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Greece

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Efficiency of process

There is no doubt that the speed of administration of justice is a multifactorial and multidimensional issue that is directly linked to the effectiveness of the justice administration system of a country. Greece, when compared with the results of other European countries from the last survey of the European Commission (Justice Scoreboard 2022), still shows considerable delays in the completion time of litigation before the competent courts of law. The Greek justice administration system, especially in civil proceedings, proved to have considerable delays, mainly due to the great number of actions, legal remedies and aids filed before the civil courts, a fact that, in turn, has led 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, without sacrificing the (equally worthy of protection) need for giving a correct and fair judgment. The essential changes occurred with the new GCCP mainly concerning ordinary proceedings before first instance courts, as well as enforcement. The most significant novelty introduced is the replacement of the (until recently, partly oral) ordinary proceedings at first instance, with more flexibility and less time taken in terms of written proceedings. In the field of compulsory enforcement, two improvements have occurred: the first improvement limited the number of legal remedies; and the second limited the time required for the completion of the actual implementation of the enforceable titles.

Despite the fact that the implementation of Law 4335/2015 had the effect of reducing the average of the required time for the issuance of decisions in the first instance courts, in relation to the required period of time before its entry into force, the outcome of the reforms was not as positive as expected. More specifically, it was observed that due to the heavy workload of the first instance courts, especially the major ones, such as the Athens Court of First Instance, the decisions, in the majority of the cases, have not been published within the period of time prescribed by law (eight months of the court hearing), but rather within a time that significantly exceeds the above deadline (one to one-and-a-half years of the court hearing). In addition, the suspension of the courts' operations during the COVID-19 pandemic led to a further slowdown in the administration of justice.

Under these circumstances, the Greek legislator deemed necessary the legislative amendment of the GCCP, with the enactment and implementation of Law 4842/2021,[1] whose provisions entered into force and apply to legal remedies and aids exercised from 1 January 2022 onwards (with the exception of certain provisions that apply also to pending cases) as well as Law 4855/2021.[2] According to the explanatory report of Law 4842/2021, the aim of the new legislative provisions is to correct the failures of the previous law (4335/2015) and to improve the system of administration of justice in civil proceedings, with changes necessary

for the faster administration of justice, the smooth functioning of the trial with the application of modern technologies and finally the issuance of correct and fair court judgments. The new legislative provisions continue in the spirit of the previous law (4335/2015), introducing mainly procedural technical changes (aimed at solving the problems caused by the previous law and implementing the solutions given by the case law in the meantime) rather than structural changes to the GCCP. The legislative changes that occurred were dictated by two main factors. Firstly, utilisation of the new technological possibilities that the legislator now has at his disposal (e.g. the facilitation of the electronic signature of documents, the possibility of electronic service of documents, subject to certain conditions, etc.) and secondly, difficulties in the operation of the courts in the era of COVID-19.

On the basis of the new articles, ordinary proceedings continue to be, in principle, written and based on written pleadings and the filing of all evidentiary means, including up to three affidavits, while the hearing before a court audience is formal, without the necessity of litigant parties, or the lawyers acting for them, attending and participating therein. The new process provides for the following stages: (a) service of the action within 30 days from filing for residents of Greece and 60 days for non-residents; (b) filing of pleadings within 90 days from the next day after the expiration of the deadline for service of the lawsuit for residents and 120 days for non-residents; (c) filing of rebuttal within 15 days from the deadline set for the filing of pleadings; (d) appointment of judges and court composition within 15 days from the filing of the rebuttal, and fixing the hearing day within 30 days after the expiry of the 15-day term and in any case within the absolutely necessary time; and (e) claims that arose after the abovementioned deadlines for submitting pleadings and the rebuttal or are proven in writing or by a judicial confession of the opposing party may be proposed with additional pleadings no later than 20 days before the scheduled hearing of the case. The rebuttal of these additional pleadings must be made no later than 10 days before the scheduled hearing of the case. Adjournment of the hearing is permitted once and only 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 the affidavit for hearing. Finally, the decision of the court should be issued and published within eight months of the court hearing (articles 237 para. 5 and 307 para. 2 GCCP). Finally, Law 5016/2023 provided for the submission of documents in electronic form in ordinary proceedings. According to the explanatory report, this addresses the problem of the volume and number of procedural and other documents in civil proceedings. In particular, in many cases the volume of documents produced, combined with the often large number of litigant parties, creates difficulties in the processing of the case file, which results in a slower time to judgment. Because of the large number and volume of procedural documents in civil proceedings, especially in large court formations, their management takes a disproportionately long time and affects the judicial work of judges, which leads to delays in the administration of justice. It should be noted that this type of submission of documents is of an ancillary nature and that such documents are submitted either electronically or by physical delivery on digital storage media.

