
VII. Country report Greece

Document Control

<i>Document</i>	<i>Evaluation of the effectiveness and efficiency of collective redress mechanisms in the European Union – country report Greece</i>
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<i>Report finalised on</i>	<i>18.7.2008</i>

1.1 Overview of collective redress mechanisms¹

Law 2251/1994 is the main legislative framework for the protection of consumers in Greece. According to its general provisions (art. 1), the State has the responsibility for the protection of consumer interests and especially for their health, security, financial interests, information, education, their organisation in consumer associations, etc. It should be noted that in Greece a “consumer” is, according to the above-mentioned law (art.1), a person for whom the products and services offered in the market are intended, or the person who uses such products or services, as long as he or she is the final recipient. Under this definition, a consumer is not only a physical but also a legal person and a person who acts not only outside his or her business, trade or profession but for professional purposes as well, as long as he or she is the final recipient of the product or the service. However, the Greek legislator has begun to harmonise the Greek definition to the European one: in the later-introduced art. 4a of Law 2251/1994 regarding distance selling in the field of financial services; in the recently altered art. 9a of the same Law regarding unfair commercial practices (in harmonisation with Directive 2005/29/EC); and in art. 1 of the Presidential Decree 131/2003 on electronic commerce, a narrower definition of consumer is given: a consumer is considered to be any person acting outside his or her business, trade or profession.

The provisions of Law 2251/1994 regulate various consumer-related issues such as general terms of consumer contracts, advertising, distance selling, etc., as well as consumer judicial protection, individual and collective. When the individual consumer suffers because of an action that is contrary to the provisions of the above-mentioned Law, he or she can pursue his or her rights as specified in the relevant provisions. Moreover, if he or she has suffered damages, he or she can seek compensation to cover his or her losses based on the provision that has been violated and the general provision of art. 914 of the Civil Code concerning tort². The individual action ensures the protection of the particular interest of consumers while the collective action seeks the protection of the collective interests of consumers.

The collective action for the protection of the general interest of consumers was introduced for the first time by Law 2251/1994. In its original form, art.10 par. 9 of the above law provided for the possibility for consumer organisations to file an action for the protection of the general interest of consumers before the court. The collective action seeks the cessation and omission of any illegal action by a supplier. Along with the filing of the action, compensation for the remuneration of moral damages can also be sought. Consumer organisations fulfilling the criteria of the Law started – cautiously in the beginning but with more enthusiasm later – filing collective actions for the control

¹ This is an update of a previous study commissioned by DG SANCO. See: Centre for Consumer Law of the Katholieke Universiteit Leuven 2007, An analysis and evaluation of alternative means of consumer redress other than redress through ordinary judicial proceedings.

² Alexandridou, 1996, p.198

of the content of general terms of consumer contracts, especially those relating to insurance, banking and mobile phone services³.

Art. 10 of Law 2251/1994 has been altered by art. 13 of Law 3587/2007, which came into force in July 2007 and added new provisions related to substantial but also procedural law⁴ concerning collective action. Specifically, among other provisions, a declaratory action for damages is foreseen, and a new way for the allocation of moral damages adjudicated by court was introduced. Because of the newness of these provisions, there is no jurisprudence and too few bibliographical references regarding them. Thus, reference to the collective redress mechanism of art. 10 par. 16 in this country report will rely mostly on the previous references and jurisprudence, taking into account the alterations that have been made.

Finally, art. 12 of Law 3587/2007 introduced art. 9i of Law 2251/1994, which provides for the judicial protection of consumers in case of unfair commercial practices in particular. More specifically, in the case of violation of articles 9c to 9h, related to unfair commercial practices, every consumer and/or consumer organisation has the right to seek the cessation and omission, in the future, of every unfair commercial practice, as well as compensation for the damages suffered because of the unfair commercial practice. The above-mentioned judicial means can be filed separately or in common against one or more suppliers of the same sector or against a code owner. Due to the general wording of the above provision, combined with the newness of its content to Greek law and the absence of any bibliographical reference and jurisprudence, no further reference, related to either substantive or procedural law, will be made to this provision.

1.1.1 *Collective redress mechanism 1: collective action for the protection of the general interest of consumers*

Summary description

As has already been mentioned above, art. 10 par. 16 of Law 2251/1994 provides for the collective action for the protection of the general interests of consumers. The action for the protection of the general interest of consumers is an action for omission. The collective action can seek, simultaneously, a) the cessation of the illegal action or the omission of the illegal behaviour by a supplier, even before this is manifested. The demand for the omission of the illegal action is the minimum that a collective action can have⁵. The confiscation, withdrawal or destruction of defective products that are dangerous for the safety and health of consumers, as well as the publication of the whole or part of the court decision or the rectifying declaration can also be sought, b) moral damages, c) injunctive measures.

³ Dellios, 2001, p. 1494

⁴ Alexandridou, 2008, p.559

⁵ Apallagaki in Alexandridou, 2008, p.570

Details**A. LEGAL BASIS**

The collective action for the protection of the general interest of consumers is based on art. 10 par. 16 of Law 2251/1994 regarding Consumer Protection, which has been most recently altered by art. 13 of Law 3587/2007.

B. COMPETENT AUTHORITY

The competent authority is the Multi-Member Court of First Instance of the residence or the establishment of the defendant.

Injunctive measures are tried by the One-Member Court of First Instance of the residence or the establishment of the defendant.

When the litigation refers to a radio/TV broadcast, then the Multi-Member Court of First Instance of the establishment of the radio/TV station is competent.

Greek Law has been harmonised with Directive 98/27/EC (Presidential Decree 301/2002), and allows for authorised persons/entities/consumer associations, etc. in the European Union to file an action in Greece, for the protection of the general interest of consumers in their country against a Greek supplier.

C. WHO CAN INITIATE THE PROCEDURE – RULES OF STANDING

Any consumer association fulfilling the criteria set by the Law can file an action before the court for the protection of the general interest of consumers.

Consumer associations that have the competence to file collective actions before the court are those which have at least 500 active members and which have been registered in the Registry of Consumer Association of the Ministry of Development for at least one year before the filing of the action. The collective action can also be filed when the illegal behaviour harms the interests of at least thirty (30) consumers. Two or more associations with 500 members jointly, also have the competence to file the action before the court. The board of directors of the consumer association is competent to decide whether to file an action or not. Finally, two or more consumer associations of first and second level can file the collective action, even if the first level association has a number of active members which is less than 500.⁶

When consumer associations file an action for the protection of the general interest of consumers, they act as the directly-entitled plaintiff, that is, as the true holders of the right and not as intermediaries. This is because the consumer association is considered a trustee of the general interest of consumers and is allowed to exercise the

⁶ Members of consumer associations of the first level can be only natural persons. Members of consumer organisations of the second level can be only consumer associations of the first level (which should be at least five). Consumer associations of the first level cannot be a member in more than one consumer organisations of the second level (see art. 10 par. 2 of Law 2251/1994).

rights for their protection, a right that is independent from the individual right of its members⁷. It has the role of the guardian of public interest entrusted to it by the State⁸.

