# Introduction to Greek Law

Third Revised Edition

Edited
by

Konstantinos D. Kerameus
*Professor of Law (emer.)*
*Athens University*

Phaedon J. Kozyris
*Professor of Law (emer.)*
*Thessaloniki and*
*Ohio State Universities*

Chapter 16

# Judicial Organization and Civil Procedure

*Konstantinos D. Kerameus**

## I. INTRODUCTION

Judicial organization and civil procedure have grown in recent years to relatively high stature in Greece. This is true both at the level of scholarly production as well as in the practice of law. The reasons for such a comparatively privileged treatment of procedural matters within the entire Greek legal system may be traced in two directions: the first pertains to the statutory regulation of procedural issues, the second to the conditions of law enforcement in the Greek courts.

In Greece, judicial organization and procedure have always possessed clear and numerous constitutional underpinnings. The Constitution of 1975 (as amended in 1986 and 2001) has stressed still more the immediate relevance of constitutional commands. First, a whole section of the Constitution (Section V of Part Three, Arts 87–100A) deals with 'Judicial Power': Chapter One (Arts 87–92) bears the title 'Judicial Officers and Staff'; Chapter Two (Arts 93–100A) is devoted to the 'Organization and Jurisdiction of Courts'. Second, a large number of other

* Dr iur., Dr h.c. mult., Professor of Law (emer.), Athens University; Director, Hellenic Institute of International and Foreign Law; President, International Association of Legal Science.

Konstantinos D. Kerameus and Phaedon J. Kozyris,
*Introduction to Greek Law*, pp. 341–378.

constitutional provisions have a direct or indirect procedural impact.[1] Third, the right of access to courts has been raised to constitutional pre-eminence: under Article 20 I of the Constitution, 'everyone is entitled to legal protection by the courts and may plead before them his position on his rights or interests, as specified by law' (*see also* Ch. 3, Section V *C* 1). It is not surprising that these normative arrangements of the third branch of government have come to be regarded in Greece, as in some other countries, as a kind of 'applied constitutional law'.

Parliamentary activity has equally contributed to expanding the relevance of procedure, as compared to other legal disciplines. Between 1835 and 1968, Greece operated under the old Code of Civil Procedure, which had come into force shortly after the establishment of the modern Greek State and was the work of the Bavarian jurist Georg Ludwig von Maurer. The current Code, elaborated over some 30 years (1933–1964), was mainly influenced by Central European models, especially German and Austrian law. This major work of codification, in force since September 16, 1968, as well as its subsequent frequent amendments, have been fuelling a lively discussion on procedural issues among the members of the legal community. Procedure has thus become a matter of actual and permanent involvement for all lawyers-practitioners, judges and scholars alike.

The conditions of law enforcement in the Greek courts have been exceptionally favorable to such a procedural orientation, or disorientation, of legal thinking and legal action. Leading scholars on procedure in the 19th century were either high court judges themselves, or extremely influential over judges. In more recent times, the large number of practicing attorneys and the intensely competitive climate that exists among them open the door of opportunity creating incentives for the use, or abuse, of procedural tactics. Some aggressive features of the Greek national character come out as well when people become litigants. Many judges regard procedure as their own professional ambit *par excellence* and cherish, in their opinions, a preference for procedural over substantive issues. This is particularly true with regard to the cases decided by Areios Pagos, the supreme court of the country in civil and criminal matters. Against such a background, one can well understand the exclamation contained in an influential Greek novel of the 1930s: 'Procedure, my friend, procedure. As long as you keep procedure under control, you have the upper hand.'[2]

## II. JUDICIAL ORGANIZATION

The law governing judicial organization is not contained in a single enactment. Relevant provisions are to be found either in the Constitution or in many special

1. Arts 1 II, III; 2 I; 4 I, II, IV; 5 II–IV, interpretative clause; 5A; 6; 7; 8; 9 I(3), II; 10 II; 12 II; 13 V; 14 III(2), IV, VI(2), VII; 16 VI(4); 17 II, IV; 18 V(4); 19 I(2), III; 22 II; 23 II(2); 25 I–III; 26 III; 28 I(1); 29 II(4), III(1); 37 III(3); 47 I, II; 48 I(1); 49 III, IV; 51 III(2); 52; 56 I; 58; 61; 62; 65 VI(2); 76 VI; 77; 86; 102 IV(3); 103 IV(2),(3); 104 III; 105 V(2); 106 IV; 109 II; 111 III(b), V; 115 I–V; 118 I, II, V; 119 I.
2. G. Theotocas, *Argo*, vol. II (8th edn, Athens, 1980) 39.

laws, some of them quite extensive. A comprehensive Code on Judicial Organization and the Status of Judicial Officers (Law 1756/1988, initially comprising 113 Articles) was again amended through various enactments, most recently Laws 2993/2002 and 3388/2005.

## A. Principles

Out of these scattered sources some general principles emerge:

(a) Justice is administered by three hierarchies of courts: administrative, civil and criminal (*διοικητικά, πολιτικά, ποινικά δικαστήρια*, dioikitika, politika, poinika dikastiria; Art. 93 I Const.). In terms of judges, however, this distinction is reduced to a twofold scheme, since the same persons regularly alternate between civil and criminal courts.

(b) Judicial officers are divided into ordinary judges (*τακτικοί δικαστές*, taktikoi dikastes) and public prosecutors (*εισαγγελείς*, eisangeleis; *see* Arts 26 II, 87 Const.). The latter mainly participate in criminal proceedings; in civil matters, only the Supreme Court prosecutor or his substitutes are required to submit their views on all cases pending before the full bench, as opposed to the sections of Areios Pagos in which the participation of the Supreme Court prosecutor was eliminated in 1995 (Art. 2 II of Law 2298/1995).

(c) Judicial officers are career lawyers, entering early and remaining for life. They are appointed at the entry level after passing an examination for getting admitted to the National School for Judges that requires an additional period of study of about 16 months on top of regular legal education (*see below*, under *E*). Once appointed, judges and public prosecutors advance through the system from level to level on the basis of length of service and merit (*see below*, under *D*). There is neither jury nor other lay element in civil and administrative cases. Only in criminal proceedings do jurors take part in mixed courts competent to try some serious felonies (*see* Ch. 20, Sections III *A* 1, *B* 1).

(d) There is some preference for judicial panels rather than single judges. Recent amendments, however, have markedly expanded the subject-matter competence[3] of one-member tribunals. What remains true is that at least all appellate courts consist of more than one judge.

## B. Ordinary Civil Courts

The Code of Civil Procedure provides for three types of district courts in civil matters: justices of peace (*ειρηνοδικεία*, eirinodikeia), one-member

3. The appropriate American term here would have been, of course, subject-matter jurisdiction. However, Greek law, following the Continental pattern, adopts a clear distinction between jurisdiction and competence. *See below*, under Section III *A*.

(*μονομελή πρωτοδικεία*, monomeli protodikeia), and three-member district courts (*πολυμελή πρωτοδικεία*, polymeli protodikeia). The justices of peace, divided into 301 districts throughout the country, mostly handle cases of low monetary value or involving agricultural disputes. The one or three-member district courts, 63 in each category, sit in jurisdictional areas that roughly coincide with the boundaries of the respective prefectures (*νομοί*, nomoi).

The three-member district courts have general original jurisdiction and also hear appeals from the justices of peace (Art. 18 II CCiv.P). Appeals from the other district courts, however, go to the 15 courts of appeals (*εφετεία*, efeteia) that sit in the largest cities of the country in panels of three judges and hear the case *de novo* both on the law and on the facts. The Supreme Court (*Άρειος Πάγος*, Areios Pagos) sits in Athens and normally hears cases in panels (*τμήματα*, tmimata) of five justices, or in full bench (*Ολομέλεια*, Olomeleia). This latter term denotes that about half of the total number of 66 justices are entitled to participate, a quorum being 17; this not considered a regular appellate court, but only a court of cassation. This type of court confines its extraordinary review to questions of law, having no authority to reverse findings of fact (*see below*, Section VIII *E*).

## C. Ordinary Administrative Courts

A similar structure has been extended in recent years to the administrative courts as well. Law 1406/1983 (*see also* Art. 94 I Const.) granted them jurisdiction over all substantive administrative disputes. There are 30 (one and three-member) administrative district courts and nine (three and five-member) administrative courts of appeal. Supreme court in the administrative jurisdiction is the Council of State (*see* Ch. 3, Sections II *B* 6 and V *C* 1).

## D. Judicial Independence

Both the Constitution (Art. 87 I) and legal doctrine distinguish the personal from the functional aspect of judicial independence. Under the former, all judicial officers, after a probationary period of two years, acquire life tenure. Compulsory retirement is now fixed at 65 or 67 years according to rank. During tenure, they may be dismissed only upon conviction for a serious offense, or upon adjudication of grave breach of discipline, illness, disability or professional incompetence, but not merely because their court or post is abolished. Even beyond that, the status of judicial officers (promotions, assignments, transfers, detachments) is within the authority of the Supreme Judicial Council (*Ανώτατο Δικαστικό Συμβούλιο*, Anotato Dikastiko Symvoulio), composed exclusively of members of the Supreme Court, with no participation of governmental or parliamentary representatives; only the promotion to the *presidium* of the Supreme Court (president, prosecutor, vice-presidents) is decided by the Cabinet. The concept of judicial self-governance is rounded out by entrusting supervision of judges only to superior judges and

also by conferring disciplinary authority over them to councils consisting of these higher judges.

The functional aspect encompasses the independence of the judiciary as a separate branch of the government. Legislation and administrative acts are subject to judicial review. Functional judicial independence exists within the judiciary itself as well; as in other Civil Law countries, no binding force of judicial precedents is formally recognized. In practice, however, courts tend to follow the holdings of prior cases (*see below*, Section VIII *E*; *see also* Ch. 2, Section III).

## E. Judicial Staff

A high degree of personal independence is also granted to the secretarial staff (*γραμματείς*, grammateis) of all courts and prosecutorial offices (Art. 92 I–III Const.). Notaries in Greece (*συμβολαιογράφοι*, symvolaiografoi), for whom full legal education is required, follow the Latin pattern of the profession. Their number is limited, and particularly in large cities some notarial offices may prosper financially. In the countryside, the notary often operates as a sort of unofficial legal adviser. They are state organs rather than private people who simply receive or register a document. They draft and record authentic documents for many legal transactions, such as contracts, wills, donations, incorporations, and others.

The role of notaries is central as regards transactions that involve property, especially real property. They also hold public auctions and proceed to the orderly distribution of funds (*see below*, Section XIII *D* after (d)), both in enforcement and non-contentious proceedings. Particularly, the former activity is important because its exercise is frequent and relevant, since funds to be distributed among creditors are more often than not insufficient. In this framework, much depends on the appropriate sequence of satisfaction of claims. The rank is decided upon, in the first place, by the notary holding the auction. Marshals (*δικαστικοί επιμελητές*, dikastikoi epimelites) officially serve judicial and extrajudicial documents, and discharge numerous functions during enforcement proceedings (*see below*, Section XIII).

For all legal professions, graduation from one of the three law schools of the country (Athens, Thessaloniki, and Komotini in Thrace) is required. Graduation from a law school in another member state of the European Union is regularly recognized as well but a separate exam is still required in some circumstances. Students enter law school normally at the age of 18, immediately after high school. Law study takes four years at a minimum. Following graduation and a period of apprenticeship (18 months), mostly in a law firm, the candidates take a bar examination conducted by the courts of appeals. All practicing attorneys (*δικηγόροι*, dikigoroi) must be members of one of the bar associations (*δικηγορικοί σύλλογοι*, dikigorikoi syllogoi), which are public entities. The promotion of lawyers to appellate courts is generally a formality, depending mainly on time. Otherwise, there is no formal distinction among practicing attorneys with regard to the functions

undertaken by them. Their number is high and their degree of specialization rather low, although recently somehow increasing.

