The Dispute Resolution Review

Fourth Edition

Editor

Richard Clark

Law Business Research

The Dispute Resolution Review

THE DISPUTE RESOLUTION REVIEW

Fourth Edition

Editor
Richard Clark

Law Business Research Ltd

PUBLISHER
Gideon Roberton

BUSINESS DEVELOPMENT MANAGER
Adam Sargent

MARKETING MANAGERS
Nick Barette, Katherine Jablonowska

MARKETING ASSISTANT
Robin Andrews

EDITORIAL ASSISTANT
Lydia Gerges

PRODUCTION MANAGER
Adam Myers

PRODUCTION EDITOR
Anne Borthwick

SUBEDITOR
Charlotte Stretch

EDITOR-IN-CHIEF
Callum Campbell

MANAGING DIRECTOR
Richard Davey

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.TheLawReviews.co.uk

ISBN: 978-1-907606-28-1

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: +44 870 897 3239

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

AFRIDI & ANGELL

APPLEBY

APPLEBY (CAYMAN) LTD

APPLEBY (ISLE OF MAN) LLC

ARTHUR COX

ASHTAR ALI & CO, ADVOCATES AND CORPORATE CONSULTANTS

ASHURST AUSTRALIA

ASTERS

BONELLI EREDE PAPPALARDO

BREDIN PRAT

BUFETE HERNÁNDEZ-ROMO

BUGGE, ARENTZ-HANSEN & RASMUSSEN (BA-HR)

CRAVATH, SWAINE & MOORE LLP

CROCI, SILVA & CAJINA ABOGADOS

DE BRAUW BLACKSTONE WESTBROEK

DITTMAR & INDRENIUS

ELVINGER, HOSS & PRUSSEN

FONTES & TARSO RIBEIRO ADVOGADOS

FULBRIGHT & JAWORSKI LLP IN ASSOCIATION WITH MOHAMMED AL-GHAMDI LAW FIRM

HENGELER MUELLER

HERGÜNER BILGEN ÖZEKE ATTORNEY PARTNERSHIP

HOET PELÁEZ CASTILLO & DUQUE

HOMBURGER

HUTABARAT HALIM & REKAN

JUN HE LAW OFFICES

K&L GATES LLP

KBH KAANUUN LIMITED

LANSKY, GANZGER & PARTNER (LGP)

ŁASZCZUK & PARTNERS

LOGAN SABAPATHY & CO

LOYENS & LOEFF

MANNHEIMER SWARTLING ADVOKATBYRÅ AB

MARVAL, O'FARRELL & MAIRAL

MCGRIGORS

MOTIEKA & AUDZEVIČIUS

NISHIMURA & ASAHI

OXFORD & BEAUMONT SOLICITORS

PELLEGRINI & URRUTIA

POTAMITISVEKRIS

QUEVEDO & PONCE

RUDOLPH, BERNSTEIN & ASSOCIATES INC

SCHRECK LAW OFFICES

SLAUGHTER AND MAY

SOFUNDE, OSAKWE, OGUNDIPE & BELGORE

SZECSKAY ATTORNEYS AT LAW

TASSOS PAPADOPOULOS & ASSOCIATES LLC

TOMAIER LEGAL ADVOKÁTNÍ KANCELÁŘ S.R.O.

TSMP LAW CORPORATION

ȚUCA ZBÂRCEA & ASOCIAȚII

URÍA MENÉNDEZ

URÍA MENÉNDEZ – PROENÇA DE CARVALHO

CONTENTS

EDITOR'S PREFACE

Richard Clark

Following the success of the first three editions of this work, the fourth edition now extends to some 56 jurisdictions and we are fortunate, once again, to have the benefit of incisive views and commentary from a distinguished legal practitioner in each jurisdiction. Each chapter has been extensively updated to reflect recent events and provide a snapshot of key developments expected in 2012.

