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Evidence in Civil Law - Greece

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ABSTRACT The dominant position of the parties with regard to a civil litigation constitutes a major principle of the Greek Code of Civil Procedure (principle of free disposition). Furthermore, The orientation of the Greek Code of Civil Procedure towards the contemporary model of a more active judge, apart from the more or less passive role of the latter, mainly to examine lack of the procedural prerequisites (Art. 73 CCP) and the legal foundation of the action on his own motion, is only sporadically provided for in certain regulations. The right of defence before the courts is explicitly guaranteed by Art. 20 I b of the Greek Constitution explicitly guarantees: "*Every person ... may plead before them his views concerning his rights or interests as specified by la*w". Moreover, the Code of Civil Procedure provides for the principle of the need for the summoning of the parties in all hearings of the case (Art. 110 II CCP), notwithstanding the application of special provisions oriented towards the specification of the right of defence. The taking of evidence is in principle administered before the whole panel of the court (= principle of directness). Moreover, witnesses testify before one member of the court's panel, who is appointed as the reporter judge Art. 270 V CCP). In particular, expert reports and viewing of the premises may be orally ordered by the court. The publicity of the courts' sittings (Art. 93 II) and publicity of the pronouncement of the courts' judgments (Art. 93 III) are explicitly guaranteed by the Greek Constitution (Art. 93 II, III).

The credibility of the means of proof is in principle freely evaluated by the court, unless otherwise explicitly provided, thus the judge decides in accordance with his inner conviction as regards the truth of the factual allegations. The judgement must include the reasons, which led the judge to the formation of his conviction (Art. 340 CCP). The Greek Code of Civil Procedure requires in principle the full conviction of the court as regards the standard of proof. Eight means of proof are exclusively listed in Art. 339 CCP: confession, direct proof, especially viewing the premises, expert reports, documentary evidence, examination of parties, testimony, presumptions and sworn attestations.

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The Greek Code of Civil Procedure, under the influence of the German-origin "Norms' Theory" ("Normentheorie"), introduces the rule that "Each party is obliged to prove the facts which are required to support his self-contained claim or counter-claim" (Art. 338 I CCP).

Art. 19 III of the Greek Constitution provides for the inadmissibility of the means of evidence obtained in violation of Art. 19, 9 and 9A of the Greek Constitution, as regards the protection of the secrecy of letters and other forms of communication, the protection of every person's home ("asylum"), the inviolability of private and family life and the inviolability of personal data respectively.

KEYWORDS: • fundamental principles of civil procedure • free assessment of evidence • material truth • means of proof • burden of proof • taking of evidence • unlawful evidence

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Author Biography Nikolaos Katiforis graduated from the Law Faculty of the National and Kapodistrian University of Athens in 1988. He was awarded the Doctor iur. degree by the abovementioned University in 1993. N. Katiforis was awarded scholarships for his postgraduate studies, by the Greek Foundation for Scholarships (1990-1993), for postdoctoral research in Greece, by the Greek Foundation for Scholarships (1998-2000) and for postdoctoral research in Germany (University of Cologne), by the German Humboldt Foundation (2005). He was elected as Lecturer, in Civil Procedural Law, at the University of Athens in 2008. In 2014 he was promoted to the degreeof the Assistant Professor. N. Katiforis is also Attorney at Law at the Supreme Court (Arios Pagos) since 1990. He is also employed as Legal Expert / Manager at the Legal Counsel's Office of EUROBANK ERGASIAS BANK (Retail Banking – Enforcement Proceedings & Insolvency Proceedings) since 2003.

Foreword

A comprehensive introduction to the modern Greek Law of Evidence, which occupies a central place in the respective civil proceedings, reflects its middle – European law origins. Over the years, there has been much procedural reform, sometimes significant, including in particular the reduce of the number of restrictions on the admissibility of relevant evidence, the rationalization of the law and the strengthening of the discretionary powers of the judge. In any event, the sporadic and piecemeal character of such reforms might result in the comparison of the current law of evidence to "*a machine, which has been constructed by judicial engineers, but which is subject to periodic alteration by parliamentary mechanics, who variously remove or re-design parts or bolt on new parts*", while the judges "*oil and maintain the machine, and continually seek to refine, modify and develop it to meet the continually changing needs it is designed to serve*"[2].

[2] Adrian Keane, The Modern Law of Evidence, 7th ed., Oxford University Press, 2008, 3.

Contents

Part I

1 Fundamental Principles of Civil Procedure

1.1 Principle of Free Disposition of the Parties and Officiality Principle[3]

The dominant position of the parties with regard to a civil litigation constitutes a major principle of the Greek Code of Civil Procedure (principle of free disposition). This principle is not equivalent with[4] but closely related to the principle of private autonomy prevailing in the Civil Code[5]. This means that, according to the regulation (Art. 106 CCP), the parties, as domini litis, have the power to determine (i) whether to commence a civil action or not, and (ii) what is the subject matter and the extent of the requested judicial protection. Finally, since civil rights are concerned, Greek law does not permit the ex officio origination of a civil process. This is provided for only in exceptional cases referring to the voluntary jurisdiction (i.e. sealing and unsealing of objects (Art. 826 I, 831 I CCP), inventor (838 I CCP)).

Accordingly, the plaintiff is entitled, not only to withdraw from the complaint without the consensus of the opponent party (Art. 294, 295 CCP) but to abandon civil rights, in principle without any further inquiry by the court, as well, thus depending on the relevant conditions of substantial law (Art. 296 CCP). Furthermore, the defendant may also close a civil dispute by accepting the relief requested through the action, at any time before a judgment is pronounced (Art. 298 CCP). Moreover, the procedural contracts, which basically derive from the right of free disposition of civil rights (i.e. conciliation), are valid under the condition that the prerequisites of substantive law are met (i.e. Art. 293: conciliation).

Furthermore, the Cassation ground nr. 1 sanctions the excess of the petitions of the parties by the court and the lack of response (by the court) to a claim (Art. 559 nr. 9

[3] Konstantinos Kerameus – Phaedon Kozyris (ed.), Introduction to Greek Law, 351 (3d ed., Kluwer Law International / Ant. N. Sakkoulas Publishers 2008), Pelagia Yessiou-Faltsi, Civil Procedure in Hellas (in English), 46 (Kluwer Law International 1995), Dimitris Maniotis – Spyros Tsantinis, Civil Justice in Greece, 10 (Nagoya University Comparative Study of Civil Justice Vol. 6, 2010).

[4] Stephanos Delikostopoulos, Private Autonomy in Civil Procedure (in Greek), 73 (Ant. N. Sakkoulas Publishers 1965).

[5] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 46, Dimitris Maniotis – Spyros Tsantinis, Civil Justice in Greece, 10.

CCP). Accordingly, the effect of res judicata covers exclusively the claim being raised (Art. 322 I CCP) within its objective limits, that means in the context of the same factual and legal grounds (Art. 342 CCP)[6]. The commencement of enforcement proceedings lies also only upon the motion of the creditor (Art. 927 CCP).

The principle of free disposition might be raised to constitutional pre-eminence as regards the protection of civil rights. Therefore, any relevant restrictions would be considered as a prohibited intervention in personal freedom and free development, on the basis of the consistency of civil proceedings with the policies embodied in substantive law[7].

In the Greek Civil Procedural Law the rejection of the possibility of the parties to submit their factual allegations after the hearing of the case is recognised as "principle of concentration". Indeed, Art. 269 I CCP relies on the need of acceleration, requiring explicitly that, as a rule, all factual allegations must be submitted by the parties to the court in a "concentrated" manner, through pleadings of the hearing; otherwise their inadmissibility is declared on the court's own motion. Exceptions and counter-exceptions are formulated in the context of the scope of this principle, under the perspective of objective truth[8] – finding, thus (i) the submission of the so called "privileged" allegations, which may be either considered any time on the court's own motion (i.e. procedural prerequisites, Art. 73 CCP), or taken into account throughout all the stages of the proceedings by virtue of a particular statutory substantial provision (Art. 269 Ib CCP); (ii) the delayed submission of factual allegations to the court if such presentation is deemed by the court, at its own discretion, as justified (Art. 269 IIa CCP); (iii) the submission of allegations related to facts which occurred later than the hearing of the case (Art. 269 IIb CCP); (iv) the submission of allegations based on facts proven through documentary evidence or through a judicial confession (Art. 269 IIc CCP)[9].