Finally, a Chamber (commercial, industrial, professional and craft) can also file a collective action for moral damages against a supplier that violates the Law.

D. TYPES OF DISPUTE

The collective action seeks the cessation and omission of any illegal action by a supplier, be it the violation of any provision of the Law 2251/1994 regarding consumer protection (such as provisions on general contract terms, on advertising, on distance selling, etc.) or any other provision of the Law relating to consumers (for example, time-share rules). The Law provides an indicative list of legal provisions. Violating these provisions may initiate the filing of the collective action. It can also serve as a means of preventive action, meaning that it can be filed even before the illegal action can be manifested.

Along with the filing of the action, consumer associations can file for immediate injunctive measures in order to secure their claims (omission, cessation, moral damages) until the final ruling or to protect consumers from dangerous products.

In addition, compensation for the remuneration of moral damages can be sought. The moral damages adjudicated by the court are characterised, according to prevailing opinion,⁹ as punitive damages. According to prevailing jurisprudence, this conclusion derives from numerous provisions of the Law and especially the criteria used for its estimation. According to another opinion,¹⁰ moral damages seek the restoration of the social imbalance caused by the illegal behaviour of the supplier. In any case, it refers to consumers in general and it can in no way be interpreted as damages covering losses suffered by individual consumers.

Art. 10 par. 16 of Law 2251/1994 (b) provides, indicatively, the criteria according to which moral damages are attributed by the court. These are: the seriousness of the violation, the size of the business that has breached the law, its business turnover, as well as the need for general and specific prevention.

Compensation for moral damages deriving from the illegal behaviour of a supplier can be granted only once. The amount attributed is allocated for educational, information and general consumer protection purposes, after the legal costs have been deducted, proportionally: a) 35% to the plaintiff consumer organisation, b) 35% to the consumer organisations of second degree¹¹ and c) 30% to the State Budget.

⁷ Apallagaki in Alexandridou, 2008, p.570

⁸ Ruling 1219/2001 of Areios Pagos

⁹ Ruling 1219/2001 of Areios Pagos

¹⁰ Karacostas/Paparseniou, 1996

¹¹ See above under footnote 6.

In order to prevent the provision for moral damages being exploited, the legislator has decreed the following:

- If the claim for the compensation for moral damages is rejected with an irrevocable judgment as apparently unfounded, then the supplier can file an action for damages or moral damages within a period of six (6) months after the date that the judgment has become irrevocable against the consumer association and against the members of the board of directors, who are in this case held responsible personally and;
- If a consumer association seeks compensation for moral damages repeatedly, with malice or gross negligence, and these claims have all been rejected with final and conclusive judgments as unfounded, then this can lead to the dissolution of the consumer association. The action for the dissolution of the association before the court can be filed by the supplier within one year of the final and conclusive judgment of the last rejecting decision; alternatively the court can decide on this if demanded by the prosecutor acting ex officio.

E. MAIN PROCEDURAL RULES

The collective action has to be filed within six months of the illegal action last taking place, and is begun in the non-contentious jurisdiction at the earliest possible hearing session. However, it is not a genuine non-contentious procedure, since it closely resembles the contentious process (e.g. there is a defendant present)¹².

The formalities that need to be served are the same as those for every court proceeding (such as deposition and service of the action, oral hearing, attendance at court by a lawyer, filing of pleadings in writing, etc.).

F. REMEDIES THAT CAN BE OBTAINED

The cessation of the illegal action and moral damages can be adjudicated on.

The decision of the court is binding. It can be appealed against and it can be given temporary executionary power (in cases where this can have effect i.e., this cannot apply in cases where the recognition of the illegality of general terms is sought). In order for the execution of the court decision to be assured, the judgment may include the measures of art. 947 of the Code of Civil Procedure, which provide for the detention of the guilty party, and a pecuniary penalty up to 5,590 Euro in the case of non-compliance with the court ruling.

The provision mentions that the legal consequences of the court decision affect everyone. However, this does not mean that it produces *res judicata* towards everyone; this would be contrary to main procedural law's principles and provisions. It means that the judgment has a wider effect;¹³ for example, members of the consumer organisation

¹² Apallagaki in Alexandridou, 2008, p.572

¹³ Matthias (1997), p. 4

can invoke the judgment to base a case for damages. It can in no case be extended against a third party, i.e. a supplier not litigant to the case.¹⁴

G. COSTS INVOLVED FOR THE PARTIES

The costs are the usual costs for filing an action before the Multi-Member Court of First Instance (including the filing and discussion of the action, lawyers fees, etc). When there is a pecuniary claim that is not of declaratory nature, then 4% of the demand is deposited for the admissibility of the case. There is no cost for consumers.

H. AVERAGE DURATION OF THE PROCEDURE

It is not possible to estimate the average duration of the procedure since it relies on the determination of the date of the hearing, adjournments, the issuing of the decision, whether or not there is an appeal against the decision, etc. In any case, for an irrevocable decision to be issued i.e., after the case has passed through the three degrees of jurisdiction: first instance, court of appeal and *Areios Pagos*), it can take up to 4 to 5 years.

1.1.2 *Collective redress mechanism 2: declaratory action for damages*¹⁵

Summary description

As mentioned above, art. 10 par. 16 of Law 2251/1994 (No d) has very recently provided for a declaratory action for damages that consumers suffer because of the illegal behaviour of a supplier.

This procedure resembles test-case procedures and can safely be categorised as such a procedure, since the declaratory judgment of the court decision produces *res judicata* in favour of the consumers who have suffered damages, even if they have not been litigants during the litigation proceedings, in the same way that the consumer who has suffered damages may, on the basis of this judgment, make his or her claim in writing to the supplier who has been sentenced irrevocably, defining the specific elements of his or her claim. If the supplier does not voluntarily meet the claim within 30 days, the petitioning consumer can proceed to the court, on the basis of the above judgment, in

¹⁴ Apallagaki in Alexandridou, 2008, pp 574 onwards.

¹⁵ According to some views, this mechanism is not a separate kind of action, but a complementary claim introduced in the same (collective) lawsuit. In other words, according to this view the law does not provide a separate collective action for damages, but only a collective action for cessation for an illegal behaviour, and in addition to the main claim of the collective action (i.e. the cessation of the illegal behaviour), the plaintiff (consumer association) can ask the court to recognise the right of restitution of damages for the consumers who have suffered such damage due to the illegal behaviour. However, authors' opinion is that the above procedure is a separate action and not just a complementary claim (see Apallagaki in Alexandridou, Consumer Protection Law, Greek and Community, 2008, pp 565 onwards). This view is also supported by the text of the law which itself, for example, talks about the "action of case d of par. 16" of art. 10, or provides for a differentiated prescription (as already stated in the present report), as well as by the Explanatory Report of the Act 3587/2007 (art. 13 point f) which has revised art 10 of Law 2251/1994.

order to demand an order of payment. He or she may do so under the condition that his or her claim is specific and definite.

