

**COMPARATIVE STUDY OF “RESIDUAL JURISDICTION”
IN CIVIL AND COMMERCIAL DISPUTES IN THE EU
NATIONAL REPORT FOR:**

GREECE

PREPARED BY:

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(A) General Structure of National Jurisdictional Rules for Cross-Border Disputes

1. Main legal Sources

The main legal source of the rules of jurisdiction in Greece in civil and commercial matters, apart from the Brussels I Regulation and Brussels Convention, is the Greek Code of Civil Procedure (Kodikas Politikis Dikonomias – Κώδικας Πολιτικής Δικονομίας).¹

It must be noted that Greek law draws a distinction between a) jurisdiction, meaning the general competence of the Greek Courts over a dispute and b) territorial competence, meaning the competence of a specific Greek court over disputes that have a territorial connection with its region.

2. Specific Rules (or Not) for Transnational Disputes

Jurisdiction on transnational disputes is not explicitly provided in the Greek Code of Civil Procedure but derives from Article 3 regulating the extent of jurisdiction of Greek civil courts. Thus, pursuant to said Article, jurisdiction of Greek civil Courts is applicable both on Greek citizens and foreigners, subject to the provision that competence of the Greek courts (pursuant to the special competence rules) is established.² In deviation from the above rule, foreigners having the benefit of extraterritoriality are excluded from the jurisdiction of Greek courts,³ unless the dispute concerns *in rem* rights on real estate property (forum rei sitae).

3. Specific Rules (or Not) for Article 4(1) Jurisdiction

Pursuant to Article 4(1) of the Brussels I Regulation, the jurisdiction of Greek courts is governed by the traditional rules of jurisdiction for cross-border cases, i.e. Article 3 of the Greek Code of Civil Procedure.

4. Influence of EU Law

The Brussels I Regulation, pursuant to EC Law, is directly applicable by the Greek courts and it is invoked thereby in cases that fall under its scope.

¹ The Greek Code of Civil Procedure has been introduced by the Presidential Decree 503/1985.

² See Nikas in "Commentary of Code of Civil Procedure", Volume I, Kerameas/Kondilis/Nikas, Sakkoulas, Athens, 2000, page 21; Nikas, "Civil Procedure", Volume I, Athens, 2003, page 99; Yannopoulou/Zompolas/Kaltzis/Katras/Blatsios/Tsikouri, "Code of Civil Procedure", Volume I, Athens, 1998, page 29; Maridakis, "International Private law in Greece", 1968, note 185; See also cases: Supreme Court 4/1992, Nomiko Vima, 1992/707; Supreme Court 439/1983, Archive of Jurisprudence 35,149; Court of Appeals of Patras 285/1989, Archive of Jurisprudence 1990/225; Court of Appeals of Thessaloniki 1930/91, Armenopoulos 45/588; Court of Appeals of Thessaloniki 2252/89, Armenopoulos 22,1348; Multi Member Court of Piraeus 1553/90, Nomiko Vima 39,257; Court of Appeals of Athens, 8439/93, Nomiko Vima 42,1006; Court of Appeals 5987/93 Elliniki Dikaosini 36,880; Multi Member Court of Thessaloniki 204/90, Armenopoulos 44,988.

³ According to the Vienna Conventions dated 18.4.1961 (ratified by virtue of the Greek law 503/1970) and 24.4.1963 (ratified by virtue of the Greek Law 90/1975).

5. Impact of Other Sources of Law

The application of national jurisdictional rules both on Greek citizens and foreigners (Art. 3 of Greek Civil Procedure Code), aims towards the elimination of the citizenship as a connecting factor for the establishment of a jurisdiction and towards the institution of territorial competence as the main and only connecting factor. In this sense, such legal provision fully observes the constitutionally acknowledged principle of fair trial as well as the protection of human rights.⁴

6. Other Specific Features

There is no specific feature in Greek procedural law regarding the jurisdiction of Greek courts in cross-border disputes other than those relating to Brussels I Regulation and the establishment of territorial competence of Greek courts in connection with Article 3 of the Greek Code of Civil Procedure.

7. Reform

There are no proposed changes currently contemplated in Greece for the rules of jurisdiction applicable in cross-border cases.

