
CONTRACTS & DISPUTE RESOLUTION IN MEDITERRANEAN COUNTRIES: THE CASE OF GREECE

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INTRODUCTION

Coming from a mediterranean country with a different judicial system from the ones in the UK, we are frequently asked about how contracts and dispute resolution are approached in Greece. Are there any standard forms of contract used? What are the most common dispute resolution mechanisms?

In the first part of this article, the Greek contract law and key differences with the English law are explored, while the second part focuses on the Greek court system as well as on the dispute resolution methods encountered in Greece.

GREEK CONTRACT LAW

Greece (officially the “Hellenic Republic”) is a civil code jurisdiction which is based on the Roman and German legal systems. Contrary to the common law jurisdictions, case law is not treated as a source of law. The Greek Code of Civil Procedure (“GCCP”) provides the rules that govern civil procedures.



As for contract law, the Greek Civil Code (“GCC”) serves as its primary source. Greek contract law has also been influenced by EU directives, given that Greece is a member of the European Union thus is also governed by the EU law.

The GCC provides both the general rules governing every contract and special rules that stipulate deviations or additions to the general rules, as applicable to specific contract types. The GCC governs both private and public contracts, although in a supplementary manner for the latter as they are primarily regulated by specific legislation for public works. Moreover, the award of public contracts is subject to specific procurement procedures, primarily deriving from EU legislation.

GCC and Construction Contracts

Construction contracts are regulated by Articles 681 to 702 of the GCC, being referred to as “contracts for works”. However, unlike in the UK, there are no standard forms of construction contracts in Greece; not even the procurement routes are standardised. On the other hand, the “freedom of contract principle” (Article 361 of the GCC) enables parties to freely negotiate contractual terms, subject to mandatory law provisions as well as to civil law general principles. Consequently, contracts can be formulated to include either the design or the construction portion of a project, or even involve design and build, management contracting or construction management arrangements.

That said, Greek construction firms often opt to either use an international standard form of contract or develop bespoke contracts using a standard form one as a basis and adjusting it to take Greek law into account. For instance, FIDIC is commonly used in both cases for large-scale projects or for projects involving foreign organisations.

GCC and English Law

A key difference between GCC and English law with respect to contracts is how penalties are treated under civil law compared to common law jurisdictions. While their notion is considered as penal in the UK and hence they are not enforceable in courts, Greek law does provide for penalties (instead of liquidated damages) as a type of compensation in case of breach of contract.



Penalties, however, are subject to the stipulations of the GCC and must not act against fundamental principles, while the amount of a penalty must be reasonable and not excessive. Otherwise, a monetary penalty clause can be reduced to the "due/proper measure" or even annulled by a judge or arbitrator, if found to be disproportionate or excessive.

Another noteworthy difference is the applicable statute of limitations on contract claims. Under UK's Limitation Act 1980, claims for breach of contract and tort can be brought within six years for a simple contract and within twelve years for a contract executed as a Deed. In certain cases, the ordinary six-year statutory limitation period can be extended if the provisions of the Latent Damage Act 1986 apply.

Conversely, in Greece, the GCC lists in detail all categories of claims statute-barred within five years, while the contractual liability limitation period for all other claims is 20 years. Commercial claims, professional fee disputes and torts fall under the five-year limitation period. It should be also noted that as statutory limitation periods are subject to the provisions of the GCC, they cannot be contractually modified or overall excluded.

THE GREEK COURT SYSTEM

The Greek judicial system is comprised of two jurisdictions, the administrative one and the civil/penal one. Since there are no specialist civil courts in relation to construction disputes in Greece, courts allocate the case to the chamber that is competent to hear it.

The GCCP provides the rules for the allocation of the cases to the different court levels. In all civil matters where the dispute is monetary, the allocation is based on the amount sought. Non-monetary cases are also allocated according to the provisions of the GCCP. If there is no relevant provision, they then fall under the Three-member Court of First Instance.

The structure of civil courts is as follows:

- the Courts of First Instance (lower courts), which are divided into:
 - i) the Magistrates' Courts, for cases up to €20,000
 - ii) the Single-member Court of First Instance, for cases between €20,001- €250,000
 - iii) the Three-member Court of First Instance, for cases above €250,001
- the Courts of Appeal (higher courts), where a defeated party can challenge the legal and factual grounds of decisions of the Courts of First Instance by filing an appeal

- the Supreme Court (the highest court), a court of cassation with the power to review the judgements of the Courts of Appeal or questions of law

Civil Proceedings

Construction disputes in Greece are most commonly resolved through litigation. As described above, litigation is presided by a judge in the appropriate Court of First Instance (in accordance with the nature and the value of the dispute) and the decision is binding for both parties. Further to litigation, alternative dispute resolution (“ADR”) methods, such as arbitration and mediation, are applicable.