Details

A. LEGAL BASIS

The declaratory action for damages is based on art. 10 par. 16 of Law 2251/1994 No d regarding Consumer Protection which has been most recently introduced by art. 13 of Law 3587/2007.

B. COMPETENT AUTHORITY

In the absence of provisions to the contrary, the same rules apply as for the collective action, therefore the relevant Multi-Member Court of First Instance for the defendant's place of residence or establishment is the competent authority.

When the litigation refers to a radio/TV broadcast then the Multi-Member Court of First Instance of the establishment of the radio/TV station is competent.

C. WHO CAN INITIATE THE PROCEDURE – RULES OF STANDING

Any consumer association fulfilling the criteria set by the Law can file a declaratory action for damages before the court.

As in the collective action procedure, consumer associations that have the competence to file collective actions before the court are those which have at least 500 active members and which have been registered in the Registry of Consumer Association of the Ministry of Development at least two years before the filing of the action. The collective action can be filed when the illegal behaviour harms the interests of at least thirty (30) consumers. Two or more associations with 500 members jointly also have the competence to file the action before the court. The board of directors of the consumer association is competent to decide whether to file an action or not. Finally, two or more consumer associations of first and second level can file the collective action, even if the first level association has a number of active members which is less than 500.

When a consumer association files a declaratory action for damages it does not act as the entitled plaintiff¹⁶, but as an “exceptionally legitimated litigant” who is not the actual holder of the filing action.

D. TYPES OF DISPUTE

The collective action seeks a court judgment declaring that a particular behaviour manifested by a supplier has caused damages to a number of consumers (not necessarily defined as an exact number from the beginning). In the absence of a specific provision, the illegal behaviour refers to the same legal basis as for the collective action, i.e., the violation of any provision of the Law 2251/1994 regarding

¹⁶ Apallagaki in Alexandridou, 2008, p. 579.

consumer protection (such as general contract terms, advertisements, distance selling, etc.) or any other provision of the Law relating to consumers (such as time-share rules); the Law provides an indicative list of legal provisions; violating these provisions may initiate the filing of the collective action. It is self-evident that the declaratory action cannot have a preventive character as in the collective action for the protection of the general interest of consumers.

E. MAIN PROCEDURAL RULES

The declaratory action should be filed within five years of the consumer association having full knowledge of the damage and who the liable party to pay damages is. In any case, the action should be filed within 20 years of the time at which the action causing the damage has taken place (as provided for in art. 937 of the Civil Code, which is directly referred to in art. 10 par. 18 of Law 2251/1994).

The formalities that need to be served seem to be the same as in every court proceedings (such as deposition and service of the action, oral hearing, attendance at court by a lawyer, filing of pleadings in writing etc.).

However, the declaratory action on behalf of an indeterminate number of consumers relieves the consumer association of the burden to invoke and prove particular damages suffered by a consumer from the illegal behaviour of a supplier.¹⁷

F. REMEDIES THAT CAN BE OBTAINED

The court may issue a judgment accepting in part or in whole the initial claim filed with the declaratory action by the consumer organisation.

The decision of the court is binding. It can be appealed against but the temporary executionary power does not have any practical effect since it cannot be relied upon until it becomes final.

It is stated that the judgment that accepts in total or in part the declaratory claim for compensation produces *res judicata* in favour of the consumers who have suffered damages, even if they have not been litigants to the procedure. As already mentioned, the consumer who has suffered damages may, on the basis of this judgment, make his or her claim in writing to the supplier who has been sanctioned, explaining the specific elements of his or her claim. If the supplier does not voluntarily meet the claim within 30 days, the petitioning consumer can proceed to the court, on the basis of the above judgment, in order to demand an order of payment. He or she may do so under the condition that his or her claim is specific and definite. Following the above procedure, the outcome of the case is extended to the actual holders of the right adjudicated on.

G. COSTS INVOLVED FOR THE PARTIES

The costs are the usual costs for the filing of action before the Multi-Member Court of First Instance (including the filing and discussion of the action, lawyers fees, etc). There are no costs for consumers.

¹⁷ Apallagaki in Alexandridou, 2008, p.579.

H. AVERAGE DURATION OF THE PROCEDURE

It is not possible to estimate the average duration of the procedure since it relies on the determination of the date of the hearing, adjournments, the issuing of the decision, whether or not there is an appeal against the decision, etc. In any case, for an irrevocable decision to be issued (that is, after the case has passed through the three degrees of jurisdiction: first instance, court of appeal and *Areios Pagos*), it can take up to 4 to 5 years.

1.2 Overview of relevant literature

There are numerous legal writings regarding the collective action for the protection of the general interest of consumers. A selection of some books that deal with consumer protection in general and some articles that deal with the effects of the collective action as well as with the nature of the moral damages attributed are listed below.

Books:

- *Alexandridou E.: Consumer Protection Law, Greek and Community, 1996, Sakkoula Publishing, Thessaloniki*

The book deals with the Law 2251/1994 and the protection of consumer interests in particular, covering also the judicial protection possibilities, individual and collective. Although published in 1996, it is still a reliable bibliographical source since it refers to some basic principles of the said provision that remain in place. However, it does not deal with the effectiveness and efficiency of the collective redress mechanisms.

- *Alexandridou E.: Consumer Protection Law, Greek and Community, Commentary, 2008, Nomiki Bibliothiki, Athens.*

The book deals with Law 2251/1994 and the analysis of each article in particular, covering also the new legislative and jurisprudential developments, dealt with by a number of academics for each topic. However, it does not deal with the effectiveness and efficiency of the collective redress mechanisms.

- *Karacostas I., Consumer Protection Law, Athens, Nomiki Bibliothiki, 2004, 384-427.*

The book deals with the Law 2251/1994 and the protection of consumer interests in particular, covering also the judicial protection possibilities, individual and collective. However, it does not deal with the effectiveness and efficiency of the collective redress mechanisms in particular.

- *Karacostas I., Consumer Protection Law, Jurisprudence on provisions of law, Athens, Nomiki Bibliothiki, 2005, 52-54.*

The book presents jurisprudence on different legal provisions of consumer protection law included not only in Law 2251/1994 but also in other legal texts, among which art. 10 par. 9 of Law 2251/1994 (in its previous form).

- *Dellios G., Consumer Protection and Private Law System, II The Judicial control of the content of consumer contracts and its limits, Athens-Thessaloniki, Sakkoula Publications, 2001*

In dealing with the system of consumer protection, the writer analyses the different criteria used by the jurisprudence for the control of general terms, the boundaries within which this control takes place (the subjective and objective effects of the decisions). However, it does not deal with the effectiveness and efficiency of the collective redress mechanisms in particular.