As foreshadowed in the preface to the previous editions, the fallout from the credit crunch and the ensuing new world economic order has accelerated the political will for greater international consistency, accountability and solidarity between states. Governments' increasing emphasis on national and cross-border regulation – particularly in the financial sector – has contributed to the proliferation of legislation and, while some regulators have gained more freedom through extra powers and duties, others have disappeared or had their powers limited. This in turn has sparked growth in the number of disputes as regulators and the regulated take their first steps in the new environment in which they find themselves. As is often the case, the challenge facing the practitioner is to keep abreast of the rapidly evolving legal landscape and fashion his or her practice to the needs of his or her client to ensure that he or she remains effective, competitive and highly responsive to client objectives while maintaining quality.

The challenging economic climate of the last few years has also led clients to look increasingly outside the traditional methods of settling disputes and consider more carefully whether the alternative methods outlined in each chapter in this book may offer a more economical solution. This trend is, in part, responsible for the decisions by some governments and non-governmental bodies to invest in new centres for alternative dispute resolution, particularly in emerging markets across Eastern Europe and in the Middle East and Asia.

The past year has once again seen a steady stream of work in the areas of insurance, tax, pensions and regulatory disputes. Some insolvency and employment practitioners have had busy years with the fallout from the credit crunch beginning to trickle down into the wider economy. At the time of writing, dark clouds hang over the EU in

particular as the Member States strive to save the euro from collapse and prepare for a period of uncertainty and challenging circumstances. It is too early to tell what, if any, fundamental changes will occur in the region or to the single currency, but it is clear that the current climate has the potential to change the political and legal landscape across the EU for the foreseeable future and that businesses will be more reliant on their legal advisors than ever before to provide timely, effective and high-quality legal advice to help steer them through the uncertain times ahead.

Richard Clark

Slaughter and May
London
March 2012

Chapter 20

GREECE

Konstantinos P Papadiamantis[1]

I INTRODUCTION TO DISPUTE RESOLUTION FRAMEWORK

Greece is a civil law country and has been a member of the European Union since 1981. As in all civil law countries, Greek judges have to apply the enacted legislation while ruling on a case. The basic law of the state is the Constitution of 1975 (amended in 1986, 2001 and 2008). An important part of the legislation is composed of the laws adopted by Parliament; another part of the legislation – in particular in public law – is in the form of presidential decrees drafted by the competent ministers.

The Greek Constitution establishes three kinds of courts: civil, criminal and administrative. Civil and criminal courts are first instance courts or courts of appeal; appeal judgments are challenged by a cassation before the Supreme Court. A cassation can be filed only on those limited grounds specified by law that are limited to points of law. First instance courts are the first tier of the civil courts, and courts of appeal are the second. Certain minor cases are introduced before the justice of the peace courts in the first instance, and their judgments are appealed before the first instance courts.

A similar two-tier system is followed by the administrative courts; cassation is not filed before the Supreme Court, but before the Council of State ('the CoS'). Nevertheless, certain requests for the annulment of administrative acts are filed directly before the CoS.

The Court of Auditors is another institution that acts as a supreme administrative court. Its jurisdiction consists mainly in resolving disputes with reference to the accounts of public law entities, many of which are often parties in public contracts.

Any conflict between the Supreme Court and the CoS as to the interpretation of rules is referred to the Supreme Special Court, which is composed by judges serving in the Supreme Courts of both jurisdictions.

1 Konstantinos P Papadiamantis is a partner at Potamitisvekris.

Judges are supposed to interpret the pre-existing legal rules, not to create them. Nevertheless, the courts tend to follow their previous judgments, and in particular the rulings of the superior courts.

There is no constitutional court under Greek law; every court is obliged not to apply an unconstitutional law. Nevertheless, constitutionality issues are mostly raised before the CoS, as an ancillary matter, in the context of disputes arising with respect to the due application of legal rules in a given case. In such cases, the court that has pronounced the legal rule as unconstitutional cannot apply it in the given case. Only the Supreme Special Court, in examining a rule's constitutionality, may declare it null *erga omnes*.