## III. JURISDICTION AND COMPETENCE

### A. Definitions

In modern Greek law, there has always been a sharp distinction between jurisdiction (*δικαιοδοσία*, dikaiodosia) and competence (*αρμοδιότητα*, armodiotita). Jurisdiction refers either to the state's judicial power as a whole (the 'international jurisdiction' of the Greek State; *see* below, Ch. 17, Section II), or to the divisions of judicial authority according to the nature of the matter to be adjudicated; with respect to the latter, one speaks of civil, criminal, and administrative jurisdiction, exercised by the corresponding kinds of courts as prescribed in Article 93 I Const. The distinction between civil and criminal matters does not cause any significant problems; so far as administrative, in contrast to civil, disputes are concerned, they always originate in some administrative action undertaken in the exercise of public power.

Competence, on the other hand, pertains to the allocation of judicial power within each jurisdictional division. It describes a court's power to adjudicate specified matters. These matters, if identified by class, are assigned to one of the three types of district courts (*see above*, Section II.*B*), constituting their subject-matter competence (*αρμοδιότητα κατ' ύλη*, armodiotita kath'yli). Additional links are, however, required to bring a dispute to a particular court, and, thus, make up its territorial competence (*αρμοδιότητα κατά τόπο*, armodiotita kata topo). This is similar to the American notion of venue. Besides subject-matter and territorial competence, there also exists the so-called functional competence (*λειτουργική αρμοδιότητα*, leitourgiki armodiotita), which denotes the respective adjudicative powers of various judicial authorities with regard to the same litigation, for example through the consecutive appellate levels.

### B. Subject-matter Competence

As a rule, subject-matter competence depends on the amount in controversy. The current lines of demarcation (Art. 14 CCiv.P) run at EUR 12,000 as between justices of peace and one-member district courts; and at EUR 80,000 as between the latter and the three-member district courts. The amount in controversy stands as defined in the complaint, without taking into account interest or other accessory claims (Art. 9 CCiv.P). Along with this value-conditioned competence, the Code of Civil Procedure adopts a parallel method of allocating civil disputes among these three types of courts, regardless of the amount in controversy, by expanding the competence of justices of peace and the one-member courts, according to

the nature of particular species of disputes. Thus, to the former are allotted many cases involving farming, restrictions on property, transportation, or performance of some other services, and the internal working of associations and cooperatives (Art. 15 CCiv.P); to the latter, leases, employment, insurance and car accident disputes, claims of lawyers and of some other professionals, as well as most family litigation with financial impact, especially maintenance petitions (Art. 16 CCiv. P).

## C. Territorial Competence

Territorial competence usually depends on the defendant's domicile within the court's district (Art. 22 CCiv.P), i.e. a person's main and permanent establishment consisting of *corpus* and *animus* (Art. 51 CC; *see also* Ch. 5, Section II *D*).[4] Business 'domicile' is an additional ground for related claims (Art. 23 II CCiv.P). If domicile is lacking, its place is taken by residence. Legal entities are deemed to be domiciled at their real seat.[5]

## D. Exclusive Jurisdictions

Special jurisdictions (*ειδικές δωσιδικίες*, eidikes dosidikies) are divided into exclusive and concurrent. There are six kinds of exclusive or 'local' jurisdiction where the action may not be brought anywhere else but there, even to the exclusion of a defendant's domicile: (a) *forum rei sitae*, actions relating to property interests in immovables, including leases but not purchase and sale contracts, are allocated to the courts of the *situs* (Art. 29 CCiv.P); (b) *forum hereditatis*, descent and distribution claims among heirs and legatees as well as in favor of third parties go to the probate courts of the decedent's domicile or residence at death (Art. 30 CCiv.P); (c) *forum connexitatis*, auxiliary claims, such as for interest on loans or for guaranties, are tried before the courts having jurisdiction over the main claim (Art. 31 CCiv.P); (d) *forum societatis*, 'internal affairs' corporate claims are adjudicated at the real seat (Art. 27 CCiv.P); (e) *forum gestae administrationis ex decreto iudicis*, where a court has appointed an administrator of the affairs or property of a person, all related claims are to be tried there (Art. 28 CCiv.P); and (f) *forum reconventionis*, counterclaims, which generally are only permissive and need not be related to the cause of action, belong, if asserted as such, to the exclusive jurisdiction of

4. The defendant's domicile covers even causes of action unrelated to the forum, thus providing the basis of 'general jurisdiction'. *See Helicopteros Nacionales de Colombia* v. *Hall*, 466 U.S. 408, at 414, 415, 418 n. 12, 421 with n. 1, 423, 424, especially 414 n. 9 (1984); *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, at 473 n. 15 (1985).
5. The 'real seat' is localized not necessarily in the district of incorporation, nor in the principal place of business, but where the decision-making authority over the affairs of the legal entity is located (*see* Ch. 17, Section I *F*).

the court of the claim, provided they do not exceed its subject-matter competence (Art. 34 CCiv.P).

## E. Concurrent Jurisdictions

Concurrent jurisdictions (*συντρέχουσες δωσιδικίες*, syntrechouses dosidikies), available at plaintiff's option, include another six categories, resembling the US long-arm system: (a) *forum negotii*, suits on contracts and other juridical acts may be brought either at the place of making or of performance (Art. 33 CCiv.P); (b) *forum delicti*, actions on tort constituting a criminal act may be brought at the place of either conduct or its effects (Art. 35 CCiv.P); (c) *forum gestae administrationis ex causis variis*, disputes relating to various agency and administration relationships are adjudicated where the related conduct took place (Art. 36 CCiv. P); (d) *forum continentiae causarum*, suits against joint obligors may be brought at the domicile or a concurrent jurisdictional basis of any one of them; likewise, actions among the same person involving multiple immovables may be brought at the *situs* of any one of the immovables (Art. 37 CCiv.P); (e) *forum matrimonii*, personal, marital and divorce matters go to the courts of the common residence, with certain exceptions where the spouses are aliens (Arts 39, 611, 612 CCiv. P); and (f) *fora bonorum*, suits on monetary claims may be brought also either at (i) the residence of the defendant if it is of a certain duration; or (ii) the *situs* of any property of the non-domiciliary defendant even for unrelated claims (Arts 38, 40 CCiv.P), which is akin to *in rem* and *quasi in rem* jurisdiction except that, because the judgment is not limited as to amount, it can be classified as potentially 'exorbitant'.

## F. Prorogation

It should also be mentioned that the parties may choose a specified district court in advance, or in a pending suit. Such choice may be effected by express written agreement or by tacit informal acceptance expressed through failure to object in court at the first opportunity (*παρέκταση*, paretkasi; prorogation, Arts 42–44 CCiv.P). This confers jurisdiction except for non-pecuniary claims and claims relating to out-of-state immovables. No similar freedom of choice exists for the parties with regard to subject-matter competence, which is mandatorily fixed by law.

## G. Review of Jurisdictional Issues

Any court having competence is required to take the case: the *forum non conveniens* doctrine is unknown in Greek law. If the court lacks competence, it may not dismiss the case, but must transfer it to the competent court within the same

jurisdictional division (Art. 46 CCiv.P). Such transfers are not allowed among different jurisdictional divisions, be they civil, criminal or administrative. They are also not allowed among different states unless Regulation 44/2001 (Brussels I)[6] applies, i.e. among the Member States of the European Union.[7] A judgment can be attacked directly for lack of competence; null and void, however, is only a judgment that transgresses the lines demarcating the three jurisdictional divisions (*see* Art. 313 I(b) CCiv.P).

## IV. PARTIES AND TYPES OF ACTIONS

### A. Capacity and Standing to Sue

According to Article 68 CCiv.P, 'he who has a direct legal interest may request judicial protection' (*ενάγων*, enagon; plaintiff). This provision grants standing to sue (*νομιμοποίηση*, nomimopoiisi) only to persons whose substantive rights constitute the object of the relief sought in the action. In conformity with traditional Continental patterns, Greek law does not allow third persons having only an indirect or remote interest, or fighting merely *pro bono publico*, to institute civil proceedings. Therefore, neither the *actio popularis* nor modern American developments in the field of class and derivative actions have found their way into Greek civil procedure.[8] A similar position is taken with regard to the proper party defendant (*εναγόμενος*, enagomenos): only a person who is liable under substantive law may be made defendant (Art. 216 I(a) CCiv.P).

Joinder of parties (*ομοδικία*, omodikia) relies equally on substantive law considerations. Permissive joinder of plaintiffs or defendants is available to all those sharing the right or duty in dispute or in cases in which joint parties pursue or face claims based on similar causes of action (Art. 74 CCiv.P). The Code (Art. 76) also acknowledges, however, the concept of necessary and indispensable parties: if several persons are required in order to bring or to defend a particular action (e.g., for partition of a thing owned in common), or if no inconsistent judgments should be rendered as among them, then the parties must be joined. An expansion of the subjective confines of litigation is further provided for through the use of the intervention (*παρέμβαση*, paremvasi; Arts 79–85 CCiv.P) and the impleader (*προσεπίκληση*, prosepiklisi; Arts 86–90 CCiv.P).

So far as capacity is concerned, every natural person and every legal entity may be made a party since they are capable of holding rights (*see* Ch. 5,

6. Council Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12/1–23, 2001.
7. Except Denmark; the latter's relations with other Member States (and therefore Greece) on this subject are still regulated by the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Brussels Convention; ratified by Law 1814/1988, GG A 249).
8. By way of exception, consumers' unions may bring in a collective action under Art. 10 IX–XV, XIX of Law 2251/1994.

Sections II *A–B*, III *B* 2). However, capacity to be a party (*ικανότητα διαδίκου*, ikanotita diadikou) is to be clearly distinguished from the capacity to conduct litigation in one's own name (*ικανότητα δικαστικής παραστάσεως*, ikanotita dikastikis parastaseos). The latter is granted only to persons enjoying the capacity to enter into juridical acts (*see* Ch. 5, Sections II *A* and V *B*), i.e. to all persons above the age of 18 who are not under judicial assistance (*see* Ch. 9, Section VII *D*). Therefore, a party not capable of conducting litigation in his own name as well as all legal entities must act through their legal representatives.

A further and more general requirement is for a party to be represented by an attorney in any court other than a justice of peace. The choice of attorney is free but must be made from among the members of the local bar. An attorney may be appointed either by a document prepared by a notary or through personal appearance in court (Art. 96 CCiv.P); it is revocable at any time (Arts 100–103 CCiv.P).

The requirements discussed in this section are called 'procedural prerequisites' (*διαδικαστικές προϋποθέσεις*, diadikastikes proypotheseis) and are scrutinized by the court on its own motion (Art. 73 CCiv.P). If any one of them is lacking, the court will not proceed to the merits of the case, but will dismiss the action as 'inadmissible' (*απαράδεκτη*, aparadekti).[9] Such a dismissal does not prevent, however, the defeated plaintiff from remedying the defect and coming back with a new action.

## B. Types of Actions

Several criteria are used in order to classify the various types of actions. The classical categories of complaints were developed in Roman law and rely heavily upon substantive law concepts (e.g., *actio in rem*, *actio in personam*, *actio mixta*; further examples along similar lines would be the hereditary action or the family law action). More important, however, is the procedural classification based on the type of relief requested by the plaintiff. In this respect, a tripartite division emerges: actions for performance, actions for declaratory judgment and actions for judicial modification of legal relationships.