- *Pouliades, Consumer Associations and the Collective Action, 1998*

The book deals with matters related to Consumer associations as well as the Collective redress action for the protection of the general interest of consumers, such as claims, moral damages etc.

Articles:

- ❑ *Kousoulis S., The effects of the collective action court decisions in DEE, 2002, 1097.*

In this article the writer deals with the specific effects of the decision on the collective action for the protection of the general interest of consumer, especially the ones deriving from the problematic wording of the provision of the law, which mentions that the decision affects all consumers. It first deals with the differences between individual and collective legal recourse, then goes on to examine the nature of the demand claimed through a collective action, and finally discusses some interpretive approaches to the consequences of the decision of the collective action and the subjective effects that the collective action brings.

- ❑ *Dellios G., Aspects of the current jurisprudence of the High Court (Areios Pagos) on the matters of the collective control of the general terms of consumer contracts, Ellhiniki DikaioSynh, 2001, 1494.*

The writer deals with the jurisprudence on the collective action of art. 10 par. 9 of Law 2251/1994, especially the one created by Ruling 1219/2001 of *Areios Pagos* which he characterises as being fundamental. He bases this opinion on the fact that the above-mentioned ruling gives answers to basic issues concerning the collective action procedure, including, for example the fact that moral damages are considered to be punitive damages, etc.

- ❑ *Karacostas I-Paparseniou P., The function of moral damages within the framework of the collective action of Law 2251/1994 on consumer protection, DEE 1996, 475.*

In this article the writers approach the issue of moral damages, dealing with it from a general point of view in the beginning and moving on to examine how this issue functions as a means of consumer protection. They end up with the conclusion, as opposed to the above-mentioned jurisprudence, that moral damages serve to repair the social imbalance that society has suffered by the illegal behaviour of the supplier.

1.3 Difficulties to obtain redress for mass claims

This issue is subject of a complementary study¹⁸ and results from the country studies are integrated therein.

1.4 Collective actions filed so far

Since the introduction of the mechanism, numerous collective actions for the protection of the general interest of consumers have been filed, especially relating to the general terms of consumer banking or insurance contracts. However, as has been mentioned, none of these cases dealt with damages suffered; they all had to rule on the issue of the legality of the specific behaviour of each supplier acting contrary to the provisions of the Law and the adjudication on the cessation and omission of the illegal behaviour. The only damages the law provided for had to do with the attribution of moral damages, which does not in any case cover individual redress claims.

Because of the newness of the declaratory action for damages of art. 10 par. 16 No. d, (in 2007) no jurisprudence exists regarding mechanism 2. It remains to be seen how it will work in practice.

¹⁸ CPEC 2008, Study regarding the problems faced by consumers in obtaining redress for infringements of consumer protection legislation, and the economic consequences of such problems, Final Report (study prepared for DG SANCO).

Table 1: Overview of cases collected – mechanism 1: Examples for collective actions for the protection of the general interest of consumers

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
Ruling 1219/2001 <i>Areios Pagos</i> ¹⁹	Consumer banking contracts	<p>This case deals with the control of the General Terms of consumer banking contracts. It deals with the collective action filed by a consumer organisation against a private bank, regarding the abusiveness of general terms of deposit and credit card contracts, contrary to art. 2 par. 6 and 7 of Law 2251/1994.</p> <p>The ruling has been one of the first to give answers to important issues related to the collective action for the protection of the general interest of consumers. Specifically, it adjudicates on, among other points, that: a. the collective action does not have as an objective the control of individual rights, legal relationships or matters disputed by certain subjects, but rather the genuine affirmation of a legal fact or the formalisation of a situation, b. moral damages take the role of punitive damages, c. unlike the individual action, the later cessation of the illegal action by the supplier (before the issuing of the final court decision) deprives the consumer organisation of the legal right to seek the recognition of a general term as being abusive, since this no longer holds any danger for potential consumers.</p>	1998	2001	None

¹⁹ It is noted that *Areios Pagos* is the Highest Greek Civil Court which does not rule on the substance of the case but on the legality of the previous rulings of a case brought before it on the claim of revision

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
		<p>On the substantial law basis it sets some criteria according to which the general terms can be controlled, such as the substantial disturbance of contractual balance and rules on a number of general terms as being abusive, such as the term that allows the bank to determine its contractual interest without setting criteria from the outset.</p> <p>It also rules, for the specific case brought before it, that the attribution of moral damages to the amount of 30.000.000 drachmas by the Court of Second Instance (<i>Efeteio</i>) has met all the criteria set by the law and thus its decision is not subject to review.</p>			
Ruling 430/2005 of <i>Areios Pagos</i>	Consumer banking contracts	<p>This case also deals with the control of the General Terms of consumer banking contracts. It deals with the collective action filed by a consumer organisation against a bank regarding the abusiveness of general terms for loans for housing purposes, contrary to art. 2 par. 6 and 7 of Law 2251/1994.</p> <p>It rules, among other points, that the adjudication of moral damages to the amount of 15,000 Euro by the Court of Second Instance (<i>Efeteio</i>) has not met all the criteria set by the law, it is not fully justified and defined and thus its decision is subject to review.</p>	2002	2005	None
Ruling 589/2001 of <i>Areios Pagos</i>	Distance selling	<p>This case deals with the collective action filed by a consumer organisation against a supplier regarding sales at a distance, contrary to art. 4 par. 1, 8, and 2 par. 7 of Law 2251/1994.</p> <p>It rules, among other points, that the authorised consumer organisation can claim that the practice of a supplier that imposed charges on the credit cards of an indeterminate</p>	1997	2001	None

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
		<p>number of consumers without any control or proof of the transactions, was defective and thus illegal, and endangered the financial interests of consumers, without having any secure systems of proof.</p> <p>It also held that, in dealing with the legality of the specific behaviour of the supplier, the court does not have to deal with the damages caused to any particular consumer.</p> <p>Finally, it rules that the attribution of moral damages by the Court of Second Instance (<i>Efeteio</i>) has used all the criteria set by the law and thus its decision is not subject to review.</p>			
Ruling 3285/1998 of the Court of Appeals in Athens	Illicit advertising	<p>This case deals with the collective action filed by a consumer organisation against a supplier regarding illicit advertising contrary to art. 9 of Law 2251/1994.</p> <p>It rules among other points that, regarding moral damages: a. moral damages of art. 10 par. 11 of Law 2251/1994 are not of the nature of moral damages awarded by the general provision of art. 932 of the Civil Code, and b. that the action does not need to state which consumers have suffered moral damages, on what grounds, what amount each one seeks or whether they are members of the plaintiff association, because moral damages adjudicated by court are of punitive nature.</p>	1996	1998 (second level)	None

1.5 Hypothetical example cases

The following section contains data concerning the costs of 3 “hypothetical example cases”. A “hypothetical example case” is hereby understood as being an action proceeding which is “invented” on basis of existing cases, and defined through the type of individual damage suffered by a number of consumers, the sector, the category of law, the value of the case, the affected number of consumers, etc. For each case are analysed:

- a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).
- b) The effects on consumers who do not bring the collective action.
- c) The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).
- d) The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer’s fee).
- e) The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.
- f) Is there a “loser pays principle”? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?