(B) Bilateral and Multilateral Conventions

8. Conventions with Third States

Greece is contracting party of the Brussels/Lugano/San Sebastian Conventions and for the time being has not entered into any other Convention which include jurisdictional rules in matters regulated by the Brussels I Regulation.

9. Practical Impact of international conventions with third states

As indicated there is presently no convention in force in Greece, be it multilateral or bilateral, that govern in general the issue of international jurisdiction in civil and commercial matters. Thus the international jurisdiction of Greek courts is determined solely by the domestic jurisdictional rules, in addition, of course, to the rules of EC law and to the Brussels and Lugano Conventions.

(C) Applicable National Rules Pursuant to Article 4 of Brussels I Regulation

10. Structure

Greek citizens as well as foreigners are subject to the jurisdiction of Greek courts, if territorial competence of Greek courts can be established (Art. 3 of the Greek Code of Civil Procedure).⁵

11. General Jurisdiction

⁴ Nikas in "Commentary of Code of Civil Procedure", Volume I, Kerameas/Kondilis/Nikas, Sakkoulas, Athens, 2000, page 21; Nikas, "Civil Procedure", Volume I, Athens, 2003, page 99; Supreme Court 439/1983, Nomiko Vima 31/1605

⁵ See footnote 1 above

The general connecting factor that applies to all defendants is the residence/domicile of the defendant.⁶ Please see answers to question 12 below for specific rules of jurisdiction.

12. Specific Rules of Jurisdiction

It must be noted that Greek Code of Civil Procedures distinguishes between exclusive and non-exclusive competence. In the first case there is a mandatory competence of a specific Court (i.e. in real estate cases, whereby the court of the territory where the real estate in question is located), while in the second case the plaintiff has the discretion (Art. 41 of the Greek Code of Civil Procedure) to bring a claim either before the Court of residence of the defendant (general Competence of Art. 22 of Greek Code of Civil Procedure) or before a Court which is related to the specific matter (e.g. contract, tort etc) of the claim.

a) Contracts

Subject to the provision that the parties of a contract have not provided in the agreement for the applicable jurisdiction, the connecting factors which may be used in contract matters to bring proceeding against a defendant domiciled in a non-EU State are either the place of execution of the contract⁷ and/or the place of performance of the contract⁸ (Art. 33 of the Greek Code of Civil procedure – non-exclusive competence – *forum negotii*).⁹

b) Tort

Should a tort act give rise to criminal proceedings according to the Greek Criminal Legislation, the connecting factor which may be used in such matters is both the place of tort as well as the place of damage, in case the damage resulted in another place (Art. 35 of the Greek Code of Civil procedure – non exclusive competence – *forum delicti*).¹⁰

In case the tort in question does not constitute a criminal act, applicable is the general connecting factor that applies to all defendants and that is the residence/domicile of the defendant.¹¹

⁶ See Nikas in "Commentary of Code of Civil Procedure", Volume I, Kerameas/Kondilis/Nikas, Sakkoulas, Athens, 2000, page 65; Nikas, "Civil Procedure", Volume I, Athens, 2003, page 170; Yannopouloy/Zompolas/Kaltzis/Katras/Blatsios/Tsikouri, "Code of Civil Procedure", Volume I, Athens, 1998, page 99; Kerameas, "Institutionenschutz und Fallgerechtigkeit in der zivilprozessualen Zuständigkeitsordnung, Festschrift für G. Rammos, 1979, pages 367-397; Bosdas, "Principles governing the issues related to the residence of the defendant, Diki, 1977, pages 201-210.

⁷ See relevant case law: Court of Appeals of Athens, 786/1972, Nomiko Vima 20,655; Supreme Court 1597/1988, Elliniki Dikaiosini 31,106; Supreme Court 1901/1988, Nomiko Vima 37,731; Supreme Court 325/1990, Nomiko Vima 39,557, Supreme Court 230/1990; Supreme Court 948/1992, Elliniki Dikaiosini 1994/1040; Supreme Court 1573/1990.