According to the regulation, the principle of concentration does not apply as regards either the defence which constitutes pure denial of facts alleged by the plaintiff, or allegations referring to legal norms. Conversely, a separate provision provides for the institution of cross actions (Art. 268)[10]. Furthermore, the admissibility of evidence based on means of proof produced for the first time before a court of appeal depends on the decision of the court whether this delay is designed to prolong litigation, or that it is caused by gross negligence (Art. 529 Ia CCP)[11].

Furthermore, given that the factual allegations submitted at first instance constitute, as a rule, the basis for the re-judgment by the appellate court basically (Art. 527 CCP),

[6] Dimitris Maniotis – Spyros Tsantinis, Civil Justice in Greece, 38.
[7] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 46-47.
[8] Konstantinos Kerameus, Procedural Rigidity and Aequitas, Volume in Honour K. Tsatsos (in Greek), 1980, 684, 700, Dimitris Maniotis – Spyros Tsantinis, Civil Justice in Greece, 12.
[9] Dimitris Maniotis – Spyros Tsantinis, Civil Justice in Greece, 12.
[10] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 50-51.
[11] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 322.

similar exceptions as those to the principle of concentration operate at second instance (s. Art. 527 nr. 2, 3 CCP). An additional exception is provided for factual allegations which are presented as defences against the appeal, under the condition that they do not result in the alteration of the factual basis of the action (Art. 527 nr. 1 CCP).

By contrast to the basic practice, that, as a rule, the parties are charged to produce the evidence, which is necessary to support their factual allegations ("adversarial principle"), the principle of party presentation (Art. 106 CCP) is not completely applicable as regards the means of evidence. Art. 107 CCP provides for the discretion of the court to act on its own motion, being free to use any legal means of evidence proper for the case, even if that means was not proposed by the parties. Furthermore, the judge may demand any document possessed by governmental officials, even before the hearing of the case, order the parties to present such documents during (oral) hearings (Art. 232 Ib and c CPC). Such means of evidence, however, may be used by the court only for the production of evidence of factual statements already presented by the parties. Conversely, the production of evidence is entirely left to the parties, even if the use of certain means of evidence has been required by the judge[12].

1.2 The Adversarial and Inquisitorial Principles

The orientation of the Greek Code of Civil Procedure towards the contemporary model of a more active judge, apart from the more or less passive role of the latter, mainly to examine lack of the procedural prerequisites (Art. 73 CCP) and the legal foundation of the action on his own motion, is only sporadically provided for in certain regulations.

Beyond the restrictions deriving from the principle of party presentation (Art. 106 CCP), the duty of the court, as a nobile officium, to intervene and help the parties to properly expose their factual statements (Art. 236 CCP), expresses the spirit of the Code to help an active judge for the sake of truth-finding. Moreover, by virtue of Art. 236 CCP, as recently amended by the Law 3994/2011, the active role of the judge has been strengthened, as the latter is provided with the "duty" (instead of the "power" under the previous state of the CCP) to help the parties to convert their vague actions to admissible ones.

Furthermore, the actual appearance of the parties, during the hearing of the case, may be ordered by the court on its own motion for the clarification of their factual allegations (Art. 245 CCP). Such powers, however, are seldom exercised by the courts in the practice. According to Art. 227 CCP, the court has the duty, even after the hearing of the case, to communicate with the parties, or their lawyer, through a written invitation or a telephone call, for the correction of eventual typical omissions in their pleadings (Art. 227 CCP).

The Code of Civil Procedure goes even further and permits the judge to control the unfolding of the case and the duration of litigation not only by using his discretion to

[12] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 56.

assist the settlement of the case by mediation (Art. 214B CCP) or conciliation (Art. 208, 233 II CCP) but by ordering the procedural connection of several pending cases or the procedural separation of the connected ones (Art. 218 II, 246, 247 CCP), under the condition of the facilitation or acceleration of the procedure or the reduce of the expense of the trial, as well[13].

Finally, Art. 691 CCP provides for the most important exception to the parties dominant role in civil proceedings, in the field of provisional remedies, declaring that the judge may act on his own motion and select all the necessary material for his decision.

"*In conclusion, a traditional conviction that civil litigation procedures must preserve principles suitable to private law rights did not allow the prevailing conception of the parties being domini litis to be disputed. In so far as private law rights are concerned, the Greek Code of Civil Procedure has not gone beyond the basic consideration that the interested parties must remain free to begin a trial, to determine its object or to declare its termination. Apart from this general view, a more or less effective power of the court in managing civil proceedings has not been considered as necessarily involving a prohibited intervention in private personal freedom and free development. The idea of this procedure as also possessing a social welfare function has not been rejected. Yet, Greek judges are usually reluctant to undertake the role of an "activist" judge in connection with civil proceedings. This situation may be attributed to two reasons: First, to the still strongly held conviction that a civil trial must be administered exclusively by the parties. Second, and most importantly, to the heavy case load a Greek civil court is expected to handle*"[14].

1.3 Hearing of Both Parties Principle (audiatur et alter pars) – Contradictory Principle

The right of defence before the courts is explicitly guaranteed by Art. 20 I b of the Greek Constitution explicitly guarantees: "*Every person … may plead before them his views concerning his rights or interests as specified by la*w". Moreover, the Code of Civil Procedure provides for the principle of the need for the summoning of the parties in all hearings of the case (Art. 110 II CCP), notwithstanding the application of special provisions oriented towards the specification of the right of defence.

According to Art. 343 CPC, the summoning of the parties is specifically required, particularly throughout the whole evidence procedure. Indeed, according to the prevailing opinion, the violation of Art. 343 CPC results in the invalidity of the relevant procedural acts in case of detriment to the unrepresented party. The right of defence is further safeguarded by a complex of provisions: If a party has not been duly summoned by his opponent (Art. 108 CCP) and fails to appear (Art. 271 II, 272 II, 279 II CPC) a duty of the court is provided for to declare, on its own motion, the inadmissibility of the relevant hearings. Otherwise, this party's right to be heard could be protected through

[13] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 56 ff.
[14] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 57-58.

the remedies of the reopening of default (Art. 501 CPC) or cassation (Art. 559 nr. 6 CPC).

Ex parte proceedings are only exceptionally allowed, notwithstanding certain doubts which have been raised as regards their compatibility to the Constitution. More specifically, apart from the cases of voluntary jurisdiction, the most characteristic examples are found in the context of proceedings for provisional remedies and for the rendition of the orders of payment. Indeed, at the discretion of the court a relief may be granted through a provisional remedy, without summoning the adversary party, provided that particularly urgent circumstances exist (Art. 687 I CPC), or through the rendition of a prompt provisional order, two days after the filing of an application for a provisional remedy, provided that the hearing of the case will take place within 30 days, also on the motion of the court (Art. 691 II CPC, as recently been amended by Law 4172/2013). Furthermore, an order of payment is always rendered without the summoning of the debtor (Art. 627 CPC). Discussions on the constitutionality of these proceedings, often provoked by the theory in view of the enforceability of such orders (Art. 631 CPC), should not be supported, given that the right of the debtor to defence may be effectively satisfied through raising an opposition, which also results in the suspension of execution, provided that the court issues such an order (Art. 632 ff. CPC).

The fundamental right of equality before the Law, concerning "all Greeks", is safeguarded in Art. 4 I of the Constitution. The said right is also been reflected in the field of civil procedure. Accordingly, Art 110 CCP that "The parties have the same rights and the same obligations and are equal before the court". Two basic principles are established in the context of Art. 110 CCP: in the first place, equality of all parties before the law ("equality of weapons"); in the second place, equality of the parties before the court; (e.g. treatment of all parties by the court the in a strictly equal procedural manner. Furthermore, the principle of equality is expressed through the right of each party to be heard[15].

