defendant for the expenses or damages incurred through the execution of the decision which ordered the provisional remedy, provided that the plaintiff knew that his claim was groundless.

The decision ordering a provisional remedy is enforced in accordance with the enforcement proceedings set out below. In Greece, provisional relief has increasingly been enjoying practical importance. The rather slow progression of ordinary proceedings adds to the attraction of provisional remedies and makes recourse to them highly desirable.

Kinds of Provisional Remedies

Provisional protection is now provided for in the form of the following kinds of provisional remedies: guarantee (*egyodosia*); registration of a mortgage foreclosure (*prossimiossi hypothikis*); provisional attachment (*sintiritiki kataschessi*); sequestration (*dikastiki messegiisi*); provisional enforcement of a claim (*prosorini epidikasi apaitiseon*); provisional preservation of the situation (*prosorini rythmissi katastasis*); and sealing, unsealing, and inventory.

Guarantee

Pursuant to Article 704 of the CCP, the court may, in order to secure a monetary claim or any other substantive right, order the defendant to pay the plaintiff a sum of money in satisfaction of a guarantee. For example, the victim of a traffic accident may obtain an order against the tortfeasor for part of the damages suffered in an accident.

Registration of a Mortgage Foreclosure

Without prejudice to the provisions of the Civil Code, the court may order the registration of a mortgage foreclosure in order to secure a real property claim. The decision should specify the amount of the mortgage debts.

Provisional Attachment

Any claim for the payment of a debt may be secured by an order for provisional attachment. On application, the court may order the provisional attachment of any movable or immovable property or any other property rights of the debtor, whether in his possession or in the possession of a third party. The court's decision ordering the provisional attachment of any movable or immovable assets should specify the amount due from the debtor.

[59] Code of Civil Procedure, art 698(1).

As a rule, provisional attachment and garnishment are enforced in accordance with the rules applicable to enforcement proceedings, with a few deviations. The proceedings start with the notification of a copy of the enforceable order of attachment to the debtor. An exception to this rule is provided for by Article 711 of the CCP, which does not require a notification of the order for the provisional attachment of chattels.

In case of an affirmative final judgment, the provisional attachment or garnishment leads to a public auction of the distrained property and, in the meantime, suspends the debtor's or third party's power of disposal.

Sequestration

Real property litigation may support a grant of relief consisting in the sequestration of any movable or immovable property of the defendant. Thus, on the application of the plaintiff, the court may order the sequestration of the land or the disputed movable property of the defendant.

The decision should specify the property to be sequestrated and direct a receiver to be appointed. The court may appoint the plaintiff, the debtor, or a third party as receiver. Finally, the court has the discretionary power to replace the receiver on an application by either party.

Provisional Enforcement of a Claim

The court may order the provisional enforcement of a claim, provided that the plaintiff brings the principal action before the competent court within 30 days from the date on which the decision is rendered.

Claims eligible for provisional enforcement include claims for damages or compensation, claims for remuneration, and maintenance claims. For example, the victim of a car accident may obtain an order against the tortfeasor for part of the damages. However, the amount of money which the defendant is ordered to pay should not exceed half of the amount claimed by the plaintiff.

Provisional Preservation of the Situation

Real property litigation between neighbors may equally support a grant of relief consisting in the provisional preservation of the current situation. Provisional preservation of the situation also may be ordered by the court in disputes concerning relationships between parents and children.

Sealing, Unsealing, and Inventory

The court may, on application of either party, order the sealing, the unsealing, or the placing in inventory of the disputed property.

Special Proceedings

The CCP sets out the functions of special proceedings (*eidikes diadikasies*) along with those of ordinary civil proceedings. The latter are distinguished from the former essentially through a simpler and speedier procedure, accompanied by wider powers of the court.

Much of the value of special proceedings, and the whole of their interest from the procedural viewpoint, lies in the fact that the slow progression and the exaggerated formalities of ordinary civil procedure are considerably reduced. Accordingly, Parliament has expanded the scope of their application by increasingly assigning to them additional kinds of disputes.