⁸ See relevant case law: Supreme Court 1660/1983, EEN 51,654; Court of Appeals of Athens 9135/1986, Diki, 18,76; Court of Appeals of Thessaloniki 1161/1986, Archive of Jurisprudence 38,446

⁹ See indicatively in Nikas, "Civil Procedure", Volume I, Athens, 2003, page 206 with further reference to relevant doctrine; indicatively see also in Mpeis "The provisions of Articles 320-321 of the Civil Code and the jurisdiction of the contract, Nomiko Vima, 17,114,8

¹⁰ See indicatively in See Nikas in "Commentary of Code of Civil Procedure", Volume I, Kerameas/Kondilis/Nikas, Sakkoulas, Athens, 2000, page 85

¹¹ See indicatively relevant case law: Court of Appeals of Athens 215/1986, Elliniki Dikaiosini, 28,144; One Member Court of First Instance of Piraeus 2055/1987, Archives of Jurisprudence 1988,45; Court of Appeals of Larissa 14/75, Diki 6,691

c) Criminal Proceedings

As mentioned above, civil claims or restitution, which are based on an act giving rise to criminal proceedings may be brought before the court of the territory, where the act took place or the damaging effect has resulted.¹² The court seized of a criminal proceeding is not competent to hear the respective civil claim,¹³ since civil claims may be brought exclusively before the Civil Courts, while criminal hearings are held exclusively by Criminal Courts.

d) Secondary Establishment

Should the defendant be a legal entity (establishment/branch/agency), the claim shall be brought in the Court of the territory, where the legal entity has its registered seat.¹⁴ Should the claim be brought against a natural person who operates an establishment/branch/agency in Greece, and said claim is related to disputes arising out of the operation of the establishment/branch/agency, the jurisdiction/competence may be determined by the nature of the dispute (e.g. arising out of contract obligation – see above under 12a) etc.). The nature of the dispute determines in the same manner the applicable jurisdiction also for disputes which are not related with the operation of the establishment in Greece.

e) Trust

There is no specific ground of jurisdiction for trusts in actions brought against defendant domiciled in non-EU States, since Greek law does not recognize the legal institution of the “trust”.

f) Arrest and/or location of Property

As far as real estate property is concerned, actions brought against defendants domiciled in non-EU States, there is an exclusive jurisdiction of the Greek Courts pursuant to Art. 29 of the Greek Code of Civil Procedure.¹⁵ Moreover, the jurisdiction of the Greek Courts is given even in case of foreigners who have the benefit of extraterritoriality (see above under A.2)

¹² See in Nikas, “Civil Procedure”, Volume I, Athens, 2003, page 227 with further reference to relevant doctrine

¹³ Multi Member Court of First Instance of Corfu 109/1971, Diki 1972/208

¹⁴ Supreme Court 461/1978, Nomiko Vima 1979/211; Court of Appeals of Athens 3865/1998, Business and Company Law Review, 1999/726

¹⁵ See relevant case law and doctrine in “Commentary of Code of Civil Procedure”, Volume I, Kerameas/Kondilis/Nikas, Sakkoulas, Athens, 2000, page 70

13. Protective Rules of Jurisdiction

a) Consumer Contracts

Besides the provision of Art. 15 para. 2 of the Brussels I Regulation, a consumer domiciled in the EU may bring a claim before Greek courts against a professional domiciled in a non-EU state in case a) there is a relevant jurisdiction clause in the consumer contract, or b) either the place of execution of the contract and/or the place of performance of the contract (Art. 33 of the Greek Code of Civil procedure – non-exclusive competence) is the Greek territory.

A professional domiciled in the EU may bring a claim before Greek courts against a consumer domiciled in a non-EU state in case a) there is a relevant jurisdiction clause in the consumer contract, or b) either the place of execution of the contract and/or the place of performance of the contract (Art. 33 of the Greek Code of Civil procedure – non-exclusive competence) is the Greek territory.