The action for performance (*καταψηφιστική αγωγή*, katapsifistiki agogi) is the most ancient and remains today the most usual type of action. It aims at a judgment ordering the defendant to perform as obligated; the performance may be a specific one or consist in the payment of money. Article 69 CCiv.P rather broadly allows even an action for future performance, thus turning an originally repressive remedy into a preventive one. The practical relevance of an action for performance lies in the field of enforcement: it is the only type of action, which, if

9. In Continental civil procedure, 'inadmissibility' of the action, or the appeal, is a technical term not limited to lack of international jurisdiction. The term means that the court may not examine the merits of the case and covers situations like lack of capacity or standing, prematurity, *res judicata*, or untimely filing of an appeal.

successful, opens the way for enforcement by execution. By contrast, declaratory judgments are not, strictly speaking, enforceable. They make a binding determination of a legal relationship capable of becoming *res judicata*. Therefore, an action for declaratory judgment (*αναγνωριστική αγωγή*, anagnoristiki agogi; Art. 70 CCiv.P) must concern a specific legal relationship, and requires a legal interest on plaintiff's part especially worthy of protection. There is increasing recourse to such actions, since their litigation is exempted from the fee levied by the state on the trial of an action for performance (about 1 per cent of the amount in litigation). Finally, an action for judicial modification of a legal relationship (*διαπλαστική αγωγή*, diaplastiki agogi; Art. 71 CCiv.P) is available only in cases provided for by law, for example to obtain a divorce or to set aside a contract on account of fraud, duress or mistake. Greek law does not permit the courts to alter existing legal relationships between the parties without an express statutory authorization; this is granted only in exceptional cases.

## V. PROCEDURAL PRINCIPLES

The Code of Civil Procedure devotes a central chapter of its Book I to the so-called 'fundamental procedural principles' (Arts 106–116). In so doing, it conforms to the Continental tradition of procedural codifications, with the new French Code of Civil Procedure (1975) being the latest and most spectacular example (Arts 1–24: *les principes directeurs du procès*). Such principles mainly deal with the allocation of power and initiative as between the court and the parties and with the guidelines for conducting litigation. They are formulated in the Code in highly abstract wording. Yet they are not mere precepts for general inspiration but rules of positive law, requiring and enjoying immediate application.

### A. The Dominant Position of the Parties

*Domini litis* are the parties. They determine whether, on what subject matter, to what extent, and upon what allegations of fact there will be civil proceedings. The judge remains a neutral, more or less passive and more or less silent, observer of the procedural scene, introducing on his own motion mainly the rules of law applicable to the dispute. Compared to his Anglo-American counterpart, the Greek judge displays less visible power in controlling the courtroom but, so far as evidentiary matters are concerned, he seems to have greater leeway for initiative.

The dominant position of the parties with regard to the subject matter and the conduct of civil litigation becomes apparent in three respects:

(a) A court may neither award the plaintiff relief not requested nor go beyond the request submitted (Art. 106 CCiv.P). Conversely, the plaintiff may withdraw the complaint and the defendant may acknowledge the claim; this means that, as a rule, the proceedings are terminated to the detriment

of the party taking such initiative, without any further inquiry by the court (Arts 294, 296, 298 CCiv.P).

(b) The court has no authority to rely on facts neither submitted nor proven by a party (Art. 106 CCiv.P). The court may, of course, order the taking of evidence (Art. 107 CCiv.P), but it is then for the parties to collect and to present to the court the various means of proof. By contrast, the field of the applicable rules of law constitutes the court's own domain: with regard to domestic law, there is neither need nor possibility of 'proving' its contents. Foreign law is also covered by judicial notice (Art. 337 CCiv.P), even on appeal, including the final appeal to Areios Pagos (Arts 559(1), 560(1) CCiv.P). If, however, the court does not know the relevant foreign law, it may order the taking of evidence or rely on any, even unofficial, methods of cognizance (Art. 337 CCiv.P; *see* Ch. 17, Section I *H* 5).

(c) All consecutive procedural steps are to be taken, as a rule, by the parties, not by the court (Art. 108 CCiv.P). For instance, all hearings of the case are fixed on a party's motion; judicial documents, including judgments, are served on party initiative and not on motion of the court (Art. 123 CCiv.P); even moving the appellate proceedings forward after an appeal has been filed always depends on party diligence (Art. 498 CCiv.P).

## B. Concentration on the First Hearing

In its endeavor to expedite proceedings, the law has required all factual allegations of the parties to be submitted to the court at the first hearing of the case; only in exceptional instances are the parties permitted to plead additional facts at a later stage (*σύστημα συγκεντρώσεως*, systima syngentroseos; Art. 269 CCiv.P). The scope of the former rule as such has been, however, strongly reduced by virtue of Article 12 of Law 2915/2001. Indeed, under this enactment, only one comprehensive hearing is provided for all cases, regardless of whether they fall under the subject-matter competence of the justices of peace, or the one-member, or three-member district courts. Under the deeply modified Article 270 CCiv.P, all courts of original jurisdiction have to render the final first-instance judgment after the first, and only, hearing of the case, which is oral and comprehensive. Accordingly, concentration on the first hearing remains only relevant with regard to the methods of appeal: as a rule, they are not allowed to deal with factual allegations or means of proof not already submitted to the court of original jurisdiction (Arts 527, 562 II CCiv.P).

## C. Oral and Written Proceedings

During the 1960s and 1970s, the drafters of the code strongly favored oral proceedings. Nevertheless, both practice and subsequent amendments relied heavily on the exchange of written pleadings, thus making a full oral hearing an optional

and rather rare phenomenon in civil litigation. By contrast, Law 1478/1984 has made oral proceedings mandatory before the justices of peace and in the one-member district courts (Arts 115, 270 [in its previous wording] CCiv.P), and Article 270 CCiv.P (as widely amended through Law 2915/2001) expanded the mandatory oral hearing to all courts of first instance.

### D. Good Faith and Morality

In an optimistic spirit of innovation, Article 116 CCiv.P introduces a general duty to tell the truth in civil proceedings, and requires the parties, their legal representatives and their attorneys to conduct litigation according to good faith and morality. Little has changed, however, as an immediate result of this provision, since the sanctions are restricted to moderate fines (Arts 205(2), 185(1) CCiv.P) seldom imposed and thus regarded as a negligible threat.

## VI. ORDINARY PROCEEDINGS IN FIRST INSTANCE

### A. Commencement of the Action

Regardless of the type of action, ordinary proceedings in the courts of first instance follow the same pattern. A civil action (*αγωγή*, agogi) is commenced by filing a complaint with the clerk who appoints a day and time for the hearing of the case; he then enters the action in the docket (*πινάκιο*, pinakio; Arts 215, 226 CCiv.P). The defendant will then, on plaintiff's initiative, be served usually at his home or at his place of business with a copy of the complaint containing also the day and time fixed. Service must be made at least 60 days before the hearing, or 90 days if the defendant resides abroad or his domicile is unknown (Art. 228 CCiv. P, as amended through Art. 6 II of Law 3043/2002). After service is completed, the action is considered as having been brought (Art. 215 I CCiv.P) and the litigation as pending. This has both procedural and substantive effects: on the procedural level, no future extension or modification of plaintiff's claim is permitted (Arts 223, 224 CCiv.P), and the resulting *lis pendens* (*εκκρεμοδικία*, ekkremodikia) prevents any other court from hearing the same claim (Art. 222 CCiv.P); on the latter level, as from the service on the defendant, among other things, the running of the statute of limitations is interrupted – which is considered, according to Continental tradition, substantive – and interest accrues on all monetary claims (Art. 221 CCiv. P; Arts 261, 346 CC).

### B. Contents of the Complaint

The complaint is drawn up and signed by plaintiff's counsel. It identifies the court in which the action is being brought, states plaintiff's and defendant's names and

domiciles and contains the grounds establishing the cause of the action as well as an unambiguous specification of the relief requested (Art. 216 I CCiv.P). Failure to allege sufficient facts to support the claim will lead to the dismissal of the complaint even on the court's own motion. By contrast, the legal aspects need not be articulated at this initial stage of the litigation or even later (*ius novit curia*; *see above*, Section V *A* (b)) – the only exception being, of course, the proceedings before Areios Pagos, which are restricted to legal issues. However, since both the complaint and the subsequent pleadings are prepared by lawyers, they, not surprisingly, often include rather extensive legal argument.

Joinder of separate claims (*σώρευση αγωγών*, soreusi agogon) between the same parties is allowed even if they arise out of entirely unrelated facts, provided they (a) do not contradict each other, and (b) fall within the competence of the court (Art. 218 CCiv.P). Subsidiary claims may likewise be included in the same or in another complaint should the main claim be dismissed (*επικουρική βάση της αγωγής*, epikouriki vasi tis agogis; Art 219 CCiv.P). There exists, however, neither a compulsory joinder nor any general prohibition against splitting a single claim or cause of action.

## C. Pleadings

Formal preparation for litigation is not necessary for either plaintiff or defendant. As a general matter, the plaintiff may bring an action as the first step in the proceedings against the prospective defendant. The defendant is not required to answer the complaint immediately. Rather, both parties must submit their respective pleadings at the latest 20 days before the hearing. Counter-memorials have to be annexed to the main pleadings 15 days before the hearing.[10] The file of the case is then closed and transmitted to the reporting judge in order for him to prepare for the hearing of the case. Such written pleadings develop the respective parties' factual and legal positions. Written pleadings other than the complaint are never required to be served or even sent to the other party; they are only filed with the court's clerk who takes care of distributing them to the other parties' lawyers (Arts 237, 240 CCiv.P, as repeatedly amended).

The hearing of the case is indeed the most important phase of the entire proceedings. Both parties articulate their statements of fact and produce all evidence required and available. Proceedings before justices of peace or one-member district courts have already been traditionally oral. Now orality has been expanded before three-member district courts as well. After the hearing that, as a rule, is only one, the judgment is handed down; only in exceptional cases may the court

10. With regard to cases before the one-member district court, these periods of time needed to be activated by a still outstanding presidential decree (Art. 7 III of Law 2915/2001).

order further evidence to be taken (Arts 237, 270 CCiv.P, as amended by Arts 7, 12 of Law 2915/2001).

## D. Defenses and Counterclaims

In formulating his pleadings, the defendant is also not subject to strict pleading rules. Two types of objections are in order at that time:

(a) Exceptions (*ενστάσεις*, enstaseis) either prevent the court from reaching a decision on the merits, for example a plea of lack of competence or of lack of standing, or plead ulterior facts, for example a plea by way of confession and avoidance or of set-off. The former type must also be considered by the judge *ex officio*.
(b) Defenses related strictly to the grounds of the action, which means to deny the facts as alleged by plaintiff or to put them in another context (*άρνηση της βάσεως της αγωγής*, arnisi tis vaseos tis agogis; Art. 261 CCiv.P).

The defendant may interpose a counterclaim 30 days before the hearing at the latest (*ανταγωγή*, antagogi; Arts 34, 268 CCiv.P). Counterclaims follow their own procedural course regardless of the outcome of the action. It is thus possible for the action to be dismissed, yet an affirmative judgment may be rendered on the counterclaim.

## E. Default

A judgment may also be obtained by default, either on plaintiff's or on defendant's side (*ερημοδικία*, erimodikia). Default may result when a party is not properly represented at a hearing; representation normally requires a duly appointed lawyer and the timely filing of pleadings. Any party's default requires the court to ascertain whether proper service of process was made on the defaulting party; if not, the case may not proceed and a new service becomes necessary (Arts 271 I, II CCiv. P). If service was proper on the defaulting party, regardless of whether that party is the plaintiff or the defendant, all parties are presumed to be present (Art. 270 I 5). Accordingly, the court may draw whatever inferences from a party's absence. However, this absence as such does not produce any legal effect on the outcome of the case (Art. 270 I 4, 5 CCiv.P).