Groups of Special Proceedings

Special proceedings are now provided for with respect to those kinds of disputes which are more frequently encountered in everyday life: matrimonial cases (divorce or annulment of marriage); relationships between parents and children; orders to pay debts on the basis of documentary evidence; disputes concerning negotiable instruments; tenancy disputes and disputes between property owners and building administrators; labor cases; disputes related to the performance of independent services; car accidents; maintenance and custody cases; and disputes related to the infringement of rights through mass media.

Common Procedural Features

Most of the rules applicable to special proceedings introduce common procedural features connecting all categories of special groups.

Thus, with regard to matrimonial cases and parent-child disputes, the most important deviation from the general principles of the civil procedure is provided for by Article 599 of the CCP, which stipulates that the parties may formulate their pleadings and produce all their means of proof until the hearing of the case.

Articles 611 to 613 of the CCP assign wider powers to the court, which include a wider demarcation of international jurisdiction and a broader *res judicata* effect that operates globally and not only against the parties to the action. They also remove availability of the party oath and demote statutory confessions to the position of non-conclusive means of proof. Finally, Article 607 of the CCP provides for the public prosecutor's potential participation in the trial as a party.

Labor cases should be regarded as the prototype special proceedings. They share two common procedural features: the parties may assume their defense themselves, as the law does not require them to be represented by advocates; and standing to sue is granted not only to the interested parties, but also to professional chambers and trade unions.

As far as evidence is concerned, Article 671 of the CCP grants an exception to the general rule by providing that the court may take into account 'means of proof not complying with the terms of law'. Thus, unsigned private documents or depositions of biased witnesses also may be considered.

Furthermore, the parties may formulate their pleadings and produce all their means of proof until the hearing of the case. Defaulting parties should be regarded as fictionally or tacitly present, and the court is compelled to examine the merits of the case as if the parties were present.

In disputes between landlords and tenants, apart from the specified rules which are applicable here as well, there are two more notable procedural peculiarities: service of the application should be made to the defendant not more than 15 days and not less than eight days before the first hearing; and the time for reopening of defaults is eight days and the time for appeal, reopening of contested judgments, and cassation is 15 days.

The beginning of these exceptional terms is calculated in accordance with generally applicable principles.[60]

Along with the legal peculiarity of special proceedings, particular rules apply to the collection of claims not exceeding the amount of €1,500. Here, although the procedure deviates from the standard, this group of claims is not listed under the heading of special proceedings, as a minor degree of deviation occurs.

Non-Contentious Proceedings

[60] Discussed in Post-Trial Motions, below.

Along with the adjudication of disputes (*iurisdictio contentiosa*), the Greek civil courts also are statutorily assigned with the regulation of the so-called 'affairs of voluntary jurisdiction' (*iurisdictio voluntaria*). The distinction between contentious and non-contentious matters (*ekoussia dikaiodosia*) is based in the nature of the subject matter of jurisdiction. Accordingly, non-contentious matters do not refer to relationships and violation of rights between persons, but to the individual's legal situation.

Practically, there are no actual parties, but only the person introducing the request. Functionally, therefore, *iurisdictio voluntaria* has a closer resemblance to public administration than to proper civil justice.

According to the CCP, voluntary jurisdiction involves matters such as granting, retracting, annulling, revoking, or amending a certificate of inheritance; 'publication' of a will or pronouncing the interdiction and guardianship or judicial supervision of persons; adoption; authorizing the alienation of a thing pledged; declaring a lost negotiable instrument as void; declaring a person whose death is strongly probable as an absentee or revoking such a declaration; judicial supervision; and bankruptcy.

A number of procedural characteristics emerge in non-contentious proceedings. As a rule, the subject matter competence belongs to the Single-Member Court of First Instance, although in exceptional cases such as bankruptcy and adoption, the competent court is the Multi-Member Court of First Instance. Furthermore, in non-contentious proceedings, a copy of the request is served on the public prosecutor or on such third parties as the judge may order.

