

Seeking resolution

Anthony B Hadjioannou and Aggeliki Moutafi of KGD
Law Firm give details of court procedures in Greece

In Greece there are two levels of jurisdiction: the First Instance Courts and the Court of Appeals. Petitions for Cassation against the judgments of the Court of Appeals (*anaireis*) are heard before the Supreme Court of Greece (*Areios Pagos*).

The First Instance Courts in civil cases are: the Magistrate's Courts, the One-member Court of First Instance and the Three-member Court of First Instance.

The Magistrate's Courts handle low value disputes, as well as possession disputes on tangible or intangible property. There are more than 300 such courts throughout Greece, located in the major cities and towns. The One-member and Three-member Courts of First Instance handle higher value disputes. The Three-member Court of First Instance acts both as a first instance court and an appeal court, having jurisdiction to judge appeals against decisions of the Magistrate's Court.

Appeals from the Courts of First Instance are heard before the competent Appeal Court, which may re-examine the case both in law and in its substance.

The Supreme Court judges petitions for cassation against judgments of the Court of Appeals and examines only errors made in the application of law by the Court of Appeals.

A three-member court

There are several three-member Courts of First Instance throughout Greece, each one of them seated in the capital of the respective Prefecture of the country. A Court is comprised of three judges (one presiding judge assisted by one reporting judge and one junior judge and the Court secretary). Upon filing of a lawsuit by the attorney for the plaintiff, the judge will fix a date of hearing. The date of hearing shall be fixed approximately six months to one year after the date of filing of the lawsuit depending on the availability of the dockets.

The plaintiff shall, thereafter, arrange the serving of the lawsuit on the defendant, inviting the latter to attend the hearing and to file his defence. The service is made by a court bailiff who is a quasi-public servant. Service to defendants residing or located out of Greece is made in accordance with the provisions of the Convention of The Hague for services and/or according the procedural rules applicable locally – through service of the document involved upon the competent Public Prosecutor, who further dispatches it for service abroad through judicial/diplomatic channels.

All parties must file with the court their (initial) briefs and their respective supporting documentation (exhibits to their briefs respectively) at least 20 days before the date of hearing. On the same day, the parties shall obtain copies of the briefs and supporting documents of the other party. Thereafter, a first addendum to briefs must be filed by all parties with the court 15 days before the date of hearing, at the latest.

In their first addendum to briefs, the parties shall counter-contest allegations of their opponents contained in their respective (initial) briefs already filed. Change of the legal basis of the lawsuit or new allegations are not allowed after the filing of the lawsuit. Clarifications and/or explanations on existing allegations are allowed.

The plaintiff is free to drop his lawsuit at any time before the commencement of the hearing. However, after the commencement of the hearing the plaintiff shall not be entitled to drop his lawsuit without the defendant's consent.

The above rules are more or less the same before the Magistrate's Court and the One-Member Court of First Instance, but the briefs in such courts are filed at the very date of hearing and contests thereafter within three days.

Contrary to what applies in several countries of central Europe, all allegations of the parties, both the ones which refer to the jurisdiction and competence of the court, the admissibility of the lawsuit

“Each litigant party has the right to examine only one witness on the date of the hearing before the court”

in procedural issues, the applicable law and so on, as well as those which refer to the merits are examined in one single hearing. Hence, the briefs of the parties must deal with all these matters and the objections of the defendant should be contained in its (initial) briefs of defence (unless they are examined *ex officio*).

If this is not done, the briefs are considered as never being filed. Of course, the court will first examine whether it has jurisdiction to judge the case. It will do so following the Greek procedural law provisions as well as those of EU Regulation 44/2001. It will then examine whether the court is the competent one or not. Once the issues of jurisdiction and competence are solved positively, the court shall then decide the applicable law, if this is disputed between the parties. The Greek Civil law on conflict of laws, as well as Rome and Rome I treaties on applicable law will be the tools in the hands of the judge to find the applicable law. The court will then examine the merits of the case on the basis of the applicable law.

After the commencement of any proceedings, that is after filing/service of a lawsuit, any third party which has an interest in the outcome of the pending trial has the right to participate in the proceedings through filing a third-party intervention.

