

# **ORAL AND WRITTEN PROCEEDINGS AS FACTORS INFLUENCING ON THE EFFICIENCY IN CIVIL PROCEDURE IN GREECE**

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The Greek procedural legislation in the field of jurisdiction of civil courts is trying to combine the oral as well as the written procedure. The Greek procedural legislator starts from the point that oral proceedings enforce the directness, which clearly constitutes one significant advantage for the proper administration of justice. The dialectical form of the trial –thesis, antithesis and synthesis– is fully achieved through the oral procedure, where the judge/court has the leading role. On the other hand the most important advantage of written proceedings consists in the indisputable fact that “scripta manent” and of course in the general ascertainment that a written text has generally better cohesion and a more careful expression. Written proceedings “last in time” and that is a factor with a significant meaning, especially in cases lasting for a long period of time.

The Greek Code of Civil Procedure (gr. CCP) prescribes the oral procedure as mandatory before the courts of first instance, as well as for the cases of voluntary jurisdiction (Art. 115 § 2 gr. CCP). Written proceedings –in the sense and form of written pleadings– are obligatory in the first instance procedure before one-member and three-member district courts, as well as in the procedure before the second instance courts (appeal courts) and before Areios Pagos, which is the Supreme Court of civil law (Art. 115 § 3 gr. CCP). On the other hand written proceedings are optional before justices of peace (in this latter case, namely before justices of peace, the parties have simply the right to submit written pleadings according to Art. 115 § 3 gr. CCP). This differentiation is according to the legislator justified by the fact that the cases before justices of peace are in general simple and don’t involve complicated issues. However, if the parties wish –namely even if only one party wishes– they can

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follow the written procedure submitting written pleadings. The rule of written proceedings is also followed, when filing an action and other documents instituting the proceedings. Once again an exception is provided for only for the actions, which are filed in justices of peace, where the oral submission is also permitted.

In the praxis, however, the system of gr. CCP is generally not always followed, in the sense that in those cases where both oral and written procedure are provided for, it is only the written one applied, while the oral is sacrificed. Lawyers submit their written pleadings without presenting orally their views and legal allegations. In those cases this oral procedure is in general restricted only to the examination of witnesses (the evaluation of their testimonies will be done with the written pleadings which will in turn be submitted after the evidentiary proceeding is over).

In the procedure of second instance oral proceedings are in praxis totally dispensed. The parties submit their written pleadings and no discussion follows.

In the procedure before Areios Pagos the parties are not obliged to submit written pleadings, unless they raise objection related to the admissibility and the duly submission of the cassation and the additional grounds. In this case the parties must submit their written pleadings at least twenty days before the hearing. The oral argumentation of the lawyers is also provided for before Areios Pagos. In the past this oral procedure was the rule in trials before the Supreme Court of Areios Pagos and it was the peak, the most significant phase of the procedure. But already the opposite practise is the rule, given that the lawyers relinquish the oral presentation of the case and they keep to the submission of written pleadings.

The law drafting committee for the reform of the Code of Civil Procedure at the Ministry of Justice, in which I had the honour to be the President, suggests legislative reforms aiming to enforce oral proceedings, which indisputable contribute to the directness of the procedure and therefore to a better judicial protection.