Regarding the possibility in Greece to appoint (in a jurisdictional clause) the courts of a non-EU State so as to force Greek consumers to bring proceedings in this non-EU State, there is no special provision/restriction in the Greek jurisdictional legal field. Thus, Article 17 para. 2 of the Brussels II Regulation, according to which the provisions related to jurisdiction on consumer contracts may be departed from only by an agreement which allows the consumer to bring proceedings in courts other than those indicated in the relevant section of the Regulation, is applicable.

b) Individual Employment Contracts

Besides the provision of Art. 18 para. 2 of the Brussels I Regulation, according to which the employer domiciled in a non-EU state shall, in disputes arising out of operations of the branch, agency or establishment in one Member State, be deemed to be domiciled in that Member State and therefore the employer may be sued in the courts of the place where the employee carries out his work (Art. 19 para. 2 (a) of the New Brussels Regulation), an employee may bring a claim before the Greek Courts against an employer domiciled in a non-EU state in case a) there is a relevant jurisdiction clause in the employment contract, or b) either the place of execution of the employment contract and/or the place of performance of the employment contract (Art. 33 of the Greek Code of Civil procedure – non-exclusive competence) is the Greek territory.¹⁶

An employer may bring a claim before Greek courts against an employee domiciled in a non-EU state in case a) there is a relevant jurisdiction clause in the employment contract, or b) either the place of execution of the employment contract and/or the place of performance of the employment contract (Art. 33 of the Greek Code of Civil procedure – non-exclusive competence) is the Greek territory.

Regarding the possibility in Greece to appoint (in a jurisdictional clause) the courts of a non-EU State so as to force Greek employees to bring proceedings in this non-EU State, there is no special provision/restriction in the Greek jurisdictional legal field. Thus, Article 21 para. 2 of the Brussels II Regulation, according to which the provisions related to jurisdiction on consumer contracts may be

¹⁶ Nikas in "Commentary of Code of Civil Procedure", Volume I, Kerameas/Kondilis/Nikas, Sakkoulas, Athens, 2000, page 83

departed from only by an agreement which allows the employee to bring proceedings in courts other than those indicated in section 5 of the Regulation, is applicable.

c) Insurance Contracts

By the same way as above in case of consumer/employment contracts, besides respectively Art. 9 para. 2 of the Brussels I Regulation (according to which an insurer who is not domiciles in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State, and therefore may be sued in the courts for the place where the plaintiff-policyholder is domiciled) a policyholder/beneficiary may bring a claim before the Greek Courts against an insurer domiciled in a non-EU state in case a) there is a relevant jurisdiction clause in the insurance contract, or b) either the place of execution of the insurance contract and/or the place of performance of the insurance contract (Art. 33 of the Greek Code of Civil procedure – non-exclusive competence) is the Greek territory.

By the same way, an insurer may bring a claim before Greek courts against an policyholder/beneficiary domiciled in a non-EU state in case a) there is a relevant jurisdiction clause in the insurance contract, or b) either the place of execution of the insurance contract and/or the place of performance of the insurance contract (Art. 33 of the Greek Code of Civil procedure – non-exclusive competence) is the Greek territory.

d) Distribution Contracts

There is no protective rule of jurisdiction in distribution contract that apply for claims against parties domiciles in non-EU states.

e) Protective Rules in Other Matters

There are no other specific matters regulated in the Greek Code of Civil Procedure or by the Greek case law.

14. Rules for the Consolidation of Claims

a) Co-Defendants

Pursuant to Article 37 of the Greek Code of Civil Procedure, should more than one persons be sued as co-defendants in a proceeding, competent is the Court of the domicile of one of the co-defendants.¹⁷ This provision handles nevertheless with the matter of the competence (stricto sensu) of the Court and is not applicable in case there is no jurisdiction of the Greek Courts for one of the co-defendants. Thus, one may distinguish between the case, whereby the grounds of the claim determines the jurisdiction and renders applicable the jurisdiction of the Greek Courts (e.g. dispute arising out of contract executed in Greece, dispute regarding real estate property in Greece, dispute based on criminal action) and the case, whereby one of the co-defendants is sued before the Greek Courts due to the fact he domiciles in Greece. In the first case the co-defendant domiciled in a non-EU state may be sued before the Greek courts along with the defendant domiciled in Greece. In the second case, he may not be sued before the Greek Courts,

¹⁷ Indicatively: Court of Appeals of Athens 2229/76, Armenopoulos 30,880; Supreme Court 2938/1994, Nomiko Vima 1995,263; Supreme Court 755/1993, not published; Court of Appeals of Athens, 481/84; Court of Appeals of Athens 10613/90 EEN 1990,512

since there is no jurisdiction of the Greek Courts according to Art. 3 of the Greek Code of Civil Procedure. However it must be noted that in practice the existence of a co-defence (so called "omodikia") before a court requires a connecting factor between these persons. Such a connecting factor may be probably a contract matter, a criminal or a tort action, a co-ownership of a property etc, whereas jurisdiction of Greek Courts, as mentioned above is given for both co-defendants.