However, there exist certain exceptions to the principle of equality of the parties before the law, most of which are oriented in the favour of the "weak" party (e.g. the defendant): e.g. Art. 22, 23 II CCP: the territorial competence follows principally the defendant's domicile or its business domicile; Art. 169: the plaintiff is obliged to deposit a guarantee, at the discretion of the court, for the expenses of the proceedings).

The defendant, who is present at the hearing, can either accept or deny the facts, which constitute this action's factual basis (Art. 261 CCP), or exercise exceptions (Art. 262 CCP), or counterclaims (Art. 268 CCP). The affirmative defence based on the denial of a certain factual allegation of the plaintiff is considered as a judicial confession. Whereas the denial of the facts, as reported by the plaintiff ("denial of the basis of the action"), causes the burden of the latter plaintiff to prove them, an ambiguous answer may be regarded by the court as a tacit confession (Art. 261 CCP)[16].

[15] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 72.
[16] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 201.

In the case of the defendant's default at the hearing the judge renders a judgment for plaintiff (Art. 271 III CPC) on the basis of an assumed confession based on the defendant's absence, provided that (i) such confession is permitted, (ii) all procedural prerequisites have been met and (iii) the action is legally founded[17].

The absence of the plaintiff at the hearing of the case results in the dismissal of the action (Art. 272 I CCP). Such dismissal is deemed as based on substantial grounds, provided that the respective prerequisites have been met and the action is legally founded.

Moreover, the judge has the duty to examine on his own motion whether service of summons on the absent party (plaintiff or defendant) was actually affected through the proper procedure and within the proper time (Art. 271 I, II; 272 II CCP). Otherwise, the hearing of the case is declared inadmissible, provided that it was fixed upon by the opponent of the absent party, whereas the absent party should be summoned for the eventual new hearing of the case[18].

1.4 Principle of Orality – Right to Oral Stage of Procedure and Principle of Written Form

Civil Procedure was traditionally on favour of oral proceedings[19]. However, "*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*". Conversely, the mandatory oral hearing has been initially established as mandatory before the justices of the peace and in the one-member district courts by the Law 1478/1984[20] and furthermore expanded by Art. 270 CCP (as widely amended through Laws 2915/2001 and 4055/2012) to all courts of first instance[21]. Namely, the taking of evidence is in principle administered before the whole panel of the court (= principle of directness)[22]. Moreover, witnesses testify before one member of the court's panel, who is appointed as the reporter judge Art. 270 V CCP). In particular, expert reports and viewing of the premises may be orally ordered by the court.

Before the multi-member district courts the pleadings must be submitted by both parties must 20 days before the hearing the latest, whereas counter-memorials have to be annexed to the main pleadings 15 days before the hearing. As regards cases before the one-member district court, these periods of time need to be activated by a still outstanding presidential decree. In addition, before multi-member district courts, the evidence taken before the court will be evaluated by the parties through further counter-

[17] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 254.
[18] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 253-254.
[19] See Konstantinos Kerameus, Civil Procedural Law, I, 181-185 (Ant. N. Sakkoulas Publishers 1986).
[20] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 52.
[21] Konstantinos Kerameus – Phaedon Kozyris (ed.), Introduction to Greek Law, 352.
[22] Nikolaos Nikas, Manual of Civil Procedural Law, II, 387 (Sakkoulas Publications 2005).

memorials which will be annexed to the main pleadings 8 working days after the hearing.

1.5 Principle of Directness

If the judgment cannot be issued, due to any reason caused after the hearing of the case (e.g. death or transfer of a judge to another court), the hearing will be repeated. The parties will be summoned to the (new) hearing of the case at the initiative, either of a party or of the Court (Art. 307 par. I CCP). New means of evidence may be freely produced by the parties before the courts of appeal. (Art. 529 I, 530 CCP). However, the judge may exclude such (new) means of evidence, provided that the respective "delay" is considered either as a part of dilatory tactics or as caused by the gross negligence of the party producing it (Art. 529 II CCP)[23].

In the context of Greek procedural law, under the nature of Appeal (Art. 511 ff. CCP) as a method of "complete jurisdiction" (i.e. in the sense that: a) a full re-examination of the case by the appellate court is allowed, irrespective of the character of the relevant points as factual or legal, procedural or; and b) it allows not only the examination of the legality and the well-foundedness of the attacked judgment, but also, a fully new examination on the merits, as well[24]. Moreover, the formulation of a ground of appeal merely, as a false evaluation of evidence, is considered as acceptable[25].

1.6 Principle of Public Hearing[26]

The publicity of the courts' sittings (Art. 93 II) and publicity of the pronouncement of the courts' judgments (Art. 93 III) are explicitly guaranteed by the Greek Constitution (Art. 93 II, III). Only in exceptional cases is the publicity of the courts' sittings restricted (i.e. if it is "detrimental to moral principles" or when "special reasons call for the protection of the private or family life of the litigants" (Art. 93 II)). The principle of publicity has been also thoroughly regulated in the Code of Civil Procedure (Art. 112-114 CCP), even before the introduction of the present Constitution (1975). Therefore, as regards the provisions of the CCP, matters of compatibility with the Constitution arise. The deliberation of the court for rendering its decision is absolutely closed (Art. 113 Ib CCP).

The doors of the courtroom remain unexceptionally open for the parties during all stages of the proceedings (preliminary stages; hearing of the case; other procedural acts outside of the hearing including evidentiary proceedings; Art. 112, 113 Ia CCP), whereas publicity vis-a-vis third persons refers exclusively to the hearing of the case and the pronouncement of judicial decisions (Art. 113 Ia, 114 III, 304 II CCP). Both the specification of the number of persons allowed to attend the court's sitting and the exclusion of certain categories of persons (Art. 193 II CCP: the under aged, persons

[23] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 270.
[24] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 264-265.
[25] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 267.
[26] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 74.

carrying arms, persons improperly dressed) lie upon the discretion of the judge who is directing the proceedings.

Furthermore, when publicity may be detrimental to "moral principles" (e.g. in matrimonial or family disputes touching moral issues), a special decision of the court for a closed sitting, even partly, on its own motion is allowed (Art. 93 II of the Constitution, 114 I CCP)). Moreover, such a decision may be rendered on the court's own motion when a public sitting may be "detrimental … to public order" (Art. 114 CCP). Doubts about the constitutionality of the specific restriction haven expressed, to extent that a respective provision is not provided for in the Constitution.

The principle of publicity is further been safeguarded by additional conditions such as: the right of the parties to be heard before the decision is rendered (Art. 114 IIa CCP); publicity of the relevant hearing unless otherwise ordered by the court (Art. 114 IIb CCP); and pronouncement of the decision at a public hearing (Art. 93 IIIa of the Constitution, Art. 114 III CCP; an exceptional right of the parties to attack this non-final decision by a regular appeal or even a cassation (Art. 114 IV CCP), thus no suspensive effect as regards these remedies is provided for.

The ground for cassation of Art. 559 nr. 7 CCP is established by the illegal performance of any restriction of the publicity of civil proceedings.

"*Fundamental guarantees for the publicity of civil proceedings currently have very limited practical relevance in Greece, if publicity is understood as direct accessibility to a civil court's session. In this sense, the extent of publicity with regard to civil cases is inevitably dependent on whether proceedings remain oral. On the other hand, indirect publicity, i.e. press reporting of judicial decisions or judicial conduct, has been playing a steadily increasing role. Nevertheless, it is still under discussion as to whether and, if so, on what conditions, television should be allowed to enter court rooms; and, moreover, if the constitutional guarantee of publicity should be interpreted as also comprising access of television to civil trials*[27]".