## F. Attempt at Conciliation

At any stage of the case, the court is expected to promote a settlement of the dispute (*συμβιβασμός*, symvivasmos; Art. 233 II CCiv.P). Furthermore, Articles

209–214 CCiv.P provide for a permissive conciliation by the justice of peace before a complaint is filed with the clerk of any civil court. Such an attempt at conciliation becomes mandatory in cases falling within the subject-matter competence of the justice of peace (Art. 208 CCiv.P) and in labor cases (Art. 667 CCiv.P). Nevertheless, the practical relevance of conciliation is minimal. Skipping a mandatory attempt at conciliation does not trigger any sanctions. With regard to optional conciliation, the parties are usually unwilling to lose face by exposing themselves to a process that may not succeed. The intensely belligerent image of Greek advocacy also contributes to a rather unfavorable attitude towards conciliation. This qualification has not much changed even after a mandatory attempt at settlement was introduced by Article 214A CCiv.P. The 'mandatory' character qualifies the attempt rather than the result. It is reported that the per centage of cases effectively settled is still minimal.

## G. Court Costs and Legal Aid

Another factor accounting for the minor role of conciliation is the comparatively low level of court costs, including attorney fees. While the Code on Attorneys provides for the minimum level of fees depending on the amount in civil litigation and the type of procedure involved, in practice an attorney's remuneration is often fixed by an agreement between him and his client. Contingent fee arrangements are allowed, and indeed usual in some areas (e.g., labor or tort cases or actions relating to rights in immovables), up to 20 per cent of the amount eventually awarded.

Court costs (*δικαστική δαπάνη*, dikastiki dapani) are borne in advance by each party with respect to his own expenses. *Ex post*, they are allocated by the judgment according to the so-called 'defeat principle' (Art. 176 CCiv.P): after the suit is terminated, the loser pays the other party's court costs including moderate lawyer fees (Art. 189 CCiv.P). This principle, however, is mitigated by an important exception: the court may and often actually does depart from the all-or-nothing cost charge and allow no recovery of expenses whatsoever, if it deems that the interpretation of the relevant rule was particularly difficult (Art. 179 CCiv. P, as amended by Art. 2 II of Law 2915/2001). This consequence may also follow in cases of partial victory and partial defeat by both parties (Art. 178 CCiv. P). Recently, there seems to be a tendency in the courts to adhere more strongly to the principle of 'loser pays all'. A preliminary encouraging opinion of counsel to the party who eventually lost would in most instances not suffice to relieve him from paying the victorious party's expenses. However, they are usually recovered at less than their actual amount, in particular they seldom come up to the total fees paid by the victorious party to his lawyer. It is worth emphasizing that malpractice suits against lawyers, while theoretically available, are virtually non-existent in all respects.

Legal aid (*ενεργέτημα πενίας*, evergetima penias) is provided for by Articles 194–204 CCiv.P. Its availability depends, however, on proven need. Such a strict limitation has so far prevented an extensive recourse to legal aid.

## VII. EVIDENCE

### A. Ordering Evidence

Matters of evidence (*απόδειξη*, apodeixi) occupy a central place in Greek civil proceedings and procedural reform trends as well. Indeed, the bulk of proposals put, time and again, on the table towards a more efficient and rapid civil procedure turned around the question of whether, or not to, first delineate the subject matter of evidence and only thereafter let the administration of evidence take place. Formerly, the taking of evidence required an extensive and fully reasoned opinion of the court. Law 1478/1984, amending Article 341 CCiv.P, replaced this full statement of reasons in a formal decision with a simple and short judicial act, containing only the subject-matter of evidence, the allocation of burden and the allowed means of proof, as well as the place and time of evidence-taking.

In addition, before one-member courts (justices of peace and one-member district courts alike), parties have been required by the law to produce their means of proof at the first hearing, since the court is expected to render judgment, as a rule, at once without further taking of evidence; since 2002, the same method applies to all first-instance courts, in particular including the three-member district court as well (Art. 270 CCiv.P, as amended first by Art. 11 of Law 1478/1984 and then by Art. 12 of Law 2915/2001; *see above*, Sections V *B*, VI *C in f.*). In particular, expert reports and viewing of the premises may be ordered orally by the court. In any event, early proper discovery and other pre-trial devices are not known to Greek law, since evidence is confined solely within the time limits of a formal lawsuit except in cases of imminent danger, for example destruction of a means of proof (*συντηρητική απόδειξη*, syntiritiki apodeixi; Arts 348–351 CCiv.P).

### B. Subject-matter of Proof

Only those facts contested by one party and relevant to the outcome of the litigation make up the subject-matter of proof (Art. 335 CCiv.P). The court takes judicial notice (Art. 336 CCiv.P) of the general teachings of human experience (e.g., notions of psychology, geography, history, even generally accessible concepts of modern technology) as well as of facts practically known to everyone (e.g., the nuclear accident at Chernobyl). The court is further allowed to infer from proven facts conclusions as to other facts.

## C. Burden of Proof

Matters of proof are extensively regulated in the Code of Civil Procedure in some 130 Articles (335–465). Nevertheless, only one of them establishes a general statutory rule allocating the burden of proof (*βάρος αποδείξεως*, varos apodeixeos; Art. 338 CCiv.P). According to this rule, each party has to prove the facts that are necessarily required to support his claim or counterclaim. Further elaboration of this abstract principle is left to the substantive rules dealing with the specific legal relationships and contained mainly in the Civil Code. Thus, in a case involving a contract, plaintiff bears the burden of proving both the existence of the contract and its breach. However, lack of capacity, fraud or the plea of the statute of limitations are affirmative defenses which must be proven by the defendant (*see* Arts 277, 278 CC).

The rules refer to the burden of proof as the onus of producing evidence. However, to the party bearing this 'subjective' burden of proof is also allocated the burden of proof in an 'objective' sense, that is the risk of non-persuasion,[11] which will in most cases ultimately mean losing the suit. Persuasion (*πεποίθηση*, pepoithisi) implies the full conviction of the court, i.e. requires clear and convincing proof; only in cases specifically provided in the law, the 'objective' burden of proof is satisfied by a showing of probability (*πιθανολόγηση*, pithanologisi; Art. 347 CCiv.P).

## D. Means of Proof

There are nowadays seven means of proof under the Code (Art. 339): confession (*ομολογία*, omologia), direct proof, especially viewing the premises (*αυτοψία*, autopsia), expert reports (*πραγματογνωμοσύνη*, pragmatognomosyni), documentary evidence (*έγγραφα*, engrafa), examination of parties (*εξέταση των διαδίκων*, exetasi ton diadikon), testimony (*μάρτυρες*, martyres), and presumptions (*τεκμήρια*, tekmiria). Party-oath was a relic of medieval procedure, conferring binding force to a party's sworn affirmation. It was imposed by the court only if there was no other sufficient evidence; in actuality, it was used infrequently and in 2002 done away altogether. It has been replaced in part by the examination of parties, sworn or unsworn, which is also a subsidiary means of proof (Art. 415 I CCiv.P) and has no binding force.

In recent years, the use of expert reports has risen greatly in importance and frequency, particularly in connection with blood tests, the explanation of air-photographs, the authenticity of tape recordings, or the account of other technological events. Courts are encouraged to take judicial notice of technical elements relevant to the litigation, for example of the value of an estate or the proper functioning of a machine. Only if the required level of knowledge is qualified as

11. On this distinction, *see*, e.g., F. James and G. Hazard, *Civil Procedure* (3rd edn, Boston, Toronto, 1985) 313–321.

'highly specialized' and expertise is requested by a party, must the court order it (Art. 368 II CCiv.P). In practice, however, expert evidence is often ordered even where the court was not bound to resort to it. In all cases of expert evidence, the parties are entitled to appoint their own 'technical counsel' (*τεχνικοί σύμβουλοι*, technikoi symvouloi; Arts 391, 392 CCiv.P) in order to highlight their viewpoints on the technical aspects and to assist the court-appointed experts. The latter may be public officers or private individuals; no formal consequences are derived from this distinction.

Testimony and documentary evidence remain the most common methods of proof. Although there are no exclusionary rules of evidence in the American sense, the Code does deal in certain exceptional situations with the non-admissibility of particular kinds of proof. Still under French influence, Greek law is suspicious of the credibility of witnesses. It requires a contract or other juridical act to be in writing and admits testimony only as an exception which is, however, rather broad. The exception encompasses all cases in which production of written proof is literally or practically impossible. Also within the exception are most commercial transactions as well as all juridical acts, even of non-commercial nature, the value of which does not exceed the sum of EUR 5,900 (Arts 393, 394 CCiv.P).

## E. Documentary Evidence

Documentary evidence consists of notarial and other authentic instruments (*δημόσια έγγραφα*, dimosia engrafa) or of instruments drawn privately (*ιδιωτικά έγγραφα*, idiotika engrafa). The former bring about conclusive proof: the court must deem established as against the world the facts recorded in an authentic instrument witnessed by a notary or other public official, provided that he has acted within the scope of his authority (Arts 438, 440, 441 CCiv.P). The latter have a more limited probative effect in two respects. First, the facts recounted are considered as established, but only as against the person(s) who signed the private instrument; however, any form of counterproof can overcome this effect (Arts 446–448 CCiv.P). Furthermore, the authenticity of a private instrument, if contested, has to be proven by the party producing the instrument (Art. 445 CCiv. P). All documents may be challenged for forgery (*πλαστογραφία*, plastografia; Arts 460–465 CCiv.P).

## F. Administration of Evidence

As a rule, evidentiary proceedings take place before the full court (Art. 270 CCiv. P). No reference of the administration of evidence to other judges or courts is provided for. The court takes into consideration all means of proof which comply with the law. In addition, the court may also consider as well, and freely evaluates, means of proof which do not comply with the requirements of law. The court

has to examine at least one witness from each side. In addition, three witnesses from each side may be examined before a notary, provided that the adverse party has been notified two working days in advance. For purposes of rebuttal, an equal number of witnesses may also be examined by the adverse party (Art. 270 CCiv.P, as replaced by Art. 12 of Law 2915/2001). In any case, it lies within the province of the court to order the supplementary examination of such evidence, especially a deposition that may seem exceptionally important (Arts 245, 254, 411 CCiv. P). Documentary evidence and expert reports are kept in the file of the case and may be examined by the whole panel. A full transcript of testimony taken before the court is kept, more or less exhaustively, and delivered to the parties (Art. 270 VI 2).

### G. Evaluation of Evidence

In principle, there are no mechanical rules of proof, prescribing in a general way the probative weight to be accorded to the various types of evidence. Such legal weight, irrespective of the particular circumstances, is provided for by the law only in exceptional cases, as with regard to notarial or other authentic instruments (*see above*, under *E*), or confessions (Art. 352 CCiv.P). Otherwise, the judges must decide controversies on the basis of their inner conviction and are free to weigh the opposed means of proof in any way they deem proper (Art. 340.1 CCiv. P). This rule applies even to highly technological explanations contained in some expert reports (Art. 387 CCiv.P). In any event, the judges are required to articulate in their opinion their conclusions as to the facts (Art. 340.2 CCiv.P).

## VIII. APPEALS AND SCOPE OF REVIEW

### A. Function and Distinctions of the Methods of Appeal

Like most Continental legal systems, Greek law does not conceive of appeals as coming within the discretion of the judge, either the lower-court judge who rendered the judgment to be attacked or the superior judge called upon to review it. All methods of appeal (*ένδικα μέσα*, endika mesa) are as of right: they are provided specifically by the law, and there is no other way of reviewing a judgment. Appeals are not necessarily addressed to a higher court: although not often used, two kinds of attack (reopening of default, and of contested judgments) are directed to the same court that rendered the decision under challenge.