b) Third Party Proceedings

A defendant domiciled in a non-EU state can be sued before Greek courts as a third party in an action on a warranty or guarantee or in any other third party proceeding, subject to the provision that for the latter there is a jurisdiction of the Greek Courts.

c) Counter-Claims

A party domiciled in Greece that has been sued by a party domiciled in a non EU-state can bring a counter claim against the former party before Greek Courts (and in particular before the court where he has been sued), subject to the provision that the basic claim, against which the counter claim is addressed, has been brought before the Greek Courts.

d) Related Claims

There is no specific rule on this issue. However it must be noted, that if the claim against a defendant domiciled in a non-EU state is connected with another claim pending before Greek courts and the connection factor consists in the nature of the dispute (e.g. dispute arising out of contract etc.) the defendant domiciled in a non-EU state may be sued before Greek courts.

e) Any Problems Pertaining to Lack of Harmonisation

No

15. Rules of Jurisdiction Pursuant to Annex I of Brussels I

a) The rules listed in annex I

The rule listed in Annex I of the Brussels I Regulation is Article 40 of the Code of Civil Procedure.¹⁸ Pursuant to Art. 40 para. 1, for disputes related to property matters, defendants domiciled outside of the Greek territory may be sued before Greek courts and in particular before the Court of the territory, whereby the defendant's property or the object in question is to be found.(non-exclusive competence of the Greek Courts).

¹⁸ See relevant doctrine: Rammos, "Der Gerichtsstand des Vermögens und das Ausländer-Forum nach vergleichendem Techt (1930); Schumman, „Issues and problems on the property jurisdiction", EEN, 47,231; Podimata, „Issues related to Art. 40 Code of Civil Procedure", Armenopoulos, 35,805; Mitsopoulos, "Special Jurisdiction of Art. 40", Diki 3,635; Relevant case law: Supreme Court, 807/1982, Nomiko Vima 1983/674; Court of Appeals of Athens 6599/1990, Elliniki Dikaiosisini 1991,825.

Additionally pursuant to para. 2 of the same Article should the property concerned refers to monetary claims of the defendant towards third parties, said property is deemed to be found at the place of residence of this third party.

b) Practical use of the rules listed in Annex I

This rule usually applies in claims related to trade movable assets (merchandise) as well as in case of monetary claims arising out of tort (e.g. claims brought on the grounds of car accidents). The consequences of the application of Art. 40 is that it facilitates on the one hand cross border transactions and on the other hand gives advance on domestic trials vis-à-vis trials to be held abroad.¹⁹

c) Extension of jurisdiction pursuant to article 4(2) of Brussels I

For the time being, there is no reported or known case, where Greek courts have applied art. 4(2) of the Brussels I Regulation.

16. Forum necessitatis

Greek Law does not provide for any such rule.

(D) National Jurisdiction & Enforcement of Non-EU Judgments

17. National rules of jurisdiction barring the enforcement of a non-EU judgment

The judgment of a non-EU State can be denied recognition or enforcement in Greece on the basis that the courts of Greece have exclusive jurisdiction to entertain the claim²⁰. The “exclusive” rules of jurisdiction under Greek law that constitute such a bar against the enforcement of a non-EU judgement are these rules which provide for an exclusive competence of a specific Greek Court such as in real estate matters (forum rei sitae - Art. 29 of the Greek Civil Procedure), in heritage matters (forum hereditatis - Art. 30), in matters between them there is a connecting factor (forum connexitatis – Art. 31), in matters related to intra-company disputes (forum societatis – Art. 27) in matters related to the administration actions based on judicial mandate (forum gestae administrationis ex decreto iudicis – Art. 28) as well as in cases of counterclaims (forum reconventionis – Art. 34).

(E) Declining Jurisdiction

18. Forum Non Conveniens

Greek Law does not provide for any such rule.

¹⁹ Kerameas, “Civil Procedural Law”, Athens, 1986, page 74; See also Recital I 44 of the Draft of the Code of Civil Procedure’.