1.7 Principle of Pre-trial Discovery

Despite the non-existence of pre-trial discovery in the context of Greek law[28], evidence produced before the hearing In any event or even before the commencement of litigation (i.e. "preservative evidence"), is thoroughly regulated by Art. 348-351 CCP. More specifically, preservative evidence may be allowed according to the proceeding of provisional remedies (Art. 348 I CCP), covering all means, provided that there exists an asserted danger that a means will be lost or that its utilization will become difficult, or an asserted need that the current situation of a thing or of a work must be confirmed. An agreement of the parties might also be the basis of preservative evidence[29].

[27] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 76.
[28] Konstantinos Kerameus – Phaedon Kozyris (ed.), Introduction to Greek Law, 357.
[29] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 319.

2 General Principles of Evidence Taking

2.1 Free Assessment of Evidence[30]

The credibility of the means of proof is in principle freely evaluated by the court, unless otherwise explicitly provided, thus the judge decides in accordance with his inner conviction as regards the truth of the factual allegations. The judgement must include the reasons, which led the judge to the formation of his conviction (Art. 340 CCP)[31]. Means of evidence are in principle regarded as of equal probative effect[32], even if consisting of presumptions. Within the process of his free evaluation, the judge enjoys a discretionary power to rely on only some of them and to reject others. Evidence offered by one party may be evaluated to satisfy the burden of proof resting on the adversary (Art. 346; principle of the community of the means of evidence).

In contrast to the previous Code, the Code of Civil Procedure has introduced only a few exceptions which maintain binding rules proscribing the court's evaluation in accordance with the "legal theory" of proof (e.g. the binding probative weight of notarial or other authentic instruments (Art. 438 CCP) and of confessions (Art. 352 CCP)).

Despite the overall qualification of Civil Procedure as public law, the fact that certain procedural rules are subject to private autonomy (ius dispositivum) was never denied[33]. In this context, the parties may agree the exclusion of certain means of evidence or the override of their probative weight[34]. However, after the submission of factual allegations and the produce of the means of evidence before the court, the judge cannot be prevented from exercising his judicial powers (e.g. the free assessment of the evidence by the court cannot be excluded contractually by the parties)[35].

2.2 Relevance of Material Truth

According to Michelakis, "*without the objective scope of the truth ... as a value, the interpretation of the law of evidence is impossible*"[36]. The finding of (objective) truth is unanimously considered in the theory as the scope of evidence. The respective tendency of the Code of Civil Procedure can easily be affirmed by several examples belonging to the specific regulation of each means of evidence: examination of the parties, free evaluation of expert reports, permissibility of presumptions as self-contained means of

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[30] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 320, Dimitris Maniotis – Spyros Tsantinis, Civil Justice in Greece, 49, Georgios Nikolopoulos, Law of Evidence, 30 ff. (2d ed., Sakkoulas Publications 2011).
[31] Konstantinos Kerameus, Procedural Rigidity, 694-695.
[32] Areios Pagos (Plenum) 32/1990, Hellenic Justice 1991, 55; Areios Pagos 1825/2001 Nomos.
[33] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 23.
[34] Dimitris Maniotis, Principles of the Law of Evidens (in Greek), Sakkoulas Editions 2013, 115.
[35] Dimitris Maniotis, Principles of the Law of Evidens (in Greek), 119.
[36] Emmanouil Michelakis, About the object of procedural evidence (in Greek), 15 (Ant. N. Sakkoulas Publishers 1940).

evidence etc[37]. Moreover, the orientation of the adversarial system to the initiative of the parties will not prevent the finding of material truth[38].

The privilege holder immunity against legal compulsion to supply information at trial (see under 6) is regarded as a restriction to the finding of material truth.

3 Evidence in General

The Greek Code of Civil Procedure requires in principle the full conviction of the court as regards the standard of proof. Additionally, although according to some Greek legal scholars[39] objective theories regarding estimation of probabilities following mathematical or statistical methods[40] should be accepted, such opinion is constantly been rejected due to its incompatibility with the principle of free evaluation of evidence (Art. 340 CCP)[41].

In exceptional cases, specifically provided for in the law, lower standard of proving the facts which are necessary for the support of someone's claim – i.e. probability – is required (Art. 347 CCP e.g. as regards adjudication in the field of provisional remedies or on pure procedural issues). Under these circumstances, the use of any appropriate means of evidence by the court, under flexible rules of procedure (free evidence), is permitted.

3.1 Methods and Standards of Proof

Eight means of proof are exclusively listed in Art. 339 CCP: confession, direct proof, especially viewing the premises, expert reports, documentary evidence, examination of parties, testimony, presumptions and sworn attestations.[42]

The examination of the parties is a traditional means of evidence in the context of the Greek civil procedural law, under the influence by the models the German and Austrian Civil Procedures (*Parteivernehmung*), aiming at replacing party oaths put by the court.

The court has the discretion to order the examination of the parties is ordered by the court on its own motion or at the request of a party (Art. 416 CCP). Such discretionary power is also exercised by the court, irrespective of its nature as of first instance or of appeal. Moreover, the determination of the person who will be examined is covered by the discretionary power of the court when the parties lack the capacity to conduct proceedings or in the cases of legal entities or of bankruptcy (Art. 415 II- IV CCP).

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[37] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 316.
[38] Georgios Nikolopoulos, Law of Evidence, 6.
[39] Stelios Koussoulis, Beweismassprobleme im Zivilprozessrecht, festschrift für K.H. Schwab, Beck, 1990, 277 ff.
[40] See K.H. Schwab, Das Beweismass im Zivilprozess, Festschrift für Fasching, Manzsche 1988, 451 ff.
[41] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 320-321.
[42] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 336-337.

Unsworn evidence is in principle given by the parties. Furthermore, beyond certain exceptional cases provided for by the law (Art. 417, Ib, II CCP), the court may require that either one or all of the parties testify on oath as regards some or all of the contested facts, or that they subsequently reconfirm on oath the unsworn evidence they have already given (Art. 417 Ia CCP).

Nevertheless, the examination of the parties is freely evaluated by the court, even if they testify on oath[43]. Failure of the summoned party either to appear without good cause in order to testify is also subject to freely weighed by the court (Art. 420 CCP).

A basic distinction of documents is in "documents" as means of evidence and commercial papers, such as cheques, and writings, which constitute an essential element for the validity of an act[44]. However, commercial papers, as private writings, bring conclusive evidence that the statements which they contain have been made by their accepted or proven author (Art. 445 CCP). This binding probative effect can be overcome by any means of counterproof (Art. 445 CCP in fin).

"*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 – 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 (Art. 438, 440, 441 CCP) – or confessions. 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 CCP)*"[45].

Mainly following the French example, the credibility of witnesses is very low in the context of Greek law. Contracts or other judicial acts, the value of which exceeds the sum of EUR 5.900,00 (Art. 393, 394 CCP). should be proven only by documentary evidence, whereas testimony is admitted only in exceptional cases (i.e. when production of written proof is literally or practically impossible[46]. Furthermore, an exception is provided for as regards most commercial transactions.

3.2 The "Duty" of Parties to Produce or Deliver Evidence

"*To the party bearing the "subjective" burden of proof is also allocated the burden of proof in an "objective" sense, that is the risk of non-persuasion, which will in most*

[43] Perjury is a crime according to Art. 224 of the Greek Criminal Code. The respective penalty is imprisonment of at least a year.
[44] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 344, Georgios Nikolopoulos, Law of Evidence, 287-288; Areios Pagos 752/2001 Legal Tribune 2002, 754.
[45] Konstantinos Kerameus – Phaedon Kozyris (ed.), Introduction to Greek Law, 360.
[46] Konstantinos Kerameus – Phaedon Kozyris (ed.), Introduction to Greek Law, 359, Dimitris Maniotis – Spyros Tsantinis, Civil Justice in Greece, 49-50, Georgios Nikolopoulos, Law of Evidence, 246 ff.

cases ultimately mean losing the suit"[47]. In any case, parties are obliged to produce documents which they have utilized or to which they have referred during a proceeding (Art. 450 I CCP)[48].