Following again French patterns, Greek civil procedure distinguishes between ordinary and extraordinary methods of attack. Reopening a default decision, as well as the regular appeal leading to a review on the law and on the facts, make up the former group. To the latter group belong the two remaining methods

of attack: the reopening of contested judgments, and cassation, the request to Areios Pagos for a review on the law only. The functional consequences of this distinction lie with the effect of *res judicata* (*δεδικασμένο*, dedikasmeno) and the enforceability (*εκτελεστότητα*, ektelestotita) of judgments. Generally, both come into play only after the ordinary methods of attack have been exhausted (Arts 321, 904 II(a) CCiv.P), that is either rejected or left unused within the time limitation provided. By contrast, extraordinary methods of attack neither suspend the *res judicata* effect nor stay execution of the judgment under challenge. Whereas, however, *res judicata* cannot be precipitated or deferred by order of the court in its discretion, the procedural maturity of the judgment for enforcement purposes may vary in both directions: the court may, or sometimes must, allow the provisional enforcement of a judgment (*προσωρινή εκτέλεση*, prosorini ektelesi), with the one or the other ordinary method of attack still pending (Arts 907–914 CCiv.P); it may also suspend the enforcement of a judgment already having *res judicata* effect until the exhaustion of the extraordinary methods of review (Arts 546 II, 565 II CCiv.P).

From a technical point of view, all methods of attack are initiated by filing a written petition with the clerk of the court that rendered the judgment (Arts 495–497 CCiv.P; for the next steps *see above*, Section V *A* (c) *in f.*). From a general point of view, appeals are not considered to be protected either through the constitutional guaranty of the right to sue (Art. 20 I Const.) or through Article 6 ECHR. Therefore, Parliament is in principle free to reduce the availability of appeal in some matters; it has done so, for example, with regard to small claims (up to EUR 1,500; Arts 466, 512 CCiv.P).

### B. Reopening of Default

The reopening of default (*ανακοπή ερημοδικίας*, anakopi erimodikias) used to be a twofold method of attack. It means, first, that a party who has not been duly summoned to a hearing of the case may demand reopening of the decision (Art. 501 CCiv.P). In this sense, reopening is premised on the right to be heard in court (Art. 20 I Const.) and does not produce a suspensive effect. However, it is rarely successful since it is unlikely that the court, when issuing the default judgment, did not consider the question of proper service on the defaulting party (*see above*, Section VI *E*).

The second meaning of the reopening of default is more technical and has been peculiar to the historical development of Greek civil procedure. This second meaning used to cover the cases in which the default judgment was handed down in the first hearing of the case, in first or second instance (intermediate appellate level). In such circumstances, the defaulting party could demand, and the court had to reopen the default, regardless of whether the party had been duly served (Art. 501 I CCiv.P, as it stood before Art. 9 I of Law 2145/1993: 'unjustifie1d' reopening of default). This latter attack was provided with suspensive effect and

often served only defendant's dilatory tactics. Such a wide conception of default has been now eliminated.

As far as time is concerned, a reopening may be asked for not later than 15 days from the date of service, or pretended service, of the default judgment or 60 days if the defaulting party resides abroad (Art. 503 CCiv.P).

## C. Regular Appeal

The most important and frequent attack on judgments is provided through the regular appeal (*έφεση*, efesi). The term has a technical meaning, denoting the attack on first instance judgments, addressed to a (intermediate) court of appeals authorized to review the judgment on the law and on the facts. In this sense, appeals may generally be taken from judgments rendered by any trial court (Arts 511, 513 CCiv.P). As a rule, only final judgments are appealable; non-final decisions, for example interlocutory or preparatory orders, can only be attacked jointly with the final judgment following them and terminating the entire case before the trial court. Intermediate petitions for reconsideration by the rendering court are quite exceptional (Art. 513 II CCiv.P). Time for appeal is 30 days from the date of service of the judgment attacked, or 60 days if appellant resides abroad (Art. 518 CCiv.P).

Grounds for appeal may refer to pure questions of fact, including the evaluation of evidence, to questions of (substantive or procedural) law, or to alleged procedural mistakes of the lower court. Consequently, an intermediate appellate court has potentially the same powers as the trial court that issued the judgment appealed from. It cannot, however, grant relief beyond the issues to which appellant has restricted his appeal (Art. 522 CCiv.P); new claims may not be presented on appeal (Art. 525 CCiv.P). Nevertheless, a cross-appeal (*αντέφεση*, antefesi) is allowed to the party who has not appealed, but only within the challenged portions of the lower-court judgment or those necessarily related to them (Art. 523 CCiv.P). The court of appeals conducts a trial *de novo* on all matters before it: a regular appeal on the record alone is unknown in Greek civil procedure.

Upon reversal, the court of appeals usually retains the case. However, if the appeal was sustained because of lack of jurisdiction of the court *below*, the case is referred to the court having jurisdiction. In the exceptional case that the latter court belongs to the jurisdictional ambit of the same appellate court, that court may either remand or decide the case on the merits (Art. 535 CCiv.P, as paragraph I was replaced by Art. 16 VII of Law 2915/2001).

## D. Reopening of Contested Judgments

Reopening of contested judgments (*αναψηλάφηση*, anapsilafisi) has been modeled in Greece on the French *requête civile* and the German *Wiederaufnahme des*

*Verfahrens.* This avenue is open to a party aggrieved by a judgment having *res judicata* effects, regardless of the availability of a cassation to Areios Pagos, yet on very narrow grounds. The grounds may be either purely procedural or have simultaneously some substantive connection (*see* Art. 544 CCiv.P). To the former category belong the existence of forged or of inconsistent judgments, a knowingly improper method of service of process as well as a party's improper representation. Along with these procedural improprieties, contested judgments may also be reopened in cases of perjury or other misconduct, provided that a criminal sanction has been already inflicted thereon through an unappealable decision; also if existing, yet concealed, documentary evidence has been discovered afterwards; finally in cases in which a judicial decision supporting the judgment under attack has been vacated. Under all these quasi-substantive grounds, the defect subsequently disclosed must have materially affected the outcome of the concluded proceedings.

## E. Cassation

Compared to the regular appeal (*see above*, under *C*), proceedings on cassation (*αναίρεση*, anairesi) in Areios Pagos take on a much narrower scope. Here, the grounds for review are, although numerous, quite limited, and may involve violation of either a rule of substantive law or of some specified rule of procedure (Arts 559, 560 CCiv.P). Cassation thus proceeds on the record and is not allowed in principle to touch upon findings of fact (Art. 561 I CCiv.P). It may nevertheless be founded on a distortion of clear and precise documentary evidence or on a lack of legal basis (*manque de base légale*), i.e. whenever the findings of fact contained in the lower-court decision are so inconsistent or insufficient that Areios Pagos cannot determine whether the law has been correctly applied.

Apart from these marginal grounds for cassation, a violation of rules of substantive law may result from either erroneous interpretation or mistaken application of a legal norm. In the latter alternative, Areios Pagos reviews also the characterization attached to facts, for instance whether or not they constitute negligence or whether they comply with abstract legal notions, such as good faith or important reason, incorporated in the applicable rules. Here, however, emerge mixed questions of law and fact, which cause difficulties in delineating the exact scope of review and spawn a somewhat inconsistent series of cases. Upon reversal, the case must be remanded to a lower court for re-examination of the disputed issue (Art. 580 CCiv.P, as amended through Arts 5 XV of Law 1738/1987, and 31, 32 of Law 2172/1993).

Even though precedents are not a formal source of law (*see above*, Section II *D in f.*, and Ch. 2, Section III), Areios Pagos opinions have a considerable impact upon the decisions of all other courts in the country and they are, as a rule, followed by the Areios Pagos itself in subsequent cases.

## IX. EFFECTS OF JUDGMENTS

### A. Drafting and Contents of Judgments

In order to prepare the judgment (*απόφαση*, apofasi) in any judicial panel, one of its members is appointed by the president or the presiding judge, immediately after the hearing, to be the drafter (*juge rapporteur* = *εισηγητής*, eisigitis). Only in the cassation panels of Areios Pagos is the drafter appointed at the time of fixing a date for the hearing. He must file his draft report with the court at least eight days before the hearing (Art. 571 CCiv.P, as considerably expanded through Arts 17 III of Law 2915/2001 and 10 of Law 3043/2002) and will read it in public at the hearing (Art 574.1 CCiv.P). In all other judicial panels, the drafter will prepare and develop orally the terms of the judgment only in a closed conference to be held among the members of the panel. The judges speak and vote in the reverse order of seniority (Art. 301 CCiv.P), except for the drafter who presents his point of view first. Dissenting opinions are allowed in all Greek courts according to Article 93 III 2 Const. (*see also* Arts 35–38 of Law 184/1975); they appear, however, rather rarely and reveal the dissenters' names. Judgments are pronounced at a public audience (Art. 93 III 1 Const.; Art. 304 II CCiv.P) and many are thereafter reported, with varying degrees of frequency and comprehensiveness, in legal periodicals.

The text of a judgment opens by mentioning the composition of the court, including the name of the judge who drafted the text; identifies the parties and their representatives; indicates the subject-matter of the dispute and the course followed in the proceedings; and then goes on stating the reasons adopted in the case by the court. The operative part of the judgment (*διατακτικό*, diataktiko) comes at the end (Art. 305 CCiv.P). The statement of reasons in Greek judgments, compared to English, American, or German ones, is rather short, tending more to French style, especially in Areios Pagos. With the exception of the latter, there are usually some references to scholarly works and even more to cases.

### B. Binding Effects of Judgments

A civil judgment is not automatically binding. In the first place, it may be null and void if it was beyond the jurisdiction of the civil courts, or against a non-existing party, or not publicly pronounced (Art. 313 CCiv.P). Apart from these truly rare cases, a non-final judgment may always be modified or revoked by the court that rendered it at a later hearing of the same case (Art. 309 CCiv.P). However, the scope of application of this rule has been reduced since all trial courts are expected to hand down their final judgment after the first and only hearing of the case, which practically leaves no room for non-final judgments (*see above*, Sections V *B*, VI *C*, VII *A*). But even a final judgment, binding though it is upon the court that rendered it, is not yet genuinely binding upon the parties. *Res judicata* accrues to

a final judgment only after it is no longer subject to an ordinary method of attack, i.e. reopening of default or regular appeal (*see above*, Section VIII *A*). Since no distinction between legal and equitable relief is recognized, all judgments have equal *res judicata* effect. According to traditional Greek doctrine, the *res judicata* effect operates within limits that are objective (preclusion on the claim adjudicated; *below*, under *C*), subjective (preclusion with respect to non-parties; *below* under *D*), or depend on time (mutability of *res judicata* because of changed circumstances; *below* under *E*).

## C. Claim and Issue Preclusion

The *res judicata* effect between the same parties produces both a merger or bar with respect to the cause of action involved and a preclusion of issues determined in the first suit. Both require a judgment on the merits. By contrast, a judgment dismissing the action on procedural prerequisites becomes *res judicata* only with regard to the procedural question decided on direct estoppel grounds (Art. 322 I CCiv.P). Claim preclusion is restricted to the same cause of action, both in factual and legal terms (Art. 324 CCiv.P). Therefore, according to the prevailing view in the cases if plaintiff, after having lost the first suit on the merits, comes back with a new complaint based on other allegations of fact or on a legal theory pertaining to substantive rules, which were not considered in the first suit, no plea of *res judicata* can be entertained. While Greek law knows no rigid forms of action, still, the legal foundation of a claim helps in delineating and identifying it.