II THE YEAR IN REVIEW

Recently enacted Law 3900/2010 inaugurated a number of novelties in the attribution of administrative justice, the most prominent of which is allowing for any action filed before any administrative court to be introduced to the CoS, at the request of any of the litigant parties or by means of a preliminary question addressed by the lower administrative courts, in cases of general interest that entail consequences to a broader circle of persons.

Said Law has effected key changes to issues pertaining, for example, to cassation proceedings before the CoS and the admissibility requirements for petitioning or appealing rulings issued in relation to taxation cases.

The administrative courts' case law of 2011, both in terms of subject matter and in relation to the content of the rulings delivered, mirrors the country's prevailing socio-economic conditions and reflects the state's response to current public exigencies.

In spite of attempts to expedite delivery of justice, the current time frames for an action before the administrative courts to reach a hearing date, be heard and adjudicated and then served to the litigant parties remain slow (four to five years at the first instance courts and the CoS, one to two years at the courts of appeals).

Similar attempts to expedite the conduct of proceedings and delivery of judgments in civil law cases have been made via several revisions of the Code of Civil Procedure ('the CCP') over the years, with the most recent revision occurring in 2010. Nevertheless, the revisions were not efficient, and another revision bill is currently before Parliament.

III COURT PROCEDURE

i Overview of court procedure

***Civil courts*[2]**

Procedure before the Greek civil courts is regulated by the CCP. The conduct of proceedings follows certain formalities. Procedure commences upon the initiative of the parties, who have to gather and submit the evidence to substantiate their allegations.

2 Please note that the civil court procedure described in this chapter reflects the current state of affairs in Greece. It should be noted, however, that a bill effecting changes, among others, in a variety of aspects of the said procedure is currently being debated in the Greek House of Parliament.

Procedure starts by filing a lawsuit before the court, which sets the date of the hearing; the plaintiff must serve a copy of the lawsuit to the defendant who, on occasion, may be invited to a meeting for extrajudicial settlement of the dispute. Servicing is carried out by duly authorised bailiffs. The attorney filing the lawsuit does not have to prove his or her power of attorney either at this stage or at a later one, unless certain specific acts are to be performed (e.g., waiving a right); his or her power of attorney is presumed, and during the proceedings he or she can be served on behalf of the client.

The CCP provides for three different types of procedure:

a ordinary procedure, applying to most civil and commercial matters;

b voluntary proceedings, such as petitions for probate, adoption, etc.; and

c special procedures, which include interim measures, labour and lease disputes and issuance of a payment order proceedings.

The rules followed in each of these procedures vary slightly.

The plaintiff has to set out in the lawsuit all essential facts that are relevant to his or her request. It is prohibited to fill in new facts at any later stage of the procedure. Either on the very day of, or prior to, the hearing, the parties file briefs, with the right to file further submissions a few days later in addition to their own or in rebuttal to that of the other litigant party. The judgment issued is served at the initiative of any of the parties. First instance judgments produce no *res judicata* effect and are not enforceable unless they have been declared 'provisionally enforceable' by the issuing court.

Every party has to prove the facts necessary to substantiate its claim or counterclaim. The means of evidence under the CCP include, among others, affidavits, documentary evidence, witness testimonies, expert opinions and confession, with the first two being the ones most commonly used. Most means of evidence are freely evaluated by the courts; others, such as confession before the court or public documents, constitute full proof of their content.

Against most judgments, an (but only one) appeal may be filed by the defeated party. The appeal court has the power to review the first instance judgment on both facts and law. In appellate proceedings, parties are not allowed to modify their allegations; neither are they allowed to submit new allegations, apart from exceptionally; new means of evidence may, in principle, be produced. The appeal judgment produces a *res judicata* effect and constitutes an enforceable title.

A cassation request may be filed against the appeal judgment. This request is limited to points of law.