In contrast with ordinary civil proceedings, the person introducing the request in voluntary jurisdiction matters (the applicant) may submit any factual allegations and plead additional facts until the last hearing of the case. Default by the applicant requires the court to cancel the hearing of the case, even if a third party that has been duly summoned is present. On the other hand, default by a third party requires the court to examine the merits of the case.

Final judgments are subject to revocation or modification on presentation of new facts. An appeal or request for reopening the case by interested parties and cassation also are available in non-contentious proceedings, but the suspensive effect of a regular appeal does not accompany this method of attack *de lege*. The right to appeal the judgment also is given to persons who, although having participated in the proceedings, are not aggrieved by the court's decision. In non-contentious proceedings, the court exercises quasi-inquisitional powers in order to establish the relevant facts of the case.

Judgment and Kinds of Relief

Drafting and Contents of Judgments

The judgment is drawn up by the trial judge within three to eight months after the conclusion of the hearing. In Multi-Member Court of First Instance and Court of Appeal proceedings, the president or the presiding judge of the judicial panel appoints one of its members to be the rapporteur of the opinion. After the rapporteur has orally developed his opinion on the merits of the case in closed deliberations among the members of the panel, the judges vote in the reverse order of seniority. After judgment has been given and drawn up, the clerk of the court enters the index number and the date on which the judgment is rendered in the books kept for this purpose.

The prescribed form for judicial decisions must be followed in the drawing up of the judgment. Thus, the text of the judgment opens by mentioning the composition of the judicial panel and the name of the judge who drafted the opinion. It indicates the parties and the statement of claim and then states the fully reasoned opinion of the panel on the merits of the case. The operative part of the decision comes at the end.

Finally, the judgment contains directions as to costs of the proceedings, if they are claimed by the

plaintiff. Without prejudice to the relevant provisions of the CCP, the general rule, as in most continental systems, is that the costs of the successful party should be borne by the unsuccessful one; nevertheless, the court has the discretion to excuse part or the whole of costs if it deems that the unsuccessful party had reasonable doubts as to the outcome of the trial.

Kinds of Relief

The judgment may only give the plaintiff what he is seeking in a fairly specific way. Two points about the operative part of judgments require special mention. First, when the judgment is for a sum of money, damages must be assessed or accounts or inquiries made before it is known precisely what is due from one party to the other. Second, if the judgment requires the defendant to do or avoid doing an act, it should specify the act and usually specify the time within which the act is to be done or avoided. Additionally, the judgment usually imposes a fine on the defendant in case of non-compliance with the order of the judicial decision.

Kinds of Judgments

Greek civil procedure distinguishes between final (*oristiki*), non-appealable (*telesidiki*), and irrevocable (*ametakliti*) judgments; this distinction is closely connected with the function and distinctions of the methods of appeal. The functional consequences of this distinction lie in the effect of *res judicata* and the enforceability of judgments.[61]

A civil judgment is not automatically binding and enforceable. When the law refers to final judgments, it means the decisions rendered either by the Court of the Peace or the courts of first instance after the hearing of cases subject to the ordinary methods of appeal (ie, reopening of default and regular appeal).

As a rule, unless the court orders the provisional enforcement of the judgment, a final judgment is not automatically enforceable and genuinely binding on the parties as long as one or other ordinary methods of appeal remain pending. Provisional enforcement of the judgment is pronounced by the court, upon the special request of the plaintiff in the first suit, in certain groups of cases statutorily provided for by the law. *Res judicata* does not accrue to a final judgment unless it becomes non-appealable.

A non-appealable judgment is one which is no longer subject to ordinary means of attack, because the ordinary means of appeal have been exhausted either through denial of the appeal or because of failure to apply for appeal within the time limitation provided by the law. Accordingly, such a judgment is automatically enforceable against the parties.

A non-appealable judgment becomes irrevocable when it is no longer subject to cassation (*aneressi*) — that is, an extraordinary means of attack before the Supreme Court of Civil and Criminal Judicature.