²⁰ See relevant decision of the Single-Member Court of Thessaloniki 6515/1997

19. Declining Jurisdiction when the Defendant is Domiciled in a Third State

(a) Non-EU Jurisdiction Agreements

In case there is a choice of court clause designating the court of a non-EU State, Greek Courts shall decline jurisdiction, unless the nature of the dispute in question grants to Greek Courts exclusive jurisdiction.

(b) Parallel Proceedings in a non-EU court

Regarding disputes not falling under the scope of the Brussels and San Sebastian Conventions (Art. 21 and Art 29l respectively) according to the prevailing stands in the Greek theory²¹ and jurisprudence²² the prior lodgement of a claim before a foreign court leads to the restraint of all hearings (stay of proceedings) related to the same dispute before any domestic (Greek) Court.

(c) "Exclusive" Jurisdiction in a non-EU State

In case a particular dispute constitutes an "exclusive jurisdiction" of the courts of a non-EU state, Greek courts decline jurisdiction. Greek courts examine the lack of jurisdiction ex officio, subject however to the provision that the defendant is not present at the hearing.²³ An ex officio examination of the lack of jurisdiction by the Greek Courts takes also place, in case the defendant is present at the hearing at remains silent and this silence has not the meaning of prorogation of jurisdiction, due to the fact that for the dispute in question a prorogation of jurisdiction is not allowed (e.g. in matters related to in real estate property etc.).²⁴

Should, on the other hand, Greek Courts, despite the close relation of the dispute to a particular non-EU State, have parallel jurisdiction on the matter concerned, they may not decline jurisdiction/stay their proceedings in favour of the non-EU court.

20. Declining Jurisdiction When the Defendant is Domiciled in the EU

a) Non-EU Choice of court clause

According to the "principle of privity" governing Greek Contract Law, the parties to an agreement are entitled to determine, at their own convenience, the place of jurisdiction. Therefore, in case there is a choice of court clause designating the court of a non-EU State, Greek Courts shall decline jurisdiction, unless the nature of the dispute in question grants to Greek Courts exclusive jurisdiction.

b) Non-EU Parallel proceeding

²¹ Kerameas, Legal Opinion in *Elliniki Dikaiosini* 1988, 1537

²² Court of Appeals of Athens Decision 13671/1988, *Elliniki Dikaiosini*, 1989, 358

²³ Article 4 of the Greek Code of Civil Procedure (Annex I)

²⁴ Due to the fact that the dispute in question refers to real estate located abroad (Supreme Court 1245/1996, *Elliniki Dikaiosini* 1997.1794) or a specific law or an agreement between the parties provides for an exclusive Court competence (Multi Member Court of First Instance in Thessaloniki 2319/1999, not published; Court of Appeals of Athens 7541/1985, *Elliniki Dikaiosini* 1896/318)

Should the non-EU state court have jurisdiction on the matter pending (e.g. matter related to in rem rights), said dispute does not fall under the Brussels Convention and therefore according to the prevailing stands in the Greek theory and jurisprudence, as mentioned above (under 19b), the prior lodgement of a claim before a foreign court leads to the restraint of all hearings (stay of proceedings) related to the same dispute before any domestic (Greek) Court.

c) Non-EU Exclusive jurisdiction

See Above under 19. c

(F) The Adequate Protection (or lack thereof) of EU Nationals and/or Domiciliaries through the Application of Domestic Jurisdictional Rules

21. Use of National Jurisdictional Rules to Avoid an Inadequate Protection in Non-EU Courts

To our knowledge, there is no published case (in civil and commercial matters subject to the Brussels I Regulation) where Greek courts have exercised jurisdiction on the basis of domestic rules in circumstances where it was shown that the plaintiff would not get a fair hearing or an adequate protection in the courts of non-EU States.

22. Lack of Jurisdiction Under National Rules Having the Effect to Deprive EU Plaintiffs of an Adequate Protection

(a) Claims from EU Consumers against non-EU defendants

To our knowledge there is no case or practice where Greek courts have declined jurisdiction with respect to a claim brought by an EU consumer against a defendant domiciled in a third State.

(b) Claims from EU Employees against non-EU Employers

To the best of our knowledge there is no case or practice where Greek courts have declined jurisdiction with respect to a claim brought by an EU employee against an employer domiciled in a third State.

