

# THE INTRODUCTORY PHASE AND PROCEDURAL CONTRACTING IN GREECE

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## I. FILING AN ACTION

The first stage of a civil trial in ordinary proceedings is defined from the filing of an action and the hearing, in which the evidentiary procedure is included (functionally and temporally) as well. In particular, in order to file an action the plaintiff must complete two separate procedural acts: to submit a complaint to the clerk of the court and to serve a copy (of it) to the defendant. That is to say, only after those two acts are completed can an action be considered as having been brought. The initiation of an action (that requires both submitting and serving) has specific procedural and substantial effects, with the following temporal difference: procedural effects commence retroactively from the time an action has been submitted, provided that it has been subsequently served to the defendant, while the substantial effects commence from the moment an action has been served. The most important procedural effect is “lis pendens” and the main substantial effects are: a) the interruption of the running of a prescription and b) the obligation of the defendant to pay interests under certain conditions.

## II. EXTRAJUDICIAL SETTLEMENT

When submitting an action the clerk also defines a specific date for the hearing of the case. Before that date, an attempt of an extrajudicial settlement of the dispute is required by law. This pretrial procedure is for the time being applied only to the private disputes adjudicated by three-member district courts. It was put into effect only in 2001 after many amendments and in reality has been proven unsuccessful, ending up to be just a typical procedure, where the parties don't show up to settle, but only to compile a report of failure. Without this report (of failure) the three-member

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district court cannot proceed to the trial/main hearing of the case. Statistically only 1% of the cases are settled through this extrajudicial proceeding, which doesn't constitute a form of mediation, although it shares a few common characteristics with this extrajudicial institute.

### III. HEARING

On condition that this pretrial settlement has failed, which as already mentioned is the rule, the parties are obliged to submit their written pleadings twenty days before the hearing. More specifically the pleadings of the plaintiff contain a detailed presentation of his action (factual and legal allegations, means of evidence), while the pleadings of the defendant include his answer to the action, which can be done in two ways: he either denies the basis of the action or he raises various types of exceptions. It is also provided that the parties must present their means of evidence and procedural documents, upon which they invoke in their written pleadings, twenty days before the hearing, otherwise they are inadmissible. Fifteen days before the hearing each party must submit its contradictions against the allegations of the opponent party, to which they have appealed with the pleadings. This procedure applies to the ordinary proceedings of the three-member district court. The submission of the pleadings doesn't of course imply that the procedure is exclusively written. The procedure in the courts of first instance is mainly oral, but due to a large number of pending cases the oral proceeding can't be detailed. In this phase of the main proceeding and hearing also takes place the evidentiary proceeding with the examination of the witnesses (as already mentioned documentary evidence must be attached to the pleadings and be submitted at least twenty days before the hearing). However, if the court decides that a tangible/direct evidence or an expert's report is necessary, then it pronounces an oral announcement which must be written in the minutes and the trial is temporarily adjourned (until the means of evidence are ready to be produced). In any case the rule which Art. 270 § 5 of gr. CCP provides is that the hearing and the evidentiary proceeding are completed in one trial day. However, if the time is not enough, the court can exceptionally suspend the hearing and the evidentiary proceeding for another day and time before the same judges with an oral announcement which must be written in the minutes of the hearing.

#### IV. SUGGESTIONS OF THE LAW DRAFTING COMMITTEE

Relating to this introductory phase and the evidentiary procedure the law drafting committee for the reform of the Greek Code of Civil Procedure at the Ministry of Justice, in which I was the President, has suggested the following reforms:

1. The attempt for extrajudicial settlement can take place even before “lis pendens” begins.
2. The report judge (in three-member district courts), who according to the valid law has no power to issue a judgment, could from now on issue a final judgment in cases of default of the plaintiff or the defendant. The report judge would also be able to issue a judgment in case that the defendant accepts the action according to the Art. 298 of the gr. CCP.
3. The assumed confession will be anew enacted, when the defendant fails to enter an appearance at the hearing, although he was summoned properly and within the time limits. On the other hand if the plaintiff is the one who doesn't appear, then the action is dismissed.
4. It will be anew established the authority of a court to issue a judgment and order a complementary evidentiary proceeding. This is necessary in those cases, when the court judges that some certain points need to be evidentially clarified. It enforces the power of the court in the evidentiary proceeding.
5. In our proposal for a bill we for the first time make provision for the electronic procedure of a trial (e-justice). It is suggested among others the electronic filing of procedural documents (actions and other documents instituting the proceeding, etc), the electronic serve of procedural documents, the electronic compilation of the clerks reports (that an action has been filed) etc.
6. It is also suggested that the plaintiff (as well as every party who files a procedural document instituting the proceedings) is obliged to appoint a lawyer as procedural representative<sup>2</sup>. The latter must have a residence in the general area of the appeal court, in which the trial is conducted. The defendant has also the same obligation. This suggestion aims to ensure a transparency in the parties' residence in order to facilitate the servings of each party to the other.

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<sup>2</sup> A procedural representative has only the power to receive all the legal documents, which are addressed to the specific party.