Issue preclusion on collateral estoppel principles is specifically provided for in Article 331 CCiv.P and distinguishes Greek law from most other Continental systems. Under this rule, issues determined in the first suit are covered by *res judicata* insofar as (a) they fell within the subject-matter competence of the trial court, and (b) their determination was necessary for the outcome of the litigation. The latter requirement particularly causes recurrent problems and induces the second court to define the scope of *res judicata* in a sometimes unpredictable, case-by-case approach.

## D. Preclusion With Respect to Non-parties

So far as the subjective limits of *res judicata* are concerned, Greek law adheres to the principle that only parties and their heirs or other successors are bound thereby (Art. 325 CCiv.P). To a certain extent, however, substantive relationships lead to a broader conclusive effect. Thus, judgments concerning property are equally binding on non-parties holding the thing in dispute in their possession or detention (Art. 325.3 CCiv.P). Judgments in matters of succession, where the administrator of a vacant succession, the liquidator of an estate, or the executor of a will is a party, are also conclusive upon the heirs even if they were not themselves parties

to the suit (Art. 327 CCiv.P; *see also* Art. 326 CCiv.P). Judgments against a legal person also become *res judicata* with respect to those members who are potentially liable (*see* Art. 329 CCiv.P). The mutuality rule is prevailing, with a slight statutory exception concerning the relationship between the principal debtor and the guarantor (Art. 328 CCiv.P), and significantly limits the subjective extent of preclusion.

### E. Time Limits of Res Judicata

Judgments are often based upon judicial forecast of future developments, for example with regard to lost profits; if reality turns out to be different from predictions, *res judicata* remains nevertheless undisturbed. Not so, however, in cases of periodic performances, for instance future maintenance claims. Here a substantial change of circumstances, including a significant increase of the price index, enables the court to modify the previous judgment for the future (Art. 334 CCiv.P), in a manner resembling the granting of equitable relief.

## X. SPECIAL PROCEEDINGS AND PROVISIONAL REMEDIES

### A. Function of Special Proceedings

Along with ordinary civil proceedings, there have always been in modern Greece special proceedings (*ειδικές διαδικασίες*, eidikes diadikasies) statutorily provided for, which are subject to simpler and speedier procedures, accompanied by wider powers of the court. These grew step by step mainly in the first half of the 20th century and they were integrated into the system of civil procedure in order to counterbalance the exaggerated formalities and considerable delays under the old Code of Civil Procedure of 1834. The new Code tried to reduce both the necessity and scope of special proceedings by concentrating on ordinary proceedings and improving their efficiency. However, in the almost 40 years during which the new Code has been in force, the reform of ordinary proceedings has lost a good part of its impact. Accordingly, the legislature expanded the sphere of application of special proceedings by increasingly assigning to them additional kinds of disputes.

Laws 1478/1984 and 2915/2001 attempted to revitalize ordinary proceedings. They simplified them, as far as all trial courts, one-member and three-member alike, are concerned, by essentially imposing the pattern of the most typical of special proceedings: the procedure in labor cases. In this fashion, traditional ordinary proceedings are now applicable only on appeal from trial court judgments, while in all other cases proceedings may still be technically 'ordinary', yet they are actually modeled upon typical patterns of special proceedings.

## B. Groups of Special Proceedings

Special proceedings are now provided for with respect to the following groups of cases: matrimonial matters such as divorce or annulment of marriage (Arts 592–613 CCiv.P); relationship between parents and children (Arts 614–622 CCiv.P); orders of payment on the basis of documentary evidence (Arts 623–634 CCiv.P); disputes concerning negotiable instruments (Arts 635–644 CCiv.P); disputes between landlords and tenants (Arts 647–662H CCiv.P); labor cases (Arts 663–676 CCiv.P); disputes related to the performance of independent services (Arts 677–681 CCiv. P); car accidents (Art. 681A CCiv.P); and maintenance and custody cases (Arts 681B–681D CCiv.P, which are also partly applicable on litigation related to press, broadcast, and TV communications).

Along with these specified special proceedings, particular rules (*ειδικές διατάξεις*, eidikes diataxeis) apply to the collection of small claims (Arts 466–472 CCiv.P; *see above*, Section VIII *A in f.*), to the action seeking an accounting (Arts 473–477 CCiv.P), and to the action for partition (Arts 478–494 CCiv.P, as amended through Articles 10–21 of Law 1562/1985). Here, both the low degree of deviation from ordinary proceedings and the technical rather than substantive delimitation of the disputes in question prevented the legislator from elevating the particular rules to the standing of actual special proceedings.

## C. Common Procedural Features

It is difficult to identify common procedural features connecting all special proceedings. With regard to matrimonial cases and parent-child disputes, one could stress the non-availability of the party-oath (which has been now under Law 2915/2001 generally eliminated; *see above*, Section VII *D*) and the statutory demotion of confession to the position of a non-conclusive method of proof (Art. 600 CCiv.P); the public prosecutor's potential participation as a party (Art. 607 CCiv.P); a wider demarcation of international jurisdiction (*see* Ch. 17, Section II), depending as well on a party's Greek nationality (Arts 612, 622 CCiv.P; *see also* Art. 611 CCiv.P); and a broader *res judicata* effect operating *erga omnes* (Arts 613, 618 CCiv.P).

So far as the other types of special proceedings are concerned, one has to keep in mind that labor disputes should be regarded as their prototype as well as their most important specimen in reality. In these proceedings, parties are not necessarily represented by lawyers and they may also assume their defense themselves (Art. 665 CCiv.P). Defaulting parties are by statutory fiction considered as silently present, so that the court must examine the merits of the case, oblivious to the default (Art. 672 CCiv.P); accordingly, no reopening of defaults is allowed without cause (Art. 673 I CCiv.P; *see above*, Section VIII *B*); however, all these consequences have been now by virtue of Law 2915/2001 generalized, and do not make up an exception any longer. Standing to sue is granted not only to

immediately interested parties but also to trade unions, professional chambers, or other associations (Art. 669 CCiv.P). Finally, admissibility of evidence in a substantially broader sense is acknowledged, including as well 'means of proof not complying with the terms of law' (Art. 671 I CCiv.P). Thus, even unsigned private instruments or depositions of biased witnesses are taken into account.

## D. Provisional Remedies

In practical terms, provisional remedies (*ασφαλιστικά μέτρα*, asfalistika metra; Arts 682–738 CCiv.P) are even more important than special proceedings. As a rule, they are administered by the one-member district court (Art. 683 I CCiv.P), with a decision usually being rendered within a couple of weeks after the hearing. Their scope is extremely broad, including, but not entirely limited to, the preservation of the *status quo ante*. They provide for the possibility of provisional relief on each and every claim under the condition of an urgent need or in order to avoid an imminent danger (Art. 682 I CCiv.P). They may be used, indeed, in the context of all kinds of substantive rights or property matters as well as contract or tort cases. Thus, rather promptly, the victim of a traffic accident may obtain an order against the tortfeasor for part of the damage (Art. 728 I(e) CCiv. P), or, to secure the future enforcement of an eventually affirmative judgment, an attachment of the debtor's property may be authorized (Arts 707–724 CCiv.P). Real property litigation between neighbors may equally support a grant of relief consisting in the provisional preservation of the situation (Arts 731, 733, 734 CCiv. P). Provisional remedies may even be granted on an application *ex parte* (Art 687 I CCiv.P) and allow the court to issue immediately a provisional order upon the filing of the request (Art. 691 II CCiv.P). They are generally available as soon as two requirements are met: (a) an urgent case and (b) the existence of an underlying substantive right needing provisional protection. Both requirements need only be shown as probable.

The aforementioned remedies are termed provisional under two meanings of the term. First, their granting may be combined with an order specifying a time limit within which plaintiff must bring the principal action; in case of non-compliance, the provisional remedy expires automatically (Art. 693 CCiv.P). Second, the court before which the main litigation is pending always has the power to modify or to revoke provisional remedies (Art. 697 CCiv.P). Revocation becomes mandatory whenever the judgment on the principal action ripens into *res judicata* (Art. 698 I(a) CCiv.P).

In Greece, provisional relief has been enjoying increasingly practical importance. The rather slow progression of ordinary proceedings makes recourse to provisional remedies highly desirable. An identifiable tendency among the courts not to depart light-heartedly from the terms of an earlier provisional relief, although they are statutorily authorized to do so (Art. 695 CCiv.P), adds to their attraction. Taking into account these developments, the legislature time and again

assigns to these accelerated and abbreviated proceedings for provisional remedies disputes which in themselves do not present an urgent character.

## XI. NON-CONTENTIOUS PROCEEDINGS

### A. Doctrinal Foundation

According to both Article 94 II Const. and Article 1(a),(b) CCiv.P, the jurisdiction of the ordinary civil courts includes not only the adjudication of controversies but also the disposition of the so-called 'affairs of voluntary jurisdiction' (*υποθέσεις εκούσιας δικαιοδοσίας*, ypotheseis ekousias dikaiodosias) which are assigned to them by statute. A distinction is thus drawn between contentious or adversary (*iurisdictio contentiosa*) and non-contentious or voluntary or *ex parte* jurisdiction (*iurisdictio voluntaria*). The criterion is to be found in the nature of the subject-matter under consideration as well as in the operation of the judicial decision on it. Disputes involve the violation of a substantive right as between at least two persons; they aim at a decision evaluating the behavior of persons in the past, inferring therefrom the consequences provided for in the law. By contrast, non-contentious affairs do not refer to relationships between persons, but contemplate one person as an individual and his legal situation; they aspire to protect it through judicial measures taken not as a sanction for past deficiencies but in anticipation of future needs. Functionally, therefore, voluntary jurisdiction appears similar to public administration rather than to proper civil justice. This tenuous relationship between non-contentious affairs and civil procedure explains why the former require a specific statute for them to be assigned to the jurisdiction of ordinary civil courts.

### B. Examples of Non-contentious Matters

According to the Code of Civil Procedure, the list of non-contentious affairs to be dealt with by the ordinary civil courts is quite long (Arts 782–866), and includes topics dispersed over the entire realm of private law. For instance, the list includes declaring a person whose death is strongly probable as an absentee, or revoking such a declaration (Arts 40, 46 CC, Arts 783–785 CCiv.P; *see* Ch. 5, Section II *C*); declaring a lost negotiable instrument as void (Art. 895 CC; Arts 850–860 CCiv.P); authorizing the alienation of a thing pledged (Art. 1237 CC; Art. 792 CCiv.P); pronouncing the judicial assistance of persons, as well as revoking such status (Arts 1666, 1669, 1676–1686 CC, as amended by Law 2447/1996; Arts 801–806 CCiv.P; *see* Ch. 9, Section VII *D*, *E*); granting, retracting, annulling, revoking, or amending a certificate of inheritance (Arts 1956–1966 CC; Arts 819–824 CCiv.P; *see* Ch. 10, Section II *F*) are all examples of non-contentious matters.

### C. Procedural Features

The procedural characteristics of non-contentious proceedings are highlighted in Articles 740–781 CCiv.P. Subject-matter competence belongs to the one-member district courts, or in exceptional cases (e.g., bankruptcy proceedings), to the three-member district courts or to the justices of peace (Art. 740 CCiv.P; Art. 44 of the Introductory Law to the CCiv.P). There exist no actual parties but only the person introducing the request. A copy of the request is in many cases served on the public prosecutor or on such third persons as the judge may designate (Art. 748 II, III CCiv.P). The court exercises quasi-inquisitional powers in establishing the relevant facts (Art. 744 CCiv.P). Even final judgments are subject to revocation or modification upon a showing of new facts (Art. 758 CCiv.P). Appeals may be taken even by persons who, having participated in the lower-court proceedings, were not aggrieved by the decision under attack (Arts 761, 769 CCiv.P). Regular appeal (Arts 763–766 CCiv.P), reopening of contested proceedings (Arts 767, 768 CCiv.P), and cassation (Arts 769–772 CCiv.P), as well as third-party opposition (*τριτανακοπή*, tritanakopi; *tierce opposition*; Arts 773–775 CCiv.P; *see also* Arts 586–590 CCiv.P within contentious jurisdiction), are available here as well. It must be noted that the benefits of a suspensive effect do not attach as of right to any of these methods of attack (Arts 763, 770, 771, 774, 776 I(c), 777 CCiv.P; *see above*, Section VIII *A*).