There are two kinds of intervention: (i) an additional intervention, whereby the intervening party participates in the trial to assist either one of the (initial) litigant parties; and (ii) a principal intervention, whereby the intervening party participates in the trial disputing the right of either the plaintiff or the defendant to qualify as such and claiming that he is the one who is the right holder in dispute. Intervention is lodged in the same manner as a lawsuit. Once a third party intervention is lodged (filed/served), the intervening party has all rights that the (initial) litigants have.

In case the plaintiff (or the petitioner, interviewing party, or appellant, as the case may be) fails to attend the hearing, then his lawsuit, petition or appeal shall be rejected for not being duly supported by the party involved. If a defendant fails to attend the hearing and is not represented by a lawyer, the court proceeds with the hearing and the defendant is judged *in absentia*.

However, in rendering its judgment the court must examine whether the defendant was properly and timely invited to attend the hearing by the plaintiff. This is achieved through the examination of the relevant certificate of service issued by the court bailiff which the plaintiff must file with the court. In case of lack of proper serv-

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ice of the lawsuit, the court shall reject the lawsuit for lack of proper service. The same applies for a petition, appeal and so on.

However, in case an appellee fails to attend the hearing before the Court of Appeals, the hearing will proceed as if he was present. In case a petitioner or a respondent fail to attend the hearing of the case before the Supreme Court, then the petition for cassation shall be heard as if the party involved was present.

At and after the hearing

Each litigant party is entitled to produce evidence through documents, technical reports, witnesses and affidavits. In the latter case, the maximum amount of affidavits allowed is three for each litigant party. Affidavits must be executed at least one working day before the filing of (initial) briefs and this is because the contents of such affidavits (the evidence deriving therefrom) shall be mentioned in the respective briefs to support argumentation contained therein.

For the valid execution of any affidavit it is imperative that the litigant who intends to obtain an affidavit from a witness notifies his opponent to this end at least two working days before such affidavit execution (or eight days before, if the affidavit is to be executed out of Greece).

Affidavits may be executed before: (i) the magistrate judge, when the witness is residing, even temporarily, in Greece; (ii) before any Greek notary public; or (iii) before any Greek consul abroad. No cross examination is made during the execution of an affidavit and the attorney for the opponent, if present, is only entitled to receive a copy of the affidavit in question, after its execution. In the case of any witnesses (affiants) not speaking Greek, they must be accompanied by a Greek-speaking interpreter, since the language will be in Greek. Also, all documents must be in Greek or duly translated into Greek.

Each litigant party has the right to examine only one witness on the date of the hearing before the court. The witness examination process takes place in the Greek language and if the witness is non-Greek speaking, the testimony must be done through an interpreter. There is no need to notify the opponent in advance as to who the witness at the hearing shall be. All witnesses of the parties, who testify before the Court at the hearing, are cross-examined. They firstly respond to questions made by the Reporting Judge and the chairman of the Court, secondly to questions from the attorney of the party in favour of which they testify, and finally to questions from the attor-

About the author

Anthony B Hadjioannou is a senior partner of the firm and heads the litigation department. He is an expert on commercial agency and distribution law and has been involved in negotiating and preparing various distribution and agency agreements, as well as supply contracts and has defended numerous cases for claims pertaining to goodwill compensation after the termination of such agreements.

He has acted as an adviser to local and international producers and has experience in product liability matters as well as defending several claims for alleged defective products. He has also handled numerous trademark and patent cases as well as defending the interests of the firm's clients against infringers. Anthony also has considerable drafting experience in civil and

commercial law matters and is an expert in real estate transactions and auctions, particularly in negotiating and drafting complex lease agreements. He has handled hundreds of cases related to conflict of laws and the international jurisdiction of Greek courts.

Contact information

Anthony B Hadjioannou
KGDI Law Firm

28, Dimitriou Soutsou Str., 115
21
Athens - Greece
Tel: +30 210 81 71 500
Fax: +30 210 68 56 657-8
Email: a.hadjioannou@kgdi.gr
Web: www.kgdi.gr



ney of the opponent.

During the hearing, the attorney for the plaintiff makes a brief presentation of the case, while the attorney for the defendant outlines to the Court all objections that he has eventually developed in his (initial) briefs. The hearing is concluded in one session and it usually lasts from 30 minutes to the end of the day (depending on the volume of the issues which are addressed before court for examination).

Within eight working days after the date of hearing, the litigants have to file their second addenda to their briefs, to comment only on the witnesses' depositions made during their cross-examination before the Court at the hearing.