Conclusiveness of Judgment

Res judicata (*dedikassmeno*) accrues only to non-appealable and irrevocable judgments. The general doctrine followed by the CCP is that the *res judicata* effect is limited to the claim and issues determined in the first suit and the parties involved at the trial.

More concretely, the *res judicata* effect between the same parties produces a preclusion with respect to both the claim involved and the procedural questions determined in the first suit. Claim preclusion requires a judgment on the merits and is restricted to the same cause of action, both in factual and legal terms. Therefore, if the plaintiff, after having lost the first suit, brings an action against the defendant

[61] Also discussed in ‘Enforcement Proceedings’, below.

with a new complaint based on different factual or legal allegations, no plea of a *res judicata* effect can be entertained.

The *res judicata* effect also produces a preclusion with regard to the issues determined during the proceedings, insofar as they fall within the subject matter competence of the court and their determination was necessary for the outcome of the litigation.

With respect to the parties' preclusion, the *res judicata* effect is extended only to the parties to the action and their heirs or other successors. However, substantive relationships justify a broader conclusive effect of judgment, which is depicted in specific rules. Accordingly, in real property litigation, the *res judicata* effect is extended to non-parties holding the thing in dispute in their possession or custody.[62] Judgment for or against a legal person (eg, a company) also is binding on its members (such as partners and shareholders).[63]

Furthermore, a judgment on the settlement of a dispute between a creditor and the principal debtor regarding the existence of a debt also is conclusive for the guarantor.[64] Finally, judgments in matters of succession where, for example, the administrator of a vacant succession, the liquidator of an estate, or the executor of a will is a party, become *res judicata* also with respect to the heirs.[65]

As far as the time limits of *res judicata* are concerned, Greek rules adhere to the principle that even if reality turns out to be different from predictions, *res judicata* remains undisturbed. However, Article 334 of the CCP grants an exemption to this rule: in cases of periodic performances, it allows the court to modify the previous conclusive judgment in the future, in terms of the price index.

Post-Trial Motions

Functions of an Appeal

The law does not leave the exercise of the right to appeal to the sole discretion of the judge. All methods of appeal are specifically provided by the CCP and constitute the only ways of reviewing a judgment.

Greek civil procedure distinguishes between ordinary and extraordinary methods of appeal. The ordinary methods of attack (reopening of default and appeal) lead to a review of the judgment on both the facts and the law of the case in question, while the extraordinary methods of attack (cassation and reopening of contested judgments) lead to a review of the judgment on the law only.

This distinction is closely connected with the effect of *res judicata* and the enforceability of judgments. The *res judicata* effect and the enforceability of judgments come into play only after the ordinary methods of appeal have been exhausted. In contrast, the extraordinary methods of appeal do not suspend the *res judicata* effect or the enforcement of a judgment.

Reopening of Default

Article 501 of the CCP provides that if a party has not been duly summoned or has not been summoned at all or did not attend the hearing of the case because of *force majeure*, he may demand the reopening of the decision.

The reopening of a default (*anakopi erimodikias*) decision is initiated by filing an application with the clerk of the court that rendered the default judgment, within 15 days from the date of service of the

[62] Code of Civil Procedure, art 325(3).
[63] Code of Civil Procedure, art 329.
[64] Code of Civil Procedure, art 328.
[65] Code of Civil Procedure, arts 326 and 327.

default judgment if the defaulting party is domiciled in Greece. If he is domiciled abroad or if his domicile is unknown, the application should be filed within 60 days from the date that the summary of the default judgment is published in two daily newspapers, one in the Athens area and the other in the district of the court that rendered the attacked judgment.[66]

The reopening of a default decision is premised on the right of the defaulting party to be heard in court and does not produce a suspensive effect. However, a request for reopening of a default decision results in a stay of the execution of the default judgment until the decision of the court is rendered.[67]

Appeal

As a rule, an appeal (*ephesi*) may be taken from final judgments rendered by the courts of first instance (ie, the Court of the Peace, the Single-Member Court of First Instance, or the Multi-Member Court of First Instance) and leads to the review of the judgment on the law and on the facts.[68] A request for appeal suspends the *res judicata* effect and results in a stay of the execution of the challenged judgment until the decision of the appellate court is issued.[69]

The Greek Code of Civil Procedure does not enumerate the grounds for appeal, as it does for cassation and reopening of contested judgments; however, the grounds for appeal may refer to questions of fact, to questions of substantive or procedural law, and to the evaluation of the submitted evidence or to the procedural faults of the court.