(c) Claims from EU Plaintiffs in Community Regulated Matters

To our knowledge there is no reported case, where Greek courts have declined jurisdiction with respect to a claim brought by a plaintiff domiciled in the EU in Community regulated matters

23. Lack of Adequate Protection as a Consequence of Transfer of Domicile to or from a Third State

To our knowledge, there is no reported case where Greek courts have declined their jurisdiction because the defendant has transferred his domicile to a third State.

24. The Risk that EU Rules and Principles be Put in Jeopardy Because of the Application of National Jurisdictional Rules

To the best of our knowledge, there is no reported case where the application of Greek jurisdictional rules has put in jeopardy the application of mandatory Community legislation, the proper functioning of the internal market, or the adequate judicial protection of EU nationals or domiciliaries.

(G) Residual Jurisdiction under the new Brussels II Regulation

25. Applicable National Rules Pursuant to article 14 of the New Brussels II Regulation (Parental Responsibility)

From the combination of Art. 1512, 1515, 1518 and 1520 of the Greek Civil Code with Art. 17 para. 1, 614 para. 1 and 622 para.1 of the Greek Code of Civil Procedure, it results that Greek courts have jurisdiction in matters of parental responsibility, in case one of the parents or the child is Greek national, even if they have not or they had never their residence or domicile in Greece.

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ANNEX I

ESSENTIAL JURISDICTIONAL PROVISIONS OF THE GREEK CODE OF CIVIL PROCEDURE

Article 3

1. Jurisdiction of Greek civil Courts is applicable both on Greek citizens and foreigners, subject to the provision that competence of the Greek courts is established.
2. Excluded from the jurisdiction of Greek Courts are foreigners having the benefit of extraterritoriality, unless the disputes concerned fall under the provision of Article 29 (forum rei sitae).

Article 22

The Court territorially competent shall be, save where it is otherwise provided by law, the one for the situs where the defendant has his residence.

Article 29

1. Regarding disputes relating to in rem rights on immovables, their possession, joint division, definition of the borders of the plot, claims against any possessor, compensation for compulsory expropriation as well regarding disputes arisen from the lease of real estate or from rights related to its exploitation, the court in whose province the real estate is situated shall be the only competent court.
2. Should the real estate be situated in the province, for which more than one courts are competent, the claimant has the right of choice (between these courts).

Article 33

Disputes relating to the existence or the validity of a legal act inter vivos and to the rights resulting from this legal act may be brought before the court for the place where the legal act has been established or for the place of performance of the obligation of question. To the same court may be brought also disputes related to damages of negative interest as well as to restitution which is based on misdemeanour during the negotiation stage.

Article 34

Counterclaims may be brought before the court, before which the claim is pending, subject to the provision that these counterclaims fall under the materiality competence of this court or under the materiality competence of a court of lower degree.

Article 35

Civil claims, which are based on an act giving rise to criminal proceedings, may be brought also before the (civil) court, in the territory of which the act giving rise to criminal proceedings has been executed, even if the claim shall be brought against a person who has no criminal liability.

Article 37

1. Where there are several defendants, the claimant shall seize, at his choice, the court of the situs where one of them has his residence, and if he has no residence, the situs where any of the co-defendants has his domicile.
2. Disputes between the same parties, having the same cause of action and relate to in rem rights on immovables, which are situated in different territories of different courts, may be brought before the one of these courts.

Article 40

1. Trials related to asset matters against persons not having a residence in Greece may be brought before the court, in the territory of which the defendant's asset or the object in question is to be found.
2. Should said asset consist in monetary claims of the defendant against any third party, the asset is deemed to be found in the situs, where this third party has his residence.

SUPPLEMENTAL REPORT FOR:

GREECE

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26. NA

27. Conventions with Third States in Matters of Parental Responsibility (and maintenance of children)

What are the international (and in particular bilateral) conventions concluded between your country and non-EU countries that include rules of jurisdiction in matters of parental responsibility (and maintenance of children)?

Greece in its capacity as a Member has ratified the 1996 Hague Convention on parental responsibility.