## XII. ARBITRATION

### A. Legislative Status

In addition to being a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (ratified by Law Decree 4220/1961, GG A 173), Greece modernized her domestic law of arbitration (*διαιτησία*, diaitisia) in Book VII of the Code of Civil Procedure (Arts 867–903 CCiv.P). The code treats arbitration as a method of settling private law disputes, which method is quasi-equal to litigation in the ordinary courts. Particularly in both international and domestic commercial relations, arbitration has expanded in frequency and importance. It has even obtained constitutional sanction in the context of the protection of foreign investments through the reference made in Article 107 II Const. to Law Decree 2687/1953 which provides for arbitration as the exclusive way of resolving all related disputes. Recent critics arguing that such arbitration is tantamount to an unconstitutional and inadvisable deprivation of the powers of the judge assigned to everyone by law (Art. 8 I Const.) are truly isolated. Moreover, Greece enacted in 1999 a special law pertaining to international commercial arbitration (Law 2735/1999). This law embodies and transfers to Greece the UNCITRAL Model Law on the matter. Since deviations are limited and not particularly important, this

section presents the Greek law on domestic arbitration as modernized in the Code of Civil Procedure and, with regard to international commercial arbitration, refers generally to the UNCITRAL principles.

## B. Arbitration Agreement

Nearly all private law disputes are arbitrable under the sole condition that the parties have the power to dispose of the relationship in question by agreement (Art. 867 CCiv.P); accordingly, arbitration is not allowed in divorce and other matrimonial cases of personal nature. A further exception pertains to labor disputes which are not arbitrable either (Art. 867.2 CCiv.P). Both existing controversies and eventual disputes, provided that the latter will result from a present legal relationship, may be likewise submitted to arbitration (Art. 868 CCiv.P). In both instances a document in writing, not necessarily a notarial one, is the only formal requirement (Art. 869 CCiv.P). An arbitral clause (*συμφωνία περί διαιτησίας*, symfonia peri diaitisias) is most often placed within the text of the civil or commercial contract itself. The scope of any arbitral agreement depends entirely on the parties' will. If, as is often the case, it extends to all disputes arising out of the contract, then any claim related to the contract and its performance, including a tortious claim, is excluded from the jurisdiction of the ordinary courts and must be submitted to arbitration.

## C. Arbitral Procedure

There are detailed statutory rules concerning the nomination of arbitrators (Arts 871–880, 883 CCiv.P); in case of disagreement, arbitrators – usually the umpire – are appointed by the one-member district court (Art. 878 CCiv.P). The parties may determine in the arbitration agreement the procedure to be followed, otherwise this task falls on the arbitrators themselves (Art. 886 I CCiv.P). Institutional arbitration (Art. 902 CCiv.P; *μόνιμη διαιτησία*, monimi diaitisia) is subject to a special regime imposed by presidential decree. However, no arbitral procedure can infringe upon the equality of the parties and their right to an adequate hearing (Arts 886 II, 897(5), 902 II(c) CCiv.P). Cases have further tightened these limits to arbitral activity. It has been held for example that an arbitrator's private knowledge of relevant facts may not be used because this knowledge would prevent the parties from verifying the sources of information, thus turning a supposedly neutral arbitrator into an involved witness.[12]

12. AP 1509/1982, NoB 31 (1983) 1355–1356.

## D. Authority of Arbitrators

The authority of arbitrators depends on the will of the parties, combined with some principles of public policy. Unless the parties have provided otherwise, the arbitrators are entitled to inquire into the validity and scope of the arbitral agreement (Art. 887 II CCiv.P). Even if the main contract, of which the arbitral agreement is a part, is invalid, the authority of the arbitrators to assess this invalidity and its consequences usually remains unimpaired. The parties may designate the applicable substantive law. They may also authorize the arbitrators to issue an award *ex aequo et bono*. In the absence of such directions, the arbitrators are expected to follow the Greek choice of law rules. In all instances, provisions of public policy must be respected (Art. 890 CCiv.P). For similar reasons arbitrators are not allowed to grant, to modify or to revoke provisional remedies (Art. 889 CCiv.P).

## E. Control by the Ordinary Courts

Unless the parties have agreed to the contrary, no methods of review are allowed with respect to awards (Art. 895 CCiv.P). A certain control is, of course, exercised by the ordinary courts, both in the beginning and at the end of arbitral proceedings. In the beginning, it may happen that a party to an arbitral agreement brings suit in the ordinary courts; the court then, assuming that the defendant pleads the arbitral agreement, will refer the dispute to arbitration after ascertaining that the agreement is valid and that the dispute falls thereunder (Arts 264, 870 I CCiv. P). At the end, a party aggrieved by the award may bring an action in the court of appeals in the region where it was rendered to set it aside (*αγωγή ακυρώσεως διαιτητικής αποφάσεως*, agogi akyroseos diaititikis apofaseos; Arts 897–901 CCiv. P, as amended through Art. 3 of Law 1816/1988). However, the grounds for this remedy are rather narrow. They include (Art. 897 CCiv.P): invalidity of the arbitral agreement; exceeding its terms or the scope of the arbitrators' authority; infringement of the right to equal treatment or to an adequate hearing; violation of public policy; or any ground for the reopening of contested judgments (*see above*, Section VIII.*D*).

The courts have given expansive construction to the grounds for setting aside an award, and a significant percentage of awards are subsequently annulled. This remedy can go up to Areios Pagos. However, it has no suspensive effect. The award (*διαιτητική απόφαση*, diaititiki apofasi), unless set aside, becomes *res judicata* (Art. 896 CCiv.P) and can be enforced upon its filing with the clerk of the one-member district court (Arts 893 II, 904 II(b), 918 II(d) CCiv.P).

## XIII. ENFORCEMENT PROCEEDINGS

### A. Enforceable Instruments

The Greek law of execution allows the creditor to resort to public authority to enforce his claim. Instruments which are enforceable by execution (*εκτελεστοί τίτλοι*, ektelestoi titloi) essentially include three groups (Art. 904 II CCiv.P):

(a) all final affirmative judgments, i.e. those which order specific performance or payment of money *and* are no longer subject to ordinary methods of attack or, pending such an attack, are given provisional enforcement (*see above*, Section VIII *A*);
(b) arbitral awards; and
(c) notarial documents enforceable by reason of their form.

Foreign judgments and arbitral awards are likewise enforceable after being granted an *exequatur* under Articles 905, 906, 323, and 903 CCiv.P, as explained in Ch. 17, Section III.

### B. Creditor's Initiative and Control by the Court

Regardless of the kind of enforceable instrument, the intervention of judicial authorities during the enforcement proceedings (*αναγκαστική εκτέλεση*, anangastiki ektelesi) is not preventive but rather of a controlling nature. Execution is considered to be a continuation of adjudication in cases of non-voluntary compliance. Therefore, in accordance with the dispositive principle of adjudication (*see above*, Section V *A* (a)), it is subject to party initiative, especially that of the creditor holding the enforceable instrument.

Enforcement proceedings start with a formal notice by the creditor to the debtor, inviting the latter to voluntary performance, otherwise threatening execution. This notice (*επιταγή*, epitagi) is placed at the bottom of a certified copy of the enforceable instrument (*απόγραφο*, apografo; Art. 924 CCiv.P). If the debtor remains silent, the creditor proceeds with enforcement by giving an order (*εντολή προς εκτέλεση*, entoli pros ektelesi; Art. 927 CCiv.P) to a marshal who is the agent authorized to levy execution and to perform various other related functions (Arts 927–931, 954, 960 I, 993, 999 I, 1049 II CCiv.P). Should the debtor deem that the enforceable instrument is invalid, that the enforcement rules have not been complied with, or even that the creditor's claim has been paid or set off, it is up to him to make the respective motion (*ανακοπή*, anakopi) before the one-member district court (Arts 933–937 CCiv.P). Only then are the courts called upon to judge on the prior steps of enforcement proceedings. On appeal, the motion can go all the way to Areios Pagos; however, it does not stay execution, unless otherwise ordered by the court (Arts 938, 939 CCiv.P).

## C. Execution With Respect to Specific Performance

With respect to methods of execution, distinctions are drawn between direct specific performance and enforcement to satisfy a money claim which usually results in a levy on property. Specific performance applies to duties to transfer title to movable (Arts 941, 942 CCiv.P) and immovable property (Art. 943 CCiv.P, *see also* Art. 944 CCiv.P for ships and aircraft), as well as to obligations to perform (Arts 945, 946 CCiv.P) or not to perform or not to oppose a specific act (Art. 947 CCiv.P). If, however, the debtor fails to meet the obligation to perform a certain act, enforcement becomes necessarily indirect: the creditor is authorized to have the act performed at the debtor's expense (Art. 945 CCiv.P). Where the specific act cannot be performed by a third person or the debtor does not omit or opposes an act, the latter will be subjected to a fine of up to EUR 5,900, and to imprisonment for debt for a period of up to one year (Art. 946 CCiv.P).

## D. Execution to Satisfy a Money Claim

Of greater practical significance is enforcement on property to satisfy a money claim. There are four types of attachment (*κατάσχεση*, kataschesi) for the purpose of bringing property under judicial control ultimately leading to a public auction and, in the meantime, suspending the debtor's power of disposal:

(a) enforcement on chattels (Arts 953–981 CCiv.P);
(b) enforcement on immovables, ships, and aircraft (Arts 992–1016 CCiv.P);
(c) garnishment, which also includes reaching chattels of a debtor that are not in his possession (Arts 982–991 CCiv.P); and
(d) enforcement on debtor's special assets, like copyrights, patents, and film exploitation rights (Arts 1022–1033 CCiv.P).

Detailed rules provide for the orderly distribution of funds realized in a public auction (Arts 974–978, 1007, 988 I 3, 1024 II, 1030 III 3, 4 CCiv.P), with special treatment granted to secured creditors (Arts 976(2), 977 I(2), 1007 I 2, 1008 CCiv.P). In essence, creditors other than the petitioning one are entitled to assert their claims (*αναγγελία*, anangelia; Art. 972 CCiv.P). Distribution will follow on an equal footing among all announced creditors, allotting to each the same per centage on his claim. Greek law thus rejects the Germanic system, which accords preference to the petitioning creditor, and follows the Roman system of proportional distribution. Proportionality is, however, disturbed in two respects: first, to the benefit of creditors enjoying a real security right, *i.e.* pledge or mortgage (*see* Ch. 7, Section VII); and second, to the benefit of creditors enjoying specific priorities (*προνόμια*, pronomia; Art. 975 CCiv.P). Creditors with specific priorities rank before creditors with real security rights; this precedence is, however, limited only to one-third of the sale proceeds, so that the remaining two-thirds are reserved for the satisfaction of secured creditors (Arts 977, 1007 CCiv.P).