Unfortunately, ordinary proceedings are slow in Greece. In that respect, a proceeding for the issuance of a payment order or an injunction (or both) are of particular practical interest.

Although not a judgment, a payment order constitutes enforceable title. It is issued by the justice of the peace courts or the first instance court after a request by the interested party and an *ex parte* procedure. The interested party has to produce a written document establishing that he or she has an unconditional, certain and already due financial claim against the opposite party. Payment orders can only be issued against persons living in Greece or legal entities having their seat in Greece. Most commonly, they are issued on the basis of unpaid cheques or invoices signed by the debtor. Payment orders are usually issued within three months. The party against whom the payment

order has been issued is entitled to challenge the validity and execution of the payment order by filing relevant actions.

Interim measures (injunction orders) are granted in cases of emergency or in order to prevent imminent danger menacing a party's right. Their scope is broad, but most commonly the attachment of the debtor's assets is requested. Interim measures are issued by one-member first instance courts. Although they may be issued *ex parte*, judges tend to hear both parties. Quite often they are issued in two stages. When the petition is filed, the requesting party requests a provisional order; its hearing is set two to 10 days later and is very simple, sometimes without witness testimonies. The provisional order is issued on either the same or the following day. On the same day the hearing of the main interim measures petition is also fixed – between one to five months later. At that hearing, witnesses are examined and judgment is usually issued after two to four months. Judgment is (in almost all cases) not subject to appeal, but can be modified or revoked under certain circumstances. Thereafter, the winning party has to file its principal lawsuit within 30 days from issuance of the interim measures judgment.

In practice, interim measures tend to obtain the status of a quasi-ordinary procedure due to the latter's slow evolution (an ordinary lawsuit filed today in Athens shall be heard in 2014).

Administrative courts

The administrative court system is divided in two categories of cases: (1) actions aiming to annul administrative acts, and (2) actions by which the claimant seeks either the annulment or the amendment of the challenged act. By virtue of the first category of actions, only the legality (compliance with the law and procedural formalities) is checked, while in cases falling under the second category, the court also addresses issues relating to the truth and validity of the facts of the case.

Each category of actions has its own structure of court instances and its own set of procedural rules.

In the case of actions filed for the annulment of administrative acts, the action is either filed outright at the Supreme Administrative Court (i.e., the CoS) or before the Administrative Court of Appeals ('the CoA'). The latter's judgment may then be appealed before the CoS.

In these cases, the claimant files the action at the court's secretariat, which then determines its date of hearing and notifies the litigant parties accordingly.

In the case of actions by which a substantive review of the relevant administrative act takes place, or a claim for damages is brought against the Greek state or other public law entities, an action is initially filed at the first instance court (with the exception of certain categories of cases, most prominently regarding acts of the Competition or Capital Markets Commission, which are filed directly before the CoA. Another exception to the above rule constitutes actions filed in relation to disputes arising out public or administrative contracts).

The Court's ruling may be appealed to the CoA having jurisdiction, while the latter's judgment may be subject to an application for cassation before the CoS. In this case, following the appointment of a day for the hearing of the application, the appellant is instructed to invite the respondent to the hearing.

Those who are entitled to petition against acts of the Administration are any person or legal entity affected by and related – in some form recognised by law – to the act under review.

The relevant actions, together with the hearing details, may be served, in the case of private entities, either to the party itself or to its appointed attorney-in-fact that resides at the seat of the court. Contrary to what applies in civil litigation, as regards hearings before the administrative courts of all instances, the attorney-in-fact for an individual or legal entity must produce due authorisation either in the form of a private document, containing the relevant mandate, duly signed and authenticated by a public authority, or in the form of a notarial deed.

Requests for the annulment of administrative acts, as well as for the cassation of CoA judgments delivered under the second category of the above cases, may be brought on limited grounds (i.e., violation of law provisions, violation of formalities governing the issuance of the act, lack of competence by the issuing administrative authority or court, flawed composition, abuse of the public authority).