In all cases it is assumed that claims are brought at the same court. The consumers are not in a state of poverty and are not eligible for legal aid targeted exclusively at the poor. All cases are decided after appeal.

1.5.1 Case 1 - telecommunication

Due to a technical defect, the telecommunications services provider T has miscalculated the duration of all telephone calls made by customers as being 2-3 percent longer than they were in reality, resulting in extra profits of 1 million Euro. 100,000 customers suffered damages; with certain differences as to the individual case. The consumer organisation or other intermediary preparing the claim estimates the average damage per consumer to be 1 Euro per month. The service provider claims to have repaired the defect after 10 months. Therefore the average damage per consumer could be estimated at 10 Euro.

- If the relevant mechanism is an opt-out system: consumer organisation or other intermediary represents all consumers (combined value of claims 1 million Euro)
- If the relevant mechanism is an opt-in system: consumer organisation or other intermediary could mobilise 1,000 consumers (combined value of claims 10,000 Euro)

a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).

- i. Because the illegal behaviour has already been stopped, it is obvious that the consumer organisation cannot file the collective action for the cessation and omission of the illegal behaviour in the future.
- ii. According to the recently introduced declaratory action for damages (collective mechanism 2, as described above), a consumer organisation can file a declaratory collective action so that the right to compensate consumers is recognised by a court decision.

b) The effects on consumers who do not bring the collective action.

- i. Regarding the collective redress mechanism 1, there are no effects on consumers.
- ii. Regarding the collective redress mechanism 2 (declaratory action), the provision mentions that the judgment that accepts in total or in part the declaratory claim for compensation, produces *res judicata* in favour of the consumers who have suffered damages even if they have not been litigants to the procedure. As already mentioned, a consumer who has suffered damages may, on the basis of this judgment, make his or her claim in writing to the supplier who has been sentenced, explaining the specific elements of his or her claim. If the supplier does voluntarily meet the claim within 30 days, the petitioning consumer can proceed to the court, on the basis of the above judgment, in order to demand an order of payment. He or she may do so under the condition that his or her claim is specific and definite. Moreover, it is explicitly stated in the provisions of art. 10 (par. 20, last part) that individual consumer claims, deriving from the same illegal behaviour, by consumers other than the ones described in paragraph 16 are not affected. The right to initiate individual action is not influenced by the rejection of the action of the consumer organisation of par. 16.

c) The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).

See table below.

d) The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer's fee).

See table below.

e) The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.

See table below.

f) Is there a “loser pays principle”? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?

In the absence of specific provisions for the filing of the collective action, the general civil procedural rules apply, specifically art. 176 of the Code of Civil Procedure where the “loser pays” principle applies. There are of course specific exceptions to this principle which may be applied according to the specific circumstances of each case (for example, in the case of partial acceptance or partial rejection of a claim, the costs may be allocated accordingly). It should be noted at this point that in practice the costs attributed by court do not usually cover all the actual costs (for example, all of the lawyers’ fees).

As has already been stated, consumers do not bear the burden of any litigation cost.

Table 2: Estimates regarding hypothetical example case 1 - telecommunications

	Estimated court fees* [national currency]	Estimated lawyer's fees [national currency]	Other costs, if any [national currency]	Public support that is available [national currency]	Estimated time involved	Comments
Collective redress: collective action for the protection of the general interest of consumers						
<i>For each individual consumer</i>	-	-	-	-	-	
<i>For intermediary filing the action</i>	-	In general, there is no specific pattern for the estimation of lawyers' fees. The minimum amounts provided for by the Lawyers Code do not usually apply. In general they may reach 1-2% of the amount adjudicated for each of the three instance courts amounting to a total of 6% until the irrevocable decision is made. In practice there may be a compromise of a lower amount.	-	-	-	-
Individual redress (through ordinary court procedure)²⁰						
<i>For each individual consumer</i>						
Individual ADR: Consumer Ombudsman, The Hellenic Ombudsman of Banking – Investment Services and the scheme of the Commissions for the amicable settlement of consumer disputes						
<i>For each individual consumer</i>	0	0	0	0		

Note: * Court fees given on basis of art. 176 and following of the Code of civil Procedure

²⁰ It is noted that there is no difference in court or lawyers fees between individual or collective redress.

1.5.2 Case 2 – financial services

Enterprise E released a third tranche of shares (230 million shares, 60 Euro per share). Following this, the value of the shares decreased rapidly during the next three years (to 10 Euro per share), leading to a loss in shareholder value of 11.5 billion Euro. Shareholders claimed that they had been victims of false information (considerably overestimated property; concealment of the burdensome acquisition of a foreign competitor) contained in the company's prospectus when the shares were put on the market. 15,000 investors bring their claims to the court, with an average value of the claim being 7,000 Euro each. The combined value of the claims is therefore 105 million Euro.

Before answering the questions, it must be noted that the above example has actually been experienced in Greece quite recently. In 1999 to 2000, when there was a fall in stockmarket valuation, many investors (mostly individuals having invested their savings) suffered severe losses. To our knowledge, no collective action has ever been filed by any consumer organisation regarding this case. Apart from the fact that the previous legal framework, as already stated, did not provide for a compensation mechanism, a lot of questions arose regarding whether the shareholder can be characterised as a consumer or not; and whether he or she is the final recipient of any product or service by an enterprise.

On the (weak) assumption that the above circumstances fall within the scope of consumer protection legislation, the following answers can be produced.

a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).

- i. Because the illegal behaviour has already been stopped, it is obvious that the consumer organisation cannot file the collective action for the cessation and omission of the illegal behaviour in the future.
- ii. According to the recently introduced declaratory action for damages (collective mechanism 2, as described above), a consumer organisation can file a declaratory collective action, in order that the right to compensation of consumers is recognised by a court decision.

b) The effects on consumers who do not bring the collective action.

- i. Regarding collective redress mechanism 1 there are no effects on consumers.
- ii. Regarding the collective redress mechanism 2 (declaratory action) the provision mentions that the judgment that accepts in total or in part the declaratory claim for compensation, produces *res judicata* in favour of the consumers who have suffered damages, even if they have not been litigants to the procedure. As already mentioned, a consumer who has suffered damages may, on the basis of this judgment, make his or her claim in writing to the supplier who has been sentenced, explaining the specific elements of his or her claim. If the supplier does not voluntarily meet claim within 30 days, the

petitioning consumer can proceed to the court, on the basis of the above judgment, in order to demand an order of payment. He or she may do so under the condition that his or her claim is specific and definite.