3.3 Duty of Third Persons to Provide Evidence

Furthermore, according to Art. 450 II CPC, every party or any other person who possesses relevant documents for the production of evidence is obliged to demonstrate them before the court, except a refusal is justified by an important reason. It is explicitly provided for in the law that such a just cause is admissible in all cases in which there is a privilege of witnesses to refuse to testify.

The court may order the (forced) production of documentary evidence, either by a party or by a third person, upon application of a party (Art. 451 CCP). Forced production of documents may be effectuated through the respective enforcement proceedings (Art. 452, 941, 946 CCP).

3.4 The Value of Judicial and Administrative Decisions as Evidence

Judicial decisions are considered as public documents, as regards their reasons. They do not have the respective full probative value erga omnes, as the facts which are deemed to have occurred according to the decision do not constitute acts, that either thblic official, states he has performed, or have taken place in his presence (Art. 438 a' CCP)[49].

The administrative decisions constitute genuine public documents in the sense of Art. 438 ff. CCP.

4 General Rule on the Burden of Proof

The Greek Code of Civil Procedure, under the influence of the German-origin "Norms' Theory" ("Normentheorie")[50], introduces the rule that "Each party is obliged to prove the facts which are required to support his self-contained claim or counter-claim" (Art. 338 I CCP). Furthermore, the concretization of the specific regulation is expressed within the context of the German doctrine – followed by the Greek theory – by the distinction of four categories of substantive rules: a) "Constitutive" legal norms, which provide for the creation of rights (e.g. the rules providing for the formation of contracts or for torts); "Preventive" legal norms, which, despite the application of "constitutive" rule, impede the creation of rights (e.g. rules providing for suspensive conditions); c) "Restraining" legal norms, which postpone the effects of rights (e.g. rules providing for

[47] Konstantinos Kerameus – Phaedon Kozyris (ed.), Introduction to Greek Law, 358.
[48] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 361.
[49] Areios Pagos 358/2007 Chronicles of Private Law (ChriD) 2007, 803, Court of Appeal of Athens 3349/2002 Greek Justice 2005, 586; contra Areios Pagos 964/2013, Review for Procedural Law (EPolD) 2013, 571.
[50] See Leo Rosenberg, Die Beweislast, 98 ff. (5th ed., C.H. Beck 1965).

a guarantor's defence that his obligation is subsidiary and not effective until the creditor has attempted enforcement against the principal debtor, Art. 855 of the Civil Code); d) "Extinguishing" legal norms, which provide for the extinction of rights (e.g. payment). The party who claims rights, the creation of which is provided for in "constitutive" rules must also prove them, whereas, fulfilment of the requirements, according to the law, for the application of "preventive", "restraining" and "extinguishing" rules must be proven by the party against whom the relevant right is exercised. Conditions of a constitutive rule must, in principle, be proven by the plaintiff. Conversely, the defences of the defendant are usually based on the other three categories of norms and consequently should be proven by the latter[51].

The predominant opinion in the Greek theory rejects the allocation of the burden of proof according to other principles, i.e. the theory of the risk domains (Gefahrenbereichen) as being contrary to the abovementioned principle provided for in Art. 338 CCP[52]. However, according to Art. 6 of the Law 2251/1994, the consumer has to prove the damage sustained, the defectiveness of the product and the causal relation between the damage and the defective product. Furthermore, as regards the performance of services, the law shifts the burden of proof of the damages and the respective connection between the damages and the behaviour of the service-employee to the plaintiff (Art. 8 III of the Law 2251/1994). Conversely, the service-employee bears the burden of proving the correspondence of his/her behaviour to the reasonably required standards of care and diligence in performing the service in concreto (Art. 8 IV of the Law 2251/1994)[53].

The prevailing opinion of the Greek procedural theory considers the rules governing the burden of proof as procedural, on the basis of the rule provided for in Art. 338 CCP[54]. Moreover, an argument in favour of the abovementioned opinion may be drawn by the reference of a certain ground of cassation (Art. 559 nr. 13 CCP) to violations of rules allocating the burden of proof. Therefore, as regards conflict cases, the burden of proof should be governed by the *lex fori*[55].

As a rule, the utilization of its private knowledge as regards the court is not allowed. Furthermore, it may take into consideration facts practically known to everyone (i.e. "notorious facts"; Art. 336 I CCP) and facts that are known through another judicial

[51] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 310-311, Georgios Mitsopoulos, The Theory of Civil Procedural Law, in Studies of the General Theory of Law and Civil procedural Law, 155 ff. (167) (Ant. N. Sakkoulas Publishers 1983), Georgios Nikolopoulos, Law of Evidence, 106 ff.
[52] Panayiotis Kargados, The Burden of Proof between procedural and substantive law, 57 ff. (Ant. N. Sakkoulas Publishers 1983).
[53] Dimitris Maniotis – Spyros Tsantinis, Civil Justice in Greece, 48.
[54] Panayiotis Kargados, The burden of proof, 137, Georgios Mitsopoulos, The Theory, 166-167, Georgios Nikolopoulos, Law of Evidence, 116.
[55] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 312.

activity (Art. 336 II CCP)[56]. Rules of common human experience (Art. 336 IV CCP) must be however applied by the court on its own motion and no not have to be proven[57].

Rules of domestic law cannot constitute the subject matter of proof (jura novit curia)[58], whereas, in principle, the court ascertains and applies them ex officio, even if those relied on by the parties are different. However, although Greek courts are required to take judicial notice of both, rules of foreign and of customary law, they are allowed to take the respective evidence, thus by using any appropriate means of proof, whenever this is necessary (Art. 337 CCP)[59].

By virtue of Art. 236 CCP, as recently amended by the Law 3994/2011, the active role of the judge has been strengthened, as the latter is provided with the "duty" (instead of the "power" under the previous state of the C.C.Proc.) to help the parties to convert their vague actions to admissible ones. This rule does not extend to the incompleteness of the proposed evidence.

4.1 Submission of Additional Evidence

"New" evidence may be taken provided that the court decides that this is necessary. In this case, the (first) hearing of the case is followed by a non-final decision, which orders the new evidence and is freely revocable by the court (Art. 309 CCP). If such evidence is not produced, the rules of the "objective" burden of proof will determine will bear the risk of non-persuasion of the court[60]. New witnesses may also be examined at a new (second) hearing of the case, provided that their testimony is related to facts, which occurred after the "first" hearing (Art. 254 CCP).

4.2 Collection of Evidence by the Court on its own Initiative

In the context of the Greek civil procedural law, a court may never collect evidence on its own initiative.

[56] Georgios Nikolopoulos, Law of Evidence 80 ff.; Areios Pagos 1732/2001 Greek Justice 2002, 1623.
[57] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 308, Konstantinos Kerameus – Phaedon Kozyris (ed.), Introduction to Greek Law, 357.
[58] Emmanouil Michelakis, About the object, 79, fn. 3, Georgios Nikolopoulos, Law of Evidence 85 ff.
[59] Georgios Nikolopoulos, Law of Evidence, 88 ff; District Court of Piraeus 1741/2001 Dike 2002, 397.
[60] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 308.

5 Written Evidence

5.1 The Concept of "Document" in the Greek Legal System

In the context of Greek law the definition of documents basically refers to the human works which are destined to preserve the memory of past facts through the use of letters[61].

According to Art. 444 I c CCP, photographs, films, tape recordings and all other kinds of mechanical portrayals are regarded as private documents. Consequently, contesting the authenticity of such mechanical reproductions or attacking them because of falsity, following the procedure which is applicable as regards private documents, is also possible, whereas they produce conclusive evidence regarding the facts they record unless this effect is overcome by another form of counter proof (Art. 448 II CCP)[62]. After the amendment of Art. 444 by the law 3994/2011 as a mechanical portrayal in the sense of Art. 444 I c CCP is also considered any means which is used by a computer or by the peripheral memory of a computer, by an electronic, magnetic or other way, for the recording, saving, production or reproduction of elements which cannot be transferred directly[63], as well as any electronic, magnetic or other material on which any information, picture, symbol or sound is independently or dependently recorded, provided that these means or materials are destined or suitable to prove legally important facts (Art. 444 II CCP).