Procedure before the courts adjudicating cases in category (1) is governed by certain fundamental principles, namely that the parties' absence does not hinder the hearing of the case and issuance of judgment. The parties to the dispute enjoy equal procedural rights and have access to each other's files submitted in view of the hearing. To a large extent, the procedure is conducted in writing, while hearings are conducted in public. Appellate courts are limited in re-examining the case within the boundaries of the grounds invoked by the appellant.

Likewise, certain general principles apply to the fact-finding procedure held before the first instance administrative courts. Thus, all evidence is produced prior to the hearing, with the court retaining the authority to order complementary evidence and conduct all necessary inquiries to establish the true facts of the case.

Judgments are served to the litigant parties care of the court's secretariat. Final, non-appealable judgments and judgments awarding damages, which are temporarily enforceable, can be enforced against the state or the entities of the broader public sector that have been parties to the proceedings. In general, the administrative authorities have an obligation to comply with the contents of the judgments issued by the administrative courts, otherwise they are subject to damages and the penal liability of their officers.

Special rules govern the award of requests to have the enforcement of administrative acts suspended and actions raised in the context of enforcement proceedings brought by the state.

Another special set of rules (transposing relevant Community legislation) governs temporary judicial protection afforded in cases of public procurement disputes arising at a pre-contractual stage. In summary, the rules in question provide for an interim measures petition to be filed, on certain conditions, by any interested party (a participant in the tender procedure) in order to suspend the enforcement of any acts of the tender authority that are detrimental to its interests.

As regards judicial expenses, all actions before the administrative courts are subject to a small fee, payable, in principle, at the filing stage. Appeals on tax disputes or disputes with the customs authorities carry a judicial fee of 2 per cent on the subject matter of the dispute, while for claims for damages against the state or entities of the public sector a court stamp of approximately 0.7 per cent on the value of the subject matter of the

dispute is payable. Costs of the procedure are, in principle, awarded at the expense of the defeated party, although in the majority of cases they are equally apportioned between the parties, and thus set off. Generally speaking, the relevant amounts are rather mediocre.

ii Procedures and time frames

Civil courts

The defendant has to be summoned by the plaintiff 60 days prior to the hearing (90 days if the defendant resides abroad or his or her residence is unknown, and 30 days in special procedures). Summons take place by serving the action to the defendant.

In proceedings before the justice of the peace courts or one-member first instance courts, briefs are filed on the day of the hearing, with an addendum or rebuttal filed three days later. In proceedings before multi-member first instance courts, briefs are filed a full 20 days in advance of the hearing, addendi or rebuttals 15 days in advance, while a written evaluation of the witnesses' examination can be filed eight days after the hearing.

In cases where the defendant has been properly summoned but fails to appear in court, the plaintiff's facts are deemed to be true and the courts shall examine the legal basis of the lawsuit; in cases where the plaintiff fails to appear in court, his or her action is heard and dismissed.

By the briefs' closing, the plaintiff has to pay for and file a court stamp of approximately 0.7 per cent of the value of the dispute subject matter. In principle, costs of the procedure, such as attorneys' fees, are awarded at the expense of the defeated party, although in cases of partial victory and partial defeat of the litigants, the court sets them off. In general, expenses granted by the court rarely cover the real ones undertaken.

Before the court of appeal, pleadings are submitted until the day prior to the hearing. Rebuttals may be filed three days later. Appeals against first and second instance court judgments have to be filed within 30 days (or 60 days, in cases where the opponent resides abroad or his or her residence is unknown) from service of the court judgment appealed, or within three years from its publication, if no service has taken place.

Administrative courts

At proceedings before the administrative courts, the Administration submits a folder containing all documents relevant to the dispute, together with the account of its views, at a reasonable stage prior to the hearing, which in category (2) of cases is up to 15 days prior to the hearing; otherwise the hearing may be adjourned and a penalty may be imposed to the Administration for unjustified failure to comply with the above procedural obligation.