Moreover, it is explicitly stated in the provisions of art. 10 (par. 20, last part) that individual consumer claims deriving from the illegal behaviour by a consumer other than the ones described in paragraph 16 are not affected. The right to individual action is also not influenced by the rejection of the action of the consumer organisation of par. 16.

c) The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).

See table below

d) The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer's fee).

See table below

e) The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.

See table below

f) Is there a "loser pays principle"? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?

In the absence of specific provisions for the filing of the collective action, the general civil procedural rules apply, specifically art. 176 of the Code of Civil Procedure, where the "loser pays" principle applies. There are of course specific exceptions from this principle which may be applied according to the special circumstances of each case (for example, in the case of partial acceptance or partial rejection of a claim, the costs may be allocated accordingly). It should be noted at this point that in practice the costs attributed by the court do not usually cover all the actual costs (for example. all of the lawyers' fees).

As already stated, consumers do not bear the burden of any litigation cost.

Table 3: Estimates regarding hypothetical example case – financial services

	Estimated court fees* [national currency]	Estimated lawyer's fees [national currency]	Other costs, if any [national currency]	Public support that is available [national currency]	Estimated time involved	Comments
Collective redress: collective action for the protection of the general interest of consumers						
<i>For each individual consumer</i>	-	-	-	-	-	
<i>For intermediary filing the action</i>	-	In general, there is no specific pattern for the estimation of lawyers' fees. The minimum amounts provided for by the Lawyers Code do not usually apply. In general they may reach 1-2% of the amount adjudicated for each of the three instance courts, amounting to a total of 6% until the irrevocable decision is made. In practice there may be a compromise to a lower amount.	-	-	-	-
Individual redress (through ordinary court procedure)²¹						
<i>For each individual consumer</i>						
Individual ADR: Consumer Ombudsman, The Hellenic Ombudsman of Banking – Investment Services and the scheme of the Commissions for the amicable settlement of consumer disputes						
<i>For each individual consumer</i>	0	0	0	0		

Note: *Court fees given on basis of art. 176 and following of the Code of civil Procedure

²¹ It is noted that there is no difference in court or lawyers fees between individual or collective redress.

1.5.3 Case 3 - tourism

The tour operator T advertised on its website a “last-minute package” called “4-star” in which the consumers were supposed to be offered services in various hotels on various locations (Greece, Tunisia, etc.) in the 4-star category. However, the hotels were in very bad shape and in spite of the request of consumers no other accommodation was provided. The tour operator also categorically rejected all written claims of consumers for compensation. The only argument of the trader for rejection was that last-minute arrangements meant lower quality of services. About 500 travellers are affected, of which 200 claim a refund of 250 Euro each (which is 10% of the total price of the package). The combined value of the claims is therefore 50,000 Euro.

a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).

- i. Because the illegal behaviour has already been stopped, it is obvious that the consumer organisation cannot file the collective action for the cessation and omission of it in the future.
- ii. According to the recently introduced declaratory action for damages (collective mechanism 2, as described above), a consumer organisation can file a declaratory collective action in order that the right to compensation of consumers is recognised by a court decision.

b) The effects on consumers who do not bring the collective action.

- i. Regarding the collective redress mechanism 1, there are no effects regarding consumers.
- ii. Regarding the collective redress mechanism 2 (declaratory action), the provision mentions that a judgment that accepts in total or in part the declaratory claim for compensation produces *res judicata* in favour of consumers who have suffered damages, even if they have not been litigants to the procedure. As already mentioned, a consumer who has suffered damages may, on the basis of this judgment, make his or her claim in writing to the supplier who has been sentenced, explaining the specific elements of his or her claims. If the supplier does not voluntarily meet claim within 30 days, the petitioning consumer can proceed to the court, on the basis of the above judgment, in order to demand an order of payment. He or she may do so under the condition that his or her claim is specific and definite.

Moreover, it is explicitly stated in the provisions of art. 10 (par. 20, last part) that individual consumer claims deriving from the same illegal behaviour, by consumers other than the ones described in paragraph 16, are not affected. The right to individual action is also not influenced by the rejection of the action of the consumer organisation of par. 16.

- c) The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).**

See table below.

- d) The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer's fee).**

See table below.

- e) The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.**

See table below.

- f) Is there a “loser pays principle”? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?**

In the absence of specific provisions for the filing of the collective action, the general civil procedural rules apply, specifically art. 176 of the Code of Civil Procedure, where the “loser pays” principle applies. There are of course specific exceptions to this principle which may be applied according to the special circumstances of each case (for example, in the case of partial acceptance or partial rejection of a claim, the costs may be allocated accordingly). It should be noted at this point that in practice the costs attributed by court do not usually cover all the actual costs (for example, all of the lawyers' fees).

As already stated, consumers do not bear the burden of any litigation cost.

Table 4: Estimates regarding hypothetical example case 3 - tourism

	Estimated court fees* [national currency]	Estimated lawyer's fees [national currency]	Other costs, if any [national currency]	Public support that is available [national currency]	Estimated time involved	Comments
Collective redress: collective action for the protection of the general interest of consumers						
<i>For each individual consumer</i>	-	-	-	-	-	
<i>For intermediary filing the action</i>	-	In general, there is no specific pattern for the estimation of lawyers' fees. The minimum amounts provided for by the Lawyers Code do not usually apply. In general they may reach 1-2% of the amount adjudicated for each of the three instance courts, amounting to a total of 6% until the irrevocable decision is made. In practice there may be a compromise to a lower amount.	-	-	-	-
Individual redress (through ordinary court procedure)²²						
<i>For each individual consumer</i>						
Individual ADR: Consumer Ombudsman, The Hellenic Ombudsman of Banking – Investment Services and the scheme of the Commissions for the amicable settlement of consumer disputes						
<i>For each individual consumer</i>	0	0	0	0		

Note: * Court fees given on basis of art. 176 and following of the Code of civil Procedure

²² It is noted that there is no difference in court or lawyers fees between individual or collective redress.

1.6 Effectiveness and efficiency of collective redress mechanisms

Unless otherwise specified, this section refers to the first collective redress mechanism (the collective action for the protection of the general interest of consumers). Due to the recentness of the introduction of the second mechanism (the declaratory action for damages), is not possible to assess its effectiveness and efficiency. Wherever possible, some indicative conclusions have been drawn; these are presented by explicitly referring to the new mechanism.

1.6.1 Effectiveness of current collective redress mechanisms

Objectives

1. Does the collective redress mechanism fulfil the objectives of the national law which introduced it?

Yes, so far. As already mentioned, one of the main goals of the legislator when introducing the first mechanism has been to provide the means for the protection of the general interest of consumers, apart from providing the means for their individual judicial protection. So far, the mechanism has worked effectively; the volume of jurisprudence proves that it can play an important role for the protection of consumer interests, especially for control of general banking or insurance contract terms.