It is also explicitly provided that photographed documents or photocopies have the same probative effect as the original, if their accuracy is properly verified, e.g. by a lawyer (Art. 449 II CCP).

As regards the establishment of electronic signature, the Greek legislation adapted to the provisions of Directive 1999/93/EC by the Presidential Decree 150/2001. According to Art. 3 I of the said decree, "*The advanced electronic signature has the same validity as handwritten signature in the context of substantive and procedural law as well, provided that (a) it is based on a recognized certificate and (b) it was created by a secure format for the creation of signature*"[64]. The prevailing opinion in Greek theory accepts that the "simple" electronic signature has the same validity as the "advanced" electronic signature.

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[61] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 344, Georgios Nikolopoulos, Law of Evidence, 281 ff.
[62] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 350.
[63] Georgios Nikolopoulos, Law of Evidence, 339-340.
[64] Dimitrios Maniotis, The Digital Signature as a means for the Assertion of Authentic Documents in Civil Procedural Law (in Greek) (Ant. Sakkoulas Publications, 1980), Dimitris Maniotis – Spyros Tsantinis, Civil Justice in Greece, 52-53.

5.2 Presumption of Correctness as Regards the Documents

Public documents bring about conclusive evidence that all acts, that the public official states he has performed, have taken place or that any event that this official records as having occurred in his presence has occurred (Art. 438a CCP[65]). Such conclusive proof may be overthrown only on grounds of falsity[66]. No means of counterproof are admissible (Art. 438b CCP). As a rule, a public act brings also conclusive proof as regards facts whose truth the public officer had to examine. Such conclusions may be attacked through any means of evidence including testimony (Art. 440 CCP).

Public acts which are executed in order to record the formation of or to confirm a juridical act ("documents of disposal") are also conclusive evidence for their respective main contents prove (Art. 441 I CCP), even if consisting of conditions which are not necessary to the act recited, provided that these are directly related to it (Art. 441 II CCP). Counterproof is admissible through any type of evidence, except testimony (Art. 393 II CCP).

Furthermore, despite the fact that the probative effect of the main contents of other public documents which do not embody juridical acts, but include mere attestations ("documents of attestation") is not explicitly provided for, It is generally accepted that the statements therein which entail extrajudicial confessions of the involved parties may be freely evaluated freely by the court (Art. 352 II CCP).

Therefore, a judgment can be rendered on basis of the above-mentioned documents only, provided that the respective conclusive proof covers all the crucial favourable to the parties factual allegations.

As long as their genuineness has been accepted through an actual or a presumed recognition, or has been proven, private writings which are duly signed and, generally, drawn up in compliance with the provided formalities are conclusive evidence that the statements which they contain have been made by their accepted or proven author (Art. 445 CCP). Counterproof is allowed by any means of counterproof (Art. 445 CCP in fine) – again apart from testimony (Art. 393 II CCP). Accordingly, the prevailing opinion in Greek law attributes to both public and private writings a similar binding probative effect[67].

Like the respective public documents, private writings which do not contain juridical acts, as long as they do not entail an extrajudicial confession, can be freely evaluated under certain conditions.

[65] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 347 ff.
[66] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 345, Dimitris Maniotis – Spyros Tsantinis, Civil Justice in Greece, 50.
[67] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 349.

5.3 Submission of the Documents to the Court

Written evidence should be only submitted to the Court. It is not allowed to be read at the hearing.

Photographed documents or photocopies could also be submitted to the Court provided that they have the same probative effect as the respective originals (i.e. if their accuracy is properly verified, e.g. by a lawyer (Art. 449 II CCP)).

6 Witnesses

6.1 Obligation to Testify

All persons are in principle compellable witnesses[68]. The judge has the discretionary power to condemn the persons, who are unwilling to testify without reason, to pay the expenses caused by their absence and an amount of money as a penalty (Art. 398 III CCP). Witnesses may refuse to testify when specific occasions exist (Art. 401, 403 III CCP). Professionals enjoy the privilege of refusing to give evidence for all facts that come to their attention during their professional activities, even if they are not legally obliged to keep them secret. Relatives of one of the parties, to a certain extent (see Art. 401 II CCP)[69], may also claim the privilege not to testify. Furthermore, there is the privilege against self-incrimination; witnesses may refuse to give evidence about facts which can base a criminal charge against them or their relatives, or which harm their dignity (Art. 401 nr. 1 CCP). Witnesses are also not obliged to testify about facts, which convey a professional or artistic secret (Art. 402 nr. 2 CCP). In addition, public functionaries and the military are excluded as regards confidential facts related to their service (Art. 400 nr. 2 CCP), unless a respective permission is granted by the competent Minister.

6.2 The Presence of Witnesses in Court

The presence of witnesses in court is assured by the parties.

6.3 Refusal to Testify

The witness is obliged to appear before the court even if he can refuse his role as a witness.

The court decides upon the issue whether a witness is obliged by law to testify, according to the respective legal provisions (see above under 6.1). A possible refusal by the court can be contested only by the parties, by the way of revocation of the non-final

[68] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 335-336.

[69] E.g. relatives by blood, marriage or adoption, affinity and collateral, up to the third degree, unless they are related to all the parties to the same degree, the spouses, even after the dissolution of marriage, and the betrothed.,

decision which considers the refusal of the witness as just, or by the way of methods of the review against the final judgment which will be issued.

The basic rule is that every sane person may give evidence, regardless of nationality or age. Two categories of persons are incompetent witnesses: The first category (Art. 399 CCP) includes persons who are excluded in all cases and are dismissed by the court on its own motion (Art. 403 I CCP). The reason for this general incapacity is the physical or mental condition of certain persons. In addition, clergymen may not testify about facts which came to their attention through a confession.

The second category (Art. 400) includes persons who are dismissed by the court (Art. 403 II CCP) only after an exception by the party against whom the witness is called. Persons who are obliged to keep secret the facts that came to their attention during their professional activities (physicians, mediators, lawyers, consultants etc.) are thus not allowed to testify, if their client objects. Furthermore, all persons that have a direct interest in the outcome of the case may be excluded.[70]. However, such testimonies may be also considered and evaluated by the court as means of proof which do not comply with the requirements of law (Art. 270 CCP).

Children over 14 are competent witnesses. The competence of children below 14 is entirely dependent on the existence of special reasons, which make their testimony indispensable. The court will determine if such reasons exist. In this case, children may give unsworn evidence (Art. 404 CCP). In matrimonial disputes or in disputes concerning the relations between parents and children, however, the children of the parties are absolutely incompetent witnesses (Art. 601 nr.2; 614 I CCP).

The witness is obliged to take an oath, either religious or political (Art. 408 CCP). The testimony is considered as null if such an oath is not taken by the witness[71]. Only persons under the age of 14 or persons who have been deprived of their political rights are allowed to testify without to take an oath (Art. 405 CCP).

The judge – the reporter judge as regards the multimember District Courts - is obliged to examine at least one witness for each side from those who have appeared before him during the hearing (Art. 270 III b CCP). Each witness is examined separately. However, the judge may order the cross-examination of a witness with another witness or with a party (Art. 409 I a CCP).

The witness must produce oral testimony. The use of written notes is permitted, provided that the latter can facilitate his memory. Furthermore, the witness is obliged to declare, the way he learned the facts about which he testifies or the person from whom he received indirect knowledge of the said facts (Art. 409 II CCP).

The court addresses questions to the witness. Afterwards, the witness is examined by the parties or by the parties' lawyers. The court may also disallow questions raised to

[70] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 335.
[71] Areios Pagos 568/1999 Greek Justice 1999, 1079.

the witness by the parties or by the parties' lawyers, if they are irrelevant or pointless (Art. 409 III CCP).

Evaluation of the examination of the parties is free as well (Art. 340 CCP).