An innovation of Law 4842/2021 is the introduction of the "Pilot Judgment Procedure" in civil proceedings. According to the newly introduced article 20A GCCP, any legal remedy or instrument brought before any civil court can be introduced to the full plenary session of the Supreme Court (*Areios Pagos*), with the legal institution of the Pilot Judgment Procedure, when a new difficult interpretative legal matter of a more general nature of interest and with consequences for a wider circle of persons is raised. The introduction to the Pilot Judgment Procedure in the full plenary session of the Supreme Court can take place in three ways:

(a) with the simple act of a three-member committee, consisting of the President, the most senior Vice-President and the President of the relevant Department of the Supreme Court, upon written request of one of the parties that is filed before it; (b) with the simple act of a three-member committee, consisting of the President, the most senior Vice-President and the President of the relevant Department of the Supreme Court, upon a preliminary question submitted by the civil court of substance, before which the new difficult interpretative legal question is pending; and (c) directly to the full plenary session of the Supreme Court by a simple act of the Public Prosecutor of the Supreme Court. It is also noted that the Pilot Judgment Procedure does not apply when an appeal is already pending on this legal issue before the Supreme Court.

Regarding the consequences of entering a Pilot Judgment Procedure, it is noted that this entails the suspension of adjudication of all the pending cases, in which the same legal issue is raised, by decision of the relevant civil courts of substance of the country. Moreover, any party in pending litigation, in which the same legal issue is raised, may intervene in the Pilot Judgment Procedure and present his claims. Finally, after the resolution of the legal issue, the full plenary session of the Supreme Court refers the legal remedy or instrument to the competent civil court of substance. The decision of the full plenary session of the Supreme Court binds the parties of the Pilot Trial, including the interveners. It is pointed out that the introduction of the Pilot Judgment Procedure in civil proceedings was carried out by copying the legal institution as it is already applied in the administrative proceedings trials. However, objections have already been raised, as the legislator overlooked the different procedural principles that apply between civil and administrative proceedings, which may create problems for the smooth functioning of the Pilot Judgment Procedure in civil proceedings in practice.

Integrity of process

A fundamental element of 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 attendance at a special School of Judges. Thereafter, it is intended to ensure the personal independence of judges by subordinating their promotions and transfers to the Supreme Judicial Council. Personal independence should be founded on 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 neutrality is the clear distinction of the court from other participants of the litigation process, namely the litigant parties, but also from other persons involved in the procedure, such as, for instance, the witnesses.

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

- the review of court judgments by means of legal remedies;
- the challenge of judges on the grounds of mere suspicion of partiality;
- penal and civil liability of judges;

- 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
- 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 a lawyer's practice and has constitutional and legislative grounds; therefore, lawyers always enjoy special protection in Greek law.

It should be noted that, in contrast with other secrecies, such as banking, tax, 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 (PC) and the Code of Penal Procedure. More specifically, under article 371 PC, lawyers and their assistants who 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 of the Greek Code of Penal Procedure, 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 Greek Code of Penal Procedure, which prohibit the seizure of documents of the persons indicated therein.

Besides these articles, lawyer's privilege is also established 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 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 civil proceedings in connection with facts covered by the lawyer's privilege, unless the one who entrusted them, and the one to whom the confidentiality concerns, allow it.

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), and 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 legal costs, it remains completely irrelevant who has paid the above costs in advance. 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 three cases (article 179 GCCP): (a) in disputes between spouses or relations by blood up to the second degree; (b) in any trial where the construction of the applicable rule of law was particularly difficult; and (c) if, under assessment of the circumstances, there was reasonable doubt as to the outcome of the trial. 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 type of 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, 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 process of remuneration is freely chosen by the parties from the following methods: a time-based charge system (article 59 of the Lawyers' Code); a success fee contract (article 60 of the Lawyers' Code); a lump sum fee; and a salaried services system (articles 44, 45, 46 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 by trainee lawyers or retired lawyers and concern a personal case.

The Court of Justice of the European Union (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, a restriction on freedom of establishment and on freedom to provide services that could be justified by the existence of overriding reasons relating to 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 legal service and on the existence, or not, of economic subject matter in dispute (articles 73–82 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% and reduce to 0.05% for economic subject matters ranging from EUR 200,000 to EUR 25,000,001 and over). Legal works without a specific economic subject matter are regulated by special Annexes to the Lawyers' Code and depend on the kind of 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 that aim to address 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 low-income citizens of an EU Member State, 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 set forth each time in the National General Collective Labour Agreement or in the law providing for the minimum fees. Legal assistance is only supplied upon application, where all necessary supporting documents evidencing the financial situation of the applicant, as well as his domicile or residence in the case of third-State nationals, are attached. The application examination procedure, carried out by the duty President of the court, where the attendance of a lawyer is not 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 be incurred 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, 204 GCCP), namely: public utilities or non-profit legal entities; associations of persons; and unlimited or limited partnerships and cooperatives.