With the newly introduced declaratory action for compensation, the legislator aims to reaffirm an effective mechanism for the easier, quicker and cheaper way for a consumer to recover damages he or she has suffered because of the illegal behaviour of a supplier. It remains to be seen how this new mechanism will work in practice.

2. Has the mechanism enabled consumers to obtain satisfactory redress in cases which they would not otherwise have been able to adequately pursue on an individual basis?

The existing (first) mechanism in Greece has so far not provided for such a possibility, as already stated, as only moral damages with punitive character that do not directly benefit individual consumers are possible.

The newly introduced declaratory action, however, does provide consumers with effective legal means to acquire an executionary title in a short time (with the issuing of an order of payment after the declaratory judgment has become irrevocable). Nevertheless, small claims seem not to be dealt efficiently, since the issuing of an order of payment requires a certain amount of expense.

Incentives provided

3. a) Does the mechanism ensure a change in the behaviour of the defendant, which results in the reduction of future harm to all consumers?

The mechanism ensures a change in the behaviour of the defendant to some extent. The means that safeguard the compliance of the defendant with the court ruling have to do with the possibility of the court to provide for the measures of art. 947 of the Code of Civil Procedure, that is, as already mentioned, the detainment of the defendant and the pecuniary penalty of up to 5,590 Euro for every case of non compliance with the court's

ruling. Moreover, the adjudication of moral damages has a punitive character but also serves the purpose of general and (mainly) specific prevention. However, experience so far has shown that several defendants – for example, banks – although abiding by the court ruling to begin with, they set new general contract terms that differ from the previous ones but have the same effect.

Finally, it should be mentioned that according to art. 10 par.21 of Law 2251/1994, the Minister for Development may define (with a Decision that must be published in the Official Government Journal), the terms and conditions of compliance of the supplier's behaviour to the *res judicata* of the irrevocable judgments, when the consequences have a wider public interest for consumers.

3 b) Does the mechanism have a preventive effect and deter potential offenders, for instance by skimming off the profit gained from the incriminated conduct?

The preventive effect of the first mechanism relates to the general and specific prevention role that punitive damages have, as already mentioned. No other means (for example, for skimming off the profit gained from the illegal conduct) exist. Concerning the newly introduced declaratory action, preventive effects remain to be seen.

3 c) Does the mechanism provide incentives and sufficient opportunity for out-of-court settlement?

The possibility of out-of-court settlement in collective actions is not provided for, either by Law 2251/1994 or by the general rules of the Code of Civil Procedure (for example, mediation procedure of art. 214A of the Code of Civil Procedure applies to common law proceedings and not to the non-contentious jurisdiction).

However, Law 3297/2004 concerning the Consumer Ombudsman (CO) provides for the possibility for consumer organisations to bring a case for a friendly settlement before the ombudsman, as long as the case is not pending before a court. The Law does not refer to the types of case that can be brought before the CO and therefore a difference in reference to the general interests of consumers may not be ruled out. The same applies for art. 11 of Law 2251/1994, referring to the Commissions of out-of-court amicable settlement of disputes, with the only difference being that the said provision does not rule out cases that are already pending before a court.

4. Does the mechanism discourage the introduction of unmeritorious claims? Is there a “gatekeeper procedure” to certify whether a collective action is admissible to the court or not? If yes, how does it work?

In order to prevent that the possibility of claiming for moral damages would be abused, the legislator has ruled, as already stated, the following:

- If the claim for the compensation for moral damages is rejected with an irrevocable judgment and is considered unfounded, then the supplier can file an action for damages or moral damages, within six months of the date the judgment has become irrevocable, against the consumer association and against the members of the board of directors, who are in this case held personally responsible.

- If a consumer association seeks compensation for the satisfaction of moral damages repeatedly, with malice or gross negligence, and these claims have all been rejected with final and conclusive judgments as unfounded, then this can lead to the dissolution of the consumer association. The action for the dissolution of the association before the court can be filed by the supplier within one year of the final and conclusive judgment of the last rejecting decision; alternatively, the court can decide this, on demand by the prosecutor acting *ex officio*.

The “gatekeeper procedure” for the admissibility of the collective action has to do with the general provisions of the Code of Civil Procedure; no special provision exists regarding the admissibility of the collective action. It should be noted that a key element for the admissibility for every action before a court is the defined citation of the facts on which the claim is based. In the case of a collective action, the facts authorising the consumer organisation for the filing of the action (including, for example, 500 active members) are rendered into key elements for the defined citation and thus the admissibility of the action.

Accessibility

5. Is the mechanism easily accessible to consumers? [Costs, rules of standing, length of proceedings and other factors hindering or facilitating access for consumers to the mechanism should be considered]

The mechanism is easily accessible to consumer organisations that file collective actions. No factors that impact negatively the accessibility of the mechanism have been filed so far.

6. What are the litigation costs of collective redress for consumers compared to individual redress? What is the risk of the consumer if the case is lost?

There are no litigation costs for individual consumers. The consumer organisation bears the cost of the collective action. Consumers who are members of the consumer association have to pay only subscription fees to the organisation. Financial resources of consumer organisations are not limited to subscriptions but may also include subsidies or grants from state or local authorities, or European Union or other international institutions, as well as 35% of the sum attributed for moral damages and also donations and other financial resources.

The consumer bears no risk if the case is lost. It is also explicitly mentioned that consumer organisations cannot ask for remuneration from their members for the services that they provide, either on an individual or collective basis (art.10 par. 25). Finally, the consumer’s individual judicial rights and possibilities remain intact.

Financing and distribution of proceeds

7. Are actions under the mechanism financed in a way which ensures that consumers are able to obtain effective legal representation? Are there mechanisms of public support for the party that brings forward a collective action (the intermediary²³), are contingency fees/conditional fees²⁴ allowed? What is the risk of the intermediary if a case is lost?

The financing of consumer organisations is provided for by the provisions of Law 2251/1994, as mentioned above. Moreover, the law provides safeguard clauses for the efficient functioning of consumer organisations such as supervision of consumer organisation by a five-member commission that certifies the active functioning of the organisation, the prohibition of accepting donations from suppliers or from their associations or from political entities, etc. Conditional fees are not ruled out by any provision of the Law and the consumer organisation is free to act on its own initiative taking into consideration all existing market circumstances in order to make efficient choices.

There is no risk for the consumer organisation if the case is lost.

8. Are proceeds of collective redress actions distributed in an appropriate manner amongst plaintiffs and their representatives?

As already mentioned, the only proceeds of the collective action relate to the punitive damages attributed and, in particular, to 35% of the total amount awarded. Members of the Board of Directors are not allowed to receive any kind of remuneration apart from the one that covers expenses for work related to the consumer organisation, as long as these expenses have documentary proof.