7 Taking of Evidence

7.1 In General

There is no mandatory sequence in which evidence has to be taken. All means of evidence must be produced during the hearing, whereas the parties are requested to appear in person (Art. 270 I c CCP). Direct evidence and expertise can be ordered through an oral announcement of the court (Art. 270 IV a CCP). If expertise is ordered by the court, the respective report should be submitted to the court within a time-limit, specified by the court, which does not exceed 60 days (Art. 270 IV b CCP). If this deadline is missed, the validity of the report is not affected[72]. Furthermore, "new" evidence may be taken provided that the court decides that this is necessary. In this case, the (first) hearing of the case is followed by a non-final decision, which orders the new evidence and is freely revocable by the court (Art. 309 CCP). New witnesses may also be examined at a new (second) hearing of the case, provided that their testimony is related to facts, which occurred after the "first" hearing (Art. 254 CCP).

"Preservative" evidence may be allowed even before litigation has commenced, following the proceeding of provisional remedies (Art. 348 I CCP), in case of an asserted danger that a means will be lost or that its utilization will become difficult, or of an asserted need that the current situation of a thing or of a work must be confirmed. Preservative evidence may also be based on an agreement of the parties[73].

7.2 The Hearing

According to the legal theory, evidence is called "direct", when the relevant facts which are necessarily required for the application of a legal norm constitute a direct object of evidentiary proceedings,. However, Art. 336 III CCP explicitly allows the deduction of conclusions by the court about unknown but relevant facts, from proven facts only indirectly relevant ("indirect evidence" or "evidence through presumptions". The said kind of evidence is thus connected to a *deductive reasoning process in the course of which the judge, by utilizing logical rules and knowledge attained through common experience, draws conclusions about the truth of relevant facts from other facts that are already known*[74]. These latter, which do not typically become a direct subject matter of proof, are called " (rebuttable) presumptions". According to standard case law indirect evidence is subject to the restrictive rules of testimony (Art. 395 CCP)[75].

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[72] Georgios Nikolopoulos, Law of Evidence, 229; Areios Pagos 1602/2008 Review for Procedural Law 2009, 87, Areios Pagos 1588/2008 Legal Tribune 2009, 629.
[73] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 319.
[74] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 318.
[75] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 318-319.

The recorded testimony of a witness is not considered as evidence at all. However, witnesses, parties or experts may be examined by electronic means (video-conference), according to Art. 270 VII – VIII CCP. The said provisions are not in force yet. These testimonies have the same probative value as the "traditional" (physical) testimonies.

7.3 Witnesses

It is a common ground that witnesses are prepared before the hearing.

7.4 Expert Witnesses

Art. 368 CCP distinguishes between "special" and "particular" knowledge. While "particular" knowledge is that exclusively possessed by specialists, "special" knowledge may also be that of any other person sufficiently qualified. When matters calling for "particular" knowledge are to be decided and expertise is requested by a party, the court is obliged to use experts (Art. 368 II CCP). Conversely, if the required level of knowledge is regarded as "special", the judge has the discretionary power to decide whether to resort to experts or not (Art. 368 I CCP). *Areios Pagos, however, traditionally refuses to review decisions of lower courts when they deal with the question of whether a certain problem calls for "special" or "particular" knowledge, whereas, the courts have in fact fully retained their discretion to decide freely whether expert reports are really indispensable*[76].

Experts are appointed from a particular register kept in court (Art. 371, 372 CCP). The court may, at its own discretion, select any other appropriate persons, public officers or private individuals. The number of experts appointed also depends on the discretionary power of the judge (Art. 368 I CCP).

Expert witnesses are dismissed by the court only after an exception by themselves or by a party is called, provided that (i) they are parties or connected to one of the parties as co-beneficiaries or co-debtors or liable for compensation or they have a direct interest in the outcome of the case, (ii) they. are affinity relatives of one of the parties, by blood, marriage or adoption, or collateral relatives up to the second degree, spouses, even after the dissolution of marriage, or betrothed, (iii) they are affinity relatives, by blood, marriage ar adoption or collateral relatives up to the second degree of a person that is remunerated or sponsored by a natural person or a legal entity which is directly or indirectly interested in the outcome of the trial (iv) the impartiality of the judge is undermined, specially because of friendship, hostility or professional relations, (v) they are civil servants, who are not granted a permission by their superior authority to act as expert witnesses because of reasons related to their service (vi) any other serious ground exists (Art. 376 CCP).

According to Art. 387 CCP, which repeats the general principle of the free evaluation of evidence (Art. 340 CCP), the opinion of experts, is freely weighed by the court.

[76] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 329-330, Konstantinos Kerameus – Phaedon Kozyris (ed.), Introduction to Greek Law, 358.

According to the prevailing opinion in the legal theory (which, however, has not been adopted by Areios Pagos)[77], the judge, who deviates from the result of an expert report, has the duty to specifically justify this deviation[78]. The free evaluation of expertise concerns, however, the results of the investigation. Furthermore, given that the expertise is conducted by a person exercising a public function, all elements related to its character as a public document, produce the binding probative effects of all other public documents[79].

The court may permit the experts are allowed to attend the hearings of the case. In this context, they are entitled to address questions to the parties, to their legal representatives and to the witnesses. They may also demand the reading of documents (Art. 382 CCP). After the submission of their written report to the court (Art. 383 CPC), the experts may be asked by the court to clarify its content (Art. 384 CCP). The report is freely evaluated by the Court, whereas the parties are entitled to comment on its content by their written pleadings.

In contrast to experts, who are appointed by the court, technical consultants are selected by the parties from a circle of persons qualified to be court appointed experts (Art. 391 CCP). If the court decides to resort to expert reports, each party is allowed to appoint a technical consultant, who is mainly entrusted to "highlight their viewpoints on the technical aspects and to assist the court-appointed experts" (Art. 392 CCP)[80].

8 Costs and Language

8.1 Costs

Under the term "legal costs" the strictly judicial costs are covered, including several kinds of fees or dues to be deposited in advance and all various extrajudicial expenses, such as the remuneration of attorneys, notaries, bailiffs, experts etc., as well as some other expenses such as those, e.g., of witnesses, technical consultants etc[81].

The general rule is that each party bears the court costs, as regards his own "legal costs" in advance (Art. 173 I, II, III CCP). Only in actions in which maintenance is seeked by the defendant, for obvious reasons, the latter has to pay the dues and the expenses of the plaintiff also, as fixed by the court (Art. 173 IV CCP). A party who fails to submit evidence of his compliance with these obligations is deemed as not having entered an appearance during the hearing of the case (Art. 175 CCP).

Court costs are allocated after the trial, following the "defeat principle". According to this basic rule, after the termination of the suit, the loser pays the other party's court

[77] See Areios Pagos 715/2006 Legal Tribune 2008, 88.
[78] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 330 and fn. 66.
[79] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 330-331.
[80] Konstantinos Kerameus – Phaedon Kozyris (ed.), Introduction to Greek Law, 359.
[81] Pelagia Yessiou-Faltsi, Civil Procedure in Hellas, 303 ff.

costs including moderate lawyer fees (Art. 176 CCP)[82]. This rule is also applicable when each party is only partially successful (Art. 178 CCP). The court can then divide the costs in accordance with the degree of the parties' defeat.

This principle, however, is mitigated by two important exceptions: each court is allowed to deviate from the "defeat principle" by taking into account whether a party's behaviour has caused the initiation of the suit ("culpability principle"). The court costs are thus charged to the plaintiff whenever a defendant has not provoked the initiation of the trial and has at once confessed or admitted the action (Art. 177 CCP). Legal costs can finally be imposed on a victorious party as a penalty, e.g., for violating the duty to tell the truth or for causing the invalidity of a certain judicial act (Art. 185 CCP). Furthermore, in where "there are justified doubts as to the outcome of litigation" (Art. 179 CCP), the court may order that no costs will be recovered by the defeated party. "Greek courts indeed resort very frequently to the "justified doubts" clause, in order to relieve the unsuccessful party from the burden of paying the total amount of costs, more often without sufficient justification".