Disclosure and other matters

The first disclosure of documents from each litigant party to the other is made on the occasion of the filing of the (initial) briefs and exhibits (20 days before the date of hearing). This will also be the case, in all future filings for the litigant parties.

The parties are free to negotiate lawyers' fees with their lawyers. The Court has the liberty to either sentence the defeated party to pay the court expenses or to set-off such expenses amongst the parties. The amounts of court expenses awarded are taken from a list-tariff existing in the Court and are usually significantly lower than the amounts actually spent by a party for lawyers fees and so on.

At the request of any litigant and due to serious purposes only, the Court may postpone the hearing once, in which case the new hearing shall be fixed at between six and 12 months thereafter, depending on the availability of dockets. The hearing may be postponed *ex-officio*, if there is a hearing of other cases which have a priority in the docket, and may not conclude within the day, which runs from 9am to 3pm.

The entire hearing procedure is tape recorded and thereafter the Court secretary prepares an official transcript, which becomes part of the file.

Assuming there will be no need for the First Instance Court to order additional evidence (expert opinions) the judgment is usually issued six to eight months after the date of the hearing. The judgment is issued in a draft signed by all judges and an official transcript is available.

Attempt for amicable settlement

According to the Greek Code of Civil Procedure, provided a dispute can be subjected to a compromise (such as a commercial dispute), the plaintiff, together with the service of the lawsuit, must invite the defendant to a meeting for an attempt of an amicable settlement (Article 214A of the Greek Code of Civil Procedure). Failure of the defendant to attend is considered a failure of the said attempt without any other consequences for him.

The date for the above meeting of the parties is fixed between the fifth day after service of the lawsuit and the 35th day before the date of hearing. If the plaintiff fails to invite the defendant for such an attempt, the court shall abstain from issuing a judgment until such procedure is followed. (The reasoning behind this provision is to exhaust all possibilities for the parties to attempt an amicable settlement before going to court). In practice only 1% of cases are settled following this procedure, and there is now a debate pending as to whether the provision should be maintained or dropped.

Appeal

The defeated party may file an appeal against the first instance judgment. If the litigant is both winning and defeated party in the first instance (say partial recognition of a claim) both litigant parties

are entitled to file their respective appeals against the first instance judgment. A winning party is entitled to appeal if erroneous considerations were made by the first instance court in reading its judgment. The appeal may be filed within 30 days of the date of service or within 60 days after service if the appellant resides or is located outside of Greece.

If no service of the first instance judgment is affected, then the time limit for the filing of an appeal shall be three years as of the date of issuance of the first instance judgment. The hearing of an appeal may be fixed within six to 10 months after filing. The Court of Appeals usually issues its judgment within four to six months after hearing.

The defeated party at the Court of Appeals may file a petition for cassation before the Supreme Court (*Areios Pagos*). Such petition may be filed within 30 days as of the date of service of the judgment of the Court of Appeals by any one of the litigants to the other or within 90 days after service in case the petitioner resides or is located out of Greece.

If no service of the judgment of the Court of Appeals is affected, then the time limit for the filing of a petition for cassation shall be three years as of the date of issuance of the judgment of the Court of Appeals. The hearing of an appeal may be fixed within six to 10 months after filing thereof and the court usually issues its judgment within four to six months after hearing.

In cases of urgency and forthcoming risk in the interests of a party, the law provides for the option of the party involved to file a petition seeking the issuance of an order/injunction for a temporary relief. If a judgment has become enforceable and provided certain conditions are met, the defendant has the right to file a petition for stay which, by definition is again, of a provisional nature.



About the author

Aggeliki Moutafi joined the firm in October 2007 as a trainee lawyer in the litigation department and became a junior associate in September 2009. In cooperation with the other members of the litigation team, she handles civil and commercial cases for both Greek and foreign clients. Aggeliki earned an LLB from the Democritian University of Thrace in 2007 and an LLM from the University of Athens in 2009. She speaks Greek, English and French.

Contact information

Aggeliki Moutafi
KGDI Law Firm

28, Dimitriou Soutsou Str., 115
21
Athens - Greece
Tel: +30 210 81 71 500
Fax: +30 210 68 56 657-8
Email: a.moutafi@kgdi.gr
Web: www.kgdi.gr