1.6.2 *Efficiency of available mechanisms*

Length of proceedings

9. Is the length of the proceedings under the mechanism reasonable for consumers, consumer organisations, public bodies, and the defendants?

They are considered to be reasonable in comparison with the rest of the court proceedings.

²³ A collective action is usually brought forward by an intermediary that organises the action on behalf of consumers. This can be a public intermediary (e.g. an ombudsman), a representative organisation as intermediary (e.g. a consumer association) or private intermediaries (e.g. a private law firm/an individual consumer taking the lead in an action). Intermediaries may also engage a private lawyer, who is not considered to be an intermediary in this context, as long as he or she is not responsible for organising the action.

²⁴ Contingency fees are lawyer's fees that consist of a percentage of the damages awarded. Conditional fees are (possibly additional) fees that are paid in case of success, but not related to the damages awarded.

Costs for consumers, consumer organisations and public bodies

10. Are the costs related to bringing an action under the mechanism for consumers, consumer organisations and public bodies proportionate to the amount in dispute?

The amount in dispute so far has to do with the moral damages claimed. If the claim does not have a declaratory nature then 4% on the amount of the claim has to be deposited for the admissibility of the action. In declaratory demands as well as in the declaratory action, the costs (not including lawyers' fees) are fixed and limited to the costs of document stamping.

11. Does the mechanism minimise litigation costs for consumers?

As already mentioned, the mechanism minimises litigation costs for consumers, since consumers do not bear any costs for the collective action proceedings.

The newly introduced declaratory judgment that provides the basis for consumers to seek an order of payment will definitely minimise costs for consumers since they will be able to acquire a legal executionary title in less time, with lower litigation costs, and through simpler procedures.

Costs for businesses

12. *Information costs*: Does the mechanism impose requirements on businesses (in terms of being informed about the existing collective redress mechanisms and providing related information to public authorities) that lead to additional costs? Do these costs weigh in heavily on Small and Medium Enterprises (SMEs)?

There is no data available relating to this.

13. *Litigation costs and related insurance costs*: Are cost for businesses for (legal) insurance (for litigation and for damages) and the litigation costs under the existing collective redress mechanisms unreasonable?

There is no data available relating to this.

14. Is the *economic impact* on traders against whom actions have been brought under the mechanism proportionate to the alleged harm caused by the trader's conduct?

There is no data available relating to this.

15. Does the mechanism lead to the *closing down* of businesses?

There is no data available relating to this.

Competitiveness and investment flows

16. Does the mechanism have an impact on the competitive position of EU firms in comparison with their non-EU rivals?

There is no data available relating to this.

17. Does the mechanism provoke cross-border investment flows (including relocation of economic activity in Member States which do not have any collective redress mechanisms?)

There is no data available relating to this.

1.6.3 Added value of available mechanisms

18. What is the added value of the collective redress mechanism(s) compared to individual judicial redress and ADR schemes, i.e. what is achieved by the mechanism(s) that is not achieved by individual redress?

To our knowledge, the numerous collective actions that have reached the courts so far have led to very important rulings in many sectors and, for example, in cases related to general terms in consumer contracts, in the fields of banking and insurance services, in favour of the consumers who have witnessed a change in the suppliers' behaviour towards them. It would be very difficult (in terms of time and effort) for individual consumers to pursue the same goals individually, though there have been such cases. Moreover, a collective action deals with the illegal behaviour of a supplier in general, covering a multitude of aspects, whereas the scope of the individual action is, by definition, usually more limited.

Of course, the collective action for the protection of the general interest of consumers had not been extended to the collective pursuit of mass claims, which would assist each individual consumer when seeking redress for damages suffered – damages they are reluctant to pursue either because of the small size of the claim, which renders judicial recourse non advantageous, or because it is in any case very costly in terms of time, effort and money, especially when considering the fact that he or she would have to pursue judicial recourse individually against an opponent who would be financially stronger.

The newly introduced declaratory action for compensation procedure has filled the gap to a certain extent. It remains to be seen how it will work in practice. It should be noted at this point that this procedure still does not favour small claims in general, since the issuing of an order of payment still bears a certain level of cost that is not always covered by the compensation awarded for litigation costs, which means that consumers would be reluctant to pursue his or her rights.

19. Please estimate, what percentage of consumers who were represented in the collective redress cases would likely have undertaken individual redress through ordinary court procedures if no collective redress system was in place (for example, none, 10%, 50%)?

Since there have been no collective redress cases under the newly introduced mechanism so far, it is not possible to estimate this.

1.7 Overview of alternative procedures for consumers

1.7.1 *Individual court action*

Is there any data available on the number of consumers seeking individual redress through ordinary court procedures?

There is no data available relating to this.

Please estimate the threshold for claims (in Euro) under which a rational consumer would refrain from seeking individual redress through ordinary court procedures?

This depends on the specific circumstances of each case.

1.7.2 *Individual action – ADR scheme(s)*

Is there an ADR scheme(s) for consumer cases?

There are three main out-of-court schemes especially designed for consumers: the newly introduced Consumer Ombudsman; The Hellenic Ombudsman of Banking – Investment Services; and the Commissions for the amicable settlement of consumer disputes that exist in each prefecture. There are many other mediation schemes in Greece, within particular authorities, public bodies and organisations.

Is there any data or an evaluation report available on the consumer relevant use of the ADR scheme(s)?

There is no evaluation report for all ADR schemes. However, some of the above-mentioned institutions release annual reports covering the operation of their institution. Details can be found on their websites: www.bank-omb.gr, www.synigorostoykatanalwti.gr

Please estimate the threshold for claims (in Euro) under which a rational consumer would refrain from seeking redress through an ADR scheme?

There is no threshold since the ADR schemes are simple to use and with no costs for the consumer.

1.8 ANNEX***Annex 1: Country literature on collective redress***

- ❑ Alexandridou E. (1996): Consumer Protection Law, Greek and Community, Sakkoula Publishing, Thessaloniki
- ❑ Alexandridou E. (2008): Consumer Protection Law, Greek and Community, Commentary, (not yet published).
- ❑ Karacostas I., Consumer Protection Law, Athens, Nomiki Bibliothiki, 2004, 384-427.
- ❑ Karacostas I., Consumer Protection Law, Jurisprudence on provisions of law, Athens, Nomiki Bibliothiki, 2005, 52-54.
- ❑ Dellios G., Aspects of the current jurisprudence of the High Court (Areios Pagos) on the matters of the collective control of the general terms of consumer contracts, Ellhiniki Dikaiosynh, 2001, 1494.
- ❑ Delicostopoulou A., The compensation for moral damages in the collective actions of Law 2251/1994 and the criteria for its determination, DEE 1997, 10
- ❑ Kousoulis S., The effects of the collective action court decisions in DEE, 2002, 1097.
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- ❑ Matthias S., The legal nature of the collective action and the consequences of the collective action, Ellhiniki Dikaiosynh, 1997, 1