As applicable under 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 set-off of costs.

Interim relief

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

Injunction measures include 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 cases of emergency or to prevent imminent danger, provided that the right to be safeguarded, and for which the injunction measure is sought, is likely to exist. The decision granting injunction measures is temporary and does not affect the main case. The validity of injunctions ceases (a) when the final judgment on the main case is given, (b) in the event of conciliation for the main case, (c) upon expiry of 30 days from completion or cancellation of the trial, or (d) if the injunction judgment is revoked or reformed due to the occurrence of new facts and if the main action is not filed within the deadline set by the judgment granting the injunction. It is noted that for injunction measures ordered from 1 January 2022 onwards and before the filing of the lawsuit for the main case, the judge ordering the injunctive measure is not obliged but has the discretion to set a

deadline for the filing of the main lawsuit. If the judge eventually sets such a deadline, it cannot be less than 60 days from the publication of the decision of the injunction measures.

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, upon application or *ex officio*, an interim order (article 691 II GCCP) in cases of emergency or imminent danger. Thus, an interim order operates as a guarantee that ensures the content of the injunction judgment. If the application for an interim order is accepted, the relevant request for injunction measures is determined for discussion within 30 days.

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 European Union) are set forth in the GCCP (article 905 in conjunction with article 323 GCCP).

In particular, article 323 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 to not be contrary to public order. According to article 321 GCCP, final court judgments have the force of *res judicata*, namely those that cannot be contested by ordinary legal remedies.

On the other hand, in case of a judgment from an EU Member State, 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 No. 1896/2006 "creating a European order for payment procedure", are applicable.

Under the Regulations, the recognition of every foreign judgment is permitted regardless of the procedural maturity, provided that it is enforceable. The recognition of foreign judgments, when 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; the defendant was not served with the document that instituted the proceedings where the judgment was given in default of appearance; the judgment is irreconcilable with a judgment given between the same parties in Greece; or 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 countries.

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

In the European Union, the applicable enactment is Regulation No. 1393/2007 (except in 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, and 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 treaties 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, which was ratified with L.D. 4/1926, and also the Geneva Convention (1927) on the enforcement of foreign arbitration awards, which was ratified with Law 5013/1931. These legislative instruments were abolished by L.D. 4220/1961, which ratified the New York Convention (1958) on the recognition and enforcement of foreign arbitral awards.

Moreover, with Emergency Law 608/1968, Greece 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 Settlement 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

are 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 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 and Law 2735/1999) are not many in number and are mostly 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, fixed amounts in internal arbitration 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, which includes, of course, his own fee.

Another significant difference concerns 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 said measures may even be foreign, namely outside the Greek legal order, providing it is 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, mentioned above.

The objective of the European Union, with which Greece is also 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 ADR includes the provisions of the GCCP that are intended to facilitate court settlement or the amicable settlement of disputes with court intervention, but also the provisions governing arbitration. Respectively, ADR also includes "extrajudicial" mediation in civil and commercial matters, which has been instituted with Law 3898/2010, amended by Law 4512/2018 and again by Law 4640/2019, which transposed into Greek law 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, Greece among them, have not only regulated 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 Civil Procedure, there are plenty of provisions that, in one way or another, provide for a reconciliation intermediating intervention of the judge. In particular:

- The category of negotiation also includes the attempt to resolve the dispute pursuant to article 214 A GCCP, namely the extrajudicial amicable settlement of a dispute. In an extrajudicial amicable settlement of a dispute, the parties may compromise, after the occurrence of pendency until the giving of the final judgment and without having a trial hearing, 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 214 A GCCP, before being amended by article 19 of Law 3994/2011, did not yield any results. The rate of settlements achieved by means of this procedure was extremely low (1–2% of total cases, even zero in certain court districts).

- In the second ADR category, namely in court mediation (article 214B GCCP) as in mediation, besides the litigant parties and the lawyers acting for said parties, a neutral Mediator Judge also participates in the procedure and assists the negotiations, 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.
- 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 his own solution to the parties in order to resolve the dispute or obtain a settlement (articles 209–214 GCCP). In Greece, the reconciliation intervention is made by the competent Justice of the Peace.
- Conclusively, the fourth category includes the institute of arbitration, which has been addressed above.

Court mediation and private mediation

The two institutes of (a) court mediation (article 214B GCCP), and (b) extrajudicial mediation (Law 4640/2019) present several similarities, 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, mediation is carried out by a third party having the capacity of a judge, who proposes solutions and addresses non-binding proposals for the resolution of the dispute at his will. On the contrary, in private mediation provided for in Law 4640/2019, 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 private mediation requires, according to the initial regulation, that the relevant agreement between both parties comes 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 court mediation, the Mediator Judge has more freedom and tries to individualise the problem and shall investigate, along with the interested parties, the way in which he shall approach the case at issue.