There are two additional methods of execution to satisfy, directly or indirectly, a money claim; the first was enacted in recent years through Law 2810/1954 and integrated then into the Code of Civil Procedure (Arts 1034–1046); the second is very old but still in existence, and occasionally effective. The former is a form of receivership called 'compulsory administration' (*αναγκαστική διαχείριση*, anangastiki diacheirisi) of a debtor's immovables or business, which are henceforth managed by an administrator appointed by the court (*see* Ch. 11, Section II *B*). The creditors receive quarterly distributions on their claims out of the profits of the new management (Art. 1043 CCiv.P). The latter method consists in the debtor's imprisonment for a period up to one year (*προσωπική κράτηση*, prosopiki kratisi; Arts 1047–1054 CCiv.P). This measure is imposed by specific judicial decision only on merchants for commercial debts; it is also generally allowed for the satisfaction of tortuous claims. Imprisonment is not often utilized and is subject to serious constitutional doubt but may still function as an effective threat.

Under the International Covenant on Civil and Political Rights, in force since March 23, 1976 and applicable in Greece since ratification by Law 2462/1997 (GG A 25), 'no one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.' In interpreting this provision, Areios Pagos restricted the scope of merchant imprisonment because of non-payment of contractual obligations only to merchants who have the economic means to comply with such obligation but intentionally discard it.[13]

## BIBLIOGRAPHICAL NOTE

1. Under the old Code of Civil Procedure (in force between 1835 and 1968), the two leading treatises, which are still of use today, were V. Oikonomidis, M. Livadas and L. Gidopoulos, *Manual of Civil Procedure*, vols I–III (7th edn, Athens, 1924-1926), and S. Eukleidis and K. Papadopoulos, *Interpretation of Civil Procedure*, vols I–II (3rd edn, Athens, 1932). The most complete digest of judicial opinions was A. Kitsikopoulos, *Civil Procedure, A Commentary by Article*, vols I–X plus annex A (Athens, 1934–1955).

2. The materials and other preparatory works for the new Code of Civil Procedure in force since September 16, 1968 are to be found in the *Draft of Civil Procedure*, elaborated by the Drafting Committee and published by the Ministry of Justice in Athens, vols I–IX (Athens, 1940–1974), as well as in the *Minutes of the Meetings of the Revision Committee for a Draft Code of Civil Procedure and Its Introductory Law* (Athens, 1967). There is only one complete translation of the Code of Civil Procedure in a foreign language (German): G. Baumgärtel and G. Rammos, *Das griechische Zivilprozessgesetzbuch mit Einführungsgesetz* (Cologne, 1969);

13. The leading case is AP 1597/2000, Hell.Dni 42 (2001) 1304, also confirmed by AP (full bench) 23/2005, Harm. 60 (2006) 405.

but even this translation refers only to the initial text of the Code, not extending to the subsequent important amendments.

3. There exist numerous treatises and commentaries in Greek on the Code of Civil Procedure. Most of them are incomplete, and can hardly cope with the unusually frequent legislative amendments. The following publications are listed alphabetically by author:

## A. Treatises

K. Beys, C. Calavros and S. Stamatopoulos, *Procedure of Private Disputes, General Part* (Athens, 1999).
C. Calavros, *Civil Procedure, General Part* (Athens-Komotini, 2003).
Ch. Fragistas, *Civil Procedure, General Part, University Lectures* (Thessaloniki, without date).
K.D. Kerameus, *Civil Procedure,* vol. I (2nd edn, Thessaloniki, 1983).
K.D. Kerameus, *Civil Procedure, General Part* (Athens-Thessaloniki, 1986).
G. Mitsopoulos, *Civil Procedure*, vol. I (Athens, 1972).
N. Nikas, *Civil Procedure*, vols I–II (Athens-Thessaloniki, 2003–2005).
G. Rammos, *Manual of Civil Procedure*, vols I–IV (Athens, 1978–1985).

Two short presentations in English are A. Iatrou, *Civil and Criminal Proceedings in Greece* (Athens, 1981); H. Tagaras and H. Meidanis, 'Greece' in *European Civil Practice*, vol. II, A. Layton and H. Mercer (gen. eds) (2nd edn, London, 2004) 212–241. A more extensive one is P. Yessiou-Faltsi, *Civil Procedure in Hellas* (Athens-The Hague-London-Boston, 1995). *See also* an *Outline of Greek Law* by K.D. Kerameus (Athens-Komotini, 1998) [in Greek]. For a modern comparative treatment of enforcement law around the world *see* K.D. Kerameus, 'Enforcement Proceedings' in *International Encyclopedia of Comparative Law*, vol. XVI, Ch. 10 (Tübingen-Dordrecht-Boston-Lancaster, 2002). Purely Greek law of enforcement has been taken care of by I. Brinias, *Enforcement Proceedings*, vols I–V (2nd edn, Athens, 1978–1982) and P. Yessiou-Faltsi, *The Law of Enforcement*, vols I–III (Athens-Thessaloniki, 1998–2006), both in Greek.

## B. Commentaries by Article

K. Beys, *Civil Procedure*, fasc. 1-23 (various places of publication, 1973–2005).
S. Delikostopoulos and L. Sinaniotis, *Interpretation of the Code of Civil Procedure*, vols I–III (Athens, 1968–1974).
K.D. Kerameus, D.G. Kondylis and N.Th. Nikas, *Interpretation of the Code of Civil Procedure: Article-by-Article Commentary,* vols I–II (Athens-Thessaloniki-Komotini, 2000), and *Supplement* (Athens-Thessaloniki, 2003).
V. Vathrakokoilis, *Code of Civil Procedure*, vols I–VI (Athens, 1994–1997), and *Supplement* (Athens, 2001).

4. For cases decided by Areios Pagos and otherwise remaining partly unreported, *see Basic Cases of Civil, Commercial, Labor and Procedural Law of the Years 1967–1982,* published by the Athens Bar Association, vols I–VI plus Indexes (Athens, 1983–1984), especially vols I–II which are devoted to civil procedure. For a continuation of this collection covering the years 1983–1986, and partly 1987, *see Supplement to Basic Cases*, vols I–II (Athens, 1987), particularly vol. I 1–417, vol. II 1617–1646.

5. Many Greek proceduralists have published separate volumes with their essays, articles and other contributions to questions of civil procedure: K. Beys, vols I–II (Athens, 1980), C. Calavros (Athens-Komotini, 1988), Ch. Fragistas, vols I–III (Athens, 1980–1987), K.D. Kerameus, vols I–IV (various places of publication, 1980–2006), out of which vol. III (Athens-Komotini, 1995) is exclusively in foreign languages, G. Mitsopoulos, vols I–II (Athens, 1983–1997), G. Rammos, vols I–VI (Athens, 1948–1968), P. Yessiou-Faltsi, vols I–II (Athens-Thessaloniki, 1981–1995), P. Zissis, vols I–IV (Athens, 1963–1972). One should also mention some collections of essays in honor respectively of K. Beys, vols I–V (Athens, 2003), Ch. Fragistas, vols I–VI (Thessaloniki, 1966–1971), P. Kargados (Athens-Komotini, 2004), E. Michelakis (Athens, 1973), G. Mitsopoulos, vols I–II (Athens, 1993), G. Oikonomopoulos (Athens, 1981), G. Rammos, vols I–II (Athens, 1979), consisting mainly of procedural studies.

6. Quite a number of articles on special questions of Greek civil procedure and judicial organization have been written by Greek authors in foreign languages. Most of them are published in English in *Revue hellénique de droit international* (Athens). Articles in foreign languages include A. Kaissis, 'Herausforderung Informationsgesellschaft: Die Anwendung moderner Technologien im Zivilprozess und anderen Verfahren', RHDI 52 (1999) 503–513; P. Kargados, 'Summary adjudication in Hellas', RHDI 51 (1998) 123–155; K.D. Kerameus, 'The Use of Conciliation for Dispute Settlement', RHDI 32 (1979) 41–53; K.D. Kerameus, 'Judicial Independence in Modern Legal Developments', RHDI 35–36 (1982–1983) 335–346; N. Klamaris, 'Einige kritische Gedanken zur Frage der Verfassungsgarantie der Rechtsmittel', RHDI 37 (1984) 353–358; N. Klamaris and G. Orfanidis, 'Die Zwangvollstreckung der gerichtlichen Entscheidungen und die Vollstreckungsmittel der Gerichte nach dem griechischen Zivilprozessrecht', RHDI 38-39 (1985–1986) 335–358; N. Klamaris and P.-E. Efstratiou, 'Access to Justice as a Fundamental Right', RHDI 51 (1998) 291–310; D. Maniotis, 'Mass Torts – Some Procedural Aspects', RHDI 47 (1994) 99–116; P. Yessiou-Faltsi, 'The Production of Evidence in the Case According [to] the Greek Code of Civil Procedure', RHDI 32 (1979) 88–111; P. Yessiou-Faltsi, 'Judicial Responsibility in Greece', RHDI 35–36 (1982–1983) 281–311; P. Yessiou-Faltsi, 'Le droit à la preuve', RHDI 35–36 (1984) 275–307; P. Yessiou-Faltsi and N. Paissidou, 'La valeur du témoignage', RHDI 47 (1994) 185–215; P. Yessiou-Faltsi and A. Tamamidis, 'Recent Tendencies in the Position of the Judge', RHDI 42 (1999) 459–484; *Zeitschrift für Zivilprozess* (Cologne, Berlin, Bonn, Munich), especially vols 74 (1961), 78 (1965), 79 (1966), 81 (1968), 91 (1978), 92 (1979), 96 (1983),

99 (1986), 100 (1987), 101 (1988), 105 (1992); nowadays the international Pendant: *Zeitschrift für Zivilprozess International*, vols 1 (1996), 3 (1998), 8 (2003), 9 (2004); *Revue critique de droit international privé* (Paris). There are also quite numerous doctoral dissertations submitted by Greek jurists to German, French and English universities and published in the respective languages.

7. With regard to arbitration, *see* S. Koussoulis, *Arbitration. An Article-by-Article Interpretation* (Athens-Thessaloniki, 2004) and *The Law of Arbitration* (Athens-Thessaloniki, 2006) [both in Greek]; G. Ververiotis, *International Commercial Arbitration*, vol. I: *New York Convention – Bilateral Treaties* (Athens-Komotini, 1990) [in Greek], vol. II: *Construction and Arbitration. Cases from the Greek Experience* (Athens-Komotini 2000) [in English]. Some fairly recent presentations in English include N. Deloukas, 'The Arbitration in Greece' in: *Arbitration*, G. Levi (ed.) (Milano, 1991) 103–129; A. Dimolitsa, 'Arbitration Agreements and Foreign Investments. The Greek State Between Contractual Commitment and Sovereign Intervention', RHDI 42–43 (1989–1990) 259–314; A. Foustoucos and S. Koussoulis, 'Greece', in *International Handbook on Commercial Arbitration*, P. Sanders (ed.) (The Hague, 2001), with three annexes; K.D. Kerameus, 'The Examination of an Arbitration Agreement by State Courts While Arbitration is Pending', RHDI 42–43 (1989–1990) 217–232; K.D. Kerameus, 'The New Greek Law on International Commercial Arbitration', RHDI 52 (1999) 583–585; 'Loi 2735/1999 'Arbitrage Commercial International' / Law 2735/1999 'International Commercial Arbitration', RHDI 52 (1999) 586–621 [translation of the enactment in French and English by A. Dimolitsa and S. Koussoulis respectively]; S. Koussoulis, 'Actual Problems of International Arbitration. The Greek Law in Comparison with the UNCITRAL Model Law', RHDI 49 (1996) 479–500; G. Ververiotis, 'Arbitrators and Contractual Groups', RHDI 42–43 (1989–1990) 367–375.

8. There are also some important monographs on the theoretical and logical bases of civil procedure. Recent ones include: *Missing of Legal Basis as a Ground for Cassation* (2005), and *Thèmes de théorie générale et de logique du droit* (2006), both of them by G. Mitsopoulos and published in Athens.