After its submission, the folder is open to inspection to the other litigant party, which also has an obligation to submit its evidence in advance to the hearing (up to the day before it). Either party may invoke evidence submitted by the other side.

iii Class actions

Class actions are not very common in Greece. The only law that expressly provides for such action is Law 2251/1994, as amended by Presidential Decree 301/2002 (implementing Directive 98/27/EC) regarding consumer protection. Article 10 refers to class actions

and specifies the procedure that must be followed to bring such an action before the competent Greek courts.

iv Representation in proceedings

In principle, each litigant is obliged to appear before the court represented by an attorney-at-law. Exceptionally, before justice of the peace courts disputes and in cases of interim measures, the litigant is allowed to act without an attorney-at-law (Article 39, Law 3026/1954). If necessary, the court may oblige the litigant to appoint an attorney-at-law to defend his or her case.

v Service out of the jurisdiction

Regulation (EC) No. 1393/2007 applies in Greece as in all EU Member States. As such, judicial documents may be served from a Greek addressor to an addressee residing in another Member State of the EU, and vice versa. By virtue of the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ('the Hague Convention'), judicial documents may be served to Greek citizens and from Greek citizens to citizens of a signatory state of the Treaty and vice versa without using consular or diplomatic channels.

vi Enforcement of foreign judgments

Judgments of EU Members States' courts of a civil and commercial nature are enforceable in Greece, following their declaration as enforceable, by virtue of Regulation (EC) No 44/2001. Judgments regarding social security, arbitration, insolvency proceedings, inheritance issues and matrimonial property issues do not fall under the above-mentioned Regulation and are regulated by separate legal instruments. Furthermore, by virtue of Regulation (EC) 805/2004, European Enforcement Orders are directly enforceable in Greece. In addition, Regulation (EC) 2201/2003 applies to foreign judgments regarding matrimonial matters and matters of parental responsibility, regulating their enforceability in Greece. As a party to the New York Convention of 1958, Greece recognises foreign arbitration awards in accordance with the provisions of the Convention.

On the other hand, judgments originating from the courts of non-EU countries are enforceable in Greece in accordance with the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ('the Washington Convention'), signed in 1965.

vii Assistance to foreign courts

According to Council Regulation 1206/2001 'Taking of Evidence', which applies in civil and commercial matters where the court of a Member State requests the competent court of another Member State to take evidence or requests evidence to be taken directly in another Member State, the Greek civil courts will provide their assistance to Member States' courts in taking evidence for use in judicial proceedings either commenced or contemplated. Furthermore, Greece is a contracting state of the Hague Convention of 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, according to which a judicial authority of a contracting state (including non-EU states) may, in accordance with the provisions of the law of its state, request the competent authority of

another contracting state, by means of a letter of request, to obtain evidence or to perform some other judicial act. The latter does not cover the service of judicial documents or the issuance of any process by which judgments or orders are executed or enforced, or orders for provisional or protective measures.

However, in practice such procedure is rarely followed.

viii Access to court files

All hearings are conducted in public; consequently, all members of the public may obtain information on ongoing proceedings. Exceptionally, the hearing may take place *in camera*. A member of the public may not obtain pleadings or evidence in relation to ongoing proceedings unless he or she demonstrates a specific legitimate interest, namely that his or her rights or obligations are directly affected by the outcome of the case.

ix Litigation funding

Litigation funding by a third party, although not explicitly prohibited by law, is highly unusual in Greece.

IV LEGAL PRACTICE

i Conflicts of interest and Chinese walls

Under Article 233 of the Criminal Code, it is forbidden to represent both parties in the same case, unless they so agree.

The conflict of interest issue is governed by the ethical rules established by the various bars. Under the Ethical Code of the Athens Bar, an attorney is entitled to act for a current client against a former one, provided that the new case is irrelevant to the old one and the attorney does not disclose or use the information he or she has obtained when he or she was representing the former client.