Already, pursuant to article 182 of the previous Law 4512/2018, which entered into 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 trademarks, patents, industrial designs or models).

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

"Extrajudicial" mediation (new Law 4640/2019)

The new Law 4640/2019 "Mediation on civil and commercial disputes – Further harmonization of Greek legislation with Directive 2008/52/EC of the European parliament and of the council of 21 May 2008 and other provisions" was published in the *Official Government Gazette* on 29 November 2019.[3]

The new Law was drafted in order for Greek legislation to conform with the above-mentioned Judgment No. 34/2018 of the Supreme Court that mandatory mediation, as it was provided in Law 4512/2018, was unconstitutional, offending the right of access to justice, and also to conform with a decision of the CJEU issued following a complaint filed by the European Commission against Greece, doubting whether the first mediation Law 3898/2010 (article 5 paras 1 and 2.2., article 7), and other pieces of legislation implementing these provisions, were aligned with Directives 2006/123/EC and 2005/36/EC. This decision of the CJEU found that, in comparison to the recognition of accreditation of mediators in other EU Member States, this law was contrary to EU law.

Law 4640/2019 provides that national or cross-border civil and commercial litigation may be subject to mandatory mediation. Prior to the court hearing, the lawyer must inform his client in writing of the option to resolve the dispute through mediation, as well as of the obligation to attend a mandatory, first joint session to be informed about the possibility of mediating his dispute. This document must be signed by both the lawyer and the party and is submitted together with the lawsuit in order to be admissible by the court.

The first mediation session is obligatory in the following cases:

- All first instance disputes before the Single-Member and Multi-Member First Instance Courts, for claims above EUR 30,000 (concerning lawsuits filed as of 15 March 2020).
- Disputes arising from contracts that contain a valid mediation clause (concerning lawsuits filed as of 30 November 2019).
- Certain family law disputes (concerning lawsuits filed as of 15 January 2020).

This session shall take place no later than 20 days after the mediation request of the plaintiff to the mediator if the parties reside in Greece, and no later than 30 days if any of the parties reside abroad. The mediation must be concluded in 40 days, unless the parties agree on an extension.

The Law provides for certain monetary penalties (from EUR 100 to EUR 500) in case one of the parties does not appear in the first joint mediation session, taking into account the overall behaviour of the party and the reasons for their non-attendance.

If the parties agree to mediate, they enter into a written mediation agreement and continue after the first session. In the event of a successful outcome of mediation, the respective minutes must be signed by the mediator, the parties and their lawyers, and a certified copy must be submitted before the secretariat of the competent court in order to become an enforceable *exequatur*. If the mediation is unsuccessful, the parties are entitled to refer the case to court, simultaneously submitting thereto the minutes proving the attempt and failure of the mediation for the admissibility of the hearing of the case.

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 the role of monitoring sensitive fields of 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, its main competence being to monitor the domestic energy market in all its sectors; the National Council for Radio and Television, which controls the content of radio and television broadcasts to safeguard the observance of the equal-time rule for news broadcasts and ensures the quality level of programmes; and the Data Protection Authority, which also monitors 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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Endnotes

1. It is noted that Law 4842/2021 introduces legislative changes concerning all the provisions of the GCCP (ordinary proceedings, special proceedings, legal remedies and proceedings before appellate courts, injunction measures, compulsory enforcement, arbitration, etc.) while Law 4855/2021 introduces limited legislative changes specific to articles regarding only compulsory enforcement.
2. Law 4855/2021 entered into force on 12 November 2021.
3. See the article "The experience from the application of the Mediation scheme (Directive 2008/52/EC) in EU member states", Spyros G. Alexandris, "*The Revision of the Greek Civil Procedural Law*" Journal, p. 526.

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Spyros G. Alexandris, LL.M., Partner of Bahas, Gramatidis & Partners, leads its Commercial Litigation, Arbitration & ADR practice. His expertise spans across almost all fields of commercial and company law, as well as financial crime law.

One of the most reputable attorneys in Greece, Spyros has built an impressive record in both national and international litigation and dispute resolution projects, with impeccable results over the years. Throughout his career, Spyros has lodged and/or fought cases before the ECHR, the Court of Justice of the European Union (former ECJ) and the ICSID. Further to his active practice, Spyros also has tens of publications in both Greek and international legal journals, and he has also served as a member of the law drafting committee for the new legislative framework governing Partnerships (Section Seven of Law 4072/2012).

His expertise has been recognised internationally and he has been awarded the International Commercial Litigation Lawyer of the Year – Greece 2017 by Corporate INTL and Global Law Experts; 2018 by Corporate INTL, Global Law Experts and Legal 100; 2019 by Corporate INTL, Global Law Experts and Global 100; and 2020 by Corporate INTL.

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