The allocation of the court costs to each party is effectuated through the final decision (Art. 191 I CCP) and normally, must be based on a detailed list of expenses submitted for this purpose by the parties' attorneys (Art. 190 CCP). Only the necessary costs, whether judicial or extrajudicial, can be recovered (Art. 189 CCP). In practise, however, attorneys seldom submit such detailed lists of expenses, whereas the whole amount of the necessary legal costs of a victorious party is not fully recovered.

Greece has not adopted any agreements or arrangements to further facilitate cooperation in the taking of evidence, as regards Art. 18 of Regulation 1206/2001.

8.2 Language and Translation

If a document used in the proceedings is drafted in a foreign language, its official translation is also submitted to the court, certified by the Ministry of Foreign Affairs or by a competent according to the law person (e.g. a Lawyer) or by the Embassy or the Consulate of Greece in the State, where the document has been drafted or by the Embassy or the Consulate of the said State in Greece. In any case, the court may order the translation of the document in Greek by an expert (Art. 454 CPC).

If a witness, an expert, one of the presented parties, or one of their legal representatives is not aware of the Greek language, an interpreter is appointed by the court. In cases of a language, which is slightly known, an interpreter of the interpreter may be appointed by the court (Art. 252 CPC).

[82] Konstantinos Kerameus – Phaedon Kozyris (ed.), Introduction to Greek Law, 356.

9 Unlawful Evidence

9.1 Distinction between Illegally Obtained Evidence and Illegal Evidence

Art. 19 III of the Greek Constitution provides for the inadmissibility of the means of evidence obtained in violation of Art. 19, 9 and 9A of the Greek Constitution, as regards the protection of the secrecy of letters and other forms of communication, the protection of every person's home ("asylum"), the inviolability of private and family life and the inviolability of personal data respectively[83]. These are the so called "illegally obtained means of evidence". The specific constitutional provision is also applicable as regards the relations between private citizens (Art. 25 I c' of the Greek Constitution).

According to the decision Nr. 1/2001 of Areios Pagos (in plenary)[84], the above-mentioned illegally obtained means of evidence are inadmissible on the basis of the violation of Art. 8 of ECHR as well. More specifically, the inadmissibility of a tape, as a means of evidence, consists in its taking without the consent of the speaking persons, which entails their entrapment and therefore constitutes a commitment and a restriction on the free exercise of communication. The consent should be given before the recording of the conversation. The use of the illegally obtained means of evidence is prohibited not only against the "trapped" conversation partner but against any other third person as well. However, an exception is valid, exclusively in favour of a constitutionally higher in rank legal value (e.g. the human life). Any other exception, even if introduced by a formal law, should be considered as invalid.

The prevailing opinion within the context of the Greek doctrine accepts the inadmissibility of the illegally obtained means of evidence on the basis of the violation of the human dignity or of rights relating to the personality. As regards the legal basis of this opinion, three versions have been supported: The argumentation of the first version derives from the provision of Art. 450 CCP, according to which, the presentation of a certain document may by refused by a party, in the case of a "significant reason"[85]. According to another opinion, the finding of truth is the objective of the evidence proceeding, within the context of the procedural provisions and the Constitution as well. Consequently, the illegally obtained means of evidence should be absolutely prohibited, provided that they violate the privacy, which relates to the core of the human dignity or personality[86]. The third version relies upon the principle of "practical harmonization", which normally gives priority to the right of proof[87].

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[83] Georgios Nikolopoulos, Law of Evidence, 58 ff. According to Konstantinos Chrisogonos (Civil and Social Rights, Legal Library 2002, 63-64), the prohibition applies also as regards the violation of other constitutional rights as well.
[84] Legal Tribune 2001, 1803 = Greek Justice 2001, 374.
[85] Athanassios Kaissis, Illegal means of proof, 56-63 (Ant. N. Sakkoulas Publishers, 1986).
[86] Konstantinos Calavros, The indirect proof through judicial presumptions, Volume in Honor of G. Oikonomopoulos, 1981, 63 ff. (64 ff.).
[87] Georgios Kaminis, Illegal means of proof and constitutional safeguard of the civil rights, 322-333 (Ant. N. Sakkoulas Publishers 1998).

Part II – Synoptical Presentation

1 Synoptic Tables

1.1 Ordinary/Common Civil Procedure Timeline

Phase #	Name of the Phase Name of the Phase in National Language	Responsible Subject	Duties of the Responsible Subject (related only to Evidence) and Consequences of their Breach	Rights (related only to Evidence) of the Responsible Subject
1	Submission of written pleadings / means of evidence (documents) to the court (i.e. as regards the multimember district courts, 20 days before the hearing, whereas as regards the single-member courts, at the hearing).	Plaintiff & defendant.	Preclusion	
2	Taking of evidence	Plaintiff & defendant.	Preclusion	
3	Evaluation of the produced evidence (i.e. as regards the multimember district courts 8 working days after the hearing, whereas as regards the single-member courts 3 working days after the hearing.	Plaintiff & defendant.	Preclusion	
4	Order for additional evidence.	Plaintiff & defendant.	Preclusion	

1.2 Basics about Legal Interpretation in Greek Legal System

There is no protocol for interpretation of substantive legal rules.

1.3 Functional Comparison

Legal Regulation / Means of Taking Evidence	National Law	Bilateral Treaties	Multilateral Treaties	Regulation 1206/2001
Hearing of Witnesses by Mutual Legal Assistance (Legal Aid)		E.g. Law 2311/1995: Ratification of the bilateral treaty between Greece and Albania: The witness will be examined according to the – unfamiliar to the requesting court - provisions of Albanian Law (Art. 6 I).	Hague Convention of 18.3.1970 on the taking of evidence abroad in civil or commercial matters: The witness will be examined according to the – unfamiliar to the requesting court – provisions of the law of the requested Court's Member State (Art. 10 II). The list of the questions to be put to the witness is binding / not flexible! (Art. 3 f)).	The witness will be examined according to the – unfamiliar to the requesting court – provisions of the law of the requested Court's Member State (Art. 10 II). The list of the questions to be put to the witness is binding / not flexible! (Art. 4 I (e)). The presence of representatives of the requesting court in the performance of the taking of evidence by the requested court is not compatible with the Greek law (Art. 12 I).
Hearing of Witnesses by Video-conferencing with Direct Asking of Questions		E.g. Law 2311/1995: Ratification of the bilateral treaty between Greece and Albania: The witness will be examined according to the – unfamiliar to the requesting court – provisions of Albanian Law (Art. 6 I).	Hague Convention of 18.3.1970 on the taking of evidence abroad in civil or commercial matters: The witness will be examined according to the – unfamiliar to the requesting court – provisions of the law of the requested Court's Member State (Art. 10 II).	The witness will be examined according to the – unfamiliar to the requesting court – provisions of the law of the requested Court's Member State (Art. 10 II).
Direct Hearing of Witnesses by Requesting Court in Requested Country			Hague Convention of 18.3.1970 on the taking of evidence abroad in civil or commercial matters:	According to the recent amendment of the grCCP, the use of communications technology should be encouraged (Art. 17 IV).

Legal Regulation / Means of Taking Evidence	National Law	Bilateral Treaties	Multilateral Treaties	Regulation 1206/2001
Hearing of Witnesses by Mutual Legal Assistance (Legal Aid)	-	-	-	
Hearing of Witnesses by Video-conferencing with Direct Asking of Questions	-	-	Hague Convention of 18.3.1970 on the taking of evidence abroad in civil or commercial matters: Despite the recent amendment of the grCCP, the use of communications technology is not established yet, from a practical point of view (infrastructures etc.).	
Direct Hearing of Witnesses by Requesting Court in Requested Country	-	-	Hague Convention of 18.3.1970 on the taking of evidence abroad in civil or commercial matters: Despite the recent amendment of the grCCP, the use of communications technology is not established yet, from a practical point of view (infrastructures etc.).	

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