Articles 516 to 518 of the CCP provide that anyone who was a party to the action, as well as successors and assignees of the parties, may appeal the judgment rendered by the court within 30 days from the date of service of the judgment attacked if the appellant is domiciled in Greece, or within 60 days if he is domiciled abroad or if his domicile is unknown. If the judgment is not served, appeal should be filed within three years from the issuance of the judgment.[70] The application for an appeal should be filed with the clerk of the court that issued the challenged decision and should specify the grounds for the appeal.

According to the provisions of the CCP, the appellate court has potentially the same powers as the trial court that issued the challenged decision. Consequently, if the appeal is granted, the appellate court retains the case and re-examines its merits. If, on the other hand, the court which rendered the challenged decision has not examined the merits of the case, the appellate court may, at its discretion, either decide the case on its merits or remit it to the trial court.[71]

However, the appellate court cannot decide issues beyond those which the appellant has appealed. Similarly, the appellate court cannot admit, except on special grounds, new claims and further evidence which have not been submitted during the proceedings before the first-instance court that issued the challenged decision.[72]

A cross-appeal is allowed to the appellee, but it should be confined to the challenged parts of the judgment or to those parts necessarily related to them.[73]

Cassation

The main extraordinary means of contesting a judgment is cassation (*anairesi*). It consists of a request

[66] Code of Civil Procedure, art 503.
[67] Code of Civil Procedure, art 504.
[68] Code of Civil Procedure, arts 511–513.
[69] Code of Civil Procedure, art 521.
[70] Code of Civil Procedure, art 518(2).
[71] Code of Civil Procedure, art 535.
[72] Code of Civil Procedure, art 525.
[73] Code of Civil Procedure, art 523.

to the Supreme Court of Civil and Criminal Judicature for the review of a judgment only on the basis of the law. Although precedent is not formally binding in Greek law, the impact of the jurisprudence of the Supreme Court is obviously considerable. A request for cassation may attack a judgment of a Court of the Peace, a judgment of a Single-Member or Multi-Member Court of First Instance, or, more frequently, a judgment of a Court of Appeal,[74] provided that such judgment is not susceptible to either reopening of default or regular appeal.[75]

A request for cassation does not suspend the *res judicata* effect of the challenged judgment and there is no stay of its execution. Nevertheless, the Supreme Court may, on request of one of the parties, suspend its execution until the issuance of its own judgment if the execution could result in damage which would be difficult to repair.[76]

The grounds for review in cassation are strictly enumerated by law,[77] and are limited to avoiding the violation of either a provision of substantive law (including foreign or international law), such as improper interpretation of a provision, or violation of certain specified procedural rules pertaining mainly to the rules on evidence and their evaluation.

The evaluation of facts by the lower court and, in particular, of the contents of documents cannot be reviewed by the Supreme Court.[78] However, the demarcation between questions of law and fact is not always self-evident and subtle problems of interpretation sometimes emerge.

An application for cassation should be filed with the clerk of the court that issued the challenged judgment, within 30 days from its service if the requesting party is domiciled in Greece or within 90 days if he is domiciled abroad or if his domicile is unknown. If the judgment is not served, cassation should be filed within three years from the issuance of the judgment.[79]

If the cassation is admitted, the challenged judgment is quashed and the parties are returned to their previous positions.[80]

Reopening of Contested Judgment

An appeal for reopening of contested judgments (*anapsilaphisi*) may be taken from judgments rendered by the first-instance courts, the Court of Appeal, and the Supreme Court, regardless of the availability of a cassation to the Supreme Court.[81] The grounds for the reopening of contested judgments are strictly enumerated by law[82] and are limited to purely procedural deficiencies.