Chinese walls practice is not developed in Greece, and it is not regulated by law or any bar's ethical code. Greek firms are generally too small for Chinese walls to be implemented. However, the issue may arise in the near future for the biggest firms.

ii Money laundering, proceeds of crime and funds related to terrorism

In Greece, issues of money laundering are governed by Law 3691/2008 implementing Directive (EC) 2005/60 and Directive (EC) 2006/70. This new Law has been widely criticised by professionals and academics for failing to resolve various issues concerning the application of its predecessor, Law 3424/2005.

By virtue of Law 3424/2005, as amended by Law 3691/2008, the list of persons and legal entities that are obliged to abide by the provisions of the law includes lawyers and public notaries. With regard to money laundering or funding of terrorism, one of the most important obligations imposed on lawyers is to report to the competent authority any transaction that seems suspicious or out of the ordinary. Lawyers are also obliged to verify the identity of their clients. Furthermore, lawyers are prohibited from informing their client or a third party suspected to be involved in such an action that such a report has been filed.

Nevertheless, lawyers are not obliged to provide information on facts that have been disclosed to them by their clients in order for them to advise them or to prepare their defence. In cases where any of the above-mentioned duties are breached, lawyers and public notaries can face serious penal charges.

In addition to the above-mentioned duties, lawyers are subject to all the duties imposed on other persons and legal entities targeted by the new Law. As a result, it has been argued that the Law contradicts the lawyer–client confidentiality privilege and the right to a fair trial.

iii Other areas of interest

Lawyers are entitled to translate documents from and into languages in which they are proficient and to produce authenticated copies from originals presented to them. The exclusive right to carry out checks of property deeds at the Land Registry is also given to lawyers and notaries.

V DOCUMENTS AND THE PROTECTION OF PRIVILEGE

Professional secrecy, provided and protected by the Greek legal system, can only be compared with the concept of legal professional privilege developed in common law countries (and therefore not in Greece). Doctors, churchmen, attorneys-at-law, notaries and nurses, as long as they are consultants of the litigant parties, are entitled to deny witness testimony of facts entrusted to them by the parties, or of those facts that have been established during the exercise of their profession and for which they are obliged to observe confidentiality.

The CCP provides and regulates the production of documents in the course of litigation, while provisions of the Greek Civil Code govern the production of documents and other tangible evidence independently of litigation. According to the CCP, the following have an obligation to produce documents:

a a litigant party at the request of the other party, as regards any document that the former has used or intends to use in the litigation; and

b a litigant or any third party in possession of a document that may be used as evidence, provided there is no cause excusing their production (e.g., when someone has the right to refuse testimony).

The relevant request may be made either in pleading or by an independent action.

Where no litigation is pending, a person has a right to a document in the possession of another only if such document was initially made for his or her benefit, or if it evidences a legal relationship between the parties or relates to conduct either by itself or for its benefit by a third party. If the critical fact can be proved by other means of evidence available, production of such document cannot be demanded. The document is produced by depositing it at the court's secretariat or by serving it to the person requesting it.

VI ALTERNATIVES TO LITIGATION

i Overview of alternatives to litigation

Practically the only alternative form of litigation is arbitration. Mediation is still not commonly practised in Greece, despite various efforts to develop it. In some areas of law a mediation stage is obligatory before going to court, but most usually this stage is a mere formality.

ii Arbitration

Arbitration is quite commonly used in Greece, mostly in international transactions. International transactions are often subject to ICC arbitration or to the rules of the London Court of International Arbitration.

The CCP fixes the principles for domestic arbitration, whereas international arbitration is governed by Law 2735/1995 introducing the UNCITRAL Model to Greece. Moreover, several institutional arbitrations have been established in Greece (e.g., by the Technical Chambers of Greece, the Chamber of Commerce). Nevertheless, most domestic arbitrations are conducted under the CCP, which sets a rather flexible procedural framework for arbitrators or the parties.