The main stages in litigation are outlined below:

- filing a claim to the Court of First Instance with the full particulars and the factual background;
- service of the action to the defendant through a court officer;
- filing of each party’s pleadings and documentary evidence;
- hearing of the case;
- issuance and publication of the judgment (Court of First Instance);
- filing of an appeal by the defeated party and issuance of the judgement (Court of Appeal); and
- filing of an appeal of cassation before the Supreme Court.

The Role of Expert Witnesses

The GCCP states that expert witnesses can be either appointed by the parties or by the Court to produce expert reports and give expert evidence. In the former event, the experts act as “technical advisors” to their clients and are guided by their guidelines as to what is to be examined, while also being bound by the rules of their field of expertise (such as the professional body they might be members of). In the latter event, the experts are guided by the instructions given by the Court.

The Court hearing the case assesses expert opinions, regardless if an expert was appointed by the parties or by the Court. Experts’ conclusions may either be adopted and relied upon by the Court, or rejected should the Court consider that any instructions and/or clarifications given to the experts have not been followed. Moreover, the Court may request a new expert report, or its repetition or completion, either by the same or by different experts, if necessary.

ALTERNATIVE DISPUTE RESOLUTION IN GREECE

Arbitration

Arbitration has been gaining more and more popularity, mainly due to the delays associated with awarding justice through litigation. Apart from employment disputes and applications for interim measures, all other private disputes may be resolved via arbitration, under the provision for arbitration expressly included within the contract or that neither party objects to it. Moreover, similar to litigation, an arbitral ruling leads to a decision binding for both parties.



While Greek law provides that arbitral rulings cannot be appealed but only annulled under certain circumstances, parties may by mutual agreement file for an appeal. Furthermore, Greece is also a signatory party of the New York Convention, therefore foreign arbitral awards are also enforceable under Greek law, unless there are specific grounds for refusal.

The arbitration legal system in Greece distinguishes between domestic (which is governed by the GCCP) and international arbitration legislation (which is governed by the Greek Law on International Arbitration). Although the Greek Law on International Arbitration sets out the criteria as to whether the dispute falls under domestic or international arbitration, it also allows the parties to freely select the type of arbitration at its outset. In the case of international arbitration, parties can agree on and select the rules (such as the CIARB Rules or the ICC International Court of Arbitration Rules) as well as the arbitral venue, the language and the applicable governing law.

Mediation

In terms of mediation, the GCCP provides the following alternatives:

- extrajudicial mediation, which may be launched at any stage of the court proceedings;
- judicial mediation, which can also be initiated at any stage prior to or during the court proceedings; and
- judicial settlement (i.e., conciliation), which can be sought before a case is filed.

The latest legislation on extrajudicial mediation provides that lawyers must advise their clients prior to the commencement of the proceedings of the option to resolve the dispute



through mediation, along with their obligation to attend a joint mediation session. Should the parties fail to reach an agreement during that session, they are entitled to refer the case to court.

With respect to judicial mediation, a neutral, certified Mediator Judge also participates in the mediation procedure, assisting the negotiations and proposing solutions. The Court of First Instance and the Appeal

Court can invite at their discretion the parties to resort to judicial mediation and to postpone the hearing at the same time.

Finally, in the case of conciliation, a neutral third party such as the competent Magistrate, intervenes and attempts to resolve the dispute or achieve a settlement by recommending their own solution.

Other forms

It should be noted that, under the Greek legal system, there is no statutory right to refer a dispute to adjudication. However, subject to the provisions of the contract and the mandatory law, the parties are free to agree on adjudication or even expert determination, although this is not that common.

SUMMARY

The Greek and the UK judicial systems are inherently different, with Greece being a civil code country and the UK a common law and statute state . Greek contract law derives from the GCC and is characterised by the “freedom of contract principle”. There are no Greek standard forms of construction contracts, hence bespoke contracts are predominantly

used. However, the use of international standard forms (or their incorporation into bespoke contracts) is common for large-scale projects.

As for the Greek court system, it is divided into lower, higher and cessation courts. Construction disputes are mainly resolved through litigation, however the process is known to be significantly lengthy, thus arbitration has been getting increasingly widespread. A dualistic arbitral system has been adopted, distinguishing between domestic and international arbitration. Mediation is also not uncommon, and the Greek law even provides for a mandatory session before a case is brought to court. Finally, there is no statutory adjudication process.

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