Contested judgments may be reopened by reason of the party's request in cases of the existence of inconsistent judgments; an improper method of service of process; a party's improper representation; or the absence of a power of attorney.

A request for the reopening of a contested judgment also may be filed in cases in which documentary evidence has been discovered after trial or the challenged judgment has been based on a judicial decision which has been irrevocably vacated.

A request for the reopening of contested judgments does not suspend the *res judicata* effect of the challenged judgment, and there is no stay of its execution.

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[74] Code of Civil Procedure, art 552.
[75] Code of Civil Procedure, art 553(1).
[76] Code of Civil Procedure, art 565(2).
[77] Code of Civil Procedure, arts 559 and 560.
[78] Code of Civil Procedure, art 561(1).
[79] Code of Civil Procedure, art 564.
[80] Code of Civil Procedure, art 579.
[81] Code of Civil Procedure, art 538.
[82] Code of Civil Procedure, art 544.

Enforcement Proceedings

Enforcement proceedings are of particular significance for the claimant who entrusts the satisfaction of his rights to the legal system. Enforcement proceedings also are of a highly technical nature and are linked to a desire for speed and efficiency.

Kinds of Enforcement Proceedings

For systematic purposes, the CCP divides enforcement proceedings into two main parts: rules common to all enforcement proceedings and rules applicable to several specific enforcement proceedings.

Rules common to all enforcement proceedings comprise an exhaustive list of the instruments that, according to law, are enforceable by execution (*ektelesti titli*) and that constitute the foundation of enforcement proceedings. These are non-appealable judgments of Greek courts and judgments that have been declared provisionally enforceable, as well as acts of the court and orders for payment issued by a judge, arbitral awards, notarial documents, foreign instruments of execution that have been declared enforceable under Greek law,[83] and orders and acts that are deemed enforceable by law,[84] such as notices for payment that the Social Security Foundation issues.

Process of Enforcement

Enforcement proceedings begin with a formal notice from the creditor to the debtor to satisfy his claim. This notice (*epitagi*) is placed at the bottom of a certified copy of the enforceable instrument (writ of execution, *ektelesto apografo*).

On being notified, the debtor is granted a three-day period to voluntarily perform his obligation. After the expiry of this period and within one calendar year from the debtor being notified, the creditor may attempt the satisfaction of his claim through the enforcement of the writ of execution. The execution is performed by an authorized server, who may seek the assistance of the competent peacekeeping authority when he deems this necessary.

Any disputes arising as to the validity of the writ of execution, the enforceability of the claim, or the observance of the rules of the execution proceedings are resolved by the Single-Member Court of First Instance of the place where the enforcement takes place, on an appropriate motion by the debtor.

The CCP's provisions on specific enforcement proceedings regulate the enforcement of several claims, providing the means for their execution according to the nature of each claim. A distinction may be drawn between direct specific performance and enforcement to satisfy a monetary claim.

Direct specific performance is provided in relation to claims for the duty to transfer the ownership of any movable or immovable asset; the transfer of securities, ships, or airplanes; and for the duty of a person to perform or not to perform or not to oppose an act.

Enforcement to satisfy a monetary claim is based either on the attachment and auction of movable or immovable assets of the debtor or on two other means of execution of a monetary claim: the debtor's imprisonment for a period of up to one year (which, after the ratification of the International Covenant on Civil and Political Rights by Law 2462/1997, may only be imposed for merchants' debts arising from unlawful acts) and/or the compulsory administration of the debtor's immovables or business by a court-appointed administrator.

The CCP does not regulate issues relating to bankruptcy or liquidation. These fall within the area of

[83] The enforcement of foreign judgments in Greece is discussed in the following subsection.
[84] Code of Civil Procedure, art 904.

bankruptcy law, which is included in the Commercial Code.