Nearly all private law disputes may be subject to arbitration; nevertheless, litigation arising out of labour law relationships are not. As regards public disputes, certain categories (e.g., tax disputes) may be submitted to arbitration; however, this means of dispute resolution is not commonly used.

In domestic arbitrations, during the arbitration proceedings an interim judgment may be issued only by the competent ordinary court. In international arbitration, both the competent state court and the arbitral tribunal may issue an interim decision.

Arbitral awards are registered in the first instance court, produce *res judicata* effect and are enforceable. They are not subject to appeal but they may be set aside. The relevant petition is introduced before the court of appeal within a three-month time period as of its service to the applying party. The grounds specified under the CCP and Law 2735/1999 for setting aside the award are limited. An award can thus be set aside if the arbitral agreement was invalid; (in international arbitration) if the subject matter was not arbitrable; or, in cases where the applying party was not properly invited to the arbitral proceedings, when the award was issued *ultra petita*, or the procedural rules or the rules set for the constitution of the arbitral tribunal were violated. Moreover, the arbitral award may be set aside if it runs contrary to the *ordre public*; in the case of an international arbitration, the court shall rule on the basis of the international *ordre public*, while in domestic arbitration it shall apply the domestic *ordre public*.

In domestic arbitration, the application to set aside the arbitral award should be distinguished from the application to recognise that an award is nonexistent, which is not time barred. An award is inexistent if the subject matter was inarbitrable.

iii Mediation

Mediation is not a very commonly used form of alternative dispute resolution in Greece, as it was only recently formally introduced into the Greek legal system. In 2010, Law 3898/2010 implemented Directive (EC) 2008/52. The new Law governs, among

other matters, confidentiality issues, enforcement of agreements' procedures and the certification process for mediators. The procedure of mediation can be selected in Greece to resolve a wide range of disputes of a civil or commercial nature, such as marital, labour or intellectual property disputes.

By virtue of Article 102, Law 3588/2007 regulating insolvency and bankruptcy proceedings, the court may appoint a mediator to facilitate the achievement of an agreement between the creditors and debtors, where necessary. Furthermore, if a debtor requests the appointment of a mediator, the court is obliged to honour the request.

VII OUTLOOK AND CONCLUSIONS

That the Greek judicial system is in need of reformation, particularly as regards the speed of proceedings, in order to sufficiently address the exigencies of a modern economy is a fact that is widely accepted. So far, attempts that have been made in this direction have had limited success, which is why another reform is currently under consideration.

Appendix 1

ABOUT THE AUTHORS

KONSTANTINOS P PAPADIAMANTIS

Potamitisvekris

Mr Papadiamantis is a partner at Potamitivekris and is responsible for the dispute resolution department. He is admitted in Athens (1986) and Paris (1994). He studied law in Athens (University of Athens LLB, 1983) and Paris (Université de Paris-X (Nanterre) PhD, 1990; Université de Paris-2 DEA in EEC Law, 1988; Université de Paris-2 Institut de Droit Comparé, Diploma in Comparative Law, 1987; and Université de Paris-2 DEA Philosophy of Law, 1985). He has represented clients before state courts and arbitral tribunals in a wide variety of commercial and civil disputes, including those arising from breach of the regulations governing a range of industries including banking, pharmaceutical, medicinal products and transport. He has a particular expertise in advising on agency and distribution agreements. He has acted in disputes arising from the governance of corporations and the relationship between shareholders, as well as litigation resulting from internal restructurings, liquidations and insolvency. He also has extensive experience in advising on white-collar crime, in particular acting on behalf of companies and individuals in the field of breach of banking and stock exchange regulations.

Mr Papadiamantis is fluent in English, French and German.

He is an independent non-executive director of Emporiki Bank (Crédit Agricole Group).

POTAMITISVEKRIS

9 Neofytou Vamva Street
10674 Athens
Greece
Tel: +30 210 33 80000
Fax: +30 210 338 0020/
+30 210 331 8085
konstantinos.papadiamantis@potamitisvekris.com
www.potamitisvekris.com