28. Jurisdiction as a Ground for Resisting the Enforcement of non-EU Judgment in Matters of Parental Responsibility

Can the judgment of a non-EU State relating to matters of parental responsibility (for instance, a judgment given the guardianship of a child to one of the parents) be denied recognition or enforcement in your country on the basis that the courts of your country are the only ones who have jurisdiction to entertain the matter? If so, what is (are) the ground(s) of these "exclusive" rules of jurisdiction (e.g., habitual residence of the child in your country, citizenship of one or several of the parties, etc.)

Pursuant to Art. 622 of the Greek Code of Civil Procedure, disputes relating *inter alia* to matters of parental responsibility may be brought before the Greek court, subject to the provision that the father, the mother or the child are Greek citizens, even if none of these persons have or had their residence/domicile in Greece.²⁵

²⁵ The jurisdiction clause of article 622 of the Greek Code of Civil Procedure applies to disputes stated under 614 of the Greek Code of Civil Procedure, whereby however disputes related to parental responsibility are not mentioned. However, according to the prevailing opinion in the jurisprudence (Supreme Court 1601/1986, Athens Court of Appeal 3823/1991) and the Greek theory (See Podimata in "Commentary of Code of Civil Procedure", Volume II, Kerameas/Kondilis/Nikas, Sakkoulas, Athens, 2000, page 1151) this jurisdiction clause applies also to these disputes.

It should be noted that the abovementioned provision establishes a non-exclusive competence of the Greek courts, allowing therefore to the parties to bring before other foreign courts disputes on parental responsibility.²⁶ In this respect, and provided, however, that no other ground on which Greek Courts can deny recognition and enforceability exist (e.g. contradiction of judgement to public order or *bonas fides*, a judgment of a non-EU State relating to matters of parental responsibility (for instance, a judgment allocating the guardianship of a child to one of the parents) cannot be denied recognition or enforcement in Greece on the basis that Greek courts are the only ones having jurisdiction to entertain the matter.

(H) Specific Country Questions

29. Jurisdiction in Divorce Proceedings Based on Citizenship

Can divorce proceedings be brought in your country on the basis of the citizenship of only one of the spouses? If yes, is it enough that the spouse was a citizen of your country at the time of marriage, or is it required that the spouse still be a citizen of your country at the time of divorce?

As already mentioned, pursuant to Article 3 of the Greek Code of Civil Procedure, Greek civil Courts have jurisdiction over both Greek citizens and foreigners, provided that the Greek courts (pursuant to the special competence rules) are competent. Greek Courts are competent to try divorce proceedings (a) in case the residence/domicile of the defendant is in Greece (in this case one of the spouses) or (b) in case the last common residence of the spouses was in Greece 9Article 39 of the Greek Code of Civil Procedure.

Additionally, pursuant to Article 612 of the Greek Code of Civil Procedure, which completes the above general rules and establishes a parallel non-exclusive jurisdiction of the Greek Courts, divorce proceedings may be brought before the Greek Courts when one of the spouses is a Greek citizen or if he/she was a Greek citizen at the time of marriage but relinquish the Greek citizenship due to the marriage to a foreigner

30. Jurisdiction in Divorce Proceedings Based on Other Grounds

Can divorce proceedings be brought in your country on the basis of one or several of the following grounds: (1) the last habitual residence of one spouse in your country; (2) the close connection with the forum State; (3) the forum necessitatis, i.e. the fact that divorce proceedings cannot be brought in any other court abroad?

(i) Divorce proceedings may also be brought before the Greek Courts in case the defendant spouse domiciles in Greece or the last common habitual residence of the spouses was in Greece.

(ii) The three factors that may establish competence of Greek Courts are (a) the domicile of one of the spouses in Greece (b) the last common residence of the spouses in Greece and (c) the Greek citizenship of one of the spouses. No other connection with the forum is acceptable for establishing competence of the Greek Courts.

(iii) Pursuant to Article 611 of the Greek Code of Civil Procedure, Greek Courts are competent to try divorce proceedings in case the marriage is valid under Greek law, but it is considered invalid or not

²⁶ Sinaniotis, Specific Procedure for disputes related to relationships between parents and children, *Diki* 1971 p. 115-116

founded as per the law of the citizenship of the spouses. In such case, however, competency of the Greek Courts as per the above (under 2ii) criteria must first be established.

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