Enforcement of Foreign Judgments in Greece

In General

Greece is a party to several treaties on the enforcement of judgments, most notably Regulation (EC) No. 44/2001 (replacing the multilateral Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil or Commercial Matters).[85]

Greece also is a party to bilateral conventions with Albania, Armenia, Austria, Bulgaria, China, Croatia, Cyprus, the Czech Republic, Georgia, Germany, Hungary, Lebanon, Poland, Romania, Russia, Serbia, Slovakia, Syria, Switzerland, Tunisia, Ukraine, and the United Kingdom.

When there is no specific treaty provision, enforcement of foreign judgments in Greece is governed by the CCP.[86] Two provisions of the CCP are particularly important: Article 323 (finality of foreign judgments) and Article 905 (enforcement of foreign deeds).

Substantive Legal Issues

According to Article 905 of the CCP, a foreign judgment can be pronounced enforceable in Greece by the court of first instance in the area of the debtor's residence, barring any applicable convention on the subject. The CCP is guided by the principles of universality of justice and of international cooperation, in that it provides for no review of the merits of the dispute and does not require reciprocity. Instead, it sets forth a test of enforceability based on five criteria.

The first criterion is that the foreign judgment must be final and enforceable according to the law of the state of its origin at the time when enforcement is sought in Greece. All procedural matters, such as adequacy of service, are reviewed according to that same law.

The second criterion is that the dispute must fall under the jurisdiction of the foreign court according to Greek law. Articles 22 to 44 of the CCP stipulate that jurisdiction can be based on the residence of the party against whom the suit is brought, on the place where a legal person (eg, a corporation) has its registered office, on the location of real property (for disputes concerning property), on the residence of the deceased (for inheritance disputes), on the fact that a contract was concluded in a certain place, on the existence of property of the party against whom the suit is brought (in the jurisdictional area of the property), and on a special agreement between the parties. There also are other grounds of minor importance for determining jurisdiction.

Under the third criterion, the party against whom the judgment was entered should not have been denied the right to defend itself and to take part in the proceedings in general, unless nationals of that State also are treated in this way.

The fourth criterion is that there must be no conflict with a similar final decision of a Greek court. In this context, 'similar' means between the same parties and on the same subject as the foreign judgment.

The final criterion is that the foreign judgment must not be contrary to the public order and the public policy of the Greek state or the good morals of the Greek community. This means that the enforcement of a foreign judgment is denied when it is presumed that it will run contrary to the basic principles

[85] Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ 2001 L 012/1.
[86] Greece also is signatory to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958.

guiding life in Greek society.

The public policy criterion is inherently vague. It is difficult to provide safe standards for its application, as it was conceived to be 'concretized' on a case-by-case basis. This criterion is primarily used to deny enforcement to decisions on personal status, such as marriage, divorce, or affiliation, rather than those on pecuniary claims. In practice, however, public policy concerns are extended to judgments issued in every kind of litigation, including antitrust, securities, and tax cases.

Lack of adequate substantiation of the foreign judgment does not violate *per se* the public policy criterion. When the foreign judgment is stated in a currency other than Greek currency (the euro), the applicable rate of currency on enforcement is, in principle, the rate on the date of payment by the debtor. Payments may only be enforced in euros.

Procedure

Under Article 905 of the CCP, a judgment enforcement action is instigated in non-contentious proceedings. Notice to the debtor is not compulsory, but it is recommended or may be ordered by the court. The debtor may then become a party to the proceedings and contest the enforcement of the judgment. A decision pronouncing the judgment enforceable is appealable. If the debtor is not served with a notice and subsequently does not participate in the proceedings, he can file a so-called 'opposition by a third party'.

The party demanding the enforcement bears the burden of proof that the conditions of Articles 905 and 323 of the CCP are fulfilled, whereas the 'defending' party has the right of counter-proof. The enforcement proceedings before the first-instance court usually do not take more than six months, which is considerably less than would be required for an action on the merits. In case of an appeal, several months should be added.

The CCP allows the creditor to seek interim relief while the enforcement action is pending.